

**In The
Supreme Court of the United States**

CHAD WOLF, ACTING SECRETARY
OF HOMELAND SECURITY, ET AL.,

Petitioners,

v.

MARTÍN JONATHAN BATALLA VIDAL, ET AL.,

Respondents.

**On Writ Of Certiorari Before Judgment
To The United States Court Of Appeals
For The Second Circuit**

**MOTION FOR LEAVE TO FILE
SUPPLEMENTAL BRIEF AFTER ORAL
ARGUMENT, AND SUPPLEMENTAL BRIEF**

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Pursuant to Supreme Court Rules 25.6 and 25.7, non-State respondents Martín Batalla Vidal, et al., move for leave to file a supplemental brief presenting new information that was not available at the time of oral argument.

First, this case involves whether the decision to terminate DACA must be vacated because, among other reasons, the Department of Homeland Security did not adequately assess the relevant reliance interests when it terminated the program. *See* Br. of DACA Recipient Respondents at 34 (“Here, the government never considered the ‘disruption’ its policy ‘would have on the lives of DACA recipients, let alone their families, employers and employees, schools and communities.’”) (citing *Regents* Pet. App. 60a); *see also* Transcript of Oral Argument at 23-24. The COVID-19 pandemic, and resulting mobilization of resources, provide a vivid illustration of some of the reliance interests engendered by the program that the agency failed to consider – namely, those borne by healthcare and other essential service providers that employ DACA recipients. While the agency could not have predicted the pandemic, at the very least it was required to give adequate consideration to the significant adverse consequences of termination for these and other key societal actors who rely on and benefit from the work of DACA recipients. It failed to do so.

Second, the question of whether DACA recipients would be deported if the program were terminated was raised at oral argument. Tr. at 48-9. The federal government recently clarified its plans regarding the deportation of DACA recipients with final orders of removal.

Respectfully submitted,

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**SUPPLEMENTAL BRIEF FOR RESPONDENTS
MARTÍN JONATHAN BATALLA VIDAL ET AL.**

Batalla Vidal-Respondents submit this brief to advise the Court of the bearing on this matter of the COVID-19 pandemic and the current national state of emergency. *Batalla Vidal*-Respondents argue that the decision to terminate DACA must be vacated because, among other reasons, the agency did not adequately assess the relevant reliance interests when it terminated the program. The public health crisis now confronting our nation illuminates the depth of those interests as borne by employers, civil society, state and local governments, and communities across the country, and especially by healthcare and other essential services providers. Furthermore, it throws into sharp relief DACA recipients' important contributions to the country and the significant adverse consequences of eliminating their ability to live and work without fear of imminent deportation. These are the very consequences the agency failed to consider.

Healthcare providers on the frontlines of our nation's fight against COVID-19 rely significantly upon DACA recipients to perform essential work. Approximately 27,000 DACA recipients are healthcare workers—including nurses, dentists, pharmacists, physician assistants, home health aides, technicians, and other staff—and nearly 200 are medical students, residents, and physicians. Brief for Ass'n of Am. Medical Colleges as Amicus Curiae Supporting Respondents at 2-3. The pandemic sheds new light on the reliance interests of healthcare providers and the

public health consequences of ignoring those interests, presciently identified by the Association of American Medical Colleges and 32 allied organizations in their amicus brief:

The country [is not] prepared to fill the loss that would result if DACA recipients were excluded from the health care workforce. The number of physicians in the United States has not kept pace with our growing and aging population and a commensurate increase in patients. . . . These shortages will be felt most keenly in medically underserved areas, such as rural settings and poor neighborhoods – precisely the areas in which DACA recipients are likeliest to work.

The risk of a pandemic also continues to grow, since infectious diseases can spread around the globe in a matter of days due to increased urbanization and international travel. . . . To ensure health security, the country needs a robust health workforce. Rescinding DACA, however, would deprive the public of domestically educated, well-trained, and otherwise qualified health care professionals. . . .

Id. at 4-5; *see also id.* at 16-24.

The record contains additional evidence of DACA recipients' involvement in providing healthcare. For example, plaintiff-respondent Jirayut (“New”) Lathivongskorn is a resident physician at the Zuckerberg San Francisco General Hospital and Trauma Center, having graduated from the University of California, San Francisco School of Medicine. J.A. at 916-931.

Other DACA-recipient healthcare providers include Dr. Dalia Larios, a physician at Brigham and Women's Hospital and Massachusetts General Hospital, Brief for Nineteen Coll. and Univ. as Amicus Curiae Supporting Respondents at 17; Dr. T.W., a surgeon, Brief for SEIU, AFL-CIO, and AFSCME as Amicus Curiae Supporting Respondents at 7-9; Jesus Contreras, a Houston-area paramedic, Brief for 109 Cities, Counties, et al. as Amicus Curiae Supporting Respondents at 10; Yazmin I., a medical intern in St. Louis, Brief for United We Dream as Amicus Curiae Supporting Respondents at 15; Luis A., an intensive care nurse in Arkansas, *id.* at 26; Daniel C., a registered nurse in New Jersey, *id.* at 27; M.R., a homecare worker for the elderly in California, SEIU, AFL-CIO, and AFSCME Am. Br. at 4-5; I.T., a surgical technician in El Paso, *id.* at 15-17; and plaintiff-respondent Martín Jonathan Battalla Vidal, a physical therapist. J.A. at 909. DACA recipients are essential to protecting communities across the country endangered by COVID-19. Termination of DACA during this national emergency would be catastrophic.¹

¹ The COVID-19 pandemic also highlights DACA recipients' impact on the economy and the importance of their participation in public health measures. Millions of family members, including U.S. citizens, rely upon DACA recipients for their economic and physical well-being. Furthermore, the forbearance from immigration enforcement that DACA affords promotes compliance by DACA recipients with stay-at-home orders and facilitates safe testing and treatment for COVID-19. These steps are essential to the public health measures now being taken to slow transmission of the virus and prevent the nation's healthcare system from being overwhelmed.

Petitioners recently have affirmed the significant risks faced by DACA recipients if termination of the program were upheld. In prior public statements, the President had averred that, upon the rescission of DACA, the administration would not target former DACA recipients for removal. J.A. at 496; *see* Tr. 48-9. Since Oral Argument, however, Petitioners have made clear that they plan to begin deporting DACA recipients if the termination of the program is upheld. On January 23, the Acting ICE Director stated, in reference to DACA recipients with final orders of removal, “If they get ordered removed, and DACA is done away with by the Supreme Court, we can actually effectuate those removal orders.” Matthew Albence, Acting Dir., Immigr. & Customs Enforcement, Public Safety Media Briefing (Jan. 23, 2020). The Acting Secretary of DHS made similar statements while testifying before the Senate on March 4. *Resources and Authorities Needed to Protect and Secure the Homeland: Hearing Before the S. Comm. on Homeland Sec. and Governmental Affairs*, 116th Cong. (2020) (statement of Chad F. Wolf, Sec’y, Dep’t of Homeland Sec.) (“So when we get final orders of removal, we’re going to effectuate those.”).

If the Court deems it appropriate, *Batalla Vidal*-Respondents would welcome the opportunity for supplemental briefing on the scope and relevance of third parties’ reliance interests, including to address whether remand to the agency for reconsideration of

its decision to terminate DACA is appropriate in light of the extraordinary public health emergency.

Respectfully submitted,

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