

IN THE
Supreme Court of the United States

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 BEFORE JUDGMENT TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

**RESPONSE TO MOTION TO EXPEDITE OF RESPONDENTS THE STATES
OF CALIFORNIA, MAINE, MARYLAND, AND MINNESOTA, THE CITY OF
SAN JOSE, THE COUNTY OF SANTA CLARA, AND SEIU LOCAL 521**

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January 22, 2018

RESPONSE TO MOTION TO EXPEDITE

On September 5, 2017, the federal government decided to terminate the Deferred Action for Childhood Arrivals program (DACA). Respondents promptly filed five related suits alleging that the decision was legally invalid and seeking a preliminary injunction and other relief. On January 9, 2018, the district court rejected petitioners' threshold arguments for dismissal and granted in part respondents' motion for a preliminary injunction. The district court ordered the government to "maintain the DACA program on a nationwide basis on the same terms and conditions as were in effect before the rescission on September 5, 2017, including allowing DACA enrollees to renew their enrollments." Pet. App. 66a. The January 9 order provides that the government need not process new applications from individuals who have never before received deferred action; that the "advance parole feature" of DACA "need not be continued for the time being for anyone"; and that petitioners "may take administrative steps to make sure fair discretion is exercised on an individualized basis for each renewal application." *Id.* at 66a-67a. It also emphasizes that the agency may "proceed[] to remove any individual, including any DACA enrollee, who it determines poses a risk to national security or public safety, or otherwise deserves, in its judgment, to be removed." *Id.* at 67a.

Petitioners have appealed the order entering the preliminary injunction, and filed a petition for permission to appeal other issues (including the threshold arguments for dismissal) certified for interlocutory appeal by the district court under 28 U.S.C. § 1292(b). Petitioners have not sought a stay of the preliminary

injunction in any court. Pet. 12-13. On January 13, the Department of Homeland Security announced that it has “resumed accepting requests to renew a grant of deferred action under DACA.” *Id.* at 10 n.3. On January 18, petitioners filed a petition for certiorari before judgment, urging this Court to grant immediate review and consider petitioners’ appellate arguments in the first instance.

As respondents will explain in opposing the petition, certiorari before judgment is inappropriate here. Exercise of that “power by the Court is an extremely rare occurrence.” *Coleman v. Paccar, Inc.*, 424 U.S. 1301, 1304 n.* (1976) (Rehnquist, J., in chambers). Even in cases of profound importance, the Court has denied petitions for certiorari before judgment where, as here, it can expect “that the Court of Appeals will proceed expeditiously to decide [the] case.” *United States v. Clinton*, 524 U.S. 912 (1998). The precedents cited by petitioners (*see* Pet. 14), involving situations in which an immediate decision from this Court was truly imperative, serve only to highlight the markedly different circumstances of the present case. *See, e.g., United States v. Nixon*, 418 U.S. 683 (1974); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952).

This case is, of course, important—especially for hundreds of thousands of young people who have received deferred action under the DACA program. Respondents agree that review of the preliminary injunction, and of other issues that the district court certified for interlocutory appeal, should proceed promptly in the court of appeals. We think it equally clear, however, that the present circumstances are not so extraordinary “as to justify deviation from normal

appellate practice and to require immediate determination in this Court.” Sup. Ct. R. 11.

That said, respondents also agree that it need not take an extended period for this Court to consider or rule on the pending petition. Respondents would not object to the Court advancing the deadline for responses to the petition to February 2. That would roughly halve the normal time for response, while allowing for orderly preparation and submission of the responsive papers.

Respectfully submitted,

/s/ Michael J. Mongan

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