

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

IN THE
Supreme Court of the United States

DEPARTMENT OF
HOMELAND SECURITY, ET AL., *Petitioners,*

v.

REGENTS OF THE UNIVERSITY
OF CALIFORNIA, ET AL., *Respondents.*

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

v.

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

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

v.

MARTIN JONATHAN BATALLA VIDAL, ET AL., *Respondents.*

ON WRITS OF CERTIORARI TO THE
UNITED STATES COURTS OF APPEALS FOR THE
NINTH, D.C., AND SECOND CIRCUITS

**BRIEF OF TIM COOK, DEIRDRE O'BRIEN, AND
APPLE AS AMICI CURIAE
IN SUPPORT OF RESPONDENTS**

Mark S. Davies	E. Joshua Rosenkranz
Thomas M. Bondy	<i>Counsel of Record</i>
Jeremy R. Peterman	ORRICK, HERRINGTON &
Upnit K. Bhatti	SUTCLIFFE LLP
Aaron Brecher	51 West 52nd Street
ORRICK, HERRINGTON &	New York, NY 10019
SUTCLIFFE LLP	(212) 506-5000
1152 15th Street, N.W.	jrosenkranz@orrick.com
Washington, D.C. 20005	

Counsel for Amici Curiae

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF AMICI CURIAE	1
INTRODUCTION AND SUMMARY OF ARGUMENT.....	2
ARGUMENT	4
CONCLUSION.....	16

TABLE OF AUTHORITIES

	Page(s)
 Cases	
<i>NLRB v. Bell Aerospace Co.</i> , 416 U.S. 267 (1974)	15
<i>Perez v. Mortg. Bankers Ass’n</i> , 135 S. Ct. 1199 (2015)	15
<i>Smiley v. Citibank (S.D.), N.A.</i> , 517 U.S. 735 (1996)	15
<i>United States v. Penn. Indus. Chem. Corp.</i> , 411 U.S. 655 (1973)	15
 Other Authorities	
Tim Cook & Charles Koch, <i>Congress must act on the ‘dreamers’</i> , Wash. Post (Dec. 14, 2017), https://tinyurl.com/y4rkuzdl	13
Letter from Tim Cook et al. to Donald J. Trump, Paul Ryan, Nancy Pelosi, Mitch McConnell, and Charles Schumer (Aug. 31, 2017), https://tinyurl.com/y6byjda9	14
<i>Global Diversity & Inclusion: Fostering Innovation Through a Diverse Workforce</i> , Forbes Insights (July 2011), https://tinyurl.com/y7plo7qh	14

Sylvia Ann Hewlett et al., *How Diversity Can Drive Innovation*, Harv. Bus. Rev. (Dec. 2013), <https://tinyurl.com/j8nyu8k>..... 13

Anna Powers, *A Study Finds That Diverse Companies Produce 19% More Revenue*, Forbes (June 27, 2018), <https://tinyurl.com/y5tk7lsn>..... 13

Ellyn Shook & Julie Sweet, *Getting to Equal 2019: Creating a Culture That Drives Innovation*, Accenture (2019), <https://tinyurl.com/y6alhclq> 13

INTEREST OF AMICI CURIAE¹

Apple is a company rooted in innovation that aims to make the world a better place. Tim Cook is its CEO, and Deirdre O'Brien is its Senior Vice President of Retail and People. Mr. Cook joined Apple in 1998, and Ms. O'Brien in 1988. In this submission, Mr. Cook and Ms. O'Brien speak for Apple and, importantly, for themselves. Apple has filed numerous briefs before this Court, but this is the first time we lend our own names as well. We do so here to stress that not only does Apple care as a company, but we care as leaders, colleagues, and human beings. This is an issue we feel to our core.

Since 1976, Apple has made its name by designing, developing, selling, and maintaining cutting-edge consumer electronics including mobile communications devices, personal computers, and related software and services. Apple's success stems from its people. They shape and embody Apple's culture of innovation. Apple employs a diverse workforce of over 90,000 employees in the United States alone.

Among those people are hundreds of DACA recipients who had no say in the decision to travel to this country and have known no other home. Apple employs DACA recipients who embody Apple's commitment to innovation in a wide variety of positions. As

¹ The parties have consented to the filing of this brief. No counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than amici and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

we explain below, they, and immigrants like them, are vital to Apple's success. They spark creativity and help drive innovation. They are among our most driven and selfless colleagues.

