No. 17-801

In the Supreme Court of the United States

IN RE UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF MANDAMUS TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

MOTION FOR LEAVE TO FILE AND BRIEF FOR THE STATE OF TEXAS AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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MOTION FOR LEAVE TO FILE

The State of Texas respectfully moves for any leave needed to file the enclosed brief as amicus curiae in support of the petition for a writ of mandamus, without 10 days' advance notice to the parties of amicus' intent to file. *Cf.* Sup. Ct. R. 37.2(a).

1. *Statement of Movant's Interest.* Plaintiffs' goal in this lawsuit is to revive a deferred-action program (DACA) that is materially identical to two programs (Expanded DACA and DAPA) invalidated by the Fifth Circuit in a ruling affirmed by an equally divided vote in this Court. *See Texas v. United States*, 809 F.3d 134, 172, 184-86 (5th Cir. 2015), *aff'd by an equally divided court*, 136 S. Ct. 2271 (2016) (per curiam).

Texas led the group of States challenging those two deferred-action programs. Pet. App. 63a. And Texas led the group of States notifying the federal government of their intent to challenge DACA on the same grounds, if DACA was not rescinded. Pet. App. 66a. Texas thus has a keen interest in this case, and its views "may be of considerable help to the Court." Sup. Ct. R. 37.1.

Texas's interest is made even stronger by the staggering scope of discovery that plaintiffs seek. Plaintiffs' incorrect view of judicial review under the Administrative Procedure Act (APA) has led them to seek far more than the federal government's internal deliberative material. Plaintiffs have also noticed a deposition of the Attorney General of Texas and subpoenaed material held by him. The propriety of the orders challenged here thus substantially affects Texas's interests.

2. *Statement Regarding Timing.* The State of Texas respectfully requests any leave needed to file the enclosed brief without 10 days' advance notice to the parties of the State's intent to file. This Court's rules allow the filing of an amicus brief in support of a petition for an extraordinary writ (such as mandamus) "within 30 days after the case is placed on the docket." Sup. Ct. R. 37.2(a). Here, that amicus-brief deadline is December 30, 2017; the case was placed on the docket on December 1, 2017, and this Court's recent scheduling order accelerated only the deadline for a response to the petition, not for amicus briefs. Because the enclosed amicus brief is filed more than 10 days before this brief's deadline, Rule 37.2(a) does not require advance notice to the parties. Nonetheless, given the purpose of the Rule, the State files this motion for any leave that is necessary to file the enclosed amicus brief without 10 days' advance notice to the parties of the State's intent to file. All parties have consented to this requested relief.

This request is justified by the expedited consideration of this matter of significant national interest. The court of appeals heard oral argument on November 7, 2017, and entered its 2-1 order denying the petition for a writ of mandamus on November 16, 2017. An emergency motion for an administrative stay was filed in the court of appeals on November 17, 2017, which was denied by that court on November 21, 2017. An application to this Court for a stay was filed on December 1, 2017, and this Court entered a stay and accelerated the deadline for a response to the petition only three business days ago, on December 8, 2017. Because that recent ac-

celeration of the response deadline implicates the purpose of Rule 37.2(a)'s requirement of 10 days' advance notice—a requirement that otherwise would not be implicated by filing the enclosed brief today—the State's request for any leave necessary to file the enclosed brief is justified by the recent deadline acceleration.

Apart from any leave needed because of the absence of 10 days' advance notice, leave is not required because this brief is presented on behalf of a State by its Attorney General. *See* Sup. Ct. R. 37.4.

CONCLUSION

The State of Texas respectfully requests that the Court grant any leave needed to file the enclosed brief supporting the petition for a writ of mandamus.

Respectfully submitted.

