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“HELP IS HERE”: HOW A DACA PATHWAY TO CITIZENSHIP WILL HELP SAVE THE SOCIAL SECURITY FUND

Jissel Esparza*

We can never insure one hundred percent of the population against one hundred percent of the hazards and vicissitudes of life, but we have tried to frame a law which will give some measure of protection to the average citizen and to his family against the loss of a job and against poverty-ridden old age.¹

They are Americans in their heart, in their minds, in every single way but one: on paper.²

* J.D. Candidate, University of Arkansas School of Law, 2024. Editor-in-Chief of the *Arkansas Law Review*, 2023-2024. The title of this Comment is inspired by Deferred Action for Childhood Arrival's (DACA) slogan "Home is here." The author would like to sincerely and graciously thank Professor Amelia S. McGowan for her constant advice, support, and assurance throughout the writing process. The author would also like to thank all of the *Arkansas Law Review* for their scholarly commitment and dedication throughout the editorial process. They hold a special place in the author's heart. In particular, the author would like to acknowledge her Note and Comment Editor, Brittany E. Hawkins; her Articles Editor, Danielle A. Essary; her Executive Editor, Bennett J. Waddell; and 2022-23 Editor-in-Chief of the *Arkansas Law Review*, Bailey R. Geller. Finally and foremost, the author would like to thank her beloved parents, Temo Esparza and Sandra (Maya) Saucedo, for their unwavering support and love throughout the entire writing process, law school, and life; their sacrifices made her dream of pursuing a law degree a reality. This Comment is dedicated to them.

1. Franklin D. Roosevelt, *Presidential Statement upon Signing the Social Security Act, August 14, 1935*, in 4 THE PUBLIC PAPERS AND ADDRESSES OF FRANKLIN D. ROOSEVELT 324, 324 (1938).

2. Remarks on Immigration Reform and an Exchange with Reporters, 1 PUB. PAPERS 800, 800 (June 15, 2012).

I. INTRODUCTION

Two federal programs hold their beneficiaries in limbo: DACA and Social Security.

In Massachusetts, Dr. Denisse Rojas Marquez is a Deferred Action for Childhood Arrivals (DACA) recipient who arrived in the United States as an infant and served on the front lines of the COVID-19 crisis.³ Dr. Rojas Marquez started a program called “Pre-Health Dreamers”—now consisting of over 1,000 members—to help other DACA recipients transform their health-care related aspirations into realities.⁴ But Dr. Rojas Marquez and the Pre-Health Dreamers have no long-term certainty that they will be able to stay in the country they have always known as home.⁵ Meanwhile, in Florida, Sue Ann Flatley lives almost entirely on Social Security benefits after working for thirty years as a certified nursing assistant.⁶ Months are particularly difficult when she must face even small additional expenses—like paying \$72 for new license plates and \$28 to change the address on her driver’s license.⁷

Social Security benefits are a critical lifeline for millions of Americans.⁸ Yet, without significant reforms, Social Security as we know it could cease to exist as early as 2034—according to the Congressional Research Service (CRS).⁹ Policymakers have suggested reform ideas that include increased taxes, an altered benefit structure, and decreased benefits to counter Social Security’s inevitable doom.¹⁰ However, these remedies have received varying levels of public support and raise considerable

3. Denisse Rojas Marquez, *I’m an Emergency Medicine Physician and a DACA Recipient. Without Immigration Reform, Thousands of People Like Me Face Uncertain Futures*, ASS’N OF AM. MED. COLLS. (Sept. 14, 2021), [<https://perma.cc/KF7C-RENZ>].

4. *Id.*

5. *See id.*

6. Paul Sullivan, *The Tightwire Act of Living Only on Social Security*, N.Y. TIMES (Sept. 11, 2012), [<https://perma.cc/XJ6X-HCDA>].

7. *Id.*

8. *See* Richard W. Pingel, *Should Social Security Retire? A Study of Personal Retirement Accounts in the American Probate System*, 20 QUINNIPIAC PROB. L.J. 99, 103 (2006).

9. BARRY F. HUSTON, CONG. RSCH. SERV., RL33514, SOCIAL SECURITY: WHAT WOULD HAPPEN IF THE TRUST FUNDS RAN OUT? 7 (2022) [hereinafter 2022 SOCIAL SECURITY CONGRESSIONAL RESEARCH REPORT].

10. *See infra* Section II.C.1.

policy concerns that will be discussed later in this Comment.¹¹ Yet, another viable remedy exists, indeed one that is already on U.S. soil: creating a pathway to citizenship for the DACA population. The United States is currently home to 1.16 million members of the DACA-eligible population—who, through a path to citizenship, could finally make the United States their permanent home and could provide a significant boost to the struggling Social Security fund.¹² This boost could help community members like Dr. Rojas Marquez and Ms. Flatley ensure a more stable future.¹³

From a metaphorical perspective, both DACA and Social Security are band-aids, of sorts—band-aids used to provide some relief but not to “cure” the root cause. And just as band-aids are a temporary solution, so are these two programs. Rather than just “changing” the band-aids, a path to citizenship would help *heal* two pressing issues: (1) the predicted insolvency of the Social Security fund, and (2) the instability of the DACA population.

This Comment refers to three different groups. For the purposes of this Comment, “DACA recipients” refers to current recipients.¹⁴ “DACA-eligible” refers to individuals who would be eligible to apply for initial consideration under the original DACA guidelines but are unable to do so because the United States Citizenship and Immigration Services (USCIS) is “not process[ing] initial DACA requests.”¹⁵ “DACA population” or “population” encompasses both current DACA recipients and DACA-eligible.

This Comment demonstrates that creating a citizenship pathway for the DACA population will not only give these deserving individuals the ability and security to remain in the

11. See Benjamin A. Templin, *Social Security Reform: Should the Retirement Age Be Increased?*, 89 OR. L. REV. 1179, 1183 (2011); see also Benjamin A. Templin, *Social Security Reform: The Politics of the Payroll Tax*, 32 QUINNIPIAC L. REV. 1, 1-3 (2013).

12. *Deferred Action for Childhood Arrivals (DACA) Data Tools*, MIGRATION POL’Y INST., [https://perma.cc/AY3Z-JUAG] (last visited Apr. 1, 2023) (providing “data on active DACA recipients at U.S. and state levels as of September 30, 2022”).

13. See *supra* notes 3-7 and accompanying text.

14. See *infra* note 72 and accompanying text.

15. *Consideration of Deferred Action for Childhood Arrivals (DACA)*, U.S. CITIZENSHIP & IMMIGR. SERVS., [https://perma.cc/9FFD-SSCT] (last visited Nov. 3, 2022) (under “ALERT: Court Decisions Regarding DACA”).

United States but will also provide relief to Social Security's impending insolvency through the influx of taxes that these then-citizens will contribute as a result of increased opportunities.¹⁶ At the same time, this Comment does not attempt to portray its argument as a "silver bullet."¹⁷ Rather, this approach is one tool that can be utilized by legislative efforts to remedy these two pressing issues.

Part II of this Comment outlines the historical roots of the Social Security fund and its hastened impending insolvency.¹⁸ Part III provides background on the formation of the DACA program and explores the program's economic constraints.¹⁹ Using both the 2021 and 2022 Social Security Trustee Reports, Part IV demonstrates how providing a path to citizenship—thereby eliminating educational and professional restrictions—would boost the Social Security fund.²⁰

II. WHY IS SOCIAL SECURITY IN PERIL?

A. The Creation of Social Security and Its Importance

President Franklin D. Roosevelt signed the Social Security Act into law on August 14, 1935.²¹ On a broad level, the Act permits eligible U.S. citizens and permanent residents who are sixty-five or older to continue receiving income after retirement.²² President Roosevelt expressed that the program should "give

16. *See infra* Part IV.

17. THERESA CARDINAL BROWN ET AL., BIPARTISAN POL'Y CTR., IMMIGRATION'S EFFECT ON THE SOCIAL SECURITY SYSTEM 4 (2018).

18. *See infra* Part II.

19. *See infra* Part III.

20. *See infra* Part IV.

21. Pingel, *supra* note 8, at 100. The official legislative name of the program is the Old-Age, Survivors, and Disability Insurance (OASDI), and it encompasses "two legally distinct federal trust funds: the OASI trust fund and the DI trust fund." 2022 SOCIAL SECURITY CONGRESSIONAL RESEARCH REPORT, *supra* note 9, at 2. Social Security taxes consist of two parts: OASDI (taxed at 12.4%) and Medicare tax (taxed at 2.9%). *Topic No. 751 Social Security and Medicare Withholding Rates*, IRS, [<https://perma.cc/W2R5-RB25>] (last visited Mar. 28, 2023). However, this Comment will primarily focus on OASI (Federal Old-Age and Survivors Insurance), as DI (Federal Disability Insurance) is not projected to deplete in the latest seventy-five-year projection. *See* 2022 SOCIAL SECURITY CONGRESSIONAL RESEARCH REPORT, *supra* note 9, at 1.

