SUPREME COURT OF THE UNITED STATES

No. 03–674

KEYSE G. JAMA, PETITIONER *v.* IMMIGRATION AND CUSTOMS ENFORCEMENT

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[January 12, 2005]

JUSTICE SCALIA delivered the opinion of the Court.

When an alien is found ineligible to remain in the United States, the process for selecting the country to which he will be removed is prescribed by 8 U. S. C. §1231(b)(2). The question in this case is whether this provision prohibits removing an alien to a country without the explicit, advance consent of that country's government.

I

Petitioner Keyse Jama was born in Somalia and remains a citizen of that nation. He was admitted to the United States as a refugee, but his refugee status was terminated in 2000 by reason of a criminal conviction. See *Jama* v. *INS,* 329 F. 3d 630, 631 (CA8 2003). The Immigration and Naturalization Service (INS) brought an action to remove petitioner from the United States for having committed a crime involving moral turpitude. *Ibid.;* see 8 U. S. C. §§1182(a)(2)(A)(i)(I), 1229a(e)(2)(A). In the administrative hearing, petitioner conceded that he was subject to removal, although he sought various forms of relief from that determination (adjustment of status, withholding of removal, relief under the Convention

Against Torture, and asylum). He declined to designate a country to which he preferred to be removed. The Immigration Judge ordered petitioner removed to Somalia, his country of birth and citizenship. The Board of Immigration Appeals affirmed that determination, and petitioner did not seek review in the Court of Appeals.

Instead, petitioner instituted collateral proceedings under the habeas statute, 28 U. S. C. §2241, to challenge the designation of Somalia as his destination. He filed his petition in the United States District Court for the District of Minnesota, alleging that Somalia has no functioning government, that Somalia therefore could not consent in advance to his removal, and that the Government was barred from removing him to Somalia absent such advance consent. The District Court agreed that petitioner could not be removed to a country that had not consented in advance to receive him, *Jama* v. *INS*, Civ. File No. 01–1172(JRT/AJB) (Mar. 31, 2002), p. 10, App. to Pet. for Cert. 51a, but a divided panel of the Court of Appeals for the Eighth Circuit reversed, holding that §1231(b)(2) does not require acceptance by the destination country. 329 F. 3d, at 633–635. We granted certiorari. 540 U. S. 1176 (2004).

II

Section 1231(b)(2), which sets out the procedure by which the Attorney General[1] selected petitioner's destina-

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[1] On March 1, 2003, the Department of Homeland Security and its Bureau of Border Security assumed responsibility for the removal program. Homeland Security Act of 2002, §§441(2), 442(a), 116 Stat. 2192–2194, 6 U. S. C. §§251(2), 252(a) (2000 ed., Supp. II). Accordingly, the discretion formerly vested in the Attorney General is now vested in the Secretary of Homeland Security. See §551(d)(2). Because petitioner's removal proceedings, including the designation of Somalia as the country of removal, occurred before this transfer of functions, we continue to refer to the Attorney General as the relevant decisionmaker.

tion after removal was ordered, provides as follows:

"(2) OTHER ALIENS.—Subject to paragraph (3)—

"(A) SELECTION OF COUNTRY BY ALIEN.—Except as otherwise provided in this paragraph—

"(i) any alien not described in paragraph (1) who has been ordered removed may designate one country to which the alien wants to be removed, and

"(ii) the Attorney General shall remove the alien to the country the alien so designates.

"(B) LIMITATION ON DESIGNATION.—An alien may designate under subparagraph (A)(i) a foreign territory contiguous to the United States, an adjacent island, or an island adjacent to a foreign territory contiguous to the United States as the place to which the alien is to be removed only if the alien is a native, citizen, subject, or national of, or has resided in, that designated territory or island.

"(C) DISREGARDING DESIGNATION.—The Attorney General may disregard a designation under subparagraph (A)(i) if—

"(i) the alien fails to designate a country promptly;

"(ii) the government of the country does not inform the Attorney General finally, within 30 days after the date the Attorney General first inquires, whether the government will accept the alien into the country;

"(iii) the government of the country is not willing to accept the alien into the country; or

"(iv) the Attorney General decides that removing the alien to the country is prejudicial to the United States.

