No. 20-1636

In the Supreme Court of the United States

DOUGLAS BOURDON, PETITIONER

v.

DEPARTMENT OF HOMELAND SECURITY, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals erred in affirming the dismissal of petitioner's challenge to the United States Citizenship and Immigration Services' determination, made in its "sole and unreviewable discretion" under 8 U.S.C. 1154(a)(1)(A)(viii)(I), about whether petitioner poses a risk to the beneficiary of his petition to classify his foreign-national spouse as an immediate relative.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-40a) is reported at 940 F.3d 537. The order of the court of appeals denying rehearing en banc (Pet. App. 77a-98a) is reported at 983 F.3d 473. The decision of the district court (Pet. App. 41a-56a) is unreported but available at 2017 WL 5187833. The decisions of the Board of Immigration Appeals (Pet. App. 57a-60a) and the United States Citizenship and Immigration Services (Pet. App. 61a-75a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on October 3, 2019. On March 19, 2020, the Court extended the time within which to file a petition for a writ of certiorari due on or after that date to 150 days from the date of the lower-court judgment or order denying a

timely petition for rehearing. On December 23, 2020, the court of appeals denied rehearing en banc. The petition for a writ of certiorari was filed on May 21, 2021. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, allows a United States citizen to file a petition to classify his foreign-national spouse as an immediate relative for the purpose of enabling the spouse to immigrate to the United States. See 8 U.S.C. 1154(a)(1)(A)(i). Such a petitioner bears the burden of establishing that he is eligible to petition for the noncitizen beneficiary. See 8 U.S.C. 1361.[1] Classification as an immediate relative allows the noncitizen to obtain a visa without regard to the numerical limitations on visa issuance that would otherwise apply. See 8 U.S.C. 1151(b)(2)(A)(i).

Congress delegated to the United States Citizenship and Immigration Services (USCIS) the authority to adjudicate immigrant visa petitions and to establish policies governing that adjudication. See 6 U.S.C. 271(a)(3)(A) and (b)(1). Pursuant to that delegation, USCIS has established a process by which a United States citizen may seek classification of his foreign-national spouse as an immediate relative by filing a Form I-130 with the agency. See 8 C.F.R. 204.1(a)(1), 204.2(a)(1).

Under the Adam Walsh Child Protection and Safety Act of 2006 (AWA), Pub. L. No. 109-248, § 402(a), 120

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

Stat. 587, USCIS is barred from granting a United States citizen's Form I-130 petition if the petitioner has been convicted of a "specified offense against a minor." 8 U.S.C. 1154(a)(1)(A)(viii)(I). The phrase "specified offense against a minor" includes, as relevant here, the "[p]ossession, production, or distribution of child pornography," and "[a]ny conduct that by its nature is a sex offense against a minor." 42 U.S.C. 16911(7) (2012). The only exception to the sex-offense bar is if "the Secretary of Homeland Security, in the Secretary's sole and unreviewable discretion, determines that the citizen poses no risk to the alien with respect to whom a petition * * * is filed." 8 U.S.C. 1154(a)(1)(A)(viii)(I). The Secretary has delegated the authority to make that risk determination to USCIS. See Pet. App. 62a.

USCIS interprets the statutory phrase "poses no risk to the alien with respect to whom a petition * * * is filed," 8 U.S.C. 1154(a)(1)(A)(viii)(I), to mean that the petitioner must pose no risk to the safety or well-being of the principal beneficiary or any derivative beneficiary. See Interoffice Memorandum from Michael Aytes, Associate Director, Domestic Operations, to Regional Directors, U.S. Citizenship & Immigration Servs., Dep't of Homeland Sec., *Guidance for Adjudication of Family-Based Petitions and I-129F Petition for Alien Fiancé(e) under the Adam Walsh Child Protection and Safety Act of 2006*, at 5 (Feb. 8, 2007), https://www.uscis.gov/sites/default/files/document/memos/adamwalshact020807.pdf; see also USCIS, *Adjudicator's Field Manual* § 21.2(f)(2)(C) and (3)(C)(i), https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm21-external.pdf. The petitioner must make that showing beyond a reasonable doubt. *Ibid.*

If USCIS denies a Form I-130 petition, the petitioner has the right to appeal the decision to the Board of Immigration Appeals (Board). See 8 C.F.R. 204.2(a)(3), 1003.1(b)(5). On appeal, the Board generally reviews issues of fact and law de novo, see 8 C.F.R. 1003.1(d)(3)(iii), but lacks jurisdiction to review either the legal or discretionary aspects of USCIS's risk determination under the AWA, see *Matter of Aceijas-Quiroz*, 26 I. & N. Dec. 294, 300-301 (B.I.A. 2014).

