

Nos. 18-15068, 18-15069, 18-15070, 18-15071,
18-15072, 18-15128, 18-15133, 18-15134

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, *et al.*,
Plaintiffs-Appellees-Cross-Appellants,

v.

UNITED STATES DEPARTMENT OF HOMELAND SECURITY, *et al.*,
Defendants-Appellants-Cross-Appellees.

**MOTION OF THE STATES OF CALIFORNIA, MAINE, MARYLAND, AND
MINNESOTA TO EXTEND AND DIVIDE TIME FOR ORAL ARGUMENT**

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Argument in these eight consolidated appeals is currently scheduled for May 15 at 1:00 p.m., with 20 minutes allotted per side. *See* Dkt. 132.¹ In light of the number of these appeals, the importance and complexity of the issues presented, and differences between the claims and arguments presented in different appeals, California and the other state plaintiffs respectfully propose that the Court increase the time allotted for oral argument to a total of 35 minutes per side, with plaintiffs' argument time to be divided among three lawyers representing, respectively, the States (15 minutes), the Regents of the University of California (10 minutes), and the individual plaintiffs (10 minutes). Consistent with Federal Rules of Appellate Procedure 28.1(b) and 34(c)-(d), the federal defendants would argue first and have the opportunity to close the argument with rebuttal, and there would be no rebuttal argument for plaintiffs.

We are authorized to indicate that the Regents have agreed to this proposal and join in this motion. As explained below, counsel for the individual plaintiffs do not oppose the request for expanded time or the amount of time proposed for the States and the Regents, but submit that the individual plaintiffs should be allowed 15 minutes to be divided between two attorneys. The City of San Jose, the County of Santa Clara, and SEIU Local 521 support expanding the time for oral argument, but take no position on the allocation of time or the number of arguing

¹ All citations to "Dkt." are to the docket in No. 18-15068.

counsel. Counsel for the federal defendants have indicated that they consent to the expansion of time, and take no position on the allocation of time among plaintiffs, so long as defendants' oral argument time is equal to the plaintiffs' time in total.

1. These appeals arise out of five separate lawsuits, each brought by different plaintiffs, challenging defendants' termination of the Deferred Action for Childhood Arrivals (DACA) program. That termination affects nearly 700,000 law-abiding young people—who have obtained protection from removal, work authorization, and other benefits as a result of DACA—as well as their employers, families, and communities. The district court entered a preliminary injunction in each of the five cases, denied defendants' motion to dismiss the five complaints under Rule 12(b)(1) in substantial part, and denied their motion to dismiss under Rule 12(b)(6) with respect to certain claims while granting it with respect to other claims. Defendants appealed the preliminary injunction order as of right. This Court granted three separate petitions for permission to appeal various rulings that the district court certified for interlocutory review under 28 U.S.C. § 1292(b)—one filed by defendants, one filed by all plaintiffs, and one filed by the individual plaintiffs along with the County of Santa Clara and SEIU Local 521. The Court consolidated all eight appeals for briefing and argument.

Defendants' opening brief advances six separate issues, including whether review of plaintiffs' claims is barred by 5 U.S.C. § 701(a)(2); whether review is

barred by 8 U.S.C. § 1252; whether plaintiffs stated a claim that the decision to terminate DACA was arbitrary and capricious in violation of 5 U.S.C. § 706(2)(A); whether plaintiffs stated a claim that the decision violated equal protection; whether plaintiffs stated a claim that changes to defendants' policies regarding the sharing of DACA recipients' personal information violated due process; and whether the district court erred in entering a preliminary injunction. Dkt. 31 at 4. Some of these arguments apply to some plaintiffs but not others. *See, e.g.*, Dkt. 31 at 54-56. Some responding arguments, including some regarding defendants' threshold reviewability arguments, similarly apply to some plaintiffs but not others. *See, e.g.*, Dkt. 43 at 28-29. The cross-appeals present additional issues. All plaintiffs contend that the district court erred in holding that they failed to state a claim that defendants' decision to terminate DACA required notice-and-comment rulemaking under 5 U.S.C. § 553. *See, e.g.*, Dkt. 43 at 3. The individual plaintiffs contend that the decision violated the Due Process Clause because it impermissibly deprived them of a protected interest in renewal of their DACA status and its attendant benefits. Dkt. 46 at 5.

