## In The Supreme Court of the United States

DEPARTMENT OF HOMELAND SECURITY, et al., Petitioners,

REGENTS OF THE UNIVERSITY OF CALIFORNIA, et al.,

Respondents.

DONALD J. TRUMP, President of the United States, et al., Petitioners,

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, et al., Respondents.

KEVIN K. MCALEENAN, Acting Secretary of Homeland Security, et al., Petitioners,

On Writs Of Certiorari To The United States Courts Of Appeals For The Ninth, District Of Columbia, and Second Circuits

BRIEF OF ALIANZA AMERICAS AND 10 OTHER IMMIGRATION RIGHTS ORGANIZATIONS AS AMICI CURIAE IN SUPPORT OF RESPONDENTS

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Blake Emerson, The Claims of Official Reason: Administrative Guidance on Social Inclusion, 128 Vale I. J. 2122 (2019)	8 17



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