2. a. In 2003, petitioner was convicted under 18 U.S.C. 2252(a)(4)(B) of possessing child pornography. Pet. App. 4a, 57a-58a. He was sentenced to thirteen months of imprisonment and three years of supervised probation, and was required to register as a sex offender. *Id.* at 63a. Five years later, petitioner married Thi Thuan Tran, a Vietnamese citizen. *Id.* at 4a.

Petitioner subsequently filed an I-130 petition to classify his wife as an immediate relative. Pet. App. 4a. USCIS denied the petition under the AWA on the grounds that petitioner's prior conviction had been for a specified offense against a minor and that petitioner had failed to demonstrate that he posed no risk to the intended beneficiary, his wife. *Id.* at 63a-64a.

Petitioner appealed USCIS's denial to the Board, which remanded the petition back to USCIS for further consideration and entry of a new decision. Pet. App. 64a.

On November 21, 2014, after petitioner had submitted additional documentation, USCIS again denied the petition in a written decision. Pet. App. 61a-73a. The decision described the documents petitioner had submitted, *id.* at 66a-69a, and then made findings about their limitations in establishing the lack of any risk, *id.* at 69a-71a. Among other things, the decision noted that

supportive affidavits had not been submitted by his wife's children, who were then young adults and may not have known of petitioner's sex-offense conviction. *Id.* at 70a. It also noted that petitioner had repeatedly visited his wife and her family in Vietnam and Thailand, countries that it described as having "literally no child protection laws and where child pornography, child prostitution, and child sex tourism are sources of national income and are tolerated by their respective governments." *Id.* at 71a. After "consider[ing] the totality of the evidence submitted," USCIS concluded, "in its exercise of sole and unreviewable discretion," that petitioner had failed to demonstrate that he posed no risk to the beneficiary. *Id.* at 72a. It further advised him that if he had "additional evidence that shows this decision is incorrect," he could move for "USCIS to reopen or reconsider the decision." *Ibid.* It advised that he could also appeal to the Board, which would "not have jurisdiction to review USCIS's [risk] determination." *Ibid.*

Petitioner appealed to the Board, which dismissed the appeal in relevant part for lack of jurisdiction. Pet. App. 57a-60a; see *id.* at 58a-59a (citing *Matter of Aceijas-Quiroz*, 26 I. & N. Dec. at 296-301). The Board declined to consider new evidence that petitioner had submitted for the first time during that appeal, but noted that he could "file a new visa petition that is supported by additional evidence to establish that he is eligible to confer immigration benefits on the beneficiary." *Id.* at 60a.

b. Petitioner filed a complaint in federal district court under the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.*, challenging the agency's denial of his petition. Pet. App. 43a. The court dismissed

petitioner's challenge to USCIS's risk determination for lack of jurisdiction. *Id.* at 47a-51a.

Petitioner appealed, alleging that USCIS violated its own regulations in two respects in making the adverse risk determination. Pet. App. 4a-6a. First, petitioner argued that USCIS had improperly required him to satisfy a beyond-a-reasonable-doubt standard rather than a preponderance-of-the-evidence standard. *Id.* at 5a. Second, he argued that USCIS had failed to provide him with an opportunity to inspect and rebut certain pieces of evidence—namely, country reports regarding Vietnam and Thailand—on which USCIS had relied in part when making its determination. *Id.* at 5a-6a.

A divided panel of the court of appeals affirmed. Pet. App. 1a-40a. The court observed that the AWA grants USCIS "sole and unreviewable discretion" to "determine[]" whether a petitioner poses a risk to the intended beneficiary. *Id.* at 7a (quoting 8 U.S.C. 1154(a)(1)(A)(viii)(I)). In the court's view, that provision precluded it from considering petitioner's claim. See *ibid.* (citing 5 U.S.C. 701(a)(1), which bars APA review when "statutes preclude judicial review").

