In the
United StatesDistrict Court
for the
District of Columbia

Save Jobs, USA 31300 Arabasca Circle Temecula CA 92592 *Plaintiff,* *v.* U.S. Dep't of Homeland Security; Office of General Counsel Washington, DC 20258. *Defendant.*	Civil Action No. 1:15-cv-00615 (TSC)

Plaintiff's Reply
in Support of Motion for Preliminary Injunction

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QUESTIONS PRESENTED

1. Does the general authority of DHS to administer the immigration system grant it unlimited authority to allow aliens to work in the United States?
2. Does the definition of *unauthorized alien* in 8 U.S.C. § 1324a grant DHS unlimited authority to allow aliens to work in the United States?

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INTRODUCTION

At the heart of this matter are two competing views, Congress versus Department of Homeland Security ("DHS"), over the scope of the DHS Secretary's authority to grant work permits to aliens. The vehicle for this dispute is the regulation, Employment Authorization for Certain H–4 Dependent Spouses, 80 Fed. Reg. 10,284 (codified at 8 C.F.R. §§ 214, 274a) (the "H-4 Rule"). This rule reverses the policy in place for 45 years (since Pub. L. No. 91-225, 84 Stat. 116 was enacted) that held that aliens who possess an H-4 visa (dependents of H guest workers) cannot work in the United States. The statutory authorization for H-4 visas contains no provision for these aliens to work. 8 U.S.C. § 1101(a)(15)(H). Nonetheless, DHS claims that a provision added to the Immigration and Nationality Act (INA) to prohibit unauthorized aliens from working in the United States, that is, section 274a(h)(3) (codified at 8 U.S.C. § 1324a(h)(3)) of the Immigration Reform and Control Act of 1986 ("IRCA"), Pub. L. No. 99–603, § 101, 100 Stat. 3445, gives the DHS Secretary "unfettered" power to allow any alien to work in the United States. 80 Fed. Reg. 10,294. As described, *infra*, DHS's interpretation holds no merit because it ignores Congress's clear mandate in the Immigration and Nationality Act ("INA") as to which aliens can and cannot work while in the United States and undermines the entire system of protections for American workers Congress established in the INA.

ARGUMENT

I. DHS's lack of standing argument has repeatedly been rejected by the D.C. Circuit and this Court.

Predictably, DHS makes arguments that have been repeatedly rejected by the D.C. Circuit and D.C. District to claim Save Jobs USA does not have standing. That is, DHS ignores the pled competitive injuries in fact, invents its own injuries,[1] then

1 For example, DHS asserts that the claimed injury in fact is "unemployment," DHS Br. 41, 42, In point of fact, Save Jobs USA never pled unemployment as an injury in fact. Compl. *passim*.

argues why its own invented injuries do not grant standing. DHS has, once again, employed its failed argument that a plaintiff who alleges competitive standing injury must prove that she applied for a job and didn't get the job but for an alien worker. DHS Br. 16–23. This argument is inconsistent with the precedent of this circuit, where merely allowing additional competitors into the market itself is a sufficient injury in fact. *See*, *e.g.*, *Bristol Meyers Squib v. Shalala*, 91 F.3d 1493, 1499 (D.C. Cir. 1996); *Honeywell v. EPA*, 374 F.3d 1363, 1369–70 (D.C. Cir. 2004); *see also*, *Gooch v. Clark*, 433 F.2d 74, 76 (9th Cir. 1970) (INS dropped standing challenges after the Supreme Court held increased competition was an injury in fact in *Ass'n of Data Processing Serv. Organizations v. Camp*, 397 U.S. 150 (1970)).

This Court recently rejected DHS's argument in a case strikingly similar to the case at bar.[2] In *Washington Alliance of Technology Workers v. DHS*, a union representing American technology workers brought suit under the Administrative Procedure Act ("APA") to challenge DHS's Optional Practical Training program that allows F-1 student visa holders to stay and work in the United States even after they have graduated from college and are no longer students. Civil Action No. 14-529 (ESH) (D.D.C.), 2014 U.S. Dist. LEXIS 163285 (D.D.C. Nov. 21, 2014). The plaintiff alleged that DHS's rules creating its OPT program and subsequent amendments were in excess of DHS's statutory authority and otherwise arbitrary and capricious. The plaintiff claimed it was harmed by DHS allowing increased competition into the labor market. In a motion to dismiss, DHS argued that the plaintiff lacked standing because it merely alleged it was harmed by increased competition and "failed to provide sufficient detail of the three named members' training and employment circumstances to establish an injury-in-fact arising from competition. (Mot. at 13.) In particular, plaintiff did not enumerate the specific positions to which its named members applied or planned to apply in the future, their qualifications for the job,

2 DHS admits so: "These claims are identical to the standing theories advanced by plaintiff in *Washington Alliance of Technology Workers v. U.S. Department of Homeland Security*." DHS Br. 11.

or whether the position applied for was filled by an OPT student on a seventeen-month STEM extension. *Id.*" November 21, 2014 Memorandum Opinion at 8 ("Mem. Op."), attached hereto as "Exhibit 1" for the court's convenience (citing Defendant's Motion to Dismiss for Lack of Subject-Matter Jurisdiction).

This Court rejected DHS's argument, finding that the omissions were "not [] fatal to plaintiff's standing, for such a close nexus is not required." *Id.* (citing *Honeywell*, 374 F.3d at 1368 (chemical manufacturer had standing because the challenged regulation could lead customers to seek out the manufacturer's competitors in the future); *Int'l Union of Bricklayers and Allied Craftsmen*, 761 F.2d 798, 802 (D.C. Cir. 1985) (standing found despite lack of details regarding specific future jobs as to which U.S. bricklayers would compete with foreign laborers); *Int'l Longshoremen's and Warehousemen's Union v. Meese*, 891 F.2d 1374, 1379 (9th Cir. 1989) (union had standing to challenge Immigration and Naturalization Service regulation without pleading specific job opportunities lost to Canadian longshoremen). *Cf Sierra Club v. Jewell*, 764 F.3d 1, at *6 (D.C. Cir. 2014) (plaintiff's members need not set foot on disputed property to have interest in enjoying it for the purpose of establishing injury)). The Court also cited *Mendoza v. Perez*, 754 F.3d 1002, 1010 (D.C. Cir. 2014), a case principally relied on by DHS here, in finding that the plaintiff had standing. The Court noted that the D.C. Circuit found in *Mendoza* that the plaintiffs had standing despite not showing that they applied for and were denied a specific position that was filled by a competitor. Mem. Op. at 9 (citing 754 F.3d 1002):

> There, the Department of Labor changed special procedures that established the minimum wage and working conditions requirements for U.S. sheepherders and goatherders. The plaintiffs did not work as herders nor had they applied for herder positions at the time the action was filed, but the Court held that "[t]he plaintiffs are not removed from the herder labor market simply because they do not currently work as herders and have not filled out formal job applications." *Mendoza*, 754 F.3d at 1014.

