

Abbott Vs. United States

Abbott Vs. United States

SooperKanoon Citation : sooperkanoon.com/108705

Court : US Supreme Court

Decided On : Nov-08-2010

Appeal No. : 09-479

Appellant : Abbott

Respondent : United States

Judgement :

Abbott v. United States - 09-479 (2010)

SYLLABUS

OCTOBER TERM, 2010

ABBOTT V. UNITED STATES

SUPREME COURT OF THE UNITED STATES

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. Goulds 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 Abbotts 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.

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 statutes 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 provisions 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. Abbotts and Goulds readings would undercut that same bills 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 Governments 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 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 clauses 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 clauses 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. Beatty* , 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.

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

Abbott v. United States - 09-479 (2010)

OPINION OF THE COURT
ABBOTT V. UNITED STATES
562 U. S. ____ (2010)

SUPREME COURT OF THE UNITED STATES

NOS. 09-479 AND 09-7073

KEVIN ABBOTT, PETITIONER

09-479 v.

UNITED STATES

on writ of certiorari to the united states court of appeals for the third circuit

CARLOS RASHAD GOULD, PETITIONER

09-7073 v.

UNITED STATES

on writ of certiorari to the united states court of appeals for the fifth circuit

[November 15, 2010]

Justice Ginsburg delivered the opinion of the Court.

As one of several measures to punish gun possession by persons engaged in crime, Congress made it a discrete offense to use, carry, or possess a deadly weapon in connection with any crime of violence or drug trafficking crime. 18 U. S. C. 924(c)(1). The minimum prison term for the offense described in 924(c) 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). The two consolidated cases before us call for interpretation of 924(c) as that provision was reformulated in 1998.

Kevin Abbott and Carlos Rashad Gould, petitioners here, defendants below, were charged with multiple drug and firearm offenses; charges on which they were convicted included violation of 924(c). Each objected to the imposition of any additional prison time for his 924(c) conviction. Their objections rested on the except clause now prefacing 924(c)(1)(A). Under that clause, a minimum term of five years shall be imposed 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 and Gould read 924(c)s except clause to secure them against prison time for their 924(c) convictions. They claim exemption from punishment under 924(c) because they were sentenced to greater mandatory minimum prison terms for convictions on other counts charging different offenses. The except clause, they urge, ensures that 924(c) offenders will serve at least five years in prison. If conviction on a different count yields a mandatory sentence exceeding five years, they maintain, the statutory requirement is satisfied and the penalty specified for the 924(c) violation becomes inoperative.

The courts below, agreeing with the Governments construction of the statute, read 924(c)(1) as independently requiring a sentence of at least five years, tacked onto any other sentence the defendant receives. The except clause refers to a greater minimum sentence otherwise provided. [O]therwise provided *for what* , the courts below asked; their answer, for conduct offending 924(c), *i.e.* ., possessing a firearm in connection with a crime of violence or drug-trafficking crime.

A defendant is not spared from a separate, consecutive sentence for a 924(c) conviction, the lower courts determined, whenever he faces a higher mandatory minimum for a different count of conviction. Instead, according to the courts below and the Government here, the except clause applies only when another provision—whether contained within or placed outside 924(c)—commands a longer term for conduct violating 924(c). For example, the mandatory minimum sentence for a 924(c) offense is five years, but if the firearm is brandished, the minimum rises to seven years, and if the firearm is discharged, to ten years. 924(c)(1)(A)(i), (ii), (iii). A defendant who possessed, brandished, and discharged a firearm in violation of 924(c) would thus face a mandatory minimum term of ten years.

We hold, in accord with the courts below, and in line with the majority of the Courts of Appeals, that a defendant is subject to a mandatory, consecutive sentence for a 924(c) conviction, and is not spared from that sentence by virtue of receiving a higher mandatory minimum on a different count of conviction. Under the except

clause as we comprehend it, a 924(c) offender is not subject to stacked sentences for violating 924(c). If he possessed, brandished, and discharged a gun, the mandatory penalty would be 10 years, not 22. He is, however, 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.

