No. 24-923

In the Supreme Court of the United States

SAVE JOBS USA, PETITIONER

v.

DEPARTMENT OF HOMELAND SECURITY, ET AL.

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

BRIEF FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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QUESTIONS PRESENTED

Congress has provided 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 of Homeland Security] may by regulations prescribe." 8 U.S.C. 1184(a)(1). The Secretary has promulgated regulations prescribing that the nonimmigrant spouses of certain aliens who are admitted to perform services in certain "specialty occupation[s]," 8 U.S.C. 1101(a)(15)(H)(i)(b), may themselves apply for work authorization in specified circumstances. See 8 C.F.R. 214.2(h)(9)(iv), 274a.12(c)(26). The questions presented are:

1. Whether the Secretary had authority to promulgate the regulations.

2. Whether petitioner, an advocacy association, has Article III standing to challenge the regulations.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-8) is reported at 111 F.4th 76. A prior opinion of the court of appeals (Pet. App. 27-40) is reported at 942 F.3d 504. The opinion of the district court (Pet. App. 9-26) is available at 2023 WL 2663005. A prior opinion of the district court (Pet. App. 41-60) is reported at 210 F. Supp. 3d 1. Another prior opinion of the district court is reported at 105 F. Supp. 3d 108.

JURISDICTION

The judgment of the court of appeals was entered on August 2, 2024. A petition for rehearing was denied on November 22, 2024 (Pet. App. 61). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. The Immigration Act of 1924, ch. 190, 43 Stat. 153, authorized the entry of various aliens as "non-quota immigrant[s]." § 4, 43 Stat. 155. The 1924 statute further provided that "[t]he admission to the United States of * * * a non-quota immigrant * * * shall be for such time as may be by regulations prescribed, and under such conditions as may be by regulations prescribed." § 15, 43 Stat. 162-163.

In 1952, Congress enacted the Immigration and Nationality Act (INA), ch. 477, 66 Stat. 163 (8 U.S.C. 1101 *et seq.*), which expanded the categories of aliens admissible as what were now called "nonimmigrants" rather than "non-quota immigrants." See § 101(a)(15), 66 Stat. 167. As relevant here, the INA authorized the admission as a nonimmigrant of an alien "who is of distinguished merit and ability and who is coming temporarily to the United States to perform temporary services of an exceptional nature requiring such merit and ability." § 101(a)(15)(H)(i), 66 Stat. 168. Congress subsequently also authorized the admission as nonimmigrants of such an alien's "spouse and minor children * * * if accompanying him or following to join him." Act of Apr. 7, 1970, Pub. L. No. 91-225, § 1(a), 84 Stat. 116. The INA preserved the Executive's time-and-conditions authority, providing 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 Attorney General may by regulations prescribe." Ch. 477, § 214(a), 66 Stat. 189.

Congress has amended the INA many times over the ensuing decades, but the statutory provisions above have remained essentially intact. Today, a "nonimmigrant" is defined to include certain aliens "who [are]

coming temporarily to the United States to perform [certain] services * * * in a specialty occupation," 8 U.S.C. 1101(a)(15)(H)(i)(b), which generally means an occupation that requires "theoretical and practical application of a body of highly specialized knowledge" and "attainment of a bachelor's or higher degree in the specific specialty," 8 U.S.C. 1184(i)(1). Nonimmigrant workers admitted or otherwise accorded status under that provision are said to have "H-1B" status, named after the relevant subparagraph of Section 1101(a)(15). The INA also provides that the "alien spouse and minor children of any" alien specified in subparagraph (H) may qualify for nonimmigrant status "if accompanying him or following to join him." 8 U.S.C. 1101(a)(15)(H). Such spouses and children are said to have "H-4" status. And the INA continues to provide 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 of Homeland Security] may by regulations prescribe." 8 U.S.C. 1184(a)(1).*

b. Two other aspects of the immigration laws are relevant to this case. First, a nonimmigrant generally may become a lawful permanent resident (LPR) by filing an application for adjustment of status and demonstrating eligibility to receive an available immigrant visa, among other requirements. See 8 U.S.C. 1255(a). As relevant here, nonimmigrant H-1B workers may seek to become LPRs by way of employment-based immigrant visas. See 8 U.S.C. 1153(b). Although the period of authorized admission for a nonimmigrant

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* Section 1184(a)(1) refers to the Attorney General, but in 2002, Congress transferred the relevant authority to the Secretary of Homeland Security. See 6 U.S.C. 557; 8 U.S.C. 1103; *Nielsen* v. *Preap*, 586 U.S. 392, 397 n.2 (2019).

H-1B worker generally may not exceed six years, 8 U.S.C. 1184(g)(4), Congress has directed that the Secretary shall extend H-1B status beyond that six-year limit during the pendency of filings relating to an application for an employment-based immigrant visa or while such immigrant visa is unavailable because of statutory per-country limitations, if certain other conditions are satisfied. See American Competitiveness in the Twenty-first Century Act of 2000 (2000 Act), Pub. L. No. 106-313, §§ 104(c), 106(a) and (b), 114 Stat. 1253-1254; see 21st Century Department of Justice Appropriations Authorization Act (2002 Act), Pub. L. No. 107-273, § 11030A, 116 Stat. 1836-1837.

