

No. 20-256

IN THE
Supreme Court of the United States

ZAVIAN MUNIZE JORDAN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit**

**BRIEF OF FAMM
AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

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QUESTION PRESENTED

Whether each separate conviction under Section 924(c)(1) requires only a separate predicate crime of violence or drug trafficking offense, as the Third, Fourth, and Eighth Circuits have held, or also requires a separate act of using, carrying, or possessing a firearm, as the Second, Fifth, Sixth, Seventh, Tenth, and D.C. Circuits have held.

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INTEREST OF *AMICUS CURIAE*¹

Amicus FAMM (formerly Families Against Mandatory Minimums) is a national, nonprofit, nonpartisan organization whose primary mission is to promote fair and rational sentencing policies and to challenge mandatory sentencing laws and the ensuing inflexible and excessive penalties. Founded in 1991, FAMM currently has 65,000 members nationwide. By mobilizing prisoners and their families adversely affected by unjust sentences, FAMM illuminates the human face of sentencing as it advocates for state and federal sentencing reform. FAMM advances its charitable purposes in part through education of the general public and through selected *amicus* filings in important cases.

In recognition of the destructive toll mandatory minimums exact on FAMM's members in prison, their loved ones, and their communities, FAMM submits this brief in support of petitioner. The decision below, if allowed to stand, would permit multiple mandatory minimum sentences arising from a single use, carrying, or possession of a firearm to be imposed consecutively, dramatically increasing already excessive terms of imprisonment. In light of the grave harm mandatory minimums cause, FAMM has a strong interest in ensuring they are not improperly "stacked" to create especially severe sentences.

¹ Pursuant to this Court's Rule 37.6, *amicus* states that this brief was not authored in whole or in part by counsel for any party, and that no person or entity other than *amicus*, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. The parties received timely notice of and have consented to the filing of this *amicus curiae* brief in accord with Supreme Court Rule 37.2.

SUMMARY OF ARGUMENT

In the decision below, the Fourth Circuit held that the district court was required to impose consecutive 5-year and 25-year mandatory minimum sentences on petitioner for the *single* possession of a firearm in furtherance of two drug trafficking crimes: conspiracy to distribute a controlled substance and possession with intent to distribute a controlled substance in the course of carrying out that same conspiracy. The Fourth Circuit’s holding that a single possession of a firearm gives rise to multiple convictions under 18 U.S.C. § 924(c) because of multiple predicate crimes of violence or drug trafficking crimes directly conflicts with the decisions of *six* federal courts of appeals. Pet. 10. This deep circuit split is reason alone to grant certiorari. Review is particularly warranted here for two additional reasons.

First, the Fourth Circuit’s decision below is wrong. Section 924(c) targets the act of using, carrying, or possessing a firearm in connection with a crime of violence or drug trafficking crime; it does not criminalize or impose penalties for each stand-alone crime of violence or drug trafficking crime. The statute’s “unit of prosecution”—the core conduct for which a defendant may be charged—is therefore the use, carrying, or possession of a firearm. Thus, a single use, carrying, or possession of a firearm, as was alleged here, can give rise to only a single charge and conviction under Section 924(c), regardless of how many theoretically separate crimes of violence or of drug trafficking that single firearm offense may further. This plain-text reading is supported by the statute’s graduated sentencing structure, as well as its underlying purpose.

To the extent any ambiguity remains, the rule of lenity compels resolving it in the defendant’s favor.

Here, that means that absent *clear* congressional instruction otherwise, courts should presume that a single use, carrying, or possession of a firearm gives rise to only a single offense for that use or possession. Indeed, this Court has previously applied the rule of lenity in nearly identical circumstances to prohibit the imposition of multiple convictions for a single discharge of a firearm. *See Ladner v. United States*, 358 U.S. 169, 178 (1958).

Second, review is appropriate because the question presented is of national and practical importance. Increased mandatory minimum sentences impose numerous costs on defendants, their families, and society as a whole. The Fourth Circuit's interpretation exacerbates the already-deleterious effects of mandatory prison sentences, and does so without any clear congressional guidance. Such an inappropriate and unjustifiable expansion of criminal liability should not be permitted to stand.

