No. 23-583

In the Supreme Court of the United States

AMINA BOUARFA, PETITIONER

v.

ALEJANDRO MAYORKAS, SECRETARY 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

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 "the authority for which is specified" to be in his "discretion" under Title II of the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.* 8 U.S.C. 1252(a)(2)(B)(ii). One of the provisions located in Title II of the INA 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.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-11a) is reported at 75 F.4th 1157. The order of the district court (Pet. App. 12a-24a) is not reported in the Federal Supplement but can be found at 2022 WL 2072995.

JURISDICTION

The judgment of the court of appeals was entered on July 28, 2023. On October 18, 2023, Justice Thomas extended the time within which to file a petition for a writ of certiorari to and including November 27, 2023, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. The Secretary of Homeland Security has broad discretion regarding the admission of noncitizens to the

United States.[1] The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, sets forth a two-step process through which a noncitizen may become a legal permanent resident by virtue of marriage to a U.S. citizen. See 8 U.S.C. 1151(b)(2)(A)(i). At the first step, the U.S.-citizen spouse must file an immigrant visa petition on the noncitizen's behalf—known as a "Form I-130, Petition for Alien Relative"—requesting that United States Citizenship and Immigration Services (USCIS) classify the noncitizen as an "immediate relative." 8 U.S.C. 1154(a)(1)(A)(i); 8 C.F.R. 204.1.[2] Generally, the petitioning spouse bears the burden of proving the validity of the marriage by a preponderance of the evidence. See 8 C.F.R. 204.1(f), 204.2(a)(2); see also *In re Pazandeh*, 19 I. & N. Dec. 884, 887 (B.I.A. 1989). USCIS may not approve an I-130 visa petition if the beneficiary has previously entered into a marriage for the purpose of evading the immigration laws. 8 U.S.C. 1154(c); 8 C.F.R. 204.2(a)(1)(ii). If USCIS denies the visa petition, the petitioner may file an administrative appeal with the Board of Immigration Appeals (Board), 8 C.F.R. 1003.1(b)(5), and if that appeal is unsuccessful, generally may seek judicial review, see, *e.g.*, *Mendoza* v. *Secretary, DHS*, 851 F.3d 1348, 1352 (11th Cir. 2017) (per curiam).

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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)).

[2] Various INA functions formerly vested in the Attorney General have been transferred to the Secretary of Homeland Security. Some residual statutory references to the Attorney General that pertain to those functions are now deemed to refer to the Secretary of Homeland Security. See 6 U.S.C. 251, 271(b), 542 note, 557; 8 U.S.C. 1551 note; see also *Nielsen* v. *Preap*, 139 S. Ct. 954, 959 n.2 (2019).

An approved I-130 visa petition on behalf of a noncitizen spouse constitutes an immediately available visa for purposes of the noncitizen's adjustment of status to that of a legal permanent resident under 8 U.S.C. 1255(a). See 8 U.S.C. 1151(b)(2)(A)(i). Thus, at the second step, the noncitizen may file an application for adjustment of status, which the Secretary "may" grant. 8 U.S.C. 1255(a); see 8 C.F.R. 245.2(a)(1).

At any time during the process, the Secretary may revoke the prior approval of a 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 and the opportunity to offer evidence. 8 C.F.R. 205.2(b). If the agency ultimately decides to revoke, 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 file an administrative appeal with the Board. 8 C.F.R. 205.2(d); see 8 C.F.R. 103.3(a)(1)(ii), 1003.1(b)(5).

b. Congress has limited judicial review of discretionary decisions by the Secretary. The relevant provision, titled "Denials of discretionary relief," provides:

> 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 provided 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 this subchapter 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.

2. Petitioner Amina Bouarfa is a U.S. citizen who married Ala'a Hamayel, a citizen of the Palestinian Authority, in 2011. Pet. App. 13a, 15a. That was Hamayel's third marriage. *Id.* at 13a. His two previous wives had filed I-130 visa petitions on his behalf, but those marriages ended in divorce, and the petitions were denied. *Id.* at 14a-15a. About three years after Hayamel's marriage to petitioner, petitioner filed an I-130 visa pe-

tition on his behalf. *Id.* at 15a. On January 6, 2015, USCIS approved the petition. *Ibid.*

On March 1, 2017, USCIS issued a notice of intent to revoke its approval of the visa petition. Pet. App. 15a. The notice explained that USCIS had determined that Hamayel entered into one of his previous marriages for the purpose of evading the immigration laws, in violation of Section 1154(c). *Id.* at 15a, 20a. USCIS cited sworn statements from Hamayel's first wife, Adriana Munoz, in which Munoz admitted to immigration officials, after filing her I-130 visa petition, that her marriage to Hamayel was a sham and that she had asked for $5000 in exchange for filing the petition. *Id.* at 15a; see *id.* at 13a-14a.

