No. 24-645

In The
Supreme Court of the United States

KELSEY CASCADIA ROSE JULIANA, *et al.*,

Petitioners,

v.

UNITED STATES, *et al.*,

Respondents.

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

BRIEF *AMICI CURIAE* OF MEMBERS OF CONGRESS IN SUPPORT OF PETITIONERS' PETITION FOR A WRIT OF CERTIORARI

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INTEREST OF *AMICI CURIAE*[1]

Amici curiae are 43 Members of Congress—7 Senators and 36 Members of the House of Representatives—and are listed in the Appendix. *Amici* have a special interest in preserving the separation of powers and the integrity of the statutes that Congress has enacted to vest the Article III courts with authority to issue declaratory relief in constitutional cases. They also have a special interest in ensuring that the federal government fulfills its obligations to respect fundamental rights of life and liberty by safeguarding the environment for current and future generations.

Amici believe that the United States Court of Appeals for the Ninth Circuit's dismissal of the petitioners' constitutional suit for declaratory relief has no basis in law and threatens to undermine the Declaratory Judgment Act, one of the most consequential remedial statutes that Congress has ever enacted. The Ninth Circuit's jurisdictional holding, if accepted, would eliminate the discretion that Congress has afforded to the Article III courts to declare constitutional rights and obligations in appropriate cases where coercive relief is not sought or may not be available. Accordingly, *Amici* respectfully urge this Court to grant the Petitioners' petition for a

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[1] No counsel for any party authored this brief in whole or in part, and no person or entity other than *amici curiae* or their counsel made a monetary contribution intended to fund the brief's preparation or submission. Counsel of record for all parties received timely notice of *amici curiae*'s intent to file this brief.

writ of certiorari.

INTRODUCTION AND SUMMARY OF ARGUMENT

Almost a century ago, Congress enacted the Declaratory Judgment Act (DJA) to ensure that the Article III courts would be open to plaintiffs seeking declaratory relief. Petitioners seek a familiar form of relief under the DJA: a declaration of the petitioners' constitutional rights and the federal government's corresponding constitutional obligations. A litigant who is suffering an ongoing injury caused by the government's continuing violation of constitutional law does not need to make a particularized factual showing that a federal official will follow a declaratory judgment in order to satisfy the redressability requirement of Article III standing doctrine. In such a case, the question is whether declaratory relief would be an appropriate exercise of the district court's discretion. But to deny declaratory relief on jurisdictional grounds is to shirk the judicial responsibility to decide a case properly before the federal courts and to undermine the carefully calibrated remedial scheme that Congress enacted.

The DJA was the product of a healthy interbranch dialogue. In 1934, when Congress enacted the DJA, this Court had already held that actions involving declaratory relief are justiciable so long as there is a real controversy between the parties. Following this Court's lead, Congress specified that federal courts have authority to adjudicate declaratory judgment actions that present actual disputes about the parties' legal relations. In enacting this law, Congress built upon 34 states and territories'

declaratory judgment statutes as well as longstanding forms of declaratory relief, such as actions to declare the obligations of trustees and government officials. Three years later, in *Aetna Life Insurance Co. v. Haworth*, 300 U.S. 227 (1937), this Court in turn confirmed that Article III courts have jurisdiction to award declaratory relief even when the plaintiff does not seek coercive relief.

Experience has proven, as Congress found when it enacted the DJA, that actions for declaratory relief are a necessary part of an effective system for the administration of justice. They resolve cases and controversies by authoritatively determining the rights and obligations of the parties. In some cases, declaratory judgment actions offer the less onerous option of settling a live dispute without risking an enforcement action. In other cases, declaratory relief is appropriate to avoid the inefficiency and needless harm of an ongoing violation of law. In short, the DJA has been among the most consequential remedial statutes ever enacted by Congress.

This Court's own jurisprudence affirms the efficacy of the declaratory judgment action. Declaratory relief has been a necessary remedy in a wide range of constitutional cases. Petitioners seek a traditional type of declaratory relief, one that includes declarations that a trustee either does (or does not) owe a fiduciary duty and that the federal government, as a trustee, has violated the petitioners' fundamental constitutional rights of life and liberty. Petitioners argue, and *Amici* agree, that the federal courts have a vital role in declaring the scope of the petitioners' Fifth Amendment rights and the government's constitutional obligations as a trustee of the climate

for America's youth. With the DJA, Congress authorized the federal courts to provide this type of relief.

