## 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

#### ABUELHAWA v. UNITED STATES

# CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 08-192. Argued March 4, 2009—Decided May 26, 2009

A wiretap of Mohammed Said's telephone recorded six calls in which petitioner Abuelhawa arranged to buy cocaine from Said in two separate 1-gram transactions. Those two purchases were misdemeanors under the Controlled Substances Act (CSA), 21 U.S.C. §844, while Said's two sales were felonies, §841(a)(1) and (b). The Government charged Abuelhawa with six felonies on the theory that each of the phone calls, some placed by him, some by Said, violated §843(b), which makes it a felony "to use any communication facility in . . . facilitating" felony distribution and other drug crimes. The District Court denied Abuelhawa's acquittal motion, in which he argued that his efforts to make misdemeanor purchases could not be treated as facilitating Said's felonies. The jury convicted Abuelhawa on all six felony counts. The Fourth Circuit affirmed, reasoning that "facilitat[e]" should be given its ordinary meaning in §843(b) and that Abuelhawa's use of a phone to buy cocaine counted as ordinary facilitation because it made Said's distribution of the drug easier.

Held: Using a telephone to make a misdemeanor drug purchase does not "facilitat[e]" felony drug distribution in violation of §843(b). Stopping with the plain meaning of "facilitate" here would ignore the rule that because statutes are not read as a collection of isolated phrases, "[a] word in a statute may or may not extend to the outer limits of its definitional possibilities." Dolan v. Postal Service, 546 U. S. 481, 486. Here it does not. The literal sweep of "facilitat[e]" sits uncomfortably with common usage: Where a transaction like a sale necessarily presupposes two parties with specific roles, it would be odd to speak of one party as facilitating the other's conduct. The common usage has its parallel in cases holding that where a statute treats one side of a bilateral transaction more leniently, adding to the

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penalty of the party on that side for facilitating the action by the other would upend the legislature's punishment calibration. In Gebardi v. United States, 287 U.S. 112, 119, for example, the Court held that a woman who voluntarily crossed a state line with a man to have sex could not be tagged with the Mann Act violation for "aid[ing] or assist[ing]" interstate transportation for immoral purposes because the statutory penalties were "clearly directed against the acts of the transporter as distinguished from the consent of the subject of the transportation." Such cases have a bearing here in two ways. First, given the presumption, see, e.g., Williams v. Taylor, 529 U. S. 362, 380-381, and n. 12, that the Congress that enacted §843(b) was familiar with the traditional judicial limitation on applying terms like "aid," "abet," and "assist," it is likely the Legislature had a comparable scope in mind when it used "facilitate," a word with equivalent meaning. Second, any broader reading would for practical purposes substantially skew the congressional calibration of respective buyer-seller penalties. Moreover, the statute's history-which shows that in 1970 the CSA downgraded simple possession from a felony to a misdemeanor, §844(a), and simultaneously limited the communications provision's prohibition of facilitating a drug "offense" to facilitating a "felony," §843(b)—drives home what is clear from the statutory text: Congress meant to treat purchasing drugs for personal use more leniently than felony distribution, and to narrow the scope of the communications provision to cover only those who facilitate a felony. Yet, under the Government's reading of §843(b), in a substantial number of cases Congress would for all practical purposes simultaneously have graded back up to felony status with the left hand the same offense, simple drug possession, it had dropped to a misdemeanor with the right. Given that Congress used no language spelling out a purpose so improbable, but legislated against a background usage of terms such as "aid," "abet," and "assist" that points in the opposite direction and accords with the CSA's choice to classify small purchases as misdemeanors, the Government's position is just too unlikely. Pp. 3–8.

523 F. 3d 415, reversed and remanded.

Souter, J., delivered the opinion for a unanimous Court.