Second, Congress has prohibited an employer from employing any alien unless he or she is authorized to work. 8 U.S.C. 1324a(a); see Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, sec. 101(a)(1), 100 Stat. 3360 (enacting 8 U.S.C. 1324a). Congress has provided that an alien is generally authorized to work in three circumstances. One is when the individual is "lawfully admitted for permanent residence," 8 U.S.C. 1324a(h)(3)(A)—such as when granted an adjustment of status under 8 U.S.C. 1255(a) based on an available employment-based immigrant visa, see 8 U.S.C. 1153(b). Another is when the individual is "authorized to be so employed by [the INA]," 8 U.S.C. 1324a(h)(3)(B)—such as when admitted in H-1B status under Section 1101(a)(15)(H). And the last is when the individual is "authorized to be so employed * * * by the [Secretary]," *ibid.*—such as when the Secretary has promulgated a regulation to make eligible for employment authorization a particular class of nonimmigrants, *e.g.*, 46 Fed. Reg. 25,079, 25,081 (May 5, 1981) (final rule extending eligibility for employment authorization to the

nonimmigrant spouses of certain foreign government officials, exchange visitors, and international organization officers and employees); 8 C.F.R. 274a.12(c)(9).

2. In 2015, following notice-and-comment rulemaking, the Secretary promulgated a final rule "extending eligibility for employment authorization to certain H-4 dependent spouses of H-1B nonimmigrants who are seeking employment-based [LPR] status." 80 Fed. Reg. 10,284, 10,284 (Feb. 25, 2015); see *id.* at 10,285; 8 C.F.R. 214.2(h)(9)(iv) and 274a.12(c)(26). The Secretary cited and relied on his general immigration rulemaking authority in 6 U.S.C. 112 and 8 U.S.C. 1103(a)(3), as well as his time-and-conditions authority in 8 U.S.C. 1184(a) and his authority to grant employment authorization under 8 U.S.C. 1103(a)(1) and 1324a(h)(3)(B). See 80 Fed. Reg. at 10,285, 10,294-10,295.

The Secretary observed that H-1B workers often "must wait many years for employment-based immigrant visas to become available," and that those delays "increase the disincentives for H-1B nonimmigrants to pursue LPR status and thus increase the difficulties that U.S. employers have in retaining highly educated and highly skilled nonimmigrant workers." 80 Fed. Reg. at 10,284. The Secretary further observed that the "lack of employment authorization for H-4 dependent spouses often gives rise to personal and economic hardships for the families of H-1B nonimmigrants" and that those "hardships may increase the longer these families remain in the United States." *Ibid.* Accordingly, the Secretary explained that extending eligibility for work authorization to H-4 nonimmigrant spouses of the subset of H-1B workers who are seeking employment-based LPR status (and have satisfied the conditions set forth in the rule) would "ameliorate certain disincen-

tives that currently lead H-1B nonimmigrants to abandon efforts to remain in the United States while seeking LPR status"; "minimiz[e] disruptions to U.S. businesses employing such workers"; "support the U.S. economy, as the contributions H-1B nonimmigrants make to entrepreneurship and research and development are expected to assist overall economic growth and job creation"; and "bring U.S. immigration policies concerning this class of highly skilled workers more in line with those of other countries that compete to attract similar highly skilled workers." *Id.* at 10,285.

3. Petitioner is an advocacy association of former technology workers who allege that they lost their jobs and were replaced by H-1B workers. See Pet. App. 42. Petitioner brought this suit challenging the 2015 rule. In 2015, the district court denied petitioner's motion for a preliminary injunction against enforcement of the rule, finding that petitioner had not demonstrated the irreparable injury required to obtain such equitable relief. 105 F. Supp. 3d 108. When ruling on motions for summary judgment in 2016, the court held that petitioner lacked Article III standing because none of its members had suffered a cognizable injury to support associational standing. Pet. App. 41-60.

In 2019, the court of appeals reversed that ruling, finding that petitioner had standing because the rule would "subject its members to an actual or imminent increase in competition" for jobs. Pet. App. 27; see *id.* at 27-40. The court also permitted two individual H-4 nonimmigrants and a nonprofit advocacy organization to intervene. See 16-5287 C.A. Doc. 1764518 (Dec. 17, 2018). The organization and one of the individuals have participated in subsequent proceedings and are therefore respondents in this Court. See Sup. Ct. R. 12.6.

