

Criminal Law—First Circuit Upholds Constitutionality of Juvenile Convictions as Predicate Offenses Under the Armed Career Criminal Act—*United States v. Matthews*, 498 F.3d 25 (1st Cir. 2007)

The Armed Career Criminal Act (ACCA) is a recidivist statute that punishes repeated criminal behavior.¹ Specifically, the ACCA enhances the minimum penalty for those who unlawfully possess firearms and have a history of prior felony convictions.² To constitute a predicate felony conviction under ACCA, the prior convictions must have resulted from a crime involving violence or a serious drug offense.³ In *United States v. Matthews*,⁴ the United States Court of Appeals for the First Circuit considered whether using a criminal defendant's prior juvenile adjudication as a sentencing enhancement under the ACCA offends the Constitution.⁵ The First Circuit held that the ACCA's sentencing enhancement based on prior juvenile adjudications does not violate a defendant's right to due process of law.⁶

On August 11, 2003, plain-clothed officers patrolled the streets of Boston's Roxbury neighborhood.⁷ The officers observed Larry Matthews and others drinking alcohol outside of a housing project.⁸ Upon seeing the officers approach in an unmarked cruiser, Matthews, a previously-convicted felon, adjusted his pants to secure a concealed item.⁹ When one of the officers called out to Matthews by name, he immediately ran away.¹⁰ During the ensuing chase, officers found a .22-caliber handgun underneath a mat outside the

1. See 18 U.S.C. § 924(e)(1) (2000) (imposing fifteen-year minimum sentence for defendants with three prior convictions); see also Jondavid S. Delong, *What Constitutes Three Previous Convictions for Offenses Committed on Occasions Different from One Another for Purpose of Sentence Enhancement Under Armed Career Criminal Act* (18 U.S.C.A. § 924(e)), 123 A.L.R. FED. 397, §§ 1[a], 2[b] (2007) (explaining ACCA as sentence-enhancing law, not one punishing separate crime).

2. See 18 U.S.C. § 924(e)(1) (2000) (increasing punishment for those convicted of violating subsection (g)(1) at least three times). The statute increases the defendant's penalty to a mandatory fifteen-year sentence. *Id.* Section 922(g)(1) makes it unlawful for a convicted felon to possess firearms or ammunition in commerce. *Id.* § 922(g)(1).

3. 18 U.S.C. § 924(e)(1) (2000) (specifying predicate felonies under ACCA); *United States v. Miller*, 478 F.3d 48, 49 (1st Cir. 2007) (restating ACCA's definition of "felon"), *cert. denied*, 127 S. Ct. 3035 (2007). A violent felony is a crime carrying a sentence of more than one year or any juvenile delinquency involving the use of a gun or a knife. 18 U.S.C. § 924(e)(2)(B).

4. 498 F.3d 25 (1st Cir. 2007).

5. *Id.* at 28 (considering constitutionality of juvenile adjudication as ACCA predicate conviction).

6. *Id.* (rejecting defendant's due process challenge to ACCA enhancement).

7. *Id.* at 29 (describing events leading to defendant's arrest). The policemen were Youth Violence Strike Force members who drove an unmarked police cruiser. *Id.*

8. 498 F.3d at 29 (recounting police observing group outside housing complex).

9. *Id.* (stating how Matthews made "security adjustment" by affixing object at waist level).

10. *Id.* (depicting confrontation leading to Matthews's arrest). Officers were surprised when Matthews fled because he had never reacted that way in prior encounters. *Id.*

apartment where Matthews sought refuge.¹¹ The police arrested Matthews and the government charged him with the crime of being a felon in possession of a firearm.¹²

After a jury found Matthews guilty, the judge sentenced him to fifteen years in prison.¹³ The trial judge applied the ACCA's enhanced penalty provision because Matthews had three prior felony convictions, one of which was a juvenile adjudication.¹⁴ Matthews appealed his sentence enhancement on grounds that a juvenile adjudication cannot constitute a predicate felony conviction under the ACCA.¹⁵ The First Circuit affirmed the sentence by ruling that juvenile convictions may serve as a predicate offense without violating an individual's due process rights.¹⁶

Many criminal proceedings conclude with the sentencing stage, where the trial judge determines a proper punishment by considering certain factors.¹⁷ Constrained only by constitutional and statutory limitations, the presiding judge may consider the evidence at trial, the defendant's demeanor, and a presentence report in fashioning a sentence.¹⁸ As a mandatory minimum sentencing provision, however, the ACCA explicitly requires trial judges to impose lengthier sentences upon those possessing a firearm after three prior felony convictions.¹⁹ The ACCA's harsh and mandatory penalty reflects

11. *Id.* (detailing chase and arrest). Matthews escaped on foot and police pursued him into another building. *Id.* Upon entering this building, Officer Sullivan looked up and noticed that Matthews momentarily rested in a crouched position near an apartment before leaving. *Id.* Sullivan then approached the apartment where he found a pistol under the doormat. *Id.*

12. 498 F.3d at 29 (indicating charged violation of 18 U.S.C. § 922(g)(1)). The police did not recover fingerprint traces from the handgun, so the government had to prove circumstantially that Matthews placed the pistol where the police found it. *See id.*

13. *Id.* at 30 (describing jury verdict and judicial sentencing determination).

