No. 20-315

In the Supreme Court of the United States

JOSE SANTOS SANCHEZ, ET AL., PETITIONERS

v.

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

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

BRIEF FOR THE RESPONDENTS

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QUESTION PRESENTED

Whether, under 8 U.S.C. 1254a(f)(4), a grant of temporary protected status must be treated as an admission into the United States for purposes of a foreign national's application for adjustment to lawful permanent resident status under 8 U.S.C. 1255.

TABLE OF CONTENTS

Page

Table of Contents—Continued: Page

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Statutes and regulations: Page

Statutes and regulations—Continued: Page

Statutes and regulations—Continued: Page

Statutes and regulations—Continued: Page

Miscellaneous: Page

Miscellaneous—Continued: Page

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-20a) is reported at 967 F.3d 242. The opinion of the district court (Pet. App. 21a-38a) is not published in the Federal Supplement but is available at 2018 WL 6427894. The decisions of United States Citizenship and Immigration Services denying petitioners' applications for adjustment of status (Pet. App. 39a-48a, 49a-51a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on July 22, 2020. The petition for a writ of certiorari was filed on September 8, 2020, and was granted on January 8, 2021. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Pertinent statutory and regulatory provisions are reproduced in the appendix to this brief. App., *infra*, 1a-52a.

STATEMENT

A. Statutory And Regulatory Background

1. The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, provides that certain foreign nationals present in the United States may apply to the Secretary of Homeland Security to adjust their immigration status "to that of an alien lawfully admitted for permanent residence." 8 U.S.C. 1255(a).[1]

As a threshold eligibility requirement, an applicant for adjustment to lawful permanent resident (LPR) status generally must have been "inspected and admitted or paroled into the United States." 8 U.S.C. 1255(a); see 8 C.F.R. 245.1(b)(3). The INA defines "[t]he terms '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). The statutory condition that generally only noncitizens who entered the United States lawfully are eligible for adjustment to LPR status has been part of U.S. immigration law since 1952. See INA, ch. 477, Title II, § 245,

[1] The INA refers to the Attorney General, but Congress has transferred some responsibility for many of the provisions at issue in this case to the Secretary of Homeland Security. See 6 U.S.C. 271(b)(5) and 557; 8 U.S.C. 1103(a)(1) and (g); 8 C.F.R. 245.2(a)(1).

66 Stat. 217 (authorizing adjustment of status for "an alien who was lawfully admitted to the United States").[2]

In addition to that requirement, a noncitizen seeking adjustment to LPR status must be "eligible to receive an immigrant visa and [be] admissible to the United States for permanent residence," and "an immigrant visa [must be] immediately available to him at the time his application is filed." 8 U.S.C. 1255(a)(2) and (3). For most noncitizens seeking adjustment to LPR status, immigrant visas become available through a petition filed on their behalf by their employer or family members. See United States Citizenship and Immigration Services (USCIS), 7 *Policy Manual* pt. A, ch. 3.B.4 (Mar. 18, 2021), https://go.usa.gov/xs5fr.

Other provisions of Section 1255 impose additional requirements on applicants for adjustment to LPR status. Most relevant here, except for certain "special immigrant[s]" or someone whose immigrant-visa petition was filed by an "immediate relative," Section 1255(c)(2) provides that an applicant must not be "in unlawful immigration status on the date of filing the application," and must not have "failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States." 8 U.S.C. 1255(c)(2); see 8 C.F.R. 245.1(b)(5) and (6). The applicant also must not have engaged in "unauthorized employment prior to filing [the] application for adjustment of status." 8 U.S.C. 1255(c)(2); see 8 C.F.R. 245.1(b)(10).

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[2] This brief uses "noncitizen" as equivalent to the statutory term "alien." See *Barton* v. *Barr*, 140 S. Ct. 1442, 1446 n.2 (2020) (quoting 8 U.S.C. 1101(a)(3)).

Congress has created several exceptions to certain of those requirements. Section 1255(i), for example, describes certain noncitizens who, despite having "entered the United States without inspection," are permitted to adjust to LPR status "[n]otwithstanding the provisions of subsections (a) and (c)." 8 U.S.C. 1255(i)(1)(A)(i). And most relevant here, Section 1255(k) relieves the bars to adjustment of status in Section 1255(c)(2) for certain applicants who sought an immigrant visa through their employer if the person is "present in the United States pursuant to a lawful admission" at the time of his application, and has not "subsequent to such lawful admission * * * for an aggregate period exceeding 180 days * * * failed to maintain, continuously, a lawful status" or "engaged in unauthorized employment." 8 U.S.C. 1255(k)(1) and (2).

Noncitizens who are not eligible to adjust to LPR status generally may depart the United States and apply from abroad for an immigrant visa. See 7 *Policy Manual* pt. A, ch. 1.A. Such persons may not be eligible for admission for three or ten years, depending on the length of their unlawful presence in the United States, although USCIS may waive those timing restrictions in some cases. See 8 U.S.C. 1182(a)(9)(B).

2. The INA separately provides that the Secretary of Homeland Security may grant foreign nationals who are present in the United States "temporary protected status" (TPS) if the Secretary determines that the present conditions in their home country (such as an armed conflict or a natural disaster) would make their return unsafe or unmanageable for their foreign government. See 8 U.S.C. 1254a(a)(1)(A) and (b)(1).

Congress created TPS in the Immigration Act of 1990 (1990 Act), Pub. L. No. 101-649, § 302, 104 Stat.

5030-5036, in order to codify and standardize a form of temporary humanitarian relief known as Extended Voluntary Departure (EVD) that had been used by the Executive for decades for foreign nationals who could not safely return to their home countries. See *In re Sosa Ventura*, 25 I. & N. Dec. 391, 394 (B.I.A. 2010). Like those predecessor grants of relief, TPS temporarily delays recipients' removal based on extraordinary and temporary conditions in their countries. 8 U.S.C. 1254a(a)(1)(A) and (b)(1); see 8 C.F.R. 244.10(f)(2)(i). Permission to remain in the United States under EVD (later known as Deferred Enforced Departure) had been granted whether or not beneficiaries had entered the United States lawfully, see USCIS, *Adjudicator's Field Manual* 38.2(a)-(d), https://go.usa.gov/xsprn, and Congress similarly provided that a noncitizen's unlawful entry into the United States "will not preclude a grant of TPS under most circumstances." *Sosa Ventura*, 25 I. & N. Dec. at 392-393; see 8 U.S.C. 1254a(c)(2)(A)(ii); 8 C.F.R. 244.3. An initial TPS designation lasts between 6 and 18 months, after which the Secretary must "review the conditions" in the designated foreign country and determine whether the criteria for the designation "continue to be met." 8 U.S.C. 1254a(b)(2) and (3)(A). If so, the country's designation may be extended for another 6, 12, or 18 months. 8 U.S.C. 1254a(b)(3)(C).

TPS recipients are not subject to removal from the United States "during the period in which such status is in effect," and they are authorized to obtain employment. 8 U.S.C. 1254a(a)(1); see 8 C.F.R. 244.10(f)(2)(i) and (ii). In addition, "[d]uring a period in which an alien is granted [TPS]," "for purposes of adjustment of status under [8 U.S.C. 1255] and change of status under

[8 U.S.C. 1258], the alien shall be considered as being in, and maintaining, lawful status as a nonimmigrant." 8 U.S.C. 1254a(f)(4); see 8 C.F.R. 244.10(f)(2)(iv).[3] But "the alien shall not be considered to be permanently residing in the United States under color of law"; he "may be deemed ineligible for public assistance by a State"; and he may travel abroad only with DHS's "prior consent." 8 U.S.C. 1254a(f)(1)-(3).

Since the first regulations implementing the TPS program in 1991, the Executive Branch has determined that Section 1254a does not alter the inspection-and-admission requirement in Section 1255(a), and therefore "[a]n alien who entered the United States without inspection" and later received TPS "cannot satisfy" Section 1255(a) and is "not * * * eligible to adjust" to LPR status. 56 Fed. Reg. 23,491, 23,495 (May 22, 1991); see, *e.g.*, *In re H-G-G-*, 27 I. & N. Dec. 617, 621-622, 641 (A.A.O. 2019) (describing the government's consistent interpretation since 1991, and reaffirming that interpretation).

B. The Present Controversy

1. Petitioners Jose Santos Sanchez and Sonia Gonzalez are husband and wife and citizens of El Salvador. Pet. App. 3a. They entered the United States unlawfully—without inspection and admission or parole—in 1997 and 1998. *Ibid.* Sanchez also admits that he was employed "without authorization" upon his entry in the United States. *Id.* at 45a.

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[3] Section 1258 authorizes a noncitizen, with certain exceptions, to "change from any nonimmigrant classification to any other nonimmigrant classification," provided that the person was "lawfully admitted to the United States as a nonimmigrant [and] is continuing to maintain that status." 8 U.S.C. 1258(a).

In 2001, the government designated El Salvador under the TPS program after it experienced three earthquakes. See *Designation of El Salvador Under Temporary Protected Status Program*, 66 Fed. Reg. 14,214 (Mar. 9, 2001).[4] Petitioners were granted TPS in 2001 and have held that status since then. Pet. App. 3a, 22a.

In 2014, petitioners applied for adjustment of status under 8 U.S.C. 1255. Pet. App. 4a. Sanchez was the beneficiary of his employer's immigrant-visa petition, and Gonzalez was a derivative beneficiary of his application. *Id.* at 39a, 50a. USCIS denied Sanchez's application, *id.* at 39a-48a, explaining that, because he acknowledged having entered the United States "without inspection," he had not been "inspected and admitted or inspected and paroled" and therefore was "not eligible" to adjust his status under Section 1255(a), *id.* at 45a-46a. USCIS found that Sanchez was also barred from adjusting his status by 8 U.S.C. 1255(c)(2), because he had engaged in "unauthorized employment" before receiving TPS. See Pet. App. 45a-46a. As an employment-based applicant, Sanchez had invoked the exception in Section 1255(k) to overcome that bar. But USCIS determined that Section 1255(k) did not apply

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[4] In January 2018, the former Secretary decided that El Salvador's TPS designation would be terminated in September 2019. *Termination of the Designation of El Salvador for Temporary Protected Status*, 83 Fed. Reg. 2654, 2654 (Jan. 18, 2018). But that decision is the subject of litigation, see *Ramos* v. *Nielsen*, 336 F. Supp. 3d 1075 (N.D. Cal. 2018), vacated and remanded, 975 F.3d 872 (9th Cir. 2020), and the termination "will take effect no earlier than 365 days from the issuance of any appellate mandate" in that litigation, *Continuation of Documentation for Beneficiaries of Temporary Protected Status Designations for El Salvador, Haiti, Nicaragua, Sudan, Honduras, and Nepal*, 85 Fed. Reg. 79,208, 79,211 (Dec. 9, 2020).

to him, because he was not "present in the United States pursuant to a lawful admission." 8 U.S.C. 1255(k)(1). See Pet. App. 46a. USCIS denied Gonzalez's application because it was dependent on the success of Sanchez's application. *Id.* at 49a-51a.

2. Petitioners sued, claiming (as relevant here) that the denial of their applications was contrary to law in violation of the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.* See Pet. App. 23a-24a.

The district court granted summary judgment to petitioners. Pet. App. 24a-35a. The court found that Section 1254a(f)(4)—which provides that, "during a period" of TPS, the recipient is "'considered' as being in, and maintaining, *lawful status* as a nonimmigrant"—unambiguously requires USCIS to treat all TPS recipients as "'inspected and admitted' under [Section] 1255." *Id.* at 31a (brackets altered; citation omitted).

3. The court of appeals reversed. Pet. App. 1a-20a. The court determined that "a grant of TPS does not constitute an 'admission' into the United States under [Section] 1255," *id.* at 20a, explaining that "'admission' and 'admitted'" are statutorily defined terms, and petitioners concededly did not make a "'lawful entry * * * into the United States after inspection and authorization by an immigration officer,'" *id.* at 7a (quoting 8 U.S.C. 1101(a)(13)(A)). The court further observed that "admission" and "status" are distinct concepts in immigration law—admission is an occurrence, defined in factual and procedural terms, whereas status refers to a noncitizen's permission to be present in the United States—and thus petitioners' lawful status under TPS did not also constitute an admission. *Id.* at 7a & n.3.

The court of appeals rejected petitioners' contention that by "'obtaining lawful nonimmigrant status [through

TPS], the alien goes through inspection and is deemed admitted,'" finding it "unpersuasive for at least three reasons." Pet. App. 8a (citation omitted). First, "the text of [Section] 1254a" nowhere mentions that a grant of TPS "is (or should be considered) an inspection and admission." *Ibid.* Second, "a grant of TPS cannot be an 'admission' because [Section] 1254a requires an alien to be present in the United States to be eligible for TPS." *Ibid.* And third, a noncitizen can be granted a lawful status without an admission, as when a person is granted asylum. *Ibid.* The court reasoned that if admission and lawful status were intertwined in the fashion that petitioners advocated, then Congress would not have separately "list[ed] inspection and admission or parole as a threshold requirement in [Section] 1255(a) and failure to maintain lawful status as a bar to eligibility * * * in [Section] 1255(c)(2)." *Id.* at 10a-11a.

The court of appeals also determined that the INA's statutory context and the purposes of the TPS program supported USCIS's decision. Pet. App. 9a. The court observed that Congress has created multiple express exceptions to the requirement that only individuals who were inspected and admitted are eligible to adjust to LPR status, but Congress did not create any comparable exception for TPS recipients, suggesting that TPS recipients are not similarly exempted. See *ibid.* (citing *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 432 (1987)). And the court found the government's interpretation more consistent with Congress's purpose in establishing TPS as a temporary protection against removal, not a means of "open[ing] the door to more permanent status adjustments." *Id.* at 11a.

SUMMARY OF ARGUMENT

A. The court of appeals correctly determined that USCIS's decision denying petitioners' applications for adjustment of status was in accordance with law. The agency reasonably found that petitioners were not "admitted" under 8 U.S.C. 1255(a) because they do not satisfy the statutory definition of that term. Section 1254a(f)(4) authorizes TPS recipients to establish that they are "in" lawful immigration status, and have "maintain[ed]" lawful status continuously, during their TPS period. 8 U.S.C. 1255(c)(2). But "admission" and "lawful status" are distinct concepts in immigration law.

In multiple other immigration-law provisions, Congress has expressly waived or deemed satisfied Section 1255(a)'s inspection-and-admission requirement, but it has not enacted any comparably unambiguous exception for TPS recipients. Those other exceptions demonstrate that Congress is aware of many ways of speaking directly to the issue here.

The history and purposes of TPS also support USCIS's decision. Congress created TPS in order to codify and standardize a form of temporary humanitarian protection that the Executive Branch had used to defer removal of certain foreign nationals who could not presently return to their home country during a crisis. Like those prior grants of Executive relief, Congress designed TPS to provide temporary protection against removal and to preserve admitted nonimmigrants' existing opportunity to adjust to LPR status, but it did not unambiguously create a new pathway to LPR status for noncitizens who were already ineligible for that benefit because of their unlawful entry or unauthorized employment.

B. Petitioners have not shown that the statutory text forecloses USCIS's decision. Section 1254a(f)(4) authorizes all TPS recipients to establish lawful status during their TPS period for purposes of any part of Section 1255, but does not mandate that the provision concerning lawful status be used to satisfy the distinct requirement of inspection and admission. USCIS's interpretation of Section 1254a(f)(4) does not artificially limit that provision or render any part of it superfluous. Even if it might have been conceptually possible to write Section 1254a(f)(4) another way, it is unsurprising that Congress used language that directly tracks the two-part lawful-status requirement in Section 1255.

Although petitioners invoke the history and purposes of TPS, they do not dispute that TPS was modeled on EVD relief which did not provide a special pathway to LPR status. Congress's response to the problem of Salvadorans and other foreign nationals who had entered the United States unlawfully before the 1990 Act was to authorize temporary protected status for them so that they would not be forced to return to their country while the crisis there persisted, but Congress did not suggest that TPS was a new pathway to lawful permanent residence. Petitioners are incorrect in claiming that USCIS's position would not force TPS recipients who entered unlawfully to return to danger; they could seek an immigrant visa from a third country.

