ORAL ARGUMENT NOT YET SCHEDULED

No. 23-5089

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SAVE JOBS USA,
Appellant,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, ET AL.,
Appellees.

On appeal from an order entered in the U.S. District Court for the District of Columbia
No. 1:15-cv-615-TSC
The Hon. Tanya S. Chutkan

BRIEF BY *AMICI CURIAE* AMERICAN IMMIGRATION COUNCIL AND AMERICAN IMMIGRATION LAWYERS ASSOCIATION IN SUPPORT OF APPELLEES IN SUPPORT OF AFFIRMANCE

Leslie K. Dellon (#27795)
Katherine Melloy Goettel* (IA SBN 23821)
American Immigration Council
1331 G Street, NW, Suite 200
Washington, DC 20005
Telephone: (202) 507-7530
ldellon@immcouncil.org
kgoettel@immcouncil.org

Jennifer R. Coberly (#63914)
American Immigration Lawyers Association
1331 G Street, NW
Washington, DC 20005
Telephone: (202) 507-7692
jcoberly@aila.org

*Not admitted to the D.C. Circuit bar

Jonathan T. Weinberg (#42749)
Wayne State University Law School
471 West Palmer Street
Detroit, MI 48202
Tel: (313) 577-3933
weinberg@wayne.edu

Attorneys for Amici Curiae

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES PER CIRCUIT RULE 28(a)(1)

A. Parties and *Amici*.

Except for the following, all parties, intervenors, and *amici curiae* appearing before the district court, and in this Court, are listed in the Brief for Appellant.

New *amici* in this Court are the American Immigration Council and the American Immigration Lawyers Association.

B. Rulings Under Review.

Reference to the ruling at issue appears in the Brief for Appellee U.S. Department of Homeland Security.

C. Related Cases.

This case was previously before this Court in *Save Jobs USA v. U.S. Dep't of Homeland Sec.*, 942 F.3d 504 (D.C. Cir. 2019).

Dated: February 8, 2024

/s/ Leslie K. Dellon
Leslie K. Dellon (#27795)
202-507-7530
ldellon@immcouncil.org

Attorney for Amici Curiae

STATEMENT REGARDING CONSENT TO FILE, AUTHORSHIP AND SEPARATE BRIEFING (CORPORATE DISCLOSURE PREVIOUSLY FILED)

Pursuant to Circuit Rule 29(b), Amici filed a Notice to Participate, with Consent, as *Amici Curiae* in Support of Appellees with this Court on February 1, 2024. In their Notice to Participate, Amici represented that all parties consented, through their respective counsel, to the filing of this brief. Their Notice to Participate also included the separate Corporate Disclosure Statement required by Circuit Rule 26.1, which Rule 29(b) states must accompany a written representation of consent to participate.

Pursuant to Fed. R. App. P. 29(a)(4)(E), this brief has not been authored, in whole or in part, by counsel to any party in this case. No party or counsel to any party contributed money intended to fund preparation or submission of this brief. No person, other than the amici, their members, or their counsel, contributed money that was intended to fund preparation or submission of this brief.

Pursuant to Circuit Rule 29(d), Amici certify that this separate *amici* brief is necessary and does not duplicate any other brief that may be submitted. Amici seek to assist the Court by providing historical background regarding the complex, but complementary, network of statutory, regulatory, and sub-regulatory provisions addressing noncitizen work authorization.

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TABLE OF AUTHORITIES

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GLOSSARY

AILA	American Immigration Lawyers Association
Council	American Immigration Council
DHS	Department of Homeland Security
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
OI	Operations Instructions
USCIS	U.S. Citizenship and Immigration Services

STATUTES AND REGULATIONS

Except for the following, the applicable statutes and regulations are in the Brief for Appellant.