Mem. Op. at 9. Likewise, the Court should reject DHS's argument in this case.

A. The injury from the H-4 Rule is so widespread nearly all American workers have standing to challenge it.

The fundamental problem DHS faces making a lack of standing argument is that the H-4 Rule creates injury so widespread that nearly every American worker has been injured by it and thus possesses standing to challenge it. Standing only requires an "identifiable trifle" of injury. *Center for Auto Safety v. Gen. Motors*, 793 F.2d 1322, 1131 (D.C. Cir. 1986). The D.C. Circuit has "repeatedly [] held that parties suffer constitutional injury in fact when agencies lift regulatory restrictions on their competitors or otherwise allow increased competition." *La. Energy & Power Authority v. FERC*, 141 F.3d 364, 367 (D.C. Cir. 1998); *Fin. Planning Ass'n v. SEC*, 482 F.3d 481, 486 (D.C. Cir. 2007); *New Eng. Pub. Communs. Council, Inc. v. FCC*, 334 F.3d 69, 74 (D.C. Cir. 2003); *United States Telecom Ass'n v. FCC*, 295 F.3d 1326, 1331 (D.C. Cir. 2002). DHS admits the H-4 Rule creates this very injury in fact for everyone working in America: "[A]n EAD [Employment Authorization Document] under the final rule will permit a qualifying H-4 dependent spouse to accept employment with *any* U.S. employer in *any* occupation (skilled or unskilled)." DHS Br. 7.

Ignoring the law in this circuit, DHS goes on at length arguing that specific job losses must be shown. DHS Br. 11–22. For example, DHS argues:

> [I]t is entirely "speculative," rather than "likely," that invalidating the H-4 nonimmigrant work authorization rule would preclude such holders from retaining independent authorization to work through other channels and/or that the absence of such visa holders would in fact lead some other third party to take the voluntary action of hiring Bradley, Buchanan and, Gutierrez.[3]

DHS Br. 22. The D.C. Circuit has repeatedly rejected such arguments. As the D.C. Circuit explained in, *Bristol Meyers*, "Consumers always decide whether to purchase the product of one competitor or another." 91 F.3d at 1499. The injury in fact is "ex-

3 DHS makes a similar claim regarding causation and redressability. DHS Br. 21. However, these elements are trivial in the increased competition injury context. But for the H-4 rule, H-4 aliens could not work and compete in the job market—causation. If the H-4 Rule be vacated, the H-4 aliens will not be in the job market—complete redress of injury.

posure to competition" from other market entrants. *Id.*; *accord, Honeywell*, 374 F.3d at 1369–70.

Just one new competitor allowed into a market is an injury in fact. In *First Nat'l Bank & Trust Co. v. NCUA*, four banks challenged a charter change allowing the AT&T Family Credit Union to enroll unaffiliated members. 988 F.2d 1272, 1273 (D.C. Cir. 1993). At that time there were 8,774 FDIC insured banks in the country. FDIC, "Statistics at a Glance", available at https://www.fdic.gov/bank/statistical/stats/2014dec/FDIC.html (last visited May 5, 2015). Affirming that the banks had standing, the Supreme Court observed that, because of the addition of a single competitor to the market, "it [was] not disputed that respondents have suffered an injury-in-fact." *NCUA v. First Nat'l Bank & Trust Co.,* 522 U.S. 479, 488 n.4 (1998).

Parties have competitive injury even when the increased competition occurs throughout the national market. *Int'l Ladies' Garment Workers' Union v. Donovan* is instructive in regard to DHS's claim of geographic limits of competition. 722 F.2d 795 (D.C. Cir. 1983). At issue in *Garment Workers'* were regulations that reversed the longstanding prohibition on home manufacturing of knitted outerwear. *Id.* at 799–804. Similar to DHS here, the government argued that the plaintiff must show that the employers of home knitters would employ factory labor. *Id.* at 810. The D.C. Circuit rejected that argument, holding that the competition resulting from the regulation was the injury. *Id. Garment Workers'* plaintiffs had an injury in fact in a national market where the competitors could appear anywhere in the country. Many other plaintiffs have had standing from increased competition where there was no specific, identifiable loss of sales in a national market. *See*, *e.g.*, *Int'l Bhd. of Teamsters v. Pena,* 17 F.3d 1478, 1483 (D.C. Cir. 1994); *Bristol Meyers*, 91 F.3d at 1499; *Int'l Bhd. of Teamsters v. United States DOT*, 724 F.3d 206, 212 (D.C. Cir. 2013).

Having admitted that the H-4 Rule causes one of the very injuries in fact pled, DHS Br. 7 (Compl. ¶¶ 48, 54–55), DHS invents its own injuries and then argues

why its inventions are not injuries in fact under the law. For example, DHS invents this injury:

> The crux of Plaintiff's argument is that Bradley, Buchanan and, Gutierrez will potentially apply for "Information Technology," "computers," or "systems analyst" and that maybe an H-4 nonimmigrant might apply for the same job in some hypothetical future.

DHS Br. 20 (citations omitted).— *Wrong*! The actual crux of competitive injury from H-4 workers[4] is that, if the H-4 rule goes into effect on May 26, 2015, it is absolutely certain that H-4 aliens will be *allowed* to compete with Save Jobs USA members for *any job* to which they apply (in this case computer related jobs). The D.C. Circuit has repeatedly held, *that it has repeatedly held* that this is an injury in fact. *E.g.*, *La. Energy*, 141 F.3d at 367; *Fin. Planning*, 482 F.3d at 486; *New Eng. Pub. Communs*, 334 F.3d at 74; *United States Telecom*, 295 F.3d at 1331.

1. Widespread injury is still an injury in fact.

Belying DHS's claim that the H-4 Rule "will have minimal labor market impacts" is employment growth figures. 80 Fed. Reg. 10,295. From 2009 to 2014, the average monthly job creation in the United States was 74,677 and from 2004 to 2014 it was 58,340. www.bls.gov/oes (OES national employment data for 2004–2014) (last visited May 11, 2015). Under the H-4 Rule, DHS is preparing to add 179,600 workers into the already depressed job market—roughly equivalent to two to three month's average job growth for the entire country. 80 Fed. Reg. 10,285. Because the H-4 Rule adds so much labor and does not restrict the alien's occupation or location, the standing question here is not "Who *would* have standing to challenge?" but rather "Who *would not* have standing to challenge?" DHS says that "[t]he final rule will permit a qualifying H-4 dependent spouse to accept employment with *any* U.S. employer in *any* occupation (skilled or unskilled)." DHS Br. 7. One would have to

4 The complaint specifies three distinct injury theories and four distinct injuries in fact. Compl. ¶¶ 23, 25, 49–62. Competition with H-4 workers is just one of the injuries in fact pled.

resort to nitpicking to identify professions where there would not be standing to challenge the H-4 Rule, such as possibly excluding professions where H-4 aliens cannot work (*e.g.*, lawyers) or are not likely to work (*e.g.*, cattle ranchers).