C. USCIS was not required to accept petitioners' argument by syllogism, which depends on disregarding the statutory definition of the term "admitted." Petitioners point out that the INA describes adjustment to LPR status as a fictional admission in certain cases, but Congress used different language to describe TPS.

Moreover, both premises in petitioners' syllogism are faulty. Section 1254a provides that TPS recipients are "considered as being in, and maintaining, *lawful status* as a nonimmigrant," 8 U.S.C. 1254a(f)(4) (emphasis added); the statute does not say that they are considered to be equivalent to nonimmigrants in all respects. And while most nonimmigrants are admitted, petitioners are incorrect that *all* persons with nonimmigrant status necessarily were admitted.

Petitioners also fail to explain why Congress would have utilized their chain of inferences instead of any of several obvious alternatives that would clearly establish that TPS recipients are admitted.

D. The Executive Branch's interpretation of Sections 1254a and 1255 has been consistent for 30 years. That interpretation was formally promulgated through a notice-and-comment rulemaking, a precedential adjudication opinion that was certified as lawful by the Attorney General, and a published decision of the Board of Immigration Appeals (Board). The government's statutory interpretation is entitled to deference under this Court's precedents in view of the Executive's careful consideration of the issue over decades, its expertise in managing the foreign-relations implications of humanitarian relief for foreign nationals, and Congress's express delegation of interpretive authority over the INA to the Attorney General.

Petitioners offer no sound basis for declining to defer to the government's longstanding, formally promulgated statutory interpretation. The agency's "position prevails" because it "is a reasonable construction of the statute," and this Court "need not decide if the statute permits any other construction." *Holder* v. *Martinez Gutierrez*, 566 U.S. 583, 591 (2012).

ARGUMENT

USCIS LAWFULLY DETERMINED THAT RECIPIENTS OF TEMPORARY PROTECTED STATUS WHO ENTERED THE UNITED STATES WITHOUT INSPECTION AND ADMISSION OR PAROLE ARE NOT ELIGIBLE TO ADJUST TO LAWFUL PERMANENT RESIDENT STATUS

Petitioners face a demanding burden to show that USCIS's decision denying their applications for adjustment of status was "not in accordance with law." 5 U.S.C. 706(2)(A). They contend that the statute "unambiguously" forecloses the government's longstanding statutory construction, and that the only position within "the 'bounds of reasonable interpretation'" requires treating every TPS recipient as having been "'inspected and admitted' for purposes of" Section 1255. Pet. Br. 17, 42 (citation omitted). Petitioners are incorrect. They were not actually "admitted" as that term is defined in the INA. Congress has expressly authorized adjustment of status for multiple classes of noncitizens—including some nonimmigrants—notwithstanding their unlawful entries, but it has not unambiguously extended a comparable exception to TPS recipients. USCIS's decision in petitioners' case was consistent with the Executive Branch's position since 1991, and that position accords with the statute's text, context, history, and purposes. The agency's decision reflects a reasonable interpretation of the INA that is entitled to deference under this Court's precedents.

A. The Court Of Appeals Correctly Determined That USCIS's Decision Was In Accordance With Law

The text of the INA supports USCIS's determination that petitioners are ineligible for adjustment to lawful permanent resident status, and the other usual

tools of statutory interpretation—context, history, and purpose—are also consistent with that decision.

1. USCIS's decision was consistent with the statutory text

a. Petitioners agree (Br. 18) that a person seeking adjustment to LPR status must have been "inspected and admitted or paroled into the United States." 8 U.S.C. 1255(a). The INA defines "'admission' and 'admitted'" as a "lawful entry * * * into the United States after inspection and authorization by an immigration officer." 8 U.S.C. 1101(a)(13)(A). But petitioners cannot satisfy that definition: They concede that they did not enter "after inspection and authorization" when they came to the United States in 1997 and 1998, *ibid.*; they instead "entered the country unlawfully," Pet. Br. 3. See Pet. App. 46a. Nor did petitioners make an "entry" into the United States when they received TPS in 2001. 8 U.S.C. 1101(a)(13)(A). At that point, petitioners were already present here—as they must have been to obtain TPS. See 8 U.S.C. 1254a(c)(1)(A)(i) and (5).

In addition, petitioners are barred from adjusting to LPR status because Sanchez "accept[ed] unauthorized employment" before receiving TPS, 8 U.S.C. 1255(c)(2). See Pet. App. 45a-46a. Petitioners also failed "to maintain continuously a lawful status since entry into the United States" before receiving TPS, 8 U.S.C. 1255(c)(2), although USCIS did not invoke that ground of ineligibility. Section 1255(k) provides an exception to Section 1255(c)(2), but Section 1255(k) does not apply to Sanchez because, as just explained, he was not "present in the United States *pursuant to a lawful admission*" when he applied for adjustment of status. 8 U.S.C. 1255(k)(1) (emphasis added).

USCIS acted "in accordance with law" in petitioners' cases, 5 U.S.C. 706(2)(A), when it construed the term "admitted" in Section 1255 in accordance with the statutory definition. See *Burgess* v. *United States*, 553 U.S. 124, 129 (2008) ("Statutory definitions control the meaning of statutory words * * * in the usual case.").[5]

b. Petitioners' receipt of TPS did not unambiguously satisfy the requirement in Section 1255(a) that they must have been admitted to the United States to be permitted to adjust to LPR status. Section 1254a(f)(4) provides that, "[d]uring a period in which an alien is granted [TPS], * * * for purposes of adjustment of status under section 1255 * * *, the alien shall be considered as being in, and maintaining, lawful status as a nonimmigrant." 8 U.S.C. 1254a(f)(4). But Section 1255 establishes multiple distinct requirements for adjustment to LPR status. As relevant here, the noncitizen must have been inspected and admitted (or paroled), he must be in lawful status, and he must have maintained lawful status for a designated period. 8 U.S.C. 1255(a),

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[5] TPS recipients are permitted to travel abroad with the "prior consent" of USCIS. 8 U.S.C. 1254a(f)(3). After petitioners received TPS, they traveled abroad with permission in 2011 and 2014, and upon return were treated as paroled into the United States. See C.A. App. 278. But petitioners did not argue before the agency—and do not argue in this Court, Pet. Br. 13 n.7—that their return from that travel made them eligible for adjustment of status. Regardless of whether petitioners' return qualified as a "parole" for purposes of Section 1255(a), Sanchez's period of "unauthorized employment" separately bars them from adjusting to LPR status, 8 U.S.C. 1255(c)(2); see Pet. App. 45a-46a, and a parole would not enable them to invoke Section 1255(k) to overcome that bar. See 8 U.S.C. 1101(a)(13)(B) (parole "shall not be considered" an admission); see also 8 C.F.R. 245.1(d)(3).

(c)(2), and (k). Section 1254a(f)(4) speaks directly only to the latter two requirements.

"Admission" and "lawful status" are distinct concepts in immigration law, as petitioners have acknowledged. See Pet. C.A. Br. 8 ("[Petitioners] do not dispute * * * that there are clear differences between the terms[] 'admission' and 'lawful status.'"). As noted above, "admission" is defined as a "lawful entry * * * into the United States after inspection and authorization by an immigration officer." 8 U.S.C. 1101(a)(13)(A). That meaning of "admitted" fits naturally in Section 1255(a), in particular, which provides that the admission must follow an "inspection" and be made "into the United States," 8 U.S.C. 1255(a)—a prepositional phrase "expressing motion from without to a point within." 8 *The Oxford English Dictionary* 9 (2d ed. 1989).

"[L]awful status," by contrast, is not a historical event but rather a legal condition held by the noncitizen. See 16 *The Oxford English Dictionary* 573 (defining "status" as "[t]he legal standing or position of a person as determined by his membership of some class of persons legally enjoying certain rights or subject to certain limitations"). Though not defined in the INA, the term naturally refers to "permission to be present in the United States." *Gomez* v. *Lynch*, 831 F.3d 652, 658 (5th Cir. 2016); see *In re Blancas-Lara*, 23 I. & N. Dec. 458, 460 (B.I.A. 2002) ("'Status' is a term of art, which is used in the immigration laws in a manner consistent with the common legal definition. It denotes someone who possess a certain legal standing."). Cf. 8 C.F.R. 245.1(d)(1) (defining types of "lawful immigration status" for purposes of Section 1255(c)(2)).

Because "admission" and "lawful status" refer to distinct concepts, establishing one does not automatically

establish the other. A noncitizen can be admitted but not in lawful status—as with a nonimmigrant student who stays more than 60 days after graduation. See 8 C.F.R. 214.2(f)(5)(i) (nonimmigrant students must depart the United States within 60 days "following completion of studies"); 8 C.F.R. 245.1(d)(1)(ii) (nonimmigrants are in lawful status under Section 1255(c)(2) while their "initial period of admission has not expired"). The converse is also true: a person who entered unlawfully can acquire lawful status without being admitted. That happens when, for example, a person applies for and obtains asylum during removal proceedings following unlawful entry. See, *e.g.*, *In re V-X-*, 26 I. & N. Dec. 147 (B.I.A. 2013) (a grant of asylum in the United States is not an admission); 8 C.F.R. 245.1(d)(1)(iv) (asylees are in lawful status).

A grant of TPS is similar, in that respect, to a grant of asylum: a noncitizen need not have been admitted to the United States to receive TPS, see p. 5, *supra*, but neither does the grant of TPS require USCIS to treat the person as having been admitted. Unlike provisions that apply to other classes of noncitizens, the INA does not say that TPS recipients are "admitted into the United States under section 1254a," similar to how Congress has specified that certain victims of severe human trafficking are "admitted into the United States under [8 U.S.C.] 1101(a)(15)(T)(i)." 8 U.S.C. 1255(*l*). It does not say that TPS recipients "shall be deemed to have been admitted," similar to a provision for certain special immigrants who "shall be deemed * * * to have been paroled into the United States." 8 U.S.C. 1255(g). Nor does the INA expressly authorize USCIS to "waive" a noncitizen's inadmissibility based on unlawful entry for

purposes of adjustment of status, as it does when granting TPS. 8 U.S.C. 1254a(c)(2)(A).[6] The terms "admission" and "admitted" appear in Section 1254a only to advise that "[n]othing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for [TPS]." 8 U.S.C. 1254a(c)(5). Those uses are synonymous with the statutory definition—an authorized entry—and are consistent with USCIS's determination that Congress did not make admission a constituent part of a grant of TPS.

Section 1254a(f)(4) provides a valuable benefit to TPS recipients who lawfully entered the United States: It enables them to establish that they are not "in unlawful immigration status on the date of filing the application for adjustment of status," 8 U.S.C. 1255(c)(2), even if their original status at admission has expired—as in the case of a nonimmigrant student who received TPS and has since graduated. Section 1254a(f)(4) also enables TPS recipients to establish that they have "maintain[ed]" continuously a lawful status during the period since receiving TPS. *Ibid.* That clause is particularly valuable to certain employment-based applicants who had a modest period of unlawful status—such as a nonimmigrant temporary worker in a specialty occupation who received TPS a few months after his visa

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[6] Section 1254a provides that a noncitizen must be "admissible as an immigrant" to be eligible for TPS, 8 U.S.C. 1254a(c)(1)(A)(iii), except for those grounds of inadmissibility waived by Section 1254a(c)(2)(A). That provision requires a TPS applicant to demonstrate that he could meet the (un-waived) conditions that would apply if, counterfactually, he were seeking to enter the United States as an immigrant. But Section 1254a(c) does not require USCIS to treat the grant of TPS as an admission.

expired, 8 U.S.C. 1101(a)(15)(H)(i)(B)—because Section 1255(k) authorizes adjustment of status "notwithstanding" subsection (c)(2) if the person was admitted and has not "failed to maintain, continuously, a lawful status" for "an aggregate period exceeding 180 days." 8 U.S.C. 1255(k).

Nothing in Section 1254a(f)(4) says, however, that a grant of TPS is an *admission* to the United States, despite the statutory definition equating that term with a "lawful entry" upon authorization by an immigration officer. 8 U.S.C. 1101(a)(13)(A). Section 1254a(f)(4) confers a time-limited benefit—one that is available only "[d]uring a period" of TPS, 8 U.S.C. 1254a(f)—which suggests that it addresses Section 1255's requirement to demonstrate lawful status on an ongoing basis, but does not necessarily "eliminate[] the effects of any prior disqualifying acts" such as entry without inspection, unauthorized employment, or a prior failure to maintain lawful status. *Melendez* v. *McAleenan*, 928 F.3d 425, 429 (5th Cir. 2019), cert. denied, 140 S. Ct. 561 (2019).

2. Other closely related statutory provisions support USCIS's decision

USCIS's statutory interpretation is supported by other INA provisions where Congress has expressly waived, or deemed satisfied, Section 1255(a)'s requirement that an applicant for adjustment of status must be "inspected and admitted or paroled." 8 U.S.C. 1255(a).

In subsection (a) itself, Congress permitted a noncitizen with "an approved petition for classification as a [Violence Against Women Act of 1994 (VAWA)] self-petitioner" to adjust to LPR status without having been

inspected and admitted or paroled. 8 U.S.C. 1255(a).[7] In subsections (g) and (h), Congress provided that "special immigrant[s] described in" 8 U.S.C. 1101(a)(27)(K) for their honorable military service to the United States, and "special immigrant" juveniles described in 8 U.S.C. 1101(a)(27)(J), "shall be deemed, for purposes of subsection (a), to have been paroled into the United States." 8 U.S.C. 1255(g) and (h)(1). And in subsection (i), Congress authorized certain noncitizens who "entered the United States without inspection" to apply for "adjustment of [their] status to that of an alien lawfully admitted for permanent residence" "[n]otwithstanding the provisions of subsections (a) and (c)." 8 U.S.C. 1255(i)(1)(A)(i).

Congress also spoke directly to adjustment of status for some classes of nonimmigrants who may receive lawful status after having entered the United States unlawfully. For example, the INA authorizes a noncitizen who has been the victim of certain serious crimes in the United States to petition for "U" nonimmigrant status if a prosecutor or other specified official certifies that the person may be helpful in an investigation or prosecution of that crime. See 8 U.S.C. 1101(a)(15)(U); 8 U.S.C. 1184(p). A person who satisfies the criteria may obtain "U" nonimmigrant status through a waiver from USCIS even if she entered without inspection. See 8 U.S.C. 1182(d)(14); 8 C.F.R. 212.17. Those "U" nonimmigrants are not "admitted" as the INA defines that term in Section 1101(a)(13)(A). Nevertheless, Congress has expressly authorized "U" nonimmigrants to adjust to LPR status if they were "admitted into the United

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[7] This case does not involve VAWA self-petitioners, which are certain noncitizens who have been subjected to particular forms of abuse or deception. See 8 U.S.C. 1101(a)(51).

States (*or otherwise provided non-immigrant status*) under section 1101(a)(15)(U)" and satisfy certain other conditions. 8 U.S.C. 1255(m)(1) (emphasis added).

The existence of those other exceptions shows that Congress is aware of many ways of speaking directly to the issue here. Indeed, the House of Representatives recently passed a bill that would amend Section 1254a(f)(4) to provide that a TPS recipient "shall be considered *as having been inspected and admitted into the United States, and* as being in, and maintaining, lawful status as a nonimmigrant." American Dream and Promise Act of 2021, H.R. 6, 117th Cong., 1st Sess. § 203 (emphasis added); 167 Cong. Rec. H1567 (daily ed. Mar. 18, 2021) (emphasis added); see also, *e.g.*, Jill H. Wilson, Cong. Research Serv., RS20844, *Temporary Protected Status: Overview and Current Issues* 15 & nn.96-102 (2020) (discussing several unenacted legislative proposals to authorize adjustment to LPR status for TPS recipients). In the absence of such an amendment, however, USCIS's interpretation is not foreclosed by the current statutory text.

