No. 22-1071

In the
Supreme Court of the United States

WASHINGTON ALLIANCE OF TECHNOLOGY WORKERS,
Petitioner,

v.

DEPARTMENT OF HOMELAND SECURITY, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF OF 31 MEMBERS OF THE UNITED STATES HOUSE OF REPRESENTATIVES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTION

STATUTES AND REGULATIONS

RULES

OTHER AUTHORITIES

INTEREST OF AMICI CURIAE[1]

Amici are 31 Members of the United States House of Representatives, representing 18 states. *Amici* have a clear special and vested interest in preserving legislative authority pursuant to the Constitution. *See* U.S. Const. art. 1 § 1. As legislative power is vested in Congress and these members have taken an oath to support and defend the U.S. Constitution, they take seriously the legislative process and the separation of powers. *Id*. Executive overreach has been a pervasive problem that has plagued the federal government for many years. Nowhere are the effects more apparent and disastrous than in immigration law. While legislative and committee action has been underway to address the executive overreach, those efforts could all be erased by a D.C. Circuit's opinion that favors executive regulation over clear statutory language and legislative intent. These members have witnessed executive overreach that has resulted in statutes and legislative intent being ignored in favor of executive policy changes. They have further seen these executive policies implemented under the guise of the Administrative Procedure Act whereby they are largely accepted even in instances where no ambiguity exists in the statutory language. A complete list of *Amici* is found in the Appendix to this brief.

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[1] All parties' counsel have been provided the advanced notice required by Supreme Court Rule 37.2(a). No counsel for any party authored this brief in whole or in part. Numbers-USA Education and Research Foundation made a monetary contribution intended to fund the brief's preparation and submission.

SUMMARY OF ARGUMENT

The Separation of Powers Doctrine has been a bedrock principle of this country since inception. As legislative authority is vested in Congress through Article I, § 1 of the Constitution, the powers may not be delegated. *Whitman v. AM. Trucking Ass'ns*, 531 U.S. 457, 472 (2001) (citing *Loving v. United States*, 517 U.S. 748, 771 (1996)). The Framers warned against the tyranny that follows an "accumulation of powers, legislative, executive, and judiciary, in the same hands…" The Federalist No. 47, at 298 (James Madison) (Clinton Rossiter ed., 1999); *see also West Virginia v. EPA,* 142 S. Ct. 2587, 2617 (2022) (citing *Marshall Field & Co. v. Clark,* 143 U.S. 649, 692, 12 S. Ct. 495, 36 L. 294 (1892))("…the Constitution's rule vesting federal legislative power in Congress is 'vital to the integrity and maintenance of the system of government ordained by the Constitution.' ").

The Constitution vests plenary authority to establish the "uniform Rule of Naturalization." U.S. Const. art. 1 § 8, cl. 4; *Boyd v. Nebraska ex rel. Thayer*, 143 U.S. 135, 160 (1892) (The right to establish the uniform rule of naturalization is exclusive to Congress). Additionally, the Court has recognized this provision confers primary responsibility over immigration. *Examining Bd. Of Engineers, Architects and & Surveyors v. Flores De Otero*, 426 U.S. 572, 602 (1976); *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972). To effect a constitutional delegation of that authority to the executive branch, it must include an "…intelligible principle to which the person or body authorized…must

conform." *J.W. Hampton, Jr. & Company v. United States*, 276 U.S. 394, 409 (1928).

At issue is the Optional Practical Training ("OPT") program, a wholly regulatory product providing foreign post-graduate students the authorization to remain in the United States and to engage in certain employment. The program began in a 1947 Rule allowing employment to foreign students "[i]n cases where employment for practical training is required or recommended by the school…" Title 8 – Alines and Nationality, 12 Fed. Reg. 5355, 5357 (Aug. 7, 1947)(to be codified at 8 C.F.R. pt. 125). In such instances, employment was limited to six months with two six-month extensions. *Id*. The rule only contemplated limited practical training when deemed necessary but did not explicitly authorize post-graduate employment.