8 U.S.C. § 1103(a) (1952).

The Attorney General shall be charged with the administration and enforcement of this Act and all other laws relating to the immigration and naturalization of [noncitizens], except insofar as this Act or such laws relate to the powers, functions, and duties conferred upon the President, the Secretary of State, the officers of the Department of State, or diplomatic or consular officers: Provided, however, That determination and ruling by the Attorney General with respect to all questions of law shall be controlling. He shall have control, direction, and supervision of all employees and of all the files and records of the Service. He shall establish such regulations; prescribe such forms of bond, reports, entries, and other papers; issue such instructions; and perform such other acts as he deems necessary for carrying out his authority under the provisions of this Act. He is authorized, in accordance with the civil-service laws and regulations and the Classification Act of 1949, to appoint such employees of the Service as he deems necessary, and to delegate to them or to any officer or employee of the Department of Justice in his discretion any of the duties and powers imposed upon him in this Act; he may require or authorize any employee of the Service or the Department of Justice to perform or exercise any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder upon any other employee of the Service. He shall have the power and duty to control and guard the boundaries and borders of the United States against the illegal entry of aliens and shall, in his discretion, appoint for that purpose such number of employees of the Service as to him shall appear necessary and proper. He is authorized to confer or impose upon any employee of the United States, with the consent of the head of the Department or other independent establishment under whose jurisdiction the employee is serving, any of the powers, privileges, or duties conferred or imposed by this Act or regulations issued thereunder upon officers or employees of the Service. He may, with the concurrence of the Secretary of State, establish offices

of the Service in foreign countries; and, after consultation with the Secretary of State, he may, whenever in his judgment such action may be necessary to accomplish the purposes of this Act, detail employees of the Service for duty in foreign countries.

Pub. L. No. 82-414, § 103(a) of the Immigration and Nationality Act, 66 Stat. 163, 173-74 (1952).

8 U.S.C. § 1103(b) (1952).

The Commissioner shall be a citizen of the United States and shall be appointed by the President, by and with the advice and consent of the Senate, and shall receive compensation at the rate of $17,500 per annum. He shall be charged with any and all responsibilities and authority in the administration of the Service and of this Act which are conferred upon the Attorney General as may be delegated to him by the Attorney General or which may be prescribed by the Attorney General.

Pub. L. No. 82-414, § 103(b) of the Immigration and Nationality Act, 66 Stat. 163, 174 (1952).

I. INTEREST OF AMICI CURIAE

Amici American Immigration Council (Council) and American Immigration Lawyers Association (AILA) submit this brief in support of the position of the Appellees. Amici seek to assist this Court by providing historical background regarding the complex, but complementary provisions addressing noncitizen work authorization. In particular, Amici focus on the period beginning in 1952, when Congress adopted a major overhaul and consolidation of the nation's immigration laws and ending in 1986 with the passage of the first comprehensive bill addressing noncitizen employment verification and enforcement.

The Council is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, and protect the legal rights of noncitizens. The Council regularly litigates in federal courts and administrative tribunals issues involving access to immigration benefits, including employment authorization.

AILA, founded in 1946, is a national, non-partisan, non-profit association with nearly 17,000 members, including lawyers and law school professors who practice and teach in the field of immigration and nationality law. AILA seeks to promote justice, advocate for fair and reasonable immigration law and policy, and advance the quality of immigration and nationality law and practice. AILA's

members practice regularly before the Department of Homeland Security, immigration courts and the Board of Immigration Appeals. AILA has participated as amicus curiae in numerous cases before the U.S. Courts of Appeals and the U.S. Supreme Court.

II. ARGUMENT

A. Summary

The Executive Branch[1] has long interpreted Congress' broad delegation of authority to administer and enforce the Immigration and Nationality Act (INA) to include filling the gaps left by Congress regarding work authorization. Since at least 1952, the Executive Branch exercised this authority relating to work authorization numerous times, granting work authorization to various classes of noncitizens. Congress has never limited such authority or otherwise indicated it was wrong.

