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THE NEED FOR *SNEED*: A LOOPHOLE IN THE ARMED CAREER CRIMINAL ACT

Abstract: On March 24, 2010, the U.S. Court of Appeals for the Eleventh Circuit, in *United States v. Sneed*, held that courts may not use police reports to determine if prior offenses occurred on different occasions for the purposes of the Armed Career Criminal Act. In so doing, the court narrowed the class of offenders that qualify as career offenders and created a loophole that allows some offenders to avoid the ACCA's mandatory minimum sentence if their previous offenses were not well documented in judicially approved sources. This Comment argues that in order to correct the problem of the *Sneed* loophole, Congress should amend the ACCA by defining different "occasions" so that the statute can be consistently applied in all jurisdictions and will not force juries to examine the facts underlying a defendant's previous convictions.

INTRODUCTION

The federal Armed Career Criminal Act (ACCA) imposes a fifteen-year mandatory minimum sentence on habitual offenders who have three prior convictions for violent felonies or serious drug offenses.¹ The ACCA's purpose is to create consistent federal penalties to reduce crimes committed by armed, career criminals.² It was passed in 1984 and Congress amended it twice before arriving at the current definition of a career criminal, in 1988.³ This definition requires offenders' previous offenses to have been committed on different occasions.⁴

In March 2010, in *United States v. Sneed*, the U.S. Court of Appeals for the Eleventh Circuit addressed the sources a sentencing judge may use to determine whether an offender's previous offenses meet this ACCA requirement.⁵ The Eleventh Circuit ruled that a sentencing judge may not use police reports to determine if previous crimes occurred on different occasions.⁶ The court thereby narrowed the class of

¹ 18 U.S.C. § 924(e) (2006).

² H.R. REP. NO. 98-1073, at 1 (1984), *reprinted in* 1984 U.S.C.C.A.N. 3661, 3661.

³ Armed Career Criminal Act of 1984, Pub. L. No. 98-473, ch. XVIII, § 1802, 98 Stat. 1837, 2185 (amended 1986); James G. Levine, Note, *The Armed Career Criminal Act and the U.S. Sentencing Guidelines: Moving Toward Consistency*, 46 HARV. J. ON LEGIS. 537, 547-48 (2009).

⁴ 18 U.S.C. § 924(e).

⁵ *See generally* 600 F.3d 1326 (11th Cir. 2010).

⁶ *Id.* at 1332. The Eleventh Circuit is not the first circuit to hold that only judicial documents may be used to determine whether prior convictions occurred on different

persons in that circuit identified as career criminals under the ACCA because offenders, such as the defendant in *Sneed*, will not qualify as career criminals when prosecutors do not document the crimes in sufficient detail in judicial documents.⁷ *Sneed* creates, in effect, a loophole that allows offenders who would otherwise be labeled career criminals to avoid the mandatory minimum sentence if their previous offenses were not well documented in sources approved by the court.⁸

Part I of this Comment gives an overview of the history of the ACCA.⁹ Part II then examines and discusses why the *Sneed* loophole exists.¹⁰ Finally, Part III explores the problems created by the *Sneed* loophole and argues that, in order to correct those problems while remaining within the bounds of the Constitution, Congress should amend the ACCA to define when crimes occur on different “occasions.”

I. SNEED AND THE HISTORY OF THE ACCA

For the ACCA to fulfill its purpose of achieving consistent sentencing for repeat offenders,¹¹ the statute must accurately define “career criminals.” In the original 1984 version of the ACCA, Congress defined the term narrowly.¹² Offenders were required to have “three previous convictions . . . for robbery or burglary, or both,” because it was found that a high percentage of robberies and burglaries were committed by a limited number of repeat offenders.¹³

The ACCA was amended by the Career Criminals Amendment Act of 1986, which broadened the requirement for the three previous convictions from “for robbery or burglary, or both” to “for a violent felony

occasions for the purpose of the ACCA. *See, e.g.*, *United States v. Fuller*, 453 F.3d 274, 279–80 (5th Cir. 2006); *United States v. Harris*, 447 F.3d 1300, 1305–06 (10th Cir. 2006); *United States v. Thompson*, 421 F.3d 278, 282, 286 (4th Cir. 2005); *United States v. Taylor*, 413 F.3d 1146, 1157 (10th Cir. 2005).