22. Social Security Act of 1935, Pub. L. No. 74-271, § 202(a), 49 Stat. 620 (codified as amended at 42 U.S.C. § 402(a)).

some measure of protection . . . against the loss of a job and against poverty-ridden old age.”²³ Although Congress and President Roosevelt did not intend for Social Security to serve as the primary source of economic support for retired Americans, in many instances, it has become just that.²⁴ But as initially intended, the program does protect many older Americans from a life of poverty.²⁵

A fixed-percentage income tax finances the Social Security fund up to a certain maximum income for all Social Security-eligible jobs. Through the Federal Insurance Contributions Act (FICA), employers and employees each contribute 6.2% of wages to fund the program.²⁶ In 2022 and 2023, the maximum taxable income was \$147,000 and \$160,200, respectively.²⁷ Thus, throughout the passage of time, as the taxable base increases, income that was not previously taxable becomes subject to taxation.²⁸ U.S. citizens and permanent residents are able to reap the benefits of Social Security by earning forty Social Security credits.²⁹ In 2023, an individual may obtain one credit for every \$1,640 in earned income in a year—with a maximum of four credits per year.³⁰ Under this system, an individual can fulfill the credit requirement by working for a decade.³¹ Once an individual reaches forty credits and retirement age, the Social Security Administration (SSA) determines the individual’s benefit amount by using the highest thirty-five years of income earnings for

23. Roosevelt, *supra* note 1.

24. See Lorie Konish, *Here’s Where Most Americans Are Really Getting Their Retirement Income*, CNBC, [https://perma.cc/LX8J-R4K9] (Jan. 17, 2020, 3:30 PM).

25. *See id.*

26. 26 U.S.C. § 3101(a); *How Is Social Security Financed?*, SSA, [https://perma.cc/UQH9-D7WY] (last visited Apr. 5, 2023). However, note that self-employed individuals are taxed under the Self-Employment Contributions Act (SECA), but rates remain consistent. 26 U.S.C. § 1401(a); *Self-Employment Tax (Social Security and Medicare Taxes)*, IRS, [https://perma.cc/A96L-HQBN] (Mar. 21, 2023).

27. *Fact Sheet: 2023 Social Security Changes*, SSA, [https://perma.cc/47Z6-QM8G] (last visited Apr. 5, 2023). The earnings base subject to the taxation “rises as average wages increase.” *How Is Social Security Financed?*, *supra* note 26.

28. *See id.*

29. *Social Security Credits*, SSA, [https://perma.cc/PV2V-3WEC] (last visited Apr. 5, 2023).

30. *Id.*

31. James R. Bright, *Social Security Payment Options: When to Elect for Benefits and Planning Strategies of the Benefit Election*, 27 OHIO PROB. L.J., July-Aug. 2017 (Westlaw).

computation.³² While applicants may draw retirement benefits as early as sixty-two, under current law, they must reach sixty-six or sixty-seven years and some months (depending on their date of birth) to draw full retirement benefits.³³

B. The Social Security Fund Is Depleting

In 2021, the U.S. government distributed roughly \$1.0019 trillion in Social Security benefits from the OASI.³⁴ Half of individuals over the age of sixty-five live in a household that receives at least 50% of its total household income from Social Security.³⁵ 25% of Social Security recipients over the age of sixty-five depend on Social Security benefits for 90% of their total household income.³⁶ This reliance on Social Security is not going anywhere either. In 2022, there were 58 million Americans who were sixty-five years or older.³⁷ That number is expected to be 76 million by 2035.³⁸

Social Security is in peril for several reasons. On average, individuals are living longer and having fewer children.³⁹ A large part of the reason for the impending depletion is the retirement of the “Baby Boomer” Generation (a nickname given to those born

32. *Id.* For further details on how benefits are computed, see *Social Security Benefit Amounts*, SSA, [https://perma.cc/9NEY-Y62T] (last visited Apr. 5, 2023).

33. *Starting Your Retirement Benefits Early*, SSA, [https://perma.cc/ZE6F-4DRX] (last visited Mar. 1, 2023). The individual’s birth year determines how many years and months old she must be. *Id.* However, when Social Security started, the set age was sixty-five. See *supra* note 22 and accompanying text.

34. BD. OF TRS., FED. OLD-AGE & SURVIVORS INS. & FED. DISABILITY INS. TR. FUNDS, THE 2022 ANNUAL REPORT OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE AND FEDERAL DISABILITY INSURANCE TRUST FUNDS 28 (2022) [hereinafter 2022 TRUSTEE REPORT], [https://perma.cc/ZW6N-2GX4]. Note, this 2022 report includes detailed information and figures “on the operations of the OASI and DI Trust Funds during calendar year 2021.” *Id.* (internal citations omitted).

35. Irena Dushi et al., *The Importance of Social Security Benefits to the Income of the Aged Population*, 77 SOC. SEC. BULL., May 2017, at 1, 2, [https://perma.cc/M3EL-DRX8].

36. *Id.*

37. *Fact Sheet: Social Security*, SSA, [https://perma.cc/R8VU-G48D] (last visited Apr. 5, 2023).

38. *Id.*

39. *Life Expectancy at Birth, Total (Years)—United States*, THE WORLD BANK, [https://perma.cc/LEZ8-ZGQF] (last visited Apr. 5, 2023); *Fertility Rate, Total (Births Per Woman)—United States*, THE WORLD BANK, [https://perma.cc/E9U7-5AJ4] (last visited Apr. 5, 2023).

in the aftermath of World War II, between 1946-64).⁴⁰ By 2060, it is projected that only 57% of the U.S. population will be working age.⁴¹ Low labor force participation has negative consequences on the economy since it means fewer individuals pay taxes into the system and more become dependent individuals.⁴²

C. What Happens if the Social Security Fund Does Deplete?

According to the 2022 Social Security Trustee Report (hereinafter “2022 Trustee Report”), the OASI Trust Fund will become insolvent in 2034.⁴³ However, insolvency does not mean a total demise of the program.⁴⁴ Instead, OASI income will be insufficient to pay 23% of OASI scheduled benefits in 2034.⁴⁵

1. How Has Congress Proposed to “Save” the Fund?

Congress has considered several potential pathways to “fix” Social Security’s impending insolvency.⁴⁶ The most notable responses include decreasing Social Security benefits, altering the program’s structure, and raising payroll taxes.⁴⁷ However, as argued below, these alterations would significantly undermine the purpose of Social Security and leave older beneficiaries without a critical lifeline.⁴⁸

40. Richard Fry, *The Pace of Boomer Retirements Has Accelerated in the Past Year*, PEW RSCH. CTR. (Nov. 9, 2020), [<https://perma.cc/7STC-YZWV>]; Philip Bump, *Baby Boomers*, ENCYC. BRITANNICA, [<https://perma.cc/6SSN-TFQN>] (Mar. 22, 2023).

41. SANDRA L. COLBY & JENNIFER M. ORTMAN, U.S. CENSUS BUREAU, PROJECTIONS OF THE SIZE AND COMPOSITION OF THE U.S. POPULATION: 2014 TO 2060, at 4 (2015), [<https://perma.cc/MZ29-H9C3>].

42. Justin Zimmerman, *Incentivizing Work at Older Ages: The Need for Social Security Reform*, 19 ELDER L.J. 485, 486-87 (2012).

43. 2022 SOCIAL SECURITY CONGRESSIONAL RESEARCH REPORT, *supra* note 9, at 7.

44. *Id.* at 7-8.

45. 2022 TRUSTEE REPORT, *supra* note 34, at 6.

46. See *Office of the Chief Actuary’s Estimates of Proposals to Change the Social Security Program or the SSI Program*, SSA, [<https://perma.cc/5YDQ-C6GZ>] (last visited Apr. 8, 2023).

47. 2022 SOCIAL SECURITY CONGRESSIONAL RESEARCH REPORT, *supra* note 9, at 11, 15-16; Zimmerman, *supra* note 42, at 509.

48. See *infra* Sections II.C.1.A-B.

a. Cut Benefits

One proposal is to “save” the Social Security system by cutting the number of benefits, increasing the retirement age, or both.⁴⁹ Yet, to equate annual benefits with annual tax income, the SSA—according to the CRS—would have to slash benefits by 20% in 2035, with cuts rising to 26% by 2096.⁵⁰ Because Americans are now experiencing longer life spans, as noted above,⁵¹ another larger benefit slash would likely occur after 2096 if tax rates remain the same.⁵²

Another proposal is to cut benefits by raising the age at which an individual may collect full retirement.⁵³ As noted above, when the fund was created, retirement age started at age sixty-five with no early option.⁵⁴ However, “[t]he deficit reduction commission [has] proposed,” among other things, “raising the normal retirement age to sixty-eight in 2050 and sixty-nine by 2075.”⁵⁵ Such a raise is not unprecedented: for example, in April 1983, Congress, during the Reagan Administration—because of a “serious short-term financial crisis”—set a higher retirement age to be implemented in 2000.⁵⁶ While one may assume that the retirement age should rise along with life expectancy,⁵⁷ this option may not be realistic for many workers—especially those with physically laborious jobs.⁵⁸

49. 2022 SOCIAL SECURITY CONGRESSIONAL RESEARCH REPORT, *supra* note 9, at 10; Zimmerman, *supra* note 42, at 487.

