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.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF AMICUS CURIAE
NAACP LEGAL DEFENSE & EDUCATIONAL
FUND, INC., AND LATINOJUSTICE PRLDEF
IN SUPPORT OF RESPONDENTS

SHERRILYN A. IFILL Daniel Harawa Of Counsel Director-Counsel JANAI S. NELSON NAACP LEGAL DEFENSE & SAMUEL SPITAL EDUCATIONAL FUND, INC. 700 14th St, NW Suite 600 NATASHA MERLE* Washington, DC 20005 RAYMOND AUDAIN CARA MCCLELLAN NAACP LEGAL DEFENSE & EDUCATIONAL FUND, INC. Counsel for Amicus Curiae 40 Rector St., 5th Floor NAACP Legal Defense & New York, NY 10006 Educational Fund, Inc. (212) 965-2200 nmerle@naacpldf.org

*Counsel of Record

October 4, 2019



TABLE OF CONTENTS

		<u>P</u>	<u>AGE</u>
ТА	BLE	E OF AUTHORITIES	ii
IN	ГER	ESTS OF AMICUS CURIAE	1
		DDUCTION AND SUMMARY OF MENT	3
AR	GU]	MENT	7
I.		spondents' Intentional Racial scrimination Claim is Cognizable	7
	A.	Respondents' Equal Protection Claim Challenges a General Policy Decision, Which Should be Reviewed Under the Arlington Heights Framework	9
	В.	Respondents' Claim of Intentional Racial Discrimination Meets the "Outrageous" Requirement of AADC	13
II.	tha Eq	e Lower Courts Correctly Concluded at Respondents Plausibly Alleged an ual Protection Claim Under <i>Arlington ights</i> .	17
	A.	The Factors Supporting an Inference of Discrimination	18
	В.	The Government Cannot Rely on <i>Ipse Dixit</i> to Defeat an Inference of Discrimination.	23



CONCLUSION	31



TABLE OF AUTHORITIES

PAGE(S)

CASES
Batalla Vidal v. Nielsen, 279 F. Supp. 3d 401 (E.D.N.Y. 2018)4
Batalla Vidal v. Nielsen, 291 F. Supp. 3d 260 (E.D.N.Y. 2018)passim
Bolling v. Sharpe, 347 U.S. 497 (1955)14
Brown v. Board of Education, 347 U.S. 483 (1954)1
Buck v. Davis, 137 S. Ct. 759 (2017)1
CASA de Maryland, Inc. v. Trump, 355 F. Supp. 3d 307 (D. Md. 2018)21
CASA de Maryland v. U.S. Dep't of Homeland Sec., 284 F. Supp. 3d 758 (D. Md. 2018)12
Centro Presente v. U.S. Dep't of Homeland Sec., 332 F. Supp. 3d 393 (D. Mass. 2018)21
Chae Chan Ping v. United States, 130 U.S. 581 (1889)16
City of Greenwood v. Peacock, 384 U.S. 808 (1966)14



iv

TABLE OF AUTHORITIES

(CONTINUED)

PAGE(S)

CASES
City of Richmond v. J.A. Croson Co. 488 U.S. 469 (1989)8
Dep't of Commerce v. New York, 139 S. Ct. 2551 (2019)29, 30
Dep't of Homeland Security v. Regents of the Univ. of Calif. (2019) (Nos. 18-587, 18-588, and 18-589)
Erickson v. Pardus, 551 U.S. 89 (2007)27
Humphrey's Executor v. United States, 295 U.S. 602 (1935)26
Korematsu v. United States 323 U.S. 214 (1944)8
McCreary County v. ACLU of Ky., 545 U.S. 844 (2005)27
Miller-El v. Dretke, 545 U.S. 231
Nat'l Ass'n for the Advancement of Colored People v. U.S. Dep't of Homeland Sec., 364 F. Supp. 3d 568 (D. Md. 2019)21



DOCKET A L A R M

Explore Litigation Insights



Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time** alerts and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.

