No. 19-373

IN THE

Supreme Court of the United States

JAMES WALKER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

BRIEF OF LAW PROFESSORS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTERESTS OF THE *AMICI CURIAE*

Amici are three law professors—Douglas A. Berman, William W. Berry III, and Michael J. Zydney Mannheimer—who teach, conduct research, and practice in the fields of criminal law and sentencing in the United States.[1] They have a professional interest in ensuring that courts interpret and apply federal sentencing statutes in a manner that coherently advances their purposes and is consistent with longstanding constitutional principles and with contemporary function in the criminal law.

SUMMARY OF ARGUMENT

This Court's interpretation of the reach of the Armed Career Criminal Act (ACCA), if properly informed by constitutional principles, must avoid application to Petitioner of the ACCA's fifteen-year mandatory minimum prison term based on his possession of thirteen bullets in violation of 18 U.S.C. § 922(g)(1). Because mere possession of ammunition is the most passive of crimes—in fact, most States do not even criminalize this behavior and it almost never results in severe punishment—a mandatory fifteen-year prison term is arguably disproportionately harsh. That Petitioner possessed a small amount of ammunition, that he lacked any vicious or menacing mens rea, and that his prior convictions are decades old serve as additional factors suggesting that a mandatory minimum

1. No counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the amici curiae, or their counsel made a monetary contribution to its preparation or submission. The parties have consented to the filing of this brief.

fifteen-year federal sentence for Petitioner's offense is constitutionally suspect under any and all jurisprudential approaches to the Eighth Amendment.

As this Court has explained, the "canon of constitutional avoidance is an interpretive tool, counseling that ambiguous statutory language be construed to avoid serious constitutional doubts." *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 516 (2009). The two modern justifications for this canon relate to the need to exercise judicial restraint and the need to give effect to constitutional provisions—under-enforced norms—that give rise to the constitutional doubt. *See* William W. Berry III, *Criminal Constitutional Avoidance*, 104 J. Crim. L. & Criminology 105, 110-16 (2014). As the Court has emphasized, the "cardinal principle" of the modern avoidance canon, "which 'has for so long been applied by [the] Court that it is beyond debate," requires merely that the Court make "a determination of serious constitutional *doubt* and not a determination of *unconstitutionality.*" *Almandarez-Torres v. United States*, 523 U.S. 224, 250 (1998) (Scalia, J., dissenting) (quoting *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988)).

Given extensive litigation over what predicate offenses qualify for ACCA's enhanced penalties, there is little question that this Court confronts ambiguous statutory language in this case. In turn, because any sound approach to the Eighth Amendment suggests serious constitutional doubts about the application of a fifteen-year mandatory sentence for "one of the most passive felonies a person could commit." *Solem v. Helm*, 463 U.S. 277, 296 (1983), the canon of constitutional avoidance provides support for the

narrower interpretation of ACCA advanced by Petitioner. Further, the absence of a modern Court application of the Eighth Amendment to a federal non-capital adult sentence suggests that this constitutional right is precisely the kind of constitutional norm that cautions judicial restraint when interpreting an ambiguous statute.

As this case highlights, broad interpretations of ACCA present a heightened risk of constitutionally questionable mandatory minimum sentences. This Court should limit that risk by adopting the ACCA interpretation put forward by the Petitioner.

ARGUMENT

I. THE EIGHTH AMENDMENT'S LIMIT ON FEDERAL PUNISHMENTS MUST BE INFORMED BY STATE LAWS AND PRACTICES, AND THAT LIMIT MUST INFORM THE CONSTRUCTION OF THE ARMED CAREER CRIMINAL ACT.

