

1 IN THE SUPREME COURT OF THE UNITED STATES
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3 JOSE SANTOS SANCHEZ, ET UX.,)
4 Petitioners,)
5 v.) No. 20-315
6 ALEJANDRO N. MAYORKAS, SECRETARY)
7 OF HOMELAND SECURITY, ET AL.,)
8 Respondents.)
9 - - - - -

10
11 Washington, D.C.
12 Monday, April 19, 2021

13
14 The above-entitled matter came on
15 for oral argument before the Supreme Court of the
16 United States at 11:47 a.m.

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19 APPEARANCES:
20 AMY M. SAHARIA, ESQUIRE, Washington, D.C.; on behalf
21 of the Petitioners.
22 MICHAEL R. HUSTON, Assistant to the Solicitor General,
23 Department of Justice, Washington, D.C.; on behalf
24 of the Respondents.

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1 P R O C E E D I N G S

2 (11:47 a.m.)

3 CHIEF JUSTICE ROBERTS: We will hear
4 argument next in Case 20-315, Sanchez versus Mayorkas.
5 Ms. Saharia.

6 ORAL ARGUMENT OF AMY M. SAHARIA

7 ON BEHALF OF THE PETITIONERS

8 MS. SAHARIA: Mr. Chief Justice, and
9 may it please the Court:

10 TPS recipients satisfy the admission
11 requirement for adjustment to lawful permanent
12 resident status. That is because Section
13 1254a(f)(4) considers TPS recipients to be in
14 lawful status as a non-immigrant for purposes of
15 adjusting status, and having been admitted is
16 inherent in non-immigrant status.

17 The government's view that admission
18 is not inherent in non-immigrant status is
19 untenable. The INA distinguishes between
20 categories of persons who are admitted and those
21 who are not.

22 Some persons with lawful status, such
23 as asylees and parolees, are not admitted.
24 Individuals in non-immigrant status are
25 admitted.

1 As the DHS policy manual states, a
2 non-immigrant is a person who is admitted for a
3 specific period of time. The INA's express
4 exception for non-immigrant crewmen demonstrates
5 that unless Congress makes an exception,
6 admission is inherent in non-immigrant status.

7 The government's primary response is
8 to argue that the statute considers TPS
9 recipients to be in lawful status but not
10 admitted. But, if Congress intended only that
11 limited function, it need only have said that
12 TPS recipients are considered to be in lawful
13 status, period.

14 The function served by the additional
15 phrase "as a non-immigrant" is to ensure that
16 TPS recipients are considered admitted just as
17 all non-immigrants are. This is the only
18 sensible reading of the statute. TPS recipients
19 are subject to rigorous scrutiny and risk
20 removal by coming forward and registering. In
21 exchange, Congress made them eligible to adjust
22 status if they acquire a qualifying
23 relationship, assuming they meet all the
24 statutory requirements, which not all will.

25 By contrast, the government's

1 interpretation would shrink the pool of eligible
2 TPS recipients to the few with non-immigrant
3 status before they receive TPS. There is no
4 warrant in the text for that result.

5 I welcome the Court's questions.

6 CHIEF JUSTICE ROBERTS: Counsel, as I
7 understand your argument, it's that people in
8 non-immigrant status go through a process to get
9 there that includes admission and inspection.
10 And there's another way to get to non-immigrant
11 status, and that is by being a TPS recipient.
12 And your argument seems to me to be that, well,
13 if you're in non-immigrant status as a TPS
14 recipient, you must have been admitted and
15 inspected or treated as such because that's the
16 other way to get to non-immigrant status.

17 And I wonder why they're just not two
18 different routes, and if you come in one route,
19 the TPS route, that doesn't mean that you've
20 checked every box to get in through the other
21 route. So it seems to me that I -- I can't
22 follow the logic of your main submission.

23 MS. SAHARIA: So I don't think that is
24 an entirely accurate characterization of our
25 position. Our position is not that TPS

1 recipients are in non-immigrant status. It's
2 clear that they are not for all purposes.

3 Our position is simply that (f)(4)
4 considers TPS recipients to be in lawful
5 non-immigrant status for just one purpose, that
6 purpose being adjustment of status. And,
7 importantly, the only characteristic of
8 non-immigrant status that is even relevant to
9 adjusting status is the fact that non-immigrants
10 are inspected and admitted.

11 CHIEF JUSTICE ROBERTS: Well, but
12 usually -- I mean, there are other places where
13 Congress deems people, when they want to get to
14 that same status, to have been admitted and
15 inspected. And, therefore, you would say, well,
16 they -- they should be regarded as having
17 checked that box, when you're determining parole
18 and other situations.

19 But that's not what the statute does
20 here. It doesn't say that you are deemed to
21 have been admitted and inspected. It says that
22 you have non-immigrant status.

23 MS. SAHARIA: That's because that
24 particular formulation would not have achieved
25 all of Congress's objectives in (f)(4). For

1 example, deeming TPS recipients simply to have
2 been inspected and admitted would not have
3 permitted TPS recipients to change to
4 non-immigrant status under Section 1258, and we
5 know Congress intended that as well because it
6 cross-referenced Section 1258.

7 The beauty of what Congress did was to
8 choose broad language that achieves multiple
9 different objectives in (f)(4), and that's why
10 that narrow formulation is not what Congress
11 chose.

12 CHIEF JUSTICE ROBERTS: Thank you,
13 counsel.

14 Justice Thomas.

15 JUSTICE THOMAS: Counsel, what's on --
16 your -- your argument is that the status --
17 non-immigrant status necessarily entails
18 inspection. What is -- do you have a case for
19 that?

20 MS. SAHARIA: Yes, Your Honor. The --
21 the -- the case that -- that states that is a --
22 a decision by the Board in a case called Garnica
23 Silva. I will confess that it's unpublished,
24 but it's exactly on point.

25 In that case, a non-immigrant who

1 was -- who received their status from inside the
2 country as a U visa non-immigrant argued that he
3 was not admitted, and the government and the
4 Board took -- both agreed that, of course, he
5 was admitted because all non-immigrants are
6 admitted.

7 JUSTICE THOMAS: Could you -- could
8 you elaborate on what it means to be admitted in
9 that case?

10 MS. SAHARIA: Yes. So the question in
11 that particular case was whether he -- that
12 particular person was -- was deportable as
13 someone who had committed a crime within a
14 certain period of admission, and -- and so his
15 position was because he had not received his
16 non-immigrant status at the border, he was not
17 deemed to have been admitted as that term is
18 defined in the INA.

19 But the government and the Board
20 disagreed with that position, and as they
21 explained, the INA consistently treats all
22 non-immigrants, except for alien crewmen, who
23 are excepted, as having been admitted. That is
24 -- that is the defining characteristic of
25 non-immigrant status, is the fact that they were

1 admitted into that status.

2 And so, in that case, the Board held
3 that, unlike asylees, for instance, who are not
4 admitted, non-immigrants are admitted.

5 JUSTICE THOMAS: But, in the case of
6 Petitioners, how does that work? Because they
7 clearly were not admitted at the borders. So is
8 that a fiction? Is it metaphysical? What is
9 it? I don't know.

10 MS. SAHARIA: Well --

11 JUSTICE THOMAS: Are we -- where do we
12 get it? Just from the definition, we assume
13 that if you gain a certain status, you assume
14 that, well, for the purposes of gaining that
15 status, you must have been admitted.

