No. 20-315

IN THE

Supreme Court of the United States

JOSE SANTOS SANCHEZ AND SONIA GONZALEZ,

Petitioners,

v.

ALEJANDRO N. MAYORKAS, SECRETARY OF HOMELAND SECURITY, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF MEMBERS OF CONGRESS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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March 1, 2021

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INTEREST OF *AMICI CURIAE*[1]

Amici are members of the U.S. Senate and House of Representatives, many of whom served when key components of the nation's immigration laws, including provisions pertinent to this case, were drafted, debated, and passed. Based on their experience serving in Congress, *amici* understand that the Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, should be interpreted, consistent with its text and Congress's plan in passing it, to permit individuals who have applied for and been granted Temporary Protected Status to adjust their status to that of lawful permanent residents if they meet the criteria for such an adjustment, regardless of whether they were inspected and admitted when they first entered the United States.

A full listing of *amici* appears in the Appendix.

INTRODUCTION AND SUMMARY OF ARGUMENT

Under the Immigration and Nationality Act (INA), the U.S. government may confer Temporary Protected Status (TPS) on foreign nationals residing in the United States who cannot safely return to their home countries due to armed conflict, environmental disaster, or other extraordinary conditions. *See* 8 U.S.C. § 1254a. TPS shields recipients from removal and authorizes them to work in the United States. *Id.*

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[1] The parties have consented to the filing of this brief, and their letters of consent have been filed with the Clerk. Under Rule 37.6 of the Rules of this Court, *amici* state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici* or their counsel made a monetary contribution to its preparation or submission.

§ 1254a(a)(1)(A)-(B). To obtain TPS, an individual must undergo a rigorous application and review process. *See* 8 C.F.R. § 244.9.

The INA provides that a TPS recipient "shall be considered as being in, and maintaining, lawful status as a nonimmigrant" "for purposes of adjustment of status under section 1255 of this title." 8 U.S.C. § 1254a(f)(4). Section 1255 of the INA, in turn, which is entitled "Adjustment of status of nonimmigrant to that of person admitted for permanent residence," states that "[t]he status of an alien who was inspected and admitted . . . into the United States . . . may be adjusted . . . to that of an alien lawfully admitted for permanent residence," provided certain criteria are satisfied. *Id.* § 1255(a). The question in this case is whether Petitioners, a married couple from El Salvador who initially entered the United States without lawful admission or inspection but who later applied for and were granted TPS, are eligible to become lawful permanent residents. This Court should hold that they are.

First, the plain language of the INA permits eligible TPS recipients to adjust their status to that of lawful permanent residents, regardless of whether they were inspected or admitted when they first entered the United States. This is because TPS recipients were necessarily "inspected and admitted" into the United States, as required for a status adjustment under Section 1255(a), by virtue of applying for and receiving TPS. Indeed, TPS recipients must undergo a rigorous vetting process comparable to the one performed at the U.S. border before the government approves their stay in the United States. Moreover, the INA's mandate that a TPS recipient "shall be considered as being in, and maintaining, lawful status as a nonimmigrant" "for purposes of adjustment of status under section

1255 of this title," 8 U.S.C. § 1254a(f)(4), also means that the recipient should be considered "admitted," as "nonimmigrants" have typically been granted "admission to the United States" under the INA, *id.* § 1184(a)(1). Indeed, there is a provision of the INA that specifically governs the "Admission of nonimmigrants," *id.* § 1184, and sets out rules regarding individuals' admission as "nonimmigrants," *id.* § 1184(a)(1).

