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THE SOCIAL CONTEXT OF THE LAW: A  
CRITICAL ANALYSIS OF RELIANCE  
INTERESTS IN THE *DEPARTMENT OF  
HOMELAND SECURITY V. REGENTS OF  
THE UNIVERSITY OF CALIFORNIA*

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ABSTRACT

*In 2020, the U.S. Supreme Court ruled on the Department of Homeland Security v. Regents of the University of California case. The case concerned the rescission of the Deferred Action for Childhood Arrivals (“DACA”) policy, an issue that sparked the interest of a wide range of amicus curiae, including those in support of the policy. Using Critical Race Theory (“CRT”) and UndocuCrit Theory in an integrated framework, this Article interrogates the social context amici presented in their amicus briefs to see what we could learn about DACA from the perspective of amici. This Article demonstrates that amici highlighted the importance and impact of the policy*

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*to all sectors of society, but, in doing so, largely emphasized the substantial gains and potential losses to the country and U.S. citizens, de-centering DACA recipients. The social context did not fully humanize recipients before the Court. Building upon this analysis, this Article discusses the implications for legal frameworks with social context, institutional/disciplinary norms, and comprehensive immigration reform.*

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## INTRODUCTION

Law is intricately connected to society, shaping social institutions and people's daily lives.<sup>1</sup> Interrogating the relationship between law and society allows us to be critical of the law and to identify its limitations and wide ranging social implications.<sup>2</sup> Legal frameworks with social context—frameworks that embed and require consideration of social or public policy

1. See Susan S. Silbey, *A Sociological Interpretation of the Relationship Between Law and Society*, in *LAW AND THE ORDERING OF OUR LIFE TOGETHER* 1, 5 (Richard John Neuhaus ed., 1989) (“[T]hrough a dialectical process, humans produce a social world which they then experience as something other than human. Consequently, the institutional world thus produced ‘requires legitimation, that is, ways by which it can be “explained” and justified’ to each new generation that encounters it as made rather than in the making. From this point of view, the law is a fundamental social institution, providing legitimations for the social order or stories that explain our lives to ourselves.” (footnotes omitted)).

2. See *infra* Section IV.A.1.

concerns within their analytic frameworks—allow us to interrogate this relationship.<sup>3</sup> They provide an opportunity for courts and advocates to engage with the real life implications of a given case.<sup>4</sup> Presumably, the consideration of a more holistic depiction of the interests at stake can humanize the parties before the court and, thereby, lead to more just outcomes.<sup>5</sup>

Humanizing the parties before the court is particularly instrumental in the context of civil rights, such as immigration, where the outcomes of a case may lead to life altering consequences, such as removal from the United States.<sup>6</sup> One such framework that centralizes the human impact in the immigration field is the framework of arbitrary and capricious agency action.<sup>7</sup> Governed by the Administrative Procedures Act (“APA”), federal agencies making policy changes must engage in “reasoned [decision-making],” accounting for the reliance interests that policies engender.<sup>8</sup> Agencies that fail to engage in reasoned decision-making act in an arbitrary and capricious manner.<sup>9</sup>

In June 2020, the U.S. Supreme Court ruled on whether the U.S. Department of Homeland Security’s (“DHS”) rescission of DACA was arbitrary and capricious.<sup>10</sup> The case (or the “DACA case”) drew national attention and attracted amici across the country who weighed in on whether DHS failed to consider the reliance interests at stake.<sup>11</sup> The case before the

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3. For example, contract common law has long developed consideration of reliance interests. *See* L. L. Fuller & William R. Perdue, Jr., *The Reliance Interest in Contract Damages*, 46 YALE L.J. 52 *passim* (1936); *see also* *Reliance Damages*, LEGAL INFO. INST., [https://www.law.cornell.edu/wex/reliance\\_damages](https://www.law.cornell.edu/wex/reliance_damages) [<https://perma.cc/7SEA-H7UJ>].

4. *See, e.g.*, Maria M. Lewis & Suzanne E. Eckes, *Storytelling, Leadership, and the Law: Using Amicus Briefs to Understand the Impact of School District Policies and Practices Related to Transgender Student Inclusion*, 56 EDUC. ADMIN. Q. 46, 46 (2020) (reviewing amicus briefs “to better understand the human impact of policies and practices related to transgender student inclusion”).

5. *See, e.g.*, *Brown v. Board of Educ.*, 347 U.S. 483, 494 n.11 (1954) (considering the psychological, social, and emotional impact of racial segregation on Black children that informed the U.S. Supreme Court’s ruling, which found racial segregation in schools to be unconstitutional).

6. *See, e.g.*, Lewis & Eckes, *supra* note 4; Donald Kerwin, Daniela Alulema & Mike Nicholson, *Communities in Crisis: Interior Removals and Their Human Consequences*, 6 J. ON MIGRATION & HUM. SEC. 226, 227 (2018).

7. 5 U.S.C. § 706(2)(A).

8. *Michigan v. EPA*, 576 U.S. 743, 750 (2015) (internal quotation marks omitted) (citing *Allentown Mack Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 374 (1998)); *see also infra* Part II.

9. § 706(2)(A); *see, e.g.*, *Summers v. Touchpoint Health Plan, Inc.*, 749 N.W.2d 182, 188 (Wis. 2008).

10. *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1915–16 (2020).

11. Stakeholders submitted a total of forty-six briefs after the U.S. Supreme Court granted certiorari in the case. Amici represented a wide array of sectors and professions, including government

Court drew an array of diverse amici, providing an opportunity to examine, through from a critical perspective, the application of a legal framework with social context.<sup>12</sup> Using Derrick Bell's concept of interest convergence<sup>13</sup> and Carlos Aguilar's concept of liminality,<sup>14</sup> this study is guided by one question: As an application of the arbitrary and capricious framework from the APA, what can we learn about DACA's significance, impact, and the interests at stake through amici's representation of reliance interests in *Department of Homeland Security v. Regents of the University of California*?<sup>15</sup>

Through our analysis, we found that though the application of the arbitrary and capricious framework—a legal framework with social context—brought to the fore DACA's significance, importance, impact, and the interests at stake, amici focused on how the interests converged with the interests of the white majority.<sup>16</sup> Without DACA, recipients would live in further social marginalization without legal protection from deportation and the ability to integrate into society.<sup>17</sup> DACA marginally improved recipients'

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officials, colleges and universities, research organizations, and business groups. Appendix A includes a list of all categories, demonstrating the wide interest the case generated.

12. See *infra* Part IV.

13. Derrick A. Bell, Jr., *Brown v. Board of Education and the Interest-Convergence Dilemma*, 93 HARV. L. REV. 518 *passim* (1980).

14. Carlos Aguilar, *Undocumented Critical Theory*, 19 CULTURAL STUD. ↔ CRITICAL METHODOLOGIES 152 *passim* (2019).

15. This study is part of a larger research project in which we applied Critical Race Theory and DocuCrit to analyze amicus briefs before the Supreme Court in *Department of Homeland Security v. Regents of the University of California*, 140 S. Ct. 1891 (2020).

16. See Bell, *supra* note 13.

17. *E.g.*, Brief of Amici Curiae the National Association of Home Builders et al. in Support of Respondents, *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891 (2020) (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for Nat'l Ass'n of Home Builders et al.]; Brief of United We Dream et al. in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for United We Dream et al.]; Brief of American Council on Education et al. as Amici Curiae in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for Am. Council on Educ. et al.]; Brief of Amici Curiae Service Employees International Union et al. in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for Serv. Emp. Int'l Union et al.]; Brief of the United States Conference of Catholic Bishops et al. in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for U.S. Catholic Bishops et al.]; Brief of Amici Curiae 109 Cities et al. in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for 109 Cities et al.]; Brief of National School Boards Ass'n et al. as Amici Curiae in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for Nat'l Sch. Bds. Ass'n et al.]; Brief of 143 U.S. Business Ass'ns & Cos. as Amici Curiae in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for 143 Business Ass'ns & Cos.]; Brief for Amici Curiae Ass'n of American Medical Colleges, et al. in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for Ass'n Am. Med. Colls. et al.]; Brief for Amici Curiae Nineteen Colleges & Universities in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for Nineteen Colls.

liminal legal status.<sup>18</sup> But, more frequently, amici extensively detailed the gains to the country, which were substantial and reverberated across all sectors.<sup>19</sup> As reflected in a rich legacy of critical scholarship, in instances when the interests of marginalized communities converge with the interests of white people, the interests and gains are provisional and will be sacrificed

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& Universities]; Brief of Nonprofit Legal Services Organizations as Amici Curiae in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for Nonprofit Legal Servs. Orgs.]; Brief of Alianza Americas et al. as Amici Curiae in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for Alianza Ams. et al.]; Brief for Amici Curiae Institutions of Higher Education in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for Inst. of Higher Educ.]; Brief for the State of Nevada et al. as Amici Curiae in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for State of Nev. et al.]; Brief of Teach for America, Inc. as Amicus Curiae in Support of Respondents & Affirmance, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for Teach for Am.]; Brief of Tim Cook et al. as Amici Curiae in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for Tim Cook et al.]; Brief for Lawyers' Committee for Civil Rights Under Law et al. as Amici Curiae in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for Laws.' Comm. for C.R. Under L. et al.]; Amici Curiae Brief of Empirical Scholars in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for Empirical Scholars]; Brief of Amicus Curiae Government of the United Mexican States in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for Gov't of Mexican States]; Brief for the American Professional Society on the Abuse of Children et al. as Amici Curiae in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for Am. Prof'l Soc'y on Abuse of Children et al.]; Brief for Former Service Secretaries, Modern Military Association of America et al. as Amici Curiae in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for Former Serv. Sec'ys et al.] (describing the economic marginalization recipients would experience without protection); Brief Amici Curiae of the National Education Ass'n and National PTA in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for Nat'l Educ. Ass'n & Nat'l PTA]; Brief of the National Queer Asian Pacific Islander Alliance et al. as Amici Curiae in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for NQAPIA et al.]; Brief of Amici Curiae Current & Former Prosecutors & Law Enforcement Leaders in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for Current & Former Prosecutors & L. Enf't]; Brief of Amici Curiae 127 Religious Organizations in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for 127 Religious Orgs.].

18. See Benjamin J. Roth, *The Double Bind of DACA: Exploring the Legal Violence of Liminal Status for Undocumented Youth*, 42 ETHNIC & RACIAL STUD. 2548 *passim* (2019); Edeline M. Burciaga & Aaron Malone, *Intensified Liminal Legality: The Impact of the DACA Rescission for Undocumented Young Adults in Colorado*, 46 LAW & SOC. INQUIRY 1092 *passim* (2021); Erin R. Hamilton, Caitlin Patler & Robin Savinar, *Transition into Liminal Legality: DACA's Mixed Impacts on Education and Employment Among Young Adult Immigrants in California*, 68 SOC. PROBS. 675 *passim* (2020).

19. E.g., Brief for Serv. Emp. Int'l Union et al., *supra* note 17, at 17–18 (detailing the positive economic effects of DACA); Brief for 109 Cities et al., *supra* note 17, at 6–16, 22 (detailing the positive impact of DACA on state governments).

or abrogated when such remedies threaten the interests of the white majority.<sup>20</sup>

DACA creates a provisional remedy and benefit to undocumented immigrants. On the one hand, they have an opportunity to work and partially integrate into society, while providing substantial gains to the United States.<sup>21</sup> On the other hand, they live in a perpetual state of liminality, in two-year increments, at the political whims of the federal executive branch, and without legal permanency.<sup>22</sup> The legal framework in the DACA case did not fully humanize the immigrant community;<sup>23</sup> according to amici, undocumented immigrants were deserving of protection because the interests at stake largely benefit the United States and the country would suffer detrimental effects if recipients lost their status.<sup>24</sup>

We begin our discussion with Part I, in which we detail the creation and rescission of DACA and track the ongoing litigation.<sup>25</sup> In Part II, we discuss the concept of reliance interests, a legal concept that is crucial to the arbitrary and capricious framework.<sup>26</sup> Then, we turn to a review of the extant legal and social science research regarding DACA and its impact in Part III.<sup>27</sup> Next, we turn to the details of this study. We present the lens and design of this study in Part IV<sup>28</sup> and present our findings in Part V.<sup>29</sup> We conclude with a discussion of the implications of this study in Part VI.<sup>30</sup> By analyzing the arbitrary and capricious framework through a critical lens, we aim to unpack how this framework furthers notions of justice for DACA recipients and to identify areas in the framework that fall short of this goal.<sup>31</sup>

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20. Cynthia Lee, *Cultural Convergence: Interest Convergence Theory Meets the Cultural Defense*, 49 ARIZ. L. REV. 911, 924 (2007); see also Bell, *supra* note 13; Taharee Apirom Jackson, *Which Interests Are Served by the Principle of Interest Convergence? Whiteness, Collective Trauma, and the Case for Anti-Racism*, 14 RACE ETHNICITY & EDUC. 435 *passim* (2011).

21. ROBERTO G. GONZALES, LIVES IN LIMBO: UNDOCUMENTED AND COMING OF AGE IN AMERICA 8–10 (2016); Roberto G. Gonzales, Veronica Terriquez & Stephen P. Ruzszyk, *Becoming DACAmented: Assessing the Short-Term Benefits of Deferred Action for Childhood Arrivals (DACA)*, 58 AM. BEHAV. SCIENTIST 1852, 1853 (2014); Roth, *supra* note 18, at 2549–50; see also *infra* Part V.

22. GONZALES, *supra* note 21, at 8–10; see also *infra* Section IV.A.3; *infra* Part V.

23. See *infra* Part V.

24. See *infra* Part V.

25. See *infra* Part I.

26. See *infra* Part II.

27. See *infra* Part III.

28. See *infra* Part IV.

29. See *infra* Part V.

30. See *infra* Part VI.

31. See *infra* Parts V, VI.

## I. DACA: CREATION, RESCISSION, AND ONGOING LITIGATION

## A. CREATION OF DACA

Announced in the summer of 2012, the DACA policy provided protections for young undocumented immigrants.<sup>32</sup> Through the policy, DHS exercised its discretion to prosecute or defer deportation for certain undocumented immigrants.<sup>33</sup> DACA allowed undocumented immigrants who were under the age of thirty-one in 2012 and had arrived to the United States prior to their sixteenth birthday to apply for a two-year period of deferred deportation.<sup>34</sup> Thus, the population was high-school or college aged. Eligible applicants submitted a \$495 fee and underwent a background check.<sup>35</sup> Similar to other immigrants who receive temporary protection from deportation, DACA recipients were eligible to apply for a Social Security number and work authorization.<sup>36</sup> They could also apply for advance parole to travel abroad.<sup>37</sup>

To be eligible, applicants had to have continuously resided in the United States since 2007; be current students, have received a high school diploma, or be honorably discharged from the armed forces; and have no convictions for any serious crime or pose a national or public security threat.<sup>38</sup> Legal advocates often advised those who did not meet the threshold requirements to not apply.<sup>39</sup> In this sense, the recipients were self-selected, and thus, unsurprisingly, DACA, as a program, had high acceptance rates.<sup>40</sup> DHS

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32. *Remarks by the President on Immigration*, WHITE HOUSE (June 15, 2012, 2:09 PM), <https://obamawhitehouse.archives.gov/the-press-office/2012/06/15/remarks-president-immigration> [<https://perma.cc/Y6F6-8AMV>].

33. Memorandum from Janet Napolitano, Sec'y, U.S. Dep't of Homeland Sec., to David V. Aguilar, Acting Comm'r, U.S. Customs & Border Prot. et al., *Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children 1–3* (June 15, 2012) [hereinafter *Napolitano Memorandum*], <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf> [<https://perma.cc/TM7E-BFGF>].

34. *Id.* at 1.

35. *I-821D, Consideration of Deferred Action for Childhood Arrivals*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Dec. 23, 2021), <https://www.uscis.gov/i-821d> [<https://perma.cc/63BA-4L8R>] (detailing the filing requirements for DACA applicants).

36. See 8 C.F.R. § 274a.12(c)(14) (2021).

37. *I-131, Application for Travel Document*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Aug. 10, 2021), <https://www.uscis.gov/i-131> [<https://perma.cc/KC97-FGXR>].

38. Napolitano Memorandum, *supra* note 33, at 1.

39. IMMIGR. LEGAL RES. CTR., *UNDERSTANDING THE CRIMINAL BARS TO THE DEFERRED ACTION POLICY FOR CHILDHOOD ARRIVALS 4* (2012), [https://www.ilrc.org/sites/default/files/documents/ilrc-understanding\\_criminal\\_bars\\_to\\_deferred\\_action.pdf](https://www.ilrc.org/sites/default/files/documents/ilrc-understanding_criminal_bars_to_deferred_action.pdf) [<https://perma.cc/8K2Y-WLJS>].

40. AUDREY SINGER & NICOLE PRCHAL SVAJLENKA, *IMMIGRATION FACTS: DEFERRED ACTION FOR CHILDHOOD ARRIVALS 4 (DACA)* (2013), [https://www.brookings.edu/wp-content/uploads/2016/06/DACA\\_singer\\_svajlenka\\_FINAL.pdf](https://www.brookings.edu/wp-content/uploads/2016/06/DACA_singer_svajlenka_FINAL.pdf) [<https://perma.cc/FMK6-BJ5X>]; U.S. CITIZENSHIP &

concluded that recipients warranted favorable treatment because they had arrived to the United States as children through no fault of their own, had no intent to violate the law, considered the United States their home, and were productive members of society.<sup>41</sup>

The three protections recipients received (that is, deferred deportation, a Social Security number, and work authorization)<sup>42</sup> led to further opportunities and benefits for recipients.<sup>43</sup> These opportunities were not tailored specifically for DACA recipients but were rather collateral benefits.<sup>44</sup> That is, these opportunities and benefits that did not require citizenship or permanent residency in the United States were also available to others who held a Social Security number and had legal authorization to work.<sup>45</sup> These benefits and opportunities were numerous, including access to health insurance, which requires a Social Security number and is often employer-provided;<sup>46</sup> access to college admissions in states where state policies restrict college access to lawfully present applicants or require a

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IMMIGR. SERVS., NUMBER OF I-821D, CONSIDERATION OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS BY FISCAL YEAR, QUARTER, INTAKE, BIOMETRICS AND CASE STATUS: 2012–2016, at 1 (2016), [https://www.uscis.gov/sites/default/files/document/data/daca\\_performancedata\\_fy2016\\_qtr4.pdf](https://www.uscis.gov/sites/default/files/document/data/daca_performancedata_fy2016_qtr4.pdf) [<https://perma.cc/36FH-F6F5>].

41. See Napolitano Memorandum, *supra* note 33, at 1–2.

42. It is important to note that a Social Security number and work authorization are two derivative protections for which recipients qualified because they received deferred action. That is, other immigrants not protected under DACA who have received deferred action also qualify for a Social Security number and work authorization. Thus, the DACA policy did not grant undocumented immigrants benefits or automatic protection. Rather, it outlined a list of priorities that guided immigration enforcement officials in deciding whether to prosecute an undocumented immigrant and identified DACA-eligible undocumented immigrants as a low priority for deportation, given their integration to the United States and low threat to national security. Because the policy simply outlined deportation priorities, immigration officials retained the discretion to deny any request for deferred action, and deferred deportation remained revocable even after immigration officials deferred deportation.

43. See, e.g., *infra* Section V.B.1 (explaining the educational opportunities and benefits afforded to DACA recipients based on their status).

44. Raquel Muñiz, *Amending the Unwritten Constitutional Use of Broad Prosecutorial Discretion in Immigration Law, Toward a Hyper-Narrow Concept*, 1 AM. IMMIGR. LAWS. ASS'N L.J. 251, 252–54 (2019).

45. For example, applying for a federal loan, *Your Social Security Number*, FED. STUDENT AID <https://studentaid.gov/help/social-security-number> [<https://perma.cc/RX3B-ND94>], a driver's license, *States Offering Driver's Licenses to Immigrants*, NAT'L CONF. STATE LEGISLATURES, <https://www.ncsl.org/research/immigration/states-offering-driver-s-licenses-to-immigrants.aspx> [<https://perma.cc/M4QT-9RSZ>], or for a tax return all require a Social Security number, SOC. SEC. ADMIN., SOCIAL SECURITY NUMBERS FOR NONCITIZENS 1–2 (2021), <https://www.ssa.gov/pubs/EN-05-10096.pdf> [<https://perma.cc/6JDS-AQ6P>].

46. Karen Hacker, Maria Anies, Barbara L Folb & Leah Zallman, *Barriers to Health Care for Undocumented Immigrants: A Literature Review*, 8 RISK MGMT. & HEALTHCARE POL'Y 175 *passim* (2015); Matthew Yu, A. Taylor Kelley, Anna U. Morgan, Andrew Duong, Anish Mahajan & Jessica D. Gipson, *Challenges for Adult Undocumented Immigrants in Accessing Primary Care: A Qualitative Study of Health Care Workers in Los Angeles County*, 4 HEALTH EQUITY 366 *passim* (2020).

Social Security number to apply;<sup>47</sup> and access to financial aid that is limited to lawfully present students or requires a Social Security number.<sup>48</sup> It is important to note that the opportunities and benefits were limited. For example, while recipients had access to state or private financial aid, they could not receive federal financial aid because federal aid is not available to undocumented students.<sup>49</sup> Their protection was also revocable; their renewal was left to the discretion of the DHS agent reviewing the case, and they had to apply approximately every year and a half to receive the two-year protection.<sup>50</sup>

## B. DACA RESCISSION

In September of 2017, five years after its introduction, then-Attorney General (“AG”) Jefferson B. Sessions III announced the rescission of DACA, arguing that DACA was unlawful.<sup>51</sup> AG Sessions sent a letter to Acting DHS Secretary Elaine C. Duke advising her to rescind DACA because, he argued, DACA shared similar legal defects to the Deferred Action for Parents of Americans and Lawful Permanent Residents (“DAPA”).<sup>52</sup> Previously, in 2014, DHS announced an expansion to DACA—three-year protection, removal of an age cap, and an extension of

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47. See HIGHER ED IMMIGR. PORTAL, <https://www.higheredimmigrationportal.org> [<https://perma.cc/S2F7-B654>] (providing an overview of each state’s admissions and aid policies regarding undocumented and DACAmented students).

48. *Id.*

49. See Betsy Baddell, ‘Really Difficult Experience’: Dreamers Have Limited Options for College Financial Aid, NBC BOS. (Feb. 20, 2021, 12:15 AM), <https://www.nbcboston.com/news/local/really-difficult-experience-dreamers-have-limited-options-for-college-financial-aid/2308145> [<https://perma.cc/6TB7-HVGE>]; see also Angela D. Adams, *Advising ‘Dreamers’ on Paying for College: What Has Changed, and What Hasn’t, Since 2012*, NAT’L ASS’N STUDENT FIN. AID ADM’RS (June 12, 2017), [https://www.nasfaa.org/news-item/12289/Advising\\_Dreamers\\_on\\_Paying\\_for\\_College\\_What\\_Has\\_Changed\\_and\\_What\\_Hasn\\_t\\_Since\\_2012](https://www.nasfaa.org/news-item/12289/Advising_Dreamers_on_Paying_for_College_What_Has_Changed_and_What_Hasn_t_Since_2012) [<https://perma.cc/5VWA-SCJ5>].

50. *Consideration of Deferred Action for Childhood Arrivals (DACA), Frequently Asked Questions*, U.S. CITIZENSHIP & IMMIGR. SERVS. (Aug. 31, 2021), <https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions> [<https://perma.cc/XNY3-SYUX>] (“Q27: Can my deferred action under the DACA process be terminated before it expires? A27: Yes. DACA is an exercise of prosecutorial discretion and deferred action may be terminated at any time, with or without a Notice of Intent to Terminate, at DHS’s discretion. . . . Q49: When Should I file my renewal request with U.S. Citizenship and Immigration Services (USCIS)? A49: USCIS strongly encourages you to submit your Deferred Action for Childhood Arrivals (DACA) renewal request between 150 days and 120 days before the expiration date . . .”).

51. Jeff Sessions, Att’y Gen., Dep’t of Just., Attorney General Sessions Delivers Remarks on DACA (Sept. 5, 2017) (transcript available at <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-daca> [<https://perma.cc/GD8T-FCXE>]).

52. Letter from Jefferson B. Sessions III, Att’y Gen., Dep’t of Just., to Elaine C. Duke, Acting Sec’y, U.S. Dep’t of Homeland Sec. (Sept. 5, 2017), [https://www.dhs.gov/sites/default/files/publications/17\\_0904\\_DOJ\\_AG-letter-DACA.pdf](https://www.dhs.gov/sites/default/files/publications/17_0904_DOJ_AG-letter-DACA.pdf) [<https://perma.cc/2852-W6CX>].

the date-of-entry requirement from 2007 to 2010—along with the creation of a new policy, DAPA.<sup>53</sup> DAPA would provide undocumented immigrants who had children who were lawful permanent residents or citizens to qualify for the same protections as DACA recipients.<sup>54</sup> Texas, alongside twenty-five other states, challenged the expansion of DACA and DAPA in a federal District Court for the Southern District of Texas.<sup>55</sup> After receiving the letter from AG Sessions, Acting DHS Secretary Duke issued a memo terminating the DACA policy.<sup>56</sup> In her memo, Duke explained the history of DACA and DAPA and offered the Fifth Circuit’s injunction, the U.S. Supreme Court’s ruling, and AG Sessions’s letter as justification for her decision to rescind

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53. Memorandum from Jeh Charles Johnson, Sec’y, U.S. Dep’t of Homeland Sec., to León Rodríguez, Dir., U.S. Citizenship & Immigr. Servs. et al., Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents 1, 3–4 (Nov. 20, 2014), [https://www.dhs.gov/sites/default/files/publications/14\\_1120\\_memo\\_deferred\\_action\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/14_1120_memo_deferred_action_0.pdf) [<https://perma.cc/32GP-96US>].

54. *Id.* at 4–5.

55. *Texas v. United States*, 86 F. Supp. 3d 591 (S.D. Tex. 2015). They argued that the expansion of DACA and the creation of DAPA were in violation of (1) the APA’s notice and comment requirement, *id.* at 614; (2) the Immigration and Nationality Act (INA), the government law in the area of immigration, *id.*; and (3) the federal executive branch’s duty to execute the law faithfully under the Take Care Clause of the United States Constitution, *id.* The district court found that the states were likely to succeed on at least one of the three claims, and therefore, it issued a preliminary injunction halting the expansion of DACA and the implementation of DAPA. *Id.* at 677–78. The Fifth Circuit Court of Appeals upheld the injunction. *Texas v. United States*, 809 F.3d 134 (5th Cir. 2015), *aff’d by an equally divided court*, 136 S. Ct. 2271 (2016) (per curiam). The federal government, at the time under the leadership of the Obama administration, argued that the DAPA policy was an action committed to agency discretion under the APA, 5 U.S.C. § 701(a)(2), and therefore was not subject to judicial review. *Texas*, 809 F.3d at 163–65. The Fifth Circuit disagreed, finding that the DAPA policy was not only nonenforcement, deferred deportation, but was conferring lawful presence to a group of undocumented immigrants. *Id.* at 166–67. The court upheld the injunction, finding that the states were likely to succeed on their claim that DAPA was a substantive rule that needed to undergo the notice and comment process. *Id.* at 177–78. The court also found that DAPA was in violation of the INA, which listed classes of immigrants who can receive benefits associated with lawful presence. *Id.* at 179–86. The U.S. Supreme Court affirmed the injunction without issuing an opinion. *United States v. Texas*, 136 S. Ct. 2271 (2016) (per curiam). The litigation continued, and in June 2017, the Trump administration took office and rescinded the enjoined DAPA policy, because it never went into effect and DAPA was contrary to the new administration’s enforcement priorities. Memorandum from John F. Kelly, Sec’y of Homeland Sec., to Kevin K. McAleenan, Acting Comm’r, U.S. Customs & Border Prot. et al., Rescission of November 20, 2014 Memorandum Providing for Deferred Action for Parents of Americans and Lawful Permanent Residents (“DAPA”) (June 15, 2017), <https://www.dhs.gov/news/2017/06/15/rescission-memorandum-providing-deferred-action-parents-americans-and-lawful> [<https://perma.cc/M46B-Z98W>]. In July 2021, Judge Hanen found DACA unconstitutional but permitted the program to continue to operate in a limited fashion; no new applications are allowed. *Texas v. United States*, No. 1:18-CV-00068, 2021 U.S. Dist. LEXIS 133114 (S.D. Tex. July 16, 2021).

56. Memorandum from Elaine C. Duke, Acting Sec’y, U.S. Dep’t of Homeland Sec., to James W. McCament, Acting Dir., U.S. Citizenship & Immigr. Servs. et al., Memorandum on Rescission of Deferred Action for Childhood Arrivals (DACA) (Sept. 5, 2017) [hereinafter the Duke Memorandum], <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca> [<https://perma.cc/8MXT-ZF3E>].

DACA.<sup>57</sup> The rescission would be phased out over a period of a few months.<sup>58</sup> DHS would no longer accept new applications for DACA, recipients whose protections expired within six months of September 2017 could apply for a renewal, and advance parole was terminated as a feature of the policy.<sup>59</sup>

### C. THE DACA RESCISSION MAKES ITS WAY TO THE U.S. SUPREME COURT

Soon after the rescission of DACA, impacted parties filed lawsuits across the country challenging the rescission.<sup>60</sup> DACA recipients challenged the rescission in the Eastern District of New York,<sup>61</sup> the Regents of the University of California led the lawsuit in the Northern District of California,<sup>62</sup> and the National Association for the Advancement of Colored People (“NAACP”) filed suit in the District of Columbia.<sup>63</sup> The plaintiffs brought a host of legal claims, including two which were ultimately before the U.S. Supreme Court: (1) DHS’s rescission of DACA was arbitrary and capricious, in violation of the APA; and (2) the rescission infringed on recipients’ equal protection in violation of the Fifth Amendment’s Due Process Clause.<sup>64</sup>

The lower courts eventually enjoined the rescission nationwide and mandated DHS to continue processing renewals for recipients, although neither new applications nor advance parole resumed.<sup>65</sup> The courts in *Regents* and *Batalla Vidal* found that plaintiffs were likely to succeed on their APA claims that DHS’s rescission of DACA was arbitrary and capricious.<sup>66</sup> The D.C. District Court in *NAACP* initially issued a partial preliminary injunction.<sup>67</sup> The court found that DHS’s rationale for rescinding DACA was insufficient and granted the agency a ninety-day period to reissue a memo rescinding DACA that provided a fuller explanation justifying the

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57. *Id.*

58. *Id.*

59. *Id.*

60. See generally *Batalla Vidal v. Duke*, 295 F. Supp. 3d 127 (E.D.N.Y. 2017); *Regents of the Univ. of Cal. v. U.S. Dep’t of Homeland Sec.*, 279 F. Supp. 3d 1011 (N.D. Cal. 2018); *NAACP v. Trump*, 298 F. Supp. 3d 209 (D.D.C. 2018).

61. *Batalla Vidal*, 295 F. Supp. 3d at 136.

62. *Regents of the Univ. of Cal.*, 279 F. Supp. 3d at 1018.

63. *NAACP*, 298 F. Supp. 3d at 215.

64. *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1903 (2020).

65. *Regents of the Univ. of Cal.*, 279 F. Supp. 3d at 1049–50; *Batalla Vidal*, 295 F. Supp. 3d at 163–64.

66. *Regents of the Univ. of Cal.*, 279 F. Supp. 3d at 1046; *Batalla Vidal*, 295 F. Supp. 3d at 147–50.

67. *NAACP*, 298 F. Supp. 3d at 249.

rescission.<sup>68</sup> DHS was required to explain how DACA lacked statutory authority or was unconstitutional.<sup>69</sup> The succeeding DHS Secretary Kirstjen M. Nielsen issued the memo within the time period.<sup>70</sup>

Secretary Nielsen concluded that she did not want to disturb the rescission.<sup>71</sup> As rationale, she cited AG Sessions's conclusion that DACA was unlawful and DHS's concern that DACA ran afoul of immigration law.<sup>72</sup> She also argued that it is within Congress's realm as the legislative branch to grant relief to recipients, not DHS; the agency had a preference for a case-by-case basis determination to grant deferred action; and maintaining the DACA policy in place would be contradictory to the Trump administration's zero-tolerance immigration policy.<sup>73</sup> Finally, Nielsen noted that though she acknowledged the "reliance interests" at stake, the interests did not outweigh her and the administration's concerns that DACA was unlawful.<sup>74</sup> The D.C. Circuit Court found Secretary Nielsen's memo deficient, reasoning that it failed to adequately explain why DACA was unlawful and failed to explain the September 2017 rescission.<sup>75</sup>

Dissatisfied with the rulings, DHS appealed the injunctions and lower courts' rulings to the Second,<sup>76</sup> Ninth,<sup>77</sup> and D.C. Circuit,<sup>78</sup> respectively, and simultaneously the U.S. Department of Justice sought certiorari from the U.S. Supreme Court before the appellate courts weighed in.<sup>79</sup> Soon after, in November 2018, the Ninth Circuit upheld the national injunctions.<sup>80</sup> The U.S. Supreme Court granted certiorari and consolidated the cases before the Second or D.C. Circuits issued any rulings.<sup>81</sup> Before the Supreme Court were

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68. *Id.* at 215–16, 245–46.

69. *Id.* at 238–40, 245.

70. Memorandum from Kirstjen M. Nielsen, Sec'y, U.S. Dep't of Homeland Sec. 1–3 (June 22, 2018), [https://www.dhs.gov/sites/default/files/publications/18\\_0622\\_S1\\_Memorandum\\_DACA.pdf](https://www.dhs.gov/sites/default/files/publications/18_0622_S1_Memorandum_DACA.pdf) [https://perma.cc/MM2E-EKN7].

71. *Id.* at 1.

72. *Id.* at 2.

73. *Id.* at 2–3.

74. *Id.* at 3.

75. *NAACP v. Trump*, 315 F. Supp. 3d 457, 471–74, 474 n.13 (D.D.C. 2018).

