UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Washington Alliance of Technology Workers, *Plaintiff,* v. United States Department of Homeland Security, et al., *Defendants,* v. National Association of Manufacturers, et al., *Intervenors-Defendants*.	Civil Action No. 1:16-cv-01170 (RBW) Hon. Reggie B. Walton

REPLY IN SUPPORT OF INTERVENORS' MOTION FOR SUMMARY JUDGMENT

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GLOSSARY

DHS.....Department of Homeland Security

INA .....Immigration and Nationality Act

INS .....Immigration and Naturalization Service

IRCA .....Immigration Reform and Control Act

OPT .....Optional Practical Training

STEM.....Science, Technology, Engineering, and Mathematics

INTRODUCTION

We demonstrated in our opening memorandum that the Optional Practical Training (OPT) program is lawful: DHS possesses express authority both to regulate the conditions of nonimmigrants' stay in this country and to authorize employment; OPT is consistent with the F-1 statute; and Congress has adopted the Executive's seven-decade interpretation of the immigration laws as permitting post-completion practical training for foreign students.

WashTech, by contrast, asserts that every presidential administration since Harry Truman's has acted illegally in permitting foreign students to be employed for practical training during limited periods of time after the completion of their academic studies. WashTech's argument has already failed once, *see Wash. Alliance of Tech. Workers v. DHS*, 156 F. Supp. 3d 123, 137-145 (D.D.C. 2015) (*Washtech I*), where Judge Huvelle thoroughly rejected it.[1] The same result is appropriate here, as the OPT program at issue in this case is lawful.

What is more—as borne out by the amicus briefs submitted by scores of leading colleges and universities, firms and business associations, and other stakeholders—OPT represents not only sound policy but a critical bulwark of the Nation's economy and its international competitiveness. More than a hundred thousand international students use it each year as a means for completing

[1] Judge Huvelle's decision in *WashTech I* remains persuasive authority. WashTech's efforts to avoid that decision (*see* Pl. S.J. Reply 4) are unavailing. "The purpose" of a *Munsingwear* vacatur "is to prevent an unreviewable opinion from having a preclusive effect" through the operation of res judicata. *Fund for Animals v. Mainella*, 335 F. Supp. 2d 19, 25 (D.D.C. 2004) (Walton, J.) (quotation marks omitted; alterations incorporated). This case is illustrative: Had the court of appeals not vacated *Washtech I*, issue preclusion would bar WashTech from arguing OPT is outside Executive authority. *See, e.g.*, *Herrera v. Wyoming*, 139 S. Ct. 1686, 1697 (2019). While vacatur of the *Washtech I* judgment avoids preclusion, it does not negate the persuasiveness of Judge Huvelle's reasoning. The D.C. Circuit has explained in the course of granting a *Munsingwear* vacatur that "the district court's opinion *will remain 'on the books'* even if vacated," meaning that "future courts will be able to consult its reasoning." *Nat'l Black Police Ass'n v. District of Columbia*, 108 F.3d 346, 353-354 (D.C. Cir. 1997) (emphasis added); *see also, e.g.*, *Koi Nation of N. Cal. v. U.S. Dep't of Interior*, 361 F. Supp. 3d 14, 52 n.17 (D.D.C. 2019) (decision vacated on mootness grounds "remains both appropriate for consideration and citation"); Intervenors' S.J. Mem. 8 n.3. The Court may thus "consult [the] reasoning" of *Washtech I* in considering the issues already once decided. *Nat'l Black Police Ass'n*, 108 F.3d at 354. And as discussed in our opening memorandum and emphasized below, that reasoning leads inexorably to the conclusion that OPT is a lawful exercise of executive power.

their American education. Foreclosing this program would, for all the reasons we described, deprive the United States economy of this incredibly talent-rich population of students. What is more, OPT benefits the United States as a whole, including native-born workers. WashTech's claims in this case, if accepted, would upend a program of enormous practical and economic significance—to say nothing of fundamentally disrupting the lives of tens of thousands of individuals who currently rely on it.

WashTech has no basis to demolish this important program, a foundational element of U.S. immigration policy. The Court should affirm the validity of OPT and enter summary judgment against WashTech.

ARGUMENT

THE OPT PROGRAM IS A VALID EXERCISE OF EXECUTIVE AUTHORITY.

We begin by describing how the OPT regulation is consistent with the F-1 visa statute, which delineates who is eligible to enter the United States on such a visa. Congress has expressly authorized the Executive to adopt regulations governing the conditions under which a non-immigrant admitted to the United States remains in status. The regulations issued by the Executive must be *reasonable*. Arbitrary and capricious limitations, or those not reasonably related to the underlying statute, are outside the scope of Executive authority. The OPT regulation is plainly within the Executive's authority: The administrative record contains overwhelming evidence connecting the limited period of optional practical training to the completion of a student's education. In fact, WashTech does not respond on this point—it does not assert that the OPT regulation fails this test.

Next, we show how OPT's legality is confirmed by its more than 7-decade history, being supported by every administration since the 1940s. Congress has frequently revised the immigration laws, but it has left this crucial program in place.

Finally, 8 U.S.C. § 1324a, enacted in the Immigration Reform and Control Act, confirms the Executive's authority to determine which aliens are eligible to work. OPT reflects a straightforward use of this power.

A. The Executive's promulgation of the OPT regulation is consistent with the F-1 visa statute.

WashTech rehashes a familiar theme: In its view, "OPT participants are not *bona fide* students solely pursuing a course of study at an academic institution that will report termination of attendance," conditions which WashTech contends are "required by the plain terms of 8 U.S.C. § 1101(a)(15)(F)(I)." Pl. S.J. Reply 2. In particular, WashTech focuses on the words "solely" and "course of study" in the F-1 statute for its conclusion that the provision "unambiguously limits student visa status to a full course of study at a school." *Id.* at 6; *see also, e.g.*, *id.* at 2-4.

