SUPREME COURT OF THE UNITED STATES

No. 17–459

WESCLEY FONSECA PEREIRA, PETITIONER *v.* JEFFERSON B. SESSIONS, III, ATTORNEY GENERAL

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

[June 21, 2018]

JUSTICE KENNEDY, concurring.

I agree with the Court's opinion and join it in full.

This separate writing is to note my concern with the way in which the Court's opinion in *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837 (1984), has come to be understood and applied. The application of that precedent to the question presented here by various Courts of Appeals illustrates one aspect of the problem.

The first Courts of Appeals to encounter the question concluded or assumed that the notice necessary to trigger the stop-time rule found in 8 U. S. C. §1229b(d)(1) was not "perfected" until the immigrant received all the information listed in §1229(a)(1). *Guamanrrigra* v. *Holder*, 670 F. 3d 404, 410 (CA2 2012) (*per curiam*); see also *Dababneh* v. *Gonzales*, 471 F. 3d 806, 809 (CA7 2006); *Garcia-Ramirez* v. *Gonzales*, 423 F. 3d 935, 937, n. 3 (CA9 2005) (*per curiam*).

That emerging consensus abruptly dissolved not long after the Board of Immigration Appeals (BIA) reached a contrary interpretation of §1229b(d)(1) in *Matter of Camarillo*, 25 I. & N. Dec. 644 (2011). After that administrative ruling, in addition to the decision under review here, at least six Courts of Appeals, citing *Chevron*, concluded that §1229b(d)(1) was ambiguous and then held that the BIA's

interpretation was reasonable. See *Moscoso-Castellanos* v. *Lynch*, 803 F. 3d 1079, 1083 (CA9 2015); *O'Garro* v. *United States Atty. Gen.*, 605 Fed. Appx. 951, 953 (CA11 2015) (*per curiam*); *Guaman-Yuqui* v. *Lynch*, 786 F. 3d 235, 239–240 (CA2 2015) (*per curiam*); *Gonzalez-Garcia* v. *Holder*, 770 F. 3d 431, 434–435 (CA6 2014); *Yi Di Wang* v. *Holder*, 759 F. 3d 670, 674–675 (CA7 2014); *Urbina* v. *Holder*, 745 F. 3d 736, 740 (CA4 2014). But see *Orozco-Velasquez* v. *Attorney General United States*, 817 F. 3d 78, 81–82 (CA3 2016). The Court correctly concludes today that those holdings were wrong because the BIA's interpretation finds little support in the statute's text.

In according *Chevron* deference to the BIA's interpretation, some Courts of Appeals engaged in cursory analysis of the questions whether, applying the ordinary tools of statutory construction, Congress' intent could be discerned, 467 U. S., at 843, n. 9, and whether the BIA's interpretation was reasonable, *id.,* at 845. In *Urbina* v. *Holder*, for example, the court stated, without any further elaboration, that "we agree with the BIA that the relevant statutory provision is ambiguous." 745 F. 3d, at 740. It then deemed reasonable the BIA's interpretation of the statute, "for the reasons the BIA gave in that case." *Ibid*. This analysis suggests an abdication of the Judiciary's proper role in interpreting federal statutes.

The type of reflexive deference exhibited in some of these cases is troubling. And when deference is applied to other questions of statutory interpretation, such as an agency's interpretation of the statutory provisions that concern the scope of its own authority, it is more troubling still. See *Arlington* v. *FCC*, 569 U. S. 290, 327 (2013) (ROBERTS, C. J., dissenting) ("We do not leave it to the agency to decide when it is in charge"). Given the concerns raised by some Members of this Court, see, *e.g.*, *id.,* at 312–328; *Michigan* v. *EPA*, 576 U. S. ___, ___ (2015) (THOMAS, J., concurring); *Gutierrez-Brizuela* v. *Lynch*, 834

F. 3d 1142, 1149–1158 (CA10 2016) (Gorsuch, J., concurring), it seems necessary and appropriate to reconsider, in an appropriate case, the premises that underlie *Chevron* and how courts have implemented that decision. The proper rules for interpreting statutes and determining agency jurisdiction and substantive agency powers should accord with constitutional separation-of-powers principles and the function and province of the Judiciary. See, *e.g.*, *Arlington*, *supra*, at 312–316 (ROBERTS, C. J., dissenting).