

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued September 12, 2025

Decided September 1, 2026

No. 24-3023

UNITED STATES OF AMERICA,
APPELLEE

v.

OSCAR RAMIRO ORTEGA-HERNANDEZ, ALSO KNOWN AS
OSCAR RAMIRO ORTEGA,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:12-cr-00014-1)

Courtney Millian, Assistant Federal Public Defender, argued the cause for appellant. With her on the briefs was *A. J. Kramer*, Federal Public Defender. *Tony Axiom Jr.*, Assistant Federal Public Defender, entered an appearance.

Timothy R. Cahill, Assistant U.S. Attorney, argued the cause for appellee. With him on the brief were *Chrisellen R. Kolb* and *Eric Hansford*, Assistant U.S. Attorneys.

Before: SRINIVASAN, *Chief Judge*, MILLETT and RAO,
Circuit Judges.

Opinion for the Court filed by *Chief Judge* SRINIVASAN.

SRINIVASAN, *Chief Judge*: In 2011, Oscar Ortega-Hernandez fired multiple rounds at the White House with his assault rifle, damaging the building. He pled guilty to two offenses: injuring a dwelling or placing lives in jeopardy within the special maritime and territorial jurisdiction of the United States, in violation of 18 U.S.C. § 1363, and using a firearm during and in relation to a “crime of violence,” in violation of 18 U.S.C. § 924(c). The predicate crime of violence for Ortega-Hernandez’s § 924(c) conviction was his § 1363 conviction.

Ortega-Hernandez argues that his § 1363 offense does not amount to a crime of violence within the meaning of § 924(c). We disagree. He pled guilty to § 1363’s enhanced offense. To determine whether that offense was a crime of violence under § 924(c), we ask whether the least culpable conduct punished by the offense necessarily meets § 924(c)’s definition of a crime of violence. That least culpable conduct is willfully and maliciously injuring a dwelling. The question, then, is whether that conduct categorically involves “use of physical force against” the “property of another” under § 924(c).

We conclude it does. One cannot willfully and maliciously injure another person’s dwelling without using physical force against that property. We therefore affirm the district court’s denial of Ortega-Hernandez’s motion to vacate his § 924(c) conviction.

I.

A.

In 2011, Oscar Ortega-Hernandez became convinced that then-President Obama “was a devil and the anti-Christ.” J.A.

231. Ortega-Hernandez began developing plans to “take [him] out.” *Id.* To that end, Ortega-Hernandez purchased an AK-47-style assault rifle and more than 1,200 rounds of ammunition and spent the next six months engaged in “shooting practice.” *Id.*

In late October 2011, Ortega-Hernandez left his home in Great Falls, Idaho, and drove more than 2,000 miles to Washington, D.C. On the evening of November 11, he stopped his car near the entrance of the Ellipse and fired at least eight shots at the White House from his car window. President Obama and the First Lady were not inside at the time, but two other members of the First Family were present. Although no one was injured, one bullet struck near two Secret Service officers, and several others hit the Truman Balcony, causing significant damage. Ortega-Hernandez fled, only to be arrested in Pennsylvania following a dayslong, multi-state search.

B.

A federal grand jury returned a 19-count indictment against Ortega-Hernandez, including one count of attempting to assassinate the President. In September 2013, Ortega-Hernandez pled guilty to two of the counts: injuring a dwelling or placing lives in jeopardy within the special maritime and territorial jurisdiction of the United States, in violation of 18 U.S.C. § 1363, and using a firearm during a “crime of violence,” in violation of 18 U.S.C. § 924(c)(1)(A). The “special maritime and territorial jurisdiction of the United States” referenced in § 1363 is defined in 18 U.S.C. § 7, and comprises distinct areas outside of state jurisdiction including

the high seas, certain federal lands and installations, the Guano islands, and U.S.-registered ships, aircraft, and spacecraft.

