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

WATSON *v.* UNITED STATES

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

No. 06–571. Argued October 9, 2007—Decided December 10, 2007

After trading a controlled substance for a pistol, petitioner Watson was indicted for, *inter alia*, violating 18 U. S. C. §924(c)(1)(A), which sets a mandatory minimum sentence, depending on the facts, for a defendant who, "during and in relation to any . . . drug trafficking crime[,] . . . uses . . . a firearm." The statute does not define "uses," but this Court has spoken to it twice. In holding that "a criminal who trades his firearm for drugs 'uses' it . . . within the meaning of §924(c)(1)," *Smith* v. *United States*, 508 U. S. 223, 241, the Court rested primarily on the "ordinary or natural meaning" of the verb in context, *id.,* at 228, understanding its common range as going beyond employment as a weapon to trading a weapon for drugs, *id.,* at 230. Later, in holding that merely possessing a firearm kept near the scene of drug trafficking is not "use" under §924(c)(1), the Court, in *Bailey* v. *United States*, 516 U. S. 137, again looked to "ordinary or natural" meaning, *id.,* at 145, deciding that "§924(c)(1) requires evidence sufficient to show an *active employment* of the firearm by the defendant, a use that makes the firearm an operative factor in relation to the predicate offense," *id.,* at 143. Watson pleaded guilty but reserved the right to challenge the factual basis for a §924(c)(1)(A) conviction and sentence. The Fifth Circuit affirmed on its precedent foreclosing any argument that Watson had not "used" a firearm.

Held: A person does not "use" a firearm under 18 U. S. C. §924(c)(1)(A) when he receives it in trade for drugs. Pp. 4–9.

(a) The Government's position lacks authority in either precedent or regular English. Neither *Smith,* which addressed only the trader who swaps his gun for drugs, not the trading partner who ends up with the gun, nor *Bailey,* which ruled that a gun must be made use of actively to satisfy §924(c)(1)(A), decides this case. With no statutory

definition, the meaning of "uses" has to turn on "everyday meaning" revealed in phraseology that strikes the ear as "both reasonable and normal." *Smith, supra*, 228, 230. When Watson handed over the drugs for the pistol, the officer "used" the pistol to get the drugs, but regular speech would not say that Watson himself used the pistol in the trade. Pp. 4–5.

(b) The Government's first effort to trump ordinary English is rejected. Noting that §924(d)(1) authorizes seizure and forfeiture of firearms "intended to be used in" certain crimes, the Government infers that since some of those offenses involve receipt of a firearm, "use" necessarily includes receipt of a gun even in a barter transaction. The Government's reliance on *Smith* for the proposition that the term must be given the same meaning in both subsections overreads *Smith*. The common verb "use" is not at odds in the two subsections but speaks to different issues in different voices and at different levels of specificity. Section 924(d)(1) indicates that a gun can be "used" in a receipt crime, but does not say whether both parties to a transfer use the gun, or only one, or which one; however, §924(c)(1)(A) requires just such a specific identification. Pp. 5–7.

(c) Nor is the Government's second effort to trump ordinary English persuasive. It claims that failing to treat receipt in trade as "use" would create unacceptable asymmetry with *Smith; i.e.,* it would be strange to penalize one side of a gun-for-drugs exchange but not the other. The problem is not with *Smith,* however, but with the limited malleability of the language it construed, and policy-driven symmetry cannot turn "receipt-in-trade" into "use." Whatever the tension between the prior result and the outcome here, law depends on respect for language and would be served better by statutory amendment than by racking statutory language to cover a policy it fails to reach. Pp. 8–9.

191 Fed. Appx. 326, reversed and remanded.

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