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## NATIVISM IN IMMIGRATION: THE RACIAL POLITICS OF EDUCATIONAL SANCTUARIES

DAVID HÒA KHOA NGUYỄN\*<sup>1</sup>

### INTRODUCTION

While comprehensive immigration reform—specifically the DREAM Act<sup>2</sup>—has yet to be passed and implemented, President Obama’s Deferred Action for Childhood Arrivals (DACA) has opened access and opportunities for undocumented students.<sup>3</sup> However, the election of President Donald Trump has sparked contentious political, societal, and litigious debates, especially concerning undocumented students and the continuation of the DACA program.<sup>4</sup> While

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<sup>1</sup> Some of the content for this article is adopted from an earlier article on sanctuary campuses. See David H.K. Nguyễn, *#ICEOffOurCampus: The Liability and Responsibility of Colleges and Universities for the Educational Attainment of Dreamers*, 5 BELMONT L. REV. 152 (2018).

<sup>2</sup> See THE DREAM ACT, DACA, AND OTHER POLICIES DESIGNED TO PROTECT DREAMERS, AM. IMMIGR. COUNCIL (Sept. 2017), [https://www.americanimmigrationcouncil.org/sites/default/files/research/the\\_dream\\_act\\_daca\\_and\\_other\\_policies\\_designed\\_to\\_protect\\_dreamers.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/research/the_dream_act_daca_and_other_policies_designed_to_protect_dreamers.pdf) (explaining the purpose and history of the Development, Relief, and Education for Alien Minors (DREAM) Act, which was introduced in 2001 and has seen numerous iterations since); see also S. 1615, 115th Cong. (2017).

<sup>3</sup> See Marisa Bono, *When a Rose is Not a Rose: DACA, the DREAM Act, and the Need for More Comprehensive Immigration Reform*, 40 T. MARSHALL L. REV. 193, 205, 207–08 (2015) (highlighting the opportunities provided by DACA for DREAMers, including the ability to “stay without fear of deportation, at least temporarily”).

<sup>4</sup> Robert Barnes, *Trump Can’t Immediately End DACA, Appeals Court Panel Says, Setting Up Supreme Court Fight*, WASH. POST (Nov. 8, 2018), [https://www.washingtonpost.com/politics/courts\\_law/trump-cant-end-daca-appeals-court-says-setting-up-supreme-court-fight/2018/11/08/4a76f928-e386-11e8-ab2c-b31dcd53ca6b\\_story.html?utm\\_term=.fef3c2c2db61](https://www.washingtonpost.com/politics/courts_law/trump-cant-end-daca-appeals-court-says-setting-up-supreme-court-fight/2018/11/08/4a76f928-e386-11e8-ab2c-b31dcd53ca6b_story.html?utm_term=.fef3c2c2db61); Annie Karni & Sheryl Gay Stolberg, *Trump Offers Temporary Protection for ‘Dreamers’ in Exchange for Wall Funding*, N.Y. TIMES (Jan. 19, 2019), <https://www.nytimes.com/2019/01/19/us/politics/trump-proposal-daca-wall.html>; Vanessa Romo et al., *Trump Ends DACA, Calls On Congress to Act*, NPR (Sept. 5, 2017, 9:05 AM), <https://www.npr.org/2017/09/05/546423550/trump-signals-end-to-daca-calls-on-congress-to-act>.

approximately sixty-five thousand undocumented students graduate high school annually,<sup>5</sup> 40% of undocumented students drop-out.<sup>6</sup> Various laws and policies make education unattainable and difficult,<sup>7</sup> resulting in a leak in the pipeline for undocumented students which is indefensible given the unfettered right to a K-12 education.<sup>8</sup>

In response to the rhetoric from President Trump and his supporters concerning the arrest and deportation of undocumented students and their families, some school districts<sup>9</sup> and college campuses<sup>10</sup> declared themselves “sanctuaries” – affirmatively refusing to collaborate and cooperate with federal immigration officials.<sup>11</sup> Others issued statements of support or remained silent. This article examines the role racist nativist politics<sup>12</sup> have had in shaping the decision-making of educational leaders in debates of whether to adopt sanctuary policies, issue

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<sup>5</sup> Zenen Jaimes Pérez, *Removing Barriers to Higher Education for Undocumented Students*, CTR. AM. PROGRESS (Dec. 5, 2014, 6:00 AM), <https://www.americanprogress.org/issues/immigration/reports/2014/12/05/101366/removing-barriers-to-higher-education-for-undocumented-students/>.

<sup>6</sup> JEFFREY S. PASSEL & D'VERA COHN, A PORTRAIT OF UNAUTHORIZED IMMIGRANTS IN THE UNITED STATES, PEW HISPANIC CTR. 11 (2009), <https://www.pewresearch.org/wp-content/uploads/sites/5/reports/107.pdf>.

<sup>7</sup> See Angela Adams & Kerry S. Boyne, *Access to Higher Education for Undocumented and “DACAmented” Students: The Current State of Affairs*, 25 IND. INT'L & COMP. L. REV. 47 (2015); David H.K. Nguyễn & Zelideh R. Martinez Hoy, “*Jim Crowing*” *Plyler v. Doe: The Resegregation of Undocumented Students in American Higher Education Through Discriminatory State Tuition and Fee Legislation*, 63 CLEV. ST. L. REV. 355 (2015).

<sup>8</sup> See *Plyler v. Doe*, 457 U.S. 202, 223 (1982) (finding education, when provided by the state, is a “right which must be made available to all on equal terms”).

<sup>9</sup> See *Safe Zone School Districts*, NAT'L EDUC. ASS'N, <https://neadjustice.org/safezonedistricts/> (last visited Apr. 16, 2019) (providing an interactive map of school districts across the country who have passed or are considering passing resolutions to become “sanctuary” zones).

<sup>10</sup> See Eric Kelderman, *Sanctuary Campus: Some Campuses Consider ‘Sanctuary’ Status. But Can They Protect Students?*, CHRON. HIGHER EDUC. (Feb. 26, 2017), <https://www.chronicle.com/article/Sanctuary-Campus/239289>.

<sup>11</sup> See JESSICA HANSON ET AL., PRACTICE ADVISORY: THE LEGAL AUTHORITY FOR “SANCTUARY” SCHOOL POLICIES, NAT'L IMMIGR. L. CTR. (2018), <https://www.nilc.org/wp-content/uploads/2018/08/sanctuary-schools-practice-advisory-2018.pdf> (discussing school sanctuary policies and best practices); see also Mark Keierleber, *‘Sanctuary Schools’ Across America Defy Trump’s Immigration Crackdown*, THE GUARDIAN (Aug. 21, 2017, 6:00 AM), <https://www.theguardian.com/us-news/2017/aug/21/american-schools-defy-trump-immigration-crackdown>.

<sup>12</sup> See generally Lindsay Pérez Huber et al., *Getting Beyond the ‘Symptom,’ Acknowledging the ‘Disease’: Theorizing Racist Nativism*, 11 CONTEMP. JUST. REV. 39 (2008) (analyzing the role racist nativism has played in the “dominant discourse about immigration” and Latinas/os).

statements of support for DACAmented<sup>13</sup> and undocumented students or remain silent.

Through analyzing the recent debates around sanctuaries and sanctuary schools and campuses, this article explains the theoretical foundations of Critical Race Theory,<sup>14</sup> LatCrit,<sup>15</sup> and racist nativism<sup>16</sup> for readers to understand various forms of racism that bestow inferiority to People of Color, specifically based on immigration status.<sup>17</sup> It will also examine the current state of affairs in educational attainment of undocumented students.<sup>18</sup> Since *Plyler v. Doe*, all children in the United States have free access to K-12 education, notwithstanding their immigration status.<sup>19</sup> However, barriers to access have been created by school, district, state, and federal laws and policies.<sup>20</sup> Finally, this article will provide a history of the sanctuary movement, examine various school and campus sanctuary policies, and analyze the political and legal debates in response to the shift in U.S. federal policy concerning DACAmented and undocumented students.<sup>21</sup> Through a nativist analysis, racism emerges in these debates over sanctuaries as a response to the changing demographics and the assignment of “illegality” to Black and Brown people based on immigration status.<sup>22</sup> It is imperative that we closely consider the current sociopolitical climate of immigration status on the educational attainment of our youth in order to help us process various ideologies that impede and facilitate the rights of marginalized peoples in the United States.

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<sup>13</sup> The term “DACAmented” refers to an individual who has been given temporary relief from deportation under the Deferred Action for Childhood Arrivals program. Tom K. Wong et al., *Undocumented No More*, CTR. AM. PROGRESS (Sept. 20, 2013, 9:07 AM), <https://www.americanprogress.org/issues/immigration/reports/2013/09/20/74599/undocumented-no-more/>.

<sup>14</sup> See CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT (Kimberlé Crenshaw et al., eds., 1995).

<sup>15</sup> See Daniel G. Solorzano & Dolores Delgado Bernal, *Examining Transformational Resistance Through a Critical Race and LatCrit Theory Framework: Chicana and Chicano Students in an Urban Context*, 36 URB. EDUC. 308 (2001) (analyzing the 1968 East Los Angeles school walk-outs and the 1993 UCLA student strike for Chicano/a studies through qualitative and counter-storytelling methods).

<sup>16</sup> See Pérez Huber et al., *supra* note 12.

<sup>17</sup> See *infra* Part III.

<sup>18</sup> See *infra* Part IV.

<sup>19</sup> *Plyler v. Doe*, 457 U.S. 202, 223 (1982).

<sup>20</sup> See *infra* Part II.

<sup>21</sup> See *infra* Parts IV–V.

<sup>22</sup> See *infra* Part VI.

## II. CURRENT POLITICAL CONTEXT OF UNDOCUMENTED STUDENTS IN EDUCATION

Undocumented students have been used as hostages in American politics with the impasse of federal immigration reform, passage of state, local, and institutional laws and policies, implementation of the DACA program, and the legal fight for DACA existence.<sup>23</sup> It is important to note and acknowledge that many undocumented students were not eligible for DACA protection and many did not apply out of fear that it would be rescinded.<sup>24</sup> This chess game has caused uncertainty among undocumented youth.<sup>25</sup>

Undocumented immigrants have been part of the American fabric since the founding of this country.<sup>26</sup> While undocumented youth live like any other American child by going to school, playing in the neighborhood, and participating in high school activities, unfortunately, there has been no legal path for them to fully engage in American society like their peers.

Of the estimated 10.7 million undocumented immigrants in the United States in 2016,<sup>27</sup> there are between 1 and 1.1 million undocumented youth eighteen years and younger.<sup>28</sup> *Plyler v. Doe*<sup>29</sup> prohibited states from denying undocumented children access to free public education.<sup>30</sup> Texas passed a law in the mid-1970s withholding funding from

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<sup>23</sup> See, e.g., Adams & Boyne, *supra* note 7 (discussing the developments and changes in federal and state laws and policies regarding DACA).

<sup>24</sup> See JEANNE BATALOVA ET AL., DEFERRED ACTION FOR CHILDHOOD ARRIVALS AT THE ONE-YEAR MARK: A PROFILE OF CURRENTLY ELIGIBLE YOUTH AND APPLICANTS, MIGRATION POL'Y INST. (2013) (explaining the eligibility criteria for DACA is "tied to human capital" and noting the characteristics of youth who are not eligible based on the program's educational requirements); Wong et al., *supra* note 13 (explaining the eligibility requirements for DACA and observing that during the first year implemented, 61.2% of eligible undocumented youth applied for DACA).

<sup>25</sup> See *supra* note 24 and accompanying text.

<sup>26</sup> LEO R. CHAVEZ, SHADOWED LIVES: UNDOCUMENTED IMMIGRANTS IN AMERICAN SOCIETY 18 (2nd ed., 1998) (1992) ("These concerns about immigrants are not new; they are as old as America itself.").

<sup>27</sup> Jens Manuel Krogstad et al., *5 Facts About Illegal Immigration in the U.S.*, PEW RES. CTR. (Nov. 28, 2018), <https://www.pewresearch.org/fact-tank/2018/11/28/5-facts-about-illegal-immigration-in-the-u-s/> (providing statistics from 2016).

