No. 21-1446

In the Supreme Court of the United States

SIMIN NOURITAJER, ET AL., PETITIONERS

v.

UR M. JADDOU, DIRECTOR, UNITED STATES CITIZENSHIP AND IMMIGRATION SERVICES, ET AL.

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

BRIEF FOR THE RESPONDENTS IN OPPOSITION

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
GLENN M. GIRDHARRY
ALESSANDRA FASO
Attorneys
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTION PRESENTED

Congress has provided that "no court shall have jurisdiction to review" certain enumerated immigration decisions, as well as "any other decision or action" by the Secretary of Homeland Security (Secretary) "the authority for which is specified" to be in his "discretion" under Title II of the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.* 8 U.S.C. 1252(a)(2)(B)(ii). Section 1155, which is located in Title II, specifies that "[t]he Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval" of any immigrant visa petition approved by him. 8 U.S.C. 1155.

The question presented is whether the Secretary's decision to revoke the approval of an immigrant visa petition is subject to judicial review in district court.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Constitution, statutes, and regulations: Page

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-11a) is reported at 18 F.4th 85. The memorandum and order of the district court (Pet. App. 12a-24a) is reported at 519 F. Supp. 3d 144.

JURISDICTION

The judgment of the court of appeals was entered on November 15, 2021. A petition for rehearing was denied on February 4, 2022 (Pet. App. 25a-26a). The petition for a writ of certiorari was filed on May 5, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Secretary of Homeland Security (Secretary) has broad discretion regarding the admission of noncit-

izens to the United States.* For noncitizen workers residing in the United States, there is generally a three-step process for becoming a lawful permanent resident through an employer's sponsorship.

First, the employer must request and obtain a certification from the U.S. Department of Labor that there are insufficient U.S. workers "able, willing, qualified (or equally qualified in [certain cases]) and available" at the time of application for a visa and admission to the United States, and that the foreign worker's employment will not adversely affect wages and working conditions of others similarly employed in the United States. 8 U.S.C. 1182(a)(5)(A)(i)(I).

Second, if the labor certification is approved, the employer must obtain approval by U.S. Citizenship and Immigration Services (USCIS) of an immigrant visa petition, known as the Immigrant Petition for Alien Worker, USCIS Form I-140. See 8 U.S.C. 1154(b); see also 8 U.S.C. 1154(a)(1)(F); 8 C.F.R. 204.5.

Third, the noncitizen must file an application for adjustment of status to that of a lawful permanent resident, which the Secretary "may" grant. 8 U.S.C. 1255(a). A noncitizen cannot adjust status unless an "immigrant visa is immediately available" to him. 8 U.S.C. 1255(a)(3). Noncitizens from certain countries often must wait years after applying for such a visa to become available, as there are "long queues for the limited number of visas available each year." *Scialabba* v. *Cuellar de Osorio*, 573 U.S. 41, 45 (2014) (plurality opinion); see 8 U.S.C. 1151(a)(2) and (d), 1152(a)(2) (setting worldwide and country-level caps on immigrant visas).

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* 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)).

At any time in this process, the Secretary may revoke the prior approval of an immigrant visa petition:

> The Secretary of Homeland Security may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him under section 1154 of this title.

8 U.S.C. 1155. The Secretary has promulgated regulations governing revocations. See 8 C.F.R. 205.1, 205.2. Revocation is automatic under certain enumerated circumstances, such as upon the death of certain petitioners or the beneficiary. 8 C.F.R. 205.1(a)(3)(i)(B) and (C). A USCIS officer may also revoke the approval of a visa petition on any other appropriate ground "when the necessity for the revocation comes to the attention of [USCIS]." 8 C.F.R. 205.2(a). Before the agency revokes approval on a non-automatic basis, it provides the noncitizen notice of its intent to revoke. 8 C.F.R. 205.2(b). If the agency ultimately decides to revoke approval, it provides the noncitizen with a "written notification of the decision that explains the specific reasons for the revocation." 8 C.F.R. 205.2(c). The petitioner may then file an administrative appeal to the USCIS Administrative Appeals Office (AAO), 8 C.F.R. 205.2(d); see 8 C.F.R. 103.3, which reviews the matter *de novo*, see *Soltane* v. *US Dep't of Justice*, 381 F.3d 143, 145 (3d Cir. 2004) (Alito, J.); *In re Christo's, Inc.*, 26 I. & N. Dec. 537, 537 n.2 (A.A.O. 2015).

