

No. 14-8077

IN THE
Supreme Court of the United States

EDWARD L. YOUNG

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

**BRIEF OF LAW PROFESSORS AS *AMICI*
CURIAE IN SUPPORT OF PETITIONERS**

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QUESTION PRESENTED

Does a federal mandatory minimum sentence of 15-years' imprisonment as the punishment for harmless possession of shotgun shells violate the Eighth Amendment?

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INTERESTS OF THE *AMICI CURIAE*

Amici are law professors who teach, conduct research, and practice in the fields of criminal law and sentencing in the United States.¹ They have a professional interest in ensuring that federal sentencing statutes are interpreted and applied in a manner that coherently advances their purposes and is consistent with longstanding constitutional principles and with contemporary function in the criminal law.

SUMMARY OF ARGUMENT

This Court has never addressed how the Eighth Amendment's proportionality and procedural safeguards for defendants facing the most serious penalties are to be applied when federal courts consider a challenge to a *federal* sentence. Both the original meaning of the Cruel and Unusual Punishments Clause and modern Eighth Amendment jurisprudence reasonably suggest that the proportionality and procedural safeguards in the Eighth Amendment should have a more robust application when federal courts are reviewing federal sentences, especially when a severe sentence significantly conflicts with state punishment norms.

¹ All parties have consented to the filing of this amicus brief and expressly do not oppose its filing based upon failure to provide ten days notice. Letters of consent to the filing of this brief executed by all parties have been lodged with the Clerk of the Court pursuant to Rule 37.2. In accord with Rule 37.6, *amici* state that no monetary contributions were made for the preparation or submission of this brief, and this brief was not authored, in whole or in part, by counsel for a party.

These realities call for this Court to take up Mr. Young's petition for certiorari and declare unconstitutional his fifteen-year mandatory federal prison term based on his harmless possession of shotgun shells in violation of 18 U.S.C. § 922(g)(1). The vast majority of U.S. States do not even criminalize possession of shotgun shells by a convicted felon (surely because mere passive possession of ammunition alone is neither inherently dangerous nor a ready instrument of crime absent possession of a firearm). The handful of States that do criminalize this possession offense treat the crime as a misdemeanor or set a statutory *maximum* prison sentence for the offense well below the 15-year mandatory *minimum* federal term Mr. Young received. Moreover, Amici are unaware of *any* case from *any* State or locality in which a defendant received *any* prison sentence of *any* duration for offense conduct that involved only the harmless possession of a small number of shotgun shells. Legislative enactments and state practices thus provide in this case potent objective evidence of a national consensus against Mr. Young's federal punishment.

ARGUMENT**I. THIS COURT SHOULD ADDRESS HOW THE EIGHTH AMENDMENT LIMITS THE MOST SERIOUS FEDERAL PENALTIES.**

This case presents this Court with an important opportunity to address whether and how the framework developed for assessing Eighth Amendment claims concerning state sentences applies to federal sentencing structures and outcomes. In its modern review of challenges by state prisoners to the most serious state sentences, this Court has repeatedly held that the Eighth Amendment includes a proportionality requirement, *see Ewing v. California*, 538 U.S. 11 (2003); *Harmelin v. Michigan*, 501 U.S. 957, 1004–05 (1991) (Kennedy, J., concurring in part and concurring in the judgment), and also has repeatedly held that the Eighth Amendment places certain procedural restrictions on how serious penalties may be imposed. *See Miller v. Alabama*, 132 S. Ct. 2455 (2012); *Sumner v. Shuman*, 483 U.S. 66 (1987); *Lockett v. Ohio*, 438 U.S. 586 (1978). However, this Court has never had an opportunity to explore and explain how these Eighth Amendment requirements, unmediated by federalism and comity concerns, are to be applied when federal courts consider a challenge to a federal sentence. Indeed, though this Court has found a federal forfeiture punishment unconstitutionally excessive based on a “principle of proportionality” in *United States v. Bajakajian*, 524 U.S. 321, 334–44 (1998), it has never directly addressed an Eighth Amendment claim concerning

the disproportionality or procedural irregularity of any federal prison sentence.