76. See Brief for Respondents at 6–7, *Nielsen v. Batalla Vidal*, No. 18-589 (2d Cir. Dec. 17, 2018) (detailing the government's appeals to the Second Circuit after the district court issued a preliminary injunction that maintained DACA in place).

77. *Regents of the Univ. of Cal. v. U.S. Dep't of Homeland Sec.*, 908 F.3d 476 (9th Cir. 2018).

78. Notice of Appeal, *NAACP v. Trump*, No. 17-cv-1907 (D.C. Cir. Aug. 10, 2018).

79. Petition for Writ of Certiorari Before Judgment, *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 139 S. Ct. 2779 (2019) (No. 18-587); *DACA Litigation Timeline*, NAT'L IMMIGR. L. CTR. (May 8, 2020), <https://www.nilc.org/issues/daca/daca-litigation-timeline> [https://perma.cc/TSC7-Y7J3].

80. *Regents of the Univ. of Cal.*, 908 F. 3d at 520.

81. *Dep't of Homeland Sec.*, 139 S. Ct. 2779.

three issues: “(1) whether the APA claims are reviewable, (2) if so, whether the rescission was arbitrary and capricious in violation of the APA, and (3) whether the plaintiffs have stated an equal protection claim.”<sup>82</sup> The Court found that the APA claims were reviewable<sup>83</sup> and that DHS had acted arbitrarily and capriciously in rescinding DACA because it failed to consider the reliance interests at stake.<sup>84</sup> The Court also found that plaintiffs failed to state an equal protection claim.<sup>85</sup> The analysis and discussion presented in this Article is related only to the arbitrary and capricious standard.<sup>86</sup> Specifically, we focus on what we can learn about DACA’s significance, importance, impact, and the interests at stake through amici’s representation of reliance interests in applying the arbitrary and capricious standard.<sup>87</sup> Moreover, we focus only on the briefs of amici who implicitly or explicitly applied the arbitrary and capricious framework, relying largely on reliance interest arguments.<sup>88</sup>

While the U.S. Supreme Court applied the arbitrary and capricious framework, the Court was not required to analyze the reliance interest at stake.<sup>89</sup> The role of the Court is not to substitute its judgment regarding which interests are at stake and whether these merit a change of agency action but rather to determine whether or not the agency properly considered the interests at stake.<sup>90</sup> In this respect, amici play a critical role in providing additional context to the Court. Their role is to inform the Court in making

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82. Dep’t of Homeland Sec. v. Regents of the Univ. of Cal., 140 S. Ct. 1891, 1905 (2020).

83. *Id.* at 1906–07.

84. *Id.* at 1913–15.

85. *Id.* at 1915–16.

86. *See infra* Section IV.B and Part V.

87. *See infra* Section IV.B and Part V.

88. *See infra* Part V, Table 1.

89. *Regents of the Univ. of Cal.*, 140 S. Ct. at 1905 (“The APA sets forth the procedures by which federal agencies are accountable to the public and their actions subject to review by the courts. It requires agencies to engage in reasoned [decision-making], and directs that agency actions be set aside if they are arbitrary or capricious, 5 U.S.C. § 706(2)(A). Under this narrow standard of review, . . . a court is not to substitute its judgment for that of the agency, but instead to assess only whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment.” (citations omitted) (internal quotation marks omitted)).

90. *Id.*

its decision.<sup>91</sup> Thus, they may provide legal arguments,<sup>92</sup> policy arguments,<sup>93</sup> narratives,<sup>94</sup> or social science research,<sup>95</sup> to name a few approaches. In the DACA case, twenty-six amicus briefs out of forty-four provided numerous legal and policy arguments in which they applied the arbitrary and capricious framework by detailing the reliance interests at stake and DHS's failure to consider the interests.<sup>96</sup> This application of the framework provided an opportunity to examine not only which interests amici put forth as important for the agency's consideration in determining whether to rescind the policy, but also the ways in which amici presented the reliance interests.<sup>97</sup>

## II. THE IMPORTANCE OF RELIANCE INTERESTS IN THE ARBITRARY AND CAPRICIOUS FRAMEWORK

While the actions of administrative agencies (for example, DHS) enjoy substantial discretion under the law,<sup>98</sup> the APA "embodies the basic

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91. SUP. CT. R. 37.1 ("An amicus curiae brief that brings to the attention of the Court relevant matter not already brought to its attention by the parties may be of considerable help to the Court. An amicus curiae brief that does not serve this purpose burdens the Court, and its filing is not favored." (emphasis removed)).

92. For example, in the DACA case, Southeastern Legal Foundation and Administrative Law Scholars provided legal arguments as part of their amicus briefs. *See* Brief of Amicus Curiae Southeastern Legal Foundation in Support of Petitioners, Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 140 S. Ct. 1891 (2020) (Nos. 18-587, 18-588, and 18-589); Brief for Administrative Law Scholars as Amici Curiae in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for Admin. L. Scholars].

93. For example, in the DACA case, the Association of American Medical Colleges et al. provided policy arguments. *See* Brief for Ass'n Am. Med. Colls. et al., *supra* note 17.

94. For example, in the DACA case, institutions of higher education and nineteen colleges and universities provided narratives. *See* Brief for Inst. of Higher Educ., *supra* note 17; Brief for Nineteen Colls. & Universities, *supra* note 17.

95. In the DACA case, the American Historical Association and others provided a code word analysis study. *See* Amici Curiae Brief of American Historical Ass'n et al. in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589).

96. *See* authorities cited *supra* note 17 (including Brief for 109 Cities et al.; Brief for 127 Religious Orgs.; Brief for 143 Business Ass'ns & Cos.; Brief for Alianza Ams. et al.; Brief for Am. Council on Educ. et al.; Brief for Am. Prof'l Soc'y on Abuse of Children et al.; Brief for Ass'n Am. Med. Colls. et al.; Brief for Current & Former Prosecutors & L. Enf't; Brief for Empirical Scholars; Brief for Former Serv. Sec'ys et al.; Brief for Gov't of Mexican States; Brief for Inst. of Higher Educ.; Brief for Lawyers' Comm. for Civil Rts. Under Law et al.; Brief for Nat'l Ass'n of Home Builders et al.; Brief for Nat'l Educ. Ass'n & Nat'l PTA; Brief for NQAPIA et al.; Brief for Nat'l Sch. Bds. Ass'n et al.; Brief for Nineteen Colls. & Universities; Brief for Serv. Emp. Int'l Union et al.; Brief for State of Nev. et al.; Brief for Nonprofit Legal Servs. Orgs.; Brief for Teach for Am.; Brief for U.S. Catholic Bishops et al.; Brief for Tim Cook et al.; Brief for United We Dream et al.); *see also* Brief of Amici Curiae Administrative Law Practitioners in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589) [hereinafter Brief for Admin. L. Prac.].

97. *See infra* Part V.

98. *See* 5 U.S.C. § 701(a)(2) (stating that the APA bars judicial review when the agency action "is committed to agency discretion by law"); *Heckler v. Chaney*, 470 U.S. 821, 832–33, 837–38 (1985)

presumption of judicial review.”<sup>99</sup> Agencies’ actions are not immune from public scrutiny, as they are subject to judicial review when these actions may violate of the law.<sup>100</sup> The APA governs federal agencies’ actions by “set[ting] forth the procedures by which federal agencies are accountable to the public and their actions subject to review by the courts.”<sup>101</sup> Under the APA, an agency is required to engage in “reasoned [decision-making].”<sup>102</sup> Otherwise, courts can find that they acted arbitrarily or capriciously.<sup>103</sup> Engaging in reasoned decision-making involves agencies being “cognizant that longstanding policies may have ‘engendered serious reliance interests that must be taken into account.’ ”<sup>104</sup>

In the context of the DACA case, the Court found that the Acting Secretary Duke “failed to consider . . . important aspect[s] of the problem” before her.<sup>105</sup> DACA recipients had come to rely on the policy in planning their lives and futures, and “ [i]t would be arbitrary and capricious to ignore such matters.’ Yet that is what the Duke Memorandum did.”<sup>106</sup> While the Court did not provide extensive details regarding the reliance interests at stake, which DHS should have considered, the Court summarized the reliance interests in the DACA case as follows:

Respondents and their *amici* . . . stress that, since 2012, DACA recipients have “enrolled in degree programs, embarked on careers, started businesses, purchased homes, and even married and had children, all in reliance” on the DACA program. The consequences of the rescission, respondents emphasize, would “radiate outward” to DACA recipients’

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(holding agency refusals to institute or investigate enforcement proceedings are presumptively committed to agency discretion, though the presumption is rebuttable); *Webster v. Doe*, 486 U.S. 592, 601 (1988) (finding the Central Intelligence Agency’s decision to dismiss an employee due to the employee’s sexual orientation was not judicially reviewable, committed to agency discretion); *Lincoln v. Vigil*, 508 U.S. 182, 193 (1993) (finding an agency’s distribution of lump sum money is committed to agency discretion). *But see* *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 410 (1971) (emphasizing that the “committed to agency discretion” exception is very narrow).

99. *Abbott Lab’s v. Gardner*, 387 U.S. 136, 140 (1967).

100. *Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992).

101. *Id.*

102. *Michigan v. EPA*, 576 U.S. 743, 750 (2015) (internal quotation marks omitted).

103. 5 U.S.C. § 706(2)(A) (“To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall . . . hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.”).

104. *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 222 (2016) (citing *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009)).

105. *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1910 (citing *Motor Vehicle Mfrs. Ass’n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

106. *Id.* at 1913 (citations omitted).

families, including their 200,000 U.S.-citizen children, to the schools where DACA recipients study and teach, and to the employers who have invested time and money in training them. In addition, excluding DACA recipients from the lawful labor force may, they tell us, result in the loss of \$215 billion in economic activity and an associated \$60 billion in federal tax revenue over the next ten years. Meanwhile, States and local governments could lose \$1.25 billion in tax revenue each year.<sup>107</sup>

The reliance on the DACA policy involved the interests of numerous stakeholders, including DACA recipients, their social networks and constellations, and society at large through recipients' support of the state and national economy.<sup>108</sup> Some amici expanded on the ways in which recipients and other stakeholders came to rely on DACA.<sup>109</sup> They provided a fuller picture of the significance of DACA.<sup>110</sup> Consistent with the Supreme Court's analysis, in this study, we focused on what we can learn about DACA's significance from amici's application of the arbitrary and capricious standard and consideration of reliance interests.<sup>111</sup>

It is important to note that though DHS was required to consider the reliance interests in the case, the interests would not be dispositive of the issue.<sup>112</sup> DHS could still rescind the policy after considering the reliance interests.<sup>113</sup> For example, DHS could still find that other factors outweighed the reliance interests at stake.<sup>114</sup> Thus, to be clear, the issue in the DACA case was not whether DHS could rescind the policy.<sup>115</sup> It could.<sup>116</sup> Rather, where DHS failed was in giving no consideration to the reliance interests.<sup>117</sup>

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107. *Id.* at 1914 (citations omitted); *see also* Brief for 143 Business Ass'ns & Cos., *supra* note 17, at 17 (estimating that hiring and training replacements would cost employers \$6.3 billion).

108. *See infra* Part V.

109. *See infra* Part V.

110. *See infra* Part V.

111. *See infra* Part V.

112. *Regents of the Univ. of Cal.*, 140 S. Ct. at 1914 (explaining that reliance interests "are not necessarily dispositive. To the Government and lead dissent's point, DHS could respond that reliance on forbearance and benefits was unjustified in light of the express limitations in the DACA Memorandum. Or it might conclude that reliance interests in benefits that it views as unlawful are entitled to no or diminished weight. And, even if DHS ultimately concludes that the reliance interests rank as serious, they are but one factor to consider. DHS may determine, in the particular context before it, that other interests and policy concerns outweigh any reliance interests. Making that difficult decision was the agency's job, but the agency failed to do it").

113. *Id.*

114. *Id.*

115. *Id.*

116. *Id.* at 1905 ("The dispute before the Court is not whether DHS may rescind DACA. All parties agree that it may.").

117. *Id.* at 1913–15.

DHS failed to engage in reasoned decision-making, acting in an arbitrary and capricious manner.<sup>118</sup>

### III. LITERATURE REVIEW

To gain a broader understanding of relevant literature, we examined legal and social science literature exploring the importance and impact of DACA.<sup>119</sup> Existing legal research tends to focus on the constitutionality of the DACA policy, paying particular attention to the roles of the executive and legislative branches in making immigration policy.<sup>120</sup> While there is limited legal research on the human impact of DACA, social science literature provides a more comprehensive explanation of the effects of the status on undocumented migrants, focusing on both the benefits and limitations of the policy.<sup>121</sup> Ultimately, existing literature situates DACA as providing a precarious legal positionality that, while more beneficial to undocumented recipients than nothing, reveals the need for more comprehensive immigration legislation or action.<sup>122</sup>

#### A. THE LEGALITY OF DACA

DACA inspired substantial debate amongst scholars, lawyers, and policymakers on whether the policy was a lawful act of prosecutorial discretion or an executive overstep that violated established law and the Constitution.<sup>123</sup> Favorable prosecutorial discretion is a long-established norm that allows the executive branch to decide when to initiate prosecution

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118. *Id.* at 1915.

119. *See infra* Section III.A, Section III.B (reviewing the legal literature), and Section IV.C (reviewing the social science literature).

120. *See infra* Section III.A.

121. *See infra* Section III.C.

122. *See, e.g.,* Gonzales et al., *supra* note 21, at 1867 (claiming that DACA is “at best, a second class status” and “not a permanent solution”); Marisa Bono, *When a Rose Is Not a Rose: DACA, the Dream Act, and the Need for More Comprehensive Immigration Reform*, 40 T. MARSHALL L. REV. 193 (2015); Roth, *supra* note 18, at 2548; Osea Giuntella & Jakub Lonsky, *The Effects of DACA on Health Insurance, Access to Care, and Health Outcomes*, 72 J. HEALTH ECON. 102320, May 11, 2020, at 1.

123. *See, e.g.,* Vanessa Romo, Martina Stewart & Brian Naylor, *Trump Ends DACA, Calls on Congress to Act*, NPR (Sept. 5, 2017, 9:05 AM), <https://www.npr.org/2017/09/05/546423550/trump-signals-end-to-daca-calls-on-congress-to-act> [<https://perma.cc/3Y3M-P4HG>] (including quotations on the legality of, and need for, DACA from officials such as former President Donald Trump, former President Barack Obama, Senator Chuck Schumer, former Attorney General Jeff Sessions, and more); Robert J. Delahunty & John C. Yoo, *Dream On: The Obama Administration’s Nonenforcement of Immigration Laws, the Dream Act, and the Take Care Clause*, 91 TEX. L. REV. 781 (2013); Shoba S. Wadhia, Response, *In Defense of DACA, Deferred Action, and the DREAM Act*, 91 TEX. L. REV. 59 (2012); Michael Kagan, *A Taxonomy of Discretion: Refining the Legality Debate About Obama’s Executive Actions on Immigration*, 92 WASH. U. L. REV. 1083 (2015).

in any given case.<sup>124</sup> It is grounded in the President's duty to "take [c]are that the [l]aws be faithfully executed" as stated in Article II, Section 3 of the Constitution.<sup>125</sup> With limited resources available, prosecutors must make decisions to prioritize certain cases over others.<sup>126</sup> The use of prosecutorial discretion has been confirmed and upheld through case law and administrative law.<sup>127</sup> The Immigration and Naturalization Service ("INS") and its successor agency, Immigration and Customs Enforcement ("ICE"), have released memoranda that offer guidance for the use of prosecutorial discretion since 1975.<sup>128</sup> The Immigration and Nationality Act ("INA") also codified the executive's power to use prosecutorial discretion, granting DHS the power to enforce immigration law and policy.<sup>129</sup> Additionally, in its 2012 *Arizona v. United States* decision, the U.S. Supreme Court confirmed the executive's role in enforcing immigration law through prosecutorial discretion.<sup>130</sup> The Obama administration's establishment of DACA was carried out within this role and has inspired subsequent scholarship that explores both the limits and possibilities of prosecutorial discretion and deferred action.<sup>131</sup>

DACA has faced significant criticism from legal scholars, political figures, and even executive agencies.<sup>132</sup> Critics of DACA argue that the policy is unconstitutional because it infringes upon the President's duty to "take [c]are" that laws are faithfully executed<sup>133</sup> and violates separation of powers.<sup>134</sup> They purport that DACA goes beyond simple prosecutorial

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124. Peter L. Markowitz, *Prosecutorial Discretion Power at Its Zenith: The Power to Protect Liberty*, 97 B.U. L. REV. 489, 490–91 (2017).

125. U.S. CONST. art. II, § 3.

126. Markowitz, *supra* note 124, at 492.

127. See, e.g., Jason A. Cade, *Judging Immigration Equity: Deportation and Proportionality in the Supreme Court*, 50 U.C. DAVIS L. REV. 1029, 1041–75 (2017); Markowitz, *supra* note 124, at 507–14.

128. Markowitz, *supra* note 124, at 508.

129. 8 U.S.C. § 1103(a)(1) ("The Secretary of Homeland Security shall be charged with the administration and enforcement of this chapter and all other laws relating to the immigration and naturalization of aliens.").

130. *Arizona v. United States*, 567 U.S. 387, 396 (2012) ("A principal feature of the removal system is the broad discretion exercised by immigration officials. Federal officials, as an initial matter, must decide whether it makes sense to pursue removal at all." (citations omitted)).

131. E.g., Kate Andrias, *The President's Enforcement Power*, 88 N.Y.U. L. REV. 1031 (2013); Zachary S. Price, *Enforcement Discretion and Executive Duty*, 67 VAND. L. REV. 671 (2014); Markowitz, *supra* note 124.

132. See, e.g., Delahunty & Yoo, *supra* note 123; Amended Complaint, *Crane v. Napolitano*, No. 3:12-cv-03247 (N.D. Tex. Oct. 10, 2012).

133. U.S. CONST. art. II, § 3.

134. See, e.g., Lauren Gilbert, *Obama's Ruby Slippers: Enforcement Discretion in the Absence of Immigration Reform*, 116 W. VA. L. REV. 255, 276–91 (2013) (classifying arguments against DACA's legality into four distinct but related constitutional claims relating to separation of powers: the

discretion and creates law, thus impinging upon the powers of the legislative branch. Robert J. Delahunty and John C. Yoo, for example, argue that as a nonenforcement decision, DACA falls outside the scope of prosecutorial discretion because “there is simply no general presidential nonenforcement power.”<sup>135</sup> They, among other critics, suggest that DACA attempted to write into law provisions of the DREAM Act, which had already failed to pass in Congress a number of times.<sup>136</sup> ICE officials made similar arguments when they filed a lawsuit in 2012 to block DACA.<sup>137</sup> In addition to the arguments outlined above, they claimed that DACA encroached upon their statutory duties, forcing them to choose between enforcing an illegal policy and defying their superiors.<sup>138</sup> They also complained that DACA conferred an affirmative benefit, work authorization, without any statutory basis.<sup>139</sup>

On the other hand, different scholars defend DACA as a legitimate act of prosecutorial discretion under the scope of the President’s power.<sup>140</sup> They cite the Take Care Clause as the basis for prosecutorial discretion, as confirmed by the Supreme Court.<sup>141</sup> The Supreme Court, in fact, has confirmed the executive’s use of deferred action “for humanitarian reasons” or “its own convenience” and called discretion a “principle feature” of the immigration system.<sup>142</sup> Whereas critics argue that the policy oversteps Congress, supporters of DACA cite historical accounts of presidential deferred action decisions<sup>143</sup> and the lack of clear congressional priorities in regard to enforcement activity when defending DACA’s constitutionality.<sup>144</sup> Defenders of DACA argue that the current structure of the immigration system justifies (and even necessitates) more involved presidential

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Youngstown/Curtiss-Wright Dichotomy; the Non-Delegation Doctrine Resurrection; the “Take Care” Clause Crisis, and the Notice and Comment Myth).

135. Delahunty & Yoo, *supra* note 123, at 784.

136. *Id.* at 787.

137. Amended Complaint, *supra* note 132.

138. *Id.* at 11.

139. *Id.* at 17–18.

140. See, e.g., Wadhia, *supra* note 123; Gilbert, *supra* note 134.

141. Wadhia, *supra* note 123, at 63–64 (citing Heckler v. Chaney, 470 U.S. 821, 832 (1985)).

142. Kagan, *supra* note 123, at 1091 (citing Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 484 (1999); Arizona v. United States, 567 U.S. 387, 396 (2012)).

143. See, e.g., Gilbert, *supra* note 134, at 303–06; Muñoz, *supra* note 44, at 252–54; Wadhia, *supra* note 123, at 64–68.

144. See Adam B. Cox & Cristina M. Rodríguez, *The President and Immigration Law Redux*, 125 YALE L.J. 104, 151 (2015) (“Little meaningful congressional guidance exists about how to appropriately structure the ex post screening rules for immigration law. . . . [T]he modern structure of immigration law effectively delegates vast screening authority to the President. . . . In a world where nearly half of all noncitizens living in the United States are formally deportable, there can be no meaningful search for the congressionally preferred screening criteria.”).

enforcement decisions and systemization of those decisions.<sup>145</sup> They see the policy as a necessary attempt to bring uniformity, transparency, and accountability to an enforcement system that, in recent decades, has lacked these components.<sup>146</sup> In regard to work authorization as a benefit, scholars point to Title 8 of the Federal Code of Regulations, which allows individuals with deferred action the ability to apply for work authorization based on “economic necessity.”<sup>147</sup> Although our Article does not focus on the legality of the DACA policy, the legal arguments provide an important foundation for understanding DACA’s journey through the court system and to contextualize the fraught dispute before the Supreme Court,<sup>148</sup> which drew substantial interest from a wide ranging group of stakeholders.<sup>149</sup>

#### B. THE HUMAN IMPACT OF DACA IN THE LEGAL LITERATURE

Although legal scholars tend to focus on the constitutional and statutory foundations for DACA, some legal literature does attempt to situate the policy within the larger context of human rights and human impact.<sup>150</sup> Some scholars frame DACA and its continuation as an issue of human rights and international law.<sup>151</sup> For example, they cite an individual’s right under the International Covenant on Civil and Political Rights (“ICCPR”) not to be expelled or refused admission to their “own country”<sup>152</sup> and claim that most DACA-eligible persons can justly consider the United States their “own country” based on the extended length of their stay and strong connections to the country.<sup>153</sup> They thus make the case that expulsion of DACA-eligible

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145. *Id.* at 131–35; *see also* Gilbert, *supra* note 134, at 306.

146. *E.g.*, Hiroshi Motomura, *The President’s Dilemma: Executive Authority, Enforcement, and the Rule of Law in Immigration Law*, 55 WASHBURN L.J. 1, 28 (2015) (“Part of taking care faithfully to execute the immigration laws is adopting an enforcement system that maximizes predictability and uniformity, and minimizes discrimination.”).

147. Letter from Law Professors to Donald J. Trump, President of the U.S. (Aug. 14, 2017) (citing 8 C.F.R. § 274a.12(c)(14) (2021)), <https://pennstatelaw.psu.edu/sites/default/files/documents/pdfs/Immigrants/LawProfLetterDACAfinal8.13.pdf> [<https://perma.cc/J5XE-WEHY>].

148. *See supra* Part I (detailing DACA’s journey through the court system).

149. *See supra* note 96 (explaining the wide diverse number of stakeholders who submitted amicus briefs); *infra* Section IV.B.

150. *See* David B. Thronson, *Closing the Gap: DACA, DAPA, and U.S. Compliance with International Human Rights Law*, 48 CASE W. RESV. J. INT’L L. 127, 135–36 (2016); William Thomas Worster, *Deporting Dreamers as a Crime Against Humanity*, 33 EMORY INT’L L. REV. 367, 368–71 (2019); Timothy E. Lynch, *The ICCPR, Non-Self-Execution, and DACA Recipients’ Right to Remain in the United States*, 34 GEO. IMMIGR. L.J. 323, 327 (2020).

151. *See* Thronson, *supra* note 150; Worster, *supra* note 150; Lynch, *supra* note 150.

152. *See, e.g.*, Lynch, *supra* note 150, at 328 (quoting International Covenant on Civil and Political Rights art 12.4, Mar. 23, 1976, 999 U.N.T.S. 171).

153. Worster, *supra* note 150, at 388–98.

individuals constitutes a violation of international law.<sup>154</sup> One scholar, David B. Thronson, argues that DACA actually helps the United States fulfill its international human rights law obligations because it helps keep families together, requires immigration enforcement to consider equitable factors, and implements the rule of law “into an otherwise rigid immigration system.”<sup>155</sup>

More relevant to our research than questions of international law is the literature that explores the impact of DACA and its potential rescission on DACA recipients themselves.<sup>156</sup> There is notably less legal literature on this topic than there is on claims of DACA’s legality and prosecutorial discretion. The few legal scholars who do focus on the human impact of DACA status explained not only the benefits of the status, but also the shortcomings and issues of the policy.<sup>157</sup> For example, Richelle S. Swan and Marisol Clark-Ibáñez analyze narratives of DACA students to highlight their experiences before and after gaining status; while they discuss benefits such as economic benefits, legal documentation, and increased feelings of safety and hope, they also acknowledge DACA’s limitations, citing the need for more comprehensive immigration reform.<sup>158</sup> Similarly, another narrative-driven legal study focuses on the impact of DACA on Chicana/Latina students and emphasizes its limits based on its temporary nature.<sup>159</sup>

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154. *Id.* at 398 (“Therefore, these people are lawfully present for purposes of international law, and their mass expulsion from their lawful homes would amount to the crime against humanity of deportation by the individuals that carry out any expulsion.”).

155. Thronson, *supra* note 150, at 136.

156. See Lindsay Pérez Huber, “*Como Una Jaula de Oro*” (*It’s like a Golden Cage*): *The Impact of DACA and the California Dream Act on Undocumented Chicanas/Latinas*, 33 CHICANA/O-LATINA/O L. REV. 91, 117–25 (2015); Richelle S. Swan & Marisol Clark-Ibáñez, *Perceptions of Shifting Legal Ground: DACA and the Legal Consciousness of Undocumented Students and Graduates*, 39 T. JEFFERSON L. REV. 67, 83–89 (2017); Candelario Saldana, *Queering the Dream—the Impact Trump’s Decision Has on LGBTQ+ Dreamers*, 10 U. MIA. RACE & SOC. JUST. L. REV. 23, 27–36 (2020) (focusing specifically on the impact of rescission on DACA recipients who identify as LGBTQI).

157. Huber, *supra* note 156; Swan & Clark-Ibáñez, *supra* note 156; Saldana, *supra* note 156.

158. Swan & Clark-Ibáñez, *supra* note 156, at 92, 98–101 (“Policymakers, legal advocates, and educators should acknowledge the psychological and social burdens inherent in giving undocumented young people only a temporary, renewable reprieve from being legal outsiders. This sort of indeterminacy makes it extremely difficult for DACA recipients to move forward in their lives in ways that involve long-term planning.”).

159. Pérez Huber, *supra* note 156, at 124–25 (“In many ways, the experiences of the participants before and after DACA illustrate how they encounter the contradictions between access and restriction that; on one hand, provide greater educational and work opportunities, and on the other, place restrictions on this access that limit their options, lives, and futures. . . . Thus, the findings reveal that the lives of the participants in this study are constantly in flux, as they grapple with the contradictions of being and living as undocumented immigrants who are perceived to be deserving of *some* access to opportunities in the [United States], but not *all* that are enjoyed by U.S. citizens.”).

The legal literature relating to the human impact of DACA and its rescission is lacking, particularly considering the importance of reliance interests in the Supreme Court case. Our Article seeks to fill that gap in the literature by situating DACA and its impact on recipients within a larger reliance interests legal framework that requires consideration of social impact.<sup>160</sup>

### C. SOCIAL SCIENCE RESEARCH

While connection between human impact and the legal status of DACA is relatively lacking in legal literature, extensive social science research explores the impact, implications, and limitations of DACA status.<sup>161</sup> Although DACA is often depicted as a transformative policy conferring substantial benefits to undocumented immigrants, the literature also emphasizes the nuances and obstacles that DACA creates due its liminal and temporary nature.<sup>162</sup>

Overall, DACA helps recipients integrate into society and institutions through the conferral of lawful presence, a Social Security number, and work authorization.<sup>163</sup> In turn, these benefits allow DACA recipients to gain access to higher education,<sup>164</sup> fund their education,<sup>165</sup> obtain a driver's license,<sup>166</sup> gain lawful employment,<sup>167</sup> earn higher wages,<sup>168</sup> and legally open a bank account and obtain a credit card.<sup>169</sup> With work authorization, beneficiaries

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160. See *infra* Section IV.A.1.

161. E.g., Gonzales et al., *supra* note 21, at 1853; Nolan G. Pope, *The Effects of DACAmendment: The Impact of Deferred Action for Childhood Arrivals on Unauthorized Immigrants*, 143 J. PUB. ECON. 98 (2016); Francesc Ortega, Ryan Edwards & Amy Hsin, *The Economic Effects of Providing Legal Status to DREAMers*, IZA J. LAB. POL'Y, 2019, at 1; Giuntella & Lonsky, *supra* note 122.

162. See, e.g., Roth, *supra* note 18, at 2549–50.

163. See, e.g., Gonzales et al., *supra* note 21, at 1853.

164. FAYE HIPSMAN, BÁRBARA GÓMEZ-AGUIÑAGA & RANDY CAPPS, DACA AT FOUR: PARTICIPATION IN THE DEFERRED ACTION PROGRAM AND IMPACTS ON RECIPIENTS 10–11 (2016), <https://www.migrationpolicy.org/sites/default/files/publications/DACAatFour-FINAL.pdf> [<https://perma.cc/NP9R-JVJ2>]; see also Yohualli Balderas-Medina Anaya, Mithi del Rosario, Lawrence “Hy” Doyle & David E. Hayes-Bautista, *Undocumented Students Pursuing Medical Education: The Implications of Deferred Action for Childhood Arrivals (DACA)*, 89 ACAD. MED. 1599, 1599 (2014); CAITLIN PATLER & JORGE A. CABRERA, FROM UNDOCUMENTED TO DACAMENTED: IMPACTS OF THE DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA) PROGRAM 4–5 (2015), [https://www.chicano.ucla.edu/files/Patler\\_DACA\\_Report\\_061515.pdf](https://www.chicano.ucla.edu/files/Patler_DACA_Report_061515.pdf) [<https://perma.cc/UEQ2-5Q78>].

165. Balderas-Medina Anaya et al., *supra* note 164, at 1600.

166. E.g., Gonzales et al., *supra* note 21, at 1856.

167. *Id.* at 1863.

168. *Id.*; see also Caitlin Patler, Jo Mhairi Hale & Erin Hamilton, *Paths to Mobility: A Longitudinal Evaluation of Earnings Among Latino/a DACA Recipients in California*, 65 AM. BEHAV. SCIENTIST 1146, 1146–47 (2021) (conducting a longitudinal study using cross-sectional data to find that DACA is associated with improved earnings for DACA recipients).

169. E.g., Pope, *supra* note 161, at 100.

can gain higher paying jobs and pursue specific careers or vocations that were previously unavailable to them.<sup>170</sup> Increased access to employment also helped DACA students fund their education.<sup>171</sup> Notably, some scholars claim that despite increased access to higher education, DACA incentivizes work over educational attainment because of its temporary and precarious nature.<sup>172</sup>

In addition to economic and educational benefits, many scholars highlight the health-related impacts of DACA.<sup>173</sup> For example, DACA status helped reduce beneficiaries' psychological stress, which in turn benefits their mental health.<sup>174</sup> Additionally, DACA increases insurance coverage for recipients, improving their access to medical care and making them more likely to receive mental health services.<sup>175</sup>

Along with tangible benefits, DACA provides recipients with significant emotional benefits.<sup>176</sup> For example, DACA provides recipients with legitimacy and security, which in turn benefits their emotional well-being.<sup>177</sup> It also confers feelings of freedom, safety, and belonging.<sup>178</sup> With lawful presence, recipients are able to gain "peace of mind" and "see

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170. See, e.g., Gonzales et al., *supra* note 21, at 1863, 1867; RAQUEL MUÑIZ, MARA ZRZAVY & NICOLE PRCHAL SVAJLENKA, *DACAMENTED LAW STUDENTS AND LAWYERS IN THE TRUMP ERA* 1–2 (2018), [https://americanprogress.org/wp-content/uploads/2018/06/LawStudentsDACA-brief-2.pdf?\\_ga=2.262682188.1150456747.1645820866-1526943882.1645820866](https://americanprogress.org/wp-content/uploads/2018/06/LawStudentsDACA-brief-2.pdf?_ga=2.262682188.1150456747.1645820866-1526943882.1645820866) [https://perma.cc/KY25-YT77].

171. HIPSAN ET AL., *supra* note 164, at 10.

172. Ortega et al., *supra* note 161, 15–17, 25 (2018); see also LISA DICKSON, T. H. GINDLING & JAMES KITCHIN, *THE EDUCATION AND EMPLOYMENT EFFECTS OF DACA, IN-STATE TUITION AND FINANCIAL AID FOR UNDOCUMENTED IMMIGRANTS* 14 (2017), <https://ftp.iza.org/dp11109.pdf> [https://perma.cc/246N-L8KL] (presenting evidence that DACA has led to an increase in youth employment and a decrease in college enrollment rates).

173. E.g., Atheendar S. Venkataramani, Sachin J. Shah, Rourke O'Brien, Ichiro Kawachi & Alexander C. Tsai., *Health Consequences of the US Deferred Action for Childhood Arrivals (DACA) Immigration Programme: A Quasi-Experimental Study*, 2 *LANCET PUB. HEALTH* 175, 178–80 (2017); Christina M. Getrich, Kaelin Rapport, Alaska Burdette, Ana Ortez-Rivera & Delmis Umanzor, *Navigating a Fragmented Health Care Landscape: DACA Recipients' Shifting Access to Health Care*, 223 *SOC. SCI. & MED.* 8, 11–14 (2019); Marie L. Mallet & Lisa García Bedolla, *Transitory Legality: The Health Implication of Ending DACA*, 11 *CAL. J. POL. & POL'Y* 1, 11–16 (2019); Giuntella & Lonsky, *supra* note 122, at 1, 5–17.

