

# DACA AND AGRICULTURE: WHY DEFERRED ACTION FOR CHILDHOOD ARRIVALS SHOULD NOT BE ALLOWED TO END

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## I. INTRODUCTION

This Note will discuss the impact of immigration on agriculture in America, focusing on the Deferred Action for Childhood Arrivals (DACA) program that was established in 2012 by President Barack Obama,<sup>1</sup> and the ramifications of the end of this program announced on September 5, 2017 pursuant to an order by President Donald Trump.<sup>2</sup> A background on the importance of immigration on agriculture in

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1. Memorandum from Janet Napolitano, Sec’y of Homeland Sec. on Exercising Prosecutorial Discretion to David V. Aguilar, Acting Comm’r, U.S. Customs & Border Prot., Alejandro Mayorkas, Dir., U.S. Citizenship & Immigration Serv. & John Morton, Dir., U.S. Immigration & Customs Enf’t (June 15, 2012), <https://perma.cc/8HPC-QF3P>.

2. Memorandum from Elaine C. Duke, Acting Sec’y of Homeland Sec. on Rescission of Deferred Action for Childhood Arrivals to James W. McCament, Acting Dir., U.S. Citizenship & Immigration Serv., Thomas D. Homan, Acting Dir., U.S. Immigration & Customs Enf’t, Kevin K. McAleenan, Acting Comm’r, U.S. Customs & Border Prot., Joseph B. Majer, Acting Gen. Counsel, James D. Nealon, Assistant Sec’y, Int’l Engagement & Julie

the United States and what should be done to ensure the future of the agricultural industry in light of the current political atmosphere surrounding immigration will also be addressed.

This Note will begin with an overview of immigration in the United States, specifically noting the importance of immigrant workers in agriculture. It will provide background information on DACA: on how it began, its effects, and what brought about its demise. It will also explain how DACA has been beneficial to agriculture and why the end of DACA will cause problems in the industry. Finally, this Note will call for Congress to take immediate action to provide permanent relief for those affected by the end of DACA and to prevent the inevitable hardship its end will cause to the agricultural industry.

## II. BACKGROUND ON IMMIGRATION IN THE UNITED STATES

While immigration reform has been a part of most recent political campaigns, the last comprehensive immigration overhaul in the United States was in 1990.<sup>3</sup> Prior to that, United States immigration policy was based on policy changes from 1952 and 1965.<sup>4</sup> Currently, immigration revolves primarily around employment-based programs and family-sponsored provisions, rather than quotas based on nationality, as in the past.<sup>5</sup>

There are four methods by which someone can immigrate to the United States: (1) employment-based, (2) family-sponsored, (3) diversity-based, and (4) refugees and asylees.<sup>6</sup> The Immigration Act of 1990 redesigned the first three of these categories, leaving the final group fundamentally unchanged.<sup>7</sup> Congress sets the number of visas to be issued for each category annually.<sup>8</sup> In addition to caps on

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M. Kirchner, Citizenship & Immigration Serv. Ombudsman (Sept. 5, 2017), <https://perma.cc/8BMB-SZ4N> (outlining the history of DACA and the reasons for its rescission).

3. MUZAFFAR CHISHTI & STEPHEN YALE-LOEHR, *MIGRATION POL'Y INST., THE IMMIGRATION ACT OF 1990: UNFINISHED BUSINESS A QUARTER-CENTURY LATER* 1-2 (July 2016), <https://perma.cc/P2EB-XV6F> (“The ideas underlying the 1990 Act date back to the 1981 recommendations of the Select Commission on the Immigration and Refugee Policy (SCIRP).”).

4. *Id.* at 1.

5. *Id.* at 3 (“Before 1990 those limits were about 20,000 [immigrants] per country per year and resulted in long backlogs for nationals of some countries.”).

6. *Id.* at 2.

7. *Id.*

8. Immigration and Nationality Act, 8 U.S.C. § 1157 (2018) (stating that the number of refugees allowed to enter the country is set by the president of the United States); CHISHTI & YALE-LOEHR, *supra* note 3 at 3.

the number of visas allowed per year for each category, there are also limits on how many people can emigrate from any one country.<sup>9</sup>

Family-sponsored immigration is designed for family members of United States Citizens (USC) and Legal Permanent Residents (LPR), to allow for reunification of families.<sup>10</sup> Categories within family-based immigration are based on the relationship between the USC or LPR and the family member wishing to immigrate, with priority given to immediate relatives of USCs.<sup>11</sup> Employment-based immigration was designed as a solution to labor shortages, with visas being issued for different classes of workers based on education, ability, and necessity.<sup>12</sup> There are five different types of employment-based immigrant visas and each has different requirements and cap limits.<sup>13</sup>

Diversity-based immigration is a relatively new concept and is designed to promote diversity in the United States.<sup>14</sup> There were several temporary programs that operated for this purpose, but the Immigration Act of 1990 made diversity-based immigration a permanent part of immigration law.<sup>15</sup> Diversity-based immigration is for people in countries with low rates of immigration to the United States.<sup>16</sup> The countries qualifying for the program vary annually based on the number of immigrants from each country.<sup>17</sup> Immigrants from the final category—refugees and asylees—are allowed to enter the United States (or to remain if they are already here) based on a history of persecution or fear of future persecution in their home countries.<sup>18</sup> Refugees and asylees must meet the same requirements to

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9. CHISHTI & YALE-LOEHR, *supra* note 3 at 3 (“The 1990 Act increased per-country ceilings to about 26,000 per country per year.”).

10. CHISHTI & YALE-LOEHR, *supra* note 3 at 3.

11. *Id.* (“[I]n setting a cap on family-based immigrant visas, Congress exempted the immediate relatives of U.S. citizens.” The lack of a cap on the number of visas available means there is no waiting line for this category of immigrants.)

