

Consolidated Case Nos. 18-15068, 18-15069, 18-15070,
18-15071, 18-15072, 18-15128, 18-15133, 18-15134

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

REGENTS OF THE UNIVERSITY OF CALIFORNIA, ET AL.,

Plaintiffs-Appellees-Cross-Appellants,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY, ET AL.,

Defendants-Appellants-Cross-Appellees.

On Appeal from the United States District Court
for the Northern District of California

**BRIEF OF 42 HISTORIANS AND THE FRED T. KOREMATSU CENTER
FOR LAW AND EQUALITY AS *AMICI CURIAE* IN SUPPORT OF
PLAINTIFFS-APPELLEES-CROSS-APPELLANTS**

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rules of Appellate Procedure 26.1 and 29(c)(1), undersigned counsel for *amici* make the following disclosures. The Fred T. Korematsu Center for Law and Equality is a research and advocacy organization based at Seattle University, a non-profit educational institution under Section 501(c)(3) of the Internal Revenue Code. The Korematsu Center does not have any parent corporation or issue stock and consequently there exists no publicly held corporation which owns 10 percent or more of its stock.

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STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE¹

The 42 individual *amici* are academics trained in the field of history who study, teach, and write about United States history.² *Amici* are keenly aware of the role that discrimination on the basis of race, ethnicity, and nationality has played in this nation's history. *Amici* have a special interest in ensuring that the Court has the benefit of their expertise when it draws its conclusions with regard to the role that animus may have played in the decision to rescind the Deferred Action for Childhood Arrivals (DACA) program. In a parallel lawsuit challenging the rescission of DACA brought by New York and fourteen other states and the District of Columbia in the United States District Court for the Eastern District of New York, *New York et al. v. Donald Trump et al.*, No. 1:17-cv-5229, the plaintiffs submitted an expert report and declaration by Dr. Stephen Pitti with regard to the historical context and use of code words evidencing animus on the part of President Trump and other Trump officials in connection with the rescission of DACA, *id.*, Dkt. 97-2, Ex. 38. After reviewing Dr. Pitti's Declaration, attached herein as Exhibit 1, *amici* agree that Dr. Pitti used research methods that are widely

¹ *Amici* certify that no party's counsel authored this brief in whole or in part, nor did any party or party's counsel contribute money intended to fund preparation or submission of this brief; and no person other than *amici curiae* and their counsel contributed money intended to fund preparation or submission of this brief. The parties have consented to the filing of this brief.

² Their names, titles, and institutional affiliations are appended, Appendix at A-1.

accepted as valid in the field of history. These methods include a specific interpretive methodology that looks at public discourse to discern the use of racially coded expressions or code words by government officials, politicians, and members of the public to advance discriminatory political objectives. *Amici* agree with Dr. Pitti's summative opinion:

When properly understood within the context of the history and contemporary discrimination directed against Mexicans, Mexican Americans, and Latinos, . . . President Trump and others who worked for his campaign and in his Administration have long expressed animus towards ethnic Mexicans and other Latinos. President Trump and others associated with his presidential campaign and Administration have drawn upon and used racial code words, and have benefitted from racism against Latinos. Racial animus against ethnic Mexicans shaped their decision to terminate DACA.

Pitti Decl. ¶ 17, Exhibit 1 at 5.

The Fred T. Korematsu Center for Law and Equality ("Korematsu Center") is a non-profit organization based at the Seattle University School of Law. The Korematsu Center works to advance justice through research, advocacy, and education. Inspired by the legacy of Fred Korematsu, who defied military orders during World War II that ultimately led to the unlawful incarceration of 120,000 Japanese Americans, the Korematsu Center works to advance social justice for all. The Korematsu Center has a special interest in addressing government action targeted at classes of persons based on race, nationality, or religion. The Korematsu Center has developed an expertise with regard to the use of racial code

words in its role as co-counsel to high school students who successfully challenged a facially neutral Arizona statute that was enacted and enforced to terminate the Mexican American Studies Program in the Tucson Unified School District.

González v. Douglas, 269 F. Supp. 3d 948 (D. Ariz. 2017). In addition, the Korematsu Center is keenly aware of the use of direct and racially coded language used to justify the discriminatory treatment of Japanese Americans before, during, and after World War II. Drawing on its experience and expertise, the Korematsu Center seeks to ensure that courts understand the way that racially coded language is used to achieve discriminatory outcomes.³

INTRODUCTION AND SUMMARY OF ARGUMENT

History teaches us that the institution of slavery, the dispossession and removal of Native Americans, the exclusion of Asian immigrants, the incarceration of Japanese Americans during World War II, and the mass repatriation and deportation of persons of Mexican ancestry were not accidents but instead were the product of deliberate decisions made by government officials. The historical record demonstrates that these decisions were informed by an explicit racial ideology that defined groups along racial lines; that justified discriminatory treatment based on notions of group superiority/inferiority and group desirability/undesirability; and

³ The Korematsu Center does not, in this brief or otherwise, represent the official views of Seattle University.

that often posed the discriminatory treatment as necessary for the security of the nation and for the prosperity of its citizenry.

During earlier periods, government officials, politicians, and members of the public expressed, much more nakedly, this racial ideology used to justify and advance discrimination. As social norms changed and it became, increasingly, less acceptable to express publicly these same sentiments, racially coded language was used by politicians to garner public support and gain elected office and by government officials to justify and advance discriminatory political objectives. Historians and other academics have observed and documented this phenomenon, the shift from explicit racial language to coded racial expressions. Examination of public discourse for the use of code words has become a widely accepted interpretive methodology used by historians and other academics to discern the role that discrimination may have played with regard to particular events, as well as for the broader course of United States history.

History is replete with examples in which explicit and coded language has been used to justify and advance discrimination against a particular group. During severe economic downturns, populist leaders and politicians exploited racial nativism to scapegoat outsider immigrant groups who were blamed for taking away

the rightful opportunities of an anxious citizenry.⁴ During the 1880s, the Chinese were blamed; during the 1920s, racialized white ethnic groups from southern and eastern Europe as well as immigrants from Asia were blamed; and during the height of the Great Depression in the 1930s, migrants from Mexico were blamed.⁵ In each instance, targeted anti-immigrant sentiment led to the various Chinese Exclusion Acts, the 1924 Immigration and Nationality Act, which barred Asian immigration and put into place per country quotas for immigration based on the national origin composition of this country as reflected in the 1890 Census, and the 1930s mass deportation of Mexican migrants and U.S. citizens of Mexican ancestry.⁶ Of the nearly 1.5 million deported during this period, upwards of 60% were U.S. citizens.⁷ These various immigration measures were fostered by both explicit and coded racial nativist expressions that relied on themes of invasion and labeling Americans as victims with certain immigrant groups as undeserving and

⁴ See generally JOHN HIGHAM, STRANGERS IN THE LAND: PATTERNS OF AMERICAN NATIVISM, 1860-1925 (rev. ed. 2002).

⁵ See generally ALEXANDER SAXTON, THE INDISPENSABLE ENEMY: LABOR AND THE ANTI-CHINESE MOVEMENT IN CALIFORNIA (1975); HIGHAM, *supra* note 4; FRANCISCO E. BALDERRAMA & RAYMOND RODRÍGUEZ, DECADE OF BETRAYAL: MEXICAN REPATRIATION IN THE 1930s (1995).

⁶ See LUCY SALYER, LAWS HARSH AS TIGERS: CHINESE IMMIGRANTS AND THE SHAPING OF MODERN IMMIGRATION LAW 6-23 (1995) (discussing anti-Chinese sentiment and the various Chinese Exclusion Acts); MAI NGAI, IMPOSSIBLE SUBJECTS: ILLEGAL ALIENS AND ALIEN CITIZENS 18-54 (discussing the impetus of the Immigration Act of 1924) and 71-75 (discussing anti-Mexican hostility and the 1930s mass deportations).

⁷ BALDERRAMA & RODRÍGUEZ, *supra* note 5, at 216; NGAI, *supra* note 6, at 72.

as threats to this nation’s security and prosperity.

This *amicus* brief will focus on the use of code words in one historic example—the 1954 mass deportation program called Operation Wetback—before turning to the use of code words associated with the rescission of DACA.

Understanding how government officials, politicians, and members of the public used the word “wetback,” along with notions of threat to national security and national prosperity, in the period leading up to Operation Wetback provides an instructive example for understanding how various code words operate today with regard to immigration enforcement, including the decision to rescind DACA.

Further, Operation Wetback is particularly relevant because in November 2015 then-candidate Donald Trump invoked the 1954 deportation program, without using its name, as a successful model that he would seek to emulate.⁸

Though the rescission of DACA does not, at present, involve a mass deportation plan, the rescission of DACA is best understood as part of a set of immigration measures that is intended to accomplish then-candidate Trump’s promises to his

⁸ Philip Bump, *Donald Trump Endorsed “Operation Wetback” – But Not by Name*, WASH. POST, Nov. 11, 2015, https://www.washingtonpost.com/news/the-fix/wp/2015/11/11/donald-trump-endorsed-operation-wetback-but-not-by-name/?utm_term=.eb2b0a6f2955; Kate Linthicum, *The Dark, Complex History of Trump’s Model for His Mass Deportation Plan*, L.A. TIMES, Nov. 13, 2015, <http://www.latimes.com/nation/la-na-trump-deportation-20151113-story.html> (discussing Trump’s endorsement during the Nov. 11, 2015, Republican primary debate in which Trump described the “deportation force” he would deploy to emulate Operation Wetback).

electorate. Promising to emulate this mass deportation program while omitting its name is itself an example of a camouflaged expression—an example of how, during the campaign and after the election, President Trump employed racially coded expressions or “code words,” language that evinces and appeals to racial animus and is intended to invoke racial fear but which permits plausible deniability that the speech is about race. His use of these code words while seeking elected office and after assuming the presidency presents strong evidence of animus.

