No. 24-923

IN THE

Supreme Court of the United States

SAVE JOBS USA,

Petitioner,

v.

DEPARTMENT OF HOMELAND SECURITY, ET AL.,

Respondents.

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

RESPONDENT IMMIGRATION VOICE'S BRIEF IN OPPOSITION

CARL E. GOLDFARB
Counsel of Record
MEGAN NYMAN
BOIES SCHILLER FLEXNER LLP
cgoldfarb@bsfllp.com
401 East Las Olas Blvd.
Suite 1200
Fort Lauderdale, FL 33301
(954) 377-4203

Paul Chavez
AMERICANS FOR IMMIGRANT JUSTICE
6355 NW 36th Street
Suite 2201
Miami, FL 33166

Counsel for Immigration Voice

PARTIES TO THE PROCEEDING

Petitioner is Save Jobs USA. Petitioner was the Appellant in the court of appeals. Respondents are the U.S. Department of Homeland Security, Immigration Voice, and Anujkumar Dhamija. Mr. Dhamija has received his green card. As a result, he no longer depends on his H-4 visa status for work authorization and seeks withdrawal as a Respondent. Immigration Voice continues to represent its many members who rely on their H-4 visa status for work authorization.

CORPORATE DISCLOSURE STATEMENT

Immigration Voice does not have a parent corporation, and there is no publicly-held corporation that owns 10% or more of its stock.

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

Page(s)

STATUTORY AND OTHER
LEGISLATIVE MATERIALS

TABLE OF AUTHORITIES—Continued

Page(s)

OTHER AUTHORITIES

STATEMENT

The Petition arises from the court of appeals' unexceptional affirmance of the district court's decision granting summary judgment in favor of the Department of Homeland Security ("DHS"), and rejecting Save Jobs USA's ("Petitioner's") challenge to the H-4 Rule, Employment Authorization for Certain H-4 Dependent Spouses, 80 Fed. Reg. 10,283–312 (Feb. 25, 2015) (codified at 8 C.F.R. §§ 214, 274a). For more than seventy years, across multiple Democratic and Republican administrations, the Attorney General, and later the Secretary of DHS, have interpreted their authority to include the authority to issue work authorization to certain lawfully admitted nonimmigrants. The trial court's ruling and the court of appeals' affirmance are consistent with the controlling statutes, the Executive Branch's longstanding interpretation of its authority, as well as Congressional acquiescence to and ratification of the Executive Branch's interpretation and practice.

The court of appeals' opinion did not create a circuit split. Petitioner alleges two different circuit splits, neither of which bears scrutiny. First, Petitioner claims that the "entry-only-requirement" interpretation of the Immigration and Nationality Act ("INA") in *Washington Alliance of Technology Workers v. Department of Homeland Security*, 50 F.4th 164 (D.C. Cir. 2022) ("*Washtech*") created a circuit split. According to Petitioner, the "entry-only-requirement" interpretation specifies that the statutory conditions for visas are strictly entry requirements that cease to apply once an individual is admitted to the United

States. But the court of appeals' decision in this case does not mention, let alone rely on that "entry-only-requirement" interpretation, which accordingly is not relevant here, and even if it were, the decisions that Petitioner cites do not conflict with *Washtech*.

The court of appeals' opinion also does not conflict with the Fifth Circuit opinions that Petitioner invokes, which addressed in part issuance of work authorizations to individuals who entered the United States unlawfully. Unlike in this case, in those cases DHS did not and could not rely on 8 U.S.C. § 1184(a)(1), which states that "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," because the beneficiaries of Deferred Action for Childhood Arrivals ("DACA") and noncitizens who would have benefited from Deferred Action for Parents of Americans ("DAPA") in those cases had not been lawfully admitted as nonimmigrants.

Additionally, this case is a poor vehicle for raising a challenge under the major questions doctrine or the nondelegation doctrine. The longstanding practice, under Republican and Democratic administrations alike, of having Immigration and Naturalization Service ("INS") and later DHS grant work authorization to various classes of lawfully admitted nonimmigrants, makes this case an unlikely fit for a major questions or nondelegation challenge. Congressional acquiescence to, and at times ratification of this practice, furthers the point and makes this case unlike any case in which this Court has found such a challenge to be successful. And because this case involves an issue at the intersection of immigration policy, over which

Congress has plenary powers including powers of delegation to the Executive, and foreign affairs, over which the Executive's power approaches its zenith, this case is especially ill suited to a nondelegation challenge.

This case is also a poor vehicle for Petitioner's untimely challenge to the D.C. Circuit's opinion in *Washtech* and its effort to seek reconsideration of this Court's denial of the petition for writ of certiorari in that case, filed by the same counsel who filed the petition here. Petitioner focuses on an issue from *Washtech* that is not even presented here: the "entry-only-requirement" interpretation of the Immigration and Nationality Act ("INA"). Petitioner's characterization of the *Washtech* opinion is not only wrong, but wholly irrelevant here. The Optional Practical Training ("OPT") program at issue in *Washtech* permitted individuals to obtain work authorization even after they were no longer pursuing a course of study, which was a prerequisite for eligibility for an F-1 visa. In contrast, the H-4 Rule grants work authorization to individuals who satisfy the eligibility requirements for an H-4 visa for the entire time they are eligible for work authorization through the H-4 Rule. Thus, Petitioner is seeking an untimely second review of the *Washtech* opinion, through an issue not even raised in the opinion below, and has provided no reason for this Court to depart from its earlier decision to deny a functionally identical petition.