Second, this plain-text reading of the INA is bolstered by the fact that interpreting Section 1255(a) to require an individual seeking a status adjustment to have been inspected and admitted upon arrival—and no later—would produce absurd results that could not have been part of Congress's plan in passing the law. Under that interpretation, an individual who has been living and working lawfully in the United States for decades, who has been thoroughly vetted by the U.S. government and granted lawful nonimmigrant status as a TPS recipient for purposes of adjusting her status, and who seeks an adjustment to lawful-permanent-resident status, would have to leave the country and either return to her country of origin (an action the U.S. government specifically deemed unsafe) or move to yet another country, only to return to the United States and be inspected and admitted upon re-arrival. That convoluted procedure is plainly inconsistent with Congress's plan in passing both Section 1254a of the INA, which allows the government to temporarily protect certain individuals from having to leave the United States when it would be unsafe to do so and deems those individuals "lawful . . . nonimmigrant[s]" for purposes of adjusting their status, and Section 1255, which allows lawful nonimmigrants to adjust their status "to that of person[s] admitted for permanent residence."

ARGUMENT

I. THE PLAIN TEXT OF THE INA PERMITS ELIGIBLE TEMPORARY PROTECTED STATUS RECIPIENTS TO BECOME LAWFUL PERMANENT RESIDENTS, REGARDLESS OF WHETHER THEY WERE INSPECTED AND ADMITTED WHEN THEY FIRST ARRIVED IN THE UNITED STATES.

It is well established that "the starting point for interpreting a statute is the language of the statute itself." *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). "And where the statutory language provides a clear answer, [the analysis] ends there as well." *Harris Trust & Sav. Bank v. Salomon Smith Barney, Inc.*, 530 U.S. 238, 254 (2000) (quoting *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 438 (1999)). In this case, this Court's analysis should begin and end with the text of the INA.

The INA provides that an individual granted TPS "shall be considered as being in, and maintaining, lawful status as a nonimmigrant" "for purposes of adjustment of status under section 1255 of this title," 8 U.S.C. § 1254a(f)(4). Section 1255, in turn, states that "[t]he status of an alien who was inspected and admitted . . . into the United States . . . may be adjusted . . . to that of an alien lawfully admitted for permanent residence," provided that certain criteria are met, as is undisputed in this case. *Id.* § 1255(a).

Under the plain language of the INA, eligible TPS recipients can adjust to lawful-permanent-resident status, regardless of whether they were inspected and lawfully admitted when they first entered the United States, because such recipients have submitted themselves to rigorous inspection and been granted formal admission by the U.S. government. Thus, by dint of

receiving TPS, they have been "inspected and admitted" within the meaning of Section 1255(a).

To start, all TPS recipients have been "inspected" for purposes of Section 1255(a) because the application process for obtaining TPS involves a thorough inspection of each applicant seeking admission. For an individual to be eligible for TPS, the Secretary of Homeland Security must have designated the applicant's country of origin as one to which the return of foreign nationals "would pose a serious threat to their personal safety," *see* 8 U.S.C. § 1254a(b)(1)(A); 6 U.S.C. § 557 (transferring designation responsibility from the Attorney General to the Secretary of Homeland Security), but that is merely a threshold requirement. Foreign nationals in the United States are not automatically granted TPS when their country of origin is so designated. Instead, "[a]n application for Temporary Protected Status must be submitted," 8 C.F.R. § 244.6(a), during a prescribed "registration period," *id.* § 244.7(b), and applicants must satisfy several criteria outlined in the INA. They must (1) have "been continuously physically present in the United States since the effective date of the most recent designation of [their country of origin]," 8 U.S.C. § 1254a(c)(1)(A)(i); (2) have "continuously resided in the United States since such date as the Attorney General may designate," *id.* § 1254a(c)(1)(A)(ii); (3) be "admissible as an immigrant," *id.* § 1254a(c)(1)(A)(iii), unless the Attorney General grants a waiver "for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest," *id.* § 1254a(c)(2)(A)(ii); (4) not be "ineligible for temporary protected status," as detailed in a separate provision, *id.* § 1254a(c)(1)(A)(iii); and (5) have applied for TPS during a designated registration period, *id.*

§ 1254a(c)(1)(A)(iv). Individuals are statutorily ineligible for TPS if (1) they have been convicted of a felony or two or more misdemeanors in the United States, *id.* § 1254a(c)(2)(B)(i); (2) they have participated in persecution, *id.* § 1158(b)(2)(A)(i); (3) they pose "a danger to the security of the United States," *id.* § 1158(b)(2)(A)(iv); (4) they have engaged in terrorist activity, *id.* § 1158(b)(2)(A)(v); or (5) they were "firmly resettled in another country prior to arriving in the United States," *id.* § 1158(b)(2)(A)(vi).

