

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

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JAMA *v.* IMMIGRATION AND CUSTOMS
ENFORCEMENTCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT

No. 03–674. Argued October 12, 2004—Decided January 12, 2005

Title 8 U. S. C. §1231(b)(2) prescribes the procedure for selecting the country to which an alien ineligible to remain in the United States will be removed. Petitioner had his refugee status in the United States terminated for a criminal conviction. When he declined to designate a country to which he preferred to be removed, the Immigration Judge ordered him removed to Somalia, his country of birth, pursuant to §1231(b)(2)(E)(iv). Petitioner filed a habeas petition to challenge the designation, claiming that Somalia had no functioning government and thus could not consent in advance to his removal, and that the Government was barred from removing him there absent such advance consent. The District Court agreed, but the Eighth Circuit reversed, holding that §1231(b)(2)(E)(iv) does not require advance acceptance by the destination country.

Held: Section 1231(b)(2)(E)(iv) permits an alien to be removed to a country without the advance consent of that country's government. Pp. 2–17.

(a) Section 1231(b)(2) provides four consecutive removal commands: (1) An alien shall be removed to the country of his choice (subparagraphs (A) to (C)), unless a condition eliminating that command is satisfied; (2) otherwise he shall be removed to the country of which he is a citizen (subparagraph (D)), unless a condition eliminating that command is satisfied; (3) otherwise he shall be removed to a country with which he has a lesser connection (subparagraph (E), clauses (i) to (vi), including the country of his birth (clause iv)); or (4) if that is “impracticable, inadvisable or impossible,” he shall be removed to another country whose government will accept him (subparagraph (E), clause (vii)). Here, the question is whether the Attor-

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ney General was precluded from removing petitioner to Somalia under subparagraph (E), clause (iv), because Somalia had not consented. Pp. 2–6.

(b) In all of subparagraph (E), an acceptance requirement appears only in clause (vii), the fourth step of the process, which the Attorney General may invoke only after finding the third step “impracticable, inadvisable, or impossible.” Clauses (i) through (vi) contain not a word about acceptance by the destination country. Including the word “another” in clause (vii) does not import the acceptance requirement into clauses (i)–(vi). Such a reading stretches the modifier too far, contrary to “the grammatical ‘rule of the last antecedent,’” *Barnhart v. Thomas*, 540 U. S. 20, 26. Subparagraph (E)’s structure does not refute the inference derived from the last-antecedent rule. Pp. 6–9.

(c) Nor is an acceptance requirement manifest in §1231(b)(2)’s structure. First, the overlap between subparagraphs (D) and (E) is not so complete as to justify imposing an acceptance requirement at the third step in the name of preventing the Attorney General from “circumventing” the second step. Second, the statute expressly countenances removal to a country notwithstanding its objections. Subparagraph (C) provides that at the first step of the country-selection process, the Attorney General “may” refrain from removing an alien to the country of his choice if that country does not accept the alien; the Attorney General thus has discretion to override any lack of acceptance. Finally, the existence of an acceptance requirement at the fourth step does not imply that such a requirement must exist at the third. To infer an absolute rule of acceptance where Congress has not clearly set it forth would run counter to this Court’s customary policy of deference to the President in foreign affairs, and would not be necessary to ensure appropriate consideration to conditions in the country of removal, since aliens facing persecution or other mistreatment have a number of available remedies. Pp. 10–13.

(d) Contrary to petitioner’s argument, the acceptance requirement is “neither settled judicial construction nor one which [the Court] would be justified in presuming Congress, by its silence, impliedly approved,” *United States v. Powell*, 379 U. S. 48, 55, n. 13, in its most recent reenactment of §1231(b)(2). Pp. 13–16.

329 F. 3d 630, affirmed.

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