In 1992, the Department of Justice promulgated a rule entitled "Pre-Completion Interval Training; F-1 Student Work Authorization." Pre-Completion Interval Training; F-1 Student Work Authorization, 57 Fed. Reg. 31954 (Jul. 20, 1992)(to be codified at 8 C.F.R. pts. 214 and 274a). Relevant to this matter, the rule explicitly permitted optional practical training "after completion of the course of study." *Id*. at 31956. This was followed by a 2008 interim final rule that, among other things, extended the period of Optional Practical Training for graduates who completed degrees in science, technology, engineering, or mathematics (STEM). Extending Period of Options Practical Training by 17 Months for F-1 Nonimmigrant Students with STEM Degrees and Expanding Cap-Gap Relief for all F-1 Students with Pending H-1B Petitions, 73 Fed.

Reg. 18944 (Apr. 8, 2008)(to be codified at 8 C.F.R. pts. 214 and 274a). A 2016 final rule again extended the program for STEM graduates. Improving and Expanding Training Opportunities for F-1 Nonimmigrant Students with STEM Degrees and Cap-Gap Relief for All Eligible F-1 Students, 81 Fed. Reg. 13040 (Mar. 11, 2016)(to be codified at 8 C.F.R. pts. 214 and 274a). These three rules have created the largest guest worker program in the United States[2] and one that is completely devoid of Congressional authorization.

Long-standing litigation efforts to invalidate the rules have now led to the instant matter. Petitioners argued that the executive branch exceeded its delegation in immigration rulemaking by creating a program that was not contemplated by statute and that providing employment authorization was further in contravention of that delegation.

The D.C. Circuit now asks us to ignore the Constitutional precepts of separation of powers and to cede authority over the "Rule of Naturalization," and immigration, more generally, to the executive branch.

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[2] In 2022, U.S. Citizenship and Immigration Services approved nearly 190,000 work authorization documents for OPT participants. U.S. Citizenship and Immigr. Serv., Form I-765 Application for Employment Authorization, All Receipts, Approvals, Denials Group by Eligibility Category and Filing Type, Fiscal Year 2022 (2022), https://www.uscis.gov/sites/default/files/document/data/I-765_Application_for_Employment_FY03-22_AnnualReport.pdf. This is only a portion of the total number as it does not include those who are still authorized from previous years' approvals.

The decision favors a broad delegation of regulatory authority to the executive branch finding that the plain and unambiguous reading of the Immigration and Nationality Act is open to a regulatory framework that exceeds its scope.

The Immigration and Nationality Act ("INA") includes no reference to post-graduate employment (or any activities) and unambiguously states that the alien's sole purpose in the United States is to study. The F-1 visa holder, so called by its sub-paragraph designation in the INA, is defined as:

> "an alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study…" 8 U.S.C. § 1101.

In finding that this clear language authorized such broad regulations, the D.C. Circuit found that the F-1 definition speaks only to the admission of aliens into the United States and is silent as to conditions of stay. Pet'r.'s App.at 25a. This holding is without merit and lacks any support as it is inconsistent with the INA writ large and would create an absurd result which would have far-reaching consequences on Congressional plenary authority over immigration policy and on the execution of those laws. *Amici* argue that the plain meaning of the statute should control.

Second, in holding that the OPT program was a valid status for work authorization purposes, the D.C.

Circuit held that Congress delegated authority to the Attorney General, now the Secretary of Homeland Security, by way of a single definition found within the INA. *Id*. at 55a. This is also erroneous when the definition is read in the context of the remainder of the INA. Assuming *arguendo*, that the D.C. Circuit is correct, the result would be the total ceding of authority of employment eligibility determinations to the executive branch. Without an unequivocal delegation of such authority, the INA cannot be read as eschewing this critical responsibility.

The D.C. Circuit's decision has far-reaching consequences for the legislative branch beyond immigration law. The majority opinion creates a dangerous precedent whereby any Congressional action is ripe for executive overreach and can be simply ignored. Where executive branch policy considerations are able to override the valid exercise of legislative functions, the separate yet equal branches of government are no longer equal.