To demonstrate that they meet all these requirements, applicants for TPS must submit (1) "evidence of identity and nationality," such as a passport, birth certificate, or a national identity document containing a photograph or fingerprint, (2) "[p]roof of residence," (3) "[e]vidence of eligibility," (4) and "[e]vidence of valid immigrant or nonimmigrant status." 8 C.F.R. § 244.9(a). Applicants must also submit information regarding their immigration and criminal history (if any) and any history of human rights violations. *See* USCIS, *Form I-821, Application for Temporary Protected Status* 7 (July 3, 2019), www.uscis.gov/sites/default/files/document/forms/i-821.pdf. In this manner, a TPS applicant "must adequately demonstrate that he is eligible to be admitted to the United States, with the possibility that some grounds of inadmissibility may be waived in individual cases at the Attorney General's discretion." *Ramirez v. Brown*, 852 F.3d 954, 960 (9th Cir. 2017).

After a TPS application is submitted, it "is scrutinized for compliance—sometimes supplemented with an interview of the applicant—then approved or denied by [U.S. Citizenship and Immigration Services (USCIS)]." *Id.*; *see* 8 C.F.R. § 244.8 ("The applicant may be required to appear in person before an immigration officer."); *id.* § 244.10(b) ("Upon review of the

evidence presented, USCIS may approve or deny the application for Temporary Protected Status in the exercise of discretion, consistent with the standards for eligibility.").

Thus, USCIS's approval of a TPS application constitutes an admission after an inspection. Indeed, "the application and approval process for securing TPS shares many of the main attributes of the usual 'admission' process for nonimmigrants." *Ramirez*, 852 F.3d at 960; *see id.* (comparing the statutory and regulatory provisions governing the admission process for new immigrants, such as 8 C.F.R. § 235.1(a) and (f)(1), with those governing the TPS application process); José A. Juarez, Jr., Note, Flores v. United States Citizenship and Immigration Services*: Clearing the Way to Admission for Temporary Protected Status Beneficiaries*, 45 Cap. U. L. Rev. 549, 565 (2017) (arguing that "a grant of Temporary Protected Status functions as an admission and inspection").

A TPS recipient should also be "considered as" having been "inspected and admitted" for purposes of Section 1255(a) because the INA provides that an individual granted TPS "shall be considered as being in, and maintaining, lawful status as a nonimmigrant" "for purposes of adjustment of status under section 1255 of this title," 8 U.S.C. § 1254a(f)(4), and under the INA, a "nonimmigrant" is ordinarily someone who has been granted "admission to the United States," *id.* § 1184(a)(1). Indeed, there is a provision of the INA that specifically governs the "Admission of nonimmigrants," *id.* § 1184, and sets out rules regarding individuals' admission as "nonimmigrants," *id.* § 1184(a)(1); *see, e.g.*, *id.* § 1184(a)(2)(A) ("The period of authorized status as a nonimmigrant . . . shall be for such period as the Attorney General may specify . . . for which the *nonimmigrant is admitted*." (emphasis

added)); *id.* § 1184(g)(4) (describing limitations that apply in some circumstances on "the period of authorized *admission as such a nonimmigrant*" (emphasis added)); *id.* § 1182(d) (governing the "[t]emporary *admission* of nonimmigrants" (emphasis added)). "In other words, by the very nature of obtaining lawful nonimmigrant status, the alien goes through inspection and is deemed 'admitted.'" *Ramirez*, 852 F.3d at 960; *see id.* at 956.

