

No. 24-5774

In the Supreme Court of the United States

DWAYNE BARRETT, PETITIONER

v.

UNITED STATES OF AMERICA

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

**REPLY BRIEF FOR RESPONDENT
SUPPORTING PETITIONER**

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As the government explained in its opening brief, because 18 U.S.C. 924(c)(1)(A) is a lesser-included offense of 18 U.S.C. 924(j), a presumption arises that Congress did not intend to authorize cumulative punishments where the same conduct violates both provisions. While that presumption can be rebutted when there is a clear indication of a contrary congressional intent, no such indication exists here. Among other things, Section 924(c) expressly authorizes cumulative punishments for some offenses, but lacks any language authorizing cumulative punishments under Sections 924(c)(1)(A) and (j).

The contrary arguments of the Court-appointed amicus largely repeat the errors of the court of appeals. Like the court of appeals, amicus pays little heed to the implications of Congress's choice to authorize only some cumulative punishments, and instead focuses on Section 924(c)'s statutory minimums and requirement for con-

secutive sentences. But by doing so, he begs the question presented in this case. Those provisions address the appropriate sentence *if* a defendant is convicted under Section 924(c); they do not address whether such a conviction is authorized if the defendant is also convicted under Section 924(j). And amicus cannot make up for the deficiencies of his textual argument simply by observing that Sections 924(c) and (j) are codified in separate subsections.

Amicus's reliance on history and purpose is similarly misplaced. Much of the legislative history that he cites relates to the same statutory-minimum and consecutive-sentencing requirements in Section 924(c) that he highlights in his textual analysis. To the extent that it is probative of statutory meaning, the history of those requirements does not indicate a clear intent to authorize cumulative punishments any more than the textual requirements themselves do. Nor does Congress's general intention to harshly punish firearm offenses clearly indicate that the sentencing schemes in Sections 924(c)(1)(A) and (j) were meant to be cumulative. This Court explained in *Lora v. United States*, 599 U.S. 453 (2023), that each subsection provides for significant punishment in its own way, without dependence on the other.

Lora also made clear that its holding—that the two sentencing schemes are separate—is consistent with the government's longstanding view that Sections 924(c)(1)(A) and (j) do not authorize cumulative punishments. That view is also consistent with the other decisions of this Court that amicus cites. And although amicus decries the results of treating the two sentencing schemes as alternatives, this Court rejected similar arguments in *Lora*. The judgment below is erroneous and should be vacated.

A. A Clear Indication Of Congressional Intent Would Be Required For Cumulative Punishments Under 18 U.S.C. 924(c)(1)(A) And (j)

As the government’s opening brief explained (at 15-18), the Double Jeopardy Clause’s application to the imposition of multiple punishments in a single trial turns on the intent expressed in the statute. Under the test set forth in *Blockburger v. United States*, 284 U.S. 299 (1932), multiple punishments are generally permissible so long as “each provision requires proof of a fact which the other does not.” *Id.* at 304. Sections 924(c)(1)(A) and (j) do not satisfy that condition, because a conviction under Section 924(j) requires proof of “a violation of subsection (c).” 18 U.S.C. 924(j); see U.S. Br. 18; Pet. Br. 20; Amicus Br. 16. And in such circumstances, this Court has presumed that the legislature did *not* intend cumulative punishments unless “there is a clear indication of contrary legislative intent.” *Albernaz v. United States*, 450 U.S. 333, 340 (1981) (citing *Blockburger*, 284 U.S. at 304).