3. The TPS program's history and purpose support USCIS's decision

a. In the 1990 Act, Congress created the TPS program "to codify and standardize" EVD, a non-statutory form of temporary immigration relief that had been used by the Executive "for decades to address humanitarian concerns" for foreign nationals who could not meet the statutory definition of refugee but could not return safely to their home countries. *In re Sosa Ventura*, 25 I. & N. Dec. 391, 394 (B.I.A. 2010); see Immigration and Naturalization Serv. (INS), Gen. Counsel's Office, *Temporary Protected Status and eligibility for adjustment of status under Section 245*, Legal Op. No.

93-59, 1993 WL 1504006, at *2 (Aug. 17, 1993) (INS 93-59) (surveying the 1990 Act's legislative history). Before 1990, every President since Eisenhower "ha[d] permitted one or more groups of otherwise deportable aliens to remain temporarily in the United States out of concern that the forced repatriation of these individuals could endanger their lives or safety." *Sosa Ventura*, 25 I. & N. Dec. at 394 (quoting H.R. Rep. No. 245, 101st Cong., 1st Sess. 9 (1989) (House Report)).

Those grants of temporary relief "merely prevent[ed] [beneficiaries'] removal from the United States and provide[d] the opportunity to apply for employment authorization"; they did not provide beneficiaries with a new pathway to permanent residence in the United States. Andrew I. Schoenholtz, *The Promise and Challenge of Humanitarian Protection in the United States: Making Temporary Protected Status Work as a Safe Haven*, 15 Nw. J. L. & Soc. Pol'y 1, 6 (2019); see *id.* at 5 n.11 ("EVD did not change the unauthorized immigration status of its beneficiaries."); House Report 10-11 (discussing the history and operation of EVD).

The June 1989 Tiananmen Square protests prompted President Bush to issue a Deferred Enforced Departure (DED) for certain Chinese nationals, see INS 93-59, at *3, which authorized "maintenance of lawful status for purposes of adjustment of status" and temporary work authorization for them, Exec. Order No. 12,711, *Policy Implementation with Respect to Nationals of the People's Republic of China* § 3(b) and (c), 55 Fed. Reg. 13,897 (Apr. 13, 1990). But that Executive action too was not itself an "admission" of Chinese nationals, and it did not open a pathway to lawful permanent residence for Chinese nationals who had not been admitted.

Congress took a similar approach with TPS. It proposed a statutory TPS program "to replace the ad hoc approach devised in response to the Chinese emergency," and in anticipation of future crises. House Report 8. Following the lead of President Bush's 1990 DED order, the House of Representatives proposed a provision substantively identical to today's Section 1254a(f)(4) that would authorize TPS recipients to preserve their lawful status during their period of TPS, and thereby satisfy the lawful-status requirements of Section 1255 for adjustment to LPR status. See Chinese Temporary Protected Status Act of 1989, H.R. 2929, 101st Cong., 1st Sess. § 2(a) (1989) (proposing INA Section 244A(f)(5)); see also House Report 14 ("In the case of an alien who receives TPS while also maintaining some other status it is the Committee's intent that the alien remain subject to the terms and conditions of that status."). Congress eventually enacted that provision into law as Section 1254a(f)(4) in the 1990 Act. INS 93-59, at *3.

Both before and after 1990, Congress enacted other legislation that removed barriers to adjustment to LPR status for certain recipients of EVD or DED. In the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, for example, Congress directed that certain noncitizens who had been "provided (or allowed to continue in) 'extended voluntary departure'" between November 1982 and November 1987 "shall be" eligible for adjustment to LPR status if they meet certain requirements, without requiring the EVD beneficiaries to have been admitted. Pub. L. No. 100-204, § 902(a), 101 Stat. 1400-1401. In the Chinese Student Protection Act of 1992, Congress provided that Section 1255(c)(2) "shall not apply" to applications for adjustment to LPR status

filed by Chinese nationals covered by President's Bush's 1990 DED order, Pub. L. No. 102-404, § 2, 106 Stat. 1969, though it left Section 1255(a)'s inspection-and-admission requirement unchanged for them, see *Qi-Zhuo* v. *Meissner*, 70 F.3d 136, 139 (D.C. Cir. 1995). Congress has not, however, enacted any similar legislation authorizing TPS recipients to overcome prior grounds of ineligibility for adjustment to LPR status.

b. That statutory history supports USCIS's conclusion that Congress in the 1990 Act preserved the *pre-existing* opportunity of admitted nonimmigrants to adjust their status, but did not mandate that TPS would create a new pathway to lawful permanent residence in the United States. Section 1254a(f)(4) enables certain "[a]liens who are in lawful nonimmigrant status when granted TPS" to adjust to LPR status even after their original status expires. INS 93-59, at *4. But just as EVD's temporary relief from deportation did not provide a pathway to permanent residence for noncitizens who had entered unlawfully, Section 1254a(f)(4) "was not intended to relieve" persons who became ineligible for adjustment of status "before having been granted TPS" by virtue of their unlawful entry, unauthorized employment, or prior period of unlawful status. *Ibid.*; see House Report 13 (TPS "does *not* create an admissions program.").[8]

That historical understanding of Section 1254a is reinforced by other parts of the statutory text. Congress specified that a TPS recipient "shall not be considered

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[8] Once Section 1255(k) was added in 1997, see Act of Nov. 26, 1997, Pub. L. No. 105-119, § 111(c), 111 Stat. 2458-2459, Section 1254a(f)(4) did clearly operate to allow adjustment to LPR status for certain noncitizens who had limited periods of unlawful status before receiving TPS. See pp. 18-19, *supra*.

to be permanently residing in the United States under color of law." 8 U.S.C. 1254a(f)(1). And it amended the Senate's rules to require a supermajority to approve "any bill, resolution, or amendment that * * * provides for adjustment to * * * permanent resident alien status for any alien receiving temporary protected status under this section." 8 U.S.C. 1254a(h)(1). Those provisions are consistent with USCIS's conclusion that TPS recipients do not have a special pathway to LPR status.

c. USCIS's conclusion is also consistent with the TPS program's original purpose. TPS relief is expressly tied to "*temporary* conditions * * * that prevent aliens who are nationals of the [designated country] from returning [there] in safety." 8 U.S.C. 1254a(b)(1)(C) (emphasis added). Regardless of whether those noncitizens entered the United States lawfully, allowing them to remain temporarily in the United States while the crisis persists both protects them and helps to mitigate humanitarian conditions in their home country as it recovers. But authorizing that temporary protection for those who entered both lawfully and unlawfully does not mean that Congress treated both groups identically in all respects. Congress could understandably have been more solicitous of persons who entered the country legally and subsequently found themselves stranded here because of an unexpected crisis in their home country, by preserving their existing opportunity to adjust status while they remain.

That policy choice put TPS recipients on the same footing as beneficiaries of pre-TPS EVD relief. And it is consistent with the almost-70-year-old INA requirement that generally only noncitizens who came here lawfully may become permanent residents. See pp. 2-3, *supra*.

B. Petitioners Have Not Shown That USCIS's Statutory Construction Was Contrary To Law

USCIS's interpretation of Section 1254a(f)(4) allows a TPS recipient to establish lawful status during his TPS period for purposes of any part of Section 1255, but not to relieve other statutory barriers to adjustment to LPR status, including the bars in subsection (a) for noncitizens who were not admitted and in subsection (c)(2) for noncitizens who engaged in unauthorized employment. See 7 *Policy Manual* pt. B, ch. 2.A.5.

In resisting that interpretation, petitioners first attribute (Br. 30) to USCIS the position that Section 1254a(f)(4) benefits *only* "TPS recipients who legally entered the country as nonimmigrants (for example, students), but then fell out of nonimmigrant status after receiving TPS," *i.e.*, those who never had any period of unlawful status. Petitioners then contend (Br. 30-36, 39-41) that the statutory text and history show that Congress must have intended Section 1254a(f)(4) to provide a pathway to lawful permanent residence for TPS recipients who had entered the United States unlawfully. Petitioners are incorrect on both counts.

1. In the first place, petitioners misdescribe the government's position. The class that they describe—noncitizens who were admitted lawfully and then received TPS before their original status expired—are *among* those who benefit from Section 1254a(f)(4). See p. 18, *supra.* And indeed, the statutory history suggests that is the class that Congress had in mind when it enacted Section 1254a(f)(4). See pp. 21-24, *supra*. But Section 1254a(f)(4)'s benefit is not limited *only* to that class, and the government has not argued otherwise: Ever since Section 1255(k) was added in 1997, a grant of TPS has also enabled certain admitted noncitizens

whose lawful status lapsed for less than 180 aggregate days before they received TPS to adjust to LPR status. See pp. 18-19, 24 n.8, *supra*.

2. In addition to mistakenly describing USCIS's statutory construction, petitioners fail to rebut it.

Contrary to petitioners' contention (Br. 31-33), the agency's construction does not render any part of Section 1254a(f)(4) superfluous. Section 1254a(f)(4) enables every TPS recipient to show both that he (1) is "in" lawful status at the time of his application for adjustment of status, and (2) has been "maintaining" lawful status since receiving TPS. 8 U.S.C. 1254a(f)(4). That language tracks the lawful-status requirements in Section 1255 precisely. See 8 U.S.C. 1255(c)(2) (an applicant is ineligible for adjustment to LPR status if he "is in unlawful immigration status on the date of filing the application" or "has failed * * * to maintain continuously a lawful status"). The applicable regulations similarly *separately* require an applicant for LPR status to be in lawful immigration status, 8 C.F.R. 245.1(b)(5), and to have maintained lawful status for the requisite period, 8 C.F.R. 245.1(b)(6). Even if it would have been conceptually possible for Congress to authorize TPS recipients merely to "maintain" their lawful status from admission, it is entirely unsurprising—and not inexplicable "surplusage" (Pet. Br. 31)—that Congress wrote Section 1254a(f)(4) in the same terms as the two-part lawful-status requirement in Section 1255.

Petitioners respond (Br. 30-31) that Congress did not expressly mention subsection 1255(c)(2) in Section 1254a(f)(4). That is true but irrelevant, because USCIS has not denied TPS recipients the ability to invoke Section 1254a(f)(4) to demonstrate lawful status for purposes of any part of Section 1255—including subsection

(k). The agency has not artificially constrained Section 1254a(f)(4)'s reach, which renders inapposite petitioners' citations to *Cyan, Inc.* v. *Beaver County Employees Retirement Fund*, 138 S. Ct. 1061, 1070 (2018), and *NLRB* v. *SW General, Inc.*, 137 S. Ct. 929, 938-939 (2017). Congress may have avoided explicitly limiting Section 1254a(f)(4)'s lawful-status benefit to Section 1255(c)(2) for the simple reason that it recognized that other portions of Section 1255 could be amended to include lawful-status requirements. See 8 U.S.C. 1255(c)(7), (c)(8), and (k).

Petitioners next say (Br. 31, 36) that Section 1254a(f)(4) is not expressly limited to TPS recipients "who initially were admitted" or who are subject to Section 1255(c)(2) because they obtained an immigrant visa through "non-immediate family relationships or employment." Once again, however, USICS has not argued otherwise. Under its reading, *all* TPS recipients are entitled to invoke Section 1254a(f)(4) to demonstrate that they are in, and have maintained, lawful status during their TPS period for purposes of Section 1255 (or change of status under Section 1258); they simply cannot use a provision concerning lawful status to satisfy the distinct statutory requirement of inspection and admission. That interpretation is not "inexplicably narrow." Contra Pet. Br. 36. Noncitizens who seek adjustment of status as special immigrants or through an immediate relative are not subject to the lawful-status requirements in Section 1255(c)(2) at all, see *ibid.*, so they do not need the lawful-status benefit conferred by Section 1254a(f)(4).

Petitioners also invoke (Br. 33) Section 1254a(f)(4)'s description of TPS recipients as having "lawful status *as nonimmigrants*" as evidence that all TPS recipients

are eligible for adjustment of status. But that clause serves only to clarify that TPS recipients—who do not actually fall into any of the INA's defined "classes of nonimmigrant[s]," 8 U.S.C. 1101(a)(15)—are nevertheless eligible for adjustment to LPR status and change of status as if they were in nonimmigrant status, as opposed to another immigration status. That makes sense because both Sections 1255 and 1258 describe procedures available to "nonimmigrant[s]." 8 U.S.C. 1255 (titled "[a]djustment of status of nonimmigrant to that of person admitted for permanent residence"); 8 U.S.C. 1258(a) (an "alien lawfully admitted to the United States as a nonimmigrant" may "change * * * to any other nonimmigrant classification").

3. Contrary to petitioners' contention, the statutory history does not require the conclusion that TPS recipients are eligible for adjustment of status notwithstanding a pre-TPS unlawful entry, unauthorized employment, or accumulated period of unlawful status.

Petitioners observe (Pet. Br. 33-36, 40-41) that Section 1254a(f)(4) allows TPS recipients to show *both* that they are *in*, and maintaining, lawful status, whereas some provisions in draft TPS legislation and President Bush's 1990 DED order referred to covered Chinese nationals only as "maintaining" their lawful status. That contrast, petitioners say, shows that Congress must have intended Section 1254a(f)(4) to benefit TPS recipients who entered the United States unlawfully.

Petitioners are incorrect. They do not dispute that Congress crafted the TPS program in order to codify EVD, nor that EVD's temporary relief from deportation did not authorize lawful permanent residence for beneficiaries who were already ineligible for adjustment because of their unlawful entry or unauthorized

employment. See pp. 21-24, *supra*. Legislators expressed various criticisms of EVD, which were addressed by the TPS program. Compare, *e.g.*, House Report 12 (finding EVD "flawed" because, among other reasons, it had been available to "drug traffickers"), with 8 U.S.C. 1254a(c)(2)(A)(iii)(II) (providing that a person who has trafficked controlled substances as described in 8 U.S.C. 1182(a)(2)(C)(i) is ineligible for TPS). But Congress apparently did not find fault with EVD on the ground that it had declined to authorize LPR status for noncitizens who had entered without inspection. See House Report 12. Indeed, petitioners do not identify any legislative history, across the several pieces of draft legislation considering TPS, suggesting that TPS was intended to provide a new pathway to adjustment to LPR status for those who did not already have one available.

That some draft legislation specific to Chinese nationals referred to them as "maintaining" lawful status, as opposed to being in and maintaining lawful status, see Pet. Br. 30-36, 40-41, does not compel the inference that petitioners would draw. Those provisions may have been drafted that way simply to follow the course charted by past EVD orders, including President Bush's Executive Order for Chinese nationals. See 55 Fed. Reg. at 13,897 (authorizing "maintenance of lawful status for purposes of adjustment of status" for covered Chinese nationals "who were in lawful status"). And as discussed above, Congress's ultimate decision to provide that TPS recipients are considered both "in" and "maintain[ing]" lawful status is easily explained by the two-part formulation of the lawful-status requirement in Section 1255(c)(2). See p. 27, *supra*.

The enacted statutory text, moreover, rebuts petitioners' suggestion (Br. 39) that the 1990 Act supplied a pathway to LPR status for all TPS recipients because Congress was aware at the time "that many Salvadorans were in the United States unlawfully." In 1990 (as now), Section 1255(c)(2) barred adjustment to LPR status for many nonimmigrants who had unauthorized employment or had not "maintain[ed] continuously a lawful status *since entry* into the United States." 8 U.S.C. 1255(c)(2) (1988) (emphasis added); see 8 U.S.C. 1101(a)(13) (1988) (defining "'entry'" as "any coming of an alien into the United States, from a foreign port or place"). But Section 1254a entitled TPS recipients to lawful status only "[d]uring a period in which" they had TPS, 8 U.S.C. 1254a(f)(4), and the exception to the Section 1225(c)(2) bars in subsection (k) would not be enacted until 1997, see p. 24 n.8, *supra*. Thus, even if petitioners were correct that Congress intended a grant of TPS to be considered an admission, the 1990 Act still unmistakably established that many TPS recipients who had entered unlawfully, or who had initially entered lawfully but later lost lawful status, were ineligible for LPR status because of their separate unauthorized employment or failure to maintain a lawful status since entry, which Section 1254a(f)(4) did not cure.

4. Petitioners also fail to demonstrate that USCIS's interpretation of the statute produces results at odds with the purposes of TPS. See Pet. Br. 36-38.

