No. 24-

IN THE

Supreme Court of the United States

LADONTA TUCKER

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

18 U.S.C. § 924(c) prescribes a mandatory minimum sentence of five years in prison if a person "uses" or "carries" a firearm "during and in relation" to a predicate drug offense or violent crime. 18 U.S.C. § 924(c)(1)(A). The question presented is:

Whether a person uses or carries a firearm "during and in relation to" a predicate offense anytime the firearm has "the potential to facilitate" the crime—even if the gun played no role in the offense.

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner, defendant-appellant below, is Ladonta Tucker.

Respondent, appellee below, is the United States of America.

No corporate parties are involved in this case.

RULE 14.1(b)(iii) STATEMENT

This case arises from the following proceedings in the District Court for the Central District of Illinois and the Court of Appeals for the Seventh Circuit:

United States v. *Tucker*, Nos. 16-CR-20017, 22-CR-20015 (C.D. Ill. 2023);

United States v. *Tucker*, Nos. 23-1781, 23-2201, 23-2245 (7th Cir.).

No other proceedings directly relate to this case.

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PETITION FOR A WRIT OF CERTIORARI

Ladonta Tucker respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Seventh Circuit.

OPINIONS AND ORDERS BELOW

The opinion of the court of appeals is reported at 108 F.4th 973 and reproduced at App. 1a–25a. The relevant proceedings in the district court are unpublished.

STATEMENT OF JURISDICTION

The Seventh Circuit issued its judgment on July 24, 2024. On November 11, 2024, Justice Barrett extended the time to file this petition to December 19, 2024. 28 U.S.C. § 1254(1) supplies jurisdiction.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

18 U.S.C. § 924(c)(1)(A) provides:

> 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.

INTRODUCTION

Section 924(c) makes it a crime to use or carry a firearm "during and in relation to" a predicate offense. 18 U.S.C. § 924(c)(1)(A). The question here is what "in relation to" means: Does a defendant use or carry a gun "in relation to" an offense anytime a gun has "the *potential* to facilitate" a crime—whether or not it actually "facilitates or furthers" the offense in any way? The Seventh Circuit's answer is yes. But that conclusion clashes with statutory text and structure and this Court's precedent.

Petitioner Ladonta Tucker was convicted of carjacking. His co-defendant robbed the victim at gunpoint and Tucker drove the vehicle. Police ultimately recovered a pistol on the ground near the driver's door with Tucker's DNA on it. The Seventh Circuit affirmed Tucker's resulting conviction for carrying a gun during and in relation to a crime of violence. Although no evidence indicated that the victim even suspected Tucker was carrying a gun (much less that he flashed or fired it), that did not matter. The panel concluded that "'in relation to' means that the gun facilitates or ha[s] the potential to facilitate the crime." App. 9a.

The Seventh Circuit's decision exemplifies a widespread problem with at least five circuits' application of § 924(c): They have read "in relation to" so broadly as to effectively erase it from the statute—flatly overriding the intent of Congress, which added this language "to allay explicitly the concern that a person

could be prosecuted for committing an entirely unrelated crime while in possession of a firearm." *Muscarello* v. *United States*, 524 U.S. 125, 137 (1998) (citation omitted). And the potential-to-facilitate standard these courts apply is so malleable that, while it looks consistent across circuits, it actually produces extreme and inconsistent results.

Correctly read in context and in light of this Court's precedents, "in relation to" has a narrower meaning: A gun must have "some purpose or effect" in actually "facilitat[ing] or further[ing]" the crime to trigger § 924(c). See *Smith* v. *United States*, 508 U.S. 223, 232, 238 (1993). That is, "the inert presence of a firearm, without more, is not enough." *Bailey* v. *United States*, 516 U.S. 137, 149 (1995). Indeed, the Court recently condemned the government's "near limitless" reading of the exact same statutory language in a criminal statute that similarly carries a mandatory consecutive sentence because the government's sweeping reading would "appl[y] virtually automatically." *Dubin* v. *United States*, 599 U.S. 110, 118, 131 (2023). So too here.

