
Beyond DACA — Defying Employer Sanctions Through Civil Disobedience

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INTRODUCTION

Acting on the instructions of President Donald Trump, on September 5, 2017 Attorney General Jeff Sessions announced that Deferred Action for Childhood Arrivals (“DACA”) would end on March 5, 2018. This message was devastating for the hundreds of thousands of DREAMers¹ who rely on DACA to remain in the United States. At the time of the announcement, almost 800,000 individuals were registered for the DACA program.² They registered for the program seeking assurance they would not be deported so that they could lead a semblance of a normal life in the United States. While neither President Obama nor Congress guaranteed the program would be permanent, DACA has provided hope to many who were brought to the United States by their parents without documentation or with documentation that expired.

While the sense of safety from deportation is an obvious benefit of DACA, the opportunity to work is just as critical as DACA’s protections against deportation. According to some estimates, approximately 700,000 DREAMers are employed and performing a wide variety of jobs in the United States. Consequently, they contribute mightily to the U.S. economy. According to one estimate, ending DACA could cost \$24.6 billion in contributions to Medicare, Social Security, and other entitlement programs, and U.S. economic output could drop by \$460.3 billion in ten years.³

¹ I use the term “DREAMer” throughout this article — sometimes interchangeably with “DACA recipient.” Generally speaking, DREAMers are noncitizens who were brought to the United States by their parents as youngsters and have grown up in the United States. Some entered without papers, while others entered on nonimmigrant visas, e.g., as tourists, and overstayed their visas. The label is derived from the DREAM Act (short for Development, Relief and Education for Alien Minors Act), a bill in Congress that would have granted legal status to certain undocumented immigrants who were brought to the United States as children and went to school here. As explained in Part II, DACA first was offered to Dreamers in 2012 by the Obama administration, and about 800,000 DREAMers eventually signed up for DACA.

² Julia Glum, *DACA by the Numbers: 15 Facts About the Youth Immigration Program Trump Could Soon Shut Down*, NEWSWEEK (Aug. 30, 2017, 3:47 PM), <https://www.newsweek.com/dreamers-daca-statistics-trump-deadline-657201>.

³ Alana Abramson, *Here’s How Much Money Rescinding DACA Could Cost the U.S. Economy*, FORTUNE (Sept. 6, 2017), <http://fortune.com/2017/09/05/daca-donald-trump-economic-impact/>; see also Melissa Cruz, *Yes, All Immigrants — Even Undocumented — Pay Billions in Taxes Each Year*, IMMIGR. IMPACT (Apr. 16, 2018), <http://immigrationimpact.com/2018/04/16/undocumented-immigrants-pay-taxes/> (estimating that all undocumented immigrants paid an \$11.7 billion in combined state and local taxes in 2014).

The purchasing power of DACA recipients is significant. For example, in a survey of more than 3,000 DACA recipients nearly two-thirds of respondents reported purchasing their first car in the United States, with that purchase total averaging \$16,469.⁴ This is positive for state coffers that collect sales tax of such purchases as well as charging for auto registration and title fees.⁵ After attaining DACA status, sixteen percent of the recipients also purchase their first home. Among respondents twenty-five years and older, this percentage rose to twenty-four percent. Home purchases lead to spending and job creation in the local market.⁶

Driving out young workers who will pay into the system for many decades is, simply put, a very bad idea. Much of the anti-immigrant sentiment in the United States is based on the notion that undocumented immigrants negatively impact the economy.⁷ However, rescinding DACA “would harm the economy and cost the U.S. government a significant amount in lost tax revenue.”⁸ DREAMers are helping to offset America’s aging population and declining fertility which results in fewer workers paying taxes to support federal programs like Medicare, Medicaid and Social Security. This is especially poignant as these programs benefit current United States citizens. Research shows that the average wage for DACA workers is over seventeen dollars an hour.⁹ Their average age is twenty-four, meaning most are prime for careers, jobs and incomes for the foreseeable future.¹⁰

However, focusing on the economic contributions of DACA recipients risks dehumanizing them by merely highlighting their

⁴ Tom K. Wong et al., *DACA Recipients’ Economic and Educational Gains Continue to Grow*, CTR. FOR AM. PROGRESS (Aug. 28, 2017, 9:01 AM), <https://www.americanprogress.org/issues/immigration/news/2017/08/28/437956/daca-recipients-economic-educational-gains-continue-grow>.

⁵ *Id.*

⁶ *Id.*

⁷ *But see* Pedro Nicolaci da Costa, *Trump’s Immigration Plans Could Cripple the U.S. Economy and Hurt the Workers He’s Pledging to Protect*, BUS. INSIDER, (Feb. 24, 2017, 10:47 AM), <http://www.businessinsider.com/trump-immigration-plans-bad-for-us-economy-and-workers-2017-2> (commenting that even the right-leaning Cato Institute says the deportation of “Dreamers” could cost \$60 billion).

⁸ *Id.*

⁹ Julia Glum, *DACA by the Numbers: 15 Facts About the Youth Immigration Program Trump Could Soon Shut Down*, NEWSWEEK, Aug. 30, 2017.

¹⁰ Gustavo Lopez & Jens Manuel Krogstad, *Key Facts About Unauthorized Immigrants Enrolled in DACA*, PEW RESEARCH CENTER (Sept. 25, 2017), <http://www.pewresearch.org/fact-tank/2017/09/25/key-facts-about-unauthorized-immigrants-enrolled-in-daca/>.

worth in monetary terms. DACA recipients — and essentially all DREAMers — are part of the conscience of the country as well as being a critical part of the economy. They have built their lives here, gone to school here, and some have even joined the military.¹¹ Along with average Americans, dozens of CEOs from companies like Microsoft, Amazon, Netflix, AT&T, Wells Fargo, Google, and Facebook urged the president to preserve DACA.¹² While he was not specific, Mark Zuckerberg pledged that his immigration advocacy vehicle at FWD.US would be “doing even more in the weeks ahead to make sure DREAMers have the protections they deserve.”¹³ After the Sessions announcement, the CEO of Google, Sundar Pichai, turned his attention to the need for legislation, stating, “DREAMers are our neighbors, our friends and our co-workers. This is their home. Congress needs to act now to #DefendDACA. #WithDreamers.”¹⁴

The plaudits continued. Over 800 American businesses including General Motors, Target, and Walmart signed onto a letter in support of the DREAMers.¹⁵ The U.S. Chamber of Commerce issued this statement: “DACA recipients are our friends, neighbors, and co-workers. The Chamber urges Congress to work quickly through the details of a legislative solution that treats these individuals with dignity and fairness. The Chamber stands ready to work with our leaders to ensure that the legislation is consistent with our nation’s values and the best interests of our economy.”¹⁶ A group calling themselves the “Dream Coalition” that includes Harvard President Catharine Faust, Apple CEO Tim Cook, New York Mayor Bill de Blasio, and former Secretary of State Madeleine Albright announced: “Collectively, we, the Dream Coalition, are committed to using our voices as business, civic, and government leaders to amplify the

¹¹ Nikhil Sonnad & Youyou Zhou, *Dreamers Live in Every U.S. State and Don’t Just Come from Mexico*, QUARTZ (Sept. 5, 2017), <https://qz.com/1069844/who-are-the-dreamers-and-where-do-they-live/>.

¹² Aarti Shahani, *Microsoft President to Trump: To Deport a DREAMer, You’ll Have to Go Through Us*, NPR (Sept. 5, 2017, 4:21 PM), <http://www.npr.org/sections/thetwo-way/2017/09/05/548686695/250-apple-employees-among-thousands-at-risk-from-daca-cancellation>.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Stephen Nellis, *Walmart, Target Join Call for ‘Dreamer’ Legislation*, REUTERS (Sept. 20, 2017, 2:26 AM), <https://www.reuters.com/article/us-usa-immigration/walmart-target-join-call-for-dreamer-legislation-idUSKCN1BV11E>.

¹⁶ Thomas J. Donohue, *Clock Is Ticking for DACA Solution*, U.S. CHAMBER OF COM. (Oct. 2, 2017, 9:00 AM), <https://www.uschamber.com/series/your-corner/clock-ticking-daca-solution>.

overwhelming American support for protecting DREAMers.”¹⁷ Dozens of human resource officers of large companies urged Congress and the Trump administration to consider the vital role foreign-born workers play in the U.S. economy when making policy decisions. The letter, signed by chief human resource officers of 110 major companies such as Merck, GE, HP, IBM, and Manpower Group notes the importance of foreign-born workers amidst a workforce crisis characterized by six million unfilled job openings, stating “as employers invest a cumulative \$637 billion toward training and equipping the American workforce, foreign-born workers in the meantime help fill workforce gaps.”¹⁸

As the DACA termination date of March 5, 2018 approached, however, Congress failed in enacting legislation to provide relief for DREAMers or to otherwise extend DACA.¹⁹ The failure was due in part to President Trump’s demand for border wall funding, the elimination of certain family immigration categories like siblings and married children and the diversity visa program in exchange for the DREAM Act.²⁰ Ultimately, DACA did not end on March fifth because federal court challenges to the rescission announcement temporarily halted the termination.²¹

If DACA is terminated at some point, many questions will be raised: How committed are the businesses that currently employ DACA recipients and claim to support them? What will employers of DACA recipients do once employment authorization documents (“EADs”)

¹⁷ Madeleine R. Nakada, *Faust Joins ‘Dream Coalition’ to Protect Undocumented Students*, HARV. CRIMSON (Oct. 19, 2017), <http://dev.thecrimson.com/article/2017/10/19/faust-joins-dream-coalition/>.

¹⁸ Steve Lee, *Chief HR Officers Urge Rethinking on Immigration Policy and DACA*, SAN DIEGO LGBT WKLY. (Oct. 26, 2017), <http://lgbtweekly.com/2017/10/26/chief-hr-officers-urge-rethinking-on-immigration-policy-and-daca/>.

¹⁹ Mallory Shelbourne, *Perez Pushes DREAM Act as Trump’s DACA Deadline Passes*, HILL (Mar. 5, 2018, 11:39 AM), <http://thehill.com/latino/376760-perez-pushes-dream-act-as-trumps-daca-deadline-passes>.

²⁰ See Samantha Grasso, *Trump’s Immigration Proposal Promises Dreamers Path to Citizenship, Border Wall Funding*, DAILY DOT (Jan. 23, 2018, 12:28 AM), <https://www.dailydot.com/irl/trump-dream-act-framework/>; Gayle Putrich, *California Republicans Close to Forcing Vote on DACA Bills in House*, S.F. CHRON. (May 17, 2018, 3:57 PM), <https://www.sfchronicle.com/politics/article/California-Republicans-close-to-forcing-vote-on-12923784.php>; Michael D. Shear & Sheryl Gay Stolberg, *Trump Immigration Plan Demands Tough Concessions from Democrats*, N.Y. TIMES (Jan. 25, 2018), <https://www.nytimes.com/2018/01/25/us/politics/trump-immigration-plan-white-house.html>.

²¹ Ariane de Vogue, *Second Federal Judge Blocks Move to End DACA*, CNN SUP. CT. REP. (Feb. 13, 2018, 6:20 PM), <https://www.cnn.com/2018/02/13/politics/federal-judge-daca/index.html>.

held by DACA recipients begin to expire? Will companies continue to employ individuals who are no longer authorized to work in knowing violation of employer sanctions laws? Some companies have preemptively answered these questions in favor of DREAMers. For example, in response to whether companies would lay off DACA recipients after work permits expire, Airbnb, stated “No. We are 100% committed to protecting DREAMers.”²² But other corporate critics of the DACA termination have been noncommittal on the issue of employing unauthorized workers — at least publicly.²³ Employers must decide if they are willing to stand up for DACA employees who lose work authorization by continuing their employment. Will corporations defy employer sanction laws to preserve DACA workers’ dignity and fairness? Are businesses willing to engage in civil disobedience as a matter of moral conviction?

In this essay, I urge employers to defy employer sanctions laws as a matter of civil disobedience if DACA comes to an end. I argue that employer sanctions laws are unjust in this context, and employers should stand up in defiance. I explain that employers should do so fully accepting that they could face civil and/or criminal penalties. I acknowledge that in the corporate context, the board of directors must take such action with its fiduciary duties in mind. Thus, I set forth the pitfalls that face employers. While the recommendations herein may result in civil or criminal sanctions, I sense that many employers are willing to take those informed risks.²⁴ At the same time, while I recommend defying employer sanctions, I do not recommend doing so publicly, because a public display of defiance would invite targeting of DACA employees by Immigration and Customs Enforcement (“ICE”).

