No. 17-778

In the Supreme Court of the United States

JAMAR ALONZO QUARLES, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether a state offense that criminalizes an intruder's unlawful continued presence in a dwelling after forming the intent to commit a crime has "the basic elements of unlawful * * * remaining in, a building or structure, with intent to commit a crime," *Taylor* v. *United States*, 495 U.S. 575, 599 (1990), thereby qualifying as "burglary" under the Armed Career Criminal Act of 1984, 18 U.S.C. 924(e)(2)(B)(ii).

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases: Page

Cases—Continued: Page

Cases—Continued: Page

Statutes and rule:

Statutes and rule—Continued: Page

Statutes and rule—Continued: Page

Statutes and rule—Continued: Page

Miscellaneous:

Miscellaneous—Continued: Page

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-8a) is reported at 850 F.3d 836. A prior opinion of the court of appeals is not published in the Federal Reporter but is reprinted at 634 Fed. Appx. 578.

JURISDICTION

The judgment of the court of appeals was entered on March 10, 2017. A petition for rehearing was denied on June 28, 2017 (Pet. App. 9a-10a). On September 15, 2017, Justice Kagan extended the time within which to file a petition for a writ of certiorari to and including November 24, 2017, and the petition was filed on that date. The petition for a writ of certiorari was granted on January 11, 2019. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant statutory provisions are reproduced in an appendix to this brief. App., *infra*, 1a-5a.

STATEMENT

Following a guilty plea in the United States District Court for the Western District of Michigan, petitioner was convicted on one count of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1). Judgment 1. He was sentenced to 204 months of imprisonment, to be followed by five years of supervised release. Judgment 2-3. The court of appeals vacated and remanded in light of *Johnson* v. *United States*, 135 S. Ct. 2551 (2015), and the district court reimposed the same sentence. 634 Fed. Appx. 578, 579 (per curiam); Am. Judgment 2-3. The court of appeals affirmed. Pet. App. 1a-8a.

1. Shortly after he was paroled following a prison sentence for shooting another person, petitioner assaulted his girlfriend, Chasity Warren, and threatened to kill Warren's mother. Presentence Investigation Report (PSR) ¶¶ 8-9. Then, on August 24, 2013, he had a lengthy dispute with Warren, forced her to accompany him, and held her at gunpoint. PSR ¶¶ 7-15.

Petitioner was unable to drive that day because he was "messed up" on Xanax, so Warren was driving the two of them around. PSR ¶ 10. Petitioner became angry and verbally abusive toward Warren when the car ran out of gas. *Ibid.* Warren hailed a cab that took them to a gas station, where Warren locked herself in a bathroom. PSR ¶ 11. When Warren emerged, petitioner took her by the arm back to their car. *Ibid.*

Petitioner got behind the wheel and, after knocking the side mirror off a parked car, became angrier with Warren and "struck her in the face," causing "swelling below her left eye." PSR ¶ 12. Warren asked to leave

when petitioner stopped at a McDonald's, but petitioner physically prevented her from doing so. PSR ¶ 13.

Petitioner drove to his house, where he "continued to yell at [Warren] and refused to let her leave." PSR ¶ 14. At one point, petitioner pointed a handgun at Warren's head and asked, "You want to go to a wedding or a funeral?" *Ibid.* Petitioner "began yelling at her for seeing other men and [questioning] whether or not she loved him." *Ibid.* Warren eventually escaped and called 911. PSR ¶ 15.

Officers arrived at the scene and arrested petitioner, who had attempted to drive away. PSR ¶ 15. During a protective sweep of petitioner's house, officers found a loaded .45-caliber semiautomatic pistol. PSR ¶ 16. Later forensic examination confirmed that the DNA on the pistol's handgrip belonged to petitioner. PSR ¶ 18.

Further investigation revealed that Layassa Moore, petitioner's ex-girlfriend, had filed a police report alleging that petitioner had recently visited her home and demanded to see her children. PSR ¶¶ 19-21. When Moore began arguing with petitioner, he pulled a gun, pointed it at her, and told her not to argue with him as he proceeded upstairs into the home. PSR ¶ 21.

2. A federal grand jury charged petitioner with one count of possession of a firearm by a felon, in violation of 18 U.S.C. 922(g)(1), based on the August 24, 2013 incident. PSR ¶¶ 1-2. He pleaded guilty. PSR ¶ 4.

After examining petitioner's lengthy criminal record, see PSR ¶¶ 47-57, the Probation Office determined that petitioner qualified for sentencing under the Armed Career Criminal Act of 1984 (ACCA), 18 U.S.C. 924(e). PSR ¶ 61. The ACCA provides that a person who violates Section 922(g) and "has three previous convictions" for "a violent felony or a serious drug offense"

shall be imprisoned for "not less than fifteen years." 18 U.S.C. 924(e)(1).

The ACCA defines a "violent felony" to include, among other things, any crime punishable by more than one year that "is burglary, arson, or extortion, involves use of explosives" (the enumerated offenses clause) "or otherwise involves conduct that presents a serious potential risk of physical injury to another" (the residual clause). 18 U.S.C. 924(e)(2)(B)(ii); see *Welch* v. *United States*, 136 S. Ct. 1257, 1261 (2016). The Probation Office found that three of petitioner's prior convictions qualify as violent felonies: (1) a 2002 Michigan conviction for third-degree home invasion; (2) a 2004 Michigan conviction for assault with a dangerous weapon, and (3) a 2008 Michigan conviction for assault with a dangerous weapon. PSR ¶¶ 40, 51, 54, 56. The Probation Office calculated petitioner's Sentencing Guidelines range at 188 to 235 months of imprisonment. PSR ¶¶ 40, 61, 103.

Petitioner objected, arguing that his 2002 home-invasion conviction did not qualify as a violent felony. See D. Ct. Doc. 29, at 5-20 (Jan. 21, 2015). The district court determined that the conviction qualified under the ACCA's residual clause, overruled the objection, and sentenced petitioner to 204 months of imprisonment to be followed by five years of supervised release. J.A. 55-77; see J.A. 74 (describing petitioner as "the paradigm picture for somebody" who "should fall within the" ACCA because "[f]irearms, a former girlfriend, and drugs and alcohol" were "a very dangerous mix for [him]").

3. Following this Court's decision in *Johnson*, which held that the residual clause is unconstitutionally vague, 135 S. Ct. at 2557, the court of appeals vacated petitioner's sentence and remanded for a determination of

whether the home-invasion conviction qualified as "burglary." 634 Fed. Appx. at 579.

Although the ACCA does not define "burglary," this Court in *Taylor* v. *United States*, 495 U.S. 575 (1990), construed the term in a "generic" manner to include "any crime, regardless of its exact definition or label, having the basic elements of unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime." *Id.* at 599. *Taylor* instructed courts to employ a "categorical approach" to determine whether a prior conviction satisfies that definition. *Id.* at 600; *e.g.*, *United States* v. *Stitt*, 139 S. Ct. 399, 405 (2018). Under that approach, courts examine the "statutory definition[]" of the crime of conviction in order to determine whether it necessarily reflects conduct that constitutes the "generic" form of burglary referenced in the ACCA. *Taylor*, 495 U.S. at 600. If the definition "substantially corresponds" to, or is narrower than, generic burglary as defined in *Taylor*, the prior offense categorically qualifies as a predicate conviction under the ACCA. *Id*. at 602.

The district court here determined that petitioner's home-invasion conviction qualifies as "burglary." J.A. 104. The court rejected petitioner's argument that the Michigan offense is broader than generic burglary because it "does not have as an element that the perpetrator ha[ve] the intent to commit an offense at the time of the entry or remaining in." D. Ct. Doc. 50, at 2 (May 4, 2016); see *id.* at 5 (arguing that "contemporaneous intent" is required). The relevant Michigan statute provides that a "person is guilty of home invasion in the third degree if the person" either "[b]reaks and enters a dwelling with intent to commit a misdemeanor in the dwelling"; "enters a dwelling without permission with

intent to commit a misdemeanor in the dwelling"; or "breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a misdemeanor." Mich. Comp. Laws Ann. § 750.110a(4)(a) (West Supp. 2001). The court explained that the Michigan statute defines a "specific-intent state crime," in that "the intent [must be formed] at the time of entry" or "while still remaining in an unprivileged access in the house or in the structure." J.A. 103. The court remarked, "I don't see how you could have a specific-intent crime committed while residing or remaining in an unprivileged entry status and not satisfy" *Taylor*'s definition. *Ibid.*

The district court accordingly reimposed the same 204-month term of imprisonment. J.A. 104, 111. The court cited petitioner's history of "visit[ing] violence on people * * * close to him with guns while on supervision," which, the court observed, was "exactly the kind of danger that * * * we're meant to address when the ACCA applies." J.A. 111; see J.A. 110 (noting petitioner's "long list of trouble" and the "volatile mix of the drugs, the anger, the violence, and usually an ex-girlfriend, sometimes a present girlfriend").

4. The court of appeals affirmed, Pet. App. 1a-8a, rejecting petitioner's argument that generic burglary includes "an intent-at-entry element," under which the defendant must form the intent to commit a crime at the initial moment at which his presence becomes unlawful, rather than later while still unlawfully remaining, *id.* at 7a-8a. The court cited *Taylor*'s definition of generic burglary, which includes the "unlawful or unprivileged entry into, *or remaining in*, a building or other structure, with intent to commit a crime." *Id.* at 8a (quoting

Taylor, 495 U.S. at 598). The court explained that "someone who enters a building or structure and, while inside, commits or attempts to commit a felony will necessarily have remained inside the building or structure to do so." *Ibid.* (quoting *United States* v. *Priddy*, 808 F.3d 676, 685 (6th Cir. 2015)). The court accordingly reasoned that "generic burglary, as defined in *Taylor*, does not require intent at entry; rather the intent can be developed while 'remaining in.'" *Ibid.* (quoting *Taylor*, 495 U.S. at 598).

SUMMARY OF ARGUMENT

The court of appeals correctly determined that petitioner's home-invasion conviction qualifies as a conviction for generic "burglary" under the ACCA. Under *Taylor* v. *United States*, 495 U.S. 575 (1990), a state offense is generic burglary so long as it has the "basic elements" of an "unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime." *Id.* at 599. *Taylor*'s "contemporaneous-intent requirement" (Pet. Br. 2) is satisfied by a state offense that requires proof of the intruder's intent to commit a crime at any point while he is inside without permission. An intruder who develops a criminal intent while remaining is "remaining * * * with intent." *Taylor*, 495 U.S. at 599.

The word "remaining" unambiguously refers to the *entire* period of an intruder's unlawful presence, not just the first moment. Dictionary definitions of the word "remain" show that it refers to a continuous activity. And this Court has likewise recognized, in construing a federal criminal statute, that the word "permits no connotation other than continuing presence." *United States* v. *Cores*, 356 U.S. 405, 408 (1958). That comports with common usage: someone who calls in sick for the

day remains home sick for the entire day, not just at the moment he calls in sick.

