No.

In the Supreme Court of the United States

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

v.

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

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

PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT

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QUESTIONS PRESENTED

This dispute concerns the policy of immigration enforcement discretion known as Deferred Action for Childhood Arrivals (DACA). In 2016, this Court affirmed, by an equally divided Court, a decision of the Fifth Circuit holding that two related Department of Homeland Security (DHS) discretionary enforcement policies, including an expansion of the DACA policy, were likely unlawful and should be enjoined. See *United States* v. *Texas*, 136 S. Ct. 2271 (per curiam). In September 2017, DHS determined that the original DACA policy was unlawful and would likely be struck down by the courts on the same grounds as the related policies. DHS thus instituted an orderly wind-down of the DACA policy. The questions presented are as follows:

1. Whether DHS's decision to wind down the DACA policy is judicially reviewable.

2. Whether DHS's decision to wind down the DACA policy is lawful.

PARTIES TO THE PROCEEDING

Petitioners are Donald J. Trump, President of the United States; Jefferson B. Sessions III, Attorney General of the United States; Kirstjen M. Nielsen, Secretary of Homeland Security; U.S. Citizenship and Immigration Services; U.S. Immigration and Customs Enforcement; the U.S. Department of Homeland Security; and the United States.

Respondents are the Trustees of Princeton University; Microsoft Corporation; Maria De La Cruz Perales Sanchez; National Association for the Advancement of Colored People; American Federation of Teachers, AFL-CIO; and the United Food and Commercial Workers International Union, AFL-CIO, CLC.

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PETITION FOR A WRIT OF CERTIORARI BEFORE JUDGMENT

The Solicitor General, on behalf of the President of the United States, Donald J. Trump, and other federal parties, respectfully petitions for a writ of certiorari before judgment to the United States Court of Appeals for the District of Columbia Circuit.

OPINIONS BELOW

The order of the district court granting respondents summary judgment (App. 1a-74a) is reported at 298 F. Supp. 3d 209. The order of the district court declining to reconsider its prior order (App. 80a-109a) is reported at 315 F. Supp. 3d 457.

JURISDICTION

On April 24, 2018, the district court granted respondents summary judgment (App. 1a-74a). The district court declined to reconsider its prior order and entered

final judgment on August 3, 2018 (App. 80a-109a). The government filed its notice of appeal on August 6, 2018 (App. 112a-115a). The court of appeals' jurisdiction over the appeal of the district court's final judgment rests on 28 U.S.C. 1291. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1) and 28 U.S.C. 2101(e).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are set forth in the appendix to the petition for a writ of certiorari before judgment in *United States Department of Homeland Security* v. *Regents of the University of California*, also filed today. *Regents* App. 127a-143a.

STATEMENT

1. a. The Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, charges the Secretary of Homeland Security "with the administration and enforcement" of the immigration laws. 8 U.S.C. 1103(a)(1). Individual aliens are subject to removal if, *inter alia*, "they were inadmissible at the time of entry, have been convicted of certain crimes, or meet other criteria set by federal law." *Arizona* v. *United States*, 567 U.S. 387, 396 (2012); see 8 U.S.C. 1182(a) (2012 & Supp. V 2017); see also 8 U.S.C. 1227(a) (2012 & Supp. V 2017). As a practical matter, however, the federal government cannot remove every removable alien, and a "principal feature of the removal system is the broad discretion exercised by immigration officials." *Arizona*, 567 U.S. at 396.

For any alien subject to removal, Department of Homeland Security (DHS) officials must first "decide whether it makes sense to pursue removal at all." *Arizona*, 567 U.S. at 396. After removal proceedings begin, government officials may decide to grant discretionary relief, such as asylum or cancellation of removal. See 8 U.S.C. 1158(b)(1)(A), 1229b. And, "[a]t each stage" of

the process, "the Executive has discretion to abandon the endeavor." *Reno* v. *American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) (*AADC*). In making these decisions, like other agencies exercising enforcement discretion, DHS must engage in "a complicated balancing of a number of factors which are peculiarly within its expertise." *Heckler* v. *Chaney*, 470 U.S. 821, 831 (1985). Recognizing the need for such balancing, Congress has provided that the "Secretary [of Homeland Security] shall be responsible for * * * [e]stablishing national immigration enforcement policies and priorities." 6 U.S.C. 202(5) (2012 & Supp. V 2017).

