Nos. 18-587, 18-588, and 18-589

IN THE
Supreme Court of the United States

DEPARTMENT OF HOMELAND SECURITY, ET AL.,
Petitioners,
v.
REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,
Petitioners,
v.
NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, ET AL.,
Respondents.

On Writ of Certiorari Before Judgment to the United States Court of Appeals for the District of Columbia Circuit

KEVIN K. MCALEENAN, ACTING SECRETARY OF HOMELAND SECURITY, ET AL.,
Petitioners,
v.
MARTIN JONATHAN BATALLA VIDAL, ET AL.,
Respondents.

On Writ of Certiorari Before Judgment to the United States Court of Appeals for the Second Circuit

BRIEF OF CURRENT MEMBERS OF CONGRESS AND BIPARTISAN FORMER MEMBERS OF CONGRESS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICI CURIAE*[1]

Amici are a bipartisan group of current and former members of the U.S. Senate and House of Representatives, many of whom served when key components of the nation's immigration laws, including provisions pertinent to these cases, were drafted, debated, and passed. Based on their experience serving in Congress, *amici* understand that the nation's immigration laws, including the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq.*, delegate significant discretion to the executive branch to interpret and administer those laws, including by setting rational enforcement priorities and providing guidance to field officials to implement those priorities. Moreover, *amici* know that administrations of both major political parties have for decades exercised that discretion to grant undocumented immigrants deferred action, on both an *ad hoc* basis and by establishing categorical threshold criteria for deferral, and Congress has consistently approved of these exercises of executive discretion. Where Congress has chosen to vest the executive with authority to determine how a law should be enforced, and the executive has acted pursuant to that authority—as was the case with the Deferred Action for Childhood Arrivals (DACA) policy—*amici* have an interest in ensuring that courts honor Congress's deliberate choice. *Amici* therefore have a substantial interest in ensuring that this Court

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[1] The parties have consented to the filing of this brief, and their letters of consent have been filed with the Clerk. Under Rule 37.6 of the Rules of this Court, *amici* state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici* or their counsel made a monetary contribution to its preparation or submission.

recognize that DACA was a permissible exercise of the broad discretion that Congress has accorded the executive branch, and that the rescission of DACA on the ground that it was unlawful therefore violated the Administrative Procedure Act (APA), 5 U.S.C. § 551 *et seq.*

INTRODUCTION AND SUMMARY OF ARGUMENT

Because immigration is a complex and dynamic field, Congress has long conferred significant discretion on the executive branch to implement the nation's immigration laws. Effectuating that discretion, administrations of both major political parties have for decades granted undocumented immigrants deferred action, both on an *ad hoc* basis and by establishing categorical threshold criteria for deferral. This Court has recognized that such grants of deferred action are "a regular practice" that the executive branch engages in "for humanitarian reasons or simply for its own convenience." *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483-84 (1999) (*AADC*). Moreover, Congress has repeatedly taken affirmative steps that demonstrate its ratification of, and reliance on, these exercises of executive discretion, including passing legislation that presumes that the executive will continue to grant deferred action or that expressly directs the executive to continue doing so.

Consistent with these past exercises of discretion, the Department of Homeland Security in 2012 established DACA, which authorized the temporary deferred removal of "certain young people who were brought to this country as children and know only this

country as home." Pet. App. 97a-98a.[2] In 2017, the current Administration ended DACA, citing its supposed "legal and constitutional defects." J.A. 878.

Contrary to the Administration's contentions when it rescinded the policy, DACA was a permissible exercise of the broad discretion that Congress conferred on the executive branch to implement the federal immigration laws. *See, e.g.*, 8 U.S.C. § 1103(a)(3) (authorizing the Secretary of Homeland Security to "establish such regulations; . . . issue such instructions; and perform such other acts as he deems necessary for carrying out his authority" under the INA); 6 U.S.C. § 202(5) (directing the Secretary to "[e]stablish[] national immigration enforcement policies and priorities"). DACA was also consistent with the immigration enforcement priorities that the executive branch had established, and the Department of Justice's Office of Legal Counsel (OLC) advised before DACA's implementation that it would be lawful, provided that it required review on a case-by-case basis, J.A. 827 n.8—which it expressly did, Pet. App. 99a.

DACA was also a sensible response to the imperatives and realities of law enforcement: the immigration laws make a substantial number of noncitizens removable, but Congress has not provided sufficient resources to effectuate the removal of more than a small fraction of the nation's undocumented immigrants. Instead, Congress has reasonably permitted the executive branch to determine the nation's immigration enforcement priorities.

Indeed, many members of Congress specifically

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[2] "Pet. App." and "Supp. Pet. App." refer to the appendices accompanying the original and supplemental petitions for certiorari, respectively, in *DHS v. Regents of the University of California*, No. 18-587.

called for the executive to exercise discretion regarding certain young people who were brought to the United States as children, and many members of Congress subsequently praised DACA's implementation. And although bipartisan efforts to enact new legislation extending broader rights and protections to certain immigrants who were brought to the United States as children have thus far failed, *see* Pet'rs Br. 5 & n.2, as have numerous congressional efforts to defund or terminate DACA, these facts have no bearing on the legality of DACA itself. The legislative proposals that Congress has considered were not remotely coextensive with DACA: Under DACA, grants of deferred action may be terminated at any time and confer no substantive rights or immigration status, J.A. 827, whereas the legislative proposals that Congress has considered would have provided more permanent and wide-ranging protections and benefits, and they would have extended these protections to a broader class of individuals. DACA was a valid exercise of the broad discretion that Congress has delegated to the executive branch, regardless of whether Congress chooses to provide greater long-term protections for DACA recipients (or others) through new legislation.

Accordingly, the Administration's decision to rescind DACA on the ground that it was unlawful was "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," in violation of the APA. 5 U.S.C. § 706(2)(A). Although Petitioners now offer multiple explanations for DACA's rescission, *see, e.g.*, Pet'rs Br. 15, those *post hoc* explanations are irrelevant. At the time that it terminated DACA, the Administration made clear that it was doing so because it had concluded that the policy was unlawful. *See* J.A. 877. The Administration also asserted that, if challenged in court, DACA would meet the same fate

as the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) policy, which the Fifth Circuit enjoined in a decision this Court affirmed by an equally divided vote. *Id.* at 878; *see Texas v. United States*, 809 F.3d 134 (5th Cir. 2015), *aff'd by an equally divided Court*, 136 S. Ct. 2271 (2016) (per curiam). The Administration reached this conclusion even though DACA is materially distinguishable from DAPA. Accordingly, this Court should hold that the decision to terminate DACA—a policy that lawfully and laudably deferred removal on a case-by-case basis of certain persons who were brought to the United States as children and who met other qualifications—on the ground that this effort was unlawful and contravened the APA.