The Ninth Circuit's holding eviscerates the DJA. Ninety years after Congress enacted this statute, and eighty-seven years after this Court held that actions for declaratory relief are justiciable cases or controversies, the Ninth Circuit held that an action for declaratory relief is not justiciable because declaratory relief is not efficacious. Assuming that declaratory relief "would do nothing 'absent further court action,'" the Ninth Circuit concluded that the petitioners could not satisfy the redressability requirement of Article III standing doctrine. Pet. App. 3a. This rule would eliminate the declaratory judgment action as an independent remedy in the federal courts.

This Court should grant the petition to clarify that declaratory relief under the DJA satisfies the Article III redressability requirement. Doing so is necessary because Congress expressly authorized declaratory relief "whether or not further relief is or could be sought." 28 U.S.C. § 2201(a). The Ninth Circuit's jurisdictional holding, which prevented the district court from even reaching the question whether declaratory relief would be appropriate, conflicts with this Court's holding that the DJA is constitutional. It also conflicts with this Court's holding that Article III courts may not limit DJA relief to cases where an injunction would be appropriate. *Steffel v. Thompson*, 415 U.S. 452, 471 (1974). Moreover, it conflicts with this Court's holding that suits for declaratory relief against government officials are justiciable even when other relief is not available. *See Utah v. Evans*, 536 U.S. 452, 460-61 (2002) (citing *Franklin v.*

Massachusetts, 395 U.S. 486, 517-18 (1992)). And, finally, the Ninth Circuit has split with its sister circuits regarding the justiciability of declaratory judgment actions, compounding that error by disregarding the final judgment rule and holding that mandamus was available at the Rule 15 amendment stage of the proceedings. Neither holding was correct and the Ninth Circuit's unprecedented ruling will undermine Congress's intent in enacting the DJA and have consequences for this and future generations.

ARGUMENT

I. CONGRESS ENACTED THE DECLARATORY JUDGMENT ACT TO CREATE AN EFFECTIVE SYSTEM FOR THE ADMINISTRATION OF JUSTICE

Congress enacted the DJA to authorize Article III courts to provide the effective, simple, and speedy remedy of a declaration of rights and legal relations that settles an actual controversy between the parties. Carefully modeled to mirror Article III's case or controversy requirement, and directly responsive to this Court's jurisprudence of federal jurisdiction, the DJA was the product of a healthy interbranch dialogue and has been one of the most consequential remedial statutes ever enacted by Congress. As Congress intended, the DJA has provided a means for the federal courts to resolve cases and controversies, including constitutional disputes, that involve the construction of a legal instrument. That is the type of declaratory relief that petitioners requested in this case, which the Ninth Circuit erroneously denied

based upon a rule that effectively would read the DJA out of the U.S. Code.

A. THE DJA WAS THE PRODUCT OF A HEALTHY INTERBRANCH DIALOGUE WITH THIS COURT

When Congress enacted the DJA in 1934, declaratory relief was not a radical innovation. Specific forms of declaratory relief have long been available in both common law and civil law courts—a fact that Congress was well aware of as it considered the constitutionality of the bill that became the DJA.

The Senate Judiciary Committee Report on the DJA took note of an ancient example of declaratory relief that was familiar to the Framers. As the Judiciary Committee explained, "[t]he declaratory judgment has existed in Scotland for over 400 years." *See* S. Rep. No. 73-1005, at 4 (1934). The Scottish Court of Session, the court of last resort with jurisdiction in both law and equity, was open to declaratory judgment actions. *See* James E. Pfander, *Standing, Litigable Interests, and Article III's Case-or-Controversy Requirement*, 65 UCLA L. Rev. 170, 203 (2018) (citing *Cross v. De Valle*, 68 U.S. (1 Wall.) 5, 14-15 (1863)). This Scottish model was an influence on the Framers as they crafted Article III and also informed Congress's consideration of the bill that was enacted as the DJA. *See generally* James E. Pfander & Daniel D. Birk, *Article III and the Scottish Judiciary*, 124 Harv. L. Rev. 1613 (2011) (discussing influence of Scottish model on the drafting of Article III).