Petitioner offers little to support his abnormal definition of the word "remaining" to encompass only the single moment in time at which a continued stay commences. His brief instead focuses almost exclusively on the undisputed requirement that the "remaining" and "intent" must *coincide in time*. The critical question here, however, is how long "remaining" *lasts*. To the extent that petitioner addresses the latter question, he largely conflates the two burglary variants, unlawful "remaining" and unlawful "entry," disregarding their linguistic and legal differences. Unlawful "entry" is essentially instantaneous and can occur without "remaining"; unlawful "remaining" is generally continuous and can occur without unlawful "entry."

When Congress made "burglary" an ACCA predicate in 1986, it intended to capture "the generic sense in which the term" was "used in the criminal codes of most States" at that time. *Taylor*, 495 U.S. at 598. And this Court has already held that the generic sense included "remaining * * * with intent." *Id.* at 599. At the time, 29 States prohibited "remaining in" burglary, and the text of each of those State's burglary statutes was naturally read to encompass situations where the intruder forms the requisite intent while remaining.

If Congress had delved deeper, the limited case law at the time reinforced that natural inference: five States' courts had concluded that an intruder could form the intent while remaining, two States' courts had reached ambiguous or conflicting decisions, and *no* State had definitively adopted petitioner's "initial moment" rule (nor had the relevant secondary sources suggested

such a rule). The weight of authority is similarly lopsided today: 18 States have explicitly adopted (by statute or judicial decision) a rule covering intent formed at any point, and only three have done otherwise (all by judicial decision). Congress in 1986 would not have intended to impose an arcane timing requirement that did not appear on the face of any state statute and was, at best, a rarity in the limited caselaw at the time (and is still a rarity today).

Doing so would have been particularly anomalous in light of the role that the explicit reference to "burglary" plays in the ACCA—identifying an invasive crime that presents a substantial risk of a violent encounter in an enclosed private space. See *Taylor*, 495 U.S. at 581, 588. That risk turns on the intruder's intent to commit a crime in someone else's home or other structure, not on whether he had that intent at the precise moment his unlawful presence began or developed it later while he remained. A resident or other victim who encounters the intruder will ordinarily not know—let alone care—about the timing or sequence by which the intruder developed the requisite intent. From the victim's perspective, what matters is that he or she has encountered a criminally-minded intruder. Petitioner attempts to paint a more benign picture of burglary by relying on a handful of hypothetical scenarios that largely focus on the *identity* of the burglar (which is also unlikely to be known to the victim) rather than the *time* at which the intruder formed the intent. Petitioner does not explain why intent at the moment of unlawful entry is categorically dangerous, but intent formed while unlawfully remaining is not.

Petitioner relies heavily on a survey—which occupies much of his brief (Br. 25-51)—showing that most

state burglary laws in 1986 required "contemporaneous intent." But that survey is misplaced. It is undisputed that generic burglary requires "contemporaneous intent." The question here is whether "remaining" lasts *only* for the initial moment that the intruder lacks permission to be there, or instead lasts the entire time he stays inside. Petitioner's survey does not answer that question. For example, the majority of his 37 supposedly favorable jurisdictions consists of 22 jurisdictions that prohibited only "entry" burglary, not "remaining in" burglary, and whose laws therefore do not illuminate how long "remaining" lasts. Petitioner also relies heavily on a handful of post-1986 decisions, which would not have been available when the relevant ACCA language was enacted, and overlooks post-1986 judicial decisions and legislative enactments that reject the minority "initial moment" rule.

More fundamentally, sifting through state court decisions defining the exact contours of "remaining" is misplaced. The list of ACCA predicates includes generic "burglary," which this Court has construed to encompass impermissibly remaining in a structure with intent. In doing so, the Court recognized that "exact formulations" of burglary "vary." *Taylor*, 495 U.S. at 598. And it understood Congress's "omission of a [statutory] definition of burglary" to "impl[y], at most, that Congress did not wish to specify an exact formulation," but instead gave that term a "generic meaning" with "basic elements" that a state offense could satisfy "regardless of its exact definition or label." *Id.* at 598-599. No reason exists to muddle the plain language of that "generic" definition with arcane and counterintuitive distinctions about "remaining" that Congress would not have contemplated when it used the term "burglary" to

describe a somewhat variegated, but thematically coherent, set of laws. Congress's use of the term "burglary" was intended to simplify, not complicate and proliferate, ACCA litigation.

ARGUMENT

FORMING THE INTENT TO COMMIT A CRIME WHILE UNLAWFULLY REMAINING INSIDE A BUILDING OR STRUCTURE QUALIFIES AS ACCA "BURGLARY"

In *Taylor* v. *United States*, 495 U.S. 575 (1990), this Court defined "burglary" under the ACCA as "any crime, regardless of its exact definition or label, having the basic elements of unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime." *Id.* at 599. That definition unambiguously encompasses the conduct of an intruder who impermissibly trespasses in a dwelling and while inside forms the intent to commit a crime: such a person "remain[s] * * * with intent," *ibid.*

In arguing otherwise, petitioner primarily focuses on the requirement that the intent be contemporaneous with the "remaining." But that point is undisputed—and his focus elides the crucial point: an intruder remains in a place the whole time he stays there, so the contemporaneousness requirement is satisfied when the intruder forms his intent *while* inside. To the extent petitioner even addresses how long "remaining" lasts, he proposes (Br. 2) to limit the phrase "remaining in" to "the initial moment when the privilege to be in lawfully entered premises ceases." But that limitation is at odds with the plain language of *Taylor*, was effectively unknown to the law at the time of the ACCA's enactment, and would be detrimental to the ACCA's scheme for identifying potentially violent recidivists. As it did earlier this Term in *United States* v. *Stitt*, 139 S. Ct. 399

(2018), the Court should reject such a hairsplitting limitation on generic burglary—which, if countenanced, would invite even more litigation—and reaffirm that *Taylor* meant what it said.

A. An Intruder Who Decides To Commit A Crime While Remaining In A Dwelling Is "Remaining With Intent"

Petitioner was convicted of "burglary" within the meaning of the ACCA, because that term includes a conviction under a state burglary law that can apply when an intruder forms the requisite intent while unlawfully remaining inside a dwelling. Such an offense "substantially corresponds" to, or is narrower than, *Taylor*'s "generic" conception of burglary, 495 U.S. at 602, because such a person "remain[s] in, a building or structure, with intent to commit a crime," *id.* at 599.

1. The plain meaning of "remaining" refers to continuous, not instantaneous, activity

Taylor's definition of burglary includes not only "unlawful or unprivileged entry into," but also "*remaining in*, a building or structure, with intent to commit a crime." 495 U.S. at 599 (emphasis added). After an intruder enters a dwelling, he remains inside until he leaves, not merely for an instant when he first decides to stay. An intruder who develops the intent to commit a crime while unlawfully present is thus committing generic burglary by unlawfully "remaining in, a building or structure, with intent to commit a crime." *Ibid.*

a. It is common ground between the parties (*e.g.*, Pet. Br. 2-4) that burglary under *Taylor* requires "contemporaneous intent," *i.e.*, that the intruder must have criminal intent at the same time he enters or remains inside the building or other structure. The act of "en-

try" is accomplished all at once, and accordingly the intruder must possess the requisite intent at that time if a burglary conviction rests on the unlawful entry. The ordinary meaning of "remaining" somewhere, by contrast, refers to the *continuous* activity of staying there. For a burglary conviction predicated on unlawful remaining, therefore, the contemporaneousness requirement is satisfied if the intent is formed at any time while the intruder remains inside.

The standard dictionary definition of the word "remain" means an ongoing action or state of staying in a particular place. See, *e.g.*, 13 *Oxford English Dictionary* 578 (2d ed. 1989) ("To continue in the same place (or with the same person); to abide, stay"; "To continue to be"); *Webster's Third New International Dictionary* 1919 (2002) ("remain" means "still extant, present, or available"; "to stay in the same place or with the same person or group"; "to continue unchanged in form, condition, status, or quantity : continue to be."); see also *Webster's New International Dictionary* 2106 (2d ed. 1958) (similar). That universal definition reflects the word's common usage; it would be quite unusual to use the word "remaining" to refer to a single instant.

If a person stays home from work for a sick day, he remains at home the entire day—not just first thing in the morning when he calls in sick. Likewise, if a person is arrested and invokes his *Miranda* right to remain silent, he remains silent so long as he does not speak—not just for the first moment after demanding a lawyer. The standard meaning of "remaining" also does not change when an adjective is attached (*e.g.*, "unlawful or unprivileged * * * remaining," *Taylor*, 495 U.S. at 599). A sit-in, for example, can be described as "peaceful remaining" for as long as it continues to be non-violent.

And a condition can accompany the "remaining" even if it did not exist at the start (*e.g.*, "remaining * * * with intent," *ibid.*). If the worker who called in sick at 9 a.m. develops a cough at noon, his "remaining at home" lasts the whole day, and his "remaining at home with a cough" lasts the whole afternoon.

This Court has previously relied on the continuous nature of the word "remain" in interpreting federal criminal law. In *United States* v. *Cores*, 356 U.S. 405 (1958), the Court addressed a statute that proscribed an alien crewman's "affirmative act of willfully remaining" in the United States longer than permitted. *Id.* at 408; see 8 U.S.C. 1282(c) (1952) (penalizing "[a]ny alien crewman who willfully remains in the United States in excess of the number of days allowed"). The crewman in *Cores* landed in Philadelphia and was allowed to stay in the United States for 29 days, but he overstayed and later traveled to Connecticut, where he was charged. 356 U.S. at 406. The district court in Connecticut dismissed the indictment for improper venue, on the theory that the offense "was not a continuing crime" and had been completed in Philadelphia. *Ibid.* This Court, however, rejected the argument "that the offense is completed the moment the permit expires" such that "even if the alien remains thereafter, he no longer commits the offense." *Id.* at 408-409. The Court explained that "the crucial word 'remains' permits *no connotation other than continuing presence*." *Id.* at 408 (emphasis added). The Court found it "incongruous to say that while the alien 'willfully remains' on the 29th day when his permit expires, he no longer does so on the 30th, though still physically present in the country." *Id.* at 409. Although "remaining at the instant of expiration satisfies

the definition of the crime," the Court emphasized that "it does not exhaust it." *Ibid.*

The term "remains" also has its typical continuous meaning in the law of trespass, which the generic definition of burglary parallels in some respects. See 3 Charles E. Torcia, *Wharton's Criminal Law* § 332, at 302-303 (15th ed. 1995). It is a trespass to "enter[] land in the possession" of another or to "remain[] on land" without permission. Restatement (Second) of Torts § 158 (1965) (Restatement). Consistent with the ordinary meaning of "remain," the phrase "remain[] on the land" does not refer solely to the first instant at which a person remains without permission, but instead refers to "a continuing trespass for the entire time during which the actor wrongfully remains." *Id.* § 158 cmt. m; cf. 18 U.S.C. 1752(a)(1) (unlawful to "knowingly enter[] or remain[] in any restricted building or grounds" without authority). If a person called 911 upon encountering an intruder in her home, and the police asked whether the intruder remained inside, it would be inexplicable to say "no" if he was still there.

b. Petitioner's brief focuses almost exclusively on the undisputed contemporaneous-intent requirement (see Br. 2-4, 15-18, 25-51), largely failing to address the meaning of the word "remaining"—the issue that actually decides this case. He provides no dictionary definition of "remaining" at all. To the extent he engages with the issue, he simply attempts to conflate "entry into" and "remaining in," *Taylor*, 495 U.S. at 599, by exporting the momentary nature of the former to the latter. But pairing "entry" with "remaining" does not unnaturally transform "remaining" into a word that refers solely to the first moment at which a person stays, rather than to the entire period of time. Cf. *Graham Cnty.*

Soil & Water Conservation Dist. v. *United States ex rel. Wilson*, 559 U.S. 280, 288-289 (2010) (declining to apply rule of thumb that "a word may be known by the company it keeps" to a short disjunctive list of distinct words). If a person walks into a store at 4:30 p.m. and stays for an hour, and an employee is asked when the person entered and how long he remained, the obvious answer would be that he entered at 4:30 and remained until 5:30. And if the store had closed at 5:00, then his remaining would be unlawful or unprivileged for the last half hour—not just for an instant at 5:00 when the store closed.