⁷ *See Sneed*, 600 F.3d at 1333; *United States v. Richardson*, 230 F.3d 1297, 1300 n.3 (11th Cir. 2000).

⁸ *See Sneed*, 600 F.3d at 1333.

⁹ *See infra* notes 11–33 and accompanying text.

¹⁰ *See infra* notes 34–55 and accompanying text.

¹¹ H.R. REP. NO. 98–1073, at 1–3 (1984), *reprinted in* 1984 U.S.C.C.A.N. 3661, 3661–63.

¹² *See id.*; Krystle Lamprecht, Comment, *Formal, Categorical, but Incomplete: The Need for a New Standard in Evaluating Prior Convictions Under the Armed Career Criminal Act*, 98 J. CRIM. L. & CRIMINOLOGY 1407, 1411–12 (2008).

¹³ Armed Career Criminal Act of 1984, Pub. L. No. 98–473, ch. XVIII, § 1802, 98 Stat. 1837, 2185 (amended 1986); H.R. REP. NO. 98–1073, at 3.

or a serious drug offense, or both.”¹⁴ Senator Arlen Specter, who introduced the Senate bill, said that it would “broaden th[e] definition [of career criminal] so that we may have a greater sweep and more effective use of this important statute.”¹⁵

In 1988, in response to an Eighth Circuit decision in which the simultaneous robbery of six people was held to satisfy the ACCA requirement for previous convictions, Congress amended the ACCA a second time.¹⁶ This amendment narrowed the class of offenders identified as career criminals by adding the requirement that the offender’s previous convictions be committed on separate occasions.¹⁷

Since 1988, the only changes regarding the definition of a career criminal have come from judicial interpretation of the statute.¹⁸ Both of the ACCA’s predicates for previous convictions—that they be violent felonies or serious drug offenses, and that they be committed on different occasions—have been the subject of litigation.¹⁹

One refinement to the ACCA came in *Sneed*.²⁰ The defendant in *Sneed* was sentenced to 180 months under the ACCA after being convicted of possession of a firearm by a convicted felon and possession of marijuana.²¹ Two of his prior convictions were for selling crack cocaine on the same day, thirty-nine minutes apart.²² The defendant argued on appeal that these two convictions did not occur on different occasions, and that the court was prohibited by a 2005 U.S. Supreme Court decision, *Shepard v. United States*, from using police reports to determine the

¹⁴ Career Criminals Amendment Act of 1986, Pub. L. No. 99-570, § 1402(a), 100 Stat. 3207, 3207-39 (amended 1988); Levine, *supra* note 3, at 547.

¹⁵ 132 CONG. REC. 7697 (1986); *see also* Taylor v. United States, 495 U.S. 575, 582-90 (1990) (summarizing the history of the Career Criminals Amendment Act).

¹⁶ Clarification of Predicate Offense Requirements for Armed Career Criminal Act, Pub. L. No. 100-690, § 7056, 102 Stat. 4181, 4402 (1988) (codified at 18 U.S.C. § 924(e) (2006)); James E. Hooper, Note, *Bright Lines, Dark Deeds: Counting Convictions Under the Armed Career Criminal Act*, 89 MICH. L. REV. 1951, 1965-66 (1991); *see* United States v. Petty, 798 F.2d 1157, 1159-60 (8th Cir. 1986).

¹⁷ Section 7056, 102 Stat. at 4402; Derrick D. Crago, Note, *The Problem of Counting to Three Under the Armed Career Criminal Act*, 41 CASE W. RES. L. REV. 1179, 1185-86 (1991).

¹⁸ *See* Levine, *supra* note 3, at 548; *see also, e.g.*, Shepard v. United States, 544 U.S. 13, 26 (2005) (holding that prior burglary offenses under a nongeneric burglary statute are predicate offenses for career criminals if elements of generic burglary are included in a list of approved judicial documents); Taylor, 495 U.S. at 602 (holding that prior offenses for career criminals are defined categorically but a court can go beyond the fact of prior conviction to find all elements of generic burglary).

¹⁹ *See, e.g.*, Taylor, 495 U.S. at 602; United States v. Hobbs, 136 F.3d 384, 387-90 (4th Cir. 1998).

²⁰ *See* 600 F.3d 1326, 1332-33 (11th Cir. 2010).