With respect to the constitutional protections enshrined in the Bill of Rights, this Court has held in most areas that the individual rights that safeguard criminal defendants apply to the federal government and the States in identical fashion. However, as this Court recently noted in *McDonald v. City of Chicago*, 561 U.S. 742 (2010), a number of notable protections of the Bill of Rights still appear to provide rights to federal criminal defendants that extend beyond the constitutional protections safeguarded for all state defendants. Specifically, under current Supreme Court jurisprudence, as *McDonald* explains, “the Sixth Amendment right to a unanimous jury verdict, ... the Fifth Amendment’s grand jury indictment requirement [, and] ... **the Eighth Amendment’s prohibition on excessive fines,**” *id.* at 764-66 & nn. 13-14 (emphasis added), all provide greater constitutional protections to federal criminal defendants than those extended to state defendants through the Fourteenth Amendment. Though it has typically been assumed by lower courts that the Cruel and Unusual Punishments Clause of the Eighth Amendment should be applied the exact same way to federal and state defendants, the fact that another clause of the Eighth Amendment has not historically been applied comparably to federal and state defendants raises uncertainty about this matter and itself provides a justification for granting review in this case.

Moreover and even more importantly, the original meaning of the Cruel and Unusual Punishments Clause, as well as this Court’s modern

Eighth Amendment jurisprudence, reasonably suggest that the proportionality and procedural safeguards in the Eighth Amendment should have a more robust application when federal courts are reviewing federal sentences. Recent scholarship has demonstrated that the framers sought and expected federal courts to review federal sentences rigorously in light of proportionality concerns. *See generally* John F. Stinneford, *Rethinking Proportionality Under the Cruel and Unusual Punishments Clause*, 97 Va. L. Rev. 899 (2011); *accord* Michael J.Z. Mannheimer, *Cruel and Unusual Federal Punishments*, 98 Iowa L. Rev. 69 (2012). And the deferential standards that have come to govern the Eighth Amendment's proportionality requirement for carceral state sentences imposed on adults, which were fleshed out in six cases from 1980 through 2003, suggest that the significant constitutional deference shown to state sentencing outcomes is in part driven and justified by federalism and comity concerns.

In *Rummel v. Estelle*, 445 U.S. 263 (1980), for example, this Court stressed: "Absent a constitutionally imposed uniformity inimical to traditional notions of federalism, some State will always bear the distinction of treating particular offenders more severely than any other State." *Id.* at 282. Likewise, in the controlling opinion in *Harmelin*, Justice Kennedy observed that a wide range of sentencing practices were both inevitable and desirable in a federal system:

[M]arked divergences both in underlying theories of sentencing and in the length of prescribed prison terms are the inevitable,

often beneficial, result of the federal structure. . . . “Our federal system recognizes the independent power of a State to articulate societal norms through criminal law.” State sentencing schemes may embody different penological assumptions, making interstate comparison of sentences a difficult and imperfect enterprise. [D]iffering attitudes and perceptions of local conditions may yield different, yet rational, conclusions regarding the appropriate length of prison terms for particular crimes.

501 U.S. at 999–1000 (Kennedy, J., concurring in part and concurring in the judgment); *see also Ewing v. California*, 538 U.S. 11, 25 (2003) (stressing that the selection of “sentencing rationales is generally a policy choice to be made by *state* legislatures, not *federal* courts”) (emphasis added).

