

Nos. 18-587, 18-588, & 18-589

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.

*ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT*

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

v.

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

*ON WRIT OF CERTIORARI BEFORE JUDGMENT
TO THE UNITED STATES COURT OF APPEALS
FOR THE D.C. CIRCUIT*

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

v.

MARTIN JONATHAN BATALLA VIDAL, ET AL.

*ON WRIT OF CERTIORARI BEFORE JUDGMENT
TO THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT*

**MOTION FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT
AND FOR EXPANDED ARGUMENT**

Pursuant to Supreme Court Rules 28.4 and 28.7, the State of Texas, on behalf of eleven additional States and the Governor of Mississippi (collectively, the amici States), respectfully requests that the Court expand the time allotted for oral argument to allow the undersigned ten minutes of argument time. This case implicates the amici States' interests in bringing about an orderly end to DACA, an unlawful program that continues to inflict numerous harms on the amici States. As set out in the amici States' brief, those interests are parallel to, yet distinct from, the interests of the United States. The amici States are uniquely positioned to represent and defend their interests before this Court.

The United States neither consents to nor opposes the relief sought in this motion. Respondents declined to share their position with the amici States, indicating that they would state their position in a separate motion.

* * *

As the parties admit, the cases now before the Court are a direct product of the amici States' legal challenge against DACA. In 2017, a group of States led by Texas notified the executive branch of the federal government that DACA is unlawful for the same reasons that previously led the Fifth Circuit to declare (and this Court to affirm on an equally divided vote) that DAPA and Expanded DACA are unlawful. *See Texas v. United States*, 328 F. Supp. 3d 662, 685 (S.D. Tex. 2018). These States threatened to expand their existing litigation to include DACA unless the Executive rescinded the program.

The Executive complied. It issued the September 2017 memorandum now before the Court announcing DACA's rescission. The courts below enjoined DACA's rescission, forcing the States to file suit seeking a declaration that DACA was unlawful and an injunction

against its further application. The ongoing harms of DACA continue because of the orders enjoining DACA's rescission presently before this Court.

The amici States' interests in the cases now before the Court are distinct from those of the United States. The United States argues that DACA's rescission is both unreviewable and, in any event, a permissible policy choice. The amici States, however, have established through their own litigation that DACA is reviewable agency action, and that it is both procedurally and substantively unlawful.

This case implicates vital questions about the separation of powers. The Court has repeatedly recognized that the power to establish when aliens are lawfully present is "entrusted exclusively to Congress," which has enacted "extensive and complex" statutes governing (among other things) lawful presence. *Arizona v. United States*, 567 U.S. 387, 409 (2012) (quoting *Galvan v. Press*, 347 U.S. 522, 531 (1954)). Through DACA, the Executive has attempted to skirt the bedrock requirements of bicameralism and presentment by granting lawful presence, access to work authorization, and a host of other benefits to aliens Congress has deemed ineligible. If the Court forces the Executive to maintain such a lawless program, it will have fundamentally and forever altered the manner in which immigration policy is set in this country.

The effect of this Court's ruling will impact the amici States differently than the United States. Respondents' arguments, if accepted, could mean that the Executive must maintain DACA indefinitely if not in perpetuity. The States would continue to incur harm from DACA by having to provide social services like healthcare, education, and law enforcement to individuals whom Congress has declared unlawfully present, but to whom the Executive

has granted lawful presence. The States bear the costs of providing these services required by federal law.

The Court has regularly allowed States to appear and present oral argument as amici curiae when state-sovereignty issues are presented or when States have a valuable perspective distinct from the petitioner or respondent. *See, e.g., Gamble v. United States*, 139 S. Ct. 1960 (2019) (granting leave to Texas); *Sturgeon v. Frost*, 136 S. Ct. 1061 (2019) (Alaska); *Tenn. Wine & Spirits Retailers Ass'n v. Byrd*, 139 S. Ct. 2449 (2019) (Illinois); *ONEOK, Inc. v. Learjet, Inc.*, 135 S. Ct. 1591 (2015) (Kansas); *Kennedy v. Louisiana*, 554 U.S. 407 (2008) (Texas); *Leegin Creative Leather Prods. Inc. v. PSKS, Inc.*, 551 U.S. 877 (2007) (New York); *United Haulers Ass'n v. Oneida-Herkimer Solid Waste Mgmt. Auth.*, 550 U.S. 330 (2007) (New York); *Halbert v. Michigan*, 125 S. Ct. 1822 (2005) (Louisiana); *Clingman v. Beaver*, 125 S. Ct. 825 (2005) (South Dakota); *Jackson v. Birmingham Bd. of Educ.*, 125 S. Ct. 457 (2004) (Alabama); *City of Littleton v. Z.J. Gifts D-4, L.L.C.*, 541 U.S. 901 (2004) (Ohio); *City of Burbank v. Lockheed Air Terminal, Inc.*, 409 U.S. 1073 (1972) (California). The Court should similarly allow the amici States to participate here.

The amici States respectfully submit that they can offer the Court a helpful perspective that is distinct from that of the United States. They further submit that the Court's resolution of this case would benefit from the amici States' participation at oral argument. *See* Sup. Ct. R. 28.4. And no party would be prejudiced by the amici States' participation. Neither the United States nor the respondents have expressed opposition or claimed that Texas's participation would harm them. The amici States therefore respectfully request that they be allotted ten minutes of argument time to advocate for the States' weighty interests in rescinding the unlawful DACA program.

CONCLUSION


The amici States respectfully request that the Court grant the motion to participate in oral argument and allot ten minutes of argument time.

Respectfully submitted.

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