2. Congress has limited judicial review of discretionary decisions by the Secretary, providing as follows:

> Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as pro-

> vided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review—
>
> > (i) any judgment regarding the granting of relief under section 1182(h), 1182(i), 1229b, 1229c, or 1255 of this title, or
> >
> > (ii) any other decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under [Title II of the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*,] to be in the discretion of the Attorney General or the Secretary of Homeland Security, other than the granting of relief under section 1158(a) of this title.

8 U.S.C. 1252(a)(2)(B); see Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, Div. C, § 306(a)(2), 110 Stat. 3009-607. Subparagraph (D) provides that subparagraph (B) does not preclude judicial review of "constitutional claims or questions of law" raised in a "petition for review" of a final order of removal filed in a "court of appeals." 8 U.S.C. 1252(a)(2)(D).

3. On December 28, 2004, petitioner the Razi School filed an application for labor certification on behalf of petitioner Simin Nouritajer, a foreign national, to work as a teacher. Pet. App. 3a. Nouritajer had been living in the United States and teaching with the Razi School since 2002. *Ibid.* The Department of Labor granted the labor certification. *Ibid.* The Razi School then filed an I-140 immigrant visa petition with USCIS on Nouritajer's behalf, and Nouritajer simultaneously filed an application for adjustment of status. *Ibid.*; Pet. 4.

USCIS approved the visa petition on November 19, 2013, though without acting on the adjustment application. *Ibid.*

On July 11, 2017, USCIS issued a notice of intent to revoke approval of the I-140 immigrant petition. Pet. App. 3a. After the Razi School submitted its opposition to the proposed revocation, USCIS revoked its prior approval. *Ibid.* In its decision, USCIS explained that the previous grant was in error, as the Razi School had not established its ability to pay the proffered wage or Nouritajer's qualifications for the position in question. *Id.* at 3a-4a.

The Razi School appealed to the AAO, Pet. App. 3a, which dismissed the appeal, *ibid.* The AAO agreed with both rationales for USCIS's decision. *Id.* at 3a-4a. The Razi School filed a motion to reopen and reconsider with the AAO, which was denied. *Id.* at 4a.

4. Both petitioners (the Razi School and Nouritajer) filed suit in district court under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*, challenging USCIS's revocation of the I-140 petition and its denial of the motion to reopen. Pet. App. 12a-13a. Petitioners alleged, among other things, that the regulations the agency relied upon are invalid and that the agency's revocation was arbitrary and capricious and in violation of the Due Process Clause. *Id.* at 19a-20a.

The district court dismissed the action for lack of jurisdiction. Pet. App. 12a-24a. The court held that Section 1252(a)(2)(B)(ii) bars judicial review because Section 1155 vests revocation decisions in the Secretary's discretion. *Id.* at 20a-21a. The court observed that its "holding [was] in line with the weight of appellate opinion across the country." *Id.* at 21a (citing cases).

The court of appeals affirmed. Pet. App. 1a-11a. It reasoned that the text of Section 1155, which states that the Secretary "may, at any time, for what he deems to be good and sufficient cause," revoke his approval, 8 U.S.C. 1155, "confers discretion on USCIS," Pet. App. 9a. It found that Sections 1155 and 1252(a)(2)(B)(ii) together "operate to strip federal courts of jurisdiction to review a substantive discretionary decision revoking the approval of an I-140 visa petition." *Id.* at 6a.

In the court of appeals' view, "the 'gravamen' of all of [petitioners'] claims challenge the agency's substantive discretionary decision to revoke Nouritajer's I-140," and those claims are therefore jurisdictionally barred. Pet. App. 6a. The court believed that the agency's compliance with mandatory procedural requirements—such as issuing pre-revocation notice—is reviewable, but it determined that none of petitioners' challenges falls in that category. *Id.* at 7a-10a. The court also found inapplicable the exception in Section 1252(a)(2)(D), permitting review of constitutional claims and questions of law, because this case does not arise from a petition for review of an order of removal. *Id.* at 10a n.1.