Distinctive features of the Cruel and Unusual Punishments Clause call for greater scrutiny of federal sentences when they conflict with state punishment norms. The Clause, of course, applied only to the federal government until at least 1868. There is considerable evidence that the framers and ratifiers of the Clause contemplated that the “unusualness” of federal punishments would be measured against state norms. *See* Mannheimer, *Cruel and Unusual Federal Punishments*, *supra*, 98 Iowa L. Rev., at 100-09 (setting forth detailed historical account of the Eighth Amendment as a key “constraint on the federal government’s power to punish” in favor of state primacy in the realm of criminal punishments); *see also* Stinneford, *Rethinking Proportionality*, *supra*, 97 Va. L. Rev. at

947 (highlighting that “the evidence from the ratification debates shows that Americans saw . . . it was necessary to add a prohibition of cruel and unusual punishments to the Constitution to prevent Congress from abandoning traditional common law limitations on criminal punishment”).

Indeed, some precursors to the Clause in the decade before its adoption used language virtually identical to that used in the Clause to signify that state punishments marked the outer boundary for punishment to be meted out by the central government. In 1783, the Articles of Confederation Congress recommended that it be vested with the power to levy duties on certain imports, a recommendation that required unanimous assent of the States in order to become operative. 24 JOURNALS OF THE CONTINENTAL CONGRESS, 1774-1789, at 256–57 (Gaillard Hunt ed., 1922). In ratifying this proposed impost power, four of the thirteen States—Georgia, Massachusetts, New Hampshire, and South Carolina—made clear that they did so only on condition that punishments for customs violations never exceed that which could be imposed under state law. Each of these four States forbade Congress from “inflict[ing] punishments which are either cruel or unusual in this State” (or in Massachusetts, “in this commonwealth”). THE RESOLUTIONS OF CONGRESS OF THE 18TH OF APRIL, 1783: RECOMMENDING THE STATES TO INVEST CONGRESS WITH THE POWER TO LEVY AN IMPOST, FOR THE USE OF THE STATES; AND THE LAWS OF THE RESPECTIVE STATES, PASSED IN PURSUANCE OF THE SAID RECOMMENDATION 48 (Georgia), 10 (Massachusetts), 7 (New Hampshire), 44 (South Carolina).

For these reasons, there is a strong claim that the highly deferential framework for Eighth Amendment claims consistently applied to state carceral sentencing outcomes should not be applied in lockstep when federal courts are called upon to review federal sentences. Rather, the Cruel and Unusual Punishments Clause should be understood to impose a more significant limit on the federal government's power to punish. At the very least, the Cruel and Unusual Punishments Clause should be interpreted to require some measure of proportionality between federal and state sentencing and should limit the ability for Congress to impose lengthy mandatory prison terms for relatively minor offenses that are far more severe than authorized by any State for comparable offenses.

II. THE EIGHTH AMENDMENT DOES NOT PERMIT A 15-YEAR MANDATORY MINIMUM FEDERAL PRISON SENTENCE FOR HARMLESS POSSESSION OF SHOTGUN SHELLS.

Giving effect to the Constitution's limits on the application and severity of criminal sanctions—especially with respect to federal punishments—is a critical federal judicial responsibility: the framers and ratifiers included the Eighth Amendment in the Bill of Rights to ensure federal judges would serve as an integral check and final safeguard against any federal legislative efforts to punish excessively as compared with prevailing state norms. See Mannheim, *Cruel and Unusual Federal Punishments*, *supra*, 98 Iowa L. Rev., at 100-20 (detailing history behind adoption of Eighth

Amendment as an attempt to constrain the federal power to punish through state common law norms); *see also* Stinneford, *Rethinking Proportionality*, *supra*, 97 Va. L. Rev. at 947 (observing that goal of Cruel and Unusual Punishments Clause was to limit Congress’s authority to mete out punishments, both in type and extent, to that which was traditionally imposed at common law). As Patrick Henry put it at the Virginia ratifying convention in 1788: “In the definition of crimes, I trust [Congress] will be directed by what wise representatives ought to be governed by. But when we come to punishments, no latitude ought to be left, nor dependence put on the virtues of representatives...” 3 JONATHAN ELLIOT, *THE DEBATES IN THE SEVERAL STATE CONVENTIONS ON THE ADOPTION OF THE FEDERAL CONSTITUTION* 447 (2d ed. 1881). The Eighth Amendment was adopted because of concerns such as those expressed by Patrick Henry.

