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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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IMMIGRATION AND NATURALIZATION SERVICE *v.* AGUIRRE-AGUIRRE

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

No. 97–1754. Argued March 3, 1999– Decided May 3, 1999

The Immigration and Nationality Act (INA) permits withholding of deportation to a country when "the Attorney General determines that [an] alien's life or freedom would be threatened in such country on account of . . . political opinion." 8 U. S. C. §1253(h)(1). In general, withholding is mandatory if an alien establishes that he is more likely than not to "be subject to persecution on [that ground]," *INS* v. *Stevic*, 467 U. S. 407, 429–430. However, as relevant here, it is not available if the Attorney General finds that the alien committed a "serious nonpolitical crime" before arriving in the United States, §1253(h)(2)(C). Respondent, a Guatemalan, requested, *inter alia*, withholding of his deportation by the Immigration and Naturalization Service. He testified at an administrative hearing that, in protesting various government policies and actions in Guatemala, he had burned buses, assaulted passengers, and vandalized and destroyed private property. The Immigration Judge granted his request, but the Board of Immigration Appeals (BIA) vacated the order, finding that his were "serious nonpolitical crime[s]." Applying the weighing test it had developed in an earlier decision, the BIA concluded that the common-law or criminal character of respondent's acts outweighed their political nature. The Ninth Circuit remanded the case, finding the BIA's analysis deficient in three respects: It should have balanced respondent's admitted offenses against the threat of persecution; it should have considered whether his acts were grossly disproportionate to their alleged objective and were atrocious, especially with reference to Circuit precedent; and it should have considered the political necessity and success of respondent's methods.

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Held: In ruling that the BIA must supplement its weighing test by examining these additional factors, the Ninth Circuit failed to accord the BIA's interpretation the level of deference required under *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837. Pp. 7–17.

(a) Because the Ninth Circuit confronted questions implicating "an agency's construction of the statute which it administers," that court should have asked whether "the statute is silent or ambiguous with respect to the specific issue" before it, and, if so, "whether the agency's answer is based on a permissible construction of the statute." *Chevron, supra,* at 843. It is clear that *Chevron* deference applies to this statutory scheme. The Attorney General is charged with the INA's administration and enforcement, and §1253(h) expressly makes an alien's entitlement to withholding turn on the Attorney General's determination whether the statutory conditions for withholding have been met. Judicial deference to the Executive Branch is especially appropriate in the immigration context. *INS* v. *Abudu,* 485 U. S. 94, 110. The BIA, which is vested with the Attorney General's discretion and authority in cases before it, should be accorded *Chevron* deference when it gives ambiguous statutory terms meaning through a process of case-by-case adjudication. *INS* v. *Cardoza-Fonseca,* 480 U. S. 421, 448–449. Pp. 7–9.

(b) The Ninth Circuit's error is clearest with respect to its holding that the BIA must balance respondent's criminal acts against his risk of persecution in Guatemala. The BIA has rejected any such interpretation, and §1253(h)'s text and structure are consistent with that conclusion. By its terms, the statute requires independent consideration of the persecution risk facing an alien before granting withholding. It is reasonable to decide, as the BIA has done, that this factor can be considered on its own and not also as a factor in determining whether the crime itself is serious and nonpolitical. A United Nations handbook relied on by the Ninth Circuit is not binding on the Attorney General, the BIA, or the United States courts. Pp. 9–12.

(c) The Ninth Circuit erred in finding that the BIA should have considered whether respondent's acts were grossly disproportionate to their alleged objective and atrocious in light of Circuit precedent. The BIA does not dispute that such considerations may be important in applying the serious nonpolitical crime exception. However, the BIA's formulation does not purport to provide a comprehensive definition of the exception, and the standard's full elaboration should await further cases. The BIA's test identifies the general standard whether an offense's political aspect outweighs its common-law character and then provides two specific inquiries that may be used in applying the rule: whether there is a gross disproportion between

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means and ends, and whether the acts are atrocious. Although an offense involving atrocious acts will result in denial of withholding, an offense's criminal element may outweigh its political aspect even if none of the acts are atrocious. Thus, the BIA did not need to give express consideration to atrociousness before determining that respondent had committed serious nonpolitical crimes. This approach is consistent with the statute, which does not equate every serious nonpolitical crime with atrocious acts. Nor is there any reason to find such equivalence. In common usage, "atrocious" suggests a deed more culpable and aggravated than a serious one. In light of this conclusion, the Court rejects the Ninth Circuit's suggestion that the BIA was required to compare the facts of this case with Circuit precedent on atrociousness. Pp. 12–15.

(d) The Ninth Circuit also erred to the extent it believed the BIA had to give more express consideration to the necessity and success of respondent's actions than it did. Although the Attorney General has suggested that a crime will not be deemed political unless it has a causal link to the alleged political purpose and object, the BIA was required to do no more than find that respondent's acts were not political based on the lack of proportion with his objectives. Even with a clear causal connection, a lack of proportion may render crimes nonpolitical. Moreover, respondent had the burden of proving entitlement to withholding, yet he failed to submit a brief to the BIA and the Immigration Judge did not address this point. In these circumstances, the BIA's rather cursory discussion does not warrant reversal. Pp. 15–16.

(e) The Court does not address respondent's argument, raised at this late stage, that there are errors in the translation and transcription of his testimony. Should the BIA determine modification of the record is necessary, it can decide whether to consider the withholding issue further. P. 16.

121 F. 3d 521, reversed and remanded.

KENNEDY, J., delivered the opinion for a unanimous Court.