ARGUMENT

I. A Single Use, Carrying, or Possession of a Firearm Cannot Support Multiple Convictions Under Section 924(c).

A defendant who uses, carries, or possesses a firearm only once in committing multiple crimes of violence or drug trafficking crimes has committed only one violation of Section 924(c). That statute's text and structure make clear that each conviction requires a separate use, carrying, or possession of a firearm. Section 924(c)'s purpose—to penalize the choice to use, carry, or possess a firearm in committing a specified crime—reinforces this limitation.

To the extent any ambiguity remains about the statute's meaning, the rule of lenity compels reversal.

The rule of lenity requires the adoption of the interpretation most favorable to the criminal defendant in the case of an ambiguous statute, and aims to ensure that legislatures provide fair warning of the conduct they intend to criminalize. In doing so, the rule guarantees that legislatures, not prosecutors, decide when conduct requires imposition of severe mandatory minimum penalties. Applying the rule of lenity here, a single use, carrying, or possession of a firearm supports only one conviction under Section 924(c).

A. The text, structure, and purpose of the statute foreclose multiple convictions for a single use, carrying, or possession of a firearm.

Section 924(c) penalizes, among other things, possessing a firearm in furtherance of another federal crime. Specifically, it imposes a mandatory minimum sentence on “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.” 18 U.S.C. § 924(c)(1)(A). This mandatory minimum sentence is “in addition to the punishment provided for such crime of violence or drug trafficking crime” and must run consecutively to, not concurrently with, the sentences for those crimes—often lengthening sentences significantly. *Id.* § 924(c)(1)(A), (c)(1)(D)(ii).

The mandatory minimum sentence for each Section 924(c) violation starts at 5 years and increases if an individual uses a firearm in a certain way, 18 U.S.C. § 924(c)(1)(A)(i)–(iii) (applying greater penalties for firearms that are brandished or discharged), or if an individual possesses a particular type of firearm, *id.* § 924(c)(1)(B)(i)–(ii) (imposing stricter sentences for short-barreled rifles, assault weapons, and

machineguns). Thus, a single Section 924(c) conviction can lengthen a sentence significantly—especially where that mandatory minimum is heightened due to any of the specified aggravating circumstances. *See id.* § 924(c)(1)(A)(iii), (c)(1)(B)(ii) (requiring a 10-year mandatory minimum for the discharge of a firearm and a 30-year mandatory minimum if the firearm is a machinegun). If a defendant is convicted of multiple Section 924(c) violations charged in the same indictment, as in petitioner’s case, the resulting mandatory minimums must run consecutively to each other and to the prison term for any other count of conviction. *Id.* § 924(c)(1)(D)(ii). Thus, multiple Section 924(c) convictions, which may already be heightened and which must be stacked on top of one another, can result in truly draconian sentences. *See id.* § 924(c)(1)(B)(ii), (c)(1)(D)(ii) (allowing multiple 30-year mandatory minimums for the use of a firearm with a silencer or muffler to run consecutively to each other).

The sentencing outcomes for second or subsequent Section 924(c) violations are particularly severe. *See* 18 U.S.C. § 924(c)(1)(C)(i)–(ii) (imposing sentences of 25 years to life in prison). As originally enacted, the statute required these longer terms of imprisonment for a second or subsequent offense even if the first and second violation were prosecuted together in the same indictment. In that event, the defendant would receive a 25-year mandatory minimum for the second violation *on top* of his 5-year mandatory minimum for the first violation. Congress amended the statute in the First Step Act of 2018 to impose these higher mandatory minimums for the second or subsequent offense only if the later offense occurred after the first conviction became final. *See* First Step Act of 2018, Pub. L. No. 115-391, § 403(a), 132 Stat. 5194, 5221–

22. Petitioner was sentenced under the earlier version of the statute, though. Thus, for him, reversal would mean a 5-year mandatory minimum for a single firearms violation instead of 30 years of mandatory consecutive time added to his sentence for the underlying offenses.²

Whether the same course of conduct can support multiple violations of the same statute depends on that statute’s unit of prosecution. *See Callanan v. United States*, 364 U.S. 587, 597 (1961). A statute’s unit of prosecution is the activity required to prove each charge—*e.g.*, the act of possessing narcotics in a possession offense—and reflects a “congressional choice” as to “[w]hether a particular course of conduct involves one or more distinct ‘offenses.’” *Sanabria v. United States*, 437 U.S. 54, 69–70 (1978). Analysis of this choice begins with the statute’s text. *See United States v. Universal C.I.T. Credit Corp.*, 344 U.S. 218, 221 (1952) (looking first to the “construction of the criminal provisions”).