Our interest in this case is simple: We are distressed at the prospect of ripping our DACA colleagues from the fabric of our company. This issue is a moral one: Our country made a deal with a highly vulnerable population interested in a bright future, and we should keep that deal.

INTRODUCTION AND SUMMARY OF ARGUMENT

We are often asked, "How does Apple do it?" How has Apple devised a parade of revolutionary new products and services that no one ever imagined? How has Apple achieved one technological breakthrough after another? How has Apple made its products so consistently innovative and appealing that people all across the world, from all walks of life, enjoy them?

The answer is our people. Our recipe for success is simple: Hire the best people, from the most diverse backgrounds. They will solve the most challenging technological problems. They will find new ways to connect to the broadest population and new ways to provide the best customer experience. This is Apple's innovation strategy. It is all about the people—and their rich diversity.

After the DACA program was created, Apple eagerly sought out and hired Dreamers—relying on the commitment our government made to them. Today,

Apple employs 443 Dreamers who come from more than 25 different countries on four continents. We did not hire them out of kindness or charity. We did it because Dreamers embody Apple’s innovation strategy. They come from diverse backgrounds and display a wide range of skills and experiences that equip them to tackle problems from different perspectives. Because they thrived in the face of adversity, they often exhibit extraordinary levels of grit and drive.

We can say from experience that DACA promotes innovation—for us at Apple and for companies all across the United States. This brief features the stories of five of our DACA colleagues who play vital roles throughout Apple. They help shape our culture. Their personal stories, work ethic, and success inspire us. Apple and companies like it would be weaker and less competitive without these extraordinary individuals in our workforce. They have earned the right to continue to contribute to our company and to our society.

Which brings us to a broader—and more fundamental—point. One of Apple’s core values is the belief that equal opportunities should be available for all, regardless of background. The United States is at its best when all people are free to pursue their dreams. Our country has enjoyed unparalleled success by welcoming people from around the world who seek to make a better life for themselves and their families, no matter their backgrounds.

DACA is an embodiment of those ideals. The Dreamers were brought to this country at a young age, typically through no choice of their own. When

they were old enough to make their own choices, our country offered them a deal, which they accepted at great personal peril. They fulfilled their end of the bargain. They have done everything right. In their patriotism, dedication to their families and communities, and commitment to making their country a better place, they are as American as any of us. They simply want the opportunity to continue to work, meet their obligations to society, raise and support their families, and pursue the American dream. We collectively have a moral obligation to uphold our end of the bargain. When we do, our country will be richer for it.

ARGUMENT

1. Apple did not become one of the most successful companies in the history of the world by doing things conventionally. Apple's success story is a story of innovation. We have succeeded by disrupting the marketplace with revolutionary products, novel strategies to engage the public, and new approaches to customer interactions. None of this would have happened without our diverse workforce.

For Apple, diversity is a technological and business imperative. Suppose you need to solve a complicated, multifaceted problem. It could be a technological problem that no one else has ever figured out, such as how to make a transparent touchscreen that can respond to multiple touches; how to make a watch provide life-saving assistance; or how to fulfill the promise of augmented reality. It could be a customer-relations challenge, such as how

to teach the latest technology to someone who is buying her first smartphone; or how to ensure Apple customers receive the very best service when they are ready to purchase a new device. It could be a problem across hundreds of dimensions.

One approach is to gather a group of problem solvers with the same upbringing, experiences, and educations. That is a recipe for group think. Apple strives to gather together a diverse group, with wildly different perspectives, educations, and life experiences. When you do that magical things happen. You find better solutions. You intuit things about customers who are not the same as you. That is how you innovate.

2. It is this culture of innovation—this technological imperative—that first attracted us to Dreamers. Apple’s investment in Dreamers has paid huge dividends. Dreamers fuel creativity, broaden knowledge, and help drive innovation. They inspire all of us. They make Apple better. They make our country better.

Apple employs Dreamers across 36 states and in all regions of the country. Dreamers at Apple run the gamut of roles within the company. They are Hardware Development Engineers, Software Engineers and Technicians, Retail Store Geniuses, and Support and Operations Specialists. With their diverse experiences and educational backgrounds, they bring different technological solutions to the table. Speaking numerous languages, they also educate customers on the latest technology and help repair broken devices in Apple’s stores. Having grown up in families from

different cultures, they display different sensibilities about customer interactions.