<sup>28</sup> POPULATION ESTIMATES: ILLEGAL ALIEN POPULATION RESIDING IN THE UNITED STATES: JANUARY 2015, DEP'T HOMELAND SECURITY 6 (2018), [https://www.dhs.gov/sites/default/files/publications/18\\_1214\\_PLCY\\_pops-est-report.pdf](https://www.dhs.gov/sites/default/files/publications/18_1214_PLCY_pops-est-report.pdf).

<sup>29</sup> 457 U.S. 202 (1982).

<sup>30</sup> *Id.* at 230.

school districts that enrolled undocumented children.<sup>31</sup> As a result, districts denied undocumented children enrollment or charged tuition.<sup>32</sup> A group of undocumented Mexican children attempted to enroll in the Tyler Independent School District in 1977 and could not prove their lawful immigration status.<sup>33</sup> Since there was no rational basis for the discriminatory statute, the federal court enjoined the implementation of the law.<sup>34</sup> The Fifth Circuit Court of Appeals affirmed that the statute did not pass the rational basis test; however, it did not find that federal law preempted the Texas statute.<sup>35</sup> However, Justice Brennan, writing for the majority of the U.S. Supreme Court, skirted the issue of preemption and ruled that this denial of education was a violation of the Fourteenth Amendment's Equal Protection Clause, reasoning that undocumented children could invoke the protections of the Equal Protection Clause.<sup>36</sup> Justice Brennan stated that without education, it would create a "lifetime hardship" and a "discrete class" of individuals so that "it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education."<sup>37</sup> Countering the state's reasoning for the law, the Court found no "evidence . . . suggesting that illegal entrants impose any significant burden on the State's economy."<sup>38</sup> As a result, Texas failed to show a substantial state interest to deny "a discrete group of innocent children" education it offers to others residing within its borders, and as a result, the U.S. Supreme Court afforded the opportunity to K-12 education for all children, immigration status aside.<sup>39</sup> As an important note, the Court stressed that the undocumented children "can affect neither their parents' conduct nor their own status,"<sup>40</sup> and consequently, it would be unfair to penalize the children for their parents' presence.<sup>41</sup>

While *Plyler* opens access to primary and secondary education to undocumented students, a high school diploma is no longer sufficient

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<sup>31</sup> *Id.* at 205 (citing TEX. EDUC. CODE ANN. § 21.031 (West 1975)).

<sup>32</sup> *Id.* at 206 n.2.

<sup>33</sup> *Id.* at 206.

<sup>34</sup> *Id.* at 206–08.

<sup>35</sup> *Plyler*, 457 U.S. at 208–09.

<sup>36</sup> *Id.* at 210, 215–16.

<sup>37</sup> *Id.* at 223.

<sup>38</sup> *Id.* at 228.

<sup>39</sup> *Id.* at 230.

<sup>40</sup> *Id.* at 220 (quoting *Trimble v. Gordon*, 430 U.S. 762, 770 (1977)).

<sup>41</sup> *Plyler*, 457 U.S. at 220.

to compete in today's labor market.<sup>42</sup> Many undocumented youth find themselves challenged as they explore higher education options.<sup>43</sup> Various obstacles are erected by federal and state governments and institutions, including the denial of admission, a lack of financial aid, and the inability to pay.<sup>44</sup> The lack of legal status continues to be a main constraint for undocumented students as it prevents their incorporation and assimilation into education and work opportunities<sup>45</sup> and access to higher education is much more uncertain for undocumented students as they transition into adulthood and confront various legal, economic, and social barriers.<sup>46</sup> Due to the myriad of systemic barriers, the Pew Hispanic Center estimated that among high school graduates ages 18-24 who are undocumented, only 49% attend or have attended college.<sup>47</sup>

Congress has failed to address comprehensive immigration reform since 1986.<sup>48</sup> In 1986, policies were implemented requiring verification of immigration status in employment, allowing seasonal-farming, migrant workers, and about three million other undocumented immigrants who entered and resided in the U.S. continuously since January

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<sup>42</sup> ROBERTO G. GONZALES, YOUNG LIVES ON HOLD: THE COLLEGE DREAMS OF UNDOCUMENTED STUDENTS, C. BOARD ADVOC. 12 (2009), <https://secure-media.collegeboard.org/digitalServices/pdf/professionals/young-lives-on-hold-undocumented-students.pdf>.

<sup>43</sup> *Id.* at 21.

<sup>44</sup> *Id.* at 19–21.

<sup>45</sup> Roberto G. Gonzales et al., *Becoming DACAmented: Assessing the Short-Term Benefits of Deferred Action for Childhood Arrivals (DACA)*, 58 AM. BEHAV. SCIENTIST 1852, 1854 (2014).

<sup>46</sup> *Id.*; see Leisy Janet Abrego, “I Can’t Go to College Because I Don’t Have Papers”: Incorporation Patterns of Latino Undocumented Youth, 4 LATINO STUD. 212 (2006) (discussing the legal and economic barriers to higher education); Emily Greenman & Matthew Hall, *Legal Status and Educational Transitions for Mexican and Central American Immigrant Youth*, 91 SOC. FORCES 1475 (2013) (examining the relationship between educational attainment and legal status and concluding that “legal status is a critical axis of stratification for Latinos”).

<sup>47</sup> PASSEL & COHN, *supra* note 6, at 12.

<sup>48</sup> Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, 100 Stat. 3445 (1986); Nguyễn & Martinez Hoy, *supra* note 7, at 361. See Rachel Weiner, *How Immigration Reform Failed, Over and Over*, WASH. POST (Jan. 30, 2013), [https://www.washingtonpost.com/news/the-fix/wp/2013/01/30/how-immigration-reform-failed-over-and-over/?utm\\_term=.2bbcf9f93074](https://www.washingtonpost.com/news/the-fix/wp/2013/01/30/how-immigration-reform-failed-over-and-over/?utm_term=.2bbcf9f93074) (detailing the timeline of the “major attempts” at immigration reform). The Immigration Reform and Control Act of 1986 was “meant to tighten border security and crack down on employers hiring undocumented immigrants, while offering amnesty to those already in the country illegally.” *Id.* However, because the law “did not slow illegal immigration or create a framework to deal with it going forward,” “opponents of comprehensive reform have often cited the 1986 legislation as a reason to be wary.” *Id.*

1, 1982, to have legal documents.<sup>49</sup> The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) re-segregated educational benefits for undocumented students.<sup>50</sup> IIRIRA specifically prohibited post-secondary institutions from providing any person “who is not lawfully present in the United States” with any post-secondary education benefit, such as in-state tuition and/or state financial aid, “unless a citizen or national of the United States is eligible” for the same “without regard to whether the citizen or national is such a resident.”<sup>51</sup>

Due to various federally created barriers, state governments and institutions have become “primary arbiters” of laws and policies concerning higher education access for undocumented students.<sup>52</sup> Understanding state legislation and navigating the maze of policies can be daunting; some provide wide open access, some provide limited access, and others openly discriminate.<sup>53</sup> Not all undocumented students are treated similarly. Undocumented students may be treated differently than DACAmented students;<sup>54</sup> those attending community college may be discriminated against more than those attending four-year institutions,<sup>55</sup> and access may be more restrictive for selective than less-

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<sup>49</sup> Susan González Baker, *The “Amnesty” Aftermath: Current Policy Issues Stemming from the Legalization Programs of the 1986 Immigration Reform and Control Act*, 31 INT’L MIGRATION REV. 5, 5–6 (1997).

<sup>50</sup> Nguyễn & Martínez Hoy, *supra* note 7, at 361. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104-193, 110 Stat. 2105 (1996); Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, 110 Stat. 3009-546 (1996).

<sup>51</sup> Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. 104-208, § 505(a), 110 Stat. 3009-546 (1996).

<sup>52</sup> David H.K. Nguyễn & Gabriel R. Serna, *Access or Barrier? Tuition and Fee Legislation for Undocumented Students Across the States*, 87 CLEARING HOUSE: J. EDUC. STRATEGIES ISSUES & IDEAS 124, 126–27 (2014); see Gabriel R. Serna et al., *State and Institutional Policies on In-State Resident Tuition and Financial Aid for Undocumented Students: Examining Constraints and Opportunities*, 25 EDUC. POL’Y ANALYSIS ARCH. 1, 6 (2017) (discussing the disparate policy environment for in-state tuition and fees across states).

<sup>53</sup> See Nguyễn & Serna, *supra* note 52, at 6–9 (describing the “variability of policies across states and even across institutions within the same state regarding in-state tuition benefits for undocumented students”).

<sup>54</sup> See Serna et al., *supra* note 52, at 7 (noting that, for example, Virginia and Florida have “extended tuition benefits to undocumented students,” but, Virginia’s policy is “limited only” to those legally present under DACA).

<sup>55</sup> See *id.* at 6, 8 n.1, 9–10 (finding that Maryland limits in-state tuition policies for undocumented students to community colleges only, Alabama’s community college system does not allow for undocumented student enrollment, and North Carolina’s community college system allows access to college, but undocumented students must pay the non-resident rate).

selective institutions.<sup>56</sup> The current system shows how arbitrarily the consequences of their legal status impact their educational attainment.

While there is no federal law that prohibits the enrollment of undocumented students in higher education,<sup>57</sup> Alabama and South Carolina have prohibited enrollment by legislation.<sup>58</sup> In yet another example of state barriers to education, in Georgia, undocumented students have challenges enrolling in the state's most selective institutions. Georgia's Board of Regents enacted a policy that prohibits institutions from enrolling undocumented students if other academically qualified students with legal status had not yet enrolled within the previous two years.<sup>59</sup> *Plyler v. Doe* indicates that states must guarantee free public access to primary and secondary education, regardless of immigration status, does not outlaw nor encompass the same protections for higher education, leaving it up for the states to regulate.<sup>60</sup>

Currently, twenty-one states allow in-state tuition benefits in some manner for undocumented students.<sup>61</sup> Sixteen states have passed legislation allowing in-state tuition for undocumented students, including California, Colorado, Connecticut, Florida, Illinois, Indiana, Kansas, Maryland, Minnesota, Nebraska, New Jersey, New Mexico, New York, Oregon, Texas, Utah, and Washington.<sup>62</sup> In Oklahoma and Rhode Island, state Boards of Regents decisions extend this benefit.<sup>63</sup> Many university and college systems in Michigan and Hawaii offer these benefits also.<sup>64</sup> In Virginia, Attorney General Mark Herring

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<sup>56</sup> See Dylan Conger & Colin C. Chellman, *Undocumented College Students in the United States: In-State Tuition Not Enough to Ensure Four-Year Degree Completion*, 8 EDUC. FIN. POL'Y 364, 372–73 (2013) (finding that associate degree programs, which are “less selective than bachelor’s programs” see more undocumented students completing their degrees on time compared to U.S. citizens and permanent residents” and noting that “simply offering in-state tuition may not be sufficient for undocumented youth to earn their bachelor’s degrees”); Adams & Boyne, *supra* note 7, at 58–59 (discussing Georgia’s selective institutions and their policy against enrolling undocumented students if a student with legal status has not yet enrolled).

<sup>57</sup> Adams & Boyne, *supra* note 7, at 52–53.

<sup>58</sup> *Id.* at 59–60; Nguyễn & Martinez Hoy, *supra* note 7, at 366.

<sup>59</sup> Adams & Boyne, *supra* note 7, at 58–59.

<sup>60</sup> *Plyler v. Doe*, 457 U.S. 202, 230 (1982). See *Equal Access Educ. v. Merten*, 305 F. Supp. 2d 585, 605 (E.D. Va. 2004) (upholding state policy on Supremacy Clause grounds since federal law was absent addressing the admission of undocumented students to public higher education institutions).

<sup>61</sup> See Serna et al., *supra* note 52, at 6–7.

<sup>62</sup> *Id.* at 6–8.

<sup>63</sup> *Id.* at 9–10.