To the contrary, Congress has explicitly ratified the Executive Branch's understanding of its authority. In 1976, Congress incorporated into the statute the

[1] Because different executive level departments have exercised authority to implement U.S. immigration laws at different points in time, Amici refer to these departments collectively as the Executive Branch. This term is intended to encompass both the Department of Justice and the Department of Homeland Security (DHS), including more specifically the Attorney General, the Commissioner of the former Immigration and Naturalization Service (INS), and the Secretary of DHS.

framework for "authorized" and "unauthorized" employment set out in the Executive Branch's 1952 regulations. Then, in 1986, Congress explicitly provided that a noncitizen can be "authorized to be . . . employed . . . by the Attorney General," adopting the model of shared congressional and executive responsibility for work authorization. The Executive Branch's authorization of employment for H-4 dependents whose spouses in H-1B status have reached a certain stage in the process of becoming a U.S. lawful permanent resident is part of this settled exercise of congressionally delegated authority.[2]

B. Overview of Congressional and Executive Branch Actions Relating to Employment Authorization

For more than thirty years before 1986, the Executive Branch used its delegated authority to grant work authorization to certain classes of noncitizens. Congress explicitly ratified that agency authority in 1986. The Executive Branch has continued to exercise that authority for nearly forty years since then.

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[2] DHS issued a final rule, effective May 26, 2015, authorizing employment upon receipt of an Employment Authorization Document for an H-4 if their H-1B spouse is the beneficiary of an immigrant visa petition approved by USCIS or has received an extension of their H-1B status beyond the regular six-year limit pursuant to § 106(a)-(b) of the American Competitiveness in the Twenty-First Century Act of 2000, Pub. L. No. 106-313, 114 Stat. 1251 (Oct. 17, 2000), *as amended by* the Twenty-First Century Department of Justice Appropriations Authorization Act, Pub. L. No. 107-273, 116 Stat. 1758 (Dec. 29, 2002). Employment Authorization for Certain H-4 Dependent Spouses, 80 Fed. Reg. 10284, 10311 (Feb. 25, 2015) (codified at 8 C.F.R. §§ 214.2(h)(9)(iv), 274a.12(c)(26)).

Since at least 1952, when the INA[3] was enacted, Congress has shared authority with the agency in specifying which classifications of noncitizens are entitled to work authorization. A complementary network of statutory, regulatory and nonregulatory provisions has governed noncitizen work authorization for decades.

In regulations adopted to implement the 1952 INA, the former Immigration and Naturalization Service (INS) introduced the terms "authorized" and "unauthorized" to characterize noncitizens' employment. The agency used these terms repeatedly in the ensuing decades. It interpreted the INA as creating shared congressional and executive responsibility with respect to employment authorization: Depending on the circumstances, employment could be authorized by either Congress or the Executive Branch.

In 1976—more than twenty years after the agency first used the term "unauthorized employment" in its 1952 regulations—Congress incorporated that term into the statute. In 1986, Congress explained that a noncitizen was "unauthorized" for purposes of the new employment verification provisions if not "*authorized to be so employed by this Act or by the Attorney General.*" 8 U.S.C.

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[3] The 1952 INA was a comprehensive immigration bill which consolidated in one location—with modifications and additions—the then-existing collection of separate immigration-related statutes. Pub. L. No. 82-414, 66 Stat. 163 (1952). The INA remains in place today, although it has been amended numerous times.

§ 1324a(h)(3)(B) (emphasis added). Congress thus officially adopted the model of shared congressional and executive responsibility for authorizing work that the agency had followed for almost 35 years. It ratified the Executive Branch's long history of exercising its delegated authority to fill the employment authorization gaps left by Congress.

1. The Immigration and Naturalization Service Exercised its Delegated Authority pursuant to the 1952 INA to Specify Work Authorization for Certain Nonimmigrants

The 1952 INA provided for the admission of various classes of noncitizens into the United States, but did not in all cases specify whether those noncitizens could work while they were here. Congress did reference employment with respect to employment-based immigrants, as well as certain classes of nonimmigrants. *See, e.g.*, INA, Pub. L. No. 82-414, §§ 101(a)(15)(E), (H)(i)-(ii) (certain nonimmigrant categories), § 203(a)(1)(A) (certain employment-based immigrant categories), 66 Stat. 163, 168, 178 (1952).

