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The Continuing Litigation Over DACA

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this Court has allowed multiple entities to participate as *amici curiae*. At the request of the parties, the Court held oral argument and various parties have, to a limited extent, filed additional post-argument authorities.

The focus of all parties is on the recently adopted DACA “Final Rule” promulgated by the Department of Homeland Security (“DHS”). This rule was promulgated following a notice and comment period as prescribed by the Administrative Procedure Act (“APA”). 5 U.S.C. § 500 *et seq.* The Final Rule was to become effective on October 31, 2022.³ Before that date arrived, however, the United States Court of Appeals for the Fifth Circuit affirmed this Court’s opinion and order enjoining DACA. *Texas v. United States*, 549 F.Supp.3d 572 (S.D. Tex. 2021), *aff’d Texas v. United States*, 50 F.4th 498 (5th Cir. 2022) (hereinafter, “*Texas II*”). As discussed below, that affirmance had one exception—the legality of the “new” Final Rule. The Fifth Circuit, lacking the complete administrative record, remanded the consideration of the Final Rule to this Court. Following the remand, the parties agreed prior to the effective date that the Final Rule would be subject to this Court’s earlier injunction of the DACA program pending a ruling by this Court.⁴ Thus, the Final Rule has never been implemented.

In its opinion, the Fifth Circuit requested this Court rule expeditiously. *Texas II*, 50 F.4th at 512. Nevertheless, since the parties agreed to subject the Final Rule to the terms of the existing injunction, the need for immediate action was somewhat alleviated. Moreover, given the subject matter’s importance, the Court allowed the parties to create their own briefing schedule to enable them to fully address the Final Rule. They agreed upon a schedule, fully briefed the issues in accordance with that schedule, and presented the case to the Court at oral argument. Prior to the

³ 87 Fed. Reg. 53,152 (Aug. 30, 2022) (to be codified at 8 C.F.R. pts. 106, 236, and 274a).

⁴ (Doc. No. 603).

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