I recognize that the arguments for civil disobedience of employer sanctions are certainly applicable beyond the DACA/DREAMer context. For example, Temporary Protected Status (“TPS”) had been granted to approximately 325,000 migrants from thirteen countries as of January 2017, because they were unable to return to their countries because of armed conflict, environmental disaster, or other extraordinary conditions.²⁵ The Trump administration has announced

²² Sam Levin, *Airbnb Vows to Be First Company to Defy Trump and Keep Employing Dreamers*, GUARDIAN (Sept. 7, 2017, 8:04 AM), <https://www.theguardian.com/us-news/2017/sep/07/silicon-valley-executives-dreamers-daca-trump>.

²³ *Id.*

²⁴ *See, e.g., id.*

²⁵ Robert Warren & Donald Kerwin, *A Statistical and Demographic Profile of the U.S. Temporary Protected Status Populations from El Salvador, Honduras, and Haiti*, 5 J. MIGRATION & HUMAN SEC. 577, 577 (2017).

the termination of TPS and employment authorization for individuals from Sudan, Nicaragua, Haiti, and El Salvador.²⁶ However, this essay is focused more narrowly on the employment of DACA recipients whose EADs will be expiring due to the fact that the debate over DACA has been the focus of great media and political attention.

I. DEFERRED ACTION FOR CHILDHOOD ARRIVALS (“DACA”)

In order to fully grasp the effect of cancelling DACA would have on its recipients as well as on its supporters, understanding the history of DACA is critical. The DREAM Act (Development, Relief and Education for Alien Minors Act) is a federal legislative proposal first introduced in 2001 that would have provided a pathway to citizenship for undocumented immigrants who were brought to the country as minors and went to school in the United States.

The legislation passed the House of Representatives in 2010, but failed to pass the Senate late that year.²⁷ DREAMers were devastated.²⁸

Several months later, on June 17, 2011, ICE Director John Morton issued an important memorandum on the use of prosecutorial discretion in immigration matters.²⁹ The memo directed ICE attorneys and employees to deprioritize the removal of deportable persons with strong equities such as significant family ties, education in the country or U.S. military service. Instead, agents were directed to dedicate

²⁶ Otto W. Immel & Ashley E. Sykes, *Termination of Temporary Protected Status (TPS) — Employer Impact*, QUARLES & BRADY LLP NEWS & RES. (Jan. 22, 2018), <https://www.quarles.com/publications/termination-of-temporary-protected-status-tps-employer-impact/>.

²⁷ *The Dream Act, DACA, and Other Policies Designed to Protect Dreamers*, IMMIGR. COUNCIL (Sept. 6, 2017), <https://www.americanimmigrationcouncil.org/research/dream-act-daca-and-other-policies-designed-protect-dreamers>.

²⁸ See Scott Wong & Shira Toeplitz, *DREAM Act Dies in Senate*, POLITICO (Dec. 20, 2010), <https://www.politico.com/story/2010/12/dream-act-dies-in-senate-046573>.

²⁹ See Memorandum from John Morton, Dir., U.S. Dep’t Homeland Sec., Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens (June 17, 2011), <http://www.ice.gov/doclib/secure-communities/pdf/prosecutorial-discretion-memo.pdf> [hereinafter Morton Memo]. Director Morton actually issued two memoranda on prosecutorial discretion that day. Morton’s second memo focuses on exercising discretion in cases involving victims, witnesses to crimes, and plaintiffs in good faith civil rights lawsuits. It instructs that “[a]bsent special circumstances or aggravating factors, it is against ICE policy to initiate removal proceedings against an individual known to be the immediate victim or witness to a crime.” Memorandum from John Morton, Dir., U.S. Dep’t Homeland Sec., Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs (June 17, 2011), <http://www.aila.org/content/default.aspx?docid=35939>.

agency resources only to prosecuting persons who posed a serious threat to public safety or national security. The Morton memo was a direct result of lobbying efforts of DREAMer students, their supporters, and even some members of Congress after the DREAM Act did not pass.³⁰

A closer look at the Morton memo revealed an affirmation of the principles and policies of previous guidance concerning prosecutorial discretion.³¹ Specifically, the memo provided a non-exhaustive list of relevant factors that ICE officers should weigh in determining whether to exercise prosecutorial discretion. Examples of these considerations include: how long the person has resided in the United States, any prior deportations, criminal problems, whether the person has relatives with lawful status in the country, and community contributions by that person.³² An important purpose of the memo was to “prioritize the use” of ICE’s “limited resources.”³³ So even though ICE officers are not technically prosecutors, the memo explicitly gave them the discretion to refrain from pursuing deportation.³⁴ Significantly, the memo also noted that prosecutorial discretion can be exercised at any stage of the enforcement proceedings — before or even after a removal order.³⁵

The Morton memo was greeted with great hope.³⁶ ICE would review 400,000 pending deportation cases to cancel the deportation proceedings of low priority immigrants.³⁷ The White House and Department of Homeland Security (“DHS”) announcements that accompanied the Morton memo in the summer of 2011 made clear that DREAM Act students were some of the primary intended beneficiaries of the memo. DHS Secretary Janet Napolitano explained

³⁰ See *supra* text accompanying note 1 (referring to DREAMer designation).

³¹ See Morton Memo, *supra* note 29.

³² See *id.* at 4.

³³ See *id.* at 2.

³⁴ See *id.* at 2.

³⁵ The Morton memo states: “While ICE may exercise prosecutorial discretion at any stage of an enforcement proceeding, it is generally preferable to exercise such discretion as early in the case or proceeding as possible in order to preserve government resources that would otherwise be expended in pursuing the enforcement proceeding.” See *id.* at 5.

³⁶ See Mary Giovagnoli, *What ICE’s Latest Memo on Prosecutorial Discretion Means for Future Immigration Cases*, IMMIGR. IMPACT (June 21, 2011), <http://immigrationimpact.com/2011/06/21/what-ice%E2%80%99s-latest-memo-on-prosecutorial-discretion-means-for-future-immigration-cases/>.

³⁷ Esther J. Cepeda, *Immigration-Reform Chump Change*, NBCLATINO.COM (June 20, 2012), <http://nbclatino.tumblr.com/post/25538630476/opinion-immigration-reform-chump-change>.

that spending enforcement resources on young people who pose no threat to public safety made no sense.³⁸ Senator Durbin, a primary DREAM Act sponsor, praised the announcements: “The Administration’s new process is a fair and just way to deal with an important group of immigrant students”³⁹ Congressman Luis Gutierrez applauded the announcement: “Focusing scarce resources on deporting serious criminals, gang bangers, and drug dealers and *setting aside non-criminals with deep roots in the U.S.* until Congress fixes our laws is the right thing to do”⁴⁰

Some removal proceedings were terminated under the June 2011 Morton memo, however, prosecutorial discretion was denied for many others—including DREAMers—with compelling circumstances.⁴¹ For example, one deported DREAMer had resided in the United States since the age of seven, was a talented artist, and a father of a four-year-old.⁴² Another DREAMer faced removal after being stopped for driving without a license.⁴³ A Denver high school graduate who was brought to the United States as a child was first told that ICE would be exercising favorable discretion, but was later told by an ICE official that there was a “mix-up” and that the young man would be placed in deportation proceedings.⁴⁴

Disappointed by the inconsistent results of the Morton memo, DREAMers demanded that the president do more.⁴⁵ President Obama

³⁸ See Robert Pear, *Fewer Youths to Be Deported in New Policy*, N.Y. TIMES (Aug. 18, 2011), <https://www.nytimes.com/2011/08/19/us/19immig.html>.

³⁹ *Durbin Lauds Obama Administration Announcement on DREAM Act Deportation Cases*, DICK DURBIN U.S. SENATOR ILL. (Aug. 18, 2011), <http://durbin.senate.gov/public/index.cfm/pressreleases?ID=46e027e8-fe46-4b62-93e2-7b4c4ea48d2b>.

⁴⁰ Susan Carroll, *As Feds Review Cases, ‘Low Priority’ May Avoid Deportation*, HOUS. CHRON. (Aug. 18, 2011, 5:30 AM), <https://www.chron.com/news/article/As-feds-review-cases-low-priority-may-avoid-2132768.php>.

⁴¹ See Ben Winograd, *President Obama to Halt Removal of DREAMers*, IMMIGR. IMPACT (June 15, 2012), <http://immigrationimpact.com/2012/06/15/president-obama-to-halt-removal-of-dreamers/>.

⁴² STEVEN W. BENDER & WILLIAM F. ARROCHA, *COMPASSIONATE MIGRATION AND REGIONAL POLICY IN THE AMERICAS* 63 (2017); Ani Palacios McBride, *Dream Activist Blames Senators Reid and Durbin for Deportations*, LA COLUMNA (Oct. 12, 2011), <http://contacto-latino.com/ideas-latinas/la-columna/2003/dream-activist-blames-senators-reid-and-durbin-for-deportations>.

⁴³ *Id.*

⁴⁴ E-mail from Violeta Raquel Chapin, Assoc. Clinical Professor of Law, U. Colo. Law School, violeta.chapin@colorado.edu, to immprof@listserv.unc.edu (Apr. 9, 2012, 17:23 PST) (on file with author).

⁴⁵ Ben Winograd, *President Obama to Halt Deportation of DREAMers*, IMMIGR. IMPACT (June 15, 2012), <http://immigrationimpact.com/2012/06/15/president-obama-to-halt-removal-of-dreamers/>.

received the message loud and clear, and on June 15, 2012, he announced the DACA program under which DREAMers would be granted deferred action and permission to work for at least two years.⁴⁶ His announcement came after a protest at his campaign office in Denver, Colorado, while facing a re-election challenge by Republican candidate Mitt Romney.⁴⁷ The protestors' actions included a hunger strike and called for special protections of DREAMers.⁴⁸ Under the directive, deferred action could be granted on a case-by-case basis to individuals who meet certain criteria, including establishing residency in the United States for at least five years, graduating from high school, securing honorable discharge from the U.S. military, committing no significant criminal offense, and being under the age of thirty-one.⁴⁹

President Obama's action on behalf of DREAMers was unprecedented.⁵⁰ Republicans claimed that Obama was acting without

⁴⁶ *Id.* When the Morton memo was issued, supporters of same-sex couples sought explicit assurances from DHS and the White House that the foreign-born partner of a U.S. citizen would be granted prosecutorial discretion. Administration officials had stated that being in a same-sex relationship would be considered in the context of the "community contributions" and "family relationships" factors in the Morton memo. But activists and Democratic lawmakers sought additional assurances that bi-national same-sex couples would not be left out. Chris Johnson, *Lawmakers Seek Added Protections For Bi-national Gay Couple*, WASH. BLADE (Sept. 27, 2011, 1:06 PM), <http://www.washingtonblade.com/2011/09/27/lawmakers-seek-added-protections-for-bi-national-gay-couples/>. Finally, more than a year later, DHS Secretary Napolitano announced: "In an effort to make clear the definition of the phrase 'family relationships,' I have directed ICE to disseminate written guidance to the field that the interpretation of the phrase 'family relationships' includes long-term, same-sex partners." Miranda S. Leitsinger, *U.S. Immigration Chief: Same-sex Ties Are Family Ties*, NBC NEWS (Sept. 28, 2012, 10:01 AM), http://usnews.nbcnews.com/_news/2012/09/28/14140024-us-immigration-chief-same-sex-ties-are-family-ties?lite.

⁴⁷ See Julianne Hing, *DREAMers Stage Sit-Ins at Obama Office to Force Deportation Standoff*, COLORLINES (June 13, 2012, 10:12 AM), http://colorlines.com/archives/2012/06/dreamers_planned_obama_campaign_office_sit-ins_force_deportation_standoff.html.

⁴⁸ *Id.*

⁴⁹ American Immigration Council Staff, *A Breakdown of DHS's Deferred Action for DREAMers*, IMMIGR. IMPACT (June 18, 2012), <http://immigrationimpact.com/2012/06/18/a-breakdown-of-dhss-deferred-action-for-dreamers/>.

