Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ABBOTT *v.* UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 09–479. Argued October 4, 2010—Decided November 15, 2010*

Petitioners Abbott and Gould, defendants in unrelated prosecutions, were charged with drug and firearm offenses, including violation of 18 U. S. C. §924(c), which prohibits using, carrying, or possessing a deadly weapon in connection with "any crime of violence or drug trafficking crime," §924(c)(1). The minimum prison term for a §924(c) offense is five years, §924(c)(1)(A)(i), in addition to "any other term of imprisonment imposed on the [offender]," §924(c)(1)(D)(ii). Abbott was convicted on the §924(c) count, on two predicate drug-trafficking counts, and of being a felon in possession of a firearm. He received a 15-year mandatory minimum sentence for his felon-in-possession conviction and an additional five years for his §924(c) violation. Gould's predicate drug-trafficking crime carried a ten-year mandatory minimum sentence; he received an additional five years for his §924(c) violation. On appeal, Abbott and Gould challenged their §924(c) sentences, resting their objections on the "except" clause prefacing §924(c)(1)(A). That clause provides for imposition of a minimum five-year term as a consecutive sentence "[e]xcept to the extent that a greater minimum sentence is otherwise provided by [§924(c) itself] or by any other provision of law." Abbott urged that the "except" clause was triggered by his 15-year felon-in-possession sentence; Gould said the same of the ten years commanded by his predicate trafficking crime. The Third Circuit affirmed Abbott's sentence, concluding that the "except" clause "refers only to other minimum sentences that may be imposed" for §924(c) violations. Gould fared no better before the Fifth Circuit.

---

*Together with No. 09–7073, *Gould* v. *United States,* on certiorari to the United States Court of Appeals for the Fifth Circuit.

Syllabus

Held: A defendant is subject to the highest mandatory minimum specified for his conduct in §924(c), unless another provision of law directed to conduct proscribed by §924(c) imposes an even greater mandatory minimum. Pp. 5–18.

(a) Section 924(c) was enacted as part of the Gun Control Act of 1968, but the "except" clause was not added until 1998. Under the pre-1998 text, it is undisputed, separate counts of conviction did not preempt §924(c) sentences, and Abbott and Gould would have been correctly sentenced under §924(c). The question here is whether Congress' 1998 reformulation of §924(c) rendered their sentences excessive. The 1998 alteration responded primarily to *Bailey* v. *United States*, 516 U. S. 137, which held that §924(c)(1)'s ban on "use" of a firearm did not reach "mere possession" of a weapon, *id.,* at 144. In addition to bringing possession within the statute's compass, Congress increased the severity of §924(c) sentences by changing "once mandatory sentences into mandatory minimum sentences," *United States* v. *O'Brien*, 560 U. S. ___, ___, and by elevating the sentences for brandishing and discharging a firearm and for repeat offenses. Congress also restructured the provision, "divid[ing] what was once a lengthy principal sentence into separate subparagraphs," *id.,* at ___, and it added the "except" clause at issue. Pp. 5–8.

(b) The leading portion of the "except" clause now prefacing §924(c)(1)(A) refers to a "greater minimum sentence . . . otherwise provided by [§924(c) itself]"; the second segment of the clause refers to a greater minimum provided outside §924(c) "by any other provision of law." To determine whether a greater minimum sentence is "otherwise provided . . . by any other provision of law," the key question is: otherwise provided *for what*? Most courts have answered: for the conduct §924(c) proscribes, *i.e.*, possessing a firearm in connection with a predicate crime.

Abbott and Gould disagree. Gould would apply the "except" clause whenever any count of conviction at sentencing requires a greater minimum sentence. Abbott argues that the minimum sentence "otherwise provided" must be one imposed for the criminal transaction that triggered §924(c) or, in the alternative, for a firearm offense involving the same firearm that triggered §924(c). These three interpretations share a common, but implausible, premise: that Congress in 1998 adopted a less aggressive mode of applying §924(c), one that significantly reduced the severity of the provision's impact on defendants. The pre-1998 version of §924(c) prescribed a discrete sentence to be imposed on top of the sentence received for the predicate crime or any separate firearm conviction. It is unlikely that Congress meant a prefatory clause, added in a bill dubbed "An Act [t]o throttle criminal use of guns," to effect a departure so great from §924(c)'s