Section 924(c)’s unit of prosecution is the act of using, carrying, or possessing a firearm in furtherance of a crime of violence or drug trafficking crime. The statute’s language reveals this: it criminalizes using or carrying a firearm “during and in relation to any crime of violence or drug trafficking crime” and possessing a firearm “in furtherance of any such crime.” 18 U.S.C. § 924(c)(1)(A). Thus, the statute’s verbs—

² The First Step Act of 2018 does not otherwise affect this case as it did not modify the statute’s unit of prosecution. *See* First Step Act of 2018, Pub. L. No. 115-391, § 403(a), 132 Stat. 5194, 5221–22 (amending § 924(c)(1)(C)). Nor does the enactment of the First Step Act diminish the urgency of granting certiorari in this case. *See infra* Part II.

using, carrying, and possessing—specify the core conduct that the law prohibits. Its modifying phrases—*during and in relation to any crime of violence or drug trafficking crime* or, for possession, *in furtherance of any such crime*—narrow the *type* of conduct it prohibits. The conduct required for criminal liability to attach, therefore, is the single act of using, carrying, or possessing a firearm either during and in relation to, or (for possession) in furtherance of, a crime of violence or drug trafficking crime. As a result, a defendant who uses, carries, or possesses a firearm only once in committing multiple crimes of violence or drug trafficking crimes may be charged (and convicted) for only one violation of Section 924(c). See *United States v. Rentz*, 777 F.3d 1105, 1109 (10th Cir. 2015) (en banc) (Gorsuch, J.).³

This reading of Section 924(c)'s unit of prosecution is consistent with the statute's structure. The statute ratchets up the minimum term of imprisonment if the firearm is used a certain way. The starting mandatory minimum of 5 years increases to 7 years if the firearm is brandished and 10 years if the firearm is discharged. 18 U.S.C. § 924(c)(1)(A)(i)–(iii). The statute also ratchets up the minimum term of imprisonment based on the type of firearm possessed. The starting mandatory minimum of 5 years increases to 10 years for a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon and 30 years

³ As the Tenth Circuit recognized, the statute's use of the word "any" (*i.e.*, "any crime of violence or drug trafficking crime" and "any such crime") does not suggest a contrary reading, because the word "any" in this context "doesn't tell us anything about the number of uses, carries, or possessions required to justify each independent charge—just about the sorts of uses, carries, or possessions that violate the statute." *Rentz*, 777 F.3d at 1111 n.5.

for a machinegun, destructive device, or firearm with a silencer or muffler. *Id.* § 924(c)(1)(B)(i)–(ii).

If Section 924(c)'s unit of prosecution were the underlying offense, the penalties for violations of the statute would be expected to increase based on the nature of the predicate crime of violence or drug trafficking crime—such as the injury resulting from the crime of violence or the drug quantity. *See, e.g.*, 18 U.S.C. § 111(b) (applying an enhanced penalty where assault results in bodily injury); 21 U.S.C. § 841(b)(1)(A)–(B) (imposing higher penalties for greater drug quantities). Instead, the penalties increase based on the use and type of firearm, providing further support that Section 924(c)'s unit of prosecution is the single use, carrying, or possession of a firearm during and in relation to, or (for possession) in furtherance of, a crime of violence or drug trafficking crime.