<sup>64</sup> *Id.*

allowed the granting of in-state resident tuition.<sup>65</sup> However, even in the states that have created an opportunity for undocumented students to receive in-state tuition benefits, discrimination still exists.<sup>66</sup> For example, in Maryland, in-state tuition is only available at the community colleges.<sup>67</sup> In Virginia, only DACA recipients are afforded tuition benefits,<sup>68</sup> and in Florida, there is a maximum quota.<sup>69</sup>

Other states have intentionally created barriers to college access for undocumented students by prohibiting any benefits.<sup>70</sup> Arizona, Indiana, and Georgia have passed legislation banning in-state tuition for undocumented students.<sup>71</sup> However, while state laws were written to prohibit in-state resident tuition, higher education institutions may still be permitted to grant resident tuition rates to those students who are “lawfully present” through the federal DACA program.<sup>72</sup> For example, Indiana law reads: “An individual who is not lawfully present in the United States is not eligible to pay the resident tuition rate that is determined by the state educational institution.”<sup>73</sup> The federal government has recognized DACA recipients as lawfully present in the United States by prosecutorial discretion.<sup>74</sup> As such, under Indiana law, so long as the immigrant is “lawfully in the United States,”<sup>75</sup> he or she may be afforded in-state resident tuition at its public institutions.<sup>76</sup>

The price of college remains unaffordable and is the primary barrier to higher education even with in-state tuition, especially for marginalized populations from lower socioeconomic backgrounds.<sup>77</sup>

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<sup>65</sup> Nguyễn & Martinez Hoy, *supra* note 7, at 365; Laura Vozzella & Pamela Constable, *Virginia Attorney General Declares ‘Dreamers’ Eligible for In-State Tuition*, WASH. POST (Apr. 29, 2014), [http://www.washingtonpost.com/local/virginia-politics/virginia-attorney-general-declares-dreamers-eligible-for-in-state-tuition/2014/04/29/ed594aea-cfb0-11e3-b812-0c92213941f4\\_story.html](http://www.washingtonpost.com/local/virginia-politics/virginia-attorney-general-declares-dreamers-eligible-for-in-state-tuition/2014/04/29/ed594aea-cfb0-11e3-b812-0c92213941f4_story.html).

<sup>66</sup> Nguyễn & Martinez Hoy, *supra* note 7, at 365–66.

<sup>67</sup> *Id.* at 365.

<sup>68</sup> *Id.* at 364.

<sup>69</sup> *Id.* at 365.

<sup>70</sup> *Id.* at 364–67.

<sup>71</sup> *Id.* at 366.

<sup>72</sup> Nguyễn & Martinez Hoy, *supra* note 7, at 366.

<sup>73</sup> IND. CODE § 21-14-11-1(b) (2013).

<sup>74</sup> Nguyễn & Martinez Hoy, *supra* note 7, at 365.

<sup>75</sup> IND. CODE § 21-14-11-1(b) (2013).

<sup>76</sup> Nguyễn & Martinez Hoy, *supra* note 7, at 366–67.

<sup>77</sup> Serna et al., *supra* note 52, at 4–5, 10; see Sandy Baum & Stella M. Flores, *Higher Education and Children in Immigrant Families*, 21 FUTURE OF CHILD. 172, 187 (2011) (theorizing that “providing adequate funding through some combination of low tuition and grant aid is straightforward, if not easy to accomplish”).

Unfortunately, the Higher Education Act of 1965 requires that federal financial aid recipients be legal U.S. residents.<sup>78</sup> Of the fifty states, only six states allow undocumented students access to state financial aid,<sup>79</sup> including Texas, New Mexico, California, Colorado, Minnesota, and Washington.<sup>80</sup> However, without access to federal financial aid, it is unlikely that these cost-barriers can be eliminated.<sup>81</sup> Federal financial aid is often the only mechanism that provides enough funds for a student to attend even the most affordable institutions.<sup>82</sup> In addition, being unable to access higher education means that opportunities for education and employment remain significantly limited.<sup>83</sup>

To address some of these various challenges, President Barack Obama in 2012 announced the DACA program, which provided a renewable two-year temporary reprieve to qualified undocumented immigrants, enabling them to enjoy certain benefits without a pathway to permanent residency or citizenship.<sup>84</sup> While it did not provide a pathway to permanent residency or citizenship, it did provide eligible and approved persons with “legal presence,” which allowed DACAmented students to benefit from in-state tuition since being “lawfully present” complied with the restrictions in Section 505 of IIRIRA.<sup>85</sup> Recipients also were protected from deportation and were allowed to seek employment, apply for a Social Security number, and obtain driver’s licenses and professional licenses, among other benefits.<sup>86</sup> This program, through an executive order, has given temporary reprieve to almost

<sup>78</sup> See 8 U.S.C. § 1641(b) (2008); Serna et al., *supra* note 52, at 10.

<sup>79</sup> Serna et al., *supra* note 52, at 11.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 10.

<sup>82</sup> Nguyễn & Martinez Hoy, *supra* note 7, at 368. See MARI LUNA DE LA ROSA & WILLIAM G. TIERNEY, BREAKING THROUGH THE BARRIERS TO COLLEGE: EMPOWERING LOW-INCOME COMMUNITIES, SCHOOLS, AND FAMILIES FOR COLLEGE OPPORTUNITY AND STUDENT FINANCIAL AID, UNIV. S. CAL. CTR. HIGHER EDUC. POL’Y ANALYSIS (2006) (discussing financial challenges students face when trying to plan for and attend college).

<sup>83</sup> Nguyễn & Martinez Hoy, *supra* note 7, at 368; see ROBERTO G. GONZALES, *supra* note 42, at 12–14 (exploring the importance of access to higher education for social mobility).

<sup>84</sup> Memorandum from Janet Napolitano, Sec’y of Homeland Security, for David V. Aguilar et al., Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children (June 15, 2012), <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretion-individuals-who-came-to-us-as-children.pdf> [hereinafter Napolitano, DACA Memorandum].

<sup>85</sup> *Id.*; Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104-208, § 505(a), 110 Stat. 3009-546 (1996).

<sup>86</sup> Robert G. Gonzales, *Here’s How DACA Changed the Lives of Young Immigrants, According to Research*, VOX (Feb. 16, 2018, 8:40 AM), <https://www.vox.com/2017/9/2/16244380/daca-benefits-trump-undocumented-immigrants-jobs>.

800,000 undocumented youth by enabling them to benefit from certain rights without fear of removal proceedings.<sup>87</sup> However, given the racist nature of the 2016 Presidential campaign, on September 5, 2017, President Trump delivered on his campaign promise to end the Obama Era DACA program and called upon Congress to act.<sup>88</sup>

After President Trump's Administration announced the end to DACA, the U.S. Department of Homeland Security issued a memorandum to cease accepting DACA renewal applications after October 5, 2017, from those recipients whose status expired September 5, 2017 through March 5, 2018.<sup>89</sup> Shortly thereafter, many states, universities, individuals, and non-profit groups filed complaints in court challenging its rescission and termination.<sup>90</sup> The state of Texas, along with Alabama, Arkansas, Louisiana, Nebraska, South Carolina, and West Virginia, later even challenged whether DACA was constitutionally implemented.<sup>91</sup> Nonetheless, some states argued to maintain DACA. In pro-DACA cases, the plaintiffs asked the courts to find that the rescission was unlawful and to cease the termination of DACA because the U.S. Department of Homeland Security acted arbitrarily and capriciously in deciding to wind down the program and it did not adequately explain its conclusion that DACA was unlawful.<sup>92</sup> While these cases continue to

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<sup>87</sup> Tom K. Wong et al., *DACA Recipients' Economic and Educational Gains Continue to Grow*, CTR. 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/>.

<sup>88</sup> Michael D. Shear & Julie Hirschfeld Davis, *Trump Moves to End DACA and Calls on Congress to Act*, N.Y. TIMES (Sept. 5, 2017), <https://www.nytimes.com/2017/09/05/us/politics/trump-daca-dreamers-immigration.html>.

<sup>89</sup> Memorandum from Elaine C. Duke, Acting Sec'y of Homeland Security, for James W. McCament et al., Rescission of the June 15, 2012 Memorandum Entitled "Exercising Prosecutorial Discretion with respect to Individuals Who Came to the United States as Children" (Sept. 5, 2017), <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca> [hereinafter Duke, DACA Rescission Memorandum].

<sup>90</sup> See STATUS OF CURRENT DACA LITIGATION, NAT'L IMMIGR. L. CTR. (Feb. 7, 2019), <https://www.nilc.org/wp-content/uploads/2019/02/Status-of-Current-DACA-Litigation-2019.pdf> (summarizing the current status of the "multiple lawsuits challenging the Trump administration's actions to terminate DACA" which were filed across the country, days and months after the rescission memorandum).

<sup>91</sup> See *id.* at 6–8; Maggie Astor, *Seven States, Led by Texas, Sue to End DACA Program*, N.Y. TIMES (May 1, 2018), <https://www.nytimes.com/2018/05/01/us/daca-lawsuit-texas.html?module=inline>; *Texas v. United States*, 328 F. Supp. 3d 662, 743 (S.D. Tex. 2018) (denying the Plaintiff states' request for a preliminary injunction).

<sup>92</sup> See *Regents of the Univ. of Ca. v. U.S. Dept. of Homeland Sec.*, 908 F.3d 476 (9th Cir. 2018), *denied cert. before judgment*, 138 S.Ct. 1182 (Mem) (U.S. Feb. 26, 2018); *Batalla Vidal v. Nielsen*, 291 F. Supp. 3d 260 (E.D.N.Y. 2018); *Casa de Maryland v. U.S. Dept. of Homeland Sec.*, 284 F. Supp. 3d 758 (D. Md. 2018); *NAACP v. Trump*, 298 F. Supp. 3d 209 (D.D.C. 2018), *adhered to on denial of reconsideration*, 315 F. Supp. 3d 457 (D.D.C. 2018).

move through the federal courts, U.S. Department of Homeland Security was ordered to cease the rescission and continue to accept renewal applications.<sup>93</sup> No new DACA applications are being accepted.<sup>94</sup>

Even when undocumented students matriculate from higher education, professional employment can be a barrier since many professions require state licensing.<sup>95</sup> Professional licensure authorizes practitioners to work in certain industries, such as law, medicine, education, social work, cosmetology, accounting, nursing, real estate, and others.<sup>96</sup> Federal law prohibits the awarding of professional licensure to undocumented students unless states specifically pass legislation to opt out of federal law.<sup>97</sup> Only a handful of states have taken steps to help undocumented students seek professional employment in various professions that require licensure:<sup>98</sup> California, New York, Nebraska, Florida, Illinois, and Indiana.<sup>99</sup>

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<sup>93</sup> *Trump*, 298 F. Supp. 3d at 249. See U.S. DISTRICT COURT IN D.C. ORDERS THAT THE DACA TERMINATION MEMO BE VACATED – BUT NOT FOR AT LEAST 90 DAYS, NAT’L IMMIGR. L. CTR. (Apr. 25, 2018), <https://www.nilc.org/wp-content/uploads/2018/04/DACA-DDS-summary-judgment-alert-2018.pdf>.

<sup>94</sup> See U.S. DISTRICT COURT IN TEXAS DENIES TEXAS REQUEST TO STOP DACA RENEWALS: USCIS CONTINUES TO ACCEPT DACA RENEWAL APPLICATIONS, NAT’L IMMIGR. L. CTR. (Aug. 31, 2018), <https://www.nilc.org/wp-content/uploads/2018/09/daca-sdtx-denial-of-prelim-inj-alert-2018-08-31.pdf>. “As a result of the nationwide injunctions issued in the U.S. District Courts for the Northern District of California, the Eastern District of New York, and the District of Columbia, along with the refusal by the court in the Southern District of Texas to halt the program, U.S. Citizenship and Immigration Services (USCIS) is still required to accept, and is currently processing, DACA renewal applications from people who have previously received deferred action and work permits through DACA.” *Id.* at 2.

<sup>95</sup> Roberto G. Gonzales, *DACA at Year Three: Challenges and Opportunities in Accessing Higher Education and Employment*, AM. IMMIGR. COUNCIL (Feb. 1, 2016), <https://www.americanimmigrationcouncil.org/research/daca-year-three-challenges-and-opportunities-accessing-higher-education-and-employment>.

<sup>96</sup> *Id.*

<sup>97</sup> See 8 U.S.C. § 1621(a) (2017).