Petitioner's contention (Br. 16) that an ordinary reading of "remaining" would "render *Taylor*'s 'unlawful entry' language superfluous" is flawed in multiple respects. As a threshold matter, it "makes the mistake of reading an opinion (in truth part of an opinion) like a statute." *United States* v. *Stitt*, 860 F.3d 854, 878 (6th Cir. 2017) (en banc) (Sutton, J., dissenting), rev'd, 139 S. Ct. 399 (2018). The Court in *Taylor* articulated a "generic" definition of "burglary," 495 U.S. at 598, that reflects "a compact version of standards found in many states' criminal codes," *Smith* v. *United States*, 877 F.3d 720, 725 (7th Cir. 2017), cert. denied, 139 S. Ct. 783, and 139 S. Ct. 784 (2019). It was not itself writing a statute. The generic definition applies "regardless of [the] exact definition or label" a State uses, and reaches state laws so long as they "substantially correspond" to that definition and have its "basic elements." *Taylor*, 495 U.S. at 599, 602. The antisurplusage canon of statutory construction therefore does not apply.

But even if it did, the ordinary meaning of "remaining" would not render "entry" superfluous. Petitioner errs in asserting that "every unlawful entry with intent

would become 'remaining in' with intent as soon as the perpetrator enters." Pet. Br. 16 (citation omitted). An "entry" for purposes of burglary law is ordinarily understood to occur "if," for example, "any part of the actor's person intruded, even momentarily, into the structure." 2 Wayne R. LaFave & Austin W. Scott, Jr., *Substantive Criminal Law* § 8.13(b), at 467 (1986) (LaFave); see 4 William Blackstone, *Commentaries on the Laws of England* 227 (1769) (similar). The "entry" prong thus parallels the common law of trespass by imposing liability the instant the defendant unlawfully crosses into the structure, not after some period of delay, and liability attaches to the intrusion regardless of whether the intruder's entire body has entered. See Restatement §§ 158, 163; cf. *United States* v. *Jones*, 565 U.S. 400, 405 (2012) ("[O]ur law holds the property of every man so sacred, that no man can set his foot upon his neighbour's close without his leave; if he does he is a trespasser, though he does no damage at all.") (quoting *Entick* v. *Carrington*, 95 Eng. Rep. 807, 817 (K.B. 1765)) (brackets in original). Deleting "entry" and referring only to "remaining" would be incongruous and create ambiguity in situations where (1) the entry was only fleeting; (2) the perpetrator abandoned his criminal intent immediately after entering; or (3) his entire body was never actually inside the structure.

The offense conduct underlying petitioner's own home-invasion conviction illustrates the point. Petitioner was intoxicated and assaulted his ex-girlfriend, who had a restraining order against him, in a parking lot. PSR ¶ 51. "She ran to a group of people who took her inside their apartment" to protect her. *Ibid.* Petitioner then "attempted to climb through an open front window to get at [her]"; he "broke the screen to the window" so

that "one arm, his head, and his upper torso were inside the apartment"; and he grabbed a woman by the arm before the apartment's occupants pushed him away and closed the window. *Ibid.* Petitioner then "kicked the [front] door in and broke the lock," but the occupants managed to hold the door and petitioner fled when they called the police. *Ibid.*

Petitioner plainly intended to commit a crime (assault) at the time he unlawfully "ent[ered]" the apartment by breaking the screen and reaching in through the window. But it is far from clear that he "remain[ed] in" the apartment—or was even fully "in" it at any point—during the crime. The occupants managed to prevent petitioner from ever getting his entire body into the apartment, and his arm may have been inside only fleetingly. Without a reference to "entry," *Taylor* would have risked excluding convictions under burglary statutes that cover conduct of that sort. The need to encompass such conduct is likely why no state legislature has ever chosen to draft a burglary statute to cover only "remaining in" burglary. See pp. 19-25, *infra*.

Finally, assuming the antisurplusage canon applied and some surplusage existed, the canon would not require interpreting a word unnaturally. See Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 176 (2012) ("[A] court may well prefer ordinary meaning to an unusual meaning that will avoid surplusage."); see also, *e.g.*, *Sullivan* v. *Stroop*, 496 U.S. 478, 482 (1990) ("If the statute is clear and unambiguous, 'that is the end of the matter.'"). Being somewhat repetitive or redundant does not turn one word into another.

2. Legal authority at the time of the ACCA supports the plain meaning of "remaining"

When assessing the meaning of "burglary" in the ACCA, this Court has looked to state burglary laws in place when Congress enacted the current version of the ACCA in 1986, to the definition of "burglary" in the original 1984 version of the ACCA, and to certain commentators. *E.g.*, *Stitt*, 139 S. Ct. at 406; *Taylor*, 495 U.S. at 593-599. As this Court already observed in defining generic "burglary" to include "remaining * * * with intent, *Taylor*, 495 U.S. at 599, most States in 1986 had "remaining in" burglary statutes and the 1984 version of the ACCA covered "remaining in" burglary as well. See 18 U.S.C. App. 1202(c)(9) (Supp. III 1985). To whatever degree Congress might have studied the issue, it would have understood state laws criminalizing "remaining in" burglary to impose criminal liability consistent with the plain meaning of that phrase to refer to a continuous period of time. A contrary definition that referred only to an instant would not have been "generic," *Taylor*, 495 U.S. at 598—and indeed would have effectively broken new ground.

a. State burglary law indicated that criminal intent could be formed while "remaining"

Contrary to petitioner's contention (*e.g.*, Br. 25)—which is largely based on a survey that tries to answer the wrong question, see Part C.1, *infra*—state burglary law in 1986 supported the ordinary continuous meaning of "remaining." Reading ACCA burglary more narrowly would subvert *Taylor* by turning Congress from a descriptor of then-current burglary law into a prognosticator of future burglary-law developments—and a bad prognosticator at that.

i. The relevant universe for understanding "remaining in" burglary consists of the 29 States that, at the time ACCA was enacted in 1986, prohibited "remaining in" burglary. Of those jurisdictions, 27 had statutes prohibiting "entering or remaining" with intent (or the equivalent), and are thus substantially identical on their face to *Taylor*'s formulation. See Ala. Code § 13A-7-7(a) (1982); Alaska Stat. § 11.46.310(a) (1983); Ariz. Rev. Stat. Ann. § 13-1506(A) (Supp. 1986); Ark. Stat. Ann. § 41-2002(1) (1977); Colo. Rev. Stat. § 18-4-203(1) (1986); Conn. Gen. Stat. Ann. § 53a-103(a) (West 1972); Del. Code Ann. tit. 11, § 824 (1979); Fla. Stat. ch. 810.02(1) (1985); Ga. Code Ann. § 16-7-1(a) (Michie 1984); Haw. Rev. Stat. § 708-810(1) (1985); Ill. Rev. Stat. ch. 38, para. 19-1(a) (1983); Iowa Code § 713.1 (1985); Kan. Stat. Ann. § 21-3715 (Supp. 1980); Ky. Rev. Stat. Ann. § 511.040(1) (Michie 1985); Me. Rev. Stat Ann. tit. 17-A, § 401(1) (West 1983); Minn. Stat. §§ 609.581(4), 690.582(3) (1986); Mo. Rev. Stat. § 569.170(1) (1986); Mont. Code Ann. § 45-6-204(1) (1985); N.J. Stat. Ann. § 2C:18-2(a) (West 1982); N.Y. Penal Law § 140.20 (McKinney 1975); N.D. Cent. Code § 12.1-22-02(1) (1985); Or. Rev. Stat. § 164.215(1) (1983); S.D. Codified Laws § 22-32-8 (1979); Utah Code Ann. § 76-6-202(1) (1978); Vt. Stat. Ann. tit. 13, § 1201(a) (Supp. 1982); Wash. Rev. Code. §§ 9A.52.030(1), 9A.52.040 (1985); Wyo. Stat. Ann. § 6-3-301(a) (Supp. 1986).

A 28th State, Ohio, prohibited "trespass" with criminal intent, which encompasses both entry and remaining. Ohio Rev. Code Ann. § 2911.12(A) (Anderson Supp. 1985). And a 29th State, Texas, criminalized "remaining in" burglary by prohibiting an unlawful entry followed by the commission of a felony or theft while inside. Tex. Penal Code Ann. § 30.02(a)(3) (West 1974); see LaFave

§ 8.13(b), at 468 & n.44 (listing Texas as a "remaining in" jurisdiction).[1] Federal law also included limited-purpose provisions prohibiting entering or remaining with intent. See 18 U.S.C. 1752(a) (1982) (certain federal buildings); 18 U.S.C. 2118(b) (Supp. III 1985) (facilities relating to controlled substances).

Not one of those statutes indicated that, in contravention of the ordinary meaning of "remaining in," criminal liability was limited to situations in which the intruder had the requisite intent at the initial moment his remaining became unlawful, thereby excluding situations in which an intruder developed that intent while remaining. Where a statute's language directly addressed the issue—as Texas's did—it explicitly criminalized such conduct. See Tex. Penal Code Ann. § 30.02(a)(3) (West 1974) (unlawful to "enter[] a building or habitation and commit[] or attempt[] to commit a felony or theft"). And the other statutes simply used the term "remaining" (or "trespass") without any special qualification that would suggest any departure from its ordinary meaning. Congress accordingly would have understood "remaining" (or the equivalent language) in all of those statutes in its ordinary, continuous sense.