DHS's denial that such widespread standing can exist ("That cannot be so, as it would establish standing for any aggrieved U.S. worker based simply on the presence of foreign workers in the United States." DHS Br. 21) is in direct conflict with the precedent of this circuit.[5] "The question of how many suffer from an injury is logically unrelated to the question of whether there is an injury and has nothing to do at all with the fitness of a particular party to bring a claim." *Center for Auto Safety v. Nat'l Highway Transportation Safety Admin.*, 793 F.2d 1322, 1334 (D.C. Cir. 1986). For example, in *Michel v Anderson*, the plaintiffs had standing, even though the injury was shared with all the "voters in the states". 14 F.3d 623, 636 (D.C. Cir. 1994). In *Bentonville v. FAA*, the plaintiffs had standing where the injury was shared with all passengers using O'Hare airport. 376 F.3d 1114, 1119 (D.C. Cir. 2004). *See also*, *FEC v. Akins*, 524 U.S. 11, 24–25 (1998); *Pub. Citizen v. United States Dep't of Justice*, 491 U.S. 440, 449–50 (1989).

2. DHS confuses widespread injury with generalized grievance.

DHS (citing *United States v. Richardson*, 418 U.S. 166, 171–80 (1974) at DHS Br. 21) confuses *widespread injury* with *generalized grievance*. As the D.C. Circuit has explained, "Although injuries that are shared and generalized—such as the right to have the government act in accordance with the law—are not sufficient to support standing, where a harm is concrete, though widely shared, the Court has found injury in fact." *Seegers v. Ashcroft*, 396 F.3d 1248, 1253 (D.C. Cir. 2005). "The term 'generalized grievance' does not just refer to the number of persons who are alleg-

5 Hypothetically, imagine the National Parks Service setting up a 20-foot crucifix and a shrine to the Virgin Mary on the Mall in front the Capitol and the resulting national publicity causes nearly every American to see pictures of the shrine. Under DHS's standing argument no one would have standing to make a constitutional challenge to this act because the injury is so widespread.

edly injured; it refers to the diffuse and abstract nature of the injury." *Akins v. FEC*, 101 F.3d 731, 737 (D.C. Cir. 1996), rev'd other grounds, 524 U.S. 11 (1998). This case addresses the concrete injury of increased competition and the concrete question of whether a specific regulation is within the authority of the agency promulgating it.

It tries, but DHS cannot hide behind the breadth of the injury it intends to inflict in just a few days with the H-4 Rule. *See*, *Michel*, 14 F.3d at 636; *Seegers*, 396 F.3d at 1253. As DHS points out the H-4 Rule "will permit a qualifying H-4 dependent spouse to accept employment with *any* U.S. employer in *any* occupation." DHS Br. 7. If the H-4 Rule had prohibited H-4 aliens from working as hairdressers, hairdressers would not have competitor standing to challenge the rule. If the rule had prohibited H-4 aliens from working as waiters, waiters would not have competitor standing to challenge. However, by launching a full-frontal, unrestricted, regulatory assault on the working public at large, DHS has created competitive injury for the working public at large. The more widespread the injury is, the more widespread the pool of plaintiffs with standing. *See*, *Michel*, 14 F.3d at 636; *Seegers*, 396 F.3d at 1253.

B. Save Jobs USA members have greater injury than the general public.

As shown above, nearly anyone in the labor market would have standing to challenge the H-4 Rule because it allows widespread increased competition with H-4 aliens. However, the Save Jobs USA plaintiffs have additional injuries that are not shared by the general public. Save Jobs USA members are all computer workers who were employed at Southern California Edison until early this year when they were replaced by foreign workers on H-1B guest worker visas. Bradley Aff. ¶¶ 7–12; Buchanan Aff. ¶¶ 9–13; Gutierrez Aff. ¶¶ 8–11. These workers remain in the computer job market as they seek new jobs. Bradley Aff. ¶ 13; Buchanan Aff. ¶ 14; Gutierrez Aff. ¶¶ 12–13. Therefore they remain competitors with H-1B workers in the computer job market. There could be no greater evidence of being in direct com-

petition with such workers for jobs than having been replaced by H-1B workers. As such, they suffer additional injuries related to their competition with H-1B holders. *See*, *infra*. DHS goes on at length over the injury of increased competition with the H-4 competitors being added to the market but brushes over the other injuries pled in the complaint and described in detail in Save Jobs USA's opening brief ("Save Jobs USA Br.") 14–18. In a footnote, DHS erroneously asserts that, "Such H-1B holders already have jobs, and Plaintiff's evidence cannot demonstrate that Bradley, Buchanan, or Gutierrez are competing directly with those currently employed H-1B holders, let alone that they might at some future point look for new jobs that Bradley, Buchanan, or Gutierrez might also apply for." DHS Br. 13 n.7. This ignores the fact that the named members were all *replaced by H-1B workers* and that these replacements were *employed* by contract labor companies that in turn supplied the workers to Southern California Edison. Gutierrez Aff. ¶¶ 8–10; Buchanan Aff. ¶¶ 8–10; Bradley Aff. ¶¶ 7–11. Even employed H-1B workers remain competitors, affecting the labor market through supply and demand.

Save Jobs USA summarizes the three additional injuries here. First, DHS's findings for the H-4 rule repeatedly state that the goal of the rule is to attract more H-1B workers. E.g., 80 Fed. Reg. 10,284, 10,286, 10288. DHS plainly stated that desire to attract more H-1B workers in its response. DHS Br. 5 ("The proposed rule would address H-1B workers leaving the United States (or never seeking employment here in the first place)"). That makes the H-4 Rule an unlawful inducement designed to attract more H-1B workers, making it more likely that such workers will be in the market. These additional H-1B workers that the H-4 Rule is designed to provide represent more direct competitors for Save Jobs USA members and an injury in fact. *See*, *La. Energy*, 141 F.3d at 367. Second, by allowing H-4 aliens to work through regulation in specialty occupations that normally require an H-1B visa, DHS circumvents the labor protections that rightly should be applied to such

labor in their fields. *E.g.*, 8 U.S.C. §§ 1182(n) (Labor Condition Application), and 1184(g) (numeric limits on foreign labor). That is an injury in fact as well. *Bhd of Locomotive Eng'rs v. United States*, 101 F.3d 718, 724 (D.C. Cir. 1996). Third, DHS's findings for the H-4 Rule repeatedly state that it will confer benefits upon H-1B visa holders (*i.e.*, Save Jobs USA competitors). *E.g.*, 80 Fed 10,284, 10,285, 10,286, 10,288. Conferring such benefits on a competitor is an injury in fact also. *New World Radio, Inc. v. FCC*, 294 F.3d 164, 172 (D.C. Cir. 2002).