The court of appeals explained that Congress's use, in the AWA, of the "verb 'determine'—rather than a noun like 'decision' that refers only to the final conclusion—extended the Secretary's discretion to the action of determining rather than only to the final determination." Pet. App. 8a. The court noted that, had Congress wished merely to insulate the agency's final decision from judicial review, it could have simply committed that decision to USCIS's discretion and allowed the rest of the work to be done by 8 U.S.C. 1252(a)(2)(B)(ii)—a provision of the INA that prohibits courts from reviewing any "decision or action of [the

Secretary] the authority for which is specified under this subchapter to be in [his] discretion." But Congress had instead gone further, reserving to USCIS "sole and unreviewable discretion" to make the risk determination. Pet. App. 11a. In that respect, the court explained, the AWA differs from the statutes at issue in *United States ex rel. Accardi* v. *Shaughnessy*, 347 U.S. 260 (1954), and *Service* v. *Dulles*, 354 U.S. 363 (1957), relied on by the dissent. In those cases, the relevant statutes did not contain "*any* jurisdiction-stripping language," and "simply * * * provide[d] discretion" to the agency. Pet. App. 21a.

The court of appeals observed that its decision was consistent with the decisions of every other circuit to address USCIS's risk determinations under the AWA. Pet. App. 12a (citing *Bakran* v. *Secretary, United States Dep't of Homeland Sec.*, 894 F.3d 557, 563 (3d Cir. 2018); *Gebhardt* v. *Nielsen*, 879 F.3d 980, 987 (9th Cir.), cert. denied, 139 S. Ct. 330 (2018); *Privett* v. *Secretary, Dep't of Homeland Sec.*, 865 F.3d 375, 380-382 (6th Cir. 2017); *Roland* v. *United States Citizenship & Immigration Servs.*, 850 F.3d 625, 628-630 (4th Cir. 2017); *Bremer* v. *Johnson*, 834 F.3d 925, 930-931 (8th Cir. 2016)). It noted that although those courts relied on differing reasoning, "none [had] conclude[d] that the Secretary's decisional process is anything but unreviewable." *Ibid.*

Although the court of appeals acknowledged the presumption in favor of judicial review of agency decisions, it found that presumption has been overcome in this context by the AWA's express language making the risk determination "unreviewable." Pet. App. 16a. The court, however, reserved the question whether the

AWA would also bar review of constitutional claims, which were not at issue in the appeal. *Id.* at 17a-18a n.6.

Judge Jordan dissented. Pet. App. 23a-40a. In his view, the majority's conclusion conflicted with *Accardi*, *supra*, and *Service*, *supra*, which he understood to authorize courts to superintend federal agencies' compliance with their own regulations, even in instances where action was otherwise committed to agency discretion. Pet. App. 28a-31a. He also expressed concern that the majority's holding would permit USCIS to act arbitrarily without the possibility of judicial correction. *Id.* at 32a.

Petitioner sought rehearing en banc, which the court of appeals denied. Pet. App. 78a. Judge Grant, the author of the panel opinion, wrote an opinion concurring in the denial and explaining why the presumption in favor of judicial review did not prevail in this particular case, given the specific language of the AWA. *Id.* at 79a-81a.

Judge Martin dissented, joined by Judge Jordan and Judge Jill Pryor. Pet. App. 82a-98a. She concluded that the panel majority erred in applying Section 701(a)(1) to bar review. In her view, the AWA does not preclude judicial review because, among other things, it does not use the phrase "'judicial review'" or "a variation" of it. *Id.* at 88a. Instead, she contended, the case should be analyzed under Section 701(a)(2), which bars review of actions "committed to agency discretion by law." 5 U.S.C. 701(a)(2); see Pet. App. 94a. Like the panel dissent, she argued that where an agency has promulgated rules that constrain its discretion, agency action may be reviewed for compliance with those rules, regardless of Section 701(a)(2). See Pet. App. 95a-97a.