In the required judicial constitutional evaluation of criminal punishments—i.e., when federal judges are called upon to evaluate a challenged penal measure in light of the “concepts of dignity, civilized standards, humanity, and decency” embodied in the Eighth Amendment, *Estelle v. Gamble*, 429 U.S. 97, 102 (1976)—courts are to be “guided by objective indicia of society’s standards, as expressed in legislative enactments and state practice,” as well as by an “understanding and interpretation of the Eighth Amendment’s text, history, meaning, and purpose.” *Kennedy v. Louisiana*, 554 U.S. 407, 421 (2008). As this Court has recently explained, the “clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country’s legislatures

... [and] actual sentencing practices are an important part of the Court's inquiry into consensus.” *Graham v. Florida*, 560 U.S. 48, 62 (2010)

In light of these established Eighth Amendment doctrines, as well as the judiciary’s obligation to give these doctrines some enforceable effect in cases involving extreme applications of harsh federal sentencing laws, this Court should declare excessive and unconstitutional Mr. Young’s fifteen-year mandatory federal prison term based on his harmless possession of shotgun shells in violation of 18 U.S.C. § 922(g)(1). As detailed below, all “objective indicia of society’s standards, as expressed in legislative enactments and state practice” countermand any contention that it is constitutionally permissible to subject Mr. Young to a mandatory fifteen-year federal prison term based only on his harmless possession of shotgun shells.

A. States overwhelmingly do not prohibit possession of shotgun ammunition by felons; those that do overwhelmingly do not authorize lengthy prison sentences for such an offense.

In contrast to federal law, the vast majority of U.S. States do not even criminalize possession of shotgun shells by a convicted felon—likely because mere passive possession of ammunition alone is neither inherently dangerous nor a ready instrument of crime absent possession of a firearm. *See* Ammunition Regulation Policy Summary by the Law Center to Prevent Gun Violence, at <http://smartgunlaws.org/ammunition-regulation->

policy-summary/#state (last visited Feb. 4, 2015) (noting that only California, Delaware, Florida, Hawaii, Illinois, Maryland, Massachusetts, Michigan, South Carolina, and Virginia prohibit the purchase or possession of ammunition by a former felon).

Moreover, as one judge observed below, it appears that even States that criminalize ammunition possession under certain circumstances typically set an upper-limit *discretionary maximum* prison term that is significantly lower than the *mandatory minimum* federal prison term imposed on Mr. Young. See *United States v. Young*, 766 F.3d 621, 631-32 (6th Cir. 2014) (Stranch, J., concurring). Three States that criminalize possession of ammunition by a convicted felon classify it as a misdemeanor punishable by no more than one year imprisonment. See Cal. Penal Code § 30305(a)(2); 430 Ill. Cons. Stat. 65/2(a)(2), 65/8(c), 65/14(e); 730 Ill. Cons. Stat. 5/5-4.5-55; Md. Code §§ 5-133(b), 5-133.1(b), (c). Six others set the maximum term of imprisonment at two, five, or eight years. See 11 Del.C. §§ 1448(a)(1), (c), 4205(b)(4) (eight years); Haw. Rev. Stat. §§ 134-7(a), (h), 706-660(1)(b) (five years); 140 Mass. Gen. Laws §§ 129B(1), 129C; 269 Mass. Gen. Laws § 10(h)(1) (two years); Mich. Cons. Laws § 750.224f(4), (6) (five years); S.C. Code § 16-23-500(A), (B) (five years); Va. Code §§ 18.2-10(f), 18.2-308.2(A) (five years). Only in Florida is the offense punishable by the sentence Mr. Young received here—fifteen years’ imprisonment. See Fla. Stat. §§ 775.082(3)(d), 790.23(1)(a), (3). But, importantly, that is the *maximum* punishment permitted in Florida, not, as here, the *mandatory minimum* punishment.