To assist the Court in deciding whether to affirm the grant of provisional relief to Plaintiffs and to affirm the denial of Defendants’ motion to dismiss Plaintiffs’ equal protection claims, *amici* historians and the Fred T. Korematsu Center for Law and Equality submit this *amicus* brief to demonstrate that racial animus can be discerned by a code word analysis, and that such an analysis is a widely accepted methodology in the field of history. The conclusion that the use of code words evidences animus is bolstered by a separate quantitative and qualitative discourse analysis that systematically reviewed 347 speeches and 6,963 tweets drawn from the President’s public discourse delivered between August 2015 and mid-September 2017 and concluded:

Trump’s public discourse, in which he repeatedly uses several related conceptual metaphors to describe immigrants, Mexicans, and U.S. Latinos as the enemy, as disease, as criminal, and as animalistic, is discriminatory and racist according to standard definitions of racism. Trump speaks as if U.S. citizens suffer each day at the hands of immigrants. This scapegoating of

Latino immigrants reinforces and capitalizes on his core constituency's economic and cultural insecurities in order to advance Trump's political objectives.

Declaration of Dr. Otto Santa Ana, ¶ 54, Exhibit 2 at 64.⁹

Further, a survey of federal circuit courts, including this Circuit, demonstrates that code word analysis has been adopted into legal frameworks as providing important direct and circumstantial evidence of animus or discriminatory intent.

ARGUMENT

The court below, in granting provisional relief to Plaintiffs, found that the Plaintiffs were likely to succeed on their claims that the Department of Homeland Security violated the Administrative Procedure Act (APA) when it terminated DACA. Order Denying FRCP 12(b)(1) Dismissal and Granting Provisional Relief (Jan. 9, 2018), at ER 38, 43. Specifically, the court rejected the Department of Homeland Security's (DHS) offered reasons for its decision, finding that (1) the agency was operating under a "flawed legal premise," *id.*, ER 38, and (2) the offered litigation risk explanation was either a post hoc rationalization or was arbitrary, capricious, and an abuse of discretion, *id.*, ER 42. In addition, the court below denied Defendants' motion to dismiss Santa Clara's and Individual

⁹ The complete analysis on which the declaration is based can be found at <https://www.thepresidentsintent.com/> ("The President's Intent").

Plaintiffs' equal protection claims. Order Granting in Part Defendants' Motion to Dismiss Under FRCP 12(b)(6) (Jan. 12, 2018), ER 58-61. Defendants have challenged each of these rulings. Appellants' Op. Br. at 28-40 (arbitrary and capricious), 40-45 (equal protection), ECF No. 31.

Amici demonstrate that the evidence regarding racial animus supports each of these rulings. First, the strong evidence regarding animus as a motivating factor for the termination of DACA along with the district court's findings that the offered reasons did not provide legal justification for the termination of DACA strongly suggests that those offered reasons were pretextual. Thus, the animus evidence strongly supports the findings that the decision was arbitrary and capricious and constituted an abuse of discretion in violation of the APA. *Cf. González v. Douglas*, 269 F. Supp. 3d 948, 973 (D. Ariz. 2017) (animus, in addition to being relevant for an equal protection claim, also established violation of student-plaintiffs' right to be free from viewpoint discrimination when based on political and partisan reasons). Further, the animus evidence strongly supports the district court's denial of the Defendants' motion to dismiss Plaintiffs' equal protection claims. *Amici* demonstrate that code word analysis is an accepted historical methodology for discerning racial animus and an accepted category of evidence that both this Circuit and other circuits have used to discern animus in equal protection claims and in other contexts in which discriminatory intent must

be shown. *Amici* further demonstrate that discourse analysis supports the examination of public discourse to discern the use of code words.

Of special note is this Court's recent observation and acknowledgment that because "'officials acting in their official capacities seldom, if ever, announce on the record that they are pursuing a particular course of action because of their desire to discriminate against a racial minority,' we look to whether they have 'camouflaged' their intent. *Arce v. Douglas*, 793 F.3d 968, 978 (9th Cir. 2015) (quoting *Smith v. Town of Clarkton*, 682 F.2d 1055, 1064, 1066 (4th Cir. 1982). In determining the question of discriminatory intent, the "district court should make 'a sensitive inquiry into such circumstantial and direct evidence of intent as may be available.'" *Gay v. Waiters' and Dairy Lunchmen's Union, Local No. 30*, 694 F.2d 531, 538 (9th Cir. 1982) (quoting *Vill. of Arlington Heights v. Metro. Hous. Dev. Corp.*, 429 U.S. 252, 266 (1977)). This sensitive inquiry examines the following non-exhaustive factors:

(1) the impact of the official action and whether it bears more heavily on one race than another; (2) the historical background of the decision; (3) the specific sequence of events leading to the challenged actions; (4) the defendant's departures from normal procedures or substantive conclusions; and (5) the relevant legislative or administrative history.

Arce, 793 F.3d at 977 (citing *Arlington Heights*, 429 U.S. at 266-68).

It is indisputable that the rescission of DACA falls most heavily on persons

of Mexican ancestry, who make up 79.4% of DACA recipients.¹⁰ Further, as the court below found with regard to Plaintiffs' APA claims, the decision to rescind DACA was plagued by a host of procedural and substantive departures. *See* Order Denying FRCP 12(b)(1) Dismissal and Granting Provisional Relief (Jan. 9, 2018), ER 29-42 (agency decision was arbitrary and capricious and constituted an abuse of discretion because based on flawed legal premise and post hoc rationalization). Added to this, a sensitive inquiry into the historical background of the decision to rescind DACA, especially the contemporaneous statements made by decisionmakers, makes code word analysis especially important when examining facially neutral governmental action under an *Arlington Heights* analysis to discern discriminatory intent. *See Arlington Heights*, 429 U.S. at 266-68. The existence of discriminatory intent is pertinent to the APA claims, including that the existence of animus strongly supports a finding of pretext or bad faith.

I. History Is Replete with Instances In Which Racially Coded Expressions Have Strongly Evidenced Animus, Such As “Wetback,” Used During the Mass Repatriation and Deportation of Persons of Mexican Ancestry in 1954.

Operation Wetback. That was the official name given to the program undertaken in 1954 to forcibly repatriate hundreds of thousands of Mexican

¹⁰ U.S. Citizenship and Immigration Servs., *Approximate Active DACA Recipients: Country of Birth (As of Sept. 4, 2017)* 1, https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/Al%20Form%20Types/DACA/daca_population_data.pdf.

migrants.¹¹ The massive scope of the program and lack of procedural safeguards resulted in many American citizens of Mexican ancestry being swept up in its dragnet and removed to remote areas of Mexico.¹² In addition to those detained and deported, hundreds of thousands of Mexican migrants left voluntarily in order to avoid brutal conditions endured by those detained and forcibly removed. The decision to institute this mass deportation program was informed by the use of the racially coded expression, “wetback.”

Viewed from today’s perspective, many might say that “wetback” is not racially coded language, but rather an explicit expression of animus. While “wetback” may today be recognized as an epithet or slur, that was certainly not the case in the 1950s. The original mundaneness of the term “wetback” is evidenced in a 1950 Sunday edition of the New York Times, which included in its “Fifteen News Questions,” the following question: “‘Wetbacks’ were reported last week to be entering California at a rate of 10,000 a month. What are ‘wetbacks’?” The answer is supplied several pages later: “Mexican immigrants who cross the border by stealth to seek work. The term ‘wetback’ was originally applied to Mexicans

¹¹ See JUAN RAMÓN GARCÍA, OPERATION WETBACK: THE MASS DEPORTATION OF MEXICAN UNDOCUMENTED WORKERS IN 1954, at 228 (1980); *see also* 150,000 “Wetbacks” Taken in Round-Up, N.Y. TIMES, 1954, at 7 (reporting numbers apprehended approximately two months after the beginning of Operation Wetback), <https://timesmachine.nytimes.com/timesmachine/1954/07/30/84128756.html?pageNumber=7>.

¹² GARCÍA, *supra* note 11, at 228.

who entered the U.S. farther east by swimming the Rio Grande.”¹³ It is of note that the New York Times did not ask “*Who* are ‘wetbacks’?” but instead, “*What* are ‘wetbacks’?”

Further, “wetback,” originally a term used to describe those who swam across the Rio Grande River, became a metonym for all unauthorized Mexican migrants. President Harry Truman used the term in precisely this way in his July 13, 1951, address to Congress that called for a more comprehensive solution to address “the steady stream of illegal immigrants from Mexico, the so-called ‘wetbacks,’ who cross the Rio Grande or the western stretches of our long border.”¹⁴ Likewise, General Dwight D. Eisenhower, getting ready to run for president in 1951, in private correspondence with Senator William Fulbright “quoted a report in the New York Times,” and highlighted a paragraph that discussed “[t]he rise in illegal border-crossing by Mexican ‘wetbacks.’”¹⁵

Though there is no record of President Eisenhower using the term in public,

¹³ *Fifteen News Questions*, N.Y. TIMES, Apr. 2, 1950, at E2 and E9, <https://timesmachine.nytimes.com/timesmachine/1950/04/02/96214886.html?pageNumber=142>; <https://timesmachine.nytimes.com/timesmachine/1950/04/02/96214988.html?pageNumber=149>.

¹⁴ President Harry S. Truman, Special Message to the Congress on the Employment of Agricultural Workers from Mexico, July 13, 1951, <https://www.trumanlibrary.org/publicpapers/index.php?pid=368>.

¹⁵ John Dillin, *How Eisenhower Solved Illegal Border Crossings from Mexico*, CHRISTIAN SCI. MONITOR, July 6, 2006, <https://www.csmonitor.com/2006/0706/p09s01-coop.html>.

he responded to questions from reporters who used the term and affirmed his support of legislation intended to address what the press characterized as the “wetback problem.”¹⁶ Further, he did use the term at least once in his personal diaries.¹⁷ And members of his administration, including the two primary architects of Operation Wetback, General Joseph Swing who became the Commissioner of Immigration and Naturalization in 1954 and Attorney General Herbert Brownell, Jr., both used the term openly, including in statements to Congress.¹⁸ Before Operation Wetback, Brownell announced that he “would go to California next

¹⁶ See The President’s News Conference, July 14, 1954, <http://www.presidency.ucs.edu/ws/index.php?pid=9947&st=wetback&st1> = (question by Sarah McClendon, El Paso Times, about two Senate bills “designed to curb the hundreds of thousands of wetbacks coming into this country”); The President’s News Conference, July 21, 1954, <http://www.presidency.ucs.edu/ws/index.php?pid=9950&st=wetback&st1> = (question by John Herling, Editors Syndicate, asking about “the wetback legislation prepared by Attorney General Brownell”). President Eisenhower’s response to these questions expressed support for the legislation and other efforts to address the issue.

