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

DADA *v.* MUKASEY, ATTORNEY GENERAL

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

No. 06–1181. Argued January 7, 2008—Decided June 16, 2008

Petitioner, a native and citizen of Nigeria, alleges that he married an American citizen in 1999. His wife filed an I–130 Petition for Alien Relative on his behalf that was denied in 2003. The Department of Homeland Security (DHS) charged Dada with being removable under the Immigration and Nationality Act for overstaying his temporary nonimmigrant visa. The Immigration Judge (IJ) denied the request for a continuance pending adjudication of a second I–130 petition, found Dada eligible for removal, and granted his request for voluntary departure under 8 U. S. C. §1229c(b). The Board of Immigration Appeals (BIA) affirmed and ordered Dada to depart within 30 days or suffer statutory penalties. Two days before the end of the 30-day period, Dada sought to withdraw his voluntary departure request and filed a motion to reopen removal proceedings under 8 U. S. C. §1229a(c)(7), contending that new and material evidence demonstrated a bona fide marriage and that his case should be continued until resolution of the second I–130 petition. After the voluntary departure period had expired, the BIA denied the request, reasoning that an alien who has been granted voluntary departure but does not depart in a timely fashion is statutorily barred from receiving adjustment of status. It did not consider Dada's request to withdraw his voluntary departure request. The Fifth Circuit affirmed.

Held: An alien must be permitted an opportunity to withdraw a motion for voluntary departure, provided the request is made before expiration of the departure period. Pp. 5–20.

(a) Resolution of this case turns on the interaction of two aspects of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996—the alien's right to file a motion to reopen in removal proceedings and the rules governing voluntary departure. Pp. 5–12.

Syllabus

(1) Voluntary departure is discretionary relief that allows certain favored aliens to leave the country willingly. It benefits the Government by, *e.g.,* expediting the departure process and avoiding deportation expenses, and benefits the alien by, *e.g.,* facilitating readmission. To receive these benefits, the alien must depart timely. As relevant here, when voluntary departure is requested at the conclusion of removal proceedings, the departure period may not exceed 60 days. 8 U. S. C. §1229c(b)(2). Pp. 5–9.

(2) An alien is permitted to file one motion to reopen, §1229a(c)(7)(A), asking the BIA to change its decision because of newly discovered evidence or changed circumstances. The motion generally must be filed within 90 days of a final administrative removal order, §1229a(c)(7)(C)(1). Although neither the text of §1229c or §1229a(c)(7) nor the applicable legislative history indicates whether Congress intended for an alien granted voluntary departure to be permitted to pursue a motion to reopen, the statutory text plainly guarantees to each alien the right to file "one motion to reopen proceedings under this section," §1229a(c)(7)(A). Pp. 9–12.

(b) Section 1229c(b)(2) unambiguously states that the voluntary departure period "shall not be valid" for more than "60 days," but says nothing about the motion to reopen; and nothing in the statutes or past usage indicates that voluntary departure or motions to reopen cannot coexist. In reading a statute, the Court must not "look merely to a particular clause," but consider "in connection with it the whole statute." *Kokoszka* v. *Belford*, 417 U. S. 642, 650. Reading the Act as a whole, and considering the statutory scheme governing voluntary departure alongside §1229a(c)(7)(A)'s right to pursue "one motion to reopen," the Government's position that an alien who has agreed to voluntarily depart is not entitled to pursue a motion to reopen is unsustainable. It would render the statutory reopening right a nullity in most voluntary departure cases since it is foreseeable, and quite likely, that the voluntary departure time will expire long before the BIA decides a timely-filed motion to reopen. Absent tolling or some other remedial action by this Court, then, the alien who is granted voluntary departure but whose circumstances have changed in a manner cognizable by a motion to reopen is between Scylla and Charybdis: The alien either may leave the United States in accordance with the voluntary departure order, with the effect that the motion to reopen is deemed withdrawn, or may stay in the United States to pursue the case's reopening, risking expiration of the departure period and ineligibility for adjustment of status, the underlying relief sought. Because a motion to reopen is meant to ensure a proper and lawful disposition, this Court is reluctant to assume that the voluntary departure statute is designed to make reopening un-

available for the distinct class of deportable aliens most favored by the same law, when the statute's plain text reveals no such limitation. Pp. 12–16.

(c) It is thus necessary to read the Act to preserve the alien's right to pursue reopening while respecting the Government's interest in the voluntary departure arrangement's *quid pro quo*. There is no statutory authority for petitioner's proposal to automatically toll the voluntary departure period during the motion to reopen's pendency. Voluntary departure is an agreed-upon exchange of benefits, much like a settlement agreement. An alien who is permitted to stay past the departure date to wait out the motion to reopen's adjudication cannot then demand the full benefits of voluntary departure, for the Government's benefit—a prompt and costless departure—would be lost. It would also invite abuse by aliens who wish to stay in the country but whose cases are unlikely to be reopened. Absent a valid regulation otherwise, the appropriate way to reconcile the voluntary departure and motion to reopen provisions is to allow an alien to withdraw from the voluntary departure agreement. The Department of Justice, which has authority to adopt the relevant regulations, has made a preliminary determination that the Act permits an alien to withdraw a voluntary departure application before expiration of the departure period. Although not binding in the present case, this proposed interpretation "warrants respectful consideration." *Wisconsin Dept. of Health and Family Servs.* v. *Blumer*, 534 U. S. 473, 497. To safeguard the right to pursue a motion to reopen for voluntary departure recipients, the alien must be permitted to withdraw, unilaterally, a voluntary departure request before the departure period expires, without regard to the motion to reopen's underlying merits. The alien has the option either to abide by the voluntary departure's terms, and receive its agreed-upon benefits; or, alternatively, to forgo those benefits and remain in the country to pursue an administrative motion. An alien selecting the latter option gives up the possibility of readmission and becomes subject to the IJ's alternative order of removal. The alien may be removed by the DHS within 90 days, even if the motion to reopen has yet to be adjudicated. But the alien may request a stay of the removal order, and, though the BIA has discretion to deny a motion for a stay based on the merits of the motion to reopen, it may constitute an abuse of discretion for the BIA to deny a motion for stay where the motion states nonfrivolous grounds for reopening. Though this interpretation still confronts the alien with a hard choice, it avoids both the quixotic results of the Government's proposal and the elimination of benefits to the Government that would follow from petitioner's tolling rule. Pp. 16–20.

207 Fed. Appx. 425, reversed and remanded.

Syllabus

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