

Restoring the Armed Career Criminal Act

Sponsored by Orrin Hatch and Tom Cotton

The Armed Career Criminal Act and *Johnson v. United States*

The Armed Career Criminal Act (ACCA), which passed the Senate by voice vote and was included in the Comprehensive Crime Control Act of 1984, protects Americans from the most violent, repeat offenders. Specifically, the ACCA requires a minimum 15-year prison sentence for felons convicted of unlawful possession of a firearm under 18 U.S.C. § 922(g) who have three prior state or federal convictions for violent felonies or serious drug offenses, which must have been committed on three different occasions.

The ACCA defines serious drug offenses as those punishable by imprisonment for 10 years or more. It defines violent felonies as those: (1) that have an element of threat, attempt, or use of physical force against another; (2) that involve burglary, arson, or extortion; or (3) that constitute crimes similar to burglary, arson, or extortion under what is known as the ACCA's "residual clause" (any crime that "otherwise involves conduct that presents a serious potential risk of physical injury to another").

In 2015, the Supreme Court in *Johnson v. United States* declared the residual clause unconstitutionally vague and thus effectively void.

The *Johnson* Fallout

The case of Jerrod Baum is illustrative of the types of criminals sentenced under the ACCA and the tragic consequences that flowed from *Johnson*. In 1991, Baum, a neo-Nazi in Utah, allegedly went into a fast food restaurant and fired at employees while trying to rob it. He was charged with numerous felonies, including attempted murder, and took a plea deal. In 1995, he pleaded guilty to aggravated assault against a prison guard. In 2003, he was convicted of possessing a firearm as a felon. In 2005, he was again convicted of possessing a firearm as a felon, and sentenced under the ACCA to remain in prison until at least 2020.

The retroactive release of violent career offenders after *Johnson* allowed Baum to leave prison early in 2016. In 2018, Baum was arrested and charged for allegedly kidnapping, stabbing, and disposing the bodies of two teenagers in Eureka, Utah, by throwing them down a mineshaft. But for the *Johnson* decision, Baum would have remained in prison and the two teenagers he allegedly murdered would almost certainly be alive.

The Legislative Solution

As Congress considers much needed reforms to reduce penalties and make our criminal justice system more fair for low-level, nonviolent offenders, it should not equate reform with across-the-board reductions in criminal penalties. Reform is about improvement, which in the case of the ACCA means providing much needed clarification regarding the appropriate cases in which prosecutors should be able to seek enhanced penalties against violent, repeat offenders.

The Restoring the Armed Career Criminal Act would do away with the concepts of "violent felony" and "serious drug offense" and replace them with a single category of "serious felony." A serious felony would be any crime punishable by 10 years or more.

By defining "serious felony" solely based on the potential term of imprisonment, the Restoring the Armed Career Criminal Act would remove any discretion or doubt about which offenses qualify. This would address the vagueness issue identified by the Supreme Court and respond to the Sentencing Commission's recommendation that Congress clarify the statutory definition of violent felony.

The Restoring the Armed Career Criminal Act would not change the other requirements to trigger the ACCA mandatory minimum penalty. Thus it could still apply only in a case where a felon who possess a firearm in violation of 18 U.S.C. § 922(g) has previously been convicted three times of serious felonies, which must have been committed on different occasions. In other words, this would give federal prosecutors an additional tool to go after the most dangerous, career criminals and would not apply to low-level offenders.