The Court should grant this petition to correct the lower courts' persistent misunderstanding and clarify the legal standard that attaches to § 924(c)'s "in relation to" element.

STATEMENT OF THE CASE

Tucker and his co-defendant Rivers carjacked a BMW in Bourbonnais, Illinois. During the incident, Rivers flashed two guns at the victim, forcing him out of the car. Tucker then drove the car away from the scene with Rivers in the front passenger seat. After a brief police chase, Tucker and Rivers abandoned the car and fled on foot until they were apprehended and arrested. Police recovered three firearms from the

scene. No gun was discovered on Tucker's person, and no witness testified to Tucker ever flashing or even carrying a gun during the carjacking.

At trial, Tucker was convicted of carjacking in violation of 18 U.S.C. § 2119 and carrying a firearm during and in relation to a crime of violence in violation of § 924(c)(1)(A)(i). The government did not offer any evidence that Tucker used the gun or carried it to advance the carjacking. At the close of evidence, the court denied Tucker's motion for a judgment of acquittal. The jury was then instructed according to the Seventh Circuit's model jury instruction, permitting a conviction if a firearm "facilitates, or has the potential to facilitate" a crime of violence. The jury convicted Tucker on each charge. Tucker was sentenced to 184 months in prison, including a 60-month mandatory consecutive sentence under § 924(c).

The Seventh Circuit affirmed the conviction. On appeal, Tucker argued that the potential-to-facilitate standard is limitless and contradicts Supreme Court precedent. He asserted that, under a proper reading of the statute, he did not carry a firearm "in relation to" the carjacking. The Seventh Circuit rejected these arguments, reasoning that this Court "at the very least, left the door open to" a potential-to-facilitate standard in *Smith* and that neither *Bailey* nor *Muscarello* defined "in relation to" in the context of a § 924(c) "carrying" charge. App. 11a–12a. The panel disregarded *Dubin* because, despite defining "in relation to" narrowly in the context of the aggravated identity theft statute, that decision "explicitly left § 924(c) caselaw undisturbed." *Id.* at 12a. Having "repeatedly stated" that "in relation to" includes "the potential to facilitate," the Seventh Circuit refused to revisit its precedent. *Id.* at 9a, 12a.

REASONS FOR GRANTING THE PETITION

I. Courts of appeals have misread *Smith*, making "in relation to" limitless in application.

The Seventh Circuit and other lower courts have heeded the government's invitation to cherry-pick dictum in *Smith* to impose a sweeping potential-to-facilitate standard. Although these courts generally purport to apply the same top-line standard, "potential to facilitate" is so malleable a phrase that these courts apply it in inconsistent ways, leading to extreme and disparate results.

A. *Smith* did not define "the precise contours" of "in relation to."

Smith addressed whether trading a firearm for drugs constituted "use" of the firearm under § 924(c). 508 U.S. at 228. Answering in the affirmative, the Court looked to the ordinary meaning of "use," determining "that one who transports, exports, sells, or trades firearms 'uses' it within the meaning of" § 924(c). *Id.* at 235.

The Court supported this holding with a brief discussion of § 924(c)'s "in relation to" requirement. Recognizing that the government might run with this broad interpretation of "use," the Court highlighted how "in relation to" constrains the breadth of § 924(c)'s accompanying verbs "use" and "carry." *Id.* at 232. The phrase "in relation to" prevented prosecution where the firearm played no role in "facilitat[ing] or further[ing]" the crime. *Id.*

Later, in dictum, the Court suggested that "at a minimum . . . the firearm must have some *purpose or effect* with respect to the [underlying] crime; its presence or involvement cannot be the result of accident or coincidence." *Id.* at 238 (emphasis added). The Court then

referenced a Ninth Circuit opinion that then-Judge Kennedy had authored, where the legislative history suggested "the gun at least must 'facilitate, or have the potential of facilitating" the offense. *Id.* (cleaned up). But the *Smith* Court immediately cautioned: "We need not determine the precise contours of the 'in relation to' requirement" because the defendant's use of a firearm met "any reasonable construction of [in relation to]." *Id.* Indeed, Justice Blackmun wrote separately to emphasize that the decision had no effect on "in relation to": "I understand the discussion . . . not to foreclose the possibility that the 'in relation to' language . . . *require*s *more* than mere furtherance or facilitation of a crime," but "it is unnecessary to determine [that] in this case." *Id.* at 241 (Blackmun, J., concurring) (emphasis added).