Petitioner responded to the notice of intent to revoke, arguing that Hamayel's previous marriage was bona fide and providing later statements from Munoz in which she attempted to retract her admission of fraud. Pet. App. 15a; see *id.* at 14a. After receiving petitioner's evidence, USCIS concluded that Munoz's later statements were unpersuasive, and on June 17, 2017, the agency revoked its approval of the visa petition. *Id.* at 15a-16a. Petitioner appealed the revocation to the Board, which upheld the decision. *Id.* at 16a.

3. Petitioner filed suit in district court under the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.*, challenging USCIS's revocation decision. Pet. App. 16a. The government moved to dismiss the complaint, arguing that the court lacked subject-matter jurisdiction due to Section 1252(a)(2)(B)(ii)'s bar on judicial review of the Secretary's discretionary decisions. *Id.* at 13a.

The district court agreed with the government and dismissed the action for lack of jurisdiction. Pet. App.

12a-26a. Taking its cue in significant part from non-precedential Eleventh Circuit decisions, the district court concluded that the Secretary's revocation of a visa petition "qualifies as a discretionary act" and that the bar on judicial review in Section 1252(a)(2)(B)(ii) applied. *Id.* at 19a, 23a-24a.

4. The court of appeals affirmed. Pet. App. 1a-11a. The court first concluded, based on the text of Section 1155, that the Secretary's decision to revoke a visa petition's approval is discretionary and therefore falls under Section 1252(a)(2)(B)(ii)'s jurisdictional bar. *Id.* at 4a-6a. The court explained that "[t]he clear import of the terms 'may,' 'at any time,' and 'what he deems to be good and sufficient cause' is that the Secretary is free to exercise his authority to revoke the approval of a petition as he sees fit." *Id.* at 6a; see 8 U.S.C. 1155. The court also observed that "most of [its] sister circuits" had reached the same conclusion. Pet. App. 4a; see *id.* at 5a (citing cases). Indeed, the court noted that even petitioner had "concede[d] that the decision to revoke an approval is not subject to judicial review." *Id.* at 4a.

Petitioner nonetheless contended that the district court could review the "underlying basis" for the revocation decision in her case—the statutory prohibition on approving an immediate-relative visa petition if the beneficiary previously engaged in marriage fraud—because it "involved non-discretionary decision-making." Pet. App. 7a (internal quotation marks and brackets omitted). The court of appeals rejected that argument. The court noted that Section 1155's only predicate for revocation is that "the Secretary deems there to be good and sufficient cause." *Ibid.*; see *id.* at 10a. That being the case, the Court explained, "nothing in the statute *requires* the Secretary to revoke the ap-

proval of a petition in any circumstance, even when [USCIS] later determines that the approval was in error." *Id.* at 7a. Thus, "no matter the basis for revocation," the decision remains discretionary and barred from judicial review. *Ibid.*

The court of appeals rejected petitioner's related contention "that because the marriage-fraud determination would have been reviewable if her petition had been denied outright, it ought to remain reviewable regardless of the context in which it was made." Pet. App. 8a. At bottom, the court explained, petitioner's APA claim is that "the Secretary reached the wrong outcome when he determined that there was good and sufficient cause to revoke the approval of her petition." *Id.* at 10a. And "[a] complaint that the Secretary reached the wrong conclusion is nothing more than a claim that the Secretary should have exercised his discretion in a different manner." *Ibid.*

ARGUMENT

The decision below is correct and does not warrant further review. The Eleventh Circuit joined the overwhelming majority of circuits in holding that 8 U.S.C. 1252(a)(2)(B)(ii) precludes judicial review of the Secretary's decision under 8 U.S.C. 1155 to revoke a prior approval of a visa petition. That conclusion follows from Section 1155's plain text, and petitioner's various counterarguments lack merit. Two circuits have reached contrary conclusions with respect to revocations of immediate-relative visa petitions relating to prior marriage fraud. But that limited conflict may dissipate on its own and, in any event, lacks sufficient practical significance to warrant this Court's intervention.