16 But we know for a fact that's not the
17 case. So what do we do with that?

18 MS. SAHARIA: Well, (f)(4) uses
19 "considering" language, which is the language
20 that Congress typically uses when it wants to
21 create a legal fiction. And the legal fiction
22 that Congress created here is that TPS
23 recipients are deemed to be in lawful
24 non-immigrant status for the purpose of
25 adjusting status.

1 And, again, the characteristic of
2 non-immigrant status that is relevant to
3 adjusting status is the fact that they are
4 inspected and admitted. That's why
5 non-immigrants can adjust status at all under
6 Section 1255(a) even though the word
7 "non-immigrant" does not appear in that
8 provision. It's because the words "inspected
9 and admitted" are describing non-immigrants.

10 JUSTICE THOMAS: Thank you.

11 CHIEF JUSTICE ROBERTS: Justice
12 Breyer.

13 JUSTICE BREYER: Well, I have to admit
14 that the immigration statute is pretty
15 complicated. So what's the -- is there a simple
16 way of explaining this? I mean, I look at 1255,
17 and it says, if you want to change to -- to your
18 permanent resident -- if you want to change your
19 -- your -- your -- to -- to -- to be a permanent
20 resident or something like that, you have to
21 have been inspected and admitted, as your
22 clients learned.

23 And then we look over here at the --
24 the temporary protected, and it says, during the
25 period where you're granted temporary status,

1 you do have lawful status as a non-immigrant,
2 during that period. It doesn't say anything
3 about that you can apply.

4 But you say, well, the word
5 "non-immigrant" automatically means admitted.
6 So we look through some of this, and, for
7 example, the U visa holder, the statute says
8 they can apply if they were admitted or
9 otherwise provided non-immigrant status.

10 Now that seems to say admitted is one
11 thing; non-immigrant status may sometimes
12 include that, may sometimes not. I mean, I --
13 so help me.

14 MS. SAHARIA: Sure. So, with respect
15 to -- two responses with respect to the -- the U
16 visa holders. Number one, they didn't exist in
17 1990 when Congress passed this statute. So even
18 if it were true that there is some category of
19 non-immigrants who are not admitted, that --
20 that came about later. That could not have
21 informed what Congress was thinking in 1990.

22 But, more fundamentally, I would again
23 point the Court to the decision that I cited
24 before, which is the Matter of Garnica Silva
25 case, because, in that case, the immigrant cited

1 the very language that Your Honor just pointed
2 to. And the government said no need to worry
3 about that language; that language simply
4 explains someone may already be admitted as a
5 non-immigrant in a different classification and
6 then change into the U visa status
7 classification under Section 1255.

8 JUSTICE BREYER: I see that. Look, to
9 me, at the moment, it seems to make sense to say
10 either. I mean, you could say: You're here,
11 Mr. Smith. Mr. Smith, you came in absolutely
12 illegally, absolutely wrong that you're here,
13 but you're here. And if you're here, we're not
14 going to ship you back to a place where you're
15 really in danger, okay, while you're in danger.
16 But, once that's over, good-bye.

17 That's a way of looking at it. Or it
18 could have meant, well, we want to keep you here
19 once you're here and you're in a terrible
20 situation. You might have been here for a long
21 time. Some were here for a long time. The
22 Attorney General could say, okay, we waive all
23 that, I guess.

24 But it could mean either.

25 MS. SAHARIA: Well, we don't think

1 that the --

2 JUSTICE BREYER: So what do we do? I
3 mean, how strong is this argument it must
4 automatically mean?

5 MS. SAHARIA: Well, it's -- it's very
6 strong because there's no other logical
7 interpretation of what Congress was doing in --

8 JUSTICE BREYER: Logical
9 interpretation is what I said. They said:
10 Mr. Illegal Alien, illegal person, you came in
11 illegally. Okay, we won't ship you back yet
12 because there's a big war or something in your
13 country. But, when that's over, you're over
14 here.

15 Why isn't that logical?

16 MS. SAHARIA: Well, because
17 Section (f)(4) exists in the statute, and it has
18 to have a purpose. And the government's
19 interpretation gives no purpose to the words "as
20 a non-immigrant" in (f)(4).

21 Those words are critical because
22 Congress would have understood clearly from the
23 INA in 1990 that non-immigrants are judged by --

24 JUSTICE BREYER: Well, you say that.
25 That's why I'm back at my original question.

1 You say, well, it must mean admitted. Well, it
2 didn't in the U visa case because they had both
3 things separately. So there must be some way of
4 becoming a -- a non-immigrant here lawfully
5 where you were not automatically admitted
6 lawfully. And here it is, right in our statute
7 in front of us and also in the U visa case.

8 Anything else? I mean, is that -- why
9 is that so far off base? Explain that to me.
10 I'd like to know.

11 MS. SAHARIA: So, again, the U visa
12 category did not exist in 1996.

13 JUSTICE BREYER: So what?

14 CHIEF JUSTICE ROBERTS: Justice Alito.

15 JUSTICE ALITO: Well, here's another
16 example along the same lines. Section 1255(m)
17 refers to "an alien admitted into the United
18 States (or otherwise provided non-immigrant
19 status)." Why doesn't that mean that Congress
20 contemplated that one could be in a
21 non-immigrant status without having been
22 admitted to the United States?

23 MS. SAHARIA: Well, Justice Alito,
24 that is the very same language that I was just
25 discussing with Justice Breyer. Section (m)

1 applies to U visa holders. And this section,
2 number one, did not exist in 1990. But, number
3 two, as -- as the government explained to the
4 Board in the Garnica Silva case, that language
5 simply refers to the possibility that someone
6 could obtain U visa status by changing to that
7 status after already having been admitted into a
8 different status.

9 And it was important for Congress to
10 use those words here because this provision sets
11 forth special procedures for U visa immigrants
12 to adjust status, and so Congress needed to make
13 clear that whether they receive that by being
14 admitted into that status or whether they
15 receive that status by changing into that
16 status, they would be eligible for these special
17 procedures.

18 JUSTICE ALITO: Would you agree that
19 if Congress did in (f)(4) what you say it did,
20 it went about it in a very roundabout way? It
21 specifically addressed two of the requirements
22 for eligibility for adjustment of status,
23 namely, being in and maintaining lawful status
24 as a non-immigrant, but it didn't say anything
25 about inspection or admission.

1 Why would it do that?

2 MS. SAHARIA: Well, I -- I don't think
3 that --

4 JUSTICE ALITO: Why would it leave it
5 to -- why would it leave it to the courts to
6 infer that "lawful status as a non-immigrant"
7 necessarily means inspection and admission?

8 MS. SAHARIA: Well, because Congress
9 used broad language that both accomplish its
10 objectives with respect to 1255(a) but also
11 accomplish its objectives with respect to 1258
12 and 1255(c)(2).

13 And I think it's critical that under
14 the government's interpretation that (f)(4)
15 simply was intended to overcome (c)(2), that
16 interpretation renders the words "as a
17 non-immigrant" superfluous, and that is because,
18 under Section (c)(2), multiple forms of lawful
19 status can satisfy that provision.