<sup>98</sup> See Alexia Fernández Campbell & National Journal, *How California Is Making Life Easier for Undocumented Immigrants*, THE ATLANTIC (Nov. 18, 2014), <https://www.theatlantic.com/politics/archive/2014/11/how-california-is-making-life-easier-for-undocumented-immigrants/431721/> (discussing the “dozen” of laws passed within the last two years to allow undocumented immigrants to get “professional licenses to practice law and medicine”); SILVA MATHEMA, WHAT DACA RECIPIENTS STAND TO LOSE—AND WHAT STATES CAN DO ABOUT IT, CTR. AM. PROGRESS 6 (Sept. 13, 2018, 9:01 AM), <https://cdn.americanprogress.org/content/uploads/2018/09/17075941/DACA-Recipients-Stand-to-Lose1.pdf> (detailing how “several states [have] extended some or all professional licenses to people who have work authorization, including DACA recipients”).

<sup>99</sup> S.B. 1159, 2014 Leg. Reg. Sess. (Cal. 2014); H.B. 755, 2014 Leg. Reg. Sess. (Fla. 2014); S.B. 23, 2015 Leg. Reg. Sess. (Ill. 2015); S.B. 419, 2018 Leg. Reg. Sess. (Ind. 2018); L.B. 947, 2016 Leg., Reg. Sess. (Neb. 2016); A.B. 27, 2015 Leg., Reg. Sess. (Nev. 2015).

While some states have passed legislation to allow DACA recipients to obtain professional licenses, these laws are moot since an approved DACA application provides employment authorization and a social security number, notwithstanding state specific rules that may require a specific immigration status to obtain licensure.<sup>100</sup> Given that not all DREAMers have or are eligible for DACA, California is most welcoming to all undocumented immigrants since the state allows licensure applicants to use an Individual Tax Identification Number (ITIN) instead of a Social Security Number.<sup>101</sup>

Beginning with his campaign for the presidency, President Trump signaled the public about his anti-immigration policies.<sup>102</sup> In addition to mass deportations,<sup>103</sup> the DACA program was argued to be unconstitutional, and many looked to President Trump to end the program.<sup>104</sup> DACA has allowed hundreds of thousands of young people to go to school at an affordable rate, seek professional employment, and participate in society.<sup>105</sup> After President Trump's election and in anticipation of anti-immigration and racist policies, individuals, institutions, organizations, and local municipalities prepared to protect their undocumented immigrants and students through the New Sanctuary Movement.<sup>106</sup>

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<sup>100</sup> See *Deferred Action for Childhood Arrivals – Federal Policy and Examples of State Actions*, NAT'L CONF. ST. LEGISLATURES (Apr. 25, 2018), <http://www.ncsl.org/research/immigration/deferred-action.aspx>.

<sup>101</sup> MATHEMA, *supra* note 98, at 7, 9 n.48; see S.B. 1159, 2014 Leg. Reg. Sess. (Cal. 2014).

<sup>102</sup> Philip Klinkner, *Anti-Immigrant Views Helped Trump Win. Will They Also Cause His Undoing?*, CHI. TRIB. (Apr. 18, 2017, 1:15 PM), <http://www.chicagotribune.com/news/opinion/commentary/ct-trump-supporters-anti-immigrant-20170418-story.html>.

<sup>103</sup> Nick Gass, *Trump's Immigration Plan: Mass Deportation*, POLITICO (Aug. 17, 2015, 6:25 AM), <http://www.politico.com/story/2015/08/donald-trump-immigration-plan-121420>.

<sup>104</sup> Danielle Kurtzleben, *Republicans are Happy Trump Ended DACA. They're Less Sure About Deporting DREAMers*, NPR (Sept. 17, 2017, 7:00 AM), <http://www.npr.org/2017/09/17/551392700/republicans-are-happy-trump-ended-daca-they-re-less-sure-about-deporting-dreamer>.

<sup>105</sup> See MATHEMA, *supra* note 98, at 1.

<sup>106</sup> Alexandra Délano Alonso, *Sanctuary Campus: Resistance and Protection Within and Beyond the University*, 21 AVERY REV. 53, 53 (2017). See Christopher N. Lasch et al., *Understanding "Sanctuary Cities"*, 59 B.C.L. REV. 1703, 1705, 1709–10 (2018) (examining the "growing national debate on so-called 'sanctuary cities'"). The term "sanctuary" does not have a "commonly accepted meaning" but can be traced back to the "New Sanctuary Movement in 2007, in which coalitions of faith-based and other groups sought to support and integrate members of the undocumented community." *Id.* at 1709–10.

## III. RACIST NATIVISM THEORY

To examine and understand the discourse of educational sanctuaries and the New Sanctuary Movement, this article uses Lindsay Pérez Huber and colleagues' concept of racist nativism,<sup>107</sup> which is informed by Critical Race Theory (CRT).<sup>108</sup> The conceptualization of this framework helps readers appreciate how racialized perceptions of "native," or whites, and "nonnatives," or People of Color, have permitted exclusionary practices targeting People of Color, and particularly immigrants of Color, while defending the rights of the dominant white population.<sup>109</sup> In order to understand racist nativism, it is first important to understand its relationship with the foundations of CRT.<sup>110</sup>

CRT is a legal-based theoretical framework utilized as a critique to hegemonic notions of race, racism, and racial power.<sup>111</sup> It "is an exciting, revolutionary intellectual movement that puts race at the center of critical analysis. Race has no necessary epistemological valence, we are told, but depends on the context and organization of its production for its political effects."<sup>112</sup> CRT "probes the legal system and questions established and accepted foundational doctrines such as equality theory, legal reasoning, and neutrality in constitutional law."<sup>113</sup> "CRT has expanded to other disciplines, such as sociology, political science, and education."<sup>114</sup> Gloria Ladson-Billings and William F. Tate IV theorized education as rife with racialized and racist cultural constructs and demarcations,<sup>115</sup> and since this, many education scholars have used CRT

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<sup>107</sup> See Pérez Huber et al., *supra* note 12, at 43 (defining racist nativism).

<sup>108</sup> *Id.* at 40; see RICHARD DELGADO & JEAN STEFANCIC, *CRITICAL RACE THEORY: AN INTRODUCTION* 3 (2nd ed. 2012).

<sup>109</sup> Pérez Huber et al., *supra* note 12, at 42, 45–46; Lindsay Pérez Huber, *Discourses of Racist Nativism in California Public Education: English Dominance as Racist Nativist Microaggressions*, 47 *EDUC. STUD.* 379, 380–82 (2011) [hereinafter Pérez Huber, *Discourses of Racist Nativism*].

<sup>110</sup> See Pérez Huber et al., *supra* note 12, at 42.

<sup>111</sup> DELGADO & STEFANCIC, *supra* note 108, at 3; *CRITICAL RACE THEORY: THE KEY WRITINGS THAT FORMED THE MOVEMENT*, *supra* note 14, at xix; Pérez Huber, *Discourses of Racist Nativism*, *supra* note 109, at 382.

<sup>112</sup> KAY ANDERSON, *RACE AND THE CRISIS OF HUMANISM* 198 (2007).

<sup>113</sup> David H.K. Nguyễn & LaWanda W. Ward, *Innocent Until Proven Guilty: A Critical Interrogation of the Legal Aspects of Job Fit in Higher Education*, in *DEBUNKING THE MYTH OF JOB FIT IN HIGHER EDUCATION AND STUDENT AFFAIRS* (Brian J. Reece et al., eds., 2018) (citing DELGADO & STEFANCIC, *supra* note 108).

<sup>114</sup> *Id.*

<sup>115</sup> See Gloria Ladson-Billings & William F. Tate IV, *Toward a Critical Race Theory of Education*, 97 *TCHR. C. REC.* 47 (1995) (exploring race through critical race theory and using it as an "analytic tool for understanding school inequity").

in the K-12 and higher education settings to “raise questions, engage in conscientious dialogue, and produce research in which CRT would serve as a tool and framework to unsettle racelessness in education.”<sup>116</sup> In order to address racial justice in education, tools that interrogate and identify the operation of Whiteness are necessary to address covert and coded racism.<sup>117</sup> As a result, CRT is a framework to expose racism and forms oppression in otherwise seen as subtle statements or policies.<sup>118</sup>

Since educational sanctuaries were formed to help protect the rights of undocumented students, racist nativism is used to explain the intersections of race and legality of immigration status.<sup>119</sup> The racist nativism framework helps explain how *perceptions* of racial differences create incorrect opinions of People of Color as “nonnative” and not “American,”<sup>120</sup> which many have noted to be connected to whiteness.<sup>121</sup> As a result, these incorrect perceptions justify racism, discrimination, and violence against various groups of people<sup>122</sup> – in this case, undocumented students. Specifically, Pérez Huber and colleagues have defined racist nativism as:

[T]he assigning of values to real or imagined differences, in order to justify the superiority of the native, who is perceived to be white, over that of the non-native, who is perceived to be People or Immigrants of Color, and

<sup>116</sup> Lori D. Patton, *Disrupting Postsecondary Prose: Toward a Critical Race Theory of Higher Education*, 51 URB. EDUC. 315, 316 (2015).

<sup>117</sup> Nolan L. Cabrera et al., *Whiteness in Higher Education: The Invisible Missing Link in Diversity and Racial Analyses*, 42 ASHE HIGHER EDUC. REP. 3, 19 (2017).

<sup>118</sup> See Gloria Ladson-Billings, *Just What is Critical Race Theory and What's it Doing in a Nice Field Like Education?*, 11 INT'L J. QUALITATIVE STUD. EDUC. 7, 7 (1998); Tara J. Yosso et al., *From Jim Crow to Affirmative Action and Back Again: A Critical Race Discussion of Racialized Rationales and Access to Higher Education*, 28 REV. RES. EDUC. 1, 5–7 (2004) (discussing CRT's ability to “identify and challenge the subtle as well as overt forms of racism experienced by students of color” in the context of education and affirmative action).

<sup>119</sup> Susana M. Muñoz & Darsella Vigil, *Interrogating Racist Nativist Microaggressions and Campus Climate: How Undocumented and DACA College Students Experience Institutional Legal Violence in Colorado*, 11 J. DIVERSITY HIGHER EDUC. 1, 4 (2018).

<sup>120</sup> Pérez Huber, *Discourses of Racist Nativism*, *supra* note 109, at 382.

<sup>121</sup> *Id.* at 382–83; see IAN F. HANEY LÓPEZ, *WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE* 1–3, 16–17 (1996) (discussing how the “law can construct races by setting the standard by which features and ancestry should be read as denoting a White or a non-White person,” causing “would-be citizens . . . to establish their Whiteness at law”).

<sup>122</sup> See George J. Sánchez, *Face the Nation: Race, Immigration and the Rise of Nativism in the Late Twentieth Century America*, 31 INT'L. MIGRATION REV. 1009, 1020 (1997) (discussing how these perceptions justify the anti-immigrant rhetoric).

thereby defend the right of whites, or the natives, to dominance.<sup>123</sup>

This article examines the racist nativist discourse of educational sanctuaries – the ways people perceive, understand, and make sense of contemporary U.S. immigration policies, educational institutions, the students that can or cannot attend, and whether certain groups of students should or should not be able obtain an equitable education.<sup>124</sup> As a result, racist nativist discourse justifies and reinforces hegemonic power, which in this case can influence whether an educational institution declares themselves a sanctuary.<sup>125</sup> The next section examines the small sampling of educational institutions, both K-12 and higher education, that declared themselves sanctuary schools and examine the how the racist nativism discourse in their communities influenced these declarations.<sup>126</sup>

#### IV. INTRODUCTION TO EDUCATIONAL SANCTUARIES

Approximately 200,000 to 225,000 college students in the U.S. are undocumented.<sup>127</sup> When it became clear that President Trump’s policies against undocumented immigrants would be enacted, students and supporters protested and staged demonstrations demanding that educational institutions declare themselves “sanctuary schools and campuses” to protect students from planned mass deportations.<sup>128</sup> Educational sanctuaries became part of the New Sanctuary Movement, a grassroots effort from various immigrant, faith-based, and community organizations and institutions leading the effort to protect immigrants and their families from being separated and deported.<sup>129</sup>

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<sup>123</sup> Pérez Huber et al., *supra* note 12, at 41.

