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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

BEGAY *v.* UNITED STATES

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

No. 06–11543. Argued January 15, 2008—Decided April 16, 2008

The Armed Career Criminal Act (Act) imposes a special mandatory 15-year prison term upon a felon who unlawfully possesses a firearm and who has three or more prior convictions for committing certain drug crimes or "a violent felony." 18 U. S. C. §924(e)(1). The Act defines "violent felony" as, *inter alia*, a crime punishable by more than one year's imprisonment that "is burglary, arson, or extortion, involves use of explosives, or otherwise involves conduct that presents a serious potential risk of physical injury to another." §924(e)(2)(B)(ii) (hereinafter clause (ii)). After petitioner Begay pleaded guilty to felony possession of a firearm, his presentence report revealed he had 12 New Mexico convictions for driving under the influence of alcohol (DUI), which state law makes a felony (punishable by a prison term of more than one year) the fourth (or subsequent) time an individual commits it. Based on these convictions, the sentencing judge concluded that Begay had three or more "violent felony" convictions and, therefore, sentenced him to an enhanced 15-year sentence. The Tenth Circuit rejected Begay's claim that DUI is not a "violent felony" under the Act.

Held: New Mexico's felony DUI crime falls outside the scope of the Act's clause (ii) "violent felony" definition. Pp. 3–10.

(a) Whether a crime is a violent felony is determined by how the law defines it and not how an individual offender might have committed it on a particular occasion. Pp. 3–4.

(b) Even assuming that DUI involves conduct that "presents a serious potential risk of physical injury to another" under clause (ii), the crime falls outside the clause's scope because it is simply too unlike clause (ii)'s example crimes to indicate that Congress intended that provision to cover it. Pp. 4–10.

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(i) Clause (ii)'s listed examples—burglary, arson, extortion, and crimes involving the use of explosives—should be read as limiting the crimes the clause covers to those that are roughly similar, in kind as well as in degree of risk posed, to the examples themselves. Their presence in the statute indicates that Congress meant for the statute to cover only *similar* crimes, rather than *every* crime that "presents a serious potential risk of physical injury to another," §924(e)(2)(B)(ii). If Congress meant the statute to be all encompassing, it would not have needed to include the examples at all. Moreover, if clause (ii) were meant to include *all* risky crimes, Congress likely would not have included clause (i), which includes crimes that have "as an element the use, attempted use, or threatened use of physical force against the person of another." And had Congress included the examples solely for quantitative purposes, demonstrating no more than the degree of risk of physical injury sufficient to bring a crime within the statute's scope, it would likely have chosen examples that better illustrated the degree of risk it had in mind rather than these that are far from clear in respect to the degree of risk each poses. The Government's argument that the word "otherwise" just after the examples is sufficient to demonstrate that they do not limit the clause's scope is rejected because "otherwise" can refer to a crime that is, *e.g.,* similar to the examples in respect to the degree of risk it produces, but different in respect to the way or manner in which it produces that risk. Pp. 4–7.

(ii) DUI differs from the example crimes in at least one important respect: The examples typically involve purposeful, violent, and aggressive conduct, whereas DUI statutes typically do not. When viewed in terms of the Act's purposes, this distinction matters considerably. The Act looks to past crimes to determine which offenders create a special danger by possessing a gun. In this respect, a history of crimes involving purposeful, violent, and aggressive conduct, which shows an increased likelihood that the offender is the kind of person who might deliberately point a gun and pull the trigger, is different from a history of DUI, which does not involve the deliberate kind of behavior associated with violent criminal use of firearms. Pp. 7–10.

470 F. 3d 964, reversed and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and STEVENS, KENNEDY, and GINSBURG, JJ., joined. SCALIA, J., filed an opinion concurring in the judgment. ALITO, J., filed a dissenting opinion, in which SOUTER and THOMAS, JJ., joined.