No. 24-5774

In the Supreme Court of the United States

DWAYNE BARRETT,

PETITIONER,

v.

UNITED STATES,

RESPONDENT.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR COURT-APPOINTED AMICUS CURIAE IN SUPPORT OF JUDGMENT BELOW

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QUESTION PRESENTED

Whether the Double Jeopardy Clause permits cumulative sentences for separate convictions under 18 U.S.C. § 924(c) and § 924(j).

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INTEREST OF AMICUS CURIAE*

By order dated March 19, 2025, this Court invited Charles L. McCloud to brief and argue this case as amicus curiae in support of the judgment below.

STATEMENT

The Double Jeopardy Clause forbids courts from "prescribing greater punishment than the legislature intended." *Missouri v. Hunter*, 459 U.S. 359, 366 (1983). But if Congress intended to authorize cumulative punishments, then the Double Jeopardy Clause poses no bar to multiple sentences. *Id.* at 368.

Here, the question is whether Congress authorized separate, cumulative punishments for a defendant who (1) "uses," "carries," or "possesses a firearm" during a crime of violence or drug trafficking crime, 18 U.S.C. § 924(c)(1)(A); and then (2) "causes the death of a person through the use of a firearm" during that crime, *id.* § 924(j). The text, structure, and history of section 924, as well as this Court's precedents, all supply a clear answer: Congress intended to punish violations of section 924(j) in addition to, not as a substitute for, violations of section 924(c).

Start with the text. Section 924(c) provides for escalating mandatory-minimum penalties based on the use of the firearm, the type of firearm, and the defendant's recidivism, regardless of the harm to the

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* Pursuant to Rule 37.6, amicus affirms that no counsel for a party authored this brief in whole or in part and that no person other than amicus and his law firm have made any monetary contributions intended to fund the preparation or submission of this brief.

victim (if any). The subsection repeats three separate times that its mandatory-minimum sentences *must* be imposed consecutively to "any other term of imprisonment" the defendant receives for the commission of a separate offense. *Id.* § 924(c)(1)(D)(ii). And as this Court acknowledged in *Lora v. United States*, section 924(j) is exactly such a standalone, separate offense. 599 U.S. 453, 459 (2023). Section 924(j) focuses on punishing the worst possible harm: death. But it does so using a "different approach to punishment" than the one in section 924(c). *Id.* at 462. The decision below correctly recognized that the text of section 924 requires punishment in accordance with *both* these distinct sentencing schemes, not one or the other.

Cumulative punishment is also consistent with section 924's structure and history. Congress enacted section 924(c) with the intent to impose harsh sentences on defendants who use firearms while committing certain crimes. When Congress enacted section 924(j) decades later, it did so against the backdrop of section 924(c)'s consecutive-sentence mandate. And it chose to locate section 924(j) outside section 924(c), rejecting several proposals that would have merged the two provisions. That deliberate decision evinces Congress' intent that section 924(c)'s consecutive-sentence mandate would apply to section 924(j), resulting in separate punishments for separate offenses.

Petitioner (at 16) and the government (at 27) nonetheless contend that Congress did not "clearly indicate" its intent to authorize cumulative punishments in sections 924(c) and 924(j). But to reach that conclusion, petitioner and the government overstate the level of clarity this Court's double-jeopardy precedents require from Congress. Indeed, petitioner goes so far as to ask

the Court to adopt a brand-new magic-words requirement modeled on a distorted reading of the Court's sovereign-immunity precedents. The Court should decline petitioner's invitation to impose such a formalistic approach.

Petitioner's and the government's position is also untenable for myriad other reasons. Petitioner and the government would create a new rule requiring Congress to repeat itself *every* time it enacts a new statute intended to cumulatively punish with an existing statute, notwithstanding whatever cumulative-punishment language is already in the existing statute. And their reading would also create absurd results where defendants culpable for the worst conduct would often receive the most lenient sentences.

Congress did not intend such anomalous results. Rather, Congress was clear that it intended to authorize cumulative punishments under sections 924(c) and 924(j). The Court should affirm the judgment below.

A. Statutory Background

This case involves the statutory "[p]enalties" for gun-related offenses under two separate subsections of 18 U.S.C. § 924.

Section 924(c) sets mandatory-minimum penalties for defendants who use firearms while committing certain other offenses. Specifically, it provides that "any person who, during and in relation to any crime of violence or drug trafficking crime … uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime" receive a sentence of "not less than 5 years" in prison. *Id.* § 924(c)(1)(A)(i).

The mandatory-minimum penalties in section 924(c) ratchet up depending on the use of the firearm, the type of firearm, and the defendant's recidivism. For example, the mandatory-minimum sentence increases to seven years if the firearm is brandished, *id.* § 924(c)(1)(A)(ii), and ten years if it is discharged, *id.* § 924(c)(1)(A)(iii). Likewise, if the defendant uses a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the minimum increases to ten years. *Id.* § 924(c)(1)(B)(i). But if the defendant instead uses a machinegun, "destructive device," "firearm silencer," or "firearm muffler," the mandatory minimum jumps to thirty years. *Id.* § 924(c)(1)(B)(ii). If the defendant has a prior section 924(c) conviction, then the mandatory minimum is twenty-five years. *Id.* § 924(c)(1)(C)(i). And because section 924(c) does not specify a maximum sentence, it authorizes a discretionary sentence up to life imprisonment. *See Alleyne v. United States*, 570 U.S. 99, 112, 116-17 (2013).

Alongside these escalating mandatory-minimum penalties, section 924(c) also includes a "consecutive-sentence mandate." *Lora*, 599 U.S. at 457. That mandate directs that "no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime" underlying the section 924(c) violation. 18 U.S.C. § 924(c)(1)(D)(ii).

Section 924(j), in comparison, establishes a separate penalty scheme for defendants who, in the course of violating section 924(c), "cause[] the death of a person through the use of a firearm." *Id.* § 924(j). Such defendants "shall … be punished by death or by imprisonment for any term of years or for life" if "the

killing is a murder," *id.* § 924(j)(1), or "be punished as provided" in section 1112 if "the killing is manslaughter," *id.* § 924(j)(2). Section 1112, in turn, sets a fifteen-year maximum sentence for voluntary manslaughter and an eight-year maximum sentence for involuntary manslaughter. *Id.* § 1112(b). Unlike section 924(c), section 924(j) does not contain statutory minimum sentences.

In *Lora*, this Court considered "whether § 924(c)'s bar on concurrent sentences extends to a sentence imposed under … § 924(j)." 599 U.S. at 455. The Court answered no; a section 924(j) sentence can thus "run either concurrently with or consecutively to another sentence." *Id.* The Court reasoned that "Congress plainly chose a different approach to punishment in subsection (j) than in subsection (c)." *Id.* at 462.

B. Factual and Procedural Background

1. Between August 2011 and January 2012, petitioner Dwayne Barrett and his co-conspirators committed a series of violent robberies, many of which occurred in the Bronx, New York. *See United States v. Barrett*, 903 F.3d 166, 170-71 (2d Cir. 2018), *vacated*, 139 S. Ct. 2774 (2019). Barrett and his robbery crew generally targeted small businesses that they believed had cash or other valuables. *See id.* "During the robberies, they wore masks and gloves. They were armed with guns, knives, and baseball bats. They injured several people during the course of their robberies, breaking bones, drawing blood, and knocking people out." *United States v. Davis*, 588 U.S. 445, 500 (2019) (Kavanaugh, J., dissenting).

On December 12, 2011, Barrett and two co-conspirators, Jermaine Dore and Taijay Todd, robbed and killed Gamar Dafalla. Pet.App.5a. That morning,

Barrett, Dore, and Todd tracked a minivan to and from the site of a sale of untaxed cigarettes. Pet.App.5a. Once the minivan stopped a few blocks away from the site, Dore and Todd approached the vehicle while Barrett remained in his car. Pet.App.5a-6a. Dore and Todd ordered two victims out of the minivan at gunpoint, got in, and drove off; a third victim, Dafalla, remained in the back of the minivan with $10,000 in cash. Pet.App.6a. As Dore and Todd drove off, Dafalla threw money out of the vehicle's window back to his associates who had been left behind. Pet.App.6a. When Dore realized what had happened, he shot and killed Dafalla. Pet.App.6a. Later that day, Barrett retrieved and disposed of the gun used to kill Dafalla. Pet.App.6a-7a.

2. In 2012, a grand jury in the Southern District of New York indicted Barrett, charging him with conspiracy to commit Hobbs Act robbery, 18 U.S.C. § 1951 (Count One); using a firearm in the commission of that conspiracy, *id.* § 924(c)(1)(A) (Count Two); two counts of substantive Hobbs Act robbery, *id.* § 1951 (Counts Three and Five); using firearms in the commission of those two robberies, *id.* § 924(c)(1)(A) (Counts Four and Six); and committing murder with a firearm during a crime of violence, *id.* § 924(j)(1) (Count Seven). Pet.App.7a; *see also* Second Superseding Indictment, *United States v. Barrett*, No. 12-cr-45 (S.D.N.Y. Feb. 19, 2013), Dkt. 141 ("S2 Indictment"). As relevant here, Count Five charged the December 12, 2011 robbery in which Dafalla was killed and served as the predicate for the Count Six section 924(c) firearms charge and the Count Seven

section 924(j) murder charge. S2 Indictment at 8-9; Pet.App.7a.[1]

After a jury trial, Barrett was convicted on all seven counts. Pet.App.7a. The district court sentenced Barrett to 90 years in prison, and the Second Circuit affirmed. *Barrett*, 903 F.3d at 172, 185. In 2019, this Court vacated and remanded the judgment in light of *Davis*, which held that the residual clause of section 924(c)(3)(B)'s "crime of violence" definition was unconstitutionally vague. *See Barrett*, 139 S. Ct. at 2774; *Davis*, 588 U.S. at 448. On remand, the Second Circuit set aside Barrett's Count Two conviction and otherwise affirmed the conviction in all other respects. *United States v. Barrett*, 937 F.3d 126, 130 (2d Cir. 2019).