12. *Id.*

13. *Id.* (EB-1 immigrants are priority workers who have extraordinary ability, EB-2 workers are professionals with at least a master’s degree, EB-3 immigrants are divided into professionals with bachelor’s degrees, skilled workers, and workers whose positions require less than two years of experience, EB-4 workers are “special immigrants” such as religious workers, and finally EB-5 immigrants must have invested at least \$500,000 into a company to fund the creation of ten or more full-time U.S. jobs.)

14. *Id.* at 4.

15. 8 U.S.C. § 1157; CHISHTI & YALE-LOEHR, *supra* note 3 at 4 (The program was made permanent by allotting 55,000 visas for immigrants from countries from which less than 50,000 people had migrated to the United States in the previous five years.)

16. CHISHTI & YALE-LOEHR, *supra* note 3 at 4.

17. *Id.*

18. *Refugees & Asylum*, U.S. CITIZENSHIP & IMMIGRATION SERV., <https://perma.cc/M7GT-SV43> (archived Aug. 18, 2018).

be considered, but the difference between the two groups arises in where they are located when they request permission to immigrate to the United States.<sup>19</sup> Refugee status is generally granted to people who apply from outside the United States, while asylum is granted to those who are already located in the United States or who are seeking admission at its borders.<sup>20</sup>

#### A. Historical Significance of Immigration in the United States

There is much debate in the United States about what makes someone American. Some say having ancestors of Caucasian descent makes them “more American,” while others argue risking their lives to travel from another country means they are more appreciative of what it means to be an American.<sup>21</sup> Still others say the only way someone can be a true American is by being born in the United States.<sup>22</sup> Regardless of which belief one subscribes to, there have been people living on the land now known as the United States of America for centuries.<sup>23</sup>

Concerns about immigration date back almost as long as the land has been settled and the current debates have changed only slightly to reflect modern issues.<sup>24</sup> United States immigration numbers have peaked at certain periods throughout history, and immigration policy has evolved over time to meet the changing needs of the country.<sup>25</sup> The world wars of the twentieth century and the terrorist attacks of September 11, 2001 played major roles in immigration policies, but these events are not alone in having shaped their course.<sup>26</sup> Despite these changes, the flow of immigrants has not stopped; immigration numbers—legal and illegal—are

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19. *Id.* (“Refugee status or asylum may be granted to people who have been persecuted, or fear they will be persecuted, on account of race, religion, nationality, and/or membership in a particular social group or political opinion.”).

20. *Id.*

21. Stacy McCland, Note, *Immigration Reform and Agriculture: What We Really Want, What We Really Need, and What Will Happen if They Leave?*, 10 BARRY L. REV. 63, 64 (2008).

22. *Id.*

23. *Id.* at 65 (Some scientists say that the first person arrived in Alaska in 12,000 B.C., thousands of years before Europeans sailed across the Atlantic Ocean and discovered America.).

24. *Id.*

25. U.S. CITIZENSHIP & IMMIGR. SERV., OVERVIEW OF INS HISTORY 6 (2012), <https://perma.cc/6YML-HFD8>.

26. *See id.* at 6-11.

continually increasing.<sup>27</sup> Immigrants are more than political tools; they are an integral part of American society.<sup>28</sup>

### B. United States Immigration Currently

“In 2016, approximately 18 million children under the age of 18 lived with at least one immigrant parent. They accounted for 26 percent of the 70 million children under age 18 in the United States.”<sup>29</sup> These numbers have been increasing steadily since statistics on immigration were first recorded in 1850.<sup>30</sup> Currently, the majority of immigrants come from Mexico, India, China, the Philippines, El Salvador, Vietnam, Cuba, the Dominican Republic, Korea, and Guatemala.<sup>31</sup> Immigrants from these ten countries account for more than half of the total immigrant population.<sup>32</sup>

It is a common misconception that immigrants are located primarily on the coasts, but immigrants settle throughout the United States. Kansas City, Missouri, for example, reported a 300% increase in the immigrant population between 1990 and 2015, compared to a 40% total population growth.<sup>33</sup> Between 2010 and 2014, the immigrant population in North Dakota increased 45%, other Midwestern and Western states showed similar increases.<sup>34</sup>

Immigrants are part of American culture and society. The numbers bear this out, as the percentage of immigrants increases each year.<sup>35</sup> The impact immigrants have on daily life is apparent. Immigrants are community leaders, teachers, scientists, politicians, and doctors. Immigrants are part of America.

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27. *Id.* at 6. (showing that 14.5 million immigrants were admitted to the United States in the first twenty years of the twentieth century); Jie Zong et al., *Frequently Requested Statistics on Immigrants and Immigration in the United States*, MIGRATION POL’Y INST. (Feb. 8, 2018), <https://perma.cc/7WZM-STC4> (stating that 1.38 million individuals arrived in 2015 alone).

28. AM. IMMIGR. COUNCIL, IMMIGRANTS IN THE U.S. 1 (2017), <https://perma.cc/8DCP-SU3T>.

29. Jie Zong et al., *supra* note 27; *see also* *Immigration and the Rural Workforce*, U.S. DEP’T AGRIC., <https://perma.cc/A8UC-BDWW> (archived Aug. 18, 2018).

30. Jie Zong et al., *supra* note 27.

31. *Id.*

32. *Id.*

33. RANDY CAPPS & ARIEL G. RUIZ SOTO, MIGRATION POLY INST., IMMIGRATION TO THE HEARTLAND: A PROFILE OF IMMIGRANTS IN THE KANSAS CITY REGION 1 (Oct. 2016), <https://perma.cc/V3B3-2XZ4>.

34. Steven A. Camarota & Karen Zeigler, *Immigrants in the United States: A Profile of the Foreign-Born using 2014 and 2015 Census Bureau Data*, CTR. FOR IMMIGR. STUD. (Oct. 3, 2016), <https://perma.cc/FDM6-BV9Y>.