Congress's response to the problem of Salvadorans and other nationals who had entered the United States unlawfully, Pet. Br. 37, was to authorize *temporary protected status* for them, and to postpone their need to depart from the United States for as long as the adverse conditions in their home country persisted. See

8 U.S.C. 1254a(a)(1) and (c)(2)(A). Contrary to petitioners' contention (Br. 37), it was reasonable for USCIS to conclude that, within the class of those afforded temporary protection, the opportunity to adjust to LPR status was preserved only for persons who originally entered lawfully and thus had a pre-TPS pathway to lawful permanent residence. As mentioned, that approach put TPS recipients on par with beneficiaries of earlier issuances of temporary humanitarian relief. See p. 25, *supra*.[9]

Last, petitioners (Br. 37-38) say that affording them the opportunity to adjust to LPR status is necessary so that they are not forced to return to danger in their home countries to seek an immigrant visa. But the core benefit of TPS is that recipients are not required to return home until it is safe to do so. Moreover, TPS recipients who are not eligible for adjustment to LPR status are not necessarily required to apply for an immigrant visa from their home countries; they may instead apply from a third country. See 9 Dep't of State, *Foreign Affairs Manual* (FAM) 504.4-8(C) ("Third Country Processing for Aliens Abroad"), https://go.usa.gov/xsdZc; 9 FAM 504.4-8(D) ("Discretionary Cases for Hardship Reasons"). Adjustment of status from within the United States is a privilege that has generally been reserved since 1952 for noncitizens

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[9] Petitioners assert (Br. 37) that "the government's position would treat TPS recipients worse, for purposes of adjusting status, than someone who was 'admitted' when she crossed the border, overstayed her visa, and worked unlawfully for two decades before adjusting status." But unless petitioners' hypothetical noncitizen was a special immigrant or had an immigrant visa available through an immediate relative, she would be ineligible to adjust to LPR status because of her unauthorized employment and aggregate period of unlawful status. See 8 U.S.C. 1255(c)(2) and (k)(2).

who entered lawfully, not those who merely received temporary protection against removal.

C. Petitioners' Argument By Syllogism Is Flawed In Several Respects

Petitioners contend (Br. 17) that the INA "unambiguously" requires USCIS to treat every TPS recipient as having been "'inspected and admitted'" under Section 1255. Petitioners arrive at that conclusion (Br. 18) through a three-step "syllogism": (1) TPS recipients "are considered to be lawful nonimmigrants"; (2) all "[n]onimmigrants are necessarily 'inspected and admitted,'"; and (3) therefore, a person who receives TPS must be "considered inspected and admitted." Premises (1) and (2) are both incorrect, and even before that, petitioners' account founders on the statutory definition of "admitted."

1. Petitioners' argument disregards the statutory definition of "admitted"

Petitioners' argument depends on setting aside the statutory definition of "'admitted'" as a "lawful entry * * * after inspection and authorization by an immigration officer." 8 U.S.C. 1101(a)(13)(A). Petitioners barely mention the statutory definition, Br. 27-28, and they fail to demonstrate that it was unreasonable for USCIS to resolve their cases in accordance with it.

Petitioners contend (Br. 27) that the definition of "admitted" need not be followed because some statutory and regulatory provisions "use admission to mean something other than physical entry." They point out in particular that the approval of an application for adjustment to LPR status is typically treated as an admission. See 8 U.S.C. 1255(a) ("The status of an alien * * *

may be adjusted * * * to that of an alien lawfully admitted for permanent residence."); 8 U.S.C. 1255(b) (the Secretary "shall record the alien's lawful admission for permanent residence as of the date" the application is approved). But those provisions do not mandate that USCIS treat all TPS recipients as admitted, because the INA has no comparable text describing a grant of TPS as an "admission." And while an adjustment to LPR status is sometimes treated as a *fictional* admission, that is necessary to avoid the "absurd results" that would arise from treating a person who is authorized to live permanently in the United States "as unadmitted (which would render him subject to removal and a variety of other sanctions plainly incompatible with his status)." *Gomez*, 831 F.3d at 661-662. Petitioners do not, and could not plausibly, contend that it would be absurd to treat TPS recipients who entered without inspection as unadmitted.

Petitioners next contend (Br. 27) that "U" nonimmigrants can be admitted without "physical entry," citing *In re Garnica Silva*, No. AXXX XX9 615, 2017 WL 4118896 (B.I.A. June 29, 2017). But the Board's conclusion in that case relied in part on the specific provision authorizing "U" nonimmigrants to adjust to LPR status and describing some of them as "*admitted* into the United States." *Id.* at *6 (quoting 8 U.S.C. 1255(m)(1)); see pp. 20-21, *supra*. Another adjustment-of-status provision that applies only to "S" nonimmigrants who provide information about a criminal enterprise, Pet. Br. 27, is similarly worded. See 8 U.S.C. 1255(j)(1)(A) (authorizing adjustment to LPR status for "a nonimmigrant admitted into the United States under section 1101(a)(15)(S)(i)"). Here again, those provisions rein-

force that Congress knows how to be more direct in authorizing adjustment of status without regard to the statutory definition of "admitted."

Petitioners suggest (Br. 26) that Congress in 1990 would have thought that noncitizens receiving humanitarian protection were admitted by reason of temporarily having nonimmigrant status, but that is incorrect. Although the definition of "admitted" was not added to the INA until the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, Div. C, Title III, § 301(a), 110 Stat. 3009-575, it was settled in 1990 that "admission" in the INA referred to an authorized entry. See, *e.g.*, 8 U.S.C. 1101(a)(4) (1988) ("The term 'application for admission' has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa."); 8 U.S.C. 1225(a) and (b) (1988) (using "inspection" and "admission" to refer to the process at the border when immigration officers examine aliens "seeking admission or readmission" to evaluate their "privilege" "to enter, reenter, pass through, or reside in the United States" and determine whether they are "entitled to land"). Then, as now, someone who had entered the United States without inspection would not be considered "an alien who was inspected and admitted or paroled into the United States." 8 U.S.C. 1255(a).

Last, petitioners seek to avoid the statutory definition by arguing (Br. 28) that the TPS application process is similar to the admission process in some respects. But USCIS was not required to disregard a statutory definition based on such policy rationales. See *Holder* v. *Martinez Gutierrez*, 566 U.S. 583, 594 (2012). And in any event, the processes for obtaining admission and TPS are materially different: applicants

for admission are "subject to a full range of inadmissibility grounds," Pet. App. 17a—for example, the requirements to provide valid documentation and demonstrate that the applicant will not become a public charge, 8 U.S.C. 1182(a)(4) and (7)—that do not apply to persons requesting TPS. See 8 U.S.C. 1254a(c)(2)(A).

2. Petitioners' syllogism relies on faulty premises

Petitioners' argument by "syllogism" (Br. 18) fails for the additional reason that both of its premises are faulty.

a. Petitioners' first premise—that TPS recipients must be treated as equivalent to lawful nonimmigrants in all respects, Br. 20-24—disregards the specific language that Congress used in Section 1254a(f)(4).

Section 1254a provides that TPS recipients are "considered as being in, and maintaining, *lawful status* as a nonimmigrant," 8 U.S.C. 1254a(f)(4) (emphasis added); it does not say that they are "considered *to be* lawful nonimmigrants." Contra Pet. Br. 18 (emphasis added). Petitioners are right that, "[w]hen one thing is 'considered as' or 'deemed to be' another, it is treated 'as if it were really something else.'" *Id.* at 21 (quoting *Sturgeon* v. *Frost*, 139 S. Ct. 1066, 1081 (2019)). But Congress's precise language matters in statutory interpretation. See *Murphy* v. *Smith*, 138 S. Ct. 784, 787-788 (2018) ("[R]espect for Congress's prerogatives as policymaker means carefully attending to the words it chose."). Section 1254a means that a TPS recipient is treated as if he really were in lawful status at the time of his application for adjustment of status and has maintained that status during his TPS period; it does not mean that he is treated as *admitted.*

Petitioners agree that "inspection and admission" and "lawful status" are distinct concepts in immigration

law. See p. 16, *supra*. And the "similar statutory language and similar statutory structure" make it reasonable to conclude that Section 1254a(f)(4) is addressed only to the lawful-status provisions in Sections 1255 and 1258, not to other requirements. *Nijhawan* v. *Holder*, 557 U.S. 29, 39 (2009); see p. 27, *supra* (comparing the text of Sections 1254a(f)(4) and 1255(c)(2)). Section 1254a(f)(4) does not clearly excuse the distinct inspection-and-admission requirement in Section 1255(a) any more than it excuses the separate bar to adjustment of status for "alien crewm[e]n" in 8 U.S.C. 1255(c)(1). See *Guerrero* v. *Nielsen*, 742 Fed. Appx. 793, 798 (5th Cir. 2018) (alien crewman with TPS was ineligible for adjustment of status because the "narrowly-crafted benefit" in Section 1254a(f)(4) does not "offer[] TPS-holders carte blanche to become lawful permanent residents").

Petitioners analogize (Br. 21) Section 1254a to the provision this Court discussed in *Ali* v. *Federal Bureau of Prisons*, 552 U.S. 214 (2008), which provided that Coast Guard officers shall "be deemed to be acting as" agents of the department whose laws they were enforcing. *Id.* at 227 n.6 (citation omitted). That analogy is inapt because Congress "deemed" certain special immigrants to be paroled for purposes of adjustment to LPR status, see p. 20, *supra*, but it did not similarly deem TPS recipients to be admitted—it instead treated them as having lawful status.

For similar reasons, the decision in *Advocate Health Care Network* v. *Stapleton*, 137 S. Ct. 1652 (2017), is no help to petitioners. Contra Pet. Br. 22-24. The Court in that case construed a "statutory *definition*," 137 S. Ct. at 1656 (emphasis added), which had initially defined a "church plan" as "a plan established and maintained . . . by a church," and then provided that "[a]

plan established and maintained . . . by a church . . . includes a plan maintained by [a principal-purpose] organization," *id.* at 1658 (brackets in original). It was Congress's "use of the word 'include[s]'" that demonstrated "that a *different* type of plan should receive the same treatment * * * as the type described in the old definition," so that a plan maintained by a principal-purpose organization qualified as a church plan even though it was not established by a church. *Ibid.* The statute in this case is materially different in at least two respects. First, the relevant provisions here are not definitional—except Section 1101(a)(13)(A)'s definition of "admission," which petitioners do not satisfy. Second, Section 1254a does not say that the phrase "lawful nonimmigrants" *includes* TPS recipients; it instead allows TPS recipients to demonstrate the same "*lawful status*" as nonimmigrants, without expressly addressing the distinct requirement of admission. 8 U.S.C. 1254a(f)(4) (emphasis added).

b. The second premise in petitioners' syllogism—that "[n]onimmigrants are necessarily 'inspected and admitted' because a person cannot be in lawful nonimmigrant status without inspection and admission," Br. 18—is also incorrect.

Petitioners derive that premise principally by implication from Section 1184, Pet. Br. 19, which is titled "[a]dmission of nonimmigrants" and provides that "[t]he admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as [the Secretary] may by regulations prescribe," 8 U.S.C. 1184(a)(1). But that provision simply authorizes USCIS to set the conditions under which nonimmigrants *may* be admitted. Section 1184 is written (and titled) that way for the unsurprising reason

that most nonimmigrants "must generally" apply for a visa from "abroad," 2 *Policy Manual* pt. A, ch. 1.A., and then submit an "application for admission" to an immigration officer, which, if granted, allows them to enter the United States with the applicable nonimmigrant status. 8 U.S.C. 1184(b). That a person can be admitted in nonimmigrant status does not necessarily establish the converse—that every person in nonimmigrant status has been admitted. Cf. *Buck* v. *Davis*, 137 S. Ct. 759, 774 (2017).

Nothing in Section 1184 or another INA provision states that *all* persons with nonimmigrant status necessarily were admitted—and some with that status were not admitted. "[A]lien crewm[e]n" have nonimmigrant status when their vessel or aircraft "land[s]" in the United States, 8 U.S.C. 1101(a)(15)(D)(i), but they are "not considered to have been admitted," 8 U.S.C. 1101(a)(13)(B). And as discussed above, "U" nonimmigrants who are granted that status from within the United States after an unlawful entry were not admitted as the INA defines that term, though they are nevertheless permitted to adjust to LPR status because Congress created a specific provision authorizing them to do so. See pp. 20-21, *supra*.

Petitioners invoke (Br. 19) USCIS's regulation defining the phrase "lawful immigration status" for purposes of Section 1255(c)(2) to include, among other categories, "[a]n alien admitted to the United States in nonimmigrant status," 8 C.F.R. 245.1(d)(1)(ii), as purported evidence that all nonimmigrants are "admitted." But that regulation merely reflects the reality that most nonimmigrants are admitted; it does not determine that all nonimmigrants necessarily are. And in any event, the regulation applies only "[f]or purposes of section

[1255](c)(2)," *ibid.*, and therefore does not purport to treat anyone as "admitted" for purposes of Section 1255(a).

3. Petitioners' argument favors a chain of inferences when Congress could have used clear alternatives

Petitioners' syllogism suffers from the additional flaw that it does not plausibly explain why Congress used multiple alternative formulations to plainly authorize adjustment of status for certain un-admitted noncitizens but did not do the same for TPS recipients. See pp. 19-21, *supra*. Congress did not *unambiguously* mandate that USCIS treat every TPS recipient as "admitted" by proceeding in the manner that petitioners say (Br. 18-19): by implication from the phase "lawful status as a nonimmigrant," 8 U.S.C. 1254a(f)(4), combined with an unstated cross-reference to a description in Section 1184 of how nonimmigrants may be admitted.

Petitioners' attempts to dismiss the relevance of those other straightforward provisions are unavailing. Petitioners first contend (Br. 28) that all of Congress's enacted exceptions "post-date" Section 1254a. That response is incomplete. Before 1990, Congress authorized adjustment of status for select EVD beneficiaries even if they had not been admitted. See p. 23, *supra*. In the 1990 Act, Congress authorized TPS to be granted to noncitizens who did not have lawful immigration status, see 8 U.S.C. 1254a(a)(5), but it did not include a comparably specific authorization for purposes of adjustment of status. The next year, when Congress "deemed" special immigrant juveniles "to have been paroled" for purposes of adjustment of status, 8 U.S.C. 1255(h), it declined to add any similar exception for TPS recipients even as it amended the TPS program in the same legislation. See Immigration Technical Corrections Act of

1991, Pub. L. No. 102-232, Title III, §§ 302(d)(2)(B), 304(b), and 307(*l*)(5), 105 Stat. 1744-1745, 1749, 1756; see also *INS* v. *Cardoza-Fonseca*, 480 U.S. 421, 432 (1987). Significantly, those amendments were made several months after the INS had already announced that TPS recipients who had entered unlawfully "would not be eligible to adjust" to LPR status because they could not satisfy Section 1255(a). 56 Fed. Reg. at 23,495.

Petitioners are also incorrect (Br. 29) that Congress has established special provisions for adjustment of status notwithstanding unlawful entry only for persons who "are not *already*" "considered as nonimmigrants." As discussed above, many "U" nonimmigrants are not admitted as the INA defines that term, but Congress created a specific adjustment-of-status provision for them in Section 1255(m). See pp. 20-21, *supra*. Petitioners do not explain why Congress did not authorize TPS recipients to adjust their status in similar terms.

D. The Government's Statutory Construction Is Reasonable And Entitled To Deference

For all the reasons described above, petitioners cannot show that the INA clearly forecloses USCIS's decision in their cases. And because petitioners have not demonstrated that Section 1254a(f)(4) "speak[s] clearly" in their favor "to the question at issue," the Executive Branch's consistent, formally promulgated interpretation of the INA—which reflects the better reading of the statutory text—is entitled to judicial deference under this Court's precedents. *Scialabba* v. *de Osorio*, 573 U.S. 41, 57 (2014) (plurality opinion); see *id.* at 79 (Roberts, C.J., concurring in the judgment) (agreeing that deference was warranted because "Congress did not speak clearly" to the issue); see also *Negusie* v. *Holder*,

555 U.S. 511, 516 (2009) ("It is well settled that 'principles of *Chevron* deference are applicable to this statutory scheme.'") (quoting *INS* v. *Aguirre-Aguirre*, 526 U.S. 415, 424 (1999)); *Chevron U.S.A. Inc.* v. *Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843-844 (1984). The court of appeals' decision can and should be affirmed on that ground.