⁵⁰ See, e.g., BENDER & ARROCHA, *supra* note 42; BILL ONG HING, *DEFINING AMERICA THROUGH IMMIGRATION POLICY* 226 (2004); Leon Wildes, *The Nonpriority Program of the Immigration and Naturalization Service Goes Public: The Litigative Use of the Freedom of Information Act*, 14 SAN DIEGO L. REV. 42, 50 (1976). See generally Michael A. Olivas, *Dreams Deferred: Deferred Action, Prosecutorial Discretion, and the Vexing Case(s) of DREAM Act Students*, 21 WM. & MARY BILL RTS. J. 463, 476-80 (2012); Shoba S. Wadhia, *The Role of Prosecutorial Discretion in Immigration Law*, 9 CONN. PUB. INT. L.J. 243, 244 (2010).

authority.⁵¹ Indeed, months earlier, the president himself was skeptical that he could “just suspend deportations [of DREAMers] through executive order.”⁵²

Donald Trump, as a presidential candidate, promised to rescind DACA immediately if he became president. After his 2016 election, however, Trump did not move to rescind the program until September 2017, when the Attorney General of Texas threatened a lawsuit if DACA was not rescinded.⁵³

II. THE PARTICULARIZED PASSIONATE SENTIMENT ON BEHALF OF DACA RECIPIENTS

As a particular subgroup of undocumented immigrants, DREAMers have gained widespread support by the American public. Two-thirds of Americans favor granting legal status to DREAMers.⁵⁴ Slightly fewer Americans would grant legal status to all undocumented immigrants, but only if merit-based immigration policy was established for future immigration.⁵⁵ Rightly or wrongly, DREAMers have taken center stage in the debate over undocumented immigration.⁵⁶

The standard narrative on behalf of DREAMers is appealing. For example, in criticizing the Trump decision to terminate DACA, former President Obama stated: “Whatever concerns or complaints Americans may have about immigration in general, we shouldn’t threaten the future of this group of young people who are here through no fault of

⁵¹ BENDER & ARROCHA, *supra* note 42; see also Julia Preston & John H. Cushman Jr., *Obama to Permit Young Migrants to Remain in U.S.*, N.Y. TIMES (June 15, 2012), https://www.nytimes.com/2012/06/16/us/us-to-stop-deporting-some-illegal-immigrants.html?_r=1.

⁵² Glenn Kessler, *Obama’s Royal Flip-flop on Using Executive Action on Illegal Immigration*, WASH. POST (Nov. 18, 2014), https://www.washingtonpost.com/news/fact-checker/wp/2014/11/18/obamas-flip-flop-on-using-executive-action-on-illegal-immigration/?noredirect=on&utm_term=.8f961d771d8f.

⁵³ See Suzanne Gamboa, *Texas AG, Others Demand Trump Stop New DACA Permits, End Renewals*, NBC NEWS (June 29, 2017, 4:03 PM), <https://www.nbcnews.com/news/latino/texas-ag-others-demand-trump-stop-new-daca-permits-end-n778371>.

⁵⁴ Domenico Montanaro, *NPR Poll: 2 In 3 Support Legal Status For DREAMers; Majority Oppose Building A Wall*, NPR (Feb. 6, 2018), <https://www.npr.org/2018/02/06/583402634/npr-poll-2-in-3-support-legal-status-for-dreamers-majority-oppose-building-a-wall>.

⁵⁵ Osita Nwanevu, *Is Donald Trump Winning on Immigration?*, SLATE (July 5, 2018), <https://slate.com/news-and-politics/2018/07/the-latest-polling-offers-good-news-and-bad-news-for-immigration-advocates.html>.

⁵⁶ See Cindy Carcamo & Brittny Mejia, *Focus on Dreamers Breeds Resentment from Other Immigrants Here Illegally*, L.A. TIMES (Feb. 18, 2018), <http://www.latimes.com/local/california/la-me-left-out-of-daca-20180218-story.html>.

their own, who pose no threat, who are not taking away anything from the rest of us.”⁵⁷ Former President Bill Clinton also commented that DREAMers grew up in America and it would be “cruel to send these young people to places many of them have never lived and do not know. For them this is home. The United States is their home.”⁵⁸

The DREAMer narrative of “no fault of their own” who should not be deported to places they “do not know” often is coupled with how they are “bright . . . hard-working contributors,”⁵⁹ who “pursue higher education,”⁶⁰ and have become “a part of our national fabric.”⁶¹ DREAMers are depicted as top students who are “entrepreneurial,” and “working to become doctors, scientists, lawyers, engineers and leaders.”⁶² The stories of DREAMers who have become valedictorians or members of the U.S. military are often highlighted.⁶³ The repeal of DACA is depicted as “betraying the principles that lie at the heart of the nation.”⁶⁴

The standard DREAMer narrative and the word “DREAMer” is problematic for many in the immigrant and immigrant rights community. As one DREAMer put it:

[T]he word DREAMer became exactly what legislators wanted it to be — an exclusive term for those who are model residents and future “Americans.” We began to see how quickly people

⁵⁷ Kevin Liptak, *Obama Slams Trump for Rescinding DACA, Calls Move “Cruel,”* CNN (Sept. 5, 2017, 11:37 PM), <https://www.cnn.com/2017/09/05/politics/obama-daca/index.html>.

⁵⁸ *Id.*

⁵⁹ Kenneth Quinell, *DACA Announcement Will Not Deter Working People’s Fight for Justice*, AFL-CIO (Sept. 5, 2017), <https://aflcio.org/2017/9/5/daca-announcement-will-not-deter-working-peoples-fight-justice>.

⁶⁰ Edwin Torres, *Congress, Find Way to Help Hard-working Dreamers*, S.C. TIMES (Sept. 23, 2017, 4:00 PM), <https://www.sctimes.com/story/opinion/2017/09/23/congress-find-way-help-hard-working-dreamers/684808001/>.

⁶¹ Patrick McCarthy, *Our Statement on Ending DACA*, ANNIE E. CASEY FOUND. (Sept. 5, 2017), <http://www.aecf.org/blog/our-statement-on-ending-daca/>.

⁶² Sen. Martin Heinrich, *Dreamers Contribute to Our Economy*, HILL (Oct. 4, 2017, 9:30 AM), <http://thehill.com/blogs/congress-blog/politics/353774-dreamers-contribute-to-our-economy>.

⁶³ See, e.g., Christina Manduley et al., “Dreamer” Twins, Hoping to Enter the Military, Will Either Get Deployed or Deported, CNN (Feb. 13, 2018, 11:48 AM), <https://www.cnn.com/2018/02/12/politics/daca-twins-deported-or-deployed-tapper-cnntv/index.html>; *Valedictorian, Dreamer, Citizen*, MY SAN ANTONIO (May 25, 2017, 6:26 PM), <https://www.mysanantonio.com/news/local/article/Valedictorian-dreamer-citizen-11174539.php>.

⁶⁴ Pablo Donado, *DACA’s Repeal: A Betrayal of American Principles*, ODYSSEY (Sept. 12, 2017), <https://www.theodysseyonline.com/dacas-repeal-betrayal-american-principles>.

were ready to throw our parents and “criminals” under the bus. For people who live in low income communities of color the reality was that most youth do not fit into the DREAMer identity.⁶⁵

I agree with this critique. In my view, the parents of all DREAMers were dreamers themselves, seeking a better life for their families. I also have long noted the tragedy of deporting so-called criminal immigrants and advocated for the recognition that immigrants convicted of crimes often rehabilitate and are worthy of a second chance.⁶⁶

The arguments for civil disobedience of employer sanctions are certainly applicable beyond the DACA/DREAMer context. According to the Pew Hispanic Center, as of 2015, eight of the eleven million undocumented immigrants in the United States are part of the civilian workforce.⁶⁷ The number of DACA workers is less than ten percent of those workers. A broad survey of DACA recipients has found that ninety-one percent are working: 728,000 of the 800,000 DACA holders.⁶⁸ I focus more narrowly on the hiring of DACA recipients whose EADs will be expiring largely because DREAMers have taken center stage on the debate over undocumented immigration.⁶⁹

Some business owners and corporate leaders may feel that the moral principles to engage in civil disobedience are greater in the DACA context than in the context of all undocumented workers. The DREAMer narrative is prevalent, often resulting in a sense of injustice that may make many employers more likely to engage in civil disobedience. So although the call for civil disobedience is relevant to all undocumented workers, this article is focused primarily in the context of DREAMers because of the recent intense focus on DACA.⁷⁰

⁶⁵ Jonathan Perez, *Challenging the “DREAMer” Narrative*, HUFFINGTON POST (Jan. 16, 2015, 12:54 PM), https://www.huffingtonpost.com/jonathan-perez/challenging-the-dreamer_n_6163008.html.

⁶⁶ See, e.g., Bill Ong Hing, *Re-examining the Zero-Tolerance Approach to Deporting Aggravated Felons: Restoring Discretionary Waivers and Developing New Tools*, 8 HARV. L. & POL'Y REV. 141 (2014).

⁶⁷ Jens Manuel Krogstad et al., *5 Facts About Illegal Immigration in the U.S.*, PEW RES. CTR. (Apr. 27, 2017), <http://www.pewresearch.org/fact-tank/2017/04/27/5-facts-about-illegal-immigration-in-the-u-s/>.

⁶⁸ See Wong et al., *supra* note 4.

⁶⁹ See Carcamo & Mejia, *supra* note 56.

⁷⁰ My intent is not to distinguish DACA recipients too broadly from their parents and cousins, throwing one lot under the bus for the sake of another.

III. A CALL FOR CIVIL DISOBEDIENCE

Given the great support expressed by employers, political leaders, educators, and others for DACA recipients and DREAMers more broadly, the time is ripe for action beyond legislative advocacy. Advocacy efforts should continue, but given Congress's poor track record on immigration reform, other actions should be contemplated. Willfully defying employer sanctions is a serious option to consider.

Employers, most notably high profile corporations, are upset that President Trump has rescinded DACA and that no legislation has been enacted to remedy the situation.⁷¹ Facebook CEO Mark Zuckerberg commented that the end of DACA was “a sad day for our country.” He continued, “[t]he decision to end DACA is not just wrong. It is particularly cruel to offer young people the American Dream, encourage them to come out of the shadows and trust our government, and then punish them for it.”⁷² Google CEO Sundar Pichai agreed that “Congress needs to act now to [help DREAMers].”⁷³

The support for DREAMers by the corporate world is not surprising considering three-fourths of major U.S. companies employ DACA recipients.⁷⁴ Apple and Microsoft promised to provide legal counsel to any of its DACA employees facing removal and collaborate on court challenges to preserve DACA.⁷⁵ One multinational corporation that declined to be named offered to assist DACA employees by helping to find work at its foreign subsidiary.⁷⁶ The fact that a high profile company like Airbnb has publicly indicated that it would continue to employ DREAMers whose work permits expire is significant.⁷⁷ Airbnb's statement came in response to a survey that *The Guardian* conducted of nineteen major tech companies. The survey asked

⁷¹ Dina Bass, *Major Corporations, Including Google and Wells Fargo, Condemn Trump Move to End DACA*, ST. LOUIS POST-DISPATCH (Sept. 5, 2017), http://www.stltoday.com/business/local/major-corporations-including-google-and-wells-fargo-condemn-trump-move/article_eb6bc212-093f-5a42-8908-e4bf489f2183.html.

⁷² *Id.*

⁷³ *Id.*

⁷⁴ Erin Mulvaney, *What Employers Should Consider After Trump's DACA Decision*, NAT'L L.J. (Sept. 7, 2017, 12:25 AM), <https://www.law.com/nationallawjournal/sites/nationallawjournal/2017/09/07/what-employers-should-consider-after-trumps-daca-decision/>.

⁷⁵ *Id.*

⁷⁶ *Id.* (citing Tracy Jan, *Companies to Offer 'Dreamers' Legal Protection as Trump Scraps DACA*, WASH. POST (Sept. 5, 2017), https://www.washingtonpost.com/news/wonk/wp/2017/09/05/trumps-decision-to-scrap-daca-will-fall-heavily-on-the-hospitality-retail-and-construction-industries/?noredirect=on&utm_term=.2a21509016ff).

⁷⁷ See Levin, *supra* note 22.

companies whether they would fire DREAMers who lost their work permits. The other eighteen companies would not reveal whether they would keep the DREAMers on the payroll.⁷⁸ The impact on major corporations could be huge; Apple alone has indicated that it employs more than 250 DREAMers in twenty-eight states.⁷⁹ Thus, the question posed to employers by *The Guardian* was whether they would dismiss DREAMers from their workforce if Trump rescinded DACA and their work permits. In other words, would employers engage in civil disobedience and defy federal employer sanctions laws that prohibit employers from knowingly employing undocumented workers?