b. In 2012, DHS announced the policy known as Deferred Action for Childhood Arrivals (DACA). See *Regents* App. 97a-101a. Deferred action is a practice in which the Secretary exercises discretion to notify an alien of her decision to forbear from seeking his removal for a designated period. *AADC*, 525 U.S. at 484. Under DHS regulations, aliens granted deferred action may apply for and receive work authorization for the duration of the deferred-action grant if they establish economic necessity. 8 C.F.R. 274a.12(c)(14). A grant of deferred action does not confer lawful immigration status or provide any defense to removal. DHS retains discretion to revoke deferred action unilaterally, and the alien remains removable at any time.

DACA made deferred action available to "certain young people who were brought to this country as children." *Regents* App. 97a. The INA does not provide any exemptions or special relief from removal for such individuals. And, dating back to at least 2001, bipartisan efforts to provide such relief legislatively had

failed.[1] Under the DACA policy, following successful completion of a background check and other review, an alien would receive deferred action for a period of two years, subject to renewal. *Id.* at 99a-100a. The policy made clear that it "confer[red] no substantive right, immigration status or pathway to citizenship," because "[o]nly the Congress, acting through its legislative authority, can confer these rights." *Id.* at 101a.

DHS explained that information provided in the DACA request process would be protected from disclosure for the purpose of immigration enforcement proceedings unless certain criteria related to national security or public safety were satisfied, or the individual met the requirements for a Notice to Appear. USCIS, DHS, *Deferred Action for Childhood Arrivals: Frequently Asked Questions* (Mar. 8, 2018), https://go.usa.gov/xngCd. DHS also stated, however, that this information-sharing policy "may be modified, superseded, or rescinded at any time without notice," and that it "may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter." *Id.* at 6.

Later, in 2014, DHS created a new policy of enforcement discretion referred to as Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA). See *Regents* App. 102a-110a. Through a process expressly designed to be "similar to DACA," DAPA made deferred action available for certain individuals who had a child who was a U.S. citizen or lawful permanent resident. *Id.* at 107a. At the same time,

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[1] See, *e.g.*, S. 1291, 107th Cong., 1st Sess. (2001); S. 1545, 108th Cong., 1st Sess. (2003); S. 2075, 109th Cong., 1st Sess. (2005); S. 2205, 110th Cong., 1st Sess. (2007); S. 3827, 111th Cong., 2d Sess. (2010).

DHS also expanded DACA by extending the deferred-action period from two to three years and by loosening the age and residency criteria. *Id.* at 106a-107a.

c. Soon thereafter, Texas and 25 other States brought suit in the Southern District of Texas to enjoin DAPA and the expansion of DACA. The district court issued a nationwide preliminary injunction, finding a likelihood of success on the claim that the DAPA and expanded DACA memorandum was a "'substantive' rule that should have undergone the notice-and-comment rule making procedure" required by the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* *Texas* v. *United States*, 86 F. Supp. 3d 591, 671 (S.D. Tex. 2015); see *id.* at 607, 647, 664-678.

The Fifth Circuit affirmed the injunction, holding that the DAPA and expanded DACA policies likely violated both the APA and the INA. *Texas* v. *United States*, 809 F.3d 134, 146, 170-186 (2015). The court of appeals concluded that plaintiffs had "established a substantial likelihood of success on the merits of their procedural claim" that DAPA and expanded DACA were invalidly instituted without notice and comment. *Id.* at 178. The court also concluded, "as an alternate and additional ground," that the policies were substantively contrary to law. *Ibid.* The court observed that the INA contains an "intricate system of immigration classifications and employment eligibility," and "does not grant the Secretary discretion to grant deferred action and lawful presence on a class-wide basis to 4.3 million otherwise removable aliens." *Id.* at 184, 186 n.202. It also noted that Congress had repeatedly declined to enact legislation "closely resembl[ing] DACA and DAPA." *Id.* at 185.