<sup>124</sup> See *infra* Parts IV–VI.

<sup>125</sup> Pérez Huber, *Discourses of Racist Nativism*, *supra* note 109, at 382.

<sup>126</sup> See *infra* Part IV.

<sup>127</sup> Kaitlin Mulhere, *Undocumented and Stressed*, INSIDE HIGHER ED (Jan. 26, 2015, 3:00 AM), <https://www.insidehighered.com/news/2015/01/26/study-finds-undocumented-colleges-students-face-unique-challenges>.

<sup>128</sup> See Jason A. Cade, *Sanctuaries as Equitable Delegation in an Era of Mass Immigration Enforcement*, 113 NW. U. L. REV. 433, 477–49 (2018) (describing the efforts and purposes of sanctuary campuses); Catherine E. Shoichet & Azadeh Ansari, ‘Sanctuary Campus’ Protests Target Trump Immigration Policies, CNN (Nov. 16, 2016), <https://www.cnn.com/2016/11/16/politics/sanctuary-campus-protests/index.html> (“College campuses have become new battlegrounds over immigration as student protests pick up around the US in the wake of last week’s presidential election.”).

<sup>129</sup> See Grace Yukich, *Constructing the Model Immigrant: Movement Strategy and Immigrant Deservingness in the New Sanctuary Movement*, 60 SOC. PROBS. 302, 302–03 (2014).

During Biblical times, churches served as sanctuaries and places of refuge for people who were accused of crimes and were vulnerable to attacks by others.<sup>130</sup> There were little to no legal recourse for these individuals because of the lack of legal rights to the accused during these periods.<sup>131</sup> In more recent history, sanctuaries provided refuge for individuals to seek safety from forced labor, violence, and dangerous situations during slavery, the Holocaust, the Civil Rights Movement, and the Vietnam War draft.<sup>132</sup> The sanctuary movement, aimed to be a symbol of non-violent and church-based reactions to distress caused by government, offered protection to Salvadoran and Guatemalan immigrants fleeing continued violence and murders of civilians by the governments of these countries, for which the U.S. was partially responsible.<sup>133</sup> Sanctuaries risked violating immigration law by offering legal assistance, providing food, shelter, and clothing, and transporting immigrants, since the U.S. government refused to offer asylum to these immigrants.<sup>134</sup>

While churches served as primary places of sanctuary, state and local governments also assured protection to their immigrant constituents and their families. Towns, cities, and states declared themselves as sanctuaries, such as the states of New York and Massachusetts and the cities of Chicago, Minneapolis, and Seattle.<sup>135</sup> In the 1980s, twenty-three cities and four states declared themselves as sanctuaries, including Los Angeles, Oakland, San Diego, and San Francisco, California; Burlington, Vermont; Cambridge, Massachusetts; Chicago, Illinois; Ithaca and Rochester, New York; Madison, Wisconsin; Olympia, Washington; Duluth and St. Paul, Minnesota; and Takoma Park, Maryland.<sup>136</sup> There

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<sup>130</sup> See Jorge L. Carro, *Sanctuary: The Resurgence of an Age-Old Right or a Dangerous Misinterpretation of an Abandoned Ancient Privilege?*, 54 CIN. L. REV. 747, 749–50 (1986) (discussing how the term sanctuary can be found in many verses of the Bible).

<sup>131</sup> *Id.* at 749.

<sup>132</sup> See Douglas L. Colbert, *The Motion in Limine: Trial Without Jury - A Government's Weapon Against the Sanctuary Movement*, 15 HOFSTRA L. REV. 5, 38–48 (1986) (tracing the history of religious sanctuary).

<sup>133</sup> ANN CRITTENDEN, SANCTUARY: A STORY OF AMERICAN CONSCIENCE AND THE LAW IN COLLISION 79–82 (1988) (discussing the emergence of sanctuaries and use of following turmoil and war in El Salvador and Guatemala); Huyen Pham, *The Constitutional Right Not to Cooperate? Local Sovereignty and the Federal Immigration Power*, 74 U. CIN. L. REV. 1373, 1382–83 (2006) (“The sanctuary movement was originally started by churches and other private institutions that believed that Guatemalans, Salvadorans, and other nationals of U.S. allies were wrongly denied asylum to further American foreign policy objectives.”).

<sup>134</sup> Pham, *supra* note 133, at 1382–83.

<sup>135</sup> *Id.*

<sup>136</sup> See *id.* at 1383–84 (discussing Takoma Park, Maryland's sanctuary law). See also Steve Salvi, *The Original List of Sanctuary Cities, USA*, OHIO JOBS & JUST. PAC (Aug. 23, 2018),

are nearly 500 sanctuary cities in the United States today,<sup>137</sup> and sanctuary policies have evolved from the specific protection of Central American immigrants to general protections of all immigrants.<sup>138</sup>

Sanctuary schools and campuses derived from the concept of sanctuary cities as a mechanism to resist anti-immigration policy and discourse in the educational setting to provide safe spaces and protection to its undocumented and immigrant students.<sup>139</sup> During the campaign and after the election, President Trump made public statements that maligned undocumented immigrants and Muslims, planned for massive deportations, and called for the end of DACA and a registry for Muslims.<sup>140</sup> As a result, student-led movements reinvigorated the sanctuary movement by engaging with their school and campus administrators and faculty to develop the strongest policies to protect the hundreds of thousands of students living, studying, working, and engaging schools nationwide.<sup>141</sup> Only a small percentage of educational institutions declared themselves as sanctuaries, while most institutions made public statements supporting their immigrant students.<sup>142</sup> The word “sanctuary” has

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<http://www.ojjpac.org/sanctuary.asp> (listing sanctuary jurisdictions by state from 2006 until the date of this article).

<sup>137</sup> See generally Salvi, *supra* note 136.

<sup>138</sup> Pham, *supra* note 133, at 1383; see Cristina M. Rodriguez, *The Significance of the Local in Immigration Regulation*, 106 MICH. L. REV. 567, 600–01 (2008) (noting the sanctuary movement began in the 1980s with the safe havens for nationals of El Salvador and Guatemala but “evolved into more general ordinances” for protecting immigrants).

<sup>139</sup> See WALTER G. TIERNEY ET AL., THE UNIVERSITY AS A SANCTUARY, PULLIAS CTR. HIGHER EDUC. U. S.CAL. 2–4 (2017), [https://pullias.usc.edu/wp-content/uploads/2017/01/The\\_University\\_as\\_a\\_Sanctuary\\_Final.pdf](https://pullias.usc.edu/wp-content/uploads/2017/01/The_University_as_a_Sanctuary_Final.pdf) (outlining the purpose and role of universities as sanctuaries).

<sup>140</sup> Tessa Berenson, *Donald Trump Pushes for Muslim Ban After Orlando Shooting*, TIME (June 13, 2016, 3:38 PM), <http://time.com/4366912/donald-trump-orlando-shooting-muslim-ban/>; Tal Kopan, *Trump Ends DACA But Gives Congress Window to Save It*, CNN (Sept. 5, 2017, 9:38 PM), <https://www.cnn.com/2017/09/05/politics/daca-trump-congress/>; James Pfiffner & Joshua Lee, *Trump Pledged to Reverse Obama’s Executive Orders. Here’s How Well Past Presidents Have Fulfilled That Pledge*, WASH. POST (Jan. 23, 2017), [https://www.washingtonpost.com/news/monkey-cage/wp/2017/01/23/trump-pledged-to-reverse-obamas-executive-orders-heres-how-well-past-presidents-have-fulfilled-that-pledge/?utm\\_term=.ea1f6f11aa26](https://www.washingtonpost.com/news/monkey-cage/wp/2017/01/23/trump-pledged-to-reverse-obamas-executive-orders-heres-how-well-past-presidents-have-fulfilled-that-pledge/?utm_term=.ea1f6f11aa26); Michael D. Shear & Ron Nixon, *New Trump Deportation Rules Allow Far More Expulsions*, N.Y. TIMES (Feb. 21, 2017), <https://www.nytimes.com/2017/02/21/us/politics/dhs-immigration-trump.html>.

<sup>141</sup> Katie Reilly, *Students Demand ‘Sanctuary Campuses’ to Oppose Donald Trump Immigration Policies*, TIME (Nov. 16, 2016), <http://time.com/4574088/sanctuary-campuses-donald-trump-immigration-student-protest/>; see also TIERNEY ET AL., *supra* note 139 (discussing the points most universities make when delineating their institution as a sanctuary and offering steps for institutions to consider “during the coming years of the Trump Administration”).

<sup>142</sup> See Natasha Newman, *A Place to Call Home: Defining the Legal Significance of the Sanctuary Campus Movement*, 8 COLUM. J. RACE & L. 122, 134 (2017) (noting that “some” institutions have joined the movement); Dawn Rhodes, *Illinois Universities Grapple with ‘Sanctuary Campus’ Efforts*, CHI. TRIB. (Dec. 8, 2016, 7:03 AM),

a negative connotation in American politics and society that has prevented institutional leaders from embracing and adopting it as a way to support their students.<sup>143</sup> However, adopting the term “sanctuary” can be a symbolic gesture to the educational community of resistance and noncompliance of anti-immigration policies.<sup>144</sup>

#### V. ANALYSIS OF INSTITUTIONAL RESPONSES

Many school districts and college campuses have declared themselves as “sanctuaries” to provide a safe and equitable learning environment for all students, including undocumented and immigrant students who face wrongful detention and deportation from President Trump’s anti-immigration policies.<sup>145</sup> After the election of President Trump, school districts and college campuses either declared themselves as “sanctuaries,” issued statements of support for their undocumented and immigrant students, or stayed silent. Below is a sampling of educational institutions that declared themselves as “sanctuaries.”

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<https://www.chicagotribune.com/news/local/breaking/ct-sanctuary-campus-illinois-20161207-story.html> (“Despite pressure from students and faculty, Illinois universities have rejected calls to declare themselves “sanctuary campuses” for undocumented students, instead outlining other ways they will offer protections.”).

<sup>143</sup> See Rose Cuison Villazor, *What is a Sanctuary*, 61 SMU L. REV. 133, 135 (2008) (noting how the term sanctuary has gained a “more negative connotation” over the years).

<sup>144</sup> Délano Alonso, *supra* note 106, at 55.

<sup>145</sup> Carolyn Jones, *What it Means When a School District Declares Itself a ‘Safe Haven’ or ‘Sanctuary’: A Quick Guide*, EDSOURCE (Aug. 10, 2017), <https://edsources.org/2017/what-it-means-when-a-school-district-declares-itself-a-safe-haven-or-sanctuary-a-quick-guide/584273>; Kelderman, *supra* note 10.

<b>Sampling of Educational Institutions that have Declared Themselves as “Sanctuaries”<sup>146</sup></b>	
<i>School Districts</i>	<i>College &amp; Universities</i>
Beverly Public Schools (MA) <sup>147</sup>	City College of San Francisco <sup>148</sup>
Chicago Public Schools <sup>149</sup>	Drake University <sup>150</sup>
Des Moines Public Schools <sup>151</sup>	Emerson College <sup>152</sup>
Las Cruces Public Schools <sup>153</sup>	Pitzer College <sup>154</sup>

<sup>146</sup> See Xavier Maciel & Aparna Parikh, *Sanctuary Campuses*, [https://www.google.com/maps/d/u/0/viewer?mid=1LcIME474-IY-WbTf\\_xQChIhSSN30&hl=en&ll=36.20397974434343%2C-113.89148150000005&z=3](https://www.google.com/maps/d/u/0/viewer?mid=1LcIME474-IY-WbTf_xQChIhSSN30&hl=en&ll=36.20397974434343%2C-113.89148150000005&z=3) (last visited Apr. 17, 2019).

<sup>147</sup> Memorandum from Steven A. Hiersche, Superintendent, Beverly Pub. Sch. et al., Beverly Public Schools Sanctuary Resolution (Mar. 8, 2017), [http://beverlyschools.org/UserFiles/Servers/Server\\_116094/File/District%20Information/School%20Committee/Beverly%20Public%20Schools%20Sanctuary%20Resolution%20with%20signatures%203-31-17.pdf](http://beverlyschools.org/UserFiles/Servers/Server_116094/File/District%20Information/School%20Committee/Beverly%20Public%20Schools%20Sanctuary%20Resolution%20with%20signatures%203-31-17.pdf).