Within England and America, quiet title actions have long provided for a definitive declaration of the

ownership of real property. *See* Edwin M. Borchard, *The Uniform Declaratory Judgments Act*, 18 Minn. L. Rev. 239, 240, 246 (1934). At least since 1852 in England, declaratory relief was available to determine the obligations of trustees to their beneficiaries. *See* S. Rep. No. 73-1005, at 4; Edwin M. Borchard, *Judicial Relief for Insecurity*, 33 Colum. L. Rev. 648, 678 (1933). While the common law forms of action did not make declaratory relief generally available, litigants could use the device of a suit for nominal damages to seek what amounted to declaratory relief. *See Uzuegbunam v. Preczewski*, 592 U.S. 279, 285 (2021) ("The award of nominal damages was one way for plaintiffs at common law to 'obtain a form of declaratory relief in a legal system with no general declaratory judgment act.'" (*quoting* D. Laycock & R. Hasen, Modern American Remedies 636 (5th ed. 2019)). This Court also countenanced the use of feigned proceedings to obtain a declaration of rights and obligations so long as there was "an actual controversy, and adverse interests." *Lord v. Veazie*, 49 U.S. (8 How.) 251, 255 (1850); Pfander, *supra,* 178 n. 37 (*discussing Veazie*).

By the early twentieth century, states and territories began to rationalize their systems for obtaining declaratory relief. In 1922, the Uniform Declaratory Judgments Act was approved by the National Conference of Commissioners on Uniform State Laws. Borchard, *supra*, 18 Minn. L. Rev. at 240. Thirty-four states and territories had enacted declaratory judgment acts before Congress enacted the federal Act. S. Rep. No. 73-1005, at 4. Like those legislatures, Congress concluded that declaratory relief was a necessary part of an effective judicial system.

Before enacting the DJA, Congress considered multiple bills that would have provided for declaratory relief in Article III courts. *See* S. Rep. No. 73-1005, at 5 (noting that bills to create a declaratory judgment act had passed the House four times). Commentators, including Professor Borchard, argued that declaratory relief in a "justiciable controversy" was well within Congress's authority to authorize. Edwin M. Borchard, *The Constitutionality of Declaratory Judgments*, 31 Colum. L. Rev. 561, 609 (1931). But some early twentieth century opinions raised doubts about the constitutionality of a federal declaratory judgment act. In an opaque opinion about a statute involving title to Indian lands, this Court seemed to suggest that requests for declaratory relief were nonjusticiable requests for advisory opinions. *Muskrat v. United States*, 219 U.S. 346 (1911). The statute in that case was, however, unusual insofar as its "whole purpose [was] . . . to determine the constitutional validity of [a] class of legislation." *Id.* at 361. In 1928, Justice Brandeis concluded that declaratory relief was "beyond the power conferred upon the federal judiciary" in a case where "[n]o defendant [had] wronged the plaintiff or [had] threatened to do so." *Willing v. Chicago Auditorium Ass'n*, 277 U.S. 274, 289-90 (1928); *see also Liberty Warehouse Co. v. Grannis*, 273 U.S. 70, 76 (1927) (concluding that Article III court lacked jurisdiction over action that sought "merely to obtain an abstract judicial declaration"). During this period, the U.S. Senate considered several declaratory judgment bills that had passed the House but did not vote to enact any of them in light of the apparent uncertainty about their constitutionality. *See* S. Rep. No. 73-1005, at 5-6.

In 1933, however, this Court "dispelled those doubts." *MedImmune, Inc. v. Genentech, Inc.*, 549 U.S. 118, 126 (2007). It held that a state declaratory judgment was reviewable under Article III. *Nashville, C. & St. L. R. Co. v. Wallace*, 288 U.S. 249 (1933). The action sought "a definitive adjudication of the disputed constitutional right of the appellant," not, as in *Muskrat*, "an abstract determination by the Court of the validity of a statute." *Id.* at 262. Where a declaratory action involves a concrete controversy, the Court held, it is not a prerequisite to federal jurisdiction that there be a further "award of process or execution." *Id.* at 263.

Following this Court's lead, Congress enacted a carefully tailored DJA that expressly reflected Article III's case or controversy requirement. The Senate Committee on the Judiciary's Report accompanying the DJA's enactment made clear that this Court had resolved the Members' questions about the Act's constitutionality. *See* S. Rep. No. 73-1005, at 5. As early as 1928, the Report explained, a subcommittee of the Judiciary Committee had heard from some of the nation's leading judges and lawyers, who supported the enactment of a declaratory judgment act.[2] *Id.* at 1-2.

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[2] These included Henry Taft of the American Bar Association, Professor Borchard of the Yale Law School, Professor Edson Sunderland of the Michigan Law School, all of whom testified to Congress, as well as Chief Judge Cardozo of the New York Court of Appeals, Judge Jesse Miller of Minnesota, Judge Thomas Swan of the Second Circuit, and Chief Justice von Moschzisker of the Supreme Court of Pennsylvania. S. Rep. No. 73-1005, at 1-2.