50. 2022 SOCIAL SECURITY CONGRESSIONAL RESEARCH REPORT, *supra* note 9, at 11. Note that numbers provided are based on the combination of both the OASI and DI trust funds. *Id.* at 1. This is due to the Trustee Report conducting a “hypothetical combined” test that assumed a change in the law would allow for the transfer of resources behind the two funds. *See id.*; 2022 TRUSTEE REPORT, *supra* note 34, at 3 & n.1.

51. *See supra* note 39 and accompanying text.

52. 2022 SOCIAL SECURITY CONGRESSIONAL RESEARCH REPORT, *supra* note 9, at 11.

53. Zimmerman, *supra* note 42, at 509.

54. *See supra* note 22 and accompanying text.

55. Zimmerman, *supra* note 42, at 509.

56. Pingel, *supra* note 8, at 101-02. This is what is reflected today. *Social Security Fact Sheet: Increase in Retirement Age, SSA*, [<https://perma.cc/F8TY-FCAC>] (last visited Apr. 6, 2023).

57. *See* Jason A. Frank & Marni S. Abrams, *Baby Boomers and Elder Law: Three Future Scenarios*, 42 MD. BAR J. 26, 30 (2009).

58. U.S. GOV'T ACCOUNTABILITY. OFF., GAO/T-HEHS-98-207, SOCIAL SECURITY REFORM: RAISING RETIREMENT AGES IMPROVES PROGRAM SOLVENCY BUT MAY CAUSE HARDSHIP FOR SOME 7 (1998).

b. Increase Taxes

Another controversial solution is to increase the payroll tax rate to meet the required Social Security benefits. Under this plan, also discussed by the CRS, Congress would have to increase the payroll tax rate from its current rate of 12.4% to 15.6% after 2035 and to 16.7% by 2096.⁵⁹ As critics have noted, however, raising payroll taxes would have a negative, disproportionate impact on low-income workers.⁶⁰ As FICA taxes are only imposed on the first \$160,200, low-income earners are disproportionately impacted.⁶¹ For example, an individual who earns \$300,000 in annual income would only be subject to FICA taxes on the first \$160,200 whereas a lower-income earner with an annual income of \$30,000 would have that entire amount taxed.⁶² In the past, Congress has pushed for a “doughnut hole” approach where the government would not impose additional FICA taxes on earners making over the current base (\$160,200 in 2023) until the earners reach a “second-tier base”—like \$300,000—resulting in a gap of additional taxable income.⁶³ While such a solution may be politically appealing, these efforts lack any bipartisan support and, to critics, represent an incentive to “distort economic realities in order to avoid a tax liability.”⁶⁴

III. WHAT IS DACA?

A. Why and When DACA Was Created

On June 15, 2012, President Obama announced the DACA program to provide administrative relief to certain non-citizens

59. 2022 SOCIAL SECURITY CONGRESSIONAL RESEARCH REPORT, *supra* note 9, at 15.

60. See Patricia E. Dilley, *Through the Doughnut Hole: Reimagining the Social Security Contribution and Benefit Base Limit*, 62 ADMIN. L. REV. 367, 404-05 (2010).

61. See *supra* notes 26-27 and accompanying text.

62. See *supra* notes 26-27 and accompanying text. *But see* Dilley, *supra* note 60, at 394.

63. See Dilley, *supra* note 60, at 410.

64. *Id.* at 416, 420-21. Recent similar “doughnut hole” attempts have lacked bipartisan support. See Lorie Konish, *Washington Leaders Agree Social Security Needs To Be Fixed—But Proposed Tax Increases Are a Key Sticking Point*, CNBC (July 5, 2022, 4:32 PM), [<https://perma.cc/GY96-8NPV>].

who arrived in the United States as children.⁶⁵ The Obama administration decided to resort to administrative relief when legislative protections, such as the DREAM Act, failed.⁶⁶ DACA allows for eligible non-citizens to apply for a renewable two-year protection from removal (“deferred action”) and work authorization.⁶⁷ To qualify for DACA, an applicant must: (1) have been under the age of thirty-one as of June 15, 2012; (2) have entered the United States before his or her sixteenth birthday; (3) have continuously resided in the United States since June 15, 2007; (4) have been physically present in the United States as of June 15, 2012 and at the time of filing the application for consideration; (5) have had no lawful status as of June 15, 2012 and at the time of filing the application for consideration; (6) have been currently enrolled in school, earned a high school diploma or GED, or be an honorably discharged veteran of the U.S. military; (7) have no felony convictions, no significant misdemeanor record, and no record of three or more non-significant misdemeanors; and finally, (8) not pose a threat to national security or public safety.⁶⁸ While the U.S. government no longer processes initial applications due to administrative actions and litigation, the U.S. government continues to process applications for two-year renewals.⁶⁹ With DACA, recipients also obtain Social Security numbers and are eligible to obtain driver’s licenses in all states.⁷⁰ However, as discussed in Section III.C., DACA offers only limited, temporary relief.⁷¹

65. Michael Jeb Richard, *Deferred Action for Childhood Arrivals: Place a Bet or Wait on a Dream*, 40 S.U. L. REV. 293, 297-98 (2013).

66. *Id.*

67. Ming H. Chen, *Beyond Legality: The Legitimacy of Executive Action in Immigration Law*, 66 SYRACUSE L. REV. 87, 91-92, 96 (2016).

68. *Consideration of Deferred Action for Childhood Arrivals (DACA)*, *supra* note 15 (noted under “Guidelines”); *see also* Memorandum from Janet Napolitano, Sec’y, Dep’t of Homeland Sec., to David V. Aguilar, Acting Comm’r, U.S. Customs & Border Prot., et al. (June 15, 2012), [<https://perma.cc/6AWE-ELBM>].

69. *See infra* note 83 and accompanying text.

70. Chen, *supra* note 67, at 96; Kendra Sena, *Driver’s Licenses and Undocumented Immigrants*, ALBANY L. SCH. GOV’T. L. CTR. (July 15, 2019), [<https://perma.cc/GS64-WSMR>] (noted under “A Note on DACA”). Arizona and Nebraska—in 2014 and 2015, respectively—were the last two states to permit DACA recipients to obtain driver’s licenses. *See id.*

71. *See infra* notes 79-86 and accompanying text.

B. Who DACA Recipients and the DACA-Eligible Are

There are 589,660 DACA recipients nationwide.⁷² The Migration Policy Institute estimates that if the government were to reopen DACA for initial applications, there would be an additional 571,340 immediately eligible recipients.⁷³

As of December 2020, the top four birth countries for DACA recipients were Mexico (81%), El Salvador (4%), Guatemala (3%), and Honduras (2%).⁷⁴ The majority of DACA recipients were female (53%).⁷⁵ DACA recipients were living in all fifty states, the District of Columbia, and even some U.S. territories.⁷⁶ The three states with the most recipients were California (29%), Texas (16%), and Illinois (5%).⁷⁷ In December 2020, the average DACA recipient was about 27 years old—and in 2017, 23.8 years old.⁷⁸

C. Why DACA, in Its Current Form, Is Insufficient

Many Americans have been asked the interview question: what is your five (or ten) year plan? For DACA recipients, the answer to this question is filled with added uncertainty. DACA permits protection for only two years at a time, and the program itself faces an uncertain future.⁷⁹

While DACA provides important relief through temporary, renewable protection from removal and work authorization (if the

72. *Deferred Action for Childhood Arrivals (DACA) Data Tools*, MIGRATION POL'Y INST., [https://perma.cc/AY3Z-JUAG] (last visited Apr. 7, 2023) (shown on map titled “DACA Recipients & Eligible Population, by State”).

73. *Id.* (this number was determined by subtracting the Migration Policy Institute’s estimate of active DACA recipients (as of September 2022) from their 2022 estimate of the immediately eligible DACA population); *see also DACA Litigation Information and Frequently Asked Questions*, U.S. CITIZENSHIP & IMMIGR. SERVS., [https://perma.cc/7CFQ-EQQV] (Nov. 3, 2022) (noting under “Oct. 14, 2022” that initial DACA requests are currently being accepted but not processed).