174. Venkataramani et al., *supra* note 173, at 178–79 (conducting a quasi-experimental study with findings indicating that DACA reduces psychological distress, which has clinically significant effects on mental health); see also MUÑIZ ET AL., *supra* note 170, at 2–5 (describing "DACamented" law students' and lawyers' psychosocial well-being as a result of receiving DACA protections).

175. Giuntella & Lonsky, *supra* note 122, at 5–10.

176. See, e.g., Gonzales et al., *supra* note 21, at 1867 (explaining that DACA helps to legitimize and affirm recipients' presence in the United States; additionally, its conferral of lawful presence eases recipients' fears of deportation or detention, which in turn benefits their emotional well-being).

177. *Id.*

178. HIPSAN ET AL., *supra* note 164, at 11.

themselves as persons worthy of recognition and equal treatment.”<sup>179</sup> This newfound confidence allows them to be more open with others to form more meaningful relationships and expand their social lives.<sup>180</sup> Thus, DACA, in addition to creating material benefits, allows recipients to feel confident, secure, and integrated into American society.<sup>181</sup>

Although DACA provides these benefits, scholars have also noted that the policy has substantial limitations.<sup>182</sup> For example, beneficiaries’ ability to access benefits and integrate into society depends in part on their state’s policies<sup>183</sup>—that is, while certain states allow DACA recipients to apply for a driver’s license or access state financial aid, others maintain barriers to these opportunities.<sup>184</sup> Gonzales and colleagues note that in addition to state policies, recipients’ ability to take advantage of DACA depends on the resources they have access to from their families, schools, or communities.<sup>185</sup> Another crucial limitation of DACA is its temporary nature (limited to two years with a possibility for renewal) with no pathway to citizenship.<sup>186</sup> Scholars Benjamin Roth, Susana M. Muñoz, and Darsella Vigil go so far as to call DACA a form of “legal violence” because it gives beneficiaries the hope of fully realized social inclusion and integration without the possibility of attaining it.<sup>187</sup> So while scholars acknowledge that beneficiaries are better

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179. Roberto G. Gonzales, Basia Ellis, Sarah A. Rendón-García & Kristina Brant, *(Un)authorized Transitions: Illegality, DACA, and the Life Course*, 15 RSCH. HUM. DEV. 345, 353–55 (2018).

180. *Id.*

181. *Id.* at 351.

182. *E.g., id.* at 355 (outlining many of the central limitations of DACA, including that it is a temporary status, it lacks a pathway to citizenship for recipients, it is revocable, it does not extend benefits to family members, and it does not help recipients gain access to federal aid for higher education).

183. Kara Cebulko & Alexis Silver, *Navigating DACA in Hospitable and Hostile States: State Responses and Access to Membership in the Wake of Deferred Action for Childhood Arrivals*, 60 AM. BEHAV. SCIENTIST 1553, 1554 (2016).

184. *Id.*

185. Gonzales et al., *supra* note 21, at 1867.

186. Gonzales et al., *supra* note 179, at 355.

187. Roth, *supra* note 18, at 2549–50 (“I find that DACA provides additional empirical support for the notion that liminal legality exerts a form of legal violence. I argue that the legal violence of DACA presents a ‘double bind’ whereby beneficiaries are subject to a paradox: while DACA affords them greater social inclusion, they are also aware that these gains are fragile and (potentially) contested due to the impermanence of DACA.” (citations omitted)); *see also* Susana M. Muñoz & Darsella Vigil, *Interrogating Racist Nativist Microaggressions and Campus Climate: How Undocumented and DACA College Students Experience Institutional Legal Violence in Colorado*, 11 J. DIVERSITY HIGHER EDUC. 451, 451 (“We utilize the concept of legal violence and campus climate to illuminate 3 forms of racist nativist microaggressions[:] (a) institutional ignorance; (b) the reproduction of pervasive invisibility; and (c) hidden/nonpresent communities of support as ways in which colleges and universities reproduce injurious acts.”).

off with DACA than without it, they emphasize its constraints and the need for long-lasting reform.<sup>188</sup>

The literature's depictions of DACA and its effects lay a foundation for a study that seeks to deepen our understanding of these effects through amici's application of the reliance interests framework. Our Article aims to bridge the gap between legal research and social science by using social science research methods to analyze the reliance interests discussed by amici in the DACA Supreme Court case.<sup>189</sup>

#### IV. CONCEPTUAL LENS AND DESIGN

The lens for this study integrates Critical Race Theory's ("CRT") tenet of interest convergence<sup>190</sup> and UndocuCrit's tenet of liminality.<sup>191</sup> We situate our conceptual lens within the broader Critical Legal Studies ("CLS") and New Legal Realism ("NLR") scholarship.<sup>192</sup> Specifically, we analyzed the data through the combined lens of interest convergence and the liminality of undocumented people to determine the ways in which amici mentioned social and political interests in their legal arguments. We describe the conceptual lens and design in detail below.

##### A. CONCEPTUAL LENS

###### 1. Theoretical Perspectives on Law and Society

We situate our work within the broader CLS<sup>193</sup> and NLR<sup>194</sup> scholarship and movements. CLS scholarship argues that the legal system is not a closed, siloed social institution divorced from the sociopolitical context.<sup>195</sup> Rather, CLS posits that the law has and likely will always be intertwined with social

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188. See Roth, *supra* note 18, at 2561–63; Cebulko & Silver, *supra* note 183, at 1567–70; Gonzales et al., *supra* note 179, at 355–58; Bono, *supra* note 122, at 219–22; Ellen E. Findley, *Bridging the Gap Between DACA and the DREAM: The BRIDGE Act, What It Means, and Why It Matters*, 7 PENN ST. J.L. & INT'L AFFS. 304, 311, 320 (2019); Ilana Etkin Greenstein, *DACA, Dreamers, and the Limits of Prosecutorial Discretion: DHS v. Regents of the University of California*, BOS. BAR J. 11, 11 (2020).

189. See *infra* Part IV and Part V.

190. See *infra* Section IV.A.2.

191. See *infra* Section IV.A.3.

192. See *infra* Section IV.A.2.

193. Mark Tushnet, *Critical Legal Studies: An Introduction to Its Origins and Underpinnings*, 36 J. LEGAL EDUC. 505, 515 (1986); Mark Tushnet, *Critical Legal Studies: A Political History*, 100 YALE L.J. 1515, 1516–18 (1991); see also James F. Lucarello, *The Praise of Silly: Critical Legal Studies and the Roberts Court*, 26 TOURO L. REV. 619, 621 (2010).

194. See, e.g., Thomas J. Miles & Cass R. Sunstein, *The New Legal Realism*, 75 U. CHI. L. REV. 831, 831 (2008); Frank B. Cross, *Political Science and the New Legal Realism: A Case of Unfortunate Interdisciplinary Ignorance*, 92 NW. U. L. REV. 251, 265–66 (1997).

195. See authorities cited *supra* note 193.

issues and politics that have inherent social biases<sup>196</sup> and, therefore, asserts that the law is subjective.<sup>197</sup> Through its underlying principles, in the twentieth century, CLS drew attention to the connection between the law and other social institutions.<sup>198</sup> Building on and extending CLS foundations, scholars examined the relationship between the law and society through a critical lens.<sup>199</sup> From this movement, CRT, which we integrate in our lens, was born.<sup>200</sup>

The body of work examining the symbiotic relationship between the law and the social institutions it shapes has continued to expand.<sup>201</sup> In the twenty-first century, NLR has amplified the call for scholars to examine the relationship between law and society.<sup>202</sup> Among their core ideas is the importance of understanding the impact of the law “on the ground” by empirically examining how individuals in society experience the law in their day to day.<sup>203</sup> NLR scholars advocate for the use of legal, qualitative, and quantitative interdisciplinary research methodologies.<sup>204</sup>

Our work is situated within these broader theoretical perspectives and scholarship examining the relationship between law and society. We draw on the CLS principles<sup>205</sup> and subsequent movements integrating critical perspectives to orient our analytic approach. Our empirical, qualitative study

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196. See authorities cited *supra* note 193; *Critical Legal Theory*, LEGAL INFO. INST., [https://www.law.cornell.edu/wex/critical\\_legal\\_theory#:~:text=Critical%20legal%20studies%20\(CLS\)%20is,those%20who%20create%20the%20law](https://www.law.cornell.edu/wex/critical_legal_theory#:~:text=Critical%20legal%20studies%20(CLS)%20is,those%20who%20create%20the%20law) [https://perma.cc/98T5-3GZZ].

197. See authorities cited *supra* note 193.

198. See, e.g., Tushnet, *supra* note 193, at 509–10; Tushnet, *supra* note 193, at 1516–18; Juhana Salojärvi, *A Counter-Culture of Law: Jurisprudential Change and the Intellectual Origins of the Critical Legal Studies Movement*, 59 AM. J. LEGAL HIST. 409, 411 (2019); Dermot Feenan, *Exploring the ‘Socio’ of Socio-Legal Studies*, in EXPLORING THE ‘SOCIO’ OF SOCIO-LEGAL STUDIES 3 *passim* (Dermot Feenan ed., 2013); Laura E. Gómez, *A Tale of Two Genres: On the Real and Ideal Links Between Law and Society and Critical Race Theory*, in THE BLACKWELL COMPANION TO LAW & SOCIETY 453 *passim* (Austin Sarat ed., 2004); 1 AT THE BOUNDARIES OF LAW: FEMINISM AND LEGAL THEORY, at xiv (Martha Albertson Fineman & Nancy Sweet Thomadsen eds., 1991); Ruth Fletcher, *Feminist Legal Theory*, in AN INTRODUCTION TO LAW AND SOCIAL THEORY 135, 135–54 (Reza Banakar & Max Travers eds., 2002); Brian Leiter, *Legal Formalism and Legal Realism: What Is the Issue?*, 16 LEGAL THEORY 111, 112 (2010); Brian Z. Tamanaha, *Understanding Legal Realism*, 87 TEX. L. REV. 731, 731 (2009).

199. See authorities cited *supra* note 198.

200. Gómez, *supra* note 198; see also *infra* Section IV.A.2.

201. See Miles & Sunstein, *supra* note 194; Cross, *supra* note 194.

202. See authorities cited *supra* note 194.

203. See Stewart Macaulay, *New Legal Realism: Unpacking a Proposed Definition*, 6 U.C. IRVINE L. REV. 149, 153 (2016).

204. See Mark C. Suchman & Elizabeth Mertz, *Toward a New Legal Empiricism: Empirical Legal Studies and New Legal Realism*, 6 ANN. REV. L. & SOC. SCI. 555 *passim* (2010).

205. See *supra* Section IV.A.1.

is also responsive to NLR's call for interdisciplinary, methodologically pluralistic research of law and society.<sup>206</sup>

Our study considers the implications of the law on society and specifically looks to see which amici made arguments that contained references to social contexts.<sup>207</sup> We defined social contexts as mentions of impact to social groups and individuals that have been, or would be, directly impacted by DACA and its potential rescission. Specifically, we sought to understand the reliance interests arguments amici made and how they considered social contexts. We understand that the law has historically favored privileged communities and disadvantaged the underprivileged;<sup>208</sup> therefore, we analyzed how, through the application of the reliance interests legal framework, social contexts were brought into the conversation surrounding DACA and by whom.<sup>209</sup> To analyze the amicus briefs, we drew from CRT<sup>210</sup> and UndocuCrit Theory.<sup>211</sup> These two lenses are critically oriented, acknowledge the social context, and focus on the lived experiences of marginalized communities.<sup>212</sup> Thus, they were particularly helpful in our analysis.

## 2. Interest Convergence—Critical Race Theory (“CRT”)

Interest convergence, often listed as a tenet of CRT,<sup>213</sup> was developed by Derrick Bell, while commenting on the Court's reasoning in *Brown v. Board of Education*.<sup>214</sup> Bell surmised that the case's resolution requiring desegregation in American schools was rooted in the self-interest of white people, the dominant social group.<sup>215</sup> Bell argued more broadly that the historical achievements Black people had made in American society only occurred because the interest of marginalized communities had converged with the interest of white people, and he thereby coined the term “interest convergence.”<sup>216</sup> Thus, he argued that progress does not occur if it threatens to undermine the interests of the white majority, and while *Brown v. Board of Education* was successful in advancing rights for Black people, this progress toward racial equality was possible because Black people's interests

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206. See Macaulay, *supra* note 203.

207. See *infra* Part V.

208. See Bell, *supra* note 13; Lee, *supra* note 20; Gómez, *supra* note 198.

209. See *infra* Part V.

210. See *supra* Section IV.A.2.

211. See *supra* Section IV.A.3.

212. See *supra* Sections IV.A.1–2.

213. RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY 7, 16–20 (2001).

214. *Brown v. Bd. of Educ.*, 347 U.S. 483, 490 (1954); see also Bell, *supra* note 13.

215. See Bell, *supra* note 13, at 522.

216. *Id.* at 523.

converged with the interests of white people, including gains in global credibility, economic profit, and the reassurances to Black soldiers that the equality and freedom they were fighting for would be extended to them upon their return.<sup>217</sup>

Bell later noted that the advancements of Black people that occurred through interest convergence were provisional and argued that “the interests of [B]lacks and even hard-won racial remedies will be sacrificed or abrogated when such remedies threaten the interests of [the] ‘superior societal status of whites.’”<sup>218</sup> Bell termed this secondary concept “racial sacrifice.”<sup>219</sup> Some legal scholars have used Bell’s concept of racial sacrifice to caution “minority groups against being too quick to join with majority causes because when minority and majority interests diverge, minority interests are likely to be sacrificed to preserve the majority’s position.”<sup>220</sup>

In our research, we used interest convergence to guide our analysis of the ways in which amici stated or alluded to an alignment of the dominant culture’s interests and DACA recipients’ interests.<sup>221</sup> Specifically, we critically examined the intangible, material, and physical benefits to the dominant culture that have been provided by DACA or its recipients.<sup>222</sup> For example, several briefs discussed the positive impacts to the federal economy, such as tax contributions, as a result of the benefits and opportunities DACA grants to its recipients.<sup>223</sup> This argument is an example of converging interests because amici favored keeping DACA in place based on the mutual benefits to the dominant, predominantly white population: financial revenue. We critically examined a spectrum of reliance interest arguments that were made specific to converging interests of society and DACA recipients and further analyzed interest convergence arguments expressed by stakeholders, dependent on their interest and position on the case.<sup>224</sup>

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217. Jackson, *supra* note 20.

218. See Lee, *supra* note 20, at 924 n.68 (citing Sheryll D. Cashin, *Shall We Overcome? Transcending Race, Class, and Ideology Through Interest Convergence*, 79 ST. JOHN’S L. REV. 253, 272 (2005) (citing DERRICK A. BELL, JR., *SILENT COVENANTS: BROWN V. BOARD OF EDUCATION AND THE UNFULFILLED HOPE FOR RACIAL REFORM* 69 (2004))).

219. *Id.*

220. *Id.*

221. See *infra* Part V.

222. See *infra* Part V.

223. See *infra* Section V.A.

224. See *infra* Part V.

### 3. Liminality—UndocuCrit Theory

To ground the experiences of DACA recipients in theory, we integrated the concept of liminality into our lens.<sup>225</sup> Aguilar conceptualized liminality as the reality that social positionality in relation to one's immigration status results in a diversity of lived experiences and life trajectories.<sup>226</sup> This concept is a tenet of UndocuCrit Theory, a theoretical framework that calls for a critical analysis of the specific and liminal experiences of undocumented individuals living in the United States based on the belief that "a binary of documented versus undocumented no longer captures the experiences and realities of individuals appropriately."<sup>227</sup> Rather, immigration status "can be conceptualized as a cloud that follows an individual throughout their intersecting experiences and that manifests differently, and at varying degrees, depending on the entity with which the interaction occurs, and the context in which it exists."<sup>228</sup> The reality that many people, and their loved ones, move in and out of immigration statuses throughout their lives produces positive and negative impacts to their physical and mental health, as well as to their life experiences.<sup>229</sup> For example, research has shown the DACA policy increases recipients' feelings of membership, belonging, and inclusion.<sup>230</sup>

To answer our research question, we paid particular attention to this concept as the implications of DACA directly relate to the experiences captured by the liminality tenet as undocumented individuals move through

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225. See *supra* Section IV.A.3.

226. See Aguilar, *supra* note 14, at 153.

227. *Id.* at 155.

228. *Id.* at 156.

229. *Id.* at 155 (citation omitted); e.g., Tom K. Wong, Sanaa Abrar, Claudia Flores, Tom Jawetz, Ignacia Rodriguez Kmec, Greisa Martinez Rosas, Holly Straut-Eppsteiner & Phillip E. Wolgin, *DACA Recipients' Livelihoods, Families, and Sense of Security Are at Stake this November*, CTR. FOR AM. PROGRESS (Sept. 19, 2019), <https://www.americanprogress.org/article/daca-recipients-livelihoods-families-sense-security-stake-november> [https://perma.cc/CHF2-X33V] ("The legal and political uncertainty surrounding DACA continues to weigh heavily on the minds of DACA recipients. For example, [fifty-six] percent of respondents reported that they think about either being detained in an immigration detention facility or deported from the United States at least once a day; and an even greater percentage, [sixty-nine] percent, reported that they think about a family member being detained or deported at least once a day. Fear of family separation is particularly strong among DACA recipients who are parents. Among those with children, [seventy-five] percent reported that they think about 'being separated from [their] children because of deportation' at least once a day, while [seventy-two] percent reported thinking about 'not being able to see [their] children grow up because of deportation' at least once a day.").

230. Aguilar, *supra* note 14, at 156 (discussing how research has shown that Central Americans who had been granted a Temporary Protected Status ("TPS") experienced increases in quality of life and home ownership rates, better quality jobs, higher incomes, and overall improved integration and well-being). This shows that liminality can greatly impact people's and families' lives throughout time and intersecting experiences.

fluctuations in experiences as they applied, received, used, and prepared for the potential loss of their DACA protections.<sup>231</sup> We sought to understand how amici represented these differing life experiences—which they described as reliance interests—including feelings of marginalization or belonging, as well as the tangible and intangible benefits and losses afforded to DACA recipients.<sup>232</sup>

## B. DESIGN

### 1. Data Sources

Our data sources comprised the amicus briefs submitted to the U.S. Supreme Court in *Department of Homeland Security v. Regents of the University of California*.<sup>233</sup> The findings presented in this Article are part of a larger study in which we examined all forty-four amicus briefs submitted after the Court granted certiorari on June 28, 2019, until the scheduling of oral arguments, and which argued in support of respondents, petitioners, or neither party.<sup>234</sup> Amici represented a broad swath of interests, communities, and perspectives.<sup>235</sup> While amici submitted forty-four briefs, only twenty-six discussed reliance interests in the case, and thus our focus in this Article is on the twenty-six amicus briefs that implicitly or explicitly discussed the reliance interests engendered by DACA.<sup>236</sup>

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231. See *infra* Part V.

232. See *infra* Part V.

233. See *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891, 1914 (2020).

234. Of the briefs submitted, there were thirty-six submitted in support of respondents, and generally, the DACA policy; there were six submitted in support of petitioners, who opposed the preservation of the DACA policy; and two were submitted in support of “neither or both” respondents and petitioners.

235. We grouped amici into different categories to capture the interests they represented and better understand their stance. To categorize the amici, we began with the amici categories Horn and colleagues developed through their review of extant literature. We adjusted the categories and definitions to best fit our study. The final categories were as follows: (1) colleges, universities, schools, and educational organizations (seven total); (2) business groups and trade associations (five total); (3) research organizations and scholars (seven total); (4) individuals with current or former government affiliation (five total); (5) governments (four total); (6) individuals and alumni (one total); (7) advocacy organizations (eight total); and (8) legal organizations and institutes (seven total). When briefs were submitted by stakeholders from more than one of the established categories, we followed the model of Horn and colleagues and placed them in a category based on the lead amicus on the brief. Patricia Marin, Catherine L. Horn, Karen Miksch, Liliana M. Garces & John T. Yun, *Uses of Extra-Legal Sources in Amicus Curiae Briefs Submitted in Fisher v. University of Texas at Austin*, 26 EDUC. POL'Y ANALYSIS ARCHIVES 1, 10 (2018). The Appendix provides a full description of each category of amici.

236. We categorized “explicit arguments” as those where amici used the term “reliance interests,” while implicit arguments were those that gave examples of or referenced specific interests at stake that DACA recipients or others relied on, but did not use the term “reliance interests.”

## 2. Coding and Analysis

We coded and analyzed the data using an iterative, deductive, and inductive process.<sup>237</sup> Using a research protocol to guide the coding and analysis process,<sup>238</sup> we applied theory-driven codes and data-driven codes.<sup>239</sup> As a team, we co-constructed theoretical definitions, including, in relevant part, for “interest convergence”<sup>240</sup> and “liminality,”<sup>241</sup> and subsequently tested the reliability of our theoretical definitions.<sup>242</sup> Upon completion of the reliability testing, the research team coded the amicus

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237. The larger study included two leading researchers and four research assistants, two of which partook in the analysis and write-up of this Article. The research assistants worked in pairs to code the briefs.

238. The protocol allowed us to maintain active and consistent progress among all researchers on the team and thorough engagement at each step of the process as researchers were all mutually participating in the same stages of work. Following a protocol in this manner can contribute to the reliability and validity of the study.

239. See generally JOHNNY SALDAÑA, *THE CODING MANUAL FOR QUALITATIVE RESEARCHERS* (2009) (explaining different types of codes and their use in the qualitative coding and analysis process).

240. Influenced by Bell, see *supra* note 13, we defined “interest convergence” as follows: “Stakeholder states or alludes to an alignment of interests of the dominant culture and interests of DACA recipients. DACA recipients bring intangible, material, or physical benefit to the interests of the dominant culture.” There is an assumption that at the point when policymakers fear the remedial policy is threatening the superior social status of dominant culture, they will abrogate the policy.

241. Influenced by Aguilar, see *supra* note 14, we defined “liminality” as follows: “Stakeholder states or alludes to different lived experiences and feelings of marginalization/belonging faced by immigrants and their families based on their positionality in, or relation to, changing legal protections. These lived experiences include the tangible and intangible benefits and losses afforded to immigrants based on legal protections.”

242. We used a random selection tool to identify ten amicus briefs through which to test our codes. Of the ten reliability briefs selected, five were for “respondents,” three were for “petitioners,” and two were for “neither or both.” Researchers were then grouped in pairs and used NVivo 12, a qualitative analysis software, to each code five of the ten reliability briefs. Throughout the reliability test coding process, coders wrote memos in NVivo at the conclusion of each session of their work. They used these memos to document and reflect on their coding process and code choices, inquiries about the data, and any emerging patterns and concepts in the data. This process increases reflection and produces a more rigorous analysis of the data as researchers code and analyze. Melanie Birks, Ysanne Chapman & Karen Francis, *Memoing in Qualitative Research: Probing Data and Processes*, 13 J. RSCH. NURSING 68 (2008).

After the reliability test coding, researchers met in their pairs to compare their coding results. The research pairs made necessary adjustments to coding applications and suggested revisions to code definitions until they reached consistency and full consensus in their coding. The two groups of pairs then met as a team to review and make necessary adjustments to the definitions of the theory-driven codes within the codebook. Reliability testing of the codebook was a crucial step in ensuring that researchers were applying codes to the data in a consistent manner. NIEK MOUTER & DIANA VONK NOORDEGRAAF, *INTERCODER RELIABILITY FOR QUALITATIVE RESEARCH: YOU WIN SOME, BUT DO YOU LOSE SOME AS WELL? passim* (2012), <https://repository.tudelft.nl/islandora/object/uuid%3A905f391d-4b25-40cf-9292-e253b7e55db2> [<https://perma.cc/3MDH-DCL3>]. This consistency in code application suggests a level of reliability in coding which influences this study’s validity and trustworthiness. Kate Roberts, Anthony Dowell, Jing-Bao Nie, *Attempting Rigour and Replicability in Thematic Analysis of Qualitative Research Data: a Case Study of Codebook Development*, 19 BMC MED. RSCH. METHODOLOGY 66 *passim* (2019).

briefs using the revised theory-driven codes and data-driven codes.<sup>243</sup> The research team followed an iterative process each week until we coded all briefs: code selected number of briefs, meet as pairs, revise any codes as necessary, meet as a full research team, and revise as necessary.

After the conclusion of the coding process, the research team thematically analyzed the rich data. Individual researchers reviewed their applied codes and written memos in NVivo 12, a qualitative research software, to identify similarities, differences, frequent occurrences, and patterns within the data. The research team coalesced the data into meaningful categories that captured the data<sup>244</sup> and co-constructed themes that explained our interpretation of the data and answered the research question.<sup>245</sup>

## V. FINDINGS

In examining the application of the arbitrary and capricious framework in the DACA case before the Supreme Court, we learned about the profound significance and impact of the policy across all sectors of society. These interests clustered around four main substantive categories: (1) the

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243. Each pair coded twenty-two briefs. Each researcher coded three briefs each week using the established theory-driven codes and also applying data-driven codes. Researchers developed data-driven codes by bracketing and labeling value points or patterns in the data that were not captured by the theory-driven codes. Saldana, *supra* note 156, at 41.

Through the data-driven coding, coders identified “legal framework with social context.” We developed this concept to critically analyze the many legal arguments made by stakeholders in the data. In order to examine how DACA recipients specifically were being considered and discussed by stakeholders, we developed a “legal framework” code that separated mentions of legal precedents, procedures, and principles by whether or not they explicitly or implicitly connected the law to any social context and implications. Arguments made regarding the reliance interests of DACA recipients were of particular interest to us and we categorized them as “legal framework with social context.”

After completing all assigned briefs for that week, researchers then met with their pair to compare application of both theory-driven codes and data-driven codes. Pairs worked together to refine and adjust the codes they used and further discussed the changes with the research team each week. The process of meeting in pairs, and then as a full group, provided additional space for researchers to express the different ways they coded, analyzed, and interpreted the data through conversation and questions. The consistent periodic meeting helped the team develop a shared interpretation and understanding of the data. *Id.* at 34.

244. The research team members shared their proposed categories with their pair and established agreed upon categories to bring to the full research team.

245. The two research assistants who contributed as co-authors of this Article participated in the analysis of the categories into meaningful themes that explained the data and answered the research question.

economy,<sup>246</sup> (2) education,<sup>247</sup> (3) social engagement,<sup>248</sup> and (4) health.<sup>249</sup> While seemingly simple and narrow in scope, providing recipients only temporary protection from deportation, a Social Security number, and work authorization,<sup>250</sup> we found the benefits of the policy served as a gateway to other social benefits and, ultimately, (limited) integration into the United States.<sup>251</sup> The case compelled amici who had interests at stake to document and share the myriad of ways in which DACA had engendered different interests seven years after Obama announced the policy.<sup>252</sup> In this sense, we found the amicus briefs provided a rich data source that documented the reverberating impact of the policy.

Twenty-six amicus briefs out of forty-four, or 59%, proffered implicit or explicit reliance interests arguments.<sup>253</sup> In these twenty-six amicus briefs, amici presented what was at stake for recipients and society at large. It was not uncommon for amici to present multiple arguments in their briefs and to connect the interests of recipients with amici's and the country's own interests.<sup>254</sup> In fact, the approach was so prevalent that the American economy was the most discussed category.<sup>255</sup> That is, amici emphasized that the U.S. economy benefited from recipients' ability to hold work authorization and participate in the labor market, a clear convergence of interests.<sup>256</sup> According to the briefs, recipients were able to make a living, and the U.S. economy benefited from this increased labor participation.<sup>257</sup> Through this approach, amici noted the benefits recipients held under the

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246. See *infra* Section V.A.

247. See *infra* Section V.B.

248. See *infra* Section V.C.

249. See *infra* Section V.D.

250. Napolitano Memorandum, *supra* note 33.

251. See *infra* Sections V.A–D.

252. Department of Homeland Security v. Regents of the University of California, SCOTUSBLOG, <https://www.scotusblog.com/case-files/cases/department-of-homeland-security-v-regents-of-the-university-of-california> [<https://perma.cc/A6K3-ZKFU>] (listing amici and links to their briefs); see also CAP Immigration Team, *Amicus Briefs Filed in Support of DACA Highlight the Administration's Illegal Termination of the Program*, CTR. FOR AM. PROGRESS (Oct. 9, 2019, 3:00 PM), <https://www.americanprogress.org/drumbeats/amicus-briefs-filed-support-daca-highlight-administrations-illegal-termination-program> [<https://perma.cc/WH2P-ZR5Q>].

253. See authorities cited *supra* note 96.

254. See, e.g., *infra* Section V.D.3 (amici linked the recession and its impact on the health of DACA recipients to its potential impact on overall public health); see also *infra* Section V.A.2.

255. See authorities cited *infra* note 268.

256. E.g., Brief for 143 Business Ass'ns & Cos., *supra* note 17, at 7–9 (noting that work authorization and the increased labor participation of DACA recipients gave recipients higher spending power and increased state tax revenue, thus benefiting the entire economy).

257. E.g., Brief for Serv. Emp. Int'l Union et al., *supra* note 17, at 17–18 (discussing the employment of DACA recipients and the costs employers will face if recipients lose work authorization).

policy's protections, briefly discussed what the loss of the policy's benefits would mean for recipients, and subsequently connected that potential loss to amici's or the country's interests.<sup>258</sup> While amici recognized the interests of recipients, their approach to their arguments advances the needs of the marginalized group because of the benefits to the majority group, and promotes progress that is not permanent, is easily abridged, and underemphasizes the needs of the marginalized group for their own sake.<sup>259</sup>

The liminality code captured the experiences of DACA recipients as a result of the policy's protections, highlighting what recipients stood to lose if the Court permitted the rescission to stand.<sup>260</sup> These liminal experiences were less emphasized in the findings. However, we find it important to emphasize and amplify these experiences of liminality in this Article. Amplifying the experiences captured through the liminality code recenters the recipients, their voices, and their needs in the discussion and furthers a more humanizing approach.<sup>261</sup>

Before discussing each theme, in Table 1, we provide an overview of the topics that amici discussed in the twenty-six briefs that focused on reliance interest arguments.

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258. See *infra* Section V.A.2.

259. See Bell, *supra* note 13, at 522–33; Lee, *supra* note 20, at 924.

260. See, e.g., Brief for Serv. Emp. Int'l Union et al., *supra* note 17, at 13–17 (discussing the experience of DACA recipients feeling an increased sense of belonging and confidence based on their DACA status).

261. See, e.g., Lewis & Eckes, *supra* note 4; Kerwin, *supra* note 6 (adopting a humanizing approach that centers the needs of marginalized communities).

TABLE 1. Reliance Interests Arguments (26 out of 44 amicus briefs)

Explicit reliance interest arguments	17 briefs (65%)	Used terminology such as “reliance interests”
Implicit reliance interests	9 briefs (35%)	Referenced or provided examples of interests at stake
<i>Economic Interests</i>		
21 (81%) briefs	If the rescission would stand: (1) amici and others would suffer negative financial impact to their investments in the professional development of recipients and (2) recipients would lose the policy’s protections, and the U.S. economy and interests would be adversely impacted	
<i>Education Interests</i>		
18 (69%) briefs	If the rescission would stand: (1) recipients would lose access to education and educational opportunities, and this would negatively impact recipients and other students (2) educational institutions would be financially and otherwise impacted, given their investment in the education of recipients, and (3) educational institutions would lose diversity in their students, faculty, and staff and others in the educational space would not be able to benefit from diversity	
<i>Social Experiences and Engagement Interests</i>		
17 (65%)	If the rescission would stand: (1) recipients’ sense of safety and belonging would be adversely impacted, (2) recipients’ family members, often U.S. citizens, would suffer adverse effects, and (3) the military, U.S. national security, and international human rights would be detrimentally impacted	
<i>Health Interests</i>		
12 (46%)	If the rescission would stand: (1) the mental health of recipients, and most importantly, the mental health of their U.S.-citizen children would suffer, (2) recipients and their families would risk losing health insurance and care, and (3) the general public health would decline	

Notably, recipients' personal impacts and interests at stake, such as their mental health and well-being, were the least discussed,<sup>262</sup> whereas a healthy booming economy dominated the conversation.<sup>263</sup> Moreover, though amici discussed recipients' interests in each category, these were but one of other interests discussed, and amici subsequently connected them to larger societal interests.<sup>264</sup> Thus, the findings demonstrated the liminal space recipients occupy in society; their value tied back to what they offer to other U.S. citizens and the country's needs.<sup>265</sup> By framing recipients as exceptional and deserving, amici implicitly furthered the narrative that other immigrants are undeserving.<sup>266</sup> DACA removed the recipients from even further liminality to second-class citizenry through a temporary measure that had a significant impact in their lives and converges with the interests of the majority, while remaining easy to abrogate if the benefits would threaten the interests of the white majority.<sup>267</sup> In the Sections that follow we expand on what we learned about the significance and impact of DACA through the examination of the amicus briefs.

#### A. ECONOMIC INTERESTS

The economic benefit of DACA recipients' labor market engagement and the economic detriment of the policy's rescission were not only a prevalent theme across the amicus briefs but also the most discussed reliance interests among amici. Of the twenty-six briefs, twenty-one briefs discussed economic reliance interests: fourteen explicitly and seven implicitly.<sup>268</sup> While 100% of stakeholders classified as "Business Groups and Trade

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262. See *infra* Section V.D.

263. See *infra* Section V.A.

264. See generally Brief for State of Nev. et al., *supra* note 17 (connecting the rescission and its impact on DACA recipients to its larger impact on society, including its impact on public health, state welfare programs, and state economies); Brief for Former Serv. Sec'ys et al., *supra* note 17 (discussing how rescission will negatively impact businesses and overall economic growth in addition to harming DACA recipients themselves in terms of economic and educational opportunity).