As the Judiciary Committee reported, "[t]he declaratory judgment differs in no essential respect from any other judgment" save one: "it is not followed by a decree for damages, injunction, specific performance, or other immediately coercive decree." S. Rep. No. 73-1005, at 2. But this difference did not make declaratory relief unconstitutional. On this point, the Senate Judiciary Committee's report grappled with the constitutional question:

> For some time doubts prevailed in certain courts, which assumed that the declaratory judgment had an analogy to advisory opinions. This confusion has now been dissipated. The declaratory judgment is a final, binding judgment between adversary parties and conclusively determines their rights. The Federal bill specifically provides for declaratory adjudication only "in cases of actual controversy." That precludes hypothetical, academic, or moot cases. The words "in cases of actual controversy" are designed to make certain what would be obvious even without them. The court has a discretion, now hardened into a rule, not to issue the judgment if it will not finally settle the rights of the parties. The question of constitutionality has now been unanimously decided in 20 courts of the United States, Michigan having reversed its earlier opinion in which it was assumed that a declaratory judgment was an advisory opinion.
>
> The United States Supreme Court, after some hesitation in dicta, finally had squarely to pass upon the matter and, in an exhaustive opinion, upheld the declaratory judgment as of the very

> essence of judicial power. [Citing *Nashville*, 288 U.S. at 249.] . . .
>
> The bill in its present form is a refinement of years of consideration. . . .
>
> Finally, it may be said that the declaratory-judgment procedure has been molded and settled by thousands of precedents, so that the administration of the law has been definitely clarified. The 1,200 American decisions have established that the proceeding must be adversary, all interested parties must be cited, the issue must be real, the question practical and not academic, and the decision must finally settle and determine the controversy.
>
> The long history of the procedure in England, and for some 15 years in the United States, encourages the committee to believe that the new section of the Judicial Code will be an important aid in the administration of justice.

Id. at 5-6. Thus, Congress, having considered multiple bills, and having explored the constitutional question with the benefit of thousands of judicial opinions as well as the testimony and reports of leading jurists and scholars, enacted the DJA as a necessary part of an effective judicial system.

The significance of Congress's act was not lost at the time. The *ABA Journal* editorial on the Act put it plainly: "*Congress Strengthens the Machinery of Justice*." *See* 20 A.B.A. J. 422 (1934). Together with the Rules Enabling Act, which was enacted during the same term of Congress, the DJA improved the administration of procedure and remedies in the federal judiciary. *Id.* at 423. As for the DJA, the

"wonder [was] that it ha[d] . . . been so long delayed." *Id.*

This Court did not take long to confirm the DJA's constitutionality. In *Aetna Life Insurance Co. v. Haworth*, 300 U.S. at 227, it held that Congress had acted consistently with Article III in authorizing federal courts to issue declaratory relief in actual cases and controversies. Congress, this Court stressed, had obviously tailored the DJA to Article III's case or controversy requirement by limiting it to "cases of actual controversy." 28 U.S.C. § 2201(a); *see Aetna*, 300 U.S. at 239-40 ("The Declaratory Judgment Act of 1934 . . . manifestly has regard to the constitutional provision and is operative only in respect to controversies which are such in the constitutional sense."). By affirming the authority of Article III courts to issue declaratory relief in a justiciable case, Congress had acted well "within its sphere of remedial action." *Aetna*, 300 U.S. at 240.

Congress's power to authorize declaratory relief was not limited to cases in which litigants also sought legal or other forms of equitable relief. A case premised upon the DJA may be justiciable even though damages are not available. *See Aetna*, 300 U.S. at 241. "And as it is not essential to the exercise of the judicial power that an injunction be sought, allegations that irreparable injury is threatened are not required." *Id.*; *see also Steffel v. Thompson*, 415 U.S. 452, 471-72 (1974) (holding that declaratory judgment could issue even if an injunction were not available).

Thus, the DJA was the product of a healthy interbranch dialogue. Congress carefully considered its independent obligation to act consistently with Article III. The Court recognized Congress's careful

crafting of the DJA and affirmed that a judicial declaration may "definitive[ly]" resolve a justiciable dispute without further court action. *Aetna*, 300 U.S. at 241.

B. THE DJA IS AMONG THE MOST CONSEQUENTIAL REMEDIAL STATUTES EVER ENACTED BY CONGRESS

Declaratory judgments may resolve cases and controversies as definitively as damages or injunctions. Indeed, "[t]he constitutional status of the Declaratory Judgment Act was settled precisely because a prospective declaratory judgment is a real decision that binds and coerces like other judgments." Samuel L. Bray, *The Myth of the Mild Declaratory Judgment*, 63 Duke L.J. 1091, 1122 (2014). The ABA's 1934 prediction proved prescient: Federal declaratory relief has been an efficacious and necessary remedy for the enforcement of federal law and administration of justice.