74. ANDORRA BRUNO, CONG. RSCH. SERV., RL46764, DEFERRED ACTION FOR CHILDHOOD ARRIVALS (DACA): BY THE NUMBERS 10 (2021) [hereinafter 2021 DACA CONGRESSIONAL REPORT].

75. *Id.* at 12.

76. *Id.* at 11.

77. *Id.*

78. *Id.* at 12.

79. *See* HILLEL R. SMITH, CONG. RSCH. SERV., LSB10625, THE LEGALITY OF DACA: RECENT LITIGATION DEVELOPMENTS 1-2 (2022) [hereinafter DACA LITIGATION REPORT].

recipient maintains eligibility), the relief it provides is limited.⁸⁰ As an administrative remedy, DACA does not offer a pathway to lawful permanent residence or citizenship.⁸¹ Rather, the policy's protections are unstable due to constant litigation and changes in presidential administrations. Since its inception in 2012, DACA has endured constant litigation.⁸² As of the date of this Comment, there is a judicial stay preventing the adjudication of initial DACA applications.⁸³ This is despite the Department of Homeland Security's (DHS) notice to "preserve and fortify DHS's DACA policy."⁸⁴ In addition to enduring the effects of constant litigation, DACA recipients generally are not eligible for federal government programs, such as SNAP.⁸⁵ Yet, DACA recipients pay taxes, including FICA, with every paycheck, just as U.S. citizens and permanent residents do.⁸⁶

During 2021, amid the COVID-19 pandemic, more than three-quarters of DACA recipients—343,000 to be more precise—were employed in jobs deemed to be "essential" by the DHS's Cybersecurity and Infrastructure Security Agency.⁸⁷ Yet, the Coronavirus Aid, Relief, and Economic Security (CARES) Act did not provide relief for DACA recipients.⁸⁸

80. See Heather Fathali, *The American DREAM: DACA, DREAMers, and Comprehensive Immigration Reform*, 37 SEATTLE U. L. REV. 221, 250-51 (2013).

81. *Id.*

82. See DACA LITIGATION REPORT, *supra* note 79, at 1-3, for a detailed history of the DACA litigation.

83. See *Consideration of Deferred Action for Childhood Arrivals (DACA)*, *supra* note 15 (under "ALERT: Court Decisions Regarding DACA"). This has been the status since July 16, 2021. See *Texas v. United States*, 549 F. Supp. 3d 572, 624 (S.D. Tex. 2021), *aff'd* 50 F.4th 498, 512, 530-31 (5th Cir. 2022). However, a detailed history of DACA litigation is beyond the scope of this Comment.

84. Deferred Action for Childhood Arrivals, 86 Fed. Reg. 53,736, 53,739 (proposed Sept. 28, 2021) (to be codified at 8 C.F.R. pts. 106, 236, and 274a).

85. ABIGAIL F. KOLKER, CONG. RSCH. SERV., R47318, UNAUTHORIZED IMMIGRANTS' ELIGIBILITY FOR FEDERAL AND STATE BENEFITS: OVERVIEW AND RESOURCES 4, 8 (2022) [hereinafter FEDERAL BENEFIT RESTRICTIONS].

86. See JOSE MAGAÑA-SALGADO & TOM K. WONG, IMMIGRANT LEGAL RES. CTR., DRAINING THE TRUST FUNDS I (2017), [<https://perma.cc/NJ3D-CLFA>].

87. This number includes health care workers, educators, and food supply chain employees. Nicole Prchal Svajlenka & Trinh Q. Truong, *The Demographic and Economic Impacts of DACA Recipients: Fall 2021 Edition*, CTR. FOR AM. PROGRESS (Nov. 24, 2021), [<https://perma.cc/DUV2-2PJA>].

88. Jacequeline Laínez Flanagan, *Reframing Taxigration*, 87 TENN. L. REV. 629, 650 (2020).

Notably, the last largest reform dates back to 1986 when President Ronald Reagan signed the Immigration Reform and Control Act (IRCA) into law.⁸⁹ This effectively granted almost 3 million undocumented immigrants legal status if they met certain requirements.⁹⁰ Despite the presence of a national recession, by “removing the uncertainty of unauthorized status,” the beneficiaries of the program reported moving to higher-wage jobs, buying homes, starting new businesses, and becoming able to invest in their education.⁹¹ The following subsections outline why the current DACA program has educational, employment, and humanitarian limitations.

1. The Economic Limitations

Since its 2012 inception, DACA recipients have been contributing to federal, state, and local taxes, including Social Security, despite the many barriers imposed, as discussed in Section III.C.⁹² In 2015 alone, New American Economy estimated that the DACA population contributed \$2 billion to Social Security taxes.⁹³ Furthermore, in 2021, the Center for American Progress estimated that current DACA recipient households annually contribute \$6.2 billion in federal taxes.⁹⁴ This is in addition to taxes paid to state and local governments. On a national level, DACA recipient households annually pay \$3.3 billion in state and local taxes, \$2.5 billion in rental payments, and \$760 million in mortgage payments.⁹⁵ They possess a spending power of \$25.3 billion.⁹⁶ Research has demonstrated that the DACA program will allow for \$433 billion

89. See *A Latinx Resource Guide: Civil Rights Cases and Events in the United States*, LIBR. OF CONG., [https://perma.cc/S37Y-SC29] (last visited Apr. 7, 2023); see also RAÚL HINOJOSA-OJEDA, CTR. FOR AM. PROGRESS & IMMIGR. POL’Y CTR, RAISING THE FLOOR FOR AMERICAN WORKERS 7 (2010), [https://perma.cc/6J6J-CNMD].

90. HINOJOSA-OJEDA, *supra* note 89, at 7.

91. *Id.* at 7-9.

92. See *infra* Sections III.C.2-3.

93. *DACA-Eligible Population Contributes Almost \$2.5 Billion to Key Social Service Programs*, NEW AM. ECON. (Jan. 29, 2018), [https://perma.cc/Z8R7-A2BD].

94. Svajlenka & Truong, *supra* note 88.

95. *Id.*

96. *Id.*

in growth over a ten-year projection.⁹⁷ Projections over the same time period also show that DACA program will increase the federal tax revenue by \$60 billion.⁹⁸

DACA recipients contribute an estimated \$24.6 billion to Social Security.⁹⁹ Since the average yearly salary for DACA recipients is \$36,231.91, the entirety, on average, is subject to FICA withholdings.¹⁰⁰ Turning now to the DACA-eligible population. Take for example, a study conducted by the Cato Institute on the youngest DACA-eligible population at the time—consisting of 90,000 individuals—which estimated that this small population, if granted DACA, would add an additional \$6.66 billion in FICA taxes by 2040.¹⁰¹

Moreover, a 2017 study concluded that if DACA recipients and DACA-eligible individuals were granted relief from deportation and authorization to work through programs like DACA, state and local revenues would see an \$815 million increase annually.¹⁰² In part, this would be due to an 8.5% “wage boost” for undocumented individuals who obtain such relief.¹⁰³

The DACA program permits employers to lawfully employ DACA recipients and thus contribute to tax revenue.¹⁰⁴ However, employers would have to expend an estimated \$6.3 billion to replace their lost workforce if DACA were rescinded because, as noted in Section IV.B.2.a., this is a highly educated population.¹⁰⁵

97. Carolina Arlota, *Is the Rescission of Deferred Action for Childhood Arrivals (DACA) Justified by the Results of Cost-Benefit Analysis?*, 29 BERKELEY LA RAZA L.J. 93, 117 (2019).

98. *Id.* at 114.

99. *Id.* at 112.

100. See MAGAÑA-SALGADO & WONG, *supra* note 86, at 7; see also *supra* note 27 and accompanying text.

101. This group of 90,000 consisted of two groups: (1) individuals who met the eligibility requirements but could not apply for DACA because of the 2017 program recession; and (2) those who would soon become eligible upon turning fifteen. Ike Brannon & M. Kevin McGee, *The Costs of Closing DACA Initial Enrollments*, REGUL., Winter 2020-2021, at 30, 32-33.

102. MISHA E. HILL & MEG WIEHE, INST. ON TAX'N & ECON. POL'Y, STATE & LOCAL TAX CONTRIBUTIONS OF YOUNG UNDOCUMENTED IMMIGRANTS 5 (2018), [<https://perma.cc/MT6V-SDK9>].

103. *Id.*

104. See *id.* at 4.

105. Arlota, *supra* note 97, at 112; see also *infra* Section IV.B.2.a.

As detailed throughout the Section above, even with the DACA program, high hurdles still block the DACA population from reaching its full economic potential and, in turn, disservice the U.S. economy.¹⁰⁶ However, as discussed in Part IV, this economic boost would further bolster the U.S. economy and, in turn, aid the Social Security fund.¹⁰⁷

2. *The Educational Limitations*

Although DACA is a national program, as demonstrated throughout this Section, the lived experiences of the DACA population vary greatly depending on their state of residency. Despite an increasing number of states allowing the DACA population to receive in-state tuition,¹⁰⁸ lack of financial access still presents a high hurdle in many states.