ARGUMENT

DACA WAS A LAWFUL EXERCISE OF EXECUTIVE DISCRETION, AND ITS RESCISSION ON THE GROUND THAT IT WAS UNLAWFUL THEREFORE VIOLATED THE APA.

I. DACA WAS A VALID EXERCISE OF EXECUTIVE AUTHORITY.

A. Congress Has Long Conferred Significant Discretion on the Executive Branch.

As *amici* know from their time serving in Congress, it is impossible for Congress to anticipate every situation to which legislation must apply. This fact is particularly true in a complex and dynamic context like immigration, as demographic, social, and political changes at home and abroad can cause abrupt and substantial changes in immigration patterns. This Court has recognized that the field of immigration is "vitally and intricately interwoven with . . . the conduct of foreign relations," *Harisiades v. Shaughnessy*, 342 U.S. 580, 588-89 (1952), a sphere that falls largely

within the executive branch's purview. *See INS v. Chadha*, 462 U.S. 919, 954 (1983); *Arizona v. United States*, 567 U.S. 387, 394-95 (2012) (noting that the federal government's authority over immigration "rests, in part, on the National Government's . . . inherent power as sovereign to control and conduct relations with foreign nations"); *Medellin v. Texas*, 554 U.S. 759, 765 (2008) (Breyer, J., dissenting) (acknowledging the "President's responsibility for foreign affairs").

Reflecting these considerations, Congress has long recognized that the executive branch must have discretion to determine how best to enforce the nation's immigration laws by "balancing . . . factors which are peculiarly within its expertise," *Heckler v. Chaney*, 470 U.S. 821, 831 (1985), including foreign relations, humanitarian considerations, and national security concerns. Accordingly, Congress has repeatedly conferred authority on executive branch officials to exercise discretion in enforcing the federal immigration laws. *See* Pet'rs Br. 16 ("Decisions about how the government will exercise enforcement discretion within the bounds of the law are uniquely entrusted to the Executive Branch."). Indeed, as far back as 1959, a key immigration law textbook reported that "Congress traditionally has entrusted the enforcement of its deportation policies to executive officers, and this arrangement has been approved by the courts." Charles Gordon & Harry N. Rosenfield, *Immigration Law and Procedure* 406 (1959); *see* Andorra Bruno et al., Cong. Research Serv., *Analysis of June 15, 2012 DHS Memorandum,* Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children 5 & n.18 (July 13, 2012) [hereinafter *CRS Analysis of DHS Memorandum*].

In particular, Congress has, for more than sixty years, authorized the Secretary of Homeland Security (previously the Attorney General) to "establish such regulations; . . . issue such instructions; and perform such other acts as he deems necessary for carrying out his authority" under the INA, 8 U.S.C. § 1103(a)(3), which charges him "with the administration and enforcement" of the nation's immigration laws, *id.* § 1103(a)(1). Moreover, in recognizing a growing gap between the size of the unauthorized immigrant population and the resources reasonably available for enforcement, Congress directed the Secretary of Homeland Security in the Homeland Security Act of 2002 to "[e]stablish[] national immigration enforcement policies and priorities." 6 U.S.C. § 202(5). These and other provisions in our federal immigration laws "delegat[e] tremendous authority to the President to set immigration screening policy." Adam B. Cox & Cristina M. Rodríguez, *The President and Immigration Law*, 119 Yale L.J. 458, 463 (2009). At a minimum, these provisions of federal immigration law authorize the executive to define enforcement and removal priorities. *See* J.A. 831 ("The practice of granting deferred action, like the practice of setting enforcement priorities, is an exercise of enforcement discretion rooted in DHS's authority to enforce the immigration laws and the President's duty to take care that the laws are faithfully executed.").

Indeed, this Court has repeatedly recognized that Congress has conferred broad discretion on the executive branch in the immigration context, observing that "[a] principal feature of the removal system is the broad discretion exercised by immigration officials" and that "[f]ederal officials, as an initial matter, must decide whether it makes sense to pursue removal at all." *Arizona*, 567 U.S. at 396; *see AADC*, 525 U.S. at

483 ("At each stage" of removal, "the Executive has discretion to abandon the endeavor."). This Court has also recognized that the executive branch's broad discretion allows its officers to consider many factors in deciding when removal is appropriate, including both "immediate human concerns" and "foreign policy" matters. *Arizona*, 567 U.S. at 396-97; *Jama v. ICE*, 543 U.S. 335, 348 (2005) ("Removal decisions . . . 'may implicate our relations with foreign powers' and require consideration of 'changing political and economic circumstances.'" (quoting *Mathews v. Diaz*, 426 U.S. 67, 81 (1976))). And this Court has noted that executive grants of deferred action in particular have become "a regular practice" and a "commendable exercise in administrative discretion." *AADC*, 525 U.S. at 483-84 (citation and internal quotation marks omitted).

Congress's delegation of this discretion to the executive branch is, in fact, essential: while the immigration laws make a substantial number of noncitizens removable, Congress has not appropriated the funds necessary to effectuate such a mass removal—indeed, it has never come close to providing such vast resources. *See* Cox & Rodríguez, *supra*, at 463 (explaining that Congress has made a "huge fraction of noncitizens deportable at the option of the Executive"); Memorandum from John Morton, Dir., Immigration & Customs Enforcement (ICE), to All ICE Employees, *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens* 1 (Mar. 2, 2011) [hereinafter *Morton Prioritization Memorandum*] (estimating that ICE has enough resources to deport less than 4 percent of the undocumented-immigrant population each year). In other words, given the large population of undocumented immigrants in the United States and the limited resources available to enforce the nation's immigration laws—

even as appropriations for enforcement have reached particularly high levels, *see* Doris Meissner & Julia Gelatt, Migration Policy Inst., *Eight Key U.S. Immigration Policy Issues: State of Play and Unanswered Questions* 1 (May 2019) ("[T]he United States is spending 34 percent more on immigration enforcement than on all other principal federal criminal law enforcement agencies combined.")—the government cannot possibly remove everyone who is eligible for removal.

Accordingly, the executive branch necessarily must exercise substantial discretion in determining who should be removed consistent with the nation's "immigration enforcement policies and priorities." 6 U.S.C. § 202(5); *see Mistretta v. United States*, 488 U.S. 361, 372 (1989) ("[I]n our increasingly complex society, . . . Congress simply cannot do its job absent an ability to delegate power under broad general directives."). Even Petitioners recognize that, "[a]s a practical matter, . . . the Executive Branch lacks the resources to remove every removable alien, and a 'principal feature of the removal system is the broad discretion exercised by immigration officials.'" Pet'rs Br. 4 (quoting *Arizona*, 567 U.S. at 396).