3. On May 20, 2021, the district court resentenced Barrett to 50 years' imprisonment, which included "20 years' imprisonment on Counts 1, 3, and 5, to run concurrently, followed by 5 years' imprisonment on Count 4 and 25 years' imprisonment on Count 7, to run consecutive to each other and to the sentences imposed on Counts 1, 3, and 5." Amended Judgment, *United States v. Barrett*, No. 12-cr-45 (S.D.N.Y. May 21, 2021), Dkt. 702, at 3. The district court did not impose a sentence for Count Six, the section 924(c) firearms count predicated on the robbery and murder of Dafalla. *Id.*

Barrett again appealed. Pet.App.3a. While Barrett's appeal was pending, this Court decided *Lora*, which held that the consecutive-sentence mandate in section 924(c)(1)(D)(ii) does not apply to sentences imposed under section 924(j). 599 U.S. at 455. Barrett

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[1] Counts Three and Four relate to a separate robbery that Barrett and other co-conspirators committed on October 29, 2011. S2 Indictment at 7-8.

then filed a supplemental brief arguing that he should be resentenced after *Lora* because the district court had been mandated to impose a consecutive sentence for Count Seven under now-overruled Second Circuit precedent. *See* Second Suppl. Br., *United States v. Barrett*, No. 21-1379 (2d Cir. July 19, 2023), Dkt. 127, at 1, 5-6.

4. The Second Circuit agreed with Barrett as to his *Lora*-based argument regarding Count Seven, vacated the May 21, 2021 judgment only as to the sentence, and remanded for resentencing. The Second Circuit otherwise affirmed the judgement. Pet.App.70a.

As relevant here, the court directed that "on remand, the district court should sentence Barrett on each of [Counts Six and Seven] consistent with the distinct sentencing regimens created by Congress in § 924(c) and § 924(j)." Pet.App.52a-53a. In reaching that conclusion, the court of appeals first applied the double-jeopardy elements test set forth in *Blockburger v. United States*, 284 U.S. 299 (1932), and concluded that "Barrett's § 924(c) crime is … a lesser-included offense of his § 924(j) crime." Pet.App.54a. But the court determined that "based on the texts of § 924(c) and § 924(j)" and the "statutory structure," "Congress intended to authorize cumulative sentences for a defendant convicted on related § 924(c) and § 924(j) counts of conviction." Pet.App.61a.

First, the court highlighted that the text of section 924(c)(1) mandates mandatory-minimum sentences, which "makes plain Congress's intent for *every* defendant convicted under that statute … to be incarcerated for no less than the stated minimum term." Pet.App.55a-56a. The court also identified section 924(c)(1)(D)(ii)'s consecutive-sentence mandate that "[n]otwithstanding any other provision of law … no term of imprisonment

imposed on a person under this subsection shall run concurrently with any other term of imprisonment." Pet.App.56a (quoting 18 U.S.C. § 924(c)(1)(D)(ii)). That provision, the court reasoned, "strongly signals Congress's intent to authorize a cumulative § 924(c) punishment without exception." Pet.App.56a. And the court cited *Lora*'s recognition that Congress intended a "different approach to punishment" to apply to section 924(c) firearms crimes than to section 924(j) homicide crimes. 599 U.S. at 462; Pet.App.58a.

Second, the court "reinforce[d]" its interpretation by looking to statutory structure: "Congress specifically chose to locate § 924(j) outside § 924(c)." Pet.App.61a. In the Second Circuit's view, that statutory structure further supported that Congress "intended to create different crimes, subject to different penalty schemes." Pet.App.61a.

Finally, the Second Circuit explained that prohibiting separate sentences under sections 924(c) and 924(j) would "create the anomalous result" of permitting courts to "impose a lower sentence on a defendant whose firearms use caused death" than for a "defendant whose firearms use in similar circumstances did not cause death." Pet.App.62a. The court reasoned that nothing in the statutory text of section 924(j) "suggests that Congress intended to create such an illogical carveout" from section 924(c)'s minimum-sentence mandate. Pet.App.62a.

SUMMARY OF THE ARGUMENT

Congress authorized cumulative punishments for convictions under sections 924(c) and 924(j).

I. Section 924's text, structure, and history, as well as this Court's precedents, confirm that Congress

authorized cumulative punishments for violations of sections 924(c) and 924(j).

A. The Double Jeopardy Clause operates as a constraint on courts, not Congress. If Congress intended to allow cumulative punishments, then the Double Jeopardy Clause poses no bar. The double-jeopardy inquiry thus turns on whether the legislature authorized multiple punishments for the convictions in question. *Blockburger*'s elements test provides one way of uncovering congressional intent. But *Blockburger* is a tool of statutory construction, not a constitutional floor. And it does not control here, because the statutory scheme evinces Congress' intent to authorize cumulative punishments.

B. The text of section 924 mandates the imposition of cumulative punishments for violations of sections 924(c) and 924(j). The two subsections target different wrongs and impose different penalties, ultimately creating two separate offenses that must be punished in accordance with the consecutive-sentence mandate set out in section 924(c)(1)(D)(ii).

Section 924(c)(1) creates a rigid scheme of escalating mandatory-minimum penalties that vary depending on the use of the firearm, the type of firearm, and recidivism. Running throughout this complex penalty scheme is one constant: The existence of any harm to a victim is irrelevant. In addition to its mandatory minimums, section 924(c)(1) requires that its penalties be imposed in addition to the penalties for the underlying predicate offense and consecutively to any other prison term. The result is a sentencing scheme that sharply cabins the discretion of sentencing judges—they can only increase a defendant's section 924(c)(1) sentence.

Section 924(j), by contrast, focuses on the harm done to the victim during a section 924(c) offense. To do so, section 924(j) incorporates the definitions of murder and manslaughter from 18 U.S.C. §§ 1111, 1112, and sets maximum penalties rather than minimums. As *Lora* explained, section 924(j) thus creates a separate offense, aimed at punishing a separate evil, and subject to a separate approach to sentencing. 599 U.S. at 461-63. And given section 924(c)(1)'s consecutive-sentence mandate, a section 924(j) sentence must be imposed cumulatively and consecutively to a section 924(c) sentence.

C. Section 924's statutory structure, history, and purpose drive this point home. Sections 924(c) and 924(j) create different approaches to punishment, with the former favoring mandatory penalties and the latter favoring flexibility. Yet section 924(j) was added to the statute decades after section 924(c), evincing Congress' desire to take a drastically different sentencing approach in section 924(j). The deliberate incompatibility of these schemes shows Congress wanted to create separate, cumulative punishments, not to erase with section 924(j) what it had created in section 924(c).

Moreover, Congress considered and rejected multiple proposals to nest what is now section 924(j) within section 924(c). Congress similarly declined to enact a proposal that would have amended section 924(c) to impose a mandatory life sentence if death resulted from a section 924(c) violation—a penalty approach Congress employed elsewhere in the criminal code. Congress' decision to keep sections 924(c) and 924(j) separate makes clear that the two subsections criminalize and punish different conduct, indicating that the consecutive-sentence mandate in section 924(c) applies to a sentence imposed under section 924(j).

Congress also chose to structure section 924(j) like other standalone offenses enacted in the Federal Death Penalty Act of 1994, further indicating Congress' intent that sections 924(c) and 924(j) be treated as separate offenses subject to section 924(c)(1)'s consecutive-sentence mandate.

That result aligns with the history and purpose of section 924(c), which aims to cabin sentencing-court discretion and impose harsh sentences on defendants who use firearms while committing drug crimes and crimes of violence. Congress has repeatedly defended section 924(c)'s design, broadening section 924(c) on multiple occasions in response to this Court's decisions trying to cabin its reach. Reversing the decision below would only counteract Congress' clear sentencing scheme.

D. This Court's precedents confirm the propriety of imposing cumulative punishments for violations of sections 924(c) and 924(j). In *Lora*, this Court held that sections 924(c) and 924(j) are standalone, separate offenses. That holding—while not dispositive here—sheds important light on how the cumulative-punishment and consecutive-sentence language in section 924(c) functions in relation to section 924(j).

The Court's double-jeopardy cases are also instructive. This body of precedents uniformly holds that only one statute needs to include cumulative-punishment language to authorize double punishments. And these cases have never required Congress to speak with particular words to signal its desire for cumulative punishments. These guiding principles support the imposition of cumulative punishments in this case.

II. Petitioner and the government argue that Congress did not speak clearly enough in section 924 to

authorize cumulative punishments for violations of sections 924(c) and 924(j). But their alternative reading of section 924 threatens to wreak havoc on this Court's double-jeopardy precedents and produces untenable results.

A. To start, petitioner asks the Court to adopt a magic-words requirement, converting the double-jeopardy inquiry from a holistic examination of a statute's text, structure, and history into a simple box-checking exercise. Petitioner would require Congress to use particular words to signal its intent to allow cumulative punishments and, apparently, require Congress to include those words in every subsequent statutory enactment. In addition to defying common sense, that result also flies in the face of this Court's double-jeopardy cases, which do not demand such a formalistic approach.

B. Petitioner's and the government's various textual and structural arguments fare no better. Petitioner and the government lean heavily on the absence of cumulative-sentencing language in section 924(j). But the Court has never required both statutes to include cumulative-punishment language; one statute will do the job. This argument also stands at odds with statutory history because section 924(j) was added to the statute well after section 924(c)—and its consecutive-sentence mandate—were enacted.

Petitioner and the government attempt to leverage section 924(c)(5), which penalizes the use of armor-piercing ammunition, including when defendants cause death with that ammunition. But section 924(c)(5)—which is located within section 924(c), was enacted years after sections 924(c) and 924(j), and focuses on the type of weapon used—says little about what Congress intended to accomplish when it enacted section 924(j).