The indictment identified the § 1363 offense as the predicate “crime of violence” for the § 924(c) count. Section 1363 contains a baseline offense and an enhanced offense. Ortega-Hernandez pled guilty to the latter, which applies to someone who, “within the special maritime and territorial jurisdiction of the United States, willfully and maliciously destroys or injures” property, if the property is “a dwelling, or the life of any person [is] placed in jeopardy.” 18 U.S.C. § 1363. In connection with Ortega-Hernandez’s guilty plea, the government dismissed the remaining counts. The district court sentenced Ortega-Hernandez to 25 years of imprisonment.

Ortega-Hernandez appealed his sentence. While his appeal was pending, the Supreme Court decided *Johnson v. United States*, 576 U.S. 591 (2015), which held that the residual clause of the Armed Career Criminal Act (ACCA) is unconstitutionally vague. *Id.* at 596–97. At the time, § 924(c) contained a materially similar residual clause. Section 924(c) defined a “crime of violence” as a felony that either has “as an element the use, attempted use, or threatened use of physical force against the person or property of another” (the “force clause”) or “by its nature, involve[d] a substantial risk that physical force against the person or property of another may be used in the course of committing the offense” (the “residual clause”). 18 U.S.C. § 924(c)(3)(A), (B). Ortega-Hernandez did not raise any challenge based on § 924(c)’s residual clause in his direct appeal.

The district court in Ortega-Hernandez’s case had not specified whether his § 1363 conviction qualified as a crime of violence under § 924(c)’s force clause or instead under its

residual clause. After Ortega-Hernandez’s direct appeal was decided, the Supreme Court held that *Johnson*’s invalidation of ACCA’s parallel residual clause applied retroactively on collateral review. *See Welch v. United States*, 578 U.S. 120, 135 (2016). Ortega-Hernandez then moved to vacate his § 924(c) conviction on collateral review based on *Johnson*’s invalidation of ACCA’s parallel residual clause. While his motion was pending, the Supreme Court decided *United States v. Davis*, 588 U.S. 445 (2019), which held based on *Johnson* that § 924(c)’s residual clause was likewise unconstitutionally vague. *Id.* at 448, 451–52, 467. *Davis* meant that Ortega-Hernandez’s § 924(c) conviction could not be sustained based on that provision’s now-invalidated residual clause, leaving the conviction potentially viable only under the provision’s force clause. The question, then, was whether the predicate crime for Ortega-Hernandez’s § 924(c) conviction—i.e., his § 1363 conviction—is a crime of violence under § 924(c)’s force clause.

The district court denied Ortega-Hernandez’s motion, holding that Ortega-Hernandez’s § 1363 conviction is a crime of violence for purposes of § 924(c)’s force clause. The court believed it could reach that conclusion so long as *either* of the two alternative ways to commit the enhanced offense under § 1363—i.e., the property at issue “be a dwelling” or “the life of any person be placed in jeopardy”—satisfies § 924(c)’s force clause. The court concluded that the latter of those alternatives necessarily involves the “use of physical force against the person or property of another” under § 924(c)’s force clause.

The district court denied Ortega-Hernandez’s motion for reconsideration, but the court granted him a certificate of appealability on whether his § 1363 offense qualifies as a

predicate crime of violence for purposes of his § 924(c) conviction. We take up that question here.

II.

Before turning to that question, we first consider the government’s argument that Ortega-Hernandez is procedurally barred from challenging his § 924(c) conviction. In Ortega-Hernandez’s direct appeal, he did not raise any challenge to § 924(c)’s residual clause. Absent an excuse for that failure, the procedural-default doctrine bars him from relying on the claim on collateral review. *See United States v. Frady*, 456 U.S. 152, 167–68 (1982). Ortega-Hernandez can overcome procedural default by demonstrating “cause and actual prejudice.” *Bousley v. United States*, 523 U.S. 614, 622 (1998) (cleaned up). (He does not claim he can show actual innocence, the other potential route for overcoming procedural default. *See id.*)