C. A party need not wait until specific transactions occur to establish competitive injury.

In addressing injury in fact and ripeness, DHS asserts that injury has not occurred because the H-4 workers are not yet in the job market. DHS Br. 13, 25. The D.C. Circuit has repeatedly rejected this argument, holding:

> We repeatedly have held that parties suffer constitutional injury in fact when agencies lift regulatory restrictions on their competitors or otherwise allow increased competition. The lifting of such restrictions alone is generally sufficient, and we have not required litigants to wait until increased competition actually occurs. A party may establish its constitutional standing by showing that the challenged action authorizes allegedly illegal transactions that have the clear and immediate potential to compete with the petitioners' own sales. They need not wait for specific, allegedly illegal transactions to hurt them competitively.

La. Energy, 141 F.3d at 367 (internal quotations and citation omitted). In spite of such clarity and repetition over the years from the D.C. Circuit, DHS asserts:

> Under these cases, Plaintiff lacks standing for the simple reason that Bradley, Buchanan and, Gutierrez cannot possibly allege they are in direct and current competition, let alone that they suffer any competitive harm, because not a single H-4 visa work authorization has been issued.

DHS Br. 13. This argument ignores the fact that in just a few days DHS intends to unleash 179,600 foreign workers into the American job market where they will be *allowed* to compete with Save Jobs USA members (and provide additional benefits

to its H-1B competitors). 80 Fed. Reg. 10,284. Furthermore, USCIS director Rodriguez admitted that many of these aliens would be, "of the type that frequently seek H-1Bs" who are already in direct competition with Save Jobs USA members. Patrick Thibodeau, *U.S. to allow some H-1B worker spouses to work*, ComputerWorld, Feb. 24, 2015. Employers are already placing advertisements for computer jobs seeking H-4 workers in anticipation of the H-4 Rule. *See*, Save Jobs USA Br. Appendix A. Not only will the H-4 aliens be allowed to compete in Save Jobs USA's market, they are likely to be in that specific market. Rodriguez, *supra*.

D. A final rule that is due to go into effect in a few days is ripe for adjudication.

DHS asserts that this case is not ripe for adjudication. DHS Br. 23–26. A review of the ripeness doctrine disproves that assertion.

> The ripeness doctrine requires [a court] to consider the fitness of the issues for judicial review and the hardship to the parties of withholding court consideration. Under the doctrine's first prong, we look to see whether the issue is purely legal, whether consideration of the issue would benefit from a more concrete setting, and whether the agency's action is sufficiently final. And under the second, we consider not whether the [parties] have suffered any direct hardship, but rather whether postponing judicial review would impose an undue burden on them or would benefit the court.

Bentonville v. FAA, 376 F.3d 1114, 1119–20 (D.C. Cir. 2004) (internal quotations and citations omitted). In *Bentonville*, the plaintiffs challenged the imposition of a $4.50 facility fee for passengers at O'Hare airport. The court found the case was ripe even though the fee would not be imposed until thirteen years in the future because the challenge (like the one here) was entirely on legal grounds; there was no benefit of delaying a decision on a final agency action (as here); delay might prevent the plaintiff for bringing the challenge at all; the resulting uncertainty from delay. *Id*. at 1119.

As with its standing argument, DHS's ripeness argument relies on misinterpreting the competitive standing doctrine to create false uncertainty. DHS argues,

> Thus, where "there are too many imponderables," like whether in fact an H-4 nonimmigrant will ever compete directly and currently with Bradley, Buchanan and, Gutierrez or whether those three ever applied for any jobs H-4 nonimmigrants would ever be eligible for or apply to, the case is not fit for review.

DHS Br. 25. As shown above, Save Jobs USA does not need to show its members have applied for any jobs H-4 nonimmigrants would apply to—they have to show the agency action has the "clear and immediate potential to compete with the petitioners' own sales." *La. Energy*, 141 F.3d at 367 (quoting *Associated Gas Distributors v. FERC*, 899 F.2d 1250, 1259 (1990)). DHS has made that showing for Save Jobs USA by admitting that the H-4 Rule does just that. DHS Br. 7 ("[A]n EAD under the final rule will permit a qualifying H-4 dependent spouse to accept employment with *any* U.S. employer in *any* occupation (skilled or unskilled)."). Nor does Save Jobs USA have to wait until those competitors arrive on the market to have standing. *La. Energy*, 141 F.3d at 367. DHS will begin taking applications for such work permits on May 26, 2014. 80 Fed. Reg. 10,284. The addition of 179,600 H-4 aliens to the job market that will be *allowed* to compete with Save Jobs USA members is a certainty if this motion is not granted.[6] 80 Fed. Reg. 10,285.

E. Save Jobs USA clearly satisfies the zone of interest test.

DHS raises the affirmative zone of interest test defense.[7] DHS Br. 26–31. The zone of interest test requires that the plaintiff be "arguably within the zone of interests to be protected or regulated by the statute" that he says was violated. *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 132 S. Ct. 2199, 2210 (2012); *Mendoza*, 754 F.3d at 1011–17. In the context of the APA, the test is not especially

6 In addition, deciding the merits of this case before aliens start working on H-4 visas would produce less hardship on the aliens and employers than having such aliens start work and later revoking work authorization.

7 DHS asserts Save Jobs USA "fails to demonstrate prudential standing". DHS Br. 26. However, the Supreme Court has eliminated the concept of *prudential standing* as part of the standing inquiry. *See Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1386–88 (2014). The zone of interest test is now part of the cause of action analysis. *Lexmark*, 134 S. Ct. at 1387–88.

demanding. *Lexmark Int'l, Inc v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1389 (2014). The benefit of any doubt goes to the plaintiff when applying the zone of interest test. *Patchak*, 132 S. Ct. at 2210.