To the extent that Congress might have examined it, state decisional law on point was fairly limited—but would have reinforced the plain import of the statutes' text. Only 7 of the 29 States had judicial decisions interpreting the duration of "remaining in" liability, and *none* had squarely foreclosed liability where criminal intent is formed after some initial moment of remaining. To the contrary, courts in five States had held that in-

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[1] Mississippi also had a statute like Texas's, see Miss. Code. Ann. § 97-17-25 (1973), but it had not been cited in any published decision.

tent may be formed "while the accused remains unlawfully." *Gratton* v. *State*, 456 So. 2d 865, 872 (Ala. Crim. App. 1984); see *State* v. *Embree*, 633 P.2d 1057, 1059 (Ariz. Ct. App. 1981); *Keith* v. *State*, 225 S.E.2d 719, 720-721 (Ga. Ct. App. 1976); *State* v. *Mogenson*, 701 P.2d 1339, 1343-1345 (Kan. Ct. App. 1985); *State* v. *Papineau*, 630 P.2d 904, 906-907 (Or. Ct. App. 1981).

Courts in two additional states (Ohio and Illinois) had come to conflicting or ambiguous conclusions and thus had not resolved the question. See *State* v. *Fontes*, 721 N.E.2d 1037, 1039-1040 (Ohio 2000) (concluding that intent may be formed while unlawfully remaining, and resolving pre-1986 conflict between *State* v. *Flowers*, 475 N.E.2d 790, 791-792 (Ohio Ct. App. 1984), and *State* v. *Jones*, 440 N.E.2d 580, 851 (Ohio Ct. App. 1981)); Pet. Br. 34 (recognizing that law in Illinois was ambiguous); compare *People* v. *Boose*, 487 N.E.2d 1088, 1091 (Ill. App. Ct. 1985) ("A criminal intent formulated after a lawful entry will satisfy the offense[] of * * * burglary by illegally remaining."), with *People* v. *Vallero*, 378 N.E.2d 549, 549-550 (Ill. App. Ct. 1978) (stating that intent must exist at the time of entry to establish remaining in liability, where defendant was invited into building to apply for a job and his authority to be present was never revoked), and *Vallero*, 378 N.E.2d at 551 (Stengel, J., specially concurring) (concluding that the defendant's presence was always lawful); see also *People* v. *Bradford*, 50 N.E.3d 1112, 1120 (Ill. 2016) (clarifying that a person "remain[s] in a public place only where he exceeds his physical authority to be on the premises.").

ii. Against that backdrop, Congress would have expected the ACCA's reference to "burglary," which included "remaining in" burglary, *Taylor*, 495 U.S. at 599, to encompass a natural understanding of "remaining."

An "initial moment" requirement would have been an alteration, not a "reflect[ion]," of "'the generic sense in which the term was used in the criminal codes of most States.'" *Stitt*, 139 S. Ct. at 406 (quoting *Taylor*, 495 U.S. at 598) (brackets omitted). Nothing in *Taylor*, any other decision of this Court, or the text or history of the ACCA suggests that Congress intended the generic term "burglary" to impose novel and unstated restrictions on an ordinary understanding of "remaining in" burglary.

Indeed, it would have been pointless and self-defeating to include "remaining in" burglary in the generic definition, yet simultaneously to define that phrase more narrowly and specifically than any state law would have established at the time. Although purporting to include "remaining in" burglary laws, such a definition would in fact have excluded the "remaining in" burglary laws in all six States to have clearly decided the scope of "remaining" (Alabama, Arizona, Georgia, Kansas, Oregon, and Texas). And it would have done nothing to ensure inclusion of the "remaining in" burglary laws of the 23 additional States in which the question remained open (including the two that had conflicting or ambiguous precedent). Those States could well have followed the others and applied their burglary statutes to impose criminal liability in circumstances where intent is formed while unlawfully "remaining in."

Indeed, as it turns out, that is exactly what most States have done. Today, three more States (32 total) have "remaining in" burglary. See Mich. Comp. Laws Ann. § 750.110a(4)(a) (West 2004); N.H. Rev. Stat. Ann. § 635:1(I) (LexisNexis 2015); Tenn. Code Ann. § 39-14-402(a) (2018). Among those 32 States, a total of 18 explicitly allow (either by statute or judicial decision)

for intent to be formed at any point during the remaining: Eight States now have statutes that are explicit about the continuous-remaining rule. See Colo. Rev. Stat. § 18-4-201(3) (2017); Del. Code Ann. tit. 11, § 829(d) (2015); Haw. Rev. Stat. Ann. § 708-812.5 (LexisNexis 2016); Mich. Comp. Laws Ann. § 750.110a(4)(a) (West 2004); Minn. Stat. Ann. §§ 609.581(4), 609.582(3) (West 2018); Mont. Code Ann. § 45-6-204(1) (2017); Tenn. Code Ann. § 39-14-402(a)(3) (2018); Tex. Penal Code Ann. § 30.02(a)(3) (West Supp. 2018). And a total of ten States have judicial decisions to the same effect. See pp. 21-22, *supra* (citing pre-1986 cases); *Braddy* v. *State*, 111 So. 3d 810, 844 (Fla. 2012) (per curiam); *State* v. *Walker*, 600 N.W.2d 606, 609 (Iowa 1999); *State* v. *DeNoyer*, 541 N.W.2d 725, 732 (S.D. 1995); *State* v. *Rudolph*, 970 P.2d 1221, 1228-1229 (Utah 1998); *State* v. *Allen*, 110 P.3d 849, 853-855 (Wash. Ct. App. 2005); see also Pet. Br. 49-51 (classifying Ohio and Utah as ambiguous only in respect to pre-1986 law). Only three States appear to require that the intent coincide with the "initial moment" of remaining, and all have adopted that approach in post-1986 decisions. See *Shetters* v. *State*, 751 P.2d 31, 36 (Alaska Ct. App. 1988); *People* v. *Gaines*, 546 N.E.2d 913, 915 (N.Y. 1989); *In re J.N.S.*, 308 P.3d 1112, 1117-1118 (Or. Ct. App. 2013).[2]

Congress cannot be deemed to have guessed—incorrectly—that after 1986, States would adopt a then-near-novel interpretation of "remaining in" burglary that is limited to "initial moment" remaining. Cf. *Stitt*, 139 S. Ct. at 406-407. The 18 States that follow the majority rule have an estimated population of more than

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[2] Oregon courts thus switched their position on the issue, in response to intervening developments from the Oregon Supreme Court. See *In re J.N.S.*, 308 P.3d at 1118.

130 million people. See Population Div., U.S. Census Bureau, *Annual Estimates of the Resident Population: April 1, 2010 to July 1, 2018* (Dec. 2018). Any or all of the 11 additional States that prohibit "remaining in" burglary, but have not yet explicitly addressed its scope, could adopt the majority rule in the future. And the 19 States that currently do not criminalize "remaining in" burglary might amend their burglary laws to do so. Congress could not have been so agnostic about creating such a major hole in the ACCA's coverage.

To the contrary, *Taylor* observed that only "[a] few States' burglary statutes * * * define burglary more broadly" than ACCA's generic definition. 495 U.S. at 599. And "[w]here, as here, the applicability of a federal criminal statute requires a state conviction," this Court "ha[s] repeatedly declined to construe the statute in a way that would render it inapplicable in many States." *Stokeling* v. *United States*, 139 S. Ct. 544, 552 (2019); see also *United States* v. *Castleman*, 572 U.S. 157, 167-168 (2014) (interpreting "physical force" to include common-law force, in part because a different reading would render 18 U.S.C. 922(g)(9) "ineffectual in at least 10 States"). Nothing supports narrowing the generic definition of "burglary," which includes "remaining in," to include only a small minority of the States that criminalize such burglary, based on a limitation that none of them had adopted in 1986.

b. The additional sources that Taylor *consulted are consistent with the ordinary meaning of "remaining"*

Not only had the States not articulated such a limitation, but neither had the other sources on which *Taylor* relied as guideposts. To the extent those sources addressed the issue at all, they supported the ordinary meaning of "remaining."

i. An understanding of "remaining" as a continuous activity is consistent with the definition of "burglary" in the original 1984 version of the ACCA, which Congress deleted (potentially inadvertently) in 1986. See *Taylor*, 495 U.S. at 589-590 & n.5. The 1984 version of the ACCA defined burglary as "any felony consisting of entering or remaining surreptitiously within a building that is property of another with intent to engage in conduct constituting a Federal or State offense." 18 U.S.C. App. 1202(c)(9) (Supp. III 1985). Although that definition excluded crimes where intent is formed after the intruder's presence is no longer surreptitious (see Pet. Br. 17-18), it plainly encompassed burglaries in which intent is formed *while still surreptitiously remaining*. For example, imagine a person who lawfully enters a store while it is open to the public, hides in a dressing room intending to shelter there, and remains there surreptitiously after the store closes If while still secretly inside the store the intruder decides to rob the cash register, he would "remain[] surreptitiously * * * with intent," consistent with the plain language of the 1984 definition. 18 U.S.C. App. 1202(c)(9) (Supp. III 1985).

Nothing in the text of the 1984 definition suggested that the intent must be formed at the instant the (surreptitious) remaining begins. If anything, this Court's precedents indicated that the term "remaining" would not likely be interpreted that way. See *Cores*, 356 U.S. at 408 ("[T]he crucial word 'remains' permits no connotation other than continuing presence."); cf. *Forest Grove Sch. Dist.* v. *T. A.*, 557 U.S. 230, 239 (2009) ("Congress is presumed to be aware of an administrative or judicial interpretation of a statute."). And although *Taylor* determined that the surreptitiousness requirement did not carry over to the 1986 version of the

ACCA, it described the 1984 and 1986 definitions as "practically identical." 495 U.S. at 598. That suggests that "remaining" would have the same, presumably continuous, meaning.

ii. The two secondary sources *Taylor* consulted—the 1986 version of Professor LaFave's treatise on substantive criminal law and the Model Penal Code, see 495 U.S. at 580 & n.3, 593, 598 & n.8—do not suggest otherwise. Neither described "remaining in" as a discrete event that occurs only when the defendant first decides to stay in a building or structure. See LaFave § 8.13(b) and (e), at 468, 473-474 & n.101; Model Penal Code § 221.1 cmt. 3, at 69-71 (1980).

The LaFave treatise's discussion of "remaining in" burglary merely states that "the requisite intent to commit a crime" needed to "exist at the time the defendant unlawfully remained within." § 8.13(b), at 468. That reiterates the undisputed requirement that the intent and the remaining be contemporaneous. But it does not directly address the question here—whether remaining is instantaneous or continuous, and thus whether intent can be formed while remaining. The treatise lists jurisdictions with "remaining in" burglary, and the list includes all six of the jurisdictions (Alabama, Arizona, Kansas, Georgia, Oregon, and Texas) that, as of 1986, had attached liability to an intruder who formed the intent while remaining. See *id.* at 468 n.44. The treatise thus contains no indication that "remaining in" was understood at the time to have anything other than its ordinary, continuous meaning, and in particular no indication that it was understood to be limited to petitioner's "initial moment" rule.

