



# Armed Career Criminal Act (ACCA): Using Prior Juvenile Adjudications for Sentence Enhancements

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## Summary

With recent U.S. Supreme Court decisions regarding the role of judges and juries in making factual determinations upon which sentences are made, there has been increased congressional interest in federal sentencing. One aspect of federal sentencing includes recidivism statutes that provide longer sentences for repeat offenders. One such statute, the Armed Career Criminal Act (ACCA), requires imposition of a 15-year prison sentence for an individual with prior serious drug or violent felony convictions. Under the ACCA, non-jury juvenile adjudications qualify as prior convictions. The use of these non-jury juvenile adjudications raises several constitutional due process questions and continues to spark debate among courts at the federal and state levels. Opinions vary, in part, because of conflicting interpretations of the U.S. Supreme Court's jury trial jurisprudence stressing the constitutional requirement of juries, rather than judges, making factual determinations upon which sentences are based. This report summarizes the competing views on the constitutionality of the use of non-jury juvenile adjudications in subsequent criminal proceedings.

The Armed Career Criminal Act (ACCA) requires imposition of a minimum 15-year term of imprisonment for unlawful possession of a firearm in violation of 18 U.S.C. § 922(g) by an individual with three prior serious drug or violent felony convictions.<sup>1</sup> The ACCA defines “conviction” to include “a finding that a person has committed an act of juvenile delinquency involving a violent felony.”<sup>2</sup> Defendants have begun to challenge, with mixed results, the courts’ ability to use non-jury juvenile adjudications as a prior conviction under the ACCA. Opinions vary, in part, because of conflicting interpretations of the U.S. Supreme Court’s recent jury trial jurisprudence, as well as the the nature of juvenile court proceedings.

In a series of cases, the U.S. Supreme Court has held that given the Sixth Amendment right to trial by jury, judges cannot impose sentences beyond the prescribed statutory maximum unless the facts supporting such an increase are found by a jury beyond a reasonable doubt.<sup>3</sup> In *Jones v. United States*,<sup>4</sup> the Court struck down the federal carjacking statute that enhanced the maximum prison sentence that Nathaniel Jones could receive depending upon the amount of bodily injury that accompanied the carjacking. In *Jones*, it was the sentencing judge, not a jury, who found the victims incurred serious bodily injury and imposed a prison sentence of 25 years. The *Jones* majority held that

under the Due Process Clause of the Fifth Amendment and the notice and jury trial guarantees of the Sixth Amendment, any fact (other than a prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt.<sup>5</sup>

*Apprendi v. New Jersey (Apprendi)*<sup>6</sup> reaffirmed *Jones* by holding that “other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt.”<sup>7</sup> In *Apprendi*, the Court struck down New Jersey’s hate crime law, which allowed a judge to increase a sentence to double the statutory maximum if he or she found, by a preponderance of the evidence, that the defendant acted with a purpose to intimidate an individual or group of individuals because of race. In reversing the lower court’s decision, the Court declared that the jury trial and notification clauses of the Sixth Amendment and the due process clauses of the Fifth and Fourteenth Amendments embody a principle that insists that, except in the case of recidivists, a judge could not on his own findings sentence a criminal defendant to a term of imprisonment greater than the statutory maximum assigned for which he had been convicted by the jury. The *Apprendi* Court specifically held that its “prior conviction” exception was a narrow one.<sup>8</sup>

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<sup>1</sup> 18 U.S.C. § 924(e).

<sup>2</sup> 18 U.S.C. § 924(e)(2)(C).

<sup>3</sup> See *Jones v. United States*, 526 U.S. 227 (1999); *Apprendi v. New Jersey*, 520 U.S. 466 (2000); *Ring v. Arizona*, 536 U.S. 584 (2002)(holding that an aggravating circumstance that makes a defendant eligible for a death sentence is the functional equivalent of an element of an offense for purposes of the Sixth Amendment right to jury trial and therefore must be found by a jury); *Blakely v. Washington*, 542 U.S. 296 (2004)(finding that the “statutory maximum” for *Apprendi* purposes is the maximum sentence a judge may impose solely on the basis of facts reflected in the jury verdict or admitted by the defendant); *United States v. Booker*, 543 U.S. 220 (2005)(finding that the mandatory nature of the Federal Sentencing Guidelines violates the Sixth Amendment right to jury).

<sup>4</sup> 526 U.S. 227 (1999).

<sup>5</sup> *Id.* at 243.