4. On remand, the district court issued the decision that petitioner now asks this Court to review. It granted the government's motion for summary judgment, which was supported by the intervenors, and denied petitioner's motion for summary judgment. Pet. App. 9-26.

a. The district court first rejected petitioner's contention that "Congress has never granted [the Department of Homeland Security (DHS)] authority to allow foreign nationals, like H-4 visa-holders, to work during their stay in the United States." Pet. App. 14; *id.* at 14-20. The court observed that the D.C. Circuit had addressed a similar contention in *Washington Alliance of Technology Workers* v. *United States Department of Homeland Security*, 50 F.4th 164 (2022), cert. denied, 144 S. Ct. 78 (2023) (No. 22-1071), and had rejected it based on "the text of the INA, decades of Executive-branch practice, and both explicit and implicit congressional ratification of that practice." Pet. App. 14.

As for the text of the INA, the district court observed that DHS "promulgated the H-4 Rule here pursuant to its time-and-conditions and general regulatory authority" in Sections 1184(a) and 1103(a)(3), respectively. Pet. App. 16. "On their face," the court explained, "the 'time' and 'conditions' of a visa-holder's stay in the United States include 'what an accompanying spouse may do while in the country,' as well as * * * 'whether they can work.'" *Ibid.* (brackets, citation, and ellipsis omitted). The court further explained that Section 1324a(h)(3) "verifies the plain meaning of those terms in the INA by recognizing that some visa-holders may be 'authorized to be employed by' DHS." *Ibid.* (citation and ellipses omitted). "In short," the court concluded, "Congress has expressly and knowingly empowered [DHS] to authorize employment as a permissible condi-

tion of an H-4 spouse's stay in the United States." *Ibid.* The court also observed that petitioner had failed to address or contest "the explicit statutory grant of time-and-conditions authority" in its briefing. *Id.* at 18.

As for executive practice, the district court observed that "the Executive Branch has had longstanding and open responsibility for authorizing employment for similar visa classes." Pet. App. 17. The court noted examples of such classes dating back to 1965, including "J-2 spouses," "spouses of foreign government officials," and "spouses of employees or officers of international organizations." *Ibid.*

As for congressional ratification, the district court explained that "Congress has repeatedly blessed" the Executive Branch's longstanding practice "by leaving the relevant provisions of the INA untouched, even as it [h]as amended other portions of the statute during the last several decades." Pet. App. 17. "That constitutes 'persuasive evidence that the interpretation is the one intended by Congress.'" *Ibid.* (quoting *CFTC* v. *Schor*, 478 U.S. 833, 846 (1986)).

b. The district court next rejected petitioner's contention that the INA's delegation of authority to the Secretary to authorize employment for H-4 spouses "violate[s] the constitutional separation of powers and related 'nondelegation doctrine.'" Pet. App. 20 (citation omitted); see *id.* at 20-22. The court explained that this Court has "held time and again, that a statutory delegation is constitutional as long as Congress 'lays down by legislative act an intelligible principle to which the person or body authorized to exercise the delegated authority is directed to conform.'" *Id.* at 21 (quoting *Gundy* v. *United States*, 588 U.S. 128, 135 (2019)) (brackets omitted). The district court further explained that

"[t]he 'intelligible principle' standard" is "satisfied unless 'Congress has failed to articulate any policy or standard' at all." *Ibid.* (quoting *Gundy*, 588 U.S. at 146) (brackets omitted).

Here, the district court explained, the "INA uses visa classes to identify who may enter temporarily and why," and so "'DHS must ensure that the times and conditions it attaches to the admission of nonimmigrant visa-holders are reasonably related to the purpose for which they were permitted to enter.'" Pet. App. 22 (quoting *Washington Alliance*, 50 F.4th at 178-179) (brackets omitted). That requirement, the court explained, "provides an intelligible principle of delegation." *Ibid.*

c. The district court also rejected petitioner's contention that the 2015 rule was arbitrary and capricious, in violation of the Administrative Procedure Act, 5 U.S.C. 706(2)(A). Pet. App. 23-26.

First, the district court rejected petitioner's argument that the rule "reversed without explanation a prior policy established by Congress and DHS." Pet. App. 23. The court observed that the agency in fact "did explain why it had decided to authorize employment for H-4 spouses": namely, "recent data and reports from experts" indicated that "'the lack of employment authorization for H-4 dependent spouses'" was causing H-1B workers "to 'abandon efforts to remain in the United States.'" *Id.* at 24 (quoting and citing 80 Fed. Reg. at 10,284-10,285, 10,304-10,305). As the court observed, the agency explained that "granting employment authorization for H-4 spouses" would address that lack of retention and thus "further[] the dual statutory purposes of H-1B workers performing specialty services

in the United States, and H-4 spouses accompanying them." *Id.* at 25 (citing 80 Fed. Reg. at 10,284-10,285).

