No. 18-1469

In the Supreme Court of the United States

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, ET AL., PETITIONERS

v.

CASA DE MARYLAND, ET AL.

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

REPLY BRIEF FOR THE PETITIONERS

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1. In September 2017, the U.S. Department of Homeland Security (DHS) determined, in accordance with the views of the Attorney General, that the non-enforcement policy known as Deferred Action for Childhood Arrivals (DACA) was likely to be struck down by the courts and should be wound down in an orderly fashion. See Pet. 6. As the government has repeatedly explained, that quintessential exercise of the Secretary of Homeland Security's authority to establish "national immigration enforcement policies and priorities," 6 U.S.C. 202(5) (2012 & Supp. V 2017), is not judicially reviewable and was eminently reasonable in any event. And yet, since January 2018, DHS has been compelled by nationwide preliminary injunctions, entered first by the Northern District of California and then the Eastern District of New York, to retain the unlawful policy with certain exceptions. See Pet. 7-10.

In November 2018, the government filed petitions for writs of certiorari before judgment to the Second, Ninth, and D.C. Circuits to review the two nationwide preliminary injunctions, as well as a third district court decision similarly concluding that the rescission was unlawful and vacating the agency's decision. See *DHS* v. *Regents of the Univ. of Cal.*, No. 18-587 (filed Nov. 5, 2018); *Trump* v. *NAACP*, No. 18-588 (filed Nov. 5, 2018); *McAleenan* v. *Batalla Vidal*, No. 18-589 (filed Nov. 5, 2018).

While the government's petitions in those cases remained pending before this Court, a divided panel of the Fourth Circuit concluded that DHS's decision was arbitrary and capricious under the Administrative Procedure Act and vacated the decision. Pet. App. 1a-37a. One week later, the government filed this petition, urging the Court to grant each of the government's pending petitions and to consolidate the cases for the Court's review. Pet. 16-17. To facilitate this Court's timely consideration of all of the government's petitions before the Court's summer recess, the government also moved to expedite consideration of this petition. Respondents opposed. Respondents observed that the government petition in this case "presents identical questions" to the petitions in *Regents*, *NAACP*, and *Batalla Vidal*. Opp. to Mot. to Expedite 3. And they argued, among other things, that full briefing on this petition was not needed for the Court to consider the government's other petitions, quoting the government's observation that, rather than expediting consideration here, the Court could plan to simply hold this petition if it granted the government's other petitions. *Id.* at 4. The Court denied the government's motion to expedite on June 3,

2019, and respondents filed their brief in opposition according to the Court's ordinary schedule, on June 24.

Four days later, the Court granted the government's petitions in *Regents*, *NAACP*, and *Batalla Vidal*, and consolidated the cases for the Court's review. Under the current briefing schedule for the consolidated cases, the government's opening brief is due August 12, 2019, respondents' briefs are due September 11, and the government's reply brief is due October 11. The Court has scheduled oral argument in those cases for November 12. Meanwhile, according to the Court's distribution schedule, this petition is set to be considered at the Court's October 1 Conference.

2. In light of the Court's June 28 Order, granting the government's petitions in *Regents*, *NAACP*, and *Batalla Vidal*, and consolidating those cases for the Court's review, the government respectfully submits that the petition in this case should be held pending the Court's decision in the consolidated cases, and then disposed of as appropriate in light of that decision. As respondents in this case have emphasized, the questions presented in this petition are identical to the questions presented in the consolidated cases. Neither the court of appeals' rationale nor respondents' arguments challenging the rescission of DACA in this case are meaningfully different from those presented in the consolidated cases. And there is no apparent reason why granting plenary review of the court of appeals' decision in this case would enable the Court to consider any question or aspect of this dispute that is not presented by those cases.

Because the court of appeals in this case vacated the rescission of DACA on erroneous grounds, the government's petition for a writ of certiorari should not be dismissed. But given that briefing in the consolidated

cases will be substantially underway before the Court considers this petition, plenary consideration of this case is likely only to further delay resolution of this important dispute. Rather than risk such delay, the government now believes that the petition in this case should be held pending resolution of the consolidated cases and disposed of as appropriate in light of the Court's decision in *Regents*, *NAACP*, and *Batalla Vidal*.

Respectfully submitted.

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