Civil disobedience, which contemplates “the willful violation of a law, undertaken for the purpose of social or political protest” plays an important role in society.⁸⁰ The intent of such disobedience is to address an injustice, asserting that those who are oppressed cannot be expected to “acquiesce indefinitely in the terms [imposed] upon [them].”⁸¹ The standard definition of civil disobedience contains elements of nonviolence, a sense of higher or moral principle, and hope for political, social, or economic change of significance.⁸² The action is taken because political or legal avenues of change may be fruitless.⁸³ Civil disobedience provides those at the margins and their supporters with a dignified voice to challenge the status quo, and bring the situation into public discourse.⁸⁴ Society and the government is reminded that government action can be restricted. The government is still subject to ethical standards and wields little power over the human spirit or moral principles.⁸⁵ Civil disobedience challenges the majority to consider legitimate positions of the minority.⁸⁶ Thus, in the employer sanctions context, violating employer sanctions is a method for employers to place moral law above an unjust law at a time when the political avenues for change have been stalled.

⁷⁸ *Id.*

⁷⁹ Daniel Uria, *Tech Companies File Briefs in Support of DACA Plaintiffs*, UPI (Nov. 2, 2017, 5:28 PM), https://www.upi.com/Top_News/US/2017/11/02/Tech-companies-file-briefs-in-support-of-DACA-plaintiffs/2671509653578/.

⁸⁰ *United States v. Schoon*, 971 F.2d 193, 195-96 (9th Cir. 1991).

⁸¹ JOHN RAWLS, *A THEORY OF JUSTICE* 382-83 (1971).

⁸² *Civil Disobedience*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/civil-disobedience>.

⁸³ *Id.*

⁸⁴ Mark Edward DeForrest, *Civil Disobedience: Its Nature and Role in the American Legal Landscape*, 33 GONZ. L. REV. 653, 666-68 (1997-1998).

⁸⁵ *Id.* at 667-68.

⁸⁶ *Id.* at 366.

Political philosopher John Rawls' analysis also gives good reason to seriously consider civil disobedience in the employer sanctions context. He argues that ordinarily civil disobedience is appropriate in the face of an unjust law only so long as the basic structure of society is also unjust. However, civil disobedience is appropriate in those circumstances if certain limits of injustice are exceeded. Discerning those limits is a matter of balancing "appropriate priorities."⁸⁷

In the immigration context, determining what "appropriate priorities" actually are is likely to vary based upon individuals' political perspectives about immigration enforcement. On one hand, anti-immigrant groups are likely to argue that employer sanctions laws are fair because they help preserve jobs for native workers and discourage undocumented immigration.⁸⁸ On the other, immigrant rights activists have opposed employer sanctions since the inception of these restrictions in 1986.⁸⁹ This opposition is based upon the fact that employer sanction laws do not address the reasons that people migrate or flee to the United States in the first place, which may well be the root issue that motivates undocumented immigration. While these laws are labeled "employer" sanctions, the workers are the ones who are punished — they are the ones who lose their jobs, which is especially harrowing in light of the fact that many are trying to feed their families because oftentimes they could not stay in their home countries for fear of persecution.

The racial effect of employer sanctions also is problematic for those who oppose those laws.⁹⁰ The vast majority of undocumented immigrants are people of color.⁹¹ More than seventy percent are from Mexico and Central America, while thirteen percent are from Asia.⁹² Furthermore, the racialization of employer sanctions is highlighted in the termination of temporary protected status ("TPS") and corresponding employment authorization, because TPS is held

⁸⁷ *Id.* at 350.

⁸⁸ See, e.g., Nolan Rappaport, *To Tackle Illegal Immigration, Go After the Employers*, HILL (Nov. 6, 2017), <http://thehill.com/opinion/immigration/358892-to-tackle-illegal-immigration-go-after-the-employers>.

⁸⁹ See generally David Bacon & Bill Ong Hing, *The Rise and Fall of Employer Sanctions*, 38 FORDHAM URB. L.J. 77 (2010).

⁹⁰ *Id.* at 94-95.

⁹¹ *Profile of the Unauthorized Population: United States*, MIGRATION POL'Y INST (2014), <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US>.

⁹² *Id.*

primarily by migrants from such countries as Sudan, Nicaragua, Haiti, and El Salvador.⁹³

While determining what constitutes “appropriate priorities” in the employer sanctions context oftentimes exposes political division over immigration enforcement, that division should not deter us from assessing whether civil disobedience is appropriate. The correctness of civil disobedience in any context is often guided by a consideration of whether that act results in tension and division that inspires debate. As Ronald Dworkin points out: “Given the sort of thing that we all accept as grounds of law — the paradigms of the day — when are citizens morally free to disobey what counts as law on those grounds?”⁹⁴ If one side rejects everything the other side takes as “paradigmatic,” then debate may be fruitless.⁹⁵ Therefore, in the immigration context, the problem is that people with pro-immigrant beliefs might reject everything that people with anti-immigrant beliefs view as “paradigmatic,” and vice versa.

However, the Rawlsian approach provides strong justification for civil disobedience in the employer sanctions context. Since the publication of his book, *A Theory of Justice*, in 1971, John Rawls is regarded by some as America’s leading political philosopher.⁹⁶ Most American and European students of politics or philosophy ruminate over his ideas. A starting point in Rawls’ theory of justice is what he terms the *original position*, which may be helpful in determining the justness of employer sanctions in the DACA context. Principles of justice evolve from an ideal theory in which “persons in the *original position* assume that the principles they acknowledge, whatever they are, will be strictly complied with and followed by everyone.”⁹⁷

The original position assumes the hypothetical situation where members of society and decision makers determine basic rights, duties for the society, and the division of social benefits behind a “veil of ignorance.”⁹⁸ No one knows his or her place in society in terms of class, financial resources, intelligence, or strength. With that

⁹³ See Otto W. Immel & Ashley E. Sykes, *Termination of Temporary Protected Status (TPS) – Employer Impact*, QUARLES & BRADY LLP (Jan. 22, 2018), <https://www.quarles.com/publications/termination-of-temporary-protected-status-tps-employer-impact/>.

⁹⁴ RONALD DWORKIN, *LAW’S EMPIRE* 112-13 (1986).

⁹⁵ *Id.*

⁹⁶ Ben Rogers, *John Rawls*, PROSPECT MAGAZINE (June 20, 1999), <https://www.prospectmagazine.co.uk/magazine/who-was-john-rawls-political-philosopher-justice>.

⁹⁷ RAWLS, *supra* note 81, at 350 (emphasis added).

⁹⁸ *Id.* at 11-13.

background, “free and rational” decisions on what is “just and unjust” are made.⁹⁹ Thus, principles of justice cannot be designed to favor a particular condition, since all are similarly situated.¹⁰⁰

So, when using the Rawlsian approach to determine whether to terminate DACA the question becomes what the decision of persons in the original position would be. Legislators do not know their position under a veil of ignorance. They are unaware of whether they are noncitizens or citizens and whether they are documented or undocumented. In other words, a decision maker can imagine being in the shoes of a DREAMer, and thus might better understand the reality of facing deportation despite having grown up in the United States. The notion of essentially being an American without the benefit of the security of lawful status would be impossible to dismiss. A rational response to such a consideration would be the enactment of the DREAM Act. At the very least, the cancellation of DACA is unlikely so long as decision makers adopt the original position.

If this scenario were to occur, strict compliance with employer sanctions laws in the face of the cancellation of DACA might not be warranted. Rawls cautions that whether “noncompliance is justified depends on the extent to which laws and institutions are unjust As a rough rule a conception of justice is reasonable in proportion to the strength of the arguments that can be given for adopting it in the original position.”¹⁰¹ I do not believe that those in the original position would adopt employer sanctions, because they would not know if they were documented or undocumented workers.

Some who are sympathetic with the plight of DREAMers may think that the best way to get the law or situation changed is through the ballot box. However, Congress has been unable to reach an agreement to resolve the situation for years.¹⁰² Thoreau reminded us in his classic essay on civil disobedience that relying on “voting [is] doing nothing.”¹⁰³ Waiting to persuade “the majority to alter” unjust laws can make things worse.¹⁰⁴

The conditions for civil disobedience in the current climate are clear. Deeming employer sanctions in the context of DACA as unjust

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 350-53.

¹⁰² Emily Tillet, *Trump Blasts Democrats over MS-13 Gang Violence, Immigration Standstill*, CBS NEWS (May 24, 2018), <https://www.cbsnews.com/news/trump-blasts-democrats-for-ms-13-gang-violence-immigration-standstill/>.

¹⁰³ HENRY DAVID THOREAU, CIVIL DISOBEDIENCE 42, 44 (1849).

¹⁰⁴ *Id.*

is a reasonable conclusion. DACA recipients work and contribute to the economy. They have resided in the United States for many years and become integral to their communities. The enforcement of employer sanctions has serious racial effects. DREAMers and their allies have urged Congress and the President to enact legislation. Court challenges to the DACA rescission have been made. Given the good faith attempts by DREAMers, their employers, and their supporters to seek a remedy to the situation through the conventional political process, civil disobedience is now appropriate.

IV. CIVIL DISOBEDIENCE IN THE CORPORATE CONTEXT

Major U.S. corporations have been very outspoken in support of DREAMers and the continuation of the DACA program.¹⁰⁵ However, when one thinks of acts of disobedience, the examples of individuals like Ghandi, Martin Luther King, and their followers most readily come to mind. Additionally, one may think of anti-war protestors or individuals opposing racist police violence. Corporate civil disobedience is not immediately contemplated. However, business ethicists remind us that people do not abandon their conscience just because they are in a business setting and can choose to violate business regulations as a matter of moral principle as well.¹⁰⁶ Moral judgments in the corporate context are made by shareholders, executives, board members, and employees.¹⁰⁷ The key questions for corporations are 1) when civil disobedience is appropriate, and 2) whether different considerations apply to businesses than individuals.

An important issue to look out for is whether the employer chooses to violate regulations simply for economic reasons. For example, in the employer sanctions context, if an employer hires unauthorized workers simply to save money, that act would hardly constitute civil disobedience for moral reasons. However, if the employer hires undocumented workers at standard wages because the workers are trying to feed their families or because they have resided in the United States for many years, then the act could be considered “conscientious evasion,” which should be respected as a form of civil disobedience.¹⁰⁸

Civil disobedience in the corporate context may face particular obstacles in terms of societal obligations. Rules and regulations are

¹⁰⁵ See *supra* notes 71-73 and accompanying text.

¹⁰⁶ Daniel T. Ostas, *Civil Disobedience in a Business Context: Examining the Social Obligation to Obey Inane Laws*, 47 AM. BUS. L.J. 291, 299, 312 (2010).

¹⁰⁷ *Id.*

¹⁰⁸ *Id.* at 301.

supposed to be followed.¹⁰⁹ Without consistent adherence to such regulations, confidence in businesses would be eroded.¹¹⁰ However, business law specialist Cynthia Williams acknowledges that civil disobedience in some contexts should be allowed. Although strict legal compliance is the general rule, following the standard Rawlsian view, she notes that unjust laws should not be obeyed. She accepts that there is a hierarchy of laws some of which demand obedience, others which provide choice, while still others require breach.¹¹¹

Using Williams' hierarchy, passionate advocacy on behalf of DREAMers and DACA recipients might require breach of employer sanctions for some supporters. At the very least, a case can be made that hiring undocumented workers presents an important choice to corporations of whether to protect their workers or cooperate with the government. Some employers may feel that undocumented immigrants should be deported, while others may feel that undocumented immigrants are human beings who are victims of failed immigration policies. More than seventy percent of Americans say that undocumented immigrants should be allowed to stay, but a small group favor deportation.¹¹²

Civil disobedience is an action that corporations can exercise. Their board members, executives, employees, and shareholders continue to have a conscience upon which they can act. The argument for civil disobedience by business employers is defensible. The next section on potential penalties — civil and criminal — provides other factors that business entities should consider in making the decision to defy employer sanctions.

V. POTENTIAL PENALTIES

A critical aspect of engaging in civil disobedience is the willingness to suffer the consequences of such action. Generally, the strategic use of civil disobedience is not only political and non-violent, but also committed openly, illustrating a willingness to accept punishment. Both Gandhi and Martin Luther King, Jr., were known for the public displays of resistance and willingness to accept the consequences. In

¹⁰⁹ See Cynthia A. Williams, *Corporate Compliance with the Law in the Era of Efficiency*, 76 N.C. L. REV. 1265, 1276 (1998).

¹¹⁰ See *id.* at 1285-95.

¹¹¹ *Id.* at 1278 n.43.

¹¹² *Broad Public Support for Legal Status for Undocumented Immigrants*, PEW RESEARCH CENTER (June 4, 2015), <http://www.people-press.org/2015/06/04/broad-public-support-for-legal-status-for-undocumented-immigrants/>.

the employer sanctions context, therefore, employers contemplating civil disobedience are likely interested in what penalties they may face should they do so.