Finally, standing issues complicate this case, further confirming that this case is a poor vehicle for consideration of the issues the Petition seeks to raise. Petitioner claims to represent an association of individuals who lost their jobs to H-1B visa holders. Yet, it

fails to show that its members competed for jobs against the relevant subset of H-1B workers. And it cannot show its members competed for work against the H-1B workers' spouses who received work authorization through the H-4 Rule because Petitioner filed this action before the Rule even took effect. Petitioner also fails to show that it is facing any continuing injury because it does not show that its members are currently competing with the relevant subset of H-1B workers or their spouses. Finally, Petitioner's members are not the individuals who are regulated by the H-4 Rule. Rather, the asserted injuries arise from the government's allegedly unlawful regulation (or lack of regulation) of *someone else*—namely, H-4 spouses. In short, if the Court found that DHS lacked authority to issue the H-4 Rule, it would do nothing to redress the harm that the Save Jobs members experienced.

A. Statutory and Regulatory Background

In 1952, Congress enacted the INA, ch. 477, 66 Stat. 163 (8 U.S.C. § 1101 *et seq.*). The INA, in turn, establishes several classes of nonimmigrants, noncitizens who are permitted to enter the United States temporarily and for certain enumerated purposes. This case concerns the grant of work authorization for certain lawfully admitted spouses of specialty workers with an H-1B visa classification.

The INA authorizes DHS to admit foreign workers into the United States to engage in certain types of labor. § 101(a)(15), 66 Stat. 167. As enacted, subsection H(i) authorized the admission as a nonimmigrant of a noncitizen "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.

Today, the amended statute authorizes the admission of a noncitizen "who is coming temporarily to the United States to perform services . . . in a specialty occupation described in [8 U.S.C. § 1184(i)(1)] . . . who meets the requirements for the occupation specified in [8 U.S.C. § 1184(i)(2)][.]" 8 U.S.C. § 1101(a)(15)(H)(i)(b). Congress has also authorized the admission of such a noncitizen's "spouse and minor children . . . if accompanying him or following to join him." 8 U.S.C. § 1101(a)(15)(H). These individuals may reside in the country in the H-4 visa category.

If U.S. Citizenship and Immigration Services ("USCIS") approves an employer's H-1B petition (which must include a Labor Condition Application approved by the Department of Labor), 8 U.S.C. § 1182(n); 8 C.F.R. § 214.2(h)(1)(ii)(B), DHS admits the worker in H-1B status for up to three years. *See* 8 U.S.C. § 1184(g)(4); 8 C.F.R. § 214.2(h)(9)(iii). USCIS may extend a worker's H-1B status for up to three more years. 8 C.F.R. § 214.2(h)(15)(ii)(B)(1). Some H-1B visa holders apply for permanent residency or a green card.

Because of immigrant visa backlogs in certain employment-based preference categories, many highly-skilled H-1B workers who were seeking to become green card holders found their applications for employment-based immigration visas were still pending after six years when their H-1B visa status could no longer be extended, and so were forced to leave the country after years of productive employment. In response, Congress enacted the American Competitiveness in the Twenty-First Century Act of 2000 ("AC

21"), which permits H-1B workers to extend their stays in the United States in certain circumstances, essentially when they have pending applications for green cards. *See* AC 21, Pub. L. No. 106-313, §§ 104(a), 106(a)–(b), 114 Stat. 1251 (2000). DHS admits the worker's dependent spouse (and minor children) in H-4 status subject to the same period of admission, renewals, and limitations as the H-1B worker. *See* 8 C.F.R. § 214.2(h)(9)(iv).

DHS's final H-4 Rule applies only to H-4 dependent spouses of H-1B workers who either: (1) are principal beneficiaries of approved I-140 immigration petitions for noncitizen workers, or (2) have been granted H-1B extensions beyond six years under AC 21 § 106(a) and (b). The final rule thus provides temporary employment authorization for this limited group of lawfully admitted H-4 dependent spouses as they wait for their spouses to get green cards, simply accelerating when these intending immigrants would become eligible to apply for employment authorization based on pending I-485 adjustment of status applications. *See* 8 C.F.R. § 274a.12(c)(9).

DHS relied on three different provisions in the INA in issuing the H-4 Rule. First, it invoked § 1103(a)(1) of the INA, which charges DHS "with the administration and enforcement of [the INA] and all other laws relating to the immigration and naturalization of aliens." 8 U.S.C. § 1103(a)(1). To carry out this authority, the INA grants DHS the power to "establish such regulations," to "issue such instructions," and to "perform such other acts as he deems necessary for carrying out his authority" to "administ[er] and enforce[]" immigration laws. 8 U.S.C. § 1103(a)(3). Second, DHS invoked a statutory grant of authority to

regulate the "time" and "conditions" of nonimmigrant admission. 8 U.S.C. § 1184(a)(1). The Executive Branch has long construed its authority under these provisions to include providing for work authorizations. *See, e.g.*, 8 C.F.R. § 274a.12; 46 Fed. Reg. 25,080–081 (May 5, 1981). Third, DHS noted that Section 274A(h)(3)(B) of the INA, 8 U.S.C. § 1324a(h)(3)(B), recognizes that employment may be authorized by statute or by the Secretary. 80 Fed. Reg. at 10,285.

In promulgating the H-4 Rule, the Secretary 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." 80 Fed. Reg. at 10,284. 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 on Legal Permanent Resident ("LPR") status (and have satisfied the conditions set forth in the rule) would "ameliorate certain disincentives that currently lead H-1B nonimmigrants to abandon efforts to remain in the United States while seeking LPR status"; "minimize[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 10,284–85.

