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

HARRIS *v.* UNITED STATES

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

No. 00–10666. Argued March 25, 2002—Decided June 24, 2002

Petitioner, who sold illegal narcotics at his pawnshop with an unconcealed semiautomatic pistol at his side, was arrested for violating, *inter alia,* 18 U. S. C. §924(c)(1)(A), which provides in relevant part that a person who in relation to a drug trafficking crime uses or carries a firearm "shall, in addition to the punishment for such crime" "(i) be sentenced to a term of imprisonment of not less than 5 years; (ii) if the firearm is brandished, be sentenced to . . . not less than 7 years; and (iii) if the firearm is discharged, be sentenced to . . . not less than 10 years." Because the Government proceeded on the assumption that the provision defines a single crime and that brandishing is a sentencing factor to be found by the judge following trial, the indictment said nothing about brandishing or subsection (ii), simply alleging the elements from the principal paragraph. Petitioner was convicted. When his presentence report recommended that he receive the 7-year minimum sentence, he objected, arguing that brandishing was an element of a separate statutory offense for which he was not indicted or convicted. At the sentencing hearing, the District Court overruled his objection, found that he had brandished the gun, and sentenced him to seven years in prison. Affirming, the Fourth Circuit rejected petitioner's statutory argument and found that *McMillan* v. *Pennsylvania,* 477 U. S. 79, foreclosed his argument that if brandishing is a sentencing factor, the statute is unconstitutional under *Apprendi* v. *New Jersey,* 530 U. S. 466. In *Apprendi*, this Court held that other than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum is, in effect, an element of the crime, which must be submitted to a jury, and proved beyond a reasonable doubt (and, in federal prosecutions, alleged in an indictment handed down by a

grand jury). But 14 years earlier, *McMillan* sustained a statute that increased the minimum penalty for a crime, though not beyond the statutory maximum, when the judge found that the defendant had possessed a firearm.

Held: The judgment is affirmed.

243 F. 3d 806, affirmed.

JUSTICE KENNEDY delivered the opinion of the Court with respect to Parts I, II, and IV, concluding:

1. As a matter of statutory interpretation, §924(c)(1)(A) defines a single offense, in which brandishing and discharging are sentencing factors to be found by the judge, not offense elements to be found by the jury. Pp. 4–9.

(a) The prohibition's structure suggests that brandishing and discharging are sentencing factors. Federal laws usually list all offense elements in a single sentence and separate the sentencing factors into subsections. *Castillo* v. *United States,* 530 U. S. 120, 125. The instant statute's lengthy principal paragraph lists the elements of a complete crime. Toward the end of the paragraph is the word "shall," which often divides offense-defining provisions from sentence-specifying ones. *Jones* v. *United States,* 526 U. S. 227, 233. And following "shall" are the separate subsections, which explain how defendants are to "be sentenced." Thus this Court can presume that the principal paragraph defines a single crime and its subsections identify sentencing factors. Pp. 4–5.

(b) As *Jones* illustrates, the statute's text might provide evidence to the contrary, but the critical textual clues here reinforce the single-offense interpretation. Brandishing has been singled out as a paradigmatic sentencing factor, *Castillo, supra,* at 126. Under the Sentencing Guidelines, moreover, brandishing and discharging are factors that affect sentences for numerous crimes. The incremental changes in the minimum penalty at issue here are precisely what one would expect to see in provisions meant to identify matters for the sentencing judge's consideration. Pp. 5–7.

(c) The canon of constitutional avoidance—which provides that when a statute is susceptible of two constructions, the Court must adopt the one that avoids grave and doubtful constitutional questions—plays no role here. The constitutional principle that petitioner says a single-offense interpretation of the statute would violate—that any fact increasing the statutory minimum sentence must be accorded the safeguards assigned to elements—was rejected in *McMillan*. Petitioner's suggestion that the canon be used to avoid overruling one of this Court's own precedents is novel and, given that *McMillan* was in place when §924(c)(1)(A) was enacted, unsound. Congress would have had no reason to believe that it was approach-

ing the constitutional line by following the instruction this Court gave in *McMillan*. Pp. 7–9.