Significantly, there is no reason to read "inspected and admitted" in Section 1255(a) to mean "inspected and admitted upon initial arrival in the United States." Section 1255 repeatedly uses the terms "admitted" and "admission" to describe developments that necessarily occur *after* an individual's initial arrival, when that person has already been physically present in the United States. For example, Section 1255 itself is entitled "Adjustment of status of nonimmigrant to that of person *admitted* for permanent residence." 8 U.S.C. § 1255 (emphasis added); *see Almendarez-Torres v. United States*, 523 U.S. 224, 234 (1998) (explaining that "'the title of a statute and the heading of a section' are 'tools available for the resolution of a doubt' about the meaning of a statute" (quoting *Brotherhood of R.R. Trainmen v. Baltimore & O.R. Co.*, 331 U.S. 519, 528-29 (1947))). Likewise, Section 1255(a)'s heading states that it pertains to "[s]tatus as person *admitted* for permanent residence on application," and the text of that section—the very section at issue in this case—details how an individual can adjust her status "to that of an alien lawfully *admitted* for permanent residence." 8 U.S.C. § 1255(a) (emphases added). Section 1255 therefore governs the adjustment of status of a nonimmigrant (someone who, by definition, is already "physically present in the United States," 8

U.S.C. § 1184(q)(3)) to that of a person *admitted* for permanent residence.

In fact, under the text of Section 1255, a grant of lawful-permanent-resident status itself constitutes an "admission," even though such a status adjustment is expressly predicated on an applicant's having "been continuously physically present in the United States" and having "continuously resided in the United States" for a certain period of time before requesting the adjustment. *See id.* § 1254a(c)(1)(A)(i)-(ii); *cf.* 8 U.S.C. § 1101(a)(20) ("The term 'lawfully *admitted* for permanent residence' means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed." (emphasis added)).

Other uses of the words "admitted" and "admission" in Section 1255 further demonstrate that Section 1255(a)'s "inspected and admitted" requirement is not tied exclusively to what occurred when an individual first entered the United States. For instance, Section 1255 provides that "[u]pon the approval of an application for adjustment . . . , the Attorney General shall record the alien's lawful *admission* for permanent residence as of the date the order of the Attorney General approving the application for the adjustment of status is made," *id.* § 1255(b) (emphasis added); *see id.* § 1255(j)(3) ("Upon the approval of adjustment of status . . . , the Attorney General shall record the alien's lawful *admission* for permanent residence as of the date of *such approval* . . . ." (emphases added)). Accordingly, under the plain text of Section 1255(a), the government's "approval" of an adjustment of status to

permanent-resident status constitutes an "admission."[2]

There is no reason why "admitted" should have one meaning in one part of Section 1255 and a different meaning when used again within the very same provision. It would require a feat of mental gymnastics to read the words "inspected and admitted" to mean "inspected and admitted upon initial arrival in the United States" in one instance in Section 1255, even as Congress repeatedly used the terms "admitted" and "admission" throughout the same exact provision to refer to developments that necessarily occur *after* an individual's arrival. *See Ramirez*, 852 F.3d at 961 ("Turning again to the plain language, the adjustment statute uses 'admission' in a way that is inconsistent with the port-of-entry definition . . . .").

To be sure, the INA defines "admission" and "admitted" as "the lawful entry of the alien into the United States after inspection and authorization by an immigration officer," 8 U.S.C. § 1101(a)(13)(A), indicating that when someone presents herself at the border, she is "admitted," and her entry is lawful after inspection and authorization by an immigration officer. But the INA repeatedly uses the terms "admission" and "admitted" in a broader sense when referring to an adjustment to permanent-resident status. Indeed, the INA defines the term "lawfully *admitted* for permanent residence" to mean "the status of having been