While *Plyler v. Doe* guaranteed a right to public primary and secondary education for all regardless of immigration status, this right does not apply to higher education.¹⁰⁹ Consequently, college admission opportunities for the DACA population vary greatly from state to state. Moreover, even if a state permits DACA recipients to enroll, it may not offer in-state tuition, financial aid, or scholarships to them. As of the date of this Comment, only seventeen “comprehensive access” states and the District of Columbia permit in-state tuition rates and some state financial aid and scholarships to all undocumented students, including the DACA population.¹¹⁰ Six “accessible” states allow all undocumented students, including the entire DACA

106. See *supra* notes 97-103 and accompanying text.

107. See *infra* Section IV.B.1; see also Laínez Flanagan, *supra* note 88, at 687-89.

108. NAT’L IMMIGR. L. CTR., BASIC FACTS ABOUT IN-STATE TUITION FOR UNDOCUMENTED IMMIGRANT STUDENTS 1 (2022), [<https://perma.cc/62E5-22AY>].

109. See 457 U.S. 202, 227-30 (1982); David Hoa Khoa Nguyen et al., Estrada v. Becker: *Defining “Legal Presence” and Implications for DACA Students*, 396 EDUC. L. REP. 1, 1-3 (2022).

110. This includes California, Colorado, Connecticut, the District of Columbia, Hawaii, Illinois, Maryland, Minnesota, Nevada, New Jersey, New Mexico, New York, Oregon, Rhode Island, Texas, Utah, Virginia, and Washington. *Tuition & Financial Aid Equity for Undocumented Students*, HIGHER ED IMMIGR. PORTAL [hereinafter *State DACA Regulations*], [<https://perma.cc/R9ZP-5P3U>] (last visited Apr. 8, 2023) (under “Tuition & Financial Aid Equity”).

population, to obtain in-state tuition.¹¹¹ Four “limited” states allow undocumented students, including the DACA population, to receive in-state or reduced tuition from at least some public institutions.¹¹² Seven “limited to DACA” states, as the category label suggests, limit in-state tuition rates to only current DACA recipients and only at certain institutions.¹¹³ Five “restrictive” states “actively bar access to in-state tuition or state financial aid” for the entire DACA population.¹¹⁴ Three “prohibitive enrollment” states prohibit undocumented students, including the DACA-eligible, from enrolling but may still allow current DACA recipients to enroll at certain institutions.¹¹⁵ Eight states and Puerto Rico have no policy at all.¹¹⁶ It is important to note that, due to ever-changing state laws and constant DACA litigation, this statistical breakdown is subject to change. Moreover, the federal government bars DACA recipients from receiving federal financial aid.¹¹⁷

This regime exacerbates extreme disparities among the DACA population nationwide. In Alabama, for example, state policy completely bars admission to the state’s public colleges and universities for any DACA-eligible individual, while it permits admission for a current DACA recipient—but only to certain institutions.¹¹⁸ On the other hand, California permits all undocumented students, including the entire DACA population,

111. The states are Arizona, Florida, Kansas, Kentucky, Nebraska, and Oklahoma. *Id.*

112. This includes Delaware, Iowa, Michigan, and Pennsylvania. *Id.*

113. This includes Arkansas, Idaho, Indiana, Maine, Massachusetts, Mississippi, and Ohio. *Id.*

114. This includes Missouri, New Hampshire, North Carolina, Tennessee, and Wisconsin. *Id.*

115. This includes Alabama, Georgia, and South Carolina. *State DACA Regulations*, *supra* note 110.

116. This includes Alaska, Louisiana, Montana, North Dakota, South Dakota, Vermont, West Virginia, Wyoming, and Puerto Rico. *Id.* Notably, in *Estrada v. Becker*, the Eleventh Circuit Court of Appeals upheld a University System of Georgia regulation requiring schools to verify student statuses—resulting in DACA recipients being ineligible to enroll in the state’s most selective schools due to their “unlawful status.” Nguyen et al., *supra* note 109, at 19. The court reasoned the regulation was consistent with the Immigration and Nationality Act. *Id.*; see also 8 U.S.C. § 1182(a)(6)(A)(i).

117. To obtain federal aid, an individual must be a permanent legal U.S. resident. 20 U.S.C. § 1091(a)(5).

118. See Nguyen et al., *supra* note 109, at 12; ALA. CODE § 31-13-8 (2012) (noting the provision applies to individuals who are “not lawfully present in the United States”).

to not only enroll in public institutions but also have some access to state financial aid.¹¹⁹

Despite all the restrictions noted in this subsection and the next, FWD.us found about half of DACA recipients have obtained at least some college education.¹²⁰ This is a statistical demonstration that, despite the immense hurdles to even be admitted into college, the DACA population is striving towards making an impact in their communities. Yet, these barriers—at times insurmountable and imposed solely due to immigration status—certainly decrease the DACA population’s potential economic impact.

3. *The Employment Limitations*

Increasingly, states have permitted DACA recipients to obtain college degrees. But what good is a degree in a career path that requires a license with no path to obtain a license? If the DACA population is barred from receiving certain licenses required to practice in certain fields, economic contributions could be lost. For many professions—including those in “law, medicine, education, social work, cosmetology, accounting, nursing, real estate”—graduating from the respective programs and completing the applicable post-graduate certification exams does not guarantee the DACA population the ability to practice in these professions like citizens or permanent residents.¹²¹ Federal law prohibits granting undocumented immigrants professional licenses unless a state affirmatively elects to do so.¹²²

States generally fall into five categories when it comes to granting occupational licenses: (1) comprehensive access, (2)

119. CAL. EDUC. CODE § 68130.5(a) (West 2023). Interestingly, California’s policy allowing for in-state tuition was upheld by its highest court because it based eligibility on whether the individual graduated from a California high school and not the individual’s state of residency. *Martinez v. Regents of Univ. of Cal.*, 241 P.3d 855, 863 (Cal. 2010).

120. *DACA Decade: From Students to Careers and Families*, FWD.US (June 14, 2022), [<https://perma.cc/DS9L-KW9U>].

121. Nguyen et al., *supra* note 109, at 5.

122. *Id.*; *see also* 8 U.S.C. § 1611(a), (c)(1)(A) (including professional licenses in the definition of “[f]ederal public benefit”). *See generally* FEDERAL BENEFIT RESTRICTIONS, *supra* note 85.

accessible, (3) limited, (4) restrictive, and (5) no state policy.¹²³ Five “comprehensive access” states allow all individuals to obtain occupational licenses in any profession regardless of their immigration status.¹²⁴ Two “accessible” states allow undocumented individuals to obtain an occupational license in at least one profession regardless of immigration status.¹²⁵ Eleven “limited” states allow current DACA recipients to obtain occupational licenses in at least one profession.¹²⁶ One “restrictive” state actively prohibits individuals without legal status from obtaining occupational licenses.¹²⁷ Thirty-one states, the District of Columbia, and Puerto Rico have no policy in place.¹²⁸

However, state legislatures recognize that opening up professional licensing for DACA recipients meets critical needs and promotes their state’s wellbeing. For example, during the COVID-19 crisis, the Arkansas Legislature, in the midst of a nursing shortage, voted to permit DACA recipients to sit for the National Council Licensure Examination (NCLEX), thereby allowing them to obtain nursing licenses.¹²⁹ Still, as noted above, states categorized as “restrictive,” “limited,” and those with no state policy might not even allow this opportunity.¹³⁰ However, now that USCIS is not adjudicating applications,¹³¹ the pool of individuals that can take advantage of such opportunities is shrinking.¹³² As detailed throughout this Section, the DACA

123. *State DACA Regulations*, *supra* note 110 (under “Professional & Occupational Licensure”).

124. This includes California, Colorado, Illinois, Nevada, and New Jersey. *Id.*

125. This includes New Mexico and Oregon. *Id.*

126. This includes Arkansas, Connecticut, Florida, Indiana, Mississippi, Nebraska, New York, Pennsylvania, Tennessee, Utah, and West Virginia. *Id.*

127. The only state in this category is Alabama. *Id.*

128. This includes Alaska, Arizona, Delaware, the District of Columbia, Georgia, Hawaii, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, New Hampshire, North Carolina, North Dakota, Ohio, Oklahoma, Puerto Rico, Rhode Island, South Carolina, South Dakota, Texas, Vermont, Virginia, Washington, Wisconsin, and Wyoming. *State DACA Regulations*, *supra* note 110.

129. *DACA Recipient Changes Arkansas Law*, YAHOO! (Aug. 30, 2019), [<https://perma.cc/Y74H-4QUU>] (video first appeared on NowThisNews.com).

130. *See supra* notes 122, 126-27 and accompanying text.

131. *See supra* note 15 and accompanying text.