Cause for procedural default can exist if “some objective factor external to the defense” prevented counsel from raising the claim on direct appeal. *Murray v. Carrier*, 477 U.S. 478, 488 (1986). Novelty is one such objective factor. A claim may be sufficiently novel if “its legal basis is not reasonably available to counsel” at the time of direct appeal. *Reed v. Ross*, 468 U.S. 1, 16 (1984). The Supreme Court has identified certain circumstances relevant to whether that standard may be satisfied: when the Court “explicitly overrule[s] one of [its] precedents”; when it overturns a “longstanding and widespread practice” uniformly approved by lower courts; or when it “disapprov[es] a practice [the] Court arguably has sanctioned in prior cases.” *Id.* at 17 (citation omitted).

Ortega-Hernandez’s claim fits within that framework. When *Johnson* held that the residual clause of ACCA was

unconstitutionally vague, the Court itself acknowledged that it was “departing from [its] decisions” in *James v. United States*, 550 U.S. 192 (2007), and *Sykes v. United States*, 564 U.S. 1 (2011). *Johnson*, 576 U.S. at 606. That is precisely the kind of circumstance *Reed* contemplated. As an illustration, the Court explained that counsel could not reasonably be expected to argue that the Fourteenth Amendment incorporates the Fifth Amendment’s Grand Jury Clause while *Hurtado v. California*, 110 U.S. 516 (1884), remained controlling, “even if there were a possibility that some day *Hurtado* may be overruled.” *Reed*, 468 U.S. at 15–16 & n.11.

Before *Johnson*, similarly, *James* and *Sykes* foreclosed the vagueness challenge to § 924(c)’s residual clause on which Ortega-Hernandez now relies. The government makes no argument that Ortega-Hernandez was situated differently from any other defendant who in theory could have argued on direct appeal that § 924(c)’s residual clause is unconstitutionally vague even though *James* and *Sykes* dictated otherwise. The government suggests that such a challenge does not qualify as sufficiently novel because a *dissenting* opinion in *James* and *Sykes* expressed disagreement with those decisions. Govt. Br. 17. But dissenting opinions always disagree with the majority, and binding Supreme Court precedent foreclosing a challenge can render it sufficiently novel for “cause” purposes regardless of whether the precedent was unanimous.

That is why, in a case involving a defendant who appealed from a pre-*Johnson* guilty plea involving ACCA’s residual clause, we opined that “it is fair to say that *no one*—the government, the [trial] judge, or the appellant—could reasonably have anticipated *Johnson*.” *United States v. Redrick*, 841 F.3d 478, 480 (D.C. Cir. 2016) (emphasis added). And we said that about parties (and a judge) involved in the entry of a guilty plea close to the time of *Johnson*. *See id.* If

no one could reasonably have anticipated *Johnson* at that time, there is cause for not having anticipated *Johnson* in pre-*Johnson* direct appeals. (Here, while the briefing in Ortega-Hernandez’s direct appeal predated *Johnson*, the oral argument came after; but the government makes no note of that timing or any argument based on it, so we do not consider whether it could matter.)

As for the prejudice part of the cause-and-prejudice inquiry, it requires a showing that the asserted error “worked to [the defendant’s] actual and substantial disadvantage,” *Frady*, 456 U.S. at 170 (emphasis omitted), or, stated another way, that there is at least “a reasonable probability that, but for [the error], the result of the proceeding would have been different,” *United States v. Pettigrew*, 346 F.3d 1139, 1144 (D.C. Cir. 2003) (quoting *United States v. Dale*, 140 F.3d 1054, 1056 n.3 (D.C. Cir. 1998)). A conviction no longer “authorized by law” necessarily satisfies that standard. *United States v. McKinney*, 60 F.4th 188, 195–97 (4th Cir. 2023) (collecting cases).

In this case, accordingly, prejudice exists. If Ortega-Hernandez is correct that his § 924(c) conviction cannot stand—which we assume for purposes of the prejudice inquiry—he necessarily establishes prejudice because his sentence would then need to be vacated. We therefore turn to the merits.