For these reasons, the *Amici* respectfully request that this Court grant the Petitioner's Petition for Certiorari and vacate the ruling of the D.C. Circuit.

ARGUMENT

I. The Definition of Student Visa in Section 1101 of the INA Does Not Permit OPT

Two provisions of the INA primarily govern nonimmigrant visas – 8 U.S.C. § 1101 contains the definition for each class of visa, and 8 U.S.C. § 1184 sets specific conditions for admission on those visas. Petitioner argues, and *Amici* concur, that OPT exceeds

the authority of the INA as the statutory text does not contemplate such a broad program and the executive branch has not been delegated the authority to promulgate the program. Despite that, however, the D.C. Circuit held that the text, being silent on such a program, implicitly authorized it and that delegations provided in Section 1184 provided constitutional protection, Pet'r.'s App.at 6a. Put more simply, the D.C. Circuit held that the INA only governs the admission of aliens and that through delegated authority, the executive branch has *carte blanche* to dictate any aspect of the nonimmigrant's stay after admission. The plain reading the statute conflicts with such an interpretation and the Court should vacate the D.C. Circuit's decision.

A. The F-1 Definition Controls the Duration of Status

Nonimmigrant visa holders are admitted after having met certain conditions and are expected to maintain the conditions of their admission during the duration of that authorized stay in the United States. Unfortunately, the D.C. Circuit has upended the entire system by holding that the conditions, as enumerated by Congress, only apply when "decisions of consular and immigration officers" are made when granting the visa and in the course of the actual admission process. *Id*. at 25a. The D.C. Circuit seeks to turn the entire process on its head.

The F-1 visa definition, *supra*, sets the basic criteria that applicants for nonimmigrant student visas must meet to be admitted. A bona fide student, among other things, must seek the visa *solely* to pursue a full course

of study in the United States. 8 U.S.C. § 1101(a)(15)(F). (emphasis added). Under such statutory construction, aliens who fail to maintain their courses of study are subject to removal. 8 U.S.C. § 1227(a)(1)(C); *Elkins v. Moreno*, 435 U.S. 647 (1978) (A nonimmigrant in restricted classes seeking to establish domicile is deportable); *Khano v. INS*, 999 F.2d 1203, 1207 (7th Cir. 1993) (A student who failed to remain enrolled in full-time studies was deportable for failing to maintain the conditions of his nonimmigrant status).

The D.C. Circuit's interpretation turns on its determination that the F-1 definition does not speak to when a student's "visit should begin or end." Pet'r.'s App.at 25a. As the D.C. Circuit has found ambiguity, and it does not "delineate the full terms of that stay," the D.C. Circuit turns to the delegation in Section 1184(a)(1) (discussed *infra*) for support.

In support of its holding, the D.C. Circuit relies on *Doe, I v. Fed. Election Comm'n*, 920 F.3d 866, 871 (D.C. Cir. 2019). It asserts that the courts will uphold regulations that are "reasonably related" to the purposes of the legislation. *Id*. (citing *Mouring v. Family Publ'ns Serv.*, 411 U.S. 356, 369 (1973)).

This conclusion is not legally or factually supportable. If a regulation conflicts with the plain reading of the statutory text, the statute controls. *Murphy v. IRS,* 493 F.3d 170, 176 (D.C. Cir. 2007). Nor can an agency, via regulation, act inconsistently with the plain limits placed on that agency through statute. *Doe*, 920 F.3d at 874 (Henderson,J., dissenting).

In interpreting a statute, "we begin with the text." *Arlington Cent. Sch. Dist. Bd. Of Educ. v. Murphy,* 548 U.S. 291, 296 (2006). The plain language of the F-1 definition limits both the start and end of the status. Pursuant to clear statutory construction, admission cannot be granted until an applicant is pursuing a full course of study. That admission ends once the visa holder/alien/student's full course of study has been completed. The word "solely" in this context is not ambiguous. The dictionary definition of solely is "to the exclusion of all else." *Solely*, Merriam-Webster Dictionary, (Rev'd ed. 2002). Hence, the plain reading of the statute is that the only permissible purpose for F-1 status is to pursue the full course of study and nothing more. Once that course of study is completed, the F-1 visa holder can no longer be considered in valid F-1 status.