I

Abbott and Gould, defendants in unrelated prosecutions, were each charged with violating 924(c)(1)(A)(i) by possessing a firearm in furtherance of a drug-trafficking crime. Abbotts case was tried to a jury in the Eastern District of Pennsylvania, which convicted him on the 924(c) count and three others: two predicate trafficking counts, 21 U. S. C. 841, 846, and being a felon in possession of a firearm, 18 U. S. C. 922(g). Given Abbotts extensive criminal history, his felon-in-possession conviction triggered a 15-year mandatory minimum under the Armed Career Criminal Act (ACCA), 18 U. S. C. 924(e). The District Court sentenced Abbott to the 15 years mandated by ACCA, and to an additional five years for the 924(c) violation, yielding a total prison term of 20 years.[[Footnote 1](#)]

Goulds indictment listed seven separate drug and firearm charges. In return for Goulds agreement to plead guilty, the Government dropped all but two: one 924(c) offense and one predicate drug-trafficking crime. The latter, for conspiracy to possess with intent to distribute cocaine base, carried a ten-year mandatory minimum under 841(b)(1)(A). Firearm involvement was not an element of that offense. The United States District Court for the Northern District of Texas imposed a sentence of 11 years and 5 months for the trafficking offense and an additional five years for the 924(c) violation, for a total of 16 years and 5 months.

On appeal, Abbott and Gould challenged the five-year consecutive sentence each received under 924(c). Abbott urged that ACCAs 15-year mandatory minimum triggered 924(c)s except clause, because ACCA qualified as [an]other provision of law that provided a greater minimum sentence. Gould said the same of the ten years commanded by his predicate trafficking crime.

The United States Court of Appeals for the Third Circuit affirmed Abbotts sentence, concluding that the except clause refers only to other minimum sentences that may be imposed for violations of 924(c). *United States v. Abbott* , 574 F. 3d 203, 208 (2009). Gould fared no better before the Fifth Circuit. *United States v. Gould* , 329 Fed. Appx. 569, 570 (2009) (*per curiam*). That courts precedent already confined the exception to conduct offending 924(c). *United States v. London* , 568 F. 3d 553, 564 (2009). To resolve the division among the Circuits on the proper construction of 924(c)s except clause,[[Footnote 2](#)] we granted certiorari in both cases and consolidated them for argument. 559 U. S. ____ (2010).

II

A

Congress enacted 18 U. S. C. 924(c) as part of the Gun Control Act of 1968, 82 Stat. 1213. The except clause, which did not appear in 924(c) as originally composed, was introduced by statutory amendment in 1998. See An Act [t]o throttle criminal use of guns, 112 Stat. 3469. We begin by setting out 924(c), first as it read before 1998, then as amended that year.

The earlier version read in relevant part:

Whoever, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime which provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) , uses or carries a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime, be sentenced to imprisonment for five years, and if the firearm is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, to imprisonment for ten years, and if the firearm is a machinegun, or a destructive device, or is equipped with a firearm silencer or firearm muffler, to imprisonment for thirty years. In the case of his second or subsequent conviction under this subsection, such person shall be sentenced to imprisonment for twenty years, and if the firearm is a machinegun, or a destructive

device, or is equipped with a firearm silencer or firearm muffler, to life imprisonment without release. Notwithstanding any other provision of law, the term of imprisonment imposed under this subsection [shall not] run concurrently with any other term of imprisonment including that imposed for the crime of violence or drug trafficking crime in which the firearm was used or carried. 924(c)(1) (1994 ed.).

If this pre-1998 text governed, all agree, separate counts of conviction would have no preemptive force, and Abbott and Gould would have been correctly sentenced under 924(c). The question we confront is whether Congress 1998 reformulation of 924(c) rendered the sentences imposed on Abbott and Gould excessive.

The 1998 alteration responded primarily to our decision in *Bailey v. United States*, [516 U. S. 137](#) (1995). In proscribing use of a firearm, *Bailey* held, 924(c)(1) did not reach mere possession of the weapon. *Id.*, at 144. Congress legislated a different result; in the 1998 revision, colloquially known as the Bailey Fix Act, the Legislature brought possession within the statutes compass. *United States v. O'Brien*, 560 U. S. ___, ___ (2010) (slip op., at 14) (internal quotation marks omitted).