<sup>6</sup> 520 U.S. 466 (2000).

<sup>7</sup> *Id.* at 490.

<sup>8</sup> *Id.*

## Prior Conviction Exception Under *Almendarez-Torres*

The narrow “prior conviction” exception from the general rule that all facts going to punishment must be found by a jury is based on assumptions regarding the reliability and fairness of the procedures available to the defendant at the time his or her prior convictions were entered.<sup>9</sup> The U.S. Supreme Court first addressed sentence enhancement based upon recidivism as a jury trial issue in *Almendarez-Torres v. United States*,<sup>10</sup> where, in a 5-4 decision, it held that a judge, rather than a jury, may decide the fact of a defendant’s prior conviction for purposes of determining whether a sentence should be imposed in excess of the statutory maximum.<sup>11</sup> The Court set forth three principal reasons for reaching its conclusion. First, recidivism has been a traditional basis for a sentencing court’s increase in an offender’s sentence.<sup>12</sup> Second, recidivism should be treated differently from other sentencing enhancement factors because “the introduction of evidence of a defendant’s prior crimes risks significant prejudice.”<sup>13</sup> Third, although a factor may trigger an increase in the maximum permissive sentence, as opposed to an increase in the mandatory minimum sentence as seen in *McMillan v. Pennsylvania*,<sup>14</sup> that factor should not automatically require a greater burden of proof, as it “does not systematically, or normally, work to the disadvantage of a criminal defendant.”<sup>15</sup> As such, the Court held that the factor of recidivism need not be included in the indictment, nor proved beyond a reasonable doubt, even if that factor increases the criminal sentence beyond the prescribed statutory maximum.<sup>16</sup>

There is doubt concerning the continued viability of *Almendarez-Torres*. The four *Almendarez-Torres* dissenters and Justice Thomas have all expressed belief that *Almendarez-Torres* was decided in error. Justice Thomas, the only member of the *Almendarez-Torres* majority to join the *Apprendi* majority, renounced his vote with the majority in *Almendarez-Torres* and declared that the decision was in error.<sup>17</sup> Moreover, the Court’s decision in *Shepard v. United States*<sup>18</sup> appears

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<sup>9</sup> For example, the defendant received a jury trial or validly waived this right and facts upon which the sentence was based were found beyond reasonable doubt. See *Jones* at 249 (explaining that using the fact of a prior conviction to enhance a sentence is constitutionally distinct from the use of other facts and does not raise the same due process and Sixth Amendment concerns because “a prior conviction must itself have been established through procedures satisfying the fair notice, reasonable doubt, and jury trial guarantees.”).

<sup>10</sup> 523 U.S. 224 (1998). In this case, the Court considered a federal statute authorizing a two-year prison term for deportees who returned to the U.S. without permission, but authorizing a prison term of up to 20 years for aliens whose deportation was subsequent to a felony conviction. The question before the Court was whether the statute defined two separate crimes, in which case the prior conviction must be mentioned in the indictment, or simply authorized an enhanced penalty, in which case the prior conviction is not an element that must be charged.

<sup>11</sup> *Id.* at 225-27.

<sup>12</sup> *Id.* at 231.

<sup>13</sup> *Id.* at 235.

<sup>14</sup> 477 U.S. 79 (1986)(upholding Pennsylvania’s Mandatory Minimum Sentencing Act, which prescribed a mandatory minimum sentence of five years upon a judge’s finding by a preponderance of the evidence that the defendant “visibly possessed a firearm” during the commission of certain enumerated offenses).

<sup>15</sup> *Almendarez-Torres*, 523 U.S. at 244.

<sup>16</sup> *Id.* at 227.

<sup>17</sup> In his concurrence in *Apprendi*, (*Id.* at 520-21) Justice Thomas wrote:

[O]ne of the chief errors of *Almendarez-Torres*—an error to which I succumbed—was to attempt to discern whether a particular fact is traditionally (or typically) a basis for a sentencing court to increase an offender’s sentence. For the reasons I have given, it should be clear that this approach just defines away the real issue. What matters is the way by which a fact enters into the sentence. If a fact is by law the basis for imposing or increasing punishment—for establishing or increasing the prosecution’s entitlement—it is an element. (To put the point differently, I am aware of no

