No. 25-11236

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

Rafael Pons-Puig,

Plaintiff-Appellant,

v.

Director, Texas Service Center,
U. S. Citizenship and Immigration Services,

Defendants-Appellees.

Appeal from United States District Court
Southern District of Florida
No. 1:24-cv-20457-JB

BRIEF OF THE AMICUS CURIAE AMERICAN IMMIGRATION LAWYERS ASSOCIATION IN SUPPORT OF PLAINTIFF-APPELLANT

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1(a), the undersigned counsel states that *amicus curiae* the American Immigration Lawyers Association has no corporate parent, and no publicly held corporation holds 10% of any stock it might issue.

Respectfully submitted,

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Dated: July 3, 2025

CERTIFICATE OF INTERESTED PERSONS

In compliance with Federal Rule of Appellate Procedure 26.1 and Elevent Circuit Rule 26.1-1 – 26.103, *amicus curiae* the Amiercan Immigration Lawyers Association identifies all attorneys, persons, associations of persons, firms, partnerships, or corporations that have an interest in the outcome of this case and have been listed in any prior Certificate of Interested Persons.:

1. Hon. BECERRA, Jaqueline, United States District Judge, Southern District of Florida;

2. BOYNTON, Brian M., Former Principal Deputy Assistant Attorney General, Civil Division, U. S. Department of Justice, Washington, DC — counsel for defendant-appellee;

3. DIRECTOR, Texas Service Center, U. S. Citizenship and Immigration Services, Irving, TX — the defendant- appellee;

4. ENSIGN, Drew C., Deputy Assistant Attorney General, Office of Immigration Litigation, Civil Division, U. S. Department of Justice, Washington, DC — counsel for defendant-appellee;

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13. Hon. SMITH, Rodney, United States District Judge, Southern District of Florida;

14. SOANES, Sherry D., Trial Attorney, Office of Immigration Litigation, Civil Division, U. S. Department of Justice, Washington, DC — counsel for defendant-appellee;

15. Hon. TORRES, Edwin G., United States Magistrate Judge, Southern District of Florida;

16. American Immigration Lawyers Association, *amicus curiae*;

17. Michael E. Piston, Attorney for Amicus Curiae the American Immigration Lawyers Association.

The amicus further certifies that no publicly traded company or corporation has an interest in the outcome of this case.

FRAP 29(a)(4)(E) STATEMENT

(i) No party's counsel authored this brief in whole or in part;

(ii) No party or party's counsel contributed money that was intended to fund preparing or submitting the brief;

(iii) No person—other than the amicus curiae, its members, or its counsel—contributed money that was intended to fund preparing or submitting this brief; and

(iv) All parties have consented to the filing of this brief.

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INTEREST OF *AMICUS CURIAE*

The American Immigration Lawyers Association ("AILA") is a national non-profit association with more than 15,000 members throughout the United States and abroad, including lawyers and law school professors who practice and teach in the field of immigration and nationality law. AILA seeks to advance the administration of law pertaining to immigration, nationality and naturalization; and to facilitate the administration of justice and elevate the standard of integrity, honor, and courtesy of those appearing in a representative capacity in immigration and naturalization matters. As part of its mission, AILA provides trainings, information, and practice advisories to practitioners providing direct services to noncitizens, and to counsel representing noncitizens accused of criminal offenses in federal and state courts.

STATEMENT OF ISSUES

Shall no court have jurisdiction to review the denial of a petition for immigrant worker solely because it might be used to support of a possible future application for judgment regarding the granting of relief under 8 U.S.C. § 1255?

SUMMARY OF ARGUMENT

This brief is submitted in connection with an appeal from the decision of the U.S. District Court for the Southern District of Florida, dismissing an action under the Administrative Procedure Act challenging the decision of the Director of the USCIS's Texas Service Center that denied Appellant's Form I-140, Immigrant Petition For Alien Worker (I-140), for lack of subject matter jurisdiction. The district court held that review was barred under 8 U.S.C. § 1252(a)(2)(B)(i) because "Plaintiff's case hinges on his attainment of his 'extraordinary ability'; visa status adjustment under Section 1255, which this Court is not empowered to review under the Eleventh Circuit's interpretation of the scope of Section 1252(a)(2)(B)(i)." *Pons-Puig v. Dir., Tex. Serv. Ctr.*, 2025 U.S. Dist. LEXIS 58862, *2; 2025 LX 93904; 2025 WL 1147755 (S.D. Fla. 2025).