Petitioner's appeals to precedent and the rule of lenity are similarly unavailing.

C. Lastly, petitioner's and the government's reading of section 924 produces bizarre results that war with the careful sentencing scheme Congress enacted. As it has done before, this Court should again decline to adopt such a strained reading of the statute.

ARGUMENT

I. The Court of Appeals Correctly Held that Congress Authorized Cumulative Punishments for Violations of Sections 924(c) and 924(j)

The decision below correctly required separate sentences for petitioner's separate violations of sections 924(c) and 924(j). Sections 924(c) and 924(j) target distinct wrongs, set distinct penalties, and after *Lora*, are undoubtedly distinct offenses. The text, structure, history, and purpose of section 924 all point in the same direction: Congress intended to allow cumulative punishments for these distinct crimes. This Court's double-jeopardy precedents confirm that conclusion.

A. Congress Can Require Cumulative Punishments Without Violating the Double Jeopardy Clause

1. Under the Double Jeopardy Clause, "[n]o person shall … be subject for the same offence to be twice put in jeopardy of life or limb." U.S. Const. amend. V. The Clause bars both successive prosecutions for the same offense and, as relevant here, multiple punishments in the same proceeding for the same offense. *See Brown v. Ohio*, 432 U.S. 161, 165 (1977). With respect to criminal sentencing, the double-jeopardy guarantee "serves principally as a restraint on courts and prosecutors," not Congress. *Id.* It forbids prosecutors from seeking, and

courts from imposing, more punishment than the legislature intended. *Hunter*, 459 U.S. at 366.

But double jeopardy is far from a categorical bar on cumulative punishments. "The power to define criminal offenses and to prescribe … punishments" is constitutionally committed to Congress. *Whalen v. United States*, 445 U.S. 684, 689 (1980); *see* U.S. Const. art. I, § 1. So, as this Court has recognized time and again, Congress remains free to decide what counts as an "offense" for double-jeopardy purposes—and, in turn, to specify how that offense should be punished. *See, e.g.*, *Brown*, 432 U.S. at 165; *Hunter*, 459 U.S. at 368; *Whalen*, 445 U.S. at 689; *Albernaz v. United States*, 450 U.S. 333, 344 (1981); *Garrett v. United States*, 471 U.S. 773, 793-94 (1985).

Thus, contrary to petitioner's suggestion, Congress does not "test [the Constitution's] bounds" when it authorizes a cumulative sentence for each additional offense of which a defendant has been convicted. Pet. Br. 19 (citation omitted). Congress *can* authorize cumulative sentences for "the same" conduct without raising any constitutional concern, *Albernaz*, 450 U.S. at 344 (citation omitted); the pertinent question is simply "whether the legislature … intended that each violation be a separate offense," *Garrett*, 471 U.S. at 778.

2. One way to determine congressional intent is by applying the *Blockburger* elements test. 284 U.S. at 304. When "the same act or transaction constitutes a violation of two distinct statutory provisions," a court applying *Blockburger* asks "whether each provision requires proof of a fact which the other does not." *Id.* If that question is answered in the negative, then a court presumes that Congress did not intend to allow cumulative punishments. *See Garrett*, 471 U.S. at 778-79.

At the same time, the *Blockburger* test is only a tool of statutory construction—not a constitutional floor set by the Double Jeopardy Clause. *See id.* *Blockburger* simply creates a presumption that Congress did or did not intend to allow cumulative punishments; that presumption does not fully resolve the double-jeopardy question.

In this case, sections 924(c) and 924(j) do not satisfy the *Blockburger* elements test because section 924(c) is a lesser-included offense of section 924(j). *See* Pet.App.54a. But petitioner did not commit a "single act" that is "an offense against two statutes"—the fact pattern where *Blockburger*'s analysis proves most useful. 284 U.S. at 304 (citation omitted). Rather, petitioner violated section 924(c) the moment he and his crew robbed their victims with guns. Pet.App.7a; *supra* p. 6. Only later, "in the course" of that robbery, did petitioner and his crew violate section 924(j) by murdering their victim. *Supra* p. 6.

For these types of compound-predicate offenses, *Blockburger* has little to say concerning Congress' authority to "punish[] separately each step leading to the consummation of a transaction which it has power to prohibit." *Garrett*, 471 U.S at 779 (citation omitted). In fact, as the government has warned this Court in the past, the *Blockburger* test can be "particularly problematic" in cases like this one, where one statutory offense (here, the section 924(j) offense) "includes as an essential element the commission of … [an]other offense[]." U.S. Br. 6, *Garrett*, 471 U.S. 773 (No. 83-1842) ("*Garrett* U.S. Br."). Reflexively applying *Blockburger* in such cases can have the perverse effect of nullifying, rather than illuminating, Congress' decision to separately proscribe and punish both offenses.

In light of its inherent limitations, *Blockburger* is "not controlling" where Congress' intent to impose cumulative

punishments "is clear from the face of the statute or the legislative history." *Garrett*, 471 U.S. at 779; *accord Hunter*, 459 U.S. at 368-69. And as we next explain, the text, structure, and history of sections 924(c) and 924(j) provide the requisite clarity.

B. The Text Confirms Congress' Intent to Impose Cumulative Punishments

The Court starts with the statutory text when determining if Congress intended to allow cumulative punishments for two offenses. *E.g.*, *Garrett*, 471 U.S. at 779-80. By its terms, section 924 authorizes cumulative punishments for violations of sections 924(c) and 924(j). Section 924(c)(1) sets mandatory-minimum sentences for defendants who use firearms during crimes of violence or drug-trafficking crimes. It imposes those mandatory minimums both on top of the penalties for the predicate offense and consecutively to any other prison term. Section 924(j), in turn, applies when a defendant "causes the death of a person" with the firearm during a violation of subsection (c). It imposes maximum penalties that differ depending on the manner of death. Because these two provisions are separate offenses that cover different wrongs and impose different penalties, the statutory scheme calls for cumulative punishments.

1. Section 924(c)(1) sets mandatory-minimum penalties that apply when defendants use firearms while committing certain offenses. Specifically, under section 924(c)(1), a defendant "shall" be sentenced to an escalating series of mandatory-minimum prison terms when he "uses," "carries," or "possesses" a firearm during "any crime of violence or drug trafficking crime." 18 U.S.C. § 924(c)(1)(A).

The mandatory minimums in section 924(c)(1) correspond to "each of seven ways that the statute can be violated." Pet.App.55a. They vary depending on what the defendant does with the firearm. Using, carrying, or possessing a firearm sets a minimum of five years; brandishing a firearm, seven years; and discharging a firearm, ten years. 18 U.S.C. § 924(c)(1)(A)(i)-(iii). The mandatory minimums also vary depending on the type of firearm used: ten years for a short-barreled rifle or semiautomatic assault weapon or thirty years for a machinegun. *Id.* § 924(c)(1)(B)(i)-(ii). And they vary further depending on recidivism, with a past section 924(c) conviction bumping the minimum sentence up to twenty-five years. *Id.* § 924(c)(1)(C)(i).

A constant thread across these variations is that section 924(c)(1)'s mandatory minimums "apply without regard to whether the proscribed use causes actual harm." Pet.App.55a. Instead, the minimums turn on the elements "lying closest to the heart of the crime at issue," namely, the type of weapon and its use. *Castillo v. United States*, 530 U.S. 120, 126-27 (2000). So, for example, a defendant who discharges a firearm while trafficking fentanyl will receive the ten-year mandatory minimum under section 924(c)(1)(A)(iii) regardless of whether his bullet hit the ground or an innocent victim.

And because section 924(c)(1) sets only minimums and not maximums, it authorizes a discretionary sentence up to life imprisonment across all seven ways of violating the statute. *Supra* p. 4; *Abbott v. United States*, 562 U.S. 8, 19 (2010). In other words, judges have discretion only to increase section 924(c)(1) sentences, which by design ensures that defendants who violate the provision always receive harsh sentences.

Congress further constrained judges' discretion by establishing that section 924(c)(1)'s mandatory minimums *must* be imposed consecutively to other sentences, leaving no discretion to the sentencing court. In fact, Congress said so three times over. *See Abbott*, 562 U.S. at 25. And it included no exception for sentences imposed under section 924(j).[2]

In the first instance, section 924(c)(1)(A) details that its mandatory minimums "shall" be imposed "in addition to the punishment provided for such crime of violence or drug trafficking crime."

In the second instance, section 924(c)(1)(A) "demands a discrete punishment even if the predicate crime itself 'provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device.'" *Abbott*, 562 U.S. at 25 (quoting 18 U.S.C. § 924(c)(1)(A)).

And in the third instance, section 924(c)(1)(D)(ii) provides that "[n]otwithstanding any other provision of law," "no term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed." This

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[2] Section 924(c) creates only one exception to its series of mandatory minimums—the anti-stacking clause. *Infra* p. 49. The clause provides that the mandatory minimums in section 924(c) do not apply when "a greater minimum sentence is otherwise provided by this subsection or any other provision of law." 18 U.S.C. § 924(c)(1)(A). But since section 924(j) speaks in terms of maximums, not minimums, the anti-stacking clause does no work here. *See* Pet.App.65a; *Abbott*, 562 U.S. at 13.

language drives home the statute's "consecutive-sentence mandate." *Lora*, 599 U.S. at 457.