In addition to the change prompted by *Bailey*, Congress increased the severity of 924(c) sentences in two other respects: The 1998 revision changed what were once mandatory sentences into mandatory minimum sentences, *O'Brien*, 560 U. S., at ___ (slip op., at 13); and it elevated 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 ___ (slip op., at 7). And it added the prefatory except clause at issue in the cases now before us. As amended, 924(c)(1)(A) prescribes:

Except to the extent that a greater minimum sentence is otherwise provided by this subsection or by any other provision of law, any person who, during and in relation to any crime of violence or drug trafficking crime (including a crime of violence or drug trafficking crime that provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device) for which the person may be

prosecuted in a court of the United States, uses or carries a firearm, or who, in furtherance of any such crime, possesses a firearm, shall, in addition to the punishment provided for such crime of violence or drug trafficking crime-

(i) be sentenced to a term of imprisonment of not less than 5 years;

(ii) if the firearm is brandished, be sentenced to a term of imprisonment of not less than 7 years; and

(iii) if the firearm is discharged, be sentenced to a term of imprisonment of not less than 10 years.

The 1998 reformulation, furthermore, removed to separate paragraphs the provisions commanding higher penalties for especially destructive weapons and second or subsequent offenses. See 924(c)(1)(B), (C).[[Footnote 3](#)] While leaving the penalties for highly destructive weapons unchanged, the revision raised the base punishment for second or subsequent offenses from 20 years to 25. *Ibid.* The reformulation also transferred the bar on concurrent sentences to 924(c)(1)(D)(ii):

[N]o term of imprisonment imposed on a person under this subsection shall run concurrently with any other term of imprisonment imposed on the person, including any term of imprisonment imposed for the crime of violence or drug trafficking crime during which the firearm was used, carried, or possessed.

B

The leading portion of the except clause, which now prefaces 924(c)(1)(A), refers to a greater minimum sentence otherwise provided by this subsection, *i.e.* , 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. Beyond debate, the latter instruction does not relieve a 924(c) offender of additional punishment simply because a higher mandatory minimum sentence exists in the United States Code. Brief for Petitioner in No. 09-479, p. 19 (hereinafter Abbott Brief). Were it otherwise, the statutes ascending series of minimums, set out in 924(c)(1)(A)-(C),

would have no work to do; the only possible 924(c) sentence would be the Codes highest-life. The except clause, it is therefore undisputed, has to have *some* understood referent to be intelligible. *United States v. Parker* , 549 F. 3d 5, 11 (CA1 2008). What should that referent be? As we comprehend the clause, to determine whether a greater minimum sentence is otherwise provided by any other provision of law, the key question one must ask is: otherwise provided *for what* As earlier noted, see *supra* , at 3, most courts, in line with the courts below and the Government, have answered: for the conduct 924(c) proscribes, *i.e.* , possessing a firearm in connection with a predicate crime.

Abbott and Gould disagree and offer diverse readings. Gould principally would apply the except clause to preclude a 924(c) sentence whenever any of a defendants counts of convictio[n] at sentencing require a greater minimum sentence. Brief for Petitioner in No. 09-7073, p. 14 (hereinafter Gould Brief).

In lieu of Goulds position that any greater minimum sentence on a different count of conviction will do, Abbott advances a somewhat narrower transactional approach. Any sentence imposed on the defendant fits the bill, he urges, so long as the sentence was imposed because of the criminal transaction that triggered 924(c) in the first place. Abbott Brief 10. Accord *United States v. Williams* , 558 F. 3d 166, 171 (CA2 2009).

Abbott also tenders an alternative construction: The minimum sentence otherwise provided must be for a firearm offense-for example, Abbotts felon-in-possession charge-involving the same firearm that triggered 924(c).[[Footnote 4](#)] Conceding that this reading is not commanded by the [statutes] plain language, Tr. of Oral Arg. 24, Abbott asserts that it advances 924(c)s goal-to discourage bearing arms in furtherance of crime-while avoiding the imposition of two consecutive mandatory minimum sentences for the single use of a single firearm, Abbott Brief 47 (emphasis omitted).