²¹ *Id.* at 1327.

²² *Id.* at 1328.

facts.²³ After examining *Shepard*, the Eleventh Circuit overruled its 2000 decision in *United States v. Richardson*, which had allowed the use of police reports when examining the underlying facts of previous convictions.²⁴

Shepard held that judges could not look to police reports to determine whether a defendant convicted under a nongeneric burglary statute was guilty of generic burglary as required by the “violent felonies or serious drug offenses” predicate of the ACCA.²⁵ Although the Court explicitly rejected the use of police reports, it listed a series of sources that could be used to determine the facts underlying previous convictions.²⁶ Those sources include 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.²⁷ *Sneed* applied *Shepard*’s list of approved sources to the ACCA’s separate occasions predicate.²⁸

In their *Shepard* and *Sneed* holdings, the Supreme Court and Eleventh Circuit avoided constitutional questions regarding the scope of judicial fact finding when the right to a jury trial has not been waived by adopting the holdings of Supreme Court cases such as *Jones v. United States* and *Apprendi v. New Jersey*, decided respectively in 1999 and 2000.²⁹ Under these cases, the Sixth and Fourteenth Amendments guarantee that, with one exception, a jury must determine any factual finding that

²³ *Id.*; see *Shepard*, 544 U.S. at 26.

²⁴ *Sneed*, 600 F.3d at 1332; *United States v. Richardson*, 230 F.3d 1297, 1299–1300 (11th Cir. 2000). In the 1990 case of *Taylor v. United States*, the Supreme Court held that Congress intended to use a categorical approach to determine who qualified under the ACCA, but carved out a narrow exception to go beyond the fact of conviction in cases where a court needed to find all the elements of generic burglary. 495 U.S. at 600–02. In *Richardson*, the Eleventh Circuit concluded that another exception should be created to determine whether prior offenses were committed successively or simultaneously for the purpose of the ACCA because that determination could not be made by the mere fact of conviction, and was therefore not suited to a categorical approach. See 230 F.3d at 1299–1300.

²⁵ 544 U.S. at 16. A generic burglary statute requires a burglary to be committed in a building or enclosed space, and a nongeneric burglary statute defines burglary more broadly. *Id.* at 16–17. For example, entries into boats and motor vehicles may also qualify as burglary under a nongeneric statute. *Id.*

²⁶ *Id.* at 16, 26.

²⁷ *Id.* at 26.

²⁸ *Sneed*, 600 F.3d at 1332–33.

²⁹ See *Shepard*, 544 U.S. at 25–26; *Apprendi v. New Jersey*, 530 U.S. 466, 475–76 (2000); *Jones v. United States*, 526 U.S. 227, 248–49 (1999); *Sneed*, 600 F.3d at 1331–32.

is essential to an increase in a potential criminal penalty.³⁰ The exception to this rule—the fact of a prior conviction—was established by the Supreme Court in 1998 in *Almendarez-Torres v. United States*.³¹ Because the factual inquiries in *Shepard* and *Sneed* extended beyond the fact of prior conviction, any facts essential to increasing the defendants' sentences had to be examined by the jury.³² This was accomplished by limiting the sentencing judge to information documented in *Shepard*-approved sources.³³

II. WHY THE SNEED LOOPHOLE EXISTS

The Eleventh Circuit in *Sneed* rejected the use of police reports in determining whether an offender's crimes were committed on separate occasions because it felt that the 2005 U.S. Supreme Court decision in *Shepard v. United States* required that result.³⁴ The court identified three aspects of *Shepard* that were particularly important.³⁵ First, the Court in *Shepard* examined and expressly rejected an argument for using police reports.³⁶ Second, *Shepard* allowed sentencing judges to use only a list of judicial records, and not police reports, to determine the nature of prior convictions.³⁷ Finally, *Shepard* stressed the constitutional guarantee that a jury must find a disputed fact about a prior conviction when that fact would increase a maximum potential sentence, a guarantee recognized in *Jones v. United States* and *Apprendi v. New Jersey*, decided in 1999 and 2000 respectively by the U.S. Supreme Court.³⁸

Shepard emphasized the *Jones* decision for the proposition that the Sixth Amendment guarantees a jury finding of any essential fact that increases the ceiling of a potential sentence.³⁹ The issue in *Jones* was whether "serious bodily injury" in a subsection of the federal carjacking statute was an element of the offense or a sentencing enhancement.⁴⁰

³⁰ *Apprendi*, 530 U.S. at 476; *Jones*, 526 U.S. at 248–49. See Courtney P. Fain, Note, *What's in a Name? The Worrisome Interchange of Juvenile "Adjudications" with Criminal "Convictions,"* 49 B.C. L. REV. 495, 511–15 (2008).

