Syllabus

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

SYKES *v.* UNITED STATES

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

No. 09–11311. Argued January 12, 2011—Decided June 9, 2011

When he pleaded guilty to being a felon in possession of a firearm, see 8 U. S. C. §922(g)(1), petitioner Sykes had prior convictions for at least three felonies, including the state-law crime of "us[ing] a vehicle" to "knowingly or intentionally" "fle[e] from a law enforcement officer" after being ordered to stop, Ind. Code §35–44–3–3(b)(1)(A) (2004). The Federal District Court decided that the prior convictions subjected Sykes to the 15-year mandatory minimum prison term that the Armed Career Criminal Act (ACCA), 18 U. S. C. §924(e), provides for an armed defendant who has three prior "violent felony" convictions. Rejecting Sykes' argument that his vehicle flight felony was not "violent" under ACCA, the Seventh Circuit affirmed.

Held: Felony vehicle flight, as proscribed by Indiana law, is a violent felony for purposes of ACCA. Pp. 5–14.

(a) The "categorical approach" used to determine if a particular crime is a violent felony "consider[s] whether the elements of the offense are of the type that would justify its inclusion within the residual provision [of 18 U. S. C. §924(e)(2)(B)], without inquiring into the specific conduct of th[e] particular offender." *James* v. *United States*, 550 U. S. 192, 202 (emphasis deleted). When punishable by more than one year in prison, burglary, arson, extortion, and crimes that involve use of explosives are violet felonies. Under the residual clause in question so too is a crime that "otherwise involves conduct that presents a serious potential risk of physical injury to another," §924(e)(2)(B)(ii), *i.e.,* a risk "comparable to that posed by its closest analog among" the statute's enumerated offenses. *Id.*, at 203. When a perpetrator flees police in a car, his determination to elude capture makes a lack of concern for the safety of others an inherent part of the offense. Even if he drives without going full speed or the wrong

way, he creates the possibility that police will, in a legitimate and lawful manner, exceed or almost match his speed or use force to bring him within their custody. His indifference to these collateral consequences has violent—even lethal—potential for others. A fleeing criminal who creates a risk of this dimension takes action similar in degree of danger to that involved in arson, which also entails intentional release of a destructive force dangerous to others. Also telling is a comparison to burglary, which is dangerous because it can end in confrontation leading to violence. In fact, the risks associated with vehicle flight may outstrip the dangers of both burglary and arson. While statistics are not dispositive, studies show that the risk of personal injuries is about 20% lower for each of those enumerated crimes than for vehicle pursuits. Thus, Indiana's prohibition on vehicle flight falls within §924(e)(2)(B)(ii)'s residual clause because, as a categorical matter, it presents a serious potential risk of physical injury to another. Pp. 5–9.

(b) Sykes' argument—that *Begay* v. *United States*, 553 U. S. 137, and *Chambers* v. *United States*, 555 U. S. 122, require ACCA predicate crimes to be purposeful, violent, and aggressive in ways that vehicle flight is not—overreads those opinions. In general, levels of risk divide crimes that qualify as violent felonies from those that do not. *Chambers* is no exception: It explained that failure to report does not qualify because the typical offender is not "significantly more likely than others to attack, or physically to resist, an apprehender." 555 U. S., at ___–___. *Begay,* which held that driving under the influence (DUI) is not an ACCA predicate and stated that it is not purposeful, violent, and aggressive, 553 U. S., at 145–148, is the Court's sole residual clause decision in which risk was not the dispositive factor. But *Begay* also gave a more specific reason for its holding: DUI "need not be purposeful or deliberate," *id.,* at 145, and is analogous to strict-liability, negligence, and recklessness crimes. *Begay*'s "purposeful, violent, and aggressive" phrase is an addition to the statutory text that has no precise link to the residual clause. Because vehicle flight is not a strict-liability, negligence, or recklessness crime and is, as a categorical matter, similar in risk to the crimes listed in the residual clause, it is a violent felony. Pp. 10–11

(c) Sykes contends that the fact that Ind. Code §35–44–3–3(b)(1)(B) criminalizes flight by an offender who "operates a vehicle in a manner that creates a substantial risk of bodily injury to another person" indicates that Indiana did not intend for §35–44–3–3(b)(1)(A), under which he was convicted, to encompass the particular class of vehicle flights reached by subsection (b)(1)(B). This argument is unconvincing. Indiana treats the two subsections as felonies of the same magnitude carrying similar prison terms, suggesting that subsection

Syllabus

(b)(1)(A) is roughly equivalent to one type of subsection (b)(1)(B) violation. Pp. 11–13.

(d) Congress framed ACCA in general and qualitative, rather than encyclopedic, terms. The residual clause imposes enhanced punishment for unlawful firearm possession when the relevant prior offenses involved a potential risk of physical injury similar to that presented by several enumerated offenses. It instructs potential recidivists regarding the applicable sentencing regime if they again transgress. This intelligible principle provides guidance, allowing a person to conform his conduct to the law. While this approach may at times be more difficult for courts to implement, it is within congressional power to enact. Pp. 13–14.

598 F. 3d 334, affirmed

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