Giving effect to the Constitution's limits on the application and severity of criminal sanctions—especially with respect to federal punishments—is a critical judicial responsibility: the framers and ratifiers included the Eighth Amendment in the Bill of Rights to ensure judges would serve as an integral check and final safeguard "against abuses of government's punitive or criminal-law-enforcement authority." *Timbs v. Indiana*, 139 S. Ct. 682, 686 (2019). Moreover, the historical record indicates that the Cruel and Unusual Punishments Clause should be interpreted to require some measure of proportionality between federal and state sentencing

to limit the ability for Congress to impose extreme punishment for relatively minor offenses that are far more severe than used by the States for comparable offenses. *See* Michael J.Z. Mannheimer, *Cruel and Unusual Federal Punishments*, 98 Iowa L. Rev. 69, 100-20 (2012) (detailing history behind adoption of Eighth Amendment as an attempt to constrain the federal power to punish through state common law norms); *see also* John F. Stinneford, *Rethinking Proportionality Under the Cruel and Unusual Punishments Clause*, 97 Va. L. Rev. 899, 947 (2011) (observing that goal of Cruel and Unusual Punishments Clause was to limit Congress's authority to mete out punishments, both in type and extent, to that which was traditionally imposed at common law). As Patrick Henry put it at the Virginia ratifying convention in 1788: "In the definition of crimes, I trust [Congress] will be directed by what wise representatives ought to be governed by. But when we come to punishments, no latitude ought to be left, nor dependence put on the virtues of representatives...." 3 Jonathan Elliot, The Debates In The Several State Conventions On The Adoption of The Federal Constitution 447 (2d ed. 1881). The Eighth Amendment was adopted because of concerns such as those expressed by Patrick Henry.

Remarkably, this Court has actually never directly addressed whether and how its evolving framework developed for assessing Eighth Amendment claims concerning state sentences applies to federal sentencing structures and outcomes. And though this federal case does not come to this Court as an Eighth Amendment challenge, the substantive and procedural rules set forth in Eighth Amendment cases involving state punishments still must inform the statutory interpretation before this

Court. This is so because, as this Court recently explained, if "a serious doubt is raised about the constitutionality of an act of Congress, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided." *Jennings v. Rodriguez*, 138 S. Ct. 830, 842 (2018) (internal citation omitted).

In its modern review of challenges by state prisoners to state sentences, this Court has repeatedly held that "[p]rotection against disproportionate punishment is the central substantive guarantee of the Eighth Amendment," *Montgomery v. Louisiana*, 136 S. Ct. 718, 732 (2016); *see also Ewing v. California*, 538 U.S. 11 (2003); *Harmelin v. Michigan*, 501 U.S. 957 (1991) (Kennedy, J., concurring in part and concurring in the judgment), and also has repeatedly held that the Eighth Amendment places certain procedural restrictions on how serious penalties may be imposed. *See Miller v. Alabama*, 567 U.S. 460 (2012); *Lockett v. Ohio*, 438 U.S. 586 (1978). However, this Court has never had an opportunity to explore just how these Eighth Amendment requirements, unmediated by federalism and comity concerns, apply when federal courts consider a challenge to a federal sentence. Indeed, though this Court has found a federal forfeiture punishment unconstitutionally excessive based on a "principle of proportionality" in *United States v. Bajakajian*, 524 U.S. 321, 334-44 (1998), it has never directly addressed an Eighth Amendment claim concerning the disproportionality or procedural irregularity of any federal prison sentence.

Importantly, the original meaning of the Cruel and Unusual Punishments Clause, as well as this Court's modern Eighth Amendment jurisprudence, suggests

that the proportionality and procedural safeguards in the Eighth Amendment should have particularly robust application when federal courts are reviewing federal sentences that are significantly out of line with state laws and punishment norms. Recent scholarship has demonstrated that the Framers sought and expected federal courts to review federal sentences rigorously in light of proportionality concerns. *See generally* Stinneford, *Rethinking Proportionality Under the Cruel and Unusual Punishments Clause*, *supra*; Mannheimer, *Cruel and Unusual Federal Punishments*, *supra*. Moreover, the relatively deferential standards that have come to govern the Eighth Amendment's proportionality requirement for carceral state sentences imposed on adults, which were developed in six cases from 1980 through 2003, suggest that the constitutional deference shown to state sentencing outcomes has been driven and justified in part by federalism and comity concerns. *See Rummel v. Estelle*, 445 U.S. 263, 282 (1980); *Harmelin*, 501 U.S. at 999–1000 (Kennedy, J., concurring in part and concurring in the judgment); *see also Ewing v. California*, 538 U.S. 11, 25 (2003) (stressing that the selection of "sentencing rationales is generally a policy choice to be made by ***state*** legislatures, not ***federal*** courts") (emphasis added).