This Court has recently and repeatedly denied petitions for writs of certiorari presenting the same or sim-

ilar questions. See *Nouritajer* v. *Jaddou*, 143 S. Ct. 442 (2022) (No. 21-1446); *iTech U.S., Inc.* v. *Jaddou*, 2022 WL 1611799 (May 23, 2022) (No. 21-596); *Rajasekaran* v. *Hazuda*, 580 U.S. 1019 (2016) (No. 16-146); *Bernardo ex rel. M&K Eng'g, Inc.* v. *Johnson*, 579 U.S. 917 (2016) (No. 15-1138); *Karpeeva* v. *DHS Citizenship & Immigration Servs.*, 565 U.S. 1036 (2011) (No. 11-365); *Sands* v. *DHS*, 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 regardless of the basis for revocation. Pet. App. 4a-11a.

a. 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). 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. "[T]he word 'any' has an expansive meaning," *Patel* v. *Garland*, 596 U.S. 328, 338 (2022) (citation omitted), which readily encompasses a revocation "decision," 8 U.S.C. 1252(a)(2)(B)(ii). And the revocation statute specifies 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—language that vests the revocation decision in the Secretary's discretion.

Multiple aspects of Section 1155's plain language establish the discretionary character of revocations. As this Court has "repeatedly observed," "the word 'may' *clearly* connotes discretion." *Biden* v. *Texas*, 597 U.S.

785, 802 (2022) (quoting *Opati* v. *Republic of Sudan*, 590 U.S. 418, 428 (2020)); see, *e.g.*, *Kucana* v. *Holder*, 558 U.S. 233, 247 n.13 (2010). Numerous circuits have accordingly reasoned that the use of the word "may" in Section 1155 signals that Congress bestowed discretion on the Secretary. See Pet. App. 6a; *Bernardo ex rel. M & K Eng'g, Inc.* v. *Johnson*, 814 F.3d 481, 485 (1st Cir.), cert. denied, 579 U.S. 917 (2016); *Jilin Pharm. USA, Inc.* v. *Chertoff*, 447 F.3d 196, 203 (3d Cir. 2006); *Polfliet* v. *Cuccinelli*, 955 F.3d 377, 382 (4th Cir. 2020); *Mehanna* v. *United States Citizenship & Immigration Servs.*, 677 F.3d 312, 315 (6th Cir. 2012); *El-Khader* v. *Monica*, 366 F.3d 562, 567 (7th Cir. 2004); *Green* v. *Napolitano*, 627 F.3d 1341, 1344-1345 (10th Cir. 2010); *iTech U.S., Inc.* v. *Renaud*, 5 F.4th 59, 67 (D.C. Cir. 2021), cert. denied, No. 21-596 (May 23, 2022).

The phrase "'at any time'"—which appears in Section 1155 immediately after "may"—further "connotes a level of discretion." *Jilin*, 447 F.3d at 203 (citation omitted); see Pet. App. 6a; *Mehanna*, 677 F.3d at 567. 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*, 814 F.3d at 486 (brackets in original). 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 there is sufficient cause to warrant revoking a visa petition's previous approval. See *Ghanem* v. *Up-*

church, 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 indicates that Congress committed to the Secretary's discretion the decision of when good and sufficient cause exists to revoke approval."); *Polfliet*, 955 F.3d at 383 (similar); 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 subjective and standardless, indicating that Congress intended to leave that determination to the Secretary rather than a reviewing court. See *El-Khader*, 366 F.3d at 567. There is no statutory definition of "good and sufficient cause." See 8 U.S.C. 1155. As a result, "the requirement of 'for what [the Secretary] deems good and sufficient cause' in § 1155 is * * * useless as a guide to a reviewing court." *Jilin*, 447 F.3d at 204-205 (brackets in original); see *Green*, 627 F.3d at 1346; cf. *Heckler* v. *Chaney*, 470 U.S. 821, 830 (1985) (courts have no jurisdiction under the APA to review matters where "a court would have no meaningful standard against which to judge the agency's exercise of discretion").

b. The court of appeals also correctly concluded that a revocation decision under Section 1155 is discretionary regardless of the decision's underlying basis—including, as here, a judgment that a marriage-based visa petition was mistakenly approved in the first instance. Pet. App. 7a-11a.