265. See *infra* Sections V.A–D.

266. See, e.g., Luis M. Andrade & Carol A. Lundberg, *Benevolent Intentions, Dangerous Ideologies: A Critical Discourse Analysis of Presidents' Letters After the Threat of the Repeal of Deferred Action for Childhood Arrivals*, J. DIVERSITY HIGHER EDUC. 1, 3 (2020).

267. See Bell, *supra* note 13, at 522–28.

268. See authorities cited *supra* note 17 (including Brief for Nat'l Ass'n of Home Builders et al.; Brief for United We Dream et al.; Brief for Am. Council on Educ. et al.; Brief for Serv. Emp. Int'l Union et al.; Brief for U.S. Catholic Bishops et al.; Brief for 109 Cities et al.; Brief for Nat'l Sch. Bds. Ass'n et al.; Brief for 143 Business Ass'ns & Cos.; Brief for Ass'n Am. Med. Colls. et al.; Brief for Nineteen Colls. & Universities; Nonprofit Legal Serv. Orgs; Brief for Alianza Ams. et al.; Brief for Inst. of Higher Educ.; Brief for State of Nev. et al.; Brief for Teach for Am.; Brief for Tim Cook et al.; Brief for Laws' Comm. for C.R. Under L. et al.; Brief for Empirical Scholars; Brief for Gov't of Mexican States; Brief for Am. Prof'l Soc'y on Abuse of Children et al.; Brief for Former Serv. Sec'ys et al.).

Associations” unsurprisingly made reliance interests related to the economy,<sup>269</sup> economic arguments were not specific to any one category of stakeholders. All stakeholders classified as Government entities<sup>270</sup> and Legal Organizations and Institutes<sup>271</sup> made economic arguments, followed by 85.7% of stakeholders classified as Colleges, Universities, Schools and Educational Organizations;<sup>272</sup> 66.7% of Advocacy Organizations;<sup>273</sup> 100% of Research Organizations and Scholars;<sup>274</sup> and 50% of Individuals with Current or Former Government Affiliation.<sup>275</sup>

Stakeholders’ economic reliance interests arguments revolved around the investments that American employers, including amici, spent training DACA recipients and the profound adverse impact that recipients’ loss of work authorization would have on the U.S. economy.<sup>276</sup> Thus, through their discussions, amici emphasized how recipients’ interests converged with broader U.S. economic interests and, in discussing the interests of DACA recipients themselves, highlighted the liminal status recipients occupy.<sup>277</sup> Three briefs emphasized the economic interests of society, largely ignoring the economic impact of the rescission on DACA recipients.<sup>278</sup> The remaining eighteen briefs gave relatively equal weight to the reliance interests of both groups.<sup>279</sup> Notably, no brief discussed the economic reliance interests of

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269. Brief for Tim Cook et al., *supra* note 17; Brief for 143 Business Ass’ns & Cos., *supra* note 17; Brief for Nat’l Ass’n of Home Builders et al., *supra* note 17; Brief for Serv. Emp. Int’l Union et al., *supra* note 17.

270. Brief for Gov’t of Mexican States, *supra* note 17; Brief for 109 Cities et al., *supra* note 17; Brief for State of Nev. et al., *supra* note 17.

271. Brief for Laws.’ Comm. for C.R. Under L. et al., *supra* note 17; Nonprofit Legal Serv. Orgs., *supra* note 17.

272. See authorities cited *supra* note 17 (including Brief for Nat’l Sch. Bds. Ass’n et al.; Brief for Am. Council on Educ. et al.; Brief for Teach for Am.; Brief for Nineteen Colls. & Universities; Brief for Inst. of Higher Educ.; Brief for Ass’n Am. Med. Colls. et al.).

273. Brief for Alianza Ams. et al., *supra* note 17; Brief for United We Dream et al., *supra* note 17; Brief for Am. Prof’l Soc’y on Abuse of Children et al., *supra* note 17; U.S. Catholic Bishops & Christian Orgs., *supra* note 17.

274. Brief for Empirical Scholars, *supra* note 17; Brief for Admin. L. Prac., *supra* note 96.

275. Brief for Former Serv. Sec’yys et al., *supra* note 17. See *infra* Appendix for further details on these categories.

276. *E.g.*, Brief for Inst. of Higher Educ., *supra* note 17 (focusing on the investments of higher education institutions); Brief for Serv. Emp. Int’l Union et al., *supra* note 17 (highlighting the turnover costs businesses will have to pay after losing DACA workers they already trained and invested in); Brief for Ass’n Am. Med. Colls. et al., *supra* note 17 (explaining the investments of medical colleges into DACA recipients who have trained, and are currently training, to become medical professionals).

277. See authorities cited *supra* note 276.

278. Brief for 143 Business Ass’ns & Cos., *supra* note 17; Brief for State of Nev. et al., *supra* note 17; Brief for Nat’l Ass’n of Home Builders et al., *supra* note 17.

279. See authorities cited *supra* note 17 (including Brief for United We Dream et al.; Brief for Am. Council on Educ. et al.; Brief for Serv. Emp. Int’l Union et al.; Brief for U.S. Catholic Bishops et al.; Brief for 109 Cities et al.; Brief for Nat’l Sch. Bds. Ass’n et al.; Brief for Ass’n Am. Med. Colls. et al.);

DACA recipients for their own sake; all briefs mentioned the interests of other groups and the economy at large, emphasizing the convergence of interests between recipients and the U.S. economy.<sup>280</sup> Though amici threaded the arguments regarding the impact to recipients and to the U.S. economy together, we discuss both themes separately to provide an in-depth analysis of their arguments.

### 1. Stakeholders Would Suffer Negative Financial Impact to Their Investments

Stakeholders, particularly employers and schools, emphasized DACA's economic impact by drawing attention to their investments—which, they emphasized, would be lost if the Court allowed the policy's rescission to stand.<sup>281</sup> Over half of the briefs making economic arguments highlighted the amici's investments in DACA recipients' careers.<sup>282</sup> They argued that employers hired and trained DACA recipients with the expectation that they would have long-term work authorization; the loss of DACA recipients as employees would lead employers not only to lose their investments, but also to incur new replacement costs.<sup>283</sup> The National School Boards Association noted that if DACA recipients left the labor market, American employers'

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Brief for Nineteen Colls. & Universities; Nonprofit Legal Serv. Orgs; Brief for Alianza Ams. et al.; Brief for Inst. of Higher Educ.; Brief for Teach for Am.; Brief for Tim Cook et al.; Brief for Laws.' Comm. for C.R. Under L. et al.; Brief for Empirical Scholars; Brief for Gov't of Mexican States; Brief for Am. Prof'l Soc'y on Abuse of Children et al.; Brief for Former Serv. Sec'ys et al.).

280. *E.g.*, Brief for Nonprofit Legal Servs. Orgs., *supra* note 17. Even a brief such as one from Nonprofit Legal Serv. Orgs., which gives substantial information as to the effects of rescission on DACA recipients themselves, discusses the wider negative economic effects of rescission. *Id.* at 20–27. They specifically focus on the economic troubles nonprofit legal services organizations will face because they will lose DACA recipient employees and need to update their legal materials in regard to the changes in legal policies. *Id.*

281. *E.g.*, Brief for Inst. of Higher Educ., *supra* note 17; Brief for Ass'n Am. Med. Colls. et al., *supra* note 17. These briefs highlight the investments of higher education institutions in regard to DACA recipients. These institutions invest their time, resources, and faculty in order to educate and train DACA students in expectation that they will become hardworking professionals in their fields. If DACA is rescinded, recipients will be unable to find legal employment, and thus the investments institutions made in training them will be rendered moot.

282. *See* authorities cited *supra* note 17 (including Brief for 109 Cities et al.; Brief for Nat'l Sch. Bds. Ass'n et al.; Brief for 143 Business Ass'ns & Cos.; Brief for Ass'n Am. Med. Colls. et al.; Brief for Nineteen Colls. & Universities; Nonprofit Legal Serv. Orgs; Brief for Alianza Ams. et al.; Brief for Inst. of Higher Educ.; Brief for State of Nev. et al.; Brief for Teach for Am.; Brief for Tim Cook et al.; Brief for Laws.' Comm. for C.R. Under L. et al.; Brief for Serv. Emp. Int'l Union et al.; Brief for Gov't of Mexican States).

283. *E.g.*, Brief for Serv. Emp. Int'l Union et al., *supra* note 17, at 18 (“In this way, rescinding DACA will cause employers to grapple with the loss of staff in whom they have invested while also forcing them to absorb unnecessary turnover expenses—a cost that is projected to total \$3.4 billion for the wholesale replacement of employed DACA recipients.”).

potential costs spent in recruiting, hiring, and training of new employees would reach \$6.3 billion—\$61 million per week.<sup>284</sup>

Amici's approach, which explicitly argued for the preservation of the policy because it prevented losses for employers and the economy, and furthered amici's interests, was an approach rooted in interest convergence.<sup>285</sup> The arguments and approach were prevalent across an array of industries.<sup>286</sup> For example, the Association of American Medical Colleges' brief explained that the healthcare industry invested long-term resources to educate and train approximately 27,000 DACA recipients with the expectation that they would be able to work in the healthcare field for decades to come.<sup>287</sup> Without these workers, the healthcare workforce shortage would worsen, directly impacting the economy, and the industry's previous investment in DACA recipients would be rendered moot.<sup>288</sup>

Educational stakeholders similarly emphasized their investments in DACA recipients and how the loss of their investments would negatively impact the economy.<sup>289</sup> The Institutions of Higher Education amicus brief, for example, outlined the types of investments higher education institutions made in DACA recipients: "financial aid, housing benefits, counseling, faculty time and attention, and graduate and research assistant positions."<sup>290</sup> They noted explicitly, "[I]f DACA [was] rescinded, amici stand to lose the return on their investments."<sup>291</sup> In the K-12 context, the National School Boards Association emphasized the significant role they play in the economy; if the rescission would stand, as "the largest employer in the country," public schools would stand to lose thousands of employees in whom they invested.<sup>292</sup> In this Section, we simply note that educational institutions experienced economic impact. We offer further discussion of the impact on educational institutions in the Section on educational reliance interests.<sup>293</sup>

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284. Brief for Nat'l Sch. Bds. Ass'n et al., *supra* note 17, at 34.

285. *E.g.*, 143 Business Ass'n, *supra* note 17; Brief for Serv. Emp. Int'l Union et al., *supra* note 17.

286. Represented industries include the service industry, the healthcare industry, higher education, the nonprofit and legal services industries, and general businesses.

287. Brief for Ass'n Am. Med. Colls. et al., *supra* note 17, at 2-3, 10.

288. *Id.* at 16-19.

289. *See* authorities cited *supra* note 17 (including 19 Colleges & Univ; Brief for Ass'n Am. Med. Colls. et al.; Brief for Inst. of Higher Educ.; Brief for Nat'l Sch. Bds. Ass'n et al.; Brief for Teach for Am.).

290. Brief for Inst. of Higher Educ., *supra* note 17, at 10.

291. *Id.* at 30.

292. Brief for Nat'l Sch. Bds. Ass'n et al., *supra* note 17, at 34.

293. *See infra* Section V.B.

Stakeholders in other industries echoed the same concern for a loss of investments and its detrimental impact on the U.S. economy.<sup>294</sup> For example, the National Association of Home Builders highlighted their investment in training and employing DACA recipients in the construction industry, which had ultimately alleviated the labor shortage and improved affordable housing in the United States.<sup>295</sup> The Nonprofit Legal Services Organizations also noted the importance of their DACA recipient employees, claiming that losing them would disrupt their ability to provide services to other immigrants.<sup>296</sup> They asserted that legal services organizations would generally lose their investments in the programs and resources created to assist immigrants applying for DACA as well.<sup>297</sup> Amici, thus, underscored the range of industries that would stand to lose significant investments and resources with the rescission of DACA.<sup>298</sup> Stakeholders focused on these losses to demonstrate the burden that rescission would bring to the entire economy,<sup>299</sup> essentially converging the interests of DACA recipients with society at large.

## 2. Recipients Would Lose DACA Protections and the U.S. Economy and Interests Would Be Adversely Impacted

Stakeholders also acknowledged the impact of the rescission on DACA recipients, namely, recipients would lose their work authorization, a significant setback for the large proportion (84%) of DACA recipients who were employed.<sup>300</sup> However, the briefs subsequently connected the impact on DACA recipients to the U.S. economic needs and interests.<sup>301</sup> In fact, all twenty-one briefs argued that the loss of work authorization would affect the economy at large. Sixteen of these briefs discussed the loss of tax revenue that would accompany rescission.<sup>302</sup> For example, one brief stated that

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294. *E.g.*, *Alianza Am. & 10 Immgr. Rights Orgs.*, *supra* note 17; *Brief for Nat'l Ass'n of Home Builders et al.*, *supra* note 17; *Nonprofit Legal Serv. Orgs.*, *supra* note 17.

295. *Brief for Nat'l Ass'n of Home Builders et al.*, *supra* note 17, at 7–11.

296. *Brief for Nonprofit Legal Servs. Orgs.*, *supra* note 17, at 25–27.

297. *Id.* at 23–24.

298. *Id.*

299. *Id.* at 20–27.

300. *See* *Brief for Empirical Scholars*, *supra* note 17, at 18. The work authorization facilitated through the policy allowed most recipients to be employed, an increase when compared to the general undocumented community, where 68% were employed. *Id.*

301. *E.g.*, *Brief for Am. Prof'l Soc'y on Abuse of Children et al.*, *supra* note 17, at 36 (discussing the negative economic impacts of rescission on DACA recipients and their children, but concluding with a section entitled “[i]t [i]s [i]n [s]ociety’s [i]nterest [t]o [p]rotect [c]hildren [f]rom [h]arm,” thus connecting the interests of recipients’ children to that of society as a whole).

302. *See* authorities cited *supra* note 17 (including *Brief for Tim Cook et al.*; *Brief for Nineteen Colls. & Universities*; *Brief for Serv. Emp. Int'l Union et al.*; *Brief for 109 Cities et al.*; *Brief for 143*

“[t]erminating DACA will also mean that \$24.6 billion worth of Medicare and Social Security contributions will be lost over the next ten years, as well as most of the federal and tax revenues generated from the 91% gainfully employed DACA recipients.”<sup>303</sup> Seven of the briefs mentioned the purchasing power of DACA recipients with legal status.<sup>304</sup> To illustrate, one brief noted that, “[i]n total, Dreamers and their households exercise \$24.1 billion in spending power (income remaining after paying taxes) each year.”<sup>305</sup> Six of the briefs<sup>306</sup> also noted that DACA recipients owned businesses, which created jobs, generated revenue, and boosted local economies.<sup>307</sup> In sum, in noting the converging interests of recipients and the economy, amici quantified the economic worth of DACA recipients across briefs through measurable figures, such as tax revenue, GDP, purchasing power, and business creation.

While nineteen out of twenty-one amicus briefs also drew attention to the hyper liminal status recipients would experience without the policy’s protection, amici either directly connected these effects to the interests of larger societal groups and industries or juxtaposed the interests of the two groups within different sections of the brief.<sup>308</sup> The discussion of economic

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Business Ass’ns & Cos.; Brief for Alianza Ams. et al.; Brief for Inst. of Higher Educ.; Brief for Nat’l Ass’n of Home Builders et al.; Brief for Empirical Scholars; Brief for Laws.’ Comm. for C.R. Under L. et al.; Brief for Ass’n Am. Med. Colls. et al.; Brief for U.S. Catholic Bishops et al.; Brief for Gov’t of Mexican States; Brief for State of Nev. et al.; Brief for United We Dream et al.; Brief for Am. Council on Educ. et al.).

303. Brief for Serv. Emp. Int’l Union et al., *supra* note 17, at 18.

304. See authorities cited *supra* note 17 (including Brief for 143 Business Ass’ns & Cos.; Brief for United We Dream et al.; Brief for State of Nev. et al.; Brief for Am. Council on Educ. et al.; Brief for Nat’l Sch. Bds. Ass’n et al.; Brief for Laws.’ Comm. for C.R. Under L. et al.; Brief for Gov’t of Mexican States).

305. Brief for 143 Business Ass’ns & Cos., *supra* note 17, at 8.

306. See authorities cited *supra* note 17 (including Brief for United We Dream et al.; Brief for 109 Cities et al.; Brief for 143 Business Ass’ns & Cos.; Brief for Nineteen Colls. & Universities; Brief for Inst. of Higher Educ.; Brief for Gov’t of Mexican States).

307. *E.g.*, Brief for 143 Business Ass’ns & Cos., *supra* note 17, at 6–7 (“Six percent of Dreamers (and nearly nine percent of Dreamers [twenty-five] years and older) started their own businesses after receiving DACA. Those businesses create jobs for other U.S. residents: Each DACA business owner with full-time employees employs on average 4.5 other workers. That is nearly 86,000 additional jobs that otherwise would not exist. The businesses started by Dreamers also generate revenue: In 2015, DACA-eligible entrepreneurs had a total business income of \$658.7 million.” (citations omitted)).

308. See authorities cited *supra* note 17 (including Brief for 143 Business Ass’ns & Cos.; Brief for United We Dream et al.; Brief for Am. Council on Educ. et al.; Brief for Serv. Emp. Int’l Union et al.; Brief for U.S. Catholic Bishops et al.; Brief for 109 Cities et al.; Brief for Nat’l Sch. Bds. Ass’n et al.; Brief for Ass’n Am. Med. Colls. et al.; Brief for Nineteen Colls. & Universities; Brief for Nonprofit Legal Servs. Orgs.; Brief for Alianza Ams. et al.; Brief for Inst. of Higher Educ.; Brief for Teach for Am.; Brief for Tim Cook et al.; Brief for Laws.’ Comm. for C.R. Under L. et al.; Brief for Empirical Scholars; Brief for Gov’t of Mexican States; Brief for Am. Prof’l Soc’y on Abuse of Children et al.; Brief for Former Serv. Sec’y et al.).

reliance interests in the briefs thus followed the logic of an interests convergence framework,<sup>309</sup> highlighting the harm to DACA recipients only when it is accompanied by harm to society. For example, in the brief filed by 143 Business Assoc. and Co., amici noted that work authorization and higher wages made possible by DACA allowed recipients to buy homes, cars, and start businesses.<sup>310</sup> They did not, however, mention these allowances for the sake of their positive effects on recipients; they directly connected them to economic growth and job creation.<sup>311</sup> This formulaic approach was mirrored across briefs, in which stakeholders included the economic reliance interests of recipients only to tie them back to their positive effect on the entire economy.<sup>312</sup>

Six amicus briefs also argued that the rescission would lead DACA recipients to lose the personal and professional investments they were able to make because of the policy's protections.<sup>313</sup> Amici noted that with the better wages and career opportunities available to them, recipients invested in careers, families, education, student loans, cars, and homes.<sup>314</sup> Four of the briefs highlighted DACA recipients' investments in education in the hopes that a degree would help them pursue a meaningful career and earn higher wages.<sup>315</sup> Without work authorization, amici argued, recipients would not be able to reap the benefits of their newly earned education.<sup>316</sup> Thus, DACA improved recipients' liminal status as undocumented immigrants. The Nonprofit Legal Services Organizations also highlighted the family-related

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309. See *supra* Section IV.A.2.

310. Brief for 143 Business Ass'ns & Cos., *supra* note 17, at 6–9.

311. *Id.*

312. See, e.g., Brief for 143 Business Ass'ns & Cos., *supra* note 17, at 6–9; Brief for State of Nev. et al., *supra* note 17, at 10 (after noting the impact of rescission on DACA recipients' ability to access social services, amici highlight the subsequent burden that will be placed on state social welfare and health programs).

313. See authorities cited *supra* note 17 (including Brief for United We Dream et al.; Brief for 143 Business Ass'ns & Cos.; Brief for Ass'n Am. Med. Colls. et al.; Brief for Nonprofit Legal Servs. Orgs.; Brief for Inst. of Higher Educ.; Brief for Laws' Comm. for C.R. Under L. et al.); cf. *supra* Section V.A.1 (detailing how more than half of the briefs that made economic reliance interest arguments highlighted others' investments in DACA recipients).

314. E.g., Brief for Nonprofit Legal Servs. Orgs., *supra* note 17, at 17.

315. Brief for United We Dream et al., *supra* note 17, at 10; Brief for Inst. of Higher Educ., *supra* note 17, at 29; Brief for Ass'n Am. Med. Colls. et al., *supra* note 17, at 14–15; Brief for Laws' Comm. for C.R. Under L. et al., *supra* note 17, at 14.

316. See, e.g., Brief for Ass'n Am. Med. Colls. et al., *supra* note 17, at 15 (“Because most DACA students are not eligible for federal loans, most finance their education through the private sector. Their only realistic route to repay those loans turns on their ability to practice medicine after residency, which in turn is dependent on their continued work authorization through DACA.”); see also Brief for Nonprofit Legal Servs. Orgs., *supra* note 17, at 17 (discussing recipients' investment in their education through, in relevant part, loans).

investments DACA recipients made in reliance on the economic opportunities DACA afforded them.<sup>317</sup> Such career and family decisions “came with major obligations that may be unmanageable without a steady job or benefits.”<sup>318</sup> Still, notably, amici juxtaposed the discussion of familial interests with the impact of rescission on their own organizations, tying their discussion back to a larger societal benefit.<sup>319</sup>

Lastly, only three amicus briefs connected economic reliance interests to DACA recipients’ family members, particularly recipients’ U.S.-citizen children.<sup>320</sup> To illustrate, the Service Employees International Union brief connected the economic benefits of DACA to reduced poverty and increased opportunities for recipients’ children.<sup>321</sup> The American Professional Society on the Abuse of Children et al. similarly highlighted that without DACA status and work authorization, “children and families will face poverty and food insecurity.”<sup>322</sup> Still, although the American Professional Society et al.’s brief focuses directly on the impact on children, the final section of the brief was devoted to the argument that “it is in society’s interest to protect children from harm.”<sup>323</sup> Thus, they too related the interests of DACA recipients and their children to a larger societal interest.<sup>324</sup>

In sum, the reliance interests stakeholders discussed regarding the economy focused on the economic impact of the rescission not on DACA recipients themselves, but on the economy at large and societal interests. Even briefs that gave more extensive discussion of the harmful economic effects on DACA recipients and their families ultimately connected the detriment to recipients back to larger economic effects and societal interests. Amici’s approach emphasized an interest convergence framework that situated the importance of DACA only in relation to how it benefited U.S. society more broadly, thereby privileging white majority interests.

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317. Brief for Nonprofit Legal Servs. Orgs., *supra* note 17, at 17–19.

318. *Id.* at 17.

319. *See id.* at 3–7, 15, 18.

320. *See* Brief for Serv. Emp. Int’l Union et al., *supra* note 17; Brief for Am. Prof’l Soc’y on Abuse of Children et al., *supra* note 17; Brief for Empirical Scholars, *supra* note 17.

321. Brief for Serv. Emp. Int’l Union et al., *supra* note 17, at 19–21.

322. Brief for Am. Prof’l Soc’y on Abuse of Children et al., *supra* note 17, at 24.

323. *Id.* at 36–39 (alteration of original capitalization).

324. *Id.*

## B. EDUCATION INTERESTS

Education was a critical topic in the conversation surrounding DACA.<sup>325</sup> Of the twenty-six total amicus briefs we examined, eighteen (69%) highlighted education related interests.<sup>326</sup> This made education the second most discussed reliance interest topic in the amicus briefs.<sup>327</sup> Within the eighteen briefs addressing education reliance interests, seven amici were Colleges, Universities, Schools, and Educational Organizations<sup>328</sup> accounting for 39% of that discussion. Other stakeholders who discussed reliance interest arguments also discussed DACA recipients' reliance on education: 100% of Government-affiliated amici,<sup>329</sup> 50% of the briefs by Business Groups and Trade Associations<sup>330</sup> and 100% of the briefs by Legal Organizations and Institutes,<sup>331</sup> 67% of the Advocacy Organizations,<sup>332</sup> and 50% of Research Organizations and Scholars.<sup>333</sup> Notably, none of the amicus briefs submitted from the Individuals with Current or Former Government

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325. See, e.g., Council on Educ. & 43 Higher Educ. Ass'ns, *supra* note 17, at 3 (“The statistics bear out the profound difference DACA has made for its recipients, for U.S. colleges and universities, and for the country as a whole. College enrollment rates have increased dramatically for DACA-eligible individuals, and completion rates have skyrocketed. Amici have seen up-close the tremendous contributions these individuals have made to our campuses as they prepare for and live lives of impact across America.”); see also Brief for Nat'l Educ. Ass'n & Nat'l PTA, *supra* note 17, at 2 (“Since its inception in 2012, the Deferred Action for Childhood Arrivals (“DACA”) program has yielded immeasurable benefits for our nation’s students and educators.”).

326. See *supra* Part V for a discussion on general findings.

327. See *supra* Part V.

328. All of the briefs within the Colleges, Universities, Schools, and Educational Organizations category made arguments in relation to education. See authorities cited *supra* note 17 (including Brief for Nat'l Educ. Ass'n & Nat'l PTA; Brief for Nat'l Sch. Bds. Ass'n et al.; Brief for Am. Council on Educ. et al.; Brief for Teach for Am.; Brief for Nineteen Colls. & Universities; Brief for Inst. of Higher Educ.; Brief for Ass'n Am. Med. Colls. et al.).

329. All of the briefs in the Government category made arguments in relation to education. The briefs in this category are: Brief for Gov't of Mexican States, *supra* note 17; Brief for 109 Cities et al., *supra* note 17; and Brief for State of Nev. et al., *supra* note 17.

330. The following briefs within the Business Groups and Trade Associations category made education related arguments: Brief for 143 Business Ass'ns & Cos., *supra* note 17; and Brief for Serv. Emp. Int'l Union et al., *supra* note 17.

331. The following briefs within the Legal Organizations and Institutes category made education related arguments: Brief for Laws.' Comm. for C.R. Under L. et al., *supra* note 17; and Brief for Nonprofit Legal Servs. Orgs., *supra* note 17.

332. The following briefs within the Advocacy Organizations category made education related arguments: Brief for NQAPIA et al., *supra* note 17; Brief for Alianza Ams. et al., *supra* note 17; Brief for United We Dream et al., *supra* note 17; and Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17.

333. The only brief from the Research Organizations and Scholars category that made an education argument was Brief for Empirical Scholars, *supra* note 17.

Affiliation<sup>334</sup> and Individuals and Alumni categories<sup>335</sup> discussed education reliance interests.

Amici's arguments focused around three main themes: without DACA (1) recipients would lose access to education and educational opportunities, and this would negatively impact recipients and other students;<sup>336</sup> (2) educational institutions would be financially and otherwise impacted;<sup>337</sup> and (3) educational institutions would lose diversity in their students, faculty, and staff, and others in the educational space would not be able to benefit from diversity.<sup>338</sup> One of the three themes focused on recipients' experiences—even though amici still connected the recipients' experiences to the needs of the United States and its predominantly white population.<sup>339</sup> We intentionally amplify recipients' experiences in this Article because the discussion highlights what recipients stood to lose if the Supreme Court upheld DACA's rescission. Amici collectively shed light on recipients' educational experiences before and after DACA and thereby illustrated the positive change more protections for undocumented immigrants could have on recipients' lives,<sup>340</sup> underscoring the need for immigration reform and permanent immigration status.

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334. The following briefs were absent from the education argument: Brief for Current & Former Prosecutors & L. Enf't, *supra* note 17; Brief of Amici Curiae of Current Members of Congress & Bipartisan Former Members of Congress in Support of Respondents, *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 140 S. Ct. 1891 (2020) (Nos. 18-587, 18-588, and 18-589); Brief of Amici Curiae of for Former Homeland Security & Immigration Officials in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589); Brief of Amici Curiae of Former National Security Officials in Support of Respondents, *Dep't of Homeland Sec.*, 140 S. Ct. 1891 (Nos. 18-587, 18-588, and 18-589); and Brief for Former Serv. Sec'y's et al., *supra* note 17.

335. See Brief for *Texas v. United States* Defendant-Intervenors DACA Recipients & State of New Jersey in Support of Respondents, *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891 (2020) (Nos. 18-587, 18-588, 18-589) [hereinafter Brief for Defendant-Intervenors DACA Recipients].

336. *E.g.*, Brief for Inst. of Higher Educ., *supra* note 17, at 6 (“In a 2019 survey of more than 1,100 DACA recipients by the Center for American Progress (the “2019 CAP survey”), [ninety-three] percent of those enrolled in school stated that DACA allowed them to pursue educational opportunities that they previously could not.”).

337. *E.g.*, Brief for Inst. of Higher Educ., *supra* note 17, at 27 (“[A]mici will almost certainly lose students mid-way through their degree programs, and the retention rate for this population will drop dramatically and beyond what institutions are prepared to accommodate through normal attrition cycles. Amici have devoted valuable, and in many cases limited, enrollment spaces to this student population that will not be able to continue in their education and cannot be replaced during a mid-point of their progression in their degree program.”).

338. Within the eighteen briefs who made education related reliance interest arguments, fifteen (83.3%) made arguments regarding access, nine (50%) made arguments regarding impact to institutions, seven (38.9%) made arguments regarding value/investments, five (27.8%) made arguments regarding impact to students, and five (27.8%) made arguments regarding opportunities within education.

339. See *supra* Section V.B.1.

340. See *supra* Section V.B.1.

### 1. Recipients Would Lose Access to Education, Which Would Negatively Impact Them and Others

Fifteen out of eighteen, or 83.3%, of amici who discussed education reliance interests acknowledged recipients' ability to access an education after DACA, access recipients would lose without DACA's protections<sup>341</sup> and which was previously unavailable to DACA-eligible immigrants.<sup>342</sup> Of those fifteen stakeholders, six were Colleges, Universities, Schools and Educational Organizations,<sup>343</sup> two Legal Organizations and Institutes,<sup>344</sup> two Advocacy Organizations,<sup>345</sup> two Business Groups and Trade Associations,<sup>346</sup> two in the Governments category,<sup>347</sup> and the last amicus was in the Research Organizations and Scholars category.<sup>348</sup>

Amici connected recipients' ability to access an education to their ability to receive a Social Security number under DACA.<sup>349</sup> Before DACA,

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341. Fifteen briefs made arguments in relation to the impact to student's access to education. *See* authorities cited *supra* note 17 (including Brief for United We Dream et al.; Brief for Am. Prof'l Soc'y on Abuse of Children et al.; Brief for 143 Business Ass'ns & Cos.; Brief for Serv. Emp. Int'l Union et al.; Brief for Nat'l Educ. Ass'n & Nat'l PTA; Brief for Nat'l Sch. Bds. Ass'n et al.; Brief for Am. Council on Educ. et al.; Brief for Nineteen Colls. & Universities; Brief for Inst. of Higher Educ.; Brief for Ass'n Am. Med. Colls. et al.; Brief for Gov't of Mexican States; Brief for State of Nev. et al.; Brief for Laws.' Comm. for C.R. Under L. et al.; Nonprofit Legal Serv. Orgs; Brief for Empirical Scholars).

342. Brief for Am. Council on Educ. et al., *supra* note 17, at 20 ("The percentage of DACA recipients enrolled in postsecondary school is reportedly almost [forty percent], up from approximately [twenty percent] of DACA-eligible students at the time the policy was announced."); *see also* Brief for State of Nev. et al., *supra* note 17, at 13 (explaining that ninety-four percent of DACA recipients currently in school report that the policy allowed them to pursue higher education they would not have otherwise been able to).

343. Six briefs within the Colleges, Universities, Schools and Educational Organizations category made access to education related arguments. *See* authorities cited *supra* note 17 (including Brief for Nat'l Educ. Ass'n & Nat'l PTA; Brief for Nat'l Sch. Bds. Ass'n et al.; Brief for Am. Council on Educ. et al.; Brief for Nineteen Colls. & Universities; Brief for Inst. of Higher Educ.; Brief for Ass'n Am. Med. Colls. et al.).

344. The following briefs within the Legal Organizations and Institutes category made access to education related arguments: Brief for Laws.' Comm. for C.R. Under L. et al., *supra* note 17; and Brief for Nonprofit Legal Servs. Orgs., *supra* note 17.

345. The following briefs within the Advocacy Organizations category made access to education related arguments: Brief for United We Dream et al., *supra* note 17; and Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17.

346. The following briefs within the Business Groups and Trade Associations category made access to education related arguments: Brief for 143 Business Ass'ns & Cos., *supra* note 17; and Brief for Serv. Emp. Int'l Union et al., *supra* note 17.

347. The following briefs within the Governments category made access to education-related arguments: Brief for Gov't of Mexican States, *supra* note 17; and Brief for State of Nev. et al., *supra* note 17.

348. The following brief within the Research Organizations and Scholars category made access to education related arguments: Brief for Empirical Scholars, *supra* note 17.

349. *E.g.*, Brief for Am. Council on Educ. et al., *supra* note 17, at 10 ("While a minority of [s]tates permitted undocumented students to qualify for the in-state rate, Dreamers often could not establish their

amici explained, recipients would often face the fear of disclosing their immigration status during the college application process and some institutions rejected applicants who were not able to provide a second form of identification.<sup>350</sup> If and when undocumented students were admitted to higher education institutions, they faced insurmountable challenges in paying for their education.<sup>351</sup> Amici shared that “more than [thirty] [s]tates [have previously] categorically prohibited undocumented immigrants from qualifying as residents for in-state tuition purposes.”<sup>352</sup> For other states that did permit undocumented students to qualify for in-state tuition rates, students still faced the risk of disclosing their status in order to establish their eligibility.<sup>353</sup> Overall, before DACA, the majority of undocumented students were forced to pay the out-of-state tuition rates “which [are] on average 61% higher, and sometimes seven times as high, as the rate charged for in-state residents.”<sup>354</sup> This financial burden was increasingly complicated before DACA when students were ineligible for certain financial aid.<sup>355</sup>

With DACA protections, however, recipients were able to apply and receive some financial aid or in-state tuition rates that required a Social Security number and a form of identification, both of which DACA facilitated.<sup>356</sup> Students with DACA protections could complete the FAFSA

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eligibility without providing their Social Security numbers or disclosing information that risked revealing their undocumented status.”)