The D.C. Circuit's description of nonimmigrant class definitions is correct in that the definitions are "each very brief, specifying little more than a type of person to be admitted and purpose for which they seek to enter." Pet'r.'s App.at 24a. The F-1 definition does exactly that. It outlines the exact purpose for entry – a full course of study – something that is not reasonably related to post-graduation employment. *Doe* is inapplicable as the F-1 statutory language controls and the OPT program, completed after the graduation, is not reasonably related to the full course of study requirement for F-1 status. While the executive branch is free to set time and condition limitations for the alien's departure, it cannot extend the F-1 status for an activity that falls outside the scope of the statute.

The D.C. Circuit also wrongly focuses on the phrase "seeks to enter." *Id*. at 41a. It's reliance on "seeks to enter" as a determinative provision is misplaced. It would ask this Court to uphold an interpretation that is wholly inconsistent with the remainder of the statute as well as with precedent. The D.C. Circuit concludes that the terms "seeks to enter" modifies the phrases "bona fide student" and "pursuing a full course of study." *Id*. at 43a-44a. This interpretation would turn both phrases into conditions of *entry* and not conditions of *status*. If this Court was to accept this interpretation, no alien in F-1 status who fails to maintain that status could be removed from the United States. Federal courts that have reviewed student removal matters have never made such a finding. *See Mashi v. Immigration & Naturalization Service*, 585 F.2d 1309 (5th Cir. 1978) (Holding that an alien did not fail to comply with conditions of status where he was a full-time student but fell below the course credit level.);

8 U.S.C. § 1227(a)(1)(C) provides that an alien is removable from the United States when that alien fails "to maintain the conditions of the nonimmigrant visa." 8 U.S.C. § 1227(a)(1)(C). This is the proper ground of removal in situations where an alien overstays or otherwise fails to comply with the terms of the alien's visa, as set by Congress. In this context, when a student fails to remain enrolled in school, that student is properly placed in removal proceedings. The D.C. Circuit's interpretation, however, would undo decades of immigration precedent by questioning whether those students did, in fact, fail to comply with the terms of their nonimmigrant F-1 visas. The majority opinion's logic would suggest that, so long as the student

intended to seek a full course of study in the United States at the time of the student's entry and admission, the student has not failed to comply with the terms of the visa.

"The formation of… policies [pertaining to the entry of aliens and their right to remain here] is entrusted exclusively to Congress and has become about as firmly imbedded in the legislative and judiciary tissues of our body politic as any aspect of our government." *Galvan v. Press*, 347 U.S. 522, 531 (1954). The interpretation at issue, and the logical consequences thereof, are inconsistent with the Court's holding in *Galvin*. There is simply no indication within the statutory text that F-1 conditions for admissions do not, likewise, dictate conditions for the status itself.

As a practical matter, the D.C. Circuit's interpretation of the F-1 definition implicates the federal government's ability to remove other classifications of aliens and would drastically undercut the enforcement of immigration law. This is because the F-1 definition is not unique in its use of the term "seeks to enter." In fact, this radical interpretation would affect aliens entering as members of the press or media under 8 U.S.C. § 1101(a)(15)(I), on fiancé visas, *Id*. at (a)(15)(K), as intracompany transfers, *Id*. at (a)(15)(L), as vocational students, *Id*. at (a)(15)(M), as aliens of extraordinary abilities, *Id*. at (a)(15)(O), as entertainers and athletes, *Id*. at (a)(15)(P), and as religious workers, *Id*. at (a)(15)(R).