20 Some of those forms of lawful status,
21 such as asylum, do not require admission. But
22 Congress chose a form of lawful status,
23 non-immigrant status, in which admission is
24 inherent. In the same way, for example, that
25 having been paroled is inherent in parolee

1 status, having been inspected and admitted is
2 inherent in having non-immigrant status.

3 JUSTICE ALITO: In a footnote in your
4 brief, you assert that your clients were paroled
5 into the United States. Does that satisfy
6 1255(a)?

7 MS. SAHARIA: It does satisfy 1255(a),
8 but it does not satisfy Section 1255(k), which
9 Petitioners need to satisfy as employment-based
10 applicants.

11 JUSTICE ALITO: Thank you.

12 CHIEF JUSTICE ROBERTS: Justice
13 Sotomayor.

14 JUSTICE SOTOMAYOR: Counsel, I -- I'm
15 sorry, I'm -- I'm lost. Aren't asylum -- people
16 who receive asylum, they're not admitted, but
17 they're in non-immigrant status, aren't they?

18 MS. SAHARIA: No, they're in asylee
19 status. They are not in non-immigrant status.

20 JUSTICE SOTOMAYOR: But crewmen are in
21 non-immigrant status?

22 MS. SAHARIA: That is correct, and
23 that's why, for -- for crewmen, Congress had to
24 create a special statutory exception, because
25 the default rule in the INA is that persons with

1 non-immigrant status are admitted.

2 JUSTICE SOTOMAYOR: One of your other
3 arguments is that Section 1254a(f)(4) provides
4 that TPS recipients should be considered as both
5 being in and maintaining lawful status as a
6 non-immigrant. And you're right that usually we
7 hesitate to interpret a statute in a way that
8 would make any of its provisions inoperative or
9 irrelevant.

10 In the case of "being in," however,
11 the government responds that "being in"
12 parallels Section 1255(c)(2) bar on an applicant
13 who is in unlawful immigration status, while the
14 "maintaining" parallels the separate bar on an
15 applicant who has failed to maintain
16 continuously a lawful status.

17 Now your reply brief did not comment
18 on the government's argument, because it is a
19 way to understand that there's not a super -- a
20 superfluous argument. So do -- would you
21 comment now and explain why the government's
22 wrong?

23 MS. SAHARIA: Sure. Two -- two
24 reasons. Number one, the government's argument
25 that the language of Section (f)(4) simply

1 tracks the "being in and maintaining" language
2 in (c)(2) overlooks the words "as a
3 non-immigrant" and gives no effect to those
4 words.

5 But, with respect to the "being in and
6 maintaining" language in particular, the
7 government's position is that the only people
8 who benefitted from this provision when it was
9 enacted are people who were already in lawful
10 non-immigrant status.

11 And for those people, the word
12 "maintain" does all the work. It satisfies both
13 the -- the "being in and maintaining language"
14 in (c)(2), and that is why, when Congress wrote
15 other contemporaneous provisions, including in
16 the rejected Senate version of this very act,
17 and it expressly limited the adjustment of
18 status benefit to persons who were already in
19 lawful non-immigrant status, as the government
20 claims this provision does, Congress used only
21 the word "maintaining."

22 The government has given no effect to
23 Congress's obvious choice to use broader
24 language in (f)(4) and to omit any restrictive
25 language restricting the benefit of (f)(4) to

1 persons already in lawful non-immigrant status.

2 JUSTICE SOTOMAYOR: Thank you,
3 counsel.

4 CHIEF JUSTICE ROBERTS: Justice Kagan.

5 JUSTICE KAGAN: Ms. Saharia, you say
6 in your brief -- and I think this is critical to
7 your argument -- all persons with lawful
8 non-immigrant status are, by definition,
9 inspected and admitted.

10 If -- if that's not true, can you
11 still win this case?

12 MS. SAHARIA: No, I don't -- I don't
13 believe so.

14 JUSTICE KAGAN: Okay. So what makes
15 that true? I mean, you say "by definition." I
16 mean, I want to look to some statutory language
17 that tells me that that's true.

18 Where am I supposed to look?

19 MS. SAHARIA: Well, I think you would
20 look to Section 1184 of the INA, which is the
21 section that authorizes the government to confer
22 non-immigrant status on individuals, and that
23 statute refers to that process as admission.

24 JUSTICE KAGAN: Well --

25 MS. SAHARIA: And there is no other --

1 JUSTICE KAGAN: -- I mean, but there's
2 nothing in that section, is there, that says --
3 that reads -- that -- you know, that stands for
4 the broad proposition that you're stating? I
5 mean, the section says the admission to the
6 United States of any alien is a non-immigrant,
7 but why does that suggest that admission is
8 something that all non-immigrants get?

9 MS. SAHARIA: Because there's no other
10 mechanism in the INA for the government to
11 confer non-immigrant status on -- on
12 individuals. It is the only mechanism, with the
13 exception of the one category that is excepted,
14 which are alien crewmen. That's why the INA
15 over and over and over again describes
16 non-immigrants as admitted. And even --

17 JUSTICE KAGAN: But, I mean, you
18 yourself said 1255(m) suggests something
19 different, and you said, well, we shouldn't --
20 we shouldn't look to that because it was passed
21 afterward.

22 But just the fact that 1255(m) could
23 have been written without saying something like,
24 you know, notwithstanding Section 1184, suggests
25 that there's no rule of the kind that you're

1 talking about in the first instance.

2 MS. SAHARIA: I would point the Court
3 again to the Board's discussion of that very
4 language in 11 -- excuse me, in -- in -- in --
5 in subsection (m) where the Board reviewed the
6 INA and the regulations governing U visa
7 recipients and other non-immigrants.

8 And the Board said, considering all of
9 that, the statutory text and the regulatory
10 text, that non-immigrants are admitted and that
11 that language only was referring to the fact
12 that someone could change into that status after
13 already being admitted in another kind of
14 status.

15 JUSTICE KAGAN: Thank you.

16 CHIEF JUSTICE ROBERTS: Justice
17 Gorsuch.

18 JUSTICE GORSUCH: Thank you, Chief. I
19 have no questions at this time.

20 CHIEF JUSTICE ROBERTS: Justice
21 Kavanaugh.

22 JUSTICE KAVANAUGH: Thank you, Chief
23 Justice.

24 Ms. Saharia, good morning -- good
25 afternoon.

1 MS. SAHARIA: Good afternoon.

2 JUSTICE KAVANAUGH: And I think the
3 questions my colleagues have pointed out and
4 Judge Hardiman's opinion in the Third Circuit
5 point out that you have an uphill climb
6 textually speaking.

7 And I guess, more broadly, I guess
8 that raises the question for me of we need to be
9 careful about tinkering with the immigration
10 statutes as written, particularly when Congress
11 has so -- such a primary role here.

12 Congress, as I understand it, passed a
13 recent bill. The House, I should say, passed a
14 recent bill on this issue. It obviously has not
15 passed the Senate yet.

16 But -- but just kind of big picture,
17 why should we jump in here when Congress is very
18 focused on immigration and when you're
19 relying -- putting forth a good argument but
20 relying on chains of inferences rather than
21 specific language as I see it at least?

22 MS. SAHARIA: Well, because,
23 respectfully, we are relying on the specific
24 language of (f)(4), and -- and that specific
25 language is that TPS recipients are considered

1 to be in lawful status as a non-immigrant.
2 Again, the government cannot give any effect to
3 those critical words in the statute.