Contrary to petitioner’s suggestion (Br. 3, 16, 19, 24), such intent need not be manifested in any specific way, so long as it is clear. Petitioner would have the Court apply the clear-statement rule adopted in cases involving the abrogation of sovereign immunity, under which Congress must make its intent “unmistakably clear in the language of the statute.” *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 387 (2023) (citation omitted). But that clear-statement rule addresses concerns about respecting the immunity that sovereigns were traditionally accorded. See *ibid.*; see also Amy Coney Barrett, *Substantive Canons and Faithful Agency*, 90 B.U. L. Rev. 109, 150 (2010). Those concerns are absent from the considera-

tion of cumulative punishments in a single trial. In this context, this Court conducts a broad inquiry into “language, structure, and legislative history” to determine whether “the legislative intent is clear.” *Garrett v. United States*, 471 U.S. 773, 779 (1985). The Court’s precedents undertaking that holistic inquiry provide the framework for analyzing the question presented here.*

Amicus endeavors to cast doubt on the applicability of the *Blockburger* presumption in cases where one statute punishes conduct that takes place “in the course” of the violation of another. Amicus Br. 16 (citation omitted). But while Congress undoubtedly has the authority to “punish[] separately each step leading to the consummation of a transaction which it has power to prohibit,” the Court has looked to the *Blockburger* presumption as a “useful canon of statutory construction” in determining whether Congress intended to do so. *Garrett*, 471 U.S. at 779. And the Court has consistently applied the presumption in circumstances analogous to the circumstances here. See, e.g., *id.* at 779-781 (applying *Blockburger* presumption to offenses of continuing criminal enterprise offense and predicate drug crimes); *Whalen v. United States*, 445 U.S. 684, 690-694 (1980) (applying *Blockburger* presumption to offenses of rape and killing committed in the course of rape).

* Petitioner briefly mentions (Br. 29) the rule of lenity. But he does not urge the Court to apply it, and there is no basis to do so. The rule of lenity comes into play only if, after employing all of the traditional tools of statutory construction, “there remains a grievous ambiguity” such that “the Court must simply guess as to what Congress intended.” *United States v. Castleman*, 572 U.S. 157, 173 (2014) (citation omitted). If that level of ambiguity existed, the *Blockburger* presumption itself would decide the case.

B. Amicus Fails To Show That Congress Clearly Intended To Authorize Cumulative Punishments For The Same Conduct Under Sections 924(c)(1)(A) And (j)

As the government’s opening brief details (at 18-23), Sections 924(c)(1)(A) and (j) do not provide the clear indication of the intent to impose cumulative punishments required by the *Blockburger* presumption. Instead, the most salient indication of congressional intent cuts the other way: in crafting Section 924, Congress expressly provided for cumulative punishments for some offenses in Section 924(c), but did not do so for Sections 924(c)(1)(A) and (j).

1. Amicus’s textual analysis disregards significant indications of Congress’s intent

Section 924 authorizes multiple punishments in certain scenarios. In Section 924(c)(1)(A), Congress provided that punishment for the basic offense of possessing a firearm in furtherance of a crime of violence or drug trafficking crime should be “in addition to the punishment provided” for the predicate crime. 18 U.S.C. 924(c)(1)(A). And in Section 924(c)(5), Congress provided that punishment for the use of armor-piercing ammunition shall be “in addition to the punishment provided” for the underlying crime of violence or drug trafficking crime “or conviction under this section”—thereby allowing multiple punishments for certain Section 924 offenses. 18 U.S.C. 924(c)(5). Yet Congress included no similar language authorizing punishment for offenses under Section 924(c)(1)(A) in addition to punishment for offenses under Section 924(j). The “specification of the one”—or here, the several—“implies exclusion of the other.” Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 107 (2012).

a. Amicus errs in disregarding (*e.g.*, Br. 17-20, 40) Congress’s express—but bounded—authorization for multiple punishments in certain circumstances, and focusing instead on Section 924(c)’s separate requirements of statutory-minimum sentences that must run consecutively to “any other term of imprisonment imposed on the person,” 18 U.S.C. 924(c)(1)(D)(ii); see 18 U.S.C. 924(c)(1)(A) (requiring statutory-minimum sentences). As the government has explained (Br. 26-27), those features of Section 924(c) simply indicate the appropriate length and sequence of a sentence *when* a defendant is convicted under Section 924(c) as well as another provision. This case, however, concerns the antecedent question of *whether* a defendant may be properly convicted under both Section 924(c)(1)(A) and Section 924(j) in the first place. Nothing in Section 924(c)’s statutory minimums or consecutive-sentence mandate addresses the permissibility of such dual convictions.