1. The Executive Branch has consistently interpreted the statute with the force of law

USCIS's decision denying petitioners' applications for adjustment of status was based on a statutory interpretation that has been consistent for nearly 30 years: a grant of TPS is not an admission, and therefore does not authorize adjustment to LPR status for TPS recipients who were already ineligible for that privilege because they had entered the United States without inspection or engaged in unauthorized employment. See *In re H-G-G-*, 27 I. & N. Dec. 617, 621-622 (A.A.O. 2019).

a. The government's interpretation was first articulated through notice-and-comment rulemaking—which petitioners concede (Br. 43) generally warrants *Chevron* deference. Since the first regulations implementing the TPS program in 1991, the government has required written notice to every TPS recipient that, "[f]or the purposes of adjustment of status" under Section 1255, "the alien is considered as being in, and maintaining, lawful status as a nonimmigrant while the alien maintains [TPS]," and furthermore that "[t]he benefits contained in the notice are *the only benefits* the alien is entitled to under [TPS]." 8 C.F.R. 244.10(f)(2)(iv) and (3) (emphasis added). Those regulations clarify that TPS recipients are not entitled to un-stated benefits, such as the ability to overcome prior acts that triggered disqualification from adjustment to LPR status.

The INS adopted substantially identical regulatory text just two months after the 1990 Act was signed into law. See *Temporary Protected Status: Interim rule with request for comments*, 56 Fed. Reg. 618, 621 (Jan. 7, 1991) (signed by Attorney General Thornburgh); see also 8 U.S.C. 1103(a) (1988) (charging the Attorney General "with the administration and enforcement of [the INA]"; requiring him to "establish such regulations * * * as he deems necessary for carrying out his authority under [the INA]"). In response, commenters recognized that the regulations did not authorize adjustment of status for TPS recipients who had entered without inspection, and they urged that TPS recipients "should be allowed to adjust" to LPR status "regardless of how they entered the United States." 56 Fed. Reg. at 23,495 (preamble to final rule, signed by Attorney General Thornburgh). But the INS rejected that proposal. It explained that Section 1254a(f)(4) had made the lawful-status requirements in Section 1255(c)(2) "inapplicable to aliens granted TPS," but made "no corresponding change in the requirements of [Section 1255(a)]." *Ibid.* The agency accordingly determined that "[a]n alien who entered the United States without inspection cannot satisfy th[at] requirement" and therefore "would not be eligible to adjust." *Ibid.* The INS "believe[d] the regulations are clear on this point" and informed the public that they "w[ould] not be changed." *Ibid.* That explanation for the INS's rulemaking made its interpretation of the statute even more explicit.

b. The government's statutory interpretation was also adopted through adjudications that produced precedential decisions.

USCIS's regulations authorize an adjudication by the agency—such as the decision on an application for

adjustment of status—to be certified to the agency's Administrative Appeals Office (AAO) "when the case involves an unusually complex or novel issue of law or fact." 8 C.F.R. 103.4(a)(1). The AAO may then request "approval of the Attorney General as to the lawfulness of [its] decision," in which case the AAO's decision is "published in the same manner as decisions of the Board [of Immigration Appeals] and the Attorney General * * * to serve as precedents in all proceedings involving the same issue(s)." 8 C.F.R. 103.3(c); see 8 C.F.R. 1003.1(g)(2) and (i) (corresponding Department of Justice regulation). USCIS used that procedure in *In re H-G-G-*, *supra*, to reconsider and ultimately reaffirm the government's longstanding position that a grant of TPS is not an admission, and does not cure a prior period of unlawful status, for purposes of adjustment to LPR status. After receiving briefs from counsel for the affected noncitizen and his amicus curiae, the AAO issued a precedential decision with the Attorney General's approval that explained at length why the government's position is supported by the text, context, history, and purpose of the TPS statute. 27 I. & N. Dec. at 617 nn.1-2, 619-641.[10]

The Board of Immigration Appeals subsequently agreed with the AAO's opinion in *H-G-G-*. *In re Padilla Rodriguez*, 28 I. & N. Dec. 164, 167 & n.3 (B.I.A. 2020). The Board rejected the Ninth Circuit's conclusion in *Ramirez* v. *Brown*, 852 F.3d 954, 958 (2017), that the INA unambiguously treats all TPS recipients as

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[10] A district court disagreed with *H-G-G-* in *Hernandez de Gutierrez* v. *Barr*, No. 19-cv-2495, 2020 WL 5764281 (D. Minn. Oct. 23, 2020), but the government has appealed, No. 20-3683 (8th Cir. filed Dec. 22, 2020), and that case will be controlled by this Court's decision here.

admitted, and it found that the AAO had provided "the proper interpretation" of Section 1254a(f) in light of "the legislative history" and "the broader context of" the statute "as a whole." 28 I. & N. Dec. at 167 & n.3. The Board also observed that *H-G-G-* accorded with the Board's own precedent determining that TPS recipients are "not admitted to the United States." *Id.* at 165 (citing *Sosa Ventura*, 25 I. & N. Dec. at 394-395). The Board receives deference for its reasonable construction of the INA in published decisions, as petitioners acknowledge (Br. 44). See *Aguirre-Aguirre*, 526 U.S. at 425 ("[T]he [Board] should be accorded *Chevron* deference as it gives ambiguous statutory terms 'concrete meaning through a process of case-by-case adjudication.'") (citation omitted).

c. The government's interpretation of the INA is entitled to deference under this Court's precedents. That interpretation reflects "the careful consideration the Agenc[ies] ha[ve] given the question over a long period of time," their "related expertise" in implementing the INA, and the "importance of the question" of what constitutes an admission to the overall "administration of the statute." *Barnhart* v. *Walton*, 535 U.S. 212, 222 (2002). Indeed, "judicial deference to the Executive Branch is especially appropriate in th[is] immigration context," where determinations about the terms of humanitarian protection for foreign nationals involve the "'exercise [of] especially sensitive political functions that implicate questions of foreign relations.'" *Aguirre-Aguirre*, 526 U.S. at 425. Deference is also especially warranted here in view of Congress's express delegation of interpretive authority over the INA to the Attorney General. See *ibid.*; 8 U.S.C. 1103(a)(1) (Attorney General's "determination and ruling * * * with respect

to all questions of law" concerning the immigration laws "shall be controlling").

Under these circumstances, the agency "position prevails" in petitioners' APA case "if it is a reasonable construction of the statute, whether or not it is the only possible interpretation or even the one a court might think best." *Martinez Gutierrez*, 566 U.S. at 591. The government's statutory interpretation easily meets that standard because it is "consistent with the statute's text," *ibid.*, as well as the statutory context, history, and purposes, for all of the reasons explained above. This Court therefore "need not decide if the statute permits any other construction." *Ibid.*

2. Petitioners have failed to show that the government's position is not entitled to deference

Petitioners offer no sound basis for declining to defer to the government's statutory interpretation.

a. As mentioned, petitioners agree (Br. 43) that notice-and-comment rulemakings generally warrant *Chevron* deference. The TPS regulations described above—adopted in 1991 and materially unchanged today—reflect the agency's interpretation of the statute, especially when combined with the INS's contemporaneous explanation for them. See pp. 42-43, *supra*.

Even if this Court found the regulatory text itself ambiguous, the INS's explanatory comment explicitly describes the reasons for the government's statutory construction. That explanation too warrants *Chevron* deference, because it is "the fruit[] of notice-and-comment rulemaking." *United States* v. *Mead Corp.*, 533 U.S. 218, 230 (2001); see *Long Island Care at Home, Ltd.* v. *Coke*, 551 U.S. 158, 165 (2007) (The agency "gave notice, it proposed regulations, it received public com-

ment, and it issued final regulations in light of that comment."). At a minimum, the agency's formally described, contemporaneous understanding of its own regulations warrants deference under *Kisor* v. *Wilkie*, 139 S. Ct. 2400, 2414-2418 (2019).

b. Petitioners also acknowledge (Br. 44, 47-48) that the Board's published decisions are generally entitled to deference; they merely claim that the Board's analysis in *Padilla Rodriguez* was dicta. Petitioners are incorrect.

The decision in *Padilla Rodriguez* had different practical consequences than in petitioners' case: the issue was not about adjustment of status, but whether a grant of TPS constitutes an admission that precludes removal after TPS has been terminated. 28 I. & N. Dec. at 164-165. But the interpretive question was essentially the same: whether the grant of TPS changed the noncitizen's "status as an alien who is present in the United States without admission." *Id.* at 165. The Board answered in the negative, and in doing so explained its agreement with the administrative and judicial opinions that have determined that Section 1254a(f)(4) does not require a different conclusion. See *id.* at 166-168. Contrary to petitioners' suggestion (Br. 48) that *Padilla Rodriguez* had no cause to address that issue, the Board did so because petitioners' interpretation of Section 1254a(f)(4), and the Ninth Circuit's decision adopting that interpretation in *Ramirez*, had been the basis for the immigration judge's ruling under review. See *id.* at 166 ("The Immigration Judge relied on *Ramirez* in finding that the [noncitizen's] previous grant of TPS constituted an 'admission.'").

Petitioners observe (Br. 48) that the Board in *Padilla Rodriguez* stated that eligibility for adjustment to

LPR status was "separate and distinct from the issue of removability" presented there, 28 I. & N. Dec. at 168, but the Board made that statement as part of its explanation for declining to follow *Ramirez*. The substance of the Board's opinion makes clear that it exercised its delegated authority to give concrete meaning to the term "admission" in the INA.

c. Petitioners also have not shown that the AAO's decision in *H-G-G-* is not entitled to deference. The AAO's opinion "expressed the [agency's] view, based on its experience implementing the INA, th[e] statutory text, administrative practice, and regulatory policy," and "the decision reads like a multitude of agency interpretations * * * to which [this Court and others] have routinely deferred." *Martinez Gutierrez*, 566 U.S. at 597-598. Petitioners' contention that the AAO's decision was not a product of "formal administrative procedure," Pet. Br. 45 (citation omitted), is clearly incorrect: the AAO received counseled legal briefs on the question (including an amicus brief); it produced an extensive opinion whose "lawfulness" was "approv[ed]" by the Attorney General, 8 C.F.R. 103.3(c); and it published its decision "to serve as precedent[]" in future proceedings, *ibid.*

Petitioners offer no basis to support their assertion that the Attorney General's approval of *H-G-G-* may not have "'focused fully' on the proper interpretation of the relevant statutes or adequately considered the interests of relevant stakeholders." Pet. Br. 46 (citation omitted). That would be a particularly odd inference to draw given that the AAO adopted the same basic interpretation of Section 1254a(f)(4) as the INS had in its 1991 rulemaking and as the Department of Justice had

advanced in every court of appeals to consider the question, going back to *Serrano* v. *U.S. Attorney General*, 655 F.3d 1260 (11th Cir. 2011) (per curiam).

d. Last of all, petitioners say (Br. 42) in a single sentence that this Court should "overrule *Chevron*" rather than defer to the government's longstanding, formally promulgated statutory interpretation. That does not come close to the "special justification" that this Court would require for overturning its multiple precedents in this area, which the Court has now repeatedly reaffirmed over decades. *Kimble* v. *Marvel Entm't, LLC*, 576 U.S. 446, 455-456 (2015) (citation omitted). And petitioners' attack is especially inadequate in light of the "enhanced force" of stare decisis here, where "Congress can correct any mistake it sees" in the Court's decisions deferring to the Executive Branch's reasonable constructions of the INA. *Id.* at 456.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. 8 U.S.C. 1101 provides in pertinent part:

Definitions

(a) As used in this chapter—

* * * * *

(3) The term "alien" means any person not a citizen or national of the United States.

(4) The term "application for admission" has reference to the application for admission into the United States and not to the application for the issuance of an immigrant or nonimmigrant visa.

* * * * *

(13)(A) The terms "admission" and "admitted" mean, with respect to an alien, the lawful entry of the alien into the United States after inspection and authorization by an immigration officer.

(B) An alien who is paroled under section 1182(d)(5) of this title or permitted to land temporarily as an alien crewman shall not be considered to have been admitted.

* * * * *

(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

* * * * *

(D)(i) an alien crewman serving in good faith as such in a capacity required for normal operation and

service on board a vessel, as defined in section 1288(a) of this title (other than a fishing vessel having its home port or an operating base in the United States), or aircraft, who intends to land temporarily and solely in pursuit of his calling as a crewman and to depart from the United States with the vessel or aircraft on which he arrived or some other vessel or aircraft;

(ii) an alien crewman serving in good faith as such in any capacity required for normal operations and service aboard a fishing vessel having its home port or an operating base in the United States who intends to land temporarily in Guam or the Commonwealth of the Northern Mariana Islands and solely in pursuit of his calling as a crewman and to depart from Guam or the Commonwealth of the Northern Mariana Islands with the vessel on which he arrived;

* * * * *

(T)(i) subject to section 1184(*o*) of this title, an alien who the Secretary of Homeland Security, or in the case of subclause (III)(aa) the Secretary of Homeland Security, in consultation with the Attorney General, determines—

(I) is or has been a victim of a severe form of trafficking in persons, as defined in section 7102 of title 22;

(II) is physically present in the United States, American Samoa, or the Commonwealth of the Northern Mariana Islands, or at a port of entry thereto, on account of such trafficking, including physical presence on account of the alien having

been allowed entry into the United States for participation in investigative or judicial processes associated with an act or a perpetrator of trafficking;

(III)(aa) has complied with any reasonable request for assistance in the Federal, State, or local investigation or prosecution of acts of trafficking or the investigation of crime where acts of trafficking are at least one central reason for the commission of that crime;

(bb) in consultation with the Attorney General, as appropriate, is unable to cooperate with a request described in item (aa) due to physical or psychological trauma; or

(cc) has not attained 18 years of age; and

(IV) the alien[3] would suffer extreme hardship involving unusual and severe harm upon removal; and

(ii) if accompanying, or following to join, the alien described in clause (i)—

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien;

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; or

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[3] So in original. The words "the alien" probably should not appear.

(III) any parent or unmarried sibling under 18 years of age, or any adult or minor children of a derivative beneficiary of the alien, as of an alien described in subclause (I) or (II) who the Secretary of Homeland Security, in consultation with the law enforcement officer investigating a severe form of trafficking, determines faces a present danger of retaliation as a result of the alien's escape from the severe form of trafficking or cooperation with law enforcement.

* * * * *

(U)(i) subject to section 1184(p) of this title, an alien who files a petition for status under this subparagraph, if the Secretary of Homeland Security determines that—

(I) the alien has suffered substantial physical or mental abuse as a result of having been a victim of criminal activity described in clause (iii);

(II) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) possesses information concerning criminal activity described in clause (iii);

(III) the alien (or in the case of an alien child under the age of 16, the parent, guardian, or next friend of the alien) has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, to a Federal, State, or local prosecutor, to a Federal or State judge, to the Service, or to other Federal, State, or local authorities investigating or prosecuting criminal activity described in clause (iii); and

(IV) the criminal activity described in clause (iii) violated the laws of the United States or occurred in the United States (including in Indian country and military installations) or the territories and possessions of the United States;

(ii) if accompanying, or following to join, the alien described in clause (i)—

(I) in the case of an alien described in clause (i) who is under 21 years of age, the spouse, children, unmarried siblings under 18 years of age on the date on which such alien applied for status under such clause, and parents of such alien; or

(II) in the case of an alien described in clause (i) who is 21 years of age or older, the spouse and children of such alien; and

(iii) the criminal activity referred to in this clause is that involving one or more of the following or any similar activity in violation of Federal, State, or local criminal law: rape; torture; trafficking; incest; domestic violence; sexual assault; abusive sexual contact; prostitution; sexual exploitation; stalking; female genital mutilation; being held hostage; peonage; involuntary servitude; slave trade; kidnapping; abduction; unlawful criminal restraint; false imprisonment; blackmail; extortion; manslaughter; murder; felonious assault; witness tampering; obstruction of justice; perjury; fraud in foreign labor contracting (as defined in section 1351 of title 18); or attempt, conspiracy, or solicitation to commit any of the above mentioned crimes; or

* * * * *

2. 8 U.S.C. 1103(a)(1) provides:

Powers and duties of the Secretary, the Under Secretary, and the Attorney General

(a) Secretary of Homeland Security

(1) The Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens, except insofar as this chapter or such laws relate to the powers, functions, and duties conferred upon the President, Attorney General, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers: *Provided, however*, That determination and ruling by the Attorney General with respect to all questions of law shall be controlling.