As the Senate Judiciary Committee explained when Congress enacted the DJA, declaratory relief is an indispensable remedy because it allows for a speedy and timely resolution of legal disputes. S. Rep. No. 1005-73, at 2 ("[A declaratory judgment] declares conclusively and finally the rights of parties in litigations over a contested issue, a form of relief which often suffices to settle controversies and fully administer justice."). Then, as now, one of its primary purposes is "the construction of instruments of all kinds" and the declaration of rights and obligations under such instruments. *Id.*

Since the DJA's enactment, declaratory judgments construing the Constitution have become a staple of federal constitutional litigation. *See* Bray, *supra*, 1120 (listing cases); *cf.* Henry Paul Monaghan, *A Cause of Action Anyone?: Federal Equity and the Preemption of State Law*, 91 Notre Dame L. Rev. 1807, 1821 (2016) ("[W]e have a longstanding tradition of suits against officers seeking equitable or declaratory relief for alleged wrongful conduct."). That is true of judgments enforcing the constitutional separation of powers and federalism. *See, e.g.*, *Nat'l Fed'n of Ind. Bus. v. Sebelius*, 567 U.S. 519 (2012). And it is true of judgments enforcing individual constitutional rights. *See, e.g.*, *44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484 (1996).

There are numerous areas of statutory law in which declaratory relief is equally, if not more, important. Within the field of patent law, to take one instance, the availability of declaratory relief streamlines the resolution of disputes about patent validity. Declaratory relief is necessary where, for example, "private and public costs may already be accruing from . . . legal uncertainty" even before a request for injunctive relief would be appropriate. Bray, *supra*, at 1140-41. Recognizing the importance of declaratory relief in resolving patent disputes, this Court rejected a test that would have precluded such relief before an injunctive remedy became available. *See MedImmune*, 549 U.S. at 133 (rejecting a "reasonable apprehension of imminent suit" requirement for issuance of declaratory relief).

C. THE DJA PROVIDES A VITAL REMEDY IN ACTIONS THAT, SUCH AS PETITIONERS', SEEK DECLARATORY RELIEF BASED UPON THE CONSTRUCTION OF A LEGAL INSTRUMENT

When Congress enacted the DJA, it expected that Article III courts would be open to suits seeking a declaration of rights and obligations under legal instruments. The declaratory judgment action had proven its efficacy where the interpretation of legal instruments was in dispute. *See* S. Rep. No. 73-1005, at 3-5. Prior to the DJA's enactment, English courts, as well as state courts, had adjudicated numerous actions seeking a declaration that a trustee either did (or did not) owe a fiduciary duty. Edwin M. Borchard, *The Declaratory Judgment in the United States,* 37 W. Va. L. Rev. 127, 134 (1931). Declaratory relief has also long been available to enforce the constitutional duties of government officials. *Supra* pp. 13-14.

Against this backdrop, petitioners seek a familiar form of declaratory relief. According to the petitioners' complaint, the Due Process Clause of the Fifth Amendment imposes upon the federal government a duty to act as a trustee of the climate for America's youth and future generations. They also seek a declaration that their Fifth Amendment rights depend upon a viable climate and that the federal government's ongoing conduct violates their fundamental rights to life and personal security. This question of constitutional construction is one that the federal courts have the competence and the responsibility to answer. *See generally Cohens v.*

Virginia, 6 U.S. (6 Wheat.) 264, 404 (1821) (Article III courts have "no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given.").

II. THE NINTH CIRCUIT'S HOLDING WOULD EVISCERATE THE DJA

The Ninth Circuit ducked its constitutional responsibility by holding that actions for declaratory relief are not justiciable "absent further court action." Pet. App. 3a (internal quotation marks omitted). According to the Ninth Circuit's unprecedented rule, declaratory relief does not on its own satisfy the redressability requirement of Article III standing doctrine. This holding conflicts with the express text of the DJA and would, if accepted, render the statute a dead letter.

A. THE NINTH CIRCUIT'S HOLDING CONFLICTS WITH CONGRESS'S EXPRESS INTENT TO AUTHORIZE DECLARATORY RELIEF AS AN INDEPENDENT REMEDY

The DJA expressly authorizes declaratory relief without regard to the availability of coercive relief:

> In a case of actual controversy within its jurisdiction, . . . any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, *whether or not further relief is or could be sought*. Any such declaration shall have the force and

> effect of a final judgment or decree and shall be reviewable as such.