4 If Congress intended only to do what
5 the government claims it was doing, it need only
6 have said that TPS recipients are being in and
7 maintaining lawful status, period.

8 JUSTICE KAVANAUGH: Don't you think
9 the flip side also applies, though, if Congress
10 was intending to do what you want, it was almost
11 certain there would be more explicit language?

12 MS. SAHARIA: I don't think that's the
13 case, because Congress used broad language that
14 -- that both satisfies Section 1255(a) but also
15 satisfies Section 1258.

16 JUSTICE KAVANAUGH: And what is the
17 status in Congress? Are you aware?

18 MS. SAHARIA: I'm -- I'm not aware,
19 Your Honor, of -- of what is the status in the
20 Senate. But it's not surprising that Congress
21 would -- would seek to clarify this issue given
22 the existence of a circuit split on this
23 question.

24 JUSTICE KAVANAUGH: Thank you very
25 much.

1 CHIEF JUSTICE ROBERTS: Justice
2 Barrett.

3 JUSTICE BARRETT: Good morning. So I
4 have a question about 1254a(h).

5 So it seems to me that that provision
6 cuts strongly against your position because that
7 provision requires Senate super-majority support
8 to approve any legislation that provides for
9 adjustment to lawful, temporary, or permanent
10 resident alien status for any alien receiving
11 TPS.

12 So, if Congress tied -- or the Senate,
13 you know, in -- in the bill that Congress
14 passed, has tied its own hands in that way, it
15 would seem unusual that in the same breath, by
16 using non-immigrant status, Congress intended to
17 delegate to the executive much broader authority
18 to treat TPS -- those in TPS status as eligible
19 for LPR status based only on the word
20 "non-immigrant."

21 Could you address that?

22 MS. SAHARIA: Sure. So both parties
23 agree that (f)(4) allows some TPS recipients to
24 make use of the existing mechanism for adjusting
25 status. Subsection (h) just doesn't say

1 anything about which one. Subsection (h) only
2 tells us that Congress wanted to make it more
3 difficult for a subsequent Congress to establish
4 a new standalone mechanism for TPS recipients to
5 adjust status.

6 And that makes sense because Congress
7 had done that in the past where it would take
8 broad categories of people and make them
9 automatically eligible to adjust status.

10 And so Congress, yes, did tie its
11 hands with respect to creating a new mechanism.
12 But Section (f)(4) doesn't create a new
13 mechanism. It just gives otherwise eligible TPS
14 recipients access to the existing mechanism in
15 Section 1255.

16 JUSTICE BARRETT: The government's
17 interpretation does give (f)(4) work to do
18 because, you know, those who were in lawful
19 status before, for example, if they overstayed
20 student visas but then became eligible for TPS
21 status, you know, that overstaying is forgiven
22 if there was a gap, or, similarly, if they got
23 TPS status while in lawful non-immigrant status
24 holding a student visa, you know, (f)(4) still
25 helps and cures those obstacles to becoming an

1 LPR.

2 Would you address that?

3 MS. SAHARIA: Yes. (f)(4) is an odd
4 way to accomplish that very narrow purpose given
5 that it applies on its face to all TPS
6 recipients and given that Congress knew that the
7 first TPS recipients included hundreds of
8 thousands of individuals who had entered the
9 country unlawfully.

10 It's also an odd way to write that
11 provision given that the Senate version of the
12 Act contained that very provision that -- that
13 the government claims this does, but on its
14 face, that provision was limited to people who
15 were already in lawful non-immigrant status.

16 JUSTICE BARRETT: Thank you.

17 CHIEF JUSTICE ROBERTS: A minute to
18 wrap up, Ms. Saharia.

19 MS. SAHARIA: Yes. Having been
20 admitted is inherent in non-immigrant status in
21 the same way that having been paroled is
22 inherent in parolee status. If Congress had
23 stated in (f)(4) that TPS recipients should be
24 considered as being in and maintaining parolee
25 status for purposes of adjusting status, no one

1 would question that Congress intended for TPS
2 recipients to be considered to have been paroled
3 for purposes of adjusting status because those
4 two things are the same.

5 The same is true here. Having been
6 admitted is inherent in having non-immigrant
7 status, and it is the only characteristic of
8 non-immigrant status that is relevant to
9 adjusting status.

10 Congress's choice to consider TPS
11 recipients as being in non-immigrant status as
12 opposed to some other form of status means that
13 they are considered to be inspected and admitted
14 for purposes of adjusting status.

15 Thank you.

16 CHIEF JUSTICE ROBERTS: Thank you,
17 counsel.

18 Mr. Huston.

19 ORAL ARGUMENT OF MICHAEL R. HUSTON

20 ON BEHALF OF THE RESPONDENTS

21 MR. HUSTON: Mr. Chief Justice, and
22 may it please the Court:

23 An agency does not act contrary to law
24 when it interprets a statutory term in
25 accordance with its statutory definition. For

1 Petitioners to be eligible to adjust to lawful
2 permanent resident status, they need to show,
3 among several other things, that they were
4 admitted into the United States.

5 But "admitted" is a defined term in
6 the INA, and Petitioners concede that they do
7 not meet that definition. They did not make a
8 lawful entry into the United States after
9 inspection and authorization by an immigration
10 officer.

11 Petitioners instead contend that
12 Congress implicitly deemed TPS recipients to be
13 admitted by giving them lawful status as
14 non-immigrants. But the TPS statute's two-part
15 lawful status benefit directly tracks the
16 two-part lawful status requirement for
17 adjustment of status.

18 The TPS statute does not address the
19 multiple other requirements for adjustment of
20 status, such as admission, and that's confirmed
21 by the fact that when -- that the lawful status
22 benefit is available only "during the TPS
23 period," which strongly suggests that it does
24 not retroactively cure pre-TPS conduct that made
25 the person ineligible for adjustment.

1 Petitioners' argument by syllogism
2 collapses because nothing in the INA defines
3 non-immigrant status to necessarily include
4 admission. And more fundamentally, Petitioners'
5 argument relies on implications and an unstated
6 cross-reference, but Congress does not make
7 unambiguous exceptions to statutory definitions
8 in such circuitous ways.

9 And that is particularly true in this
10 statute, where Congress did create several
11 express exceptions to the various requirements
12 for adjustment of status but did not provide any
13 comparable exception for TPS recipients.

14 TPS offers temporary protection
15 against removal during a crisis, and it
16 preserves the existing opportunities of
17 previously not admitted non-immigrants to adjust
18 their status. But USCIS reasonably determined
19 that Congress did not establish TPS as a special
20 pathway to permanent residents for non-citizens
21 who are already barred from that privilege
22 because of pre-TPS conduct.

23 CHIEF JUSTICE ROBERTS: Mr. Huston, I
24 was struck by the extent to which your brief
25 undersold your position. Throughout it, you

1 said things like the text doesn't foreclose your
2 position; the Court was not required to accept
3 the Petitioners' reading; the statute does not
4 clearly exclude your reading; Congress did not
5 unambiguously mandate the opponent's position.

6 And, of course, you ended by saying
7 that it would not be entirely unreasonable for
8 the Court to rule in your favor. I -- I made
9 that last one up, but that's part -- that's what
10 I was expecting to see.