III.

The sole question in this appeal is whether Ortega-Hernandez’s § 1363 conviction qualifies as a crime of violence under § 924(c). After *Davis* invalidated § 924(c)’s residual clause, Ortega-Hernandez’s § 924(c) conviction can be valid only if his § 1363 offense is a crime of violence under § 924(c)’s force clause—i.e., if his § 1363 offense “has as an

element” the “use of physical force against the person or property of another.” 18 U.S.C. § 924(c)(3)(A).

A.

Section 1363 sets out a baseline offense that can be elevated to an enhanced offense if one of two alternative conditions is additionally established. The baseline offense occurs if someone, “within the special maritime and territorial jurisdiction of the United States, willfully and maliciously destroys or injures any structure, conveyance, or other real or personal property.” 18 U.S.C. § 1363. The enhanced offense then applies if either “the building be a dwelling, or the life of any person be placed in jeopardy.” *Id.*

Because Ortega-Hernandez pled guilty to the enhanced offense, we have no need to consider whether the baseline offense qualifies as a crime of violence under § 924(c)’s force clause. We instead focus solely on the enhanced offense. Ortega-Hernandez pled guilty to a count that referenced both alternatives for the enhanced offense—that the property involved was a dwelling, and that a person’s life was placed in jeopardy—so the plea does not on its face identify one rather than the other. In that situation, how do we decide which alternative is relevant when assessing whether the offense involved the “use of physical force against the person or property of another” for purposes of § 924(c)’s force clause? The parties present an array of competing arguments on that question, with Ortega-Hernandez wanting us to treat his offense as involving injury to a dwelling and the government wanting us to treat it as involving jeopardizing life. We need not resolve that debate.

Both sides agree that injury to a dwelling is the less culpable of the alternatives—that is, it less clearly involves the requisite use of force under § 924(c), and jeopardizing life

more clearly does. *See Borden v. United States*, 593 U.S. 420, 424 (2021) (plurality opinion) (“If any—even the least culpable—of the acts criminalized do not entail [the requisite] kind of force, the statute of conviction . . . cannot serve as an ACCA predicate.”). Because we conclude that what the parties agree is the less-culpable alternative—injury to a dwelling—satisfies § 924(c)’s force clause, we can assume without deciding that Ortega-Hernandez’s offense should be treated as involving that alternative. *See Daye v. U.S. Attorney General*, 38 F.4th 1355, 1361 & n.4 (11th Cir. 2022); *United States v. Burris*, 920 F.3d 942, 948 (5th Cir. 2019).

On that assumption, the question is whether the variant of § 1363’s enhanced offense involving injury to a dwelling is a crime of violence within the meaning of § 924(c)’s force clause. We conclude it is.

B.

Congress considered § 1363’s enhanced offense a serious crime, authorizing a sentence of up to 20 years of imprisonment (as opposed to the five-year maximum sentence available under § 1363’s baseline offense). *See* 18 U.S.C. § 1363. To determine whether the variant of the enhanced offense at issue here is a crime of violence under § 924(c)’s force clause, we ask whether, as a categorical matter, every violation of that variant necessarily involves the requisite use of force. *See Mathis v. United States*, 579 U.S. 500, 505–06, 509–10 (2016). We do not look to the facts of a specific case or ask whether the particular conduct underlying the conviction involved the requisite force. The inquiry, rather, is an across-the-board one. *See id.*

The question we consider, then, is whether “willfully and maliciously destroy[ing] or injur[ing] . . . a dwelling,” 18 U.S.C. § 1363, as a categorical matter, involves the “use of

physical force against the person or property of another” under § 924(c). And we can refine that question a bit more in two ways. First, because we are concerned with the variant of § 1363’s enhanced offense involving injury to a dwelling, rather than jeopardizing life, the relevant violations implicate the use of force against the “property of another” as opposed to “the person of another.” And second, “injuring” a dwelling is less culpable than “destroying” it, so we can focus on injury to a dwelling rather than destruction of it.