In this section, I cover the basic provisions of employer sanctions — from civil to criminal and special considerations for corporations answering to shareholders as well as nonprofit organizations. Because this article challenges employers — including corporate employers — to engage in civil disobedience, I turn to a number of considerations that company officials must keep in mind if they choose the path of defying employer sanctions laws. The lessons concentrate greatly on the intent of corporate officials, the actions they take, and the reasons for their actions. The actors involved must be mindful of a variety of factors as they make their choice.

A. *Employer Sanctions Provisions*

Federal law prescribes the penalties for hiring undocumented workers. The government enacted these laws as part of the Immigration Reform and Control Act of 1986 (“IRCA”).¹¹³ Under IRCA, employers who “knowingly” hire an unauthorized worker in violation of the law are subject to civil fines.¹¹⁴ However, employers who engage “in a pattern or practice of hiring, recruiting or referring for a fee unauthorized aliens” are subject to criminal penalties.¹¹⁵ Until now, employers who violate the employer sanction law are subject to preclusion from government contracts as well,¹¹⁶ but this punishment is seldom imposed.¹¹⁷ Of course, no one can predict whether the Trump administration will approach employer sanctions in the same manner, in spite of highly publicized raids at 7-Eleven stores across the country in January 2018 and a Fresh Mark meat packing plant in June 2018.¹¹⁸

¹¹³ Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3445 (1986).

¹¹⁴ 8 U.S.C. § 1324a(a)(1)(A) (2018).

¹¹⁵ *Id.* at § 1324a(f)(1).

¹¹⁶ *See id.*

¹¹⁷ Interview with Maxine Bayley, Business Immigration Law Specialist, in San Francisco, Cal. (Aug. 16, 2018).

¹¹⁸ Alan Newhauser, *ICE Puts Employers in Its Crosshairs*, U.S. NEWS (Jan. 22, 2018), <https://www.usnews.com/news/national-news/articles/2018-01-22/is-ice-finally-targeting-employers-of-illegal-workers>; Kristine Phillips, *ICE Arrests Nearly 150 Meat Plant Workers in Latest Immigration Raid in Ohio*, WASH. POST (June 20, 2018), https://www.washingtonpost.com/news/post-nation/wp/2018/06/20/ice-arrests-nearly-150-meat-plant-workers-in-latest-immigration-raid-in-ohio/?noredirect=on&utm_term=.c293e1984922.

As discussed above, an employer who violates employer sanctions laws is subject to civil and criminal penalties, depending on the circumstances. The penalties are primarily for knowingly hiring unauthorized workers.¹¹⁹ These penalties apply even when an employer hires an employee who was initially authorized to work, but loses authorization and the employer becomes aware of the loss of employment authorization.¹²⁰ Penalties also attach for simply failing to follow the paperwork required, such as neglecting to complete an I-9 form for a new employee or failing to complete the form correctly. However, the I-9 requirement does not apply when a business hires a worker as an independent contractor. Despite this, an employer cannot get around the employer sanctions laws by treating a worker who loses employment authorization as an independent contractor if the employer knows the worker is not authorized to work. The statute prevents employers from knowingly using independent contractor arrangements to avoid liability for hiring an unauthorized worker.¹²¹

1. Civil Fines and Order to Cease and Desist

The first civil sanction upon an employer who has violated any of the above provisions is an order to cease and desist from such behavior.¹²² The employer may also be subjected to civil fines that range from \$250 to \$10,000.¹²³ The size of the fine depends on any prior violations and evidence of good faith on the part of the employer.¹²⁴

Thus, depending on the circumstances, the civil fine can be quite high. In September 2017, ICE announced the biggest ever employer sanctions fine of \$95 million. Asplundh Tree Experts, Co., which trims trees and clears brush for power and gas lines across the country, hired employees who provided fake identification documents from 2010 to 2014.¹²⁵ After ICE found that Asplundh employed unauthorized workers in 2009, the company dismissed workers, but

¹¹⁹ 8 U.S.C. § 1324a(a)(1)(A).

¹²⁰ *Split Rail Fence Co. v. United States*, 852 F.3d 1228, 1243 (10th Cir. 2017).

¹²¹ 8 U.S.C. § 1324a(a)(4).

¹²² 8 C.F.R. § 274a.10(b)(1) (2018); *Mester Mfg. Co. v. INS*, 879 F.2d 561, 563 (9th Cir. 1989).

¹²³ 8 U.S.C. § 1324a(e)(4)(A).

¹²⁴ *Id.*

¹²⁵ Brendan O'Brien, *Tree Trimming Firm Pays Biggest Fine in U.S. Immigration Case*, REUTERS (Sept. 29, 2017), <https://www.reuters.com/article/legal-us-usa-immigration-asplundh/tree-trimming-firm-pays-biggest-fine-in-u-s-immigration-case-idUSKCN1C41M0>.

later hired the same workers back.¹²⁶ However, a similar sized fine for a company engaging in civil disobedience is unlikely to be imposed, as Asplundh employed thousands of unauthorized workers and most companies who may engage in civil disobedience do not employ undocumented workers at such a large level.¹²⁷

2. Criminal Penalties

Any employer is likely to be particularly concerned with potential criminal liability for an act of civil disobedience. In the employer sanctions area, employers who engage in a “pattern or practice” of violating the employer sanctions law are subject to criminal penalties of six months in prison on top of a \$3,000 fine for each unauthorized worker hired.¹²⁸

Thus, flagrant abuse of IRCA can result in serious criminal penalties. For example, in 2001, allegations that Tyson Foods smuggled noncitizens to work at processing facilities led to multi-count federal indictments which resulted in the government seeking prison terms for defendants, and demanding more than \$100 million to resolve the company’s case without criminal consequences.¹²⁹ Officials likely sought stiff penalties based on evidence that Tyson smuggled the workers into the country.¹³⁰ Additionally, in November 2017, news reports indicating that ICE was planning a nationwide raid of an unnamed restaurant chain and preparing “harboring” charges for those responsible for hiring undocumented workers surfaced.¹³¹ Months later, 146 workers were arrested at Ohio meat processing company Fresh Mark, and criminal charges were contemplated but not filed.¹³² However, in August 2018, seventeen individuals were

¹²⁶ See *Tree Company Hit with \$95 Million Fine for Illegal Hiring*, CBS NEWS (Sept. 28, 2017), <https://www.cbsnews.com/news/tree-company-hit-with-95-million-fine-for-illegal-hiring/>.

¹²⁷ See Jeff Goldman, *Tree Company Asplundh to Pay Largest Fine Ever for Hiring Undocumented Workers*, NJ.COM (Sept. 29, 2017), https://www.nj.com/news/index.ssf/2017/09/asplundh_tree_company_to_pay_95m_fine_for_hiring_u.html.

¹²⁸ 8 U.S.C. § 1324a(f)(1).

¹²⁹ Robert L. Jackson, *Tyson Foods Is Indicted in Immigrant Smuggling*, L.A. TIMES (Dec. 20, 2001), <http://articles.latimes.com/2001/dec/20/news/mn-16761>.

¹³⁰ See *id.*

¹³¹ Betsy Woodruff, *Feds Plan Nationwide Operation Targeting Food Service Chain over Undocumented Workers*, DAILY BEAST (Nov. 21, 2017), <https://www.thedailybeast.com/feds-plan-nationwide-operation-targeting-food-service-chain-over-undocumented-workers>.

¹³² John Seewer, *146 Arrested in Immigration Raid at Ohio Meatpacking Plant*, TALKING POINTS MEMO (June 20, 2018), <https://talkingpointsmemo.com/news/>

arrested on suspicion of criminal conspiracy related to worksite hiring of undocumented immigrants on behalf of eleven different employers.¹³³

Despite the threat of criminal sanctions, corporations likely know that civil disobedience often necessitates defying laws despite the threat of incarceration. Indeed, corporations surely remember that Gandhi and Martin Luther King stood up to criminal penalties, and even suffered incarceration for their causes. Nevertheless, the prospect of prison is likely to strongly influence corporate board members' decisions regarding voting to support hiring DREAMers whose work permits have expired.

While criminal charges are possible in the employer sanctions context, a review of cases indicate that no board members have been indicted for hiring undocumented workers. For example, in the Tyson Foods case, no directors were charged, perhaps due to non-culpability, and three of the managers were acquitted by a federal jury.¹³⁴ At trial, prosecutors argued that executives should have known about the recruitment and hiring, but executives claimed that the company did not condone hiring unauthorized workers and that any managers who acted criminally did so on their own.¹³⁵ Even those members of the company who were found guilty received light sentences, as the two managers who pleaded guilty were simply placed on probation for one year.¹³⁶ However, the sixth manager who was indicted committed suicide about a year before the case went to trial.¹³⁷

Despite the fact that criminal penalties are unlikely, large corporations that violate employer sanctions laws may additionally be concerned over whether they might be singled out by the Trump administration for civil or criminal sanctions given Trump's rhetoric about enforcement.¹³⁸ When he campaigned for the presidency,

immigration-raid-ohio-meatpacking-plant-fresh-mark.

¹³³ Josh Planos, *ICE Executes Federal Warrants in Nebraska, Minnesota, Nevada*, KETV7NEWS (Aug. 9, 2018), <https://www.ketv.com/article/immigration-raid-underway-in-oneill/22676364>.

¹³⁴ Bootie Cosgrove-Mather, *Tyson Foods Acquitted of Illegal Hiring*, CBS NEWS (Mar. 26, 2003), <https://www.cbsnews.com/news/tyson-foods-acquitted-of-illegal-hiring/>.

¹³⁵ *Id.*

¹³⁶ Associated Press, *Probation for Tyson Managers*, N.Y. TIMES (May 13, 2003), <https://www.nytimes.com/2003/05/13/us/national-briefing-south-tennessee-probation-for-tyson-managers.html>.

¹³⁷ *Tyson Manager Commits Suicide*, MRT (Apr. 18, 2002), <https://www.mrt.com/news/article/Tyson-Manager-Commits-Suicide-7878730.php>.

¹³⁸ Interview with Zachary Nightingale, Immigration Law Specialist, in San Francisco, Cal. (Apr. 16, 2018).

Trump regularly described unauthorized workers as an economic threat who are “taking our manufacturing jobs.” “taking our money,” and “killing us.”¹³⁹ Trump’s ICE officials have vowed to focus on criminal prosecution of employers who knowingly hire undocumented workers.¹⁴⁰ The Obama administration generally was tougher on corporations after its Justice Department was criticized for being too easy on banks that caused the 2008 financial meltdown. Hefty fines were imposed on the financial institutions in civil cases, however, corporate executives were able to avoid personal liability. These big banks rarely were charged criminally, pejoratively labelled “too big to jail” by critics.¹⁴¹

Corporations contemplating civil disobedience in the employer sanctions context need to be a little concerned about a change in policy regarding the prosecution of corporate officials near the end of the Obama administration. In order to address the criticism of being too soft on corporate officials, then-Deputy Attorney General Sally Yates issued a new policy telling prosecutors to focus on prosecuting company officials found to have engaged in wrongdoing from the start of their investigation.¹⁴² The Yates memo, which remains in effect, addressed the concern about whether corporate officials should be criminally prosecuted after civil settlement with the corporation was reached.¹⁴³ The memo requires federal prosecutors to focus on the individuals responsible for the misconduct from the beginning of the investigation. Before prosecutors can forego civil or criminal action against corporate officials, a senior Department of Justice official must approve.¹⁴⁴ Even though laws such as employer sanctions laws may not have motivated the new guidelines, the Yates memo demonstrates

¹³⁹ Massimo Calabresi, *What Donald Trump Knew About Undocumented Workers at His Signature Tower*, TIME MAG. (Aug. 24, 2016), <http://time.com/4465744/donald-trump-undocumented-workers/>.

¹⁴⁰ Kelly Cohen, *ICE to Target Employers Who Hire Illegal Immigrants*, WASH. EXAMINER (Oct. 22, 2017), <https://www.washingtonexaminer.com/ice-to-target-employers-who-hire-illegal-immigrants>.

¹⁴¹ Gretchen Morgenson, *A Bank Too Big to Jail*, N.Y. TIMES (July 15, 2016), <https://www.nytimes.com/2016/07/17/business/a-bank-too-big-to-jail.html>.

¹⁴² Katrice Bridges Copeland, *The Yates Memo: Looking for “Individual Accountability” in All the Wrong Places*, 102 IOWA L. REV. 1897, 1899 (2017).

