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Honorable Scott Harris
Clerk of Court
U.S. Supreme Court
1 First Street, NE
Washington, DC 20543

Re: No. 18-588, Donald J. Trump, President of the United States, et al. v. National Association for the Advancement of Colored People, et al.

Dear Mr. Harris:

We represent Respondents Princeton University, Microsoft Corporation, and Maria De La Cruz Perales Sanchez in the above-captioned case. The petition for a writ of certiorari before judgment was filed November 5, 2018. Without an extension, Respondents' brief in opposition would be due on December 5, 2018. In addition, our brief in the United States Court of Appeals for the D.C. Circuit in this case is due January 7, 2019.

On November 23, 2018, the State of Texas notified us of its intent to file a petition-stage amicus brief in support of the petition. On November 24, 2018, the Immigration Reform Law Institute notified us of its intent to file a petition-stage amicus brief in support of the petition. In addition, although we were not served with it, we have become aware that Petitioners filed a Supplemental Brief in Case No. 18-587, Department of Homeland Security et al. v. Regents of the University of California, et al., on November 19, 2018 which argues that an intervening decision "strengthens the case for granting certiorari before judgment" in this case. Supp. Br. 11. On November 27, 2018, Petitioners submitted a letter and (Corrected) Supplemental Brief, this time serving Respondents, and taking a different position on whether the Court should grant certiorari in *Nielsen v. Batalla Vidal*, No. 18-589. In order to afford us an opportunity to review and respond to the amicus briefs, as well as the Supplemental Brief filed in support of certiorari, Respondents respectfully move for a 30-day extension of time to submit our brief in opposition. I am authorized to make this request on behalf of all Respondents in this case.

Petitioners have advised us that they will consent to a 12-day extension, but have not consented to a 30-day extension. The Court routinely grants a first 30-day extension of time for briefs in opposition where the petitioner is supported by amicus briefs, which are filed on the day a brief in opposition is due. And the government routinely asks for and receives a first 30-day extension of time to file its own brief in opposition, even when such a request comes at a late period in the Court's term.

There is no basis to depart from the Court's ordinary approach here. This case concerns the purported rescission of the Deferred Action for Childhood Arrivals (DACA) program, which Petitioners put

in place more than six (6) years ago. Notwithstanding prior challenges by states to the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program that reached this Court in 2016, the DACA program was not the subject of challenge by any state until 2018. Under the current administration, Petitioners chose to continue the program for more than eight months before deciding to discontinue it in response to threats from Texas and some of the other states that previously challenged DAPA. Even then, Petitioners allowed many DACA recipients to renew their deferred status for an additional term, effectively extending the program for an additional two and a half years. There is no need for exigent review of a policy that has been in place since 2012 and that the government itself opted to extend in part through March 2020.

Furthermore, Respondents are being asked to respond to a petition for certiorari before judgment, and in the midst of preparing their brief in the D.C. Circuit—factors that distinguish this case from *United States Department of Homeland Security* v. *Regents of the University of California*, No. 18-587. Moreover, there is no cause for urgency here. In this case, the district court issued a final judgment vacating the rescission, but partially stayed that vacatur pending appeal in order to maintain the status quo. The government has not sought to stay that partial vacatur. This case is thus materially different from past cases where the Court has sought to review a nationwide injunction on an expedited basis. *E.g.*, *United States v. Texas*, No. 15-674 (granting review following the denial of the United States' request for a stay); *Trump v. Hawaii*, No. 17-965 (granting review after granting the United States' request for a stay).

Nor would any harm result if Respondents were afforded the typical 30-day extension to review and respond to the amicus briefs, as well as Petitioners' supplemental briefs. Petitioners may continue to review DACA renewal applications on a case by case basis, and DHS can initiate removal proceedings against DACA recipients determined to present a risk to national security or public safety. *Batalla Vidal* Pet. App. 126a; *Regents* Pet. App. 45a.

Finally, we understand that the government's reticence to agree to a 30-day extension results from a desire to have the petition conferenced this Term. First, the timing results from the government's choice to file a petition for certiorari before judgment in November, not from any action or decision by Respondents; Respondents should not be prejudiced as a result of the government's litigating choices. Second, should an extension result in the consideration of the petition next term instead of this one, the Court's consideration of the petitions could only stand to benefit. By then, the D.C. Circuit will likely have ruled in this case, and the Court will be able to review these questions in the normal course. *See Aaron v. Cooper*, 357 U.S. 566 (1958) (per curiam) (denying petition for certiorari before judgment where Court had "no doubt that the Court of Appeals will recognize the vital importance of the time element in this litigation").

For these reasons, Respondents respectfully request a 30-day extension to allow Respondents adequate time to respond to the amicus briefs, Supplemental Brief, and (Corrected) Supplemental Brief in support of the petition.

Sincerely,

Lindsay C. Harrison

cc: Noel Francisco, Esq.