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

GONZALES, ATTORNEY GENERAL *v.* DUENAS-ALVAREZ

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

No. 05–1629. Argued December 5, 2006—Decided January 17, 2007

Respondent, a permanent resident alien, was convicted of violating Cal. Veh. Code Ann. §10851(a), under which "[a]ny person who drives or takes a vehicle not his or her own, without the consent of the owner . . . , or *any person who is a party or an accessory to or an accomplice in* the driving or unauthorized taking or stealing, *is guilty* of a public offense." (Emphasis added.) The Federal Government then sought to remove respondent from the United States as an alien convicted of "a theft offense . . . for which the term of imprisonment [is] at least one year," 8 U. S. C. §1101(a)(43)(G); §1227(a)(2)(A). The Government claimed that the California conviction qualified as such a "theft offense" under the framework set forth in *Taylor* v. *United States*, 495 U. S. 575. In *Taylor,* the Court considered whether a prior conviction for violating a state statute criminalizing certain burglary-like behavior fell within the term "burglary" for sentence-enhancement purposes under 18 U. S. C. §924(e). This Court held that Congress meant that term to refer to "burglary" in "the generic sense in which the term is now used in the criminal codes of most States," *id.*, at 598; and that a sentencing court seeking to determine whether a particular prior conviction was for generic burglary should normally look to the state statute defining the crime of conviction, not to the facts of the particular prior case, *id.*, at 599–600; but that where state law defines burglary broadly to include crimes falling outside generic "burglary," the sentencer should "go beyond the mere fact of conviction" and examine, *e.g.,* the charging document and jury instructions to determine whether the earlier "jury was actually required to find all the elements of generic burglary," *id.*, at 602. The Federal Immigration Judge and the Bureau of Immigration Appeals (BIA) found

Syllabus

respondent removable, but the Ninth Circuit, summarily remanded in light of its earlier *Penuliar* decision holding that "aiding and abetting" a theft is not itself a crime under the generic definition of theft.

Held: The term "theft offense" in 8 U. S. C. §1101(a)(43)(G) includes the crime of "aiding and abetting" a theft offense. Pp. 5–11.

(a) One who aids or abets a theft, like a principal who actually participates, commits a crime that falls within the scope of the generic theft definition accepted by the BIA and the Ninth and other Circuits: the "taking of property or an exercise of control over property without consent with the criminal intent to deprive the owner of rights and benefits of ownership, even if such deprivation is less than total or permanent." *Penuliar* v. *Gonzales*, 435 F. 3d 961, 969. Since, as the record shows, state and federal criminal law now uniformly treats principals and aiders and abettors alike, "the generic sense in which" the term "theft" "is now used in the criminal codes of most States," *Taylor, supra,* at 598, covers such "aiders and abettors" as well as principals. And the criminal activities of these aiders and abettors of a generic theft thus fall within the scope of the term "theft" in the federal statute. Pp. 5–6.

(b) The Court rejects respondent's argument that Cal. Veh. Code §10851, through the California courts' application of a "natural and probable consequences" doctrine, creates a subspecies of the crime falling outside the generic "theft" definition. The fact that, under California law, an aider and abettor is criminally responsible not only for the crime he intends, but also for any crime that naturally and probably results from his intended crime, does not in itself show that the state statute covers a nongeneric theft crime. Relatively few jurisdictions have expressly rejected the "natural and probable consequences" doctrine, and many States and the Federal Government apply some form or variation of that doctrine or permit jury inferences of intent in circumstances similar to those in which California has applied the doctrine. To succeed, respondent must show something *special* about California's version of the doctrine. His attempt to show that, unlike most other States, California makes a defendant criminally liable for conduct he did not intend, not even as a known or almost certain byproduct of his intentional acts, fails because the California cases respondent cites do not show that California's law is applied in such a way that is somehow broader in scope than other States' laws. Moreover, to find that state law creates a crime outside the generic definition of a listed crime in a federal statute requires a realistic probability, not a theoretical possibility, that the State would apply its statute to conduct falling outside the generic definition. To make that showing, an offender must at least point to his own case or other cases in which the state courts in fact did apply the

Syllabus

statute in the special (nongeneric) manner for which he argues. Respondent makes no such showing. Pp. 6–10.

(c) Respondent's additional claims—that §10851 (1) holds liable accessories after the fact, who need not be shown to have committed a theft, and (2) applies to joyriding, which falls outside the generic "theft" definition—are not considered here because they do not fall within the terms of the question presented, the lower court did not consider them, and this Court declines to reach them in the first instance. Pp. 10–11.

176 Fed. Appx. 820, vacated and remanded.

BREYER, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, KENNEDY, SOUTER, THOMAS, GINSBURG, and ALITO, JJ., joined, and in which STEVENS, J., joined, as to Parts I, II, and III–B. STEVENS, J., filed an opinion concurring in part and dissenting in part.