"(D) ALTERNATIVE COUNTRY.—If an alien is not removed to a country designated under subparagraph (A)(i), the Attorney General shall remove the alien

to a country of which the alien is a subject, national, or citizen unless the government of the country—

"(i) does not inform the Attorney General or the alien finally, within 30 days after the date the Attorney General first inquires or within another period of time the Attorney General decides is reasonable, whether the government will accept the alien into the country; or

"(ii) is not willing to accept the alien into the country.

"(E) ADDITIONAL REMOVAL COUNTRIES.—If an alien is not removed to a country under the previous subparagraphs of this paragraph, the Attorney General shall remove the alien to any of the following countries:

"(i) The country from which the alien was admitted to the United States.

"(ii) The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States.

"(iii) A country in which the alien resided before the alien entered the country from which the alien entered the United States.

"(iv) The country in which the alien was born.

"(v) The country that had sovereignty over the alien's birthplace when the alien was born.

"(vi) The country in which the alien's birthplace is located when the alien is ordered removed.

"(vii) If impracticable, inadvisable, or impossible to remove the alien to each country described in a previous clause of this subparagraph, another country whose government will accept the alien into that country.

"(F) REMOVAL COUNTRY WHEN UNITED STATES IS AT WAR.—When the United States is at war and the

> Attorney General decides that it is impracticable, inadvisable, inconvenient, or impossible to remove an alien under this subsection because of the war, the Attorney General may remove the alien—
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> "(i) to the country that is host to a government in exile of the country of which the alien is a citizen or subject if the government of the host country will permit the alien's entry; or
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> "(ii) if the recognized government of the country of which the alien is a citizen or subject is not in exile, to a country, or a political or territorial subdivision of a country, that is very near the country of which the alien is a citizen or subject, or, with the consent of the government of the country of which the alien is a citizen or subject, to another country." Immigration and Nationality Act, §241(b)(2), as added by Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), §305(a)(3), 110 Stat. 3009–600 to 3009–607.

The statute thus provides four consecutive removal commands. (1) An alien shall be removed to the country of his choice (subparagraphs (A) to (C)), unless one of the conditions eliminating that command is satisfied; (2) otherwise he shall be removed to the country of which he is a citizen (subparagraph (D)), unless one of the conditions eliminating that command is satisfied; (3) otherwise he shall be removed to one of the countries with which he has a lesser connection (clauses (i) to (vi) of subparagraph (E)); or (4) if that is "impracticable, inadvisable or impossible," he shall be removed to "another country whose government will accept the alien into that country" (clause (vii) of subparagraph (E)). Petitioner declined to designate a country of choice, so the first step was inapplicable. Petitioner is a citizen of Somalia, which has not informed the Attorney

General of its willingness to receive him (clause (i) of subparagraph (D)), so the Attorney General was not obliged to remove petitioner to Somalia under the second step. The question is whether the Attorney General was precluded from removing petitioner to Somalia under the third step (clause (iv) of subparagraph (E)) because Somalia had not given its consent.

A

We do not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply, and our reluctance is even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest. In all of subparagraph (E), an acceptance requirement appears only in the terminal clause (vii), a clause that the Attorney General may invoke only after he finds that the removal options presented in the other six are "impracticable, inadvisable, or impossible." Clauses (i) through (vi) come first—in the statute and in the process of selecting a country. And those six clauses contain not a word about acceptance by the destination country; they merely direct that "the Attorney General shall remove the alien" to any one of them.