Consequently, Mr. Young's offense behavior could not have subjected him to any form of criminal prosecution, let alone a lengthy mandatory imprisonment term, in the vast majority of states—including Mr. Young's home State of Tennessee because its laws do not prohibit possession of shotgun shells by a former felon. In forty-three States, his conduct would not be a felony. And in forty-nine States, the offense could not be punished with the fifteen-year prison term Mr. Young received.

Amici do not assert that the fact that the vast majority of States do not even criminalize Mr. Young's offense conduct precludes federal prosecution or some prison term for Mr. Young; Congress must have some authority to criminally prohibit some conduct that States may not consider worthy of criminalizing. *Cf. Staples v. United States*, 511 U.S. 600, 613-15 & n.9 (1994) (stressing limited restrictions on firearm purchases in the "vast majority of States" when construing the National Firearms Act). But the fact that Mr. Young's conduct would not even be considered a crime in most States throughout the nation objectively demonstrates that a mandatory minimum fifteen-year federal prison sentence for Mr. Young is grossly disproportionate for his federal offense. *Cf. id.* at 616-20 (describing a federal statutory maximum term of "up to 10 years' imprisonment" as a "harsh," "lengthy," and "severe penalty"). Finally, Amici are unaware of *any* case from *any* State or locality in which a defendant received *any* prison sentence of *any* duration for offense conduct that involved only

the harmless possession of a small number of shotgun shells.

In short, the vast majority of States do not criminalize Mr. Young's conduct, those States that have criminalized this conduct generally provide for much lower sentencing ranges for his conduct, and seemingly no person has ever even served a day in prison for the kind of conduct which resulted in Mr. Young's 15-year mandatory minimum federal prison term. These realities reflecting "legislative enactments and state practice" provide in this case considerably more—and considerably more potent—objective "evidence of national consensus against" Mr. Young's federal punishment than was demonstrated in prior Eighth Amendment cases finding a state punishment unconstitutional. See *Graham v. Florida*, 560 U.S. 48 (2010); *Kennedy v. Louisiana*, 554 U.S. 407 (2008); *Roper v. Simmons*, 543 U.S. 551 (2005); *Atkins v. Virginia*, 536 U.S. 304 (2002); accord *Solem v. Helm*, 463 U.S. 277, 299-303 (1983) (finding Eighth Amendment violation when offender "has been treated more harshly than he would have been in any other jurisdiction, with the possible exception of a single State"); *Gonzalez v. Duncan*, 551 F.3d 875, 887-89 (9th Cir. 2008) (Bybee, J.) (emphasizing, when finding mandatory state punishment unconstitutional under the Eighth Amendment, that defendant's offense conduct would not have been a criminal offense in some States and that the defendant's sentence "is at the margin of what the states have deemed an appropriate penalty" for similar behavior); see also Mannheimer, *Cruel and Unusual Federal Punishments*, *supra*, 98 Iowa L. Rev. at 100-126 (explaining at great length why the most appropriate way to "operationalize [the

framers'] view of the Cruel and Unusual Punishments Clause as both a reservation of state sovereignty and as a reference to state common law on criminal punishments" would be to limit any severe federal punishments that would be excessive in reference to state sentencing laws and norms).

B. State laws and federal practices are evolving away from severe mandatory prison terms for low-level offenses.

The Eighth Amendment's restriction on excessive sanctions, as this Court most recently explained, "flows from the basic precept of justice that punishment for crimes should be graduated and proportioned to both the offender and the offense." *Miller v. Alabama*, 132 S. Ct. 2455, 2463 (2012). In addition to stressing that "the concept of proportionality is central to the Eighth Amendment," *id.*, this Court has explained that the concept of proportionality is to be viewed "less through a historical prism than according to the evolving 'standards of decency that mark the progress of a maturing society.'" *Id.* (quoting *Estelle v. Gamble*, 429 U.S. 97, 102 (1976)).