B. Courts of appeals have misapplied *Smith*, leading to extreme and inconsistent results.

Despite *Smith*'s caution, the government has latched on to the most malleable language in that dictum, persuading a handful of circuits to adopt a potential-to-facilitate standard. But if *Smith* offered any definitive guidance on what "in relation to" means, it called for a *higher* standard than what these courts have applied.

The decision below illustrates the Seventh Circuit's consistent misunderstanding of *Smith*. For one, the panel mistakenly believed this Court endorsed two different interpretations of "in relation to" within the same penal statute—a construction that would flout basic principles of statutory interpretation. See App. 11a ("*Smith* went on to define 'in relation to' more broadly when the defendant is charged with merely *carrying*, not *using* a firearm."). Doubling down, the panel further reasoned that even if "the Supreme Court was not endorsing a potential-to-facilitate

standard, that concession does not constitute a compelling reason to overturn our circuit precedent." *Id.*

The problem, though, is the Seventh Circuit has never critically analyzed *Smith*'s discussion of the "in relation to" element—whether it be the fact that the discussion was dictum or even the interpretive difficulty inherent to that statutory phrase. Within just two years of *Smith*, the Seventh Circuit's authoritative § 924(c) precedent had warped Supreme Court dictum into an ostensible holding: "In *Smith* v. *United States*, the Supreme Court explained that 'in relation to' means that 'the gun at least must "facilitat[e], or ha[ve] the potential of facilitating," the drug trafficking offense.'" *United States* v. *Cotton*, 101 F.3d 52, 55–56 (7th Cir. 1996). *Cotton* then opened the floodgates for the potential-to-facilitate standard to flourish. So long as a firearm is found at the scene of a predicate offense, a § 924(c) conviction will stand. See, *e.g.*, *United States* v. *Franklin,* 547 F.3d 726, 732 (7th Cir. 2008) ("Franklin had both the drugs and the gun in the car at the same time. That proximity is sufficient to establish a violation of § 924(c)(1)."); *United States* v. *Stott*, 245 F.3d 890, 906 (7th Cir. 2001) (describing how "it is nearly an inescapable conclusion that [drugs] satisfy the *in relation to* prong" when a gun is found as well).

The Seventh Circuit does not stand alone, either. Pattern jury instructions show that other circuits also apply the potential-to-facilitate standard—but that they do so inconsistently, allowing convictions on different showings in different courts.

The Third, Sixth, Seventh, Tenth, and Eleventh Circuits adopt the potential-to-facilitate standard in their pattern jury instructions. See Third Circuit: 6.18.924B ("The firearm must have at least facilitated or had the

potential of facilitating (name of crime)"); Sixth Circuit: 12.02 ("the firearm must facilitate or further, or have the potential of facilitating or furthering the crime charged"); Seventh Circuit: page 383 ("The firearm must at least facilitate, or have the potential of facilitating, the crime"); Tenth Circuit: 2.45 ("The phrase 'during and in relation to' means that the firearm played an integral part in the underlying crime, that it had a role in, facilitated (i.e., made easier), or had the potential of facilitating the underlying crime"); Eleventh Circuit: 35.2 ("To [use] [carry] a firearm "in relation to" a crime means that the firearm . . . must have facilitated, or had the potential of facilitating, the crime").

In contrast, the First, Fifth, Eighth, and Ninth Circuits' pattern jury instructions employ a narrower interpretation of "in relation to." See First Circuit: 4.18.924 ("the firearm must have played a role in the crime or must have been intended by the defendant to play a role in the crime"); Fifth Circuit: 2.44A ("'In relation to' means that the firearm must have some purpose, role, or effect with respect to the [predicate crime]"); Eighth Circuit: 6.18.924C-2 ("In determining whether a defendant used or carried a firearm, you may consider all of the factors received in evidence in the case including the nature of the underlying drug trafficking crime alleged, the proximity of the defendant to the firearm in question, the usefulness of the firearm to the crime alleged, and the circumstances surrounding the presence of the firearm"); Ninth Circuit: 14.22 ("A defendant [used] [carried] [brandished] a firearm 'during and in relation to' the crime if the firearm facilitated or played a role in the crime").