Section 924(c)(1)(D)(ii) is written as expansively and comprehensively as possible. The consecutive-sentence mandate expressly excludes any exceptions, since it applies "[n]otwithstanding any other provision of law." 18 U.S.C. § 924(c)(1)(D). Moreover, the text covers "any other term of imprisonment," "including" a term imposed for the predicate offense. *Id.* § 924(c)(1)(D)(ii). "Any" "has an expansive meaning, that is, 'one or some indiscriminately of whatever kind,'" *United States v. Gonzales*, 520 U.S. 1, 5 (1997) (citation omitted), broadening the reach of section 924(c)(1)(D)(ii). And as a final indicator of its breadth, the text uses "including" followed by two examples, "the crime of violence or drug trafficking crime." This structure creates a non-exhaustive list, meaning section 924(c)(1)(D)(ii) also covers offenses not specifically listed. *See Google LLC v. Oracle Am., Inc.*, 593 U.S. 1, 19 (2021) (list of factors following "including" "is not exhaustive"). That Congress carefully crafted section 924(c)(1)(D)(ii)'s consecutive-sentence mandate to cover the waterfront of other offenses is strong evidence that Congress did not intend to erase with section 924(j) what it had already written in section 924(c)(1).

At bottom, section 924(c)(1) establishes a strict sentencing scheme that cabins sentencing discretion in favor of ensuring that additional punishments will be imposed for section 924(c)(1) crimes, regardless of whether those crimes harmed any victim. *Abbott*, 562 U.S. at 20. Congress' unyielding, expansive consecutive-sentence language shows that section 924(c)(1)'s penalties should be imposed cumulatively to section 924(j)'s.

2. For its part, section 924(j) enacts "a different approach to punishment" than section 924(c). *Lora*, 599 U.S. at 462. Section 924(j) punishes a defendant who "in the course of a violation of subsection (c), causes the death of a person through the use of a firearm." 18 U.S.C. § 924(j). As opposed to setting mandatory minimums like section 924(c)(1), section 924(j) instead speaks in maximums, leaving district courts "sentencing flexibility." *Lora*, 599 U.S. at 462. And unlike the escalating penalties in section 924(c)(1), the firearm's use, the type of firearm, and recidivism have no effect on the "comprehensive set of penalties" set out in section 924(j). *See id.* at 460. Instead, section 924(j) tailors the appropriate maximum punishment to the manner of death.

If the killing was murder, as defined in 18 U.S.C. § 1111, then the defendant "shall" "be punished by death or by imprisonment for any term of years or for life." *Id.* § 924(j). Section 924(j) thus authorizes the harshest possible penalty, death, while simultaneously affording district courts discretion to impose any lesser term of imprisonment instead. That contrasts sharply with section 924(c)(1), which requires escalating mandatory minimums and allows only the ratcheting up of sentences.

If the killing was manslaughter, then section 924(j) applies the penalties set in 18 U.S.C. § 1112. Those penalties allow for an eight-year maximum sentence for involuntary manslaughter and a fifteen-year maximum sentence for voluntary manslaughter. *Id.* This too contrasts with section 924(c)(1)'s mandatory minimums and boundless maximums.

On top of the differing penalty structures of sections 924(j) and 924(c)(1)—which indicate they are separate offenses—section 924(j) also covers different wrongful

conduct. Section 924(j) focuses on the harm done to the victim, unlike section 924(c)(1). To do so, section 924(j) incorporates the definitions of murder and manslaughter from sections 1111 and 1112.

Sections 1111 and 1112, in turn, are generally considered predicate offenses under section 924(c)(1) that receive cumulative penalties with the section 924(c)(1) offense. *E.g.*, *United States v. Molina-Uribe*, 853 F.2d 1193, 1208 (5th Cir. 1988), *overruled on other grounds by United States v. Bachynsky*, 934 F.2d 1349 (5th Cir. 1991); *United States v. Draper*, 84 F.4th 797, 807 (9th Cir. 2023).[3] But because of the limits of federal criminal jurisdiction, sections 1111 and 1112 only criminalize murder and manslaughter occurring "[w]ithin the special maritime and territorial jurisdiction of the United States." 18 U.S.C. §§ 1111(b), 1112(b); *see id.* § 7 (defining phrase).

Section 924(j), by contrast, uses a different jurisdictional hook for murder and manslaughter: the commission of a gun crime under section 924(c)(1). By linking sections 1111 and 1112 to a violation of section 924(c)(1), Congress in section 924(j) punished the same conduct on a broader scale with a different jurisdictional foundation. Congress' incorporation of sections 1111 and 1112 into section 924(j) serves as a further indication of Congress' intent to treat sections 924(j) and 924(c) as separate offenses with cumulative punishments.

In sum, sections 924(c) and 924(j) create two distinct crimes with two distinct sentencing schemes targeted at two distinct wrongs. Indeed, the sentencing schemes "'cannot' both be followed in a single sentence without

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[3] That said, some courts have held that involuntary manslaughter is not a crime of violence under section 924(c). *See United States v. Benally*, 843 F.3d 350, 353-54 (9th Cir. 2016).

risking 'collision.'" Pet.App.66a (quoting *Lora*, 599 U.S. at 459-60). And because one section, 924(c)(1), clearly demands consecutive punishments, it follows that Congress intended to authorize "cumulative punishments for separate crimes, the sentence for each crime determined by reference to its own particular statutory scheme." Pet.App.66a.

C. Section 924's Structure, History, and Purpose Further Support Imposing Cumulative Punishments

Beyond the text, section 924's statutory "structure" "show[s] in the plainest way that Congress intended" section 924(j) "to be a separate criminal offense which was punishable in addition to, and not as a substitute for" section 924(c). *See Garrett*, 471 U.S. at 779. And historical context and legislative history further confirm that when Congress located section 924(j) outside of section 924(c), it intended to create separate crimes with separate penalty schemes.

1. Sections 924(c) and 924(j) are structured to punish different conduct with "different approach[es] to punishment." *Lora*, 599 U.S. at 462. As petitioner (at 7) recognizes, Congress enacted section 924(j) against the backdrop of a robust sentencing scheme under 924(c), which "is full of *mandatory* penalties." *Id.* And "when subsection (j) was enacted in 1994, subsection (c) specified not just mandatory minimums, but exact mandatory terms of imprisonment." *Id.* (citing 18 U.S.C. § 924(c)(1) (1994)). Section 924(j), by contrast, "eschews mandatory penalties in favor of sentencing flexibility" and speaks in terms of maximum punishments. *Id.* Congress thus made a clean break from the then discretion-less scheme in section 924(c) when it added section 924(j) to punish death resulting from use of a firearm.

That deliberate approach to punishment evinces Congress' intent to impose cumulative—not alternative—punishments for the two subsections. In section 924(c), Congress chose to punish based on the type of firearm, how it was used, and the defendant's recidivism. It makes little sense to conclude that when it enacted section 924(j), Congress meant to supplant section 924(c)'s carefully reticulated sentencing scheme in cases where the defendant's use of a firearm caused death. The more logical conclusion is the one reached by the court below: "Congress's intent in affording courts broad discretion in sentencing a defendant on a § 924(j) homicide count is [] best understood by recognizing, as Congress presumably did, that it had already explicitly mandated a minimum, consecutive punishment for the predicate § 924(c) firearms crime." Pet.App.66a. "A district court can take a mandated § 924(c) sentence into account in determining an appropriate § 924(j) sentence." *Id.* But the district court is not *barred* from imposing a sentence that reflects the gravity of the distinct harms done by a defendant who violates both sections 924(c) and 924(j).

2. Statutory history suggests the same answer. In fact, as petitioner (at 21-22) acknowledges, Congress considered and rejected multiple proposals that would have nested section 924(j) within section 924(c), further confirming that Congress intended the two subsections to be separate offenses. *See, e.g.*, S. 1241, 102d Cong., § 1211 (as introduced June 6, 1991); 137 Cong. Rec. 17611 (1991). Congress also rejected an amendment to section 924(c) that would have imposed a mandatory life sentence if death resulted from a violation. *See Lora*, 599 U.S. at 463 & n.6 (citing 140 Cong. Rec. 11165, 24066 (1994)); *see also* 139 Cong. Rec. 27837 (1993).

Elsewhere in the criminal code, Congress adopted that latter approach of amending preexisting statutes to scale up penalties where an offense results in death.[4] But here, Congress rejected that approach for section 924(c). Instead, Congress intentionally enacted 924(j) as a distinct subsection. As a result, "several unrelated subsections separate subsections (c) and (j) structurally, and nothing joins their penalties textually." *Lora*, 599 U.S. at 461. By placing the new homicide penalties in a discrete subsection and leaving section 924(c)'s cumulative-punishment provisions untouched, Congress made clear that it viewed section 924(j) as a new, separate offense.

3. Section 924(j)'s structure closely mirrors that of other standalone offenses in the criminal code enacted at the same time. Indeed, "several other provisions enacted alongside subsection (j) in the Federal Death Penalty Act of 1994" "follow[] the same pattern." *Id.* at 462 & n.3 (citing 108 Stat. at 1971-73, 1976, 1978-82 (Pub. L. No. 103-322, §§ 60008, 60010, 60011, 60019-60024)). In each instance, Congress chose to enact a new statutory provision criminalizing a new offense, rather than to amend an existing provision to scale up the penalties.

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[4] *See, e.g.*, Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 60003(a)(10), 108 Stat. at 1969 (1994) (amending hostage-taking statute, 18 U.S.C. § 1203(a), to include a clause authorizing the death penalty); *id.* § 60003(a)(11), 108 Stat. at 1969 (same for murder-for-hire statute, 18 U.S.C. § 1958); *id.* § 60006(b), 108 Stat. at 1970-71 (same for deprivation of rights under color of law, 18 U.S.C. § 242); *id.* § 60006(c), 108 Stat. at 1971 (same for interference with federally-protected-activities statute, 18 U.S.C. § 245(b)); *see also* 18 U.S.C. §§ 241(d), 247(d), 844(d), 1581, 1589(d), 2119(3); 21 U.S.C. § 960(b); 42 U.S.C. §§ 2284(a), (b), 3631; 49 U.S.C. § 46505(c).