With respect to immigrants, Congress had incorporated the prior system of setting annual numerical limitations (quotas) based upon country of origin. Congress allocated a portion of the annual quota "to qualified quota immigrants whose services are determined by the Attorney General to be needed urgently in the United States because of the high education, technical training, specialized experience, or exceptional ability of such immigrants . . ." INA, Pub. L. No. 82-

414, § 203(a)(1)(A), 66 Stat. 163, 178 (1952). Upon their admission, these individuals were authorized to work by virtue of their classification as employment-based immigrants. Similarly, Congress included a category under which a religious minister, entering "solely" to work in that vocation, could become a permanent resident of the United States without being subject to the quota system. *Id*., § 101(a)(27)(F)(i), 66 Stat. 163, 170.

But the 1952 INA did not always speak to whether classes of nonimmigrants could work in the United States. Congress did specify work authorization for certain nonimmigrant categories: treaty traders and investors, noncitizens of distinguished merit and ability, noncitizens coming to the U.S. to perform temporary labor, and foreign media representatives. *See id*., §§ 101(a)(15)(E)(i)-(ii); 101(a)(15)(H)(i)-(ii); 101(a)(15)(I), 66 Stat. 163, 168-69. In several other categories, the statutory language made clear that the noncitizens would be working in the United States. *See, e.g.*, *id*., §§ 101(a)(15)(A)(i)-(ii) (certain types of accredited diplomats, other foreign officials and employees); 101(a)(15)(A)(iii) (their personal staff); 101(a)(15)(G)(i)-(v) (international organization principal and accredited representatives and their personal staff), 66 Stat. 163, 167-68.

But Congress did not fully answer the question whether other categories of nonimmigrants were authorized to work in the United States. The INS addressed this question in its December 1952 regulations implementing the 1952 INA.

Immigration and Nationality Regulations, 17 Fed. Reg. 11469, 11469-564 (Dec. 19, 1952). The agency provided a two-part answer**.** *See* 17 Fed. Reg. at 11489 (codified at 8 C.F.R. § 214.2 (1953)) (Conditions of nonimmigrant status).

First, for those categories in which Congress did make employment a component of status, nonimmigrants would be subject to removal if they did not comply with the employment conditions incident to their status. *See, e.g.*, 17 Fed. Reg. at 11491 (codified at 8 C.F.R. § 214e.4(a)(2) (1953)) (treaty trader fails to maintain status if he changes his activities to those of a treaty investor without prior consent from INS); 17 Fed. Reg. at 11494 (codified at 8 C.F.R. §§ 214i.3-214i.4 (1953)) (an information media representative fails to maintain status if he changes employment without prior INS consent).

Second, for those categories in which Congress did not make employment a component of status, the INS could still grant the nonimmigrant employment authorization on a case-by-case basis.

> [W]hile in the United States [a nonimmigrant] will not engage in any employment or activity inconsistent with and not essential to the status under which he is in the United States *unless such employment or activity has first been authorized* by the district director or the officer in charge having administrative jurisdiction over the [nonimmigrant's] place of temporary residence in the United States.

17 Fed. Reg. at 11489 (codified at 8 C.F.R. § 214.2(c) (1953)) (emphasis added). For example, INS officials could grant employment authorization to noncitizen

students who sought to work on campus due to financial need, or who sought employment for practical training. *See* 17 Fed. Reg. at 11492 (codified at 8 C.F.R. § 214f.4(a)-(b) (1953)).