132. David J. Bier, *DACA Population Continues to Decline—Falling Below 600,000*, CATO INST. (Nov. 23, 2022, 8:55 AM), [<https://perma.cc/5CGN-6TBZ>].

population, even those who are DACA recipients and who graduate from post-secondary schools, has limited employment opportunities.¹³³

4. *The Humanitarian Limitations*

The forefront of this Comment is based in economic reasoning; however, economic analysis does not tell the entire story. One should also take into account a policy’s “moral considerations.”¹³⁴ In addition to economic benefits, a pathway to citizenship for the DACA population also furthers a foundational American principle: familial stability. In 2021, the Center for American Progress estimated that 254,000 U.S. citizen children had at least one DACA recipient parent.¹³⁵ In addition to these children, 1.5 million other citizens lived with a DACA recipient family member.¹³⁶ DACA recipients are also friends, neighbors, and integrated and vital members of their communities.

Furthermore, DACA recipients have become reliant on the program. At the time of this Comment, DACA has existed for over a decade.¹³⁷ While DACA is a deferred action program, many DACA recipients rely on the program to provide them with stability and opportunity in the United States.¹³⁸ The current DACA program allows for security in two-year increments that now, a decade later, many heavily rely on.¹³⁹

IV. HOW IS A PATH TO CITIZENSHIP FOR THE DACA POPULATION A “WIN-WIN” FOR ALL?

By eliminating educational and employment barriers, the DACA population can help alleviate the constraints currently

133. See *supra* notes 121-22, 126-28.

134. Arlota, *supra* note 97, at 118.

135. Claudia Flores & Nicole Prchal Svajlenka, *Why DACA Matters*, CTR. FOR AM. PROGRESS (Apr. 29, 2021), [<https://perma.cc/BC62-BQSM>].

136. *Id.*

137. See Rafael Bernal, *DACA Turns 10 with ‘Dreamers’ No Closer to Solid Ground*, HILL (June 14, 2022, 5:55 PM), [<https://perma.cc/FFR7-C2LF>].

138. See Arlota, *supra* note 97, at 120 (“created the expectation of deferral”).

139. See *supra* note 67 and accompanying text.

facing the Social Security fund. 91% of DACA recipients are employed, thereby contributing to the Social Security fund via FICA contributions every paycheck.¹⁴⁰ Yet, these contributions are far below what the DACA population could contribute to the U.S. economy. As noted throughout Part III, substantial barriers—particularly educational and employment restrictions—keep the DACA population from fully participating in society.¹⁴¹ And as noted in Part II, Social Security—which provides millions of retirees with critical assistance—is facing insolvency as soon as 2034.¹⁴²

For decades now, as noted in Section IV.A. below, legislative efforts to implement different versions of the DREAM Act have proved fruitless.¹⁴³ This Comment advocates for a pathway to citizenship that, historically, can only be implemented through Congress.¹⁴⁴ If such action is taken, the DACA population will finally achieve stability.

During the last few decades, as Congress has attempted to implement versions of the DREAM Act, America's working age group has been depleting.¹⁴⁵ However, there is a large pool of talented, American-raised young adults who can replenish this pool. These young adults simply lack the proper documentation to do so. DACA's eligibility hinges on meeting a lengthy list of requirements, including residing in the United States since June 15, 2007.¹⁴⁶ Not enabling American-raised individuals to contribute to the economy long-term is an economic waste. Historical trends and research demonstrate that even if there is no legislative fix, many of these individuals will remain in the country.¹⁴⁷ By creating a pathway to citizenship, the DACA population will finally have increased access to educational and

140. See Láinez Flanagan, *supra* note 88, at 652, 687.

141. See *supra* Sections III.C.2-3.

142. See *supra* notes 34-38, 45 and accompanying text.

143. Fathali, *supra* note 80, at 237-38; see also *infra* Section IV.A.

144. Megan Moleski, Comment, *How to Protect DACA & Dreamers After the United States Supreme Court Decision in Department of Homeland Security v. Regents of the University of California*, 54 UIC L. REV. 1037, 1045 (2021) (Congress has the right to “confer rights to immigration status and pathways to citizenship”).

145. See *supra* text accompanying notes 39-42; *infra* Section IV.A.

146. See *supra* text accompanying note 68.

147. See Patricia B. Reagan & Randall J. Olsen, *You Can Go Home Again: Evidence from Longitudinal Data*, 37 DEMOGRAPHY 339, 349 (2000).

employment opportunities—thereby permitting them to fully participate in the American economy.¹⁴⁸

A. Past Legislative Attempts

The idea of a citizenship pathway for the DACA population is not one of first impression. In fact, Congress introduced the first variation of what came to be known as the DREAM Act in 2001.¹⁴⁹ Despite bipartisan support, variations of the Act have continuously failed.¹⁵⁰

Although these variations have been orchestrated by different congressional members and political parties, the “core requirements” have generally stayed the same with small differences.¹⁵¹ For example, a 2011 version, introduced by members from both sides of the aisle, required an individual to have arrived in the United States before the age of fifteen; have been present in the United States for at least five years prior to the date the bill passed; be of good moral character with no criminal history; have obtained a GED or high school diploma or been admitted to an institution of higher learning; and be thirty-five years old or younger.¹⁵² Under this version, individuals meeting the above requirements would have received conditional permanent residence for six years.¹⁵³ In addition, those individuals would have been required to complete two years of higher education or service in the military; after those conditions were satisfied, these individuals could have petitioned for permanent residence without conditions.¹⁵⁴

148. *See infra* Section IV.B.2.

149. JEANNE BATALOVA & MARGIE MCHUGH, MIGRATION POL’Y INST., DREAM VS. REALITY: AN ANALYSIS OF POTENTIAL DREAM ACT BENEFICIARIES 1 (2010), [<https://perma.cc/Q6NX-SMD6>].

150. Myah Ward, *Is It Now or Never for DACA?*, POLITICO (Nov. 15, 2022, 2:51 PM), [<https://perma.cc/WC6D-4FZ7>].

151. Fathali, *supra* note 80, at 237-38.

152. *Id.* at 238; Development, Relief, and Education for Alien Minors Act of 2011, H.R. 1842, 112th Cong. (2011) (cosponsored by 115 members of Congress from both political parties).

153. Fathali, *supra* note 80, at 238.

154. *Id.*

B. Prior Analysis of DACA's Impact on Social Security

As noted throughout Part II, the Social Security fund is in peril.¹⁵⁵ The total cost of the OASI program in 2021 was \$1.0019 trillion while total income lagged at \$942.9 billion.¹⁵⁶

1. The Social Security Trustee Report

As outlined in Part III, despite DACA permitting work authorization and permitting individuals to obtain Social Security numbers, education, employment, and professional licenses, restrictions still vary state by state.¹⁵⁷ However, if such barriers were non-existent, the FICA contributions made by this population would very likely increase.

In the 2021 Trustee Report,¹⁵⁸ Section III.B concluded the following about the DACA Program's impact on the Social Security fund:

[T]he DACA program is estimated to have a small but significant positive financial effect on the OASDI program over the short-range projection period and a small but significant negative financial effect over the long-range projection period. Sections IV.A.4 and IV.B.6 of this report provide further description of the magnitude of effects on the financial status of the OASDI program.¹⁵⁹

Section IV.A.4:

The changes in policy for the Deferred Actions for Childhood Arrivals program discussed in III.B, which affect the Social Security program in the first ten years primarily

155. *See supra* Section II.B.

156. 2022 TRUSTEE REPORT, *supra* note 34, at 7.

157. *See supra* notes 67, 70 and accompanying text; *supra* Sections III.C.2-3.

158. Note the 2022 Trustee Report is not being used because it uses the same DACA estimates as—and defers to—the 2021 Trustee Report but acknowledges a one-year delay is now incorporated in the estimates because of the judicial stay. 2022 TRUSTEE REPORT, *supra* note 34, at 40.