¹⁷ DDE Personal Diary Jan.-Nov. 1954 (1)(2) (“notes on Bricker Amendment; school construction; wetbacks; Brazilian coffee”), Eisenhower, Dwight D.: Papers as President; DDE Diary Series, at 5, https://www.eisenhower.archives.gov/research/finding_aids/pdf/Eisenhower_Dwight_Papers_as_President/DDE_Diary_Series.pdf.

¹⁸ See, e.g., *Drive on Wetbacks Termed a Success*, N.Y. TIMES, Mar. 10, 1955, at 28, <https://timesmachine.nytimes.com/timesmachine/1955/03/10/93729836.html?pageNumber=28> (reporting on Swing’s testimony to a House Government Operations subcommittee); Statement of Honorable Herbert Brownell, Jr., Attorney General of the United States, Testimony before Subcommittee on Immigration of the Committee on the Judiciary, April 13, 1956, <https://www.justice.gov/sites/default/files/ag/legacy/2011/09/12/04-13-1956%20pro.pdf> (discussing the “Mexican wetback problem” and Operation Wetback).

week to study the ‘wetback’ problem.”¹⁹ General Swing, upon taking charge as Commissioner, announced that he would “stop this horde of invaders.”²⁰

Though it may not have been apparent at the time to government officials, members of the mainstream press, or the public, “wetback” was a racially coded expression that has since come to be recognized as an epithet or slur.²¹ Facially descriptive, it is pejorative and diminishing, reducing a person to a characteristic associated with a part of the body. Further, this term does not accurately describe those who crossed the land border, yet it stands in as a metonym for all unauthorized border crossers from Mexico, and eventually became a term that is used by some for all Mexican migrants and Mexican Americans. Historians today,

¹⁹ *Brownell Maps Trip for “Wetback” Study*, N.Y. TIMES, Aug. 8, 1953, at 13, <https://timesmachine.nytimes.com/timesmachine/1953/08/08/84417640.html?pageNumber=13>.

²⁰ KITTY CALAVITA, *INSIDE THE STATE: THE BRACERO PROGRAM, IMMIGRATION, AND THE I.N.S.* 51 (1992).

²¹ Whether it was a slur expressing animus was contested among Supreme Court justices as late as 1981. Justice William Rehnquist used the term during the justices’ private weekly conference when they were discussing *Plyler v. Doe*. Justice William Rehnquist referred to schoolchildren of Mexican ancestry as “wetbacks.” When Justice Thurgood Marshall protested, likening the word to the n-word, Justice Rehnquist defended his use of the term, saying that the term still had “currency” in his part of the country. Keith Cunningham-Parmeter, *Alien Language: Immigration Metaphors and the Jurisprudence of Otherness*, 79 FORDHAM L. REV. 1545, 1547 (2011) (citing Justice William J. Brennan, Conference Notes, *Plyler v. Doe* (Nos. 80-1538, 80-1934) (Dec. 8 1981) (on file with the Library of Congress, Manuscript Division, William J. Brennan Papers, Part I: Box 572)). It is of note that Justice Rehnquist joined Chief Justice Burger’s dissent in *Plyler v. Doe*, 457 U.S. 202, 242 (1982) (Burger, C.J., dissenting).

employing code word analysis, would draw the conclusion that the direct use of the term by President Truman, the private use and public acquiescence to the term by President Eisenhower, and the repeated use by members of Eisenhower's administration is strong evidence of animus that may have affected government policies and immigration enforcement.

II. Code Word Analysis Is a Widely Accepted Methodology that Historians Employ to Discern Racial Animus and Give Context to Government Action.

While the use of “wetback” in the 1950s presents an easier case of discerning racially coded expressions, code word analysis becomes increasingly important when political strategists recognize the need to develop code words whose racial character is less obvious. The most explicit description is provided in a surprisingly candid confession by Republican political strategist Lee Atwater in 1981:

You start out in 1954 by saying, “Nigger, nigger, nigger.” By 1968 you can't say “nigger” – that hurts you. Backfires. So you say stuff like . . . forced busing, states' rights, and all that stuff, and you're getting abstract. Now, you're talking about cutting taxes, and all these things you're talking about are totally economic things and a byproduct of them is, blacks get hurt worse than whites . . . “We want to cut this,” is much more abstract than even the busing thing . . . and a hell of a lot more abstract than “Nigger, nigger.”²²

²² Rick Perlstein, *Exclusive: Lee Atwater's Infamous 1981 Interview on the Southern Strategy*, THE NATION, Nov. 13, 2012, <https://www.thenation.com/article/exclusive-lee-atwaters-infamous-1981-interview-southern-strategy/>.

As Dr. Stephen Pitti sets forth in his Declaration:

Historians and other academic experts recognize that animus does not require explicit, public declarations of racial ideology that racism has persisted across the centuries. An attention to history and careful analysis of the use of coded racial appeals in contemporary political discourse provide the keys to understanding the links between racial animus and politics in the twenty-first century.

Pitti Decl. ¶ 20, Exhibit 1 at 6.

This understanding and appreciation of the operation of code words by historians is precisely the reason the analysis and expert opinions expressed by historians examining current events can be helpful to the Court, especially when they are able to demonstrate how careful study of certain past events may inform our understanding of current events.

III. Courts Routinely Recognize the Evidentiary Value of Coded Language in Discerning Racial Animus.

Courts have come to rely on code words as evidence in determining whether alleged discriminatory acts are racially motivated. Unlike times past, today people are rarely explicit about their intent or motivation in expressing or acting on racial bias. This Court has recognized that because “officials acting in their official capacities seldom, if ever, announce on the record that they are pursuing a particular course of action because of their desire to discriminate against a racial minority,” it is necessary to determine “whether they have ‘camouflaged’ their

intent. *Arce v. Douglas*, 793 F.3d 968, 978 (9th Cir. 2015) (quoting *Smith v. Town of Clarkton*, 682 F.2d 1055, 1064, 1066 (4th Cir. 1982)); see also *Avenue 6E Invs., LLC v. City of Yuma*, 818 F.3d 493, 505 (9th Cir. 2016) (though camouflaged, when “code words consisting of stereotypes of Hispanics that would be well-understood in [the relevant community],” plausible inference of racial animus may be drawn).

On remand in *Arce v. Douglas*, after a bench trial, Judge A. Wallace Tashima, sitting by designation, held that public officials used code words with regard to Mexican Americans, and that this constituted evidence of discriminatory intent in violation of the Equal Protection Clause. *González*, 269 F. Supp. 3d at 967-68. In that case, plaintiffs successfully claimed that a facially neutral Arizona statute used to eliminate a highly successful Mexican American Studies program was the product of racial animus. The court noted that the officials involved in the enactment and enforcement of the statute frequently used certain terms to stand in for Mexican Americans, such as “‘Raza,’ ‘un-American,’ ‘radical,’ ‘communist,’ ‘Aztlán,’ and ‘M.E.Ch.A.’” *Id.* The court found these to be derogatory code words because they “[drew] on negative mischaracterizations that had little to no basis in fact,” and found that “[t]hese particular words were effective codewords with Arizona voters because they drew on ‘people’s ... concerns about illegal immigration’ and the ‘Mexicanization’ of Arizona that were prominent” at the

time. *Id.* (internal quotations omitted). Based in part on the code word evidence, the court found that the statute had been enacted and enforced in violation of the First and Fourteenth Amendments. *Id.* at 972, 974.

Nearly every circuit court has recognized that code words or camouflaged expressions can be considered as evidence of discriminatory intent:²³

- First Circuit: *Soto v. Flores*, 103 F.3d 1056, 1067 n.12 (1st Cir. 1997) (“It is rare that discrimination wears its garb openly and it more often comes ‘masked in subtle forms.’ Triers of fact may recognize those more subtle forms for what they are and coded comments may raise inferences of discrimination.”) (quoting *Aman v. Cort Furniture Rental Corp.*, 85 F.3d 1074, 1082 (3rd Cir. 1996));
- Second Circuit: *MHANY Mgmt., Inc. v. Cnty. of Nassau*, 819 F.3d 581, 608-12 (upholding district court’s finding that opponents used racially charged code words to communicate animus and that city officials acquiesced to this animus in its shift in zoning);
- Third Circuit: *Aman*, 85 F.3d at 1082-83 (holding that use of “inherently racist” code words can constitute evidence of a hostile work environment and an intent to discriminate);

²³ The only circuit that appears not to have directly addressed this issue is the Federal Circuit, though that court does recognize that “because direct evidence of deceptive intent is rarely available, such intent can be inferred from indirect and circumstantial evidence.” *Star Sci., Inc. v. R.J. Reynolds Tobacco Co.*, 537 F.3d 1357, 1366 (Fed. Cir. 2008) (citation omitted). At least two Supreme Court justices have referenced the concept of code words as a mask for racial discrimination. *See City of Memphis v. Greene*, 451 U.S. 100, 135 (1981) (Marshall, J., dissenting) (recognizing the use of “code phrases” for racial discrimination in city’s explanation for closure of road from predominately white area of the city to predominately black area); *Keyes v. Sch. Dist. No. 1, Denver, Colo.*, 413 U.S. 189, 243 n.23 (1973) (Powell, J., concurring in part, dissenting in part) (noting argument that “neighborhood education is now but a code word for racial segregation”).