<sup>148</sup> Memorandum from Rafael Mandelman, President of Bd. Tr. et al., City College of San Francisco Joins the City and County of San Francisco in Affirming Its Sanctuary Status for All People of San Francisco (Dec. 15, 2016), <http://www.ccsf.edu/BOT/2016/December/346r.pdf>.

<sup>149</sup> *Resolution for the Chicago Board of Education: Sanctuary and Safe Schools for All Students*, CHI. TCHR. UNION (Apr. 18, 2017), <https://www.ctulocal1.org/posts/resolution-for-the-chicago-board-of-education-sanctuary-and-safe-schools-for-all-students/>.

<sup>150</sup> Steffi Lee, *Drake University President Declares Institution a “Sanctuary Campus,”* CBS IOWA (Dec. 1, 2016), <http://cbs2iowa.com/news/local/drake-university-president-declares-institution-a-sanctuary-campus>.

<sup>151</sup> *School Board Unanimously Approves Support of Immigrant, Refugee Students*, DES MOINES PUB. SCH. (Feb. 7, 2017), [https://www.dmschools.org/news\\_release/school-board-to-consider-sanctuary-resolution-for-des-moines-public-schools/](https://www.dmschools.org/news_release/school-board-to-consider-sanctuary-resolution-for-des-moines-public-schools/); Resolution 17-019, from Bd. Dir. Des Moines Indep. Community Sch. District, Affirming its Commitment to a Safe and Supportive School Environment for All Students, Regardless of Citizen Status and Immigration Status (Feb. 7, 2017), <https://cdn.dmschools.org/wp-content/uploads/2017/02/DMPS-School-Board-Sanctuary-Resolution.pdf>.

<sup>152</sup> Ross Cristantiello, *Faculty Approves Sanctuary Campus Proposal*, BERKELEY BEACON (Nov. 30, 2016), <http://www.berkeleybeacon.com/news/2016/11/30/emerson-declared-a-sanctuary-campus>.

<sup>153</sup> *LCPS Passes Resolution Supporting Immigrant Students, Adopts Policy Declaring Schools ‘Safe Haven’*, KVIA NEWS (Apr. 20, 2017, 6:26 PM), <https://www.kvia.com/news/new-mexico/lcps-passes-resolution-supporting-immigrant-students-adopts-policy-declaring-schools-safe-haven/456927866>.

<sup>154</sup> Letter from Melvin L. Oliver, President, Pitzer College, to Pitzer College Community (Nov. 30, 2016), <https://www.pitzer.edu/president/president-oliver-and-board-of-trustees-declare-pitzer-a-sanctuary-college>.

Miami-Dade County Public Schools <sup>155</sup>	Portland State University <sup>156</sup>
Milwaukee Public Schools <sup>157</sup>	Queensborough Community College <sup>158</sup>
Newark Public Schools <sup>159</sup>	Reed College <sup>160</sup>
Oakland Unified School District <sup>161</sup>	San Francisco Art Institute <sup>162</sup>
Pittsburgh Public Schools <sup>163</sup>	Santa Fe Community College <sup>164</sup>
Portland Public Schools <sup>165</sup>	Scripps College <sup>166</sup>

<sup>155</sup> Kyra Gurney, *Miami Schools Vote to Protect Undocumented Immigrants, Refugees*, MIAMI HERALD (Mar. 15, 2017, 11:17 PM), <https://www.miamiherald.com/news/local/education/article138758253.html>.

<sup>156</sup> Wim Wiewel, *Portland State is a Sanctuary University*, PORTLAND ST. U., <https://www.pdx.edu/insidepsu/portland-state-is-a-sanctuary-university> (last visited Apr. 17, 2019).

<sup>157</sup> Christina Palladino, *Milwaukee Public School Board Passes Sanctuary District Resolution for Schools*, WISN 12 (Mar. 30, 2017, 11:11 PM), <https://www.wisn.com/article/milwaukee-public-school-board-passes-sanctuary-district-resolution-for-schools/9211721>.

<sup>158</sup> *A Resolution to Designate Queensborough Community College of the City University of New York a Sanctuary Campus for Immigrants and Members of Protected Classes*, ACAD. SENATE AGENDA (Dec. 13, 2016), [http://www.qcc.cuny.edu/governance/academicSenate/docs/ay2016-17/December\\_2016/Attachment-J-Sanctuary-Campus-Resolution-December-2016.pdf](http://www.qcc.cuny.edu/governance/academicSenate/docs/ay2016-17/December_2016/Attachment-J-Sanctuary-Campus-Resolution-December-2016.pdf).

<sup>159</sup> Ras J. Baraka, *Newark Mayor Lays Out What It Means to Be a Sanctuary Community*, TAP INTO NEWARK (Sept. 11, 2018, 1:02 PM), <https://www.tapinto.net/towns/newark/articles/opinion-newark-mayor-lays-out-what-it-means-to-be-a-sanctuary-community>.

<sup>160</sup> Chris Lydgate, *Kroger Declares Reed a Sanctuary College*, REED MAG. (Nov. 18, 2016, 11:14 AM), [http://www.reed.edu/reed\\_magazine/sallyportal/posts/2016/sanctuary-college.html](http://www.reed.edu/reed_magazine/sallyportal/posts/2016/sanctuary-college.html).

<sup>161</sup> Memorandum from Antwan Wilson, Superintendent & Marion McWilliams, General Counsel of Oakland Unified Sch. District, to Board of Education, Resolution Reaffirming District Facilities, Programs Are a Sanctuary for All Children and Adults (Dec. 14, 2016), <https://drive.google.com/file/d/0B8A8X8ktDxQkeWZvRHdUVFpCVGc/view>.

<sup>162</sup> Letter from Gordon Knox, President, San Francisco Art Institute, Declaration of Sanctuary Campus Status (Mar. 8, 2017, 2:08 PM), <https://moodle.sfai.edu/mod/forum/discuss.php?d=4143>.

<sup>163</sup> Molly Born, *Pittsburg Public Schools Declares Itself 'Sanctuary' Campus*, POST-GAZETTE (Jan. 25, 2017, 7:47 PM), <https://www.post-gazette.com/news/education/2017/01/25/Pittsburg-Public-Schools-declares-itself-sanctuary-campus/stories/201701250214>.

<sup>164</sup> Robert Nott, *SFCC Declared a 'Sanctuary Campus' for Immigrants*, SANTA FE NEW MEXICAN (Nov. 30, 2016), [http://www.santafenewmexican.com/news/education/sfcc-declared-a-sanctuary-campus-for-immigrants/article\\_cb2a01c6-52d4-55d7-b888-f6d4a16b0ecc.html](http://www.santafenewmexican.com/news/education/sfcc-declared-a-sanctuary-campus-for-immigrants/article_cb2a01c6-52d4-55d7-b888-f6d4a16b0ecc.html).

<sup>165</sup> Rob Manning, *PSU Joins Portland Public Schools in Offering 'Sanctuary' to Immigrant Students*, OR. PUB. BROADCASTING (Nov. 18, 2016, 6:00 PM), <https://www.opb.org/news/article/psu-sanctuary-immigrant-students/>.

<sup>166</sup> Letter from Lara Tiedens, President, Scripps College, Message in Response to Petition (Dec. 11, 2016), <http://inside.scrippscollege.edu/news/office-of-the-president-message-in-response-to-petition>.

Broward County Public Schools (FL) <sup>167</sup>	Swarthmore College <sup>168</sup>
San Francisco Unified School District <sup>169</sup>	University of Pennsylvania <sup>170</sup>
Santa Fe Public Schools <sup>171</sup>	Wesleyan University <sup>172</sup>

School districts, colleges, or universities that have declared themselves “sanctuary schools” have adopted policies that protect the rights of undocumented and immigrant students.<sup>173</sup> While each adopted varying policies, their declarations, resolutions, and statements reiterated their support for their students.<sup>174</sup> There is not one specific policy that schools adopt, but they vary from refusing to voluntarily share information with federal immigration officials and prohibiting physical access to federal immigration officials to providing distance-learning options for affected students.<sup>175</sup> Whether or not schools declared themselves as sanctuaries, they still have legal responsibilities to

<sup>167</sup> Kyra Gurney, *Broward Schools Vote to Protect Students From Immigration Raids*, MIAMI HERALD (Mar. 8, 2017, 6:55 PM), <https://www.miamiherald.com/news/local/education/article137051928.html>.

<sup>168</sup> Thomas E. Spock & Valerie Smith, *Swarthmore Board Pledges Sanctuary for Undocumented Students, All Community Members*, SWARTHMORE C. (Dec. 2, 2016), <https://www.swarthmore.edu/news-events/swarthmore-board-pledges-sanctuary-undocumented-students-all-community-members>.

<sup>169</sup> *Overview: Immigrant & Refugee Resources*, S.F. PUB. SCH., <http://www.sfusd.edu/en/family-and-community-support/immigrant-and-refugee-resources/overview.html> (last visited Apr. 17, 2019) (noting its commitment to upholding the San Francisco Sanctuary City policy).

<sup>170</sup> Amy Gutmann et al., *A Message to the Penn Community Concerning Our DACA and Undocumented Community Members*, PENN TODAY (Nov. 30, 2016), <https://news.upenn.edu/message-penn-community-concerning-our-daca-and-undocumented-community-members>.

<sup>171</sup> Robert Nott, *SFPS Board Votes to Become ‘Sanctuary School District,’* SANTA FE NEW MEXICAN (Dec. 7, 2016), [http://www.santafenewmexican.com/news/education/sfps-board-votes-to-become-sanctuary-school-district/article\\_7e724034-7773-599d-af2e-7b4f8a518d61.html](http://www.santafenewmexican.com/news/education/sfps-board-votes-to-become-sanctuary-school-district/article_7e724034-7773-599d-af2e-7b4f8a518d61.html).

<sup>172</sup> Michael S. Roth, *Wesleyan University a Sanctuary Campus*, WESLEYAN U. (Nov. 20, 2016), <http://roth.blogs.wesleyan.edu/2016/11/20/wesleyan-university-a-sanctuary-campus/>.

<sup>173</sup> David H.K. Nguyễn, *#ICEOffOurCampus: The Liability and Responsibility of Colleges and Universities for the Educational Attainment of DREAMers*, 5 BELMONT L. REV. 151, 169 (2018).

<sup>174</sup> *Id.* at 173 (sampling sanctuary campus policies from a number of institutes).

<sup>175</sup> See Stephanie Francis Ward, *Can Universities Create ‘Sanctuary Campuses’ To Protect Immigrant Students?*, ABA J. (Nov. 15, 2016, 2:00 PM), [http://www.abajournal.com/news/article/can\\_universities\\_create\\_sanctuary\\_campuses\\_to\\_protect\\_immigrant\\_students](http://www.abajournal.com/news/article/can_universities_create_sanctuary_campuses_to_protect_immigrant_students); The Immigration Response Initiative, *Sanctuary Campus Frequently Asked Questions*, HARV. L. SCH. 1, 2 (2017), <https://today.law.harvard.edu/wp-content/uploads/2017/02/Sanctuary-Campus-Toolkit.pdf>.

their undocumented and immigrant students to protect their educational records, among other rights.<sup>176</sup>

Since the declaration of “sanctuary” elicits a specific racist nativist image for some,<sup>177</sup> it is no surprise that the schools and college campuses that declared themselves as sanctuaries are either private universities that can avail themselves from state legislative and purse string control or public institutions located in sanctuary municipalities or have strong local support.<sup>178</sup> Since political support is inextricably linked to the governance and funding of education,<sup>179</sup> the following will examine and analyze how statements can influence schools’ decisions whether they can make clear declarations of sanctuaries, only issue statements of support, or remain silent on the issue. From examining statements from press releases, press accounts, and editorials from various states, I highlight the role that racist nativist rhetoric plays in educational politics. From the various states and territorial jurisdictions (including the District of Columbia), I chose a small sampling of states that passed state-level sanctuary law(s) and states that passed state-level anti-sanctuary law(s). The findings will be presented in two cases.