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to further question the continued viability of *Almendarez-Torres*. In *Shepard*, the Court addressed whether a sentencing court, acting pursuant to the ACCA, can examine police reports or complaints to determine whether a prior guilty plea to burglary counts as a prior conviction of a “violent felony.”<sup>19</sup> In reading the “prior conviction” exception narrowly, the Court concluded that the judicial inquiry under the ACCA, as to whether a guilty plea to burglary is a “violent felony,” “is limited to the terms of the charging document, the terms of a plea agreement or transcript of colloquy between judge and defendant in which the factual basis for the plea was confirmed by the defendant, or some comparable judicial record of this information.”<sup>20</sup> It would appear that requiring that recidivism in the *Shepard* context be proved beyond a reasonable doubt calls into question the distinction between “traditional sentencing factors” such as recidivism and “elements of the offense.” However, it should be noted that *Shepard* was decided on statutory grounds, invoking the doctrine of avoiding constitutional doubt.

## Two Interpretations of the Prior Conviction Exception as Applied to Prior Juvenile Adjudications

The scope of the “prior conviction” exception and its applicability to prior juvenile adjudications have been the focus of debate. Following the *Almendarez-Torres* and *Apprendi* decisions, two conflicting views have arisen as to whether a juvenile adjudication constitutes a “prior conviction” for the purpose of enhancing an adult’s sentence. The legal issue with using juvenile adjudications as sentence enhancers is not the constitutional validity of the adjudication itself, but instead the constitutional validity of the adjudication’s subsequent use in an adult criminal court. Historically, prior juvenile criminality was not used as a sentencing factor because records of juvenile adjudications were confidential and often expunged.<sup>21</sup> The Ninth Circuit was the first to publish an opinion on the matter in *United States v. Tighe*.<sup>22</sup> The defendant pled guilty to bank robbery, being a felon in possession of a firearm, and interstate transportation of a stolen vehicle. The government argued that the defendant’s sentence could be enhanced because of a prior adjudication as a juvenile of reckless endangerment, first-degree robbery, and unauthorized use of a motor vehicle.<sup>23</sup> However, the Court found that the juvenile adjudication could not be used for

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historical basis for treating as a nonelement a fact that by law sets or increases punishment.) When one considers the question from this perspective, it is evident why the fact of a prior conviction is an element under a recidivism statute. Indeed, cases addressing such statutes provide some of the best discussions of what constitutes an element of a crime. One reason frequently offered for treating recidivism differently, a reason on which we relied in *Almendarez-Torres* is a concern for prejudicing the jury by informing it of the prior conviction. But this concern, of which earlier courts were well aware, does not make the traditional understanding of what an element is any less applicable to the fact of a prior conviction.

<sup>18</sup> 544 U.S. 13 (2005).

<sup>19</sup> *Id.* The ACCA mandates a 15-year minimum sentence for any person found to have committed certain federal firearms violations if that person has three prior convictions for “violent felonies.” The term “violent felony” includes “burglary,” and the Court in *Taylor v. United States* (495 U.S. 575, 598-99 (1990)) held that the ACCA’s use of the term “burglary” encompasses only “generic burglary.”

<sup>20</sup> *Id.* at 1263.

<sup>21</sup> David S. Tanenhaus, *The Evolution of Juvenile Courts in the Early Twentieth Century: Beyond the Myth of Immaculate Construction*, in *A Century of Juvenile Justice* 42, 69-70 (Margaret K. Rosenhem et al., Eds., 2002).

<sup>22</sup> 266 F.3d 1187 (2001).

<sup>23</sup> *Id.* at 1190.

enhancement purposes pursuant to the ACCA because his juvenile adjudication was not tried by a jury trial, thus evidencing “significant constitutional differences between adult convictions and juvenile adjudications.”<sup>24</sup> The Court held that “the ‘prior conviction’ exception to *Apprendi*’s general rule must be limited to prior convictions that were themselves obtained through proceedings that included the right to a jury trial and proof beyond a reasonable doubt.”<sup>25</sup>

In *United States v. Smalley*,<sup>26</sup> the Eighth Circuit rejected the Ninth Circuit’s reasoning in *Tighe*. The court, in employing a broader interpretation than the Ninth Circuit, found that the question of whether juvenile adjudications should be exempt from *Apprendi*’s general rule should not turn on the narrow parsing of words, but on an examination of whether juvenile adjudications, like adult convictions, are so reliable that due process of law is not offended by such an exemption.<sup>27</sup> The court reasoned that as juvenile courts apply a “beyond a reasonable doubt” standard, the juvenile bench trial was procedurally adequate to constitute a “prior conviction.”<sup>28</sup>