ARGUMENT

The decision below is correct and does not warrant further review. The Second Circuit here joined the overwhelming majority of circuits in holding that 8 U.S.C. 1252(a)(2)(B)(ii) precludes judicial review of a decision under 8 U.S.C. 1155 to revoke a prior approval of an immigrant visa petition. That conclusion follows from the provisions' plain text, and petitioners' various counterarguments are unavailing. Only one circuit has reached a contrary conclusion. But the conflict among the circuits may dissipate on its own and, in any event,

it lacks sufficient practical significance to warrant this Court's intervention.

This Court has repeatedly denied petitions for writs of certiorari on the same or similar questions. See *iTech U.S., Inc.* v. *Jaddou*, No. 21-596 (May 23, 2022); *Rajasekaran* v. *Hazuda*, 137 S. Ct. 567 (2016) (No. 16-146); *Bernardo ex rel. M&K Eng'g, Inc.* v. *Johnson*, 579 U.S. 917 (2016) (No. 15-1138); *Karpeeva* v. *Department of Homeland Sec. Citizenship & Immigration Servs.*, 565 U.S. 1036 (2011) (No. 11-365); *Sands* v. *Department of Homeland Sec.*, 558 U.S. 817 (2009) (No. 08-1330). It should do the same here.

1. The court of appeals correctly held that Sections 1155 and 1252(a)(2)(B)(ii) together foreclose judicial review of the Secretary's decision to revoke the approval of an immigrant visa petition. See Pet. App. 6a. Section 1252(a)(2)(B) expressly precludes judicial review of certain enumerated decisions, as well as "any other decision or action" the authority for which is "specified under" Title II of the INA to be in the "discretion" of the Secretary. 8 U.S.C. 1252(a)(2)(B)(ii). "[T]he word 'any' has an expansive meaning," *Patel* v. *Garland*, 142 S. Ct. 1614, 1622 (2022) (citation omitted), which readily encompasses a revocation decision. No party disputes that Section 1155 is located within Title II of the INA. See Act of Oct. 3, 1965, Pub. L. No. 89-236, § 23, 79 Stat. 922. And Section 1155—which states that the Secretary "may, at any time, for what he deems to be good and sufficient cause, revoke the approval of any petition approved by him," 8 U.S.C. 1155—plainly vests the revocation decision in the Secretary's discretion.

Multiple aspects of the language of Section 1155 confirm its discretionary character. Most notably, as this Court has "repeatedly observed," "the word 'may'

clearly connotes discretion." *Biden* v. *Texas*, 142 S. Ct. 2528, 2541 (2022) (quoting *Opati* v. *Republic of Sudan*, 140 S. Ct. 1601, 1609 (2020)); see, *e.g.*, *Kucana* v. *Holder*, 558 U.S. 233, 247 n.13 (2010).

The temporal phrase "'at any time,'" immediately after "may," further "connotes a level of discretion." *Jilin Pharm. USA, Inc.* v. *Chertoff*, 447 F.3d 196, 203 (3d Cir. 2006); *El-Khader* v. *Monica*, 366 F.3d 562, 567 (7th Cir. 2004). The Secretary's authority to revoke "'at any time'" was once constrained by a statutory "notice requirement," and Congress's elimination of that requirement "strengthen[ed] the discretion of the Secretary of Homeland Security to revoke approval of petitions." *Jilin*, 447 F.3d at 203 (citation omitted).

In addition, "the language 'for what [the Secretary] *deems* to be good and sufficient cause' makes clear that what constitutes 'good and sufficient cause' is within the Secretary's discretion." *Bernardo ex rel. M&K Eng'g, Inc.* v. *Johnson*, 814 F.3d 481, 486 (1st Cir.) (emphasis added; citation omitted; brackets in original), cert. denied, 579 U.S. 917 (2016). To "deem" means "to come to view, judge, or classify after some reflection," or to "hold" or "think." *Webster's Third New International Dictionary* 589 (1993) (capitalization omitted); see *Black's Law Dictionary* 415 (6th ed. 1990) ("To hold; consider; adjudge; believe; condemn; determine[.]"). By using the verb "deems," Congress made clear that the Secretary—not a court—is the one who decides whether good and sufficient cause warrants revoking a visa petition. See *Ghanem* v. *Upchurch*, 481 F.3d 222, 225 (5th Cir. 2007) ("We interpret the phrase 'for what he deems' as vesting complete discretion in the Secretary to determine what constitutes good and sufficient cause."); *Jilin*, 447 F.3d at 203 ("This language indi-

cates that Congress committed to the Secretary's discretion the decision of when good and sufficient cause exists to revoke approval."); cf. *Webster* v. *Doe*, 486 U.S. 592, 600 (1988) (emphasizing that another statute allowed for a termination when the specified official "shall *deem* such termination necessary or advisable," rather than "when the dismissal *is* necessary or advisable").