350. *Id.* at 12–13.

351. *E.g., id.* at 10 (“In practice, many undocumented immigrants were . . . compelled to pay the out-of-state rate at state schools, which is on average [sixty-one percent] higher, and sometimes seven times as high, as the rate charged for in-state residents.”)

352. *See id.* at 10.

353. Brief for State of Nev. et al., *supra* note 17, at 14–15 (“At Virginia Commonwealth University, for example, out-of-state tuition costs \$35,798 per year—\$20,000 more than in-state tuition and fees. In addition, in February 2017, Angel Cabrera, president of Virginia’s George Mason University, estimated that without DACA, between 150 and 300 students might have to leave the university due to unaffordable tuition.” (citations omitted)); *see also id.* at 14 (“Because some states provide in-state tuition rates at public colleges and universities to DACA students, but require other immigrants to pay full tuition, many of these students will find it unaffordable to continue with any form of higher education if DACA is rescinded. Likewise, DACA students will lose the ability to pay in-state tuition at public colleges and universities in at least three states: Virginia, Massachusetts, and Ohio. Among the nearly 20,600 people with DACA status, students in those states are at risk of losing their access to public colleges and universities because of the prohibitive difference between in-state and out-of-state tuition.” (citations omitted)).

354. *See* Brief for Am. Council on Educ. et al., *supra* note 17, at 10.

355. *See* Brief for Serv. Emp. Int’l Union et al., *supra* note 17, at 20 (“Undocumented youth encounter additional hurdles in their education because of their ineligibility for federal and state financial aid, paid internships, and study opportunities that require identification.”)

356. *See* Brief for Am. Council on Educ. et al., *supra* note 17, at 10 (“While a minority of States permitted undocumented students to qualify for the in-state rate, Dreamers often could not establish their eligibility without providing their Social Security numbers or disclosing information that risked revealing their undocumented status. In practice, many undocumented immigrants were thus compelled to pay the

(Free Application for Federal Student Aid) to calculate and receive need-based aid through their institutions, even though they still did not qualify for federal aid.<sup>357</sup> Additionally, the policy encouraged more states to allow DACA recipients to qualify for in-state tuition rates and other scholarships and grants.<sup>358</sup> The opportunities created a remarkable difference in recipients' ability to not only fund their education, but to complete their education without having to "stop out" to earn more money for tuition as many undocumented students did.<sup>359</sup> According to the briefs, undocumented college students "had markedly worse outcomes than their peers" and "were more than three times as likely as their peers to 'stop out' of school."<sup>360</sup> These discussions vis-a-vis recipients' access to education highlighted the liminal status recipients would occupy without DACA. At the same time, the discussions highlighted the lack of permanence and stability recipients experience under DACA, knowing their protections can easily be reversed and lost.

Several stakeholders explicitly discussed that other students would also be detrimentally affected in school if recipients lost their protections.<sup>361</sup> For example, stakeholders highlighted the potential harm to DACA recipients' U.S.-citizen children and other family members.<sup>362</sup> They argued that these young students would experience undue stress and anxiety at the fear that their loved one might be deported.<sup>363</sup> They reported that children of DACA recipients will face more barriers to their education based on their exposure

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out-of-state rate at state schools, which is on average [sixty-one percent] higher, and sometimes seven times as high, as the rate charged for in-state residents." (citations omitted)).

357. See Brief for United We Dream et al., *supra* note 17, at 11.

358. See *id.* at 10–11.

359. See Brief for Am. Council on Educ. et al., *supra* note 17 at 17 ("Taken together, these tools have had a dramatic effect on Dreamers' ability to pay for college: 80% of DACA recipients report that DACA enabled them to earn more money to help pay for their tuition, and 72.3% of DACA recipients enrolled in college now report that they have paid work experience, as compared with 28% of undocumented college students who are not DACA recipients . . . ." (citations omitted)).

360. *Id.* at 14.

361. *E.g.*, Brief for Nat'l Educ. Ass'n & Nat'l PTA, *supra* note 17, at 16 (indicating that the removal of DACA educators would "irreversibly harm children and their educational outcomes").

362. See Brief for Empirical Scholars, *supra* note 17, at 18 ("DACA has improved the lives of recipients and their families, including their U.S.-citizen children and family members, in various ways. These improvements include increased earnings and better jobs, increased motivation in school and ability to attend college, and decreased anxiety and related mental health problems for themselves and their U.S.-citizen children.").

363. See Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17, at 19 ("In sum, whether DACA recipients are detained immediately, sometime in the future, or not at all, the Rescission Memo inflicts fear and anxiety not only on the recipients, but also their children, at significant cost to their long-term health and well-being.").

to the toxic stress of their family situation.<sup>364</sup> The American Professional Society on Abuse of Children noted: “The anxiety, depression, and other symptoms that children will experience interfere with cognitive ability and focus, and behavioral issues like aggression that results from experiencing trauma can interfere with concentration and attendance.”<sup>365</sup>

Importantly, we note that while the discussion on access to education appeared in 58% of all the total amicus briefs that contained reliance interests,<sup>366</sup> the conversation was often accompanied with a discussion of economic related interests or other negative repercussions to others.<sup>367</sup> The approach is reminiscent of the U.S. Supreme Court’s discussion in *Brown v. Board*,<sup>368</sup> in which the rights and interests of Black students were determined based on the converging interests of white children and other national and political objectives.<sup>369</sup> Further, the conversation also included the ways in which institutions as entities themselves might also be mutually impacted by a change in DACA recipients’ ability to access education, further advancing a converging interests narrative.<sup>370</sup>

Moreover, five of the eighteen amicus briefs that discussed education reliance interests mentioned the educational opportunities on which recipients relied and that would be impacted by the rescission.<sup>371</sup> Of those five amici, two amici were Colleges, Universities, Schools and Educational Organizations,<sup>372</sup> one was an Advocacy Organization,<sup>373</sup> one was

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364. *Id.* at 21.

365. *Id.* at 29–30.

366. *See supra* Part V.

367. *E.g.*, Brief for 143 Business Ass’ns & Cos., *supra* note 17, at 4–5 (“DACA enabled more than 825,000 individuals to come out of the shadows, participate in the economy, and contribute to U.S. companies and the economy, which benefits us all. Rescinding DACA will harm not only individual recipients and their families, friends, and co-workers, but also . . . many U.S. businesses . . .”).

368. *See Brown v. Board of Educ.*, 347 U.S. 483, 490 (1954).

369. *See Bell*, *supra* note 13.

370. *E.g.*, Brief for Ass’n Am. Med. Colls. et al., *supra* note 17, at 13 (discussing the impact to medical schools who have invested in educating DACA recipients at their institutions) (“Accompanying this significant financial investment is an investment of tens of thousands of hours in supervision, training, and administration. As with all physicians’ residency training, enormous resources have been expended with the expectation of a return on that investment in the form of [highly trained] professionals able to serve the public by practicing medicine independently. These investments would not have been made but for reliance on DACA recipients’ continued eligibility to work in the [United States].”).

371. *See* authorities cited *supra* note 17 (including Brief for Alianza Ams. et al.; Brief for Serv. Emp. Int’l Union et al.; Brief for Am. Council on Educ. et al.; Brief for Nineteen Colls. & Universities; Brief for State of Nev. et al.).

372. Brief for Am. Council on Educ. et al., *supra* note 17; Brief for Nineteen Colls. & Universities, *supra* note 17.

373. Brief for Alianza Ams. et al., *supra* note 17.

Government affiliated,<sup>374</sup> and one was a Business Group and Trade Association.<sup>375</sup> All five of these stakeholders discussed similar impacts surrounding DACA recipients' inability to participate in critical opportunities on which recipients relied to excel in and even fund their education, such as work study, internships, study abroad, and research.<sup>376</sup> Amici stated that these opportunities were crucial to recipients' skill development and the expansion of recipients' professional networks, but they were dependent on students' ability to receive work authorization, a Social Security number, and flexibility for travel.<sup>377</sup> They explained specifically that many DACA recipients had "started internships which provided them with the opportunity to be in a 'better position to leverage their education to pursue better jobs with higher earnings.'" <sup>378</sup> Stakeholders also noted that "without advance parole [facilitated through DACA], DACA recipients will not be able to travel abroad for studies or educational meetings, and the colleges and universities will lose the ability to select the best candidates to represent the institution in these programs and forums."<sup>379</sup> In sum, amici argued that recipients would experience limited educational opportunities without DACA.

## 2. Educational Institutions Would Be Financially and Otherwise Impacted, Given Their Investments

Amici's application of the legal framework with social context also brought to the fore the profound significance of DACA to the function and mission of higher education institutions.<sup>380</sup> Of the eighteen briefs that made education related arguments, half specifically mentioned the perceived

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374. Brief for State of Nev. et al., *supra* note 17.

375. Brief for Serv. Emp. Int'l Union et al., *supra* note 17.

376. *E.g.*, Brief for Nineteen Colls. & Universities, *supra* note 17, at 15 ("DACA helps amici achieve this objective by making it possible for undocumented students to participate fully in educational work opportunities, such as off-campus internships and on-campus research with university faculty. It also allows them to conduct field work outside of the United States and participate in amici's varied study abroad programs." (emphasis removed) (citing Gonzales et al., *supra* note 21, at 1857)); Brief for Am. Council on Educ. et al., *supra* note 17, at 19 ("DACA has improved Dreamers' opportunities while in college, as well. Because DACA recipients can legally work and drive, it is possible for them to pursue internships and other hands-on programs critical for academic success. Over [forty percent] of DACA recipients have obtained internships, as compared to [sixteen percent] of the non-DACA undocumented population.").

377. Brief for Alianza Ams. et al., *supra* note 17, at 15.

378. *Id.*

379. Brief for State of Nev. et al., *supra* note 17, at 15.

380. *E.g.*, Brief for Nineteen Colls. & Universities, *supra* note 17, at 15 ("Consistent with their missions, amici are committed to providing a full and complete education to all of their enrolled students—anything less is insufficient to prepare them to identify and solve the consequential problems that amici expect their alumni to address over the course of their careers." (emphasis removed)).

negative financial and diversity impact on educational institutions if the rescission stood.<sup>381</sup> Five of the nine amici who made these arguments were the seven Colleges, Universities, Schools and Educational Organizations<sup>382</sup> themselves, followed by two Government affiliated stakeholders,<sup>383</sup> one Advocacy Organization,<sup>384</sup> and one Legal Organization or Institute.<sup>385</sup> Although Research Organizations and Scholars and Business Groups and Trade Organizations made education related arguments, they were absent from the conversation on the specific impact to institutions. Overall, however, the impact to institutions was the second most discussed subtheme within education reliance interest arguments.

Three of the stakeholders discussed the negative financial impact that rescission would bring to educational institutions.<sup>386</sup> Specifically, they discussed how educational institutions had spent a considerable amount of resources recruiting and training recipients, which they would lose if the rescission stood.<sup>387</sup> Furthermore, they estimated that because “45% of DACA recipients were currently in school [at the time of the Supreme Court case], and of that group, more than 70% were pursuing a bachelor’s degree or higher,” the rescission and consequent increased student dropout rates would lead to significant losses of tuition dollars.<sup>388</sup>

Additionally, all but two of the nine stakeholders discussed the harm revoking DACA would bring to their institutions’ diversity of faculty, staff, and students.<sup>389</sup> Some discussed the significant losses of these talented individuals and how their removal from their positions at Universities, and/or the country, would deprive the nation and its students of some of the best

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381. See Brief for Teach for Am., *supra* note 17, at 15–16 (describing the impact DACA educators have on their students) (“Diverse teachers ‘break[] down negative stereotypes’ and serve as ‘positive role models’ in different ways to different students. Teachers who share demographic traits with their students help upend the tyranny of low expectations, diffuse conflicts that can lead to disciplinary action, and inspire students to be their best selves. DACA teachers add to the diversity of Teach For America’s corps in many ways, including language fluency, national origin, socioeconomic status, race, and ethnicity. Their lived experience as undocumented immigrants is uniquely valuable to the 80,000 DACA-eligible undocumented children who turn [eighteen] each year.”).

382. See authorities cited *supra* note 17 (including Brief for Nat’l Educ. Ass’n & Nat’l PTA; Brief for Nat’l Sch. Bds. Ass’n et al.; Brief for Am. Council on Educ. et al.; Brief for Teach for Am.; Brief for Nineteen Colls. & Universities; Brief for Inst. of Higher Educ.; Brief for Ass’n Am. Med. Colls. et al.).

383. Brief for Gov’t of Mexican States, *supra* note 17; Brief for State of Nev. et al., *supra* note 17.

384. Brief for Alianza Ams. et al., *supra* note 17.

385. Brief for Laws.’ Comm. for C.R. Under L. et al., *supra* note 17.

386. Brief for Alianza Ams. et al., *supra* note 17; Brief for Inst. of Higher Educ., *supra* note 17; Brief for State of Nev. et al., *supra* note 17.

387. Brief for Alianza Ams. et al., *supra* note 17, at 16.

388. Brief for State of Nev. et al., *supra* note 17, at 13.

389. Brief for Alianza Ams. et al., *supra* note 17; Brief for Nat’l Sch. Bds. Ass’n et al., *supra* note 17.

diverse scholars.<sup>390</sup> According to amici, a loss of these diverse scholars would directly impact institutions' academic successes, emphasizing the converging interests of recipients and college institutions.<sup>391</sup> As educational institutions seek academic excellence, amici shared, the institutions fear losing their pillars of that success, and subsequently the financial losses as well.<sup>392</sup> Furthermore, we found that stakeholders discussed the impacts to "the nation" based on the loss of these bright students and the diversity they bring to U.S. classrooms, another example of converging interests.<sup>393</sup> Without DACA, classrooms would lose recipients' presence and other students would not be able to benefit from a diverse educational environment.<sup>394</sup>

Some amici also discussed the negative impact that the rescission would have on their tangible and intangible "investments" in recipients' education.<sup>395</sup> Seven of the eighteen (38.9%) briefs<sup>396</sup> discussed recipients' and others' investments: three Colleges, Universities, Schools and Educational Organizations,<sup>397</sup> two Legal Organizations and Institutes,<sup>398</sup> one Advocacy Organization,<sup>399</sup> and one Government-associated amicus.<sup>400</sup> Because above we discussed recipients' own investments and in this section the focus is on the impact to the institutions, here we discuss the latter. To

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390. Brief for Nineteen Colls. & Universities, *supra* note 17, at 3–4.

391. Brief for Am. Council on Educ. et al., *supra* note 17, at 5–8.

392. Brief for Nat'l Sch. Bds. Ass'n et al., *supra* note 17; Brief for Inst. of Higher Educ., *supra* note 17; Brief for State of Nev. et al., *supra* note 17.

393. Brief for Inst. of Higher Educ., *supra* note 17, at 23–24 ("[E]nrolling a diverse student body 'promotes cross-racial understanding, helps to break down racial stereotypes, and enables students to better understand persons of different races.' . . . [S]tudent body diversity promotes learning outcomes, and better prepares students for an increasingly diverse workforce and society." (citing *Fisher v. Univ. of Tex. at Austin*, 136 S. Ct. 2198, 2210 (2016) (internal quotation marks omitted))).

394. *Id.* at 23–26.

395. See *supra* notes 296–97 and accompanying text; see also Brief for Ass'n Am. Med. Colls. et al., *supra* note 17, at 16 ("Each DACA recipient in the health care sector embodies a substantial, irreplaceable investment of time and resources made with the reasonable expectation that that recipient would be eligible to put his or her education and training into practice. Every dollar or hour invested in a DACA recipient's education and training during the past seven years is a dollar or hour not invested in someone else's.").

396. See authorities cited *supra* note 17 (including Brief for Alianza Ams. et al.; Brief for Am. Council on Educ. et al.; Brief for Inst. of Higher Educ.; Brief for Ass'n Am. Med. Colls. et al.; Brief for 109 Cities et al.; Brief for Laws.' Comm. for C.R. Under L. et al.; Brief for Nonprofit Legal Servs. Orgs.).

397. Brief for Am. Council on Educ. et al., *supra* note 17; Brief for Inst. of Higher Educ., *supra* note 17; Brief for Ass'n Am. Med. Colls. et al., *supra* note 17.

398. Brief for Laws.' Comm. for C.R. Under L. et al., *supra* note 17; Brief for Nonprofit Legal Servs. Orgs., *supra* note 17.

399. Brief for Alianza Ams. et al., *supra* note 17.

400. Brief for 109 Cities et al., *supra* note 17.

illustrate amici's arguments in this subtheme, consider Association of American Medical Colleges et al.'s discussion.<sup>401</sup> They noted that

enormous resources have been expended with the expectation of a return on that investment in the form of [highly trained] professionals able to serve the public by practicing medicine independently. These investments would not have been made but for reliance on DACA recipients' continued eligibility to work in the [United States].<sup>402</sup>

If the Court would allow DACA's rescission, the investment in DACA recipients' educational training would be lost.<sup>403</sup> Students relied on the promise of work authorization when they made education decisions, and although not all DACA recipients expend as many resources as those pursuing careers in medicine, the concerns of other amici remained the same; institutions were committed and poured a great deal of investments into the education of DACA recipients in reliance on the continuance of the policy.<sup>404</sup>

### 3. Educational Institutions Would Lose Diversity and Others Would Not Benefit from the Diversity Recipients Bring

In total, of the eighteen briefs submitted that contained education based reliance interests, seven (39%) expressed reliance interests regarding diversity in our nation's education systems.<sup>405</sup> Of these amici, four were Colleges, Universities, Schools and Educational Organizations,<sup>406</sup> two were Governments,<sup>407</sup> and one was a Legal Organization and/or Institute.<sup>408</sup> All seven of the briefs that identified diversity related interests made claims specific to the impact to institutions as a whole, while only three made specific mentions about the impacts to students through a diversity lens.<sup>409</sup> Although we have acknowledged the specific instances in which stakeholders allude to impacts to institutions compared to students, the diversity-related interests of amici were often closely linked, and we could not fully separate them. However, since the diversity rationale was

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401. Brief for Ass'n Am. Med. Colls. et al., *supra* note 17.

402. *Id.* at 13.

403. *Id.* at 14.

404. *Id.* at 14–15.

405. See authorities cited *supra* note 17 (including Brief for Nat'l Educ. Ass'n & Nat'l PTA; Brief for Am. Council on Educ. et al.; Brief for Teach for Am.; Brief for Inst. of Higher Educ.; Brief for State of Nev. et al.; Brief for Gov't of Mexican States; Brief for Laws.' Comm. for C.R. Under L. et al.).

406. Brief for Nat'l Educ. Ass'n & Nat'l PTA, *supra* note 17; Brief for Am. Council on Educ. et al., *supra* note 17; Brief for Teach for Am., *supra* note 17; Brief for Inst. of Higher Educ., *supra* note 17.

407. Brief for State of Nev. et al., *supra* note 17; Brief for Gov't of Mexican States, *supra* note 17.

408. Brief for Laws.' Comm. for C.R. Under L. et al., *supra* note 17.

409. Brief for Nat'l Educ. Ass'n & Nat'l PTA, *supra* note 17; Brief for Am. Council on Educ. et al., *supra* note 17; Brief for Teach for Am., *supra* note 17.

prominent throughout the amicus briefs, we found that it merited its own discussion.<sup>410</sup>

Amici who expressed concerns related to diversity in education indicated that many DACA recipients held careers in education and that their roles, as diverse educators, served additional benefits to their students and society as a whole.<sup>411</sup> One study showed that “[i]n the 2011–[2012] school year, 24% of students were Hispanic, while only 8% of teachers were Hispanic” and that it is anticipated that this disparity will only increase.<sup>412</sup> By 2024, it is estimated that “students of color are expected to make up 56[%] of the student population.”<sup>413</sup> As 93% of DACA recipients are from Latin American countries, their role as educators and role models is crucial for students’ development, especially those students who see that their teacher looks like them.<sup>414</sup> Students who see and are mentored by role models that they can relate to are better able to envision themselves as leaders one day.<sup>415</sup> The benefits of DACA recipients as educators further translated into positive outcomes quantitatively as well. Stakeholders reported that “a larger presence of [B]lack and Hispanic teachers [is linked] to improved treatment or outcomes for [B]lack and Hispanic students along a variety of dimensions, including lower rates of exclusionary discipline, lower likelihood of placement in special education, and higher pass rates on standardized tests.”<sup>416</sup> They similarly report that “non-English proficient Latino children revealed greater gains on a direct assessment of literacy . . . if their teacher was also Latino rather than Caucasian.”<sup>417</sup> However, stakeholders pointed to studies that showed all students benefit from having teachers of color, who might also be DACA recipients, because they help break down negative stereotypes about undocumented immigrants, are more representative of the U.S. demographics, and bring new viewpoints and perspectives that are valuable for students to learn.<sup>418</sup> This

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410. The argument that diverse students should be welcomed on campus because diversity benefits other students is not new. The Supreme Court has recognized that the value of a diverse student body, which benefits all students (most of whom are white) is a compelling interest for colleges and universities to adopt race-conscious admissions policies in higher education. *See Fisher v. Univ. of Tex. at Austin*, 136 S. Ct. 2198, 2210 (2016).

411. *See* authorities cited *supra* note 308.

412. Brief for Nat’l Educ. Ass’n & Nat’l PTA, *supra* note 17, at 21.

413. *Id.*

414. *Id.* at 22.

415. *See supra* note 343.

416. Brief for Nat’l Educ. Ass’n & Nat’l PTA, *supra* note 17, at 21.

417. *Id.*

418. *See* Brief for Teach for Am., *supra* note 17, at 15–16 (explaining that diverse teachers serve as “positive role models” for students by sharing demographic traits with them, inspiring them to be their best selves and by upending low expectations); *supra* note 381. A “teacher is often the first adult an

encouragement by stakeholders to maintain DACA to further diversity efforts in our nation's schools is centered around the betterment of U.S. institutions, rather than DACA recipients themselves.<sup>419</sup> Although their arguments present worthy and valuable initiatives, their discussion regarding diversity expanded amici's arguments that DACA is crucial and significant, largely because of its benefits to U.S. societal interests.

### C. SOCIAL EXPERIENCES AND ENGAGEMENT INTERESTS

According to amici, DACA also had a significant impact on recipients' social experiences and engagement.<sup>420</sup> Because DACA deferred their deportation, allowed them to work, and provided a Social Security number, recipients made intentional choices about their social engagement that they may not have without DACA.<sup>421</sup> Seventeen, or 65%, of all amici who made reliance interest arguments made specific claims in relation to DACA recipients' social experiences and engagement.<sup>422</sup> This made it the third most discussed category of reliance interests out of four main categories, only followed by health-related interests.<sup>423</sup> Of the seventeen amici who discussed

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undocumented student will ask for help' in overcoming obstacles and planning their future." Brief for Teach for Am., *supra* note 17, at 16 (citation omitted); *see also* Brief for Laws.' Comm. for C.R. Under L. et al., *supra* note 17, at 14 ("An estimated 20,000 DACA recipients are employed as educators throughout the U.S., and many of them possess in-demand bilingual language skills."). Amici also cited "a severe shortage nationally of teachers . . . estimated to be as high as 327,000," which they state has negative impacts on students' experiences, that is, "larger class sizes, fewer teacher aides, fewer guidance counselors, and fewer extra-curricular activities." *Id.*; *see also supra* note 393.

419. For briefs that discuss diversity in education, see authorities cited *supra* note 17 (including Brief for Nat'l Educ. Ass'n & Nat'l PTA; Brief for Am. Council on Educ. Et al.; Brief for Teach for Am.; Brief for Inst. Of Higher Educ.; Brief for Gov't of Mexican States; Brief for State of Nev. et al.; Brief for Laws.' Comm. for C.R. Under L. et al.).

420. *See* Brief for United We Dream et al., *supra* note 17, at 23 (discussing a mother's ability to engage with her child's sports team based on her receipt of a Social Security number) ("DACA has helped Angelica become more engaged in her children's extra-curricular activities. She is now able to coach her children's soccer teams—which required Angelica to have a Social Security number as part of a routine background check."); *see also* Brief for Serv. Emp. Int'l Union et al., *supra* note 17, at 14 ("With DACA, C.F.'s self-assurance returned. He began participating in activities to help his community and in activities supporting his co-workers. 'There are many people like me who just want a chance to work hard and be part of the American dream. DACA gave me that chance.'").

421. *See* Brief for Inst. Of Higher Educ., *supra* note 17, at 9 ("DACA enables students to envision a future for themselves in this country, providing the incentive to pursue a degree, develop skills and expertise, and invest in their future here.").

422. *See* authorities cited *supra* note 17 (including Brief for NQAPIA et al.; Brief for Laws.' Comm. for C.R. Under L. et al.; Brief for Empirical Scholars; Brief for Tim Cook et al.; Brief for 109 Cities et al.; Brief for Nonprofit Legal Servs. Orgs.; Brief for Alianza Ams. Et al.; Brief for United We Dream et al.; Brief for Current & Former Prosecutors & L. Enf't; Brief for Serv. Emp. Int'l Union et al.; Brief for Am. Prof'l Soc'y on Abuse of Children et al.; Brief for U.S. Catholic Bishops et al.; Brief for Former Serv. Sec'ys et al.; Brief for 127 Religious Orgs.; Brief for State of Nev. et al.; Brief for Teach for Am.).

423. *See supra* Part V.

social-related interests, six were Advocacy Organizations,<sup>424</sup> three Government affiliated amici,<sup>425</sup> two Business Groups and Trade Associations,<sup>426</sup> two Individuals with Current or Former Government Affiliation,<sup>427</sup> two Legal Organizations and Institutes,<sup>428</sup> one Research Organizations and/or Scholar,<sup>429</sup> and one College, University, School and/or Educational Organization.<sup>430</sup> Advocacy Organizations were most prevalent in the social experiences and engagement conversation, and they discussed this area of reliance interests more than the other three types of reliance interests (that is, economics, education, and health).<sup>431</sup>

We identified three main subthemes within the social experiences and engagement theme: if the rescission stood, (1) recipients' sense of safety and belonging would be adversely impacted;<sup>432</sup> (2) recipients' family members, often U.S. citizens, would suffer adverse effects,<sup>433</sup> and (3) the military, U.S. national security, and international human rights would be detrimentally

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424. See authorities cited *supra* note 17 (including Brief for 127 Religious Orgs.; Brief for NQAPIA et al.; Brief for Alianza Ams. Et al.; Brief for United We Dream et al.; Brief for Am. Prof'l Soc'y on Abuse of Children et al.; Brief for U.S. Catholic Bishops et al.).

425. Brief for Gov't of Mexican States, *supra* note 17; Brief for 109 Cities et al., *supra* note 17; Brief for State of Nev. et al., *supra* note 17.

426. Brief for Tim Cook et al., *supra* note 17; Brief for Serv. Emp. Int'l Union et al., *supra* note 17.

427. Brief for Current & Former Prosecutors & L. Enf't, *supra* note 17; Brief for Former Serv. Sec'ys et al., *supra* note 17.

428. Brief for Laws.' Comm. for C.R. Under L. et al., *supra* note 17; Brief for Nonprofit Legal Servs. Orgs., *supra* note 17.

429. Brief for Empirical Scholars, *supra* note 17.

430. Brief for Teach for Am., *supra* note 17.

431. See authorities cited *supra* note 17 (including Brief for 127 Religious Orgs.; Brief for NQAPIA et al.; Brief for Alianza Ams. Et al.; Brief for United We Dream et al.; Brief for Am. Prof'l Soc'y on Abuse of Children et al.; Brief for U.S. Catholic Bishops et al.).

432. *E.g.*, Brief for NQAPIA et al., *supra* note 17, at 4 (discussing LGBTQ DACA recipients' social engagement) ("Many LGBTQ DACA recipients have been open and transparent about their sexual orientation and/or gender identity while living in the United States, have engaged in LGBTQ activism, and have publicly disclosed their LGBTQ status in their communities, through their online identities and otherwise. In this digital age, if these openly LGBTQ DACA recipients are removed, there is no realistic way to put this 'genie back in the bottle.' The rescission of DACA will unavoidably put these individuals in danger of criminal prosecution, discrimination, violence and even death in their country of birth because of their sexual orientation and/or gender identity.").

433. *E.g.*, Brief for Nonprofit Legal Servs. Orgs., *supra* note 17, at 18 (discussing the potential impacts of rescission to U.S. family members) ("Moreover, DACA recipients made life-altering decisions about their family lives in reliance on DACA. These choices will be upended if DACA is rescinded; the effects will be terribly disruptive and will deeply impact U.S. citizens as well. Many DACA recipients will be forced to make heart-breaking decisions about the future of their families, and in particular about the future of their U.S.-citizen children. DACA recipients who are parents will have to decide whether to take their U.S.-citizen children with them if they leave or are deported (separating their children from the communities they know and significantly disrupting their lives) or face long-term and possibly permanent separation from their children.").

impacted.<sup>434</sup> As in previous Sections, in this Section, we also amplify the experiences of recipients by expanding on the significance of DACA to recipients themselves, despite the fact that their stories played a more limited role in the data. We note instances where amici's arguments emphasized recipients' reliance interests converging with other interests, paying close attention to whose interests, besides recipients' interests, were furthered through DACA.

Generally, in the social experiences and engagement theme, amici discussed the liminal experiences of undocumented immigrants without DACA by discussing how DACA influenced recipients' ability to engage in society and social institutions.<sup>435</sup> Amici subsequently expanded on the benefits the United States and U.S. citizens (for example, recipients' children) accrued because of recipients' ability to engage socially.<sup>436</sup> Conversely, losing DACA protections would limit recipients' ability to engage socially and thereby negatively impact the benefits to the United States and U.S. citizens.<sup>437</sup> For instance, rescinding DACA would limit the social engagement of DACA recipients and their family members because they would fear deportation.<sup>438</sup> According to amici, fear of deportation would not only threaten recipients' feelings of safety and belonging, but would also likely threaten overall public safety because, without protection, recipients would be less likely to trust law enforcement.<sup>439</sup> Due to fear and a lack of stability, DACA recipients and their families would also be less likely to engage in family planning, dream about their future, or contribute to their communities in ways they would have with DACA status.<sup>440</sup> Instead, due to their deeply rooted fear of deportation and family separation, they would isolate themselves and draw away from widespread community engagement.<sup>441</sup> We turn to the subthemes next.

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434. *E.g.*, Brief for Former Serv. Sec'yys et al., *supra* note 17, at 9 (discussing the rescission and indicating that "the Government did not adequately consider the 'serious reliance interests' of DACA beneficiaries who have enlisted in the military and are pursuing a path to citizenship, the interests of military family members who are direct or indirect beneficiaries of DACA, and the interests of the American people, who rely on a military that has been significantly strengthened by the DACA program.").

435. *See, e.g.*, authorities cited *supra* note 428; Brief for Serv. Emp. Int'l Union et al., *supra* note 17, at 13–14 (detailing the experiences of a DACA recipient who was able to participate in his community's activities with the aid of DACA).

436. *See, e.g.*, *infra* Section V.C.2.

437. *See, e.g.*, *infra* Section V.C.2.

438. *See infra* Section V.C.1.

439. *See infra* Section V.C.1.

440. *See infra* Section V.C.2.

441. *See infra* Section V.C.2.

### 1. Recipients' Sense of Safety and Belonging Would Be Adversely Impacted

According to amici, the safety of DACA recipients and others would be at stake if the Court allowed the rescission to stand.<sup>442</sup> One argument in the National Queer Asian Pacific Islander Alliance and Others brief stood out as the sole argument regarding safety with a focus on recipients and their needs, without tying the argument to the interests of others.<sup>443</sup> And while the argument in the brief was the only one that took this approach when discussing safety,<sup>444</sup> we find it critical to amplify the safety risks and further liminal experiences some recipients would face without DACA. More specifically, the brief focused on Asian Pacific Islander LGBTQ identifying DACA recipients.<sup>445</sup> The amici argued that if deported, “many LGBTQ API DACA recipients are almost certain to face harassment, discrimination, criminal prosecution, violence and even death by virtue of their sexual orientation and/or gender identity.”<sup>446</sup> To support their argument, the amici drew attention to the interests that were at stake for recipients facing deportation, including the significant safety risks they would face, such as losing their lives.<sup>447</sup>

A second safety-related topic amici discussed was the temporary safety from deportation.<sup>448</sup> A total of nine amici explicitly acknowledged the benefit DACA provided recipients: temporary, albeit revocable, protection from deportation (that is, deferred action on recipients' deportation).<sup>449</sup> The temporary deferred action allowed recipients to socially engage in their communities.<sup>450</sup> But amici noted that recipients' temporary safety from

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442. Brief for Current & Former Prosecutors & L. Enf't, *supra* note 17, at 5–22; Brief for 109 Cities et al., *supra* note 17, at 10–11, 14–16.

443. Brief for NQAPIA et al., *supra* note 17.

444. *Id.*

445. *See id.*

446. *Id.* at 4.

447. *See id.* at 5–29.

448. *See, e.g.*, Brief for 109 Cities et al., *supra* note 17, at 14 (“Law enforcement agencies report that, as immigration enforcement and the threat of deportation increase, undocumented immigrants are substantially less likely to report crimes, including violent crimes. One study estimates that granting legal status to [one percent] of undocumented immigrants in a county can lower crime rates there by [two to six percent]. Although then-Attorney General Sessions insinuated that DACA had ‘put our nation at risk of crime, violence and even terrorism,’ the facts show just the opposite.” (citations omitted)).

449. *See* authorities cited *supra* note 17 (including Brief for Nonprofit Legal Servs. Orgs.; Brief for Alianza Ams. et al.; Brief for Serv. Emp. Int’l Union et al.; Brief for Am. Prof’l Soc’y on Abuse of Children et al.; Brief for Teach for Am.; Brief for Former Serv. Sec’y et al.; Brief for 127 Religious Orgs.; Brief for NQAPIA et al.; Brief for Laws.’ Comm. for C.R. Under L. et al.).