ARGUMENT

Petitioner renews (Pet. 12-26) his contention that the court of appeals erred in dismissing his claim that USCIS violated its own regulations in making the risk determination under the AWA. Further review is unwarranted. The outcome below was correct and consistent with the decisions of this Court and of every other court of appeals to address the issue. The Court recently denied review on this issue, and it should do the same here. See *Gebhardt* v. *Nielsen*, 139 S. Ct. 330 (2018) (No. 18-158). This Court should also decline to hold the petition for a writ of certiorari pending its resolution of *Patel* v. *Garland*, cert. granted, No. 20-979 (oral argument scheduled for Dec. 6, 2021), which involves a different statutory provision and is unlikely to affect the disposition of this case.

1. The court of appeals correctly held that courts are barred from reviewing either the process or the outcome of USCIS's risk determination under the AWA. The AWA provides USCIS with the authority, in its "sole and unreviewable discretion," to "determine[]" whether the petitioner poses a risk to his intended beneficiary. 8 U.S.C. 1154(a)(1)(A)(viii)(I).

a. The AWA's plain language accomplishes two objectives. First, it commits the risk determination to USCIS's "discretion." 8 U.S.C. 1154(a)(1)(A)(viii)(I). Second, it goes further and makes the exercise of that discretion "unreviewable." *Ibid.* The latter triggers the provision that makes the APA's chapter governing judicial review inapplicable to the extent that "statutes preclude judicial review." 5 U.S.C. 701(a)(1). And the AWA's language barring review is sufficiently express to overcome the general presumption in favor of judicial review. See *Mach Mining, LLC* v. *EEOC*, 575 U.S. 480,

486 (2015) (noting that the "presumption is rebuttable" and "fails when a statute's language or structure demonstrates that Congress wanted an agency to police its own conduct").

The AWA's review bar applies to the process underlying USCIS's final decision, in addition to the final outcome of the decision itself. The statute protects USCIS's discretion to "determine[]" whether a petitioner poses a risk to his intended beneficiary. 8 U.S.C. 1154(a)(1)(A)(viii)(I). That phrasing is most naturally understood to cover the process of determining whether a risk exists, rather than merely the ultimate determination. See Pet. App. 8a-9a & n.2; see also *Bakran* v. *Secretary, United States Dep't of Homeland Sec.*, 894 F.3d 557, 563 (3d Cir. 2018) ("The choice of the word 'determines' frames the matters within this discretion.").

The court of appeals' conclusion is consistent with the decisions of every other court of appeals to address the question. Although the other circuits have relied on differing reasons in reaching that result, all of them have concluded that USCIS's risk determination and the process underlying it are judicially unreviewable. See *Bakran*, 894 F.3d at 562-564; *Roland* v. *United States Citizenship & Immigration Servs.*, 850 F.3d 625, 629-630 (4th Cir. 2017); *Privett* v. *Secretary, Dep't of Homeland Sec.*, 865 F.3d 375, 380-382 (6th Cir. 2017); *Bremer* v. *Johnson*, 834 F.3d 925, 930-931 (8th Cir. 2016); *Gebhardt* v. *Nielsen*, 879 F.3d 980, 987 (9th Cir.), cert. denied, 139 S. Ct. 330 (2018).

b. Petitioner contends (Pet. 20-21) that the AWA's reference to "the Secretary's sole and unreviewable discretion," 8 U.S.C. 1154(a)(1)(A)(viii)(I), was intended only to make it clear that the final decision could not be

made or reviewed by others in the Executive Branch, such as the Attorney General or the Secretary of State, and that it therefore does not affirmatively preclude judicial review. That contention is untenable in light of the provision's plain language, which is not limited to administrative review. The fact that the AWA does not expressly state that USCIS's determination is "judicial[ly]" unreviewable, or unreviewable by a "court," Pet. 21 (citation and emphasis omitted), does not compel a different result. See *Cuozzo Speed Techs., LLC* v. *Lee*, 136 S. Ct. 2131, 2139 (2016) (finding judicial review barred by statute providing that a particular agency determination "shall be final and nonappealable") (citation and emphasis omitted). Indeed, the presence of a limiting adjective like "judicially" would have *narrowed* the scope of the review bar, not expanded it. Petitioner invokes (Pet. 21) the Board's decision in *Matter of Aceijas-Quiroz*, 26 I. & N. Dec. 294 (B.I.A. 2014), but that decision did not draw petitioner's conclusion. The Board there held merely that Section 1154(a)(1)(A)(viii)(I) was not "intended *only* to limit judicial review," and therefore found that the provision also serves to shield USCIS's discretion from review by other executive agencies. *Id.* at 299 (emphasis added).