14. *Id.* (recounting district court's imposition of mandatory fifteen-year sentence). Matthews's criminal record included a 1992 juvenile adjudication, a 1995 conviction for possession of heroin with intent to distribute, and a 1996 conviction for assault and battery with a dangerous weapon. *Id.* at 32 n.5. The delinquency consisted of an assault with intent to kill and assault and battery with a dangerous weapon. *Id.* According to the police report, Matthews had stabbed someone. *Id.* at 33 n.7.

15. *Id.* at 30 (listing grounds for Matthews's appeal). Matthews made several other arguments on appeal. *Id.* He argued that Congress unconstitutionally classified juvenile adjudications as criminal convictions because this categorization interfered with Massachusetts state law that dictates otherwise. *See id.* at 33. The court rejected this argument, holding that federal classifications may prevail over state categorizations. *See id.* at 34. Matthews also unsuccessfully challenged the sufficiency of the evidence and a portion of the jury charge. *Id.* at 30-32.

16. 498 F.3d at 35-36 (upholding constitutionality of juvenile adjudication used as sentencing enhancements).

17. *See Williams v. People*, 337 U.S. 241, 247 (1949) (establishing trial judge's sentencing power).

18. *See* FED. R. CRIM. P. 32 (describing content of presentence report and functions thereof); 3 CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE § 526 (3d ed. 2007) (outlining sentencing considerations trial judges weigh).

19. *See* 18 U.S.C. § 924(e) (2000) (stating repeat offenders "shall be . . . imprisoned not less than fifteen years"). Although initially some argued that the ACCA created a separate crime, courts agree that the statute is simply a sentence-enhancing provision. *See, e.g., United States v. Pirovolos*, 844 F.2d 415, 420 (7th Cir. 1988) (inferring Congress intended ACCA as recidivist sentence enhancement); *United States v. Rush*, 840 F.2d 574,

Congress's desire to reduce crime by incapacitating dangerous career criminals.²⁰

The Supreme Court has generally upheld habitual criminal statutes such as the ACCA.²¹ In *Apprendi v. New Jersey*,²² the Court held that the prosecution must list in the indictment, submit to a jury, and prove beyond a reasonable doubt any fact that increases a sentence beyond the statutory maximum penalty, unless such fact constitutes a prior conviction.²³ The Court did not include prior convictions among the "facts" that the prosecution must establish beyond a reasonable doubt because such verdicts rest on trials equipped with all constitutionally-mandated procedural protections, including due process and the jury trial guarantee.²⁴ While the Supreme Court has not addressed whether

577 (8th Cir. 1988) (viewing ACCA as sentence enhancement provision); *United States v. Jackson*, 824 F.2d 21, 22-23 n.2 (D.C.C. 1987) (denying ACCA creates substantive crime); see also Cynthia R. Cook, Comment, *The Armed Career Criminal Act Amendment: A Federal Sentence Enhancement Provision*, 12 GEO. MASON U. L. REV. 99, 100 (1989) (describing original debate surrounding ACCA characterization).

20. See H.R. REP. NO. 98-1073, at 1-3 (1984), as reprinted in 1984 U.S.C.C.A.N. 3661, 3661-62 (summarizing data on criminality of habitual offenders); see also Douglas M. Schneider, Note, *But I Was Just a Kid!: Does Using Juvenile Adjudications to Enhance Adult Sentences Run Afoul of Apprendi v. New Jersey?*, 26 CARDOZO L. REV. 837, 846 (2005) (explaining ACCA reflects Congress's concern with recidivism). Congress cited to a number of studies experts performed on subjects from Pennsylvania, Maryland, and California. H.R. REP. NO. 98-1073, at 1-3 (1984). All concluded that previous offenders are substantially more likely to commit crimes than new transgressors. See *id.*

21. See *Graham v. West Virginia*, 224 U.S. 616, 630 (1912) (upholding constitutionality of West Virginia recidivist statute). Statutes that punish repeated criminal behavior do not violate due process, double jeopardy, equal protection, or privileges and immunities. See *id.*; see also Barry W. Strike, Note, *Custis v. United States: Are Unconstitutional Prior Convictions Being Used to Increase Prison Terms?*, 25 GOLDEN GATE U. L. REV. 267, 274 (1995) (summarizing nature, purpose, and constitutionality of recidivist statutes). The trying entity does not violate due process even if it does not notify the defendant of its intention to seek an enhanced penalty. See *Oyler v. Boles*, 368 U.S. 448, 452 (1962).

