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. DONALD J. TRUMP, President of the United States, et al., Petitioners, v. NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, et al., Respondents. _____ KEVIN K. MCALEENAN, Acting Secretary of Homeland Security, et al., Petitioners, v. MARTIN JONATHAN BATALLA VIDAL, et al., Respondents. **On Writs Of Certiorari To The United States Courts Of Appeals For The** Ninth, District Of Columbia, and Second Circuits **BRIEF OF ALIANZA AMERICAS AND 10 OTHER IMMIGRATION RIGHTS ORGANIZATIONS AS** AMICI CURIAE IN SUPPORT OF RESPONDENTS NEIL V. MCKITTRICK Counsel of Record LORENZO R. CABANTOG OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.

SMOAK & STEWART, P.C. One Boston Place, Suite 3500 Boston, MA 02108 (617) 994-5726 neil.mckittrick@ogletree.com Counsel for Amici Curiae

COCKLE LEGAL BRIEFS (800) 225-6964 WWW.COCKLELEGALBRIEFS.COM

DOCKE

RM

Find authenticated court documents without watermarks at docketalarm.com.

TABLE OF CONTENTS

| TABLE OF CONTENTS | i |
|---|------|
| TABLE OF AUTHORITIES | ii |
| INTEREST OF THE AMICI CURIAE | 1 |
| SUMMARY OF ARGUMENT | 1 |
| ARGUMENT | 4 |
| I. DHS FAILED TO CONSIDER THE SIGNIF- ICANT RELIANCE INTERESTS CREATED BY THE DACA PROGRAM BEFORE IT | |
| DECIDED TO RESCIND DACA | 4 |
| A. THE 2017 DUKE MEMORANDUM DID NOT CONSIDER AT ALL THE RELI- ANCE INTERESTS AT STAKE | 5 |
| B. THE JUNE 2018 NIELSON MEMO- RANDUM WAS A POST HOC RATION- ALIZATION THAT IS NOT PROPERLY PART OF THE ADMINISTRATIVE REC- ORD AND WHICH ALSO FAILED TO CONSIDER ADEQUATELY THE SUB- STANTIAL RELIANCE INTERESTS INVOLVED | 9 |
| II. THE RELIANCE INTERESTS INVOLVE SIGNIFICANT SOCIAL AND ECONOMIC BENEFITS TO DACA RECIPIENTS AND | - |
| THE COMMUNITY AT LARGE | 13 |
| III. RESCINDING DACA WOULD POTEN- TIALLY RESULT IN THE ENTRAPMENT | 1 17 |
| | 17 |
| CONCLUSION | 20 |
| APPENDIX A—LIST OF AMICI | 1a |

TABLE OF AUTHORITIES

Page

CASES

| <i>Am. Textile Mfrs. Inst. v. Donovan</i> , 452 U.S. 490 (1981) |
|---|
| Camp v. Pitts, 411 U.S. 138 (1973)10 |
| Cox v. Louisiana, 379 U.S. 559 (1965)18 |
| <i>Encino Motorcars LLC v. Navarro</i> , 136 S. Ct. 2117 (2016) |
| FCC v. Fox Television Stations, Inc., 556 U.S. 502 (2009)4, 7, 11, 12 |
| Martin v. Occupational Safety & Health Review Comm'n, 499 U.S. 144 (1991)12 |
| Matter of Bell Petroleum Servs., Inc., 3 F.3d 889 (5th Cir. 1993) |
| Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co., 463 U.S. 29, 103 S. Ct. 2856 (1983)9 |
| NAACP v. Trump, 298 F. Supp. 3d 209 (D.D.C.), denied on reconsideration, 315 F. Supp. 3d 457 (D.D.C. 2018) |
| Raley v. Ohio, 360 U.S. 423, 79 S. Ct. 1257 (1959) 18 |
| Regents of the Univ. of Cal. v. U.S. Dep't of Home- land Sec., 279 F. Supp. 3d 1011 (N.D. Cal. 2018)passim |
| Regents of the Univ. of Cal. v. U.S. Dep't of Home- land Sec., 908 F.3d 476 (9th Cir. 2018)10 |

TABLE OF AUTHORITIES – Continued

iii

Page

| Sec. and Exchange Comm'n v. Chenery Corp., | |
|---|---|
| 332 U.S. 194 (1947) | 9 |
| Vargas v. I.N.S., 938 F.2d 358 (2d Cir. 1991) | 9 |

RULES

| S. Ct. R. 37.2(a)1 | |
|--------------------|--|
| S. Ct. R. 37.61 | |

OTHER AUTHORITIES

| Alex Horton, The military looked to 'dreamers' to |
|--|
| use their vital skills. Now the U.S. might deport |
| them. (Sept. 7, 2017) (available at https://www. |
| washingtonpost.com/news/checkpoint/wp/2017/ |
| 09/07/the-military-looked-to-dreamers-to-use- |
| their-vital-skills-now-the-u-s-might-deport-them/)17 |
| Alexander Casey, An Estimated 123,000 "Dream- ers" Own Homes and Pay \$380M in Property Taxes, Zillow (Sept. 20, 2017) (available at https:// www.zillow.com/research/daca-homeowners-380M- taxes-16629) |
| Blake Emerson, The Claims of Official Reason: |
| Administrative Guidance on Social Inclusion, |
| 128 Yale L.J. 2122 (2019) |

TABLE OF AUTHORITIES – Continued

| \mathbf{P} | a | 2e | e |
|--------------|---|----|---|

| Elaine C. Duke, Rescission of the June 15, 2012 Memorandum Entitled "Exercising Prosecu- torial Discretion with Respect to Individuals Who Came to the United States as Children," U.S. Dep't Homeland Security (Sept. 5, 2017) (available at https://www.dhs.gov/news/2017/ 09/05/memorandum-rescission-daca) | 2 |
|--|----|
| Form I-765, Application for Employment Au- thorization, Eligibility Category and Filing Type, fiscal years 2003-2018, available at https:// www.uscis.gov/sites/default/files/USCIS/Resources/ Reports%20and%20Studies/Immigration%20 Forms%20Data/Employment-based/I-765_RAD_ FY03-18.pdf | 14 |
| Kirstjen M. Nielsen, Memorandum from Secre- tary Kirstjen M. Nielsen on the Rescission of Deferred Action for Childhood Arrivals (DACA) (June 22, 2018) (available at https://www.dhs. gov/sites/default/files/publications/18_0622_S1_ Memorandum_DACA.pdf) | 2 |
| Remarks by the President on Immigration, June 15, 2012 (available at https://obamawhitehouse. archives.gov/the-press-office/2012/06/15/remarks- president-immigration) | 19 |
| Roberto G. Gonzales et al., Becoming DACA- mented: Assessing the Short-Term Benefits of Deferred Action for Childhood Arrivals (DACA), 58 Am. Behav. Scientist 1852 (2014) | 15 |
| United States Citizenship and Immigration Ser- vices Form I-821D | 13 |

iv

DOCKET A L A R M



Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.