This argument makes the "mistake" of "squint[ing] myopically" at a single statutory phrase "and interpret[ing] it in isolation, rather than in the context of the text and structure of [the statute] as a whole." *United States v. Tupone*, 442 F.3d 145, 151 (3d Cir. 2006) (quotation marks omitted); *accord, e.g.*, *Torres v. Lynch*, 136 S. Ct. 1619, 1626 (2016) ("[W]e must, as usual, 'interpret the relevant words not in a vacuum, but with reference to the statutory context.'") (quoting *Abramski v. United States*, 573 U.S. 169, 179 (2014)). Here, the "context" disregarded by WashTech lies in the very same sentence from which it repeatedly quotes: An F-1 student is one who, among other things, "*seeks to enter* the United States . . . solely for the purpose of pursuing [a full] course of study . . . at an established college, university, . . . or other academic institution." 8 U.S.C. § 1101(a)(15)(F). That is, the F-1 statute describes conditions that must be met at the time a student applies for a visa and "seeks to enter" the country; it does not follow that each condition then present must continue to be satisfied in order for the noncitizen to maintain status.

To the contrary, the INA explicitly empowers the Attorney General (now DHS) to "prescribe" the "conditions" of "[t]he admission to the United States of any alien as a nonimmigrant" through notice-and-comment rulemaking. 8 U.S.C. § 1184(a)(1) ("The admission to the United States of any alien as a nonimmigrant shall be for such time and under such conditions as the Attorney General may by regulations prescribe."); *see also id.* § 1103(a)(1), (a)(3) (general grant of rulemaking authority, providing that "[t]he Secretary of Homeland Security . . . shall establish such regulations . . . as he deems necessary for carrying out his authority under [the INA]."). In other words—and as Judge Huvelle concluded—Section 1101(a)(15)(F)(I) "could sensibly be read

as an *entry requirement*" (*Washtech I*, 156 F. Supp. 3d at 139), leaving to DHS the task of formulating, by regulation, the "conditions" for maintaining that status after entry. 8 U.S.C. § 1184(a)(1).[2] As we explained, this conclusion effectively ends the case, since "[n]o one disputes that all F-1 aliens enter the United States as 'students' under any conceivable definition." *Washtech I*, 156 F. Supp. 3d at 140; *see* Intervenors' S.J. Mem. 26.

We explained earlier that the only sensible construction of the statutory structure is that the Executive may promulgate reasonable regulations governing when and how an individual remains in F-1 status—or else an international student would *immediately* lose status on the day of graduation. *See* Intervenors' S.J. Mem. 27. Instead of this harsh result, regulations provide students 60 days to exit the United States upon graduation. 8 C.F.R. § 214.2(f)(5)(iv). WashTech's argument, if accepted, would invalidate this regulation (and the many others like it, governing international students as well as several other visa classes). WashTech's silence on this score is conspicuous. It cannot seriously contest that, through Section 1184(a)(1), Congress provided the Executive authority to adopt regulations governing the circumstances in which an alien remains in lawful status.

Nor would this "sensibl[e]" interpretation (*Washtech I*, 156 F. Supp. 3d at 139) risk the "absurd result" that WashTech professes to fear—that "DHS could redefine any visa through regulations governing after-entry conduct," rendering the statutory visa categories "paper cutouts with no effective meaning." *See* Pl. S.J. Reply 6. Rather, any regulations promulgated by DHS under its explicit statutory authorization to "prescribe" the "conditions" of nonimmigrants' admission must still be "'reasonably related' to the purposes of the legislation"—here, the educational purposes of the F-1 student visa—in order to survive a challenge in court. *Doe, 1 v. Fed. Election Comm'n*, 920 F.3d 866, 871 (D.C. Cir. 2019) (quoting *Mourning v. Family Publ'ns Serv., Inc.*, 411 U.S. 356, 369 (1973)); *see also, e.g., Cmty. for Creative Non-Violence (CCNV) v. Kerrigan*, 865 F.2d 382, 385 (D.C. Cir. 1989) ("To be valid, a regulation must be reasonably related to the

[2] DHS has done so in voluminous fashion. *See* 8 C.F.R. § 214.2 (filling 141 pages of the Code of Federal Regulations with "[s]pecial requirements for admission, extension, and maintenance of status" for the various nonimmigrant classifications).

purposes of the enabling legislation.") (quotation marks omitted).[3] This standard is "deferential" (*Lederman v. United States*, 89 F. Supp. 2d 29, 34 (D.D.C. 2000)), but it is "stricter . . . than the minimum rationality required of congressional statutes" (*CCNV*, 865 F.2d at 168), and would be more than sufficient to preclude WashTech's "absurd result[s]," such as a hypothetical regulation allowing F-1 students "to stay forever" after graduating—or, indeed, a regulation that allowed graduated students to work in fields unrelated to their studies. *See* Pls. S.J. Reply 5-6 (quoting Tr. of Oral Arg. 27, *Wash. All. of Tech Workers v. DHS*, No. 15-5239 (D.C. Cir. May 4, 2016)).[4]

As we explained, the regulation actually at issue in *this* case easily passes this standard, given the 2016 Rule's raft of requirements directly tethering work under the STEM OPT extension to a student's educational development, and thus to F-1's educational purpose. *See* Intervenors' S.J. Mem. 27-31; STEM000057-58 (81 Fed. Reg. at 13,041-13,042) (summarizing features); STEM000096-97, 99-103 (81 Fed. Reg. at 13,080-13,081, 13,083-13,087) (discussing participating employers' duty to "attest that, among other things: (1) The employer has sufficient resources and personnel available to provide appropriate training in connection with the specified opportunity; (2) the STEM OPT student will not replace a full- or part-time temporary or permanent

[3] Whether this inquiry is characterized as an arbitrary-and-capricious standard or a *Chevron* step two question is perhaps academic, as the two inquiries "often . . . overlap[]." *Pharm. Res. & Mfrs. of Am. v. FTC*, 790 F.3d 198, 204 (D.C. Cir. 2015). *Compare, e.g.*, *Keating v. FERC*, 569 F.3d 427, 433 (D.C. Cir. 2009) (agency action "was not arbitrary or capricious" because agency "articulated rational reasons related to its statutory responsibility"), *with Good Fortune Shipping SA v. Commissioner*, 897 F.3d 256, 261 (D.C. Cir. 2018) ("At *Chevron* Step Two . . . [o]ur focus is thus on 'whether the agency has reasonably explained how the permissible interpretation it chose is rationally related to the goals of the statute.'") (quotation marks omitted; alteration incorporated).