Distinctive features of the Cruel and Unusual Punishments Clause call for particularly robust scrutiny of federal sentences when they conflict with state punishment norms. The Clause, of course, applied only to the federal government until at least 1868. There is considerable evidence that the framers and ratifiers of the Clause contemplated that the "unusualness" of federal punishments would be measured against state norms. *See* Mannheimer, *Cruel and Unusual Federal*

Punishments, *supra*, 98 Iowa L. Rev., at 100-09 (setting forth detailed historical account of the Eighth Amendment as a key "constraint on the federal government's power to punish" in favor of state primacy in the realm of criminal punishments); *see also* Stinneford, *Rethinking Proportionality, supra*, 97 Va. L. Rev. at 947 (highlighting that "the evidence from the ratification debates shows that Americans saw . . . it was necessary to add a prohibition of cruel and unusual punishments to the Constitution to prevent Congress from abandoning traditional common law limitations on criminal punishment").

Indeed, some precursors to the Clause in the decade before its adoption used language virtually identical to that used in the Clause to signify that state punishments marked the outer boundary for punishment to be meted out by the central government. In 1783, the Articles of Confederation Congress recommended that it be vested with the power to levy duties on certain imports, a recommendation that required unanimous assent of the States in order to become operative. 24 JOURNALS OF THE CONTINENTAL CONGRESS, 1774-1789, at 256–57 (Gaillard Hunt ed., 1922). In ratifying this proposed impost power, four of the thirteen States—Georgia, Massachusetts, New Hampshire, and South Carolina—made clear that they did so only on condition that punishments for customs violations never exceed that which could be imposed under state law. Each of these four states forbade Congress from "inflict[ing] punishments which are either cruel or unusual in this State" (or in Massachusetts, "in this commonwealth"). THE RESOLUTIONS OF CONGRESS OF THE 18TH OF APRIL, 1783: RECOMMENDING THE STATES TO INVEST CONGRESS WITH THE POWER TO LEVY AN IMPOST, FOR THE USE OF THE STATES; AND THE LAWS OF THE

Respective States, Passed In Pursuance of The Said Recommendation 48 (Georgia), 10 (Massachusetts), 7 (New Hampshire), 44 (South Carolina).

For these reasons, the deferential framework for Eighth Amendment claims applied to state sentencing outcomes arguably should be given extra bite when federal courts review federal sentences under the Cruel and Unusual Punishments Clause. Based on the original meaning of the Eighth Amendment, it is possible that federal punishments, without the considerations of comity and federalism present with respect to review of state punishments, should merit a higher level of scrutiny under the Eighth Amendment. This may be particularly true when the federal law criminalizes behavior that most States could but do not. *See generally* William W. Berry III, *Eighth Amendment Differentness*, 78 Mo. L. Rev. 1053 (2013) (arguing that *Miller v. Alabama* opens the door to considering other types of "different" sentences under the Eighth Amendment). This is consistent with this Court's dicta in recent cases that "[i]ncorporated Bill of Rights guarantees are 'enforced against the States under the Fourteenth Amendment according to the same standards that protect those personal rights against federal encroachment.'" *Timbs*, 139 S. Ct. at 687 (quoting *McDonald* v. *City of Chicago*, 561 U.S. 742, 765 (2010)). These dicta, which respond to arguments by states that only a "watered down" version of the Bill of Rights applied to them via the Fourteenth Amendment, cannot foreclose the very different claim presented here, namely that there are additional federalism constraints applicable to the federal government's punitive authority that, by definition, cannot apply to the states. Certainly, given that the Court has never addressed an Eighth

Amendment disproportionality challenge to a federal prison sentence, the Court could not through these dicta bind itself in future cases where it might address such a claim. Moreover, these dicta are not inconsistent with the contention that the Cruel and Unusual Punishments Clause must be interpreted to require some measure of proportionality between federal and state sentencing and should limit the ability for Congress to impose lengthy mandatory prison terms for relatively minor offenses that are far more severe than authorized by any state for comparable offenses.