The potential-to-facilitate standard has led to sweeping results since any nearby firearm necessarily satisfies the requirement. Lower courts routinely

credit the government's always-true argument that a nearby firearm had the potential of facilitating a predicate offense because the gun could theoretically embolden the defendant or provide a sense of security. See, *e.g.*, App. 13a ("A reasonable jury could conclude that, under these circumstances, the firearm provided Tucker with 'a means of protection' or 'a necessary sense of security.'" (internal citations omitted)); *United States* v. *Cecil*, 615 F.3d 678, 694 (6th Cir. 2010) ("[A] reasonable juror could have concluded that Cecil was emboldened by the presence of the firearm in his holster, giving him the security and confidence to undertake the criminal act." (cleaned up)); *United States* v. *Lipford*, 203 F.3d 259, 266 (4th Cir. 2000) ("[I]t is enough for § 924(c)(1) purposes if the firearm was present for protection or to embolden the actor."). And in some jurisdictions, the firearm need not even be capable of firing to impose the statute's mandatory penalty. See *United States* v. *Robinson*, 390 F.3d 853, 878 (6th Cir. 2004) ("Nor does it matter that one firearm was disassembled and the other unloaded, as we have held that a weapon need not be operable or loaded in order to sustain a conviction under § 924(c).").

This limitless approach has produced extreme results. The Third Circuit affirmed a § 924(c) conviction premised on a bank robbery where the defendant did not even bring a gun into the bank with him. The court concluded the government had carried its burden because the defendant "admitted to putting a firearm in his car the night before the robbery; the gun was within reach during his flight from the bank; and he undoubtedly was aware of its presence in the car." *United States* v. *Williams*, 344 F.3d 365, 371 (3d Cir. 2003). The Eleventh Circuit similarly upheld a § 924(c) conviction where a police officer defendant assisted a drug conspiracy while wearing his duty weapon. By

"escorting co-conspirators to and from the [] residence while they were transporting drugs," a jury could "conclude that Lopez used his weapon, albeit a police-issued service firearm, 'in relation to' the drug conspiracy and that his carrying the weapon facilitated, or had the potential for facilitating, the co-conspirators' drug trafficking." *United States* v. *Novaton*, 271 F.3d 968, 1013 (11th Cir. 2001); see also *United States* v. *Mack*, 572 F. App'x 910, 922 (11th Cir. 2014) (affirming a § 924(c) conviction for a police officer defendant who escorted drug traffickers, where the evidence indicated that he carried his service firearm "approximately two hours before the actual drug transportation").

Although these lower courts generally purport to apply the same top-line standard, the potential-to-facilitate formulation is so malleable that it offers no guidance or constraint. Critically, much of the lower courts' § 924(c) jurisprudence—even in the circuits that ostensibly endorse a narrower standard—stems from the antiquated and misconceived notion that gun possession is necessarily criminal. See *United States* v. *Pike*, 211 F.3d 385, 389 (7th Cir. 2000) (concluding the "in relation to" element was met because "possession of a weapon is often a hallmark of drug trafficking" (quoting *United States* v. *Hubbard*, 61 F.3d 1261, 1270 (7th Cir. 1995))); see also *United States* v. *Ramirez-Frechel*, 23 F.4th 69, 75 (1st Cir. 2022) ("After all, as our circuit has repeatedly recognized, guns are tools of the drug trade."); *United States* v. *Flax*, 988 F.3d 1068, 1074 (8th Cir. 2021) (same); *United States* v. *McKissick*, 204 F.3d 1282, 1293 (10th Cir. 2000) (same). This misconception permits the government to blindly threaten a mandatory minimum every time a defendant commits a predicate drug or violent offense and a gun is discovered, regardless of whether the firearm had any purpose or effect with respect to the offense.