The three interpretations just described share a common premise. In adding the except clause in 1998, all three posit, Congress adopted a less aggressive mode of applying 924(c), one that significantly reduced the severity of the provisions

impact on defendants. Like the courts below, we regard this premise as implausible. As earlier observed, see *supra* , at 5-6, the pre-1998 version of 924(c) prescribed a discrete sentence-punishment to be imposed regardless of the sentence received for the predicate crime or any separate firearm conviction. Abbott and Gould think the except clause installed, instead, a modest scheme designed simply to ensure that all 924(c) offenders serve at least 5 years in prison. Gould Brief 5; see Abbott Brief 10. We doubt 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 longstanding thrust, *i.e.* , its insistence that sentencing judges impose *additional* punishment for 924(c) violations.

Were we to accept any of the readings proposed by Abbott or Gould, it bears emphasis, we would undercut that same bills primary objective: to expand 924(c)s coverage to reach firearm possession. In 1999, more than half of those who violated 924(c) in connection with a drug-trafficking offense received a mandatory minimum of ten years or more for that trafficking offense. Letter from Glenn R. Schmitt, United States Sentencing Commission, to Supreme Court Library (Nov. 10, 2010) (available in Clerk of Courts case file). Congress, however, imposed only a five-year minimum for firearm possession in furtherance of a drug offense. As construed by Abbott and Gould, the amendment to include firearm possession as a 924(c) offense would spare the most serious drug offenders from any discrete punishment for the very firearm activity the amendment targeted. We are disinclined to say that what Congress imposed with one hand it withdrew with the other . *Logan v. United States* , 552 U. S. 23 , 35 (2007).

Abbotts and Goulds proposed readings, moreover, would result in sentencing anomalies Congress surely did not intend. We note first that 924(c), as they construe it, would often impose no penalty at all for the conduct that provision makes independently criminal. Tr. of Oral Arg. 52. For example, an individual who sold enough drugs to receive a ten-year minimum sentence under 841(b)(1)(A) could, so far as 924(c) is concerned, possess or even brandish a gun without incurring any additional punishment.

Stranger still, under the Abbott and Gould readings, the worst offenders would often secure the shortest sentences. Consider two defendants convicted of trafficking in cocaine. The first possesses 500 grams and is subject to a mandatory minimum of five years, 841(b)(1)(B); the second possesses five kilograms and is subject to a mandatory minimum of ten years, 841(b)(1)(A). Both brandish firearms, calling for a sentence of seven years under 924(c)(1)(A)(ii). The first defendant, under all readings, will spend at least 12 years in prison. The second defendant's ten-year drug minimum, according to Abbott and Gould, triggers the except clause and wipes out that defendant's 924(c) penalty; though the more culpable of the two, the second defendant's minimum term would be just ten years. Brief for United States 40. Like the Third Circuit below, [w]e are confident that Congress did not intend such a bizarre result. 574 F. 3d, at 209.

Abbott's alternative construction, which homes in on other firearm offenses, gives rise to similar oddities. On this reading, Abbott's 15-year ACCA sentence for being a felon-in-possession would preempt his five-year 924(c) sentence, and his minimum term would be 15 years, rather than 20.[[Footnote 5](#)] But if ACCA were not at issue, Abbott's minimum term would be the same 15 years: his five-year 924(c) sentence on top of his ten-year drug sentence. Qualification as a career criminal would carry no consequence.

Nor does Abbott's second construction necessarily promote more equitable outcomes. Suppose, for example, that a career criminal sold drugs together with a first-time offender, and both brandished firearms in the process. The first-time offender, lacking a felon-in-possession conviction, would serve a seven-year 924(c) sentence on top of a ten-year drug sentence, for a total of 17 years. But the career criminal's ACCA sentence would preempt the 924(c) sentence; he would serve only 15 years.

Abbott and Gould respond that sentencing judges may take account of such anomalies and order appropriate adjustments. We observe first that no correction or avoidance appears possible for the anomaly that, while 924(c) defines a standalone crime, a 924(c) sentence would be wiped out by a wholly separate and independent conviction. *United States v. Easter* , 553 F. 3d 519, 526 (CA7

2009) (*per curiam*) (A determination of guilt that yields no sentence is not a judgment of conviction at all.). We do, however, agree that 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; the judge could increase that defendant's sentence for a predicate crime to make up for 924(c)'s failure to effect any enlargement of the time served. *United States v. Whitley*, 529 F. 3d 150, 155 (CA2 2008). But we doubt Congress had such a cure in mind in 1998, seven years before we held, in *United States v. Booker*, 543 U. S. 220 (2005), that district courts have discretion to depart from the Sentencing Guidelines on the basis of 3553(a).