Further, although section 924(j) incorporates section 924(c)'s elements, it also incorporates sections 1111 and 1112. The incorporation of sections 1111 and 1112 is found in other standalone criminal code provisions as well. *See, e.g.*, 18 U.S.C. §§ 36, 2332. For instance, in section 36, Congress enacted a "new offense" for the indiscriminate use of a firearm during a drug conspiracy and incorporated section 1111's definitions in crafting a new punishment scheme. Pub. L. No. 103-322, § 60008, 108 Stat. at 1971. Section 924(j)'s incorporation of sections 1111 and 1112, like that in section 36, makes it more akin to other standalone offenses in the criminal code and less like a follow-on to section 924(c). *Supra* p. 22.

4. Section 924(c)'s legislative history further indicates that Congress intended to create a standalone firearms offense with harsh mandatory-minimum sentences solely for committing that offense. This too supports reading section 924 to require cumulative punishments for violations of sections 924(c) and 924(j). *E.g.*, *Albernaz*, 450 U.S. at 340-41 (considering legislative history); *Garrett*, 471 U.S. at 782 (same); *Whalen*, 445 U.S. at 692-93 (same).

Section 924(c)'s consecutive-sentence language was enacted via a 1971 amendment to the original 1968 statute. Pub. L. No. 91-644, tit. II, § 13, 84 Stat. at 1889-90 (1971). As enacted, the amendment "impose[d] additional penalties for the use of a firearm to commit, or for carriage of a firearm unlawfully during the commission of, a Federal felony." H. Rep. 91-1768 at 20-21 (1970) (conf. rep.). The amendment meant "that the gun offender will be required to serve a separate and additional sentence for his act of using a gun. There is no discretion given: *there is no way this additional sentence can be avoided*." 116 Cong. Rec. 42150 (1970) (statement of Sen. John

McClellan) (emphasis added); *accord id.* (statement of Sen. Mike Mansfield); 116 Cong. Rec. 35734 (1970) (statement of Sen. Hugh Scott); *id.* (statement of Sen. Mike Mansfield). The decision below dovetails with Congress' desire that use of a firearm during another crime would be subject to "additional" punishment.

A 1984 amendment to section 924(c) further strengthened the consecutive-sentence mandate, partially in response to "recent Supreme Court decisions [that had] greatly reduced its effectiveness as a deterrent to violent crime." S. Rep. 98-225 at 312 (1983). That amendment was designed to abrogate *Simpson v. United States*, 435 U.S. 6 (1978), and *Busic v. United States*, 446 U.S. 398 (1980), two cases in which the Court limited the reach of section 924(c). Citing the "absen[ce] [of] a clear and definite legislative directive" to punish cumulatively, *Simpson* and *Busic* held that section 924(c) did not apply in cases where the predicate felony statute contained its own sentencing-enhancement provision. *Simpson*, 435 U.S. at 15-16; *Busic*, 446 U.S. at 404, 407.

With the 1984 amendment, Congress removed any doubt about the scope of section 924(c)'s cumulative penalties. First, Congress reaffirmed that section 924(c) "sets out an offense distinct from the underlying felony and is not simply a penalty provision." S. Rep. 98-225 at 312 (1983). Second, it clarified that courts should impose a mandatory consecutive sentence even when the underlying federal felony already has an enhanced penalty scheme. *Id.* at 313. Finally, Congress underscored its "inten[t] that the mandatory sentence … be served prior to the start of the sentence for the underlying felony *or any other offense*." *Id.* (emphasis added); *see* Pub. L. No. 98-473, ch. X, § 1005, 98 Stat. at 2139 (1984) ("[N]or shall the term of imprisonment

imposed under this subsection run concurrently with any other term of imprisonment ….").

When the Court again narrowed section 924(c)(1), this time to offenses involving active use of a gun, *see Bailey v. United States*, 516 U.S. 137 (1995), Congress rebuffed that decision too, *see United States v. O'Brien*, 560 U.S. 218, 233 (2010) (discussing "Bailey Fix Act"). In other words, Congress has rejected multiple attempts to cabin the reach of section 924(c). Again, the decision below is consistent with that history.

5. Finally, imposing cumulative punishments for violations of sections 924(c) and 924(j) aligns with statutory purpose. *Cf. Wooden v. United States*, 595 U.S. 360, 374-75 (2022). In enacting section 924, Congress undisputedly wanted to harshly punish and deter firearm crimes. Guns played an outsized role in the unprecedented crime wave of the 1960s—a fact not lost on federal policymakers. *See, e.g.*, 116 Cong. Rec. 35734 (1970) (statement of Sen. Hugh Scott). When Congress enacted section 924(c)'s consecutive-sentence mandate, legislators emphasized the "dire threat" criminals that used firearms posed to law enforcement and the broader public. *See id.* Congress sought to ensure that defendants would be subject to mandatory punishment "solely for deciding to use a firearm." 115 Cong. Rec. 2567 (1969) (statement of Sen. Mike Mansfield). The decision below is consistent with Congress' evident aims.

D. This Court's Precedents Call for Cumulative Punishments

This Court's precedents back what the text, structure, and history of section 924 make plain: that Congress intended sections 924(c) and 924(j) as separate offenses with cumulative punishments.

1. Chief among them, *Lora* credited the textual, structural, and purposive differences between sections 924(c) and 924(j) to conclude that Congress intended to cleave the latter's penalties from the former's. Specifically, the Court considered whether section 924(j) incorporated the consecutive-sentence mandate of section 924(c). 599 U.S. at 455. In holding that it did not, *Lora* reasoned that Congress "plainly chose a different approach to punishment" in section 924(j) as compared to section 924(c). *Id.* at 462. Rather than merely lifting its punishments from section 924(c), the Court explained, section 924(j) instead "supplies its own comprehensive set of penalties." *Id.* at 460.

Along the way, *Lora* took every opportunity to underscore the differences between sections 924(c) and 924(j). "[N]othing joins their penalties textually," *id.* at 461, and instead of laying sections 924(c) and 924(j) side-by-side, Congress separated them by "several unrelated subsections," *id.*; *supra* pp. 21, 24. And at bottom, Congress' "different approach to punishment" in section 924(j) allowed the "harshest maximum penalty possible"—death—but paired that ultimate maximum with "sentencing flexibility over mandatory penalties." *Lora*, 599 U.S. at 462-63. Although Congress "could certainly have designed" sections 924(c) and 924(j) such that they were intertwined, it "did not": Section 924(c)'s rules "do[] not govern § 924(j) sentences," making clear that the two are "different" offenses. *Id.* at 463-64.

To be sure, as petitioner (at 31-32) and the government (at 23) note, *Lora* reserved the question presented here, *id.* at 461; *infra* p. 44. But that fact does not make *Lora*'s reasoning any more consistent with petitioner's and the government's reading of section 924. To the contrary, every premise bracing *Lora*'s conclusion

relies on the differences—textually, structurally, and in purpose and approach—between sections 924(c) and 924(j). As discussed, *supra* pp. 17-28, those differences show that "Congress intended to create a separate offense" with section 924(j), *see Garrett*, 471 U.S. at 793, "subject to different penalty schemes," Pet.App.61a.

2. The Court's pre-*Lora* decisions interpreting section 924 further support the decision below by confirming that section 924(c)'s "straightforward language" means what it says: A section 924(c) sentence must run consecutively to "'any term of imprisonment' without limitation." *Gonzales*, 520 U.S. at 9 (quoting 18 U.S.C. § 924(c)). *Gonzales* teaches that when violated, section 924(c)'s "consecutive-sentencing provision" requires that a defendant's "sentencing enhancement under that statute must run consecutively *to all other prison terms*." *Id.* at 9-10 (emphasis added); *accord* Pet.App.59a-60a. That is so "regardless of whether [the other prison terms] were imposed under firearms enhancement statutes similar to § 924(c)," including, over the dissent's protest, "a virtually identical state firearms enhancement" punishing the same conduct. *Gonzales*, 520 U.S. at 9-10.

Likewise, in *Abbott*, the Court affirmed that section 924(c)'s clear "command" that "all § 924(c) offenders shall receive additional punishment for their violation of that provision" still holds true, regardless of section 924(c)'s anti-stacking provision. 562 U.S. at 25. Defendants are "not spared," from section 924(c)'s "mandatory, consecutive sentence" just "by virtue of receiving a higher mandatory minimum on a different count of conviction." *Id.* at 13; *accord Delligatti v. United States*, 145 S. Ct. 797, 803 (2025) (recognizing "mandatory minimum sentence"

in section 924(c) must "be served consecutively with any other term of imprisonment").

Section 924(c)'s "command[,] reiterated three times," *Abbott*, 562 U.S. at 25, looms even larger here: If 924(c) demands consecutive punishment to "virtually identical state firearms enhancements" that penalize the same conduct, *Gonzales*, 520 U.S. at 9, it must also demand the same of sentences imposed under section 924(j), which punishes different conduct entirely. If petitioner's and the government's reading were to prevail instead, section 924(j) would become not just "an exception severely limiting application of" section 924(c)'s "command," *Abbott*, 562 U.S. at 25; *supra* pp. 19-20, but a trump card letting defendants escape the consecutive-sentence mandate altogether. Congress did not intend such an "internally inconsistent" result. *Id.* (quoting *Greenlaw v. United States*, 554 U.S. 237, 251 (2008)).

3. How the Court has delineated offenses in section 924 also cements that sections 924(c) and 924(j) are indeed separate offenses imposing separate, cumulative punishments.

In *Castillo*, the Court held that section 924(c)(1)(B)(ii)'s prohibition on using a "machinegun" defined an entirely "separate offense" from section 924(c)(1)(A)'s simple prohibition on using a "firearm," rather than a mere "sentencing factor[]" increasing the penalty of a section 924(c) violation. 530 U.S. at 121. That was so for several reasons.

First, the "statute's structure." *Id.* at 124. "Congress placed the element 'uses or carries a firearm' and the word 'machinegun' in a single sentence," followed by separate sentences "refer[ring] directly to sentencing." *Id.* at 124-25. *Second*, the nature of sentencing factors.