The Model Penal Code is even less illuminating, because its influence on "remaining in" burglary, as covered by the ACCA, is nonexistent. Although *Taylor* described its definition of burglary as "approximat[ing]" the definition of "burglary" in the Model Penal Code, 495 U.S. at 598 n.8, the *Taylor* definition unambiguously departed from the Model Penal Code in including "remaining in" burglary, *id.* at 598. The Model Penal Code "does not include any 'remaining in' language at all." *United States* v. *Herrold*, 883 F.3d 517, 533 (5th Cir. 2018) (en banc), petition for cert. pending, No. 17-1445 (filed Apr. 18, 2018), and petition for cert. pending, No. 17-9127 (filed May 21, 2018). Instead, its drafters recommended "reject[ing]" proposals to recognize remaining in burglary. Model Penal Code § 221.1 cmt. 3, at 71. But that recommendation did not carry the day in a majority of States, or in the ACCA. It thus says nothing about what "remaining in" burglary means in the generic ACCA definition.

B. The Normal Understanding Of "Remaining" Is The Only Definition Consistent With The ACCA's Design

Congress, like the majority of States at the time, had good reason to include "remaining in" burglary in the definition of generic burglary under the ACCA. Congress "viewed burglary as an inherently dangerous crime," *Stitt*, 139 S. Ct. at 406, and its dangers are in no way tied to the esoteric issue of whether an intruder formed the intent to commit a crime at the precise moment when his presence became unlawful, or instead seconds or minutes later.

1. As this Court has explained, Congress in both 1984 and 1986 singled out burglary as an ACCA predicate because of the crime's "inherent potential for harm

to persons." *Taylor*, 495 U.S. at 588. Congress recognized that burglary "creates the possibility of a violent confrontation between the offender and an occupant, caretaker, or some other person who comes to investigate." *Stitt*, 139 S. Ct. at 406 (quoting *Taylor*, 495 U.S. at 588); see *James* v. *United States*, 550 U.S. 192, 203 (2007), overruled on other grounds by *Johnson* v. *United States*, 135 S. Ct. 2551 (2015). And Congress viewed burglary as "one of the 'most damaging crimes to society' because it involves 'invasion of [victims'] homes or workplaces, violation of their privacy, and loss of their most personal and valued possessions.'" *Taylor*, 495 U.S. at 581 (quoting H.R. Rep. No. 1073, 98th Cong., 2d Sess. 3 (1984)) (brackets in original).

Accordingly, this Court has repeatedly rejected efforts by defendants to inject "arcane distinctions" into the term "burglary" that have "little relevance to modern law enforcement concerns," and in particular have no bearing on the risk of violent confrontation. *Taylor*, 495 U.S. at 593. For example, earlier this Term in *Stitt*, this Court declined to interpret "burglary" to exclude the burglary of a vehicle or other structure that is adapted or used for overnight accommodation, reasoning that an offender's unlawful entry into such a location "runs a similar or greater risk of violent confrontation" as compared to a traditional home. 139 S. Ct. at 406.

2. None of the factors that this Court has identified as making burglary dangerous—the risk of a violent confrontation, the defendant's culpability, or the violation of personal privacy—depends on whether the intruder developed his criminal intent at the exact moment he was first unlawfully present or at some point later while still unlawfully remaining inside. "The timing of when intent was formed implicates neither the

culpability of the perpetrator nor the extent of danger to victims." *Herrold*, 883 F.3d at 547 (Haynes, J., dissenting). Once the intruder is both (1) unlawfully present inside a structure *and* (2) has the requisite intent to commit a crime, all of the practical concerns that led Congress to include "burglary" as an ACCA predicate apply with full force. At that point, the defendant is an intruder into a private space; he is bent on committing a crime; and a resident or other person who encounters him is unlikely to know—or care—how long before the encounter he hatched his criminal plan.

For example, imagine a person who is home alone and is awoken in the middle of the night by the sound of footsteps downstairs, and who gets up to investigate and encounters an intruder in the dark who is in the process of stealing a television. Such an intruder is no mere trespasser; he has decided not only to enter someone's home without permission, but also to commit a crime while there. And when the homeowner encounters the intruder doing so, it is irrelevant whether the intruder decided to steal the television before, during, or after the time he first broke into the house. The victim's terror and sense of invasion, the possibility that the victim will defend himself or herself and the home through violent force, and the possibility that the perpetrator will initiate violence when encountered, will all be the same, regardless of how long before the encounter the intruder made up his mind to violate the law.

A distinction between intent formed at the instant presence becomes unlawful and intent formed while unlawfully present would create arbitrary results that have nothing to do with burglary's inclusion as an ACCA predicate. Imagine a woman invites her exboyfriend into her home, he makes unwanted advances,

and she demands that he leave and tries to kick him out. Under either petitioner's or the government's approach, the ex-boyfriend is guilty of "remaining in" burglary if he refuses to leave and at the same time harbors the intent to steal or destroy items that are hers, or to sexually assault her. But under petitioner's approach, he would *not* be guilty of burglary if he developed precisely the same intent (or even completed the crime) seconds or minutes later. The divergent treatment of two functionally identical situations, where the seriousness and culpability of trespassing with the intent to steal property or sexually assault a person in her own home is exactly the same, makes little sense. And nothing in the ACCA or *Taylor* suggests that Congress distinguished between them.

3. Petitioner's only suggestion (Br. 3, 53-55) as to why Congress might have intended a cramped meaning of "remaining" is to invoke a hypothetical hiker or homeless person who commits a "low-risk, spur-of-the-moment crime[] of opportunity, such as stealing clothing or food, while trespassing to seek shelter from the cold." But for several reasons, that hypothetical provides no support for a rule under which a burglar must form the intent to commit a crime at the precise moment his presence becomes unlawful.

First, petitioner provides no sound basis for deeming such a burglary to be "low-risk." "The main risk of burglary arises * * * from the possibility of a face-to-face confrontation between the burglar and a third party—whether an occupant, a police officer, or a bystander—who comes to investigate." *James*, 550 U.S. at 203. Whoever comes to investigate will typically not know that the intruder is a "hiker"; the intruder will simply be a stranger who is unlawfully present and committing

a crime. Second, to the extent that the intruder's identity as a hiker *were* known, his dangerousness would not turn on whether he formed the intent to steal food at the precise moment he broke in (because he was hungry then) or formed it afterward (because he became hungry later). Either way, he is someone who is willing to commit a crime in a private space where he has no right to be, triggering the dangers inherent in burglary. Third, this Court has long understood that Congress did not expect *every* instance of an ACCA enumerated offense be violent. See *id.* at 208. Rather, Congress determined that such offenses are generally violent, and thus made them ACCA predicates, irrespective of the possibility of corner cases. See *ibid.* (discussing extortion). And Congress minimized the probability of misclassification by requiring the defendant to have not one but *three* qualifying convictions, 18 U.S.C. 924(e)(1), which are unlikely to *all* have occurred in unusual ways.

Finally, to the extent petitioner's argument rests on a concern that "remaining in" burglary covers conduct that should be treated as less culpable than what he might consider to be classic "burglary," that concern has no place in construing generic burglary under the ACCA. Congress intended for "burglary" in the ACCA to be descriptive, and "the contemporary understanding of 'burglary' has diverged a long way from its common-law roots," to the point that the "'modern crime * * * has little in common with its common-law ancestor except for the title of burglary.'" *Taylor*, 495 U.S. at 593 (citation omitted); see *id.* at 598. For example, States have rejected commentators' objections that eliminating the surreptitiousness requirement would overbroaden burglary. See, *e.g.*, Model Penal Code § 221.1 cmt. 3, at

71; LaFave § 8.13(b), at 468. And petitioner's own "initial moment" rule both includes conduct dissimilar from traditional burglary (such as the ex-boyfriend who intends to assault his ex-girlfriend at the moment she asks him to leave) and excludes conduct nearly identical to traditional burglary (such as an intruder who breaks into a house at night to get some rest, and moments later develops the intent to commit theft). Accordingly, even if petitioner's normative concerns about the scope of "burglary" were relevant, his rule would not address them.

C. Petitioner's "Initial Moment" Rule Is Unsupported And Unsound

Petitioner identifies little basis for an abnormal interpretation of "remaining in," under which "remaining" is ephemeral. For the most part, he emphasizes the separate—and undisputed—requirement that the burglar's criminal intent be contemporaneous with his "remaining in," without addressing what "remaining in" itself means. And adopting an unnatural interpretation of ACCA burglary would undermine the clarity that *Taylor*'s definition of "burglary" would otherwise provide, and encourage a morass of further litigation about the meaning of the term.

1. Petitioner's state survey is misguided

Petitioner devotes much of his brief (Br. 25-51) to an exhaustive survey purporting to establish that, when Congress amended the ACCA to its current form in 1986, a "substantial majority of states—at least 37—retained a contemporaneous-intent requirement." Pet. Br. 26. That survey is both inapposite and inaccurate.

a. As a threshold matter, the stated goal of petitioner's survey (Br. 25) is to identify state burglary laws

with a "contemporaneous-intent requirement." But that is not directly relevant to the question presented. The result in this case does not depend on whether ACCA burglary includes a "contemporaneous-intent requirement," in the sense that the intruder must possess the requisite intent at the same time he enters or remains. Everyone agrees that it does. The key question is instead whether the defendant "remains" in a structure not just at the first moment he is inside, but for the entire time that he stays inside, and therefore can develop his criminal intent while remaining.

Petitioner's survey does not answer that question. For example, his count of jurisdictions favoring his position mostly consists of the 22 jurisdictions that, in 1986, did not prohibit "remaining" at all and instead prohibited only "entry." See Cal. Penal Code § 459 (Deering 1985); D.C. Code Ann. § 22-1801(a) (1981); Idaho Code § 18-1401 (Supp. 1981); Ind. Code Ann. § 35-43-2-1 (Burns Supp. 1984); La. Rev. Stat. Ann. § 14:62 (West 1986); Md. Ann. Code art. 27, § 30(a) (1982); Mass. Gen. L. ch. 266, § 15 (1986); Mich. Comp. Laws § 750.110 (1981); Miss. Code Ann. § 97-17-19 (1973); Neb. Rev. Stat. § 28-507(1) (1985); Nev. Rev. Stat. Ann. § 205.060(1) (Michie 1986); N.H. Rev. Stat. Ann. § 635:1(I) (1986); N.M. Stat. Ann. § 30-16-3 (Michie 1978); N.C. Gen. Stat. § 14-51 (1986); Okla. Stat. Ann. tit. 21, § 1435 (West 1983); 18 Pa. Cons. Stat. Ann. § 3502(a) (1983); R.I. Gen. Laws § 11-8-1 (1981); S.C. Code Ann. § 16-11-313(A) (Law. Co-op. Supp. 1985); Tenn. Code Ann. § 39-3-401(a) (1982); Va. Code Ann. § 18.2-89 (Michie 1982); W. Va. Code Ann. § 61-3-11(a)-(b) (Michie 1977); Wisc. Stat. Ann. § 943.10(1) (West 1982). But *Taylor* recognized that Congress did not intend for "burglary" under the ACCA to be limited to "entry" burglary, so the laws and court

decisions in those jurisdictions with that limitation shed no meaningful light on what it means to "remain[] * * * with intent." 495 U.S. at 599.

b. Even when examining "remaining in" jurisdictions, petitioner's methodology is flawed and inconsistent. Petitioner identifies (Br. 30-42, 44) 15 States that prohibited "remaining in" burglary and that, according to him, defined such burglary in the manner he proposes for the ACCA. But he identifies none that had done so *in 1986*, when the ACCA was enacted.