Abbott and Gould alternatively contend that Congress could have anticipated that the then-mandatory Guidelines would resolve disparities. See Abbott Brief 32-35; Gould Brief 30-32. On this view, the except clause ensures that a 924(c) offender incurs a minimum sentence of considerable length; the Guidelines would then control, elevating that sentence based on firearm possession or use. See United States Sentencing Commission, Guidelines Manual 2D1.1(b)(1), 2K2.1(b)(5) (Nov. 1998) (increasing offense level for defendants who use or possess firearms in course of violent crime or drug trafficking); 2D1.1(b)(1), 2K2.1(b)(6) (Nov. 2009) (same).

We do not gainsay that Abbott and Gould project a rational, less harsh, mode of sentencing. But we do not think it was the mode Congress ordered. Congress expressly rejected an analogous scheme in 1984, when it amended 924(c) in the same law that created the Sentencing Commission and the Guidelines. Pub. L. 98-473, 98 Stat. 1987, 2138. Four years earlier, in *Busic v. United States*, [446 U. S. 398](#), 404 (1980), we had read 924(c) to impose no penalty when the predicate crime itself prescribed a firearm enhancement; similarly, Abbott and Gould now read 924(c) to impose no penalty when the Guidelines prescribe a firearm enhancement to the predicate sentence. The 1984 legislation repudiated *Busic*, clarifying that 924(c) applied even when the predicate crime already provides for an enhanced punishment if committed by the use of a deadly or dangerous weapon or device. *United States v. Gonzales*, [520 U. S. 1](#), 10 (1997) (internal

quotation marks omitted).

Between 1984 and 1998, Congress expanded the reach or increased the severity of 924(c) on four occasions, never suggesting that a Guidelines firearm enhancement might suffice to accomplish 924(c)s objective.[[Footnote 6](#)] Nor is there the slightest indication that Congress was contemplating the Guidelines relationship to 924(c) when it added the except clause in the 1998 amendments.[[Footnote 7](#)]

The except clause, we note, would have been a most haphazard way to achieve a Guidelines-driven rollback of 924(c). If Congress wanted to ensure that 924(c) offenders receive at least five years in prison, and to rely on the Guidelines for the rest, Abbott Brief 10, there was an obvious solution: Congress could have excised all prescriptions ordering that 924(c) sentences shall run consecutively to other sentences. Without such a requirement, *all* defendants would benefit from a minimum-plus-Guidelines regime-not just the most culpable offenders. Congress did not adopt that obvious solution, we think, because it did not want the Guidelines to supplant 924(c).

C

The Governments reading of the except clause, we are convinced, makes far more sense than the interpretations urged by Abbott and Gould. In imposing a sentence for a 924(c) violation [e]xcept to the extent that a greater minimum sentence is otherwise provided . . . by any other provision of law, Congress meant:

[I]f another provision of the United States Code mandates a punishment for using, carrying, or possessing a firearm in connection with a drug trafficking crime or crime of violence, and that minimum sentence is longer than the punishment applicable under 924(c), then the longer sentence applies. Brief for United States 17.

This reading gives effect to the 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 punishment

specified in 924(c)(1) shall be imposed in addition to the penalty for the predicate offense. 924(c)(1)(A). Second, after *Busic*, 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. We doubt that Congress, having retained this thrice-repeated instruction, would simultaneously provide an exception severely limiting application of the instruction. Cf. *Greenlaw v. United States*, 554 U. S. 237, 251 (2008) (We resist attributing to Congress an intention to render a statute so internally inconsistent.).

Interpreting the except clause to train on conduct offending 924(c) also makes sense as a matter of syntax. The except clause is not a standalone enactment, or even a standalone sentence. Rather, it precedes and qualifies 924(c)(1)(A)'s principal clause, which punishes the possession of a firearm in connection with specified predicate crimes. The grammatical and logical scope of a proviso, we have held, is confined to the subject-matter of the principal clause to which it is attached. *United States v. Morrow*, [266 U. S. 531](#), 534-535 (1925). As a proviso attached to 924(c), the except clause is most naturally read to refer to the conduct 924(c) proscribes. Accord *United States v. Villa*, 589 F. 3d 1334, 1343 (CA10 2009).