Effects are attached to nonacceptance throughout the rest of paragraph (2), making the failure to specify any such effect in most of subparagraph (E) conspicuous—and more likely intentional. Subparagraph (C) prescribes the consequence of nonacceptance in the first step of the selection process; subparagraph (D) does the same for the second step; and clause (vii) of subparagraph (E) does the same for the fourth step.[2] With respect to the third step,

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[2]The dissent contends that there are only three steps, with all of subparagraph (E) constituting only a single step, and that clause (vii)'s acceptance requirement therefore covers the entire subparagraph. *Post,* at 1, n. 2 (opinion of SOUTER, J.). We think not. Clause (vii)

however, the Attorney General is directed to move on to the fourth step only if it is "impracticable, inadvisable, or impossible to remove the alien to each country described in" the third step. Nonacceptance may surely be one of the factors considered in determining whether removal to a given country is impracticable or inadvisable, but the statute does not give it the dispositive effect petitioner wishes.

Petitioner seizes upon the word "another" in clause (vii) as a means of importing the acceptance requirement into clauses (i) through (vi). He argues that if the last-resort country is "*another* country whose government will accept the alien," then the countries enumerated in clauses (i) through (vi) must *also* be "countries whose governments will accept the alien." That stretches the modifier too far. Just last Term, we rejected an argument much like petitioner's, noting that it ran contrary to "the grammatical 'rule of the last antecedent,' according to which a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows." *Barnhart* v. *Thomas,* 540 U. S. 20, 26 (2003). There, a statute referred first to a claimant's "previous work" and then to "any other kind of substantial gainful work which exists in the national economy"; under the rule of the last antecedent, we declined to read the limiting clause "which exists in the national economy" into the term "previous work." *Id.*, at 26–28 (emphasis deleted); accord, *FTC* v. *Mandel Brothers, Inc.,* 359 U. S. 385, 389–390 (1959). We thus did not treat "any other" as the "apparently connecting modifier" that the dissent here thinks "another" to be,

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applies only after the options set out in the third step are exhausted; it is nothing if not a discrete, further step in the process. That step four is a separate clause rather than a separate subparagraph is immaterial: step one, which is indisputably set out in *three* subparagraphs, belies the dissent's theory that steps must precisely parallel subparagraphs.

post, at 4.[3]

Nor does the structure of subparagraph (E) refute the inference derived from the last-antecedent rule. Each clause is distinct and ends with a period, strongly suggesting that each may be understood completely without reading any further.[4] And as we have already noted, it is

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[3] Indeed, both "other" and "another" are just as likely to be words of *differentiation* as they are to be words of connection. Here the word "another" serves simply to rule out the countries already tried at the third step and referred to in the conditional prologue of clause (vii) ("If impracticable, inadvisable, or impossible to remove the alien to each country described in a previous clause of this subparagraph, another country . . ."). It is the fact of that close earlier reference that makes it natural to say "another country" here, whereas "A country" is used at the outset of §1231(b)(1)(C)(iv), in which the reference to "each country described in a previous clause of this subparagraph" comes later and hence cannot serve as an antecedent for an "Another." The dissent makes a mountain of this molehill, see *post*, at 5–6.

The dissent also finds profound meaning in the fact that Congress changed the text from "any country" in the 1996 legislation to "another country" in the current version. "The Court cannot be right," it says, "in reducing the 1996 amendment to this level of whimsy." *Post*, at 7. But if one lays the pre-1996 version of the statute beside the current version, he will find *numerous* changes that are attributable to nothing more than stylistic preference. To take merely one example: Clause (E)(ii) of the current law, which reads "The country in which is located the foreign port from which the alien left for the United States or for a foreign territory contiguous to the United States," previously read "the country in which is located the foreign port at which such alien embarked for the United States or for foreign contiguous territory." 8 U. S. C. §1253(a)(2) (1994 ed.). The dissent must explain why these changes were insignificant whereas the change from "any country" to "another country" was a momentous limitation upon executive authority.