After briefing and argument, this Court affirmed the Fifth Circuit's judgment by an equally divided Court, *United States* v. *Texas*, 136 S. Ct. 2271, 2272 (2016) (per curiam), leaving the nationwide injunction in place.

d. In June 2017, Texas and other plaintiff States in the *Texas* case announced their intention to amend their complaint to challenge the original DACA policy. D. Ct. Doc. 60, at 238-240 (Feb. 16, 2018).[2] They asserted that "[f]or the[] same reasons that DAPA and Expanded DACA's unilateral Executive Branch conferral of eligibility for lawful presence and work authorization was unlawful, the original June 15, 2012 DACA memorandum is also unlawful." *Id.* at 239.

On September 5, 2017, rather than confront litigation challenging DACA on essentially the same grounds that had succeeded in *Texas* before the same court for the DAPA and expanded DACA policies, DHS decided to wind down DACA in an orderly fashion. *Regents* App. 111a-119a. In the rescission memorandum, then-Acting Secretary of Homeland Security Elaine Duke explained that, "[t]aking into consideration the Supreme Court's and the Fifth Circuit's rulings in the ongoing litigation," as well as the Attorney General's view that the DACA policy was unlawful and that the "potentially imminent" challenge to DACA would "likely * * * yield similar results" as the *Texas* litigation, "it is clear that the June 15, 2012 DACA program should be terminated." *Id.* at 116a-117a. The Acting Secretary accordingly announced that, "[i]n the exercise of [her] authority in establishing national immigration policies and priorities," the original DACA memorandum was "rescind[ed]." *Id.* at 117a.

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[2] Citations to the district court docket are to *Trustees of Princeton University* v. *United States*, No. 17-cv-2325.

The rescission memorandum stated, however, that the government "[w]ill not terminate the grants of previously issued deferred action * * * solely based on the directives in this memorandum" for the remaining two-year periods. *Regents* App. 118a. The memorandum also explained that DHS would "provide a limited window in which it w[ould] adjudicate certain requests for DACA." *Id.* at 117a. Specifically, DHS would "adjudicate —on an individual, case by case basis—properly filed pending DACA renewal requests * * * from current beneficiaries that have been accepted by the Department as of the date of this memorandum, and from current beneficiaries whose benefits will expire between the date of this memorandum and March 5, 2018 that have been accepted by the Department as of October 5, 2017." *Id.* at 117a-118a.

DHS has also made clear that the "information-sharing policy has not changed in any way since it was first announced, including as a result of the Sept. 5, 2017" DACA rescission. USCIS, DHS, *Guidance on Rejected DACA Requests* (Feb. 14, 2018), https://go.usa.gov/xPVmG; see USCIS, DHS, *Frequently Asked Questions: Rescission of DACA* (Sept. 5, 2017), https://go.usa.gov/xPVmE.

e. Shortly after DHS's decision to rescind DACA, respondents brought these two related suits in the District of Columbia challenging the rescission of DACA. Collectively, they allege that the termination of DACA is unlawful because it is arbitrary and capricious under the APA; violates the APA's requirement for notice-and-comment rulemaking as well as the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*; denies respondents equal protection and due process; and permits the government to use information obtained through DACA in

a manner that is inconsistent with due-process principles. See App. 17a-18a. Similar challenges were filed in the Eastern District of New York and in the Northern District of California. See *Batalla Vidal* v. *Nielsen*, No. 16-cv-4756 (E.D.N.Y. filed Sept. 19, 2017); *Regents of the Univ. of Cal.* v. *DHS*, No. 17-cv-5211 (N.D. Cal. filed Sept. 8, 2017). A summary of the proceedings in the District of Columbia (*NAACP*) follows in this petition. A summary of the proceedings in the other district courts can be found in the government's petitions in those cases, filed simultaneously with this one.[3]

2. In *NAACP*, the government filed motions to dismiss both suits under Federal Rule of Civil Procedure 12(b)(1) and (6). D. Ct. Doc. 15 (Nov. 8, 2017). At the threshold, the government argued that respondents' claims are not reviewable because DHS's decision to rescind DACA is committed to agency discretion by law, see 5 U.S.C. 701(a)(2); and because judicial review of the denial of deferred action, if available at all, is barred under the INA prior to the issuance of a final removal order, see 8 U.S.C. 1252. The government also argued that respondents' arbitrary-and-capricious claims fail because DHS rationally explained the decision to wind down the discretionary DACA policy given the Acting Secretary's conclusion that the policy is unlawful and the imminent risk of its being invalidated in the *Texas* case. Finally, the government argued that respondents' other claims are without merit because the rescission of DACA is exempt from notice-and-comment requirements; does not violate principles of equal protection or

[3] The government largely prevailed in a similar challenge to the rescission filed in the District of Maryland. See *Casa de Maryland* v. *DHS*, 284 F. Supp. 3d 758 (2018). An appeal of that decision is pending before the Fourth Circuit.

due process; and does not change or affect the policies governing the use of aliens' personal information.