The issue then boils down to the following (and for ease of presentation, we will avoid the use of ellipses or brackets denoting negligible alterations): does “willfully and maliciously injuring a dwelling” under § 1363 categorically involve “use of physical force against the property of another” under § 924(c)? We conclude the answer is yes. And we examine the issue in two steps: first, does the relevant conduct under § 1363 necessarily involve “use of physical force against property”?; and second, is the relevant property under § 1363—i.e., the dwelling—necessarily the property “of another” as opposed to one’s own?

1.

We first consider whether “willfully and maliciously injuring a dwelling” under § 1363 categorically involves the “use of physical force against property” under § 924(c). To address that question, we initially examine what § 1363 covers in relevant part and then ask whether that coverage necessarily fits within § 924(c)’s force clause.

a.

As the availability of a 20-year sentence of imprisonment indicates, willfully and maliciously injuring someone’s dwelling is not a mere glancing brush against their residence.

It was established at the time of § 1363’s initial codification in 1948 that injury to a dwelling required material impairment: specifically, “injure,” “[a]s applied to a building,” meant “to materially impair or destroy any part of the existing structure.” *Injure*, Black’s Law Dictionary (3d ed. 1933); *see also Injure*, Black’s Law Dictionary (4th ed. 1951) (same). The modern understanding is to the same effect. *Criminal Damage to Property*, Black’s Law Dictionary (12th ed. 2024) (“Injury, destruction, or substantial impairment to the use of property.”).

The structure of § 1363 fortifies that reading. The provision criminalizes not just injuring property, but “*destroy[ing]* or *injur[ing]*” it. 18 U.S.C. § 1363 (emphasis added). By treating “destroying” property as the anchoring term and “injuring” property as a species of destruction, § 1363 reinforces the idea that the kinds of injury to a dwelling encompassed by the enhanced offense involve material impairments closer to the destruction end of the spectrum, not grazing nudges at the other end.

That understanding draws additional support from the close association between § 1363 and the crime of malicious mischief. Congress made that connection explicit when it enacted § 1363 in 1948 as part of a chapter entitled “Malicious Mischief,” alongside three related provisions. *See* Act of June 25, 1948, ch. 645, § 1, 62 Stat. 683, 764. That placement makes sense. The crime of malicious mischief was a well-established offense against property, and it was generally defined in terms closely mirroring § 1363: “the wilful and unlawful injury to or destruction of the property of another.” 34 Am. Jur. Malicious Mischief § 2 (1941); *compare* 18 U.S.C. § 1363 (“willfully and maliciously destroys or injures any . . . property”); *see also* 19 Am. & Eng. Encyc. L. Malicious Mischief 633 (2d ed. 1896) (“general definition of the

common-law offense” is “wilful and malicious injury to or destruction of property”).

The degree of injury to property required to make out the offense of malicious mischief was described as “impairing or materially diminishing the value of [the] property.” Am. Jur., *supra*, § 10. Or, as one authority put it: “To sustain a conviction” for malicious mischief, “there must be proof of injury done to such an extent as to impair utility[] or materially diminish value.” 2 Wharton’s Criminal Law, § 1327 (12th ed. 1932). The same material-impairment understanding of injury carries over to § 1363.

Not only must the injury to the dwelling under § 1363’s enhanced offense amount to material impairment of its use or value, but the injury must also be inflicted “willfully and maliciously.” 18 U.S.C. § 1363. That means the injury must be intended, not inadvertent, and inflicted for wrongful, wicked, or mischievous reasons. *See Malicious*, Black’s Law Dictionary (4th ed. 1951); *Willful*, Black’s Law Dictionary (4th ed. 1951). To bring all of this together: to “willfully and maliciously injure” a dwelling under § 1363’s enhanced offense, a perpetrator must intentionally inflict the injury for a wrongful, wicked, or mischievous reason, and the injury must amount to a material impairment of the dwelling.