Critically, Petitioner's sentence can be viewed as constitutionally doubtful without any finding that this case falls within a category of "different" cases that have received heightened Eighth Amendment scrutiny, *see*, *e.g.*, *Atkins v. Virginia*, 536 U.S. 304 (2002) (excluding certain death sentences under the Eighth Amendment); *Graham v. Florida*, 560 U.S. 48 (2010) (excluding certain juvenile life without parole sentences under the Eighth Amendment), and without any effort to develop a new Eighth Amendment category. The reasoning of Chief Justice Roberts's separate opinion in *Graham* underscores this point, where he found that Terrance Graham's life without parole sentence contravened the Eighth Amendment's proportionality requirement without adoption of a categorical rule. *Graham*, 560 U.S. at 86-96 (Roberts, C.J., concurring in the judgment). He reasoned that "[o]ur system depends upon judges applying their reasoned judgment to each case that comes before them," as "the whole enterprise of proportionality review is premised on the 'justified' assumption that 'courts are competent to judge the gravity of an offense.'" *Id.* at 96 (quoting *Solem*, 463 U.S. at 292).

This Court not only can, but also must, continue to vindicate the constitutional safeguards of the Eighth Amendment though case-by-case review in cases like this one where the "nature of [the defendant's] criminal activity and the unusual severity of his sentence … tips the constitutional balance." *Id.* The protections of the Eighth Amendment obviously extend beyond capital cases and juvenile defendants. It also clearly applies to federal sentences related to firearms, particularly where the sentence in question amounts to a virtual life sentence for a passive crime of ammunition possession.[2]

II. THE EIGHTH AMENDMENT RAISES SERIOUS DOUBT ABOUT IMPOSITION HERE OF FIFTEEN-YEAR MANDATORY MINIMUM FEDERAL SENTENCE FOR HARMLESS POSSESSION OF BULLETS.

In the required judicial constitutional evaluation of criminal punishments—i.e., when federal judges are called upon to evaluate a challenged penal measure in light of the "concepts of dignity, civilized standards, humanity, and decency" embodied in the Eighth Amendment, *Estelle v. Gamble*, 429 U.S. 97, 102 (1976)—courts are to be "guided by objective indicia of society's standards, as expressed in legislative enactments and state practice,"

2. The Second Amendment's guarantee of the right "to keep and bear arms" gives cases such as this one added salience. *See* U.S. Const., amend. II; *District of Columbia* v. *Heller*, 554 U.S. 570 (2008). If the framers and ratifiers of the Bill of Rights were concerned about the federal government punishing crimes more severely than did the states, they were doubly concerned when those crimes related so closely to the exercise of a fundamental constitutional right.

as well as by an "understanding and interpretation of the Eighth Amendment's text, history, meaning, and purpose." *Kennedy v. Louisiana*, 554 U.S. 407, 421 (2008). As this Court has explained, the "clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures … [and] actual sentencing practices are an important part of the Court's inquiry into consensus." *Graham v. Florida*, 560 U.S. 48, 62 (2010).

In light of these established Eighth Amendment doctrines, as well as the judiciary's obligation to give these doctrines some enforceable effect in cases involving extreme applications of harsh federal sentencing laws, this Court should give ACCA a reasonable interpretation that avoids application of the statute's extreme fifteen-year mandatory federal prison term to Petitioner based on his possession of thirteen bullets in violation of 18 U.S.C. § 922(g)(1). As detailed below, all "objective indicia of society's standards, as expressed in legislative enactments and state practice" raise serious doubts about whether it is constitutionally permissible to subject Petitioner to a mandatory fifteen-year federal prison term based only on his harmless possession of a small amount of ammunition.

A. States overwhelmingly do not prohibit possession of ammunition by felons; those that do overwhelmingly do not authorize lengthy prison sentences for such an offense.

In contrast to federal law, the majority of U.S. states do not even criminalize possession of ammunition by a convicted felon, no doubt because mere passive possession of ammunition alone is neither inherently dangerous nor a

ready instrument of crime, absent possession of a firearm. *See Ammunition Regulation Policy Summary* by the Law Center to Prevent Gun Violence, at http://smartgunlaws.org/ammunition-regulation-policy-summary/#state (last visited January 10, 2020) (indicating that just over a dozen of the 50 states prohibit the purchase or possession of ammunition by a person with a felony record on the same terms that firearm possession is restricted).

