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

NIJHAWAN *v.* HOLDER, ATTORNEY GENERAL

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

No. 08–495. Argued April 27, 2009—Decided June 15, 2009

An alien "convicted of an aggravated felony any time after admission is deportable." 8 U. S. C. §1227(a)(2)(A)(iii). An "aggravated felony" includes "an offense that . . . involves fraud or deceit in which the loss to the . . . victims exceeds $10,000." §1101(a)(43)(M)(i). Petitioner, an alien, was convicted of conspiring to commit mail fraud and related crimes. Because the relevant statutes did not require a finding of loss, the jury made no such finding. However, at sentencing, petitioner stipulated that the loss exceeded $100 million. He was sentenced to prison and required to make $683 million in restitution. The Government subsequently sought to remove him from the United States, claiming that he had been convicted of an "aggravated felony." The Immigration Judge found that petitioner's conviction fell within the "aggravated felony" definition. The Board of Immigration Appeals agreed, as did the Third Circuit, which held that the Immigration Judge could inquire into the underlying facts of a prior fraud conviction for purposes of determining whether the loss to the victims exceeded $10,000.

Held: Subparagraph (M)(i)'s $10,000 threshold refers to the particular circumstances in which an offender committed a fraud or deceit crime on a particular occasion rather than to an element of the fraud or deceit crime. Pp. 3–13.

(a) Words such as "crime," "felony, and "offense" sometimes refer to a generic crime (a "categorical" interpretation), and sometimes refer to the specific acts in which an offender engaged ("circumstance-specific" interpretation). The basic argument favoring the "categorical" interpretation rests upon *Taylor* v. *United States*, 495 U. S. 575, *Chambers* v. *United States*, 555 U. S. ___, and *James* v. *United States*, 550 U. S. 192. These cases concerned the Armed Career

Criminal Act (ACCA), which enhances the sentence for firearm-law offenders who have prior "violent felony" convictions, 18 U. S. C. §924(e). The Court held that the word "felony" refers to a generic crime as generally committed. Thus, for example, in *James*, the Court applied the "categorical method" to determine whether an "attempted burglary" was a "violent felony." That method required the Court to examine "not the unsuccessful burglary . . . attempted on a particular occasion, but the generic crime of attempted burglary." 550 U. S., at 204–206. Pp. 3–5.

(b) Contrary to petitioner's arguments, the "$10,000 loss" provision at issue calls for a "circumstance-specific" interpretation, not a "categorical" one. The "aggravated felony" statute of which it is a part differs from ACCA in general, and the "$10,000 loss" provision differs specifically from ACCA's provisions. Pp. 6–10.

(1) The "aggravated felony" statute at issue resembles ACCA when it lists several "offenses" in language that must refer to generic crimes. But other "offenses" are listed using language that almost certainly refers to specific circumstances. Title 8 U. S. C. §1101(a)(43)(P), for example, after referring to "an offense" that amounts to "falsely making, forging, counterfeiting, mutilating, or altering a passport," adds, "except in the case of a first offense for which . . . the alien committed the offense for the purpose of assisting . . . the alien's spouse, child, or parent . . . to violate a provision of this chapter." The language about "forging . . . passport[s]" may well refer to a generic crime, but the exception cannot possibly refer to a generic crime, because there is no criminal statute that contains any such exception. Subparagraph (M)(ii), which refers to an offense "described in [26 U. S. C. §7201] (relating to tax evasion) in which the revenue loss to the government exceeds $10,000," provides another example. Because no §7201 offense has a specific loss amount as an element, the tax-evasion provision would be pointless, unless the "revenue loss" language calls for circumstance-specific application. Here, the question is to which category subparagraph (M)(i) belongs. Pp. 6–8.

(2) Subparagraph (M)(i)'s language is consistent with a circumstance-specific approach. The words "in which" (modifying "offense") can refer to the conduct involved "*in*" the commission of the offense of conviction, rather than to the elements *of* the offense. Moreover, subparagraph (M)(i) appears just prior to subparagraph (M)(ii), the tax-evasion provision, and their structures are identical. Where, as here, Congress uses similar statutory language and similar statutory structure in two adjoining provisions, it normally intends similar interpretations. *IBP, Inc.* v. *Alvarez*, 546 U. S. 21, 34. Additionally, applying a categorical approach would leave subparagraph (M)(i) with little, if any, meaningful application. Only three federal fraud

statutes appear to contain a relevant monetary loss threshold. And at the time the $10,000 threshold was added, only eight States had fraud and deceit statutes in respect to which that threshold, as categorically interpreted, would have full effect. Congress is unlikely to have intended subparagraph (M)(i) to apply in such a limited and haphazard manner. Pp. 8–10.

(c) This Court rejects petitioner's alternative position that fairness calls for a "modified categorical approach" requiring a jury verdict or a judge-approved equivalent to embody a loss-amount determination, and permitting the subsequent immigration court applying subparagraph (M)(i) to examine only charging documents, jury instructions, and any special jury finding, or their equivalents. The Court's cases developed the evidentiary list to which petitioner points for a very different purpose, namely, to determine which statutory phrase (contained within a statutory provision covering several different generic crimes) covered a prior conviction. Additionally, petitioner's proposal can prove impractical insofar as it requires obtaining from a jury a special verdict on a fact that is not an element of the offense. Further, evidence of loss offered by the Government must meet a "clear and convincing" standard and the loss must be tied to the specific counts covered by the conviction. These considerations mean that petitioner and others in similar circumstances have at least one and possibly two opportunities to contest the loss amount, the first at the earlier sentencing and the second at the deportation hearing. There was nothing unfair about the Immigration Judge's reliance on earlier sentencing-related material here. The defendant's sentencing stipulation and the court's restitution order show that the conviction involved losses considerably greater than $10,000. Absent any conflicting evidence, this evidence is clear and convincing. Pp. 10–12.

523 F. 3d 387, affirmed.

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