There is strong contextual support for our view that Congress intended the except clause to serve simply as a clarification of 924(c), not as a major restraint on the statute's operation. At the same time Congress added the except clause, it made the rest of 924(c) more complex. The 1998 revision divided the statute's existing sentencing prescriptions into four paragraphs in lieu of one, and added new penalties for brandishing and discharging a firearm. 924(c)(1)(A)-(D). We know that Congress thought the restructuring might confuse sentencing judges: Warding off confusion, all agree, was the Legislature's sole objective in adding the initial part of the except clause, which covers greater minimums provided by this subsection. That portion of the clause instructs judges to pick the single highest sentence stipulated for a 924(c) violation within 924(c) itself, and not to stack ten

years for discharging a gun on top of seven for brandishing the same weapon, whenever a defendant does both.

In referencing greater minimums provided by any other provision of law, we think, the second portion of the except 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 the except clause was framed in 1998, for the bill that reformulated the text of 924(c) did just one thing more: It amended 18 U. S. C. 3559(c) to command a life sentence when certain repeat felons are convicted of firearms possession (as described in 924(c)). Pub. L. 105-386, 1(b), 112 Stat. 3470.

Our interpretation, Abbott and Gould protest, renders the second part of the except clause effectively meaningless. Section 3559(c) is the only existing statute, outside of 924(c) itself, the Government places within the except clause. Tr. of Oral Arg. 32-35, 42-44.[[Footnote 8](#)] But 3559(c) already imposes a life sentence. A defendant would find little comfort in knowing that no 924(c) sentence, say five years or seven, will be tacked on to his 3559(c) life term.

As Courts of Appeals have observed, however, the any other provision of law portion of the except clause installs a safety valve. *United States v. Studifin* , 240 F. 3d 415, 423 (CA4 2001). It allow[s] for additional 924(c) sentences, akin to the sentence prescribed in 3559(c), that Congress may codify outside 924(c) in the future. See *Abbott* , 574 F. 3d, at 208. We do not regard this allowance as implausible. See Abbott Brief 22; Gould Brief 21. As the Government points out, there is nothing unusual about Congress prescribing mandatory minimum penalties for substantive offenses codified in other provisions. Brief for United States 22. See, e.g. , 3559(c) (prescribing penalties for violations of, *inter alia* , 49 U. S. C. 46502 and 18 U. S. C. 1111, 2111, 2113, and 2118); 3559(d) (prescribing penalties for violations of, *inter alia* , 18 U. S. C. 2422, 2423, and 2251); 18 U. S. C. 924(e) (prescribing penalty for violation of 922(g)). See also 18 U. S. C. 924(j)(1) (prescribing a nonmandatory penalty of death for individuals who commit murder with a firearm in the course of a 924(c) offense).

Our decisions in *Gonzales* and *Republic of Iraq v. Beaty*, 556 U. S. ____ (2009), do not warrant a different conclusion. We observed in *Gonzales* that the word any [ordinarily] has an expansive meaning. 520 U. S., at 5 (holding that any other term of imprisonment includes terms imposed by state courts). See also *Beaty* , 556 U. S., at ____ (slip op., at 7) (the word any in any other provision of law was no warrant to limit the class of provisions of law). But our decision on the petitions of Abbott and Gould does not turn on artificial confinement of the phrase any other provision of law. We rely, instead, on the different direction Congress prescribed for the except clause: It applies only when a greater minimum sentence is otherwise provided. In the contest between reading that phrase to refer to penalties for the [924(c)] offense in question or to penalties for any [other] offense [a defendant commits], we believe the former is the most natural. *Easter* , 553 F. 3d, at 526.[[Footnote 9](#)]

For the reasons stated, the judgments of the Court of Appeals for the Third Circuit and the Court of Appeals for the Fifth Circuit are

Affirmed.

Justice Kagan took no part in the consideration or decision of these cases.

[Footnote 1](#)

Abbott received ten years on each drug-trafficking count. Those sentences, imposed concurrently, did not alter his total term of imprisonment and do not figure in this case.