INS took these steps in reliance on its delegated authority under § 103 of the 1952 Act. *See* 17 Fed. Reg. at 11488. Congress in § 103 delegated broad authority to the Executive Branch to "administ[er] and enforce[]" the INA. INA, Pub. L. No. 82-414, § 103(a), 66 Stat. 163, 173 (1952). More specifically, it empowered the Executive Branch, through the Attorney General, *inter alia*, to "establish such regulations" and "perform such other acts as he deems necessary for carrying out his authority under the provisions of this Act." *Id*. Additionally, in a still-existing provision, Congress specifically granted the Executive Branch the authority to determine the conditions under which nonimmigrants, including those at issue here, would be permitted into the United States and allowed to remain: "The admission to the United States of any [noncitizen] as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe, . . ." *Id*., § 214(a), 66 Stat. 163, 189.

Congress further specified that the Attorney General could delegate his duties and powers, § 103(a), including to the Commissioner of INS:

> [The Commissioner] shall be charged with any and all responsibilities and authority in the administration of the Service and of this Act which are conferred upon the Attorney

> General as may be delegated to him by the Attorney General or which may be prescribed by the Attorney General.

INA, Pub. L. No. 82-414, § 103(b), 66 Stat. 163, 174 (1952).

2. The Executive Branch Repeatedly Exercised this Delegated Authority Between 1952 and 1986

Between 1952 and 1986, INS routinely exercised its authority to grant work authorization to classes of noncitizens beyond those granted by Congress pursuant to the statutory delegation of authority. In 1971, INS amended its regulations to provide more succinctly that it could provide work authorization beyond the categories explicitly listed in the statutory text. The amended regulations stated that a nonimmigrant "may not engage in any employment unless he has been accorded a nonimmigrant classification which authorizes employment or he has been granted permission to engage in employment in accordance with the [agency's regulations]." Employment of Certain Nonimmigrants, 36 Fed. Reg. 8048, 8049 (Apr. 29, 1971) (codified at 8 C.F.R. § 214.1(c) (1972)).[4]

The INS promulgated two regulations in 1978, under its authority in 8 U.S.C. § 1103, that granted work authorization to classes of noncitizens not authorized to work by statute. The first provided work authorization to certain

[4] This regulation was later redesignated as 8 C.F.R. § 214.1(e) without change. Extension of Stay for Nonimmigrant Visitors for Pleasure B-2, 43 Fed. Reg. 12673, 12674 (Mar. 27, 1978).

categories of noncitizens to whom the agency had granted voluntary departure in lieu of deportation.[5] Voluntary Departure Prior to Commencement of Hearing, 43 Fed. Reg. 29526, 29528 (July 10, 1978) (codified at 8 C.F.R. § 242.5(a)(3) (1979)) (indicating that INS could stamp "Employment Authorized" on the noncitizen's Arrival/Departure form). Those categories included certain students and exchange visitors or their dependents; quota-exempt and non-quota immigrants who were under temporal restrictions; noncitizens granted asylum but not parole or a stay of deportation; and noncitizens granted voluntary departure by INS for "compelling circumstances." *See id.* (codified at 8 C.F.R. § 242.5(a)(2)(v)-(viii) (1979)). INS asserted 8 U.S.C. § 1103 as its authority for this regulatory grant of work authorization. *Id*.

The agency issued a second regulation in 1978 establishing criteria by which it would decide applications for work authorization by spouses and unmarried dependent children of international organization officers or employees (the G-4 nonimmigrant category). Application to Accept or Continue Employment by G-4 Nonimmigrants, 43 Fed. Reg. 33229, 33231 (July 31, 1978). The agency explained:

> Under the [INA], G-4 spouses and dependents are nonimmigrants. Nonimmigrants generally are prohibited from

[5] A person granted voluntary departure agrees to depart the United States within a set period of time in exchange for the agency not pursuing deportation proceedings. *See* 8 U.S.C. § 1229c.

> working by Service regulations, unless permission to work has first been granted by the Service . . . . [T]he proposed G-4 regulation does not contravene the cited U.N. Headquarters Agreement, nor is it inconsistent with the authority of Congress over [noncitizens] in the United States which has been delegated through the Attorney General to the Service under the [INA].

Id. at 33230.