Moreover, even states that criminalize ammunition possession under certain circumstances typically set an upper-limit *discretionary maximum* prison term that is significantly lower than the *mandatory minimum* federal prison term imposed on Petitioner. *See United States v. Young*, 766 F.3d 621, 631-32 (6th Cir. 2014) (Stranch, J., concurring) (observing that she found "no state that would punish [ammunition] possession with a fifteen-year sentence"). Three states that criminalize possession of ammunition by a convicted felon classify this crime only as a misdemeanor punishable by no more than one-year imprisonment. *See* Cal. Penal Code § 30305(a)(2); 430 Ill. Cons. Stat. 65/2(a)(2), 65/8(c), 65/14(e); 730 Ill. Cons. Stat. 5/5-4.5-55; Md. Code §§ 5-133(b), 5-133.1(b), (c). Most other states set the maximum term of imprisonment at five years or less. *See, e.g.*, Haw. Rev. Stat. §§ 134-7(a), (h), 706-660(1)(b) (five years); 140 Mass. Gen. Laws §§ 129B(1), 129C; 269 Mass. Gen. Laws § 10(h)(1) (two years); Mich. Cons. Laws § 750.224f(4), (6) (five years); S.C. Code § 16-23-500(A), (B) (five years); Va. Code §§ 18.2-10(f), 18.2-308.2(A) (five years). Only in Florida is the offense punishable by the sentence Petitioner received here—fifteen years' imprisonment. *See* Fla. Stat. §§ 775.082(3)(d), 790.23(1)(a),(3). But, importantly, that is the ***maximum*** punishment permitted in Florida, not, as here, the ***mandatory minimum*** punishment.

Consequently, Petitioner's offense behavior could not have subjected him to any form of criminal prosecution, let alone a lengthy mandatory imprisonment term, in the vast majority of states—including Petitioner's home state of Tennessee— because these laws do not prohibit possession of ammunition by a person with a felony record. In at least three-dozen states, his conduct could not result in a felony conviction. And in nearly every state in the Union, Petitioner's offense could not possibly be punished with a sentence anywhere near the fifteen-year prison term he was mandated to receive under federal law.

Amici do not assert that the fact that the vast majority of states do not even criminalize Petitioner's offense conduct precludes federal prosecution or some prison term for Petitioner; Congress must have some authority to criminally prohibit some conduct that states may not consider worthy of criminalizing. *Cf. Staples v. United States*, 511 U.S. 600, 613-15 & n.9 (1994) (stressing limited restrictions on firearm purchases in the "vast majority of States" when construing the National Firearms Act). But that Petitioner's conduct would not even be considered a crime in most states throughout the nation objectively demonstrates that a mandatory minimum fifteen-year federal prison sentence for Petitioner, at the very least, raises some serious constitutional doubt about the proportionality of his punishment. Moreover, focusing upon actual state sentencing practices, Amici are unaware of ***any*** case from ***any*** state or locality in which ***any*** defendant received ***any*** extended prison sentence for offense conduct that involved only the harmless possession of a small amount of ammunition.

In short, the vast majority of states do not criminalize Petitioner's conduct, those states that have criminalized this conduct generally provide for much lower sentencing ranges for his conduct, and seemingly no person has ever served any extended time in state prison for the kind of conduct which resulted in Petitioner's fifteen-year mandatory minimum federal prison term. These realities reflecting "legislative enactments and state practice" provide in this case considerably more—and considerably more potent—objective "evidence of national consensus against" Petitioner's federal punishment than was demonstrated in prior Eighth Amendment cases finding a state punishment unconstitutional. *See Graham v. Florida*, 560 U.S. 48 (2010); *Kennedy v. Louisiana*, 554 U.S. 407 (2008); *Roper v. Simmons*, 543 U.S. 551 (2005); *Atkins v. Virginia*, 536 U.S. 304 (2002); *accord Solem v. Helm*, 463 U.S. 277, 299-303 (1983) (finding Eighth Amendment violation when offender "has been treated more harshly than he would have been in any other jurisdiction, with the possible exception of a single State"); *Gonzalez v. Duncan*, 551 F.3d 875, 887-89 (9th Cir. 2008) (Bybee, J.,) (emphasizing, when finding mandatory state punishment unconstitutional under the Eighth Amendment, that defendant's offense conduct would not have been a criminal offense in some states and that the defendant's sentence "is at the margin of what the States have deemed an appropriate penalty" for similar behavior); *see also* Mannheimer, *Cruel and Unusual Federal Punishments*, *supra*, 98 Iowa L. Rev. at 100-26 (explaining the most appropriate way to "operationalize [the framers'] view of the Cruel and Unusual Punishments Clause as both a reservation of state sovereignty and as a reference to state common law on criminal punishments" would be to limit any severe federal punishments that

would be excessive in reference to state sentencing laws and norms).