[4] This framing also answers Judge Millett's concern at the D.C. Circuit's oral argument in *Washtech I*. *See* Pl. S.J. Reply 5 ("If it's just an entry requirement why does the statute also require [] the schools to report . . . .") (quoting Tr. of Oral Arg. 29, *Wash. All. of Tech Workers v. DHS*, No. 15-5239 (D.C. Cir. May 4, 2016)). The reporting requirement reflects a congressional concern with foreign students dropping out of school—that is, ceasing to pursue the education for which they were admitted—but remaining in the country; a regulation that permitted that behavior would likely fail to be reasonably related to the purposes of F-1 under cases like *Doe 1*. By contrast, OPT permits students to continue their education through practical training related to their chosen fields of study.

U.S. worker; and (3) the opportunity assists the student in attaining his or her training goals."); STEM000106-114 (81 Fed. Reg. at 13,090-13,098) (discussing in detail the requirement for a "formalized Training Plan," "jointly executed by the F-1 student and the employer" and submitted to school officials for review, "to formalize the relationship between F-1 student's on-the-job experience and the student's field of study and academic learning."); STEM000079, 84-85 (81 Fed. Reg. at 13,063, 13068-13,069) (describing mandatory annual evaluations "to document [the student's] progress towards meeting specific training goals, as those goals are described in the Training Plan," so as to "ensure that the student's practical training goals are being satisfactorily met"); STEM000078, 81 (81 Fed. Reg. at 13,062, 13,065) (discussing DHS's power to conduct employer site visits "to ensure that . . . students and employers are engaged in work-based learning experiences that are consistent with the student's" training plan). Indeed, WashTech does not argue otherwise.

Additionally, DHS had before it robust evidence demonstrating that term-limited optional practical training is reasonable related to the F-1 statute's educational purpose. *See, e.g.*, Comment ICEB-2015-0002- 41568-A1, at 2 (Comment letter of 12 major university associations) ("The OPT program appropriately focuses on the critical part of an education that occurs in partnership with employers. Experiential learning is a key component of the educational experience. OPT allows students to take what they have learned in the classroom and apply 'real world' experience to enhance learning and creativity while helping fuel the innovation that occurs both on and off campus."); Comment ICEB-2015-0002- 41520-A1, at 1 (Comment letter of Harvard University) ("This rule is an extremely important aspect of their training in the United States as it allows students the opportunity to remain in the US and contribute to the cutting edge research programs offered here at Harvard as well as at other U.S. employers.").[5]

[5] *See also, e.g.,* Comment ICEB-2015-0002-39742-A1, at 2 (Comment letter of NAFSA: Association of International Educators) ("Learning through experience is distinct from rote or didactic learning that takes place in the classroom. Experiential learning opportunities have become an integral part of U.S. higher education in all fields of study, and must not be reserved only for American students or, in the case of foreign students, only for STEM degrees."); Comment ICEB-

In fact, WashTech does not contest DHS's determination that the duration of the STEM OPT extension is closely tied to the realities of STEM education. *See generally* STEM0000103-105 (81 Fed. Reg. at 13,087-13,089). As DHS explained, the 24-month term of the extension "is based on the complexity and typical duration of research, development, testing, and other projects commonly undertaken in STEM fields," which "usually require several years to complete." STEM0000104 (81 Fed. Reg. at 13,088). In order for OPT to serve its purpose of "provid[ing] the student an opportunity to receive work-based guided learning," and "enhanc[ing] educational objectives," the duration of the program must match up with this multi-year project cycle. *Id.*; *see also id.* ("Consistent with many comments received from higher education associations and universities, DHS believes that allowing students an additional two years to receive training in their field of study would significantly enhance the knowledge and skills such students obtained in the academic setting, benefitting the students, U.S. educational institutions, and U.S. national interests."); STEM0000103-105 (81 Fed. Reg. at 13,087-13,089) (citing additional comments describing the multi-year nature of STEM project cycles).[6] WashTech does not disagree.

2015-0002-41714, at 4 (Comment letter of Michelle Desikan, Designated School Official, Columbia University) ("I do believe experiential learning opportunities are essential to all students."); Comment ICEB-2015-0002-40908, at 2 (Comment letter of Laurel M. Garrick Duhaney, Ph.D. Associate Provost & Dean of the Graduate School State University of New York at New Paltz) ("Experiential learning opportunities have become an integral part of U.S. higher education in all fields of study, and especially the STEM fields where hands on work supplements classroom education. These opportunities build practical skills and facilitate the move from theory to practice by providing a deeper understanding of subject matter than is possible through classroom study alone. Experiential learning fosters the capacity for critical thinking and application of knowledge in complex or ambiguous situations while new graduate develop the ability to engage in lifelong learning, including learning in the workplace. This is a necessary component of a 21st century education, especially in the STEM fields.").

[6] *See also, e.g.*, Comment ICEB-2015-0002-41572, at 3 (Comment of the Council for Global Immigration, Society for Human Resource Management) ("[T]he extended period aligns to the period of H-3 admission, the typical training period for doctoral students, as well as to three year National Science Foundation (NSF) grants when combined with the initial 12 months of post-completion OPT."); Comment ICEB-2015-0002-39731, at 1 (similar); Comment ICB-2015-0002-6252 (OPT student, explaining that "the normal technology development cycle is almost 3 to 5 years in my field of study. . . . [M]ost of the meaningful and significant project[s]—often involving a grant or fellowship application, management of grant money, focused research, and publication of a report—typically require[] several years to complete. . . . Students with up to 36 months of

Ultimately, Section 1184(a)(1) necessarily grants DHS authority to determine the range of conduct that allows an individual to remain in "status." A regulation is valid if DHS exercises this authority in a manner reasonably related to the statutory objectives. On that point, WashTech is notably silent. It does not acknowledge—much less wrestle with —the robust evidence in the administrative record before DHS demonstrating the centrality of term-limited post-graduation practical training to the completion of a student's education. *See* pages 5-7, *supra*.

WashTech invokes two other provisions of the INA, 8 U.S.C. §§ 1184(a)(1) and 1227(a)(1)(C)(i), to resist this statutory construction, suggesting that they "preclude" reading the F-1 statute to set out entry requirements by "dictating that nonimmigrants must conform to the status for which they were admitted." Pl. S.J. Reply 6. But as we earlier explained (*see* Intervenors' S.J. Mem. 27 n.15), these arguments assume the conclusion.