In 1979, INS proposed to codify employment authorization procedures that had so far been set out only in its Operations Instructions and in informal policy statements for its field offices. Proposed Rules for Employment Authorization for Certain Aliens, 44 Fed. Reg. 43480, 43480 (July 25, 1979). During the regulatory process—which consisted of two rounds of proposed rules—INS was clear throughout that its 8 U.S.C. § 1103 authority "to establish regulations, issue instructions, and perform any actions necessary for the implementation and administration of the [INA]" gave the Attorney General the power to grant work authorization. 44 Fed. Reg. at 43480 and Employment Authorization, Proposed Rule, 45 Fed. Reg. 19563, 19563 (Mar. 26, 1980).

The final rule defined six categories of noncitizens who did not have work authorization under the terms of the statute, but who could apply for work authorization from INS. Employment Authorization to Aliens in the United States, 46 Fed. Reg. 25079, 25080 (May 5, 1981) (codified at 8 C.F.R. § 109.1(a) (1982)). The first group included certain nonimmigrants for whom INS had provided terms for employment in 8 C.F.R. § 214.2, such as the spouse or unmarried dependent

child of a G-4 international organization employee or the spouse of an exchange visitor. 46 Fed. Reg. at 25081 (codified at 8 C.F.R. § 109.1(b)(1)(iii)-(iv) (1982)). The second and third groups consisted of asylum applicants with "non-frivolous" applications and adjustment of status applicants with "properly filed" applications. *Id*. (codified at 8 C.F.R. § 109.1(b)(2)-(3) (1982)). The final three groups consisted of noncitizens who were not maintaining lawful nonimmigrant status. Employment Authorization; Revision to Classes of Aliens Eligible, 46 Fed. Reg. 55920, 55921-22 (Nov. 13, 1981) (codified at 8 C.F.R. § 109.1(b)(v)-(vii) (1982)).

3. Congress Amended the INA Several Times Between 1952 and 1986 But Never Suggested That the Agency Lacked Power to Authorize Noncitizen Employment

Throughout the same period, 1952 to 1986, Congress amended the INA repeatedly, but never questioned the agency's authority to grant work authorization. For example, in 1965 and 1970, Congress amended several existing provisions regarding employment-based visas. *See e.g.*, Act of Apr. 7, 1970, Pub. L. No. 91-225, amending 8 U.S.C. § 1101(a)(15)(H), 84 Stat. 116, 116; Act of Oct. 3, 1965, Pub. L. No. 89-236, amending 8 U.S.C. §§ 1101(a)(27)(D), (a)(32), 1153, 1182(a)(14), 79 Stat. 911, 912-14, 916-17. In 1970, Congress amended the INA to add another nonimmigrant employment category, so that noncitizens who worked for multinational companies in certain capacities outside of the United States could

work in the United States. Act of Apr. 7, 1970, Pub. L. No. 91-225, § 101(a)(15)(L), 84 Stat. 116, 116.

Also in 1970, Congress added a new nonimmigrant category under which a fiancé or fiancée of a U.S. citizen could receive a visa to enter the United States and marry within 90 days after entry. *Id.*, § 101(a)(15)(K), 84 Stat. 116, 116. Because Congress said nothing about work authorization for this new visa category, the agency addressed the question of work authorization for persons in this status via sub-regulatory guidance in its Operations Instructions (OI): "The words 'EMPLOYMENT AUTHORIZED' shall be stamped in the lower right hand corner of the original Form I-94 by the admitting officer upon admission …." INS O.I. 214.2(k)(5).