Each brings his or her own story of adversity, achievement, and commitment to excellence. Each contributes to Apple's success in his or her own way—and in ways that would not be replicated by plugging just any cog into the wheel. As a group, they tend to display levels of determination and resolve that would be the pride of any business. We could tell you 443 stories to illustrate these attributes. Instead, we will focus on an illustrative five.²

D.O. came from Mexico as an eight-year-old when his mother sacrificed everything to reunite with her family in the United States. He saw his mother struggle to find a steady job and then ultimately “work in the fields. It [wa]s really hard, manual labor. It is so tough on her body and I see how it wears her out. So seeing my mom have to work like that, I knew I needed to do everything I could, work as hard as I could, to get a job that would allow her to stop working in the fields. You know, working in the fields, you don't get benefits, you don't get a retirement plan. I'm my mom's retirement plan.” Growing up, D.O.'s main goal was to own a computer. “I always had to work just to get my hands on a device.” He focused his interest and passion for computers toward helping his community. He helped students learn how to code and worked as a program coordinator, teaching students

² All Dreamers are highly vulnerable and fear retribution. The Dreamers in the stories below have authorized us to use their initials, except for “A.B.,” who requested complete anonymity.

the skills they needed to succeed in software engineering. “These jobs focused on giving back to my community, and the reason why I give back is because I’ve seen what can happen to kids like me if they don’t get opportunities to be on a laptop and get their hands on the programs that they want to write. Due to the way I grew up and what I wanted to do, it was hard to get the opportunities that I had.”

D.O. explains how his background affects his professional endeavors. “I think the adversity I faced led me to develop a really strong work ethic that allowed me to succeed. I attended a college program where you could graduate with your bachelor’s in three years instead of four—but that meant no breaks, no summers off. All school all the time. It was an intense schedule but because of my drive to get my mom out of her manual labor job, I was able to stay committed to the program.”

That drive has contributed to D.O.’s success at Apple, which hired him out of college as a software development engineer in Sunnyvale, California. Recognizing his work ethic and skills, D.O.’s supervisors have commented, “He was learning so fast that we couldn’t even keep up with him!” D.O. was hired about four weeks ago and is already known for his research skills and for his ability “to come up with his own ideas.” It was an “easy decision to hire him. He was as brilliant as anybody we could get. He is of the highest caliber for any new college hire.” Given his “determination, ability to learn, and keenness to provide new ideas, he [has become a] well-respected team member.”

* * *

W.V.'s father faced struggles in Peru and moved to the United States, leaving his family behind for several years. W.V. was eight years old when his father brought him here. W.V. says he is motivated by "the sacrifices my mom and dad made. My dad never saw his family again." At first, he says, "I didn't have a drive. Because there was no DACA back then, I knew I wouldn't be able to get a job so I didn't have the drive to do well. But when my dad passed away, I knew I had to work hard." He simply had to support his mother and sister. The obstacles W.V. faced helped him learn how to think outside the box. "I've been in some [difficult situations]. But just like my dad, I'm going to go with it. Just going with the flow and finding the best solution that I can find."

Apple originally hired W.V. as a contractor. But managers quickly noticed his unique abilities and he was offered a full-time position as a Maps Analyst. His supervisor emphasizes that W.V. has always been "a top performer and takes initiative and runs with anything we give him." He is "one of the best people I've had working for me. He's become an indispensable part of my group." If W.V. had to leave the country, his supervisor worries, "I don't know if his replacement would be able to do what he can do."

* * *

A.B. was born and raised in a small town in Mexico. She was brought to the United States at the age of eight. Her sister was born in the United States. Growing up, she says, "I knew I would not have the

same opportunity to continue my education after high school or even have a standard career like my sister due to my legal status.” So she “had to get creative and find a different path to success.” A.B. gets her motivation from her mother who cleans houses for a living. She says, “Her work ethic drives me. I learned to give it 110% because of her.” A.B. started working at a very young age. She explains, “I had to make sure what my family went through wasn’t for nothing.” DACA gave her hope and opportunity. She made it to Apple, where she now works in an Apple store in Louisville. She explains how her background prepared her for her current job at Apple. “I’m not above anything. My mom is a cleaning lady. I can do anything. I can tackle anything. She doesn’t even know the language, but she’s out there. So what’s stopping me?” Her struggles have taught her to “be more patient and put my energy in my work, even if it’s the energy that’s fueled by people hating on me or misunderstanding me.”

A.B.’s supervisor also describes her as “a superstar!” “She’s one of the most positive team members that I’m lucky enough to lead.” A.B. started out as a part-time employee, but “I sat her down and asked her to come on full-time because she was so positive. She offers to stay late or work in another area of the store every day just to support the store.” She recounts that “we just recognized her two days ago. I talked to my leaders about how great she is. She’s quick, accurate, and knows how to engage with customers. She’s very personable. She’s one of my favorites!”