Amicus is mistaken in repeatedly asserting (Br. 20, 24, 31, 39, 49) that foreclosing dual convictions under Sections 924(c)(1)(A) and (j) would treat Section 924(j) as nullifying Section 924(c)’s sentencing requirements. Instead, those requirements would still apply in any number of cases. A conviction for violating Section 924(c)(1)(A) in the course of a robbery, for example, would still require a statutory-minimum sentence consecutive to any sentence for the robbery (if charged) and any sentences for other offenses for which the defendant was validly convicted. See, *e.g.*, *United States v. Gonzales*, 520 U.S. 1, 4-5 (1997) (holding that Section 924(c)(1)(A) required sentence consecutive to sentence for state firearm offense).

Congress simply did not authorize multiple sentences—or, consequently, multiple convictions, see *Ball v.*

United States, 470 U.S. 856, 861 (1985)—for the same conduct in the particular circumstance where the same conduct violates both Sections 924(c)(1)(A) and (j). Indeed, if Section 924(c)’s statutory minimums and consecutive-sentence mandate were in themselves sufficient to authorize cumulative punishments, Congress presumably would not have needed to specify that punishment under Section 924(c)(1)(A) should be “in addition to the punishment provided for” the predicate “crime of violence or drug trafficking crime.” 18 U.S.C. 924(c)(1)(A).

b. Amicus’s criticisms of that straightforward application of the *Blockburger* presumption are misplaced. He correctly notes (Br. 38-39) that Congress need only indicate its intent to allow for cumulative punishments in either Section 924(c)(1)(A) *or* Section 924(j), not both. But the problem here is that *neither* provision indicates such an intent. A consecutive-sentence mandate speaks to the sequencing of sentences, not the permissibility of convictions. Even if both Sections 924(c) and (j) had consecutive-sentencing mandates, that would not necessarily indicate that Congress had the intent to allow for conviction under both Sections 924(c)(1)(A) and (j).

Amicus is also correct in noting (Br. 41-42) that the particular language in Section 924(c)(5)—which expressly authorizes punishment cumulative to other Section 924 penalties for violations of Section 924(c) that involve armor-piercing ammunition—is not the *only* way that Congress could indicate an intent to allow for multiple punishments. All that is required is an indication, however it might be manifested, that Congress intended to rebut the *Blockburger* presumption. See, *e.g.*, *Garrett*, 471 U.S. at 779-781 (holding that Congress authorized cumulative punishments without language analogous to Section 924(c)(5), based on text, structure,

and history). But Sections 924(c)(1)(A) and (j) do not have such a clear indication at all.

The express language authorizing cumulative punishments in some circumstances in Section 924(c)(5)—and for predicate offenses in Section 924(c)(1)(A)—is relevant not because it exhibits a rigid “magic-words requirement,” Amicus Br. 41, but instead because it suggests that Congress “act[ed] intentionally” in omitting analogous language with respect to cumulative punishments for Sections 924(c)(1)(A) and (j). *Russello v. United States*, 464 U.S. 16, 23 (1983) (citation omitted). Amicus argues (Br. 42) that structural “indicia” obviated the need for such an analogue. See Amicus Br. 21-24, 29-30, 42-43. But the “indicia” that he identifies—differences in the harm on which the provisions are focused, the provisions’ distinct punishment schemes, and the provisions’ codification in separate subsections—are ones that this Court’s precedents have found insufficient to show the requisite clear indication. See, e.g., *Whalen*, 445 U.S. at 690-695 (no cumulative punishments for rape and the killing of a person in the course of rape, codified in different sections); *Brown v. Ohio*, 432 U.S. 161, 167 (1977) (no cumulative punishments for joyriding and auto theft, codified in different subsections); see also *Rutledge v. United States*, 517 U.S. 292, 304 n.14 (1996) (finding that codification in different sections “d[id] not rise to the level of the clear statement necessary for us to conclude that * * * Congress intended to allow multiple punishments”).