35. Gustavo Lopez et al., *Key Findings about U.S. Immigrants*, PEW RES. CTR. (Sept. 14, 2018), <https://perma.cc/GAB9-L4FY>; Jie Zong et al., *supra* note 27.

### C. How Immigration Affects Agriculture

The immigrant population provides a sizable percentage of farm labor in the United States.<sup>36</sup> According to the Southern Poverty Law Center, “at least 6 out of 10 of our country’s farm workers are undocumented.”<sup>37</sup> Many of these workers come from impoverished countries seeking greater opportunity here in the United States than they can hope to attain in their countries of origin.<sup>38</sup> The political rhetoric in the United States has many immigrant farmworkers living in fear of imminent deportation, and farmers who face losing their labor force to mass deportations often share this fear.<sup>39</sup> Immigrants frequently hold jobs that are unwanted by Americans despite salaries far exceeding the minimum wage.<sup>40</sup> The guest worker program cannot keep up with the demand for workers.<sup>41</sup>

Of these immigrants, 14,000 are DACA recipients.<sup>42</sup> According to Bob Martin, Program Director of Food System Policy at Johns Hopkins Center for a Livable Future, “any draconian move to roundup and deport people will have a devastating effect on agriculture.”<sup>43</sup> Bruce Goldstein, the President of Farmworker Justice, echoed this sentiment at a summit in February 2017.<sup>44</sup> Mr. Goldstein said that a large number of deportations would cause the agricultural system to collapse.<sup>45</sup> This would lead to rising food costs with some estimating up to a 6%

36. *Farm Workers & Immigration*, NAT’L FARM WORKER MINISTRY, <https://perma.cc/49VB-5UYJ> (archived Aug. 18, 2018) / (“The vast majority of workers—78%, according to the most recent National Agricultural Workers Survey—is foreign-born and crossed a border to get here.”); see also Jenna Broughton, *The Role of Immigrants in Our Food System*, INC. (Dec. 11, 2016), <https://perma.cc/WZY5-CMYF>.

37. *Farm Workers & Immigration*, *supra* note 36; see also Leanna Garfield, ‘Our Agricultural System Would Collapse’ if Trump Starts Mass Deportations, *Says Farm Worker Advocate*, BUS. INSIDER (Feb. 3, 2017), <https://perma.cc/7H2R-HSCS>.

38. *Farm Workers & Immigration*, *supra* note 36.

39. Brian Barth, *Farmworkers on Edge After Trump Elected President*, MOD. FARMER (Nov. 10, 2016), <https://perma.cc/97FE-A7QW> (“I’m really scared . . . [m]e and my roommate already have our truck loaded and ready to leave.”); Broughton, *supra* note 36.

40. Broughton, *supra* note 36. (stating many undocumented workers earn \$12 per hour or more).

41. *Id.* (“In 2011 when unemployment was over 10 percent in North Carolina and almost 500,000 people were without jobs, the North Carolina Growers Association still could not recruit native workers.”).

42. Jim Dickrell, *14,000 DACA Individuals Work in Farming, Fishing and Forestry*, AGWEB (Sept. 6, 2017), <https://perma.cc/ZRL2-MKW7>; RANDY CAPPS ET AL., MIGRATION POL’Y INST., THE EDUCATION AND WORK PROFILES OF THE DACA POPULATION 6 (2017), <https://perma.cc/8G8S-2WGM>.

43. Broughton, *supra* note 36.

44. Garfield, *supra* note 37.

45. *Id.*

increase.<sup>46</sup> Proposed changes to immigration policy, such as requiring the use of an employment eligibility system, would likewise have a disparate impact on farmers in the United States as it would increase costs and decrease the available labor supply.<sup>47</sup> The effect would be harsher on small farm owners who cannot afford to replace immigrant farmworkers with automated mechanical systems.<sup>48</sup> Goldstein believes a path to citizenship for illegal workers is necessary to save the agriculture industry.<sup>49</sup>

“[F]arm labor accounted for 17 percent of variable production expenses in United States agriculture” between 2006 and 2010.<sup>50</sup> Higher numbers were reported in certain sectors such as fruit, where labor cost accounted for 48% (see table below).<sup>51</sup> For these more labor-intensive sectors of agriculture, immigrant labor is even more important.

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46. *Id.*

47. Steven Zahniser et al., *Immigration Policy and Its Possible Effects on U.S. Agriculture*, U.S. DEP’T AGRIC. (June 5, 2012), <https://perma.cc/GAB9-L4FY> (“Some farm groups have expressed concern that mandating E-Verify—without some sort of new or expanded program for foreign-born, agricultural workers who are not currently authorized to work in the United States—would adversely affect many agricultural employers.”).

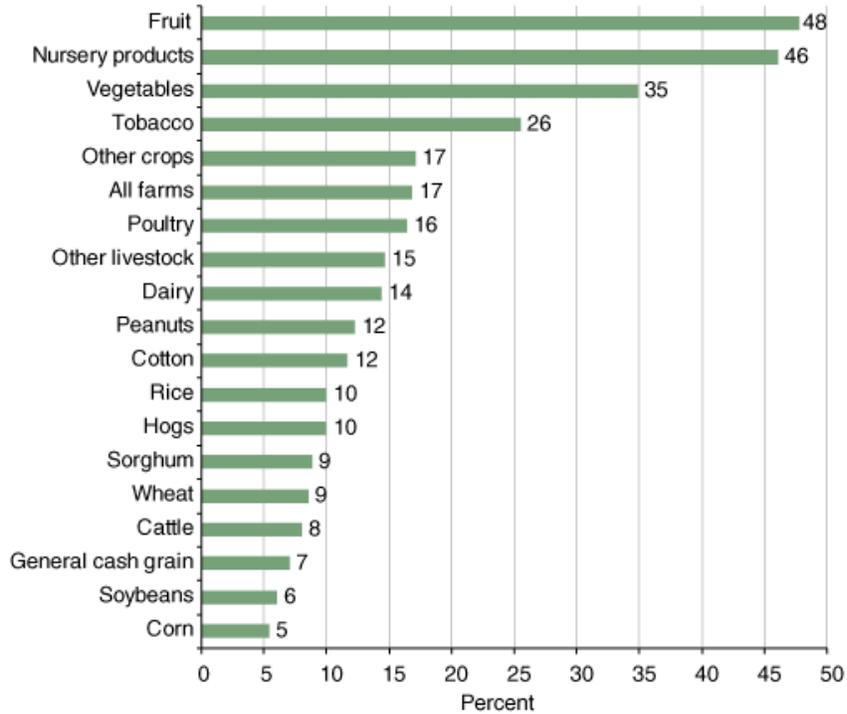
48. Garfield, *supra* note 37.