With that understanding of § 1363’s enhanced offense in mind, the question under § 924(c)’s force clause becomes whether someone who “willfully and materially injures” a dwelling—i.e., materially impairs it, intentionally and for wrongful, wicked, or mischievous reasons—necessarily has “used physical force against the property.” The Supreme

Court’s decisions construing § 924(c)’s force clause tell us the answer is yes.

b.

In a series of decisions, the Supreme Court has interpreted § 924(c)’s force clause and the nearly identical language of ACCA’s parallel force provision, 18 U.S.C. § 924(e)(2)(B)(i). The latter covers an offense that “has as an element the use, attempted use, or threatened use of physical force against the person of another,” and the former covers an offense that “has as an element the use, attempted use, or threatened use of physical force against the person or property of another.” The sole difference is that § 924(c) encompasses force against “person or property” whereas ACCA’s provision reaches only force against “person.”

The Supreme Court on several occasions has examined whether conduct amounts to the “use of physical force against a person” within the meaning of those clauses. *See Delligatti v. United States*, 604 U.S. 423 (2025) (§ 924(c)); *Stokeling v. United States*, 586 U.S. 73 (2019) (ACCA); *Johnson v. United States*, 559 U.S. 133 (2010) (ACCA). Two points are of particular relevance. First, in *Johnson*, the Court established that “physical force” means “force capable of causing physical pain or injury to another person”—so something more than the “slightest offensive touching.” 559 U.S. at 139–40. Second, in *Delligatti*, the Court explained that “it is impossible to deliberately cause physical harm without the use of physical force.” 604 U.S. at 429. “Thus, whenever someone knowingly causes physical harm, he uses force.” *Id.* at 430.

Whereas those decisions involved force against a person, this case involves force against property. But there is no doubting those decisions’ general relevance: § 924(c) identifies both a “person” and the “property” as possible

objects of the requisite “physical force,” suggesting that a common understanding of “physical force” should generally apply to each. Cf. *Clark v. Martinez*, 543 U.S. 371, 378 (2005) (“The operative language of [the statute] applies without differentiation to all [the] categories,” and “[t]o give these same words a different meaning for each category would be to invent a statute rather than interpret one.”).

At any rate, we need do no more than apply *Johnson*’s and *Delligatti*’s interpretation of § 924(c)’s force clause at a high level. *Johnson*, for its part, establishes that “physical force” under § 924(c) means force capable of causing injury (or pain). *Delligatti* then instructs that intentionally causing physical injury always involves “use of physical force” within the meaning of § 924(c). Read together, the two decisions yield a straightforward understanding: a crime that requires intentionally causing an injury necessarily requires the use of physical force capable of causing the injury. Section 1363’s enhanced offense fits the bill. It requires intentionally injuring a dwelling to the point of materially impairing it, and material impairment cannot occur without physical force capable of causing it.

A dwelling, moreover, is a paradigmatic instance of “property” for purposes of § 924(c). The common law famously regarded a person’s home as “his castle of defence and asylum.” *Wilson v. Arkansas*, 514 U.S. 927, 931 (1995) (citation omitted). And the Supreme Court has repeatedly invoked the home as the benchmark when defining both the scope and contents of property protection. See *Horne v. Department of Agriculture*, 576 U.S. 351, 358 (2015); *United States v. James Daniel Good Real Property*, 510 U.S. 43, 53–54 (1993). Whatever questions could conceivably arise

concerning the scope of § 924(c)'s reference to "property," then, a dwelling plainly lies in the force clause's heartland.

2.

Section 924(c)'s force clause speaks in terms of a predicate offense involving the "use of physical force against the person or property *of another*." 18 U.S.C. § 924(c)(3)(A) (emphasis added). So, to qualify as a predicate crime of violence under the force clause, § 1363 must be categorically limited to the use of force against someone else's property, rather than one's own. The government submits that § 1363 is confined in that manner, even though that understanding would, on balance, narrow the range of prosecutions available under the provision. We are unaware of any case in which the government has attempted to apply § 1363 to a person's injury of her own property, or of any decision addressing whether the statute reaches such conduct. We agree with the government that it does not.