Moreover, the discretion Congress has conferred on the executive branch to implement the immigration laws is not limited to decisions related to removal. To the contrary, Congress has also specifically given the executive branch significant authority over which persons are entitled to work in the United States. For example, the Immigration Reform and Control Act of 1986 (IRCA) defines an "unauthorized alien" not entitled to work in the United States as an alien who is neither a lawful permanent resident nor "authorized to be . . . employed by [the INA] *or by the Attorney General* [now the Secretary of Homeland Security]." 8 U.S.C. § 1324a(h)(3) (emphasis added); *see* Pub. L. No.

99-603, 100 Stat. 3359, 3368 (1986). Thus, whether deferred action recipients can apply for work authorization "depend[s] on independent and more specific statutory authority rooted in the text of the INA," J.A. 833, and falls within the executive's discretion.

To be sure, executive discretion in the immigration context is not unlimited, and Congress remains free to "limit an agency's exercise of enforcement power if it wishes, either by setting substantive priorities, or by otherwise circumscribing an agency's power to discriminate among issues or cases it will pursue." *Chaney*, 470 U.S. at 833. Congress has, for instance, directed the Secretary of Homeland Security to "prioritize the identification and removal of aliens convicted of a crime by the severity of that crime." Department of Homeland Security Appropriations Act, Pub. L. No. 114-4, 129 Stat. 39, 43 (2015). But Congress has never sought to define enforcement priorities in such detail that the executive could not exercise its own judgment at all, nor has it sought to enumerate all the circumstances in which a noncitizen may receive a given accommodation. Accordingly, this Court has observed that, when it comes to immigration, "[i]t is not necessary that Congress supply administrative officials with a specific formula for their guidance in a field where flexibility and the adaptation of the congressional policy to infinitely variable conditions constitute the essence of the program." *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 543 (1950) (quoting *Lichter v. United States*, 334 U.S. 742, 785 (1948)).

In short, through the INA and other legislation, Congress has intentionally given the executive branch broad discretion to rationally decide how best to implement the nation's immigration laws. *See* Supp. Pet. App. 8a-9a.

B. The Executive Branch Has Long Exercised This Broad Discretion with Congress's Affirmative Approval.

The executive has long exercised its broad discretion in the immigration context by implementing policies involving deferred action and similar forms of discretionary relief, and Congress has affirmatively approved of, and relied on, those practices. "Since at least the 1970s, immigration authorities in the United States have sometimes exercised their discretion to grant temporary reprieves from removal to non-U.S. nationals . . . ." Ben Harrington, Cong. Research Serv., R45158, *An Overview of Discretionary Reprieves from Removal: Deferred Action, DACA, TPS, and Others*, at i (Apr. 10, 2018) [hereinafter *CRS Overview*]. As this Court has recognized, "[t]his commendable exercise in administrative discretion, developed without express statutory authorization, originally was known as nonpriority and is now designated as deferred action." *AADC*, 525 U.S. at 484 (citation and internal quotation marks omitted); *see CRS Overview* at 15 (noting that "[p]rior to 1975, immigration authorities used the term 'nonpriority status' to describe the type of reprieve now labeled deferred action"); Supp. Pet. App. 10a (tracing the practice of granting "nonpriority status" to at least the 1950s).

In 1975, the Immigration and Naturalization Service (INS) issued its first formal guidance on deferred action. *CRS Analysis of DHS Memorandum* at 8. Federal agencies have also promulgated regulations recognizing deferred action since the 1980s. *E.g.*, 8 C.F.R. § 109.1(b)(7) (1984) (providing that recipients of deferred action are eligible to apply for work authorization) (reserved by 52 F.R. 16222 (1987)); *id.* § 274a.12(c)(14) (1989) (describing deferred action as "an act of administrative convenience to the

government which gives some cases lower priority"); *id.* § 245a.2(a)(2)(iv)(5) (1989) (providing that immigrants granted deferred action before January 1, 1982, and meeting other criteria could apply for adjustment to temporary residence status).

Thus, for decades, administrations of both major political parties have granted discretionary relief from removal, both on an *ad hoc* basis and by establishing categorical threshold criteria for deferral. *See CRS Analysis of DHS Memorandum* at 20-23; Am. Immigration Council, *Executive Grants of Temporary Immigration Relief, 1956-Present*, at 1 (Oct. 2014), https://www.americanimmigrationcouncil.org/sites/default/files/research/executive_grants_of_temporary_immigration_relief_1956-present_final_0.pdf ("Since at least 1956, every U.S. president has granted temporary immigration relief to one or more groups in need of assistance."); *id.* at 3-10 (collecting 39 examples). In 1987, for instance, after IRCA gave lawful status to some undocumented immigrants, the Reagan Administration created the Family Fairness Program, which allowed INS district directors to choose not to remove some children and spouses of immigrants whose status had recently changed under the Act. The program provided that those district directors could "exercise the Attorney General's authority to indefinitely defer deportation of anyone for specific humanitarian reasons." Alan C. Nelson, Comm'r, INS, *Legalization and Family Fairness—An Analysis* (Oct. 21, 1987), *in* 64 No. 41 Interpreter Releases 1191, app. I, at 1203 (Oct. 26, 1987).

That program was then expanded in 1990 under President George H.W. Bush to allow more people to qualify for deferral of deportation and also to receive work authorization. Memorandum from Gene McNary, Comm'r, INS, to Reg'l Comm'rs, *Family*

Fairness: Guidelines for Voluntary Departure Under 8 C.F.R. 242.5 for the Ineligible Spouses and Children of Legalized Aliens (Feb. 2, 1990), *in* 67 No. 6 Interpreter Releases 153, app. I, at 164-65 (Feb. 5, 1990). The INS published guidelines "to assure uniformity in the granting of voluntary departure and work authorization for the ineligible spouses and children of legalized aliens." *Id.* at 164.

And in 2006, during the administration of President George W. Bush, ICE published a field manual that included guidelines for when deferred action could be granted. Memorandum from John P. Torres, Acting Dir., ICE Office of Detention & Removal Operations, to Field Office Dirs., *Detention and Deportation Officer's Field Manual Update* (Mar. 27, 2006), https://www.ice.gov/doclib/foia/dro_policy_memos/09684drofieldpolicymanual.pdf. As was the case with DACA, the manual specified that "deferred action is not an immigration status," and it enumerated "[f]actors to be [c]onsidered . . . as part of a deferred action determination." *Id.* § 20.8(a)-(b). The manual explained that, although deferred action "may, on [its] face look like a benefit grant," it "really [is] just [a] mechanism[] for formalizing an exercise of prosecutorial discretion." *Id.* § 20.9(a).