Second, the district court rejected petitioner's contention that DHS "'entirely failed to consider' the 'negative effect' that the H-4 Rule could have on American workers." Pet. App. 25 (citation omitted). The court explained that DHS had "noted that the H-4 Rule would 'not result in "new" additions to the labor market' because 'it simply accelerates the timeframe by which H-4 spouses can enter the labor market,'" *ibid.* (quoting 80 Fed. Reg. at 10,309) (brackets omitted); that DHS had "calculated that 'even if every eligible H-4 spouse took advantage of the rule in the first year (the year with the most newly-eligible H-4 spouses) it would amount to less than 0.12% of the U.S. workforce,'" *ibid.* (citing 80 Fed. Reg. at 10,295, 10,309); and that DHS had "noted that commenters predicting negative impacts on American jobs did not provide any empirical support for that prediction," *ibid.* (citing 80 Fed. Reg. at 10,296). The court thus found DHS's conclusion "that the H-4 Rule's benefits outweighed its 'minimal' economic costs" was sufficient "to establish a 'rational connection between the facts found and the choice made.'" *Ibid.* (citations omitted).

d. Finally, the district court made clear that it was not relying on any deference under *Chevron U.S.A. Inc.* v. *NRDC, Inc.*, 467 U.S. 837 (1984), because it concluded that "the statute's text and history plainly permit [DHS] to authorize employment for H-4 spouses." Pet. App. 17 n.6. The court alternatively held that "[w]ere there any ambiguity in the INA," the government had "reasonably resolved it" under *Chevron*. *Id.* at 18 n.6.

5. Petitioner filed a notice of appeal and a petition for a writ of certiorari before judgment. This Court denied

the petition, 144 S. Ct. 371 (No. 23-22), and also denied the petition for a writ of certiorari in *Washington Alliance of Technology Workers* v. *United States Department of Homeland Security*, 144 S. Ct. 78 (2023) (No. 22-1071).

6. The court of appeals affirmed the district court's judgment. Pet. App. 1-8.

The court of appeals explained that it "ha[d] already interpreted the relevant provisions of the INA" in *Washington Alliance*, *supra*, and that petitioner "ha[d] not meaningfully distinguished this case from that binding precedent." Pet. App. 1; see *id.* at 5. The court observed that *Washington Alliance* upheld a rule authorizing certain nonimmigrant students holding F-1 visas to temporarily engage in practical training reasonably related to their studies for "two key reasons": (1) Section 1184(a)(1) "'specifically provides' DHS with 'time-and-conditions authority'"; and (2) "'sections 1184(a) and 1103(a)'" confer "'broad authority'" on DHS, such that "'the INA need not specifically authorize each and every action taken by DHS, so long as its action is reasonably related to the duties imposed upon it.'" *Id.* at 4-5 (citations omitted). The court explained that those same reasons supported the rule here, and that petitioner had not argued to the contrary. *Id.* at 5-6.

The court of appeals also rejected petitioner's request to overrule *Washington Alliance* on the ground that "it did not address the major questions doctrine." Pet. App. 6; see *id.* at 6-7. The court explained that "the function of the major questions doctrine" is "to help courts figure out what a statute means," and that *Washington Alliance* "has already done that" here. *Id.* at 7. The court observed that *Washington Alliance* "was decided after" this Court's decision in *West Virginia* v.

EPA, 597 U.S. 697 (2022), and there was accordingly no basis to reconsider *Washington Alliance* in light of that decision. Pet. App. 7.

ARGUMENT

Petitioner renews its contention (Pet. 12-30) that the Secretary of Homeland Security lacked authority to promulgate the 2015 rule. The court of appeals correctly rejected that contention, and its decision does not conflict with any decision of this Court or another court of appeals. This case also would be a poor vehicle in which to address the rule's legality because petitioner lacks Article III standing, which is a threshold issue that this Court would have to address before reaching the merits of petitioner's claim. This Court previously denied both the petition for a writ of certiorari in *Washington Alliance of Technology Workers* v. *United States Department of Homeland Security*, 144 S. Ct. 78 (2023) (No. 22-1071), and the petition for a writ of certiorari before judgment in this case, 144 S. Ct. 371 (No. 23-22). The same result is warranted here.

1. a. The courts below correctly held that the Secretary had statutory authority under the INA to promulgate the 2015 rule. Pet. App. 4-7; *id.* at 14-20. The rule permits a limited group of H-4 dependent spouses of certain H-1B nonimmigrant specialty occupation workers to apply for temporary employment authorization while they pursue status as lawful permanent residents. See pp. 5-6, *supra*. The INA 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). H-4 spouses are admitted as "nonimmigrant[s]," 8 U.S.C. 1101(a)(15), and the challenged provisions of the 2015 rule plainly prescribe both

the "time"—for the duration of the H-1B spouse's authorized presence in the United States—and the "conditions"—including that the H-1B spouse be seeking employment-based LPR status and have satisfied the requirements set forth in the rule—of an H-4 spouse's admission. The plain text of Section 1184(a)(1) thus authorizes the rule.