49. *Id.* (“The majority of farm workers in this country are undocumented. We need them, we should respect them, and we should grant them the chance to have an immigration status and a path to citizenship . . . If we don’t figure that out, agriculture is in trouble.”).

50. Zahniser et al., *supra* note 47.

51. *Id.*

**Hired labor accounts for a large share of production costs for some crops**



Source: USDA, Economic Research Service using data from USDA's 2006-10 Agricultural Resource Management Survey.

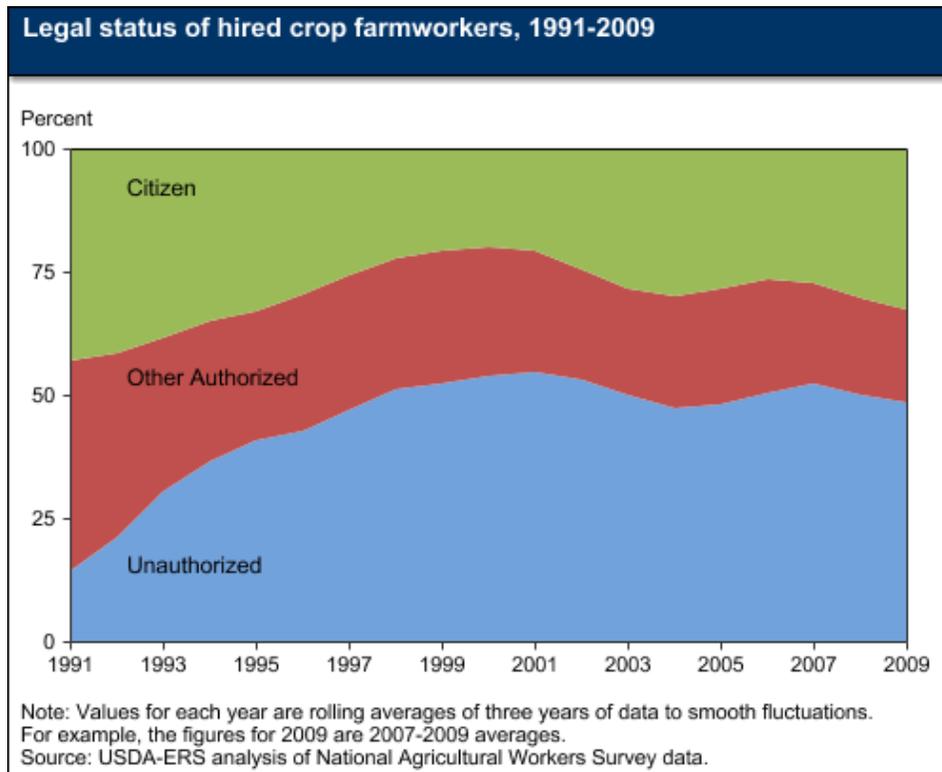
<sup>52</sup>

Between 2007 and 2009, 71% of farm workers were not born in the United States,<sup>53</sup> and 48% of those immigrants were not authorized to work (see table below).<sup>54</sup>

52. *Id.*

53. *Immigration and the Rural Workforce*, *supra* note 29.

54. *Id.*



<sup>55</sup> According to a model showing a decrease in unauthorized labor by 5.8 million (including non-agriculture jobs), the output of the agricultural industry would decrease by as much as 5.4%, with exports decreasing up to 9.3%.<sup>56</sup> This model also shows that while the number of authorized farmworkers would increase, this projected increase would not be enough to make up for the loss of unauthorized workers.<sup>57</sup> Under the model, the gross national product will decrease by approximately 1%, which would have a significant impact on the American economy.<sup>58</sup>

Even states without large numbers of undocumented immigrants will be negatively affected by a sudden and extreme loss of workers. In Idaho, for

55. *Id.*

56. Zahniser et al., *supra* note 47.

57. *Id.*

58. *Id.*

example, agriculture accounts for about 4% of the state economy.<sup>59</sup> The state's 45,000 undocumented immigrants make up a mere 0.4% of the nation's 11.1 million total.<sup>60</sup> However, despite these relatively small numbers, illegal immigrants comprise approximately 43% of the state's farm workers.<sup>61</sup> States, such as Idaho, rely on immigrant workers.

One farmer in California states that despite the high unemployment rate in his area, he is forced to use undocumented workers because Americans are not willing to do the jobs he needs filled.<sup>62</sup> There is currently a labor shortage, and the possibility of an increase in deportations will exacerbate the problem.<sup>63</sup> Farmers in California and New Mexico complain they are losing money because they cannot find enough workers to pick fruit and vegetables before they rot in the fields.<sup>64</sup> "Of all my field workers, only two are Americans, and when I can find them, I hire them, but they don't stay for long," says Joe Del Bosque, a California farmer whose farms produce cantaloupe, melons, almonds, and asparagus.<sup>65</sup>

These numbers make it easy to see how important immigrant workers are to the United States agricultural industry. While DACA recipients make up a relatively small percentage of total farm labor,<sup>66</sup> removing this portion of the labor force would be detrimental to the industry.<sup>67</sup>

Immigrants comprise a large and important percentage of farm workers in the United States.<sup>68</sup> Many of these workers do not have legal immigration status and therefore cannot work legally, but losing this segment of the workforce would

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59. Bill Dentzer, *Trump Deportations Would Hit Idaho Ag, Where a Fourth of All Workers Are Undocumented*, IDAHO STATESMAN (Nov. 12, 2016), <https://perma.cc/74S5-BWPD>.