The H-4 Rule at issue here provides eligibility for employment authorization to H-4 dependents whose H-1B spouses are in the process of applying for green cards as described above. 8 C.F.R. §§ 214.2, 274a. The Rule underwent notice-and-comment procedures, *see* 79 Fed. Reg. 26,886 (May 12, 2014) (proposed rule), and took effect on May 26, 2015, *see* 80 Fed. Reg. 10,284–312.

B. Procedural History

On April 23, 2015, Petitioner filed its Complaint in this action and immediately moved for a preliminary injunction, seeking to stay implementation of the H-4 Rule, even before the Rule took effect. Pet.App.12b. The district court denied Petitioner's motion for a preliminary injunction. *Id.* The parties filed cross motions for summary judgment, and the district court ruled in favor of DHS, finding that Petitioner did not have standing. Pet.App.49d–54d.

Petitioner appealed, Immigration Voice and Anujkumar Dhamija moved to intervene, and the court of appeals granted their motion. DHS and the Intervenors defended the trial court's ruling. Several amici briefs were also filed during the appeal. The Chamber of Commerce, the Information Technology Industry Council, and the National Association of Manufacturers filed an amici curiae brief supporting the district court opinion. *See* Brief of Chamber of Commerce, et al. as Amici Curiae in Support of Affirmance, *Save Jobs v. Dep't of Homeland Sec.*, 942 F.3d 504 (D.C. Cir. 2019) (No. 16-5287). Citing various studies, the amici brief reported that the H-4 spouses working pursuant to the Rule are predominately highly educated and experienced professionals—nearly sixty percent of H-4 spouses have attained at least a master's degree and

ninety-nine percent are college graduates—and that they contribute billions of dollars to the economy. *Id.* at 6. The brief cited reports estimating that "[i]nvalidation of the H-4 Rule [] would reduce the national GDP by somewhere between $7.5 billion and $15 billion annually." *Id.* at 8.[1]

The court of appeals reversed, finding the Plaintiff had standing, and remanded for further proceedings. Pet.App.27c, 40c.[2] On remand, the district court upheld the H-4 Rule against Save Jobs' constitutional, statutory, and Administrative Procedure Act arguments. *See id.* at 9b–26b. The district court found that DHS's statutory authority to establish the "time" and "conditions" of a visa holder's stay under Section 1184 encompassed the authority to issue work authorization. *Id.* at 15b. The court also pointed to the long history of congressional acquiescence to the Executive Branch's issuance of work authorization to lawfully admitted non-immigrants. *Id.* The court further explained that Congress ratified the Department's position that "DHS may lawfully authorize employment for nonimmigrants" when it passed the 1986 Immigration Control and Reform Act ("IRCA"). *Id.* at 16b. As the district court noted, the "IRCA prohibits the employment of 'unauthorized aliens,'" which it defines as "one who is neither 'lawfully admitted for permanent residence' nor 'authorized to be so employed by this

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[1] The National Association of Manufacturers, the U.S. Chamber of Commerce, and the Information Technology Industry Council had previously intervened in the district court in *Washtech* in defense of the OPT program.

[2] The court of appeals held that the intervenors had standing, rejecting Save Jobs' contention to the contrary. *See* Pet.App.40c.

chapter or by the Attorney General'—now DHS." *Id.* (quoting 8 U.S.C. § 1324). The court found that provision ratified the Department's longstanding interpretation of its authority to grant work authorization to lawfully admitted non-immigrants.

Finally, the court rejected Petitioner's arguments that DHS's interpretation of the INA violated the nondelegation doctrine and that the H-4 Rule was arbitrary and capricious. Pet.App.20b–26b. As the 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.14a (quoting *Washtech*, 50 F.4th at 178–79) (brackets omitted). That requirement, the court found, "provides an intelligible principle of delegation." *Id.*

After the district court issued its opinion, Petitioner filed a petition for writ of certiorari before judgment requesting that this Court review the case before a ruling issued from the court of appeals. Petition for Writ of Certiorari, *Save Jobs USA v. U.S. Dep't of Homeland Sec.* (2023) (No. 23-22). The petition was filed two months after the plaintiff in *Washtech* filed a petition for writ of certiorari in its case challenging DHS's OPT Rule, which the court of appeals had upheld, relying on the text and structure of the INA and the long history of the Executive Branch permitting practical training programs. Petition for Writ of Certiorari, *Wash. All. Of Tech. Workers v. U.S. Dep't of Homeland Sec.* (2023) (No. 22-1071).

Petitioner sought a writ of certiorari before judgment with the expectation that "this case will be

consolidated with *Washtech*." Petition for Writ of Certiorari, *Save Jobs USA v. U.S. Dep't of Homeland Sec.*, at 3 (2023) (No. 23-22). Petitioner described *Washtech* as "directly related" stating that "as in *Washtech*, DHS created a major alien employment program without clear congressional authorization." *Id.* In its petition, the Petitioner raised both the major questions and nondelegation arguments that the Petitioner raises here. DHS opposed the petition and Immigration Voice and Mr. Dhamija joined that opposition.

On October 2, 2023, the Court denied the petition in *Washtech*, and then on October 30, 2023, denied the Petition in *Save Jobs*.

Subsequently, the court of appeals unanimously affirmed the district court's opinion in this case upholding the H-4 Rule. *See* Pet.App.1a.[3] The court of appeals concluded that Sections 1184 and 1103(a)(1) provided a statutory basis for the H-4 Rule. *Id.* at 4a–5a. The court rejected the major questions challenge, finding that since its earlier decision in *Washtech* came after the issuance of this Court's opinion in *West Virginia v. Env't Prot. Agency*, 597 U.S. 697 (2022),[4] the panel in *Washtech* had necessarily rejected the major questions challenge in holding DHS had the

[3] In that appeal, Immigration Voice and Mr. Dhamija were appellees.