22. 530 U.S. 466 (2000).

23. See *United States v. Apprendi*, 530 U.S. 466, 490 (2000) (holding due process violation occurred when judge made factual determination increasing defendant's mandatory minimum sentence). *Apprendi*'s "prior conviction" exception developed from two other Supreme Court cases. See *United States v. Tighe*, 266 F.3d 1187, 1193 (9th Cir. 2007) (tracing jurisprudential developments leading to *Apprendi* decision). In *Almendarez-Torres v. United States*, 523 U.S. 244 (1998), the Court held that prior convictions may constitute sentencing factors without necessarily being elements of a crime. 523 U.S. at 226 (articulating prosecution need not prove prior convictions beyond reasonable doubt when serving as sentencing factors). In the following term, the Supreme Court explained that courts can treat prior convictions as sentencing factors because those adjudications afforded defendants the right to fair notice, proof beyond reasonable doubt, and trial by jury. *Jones v. United States*, 526 U.S. 227, 249 (1999) (distinguishing prior convictions from other sentence-increasing facts).

24. *United States v. Apprendi*, 530 U.S. 466, 496 (2000) (differentiating between prior conviction and fact yet adjudicated); see also *Jones v. United States*, 526 U.S. 227, 249 (1999) (explaining constitutional difference between recidivist facts and other sentence-enhancing facts); *Almendarez-Torres v. United States*, 523 U.S. 224, 229 (1998) (viewing prior convictions as sentencing factors, not elements of crime). The *Apprendi* Court stated that:

[T]here is a vast difference between accepting the validity of a prior judgment of conviction entered in a proceeding in which the defendant had the right to a jury trial and the right to require the prosecutor to prove guilt beyond a reasonable doubt, and allowing the judge to find the required fact under a lesser standard of proof.

juvenile adjudications qualify as “convictions” under the *Apprendi* exception, many urge that courts should interpret *Apprendi*’s emphasis on the importance of jury trials as barring the use of delinquency dispositions to invoke the ACCA sentencing enhancement.²⁵ According to this theory, the law should treat juvenile and adult convictions differently because juvenile defendants face procedural inequities and do not enjoy the same constitutional rights as their adult counterparts.²⁶ Perhaps nothing better illustrates this disparity than *McKeiver v. Pennsylvania*,²⁷ where the Court held that the Constitution does

Apprendi v. New Jersey, 530 U.S. 466, 496 (2000) (emphasis added). The Court admonished the New Jersey Legislature for enacting a statute that required such “an unacceptable departure from the jury tradition that is an indispensable part of our criminal justice system.” *Id.* at 497 (emphasis added). The Court reaffirmed *Apprendi* in *United States v. Booker*, 543 U.S. 220, 244 (2005).

25. See *United States v. Crowell*, 493 F.3d 744, 749-750 (6th Cir. 2007) (describing interpretational divergence absent Supreme Court ruling), *cert. denied*, 76 U.S.L.W. 3345 (U.S. Jan. 7, 2008) (No. 07-6742); see also Jason Abbott, Note, *The Use of Juvenile Adjudications Under the Armed Career Criminal Act*, 85 B.U. L. REV. 263, 272-92 (2005) (arguing *Apprendi* defines “conviction” as adjudication obtained in jury trial); *Eighth Circuit Holds an Adjudication of Juvenile Delinquency to Be a “Prior Conviction” for the Purpose of Sentence Enhancement at a Subsequent Criminal Proceeding*, 116 HARV. L. REV. 705, 711 (2002) [hereinafter “HLR Comment”] (suggesting *Apprendi* disallows using juvenile adjudications as ACCA predicate offenses).