¹⁴³ Hiroko Tabuchi, Jack Ewing & Matt Apuzzo, *6 Volkswagen Executives Charged as Company Pleads Guilty in Emissions Case*, N.Y. TIMES (Jan. 11, 2017), <https://www.nytimes.com/2017/01/11/business/volkswagen-diesel-vw-settlement-charges-criminal.html>.

¹⁴⁴ Carol A. Poindexter, *Criminal and Civil Liability for Corporations, Officers, and Directors*, NORTON ROSE FULBRIGHT (Aug. 2016), <http://www.nortonrosefulbright.com/files/20160801-criminal-and-civil-liability-for-corporations-officers-and-directors-142383.pdf>.

serious intent by the Department of Justice to consider criminal prosecutions against corporate officials. The memo provides guidelines for a Trump/Sessions Department of Justice that may take employer sanctions against corporate officials much more seriously than the Obama administration may have.¹⁴⁵

Despite this policy, criminal indictments of corporate board members remain rare. Consider the Takata automobile air bag case.¹⁴⁶ The Japanese corporation manufactured automobile air bags with a deadly defect that led to a massive recall.¹⁴⁷ The U.S. Department of Justice brought criminal charges against the corporation resulting in a guilty plea for wire fraud and a one billion dollar fine. Three Takata executives were criminally charged with wire fraud and conspiracy because they allegedly “concealed deadly defects.” Yet, none of Takata’s board members were criminally indicted. In another example, criminal charges were brought against Volkswagen executives in a case involving a major emissions-cheating scandal.¹⁴⁸ Six executives were charged for their roles in allegations of wire fraud, customs violations, and obstruction of justice.¹⁴⁹ However, no board members were indicted even though some officers who were charged reported directly to board members.¹⁵⁰

Criminal indictments of board members are rare because malfeasance on the part of board members is difficult to establish. The corollary of that observation is that when malfeasance on the part of the board is easy to establish, criminal charges against board members is more likely. Thus, if a board is asked specifically to vote on whether to defy employer sanctions at a board meeting, presumably minutes of the meeting would be clear evidence of the action. If boards engaged in civil disobedience in this manner, its members may be more likely to face criminal indictments.

¹⁴⁵ See *id.*

¹⁴⁶ See generally *United States v. Takata Corp.*, No. 16-CR-20810, 2018 WL 1406839 (E.D. Mich. Mar. 21, 2018).

¹⁴⁷ Rebecca Hersher, *Takata to Pay \$1 Billion over Air Bag Fraud; 3 Executives Criminally Charged*, NPR (Jan. 13, 2017), <https://www.npr.org/sections/thetwo-way/2017/01/13/509665912/takata-to-pay-1-billion-over-airbag-fraud-3-executives-criminally-charged>.

¹⁴⁸ Tabuchi, Ewing & Apuzzo, *supra* note 143.

¹⁴⁹ *Id.*; U.S. Dep’t of Justice, *Volkswagen AG Agrees to Plead Guilty and Pay \$4.3 Billion in Criminal and Civil Penalties; Six Volkswagen Executives and Employees Are Indicted in Connection with Conspiracy to Cheat U.S. Emissions Tests* (Jan. 11, 2017), <https://www.justice.gov/opa/pr/volkswagen-ag-agrees-plead-guilty-and-pay-43-billion-criminal-and-civil-penalties-six>.

¹⁵⁰ See U.S. Dep’t of Justice, *supra* note 149.

Whether or not corporate board members would likely face criminal liability (the chances of which increase the more involved the board or an individual member is in the decision to violate criminal law), corporations should be apprised of the standards for criminal liability of corporations generally. A corporation acts through its officers, employees, and agents, and courts have held corporations vicariously liable for torts committed by their agents acting within the scope of their employment duties. Extending the same principle to criminal acts, more than a century ago, the Supreme Court held that the entity can be criminally liable for its agents' acts undertaken to benefit the corporation.¹⁵¹ Under the same theory, corporate officials may face liability for the agents' misconduct, irrespective of actual knowledge of the misconduct.¹⁵²

While corporate liability attaches when the agent is motivated by service to the corporation, the fact that the agent is acting for other reasons as well does not absolve the corporation.¹⁵³ If the agent acted with the intent to benefit the corporation in some way, the act is imputed to the principal whether the corporation benefited or not, or even if the result adversely affected the corporation's interests.¹⁵⁴ In the employer sanctions context, imagine this scenario: Sally, a member of the H.R. department at X Company decides to continue employing DACA workers whose work permits have expired. She makes this decision based, at least in part, on a belief that doing so will benefit the corporation thinking that the company needs their skills. Sally also may be motivated by the hope that the act of civil disobedience will play well with pro-immigrant customers and groups. Under the current standard, X Company would be liable for the actions of Sally, as she acted at least in part because she thought hiring undocumented workers would benefit the corporation.

Corporate executives and board members confronting potential criminal liability over actions of civil disobedience should be mindful of other relevant concepts such as willful blindness, collective knowledge, responsible corporate officer principles, and conspiracy. Corporate officials can face criminal liability under the willful

¹⁵¹ *New York Cent. & Hudson R.R. v. United States*, 212 U.S. 481, 494-95 (1909); see also *United States v. Dotterweich*, 320 U.S. 277, 281 (1943) (explaining that "the only way in which a corporation can act is through the individuals who act on its behalf").

¹⁵² Poindexter, *supra* note 144.

¹⁵³ *Id.*; see also *United States v. Gold*, 743 F.2d 800, 823 (11th Cir. 1984).

¹⁵⁴ See *Standard Oil Co. of Texas v. United States*, 307 F.2d 120, 128-29 (5th Cir. 1962).

blindness doctrine for intentionally failing to investigate suspicious wrongdoing. The principle attaches culpability for purposefully ignoring criminal activity.¹⁵⁵ Criminal liability can also attach to a corporation based on the collective knowledge and conduct of its agents. If no single agent has sufficient knowledge to be guilty of a crime, criminal liability cannot be avoided because its agents' duties were divided.¹⁵⁶ Relatedly, under a concept dubbed the "Responsible Corporate Officer" doctrine, civil and criminal liability can extend to any corporate official with a responsible share of the action that a statute outlawed.¹⁵⁷ Criminal liability attaches under conspiracy law when at least two individuals agree to commit a crime, and one of the individuals acts to advance the criminal objective of the conspiracy.¹⁵⁸ Conspiring with corporate agents falls with the criminal statutes.¹⁵⁹

Thus, depending on the circumstances, corporate executives and board members can be criminally liable. Did the officials fail to investigate when they learned of potential criminal activity of an agent? If so, willful blindness might be alleged. If the collective knowledge of the H.R. manager and the head of a division constitutes sufficient knowledge of a crime, criminal liability may attach to the corporation. If one board member and an executive conspire to violate a law, conspiracy might be established.

The characterization of employer sanctions defiance may be important to some corporate board members. Some companies may choose to defy certain laws in a manner that could be viewed as civil disobedience by an objective observer, but might take the position that the law does not apply or that the law itself is unlawful. For example, in lawsuits challenging the attempt to rescind DACA, more than a hundred tech companies signed an amicus brief which argued that the DACA rescission was invalid.¹⁶⁰ Historically, after the Supreme Court

¹⁵⁵ Poindexter, *supra* note 144; *see also* United States v. Bank of New England, N.A., 821 F.2d 844, 856 (1st Cir. 1987).

¹⁵⁶ *See id.*; *In re* WorldCom, Inc. Sec. Litig., 352 F. Supp. 2d 472, 497 (S.D.N.Y. 2005). Collective knowledge, however, is not used to establish corporate intent or scienter. *See* Southland Sec. Corp. v. INSpire Ins. Sols., Inc., 365 F.3d 353, 366 (5th Cir. 2004).

¹⁵⁷ United States v. Park, 421 U.S. 658, 660-77 (1975); Ted Zwyer, *The Responsible Corporate Officer Doctrine Receives New Attention*, LEXISNEXIS LEGAL NEWSROOM (Oct. 28, 2009), <https://www.lexisnexis.com/legalnewsroom/lexis-hub/b/commentary/archive/2009/10/28/the-responsible-corporate-officer-doctrine-receives-new-attention.aspx>.

¹⁵⁸ 18 U.S.C. § 371 (2018).

¹⁵⁹ Poindexter, *supra* note 144; *see also id.*; McAndrew v. Lockheed Martin Corp., 206 F.3d 1031, 1036-38 (11th Cir. 2000).

¹⁶⁰ Daniel Uria, *Tech Companies File Briefs in Support of DACA Plaintiffs*, UPI (Nov.

upheld the 1964 Civil Rights Amendments on commerce clause grounds in *Heart of Atlanta Motel v. United States*,¹⁶¹ some entities in the South continued to resist integration. Owners or managers of companies knew they were discriminating, but their arguments were premised upon the inapplicability of the commerce clause to their situation and they could therefore legally discriminate. This was still a form of resistance. For example, in *Nesmith v. Young Men's Christian Ass'n of Raleigh, N.C.*,¹⁶² an athletic club argued that because the commerce clause did not apply to them, they could refuse service to African-Americans. The court ruled that the club was subject to the commerce clause and enjoined the racially discriminatory policies. Similarly, in *Gregory v. Meyer*,¹⁶³ restaurant owners knowingly denied service to African-Americans, but argued that the commerce clause did not apply to them and that they should be allowed to discriminate. However, the court disagreed and ordered the restaurant to comply with the civil rights law.

An employer may assert that they are not breaking the employer sanction law because the DACA rescission was not based on a valid legal basis. Thus, one sound argument that the law does not apply would be based on an assertion that the employer did not knowingly break the law. The company would essentially be arguing that it was not knowingly employing an unauthorized worker because they believed the worker was still authorized to work. So arguing that the rescission was not valid could appease some corporate board members who are hesitant to defy employer sanctions.

In sum, criminal charges are more likely to be brought against officers or the corporation itself and less likely against the board. This is because often cases against boards are for a lack of monitoring or self-dealing, and less about active malfeasance.¹⁶⁴ However, the more involved the board is in making the decision to violate the law, then the chances of attaching criminal liability to the board members increase.¹⁶⁵ That is why the defenses available — from challenging the validity of the law

2, 2017, 5:28 PM), https://www.upi.com/Top_News/US/2017/11/02/Tech-companies-file-briefs-in-support-of-DACA-plaintiffs/2671509653578/.

¹⁶¹ 379 U.S. 241, 241 (1964).

¹⁶² 397 F.2d 96 (4th Cir. 1968).

¹⁶³ 376 F.2d 509 (5th Cir. 1967).

¹⁶⁴ Email from Reza Dibadj, Professor of Law, University of San Francisco, to Bill Hing, Professor of Law, University of San Francisco (Mar. 30, 2018, 05:08 PST) (on file with author).

¹⁶⁵ *Id.*

on legal grounds versus moral grounds of being unjust — may be critical to the board's decision on whether or not to act.

B. Criminal Harboring Provisions

Some employers considering the continued employment of DACA recipients whose employment permits expire may also be concerned about whether employment would subject them to criminal harboring charges. Generally speaking, the mere employment of a noncitizen known to be unauthorized to work is not sufficient to bring criminal harboring charges against the employer. However, employers should be cognizant of related actions that could increase the chances of criminal harboring liability.

United States law makes it a federal crime to bring in, harbor, transport, or encourage the entry of an undocumented person in the United States.¹⁶⁶ Of course, the undocumented person must be in the United States unlawfully. Then the defendant must know the person is in the country unlawfully and conceal or shield the person in a building or during transportation.¹⁶⁷

Simply employing an undocumented worker will not lead to a conviction under the harboring provision.¹⁶⁸ But a review of harboring cases where employment was involved is instructive for employers contemplating the violation of employer sanctions laws.

The Fifth Circuit has decided several cases involving harboring charges in the employment context. *United States v. Cantu* involved a restaurant owner who allegedly employed undocumented workers.¹⁶⁹ The owner, Cantu, informed immigration agents that they could not come into the restaurant to question the employees unless a warrant was produced.¹⁷⁰ While the agents stayed off the premises awaiting a warrant, Cantu apparently had customers drive away some of the undocumented workers.¹⁷¹ Under Cantu's instructions, one employee posed as a customer who walked away.¹⁷² However, agents stopped

¹⁶⁶ 8 U.S.C. § 1324(a) (2018).

¹⁶⁷ *Id.* at § 1324(a)(1)(A)(iii).