Section 1227(a)(1)(C)(i) makes "deportable" any nonimmigrant "who has failed to maintain the nonimmigrant status in which the alien was admitted." Thus, to remain in the United States, an international student admitted on an F-1 visa must remain in F-1 "status." This precludes an alien from, following admission to the United States and absent an adjustment of status, arguing that his or her continued presence is justified by meeting some other status (e.g., a K fiancé visa). This section does *not* say that the metes and bounds of that "status" are defined by the statute's entry requirements, rather than by DHS acting pursuant to the express delegation of lawmaking authority in Section 1184. That is, nothing about Section 1227(a)(1)(C)(i) is inconsistent with the notion that the F-1 definition establishes entry requirements, with DHS empowered to define conditions—rationally related to F-1's educational purpose—for maintaining status prospectively.

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practical training can be assigned more challenging projects that better complement academic programs and career interests."); Comment ICEB-2015-0002-17393 (noting from personal experience that "the 24-month extension is beneficial because it follows the natural timeline of an engineering product development cycle."); Comment ICEB-2015-0002-17868 ("The projects in my field as well as a lot of STEM fields" generally "last more than 2 years."); Comment ICEB-2015-0002-12584 ("Certain projects in STEM do take several years to complete and a full project life cycle experience is necessary for STEM students, especially those at the master's or higher level. For example, in the IC(integrated circuit) design industry, a server CPI project takes about 3 years.").

Were it otherwise, an international student who stays in the country one day after graduation would be deportable, despite longstanding regulations to the contrary.

The same is true for the portion of Section 1184 cited by WashTech, which (even if read as WashTech proposes)[7] merely requires DHS to "insure that . . . upon failure to maintain the status under which he was admitted . . . [a nonimmigrant] will depart from the United States." 8 U.S.C. § 1184(a)(1). Again, WashTech *assumes* that the requirements a noncitizen must follow to "maintain . . . status" are defined by the F-1 statute's entry requirements, rather than DHS's duly-promulgated regulations (*see* Pl. S.J. Reply 4), but that assumption is unhelpful, as this is the precise question in dispute. Nothing in either of these provisions is inconsistent with reading Section 1101(a)(15)(F)(I) "sensibly . . . as an entry requirement." *Washtech I*, 156 F. Supp. 3d at 139 (emphasis omitted).

WashTech points again to the *Bricklayers* case from the Northern District of California, arguing that it undercuts this interpretation, since "[u]nder the reasoning of *Washtech I*, the *Bricklayers* court should have found that the B visa terms were just entry requirements and the INS (now DHS) was free to allow the Italians to work as bricklayers after they entered as visitors." *See* Pl. S.J. Reply 5-6 (citing *Int'l Union of Bricklayers v. Meese*, 616 F. Supp. 1387 (N.D. Cal. 1985)). This argument disregards what the INS actually did in that case. The INS operating instruction held unlawful in *Bricklayers* purported to provide that a B-1 visa was available to "[a]n alien coming to install, service, or repair commercial or industrial equipment," despite that the B-1 visa statute specifically excluded noncitizens "coming for the purpose . . . of performing skilled or unskilled labor." *Bricklayers*, 616 F. Supp. at 1390-1391 (first quoting INS Operating Instruction

[7] In fact, the better reading of Section 1184 is not that DHS *must* "insure that at the expiration of [the prescribed] time or upon failure to maintain [] status . . . such alien will depart from the United States," but that the agency *may* require "the *giving of a bond* with sufficient surety . . . to insure that" departure takes place under those circumstances. 8 U.S.C. § 1184(a)(1). That passage describes the appropriate purposes of a discretionary bond requirement, not an independent obligation of DHS.

214.2(b)(5); then quoting 8 U.S.C. § 1101(a)(15)(B)). That is, the agency action rejected in *Bricklayers* changed the entry requirements for the B-1 visa—and did so in a way expressly contrary to the statute. It did not purport to establish conditions for the *maintenance* of B-1 status once a noncitizen had lawfully entered. And even if the INS had purported to do so, that action still would have been unlawful under the analysis laid out above, as a regulation allowing B-1 visitors to perform "skilled or unskilled labor" cannot be said to be "reasonably related to the purposes" of the B-1 statute (*Doe 1*, 920 F.3d at 876) when that statute expressly excludes "skilled or unskilled labor" from the permissible "business" a B-1 visitor may enter to transact (8 U.S.C. § 1101(a)(15)(B)). *Bricklayers* does not advance WashTech's case.

In the end, WashTech cannot controvert the statutory construction deemed "sensibl[e]" by Judge Huvelle: The F-1 statute provides entry requirements, and DHS is empowered to define by regulation the conditions for maintaining status once a noncitizen enters the United States. *Washtech I*, 156 F. Supp. 3d at 139. At the *very* least, that interpretation is certainly not "unambiguously foreclosed by the statute," and is therefore entitled to *Chevron* deference so long as it is reasonable. *Sorenson Commc'ns, LLC v. FCC*, 897 F.3d 214, 223-224 (D.C. Cir. 2018). And as we have explained—and as Judge Huvelle held—DHS's interpretation is eminently reasonable "[i]n light of Congress' broad delegation of authority to DHS to regulate the duration of a nonimmigrant's stay and Congress' acquiescence in DHS's longstanding reading of F-1." *Washtech I*, 156 F. Supp. 3d at 145. OPT is a valid exercise of DHS's authority.

B. Congress's 70-year practice further confirms the legality of OPT.

That straightforward conclusion is only strengthened by the fact that, "[f]or [over] 70 years, DHS and its predecessor, the Immigration and Naturalization Service . . . have interpreted the immigration laws to allow students to engage in employment for practical training purposes," yet Congress has left "the agency's interpretation of F-1 undisturbed" for that period, "strongly signal[ling] that it finds DHS's interpretation to be reasonable." *Washtech I*, 156 F. Supp. 3d at 129, 143; *see also* Intervenors' S.J. Mem. 9-17 (documenting this history).

1. As we explained, this history of administrative interpretation and congressional acquiescence dates back to the 1952 INA itself. The Immigration Act of 1924 established the precursor to the F-1 student visa definition, with nearly identical language:

> [a]n immigrant who is *a bona fide student* at least 15 years of age and who *seeks to enter the United States solely for the purpose of study at an accredited school*, college, academy, seminary, or university, particularly designated by him and approved by the Secretary of Labor, which shall have agreed to *report to the Secretary of Labor the termination of attendance of each immigrant student*, and if any such institution . . . fails to make such reports promptly the approval shall be withdrawn.