There is no statute that requires the revocation of a visa petition's approval under any circumstances. See *El-Khader*, 366 F.3d at 568. Nor does any statute prohibit revocation of such an approval, so long as the Secretary makes the good-and-sufficient-cause finding. See Pet. App. 10a (observing that "[t]he sole statutory predicate for revocation is that the Secretary deem that there is good and sufficient cause"). Thus, in this case, USCIS was not required to revoke its approval of petitioner's visa petition even after it determined that her husband previously engaged in marriage fraud. As the Seventh Circuit explained in a similar case:

> [T]he fact that the [Immigration and Naturalization Service] is required to deny petitions to those who have committed marriage fraud for immigration purposes in no way limits the discretionary status of the Attorney General's subsequent revocation under § 1155 of a granted petition that, it turns out, should have never been made in the first instance. No statutory or regulatory mandate exists *requiring* the Attorney General to revoke visas in instances where he finds that marriage fraud had occurred.

El-Khader, 366 F.3d at 568; see p. 2 n.2, *supra*. In other words, a revocation decision based on considerations that would have required the denial of a petition in the first instance is still discretionary, because the only statutory standard for revocation—"good and sufficient cause"—is unambiguously discretionary. *El-Khader*, 366 F.3d at 568; see *Green*, 627 F.3d at 1347-1348; see also pp. 8-10, *supra*.

2. Petitioner's counterarguments are unavailing. She does not dispute that revocation decisions under Section 1155 are, as a general matter, discretionary (and thus unreviewable). See Pet. 4, 23-24, 26; see also

Pet. App. 4a (noting petitioner's concession "that the decision to revoke an approval is not subject to judicial review"). She instead contends (Pet. 26) that USCIS's particular reason for the revocation in this case—namely, its finding that petitioner's husband had previously engaged in marriage fraud—is reviewable. But she identifies nothing in the text of Section 1252(a)(2)(B)(ii) or Section 1155 indicating that some revocation decisions are discretionary (and therefore barred from review) and some are not. Instead, Section 1252(a)(2)(B)(ii) bars review of "*any* * * * decision * * * the authority for which is specified * * * to be in the discretion of the * * * Secretary of Homeland Security." 8 U.S.C. 1252(a)(2)(B)(ii) (emphasis added). As this Court reasoned with respect to the other half of Section 1252(a)(2)(B)'s jurisdictional bar, the phrase "any judgment" "means that the provision applies to judgments 'of whatever kind' under [the relevant INA provision], not just discretionary judgments or the last-in-time judgment." *Patel*, 596 U.S. at 338 (some internal quotation marks omitted). It follows, *a fortiori*, that the reference in clause (ii) to "any * * * decision" includes *any* decision under Section 1155 to revoke the previous approval of a visa petition.

Petitioner nonetheless maintains that in this case, "the ground for revocation was the application of *non-discretionary* criteria that the agency should have evaluated when first approving the petition." Pet. 2; see Pet. 23-26, 28-29. But if she means to suggest that USCIS was required to revoke its approval once it discovered her spouse's prior marriage fraud, that is incorrect for the reasons explained above. See p. 11, *supra*. The decision whether to revoke remains in the agency's discretion even if it is based on a consideration that

would have required the agency to deny the petition in the first instance, including the presence of marriage fraud. See *El-Khader*, 366 F.3d at 568.

For similar reasons, petitioner's contention (Pet. 26-27) that this particular revocation should be reviewable because the agency explained *why* it found "good and sufficient cause" is not persuasive. Petitioner offers no authority for the counterintuitive proposition that an agency's discretionary determination should be reviewable simply because the agency explains a basis for its decision, even if the proffered explanation is "objective." Pet. 26.

Petitioner also invokes the "presumption favoring judicial review of administrative action." Pet. 27 (citation omitted). But as this Court explained in *Patel*, Section 1252(a)(2)(B) "is, after all, a jurisdiction-stripping statute," and the interpretive inquiry should accordingly give predominance to the statutory text rather than to "any interpretive presumption." 596 U.S. at 347. Here, both Sections 1252(a)(2)(B)(ii) and 1155 are "clear," *ibid.*, and there is no silence or lingering ambiguity for the presumption of reviewability to resolve. See *Bernardo*, 814 F.3d at 485; *Polfliet*, 955 F.3d at 381-382; *Mehanna*, 677 F.3d at 317.