[Footnote 2](#)

Compare *United States v. Williams* , 558 F. 3d 166, 171 (CA2 2009) (clause covers minimum sentences for offenses arising from the same criminal transaction or operative set of facts); and *United States v. Almany* , 598 F. 3d 238, 241 (CA6 2010) (clause applies whenever a defendant is subject to a greater mandatory minimum), with *United States v. Parker* , 549 F. 3d 5, 11-12 (CA1 2008) (clause does not cover sentences for predicate drug offenses but might

cover sentences for ACCA firearm offenses); *United States v. Villa* , 589 F. 3d 1334, 1343 (CA10 2009) (clause covers only sentences for conduct offending 924(c)); *United States v. Segarra* , 582 F. 3d 1269, 1272-1273 (CA11 2009) (same); 574 F. 3d, at 208 (case below) (same); *United States v. Easter* , 553 F. 3d 519, 526 (CA7 2009) (*per curiam*) (same); *United States v. Studifin* , 240 F. 3d 415, 423 (CA4 2001) (same); *United States v. Alaniz* , 235 F. 3d 386 (CA8 2000) (same); and 329 Fed. Appx., at 570 (case below) (same).

[Footnote 3](#)

These provisions read:

(B) If the firearm possessed by a person convicted of a violation of this subsection-

(i) is a short-barreled rifle, short-barreled shotgun, or semiautomatic assault weapon, the person shall be sentenced to a term of imprisonment of not less than 10 years; or

(ii) is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, the person shall be sentenced to a term of imprisonment of not less than 30 years.

(C) In the case of a second or subsequent conviction under this subsection, the person shall-

(i) be sentenced to a term of imprisonment of not less than 25 years; and

(ii) if the firearm involved is a machinegun or a destructive device, or is equipped with a firearm silencer or firearm muffler, be sentenced to imprisonment for life.

[Footnote 4](#)

Because Goulds only firearm-related offense is his 924(c) offense, Goulds sentence would stand under Abbotts alternative construction.

[Footnote 5](#)

ACCA sentences may run concurrently with drug sentences.

[Footnote 6](#)

Firearms Owners Protection Act, 1986, Pub. L. 99-308, 104(a), 100 Stat. 456-457 (increasing sentences for certain firearms and adding drug trafficking as a predicate felony); Anti-Drug Abuse Act of 1988, Pub. L. 100-690, 6460, 102 Stat. 4373-4374 (increasing sentences); Crime Control Act of 1990, Pub. L. 101-647, 1101, 104 Stat. 4829 (same); Public Safety and Recreational Firearms Use Protection Act, 1994, Pub. L. 103-322, 110102(c), 108 Stat. 1998 (same).

[Footnote 7](#)

For those who take legislative history into account, it is as silent as is the statutes text. The sole reference to the except clause appears in the statement of one witness at a Senate hearing. See Hearing on S. 191 before the Senate Committee on the Judiciary, 105th Cong., 1st Sess., 38 (1997) (statement of Thomas G. Hungar) ([B]y adding an introductory clause authorizing imposition of stiffer minimum sentences if required under other provisions of law, S. 191 eliminates any potential inconsistency with other statutes.).

[Footnote 8](#)

We agree with the Government that a qualifying statute need not explicit[ly] reference 924(c), Tr. of Oral Arg. 27; a statute will fit the bill if it provides a greater mandatory minimum for an offense that embodies all the elements of a 924(c) offense.

[Footnote 9](#)

Abbott and Gould invoke the rule of lenity as a final reason to construe the except clause to bar their punishments under 924(c); if their proposed limitations are textually possible, they maintain, we may not choose the Governments. [T]he touchstone of the rule of lenity is statutory ambiguity. *Bifulco v. United States* , [447 U. S. 381](#) , 387 (1980) (internal quotation marks omitted). [A]fter consulting traditional canons of statutory construction, *United States v. Shabani* , [513 U. S. 10](#) , 17 (1994), we are persuaded that none remains here: The except clause covers only conduct offending 924(c). Although the clause might have been more meticulously drafted, the grammatical possibility of a defendants interpretation does not command a resort to the rule of lenity if the interpretation proffered by the defendant reflects an implausible reading of the congressional purpose. *Caron v.*

United States , [524 U. S. 308](#) , 316 (1998).

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com