26. See *HLR Comment*, *supra* note 25, at 705 (noting Constitution does not provide full panoply of due process rights to juvenile defendants); see also Leta R. Holden, *Juvenile Law*, 73 DENV. U. L. REV. 843, 847 (1996) (reviewing limited due process that courts extend to juveniles); Javier M. Vazquez, Comment, *Appropriate Treatment for Juvenile Offenders: Juvenile Justice System v. Jury System*, 1 BARRY L. REV. 185, 197-99 (2000) (describing shortcomings of juvenile system particularly in absence of jury trial right). The design of the juvenile justice system originally served to rehabilitate, not punish, juvenile offenders. See Vazquez, *supra*, at 185 (detailing juvenile justice evolution and reasons therefore). The belief that juvenile and adult defendants differ serves as the foundation upon which the juvenile system rests. See Lisa M. Krzewinski, Note, *But I Didn’t Do It: Protecting the Rights of Juveniles During Interrogation*, 22 B.C. THIRD WORLD L.J. 355, 355 (2002) (explaining juvenile system exists because juveniles differ physically and mentally from adults). In the 1940s, however, the system began resembling its adult counterpart without the latter’s due process rights. See Vazquez, *supra*, at 189 (explaining philosophical shift from rehabilitative to punitive juvenile sentencing). Later, the Supreme Court rendered decisions increasing the rights of juvenile criminal defendants, and in the process, legitimized the emerging societal attitude that juveniles were responsible for their crimes. See *id.* at 192 (arguing the Supreme Court transformed juvenile courts into an adult institution with respect to punishment). The Court expanded the rights of juvenile defendants to include: the right to counsel; the right to notice of the charges; the right to confront and cross-examine; and the right to demand that the prosecution prove guilt beyond a reasonable doubt. See *In re Winship*, 397 U.S. 358, 368 (1970) (establishing proof-beyond-reasonable-doubt standard in delinquency proceedings); *In re Gault*, 387 U.S. 1, 36-37, 52-55 (1967) (allowing juvenile defendants confrontation, cross-examination, and notice rights); *Kent v. United States*, 383 U.S. 541, 561 (1966) (declaring accused delinquents enjoy right to legal representation). It remains, however, that juvenile defendants do not have a constitutional right to a jury trial. See *McKeiver v. Pennsylvania*, 403 U.S. 528, 547 (1976) (concluding jury trial for juveniles not a constitutional right). Despite enhanced procedural protections for juveniles, the system remains stark and flawed, and critics blame the problem on the lack of the right to a jury trial. See Vazquez, *supra*, at 197-99 (proposing jury trial essential in protecting rights of juvenile defendants). Juvenile court judges are prone to biases and political pressure, grow weary of fact-finding, cannot separate evidentiary hearings from adjudicative proceedings, and do not constitute a representative cross-section of the community. *Id.* Other flaws of the juvenile criminal justice system rest in the pre-trial investigative process. See Krzewinski, *supra*, at 355-68 (suggesting traditional interrogation techniques yield unreliable statements).

27. 403 U.S. 528 (1976).

not grant the jury trial right to accused delinquents.²⁸

Absent a Supreme Court ruling on the issue, a circuit split, albeit mainly one-sided, has emerged on whether considering nonjury juvenile adjudications as convictions under the ACCA violates the constitutional principle set forth in *Apprendi*.²⁹ Representing the minority view, the Ninth Circuit has held that juvenile convictions cannot serve as ACCA predicate offenses if the proceedings from which they resulted did not offer the defendant the right to fair notice, proof beyond reasonable doubt, and trial by jury.³⁰ The Ninth Circuit concluded that the jury trial is an indispensable component to *Apprendi*'s procedural triumvirate.³¹ Conversely, other circuits have ruled that a juvenile adjudication is reliable, even in absence of the jury trial guarantee.³²

28. See *McKeiver v. Pennsylvania*, 403 U.S. 528, 545 (1976) (reasoning rehabilitative non-criminal nature of juvenile system does not require added protection of jury trial). The Court reasoned that a jury trial would make the juvenile proceeding akin to the adversary counterpart of the adult criminal trial. See *id.* at 545. The Court added that a jury trial would remove the rehabilitative essence of the juvenile justice system. See *id.* at 547. Last, the Court rejected the argument for juvenile jury trials because it necessarily equated the juvenile proceeding to the criminal trial. See *id.* at 550.

29. Compare *United States v. Crowell*, 493 F.3d 744, 750 (6th Cir. 2007) (holding non-jury juvenile adjudications procedurally sound to fall within *Apprendi*'s "prior conviction" exception), *cert. denied*, 76 U.S.L.W. 3345 (U.S. Jan. 7, 2008) (No. 07-6742), *United States v. Burge*, 407 F.3d 1183, 1191 (11th Cir. 2005) (concluding jury trial not procedural safeguard which absence affects reliability of juvenile proceeding), *United States v. Jones*, 332 F.3d 688, 696 (3d Cir. 2003) (holding courts can characterize non-jury juvenile adjudications as "convictions" under *Apprendi*), and *United States v. Smalley*, 294 F.3d 1030, 1032 (8th Cir. 2002) (holding juvenile convictions, even without jury trial right, sufficiently reliable to constitute ACCA predicate offense), with *United States v. Tighe*, 266 F.3d 1187, 1194-95 (9th Cir. 2001) (holding *Apprendi* "conviction" does not encompass juvenile adjudication where defendant enjoyed no jury trial right).