For 5 of the 15 States (Alaska, Delaware, Hawaii, Minnesota, and New York), petitioner relies (Br. 30, 32-33, 37-38, 41) exclusively on *post*-1986 judicial decisions, which had not yet been rendered when the ACCA was enacted. For two others (Missouri and Vermont), petitioner identifies (Br. 38-39, 44) no judicial decision before *or* after 1986 addressing the relevant question.

For the other 8 of the 15 States (Arkansas, Colorado, Connecticut, Illinois, Maine, Montana, New Jersey, and North Dakota), petitioner relies (Br. 31-36, 39-42) mostly on cases that merely hold that, to commit "entry" burglary, a person must possess the requisite intent at the time of entry. The word "remain" does not even appear in most of the pre-ACCA decisions that petitioner cites from those jurisdictions. See *Hickerson* v. *State*, 667 S.W.2d 654, 655-656 (Ark. 1984) (unlawful entry of house); *People* v. *Barnhart*, 638 P.2d 814, 816 (Colo. App. 1981) (breaking and entering school); *People* v. *Weaver*, 243 N.E.2d 245, 248 (Ill. 1968) (entry into store "without authority" while still open), cert. denied, 395 U.S. 959 (1969); *State* v. *Field*, 379 A.2d 393, 395 (Me. 1977) (break-in of restaurant); *State* v. *Pyron*, 495 A.2d 467, 468 (N.J. Super. Ct. App. Div. 1985) (forceful entry of apartment); see also *Young* v. *State*,

266 S.W.3d 744, 750 (Ark. 2007) (relying on *Hickerson* for its understanding of "ent[ry]," but not invoking *Hickerson* in connection with "remaining in"); *Boose*, 487 N.E.2d at 1091 (describing *Weaver* as a case only about "entry" burglary). And in the few decisions where it does appear, the reference to "remaining" is clearly inapposite. See *State* v. *Manthie*, 641 P.2d 454, 456-457 (Mont. 1982) (finding sufficient evidence that the defendant unlawfully "remained," but not addressing whether intent may be formed while remaining); Pet. Br. 42 (acknowledging that North Dakota decisions, including *State* v. *Arne*, 311 N.W.2d 186 (N.D. 1981), "have not addressed" the issue here).

Petitioner does cite (Br. 32-33) pre-1986 "remaining in" burglary cases in Connecticut and Illinois, but they address a different question from the one at issue here. They hold that "remaining in" burglary occurs only when the initial entry was lawful and the intruder overstays his welcome. See *State* v. *Belton*, 461 A.2d 973, 976 (Conn. 1983); *People* v. *Green*, 404 N.E.2d 930, 932 (Ill. App. Ct. 1980), abrogated in part on other grounds by *People* v. *Maggette*, 747 N.E.2d 339 (Ill. 2001); see also *Arabie* v. *State*, 699 P.2d 890, 894-895 (Alaska Ct. App. 1985) (similar contemporaneous decision); cf. *Young*, 266 S.W.3d at 744 (post-1986 decision); *State* v. *Edwards*, 524 A.2d 648, 653 (Conn. App. Ct. 1987) (same); *Delgado* v. *State*, 776 So. 2d 233, 238-241 (Fla. 2000) (per curiam) (same);[3] *Gaines*, 546 N.E.2d at 915 (same). Such a holding does not presuppose, or dictate, a requirement that criminal intent exist at the exact moment the defendant's presence becomes unlawful. It is

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[3] *Delgado* also held that remaining must be surreptitious, but that holding has been superseded by statute. See *Sparre* v. *State*, 164 So. 3d 1183, 1201 (Fla.) (per curiam), cert. denied, 136 S. Ct. 411 (2015).

equally consistent with the majority rule that intent may be formed while "remaining." See, *e.g.*, *Braddy*, 111 So. 3d at 844 (Florida Supreme Court employing majority rule on formation of intent in conjunction with lawful-entry definition of "remaining").

c. In addition, petitioner's survey incorporates post-1986 developments only when they are (assertedly) helpful, while omitting such developments when they are not. For example, petitioner relies (Br. 41) on a 1989 decision as the basis for classifying New York as adopting the minority rule he favors. See *Gaines*, 546 N.E.2d at 915-916. But he asserts (Br. 49-51) that the positions of Ohio and Utah were "[a]mbiguous"—even though post-1986 decisions from their Supreme Courts squarely adopted the majority rule. See *Rudolph*, 970 P.2d at 1228-1229; *Fontes*, 721 N.E.2d at 1039-1040. Similarly, petitioner relies (Br. 31-33) on post-1986 decisions to categorize Colorado, Delaware, and Hawaii as supporting his understanding of Congress's intent in 1986. See *Cooper* v. *People*, 973 P.2d 1234, 1236 (Colo. 1999) (en banc); *Dolan* v. *State*, 925 A.2d 495, 501 (Del. 2007); *State* v. *Mahoe*, 972 P.2d 287, 291-293 (Haw. 1998). But legislatures in all three States responded by abrogating those decisions and instead amending their burglary statutes to adopt the majority rule. See 1999 Colo. Sess. Laws 326-327; 76(2) Del. Laws 115 (2007-2008); 2006 Haw. Sess. Laws 997. Those jurisdictions thus would not support petitioner's position either in 1986 or today.

All in all, as noted earlier, see pp. 19-25, *supra*, petitioner's "initial moment" rule requires an unnatural reading of the word "remaining" that no State's "remaining in" burglary statute has ever expressly suggested; the rule was rejected by six States before 1986;

petitioner does not identify *any* State that had adopted it in 1986; and he has identified only three that do so now, as opposed to 18 that endorse the broader rule. See *ibid.* Even putting aside the anachronism of relying on the legal landscape *after* the ACCA was enacted, it is difficult to believe that Congress would have adopted the three-State approach rather than the 18-State one.

2. Petitioner's position overcomplicates* Taylor *and invites substantial additional ACCA litigation

More fundamentally, it is difficult to believe that Congress (in the pre-internet age) engaged in the exhaustive exercise that occupies 22 pages of petitioner's brief—or intended that courts called upon to interpret the ACCA do so. Nor did this Court in *Taylor* appear to anticipate that applying its definition of burglary would involve resolving disputes at this level of granularity. Rather than countenancing such results, the easiest way to resolve the question presented in this case is with a plain-English application of *Taylor*: "remaining in" means what "remaining in" ordinarily means, encompassing both the beginning and the continuation of the period when a person stays inside. See, *e.g.*, *Cores*, 356 U.S. at 408-409.

The question presented here is unlikely to be the last arcane interpretive distinction of burglary (or another enumerated offense) that a litigant might seek to advance. A straightforward interpretation of *Taylor* can help to forestall further litigation that unrealistically presumes congressional omniscience about state-court decisions addressing every possible variant of burglary. In enacting the ACCA, Congress drew a circle, not a squiggle, around state burglary laws.

As the above discussion illustrates, States have not always had decisional law addressing every possible aspect of burglary, have sometimes had conflicting decisional law, and have changed their law over the course of time. Efforts to pinpoint state law on a particular date are, of course, inevitable in the context of generic offenses. But overly corrugated definitions of those offenses multiply the number of features that must be examined, and increase the likelihood of indeterminacy, confusion, and conflicts in the federal courts.

Taylor counsels strongly against such an approach. The Court in *Taylor* recognized that "exact formulations" of burglary "vary" among the States; viewed the "omission of a definition of burglary" in the ACCA itself to "impl[y], at most, that Congress did not wish to specify an exact formulation that an offense must meet in order to count as 'burglary'"; and gave that term a "generic meaning" with "basic elements" that a state offense could satisfy "regardless of its exact definition or label." 495 U.S. at 598-599. Nothing in *Taylor* invites fine-grained distinctions, or conscripts courts into an increasingly complex and time-consuming role as the historical cartographers of state burglary law.

D. The Court Of Appeals Correctly Upheld Petitioner's Sentence

Under a plain reading of *Taylor*, petitioner's prior conviction for third-degree home invasion, in violation of Mich. Comp. Laws Ann. § 750.110a(4)(a) (West Supp. 2001), is a conviction for "burglary." As relevant here, petitioner's conviction required proof of (1) "break[ing] and enter[ing] a dwelling or enter[ing] a dwelling without permission" and (2) "commit[ing] a misdemeanor" while inside, *ibid.*—in petitioner's case, "assault," J.A. 25 (capitalization omitted) (charging document); see *Mathis*

v. *United States*, 136 S. Ct. 2243, 2249 (2016) (permitting reference to charging document to determine elements necessary for prior conviction). It thus "ha[s] the basic elements," *Taylor*, 495 U.S. at 599, of generic burglary.

Breaking or entering a dwelling is "unlawful or unprivileged entry into, or remaining in, a building or structure," and commission of assault requires "intent to commit a crime." *Taylor*, 495 U.S. at 599; see *People* v. *Johnson*, 284 N.W.2d 718, 718-719 (Mich. 1979) (assault requires "either an intent to injure or an intent to put the victim in reasonable fear or apprehension of an immediate battery").[4] In conjunction with his two other undisputed violent felony convictions (both for assault), petitioner qualifies for an ACCA sentence. Indeed, as the district court concluded, he presents "the paradigm picture for somebody * * * that should fall within the [ACCA]." J.A. 74.

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[4] To the extent petitioner suggests (Br. 9) that a defendant *could* be convicted of Michigan third-degree home invasion without ever forming criminal intent, such an argument was neither pressed nor passed on below and is not fairly encompassed within the question presented in the petition. See Pet. I (seeking review of whether "it is enough that the defendant formed the intent to commit a crime at any time while 'remaining in' the building"). Although petitioner's merits brief (at I) reformulates the question presented, "[o]nly the questions set out in the petition, or fairly included therein, will be considered by the Court," Sup. Ct. R. 14.1(a). In any event, such an argument would lack merit. See, *e.g.*, *United States* v. *Bonilla*, 687 F.3d 188, 193 (4th Cir. 2012) ("[P]roof of a completed or attempted felony *necessarily* requires proof that the defendant formulated the intent to commit a crime either prior to his unlawful entry or while unlawfully remaining."), cert. denied, 571 U.S. 829 (2013). Nor would the argument suggest a different result in petitioner's own case, because the charging document required proof that his burglary involved intent to commit an assault or the actual commission of assault, which is a specific intent crime. See J.A. 25; see also *Mathis*, 136 S. Ct. at 2249.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX A

1. 18 U.S.C. 924 (2012) provides in relevant part:

Penalties

* * * * *

(e)(1) In the case of a person who violates section 922(g) of this title and has three previous convictions by any court referred to in section 922(g)(1) of this title for a violent felony or a serious drug offense, or both, committed on occasions different from one another, such person shall be fined under this title and imprisoned not less than fifteen years, and, notwithstanding any other provision of law, the court shall not suspend the sentence of, or grant a probationary sentence to, such person with respect to the conviction under section 922(g).