Immigration Act of 1924, Pub. L. No. 68-139, § 4(e), 43 Stat. 153, 155 (emphases added). In 1947, the immigration agency promulgated a regulation providing for practical training under this definition: "In cases where employment for practical training is required or recommended by the school, the district director may permit the student to engage in such employment for a six-month period subject to extension for not over two additional six-month periods." 12 Fed. Reg. 5,355, 5,357 (Aug. 7, 1947). This practical training was understood to take place after graduation—just like OPT. *See* S. Rep. No. 81-1515 (1950), at 503 ("[S]ince the issuance of the revised regulations in August 1947 . . . practical training has been authorized for 6 months *after completion of the student's regular course of study*.") (emphasis added).

Congress was no doubt aware of the regulation authorizing post-completion practical training when it enacted the 1952 INA. Indeed, the report just quoted was prepared by the Senate Judiciary Committee itself and presented to Congress in 1950 as "a full and complete investigation of our entire immigration system." S. Rep. No. 81-1515, at 1. And as the leading immigration law treatise explains, the 1952 INA "had its genesis in" precisely this "two-year study by the Senate Judiciary Committee." 1 Charles Gordon et al., *Immigration Law & Procedure* § 2.03[1] (2019).

With knowledge in hand of the post-completion practical training program already implemented under the 1924 Act's student visa definition, Congress reenacted a materially identical definition for the new F-1 student visa in the 1952 INA:

> an alien having a residence in a foreign country which he has no intention of abandoning, who is *a bona fide student* qualified to pursue a full course of study and who *seeks to enter the United States* temporarily and *solely for the purpose of pursuing such a course of study at an established institution of learning* or other recognized place of study in the United States, particularly designated by him and approved by the Attorney General after consultation with the Office of Education of the United States, which institution or place of study shall have agreed to *report to the Attorney General the termination of attendance of each nonimmigrant student*, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn[.]

Immigration and Nationality Act, Pub. L. No. 82-414, § 101(a)(15)(F), 66 Stat. 163, 168 (1952) (emphases added); *compare* Immigration Act of 1924, Pub. L. No. 68-139, § 4(e), 43 Stat. 153, 155 (quoted in full *supra*).

Congress's reenactment of this statutory language—identical in all relevant ways to the provision the government had already interpreted as allowing post-completion practical training—is particularly strong evidence that the Congress that passed the INA intended to permit that practice. "Congress is presumed to be aware of an administrative or judicial interpretation of a statute and to adopt that interpretation when it re-enacts a statute without change"—precisely what happened here. *Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Curran*, 456 U.S. 353, 382 n.66 (1982) (quoting *Lorillard v. Pons*, 434 U.S. 575, 580-581 (1978)); *accord, e.g.*, *Owens v. Republic of Sudan*, 864 F.3d 751, 778 (D.C. Cir. 2017) (same). In enacting the 1952 INA, Congress thus ratified the government's interpretation that a visa category for "bona fide student[s]" who "seek[] to enter the United States solely for the purpose of study at an accredited school" (Immigration Act of 1924, § 4(e)) is amenable to post-completion practical training programs.

WashTech suggests that the *Lorillard* doctrine is inapposite, pointing out that "[u]nder the Immigration Act of 1924, alien students were 'immigrants' and under the [INA] of 1952, students are admitted as 'nonimmigrants.'" Pl. S.J. Reply 21. But WashTech does not explain how this change makes any relevant difference. It does not. Students admitted as non-quota immigrants under the 1924 Act were required to "maintain the status under which admitted" just like nonimmigrant students under the 1952 Act. Immigration Act of 1924, Pub. L. No. 68-139, § 15, 43 Stat. at 163. Indeed, WashTech's own authorities confirm that the 1952 INA switched the student visa

from the non-quota immigrant category to the nonimmigrant category precisely because "the term 'immigrant' is somewhat inappropriate" given the term-limited nature of student status even under the 1924 Act. *See* H.R. Rep. No. 82-1365 (1952), at 40 (reproducing letter from John L. Thurston, Acting Administrator, Federal Security Agency). This transfer was merely an updating of terminology—not a change in the substance of the student definition—and does not undermine the application of the *Lorillard* reenactment canon.

Finally, WashTech asserts that arguments about ratification are inappropriate at *Chevron* step one, and may be considered only as part of the reasonableness inquiry at *Chevron* step two. Pl. S.J. Reply 1-2 (citing *First Nat'l Bank & Tr. Co. v. Nat'l Credit Union Admin.*, 90 F.3d 525, 530 (D.C. Cir. 1996)). Setting aside the merits of WashTech's proposition as a general matter,[8] it can have no application here. The *First National Bank* court rejected an argument based on "the fact that Congress has not objected to" an agency interpretation, noting that "the silence of a later Congress says nothing about the intent of the earlier Congress that spoke directly to the question here at issue." *First Nat'l Bank*, 90 F.3d at 530; *see also id.* (describing agency's argument as based on "congressional inaction"). Here, though, application of the *Lorillard* reenactment canon is based not on silence, but on the affirmative action of the 1952 Congress in reenacting language

[8] *First National Bank* is best understood as rejecting the application of an argument based *solely* on "congressional inaction" (90 F.3d at 530), which is by far the weakest of the acquiescence canons, and is not pressed here. *See* Intervenors' S.J. Mem. 12-13 (arguing that Congress's repeated failure to "repudiate[] INS or DHS's interpretation permitting foreign students to engage in post-completion practical training" is probative because Congress has meanwhile "amended the provisions governing nonimmigrant students on several occasions") (quoting *Washtech I*, 156 F. Supp. 3d at 142-143). On the broader (incorrect) reading WashTech provides, however, *First National Bank* would seem to be in tension with the repeated pronouncements of the Supreme Court and D.C. Circuit that courts must "exhaust the 'traditional tools of statutory construction'" at *Chevron* step one. *Nat. Res. Def. Council v. Browner*, 57 F.3d 1122, 1125 (D.C. Cir. 1995) (quoting *Chevron U.S.A. Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843 n.9 (1984)); *see also, e.g.*, *Sierra Club v. EPA*, 551 F.3d 1019, 1027 (D.C. Cir. 2008) ("'Although *Chevron* step one analysis begins with the statute's text,' the court must . . . 'exhaust the traditional tools of statutory construction, including examining the statute's legislative history to shed new light on congressional intent, *notwithstanding statutory language that appears superficially clear*.'") (quoting *Am. Bankers Ass'n v. Nat'l Credit Union Admin.*, 271 F.3d 262, 267 (D.C. Cir. 2001) (emphasis added)). This Court should avoid that reading.

that had been authoritatively interpreted to permit post-completion practical training programs. This powerful evidence of congressional intent is permissibly considered at *Chevron* step one.