30. See *United States v. Tighe*, 266 F.3d 1187, 1193-94 (9th Cir. 2001) (differentiating between juvenile and adult convictions based on constitutional rights each enjoy). According to the Ninth Circuit, the "fundamental triumvirate" of fair notice, reasonable doubt, and right to jury trial ensures that results in criminal trials are reliable. See *id.* By inquiring into the scope of the conviction exception, the Ninth Circuit found support for its interpretation in *Almendarez-Torres*, *Jones*, and *Apprendi*. See *id.* The court reasoned that, under *Almendarez-Torres*, the procedural safeguards of prior convictions were essential to treating prior adjudications as sentencing factors. *Id.* Likewise, the Supreme Court's repeated emphasis on the right to a jury trial in both *Jones* and *Apprendi* moved the Ninth Circuit to exclude non-jury juvenile convictions as ACCA "convictions." See *id.* Finally, the court cautioned against a broad reading of *Almendarez-Torres* that would consider juvenile adjudications as sentencing factors because the Supreme Court has expressed reservations about that decision. See *id.* at 1194.

31. *United States v. Tighe*, 266 F.3d 1187, 1194 (9th Cir. 2001) (basing conclusion on *Apprendi*'s jury trial emphasis). The *Tighe* majority faced a dissenting opinion. See *id.* at 1198-1201 (Brunetti, J., dissenting). Among other things, the dissenting judge criticized that the majority's holding will have negative practical implications. See *id.* at 1200-01. The dissent pointed out that introducing evidence of prior juvenile convictions to a jury would significantly prejudice the defendant. *Id.* On the other hand, several criminal laws include prior convictions as elements of the crime that the prosecution must prove to a jury. See 18 U.S.C. § 922(g)(1) (2000) (listing prior conviction as element of crime government must prove beyond reasonable doubt); *Almendarez-Torres v. United States*, 523 U.S. 224, 246 (1998) (listing states which recidivist laws charge prior convictions as element of crime). Furthermore, an effective jury instruction can diminish potential prejudice. See *Bruton v. United States*, 391 U.S. 123, 135 (1968). The *Tighe* majority responded by stating that courts can implement different procedures to avoid any potential harm. *United States v. Tighe*, 266 F.3d 1187, 1195 n.5 (9th Cir. 2001). For example, trial courts could separate the guilt and sentencing stages of the proceeding. *Id.*

32. See, e.g., *United States v. Crowell*, 493 F.3d 744, 750 (6th Cir. 2007) (opining non-jury juvenile

These courts conclude so because the Constitution affords juveniles sufficient procedural protections, like the right to obtain counsel, confront and cross-examine accusers, refrain from self-incrimination, and require proof of guilt beyond a reasonable doubt.³³ The majority of courts have criticized the Ninth Circuit for reading an exception for juvenile proceedings into *Apprendi*'s holding, especially since *Apprendi* never specifically referred to delinquencies.³⁴ In sum, the majority of circuits conclude juvenile adjudications are sufficiently reliable without a jury trial to fall within the *Apprendi* exception, whereas the minority view holds the jury trial is a necessary component of the reliability test.³⁵

In *United States v. Matthews*, the First Circuit determined that prior juvenile adjudications, if reliable, may trigger the ACCA's sentencing enhancement, without the prosecution having to prove such convictions beyond a reasonable doubt.³⁶ The court summarized the current circuit split, agreed that the issue turns on whether juvenile adjudications are sufficiently reliable so as not to

proceedings satisfy *Apprendi* reliability), *cert. denied*, 76 U.S.L.W. 3345 (U.S. Jan. 7, 2008) (No. 07-6742); *United States v. Jones*, 332 F.3d 688, 696 (3d Cir. 2003) (finding no reason to cast doubt on reliability of juvenile convictions); *United States v. Smalley*, 294 F.3d 1030, 1032-33 (8th Cir. 2002) (asserting current procedural protections juveniles enjoy sufficiently reliable for *Apprendi* purposes).