3. 8 U.S.C. 1184 provides in pertinent part:

Admission of nonimmigrants

(a) Regulations

(1) The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, including when he deems necessary the giving of a bond with sufficient surety in such sum and containing such conditions as the Attorney General shall prescribe, to insure that at the expiration of such time or upon failure to maintain the status under which he was admitted, or to maintain any status subsequently acquired under section 1258 of this title, such alien will depart from the United States. No alien admitted to Guam or the Commonwealth of the Northern Mariana

Islands without a visa pursuant to section 1182(*l*) of this title may be authorized to enter or stay in the United States other than in Guam or the Commonwealth of the Northern Mariana Islands or to remain in Guam or the Commonwealth of the Northern Mariana Islands for a period exceeding 45 days from date of admission to Guam or the Commonwealth of the Northern Mariana Islands. No alien admitted to the United States without a visa pursuant to section 1187 of this title may be authorized to remain in the United States as a nonimmigrant visitor for a period exceeding 90 days from the date of admission.

(2)(A) The period of authorized status as a nonimmigrant described in section 1101(a)(15)(O) of this title shall be for such period as the Attorney General may specify in order to provide for the event (or events) for which the nonimmigrant is admitted.

(B) The period of authorized status as a nonimmigrant described in section 1101(a)(15)(P) of this title shall be for such period as the Attorney General may specify in order to provide for the competition, event, or performance for which the nonimmigrant is admitted. In the case of nonimmigrants admitted as individual athletes under section 1101(a)(15)(P) of this title, the period of authorized status may be for an initial period (not to exceed 5 years) during which the nonimmigrant will perform as an athlete and such period may be extended by the Attorney General for an additional period of up to 5 years.

(b) Presumption of status; written waiver

Every alien (other than a nonimmigrant described in subparagraph (L) or (V) of section 1101(a)(15) of this

title, and other than a nonimmigrant described in any provision of section 1101(a)(15)(H)(i) of this title except subclause (b1) of such section) shall be presumed to be an immigrant until he establishes to the satisfaction of the consular officer, at the time of application for a visa, and the immigration officers, at the time of application for admission, that he is entitled to a nonimmigrant status under section 1101(a)(15) of this title. An alien who is an officer or employee of any foreign government or of any international organization entitled to enjoy privileges, exemptions, and immunities under the International Organizations Immunities Act [22 U.S.C. 288 et seq.], or an alien who is the attendant, servant, employee, or member of the immediate family of any such alien shall not be entitled to apply for or receive an immigrant visa, or to enter the United States as an immigrant unless he executes a written waiver in the same form and substance as is prescribed by section 1257(b) of this title.

* * * * *

(p) Requirements applicable to section 1101(a)(15)(U) visas

(1) Petitioning procedures for section 1101(a)(15)(U) visas

The petition filed by an alien under section 1101(a)(15)(U)(i) of this title shall contain a certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating criminal activity described in section 1101(a)(15)(U)(iii) of this title. This certification may also be provided by an official

of the Service whose ability to provide such certification is not limited to information concerning immigration violations. This certification shall state that the alien "has been helpful, is being helpful, or is likely to be helpful" in the investigation or prosecution of criminal activity described in section 1101(a)(15)(U)(iii) of this title.

(2) Numerical limitations

(A) The number of aliens who may be issued visas or otherwise provided status as nonimmigrants under section 1101(a)(15)(U) of this title in any fiscal year shall not exceed 10,000.

(B) The numerical limitations in subparagraph (A) shall only apply to principal aliens described in section 1101(a)(15)(U)(i) of this title, and not to spouses, children, or, in the case of alien children, the alien parents of such children.

(3) Duties of the Attorney General with respect to "U" visa nonimmigrants

With respect to nonimmigrant aliens described in subsection (a)(15)(U) of section 1101 of this title—

(A) the Attorney General and other government officials, where appropriate, shall provide those aliens with referrals to nongovernmental organizations to advise the aliens regarding their options while in the United States and the resources available to them; and

(B) the Attorney General shall, during the period those aliens are in lawful temporary resident status under that subsection, provide the aliens with employment authorization.

(4) Credible evidence considered

In acting on any petition filed under this subsection, the consular officer or the Attorney General, as appropriate, shall consider any credible evidence relevant to the petition.

(5) Nonexclusive relief

Nothing in this subsection limits the ability of aliens who qualify for status under section 1101(a)(15)(U) of this title to seek any other immigration benefit or status for which the alien may be eligible.

(6) Duration of status

The authorized period of status of an alien as a nonimmigrant under section 1101(a)(15)(U) of this title shall be for a period of not more than 4 years, but shall be extended upon certification from a Federal, State, or local law enforcement official, prosecutor, judge, or other Federal, State, or local authority investigating or prosecuting criminal activity described in section 1101(a)(15)(U)(iii) of this title that the alien's presence in the United States is required to assist in the investigation or prosecution of such criminal activity. The Secretary of Homeland Security may extend, beyond the 4-year period authorized under this section, the authorized period of status of an alien as a nonimmigrant under section 1101(a)(15)(U) of this title if the Secretary determines that an extension of such period is warranted due to exceptional circumstances. Such alien's nonimmigrant status shall be extended beyond the 4-year period authorized under this section if the alien is eligible for relief under section 1255(m) of this title

and is unable to obtain such relief because regulations have not been issued to implement such section and shall be extended during the pendency of an application for adjustment of status under section 1255(m) of this title. The Secretary may grant work authorization to any alien who has a pending, bona fide application for nonimmigrant status under section 1101(a)(15)(U) of this title.

(7) Age determinations

(A) Children

An unmarried alien who seeks to accompany, or follow to join, a parent granted status under section 1101(a)(15)(U)(i) of this title, and who was under 21 years of age on the date on which such parent petitioned for such status, shall continue to be classified as a child for purposes of section 1101(a)(15)(U)(ii) of this title, if the alien attains 21 years of age after such parent's petition was filed but while it was pending.

(B) Principal aliens

An alien described in clause (i) of section 1101(a)(15)(U) of this title shall continue to be treated as an alien described in clause (ii)(I) of such section if the alien attains 21 years of age after the alien's application for status under such clause (i) is filed but while it is pending.

* * * * *

4. 8 U.S.C. 1254a provides:

Temporary protected status

(a) Granting of status

(1) In general

In the case of an alien who is a national of a foreign state designated under subsection (b) (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state) and who meets the requirements of subsection (c), the Attorney General, in accordance with this section—

(A) may grant the alien temporary protected status in the United States and shall not remove the alien from the United States during the period in which such status is in effect, and

(B) shall authorize the alien to engage in employment in the United States and provide the alien with an "employment authorized" endorsement or other appropriate work permit.

(2) Duration of work authorization

Work authorization provided under this section shall be effective throughout the period the alien is in temporary protected status under this section.

(3) Notice

(A) Upon the granting of temporary protected status under this section, the Attorney General shall provide the alien with information concerning such status under this section.

(B) If, at the time of initiation of a removal proceeding against an alien, the foreign state (of which

the alien is a national) is designated under subsection (b), the Attorney General shall promptly notify the alien of the temporary protected status that may be available under this section.

(C) If, at the time of designation of a foreign state under subsection (b), an alien (who is a national of such state) is in a removal proceeding under this subchapter, the Attorney General shall promptly notify the alien of the temporary protected status that may be available under this section.

(D) Notices under this paragraph shall be provided in a form and language that the alien can understand.

(4) Temporary treatment for eligible aliens

(A) In the case of an alien who can establish a prima facie case of eligibility for benefits under paragraph (1), but for the fact that the period of registration under subsection (c)(1)(A)(iv) has not begun, until the alien has had a reasonable opportunity to register during the first 30 days of such period, the Attorney General shall provide for the benefits of paragraph (1).

(B) In the case of an alien who establishes a prima facie case of eligibility for benefits under paragraph (1), until a final determination with respect to the alien's eligibility for such benefits under paragraph (1) has been made, the alien shall be provided such benefits.

(5) Clarification

Nothing in this section shall be construed as authorizing the Attorney General to deny temporary

protected status to an alien based on the alien's immigration status or to require any alien, as a condition of being granted such status, either to relinquish nonimmigrant or other status the alien may have or to execute any waiver of other rights under this chapter. The granting of temporary protected status under this section shall not be considered to be inconsistent with the granting of nonimmigrant status under this chapter.

(b) Designations

(1) In general

The Attorney General, after consultation with appropriate agencies of the Government, may designate any foreign state (or any part of such foreign state) under this subsection only if—

(A) the Attorney General finds that there is an ongoing armed conflict within the state and, due to such conflict, requiring the return of aliens who are nationals of that state to that state (or to the part of the state) would pose a serious threat to their personal safety;

(B) the Attorney General finds that—

(i) there has been an earthquake, flood, drought, epidemic, or other environmental disaster in the state resulting in a substantial, but temporary, disruption of living conditions in the area affected,

(ii) the foreign state is unable, temporarily, to handle adequately the return to the state of aliens who are nationals of the state, and

(iii) the foreign state officially has requested designation under this subparagraph; or

(C) the Attorney General finds that there exist extraordinary and temporary conditions in the foreign state that prevent aliens who are nationals of the state from returning to the state in safety, unless the Attorney General finds that permitting the aliens to remain temporarily in the United States is contrary to the national interest of the United States.

A designation of a foreign state (or part of such foreign state) under this paragraph shall not become effective unless notice of the designation (including a statement of the findings under this paragraph and the effective date of the designation) is published in the Federal Register. In such notice, the Attorney General shall also state an estimate of the number of nationals of the foreign state designated who are (or within the effective period of the designation are likely to become) eligible for temporary protected status under this section and their immigration status in the United States.

(2) Effective period of designation for foreign states

The designation of a foreign state (or part of such foreign state) under paragraph (1) shall—

(A) take effect upon the date of publication of the designation under such paragraph, or such later date as the Attorney General may specify in the notice published under such paragraph, and

(B) shall remain in effect until the effective date of the termination of the designation under paragraph (3)(B).

For purposes of this section, the initial period of designation of a foreign state (or part thereof) under paragraph (1) is the period, specified by the Attorney General, of not less than 6 months and not more than 18 months.

(3) Periodic review, terminations, and extensions of designations

(A) Periodic review

At least 60 days before end of the initial period of designation, and any extended period of designation, of a foreign state (or part thereof) under this section the Attorney General, after consultation with appropriate agencies of the Government, shall review the conditions in the foreign state (or part of such foreign state) for which a designation is in effect under this subsection and shall determine whether the conditions for such designation under this subsection continue to be met. The Attorney General shall provide on a timely basis for the publication of notice of each such determination (including the basis for the determination, and, in the case of an affirmative determination, the period of extension of designation under subparagraph (C)) in the Federal Register.

(B) Termination of designation

If the Attorney General determines under subparagraph (A) that a foreign state (or part of such foreign state) no longer continues to meet the conditions for designation under paragraph (1), the Attorney General shall terminate the designation by publishing notice in the Federal Register of the determination under this subparagraph (including

the basis for the determination). Such termination is effective in accordance with subsection (d)(3), but shall not be effective earlier than 60 days after the date the notice is published or, if later, the expiration of the most recent previous extension under subparagraph (C).

(C) Extension of designation

If the Attorney General does not determine under subparagraph (A) that a foreign state (or part of such foreign state) no longer meets the conditions for designation under paragraph (1), the period of designation of the foreign state is extended for an additional period of 6 months (or, in the discretion of the Attorney General, a period of 12 or 18 months).

(4) Information concerning protected status at time of designations

At the time of a designation of a foreign state under this subsection, the Attorney General shall make available information respecting the temporary protected status made available to aliens who are nationals of such designated foreign state.

(5) Review

(A) Designations

There is no judicial review of any determination of the Attorney General with respect to the designation, or termination or extension of a designation, of a foreign state under this subsection.

(B) Application to individuals

The Attorney General shall establish an administrative procedure for the review of the denial of benefits to aliens under this subsection. Such procedure shall not prevent an alien from asserting protection under this section in removal proceedings if the alien demonstrates that the alien is a national of a state designated under paragraph (1).

(c) Aliens eligible for temporary protected status

(1) In general

(A) Nationals of designated foreign states

Subject to paragraph (3), an alien, who is a national of a state designated under subsection (b)(1) (or in the case of an alien having no nationality, is a person who last habitually resided in such designated state), meets the requirements of this paragraph only if—

(i) the alien has been continuously physically present in the United States since the effective date of the most recent designation of that state;

(ii) the alien has continuously resided in the United States since such date as the Attorney General may designate;

(iii) the alien is admissible as an immigrant, except as otherwise provided under paragraph (2)(A), and is not ineligible for temporary protected status under paragraph (2)(B); and

(iv) to the extent and in a manner which the Attorney General establishes, the alien registers for the temporary protected status under this section during a registration period of not less than 180 days.

(B) Registration fee

The Attorney General may require payment of a reasonable fee as a condition of registering an alien under subparagraph (A)(iv) (including providing an alien with an "employment authorized" endorsement or other appropriate work permit under this section). The amount of any such fee shall not exceed $50. In the case of aliens registered pursuant to a designation under this section made after July 17, 1991, the Attorney General may impose a separate, additional fee for providing an alien with documentation of work authorization. Notwithstanding section 3302 of title 31, all fees collected under this subparagraph shall be credited to the appropriation to be used in carrying out this section.

(2) Eligibility standards

(A) Waiver of certain grounds for inadmissibility

In the determination of an alien's admissibility for purposes of subparagraph (A)(iii) of paragraph (1)—

(i) the provisions of paragraphs (5) and (7)(A) of section 1182(a) of this title shall not apply;

(ii) except as provided in clause (iii), the Attorney General may waive any other provision of section 1182(a) of this title in the case of individual aliens for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest; but

(iii) the Attorney General may not waive—

(I) paragraphs (2)(A) and (2)(B) (relating to criminals) of such section,

(II) paragraph (2)(C) of such section (relating to drug offenses), except for so much of such paragraph as relates to a single offense of simple possession of 30 grams or less of marijuana, or

(III) paragraphs (3)(A), (3)(B), (3)(C), and (3)(E) of such section (relating to national security and participation in the Nazi persecutions or those who have engaged in genocide).

(B) Aliens ineligible

An alien shall not be eligible for temporary protected status under this section if the Attorney General finds that—

(i) the alien has been convicted of any felony or 2 or more misdemeanors committed in the United States, or

(ii) the alien is described in section 1158(b)(2)(A) of this title.

(3) Withdrawal of temporary protected status

The Attorney General shall withdraw temporary protected status granted to an alien under this section if—

(A) the Attorney General finds that the alien was not in fact eligible for such status under this section,

(B) except as provided in paragraph (4) and permitted in subsection (f)(3), the alien has not remained continuously physically present in the United States from the date the alien first was granted temporary protected status under this section, or

(C) the alien fails, without good cause, to register with the Attorney General annually, at the end of each 12-month period after the granting of such status, in a form and manner specified by the Attorney General.

(4) Treatment of brief, casual, and innocent departures and certain other absences

(A) For purposes of paragraphs (1)(A)(i) and (3)(B), an alien shall not be considered to have failed to maintain continuous physical presence in the United States by virtue of brief, casual, and innocent absences from the United States, without regard to whether such absences were authorized by the Attorney General.

(B) For purposes of paragraph (1)(A)(ii), an alien shall not be considered to have failed to maintain continuous residence in the United States by reason of a brief, casual, and innocent absence described in

subparagraph (A) or due merely to a brief temporary trip abroad required by emergency or extenuating circumstances outside the control of the alien.