To understand why, it is necessary to trace § 1363's roots back to its historical antecedents. The statute that would ultimately give rise to § 1363 more than a century later is an 1825 federal arson law. The provision contained two arson offenses. The first made it a capital felony, within certain federal enclaves, to "wilfully and maliciously" burn "any dwelling-house, or mansion-house, or any store, barn, stable, or other building, parcel of any dwelling or mansion-house." Act of Mar. 3, 1825, ch. 65, § 1, 4 Stat. 115. The second covered real property and certain personal property "not parcel of a dwelling house" in those same enclaves, punishing anyone who "wilfully and maliciously" burned such property by up to ten years of imprisonment. *Id.* § 2. Those provisions, as forebears of § 1363, likewise addressed willful and malicious

injury to property while distinguishing between dwellings and non-dwellings.

We have found no decision specifically addressing whether the 1825 arson provisions applied only to the property of another. It is quite possible the question never arose because the law was settled. At common law, arson law served to protect the physical safety of the *persons* in possession of a dwelling rather than their *property* interest in it. See John Poulos, *The Metamorphosis of the Law of Arson*, 51 Mo. L. Rev. 295, 299–300 (1986). The common law accordingly limited arson to the “malicious and wilful burning” of the house “*of another*.” 4 William Blackstone, *Commentaries on the Laws of England* 220 (1770) (emphasis added). Contemporary dictionaries at the time of the 1825 law embodied the same understanding: “In law, the malicious burning of a dwelling house or outhouse *of another man*, which by the common law is felony.” Arson, Noah Webster, *An American Dictionary of the English Language* (1828) (emphasis added).

By 1825, moreover, more than twenty states had enacted arson statutes of their own. Most expressly confined the offense to the property “of another.” See e.g., 16 Ohio Laws 166, § 13 (1818); Ind. Rev. Laws 142, § 20 (1824); 1 Mo. Laws 284, § 16 (1825). Others, like the federal statute, omitted that phrase. Even so, there is no indication that the omission was understood to depart from the common law by expanding arson to the burning of one’s own property. To the contrary, the state decisions construing statutes lacking an express “of another” limitation confined the offense to another person’s property, in keeping with the common law. See *Martha v. State*, 26 Ala. 72, 74–75 (Ala. 1855); *State v. Sarvis*, 24 S.E. 53, 54 (S.C. 1896).

Circumstances in which legislatures affirmatively removed an express “property of another” limitation are different. When the terms of a state’s arson law, unlike the federal law, initially contained such an express limitation but the legislation later removed it, courts naturally understood that express change to mean that the law now encompassed the burning of one’s own property. *See State v. Cazeau*, 8 La. Ann. 109, 117 (La. 1853); *Shepherd v. People*, 19 N.Y. 537, 542–43 (N.Y. 1859); *State v. Hurd*, 51 N.H. 176, 176–77 (N.H. 1871). But when a state arson law from the outset contained no indication one way or another—as with the federal law—we are unaware of any decision construing the law to encompass the burning of one’s own property at any time while the 1825 law was in effect.

The 1825 provisions remained on the books until 1909, when Congress amended them without materially altering their essential makeup. *See* Act of Mar. 4, 1909, ch. 321, §§ 285–286, 35 Stat. 1144. There continued to be two provisions, and it remained the case that one addressed willfully and maliciously burning dwellings while the other addressed willfully and maliciously burning property other than dwellings. No reported decision appears to have considered whether those laws reached the burning of one’s own property. But the continuity in the provisions’ language and structure gives little reason to suppose that they encompassed burning one’s own property if their 1825 precursors did not. Some states, by contrast, amended their laws expressly to encompass burning one’s own property, at least in specified circumstances. *See, e.g.,* Mich. Rev. Stat. ch. 4 § 1 (1838) (covering the burning of a building “owned by himself or another” in the “night time”); Me. Rev. Stat. ch. 119, § 1 (1857) (same); Nev. Comp. Laws § 2363 (1873) (same); Gen. Laws of Or. ch. 44 § 535 (1866) (same).