II. The potential-to-facilitate standard contradicts the statute's text and this Court's precedent.

Properly understood, the phrase "in relation to" in § 924(c) requires a firearm to have some "purpose or effect" in "facilitating or furthering" the predicate offense. The government's potential-to-facilitate standard clashes with statutory text and structure and this Court's guidance. Indeed, the Court has consistently rejected limitless readings of "in relation to" in the context of § 924(c) and like statutes.

A. Text and structure confirm that "in relation to" requires some "purpose or effect" in "facilitating or furthering" the offense.

The statutory phrase "in relation to" "refers to a relationship or nexus of some kind," but "the kind of relationship required, its nature and strength, will be informed by context." *Dubin*, 559 U.S. at 119. In § 924(c), that statutory context—as understood through three canons of interpretation—points in a single direction: the government's limitless potential-to-facilitate standard is wrong.

First, the canon against superfluity suggests a more circumscribed reading of "in relation to." Congress uses statutory terms because it intends each to have "non-superfluous meaning." *Id.* at 126 (quoting *Bailey*, 516 U.S. at 146). Significantly, Congress added the word "during" alongside "in relation to," intending each term to have independent meaning. Yet construing "in relation to" as requiring the firearm to merely have the potential of facilitating the offense would deprive that causal language of "virtually any function." *Bailey*, 516 U.S. at 146. Framed in elemental terms, every gun carried "during" a predicate offense would necessarily satisfy the "in relation to" element as well

because the government can always successfully maintain that such a gun has the potential to facilitate the predicate offense—every firearm inherently emboldens and provides a sense of security. But see *id.* at 149 ("[T]he inert presence of a firearm, without more, is not enough to trigger § 924(c)(1).").

An overbroad reading of "in relation to" risks sweeping up someone's constitutionally protected right to carry a gun if that person happens to commit particular crimes while carrying that gun, even when that gun plays no role in the commission of those crimes. This concern animated then-Judge Gorsuch's caution that "Section 924(c)(1)(A) doesn't prohibit using or carrying or possessing a gun in isolation. Nor could it for guns often may be lawfully used, carried, or possessed: the Constitution guarantees as much." *United States* v. *Rentz*, 777 F.3d 1105, 1109 (10th Cir. 2015) (en banc); see also *Muscarello*, 524 U.S. at 138 ("[W]e believe that the words 'during' and 'in relation to' will limit the statute's application to the harms that Congress foresaw."). Without an effective "in relation to" limitation, a defendant who uses a firearm to scratch his head during a predicate crime but uses it for no other purpose would nevertheless be subject to § 924(c)'s mandatory minimum—a hypothetical this Court already considered and rejected. See *Smith*, 508 U.S. at 232 ("Although scratching one's head with a gun might constitute 'use,' that action cannot support punishment under § 924(c)(1)" because "'in relation to' requires, at a minimum, that the use facilitate the crime.").

Congress carefully calibrated the statute with two, independent limitations. To avoid superfluity, this language must be precisely defined so that a firearm can be carried "during" but not "in relation to" a predicate offense.

Second, the government's overbroad potential-to-facilitate standard offends the restraint this Court exercises in assessing the reach of federal criminal statutes. "This restraint arises 'both out of deference to the prerogatives of Congress and out of concern that a fair warning should be given to the world in language that the common world will understan[d] of what the law intends to do if a certain line is passed.'" *Dubin*, 599 U.S. at 129 (quoting *Marinello* v. *United States*, 584 U.S. 1, 7 (2018)). Put another way, § 924(c)'s scope should be "defined by the legislature, not by clever prosecutors riffing on equivocal language." *Id.* at 129–30 (citation omitted); see also *United States* v. *Wiltberger*, 18 U.S. (5 Wheat.) 76, 95 (1820) (Marshall, C. J.) ("It is the legislature, not the Court, which is to define a crime, and ordain its punishment."). This interpretive restraint in the criminal context is ingrained in this Court's modern precedent, too. As Judge Costa recognized in his en banc dissent that set the table for this Court's reversal in *Dubin*, "[t]he Supreme Court's message is unmistakable: Courts should not assign federal criminal statutes a 'breathtaking' scope when a narrower reading is reasonable." *United States* v. *Dubin*, 27 F.4th 1021, 1041 (5th Cir. 2022) (per curiam) (quoting *Van Buren* v. *United States*, 593 U.S. 374, 393 (2021)) (listing such decisions of this Court and describing them as "nearly an annual event"), *vacated,* 599 U.S. 110.