Congress has consistently affirmatively approved of these exercises of executive discretion. As OLC has recognized, "Congress has long been aware of the practice of granting deferred action, including in its categorical variety, and of its salient features," and yet instead of acting "to disapprove or limit the practice," Congress "has enacted several pieces of legislation that have either assumed that deferred action would be available in certain circumstances, or expressly directed that deferred action be extended to certain categories of aliens." J.A. 828-29; *cf. Dames & Moore v.*

Regan, 453 U.S. 654, 680, 686 (1981) (holding that the president had authority to settle international claims by executive agreement and explaining that "crucial to [this] decision" was the fact that Congress had "placed its stamp of approval on such agreements" by passing legislation "creating a procedure to implement future settlement agreements"); *United States v. Rutherford*, 442 U.S. 544, 554 n.10 (1979) ("[O]nce an agency's statutory construction has been 'fully brought to the attention of the public and the Congress,' and the latter has not sought to alter that interpretation although it has amended the statute in other respects, then presumably the legislative intent has been correctly discerned." (quoting *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 489 (1940))); *Tex. Dep't of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc.*, 135 S. Ct. 2507, 2519-20 (2015) (similar). In this manner, Congress has repeatedly ratified the executive branch's interpretation of the federal immigration laws as authorizing the executive to grant discretionary relief from removal.

For example, in making certain victims of trafficking and abuse eligible for immigration-status adjustments, Congress authorized the Secretary of Homeland Security to stay final orders of removal while applications for such adjustments are pending. 8 U.S.C. § 1227(d)(1). In so doing, Congress took care to ensure that this new authority would not impair the forms of relief already available under existing law—including deferred action—by clarifying that the denial of an administrative stay under the new provision "shall not preclude the alien from applying for a stay of removal, *deferred action*, or a continuance or abeyance of removal proceedings under any other provision of the immigration laws." *Id.* § 1227(d)(2) (emphasis added). This provision is a clear indication that Congress understood deferred action as a preexisting and

permissible form of relief available under the immigration laws. *See, e.g.*, Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, Pub. L. No. 109-13, § 202(c)(2)(B)(viii), 119 Stat. 231, 313 (2005) (codified at 49 U.S.C. § 30301 note) (listing "approved deferred action status" as a basis for issuing driver's licenses).

In addition to endorsing the executive's use of deferred action as a general matter, Congress has at times required the executive to consider whether individuals who satisfy certain categorical threshold criteria should be granted deferred action. For instance, Congress has provided that certain victims of domestic violence with pending petitions for preference status are "eligible for deferred action and work authorization." 8 U.S.C. § 1154(a)(1)(D)(i)(II) & (IV). As legislators considered reauthorizing the Violence Against Women Act (VAWA) in 2000, INS officials testified that "[a]pproved [VAWA] self-petitioners are placed in deferred action status," with the result that "[n]o battered alien who has filed a[n approved] self petition . . . has been deported." J.A. 829 (alterations in original) (quoting *Battered Immigrant Women Protection Act of 1999: Hearing on H.R. 3083 Before the Subcomm. on Immigration & Claims of the H. Comm. on the Judiciary*, 106th Cong. 43 (2000) (statement of Barbara Strack, Acting Exec. Assoc. Comm'r for Pol'y & Planning, INS)). In response to this testimony, Congress "not only acknowledg[ed] but also expand[ed] the deferred action program in the 2000 VAWA reauthorization legislation, providing that children who could no longer self-petition under VAWA because they were over the age of 21 would nonetheless be 'eligible for deferred action and work authorization.'" *Id.* (quoting Victims of Trafficking and Violence Protection Act of

2000, Pub. L. No. 106-386, § 1503(d)(2), 114 Stat. 1464, 1522 (codified at 8 U.S.C. § 1154(a)(1)(D)(i)(II), (IV))).

Congress has similarly ensured that eligibility for both deferred action and work authorization remains available to people affected by other prominent tragedies or hardships. *See, e.g.*, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), Pub. L. No. 107-56, § 423(b)(1)-(2), 115 Stat. 272, 361 (specifying that certain relatives of individuals killed in the September 11 terrorist attacks with pending petitions for preference status "may be eligible for deferred action and work authorization"); National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, § 1703(c)-(d), 117 Stat. 1392, 1694-95 (2003) (specifying that certain relatives of individuals killed in combat with pending petitions for classification "shall be eligible for deferred action, advance parole, and work authorization").

Congress has also demonstrated its reliance on the executive's practice of granting deferred action in other ways. For decades, the congressional committees that are responsible for immigration have routinely asked the executive to grant unauthorized immigrants deferred action or stays of removal while the committees considered private bills for relief from enforcement of the immigration laws. *See, e.g.*, Bernadette Maguire, *Immigration: Public Legislation and Private Bills* 23-25, 253-55 (1997); Subcomm. on Immigration, Citizenship, Refugees, Border Security, & Int'l L., H. Comm. on the Judiciary, 111th Cong., *Rules of Procedure and Statement of Policy for Private Immigration Bills*, R. 5 ("In the past, the Department of Homeland Security has honored requests for departmental reports by staying deportation until final action is taken on the private bill."); *see also* 8 C.F.R.

§ 274a.12(c)(14) (allowing recipients of deferred action to apply for work authorization).

In sum, Congress has not simply declined to amend the law after the executive has announced certain grants of deferred action, but rather it has "affirmatively manifested its acquiescence" in that practice. *Bob Jones Univ. v. United States*, 461 U.S. 574, 601 (1983). As OLC has explained, "[t]he history of immigration policy illustrates" that "[w]hen Congress has been dissatisfied with Executive action, it has responded . . . by enacting legislation to limit the Executive's discretion in enforcing the immigration laws." J.A. 806. With respect to executive grants of deferred action, however, Congress has repeatedly enacted legislation affirming the executive branch's broad authority to grant this relief and relying on the continuation of this practice. There can therefore be no doubt that deferred action is a valid form of discretionary forbearance available to the Secretary of Homeland Security in cases or classes of cases that he rationally deems appropriate.