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BRIEF FOR THE STATE OF TEXAS AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

INTEREST OF AMICUS CURIAE

Amicus curiae is the State of Texas.[1] Plaintiffs' goal in this lawsuit is to revive a deferred-action program (DACA) that is materially identical to two programs (Expanded DACA and DAPA) struck down by the Fifth Circuit in a ruling affirmed by an equally divided vote in this Court. *See Texas v. United States*, 809 F.3d 134,

[1] Pursuant to Supreme Court Rule 37.6, amicus states that no counsel for any party authored this brief in whole or in part, and no person or entity other than amicus contributed monetarily to the preparation or submission of this brief. Due to the recent acceleration of the deadline for a response to the petition for a writ of mandamus, amicus is now unable to provide the parties with notice of intent to file ten days before the deadline for a response, which seems contemplated by the spirit, though not the text, of this Court's Rule 37.2. Accordingly, amicus also submits, as one document with this brief, *see* Sup. Ct. R. 37.3(b), an accompanying motion for any leave necessary to file this brief. All parties have consented to the filing of this brief.

172, 184-86 (5th Cir. 2015), *aff'd by an equally divided court*, 136 S. Ct. 2271 (2016) (per curiam).

Texas led the group of States challenging those two deferred-action programs. Pet. App. 63a. And Texas led the group of States notifying the federal government of their intent to challenge DACA on the same grounds, if DACA were not rescinded. Pet. App. 66a. Texas thus has a keen interest in this case, and its views "may be of considerable help to the Court." Sup. Ct. R. 37.1.

Texas's interest is made even stronger by the staggering scope of discovery that plaintiffs seek. Plaintiffs' incorrect view of judicial review under the Administrative Procedure Act (APA) has led them to seek far more than the federal government's internal deliberative material. Plaintiffs have also noticed a deposition of the Attorney General of Texas and subpoenaed material held by him. The propriety of the orders challenged here thus substantially affects Texas's interests.

SUMMARY OF ARGUMENT

Plaintiffs are trying to use the Administrative Procedure Act in an unprecedented way. Plaintiffs cloak their expedition for internal deliberative material held by the federal government as a mere request for a "complete" administrative record. Judge Watford persuasively explained below why mandamus should be granted to prevent that intrusion: "The order sweeps far beyond materials related to the sole reason given for rescinding DACA"—the Texas-led coalition's successful challenges to the legality of materially identical programs. Pet. App. 19a (Watford, J., dissenting).

What is more, the damage from plaintiffs' novel view of APA review does not end with the federal government. The intrusion on deliberative functioning extends to the State of Texas as well. Plaintiffs have tried to subpoena documents from Texas's counsel and depose the Attorney General of Texas. But the Texas Attorney General cannot possibly be a relevant actor for analyzing whether the federal Executive Branch acted arbitrarily or capriciously in winding down DACA.

Beyond the fact that precedent prohibits plaintiffs' irrelevant fishing expedition, the underlying lawsuit's APA claims are meritless. Texas and a group of States successfully challenged the 2014 Expanded DACA and DAPA programs, and Texas along with other States publicly announced an intention to challenge the materially identical 2012 DACA program on the same legal grounds if the federal government did not agree to wind down DACA. There is nothing arbitrary or capricious about the federal government responding to that threatened litigation by withdrawing the policy that would have been challenged. In fact, plaintiffs' own pleadings in this case confirm that DACA was unlawful to begin with.

As Judge Watford recognized below in dissent, the non-arbitrary basis for the agency's action is plain from the agency record as it is: Texas has argued for years that the federal Executive Branch lacks the power to unilaterally grant unlawfully-present aliens lawful presence and work authorization—as DACA, Expanded DACA, and DAPA did.

Texas made this argument while leading a challenge to Expanded DACA and DAPA. Texas made the same argument in announcing its intent to challenge DACA in that lawsuit. And Texas made the same argument in an amicus brief in this Court, on behalf of 13 States and one Governor, detailing why DACA is substantively unlawful. Br. for the States of Texas et al. as Amici Curiae in Support of Petitioners, *Brewer v. Ariz. Dream Act Coal.*, No. 16-1180 (May 1, 2017) ("Texas Amicus Br."); *see also* Orders of June 26, 2017, *id.* (calling for the view of the Solicitor General of the United States on the certiorari petition).