Helpfully, in the context of § 924(c), this Court has already identified a narrower reading that is faithful to the text. *Smith* suggested that the "phrase 'in relation to' requires, at a minimum, that the use facilitate the crime." 508 U.S. at 232. That is, "[t]he phrase 'in relation to' thus, at a minimum, clarifies that the firearm must have some purpose or effect with respect to [a predicate] crime; its presence or involvement cannot

be the result of accident or coincidence." *Id.* at 238. That conception, which *Smith* traced back to the language's plain meaning, is narrower than the government's open-ended potential-to-facilitate standard.

At bottom, this Court has consistently "avoid[ed] reading incongruous breadth into opaque language in criminal statutes" when a narrower reading is reasonable. *Dubin*, 599 U.S. at 112; see also Joel Johnson, *Vagueness Avoidance*, 110 Va. L. Rev. 71, 95–101 (2024) (discussing the need to narrowly read indeterminate penal statutes to avoid vagueness constitutional concerns). The Court should follow that well-trodden course here too.

Third, after exhausting all evidence of statutory meaning, the rule of lenity weighs against the more punitive construction. Although it is the judiciary's job to follow congressional directive, "ambiguities about the breadth of a criminal statute should be resolved in the defendant's favor." *United States* v. *Davis*, 588 U.S. 445, 464 (2019). Said differently, when "any fair reader of [a] statute would be left with a reasonable doubt about whether it covers the defendant's charged conduct," courts should interpret the statute "not for the prosecutor but for the presumptively free individual." *Snyder* v. *United States*, 603 U.S. 1, 20 (2024) (Gorsuch, J., concurring). That presumption extends to the causal element in § 924(c)—an element premised on statutory language that this Court has admitted prompts "frustrating difficulty [when] defining [this] key term." *Dubin*, 599 U.S. at 119 (quoting *New York State Conf. of Blue Cross & Blue Shield Plans* v. *Travelers Ins. Co.*, 514 U.S. 645, 656 (1995)) (second alteration in *Dubin*). In short, lenity cuts against the government's sweeping reading.

B. This Court has condemned limitless readings of the statutory phrase "in relation to."

On top of the text and structure, this Court's precedent has also consistently confirmed that "in relation to" plays a key role as a constraint on criminal liability. That lesson is a throughline across nearly 30 years of precedent, stretching from the immediate aftermath of *Smith* in the 90s to the Court's most recent encounter with this language last year.

For example, *Bailey* declined to allow a firearm's "proximity and accessibility" to drugs to constitute "use" of a firearm. 516 U.S. at 138. The Court observed that the "standard provide[d] almost no limitation on the kind of possession that would be criminalized" and effectively "eras[ed] the line that the statutes, and the courts, have tried to draw" when interpreting § 924(c). *Id.* at 144. Building on this, the Court rejected the government's contention that liability could attach to "mere possession of a firearm by a drug offender, at or near the site of a drug crime or its proceeds or paraphernalia." *Id.* at 149. Significantly, the "availability for intimidation, attack, or defense would always, presumably, embolden or comfort the offender," and such a limitless conception of the statute effectively nullified the statute's boundaries. *Id.* Framed at a general level, "the inert presence of a firearm, without more, is not enough to trigger § 924(c)(1)." *Id.*

A few years later, *Muscarello* construed the term "carry," holding that Congress intended it to have a broad meaning. 524 U.S. at 129–31. Notably, though, this broad conception was premised on the statute's structure. The Court explained how Congress offset the broad statutory language ("carry" and "use") with narrowing language ("during" and "in relation to"), where "Congress added these words in part to prevent

prosecution where guns 'played' no part in the crime." *Id.* at 137. "The limiting phrase 'during and in relation to' should prevent misuse of the statute to penalize those whose conduct does not create the risks of harm at which the statute aims." *Id.* at 139. Critically, the statutory counterbalancing structure that *Bailey* rests on only works when the narrowing language has independent meaning.