- Fourth Circuit: *Smith v. Town of Clarkton, N.C.*, 682 F.2d 1055, 1066 (4th Cir. 1982) (concern evinced about the influx of “undesirables” and dilution of public schools and threat to public safety constituted “evidence ... which in a different context might not illustrate racial bigotry, but, against the background of the housing project in Clarkton and the considerable opposition to it, were interpreted by the trial court as ‘camouflaged’ racial expressions”);
- Fifth Circuit: *Jenkins v. Methodist Hosps. of Dallas, Inc.*, 478 F.3d 255, 265 (5th Cir. 2007) (recognizing that code words may provide basis of discriminatory intent);
- Sixth Circuit: *United States v. City of Birmingham, Mich.*, 727 F.2d 560, 563 (6th Cir. 1984) (affirming injunctive relief on a Fair Housing Act claim based in part on statements that proposed housing would introduce “harmful elements” and bring “those people” to Birmingham, which led trial court to specifically conclude the language was in reference to “[B]lack people”);
- Seventh Circuit: *E.E.O.C. v. Bd. of Regents of U. of Wis. Sys.*, 288 F.3d 296, 303 (7th Cir. 2002) (finding that a reasonable jury could find use of code words such as “‘pre-electronic’ era and that he would have to be brought ‘up to speed’ on ‘new trends of advertising via electronic means’” a reflection of age bias in ADEA case);
- Eighth Circuit: *Smith v. Fairview Ridges Hosp.*, 625 F.3d 1076, 1085-86 (8th Cir. 2010), *abrogated on other grounds by Torgerson v. City of Rochester*, 643 F.3d 1031 (8th Cir. 2011) (finding that “[t]he picture of Buckwheat, the comment about fried chicken, and the reference to the ghetto ... carry some inferences that they were racially motivated” and discussing variety of instances in which code words may serve as evidence of racial animus);
- Ninth Circuit: *Avenue 6E Invs., LLC v. City of Yuma, Ariz.*, 818 F.3d 493, 506-07 (9th Cir. 2016) (finding that use of code words consisting of stereotypes of Latinos, along with other evidence, “provide plausible circumstantial evidence that community opposition to Developers’ proposed development was motivated in part by animus, and that the City Council was

fully aware of these concerns” when it voted against the zoning commission’s recommendations);

Tenth Circuit: *Villanueva v. Carere*, 85 F.3d 481, 488 (10th Cir. 1996) (sharing concern over use of “culture” in response to argument that use of term is a code word for “ethnic minority”);

Eleventh Circuit: *Underwood v. Hunter*, 730 F.2d 614, 621 (11th Cir. 1984), *aff’d*, *Hunter v. Underwood*, 471 U.S. 222 (1985) (holding that a provision of the Alabama constitution disenfranchised voters in violation of the Fourteenth Amendment, noting that “the avowed objective of the suffrage committee was to deny the vote to *the corrupt and the ignorant*,” which the defendant’s expert admitted “referred specifically to blacks and lower-class whites”) (emphasis added); and

D.C. Circuit *Arnold v. U.S. Postal Serv.*, 863 F.2d 994, 1000 (D.C. Cir. 1988) (recognizing that “[t]here may well be cases in which seniority is simply a code word or age discrimination” in an ADEA case).

A recent case under the Voting Rights Act is particularly instructive, especially with regard to the role that an expert can play in assisting a court to discern “that neutral reasons can and do mask racial intent, a fact we have recognized in other contexts that allow for circumstantial evidence.” *Veasey v. Abbott*, 830 F.3d 216, 236 (5th Cir. 2016), *cert. denied*, 137 S. Ct. 612 (2017). As the court reviewed the evidence “that could support a finding of discriminatory intent,” 830 F.3d at 235, it contrasted the stated purpose of SB 14—deterring “voter fraud”—with evidence that the drafters and proponents likely knew of the law’s disproportionate effect on minorities, *id.* at 236. The Deputy General

Counsel to the Lieutenant Governor testified that he sent an email “urg[ing] senators to emphasize the detection and deterrence of fraud and protect[ing] public confidence in elections” as “the goal” of SB 14, “to remind people what the point of the bill was” for their speeches on the floor of the Texas Senate. *Id.* at 236 n.19; *see also id.* at 288 n.17 (Jones, J., dissenting) (cataloguing statements of proponents of SB 14 about the purpose of the bill being to deter “voter fraud” and “protect the integrity of the ballot box”).

In examining the stated purpose of deterring “voter fraud,” the court gave special attention to the testimony from plaintiffs’ expert on race relations, a history professor, which placed the “voter fraud” language in historical context. *Id.* at 237 (noting the record showed that Texas has a history of justifying voter suppression efforts such as the poll tax and literacy tests with the race-neutral reason of promoting ballot integrity). The court quoted directly from the expert’s testimony about the stated rationale for devices Texas had used to deny minorities the vote, including the all-White primary, the secret ballot, and the use of illiteracy, poll tax, re-registration, and purging. *Id.*

Q What, in your opinion, was the stated rationale for the enactment of all [-]White primaries in Texas?

A The stated rationale was voter fraud.

Q What was the stated rationale, in your opinion, for the use of secret ballot provisions in Texas?

A The stated rationale was to prevent voter fraud.

Q And what was the stated rationale, in your opinion, for the use of the poll tax in Texas?

A The stated rationale by the State was to prevent voter fraud.

Q And how about the stated rationale for the use in Texas of re-registration requirements and voter purges?

A The stated rationale was voter fraud.

Q Dr. Burton, in your expert opinion, did these devices actually respond to sincere concerns or incidents—incidences of voter fraud?

A No.

Id. The court remanded the discriminatory intent issue, instructing the trial court to reweigh the *Arlington Heights* factors, noting “there is evidence that could support a finding that the Legislature’s race-neutral reason of ballot integrity offered by the State is pretextual,” *id.*, and that “there remains evidence to support a finding that the cloak of ballot integrity could be hiding a more invidious purpose,” *id.* at 241; *id.* at 242 (remand).

IV. A Sensitive Inquiry into the Historical Background of the Decision to Rescind DACA, with Particular Attention Paid to Contemporaneous Statements Made by Decisionmakers, Reveals the Use of Code Words Reflecting Animus Against Persons of Mexican Ancestry and Latinos.

Dr. Stephen Pitti’s Declaration, Exhibit 1, based on his 96-page Expert Report of Stephen J. Pitti, *New York et al. v. Donald Trump et al.*, No. 1:17-cv-05228, ECF No. 97-2 at 76-174 (“Pitti Report”), provides comprehensive documentation and analysis of contemporaneous statements made by Donald Trump as candidate and as President as well as statements made by key advisers

and administration officials, including Senator and later Attorney General Jefferson Beauregard Sessions III and policy adviser Stephen Miller. *Id.* at 113-63. A comprehensive discourse analysis of 347 speeches and 6,963 tweets by then-candidate and now-President Donald Trump was conducted by a team of researchers. *See* Declaration of Dr. Otto Santa Ana, ¶ 14, Exhibit 2 at 4. Each scholar finds numerous, consistent, and persistent statements that are racially coded expressions and code words that provide strong evidence of animus. Pitti Decl. ¶¶ 18-148, Exhibit 1 at 18-46; Santa Ana Decl. ¶¶ 23-53, Exhibit 2 at 7-17.

Of special note is the manner in which Trump talks about DACA recipients and the way he contests and subverts the name by which they are commonly referred: “Dreamers.” On November 13, 2015, in a forum called the Sunshine Summit hosted by the Republican Party of Florida intended to “electrify the Republican grassroots movement,”²⁴ then-candidate Donald Trump stated: “We are going to hire Americans first. We’re going to take care of our workers. Did you ever hear of the Dream Act? It is not for our children. The Dream Act is for other children that come into the country. I want the Dream Act to be for our children.”²⁵ Two days earlier at the fourth Republican presidential primary debate, Trump had

²⁴ Sunshine Summit, “Thank You,” <http://www.sunshinesummit.gop/thank-you> (stating mission).

²⁵ Donald J. Trump, Remarks at 2015 Sunshine Summit (Nov. 13, 2015), <https://www.c-span.org/video/?400325-10/donald-trump-remarks-2015-sunshine-summit>.

promised a “deportation force” based on President Eisenhower’s enforcement of the border that included deportation efforts such as the 1954 Operation Wetback. In particular, he lauded Eisenhower’s program of deporting people deep into Mexico, saying, “Moved them way south. They never came back.”²⁶ Rescinding DACA exposes DACA recipients to this “deportation force.”

These relatively early primary campaign statements are repeated during the general election campaign after Trump garners the Republican party nomination. In a speech on August 24, 2016, Trump juxtaposes truly deserving American children against DACA recipients: “Where is the sanctuary city for American children? Where is that sanctuary? The dreamers we never talk about are the young Americans. Why aren’t young Americans dreamers also? I want my dreamers to be young Americans.”²⁷ In another general campaign speech, he implores, “Let our children be dreamers too.”²⁸

On September 1, 2017, when asked by reporters whether Dreamers should be worried, he responded, “We love the DREAMers . . . We think the DREAMers

²⁶ *Transcript: Republican Presidential Debate*, N.Y. TIMES, Nov. 11, 2015, <https://www.nytimes.com/2015/11/11/us/politics/transcript-republican-presidential-debate.html>.

²⁷ Donald J. Trump, Remarks at the Mississippi Coliseum in Jackson, Mississippi (Aug. 24, 2016), <http://www.presidency.ucsb.edu/ws/index.php?pid=123198>.

²⁸ Donald J. Trump, Remarks at the Charlotte Convention Center in Charlotte, North Carolina (Aug. 18, 2016), <http://www.presidency.ucsb.edu/ws/index.php?pid=119175>.

are terrific.”²⁹ Mere days later, on September 5, the Trump administration ended DACA. In doing so, President Trump repeated, “Above all else, we must remember that young Americans have dreams too. . . . Our first and highest priority must be to improve jobs, wages and security for American workers and their families.”³⁰

In this usage, Trump has co-opted “dreamer” and uses it instead to paint DACA recipients as interlopers whose unlawful presence threatens the rightful economic opportunities of “American” children. “Dreamer” itself becomes a code word that is intended to inflame and exploit negative sentiment based on people’s economic and cultural anxieties. *See Santa Ana Decl.* ¶ 50, Exhibit 2 at 16.

The declarations of Drs. Pitti and Santa Ana, each of which is based on accepted methodologies in their respective fields and supported by comprehensive reports with detailed findings based on publicly available statements, provide ample evidence that Plaintiffs have a strong likelihood of proving animus and prevailing on their APA claims.

²⁹ Donald J. Trump, Remarks on Signing a Proclamation on the National Day of Prayer for the Victims of Hurricane Harvey and for Our National Response and Recovery Efforts and an Exchange with Reporters (Sept. 1, 2017), <http://www.presidency.ucsb.edu/ws/index.php?pid=128160&st=dreamers&st1=>.