³¹ 523 U.S. 224, 226–227 (1998).

³² See *Shepard*, 544 U.S. at 24–26; *Sneed*, 600 F.3d at 1332.

³³ *Shepard*, 544 U.S. at 26; *Sneed*, 600 F.3d at 1332–33.

³⁴ *United States v. Sneed*, 600 F.3d 1326, 1332 (11th Cir. 2010).

³⁵ *Id.* at 1331–32.

³⁶ *Id.* at 1331.

³⁷ *Id.* at 1332.

³⁸ *Id.* (citing *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000); *Jones v. United States*, 526 U.S. 227, 243 (1999)).

³⁹ See *Shepard*, 544 U.S. at 24–25.

⁴⁰ 526 U.S. at 230, 239.

The Court held that it was an element of the offense because it increased the maximum sentence for the crime, but it recognized that the contrary reading was also possible.⁴¹ Because the contrary reading would give rise to constitutional doubt, however, the Court rejected that reading.⁴² Justice Souter explained that removing the jury's control over facts that would determine the sentencing range would diminish the jury's significance, which would present an issue under an area of law not yet settled—the Sixth Amendment's guarantee to a jury trial.⁴³ Therefore, to avoid constitutional questions, the subsections of the carjacking statute were held to be separate offenses, all of the elements of which must be submitted to a jury for consideration.⁴⁴

In *Apprendi*, the Court expanded the holding of *Jones* to state statutes through the application of the Fourteenth Amendment.⁴⁵ The defendant's sentence in *Apprendi* was increased under New Jersey's hate crime statute, and the Court determined that the facts must be submitted to the jury because the statute required an inquiry to determine if the defendant had a biased purpose in committing the crime.⁴⁶ This inquiry required a determination of what happened in the commission of the offense, which the Court distinguished from determining the fact of a prior conviction because that fact is unrelated to the commission of the instant offense, and, therefore, does not have to be examined by the jury.⁴⁷

There remains one exception to the *Jones* and *Apprendi* holdings that facts essential to an increase in the ceiling of a potential sentence must be submitted to a jury.⁴⁸ This exception is for the fact of prior conviction and was established by *Almendarez-Torres v. United States*, a U.S. Supreme Court decision in 1998, which held that a statute increasing the sentence for an illegal alien who reenters the country after being convicted of a felony and is subsequently deported was a sentencing factor and not a separate offense.⁴⁹ Although *Almendarez-Torres* has never been overturned, Justice Thomas, who joined the five-justice ma-

⁴¹ *Id.* at 239.

⁴² *Id.*

⁴³ *Id.* at 248.

⁴⁴ *Id.* at 251–52.

⁴⁵ *Apprendi*, 530 U.S. at 476.

⁴⁶ *Id.* at 469–70, 496.

⁴⁷ *Id.* at 496.

⁴⁸ *Id.* at 487–90; *Jones*, 526 U.S. at 248–49, 249 n.10.

⁴⁹ 523 U.S. 224, 229, 234–35 (1998).

jority, later repudiated his decision because he felt that the holding had been eroded by the Court's subsequent jurisprudence.⁵⁰

Because *Sneed* subsequently adopted *Shepard's* reasoning, both *Shepard* and *Sneed* are based on the *Jones/Apprendi* understanding that factual inquiries into an offender's previous convictions for the purpose of the ACCA must be made by a jury under the Sixth and Fourteenth Amendments.⁵¹ The Court determined that the fact of prior conviction exception to the *Jones/Apprendi* rule exemplified by *Almendarez-Torres* did not apply in *Shepard*, and therefore the exception did not apply to *Sneed* either.⁵²