¹⁶⁸ See “Julie” Yihong Mao & Jan Collatz, *Understanding the Federal Offenses of Harboring, Transporting, Smuggling, and Encouraging Under 8 U.S.C. § 1324(a)*, NAT'L IMMIGR. PROJ. 11-15 (Sept. 28, 2017), http://nationalimmigrationproject.org/PDFs/practitioners/practice_advisories/pr/2017_28Sep_memo-1324a.pdf.

¹⁶⁹ *United States v. Cantu*, 557 F.2d 1173, 1175 (5th Cir. 1977).

¹⁷⁰ *Id.*

¹⁷¹ *Id.* at 1175-76.

¹⁷² *Id.* at 1175.

and questioned that employee, then arrested him.¹⁷³ The Fifth Circuit ruled that Cantu's actions — including instructing one of his employees to act like a customer in order to evade arrest — tended to facilitate the immigrants remaining in the United States without permission in an attempt to shield them from apprehension.¹⁷⁴

Similarly, the Fifth Circuit, in *United States v. Varkonyi*,¹⁷⁵ upheld a harboring conviction when the employer blocked an agent at the front gate of a scrap metal yard and shoved the agent out of the way.¹⁷⁶ The defendant actually helped one employee escape.¹⁷⁷ Then in *United States v. Shum*,¹⁷⁸ the Fifth Circuit upheld a conviction when the employer provided false identification documents for the undocumented workers.¹⁷⁹

The reported Fifth Circuit employment harboring cases all seem to involve more than mere employment. In *Shum*, the employer provided false identification to the workers. In *Varkonyi*, the employer physically intervened and helped someone escape. And in *Cantu*, the employer tried to help workers evade apprehension. Courts in the Sixth Circuit appear to agree that “merely knowingly hiring and employing an [unauthorized] alien does not constitute concealing, harboring, or shielding that alien from detection. Some manner of affirmative conduct, such as providing housing or informing aliens of impending government raids, is required.”¹⁸⁰ A Seventh Circuit case also evaluated a situation involving more than the simple act of employing undocumented workers.¹⁸¹ In that case, the employer instructed the employees to purchase false documents, and he did not account for the workers on payroll records.¹⁸² The employer also arranged for transportation and housing for the workers.¹⁸³

Additionally, the Eighth Circuit also has decided cases involving harboring convictions, but with facts beyond mere employment. In

¹⁷³ *Id.* at 1176.

¹⁷⁴ *See id.* at 1180.

¹⁷⁵ 645 F.2d 453 (5th Cir. 1981).

¹⁷⁶ *Id.* at 459.

¹⁷⁷ *Id.* at 455.

¹⁷⁸ 496 F.3d 390 (5th Cir. 2007).

¹⁷⁹ *Id.*

¹⁸⁰ *Hager v. ABX Air, Inc.*, No. 2:07-cv-317, 2008 WL 819293, at *6 (S.D. Ohio Mar. 25, 2008).

¹⁸¹ *Mao & Collatz*, *supra* note 168; *United States v. Xiang Hui Ye*, 588 F.3d 411, 417 (7th Cir. 2009).

¹⁸² *Mao & Collatz*, *supra* note 168; *Xiang Hui Ye*, 588 F.3d at 417.

¹⁸³ *Mao & Collatz*, *supra* note 168; *Xiang Hui Ye*, 588 F.3d at 417.

United States v. Rushing,¹⁸⁴ the defendants were convicted because they gave an undocumented worker a job in their restaurant and a place to live. The employers also arranged for medical care and banking. All those actions contributed to the harboring conviction.¹⁸⁵ Furthermore, in *United States v. Sanchez*,¹⁸⁶ the defendant was found guilty of harboring because she and her husband provided false documents to the undocumented workers and rented them an apartment.¹⁸⁷ Therefore, also under this standard, courts may not find that employers are harboring until they engage in steps beyond mere employment.

The Eleventh Circuit has come the closest to holding that mere employment is enough to sustain a harboring conviction. In *United States v. Khanani*,¹⁸⁸ the defendants hired undocumented workers to work in their retail stores and were found guilty of conspiracy to conceal, harbor, and shield the workers from employer sanctions laws. The jury instruction required the government to prove a level of knowledge and intent beyond mere employment of undocumented immigrants.¹⁸⁹ The court reasoned that a jury could have found that the accountant for the business (also a defendant) knew that his efforts in forming four sham companies furthered the defendants' actions in harboring undocumented workers.¹⁹⁰ In other words, the formation of sham companies facilitated the employment of unauthorized workers. The accountant knowingly prepared tax filings that omitted certain sales that were used to pay undocumented workers.¹⁹¹

Three years later, in *Edwards v. Prime Inc.*,¹⁹² the Eleventh Circuit noted that the employment of unauthorized workers done knowingly or recklessly might be enough for a harboring conviction.¹⁹³ The court, however, held that it did not need to decide that exact issue, as the complaint indicated that the defendants not only knew of the

¹⁸⁴ 313 F.3d 428, 428 (9th Cir. 2002).

¹⁸⁵ *Id.* at 434.

¹⁸⁶ 927 F.2d 376 (8th Cir. 1991).

¹⁸⁷ *Id.* at 378.

¹⁸⁸ 502 F.3d 1281 (11th Cir. 2007).

¹⁸⁹ *Id.* at 1289.

¹⁹⁰ *Id.* at 1294.

¹⁹¹ Mao & Collatz, *supra* note 168; *see also* *United States v. Khanani*, 502 F.3d 1281, 1294 (11th Cir. 2007).

¹⁹² 602 F.3d 1276 (11th Cir. 2010).

¹⁹³ Mao & Collatz, *supra* note 168; *see also* *Edwards v. Prime Inc.*, 602 F.3d 1276, 1298 (11th Cir. 2010).

workers' undocumented status, but also that they provided names, social security numbers, and cash payments in order to prevent detection.¹⁹⁴

In a Second Circuit case, *United States v. Kim*,¹⁹⁵ the issue of employment harboring came up as well. Kim owned and operated a garment-manufacturing business, where he employed several undocumented workers. Kim told one of the employees to bring different documents to him with a different name on more than one occasion in order to continue employing that worker. This happened even when the employer was under investigation by immigration agents. The court held that Kim's actions constituted harboring.¹⁹⁶ In another Second Circuit case, *United States v. Herrera*,¹⁹⁷ the defendants operated a massage parlor where they installed a security system and a method of alerting undocumented employees to an imminent immigration raid. Defendants yelled "immigration" several times to warn the workers of agents' presence. The defendants also told the employees how to escape during a raid and lie about citizenship. The court found the evidence sufficient to constitute harboring.¹⁹⁸

Employers should be mindful that the defiance of employer sanctions could come in more than one way. One way is simply to hire an unauthorized worker without the required I-9 form. Another way is to complete an I-9 form with false evidence that the person is authorized to work. The latter route is more likely to be considered more than mere employment.

No one can accurately predict what harboring charges in the employment context the Trump/Sessions Department of Justice may pursue. We do know, however, that tough immigration enforcement has been a motto of the Trump administration. Until now, harboring requires more than simply employing an undocumented immigrant. In the cases above, the employers' conduct included at least one other affirmative act, besides employing an undocumented worker, that made it easier for the individual to remain in the United States without permission. In *Kim*, the defendant told the worker to bring in new false documents. In *Shum*, the employer helped to falsify background checks to cover up the true status of workers. The Eleventh Circuit language in *Prime, Inc.*, however, is more worrisome.

¹⁹⁴ *Id.* at 1299.

¹⁹⁵ 193 F.3d 567 (2d Cir. 1999).

¹⁹⁶ *Id.* at 574.

¹⁹⁷ 584 F.2d 1137, 1141 (2d Cir. 1978).

¹⁹⁸ *Mao & Collatz*, *supra* note 168; *see also* *United States v. Herrera*, 584 F.2d 1137, 1142-1145 (2d Cir. 1978).

While harboring appears to require more than mere employment of undocumented workers, the case law, especially in the Fifth and Eleventh Circuits, suggests that the right set of facts can lead to problems. Knowingly or recklessly hiring undocumented workers could be enough to establish a violation of the harboring provision.

C. Loss of Nonprofit Status

Employers come in different forms and sizes. Some are small businesses like corner stores, optometrists, and local lumber yards. Others are the large corporations like the ones discussed above — Apple, Microsoft, Facebook. Still others are nonprofit organizations, many of whom are very sympathetic toward DREAMers and are more inclined to engage in civil disobedience. Nonprofits are more likely to resist employer sanctions by continuing to hire DACA recipients whose employment permits are being threatened.¹⁹⁹ However, nonprofit board members, while not beholden to shareholders, will also weigh the personal criminal sanctions possibilities as well as the organization's exposure in their exercise of fiduciary duties.²⁰⁰ The size and notoriety of the nonprofit could be relevant to whether the organization will be subjected to more or less scrutiny, although nothing empirical has surfaced.

Nonprofit leaders — including volunteers — carry fiduciary responsibilities to the entity. That includes the duty of care and loyalty. Those individuals must be reasonable and prudent in their actions, looking out for the entity's best interests. A breach of the fiduciary duties can result in liability for any damages suffered by the nonprofit. This fiduciary duty attaches even to those who serve on a committee or task force.²⁰¹

¹⁹⁹ In Person Interview with [John Smith], Exec. Dir., [Nonprofit Organization] (Sept. 30, 2017).

²⁰⁰ *Id.* Some nonprofit organizations are membership organizations. Members have no management authority, as such authority is held by the board of directors. However, state nonprofit corporation laws generally reserve to members the right to remove officers and directors and to amend the organization's articles of incorporation, among other rights. Under some nonprofit bylaws, certain matters, such as the amendment of the bylaws or the election of officers and directors, must be submitted to the membership for a vote. However, most other matters generally are not submitted to the full membership, but rather are handled by the board, one or more of its committees, or the officers or employees of the organization. Jeffrey S. Tenenbaum, *Legal Duties of Association Board Members*, CTR. ASS'N LEADERSHIP, (Dec. 21, 2015), https://www.asacenter.org/resources/articles/an_plus/2015/december/legal-duties-of-association-board-members.

²⁰¹ Tenenbaum, *supra* note 200.

Board duties are broad. For example, the duty of care requires members to be honest, to act in good faith, and in the best interest of the program.²⁰² A decision made with due care and in good faith can protect the corporation under the “business judgment rule.”²⁰³ The duty of loyalty requires “undivided allegiance” to the organization; personal interests cannot be elevated above those of the organization.²⁰⁴ And the duty of obedience requires that governing documents of the corporation like bylaws and articles of incorporation be followed.²⁰⁵

For all these reasons, nonprofit — as well as for profit — boards of directors must weigh the reasons asserted for engaging in civil disobedience in the employer sanctions area against the threat of civil and/or criminal liability in the context of their duties to the well-being of the entity. In the context of employer sanctions, this means that if the board decides to approve hiring DACA recipients whose employment permits have expired, the decision must be done in the best interest of the program. And the decision must be made not as a matter of personal interest of board members. These conditions can be satisfied if the board feels that the rescission of DACA was unlawful,²⁰⁶ but also if the organization is attempting to demonstrate moral leadership on the issue. Moral leadership based on principles of humanity are in the best interest of the country as well as for the entity.

In the nonprofit area, however, at least one other potential liability should be considered by the board. That threat is whether endorsement of civil disobedience might jeopardize nonprofit tax status.²⁰⁷ In response to the 2016 election of Donald Trump, issues have been raised over whether anticipated protests and civil disobedience by non-profit personnel against the administration might “threaten the tax-exempt status of the non-profit.”²⁰⁸ The law firm of Lowenstein and Sandler bluntly warned, “civil disobedience activity by a non-profit’s personnel will jeopardize the organization’s tax-exempt

²⁰² *Id.*

²⁰³ *Id.* In making the decision, a board without specialized knowledge can rely on experts and advisors to make its decisions. *Id.*

²⁰⁴ *Id.*

²⁰⁵ *Id.*

²⁰⁶ See *supra* notes 160-63 and accompanying text.

²⁰⁷ See Memorandum from David Leit et al., Lowenstein Sandler LLP, to Interested Non-profits, Civil Disobedience Policies for Non-Profit Organizations 18-20 (May 2, 2017), <https://www.lowenstein.com/media/4131/memo-for-non-profits-on-liability-for-civil-disobedience.pdf>.