[4] The plaintiffs in *Washtech* raised the major questions doctrine through a 28j letter and petition for rehearing *en banc*, *see* Notice of Supplemental Authority, *Wash. All. of Tech. Workers v. Dep't of Homeland Sec.*, 50 F.4th 164 (D.C. Cir. 2022) (No. 21-5028); Petition for Rehearing *En Banc* at 12, *Wash. All. of Tech. Workers v. Dep't of Homeland Sec.*, 50 F.4th 164 (D.C. Cir. 2022) (No. 21-5028).

authority to issue the regulation in question. *Id.* at 6a–7a.

Petitioner sought rehearing *en banc*. In a *per curiam* order, without dissent, the Court denied the petition. Pet.App.61e.

REASONS FOR DENYING THE PETITION

I. THE D.C. CIRCUIT OPINION IS UNEXCEPTIONAL AND CORRECT.

The court of appeals was correct in holding that DHS had authority to issue the H-4 Rule under Section 1184, which permits DHS to "prescribe" the "time and conditions" of a nonimmigrant's stay in the United States, and under Section 1103, which permits DHS to "establish such regulations . . . and perform such other acts as he deems necessary for carrying out his authority under the" INA. Pet.App.2a. The court of appeals' holding is consistent with the text, structure, history, and purpose of the statute. The court of appeals also found that it had previously and properly concluded that the Secretary's conduct in issuing work authorization, a practice buttressed by decades of consistent practice, did not offend the major questions doctrine. *Id.* at 6a–7a.

The text and structure of the INA demonstrate that Congress granted the Executive the authority to set the conditions of a visa holder's stay. Under Section 1103, the INA granted DHS general rulemaking authority. The INA also granted DHS the authority under Section 1184 to regulate the "time" and "conditions" of a nonimmigrant's stay. The Executive's statutory authority to set the "conditions" of nonimmigrants' stays includes the power to authorize employment. The INA's definitions of visa categories provide

parameters guiding DHS's exercise of its discretion under Section 1184 to issue work authorization to various classes of nonimmigrants, consistent with the principles of the nondelegation doctrine.

The court of appeals' interpretation of the INA is also consistent with DHS's long history of granting work authorization to nonimmigrants under this statutory authority. Indeed, DHS has authorized certain classes of nonimmigrants to work for over seventy years. *See, e.g.*, 17 Fed. Reg. 11,489 (Dec. 19, 1952) (codified at 8 C.F.R. 214.2I) (nonimmigrants may engage in employment if "authorized by the district director or the officer in charge having administrative jurisdiction over the alien's place of temporary residence"). Even before the 1952 enactment of the INA, the Attorney General interpreted his authority to include the ability to issue work authorization. *See* 12 Fed. Reg. 5,357 (Aug. 7, 1947). Despite making numerous significant changes to the INA, Congress has never repudiated DHS's authority to issue work authorization. That is significant because "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." *Creekstone Farms Premium Beef, L.L.C. v. Dep't of Agric.*, 539 F.3d 492, 500 (D.C. Cir. 2008). In enacting IRCA in 1986, Congress ratified DHS's longstanding interpretation of its authority. Notwithstanding Save Jobs' contention to the contrary, the H-4 Rule is an unexceptional example of DHS's longstanding authority to issue work authorization to nonimmigrants.

Additionally, the H-4 Rule is consistent with the purpose of the H-1B and H-4 visa programs. As the court of appeals recognized, "[w]ith the H-4 Rule, DHS hopes to 'ameliorate certain disincentives for talented H1-B nonimmigrants to permanently remain in the United States and continue contributing to the U.S. economy as lawful permanent residents." Pet.App.30c. The H-4 Rule ensures that H-1B workers and their families can afford to stay in the country and work productively while waiting to receive their green cards.

The legal challenges raised by the Petition are of no consequence and meritless. Petitioner contends enactment of the H-4 Rule violates the major questions doctrine. Pet.29–30. The Court has applied major-questions scrutiny where agencies invoke "unprecedented" claims of authority, which have "never before been" embraced by the relevant agency. *Id.* at 722. The major questions framework applies where an agency "has never previously claimed powers of this magnitude under" the relevant statute. *Biden v. Nebraska*, 143 S. Ct. 2355, 2372 (2023); *see also id.* at 2383 (Barrett, J., concurring) ("A longstanding 'want of assertion of power by those who presumably would be alert to exercise it' may provide some clue that the power was never conferred." (quoting *Fed. Trade Comm'n v. Bunte Bros., Inc.*, 312 U.S. 349, 352 (1941)). But this is not an instance where an agency has "'claim[ed] to discover in a long-extant statute an unheralded power' representing a 'transformative expansion in [its] regulatory authority.'" *West Virginia*, 597 U.S. at 724 (quoting *Util. Air Reg. Grp. V. Env't Protect. Agency*, 573 U.S. 302, 324 (2014)).

Contrary to cases where this Court has found a violation of the major questions doctrine, the H-4 Rule is a natural, limited continuation of DHS's long history of exercising its authority to regulate employment conditions for certain classes of lawfully admitted nonimmigrants when Congress has not explicitly done so. As noted, for more than seventy years, across Democratic and Republican administrations, the Attorney General and later DHS have interpreted their authority under the INA to include issuance of work authorizations. *See, e.g.*, 8 C.F.R. 214.2I.