C. DACA Was a Valid Exercise of Executive Discretion.

The Secretary's establishment of DACA fell well within the broad discretion that Congress has long conferred on the executive and repeatedly reaffirmed. Although deferred action policies originated "without express statutory authorization," *AADC*, 525 U.S. at 484 (citation and internal quotation marks omitted), they are now "a regular practice," *id.* at 483-84, and are part and parcel of the Secretary's congressionally conferred authority both to "[e]stablish[] national immigration enforcement policies and priorities," 6 U.S.C. § 202(5), and to "establish such regulations; . . . issue such instructions; and perform such other acts as he deems necessary for carrying out his authority"

under the INA, 8 U.S.C. § 1103(a)(3). DACA was no exception to this rule.

DACA enabled "certain young people who were brought to this country as children and know only this country as home" to apply for deferred action from removal. Pet. App. 97a-98a. Those whose applications were approved were protected from removal for renewable two-year periods and were eligible for work authorization. *Id.* at 11a-12a. The executive memorandum announcing DACA recognized that "[o]ur Nation's immigration laws must be enforced in a strong and sensible manner" and that these laws are not "designed to remove productive young people to countries where they may not have lived or even speak the language." *Id.* at 98a-99a. The memorandum also established specific eligibility criteria and provided that qualified applicants must pass a background check and undergo a case-by-case review process to receive the requested deferral from removal. *Id.* Moreover, the memorandum emphasized that DACA was an exercise of "[p]rosecutorial discretion, which is used in so many other areas, [and] is especially justified here." *Id.* at 99a.

DACA was also fully consistent with the reasonable immigration enforcement priorities that the executive branch had announced pursuant to 6 U.S.C. § 202(5), which authorizes the executive to "[e]stablish[] national immigration enforcement policies and priorities." In a 2011 memorandum, the director of ICE declared that "[a]liens who pose a danger to national security or a risk to public safety" were the highest priority for civil immigration enforcement. *Morton Prioritization Memorandum* at 1. The director deemed other undocumented immigrants, including "[r]ecent illegal entrants" and "[a]liens who are fugitives or otherwise obstruct immigration controls" to be lower

enforcement priorities. *Id.* at 2. The director explained that "[t]he rapidly increasing number of criminal aliens who may come to ICE's attention heightens the need for ICE employees to exercise sound judgment and discretion consistent with these priorities when conducting enforcement operations." *Id.* at 4. He also noted that "[p]articular care should be given when dealing with . . . juveniles." *Id.* By establishing DACA to advance these carefully constructed priorities, the Secretary acted within his congressionally conferred discretion to, among other things, "establish such regulations; . . . issue such instructions; and perform such other acts as he deems necessary for carrying out his authority" under the INA, 8 U.S.C. § 1103(a)(3).

OLC's 2014 memorandum further confirms DACA's validity. The memorandum noted that prior to DACA's implementation, OLC had concluded that a deferred action policy like DACA "would be permissible, provided that immigration officials retained discretion to evaluate each application on an individualized basis." J.A. 827 n.8. Significantly, DACA expressly guarantees that "requests for relief . . . are to be decided on a case by case basis. DHS cannot provide assurance that relief will be granted in all cases." Pet. App. 99a. OLC also observed that "the concerns animating [DACA] were consistent with the types of concerns that have customarily guided the exercise of immigration enforcement discretion." *Id.* at 42a. Thus, OLC recognized that DACA would be a lawful exercise of the executive's discretionary authority in immigration enforcement.

Moreover, in addition to Congress's longstanding general practice of sanctioning executive grants of deferred action, members of Congress affirmatively called for the executive to exercise discretion regarding

certain individuals who were brought to the country as children. In a 1999 letter to the attorney general and the INS commissioner, 28 bipartisan members of Congress noted the "well-grounded" principle that the "INS has prosecutorial discretion in the initiation or termination of removal proceedings" and specifically called on the executive to issue written guidelines and "exercise . . . such discretion" in "[t]rue hardship cases," including those involving people "who came to the United States when they were very young." Letter from Rep. Lamar Smith et al., to Hon. Janet Reno, Att'y Gen., DOJ, and Hon. Doris M. Meissner, Comm'r, INS (Nov. 4, 1999), *in* 76 Interpreter Releases, app. I, at 1730-32 (Dec. 3, 1999). In sending this letter, members of Congress on both sides of the aisle recognized that Congress had deliberately given the executive broad discretion to grant deferred action, and this bipartisan group expressly encouraged the executive to exercise that discretion with respect to the category of individuals later covered by DACA.

In the period surrounding DACA's establishment, members of Congress on a bipartisan basis continued to recognize the executive's prerogative to establish eligibility criteria for deferred action. In 2010, Senator Richard J. Durbin, then Assistant Majority Leader of the Senate, and then-Senator Richard G. Lugar, Ranking Member of the Senate Foreign Relations Committee, wrote to the executive branch requesting deferred action for young immigrants known as Dreamers. *See* Press Release, *Durbin, Lugar Ask Secretary Napolitano to Stop Deportations of Dream Act Students* (Apr. 21, 2010), https://www.durbin.senate.gov/newsroom/press-releases/durbin-lugar-ask-secretary-napolitano-to-stop-deportations-of-dream-act-students. Shortly after the 2012 memorandum implementing DACA was released, a group of 104 members of

Congress sent a follow-up letter to President Obama praising the use of prosecutorial discretion in DACA, which they noted deferred the removal of certain "outstanding young Americans." 158 Cong. Rec. 11764 (daily ed. July 19, 2012) (statement of Rep. Gutiérrez). These members of Congress emphasized that the "consensus legal opinion among experts" was that DACA rested "on solid moral and legal ground," and they vowed to defend "the authority that [President Obama], like past Presidents, can exercise to set [immigration] enforcement priorities and better protect our neighborhoods and our nation." *Id.*

Although bipartisan efforts to provide broader and more permanent protections to Dreamers through new legislation have thus far failed, *see* Pet'rs Br. 5 & n.2, that fact has no bearing on DACA's legality as an exercise of the discretion Congress has already conferred on the executive in existing legislation. *See United States v. Craft*, 535 U.S. 274, 287 (2002) ("[C]ongressional inaction lacks persuasive significance because several equally tenable inferences may be drawn from such inaction, including the inference that the existing legislation already incorporated the offered change." (citation and internal quotation marks omitted)). As this Court's precedents confirm, and as Congress has consistently reaffirmed through the legislation it *has* passed, the executive branch's authority to set rational immigration enforcement priorities is well established. *See Arizona*, 567 U.S. at 394-95 (noting that the federal government's authority over immigration "rests, in part, on the National Government's . . . inherent power as sovereign to control and conduct relations with foreign nations"); *Medellin*, 554 U.S. at 765 (Breyer, J., dissenting) (acknowledging the "President's responsibility for foreign affairs"); 6 U.S.C. § 202(5) (authorizing the executive to "[e]stablish[]

national immigration enforcement policies and priorities").