159. BD. OF TRS., FED. OLD-AGE & SURVIVORS INS. & FED. DISABILITY INS. TR. FUNDS, THE 2021 ANNUAL REPORT OF THE BOARD OF TRUSTEES OF THE FEDERAL OLD-AGE AND SURVIVORS INSURANCE AND FEDERAL DISABILITY INSURANCE TRUST FUNDS 39 (2021) [hereinafter 2021 TRUSTEE REPORT], [<https://perma.cc/92XH-9YSH>].

by increasing payroll tax income, *increased* the tenth year OASI trust fund ratio by 1 percentage point.¹⁶⁰

Section IV.B.6:

The effect over the next 75 years is to increase future benefits slightly more than future payroll tax revenue because: (1) a significant portion of the payroll taxes from this group has already been credited to the trust funds, while the vast majority of the OASDI benefits they will earn will be in the future, dependent on their preserving DACA status; and (2) currently scheduled payroll tax rates are not sufficient to fully finance future benefits for this group and in general. This change in policy is thus estimated to decrease the long-range actuarial balance by 0.01 percent of taxable payroll.¹⁶¹

2. *Limitations of the Social Security Trustee Report*

Because of the current DACA program’s limitations and lack of guaranteed longevity, current recipients are more likely to opt out of post-secondary education and proceed to the workforce.¹⁶² This reality demonstrates why both the 2021 and 2022 Trustee Reports depict DACA, in the short run, as a positive for Social Security—as the DACA population is more likely to join the workforce because of the high educational and employment barriers in certain professions.¹⁶³

Further, the “small but significant negative” long-term effect is likely due to the current barriers of the program.¹⁶⁴ While the 2021 Trustee Report notes that a “significant portion” of DACA recipients’ contributory taxes have already been credited to the trust funds, these are taxes incurred with the current restrictions the program places on recipients; this Comment advocates for an expansion leading to a pathway for citizenship.¹⁶⁵ The following two subsections specifically illustrate how increased educational and employment opportunities for the DACA population would aid the Social Security fund.

160. *Id.* at 51 (emphasis added).

161. *Id.* at 78.

162. *See supra* Sections III.C.2-3; *infra* notes 170-73 and accompanying text.

163. *See supra* notes 159-60 and accompanying text; Sections III.C.2-3.

164. 2021 TRUSTEE REPORT, *supra* note 159, at 39.

165. *Id.* at 78; *see also supra* Sections III.C.2-3.

a. The Impact of Higher Education

Due to eligibility requirements, members of the DACA population either have a high school diploma (or GED) or are currently working towards a diploma, and many have gone on to graduate from post-secondary programs.¹⁶⁶ Therefore, a citizenship pathway would provide reassurance in their ability to remain in the United States and enable them to effectively use “human capital” gained from increased educational opportunities to contribute larger streams of tax revenue.¹⁶⁷

Despite *Plyler* establishing K-12 education for all U.S. residents regardless of their immigration status, courts have held that this does not extend to post-secondary education.¹⁶⁸ As reasoned by the *Plyler* Court, “by depriving the children of any disfavored group of an education, we foreclose the means by which that group might raise the level of esteem in which it is held by the majority. But more directly, ‘education prepares individuals to be self-reliant and self-sufficient participants in society.’”¹⁶⁹ This is a population that was raised on American soil, attended American schools, and pledged allegiance to the American flag. By failing to fully integrate this group into American society and denying wide-spread opportunity to pursue post-secondary education, the United States issues a blow to the very bedrock of American principles.

Research makes it clear that while the DACA program has unambiguously increased high school graduation rates, it has not had a similarly clear effect on enrollment in post-secondary programs.¹⁷⁰ This phenomenon is largely because DACA *increases* the opportunity cost of post-secondary education by “increasing the current income that must be foregone in pursuing

166. See *supra* note 68 and accompanying text.

167. Ike Brannon & Kevin McGee, *Would Suspending DACA Withstand a Benefit-Cost Analysis?*, REGUL., Winter 2018-2019, at 1, 6 [hereinafter *DACA Benefit-Cost*].

168. See Nguyen et al., *supra* note 109, at 6-7, 19-22.

169. *Plyer v. Doe*, 457 U.S. 202, 222 (1982) (quoting *Wisconsin v. Yoder*, 406 U.S. 205, 221 (1972)).

170. Ike Brandon & M. Kevin McGee, *Estimating the Economic Impact of DACA 18-19* (July 5, 2019) (unpublished manuscript) [hereinafter *DACA Educational Attainment*], [<https://perma.cc/VTD4-QKNU>].

that higher education”¹⁷¹—in large part because of the program’s short-term, two-year deferred action status and constant uncertain future.¹⁷² However, if the program were to provide permanent legal status, it is likely it would unambiguously—like it did for high school graduation rates—increase college enrollment.¹⁷³

Through many variations of past DREAM Acts, the DACA population would become eligible for financial aid as long as they met other basic eligibility criteria, as permanent residents are considered “eligible noncitizen[s].”¹⁷⁴ This opportunity would likely prove incredibly beneficial to the DACA population—as even if they were admitted to post-secondary programs, they often lack access to federal aid, and private student loans impose steep interest rates.¹⁷⁵

b. The Impact of Employment

A pathway to citizenship would eliminate professional licensing barriers and thereby increase employment opportunities, which in turn would lead to increased tax contributions. The Trustee Reports base DACA’s long-term financial effect on Social Security as the program currently is—while this Comment advocates that, by creating a pathway, this population would positively impact the fund.¹⁷⁶

For example, in a 2019 study, the CATO Institute estimated that if current DACA recipients were granted permanent legal status, between 2020 and 2029, the group would earn an income of \$380 billion.¹⁷⁷ In such a case, this population would pay “\$43 billion in federal income taxes and \$59 billion in FICA taxes.”¹⁷⁸ Without legal status, during the same period, their aggregate income would only be \$158 billion, resulting in “\$6 billion in

171. *Id.* at 18.

172. *See supra* notes 79-84 and accompanying text.

173. *See* DACA Educational Attainment, *supra* note 170, at 18-19.

174. *See Eligible Noncitizen*, FED. STUDENT AID, [https://perma.cc/2VAJ-F2GS] (last visited Apr. 4, 2023).

175. *See* Aly J. Yale, *Are DACA Students Eligible for Student Loans?*, BUS. INSIDER (Jan. 26, 2023, 2:32 PM), [https://perma.cc/W76P-DRVV].

176. *See supra* notes 158-59 and accompanying text.

177. *DACA Benefit-Cost*, *supra* note 167, at 5.

178. *Id.*

federal income taxes and \$24 billion in FICA taxes.”¹⁷⁹ This illustrates how current recipients could contribute an additional \$70 billion in tax revenue over the decade (with potential to contribute up to \$102 billion in additional taxes).¹⁸⁰

As indicated by the research study above, with lawful status, the DACA population would greatly increase its earning potential and thereby pay higher taxes.¹⁸¹ Simply put, lawful status permits increased educational opportunities, leading to higher-salaried jobs, which in turn increases the taxable income subject to FICA contributions.¹⁸²

Furthermore, DACA recipients and DACA-eligible individuals would no longer have to wait for their respective state legislatures to affirmatively elect to permit the issuance of professional licenses.¹⁸³ They could participate in their respective field upon graduating from their program. For example, a study revealed that 46% of DACA recipients already have a bachelor’s degree or higher with the current limitations in place.¹⁸⁴ This is an educated population that can perform skilled jobs American employers often have trouble filling.¹⁸⁵

Take, for example, a study conducted by Richard Jones, a Professor at the University of Texas at San Antonio.¹⁸⁶ Jones’s study denoted the “quantifiable gains in socioeconomic factors for DACA recipients were two to three times greater than for Dreamers over the same timeframe.”¹⁸⁷ In this case study, the mean annual income for a DACA recipient with a Bachelor of Arts increased to \$30,179, while the individual without DACA

179. *Id.*

180. *Id.*

181. *Id.*

182. *See DACA Benefit-Cost, supra* note 167, at 5.

183. *See supra* Section III.C.3.

184. Tom K. Wong et al., *DACA Recipients’ Livelihoods, Families, and Sense of Security Are at Stake This November*, CTR. FOR AM. PROGRESS (Sept. 19, 2019) [hereinafter *DACA Livelihood*], [<https://perma.cc/E27P-M7B2>] (this figure is based on a national survey of “1,105 DACA recipients in 40 states as well as the District of Columbia”).

185. *See* WILLIAM C. DUNKELBERG & HOLLY WADE, NAT’L FED’N OF INDEP. BUS., SMALL BUSINESS ECONOMIC TRENDS 11 (2023), [<https://perma.cc/643K-WGS3>] (43% of small business owners reported having positions they could not fill in March of 2023).

186. Richard C. Jones, *Has DACA Promoted Work over Schooling and Professional Advancements for Qualifying Mexican Dreamers?*, 102 SOC. SCI. Q. 3007, 3007 (2021).

187. *UTSA Study: DACA Protection Leads to Sizeable Economic Gains*, UTSA TODAY (Oct. 1, 2021), [<https://perma.cc/3NQA-DX4M>].

but with the same degree saw a decline of \$4,500.¹⁸⁸ This illustrates the financial impact increased access to educational opportunities and professional licensing has on this population—despite the barriers imposed. If such barriers were completely eliminated, the DACA population—throughout the entire United States—would have access to a wide range of education and employment opportunities.