Then, in 1948, the federal statutes assumed their current form. As part of its general recodification of the federal criminal code, Congress recodified the 1909 statutes, in two different chapters, as 18 U.S.C. §§ 81 and 1363. *See* Act of June 25, 1948, ch. 645, §§ 81, 1363, 62 Stat. 683, 764. Section 81 remained an arson statute: it is the sole provision in a chapter entitled “Arson,” addressing “[a]rson within [the] special maritime and territorial jurisdiction” of the United States and covering a person who “willfully and maliciously sets fire to or burns” property within that jurisdiction. 62 Stat. 688. Section 1363, meanwhile, assumed essentially its present form, encompassing willfully and maliciously destroying or injuring property within the special maritime and territorial jurisdiction in ways other than setting fire to it. 62 Stat. 764.

Congress gave no indication that it intended to broaden the reach of § 1363 to encompass injuring or destroying one’s own property. To the contrary, Congress, as noted, grouped § 1363 with three other provisions in a chapter entitled “Malicious Mischief.” *See id.* At the time, malicious mischief was universally understood to address destruction or injury of another person’s property, not one’s own. *See Malicious Mischief*, Webster’s New International Dictionary (2d ed. 1941) (injury to the property “of another”); 3 William L. Burdick, *The Law of Crime* § 778 (1946) (“malicious injury or destruction of the property of another”); Am. Jur. *supra* § 2 (“wilful and unlawful injury to or destruction of the property of another”). That is in concert with the historic conception of “malice” as conduct operating “to the prejudice of another person,” not to the prejudice of oneself. *Malice*, Black’s Law Dictionary (1st ed. 1891).

The surrounding provisions Congress codified alongside § 1363 in the “Malicious Mischief” chapter reinforce the

chapter's outward-facing focus on property of someone else. Those provisions prohibited injury to "any property of the United States," interference with communication lines "operated or controlled by the United States," and interference with property involved in "foreign commerce," in which the United States has particular interests. *See* 18 U.S.C. §§ 1361, 1362, 1364 (1948); *see also* Wharton's Criminal Law *supra* § 1319 ("malicious mischief may be defined to be any malicious or mischievous physical injury, *either to the rights of another or to those of the public in general*") (emphasis added). Those provisions by nature would not involve one's own property.

We have no cause to consider whether the same understanding governs the aforementioned 18 U.S.C. § 81, which addresses the commission of arson in the special maritime and territorial jurisdiction of the United States. Nor do we find it relevant to our analysis to consider the two more broadly applicable, later-enacted federal arson statutes, 18 U.S.C. §§ 844(f) and 844(i). Unlike §§ 81 and 1363, which trace back to 1825, §§ 844(f) and (i) were first enacted in 1970. By that time, it was much more common for state laws and other authorities to treat arson as encompassing burning one's own property. *See e.g.*, Model Penal Code § 220.1 (1962). The modern statutes also have a different placement in Title 18 than § 1363. Whereas § 1363 was placed in chapter 65 on "Malicious Mischief," a title long understood to refer to the harming of another, §§ 844(f) and (i) were placed in chapter 40, which has the general title "Importation, Manufacture, Distribution, and Storage of Explosive Materials," 84 Stat. 956, 957–58. Because of their considerably different statutory structure and pedigree, §§ 844(f) and (i) do not suggest that § 1363 encompasses burning one's own property.

For all those reasons, we agree with the government's interpretation of § 1363 as addressed to injuring or destroying

someone else's property, not one's own. And that means Ortega-Hernandez's § 1363 offense categorically involves the use of physical force against the property "of another."

* * * * *

For the foregoing reasons, the judgment of the district court is affirmed.

So ordered.