This interpretation not only impinges on Congress' plenary authority but would also erode this country's immigration system. As nonimmigrants are expected

to comply with the conditions of their visa, an interpretation that divorces entry requirements from conditions would provide massive incentives for fraud. This would become prevalent in the student visa context as well as in other nonimmigrant categories utilizing the phrase "seeks to enter." Furthermore, status holders of these categories would contest removal proceedings arguing that they no longer must comply with any conditions once they are physically admitted into the United States. This creates absurd results. An alien on a fiancé visa, for example, could remain in status even if the alien never married. A basketball player on a P-visa would need only intend to play basketball in the United States but could then pursue a real estate. Further, this would set a disturbing precedent akin to a judicial version of prosecutorial discretion. The nonimmigrant visa process would break down as the intent of the alien at the time of entry would be the sole factor for removal. So long as an alien is admitted in any of the classes enumerated herein, the D.C. Circuit would find that they are absolved of any conditions of entry or duration of status.

B. Section 1184 of the INA Does Not Confer Plenary Authority Over Admitted Nonimmigrants

The D.C. Circuit Court's interpretation rests largely on the discretion afforded the executive branch in regulating nonimmigrant admissions. 8 U.S.C. § 1184(a)(1). In pertinent part, that statute states:

> 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 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 248, such alien will depart from the United States. *Id*.

The D.C. Circuit's sole focus on the "time and condition" clause is misplaced. While the executive branch has broader authority to regulate in this space, the D.C. Circuit seemingly ignores two important factors. First, the majority opinion ignores the plain reading of the remainder of the statute, including the definitions section contained within Section 1101. The delegation of authority in Section 1184(a)(1) should not be interpreted as usurping Congressional legislative authority or intent of the enabling statute. Even within the remainder of Section 1184, Congress clearly proscribes conditions for various nonimmigrant visa categories that require agency rulemaking. Reading the delegation of authority in Section 1184(a)(1) as providing a broad delegation encompassing the entire gamut of nonimmigrant admissions would render the remainder of Section 1184 superfluous. Yet "[i]t is our duty to give effect, if possible to ever clause and word of a statute." *Duncan v. Walker*, 533 U.S. 167, 174 (2001). Instead, the D.C. Circuit should consider that the "time and condition" delegation was meant to

provide authority, but only within clear statutory confines.

Second, the D.C. Circuit ignores the remainder of the provision cited *supra*. While discounting the bond provision, the D.C. Circuit should have looked beyond the reasons for allowing for bond. Specifically, Congress wanted to ensure that nonimmigrants maintained the appropriate status and timely departure. The Circuit Court discounted the possibility, by not addressing it, that the "time and condition" clause was meant to be modified by the purpose – to wit, ensuring the maintenance of status and ultimate departure.

Admittedly, the executive branch has broad discretion in carrying out the immigration laws. *Arizona v. United States*, 567 U.S. 387, 396 (2012). That discretion cannot, however, exceed the confines Congress has established. *Kleindienst*, 408 U.S. at 766 (citing *Boutilier v. INS*, 387 U.S. 118, 123 (1967)). A regulatory delegation as broad as the D.C. Circuit suggests, impinge on Congress' plenary authority as the delegation falls far outside the scope of the INA. Nowhere does the INA suggest that the nonimmigrant definitions that include "seeks to enter" are not subject to those entry conditions during the duration of the status. Furthermore, the remainder of Section 1184 includes specific references to several of those categories, confirming that the conditions laid out in the definition do, in fact, apply for the duration of the nonimmigrant's stay.

The Court should not allow the D.C. Circuit's sweeping interpretation to upend separation of powers

and grant broad authority to the executive branch where Congress clearly has not delegated such authority. In its holding, the D.C. Circuit found reasonableness where reasonableness does not exist and created ambiguity where the statute is the clearest. As immigration law long has been subject to executive overreach, the Court should ensure that the broad judicial discretion afforded to the executive branch is placed in check.

II. Section 1324a Does Not Delegate Authority to the Executive Branch

The Immigration Reform and Control Act of 1986 ("IRCA") established sanctions for employers hiring aliens unauthorized to work in the United States. For employment eligibility purposes, IRCA defined "unauthorized alien" as an alien who is not either "an alien lawfully admitted for permanent residence" or "authorized to be so employed by this Act or by the Attorney General." 8 U.S.C. § 1324a(h)(3).