(5) Construction

Nothing in this section shall be construed as authorizing an alien to apply for admission to, or to be admitted to, the United States in order to apply for temporary protected status under this section.

(6) Confidentiality of information

The Attorney General shall establish procedures to protect the confidentiality of information provided by aliens under this section.

(d) Documentation

(1) Initial issuance

Upon the granting of temporary protected status to an alien under this section, the Attorney General shall provide for the issuance of such temporary documentation and authorization as may be necessary to carry out the purposes of this section.

(2) Period of validity

Subject to paragraph (3), such documentation shall be valid during the initial period of designation of the foreign state (or part thereof) involved and any extension of such period. The Attorney General may stagger the periods of validity of the documentation and authorization in order to provide for an orderly renewal of such documentation and authorization and for an orderly transition (under paragraph (3)) upon the termination of a designation of a foreign state (or any part of such foreign state).

(3) Effective date of terminations

If the Attorney General terminates the designation of a foreign state (or part of such foreign state) under subsection (b)(3)(B), such termination shall only apply to documentation and authorization issued or renewed after the effective date of the publication of notice of the determination under that subsection (or, at the Attorney General's option, after such period after the effective date of the determination as the Attorney General determines to be appropriate in order to provide for an orderly transition).

(4) Detention of alien

An alien provided temporary protected status under this section shall not be detained by the Attorney General on the basis of the alien's immigration status in the United States.

(e) Relation of period of temporary protected status to cancellation of removal

With respect to an alien granted temporary protected status under this section, the period of such status shall not be counted as a period of physical presence in the United States for purposes of section 1229b(a) of this title, unless the Attorney General determines that extreme hardship exists. Such period shall not cause a break in the continuity of residence of the period before and after such period for purposes of such section.

(f) Benefits and status during period of temporary protected status

During a period in which an alien is granted temporary protected status under this section—

(1) the alien shall not be considered to be permanently residing in the United States under color of law;

(2) the alien may be deemed ineligible for public assistance by a State (as defined in section 1101(a)(36) of this title) or any political subdivision thereof which furnishes such assistance;

(3) the alien may travel abroad with the prior consent of the Attorney General; and

(4) for purposes of adjustment of status under section 1255 of this title and change of status under section 1258 of this title, the alien shall be considered as being in, and maintaining, lawful status as a nonimmigrant.

(g) Exclusive remedy

Except as otherwise specifically provided, this section shall constitute the exclusive authority of the Attorney General under law to permit aliens who are or may become otherwise deportable or have been paroled into the United States to remain in the United States temporarily because of their particular nationality or region of foreign state of nationality.

(h) Limitation on consideration in Senate of legislation adjusting status

(1) In general

Except as provided in paragraph (2), it shall not be in order in the Senate to consider any bill, resolution, or amendment that—

(A) provides for adjustment to lawful temporary or permanent resident alien status for any alien receiving temporary protected status under this section, or

(B) has the effect of amending this subsection or limiting the application of this subsection.

(2) Supermajority required

Paragraph (1) may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members duly chosen and sworn. An affirmative vote of three-fifths of the Members of the Senate duly chosen and sworn shall be required in the Senate to sustain an appeal of the ruling of the Chair on a point of order raised under paragraph (1).

(3) Rules

Paragraphs (1) and (2) are enacted—

(A) as an exercise of the rulemaking power of the Senate and as such they are deemed a part of the rules of the Senate, but applicable only with respect to the matters described in paragraph (1) and supersede other rules of the Senate only to the extent that such paragraphs are inconsistent therewith; and

(B) with full recognition of the constitutional right of the Senate to change such rules at any time, in the same manner as in the case of any other rule of the Senate.

(i) Annual report and review

(1) Annual report

Not later than March 1 of each year (beginning with 1992), the Attorney General, after consultation with the appropriate agencies of the Government, shall submit a report to the Committees on the Judiciary of the House of Representatives and of the Senate on the operation of this section during the previous year. Each report shall include—

(A) a listing of the foreign states or parts thereof designated under this section,

(B) the number of nationals of each such state who have been granted temporary protected status under this section and their immigration status before being granted such status, and

(C) an explanation of the reasons why foreign states or parts thereof were designated under subsection (b)(1) and, with respect to foreign states or parts thereof previously designated, why the designation was terminated or extended under subsection (b)(3).

(2) Committee report

No later than 180 days after the date of receipt of such a report, the Committee on the Judiciary of each House of Congress shall report to its respective House such oversight findings and legislation as it deems appropriate.

5. 8 U.S.C. 1255 provides:

Adjustment of status of nonimmigrant to that of person admitted for permanent residence

(a) Status as person admitted for permanent residence on application and eligibility for immigrant visa

The status of an alien who was inspected and admitted or paroled into the United States or the status of any other alien having an approved petition for classification as a VAWA self-petitioner may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

(b) Record of lawful admission for permanent residence; reduction of preference visas

Upon the approval of an application for adjustment made under subsection (a), 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, and the Secretary of State shall reduce by one the number of the preference visas authorized to be issued under sections 1152 and 1153 of this title within the class to which the alien is chargeable for the fiscal year then current.

(c) Alien crewmen, aliens continuing or accepting unauthorized employment, and aliens admitted in transit without visa

Other than an alien having an approved petition for classification as a VAWA self-petitioner, subsection (a) shall not be applicable to (1) an alien crewman; (2) subject to subsection (k), an alien (other than an immediate relative as defined in section 1151(b) of this title or a special immigrant described in section 1101(a)(27)(H), (I), (J), or (K) of this title) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States; (3) any alien admitted in transit without visa under section 1182(d)(4)(C) of this title; (4) an alien (other than an immediate relative as defined in section 1151(b) of this title) who was admitted as a nonimmigrant visitor without a visa under section 1182(*l*) of this title or section 1187 of this title; (5) an alien who was admitted as a nonimmigrant described in section 1101(a)(15)(S) of this title,[1] (6) an alien who is deportable under section 1227(a)(4)(B) of this title; (7) any alien who seeks adjustment of status to that of an immigrant under section 1153(b) of this title and is not in a lawful nonimmigrant status; or (8) any alien who was employed while the alien was an unauthorized alien, as defined in section 1324a(h)(3) of this title, or who has otherwise violated the terms of a nonimmigrant visa.

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[1] So in original. The comma probably should be a semicolon.

(d) Alien admitted for permanent residence on conditional basis; fiancee or fiance of citizen

The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 1186a of this title. The Attorney General may not adjust, under subsection (a), the status of a nonimmigrant alien described in section 1101(a)(15)(K) of this title except to that of an alien lawfully admitted to the United States on a conditional basis under section 1186a of this title as a result of the marriage of the nonimmigrant (or, in the case of a minor child, the parent) to the citizen who filed the petition to accord that alien's nonimmigrant status under section 1101(a)(15)(K) of this title.

(e) Restriction on adjustment of status based on marriages entered while in admissibility or deportation proceedings; bona fide marriage exception

(1) Except as provided in paragraph (3), an alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a).

(2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to be admitted or remain in the United States.

(3) Paragraph (1) and section 1154(g) of this title shall not apply with respect to a marriage if the alien establishes by clear and convincing evidence to the satisfaction of the Attorney General that the marriage was entered into in good faith and in accordance with the

laws of the place where the marriage took place and the marriage was not entered into for the purpose of procuring the alien's admission as an immigrant and no fee or other consideration was given (other than a fee or other consideration to an attorney for assistance in preparation of a lawful petition) for the filing of a petition under section 1154(a) of this title or subsection (d) or (p)[2] of section 1184 of this title with respect to the alien spouse or alien son or daughter. In accordance with regulations, there shall be only one level of administrative appellate review for each alien under the previous sentence.

(f) Limitation on adjustment of status

The Attorney General may not adjust, under subsection (a), the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 1186b of this title.

(g) Special immigrants

In applying this section to a special immigrant described in section 1101(a)(27)(K) of this title, such an immigrant shall be deemed, for purposes of subsection (a), to have been paroled into the United States.

(h) Application with respect to special immigrants

In applying this section to a special immigrant described in section 1101(a)(27)(J) of this title—

(1) such an immigrant shall be deemed, for purposes of subsection (a), to have been paroled into the United States; and

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[2] See References in Text note below.

(2) in determining the alien's admissibility as an immigrant—

(A) paragraphs (4), (5)(A), (6)(A), (6)(C), (6)(D), (7)(A), and (9)(B) of section 1182(a) of this title shall not apply; and

(B) the Attorney General may waive other paragraphs of section 1182(a) of this title (other than paragraphs (2)(A), (2)(B), (2)(C) (except for so much of such paragraph as related to a single offense of simple possession of 30 grams or less of marijuana), (3)(A), (3)(B), (3)(C), and (3)(E)) in the case of individual aliens for humanitarian purposes, family unity, or when it is otherwise in the public interest.

The relationship between an alien and the alien's natural parents or prior adoptive parents shall not be considered a factor in making a waiver under paragraph (2)(B). Nothing in this subsection or section 1101(a)(27)(J) of this title shall be construed as authorizing an alien to apply for admission or be admitted to the United States in order to obtain special immigrant status described in such section.

(i) Adjustment in status of certain aliens physically present in United States

(1) Notwithstanding the provisions of subsections (a) and (c) of this section, an alien physically present in the United States—

(A) who—

(i) entered the United States without inspection; or

(ii) is within one of the classes enumerated in subsection (c) of this section;

(B) who is the beneficiary (including a spouse or child of the principal alien, if eligible to receive a visa under section 1153(d) of this title) of—

(i) a petition for classification under section 1154 of this title that was filed with the Attorney General on or before April 30, 2001; or

(ii) an application for a labor certification under section 1182(a)(5)(A) of this title that was filed pursuant to the regulations of the Secretary of Labor on or before such date; and

(C) who, in the case of a beneficiary of a petition for classification, or an application for labor certification, described in subparagraph (B) that was filed after January 14, 1998, is physically present in the United States on December 21, 2000;

may apply to the Attorney General for the adjustment of his or her status to that of an alien lawfully admitted for permanent residence. The Attorney General may accept such application only if the alien remits with such application a sum equalling $1,000 as of the date of receipt of the application, but such sum shall not be required from a child under the age of seventeen, or an alien who is the spouse or unmarried child of an individual who obtained temporary or permanent resident status under section 1160 or 1255a of this title or section 202 of the Immigration Reform and Control Act of 1986 at any date, who—

(i) as of May 5, 1988, was the unmarried child or spouse of the individual who obtained temporary or permanent resident status under section 1160 or

1255a of this title or section 202 of the Immigration Reform and Control Act of 1986;

(ii) entered the United States before May 5, 1988, resided in the United States on May 5, 1988, and is not a lawful permanent resident; and

(iii) applied for benefits under section 301(a) of the Immigration Act of 1990. The sum specified herein shall be in addition to the fee normally required for the processing of an application under this section.

(2) Upon receipt of such an application and the sum hereby required, the Attorney General may adjust the status of the alien to that of an alien lawfully admitted for permanent residence if—

(A) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence; and

(B) an immigrant visa is immediately available to the alien at the time the application is filed.

(3)(A) The portion of each application fee (not to exceed $200) that the Attorney General determines is required to process an application under this section and is remitted to the Attorney General pursuant to paragraphs (1) and (2) of this subsection shall be disposed of by the Attorney General as provided in subsections (m), (n), and (*o*) of section 1356 of this title.

(B) Any remaining portion of such fees remitted under such paragraphs shall be deposited by the Attorney General into the Breached Bond/Detention Fund established under section 1356(r) of this title, except that

in the case of fees attributable to applications for a beneficiary with respect to whom a petition for classification, or an application for labor certification, described in paragraph (1)(B) was filed after January 14, 1998, one-half of such remaining portion shall be deposited by the Attorney General into the Immigration Examinations Fee Account established under section 1356(m) of this title.

(j) Adjustment to permanent resident status

(1) If, in the opinion of the Attorney General—

(A) a nonimmigrant admitted into the United States under section 1101(a)(15)(S)(i) of this title has supplied information described in subclause (I) of such section; and

(B) the provision of such information has substantially contributed to the success of an authorized criminal investigation or the prosecution of an individual described in subclause (III) of that section,

the Attorney General may adjust the status of the alien (and the spouse, married and unmarried sons and daughters, and parents of the alien if admitted under that section) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 1182(a)(3)(E) of this title.

(2) If, in the sole discretion of the Attorney General—

(A) a nonimmigrant admitted into the United States under section 1101(a)(15)(S)(ii) of this title has supplied information described in subclause (I) of such section, and

(B) the provision of such information has substantially contributed to—

(i) the prevention or frustration of an act of terrorism against a United States person or United States property, or

(ii) the success of an authorized criminal investigation of, or the prosecution of, an individual involved in such an act of terrorism, and

(C) the nonimmigrant has received a reward under section 2708(a) of title 22,

the Attorney General may adjust the status of the alien (and the spouse, married and unmarried sons and daughters, and parents of the alien if admitted under such section) to that of an alien lawfully admitted for permanent residence if the alien is not described in section 1182(a)(3)(E) of this title.

(3) Upon the approval of adjustment of status under paragraph (1) or (2), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of such approval and the Secretary of State shall reduce by one the number of visas authorized to be issued under sections 1151(d) and 1153(b)(4) of this title for the fiscal year then current.

(k) Inapplicability of certain provisions for certain employment-based immigrants

An alien who is eligible to receive an immigrant visa under paragraph (1), (2), or (3) of section 1153(b) of this title (or, in the case of an alien who is an immigrant described in section 1101(a)(27)(C) of this title, under section 1153(b)(4) of this title) may adjust status pursuant

to subsection (a) and notwithstanding subsection (c)(2), (c)(7), and (c)(8), if—

(1) the alien, on the date of filing an application for adjustment of status, is present in the United States pursuant to a lawful admission;

(2) the alien, subsequent to such lawful admission has not, for an aggregate period exceeding 180 days—

(A) failed to maintain, continuously, a lawful status;

(B) engaged in unauthorized employment; or

(C) otherwise violated the terms and conditions of the alien's admission.

(*l*) Adjustment of status for victims of trafficking

(1) If, in the opinion of the Secretary of Homeland Security, or in the case of subparagraph (C)(i), in the opinion of the Secretary of Homeland Security, in consultation with the Attorney General, as appropriate[3] a nonimmigrant admitted into the United States under section 1101(a)(15)(T)(i) of this title—

(A) has been physically present in the United States for a continuous period of at least 3 years since the date of admission as a nonimmigrant under section 1101(a)(15)(T)(i) of this title, or has been physically present in the United States for a continuous period during the investigation or prosecution of acts of trafficking and that, in the opinion of the Attorney

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[3] So in original. Probably should be followed by a comma.

General, the investigation or prosecution is complete, whichever period of time is less;

(B) subject to paragraph (6), has, throughout such period, been a person of good moral character; and

(C)(i) has, during such period, complied with any reasonable request for assistance in the investigation or prosecution of acts of trafficking;

(ii) the alien[4] would suffer extreme hardship involving unusual and severe harm upon removal from the United States; or

(iii) was younger than 18 years of age at the time of the victimization qualifying the alien for relief under section 1101(a)(15)(T) of this title.[5]

the Secretary of Homeland Security may adjust the status of the alien (and any person admitted under section 1101(a)(15)(T)(ii) of this title as the spouse, parent, sibling, or child of the alien) to that of an alien lawfully admitted for permanent residence.

(2) Paragraph (1) shall not apply to an alien admitted under section 1101(a)(15)(T) of this title who is inadmissible to the United States by reason of a ground that has not been waived under section 1182 of this title, except that, if the Secretary of Homeland Security considers it to be in the national interest to do so, the Secretary

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[4] So in original. The words "the alien" probably should not appear.

[5] So in original. The period probably should be a comma.

of Homeland Security, in the Attorney General's[6] discretion, may waive the application of—

(A) paragraphs (1) and (4) of section 1182(a) of this title; and

(B) any other provision of such section (excluding paragraphs (3), (10)(C), and (10(E)),[7] if the activities rendering the alien inadmissible under the provision were caused by, or were incident to, the victimization described in section 1101(a)(15)(T)(i)(I) of this title.