States have also adopted different approaches for allowing the use of juvenile adjudications as sentence enhancers. One approach used by some states (e.g., Indiana and Kansas) allows courts to consider a prior juvenile adjudication as part of a defendant’s criminal history.<sup>29</sup> The majority of states that have addressed the constitutionality of such provisions have found that as long as juveniles receive all the process they are constitutionally due in the juvenile system, an adult court can treat a juvenile adjudication as a sentence enhancer.<sup>30</sup>

However, in *State v. Brown*,<sup>31</sup> the Louisiana Supreme Court adopted the minority view and held that courts cannot use a juvenile adjudication to enhance a sentence.<sup>32</sup> The defendant pleaded guilty to one count of robbery, and a jury found him guilty under a separate count of armed robbery. After his conviction, the state charged the defender under its habitual offender law and enhanced his sentence based on a prior juvenile adjudication.<sup>33</sup> He challenged the sentence and argued that the trial court’s use of his juvenile adjudication for sentence enhancement violated *Apprendi*. The Louisiana Supreme Court distinguished civil adjudications from criminal convictions, noting that juvenile courts afford juveniles less due process, which results in a proceeding that is more civil in nature than criminal.<sup>34</sup> The court decided that although juvenile

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<sup>24</sup> *Id.* at 1192-93.

<sup>25</sup> *Id.* at 1194.

<sup>26</sup> 294 F.3d 1030 (2002).

<sup>27</sup> *Id.* at 1032-1033.

<sup>28</sup> The Third and Eleventh Circuits have heard factually similar cases involving a criminal defendant’s sentence enhancement under the ACCA and followed the same rationale as the Eighth Circuit. *United States v. Jones*, 332 F.3d 688 (3d Cir. 2003), *cert. denied*, 540 U.S. 1150 (2004); *United States v. Burge*, 407 F.3d 1183 (11<sup>th</sup> Cir. 2005). A similar split exists with respect to the use of prior delinquency adjudications for the purpose of a defendant’s sentencing guideline criminal history score. Compare, *United States v. Washington*, 462 F.3d 1124 (9<sup>th</sup> Cir. 2006), with *United States v. Williams*, 410 F.3d 397 (7<sup>th</sup> Cir. 2007), *United States v. McKoy*, 452 F.3d 234 (3<sup>rd</sup> Cir. 2006).

<sup>29</sup> See Joseph B. Sanborn, Jr., *Striking Out on the First Pitch in Criminal Court*, 1 *Barry L. Rev.* 7, 17 (2000).

<sup>30</sup> See, e.g., *People v. Bowden*, 125 Cal. Rptr. 2d 513, 518 (Cal. Ct. App. 2002); *Ryle v. State*, 819 N.E.2d 119, 123 (Ind. Ct. App. 2004); *State v. Hitt*, 42 P.3d 732, 740 (Kan. 2002), *cert. denied*, 537 U.S. 1104 (2003).

<sup>31</sup> 879 So. 2d 1276 (La. 2004), *cert. denied*, 543 U.S. 826 (2005).

<sup>32</sup> *Id.* at 1280.

<sup>33</sup> *Id.* Louisiana’s habitual offender law provides that any person who has previously been convicted of a felony or adjudicated as a juvenile of a serious drug or violent offense will receive an enhanced sentence if convicted of a second felony. *Id.* at 1279.

<sup>34</sup> *Id.* at 1289.

adjudications are sufficiently reliable for use in the juvenile court system, the absence of the right to a jury trial makes juvenile adjudications too unreliable for use as an adult sentence enhancer.<sup>35</sup>

The future of the “prior conviction” exception and its applicability to juvenile adjudications remain unclear, as the U.S. Supreme Court has denied petitions for writ of certiorari in the cases that have adopted the majority view and in cases that have adopted the minority view.<sup>36</sup>

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<sup>35</sup> *Id.* at 1290.

<sup>36</sup> *United States v. Jones*, 332 F.3d 688 (3d Cir. 2003), *cert. denied*, 540 U.S. 1150 (2004); *United States v. Smalley*, 294 F.3d 1030 (8<sup>th</sup> Cir. 2002), *cert. denied*, 537 U.S. 1114 (2003); *State v. Hitt*, 42 P.3d 732 (Kan. 2002), *cert. denied*, 537 U.S. 1104 (2003); *State v. Brown*, 879 So.2d 276 (La. 2004), *cert. denied*, 534 U.S. 826 (2005).

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