Congress thus had no sound reason to assume that courts would read Section 924(j)’s silence as the functional equivalent of Section 924(c)(5)’s, or Section 924(c)(1)(A)’s, explicit language. And the presence of such explicit language in those sections, but not in Sec-

tion 924(j), refutes amicus’s suggestion (Br. 22, 26) that because 18 U.S.C. 1111 and 1112 may serve as predicate offenses that are subject to cumulative punishments under Section 924(c)(1), Congress intended the same treatment when it expanded federal jurisdiction over murder and manslaughter in Section 924(j). The basis for cumulative punishments for murder and manslaughter under Section 924(c)(1) is the plain text of the statute—text that is conspicuously absent with respect to Sections 924(c)(1)(A) and (j).

2. History and purpose do not provide the clear indication missing from the statutory text

As the government has explained (Br. 21-23), to the extent that it is relevant, the history of Sections 924(c) and (j) suggests that cumulative punishments are not permitted here. Amicus’s contrary arguments focus on aspects of the provisions that do not bear on multiple punishments. And he cannot rescue his argument by resorting to a generic statutory “purpose” to punish firearms offenses harshly.

a. Far from supporting amicus’s position, the history of Section 924(c) in fact shows that Congress was aware of the kind of clarity this Court requires to authorize cumulative punishments, and yet did not speak with such clarity when enacting Section 924(j). See U.S. Br. 21-23. In *Simpson v. United States*, 435 U.S. 6, 12-13 (1978), and *Busic v. United States*, 446 U.S. 398, 405 (1980), the Court held that Section 924(c)’s language requiring punishment to be “in addition to” punishment for the predicate offense was insufficient to authorize cumulative punishments if the predicate offense itself contained a firearm enhancement provision. Congress responded by explicitly indicating that it intended for cumulative punishments in such cases. But it did not

carry that lesson forward by providing a similar indication with respect to sentences under Sections 924(c)(1)(A) and (j). See Federal Death Penalty Act of 1994, Pub. L. No. 103-322, Tit. VI, § 60013, 108 Stat. 1973.

Amicus attempts (Br. 27) to spin that history in his favor by asserting that because Congress amended Section 924(c) after *Simpson* and *Busic* to expressly provide for multiple punishments when predicate offenses have firearm enhancement provisions, Congress exhibited a general favoritism for multiple punishments that would encompass Section 924(j) as well. But Congress's express authorization of cumulative punishments for Section 924(c)(1)(A) offenses and all of their *predicate* offenses does not mean that Congress also chose to authorize cumulative punishments for Section 924(c)(1)(A) offenses and all *nonpredicate* offenses, like Section 924(j). Instead, by amending Section 924(c)(1)(A), Congress recognized the clarity this Court had required in *Simpson* and *Busic*. And by declining to speak with any similar clarity when it later added Section 924(j), Congress declined to take a similar approach to cumulative punishments under that provision.

Amicus cannot show a general intent to nonetheless authorize multiple punishments by pointing (Br. 26) to statements by Senators during debates on Section 924(c). To the extent that legislative history could be probative of statutory meaning, "floor statements by individual legislators rank among the least illuminating forms." *NLRB v. Southwest Gen., Inc.*, 580 U.S. 288, 307 (2017). In any event, the cited statements (like amicus's textual arguments) focus on Section 924(c)'s consecutive-sentence mandate and authorization of cumulative punishments for Section 924(c) offenses and their *predicate* crimes. See 116 Cong. Rec. 42,150 (1970) (statements of