Respondents opposed the government's motions to dismiss and filed a motion for summary judgment or, in the alternative, a preliminary injunction preventing the government from rescinding the DACA policy and from modifying its information-sharing policy. D. Ct. Docs. 23, 28 (Dec. 15, 2017).

3. On April 24, 2018, the district court entered an order granting respondents summary judgment and vacating the agency's rescission of DACA. App. 1a-74a.

The district court first rejected the government's justiciability arguments. The court concluded that the INA did not preclude review of respondents' claims before a final order of removal on the ground that "there is no allegation here that removal proceedings have yet been initiated against any DACA beneficiary, so there are no pending removal proceedings with which [respondents'] challenge might interfere." App. 21a. And the court determined that the rescission of DACA was not "committed to agency discretion by law," 5 U.S.C 701(a)(2), on the ground that Section 701(a)(2) does not apply to an agency's rescission of "a general enforcement policy predicated on [a] legal determination that the program was invalid." App. 43a. The court also reasoned that litigation risk "is insufficiently independent from the agency's evaluation of DACA's legality to trigger *Chaney*'s presumption of unreviewability." *Ibid.*

On the merits, the district court concluded that the rescission was arbitrary and capricious under the APA because the rescission memorandum's "legal reasoning was insufficient to satisfy the Department's obligation to explain its departure from its prior stated view that DACA was lawful." App. 51a. The court acknowledged

that the memorandum cited the Fifth Circuit's decision in *Texas*. *Ibid.* But the court interpreted that decision as holding only that "DAPA likely conflicted with the INA's 'intricate process for illegal aliens to derive a lawful immigration classification from their children's immigration status.'" *Ibid.* (citation omitted). The court reasoned that, "unlike DAPA, 'DACA has "no analogue in the INA,"'" and thus the Fifth Circuit's analysis was "inapposite." *Ibid.* (citations omitted). The court also concluded that DHS had failed to adequately consider reliance interests of DACA recipients who had structured their affairs "on the assumption that they would be able to renew their DACA benefits." App. 54a. Finally, the court determined that DHS's litigation-risk concern was arbitrary and capricious because, if a court were to find DACA unlawful under the *Texas* decision, it would have had "'broad discretion' to 'fashion[] equitable relief,'" such as allowing DHS an "opportunity to wind the program down." App. 58a (citation omitted; brackets in original).

The district court rejected respondents' claim that the rescission should have undergone notice-and-comment rulemaking, explaining that the rescission was "exempt from notice and comment as a general statement of agency policy." App. 48a. And the court dismissed the respondents' claim against DHS's alleged change in its information-sharing policy. App. 71a-72a. The court reasoned that, in light of DHS's recent public statements that the policy was unchanged, respondents had not "plausibly allege[d] that DACA beneficiaries' information has been or will be used inconsistently with DHS's stated information-sharing policy." App. 72a.

Finally, the court deferred ruling on respondents' equal-protection and due-process challenges to the rescission of DACA. App. 66a-67a. And the court stayed its order for 90 days to permit the Secretary of Homeland Security to "reissue a memorandum rescinding DACA, this time providing a fuller explanation." App. 66a.