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[2] Although the Department of Justice argues that Section 1255(b)'s "recordkeeping requirement" is "merely . . . related to the limitation on the 'number of the preference visas' that can be issued in a given year" and "does not change the substantive meaning of 'admitted' in Section 1255(a)," Resp. Br. 15 n.4, such an interpretation ignores the plain text of the statute, which expressly equates an "admission" with an "approval" of a status adjustment. *See* 8 U.S.C. § 1255(j)(3).

lawfully accorded the privilege of residing permanently in the United States," *id.* § 1101(a)(20) (emphasis added), and again, such a status is conferred only on those already residing in the United States. Moreover, as explained above, Section 1255 itself—the very section at issue here—repeatedly uses the words "admitted" and "admission" to refer to the grant of a particular legal status, not to describe someone's physical arrival into the United States. *See, e.g.*, *id.* § 1255 (entitled "Adjustment of *Status* of Nonimmigrant to That of Person *Admitted* for Permanent Residence" (emphases added)); *id.* § 1255(a) (pertaining to one's "*[s]tatus* as [a] person *admitted* for permanent residence" (emphases added)); *id.* § 1255(b) (referring to an "alien's lawful *admission* for permanent residence" (emphasis added)); § 1255(j)(3) (same)). Thus, while the Department of Justice (DOJ) argues that "admission and lawful status are distinct concepts that hold separate legal significance," Resp. Br. 10; *see id.* at 11 (citing 8 U.S.C. § 1227(a)(1)(B)), the text of the relevant portions of the INA forecloses this argument, at least as it pertains to Section 1255 and the question presented in this case. Indeed, at least for purposes of an adjustment to permanent-resident status, "admission" and "status" go hand in hand.

This Court's recent decision in *Barton v. Barr* underscores this point. In that case, the Court held that a longtime lawful permanent resident who was convicted of multiple crimes, and thereby rendered "inadmissible" under the INA, was ineligible for cancellation of removal, which would have allowed him to remain in the United States. 140 S. Ct. 1442, 1445-46 (2020). The Court rejected petitioner's argument that a lawfully admitted noncitizen cannot "be found inadmissible when he has already been lawfully admitted." *Id.* at 1451. In doing so, the Court noted that the text

of the INA "employs the term 'inadmissibility' as a status that can result from, for example, a noncitizen's (including a lawfully admitted noncitizen's) commission of certain offenses." *Id.* Citing the provision of the INA stating that a noncitizen may be "inadmissible" for purposes of adjusting to permanent resident status, *id.* at 1452 (citing 8 U.S.C. § 1255(a), (*l*)(2)), the Court observed that "Congress has employed the concept of 'inadmissibility' as a status in a variety of statutes similar to the cancellation-of-removal statute, including for lawfully admitted noncitizens," *id.* Thus, the Court reasoned that an individual can be deemed "inadmissible" under the INA regardless of whether she has already been "admitted" to the United States. *See id.* Using the same logic grounded in the INA's text, an individual can be "admitted," or granted a particular immigration status, even if she has already physically entered the country. Thus, TPS recipients have necessarily been "inspected and admitted" for purposes of Section 1255, regardless of whether their inspection and admission occurred when they first arrived in the United States.

The INA's structure further illustrates this point. Notably, the statute mandates that a TPS recipient "shall be considered as being in, and maintaining, lawful status as a nonimmigrant" not only "for purposes of adjustment of status under section 1255," but also "for purposes of . . . change of status under section 1258 of this title." 8 U.S.C. § 1254a(f)(4). Section 1258 provides that, subject to certain exceptions, "[t]he Secretary of Homeland Security may . . . authorize a change from any nonimmigrant classification to any other nonimmigrant classification in the case of any alien lawfully *admitted to the United States as a nonimmigrant* who is continuing to maintain that status and who is not inadmissible." 8 U.S.C. § 1258(a) (emphasis

added).[3] Together, these provisions of the INA therefore equate "being in, and maintaining, lawful status as a nonimmigrant," *id.* § 1254a(f)(4), with being "lawfully admitted to the United States as a nonimmigrant," *id.* § 1258(a). *See Ramirez*, 852 F.3d at 961-62 ("This statutory mirroring is significant because § 1258 uses the word 'admitted,' thus supporting the interpretation that 'being in . . . lawful status as a nonimmigrant' qualifies [a TPS recipient] as being 'admitted' for purposes of both statutory provisions—§§ 1255 and 1258—cited in § 1254a(f)(4).").