In 2017, at least 36 states and the District of Columbia considered legislation regarding sanctuary jurisdictions.<sup>180</sup> Of these 120 proposed bills, the vast majority would prohibit sanctuary policies in 33 states, while in 15 states and D.C. the laws would support sanctuaries.<sup>181</sup> Twelve states had proposed legislation on both sides of the issue.<sup>182</sup> Of the states that considered legislation in support of sanctuaries, only a small number of states passed legislation.<sup>183</sup> For the purposes of this article, I examined statements made from officials in California and

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<sup>176</sup> Nguyễn, *supra* note 173, at 174; *see* 20 U.S.C. § 1232(g) (2013) (providing that under the Federal Education Rights and Privacy Act, educational institutes must protect “educational records”).

<sup>177</sup> *See supra* Part III.

<sup>178</sup> *See* Nguyễn, *supra* note 173, at 179–80 (noting how the “liabilities of declaring a campus a sanctuary are virtually entirely political” and require public institutes to “carefully consider these ramifications since they are dependent on state funding”).

<sup>179</sup> *Id.*

<sup>180</sup> Ann Morse et al., *What’s a Sanctuary Policy? FAQ on Federal, State, and Local Action on Immigration Enforcement*, NAT’L CONF. ST. LEGISLATURES (Apr. 16, 2019), <http://www.ncsl.org/research/immigration/sanctuary-policy-faq635991795.aspx>; *see* Rose Cuison Villazor & Pratheepan Gulasekaram, *The New Sanctuary and Anti-Sanctuary Movements*, 52 U.C. DAVIS L. REV. 549 (2018) (discussing the how the expansion of sanctuary across states has also been met with the expansion of anti-sanctuary efforts in some states).

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

Illinois. While many states proposed bills, neither bills in support nor in opposition were enacted or adopted because of lack of support either in the legislative or executive branches of government.<sup>184</sup> On the other hand, other states were able to easily pass anti-sanctuary legislation prohibiting any municipality, public school or university, or public agency or subsection from making a declaration of sanctuary.<sup>185</sup> Of these, I examine statements from Indiana and Mississippi.

#### A. *Case One: California and Illinois*

Historically, California and Illinois are states that have been some of the first to pass legislation supporting the needs of undocumented students and undocumented immigrants, generally.<sup>186</sup> When it became clear that the passage of the DREAM Act would be difficult in the U.S. Congress, the respective state legislatures passed their state level DREAM Acts in 2001 and 2004.<sup>187</sup> California is also one of a handful of states that offers state financial aid for undocumented students,<sup>188</sup> and California and Illinois are some of the few states that have revised their regulations to permit professional licensing to allow many undocumented immigrants to work without regulatory obstacles.<sup>189</sup> Given their legislative history and state demographics, California and Illinois were also states that have recently passed measures to limit cooperation with federal immigration enforcement.<sup>190</sup>

Early on, California came out strong against the Trump Administration and their policies against immigrants.<sup>191</sup> While many private

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<sup>184</sup> Ann Morse et al., *supra* note 180. As of May 8, 2017, the only states that adopted and enacted bills were California, District of Columbia, Georgia, Indiana, Mississippi, Texas, Virginia, and Vermont. See STATE SANCTUARY BILLS, NAT'L CONF. ST. LEGISLATURES (May 8, 2017), [http://www.ncsl.org/Portals/1/Documents/immig/StateSanctuaryBills\\_050817.pdf](http://www.ncsl.org/Portals/1/Documents/immig/StateSanctuaryBills_050817.pdf).

<sup>185</sup> *Id.*

<sup>186</sup> Serna et al., *supra* note 52, at 6, 11; see Nguyễn, *supra* note 173, at 165.

<sup>187</sup> Serna et al., *supra* note 52, at 6.

<sup>188</sup> *Id.* at 11–12.

<sup>189</sup> See Nguyễn, *supra* note 173.

<sup>190</sup> See Ingrid V. Eagly, *Criminal Justice in an Era of Mass Deportation: Reforms From California*, 20 NEW CRIMINAL L. REV. 12, 25, 25–26 n.62 (2017) (stating that California has “already established itself as an immigrant-friendly state” and noting a study which found Illinois and California to have the “most positive climate for immigrants in the country”); see generally Lasch et al., *supra* note 106 (examining new policies put in place, for example, some counties in Illinois and California have banned ICE agents from entering local jails without a criminal warrant).

<sup>191</sup> Tim Henderson, *As Sanctuary State, California Takes Deportation Fight to New Level*, PEW CHARITABLE TRUSTS (Oct. 23, 2017), <https://www.pewtrusts.org/en/research-and>

and public institutions declared themselves as sanctuaries, the California legislature also passed and enacted a “sanctuary state” bill.<sup>192</sup> State Senator Kevin de León of Los Angeles, the author of the bill, responded to claims that the “sanctuary state” bill would inhibit the ability to ensure public safety as “fearmongering . . . we won’t help them tear apart families and our economy in the process.”<sup>193</sup>

Those that opposed the “sanctuary state” law claimed that it would “hinder collaborative efforts to remove serious offenders,” and that the law would “create another magnet for more illegal immigration.”<sup>194</sup> Many of the community and non-profit organizations that work with the state’s immigrant population were relieved with the passage of the law stating, “This comes as a relief that there are some legislators that are really listening [to the needs of our immigrants].”<sup>195</sup> In Illinois, while some of its cities declared themselves as “sanctuary cities,”<sup>196</sup> college campuses decided not to seek that declaration.<sup>197</sup> On December 6, 2016, one month after the election of Donald Trump, the University of Illinois System issued a news release stating that it “cannot declare [their] campuses as sanctuaries, as the concept is not well specified and may actually jeopardize [its] institution. However, [it] will continue to do everything [it] can within the law to reassure, support and protect [their] students . . . that includes our undocumented students.”<sup>198</sup> Given the budgetary issues that have plagued public higher education institutions in Illinois for the past few years, leaders in the University of Illinois System may have weighed the political implications of falling short of declaring their campuses as “sanctuaries.”<sup>199</sup>

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analysis/blogs/stateline/2017/10/23/as-sanctuary-state-california-takes-deportation-fight-to-new-level.

<sup>192</sup> S.B. 54, 2017-2018 Leg., Reg. Sess. (Cal. 2017).

<sup>193</sup> Henderson, *supra* note 191.

<sup>194</sup> *Id.*

<sup>195</sup> Jonathan J. Cooper, *California Legislators Approve ‘Sanctuary State’ Bill*, PBS NEWSHOUR (Sept. 17, 2017, 9:18 AM), <https://www.pbs.org/newshour/politics/california-legislators-approve-sanctuary-state-bill>.

<sup>196</sup> *See* Salvi, *supra* note 136.

<sup>197</sup> *U of I System Message on Sanctuary Campus Petitions*, U. ILL. (Dec. 6, 2016), <https://emails.uofi.uillinois.edu/newsletter/113495.html> (releasing email sent by President of the University of Illinois System, Tim Killeen).

<sup>198</sup> *Id.*

<sup>199</sup> *See* Kate Lobosco, *Illinois is Starving State Colleges and Universities*, CNN (June 29, 2017, 4:52 PM), <https://money.cnn.com/2017/06/29/pf/college/illinois-budget-higher-education/index.html>.

The state of Illinois did pass legislation to limit police cooperation with federal immigrant officials.<sup>200</sup> While it was short of a “sanctuary” declaration, many immigrant rights proponents saw the law as protecting the rights of immigrant communities in Illinois.<sup>201</sup> State Senate President John Cullerton stated, “It’s obviously a benefit to an undocumented person to know the police are not going to be putting them under suspicion everywhere they go.”<sup>202</sup> Cullerton also stated, “The reason why [the bill] is called the Trust Act is because we want undocumented [immigrants] who live among us and contribute to our economy [to] trust their own law enforcement and sheriffs . . . .”<sup>203</sup> In addition to the state-level Trust Act that prevents local law enforcement from stopping, arresting, searching, and detaining or continuing to detain a person solely because of their immigration status, Chicago Mayor Rahm Emanuel filed a lawsuit against the U.S. Department of Justice for adding additional requirements for cities to receive federal funding as a penalty for becoming a sanctuary city.<sup>204</sup> The passage of legislation and initiation of litigation that counteracts the federal government’s attack on undocumented immigration illustrates the support from state- and local-level lawmakers and elected officials for their undocumented community.

### B. Case Two: Indiana and Mississippi

Politics in other states have painted a different picture for their undocumented communities. In the case of Indiana and Mississippi, these two states swiftly passed anti-immigration, anti-sanctuary campus legislation, citing issues of criminality and law and order.<sup>205</sup> Not

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<sup>200</sup> Sophia Tareen, *Illinois Governor Signs Law Limiting Police Cooperation with Federal Immigration Officials*, PBS NEWSHOUR (Aug. 28, 2017, 6:24 PM), <https://www.pbs.org/news-hour/politics/illinois-governor-signs-law-limiting-police-cooperation-federal-immigration-officials>.

<sup>201</sup> *Id.*

<sup>202</sup> *Id.*

<sup>203</sup> Savannah Eadens, *Trust Act Aims to Make Illinois a ‘Sanctuary State,’* COLUMBIA COLLEGE CHRON. (Sept. 11, 2017), <https://columbiachronicle.com/5c8a8926-94fa-11e7-9dba-b3e3d57fecfe>.

<sup>204</sup> Jon Schuppe, *Chicago Sues to Remain a ‘Sanctuary City’ and Avoid the Past*, NBC NEWS (Aug. 8, 2017, 5:57 AM), <https://www.nbcnews.com/news/us-news/sanctuary-city-suit-chicago-doesn-t-want-go-back-abuses-n790406>.

<sup>205</sup> Rob Burgess & Associated Press, *Hill Supports Sessions’ Fight Against ‘Sanctuary State Laws,’* IND. LAWYER (Mar. 12, 2018), <https://www.theindianalawyer.com/articles/46404-hill-supports-sessions-fight-against-sanctuary-state-laws>; Niraj Chokshi, *States Have Already Passed Almost Twice as Many Immigration Laws as Last Year*, N.Y. TIMES (Aug. 7, 2017), <https://www.nytimes.com/2017/08/07/us/sanctuary-city-immigration.html>; Geoff Pender, *Mississippi’s Anti-‘Sanctuary Cities’ Bill Passes*, THE CLARION-LEDGER (Mar. 21, 2017, 2:51

surprisingly, no schools in these states have declared themselves as sanctuaries.<sup>206</sup> Given the rhetoric from state policy and lawmakers concerning “sanctuaries,” while institutions may have desired to become sanctuaries, it became clear that law would be passed to implicate these institutions.

Since many students and faculty at universities across the country demanded their institutions become sanctuaries to protect their fellow undocumented peers from the anti-immigration and racist policies of President Donald Trump, administrators and lawmakers strongly opposed sanctuary campuses in Indiana and Mississippi.<sup>207</sup> In an editorial of the *Indiana Daily Student*, the student newspaper of Indiana University Bloomington, the student author argues against a sanctuary designation for Indiana University Bloomington since it would mean “that University employees would have to refuse to cooperate with federal immigration officials”<sup>208</sup> and IU would be encouraging “lawlessness.”<sup>209</sup> The author further states that since IU is a public institution, it cannot ignore federal law.<sup>210</sup> This similar sentiment is shared by others in Georgia; an anonymous author of an editorial in the *Savannah Morning News* stated that since “[w]e are a nation of laws,” that sanctuaries would be an affirmative action for institutions to disobey laws.<sup>211</sup> The author further claimed that while he sympathized with undocumented students, the only appropriate recourse is to change law in the U.S. Congress.<sup>212</sup>

Given the widespread anti-sanctuary sentiment in Indiana, lawmakers quickly proposed and passed an anti-sanctuary campus bill.<sup>213</sup>

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PM), <https://www.clarionledger.com/story/news/politics/2017/03/21/sanctuary-cities-bill/99450244/>.

<sup>206</sup> See Maciel & Parikh, *supra* note 146.

<sup>207</sup> See Burgess & Associated Press, *supra* note 205.