Sens. McClellan and Mansfield) (discussing consecutive-sentence mandate); 116 Cong. Rec. 35,734 (1970) (statement of Sen. Mansfield) (“The sentence imposed will be in addition to and not concurrent, with the sentence for the *underlying* crime.”) (emphasis added). Like the textual provisions of Section 924(c) to which those statements relate, the statements do not reflect an intent to authorize cumulative punishments for overlapping offenses that do *not* qualify as a predicate offense for Section 924(c)(1)(A).

b. The history of Section 924(j) likewise does not contain, or otherwise support, a clear indication that Congress intended to authorize cumulative punishments. Amicus notes (Br. 24-25) that Congress rejected proposals to amend Section 924(c) to impose a mandatory life sentence if death resulted from a violation or to otherwise nest Section 924(j) within Section 924(c). But Congress’s rejection of the proposal to require a mandatory life sentence when death results indicates a choice to “eschew[] mandatory penalties in favor of sentencing flexibility.” *Lora*, 599 U.S. at 462. It does not clearly indicate that Congress intended the mandatory penalties and flexible penalties to be stacked. And, as already explained (pp. 8-9, *supra*), codification in a separate subsection does not suggest an intent to authorize cumulative punishments under both subsections for the same conduct.

The insufficiency of separate codification as a clear indication of Congress’s intent here likewise undermines amicus’s reliance (Br. 25) on the premise that in enacting Section 924(j) as a standalone offense, Congress “mirror[ed]” other offenses enacted at the same time as part of the Federal Death Penalty Act. Regardless of whether the offenses are separately codified, a

more extensive *Blockburger*-based analysis is required. And whatever might be the case for any other offense in the Federal Death Penalty Act, the analysis here, based on the Court's precedents, does not support the conclusion that cumulative punishments are authorized.

c. Finally, amicus's emphasis (Br. 28) on Congress's desire to harshly punish firearm offenses does not meaningfully add to his argument. The invocation of a generic (and inherently malleable) statutory "purpose" provides a poor substitute for the plain meaning of the text. In any event, amicus's argument fails on its own terms. Congress already "designed subsection (j)'s penalties to account for the seriousness of the offense by themselves." *Lora*, 599 U.S. at 463 n.5. Even without a cumulative punishment for violating Section 924(c), Section 924(j) authorizes the death penalty—the most severe punishment possible—as well as the punishments that Congress elsewhere deemed appropriate for the homicide crimes of murder and manslaughter. See 18 U.S.C. 924(j)(1) and (2). If Congress had deemed punishment under Section 924(c) to be necessary to appropriately punish Section 924(j) crimes, it could have incorporated the Section 924(c) sentencing scheme into Section 924(j). But, as this Court has squarely held, it did not do so. See *Lora*, 599 U.S. at 455.

At all events, because "no legislation pursues its purposes at all costs," *Rodriguez v. United States*, 480 U.S. 522, 525-526 (1987) (per curiam), it is "'quite mistaken to assume' * * * that any interpretation of a law that does more to advance a statute's putative goal 'must be the law,'" *Perez v. Sturgis Pub. Sch.*, 598 U.S. 142, 150 (2023) (citation omitted). In the absence of any clear implication that Congress intended to authorize multi-

ple punishments, invoking a general congressional “purpose” to harshly punish firearm crimes does not suffice.

C. Amicus’s Remaining Arguments Are Unsound

Amicus’s remaining arguments overread this Court’s precedents or rely on reasoning that this Court has already rejected. They do not provide a basis to affirm the judgment below.

1. *Amicus overreads this Court’s precedents*

Amicus attempts to find a foothold for his position in numerous precedents, both inside and outside of the double-jeopardy context. But neither set of decisions supplies or supports a clear indication that Congress authorized cumulative punishments under Sections 924(c)(1)(A) and (j).

a. Like the court of appeals, amicus highlights (Br. 29-30) *Lora*’s observation that Congress “plainly chose a different approach to punishment” in Section 924(j) than it did in Section 924(c). 599 U.S. at 462; see Pet. App. 58a. But as the Court explicitly recognized, the “[g]overnment’s view of double jeopardy can easily be squared” with *Lora*, which did not decide the double-jeopardy issue. 599 U.S. at 462. Indeed, *Lora*’s observation that Section 924(j) favors “sentencing flexibility” and punishes the offense “without incorporating penalties from subsection (c),” *id.* at 463 & n.5, suggests that Congress did not authorize cumulative Section 924(c) penalties.