original insistence that sentencing judges impose *additional* punishment for §924(c) violations. Abbott's and Gould's readings would undercut that same bill's primary objective: to expand §924(c)'s coverage to reach firearm possession. Their readings would also result in sentencing anomalies Congress surely did not intend. Section 924(c), as they construe it, would often impose no penalty at all for the conduct that provision makes independently criminal. Stranger still, the worst offenders would often secure shorter sentences than less grave offenders, because the highest sentences on other counts of conviction would be most likely to preempt §924(c) sentences. Abbott and Gould respond that sentencing judges may take account of any anomalies and order appropriate adjustments. While a judge exercising discretion under 18 U. S. C. §3553(a) would not be required to sentence a more culpable defendant to a lesser term, this Court doubts that Congress had such a cure in mind in 1998, seven years before *United States* v. *Booker*, 543 U. S. 220, held that district courts have discretion to depart from the Sentencing Guidelines based on §3553(a). Abbott and Gould alternatively contend that Congress could have anticipated that the then-mandatory Guidelines would resolve disparities by prescribing a firearm enhancement to the predicate sentence. But Congress expressly rejected an analogous scheme in 1984, when it amended §924(c) to impose a penalty even when the predicate crime itself prescribed a firearm enhancement. Between 1984 and 1998, Congress expanded the reach or increased the severity of §924(c) four times, never suggesting that a Guidelines firearm enhancement might suffice to accomplish §924(c)'s objective. Nor is there any indication that Congress was contemplating the Guidelines' relationship to §924(c) when it added the "except" clause. Pp. 8–14.

(c) The Government's reading—that the "except" clause is triggered only when another provision commands a longer term for conduct violating §924(c)—makes far more sense. It gives effect to statutory language commanding that all §924(c) offenders shall receive additional punishment for their violation of that provision, a command reiterated three times: First, the statute states that the §924(c)(1) punishment "shall" be imposed "in addition to" the penalty for the predicate offense, §924(c)(1)(A); second, §924(c) demands a discrete punishment even if the predicate crime itself "provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device," *ibid.*; third, §924(c)(1)(D)(ii) rules out the possibility that a §924(c) sentence might "run concurrently with any other term of imprisonment." Interpreting the "except" clause to train on conduct offending §924(c) also makes sense as a matter of syntax. The clause is a proviso, most naturally read to refer to the conduct

Syllabus

§924(c) proscribes. See *United States* v. *Morrow*, 266 U. S. 531, 534–535. There is strong contextual support for the view that the "except" clause was intended simply to clarify §924(c). At the same time Congress added the clause, it made the rest of §924(c) more complex, dividing its existing sentencing prescriptions into four paragraphs, and adding new penalties for brandishing and discharging a firearm. Congress thought the restructuring might confuse sentencing judges: It added the "except" clause's initial part, which covers greater minimums provided "by this subsection," to instruct judges not to stack ten years for discharging a gun on top of seven for brandishing the same weapon. In referencing greater minimums provided by "any other provision of law," the second portion of the clause simply furnishes the same no-stacking instruction for cases in which §924(c) and a different statute both punish conduct offending §924(c). Congress likely anticipated such cases when framing the "except" clause, for the bill that reformulated §924(c)'s text also amended 18 U. S. C. §3559(c) to command a life sentence for certain repeat felons convicted of "firearms possession (as described in §924(c))." This interpretation does not render the "except" clause's second part effectively meaningless. Though §3559(c) is the only existing statute, outside of §924(c) itself, that the Government places within the "except" clause, the "any other provision of law" portion installs a safety valve for additional sentences that Congress may codify outside §924(c) in the future. Neither *United States* v. *Gonzales,* 520 U. S. 1, nor *Republic of Iraq* v. *Beaty*, 556 U. S. ___, warrants a different conclusion. Pp. 14–18.

No. 09–479, 574 F. 3d 203; No. 09–7073, 329 Fed. Appx. 569, affirmed.

GINSBURG, J., delivered the opinion of the Court, in which all other Members joined, except KAGAN, J., who took no part in the consideration or decision of the cases.