450. *See* authorities cited *supra* note 17 (including Brief for Nonprofit Legal Servs. Orgs.; Brief for Alianza Ams. et al.; Brief for Serv. Emp. Int’l Union et al.; Brief for Am. Prof’l Soc’y on Abuse of

deportation had also engendered other interests as recipients engaged in their communities.<sup>451</sup> The interests of recipients to remain temporarily safe from deportation converged with, for example, their U.S.-citizen children's interests and well-being.<sup>452</sup> To illustrate, consider the Nonprofit Legal Services Organization's argument detailing the negative impact recipients' deportation would have on their U.S.-citizen children.<sup>453</sup> Without protection from deportation,

[m]any DACA recipients will be forced to make heart-breaking decisions about the future of their families, and in particular about the future of their U.S. citizen children. DACA recipients who are parents will have to decide whether to take their U.S. citizen children with them if they leave or are deported (separating their children from the communities they know and significantly disrupting their lives) or face long-term and possibly permanent separation from their children.<sup>454</sup>

This example highlights not only temporary safety from deportation as a reliance interest, but also interests surrounding family and health, topics which we discuss in detail below.<sup>455</sup> Here, we highlight that safety from deportation under DACA was not only a benefit to recipients, but according to amici, an issue that impacted the family unit, especially U.S.-citizen children.<sup>456</sup> Notably, amici underscored the damaging effects to U.S. citizens with little to no mention of recipients' undocumented family members.<sup>457</sup>

Amici also discussed other community members who would be equally affected if recipients were no longer safe from deportation.<sup>458</sup> In the 127 Religious Organizations brief, stakeholders detailed how, without DACA, recipients' looming deportation would impact amici by removing members

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Children et al.; Brief for Teach for Am.; Brief for Former Serv. Sec'ys et al.; Brief for 127 Religious Orgs.; Brief for NQAPIA et al.; Brief for Laws.' Comm. for C.R. Under L. et al.).

451. See authorities cited *supra* note 17 (including Brief for Nonprofit Legal Servs. Orgs.; Brief for Alianza Ams. et al.; Brief for Serv. Emp. Int'l Union et al.; Brief for Am. Prof'l Soc'y on Abuse of Children et al.; Brief for Teach for Am.; Brief for Former Serv. Sec'ys et al.; Brief for 127 Religious Orgs.; Brief for NQAPIA et al.; Brief for Laws.' Comm. for C.R. Under L. et al.).

452. See Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17, at 15–39.

453. See Brief for Nonprofit Legal Servs. Orgs., *supra* note 17, at 18.

454. *Id.*

455. See *infra* Sections V.C.2, V.D.

456. See Brief for Nonprofit Legal Servs. Orgs., *supra* note 17, at 3, 7, 18, 19.

457. *Id.*

458. See Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17, at 14 (discussing those impacted by the potential and actual deportation of immigrants) (“In addition to the children of DACA recipients, children of other immigrant parents and in affected school communities also suffer increased stress. DACA recipients live in households with an average of four members, often of different immigration statuses, and within larger communities. The effects of deportation touch neighbors, friends, and family. Children who witness arrests often share their stories with friends and classmates.”).

and leaders of their organizations who “serve as mentors and inspire others to give back to institutions from which they have benefitted.”<sup>459</sup> They continued by stating that “[a]mici will suffer incalculable harm if they are deprived of the contributions and talents of these young congregants and community members.”<sup>460</sup> In similar fashion as other amici’s arguments, in their argument, 127 Religious Organizations intertwined temporary safety from deportation with the well-being and interests of the larger religious community.<sup>461</sup> The majority of the nine briefs that discussed protection from deportation as a reliance interest followed this trend by mentioning the interest and relating it back to a subsequent and related interest that would also be impacted.<sup>462</sup>

Lastly, regarding safety, three amici discussed the concern for the physical safety of DACA recipients as well as public safety concerns in the United States.<sup>463</sup> All three of these stakeholders held Government affiliations and were categorized as either Governments or Individuals with Current or Former Government Affiliation.<sup>464</sup> They each discussed concerns that DACA recipients who were not protected from deportation would be less likely to report violent crimes.<sup>465</sup> Current and Former Prosecutors and Law Enforcement Leaders indicated that DACA, by deferring deportation for recipients, increased recipients’ comfort in reaching out and cooperating with law enforcement because recipients were less likely to fear that their interaction with law enforcement would lead to removal from the country.<sup>466</sup> Amici argued that when community residents cannot trust their interactions with law enforcement, public safety is undermined; law enforcement is less effective in conducting investigations, prosecuting individual crimes, and properly allocating public safety resources.<sup>467</sup> As 109 Cities, Counties, Municipalities, and Local Government Advocacy Organizations further explained, contrary to what “then-Attorney General Sessions insinuated that DACA had ‘put our nation at risk of crime, violence and even terrorism,’ the

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459. Brief for 127 Religious Orgs., *supra* note 17, at 17.

460. *Id.*

461. *See id.* at 12–25.

462. *See* authorities cited *supra* note 17 (including Brief for Nonprofit Legal Servs. Orgs.; Brief for Alianza Ams. et al.; Brief for Serv. Emp. Int’l Union et al.; Brief for Am. Prof’l Soc’y on Abuse of Children et al.; Brief for Teach for Am.; Brief for Former Serv. Sec’y’s et al.; Brief for 127 Religious Orgs.; Brief for NQAPIA et al.; Brief for Laws.’ Comm. for C.R. Under L. et al.).

463. Brief for 109 Cities et al., *supra* note 17; Brief for Current & Former Prosecutors & L. Enf’t, *supra* note 17; Brief for State of Nev. et al., *supra* note 17.

464. *Supra* note 463.

465. *Supra* note 463.

466. Brief for Current & Former Prosecutors & L. Enf’t, *supra* note 17, at 3.

467. *Id.*

facts show just the opposite.”<sup>468</sup> In fact, it has been found that “granting legal status to 1% of undocumented immigrants in a county can lower crime rates there by 2 to 6%.”<sup>469</sup>

The DACA policy ameliorated these public safety concerns by targeting one of the main reasons undocumented immigrants avoid contact with law enforcement: fear of deportation.<sup>470</sup> Amici’s claims were not only hypothetical. The State of Nevada et al. presented study results, which indicated that

in a survey of over 3,000 DACA recipients, 53% said after the rescission they would be less likely to report a crime, 46% said they would be less likely to report a crime even if they were the victim, and 60% said they would be less likely to report wage theft. In another survey of DACA recipients, 59% said they would report a crime after receiving DACA status but would not have before.<sup>471</sup>

In other words, though DACA provided recipients a liminal status, without DACA, recipients would be in an even more vulnerable liminal status that would make them more likely to fall prey to crimes that would undermine public safety.<sup>472</sup>

The rescission would also negatively impact recipients’ sense of belonging.<sup>473</sup> Seven amici mentioned a decreased sense of belonging as a concern if the Court allowed the rescission of DACA: three Advocacy Organizations,<sup>474</sup> two Business Groups and Trade Organizations,<sup>475</sup> one Government affiliated amici,<sup>476</sup> and one Research Organization and/or Scholar.<sup>477</sup> These amici discussed recipients’ general sense of belonging and

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468. Brief for 109 Cities et al., *supra* note 17, at 14.

469. *Id.*

470. Brief for Current & Former Prosecutors & L. Enf’t, *supra* note 17, at 3.

471. Brief for State of Nev. et al., *supra* note 17, at 17 (citations omitted).

472. *See id.* at 16–17.

473. *See* Brief for Empirical Scholars, *supra* note 17, at 24 (“A 2018 study found that DACA led to many more opportunities for entire families to ‘achieve their goals [and] experience spatial mobility,’ and ‘shifted entire families’ legal consciousness toward a stronger sense of pride and belonging in the United States.” (citing Leisy Abrego, *Renewed Optimism and Spatial Mobility: Legal Consciousness of Latino Deferred Action for Childhood Arrivals Recipients and Their Families in Los Angeles*, 18 *ETHNICITIES* 192, 192–207 (2018))).

474. Brief for NQAPIA et al., *supra* note 17; Brief for 127 Religious Orgs., *supra* note 17; Brief for United We Dream et al., *supra* note 17.

475. Brief for Tim Cook et al., *supra* note 17; Brief for Serv. Emp. Int’l Union et al., *supra* note 17.

476. Brief for Gov’t of Mexican States, *supra* note 17.

477. Brief for Empirical Scholars, *supra* note 17.

cultural identity as Americans.<sup>478</sup> While recipients developed a sense of belonging growing up in the United States,<sup>479</sup> they experienced being “othered” as undocumented immigrants.<sup>480</sup> For example, stakeholders described recipients as quintessentially American, given their patriotism to the United States, dedication to their families and communities, commitment to pursue the American dream, and general desire to improve the United States.<sup>481</sup> Their stories and lives epitomize the American dream, and their contributions benefit the interests of society at large.<sup>482</sup> As United We Dream noted, recipients having grown up in the United States

play critical roles in their communities—as entrepreneurs who create jobs, as family members who support hundreds of thousands of U.S. citizens, as public servants who teach our children and care for us, and as volunteers who improve their communities. In short, they have become fully integrated into the fabric of American society.<sup>483</sup>

Yet, as one amicus brief noted, living as an undocumented immigrant in the United States negatively impacted DACA recipients’ life outlook and undermined their confidence pre-DACA.<sup>484</sup> For example, a recipient shared that prior to DACA, he felt he did not fully belong: “I’m really close to my three U.S. citizen brothers. But finding out about my immigration situation made me feel like an outsider, different and alone.”<sup>485</sup> DACA, through its three key features, allowed recipients to participate more fully in society, thereby increasing recipients’ sense of belonging.<sup>486</sup> DACA, according to stakeholders, allowed recipients to foster “a stronger sense of pride and

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478. See authorities cited *supra* note 17 (including Brief for NQAPIA et al.; Brief for 127 Religious Orgs.; Brief for United We Dream et al.; Brief for Tim Cook et al.; Brief for Serv. Emp. Int’l Union et al.; Brief for Gov’t of Mexican States; Brief for Empirical Scholars).

479. See authorities cited *supra* note 17 (including Brief for NQAPIA et al.; Brief for 127 Religious Orgs.; Brief for United We Dream et al.; Brief for Tim Cook et al.; Brief for Serv. Emp. Int’l Union et al.; Brief for Gov’t of Mexican States; Brief for Empirical Scholars); see also Brief for Gov’t of Mexican States, *supra* note 17, at 19 (“[R]ecipients often [belie] their cultural identity as Mexican and American as they have been educated and raised in the United States.”).

480. See authorities cited *supra* note 17 (including Brief for NQAPIA et al.; Brief for 127 Religious Orgs.; Brief for United We Dream et al.; Brief for Tim Cook et al.; Brief for Serv. Emp. Int’l Union et al.; Brief for Gov’t of Mexican States; Brief for Empirical Scholars).

481. Brief for Tim Cook et al., *supra* note 17, at 4.

482. Brief for United We Dream et al., *supra* note 17, at 4–5.

483. *Id.* at 5.

484. Brief for Serv. Emp. Int’l Union et al., *supra* note 17, at 13.

485. *Id.*

486. See authorities cited *supra* note 17 (including Brief for NQAPIA et al.; Brief for 127 Religious Orgs.; Brief for United We Dream et al.; Brief for Tim Cook et al.; Brief for Serv. Emp. Int’l Union et al.; Brief for Gov’t of Mexican States; Brief for Empirical Scholars).

belonging in the United States” that impacted how recipients engaged in their communities and daily lives.<sup>487</sup>

## 2. Recipients’ Family Members, Often U.S. Citizens, Would Be Adversely Impacted

Seven of the amici who made social engagement related reliance interest arguments discussed recipients’ reliance on DACA in order to plan for and support their families.<sup>488</sup> These amici represented three Advocacy Organizations, one Research Organization and/or Scholar, One Business Group and Trade Association, and one Individuals with Current or Former Government Affiliation.<sup>489</sup> In general, the arguments in this Section centered around the negative impact that U.S.-citizen family members (including recipients’ U.S.-born children) who depended on DACA recipients would experience if the Court allowed the rescission to stand.<sup>490</sup> Stakeholders indicated that upon receiving DACA, recipients improved their liminal status, being able to financially support their families based on their ability to be employed.<sup>491</sup> Through their lawful work authorization, they were also able to access better work opportunities with higher salaries.<sup>492</sup> The impact of recipients’ ability to enjoy better opportunities would be vast, according to amici, because “[n]early 1.5 million Americans live with someone who is a DACA recipient.”<sup>493</sup> Stakeholders expressed that many of these U.S. families had structured their lives around the benefits that DACA brought, and that rescinding the program was arbitrary and capricious because the

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487. Brief for Empirical Scholars, *supra* note 17, at 24 (citing Abrego, *supra* note 473, at 192–207).

488. See authorities cited *supra* note 17 (including Brief for Empirical Scholars; Brief for Nonprofit Legal Servs. Orgs.; Brief for United We Dream et al.; Brief for Serv. Emp. Int’l Union et al.; Brief for Am. Prof’l Soc’y on Abuse of Children et al.; Brief for U.S. Catholic Bishops et al.; Brief for Former Serv. Sec’yys et al.).

489. See authorities cited *supra* note 17 (including Brief for Empirical Scholars; Brief for Nonprofit Legal Servs. Orgs.; Brief for United We Dream et al.; Brief for Serv. Emp. Int’l Union et al.; Brief for Am. Prof’l Soc’y on Abuse of Children et al.; Brief for U.S. Catholic Bishops et al.; Brief for Former Serv. Sec’yys et al.).

490. See authorities cited *supra* note 17 (including Brief for Empirical Scholars; Brief for Nonprofit Legal Servs. Orgs.; Brief for United We Dream et al.; Brief for Serv. Emp. Int’l Union et al.; Brief for Am. Prof’l Soc’y on Abuse of Children et al.; Brief for U.S. Catholic Bishops et al.; Brief for Former Serv. Sec’yys et al.); see also, e.g., Brief for Empirical Scholars, *supra* note 17, at 8 (discussing the impact of the rescission on recipients’ U.S.-citizen children) (“U.S.-citizen children whose parents received deferred action experienced reduced rates of adjustment and anxiety disorders, compared to children whose parents did not. DACA further protects U.S.-citizen children and other immediate family members from substantial harms that result from having a family member, especially the primary breadwinner, removed or living under the constant threat of removal.”).

491. Brief for United We Dream et al., *supra* note 17, at 22.

492. *Id.*

493. *Id.* at 23 (“Altogether, 256,000 U.S. citizen children have a parent who is a DACA recipient.”).

Trump administration did not consider “the well-being and contributions of DACA recipients and their families to the [United States].”<sup>494</sup>

### 3. Military, U.S. National Security, and International Human Rights Would Be Adversely Impacted

The last topic amici discussed in relation to social engagement reliance interests was the policy’s significance to the military and national security.<sup>495</sup> Without DACA, recipients would be excluded from participating and engaging in the military, and this would lead to greater concerns for the military (that is, recruits) and for national security with fewer enlisted service people. While just three amicus briefs discussed these interests, their arguments revealed the significance of DACA to national security interests and international human rights.<sup>496</sup> We categorized the three amici differently—one as a Legal Organization and/or Institute, one as Government affiliated, and one as Individuals with Current or Former Government Affiliation.<sup>497</sup>

The stakeholders focused on the significance of DACA to military service and national security interests detailed that recipients had planned and relied on DACA when they enrolled in The Military Accessions Vital to the National Interest (“MAVNI”) Program and argued that the United States must consider its relations with other nations in making decisions on DACA.<sup>498</sup> Stakeholders noted that “[a]t the time of rescission, the Defense Department estimated that up to 900 DACA recipients were either serving or had signed contracts to serve through MAVNI,”<sup>499</sup> while another “4,000 MAVNI recruits were awaiting basic training” shortly before the administration rescinded DACA.<sup>500</sup> Without DACA, recipients would be placed in a state of further liminality as undocumented service members.<sup>501</sup> DACA enlistees would be in “limbo” and vulnerable to deportation after providing extensive information to the government about their

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494. Brief for Gov’t of Mexican States, *supra* note 17, at 1.

495. Brief for Laws.’ Comm. for C.R. Under L. et al., *supra* note 17; Brief for Gov’t of Mexican States, *supra* note 17; Brief for Former Serv. Sec’ys et al., *supra* note 17.

496. *Supra* note 495.

497. *Supra* note 495.

498. Brief for Laws.’ Comm. for C.R. Under L. et al., *supra* note 17, at 21 (“The administrative record is devoid of any consideration whatsoever of the military’s promises and the reliance thereon by DACA enrollees in the MAVNI program. Termination of the DACA program without consideration of these serious reliance interests and those described above is arbitrary and capricious under the APA.”).

499. *Id.* at 20.

500. Brief for Former Serv. Sec’ys et al., *supra* note 17, at 16.

501. Brief for Laws.’ Comm. for C.R. Under L. et al., *supra* note 17, at 21.

undocumented status.<sup>502</sup> If deported, their service membership would place them at high risk of “the most serious of consequences, including ‘harsh treatment or interrogation’ by foreign adversaries” due to their affiliation with the U.S. military.<sup>503</sup> If DACA service members would escape deportation, they would likely lose the benefits associated with employment in the military, such as “health care, home loans, and educational funds.”<sup>504</sup>

Aside from these mentions of the impact to the MAVNI enlistees, which we amplified above, amici’s arguments in this subtheme focused on the recession’s impact on the military and how the rescission could impact engagement in service opportunities, which is directly tied to the national security of the United States on which Americans rely.<sup>505</sup> For example, stakeholders stated that “DACA recipients, along with other MAVNI service members, possess ‘critical skills’ and are ‘vital’ to protecting the American people,”<sup>506</sup> and without DACA, these talented immigrants could not have participated in this program.<sup>507</sup> They continued on to say that DACA “enable[ed] the military to approach its recruiting and retention goals by leveraging immigrant and minority communities with unique skills vital to the national interest” for more than five years now.<sup>508</sup> According to amici, immigrants and their children are predicted to become the main source of service member recruits in the near future;<sup>509</sup> thus, keeping DACA recipients and their children in the United States benefits the United States so that it can meet its military recruitment goals.<sup>510</sup>

The Government of the United Mexican States brief brought an international human rights perspective to the discussion, arguing the United States had an obligation to adhere to the ICCPR treaty which “guarantees that family is ‘entitled to protection by society and the State.’”<sup>511</sup> The Mexican Government argued that recipients’ protection from deportation, in addition to the other benefits DACA provided recipients and their families,

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502. *Id.*

503. *Id.* (citing Alex Horton, *The Military looked to ‘Dreamers’ to Use Their Vital Skills. Now the U.S. Might Deport Them*, WASH. POST. (Sept. 7, 2017), <https://www.washingtonpost.com/news/check-point/wp/2017/09/07/the-military-looked-to-dreamers-to-use-their-vital-skills-now-the-u-s-might-deport-them> [<https://perma.cc/H4WH-AHNX>]).

504. Brief for Former Serv. Sec’y et al., *supra* note 17, at 16.

505. *Id.*

506. *Id.* at 13.

507. *Id.* at 14.

508. *Id.* at 11.

509. *Id.* at 28–29.

510. *Id.*

511. Brief for Gov’t of Mexican States, *supra* note 17, at 26 (citing International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171).

fell under the U.S. government's obligations under the ICCPR.<sup>512</sup> From an international humanitarian perspective, amici argued, the United States would protect the family unit if the Court allowed DACA to remain in place because the policy would allow recipients to engage in society with less fear of deportation and more access to opportunities.<sup>513</sup> Amici explained that the United States' adherence to the ICCPR and other treaties can strengthen border exchanges and promote increased investment, trade, and skills of foreign nationals to both countries.<sup>514</sup> In sum, amici who made arguments relating to the military, national security interests, and human rights perspectives mentioned the impact losing DACA would have on recipients' ability to engage socially, but consistently employed an interest convergence argument, following the discussion with the general and cascading implications for the United States and its citizens as a whole.<sup>515</sup>

#### D. HEALTH INTERESTS

Living undocumented in the United States takes a toll on the health of immigrants who do not have access to employer-based insurance and constantly worry about being removed from the country and separated from their family, to name a few worries.<sup>516</sup> DACA facilitated recipients' ability to access health care<sup>517</sup> and removed the constant concern of deportation.<sup>518</sup> Though health care is a need for undocumented immigrants as evidenced in the briefs, only twelve briefs (46%) discussed the significance of DACA to health-related recipients, making health interests the least discussed interest

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512. *Id.* at 28.

513. *See id.* at 4–21.

514. *Id.* at 24.

515. *Id.*; Brief for Former Serv. Sec'yys et al., *supra* note 17; Brief for Laws.' Comm. for C.R. Under L. et al., *supra* note 17.

516. *See, e.g.*, Brief for State of Nev. et al., *supra* note 17, at 10 ("Undocumented immigrants are more hesitant to seek out and use health services and medical treatment. Respondents in this case have described how they and other undocumented immigrants are hesitant to seek healthcare treatment when they need it. In addition, recipients were able to obtain health insurance because of DACA, often through their new employers. They will likely lose this health insurance because of the rescission, leading to worse health outcomes . . . ." (citations omitted)); Brief for 143 Business Ass'ns & Cos., *supra* note 17, at 17 ("Seventy-six percent of Dreamers reported living with the daily worry of being separated from their children. The fear for the future that is now a daily part of life for Dreamers and their families affects both physical and mental health." (citations omitted)).

517. *See, e.g.*, Brief for Nonprofit Legal Servs. Orgs., *supra* note 17 (explaining that DACA helped recipients gain access to healthcare through their employers, which was made possible by the work authorization).

518. *E.g.*, Brief for Empirical Scholars, *supra* note 17, at 14, 29 (noting how DACA removes the fear of deportation for recipients themselves, but also for their family members, specifically children).

among the four categories.<sup>519</sup> Of the briefs that made reliance interest arguments, 100% of Government stakeholders made health arguments,<sup>520</sup> followed by 50% of Business Groups and Trade Organizations,<sup>521</sup> 50% of Advocacy Organizations,<sup>522</sup> 50% of Legal Organizations and Institutes,<sup>523</sup> 50% of Research Organizations and Scholars,<sup>524</sup> and 28.6% of Colleges, Universities, Schools and Educational Organizations.<sup>525</sup>

Additionally, while amici acknowledged the health-related harm recipients would experience without DACA, amici largely focused their discussions on the health impact others would suffer if DACA were rescinded.<sup>526</sup> Amici's arguments clustered around three central health-related effects that would follow if the Court permitted the rescission: (1) the mental health of recipients and, most importantly, the mental health of their U.S.-citizen children would suffer;<sup>527</sup> (2) recipients and their families would risk losing health insurance and care;<sup>528</sup> and (3) the general public health would decline.<sup>529</sup> While public health is an explicit interest convergence argument, the former two primary effects<sup>530</sup> are more in line with liminality. Nonetheless, all three arguments included interest convergence claims.<sup>531</sup> For example, recipients' children's health and well-being are of concern to

519. See authorities cited *supra* note 17 (including Brief for NQAPIA et al.; Brief for Nat'l Educ. Ass'n & Nat'l PTA; Brief for Empirical Scholars; Brief for Gov't of Mexican States; Brief for 109 Cities et al.; Brief for Nonprofit Legal Servs. Orgs.; Brief for 143 Business Ass'ns & Cos.; Brief for State of Nev. et al.; Brief for Serv. Emp. Int'l Union et al.; Brief for Am. Prof'l Soc'y on Abuse of Children et al.; Brief for U.S. Catholic Bishops et al.; Brief for Ass'n Am. Med. Colls. et al.); see also Jean Edward, *Undocumented Immigrants and Access to Health Care: Making a Case for Policy Reform*, 15 POL'Y, POL., & NURSING PRAC. 5 *passim* (2014).

520. Brief for Gov't of Mexican States, *supra* note 17; Brief for 109 Cities et al., *supra* note 17; Brief for State of Nev. et al., *supra* note 17.

521. Brief for 143 Business Ass'ns & Cos.; Brief for Serv. Emp. Int'l Union et al., *supra* note 17.

522. Brief for NQAPIA et al., *supra* note 17; Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17; Brief for U.S. Catholic Bishops et al., *supra* note 17.

523. Brief for Nonprofit Legal Servs. Orgs., *supra* note 17.

524. Brief for Empirical Scholars, *supra* note 17.

525. Brief for Nat'l Educ. Ass'n & Nat'l PTA, *supra* note 17; Brief for Ass'n Am. Med. Colls. et al., *supra* note 17.

526. See authorities cited *supra* note 17 (including Brief for NQAPIA et al.; Brief for Nat'l Educ. Ass'n & Nat'l PTA; Brief for Empirical Scholars; Brief for Gov't of Mexican States; 109 Cities et al.; Brief for Nonprofit Legal Servs. Orgs.; Brief for 143 Business Ass'ns & Cos.; Brief for State of Nev. et al.; Brief for Serv. Emp. Int'l Union et al.; Brief for Am. Prof'l Soc'y on Abuse of Children et al.; Brief for U.S. Catholic Bishops et al.; Brief for Ass'n Am. Med. Colls. et al.).

527. See, e.g., Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17.

528. See, e.g., Brief for Nonprofit Legal Servs. Orgs., *supra* note 17.

529. See, e.g., Brief for Ass'n Am. Med. Colls. et al., *supra* note 17.

530. See *infra* Sections V.D.1–2.

531. See *infra* Sections V.D.1–2.

children, society, and recipients themselves.<sup>532</sup> However, amici largely ignored the connection between the impact on children's health and recipients' well-being.<sup>533</sup> Rather, amici emphasized the negative impact on children and underscored that these children were U.S. citizens and society should care about their health and well-being.<sup>534</sup> In fact, six of the briefs (half) centered their discussion of health around the impact of rescission on children's health.<sup>535</sup> In the following sections, consistent with our focus on UndocuCrit's tenet of liminality, we amplify recipients' liminal experiences regarding their health, including the impact that their children's health could have on recipients, despite the fact that these implications played a limited role in the dataset.<sup>536</sup>

### 1. Recipients' and Their U.S.-Citizen Children's Mental Health Would Suffer

Stakeholders highlighted the relationship between DACA status and mental health for both DACA recipients and their family members.<sup>537</sup> Albeit mainly in passing, some stakeholders noted the concrete effects immigration status has on the health of immigrants.<sup>538</sup> For example, briefs noted that uncertainty and fear of deportation because of DACA's rescission led to notable declines in recipients' mental and physical health.<sup>539</sup> Amici also argued that recipients' health would be significantly harmed by losing not only their DACA status, but also potentially, for example, their education.<sup>540</sup>

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532. Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17 (“[I]t is in ‘the interests of society to protect the welfare of children.’ ” (citing *Prince v. Massachusetts*, 321 U.S. 158, 165 (1944))).

533. *See infra* Sections V.D.1–3.

534. *See infra* Sections V.D.1–3.

535. *See* authorities cited *supra* note 17 (including Brief for Empirical Scholars; Brief for Gov't of Mexican States; Brief for Nat'l Educ. Ass'n & Nat'l PTA; Brief for Serv. Emp. Int'l Union et al.; Brief for Am. Prof'l Soc'y on Abuse of Children et al.; Brief for U.S. Catholic Bishops et al.).

536. *See* authorities cited *supra* note 96 (containing a detailed list of the data set).

537. *See, e.g.*, Brief for Nat'l Educ. Ass'n & Nat'l PTA, *supra* note 17; Brief for Serv. Emp. Int'l Union et al., *supra* note 17; Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17.

538. *See, e.g.*, Brief for 143 Business Ass'ns & Cos., *supra* note 17, at 17; Brief for Empirical Scholars, *supra* note 17, at 23; Brief for Serv. Emp. Int'l Union et al., *supra* note 17, at 20.

539. *E.g.*, Brief for Empirical Scholars, *supra* note 17, at 33 (“[T]he observed declines in health after mid-2015 were a response to the stressful and painful experiences of fearing the termination of DACA, not knowing what the future held, and imagining a return to undocumented status.” Other studies have drawn similar conclusions, finding that the September 2017 attempt to rescind DACA may have led to worsening health outcomes for DACA recipients.” (citation omitted) (citing Caitlin Patler, Erin Hamilton, Kelsey Meagher & Robin Savinar, *Uncertainty About DACA May Undermine Its Positive Impact on Health for Recipients and Their Children*, 38 HEALTH AFFS. 738, 743 (2019))).

540. *See* Brief for Am. Council on Educ. et al., *supra* note 17, at 19 (“DACA has reduced the emotional toll of college enrollment for Dreamers, too. For the first time, many Dreamers can speak openly about their undocumented status, increasing their sense of belonging, and reducing the pressures and anxieties previously endemic to enrollment in college without legal status.”).

In contrast, almost all the briefs discussing mental health identified the harm to children's mental health. Of the seven briefs that discussed mental health, six focused on children's mental health.<sup>541</sup> They argued that fear of parental separation and instability, because of precarious, liminal immigration status, worsens children's mental health.<sup>542</sup> Children can develop anxiety and post-traumatic-stress disorder.<sup>543</sup> All six briefs mentioned the long-term effects of anxiety and stress for children, including a higher likelihood of depression, substance abuse, obesity,<sup>544</sup> and disrupted brain development<sup>545</sup>—all which have significant implications for a person's "social-emotional, physical, and economic well-being."<sup>546</sup> DACA, amici argued, by removing the constant fear of deportation led to improved mental health for children.<sup>547</sup>

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Rodriguez works one-on-one with a student receiving special education services. Last year, he served as the school's resident substitute, an assignment that included three months as a teacher providing bilingual education to second-graders. The former Director of Social Services at an after-school program providing academic support for school-aged children, Rodriguez has just this month applied for a master's program in education. His career goal is to teach high school students in the areas of English and Ethnic Studies, his majors in college, but he now feels that "my dream of working in education is slowly slipping away despite how far I have come." . . . When an agency error caused a temporary break in Marcos's DACA status, she says it "turned my world upside down." She had to withdraw from UT-Austin for a semester, move back in with her parents, and cease work until the mistake could be corrected. "It affects every aspect of my being. It not only affects me financially, it also affects my mental health."

Brief for Nat'l Educ. Ass'n & Nat'l PTA, *supra* note 17, at 11, 12–13.

541. See authorities cited *supra* note 17 (including Brief for Empirical Scholars; Brief for Gov't of Mexican States; Brief for Nat'l Educ. Ass'n & Nat'l PTA; Brief for Serv. Emp. Int'l Union et al.; Brief for Am. Prof'l Soc'y on Abuse of Children et al.; Brief for U.S. Catholic Bishops et al.).

542. See, e.g., Brief for Am. Prof'l Soc'y on Abuse of Children et al. at 21–22 ("The lingering possibility of deportation of parents leaves children with constant anxiety and vigilance about the potential becoming real. A 2013 study of family unity and health among mixed-status families (families with at least one undocumented parent and at least one U.S.-citizen child) found that almost [seventy-five percent] of undocumented parents reported signs of PTSD in their children, compared with [forty percent] of documented parents." (citations omitted) (internal quotation marks omitted) (citing SARA SATINSKY, ALICE HU, JONATHAN HELLER & LILI FARHANG, FAMILY UNITY, FAMILY HEALTH: HOW FAMILY-FOCUSED IMMIGRATION REFORM WILL MEAN BETTER HEALTH FOR CHILDREN AND FAMILIES 2, 8 (2013), <https://familyunityfamilyhealth.org/wp-content/uploads/2018/09/FamilyUnityFamilyHealthExecutiveSummaryinEnglish.pdf> [<https://perma.cc/WPK3-SQGL>])); Brief for Empirical Scholars, *supra* note 17, at 24.

543. See authorities cited *supra* note 542.

544. See Brief for Gov't of Mexican States, *supra* note 17, at 16; Brief for U.S. Catholic Bishops et al., *supra* note 17, at 12.

545. Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17, at 22; Brief for Empirical Scholars, *supra* note 17, at 31; Brief for Nat'l Educ. Ass'n & Nat'l PTA, *supra* note 17, at 26–27.

546. Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17, at 22; see also Brief for Gov't of Mexican States, *supra* note 17, at 1.

547. See, e.g., Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17, at 13–14 ("The mental health benefits to children whose mothers are protected by DACA, and therefore protected from the fear of deportation, are large and clinically significant. Children who did not live in fear that their parent might be detained and deported saw significantly decreased adjustment and anxiety disorder

Several amici extended the argument to the larger societal impact of children's mental health.<sup>548</sup> The American Professional Society on the Abuse of Children et al.'s brief, for example, included a section entitled, "It Is [i]n Society's Interest [t]o Protect Children [f]rom Harm."<sup>549</sup> Similarly, the National Education Association's brief argued that the anxiety caused by DACA's rescission extended to all students, disrupting DACA recipients' and their peers' ability to learn.<sup>550</sup>

Notably, five out of the six briefs discussing children underscored that the children who would experience worsening health were U.S.-born children.<sup>551</sup> The only brief that did not use the phrase "U.S.-born child(ren)" was the National Education Association and National PTA brief, which noted that anxiety caused by rescission is "not limited to students with DACA or those taught by DACA educators."<sup>552</sup> Thus, even when discussing the impact of rescission on children of DACA recipients, amici's focus was on how significant DACA is to the health of U.S. citizens and U.S. society,<sup>553</sup> adopting an interest convergence approach. In centering U.S. citizens and U.S. society, the arguments marginalized the recipients' experiences and other undocumented family members who were largely absent from amici's discussion.<sup>554</sup>

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diagnoses." (citations omitted) (citing Jens Hainmueller, Duncan Lawrence, Linna Martén, Bernard Black, Lucila Figueroa, Michael Hotard, Tomás R. Jiménez, Fernando Mendoza, Maria I. Rodriguez, Jonas J. Swartz & David D. Laitin, *Protecting Unauthorized Immigrant Mothers Improves Their Children's Mental Health*, 357 *SCI.* 1041, 1041–44 (2017)); Brief for Empirical Scholars, *supra* note 17, at 26 ("Another study that drew from representative statewide survey data from the California Health Interview Survey found that mothers' DACA eligibility significantly increased reports of 'good,' 'great,' or 'excellent' health among children, compared to reports of 'fair' or 'poor' health. While [seventy-nine percent] of children of DACA-eligible mothers were reported to have good health during the period prior to DACA, this percentage rose to [ninety-nine percent] from 2012–[20]15." (citations omitted) (citing Patler et al., *supra* note 539, at 738–45)).