For similar reasons, petitioner's reliance (Pet. 12-18) on *United States ex rel. Accardi* v. *Shaughnessy*, 347 U.S. 260 (1954), and its progeny is misplaced. In *Accardi*, a noncitizen challenged the Board's denial of discretionary relief from removal on the ground that it failed to comply with binding regulations, and the Court upheld that challenge on the merits. *Id.* at 263, 267. Critically, although the ultimate grant or denial of relief was discretionary in character, *Accardi*—in direct contrast to this case—did not involve any provision affirm-

atively barring judicial review. See *id.* at 268. Similarly, in *Service* v. *Dulles*, 354 U.S. 363 (1957) (cited at Pet. 14), the Court reached the merits of the petitioner's claim that the Secretary of State violated applicable regulations in terminating his employment. *Id.* at 372-373. As in *Accardi*, the termination decision was vested in the Secretary's discretion, but the case did not involve any statutory provision that affirmatively made the decision unreviewable. See *id.* at 370. Notably, the government did not even dispute the application of the *Accardi* principle in *Service*. *Id.* at 373. Petitioner does not cite any cases for the proposition that *Accardi* applies even when, as here, the relevant statute precludes judicial review entirely. See Pet. 23; see also Pet. App. 95a (Martin, J., dissenting from the denial of rehearing en banc) (acknowledging that "[i]t may be true that, when a statute precludes *all* judicial review, review of *Accardi* claims is foreclosed").[2]

c. Petitioner separately contends (Pet. 21) that the AWA shields, at most, USCIS's ultimate determination. But petitioner has no explanation for the statute's use of a verb ("determines," 8 U.S.C. 1154(a)(1)(A)(viii)(I)), which naturally signifies a process, rather than a noun (*e.g.*, "determination"), which might more naturally signify a discrete decision. Compare *McNary* v. *Haitian Refugee Center, Inc.*, 498 U.S. 479, 492 (1991) ("[T]he

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[2] Petitioner contends that counsel for the government conceded at oral argument that USCIS's risk determination is unreviewable only if "all [agency] procedures are complied with." Pet. 19 (brackets in original; citation omitted). But as the court of appeals explained, a party's purported concession as to the meaning of the law is not binding on the courts and, regardless, the government's brief correctly argued that the AWA precludes judicial review in this case. Pet. App. 17a-18a n.6; see Gov't C.A. Br. 13-20 (also relying on 8 U.S.C. 1252(a)(2)(B)(ii)).

reference to 'a determination' describes a single act rather than a group of decisions or a practice or procedure employed in making decisions.").

In any event, the errors that petitioner attributes to the agency—a supposed misapplication of the standard of proof and supposed failure to accord petitioner the opportunity to rebut adverse evidence—are inseparable from the ultimate risk determination itself. This is not a case in which the statute establishes eligibility criteria distinct from the ultimate exercise of discretion. Compare, *e.g.*, 8 U.S.C. 1255 (establishing eligibility criteria that must be satisfied before the Attorney General may exercise his discretion to adjust the noncitizen's status to that of a lawful permanent resident).[3] Because considerations involving "the type of proof required, the evidentiary standard a petitioner must satisfy, and whether the petitioner's evidence meets that standard * * * are inextricably intertwined with how and whether to exercise [USCIS's] discretion," *Bakran*, 894 F.3d at 563, they are insulated from judicial review by the provision making the agency's risk determination unreviewable. See *Bremer*, 834 F.3d at 930-931 (finding that the "appropriate standard of proof is 'part and parcel of the ultimate exercise of discretion' accorded to the Secretary," making inapplicable the "USCIS administrative decision issued in a different context" that generally provides for application of a preponderance-of-the-evidence standard) (citation omitted).

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[3] The only express eligibility criterion contained in the AWA is that the petitioner have been convicted of a "specified offense against a minor." 8 U.S.C. 1154(a)(1)(A)(viii). But the decision below cited case law acknowledging that that threshold question is reviewable, see Pet. App. 13a-14a, and petitioner does not dispute that he has been convicted of such an offense, see *id.* at 63a.