As noted, moreover, the proposals for new legislation that Congress has considered would provide more permanent and wide-ranging protections for Dreamers than DACA afforded its recipients, and they would have extended these protections to a broader class of Dreamers. *See, e.g.*, S. 1615, 115th Cong. (2017). The fact that these proposals are not coextensive with DACA further underscores why Congress's failure to pass them has no bearing on DACA's legality. Indeed, even if congressional inaction were a permissible consideration when assessing the legality of executive policies, no inference could be drawn here in either direction, given that Congress has also repeatedly rejected efforts to terminate or defund DACA, *see, e.g.*, H.R. 5160, 113th Cong. (2014); S. 2631, 113th Cong. (2014). In short, Congress's decision not to pass new legislation that might affect DACA recipients (and others) is irrelevant to the legality of DACA itself. "The search for significance in the silence of Congress is too often the pursuit of a mirage." *Scripps-Howard Radio v. F.C.C.*, 316 U.S. 4, 11 (1942).

Likewise, even though President Obama stated that he intended for DACA to be a short-term measure until Congress passed legislation to more fully protect DACA recipients, *see* Pet'rs Br. 38; Pres. Barack Obama, Remarks by the President on Immigration (June 15, 2012) ("This is not a path to citizenship. It's not a permanent fix. This is a temporary stopgap measure . . . ."), this subjective expectation did not alter the legal authority underpinning DACA, much less set an expiration date on that legal authority. President Obama merely recognized that DACA did not confer a legal immigration status on recipients—an action that would have fallen within Congress's domain, *see*

Pet. App. 101a—and he encouraged Congress to legislate to more completely protect DACA recipients from removal, even as the executive was providing available legal protections through DACA in the meantime. *Cf. ICYMI: Speaker Ryan, Senator Hatch Urge Trump to Keep DACA*, fwd.us (Sept. 1, 2017), https://www.fwd.us/news/speaker-ryan-senator-hatch-urge-trump-keep-daca/ (quoting statement by then-Senator Orrin Hatch that he has "urged [President Trump] not to rescind DACA" while recognizing that "we also need a workable, permanent solution for individuals who entered our country unlawfully as children through no fault of their own" and that "that solution must come from Congress").

DACA therefore did what Congress legally authorized the executive to do: grant deferred action to certain qualified and "outstanding young Americans," 158 Cong. Rec. 11764 (daily ed. July 19, 2012), so that immigration officers could instead focus their enforcement efforts and limited resources on higher priority cases. *See* Supp. Pet. App. 56a ("In a world where the government can remove only a small percentage of the undocumented noncitizens present in this country in any year, deferred action programs like DACA enable DHS to devote much-needed resources to enforcement priorities such as threats to national security, rather than blameless and economically productive young people with clean criminal records."). Accordingly, DACA was a lawful exercise of executive discretion.

II. THE TERMINATION OF DACA ON THE GROUND THAT IT WAS UNLAWFUL VIOLATED THE APA.

Despite the many explanations that Petitioners now offer for DACA's rescission, *see, e.g.*, Pet'rs Br. 15, what matters is the explanation the executive branch offered at the time it terminated DACA—namely, that

it had concluded that DACA was unlawful, J.A. 877. *See Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168-69 (1962) ("The courts may not accept appellate counsel's *post hoc* rationalizations for agency action; [*SEC v. Chenery Corp.*, 332 U.S. 194 (1947),] requires that an agency's discretionary order be upheld, if at all, on the same basis articulated in the order by the agency itself."); *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 50 (1983) (same). In his September 2017 letter advising then–Acting Secretary of Homeland Security Elaine C. Duke to end DACA, then–Attorney General Jefferson B. Sessions, III, asserted that "DACA was effectuated . . . without proper statutory authority" and that "[s]uch an open-ended circumvention of immigration laws was an unconstitutional exercise of authority by the Executive Branch." J.A. 877. He also referenced the DAPA policy, which the Fifth Circuit had concluded was unlawful in a decision this Court affirmed by an equally divided vote, and suggested that "it is likely that potentially imminent litigation would yield similar results with respect to DACA." *Id.* at 878. Acting Secretary Duke's memorandum formally rescinding DACA the next day echoed and incorporated these reasons for the rescission. *See* Pet. App. 112a. It stated, "Taking into consideration the Supreme Court's and the Fifth Circuit's rulings in the ongoing [DAPA] litigation, and the September 4, 2017 letter from the Attorney General, it is clear that the June 15, 2012 DACA program should be terminated." *Id.* at 117a. Thus, the Administration ended DACA because it concluded that it was unlawful and would likely be enjoined if challenged in court.

For the reasons discussed above, however, DACA was fully consistent with the nation's immigration laws and was a permissible—and, indeed, sensible—

exercise of the discretion Congress conferred on the executive to implement those laws. Accordingly, the decision to terminate DACA on the ground that it was unlawful was itself "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," in violation of the APA. 5 U.S.C. § 706(2)(A).

Contrary to the executive officials' assertions, DACA is also materially distinguishable from DAPA, which the Fifth Circuit addressed in *Texas v. United States*, 809 F.3d 134. The Fifth Circuit there upheld a preliminary injunction against DAPA on the ground that DHS likely lacked the authority to implement it, and the Department therefore likely violated the APA in doing so. *See id.* at 146, 178-86. Although the Fifth Circuit noted in its decision some "important similarities" between DACA and DAPA, it also emphasized that "DACA and DAPA are not identical," *id.* at 174, and that "any extrapolation from DACA must be done carefully," *id.* at 173.

Illustrating one such distinction, the Fifth Circuit based its DAPA decision in part on its determination that "Congress has enacted an intricate process for illegal aliens to derive a lawful immigration classification from their children's immigration status." *Id.* at 179; *see id.* at 180 n.167 (citing 8 U.S.C. §§ 1151(b)(2)(A)(i), 1182(a)(9)(B)(i)(II), 1201(a), 1255). The Fifth Circuit noted with disapproval that "DAPA would allow illegal aliens to receive the benefits of lawful presence solely on account of their children's immigration status without complying with any of the [enumerated] requirements . . . that Congress has deliberately imposed." *Id.* at 180. This analysis of DAPA

was flawed,[3] but it is also inapposite here because DACA is markedly different from DAPA in this regard. No legislation provides a framework for young people who were brought to the United States as children without documentation to receive lawful status *or* to be considered lawfully present in the country, and therefore DACA does not even plausibly circumvent any established legislative scheme.