2. As we explained, the history of congressional acquiescence in the Executive's interpretation of F-1 continued unabated in the decades following the 1952 enactment of the INA. *See* Intervenors' S.J. Mem. 11-15. The immigration agencies promulgated regulation after regulation that allowed post-completion practical training for F-1 students,[9] and Congress repeatedly amended the laws governing those students without taking any action to countermand that interpretation.[10] And "when Congress revisits a statute giving rise to a longstanding administrative interpretation without pertinent change, the 'congressional failure to revise or repeal the agency's interpretation is persuasive evidence that the interpretation is the one intended by Congress.'" *E.g. Altman v. SEC*, 666 F.3d 1322, 1326 (D.C. Cir. 2011) (quoting *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 883, 846 (1986)). Thus, "[b]y leaving the agency's interpretation of F-1 undisturbed for [over] 70 years, notwithstanding these significant overhauls, Congress has strongly signaled that it finds DHS's interpretation to be reasonable." *Washtech I*, 156 F. Supp. 3d at 143.

WashTech offers two main objections to this comprehensive history, but neither persuades. *First*, WashTech repeatedly suggests that the OPT program at issue here is somehow different from the post-completion practical training programs that have existed in the past. *See* Pl. S.J.

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[9] *See, e.g.*, *Special Requirements for Admission, Extension, and Maintenance of Status*, 38 Fed. Reg. 35,425, 35,426 (Dec. 28, 1973); *Nonimmigrant Classes; Change of Nonimmigrant Classification; Revisions in Regulations Pertaining to Nonimmigrant Students and the Schools Approved for Their Attendance*, 48 Fed. Reg. 14,575, 14,586 (Apr. 5, 1983); *Pre-Completion Interval Training; F-1 Student Work Authorization*, 57 Fed. Reg. 31,954, 31,956 (July 20, 1992); *Retention and Reporting of Information for F, J, and M Nonimmigrants; Student and Exchange Visitor Information System (SEVIS)*, 67 Fed. Reg. 76,256, 76,274 (Dec. 11, 2002).

[10] *See Washtech I*, 156 F. Supp. 3d at 142-143 (citing Pub. L. No. 87-256, § 109(a), 75 Stat. 527, 534 (1961); Immigration Act of 1990, Pub L. No. 101-649, § 221(a), 104 Stat. 4978, 5027; Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, § 625, 110 Stat. 3009-546, 3009-699; Enhanced Border Security and Visa Entry Reform Act of 2002, Pub. L. No. 107-173, §§ 501-502, 116 Stat. 543, 560-63; Pub. L. No. 111-306, § 1, 124 Stat. 3280, 3280 (2010)).

Reply 17-19. But WashTech does not explain *how* the OPT program differs in any relevant way from the programs that Congress has been aware of for the last 70 years. If WashTech means to say that prior practical training programs did not authorize employment post-graduation—*see, e.g.*, Pl. S.J. Reply 18 ("The issue is whether aliens can work on student visas *after they graduate*[.]")—then WashTech is simply wrong as a factual matter. As we explained (and as WashTech does not directly dispute), post-completion practical training has been explicitly authorized by executive regulations since at least 1983. *See* 48 Fed. Reg. at 14,586 (allowing, in 1983, "[t]emporary employment for practical training . . . [a]fter completion of the course of study"); *see also* Intervenors' S.J. Mem. 11-12. Even before this change, the government in fact allowed post-completion training under the earlier regulations, as the numerous BIA decisions we cited reveal. *See* Intervenors' S.J. Mem. 12 (collecting cases). And of course, as noted above, the pre-INA regulations also allowed "practical training . . . for 6 months after completion of the student's regular course of study." S. Rep. No. 81-1515, at 503. Judge Huvelle thus rejected the same argument WashTech now presses: "[P]laintiff is correct that the details of the practical training regulations have changed over the decades. Notwithstanding these changes, however, INS and DHS have, since 1947, consistently interpreted the immigration laws to permit post-completion practical training." *Washtech I*, 156 F. Supp. 3d at 142 & n.8 (citation omitted). The result should be no different here.

If WashTech means to imply that the OPT regulations implemented by the 2016 Rule are somehow less connected to F-1's educational mission than prior practical training programs (*cf.* Pl. S.J. Reply 17), WashTech does not substantiate that claim. WashTech responds neither to our demonstration that the features of the 2016 Rule tether OPT employment tightly to the educational goals of the F-1 statute (*see* Intervenors' S.J. Mem. 27-31), nor to DHS's extensive explanation of the same point in the 2016 Rule itself. *See, e.g.*, STEM000057-58, 78-79, 81, 84-85, 96, 99-103, 106-114 (81 Fed. Reg. at 13,041-13,042, 13062-13,063, 13,065, 13068-13,069, 13,080, 13,083-13,087, 13,090-13,098); *cf., e.g.* STEM000067 (81 Fed. Reg. at 13,051) (rejecting proposal to expand OPT to employment beyond the student's particular field of study, because "at its core, such work based learning is a continuation of the student's program of study."). Having effectively

conceded these points, WashTech has no leg to stand on in its attempt to distinguish OPT from the practical training policies in which Congress has previously acquiesced.

Second, WashTech suggests that "Congress has been presented with conflicting information on student work," supposedly undermining the applicability of the acquiescence canon. Pl. S.J. Reply 20. First of all, there was nothing "conflicting" about the Judiciary Committee's own comprehensive report informing Congress, prior to the passage of the INA, that "practical training has been authorized for 6 months after completion of the student's regular course of study." S. Rep. No. 81-1515, at 503. Nor do WashTech's examples conflict with that appraisal. The cited letter from the Federal Security Agency speaks in general terms about whether F-1 students should be classified as immigrants or nonimmigrants, and cites the fact that, in general, students "are not permitted to stay beyond the completion of their studies" as evidence for the latter. H.R. Rep. No. 82-1365, at 40. That says nothing about the validity of post-completion practical training, which even today is an exception to the general rule.

