

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.

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

**BRIEF OF *AMICI CURIAE* 109 CITIES,
COUNTIES, MUNICIPALITIES, AND LOCAL
GOVERNMENT ADVOCACY ORGANIZATIONS
IN SUPPORT OF RESPONDENTS**

MICHAEL N. FEUER

City Attorney

JAMES P. CLARK

VALERIE L. FLORES

DANIELLE GOLDSTEIN

MICHAEL DUNDAS

Counsel of Record

200 N. Main Street

Los Angeles, CA 90012

(213) 978-8100

mike.dundas@lacity.org

MARGARET L. CARTER

DANIEL R. SUVOR

DIMITRI D. PORTNOI

DANIEL J. TULLY

O'MELVENY & MYERS LLP

400 South Hope Street

18th Floor

Los Angeles, CA 90071

(213) 430-6000

Counsel for Amicus Curiae *Counsel for Amicus Curiae*
City of Los Angeles, Calif. *County of Los Angeles, Calif.*

[Additional Captions Listed On Inside Cover]

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES,
ET AL.,

Petitioners,

v.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF
COLORED PEOPLE, ET AL.,

Respondents.

**On Writ of Certiorari Before Judgment to the
United States Court of Appeals
for the District of Columbia Circuit**

KEVIN K. MCALEENAN, ACTING SECRETARY OF
HOMELAND SECURITY, ET AL.,

Petitioners,

v.

MARTIN JONATHAN BATALLA VIDAL, ET AL.,

Respondents.

**On Writ of Certiorari Before Judgment to the
United States Court of Appeals
for the Second Circuit**

QUESTIONS PRESENTED

In 2012, the Secretary of Homeland Security announced a policy that would provide a temporary forbearance of removal for certain undocumented immigrants who unwittingly entered the United States as children. Known as Deferred Action for Childhood Arrivals (DACA), the program allows such noncitizens to receive a renewable two-year term of deferred action—a form of prosecutorial discretion whereby the government declines to pursue removal—if they have no criminal record and satisfy various educational or military service requirements. Under longstanding federal regulations, any person subject to deferred action, including DACA recipients, may apply for government work authorization. In the seven years since DACA was implemented, more than 800,000 young people throughout the country have applied for and received deferred action. In September 2017, the Department of Homeland Security (DHS) announced that it would rescind DACA because it believed the program was unlawful and would likely be struck down by the courts.

The questions presented are:

1. Whether DHS's decision to rescind DACA is judicially reviewable.
2. Whether DHS's decision to rescind DACA is unlawful.

TABLE OF CONTENTS

	Page(s)
STATEMENT OF INTEREST.....	1
INTRODUCTION	4
ARGUMENT	6
I. DACA Recipients Represent the Best of <i>Amici</i> 's Communities.	6
II. Rescinding DACA Harms <i>Amici</i> 's Young People and Communities.	10
A. Rescinding DACA Will Harm the Economy.	11
B. Rescinding DACA Will Undermine <i>Amici</i> 's Public Safety Priorities.	14
III. Petitioners' Purported Rescission of DACA is Unlawful.	16
A. Petitioners Did Not Adequately Consider the Harm of Repealing DACA.	18
B. Post-Hoc Rationalizations Do Not Insulate Petitioners' Decision From Review or Render it Lawful.	26
CONCLUSION.....	38
APPENDIX	1a

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>Block v. Cmty. Nutrition Inst.</i> , 467 U.S. 340 (1984).....	33
<i>Bowen v. Mich. Acad. of Family Physicians</i> , 476 U.S. 667 (1986).....	28
<i>Camp v. Pitts</i> , 411 U.S. 138 (1973).....	33, 35, 37
<i>Citizens to Pres. Overton Park, Inc. v. Volpe</i> , 401 U.S. 402 (1971).....	24, 28, 32, 35
<i>Encino Motorcars, LLC v. Navarro</i> , 136 S. Ct. 2117 (2016).....	passim
<i>FCC v. Fox Television Stations, Inc.</i> , 556 U.S. 502 (2009).....	18, 20, 22, 25
<i>FDA v. Brown & Williamson Tobacco Corp.</i> , 529 U.S. 120 (2000).....	36
<i>Food Mktg. Inst. v. ICC</i> , 587 F.2d 1285 (D.C. Cir. 1978).....	34, 37
<i>Franklin v. Massachusetts</i> , 505 U.S. 788 (1992).....	33
<i>Heckler v. Chaney</i> , 470 U.S. 821 (1985).....	28, 29
<i>Hilton v. S.C. Pub. Rys. Comm'n</i> , 502 U.S. 197 (1991).....	25
<i>ICC v. Bhd. of Locomotive Eng'rs</i> , 482 U.S. 270 (1987).....	31
<i>Judulang v. Holder</i> , 565 U.S. 42 (2011).....	18, 27
<i>Landgraf v. USI Film Prods.</i> , 511 U.S. 244 (1994).....	25

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.