11 Do you want us to say that your
12 interpretation of the statute is the correct
13 one?

14 MR. HUSTON: Your Honor, we think that
15 the Court should follow its precedents in the
16 immigration area, particularly
17 Martinez-Gutierrez, which has indicated that
18 when an agency, as in this case, has
19 consistently interpreted the statute with the
20 force of law, the agency's position prevails if
21 it's a reasonable construction of the statute,
22 and the Court has no need to decide whether
23 there's any other construction that would be
24 possible.

25 I think that's what the Court's

1 precedents dictate as the analytical approach to
2 these types of cases, and we just think the
3 Court should follow that here.

4 CHIEF JUSTICE ROBERTS: Well, did you
5 think that at the cert stage? Because, in your
6 response to the petition for cert -- and this is
7 a quote -- "The court of appeals' reading
8 clearly represents the best one in light of the
9 statutory text, structure, and context."

10 Is that still the Department's
11 position, that your reading is clearly the best
12 one?

13 MR. HUSTON: Your Honor, we absolutely
14 contend that the government's position is the
15 better reading of the statutory text. And even
16 if the Court was not inclined to apply Chevron
17 deference, the result would be the same. We
18 think our interpretation is the better one.

19 All we're saying is that we don't need
20 in this case to -- to show that there is no
21 other interpretation. And as I think
22 Petitioners have acknowledged in their brief, in
23 order for them to prevail, they need to show
24 that the statute unambiguously forecloses the
25 government's position. And our respectful

1 submission is that they can't clear that high
2 bar.

3 CHIEF JUSTICE ROBERTS: Justice
4 Thomas.

5 JUSTICE THOMAS: Thank you, Chief
6 Justice -- Mr. Chief Justice.

7 Counsel, as a matter of curiosity, if
8 the Petitioners here were allowed to leave the
9 country for a brief visit abroad and return,
10 would they then be eligible for adjustment of
11 status?

12 MR. HUSTON: Not under the
13 government's current interpretation of the
14 statute, Justice Thomas, although the government
15 announced that interpretation in a case -- in a
16 decision called In re Z-R-C-Z in 2020, and it
17 did not make that decision retroactive to people
18 who had traveled before 2020.

19 JUSTICE THOMAS: So the -- the
20 argument that Petitioners make that the -- that
21 inspection is implicit in the status of a -- as
22 a non-immigrant, it seems to be quite
23 reasonable.

24 I mean, how else would you categorize
25 someone as a non-immigrant under these statutes,

1 other than assuming that they have been
2 inspected or that they have been deemed to be
3 inspected?

4 MR. HUSTON: Justice Thomas, the
5 non-immigrant statuses are defined in the INA at
6 8 U.S.C. 1101(a)(15). But nothing in that
7 provision states that it is a condition of
8 receiving one of those non-immigrant statuses
9 that you were necessarily admitted.

10 As I think Petitioners have recognized
11 throughout this case, admission and lawful
12 immigration status are distinct concepts.

13 Admit -- your -- your immigration
14 status refers to your permission to be present
15 in this country. And as I think the example of
16 alien crewmen demonstrates, there's nothing in
17 the INA that bars Congress from saying to a
18 particular group of people: you will have the
19 status of non-immigrants, and that's exactly
20 what Congress says, to persons who come here as
21 crewmen on foreign vessels, while they are here.
22 They make a lawful entry, so they would seem to
23 fit the definition of admitted.

24 But Congress says: you are lawful
25 non-immigrants, but you are not admitted.

1 There's nothing in the INA that forecloses that
2 because admission is not a constituent part of
3 what it means to have non-immigrant status.

4 JUSTICE THOMAS: Well, why couldn't
5 they create -- the designation for the crewmen
6 be considered an exception to the general rule?

7 MR. HUSTON: Well, the reason why that
8 exception for crewmen is in there, Justice
9 Thomas, is, again, because alien crewmen are --
10 they do make a lawful entry. They -- they, of
11 course, come here lawfully on their vessel and
12 when that vessel lands, so they would seem to
13 fit the ordinary definition of admitted.

14 So I think it makes sense that
15 Congress would clarify you are not admitted
16 while you are here for the purposes of staying,
17 you know, until your vessel departs. I think
18 that's just a perfectly sensible thing to do.

19 But the broader point is that when you
20 look at the various non-immigrant statuses that
21 are described in Section 1101(a)(15), you will
22 not see anything that says the person, in order
23 to have this status, must necessarily have been
24 admitted. We simply use the admission process
25 to bring in people who come here lawfully from

1 overseas, but that's not part of what it means
2 to have non-immigrant status.

3 JUSTICE THOMAS: Thank you.

4 CHIEF JUSTICE ROBERTS: Justice
5 Breyer.

6 JUSTICE BREYER: Well, my -- following
7 on from Justice Thomas, I take it the argument
8 of the Petitioner is simply this: You look
9 through the United States, look everywhere,
10 everywhere, every tunnel, every mountain, every
11 lake, every human being you come across who is
12 not, et cetera, if they are non-immigrants and
13 they are here lawfully, they are here as
14 non-immigrants, they will have been either
15 deemed to be or actually been lawfully admitted.

16 So it goes along with the game. There
17 we are. But I admit there are two exceptions.
18 One is crewmen, where they use both terms, and
19 that could just be overinsurance because they
20 wanted those people admitted, and the other is
21 the U visa. And the U visa, they could have
22 been trying to do uncertainty. Okay? So
23 doesn't that lead -- are there other examples
24 that I've missed? That's my main question,
25 other examples that I missed.

1 MR. HUSTON: Well --

2 JUSTICE BREYER: And if there are no
3 others, then aren't we in the world where there
4 is ambiguity in the statute and we have to get
5 into the Chevron issue, which, as you well know,
6 is a big issue where there are two sides. And
7 should this be the case where we get into that?

8 All right. Both questions.

9 MR. HUSTON: Justice Breyer, I --
10 there -- I don't think there are any other
11 classes of non-immigrants who are not admitted,
12 but the -- importantly, one of the key reasons
13 for that is that in that there are certain kinds
14 of non-immigrants who receive that status within
15 the United States after an unlawful entry, and
16 those people, of course, would not meet the
17 statutory definition of admitted in the ordinary
18 case, but, in some cases, Congress has
19 nevertheless labeled those classes of
20 non-immigrants as admitted.

21 And, of course, Congress is free by
22 context to change the meaning of admitted, and
23 it's done that a couple of times. And as you
24 note, I think the U visa example shows this too,
25 Congress has sometimes treated -- Congress has

1 specified that U non-immigrants are eligible to
2 adjust their status whether they were admitted
3 or otherwise acquired that status.

4 So we think that it is not necessary
5 for the Court to reach -- to get into Chevron
6 deference here because we simply think we have
7 the better interpretation of the statutory text.

8 If the Court was inclined, if the
9 Court thought that the statute is ambiguous, I
10 think that the combination of various sources
11 where the government has consistently
12 interpreted this statute the same way that we do
13 since 1991 in a decision by the Board of
14 Immigration Appeals, in a decision that was
15 approved as lawful by the Attorney General, and
16 in a response to notice-and-comment rulemaking,
17 all would make the case for deference very easy.

18 CHIEF JUSTICE ROBERTS: Justice Alito.

19 JUSTICE ALITO: Would it be reasonable
20 to interpret the statute the other way?

21 MR. HUSTON: Well, the -- the agency
22 hasn't taken a position on that, Your Honor, and
23 I wouldn't want to foreclose the agency from
24 considering whether there's an alternative
25 position.