Finally, the determination of whether "'good and sufficient cause'" exists is itself highly subjective, and "there exist no strict standards for making this determination," suggesting that Congress intended to leave it to the Secretary rather than a reviewing court. *El-Khader*, 366 F.3d at 567; see *Jilin*, 447 F.3d at 205 ("[T]he requirement of 'for what [the Secretary] deems good and sufficient cause' in § 1155 is so vague as to be useless as a guide to a reviewing court.") (second set of brackets in original).

2. Petitioners contend that Section 1155 does not vest revocation decisions in the Secretary's discretion and that, even if it did, such decisions would still be subject to judicial review. Those arguments are unavailing.

a. Petitioners principally contend (Pet. 11) that Section 1155 "does not provide the clarity" that would be required to overcome the "presumption favoring judicial review" and vest revocation decisions in the Secretary's discretion. Given the statute's numerous indicia of discretion, petitioners' contention appears to consist in the absence in Section 1155 of the word "discretion." But that argument conflicts with the principle that Congress need not "use magic words in order to speak clearly" on matters of jurisdiction. *Henderson* v. *Shinseki*, 562 U.S. 428, 436 (2011).

Petitioners' argument is also at odds with this Court's decision in *Kucana*. As the Court explained,

Section 1252(a)(2)(B)(ii) expressly exempts decisions on asylum applications from its bar. *Kucana*, 558 U.S. at 247 n.13. But the word "discretion" does not appear in the INA's provision about asylum, either. Instead, like Section 1155, it uses the permissive "may," providing that "the Attorney General may grant asylum." 8 U.S.C. 1158(b)(1)(A). The express exception that Section 1252(a)(2)(B)(ii) makes for grants of asylum would therefore be superfluous unless the provision otherwise encompassed statutes that do not use the word "discretion." See *Kucana*, 558 U.S. at 247 n.13; *Zhu* v. *Gonzales*, 411 F.3d 292, 294-295 (D.C. Cir. 2005). Indeed, petitioners themselves concede (Pet. 12) that the power to grant "asylum is discretionary"—despite the absence of the word "discretion" or any other textual clues in Section 1158 that are more express than those present in Section 1155.

b. Petitioners next contend that "prior administrative precedent has created a meaningful legal standard to govern" what constitutes "'good and sufficient cause,'" thereby enabling courts to review revocation decisions for compliance with that standard. Pet. 9 (citation omitted); see Pet. 12. At the outset, petitioners fail to identify any respect in which the agency's decision departed from those standards.

In any event, petitioners' argument effectively excises the word "deems" from the statute. 8 U.S.C. 1155; see *Market Co.* v. *Hoffman*, 101 U.S. 112, 115 (1879) (noting "that significance and effect shall, if possible, be accorded to every word" of a statute). Section 1155 authorizes the Secretary to revoke a prior approval on the basis of "what he *deems* to be good and sufficient cause." 8 U.S.C. 1155 (emphasis added). Accordingly, "[t]he operative fact required to exercise discretion un-

der § 1155 is not merely the presence of cause for the revocation, but the Secretary's *judgment* that such cause exists." *Jilin*, 447 F.3d at 204. "[W]hen read in context and as a whole, the statute makes clear that Congress delegates to the Secretary the decision to determine what constitutes good and sufficient cause." *Ghanem*, 481 F.3d at 224.