Petitioner does not seriously dispute that conclusion; indeed, it forfeited any argument to the contrary in the district court. See Pet. App. 5 & n.3, 18. Instead, in this Court petitioner contends (Pet. 12-15) that Section 1101(a)(15)(H) itself precludes the Secretary's exercise of his authority under Section 1184(a)(1) to grant eligibility for work authorization to H-4 nonimmigrants. According to petitioner, because subparagraph (H) does not *compel* the Secretary to grant work authorization to H-4 nonimmigrant spouses, it must be read to *forbid* the Secretary from doing so, rendering the 2015 rule "*ultra vires*." Pet. 15; see Pet. 14-15.

That argument lacks merit. Subparagraph (H) provides that the spouse of an H-1B worker may be admitted as a nonimmigrant "if accompanying him or following to join him." 8 U.S.C. 1101(a)(15)(H). It does not purport to specify the time and conditions for the admission of a spouse who satisfies that requirement—much less impose a bright-line "no employment" limit on the Executive's authority under Section 1184(a)(1) to prescribe, by regulation, what the times and conditions of admission will be. Petitioner's contrary argument—that subparagraph (H)'s silence should be read as an affirmative prohibition—overlooks the grant of authority in Section 1184(a)(1).

The Secretary's time-and-conditions authority under Section 1184(a)(1) of course is not unbounded, as the court

of appeals recognized. See Pet. App. 5. That authority is limited not just by "basic principles of administrative law," *Washington Alliance of Technology Workers* v. *United States Department of Homeland Security*, 50 F.4th 164, 189 (D.C. Cir. 2022), cert. denied, 144 S. Ct. 78 (2023), but also by the definitions of specific nonimmigrant classes in Section 1101(a)(15). See *id.* at 178-180, 189-190. As the district court explained, "DHS must ensure that the times and conditions it attaches to the admission of nonimmigrant visa-holders are reasonably related to the purpose for which they were permitted to enter." Pet. App. 22 (quoting *Washington Alliance*, 50 F.4th at 179) (brackets omitted); cf. *Mourning* v. *Family Publications Service, Inc.*, 411 U.S. 356, 369 (1973) ("Where the empowering provision of a statute states simply that the agency may 'make such rules and regulations as may be necessary to carry out the provisions of this Act,' we have held that the validity of a regulation promulgated thereunder will be sustained so long as it is 'reasonably related to the purposes of the enabling legislation.'") (citation, ellipsis, and footnote omitted). That is the best way to harmonize Section 1101(a)(15)'s descriptions of the various classes of nonimmigrants with Section 1184(a)(1)'s express grant of time-and-conditions authority to the Secretary. Cf. *Epic Systems Corp.* v. *Lewis*, 584 U.S. 497, 502 (2018) ("It is this Court's duty to interpret Congress's statutes as a harmonious whole rather than at war with one another.").

Here, the 2015 rule "is reasonably related to the nature and purpose of the H-4 visa class." Pet. App. 24 (brackets and citation omitted). H-4 spouses are admitted for the purpose of "accompanying" or "join[ing]" H-1B nonimmigrants, who in turn have been admitted

to "perform services in a specialty occupation." *Ibid.* (quoting 8 U.S.C. 1101(a)(15)(H)) (ellipsis omitted). Congress also has provided that such H-1B workers may be granted LPR status if they are eligible for an employment-based immigrant visa and satisfy certain other conditions. See 8 U.S.C. 1255(a). And Congress expressly directed DHS to extend the duration of those workers' stay beyond otherwise-applicable statutory limits during the pendency of filings related to their applications for LPR status or while an applicable immigrant visa is unavailable because of statutory per-country limitations, if certain conditions are met. See 2002 Act § 11030A(a) and (b), 116 Stat. 1836-1837; 2000 Act §§ 104(c), 106(a) and (b), 114 Stat. 1253-1254.

At the same time, DHS recognized that the inability of H-4 spouses to work "'often gives rise to personal and economic hardships for the families of H-1B nonimmigrants,' leading them to 'abandon efforts to remain in the United States.'" Pet. App. 24 (quoting 80 Fed. Reg. at 10,284-10,285). Such abandonment would directly undermine Congress's express goal in the 2000 Act and 2002 Act of encouraging many H-1B workers to remain in the United States during the pendency of the LPR application process. It would also undermine Congress's goal in authorizing admission for H-4 spouses and children in the first place—namely, to eliminate a strong disincentive for H-1B workers with families to come to or remain in the United States and satisfy the economic needs for their specialty services. Extending eligibility for employment authorization to H-4 spouses therefore "furthers the dual statutory purposes of H-1B workers performing specialty services in the United States, and H-4 spouses accompanying them." *Id.* at 25. Accordingly, the 2015 rule "is reasonably related to the

nature and purpose of the H-4 visa class." *Id.* at 24 (brackets and citation omitted).