Petitioners argue that this definition does not confer specific authority to DHS to regulate classes of aliens eligible to work in the United States. The D.C. Circuit held, however, that this definition was not a delegation but an acknowledgement that that employment authorization may be granted solely through the regulatory process. Given the statute as read in its overall context, the breadth of the supposed delegation, and the regulatory scheme, section 1324a cannot be read to delegate such vast authority.

A. When read in the context of the INA, section 1324a does not delegate authority to the executive branch.

Section 1324a(h)(3) cannot be read in a vacuum. "It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *West Virginia v. EPA*, 142 S. Ct. 2587, 2607 (2022) (citing *Davis v. Michigan Dept. of Transportation*, 489 U.S. 803, 809 (1989)). Here, the D.C. Circuit failed to read Section 1324a(h)(3) in the context of the remainder of the INA and never opined on whether "…Congress meant to confer the power the agency asserts." *Id.* at 2608 (citing *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 159 (2000)).

Instead, the D.C. Circuit cited a Reagan-era statement suggesting that Congress "…defined 'unauthorized alien' in such a fashion as to exclude aliens who have been authorized employment by the Attorney General through the regulatory process, in addition to those who are authorized employment by statute." Employment Authorization: Classes of Aliens Eligible, 52 Fed. Reg. 46,092, 46,093 (Dec. 4, 1987). In doing so, the court ignored the INA's numerous references to employment authorization, including certain instances in which the statute specifically authorizes the Attorney General, now the DHS Secretary, to act.

For example, the asylum statute belies the D.C. Circuit's holding. Section 1158 includes two references to employment authorization. For those granted asylum status, the Attorney General shall provide the

authorization. 8 U.S.C. 1158(c)(1)(B). However, for asylum applicants:

> "An applicant for asylum is not *entitled* to employment authorization, but such authorization *may be provided by the Attorney General*. An applicant who is not otherwise eligible for employment authorization shall not be granted such authorization prior to 180 days after the date of filing of the application for asylum." (emphasis added) 8 U.S.C. § 1158(d)(2).

In the latter instance, Congress has delegated authority to the executive branch to regulate. This does not cede absolute authority over the subject beyond the asylum applicant. *Jama v. Immigr. & Customs Enf't*, 543 U.S. 355, 341 (2005) ("We do not lightly assume that Congress has omitted from its adopted text requirements that it nonetheless intends to apply, and our reluctance is even greater when Congress has shown elsewhere in the same statute that it knows how to make such a requirement manifest.").

So, too, the statutory provisions governing nonimmigrant visas demonstrate the limitation on the executive branch to grant employment authorization in its discretion. 8 U.S.C. § 1184. Congress provided DHS statutory authority to waive certain conditions of admission in its discretion. *Id.* at (c)(4)(B)(ii) (permitting DHS to waive the international recognition requirement for P visa applicants); *id.* at (c)(14)(A)(ii) (permitting DHS to deny H visa petitions where DHS has found a substantial failure to meet any of the conditions of the petition); *id.* at (d)(1) (providing discretionary authority for DHS to waive the

requirement that a fiancé visa beneficiary has previously met the petitioner). Waivers in these instances will provide the executive branch the authority to grant work authorization to aliens otherwise not eligible under statute to be admitted as nonimmigrants or to work.

B. The Breadth of the Supposed Delegation Does Not Support the D.C. Circuit's Reading of Section 1324a.

Amici do not contest that Congress has delegated DHS certain authorities in the execution of its functions under the INA. That delegation, however, cannot be read to provide "a further delegation to define other functions well beyond the statute's specific grants of authority." *Gonzales v. Oregon*, 546 U.S. 243, 264-265 (2006). "Extraordinary grants of regulatory authority are rarely accomplished through 'modest words,' 'vague terms,' or 'subtle device[s].'" *West Virginia*, 142 S. Ct. at 2609 (citing *Whitman*, 531 U.S. at 468).