Consequently, this Court is to consider Mr. Young's fifteen-year mandatory federal prison term "not by the standards that prevailed in 1685 when Lord Jeffreys presided over the 'Bloody Assizes' or when the Bill of Rights was adopted [or even the standards when 18 U.S.C. § 922(g)(1) was enacted], but rather by those that currently prevail." *Atkins*, 536 U.S. at 311 (emphasis added). The evolution of societal and legal standards as evidenced by sentencing reforms at both the federal and state

level—especially with respect to seeking alternatives to lengthy incarceration terms for low-level offenses and avoiding the application of mandatory prison terms for less-serious repeat offenders—provide further support and justification for declaring unconstitutional Mr. Young’s fifteen-year mandatory federal prison term based on his harmless possession of shotgun shells in violation of 18 U.S.C. § 922(g)(1).

Lawmakers on both sides of the political aisle in States nationwide have in recent years restricted the application of long prison term by revising or repealing mandatory sentencing provisions for lower-level and/or non-violent offenders. *See generally* Families Against Mandatory Minimums, *Recent State-Level Reforms to Mandatory Minimum Laws*, available at <http://famm.org/wp-content/uploads/2013/08/FS-List-of-State-Reforms-6.30.pdf> (last updated June 2013) (listing 19 States having significantly reformed mandatory minimum sentencing laws in recent years); Bob Egelko, *Prop. 36’s ‘3 Strikes’ Change Working, Lawyers Say*, S.F. Chron., Sept. 9, 2013 (discussing California’s Proposition 36 which “passed with a 69 percent majority in November [2012 and] abolished life terms for criminals whose third strikes were neither serious nor violent and instead sentenced them to twice the normal term”); *see also* *Conservatives Join Push to Roll Back Mandatory Prison Sentences*, FoxNews.com, Sept. 29, 2013, available at <http://www.foxnews.com/politics/2013/09/29/conservatives-join-push-to-roll-back-mandatory-prison-sentences/> (last visited Feb. 4, 2015) (“A grassroots effort to roll back mandatory prison sentences—based on such conservative principles as less government and personal responsibility—appears to

be gaining momentum by winning changes in several states and following a similar trend in Washington.”).

In the federal system in recent years, leaders of all three branches of government have forcefully advocated reforming, or seeking alternatives to, mandatory prison terms of incarceration for low-level offenses and offenders, even for repeat offenders like Mr. Young. Through passage of the Fair Sentencing Act of 2010, Congress significantly reduced sentences mandated and recommended for all less serious crack offenses not only for first offenders, but also for persons with even a significant criminal history. Because this statutory reform has been so well received, leading members of Congress representing both major political parties have advanced additional legislation to more broadly repeal or restrict the applicability of mandatory prison terms for low-level offenses and offenders like Mr. Young. *See generally* The Smarter Sentencing Act of 2013, S. 1410, 113th Cong. (2013) (co-sponsored by Senators Richard Durbin and Mike Lee), *available at* <http://www.govtrack.us/congress/bills/113/s1410/text>; The Justice Safety Valve Act of 2013, S. 619, 113th Cong. (2013) (co-sponsored by Senators Patrick Leahy and Rand Paul), *available at* <http://www.govtrack.us/congress/bills/113/s619/text>.