Amicus also errs in relying (Br. 30-35) on decisions that enforced Section 924(c)’s requirement for minimum consecutive sentences for defendants also convicted of a state firearm offense, *Gonzales*, 520 U.S. at 9-10, or a federal offense with a higher statutory minimum, see *Abbott v. United States*, 562 U.S. 8, 24-25 (2010). Those ap-

plications of Section 924(c)'s consecutive-sentence requirement have no bearing on the double-jeopardy issue here. As previously discussed, see pp. 6-7, *supra*, the consecutive-sentence requirement applies *when* multiple convictions are allowed; it does not in itself provide for multiple convictions. And the multiple convictions in each case cited were clearly permissible: multiple convictions under state and federal law (as in *Gonzales*) are not barred by the Double Jeopardy Clause, see *Gamble v. United States*, 587 U.S. 678, 683-685 (2019), and cumulative punishment for a predicate offense (as in *Abbott*) is expressly authorized by Section 924(c)(1)(A), see 18 U.S.C. 924(c)(1)(A).

Castillo v. United States, 530 U.S. 120 (2000), on which amicus also relies (Br. 31-33), likewise says nothing about the double-jeopardy issue here. In *Castillo*, the Court addressed Section 924(c)(1)(B), which provides that if a person convicted of a Section 924(c) violation used a machinegun, the person shall be sentenced to a minimum of 30 years of imprisonment. 18 U.S.C. 924(c)(1)(B). The Court held that the use of a machinegun is an additional offense element, as opposed to a sentencing factor that could be proven to the judge. *Castillo*, 530 U.S. at 124. In describing the additional element as “creat[ing] a separate substantive crime” for proof purposes, the Court was not holding that a defendant could be sentenced to five years for using a firearm in a crime of violence under Section 924(c)(1)(A), and an additional 30 years under Section 924(c)(1)(B)(ii) if the firearm is a machinegun. *Ibid.* Indeed, that is a result that amicus himself elsewhere disclaims. See Amicus Br. 42 (stating that, aside from Section 924(c)(5), the “other penalties set out in section 924(c) are mandatory minimums that replace each other”).

b. Amicus’s analogies to double-jeopardy precedents are similarly unsound. He likens (Br. 33-34) this case to *Garrett v. United States*, which held that a defendant could be convicted of both a continuing criminal enterprise as well as the predicate offense of importing marijuana. 471 U.S. at 776, 794-795. Amicus asserts that this case is akin to *Garrett* on the theory that in both cases, Congress “sought to punish two different steps of a criminal process” by targeting a “‘separate evil’” with its own “‘separate penalty.’” Br. 33-34 (brackets and citations omitted). But this Court’s precedents show that those factors are not always sufficient, particularly when other indicators of objective meaning exist. See pp. 8-9, *supra*. In *Whalen v. United States*, for example, the Court held that Congress did not authorize cumulative punishments in separate statutory provisions punishing rape and the killing of a person in the course of rape, based on indicators from the text and legislative history. 445 U.S. at 690-692.

Furthermore, the Court has explained that the result in *Garrett* “merely adhered to [the Court’s] understanding that legislatures have traditionally perceived a qualitative difference between conspiracy-like crimes and the substantive offenses upon which they are predicated.” *Rutledge*, 517 U.S. at 301 n.12. *Garrett* therefore illustrates that understandings of traditional legislative intent can at least sometimes provide the requisite clear indication overcome the *Blockburger* presumption. But the understanding at issue in *Garrett*, involving legislative intent with respect to separate charges for conspiracy-like offenses and an associated substantive crime, has no bearing on this case. Nor does the understanding of legislative intent reflected in *Diaz v. United States*, 223 U.S. 442 (1912), which amicus also cites (Br.