[4] By contrast, in the cases on which the dissent relies to rebut the last-antecedent inference, see *post*, at 3–4, the structure cut the other way: the modifying clause appeared not in a structurally discrete statutory provision, but at the end of a single, integrated list—for example, "'receives, possesses, or transports in commerce or affecting commerce.'" *United States* v. *Bass,* 404 U. S. 336, 337, 339 (1971); see also *United States* v. *Standard Brewery, Inc.,* 251 U. S. 210, 218 (1920);

not necessary to turn to the acceptance language of clause (vii) to find the conditions under which the Attorney General is to abandon the third step and move to the fourth, the last-resort option of any willing country. The Attorney General must do so if in his judgment it would be "impracticable, inadvisable, or impossible to remove the alien to each country described in" clauses (i) to (vi). This allows the Attorney General to take both practical and geopolitical concerns into account when selecting a destination country (and accords with the similar flexibility to pass over inappropriate countries that the statute gives the Attorney General at the other steps, see *infra,* at 13). Petitioner's reading would abridge that exercise of Executive judgment, effectively deeming the removal of an alien to any country to be *per se* "impracticable, inadvisable, or impossible" absent that country's advance acceptance, even though in many cases—such as this one—it is nothing of the sort. (Removing an alien to Somalia apparently involves no more than putting the alien on one of the regularly scheduled flights from Dubai or Nairobi, and has been accomplished a number of times since petitioner's removal proceeding began. App. 36–40 (declaration of detention enforcement officer Eric O'Denius).) Even without advance *consultation*, a country with a functioning government may well accept a removed alien when he is presented at the border or a port of entry; the absence of advance *consent* is hardly synonymous with impracticability or impossibility.[5]

United States v. *United Verde Copper Co.,* 196 U. S. 207, 213 (1905). We do not dispute that a word is known by its fellows, but here the structure refutes the premise of fellowship.

[5] The Government argued below that even if clauses (i) through (vi) of subparagraph (E) require some form of consent, the destination country's acceptance of the alien at the port of entry suffices. Brief for Respondent-Appellant in No. 02–2324 (CA8), pp. 43–46; *Jama* v. *INS,* Civ. File No. 01–1172(JRT/AJB) (D. Minn., Mar. 31, 2002), p. 14, App.

B

Petitioner contends that even if no acceptance requirement is explicit in the text, one is manifest in the entire structure of §1231(b)(2). The Attorney General may not remove an alien to a country under subparagraph (A) or (D) without that country's consent, petitioner reasons, so he must be barred from circumventing that limitation by removing the same alien to the same country under subparagraph (E). The dissent rests its argument only on the existence of an acceptance requirement in step two (subparagraph (D)) and not in step one (subparagraphs (A) through (C)).[6]

We note initially a point that applies to both petitioner's and the dissent's positions: the "circumvention" argument requires that the country the Attorney General selects at step three—here, the country of birth under clause (iv)—also be the country of citizenship that was disqualified at step two for failure to accept the alien. That will sometimes be true, yet the reason step three exists at all is that it will not *always* be true. (Indeed, in petitioner's case, several of the clauses of subparagraph (E) describe Kenya, not Somalia.) Despite this imperfect overlap, petitioner and the dissent seek to impose an acceptance requirement on *all* removals under step three, in the name of prevent-

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to Pet. for Cert. 54a. Because clauses (i) through (vi) contain no acceptance requirement, we need not pass on petitioner's contention that when §1231(b)(2) requires acceptance, only *advance* acceptance will do.

[6]The dissent asserts that we misdescribe petitioner's argument when we say it rests on both steps one and two. *Post*, at 14, and n. 10. We note that petitioner heads the relevant argument "The Plain Language Of The Statute Requires Acceptance *At Every Step*," Brief for Petitioner 23 (emphasis added), and concludes his description of the country-selection process with the assertion that "[t]he outer limit of the Attorney General's authority, . . . which circumscribes the selection of *any country*, is that the government of the country of removal must be willing to accept the alien." *Id.*, at 18 (emphasis added); see also *id.*, at 19–20.

ing the Attorney General from "circumventing" step two in the cases where a step-three country is also the country of citizenship.