(3) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days, unless—

(A) the absence was necessary to assist in the investigation or prosecution described in paragraph (1)(A); or

(B) an official involved in the investigation or prosecution certifies that the absence was otherwise justified.

(4)(A) The total number of aliens whose status may be adjusted under paragraph (1) during any fiscal year may not exceed 5,000.

(B) The numerical limitation of subparagraph (A) shall only apply to principal aliens and not to the

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[6] So in original. Probably should be "Secretary's".

[7] So in original. Probably should be "(10)(E)),".

spouses, sons, daughters, siblings, or parents of such aliens.

(5) Upon the approval of adjustment of status under paragraph (1), the Secretary of Homeland Security shall record the alien's lawful admission for permanent residence as of the date of such approval.

(6) For purposes of paragraph (1)(B), the Secretary of Homeland Security may waive consideration of a disqualification from good moral character with respect to an alien if the disqualification was caused by, or incident to, the trafficking described in section 1101(a)(15)(T)(i)(I) of this title.

(7) The Secretary of Homeland Security shall permit aliens to apply for a waiver of any fees associated with filing an application for relief through final adjudication of the adjustment of status for a VAWA self-petitioner and for relief under sections 1101(a)(15)(T), 1101(a)(15)(U), 1105a, 1229b(b)(2), and 1254a(a)(3) of this title (as in effect on March 31, 1997).

(m) Adjustment of status for victims of crimes against women

(1) The Secretary of Homeland Security may adjust the status of an alien admitted into the United States (or otherwise provided nonimmigrant status) under section 1101(a)(15)(U) of this title to that of an alien lawfully admitted for permanent residence if the alien is not described in section 1182(a)(3)(E) of this title, unless the Secretary determines based on affirmative evidence that the alien unreasonably refused to provide assistance in a criminal investigation or prosecution, if—

(A) the alien has been physically present in the United States for a continuous period of at least 3

years since the date of admission as a nonimmigrant under clause (i) or (ii) of section 1101(a)(15)(U) of this title; and

(B) in the opinion of the Secretary of Homeland Security, the alien's continued presence in the United States is justified on humanitarian grounds, to ensure family unity, or is otherwise in the public interest.

(2) An alien shall be considered to have failed to maintain continuous physical presence in the United States under paragraph (1)(A) if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days unless the absence is in order to assist in the investigation or prosecution or unless an official involved in the investigation or prosecution certifies that the absence was otherwise justified.

(3) Upon approval of adjustment of status under paragraph (1) of an alien described in section 1101(a)(15)(U)(i) of this title the Secretary of Homeland Security may adjust the status of or issue an immigrant visa to a spouse, a child, or, in the case of an alien child, a parent who did not receive a nonimmigrant visa under section 1101(a)(15)(U)(ii) of this title if the Secretary considers the grant of such status or visa necessary to avoid extreme hardship.

(4) Upon the approval of adjustment of status under paragraph (1) or (3), the Secretary of Homeland Security shall record the alien's lawful admission for permanent residence as of the date of such approval.

(5)(A) The Secretary of Homeland Security shall consult with the Attorney General, as appropriate, in

making a determination under paragraph (1) whether affirmative evidence demonstrates that the alien unreasonably refused to provide assistance to a Federal law enforcement official, Federal prosecutor, Federal judge, or other Federal authority investigating or prosecuting criminal activity described in section 1101(a)(15)(U)(iii) of this title.

(B) Nothing in paragraph (1)(B) may be construed to prevent the Secretary from consulting with the Attorney General in making a determination whether affirmative evidence demonstrates that the alien unreasonably refused to provide assistance to a State or local law enforcement official, State or local prosecutor, State or local judge, or other State or local authority investigating or prosecuting criminal activity described in section 1101(a)(15)(U)(iii) of this title.

6. 8 U.S.C. 1255 (1988) provides:

Adjustment of status of nonimmigrant to that of person admitted for permanent residence

(a) Status as person admitted for permanent residence on application and eligibility for immigrant visa

The status of an alien who was inspected and admitted or paroled into the United States may be adjusted by the Attorney General, in his discretion and under such regulations as he may prescribe, to that of an alien lawfully admitted for permanent residence if (1) the alien makes an application for such adjustment, (2) the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence, and (3) an immigrant visa is immediately available to him at the time his application is filed.

(b) Record of lawful admission for permanent residence; reduction of preference or nonpreference visas

Upon the approval of an application for adjustment made under subsection (a) of this section, 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, and the Secretary of State shall reduce by one the number of the preference or nonpreference visas authorized to be issued under sections 1152(e) or 1153(a) of this title within the class to which the alien is chargeable for the fiscal year then current.

(c) Alien crewmen, aliens continuing or accepting unauthorized employment, and aliens admitted in transit without visa

Subsection (a) of this section shall not be applicable to (1) an alien crewman; (2) an alien (other than an immediate relative as defined in section 1151(b) of this title or a special immigrant described in section 1101(a)(27)(H) or (I) of this title) who hereafter continues in or accepts unauthorized employment prior to filing an application for adjustment of status or who is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States; (3) any alien admitted in transit without visa under section 1182(d)(4)(C) of this title; or (4) an alien (other than an immediate relative as defined in section 1151(b) of this title) who was admitted as a nonimmigrant visitor without a visa under section 1182(*l*) of this title or section 1187 of this title.

(d) Alien admitted for permanent residence on conditional basis; fiancee or fiance of citizen

The Attorney General may not adjust, under subsection (a) of this section, the status of an alien lawfully admitted to the United States for permanent residence on a conditional basis under section 1186a of this title. The Attorney General may not adjust, under subsection (a) of this section, the status of a nonimmigrant alien described in section 1101(a)(15)(K) of this title (relating to an alien fiancee or fiance or the minor child of such alien) except to that of an alien lawfully admitted to the United States on a conditional basis under section 1186a of this title as a result of the marriage of the nonimmigrant (or, in the case of a minor child, the parent) to the citizen who filed the petition to accord that alien's nonimmigrant status under section l101(a)(15)(K) of this title.

(e) Restriction on adjustment of status based on marriages entered while in exclusion or deportation proceedings

(1) An alien who is seeking to receive an immigrant visa on the basis of a marriage which was entered into during the period described in paragraph (2) may not have the alien's status adjusted under subsection (a) of this section.

(2) The period described in this paragraph is the period during which administrative or judicial proceedings are pending regarding the alien's right to enter or remain in the United States.

7. 8 U.S.C. 1258 provides:

Change of nonimmigrant classification

(a) The Secretary of Homeland Security may, under such conditions as he may prescribe, 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 under section 1182(a)(9)(B)(i) of this title (or whose inadmissibility under such section is waived under section 1182(a)(9)(B)(v) of this title), except (subject to subsection (b)) in the case of—

(1) an alien classified as a nonimmigrant under subparagraph (C), (D), (K), or (S) of section 1101(a)(15) of this title,

(2) an alien classified as a nonimmigrant under subparagraph (J) of section 1101(a)(15) of this title who came to the United States or acquired such classification in order to receive graduate medical education or training,

(3) an alien (other than an alien described in paragraph (2)) classified as a nonimmigrant under subparagraph (J) of section 1101(a)(15) of this title who is subject to the two-year foreign residence requirement of section 1182(e) of this title and has not received a waiver thereof, unless such alien applies to have the alien's classification changed from classification under subparagraph (J) of section 1101(a)(15) of this title to a classification under subparagraph (A) or (G) of such section, and

(4) an alien admitted as a nonimmigrant visitor without a visa under section 1182(*l*) of this title or section 1187 of this title.

(b) The exceptions specified in paragraphs (1) through (4) of subsection (a) shall not apply to a change of nonimmigrant classification to that of a nonimmigrant under subparagraph (T) or (U) of section 1101(a)(15) of this title.

8. 8 C.F.R. 103.3(c) provides:

Denials, appeals, and precedent decisions.

(c) *Service precedent decisions.* The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General decisions relating to the administration of the immigration laws of the United States for publication as precedent in future proceedings, and upon approval of the Attorney General as to the lawfulness of such decision, the Director of the Executive Office for Immigration Review shall cause such decisions to be published in the same manner as decisions of the Board and the Attorney General. In addition to Attorney General and Board decisions referred to in § 1003.1(g) of chapter V, designated Service decisions are to serve as precedents in all proceedings involving the same issue(s). Except as these decisions may be modified or overruled by later precedent decisions, they are binding on all Service employees in the administration of the Act. Precedent decisions must be published and made available to the public as described in 8 CFR 103.10(e).

9. 8 C.F.R. 103.4(a)(1) provides:

Certifications.

(a) *Certification of other than special agricultural worker and legalization cases*—(1) *General.* The Commissioner or the Commissioner's delegate may direct that any case or class of cases be certified to another Service official for decision. In addition, regional commissioners, regional service center directors, district directors, officers in charge in districts 33 (Bangkok, Thailand), 35 (Mexico City, Mexico), and 37 (Rome, Italy), and the Director, National Fines Office, may certify their decisions to the appropriate appellate authority (as designated in this chapter) when the case involves an unusually complex or novel issue of law or fact.

10. 8 C.F.R. 244.10(f) provides:

Decision and appeal.

(f) *Grant of temporary protected status.* (1) The decision to grant Temporary Protected Status shall be evidenced by the issuance of an alien registration document. For those aliens requesting employment authorization, the employment authorization document will act as alien registration.

(2) The alien shall be provided with a notice, in English and in the language of the designated foreign state or a language that the alien understands, of the following benefits:

(i) The alien shall not be deported while maintaining Temporary Protected Status;

(ii) Employment authorization;

(iii) The privilege to travel abroad with the prior consent of the director as provided in § 244.15;

(iv) For the purposes of adjustment of status under section 245 of the Act and change of status under section 248 of the Act, the alien is considered as being in, and maintaining, lawful status as a nonimmigrant while the alien maintains Temporary Protected Status.

(v) An alien eligible to apply for Temporary Protected Status under § 244.2(f)(2), who was prevented from filing a late application for registration because the regulations failed to provide him or her with this opportunity, will be considered to have been maintaining lawful status as a nonimmigrant until the benefit is granted.

(3) The benefits contained in the notice are the only benefits the alien is entitled to under Temporary Protected Status.

(4) Such notice shall also advise the alien of the following:

(i) The alien must remain eligible for Temporary Protected Status;

(ii) The alien must register annually with the district office or service center having jurisdiction over the alien's place of residence; and

(iii) The alien's failure to comply with paragraphs (f)(4)(i) or (ii) of this section will result in the withdrawal of Temporary Protected Status, including work authorization granted under this Program, and may result in the alien's deportation from the United States.

11. 8 C.F.R. 245.1 provides in pertinent part:

Eligibility.

(a) *General.* Any alien who is physically present in the United States, except for an alien who is ineligible to apply for adjustment of status under paragraph (b) or (c) of this section, may apply for adjustment of status to that of a lawful permanent resident of the United States if the applicant is eligible to receive an immigrant visa and an immigrant visa is immediately available at the time of filing of the application. A special immigrant described under section 101(a)(27)(J) of the Act shall be deemed, for the purpose of applying the adjustment to status provisions of section 245(a) of the Act, to have been paroled into the United States, regardless of the actual method of entry into the United States.

(b) *Restricted aliens.* The following categories of aliens are ineligible to apply for adjustment of status to that of a lawful permanent resident alien under section 245 of the Act, unless the alien establishes eligibility under the provisions of section 245(i) of the Act and § 245.10, is not included in the categories of aliens prohibited from applying for adjustment of status listed in § 245.1(c), is eligible to receive an immigrant visa, and has an immigrant visa immediately available at the time of filing the application for adjustment of status:

(1) Any alien who entered the United States in transit without a visa;

(2) Any alien who, on arrival in the United States, was serving in any capacity on board a vessel or aircraft or was destined to join a vessel or aircraft in the United States to serve in any capacity thereon;

(3) Any alien who was not admitted or paroled following inspection by an immigration officer;

(4) Any alien who, on or after January 1, 1977, was employed in the United States without authorization prior to filing an application for adjustment of status. This restriction shall not apply to an alien who is:

(i) An immediate relative as defined in section 201(b) of the Act;

(ii) A special immigrant as defined in section 101(a)(27)(H) or (J) of the Act;

(iii) Eligible for the benefits of Public Law 101-238 (the Immigration Nursing Relief Act of 1989) and files an application for adjustment of status on or before October 17, 1991; or

(iv) Eligible for the benefits of Public Law 101-238 (the Immigration Nursing Relief Act of 1989), and has not entered into or continued in unauthorized employment on or after November 29, 1990.

(5) Any alien who on or after November 6, 1986 is not in lawful immigration status on the date of filing his or her application for adjustment of status, except an applicant who is an immediate relative as defined in section 201(b) or a special immigrant as defined in section 101(a)(27) (H), (I), or (J).

(6) Any alien who files an application for adjustment of status on or after November 6, 1986, who has failed (other than through no fault of his or her own or for technical reasons) to maintain continuously a lawful status since entry into the United States, except an applicant who is an immediate relative as defined in section 201(b)

of the Act or a special immigrant as defined in section 101(a)(27) (H), (I), or (J) of the Act;

(7) Any alien admitted as a visitor under the visa waiver provisions of 8 CFR 212.1(e) or (q), other than an immediate relative as defined in section 201(b) of the Act;

(8) Any alien admitted as a Visa Waiver Pilot Program visitor under the provisions of section 217 of the Act and part 217 of this chapter other than an immediate relative as defined in section 201(b) of the Act;

(9) Any alien who seeks adjustment of status pursuant to an employment-based immigrant visa petition under section 203(b) of the Act and who is not maintaining a lawful nonimmigrant status at the time he or she files an application for adjustment of status; and

(10) Any alien who was ever employed in the United States without the authorization of the Service or who has otherwise at any time violated the terms of his or her admission to the United States as a nonimmigrant, except an alien who is an immediate relative as defined in section 201(b) of the Act or a special immigrant as defined in section 101(a)(27)(H), (I), (J), or (K) of the Act. For purposes of this paragraph, an alien who meets the requirements of § 274a.12(c)(9) of this chapter shall not be deemed to have engaged in unauthorized employment during the pendency of his or her adjustment application.

* * * * *

(d) *Definitions*—(1) *Lawful immigration status.* For purposes of section 245(c)(2) of the Act, the term "lawful immigration status" will only describe the immigration status of an individual who is:

(i) In lawful permanent resident status;

(ii) An alien admitted to the United States in nonimmigrant status as defined in section 101(a)(15) of the Act, whose initial period of admission has not expired or whose nonimmigrant status has been extended in accordance with part 214 of this chapter;

(iii) In refugee status under section 207 of the Act, such status not having been revoked;

(iv) In asylee status under section 208 of the Act, such status not having been revoked;

(v) In parole status which has not expired, been revoked or terminated; or

(vi) Eligible for the benefits of Public Law 101-238 (the Immigration Nursing Relief Act of 1989) and files an application for adjustment of status on or before October 17, 1991.

* * * * *

(3) *Effect of departure.* The departure and subsequent reentry of an individual who was employed without authorization in the United States after January 1, 1977 does not erase the bar to adjustment of status in section 245(c)(2) of the Act. Similarly, the departure and subsequent reentry of an individual who has not maintained a lawful immigration status on any previous entry into the United States does not erase the bar to adjustment of status in section 245(c)(2) of the Act for any application filed on or after November 6, 1986.

* * * * *

12. 8 C.F.R. 1003.1(i) provides:

Organization, jurisdiction, and powers of the Board of Immigration Appeals.

(i) *Publication of Secretary's precedent decisions.* The Secretary of Homeland Security, or specific officials of the Department of Homeland Security designated by the Secretary with the concurrence of the Attorney General, may file with the Attorney General decisions relating to the administration of the immigration laws of the United States for publication as precedent in future proceedings, and, upon approval of the Attorney General as to the lawfulness of such decision, the Director of the Executive Office for Immigration Review shall cause such decisions to be published in the same manner as decisions of the Board and the Attorney General.