Unlike "[t]raditional sentencing factors," using a machinegun did not speak to the "characteristics of the offender." *Id.* at 126. Nor was it a "special feature[] of the manner in which" the basic section 924(c) crime "was carried out," due to the "great" difference "both in degree and kind" in using a machinegun. *Id.* at 126. *Third*, that the "presence" of a machinegun induced an "added mandatory sentence" of great "length and severity" weighed "in favor of treating such offense-related words as referring to an element." *Id.* at 131; *accord O'Brien*, 560 U.S. at 235 (affirming *Castillo*'s holding as to amended section 924(c)).[5]

So too here. Like section 924(c)(1)(B)(ii), section 924(j) "clearly and indisputably establishes the elements of the basic federal offense," and then follows that definition with two sentences "refer[ring] directly to sentencing." *Castillo*, 530 U.S. at 124-25. Further, homicide—the linchpin of a section 924(j) violation—is not a "characteristic[] of the offender," and is "great[ly]" different, "both in degree and kind," than mere possession or use of a firearm that constitutes a "basic" 924(c) violation. *Id.* at 126. And finally, "caus[ing] the death of a person" "in the course of a" section 924(c) violation, 18 U.S.C. § 924(j), can invoke the longest and most severe punishment of all: death, *Castillo*, 530 U.S. at 127; *accord United States v. Julian*, 633 F.3d 1250, 1254-55 (11th Cir. 2011) (employing same reasoning). So, like in *Castillo*,

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[5] *Castillo* also reviewed section 924(c)'s legislative history, *see supra* pp. 26-28, and concluded that "the legislative statements … seemingly describe offense conduct." 530 U.S. at 130. In addition, *Castillo* considered a fifth factor irrelevant here: whether putting the presence of a machinegun to the jury, rather than the judge, would "complicate" or "risk unfairness" at trials. *Id.* at 127.

sections 924(c) and 924(j) are separate crimes demanding separate, cumulative punishments.

4. That conclusion also coheres with this Court's double-jeopardy precedents.

For example, the Court in *Garrett* found no double-jeopardy issue when a defendant was jointly convicted of both a continuing criminal enterprise (21 U.S.C. § 848) and the predicate offense—there, the importation of marijuana (21 U.S.C. §§ 952, 960(a)(1), (b)(2), and 18 U.S.C. § 2). 471 U.S. at 776, 794-95.

Explaining why, the Court noted the text of the continuing-criminal-enterprise provision had "no reference to other statutory offenses," and rather than including "a multiplier of the penalty established for some other offense," set out "a separate penalty." *Id.* at 781. Congress had constructed "a carefully crafted prohibition aimed at a special problem": "the 'top brass' in the drug rings, not the lieutenants and foot soldiers." *Id.* "Moreover, disallowing cumulative sentences would have the anomalous effect in many cases of converting the large fines provided by [the continuing-criminal-enterprise provision] into ceilings," which would be inconsistent with Congress' purpose behind the fines: depriving "big-time drug dealers of some of their enormous profits." *Id.* at 794. The Court concluded that "nothing in the Constitution … prevents Congress from punishing separately each step leading to the consummation of a transaction which it has power to prohibit and punishing also the completed transaction." *Id.* at 779 (citation and emphasis omitted).

The parallels to sections 924(c) and 924(j) are legion. Here, as in *Garrett*, Congress sought to punish two different steps of a criminal process: first, using or

possessing a firearm while committing certain felonies and second, killing another person "in the course" of that violation. 18 U.S.C. § 924(c), (j). Each "separate evil[]"—possessing or using a firearm and homicide—is targeted separately. *See Albernaz*, 450 U.S. at 343. And each subsection brings along its own "separate penalty." *Garrett*, 471 U.S. at 781; *see also Lora*, 599 U.S. at 462. As in *Garrett*, those features of the punishment scheme counsel against concluding that Congress did not authorize cumulative punishments.

Hunter is also instructive. There, the Court concluded that the Missouri Legislature intended cumulative punishments for both "armed criminal action"—a felony for committing other felonies while using a deadly weapon—and the "underlying felony" supporting that action (first-degree robbery). *Hunter*, 459 U.S. at 362-64. The Missouri Legislature, like Congress here, directed that "[t]he punishment imposed" for armed criminal action "shall be in addition to any punishment provided by law for the [underlying] crime committed." *Id.* at 362 (quoting Mo. Stat. App. § 559.225). This "specific[] authoriz[ation]" made the Legislature's intent for cumulative punishments "crystal clear." *Id.* at 368.

Section 924(c)'s thrice-repeated decree for "additional punishment" for "all § 924(c) offenders," *Abbott*, 562 U.S. at 25, crystalizes Congress' intent just as clearly. As separate crimes with separate penalty structures, section 924(c)'s consecutive-sentence mandate requires cumulative punishments with section 924(j).

Finally, *Diaz v. United States* highlights another significant pitfall inherent in petitioner's and the government's reading of the statute. 223 U.S. 442 (1912).

The defendant in *Diaz* was initially convicted of assault. *Id.* at 444, 448. Then, after the victim later died, the defendant was convicted of homicide. *Id.* The Court concluded that the first conviction posed "no obstacle to the prosecution for homicide." *Id.* at 449. Because "[a]t the time of the trial for" assault, "the death had not ensued," no homicide had yet been committed. *Id.* Only after the victim passed away, "and not before, was it possible to put the accused in jeopardy for" homicide. *Id.*[6]

Like the defendant's position in *Diaz*, petitioner's and the government's reading risks rewarding those section 924(c) offenders who are inefficient killers. Should a victim of a section 924(c) offense later die, petitioner's and the government's view would foreclose any later section 924(j) conviction and sentence, even though no section 924(j) conviction was possible any earlier. For over a century, the Court has rejected such a result. It should do the same in this case.

II. Petitioner's and the Government's Alternative Reading Is Incorrect

Petitioner and the government would have this Court ignore the clear text, structure, and history of section 924 and jettison "the design Congress chose." *Lora*, 599 U.S. at 464. In its place, they seek a statutory scheme that is contrary to congressional intent, conflicts with this Court's precedents, and produces absurd outcomes this Court has long rejected.

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[6] Although the defendant in *Diaz* relied on a statutory prohibition against double jeopardy that existed under Filipino law, the Court has referenced *Diaz*'s reasoning in later constitutional double-jeopardy cases. *See Garrett*, 471 U.S. at 791 (citing *Diaz*); *Rutledge v. United States*, 517 U.S. 292, 307 n.17 (1996) (same).

A. Petitioner Demands Magic Words of Congress

In petitioner's telling, the clear indications of congressional intent here are simply not enough. That is so, petitioner (at 3, 5, 16, 19, 29-31) contends, because Congress can only "clearly indicate[] a wish to double-punish" offenses that fail *Blockburger*'s element test by satisfying a "demanding" "clear-statement rule." Pet. Br. 3 (citation omitted). In petitioner's view, Congress was required to write that a section 924(j) punishment is "in addition to the punishment" of a section 924(c) violation (or vice versa) to authorize cumulative punishments. *See* Pet. Br. 3, 16. And though the government is more circumspect, it too seems at times to suggest (at 20, 23, 25-26) that if two offenses fail *Blockburger*'s test, Congress must say that one punishment is "in addition to" the other (or language to that effect) to overcome *Blockburger*. U.S. Br. 20.

No such rule exists. All Congress must do is clearly demonstrate its intent to authorize cumulative punishment, however it wishes. *E.g.*, *Garrett*, 471 U.S. at 779; *Hunter*, 459 U.S. at 368. The text has never been the sole determinant of that intent; rather, as the government previously urged, "the structure of the statute, its context and history, and the societal interests and objectives underlying it, all shed light" on what Congress wanted courts to do. *Garrett* U.S. Br. 16.

Petitioner trekked far afield from this Court's double-jeopardy precedents to find his "clear-statement rule." *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, petitioner's key case (at 3, 16, 19, 24), concerns not double jeopardy, but sovereign immunity. 599 U.S. 382, 385 (2023). That a "clear statement" is needed to "abrogate sovereign immunity," *id.* at 387 (citation omitted), does not mean the same is required for

Congress to authorize cumulative punishments. And if anything, *Lac du Flambeau* undermines petitioner's position: However "demanding" the "clear statement" standard may be, it is still "not a magic-words requirement." *Id.* at 388 (citation omitted). Petitioner fails to acknowledge that "Congress need not state its intent in any particular way," nor "make its clear statement in a single [statutory] section." *Id.* (citations omitted); *accord Soto v. United States*, 145 S. Ct. 1677, 1685 (2025) (looking "to the text, context, and structure of the entire statutory scheme at issue" to determine congressional intent (cleaned up)).

Petitioner insists that a "clear-statement rule" is necessary to ensure that "Congress … operate[s] in congruence with the Constitution." Pet. Br. 5 (quoting *West Virginia v. EPA*, 597 U.S. 697, 736 (2022) (Gorsuch, J., concurring)). That rationale is plainly inapplicable here. As petitioner (at 18) concedes, the Double Jeopardy Clause constrains "the *sentencing court*," not Congress. *Hunter*, 459 U.S. at 366 (emphasis added).

Petitioner similarly suggests that only a clear statement can overcome *Blockburger*'s presumption because the *Blockburger* test "help[s] courts act as faithful agents of the Constitution" and Congress. Pet. Br. 5 (cleaned up). But that is only true insofar as *Blockburger* helps courts perform their assigned role of determining the "best reading" of the statutes at issue. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 400 (2024). Petitioner's request to "convert[]" *Blockburger*'s rule of thumb "into a conclusive presumption of law" would frustrate, not further, courts' efforts to determine congressional intent. *Garrett*, 471 U.S. at 779.

B. Petitioner's and the Government's Textual and Structural Arguments Lack Merit

1. Many of petitioner's and the government's arguments boil down to the proposition that because section 924(j) lacks consecutive-sentencing language, sections 924(c) and 924(j) cannot impose cumulative punishments. *See* Pet. Br. 21-22; U.S. Br. 19-20. This argument suffers from multiple infirmities.