The Court should grant mandamus relief reversing the district court's orders relating to discovery and the administrative record.

ARGUMENT

I. Courts May Order an Agency to Produce Only the Record Required by the APA or Other Law—Plaintiffs' Curiosity About Internal Agency Deliberation Is Not Enough.

As Judge Watford's dissent in the Ninth Circuit persuasively explained, arbitrary-and-capricious review under the APA, *see* 5 U.S.C. § 706(2)(A), must analyze only the record compiled by the agency and presented to the reviewing court. Pet. App. 16a (citing *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 743-44 (1985); *Camp v. Pitts*, 411 U.S. 138, 142 (1973) (per curiam)).

When an agency acts without informal (notice-and-comment) rulemaking and without formal rulemaking

or adjudication procedures,[2] as is true here, then the only statute-based limits on what the "whole record" must contain are the limits inherent in the agency's desire to have its action survive APA review, for example as not arbitrary and capricious, 5 U.S.C. § 706(2)(A). That arbitrary-and-capricious standard is narrow. As Judge Watford explained below, the reviewing court simply must be "able to discern the agency's reasons for taking the action that it did." Pet. App. 18a; *see F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 513-14 (2009) (noting that clarity can be "less than ideal," so long as "the agency's path may reasonably be discerned") (quoting *Bowman Transp., Inc. v. Ark.-Best Freight Sys., Inc.*, 419 U.S. 281, 286 (1974)). Thus, where the agency here placed only 256 pages of information into the record, judicial review asks whether only those 256 pages—and not other sources outside that administrative record—confirm that the agency has given a "reasoned explanation" for its decision. *Fox*, 556 U.S. at 515.

Plaintiffs cannot contend that the record here needs anything more for courts to discern whether the agency

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[2] The APA or other statutes may at times require certain documents to be placed in the administrative record—for example, the "written data, views, or arguments" submitted through comments when notice-and-comment rulemaking is used, 5 U.S.C. § 553(c), or material presented in hearings through formal rulemaking or adjudication, *id.* §§ 556(e), 557. But nowhere does the APA or any other statute require internal deliberative materials to be placed in the administrative record—even when notice-and-comment or formal procedures are used.

has an "explanation for its action." *Id.* The agency's memo "explicitly states" the justification for its action: "concern that the program would be invalidated in threatened litigation." Pet. App. 18a (Watford, J., dissenting). *See infra* Part III. Plaintiffs point to no statute requiring the agency to consider anything more.

Thus, plaintiffs are left with only their "desire for greater insight into how DHS arrived at its decision." Pet. App. 16a (Watford, J., dissenting). But plaintiffs' wishes are not legal authority; they do not allow plaintiffs to add material to the agency's record. Plaintiffs cannot commandeer the federal administrative apparatus simply because they disagree with the agency's policy determinations.

II. Plaintiffs' Own Position on the DACA-Rescission Memo Shows that DACA Was Never Lawful—It Modified Rights Without Notice-and-Comment Procedure.

Plaintiffs' own pleadings confirm that DACA was unlawful to begin with, because it was a substantive rule that had to go through APA notice-and-comment procedure.

A. There is no dispute that DACA is a "rule" for APA purposes. 5 U.S.C. § 551(4). Accordingly, DACA had to be issued through notice-and-comment procedure if it was a substantive rule, rather than a mere "'general statement[] of policy.'" *Texas*, 809 F.3d at 171 (alteration in original). The key distinction between policy statements and substantive rules is that policy statements cannot be "binding." *Chrysler Corp. v.*

Brown, 441 U.S. 281, 302 (1979); *see Syncor Int'l Corp. v. Shalala*, 127 F.3d 90, 94 (D.C. Cir. 1997) ("We thus have said that policy statements are binding on neither the public . . . nor the agency.").