The more fundamental defect in petitioner's argument, which appeals to a presumed uniformity of acceptance requirement throughout §1231(b)(2), is that its premise is false. It is simply not true that the Attorney General may not remove an alien to a country under subparagraph (A) or (D) without that country's consent. Subparagraph (C) specifies that the Attorney General "may disregard" the alien's subparagraph (A) designation if the designated country's government proves unwilling to accept the alien or fails to respond within 30 days. The word "may" customarily connotes discretion. See, *e.g.*, *Haig* v. *Agee,* 453 U. S. 280, 294, n. 26 (1981). That connotation is particularly apt where, as here, "may" is used in contraposition to the word "shall": the Attorney General "shall remove" an alien to the designated country, except that the Attorney General "may" disregard the designation if any one of four potentially countervailing circumstances arises. And examining those four circumstances reinforces the inappropriateness of reading "may" to mean "shall" in subparagraph (C): Would Congress really have wanted to preclude the Attorney General from removing an alien to his country of choice, merely because that country took 31 days rather than 30 to manifest its acceptance? (Subparagraph (C), unlike subparagraph (D), offers no "reasonable time" exception to the 30-day rule.) Petitioner insists that a lack of advance acceptance is an absolute bar to removal, but offers no plausible way of squaring that insistence with the text of subparagraph (C).[7]

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[7]The same incompatibility may exist with regard to subparagraph (D), which prescribes that the Attorney General "shall remove the alien" to his country of citizenship "unless" that country's government declines to accept the alien or fails to manifest its acceptance within a reasonable time. The Government urges that the two exceptions

Nor does the existence of an acceptance requirement at the fourth and final step create any structural inference that such a requirement must exist at the third. It would be a stretch to conclude that merely because Congress expressly directed the Attorney General to obtain consent when removing an alien to a country with which the alien lacks the ties of citizenship, nativity, previous presence, and so on, Congress must also have *implicitly* required him to obtain advance acceptance from countries with which the alien *does* have such ties. Moreover, if the Attorney General is unable to secure an alien's removal at the third step, all that is left is the last-resort provision allowing removal to a country with which the alien has little or no connection—if a country can be found that will take him. If none exists, the alien is left in the same removable-but-unremovable limbo as the aliens in *Zadvydas* v. *Davis*, 533 U. S. 678 (2001), and *Clark* v. *Martinez, post*, p. __, and under the rule announced in those cases must presumptively be released into American society after six months. If this is the result that obtains when the country-selection process fails, there is every reason to refrain from reading restrictions into that process that do not clearly appear—particularly restrictions upon the third step, which will often afford the Attorney General his last realistic option for removal.

To infer an absolute rule of acceptance where Congress has not clearly set it forth would run counter to our cus-

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preserve discretion for the Attorney General: If one of those conditions exists, the Attorney General is no longer required to remove the alien to that country, but he *may* still do so. We need not resolve whether subparagraph (D) affords this residual level of discretion; subparagraph (C) is more than enough to demonstrate that an acceptance requirement does not pervade the selection process in the way petitioner claims, and other factors suffice to refute the dissent's more limited contention. Rejection of the Government's argument is essential, however, to the dissent's position, see *post*, at 15–17—and the proper resolution is far from clear.

tomary policy of deference to the President in matters of foreign affairs. Removal decisions, including the selection of a removed alien's destination, "may implicate our relations with foreign powers" and require consideration of "changing political and economic circumstances." *Mathews* v. *Diaz,* 426 U. S. 67, 81 (1976). Congress has already provided a way for the Attorney General to avoid removals that are likely to ruffle diplomatic feathers, or simply to prove futile. At each step in the selection process, he is *empowered* to skip over a country that resists accepting the alien, or a country that has declined to provide assurances that its border guards will allow the alien entry.

Nor is it necessary to infer an acceptance requirement in order to ensure that the Attorney General will give appropriate consideration to conditions in the country of removal. If aliens would face persecution or other mistreatment in the country designated under §1231(b)(2), they have a number of available remedies: asylum, §1158(b)(1); withholding of removal, §1231(b)(3)(A); relief under an international agreement prohibiting torture, see 8 CFR §§208.16(c)(4), 208.17(a) (2004); and temporary protected status, 8 U. S. C. §1254a(a)(1). These individualized determinations strike a better balance between securing the removal of inadmissible aliens and ensuring their humane treatment than does petitioner's suggestion that silence from Mogadishu inevitably portends future mistreatment and justifies declining to remove *anyone* to Somalia.