This understanding that a jury must inquire into the facts of previous convictions for the ACCA justifies the loophole created by *Sneed*.⁵³ The Eleventh Circuit, following the *Jones* and *Apprendi* cases, determined that constitutional concerns take priority over the application of the ACCA.⁵⁴ This led the court to reject the use of police reports and limit the documents that could be used for the inquiry to *Shepard*-approved sources, creating the *Sneed* loophole.⁵⁵

III. THE *SNEED* LOOPHOLE: PROBLEMS AND SOLUTIONS

Because the question of whether prior convictions occurred on different occasions goes beyond the fact of prior conviction, the Eleventh Circuit determined that it was a fact that must be submitted to the jury, and thereby created the *Sneed* loophole.⁵⁶ Although there are several problems associated with this loophole, its existence is justified by the constitutional right to a jury trial.⁵⁷ Because of the importance of this constitutional right, the solution to the *Sneed* loophole's problems must come from Congress rather than the courts.⁵⁸

The *Sneed* loophole creates three primary problems.⁵⁹ First, it will lead to inconsistency in the ACCA's application.⁶⁰ It forces courts to ig-

⁵⁰ *Shepard*, 544 U.S. at 27–28 (Thomas, J., concurring).

⁵¹ *See id.* at 25–26 (majority opinion); *Sneed*, 600 F.3d at 1331–32.

⁵² *Shepard*, 544 U.S. at 25; *see Almendarez-Torres*, 523 U.S. at 226–27; *Sneed*, 600 F.3d at 1331–32.

⁵³ *See* 600 F.3d at 1331–32.

⁵⁴ *See id.* at 1333.

⁵⁵ *See id.*

⁵⁶ *See* United States v. Sneed, 600 F.3d 1326, 1331–33 (11th Cir. 2010).

⁵⁷ *See infra* notes 60–73 and accompanying text.

⁵⁸ *See infra* notes 74–80 and accompanying text.

⁵⁹ *See infra* notes 61–69 and accompanying text.

⁶⁰ *See* *Shepard v. United States*, 544 U.S. 13, 35–37 (2005) (O'Connor, J., dissenting); Lamprecht, *supra* note 13, at 1426–29.

nore readily obtainable information about prior convictions, and instead evaluate only information in *Shepard*-approved sources, which will vary by jurisdiction.⁶¹

Second, the approach adopted by the court in *Sneed* creates a risk of prejudice because it requires the jury to examine the facts of prior convictions.⁶² The dissent in the 2005 U.S. Supreme Court case *Shepard v. United States* elaborated on this problem in the context of the ACCA: “When ACCA defendants in the future go to trial rather than plead guilty, the majority’s ruling in effect invites the Government, in prosecuting the federal gun charge, also ‘to prove to the jury’ the defendant’s prior burglaries.”⁶³ The same would be true for determining whether crimes occurred on different occasions.⁶⁴ For example, in *Sneed*, requiring the jury to decide whether two previous convictions for purchasing crack cocaine occurred on different occasions could prejudice them against *Sneed* in the current case.⁶⁵

Third, deciding cases to avoid constitutional concerns can undermine congressional intent.⁶⁶ In creating the ACCA, Congress intended a categorical approach to identify career criminals and *Shepard* and *Sneed* address the two exceptions to that approach.⁶⁷ By prohibiting the use of police reports, *Shepard* and *Sneed* risk introducing arbitrariness into the ACCA.⁶⁸

Each of these problems is valid, but they can all be justified by the same argument: the constitutional concerns about the right to a jury trial are more important than other, non-constitutional problems created by the *Sneed* loophole.⁶⁹ In the 2000 Supreme Court case *Apprendi v. New Jersey*, Justice Scalia addressed concerns about consistency while emphasizing the necessity of prioritizing constitutional concerns over strict application of a statutory sentence:

Will there be disparities? Of course. But the criminal will never get *more* punishment than he bargained for when he

⁶¹ See *Shepard*, 544 U.S. at 35–36 (O’Connor, J., dissenting).

⁶² See *Almendarez-Torres v. United States*, 523 U.S. 224, 234–35 (1998); *Lamprecht*, *supra* note 13, at 1413–14.

⁶³ *Shepard*, 544 U.S. at 38 (O’Connor, J., dissenting).

⁶⁴ See *Sneed*, 600 F.3d at 1328–29, 1333.

⁶⁵ See *Almendarez-Torres*, 523 U.S. at 234–35; *Sneed*, 600 F.3d at 1328–29.