2. Petitioner contends (Pet. 26-29) that the decision below conflicts with decisions from four other courts of appeals. But the decisions he cites did not address the question presented in this case. None involved the AWA and, like *Accardi* itself, none involved a statute expressly limiting judicial review.

In *Steenholdt* v. *FAA*, 314 F.3d 633 (D.C. Cir. 2003), the court examined a statute authorizing the Federal Aviation Administration to decline to renew an inspector's certification "at any time for any reason the Administrator considers appropriate." *Id.* at 638. That provision vested discretion in the agency but did not expressly bar review. And, regardless, the court found that there was no prejudice from the agency's "alleged departure from its gratuitous procedures" and therefore expressly declined to resolve whether "the *Accardi* doctrine" would provide "an independent basis for review" despite the general commitment of the issue to agency discretion. *Id.* at 640.

Musunuru v. *Lynch*, 831 F.3d 880 (7th Cir. 2016), found that Section 1252(a)(2)(B)(ii) did not bar a challenge to USCIS's alleged failure to comply with applicable regulations in exercising discretion under a provision stating that the Secretary of Homeland Security "may" revoke a previously approved visa. *Id.* at 887-888 (citation omitted). That holding is not implicated here, given the court of appeals' conclusion that the AWA has a broader preclusive scope than Section 1252 and its decision not to rely on the latter. See Pet. App. 11a (noting that the AWA's "language" "went beyond" Section 1252); see also *id.* at 19a-21a.

Duane v. *United States Department of Defense*, 275 F.3d 988 (10th Cir. 2002), did not involve a statutory provision at all, much less any statutory bar to review.

Instead, the court found only that it could "compel an agency to follow its own regulations" about security-clearance decisions notwithstanding the principle that, "'unless Congress specifically has provided otherwise, courts traditionally have been reluctant to intrude upon the authority of the Executive in military and national security affairs.'" *Id.* at 993 (citation omitted).

Lastly, *Garcia* v. *Neagle*, 660 F.2d 983 (4th Cir. 1981), cert. denied, 454 U.S. 1153 (1982), addressed a statute providing that "[a]ctions of the [United States Parole] Commission * * * shall be considered actions committed to agency discretion." *Id.* at 988 n.4. Again, that provision granted discretion without barring review. Moreover, that case did not involve an *Accardi* claim at all, but rather a claim that the agency had acted "in violation of the statutory mandate." *Id.* at 989.

In short, none of the cited decisions conflicts with the decision below, even at a high level of generality. And absent a conflict, petitioner offers no reason to believe that the question presented—which involves a narrow provision governing a discrete class of offenders who file a petition to classify a relative for immigration purposes—arises with sufficient frequency or is otherwise sufficiently important to warrant this Court's plenary review. The Court recently denied review on this issue, and it should do the same here. See *Gebhardt*, 139 S. Ct. at 330.

3. In the alternative, petitioner requests (Pet. 30) that the Court hold his petition for a writ of certiorari pending its disposition of *Patel* v. *Garland*, *supra*. At issue in *Patel* is the scope of 8 U.S.C. 1252(a)(2)(B)(i), which provides that "no court shall have jurisdiction to review * * * any judgment regarding the granting of relief under" various provisions of the INA. See Pet.

i, *Patel*, *supra*. As petitioner concedes (Pet. 30), the decision below declined to rely on Section 1252, resting instead on Section 1154(a)(1)(A)(viii). See Pet. App. 7a, 11a. To be sure, the court cited Section 1252 as contextual support for its interpretation of the AWA. See *id.* at 11a-12a & n.3. But even in that respect, it cited Section 1252(a)(2)(B)(*ii*), not Section 1252(a)(2)(B)(*i*). *Ibid.* And as discussed, the court expressly found that the scope of the AWA's review bar is different from and broader than that of Section 1252(a)(2)(B)(ii). See *id.* at 11a-12a, 19a-21a. *Patel* is therefore thrice removed from this case, and petitioner does not explain how the outcome in *Patel* is likely to alter the decision below in any material way. Under the circumstances, a hold is unwarranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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