The H-4 Rule also falls far short of the level of economic or political significance required to find a violation of the major questions doctrine. *King v. Burwell*, 576 U.S. 473, 485–86 (2015). In contending otherwise, Petitioner states that the OPT Rule established the largest employment authorization program in the immigration system. Pet.30. But the OPT Rule is not at issue here. The H-4 Rule would at most impact less than 0.12 percent of the U.S. workforce, even if every eligible H-4 spouse had received work authorization in the first year under the Rule, which they did not. Pet.App.25b. In actuality, far fewer nonimmigrants have received work authorization under the H-4 Rule than predicted, just 129,514 individuals from 2015 to 2019, compared to the prediction of 179,000 individuals in year one and 55,000 in each subsequent year. *See* USCIS, Immigration and Citizenship Data, Form 1-756, Application for Employment Authorization, Granted Applications for H-4 Holders, (last updated March 29, 2019), https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data (to access data sheet, navigate to the web page, type "H-4" in the search box, then click on the first link). Far

from hurting the economy, the H-4 Rule has boosted the nation's GDP. *See supra* at 8.

Petitioner also raises a meritless nondelegation argument. Pet.13–15. So long as a statute sets forth an "intelligible principle" to guide the executive agency's actions, it constitutes a lawful grant of discretion rather than an unlawful delegation of legislative power. *J.W. Hampton, Jr., & Co. v. United States*, 276 U.S. 394, 409 (1928). A statute satisfies that requirement if it identifies "the general policy, the public agency which is to apply it, and the boundaries of this delegated authority." *Am. Power & Light Co. v. Sec. Exch. Comm'n*, 329 U.S. 90, 105 (1946). That test is "not demanding." *Gundy v. United States*, 588 U.S. 128, 146 (2019) (plurality opinion). "Only twice in this country's history" has the Court held that a statute crossed that line: "one . . . provided literally no guidance for the exercise of discretion, and the other . . . conferred authority to regulate the entire economy on the basis of no more precise a standard than stimulating the economy by assuring 'fair competition.'" *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 474 (2001) (citing *Panama Refin. Co. v. Ryan*, 293 U.S. 388 (1935)); *A.L.A. Schechter Poultry Corp. v. United State*s, 295 U.S. 495 (1935)); *see also Fed. Commc'ns Comm'n v. Consumers' Rsch.*, No. 24-354, 2025 WL 1773630, at *8 (U.S. June 27, 2025) (summarizing Court's nondelegation jurisprudence and stating "the intelligible-principle standard has focused our nondelegation doctrine for a century").

Here, this regulation readily passes that test because the INA provides an intelligible principle to guide DHS's regulation of work authorizations for limited categories of nonimmigrants. Section 1184

provides that DHS may prescribe regulations for a particular subject matter (time and conditions) over particular categories of noncitizens (nonimmigrants). The H-1B class definition guides and limits DHS's discretion. The H-1B program is statutorily authorized, 8 U.S.C. § 1101(a)(15)(H)(i)(b), and DHS was fully justified in concluding that H-4 work authorizations furthered the purposes of the program. *See* 8 U.S.C. § 1103(a). Allowing lawfully admitted spouses of certain H-1B workers to work during the lengthy period when they would otherwise have to wait for green cards promotes the H-1B program's purpose of encouraging skilled workers in specialty occupations to emigrate to the United States and stay here.

II. THERE IS NO CIRCUIT SPLIT.

A. This case did not create a circuit split over the entry-requirement-only interpretation of the INA.

Petitioner claims that the entry-only-requirement interpretation led to a circuit split. Pet.17–20. To start, as described below in Section III, this case would be an improper vehicle for addressing such a split because the entry-requirement-only interpretation of the INA is not at issue here. Regardless, there is no circuit split over the entry-requirement-only interpretation. None of the cases Petitioner cites gives rise to a conflict among the circuits. Indeed, none of them even addresses DHS's issuance of work authorization to nonimmigrants.

Several of Petitioner's cases address whether nonimmigrants can establish domicile in the United States and thereby become eligible to seek relief from deportation under Section 212I of the INA, 8 U.S.C.

§ 1182I. *See Anwo v. Immigr. & Naturalization Serv.*, 607 F.2d 435, 437 (D.C. Cir. 1979); *Morel v. Immigr. & Naturalization Serv.*, 90 F.3d 833, 838–839 (3d Cir. 1996), *opinion vacated on reconsideration*, 144 F.3d 248 (3d Cir. 1998); *Lok v. Immigr. & Naturalization Serv.*, 681 F.2d 107, 110 (2d Cir. 1982); *Von Kennel Gaudin v. Remis*, 379 F.3d 631, 637 (9th Cir. 2004). The H-4 Rule does not purport to permit H-4 dependent spouses to develop an intent to establish domicile, so none of these cases conflicts with the court of appeals' opinion.

Several other cases address whether G-4 nonimmigrants, who are not prohibited by the statutory terms of the visa category from forming a legal intent to remain in the United States, are eligible for in-state tuition, an issue not implicated by this appeal. *See Toll v. Moreno*, 458 U.S. 1, 13–14 (1982); *Elkins v. Moreno*, 435 U.S. 647, 665–66 (1978), *certified question answered sub nom. Toll v. Moreno*, 284 Md. 425 (1979); *Moreno v. Univ. of Md.*, 645 F.2d 217, 219 (4th Cir. 1981), *aff'd sub nom. Toll v. Moreno*, 458 U.S. 1 (1982).