4. On June 22, 2018, current Secretary of Homeland Security Kirstjen Nielsen issued a memorandum in response to the district court's invitation. *Regents* App. 120a-126a. In her memorandum, Secretary Nielsen concluded that "the DACA policy properly was—and should be—rescinded, for several separate and independently sufficient reasons." App. 122a. First, the Secretary agreed that "the DACA policy was contrary to law" and explained that "[a]ny arguable distinctions between the DAPA and DACA policies" were not "sufficiently material" to convince her otherwise. *Ibid.*; see App. 122a-123a. Second, the Secretary reasoned that, in any event, "[l]ike Acting Secretary Duke, [she] lack[s] sufficient confidence in the DACA policy's legality to continue this non-enforcement policy, whether the courts would ultimately uphold it or not." App. 123a. She noted that "[t]here are sound reasons for a law enforcement agency to avoid discretionary policies that are legally questionable." App. 122a-123a. Third, the Secretary offered several "reasons of enforcement policy to rescind the DACA policy," regardless of whether the policy is "illegal or legally questionable." App. 123a. The Secretary also explained that, although she "do[es] not come to these conclusions lightly," "neither any individual's reliance on the expected continuation of the DACA policy nor the sympathetic circumstances of DACA recipients as a class" outweigh the reasons to end the policy. App. 125a.

5. On August 3, 2018, the district court denied the government's motion to reconsider its prior order in light of Secretary Nielsen's memorandum. App. 80a-109a. The court largely accepted that the Nielsen memorandum provided a relevant "'further explanation'" for DHS's decision, rather than (as respondents' urged) an impermissible "*post hoc* rationalization." App. 91a (citation omitted).[4] But it concluded that the memorandum did not provide a basis to revisit its reviewability or merits determinations. App. 95a-108a.

On reviewability, the district court observed that the Nielsen memorandum, like the rescission memorandum, was based in part on the view that "the DACA policy was contrary to law." App. 97a (citation omitted). And the court reasoned that "'an otherwise reviewable' legal interpretation 'does not become presumptively unreviewable simply because the agency characterizes it as an exercise of enforcement discretion.'" App. 95a-96a (citation omitted). It rejected the independent non-legal policy reasons offered by Secretary Nielsen as simply an "attempt to disguise an objection to DACA's legality as a policy justification for its rescission." App. 100a.

On the merits, the district court reaffirmed its conclusion that the rescission of DACA is arbitrary and capricious because it did not find DHS's explanation to include a sufficient "legal assessment that th[e] [c]ourt

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[4] The district court refused to consider one of the several enforcement-policy reasons offered by the Secretary on the ground that it was a *post hoc* rationalization—namely, the importance for DHS to "project a message that leaves no doubt regarding the clear, consistent, and transparent enforcement of the immigration laws against all classes and categories of aliens," *Regents* App. 124a. See App. 94a.

could subject to judicial review." App. 105a. As for Secretary Nielsen's other rationales, the court expressed skepticism that the Secretary actually considered them to be "'independently sufficient'" given the court's conclusion that "three of those grounds—the substantial-doubts, legislative-inaction, and individualized-discretion rationales—simply recapitulate the Secretary's inadequately explained legal assessment." App. 106a (citation omitted). In any event, the court reasoned that the Secretary's memorandum "fails to engage meaningfully with the reliance interests and other countervailing factors that weigh against ending the program." *Ibid.* In the court's view, Secretary Nielsen "demonstrates no true cognizance of the serious reliance interests at issue here" and therefore the court refused to "accept as sufficient" her determination that "any reliance interests are outweighed" by the Secretary's other concerns about the DACA policy. App. 107a.

The government filed notices of appeal from the district court's final judgment on August 6, 2018. App. 112a-115a. On August 17, the district court stayed its order vacating the rescission of DACA insofar as the order granted relief beyond that already granted by the district courts in *Regents* and *Batalla Vidal*. D. Ct. Doc. 31.

REASONS FOR GRANTING THE PETITION

These cases concern the Executive Branch's authority to revoke a discretionary policy of non-enforcement that is sanctioning an ongoing violation of federal immigration law by nearly 700,000 aliens. The DACA policy is materially indistinguishable from the related policies that the Fifth Circuit held were contrary to federal immigration law in a decision that four Justices of this Court voted to affirm. No one contends that the policy is required by federal law. And, in fact, consistent with

the view of the Department of Justice, DHS has decided that the policy is unlawful and should be adopted only by legislative action, not unilateral executive action. Yet as a result of nationwide preliminary injunctions issued by the District Courts in the Northern District of California and the Eastern District of New York, DHS has been required to keep the policy in place, now more than a year since the agency's decision.