As for the INS Commissioner's testimony before a House subcommittee in 1975 (*see* Pl. S.J. Reply 20), the Commissioner made clear in the sentence immediately preceding the one quoted by WashTech that "practical training" was an exception to his more general remarks about "employment." *Review of Immigration Problems: Hearings Before the Subcomm. on Immigration, Citizenship, and Int'l Law of the H. Comm. on the Judiciary*, 94th Cong. 36 (1976) (testimony of Leonard F. Chapman, Jr., Comm'r, INS). Indeed, elsewhere in *that very same testimony* Commissioner Chapman explained that, while "[t]here is no express provision in the law for an F-1 student to engage in employment, . . . for many years the Service has permitted students to accept employment under special conditions which we believe to be consistent with the intent of the statute," including "in order for the student to obtain practical training in a field related to his course of study." *Id.* at 21; *see also id.* at 23 ("Employment for practical training may be engaged in full time and may be authorized in increments of 6 months, not to exceed 18 months in the aggregate."). That testimony made clear to Congress that post-completion practical training was authorized—

as did the myriad other examples exhaustively detailed by Judge Huvelle, and those cited in our brief. *See Washtech I*, 156 F. Supp. 3d at 141-144 & n.7; Intervenors' S.J. Mem. 11-15.

As Judge Huvelle rightly concluded: "The Court finds th[e] evidence more than sufficient to demonstrate 'congressional familiarity with the administrative interpretation at issue.'" *Washtech I*, 156 F. Supp. 3d at 144 (quoting *Pub. Citizen, Inc. v. U.S. Dep't of Health & Human Servs.*, 332 F.3d 654, 669 (D.C. Cir. 2003)). WashTech's last objection to the overwhelming history of congressional ratification and acquiescence in post-completion practical training thus falls.

C. Congress has authorized DHS to grant work authorization to classes of noncitizens via regulation.

We explained in our principal brief (at 17-25) how Congress has empowered DHS to provide work authorization to classes of noncitizens. DHS (and its predecessor agencies) has routinely exercised this authority since at least 1947 (Intervenor Br. at 18 n.9), as part of the powers provided by 8 U.S.C. § 1103 (*id*. at 17-20). And, in the 1986 Immigration Reform and Control Act, Congress underscored the Executive's very specific power to determine which aliens are authorized to work in the United States. *Id*. at 20-23. As the leading immigration law treatise puts it: "Whether or not the immigration agency earlier had the implied authority to issue such work authorization, [Section 1324a], in its definition of 'unauthorized alien,' has now implicitly granted such authority to the Attorney General." 1 Charles Gordon et al., *Immigration Law & Procedure* § 7.03[2][c] (2019). WashTech's rejoinders (*see* Pl. S.J. Reply 8-15) each fail.

1. To start with, the Court need not address WashTech's various arguments regarding the scope of Section 1103 (Pl. S.J. Reply 10-17), because Section 1324a provides with unmistakable clarity that DHS has the relevant authority.

It is revealing that WashTech does not grapple with the text of Section 1324a. *See* Pl. S.J. Reply 8-9. Nor could it. Section 1324a is the part of federal law that precludes an employer from hiring an "unauthorized alien." 8 U.S.C. § 1324a(1)(A). Unauthorized aliens may not work in the United States; conversely, authorized aliens *may* work in the United States. *Id*.

As we explained earlier (Intervenors' S.J. Mem. 20), IRCA specifically identifies which aliens qualify as "unauthorized"—and thus may not work in the United States. The statute provides that aliens are "unauthorized" *unless* they were "admitted for permanent residence," "authorized to be so employed by this chapter" (that is, the INA), or "authorized to be so employed . . . by the [Secretary of Homeland Security]." 8 U.S.C. § 1324a(h)(3).

This last clause—providing authority to the DHS Secretary—must be given meaning. Otherwise, this statutory language would be "pure surplusage." *Wisc. Pub. Intervenor v. Mortier*, 501 U.S. 597, 613 (1991); *see, e.g.*, *Agnew v. District of Columbia*, 920 F.3d 49, 57 (D.C. Cir. 2019) ("[A] statute [should] not be interpreted in a way that renders any part of it superfluous.").[11]

WashTech's principal response is the offhand remark that Section 1324a(h)(3)'s definition is "limited to its own section"—calling our construction an "elephant-in-a-mousehole." Pl. S.J. Reply 14-17. But we have already explained why this is wrong (Intervenors' S.J. Mem. 21): Section 1324a is the very provision in federal law that delineates who may work, and it establishes penalties for the unlawful employment of noncitizens in the United States. Indeed, this is part of the landmark 1986 Immigration Reform and Control Act—the federal law *designed* to provide the federal government exclusive authority to delineate work authorization for noncitizens. As the Supreme Court has said repeatedly, IRCA is a "comprehensive framework for 'combating the employment of illegal aliens.'" *Arizona v. United States*, 567 U.S. 387, 404 (2012) (quoting *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 147 (2002)).

[11] WashTech block quotes from an amicus brief filed in another case, suggesting that "work authorization sometimes comes directly from a statute and other times must come from the Attorney General, pursuant to statute." Pl. S.J. Reply 13. But this observation does not avoid the surplusage problem: If a noncitizen's work authorization derives from a specific statutory grant, then the noncitizen is "authorized to be [] employed by this chapter"—that is, by the INA—regardless of whether an action from the Attorney General is required as an intermediate step. 8 U.S.C. § 1324a(h)(3). WashTech's reading leaves the statutory phrase "or by the Attorney General" (*id.*) with nothing to do. Such an interpretation is strongly disfavored, however, as "the Court is 'obliged to give effect, if possible, to every word Congress used.'" *Nat'l Ass'n of Mfrs. v. Dep't of Defense*, 138 S. Ct. 617, 632 (2018) (quoting *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979)).

Section 1324a is not some obscure aspect of federal law; it is the centerpiece of the legal regime governing the employment of noncitizens. *Of course* a definition in this section—one that determines which noncitizens are *authorized for employment*—has direct implications here. Altogether, Section 1324a is not subject to serious debate; the DHS Secretary has authority to authorize noncitizens to be employed. OPT is a lawful exercise of this authority.