28 U.S.C. § 2201(a) (emphasis added). Congress's intent could not be plainer: under the DJA, declaratory relief is independently available and declaratory judgments stand on the same footing as other final and reviewable judgments.[3]

Congress's purpose was to remove formalistic barriers to declaratory relief. No longer would it be necessary for a litigant to seek nominal damages as a way of pursuing their real aim of declaratory relief. *Cf. Uzuegbunam*, 592 U.S. at 285-92. (explaining that suit for nominal damages permitted litigants to seek declaratory relief at common law). No longer would it be necessary to satisfy the requirements for a coercive injunction to settle a dispute that could be settled through a declaratory judgment. *See Aetna*, 300 U.S. at 242. Declaratory relief would be an available and efficacious remedy in its own right.

The Ninth Circuit's holding conflicts with Congress's express direction to federal courts to treat declaratory relief as just another available remedy alongside other forms of equitable relief or legal relief. In the Ninth Circuit's rendering, there can be no justiciable controversy unless "further court action" is sought or at least could be sought. Pet. App. 3a

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[3] Professor Borchard, one of the DJA's principal scholarly proponents and a witness at congressional hearings on the proposed bill, argued that declaratory relief is available and appropriate when an injunction is *not* available. Edwin Borchard, *The Federal Declaratory Judgments Act*, 21 Va. L. Rev. 35, 40 (1934).

(internal quotation marks omitted). That is not the DJA's rule.[4]

B. THE NINTH CIRCUIT'S HOLDING CONFLICTS WITH THIS COURT'S PRECEDENT AND CREATES A CIRCUIT SPLIT

Perhaps because it flouts the DJA's plain text, the Ninth Circuit purported to find its new rule elsewhere. According to the Ninth Circuit, this Court's precedent holds that a plaintiff seeking only declaratory relief cannot satisfy the redressability requirement of Article III without a particularized factual showing that a federal agency or official will follow the declaratory judgment. In particular, the Ninth Circuit concluded that petitioners could not meet this requirement because they could not demonstrate that additional coercive relief would be available. But this Court's precedent, like the DJA itself, rules out the Ninth Circuit's novel rule, as other circuits have recognized.

Consider first the direct conflict between the Ninth Circuit's holding and this Court's holding that the DJA is constitutional. *See Aetna*, 300 U.S. at 227.

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[4] The Ninth Circuit, moreover, plainly erred in ignoring Federal Rule of Civil Procedure 57. As the Advisory Committee Note to Rule 57 makes clear, "[t]he fact that a declaratory judgment may be granted 'whether or not further relief is or could be prayed' indicates that declaratory relief is alternative or cumulative and not exclusive or extraordinary." Fed. R. Civ. P. 57, notes of advisory committee-1937. That is why Rule 57 provides that "[t]he existence of another adequate remedy does not preclude a declaratory judgment that is otherwise appropriate." *Id.*

The Ninth Circuit held that the availability of coercive relief was essential to any exercise of the Article III power to grant declaratory relief. To the contrary, this Court held in *Aetna* that "it is not essential to the exercise of the judicial power that an injunction be sought." 300 U.S. at 241. Where the Ninth Circuit assumed that declaratory relief would "do nothing 'absent further court action,'" Pet. App. 3a, this Court has assumed, time and again, that declaratory relief is efficacious and issued judgments for only declaratory relief. If the Ninth Circuit is right, then this Court has been wrong every time it has issued declaratory relief when further court action in the form of coercive relief was not available.

In *Steffel v. Thompson*, 415 U.S. 452, this Court held that declaratory relief may be available to enforce constitutional rights even when the plaintiff cannot demonstrate irreparable injury as required for injunctive relief. To hold otherwise, this Court explained would be to "engraft[] upon the Declaratory Judgment Act" a requirement that Congress did not create and thus "would defy Congress's intent to make declaratory relief available in cases where an injunction would be inappropriate." *Id.* at 471. The "only" exception was for cases in which "principles of federalism militated altogether against federal intervention in a class of adjudications," *id.* at 472—an exception that, needless to say, does not extend to this case of national concern.

This Court, moreover, has held that declaratory relief against government officials suffices for the Article III redressability requirement. In *Utah v. Evans*, 536 U.S. 452 (2002), this Court held that a constitutional suit against the Secretary of Commerce

challenging the method for calculating the 2000 census was justiciable. The State of Utah sought a declaration that the Secretary's report erred in how it calculated the populations of North Carolina and Utah. It also requested an injunction. Either way, this Court held, a judicial remedy would redress Utah's injury: "Victory would mean a declaration leading, or an injunction requiring, the Secretary to substitute a new 'report' for the old one." *Id.* at 463.