³⁰ Statement from President Donald J. Trump (Sept. 5, 2017), <https://www.whitehouse.gov/briefings-statements/statement-president-donald-j-trump-7/>.

CONCLUSION

For the foregoing reasons, this Court should affirm the district court's (1) grant of provisional relief to Plaintiffs and (2) denial of Defendants' motion to dismiss Plaintiffs' equal protection claims.

Dated: March 19, 2018

Respectfully submitted,

**FRED T. KOREMATSU CENTER
FOR LAW AND EQUALITY**

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APPENDIX**List of Individual *Amici Curiae* with
Title and Institutional Affiliation Listed for Identification Purposes³¹**

Name	Title	Institutional affiliation
Lauren Araiza	Associate Professor and Chair, Department of History	Denison University
Rick Baldoz	Associate Professor and Chair of Sociology	Oberlin College
Carlos Kevin Blanton	Professor of History	Texas A & M University, College Station
Laura Briggs	Chair and Professor, Women, Gender, Sexuality Studies; Affiliate Professor, Department of History	University of Massachusetts Amherst
Geraldo L. Cadava	Associate Professor of History and Latina/o Studies	Northwestern University
Maria Raquel Casas	Associate Professor, Department of History	University of Nevada, Las Vegas
Lori Flores	Associate Professor, Department of History	Stony Brook University (SUNY)
Glenda E. Gilmore	Peter V. and C. Vann Woodward Professor of History	Yale University

³¹ None of the individual amici speak for or represent the official views of their respective institutions or departments.

Ariela Gross	John B. & Alice R. Sharp Professor of Law & History	University of Southern California
Thomas Guglielmo	Associate Professor of American Studies	George Washington University
Joshua B. Guild	Associate Professor of History and African American Studies	Princeton University
Matthew Pratt Guterl	Professor of Africana Studies and American Studies	Brown University
Leslie M. Harris	Professor, History and African American Studies	Northwestern University
Kelly Lytle Hernandez	Professor, Departments of History and African- American Studies and Interim Director, Ralphe Bunche Center for African American Studies	University of California, Los Angeles
Daniel HoSang	Associate Professor of Ethnicity, Race & Migration and American Studies	Yale University
Madeline Y. Hsu	Professor, Department of History and Center for Asian American Studies	The University of Texas at Austin
Michael D. Innis- Jiménez	Associate Professor of American Studies and Director of Graduate Studies	University of Alabama
Matthew Frye Jacobson	William Robertson Coe Professor of American Studies and History	Yale University

Karl Jacoby	Professor of History	Columbia University
Ari Kelman	Chancellor's Leadership Professor of History	The University of California, Davis
Erika Lee	Director, Immigration History Research Center, and Distinguished McKnight University Professor, Department of History	University of Minnesota
Shelley S. Lee	Associate Professor of History and Director of Comparative American Studies	Oberlin College
Mary Ting Yi Lui	Professor of American Studies and History	Yale University
Joseph Lowndes	Associate Professor, Political Science Department	University of Oregon
Nancy MacLean	William H. Chafe Professor of History and Public Policy	Duke University
Kate Masur	Associate Professor of History	Northwestern University
John Mckiernan- Gonzalez	Associate Professor of History	Texas State University
Ronald L. Mize	Associate Professor of Language, Culture and Society	Oregon State University
Natalia Molina	Professor of History	University of California, San Diego

Gary Y. Okihiro	Visiting Professor, American Studies	Yale University
Lorena Oropeza	Associate Professor, History Department	University of California, Davis
Leigh Raiford	Associate Professor, African American Studies	University of California, Berkeley
David Roediger	Foundation Professor of American Studies	University of Kansas
Renee C. Romano	Robert S. Danforth Professor of Humanities; Chair, Department of History; and Professor of Comparative American Studies and Africana Studies	Oberlin College
Vicki L. Ruiz	Distinguished Professor Emerita, History and Chicano/Latino Studies	University of California, Irvine
Rachel St. John	Associate Professor, Department of History	University of California, Davis
Virginia J. Scharff	Distinguished Professor of History and Director, Center for the Southwest	University of New Mexico
Alexandra Minna Stern	Chair and Professor, Department of American Culture and History	University of Michigan
Timothy Stewart-Winter	Associate Professor of History	Rutgers University – Newark

Penny Von Eschen	L. Sanford and Jo Mills Reis Professor of Humanities, Department of History	Cornell University
Julie M. Weise	Associate Professor of History	University of Oregon
Judy Tzu-Chun Wu	Professor and Chair, Asian American Studies Department	University of California, Irvine

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of FRAP 32(a)(5) and (6) because it has been prepared in 14-point Times New Roman, a proportionally spaced font, and that it complies with the type-volume limitations of FRAP 29(a)(5) and Circuit Rule 32-1 because it contains 6,523 words according to the word count feature of Microsoft Word, excluding the parts exempted by FRAP 32(a)(7)(B)(iii).

s/ Robert S. Chang
Robert S. Chang

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

U.S. Court of Appeals Docket Numbers: 18-15068, 18-15069, 18-15070,
18-15071, 18-15072, 18-15128, 18-15133, 18-15134

I hereby certify that on March 19, 2018, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Robert S. Chang
Robert S. Chang

EXHIBIT 1

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

STATES OF NEW YORK,
MASSACHUSETTS,
WASHINGTON, COLORADO
CONNECTICUT, DELAWARE,
DISTRICT OF COLUMBIA,
HAWAII, ILLINOIS, IOWA, NEW
MEXICO, NORTH CAROLINA,
OREGON, PENNSYLVANIA,
RHODE ISLAND, VERMONT, and
VIRGINIA,

Plaintiffs,

v.

DONALD TRUMP, in his official
capacity as President of the United
States; U.S. DEPARTMENT OF
HOMELAND SECURITY; ELAINE
C. DUKE, in her official capacity; U.S.
CITIZENSHIP AND IMMIGRATION
SERVICES; U.S. IMMIGRATION
AND CUSTOMS ENFORCEMENT;
and the UNITED STATES OF
AMERICA,

Defendants.

CIVIL ACTION NO. 17-cv-5228

**DECLARATION OF DR. STEPHEN
PITTI**

Dr. Stephen J. Pitti, Ph.D., pursuant to 28 U.S.C. § 1746, declares as follows:

A. INTRODUCTION

1. I am a tenured full Professor of History and American Studies at Yale University in New Haven, Connecticut. I was appointed Assistant Professor in 1998 and was promoted to Associate Professor in 2003 and full professor in 2005.

2. I received a B.A. in History, *magna cum laude*, from Yale College in 1991. I received an M.A. in 1994 and a Ph.D. in 1998 in U.S. history from Stanford University. I was a President's Postdoctoral Fellow in the Department of History at U.C. San Diego from 1997-98.

3. My primary field of research and teaching centers on Mexicans and Mexican Americans in the U.S. Southwest.

4. I teach or have taught the following graduate-level and undergraduate-level courses: Introduction to U.S. Historiography, Latinos in the 20th Century, Race and Civil Rights, Immigration to the United States, History of Latinas/os in the U.S., History of Mexican Americans Since 1848, Chicana/o Cultural History, and Introduction to Ethnicity, Race and Migration.

B. QUALIFICATIONS

5. I am the inaugural Director of Yale's Center for the Study of Race, Indigeneity, and Transnational Migration. This academic and research center, which supports research and teaching on race, indigenous studies, and migration, houses Yale's undergraduate Ethnicity, Race, and Migration Program.

6. I was appointed to a three-year term, 2016-2019, as a Distinguished Lecturer for the Organization of American Historians (OAH). Founded in 1907, OAH is the largest professional society dedicated to the teaching and study of American history.

7. I serve as a Series Editor for the "Politics and Culture in Modern America" book series for the University of Pennsylvania Press. I also served as an advisor to the Peabody Award-Winning series, "Latino Americans" on PBS and the "Bridging Cultures: Latino Americans Project" for the National Endowment for the Humanities and the American Library Association.

8. As a member of the National Parks Service (NPS) Advisory Board from 2013 to 2017, I have advised the NPS Director and the Secretary of the Interior; I have chaired the National Historic Landmarks Committee; and I have served as a member of the Latino Scholars Panel for the National Parks Service. In 2007, I provided expert testimony to the United States Congress in 2007 on the history of Mexican immigration to the United States.

9. I am the author of two major publications that examine the history of Mexicans and Mexican Americans: *The Devil in Silicon Valley: Race, Mexican Americans, and Northern California* (Princeton University Press, 2003) and *American Latinos and the Making of the United States* (Eastern National Press, 2012), and numerous articles and book reviews in academic

and popular journals. A more complete listing of my publications and academic papers can be found in my attached curriculum vitae. See Ex. A.

C. ASSIGNMENT

10. I prepared an expert report on December 10, 2017. In my expert report, I conducted a historical analysis of the treatment of Mexican Americans, both antecedent and recent, the use of racial “codewords”, and the rhetoric used by President Trump and other Trump officials, which resulted in the September 5, 2017 decision to terminate the Deferred Action for Childhood Arrivals program (DACA). See Ex. B (including all factual sources).

D. RESEARCH METHODS

11. Drawing from my experience as an academically trained professional historian and scholar, I examined both primary and secondary materials that covered immigration, contemporary public policy, as well as a range of other topics about the treatment of Mexicans, Mexican Americans, and Latinos in the United States. I undertook this broader examination because historians have long recognized that, in order to gain a better understanding of a particular event, one must understand the broader historical context within which the event occurred.

12. With changes in social norms altering the form and expression of racial animus, historians and political scientists have developed an interpretive methodology that draws conclusions about the existence of animus. Conclusions are drawn in part by carefully examining public discourse to understand the use of code words by government officials, politicians, and members of the public. Using this accepted interpretive methodology, I examined primary and secondary sources to ascertain if code words were used to achieve or attempt to achieve political objectives. I paid particular attention to statements made by those identified in public or in depositions as the decision-makers with respect to DACA’s termination.