Petitioners invoke (Pet. 12) *Service* v. *Dulles*, 354 U.S. 363 (1957), for the proposition that an agency's decision may be reviewed for compliance with its own regulations. *Service* is inapposite. Although the relevant decision there was vested in the Secretary's discretion, the case did not involve any statutory provision that affirmatively made the decision unreviewable (as Section 1252(a)(2)(B)(ii) does). See *id.* at 370. Petitioners' reliance (Pet. 12-13) on *United States ex rel. Stellas* v. *Esperdy*, 366 F.2d 266 (2d Cir. 1966), rev'd, 388 U.S. 462 (1967), is misplaced for a similar reason. See *Pierno* v. *INS*, 397 F.2d 949 (2d Cir. 1968) (construing *Stellas*). In *Stellas*, the court of appeals affirmed the automatic revocation of a visa under Section 1155 based on a regulation, but this Court summarily reversed and remanded to the agency. See 366 F.2d at 269-270; *Stellas* v. *Esperdy*, 388 U.S. 462 (1967). Like *Service*, *Stellas* did not involve an affirmative bar to review, since Section 1252(a)(2)(B)(ii) was not enacted until decades later. See IIRIRA § 306(a)(2), 110 Stat. 3009-607. Before the enactment of Section 1252(a)(2)(B), courts could review the substance of discretionary immigration decisions. See, *e.g.*, *Foti* v. *INS*, 375 U.S. 217, 229 n.15 (1963). But Congress overhauled that regime when it "sharply circumscribed judicial review of the discretionary-relief process" by enacting Section 1252(a)(2)(B). *Patel*, 142 S. Ct. at 1619.

Petitioners' attempt (Pet. 9) to rely on "administrative precedent" is also at odds with *Kucana*. There, the Court concluded that Section 1252(a)(2)(B)(ii) applies only to "determinations made discretionary by statute," rather than "determinations declared discretionary by the [agency] through regulation." *Kucana*, 558 U.S. at 237. The inverse is also true: "If an agency regulation cannot render a decision discretionary (and thus forbid review), then neither should it render it non-discretionary (and thus permit review)." *Poursina* v. *USCIS*, 936 F.3d 868, 875 (9th Cir. 2019).

Petitioners briefly suggest that "Congress can be presumed to have been familiar with these administrative standards in place for more than 30 years and implicitly approved them in subsequent reenactment of the revocation provision." Pet. 10; see Pet. 11. That argument misses the point. Even if Congress were aware that the agency had, in its discretion, construed the statute's good-cause standard, that would not suggest that Congress intended to convert Section 1155 from a discretionary to a nondiscretionary grant of authority. And in any event, the doctrine of ratification has no application "when, as here, an ambiguous term lacks a widely accepted meaning and we lack any indication that Congress was even aware of the administrative interpretation suggested." *Bernardo*, 814 F.3d at 490.

c. Lastly, petitioners object to the court of appeals' interpretation on policy grounds. They suggest that, even though the initial denial of a visa petition is subject to judicial review—because the statute provides that the Secretary "shall" grant visa petitions to eligible petitioners, 8 U.S.C. 1154(b); see 8 U.S.C. 1153(b)(3)(A)—the court of appeals' decision would allow the Secretary to evade judicial review by approving a petition and

then revoking it "a day after approval." Pet. 14. The presumption of regularity weighs against lending any credence to that speculation. See *United States* v. *Armstrong*, 517 U.S. 456, 464 (1996). And in this case, several years separated the initial grant of approval and the eventual revocation. See p. 5, *supra*. To the extent the Court is concerned about the possibility of gamesmanship by the agency, it should wait for a case that actually presents that concern.

Petitioners more broadly complain (Pet. 14-16) that the court of appeals' interpretation might shield executive misconduct, including allegedly pretextual decisions, from judicial scrutiny. Section 1252(a)(2)(B)(ii) does not preclude a noncitizen placed in removal proceedings from raising any "constitutional claims or questions of law" arising from those proceedings in "a petition for review filed with an appropriate court of appeals." 8 U.S.C. 1252(a)(2)(D). Regardless, even assuming petitioners' claim of pretext could not be raised in an eventual petition for review, but see *Polfliet* v. *Cuccinelli*, 955 F.3d 377, 384 (4th Cir. 2020), the preclusion of judicial review of their adjustment-related claims "would be consistent with Congress' choice to reduce procedural protections in the context of discretionary relief." *Patel*, 142 S. Ct. at 1626-1627.

3. There has long been a lopsided circuit split on the question presented, but this Court's review is not warranted to resolve it. The Second Circuit in the decision below joined the First, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Tenth, and D.C. Circuits in holding that Sections 1155 and 1252(a)(2)(B)(ii) together preclude judicial review of a decision to revoke approval of an immigrant visa petition. See *iTech U.S., Inc.* v. *Renaud*, 5 F.4th 59, 67-68 (D.C. Cir. 2021) (collecting cases), cert.

denied, No. 21-596 (May 23, 2022). In an unpublished opinion, an Eleventh Circuit panel has held the same. See *Sands* v. *U.S. Dep't of Homeland Sec.*, 308 Fed. Appx. 418, 419-420 (per curiam), cert. denied, 558 U.S. 817 (2009).