The remaining cases, other than the two Fifth Circuit opinions addressed below, involved nonimmigrants who violated the terms of their visas and were thus subject to deportation. *See Gazeli v. Session*, 856 F.3d 1101, 1106 (6th Cir. 2017) (overstayed terms of B2 tourist visa); *Touray v. United States AG*, 546 F. App'x 907, 912 (11th Cir. 2013) (failing to maintain student status); *Birdsong v. Holder*, 641 F.3d 957, 958 (8th Cir. 2011) (failed to conclude a valid marriage with U.S. citizen fiancé within ninety days of admission); *Olaniyan v. Dist. Dir., Immigr. & Naturalization Serv.*, 796 F.2d 373, 374 (10th Cir. 1986) (working

without authorization); *Khano v. Immigr. & Naturalization Serv.*, 999 F.2d 1203, 1207, 1207 n.2 (7th Cir. 1993) (failed to maintain student status); *United States v. Igbatayo*, 764 F.2d 1039, 1040 (5th Cir. 1985) (failed to maintain student status); *Akbarin v. Immigr. & Naturalization Serv.*, 669 F.2d 839, 840 (1st Cir. 1982) (accepted employment without obtaining the requisite authorization). The H-4 Rule does not purport to allow nonimmigrants to violate the terms of their stays, and so none of these cases conflicts with the court of appeals' opinion here.

B. There is no circuit split over the authority conferred on DHS by 8 U.S.C. 1324a(h)(3).

Petitioner erroneously insists that the D.C. Circuit created a conflict with the Fifth Circuit's decisions in *Texas v. United States*, 809 F.3d 134, 182–83 & nn.185–86 (5th Cir. 2015) and *Texas v. Mayorkas*, No. 23-40653, slip op. (5th Cir. Jan. 17, 2025) by concluding that DHS has independent authority to authorize nonimmigrant employment. However, Petitioner's argument relies on the contention that this case creates a conflict regarding interpretation of a statutory provision, 8 U.S.C. § 1324a(h)(3), that the court of appeals did not even cite. Moreover, Petitioner ignores fundamental differences between this case and the Fifth Circuit opinions.

In an effort to fabricate a conflict, Petitioner erroneously claims that the court of appeals invoked Section 1324a(h)(3) as a source of DHS's authority, shared with Congress, to determine the classes of noncitizens eligible for employment. *See* Pet.3. That provision defines the term "unauthorized alien" to

mean "that the alien is not at that time either (A) an alien lawfully admitted for permanent residence, or (B) authorized to be so employed by this chapter or by the Attorney General." 8 U.S.C. § 1324a(h)(3)(B). But the court of appeals did not even cite Section 1324a(h)(3) in its opinion in this case, instead relying exclusively on DHS's time and conditions authority under Section 1184 and the Secretary's authority to "establish such regulations" and "perform such other acts as he deems necessary for carrying out his authority" under Section 1103. Pet.App.2a. Because the court of appeals did not even mention § 1324, it did not and could not create a conflict with the Fifth Circuit over the interpretation of this provision.

Moreover, unlike this case, the Fifth Circuit opinions concerned individuals who were not lawfully admitted to the United States and thus did not and could not implicate the Secretary's authority to issue work permission under Section 1184, which gives the Secretary authority to determine time and conditions for lawfully admitted nonimmigrants' stay in the U.S. *Texas v. United States* was a challenge to the DAPA program, which would have protected from removal certain individuals who entered the United States unlawfully. In *Texas v. United States*, the court of appeals concluded that the DAPA program itself was unlawful. The court of appeals explained that the program undermined Congress's "stated goal of closely guarding access to work authorization and preserving jobs for those *lawfully* in the country." *Texas v. United States*, 809 F.3d at 181 (emphasis added). While this ruling had the effect of finding that those same individuals would not be eligible for work authorization, the case turned on the fact that noncitizens who would have been eligible for relief under DAPA were not

lawfully admitted to the country. The Court did not address the Secretary's authority to issue work permission to lawfully admitted nonimmigrants such as H-4 visa holders.

Texas v. Mayorkas, No. 23-40653, slip op. (5th Cir. Jan. 17, 2025) was a challenge to a final rule promulgated by the Biden Administration that reinstated the DACA program, which instructs immigration officials not to remove certain individuals who were brought to the United States unlawfully as children. Like *Texas v. United States*, the Fifth Circuit's opinion in *Texas v. Mayorkas* did not analyze the statutory provisions that provide DHS authority to issue work authorizations to lawfully admitted H-4 visa holders. DACA, like DAPA, granted work authorization to individuals who did not enter the country lawfully. Thus, as with DAPA, DHS could not and did not rely on its time and conditions authority as it did when it issued the H-4 Rule. Accordingly, neither decision addresses or conflicts with decisions regarding DHS's authority to grant work authorization to lawfully admitted nonimmigrants.

Also, unlike DAPA and DACA, the H-4 Rule is interstitial. In *Texas v. United States*, 809 F.3d at 185, the court distinguished DAPA from other deferred action programs that "were bridges from one legal status to another." *Id.* at 184. For example, the court distinguished the "Family First" program, which granted "voluntary departure to family members of legalized aliens while they 'wait[ed] for a visa preference number to become available for family members,'" because the "Family First" program was interstitial to a statutory legalization scheme. *Id.* The court contrasted

DAPA, which it concluded "is far from interstitial" since "Congress has repeatedly declined to enact the Development, Relief, and Education for Alien Minors Act ('DREAM Act')." *Id.* By contrast, the H-4 Rule is interstitial because it simply expedites the date when lawfully admitted noncitizens will be entitled to work in the United States. The interstitial nature of the H-4 Rule further distinguishes it from the DACA and DAPA programs and demonstrates that there is no circuit split here.