A rule is binding if it creates or modifies "rights and obligations." *E.g.*, *McLouth Steel Prods. Corp. v. Thomas*, 838 F.2d 1317, 1320 (D.C. Cir. 1988); *Prof'ls & Patients for Customized Care v. Shalala*, 56 F.3d 592, 595 (5th Cir. 1995). In *Morton v. Ruiz*, 415 U.S. 199 (1974), this Court held that a vastly more modest rule concerning benefits eligibility "affect[ed] individual rights and obligations" and therefore had to be treated as a substantive rule. *Id.* at 231-37. The same is true of DACA, under plaintiffs' own pleadings.

B. This mandamus petition involves orders entered in five consolidated actions and, therefore, multiple plaintiffs. *See* Pet. App. 45a. The University of California plaintiffs here contend that the DACA rescission memo "constitutes a substantive rule subject to APA's notice-and-comment requirements." Complaint 14, *Regents of Univ. of Cal. v. Dep't of Homeland Sec.*, No. 3:17-cv-5211-WHA (N.D. Cal. filed Sept. 8, 2017), ECF No. 1.

But that could be true only if DACA was itself a substantive rule—one that modifies rights and obligations. After all, if DACA were not a substantive rule that changed the rights of recipients, then winding down this program also could not be a substantive rule changing rights. Plaintiffs, though, allege that DACA is just such a substantive rule. First, plaintiffs admit that DACA purported to unilaterally confer lawful presence:

> Individuals with DACA status were "not considered to be unlawfully present during the period in which deferred action [was] in effect." USCIS FAQs.

Id. at 8. Moreover, plaintiffs admit that aliens who received DACA status would not have been able—but for DACA—to lawfully "obtain jobs and access to certain Social Security and Medicare benefits." *Id.* at 2. So the unspoken premise of plaintiffs' current complaint is that DACA was unlawful the entire time, as issued without required APA notice-and-comment procedure.

Plaintiffs point to no requirement that the government must use notice-and-comment procedure to rescind a policy unlawfully issued without that procedure. If the APA somehow required the federal Executive Branch to continue enforcing an unlawful policy while notice-and-comment procedure was used to rescind that unlawful policy, then the APA would be unconstitutional as applied to that unlawful policy. Congress cannot command the Executive Branch to ignore its Take Care Clause duty and enforce an unlawful rule.

C. The State of California plaintiffs here likewise affirmatively plead, in substance, that DACA's features meet the test for a substantive rule that required APA notice-and-comment procedure. For instance, these plaintiffs plead that "DACA Provides Numerous Benefits," which these plaintiffs describe in detail:

> 82. DACA grantees are provided with numerous *benefits*. Most importantly, they are granted the *right* not to be arrested or detained based solely

on their immigration status during the designated period of their deferred action. *See id.* at 2-3.

83. DACA grantees are granted eligibility to receive *employment authorization.*

84. DACA also opened the door to *allow travel* for DACA grantees. For example, DACA grantees were allowed to briefly depart the U.S. and legally return under certain circumstances, such as to visit an ailing relative, attend funeral services for a family member, seek medical treatment, or further educational or employment purposes. 8 U.S.C. § 1182(a)(9)(B)(i); *see also* Ex. E, USCIS, Frequently Asked Questions, DHS DACA FAQs ("DACA FAQs") (Apr. 25, 2017) Q57. Travel for vacation is not permitted.

85. Unlike other undocumented immigrants, DACA grantees are not disqualified on the basis of their immigration status from receiving certain public benefits. These include *federal Social Security, retirement, and disability benefits*. *See* 8 U.S.C. §§ 1611(b)(2)-(3), 1621(d). As a result, and in reliance on DHS's oft-stated position that DACA and similar programs are a lawful exercise of the agency's authority, Plaintiff States have structured some schemes around DACA which allow, for example, applicants to demonstrate eligibility for state programs by producing documentation that they have been approved

> under DACA. The rescission of DACA undermines such regulatory frameworks.
>
> 86. DACA grantees are able to secure equal access to other *benefits* and opportunities on which Americans depend, including opening bank accounts, obtaining credit cards, starting businesses, purchasing homes and cars, and conducting other aspects of daily life that are otherwise often unavailable for undocumented immigrants.