60. *Id.*

61. *Id.*

62. Vanessa Rancano, *Will Trump's Tough Talk on Immigration Cause a Farm Labor Shortage?*, NAT'L PUB. RADIO (Jan. 21, 2017), <https://perma.cc/7VWM-L4L5>; *Immigration Issues Threaten Agriculture's Profitability*, SW. FARM PRESS (April 11, 2017), <https://perma.cc/4PZ9-D66X>.

63. Rancano, *supra* note 62.

64. Hawkes, *supra* note 62.

65. *Id.*

66. CAPPS ET AL., *supra* note 42, at 6.

67. Mike Gempler, *Cancellation of DACA is a Blow to Agricultural Communities*, SEATTLE TIMES (last updated Dec. 18, 2017, 3:02 PM), <https://perma.cc/ME5B-N9TM>.

68. Memorandum from the Am. Immigration Council on Immigrants in the U.S. (Oct. 4, 2017) (on file with author).

devastate the industry. This pertains particularly to small farmers, for whom alternatives to immigrant labor are not a realistic financial option.<sup>69</sup>

#### *D. Problems with the Immigration System*

One theory, though not widely shared, about the “broken” immigration system, is that it was designed this way by the United States and Mexican governments to achieve the goals of each country.<sup>70</sup> This idea contrasts the more widely held theory that illegal immigration is a social problem threatening the way of life for Americans.<sup>71</sup> Under the latter theory, the Mexican government is the guilty party while the United States is the victim.<sup>72</sup> This belief can be seen in centuries of immigration policies enacted by Congress.<sup>73</sup> Conversely, the former theory says that by implicitly allowing undocumented immigrants to buy products, rent homes, and work in the United States, the United States is not opposed to illegal immigration despite the rhetoric used.<sup>74</sup>

During the twentieth century, immigrant labor laws were rarely enforced, leading to an influx of cheap labor from other countries.<sup>75</sup> Cheap, unskilled labor benefitted American farmers and business owners, and as advances in industry created more of these types of jobs, the number of immigrants needed to fill them increased as well.<sup>76</sup> This created the “de facto policy of lenient immigration enforcement and tolerance for extra-legal immigration,” that continues to today.<sup>77</sup> Despite recent attempts, politicians have largely been unsuccessful in curtailing illegal immigration and removing undocumented immigrants already living and working in the United States.<sup>78</sup> Immigrants are willing to risk detection and deportation for the chance to live in the United States, and employers, desperate for workers, ignore the laws prohibiting hiring.<sup>79</sup>

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69. ERIC A. RUARK & ANIQA MOINUDDIN, FED’N FOR AM. IMMIGR., *ILLEGAL IMMIGRATION AND AGRIBUSINESS: THE EFFECT ON THE AGRICULTURE INDUSTRY OF CONVERTING TO A LEGAL WORKFORCE 1* (Apr. 2011), <https://perma.cc/PX4F-CRJN>.

70. Gerald P. Lopez, *Super Aoki - A Tribute to Keith Aoki: Don't We Like Them Illegal?*, 45 U.C. DAVIS L. REV. 1711, 1718 (2012).

71. *Id.* at 1722.

72. *Id.* at 1722-23.

73. *Id.* at 1723.

74. *Id.* at 1728-29.

75. Suzanne E. Cevalco, Note, *Nation of Immigrants, Nation of Laws: Agriculture as the Achilles Heel of Enforcement-Only Immigration Legislation*, 37 SETON HALL LEGIS. J. 175, 182-83 (2012).

76. *Id.* at 182.

77. *Id.* at 182-83.

78. *Id.* at 184-85.

79. *Id.* at 185.

Legal programs designed to allow foreign nationals to work in the United States have proven insufficient to meet labor demands, especially in the agricultural and construction industries.<sup>80</sup> The dependence on undocumented workers by the agricultural industry puts farmers at odds with immigration policy.<sup>81</sup> Despite the fact that agriculture makes up a small percentage of the total gross domestic product of the United States, jobs in this industry promote job creation in many other industries.<sup>82</sup> It is not just farmers who rely on immigrants. In addition to farm workers, immigrants make up significant percentages of workers in textile, leather, and apparel manufacturing, as well as in private households.<sup>83</sup>

Much of the rhetoric about immigration stems from anxiety rather than concrete problems caused by immigrants.<sup>84</sup> This anxiety is related to many cultural and societal issues, including national and economic security, changing norms, and the ability of the government to handle these issues.<sup>85</sup> These problems are not unique to the United States. In fact, they have been a significant issue in much of Europe in recent years, leading in part to the Brexit vote initiating the United Kingdom's exit from the European Union.<sup>86</sup> Complicated immigration systems and an apparent inability to come to a consensus on a workable solution present many problems in the United States and throughout the world.

### III. BACKGROUND ON DACA

#### A. What is DACA?

DACA was put in place by President Obama in 2012, by executive office memorandum.<sup>87</sup> This program allows certain undocumented immigrants to apply

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80. *Id.* at 187.

81. *Id.* at 181-88

82. *Id.* at 187-88 (stating that each agricultural job affects at least three jobs in other industries).

83. Drew Desilver, *Immigrants Don't Make up a Majority of Workers in Any U.S. Industry*, PEW RES. CTR. (Mar. 16, 2017), <https://perma.cc/7MXF-DE66>.

84. DEMETRIOS G. PAPADEMETRIOU & NATALIA BANULESCU-BOGDAN, COUNCIL ON MIGRATION, UNDERSTANDING AND ADDRESSING PUBLIC ANXIETY ABOUT IMMIGRATION 1 (July 2016), <https://perma.cc/634Z-MNKW>.