The Supreme Court has repeatedly held that, "[a] primary purpose in restricting immigration is to preserve jobs for American workers." *E.g.*, *Reno v. Flores*, 507 U.S. 292, 334 (1993) (citation omitted). Following that maxim, courts have held that American workers fall within the zone of interests to be protected by the INA's provisions regarding entry of nonimmigrant alien workers. *E.g.*, *Bricklayers*, 761 F.2d at 804–05 (holding that several unions comprised of American workers had prudential standing to challenge Immigration and Naturalization Service ("INS") practices that allowed foreign workers to come to the U.S. and perform work that U.S. workers could perform);[8] *Longshoremen*, 891 F.2d at 1379 (holding that the union and its members were "within the 'zone of interests' protected by the INA" because a "primary purpose of the immigration laws, with their quotas and certification procedures, is to protect American laborers"). Because Save Jobs USA seeks to preserve employment opportunities for domestic labor, a primary purpose of the INA, it clearly satisfies the zone of interest test.

Cherry picking from zone of interest precedent, DHS declares *Fed'n for Am. Immigration Reform v. Reno* ("*FAIR*"), 93 F.3d 897, 903–04 (D.C. Cir. 1996) "controls this case."[9] DHS Br. 28. The *FAIR* opinion is notable for being one of only four opinions in the D.C. Circuit that have interpreted *Air Courier Conference v. Am. Postal Workers Union*, 498 U.S. 517, 530 (1991), as adding a more stringent *integral*

8 DHS proclaims with no authority that *Bricklayers* is "inapposite because of intervening case law". DHS Br. 28 n.11. Nonetheless, *Bricklayers* is continuously cited by courts as authority for labor standing in the D.C. Circuit and other circuits. *See*, *e.g.*, *Mendoza v. Perez*, 754 F.3d 1002, 1011 (D.C. Cir. 2014); and *Pai v. United States Citizenship & Immigration Servs.*, 810 F.Supp. 2d 102, 110 (D.D.C. 2011).

9 A more recent opinion, such as *Mendoza*, reflecting clarifications the Supreme Court has made to the zone of interest test in *Lexmark* and *Patchak* is a safer and surer ground for this Court to stand on.

relationship requirement to the zone of interest test. *Nat'l Petrochemical & Refiners Ass'n v. EPA*, 287 F.3d 1130, 1147 (D.C. Cir. 2002); *Grocery Mfrs. Ass'n v. EPA*, 693 F.3d 169, 179 (D.C. Cir. 2012); *Conf. Group, LLC v. FCC*, 720 F.3d 957, 963 (D.C. Cir. 2013). Otherwise, the D.C. Circuit and Supreme Court have rejected this approach. *See*, *e.g.*, *Lexmark*, 134 S. Ct. at 1389–90 (analyzing the overall purpose of the Lanham Act to determine the zone of interests); *Clarke v. Sec. Indus. Ass'n*, 479 U.S. 388, 401 (1987) (a court may consider any provision that helps to understand Congress' overall purposes); *Mendoza*, 754 F.3d at 1017 (analyzing the overall purpose of the Immigration and Nationality Act to determine the zone of interests).[10] In the interest of consistency in the law, Save Jobs USA urges the court to employ a more recent formulation of the zone of interest test, such as *Mendoza*, rather than *FAIR* and the other outliers.

That said, even applying the *FAIR* zone of interest analysis using the facts of *this* case reaches the same result one would get using *Mendoza* or *Lexmark* instead: Save Jobs USA has a cause of action.[11] Under the *FAIR* analysis, the starting point is to

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10 DHS's zone of interest argument relies on outlier opinions in conflict with the main body of precedent from two circuits: *FAIR* and the nonprecedential *Programmers Guild v. Chertoff*, 338 F. App'x 239 (3d Cir. 2009). Both opinions apply an "integral relationship" requirement claimed to originate in *Air Courier*, 498 U.S. at 530. While the *FAIR* opinion asserts the Court "emphasized" the new integral relationship element, 93 F.3d at 904, the Supreme Court has never before or since used the term *integral relationship* in the context of the zone of interest test. Rather than adding such a requirement to the zone of interest test, it is more likely the Court was merely responding to that term as used in the opinion being reviewed. *Am. Postal Workers Union v. United States Postal Service*, 891 F.2d 304, 306 (D.C. Cir. 1989). *FAIR* spawned a small island chain of just four opinions within the D.C. Circuit using integral relationship analysis. Whereas the majority of opinions in this circuit and others reject this approach. DHS cites in support of *FAIR*, the non-precedential Third Circuit opinion *Programmers Guild*. However, the Third Circuit's precedential opinions expressly disavow the interpretation of the zone of interest test as put forth in *FAIR* and *Programmers Guild*. Its precedential interpretation is that *Air Courier's* "integral relationship" language merely means, "that a recodification of an entire title of the United States Code, covering hundreds of statutory provisions developed over the course of two centuries, did not constitute one 'statute' within the meaning of the zone of interests test." *Davis by Davis v. Philadelphia Hous. Auth.*, 121 F.3d 92, 98 (3d Cir. 1997). Hopefully, the D.C. Circuit will address the inconsistency of *FAIR* with its main body of zone of interest precedent soon. Nonetheless, Save Jobs USA has standing under either interpretation of the test.

11 Notably, DHS's zone of interest analysis goes on at length applying the facts of *FAIR* while ignoring the fact that there are different provisions at issue here than in *FAIR*. DHS Br. 26–28.

identify the statute in question at provision level. *FAIR*, 93 F.3d at 903–04. Then one identifies the provisions with an integral relationship to the statute in question. *Id*. Those provisions become the scope of the zone of interest analysis. *Id*.

Applying *FAIR*, DHS suggests that the H-4 provision, 8 U.S.C. § 1101(a)(15)(H), is the statute in question. Resp. Br. 30. With that starting point, the integral relationship analysis is not even necessary to establish a cause of action. Section 1101(a)(15)(H) was radically revised in the Immigration Act of 1990 ("IMMACT90"), Pub. L. No. 101-649, 104 Stat. 4978, in response to abusive administrative interpretation that had undermined its domestic labor protections. H.R. Rept. 101-723, pp. 44. The structure of that provision reflects congressional intent to protect domestic workers as it spells out the labor protections that must be complied with when aliens are admitted under guest worker visas. 8 U.S.C. § 1101(a)(15)(H). Clearly Save Jobs USA's interest in protecting wage and working conditions of domestic workers is within the zone of interest of 8 U.S.C. § 1101(a)(15)(H) and one does not even have move to the next step and look at integrally related provisions to reach that conclusion.[12]

Moving to the next step (integral relationships) reinforces the conclusion that Save Jobs USA satisfies the zone of interest test. The problem one encounters here applying the *FAIR* zone of interest analysis is that the Supreme Court never defined an *integral relationship* and there has never been a clear definition in the D.C. Circuit. In the absence of guiding precedent, Save Jobs USA makes the logical assertion that provisions that explicitly reference each other have an integral relationship and may be incorporated into the *FAIR* analysis. Under that assertion, the additional, specific protections for domestic labor under 8 U.S.C. §§ 1182(m)(2), 1182(n)(1), 1182(t)(1), 1184(g), and 1188 enter the analysis, further emphasizing Save

12 DHS makes the bizarre assertion that, "Plaintiff may not rely on general labor protections under the H-1B nonimmigrant category, which is within the same statutory scheme as the H-4 statute. DHS Br. 30–31. The two are more than part of the same *statutory scheme*. H-4 and H-1B (and H-1B1, H-1C, H-2A, H-2B) are part of the *very same provision*. 8 U.S.C. § 1101(a)(15)(H). If H-4 be the statute in question for the zone of interest analysis, those other visas are inseparable.