b. It would be particularly anomalous to read subparagraph (H)'s *silence* about employment for H-4 spouses as a categorical *prohibition* on such employment, as petitioner urges (Pet. 14-15), given the 1986 enactment of 8 U.S.C. 1324a(h)(3). That provision, which specifically addresses the unlawful employment of aliens, expressly *excludes* from the definition of "'unauthorized alien'" any alien who is "authorized to be so employed * * * by the [Secretary]." 8 U.S.C. 1324a(h)(3). That provision plainly reflects Congress's understanding that DHS *may* lawfully authorize employment for nonimmigrants by regulation. See *Washington Alliance*, 50 F.4th at 191-192. The Executive Branch has long understood Section 1324a(h)(3) in that manner, explaining that "the only logical way to interpret [Section 1324a(h)(3)] is that Congress, being fully aware of the Attorney General's authority to promulgate regulations, * * * approv[ed] of the manner in which he has exercised that authority." 52 Fed. Reg. 46,092, 46,093 (Dec. 4, 1987) (denial of petition for rulemaking).

To be sure, Section 1324a(h)(3) is a definitional provision, not a direct conferral of authority. But "the words of a statute must be read in their context and with a view to their place in the overall statutory scheme," *Parker Drilling Management Services, Ltd.* v. *Newton*, 587 U.S. 601, 608 (2019) (citation omitted), and thus "[w]hat matters is that section 1324a(h)(3) expressly *acknowledges* that employment authorization need not be specifically conferred by statute; it can also be granted by regulation," *Washington Alliance*, 50 F.4th at 191-192 (emphasis added). Indeed, petitioner's own heavy reliance on subparagraph (H)'s silence to limit

the express time-and-conditions authority conferred by Section 1184(a)(1) belies any notion that definitional provisions are irrelevant to the interpretation of related authority-conferring provisions, for subparagraph (H) itself is merely definitional. See 8 U.S.C. 1101(a)(15) (defining classes of aliens who are deemed to be "nonimmigrant[s]" rather than "'immigrant[s]'").

c. The statutory and regulatory history confirm what the INA's plain text already indicates: The Secretary has authority to permit H-4 spouses to be eligible for employment authorization under certain circumstances. Congress has expressly authorized the Executive Branch to use regulations to prescribe the time and conditions of a nonimmigrant's admission since 1924, and the Executive Branch has exercised that authority to grant eligibility for employment authorization to alien spouses for many decades. See Pet. App. 17. As the district court observed, Congress was well aware of that exercise of authority and "repeatedly blessed it by leaving the relevant provisions of the INA untouched, even as it [h]as amended other portions of the statute during the last several decades." *Ibid.* "It is well established that when Congress revisits a statute giving rise to a longstanding administrative interpretation without pertinent change, the 'congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress.'" *CFTC* v. *Schor*, 478 U.S. 833, 846 (1986) (citation omitted); see *Bragdon* v. *Abbott*, 524 U.S. 624, 645 (1998); *NLRB* v. *Gullett Gin Co.*, 340 U.S. 361, 365-366 & n.3 (1951); Antonin Scalia & Bryan A. Garner, *Reading Law* 323-324 & n.8 (2012).

d. Petitioner contends that the court of appeals interpreted Section 1101(a)(15) to impose "entry require-

ments that do not apply while an alien is in the United States," which would "create[] absurdity throughout the nonimmigrant visa system." Pet. 16; see Pet. 15-17. That contention lacks merit. The court did not hold, either in the decision below or in its earlier decision in *Washington Alliance*, *supra*, that the statutory requirements in Section 1101(a)(15) cease to apply once the alien has been admitted to the United States. Quite the opposite. For example, *Washington Alliance* held that Section 1101(a)(15)(F)(i) "guides DHS in exercising its authority to set the time and conditions of F-1 students' stay" under Section 1184(a)(1), and that "DHS must ensure that the times and conditions it attaches to the admission of F-1 students are reasonably related to the purpose for which they were permitted to enter" under Section 1101(a)(15)(F)(i). 50 F.4th at 178-179. The court applied that principle to Section 1101(a)(15)(H) in the decision below. See Pet. App. 4-6. As explained above, the court's interpretation of the INA harmonizes Sections 1101(a)(15), 1184(a)(1), and 1324a(h)(3). Petitioner's preferred interpretation, in contrast, creates needless contradictions between those INA provisions and would nullify both the authority granted in Section 1184(a)(1) and the express recognition in Section 1324a(h)(3) that the Secretary may designate certain nonimmigrants as eligible for employment.

e. To the extent petitioner contends (cf. Pet. 10-11, 28-30) that the decision below contravenes the major-questions doctrine, that contention lacks merit. This Court has stated that the major-questions doctrine reflects the interpretive principle that "[e]xtraordinary grants of regulatory authority are rarely accomplished through 'modest words,' 'vague terms,' or 'subtle de-

vices.'" *West Virginia* v. *EPA*, 597 U.S. 697, 723 (2022) (brackets and citation omitted).