To start, it is at odds with *Hunter*, 459 U.S. 359. That case centered on Missouri's first-degree-robbery and armed-criminal-action statutes. *Id.* at 366-67. The armed-criminal-action statute stated that its penalty would be imposed "in addition to any punishment" for the underlying crime. *Id.* at 362 (citation omitted). The first-degree-robbery statute, by contrast, said nothing about cumulative penalties. *Id.* at 361. The Court nevertheless held that "the Missouri Legislature has made its intent crystal clear" to allow for cumulative punishments. *Id.* at 368. *Hunter* did not require both statutes to include cumulative-punishment language, as petitioner and the government would have the Court do here.

Petitioner's and the government's double-language requirement also wars with statutory history. Congress enacted section 924(j) decades after section 924(c) was already on the books, *supra* pp. 23-25, meaning the consecutive-sentence mandate was long established. *Hunter*, too, had already been decided when section 924(j) was enacted, so Congress knew that the presence of such language in one statute suffices for double-jeopardy purposes and presumably "legislated with [that] in mind." *See Albernaz*, 450 U.S. at 342. But petitioner and the government would now require Congress to include duplicative (and, before now, unnecessary) cumulative-punishment language in the new offense every time it

enacts a new statute that it wants to stack with section 924(c).

On top of making little practical sense, that outcome would conflict with the presumption against implied repeals. Petitioner and the government essentially argue that Congress shrunk section 924(c)'s scope by adding section 924(j) without also including cumulative-sentence language in that new offense. But when Congress intends to modify an older law by enacting a newer law, it usually says so expressly. *E.g.*, *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 380-81 (1996). Petitioner and the government, however, seem to posit that unless the new provision *also* expressly authorizes cumulative punishment, then courts should read out section 924(c)'s express cumulative-punishment authorization.

A decision endorsing that theory would not only constrict section 924(c)'s reach in relation to section 924(j); it would also disrupt the extensive body of lower-court precedents holding that the statute establishing a 924(c) predicate offense need not separately include cumulative-punishment language. *See, e.g.*, *United States v. Singleton*, 16 F.3d 1419, 1428 (5th Cir. 1994) ("Congress may clearly indicate its intent to impose cumulative punishments in *either* of two challenged statutes; it need not do so in *both*."); *United States v. Johnson*, 32 F.3d 82, 85-86 (4th Cir. 1994); *United States v. Harris*, 832 F.2d 88, 91 (7th Cir. 1987); *United States v. Dowd*, 451 F.3d 1244, 1251-52 (11th Cir. 2006). This Court should not adopt an approach with such far-reaching and disruptive results.[7]

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[7] As to section 924(j), petitioner also points out that "'Congress specifically considered and rejected' a call to 'place[] subsection (j) within subsection (c).'" Pet. Br. 21 (quoting *Lora*, 599 U.S. at 463 &

2. Petitioner and the government also contend that section 924(c)(1) fails to provide the necessary indicia of congressional intent for cumulative punishments. According to petitioner (at 23-24) and the government (at 19, 27), section 924(c)(1)(A)'s cumulative-punishment language is insufficiently clear because it only requires its penalties to be imposed "in addition to" *predicate* offenses, and not "in addition to" section 924(j). That is an overly restricted view of what section 924(c)(1)(A) accomplishes and how it interacts with section 924(j).

As discussed, section 924(c)(1)(A) sets up a strict penalty scheme with escalating mandatory minimums. *Supra* pp. 17-18. Section 924(c) makes clear that those mandatory penalties are to run consecutively to the penalties for *any* other separate offense. And after *Lora*, sections 924(c) and 924(j) are undeniably separate offenses. Those facts, taken together, are more than enough to demonstrate Congress' intent to impose cumulative punishments.

Petitioner (at 25) (but not the government) also disputes that section 924(c)(1)(D)(ii) supports imposing cumulative punishments. According to petitioner, that section requires the existence of a properly imposed, separate prison term, so relying on it to impose cumulative punishments assumes the answer to the

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n.6). But that decision cuts against petitioner's view. Congress' decision to separate section 924(j) from section 924(c) indicates its desire to treat the two as separate offenses. *See Lora*, 599 U.S. at 463 & n.6; *supra* pp. 23-25. Petitioner's footnote (at 28 n.3) contrasting section 924(j) with other instances in the criminal code where Congress included "in addition to" language is also unavailing: No one disputes that section 924(j) itself does not include consecutive-sentence or cumulative-punishment language. That authorization comes from section 924(c).

double-jeopardy question. Again, petitioner's argument overlooks the basic premise that, after *Lora*, sections 924(c) and 924(j) *are* separate offenses. And section 924(c) requires its mandatory-minimum sentences to run consecutively to sentences imposed for separate offenses, including section 924(j).

3. Petitioner (at 26) and the government (at 20) argue that section 924(c)(5) "shows how Congress could have constructed penalties that might ultimately add together." *Lora*, 599 U.S. at 461. Section 924(c)(5) imposes a fifteen-year mandatory minimum on defendants who use armor-piercing ammunition during a predicate offense. But if the defendant kills someone using armor-piercing ammunition, section 924(c)(5) further provides that its penalties are imposed "in addition to the punishment provided for" the predicate offense "or conviction under this section." In petitioner's and the government's view, Congress should have structured section 924(j) in a similar manner by using equivalent cumulative-punishment language.

This argument is simply a variation on petitioner's and the government's magic-words requirement. As explained, *supra* pp. 38-39, the lack of consecutive-sentence language in section 924(j) is not dispositive, because this Court's precedents permit cumulative punishments when only one of the statutes at issue includes language signaling congressional intent to impose them. *E.g.*, *Hunter*, 459 U.S. at 368.

Regardless, critical differences between sections 924(c)(5) and 924(j) independently make section 924(c)(5) a poor comparator; as petitioner recognizes, they are "cast from … different mold[s]." Pet. Br. 27 (quoting *Lora*, 599 U.S. at 461). Section 924(c)(5) is similar in kind to other section 924(c) offenses in that it focuses on the

type of weapon used. Just as the use of certain firearms or firearm modifiers can bump up a defendant's mandatory minimum, 18 U.S.C. § 924(c)(1)(B)-(C), so too will the use of armor-piercing ammunition, *id.* § 924(c)(5). Section 924(j), in contrast, is focused exclusively on the outcome for the victim and not the type of weapon used. Given those differences, it makes sense that section 924(j) was not included in section 924(c) but that section 924(c)(5) was.

It also makes sense that section 924(c)(5) has additional cumulative-sentence language not found in section 924(j)—specifically, the directive that any punishment under section 924(c)(5) should be "in addition to the … conviction under this section." *Id.* § 924(c)(5). The structure of section 924(c) shows why. The other penalties set out in section 924(c) are mandatory minimums that replace each other. Section 924(c)(1)(A)(i)-(iii), for example, sets a baseline mandatory minimum of five years, which increases to seven years for brandishing a firearm and ten years for discharging it. But a "defendant who possessed, brandished, *and* discharged a firearm in violation of § 924(c) would … face a mandatory minimum term of ten years," not twenty-two years. *Abbott*, 562 U.S. at 13 (emphasis added).

As a result, Congress reasonably clarified that even though section 924(c)(5) was placed in the same subsection as these other penalties (and thus lacked structural indicia supporting cumulative punishments), section 924(c)(5)'s penalties would be cumulative to anything else in section 924(c). By contrast, section 924(j) does not need the same clarification; unlike section 924(c)(5), it is plainly a separate offense from section

924(c) even without that language. *See Lora*, 599 U.S. at 458-59; *supra* pp. 29-30.

4. Petitioner (at 27) and the government (at 21-22) also point to the amendments made to section 924(c) in 1984 in the wake of this Court's decisions in *Simpson* and *Busic*. In those cases, the Court interpreted an older version of section 924(c), which provided that a defendant who:

> uses a firearm to commit any felony for which he may be prosecuted in a court of the United States … shall, in addition to the punishment provided for the commission of such felony, be sentenced to a term of imprisonment for not less than one year nor more than ten years, … nor shall the term of imprisonment imposed under this subsection run concurrently with any term of imprisonment imposed for the commission of such felony.

Simpson, 435 U.S. at 7-8 (quoting 18 U.S.C. § 924(c) (1968)).

The Court held that section 924(c)'s consecutive-sentence language did not apply when the predicate offense "itself authorizes enhancement if a dangerous weapon is used." *Busic*, 446 U.S. at 399-400; *accord Simpson*, 435 U.S. at 12-13. Congress then amended section 924(c) to abrogate those cases, "clarifying that § 924(c) applied even when the predicate crime already 'provides for an enhanced punishment.'" *Abbott*, 562 U.S. at 23 (quoting *Gonzales*, 520 U.S. at 10).

Petitioner and the government suggest that if Congress wanted section 924(j) to impose cumulative

punishment, it should have included in that provision language similar to what it added to section 924(c) after *Busic* and *Simpson*. Again, however, there is no one-size-fits-all formulation Congress must use to accomplish cumulative punishments. Relying on section 924(c)'s cumulative-punishment mandate is more than enough. And if anything, the decision to amend section 924(c) in response to *Busic* and *Simpson* emphasizes Congress' desire that punishments under section 924(c) run consecutively to any other offense, notwithstanding the penalty structure of that offense. That weighs in favor of reading section 924(c)'s consecutive-sentence language as applying to penalties imposed under section 924(j) as well.

5. Petitioner (at 31-32) and the government (at 23-25, 27-28) argue that *Lora* does not support the decision below. Petitioner and the government latch on to the Court's statement that "the Government's view of double jeopardy can easily be squared with our view that subsection (j) neither incorporates subsection (c)'s penalties nor triggers the consecutive-sentence mandate." 599 U.S. at 462. But earlier in the same paragraph the Court explained that it "express[ed] no position on the Government's view of double jeopardy, because even assuming it, *arguendo*, the Government's view does not refute [the] holding on the question presented." *Id.* at 461. The Court expressly reserved the question presented in this case. And for the reasons detailed above, the reasoning of *Lora* supports allowing cumulative punishments here. *Supra* pp. 29-30.