By barring judicial review merely because of the possibility that the petition at issue here *might* play a role in a *possible*, *future,* or *potential* application for adjustment of status, no matter how speculative it is that such an application will ever be filed, creates a precedent that could be applied to bar review of virtually all agency

decisions under the INA. For that reason, and because the district court's decision is unsupported by precedent and inconsistent with plain language of the statute, the American Immigration Lawyers Association submits this brief as *amicus curiae*, to bring these implications to the attention of the Court, and to urge it to reject the lower court's poorly reasoned and vastly overbroad decision.

ARGUMENT

I. The District Court's decision is unsupported by precedent and contrary to the plain language of the statute

The lower court adopted the magistrate judge's recommendation, and so his Report and Recommendation (R. & R.) should be treated as adopted by the district court. *Murray v. Governor, Fla.*, 2024 U.S. App. LEXIS 25816, *7; 2024 WL 4490325 (11th Cir. 2024). Because the R. & R. finds the I-140 to be "regarding" (or relating to) an application for adjustment of status which does not exist, it is contrary to the plain language of the statute and the district court's order should be reversed.

8 U.S.C. § 1252(a)(2)(B) provides in relevant part that:

> Notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, and except as provided in subparagraph (D), and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review—
> (i) any judgment regarding the granting of relief under section 1182(h), 1182(i), 1229b, 1229c, or 1255 of this title[.]

However, an I-140 cannot be a judgment regarding the granting of relief under section … 1255 of Title 8 if, as here, there is in fact no grant (or denial) of that relief. Further, the word "granting" cannot reasonably be understood to include "future" "possible" or "potential" grants or granting of relief, because that would render those words all

superfluous where they appear in the phrases "future grant", "possible grant" and "potential grant" in other parts of the United States Code.[1] For example, the phrase "future grant" appears in 17 U.S.C. § 203, 17 U.S.C. § 304, 42 U.S.C. § 300ff-31a and 42 U.S.C. § 282, 33 U.S.C. § 467f-2 and 34 U.S.C. § 10563 contain the phrase "potential grant", while the phrase "possible grant" appears in 34 U.S.C. § 10479.

"One of the most basic interpretive canons is that '[a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative or superfluous, void or insignificant . . . .' *Hibbs* v. *Winn*, 542 U.S. 88, 101 (2004) (quoting 2A N. Singer, Statutes and Statutory Construction § 46.06, pp 181-186 (rev. 6th ed. 2000); footnote omitted)." *Corley v. United States*, 556 U.S. 303, 314 (2009). Giving § 1252(a)(2)(B)(i) the interpretation offered by the R. & R. contravenes that provision by making the words future, potential and

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[1] Admittedly where these phrases appear in the U.S. Code it is generally connection with a grant of funds. But there is no fundamental distinction between a grant of funds and a grant of relief. A grant of funds is, like a grant of relief, "something granted". See, e.g. the noun form of "grant" as defined in Merriam-Webster's Online Dictionary: "something granted *especially* **:** a gift (as of land or money) for a particular purpose". "Grant." Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/grant. Accessed 1 Jul. 2025.

possible all superfluous whenever they are used in conjunction with "grant" in the U.S. Code, inasmuch as the R. & R. silently assumes that a grant of relief includes all future, potential or possible ones.

Although the R. & R. purported to be relying primarily on this Court's decision in *Patel v. United States Attorney General*, 971 F.3d 1258 (11th Cir. 2020) (*Patel I*), careful review of this decision and the Supreme Court's in *Patel v. Garland*, 596 U.S. 328 (2022) (*Patel II*), show that these opinions not only are materially distinguishable from, but in fact sharply contradict, the R. & R.'s reasoning in multiple regards.

First, of course, in *Patel*, the petitioner did in fact apply for a grant of relief under § 1255, which was denied, and it was the denial of that grant that he sought review of. Here, however, there not only has been no denial of a grant of relief (and so of course, the appellant is not seeking review of the same), but in fact there hasn't even been an application for such and, indeed, there is no more than the mere possibility that there might be an application for such a grant of relief in the future, and even that is unlikely given that the appellant's form I-140 indicated that he will be applying for an immigrant visa at a

consulate and *not* for a grant of the relief of adjustment of status at all. (D.E. 20-6 at 11).

Likewise, in *Commandant v. Rinehart*, No. 20-23530-CIV, 2021 WL 422177, 2021 U.S. Dist. LEXIS 20474 (S.D. Fla. Feb. 1, 2021), aff'd sub nom. *Commandant v. Dist. Dir.*, 2024 U.S. App. LEXIS 18597, 2024 WL 3565390 (11th Cir. July 29, 2024), also relied upon by the R. & R., "the plaintiffs challenged the United States Citizenship and Immigration Services's (USCIS) denials of their applications for adjustment of status under 8 U.S.C. section 1255". *Commandant*, 2024 U.S. App. LEXIS 18597 at *2. Not appellant here.

