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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

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KUCANA *v.* HOLDER, ATTORNEY GENERAL

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

No. 08–911. Argued November 10, 2009—Decided January 20, 2010

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) amended the Immigration and Nationality Act (INA or Act), codifying certain rules, earlier prescribed by the Attorney General, that govern the process of reopening removal proceedings. IIRIRA also added a provision stating that no court has jurisdiction to review any action of the Attorney General "the authority for which is specified under this subchapter to be in the discretion of the Attorney General." 8 U. S. C. §1252(a)(2)(B)(ii). A regulation, amended just months before IIRIRA's enactment, provides that "[t]he decision to grant or deny a motion to reopen . . . is within the discretion of the [Board of Immigration Appeals (BIA)]," 8 CFR §1003.2(a). As adjudicator in immigration cases, the BIA exercises authority delegated by the Attorney General.

Petitioner Kucana moved to reopen his removal proceedings, asserting new evidence in support of his plea for asylum. An Immigration Judge denied the motion, and the BIA sustained that ruling. The Seventh Circuit concluded that it lacked jurisdiction to review the administrative determination, holding that §1252(a)(2)(B)(ii) bars judicial review not only of administrative decisions made discretionary by statute, but also of those made discretionary by regulation.

Held: Section 1252(a)(2)(B)'s proscription of judicial review applies only to Attorney General determinations made discretionary by statute, not to determinations declared discretionary by the Attorney General himself through regulation. Pp. 6–18.

(a) The motion to reopen is an "important safeguard" intended "to ensure a proper and lawful disposition" of immigration proceedings. *Dada* v. *Mukasey*, 554 U. S. 1, ___. Federal-court review of administrative decisions denying motions to reopen removal proceedings

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dates back to at least 1916, with the courts employing a deferential abuse-of-discretion standard of review. While the Attorney General's regulation in point, 8 CFR §1003.2(a), places the reopening decision within the BIA's discretion, the statute does not codify that prescription or otherwise "specif[y]" that such decisions are in the Attorney General's discretion. Pp. 6–7.

(b) Section 1252(a)(2)(B) does not proscribe judicial review of denials of motions to reopen. Pp. 8–16.

(1) The *amicus* defending the Seventh Circuit's judgment urges that regulations suffice to trigger §1252(a)(2)(B)(ii)'s proscription. She comprehends "under" in "authority . . . specified under this subchapter" to mean, *e.g.,* "pursuant to," "subordinate to." Administrative regulations count for §1252(a)(2)(B) purposes, she submits, because they are issued "pursuant to," and are measures "subordinate to," the legislation they serve to implement. On that reading, §1252(a)(2)(B)(ii) would bar judicial review of any decision that an executive regulation places within the BIA's discretion, including the decision to deny a motion to reopen. The parties, on the other hand, read the statutory language to mean "specified in," or "specified by," the subchapter. On their reading, §1252(a)(2)(B)(ii) precludes judicial review only when the statute itself specifies the discretionary character of the Attorney General's authority. Pp. 8–9.

(2) The word "under" "has many dictionary definitions and must draw its meaning from its context." *Ardestani* v. *INS*, 502 U. S. 129, 135. Examining the provision at issue in statutory context, the parties' position stands on firmer ground. Section 1252(a)(2)(B)(ii) is far from IIRIRA's only jurisdictional limitation. It is sandwiched between two subsections, §1252(a)(2)(A) and §1252(a)(2)(C), both dependent on statutory provisions, not on any regulation, to define their scope. Given §1252(a)(2)(B)'s statutory placement, one would expect that it, too, would cover statutory provisions alone. Pp. 9–11.