In so holding, this Court adopted the controlling plurality opinion in *Franklin v. Massachusetts*, 505 U.S. 788 (1992), which concluded that an injury may be "redressed by declaratory relief . . . alone." *See Evans*, 563 U.S. at 460-61, 463-64 (quoting *Franklin*, 505 U.S. at 803 (plurality op.)). The Commonwealth of Massachusetts and two individuals sued to challenge the methodology for the 1990 census. This Court concluded that an Article III court could not order injunctive relief against the President or members of Congress to alter the apportionment of representatives. But a federal court could declare that the Secretary of Commerce used an unlawful method of calculation. And this declaratory relief would by itself suffice for Article III's redressability requirement. *Franklin*, 505 U.S. at 803 (plurality op.). Redressability was satisfied in both *Evans* and *Franklin* because it was "'substantially likely that the President and other executive and congressional officials would abide by an authoritative interpretation of the census statute and constitutional provision.'" *Evans*, 536 U.S. at 464 (quoting *Franklin*, 505 U.S. at 803 (plurality op.)).

Evans and *Franklin* foreclose the Ninth Circuit's conclusion that declaratory relief may not by

itself satisfy the redressability requirement of Article III standing doctrine. The Ninth Circuit apparently assumed, without explanation, that federal officials would not abide by an authoritative declaration that their continuing conduct violates the Constitution. In *Evans* and *Franklin*, this Court adopted the contrary assumption that declaratory relief against federal government officials is "'substantially likely'" to lead to government compliance with law. *Evans*, 536 U.S. at 464 (quoting *Franklin*, 505 U.S. at 803 (plurality op.)). Declaratory relief against the federal government therefore results "in a significant increase in the likelihood that the plaintiff would obtain relief"—which is the showing that this Court's precedent requires.[5] *Evans*, 536 U.S. at 464.

Indeed, the Ninth Circuit's implicit assumption that federal officials cannot be expected to follow authoritative legal declarations by federal officials cannot be squared with Congress's enactment of the DJA or this Court's DJA jurisprudence. Congress found that declaratory relief is an effective remedy even when coercive relief is not sought or available. This Court has similarly recognized that declaratory relief, especially against federal officials who take an oath to observe the Constitution, is likely to be effective. Of course, government officials sometimes try to evade their constitutional obligations. But the proper response is not to conclusively presume, as the Ninth Circuit did, that declaratory relief against the

[5] *See also Duke Power Co. v. Carolina Envt. Study Grp.*, 438 U.S. 59, 78 (1978) ("Nothing in our prior cases requires a party seeking to invoke federal jurisdiction to negate the kind of speculative and hypothetical possibilities suggested in order to demonstrate the likely effectiveness of judicial relief.").

government is inefficacious and therefore that declaratory judgment actions by themselves are nonjusticiable.

The Ninth Circuit's holding also conflicts with the approach of other circuits. The Ninth Circuit denied the jurisdiction of the federal courts in cases where there is an ongoing injury traceable to the government's unconstitutional conduct by holding that declaratory relief does not satisfy the redressability requirement for Article III standing. Its sister circuits, by contrast, have recognized that whether an Article III court has jurisdiction to award declaratory relief is a different question from whether declaratory relief is within the discretion of the district court.[6]

For example, in *Miller v. Christopher*, 96 F.3d 1467 (D.C. Cir. 1996), the D.C. Circuit held that a plaintiff who had suffered an ongoing injury from the government's application of an allegedly unconstitutional statute had standing to seek a declaration that the statute was unconstitutional. The

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[6] As the petitioners have argued, the Ninth Circuit also erred by disregarding the statutory final judgment rule in its rush to dismiss this case on erroneous jurisdictional grounds. *See* Pet. for Cert. 25-36; *see also* 28 U.S.C. § 1291 (court of appeals jurisdiction over appeals from "final decisions of the district courts"); *Richardson-Merrell, Inc. v. Koller*, 472 U.S. 424, 429-30 (1985) ("The statutory requirement of a 'final decision' means that 'a party must ordinarily raise all claims of error in a single appeal following final judgment on the merits.'"). As this Court has held, mandamus is not a substitute for the appeals process that Congress has crafted. *See Cheney v. U.S. Dist. Ct.*, 542 U.S. 367, 380 (2004). That is why a mandamus petitioner must show that it has no other adequate means, including a direct appeal, for obtaining relief. *See id.* at 380-81.