1 The last time that the agency looked
2 at this question in HGG, it said we think the
3 statute is unambiguous at Chevron Step 1, but it
4 observed that some courts of appeals had
5 disagreed with it. And so it said, if we're
6 wrong and the statute is ambiguous, we would
7 reach the same interpretation for all of the
8 same reasons.

9 I think that this Court's precedents
10 say that, in a case like that, the Court will
11 simply look at whether the agency's
12 interpretation is reasonable, and, if so, it
13 need not decide whether any other interpretation
14 is possible.

15 And if I might just make -- say one
16 more thing about why I think that sort of
17 judicially modest course is particularly
18 appropriate here, it's because the Court has
19 recognized that in immigration law in
20 particular, Congress has expressly delegated
21 interpretive authority to the Attorney General.

22 And the administration of the INA and
23 particularly something like this, setting the
24 terms of humanitarian protection for foreign
25 nationals, implicates foreign relation questions

1 that really belong best to the executive.

2 JUSTICE ALITO: Well, members of the
3 Court may have different opinions about Chevron.
4 So are you saying that it is necessary for us to
5 address Chevron here?

6 MR. HUSTON: No, Your Honor. The
7 Court can simply find that the government has
8 the better interpretation of the statutory text
9 and -- and say no more. And we certainly think
10 that that -- that is the case for all of the
11 reasons that we have discussed here today.

12 Petitioner --

13 JUSTICE ALITO: Well, but, if we say
14 -- if we say the government's -- the government
15 has the better interpretation, won't that
16 foreclose you from later changing your position?

17 MR. HUSTON: No, Your Honor, not under
18 the Court's decision in Brand X. The Court --
19 the -- the agency could theoretically decide
20 that, although it's taken a position, it has had
21 this position since 1991, it -- it studied the
22 question further and concluded that the statute
23 was ambiguous and that it should resolve that
24 ambiguity by taking a different interpretation.

25 It's possible the agency could decide

1 to take that course in a future case, but I
2 think it's not a question the Court has reason
3 to address now because the agency has an
4 interpretation and it's reasonable. But even if
5 -- even if you didn't want to get in the Chevron
6 framework, our interpretation is the better one.

7 JUSTICE ALITO: Well, I -- I really
8 don't understand your -- your answer. When you
9 refer to Brand X, are you not back into Chevron?

10 MR. HUSTON: I think the Court's
11 decision in Brand X recognizes that it is
12 possible theoretically that there can be more
13 than one reasonable construction of a statute.

14 I think what we're saying is, if you
15 wanted to avoid getting into the Chevron
16 framework altogether, you could do so by simply
17 saying that our interpretation is better than
18 the one that Petitioners have reached.

19 But the -- the -- the more standard
20 procedure, I think, in a case like this, the
21 Court's precedents show, would be to ask whether
22 the agency's longstanding and consistent
23 interpretation is reasonable, and, if so, it
24 prevails.

25 JUSTICE ALITO: Thank you.

1 CHIEF JUSTICE ROBERTS: Justice
2 Sotomayor.

3 JUSTICE SOTOMAYOR: Counsel, I'd like
4 to return to Justice Thomas's question about
5 people who have traveled abroad, been given
6 permission, TPS people who have been given
7 permission to travel abroad.

8 The Miscellaneous and Technical
9 Immigration and Naturalization Amendments of
10 1991 provide that, in the case of an alien who's
11 given TPS, whom the Attorney General authorizes
12 to travel abroad temporary -- temporarily, and
13 who returns to the U.S. in accordance with such
14 authority, the alien shall be inspected and
15 admitted in the same immigration status that the
16 -- that the alien had at the time of departure.

17 It says it right there: shall be
18 inspected and admitted. By the plain text, it
19 seems to me that any TPS holder who is granted
20 permission to travel abroad and return would be
21 admitted within the meaning of Section 1255.

22 Yet you're telling me that the agency
23 has said no in 2020. It makes no sense to me,
24 counsel. You yourself argue that there's a
25 difference between being -- between lawful

1 non-immigrant status and admission -- and
2 admission, and if that's the case, how do you --
3 how can you win on that argument?

4 MR. HUSTON: Justice Sotomayor, the
5 first thing to note about this argument, of
6 course, is that Petitioners have expressly
7 waived it in this case. And as my friend
8 explained, that's because the government's
9 consistent practice before 2020 has been to
10 treat the return from authorized travel for TPS
11 recipients as a parole, and that, of course,
12 wouldn't help them.

13 Now, setting that aside, I'm happy to
14 answer the question.

15 JUSTICE SOTOMAYOR: Well, but whether
16 it was treated as a parole or not, we got to go
17 by the words of the statute, and the words of
18 the statute talk about it being an admission.

19 MR. HUSTON: Yes. Justice --

20 JUSTICE SOTOMAYOR: So you want to
21 recharacterize it as a parole, or I don't know
22 why they -- they forfeit it at all, but other
23 people may not.

24 It -- it just seems to me that, if
25 you're asking us to find the better reading of a

1 statute, we should go by its terms. Those
2 people have been admitted.

3 MR. HUSTON: Justice Sotomayor, we
4 think that the clear import of MTINA, this
5 statute, is to make the point that when a person
6 who has TPS is authorized to travel abroad and
7 comes back, they come back and return in the
8 same immigration status that they had when they
9 went out.

10 And I think that is certainly the most
11 natural reading of that -- of that text, and
12 it's -- at minimum, it's a reasonable reading of
13 that text in light of the --

14 JUSTICE SOTOMAYOR: Now then we get
15 into Chevron. But, if we're going to go, as we
16 have suggested, which is go to the better -- go
17 to the better reading of the actual language of
18 the statute, you lose.

19 MR. HUSTON: No. Respectfully,
20 Justice Sotomayor, I mean, I disagree with that.
21 I think the other thing to note about this
22 argument, of course, is that it's outside the
23 scope of the question presented because it only
24 applies to people who travel abroad. And the
25 question presented in this case was about the

1 effect of granting TPS itself.

2 But, again, I think the clear import
3 of MTINA is to specify that a person goes out
4 and comes back in the same status. And what
5 that's going to mean for a person like
6 Petitioners is that they will return to the
7 United States in the status of someone who has
8 no lawful immigration status, who is present
9 here unlawfully and is subject to removal but,
10 because of TPS, will not be removed temporarily
11 during conditions in their home country. That's
12 their immigration status.

13 JUSTICE SOTOMAYOR: Thank you,
14 counsel. I've run out of time.

15 CHIEF JUSTICE ROBERTS: Justice Kagan.

16 JUSTICE KAGAN: Mr. Huston, you said
17 earlier that nothing defines non-immigration
18 status to include admission. And when I said
19 something similar to Ms. Saharia, she told me
20 that 1184(a) does just that. So could you tell
21 me how you read that provision?

22 MR. HUSTON: Certainly, Justice Kagan.
23 I think the purpose of 1184 is to specify the
24 conditions that the government may use to admit
25 non-immigrants. Of course, it's true that there

1 are many, many non-immigrants who come to this
2 country abroad and enter lawfully through a port
3 of entry, they get admitted.