Jobs USA's interest of protecting working conditions falls within the zone of interest of 8 U.S.C. § 1101(a)(15)(H).

II. DHS's assertion that 8 U.S.C. § 1182(a)(5)(A) only applies to permanent residents conflicts with agency and court interpretation.

8 U.S.C. § 1182(a)(5)(A) provides, "In general Any alien who seeks to enter the United States for the purpose of performing skilled or unskilled labor is inadmissible" unless there has been a certification by the Department of Labor. In spite of its "Any alien" language, DHS asserts § 1182(a)(5)(A) "applies only to aliens seeking admission or adjustment of status in second (EB-2) or third (EB-3) preference employment-based immigrant classifications under 8 U.S.C. § 1153(b)(2) or (3)." DHS Br. 29. DHS relies on § 1182(a)(5)(D) that provides § 1182(a)(5)(A) "shall apply" (rather than "shall only apply") to those two permanent residency programs.

There are two ironies with DHS's scope claim. First, where DHS finds the words "shall apply" limits the application scope exclusively to the specified provisions, it ignores the phrase "As used in this section" limiting the scope of 8 U.S.C. § 1324a(h)(3) when claiming that provision gives it unfettered authority to allow aliens to work in the United States. 80 Fed. Reg. 10,295. Second, the *agency* has interpreted § 1182(a)(15)(A) as having broader application than just permanent residency. In *Robert v. Reno*, the plaintiff was a Canadian a trucking company whose drivers entered the United States on B visitor visas. 25 Fed. Appx. 378 (6th Cir. 2002). The INS blocked these drivers from transporting materials between points within the United States, citing § 1182(a)(5)(A) as grounds. Similarly, in *In Re: [Redacted]*, DHS blocked the entry of an alien from Mexico, asserting § 1182(a)(5)(A) was one of the grounds for inadmissibility even though he was not applying for permanent residency under EB-2 or EB-3. 2005 Immig. Rptr. LEXIS 40706. If the scope of § 1182(a)(5)(A) be as limited as DHS claims here, it has been improperly using that provision to exclude aliens not intending EB-2 or EB-3 admission for a long time.

There are a number of other problems with DHS's assertion that § 1182(a)(5)(A) only applies to certain green cards. First, the plain text reads that it applies to "Any alien." Second, Congress explicitly changed the text from being limited to EB-2 and EB-3 to applying to "Any alien." When originally created in IMMACT90, § 162(e), 104 Stat. 4978, 5011, the text of § 1182(a) read that it applied to, "Any alien who seeks admission or status as an immigrant under paragraph (2) or (3) of section 203(b) [of the INA]" (*i.e.*, 8 U.S.C. § 1153(b)(2)–(3)—EB-2 and EB-3, the limitation DHS claims here). However, the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Pub. L. No. 102-232, § 141, 105 Stat. 1733, 1746, changed that text to the current "Any alien who seeks to enter the United States …". Third, the aliens receiving work permits under the H-4 rule are seeking permanent residency visas under § 1153(b)(2)–(3). 80 Fed. Reg. 10,287. DHS points out that the H-4 visa holder's H-1B worker spouse will likely have gone through the § 1182(a)(5)(A) certification. DHS Br. 38–39. However, the H-4 spouse who, under the H-4 Rule, is now seeking employment, has not gone through the same process. That omission directly conflicts with the "Any alien" language of § 1182(a)(5)(15) even when the scope is restricted to EB-2 and EB-3 status. Fourth, it is true that most case law has addressed § 1182(a)(5)(A) in the context of permanent residency. *E.g.*, *United States v. Bisong*, 645 F.3d 384, 387 (D.C. Cir. 2011). However, courts have applied § 1182(a)(5)(A) outside the EB-2 and EB-3 context. For example, in *Comite de Apoyo a los Trabajadores Agricolas v. Perez*, the court applied § 1182(a)(5)(A) to the H-2B guestworker program. 774 F.3d 173, 177 (3d Cir. 2014).

III. DHS's argument on the merits will upend the entire immigration system if upheld by this Court.

Moving past DHS's utterly frivolous standing arguments that have been repeatedly rejected by the D.C. Circuit, the gravamen of this case is one of statutory authority. Does DHS have the statutory authority to allow any alien it chooses to work in the

United States, including aliens who possess an H-4 visa? As will be shown below, it does not.

Congress has set up an elaborate scheme for the admission of non-immigrants. § 1101(a)(15). Some of the visas do not authorize work. For example, Congress has not authorized work on visitor B visas. § 1101(a)(15)(B). On the other hand, the H-1B, H-1B1, H-1C, H-2A, and H-2B visas all specifically authorize work and contain protections for domestic labor. § 1101(a)(15)(H).

Unfortunately, this system has suffered under the constant problem of administrative erosion and abuse. For example, in *Bricklayers*, the INS authorized the admission of foreign bricklayers on B visitor visas, thereby nullifying the domestic labor protections of the H-2 visa that should have been applied to such labor. 761 F.2d 798. The courts blocked this practice in *Int'l Union of Bricklayers and Allied Craftsmen v. Meese*, 616 F. Supp. 1387 (N.D. Calif. 1985). The current H-1B visa was created because of administrative abuse where the H-1 visa (which did not have worker protections) was being used in place of the H-2 visa. H.R. Rept. 101-723, pp. 44. DHS now intends to continue that that type of abuse with H-4 visas.

Under the H-4 Rule, DHS claims that it has "unfettered" authority to allow aliens to work in the United States. 80 Fed. Reg. 10,295. Should the Court adopt DHS's interpretation of its authority, the entire system of non-immigrant visas for different purposes would be upended and nearly all protections for domestic labor could be wiped out through administrative action. What is more, past precedent, such as *Bricklayers*, would be meaningless because DHS could simply let aliens work on tourist visas through regulation.

A. Controlling federal law and Supreme Court separation of powers doctrine impose mandates and restrictions on DHS discretion over alien employment.