Indeed, if being "admitted" were a separate requirement from "being in lawful status as a nonimmigrant," then the language in Section 1254a(f)(4) establishing that a TPS recipient "shall be considered as being in, and maintaining, lawful status as a nonimmigrant" "for purposes of . . . change of status under section 1258 of this title" would be meaningless, as Section 1258(a) does not refer to nonimmigrants outside of its reference to "any alien lawfully admitted to the United States as a nonimmigrant." Accordingly, a TPS recipient must be considered "inspected and admitted" within the meaning of Section 1255(a).

[3] Note that Section 1258, like the others cited above, uses the word "admission" to describe the conferral of a particular "status," rather than to describe one's physical entry into the country. *See* 8 U.S.C. § 1258(a) (referring to "any alien lawfully *admitted* to the United States *as a nonimmigrant* who is continuing to maintain *that status*" (emphases added)).

II. THIS PLAIN-TEXT READING OF THE INA IS CONSISTENT WITH CONGRESS'S PLAN IN PASSING THE STATUTE AND IS BOLSTERED BY THE FACT THAT THE ALTERNATIVE INTERPRETATION WOULD PRODUCE ABSURD RESULTS.

This plain-text reading of the INA is supported by the fact that interpreting Section 1255(a) to require individuals to have been inspected and admitted upon arrival—and no later—would produce absurd results that are irreconcilable with Congress's plan in passing the relevant provisions of the INA. Under DOJ's interpretation, an individual who has been living and working in the United States for decades, who has been thoroughly vetted by the U.S. government and granted TPS, and who seeks to adjust to lawful-permanent-resident status, would have to leave the country and either return to her country of origin (an action the U.S. government specifically deemed unsafe, *see* 8 U.S.C. § 1254a(b)(1)(A)-(C)), or move to yet another country (an action that would require obtaining a visa and could be otherwise difficult). The individual would then have to return to the United States with an immigrant visa from a U.S. embassy or foreign consulate and be inspected and admitted upon re-arrival. Those consequences confirm that the INA permits TPS recipients to adjust to permanent-resident status, regardless of whether they were initially "inspected and admitted" upon arrival.

Congress established TPS in 1990 "as a form of humanitarian relief," *Solorzano v. Mayorkas*, No. 19-50220, 2021 WL 365830, at *1 (5th Cir. Feb. 3, 2021), that shields individuals from removal "when the Attorney General finds that removal to a country with an ongoing armed conflict [or other extraordinary circum-

stances] 'would pose a serious threat to [an alien's] personal safety,'" *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1923 (2020) (second alteration in original) (quoting 8 U.S.C. § 1254a(b)(1)(A)). As the Ninth Circuit has recognized, TPS "provides a limited, temporary form of relief for the period that conditions render an alien's return unsafe by creating a safe harbor and authorizing recipients to work . . . to support themselves for the duration of their stay. Allowing TPS recipients to adjust their status comfortably fits within that purpose." *Ramirez*, 852 F.3d at 963 (citation omitted).

An alternative interpretation of the INA that would render some TPS recipients—individuals who have successfully demonstrated their need to remain in the United States for their own safety and that they satisfy the numerous other TPS criteria—ineligible to adjust to permanent resident status unless they leave the United States and reenter would inexplicably hinder Congress's humanitarian objectives in establishing TPS. The Sixth Circuit recognized as much in *Flores v. USCIS*, 718 F.3d 548, 555-56 (6th Cir. 2013). The plaintiff in that case, a TPS recipient named Saady Suazo, had lived in the United States for about fifteen years, had a wife and minor child who were both U.S. citizens, and "ha[d] waited his turn for an independent, legal, and legitimate pathway to citizenship, through the immediate relative visa application." *Id.* at 555. The court explained, however, that "[u]nder the Government's interpretation, Mr. Suazo would have to leave the United States, be readmitted, and then go through the immigration process all over again" to be eligible for an adjustment to permanent-resident status. *Id.*; *see id.* at 549 ("While many suggest that immigrants should simply 'get in line' and pursue a legal pathway to citizenship, for Saady Suazo