4 And it makes sense that Congress, in
5 Section 1184, wrote a provision granting the
6 service authority to set some of the
7 restrictions and requirements for that admission
8 process and then imposing some of Congress's
9 own. But the --

10 JUSTICE KAGAN: It does seem, though,
11 Mr. Huston, that these phrases like "admission
12 as a non-immigrant," they arise repeatedly in
13 the immigration statutes, so that, you know,
14 Congress seems to be assuming that
15 non-immigrants are, in fact, admitted and that
16 the -- the status/admission distinction that you
17 continually press on us is really not a
18 distinction with respect to non-immigrants.

19 MR. HUSTON: Your Honor, I -- I think
20 it is certainly true that the overwhelming
21 majority of people who have non-immigrant status
22 get it by coming here lawfully.

23 And the fact that there are references
24 throughout the INA and in the regulations and in
25 the policy manual and things like that to people

1 admitted as non-immigrants just reflects that
2 reality. Most people come here lawfully, and
3 that's how they get non-immigrant status.

4 But it remains true that both as a
5 matter of statutory text, and keep in mind
6 there's a definition of "admitted" in this
7 statute, and so I think, as a matter of text, as
8 a matter of ordinary usage, admission is a
9 factual event. It's something that happens at a
10 particular place and time.

11 Lawful status refers to permission
12 that the person has. And so there's just
13 nothing --

14 JUSTICE KAGAN: Well, let me switch
15 gears a little bit. On your view, under what
16 conditions can a TPS holder actually become a
17 lawful permanent resident?

18 MR. HUSTON: Oh, Your Honor, there are
19 tens of thousands of TPS holders who have
20 successfully adjusted their status to law -- to
21 lawful permanent residents. People do this
22 every year. The only thing they --

23 JUSTICE KAGAN: And what are the --
24 what are the conditions in which they can do it?

25 MR. HUSTON: Sure. They just need to

1 have come here originally and been admitted.
2 They need to have been admitted as a -- a
3 student or an au pair or a temporary worker or
4 something like that. Anyone who comes here
5 lawfully in one of the non-immigrant statuses,
6 except crewmen, would be able to demonstrate
7 that they are here with -- they have been
8 admitted, and then even -- TPS will allow them
9 to stay here longer than their status would
10 normally have done.

11 And the purpose of Section (f)(4) is
12 to say, as -- you know, we -- you -- even if you
13 were originally out of status while you are
14 being allowed to remain here, we will preserve
15 your existing opportunity to adjust your status.

16 JUSTICE KAGAN: Thank you.

17 MR. HUSTON: It just doesn't create a
18 new opportunity.

19 CHIEF JUSTICE ROBERTS: Justice
20 Gorsuch.

21 JUSTICE GORSUCH: Thank you. I have
22 no questions at this time.

23 CHIEF JUSTICE ROBERTS: Justice
24 Kavanaugh.

25 JUSTICE KAVANAUGH: Thank you, Chief

1 Justice.

2 Good afternoon, Mr. Huston. Just in
3 terms of your position here with respect to how,
4 if you were to prevail, the opinion's phrased, I
5 think there are three options, and I just want
6 to explore them with you.

7 One, you -- you argue that we could
8 just say it's at least reasonable, that your
9 interpretation is at least reasonable and not
10 unambiguously foreclosed.

11 A second option is we could just say
12 that your interpretation is the better one, not
13 the unambiguously better one necessarily but
14 just the better one.

15 And the third option is to say that
16 your statutory interpretation is unambiguously
17 the correct one.

18 I gather you don't want us to say the
19 third.

20 MR. HUSTON: That's -- Justice
21 Kavanaugh, we would urge the Court to follow the
22 first of those proposals because I think it's
23 the most consistent with the Court's precedent,
24 although, candidly, I'm not sure --

25 JUSTICE KAVANAUGH: Well, I mean,

1 just, you know, in courts of appeals, certainly,
2 all three of those options are deployed
3 routinely, and at this Court as well.

4 MR. HUSTON: Sure. Sure, Your Honor.
5 I -- I understand that. I mean, I think -- I'm
6 not sure I see a meaningful difference between
7 the first and second interpretation.

8 JUSTICE KAVANAUGH: The first one, you
9 wouldn't be saying it's the better
10 interpretation; you're just saying it's at least
11 a reasonable interpretation of the statutory
12 language.

13 MR. HUSTON: I -- I think that would
14 be our preference, Your Honor, because we think
15 it follows most directly from this Court's
16 immigration preference and because, you know, we
17 think that the agency is the one who is charged
18 with the administration of this statute, and if
19 the agency -- you know, we think the Court
20 generally does not foreclose the agency from
21 thinking about the problem in the future.

22 And so I -- I think it's notable that
23 under this Court's precedents, Petitioners have
24 a high bar to clear. We think they haven't
25 cleared it. And we think it's sufficient for

1 the day for the Court to say that.

2 JUSTICE KAVANAUGH: Okay. How many
3 people are in the country who are in this same
4 status, roughly?

5 MR. HUSTON: You mean -- do you mean
6 temporary protected status, Your Honor?

7 JUSTICE KAVANAUGH: Yes.

8 MR. HUSTON: I just want to make sure
9 I -- we understand that there are approximately
10 400,000, although the government's understanding
11 is that about -- approximately 85,000 of them
12 have already successfully adjusted to lawful
13 permanent resident status.

14 JUSTICE KAVANAUGH: One of the amicus
15 briefs of the American Immigration Lawyers
16 Association and others says that roughly
17 80 percent of those have been living in the
18 United States for more than 20 years and have
19 married and had children, authorized to work
20 here. Do you dispute that?

21 MR. HUSTON: No, Your Honor, we don't
22 dispute that. I -- I -- but I think that it is
23 a -- the -- the defining characteristic of
24 temporary protected status is that --

25 JUSTICE KAVANAUGH: Is that it's not

1 temporary.

2 MR. HUSTON: Well, it has turned out,
3 I think, to last -- some of these crises have
4 turned out to last for a while, and the United
5 States, I think, has been extraordinarily
6 generous and it is a testament to the strength
7 of our humanitarian commitments that we have
8 allowed people who have found themselves
9 stranded here during a crisis to stay here for a
10 very long time.

11 But all TPS recipients receive that
12 status with the unambiguous awareness that it is
13 a temporary form of relief from removal that
14 will not last forever because the government has
15 to continuously reevaluate whether the
16 conditions in the home country persist, and,
17 moreover, the recipient himself has to
18 reregister for the status on an ongoing basis.

19 So everyone understands that the --

20 JUSTICE KAVANAUGH: I -- I -- I
21 understand that. It puts the people in a very
22 awkward position year after year, and I'm sure
23 you understand that. But that's -- I'll let
24 that go. Thank you.

25 CHIEF JUSTICE ROBERTS: Justice

1 Barrett.

2 JUSTICE BARRETT: Good morning,
3 Mr. Huston, or I guess it's afternoon now. I --
4 I want to follow on to the questions that
5 Justice Kavanaugh was asking you about, the
6 three ways that we could write this opinion.

7 And one thing I just want to start by
8 clarifying -- I think the Chief Justice pressed
9 you a little bit on this -- is it correct to say
10 then that the government has changed its
11 position from the cert stage to the merits stage
12 about whether the statute is clear or ambiguous?

