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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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SHEPARD *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

No. 03–9168. Argued November 8, 2004—Decided March 7, 2005

After petitioner Shepard pleaded guilty to being a felon in possession of a firearm in violation of 18 U. S. C. §922(g)(1), the Government sought to increase his sentence from a 37-month maximum to the 15-year minimum that §924(e), popularly known as the Armed Career Criminal Act (ACCA), mandates for such felons who have three prior convictions for violent felonies or drug offenses. Shepard's predicate felonies were Massachusetts burglary convictions entered upon guilty pleas. This Court has held that only "generic burglary"—meaning, among other things, that it was committed in a building or enclosed space—is a violent crime under the ACCA, *Taylor* v. *United States,* 495 U. S. 575, 599, and that a court sentencing under the ACCA can look to statutory elements, charging documents, and jury instructions to determine whether an earlier conviction after a jury trial was for generic burglary in States (like Massachusetts) with broader burglary definitions, *id.,* at 602. Refusing to consider the 15-year minimum, the District Court found that a *Taylor* investigation did not show that Shepard had three generic burglary convictions and rejected the Government's argument that the court should examine police reports and complaint applications in determining whether Shepard's guilty pleas admitted and supported generic burglary convictions. The First Circuit vacated, ruling that such reports and applications should be considered. On remand, the District Court again declined to impose the enhanced sentence. The First Circuit vacated.

Held: The judgment is reversed, and the case is remanded.

348 F. 3d 308, reversed and remanded.

JUSTICE SOUTER delivered the opinion of the Court, except as to Part III, concluding that enquiry under the ACCA to determine

whether a guilty plea to burglary under a nongeneric statute necessarily admitted elements of the generic offense is limited to the terms of the charging document, to the terms of a plea agreement or transcript of colloquy between judge and defendant in which the defendant confirmed the factual basis for the plea, or to some comparable judicial record of this information. Guilty pleas may establish ACCA predicate offenses, and *Taylor*'s reasoning controls the identification of generic convictions following pleas, as well as convictions on verdicts, in States with nongeneric offenses. The ACCA nowhere provides that convictions in tried and pleaded cases should be regarded differently, and nothing in *Taylor*'s rationale limits it to prior jury convictions. This Court, then, must find the right analogs for applying *Taylor* to pleaded cases. The *Taylor* Court drew a pragmatic conclusion about the best way to identify generic convictions in jury cases. In cases tried without a jury, the closest analogs to jury instructions would be a bench-trial judge's formal ruling of law and finding of fact; in pleaded cases, they would be the statement of factual basis for the charge shown by a transcript of plea colloquy or by written plea agreement presented to the court, or by a record of comparable findings of fact adopted by the defendant upon entering the plea. A later court could generally tell from such material whether the prior plea had "necessarily" rested on the fact identifying the burglary as generic. *Taylor, supra,* at 602. The Government's arguments for a wider evidentiary cast that includes documents submitted to lower courts even prior to charges amount to a call to ease away from *Taylor*'s conclusion that respect for congressional intent and avoidance of collateral trials require confining generic conviction evidence to the convicting court's records approaching the certainty of the record of conviction in a generic crime State. That was the heart of the *Taylor* decision, and there is no justification for upsetting that precedent where the Court is dealing with statutory interpretation and where Congress has not, in the nearly 15 years since *Taylor,* taken any action to modify the statute. Pp. 5–9, 12.

JUSTICE SOUTER, joined by JUSTICE STEVENS, JUSTICE SCALIA, and JUSTICE GINSBURG, concluded in Part III that the rule in the *Jones* v. *United States,* 526 U. S. 227, 243, n. 6, and *Apprendi* v. *New Jersey,* 530 U. S. 466, 490, line of cases—that any fact other than a prior conviction sufficient to raise the limit of the possible federal sentence must be found by a jury, absent a waiver by the defendant—is also relevant to ACCA sentencing. In a nongeneric State, the fact necessary to show a generic crime is not established by the record of conviction as it would be in a generic State when a judicial finding of a disputed prior conviction is made on the authority of *Almendarez-Torres* v. *United States,* 523 U. S. 224. Instead, the sentencing judge

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considering the ACCA enhancement would (on the Government's view) make a disputed finding of fact about what the defendant and state judge must have understood as the prior plea's factual basis, and the dispute raises the concern underlying *Jones* and *Apprendi:* the Sixth and Fourteenth Amendments guarantee a jury's standing between a defendant and the power of the State, and they guarantee a jury's finding of any disputed fact essential to increase a potential sentence's ceiling. The disputed fact here is too far removed from the conclusive significance of a prior judicial record, and too much like the findings subject to *Jones* and *Apprendi,* to say that *Almendarez-Torres* clearly authorizes a judge to resolve the dispute. The rule of reading statutes to avoid serious risks of unconstitutionality therefore counsels the Court to limit the scope of judicial factfinding on the disputed generic character of a prior plea. Pp. 10–12.

JUSTICE THOMAS agreed that the Court should not broaden the scope of the evidence judges may consider under *Taylor* v. *United States,* 495 U. S. 575, because it would give rise to constitutional error, not constitutional doubt. Both *Almendarez-Torres* v. *United States,* 523 U. S. 224, and *Taylor*, which permit judicial factfinding that concerns prior convictions, have been eroded by this Court's subsequent Sixth Amendment jurisprudence. Pp. 1–3.

SOUTER, J., delivered an opinion, which was for the Court except as to Part III. STEVENS, SCALIA, and GINSBURG, JJ., joined that opinion in full, and THOMAS, J., joined except as to Part III. THOMAS, J., filed an opinion concurring in part and concurring in the judgment. O'CONNOR, J., filed a dissenting opinion, in which KENNEDY and BREYER, JJ., joined. REHNQUIST, C. J., took no part in the decision of the case.