E. SUMMARY OF OPINIONS

13. Animus directed at Latinos has often been driven by electoral politics. In recent years, a concern about the “Mexicanization” of the United States has often framed public policy debates, including debates about youth in immigrant families and about public education. Anti-

immigrant politicians and advocates have expressed considerable opposition to both immigrant children and the U.S.-born children of immigrants. Politicians and activists working on recent political campaigns have encouraged opposition to Mexicans, Mexican Americans, and other Latinos. This animus, now directed at DACA grantees, has developed from historical anti-Latino animus and the history of racial segregation in education. Recipients of DACA and other immigrants have been represented as an obstacle to the well-being of “everyday Americans,” to national security, to public health, and to the safety of the American public.

14. At the same time, racial code words have become ever more important, and they have shaped how politicians send messages to voters and protect themselves from charges of racism. Instead of explicitly stating animus, politicians may refer to immigrants as “illegals,” as criminals, security risks, and enemies of the United States. The most powerful and enduring example of racially coded speech intended to remind voters and others of the dangers associated with Latinos in the United States has been “the wall,” a phrase intended to remind Americans of many threatening narratives about Latinos.

15. In the 2016 political campaign, President Trump used racial code words to describe Mexicans as criminals, animals, and threats to white voters. In addition, then-candidate Trump’s animus towards Latinos, and towards immigrants, has been characterized by significant exaggeration about the demographic size of the immigrant population and their negative impact on U.S. society; about the number of Latinos arriving each week in the United States; about the lack of border enforcement under the Obama presidency; about the number of convicted criminals in the population of undocumented residents; about candidate Hillary Clinton’s stated intentions regarding border enforcement and immigrant access to health care; and more.

16. Many of the President’s appointees and associates involved in the decision to terminate DACA have also shared President Trump’s open animus against ethnic Mexicans, Mexican immigrants, and Latinos. They include: Attorney General Jeff Sessions; a member of Trump’s transition team, Kansas Secretary of State Kris Kobach; a White House senior policy adviser, Stephen Miller; and several representatives from anti-immigrant organizations such as the

Center for Immigration Studies (CIS) and the Federation for American Immigration Reform (FAIR), and Numbers USA. Many other leaders prominent in the Trump Administration were involved in anti-immigrant politics in Arizona, which provided a testing ground and model for national Republican Party responses to the “Latino Threat.”

17. When properly understood within the context of the history and contemporary discrimination directed against Mexicans, Mexican Americans, and Latinos, it is my expert opinion that President Trump and others who worked for his campaign and in his Administration have long expressed animus towards ethnic Mexicans and other Latinos. President Trump and others associated with his presidential campaign and Administration have drawn upon and used racial code words, and have benefitted from racism against Latinos. Racial animus against ethnic Mexicans shaped their decision to terminate DACA.

F. FINDINGS

18. Throughout the course of United States history, racism has sometimes been expressed as an explicit ideology in which groups were clearly defined along racial lines, and in which they were marked as superior or inferior in racial terms. This explicit ideology developed alongside and justified the development of racialized slavery and the quotas used to preserve the racial status quo in the early to mid-twentieth century.

19. Because of changing social norms, explicit calls to racial superiority or inferiority or explicit calls for racial discrimination are less frequently found in public discourse by government officials, politicians, and members of the public. Instead, government officials, politicians, and members of the public often resort to racially coded speech that stands in for racial and racist ideology that was previously stated explicitly. For more than fifty years, coded speech has been, above all, a political tool. One of the most explicit acknowledgements about racially coded speech and its political efficacy was made by Republican political strategist Lee Atwater:

You start out in 1954 by saying, “Nigger, nigger, nigger.” By 1968 you can’t say “nigger” — that hurts you. Backfires. So you say stuff like forced busing, states’ rights and all that stuff. You’re getting so abstract now, you’re talking about cutting taxes, and all these things you’re talking about are totally

economic things and a byproduct of them is, blacks get hurt worse than whites. . . . So anyway you look at it, race is coming on the back burner.”

20. Examining public discourse for code words is a widely accepted interpretive methodology to surmise whether or not animus affects or helps to determine political outcomes. Historians and other academic experts recognize that animus does not require explicit, public declarations of racial ideology that racism has persisted across the centuries. An attention to history and careful analysis of the use of coded racial appeals in contemporary political discourse provide the keys to understanding the links between racial animus and politics in the twenty-first century.

21. Today, politicians often speak in “code” about the dangers posed by immigrants and non-whites, about their radicalism or promiscuity or hygiene, to stimulate strong reactions in their constituents much like a “dog whistle” prompts a response in a canine. It allows politicians to insist on their own opposition to institutional racism and their sensitivity to a diverse set of constituents. Statements of general support from anti-immigrant activists have often been interspersed in recent years with far harsher statements about Latinos. By 2016, then-candidate Trump and members of his campaign could scoff at any suggestion that they harbored racial animus, countering with charges that liberals who mention race as a social problem are themselves the real racists. But there can be little doubt that political speech about DACA grantees and other immigrants has been meant to send a message, to elicit racial loyalty and to stimulate strong reactions in white voters.

History of Anti-Latino Animus

22. To understand why Attorney General Jeff Sessions used a word such as “filth” to characterize Mexican immigrants in April 2017, or to understand why Kansas Secretary of State Kris Kobach – who, according to depositions, was in close touch with Gene Hamilton from “day one” of the Trump Administration – argued that DACA grantees “represent a cross section of the illegal alien population” which includes “criminals,” it is critical to recognize the importance of racial animus.”

23. “Racial scripts” about different societal groups, though discredited, often continue

to shape contemporary racial animus. Racial scripts, as one historian notes, “show how power is always at stake in racial categorization and how, once formed, those racial categories can easily be transferred to new groups.” For example, racial scripts explain why Mexican Americans are still not deemed fully American and are largely equated with illegality. The “racial script” about Latinos is based in a long history of anti-Latino animus.

24. U.S. westward expansion during the mid-nineteenth century and concerns during and after the war between the United States and Mexico about the future incorporation of ethnic Mexicans into the national community shaped this country’s racial animus. Many scholars recognize that early twentieth century Mexican immigration prompted fears in the United States about the “brown tide” that seemed to be “flooding” across the Southwestern border. Fear of the “Mexicanization” of the United States led to racial violence; to mass deportation; and to discrimination in housing, jury selection, public education and voting rights.

25. Stereotypes about Mexicans as criminals and a threat to public safety developed in the early- and mid-twentieth century. During the Great Depression of the 1930s, politicians and other white Americans pointed to Mexican immigrants and their U.S.-born children as causes of the nation’s economic trouble, high unemployment among U.S. citizens, worrisome crime in major cities, and the spike in political radicalism. Several authors popularized images of Mexican Americans as indolent, unproductive, un-American, and often drunk, including John Steinbeck, Ernest Hemingway and Jack Kerouac.

26. As a result, the “racial script” about Latinos has led to the persistence of negative ideas associated with Latinos – their perceived links to criminality, disease, political radicalism, and so forth. When explicit talk of racial inferiority came to seem less appropriate in literary, media, and government circles by the 1940s and 1950s, new code words were introduced to represent Latinos that gestured back to the long history of racial animus in the United States.

27. Racial animus took on new forms during the 1970s and 1980s. As the United States worried about new immigration and stiff economic competition abroad, stereotypical portraits of Latinos continued to emphasize their dangerous, criminal and unproductive qualities, their status

as temporary laborers but not permanent residents, and often their weak intellects and fitness for only manual labor.

28. Immigrants are a more acceptable target than U.S. citizens for articulations of racial animus. The ongoing use of the term “illegal” to refer to ethnic Mexicans, both documented and undocumented residents, and the strong association between Mexicanness and criminality in public discourse and political discussions, has kept alive older concerns about Latinos as suspected criminals, as non-citizens, and as marginal to the national community.

29. As such, among politicians and in polite company, recent racial animus has often centered on recently-arrived immigrants, especially foreign minorities who can be characterized through established racial scripts. As sociologists recognized, after surveying the *New York Times*, *Washington Post*, *Wall Street Journal*, and *Los Angeles Times* from 1965-1995, political candidates discovered the political advantages to be gained in demonizing Latino immigrants.

30. References to dangerous “illegals,” hordes of newcomers and drug runners, problems presented by immigrants with low standards of living, the arrogance of radicals who disregard American individualism, the ubiquity of law breakers and welfare cheats — these contemporary representations of Latinos suggest but do not require explicit declarations of group inferiority. At times they imply that Latinos share undesirable traits with other racialized groups in the United States. And they provide a political shorthand that allows Americans “to construct Mexicans as inferior” or dangerous without needing to reference biological, scientific discourses of racial superiority and inferiority.

31. Since the 1960s, politicians who claim to be antiracist have increasingly relied on racial codewords as a key feature of their political discourse. Elected officials and political candidates have used coded speech to mobilize segments of the voting population, and fellow activists and party members, and politicians have galvanized white voters through veiled references to the threats posed by African Americans or non-white immigrants.

32. Many political candidates participated in “dog whistle politics” even if they were not avowed racists, and recent racial politics have been strategic more often than they have been

deeply felt. Many candidates and government officials have reputations as “racial moderates,” but opt to harness racial divisions to their agenda of getting elected. In other words, it was not about racism; instead, it was about winning.

33. The same is likely true of at least some prominent politicians and policymakers who have articulated anti-Latino animus in recent years. Racial animus towards Latinos has often emphasized that Latin Americans are in effect attempting to “reconquer” the United States through migration. The “Latino Threat Narrative” posits that Latinos are unwilling or incapable of integrating, of becoming part of the national community. Rather, they are part of an invading force from south of the border that is bent on reconquering land that was formerly theirs (the U.S. Southwest) and destroying the American way of life.

34. Since the 1970s, pundits and politicians have stoked that fear by suggesting that Mexicans would achieve their “reconquista” if new arrivals continued to settle and if the children of immigrants continued to establish themselves as permanent residents of the United States. In 1974, for example, the cover of *American Legion* magazine depicted “illegal aliens” storming across the U.S.-Mexico border, arriving to the East Coast by ship, and swimming to Florida from the Caribbean. By the early-1980s, journalists for *U.S. News and World Report*, *Time Magazine*, and other national publications warned that “Los Angeles is being invaded” and that new migrants saw themselves as “not an illegal alien but a reconquistador.” In 1994, California Governor Pete Wilson lamented in response to a federal judge striking down California’s Proposition 187, a ballot measure that barred undocumented residents from accessing social services, that “the massive and unlawful migration of foreign nationals...constitutes an invasion of the state of California against which the United States is obligated to protect California.”