Complaint 17-18, *California v. Dep't of Homeland Sec.*, No. 3:17-cv-5235-WHA (N.D. Cal. filed Sept. 11, 2017), ECF No. 1 (emphases added).

D. The *Garcia* plaintiffs here admit the same thing. Complaint 9 ¶ 27, *Garcia v. United States*, No. 3:17-cv-5380-WHA (N.D. Cal. filed Sept. 18, 2017), ECF No. 1 ("DACA *confers* numerous important *benefits* on those who apply for and are granted DACA status.") (emphases added).

Furthermore, the *Garcia* plaintiffs state that the APA does not allow policies to remain in effect when they are "predicated on an incorrect legal premise." *Id.* Complaint 22, *California*, No. 3:17-cv-5235-WHA, ECF No. 1 (citing *Massachusetts v. EPA*, 549 U.S. 497, 532-535 (2007); *Safe Air for Everyone v. U.S. EPA*, 488 F.3d 1088, 1101 (9th Cir. 2007)). In other words, these plaintiffs plead that the APA does not permit *ultra vires* actions—which means DACA could not have been enforced this entire time and could not be enforced in the future. Plaintiffs thus necessarily acknowledge that

they cannot obtain the relief they seek—DACA's continued operation.

E. In addition to the five challenges pending in the Northern District of California, at least four other pending lawsuits challenge the DACA rescission memo. Complaint, *Trustees of Princeton Univ. v. United States*, No. 1:17-cv-2325-CRC (D.D.C. filed Nov. 3, 2017), ECF No. 1; Complaint, *NAACP v. Trump*, No. 1:17-cv-1907-CRC (D.D.C. filed Sept. 18, 2017), ECF No. 1; 2d Am. Complaint, *Batalla Vidal v. Nielsen*, No. 1:16-cv-4756-NGG-JO (E.D.N.Y. filed Sept. 29, 2017), ECF No. 29; Complaint, *New York v. Trump*, No. 1:17-cv-5228-NGG-JO (E.D.N.Y. filed Sept. 6, 2017), ECF. No. 1. Plaintiffs in those cases similarly have pleaded, in substance, that DACA was unlawful this entire time.

Plaintiffs in the *New York* lawsuit plead that DACA affirmatively confers benefits, i.e., that DACA alters substantive rights:

> [¶] 218. DACA *confers* numerous *benefits* on DACA grantees. Notably, DACA grantees are *granted the right* not to be arrested or detained based solely on their immigration status during the time period their deferred action is in effect. *See* Ex. 14, Question 9.
>
> . . . .
>
> [¶] 220. DACA grantees are eligible to receive certain *public benefits*. These include *Social Security, retirement, and disability benefits*, and, in certain states, benefits such as driver's licenses or unemployment insurance. *See* 8 U.S.C.

> §§ 1611(b)(2)-(3), 1621(d). In the State of Washington, DACA holders also are eligible for certain state financial aid programs and state-funded food assistance. *See* Wash. Rev. Code § 28B.92.010; Wash. Admin. Code §§ 388-400-0050, 388-424-0001, 388-424-0030. In the State of New York, DACA holders are eligible for teaching and nursing licenses. *See* Comm. of Educ. Regs. §§ 59.4; 80-1.3; Ex. 78 (NYS Board of Regents Press Release, Feb. 24, 2016).

Complaint 41, *New York*, No. 1:17-cv-5228-NGG-JO, ECF No. 1 (emphases added). These plaintiffs have likewise tacitly admitted that DACA itself needed to go through APA notice-and-comment procedure because it was a substantive rule, one modifying rights:

> [¶] 289. In implementing the DHS Memorandum, federal agencies have changed the *substantive criteria* by which individuals DACA grantees *work, live, attend school, obtain credit, and travel* in the United States. Federal agencies did not follow the procedures required by the APA before taking action impacting these *substantive rights*.