This reading of Section 924(c) is also consistent with the statute's purpose: to penalize the choice to use, carry, or possess a firearm when committing specified types of crimes. Congress enacted Section 924(c) "to persuade the man who is tempted to commit a felony to leave his gun at home." 114 Cong. Rec. 22,231 (1968) (statement of Representative Poff, sponsor of the legislation that eventually became Section 924(c)). The statute provides "a separate and additional penalty for the mere act of choosing to use or carry a gun in committing a crime under a federal law." 115 Cong. Rec. 34,838 (1969) (statement of Senator Mansfield, sponsor of the original amendment to Section 924(c)). The Fourth Circuit's interpretation of the statute—which allows for the imposition of multiple convictions and penalties when there is only one choice to use, carry, or possess a firearm in committing specified crimes—is contrary to this purpose.

In sum, the statute’s text, structure, and purpose do not support multiple convictions—and multiple mandatory minimum sentences—where individuals, like petitioner, are convicted of engaging in only a single use, carrying, or possession of a firearm.

B. The rule of lenity requires that any remaining ambiguity about the statute’s meaning be resolved in the defendant’s favor.

To the extent Section 924(c)’s meaning is ambiguous, the rule of lenity compels reversal of the Fourth Circuit’s decision. An “outgrowth” of courts’ “reluctance to increase or multiply punishments absent a clear and definite legislative directive,” *Simpson v. United States*, 435 U.S. 6, 15–16 (1978), the rule of lenity provides that “where there is ambiguity in a criminal statute, doubts are resolved in favor of the defendant,” *Adamo Wrecking Co. v. United States*, 434 U.S. 275, 284–85 (1978) (internal quotation marks omitted). The rule applies when, “after considering text, structure, history, and purpose, there remains a grievous ambiguity or uncertainty in the statute.” *Barber v. Thomas*, 560 U.S. 474, 488 (2010) (internal quotation marks and citation omitted).

Here, all the tools of statutory interpretation point in the same direction: a single use, carrying, or possession of a firearm supports only one conviction under Section 924(c). *See supra* Part I.A. But if these do not resolve the issue, the ambiguity in Section 924(c) is certainly “grievous,” requiring the Court to “simply guess as to what Congress intended.” *Barber*, 560 U.S. at 488 (internal quotation marks omitted). In such a case, “the tie goes to the presumptively free citizen and not the prosecutor.” *Rentz*, 777 F.3d at 1113.

The construction adopted by the Fourth Circuit is far more severe than the majority interpretation, allowing multiple, consecutively imposed mandatory minimums for a single use, carrying, or possession of a firearm.

Section 924(c) is particularly harsh, requiring 5 additional years of imprisonment even for a defendant with no criminal history who merely possessed a firearm in furtherance of a predicate offense. 18 U.S.C. § 924(c)(1)(A). The Fourth Circuit’s interpretation renders Section 924(c) even more punitive, allowing the imposition of multiple mandatory minimums for the *same conduct*—the single use, carrying, or possession of a firearm. At the time Congress originally enacted higher penalties for second or subsequent violations, this interpretation meant at least *quintupling* the sentence, adding a mandatory minimum of 25 years to life in prison to the 5-year mandatory minimum for the first conviction, for a single use, carrying, or possession. Even the current, post-2018 version of Section 924(c) dictates that no sentence imposed under the statute “shall run concurrently with any other term of imprisonment imposed on the person,” *id.* § 924(c)(1)(D)(ii), so this interpretation at least doubles the minimum term of imprisonment compared to that which a defendant would face under the majority rule.

The Fourth Circuit’s interpretation also allows drastic sentencing disparities among defendants who engage in very similar conduct. For example, consider a defendant who, carrying a firearm, attacks a potential witness in a grocery store parking lot. The defendant could be charged with the predicate offense of using physical force to influence testimony (18 U.S.C. § 1512(a)(2)). If convicted of a single Section 924(c)

violation, he would face a 5-year mandatory minimum sentence. Now consider a defendant who, carrying a firearm, attacks a potential witness in a post office parking lot. This defendant could be charged with two predicate offenses: using physical force to influence testimony (18 U.S.C. § 1512(a)(2)) *and* assault with intent to commit a felony in the federal territorial jurisdiction of the United States (18 U.S.C. § 113(a)(2)). In the Fourth Circuit, this defendant could be convicted of two Section 924(c) violations, resulting in two consecutive 5-year mandatory minimum sentences—twice the sentence of the defendant who committed the same offense on private property.