* * *

K.G.'s parents arranged for him to come to the United States from Mexico when he was eight years old to join his father, who had moved earlier. "Living without my dad for a good long time was difficult," he recounts. "Financially, we were not very stable. For us to come here to the U.S., mom had to sell her car. We had to travel from Central Mexico." K.G.'s empathy and work ethic were driven by tough circumstances that have fostered a sense of gratitude for his chances here. He explains, "These tough circumstances changed how I see things in life. I matured faster because of that. Changed [because of] my having to learn a whole new language." Because of these hardships, "I've been able to push myself more to look for the things that I want and work harder." Within a year of coming to the United States, "I was already speaking English fairly fluently. I now speak three languages."

K.G. now works as a part of our AppleCare team in Austin. Though he's been with Apple less than a year, he is already impressing supervisors with his ability to pick up details of Apple's procedures. He explains what drives him: "I want to be more successful than what my parents were able to be. They brought me here to become a better person and have better luck than they had. [So] I appreciate every opportunity I'm presented, and I always try to do my best."

* * *

L.D. was five when she moved to the United States from Brazil with her parents. At such a young age, she didn't realize how her life would change and what obstacles she would face, but growing up she

learned this fact very quickly. “I saw how difficult it was for my parents and how it may be for me and my sister. We couldn’t visit our family. When my grandparents passed away, my parents couldn’t go back. People always judge us and ask why we’re here. It’s uncomfortable because we can’t share our story because we don’t know how someone will take it.” But “DACA helped me and my sister not feel different from everyone else.”

L.D. is now working as a Retail Specialist at Apple. Her supervisors have asked her to train new employees even though that function was not initially part of her official job description. She attributes her success to her ability to “educat[e herself] about everything that’s going on.” She’s also “able to relate with everyone and care about everyone. Even if I don’t speak their language, I’m able to relate and be patient with them because I saw that with my parents who didn’t speak English.”

Her supervisors “appreciate [her] diversity and [her] customer focus, and [she] gets opportunities others don’t” because of her unique skills. “We can lean on her for a lot of things,” her supervisors stress. “One thing that sticks out is her ability to connect with people and embody our values.” L.D. is “one out of 2 among 100 of our employees who has been chosen to train new employees on Apple’s values, products, and how to connect with our customers.” We “want her to be the first impression [our new employees] have with Apple.” “Others can also speak multiple languages, but they cannot relate to customers like her.” Coming from another country, “she can connect with customers in a unique way—other employees can’t provide

that exceptional experience.” In our customer reviews, she is rated “one of the highest consistently.”

* * *

As different as these stories are, they all have a few things in common. First, they display how unique backgrounds have translated into tangible skills and capabilities that set Apple apart in every arena. Second, they display the grit that inevitably translates into personal and collective success.

Third, they inspire us—all of us, at every level of the company. Apple would quite literally not exist without a brilliant and driven population of immigrants. Apple founder Steve Jobs’s father immigrated from Syria. Dreamers form a pipeline from which future managers and leaders will be drawn. Each is an innovator with promotion potential, and we would be thrilled if they spent their careers at Apple. Infusions of talent like the Dreamers from around the globe sustain and help drive Apple’s ability to thrive. Every one of these talented Dreamers should have the same opportunities as Steve did to create, work hard, and help change the world for the better.

Fourth, these are all quintessentially *American* stories—stories about the American Dream: Come from nothing, follow the rules, work hard, contribute, and then prosper and make us all more prosperous.

3. Apple is not the only company that subscribes to the view that diversity drives innovation—and that has found huge value in hiring DACA recipients. This Court will hear from many tech companies—run by

executives across the ideological spectrum—who will confirm that they subscribe to the same philosophy.³ That is why we say (as we have published with Charles Koch): “For our nation to maximize progress and prosperity, we need more, not fewer, talented people at the table.”⁴ The path to our country’s continued success is to bring in the best and most diverse team of problem-solvers.

Several studies have shown that organizations with diverse employees are significantly more likely to experience growth and success.⁵ For example, a study based on “a nationally representative survey of 1,800 professionals, 40 case studies, and numerous focus groups and interviews” found that companies with managers who have diverse traits and varied life experiences “are 45% likelier to report a growth in market share over the previous year and 70% likelier to report that the firm captured a new market.”⁶ Another study by the Boston Consulting Group found

³ Apple fully endorses the Coalition for the American Dream’s amicus brief.