Further, in *Patel I*, this Court observed that "the statutory scheme is that 'judgment' encompasses all decisions made by the BIA and that we are foreclosed from reviewing those determinations unless the alien presents a legal or constitutional challenge." But in *Patel,* the BIA was the tribunal which decided the petitioner's application for adjustment of status. Here we have no idea if the Director of the Texas Service Center (or anyone) will eventually make a decision regarding Mr. Pons-Puig's application for adjustment of status, or if one will ever be made (or even applied for) at all. Therefore, in no way does the statutory scheme

encompass all decisions made by the Director. In fact, there is no reason at this point to conclude that it would encompass *any* such decisions at all.

But it is the actual holding of *Patel I* which most conclusively demonstrates that it has no application here. In *Patel I*, this Court concluded that "we hold that we are precluded from reviewing any judgment relating to Patel's request for relief, except to the extent that he raises a constitutional claim or a question of law." *Patel I*, 971 F.3d at 1283. However, here the appellant *hasn't even made a request for relief under section 1255* for this Court to review any judgment relating to, nor is there any evidence that he ever will. Accordingly, *Patel I* is entirely distinguishable.

Patel II also illustrates vividly the fundamental difference between it and the instant matter. In *Patel II*, the Court held "[w]e must decide how far this bar extends—specifically, whether it precludes judicial review of factual findings that underlie a denial of relief. It does." *Patel II*, 596 U.S. at 331. But this action doesn't even involve a denial of section 1255 relief.

Patel II goes on to comment that "Section 1252(a)(2)(B)(i) strips courts of jurisdiction to review 'any judgment regarding the granting of relief', *id.* at 336, and that "§1252(a)(2)(B)(i) … prohibits review of any judgment regarding the granting of relief under §1255 and the other enumerated provisions". *Id.* at 338. But again, here, there is no grant (or denial) of relief for any judgment to be regarding. Further, it does not matter that "the word 'any' has an expansive meaning." *Id* (quoting *Babb* v. *Wilkie*, 589 U. S. ___, ___, 206 L. Ed. 2d 432, n. 2 (2020)), since the phrase it is expanding, "any judgment regarding the granting of relief under section" is a null set, in that there is no grant (or denial) of relief for there to be any judgment regarding.[2] Similarly, even though "'any means that the provision applies to judgments ""of whatever kind"" under §1255," *Patel II* at 336, nevertheless, the judgment to deny the I-140 at issue here is simply not a denial under § 1255, since there has been no decision under § 1255 to begin with. In fact, even if there were a § 1255 decision, an I-140 denial still would not be "under" it, since it would be neither "in accordance with" or "in compliance with" § 1255. *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 530 (2013).

[2] Or, to express the concept algebraically, "0 x n = 0" (no matter how large a number one multiplies zero by, the product is always zero).

Rather, the authority to approve forms I-140 is derived from 8 U.S.C. §§ 1153(b) & 1154. And the denial of an I-140 is not a judgment "regarding" a granting of relief under § 1255 when, again, no relief under § 1255 is even sought. *Cf. Patel II* at 338-339.

Patel II also properly notes that "[h]ad Congress intended instead to limit the jurisdictional bar to 'discretionary judgments,' it could easily have used that language—as it did elsewhere in the immigration code." *Id.* at 341. Likewise, had Congress intended to expand the jurisdictional bar to judgments regarding future, potential or possible grants of relief, it also could easily have used that language—as it did at numerous locations elsewhere in the United States Code. *See supra.*

Further, *Patel II* rejected the government's argument regarding *Kucana v. Holder*, 558 U.S. 233 (2010), because "[w]e neither said nor implied anything [there] about review of eligibility decisions made in the course of exercising that statutory discretion." *Patel II* at 343. But a decision regarding appellant's I-140 was not made in the course of the USCIS exercising discretion under § 1255 either. In fact, no request for an exercise of discretion under § 1255 has been made here at all, and it is purely speculative whether one may be made in the future. Indeed,

since the I-140 here expressly negates the possibility of the beneficiary applying for adjustment of status, (D.E. 20-6, at 11), the record shows that it is unlikely that such a future exercise of discretion will ever occur at all.

Finally, § 1252(a)(2)(B)(i) is not in the least ambiguous. It is unambiguously limited to judgments regarding the granting of relief under § 1255 and cannot even be arguably construed to include future, potential or possible applications for relief under that section, particularly when there is no evidence that such an application may in fact be filed in the future, and the only evidence in the record indicates that it will not. Therefore, in no way does § 1252(a)(2)(B)(i) unambiguously bar review of the denial of a standalone form I-140, where no application for the granting of relief under § 1255 has been filed, or even appears contemplated. Nevertheless, even if this section were ambiguous, it would be presumed that judicial review was available. See *Reno* v. *Catholic Social Services, Inc.*, 509 U. S. 43, 56 (1993).

