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

DePIERRE *v.* UNITED STATES

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

No. 09–1533. Argued February 28, 2011—Decided June 9, 2011

In 1986, increasing public concern over the dangers of illicit drugs—in particular, the new phenomenon of crack cocaine—prompted Congress to revise the penalties for criminal offenses involving cocaine-related substances. Following several hearings, Congress enacted the Anti-Drug Abuse Act of 1986 (ADAA). The statute provides a mandatory 10-year minimum sentence for certain drug offenses involving "(ii) 5 kilograms or more of a mixture or substance containing a detectable amount of . . . (II) cocaine, its salts, optical and geometric isomers, and salts of isomers, [or] (iii) 50 grams or more of a mixture or substance described in clause (ii) which contains cocaine base." 21 U. S. C. §841(b)(1)(A). The statute similarly provides a 5-year sentence for offenses involving 500 grams of a substance enumerated in clause (ii) or 5 grams of one outlined in clause (iii). §841(b)(1)(B).

In 2005, petitioner DePierre was indicted for distribution of 50 grams or more of cocaine base under §§841(a)(1) and (b)(1)(A)(iii). The District Court declined DePierre's request that the jury be instructed that, in order to find DePierre guilty of distribution of "cocaine base," it must find that his offense involved crack cocaine. DePierre was convicted, and the court sentenced him to the 120 months in prison mandated by the statute. The First Circuit affirmed, rejecting DePierre's argument that §841(b)(1)(A)(iii) should be read only to apply to offenses involving crack cocaine. Instead, it adhered to its precedent holding that "cocaine base" refers to all forms of cocaine base.

Held: "[C]ocaine base," as used in §841(b)(1), means not just "crack cocaine," but cocaine in its chemically basic form. Pp. 7–18.

(a) The most natural reading of "cocaine base" in clause (iii) is cocaine in its chemically basic form—*i.e.*, the molecule found in crack

cocaine, freebase, and coca paste. On its plain terms, then, "cocaine base" reaches more broadly than just crack cocaine. In arguing to the contrary, DePierre urges the Court to stray far from the statute's text, which nowhere contains the term "crack cocaine." The Government's reading, on the other hand, follows the words Congress chose to use. DePierre is correct that "cocaine base" is technically redundant—chemically speaking, cocaine *is* a base. But Congress had good reason to use "cocaine base"—to make clear that clause (iii) does not apply to offenses involving cocaine hydrochloride (*i.e.*, powder cocaine) or other nonbasic cocaine-related substances. At the time the statute was enacted, "cocaine" was commonly used to refer to powder cocaine, and the scientific and medical literature often uses "cocaine" to refer to *all* cocaine-related substances, including ones that are not chemically basic. Pp. 7–10.

(b) This reading of "cocaine base" is also consistent with §841(b)(1)'s somewhat confusing structure. Subsection (b)(1)(A)(ii)(II) lists "cocaine," along with "its salts, optical and geometric isomers, and salts of isomers," as elements subject to clause (ii)'s higher quantity threshold. DePierre is correct that, because "cocaine" and "cocaine base" both refer to chemically basic cocaine, offenses involving a substance containing such cocaine will always be penalized according to the lower quantity threshold of clause (iii), and never the higher threshold clause (ii) establishes for mixtures and substances containing "cocaine." But the Court does not agree that the term "cocaine" in clause (ii) is therefore superfluous—in light of the structure of subclause (II), "cocaine" is needed as the reference point for "salts" and "isomers," which would otherwise be meaningless.

The term "cocaine" in clause (ii) also performs another critical function. Clause (iii) penalizes offenses involving a mixture or substance "described in clause (ii) which contains cocaine base." Thus, clause (ii) imposes a penalty for offenses involving cocaine-related substances generally, and clause (iii) imposes a higher penalty for a subset of those substances—the ones that "contai[n] cocaine base." For this structure to work, however, §841(b)(1) must "describ[e] in clause (ii)" substances containing chemically basic cocaine, which then comprise the subset described in clause (iii). Congress thus had good reason to include the term "cocaine" in clause (ii), and the slight inconsistency created by its use of "cocaine base" in clause (iii) is insufficient reason to adopt DePierre's interpretation. Pp. 10–13.

(c) DePierre's additional arguments are unpersuasive. First, the records of the 1986 congressional hearings do not support his contention that Congress was exclusively concerned with offenses involving crack cocaine. Second, reading "cocaine base" to mean chemically basic cocaine, rather than crack cocaine, does not lead to an absurd re-

sult. Third, the fact that "cocaine base" in the Federal Sentencing Guidelines is defined as "crack" does not require that the statutory term be interpreted the same way. Fourth, the statute is sufficiently clear that the rule of lenity does not apply in DePierre's favor. Pp. 13–18.

599 F. 3d 25, affirmed.

SOTOMAYOR, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, GINSBURG, BREYER, ALITO, and KAGAN, JJ., joined, and in which SCALIA, J., joined except for Part III–A. SCALIA, J., filed an opinion concurring in part and concurring in the judgment.