(3) Section 1252(a)(2)(B)(i) places within the no-judicial-review category "any judgment regarding the granting of relief under section 1182(h), 1182(i), 1229b, 1229c, or 1255." Each of the referenced statutory provisions addresses a different form of discretionary relief from removal and contains language indicating that the decision is entrusted to the Attorney General's discretion. Clause (i) does not refer to any regulatory provision. The proximity of clause (i) and the clause (ii) catchall, and the words linking them—"any other decision"—suggests that Congress had in mind decisions of the same genre, *i.e.*, those made discretionary by legislation. Read harmoniously, both clauses convey that Congress barred court review of discretionary decisions only when Congress itself set out the Attorney General's discretionary authority in the statute. Pp. 11–12.

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(4) Also significant is the character of the decisions insulated from judicial review in §1252(a)(2)(B)(i). The listed determinations are substantive decisions the Executive makes involving whether or not aliens can stay in the country. Other decisions specified by statute "to be in the discretion of the Attorney General," and therefore shielded from court oversight by §1252(a)(2)(B)(ii), are of a like kind. See, *e.g.,* §1157(c)(1). Decisions on reopening motions made discretionary by regulation, in contrast, are adjunct rulings. A court decision reversing the denial of a motion to reopen does not direct the Executive to afford the alien substantive relief; ordinarily, it touches and concerns only the question whether the alien's claims have been accorded a reasonable hearing. Had Congress wanted the jurisdictional bar to encompass decisions specified as discretionary by regulation as well as by statute, moreover, Congress could easily have said so, as it did in provisions enacted simultaneously with §1252(a)(2)(B)(ii). See, *e.g.,* IIRIRA, §213, 110 Stat. 3009–572. Pp. 12–14.

(5) The history of the relevant statutory provisions corroborates this determination. Attorney General regulations have long addressed reopening requests. In enacting IIRIRA, Congress simultaneously codified the process for filing motions to reopen and acted to bar judicial review of a number of executive decisions regarding removal. But Congress did not codify the regulation delegating to the BIA discretion to grant or deny reopening motions. This legislative silence indicates that Congress left the matter where it was pre-IIRIRA: The BIA has broad discretion, conferred by the Attorney General, "to grant or deny a motion to reopen," 8 CFR §1003.2(a), but courts retain jurisdiction to review the BIA's decision. It is unsurprising that Congress would leave in place judicial oversight of this "important [procedural] safeguard," *Dada*, 554 U. S., at ___, where, as here, the alien's underlying asylum claim would itself be reviewable. The REAL ID Act of 2005, which further amended the INA by adding or reformulating provisions on asylum, protection from removal, and even judicial review, did not disturb the unbroken line of decisions upholding court review of administrative denials of motions to reopen. Pp. 14–16.

(c) Any lingering doubt about §1252(a)(2)(B)(ii)'s proper interpretation would be dispelled by a familiar statutory construction principle: the presumption favoring judicial review of administrative action. When a statute is "reasonably susceptible to divergent interpretation," this Court adopts the reading "that executive determinations generally are subject to judicial review." *Gutierrez de Martinez* v. *Lamagno*, 515 U. S. 417, 434. The Court has consistently applied this interpretive guide to legislation regarding immigration, and par-

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ticularly to questions concerning the preservation of federal-court jurisdiction. See, *e.g., Reno* v. *Catholic Social Services, Inc.*, 509 U. S. 43, 63–64. Because this presumption is "'well-settled,'" *ibid.,* the Court assumes that "Congress legislates with knowledge of" it, *McNary* v. *Haitian Refugee Center, Inc.*, 498 U. S. 479, 496. It therefore takes "'"clear and convincing evidence"'" to dislodge the presumption. *Catholic Social Services, Inc.,* 509 U. S., at 64. There is no such evidence here. Finally, reading §1252(a)(2)(B)(ii) to apply to matters where discretion is conferred on the BIA by regulation would ignore Congress' design to retain for itself control over federal-court jurisdiction. The Seventh Circuit's construction would free the Executive to shelter its own decisions from abuse-of-discretion appellate court review simply by issuing a regulation declaring those decisions "discretionary." Such an extraordinary delegation of authority cannot be extracted from the statute Congress enacted. Pp. 16–17.

533 F. 3d 534, reversed and remanded.

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