Id. at 54. If DACA's rescission affected substantial rights, as these plaintiffs allege, then DACA did so too and was unlawful in the first place.

III. Texas's Threatened Litigation to Challenge DACA Would Alone Be Enough of an Administrative Record to Satisfy APA Review.

A. The record needs no expansion to perform arbitrary-and-capricious review.

As Judge Watford recognized in dissent below, Pet. App. 18a, the non-capricious basis for the agency's decision to rescind DACA is manifest: The State of Texas made very clear, in a publicly available letter, that it and a coalition of States would sue to challenge DACA if the Executive Branch did not wind it down.

On June 29, 2017, the Texas Attorney General, nine other State Attorneys General, and one Governor sent a letter to the federal Executive Branch proposing a DACA wind-down as a way to end the States' existing lawsuit challenging the Executive's ability to unilaterally confer lawful presence and work authorization; this letter is in the administrative record. A.R. 238-40.[3]

This letter was immediately made publicly available by the Texas Attorney General. That same day, the Texas Attorney General issued a press release that made the letter public.[4] It explained:

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[3] A.R. cites the Administrative Record, filed as ECF No. 64-1 in District Court No. 3:17-cv-05211 (N.D. Cal.).

[4] *AG Paxton Leads 10-State Coalition Urging Trump Administration to Phase Out Unlawful Obama-Era DACA Program*, http://www.texasattorneygeneral.gov/news/releases/ag-paxton-leads-10-state-coalition-urging-trump-administration-to-phase-out (June 29, 2017).

> In a letter sent today to the U.S. Attorney General, Texas Attorney General Ken Paxton, nine other state attorneys general and the governor of Idaho urged the Trump Administration to phase out the unlawful Obama-era Deferred Action for Childhood Arrival (DACA) program, which confers lawful presence and work permits for nearly one million unlawfully present aliens in the U.S.
>
> . . . .
>
> Attorney General Paxton and the coalition promised to voluntarily dismiss their lawsuit challenging unlawful deferred-action programs currently pending in district court if the Trump Administration agrees by September 5 to rescind DACA and not renew or issue any new DACA permits in the future.[5]

The letter itself made crystal clear why DACA was unlawful:

> As you know, this November 20, 2014 memorandum creating DAPA and Expanded DACA would have granted eligibility for lawful presence and work authorization to over four million unlawfully present aliens. Courts blocked DAPA and Expanded DACA from going into effect, holding that the Executive Branch does not have the unilateral power to confer lawful presence and work authorization on unlawfully present al-

[5] *Id.*

> iens simply because the Executive chooses not to remove them. Rather, "[i]n specific and detailed provisions, the [Immigration and Nationality Act] expressly and carefully provides legal designations allowing defined classes of aliens to be lawfully present." *Texas v. United States*, 809 F.3d 134, 179 (5th Cir. 2015), *aff'd by an equally divided court*, 136 S. Ct. 2271 (2016) (per curiam). "Entirely absent from those specific classes is the group of 4.3 million illegal aliens who would be eligible for lawful presence under DAPA." *Id.* Likewise, "[t]he INA also specifies classes of aliens eligible and ineligible for work authorization . . . with no mention of the class of persons whom DAPA would make eligible for work authorization." *Id.* at 180-81. Thus, "DAPA is not authorized by statute," *id.* at 184, and "DAPA is foreclosed by Congress's careful plan," *id.* at 186.
>
> For these same reasons that DAPA and Expanded DACA's unilateral Executive Branch conferral of eligibility for lawful presence and work authorization was unlawful, the original June 15, 2012 DACA memorandum is also unlawful. The original 2012 DACA program covers over one million otherwise unlawfully present aliens. *Id.* at 147. And just like DAPA, DACA unilaterally confers eligibility for work authorization, *id.*, and lawful presence without any statutory authorization from Congress.