548. See Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17; Brief for U.S. Catholic Bishops et al., *supra* note 17; Brief for Nat'l Educ. Ass'n & Nat'l PTA, *supra* note 17.

549. Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17, at 36–39.

550. Brief for Nat'l Educ. Ass'n & Nat'l PTA, *supra* note 17, at 25–28; Brief for Gov't of Mexican States, *supra* note 17, at 1.

551. Brief for Empirical Scholars, *supra* note 17, at 29; Brief for Gov't of Mexican States, *supra* note 17, at 15; Brief for Serv. Emp. Int'l Union et al., *supra* note 17, at 20–21; Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17, at 24; Brief for U.S. Catholic Bishops et al., *supra* note 17, at 10.

552. Brief for Nat'l Educ. Ass'n & Nat'l PTA, *supra* note 17, at 25; see also Brief for Gov't of Mexican States, *supra* note 17, at 1.

553. Brief for Nat'l Educ. Ass'n & Nat'l PTA, *supra* note 17, at 25; Brief for Gov't of Mexican States, *supra* note 17, at 1. See also authorities cited *supra* note 519.

554. See, e.g., Brief for Empirical Scholars, *supra* note 17; Brief for Gov't of Mexican States, *supra* note 17; Brief for Serv. Emp. Int'l Union et al., *supra* note 17; Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17, at 24; Brief for U.S. Catholic Bishops et al., *supra* note 17.

## 2. Recipients and Their Families Would Risk Losing Health Insurance and Care

Six briefs brought to the fore another significant effect that would follow if the Court allowed the rescission to stand: the potential loss of health insurance and care for recipients and their family members.<sup>555</sup> Only two briefs summarily noted that many recipients relied on their employers for health insurance, and with the loss of work authorization they would lose their jobs and, with them, their employer-based insurance.<sup>556</sup> The other four briefs crafted arguments around the impact on governments and U.S.-citizen children that the loss of recipients' healthcare would cause.<sup>557</sup> The two government briefs discussed the effects that loss of healthcare would have for state governments, noting that without health insurance and easy access to care, recipients will burden the state welfare system and strain public health resources.<sup>558</sup> The 109 Cities brief also related the loss of health insurance to recipients' reduced ability to contribute to society.<sup>559</sup>

The two remaining briefs in this subtheme discussed how loss of health insurance would impact children.<sup>560</sup> Without health insurance, undocumented immigrants are often hesitant to seek medical treatment for themselves or their children due to fear of encounters with law enforcement and consequent deportation.<sup>561</sup> Given these concerns, they are also less likely to enroll their children in programs such as Head Start or child nutrition

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555. See authorities cited *supra* note 17 (including Brief for Empirical Scholars; Brief for Gov't of Mexican States; Brief for 109 Cities et al.; Brief for Nonprofit Legal Servs. Orgs.; Brief for State of Nev. et al.; Brief for Am. Prof'l Soc'y on Abuse of Children et al.).

556. Brief for Nonprofit Legal Servs. Orgs., *supra* note 17, at 3, 16; Brief for Gov't of Mexican States, *supra* note 17, at 16.

557. Brief for Empirical Scholars, *supra* note 17; Brief for 109 Cities et al., *supra* note 17; Brief for State of Nev. et al., *supra* note 17; Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17.

558. Brief for 109 Cities et al., *supra* note 17, at 22 (“[Rescission] will also force amici to operate and fund the social safety net that will be needed to catch recipients’ families when jobs are lost, health insurance plans are discontinued, college educations are forfeited, homes fall into foreclosure, and families are forced apart by low-priority removals. Although they may be different in kind from recipients’ interests, amici’s interests are no less relevant.” (emphasis omitted)); Brief for State of Nev. et al., *supra* note 17, at 10 (“They will likely lose this health insurance because of the rescission, leading to worse health outcomes and greater strain on public health resources from treating uninsured patients at state facilities.” (citations omitted)).

559. Brief for 109 Cities et al., *supra* note 17, at 10 (“[DACA has given recipients] improved access to vital services—like healthcare and driver’s licenses—which allow them to better contribute to society.”).

560. Brief for Empirical Scholars, *supra* note 17; Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17.

561. See, e.g., Brief for Empirical Scholars, *supra* note 17, at 31; Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17, at 25–28; see also Hacker et al., *supra* note 46; Yu et al., *supra* note 46.

programs.<sup>562</sup> The American Professional Society noted that even though “citizen-children have the right to health care, their parents may avoid encounters with providers for fear of discovery.”<sup>563</sup> Their brief also noted that the loss of healthcare for children specifically can lead to increased costs in the long run, child deaths, and future disabilities.<sup>564</sup> Still, although the brief provided an in-depth discussion of the impact of loss of health insurance, the brief also focused on interest convergence arguments in other sections of the brief.<sup>565</sup> Amici thus included access to healthcare as an important reliance interest for DACA recipients and their families that is also beneficial to society as a whole, because access to health insurance and care reduces the role of state welfare systems in providing healthcare to DACA recipients and their U.S.-citizen family members.<sup>566</sup>

### 3. General Public Health Would Decline

Three briefs also highlighted the impact of the rescission on public health.<sup>567</sup> The Association of American Medical Colleges, for example, stated that “[a] rescission of DACA is a threat to public health: the sudden loss of employment by roughly a million people will likely result in a concomitant reduction in their living conditions, their mental health, and their ability to seek preventative health care.”<sup>568</sup> It noted that the impact of losing health insurance would reverberate across society, particularly in the health care sector.<sup>569</sup> The Government of Mexican States similarly stated that the health of DACA recipients was “linked to increased community health,” thus benefiting entire communities beyond just the families of recipients.<sup>570</sup> The State of Nevada et al. brief extended the arguments by focusing on the connection between undocumented status and the strain on public

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562. Brief for Empirical Scholars, *supra* note 17, at 32.

563. Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17, at 26 (citing Luis H. Zayas & Laurie Cook Heffron, *Disrupting Young Lives: How Detention and Deportation Affect US-born Children of Immigrants*, AM. PSYCH. ASS'N (Nov. 2016), <https://www.apa.org/pi/families/resources/new-sletter/2016/11/detention-deportation> [<https://perma.cc/T73C-JWSU>]); *see also* Brief for Gov't of Mexican States, *supra* note 17, at 26.

564. Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17, at 2; Brief for Gov't of Mexican States, *supra* note 17, at 28.

565. *See, e.g.*, Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17, at 36–39.

566. Brief for 109 Cities et al., *supra* note 17; Brief for State of Nev. et al., *supra* note 17; Brief for Empirical Scholars, *supra* note 17.

567. Brief for State of Nev. et al., *supra* note 17; Brief for Ass'n Am. Med. Colls. et al., *supra* note 17; Brief for Gov't of Mexican States, *supra* note 17.

568. Brief for Ass'n Am. Med. Colls. et al., *supra* note 17, at 23.

569. *Id.* For further discussion of the rescission's impact on the health care sector, *see supra* Section IV.A.

570. Brief for Gov't of Mexican States, *supra* note 17, at 18.

healthcare.<sup>571</sup> It argued that undocumented immigrants are more hesitant to seek healthcare treatment.<sup>572</sup> Thus, if recipients were to lose their protections, they would lose health insurance, which in turn would lead to worse health outcomes and a strain on the states' health care infrastructure from treating uninsured patients.<sup>573</sup> These three briefs presented an interest convergence argument that connected the importance of maintaining DACA to public health at large.

## VI. DISCUSSION AND IMPLICATIONS

Through a robust analysis of amicus briefs submitted in the DACA case, we were able to gain valuable insight into arguments constructed by a range of stakeholders.<sup>574</sup> This work is situated within a broader body of literature in which critical legal scholars have long called for an examination of the limitations and impact of law on minoritized populations.<sup>575</sup> Honoring this important legacy, critical theory provided an illuminating lens to analyze the significance and implications of the DACA case. Specifically, CRT's tenet of interest convergence<sup>576</sup> and UndocuCrit's tenet of liminality<sup>577</sup> served as meaningful proxies for reliance interest, a legal framework intended to account for social context.<sup>578</sup> Overall, we gained perspective into the interests at stake in the DACA case, both for DACA recipients and society in general. However, most often, the narrative emphasized the impact on society, even when amici seemed to be directly addressing the interests of DACA recipients.<sup>579</sup> Nonetheless, this study provides important depth and nuance to our understanding of legal frameworks with social context, professional norms and institutional barriers, and future immigration reform.<sup>580</sup> In turn, we hope to inform policy, systems, institutions, and

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571. Brief for State of Nev. et al., *supra* note 17, at 10.

572. *Id.*

573. *Id.*

574. See Paul M. Collins, Jr., Pamela C. Corley & Jesse Hamner, *The Influence of Amicus Curiae Briefs on U.S. Supreme Court Opinion Content*, 49 LAW & SOC'Y REV. 917 *passim* (2015).

575. See, e.g., Bell, *supra* note 13; Derrick Bell, *Racial Realism*, 24 CONN. L. REV. 363 (1992); Kimberlé Williams Crenshaw, *Race, Reform, and Retrenchment: Transformation and Legitimation in Antidiscrimination Law*, 101 HARV. L. REV. 1331 (1988); Kimberlé Williams Crenshaw, *Twenty Years of Critical Race Theory: Looking Back to Move Forward*, 43 CONN. L. REV. 1253 (2011).

576. Bell, *supra* note 13.

577. Aguilar, *supra* note 14, at 153.

578. See *supra* Part II.

579. See *supra* Part III; see also, e.g., Brief for Am. Prof'l Soc'y on Abuse of Children et al., *supra* note 17 (discussing the interests of the children of DACA recipients, only to conclude the brief saying that it is in society's interest to protect children from harm).

580. See *supra* Part III.

support mechanisms for DACA recipients and undocumented individuals more broadly.

A. LEGAL FRAMEWORKS WITH SOCIAL CONTEXT: SOCIETAL AND INDIVIDUAL RELIANCE INTEREST

The law has a profound impact on society.<sup>581</sup> In some instances, assessment of impact is explicitly written into the law or created through case law.<sup>582</sup> Here, we examined the application of reliance interests as a legal framework with social context.<sup>583</sup> Throughout the briefs, amici emphasized the interests of society in general.<sup>584</sup> When the interests of DACA recipients were mentioned, they were either offered in tandem with broader societal interests or were couched within broader societal interests.<sup>585</sup> The emphasis on interest convergence is reflective of a broader, majoritarian narrative that is present in national discourse.<sup>586</sup>

In the briefs, DACA recipients were framed as exceptional, an implied and at times explicit binary that is consistent with prior case law.<sup>587</sup> For example, in *Plyler v. Doe*, a 1982 case addressing the constitutional obligation of school districts to provide an education to undocumented students, the Court referred to undocumented children as “innocent,”<sup>588</sup> emphasizing “they are present in this country through no fault of their own.”<sup>589</sup> From this language, one can infer that in the Court’s eyes, undocumented adults were different from a legal perspective. Although the Court ruled in favor of undocumented students, representing an important victory for undocumented children and the advocates who tirelessly fought to protect their rights,<sup>590</sup> the Court’s binary framing presents implications for

581. See *supra* Part IV.

582. See *supra* note 3 (regarding reliance interests in contract law); 5 U.S.C. § 706(2)(A) (outlining reliance interests in the APA’s arbitrary and capricious framework).

583. *Supra* Parts IV, V.

584. See, e.g., Brief for 109 Cities et al., *supra* note 17; Brief for 143 Business Ass’ns & Cos., *supra* note 17; Brief for State of Nev. et al., *supra* note 17.

585. See, e.g., *supra* Section V.A.

586. See, e.g., Andrade & Lundberg, *supra* note 266.

587. See, e.g., *Plyler v. Doe*, 457 U.S. 202, 238–39 (1982) (“[Undocumented] children are innocent in this respect. . . . The classification at issue deprives a group of children of the opportunity for education afforded all other children simply because they have been assigned a legal status due to a violation of law by their parents. These children thus have been singled out for a lifelong penalty and stigma.”).

588. *Id.* at 224, 230.

589. *Id.* at 226.

590. Similar to the DACA case, legal scholars argue that *Plyler* was a case of interest convergence. E.g., María Pabón López, *Reflections on Educating Latino and Latina Undocumented Children: Beyond Plyler v. Doe*, 35 SETON HALL L. REV. 1373, 1377 (2005).

the overall narrative of immigration policy and reform.<sup>591</sup> Moreover, the literature identifies the dehumanizing implications of a policy discourse that focuses solely on a narrative of Dreamers and success stories, implying that those who do not share these experiences or relative privileges are undeserving.<sup>592</sup>

Despite the emphasis on the interests of society, we were able to identify some important implications of liminality in the lives of DACA recipients and the potential impact of rescission, including implications for health and education.<sup>593</sup> Although we were able to identify some implications for DACA recipients, these arguments did not capture the depth of the experiences of DACA recipients that is reflected in the literature.<sup>594</sup> In fact, there is an ever-growing body of research dedicated to the experiences of DACA recipients and undocumented individuals more broadly.<sup>595</sup> This scholarship cuts across disciplines and draws on the testimonies or personal stories of DACA recipients.<sup>596</sup> This research also highlights the limitations of DACA.<sup>597</sup> For example, in a study on higher education, Raúl Gámez, William Lopez, and Betty Overton describe “DACA status as a type of liminal legality creating an ambiguous and tentative landing place for undocumented students, and the very nature of the vagueness of the status creates its own stress, impacting DACAmented students’ abilities to matriculate, as they are always conscious of the uncertainty of their status.”<sup>598</sup>

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591. See *Plyler*, 457 U.S. at 238–39.

592. See generally, e.g., Claudia A. Anguiano & Lourdes Gutiérrez Nájera, *Paradox of Performing Exceptionalism: Complicating the Deserving/Underserving Binary of Undocumented Youth Attending Elite Institutions*, 9 ASS’N MEX.-AM. EDUCATORS 45 (2015); Andrade & Lundberg, *supra* note 266; LEISY J. ABREGO & GENEVIEVE NEGRÓN-GONZALES, *WE ARE NOT DREAMERS: UNDOCUMENTED SCHOLARS THEORIZE UNDOCUMENTED LIFE IN THE UNITED STATES* (2020).

593. E.g., *supra* Section V.B.1 and Section V.D.1–2.

594. See generally, e.g., Lorraine T. Benuto, Jena B. Casas, Caroline Cummings & Rory Newlands, *Undocumented, to DACAmented, to DACAlimited: Narratives of Latino Students with DACA Status*, 40 HISP. J. BEHAV. SCIS. 259 (2018).

595. E.g., *id.* See generally Darlene Xiomara Rodriguez, Sanjuana C. Rodriguez, Banti C. Zehyoue, *A Content Analysis of the Contributions in the Narratives of DACA Youth*, 14 J. YOUTH DEV. 64 (2019); Jessica Rosenberg, Sally Robles, Marlon O. Agustín-Méndez, Emma Cathell & Astrid Casasola, *What Happens to a Dream Deferred? Identity Formation and DACA*, 42 HISP. J. BEHAV. SCIS. 275 (2020); ABREGO & NEGRÓN-GONZALES, *supra* note 592.

596. See authorities cited *supra* note 595.

597. See generally Raúl Gámez, William Lopez & Betty Overton, *Mentors, Resiliency, and Ganas: Factors Influencing the Success of DACAmented, Undocumented, and Immigrant Students in Higher Education*, 16 J. HISP. HIGHER EDUC. 144 (2017).

598. *Id.* at 147; see also GONZALES, *supra* note 21. Legal scholarship similarly offers critiques, and exposes the implications of, liminality. See generally, e.g., Jennifer M. Chacón, *Producing Liminal Legality*, 92 DENV. U. L. REV. 709 (2015).

Our findings demonstrate that a legal framework with social context, in this case, reliance interests, may not guarantee a comprehensive analysis of the social context. Because the legal framework allows for discretion, amici have the autonomy to frame their arguments in a manner that they think will be most effective or persuasive. As such, the framework allows them to use language that furthers a sense of belonging for immigrants in a case like DACA. However, based on our analysis, this is not the way that amici most often used their discretion. Instead, the interests of society were a focal point of the overall story that was told across the briefs.<sup>599</sup> Since amicus briefs are written within a particular context, additional analysis is warranted to better understand the role of institutional and professional norms or constraints.

#### B. INSTITUTIONAL AND PROFESSIONAL NORMS/CONSTRAINTS

Amicus briefs are not created in a vacuum; they are part of a legal process, with norms and expectations.<sup>600</sup> Moreover, as a product of legal practice, they are intricately tied to the norms, values, and biases that are entrenched in legal education.<sup>601</sup> As such, our findings invite reflection and analysis of professional norms and legal training.

Cross-disciplinary scholarship analyzes the content, function, and impact of amicus briefs.<sup>602</sup> Within this work, there is some debate as to the impact of amicus briefs.<sup>603</sup> Furthermore, we still have a great deal to learn

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599. Raquel Muñiz & Maria Lewis, *The Story of DACA as Told by “Friends of the Court:” A Critical Policy Analysis*, Presentation at the 2021 American Educational Research Association Annual Meeting (Apr. 11, 2021) (unpublished manuscript) (on file with author).

600. See generally REAGAN W. SIMPSON & MARY R. VASALY, *THE AMICUS BRIEF: ANSWERING THE TEN MOST IMPORTANT QUESTIONS ABOUT AMICUS PRACTICE* (4th ed. 2015) (detailing the norms, values, and biases prevalent in the legal field).

601. *Id.*

602. Catherine L. Horn, Patricia Marin, Liliana M. Garces, Karen Miksch & John T. Yun, *Shaping Educational Policy Through the Courts: The Use of Social Science Research in Amicus Briefs in Fisher I*, 34 *EDUC. POL’Y* 449 (2020); Lewis & Eckes, *supra* note 4; Maria M. Lewis & Laura E. Bray, *A Call for Amicus Briefs as a Means to Influence Special Education Policy: Lessons Learned from Endrew F.*, 30 *J. DISABILITY POL’Y STUD.* 131 (2019); James F. Spriggs, II & Paul J. Wahlbeck, *Amicus Curiae and the Role of Information at the Supreme Court*, 50 *POL. RSCH. Q.* 365 (1997); Joseph D. Kearney & Thomas W. Merrill, *The Influence of Amicus Curiae Briefs on the Supreme Court*, 148 *U. PA. L. REV.* 743 (2000); Collins, Jr. et al., *supra* note 574.

603. See generally, e.g., Paul M. Collins, Jr., *Friends of the Court: Examining the Influence of Amicus Curiae Participation in U.S. Supreme Court Litigation*, 38 *LAW & SOC’Y REV.* 807 (2004) [hereinafter Collins, Jr., *Friends of the Court*]; Donald R. Songer & Reginald S. Sheehan, *Interest Group Success in the Courts: Amicus Participation in the Supreme Court*, 46 *POL. RSCH. Q.* 339 (1993); Paul M. Collins, Jr., *Lobbyists Before the U.S. Supreme Court: Investigating the Influence of Amicus Curiae Briefs*, 60 *POL. RSCH. Q.* 55 (2007); PAUL M. COLLINS, JR., *FRIENDS OF THE SUPREME COURT: INTERESTS GROUPS AND JUDICIAL DECISION MAKING* (2008); Kearney & Merrill, *supra* note 602.

about amicus briefs.<sup>604</sup> Nonetheless, scholars argue that “increased use of amicus briefs suggests that amici are convinced of their broader value, which includes influencing public discourse on an issue, increasing an organization’s visibility, or satisfying current and attracting new members.”<sup>605</sup> Moreover, attorneys may have a range of motivations behind the ways in which they frame their legal arguments, including speaking directly to a swing justice<sup>606</sup> or catering to the ideology of the court.<sup>607</sup> Amicus briefs serve as an entry point for interested stakeholders to inform judges of the potential impact of the case, including the human impact. In turn, these stakeholders have an opportunity to shape public policy.<sup>608</sup> Interestingly, unlike other venues to influence law and policy, the amicus brief process is not dominated by a particular type of interest group,<sup>609</sup> making the process a rich platform for a range of interested groups to weigh in on issues of public interest.

In constructing arguments, storytelling can serve as an informative tool for communicating the impact of the law on marginalized communities,<sup>610</sup> sometimes referred to as “voices briefs.”<sup>611</sup> These briefs have emerged in important cases related to marriage equality,<sup>612</sup> women’s health,<sup>613</sup> transgender and nonbinary rights,<sup>614</sup> and most relevant for present purposes, immigration policy.<sup>615</sup> CRT similarly emphasizes counterstorytelling and more specifically, UndocuCrit provides insight into the lived experiences of

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604. Paul M Collins, Jr., *The Use of Amicus Briefs*, 14 ANN. REV. L. & SOC. SCI. 219 *passim* (2018) (noting that additional research is necessary to understand the intent behind, and influence of, amicus briefs). Collins, Jr. argues that this work should also acknowledge the role of social movements. *See id.* Moreover, he supports the need for careful and methodical analysis of the content of the briefs. *See id.* These considerations were at the core of our study.

605. Catherine L. Horn et al., *supra* note 602, at 455. For further discussion of the broader impact, see Collins, Jr., *Friends of the Court*, *supra* note 603; SIMPSON & VASALY, *supra* note 600.

606. Peter K. Enns & Patrick C. Wohlfarth, *The Swing Justice*, 75 J. POL. 1089, 1091 (2013).

607. LAWRENCE BAUM, IDEOLOGY IN THE SUPREME COURT (2017); Lawrence Baum, *Ideology and the Court’s Work*, in SCOTUS 2020 163, 163–72 (Morgan Marietta ed., 2021).

608. Collins, Jr., *supra* note 604.

609. *Id.*

610. *See generally, e.g.*, Lewis & Eckes, *supra* note 4; Linda H. Edwards, *Telling Stories in the Supreme Court: Voices Briefs and the Role of Democracy in Constitutional Deliberation*, 29 YALE J.L. & FEMINISM 29 (2017); Nancy Levit, *Theorizing and Litigating the Rights of Sexual Minorities*, 19 COLUM. J. GENDER & L. 21 (2010); Lynn M. Paltrow, *Amicus Brief: Richard Thornburgh v. American College of Obstetricians and Gynecologists*, 9 WOMEN’S RTS. L. REP. 3 (1986); *see also* Collins, Jr., *supra* note 604.

611. Edwards, *supra* note 610, at 29.

612. *Id.* at 37 (referring to *Obergefell v. Hodges*, 576 U.S. 644 (2015)).

613. *Id.* at 30–31 (referring to *Whole Woman’s Health v. Hellerstedt*, 136 S. Ct. 2292 (2016)).

614. Lewis & Eckes, *supra* note 4 *passim* (referring to *G.G. v. Gloucester Cnty. Sch. Bd.*, 822 F.3d 709 (2016)).

615. *See* Brief for Defendant-Intervenors DACA Recipients, *supra* note 335.

undocumented and DACAmented individuals. Through the use of theory, we were able to identify the limitations of the “story” of DACA as told by amici.<sup>616</sup> In addition to separate briefs submitted by marginalized communities, amici more broadly should consider ways to honor the lived experiences of marginalized communities. Based on our analysis and the overall emphasis on societal interests (as opposed to the interests of DACA recipients), we encourage attorneys to challenge legal norms and traditions and expand upon efforts to use amicus briefs as an opportunity to amplify the voices of marginalized communities. This work should also consider opportunities to integrate relevant social science research, which has been particularly instructive in civil rights case law.<sup>617</sup>

In addition to professional norms, our study presents some implications for law school curricula. Law school is a generative space where budding lawyers not only learn the norms of the profession but also have an opportunity to experiment with different lenses and reimagine the profession through different approaches.<sup>618</sup> Learning the law and the norms of the profession thus is important, as is evaluating the law and its limitations to imagine how to improve it. This study is situated within a social context in which law schools, policymakers, and practitioners are engaging in unprecedented efforts to address systemic and institutional racism.<sup>619</sup> As Professor Dermot Groome stated,

In this important period of our national history, our country requires of us something that only we can provide: a generation of lawyers who will dismantle the remaining vestiges of systemic racism in our nation. We must educate the next generation of lawyers to finish the job of rooting out systemic racism wherever it continues to live and breed. We must equip our students not simply with the knowledge and skills they will need for this task but with a sense of their place and role in our changing, imperfect, struggling democracy and with the enduring passion they will need to sustain their efforts.<sup>620</sup>

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616. Muñiz & Lewis, *supra* note 599.

617. *Brown v. Bd. of Educ.*, 347 U.S. 483 (1954); Susan T. Fiske, Donald N. Bersoff, Eugene Borgida, Kay Deaux & Madeline E. Heilman, *Social Science Research on Trial: Use of Sex Stereotyping Research in Price Waterhouse v. Hopkins*, 46 AM. PSYCH. 1049 (1991).

618. Dermot Groome, *Educating Antiracist Lawyers: The Race and the Equal Protection of the Laws Program at Dickinson Law* (June 29, 2021) (on file with Rutgers Race and Law Review).

619. *Liberty and Justice . . . for All? Confronting Systemic Racism and Addressing Civil Unrest—A Call to Action for Young Lawyers*, A.B.A. YOUNG LAWS DIV., [https://www.americanbar.org/groups/young\\_lawyers/resources/webinars/liberty-and-justice-for-all-confronting-systemic-racism](https://www.americanbar.org/groups/young_lawyers/resources/webinars/liberty-and-justice-for-all-confronting-systemic-racism) [<https://perma.cc/D2GJ-ALXN>]; *Law Deans Antiracist Clearinghouse Project*, ASS'N AM. L. SCHS., <https://www.aals.org/antiracist-clearinghouse> [<https://perma.cc/AC56-S826>].

620. Groome, *supra* note 618.

This significant work must be prioritized at a time when efforts to undermine anti-racist, critically oriented work have been on the rise at the national,<sup>621</sup> state,<sup>622</sup> and local levels.<sup>623</sup> Given the important role of the legal system in both perpetuating and dismantling systemic and institutional racism,<sup>624</sup> lawyers, judges, and other legal professionals are critical to this work. As such, law schools are making shifts in policies, practices, and curricular offerings. Reflecting this commitment, law school deans have issued targeted, explicit statements in support of CRT.<sup>625</sup> Similarly, the Association of American Law Schools has created “The Law Deans Antiracist Clearinghouse Project,” a central space and resource for law school deans to share and learn from one another in the effort to promote racial justice in law schools and beyond.<sup>626</sup> Scholars have argued that the law school curriculum fails to engage in critical conversations about race and racism,<sup>627</sup> including

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621. E.g., Exec. Order No. 13,950, 85 Fed. Reg. 60,683 (Sept. 28, 2020); see also Dana Brownlee, *Trump’s Ban Censors the Type of Diversity Training Organizations Need Most, Antiracism Training*, FORBES (Sept. 6, 2020, 5:02 PM), <https://www.forbes.com/sites/danabrownlee/2020/09/06/trumps-ban-censors-the-type-of-diversity-training-companies-need-most-antiracism-training/?sh=42970dd07e5e> [https://perma.cc/MLD9-2K4K].

622. E.g., Emma Winowiecki, *Michigan Republicans Want to Ban Critical Race Theory from Schools. What Exactly Does That Mean?*, MICH. RADIO (June 24, 2021, 11:16 AM), <https://www.michiganradio.org/post/michigan-republicans-want-ban-critical-race-theory-schools-what-exactly-does-mean> [https://perma.cc/F7C9-PZRJ]; Greg Childress & Kyle Ingram, *PW Special Report: The Right’s Coordinated Assault on Critical Race Theory in North Carolina*, N.C. POL’Y WATCH (June 24, 2021), <http://www.ncpolicywatch.com/2021/06/24/pw-special-report-the-rights-coordinated-assault-on-critical-race-theory-in-north-carolina> [https://perma.cc/28RZ-YLHU]; Rebekah Chung, *Kansas Lawmaker to Introduce Critical Race Theory Bill to Ban It from Schools*, KSNT (June 25, 2021, 9:01 PM), <https://www.ksnt.com/capitol-bureau/kansas-lawmaker-to-introduce-critical-race-theory-bill-to-ban-it-from-schools> [https://perma.cc/N4JC-CED9].

623. E.g., Brian Hill, *Cobb County School District Bans Teaching Students Critical Race Theory*, FOX 5 ATLANTA (June 10, 2021), <https://www.fox5atlanta.com/news/cobb-county-bans-critical-race-theory-in-public-schools> [https://perma.cc/FD7N-PQ9C]; Sam Knef, *Gallatin County Schools Becomes First Ky. School District to Ban Critical Race Theory*, SPECTRUM NEWS 1 LOUISVILLE (June 19, 2021, 9:30 AM), <https://spectrumnews1.com/ky/louisville/news/2021/06/18/gallatin-county-bans-crt> [https://perma.cc/RR2T-QU5T]; Karen Velie, *Paso Robles School Board Planning to Ban Critical Race Theory*, CAL COAST NEWS (June 20, 2021), <https://calcoastnews.com/2021/06/paso-robles-school-board-planning-to-ban-critical-race-theory> [https://perma.cc/52GD-5XA6].

624. See authorities cited *supra* note 619.

625. *Joint Statement of the Deans of the University of California Law Schools About the Value of Critical Race Theory*, UCLA L. (Sept. 11, 2020), <https://law.ucla.edu/news/joint-statement-deans-university-california-law-schools-about-value-critical-race-theory-0> [https://perma.cc/UKU6-RBX2].

626. *Law Deans Antiracist Clearinghouse Project*, *supra* note 619.

627. Alexi Nunn Freeman & Lindsey Webb, *Positive Disruption: Addressing Race in a Time of Social Change Through a Team-Taught, Reflection-Based, Outward-Looking Law School Seminar*, 21 U. PA. J.L. & SOC. CHANGE 121, 122 (2018) (citing Chris J. Iijima, *Separating Support from Betrayal: Examining the Intersections of Racialized Legal Pedagogy, Academic Support, and Subordination*, 33 IND. L. REV. 737, 754–55 (2000) (arguing that the “fiction that the dominant racial perspective is neutral” in law school courses causes law students of color to experience objectification, subjectification, and a sense of invisibility, which can lead to “disengagement and alienation”)); Rhonda V. Magee, *Competing*

whiteness<sup>628</sup> and misguided notions of objectivity and colorblindness.<sup>629</sup> Building upon important elective course offerings that explicitly address race and racism,<sup>630</sup> some law schools are requiring a course on racism as a part of their curriculum.<sup>631</sup> Reflecting this need, this study revealed a color-evasive narrative of DACA.<sup>632</sup> As such, we stand in solidarity with law schools that have taken explicit steps to address racism within required coursework. Moreover, we encourage other law schools to create similar standalone courses and ensure that this commitment is similarly threaded throughout traditional required courses, not as a solution, but as one part of a larger effort to address racism in law schools and society more broadly. These curricular efforts have the potential to shape future attorneys' understanding of the law and their role in dismantling systemic racism.<sup>633</sup> In turn, this has the potential to increase the use of anti-racist, humanizing arguments in legal briefs, which can work in tandem with, and inform, legal arguments.

### C. FUTURE IMMIGRATION REFORM AND POLICY

Our study is also situated within the broader immigration rights scholarship and movement and has implications for immigration reform and

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*Narratives, Competing Jurisprudences: Are Law Schools Racist? And the Case for an Integral Critical Approach to Thinking, Talking, Writing, and Teaching About Race*, 43 U. S.F. L. REV. 777, 780–81 (2009) (“That law schools can and do perpetuate the privileges of ‘Whiteness’ and disadvantages of ‘Blackness’ and ‘Coloredness’ embedded in our society and legal culture since the founding—[that is], that law schools inevitably manifest institutionalized racism against people of color—should by now be beyond cavil.”); see also Erin C. Lane, *Racialized Interactions in the Law School Classroom: Pedagogical Approaches to Creating a Safe Learning Environment*, 67 J. LEGAL EDUC. 780, 782 (2018).

628. Freeman & Webb, *supra* note 627, at 122–23 (citing Margalynne J. Armstrong & Stephanie M. Wildman, *Teaching Race/Teaching Whiteness: Transforming Colorblindness to Color Insight*, 86 N.C. L. REV. 635, 638–39 (2008)).

629. Iijima, *supra* note 627, at 757–58.

630. For example, UCLA Law offers courses in Critical Race Theory, Advanced Critical Race Theory, and Critical Race Judgments: Critical Race Theory and Supreme Court Decisionmaking. See *Law 266 Critical Race Theory*, UCLA L., <https://law.ucla.edu/academics/curriculum/critical-race-theory> [<https://perma.cc/VYW4-9327>]. Duke Law similarly offers a course on critical race theory. See *504 Critical Race Theory*, DUKE L., [https://law.duke.edu/academics/course/504#:~:text=Critical%20race%20theory%20\(CRT\)%2C,approaches%20to%20solving%20legal%20problems](https://law.duke.edu/academics/course/504#:~:text=Critical%20race%20theory%20(CRT)%2C,approaches%20to%20solving%20legal%20problems) [<https://perma.cc/K5EH-86PN>]. UNC Law also has a Critical Race Civil Rights Clinic. See *Critical Race Lawyering Civil Rights Clinic*, UNC SCH. L., <https://law.unc.edu/experiential-learning/clinics/critical-race-lawyering-civil-rights-clinic> [<https://perma.cc/9VTN-RCU9>].

631. Janelle McPherson, *USC One of the First Schools to Make Racism Course Mandatory*, PRELAW (Mar. 9, 2021, 11:57 AM), <https://www.nationaljurist.com/prelaw/usc-one-first-schools-make-racism-course-mandatory> [<https://perma.cc/B8KC-VZC3>] (discussing USC Gould School of Law); Groome, *supra* note 618, at 6.