B. The passive and minor nature of Petitioner's offense conduct, combined with the absence of a vicious mens rea and the staleness of his criminal history, add to the constitutional doubtfulness of his sentence.

The essential facts of Petitioner's offense behavior contribute to the disparity between the gravity of his offense and the harshness of his penalty. Petitioner inadvertently came into possession of a small amount of standard ammunition—conduct which is not a crime in his home state or in the vast majority of states in our Union—and there is no evidence to suggest he made any kind of active effort to acquire this ammunition illegally or had any plans to combine this ammunition with a firearm or to transfer the ammunition to someone who would. This reality stands in sharp contrast to the kinds of offenders Congress was considering when enacting ACCA, as described by this Court in *Begay v. United States*, 553 U.S. 137 (2015):

> As suggested by its title, the Armed Career Criminal Act focuses upon the special danger created when a particular type of offender—a violent criminal or drug trafficker—***possesses a gun***. . . . [Prior purposeful offenses] . . . show an increased likelihood that the offender is ***the kind of person who might deliberately point the gun and pull the trigger***. . . . .

> Were we to read the statute without this distinction, its 15–year mandatory minimum sentence would apply to a host of crimes which, though dangerous, are not typically committed by those whom one normally labels "armed career criminals." We have no reason to believe that Congress intended to bring within the statute's scope these kinds of crimes, far removed as they are from ***the deliberate kind of behavior associated with violent criminal use of firearms***. *Id.* at 146 (emphasis added).

Mere possession of a small amount of standard ammunition, especially when acquired in the manner Petitioner acquired thirteen bullets, does not constitute the "special danger" discussed by this Court in *Begay*. Congress may have quite sensibly included ammunition possession within ACCA's terms because a career criminal's willful acquisition of a large amount of ammunition (or his possession of especially dangerous forms of ammunition) might reasonably be connected to "the deliberate kind of behavior associated with violent criminal use of firearms." *Id.* But Petitioner's mere possession of a small amount of standard ammunition does not in any way "show an increased likelihood that the offender is the kind of person who might deliberately point the [in this case, purely hypothetical] gun and pull the trigger." *Id.* In addition to undermining the case that Congress ever actually intended a fifteen–year mandatory prison term to apply to this type of offender, these factors also make even more dubious the constitutionality of this sentence.

Last but not least, the disproportionate nature of Petitioner's punishment is further reflected in Petitioner's predicate offenses being decades old at the time of his possession of a small amount of standard ammunition. Again, application of ACCA's severe sentencings mandates may be justifiable, even in a case involving only ammunition possession, if an active criminal offender assembled a lengthy violent criminal record in a short period of time and then illegally acquired ammunition not long after having committed other violent offenses. *Cf. Ewing v. California*, 538 U.S. 11, 30 (2003) (upholding 25-year term after stressing that felony grand theft "was certainly not one of the most passive felonies a person could commit" and that the defendant had "been convicted of numerous misdemeanor and felony offenses, served nine separate terms of incarceration, and committed most of his crimes while on probation or parole"). But here, the most recent ACCA predicate offense took place in 1994 and prior ones extend all the way back to the early 1980s. That such stale criminal history served as the basis for a severe enhancement of punishment for "one of the most passive felonies a person could commit," *Solem v. Helm*, 463 U.S. 277, 296 (1983), provides still further reason for this Court to recognize that the canon of constitutional avoidance calls for the narrower interpretation of ACCA advanced by Petitioner.

CONCLUSION

Broad interpretations of ACCA present a heightened risk of constitutionally questionable mandatory minimum sentences, especially in a case involving the mere possession of a small amount of standard ammunition. This Court should limit that risk by adopting the ACCA interpretation advanced by the Petitioner.

Respectfully submitted,

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