A.R. 238-39.

This letter thus (1) threatened litigation over DACA and (2) gave a substantive explanation providing legal arguments based on precedent as to why DACA was unlawful. Even if this letter were the *only* document in the administrative record, the federal Executive Branch's decision to wind down DACA would be wholly rational and non-capricious under the APA.

B. Texas has consistently, clearly, and publicly explained for years how DACA is unlawful.

1. Texas's substantive explanation in its June 29, 2017 letter of DACA's illegality did not come out of the blue. It was based on Texas's victory, leading a 26-State coalition, in challenging the materially identical Expanded DACA and DAPA programs. *See, e.g.*, *Texas*, 809 F.3d at 174 n.139 ("DACA is an apt comparator to DAPA."). As early as April 2015, counsel of record told the Fifth Circuit that DACA was required to go through notice-and-comment procedure. Oral Argument Recording at 1:16:01-10, *Texas v. United States*, 787 F.3d 733 (5th Cir. 2015) (No. 15-40238) (denying stay pending appeal).

2. Even more recently, Texas led a 13-State coalition urging this Court to grant certiorari in *Brewer v. Arizona Dream Act Coalition*, No. 16-1180, where the amici States explicitly argued that DACA was unlawful—based on the same arguments that the States successfully made regarding Expanded DACA and DAPA.

For example, the States argued that DACA was unlawful because "Deferred action under DACA is much more than just a decision not to pursue removal of the

alien. The Executive deems deferred action under DACA to confer lawful presence and a host of attendant benefits." Texas Amicus Br. 3.

DACA's conferral of lawful presence, the amici States noted, "violates Congress's extensive statutory framework defining when aliens are authorized to be present in the country." *Id.* at 6. The States explained:

> The Executive has no power to unilaterally "create immigration classifications" that authorize aliens' presence in this country because "the INA expressly and carefully provides legal designations allowing defined classes of aliens to be lawfully present," *Texas*, 809 F.3d at 179. DACA violates the INA just like the materially identical DAPA program.

Id. at 7 (citation omitted).

The States further explained that DACA violated statutes governing which aliens are authorized to work in this country:

> [W]hen Congress wanted to provide work-authorization eligibility to four narrow classes of deferred-action recipients, it did so by statute. Otherwise, the 1986 IRCA "prohibit[s] the employment of aliens who are unauthorized to work in the United States because they either *entered the country illegally*, or are in an immigration status which does not permit employment." H.R. Rep. No. 99-682(I), at 46, 51-52 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5649, 5650, 5655-56 (emphasis added).

Id. at 15-16 (footnote omitted). And the States surveyed various historical practices, explaining how they could not support DACA's unilateral conferral of lawful presence and work authorization. *Id.* at 18-20.

3. In sum, it is easily rational and not capricious to wind down a program based on a controversial assertion of unilateral Executive Branch authority, which Texas and other States had been challenging for years. No expansion of the administrative record or further discovery is needed to perform APA arbitrary-and-capricious review.

IV. Mandamus Is Proper to Stop Burdensome, Disorderly Litigation Across the Nation.

The Court should exercise its supervisory mandamus authority here to ensure that the judicial system operates in an orderly and efficient manner. *See La Buy v. Howes Leather Co.*, 352 U.S. 249, 259-60 (1957). Across the Nation, no less than nine lawsuits challenge DACA's rescission. *See supra* pp. 11-12. A decision here will provide nationwide direction, curtailing extraordinarily broad, resource-intensive discovery based on clearly incorrect legal theories that threaten to work irreparable harm to federal and state operations.

CONCLUSION

The Court should issue a writ of mandamus reversing the district court's orders relating to discovery and the administrative record or, in the alternative, grant a writ of certiorari to the Ninth Circuit and direct that court to issue a writ of mandamus reversing the district court orders.

Respectfully submitted.

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