⁶⁶ See *Shepard*, 544 U.S. at 28 (O’Connor, J., dissenting); *Sneed*, 600 F.3d at 1333; *Lamprecht*, *supra* note 13, at 1416–19.

⁶⁷ *Shepard*, 544 U.S. at 36 (O’Connor, J., dissenting); *Taylor v. United States*, 495 U.S. 575, 600–01 (1990); *Sneed*, 600 F.3d at 1332.

⁶⁸ *Shepard*, 544 U.S. at 36 (O’Connor, J., dissenting); see *Sneed*, 600 F.3d at 1332.

⁶⁹ See *Shepard*, 544 U.S. at 25–26.

did the crime, and his guilt of the crime (and hence the length of the sentence to which he is exposed) will be determined *beyond a reasonable doubt by the unanimous vote of 12 of his fellow citizens*.⁷⁰

By creating the *Sneed* loophole, the Eleventh Circuit avoided the possibility of depriving defendants of the constitutional right to a jury trial and decreased the possibility of sentencing someone who is not a career criminal under the ACCA.⁷¹ The court determined that these positive effects outweighed the problems created by the loophole because of the fundamental nature of the guarantee that a jury stand between a defendant and the power of the State, as well as the fact that defendants may choose to waive the right to have a jury decide questions about their prior convictions.⁷²

The decision in *Sneed* was necessary both because it applied the *Shepard* precedent and because it valued the constitutional right to a jury trial over the problems that the decision created.⁷³ There is a way, however, to remedy the problems without creating constitutional doubt.⁷⁴ Because judicial interpretation of the ACCA made determining when prior convictions occurred problematic, Congress should respond by amending the ACCA, which has not been done in twenty-two years.⁷⁵ Congress should close the *Sneed* loophole by more narrowly tailoring the requirement that previous convictions be committed on different occasions by career criminals.⁷⁶ Congress should define “occasions different from one another” in such a way that courts would not have to prejudice the jury by engaging in an inquiry of facts underlying the previous convictions.⁷⁷ For example, crimes committed on the same day could be defined by statute as occurring on the same occasion.⁷⁸ Such an amendment would make sentencing under the ACCA more consistent, while keeping its application categorical, as Congress intended.⁷⁹

⁷⁰ *Apprendi*, 530 U.S. at 498 (Scalia, J., concurring).

⁷¹ *See id.*; *Sneed*, 600 F.3d at 1333.

⁷² *See Shepard*, 544 U.S. at 25, 26 n.5; *Almendarez-Torres*, 523 U.S. at 234–35; *Sneed*, 600 F.3d at 1333.

⁷³ *See Sneed*, 600 F.3d at 1331–33.

⁷⁴ *See Crago*, *supra* note 17, at 1205–06; *Levine*, *supra* note 3, at 548–50.

⁷⁵ *See Levine*, *supra* note 3, at 548–50; *Shepard*, 544 U.S. at 35–36 (O’Connor, J., dissenting). *See generally* Hooper, *supra* note 16.

⁷⁶ *See Crago*, *supra* note 17, at 1199–1207; *Levine*, *supra* note 3, at 555–56.

⁷⁷ *See Shepard*, 544 U.S. at 38 (O’Connor, J., dissenting); *Crago*, *supra* note 17 at 1205–06; *Levine*, *supra* note 3 at 555–58.

⁷⁸ *See Levine*, *supra* note 3 at 555–58.

⁷⁹ *See Taylor*, 495 U.S. 600–02; *Levine*, *supra* note 3, at 555–56.

CONCLUSION

The *Sneed* case overturned precedent in the Eleventh Circuit that had allowed sentencing judges to use police reports to determine if previous crimes were committed on different occasions for the purposes of the ACCA. This created a loophole that allows some offenders to avoid being classified as career criminals if it is not documented in *Shepard*-approved sources whether their prior offenses occurred on different occasions. This loophole was held to be necessary to comply with the constitutional rule that any fact, other than that of a prior conviction, that increases the maximum penalty for a crime must be examined by a jury. Because the *Sneed* loophole is constitutionally mandated, Congress would have to amend the ACCA in order to solve the problems created by it. In so doing, Congress could more accurately identify career criminals while remaining consistent with the categorical approach that the statute intended.

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