Here, there is nothing "'unusual,'" much less "[e]xtraordinary" or "'radical,'" about the Secretary's exercise of his time-and-conditions authority to extend eligibility for work authorization to nonimmigrant H-4 spouses. *West Virginia*, 597 U.S. at 722-723 (citations omitted). As explained above, for decades the Executive Branch has extended work authorization to nonimmigrants, including to aliens admitted as the spouses of other nonimmigrants, and Congress has never questioned—indeed, it has effectively ratified—those exercises of authority. Nor does the 2015 rule rely on "'modest words,' 'vague terms,' or 'subtle devices'" in the INA. *Id.* at 723 (brackets and citations omitted). Congress has expressly stated both that a nonimmigrant's admission "shall be for such time and under such conditions as the [Secretary] may by regulations prescribe," 8 U.S.C. 1184(a)(1), and that an alien may engage in employment when "authorized to be so employed * * * by the [Secretary]," 8 U.S.C. 1324a(h)(3).

Together, those provisions make clear that Congress authorized the Secretary to include eligibility for employment among the conditions that attach to a nonimmigrant's admission and continued presence in this country. Petitioner's policy objections (Pet. 30) to the number of aliens potentially affected by the 2015 rule (or the rule at issue in *Washington Alliance*, *supra*) do not convert a clearly authorized exercise of regulatory authority into a "major question" unauthorized by Congress. As Justice Barrett has observed, the major-questions doctrine neither "requires an unequivocal declaration from Congress authorizing the *precise* agency action under review" nor "purports to depart from

the best interpretation of the text." *Biden* v. *Nebraska*, 600 U.S. 477, 511 (2023) (Barrett, J., concurring) (citation and internal quotation marks omitted).

2. Petitioner argues (Pet. 3, 17-20, 23-26) that the court of appeals' decision gives rise to two circuit conflicts warranting this Court's review. That is incorrect.

First, petitioner errs in contending (Pet. 17-20) that the court of appeals' decisions in this case and in *Washington Alliance*, *supra*, "opened up a circuit split" on the ground that "every numbered circuit * * * treat[s] the statutory visa terms as applying to an alien's entire stay." Pet. 17-18. That contention relies on the same mischaracterization of the court of appeals' reasoning discussed above, see p. 18, *supra*. The court did not treat the visa requirements in Section 1101(a)(15) as applying only to entry, but instead recognized that those requirements must continue to guide the Secretary's discretion in exercising her *additional* statutory authorities under the INA to define the terms of a nonimmigrant's stay, including those in Sections 1184(a)(1) and 1324a(h)(3). None of the cases that petitioner cites (Pet. 18) even addresses that issue, much less conflicts with the court of appeals' harmonization of those INA provisions.

To the contrary, the cited cases say only that nonimmigrants generally are not authorized to remain here permanently, and that an alien may be removed once out of status. Nobody, including the court of appeals below, contends otherwise. For example, the cited footnote in *Toll* v. *Moreno*, 458 U.S. 1 (1982), observes only that certain nonimmigrant aliens, including foreign students and temporary workers, may not "establish[] domicile" absent some change of status. *Id.* at 14; see *id.* at 14 n.20. Similarly, the cited discussion in *Elkins*

v. *Moreno*, 435 U.S. 647 (1978), states only that "a nonimmigrant alien who does not maintain the conditions attached to his status can be deported * * * in the absence of an adjustment of status." *Id.* at 666 (citation omitted). The issue here, of course, is what the "conditions attached to [an H-4 nonimmigrant spouse's] status" are in the first place. *Ibid.*

Second, petitioner contends (Pet. 23-26) that the decision below conflicts with the interpretation of Section 1324a(h)(3) in the Fifth Circuit's decision in *Texas* v. *United States*, 809 F.3d 134 (2015) (*DAPA*), affirmed by an equally divided court, 579 U.S. 547 (2016) (per curiam). That contention is unsound. *DAPA* held that Section 1324a(h)(3) did not authorize the granting of "lawful presence and work authorization" to aliens who lacked lawful status and had never been admitted in the first place, as that would contravene "the INA's intricate system of immigration classifications and employment eligibility." *Id.* at 184. Nothing in *DAPA* conflicts with the court of appeals' interpretation of that "intricate system" here as authorizing the Secretary to permit, within bounds, a limited group of lawfully present H-4 dependent spouses of certain lawfully present H-1B nonimmigrant specialty occupation workers to apply for temporary employment authorization while they pursue LPR status. And petitioner's reliance (Pet. 25) on *Texas* v. *United States*, 126 F.4th 392 (5th Cir. 2025), is misplaced, as that case simply applied *DAPA* without even citing Section 1324a(h)(3). See *id.* at 417-418.

