No. 24-183

In the Supreme Court of the United States

SALEH SHAIBAN, PETITIONER

v.

UR M. JADDOU, DIRECTOR, UNITED STATES CITIZENSHIP
AND IMMIGRATION SERVICES, ET AL.

*ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT*

MEMORANDUM FOR THE RESPONDENT

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The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, provides that, "[n]otwithstanding any other provision of law[,] * * * and regardless of whether the judgment, decision, or action is made in removal proceedings, no court shall have jurisdiction to review" a "decision or action of the Attorney General or the Secretary of Homeland Security the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security." 8 U.S.C. 1252(a)(2)(B)(ii). Another provision of that subchapter vests authority in "[t]he Secretary of Homeland Security or the Attorney General, in the Secretary's or Attorney General's discretion," to adjust the status of a foreign national who has been granted asylum to that of "an alien lawfully admitted for permanent residence" when certain requirements are satisfied. 8 U.S.C. 1159(b)(2).

(1)

In the decision below, the court of appeals held that Section 1252(a)(2)(B)(ii) bars judicial review of petitioner's challenge—brought in district court under the Administrative Procedure Act (APA), 5 U.S.C. 701 *et seq.*, see Pet. App. 3a—to the Secretary of Homeland Security's denial of petitioner's application for adjustment of status under Section 1159(b)(2). Pet. App. 4a-12a. Petitioner contends that the court of appeals erred, for two reasons, in finding that judicial review of his challenge is barred by Section 1252(a)(2)(B)(ii): first, because Section 1252(a)(2)(B)(ii) does not, in his view, apply to agency decisions made outside of removal proceedings, Pet. 12-25; and second, because Section 1252(a)(2)(B)(ii) does not, in his view, bar review of nondiscretionary determinations that underlie a discretionary determination, Pet. 26.

As petitioner observes (Pet. 2-3), this Court is considering a related question regarding the application of Section 1252(a)(2)(B)(ii) in *Bouarfa* v. *Mayorkas,* No. 23-583 (argued Oct. 15, 2024). The question presented in *Bouarfa* is whether Section 1252(a)(2)(B)(ii) bars judicial review of the Secretary of Homeland Security's decision to revoke the approval of a visa petition under 8 U.S.C. 1155. See Pet. at i, *Bouarfa, supra.*

Petitioner principally contends (Pet. 2-3, 6, 11-13, 26, 36) that the Court should hold this case pending its resolution of *Bouarfa* and then vacate the decision below and remand for further proceedings. Respondent agrees that resolution of *Bouarfa* is likely to bear on the appropriate disposition of this case, both because *Bouarfa* arises in the context of an APA challenge and because the petitioner in *Bouarfa* has contended that, at a minimum, Section 1252(a)(2)(B)(ii) does not bar review of nondiscretionary determinations underlying the Sec-

retary's ultimately discretionary decision to revoke the approval of a visa petition. See Merits Reply Br. at 11-20, *Bouarfa*, *supra*.

Accordingly, this Court should hold the petition for a writ of certiorari in this case pending the resolution of *Bouarfa* v. *Mayorkas*, No. 23-583 (argued Oct. 15, 2024), and then dispose of the petition as appropriate.*

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General

NOVEMBER 2024

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* Respondent waives any further response to the petition for a writ of certiorari unless this Court requests otherwise.