III. THIS CASE IS A POOR VEHICLE FOR ADDRESSING THE ISSUES RAISED BY THE PETITION.

A. This case is a poor vehicle for Petitioner to relitigate *Washtech*.

In *Washtech*, the court of appeals affirmed DHS's authority to issue the OPT Rule, which extended the period of time during which noncitizens with F-1 visa status could engage in post-graduation OPT directly related to the students' academic concentrations. *Washtech*, 50 F.4th at 168. The extension was fully consistent with the Executive's longstanding authorization of post-coursework Optional Practical Training dating back to at least 1947. 12 Fed. Reg. 5,355, 5,357. DHS promulgated the OPT Rule under Section 1184, which authorizes DHS to set the "time" and "conditions" of a nonimmigrant's stay. In upholding the Rule, the court of appeals emphasized that the Executive "has consistently exercised those enduring statutory powers to maintain and control the OPT program." *Washtech*, 50 F.4th at 171. Additionally, the court of appeals found that the F-1 visa class definition guides DHS's use of the time and conditions authority. *Id.* Accordingly, the court of appeals rejected

Washtech's statutory and administrative law challenges to the OPT Rule.

This Court denied certiorari in *Washtech*. The Court should also deny certiorari here. This petition is an attempt at a do-over, and Petitioner provides no reason that the Court should reach a different decision now.

Indeed, Petitioner makes much of the "entry-requirement-only" interpretation of the INA, arguing that it creates an absurdity and that this absurdity is one of the principal reasons why the Court should grant certiorari. Pet.15–17. But this interpretation of the INA is not even presented here. The entry-only-requirement interpretation of the INA arose in *Washtech* because the OPT Rule permitted nonimmigrants to stay in the country and work for a period of time after they were no longer pursuing a course of study at school, while the statute said such a visa could be provided to "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(a)(15)(F)(i). Here, there is no time when H-4 visa recipients are eligible for work authorization while not satisfying the entry requirements in the statute for H-4 visa holders. This case is thus an improper vehicle for the Court to reconsider *Washtech* since the error alleged by Petitioner is not even at issue here.

Petitioner's argument also misstates the court of appeals' opinion in *Washtech*. The court did not hold that the entry requirements are irrelevant after entry. Rather, the court held that the visa class definitions in Section 1101(a)(15)(F)(i) must "guide[] DHS in

exercising its authority to set the time and conditions of F-1 students' stay." *Washtech*, 50 F.4th at 178. This is certainly true here, where the H-4 Rule is aimed at ameliorating the barriers to H-1B holders' remaining in the United States and working productively while seeking LPR status.

B. This case is a poor vehicle for addressing Petitioner's administrative law arguments.

The long history of similar regulation and congressional acquiescence makes this case a poor vehicle for Petitioner's nondelegation and major questions arguments. DHS, and prior to that, the Attorney General, have granted work authorization to lawfully admitted nonimmigrants under both Democratic and Republican administrations for decades. *See* 17 Fed. Reg. 11,489. This long history of issuing work authorization under the same statutory authority and Congress's acquiescence in, and at times ratification of, the agency's conduct cuts strongly against Petitioner's argument and makes this case atypical and thus a poor vehicle for addressing the major questions doctrine. As Justice Barrett's concurring opinion in *Biden v. Nebraska* states, the major questions doctrine "emphasize[s] the importance of context when a court interprets a delegation to an administrative agency." 143 S. Ct. at 2376. Here, history provides that context; it shows Congress has approved of that delegation, and makes this case highly unusual for a major questions challenge.

For the nondelegation argument, this long history not only weighs heavily against the argument but also raises serious questions not present in a typical nondelegation challenge.

Additionally, Congress's plenary power over immigration, combined with the Executive's extensive power over foreign affairs, makes this a particularly poor vehicle for Petitioner's nondelegation argument. This Court has recognized that Congress has plenary power over immigration policy and may properly delegate this broad power to the Executive. *See Kleindienst v. Mandel*, 408 U.S. 753, 769 (1972); *see also Kerry v. Din*, 576 U.S. 86, 104 (2015) (Kennedy, J., concurring) (recognizing that congress may delegate its "plenary power 'to supply the conditions of the privilege of entry into the United States'" to the Executive (citations omitted)). Indeed, this Court has previously rejected a challenge to Congress's ability to delegate power over immigration. In *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 539 (1950), the Court found there was "no question of inappropriate delegation of legislative power" where Congress had delegated to the Executive the power to exclude a noncitizen without a hearing. The Court explained that "[w]hen Congress prescribes a procedure concerning the admissibility of aliens, it is not dealing alone with a legislative power. It is implementing an inherent executive power" and that the right for the Executive to act pursuant to a Congressional delegation "stems not alone from legislative power but is inherent in the executive power to control the foreign affairs of the nation." *Id.* at 542–43; *see also Trump v. Hawaii*, 585 U.S. 667, 712 (2018) (Thomas, J., concurring) ("the President has *inherent* authority to exclude aliens from the country" (citations omitted)).

Relatedly, this Court has recognized that Congress has broad power to delegate in the foreign affairs context. *See United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 314-329 (1936) (explaining

that Congress may delegate more broadly in the foreign affairs context because "the President [is] the sole organ of the federal government in the field of international relations."); *see also* Reply Br. for Federal Petitioners, Fed. Commc'ns Comm'n v. Consumers' Rsch. (2024) (Nos. 24-354 and 24-422) at 2–3. Because setting the terms of nonimmigrants' stay in the United States also implicates the Executive's extensive powers over foreign affairs, this case is a particularly poor vehicle for addressing the extent of Congress's ability to delegate authority to the Executive.