Even if petitioner had identified any conflict or tension among the circuits on the question presented, certiorari would be unwarranted. Throughout this litigation, petitioner has "ma[de] little effort trying to meaningfully distinguish this case from" the court of appeals'

earlier decision in *Washington Alliance*, Pet. App. 5, which petitioner itself describes has having "introduced" the "judicial interpretations of the INA" giving rise to the supposed circuit conflicts here, Pet. 8. See Pet. 11 (noting that petitioner sought to consolidate its previous petition for certiorari with the one in *Washington Alliance* "because both cases addressed identical issues in the context of different visas"). This Court denied certiorari in *Washington Alliance*, *supra* (No. 22-1071), and the same result is warranted here, given that the decision below simply applied *Washington Alliance* to the 2015 rule at issue in this case, see Pet. App. 4-6.

3. In any event, this case would be a poor vehicle in which to review the Secretary's statutory authority to promulgate the 2015 rule because petitioner lacks Article III standing. Article III limits the federal "judicial Power" to the adjudication of "Cases" and "Controversies." U.S. Const. Art. III, § 2, Cl. 1. An "essential and unchanging part of the case-or-controversy requirement" is Article III standing. *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 (1992). And because this case is not an exception to the general "rule that Article III jurisdiction is always an antecedent question," *Steel Co.* v. *Citizens for a Better Environment*, 523 U.S. 83, 101 (1998), the Court would have to address petitioner's standing before it could reach the merits of petitioner's challenge to the 2015 rule.

Article III standing requires a plaintiff to demonstrate an actual or imminent injury that is personal, concrete, and particularized; that is fairly traceable to the defendant's conduct; and that likely will be redressed by a favorable decision. *Lujan*, 504 U.S. at 560-561. In the district court, petitioner did not assert that it had standing in its own right to challenge the 2015

rule. Instead, petitioner claimed associational standing to sue on behalf of its members. See Pet. App. 48. An association may have standing on behalf of its members if, among other things, those members "are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit." *Warth* v. *Seldin*, 422 U.S. 490, 511 (1975). Petitioner asserted below that its members suffer competitive injuries from having to compete for jobs against foreign workers, and in its 2019 decision, the court of appeals held that petitioner had standing because the rule "increas[es] competition for jobs from H-1B visa holders." Pet. App. 33; see *id.* at 34 ("Absent the rule, argues [petitioner], at least some H-1B visa holders awaiting permanent residence would leave the United States—exiting the labor pool—because their spouses are unable to work.").

But petitioner did not identify a single member who is "suffering *immediate or threatened* injury" that is fairly traceable to the 2015 rule. *Warth*, 422 U.S. at 511 (emphasis added); cf. *Lujan*, 504 U.S. at 561 (explaining that a "plaintiff can no longer rest on * * * 'mere allegations'" of standing at summary judgment) (citation omitted). Petitioner submitted declarations from three of its members who asserted that they had lost their jobs in the past to H-1B workers. See D. Ct. Doc. 2-2, at 1-4 (Apr. 23, 2015) (Bradley Decl.); *id.* at 5-6 (Buchanan Decl.); *id.* at 7-9 (Gutierrez Decl.). But "past wrongs do not in themselves amount to that real and immediate threat of injury necessary to make out a case or controversy" to support prospective injunctive relief. *City of Los Angeles* v. *Lyons*, 461 U.S. 95, 103 (1983). Moreover, all three lost their jobs *before* the Secretary

issued the 2015 rule, so their injuries are not fairly traceable to that rule.

The court of appeals brushed past those flaws on the ground that "H-1B visa holders have competed with [petitioner's] members in the past, and, as far as we know, nothing prevents them from doing so in the future." Pet. App. 37. But that is precisely the type of speculative "'some day'" injury that this Court has found insufficient to establish "the 'actual or imminent' injury that [the Court's] cases require." *Lujan*, 504 U.S. at 564 (citation omitted).

Moreover, the court of appeals' reasoning is wrong even on its own terms. The question is not whether petitioner's members would face competition from H-1B workers generally, but instead whether they would compete for jobs against the subset of H-1B workers who (1) are eligible for and actively seeking LPR status; (2) have dependent spouses admitted as H-4 nonimmigrants who obtained work authorization under the 2015 rule; and (3) would have left this country but for their spouses' having obtained such work authorization. None of the three members who submitted declarations provided any basis to believe that he or she would compete against such an H-1B worker, making an injury based on such competition entirely speculative. Nor does it matter that "the rule will cause more H-1B visa holders to remain in the United States than otherwise would," Pet. App. 36, for that is the sort of "statistical probability" of injury that this Court has consistently rejected as a basis for standing. *Summers* v. *Earth Island Institute*, 555 U.S. 488, 497 (2009).

Indeed, petitioner's failure to demonstrate standing is all the more evident because its members' "asserted injur[ies] arise[] from the government's allegedly un-

lawful regulation (or lack of regulation) of *someone else*"—namely, H-4 spouses. *Lujan*, 504 U.S. at 562. As this Court has explained, "when the plaintiff is not himself the object of the government action or inaction he challenges, standing * * * is ordinarily 'substantially more difficult' to establish." *Ibid.* (citation omitted). This Court's need to address petitioner's Article III standing as a threshold issue would complicate review of the question presented.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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