Lacking a foothold in the INA's text, petitioner primarily bases her contrary interpretation on policy concerns. See Pet. 2-3, 4, 13, 16, 18-19, 27-31. She argues that it makes little sense for the same substantive determination to receive judicial review if made in the context of USCIS's adjudication of a visa petition but not if it is made in the context of a later petition revocation. Pet. 29-30. But that "is the system Congress has created," and courts "'cannot legislate to correct it.'" *Jilin*, 447 F.3d at 205 n.11 (citation omitted); see *Ber-*

nardo, 814 F.3d at 494 (rejecting similar argument regarding that "so-called 'inconsistency,'" as it "does not undermine [the] conclusion that that is what Congress intended"). In any event, petitioner acknowledges that she still has a route to obtain judicial review of the underlying marriage-fraud determination: She can file another Form I-130 visa petition, and if it is denied on that ground, seek judicial review of the denial. Pet. 30; see p. 2, *supra*.

Petitioner nevertheless protests that the court of appeals' interpretation could allow the Secretary to evade judicial review by continuously granting visa petitions and then immediately revoking them, resulting in "perpetual cycles of unresolved, unreviewable petitions." Pet. 31 (citation omitted). But she cites no instance in which anything remotely similar to that hypothetical has happened. The presumption of regularity counsels against deciding the statutory-interpretation issue at hand based on such speculation. See *United States* v. *Armstrong*, 517 U.S. 456, 464 (1996). Moreover, petitioner makes no claim that that any bad faith occurred in this case, where the revocation happened two years later and was based on sworn statements made to immigration officials, overlooked during USCIS's adjudication of the petition at issue, regarding the beneficiary's prior marriage fraud. See Pet. App. 15a-16a. To the extent the Court is concerned about the possibility of agency gamesmanship, it should wait for a case that actually presents that concern.

3. There has long been a lopsided circuit split on the question presented, but this Court's review is not warranted to resolve it. In the decision below, the Eleventh Circuit joined the First, Second, 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 a visa petition. See *Bernardo*, 814 F.3d at 484 (1st Cir.); *Nouritajer* v. *Jaddou*, 18 F.4th 85, 88-89 (2d Cir. 2021) (per curiam), cert. denied, 143 S. Ct. 442 (2022); *Jilin*, 447 F.3d at 205 (3d Cir.); *Polfliet*, 955 F.3d at 383 (4th Cir.); *Ghanem*, 481 F.3d at 224-225 (5th Cir.); *Mehanna*, 677 F.3d at 315 (6th Cir.); *El-Khader*, 366 F.3d at 567 (7th Cir.); *Abdelwahab* v. *Frazier*, 578 F.3d 817, 821 (8th Cir. 2009); *Green*, 627 F.3d at 1345 (10th Cir.); *iTech*, 5 F.4th at 67-68 (D.C. Cir.).

The only court of appeals that has held to the contrary is the Ninth Circuit, over a dissent. See *ANA Int'l Inc.* v. *Way*, 393 F.3d 886, 895 (2004); *id.* at 856-899 (Tallman, J., dissenting). In *ANA*, the Ninth Circuit concluded that, although Section 1155 "plainly authorizes some measure of discretion," *id.* at 893, the statute's reference to "good and sufficient cause" provides a "meaningful legal standard" for judicial review, *id.* at 893-894. Even petitioner fails to embrace that reasoning fully, see Pet. 27 n.9 (saying only that Section 1155's phrase "arguably provides a 'meaningful standard'"), perhaps due to her prior concession that "the decision to revoke an approval is not subject to judicial review," Pet. App. 4a.

Further, the decision below joined the Fifth, Seventh, Eighth, and Tenth Circuits in holding that a visa revocation remains nonreviewable even if it is based on a finding of marriage fraud. See *Ghanem*, 481 F.3d at 223-224 (5th Cir.); *El-Khader*, 366 F.3d at 568 (7th Cir.); *Abdelwahab,* 578 F.3d at 819, 821 (8th Cir.); *Green*, 627 F.3d at 1343, 1346 (10th Cir.).[3] The Sixth Circuit is the