Similarly, if a single use, carrying, or possession of a firearm can give rise to multiple Section 924(c) convictions, a prosecutor can strategically charge multiple predicate offenses for the same conduct in order to increase the mandatory term of imprisonment exponentially. This is a serious concern. *See Rentz*, 777 F.3d at 1107 (“In an age when the manifest of federal criminal offenses stretches ever longer, a parsimonious pleader can easily describe a defendant’s single use of a firearm as happening ‘during and in relation to’ multiple qualifying crimes.”). For example:

- In one trip, a defendant drives across state lines to a meeting where he negotiates and completes a sale of drugs. The defendant carries a firearm in his car during this single trip. The defendant has potentially committed three drug trafficking crimes: distribution (21 U.S.C. § 841(a)(1)), conspiracy (21 U.S.C. § 846), and interstate travel with intent to facilitate drug trafficking (18 U.S.C. § 1952(a)(3)), each a predicate drug trafficking offense under

Section 924(c). The prosecutor decides whether to charge the defendant with as many as three violations of Section 924(c), which would result in *three* consecutive mandatory minimums of at least 5 years each (or 30 years each—90 years total—if the firearm was an automatic weapon).

- A defendant retaliates against an airport security guard by striking him with a firearm after the guard reported the defendant to federal law enforcement. The defendant could be charged with three crimes of violence: interference with the duties of airport security personnel by assault (49 U.S.C. § 46503), retaliation through bodily injury for providing information to a federal law enforcement officer (18 U.S.C. § 1513(b)(2)), and violence at an international airport (18 U.S.C. § 37(a)). The prosecutor decides whether to charge the defendant with as many as three violations of Section 924(c), which would result in *three* consecutive mandatory minimums of at least 7 years each.
- On federal property, a defendant shoots and wounds a potential witness who had cooperated with federal law enforcement during the investigation that led to the defendant's arrest. The defendant could be charged with three crimes of violence: attempted murder within the territorial jurisdiction of the U.S. (18 U.S.C. § 1113), attempted killing of a witness (18 U.S.C.

§ 1512(a)(1)), and attempted killing of a person on account of their assistance of a federal officer (18 U.S.C. § 1114(3)). The prosecutor can charge as many as three violations of Section 924(c), which would result in *three* consecutive mandatory minimums of at least 10 years each. *See* 18 U.S.C. § 924(c)(1)(A)(iii).

Where such significant sentences are at stake, the law must prescribe clearly a unit of prosecution that greatly enhances the required penalty. *See United States v. Bass*, 404 U.S. 336, 348 (1971) (observing that the rule of lenity “embodies the instinctive distastes against men languishing in prison unless the lawmaker has clearly said they should” (internal quotation marks omitted)). But here, no clear statement in Section 924(c)’s text or legislative history supports the Fourth Circuit’s interpretation. And where one reading of a statute would yield a longer sentence, courts should adopt the interpretation requiring the less severe punishment. *United States v. R.L.C.*, 503 U.S. 291, 305 (1992). The rule of lenity therefore compels reversal of the Fourth Circuit’s decision.

Indeed, this Court has applied the rule of lenity in circumstances very similar to those here. In *Ladner v. United States*, 358 U.S. 169 (1958), a defendant was convicted of two counts of assault under a federal statute after he wounded two federal officers with the single discharge of a shotgun. *Id.* at 171. The Court applied the rule of lenity and held that this conduct could not support two separate convictions. *Id.* at 178–79. The Court explained that if Congress wished to “create multiple offenses from a single act,” it could “make that meaning clear,” but it had failed to do so. *Id.* at

178. In reaching this result, the Court noted that the statute also forbids activities beyond assault, such as impeding an officer in performing his duty. Thus, under the government’s interpretation, if a locked door impeded officers in their efforts to effect an arrest, “the person locking the door might commit as many crimes as there are officers denied entry.” *Id.* at 176. The Court in *Ladner* found no reason to believe Congress intended multiple charges in that instance, and it identified no basis for treating the outlawed activities of assault and impeding differently when it comes to multiple counts. *Id.* So too here. There is no indication that Congress intended for the single use of a firearm to give rise to multiple mandatory consecutive sentences. Thus, a single carrying or possession cannot support multiple Section 924(c) counts either.