The U.S. Constitution delegates all immigration-related powers to Congress:

> The conditions for entry of every alien, the particular classes of aliens that shall be denied entry altogether, the basis for determining such classification, the right to terminate hospitality to aliens, [and] the grounds on which such determination shall be based, have been recognized as matters solely for the responsibility of the Congress.

Harisiades v. Shaughnessy, 342 U.S. 580, 596–97 (1952) (Frankfurter, J., concurring) (emphasis added). The plenary authority of Congress over aliens under Art. I, § 8, cl. 4, is not open to question. *INS v. Chadha*, 462 U.S. 919, 940 (1983). The Constitution confers no enumerated powers over immigration upon the president. In contrast, Congress has exercised its plenary authority by creating a comprehensive legislative scheme, the INA, which delegates carefully circumscribed enforcement duties to the executive branch. *Chamber of Commerce v. Whiting*, 131 S.Ct. 1968, 1973 (2011). DHS has no authority to overstep those bounds and ignore statutory mandates as it has done in this case.

B. DHS's claim of unfettered authority to allow aliens to work in the United States is a product of textual overreach.

The statutory definition of H-4 visas does not provide any authorization for these aliens to work. In order to survive *Chevron* step one, the H-4 Rule must have delegated authority somewhere else. *See*, *Motion Picture Ass'n of Am. v. FCC*, 309 F.3d 796, 801 (D.C. Cir. 2002). DHS asserts the source of authority is § 1324a(h)(B)(3) that it claims, "specifically recognizes the authority of both Congress and the Secretary to grant work authorization." DHS Br. 34; *see also*, p. 33. The central issue in this case is whether (1) § 1324a recognizes that, elsewhere in the INA, Congress has defined specific classes of aliens lacking work visas and has conferred on DHS the broad power to authorize individuals within those classes to work; or whether (2) § 1324a itself confers on DHS a "grant of dual authority," DHS Br. 35, to independently define classes of aliens allowed to work in the United State and to determine which aliens within those classes are authorized work. The provision in question reads:

> (3) Definition of unauthorized alien
>
> As used in this section, the term "unauthorized alien" means, with respect to the employment of an alien at a particular time, that the alien is not at that time either
>
> (A) an alien lawfully admitted for permanent residence, or
>
> (B) authorized to be so employed by this chapter or by the Attorney General.

8 U.S.C. § 1324a(h). The plain language of the text only defines the term *unauthorized alien* does not give DHS authority to do anything. The restriction "As used in this section" reinforces the view that the scope of § 1324a(h)(3) is extremely limited.

The reasonable interpretation of this provision is that it acknowledges Congress has defined specific classes of aliens without work visas and has authorized Secretary of Homeland Security to permit aliens within those specified classes to work. For example, § 1105a(a) provides that the "Secretary of Homeland Security may authorize" battered spouses (including H-4 aliens) to work in the United States. Section 1154 provides that the secretary may authorize aliens with an approved Violence Against Women Act petitions to work. IRCA, itself, contains seven specific, mandatory directives authorize aliens without visas who are in the legalization process to engage in employment. § 201 ("Legalization") 100 Stat. 3397, 3399 (two), § 301 ("Lawful Residence for Certain Special Agriculture Workers") 100 Stat. 3418, 3421 (two), 3428.

This interpretation, that § 1324a(h)(3) refers to specific work authorizations enacted by Congress, fits both the overall immigration system and the legislative history. In the absence of the clause "or by the Attorney General" in § 1324a(h)(3)(B), the Secretary could authorize certain aliens to work but it would be illegal for employers to hire them. That interpretation is supported in the legislative history for IRCA that states, "An alien employed as a transitional worker and in possession of a properly endorsed such work permit or other documentation shall, for purpose of INA section 274A, be considered to be authorized by the Attorney General to be so employed during the period of time indicated on such documentation." *See*, S. Rep.

99-132, p. 43. In other words, an alien that Congress directed could be given a work permit is considered authorized by the Secretary.

Under DHS's interpretation of § 1324a(h)(3), the many statutory directives under the INA, whereby the Secretary "shall" or "may" authorize employment, become entirely redundant because the Secretary can authorize anyone to work. Such an interpretation should be rejected. *Platt v. Union P. R. Co.*, 99 U.S. 48, 59 (1879) ("[W]here a given construction would make a word redundant, it was reason for rejecting it.").

DHS argues that, "If section 1324a(h)(3) intended to vest authority for work authorization only in Congress, it would have omitted the words 'or by the Attorney General,' leaving work authorization only in the hands of Congress." DHS Br. 34. That argument has no merit. As described above, had Congress omitted that clause, those aliens without work visas who Congress has directed be given, or discretionally may be given, work authorization would be unemployable under the remaining provisions of § 1324a. Such aliens would have work permits but those permit would be useless because employers would be barred from employing them under the threat of civil and criminal penalties. § 1324a. As with the rest of DHS's analysis, affirmance of its argument requires looking at § 1324a(h)(3) in isolation from the rest of the INA (and even in isolation from the rest of § 1324a). *See*, *Griffith v. Lanier*, 521 F.3d 398, 402 (D.C. Cir. 2008) (stating courts read a body of statutes addressing the same subject matter *in pari materia*, as if they were one law).

DHS interpretation begs the question, if Congress wanted to confer on DHS unfettered authority to allow any alien that it chooses to work in the United States, why would Congress bury such authority in a definition within a section banning employers from hiring certain aliens that is limited in scope to that one section? "The Supreme Court has stated that courts should not lightly presume congressional intent to implicitly delegate decisions of major economic or political significance to

agencies." *Loving v. IRS*, 742 F.3d 1013, 1021 (D.C. Cir. 2014) (citing *FDA v. Brown & Williamson*, 529 U.S. 120, 160 (2000) (stating "we are confident that Congress could not have intended to delegate a decision of such economic and political significance to an agency in so cryptic a fashion")). Here, DHS asserts Congress has created a "grant of dual authority" with DHS though § 1324a(a)(H)(3). DHS Br. 35. The claim that Congress has made DHS a co-equal partner implicitly through a definition restricted in scope to a single section at is precisely that the type of presumption the Court has prohibited. *Loving*, 732 F.3d at 1021.