The Ninth Circuit is the only court of appeals to reach the opposite result, and it did so over a dissent by Judge Tallman. *ANA Int'l Inc.* v. *Way*, 393 F.3d 886, 896 (2004); see *id.* at 895 (Tallman, J., dissenting). In *ANA*, the court of appeals concluded that, although Section 1155 "plainly authorizes some measure of discretion," *id.* at 893, the statute's reference to "good and sufficient cause," 8 U.S.C. 1155—which has been construed and applied in previous agency decisions—provides a "meaningful legal standard" for judicial review, 393 F.3d at 894.

That narrow circuit conflict may dissipate on its own. The Ninth Circuit recently found that Section 1252(a)(2)(B)(ii) covers 8 U.S.C. 1153(b)(2)(B)(i), which shares the "same basic linguistic and logical structure" as Section 1155. *Poursina*, 936 F.3d at 873. Rejecting the argument that "*ANA International* compels a contrary result," the Ninth Circuit characterized *ANA* as an "outlier" and stated that it "would hesitate to extend such decision beyond its narrow holding." *Id.* at 873, 875. The court noted the "tension" between *Kucana* (which holds that whether a decision is discretionary for purposes of Section 1252(a)(2)(B)(ii) depends on the statute itself) and *ANA* (which had previously held that the agency's interpretation of the statute may render a decision nondiscretionary). *Id.* at 875. Thus, given the opportunity, the Ninth Circuit might choose to align its precedent with the rest of the circuits.

Intervening precedent from this Court further counsels in favor of giving the Ninth Circuit an opportunity to revisit *ANA*. Just last Term, this Court interpreted Section 1252(a)(2)(B)(ii)'s adjoining clause, which precludes courts from reviewing "any judgment regarding the granting of relief" under certain specified provisions. 8 U.S.C. 1252(a)(2)(B)(i). The Court concluded that the phrase "any judgment," *ibid.*, encompasses "any authoritative decision," *Patel*, 142 S. Ct. at 1621-1622. It explained that the provision thus "encompasses any and all decisions relating to the granting or denying of discretionary relief," rejecting the government's argument that the provision was limited to "discretionary judgments." *Id.* at 1621, 1625 (citation and internal quotation marks omitted).

To be sure, the text of clause (i) differs in certain respects from the text of clause (ii). Compare 8 U.S.C. 1252(a)(2)(B)(i) ("any judgment regarding the granting of relief"), with 8 U.S.C. 1252(a)(2)(B)(ii) ("any other decision or action * * * specified" to be in the Secretary's discretion). But this Court has recognized that "[t]he proximity of clauses (i) and (ii), and the words linking them—'any other decision'—suggests that Congress had in mind decisions of the same genre[.]" *Kucana*, 558 U.S. at 246. And *ANA* relied on a Ninth Circuit precedent interpreting clause (i), *Montero-Martinez* v. *Ashcroft*, 277 F.3d 1137 (2002), which *Patel* has since abrogated. See *ANA*, 393 F.3d at 895. The Ninth Circuit thus might reasonably conclude that *Patel* provides an additional basis for revisiting *ANA*'s holding that Section 1252(a)(2)(B)(ii) fails to shield the purportedly nondiscretionary aspects of a revocation decision from review.

Regardless, the availability of judicial review in the Ninth Circuit (but not elsewhere) is insufficiently important to warrant this Court's intervention. Revocation decisions are generally subject to review in the administrative process, and thus are already exposed to scrutiny and the possibility of reversal if an error has occurred. And in the event that a visa petitioner seeks judicial review of a revocation decision in the Ninth Circuit, the standard of review is highly deferential. See *Love Korean Church* v. *Chertoff*, 549 F.3d 749, 754-755 (9th Cir. 2008); see also *Tandel* v. *Holder*, No. C-09-1319, 2009 WL 2871126, at *1 (N.D. Cal. Sept. 1, 2009) ("[T]he hurdle that a plaintiff must overcome to overturn the agency's decision is set very high.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
GLENN M. GIRDHARRY
ALESSANDRA FASO
Attorneys

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