Accordingly, neither this Court's opinion in *Patel I* nor the Supreme Court's in *Patel II* are even remotely supportive of the decision

below. In fact, to the extent they are relevant at all, they run directly contrary to the R. & R.

II. The decision below would lead to a vast expansion of §1252(a)(2)(B)(i) well beyond what reasonably could have been contemplated by Congress.

The decision below, if accepted, would expand § 1252(a)(2)(B)(i) vastly beyond its apparent parameters. A holding that the mere possibility that a decision might play a role in some future application for relief under 8 U.S.C. §§ 1182(h), 1182(i), 1229b, 1229c, or 1255, is enough to bring it within its terms, would immunize nearly any decision under the Immigration and Nationality Act from judicial review. Not only would it bar judicial review of *any* immigrant visa petition (since any such petition can satisfy the requirements of § 1255(a)(2) & (3)), but *any* nonimmigrant visa petition as well. This is because § 1255(a) provides in part (with an exception not relevant here) that one must have been "inspected and admitted or paroled into the United States" to qualify for adjustment of status, and that § 1255(c)(2) bars from adjustment someone "who has failed (other than through no fault of his own or for technical reasons) to maintain continuously a lawful status since entry into the United States." Since approval of all nonimmigrant visa petitions are prerequisites for, and have as their sole purpose,

either the admission of a noncitizen into the U.S., or maintenance of the lawful status of those already here, the approval or denial of ***any*** such petition could affect a potential application for adjustment of status just as much as a form I-140 could, even if there is no indication at the time of decision that the petition beneficiary has any intention of so applying. Therefore the judicial review of all visa petitions would be barred under the reasoning of the R. & R. There is no reason to expect that Congress intended such an extraordinary result, which would reverse decades of judicial practice.

Nor does it stop there. All of the decisions mentioned in § 1252(a)(2)(B)(i) require a favorable exercise of discretion. But virtually any decision under the INA could be relevant to a favorable (or unfavorable) exercise of discretion. As the 7th Circuit has stated:

> The discretion of immigration officials is exceptionally broad. The Supreme Court recently suggested that it is absolute. See *INS v. Phinpathya*, 464 U.S. 183, 188 n.6, 78 L. Ed. 2d 401, 104 S. Ct. 584 (1984) (the disposition of a motion to reopen "is entirely within the BIA's discretion") (dictum). The Board's discretion is broad in part because it administers the immigration laws, and "over no conceivable subject is the legislative power of Congress more complete" than with respect to immigration. *Oceanic Steam Navigation Co. v. Stranahan*, 214 U.S. 320, 339, 53 L. Ed. 1013, 29 S. Ct. 671 (1909).

Achacoso-Sanchez v. Immigration & Naturalization Service, 779 F.2d 1260, 1264 (1985).

Thus, since an immigration officer, within his absolute discretion, could consider virtually any factor they wish in deciding how to exercise discretion on an application for adjustment of status or other relief under § 1252(a)(2)(B)(i), they could consider the outcome of virtually any request for benefits under the INA in making that discretionary determination[3], judicial review of all of the same would be barred under the reasoning of the R. and R., since any decision weighing on discretion could be treated as incorporated into a determination under § 1255 et al. This includes, for example, benefit requests the Congress clearly intended to be reviewed, such as denial of an application for asylum, § 1252(a)(2)(B)(ii), or even decisions already found reviewable by the Supreme Court, such as a grant of relief under the Convention Against Torture. *Nasrallah v. Barr,* 590 U.S. 573 (2020).

In short, the reasoning of the decision below amounts to a black hole which sweeps virtually the whole of the INA into § 1252(a)(2)(B)(i),

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[3] In fact, *amicus* cannot conceptualize ***any*** decision on a request for benefits that couldn't be considered in a future exercise of discretion on an application under § 1255 or any other section listed in § 1252(a)(2)(B)(i).

a result certainly never intended by Congress. Yet that is the inescapable consequence of a decision holding that review of any decision which might play a role in some future, potential or possible application for adjustment of status, is barred, regardless of whether that application has been filed or even contemplated.

CONCLUSION

The Court should reverse the decision below.

Respectfully submitted,

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Dated: July 3, 2025

CERTIFICATE OF COMPLIANCE

The foregoing brief, not including portions detailed in FRAP 32(f), contains 2,847 words.

Respectfully Submitted this 3rd day of July, 2025.

/s/ *Michael E. Piston*
Michael E. Piston

CERTIFICATE OF SERVICE

I certify on this 3rd day of July, 2025, that the foregoing has been served by the Court's CM/ECF system.

/s/ *Michael E. Piston*
Michael E. Piston