As President Reagan's INS put it in rejecting precisely the same argument WashTech advances, "the only logical way to interpret" Section 1324a(h)(3) "is that Congress, being fully aware of the Attorney General's authority to promulgate regulations, and approving of the manner in which he has exercised [his] authority" in authorizing noncitizen employment, "defined 'unauthorized alien' in such fashion as to exclude aliens who have been authorized employment . . . through the regulatory process, in addition to those who are authorized employment by statute." *Employment Authorization; Classes of Aliens Eligible,* 52 Fed. Reg. 46,092, 46,093 (Dec. 4, 1987). And "[w]here, as here, 'Congress has not just kept its silence by refusing to overturn [an] administrative construction, but has ratified it with positive legislation,' [the Court] cannot but deem that construction virtually conclusive." *Schor,* 478 U.S. at 846 (quoting *Red Lion Broad. Co. v. FCC,* 395 U.S. 367, 381-382 (1969)).

WashTech, by contrast, argues that IRCA's "House and Senate reports . . . do not mention granting such power to the executive." Pl. S.J. Reply 12. But "silence in the legislative history, 'no matter how clanging,' cannot defeat the better reading of the text and statutory context." *Encino Motorcars v. Navarro*, 138 S. Ct. 1134, 1143 (2018) (quoting *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 495 n.13 (1985)). That is, "[i]f the text is clear, it needs no repetition in the legislative history; and if the text is ambiguous, silence in the legislative history cannot lend any clarity." *Id.* Here, the text is unambiguous.

WashTech reprises its reliance on the Fifth Circuit's *Texas* decision, again asserting that "that opinion held that DHS does not have" "the power to authorize alien employment independently of Congress." Pl. S.J. Reply 9 (citing *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015)). But as we explained the first time around, *Texas* held no such thing. *See* Intervenors' S.J.

Mem. 24. Rather, to the extent *Texas* was even about work authorization, its holding was based on the fact that "Congress 'forcefully made combating the employment of illegal aliens central to the policy of immigration law, in part by establishing an extensive employment verification system, designed to deny employment to aliens who are not *lawfully present* in the United States." *Texas*, 809 F.3d at 181 (quoting *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 147 (2002) (emphasis added by the *Texas* court) (alterations incorporated)). As we explained, F-1 students *are* "lawfully present in the United States" (*id.*), and are thus outside the scope of the Fifth Circuit's analysis. Moreover, the statutory provision upon which *Texas* indirectly relies for its characterization of the INA's purpose *is Section 1324a*, which explicitly permits the employment of noncitizens "authorized to be so employed . . . by the Attorney General." 8 U.S.C. § 1324a(h)(3); *see Texas*, 809 F.3d at 181 n.175 (citing 8 U.S.C. § 1324a). *Texas* mentions Section 1324a(h)(3) only to reject it as "an exceedingly unlikely place to find authorization for DAPA" because it "does not mention lawful presence or deferred action"—the primary features of the DAPA program and what the *Texas* case was largely about. *Texas*, 809 F.3d at 182-183.

2. Perhaps recognizing the weakness of its response to Section 1324a's plain text, WashTech turns (at 9) to its non-delegation argument. *See also* Pl. S.J. Reply 14-15. And it adds alleged separation of power arguments. *Id.* at 14-17. Again, these contentions have little merit in light of prevailing law. *See* Intervenors' S.J. Mem. 25. Here, there is an "intelligible principle" (*e.g. Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 472 (2001)) in multiple respects. As Judge Huvelle explained, "[o]ne of DHS's statutorily enumerated goals is to 'ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.'" *Washtech I*, 156 F. Supp. 3d at 144 (quoting 6 U.S.C. § 111(b)(1)(F)). An additional principle is provided by the F-1 statute's educational goals; as we have explained, OPT is wholly consistent with those ends. *See* pages 14-15, *supra*. *Texas* on its face suggests the limiting principle that WashTech seeks: The DHS Secretary may provide work authorization to those aliens that have some form of lawful presence in the United States.

3. In any event, Section 1103(a)(3), which substantially predates IRCA's Section 1324a, additionally authorizes the Executive to determine which aliens are eligible to work in the United States. *See, e.g.*, *Matter of S-*, 8 I. & N. Dec. 574, 575 (B.I.A. 1960). We described the lengthy history of Executive action reliant upon Section 1103(a)(3), and the congressional acquiescence to this conduct (Intervenors' S.J. Mem. 17-20)—all without serious rejoinder by WashTech.

WashTech's main response is a return to *Bricklayers*, arguing that "[i]f the INS (now DHS) had the power to independently authorize alien employment administratively (as claimed for OPT)," *Bricklayers* should have come out differently. Pl. S.J. Reply 13. But as we have explained, *Bricklayers* was not about the immigration agency's general power to authorize employment; it was about the fact that the B-1 visa statute "expressly excluded" from its ambit "one coming for the purpose of . . . performing skilled or unskilled labor." *Bricklayers*, 616 F. Supp. at 1398 (quoting 8 U.S.C. § 1101(a)(15)(B) (emphasis omitted)); *see* Intervenors' S.J. Reply 35. Of course the agency could not use its rulemaking powers to contravene that specific statutory prohibition. Because nothing comparable is present here, *Bricklayers* does not support WashTech's argument. And, as we have further shown, Section 1324a obviates any need for sole reliance on Section 1103(a)(3) in all events.

Although Congress has identified classes of individuals eligible for employment in some statutes, the Executive has on numerous occasions granted work authorization to other categories of individuals. *See* Intervenors' S.J. Mem. 18 n.9, 22 n.13. Nothing prevents Congress from authorizing the Executive to issue such regulations. Congress has created a partial floor on the scope of alien employment, authorizing the Executive to establish the ceiling. Ultimately, WashTech has provided no reason to depart from Judge Huvelle's conclusion that, "[i]n light of Congress' broad delegation of authority to DHS to regulate the duration of a nonimmigrant's stay and Congress' acquiescence in DHS's longstanding reading of F-1, . . . the agency's interpretation is not unreasonable." *Washtech I*, 156 F. Supp. 3d at 145.

CONCLUSION

For the foregoing reasons, the Court should deny Plaintiff's motion for summary judgment and enter summary judgment in favor of Defendants.

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Respectfully submitted,

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