question before the court of appeals was whether declaratory relief may by itself satisfy the redressability requirement of Article III standing doctrine when controlling Supreme Court precedent precluded injunctive relief. The plaintiff's application for U.S. citizenship was denied under a federal statute that the plaintiff argued was unconstitutional. In *INS v. Pangilinan*, 486 U.S. 875 (1988), this Court concluded that federal courts do not have equitable authority to confer citizenship. The D.C. Circuit held, however, that the plaintiff's suit was justiciable because an Article III court could issue a declaration that the challenged statute was unconstitutional and a finding that the plaintiff would be entitled to citizenship under the generally applicable rules concerning U.S. citizenship. *See Miller*, 96 F.3d at 1470. It then proceeded to consider the merits and ultimately to rule against the claimant, as the DJA and this Court's precedents direct. As the D.C. Circuit held, declaratory relief was sufficient for Article III standing because it would make it "likely" that the plaintiff's ongoing injury would be redressed. *Id.* (internal quotation marks omitted).

More generally, circuit courts have repeatedly held that declaratory relief is available even when other forms of relief are not. *See, e.g.*, *Anatol Zukerman & Charles Kause Reporting, LLC v. U.S. Postal Serv.*, 64 F.4th 1354, 1366 (D.C. Cir. 2023) ("a request for declaratory relief may be considered independently of whether other forms of relief are appropriate"); *Ulstein Maritime, Ltd. v. United States*, 833 F.2d 1052, 1055 (1st Cir. 1987) ("a declaratory judgment is a milder remedy which is frequently

available in situations where an injunction is unavailable or inappropriate").

This Court should grant certiorari to make clear that declaratory relief satisfies the redressability requirement of Article III standing doctrine. This jurisdictional question is distinct from the question whether an Article III court should exercise its discretion under the DJA to award declaratory relief. *See generally Wilton v. Seven Falls Co.*, 515 U.S. 277, 287 (1995) ("[T]he propriety of declaratory relief in a particular case will depend upon a circumspect sense of its fitness informed by the teachings and experience concerning the functions and extent of federal judicial power." (internal quotation marks omitted)). Just as this Court recently clarified that "a request for nominal damages satisfies the redressability element of standing," *Uzuegbunam*, 592 U.S. at 802, it should grant certiorari in this case to clarify that a request for declaratory relief satisfies the redressability requirement without a particularized factual showing that a federal agency or official will follow a declaratory judgment. Doing so is necessary to vindicate Congress's intent in enacting the DJA as well as this Court's declaratory judgment jurisprudence.

CONCLUSION

For the foregoing reasons, *Amici* Members of Congress respectfully request that this Court grant the petitioners' petition for a writ of certiorari.

Respectfully submitted,

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January 13, 2025

APPENDIX

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LIST OF *AMICI CURIAE*

U.S. Senate

Jeff Merkley of Oregon

Cory Booker of New Jersey

Edward Markey of Massachusetts

Bernard Sanders of Vermont

Chris Van Hollen of Maryland

Sheldon Whitehouse of Rhode Island

Ron Wyden of Oregon

U.S. House of Representatives

Jan Schakowsky of Illinois

Alma Adams of North Carolina

Nanette Barragaìn of California

Julia Brownley of California

Andre Carson of Indiana

Yvette Clarke of New York

Danny Davis of Illinois

Mark DeSaulnier of California

Veronica Escobar of Texas

Adriano Espaillat of New York

Maxwell Frost of Florida

Jesús García of Illinois

Raúl Grijalva of Arizona

Jared Huffman of California

Jonathan Jackson of Illinois

Pramila Jayapal of Washington

Hank Johnson of Georgia

Ro Khanna of California

Summer Lee of Pennsylvania

Betty McCollum of Minnesota

Jim McGovern of Massachusetts

Eleanor Holmes Norton of the District of Columbia

Alexandria Ocasio-Cortez of New York

Ilhan Omar of Minnesota

Chellie Pingree of Maine

Mark Pocan of Wisconsin

Delia Ramirez of Illinois

Jamie Raskin of Maryland

Deborah Ross of North Carolina

Mary Gay Scanlon of Pennsylvania

Melanie Stansbury of New Mexico

Rashida Tlaib of Michigan

Jill Tokuda of Hawaii

Nydia Velázquez of New York

Bonnie Watson Coleman of New Jersey

Frederica Wilson of Florida