85. *Id.* at 2.

86. *Id.* at 1; Nick Hopkins & Alan Travis, *Leaked Document Reveals UK Brexit Plan to Deter EU Immigrants*, GUARDIAN (Sept. 5, 2017), <https://perma.cc/AX3S-D45K>;

87. President Barack Obama, Remarks by the President on Immigration at the Rose Garden, (June 15, 2012), <https://perma.cc/RHT5-C4LN>; Memorandum from Janet Napolitano, *supra* note 1 (“[Immigration laws] are not designed to be blindly enforced without consideration given to the individual circumstances of each case. Nor are they designed to remove productive young people to countries where they may not have lived or even speak

for deferred action from deportation for a period of two years and also allows them to obtain temporary work permits.<sup>88</sup> To qualify for DACA, applicants must satisfy several criteria. The applicant (1) must have come to the United States before they were sixteen years old, (2) be between fifteen and thirty years old at the time of filing, (3) have graduated high school or received a GED, and (4) pass a background check.<sup>89</sup> Applicants are ineligible if they have been convicted of a felony, a serious misdemeanor, three misdemeanors, or pose a threat to national security or public safety.<sup>90</sup>

DACA is not an amnesty program, it is not a path to citizenship, and offers no permanent solution for those who are eligible.<sup>91</sup> Instead, it gives applicants a brief respite, which allows them to live as functioning and productive members of society without constant fear of deportation.<sup>92</sup>

### B. DACA's Inception

DACA was initiated as a result of Congress's repeated failure to pass the Development, Relief, and Education for Alien Minors Act (DREAM Act), which President Obama had strongly supported.<sup>93</sup> The DREAM Act was proposed in Congress numerous times in various stages beginning in 2001, but was never passed by both houses.<sup>94</sup> The purpose of the DREAM Act (and DACA) was to provide support for young undocumented immigrants who were in the United

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the language.”); Julia Preston & John H. Cushman Jr., *Obama to Permit Young Migrants to Remain in U.S.*, N.Y. TIMES (June 15, 2012), <https://perma.cc/8LYA-WT5Y>.

88. ZENÉN JAIMES PÉREZ, UNITED WE DREAM, A PORTRAIT OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS RECIPIENTS: CHALLENGES AND OPPORTUNITIES THREE-YEARS LATER 3 (Oct. 2015), <https://perma.cc/82LU-BNLL>.

89. ZENÉN JAIMES PÉREZ, UNITED WE DREAM, A PORTRAIT OF DEFERRED ACTION FOR CHILDHOOD ARRIVALS RECIPIENTS: CHALLENGES AND OPPORTUNITIES THREE-YEARS LATER 3 (Oct. 2015), <https://perma.cc/6M95-EH8T>.

90. *Id.*

91. Olga Y. Kuchins, Note, *Out of the Shadows: Deferred Action for Childhood Arrivals, Deferred Action to Parents of Americans and Lawful Permanent Residents, and Executive Prosecutorial Discretion in Immigration Law*, 43 HASTINGS CONST. L.Q. 705, 712 (2016); see also Memorandum from Janet Napolitano, *supra* note 1 (“This memorandum confers no substantive right, immigration status or pathway to citizenship. Only the Congress, acting through its legislative authority, can confer these rights. It remains for the executive branch, however, to set forth policy for the exercise of discretion within the framework of the existing law.”).

92. Kuchins, *supra* note 91, at 705.

93. *Id.* at 709; President Barack Obama, *supra* note 87.

94. Elizabeth Keyes, *Defining American: The DREAM Act, Immigration Reform and Citizenship*, 14 NEV. L. J. 101, 103 (2013); Kuchins, *supra* note 91, at 708-09.

States through no fault of their own.<sup>95</sup> DACA provides no permanent resolution and does not include a path to citizenship as the DREAM Act did.<sup>96</sup> However, it does provide a temporary reprieve from the threat of deportation through prosecutorial discretion.<sup>97</sup>

The idea that children should not be punished for the sins of their parents is an ancient one, and children can hardly be blamed for being brought to the United States by their parents.<sup>98</sup> The Supreme Court agreed with this idea in the landmark case of *Plyler v. Doe*, which established that children could not be denied a public education on the basis of immigration status.<sup>99</sup> *Plyler* also affirmatively established that undocumented immigrants have certain rights, although others are reserved for legal permanent residents and citizens.<sup>100</sup>

President Obama hailed the benefits of the DREAM Act in a speech he gave in 2013, even after DACA had begun.<sup>101</sup> In this speech, President Obama urged Congress to pass the comprehensive DREAM Act, because “this change isn’t permanent . . . [w]e need Congress to act on a comprehensive approach that finally deals with the 11 million undocumented immigrants who are in the country right now.”<sup>102</sup> President Obama, the architect of DACA, understood that it was merely a stopgap and not a final solution.<sup>103</sup> Still, DACA allowed undocumented people the opportunity to come out of hiding and become productive members of society.<sup>104</sup>

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95. Kuchins, *supra* note 91, at 708.

96. *Id.* at 710-12.

97. *Id.*

98. *Id.* at 708.

99. *Plyler v. Doe*, 457 U.S. 202, 220 (1982) (stating that “[e]ven if the State found it expedient to control the conduct of adults by acting against their children, legislation directing the onus of a parent’s misconduct against his children does not comport with fundamental conceptions of justice.”).

100. *Id.* at 222-23.

101. President Barack Obama, Remarks by the President on Comprehensive Immigration Reform at Del Sol High School, Las Vegas, Nev. (Jan. 29, 2013), <https://perma.cc/75SM-YX3S> [hereinafter Remarks by the President].

