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

NEGUSIE *v.* HOLDER, ATTORNEY GENERAL

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

No. 07–499. Argued November 5, 2008—Decided March 3, 2009

The Immigration and Nationality Act (INA) bars an alien from obtaining refugee status in this country if he "assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 U. S. C. §1101(a)(42). This so-called "persecutor bar" applies to those seeking asylum or withholding of removal, but does not disqualify an alien from receiving a temporary deferral of removal under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). During the time petitioner, an Eritrean national, was forced to work as a prison guard in that country, the prisoners he guarded were persecuted on grounds protected under §1101(a)(42). After escaping to the United States, petitioner applied for asylum and withholding of removal. Concluding that he assisted in the persecution of prisoners by working as an armed guard, the Immigration Judge denied relief on the basis of the persecutor bar, but granted deferral of removal under CAT because petitioner was likely to be tortured if returned to Eritrea. The Board of Immigration Appeals (BIA) affirmed in all respects, holding, *inter alia,* that the persecutor bar applies even if the alien's assistance in persecution was coerced or otherwise the product of duress. The BIA followed its earlier decisions finding *Fedorenko* v. *United States*, 449 U. S. 490, controlling. The Fifth Circuit affirmed, relying on its precedent following the same reasoning.

Held: The BIA and Fifth Circuit misapplied *Fedorenko* as mandating that whether an alien is compelled to assist in persecution is immaterial for prosecutor-bar purposes. The BIA must interpret the statute, free from this mistaken legal premise, in the first instance. Pp. 4–12.

(a) Under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Coun-*

Syllabus

cil, Inc., 467 U. S. 837, 842–843, the BIA is entitled to deference in interpreting ambiguous INA provisions, see, *e.g., INS* v. *Aguirre-Aguirre*, 526 U. S. 415, 424–425. When the BIA has not spoken on "a matter that statutes place primarily in agency hands," this Court's ordinary rule is to remand to allow "the BIA . . . to address the matter in the first instance in light of its own experience." *INS* v. *Orlando Ventura*, 537 U. S. 12, 16–17. Pp. 4–5.

(b) As there is substance both to petitioner's contention that involuntary acts cannot implicate the persecutor bar because "persecution" presumes moral blameworthiness, and to the Government's argument that the question at issue is answered by the statute's failure to provide an exception for coerced conduct, it must be concluded that the INA has an ambiguity that the BIA should address in the first instance. *Fedorenko*, which addressed a different statute enacted for a different purpose, does not control the BIA's interpretation of this persecutor bar. In holding that voluntariness was not required with respect to such a bar in the Displaced Persons Act of 1948 (DPA), *Fedorenko* contrasted the omission there of the word "voluntary" with the word's inclusion in a related statutory subsection. 449 U. S., at 512. Because Congress did not use the word "voluntary" anywhere in the persecutor bar at issue here, its omission cannot carry the same significance as it did in *Fedorenko.* Moreover, the DPA's exclusion of even those involved in nonculpable, involuntary assistance in persecution was enacted in part to address the Holocaust and its horror, see *id.,* at 511, n. 32, whereas the persecutor bar in this case was enacted as part of the Refugee Act of 1980, which was designed to provide a general rule for the ongoing treatment of all refugees and displaced persons, see, *e.g., Aguirre-Aguirre*, *supra,* at 427. Pp. 5–8.

(c) Whether a BIA determination that the persecution bar contains no exception for coerced conduct would be reasonable, and thus owed *Chevron* deference, is a legitimate question; but it is not presented here. In denying petitioner relief, the BIA recited a rule it has developed in its cases: An alien's motivation and intent are irrelevant to the issue whether he "assisted" in persecution; rather, his actions' objective effect controls. A reading of those decisions confirms that the BIA has not exercised its interpretive authority but, instead, has deemed its interpretation to be mandated by *Fedorenko.* This error prevented the BIA from fully considering the statutory question presented. Its mistaken assumption stems from a failure to recognize the inapplicability of the statutory construction principle invoked in *Fedorenko*, as well as a failure to appreciate the differences in statutory purpose. The BIA is not bound to apply the *Fedorenko* rule to the persecutor bar here at issue. Whether the statute permits such an interpretation based on a different course of reasoning must be

Syllabus

determined in the first instance by the agency. Pp. 8–10.

(d) Because the BIA has not yet exercised its *Chevron* discretion to interpret the statute, the proper course is to remand to it for additional investigation or explanation, *e.g., Gonzales* v. *Thomas*, 547 U. S. 183, 186, allowing it to bring its expertise to bear on the matter, evaluate the evidence, make an initial determination, and thereby help a court later determine whether its decision exceeds the leeway that the law provides, *e.g., id.,* at 186–187. Pp. 10–12.

231 Fed. Appx. 325, reversed and remanded.

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