

Nos. 18-587, 18-588, 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 Circuit, District
Of Columbia Circuit, And Second Circuit**

**AMICUS BRIEF OF SAVE JOBS USA AND THE
WASHINGTON ALLIANCE OF TECHNOLOGY
WORKERS IN SUPPORT OF PETITIONERS**

JOHN M. MIANO
Counsel of Record
IMMIGRATION REFORM LAW INSTITUTE
25 Massachusetts Ave., NW, Suite 315
Washington DC 20001
(202) 232-5590
miano@colosseumbuilders.com

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

TABLE OF CONTENTS

	Page
INTEREST OF <i>AMICI CURIAE</i>	1
SUMMARY OF THE ARGUMENT	3
ARGUMENT	4
I. DACA is unlawful because DHS has no authority to permit alien employment through administrative actions not authorized by Congress	4
A. Section 1324a(h)(3) cannot confer on DHS the authority to authorize alien employment because it is a term definition, limited in scope to its own section.....	5
B. Congress did not confer on DHS dual authority to define classes of aliens eligible for employment in the agency’s general authority to promulgate regulations	8
C. Even if Congress had attempted to confer on DHS the power to define classes of aliens eligible for employment, such a delegation of power would be unconstitutional.....	11
II. Whether § 1324a(h)(3) confers on DHS co-equal authority with Congress to authorize any class of aliens it chooses to work will have major implications throughout the immigration system and is not an issue to be lightly considered	14
CONCLUSION.....	16

TABLE OF AUTHORITIES

	Page
CASE LAW:	
<i>Arizona Dream Act Coal. v. Brewer</i> , 757 F.3d 1053 (9th Cir. 2014).....	6
<i>Arizona v. Inter Tribal Council of Ariz., Inc.</i> , 133 S. Ct. 2247 (2013)	13
<i>Clinton v. City of N.Y.</i> , 524 U.S. 417 (1998).....	12
<i>Guevara v. Holder</i> , 649 F.3d 1086 (9th Cir. 2011).....	6
<i>J. W. Hampton, Jr., & Co. v. United States</i> , 276 U.S. 394 (1928)	12
<i>Indus. Union Dep’t, AFL-CIO v. Am. Petroleum Inst.</i> , 448 U.S. 607 (1980)	16
<i>Int’l Longshoremen’s & Warehousemen’s Union v. Meese</i> , 891 F.2d 1374 (9th Cir. 1989).....	14
<i>Int’l Union of Bricklayers & Allied Craftsmen v. Meese</i> , 761 F.2d 798 (D.C. Cir. 1985).....	14
<i>Loving v. United States</i> , 517 U.S. 748 (1996)	12
<i>NAACP v. Trump</i> , 298 F. Supp. 3d 209 (D.D.C. 2018).....	5
<i>Regents of the Univ. of Cal. v. U.S. Dep’t of Homeland Sec.</i> , 279 F. Supp. 3d 1011 (N.D. Cal. 2018).....	2, 6, 8
<i>Texas v. United States</i> , 809 F.3d 134 (5th Cir. 2015).....	5, 6, 8
<i>United States v. Texas</i> , 136 S. Ct. 2271 (2015).....	6

TABLE OF AUTHORITIES—Continued

	Page
<i>Util. Air Regulatory Grp. v. Eenvtl. Prot. Agency</i> , 573 U.S. 302 (2014)	7
<i>Vidal v. Nielsen</i> , 279 F. Supp. 3d 401 (E.D.N.Y. 2018)	5, 8
<i>Whitman v. Am. Trucking Ass'ns</i> , 531 U.S. 457 (2001)	4, 8, 10, 12, 13
CONSTITUTION:	
U.S. Const., Art. I, § 7	12
STATUTES:	
Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163	9, 11
Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 Stat. 911	11
Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3445	8
Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4978	11
Consolidated Appropriations Resolution, 2003, Pub. L. No. 108-7, 117 Stat. 11	9
8 U.S.C. § 1103	9, 13
8 U.S.C. § 1324a(h)(3)	<i>passim</i>

TABLE OF AUTHORITIES—Continued

	Page
REGULATIONS:	
Employment Authorization for Certain H-4 Dependent Spouses, 80 Fed. Reg. 10,284 (Feb. 25, 2015)	10
Improving and Expanding Training Opportunities for F-1 Nonimmigrant Students With STEM Degrees and Cap-Gap Relief for All Eligible F-1 Students, 81 Fed. Reg. 13,040 (Mar. 11, 2016)	2, 11
Extending Period of Optional Practical Training by 17 Months for F-1 Nonimmigrant Students With STEM Degrees and Expanding Cap-Gap Relief for All F-1 Students, 73 Fed. Reg. 18,944 (Apr. 8, 2008)	15
Employment Authorization for Certain H-4 Dependent Spouses, 80 Fed. Reg. 10,284 (Feb. 25, 2015)	1, 10
Enhancing Opportunities for H-1B1, CW-1, and E-3 Nonimmigrants and EB-1 Immigrants, 81 Fed. Reg. 2,068 (Jan. 15, 2016)	10
International Entrepreneur Rule, 82 Fed. Reg. 5,238 (Jan. 17, 2017)	11
CONGRESSIONAL REPORTS:	
S. Rep. No. 82-1072 (1952)	9
S. Rep. No. 82-1137 (1952)	9
H.R. Rep. No. 82-1365	9

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.