102. *Id.*

103. *Id.*

104. *Id.*; Kuchins, *supra* note 91, at 717-18. (“Regardless of one’s views on undocumented immigrants, recent statistical findings illustrate an overall positive impact of DACA on the program’s recipients, as well as the United States economy as a whole. Data shows that as of June 2015 DACA recipients are finding employment and receiving better paying jobs than before. They are enrolling in institutions of higher education, as well as purchasing vehicles at increased rates. Further, data shows that DACA beneficiaries’ hourly wage increased significantly. Legal employment without fear of arrest and deportation allows noncitizens to increase their standard of living by finding jobs that match their skills and abilities. Because higher wages translate into economic growth through increased tax revenue, DACA benefits are not limited to recipients alone.”).

## IV. HOW DACA BENEFITS AGRICULTURE

The agricultural industry relies heavily on immigrants for labor, but many of these farm laborers are in the United States without legal authorization. Estimates say the loss of these immigrants to the labor force would devastate the agricultural industry with output decreasing between \$30 billion and \$60 billion, leading to an increase in food prices of up to 6%.<sup>105</sup>

While only 3.6% of DACA recipients work in agriculture, the impact of ending DACA does not end with these individuals.<sup>106</sup> Many of these young people have parents and other relatives working on farms whose lives would be affected immensely if their loved ones lost their ability to work or were deported.<sup>107</sup>

It is often believed that economies and job markets are zero-sum games, that for every job held by an immigrant there is one less job for an Americans.<sup>108</sup> However, there is little if any evidence to support this idea.<sup>109</sup> A larger labor force does not have to mean higher unemployment. An economy cannot grow if there are not enough jobs to support the growth, but the number of jobs in the United States has been increasing since 2010, meaning plenty of opportunities exist for everyone.<sup>110</sup>

Immigration has not been shown to decrease wages, nor has lowering immigration rates been shown to increase wages.<sup>111</sup> Allowing unskilled agricultural jobs to go to immigrants frees up workers for other areas.<sup>112</sup> Americans who place the blame for high unemployment rates on illegal immigrants are mistaken. Jobs are not being “stolen,” the job market is merely changing.<sup>113</sup> Technology is changing everything we do, and this is true of jobs as well. Increases in immigration lead to natives achieving higher levels of education and taking white-collar jobs.<sup>114</sup> Many of those eligible for DACA are college educated<sup>115</sup> and have ties to farming through

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105. *Economic Impact of Immigration*, AM. FARM BUREAU FED’N, <https://perma.cc/U88Z-DZ74> (archived Jun. 11, 2019).

106. Dickrell, *supra* note 42; Gempler, *supra* note 67.

107. CAPPS ET AL., *supra* note 42, at 8; Gempler, *supra* note 67.

108. Kevin Shih, *Want a Stronger Economy? Give Immigrants a Warm Welcome*, CONVERSATION (Feb. 22, 2017), <http://perma.cc/9ZMX-PMWK>.

109. *Id.*

110. *Id.*

111. *Id.* (“Extensive reviews of research on the topic (like this one) show that most studies of how immigration affects native wages and employment found very little effect.”).

112. *Id.*

113. *Id.*

114. *Id.*

115. CAPPS ET AL., *supra* note 42, at 8.

their families or their own experiences.<sup>116</sup> These young people will be incredibly important in implementing technology into the agricultural industry.

DACA takes thousands of immigrants who are already in the United States and allows them to work on the grid to help the economy grow.<sup>117</sup> Deporting all of those eligible for DACA would cost billions of dollars and waste human capital already present in the United States.<sup>118</sup>

## V. THE END OF DACA

President Donald Trump campaigned on toughening immigration law, repeatedly saying that he would keep illegal aliens out of America and deport the undocumented immigrants already in the United States.<sup>119</sup> He specifically mentioned DACA in his campaign, promising to end the program.<sup>120</sup> In September 2017, Attorney General Jeff Sessions announced the end of DACA.<sup>121</sup> In a statement accompanying the announcement, President Trump said, “I do not favor punishing children... for the actions of their parents.”<sup>122</sup> The President stated, “[t]he legislative branch, not the executive branch, writes these laws—this is the bedrock of our Constitutional system, which I took a solemn oath to preserve, protect, and defend.”<sup>123</sup> It is President Trump’s belief that former President Barack Obama’s executive action initializing DACA was unconstitutional, and President Trump urged Congress to step in and create legislation to protect DACA recipients in accordance with the United States Constitution.<sup>124</sup>

116. Gempler, *supra* note 67; Patrick Cavanaugh, *Farm Workers and Dreamers Work Hard To Reach the American Dream*, CAL. AGRIC. TODAY (Sept. 21, 2017), <https://perma.cc/AX36-BFKY>.

117. See Benjamin Harris, *Why Your Economic Argument Against Immigration is Probably Wrong* FORTUNE, (Sept. 11, 2017), Benjamin Harris, *Why Your Economic Argument Against Immigration is Probably Wrong*, FORTUNE (Sept. 11, 2017), <https://perma.cc/FYC8-CQD4>.

118. *Id.*; STEVEN A. CAMAROTA, CTR. FOR IMMIGR. STUD., DEPORTATION VS. THE COST OF LETTING ILLEGAL IMMIGRANTS STAY 1 (Aug. 2017), <https://perma.cc/23C7-RT67> (“Immigration and Customs Enforcement (ICE) reported the average deportation cost as \$10,854 in FY 2016.”).

119. Miriam Valverde, *PolitiFact Sheet: Donald Trump’s Immigration Plan*, POLITIFACT (Nov. 9, 2016), <https://perma.cc/U8D7-35EX>.

120. *Id.*

121. Kate Samuelson, *Read President Trump’s Full Statement on Rescinding DACA*, TIME, (Sept. 5, 2017), <https://perma.cc/X5LC-ZHGD>; see also Memorandum from Elaine C. Duke, *supra* note 2 (outlining the history of DACA & the reasons for its rescission).

122. Samuelson, *supra* note 121.

123. *Id.*

124. *Id.*; but see Memorandum from Elaine C. Duke, *supra* note 2.