In addition, the Obama Administration has even more recently demonstrated the executive branch’s eagerness to move away from the broad application of lengthy mandatory prison terms: Attorney General Eric Holder announced in August 2013 that the Justice Department will no longer

pursue mandatory minimum sentences for certain low-level, nonviolent offenders, including for some offenders with even a significant number of prior convictions. See Attorney General Eric Holder, *Memorandum to the United States Attorneys and Assistant Attorney General for the Criminal Division: Department Policy on Charging Mandatory Minimum Sentences and Recidivist Enhancements in Certain Drug Cases* (Aug. 12, 2013) [hereinafter Holder, *Memorandum*]; Attorney General Eric Holder, *Remarks at the Annual Meeting of the American Bar Association's House of Delegates* (Aug. 12, 2013) [hereinafter Holder, *Remarks*], available at <http://www.justice.gov/iso/opa/ag/speeches/2013/ag-speech-130812.html>. In his Memorandum to U.S. Attorneys, Attorney General Holder articulated the widely-recognized reality that in “some cases, mandatory minimum and recidivist enhancement statutes have resulted in unduly harsh sentences and perceived or actual disparities.” Holder, *Memorandum* at 1. In his Remarks to the American Bar Association, Attorney General Holder lamented that “too many Americans go to too many prisons for far too long, and for no truly good law enforcement reason,” and that “statutes that mandate inflexible sentences regardless of the individual conduct at issue in a particular case ... oftentimes generate unfairly long sentences [and] breed disrespect for the system.” Holder, *Remarks*.

* * *

The essential facts of this case read like a fictional story about a totalitarian dystopian state imagined by the likes of Franz Kafka or George Orwell: after unintentionally coming into possession

of a handful of shotgun shells while helping his widowed neighbor—conduct which is not a crime in his home State or in the vast majority of States in our Union—Edward Young was prosecuted by federal officials using a federal law that mandated a sentencing judge to order Mr. Young to spend the next 15 years of his life locked in a cage. Disconcertingly, this nightmare tale of extreme punishment is not only true, but it has occurred in the United States of America—a country which was supposedly “conceived in liberty,” Abraham Lincoln, *Gettysburg Address*, and in which school children still recite their commitment to “liberty and justice for all.” Pledge of Allegiance (codified in Title 4 of the United States Code § 4).

Thanks to the grand design of the Constitution and a system of judicial review in which independent judges must check and balance the exercise of government power by other branches, this Court need not and should not condone Mr. Young’s Kafkaesque federal sentencing experience. The Eighth Amendment not only guarantees Americans the right not to be subjected to excessive sanctions, but it empowers and obligates the judiciary to declare unconstitutional the “Cruel and Unusual Punishment” that this case represents. Indeed, as this Court and some of its Members have recently observed, when federal prosecutorial discretion is exercised to achieve a result such as occurred in this case, the Court’s duty to apply exacting scrutiny is clear. *See, e.g., Bond v. United States*, 134 S.Ct. 2077, 2093 (2014) (“[T]he global need to prevent chemical warfare does not require the Federal Government to reach into the kitchen cupboard ...”); Transcript of Oral Argument at 29, *Yates v. United*

States (No. 13-7451) (suggesting that if the Justice Department is committed to always prosecuting defendants on the most severe federal charge possible, “then we’re going to have to be much more careful about how extensive statutes are”) (statement of Justice Scalia).

Perhaps a majority of this Court has come now to the view that the Eighth Amendment functionally and formally provides no restrictions whatsoever on how severe Congress may punish adults through prison terms for conduct it deems criminal, and that only structural provisions like the Commerce Clause “impose[] real limits on federal power” and establish “boundaries to what the Federal Government may do” in the exercise of its police powers through the federal criminal justice system. *Alderman v. United States*, 562 U.S. ___ (2011) (Thomas, J., dissenting from the denial of certiorari). But, as explained above, a sounder originalist and modern understanding of the Cruel and Unusual Punishments Clause is as a constitutional provision that can operate to protect individual Americans from the most extreme application of severe mandatory prison terms for the most minor transgression of federal law. Indeed, if Mr. Young’s fifteen-year mandatory federal prison term based on his harmless possession of shotgun shells is allowed to remain in place without further review, this Court would essentially signal to Congress that it very well could constitutionally make even “overtime parking a felony punishable by life imprisonment.” *Rummel v. Estelle*, 445 U.S. 263, 274 n.11 (1980).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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