C. There is no precedent in this circuit supporting DHS's claim of unfettered authority to allow aliens to work.

DHS cannot validate its claim to unfettered authority through D.C. Circuit precedent. Instead, DHS casts the weight of its argument on Ninth and Fifth Circuit opinions. Plaintiff readily distinguished *Ariz. Dream Act Coal. v. Brewer*, F.3d 1053 (9th Cir. 2014) in its opening brief. Regarding *Perales v. Casillas*, 903 F.2d 1043 (5th Cir. 1990), the court in no way intimated that, under § 1324a(h)(3), DHS may allow any alien of its choosing to work. While DHS asserts the authority Save Jobs USA cited in its opening brief is inapposite, DHS Br. 33 n.14, the fact of the matter is, no opinions looking at the scope of § 1324a, including *Parales*, have held that the provision confers on DHS unlimited authority to allow any alien of its choosing to work.

IV. DHS acted arbitrarily and capriciously because it reversed a policy adopted by Congress.

DHS's argument that it did not act arbitrarily and capriciously ignores the fact that the H-4 Rule reverses a policy in place for 45 years. DHS Br. 39–40. Once Congress adopts an agency interpretation, the agency is not free to change it. *Brown & Williamson*, 529 U.S. at 155–56. The fact that Congress has understood that aliens cannot work on H-4 visas is well documented. For example, in the debate over authorizing spouses of aliens on treaty visas to work, Congressman Wexler expressed the view

that he hoped this would be extended to the spouses of other types of visas, thereby recognizing the need for congressional action to allow such work. 147 Cong. Rec. H5357 (daily ed. Sept. 5, 2001). In recent years, several bills have been introduced and debated that would allow aliens who possess an H-4 visa to work. *See,* Border Security, Economic Opportunity, and Immigration Modernization Act, § 4102, S.744, 113th Congress (passed Senate); I-Squared Act of 2013, § 103 S.169, 113th Congress; I-Squared Act of 2015, § 104, S. 153, 114th Congress. This demonstrates that Congress understands it has not authorized H-4 aliens to work and has adopted that interpretation. Changing the policy that H-4 aliens may not work when it has been adopted by Congress is arbitrary and capricious. *Brown & Williamson*, 529 U.S. at 155–56.

The H-4 Rule is arbitrary and capricious even without congressional adoption. An agency can change course, as long as it acknowledges and explains why it is making the change.

> Of course, the Agency is entitled to change its mind as long as its new direction falls within the ambit of its authorizing statute and the policy shift is adequately explained. The requirement that an agency provide a reasoned explanation for its actions ordinarily means the agency must "display awareness that it is changing position."

Arkema v. EPA, 618 F.3d 1, 6 (D.C. Cir. 2010) (quoting *FCC v. Fox Television Stations, Inc.*, 129 S. Ct. 1800, 1811 (2009)). "An agency's departure from past practice can, however, if unexplained, render regulations arbitrary and capricious." *Ass'n of Private Colls. and Univs, v. Duncan*, 681 F.3d 427, 441 (D.C. Cir. 2012). In the H-4 Rule, DHS provided no acknowledgement that it was reversing a policy in place for 45 years, let alone an explanation why it was reversing this policy. 80 Fed. Reg. 10,284–312. That glaring omission makes the H-4 Rule arbitrary and capricious as well. *Ass'n of Private Colls. and Univs.*, 681 F.3d at 441.

The H-4 Rule is also arbitrary and capricious because the conclusion that the rule will only have a "minimal impact" on American workers is unfounded. As noted

above, belying DHS's claim that the H-4 Rule "will have minimal labor market impacts" is employment growth figures. 80 Fed. Reg. 10,295. From 2009 to 2014, the average monthly job creation in the United States was 74,677 and from 2004 to 2014 it was 58,340. www.bls.gov/oes (OES national employment data for 2004–2014) (last visited May 11, 2015). Under the H-4 Rule, DHS is preparing to add 179,600 workers into the already depressed job market—roughly equivalent to two to three month's average job growth for the entire country. 80 Fed. Reg. 10,285.

V. DHS's claim that Save Jobs USA unnecessarily delayed filing this action is preposterous.

In arguing against a preliminary injunction, DHS makes the preposterous claim that Save Jobs USA "waited a year to challenge the rule" and has created "an emergency of its own making." DHS Br. 41.

Only *final* agency actions are reviewable under the APA. *Mittleman v. Postal Regulatory Comm'n*, 757 F.3d 300, 304 (D.C. Cir. 2014); 5 U.S.C. § 704. Save Jobs USA could not possibly have brought this action until after the H-4 Rule was finalized on Feb. 26, 2015. 80 Fed. Reg. 10,284. Save Jobs USA prepared and filed this case (Apr. 23, 2015) within eight weeks of the earliest possible date it could have been filed.[13]

CONCLUSION

This case raises the fundamental question of whether Congress is the master of the immigration system and holds the power to define the classes of aliens who may enter the United States to perform labor and where DHS is the policy implementer, having the broad power to decide which individuals within those classes may work

13 DHS also raises the issue of unrepresented third parties and claims that a delay in implementing the rule would adversely affect them. DHS Br. 45. It would be less of a hardship to those parties to delay implementation of the H-4 Rule than to allow those aliens to work now then come back later and say they have to stop working. It would be less of a hardship to those parties to delay implementation of the H-4 Rule than to allow those aliens to work now then revoke their work authorization at a later date.

(as set forth in the Constitution); or whether there exists "dual authority" over the immigration system where either Congress or DHS can independently authorize classes of aliens to work in the United States. The Court's answer to that question has major implications.

The statutory protections for domestic labor are already inadequate, as the replacement of Save Jobs USA members by foreign workers demonstrates. Should the Court adopt DHS's position that it has "dual authority" to authorize any alien of its choosing to work, nearly any statutory protection for American workers under the immigration system can be invalidated through regulations authorizing aliens to work without being admitted on a work visa. DHS has already announced that it "may consider expanding employment authorization to other dependent nonimmigrant categories in the future." 80 Fed. Reg. 10,292. The lessons learned from cases like *Bricklayers* should give this Court pause as to the consequences of ruling that DHS has unfettered authority to authorize any alien it chooses to work. The labor protections embodied in the INA will be undermined and the American worker will suffer.

In order to preserve the integrity of the immigration system and affirm the constitutional authority of Congress over immigration matters, Save Jobs USA's motion for preliminary injunction should be granted.

Respectfully submitted,
Dated: May 15, 2015

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In the
United StatesDistrict Court
for the
District of Columbia

Save Jobs, USA 31300 Arabasca Circle Temecula CA 92592 *Plaintiff*, *v.* U.S. Dep't of Homeland Security; Office of General Counsel Washington, DC 20258. *Defendant.*	Civil Action No. 1:15-cv-00615 (TSC)

Certificate of Service

I certify that on May 15, 2015, I filed the attached Reply Brief in Support of Plaintiff's Motion for Preliminary Injunction and Exhibit 1 with the Clerk of the Court using the CM/ECF system that will provide notice and copies to the Defendant's attorneys of record.

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