Similarly, in *Bell v. United States*, 349 U.S. 81 (1955), the Court applied the rule of lenity and held that a defendant could not be convicted of multiple violations of a federal prostitution statute when he transported two victims in the same car on the same trip. *Id.* at 82–84. Writing for the Court, Justice Frankfurter observed: “When Congress has the will it has no difficulty in expressing it—when it has the will, that is, of defining what it desires to make the unit of prosecution and, more particularly, to make each stick in a [bundle] a single criminal unit.” *Id.* at 83.

The rationales in *Ladner* and *Bell* compel the same result here. One of the activities giving rise to Section 924(c) convictions is the use of a firearm—the very conduct giving rise to the assault convictions in *Ladner*. 358 U.S. at 171. In fact, this case presents even stronger justification for applying the rule of lenity than in those cases, as the criminal penalties under Section 924(c) are much harsher than those in

Ladner and *Bell*, neither of which involved either a mandatory minimum or a requirement that the sentences for the convictions run consecutively. See 18 U.S.C. § 254 (1940) (establishing 10-year *maximum* for assaulting a federal officer with a deadly or dangerous weapon); 18 U.S.C. § 2421 (1952) (establishing 5-year *maximum* for prostitution trafficking). In light of this precedent, the majority of circuits agree that the rule of lenity compels adoption of the less severe reading of Section 924(c) to the extent the statute is ambiguous.⁴

In sum, the rule of lenity requires that any remaining ambiguity about the statute's meaning be resolved in the defendant's favor and thus compels reversal of the Fourth Circuit's decision. This case presents an opportunity for the Court to reaffirm the rule of lenity's importance to the interpretation of criminal statutes and the crucial values it furthers.

II. The Decision Below Is of Practical and National Significance.

Not only is the Fourth Circuit's interpretation of the statute wrong and in conflict with the interpretations adopted by six other federal courts of appeals, it threatens to impose substantial and unnecessary harms and costs on criminal defendants, their families, and society at large. Those harms and costs have not been removed by the First Step Act's otherwise salutary amendment of § 924(c)'s recidivist provision.

⁴ See *United States v. Vichitvongsa*, 819 F.3d 260, 269 (6th Cir. 2016); *Rentz*, 777 F.3d at 1113–14; *United States v. Cureton*, 739 F.3d 1032, 1044 (7th Cir. 2014); *United States v. Phipps*, 319 F.3d 177, 187–88 (5th Cir. 2003); *United States v. Finley*, 245 F.3d 199, 207 (2d Cir. 2001); *United States v. Wilson*, 160 F.3d 732, 749 (D.C. Cir. 1998).

The difference between a single Section 924(c) conviction and two Section 924(c) convictions is significant. For defendants like petitioner, charged before Congress passed the First Step Act, a second Section 924(c) charge carries a default mandatory minimum of 25 years, to be imposed *consecutively* to all other sentences, including the mandatory minimum for the first Section 924(c) charge. *See* 18 U.S.C. § 924(c)(1)(C) (2012), *amended by* First Step Act of 2018, Pub. L. No. 115-391, 132 Stat. 5194. If the firearm was a machinegun or destructive device, or was equipped with a silencer or muffler, that defendant “shall” be sentenced to “imprisonment for life” for the single use, possession, or carrying. *Id.*

Although the First Step Act has lessened the compounding effect of the Fourth Circuit’s decision going forward, *see supra*, in that defendants are no longer treated as recidivists simply for being convicted under a multi-count indictment, defendants convicted and sentenced under the Fourth Circuit’s interpretation still will face a mandatory minimum 5-year sentence for each conviction under Section 924(c), to run consecutively with the sentence for the first conviction, where both are charged in the same indictment. *See* 18 U.S.C. § 924(c)(1)(A)(i), (c)(1)(D)(ii). Again, substantial enhancements make for even greater compounding effects—if the firearm was brandished or discharged, the defendant would receive two consecutive 7-year or 10-year sentences on the Section 924(c) counts. *See id.* § 924(c)(1)(A)(ii)–(iii). If the firearm was equipped with a silencer or was a machinegun, the defendant would face two consecutive 30-year sentences on the Section 924(c) counts. *See id.* § 924(c)(1)(B)(ii).