33. See *United States v. Crowell*, 493 F.3d 744, 750 (6th Cir. 2007) (opining non-jury juvenile proceedings satisfy *Apprendi* reliability), *cert. denied*, 76 U.S.L.W. 3345 (U.S. Jan. 7, 2008) (No. 07-6742); *United States v. Smalley*, 294 F.3d 1030, 1032-33 (8th Cir. 2002) (asserting current procedural protections juveniles enjoy sufficiently reliable for *Apprendi* purposes). In further support of this argument, the majority points to the fact that a trial by jury in juvenile proceedings is not a constitutional requirement. See *United States v. Crowell*, 493 F.3d 744, 750 (6th Cir. 2007) (rejecting *Apprendi* reliability requires jury trials for juveniles because Constitution grants no such right), *cert. denied*, 76 U.S.L.W. 3345 (U.S. Jan. 7, 2008) (No. 07-6742); *United States v. Burge*, 407 F.3d 1183, 1190 (11th Cir. 2005) (assuming lack of jury trial guarantee for juveniles signifies reliability of such convictions). Another court has doubted the jury's value to the fact-finding process. See *United States v. Smalley*, 294 F.3d 1030, 1033 (8th Cir. 2002).

34. See, e.g., *United States v. Burge*, 407 F.3d 1183, 1190 (11th Cir. 2005) (rejecting Ninth Circuit's strict interpretation); *United States v. Jones*, 332 F.3d 688, 696 (3d Cir. 2003) (cautioning against *Tighe* interpretation because *Apprendi* never directly addressed juvenile convictions); *United States v. Smalley*, 294 F.3d 1030, 1032-33 (8th Cir. 2002) (criticizing Ninth Circuit's narrow reading of *Apprendi*). But see *HLR Comment, supra* note 25, at 709 (arguing *Tighe* consistent with *Apprendi* unlike majority view). Most circuits have reasoned that, because *Apprendi* never answered whether jury trials are required for juvenile defendants, the Ninth Circuit incorrectly concluded that the case so held. See *United States v. Burge*, 407 F.3d 1183, 1191 (11th Cir. 2005) (noting Supreme Court's decision implicated adult proceedings only); *United States v. Smalley*, 294 F.3d 1030, 1032 (8th Cir. 2002) (emphasizing *Apprendi* Court never addressed juvenile adjudications). Likewise, courts criticizing the Ninth Circuit insist that the Supreme Court, in *Jones v. United States*, 526 U.S. 227 (1999), never defined prior convictions as only those adjudications that the jury tries. See *United States v. Jones*, 332 F.3d 688, 696 (3d Cir. 2003) (articulating holding of *Jones v. United States*); *United States v. Smalley*, 294 F.3d 1030, 1032 (8th Cir. 2002) (interpreting "prior conviction" under *Jones v. United States*).

35. See *supra* notes 29-34 and accompanying text (explaining diverging circuit court considerations of *Apprendi* conviction exception).

36. See 498 F.3d at 35 (likening juvenile adjudications to adult convictions). Using reliable prior juvenile convictions in this context does not offend due process of law, but properly falls within the exception to *Apprendi*'s general rule of viewing prior adjudications as sentencing factors rather than elements of a crime. See *id.*

offend due process, but chose not to side with any of the other circuits.³⁷ The court concluded that juvenile and adult adjudications do not differ for the purpose of applying the ACCA's sentencing enhancement.³⁸ The court therefore affirmed the constitutionality of using juvenile convictions as ACCA sentencing factors when they share the same reliability as their adult counterparts.³⁹ The court, however, did not decide whether the right to a jury trial is a necessary prerequisite to the reliability that *Apprendi* demands.⁴⁰ Without affecting the circuit split in either direction, the court concluded that Matthews's juvenile conviction qualified as an ACCA predicate offense because he enjoyed the right to a jury trial under Massachusetts law.⁴¹

The First Circuit correctly held that the government need not prove a *reliable* prior juvenile conviction beyond a reasonable doubt when seeking a sentencing enhancement under the ACCA.⁴² By focusing on the determination of reliability, the court successfully found common ground among the diverging understandings of *Apprendi*.⁴³ The court also correctly pointed out that, in general, courts should treat both juvenile and adult convictions as sentencing-enhancement factors.⁴⁴ More importantly, the court properly

37. *See id.* at 35 (outlining circuit split without taking sides on interpretational conflict). The court noted that all of the circuits that have ruled on the issue framed the question correctly by focusing on the reliability of a conviction to determine whether a juvenile adjudication is an *Apprendi* conviction. *See id.*

38. *See id.* (equating adult and juvenile adjudications for sentence-enhancement purposes). The First Circuit explained that courts have historically considered prior convictions, whether juvenile or adult, in the sentencing stage. *Id.* Therefore, the court found no reason to treat adult and juvenile adjudications differently for *Apprendi* purposes. *See id.*

39. *See id.* (presuming *Apprendi* rule applies equally to adult and juvenile convictions if both share equivalent reliability).