13 MR. HUSTON: No, Your Honor. The
14 agency's position has been that the statute is
15 unambiguous at Chevron step 1, but, in the
16 alternative, if it's ambiguous, it has -- it
17 would have reached the same result. We're not
18 backing away from that position.

19 But we do think that the Court doesn't
20 need to reach that, and we think the Court's
21 precedents have -- have indicated that the Court
22 won't foreclose the agency in a case like this
23 from considering whether any other alternative
24 is possible.

25 JUSTICE BARRETT: Okay. Well, then I

1 guess I'm where Justice Alito was when he said
2 he didn't really understand the difference
3 between that position and your asking us to give
4 you Chevron deference.

5 And I guess I also think, if that's
6 your position, how do we avoid addressing some
7 of the questions -- the issues that the
8 Petitioner raises about whether the
9 interpretations that the government has offered
10 here are even entitled to Chevron deference at
11 all because they're informal adjudications, et
12 cetera.

13 MR. HUSTON: Justice Barrett, I think
14 you could resolve the case if you were inclined
15 to avoid getting into Chevron deference at all.
16 You could simply resolve the case along the
17 lines that just -- that Justice Kavanaugh's
18 second option suggested, that the government has
19 the better reading of the statute. That would
20 be sufficient to affirm the judgment below, and
21 the Court could say no more.

22 We would -- the Court -- we would also
23 be perfectly fine with the Court saying that the
24 government's interpretation is reasonable and
25 Petitioners haven't met their bar to show that

1 our position is unambiguously foreclosed.

2 Either of those conclusions would be
3 fine with us because we think that they would
4 affirm the approp- -- the legitimacy of the
5 government's longstanding inconsistent
6 interpretation --

7 JUSTICE BARRETT: You don't want --
8 you don't want Justice Kavanaugh's -- I think it
9 was his third, saying that it is unambiguously
10 in your favor?

11 MR. HUSTON: That's right, Your Honor.
12 And just the reason for that is because we think
13 that, as a general matter, it is the agency that
14 has been expressly charged by Congress with
15 interpreting this statute. And we think that
16 generally the Court recognizes that because of
17 that feature and because it implicates questions
18 of foreign affairs, the Court should not reach
19 out to foreclose the agency from ever deciding a
20 case -- you know, reaching a --

21 JUSTICE BARRETT: Okay, Mr. Huston,
22 just so I don't run out of time, let me just ask
23 you one other question.

24 Is it the case that U visa holders are
25 the only non-immigrants who have not been

1 admitted, or are there others -- I mean, putting
2 aside alien crewmen, are there others besides U
3 visa holders?

4 MR. HUSTON: That's a -- I think that
5 they are the only ones, Your Honor, and if I
6 might just elaborate on that point for one
7 minute, it's true, as my friend suggests, that U
8 non-immigrants have been treated for certain
9 purposes as admitted into the United States.
10 The question in Garnica Silva was about whether
11 the grant of U visa status was an admission for
12 purposes of a certain time bar in the INA.

13 But if that -- you know, insofar as
14 that's true, it's because Congress has created a
15 special provision for them in Section 1255(m)
16 labeling some of them as admitted. And I think
17 that just reinforces that Congress is aware of
18 labeling a certain kind of non-immigrant as
19 admitted even though they didn't come here
20 lawfully, and the stark contrast between
21 Congress's drafting choice in that provision and
22 the TPS provision has to be given respect, I
23 think.

24 JUSTICE BARRETT: Thank you.

25 CHIEF JUSTICE ROBERTS: A minute to

1 wrap up, Mr. Huston.

2 MR. HUSTON: Thank you, Mr. Chief
3 Justice.

4 I'd like to just briefly recap the
5 textual reasons why the agency's statutory
6 construction is not unambiguously foreclosed.

7 First is the definition of "admitted,"
8 which Petitioners concede they can't meet.

9 Second is the direct textual
10 parallelism between the two-part lawful status
11 benefit in the TPS statute and the two-part
12 lawful status requirement for adjustment of
13 status, which suggests the TPS statute doesn't
14 address the other requirements for adjustment of
15 status like admission.

16 Third is the fact that the lawful
17 status benefit is available only "during the TPS
18 period," which I think is strong evidence that
19 it does not retroactively cure pre-TPS conduct
20 that made the person ineligible for adjustment
21 of status.

22 And finally are all the other places
23 in the INA where Congress has expressly
24 authorized various classes of aliens to adjust
25 their status, notwithstanding their entry

1 without admission. Petitioners haven't
2 explained why Congress didn't follow any similar
3 course for TPS recipients.

4 And so the Court need only hold in
5 this case that, for all of those reasons, the
6 agency's interpretation of the statute was
7 reasonable. Thank you.

8 CHIEF JUSTICE ROBERTS: Thank you,
9 counsel.

10 Ms. Saharia, rebuttal?

11 REBUTTAL ARGUMENT OF AMY M. SAHARIA
12 ON BEHALF OF THE PETITIONERS

13 MS. SAHARIA: Yes. One clarification.
14 Government counsel referred to the tens of
15 thousands of TPS recipients who have adjusted
16 status. It is highly unlikely that those are
17 even -- even a -- the majority of those are
18 people who entered as non-immigrants, because
19 the vast minority of TPS recipients entered this
20 country as non-immigrants. Those are almost
21 certainly people who adjusted status pursuant to
22 the government's prior position that reentry on
23 parole permits an adjustment of status.

24 Now, with respect to the question of
25 whether admission is inherent in non-immigrant

1 status, when it comes to non-immigrants, those
2 are not distinct concepts.

3 A great example of that is Section
4 1258 governing a change of status, which
5 Congress expressly cross-referenced in (f)(4),
6 the provision at issue.

7 That provision explains that the
8 agency maintains a non-immigrant classification
9 "in the case of any alien lawfully admitted to
10 the United States as a non-immigrant who is
11 continuing to maintain that status."

12 Congress there expressly equated the
13 concept of being admitted as a non-immigrant
14 with having lawful status as a non-immigrant,
15 and that is entirely consistent with how that
16 concept is treated throughout the INA.

17 Now I think I heard government counsel
18 to concede that if you look in every tunnel and
19 on every mountain in this country, every single
20 non-immigrant, except for alien crewmen and U
21 visa holders, are, in fact, admitted.

22 Alien crewmen are the exception that
23 proves the rule because Congress had to create
24 an express exception for them in the statute.
25 And as to the U visa non-immigrants, who did not

1 exist in 1990, the statute, which is Section
2 1255(m) -- (m)(1)(A), expressly refers to them
3 as -- as having been admitted. It permits
4 adjustment if they have been physically present
5 in the United States for a continuous period
6 since the date of admission as a non-immigrant.

7 I'm not sure I understood counsel's
8 attempt to distinguish away the Garnica Silva
9 case. That case did not just deem U visa
10 non-immigrants to be admitted for one single
11 purpose. It held unequivocally that they aren't
12 admitted based on this language that I just
13 quoted, the language of the INA, and the
14 government's own regulations.

15 The only category of non-immigrants
16 who are not admitted are alien crewmen, and they
17 are the exception that proves the rule.

18 Thank you.

19 CHIEF JUSTICE ROBERTS: Thank you,
20 counsel. The case is submitted.

21 (Whereupon, at 12:46 p.m., the case
22 was submitted.)

23

24

25

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