Another important difference the court identified between the policies was that "[e]ligibility for DACA was restricted to a younger and less numerous population" than was the case for DAPA. *Id.* at 174. According to the Fifth Circuit, approximately "1.2 million persons qualif[ied] for DACA" and only "approximately 636,000 applications were approved through 2014." *Id.* at 147; *see id.* at 174 n.138. By 2018, that number was still only 823,815. *See* U.S. Citizenship and Immigration Services, *Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals*, at 1

[3] The Fifth Circuit erred by conflating two distinct concepts: "lawful immigration classification" and "lawful presence." *Texas*, 809 F.3d at 179-80. While the former confers significant rights and benefits, the latter simply means that one's physical presence no longer exposes him or her to immigration enforcement consequences that escalate over time. *See, e.g.*, 8 U.S.C. § 1182(a)(9)(B) (making admissibility determinations depend on how long an alien has been unlawfully present in the United States). Although the Fifth Circuit acknowledged the existence of this distinction, *Texas*, 809 F.3d at 180 ("DAPA does not confer the full panoply of benefits that a visa gives . . . ."); *id.* ("LPR status is more substantial than is lawful presence . . . ."); *id.* at 184 ("DAPA awards lawful presence to persons who have never had a legal status and may never receive one." (footnote omitted)), it nevertheless brushed it aside—declaring with little explanation that Congress's decision to make lawful immigration classifications available in certain defined situations precluded the executive from allowing other individuals to be lawfully present through a grant of deferred action, *see id.* at 179-82, 186.

(Nov. 30, 2018), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA_FY19_Q1_Data.pdf. By contrast, "4.3 million [persons] would [have] be[en] eligible for lawful presence pursuant to DAPA." *Texas*, 809 F.3d at 148; *see id.* at 174 n.138.

Regardless, the Fifth Circuit's conclusion about DAPA's legality was wrong, undermining any persuasive value the decision might have in assessing the legality of DACA (and the attendant illegality of its rescission). Although the court purported to disclaim reliance on the *expressio unius est exclusio alterius* canon of statutory construction, *id.* at 182, it reasoned that congressional acknowledgement of deferred action's appropriateness in some circumstances precludes the executive branch from granting deferred action in other circumstances, as it did in DAPA, *see id.* at 179-81. *See generally Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 392 (2013) (explaining that the *expressio unius* canon "instructs that when Congress includes one possibility in a statute, it excludes another by implication"). In other words, the court reasoned that because "the INA expressly and carefully provides legal designations allowing defined classes of aliens to be lawfully present and confers eligibility for 'discretionary relief allowing [aliens in deportation proceedings] to remain in the country,'" the INA deliberately does not authorize grants of deferred action to others, including those eligible for DAPA. *Texas*, 809 F.3d at 179 (alterations in original) (quoting *Arizona*, 567 U.S. at 396); *see id.* ("Entirely absent from those specific classes is the group of 4.3 million illegal aliens who would be eligible for lawful presence under DAPA were it not enjoined.").

This Court, however, has repeatedly held that "the canon *expressio unius est exclusio alterius* does not apply to every statutory listing or grouping; it has force only when the items expressed are members of an 'associated group or series,' justifying the inference that items not mentioned were excluded by deliberate choice, not inadvertence." *Barnhart v. Peabody Coal Co.*, 537 U.S. 149, 168 (2003) (quoting *United States v. Vonn*, 535 U.S. 55, 65 (2002)). As the court of appeals explained in one of the decisions below, the INA provisions allowing for deferred action were not collectively included in the original statute. *See* Supp. Pet. App. 53a. Rather, Congress has added them piecemeal over time in separate amendments to the INA as different situations arose. *See id.* Accordingly, as many *amici* well know from serving in Congress while those amendments were drafted, debated, and passed, Congress did not intend to preclude the executive from granting deferred action in other situations besides those expressly mentioned in the amendments. And, as explained above, the fact that Congress has not yet enacted such an amendment permanently protecting DACA recipients and others from removal does not alter the fact that Congress has given the executive broad discretion to provide some relief in the meantime.

In short, because DACA was a lawful exercise of executive discretion, the decision to terminate it on the ground that it was unlawful was itself in violation of the APA.

CONCLUSION

For the foregoing reasons, the judgments of the Ninth Circuit and the District Court for the District of Columbia, as well as the orders of the Eastern District of New York, should be affirmed.