40. *See* 498 F.3d at 35 (rejecting need to resolve issue at forefront of circuit split).

41. *See id.* at 35-36 (resolving appeal without considering jury trial's role in *Apprendi*'s reliability). In Massachusetts, delinquents have the right to a jury trial under state law. MASS. GEN. LAWS ch. 119, § 55A (2003). The court pointed out that Matthews declined to have a jury trial for his delinquency crimes. 498 F.3d at 36. This result, the court concluded, would withstand even the Ninth Circuit's more restrictive interpretation of reliability. *See id.*

42. *See* 498 F.3d at 35 (allowing Matthews's juvenile adjudication to enhance sentence under ACCA). All of the circuits that have ruled on this issue agree that a reliable prior conviction should fall within *Apprendi*'s prior conviction exception, which lifts from the government the burden of re-proving convictions beyond a reasonable doubt. *Id.* (observing circuit agreement on reliability as standard).

43. *Compare* United States v. Crowell, 493 F.3d 744, 750 (6th Cir. 2007) (holding non-jury juvenile adjudications sufficiently reliable to fall within *Apprendi*'s "prior conviction" exception), *cert. denied*, 76 U.S.L.W. 3345 (U.S. Jan. 7, 2008) (No. 07-6742), United States v. Burge, 407 F.3d 1183, 1190 (11th Cir. 2005) (concluding *Apprendi* reliability does not mandate trial by jury), United States v. Jones, 332 F.3d 688, 696 (3d Cir. 2003) (holding non-jury juvenile adjudications count as "convictions" under *Apprendi* due to sufficient reliability), *and* United States v. Smalley, 294 F.3d 1030, 1032 (8th Cir. 2002) (holding juvenile convictions without jury trial right sufficiently reliable to constitute ACCA predicate offense), *with* United States v. Tighe, 266 F.3d 1187, 1194-95 (9th Cir. 2001) (holding reliability nonexistent without defendant having choice of fact-finder).

44. *See* 498 F.3d at 35 (recalling historic use of juvenile convictions at sentencing stage); *see also* United States v. Smalley, 294 F.3d 1030, 1032 (8th Cir. 2002) (treating prior convictions as sentencing factors); United States v. Tighe, 266 F.3d 1187, 1194-95 (9th Cir. 2001) (agreeing prior convictions are sentencing factors because prosecution need not prove them beyond reasonable doubt); *supra* notes 17-18 and accompanying text

concluded that Matthews's prior juvenile conviction constituted a predicate offense under the ACCA because Massachusetts afforded him the right to a jury trial.⁴⁵

The First Circuit, however, failed to decide whether *Apprendi* reliability requires that a juvenile defendant possess the jury trial right before using his adjudication as a prior conviction under the ACCA.⁴⁶ Had the court taken a position, it should have adopted the Ninth Circuit approach and held that a juvenile adjudication can count as an ACCA conviction only if the jurisdiction in which the proceeding transpired offered the defendant the right to a jury trial.⁴⁷ Not only does Supreme Court precedent in *Apprendi* and *Jones v. United States*⁴⁸ support this conclusion, but so do other practical considerations, such as the criminalization of the juvenile justice system and its accompanying procedural injustices.⁴⁹ The court should have also rejected the majority approach because it directly contradicts the Supreme Court's emphasis on the importance of the jury trial guarantee.⁵⁰ The majority view also incorrectly relied on *McKeiver* to conclude that an *Apprendi* conviction does not require a juvenile jury trial because a trial by jury is not a constitutional requirement in juvenile proceedings.⁵¹ This argument disregards key reasoning, in that *McKeiver* did not extend the jury trial mandate to juvenile proceedings because

(tracking history of wide ranging judicial discretion in sentencing matters); *supra* note 23 and accompanying text (tracing Supreme Court developments treating prior convictions as sentencing factors not elements of crime).

45. See 498 F.3d at 35 (holding juvenile adjudication has reliability for *Apprendi* purposes because Massachusetts grants juveniles jury trial right); see also *United States v. Tighe*, 266 F.3d 1187, 1194-95 (9th Cir. 2001) (holding juvenile conviction reliable if defendant had opportunity to have jury try his delinquency).

46. See 498 F.3d at 35 (agreeing with how circuits framed issue but not deciding whether reliability presupposes jury trial guarantee). The court missed an opportunity to resolve the real controversy among the courts. See *supra* notes 29-34 and accompanying text (analyzing controversy rests on disagreement whether reliability requires jury trial right). The tough question in this dispute is whether to narrowly define the *Apprendi* conviction as a prior adjudication that afforded the defendant the right to a jury trial. See *id.* All courts agreed that a reliable prior conviction is necessary, but disagreed whether a jury trial is a prerequisite to reliability. See *id.* The First Circuit's holding, hence, fails to address this core issue. See *id.*

47. *United States v. Tighe*, 266 F.3d 1187, 1194-95 (9th Cir. 2001) (concluding jury trial indispensable component of *Apprendi*'s procedural triumvirate); see also *supra* note 25 and accompanying text (indicating *Apprendi* conviction means adjudication that offered juvenile trial by jury).

