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, $\it et$ $\it al., Petitioners,$

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 FOR AMICUS CURIAE IMMIGRATION REFORM LAW INSTITUTE IN SUPPORT OF THE PETITIONERS

CHRISTOPHER J. HAJEC*
IMMIGRATION REFORM LAW INSTITUTE
25 Massachusetts Ave., NW, Suite 335
Washington, DC 20001
(202) 232-5590
chajec@irli.org
*Counsel of Record

August 26, 2019 Counsel for Amicus Curiae

Becker Gallagher · Cincinnati, OH · Washington, D.C. · 800.890.5001



TABLE OF CONTENTS

TABLE OF AUTHORITIESii
INTEREST OF AMICUS CURIAE
SUMMARY OF THE ARGUMENT 1
ARGUMENT
I. Because DACA Was Invalid, The Courts Below Could Not Reinstate It, And Respondents Lack Standing
II. DACA Is Invalid 4
A. The Immigration and Nationality Act does not authorize DACA 4
B. The DACA program is a substantive rule that did not go through the procedural requirements of 5 U.S.C. § 553
CONCLUSION

TABLE OF AUTHORITIES

CASES

Action on Smoking & Health v. Civil Aeronautics Bd., 713 F.2d 795 (D.C. Cir. 1983)	3
Arizona Dream Act Coal. v. Brewer, 818 F.3d 101 (9th Cir. 2016)	1
Arizona v. Inter Tribal Council of Ariz., Inc., 133 S. Ct. 2247 (2013)	. 1
Chrysler Corp. v. Brown, 441 U.S. 281 (1979)	5
City of Los Angeles v. Adams, 556 F.2d 40 (D.C. Cir. 1977)	7
Crowell v. Benson, 285 U.S. 22 (1932)	. 1
Guevara v. Holder, 649 F.3d 1086 (9th Cir. 2011)	9
Kamen v. Kemper Fin. Servs., 500 U.S. 90 (1991)	4
Lujan v. Defs. of Wildlife, 504 U.S. 555 (1992)	3
Mada-Luna v. Fitzpatrick, 813 F.2d 1006 (9th Cir. 1987) 12, 1	.3
Manhattan Gen. Equip. Co. v. Comm'r of Internal Revenue, 297 U.S. 129 (1936)	5



Massachusetts v. EPA, 549 U.S. 497 (2007)
Matter of C-T-L-, 25 I. & N. Dec. 341 (B.I.A. 2010) 1
Matter of Silva-Trevino, 26 I. & N. Dec. 826 (B.I.A. 2016) 1
Mistretta v. United States, 488 U.S. 361 (1989)
NRDC v. United States Forest Serv., 421 F.3d 797 (9th Cir. 2005)
Nat'l Ass'n of Mfrs. v. United States Dep't of Labor, no. 95-0715, 1996 U.S. Dist. LEXIS 10478 (D.D.C. July 22, 1996)
Pacific Gas & Electric Co. v. Federal Power Com., 506 F.2d 33 (D.C. Cir. 1974)
Paulsen v. Daniels, 413 F.3d 999 (9th Cir. 2005)
Save Jobs USA v. U.S. Dep't of Homeland Sec., No. 16-5287 (D.C. Cir., filed Sept. 28, 2016) 1
Succar v. Ashcroft, 394 F.3d 8 (1st Cir. 2005)
Sure-Tan, Inc. v. Nat'l Labor Relations Bd., 467 U.S. 883 (1984)
Texas v. United States, 86 F. Supp. 3d 591 (S.D. Tex. 2015)



Texas v. United States, 809 F.3d 134 (5th Cir. 2015)
Transohio Sav. Bank v. Dir., Office of Thrift Supervision, 967 F.2d 598 (D.C. Cir. 1992) 3
Trump v. Hawaii, 138 S. Ct. 2392 (2018)
United States v. Hays, 515 U.S. 737 (1995)
United States v. Texas, 136 S. Ct. 2271 (2016)
Univ. of the D.C. Faculty Ass'n/NEA v. D.C. Fin. Responsibility & Mgmt. Assistance Auth., 163 F.3d 616 (D.C. Cir. 1998)
Washington All. of Tech. Workers v. U.S. Dep't of Homeland Sec., 74 F. Supp. 3d (D.D.C. 2014)
Whitman v. Am. Trucking Ass'ns, 531 U.S. 457 (2001)
Woodall v. Commissioner, 964 F.2d 361 (5th Cir. 1992)
STATUTES
5 U.S.C. § 553
5 U.S.C. § 706(2)(A)
5 U.S.C. § 706(2)(C)
6 H S C 8 202(5)



DOCKET

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.