C

Petitioner points to what he describes as the "settled construction" of §1231(b)(2), and asserts that Congress, in its most recent re-enactment of the provision, should be deemed to have incorporated that construction into law. We think not. Neither of the two requirements for con-

gressional ratification is met here: Congress did not simply re-enact §1231(b)(2) without change, nor was the supposed judicial consensus so broad and unquestioned that we must presume Congress knew of and endorsed it.

Removal is a new procedure created in 1996 through the fusion of two previously distinct expulsion proceedings, "deportation" and "exclusion." IIRIRA, §304(a)(3), 110 Stat. 3009–589, 8 U. S. C. §1229a. Our immigration laws historically distinguished between aliens who have "entered" the United States and aliens still seeking to enter (whether or not they are physically on American soil). See *Leng May Ma* v. *Barber,* 357 U. S. 185, 187 (1958). "The distinction was carefully preserved in Title II" of the Immigration and Nationality Act (INA): expelling an alien who had already entered required a *deportation* proceeding, whereas expelling an alien still seeking admission could be achieved through the more summary exclusion proceeding. *Ibid.;* see *Landon* v. *Plasencia,* 459 U. S. 21, 25–27 (1982) (cataloging differences between the two proceedings). Aliens who, like petitioner, were allowed into the United States as refugees were subject to exclusion proceedings rather than deportation proceedings when their refugee status was revoked. 8 CFR §207.8 (1995).[8]

The cases on which petitioner relies pertained to the INA's *deportation* provision, the former 8 U. S. C. §1253 (1952 ed.). *United States ex rel. Tom Man* v. *Murff*, 264 F. 2d 926 (CA2 1959); *Rogers* v. *Lu*, 262 F. 2d 471 (CADC

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[8] Petitioner's application for admission was deemed to have been made after his criminal conviction, because he had not applied previously. See 8 U. S. C. §1159(a)(1) (1994 ed.) (a refugee must appear for "inspection and examination for admission to the United States as an immigrant in accordance with [§1227, the former exclusion provision]" one year after entry). The district director conducted petitioner's examination for admission and found him inadmissible by reason of his conviction. Record 97, 99 (Exh. F). This finding, under the pre-1996 law, would have subjected petitioner to expulsion "in accordance with" the exclusion provision, not the deportation provision.

1958) *(per curiam)*.[9] In the two cited cases, the Courts of Appeals barred deportation of aliens to the People's Republic of China, a nation with which the United States at the time had no diplomatic relations, without that nation's prior consent. *Tom Man*, *supra*, at 928 (reading the acceptance requirement in clause (vii) to cover clauses (i) to (vi) as well); *Rogers*, *supra*, at 471.[10] During the same period, however, courts—including the Court of Appeals that decided *Tom Man*—were *refusing* to read an acceptance requirement into the exclusion provision, the former 8 U. S. C. §1227 (1952 ed.). *E. g.*, *Menon* v. *Esperdy*, 413 F. 2d 644, 654 (CA2 1969). Likewise, when Congress amended the exclusion provision to expand the list of possible destinations—adding three new categories and a fourth, last-resort provision virtually identical to the last-resort provision in current §1231(b)(2)(E)(vii), see 8 U. S. C. §1227(a)(2) (1982 ed.)—courts were generally skeptical of efforts to read the acceptance requirement back into the other clauses. *E. g.*, *Walai* v. *INS*, 552 F. Supp. 998, 1000 (SDNY 1982); *Amanullah* v. *Cobb*, 862 F. 2d 362, 369 (CA1 1988) (Aldrich, J., concurring). But see *id.*, at 365, and n. 4 (opinion of Pettine, J.).

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[9] *Rogers* v. *Lu* in fact involved the existence of an acceptance requirement at step *two*, not step three. See *Lu* v. *Rogers,* 164 F. Supp. 320, 321 (DC 1958).