[3] The Second and Third Circuits have also held that the jurisdictional bar applies to revocation decisions based on considerations

only court of appeals to recognize an exception to a general rule of nonreviewability for a marriage-fraud-based revocation. See *Jomaa* v. *United States*, 940 F.3d 291, 296 (2019). But the Sixth Circuit's rationale for such an exception is not persuasive. Like petitioner, the *Jomaa* court failed to identify any language in Sections 1252(a)(2)(B)(ii) and 1155 indicating that some revocation decisions are barred from judicial review as discretionary and some are not, see p. 12, *supra*; gave short shrift to the "plain language of [S]ection 1155" that the Sixth Circuit had previously found to connote discretion in *Mehanna*, 677 F.3d at 315; and failed to grapple with the fact that revocation is still not mandated even if USCIS determines that the original petition should not have been granted, see p. 11, *supra*. Instead, the *Jomaa* court emphasized the concern that USCIS could deliberately avoid judicial review of a marriage-fraud-based denial of an I-130 petition by first approving the petition and then later revoking it. 940 F.3d at 296. As explained, that concern is not substantiated and cannot dictate the interpretive analysis in any event. See pp. 13-14, *supra*.

Despite those two divergent decisions, this Court's review of the question presented is not warranted at this time. To begin with, the conflict may dissipate on its own. Fifteen years after its decision in *ANA*, the Ninth Circuit held that Section 1252(a)(2)(B)(ii) bars review of decisions under 8 U.S.C. 1153(b)(2)(B)(i), a statute which shares the "same basic linguistic and logical structure" as Section 1155. *Poursina* v. *United States Citizenship & Immigration Servs.*, 936 F.3d 868, 873

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that would not have been discretionary in the context of the original visa-petition decision. See *Nouritajer*, 18 F.4th at 87, 90 (2d Cir.); *Jilin*, 447 F.3d at 198, 203-204, 205 n.11 (3d Cir.).

(2019). Rejecting the argument that "*ANA International* compels a contrary result," *id.* at 873, the Ninth Circuit characterized *ANA* as an "outlier" and stated that the court "would hesitate to extend such decision beyond its narrow holding," *id.* at 875.

Intervening precedent from this Court further counsels in favor of giving the Sixth and Ninth Circuits an opportunity to reconsider their positions. In its 2022 decision in *Patel*, this Court interpreted Section 1252(a)(2)(B)(ii)'s adjoining clause (i), 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, as used in clause (i), "judgment" means "any authoritative decision." *Patel*, 596 U.S. at 337-338. And it explained that Section 1252(a)(2)(B)(i) thus "encompasses any and all decisions relating to the granting or denying of discretionary relief," *id.* at 337 (citation and internal quotation marks omitted), rejecting the government's argument that the provision was limited to the aspects of those decisions that were "discretionary judgments," *id.* at 338.

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. Notably, *ANA* relied on a Ninth Circuit precedent interpreting clause (i), *Montero-Martinez* v. *Ashcroft*, 277 F.3d 1137 (2002), which has now been ab-

rogated by *Patel*. See *ANA*, 393 F.3d at 895. And both *ANA* and *Jomaa* relied on the presumption of judicial review, in reasoning analogous to that which *Patel* repudiated. Compare *id.* at 891, and *Jomaa*, 940 F.3d at 295-296, with *Patel*, 596 U.S. at 346-347. Both circuits might therefore conclude that *Patel* provides an additional basis for revisiting their outlier holdings that Section 1252(a)(2)(B)(ii) does not shield some or all aspects of a revocation decision from review.

In the meantime, the availability of judicial review of revocation decisions in the Ninth Circuit and the availability of review of marriage-fraud-based revocation decisions in the Sixth Circuit is insufficiently important to warrant this Court's intervention. The disagreement does not affect the substantive standard for revoking approval of a visa petition. Revocation decisions are generally subject to review in the administrative process, see p. 3, *supra*, and thus are already exposed to scrutiny and the possibility of reversal if an error occurred. As noted above, the petitioner may also obtain judicial review of an underlying marriage-fraud determination by filing another petition and seeking review of a subsequent denial. See p. 14, *supra*. And even when visa petitioners in the Sixth and Ninth Circuits are able to seek judicial review of revocation decisions, the standard of review is deferential. See *Jomaa*, 940 F.3d at 296; *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."). Thus, as this Court may have determined in declining to grant certiorari multiple times since the Ninth Circuit's decision in *ANA* twenty years ago, see pp. 7-8, *supra*, the

Court's review of the question presented is not warranted.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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