

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 PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

**BRIEF IN OPPOSITION FOR THE STATES OF CALIFORNIA,
MAINE, MARYLAND, AND MINNESOTA**

XAVIER BECERRA
Attorney General of California
EDWARD C. DUMONT
Solicitor General
MICHAEL L. NEWMAN
*Senior Assistant Attorney
General*

MICHAEL J. MONGAN*
Deputy Solicitor General
SAMUEL P. SIEGEL
*Associate Deputy Solicitor
General*
STATE OF CALIFORNIA
DEPARTMENT OF JUSTICE
455 Golden Gate Avenue
San Francisco, CA 94102
(415) 510-3920
Michael.Mongan@doj.ca.gov
**Counsel of Record*

(Additional counsel on signature page)

December 17, 2018

QUESTION PRESENTED

Whether the district court erred by (i) holding that respondents' claims are subject to judicial review, (ii) entering a preliminary injunction partially suspending petitioners' termination of the Deferred Action for Childhood Arrivals program, and (iii) denying in part petitioners' motion to dismiss.

TABLE OF CONTENTS

	Page
Introduction	1
Statement	2
Argument	13
I. There is no need for “prompt intervention” by this Court.....	13
II. Petitioners’ merits arguments provide no reason for review	17
A. Reviewability	17
B. The preliminary injunction	23
C. The motion to dismiss.....	31
Conclusion.....	33

TABLE OF AUTHORITIES

	Page
CASES	
<i>Batalla Vidal v. Nielsen</i> 279 F. Supp. 3d 401 (E.D.N.Y. 2018).....	<i>passim</i>
<i>Casa de Md. v. Dep’t of Homeland Sec.</i> 284 F. Supp. 3d 758 (D. Md. 2018)	12, 17, 32
<i>City of Arlington v. FCC</i> 569 U.S. 290 (2013)	20
<i>East Bay Sanctuary Covenant v. Trump</i> ___ F.3d. ___, 2018 WL 6428204 (9th Cir. Dec. 7, 2018)	16
<i>Encino Motorcars LLC v. Navarro</i> 136 S. Ct. 2117 (2016)	25
<i>FCC v. Fox Television Stations, Inc.</i> 556 U.S. 502 (2009)	23
<i>Franklin v. Massachusetts</i> 505 U.S. 788 (1992)	25
<i>Heckler v. Chaney</i> 470 U.S. 821 (1985)	<i>passim</i>
<i>ICC v. Bhd. of Locomotive Eng’rs</i> 482 U.S. 270 (1987)	21
<i>In re United States</i> 138 S. Ct. 443 (2017) (per curiam).....	5

TABLE OF AUTHORITIES
(continued)

	Page
<i>Lincoln v. Vigil</i> 508 U.S. 182 (1993)	19
<i>Montana Air Chapter No. 29 v. FLRA</i> 898 F.2d 753 (9th Cir. 1990)	20
<i>Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.</i> 463 U.S. 29 (1983)	23
<i>NAACP v. Trump</i> 298 F. Supp. 3d 209 (2018)	<i>passim</i>
<i>Negusie v. Holder</i> 555 U.S. 511 (2009)	20
<i>Neil v. Biggers</i> 409 U.S. 188 (1972)	26
<i>Newman v. Apfel</i> 223 F.3d 937 (9th Cir. 2000)	22
<i>Reno v. Am.-Arab Anti-Discrimination Comm.</i> 525 U.S. 471 (1999)	<i>passim</i>
<i>SEC v. Chenery Corp.</i> 318 U.S. 80 (1943)	9, 23
<i>Texas v. United States</i> 328 F. Supp. 3d 662 (2018)	13, 29
<i>Texas v. United States</i> 809 F.3d 134 (5th Cir. 2015)	<i>passim</i>

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.