2. In light of the importance of these consolidated appeals, the number of parties, and the number and complexity of issues before the Court, the States respectfully suggest that the current allocation of 20 minutes of argument time per side is insufficient. Expanding the time to 35 minutes per side would assist the

Court's consideration of these appeals by ensuring adequate time for the Court to explore the numerous issues before it. It would also allow counsel for the States, the Regents, and the individual plaintiffs to address issues, arguments, or perspectives unique to their clients.

To ensure an orderly and helpful argument, the States propose limiting the number of attorneys presenting oral argument to three, each representing different plaintiffs. The States propose that the Court hear from counsel for the State of California for 15 minutes, followed by counsel for the Regents for 10 minutes and counsel for the individual plaintiffs for 10 minutes. Arguing counsel would coordinate to ensure that the interests of the remaining plaintiffs are also represented.

3. We are authorized to indicate that the Regents have agreed to this proposal and join in this motion. The City of San Jose, the County of Santa Clara, and SEIU Local 521 support expanding the time for oral argument, but take no position on the allocation of time or the number of arguing counsel. Counsel for the federal defendants have indicated that they consent to the expansion of time, and take no position on the allocation of time among plaintiffs, so long as defendants' oral argument time is equal to the plaintiffs' time in total.

The individual plaintiffs have asked that we include the following statement of their position:

“The individual plaintiffs agree that this case, given its national significance and the multiple complex legal issues presented, should have additional time for oral argument. While they do not oppose the amount of time requested by the other plaintiff groups, the individual plaintiffs respectfully submit that they should be allowed 15 minutes at argument, and that they should be permitted to divide their argument time between Theodore J. Boutrous, Jr. of Gibson, Dunn & Crutcher LLP and Mark Rosenbaum of Public Counsel, who will address distinct issues.

“The individual plaintiffs request this additional time for several reasons: First, they are the only plaintiffs in these cases who brought all of the causes of action at issue, who are arguing constitutional claims brought by neither of the State plaintiffs, and who have addressed some other claims in a manner different though complementary to the approaches taken by the governmental plaintiffs. Second, the individual plaintiffs unquestionably have standing to bring these claims. Third, the six individual plaintiffs’ stories about their reliance on DACA powerfully underscore the showings of irreparable harm and balance of harms justifying the preliminary injunction on appeal. Relatedly, but more fundamentally, the individual plaintiffs undoubtedly have the most at stake in this case. They stand to lose the very protection that DACA provides them and that they have built their lives around. It is the individual plaintiffs who face the threat of deportation,

and who could lose their homes, businesses, jobs and careers, and be forced to leave behind their friends, loved ones, students, clients, patients, and, for many, the only country they have ever known.”

CONCLUSION

The Court should expand the time for oral argument to 35 minutes per side, to be divided on the plaintiffs’ side among one lawyer for the State of California for 15 minutes, one lawyer for the Regents for 10 minutes, and one lawyer for the individual plaintiffs for 10 minutes.

Dated: April 20, 2018

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this motion complies with the requirements of Ninth Circuit Rule 27-1(1)(d), and the requirements of Federal Rules of Appellate Procedure 27(d), 32(a)(5), and 32(a)(6), because it uses a proportionately spaced Times New Roman font, has a typeface of 14 points, and contains 1,290 words.

Dated: April 20, 2018

s/ Michael J. Mongan

CERTIFICATE OF SERVICE

I certify that on April 20, 2018, I electronically filed the foregoing document with the Clerk of the Court of the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system. I certify that all other participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

Dated: April 20, 2018

s/ Michael J. Mongan