²⁰⁸ See *id.* at 1-2.

status.”²⁰⁹ The firm largely based its conclusion on IRS Revenue Ruling 75-384 (1975) and IRS General Counsel Memorandum 381415 (1980).²¹⁰

IRS Revenue Ruling 75-384 involved a non-profit organization seeking tax-exempt status that was established to “promote world peace and disarmament by nonviolent direct action.”²¹¹ The IRS denied the entity tax exemption under 26 U.S.C. § 501(c)(3) because the “organization encouraged, planned, and sponsored the commission of criminal acts of civil disobedience.”²¹² The IRS reasoned that the criminal acts burdened the government and were “inconsistent with charitable ends” and thus the organization was not “operating exclusively for charitable purposes.”²¹³

On the other hand, in General Counsel Memorandum 381415, 501(c)(3) status was granted to an environmental group that distributed educational materials on environmental issues, demonstrated against those who commercially hunted or harvested endangered species, and supported boycotting such products.²¹⁴ Apparently, the organization did not engage in or advocate civil disobedience or illegal methods. Some members may have “engaged in potentially illegal activity,” but no evidence was produced “that the organization authorized or condoned this activity.”²¹⁵ Revenue Ruling 75-384 was distinguished on the ground that the world peace and disarmament group there was “sponsoring . . . civil disobedience,” while the Memorandum 381415 entity “did not induce, encourage, or condone illegal acts.”

Based on its analysis of these two IRS matters, Lowenstein and Sandler concluded “[t]here is a *significant risk* that a non-profit could lose its tax-exempt status if it encourages or condones civil disobedience.”²¹⁶ However, the memo’s “significant risk” conclusion is arguably an overstatement or at least misleading. A review of the IRS compilation of nonprofit organizations that have lost tax-exempt status reveals none that lost its 501(c)(3) status as a result of breaking the law.²¹⁷

²⁰⁹ *Id.* at 18.

²¹⁰ *See id.* at 18-19.

²¹¹ *Id.* at 18.

²¹² *Id.* at 18-19.

²¹³ *Id.* at 18.

²¹⁴ *Id.* at 19.

²¹⁵ *Id.*

²¹⁶ *Id.* at 20 (emphasis added).

²¹⁷ E-mail from Paulina De La Torre, Law Student, University of San Francisco, to

Importantly, the primary purpose of the world peace and disarmament organization that was the subject of Revenue Ruling 75-384 was to support civil disobedience. The question is what results when the illegal activity is incidental to the goals of the organization? What do cases or actual IRS actions reveal?

In *United States v. Omaha Live Stock Traders Exchange*,²¹⁸ the government challenged a business league's tax exemption because it had engaged in an illegal activity.²¹⁹ Organization members determined which of its members would have the first opportunity to negotiate for the purchase of livestock offered for sale by means of the flip of a coin. Persons not members of the organization were not permitted to participate in the flipping. That practice was illegal.²²⁰ However, the Eighth Circuit ruled that "an organization whose principal [sic] purpose and activity is such as to justify exemption does not lose its exempt status by engaging in incidental activity which standing alone would be subject to taxation."²²¹ In this case, the league's primary purpose was the improvement of business conditions in the traders' line of business, and the services which may be of benefit to the members — including the determination of how members could negotiate livestock purchase — were only incidental and subordinate to this main objective.²²² Therefore, the Court of Appeals affirmed the trial court's refusal to pierce the league's tax exemption.²²³

In addition, between 2004 and 2006, the IRS investigated many tax-exempt organizations for their participation in political campaigning. Out of forty churches investigated, thirty-seven were found to have broken the law; however, they were given only warnings, and none had their tax-exempt status taken away.²²⁴

One of the churches investigated was the All Saints Episcopal Church in Pasadena, California, which came under IRS scrutiny after a 2004 anti-war sermon given by Rev. George R. Regas, the former

Bill Hing, Professor of Law, University of San Francisco (Apr. 5, 2018, 19:43 PST) (on file with author).

²¹⁸ 366 F.2d 749 (8th Cir. 1966).

²¹⁹ *Id.* at 750.

²²⁰ *Id.* at 750-51.

²²¹ *Id.* at 752.

²²² *Id.* at 752-53.

²²³ *Id.* at 753.

²²⁴ Ruth Benn, *Nonprofits and Tax-Exempt Status*, NAT'L WAR TAX RESISTANCE COORDINATING COMM., <https://nwtccc.org/war-tax-resistance-resources/readings/nonprofits-and-tax-exempt-status/> (last visited Apr. 5, 2018).

rector of the church, right before the presidential elections.²²⁵ In his sermon, Regas imagined Jesus participating in a political debate with then-presidential candidates George W. Bush and John Kerry.²²⁶ Regas strongly criticized the war in Iraq and said that Jesus would never have supported the war.²²⁷ As a result, the IRS conducted a lengthy investigation against the church. The investigation finally concluded in 2007 and the church was able to maintain its tax-exempt status. However, the IRS warned the church that its tax-exempt status could be in danger again if the church continued interfering in political campaigns and elections since federal law prohibits tax-exempt organizations from doing so.²²⁸

Insofar as the potential loss of tax-exempt status is concerned, a strong argument can be made that the possibility is not serious if civil disobedience is incidental to the primary function of the nonprofit's main objectives. In the employer sanctions context, nonprofit organizations whose main objectives are not civil disobedience are likely not in danger of losing their tax-exempt status for defying the law.

VI. AN INVITATION TO TARGET THE VICTIM

DACA recipients and all DREAMers are trying to avoid deportation. They and their supporters have been challenging Trump's rescission announcement and pushing for the DREAM Act to avoid removal. Thus, my call for defiance of employer sanctions laws raises concerns about whether that defiance will attract unwanted attention to the very employees the civil disobedience is attempting to protect.

A person in the business world continues to have a conscience. Acting out of moral conviction in the business setting is still civil disobedience worthy of praise. A commitment by corporate leaders to continue hiring DREAMers if DACA ends would be "a powerful pledge."²²⁹

Similarly, if firms were to employ DREAMers who have lost their permission to work, David Leopold, former American Immigration Lawyers Association president stated, "it would be an incredible

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ Rebecca Trounson, *IRS Ends Church Probe but Stirs New Questions*, L.A. TIMES (Sept. 24, 2007), <http://articles.latimes.com/2007/sep/24/local/me-allsaints24>.

²²⁹ Levin, *supra* note 22 (citing Madhuri Nemali, a Silicon Valley immigration lawyer: "[I]t's not just your lives on the line. We're standing by you and also willing to go against the law to take a moral stance.").

statement. It would be unprecedented. The government would have to make a huge decision — are they going to go after major companies or are they going to do the right thing and reinstate DACA?”²³⁰ These are lofty statements, as is Airbnb’s pledge to defy employer sanctions laws should the DACA program end. However, these bold statements do not account for the potential targeting of employees by ICE for removal. In other words, Airbnb’s courageous pronouncement that it will defy employer sanctions in support of its DACA employees could very well place a deportation target on the back of the very employees Airbnb is trying to protect.

Therein lies the real problem with a call to arms of employers — from big-name corporations, to left-leaning nonprofit organizations and mom-and-pop establishments. While their wider impact to effectuate policy change, i.e., the passage of the DREAM Act, would have more effect if done publicly, the publicity could backfire and result in the targeting of their employees for deportation. In the face of major companies defying employer sanctions, the federal government has more than the two choices set forth by Leopold of fining major companies or reinstating DACA. Deportation of the companies’ employees is a third option. In Trump’s ICE age, who would bet against agents raiding or at least auditing the I-9 files of the companies? Some DACA employees might be willing to take the risk of public exposure if consulted by their employees, but DACA recipients, do not want the exposure, understandably saying, “continue to hire me, but do so quietly.”²³¹

The boldness of the Ghandi-King public-out-in-the-open framework excludes other examples of civil disobedience. For example, secretive acts such as Harriet Tubman’s Underground Railroad or violent acts like the Boston Tea Party were illegal activities taken out of conscience and moral principle that are within the concept of civil disobedience.²³² So, pacifists who refuse to register for the draft should fall within the rubric of civil disobedience. Even Rawls approvingly labeled Tubman’s actions “conscientious evasion.” Secret civil disobedience is not surprising in a nation that is regarded as unjust. Those acting out of religious motivation are also properly viewed as engaging in civil disobedience even absent political motive.²³³

²³⁰ *Id.*

²³¹ In Person Interviews with Antonia Garcia, Abebi Omwuachi, Leslie Martinez, Jazmin Villareal, DACA Recipients (Mar. 30, 2018) (on file with author).

²³² Ostas, *supra* note 106 at 296-97.

²³³ *Id.* at 297.

I agree that a decision by big firms to continue employing DREAMers “would be a powerful pledge,” but that pledge should probably not be done publicly. While I challenge employers to engage in civil disobedience and to continue to hire DREAMers even after their employment authorization expires, the action probably needs to be done quietly to avoid the targeting of their employees by ICE. That means the disobedience could have little policy effect. Engaging in corporate civil disobedience would be a bold statement, but on its own, if done quietly, is not likely to bring about a permanent, fair outcome for DREAMers. Quiet resistance by employers in this situation is more akin to Harriet Tubman’s underground railroad. Tubman’s goal was to help slaves escape in defiance of the slave act, and she certainly was not going to do so publicly. If caught, she would have brought a \$40,000 reward and faced prosecution under the Fugitive Slave Act.²³⁴ She left the public policy arguments to others.

Alternative public actions might result in some effective collective action. For example, funding a legal defense fund for DREAMers and their families could be powerful. Providing public information programs advocating for immigration reform and training and educating DREAMers on how to avoid I-9 employee problems by working as independent contractors are also worthwhile. All those actions could be powerful organizing efforts for immigrants, employers, and activists to rally behind publicly. But defying the employer sanctions laws would be critical for the actual DREAMers who are trying to earn a living.

CONCLUSION

If the injustice is part of the necessary friction of the machine of government, let it go, let it go: perchance it will wear smooth — certainly the machine will wear out. If the injustice is a spring, or a pulley, or a rope, or a crank, exclusively for itself, then perhaps you may consider whether the remedy will not be worse than the evil; but if it is of such nature that it requires you to be the agent of injustice to another, then, I say, break the law. Let your life be a counter-friction to stop the machine. What I have to do is to see, at any rate, that I do not lend myself to the wrong which I condemn.²³⁵

²³⁴ Jone Johnson Lewis, *Biography of Harriet Tubman*, THOUGHTCO. (Jan. 31, 2018), <https://www.thoughtco.com/harriet-tubman-biography-3529273>.

²³⁵ THOREAU, *supra* note 103, at 120.

Like so many of President Trump's immigration enforcement actions — from travel bans targeting Muslims to the separation of migrant children from their parents — the termination of DACA challenges anyone with humanitarian instincts to oppose an injustice that seems wholly unnecessary. Relying on the courts to ultimately correct these wrongs may be fruitless, as we have seen in the travel ban situation.²³⁶ Similarly, the likelihood that the DREAM Act will be enacted in the near future is dim.²³⁷

For employers who have come to know and respect their DACA employees or the DREAMer narrative, defying employer sanctions laws in an exercise of civil disobedience and out of a sense of moral values is imperative. Leaving the fate of DREAMers to the whims of day-to-day politics in a divided nation is the equivalent of standing on the sidelines of the Big Game. Cheering and encouraging one side may help, but meaningfully intervening through civil disobedience — even on behalf of just one worker — is a moral stand that literally assists the affected individual make a better life.

What we know about DREAMers provides the moral basis for defying employer sanctions laws. Placing ourselves in their shoes informs our understanding of their lives as individuals who have grown up in the United States, gone to school here, become our neighbors and colleagues, and in essence become part of the American fabric. Employer supporters of DACA recipients have a solid principled argument for such an act of civil disobedience.

As with any act of civil disobedience, employers have to be ready to pay the price if their acts are discovered and deemed unlawful. Civil penalties are likely. Criminal penalties are possible, but less likely. Corporate boards — if asked — should vote to defy employer sanctions knowing that criminal as well as civil penalties could attach. In the for-profit corporate setting, a shareholder lawsuit might also be filed. For nonprofit organizations, however, loss of nonprofit status is unlikely.

Abandoning DACA employees would be tragic. Giving in to employer sanctions turns employers from an instrument of helping workers to become productive members of society into a weapon of oppression and dehumanization. Once employers give in to becoming

²³⁶ See *Trump v. Hawaii*, 138 S. Ct. 2392, (2018).

²³⁷ See, e.g., Thomas Kaplan & Nicholas Fandos, *House Rejects Hard-Line Immigration Bill and Delays Vote on Compromise*, N.Y. TIMES (June 21, 2018), <https://www.nytimes.com/2018/06/21/us/politics/house-immigration-bills-dreamers-daca-family-separation.html>.

weaponized, we have lost our sense of values and justice. Defying employer sanctions is the right moral answer.