632. Muñiz & Lewis, *supra* note 599.

633. See authorities cited *supra* notes 630–31.

policy.<sup>634</sup> Immigration is the story of America, and thus, immigration reform has been an ever-present topic of discussion in the U.S. political sphere.<sup>635</sup> Unfortunately, immigration reform and policy have been most influenced by politics rather than sound policymaking.<sup>636</sup> Yet, our analysis and findings underscored the need for a permanent solution, through immigration reform, for DACA recipients and other undocumented immigrants.<sup>637</sup> We found in the amicus briefs that a seemingly small change in lawful status had a reverberating positive impact for recipients, their families, and society in general.<sup>638</sup> We encourage policymakers to consider how a more permanent solution to recipients' immigration status, though a politically fraught issue, would allow for further integration into society and confer additional benefits to recipients.

In contemporary immigration reform movements, the DACA policy and related efforts to provide permanent solutions for young undocumented immigrants are situated within a broader call to reform the immigration

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634. See generally Shoba Sivaprasad Wadhia, *Immigration Litigation in the Time of Trump*, 53 U.C. DAVIS L. REV. ONLINE 121 (2019) (describing ongoing litigation regarding President Donald Trump's immigration policies in the summer of 2019); Wadhia, *supra* note 123 (rebutting the notion that President Barack Obama lacks authority to enforce DACA); Kevin R. Johnson, *Lessons About the Future of Immigration Law from the Rise and Fall of DACA*, 52 U.C. DAVIS L. REV. 343 (2018) (tracing the congressional inaction on immigration reform, presidential responses, and possible future reform); Bono, *supra* note 122 (evaluating the federal immigration system and the consequences of DREAMers' lack of statutory relief); MICHAEL A. OLIVAS, PERCHANCE TO DREAM: A LEGAL AND POLITICAL HISTORY OF THE DREAM ACT AND DACA (2020) (providing a historical account of immigration litigation and reform from the 1982 case *Plyler v. Doe* to President Trump's legal challenge to DACA).

635. Waves of people from different parts of the world have migrated to the United States throughout history. *Modern Immigration Wave Brings 59 Million to U.S., Driving Population Growth and Change Through 2065*, PEW RSCH. CTR. (Sept. 28, 2015), <https://www.pewresearch.org/hispanic/2015/09/28/modern-immigration-wave-brings-59-million-to-u-s-driving-population-growth-and-change-through-2065> [https://perma.cc/5AFL-B5H8]. Indigenous communities occupied the land of the United States prior to English immigrants. Since then, different waves of migration have followed, including Irish, Italian, Mexican, and Central American immigrants, to name a few. See Andrés Rodríguez-Pose & Viola von Berlepsch, *Does Population Diversity Matter for Economic Development in the Very Long Term? Historic Migration, Diversity and Country Wealth in the US*, 35 EUR. J. POPULATION 873, 889 (2019). An anti-immigrant sentiment has also been pervasive throughout each wave. Marco Tabellini, *Gifts of the Immigrants, Woes of the Natives: Lessons from the Age of Mass Migration*, 87 REV. ECON. STUD. 454, 455, 461–62 (2020). Debates about who should be welcomed and how (that is, process) have been at the fore of the political discussions. These political discussions led to the adoption of restrictive laws, the most pertinent of which is the Immigration Nationality Act of 1965 (INA), the governing law in immigration law. Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 Stat. 911 (codified in scattered sections of 8 U.S.C. ch. 12).

636. See Richard Johnson, *Trump, the Democrats, and the Politics of Immigration*, 9 POL. INSIGHT 15, 16 (2018) (describing the polarization of immigration policy along party lines); Robert H. Wood, *The Crushing of a Dream: DACA, DAPA and the Politics of Immigration Law Under President Obama*, 22 BARRY L. REV. 27, 43–45 (2016).

637. See *supra* Part V.

638. See *supra* Part V.

system to one that is more just.<sup>639</sup> The need for a more just system was highlighted in the amicus briefs, which implicitly and explicitly discussed the vulnerabilities of immigrants in mixed status families and the negative impact they experience when living in a liminal status.<sup>640</sup> The contemporary plight of young undocumented immigrants has been debated since the early 2000s.<sup>641</sup> With a growing undocumented population, including young children, the U.S. legislature introduced the DREAM Act, but it was not successful.<sup>642</sup> The DREAM Act would provide a permanent immigration status to young undocumented immigrants.<sup>643</sup> Since then, legislators across the political spectrum have proposed similar bills to no avail.<sup>644</sup>

The challenges in creating systemic changes to immigration law and policy are impacted by fraught political debates.<sup>645</sup> Some critics with left-leaning ideologies oppose measures that would further fracture the immigrant community by legalizing only DACA-eligible immigrants, perpetuating the dominant “good” versus “bad” immigrant narrative, and leaving older immigrants without any protection.<sup>646</sup> This differentiation was both implied and explicitly referenced in the amicus briefs as well—stakeholders implicitly framing recipients as “good immigrants” deserving of protection.<sup>647</sup> Critics with right-leaning ideologies generally oppose

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639. Adrienne Pon, *The Dreamer Divide: Aspiring for a More Inclusive Immigrants' Rights Movement*, 14 STAN. J. C.R. & C.L. 33, 34–35 (2018).

640. See *supra* Part V.

641. In 1986, Ronald Reagan signed into law a sweeping immigration bill that legalized a large proportion of undocumented immigrants in the United States. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359. Families who immigrated to the United States after the law did not qualify for reprieve and permanent immigration status. By 2000, the children in these families continued to grow up in a country that provided them with the hope for a better future but continued to deny them opportunities once they became of age. See *Plyler v. Doe*, 457 U.S. 202, 228–29 (1982) (striking down a Texas statute that permitted public schools to deny enrollment to undocumented children). Thus, discussions of immigration reform for these children and youth garnered sufficient traction.

642. S. 1291, 107th Cong. (2001).

643. *Id.*

644. *Id.*; see, e.g., S. 1545, 108th Cong. (2003); H.R. 1468, 108th Cong. (2003); S. 2075, 109th Cong. (2005); H.R. 5131, 109th Cong. (2005); S. 2205, 110th Cong. (2007); H.R. 1275, 110th Cong. (2007); H.R. 5281, 111th Cong. (2010); S. 729, 111th Cong. (2009); S. 3992, 111th Cong. (2010); H.R. 1842, 112th Cong. (2011); S. 952, 112th Cong. (2011); H.R. 1468, 115th Cong. (2017); H.R. 3591, 115th Cong. (2017); H.R. 2820, 116th Cong. (2019).

645. Johnson, *supra* note 634, at 358 (“[D]espite years of turbulent debate over a variety of reform proposals, Congress has been unable to agree to the compromises necessary to pass a comprehensive immigration reform bill.”).

646. Yalidy Matos, *The “American DREAM”: Understanding White Americans’ Support for the DREAM Act and Punitive Immigration Policies*, 19 PERSPS. ON POL. 422, 456 (2021); Charles R. Chandler & Yung-mei Tsai, *Social Factors Influencing Immigration Attitudes: An Analysis of Data from the General Social Survey*, 38 SOC. SCI. J. 177, 185–87 (2001).

647. See *supra* Part V.

providing a pathway toward a permanent immigration status to any undocumented immigrants, arguing the efforts would reward undocumented immigrants or incentivize further undocumented immigration.<sup>648</sup> These critiques do not consider that the U.S. immigration system has become what scholars describe as too complex and providing few, if any, pathways for these undocumented immigrants.<sup>649</sup> However, right-leaning legislators have been more receptive to providing a pathway toward permanent immigration status for young undocumented immigrants, often noting that young undocumented immigrants who arrived to the United States at a young age did so through no fault of their own.<sup>650</sup> This narrative is quite prominent in public discourse and it was present across the amicus briefs as well, regardless of the stakeholders involved or ideologies represented.<sup>651</sup> To ensure that only those who arrived at a young age through no fault of their own benefit from legislative solutions, Republicans have introduced bills that would provide status protection to DACA-eligible immigrants, albeit through lengthy processes and a vast number of requirements or sometimes providing permanent residency with no pathway toward citizenship.<sup>652</sup> However, our findings demonstrate the wide-reaching implications of a policy framework that treats recipients as second-class citizens, leaving them with a life in limbo and with perpetual uncertainty.<sup>653</sup>

Attempts to meet the needs of undocumented youth have been met through a patchwork of support systems at the federal, state, and local levels.<sup>654</sup> As our study shows, DACA, through its three key elements—

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648. See Chris Kahn & David Morgan, *Republicans' Hostility Grows Toward Illegal Immigrants as Party Attacks Biden on Border*, REUTERS (Mar. 17, 2021, 3:02 AM), <https://www.reuters.com/article/us-usa-immigration-republicans/republicans-hostility-grows-toward-illegal-immigrants-as-party-attacks-biden-on-border-idUSKBN2B919J> [<https://perma.cc/H37T-554R>]; David A. Super, *The Future of U.S. Immigration Law*, 53 U.C. DAVIS L. REV. 509, 587–88 (2019).

649. MING HSU CHEN, PURSUING CITIZENSHIP IN THE ENFORCEMENT ERA 88–89 (2020). See generally Leisy J. Abrego, *Legal Consciousness of Undocumented Latinos: Fear and Stigma as Barriers to Claims-Making for First- and 1.5-Generation Immigrants*, 45 LAW & SOC'Y. REV. 337 (2011) (finding that the legal status of undocumented immigrants engenders fear and stigma that prevent making claims).

650. Carol L. Schmid, *Undocumented Childhood Immigrants, the Dream Act and Deferred Action for Childhood Arrivals in the USA*, 33 INT'L J. SOCIO. & SOC. POL'Y 693, 700–01 (2013).

651. See *supra* Part V.

652. See, e.g., H.R. 1468, 115th Cong. (2017).

653. See *supra* Sections V.B.1, V.C, V.D.1, V.D.3.

654. See Laura E. Enriquez, Martha Morales Hernandez, Daniel Millán & Daisy Vazquez Vera, *Mediating Illegality: Federal, State, and Institutional Policies in the Educational Experiences of Undocumented College Students*, 44 LAW & SOC. INQUIRY 679, 681–82 (2019) (describing the interplay of institutional, state, and federal policies to try to improve the experiences of undocumented students); ALEXIS M. SILVER, SHIFTING BOUNDARIES: IMMIGRANT YOUTH NEGOTIATING NATIONAL, STATE, AND SMALL-TOWN POLITICS 7–8 (2018); Leticia Oseguera, Stella M. Flores & Edolina Burciaga,

deferred deportation, a Social Security number, and work authorization—expansively broadened access to social benefits that the United States has tied to these three anchors.<sup>655</sup> Scholarship in this area discusses how connecting access to health insurance to employment,<sup>656</sup> and access to financial aid in college to a Social Security number, excludes immigrants from these benefits.<sup>657</sup> DACA provided these anchors within the executive branch’s prosecutorial discretion.<sup>658</sup> As we noted in our findings, state and local support, such as the adoption of state legislation, further expanded access to opportunities that depended on a Social Security number, work authorization, or lawful presence—the three key policy elements.<sup>659</sup> Unsurprisingly, the patchwork of support has created “pockets of inclusion or exclusion” for recipients, “where success or failure is a matter of chance,” dependent on where recipients reside.<sup>660</sup> This patchwork approach expanded opportunities and possibilities for recipients, and our findings showed how far reaching these benefits were across different sectors of American society.<sup>661</sup> But, as our findings indicate, the benefits were not universal and depended on where recipients resided.<sup>662</sup>

At the same time, the reverberating, significant impact of the policy, according to the amicus briefs, brings to the fore the importance of cross-system collaboration.<sup>663</sup> Different systems provide for recipients’ different needs, for example, stakeholders in the education system have expanded recipients’ educational access and invested in recipients’ professional

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*Documenting Implementation Realities: Undocumented Immigrant Students in California and North Carolina*, 206 J. COLL. ADMISSION 37, 38 (2010).

655. See *supra* Part V; *supra* note 42.

656. Mónica García-Pérez, *DACA Recipients and Their Health Insurance Dream: Employment, Schooling, and Health Coverage*, 2 J. ECON., RACE & POL’Y 77, 78 (2019); George J. Borjas, *Welfare Reform, Labor Supply, and Health Insurance in the Immigrant Population*, 22 J. HEALTH ECON. 933, 936 (2003); Hacker et al., *supra* note 46, at 180.

657. Bono, *supra* note 122, at 208 n.99; Carola Suárez-Orozco, *Conferring Disadvantage: Behavioral and Developmental Implications for Children Growing up in the Shadow of Undocumented Immigration Status*, 38 J. DEV. & BEHAV. PEDIATRICS 424, 424–25 (2017); Gámez et al., *supra* note 597, at 146.

658. Shoba Sivaprasad Wadhia, *The Role of Prosecutorial Discretion in Immigration Law*, 9 CONN. PUB. INT. L.J. 243, 246, 248, 261 (2010).

659. See *supra* Part V; Marie Price & Nicole Prchal Svajlenka, *Undocumented Youth and Their Unequal Rights: State Responses to Trump’s Immigration Policies*, in POLITICAL LANDSCAPES OF DONALD TRUMP 322, 329 (Barney Warf ed., 2021).

660. GONZALES, *supra* note 21, at 22.

661. See Cebulko & Silver, *supra* note 183, at 1569.

662. See *supra* Part V.

663. See *supra* Part V.

futures.<sup>664</sup> Thus, in regard to a comprehensive approach to immigration, our findings highlight the importance of collaboration and support across systems and institutions, including education,<sup>665</sup> healthcare,<sup>666</sup> and economic considerations,<sup>667</sup> such as housing and employment. The findings also underscore that the change must be permanent.<sup>668</sup> Otherwise, as the amicus briefs showed, recipients will continue to live in a liminal status with limited opportunities, while the United States and its citizens continue to derive substantial benefits from recipients and their contributions.<sup>669</sup>

A permanent, cross-system collaboration is within the purview of the federal government and may be possible with a new administration at the helm.<sup>670</sup> Following four years of overt anti-immigrant sentiments led by the preceding president, President Biden has outlined an agenda that supports DACA-eligible immigrants.<sup>671</sup> His commitment is unsurprising, given that he served as President Obama's Vice President when President Obama announced DACA. In his first day in office, he affirmed his support for DACA, issuing a memorandum that reinstated the DACA policy to its

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664. See Corinne Harmon, Glenda Carne, Krista Lizardy-Hajbi & Eugene Wilkerson, *Access to Higher Education for Undocumented Students: "Outlaws" of Social Justice, Equity, and Equality*, 5 J. PRAXIS MULTICULTURAL EDUC. 67, 68 (2010); MICHELLE CAMACHO LIU, INVESTING IN HIGHER EDUCATION FOR LATINOS: TRENDS IN LATINO COLLEGE ACCESS AND SUCCESS 6–8 (2011), <https://www.ncsl.org/documents/educ/trendsinlatinosuccess.pdf> [<https://perma.cc/TD8B-FSJM>]; H. Kenny Nienhusser, *Higher Education Institutional Agents as Policy Implementers: The Case of Policies That Affect Undocumented and DACAmented Students*, 41 REV. HIGHER EDUC. 423 (2018).

665. See *supra* Section V.B.

666. See *supra* Section V.D.

667. See, e.g., *supra* Section V.A.

668. See *supra* Part V.

669. See *supra* Part V.

670. U.S. Citizenship Act, H.R. 1177, 117th Cong. (2021); Exec. Order No. 14012, 86 Fed. Reg. 7211 (Feb. 2, 2021); Exec. Order No. 13999, 86 Fed. Reg. 7211 (Jan. 21, 2021); Exec. Order No. 13993, 86 Fed. Reg. 7051 (Jan. 20, 2021); see also Exec. Order No. 1403, 86 Fed. Reg. 8839 (Feb. 9, 2021) (highlighting the overlap of climate change and its impact on immigration).

671. President Biden also attempted to reverse some of his predecessor's prior policies, including the border's Migrant Protection Protocols (MPP)—most prominently known as the Remain in Mexico policy. *DHS Issues a New Memo to Terminate MPP*, DEP'T HOMELAND SEC. (Oct. 29, 2021), <https://www.dhs.gov/news/2021/10/29/dhs-issues-new-memo-terminate-mpp> [<https://perma.cc/9A7R-QAT8>]. The policy slowed the number of asylum seekers even when they were eligible. Muzaffar Chishti & Jessica Bolter, *Court-Ordered Relaunch of Remain in Mexico Policy Tweaks Predecessor Program, but Faces Similar Challenges*, MIGRANT POL'Y INST. (Dec. 2, 2021), <https://www.migrationpolicy.org/article/court-order-relaunch-remain-in-mexico> [<https://perma.cc/L29M-VW6X>]. However, after several states sued, a court ordered the Biden administration to reestablish MPP. *Id.* A narrower version of MPP remained in place since December 2021, while the administration continues to challenge the court rulings. Nick Miroff & Arelis R. Hernández, *'Remain in Mexico' Is Back Under Biden, with Little Resemblance to Trump Version*, WASH. POST (Feb. 4, 2022, 2:23 PM), <https://www.washingtonpost.com/national-security/2022/02/04/biden-mpp-mexico> [<https://perma.cc/6BLF-A3FH>].

original 2012 status.<sup>672</sup> The Biden administration also issued directives, a change to prior immigration policy, to administrative agencies to adopt changes in the language immigrant-serving agencies use.<sup>673</sup> This change is a step toward humanizing immigrants and provides an example that others can follow, including amici engaged in presenting arguments before the courts. Unfortunately, we found that this humanizing framing was largely absent in the amicus briefs.<sup>674</sup> To exemplify a humanizing approach, consider how federal agencies are replacing terms such as “illegal alien” with “undocumented noncitizen” and “assimilation” with “integration.”<sup>675</sup> The rationale behind these changes is to adopt a more humane immigration system, in which “[w]e enforce our nation’s laws while also maintaining the dignity of every individual with whom we interact. The words we use matter and will serve to further confer that dignity to those in our custody.”<sup>676</sup> At the outset, we acknowledge that change in language is necessary though not sufficient,<sup>677</sup> and that critics of the Biden administration have identified shortcomings of the administration’s immigration policy.<sup>678</sup> Policy and practice that leads to systemic change is critical in furthering justice.<sup>679</sup> Nonetheless, language is powerful.<sup>680</sup> It has the power to humanize, to make

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672. Presidential Memorandum on Preserving and Fortifying Deferred Action for Childhood Arrivals (DACA), 86 Fed. Reg. 7053 (Jan. 20, 2021) (“The Secretary of Homeland Security, in consultation with the Attorney General, shall take all actions he deems appropriate, consistent with applicable law, to preserve and fortify DACA.”). A federal district court in Texas, however, subsequently found DACA to be in violation of the law. *See supra* text accompanying note 55.

673. Memorandum from Troy A. Miller, Senior Off. Performing the Duties of the Comm’r, U.S. Customs & Border Protection, Updated Terminology for CBP Communications and Materials (Apr. 19, 2021), <https://www.aila.org/infonet/terminology-communications> [<https://perma.cc/GW53-VMTN>].

674. *See supra* Part V.

675. Memorandum from Troy A. Miller, *supra* note 673.

676. Joel Rose, *Immigration Agencies Ordered Not to Use Term “Illegal Alien” Under New Biden Policy*, NPR (April 19, 2021, 2:51 PM), <https://www.npr.org/2021/04/19/988789487/immigration-agencies-ordered-not-to-use-term-illegal-alien-under-new-biden-policy> [<https://perma.cc/7QW4-VGBV>] (quoting Troy Miller, the top official at Customs and Border Protection).

677. *See supra* Section VI.A.

678. *See, e.g.*, WOMEN’S REFUGEE COMM’N, DOUBLING DOWN ON DETERRENCE: ACCESS TO ASYLUM UNDER BIDEN 1–4 (2021) (describing policies under the Biden administration that have limited access to asylum), [https://www.womensrefugeecommission.org/wp-content/uploads/2021/09/Doubling-Down-on-Deterrence\\_-Access-to-Asylum-Under-Biden-FACTSHEET-1-1.pdf](https://www.womensrefugeecommission.org/wp-content/uploads/2021/09/Doubling-Down-on-Deterrence_-Access-to-Asylum-Under-Biden-FACTSHEET-1-1.pdf) [<https://perma.cc/XAU2-Q8VV>].

679. *See, e.g.*, Maggie Walter, Stephanie Russo Carroll, Tahu Kukutai & Desi Rodriguez-Lonebear, *Embedding Systemic Change—Opportunities and Challenges*, in INDIGENOUS DATA SOVEREIGNTY AND POLICY 226, 228 (Maggie Walter, Tahu Kukutai, Stephanie Russo Carroll & Desi Rodriguez-Lonebear eds., 2021); Jovonnie L. Esquierdo-Leal & Ramona A. Houmanfar, *Creating Inclusive and Equitable Cultural Practices by Linking Leadership to Systemic Change*, 14 BEHAV. ANALYSIS PRAC. 499, 503 (2021).

680. *See* Maarten Sap, Saadia Gabriel, Lianhui Qin, Dan Jurafsky, Noah A. Smith & Yejin Choi, *Social Bias Frames: Reasoning About Social and Power Implications of Language* 5477–90 (2020)

people feel included, and increase their sense of belonging.<sup>681</sup> The same can be adopted in amicus briefs.

The necessity of a permanent solution can only occur through federal legislation. The Biden administration has spurred and ushered legislative efforts. One effort included exploring the possibility of using the process of budget reconciliation to provide permanent legal protection to a small set of undocumented immigrants, including DACA-eligible immigrants, under the premise that these immigrants contribute to the economy.<sup>682</sup> As our analysis demonstrates, there is sufficient data to support how recipients contribute to the economy in numerous and significant ways.<sup>683</sup> In fact, recipients' contributions to the economy were the main theme in the amicus briefs.<sup>684</sup> The nexus to the economy would be central to the Biden administration's argument, given that policies adopted through the budget reconciliation process must have a tie to the economy.<sup>685</sup> While legislation would require the support of two-thirds of the Senate, policy passed through the reconciliation process would not.<sup>686</sup>

A second effort that could address the individual and societal concerns amici expressed in their briefs<sup>687</sup> would be the U.S. Citizenship Act, which President Biden sent to Congress on his first day in office and Senator Robert Menendez (D-NJ) and U.S. Representative Linda Sanchez (D-CA) introduced in their respective chambers on February 18, 2021.<sup>688</sup> The Act would reform and transform immigration law toward family-based immigration and includes some key changes that would benefit DACA

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(unpublished manuscript) (on file with the Association for Computational Linguistics); Cristian Danescu-Niculescu-Mizil, Lillian Lee, Bo Pang & Jon Kleinberg, *Echos of Power: Language Effects and Power Differences in Social Interaction*, in WWW 2012—SESSION: SOCIAL INTERACTIONS AND THE WEB 699 (2012).

681. Jennifer Merolla, S. Karthick Ramakrishnan & Chris Haynes, "Illegal," "Undocumented," or "Unauthorized": *Equivalency Frames, Issue Frames, and Public Opinion on Immigration*, 11 PERSPS. ON POL. 789, 801 (2013); Joy Moncrieffe, *Labelling, Power and Accountability: How and Why 'Our' Categories Matter*, in THE POWER OF LABELLING: HOW PEOPLE ARE CATEGORIZED AND WHY IT MATTERS 1, 1–3 (Joy Moncrieffe & Rosaline Eyben eds., 2007); see also Simar Singh Bajaj, Lucy Tu & Fatima Cody Stanford, *Words Matter, Humanity Matters: Alienating Non-Citizens from the COVID-19 Vaccine*, 97 POSTGRADUATE MED. J. 481, 481 (2021).

682. Nandita Bose, *Biden Calls for Big Budget Bill to Include Immigration*, REUTERS (July 30, 2021), <https://www.reuters.com/world/us/biden-says-immigration-should-be-big-democratic-budget-bill-2021-07-29> [<https://perma.cc/LJZ3-EGYB>].

683. See *supra* Section V.A.

684. See *supra* note 268 (listing all of the briefs used for reference).

685. Congressional Budget and Impoundment Control Act of 1974, H.R. 7130, 93d Cong. § 310 (1973).

686. *Id.*

687. See *supra* Part V.

688. See U.S. Citizenship Act, H.R. 1177, 117th Cong. (2021).

recipients.<sup>689</sup> DACA recipients would have an expedited process to apply for permanent residence, public institutions of higher education would no longer be prohibited from offering in-state tuition rates to undocumented immigrants on the basis of residence in the state unless they offered the same to out-of-state residents, and the Act would remove the “lawfully present” bar recipients face in meeting eligibility requirements for the Affordable Care Act, providing health insurance to many immigrants.<sup>690</sup> As the amici in our study emphasized, these were areas of great concern to recipients and would be addressed through a permanent legislative solution to recipients’ immigration status.<sup>691</sup> As was evident in our findings, while the cross-system collaboration increased the opportunities available to recipients, the opportunities are temporary and limited given recipients’ liminal immigration status, leading to permanent second-class citizenship.<sup>692</sup> The Act would lessen recipients’ liminality.

Our findings also point to the importance of transborder solutions.<sup>693</sup> Throughout the briefs, amici argued that recipients had arrived in the United States because their families were leaving unfavorable or dangerous conditions in their home countries.<sup>694</sup> For some, such as recipients who are members of the LGBTQ+ community, the conditions in these countries could lead to their persecution and death.<sup>695</sup> Thus, transborder solutions that attempt to address the root causes of current migration patterns are better suited to address the challenges immigrants face in their home countries and the United States. The Act, in line with these cross-system, transborder needs, calls for a systemic approach to reforming the immigration system.<sup>696</sup> The legislation promotes collaboration among the United States and Central American countries, offering additional pathways for immigration status and offering monetary support to El Salvador, Guatemala, and Honduras to mitigate corruption, violence, and poverty, all which influence immigration from Central America to the United States.<sup>697</sup> Similar conditions over decades incentivized the migration of DACA recipients and their family members.<sup>698</sup> The Biden administration’s renewed immigration reform and policy efforts draw attention to the need for change and to provide

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689. *Id.*

690. *Id.* § 1103.

691. *See supra* Part V.

692. *See supra* Sections I.A., V.A–D.

693. *See supra* Part V.

694. *See supra* Section V.C.

695. *See supra* Section V.C.1.

696. U.S. Citizenship Act, H.R. 1177, 117th Cong. (2021).

697. *See id.* §§ 2204, 2107.

698. *See id.* §§ 2101, 2103–2106.

permanence to DACA recipients who have lived in limbo for nearly a decade. Collaboration across systems and borders can lead to robust support for young undocumented immigrants, including DACA recipients.<sup>699</sup>

### CONCLUSION

The social context of the law has the power to inform courts about the significance of the law in people's lives.<sup>700</sup> In civil rights cases, the need to inform the court about the wide-ranging impact a court ruling can have on individuals' lives is particularly pressing.<sup>701</sup> Our findings highlighted the vast significance of the DACA policy for all areas of recipients' lives.<sup>702</sup> Moreover, using a critical perspective, we were able to identify the limitations of stakeholders' application of the legal framework with embedded consideration of the social context.<sup>703</sup> Through the application of the legal framework with social context, amici documented the impact of DACA.<sup>704</sup> But, stakeholders enjoyed substantial discretion in framing the implications of the law on recipients' lives and their framing largely did not humanize recipients.<sup>705</sup> Their arguments emphasized and prioritized the interests that converged with the U.S. economy and the needs of the United States and its citizens generally.<sup>706</sup> The approach is reminiscent of the approaches in other civil rights movements where the needs of minoritized communities advance when they benefit the white majority (for example, *Brown v. Board of Education*).<sup>707</sup> While the approach amici took in the case was likely informed by their audience, that is, a conservative-leaning Supreme Court, lawyers have the power to shift norms and law schools can adopt anti-racist curricula and shift practices in ways that socialize law students into adopting socially just arguments that do not other minoritized communities.<sup>708</sup> Amici's arguments matter beyond the courts, because they contribute to the public policy debates at large.<sup>709</sup> Via a humanizing lens, amici can leverage their legal platform to inform the broader discussion

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699. See, e.g., Jen Vanek, Heide Spruck Wrigley, Erik Jacobson & Janet Isserlis, *All Together Now: Supporting Immigrants and Refugees Through Collaboration*, 2 ADULT LITERACY EDUC. 41, 42 (2020); Ludmila De Faria, Carlos J. Gomez & Alex Johnson, *No Wrong Door: Improving Access Through Collaboration*, in COLLEGE PSYCHIATRY 55, 57, 67 (Michelle B. Riba & Meera Menon eds., 2021).

700. See Lewis & Eckes, *supra* note 4, at 78.

701. See, e.g., *Brown v. Board of Educ.*, 347 U.S. 483, 494 n.11 (1954).

702. See *supra* Part V.

703. See *supra* Part IV.

704. See *supra* Section III.B.

705. See *supra* Part V.

706. See *supra* Part V.

707. See *supra* Section IV.A.2.

708. See *supra* Section VI.B.

709. See Collins, Jr., *Friends of the Court*, *supra* note 603, at 825.

regarding populations who live in liminal positions and thereby influence the courts' rulings toward more just outcomes.<sup>710</sup>

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710. *See supra* Part VI.

## APPENDIX: AMICI CATEGORIES

<i>Amici Type</i>	<i>Definition</i>	<i>Brief</i>
Colleges, Universities, Schools, and Educational Organizations (7)  Reliance Interest Arguments (7)	Briefs submitted by colleges; universities; university-affiliated associations, organizations, groups, or centers; schools; or by educational organizations or associations not affiliated with a college or university	<b>Nineteen Colleges and Universities</b>
		<b>Institutions of Higher Education</b>
		<b>Teach for America, Inc.</b>
		<b>Association of American Medical Colleges et al.</b>
		<b>The National Education Association and National PTA</b>
		<b>American Council on Education and 43 Other Higher Education Associations</b>
		<b>National School Boards Association et al.</b>
Business Groups and Trade Associations (5)	Briefs submitted by business groups, corporations, or trade associations	<b>143 U.S. Business Associations and Companies</b>
		<b>The National Association of Home Builders, the Real Estate Roundtable, and the Essential Worker Immigration Coalition</b>

Reliance Interest Arguments (4)		<b>Service Employees International Union, American Federation of Labor and Congress of Industrial Organizations, and American Federation of State, County and Municipal Employees</b>
		Save Jobs USA and the WA Alliance of Technology Workers
		<b>Tim Cook, Deirdre O'Brien, and Apple</b>
Research Organizations and Scholars (7)	Briefs submitted by scholars, practitioners, and litigators	Administrative Law Scholars
Reliance Interest Arguments (2)		<b>Administrative Law Practitioners</b>
		Immigration Law Scholars
		Professors Dean Ronald A. Cass, Christopher C. Demuth, Sr., and James L. Huffman
		CATO Institute and Professor Jeremy Rabkin as Amici Curiae Supporting DACA as a Matter of Policy but Petitioners as a Matter of Law
		American Historical Association, Organization of American Historians, 42 Historians, and the Fred T. Korematsu Center for Law and Equality
<b>Empirical Scholars</b>		

<p>Individuals with Current or Former Government Affiliation (5)</p> <p>Reliance Interest Arguments (2)</p>	<p>Briefs submitted by individuals who are or were employed by the federal government or a state government</p>	<p><b>Former Service Secretaries, Modern Military Association of America, and Military and Veteran Advocacy Organizations</b></p> <p>Current Members of Congress and Bipartisan Former Members of Congress</p> <p>Former Homeland Security and Immigration Officials</p> <p>Former National Security Officials</p> <p><b>Current and Former Prosecutors and Law Enforcement Leaders</b></p>
<p>Governments (4)</p> <p>Reliance Interest Arguments (3)</p>	<p>Briefs submitted by the U.S. government, state governments, and other governments with interest</p>	<p><b>States of Nevada, Michigan, Wisconsin, Governor Laura Kelly of Kansas, and Governor Steve Bullock of Montana</b></p> <p><b>109 Cities, Counties, Municipalities, and Local Government Advocacy Organizations</b></p> <p>States of Texas, Alabama, Alaska, Arizona, Arkansas, Florida,</p> <p>Kansas, Louisiana, Nebraska, South Carolina, South Dakota and West Virginia, and Governor Phil Bryant of Mississippi</p> <p><b>Government of the United Mexican States</b></p>

Individuals and Alumni (1)  Reliance Interest Arguments (0)	Briefs submitted by individuals or alumni who are not faculty or scholars affiliated with a college or university	DACA Recipients and State of New Jersey in Support of Respondents
Advocacy Organizations (8)  Reliance Interest Arguments (6)	Briefs submitted by organizations that seek to advocate, represent, and promote causes of interest	<b>The American Professional Society on the Abuse of Children, The American Academy of Pediatrics, The Center for Law and Social Policy, and 33 Child Advocacy Organizations, Medical Professionals, and Child Development Experts</b>
		<b>National Queer Asian Pacific Islander Alliance and Others</b>
		<b>Alianza Americas and 10 Other Immigration Rights Organizations</b>
		Public Citizen, Natural Resources Defense Council, and American Civil Liberties Union
		<b>United We Dream and 50 Organizations</b>
		<b>127 Religious Organizations</b>
		<b>The United States Conference of Catholic Bishops and Other Christian Organizations</b>

		Citizens United, Citizens United Foundation, English First Foundation, Public Advocate of the U.S., The Senior Citizens League, 60 Plus Foundation, Gun Owners of America, Conservative Legal Defense and Education Fund, Patriotic Veterans, Policy Analysis Center, and Restoring Liberty Action Committee
Legal Organizations and Institutes (7)	Briefs submitted by legal organizations and institutes that provide services and legal assistance to those in need	Immigration Reform Law Institute
Reliance Interest Arguments (2)		<b>Nonprofit Legal Services Organizations</b>
		<b>Lawyers' Committee for Civil Rights Under Law, the Anti-Defamation League, the Leadership Conference on Civil and Human Rights, and 42 Other Social Justice Organizations</b>
		Southeastern Legal Foundation
		Center for Constitutional Jurisprudence
		Public Interest Law Center, Washington Lawyers' Committee for Civil Rights and Urban Affairs, and the Mississippi Center for Justice
NAACP Legal Defense & Educational Fund, Inc., and Latino Justice PRLDEF		
<p><i>Note:</i> Bold indicates that Stakeholder made reliance interest arguments and was included in our final analysis (26).</p>		