(2) As used in this subsection—

(A) the term "serious drug offense" means—

(i) an offense under the Controlled Substances Act (21 U.S.C. 801 et seq.), the Controlled Substances Import and Export Act (21 U.S.C. 951 et seq.), or chapter 705 of title 46 for which a maximum term of imprisonment of ten years or more is prescribed by law; or

(ii) an offense under State law, involving manufacturing, distributing, or possessing with intent to manufacture or distribute, a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)), for which a maximum term of imprisonment of ten years or more is prescribed by law;

(B) the term "violent felony" means any crime punishable by imprisonment for a term exceeding one year, or any act of juvenile delinquency involving the use or carrying of a firearm, knife, or destructive device that would be punishable by imprisonment for such term if committed by an adult, that—

(i) has as an element the use, attempted use, or threatened use of physical force against the person of another; or

(ii) is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another; and

(C) the term "conviction" includes a finding that a person has committed an act of juvenile delinquency involving a violent felony.

* * * * *

2. Mich. Comp. Laws Ann. § 750.110a (West Supp. 2001) provides:

Definitions; breaking and entering a dwelling; crime of home invasion, penalties

Sec. 110a. (1) As used in this section:

(a) "Dwelling" means a structure or shelter that is used permanently or temporarily as a place of abode, including an appurtenant structure attached to that structure or shelter.

(b) "Dangerous weapon" means 1 or more of the following:

(*i*) A loaded or unloaded firearm, whether operable or inoperable.

(*ii*) A knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon.

(*iii*) An object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon or carried or possessed for use as a weapon.

(*iv*) An object or device that is used or fashioned in a manner to lead a person to believe the object or device is an object or device described in subparagraphs (*i*) to (*iii*).

(c) "Without permission" means without having obtained permission to enter from the owner or lessee of the dwelling or from any other person lawfully in possession or control of the dwelling.

(2) A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exists:

(a) The person is armed with a dangerous weapon.

(b) Another person is lawfully present in the dwelling.

(3) A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the second degree.

(4) A person is guilty of home invasion in the third degree if the person does either of the following:

(a) Breaks and enters a dwelling with intent to commit a misdemeanor in the dwelling, enters a dwelling without permission with intent to commit a misdemeanor in the dwelling, or breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a misdemeanor.

(b) Breaks and enters a dwelling or enters a dwelling without permission and, at any time while the person is entering, present in, or exiting the dwelling, violates any of the following ordered to protect a named person or persons:

(*i*) A probation term or condition.

(*ii*) A parole term or condition.

(*iii*) A personal protection order term or condition.

(*iv*) A bond or bail condition or any condition of pretrial release.

(5) Home invasion in the first degree is a felony punishable by imprisonment for not more than 20 years or a fine of not more than $5,000.00, or both.

(6) Home invasion in the second degree is a felony punishable by imprisonment for not more than 15 years or a fine of not more than $3,000.00, or both.

(7) Home invasion in the third degree is a felony punishable by imprisonment for not more than 5 years or a fine of not more than $2,000.00, or both.

(8) The court may order a term of imprisonment imposed for home invasion in the first degree to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction.

(9) Imposition of a penalty under this section does not bar imposition of a penalty under any other applicable law.

APPENDIX B

State Burglary Statutes at the Time of 18 U.S.C. 924(e)(2)(B)(ii)'s Enactment (Career Criminals Amendment Act of 1986, Pub. L. No. 99-570, Tit. I, Subtit. I, § 1402, 100 Stat. 3207-39)[*]

Alabama: *Covered remaining*

Burglary in the first degree.

(a) A person commits the crime of burglary in the third degree if he knowingly enters or remains unlawfully in a building with intent to commit a crime therein.

Ala. Code § 13A-7-7(a) (1982).

Alaska: *Covered remaining*

Burglary in the second degree.

(a) A person commits the crime of burglary in the second degree if the person enters or remains unlawfully in a building with intent to commit a crime in the building.

Alaska Stat. § 11.46.310(a) (1983).

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[*] This appendix contains the text of each State's statute providing the baseline definition of burglary. This does not detail the various degrees of burglary offenses in each State.

Arizona: *Covered remaining*

Burglary in the third degree; classification

A. A person commits burglary in the third degree by entering or remaining unlawfully in or on a nonresidential structure or in a fenced commercial or residential yard with the intent to commit any theft or any felony therein.

Ariz. Rev. Stat. Ann. § 13-1506(A) (Supp. 1986).

Arkansas: *Covered remaining*

Burglary.—

(1) A person commits burglary if he enters or remains unlawfully in an occupiable structure of another person with the purpose of committing therein any offense punishable by imprisonment.

Ark. Stat. Ann. § 41-2002(1) (1977).

California: *Entry only*

Burglary

Every person who enters any house, room, apartment * * * with intent to commit grand or petit larceny or any felony is guilty of burglary.

Cal. Penal Code § 459 (Deering 1985).

Colorado: *Covered remaining*

Second degree burglary.

(1) A person commits second degree burglary, if he knowingly breaks an entrance into, or enters, or remains unlawfully in a building or occupied structure

with intent to commit therein a crime against a person or property.

Colo. Rev. Stat. § 18-4-203(1) (1986).

Connecticut: *Covered remaining*

Burglary in the third degree: Class D felony

(a) A person is guilty of burglary in the third degree when he enters or remains unlawfully in a building with intent to commit a crime therein.

Conn. Gen. Stat. Ann. § 53a-103(a) (West 1972).

Delaware: *Covered remaining*

Burglary in the third degree: class D felony.

A person is guilty of burglary in the third degree when he knowingly enters or remains unlawfully in a building with intent to commit a crime therein.

Del. Code Ann. tit. 11, § 824 (1979).

District of Columbia: *Entry only*

Definition and penalty.

(a) Whoever shall, either in the nighttime or in the daytime, break and enter, or enter without breaking, any dwelling, or room used as a sleeping apartment in any building, with intent to break and carry away any part thereof, or any fixture or other thing attached to or connected thereto or to commit any criminal offense, shall, if any person is in any part of such dwelling or sleeping apartment at the time of

such breaking and entering, or entering without breaking, be guilty of burglary in the first degree. * * *

D.C. Code Ann. § 22-1801(a) (1981).

Florida: *Covered remaining*

Burglary.—

(1) "Burglary" means entering or remaining in a structure or a conveyance with the intent to commit an offense therein, unless the premises are at the time open to the public or the defendant is licensed or invited to enter or remain.

Fla. Stat. ch. 810.02(1) (1985).

Georgia: *Covered remaining*

Burglary.

(a) A person commits the offense of burglary when, without authority and with the intent to commit a felony or theft therein, he enters or remains within the dwelling house of another or any building, vehicle, railroad car, watercraft, or other such structure designed for use as the dwelling of another or enters or remains within any other building, railroad car, aircraft, or any room or any part thereof. * * *

Ga. Code Ann. § 16-7-1(a) (Michie 1984).

Hawaii: *Covered remaining*

Burglary in the first degree.

(1) A person commits the offense of burglary in the first degree if he intentionally enters or remains unlawfully in a building, with intent to commit

therein a crime against a person or against property rights, and:

(a) He is armed with a dangerous instrument in the course of committing the offense; or

(b) He intentionally, knowingly, or recklessly inflicts or attempts to inflict bodily injury on anyone in the course of committing the offense; or

(c) He recklessly disregards a risk that the building is the dwelling of another, and the building is such a dwelling.

Haw. Rev. Stat. § 708-810(1) (1985).

Idaho: *Entry only*

Burglary defined.—

Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse, or other building, tent, vessel, closed vehicle, closed trailer, airplane or railroad car, with intent to commit any theft or any felony, is guilty of burglary.

Idaho Code § 18-1401 (Supp. 1981).

Illinois: *Covered remaining*

Burglary.

§ 19-1. Burglary. (a) A person commits burglary when without authority he knowingly enters or without authority remains within a building, housetrailer, watercraft, * * * or any part thereof,

with intent to commit therein a felony or theft. * * *

Ill. Rev. Stat. ch. 38, para. 19-1(a) (1983).

Indiana: *Entry only*

Burglary.—

A person who breaks and enters the building or structure of another person, with intent to commit a felony in it, commits burglary, a class C felony. * * *

Ind. Code Ann. § 35-43-2-1 (Burns Supp. 1984).

Iowa: *Covered remaining*

Burglary defined.

Any person, having the intent to commit a felony, assault or theft therein, who, having no right, license or privilege to do so, enters an occupied structure, such occupied structure not being open to the public, or who remains therein after it is closed to the public or after the person's right, license or privilege to be there has expired, or any person having such intent who breaks an occupied structure, commits burglary.

Iowa Code § 713.1 (1985).

Kansas: *Covered remaining*

Burglary.

Burglary is knowingly and without authority entering into or remaining within any building, mobile home, tent or other structure, or any motor vehicle, aircraft, watercraft, railroad car or other means of

conveyance of persons or property, with intent to commit a felony or theft therein.

Kan. Stat. Ann. § 21-3715 (Supp. 1980).

Kentucky: *Covered remaining*

Burglary in the third degree.—

(1) A person is guilty of burglary in the third degree when, with the intent to commit a crime, he knowingly enters or remains unlawfully in a building.

Ky. Rev. Stat. Ann. § 511.040(1) (Michie 1985).

Louisiana: *Entry only*

Simple burglary

Simple burglary is the unauthorized entering of any dwelling, vehicle, watercraft, or other structure, movable or immovable, with the intent to commit a felony or any theft therein, other than as set forth in Section 60.

* * * * *

La. Rev. Stat. Ann. § 14:62 (West 1986).

Maine: *Covered remaining*

Burglary

1. A person is guilty of burglary if he enters or surreptitiously remains in a structure, knowing that he is not licensed or privileged to do so, with the intent to commit a crime therein.

Me. Rev. Stat Ann., tit. 17-A, § 401(1) (West 1983).

Maryland: *Entry only*

Breaking dwelling with intent to steal or commit felony.

(a) Every person, his aiders, abettors and counsellors, who shall break and enter any dwelling house in the nighttime with the intent to steal, take or carry away the personal goods of another of any value therefrom shall be deemed a felon, and shall be guilty of the crime of burglary.

Md. Ann. Code art. 27, § 30(a) (1982).

Massachusetts: *Entry only*

Burglary, Not Being Armed, etc.

Section 15. Whoever breaks and enters a dwelling house in the night time, with the intent mentioned in the preceding section, or, having entered with such intent, breaks such dwelling house in the night time, the offender not being armed, nor arming himself in such house, with a dangerous weapon, nor making an assault upon a person lawfully therein, shall be punished * * * .

Mass. Gen. L. ch. 266, § 15 (1986).

Michigan: *Entry only*

Breaking and entering.