### A. What Will Happen to Dreamers When DACA Ends?

President Trump did not order DACA to end immediately. Instead, his executive branch memorandum ended the acceptance of new applications, but allowed renewals to be processed for a period of six months.<sup>125</sup> Under the President's plan, recipients will be able to stay in the program until their permits expire.<sup>126</sup> President Trump effectively placed the onus on Congress to enact legislation to protect Dreamers before the six-month deadline, as Democrats balked at the idea of cutting protections for thousands of immigrants.<sup>127</sup>

As the DACA protections slowly end for the recipients of deferred action,<sup>128</sup> many recipients fear they will be deported, because they are "in the system," which could allow Immigration and Customs Enforcement (ICE) to identify and locate them.<sup>129</sup> While the Department of Homeland Security has said it will not divulge information about those who have received DACA protections, this policy is subject to change at any time—possibly without warning to those it would affect the most.<sup>130</sup>

### B. Call for Congressional Action

President Obama did not intend DACA to be a permanent solution. Instead, it was a means to protect Dreamers in the interim while waiting for Congress to pass the DREAM Act.<sup>131</sup> In announcing the rescission, President Trump urged Congress to create a permanent solution.<sup>132</sup> It has been nearly twenty years since the DREAM Act was first introduced in Congress.<sup>133</sup> Since its initial introduction, debate over what to do about the thousands of undocumented immigrants who have

125. Memorandum from Elaine C. Duke, *supra* note 2.

126. *Id.*

127. Max Matza & Courtney Subramanian, *Reaction to DACA – As It Happened*, BRIT. BROADCASTING CORP. (last visited Sept. 5, 2017), <https://perma.cc/B7W4-S64C>.

128. Memorandum from Elaine C. Duke, *supra* note 2.

129. Ted Hesson, *Dreamers Fear Deportations from DACA Data*, POLITICO (Sept. 5, 2017), <https://perma.cc/8636-AAYM>; *see also* Catherine E. Shoichet et al., *US Immigration: DACA and Dreamers Explained*, CABLE NEWS NETWORK (updated Oct. 26, 2017), <https://perma.cc/6CHU-UTY3>.

130. Hesson, *supra* note 129.

131. Remarks by the President, *supra* note 101.

132. Samuelson, *supra* note 121.

133. Kuchins, *supra* note 91, at 708; Olga Y. Kuchins, Note, *Out of the Shadows: Deferred Action for Childhood Arrivals, Deferred Action to Parents of Americans and Lawful Permanent Residents, and Executive Prosecutorial Discretion in Immigration Law*, 43 HASTINGS CONST. L.Q. 705, 708 (2016); *see* Development, Relief, and Education for Alien Minors Act, S. 1291, 107th Cong. (2001).

grown up in the United States has been on the forefront of the political arena.<sup>134</sup> DACA is not a new idea, but merely the only action President Obama thought politically possible at the time.<sup>135</sup>

In January 2018, President Trump has announced a plan that would include protections and a path to citizenship for not only those eligible for DACA, but thousands of other young immigrants as well.<sup>136</sup> However, this plan included money to fund a wall along the southern border of the United States, increased immigration enforcement, an end to the diversity lottery program, and significant cuts to family based immigration.<sup>137</sup> This plan was seen by many pro-immigrant groups as holding Dreamers hostage, while conservatives objected to the idea of giving amnesty to any undocumented workers.<sup>138</sup> Since then, not much has changed. Injunctions from three different federal courts have kept protection alive for current DACA recipients, but new applications are not accepted.<sup>139</sup> Moreover, DACA recipients have no certainty that the program will survive from day to day.<sup>140</sup> While Congress continues to argue and debate, each day without action is one day closer to the loss of protections for thousands.

## VI. CONCLUSION

DACA is important to the United States for several reasons. Immigration helps the economy grow, and those immigrants included in DACA are exactly the immigrants who will fuel American economic growth. These are young people who have grown up in the United States, finished high school, and stayed out of trouble. Many Dreamers have graduated from college,<sup>141</sup> some have started businesses and many have created jobs, rather than taking them.<sup>142</sup>

134. President Barack Obama, *supra* note 87; Matza & Subramanian, *supra* note 127.

135. President Barack Obama, *supra* note 87.

136. Dan Nowicki, *State of the Union: Trump Pitches Immigration Plan as 'Fair Compromise'*, ARIZ. CENT. (Jan. 30, 2018), <https://perma.cc/P5L8-DCTG>.

137. *Id.*

138. Brian Bennett & Lisa Mascaro, *Trump's Immigration Plan Draws Harsh Reviews from Left and Right, and Some Conservatives Label Him 'Amnesty Don,'* L.A. TIMES (Jan. 25, 2018), <https://perma.cc/6KM9-LXWC>; Jessica Taylor et al., *Conservatives Fume Over DACA Deal as Trump Tries to Mollify His Base*, NAT'L PUB. RADIO (Sept. 14, 2017), <https://www.npr.org/2017/09/14/551053707/conservatives-fume-over-daca-deal-as-trump-tries-to-mollify-his-base>.

<sup>139</sup> *DACA Litigation Timeline*, NAT'L IMMIGRATION LAW CTR., <https://perma.cc/NJY8-YMUA>.

<sup>140</sup> *Id.*

141. CAPPS ET AL., *supra* note 42, at 4.

142. Shih, *supra* note 108.

The agricultural industry relies on immigrants and is already facing a labor shortage.<sup>143</sup> Additionally, agriculture is an industry that must utilize new technology to stay up to date and continue to provide its necessary contributions to the American economy. Dreamers are specially situated to be able to serve this purpose because they are young, innovative, and educated, but also have strong connections to agriculture. Agriculture needs Dreamers, and thousands of young immigrants need an act of Congress to ensure their future and ability to continue to contribute to the American economy and agricultural industry are safe.

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143. Rancano, *supra* note 62.