This Comment does not attempt to suggest this pathway to citizenship would completely remedy Social Security’s existing troubles, as it would impact a population of only 1.16 million individuals.¹⁸⁹ However, with this remedy, the government can alleviate a portion of the current and future stress on Social Security while providing security to these American-raised individuals. As noted in Part II, the American working population is shrinking each year.¹⁹⁰ The DACA population has decades to offer and contribute to the economy and the imperiled Social Security fund.¹⁹¹

C. The Pathway’s Economic Impact Would Reach Far Beyond the Social Security Fund

Outside of the direct impact on Social Security, the implementation of a pathway would allow the DACA population to fully contribute to their communities, their own personal growth, and the American economy as a whole—thereby creating an additional boost for the Social Security fund. For example, the DACA population would have increased access to home ownership,¹⁹² a greater ability to start new businesses,¹⁹³ and other opportunities to make an impact in the community.

Additionally, increased stability would increase tax filing compliance. A path to citizenship would increase tax compliance

188. Jones, *supra* note 187, at 3015.

189. *See supra* text accompanying note 12.

190. *See supra* text accompanying notes 39-42.

191. *See supra* text accompanying note 78.

192. *See* Amresh Singh, *A Complete Guide to DACA Home Loans*, HOMEABROAD (Sept. 14, 2022), [<https://perma.cc/XPK4-JGJQ>].

193. DACA recipients generally have a difficult time obtaining loans, which are often needed to start a business. *See* Jonathan Petts, *How to Get a Bank Loan with DACA: The Complete Guide*, IMMIGRATIONHELP (May 26, 2022), [<https://perma.cc/W5B6-NRTW>].

as the DACA population, in particular the DACA-eligible, would no longer fail to file because of a central fear of immigration-related consequences.¹⁹⁴ By forbidding the DACA-eligible from gaining acceptance into the program, the government ensures only half are filing taxes despite their ability to contribute.¹⁹⁵ But by forming a pathway to citizenship, the United States would be guaranteed a steady and reliable taxable income source.

On a national level, DACA recipients annually pay \$3.3 billion in state and local taxes, \$2.5 billion in rental payments, and \$760 million in mortgage payments.¹⁹⁶ They possess a spending power of \$25.3 billion, thereby contributing to the economy beyond their contributory FICA taxes imposed on each paycheck—that in turn contribute to Social Security.¹⁹⁷

Notably, the DACA population entrepreneurial rate exceeds that of the native-born U.S. population—8% of recipients over the age of twenty-five have started small businesses compared to 3.1% of natives.¹⁹⁸ This in turn generates jobs for other workers—notably at a higher rate than for natives—which then generates additional FICA tax contributions that would have otherwise been forgone.

Current recipients have reported great access to jobs with higher salaries that align with their educational and training skills.¹⁹⁹ These are not just any jobs—three-quarters of the

194. See Laínez Flanagan, *supra* note 88, at 699-702 (noting the widespread “fear that the Internal Revenue Service works with the Department of Homeland Security”). As a result of USCIS not currently processing initial applications, DACA-eligible individuals who are not currently in the program but continue to reside in the United States are legally required to pay taxes through an assigned ITIN (Individual Taxpayer Identification Number). See Luis Larrea, *Taxation Inequality and Undocumented Immigrants*, 5 WM. MITCHELL L. RAZA J. 2, 8 (2013). In a nutshell, ITINs are assigned to individuals without a Social Security number to pay taxes—despite wages earned being statutorily illegally derived. *Id.* at 7-8; see also Treas. Reg. § 301.6109-1(d)(3)(ii) (2013).

195. LISA CHRISTENSEN GEE ET AL., INST. ON TAX’N. & ECON. POL’Y, UNDOCUMENTED IMMIGRANTS’ STATE & LOCAL TAX CONTRIBUTIONS 2 (2016), [<https://perma.cc/ESC9-N2HG>].

196. Svajlenka & Truong, *supra* note 88.

197. *Id.*

198. Tom K. Wong et al., *DACA Recipients’ Economic and Educational Gains Continue to Grow*, CTR. FOR AM. PROGRESS (Aug. 28, 2017), [<https://perma.cc/YTR8-URYK>] (based on a study involving “3,063 respondents in 46 states as well as the District of Columbia”).

199. Svajlenka & Truong, *supra* note 88.

current DACA recipient population is “employed in jobs deemed essential” including health care, education, and food services.²⁰⁰

In 2019, solely with the protection of DACA, individuals reported job advancement, including an average hourly increase from \$10.46 to \$19.45.²⁰¹ Because DACA recipients have demonstrated the ability to perform well financially under the restrictions of the program, by removing educational and employment barriers via a pathway to citizenship, an even greater financial impact will likely follow. Furthermore, about 25% of current recipients own their home—a single home purchase generates an additional \$58,529 in the local economy, and one job is created for every two homes sold.²⁰² Therefore, an even greater “positive feedback loop” would result from a citizenship pathway and further aid the Social Security fund.²⁰³

D. This Pathway Would Be Inherently Important Even Beyond Its Economic Impact

Outside of the positive impact such legislation would have on the U.S. economy, it would also provide important humanitarian protections. For the DACA population, it would provide a secure status for themselves and their families in the country they have called home for most of their lives. Indeed, for many in the DACA population, the United States is the only home they have ever known.²⁰⁴ Recall that 1.5 million individuals in the United States live with a DACA recipient family member, and over 250,000 U.S. citizen children have at least one DACA

200. *Id.*

201. *DACA Livelihood*, *supra* note 184.

202. Tom K. Wong et al., *New DHS Policy Threatens to Undo Gains Made by DACA Recipients*, CTR. FOR AM. PROGRESS (Oct. 5, 2020), [<https://perma.cc/XV7D-GVDH>]; *see also Jobs Impact of an Existing Home Purchase*, NAT’L ASS’N OF REALTORS, [<https://perma.cc/MYE7-YKXS>] (last visited Apr. 5, 2023).

203. Memorandum from Att’y Gen. of California, New Jersey, New York, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Illinois, Iowa, Maine, Maryland, Massachusetts, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Virginia, Washington, and Wisconsin, to Alejandro Mayorkas, Sec’y, U.S. Dept. of Homeland Sec. 10 (Nov. 19, 2021), [<https://perma.cc/LK9U-2C9V>] (discussing the Notice of Proposed Rulemaking: “Deferred Action for Childhood Arrivals”).

204. *See supra* notes 4-6 and accompanying text.

parent.²⁰⁵ Providing a secure status to the DACA population will also uplift these individuals.

This legislation would also help provide security to millions of future retirees, who have grown up believing they would be able to count on Social Security benefits. As noted in Part II, retired individuals rely greatly on benefits to get them through life.²⁰⁶ As it stands, this vital safety net faces a crisis, but this reform would help ensure future retirees' access to proper nutrition, medical care, and shelter.²⁰⁷

If Congress does indeed pass legislation in this area, appropriate safeguards should be in place to ensure delays in status adjustment so that these reforms do not cause harm to applicants. Specifically, these reforms should ensure DACA recipients do not have a lapse in their legal status, thereby hindering their ability to lawfully work.

This Comment's argument begs the following question: why would perpetual DACA status be insufficient? "Legalization without citizenship [would be] a punitive compromise" for this population because such policies are essentially ensuring "permanent political exclusion."²⁰⁸ Providing a pathway to citizenship for the DACA population would provide them permanent protection in the United States and allow them to fully participate in American life and the U.S. economy.

While this Comment focuses on DACA recipients and DACA-eligible individuals specifically, there are millions of other non-citizens who also merit a similar relief program.²⁰⁹ The Author of this Comment chose DACA as the focal point due to the greater availability of statistical information.

205. See *supra* notes 135-36 and accompanying text.

206. See *supra* notes 35-38 and accompanying text.

207. See *supra* notes 35-38 and accompanying text.

208. Jennifer M. Chacón, *Citizenship Matters: Conceptualizing Belonging in an Era of Fragile Inclusions*, 52 U.C. DAVIS L. REV. 1, 17 (2018).

209. In particular, the DACA program's language places time restrictions that require eligible applicants to be residents by June 15, 2007—thus, if someone entered as a newborn on said date, they would have turned fifteen years of age in 2022. 2021 DACA CONGRESSIONAL REPORT, *supra* note 74, at 6. Therefore, as of June 15, 2022, there are no longer individuals aging into the program. *Id.*

V. CONCLUSION

This Comment possesses a dual-purpose: (1) to bring awareness to the insufficiency that educational and employment barriers create for the DACA population,²¹⁰ and (2) to provide an analysis on how a citizenship pathway for the DACA population would not only provide the population security but also fortify the imperiled Social Security fund.

The life of this Comment extends beyond the outcome of the pending DACA litigation. Regardless, if the DACA program is upheld, this Comment has demonstrated logical economic and humanitarian reasons why a pathway to citizenship for the DACA population should exist.

By granting DACA recipients and DACA-eligible individuals a pathway to citizenship, the United States would simultaneously grant deserving individuals rights while providing aid to the Social Security fund without having to raise taxes or cut benefits upon which millions of individuals rely upon.

210. *See supra* Sections III.C.2-3 and accompanying text.