In 1976, Congress wrote the term "unauthorized employment"—a phrase the agency had introduced in 1952, and at the core of its regulation under its delegated authority since then—into the statute. Congress amended the INA to specify that individuals, other than immediate relatives of U.S. citizens, who engaged in "unauthorized employment" would be barred from becoming lawful permanent residents from within the United States. *See* Act of Oct. 20, 1976, Pub. L. No. 94-571, § 245(c), 90 Stat. 2703, 2706.[6] Congress also used the agency's term

[6] A noncitizen who is physically present in the United States and who meets the statutory eligibility requirements, may file an application to adjust status to

"employment authorized" in the Refugee Act of 1980, stating that the Attorney General could grant a limited group of asylum applicants permission to work in the United States and could "provide [the noncitizen] an 'employment authorized' endorsement or other appropriate work permit." Refugee Act of 1980, Pub. L. No. 96-212, § 401(b), 94 Stat. 102, 118.

Nothing in either amendment displaced the then-settled law that employment authorization could derive either from statutory text or agency action.

4. In 1986, Congress Explicitly Ratified the Executive Branch's More Than 30-Year History of Granting Employment Authorization Via its Delegated Authority

In the Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359, Congress enacted a provision penalizing employers for hiring noncitizen workers who were not authorized for employment. In that enactment, Congress defined "unauthorized employment" for the first time: "[W]ith respect to the employment of a [noncitizen] at a particular time," the noncitizen must either be "lawfully admitted for permanent residence," or "*authorized to be so employed* by this Act or *by the Attorney General*." *Id*., § 274A(h)(3), 100 Stat. 3359, 3368 (codified at 8 U.S.C. § 1324a(h)(3)) (emphasis added). This provision ended any possible doubt over the legitimacy of the Executive Branch's delegated authority to

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lawful permanent resident from within the United States rather than apply for an immigrant visa abroad.

grant work authorization. As the statute now makes explicit, a noncitizen can be "authorized to be . . . employed" *either* "by [the INA]" *or* "by the [Executive Branch]." Congress thus explicitly ratified the Executive Branch's power to grant work authorization via its delegated authority.

III. CONCLUSION

The foregoing establishes that the Executive Branch possesses delegated authority to grant work authorization to classes of noncitizens. As Appellees' briefs make clear, DHS's decision authorizing certain H-4 spouses to receive work authorization was an appropriate exercise of that authority. Accordingly, Amici urge this Court to affirm the District Court decision granting summary judgment to DHS.

Dated: February 8, 2024

Respectfully submitted,

/s/ Leslie K. Dellon
Leslie K. Dellon (#27795)
Senior Attorney
Katherine Melloy Goettel*
(Iowa SBN 23821)
Senior Legal Director, Litigation
American Immigration Council
1331 G Street, NW, Suite 200
Washington, DC 20005
Telephone: (202) 507-7530
ldellon@immcouncil.org
kgoettel@immcouncil.org

/s/ Jennifer R. Coberly
Jennifer R. Coberly (#63914)
American Immigration
Lawyers Association
1331 G Street, NW
Washington, DC 20005
Telephone: (202) 507-7692
jcoberly@aila.org

Jonathan T. Weinberg (#42749)
Wayne State University Law School
471 West Palmer Street
Detroit, MI 48202
Tel: (313) 577-3933
weinberg@wayne.edu

Attorneys for Amici Curiae
American Immigration Council
American Immigration
Lawyers Association

*Not admitted to the D.C. Circuit Bar

CERTIFICATE OF COMPLIANCE

I hereby certify that this *amici* brief complies with the type-volume limitation in Fed. R. App. 29(a)(5), as referenced in Circuit Rule 32(e)(3), because it contains 3,277 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1).

I further certify that this *amici* brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionately-spaced typeface in Microsoft Office 365 Word using the 14-point Times New Roman font.

Dated: February 8, 2024

/s/ Leslie K. Dellon
Leslie K. Dellon (#27795)
202-507-7530
ldellon@immcouncil.org

CERTIFICATE OF SERVICE

I certify that on February 8, 2024, I filed a Brief by *Amici Curiae* American Immigration Council and American Immigration Lawyers Association in Support of Appellees, with the ECF system that will provide notice and copies to the parties' counsel of record.

/s/ Leslie K. Dellon
Leslie K. Dellon (#27795)
202-507-7530
ldellon@immcouncil.org