

22-49 LORA V. UNITED STATES

DECISION BELOW: 2022 WL 453368

LOWER COURT CASE NUMBER: 20-33

QUESTION PRESENTED:

District courts have discretion to impose either consecutive or concurrent sentences unless a statute mandates otherwise. 18 U.S.C. § 3584(a). Section 924(c)(1)(D)(ii) of Title 18 includes such a mandate, but only for sentences imposed "under this subsection." Efrain Lora was convicted and sentenced under a different subsection, Section 924(j), which does not include such a mandate. Lora therefore argued that the district court had discretion to impose concurrent sentences because Section 924(j) creates a separate offense not subject to Section 924(c)(1)(D)(ii); yet the Second Circuit ruled that the district court was required to impose consecutive sentences because Section 924(j) counts as "under" Section 924(c). This Court, however, has held that provisions like Sections 924(c) and 924(j) define separate offenses, not the same offense, because they set forth different potential punishments based on different elements. *Alleyne v. United States*, 570 U.S. 99, 100 (2013).

Four circuit courts have agreed with the Second Circuit's conclusion, although for distinct reasons (the Third, Fourth, Eighth, and Ninth). At least two circuits have disagreed (the Tenth and Eleventh). In addition to the numerous appellate decisions, this issue recurs in district courts frequently, because Section 924 is one of the most frequently charged federal criminal statutes. The question presented is:

Whether 18 U.S.C. § 924(c)(1)(D)(ii), which provides that "no term of imprisonment imposed ... under this subsection shall run concurrently with any other term of imprisonment," is triggered when a defendant is convicted and sentenced under 18 U.S.C. § 924(j).

CERT. GRANTED 12/9/2022