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The Continuing Litigation Over DACA

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

STATE OF TEXAS, *et al.*, *Plaintiffs*,	§	
v.	§	Civil Action No. 1:18-CV-00068
THE UNITED STATES OF AMERICA, *et al.*, *Defendants*,	§	
and	§	
KARLA PEREZ, *et al.*;	§	
STATE OF NEW JERSEY, *Defendant-Intervenors*.	§	

MEMORANDUM AND ORDER

Before the Court is the Motion for Summary Judgment filed by the Plaintiff States.[1] (Doc. No. 625-1). Defendant-Intervenor New Jersey filed a combined response and cross-motion for Summary Judgment, as did the individual Defendant-Intervenors.[2] (Doc. Nos. 636, 641). The primary Defendant is the United States of America, and the following individuals with some supervisory role over the Deferred Action for Childhood Arrivals ("DACA") program have also been named: Alejandro Mayorkas, Troy A. Miller, Tae D. Johnson, Ur M. Jaddou, and Raul L. Ortiz (the "Federal Defendants"). Collectively, the Federal Defendants have filed a combined cross-motion for summary judgment and response in opposition to the Plaintiff States' motion. (Doc. No. 639). The parties have filed various responses, replies, and sur-replies. Additionally,

[1] The Plaintiff States are comprised of Texas, Alabama, Arkansas, Kansas, Louisiana, Mississippi, Nebraska, South Carolina, and West Virginia.

[2] The Defendant-Intervenors are 22 individual DACA recipients plus the State of New Jersey. The Court will refer to them collectively as "Defendant-Intervenors" unless there is a need for them to be referred to separately. When that occurs, the Court will denote the DACA recipients as the "individual Defendant-Intervenors" and the state as "New Jersey."

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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