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

UNITED STATES *v.* JIMENEZ RECIO ET AL.

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

No. 01–1184. Argued November 12, 2002—Decided January 21, 2003

Ninth Circuit precedent states that a conspiracy terminates when "'there is affirmative evidence of . . . *defeat of the object of the conspiracy*.'" *United States* v. *Cruz*, 127 F. 3d 791, 795 (emphasis added). Here, police stopped a truck carrying illegal drugs, seized the drugs, and, with the help of the truck's drivers, set up a sting. The drivers paged a contact who said he would call someone to get the truck. Respondents Jimenez Recio and Lopez-Meza appeared in a car, and the former drove away in the truck, the latter in the car. After a jury convicted them of conspiring to possess and to distribute unlawful drugs, the judge ordered a new trial because, under *Cruz,* the jury could not convict respondents unless it believed they had joined the conspiracy before the police seized the drugs, and it had not been so instructed. The new jury convicted respondents, who appealed. The Ninth Circuit reversed, holding that the evidence presented at the second trial was insufficient to show that respondents had joined the conspiracy before the drug seizure.

Held: A conspiracy does not automatically terminate simply because the Government has defeated its object. Thus, the Ninth Circuit is incorrect in its view that a conspiracy ends through "defeat" when the Government intervenes, making the conspiracy's goals impossible to achieve, even if the conspirators do not know that the Government has intervened and are totally unaware that the conspiracy is bound to fail. First, the Ninth Circuit's rule is inconsistent with basic conspiracy law. The agreement to commit an unlawful act is "a distinct evil," which "may exist and be punished whether or not the substantive crime ensues." *Salinas* v. *United States,* 522 U. S. 52, 65. The conspiracy poses a "threat to the public" over and above the threat of the substantive crime's commission—both because the "[c]ombination in

Syllabus

crime makes more likely the commission of [other] crimes" and because it "decreases the probability that the individuals involved will depart from their path of criminality." *E.g., Callanan* v. *United States,* 364 U. S. 587, 593–594. Where police have frustrated a conspiracy's specific objective but conspirators (unaware of that fact) have neither abandoned the conspiracy nor withdrawn, these special conspiracy-related dangers remain, as does the conspiracy's essence—the agreement to commit the crime. Second, this Court's view is that of almost all courts and commentators but for the Ninth Circuit. No other Federal Court of Appeals has adopted the Ninth Circuit's rule, and three have explicitly rejected it. The *Cruz* majority argued that the traditional rule threatened "endless" potential liability. But the majority's example illustrating that point—a sting in which police instructed an arrested conspirator to call all of his acquaintances to come and help him, with the Government obtaining convictions of those who did so—draws its persuasive force from the fact that it bears certain resemblances to entrapment, which the law independently forbids. At the same time, the *Cruz* rule would reach well beyond arguable police misbehavior, potentially threatening the use of properly run law enforcement sting operations. See *Lewis* v. *United States,* 385 U. S. 206, 208–209. Ninth Circuit precedent, whereby the language "the defendant . . . defeated its purpose" in *United States* v. *Krasn*, 614 F. 2d 1229, 1236, was changed to "a conspiracy is presumed to continue until *there is* . . . defeat of the [conspiracy's purpose]" in *United States* v. *Bloch*, 696 F. 2d 1213, 1215 (emphasis added), may help to explain the *Cruz* rule's origin. But, since the Ninth Circuit's earlier cases nowhere give any reason for the critical language change, they cannot help to justify it. Pp. 3–7.

258 F. 3d 1069, reversed and remanded.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and O'CONNOR, SCALIA, KENNEDY, SOUTER, GINSBURG, and THOMAS, JJ., joined. STEVENS, J., filed an opinion concurring in part and dissenting in part.