35. Over the last twenty-five years, this narrative has continued to circulate and shape discussions of Mexican immigration. CIS, FAIR and Numbers USA successfully mobilized journalists, politicians and the public to block both President Bush’s 2007 proposal creating a pathway to citizenship for undocumented immigrants and President Obama’s attempts at immigration reform. The creation of the Department of Homeland Security following the attacks

of September 11, 2001 solidified connections between immigration concerns and discourse about national security. In this context, questions were raised not only about immigrants as security risks, but also about the loyalty of U.S.-born Latinos.

Arizona as Political Laboratory

36. Drawing from *reconquista* rhetoric, many words and phrases used in political speech today conjure up the “Latino Threat Narrative.” Talk of building a wall on the U.S.-Mexico border, and of stopping the Latino “invasion” are prominent examples.

37. In the early-twenty first century, the state of Arizona became the national center of anti-immigrant, and anti-Latino, political mobilization. Anti-immigrant activists in Arizona focused on two major efforts. First, they worked to draw sharp rhetorical lines – between white citizens and radical Latinos, between “us” and “them,” and between citizens and non-citizens. Second, they worked to develop legislative proposals and ballot propositions that would so diminish the rights of immigrants, of members of mixed-status families, and of others who felt their effects (including U.S. Latino citizens) that unwanted Arizonans would leave the state. As a presidential candidate in 2012, Mitt Romney later announced his own support for similarly harsh policies that would lead to “self-deportation.”

38. From around 2000 to 2014, the region was center-stage in dramatic confrontations about the Latino Threat Narrative. Suggesting that the Latino community was the source of problems with Arizona’s schools and crime rates, Arizona developed new, punitive laws, and law enforcement officers increased immigrant raids of Latino communities. Arizona lawmakers denied bail to immigrants charged with felonies and denied undocumented immigrants access to welfare services. Arizona legislators cracked down on day laborers and required the use of E-Verify. They passed laws targeting immigrant access to public schools, English-language education, and adult education. And they proposed bills that attempted to limit the rights of U.S. citizen children born to undocumented parents.

39. The region provided Republicans a laboratory for developing anti-immigrant rhetoric, and dog whistle politics, to win over white voters in advance of the 2016 election.

Between 2001 and 2010, Arizona saw an intense escalation of racialized rhetoric and the popularization of the Latino Threat Narrative. In highlighting the dangers of Latino criminals, welfare cheats, “anchor babies,” public school kids, and others, Arizona lawmakers focused special attention on Latino youth in their demonization of immigrants. Leaders such as Sheriff Joe Arpaio at times eliminated any distinction between “illegals” and Hispanics/Latinos who were U.S. citizens in discussing their efforts. “They hate me, the Hispanic community,” Arpaio noted, “because they’re afraid they’re going to be arrested. And they’re all leaving town, so I think we’re doing something good, if they’re leaving.”

40. National organizations and leaders later involved in the Trump campaign and Administration – including Kris Kobach and FAIR – played critical roles in developing these Arizona strategies, exporting them to other states, and then assuring that they would define Republican national politics. FAIR and some members of the Republican party understood Arizona’s strident anti-immigrant model as expedient and beneficial for the national GOP. Republicans had known for decades that they had little to gain by increasing the number of potential Latino voters – most of whom voted in the late-twentieth and early-twenty first centuries for Democratic candidates. FAIR was transparent about its own intentions to limit Latino political power through immigration reform in 2013, writing that “as long as our nation's immigration policies continue to bring millions of poorly educated and poorly skilled immigrants to the United States, Republicans will have little chance to attract new voters.”

41. Referencing DACA and other calls to provide “amnesty” to undocumented immigrants, FAIR President Dan Stein argued that “Republicans in the House have a unique opportunity to do what is ... best for their own political interests by refusing to accede to special interest demands for amnesty and massive increases in immigration.” FAIR concluded that Latino immigration and increased voting would only “increas[e] the gap for Republican candidates” in the future.

42. Republicans followed the Arizona model as what was “best for their own political interests,” determining that a strong GOP fight against undocumented immigrants, and against

DACA, provided a viable option also for galvanizing white voters. Prominent figures such as Kobach who have been key to the national anti-immigrant movement, and to the rescinding of DACA, were involved in these discussions in Arizona and elsewhere. Kobach authored several articles analyzing how states might intervene on immigration issues that had traditionally been controlled by the federal government. Kobach advised Sheriff Joe Arpaio in developing the Maricopa County Sheriff Department's harsh policies towards undocumented immigrants, and Kobach also advised State Senator Russell Pearce on the development of Senate Bill 1070, the far-reaching "Show Me Your Papers" legislation in 2010 that required Arizona police to ask anyone under "reasonable suspicion" for their citizenship papers.

43. President Trump's campaign and Administration adopted and elaborated on the Arizona strategy of demonizing undocumented immigrants. Then-candidate Trump expressed admiration for Arizona's anti-immigrant movement, and in July 2015 he tweeted to Governor Jan Brewer encouraging her to "Keep throwing those giant hand grenades into the amnesty debate. You're pissing off all the right people in the GOP." Then-candidate Trump later expressed more admiration for Arizona's Jan Brewer, naming her a potential Vice Presidential running mate, and he drew attention to his friendship and alliance with Arizona Sheriff Joe Arpaio, who had endorsed then-candidate Trump for President in January 2016.

44. Then-candidate Trump chose Arizona as the site of his major campaign address on immigration on August 31, 2016, and again chose Arizona a year later to give a major address on immigration in August 2017. During the August 31, 2016 speech, the candidate stated that "Together we can save American lives, American jobs, and American futures. Together we can save America itself." He continued:

This election, and I believe this, is our last chance to secure the border, stop illegal immigration and reform our laws to make your life better. I really believe this is it. This is our last time. November 8. November 8. You got to get out and vote on November 8.

45. Officials in President Trump's campaign and Administration rearticulated the Latino Threat Narrative and called upon anti-immigrant activists nationwide to look to Arizona as

a political beacon. In noting the importance of building a wall on the U.S.-Mexico border, President Trump stated: “Arizona knows better than most exactly what I’m talking about.” President Trump followed Sheriff Joe Arpaio who had stated that “A growing movement among not only Mexican nationals but also some Mexican-Americans contends that the United States stole the territory that is now California, Arizona, and Texas, for a start, and that massive immigration over the border will speed and guarantee the reconquista of these lands, returning them to Mexico.” Sheriff Arpaio had further highlighted his disgust with the uncleanness of Latin Americans in 2009:

All these people that come over, they could come with disease. There’s no control, no health checks or anything. They check fruits and vegetables, how come they don’t check people? No one talks about that! They’re all dirty.

46. Likewise, Jeff Sessions chose to deliver major addresses about immigration in Arizona, as in April 2017, when Sessions announced in Nogales, Arizona: “the Department of Justice’s Renewed Commitment to Criminal Immigration Enforcement.” President Trump pushed the GOP to adopt a version of hard-line, anti-immigrant politics common in Arizona, to marginalize members of the GOP who took a more moderate stance, to encourage the self-deportation of immigrant families, and to win the White House by mobilizing racial animus in white voters.

47. Especially after the passage of SB 1070 in 2010, Republicans such as then-candidate Trump, Sessions, and Kobach invested heavily in advancing Arizona’s political model of promoting anti-Latino animus. As President, Trump would call Sheriff Arpaio an “American patriot” and praised him for having “kept Arizona safe!” While a federal judge found Arpaio guilty of racially profiling Latinos, President Trump insisted in August 2017 – just days before his Administration rescinded DACA – that Arpaio had in fact “done a great job for the people of Arizona, he’s very strong on borders, very strong on illegal immigration, he is loved in Arizona.” President Trump told a Phoenix audience that:

The most sacred duty of government is to protect the lives of its citizens, and that includes securing our borders, and enforcing our immigration laws. (APPLAUSE)

By the way, I'm just curious. Do the people in this room like Sheriff Joe? (APPLAUSE)

So, was Sheriff Joe convicted for doing his job? That's why... (APPLAUSE)

He should have had a jury, but you know what? I'll make a prediction. I think he's going to be just fine, OK?

48. A few weeks later, President Trump pardoned Arpaio of federal charges of criminal contempt.

49. Arizona's political model was an enormously attractive successor to the GOP's powerful "Southern Strategy" of earlier decades. Anti-immigration hyperbole motivated voters and, after SB 1070 passed, the state's climate of exaggeration, deception and racial stereotyping continued. Arizona Republicans established an approach to demonizing Latino immigrants, and mobilizing white voters, through racial code words. After 2010, anti-immigrant activists raised "haunting" questions about immigrant and U.S.-born Latinos in states such as Alabama, South Carolina, Georgia, Indiana, and Utah, which led to proposed bills in those states modeled on Arizona SB 1070. Kobach took what he learned in Arizona to those regions in advance of the 2016 election.

The Role of John Tanton's Organizations: CIS, FAIR and Numbers USA

50. Important aspects of the current anti-immigrant movement in the United States were shaped by individuals who expressed explicit fears about the "Mexicanization" of the United States in the 1970s and 1980s. Chief among them was John Tanton, founder of the three most prominent anti-immigrant groups, *i.e.*, CIS, FAIR and Numbers USA, all of which have played key roles in the development of President Trump's immigration policies. Active since the late-1970s, Tanton has been linked to white supremacist movements and once commented that: "I've come to the point of view that for European-American society and culture to persist requires a European-American majority, and a clear one at that."

51. Tanton's ideologies were further expressed in a 1986 memo, where he defined

Latinos as a clear threat to the future of the nation, worried that “illegal aliens” would be given “political power,” observed that Latinos were “simply more fertile” than white Americans, and urged activists to focus on “drugs and the border.” Later, Tanton’s book *The Immigration Invasion* crystalized and further popularized the idea of a Latino threat.

