No. 21-7

# In the Supreme Court of the United States

MERRICK B. GARLAND, ATTORNEY GENERAL, ET AL.,
*Petitioners*,

*v.*

LEYMIS CAROLINA VELASQUEZ, ET AL.,
*Respondents*.

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ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

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## BRIEF FOR THE RESPONDENTS

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## QUESTION PRESENTED

Whether a grant of temporary protected status under 8 U.S.C. 1254a(f )(4) 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 AUTHORITIES

### Cases



### Statutes

## INTRODUCTION

Prior to June 7, 2021, Circuit Courts were divided as to whether a grant of Temporary Protected Status rendered an alien "inspected and admitted" for the purposes of adjustment of status. The Sixth, Eighth, and Ninth Circuits had held that a grant of Temporary Protected Status did constitute an inspection and admission for the purposes of adjustment of status,[1] while the Third, Fifth, and Eleventh Circuits held the opposite view.[2]

On June 7, 2021, this Court decided *Sanchez v. Mayorkas*, 141 S. Ct. 1809 (2021). There, this Court affirmed the Third Circuit's ruling and held "[t]he TPS program gives foreign nationals nonimmigrant status, but it does not admit them. So the conferral of TPS does not make an unlawful entrant (like Sanchez) eligible under § 1255 for adjustment to LPR status." *Id.* at 1812–13. This resolved the split, thereby "abrogating *Velasquez v. Barr*, 979 F. 3d 572 [.]" *Id.* at 1809.

Thus, the merits of this case have been decided and there is simply no basis in law or fact today for contesting the petition.

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[1] *Flores v. United States Citizenship and Immigration Servs.*, 718 F.3d 548 (6th Cir. 2013); *Velasquez v. Barr*, 979 F.3d 572 (8th Cir. 2020); *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017).

[2] *Sanchez v. Secretary U. S. Dept. of Homeland Security*, 967 F.3d 242 (3rd Cir. 2020); *Nolasco v. Crockett*, 978 F.3d 955 (5th Cir. 2020); *Serrano v. United States Atty. Gen.*, 655 F.3d 1260 (11th Cir. 2011) (per curiam) with

## OPINIONS AND ORDERS BELOW

The opinion of the court of appeals in *Velasquez v. Barr* is reported at 979 F.3d 572 (8th Cir. 2020). The decisions of the District Court in *Leymis V. v. Whitaker* is reported at 355 F. Supp. 3d 779 (D. Minn. 2018). The decisions of the District Court in *Melgar v. Barr* is reported at 379 F. Supp. 3d 783 (D. Minn. 2019). These cases were consolidated on appeal in *Velasquez v. Barr*, 979 F.3d 572 (8th Cir. 2020).

Decisions from the United States Citizenship and Immigration Services are unreported. The agency's decision on Leymis Velasquez's application is reproduced at Pet. App. D 53a-56a. The agency's decision on Sandra Ortiz's application is reproduced at Pet. App. D 57a-60a. The agency's decision on Gilma Melgar's application is reproduced at Pet. App. D 61a-64a. The agency's decision on Sandra Ortiz's application is reproduced at Pet. App. D 68a-a.

## JURISDICTION

The judgment of the court of appeals was entered on October 27, 2020. The petition for a writ of certiorari was filed on July 1, 2021. The jurisdiction of this Court has been invoked under 28 U.S.C. 1254(1).

## STATEMENT

### A. Statutory Background

Respondents are content with Petitioner's recitation of the statutory and regulatory framework.

### B. Factual and Procedural Background

Respondents are content with Petitioner's recitation of the factual and procedural history.

### C. Intervening Case Law

On June 7, 2021, this Court decided *Sanchez v. Mayorkas*, 141 S. Ct. 1809 (2021). It held "[t]he TPS program gives foreign nationals nonimmigrant status, but it does not admit them. So the conferral of TPS does not make an unlawful entrant (like Sanchez) eligible under § 1255 for adjustment to LPR status." *Id.* at 1812–13. This "abrogate[ed] *Velasquez v. Barr*, 979 F. 3d 572[.]" *Id.* at 1809.

## ARGUMENT

This Court addressed and decided the issue at the heart of this case. *See Sanchez v. Mayorkas*, 141 S. Ct. 1809, 1811 (2021) ("The question here is whether the conferral of TPS enables him to obtain LPR status despite his unlawful entry."). The Court concluded: "[a] TPS recipient who entered the United States unlawfully is not eligible under § 1255 for LPR status merely by dint of his TPS." *Id.* at 1810.

That is the issue Petitioners raised here. *See* Pet. I ("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.").

Petitioners are correct that "A GVR is appropriate when 'intervening developments ... reveal a reasonable probability that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration, and where it appears that such a redetermination may determine the ultimate outcome' of the matter." *Wellons v. Hall*, 558 U.S. 220, 225 (2010) (citing *Lawrence v. Chater*, 516 U.S. 163, 167 (1996) (per curiam).

The decision rendered by the Eighth Circuit was premised on the legal issue decided in *Sanchez*. *Compare Velasquez*, 979 F.3d at 575, *with Sanchez*, 141 S. Ct. at 1811. There are no meaningful factual differences between the cases. *Compare Velasquez*, 979 F.3d at 575, *with Sanchez*, 141 S. Ct. at 1813. Thus, Petitioners are correct "that the decision below rests upon a premise that the lower court would reject if given the opportunity for further consideration." *Lawrence*, 516 U.S. at 167 (1996).

There is simply no basis in law or fact today for contesting the petition.

## CONCLUSION

Respondents do not contest Petitioner's request.

Respectfully submitted,

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