The government today is filing petitions for writs of certiorari before judgment to the Second, Ninth, and D.C. Circuits, each of which has before it a decision concluding that the rescission of DACA either is or likely is unlawful. As explained in the *Regents* petition, those decisions are wrong and they warrant this Court's immediate review. The government presents each of these petitions to ensure that the Court has an adequate vehicle in which to resolve the questions presented in a timely and definitive manner. The government respectfully submits that the Court should grant each petition for a writ of certiorari before judgment, consolidate these cases for decision, and consider this important dispute this Term.

A. The Questions Presented Warrant The Court's Immediate Review

The government's petition in *Regents* explains in detail why a grant of certiorari is necessary in order to obtain an appropriately prompt resolution of this important dispute. *Regents* Pet. 15-17. More than eight months ago, this Court recognized the need for an "expeditious[]" resolution of this dispute in its order dismissing without prejudice the government's petition for a writ of certiorari before judgment in *Department of Homeland Sec.* v. *Regents of the University of California*, 138 S. Ct. 1182 (2018). Absent certiorari before

judgment, even if a losing party were immediately to seek certiorari from a decision of one of the courts of appeals, this Court would not be able to review that decision in the ordinary course until next Term at the earliest. In the interim, the government would be required to retain a discretionary non-enforcement policy that DHS and the Attorney General have correctly concluded is unlawful and that sanctions the ongoing violation of federal law by more than half a million people. And the very existence of this litigation (and resulting uncertainty) would continue to impede efforts to enact legislation addressing the legitimate policy concerns underlying the DACA policy.

B. These Cases Squarely Present The Reviewability And The Lawfulness Of DACA's Rescission

The cases pending before the D.C. Circuit squarely present both of the questions presented. The respondents raise all of the principal challenges to the lawfulness of the rescission of DACA, including that it is arbitrary and capricious, that it should have gone through notice-and-comment rulemaking, and that it violates equal-protection and due-process principles. The government moved to dismiss all of respondents' claims on justiciability and merits grounds. Respondents opposed dismissal for all of their claims and moved for summary judgment on the arbitrary-and-capricious and notice-and-comment claims. And the district court's final judgment rests on essentially the same arbitrary-and-capricious claim on which the district courts in *Regents* and *Batalla Vidal* rest their nationwide preliminary injunctions.

These cases, moreover, present at least one advantage over the cases at issue in *Regents* and *Batalla Vidal*. Secretary Nielsen issued her memorandum,

which provides further explanation for DHS's decision to rescind DACA, in response to an order from the district court in these cases. And she did so after the decisions in *Regents* and *Batalla Vidal* were on appeal. As a result, the district court here is the only court to have addressed the effect of that memorandum on the questions presented (including by considering and rejecting respondents' arguments that Secretary Nielsen's explanation should be disregarded in its entirety as *post hoc* rationalization).

A grant of certiorari before judgment to the D.C. Circuit would therefore ensure that the district court's analysis of Secretary Nielsen's memorandum is before this Court, and it would allow the Court to resolve, at a minimum, the government's justiciability arguments and the arbitrary-and-capricious claim after a final judgment.

C. The Court Should Grant Each Of The Government's Petitions And Consolidate The Cases For Consideration This Term

To ensure an adequate vehicle for the timely and definitive resolution of this dispute, in addition to granting the government's petition in these cases, the Court should also grant the petitions for a writ of certiorari before judgment in *Regents* and *Batalla Vidal*, and consolidate the cases for further review. Although respondents here present the principal challenges against the rescission of DACA, they do not present some of the more tangential claims against the rescission, including, for example, that the rescission violates principles of equitable estoppel, and their equal-protection challenge is premised on DHS' alleged discrimination on the basis of DACA recipients' unlawful immigration status, not their race. The district court in these cases, moreover, did not pass on any constitutional challenges to the rescission.

The government thus respectfully submits that the Court should grant all three petitions and consolidate the cases for this Court's review. In so doing, the Court would ensure that no intervening developments in the lower courts—for example, a reversal by the Second or Ninth Circuits of one of the preliminary injunctions—would impede or complicate the Court's ability to reach all of the claims against the rescission of DACA on which respondents have prevailed in the lower courts and thus provide a definitive resolution of this dispute this Term.

CONCLUSION

The petition for a writ of certiorari before judgment should be granted.

Respectfully submitted.

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