<sup>208</sup> Zach Chambers, *IU Shouldn't Be a Sanctuary Campus*, IND. DAILY STUDENT (Apr. 5, 2017, 8:51 PM), <https://www.idsnews.com/article/2017/04/undocuhoosier-sanctuary-campus>.

<sup>209</sup> *Id.*

<sup>210</sup> *Id.*

<sup>211</sup> *Follow Federal Law: Not to Sanctuary Campuses*, SAVANNAH MORNING NEWS (Dec. 6, 2016, 4:03 PM), <http://www.savannahnow.com/opinion-editorial/2016-12-06/editorial-follow-federal-law-no-sanctuary-campuses>.

<sup>212</sup> *Id.*

<sup>213</sup> Matt Smith, *As New Deportation Guidelines Are Unveiled, Indiana Lawmakers Vote to Prohibit Sanctuary Campuses*, FOX 59 NEWS (Feb. 21, 2017, 5:26 PM), <https://fox59.com/2017/02/21/as-new-deportation-guidelines-are-unveiled-indiana-lawmakers-vote-to-prohibit-sanctuary-campuses/>; Stephanie Wang, *Lawmakers: No Sanctuary Campuses in Indiana*, INDIANAPOLIS STAR (Apr. 11, 2017, 6:07 PM),

The bill's author referenced the protests on the Bloomington campus as an example of "chaos."<sup>214</sup> By stripping students of their voice, he stated, "What kind of system do we want where we have people that come in and tell our institutions that you have to break the law?"<sup>215</sup> Citing lawlessness, he suggested that sanctuaries would create criminal activity on campus suggesting that sanctuary campuses protected criminals.<sup>216</sup> He said, "What kind of system is that where we tell our government entities, or even tell our employees you cannot talk to the Department of Homeland Security and then three days later a building is bombed."<sup>217</sup>

The passage of this bill added to a culture of fear by stereotyping immigrants as criminals, and the stereotype continues to be utilized to oppose sanctuary policies.<sup>218</sup> Most recently, the Indiana Attorney General spoke in support of the U.S. Attorney General's lawsuit against California's sanctuary state law.<sup>219</sup> He stated, "In a world of increasing dangers and complexities, it is fundamental that our U.S. borders be secure and that our immigration policies are rational and consistent. We must be safe, . . . California officials . . . are . . . exposing their people to untold dangers."<sup>220</sup>

Officials in Mississippi also passed an anti-sanctuary cities and campuses bill that painted immigrants as criminals and called for law and order.<sup>221</sup> After signing the bill, Mississippi's Governor Phil Bryant stated, "The president said [sanctuaries] have caused immeasurable harm to the American people and to the very fabric of the republic."<sup>222</sup> The state-level bill overrode Mississippi's only sanctuary policy passed in 2010.<sup>223</sup> When asked about opposition from religious leaders, the Governor stated, "I would ask them, are there no more souls left to save

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<https://www.indystar.com/story/news/politics/2017/04/11/lawmakers-no-sanctuary-campuses-indiana/100341042/>.

<sup>214</sup> Smith, *supra* note 213.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> *Id.*

<sup>218</sup> See Burgess & Associated Press, *supra* note 205.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*

<sup>221</sup> Pender, *supra* note 205. See S.B. 2710, Reg. Sess. (Miss. 2017).

<sup>222</sup> Associated Press, *Mississippi Governor Approves Outlawing of Sanctuary Cities*, JACKSON FREE PRESS (Mar. 28, 2017, 6:00 AM), <http://www.jacksonfree-press.com/news/2017/mar/28/mississippi-governor-approves-outlawing-sanctuary-/>.

<sup>223</sup> *Id.* The 2010 ordinance was passed in the city of Jackson and prevents police officers from asking about immigration status. *Id.*

in their congregation?,”<sup>224</sup> suggesting that undocumented members are not worthy. Given the widespread opposition and divisive rhetoric concerning sanctuaries in these states, it is not surprising that institutions would avoid such a declaration.

## VI. IMPLICATIONS OF RACIST NATIVIST RHETORIC

Racist nativism is a “perceived superiority” of the native-born, which justifies native dominance and excludes immigrants from full participation in American society by limiting their political, social, and legal status, including education.<sup>225</sup> As presented in the two cases above of rhetoric by state politicians and press accounts, racist nativist rhetoric has an influence over whether schools perceive they can make declarations as sanctuaries.<sup>226</sup> While the legal ramifications of sanctuaries have been debated, it is known that “sanctuary” designation does provide a safe and brave space for students, activists, and immigrants.<sup>227</sup> While the rhetoric among politicians, the media, and the community may make undocumented students feel uncomfortable, discouraged, and fearful, a “sanctuary” designation can help ease the anxiety with a clear message of support.<sup>228</sup>

However, it is not surprising that sanctuary designation highly depends on the geographic location of the institution and the level of political support in the community. Research has shown how the media has such a strong role in shaping discourse in issues of immigration.<sup>229</sup>

<sup>224</sup> *Id.*

<sup>225</sup> See Lindsay Pérez Huber, *Using Latina/o Critical Race Theory (LatCrit) and Racist Nativism to Explore Intersectionality in the Educational Experiences of Undocumented Chicana College Students*, *EDUC. FOUNDS.* 77, 80–81.

<sup>226</sup> See generally Lindsay Pérez Huber, “‘Make American Great Again!’: Donald Trump, Racist Nativism and the Virulent Adherence to White Supremacy Amid U.S. Demographic Change,” 10 *CHARLESTON L. REV.* 215 (2016) (examining the prevalence and power of political racist nativism rhetoric).

<sup>227</sup> See Nguyễn, *supra* note 173, at 179–81; see generally Villazor & Gulasekaram, *supra* note 180 (examining the sanctuary movement and counter movement and the legal justifications and ramifications).

<sup>228</sup> Nguyễn, *supra* note 173, at 179.

<sup>229</sup> LEO R. CHAVEZ, *THE LATINO THREAT, CONSTRUCTING IMMIGRANTS, CITIZENS, AND THE NATION* 5–6 (2001); see also OTTO SANTA ANA, *BROWN TIDE RISING: METAPHORS OF LATINOS IN CONTEMPORARY AMERICAN PUBLIC DISCOURSE* 100–103 (2002) (noting that “there can be little doubt that all forms of printed text, those of the mass media are most pervasive, if not most influential, when judged by the power criteria of recipient scope’ and thus “racist discourse” is “continually reinforced” when media uses “dominant metaphors”) (quoting Teun A. van Dijk, *Structures of Discourse and Structures of Power*, in *COMMUNICATIONS YEARBOOK* 18, 42 (vol. 2 1989)).

Similar to the rhetoric in media accounts and editorials in Indiana and Mississippi, the media has contributed to the long-standing negative constructions that Latinos are a problem to the foundations of “American” life.<sup>230</sup> Mississippi Governor Phil Bryant stated that sanctuaries were a threat to the fabric of American society, emphasizing that immigrants are not “American.”<sup>231</sup> This kind of narrative has been coined as the “Latino Threat Narrative.”<sup>232</sup> While undocumented immigration includes a vast array of nationalities from across the world, the media and politicians want to focus the hatred on Brown bodies as “invading” the country and that they do not belong.<sup>233</sup>

In addition to the lack of belonging, the racist nativist language illustrates how the media and politicians conceptualize and spread false opinions and images that Black and Brown people, especially undocumented immigrants, are “criminal” and “dangerous.”<sup>234</sup> The Indiana Attorney General supporting the U.S. Government’s lawsuit against California stated that this world was full of “dangers.”<sup>235</sup> The Mississippi Governor spoke of sanctuaries as “harmful” to the American people since they sought to protect the “non-natives.”<sup>236</sup> These statements and false characterizations feed these negative and racist nativist perceptions that undocumented immigrants are a subordinate group.<sup>237</sup>

However, from examining the language used in states that are more supportive of their undocumented immigrants, such as California and Illinois, the media and politicians use language that portray undocumented immigrants as “family” and a part of the community.<sup>238</sup> There is an understanding of the diverse contributions that immigrants make to their communities and rising up to acknowledge the fears in the communities because of current federal policies.<sup>239</sup> Given the political environment and the lack of racist nativist language used among the senior

<sup>230</sup> CHAVEZ, *supra* note 229, at 2.

<sup>231</sup> Associated Press, *supra* note 222.

<sup>232</sup> CHAVEZ, *supra* note 229, at 2.

<sup>233</sup> *Id.* at 2–3.

<sup>234</sup> DAVID E. HAYES-BAUTISTA, LA NUEVA CALIFORNIA: LATINOS IN THE GOLDEN STATE 3 (2004); Pierrette Hondagneu-Sotelo, *Women and Children First: New Directions in Anti-Immigrant Policies*, 25 SOCIALIST REV. 169, 169–70, 172–73, 186 (1995).

<sup>235</sup> Burgess & Associated Press, *supra* note 205.

<sup>236</sup> Associated Press, *supra* note 222.

<sup>237</sup> George Lakoff & Sam Ferguson, *The Framing of Immigration*, ROCKRIDGE INST. (May 25, 2006), <https://cloudfront.escholarship.org/dist/prd/content/qt0j89f85g/qt0j89f85g.pdf?t=nr6lad>.

<sup>238</sup> *See supra* Part V.A.

<sup>239</sup> *See id.*

legislators and the press, it is not surprising that institutions in California were able to quickly respond to the needs of their undocumented students by declaring themselves as “sanctuaries.”<sup>240</sup> Many institutions in Illinois, Indiana, and Mississippi issued statements of support give their tumultuous nature of their state politics.<sup>241</sup> Since public institutions still depend on the state legislature for public funding, there is a fine line that institutions must abide by and navigate the political waters.<sup>242</sup> As a result, it is no surprise that from the racist nativist language utilized by community members, the media, and politicians, these kinds of racist accounts of our undocumented immigrants have a direct impact in how our public and state entities respond to our communities.

### CONCLUSION

After the election of President Donald Trump, public schools and institutions of higher education explored designations as “sanctuaries” as they were pressured by their students, faculty, and community members.<sup>243</sup> Only a select few made clear designations.<sup>244</sup> Many others shied away from making such a clear designation but offered up statements of support.<sup>245</sup> Schools reassured their undocumented students that while a “sanctuary” designation was legally ambiguous that they would continue to follow state and federal law and not disclose students’ information and abide by other policies to protect their immigration status.<sup>246</sup> While “sanctuary” designation may be legally ambiguous, it does provide a safe and brave space for students to protest, learn, live, and thrive.<sup>247</sup> Even if psychological, the perception of protection can be more helpful given the current “law and order” environment. As a result, it is interesting to examine the political context in which institutions decide to become sanctuaries.

While not surprising, institutions located in states where the media and politicians make clear and strong statements of support for undocumented immigrants were able to become sanctuaries. Most

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<sup>240</sup> *See id.*

<sup>241</sup> *See supra* Part V.B.

<sup>242</sup> *See supra* Parts IV, V.

<sup>243</sup> *See supra* Part IV.

<sup>244</sup> *Id.*

<sup>245</sup> *Id.*; *see also* Part V.

<sup>246</sup> *See supra* Part IV.

<sup>247</sup> *Id.*

sanctuary institutions and schools are located in California.<sup>248</sup> California is also the only state defending its right to be a sanctuary state.<sup>249</sup> Institutions in other states experienced racist nativist rhetoric that influenced how its communities perceived immigrants and in turn elicited anti-immigration policies.<sup>250</sup> Institutions in these states did not have the latitude to make such clear declarations as sanctuaries fearing repercussions to their reputations, funding mechanisms, and political outfall.<sup>251</sup> Given the connections between racist nativist language and its implications to the safety and success of our students, as scholars, researchers, lawyers, and policymakers, we must continue this work to uncover these kinds of words and counteract the negative perceptions given to our immigrants, especially among our Black and Brown friends.

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<sup>248</sup> See *supra* Part V.

<sup>249</sup> Bob Egelko, *California Defends Sanctuary Laws in Battle with Trump Administration*, S.F. CHRON. (June 18, 2018, 4:14 PM), <https://www.sfchronicle.com/news/article/Sanctuary-battle-Administration-accused-to-13004994.php>.

<sup>250</sup> See *supra* Part V.

<sup>251</sup> See *supra* Parts V, VI.