48. 526 U.S. 227 (1999).

49. See *supra* notes 23-24 and accompanying text (describing how *Jones* and *Apprendi* decisions emphasized jury trial's importance to reliable adjudications); *supra* notes 25-26 and accompanying text (summarizing flaws of juvenile system and arguing jury trial relieves system's injustice). The jury trial guarantee plays a vital role in the reliability of a juvenile conviction because bench trials for juveniles are more susceptible to flaws than those for adults. See *supra* note 26 (expounding on problems of bench trials in juvenile system).

50. See *United States v. Tighe*, 266 F.3d 1187, 1194-95 (9th Cir. 2001) (relying on Supreme Court's explicit language in *Jones* and *Apprendi* to hold non-jury juvenile convictions unreliable).

51. See *United States v. Crowell*, 493 F.3d 744, 750 (6th Cir. 2007) (rejecting *Apprendi* reliability requires jury trials for juveniles because Constitution grants them no such right), *cert. denied*, 76 U.S.L.W. 3345 (U.S. Jan. 7, 2008) (No. 07-6742); *United States v. Burge*, 407 F.3d 1183, 1190 (11th Cir. 2005) (refusing to interpret *Apprendi* as requiring jury trial for juveniles where *McKeiver* holds otherwise).

the Court did not view them as criminal adjudications.⁵²

The First Circuit's holding did not solve the actual and more controversial aspect of the issue it faced.⁵³ As a result, the court has left the district courts without guidance as to how they should treat prior delinquencies when state law does not guarantee a juvenile the right to a jury trial.⁵⁴ This deliberate lack of direction by the First Circuit leaves open the possibility for a court to re-visit the reliability of non-jury trial juvenile adjudication.⁵⁵ The most problematic result, however, is the fact the First Circuit has left the district courts free to adopt an incorrect and unjust interpretation of the *Apprendi* conviction exception.⁵⁶

In *United States v. Matthews*, the First Circuit held that a juvenile conviction can serve as a predicate offense for a court to impose a sentencing enhancement under ACCA, so long as the adjudication is reliable. The court, however, did not address the disputed issue of whether such convictions must have emerged from a proceeding that afforded juvenile defendants the procedural protection of a jury trial. The First Circuit's forbearance leaves the district courts with little guidance for interpreting the reliability of juvenile convictions from jurisdictions in which accused delinquents enjoy no jury trial guarantee. More significantly, the court missed an opportunity to reaffirm the importance of the jury trial guarantee in the face of a criminalized juvenile system that has become increasingly unjust.

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52. See *McKeiver v. Pennsylvania*, 403 U.S. 528, 545-50 (1976) (holding jury trial unnecessary for juvenile adjudications because such proceedings not criminal in nature). No longer, however, are juvenile convictions mere youthful indiscretions. See 18 U.S.C. § 924(e)(2)(B) (2000) (defining "felony" to include juvenile convictions); see also *supra* note 26 (depicting juvenile system regression from rehabilitative to punitive like adult criminal system). Therefore, *McKeiver* does not support the majority; rather, it bolsters the Ninth Circuit's approach. See *United States v. Tighe*, 266 F.3d 1187, 1193 (2001) (recognizing necessity of jury trial right to reliability of conviction). Although the Ninth Circuit's approach may prejudice the defendant by allowing the introduction of evidence of past criminal history, courts can easily mitigate this prejudice by implementing certain palliative measures. See *supra* note 31 (describing how courts address prejudice arising from jury's knowledge of defendant's criminal history). This concern overlooks the fact that the danger of prejudice is inherent in other crimes that list prior convictions as elements of the offense. See 18 U.S.C. § 922(g)(1) (punishing convicted felons for possessing firearms); *Almendarez-Torres v. United States*, 523 U.S. 224, 246 (1998) (discussing state laws including facts of prior convictions as elements of crime).

53. See 498 F.3d at 35 (failing to decide whether reliability requires jury trial).

54. See *id.* (refusing to inquire into reliability when prior conviction resulted from proceeding offering defendant jury trial).

55. See *supra* notes 29-34 (listing differing outcomes of circuit courts).

56. See *supra* notes 47-52 and accompanying text (arguing accuracy of Ninth Circuit approach over majority view).