Such protracted sentences—often based only on the happenstance of multiple available charges for much the same conduct, *see supra*—have devastating effects on both the accused and their families. Longer mandatory minimum sentences make reentry into society more difficult, principally because the longer a defendant spends in prison, the fewer the resources and the weaker the support infrastructure the defendant can expect upon release, and the more likely the defendant will return to the people and circumstances that led her to commit crime in the first place. *See* Andrew D. Leipold, *Is Mass Incarceration Inevitable?*, 56 Am. Crim. L. Rev. 1579, 1586 (2019). And children of incarcerated individuals likewise suffer—these innocent third parties face greater risks of health and psychological problems, and generally have diminished educational and economic success. *See* Eric Martin, *Hidden Consequences: The Impact of Incarceration on Dependent Children*, 278 Nat'l Inst. Just. 10, 10–16 (2017).

The costs of lengthy incarceration also extend to society more broadly. Mandatory minimums drain government revenue, increasing the number of incarcerated individuals by severalfold and imposing substantial costs associated with maintaining adequate facilities for those individuals. *See* Barbara S. Vincent & Paul J. Hofer, *The Consequences of Mandatory Minimum Prison Terms: A Summary of Recent Findings*, 7 Fed. Sent'g Rep. 33, 36–37 (1994). And despite their intended deterrent effect, mandatory terms may actually exacerbate crime rather than reduce it, because longer terms of imprisonment generally increase recidivism rates. *See* Daniel S. Nagin et al., *Imprisonment and Reoffending*, 38 Crime & Just. 115, 121 (2009); *see also* Michael Tonry, *The Mostly Unintended Effects of Mandatory Penalties: Two Centuries*

of Consistent Findings, 38 Crime & Just. 65, 68 (2009) (noting the lack of evidence that mandatory minimums have any deterrent effect).

Moreover, the costs and harms of the decision below are not isolated. In 2016 alone, 1,976 defendants were convicted under Section 924(c). See U.S. Sent’g Comm’n, *Mandatory Minimum Penalties for Firearms Offenses in the Federal Criminal Justice System* 4 (Mar. 2018), <https://bit.ly/30CviUh>. Nearly one-tenth (146 of those defendants) were convicted of and sentenced for multiple counts of Section 924(c) in the same proceeding. *Id.* at 19.

As has always been the case, the individuals sentenced under Section 924(c) in 2016 were disproportionately Black—52.6% of all defendants convicted. See U.S. Sent’g Comm’n, *supra*, at 24. Whether this effect results from statistical differences in the nature of crimes committed, on average, or from unconscious bias by prosecutors in charging and plea-bargaining is unknown. But the Fourth Circuit’s interpretation exacerbates that disproportionate application: 70.5% of all defendants convicted of multiple counts of Section 924(c) in the same proceeding were Black. *Ibid.* In other words, it is not just that Section 924(c) disproportionately affects minority populations, but rather that the decision below in particular heightens the disparate sentencing impacts on Black criminal defendants.

This Court should look with skepticism at judicial applications of the sentencing laws that serve no apparent deterrent or retributive purpose, and instead arbitrarily increase the prison time of some individuals who have not engaged in conduct that is more culpable in any meaningful way. See *United States v. Smith*, 756 F.3d 1179, 1191 (10th Cir. 2014) (Gorsuch,

J.) (“In our legal order it is not the job of independent courts to bend ambiguous statutory subsections in procrustean ways to fit the prosecutor’s bill.”). If such unfounded interpretations of statutes are allowed to proliferate without intervention and correction by this Court, the costs to defendants, their families, and society as a whole will continue to compound, with no countervailing benefit.

CONCLUSION

The Court should grant the petition for certiorari.

Respectfully submitted.

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