2. Reaffirming *McMillan* and employing the approach outlined in that opinion, the Court concludes that §924(c)(1)(A)(ii) is constitutional. Basing a 2-year increase in the defendant's minimum sentence on a judicial finding of brandishing does not evade the Fifth and Sixth Amendments' requirements. Congress simply dictated the precise weight to be given to one traditional sentencing factor. *McMillan, supra,* at 89–90. Pp. 21–22.

JUSTICE KENNEDY, joined by THE CHIEF JUSTICE, JUSTICE O'CONNOR, and JUSTICE SCALIA, concluded in Part III that §924(c)(1)(A)(ii) is constitutional under *McMillan,* which remains sound authority after *Apprendi*. The Court will not overrule a precedent absent a special justification. The justification offered by petitioner is that *Apprendi* and *McMillan* cannot be reconciled. Those decisions are consistent, however, because there is a fundamental distinction between the factual findings at issue in those two cases. *Apprendi* said that any fact extending the defendant's sentence beyond the maximum authorized by the jury's verdict would have been considered an element of an aggravated crime by the Framers of the Bill of Rights. That cannot be said of a fact increasing the mandatory minimum (but not extending the sentence beyond the statutory maximum), for the jury's verdict has authorized the judge to impose the minimum with or without the finding. This sort of fact is more like the facts judges have traditionally considered when exercising their discretion to choose a sentence within the range authorized by the jury's verdict—facts that the Constitution does not require to be alleged in the indictment, submitted to the jury, or proved beyond a reasonable doubt. Read together, *McMillan* and *Apprendi* mean that those facts setting the outer limits of a sentence, and of the judicial power to impose it, are elements of the crime for the purposes of the constitutional analysis. Within the range authorized by the jury's verdict, however, the political system may channel judicial discretion—and rely upon judicial expertise—by requiring defendants to serve minimum terms after judges make certain factual findings. Legislatures have relied upon *McMillan's* holding, and there is no reason to overturn these statutes or cast uncertainty upon sentences imposed under them. Pp. 9–22.

JUSTICE BREYER concluded that although *Apprendi* v. *New Jersey,* 530 U. S. 466, cannot easily be distinguished from this case in terms of logic, the Sixth Amendment permits judges to apply sentencing factors—whether those factors lead to a sentence beyond the statutory maximum (as in *Apprendi*) or the application of a mandatory minimum (as here). This does not mean to suggest approval of mandatory minimum sentences as a matter of policy. Mandatory mini-

mum statutes are fundamentally inconsistent with Congress' simultaneous effort to create a fair, honest, and rational sentencing system through the use of the Sentencing Guidelines. They transfer sentencing power to prosecutors, who can determine sentences through the charges they decide to bring, and who thereby have reintroduced much of the sentencing disparity that Congress created the Guidelines to eliminate. Applying *Apprendi* in this case would not, however, lead Congress to abolish, or to modify such statutes, and it would take from the judge the power to make a factual determination, while giving that power not to juries, but to prosecutors. The legal consequences of extending *Apprendi* are also seriously adverse, for doing so would diminish further Congress' otherwise broad constitutional authority to define crimes through specification of elements, to shape criminal sentences through the specification of sentencing factors, and to limit judicial discretion in applying those factors in particular cases. Pp. 1–4.

KENNEDY, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I, II, and IV, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, and BREYER, JJ., joined, and an opinion with respect to Part III, in which REHNQUIST, C. J., and O'CONNOR and SCALIA, JJ., joined. O'CONNOR, J., filed a concurring opinion. BREYER, J., filed an opinion concurring in part and concurring in the judgment. THOMAS, J., filed a dissenting opinion, in which STEVENS, SOUTER, and GINSBURG, JJ., joined.