In the instant case, there is no broad delegation from Congress, nor is there even an implicit delegation to DHS to grant employment authorization outside the strict parameters Congress has established. Where Congress has delegated regulatory authority to the executive branch, the statute is clear. While the D.C. Circuit relies heavily on the wording of Section 1324a(h)(3), it has failed to put any faith in the plain meaning of the words in the context of the statute. Surely, Congress intended for the executive branch to promulgate regulations to implement the authorities provided by Congress, but there is no indication of any

broader delegation. If Congress had intended to provide broad delegation over work authorization, it would never have carved out specific delegations in Sections 1158 and 1184. *Whitman,* 531 U.S. at 468 ("Congress…does not alter the fundamental details of a regulatory scheme in vague terms or ancillary provisions – it does not, one might say, hide elephants in mouseholes.") The definition in § 1324a(h)(3) is merely an acknowledgement that there are instances where the executive branch *may* provide work authorization pursuant to statutory delegations but is not an independent grant of any additional authorities.

Current regulations also suggest a difference in the manner in which authorization is given to OPT applicants. The regulation separates work authorization into three distinct categories: those aliens authorized to work incident to status, those authorized to work with a specific employer incident to status, and those authorized to work only with permission from the government. 8 C.F.R. § 274a.12. The regulation permits work authorization for F-1 students seeking on-campus employment in certain circumstances, as well as curricular practical training for specific employers, incident to status. 8 C.F.R. § 274a.12(b)(6). By contrast, OPT employment authorization is found under 8 C.F.R. § 274a.12(c), which requires the would-be worker to apply for work authorization. 8 C.F.R. § 274a.12(c)(3). This is the same section that provides authorization for asylum applicants. *Id*. at (c)(8). If the government had the authority, pursuant to the F-1 visa definition, to promulgate work authorization, it should be akin to the other work authorizations for students that are

incident to status. Instead, it is limited only to instances where an application is made to the government. With no statutory basis for the OPT work authorization, *Amici* would argue that the executive branch could not promulgate an OPT work authorization that was incident to status as Congress simply had not authorized it.

The lower court failed to properly analyze this matter in light of the Court's holding in *West Virginia*. Hereto, there lacks an explicit, or even implicit, delegation of authority to grant broad work authorization to the executive branch.

CONCLUSION

For the foregoing reasons, *Amici* Members of U.S. House of Representatives respectfully request that the Court grant Petitioner's Petition for Certiorari and to hold unlawful the OPT Program as executive overreach. The D.C. Circuit's judgement should be vacated.

Respectfully submitted,

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APPENDIX

APPENDIX

TABLE OF CONTENTS

APPENDIX A

AMICI CURIAE MEMBERS OF THE HOUSE OF REPRESENTATIVES

1. Representative Brian Babin (TX-36), *Lead Amici*
2. Representative Tom McClintock (CA-05), *Lead Amici*
3. Representative Andy Biggs (AZ-05)
4. Representative Dan Bishop (NC-08)
5. Representative Lauren Boebert (CO-03)
6. Representative Josh Brecheen (OK-02)
7. Representative Eric Burlison (MO-07)
8. Representative John Carter (TX-31)
9. Representative Andrew Clyde (GA-09)
10. Representative Eli Crane (AZ-02)
11. Representative Byron Donalds (FL-19)
12. Representative Jeff Duncan (SC-03)
13. Representative Bob Good (VA-05)
14. Representative Lance Gooden (TX-05)
15. Representative Paul Gosar (AZ-09)
16. Representative Mark Green (TN-07)

17. Representative Harriet Hageman (WY-AL)
18. Representative Richard Hudson (NC-09)
19. Representative Mike Johnson (LA-04)
20. Representative Laurel Lee (FL-15)
21. Representative Debbie Lesko (AZ-08)
22. Representative Anna Paulina Luna (FL-13)
23. Representative Morgan Luttrell (TX-08)
24. Representative Mary Miller (IL-15)
25. Representative Alex Mooney (WV-02)
26. Representative Troy Nehls (TX-22)
27. Representative Andy Ogles (TN-05)
28. Representative Scott Perry (PA-10)
29. Representative Chip Roy (TX-21)
30. Representative Tom Tiffany (WI-07)
31. Representative Randy Weber (TX-14)