6. Petitioner (at 24-25, 30-32) contends that under the Court's decisions in *Whalen*, *Rutledge*, and *Ball*, "the fact that greater and lesser included crimes are separate statutory offenses for which punishments are separately provided" does not rise "to the level of the clear statement

necessary for" cumulative punishments. Pet. Br. 30 (cleaned up). But petitioner's summary of precedent ignores *Garrett*, *see supra* pp. 33-34, in which a separation of offenses into different statutory sections was deemed sufficiently indicative of Congress' intent for cumulative punishments. 471 U.S. at 781. And in any event, neither *Whalen*, *Rutledge*, nor *Ball* addressed a statute with express indications of congressional intent like section 924(c)'s cumulative-punishment and consecutive-sentence language.

Whalen, for example, considered whether Congress authorized multiple punishments for convictions for rape and killing a person during rape under D.C. law. 445 U.S. at 690. Although the Court acknowledged that *Blockburger*'s test gives way when cumulative sentences are "elsewhere specially authorized by Congress," *id.* at 693, it concluded that "[n]either statute" included any such authorization and that "the legislative history … shed[] no light on that question," *id.* at 690. Left only with *Blockburger*'s presumption, *id.* at 693-94, the Court held no cumulative punishment was authorized, *id.*; *accord Hunter*, 459 U.S. at 366-67 (confirming this interpretation of *Whalen*). Section 924(c)'s text, structure, and history, by contrast, supply the very authorization missing in *Whalen*.

Similarly, although *Rutledge* held that a conspiracy offense (under 21 U.S.C. § 846) and a continuing-criminal-enterprise offense (under 21 U.S.C. § 848) could not be cumulatively punished, 517 U.S. at 307, neither statute included—and the Court did not discuss—any consecutive-sentence language or other indicia of Congress' intent to authorize cumulative punishments.

The same is true of *Ball v. United States*, 470 U.S. 856 (1985). There, the Court held that a defendant could not

be cumulatively sentenced for both "receiving" (18 U.S.C. § 922(h)(1)) and "possessing" (18 U.S.C. § 1202(a)(1)) a firearm as a felon. *Id.* at 857-58, 863-64. But that was because "a felon who receives a firearm must also possess it," meaning these statutes reached "the same criminal act." *Id.* at 862. Nothing in either statute indicated that Congress had any "intention of subjecting that person to two convictions." *Id.* *Ball* has no bearing here; sections 924(c) and 924(j) are separate offenses, targeting separate criminal acts, and—through section 924(c)—Congress evinced a clear intent to allow separate, cumulative punishments.

7. Petitioner (at 29) floats the idea of lenity, only to agree that there is "no need for lenity" here. Petitioner is correct. "[T]he 'touchstone' of the rule of lenity 'is statutory ambiguity.'" *Albernaz*, 450 U.S. at 342. Section 924(c)'s consecutive-sentence mandate is unambiguous, and so "the rule of lenity simply has no application in this case." *See id.* at 343.

C. Petitioner's and the Government's Reading Produces Untenable Results

The decision below correctly recognized that reading section 924(j) to substitute for section 924(c) would create "anomalous result[s]" and "afford[] only those defendants whose § 924(c) crimes actually caused death the possibility of avoiding" the otherwise mandatory penalties under section 924(c). Pet.App.62a. Congress did not intend for courts to "impose a lower sentence on a defendant whose firearms use caused death" than for a "defendant whose firearms use in similar circumstances did not cause death." Pet.App.62a.

1. Consider the example the Court discussed in *Lora*: "voluntary manslaughter using a machinegun in the

course of a subsection (c)(1) violation." 599 U.S. at 459. Section 924(c)'s mandatory minimum for use of a machinegun, regardless of whether harm results, is thirty years. 18 U.S.C. § 924(c)(1)(B)(ii). But under section 924(j)(2), the maximum sentence for voluntary manslaughter is fifteen years. *Id.* §§ 924(j)(2), 1112(b); *see Lora*, 599 U.S. at 459-60. As the Court noted in *Lora*, it is "impossible" to fashion a single section 924(j) sentence that is both "not less than 30 years" and "not more than 15 years." 599 U.S. at 460. A defendant convicted under section 924(j) therefore could not be subject to the mandatory-minimum sentence that would otherwise be required by section 924(c) and its consecutive-sentence mandate.[8]

Under petitioner's and the government's view, then, adding the additional element of "death" would mean that a defendant convicted of the purportedly greater section 924(j)(2) offense would receive a lower sentence than a defendant convicted of the "lesser" section 924(c) offense whose machinegun use did not cause death. As it has done before, this Court should decline to adopt a construction of section 924 that "would result in sentencing anomalies Congress surely did not intend," where "the worst

[8] Machinegun-toting manslaughterers are not the only ones who would benefit from petitioner's and the government's anomaly. As another example, take a repeat section 924(c) offender who uses a firearm with a silencer while trafficking drugs, which then results in voluntary manslaughter. If the defendant is convicted under section 924(j), she faces a maximum sentence of fifteen years, 18 U.S.C. §§ 924(j)(2), 1112(b), but under section 924(c), even if the defendant had done no harm, the mandatory sentence is "imprisonment for life," *id.* § 924(c)(1)(C)(ii).

offenders would often secure the shortest sentences." *Abbott*, 562 U.S. at 21.[9]

2. That untenable result illustrates another flaw in petitioner's and the government's position: It would render the second half of section 924(j) a dead letter in practice. Contrary to the government's assertion (at 5), prosecutors are not "free to pick one offense or the other," because it is difficult to imagine a scenario where a prosecutor would charge the greater section 924(j)(2) offense over the lesser section 924(c) offense for a firearm crime resulting in manslaughter. Department of Justice policy requires federal prosecutors generally to "charge and pursue the most serious, readily provable offense," defined to include "those [offenses] with the most significant mandatory minimum sentences."[10] Section 924(c) sets mandatory-minimum penalties based on various factors, with a maximum sentence of life imprisonment. *See Alleyne*, 570 U.S. at 112, 116-17. For manslaughter, section 924(j)(2) offers a lower minimum sentence *and* a lower maximum sentence than the lesser-included section 924(c) offense. Thus, for every defendant who commits manslaughter in the course of a section 924(c) violation, section 924(c) will always be the "most

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[9] As the Second Circuit noted, Pet.App.64a n.35, this anomaly is not avoided by the possibility of imposing a section 924(j)(2) sentence concurrently with a mandatory-minimum section 924(c) sentence. If double jeopardy applies, "the collateral consequences of a second conviction make it as presumptively impermissible to impose as it would be to impose any other unauthorized cumulative sentence," *Rutledge*, 517 U.S. at 302, regardless of whether the sentence for that second conviction is imposed consecutively or concurrently.

[10] Attorney General's Memorandum, General Policy Regarding Charging, Plea Negotiations, and Sentencing 2 (Feb. 5, 2025), https://www.justice.gov/ag/media/1388541/dl?inline.

serious" offense. That leaves section 924(j)(2) with little meaningful work to do in the real world.

3. Petitioner's and the government's reading also flouts the sole exception to section 924(c)'s "ascending series of minimums": the anti-stacking clause. *Abbott*, 562 U.S. at 19; *supra* p. 19 n.2. As noted, that clause provides an exception to section 924(c)(1)'s mandatory minimums when a "greater minimum sentence is otherwise provided." 18 U.S.C. § 924(c)(1)(A). In such cases the greater minimum sentence applies, consistent with "§ 924(c)'s longstanding thrust" to "impose *additional* punishment for § 924(c) violations." *Abbott*, 562 U.S. at 20.

Petitioner and the government would carve out another exception. Under their view, defendants whose criminal conduct implicates both sections 924(c) and 924(j) cannot be sentenced under both provisions. A section 924(j) conviction thus provides a defendant with an escape hatch from the otherwise mandatory sentence that would be imposed under section 924(c). That interpretation runs afoul of the principle that when Congress includes exceptions in a statute—here, the anti-stacking clause—"[t]he proper inference … is that Congress considered the issue of exceptions and, in the end, limited the statute to the ones set forth." *See United States v. Johnson*, 529 U.S. 53, 58 (2000).

CONCLUSION

The judgment of the Second Circuit should be affirmed.

Respectfully submitted,

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STATUTORY APPENDIX

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CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. V provides, in relevant part:

No person shall … be subject for the same offence to be twice put in jeopardy of life or limb….

18 U.S.C. § 924(c)(1) provides, in relevant part:

(A) Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime—

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

* * *

(D) Notwithstanding any other provision of law—

(i) a court shall not place on probation any person convicted of a violation of this subsection; and

(ii) no term of imprisonment imposed on a person under this subsection shall run concurrently with any

other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

18 U.S.C. § 924(c)(5) provides:

Except to the extent that a greater minimum sentence is otherwise provided under this subsection, or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be prosecuted in a court of the United States, uses or carries armor piercing ammunition, or who, in furtherance of any such crime, possesses armor piercing ammunition, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime or conviction under this section—

(A) be sentenced to a term of imprisonment of not less than 15 years; and

(B) if death results from the use of such ammunition—

(i) if the killing is murder (as defined in section 1111), be punished by death or sentenced to a term of imprisonment for any term of years or for life; and

(ii) if the killing is manslaughter (as defined in section 1112), be punished as provided in section 1112.

18 U.S.C. § 924(j) provides:

A person who, in the course of a violation of subsection (c), causes the death of a person through the use of a firearm, shall—

(1) if the killing is a murder (as defined in section 1111), be punished by death or by imprisonment for any term of years or for life; and

(2) if the killing is manslaughter (as defined in section 1112), be punished as provided in that section.