Fast forward to *Dubin* in 2023, where this Court relied on similar principles when rejecting the government's "near limitless" conception of identical language in the federal aggravated identity theft offense. 599 U.S. at 118. Like § 924(c), aggravated identity theft prescribes a mandatory minimum sentence when, "during and in relation to" a predicate offense, one "knowingly transfers, possesses, or uses, without lawful authority, a means of identification of another person." 18 U.S.C. § 1028A(a)(1). When defining "in relation to," the Court cautioned, "[i]f 'relate to' were taken to extend to the furthest stretch of its indeterminacy, then for all practical purposes there would be no limits, as really, universally, relations stop nowhere." *Dubin*, 599 U.S. at 119 (cleaned up). After canvassing the statutory context and drawing on the interpretive restraint afforded to criminal statutes, the Court concluded that the defendant's "more targeted reading," compared to the government's "sweeping reading," better captured the statute's scope. *Id.* at 129–31. In sum, the reach of the statute "is not indiscriminate, but targets situations where the means of identification itself plays a key role . . . where the means of identification is at the crux of the underlying criminality." *Id.* at 129.

To be sure, in reaching this conclusion, the Court flagged that its holding did not alter § 924(c) precedent. See *id.* at 119 n.4. And that made good sense, too,

since *Dubin*'s "crux of the underlying criminality" causal standard is even stricter than any standard *Smith* contemplated. But stepping back, the reasoning underlying *Dubin* is equally applicable to the dispute over whether a near limitless potential-to-facilitate standard is the proper conception of § 924(c)'s "in relation to" language, particularly when the two statutes are akin. See *United States* v. *Smith*, 756 F.3d 1179, 1185 (10th Cir. 2014) (Gorsuch, J.) ("That the government wishes us to impress on § 924(c) a good deal more than that its text will sustain finds further confirmation from a statutory cousin [§ 1028A]."). Even the government's response in *Dubin*, summarizing this Court's § 924(c) jurisprudence, stood on examples reflecting a stricter standard than the decision below applied. See Brief for Respondent 12, *Dubin* v. *United States*, 599 U.S. 110 (2023) (No. 22-10) (arguing that "firing [a gun] at a witness, pistol-whipping a suspected informant with it, brandishing it to intimidate a rival drug dealer, or trading it for drugs" satisfied the "in relation to" standard).

III. This case illustrates the disparities the potential-to-facilitate standard produces.

Comparing Tucker's offense conduct and resulting sentence to that of his co-defendant illustrates the extreme sentencing disparities that can result from an overbroad application of "in relation to." The firearm the government attributed to Tucker did not "facilitate or further" or have any "purpose or effect" on the carjacking: it was found on the ground outside the stolen car after the chase. No one testified that Tucker held or flashed the firearm, or even that he wanted a firearm for protection. To the contrary, the victim's testimony suggested he believed Tucker was unarmed.

Rivers, on the other hand, approached the front passenger-side window of the car and pointed two guns at

the driver to force him out of his vehicle. The government elicited witness testimony confirming that Rivers then fired bullets into the air. Clearly, Rivers' guns—even had they never been fired—had a purpose or effect in facilitating or furthering the carjacking.

The contrast between this evidence demonstrates why the government failed to carry its burden on Tucker's § 924(c) charge under a narrower reading of "in relation to." Nevertheless, the Seventh Circuit affirmed his conviction under the broader potential-to-facilitate standard. The court of appeals reasoned that Tucker carried the firearm "in relation to" the carjacking because it "provided [him] with 'a means of protection' or 'a necessary sense of security.'" App. 13a (internal citations omitted). Under the Seventh Circuit's reasoning—reasoning that reflects the law in several other circuits—any gun present at the scene of a predicate crime is used or carried "in relation to" that offense.