Respectfully submitted,

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October 4, 2019

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APPENDIX:
LIST OF *AMICI*

U.S. Senate

Durbin, Richard J.
Senator of Illinois

Schumer, Charles E.
Senator of New York

Leahy, Patrick J.
Senator of Vermont

Feinstein, Dianne
Senator of California

Murray, Patty
Senator of Washington

Wyden, Ron
Senator of Oregon

Reed, Jack
Senator of Rhode Island

Carper, Thomas R.
Senator of Delaware

Stabenow, Debbie
Senator of Michigan

Cantwell, Maria
Senator of Washington

LIST OF *AMICI* - cont'd

Menendez, Robert
Senator of New Jersey

Cardin, Benjamin L.
Senator of Maryland

Sanders, Bernard
Senator of Vermont

Brown, Sherrod
Senator of Ohio

Casey, Robert P., Jr.
Senator of Pennsylvania

Klobuchar, Amy
Senator of Minnesota

Whitehouse, Sheldon
Senator of Rhode Island

Tester, Jon
Senator of Montana

Udall, Tom
Senator of New Mexico

Shaheen, Jeanne
Senator of New Hampshire

Warner, Mark R.
Senator of Virginia

LIST OF *AMICI* - cont'd

Merkley, Jeff
Senator of Oregon

Bennet, Michael F.
Senator of Colorado

Gillibrand, Kirsten E.
Senator of New York

Manchin, Joe, III
Senator of West Virginia

Coons, Christopher A.
Senator of Delaware

Blumenthal, Richard
Senator of Connecticut

Schatz, Brian
Senator of Hawai‘i

Baldwin, Tammy
Senator of Wisconsin

Murphy, Christopher
Senator of Connecticut

Hirono, Mazie K.
Senator of Hawai‘i

Heinrich, Martin
Senator of New Mexico

LIST OF *AMICI* - cont'd

King, Angus S., Jr.
Senator of Maine

Kaine, Tim
Senator of Virginia

Warren, Elizabeth
Senator of Massachusetts

Markey, Edward J.
Senator of Massachusetts

Booker, Cory A.
Senator of New Jersey

Peters, Gary C.
Senator of Michigan

Van Hollen, Chris
Senator of Maryland

Duckworth, Tammy
Senator of Illinois

Hassan, Margaret Wood
Senator of New Hampshire

Harris, Kamala D.
Senator of California

Cortez Masto, Catherine
Senator of Nevada

LIST OF *AMICI* - cont'd

Smith, Tina
Senator of Minnesota

Rosen, Jacky
Senator of Nevada

Hart, Gary
Former Senator of Colorado

Levin, Carl
Former Senator of Michigan

Reid, Harry
Former Senator of Nevada

Udall, Mark
Former Senator of Colorado

U.S. House of Representatives

Lofgren, Zoe
Representative of California

Nadler, Jerrold
Representative of New York

Castro, Joaquin
Representative of Texas

Pelosi, Nancy
Representative of California

Hoyer, Steny H.
Representative of Maryland

LIST OF *AMICI* - cont'd

Clyburn, James E.
Representative of South Carolina

Aguilar, Pete
Representative of California

Allred, Colin Z.
Representative of Texas

Barragán, Nanette Diaz
Representative of California

Bass, Karen
Representative of California

Beyer, Donald S., Jr.
Representative of Virginia

Blumenauer, Earl
Representative of Oregon

Brown, Anthony
Representative of Maryland

Brownley, Julia
Representative of California

Carbajal, Salud O.
Representative of California

Cárdenas, Tony
Representative of California

LIST OF *AMICI* - cont'd

Carson, André
Representative of Indiana

Casten, Sean
Representative of Illinois

Castor, Kathy
Representative of Florida

Chu, Judy
Representative of California

Cicilline, David N.
Representative of Rhode Island

Cisneros, Gilbert R., Jr.
Representative of California

Clarke, Yvette D.
Representative of New York

Cohen, Steve
Representative of Tennessee

Correa, J. Luis
Representative of California

Costa, Jim
Representative of California

Cox, TJ
Representative of California

LIST OF *AMICI* - cont'd

Crow, Jason
Representative of Colorado

Cummings, Elijah E.
Representative of Maryland

Davis, Danny K.
Representative of Illinois

Davis, Susan A.
Representative of California

DeFazio, Peter A.
Representative of Oregon

DeGette, Diana
Representative of Colorado

DeLauro, Rosa L.
Representative of Connecticut

DelBene, Suzan K.
Representative of Washington

Demings, Val Butler
Representative of Florida

DeSaulnier, Mark
Representative of California

Deutch, Theodore E.
Representative of Florida

LIST OF *AMICI* - cont'd

Engel, Eliot L.
Representative of New York

Escobar, Veronica
Representative of Texas

Eshoo, Anna G.
Representative of California

Espaillat, Adriano
Representative of New York

Evans, Dwight
Representative of Pennsylvania

Foster, Bill
Representative of Illinois

Gabbard, Tulsi
Representative of Hawai'i

Gallego, Ruben
Representative of Arizona

Garamendi, John
Representative of California

García, Jesús G. "Chuy"
Representative of Illinois

Garcia, Sylvia R.
Representative of Texas

LIST OF *AMICI* - cont'd

Gomez, Jimmy
Representative of California

Green, Al
Representative of Texas

Grijalva, Raúl M.
Representative of Arizona

Haaland, Debra A.
Representative of New Mexico

Harder, Josh
Representative of California

Hayes, Jahana
Representative of Connecticut

Hill, Katie
Representative of California

Huffman, Jared
Representative of California

Jackson Lee, Sheila
Representative of Texas

Jayapal, Pramila
Representative of Washington

Jeffries, Hakeem
Representative of New York

LIST OF *AMICI* - cont'd

Johnson, Henry C. "Hank," Jr.
Representative of Georgia

Keating, William R.
Representative of Massachusetts

Khanna, Ro
Representative of California

Kildee, Daniel T.
Representative of Michigan

Lawrence, Brenda L.
Representative of Michigan

Lee, Barbara
Representative of California

Levin, Andy
Representative of Michigan

Lewis, John
Representative of Georgia

Lieu, Ted W.
Representative of California

Lowenthal, Alan S.
Representative of California

Lowey, Nita M.
Representative of New York

LIST OF *AMICI* - cont'd

Matsui, Doris O.
Representative of California

McCollum, Betty
Representative of Minnesota

McEachin, A. Donald
Representative of Virginia

McGovern, James P.
Representative of Massachusetts

McNerney, Jerry
Representative of California

Meeks, Gregory W.
Representative of New York

Meng, Grace
Representative of New York

Moore, Gwen
Representative of Wisconsin

Napolitano, Grace F.
Representative of California

Neguse, Joe
Representative of Colorado

Norton, Eleanor Holmes
Delegate of District of Columbia

LIST OF *AMICI* - cont'd

Ocasio-Cortez, Alexandria
Representative of New York

Panetta, Jimmy
Representative of California

Peters, Scott H.
Representative of California

Pocan, Mark
Representative of Wisconsin

Porter, Katie
Representative of California

Pressley, Ayanna
Representative of Massachusetts

Quigley, Mike
Representative of Illinois

Raskin, Jamie
Representative of Maryland

Rice, Kathleen M.
Representative of New York

Richmond, Cedric L.
Representative of Louisiana

Rouda, Harley
Representative of California

LIST OF *AMICI* - cont'd

Roybal-Allard, Lucille
Representative of California

Rush, Bobby L.
Representative of Illinois

Sánchez, Linda T.
Representative of California

Schakowsky, Janice D.
Representative of Illinois

Schiff, Adam B.
Representative of California

Schneider, Bradley Scott
Representative of Illinois

Serrano, José E.
Representative of New York

Sires, Albio
Representative of New Jersey

Smith, Adam
Representative of Washington

Soto, Darren
Representative of Florida

Stanton, Greg
Representative of Arizona

LIST OF *AMICI* - cont'd

Swalwell, Eric
Representative of California

Takano, Mark
Representative of California

Thompson, Bennie G.
Representative of Mississippi

Titus, Dina
Representative of Nevada

Tlaib, Rashida
Representative of Michigan

Torres, Norma J.
Representative of California

Vargas, Juan
Representative of California

Vela, Filemon
Representative of Texas

Velázquez, Nydia M.
Representative of New York

Welch, Peter
Representative of Vermont

Yarmuth, John A.
Representative of Kentucky

LIST OF *AMICI* - cont'd

Gonzalez, Charles
Former Representative of Texas

Holtzman, Elizabeth
Former Representative of New York

LaHood, Ray
Former Representative of Illinois

Morella, Constance
Former Representative of Maryland

Schneider, Claudine
Former Representative of Rhode Island

Skaggs, David E.
Former Representative of Colorado

Smith, Peter
Former Representative of Vermont

Waxman, Henry A.
Former Representative of California