and other similarly situated [TPS] beneficiaries, the Government proposes that there is simply no line available for them to join.").

Such a convoluted procedure is plainly inconsistent with Congress's plan in passing both Section 1254a of the INA, which allows the government to treat certain individuals as "lawful . . . nonimmigrant[s]" and temporarily protect them from having to leave the United States when it would be unsafe to do so, and Section 1255, which allows lawful "nonimmigrant[s] to adjust their immigration status "to that of person[s] admitted for permanent residence." Moreover, "the government's interpretation is inconsistent with the TPS statute's purpose because its interpretation completely ignores that TPS recipients are allowed to stay in the United States pursuant to that status." *Ramirez*, 852 F.3d at 964. It would make no sense for Congress to require TPS recipients seeking a status adjustment to undergo a "Rube Goldberg–like procedure," *id.*, and return to a country that the U.S. government has deemed unsafe, when Congress specifically sought to "protect[]" such individuals from having to return to those unsafe conditions, shielding them from removal, 8 U.S.C. § 1254a(a)(1)(A).

DOJ's interpretation of the statute would also lead to unfairly disparate results. Under that interpretation, an individual who first entered the United States under a student visa but who overstayed that visa and therefore ended up living unlawfully in the United States for decades before obtaining TPS would not need to leave the country to become eligible for an adjustment to permanent-resident status. Meanwhile, an individual who first entered the United States unlawfully but who went through all the proper procedures to obtain TPS, has been living and working lawfully in the United States for decades, and even has

U.S. citizen children, would be barred from becoming a lawful permanent resident without leaving the country (risking her own safety) and returning through prescribed legal channels. Nothing in the text or history of the INA supports an interpretation of the statute that would produce such unfairly divergent results.

To be sure, TPS itself "provide[s] only *temporary* relief," *Solorzano*, 2021 WL 365830, at *5, and "[a] grant of TPS does not provide a recipient with a designated pathway to [lawful-permanent-resident] status," Jill H. Wilson, Cong. Research Serv., RS 20844, *Temporary Protected Status: Overview and Current Issues* 14 (Oct. 26, 2020). But "a TPS recipient is not barred from acquiring nonimmigrant or immigrant status if he or she meets the requirements" and completes the proper procedures. *Id.* In fact, Congress mandated in the INA that a TPS recipient "shall be considered as being in, and maintaining, lawful status as a nonimmigrant" "for purposes of adjustment of status under section 1255," 8 U.S.C. § 1254a(f)(4), and Section 1255 provides that the status of such a nonimmigrant may be adjusted "to that of [a] person admitted for permanent residence," *id.* § 1255. This language demonstrates Congress's plan that TPS recipients be eligible to adjust their status to that of lawful permanent residents, regardless of how they first entered the United States and regardless of the fact that TPS itself is temporary.

* * *

In sum, the plain text of the INA makes clear that a TPS recipient is not barred from adjusting to permanent-resident status because she initially entered the United States without inspection or admission. A TPS

recipient has necessarily been "inspected and admitted," as required for such a status adjustment, by virtue of applying for and receiving TPS, and she must also be considered "admitted" under the INA for purposes of adjusting her status. This plain-text reading of the INA is confirmed by the fact that interpreting Section 1255(a) to require an individual to have been inspected and admitted upon arrival—and no later—would produce absurd results that are irreconcilable with Congress's plan in passing the relevant provisions of the statute.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be reversed.

Respectfully submitted,

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