IV. This issue is important and recurring.

As the Solicitor General has explained, "18 U.S.C. § 924(c) is an important and widely used statute," Pet. 7, *United States* v. *Gonzales*, No. 95-1605, whose proper interpretation "has been the source of much perplexity in the courts," *Bailey*, 516 U.S. at 142. Over the last five years, 13,751 people have received § 924(c) convictions, with the average total sentence being 145 months. See U.S. Sentencing Comm'n, *Section 924(c) Firearms*, (2023), https://shorturl.at/kFzSC. This equates to roughly one out of every twenty federal criminal defendants being subject to sentencing under § 924(c). See *id.* (64,124 criminal cases reported for fiscal year 2023 and 2,864 convictions under § 924(c)). What is more, the vast majority of these convictions (68.8%) stem from offense conduct where the "in rela-

tion to" element is an important constraint on the government's prosecutorial discretion. *Id.* (distinguishing the ten-year minimum for discharging and the seven-year minimum for discharging from the five-year minimum for possessing or carrying). The frequency of § 924(c) charges underscores the need to precisely define the "in relation to" requirement.

The mandatory minimums accompanying a § 924(c) conviction also demonstrate why this issue warrants review. Even § 924(c)'s baseline five-year mandatory minimum sentences are among the harshest in the entire federal criminal justice system. And just as in *Dubin*, "the prosecutor can hold the threat of charging an additional [five]-year mandatory prison sentence over the head of any defendant who is considering going to trial" because the government's statutory conception "applies virtually automatically." 599 U.S. at 131. These mandatory minimums, moreover, are not only harsher than aggravated identity theft based on the term of imprisonment (two versus five years), but also more punitive, since stacked § 1028A charges can run concurrently together, whereas every single stacked § 924(c) charge must run consecutively. See 18 U.S.C. § 1028A(b)(4).

Prosecutorial discretion provides no shelter, either. This Court has expressed skepticism toward open-ended delegations of power in the name of discretion. See *Dubin*, 599 U.S. at 131 ("We cannot construe a criminal statute on the assumption that the Government will use it responsibly." (cleaned up)). And this skepticism is all the more warranted when, "[a]s a matter of common sense, an increased mandatory minimum heightens the loss of liberty and represents the increased stigma society attaches to the offense." *Harris* v. *United States*, 536 U.S. 545, 577–78 (2002)

(Thomas, J. dissenting); see also Stephen J. Schulhofer, *Rethinking Mandatory Minimums*, 28 Wake Forest L. Rev. 199, 202 (1993) (describing how mandatory minimums are often "a 'hammer' which the prosecutor can invoke at her option, to obtain more guilty pleas under more favorable terms.").

As currently construed by the lower courts, the potential-to-facilitate standard empowers prosecutors to draw the statute's scope as they see fit, where criminal liability attaches nearly automatically to crimes of violence and drug trafficking offenses whenever a gun is also found. But see *Dubin*, 599 U.S. at 133 (Gorsuch, J., concurring) (warning how liability should not turn on a "Rorschach test," where "[d]epending on how you squint your eyes, you can stretch (or shrink) [a statute's] meaning to convict (or exonerate) just about anyone"). This petition provides an opportunity to clarify *Smith* and properly ground "in relation to" within its context in § 924(c).

V. This petition is an ideal vehicle to define the reach of "in relation to."

This case is an ideal vehicle because there are no jurisdictional issues, and Tucker challenged the potential-to-facilitate standard on appeal. Although Tucker did not object to the jury instructions, he made a general Rule 29 motion challenging the sufficiency of the evidence and he argued—as he does here—that the legal standard below conflicts with this Court's precedent. This procedural posture under Rule 29 treads almost the exact same path as the defendant in *Dubin*, which similarly presented an ideal vehicle for this Court. See *Dubin*, 27 F.4th at 1033–34.

The facts of Tucker's case cleanly present the issue. The sole question is whether Tucker "carried" a firearm "during and in relation to" the carjacking. Tucker

never displayed, brandished, fired, or otherwise used a firearm while committing the crime or fleeing. And no witness testified that Tucker had a firearm, let alone that anyone believed he was carrying one. The only basis on which Tucker was convicted was that a firearm associated with him had the "potential to facilitate" the crime.

CONCLUSION

For these reasons, the petition should be granted.

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