Sec. 110. Any person who shall break and enter with intent to commit any felony, or any larceny therein, any tent, hotel, office, store, shop, warehouse, barn, granary, factory or other building, structure, boat or ship, railroad car or any private apartment in any of such buildings or any unoccupied dwelling

house, shall be guilty of a felony punishable by imprisonment in the state prison not more than 10 years. * * *

Mich. Comp. Laws § 750.110 (1981).

Minnesota: *Covered remaining*

BURGLARY.

Subdiv. 3. **Burglary in the third degree.** Whoever enters a building without consent and with intent to steal or commit any felony or gross misdemeanor commits burglary in the third degree.

Minn. Stat. § 609.582(3) (1986).

DEFINITIONS.

Subdiv. 4. **Enters a building without consent.** "Enters a building without consent" means:

(a) to enter a building without the consent of the person in lawful possession;

(b) to enter a building by using artifice, trick, or misrepresentation to obtain consent to enter from the person in lawful possession; or

(c) to remain within a building without the consent of the person in lawful possession.

* * * * *

Minn. Stat. § 609.581(4) (1986).

Mississippi: *Entry only*

Burglary—breaking and entering dwelling.

Every person who shall be convicted of breaking and entering any dwelling house, in the day or night, with intent to commit a crime, shall be guilty of burglary, and be imprisoned in the penitentiary not more than ten years.

Miss. Code Ann. § 97-17-19 (1973).

Missouri: *Covered remaining*

Burglary in the second degree.—

1. A person commits the crime of burglary in the second degree when he knowingly enters unlawfully or knowingly remains unlawfully in a building or inhabitable structure for the purpose of committing a crime therein.

Mo. Rev. Stat. § 569.170(1) (1986).

Montana: *Covered remaining*

Burglary.

(1) A person commits the offense of burglary if he knowingly enters or remains unlawfully in an occupied structure with the purpose to commit an offense therein.

Mont. Code Ann. § 45-6-204(1) (1985).

Nebraska: *Entry only*

Burglary; penalty

(1) A person commits burglary if such person willfully, maliciously, and forcibly breaks and enters any real estate or any improvements erected thereon with intent to commit any felony or with intent to steal property of any value.

Neb. Rev. Stat. § 28-507(1) (1985).

Nevada: *Entry only*

Definition; punishent; venue.

1. Every person who, either by day or night, enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, vehicle, vehicle trailer, semitrailer or housetrailer, airplane, glider, boat or railroad car, with intent to commit grand or petit larceny, or any felony, is guilty of burglary.

Nev. Rev. Stat. Ann. § 205.060(1) (Michie 1986).

New Hampshire: *Entry only*

Burglary.

I. A person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied section thereof, with purpose to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. * * *

N.H. Rev. Stat. Ann. § 635:1(I) (1986).

New Jersey: *Covered remaining*

Burglary

a. Burglary defined. A person is guilty of burglary if, with purpose to commit an offense therein he:

(1) Enters a structure, or a separately secured or occupied portion thereof, unless the structure was at the time open to the public or the actor is licensed or privileged to enter;

(2) Surreptitiously remains in a structure or a separately secured or occupied portion thereof knowing that he is not licensed or privileged to do so.

N.J. Stat. Ann. § 2C:18-2(a) (West 1982).

New Mexico: *Entry only*

Burglary.

Burglary consists of the unauthorized entry of any vehicle, watercraft, aircraft, dwelling or other structure, movable or immovable, with the intent to commit any felony or theft therein.

* * * * *

N.M. Stat. Ann. § 30-16-3 (Michie 1978).

New York: *Covered remaining*

Burglary in the third degree

A person is guilty of burglary in the third degree when he knowingly enters or remains unlawfully in a building with intent to commit a crime therein.

* * * * *

N.Y. Penal Law § 140.20 (McKinney 1975).

North Carolina: *Entry only*

First and second degree burglary.

There shall be two degrees in the crime of burglary as defined at the common law. If the crime be committed in a dwelling house, or in a room used as a sleeping apartment in any building, and any person is in the actual occupation of any part of said dwelling house or sleeping apartment at the time of the commission of such crime, it shall be burglary in the first degree. If such crime be committed in a dwelling house or sleeping apartment not actually occupied by anyone at the time of the commission of the crime, or if it be committed in any house within the curtilage of a dwelling house or in any building not a dwelling house, but in which is a room used as a sleeping apartment and not actually occupied as such at the time of the commission of the crime, it shall be burglary in the second degree. * * *

N.C. Gen. Stat. § 14-51 (1986).

North Dakota: *Covered remaining*

Burglary.

1. A person is guilty of burglary if he willfully enters or surreptitiously remains in a building or occupied structure, or a separately secured or occupied portion thereof, when at the time the premises are not open to the public and the actor is not licensed, invited, or otherwise privileged to enter or remain as the case may be, with intent to commit a crime therein.

N.D. Cent. Code § 12.1-22-02(1) (1985).

Ohio: *Covered remaining*

Burglary.

(A) No person, by force, stealth, or deception, shall trespass in an occupied structure as defined in section 2909.01 of the Revised Code, or in a separately secured or separately occupied portion thereof, with purpose to commit therein any theft offense as defined in section 2913.01 of the Revised Code, or any felony.

Ohio Rev. Code Ann. § 2911.12(A) (Anderson Supp. 1985).

Oklahoma: *Entry only*

Burglary in the second degree—Acts constituting

Every person who breaks and enters any building or any part of any building, room, booth, tent, railroad car, automobile, truck, trailer, vessel or other structure or erection, in which any property is kept, or

breaks into or forcibly opens, any coin-operated or vending machine or device with intent to steal any property therein or to commit any felony, is guilty of burglary in the second degree.

Okla. Stat. Ann. tit. 21, § 1435 (West 1983).

Oregon: *Covered remaining*

Burglary in the second degree.

(1) A person commits the crime of burglary in the second degree if he enters or remains unlawfully in a building with intent to commit a crime therein.

Or. Rev. Stat. § 164.215(1) (1983).

Pennsylvania: *Entry only*

Burglary

(a) Offense defined.—A person is guilty of burglary if he enters a building or occupied structure, or separately secured or occupied portion thereof, with intent to commit a crime therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter.

18 Pa. Cons. Stat. Ann. § 3502(a) (1983).

Rhode Island: *Entry only*

Burglary.—

Every person who shall commit burglary shall be imprisoned for life or for any term not less than five (5) years.

R.I. Gen. Laws § 11-8-1 (1981).

South Carolina: *Entry only*

Burglary; third degree.

(A) A person is guilty of burglary in the third degree if the person enters a building without consent and with intent to commit a crime therein.

S.C. Code Ann. § 16-11-313(A) (Law. Co-op. Supp. 1985).

South Dakota: *Covered remaining*

Third degree burglary defined—Felony.

Any person who enters or remains in an unoccupied structure, with intent to commit any crime therein, is guilty of third degree burglary. * * *

S.D. Codified Laws § 22-32-8 (1979).

Tennessee: *Entry only*

Burglary generally.—

(a) Burglary is the breaking and entering into a dwelling house, or any other house, building, room or rooms therein used and occupied by any person or persons as a dwelling place or lodging either permanently or temporarily and whether as owner, renter, tenant, lessee or paying guest, by night, with intent to commit a felony.

Tenn. Code Ann. § 39-3-401(a) (1982).

Texas: *Covered remaining*

Burglary

(a) A person commits an offense if, without the effective consent of the owner, he:

(1) enters a habitation, or a building (or any portion of a building) not then open to the public, with intent to commit a felony or theft; or

(2) remains concealed, with intent to commit a felony or theft, in a building or habitation; or

(3) enters a building or habitation and commits or attempts to commit a felony or theft.

Tex. Penal Code Ann. § 30.02(a) (West. 1974).

Utah: *Covered remaining*

Burglary.—

(1) A person is guilty of burglary if he enters or remains unlawfully in a building or any portion of a building with intent to commit a felony or theft or commit an assault on any person.

Utah Code Ann. § 76-6-202(1) (1978).

Vermont: *Covered remaining*

Burglary

(a) A person is guilty of burglary if he enters any building or structure knowing that he is not licensed or privileged to do so, with the intent to commit a felony, petit larceny, simple assault or unlawful mischief. This provision shall not apply to a licensed or privileged entry, or to an entry that takes place while

the premises are open to the public, unless the person, with the intent to commit a crime specified in this subsection, surreptitiously remains in the building or structure after the license or privilege expires or after the premises no longer are open to the public.

Vt. Stat. Ann. tit. 13, § 1201(a) (Supp. 1982).

Virginia: *Entry only*

Burglary; how punished.—

If any person break and enter the dwelling house of another in the nighttime with intent to commit a felony or any larceny therein, he shall be guilty of burglary, punishable as a Class 3 felony; provided, however, that if such person was armed with a deadly weapon at the time of such entry, he shall be guilty of a Class 2 felony.

Va. Code Ann. § 18.2-89 (Michie 1982).

Washington: *Covered remaining*

Burglary in the second degree.

(1) A person is guilty of burglary in the second degree if, with intent to commit a crime against a person or property therein, he or she enters or remains unlawfully in a building other than a vehicle.

Wash. Rev. Code. § 9A.52.030(1) (1985).

Inference of intent.

In any prosecution for burglary, any person who enters or remains unlawfully in a building may be inferred to have acted with intent to commit a crime

against a person or property therein, unless such entering or remaining shall be explained by evidence satisfactory to the trier of fact to have been made without such criminal intent.

Wash. Rev. Code. § 9A.52.040 (1985).

West Virginia: *Entry only*

Burglary; entry of of dwelling; outhouse; penalties.

(a) * * * If any person shall, in the nighttime, break and enter, or enter without breaking, or shall, in the daytime, break and enter, the dwelling house, or an outhouse adjoining thereto or occupied therewith, of another, with intent to commit a felony or any larceny therein, he shall be deemed guilty of burglary.

(b) If any person shall, in the daytime, enter without breaking a dwelling house, or an outhouse adjoin thereto or occupied therewith, of another, with intent to commit a felony or any larceny therein, he shall be deemed guilty of a felony, and, upon conviction, shall be confined in the penitentiary not less than one nor more than ten years.

W. Va. Code Ann. § 61-3-11(a)-(b) (Michie 1977).

Wisconsin: *Entry only*

Burglary

(1) Whoever intentionally enters any of the following places without the consent of the person in lawful possession and with intent to steal or commit a felony in such place is guilty of a Class C felony:

(a) Any building or dwelling; or

(b) An enclosed railroad car; or

(c) An enclosed portion of any ship or vessel; or

(d) A locked enclosed cargo portion of a truck or trailer; or

(e) A motor home or other motorized type of home or a trailer home, whether or not any person is living in any such home; or

(f) A room within any of the above.

Wisc. Stat. Ann. § 943.10(1) (West 1982).

Wyoming: *Covered remaining*

Burglary; aggravated burglary; penalties.

(a) A person is guilty of burglary if, without authority, he enters or remains in a building, occupied structure or vehicle, or separately secured or occupied portion thereof, with intent to commit larceny or a felony therein.

Wyo. Stat. Ann. § 6-3-301(a) (Supp. 1986).