⁴ Tim Cook & Charles Koch, *Congress must act on the ‘dreamers’*, Wash. Post (Dec. 14, 2017), <https://tinyurl.com/y4rkuzdl>.

⁵ Sylvia Ann Hewlett et al., *How Diversity Can Drive Innovation*, Harv. Bus. Rev. (Dec. 2013), <https://tinyurl.com/j8nyu8k>; see also Ellyn Shook & Julie Sweet, *Getting to Equal 2019: Creating a Culture That Drives Innovation*, Accenture (2019), <https://tinyurl.com/y6alhclq>.

⁶ Hewlett et al., *supra*.

that “diversity increases the bottom line for companies.”⁷

Companies have recognized how diversity fuels success.⁸ That is why hundreds of America’s most important business leaders wrote to the Administration emphasizing DACA’s benefits and urging it to preserve the program, explaining that “Dreamers are vital to the future of our companies and our economy” and part of America’s “global competitive advantage.”⁹

4. Most of the Dreamers had no say in the decision to travel to this country and have known no other home. By adopting the DACA program, this country

⁷ Anna Powers, *A Study Finds That Diverse Companies Produce 19% More Revenue*, Forbes (June 27, 2018), <https://tinyurl.com/y5tk7lsn>.

⁸ See generally *Global Diversity & Inclusion: Fostering Innovation Through a Diverse Workforce*, Forbes Insights (July 2011), <https://tinyurl.com/y7plo7qh> (“Diversity fosters creativity. We need to generate the best ideas from our people in all levels of the company and incorporate them into our business practices.” –Frédéric Rozé, President and CEO, L’Oréal USA); *id.* (“We are in 75 countries and we want to hire the best talent in each locale. Diverse teams and companies make better decisions.” –Eileen Taylor, global head of diversity until 2013, Deutsche Bank); *id.* (“We couldn’t have gone through all of the mergers and acquisitions and continue to be successful without having a diverse workforce. It’s important to our business strategy and it makes us more innovative and competitive.” –Debbie Storey, senior vice president of talent development and chief diversity officer until 2015, AT&T).

⁹ Letter from Tim Cook et al. to Donald J. Trump, Paul Ryan, Nancy Pelosi, Mitch McConnell, and Charles Schumer (Aug. 31, 2017), <https://tinyurl.com/y6byjda9>.

acknowledged their sacrifice and offered them a path to continuing the lives they loved and formalizing their contributions to American society. With the promise of deferred action and permission to seek work and stay long term, 800,000 young people stepped forward, shared highly sensitive personal information, passed a background check, and played by the rules. Their decision to do so was quite literally life-altering, and irreversible. DACA status affected Dreamers' decisions about whether and where to apply to college, seek jobs, and travel. The Dreamers took us at our word. They held up their end of the bargain. They have worked hard, paid taxes, and contributed to our society and to their communities.

This Court has recognized that “serious reliance interests” like these carry significant legal weight. *Perez v. Mortg. Bankers Ass’n*, 135 S. Ct. 1199, 1209 (2015); *Smiley v. Citibank (S.D.), N.A.*, 517 U.S. 735, 742 (1996); *see also NLRB v. Bell Aerospace Co.*, 416 U.S. 267, 295 (1974) (warning against agency actions “impos[ing]” “new liability ... on individuals for past actions which were taken in good-faith reliance on [agency] pronouncements”); *United States v. Penn. Indus. Chem. Corp.*, 411 U.S. 655, 670-75 (1973) (requiring consideration of reliance interests).

This is an issue where one’s head and heart lead to the same conclusion. We collectively owe it to the Dreamers to hold up our end of the bargain. It is not just a legal requirement. It is the moral thing to do. Who are we as a country if we renege? What does it say about us as a people to turn our backs on the Dreamers now?

CONCLUSION

This Court should affirm the judgments below.

Respectfully submitted,

Mark S. Davies
Thomas M. Bondy
Jeremy R. Peterman
Upnit K. Bhatti
Aaron Brecher
ORRICK, HERRINGTON &
SUTCLIFFE LLP
1152 15th Street, N.W.
Washington, D.C. 20005

E. Joshua Rosenkranz
Counsel of Record
ORRICK, HERRINGTON &
SUTCLIFFE LLP
51 West 52nd Street
New York, NY 10019
(212) 506-5000
jrosenkranz@orrick.com

October 2, 2019