In any event, in *Washtech*, the petitioner raised the same major questions contention and the same nondelegation argument that Petitioner is touting here, and this Court denied the petition. Petition for Writ of Certiorari, Wash. All. of Tech. Workers v. U.S. Dep't of Homeland Sec. (2023) (No. 22-1071) at 25–28. Petitioner also raised the same two arguments in its petition for certiorari before judgment in this case. Petition for Writ of Certiorari, Save Jobs USA v. U.S. Dep't of Homeland Sec., at 26–29 (2023) (No. 23-22). As noted, this Court denied both petitions, and Petitioner has provided no basis for seeking a third bite at the apple or for this Court to reach a different result now.

C. Petitioner Lacks Standing.

Questions regarding Petitioner's Article III standing also make this case a poor vehicle to address the issues Petitioner seeks to raise. 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).

Because "Article III jurisdiction is always an antecedent question," *Steel Co. v. Citizens for a Better Env't*, 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 H-4 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 560–61. In the district court, Petitioner claimed associational standing to sue on behalf of its members. 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).

The court of appeals held that Petitioner has standing because the H-4 Rule "will subject its members to an actual or imminent increase in competition." Pet.App.27c. The court cited two D.C. Circuit cases for the proposition that "an individual who competes in a labor market has standing to challenge allegedly unlawful government action that is likely to lead to an increased supply of labor—and thus competition—in that market." *Id.* (citing *Washington Alliance of Technology Workers v. Dep't of Homeland Sec.*, 892 F.3d 332, 339–40 (D.C. Cir. 2018); *Mendoza v. Perez*, 754 F.3d 1002, 1011 (D.C. Cir. 2014)). Neither of those cases involved the issuance of work authorization to a category of individuals who were not engaged in direct competition with the plaintiff workers. Here,

the members of Save Jobs allege that they were replaced by H-1B workers, not H-4 workers. *See* D. Ct. Doc. 2-2.

Even if the Court were to credit the court of appeals' reasoning that "at least some H-1B visa holders awaiting permanent residence would leave the United States" if the H-4 Rule did not go into effect, "meaning that more H-1B visa holders will stay and compete with Save Jobs' members," Pet.App.34c., this is not enough to demonstrate that Petitioner has standing. Petitioner did not identify a single member who is suffering an injury that is fairly traceable to the H-4 Rule. 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 H-4 Rule; and (3) would have left this country but for their spouses' having obtained such work authorization. Petitioner has failed to demonstrate that its members are competing for jobs against this subset of H-1B workers or their spouses who received work authorization under the H-4 Rule. Indeed, the three members who Petitioner submitted declarations for at the district court all lost their jobs before DHS issued the H-4 Rule and so could not have been competing against spouses of any H-1B beneficiaries. *See* D. Ct. Doc. 2-2. Thus, Petitioner's injuries are not fairly traceable to the H-4 Rule.

Insofar as Petitioner sought a preliminary injunction, Petitioner also has failed to identify a single member who is "suffering *immediate* or *threatened*

injury" that is fairly traceable to the H-4 Rule. *Warth*, 422 U.S. at 511 (emphasis added). While the court of appeals may have been correct that, at least in the D.C. Circuit, evidence that the competitive harm has already occurred is not required to establish standing, Pet.App.36c, the harm must still be "likely, as opposed to merely speculative," *Lujan*, 504 U.S. at 560–61. Petitioner's members asserted that they had lost their jobs in the past to H-1B workers. Their assertions that they may face competition from H-1B workers or H-4 workers in the future are entirely speculative. This Court's precedent confirms that "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).

Petitioner also fails to demonstrate standing because its members' "asserted injur[ies] arise[] from the government's allegedly unlawful 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." *Id.* (citation omitted); *see also Food & Drug Admin. v. All. for Hippocratic Med.*, 602 U.S. 367 (2024) (finding that plaintiff doctors and medical associations failed to demonstrate standing where they were unregulated parties who sought to challenge the FDA's regulation of others).

In short, if this Court were to conclude that DHS lacked authority to issue the H-4 Rule, it would do nothing to redress Petitioner's harm.

Finally Petitioner Save Jobs USA "is an unincorporated group of computer workers[.]" *See* Compl. at 2, *Save Jobs v. Dep't of Homeland Sec.*, 210 F. Supp. 3d 1 (D.D.C. Cir. 2016) (No. 15-00615), Dkt. No. 1. Petitioner filed affidavits in 2015 from three workers who asserted then that they faced or would face competition from H-1B workers or their spouses with H-4 work authorization. *See* Affs. of D. Stephen Bradley, B. Buchanan, and J. Gutierrez, *Save Jobs v. Dep't of Homeland Sec.*, 210 F. Supp. 3d 1 (D.D.C. Cir. 2016) (No. 15-00615), Dkt. No. 2-2. The record does not indicate whether those workers are still seeking employment. Nor does it indicate how many other members Petitioner had or has, if any, or whether any of those members are currently seeking work and facing added competition as a result of the H-4 Rule. As is the case for any litigant, Petitioner's standing "must continue through [the] existence" of the litigation, *Friends of the Earth, Inc. v. Laidlaw Envt. Servs. (TOC), Inc.*, 528 U.S. 167, 170 (2000), and it is unclear whether Petitioner can meet that test.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

Respectfully submitted,

PAUL CHAVEZ
AMERICANS FOR
IMMIGRANT JUSTICE
6355 NW 36th Street
Suite 2201
Miami, FL 33166

CARL E. GOLDFARB
Counsel of Record
MEGAN NYMAN
BOIES SCHILLER FLEXNER LLP
cgoldfarb@bsfllp.com
401 East Las Olas Blvd.
Suite 1200
Fort Lauderdale, FL 33301
(954) 377-4203

Counsel for Immigration Voice