34-35). *Diaz* illustrates that a legislature may not intend to preclude multiple punishments in particular circumstances where an additional death-results element is satisfied only after the original proceeding on the lesser-included crime. See *Diaz*, 223 U.S. at 449; see also *Jeffers v. United States*, 432 U.S. 137, 151 (1977) (noting an exception to the general rule that a defendant may not be tried for a greater offense after being convicted of a lesser-included offense “when all the events necessary to the greater crime have not taken place at the time the prosecution for the lesser is begun”). But that says little about whether the legislature would intend to allow multiple punishments in *all* cases—as amicus contends it did here.

Amicus’s reliance (Br. 34) on *Missouri v. Hunter*, 459 U.S. 359 (1983), is even more misplaced, as that decision cuts against his position here. There, the Missouri legislature rebutted the *Blockburger* presumption by expressly requiring that the punishment for armed criminal action “shall be in addition to any punishment provided by law” for the predicate crime. *Id.* at 362 (quoting Mo. Rev. Stat. § 559.225 (Supp. 1976)). That authorization is akin to Section 924(c)(1)(A)’s instruction that the firearms offense shall be punished “in addition to” the predicate crime, 18 U.S.C. 924(c)(1)(A). But as discussed, that instruction tellingly has no analogue in Section 924(j).

2. *Amicus relies on reasoning that this Court has previously rejected*

In the final portion of his brief, amicus asserts (Br. 46-49) that a decision rejecting multiple punishments under Sections 924(c)(1)(A) and (j) will produce “untenable” results. Amicus hypothesizes (Br. 47) that courts might impose lower sentences on defendants under Sec-

tion 924(j) than under Section 924(c)(1), even though a victim’s death is an element of the former but not the latter. The government made similar arguments in *Lora*, and this Court rejected them. 599 U.S. at 462. The Court explained that Congress chose to account for the “seriousness of the offense” differently in Section 924(j) than it did in Section 924(c)—namely, by “authoriz[ing] the harshest maximum penalty possible” for murder and “impos[ing] the same harsh punishment” prescribed elsewhere in the Federal Criminal Code for manslaughter. *Id.* at 463. That same reasoning applies with here.

Amicus also claims (Br. 48) that unless multiple punishments are allowed, Section 924(j)’s manslaughter offense will become a “dead letter” because no prosecutor would choose to pursue a Section 924(j) charge when he could instead pursue a Section 924(c)(1)(A) charge that carries a statutory minimum. But as this Court explained in *Lora*, when Section 924(j) was enacted, manslaughter under Section 924(j) would have allowed for a higher sentence than the fixed five-year sentence that existed under Section 924(c)(1)(A) at that time. 599 U.S. at 463 n.5. It was not until Congress later shifted Section 924(c)(1)(A)’s penalties from fixed terms to mandatory minimums that the discrepancy for manslaughter arose. But neither at that time, nor any other, has Congress indicated a clear intent to authorize cumulative punishments under Sections 924(c)(1)(A) and (j).

Instead, Congress enacted Section 924(j) in order to expand authorization for the death penalty and enlarge federal criminal jurisdiction for murder and manslaughter beyond the “special maritime and territorial jurisdiction of the United States” for which it otherwise existed. 18 U.S.C. 1111(b), 1112(b); see U.S. Br. 22. And

by making murder under Section 924(j) punishable by death, Congress effectively eliminated the statute of limitations on that offense, see 18 U.S.C. 3281, providing prosecutors an option for charging a defendant after the five-year limitation for Section 924(c) offenses has expired, see 18 U.S.C. 3282(a).

Section 924(j) gives prosecutors a valuable additional tool for combatting firearms offenses. But that tool is an alternative to Section 924(c)(1)(A), not an add-on.

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The judgment of the court of appeals should be vacated in part and the case remanded for further proceedings.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

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