[10] The dissent asserts that the Board of Immigration Appeals adhered to a similar position. *Post,* at 8. With rare exceptions, the BIA follows the law of the circuit in which an individual case arises, see *Matter of K— S—,* 20 I. & N. Dec. 715, 718 (1993); *Matter of Anselmo*, 20 I. & N. Dec. 25, 30–32 (1989). Thus, in a case arising in the Second Circuit, the BIA adhered (in dictum) to that court's decision in *Tom Man*. See *Matter of Linnas*, 19 I. & N. Dec. 302, 306–307 (1985). But in a case decided after *Tom Man* and *Rogers* but not controlled by those decisions, the BIA held to the contrary: "When designating a country in step three as a place of deportation, there is *no requirement* that preliminary inquiry be addressed to the country to which deportation is ordered . . . ." *Matter of Niesel,* 10 I. & N. Dec. 57, 59 (1962) (emphasis added).

In other words, IIRIRA forged the new removal procedure out of two provisions, only one of which had been construed as petitioner wishes.[11] And even the supposed judicial consensus with respect to that one provision boils down to the decisions of two Courts of Appeals—one of which was only a two-sentence *per curiam* that considered step two, not step three. *Rogers*, *supra*, at 471; see n. 9, *supra*.[12] In the context of new §1231(b)(2), the acceptance requirement is "neither a settled judicial construction nor one which we would be justified in presuming Congress, by its silence, impliedly approved." *United States* v. *Powell,* 379 U. S. 48, 55, n. 13 (1964) (citation omitted). Even notwithstanding the contradictory interpretation of the Board of Immigration Appeals, see n. 10, *supra*, petitioner's Circuit authority is too flimsy to justify presuming

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[11] The dissent's assertion, *post*, at 10–11, that §1231(b)(2) descends solely from the former deportation provision is, in the relevant respect, erroneous. To be sure, the former exclusion provision has its own exclusive descendant in §1231(b)(1), but that applies only to aliens placed in removal proceedings immediately upon their arrival at the border, see §§1231(b)(1)(A), (c)(1), not to formerly excludable aliens who, like petitioner, were paroled or otherwise allowed into the country. Whereas previously some aliens who had been allowed into the country were excluded and some deported, see §§1227(a)(1), 1253(a) (1994 ed.), now all are *removed* and their destination chosen under §1231(b)(2), not (b)(1). Section 1231(b)(2) is thus a descendant of the exclusion provision as well as the deportation provision, and cases decided under the former represent the relevant prior law no less than cases decided under the latter.

The dissent repeatedly contends that Congress intended to make no substantive change to the prior law when it enacted §1231(b)(2). *E. g.*, *post,* at 10–11. But on the dissent's view the 1996 amendment worked rather a large change: refugees like petitioner, who previously could be expelled without acceptance (under former §1227), now cannot. See n. 8, *supra.*

[12] The additional dicta cited by the dissent, *post*, at 8, do not lend any additional weight to the argument that Congress ratified a settled judicial construction. Dictum settles nothing, even in the court that utters it.

that Congress endorsed it when the text and structure of the statute are to the contrary.[13]

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For the foregoing reasons, the judgment of the Court of Appeals is affirmed.

It is so ordered.

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[13] In his brief on the merits, petitioner raises the additional contention—not presented to, or decided by, the Court of Appeals—that removal to Somalia is impermissible at any step of §1231(b)(2), because the lack of a functioning central government means that Somalia is not a "country" as the statute uses the term. The question on which we granted certiorari in this case, as phrased by petitioner himself, was as follows: "Whether the Attorney General can remove an alien to one of the countries designated in 8 U. S. C. §1231(b)(2)(E) without obtaining that country's acceptance of the alien prior to removal." Pet. for Cert. i. That question does not fairly include whether Somalia is a country any more than it fairly includes whether petitioner is an alien or is properly removable; we will not decide such issues today. See this Court's Rule 14.1(a); *Lexecon Inc.* v. *Milberg Weiss Bershad Hynes & Lerach,* 523 U. S. 26, 42, n. 5 (1998).