52. From the beginning of his presidential run, President Trump and others in his campaign have supported the animus against Latinos promoted by organizations such as FAIR, CIS, and Numbers USA. President Trump has elevated members of Tanton’s organizations and their followers to positions of political leadership, including:

53. **Jeff Sessions** (Alabama Senator, Attorney General): As Senator, Jeff Sessions provided a keynote at FAIR’s national advisory board meeting in 2007, where he was given the “Franklin Society Award” bestowed upon “rare individuals who have made a real difference.” When Sessions became Ranking Member of the Senate Judiciary Committee in 2009, the executive director of Numbers USA announced that the organization considered Sessions “the No. 1 champion for the American workers on immigration issues.” Senator Jeff Sessions read a tribute to Numbers USA into the Congressional Record in May 2012 “to recognize the 15th anniversary of Numbers USA, a national grassroots organization that advocates for immigration policies that seek to serve the national interest.” FAIR called him a “true immigration reformer” in October 2016. FAIR President Dan Stein announced his organization’s support of the Attorney General nominee immediately after the November election: “It’s hard to imagine a better pick for the Attorney General position than Senator Jeff Sessions.”

54. **Kellyanne Conway** (Campaign Manager and Counselor to the President): Conway’s polling firm worked closely with FAIR in advance of the 2016 election cycle. According to FAIR President Dan Stein, “FAIR began working with Kellyanne Conway as far back as 1996, and we have used her for polling virtually every year since then. We take it as a certain amount of personal pride, is that when she became the campaign manager for Donald Trump—first successful woman to lead, you know, a successful presidential campaign—she was possessed of intimate professional knowledge of the immigration issue as it related to the voter concerns. And we saw that influence

helping to shape Donald Trump's positions and statements once she came on board."

55. **John Feere** (adviser to Thomas D. Homan, the acting director of Immigration and Customs Enforcement): While at CIS as a legal policy analyst, Feere promoted legislation to end automatic citizenship for US-born children of undocumented immigrants. He argued that bearing a child on US soil provides an immigrant access to welfare and other social benefits, which has spurred a rise in what he calls "birth tourism," the practice of foreigners traveling to the United States to give birth to add a US citizen to the family. In one CIS article, Feere questioned whether children brought to the United States at an early age were sufficiently assimilated or loyal to this nation to be granted any type of legal status.

56. **Lou Barletta** (Pennsylvania Congressman, and member of President Trump's transition team): A member of FAIR's national board of advisers, Barletta made national news in developing anti-immigrant measures as mayor of Hazleton, Pennsylvania.

57. **Kris Kobach** (Kansas Secretary of State, advisor of President Trump's transition team): Counsel for FAIR's legal affiliate, the Immigration Reform Law Institute, and legal counsel for anti-immigrant efforts in Arizona, Alabama, Pennsylvania, Missouri, and elsewhere, Kobach has claimed primary credit for developing Trump's immigration policies, as well as the current approach to immigration adopted by the GOP.

58. **Stephen Miller** (Communications Director for Senator Sessions, Senior Policy Advisor for President Trump): As a member of Jeff Sessions' staff since 2009, Miller worked closely with FAIR. Robert Law, the organization's director of government relations, predicted that "I would not be surprised if Stephen [Miller] played a large role in crafting Trump's platform. Every single component of it is basically what we have fought for, for a very long time."

59. **Julie Kirchner** (Policy Advisor for "Trump for President" campaign, and Ombudsman of the U.S. Citizenship and Immigration Services): Kirchner served as FAIR's Executive Director for ten years, and she has frequently provided Congressional testimony on immigration issues.

60. These individuals, and others who have worked closely with Attorney General

Sessions and with FAIR, CIS, and Numbers USA, have taken the lead in reshaping immigration policy under President Trump. And, several were also closely involved in the rescinding of DACA.

The Trump Campaign and Administration, and Racial Animus

61. Anti-immigrant politics in Arizona and other states had made clear the electoral value of “dog whistling” about the Latino Threat in advance of the 2016 elections. Members of the Trump campaign and Administration have been very attentive to political language, and to communicating messages to voters about immigration. Senior policy advisor Stephen Miller has acknowledged “how important words are in the immigration debate.” In fact, much of the debate about DACA grantees, and about other immigrants, has been a contest over language, with President Trump and Sessions and others seeking to advance particular understandings of the Latino Threat, of illegality, and more.

62. In advance of then-candidate Trump’s 2015 announcement of his candidacy for president, Miller delivered a major address at CIS regarding the need to recapture terms such as “immigration reform” that had been defined, in his view, by business interests and spokespersons who favor undocumented immigrants. He advocated, as well, for broad public and political use of the term “illegal alien” which had, he suggested, been replaced with inaccurate and distorting terminology: “‘illegal alien’ ... became ‘illegal immigrant’ became ‘undocumented immigrant’ became ‘immigrant without papers’ became ‘new American,’ which is what it is now.”

63. The repeated use by President Trump and others of the word “illegal” to refer to undocumented immigrants has been no accident. Terms such as “illegal alien,” “criminal alien,” “alien criminal,” “criminal,” “drug dealer,” “gang member,” and “cartel,” among others, have been used by the Trump campaign and Administration, and by other politicians, to urge voters – often referred to in contrasting terms as “good Americans,” “tax payers,” “hard-working citizens,” “members of our communities,” and the like – of the importance of building a “wall” to protect us from them, and of the central “threat” that many Latinos pose to the United States.

64. Social media is one tool used by many politicians today, including President Trump, where terms like these can be reiterated and social categories can be defined. Addressing an Arizona

audience in August 2017, President Trump noted that “the advantage I have is that we do have a big voice. And you know, they’re always saying, like Twitter or social media – if I didn’t have social media, I wouldn’t be able to get the word out. I probably wouldn’t be standing here, right? I probably wouldn’t be standing here right now.”

65. In representing immigrants as a danger to society, and in attempting to draw white voters together to face Mexicans as “external” enemies, President Trump and members of his campaign and Administration have repeatedly denied being racists or bigots, even as they have welcomed support from white supremacists and hate groups. CIS, for example, advertises itself as “pro-immigrant.” In speeches delivered in September 2016 in Maryland and Florida, then-candidate Trump assured voters that “People who want their immigration laws enforced, and their borders secured, are not racists. They are patriotic Americans of all backgrounds who want their jobs and families protected.”

66. The United States has seen a recent rise in reported acts of racially-motivated violence against Latinos. Some pundits and politicians seemed to endorse this sort of animus and violence. In March 2006, “well-known white nationalist radio host and blogger Hal Turner proclaimed, ‘All of you who think there’s a peaceful solution to these invaders [immigrants] are wrong. We’re going to have to start killing these people.’” Similarly, then-candidate Trump did not consistently distance himself from talk of violence on the campaign trail. When two brothers in Boston beat a homeless Latino man in August 2015, declaring that “Donald Trump was right, all these illegals need to be deported,” then-candidate Trump again concluded simply that “They love this country and they want this country to be great again. They are passionate.”

67. However, this denial of racial animus is consistent with dog whistle politics. President Trump has characteristically charged his accusers with being the real racists: “Hillary Clinton is a bigot who sees people of color [applause] only as votes, not as human beings worthy of a better future,” he announced in Mississippi. Like Arizona restrictionists who denied any anti-Latino animus, then-candidate Trump has even proclaimed his “love” for Mexicans, or that there are “great people” in Mexico, and in May 2016 he tweeted a photo of himself eating a taco bowl in

Trump Tower with the message “I love Hispanics!” Campaign spokesperson Katrina Pierson acknowledged on CNN in August 2016 that when President Trump seemed for a brief period during the campaign to embrace a less dogmatic approach to border militarization and immigration enforcement, the candidate’s “change in words” did not mean he had actually “changed his position on immigration,” only that he was looking for more palatable ways to express the same message.

68. **The Trump Administration’s Animus: “Us” vs. “Them”**In recent years, racial codewords have drawn upon distinctions of citizenship to heighten political concerns about ethnic Mexicans and to mobilize white voters. These distinctions have referenced racial stereotypes, and they have often been rooted in animus. Despite the fact that many immigrants live in mixed-status families, sharp contrasts have been drawn between “real Americans” and “immigrants” by members of the Trump campaign and Administration. Then-candidate Trump articulated such contrasts when he announced his candidacy for president in June 2015:

When Mexico sends its people, they’re not sending their best. They’re not sending you. They’re sending people that have lots of problems, and they’re bringing those problems with us. They’re bringing drugs. They’re bringing crime. They’re rapists. And some, I assume, are good people.

The dichotomies in candidate Trump’s announcement were strong, clear, and rooted in racial thinking. People of Mexican descent are distinct. “They” are problems, “they” are drug dealers, “they” are criminals, and “they” are rapists. Even the “good people” among them are fundamentally different than “us.”

69. These types of distinctions have been continually reiterated and affirmed by members of the campaign and the Administration. John Kelly, for example, tweeted on July 28, 2016 that with the election of President Trump, “Real Americans will finally have someone who speaks for them - and not immigrants - working in the White House. #tcot #MAGA.”

70. President Trump and others associated with his campaign and Administration drew upon past experiences in Arizona and elsewhere to highlight distinctions between Americans, or those they consider their political base, and Latinos. Corruption, criminality, dishonesty,

irresponsible financial management, and an incapacity to self-govern have been prominent in these stereotypes about Latinos. In July 2014, for example, President Trump tweeted to ask “When will the U.S. stop sending \$’s to our enemies, i.e. Mexico and others.” In February 2015 he tweeted “The Mexican legal system is corrupt, as is much of Mexico. Pay me the money that is owed me now - and stop sending criminals over our border.” The following month he tweeted “Mexico’s court system corrupt. I want nothing to do with Mexico other than to build an impenetrable WALL and stop them from ripping off U.S.” A few weeks later he tweeted “The border is wide open for cartels & terrorists. Secure our border now. Build a massive wall & deduct the costs from Mexican foreign aid!” In April 2015, he told an audience that “we need leadership. We can’t allow ... Mexico to rip us off.”

71. Then-candidate Trump continued to refer to Mexicans as an “enemy” of the United States, and in particular to white working class voters, in various ways over the following three years. Following others who had long questioned the loyalty of Mexican Americans to the United States, in May 2016 the candidate tweeted about unnamed protesters seen “proudly waving Mexican flags” who apparently burnt U.S. flags at a political protest in California. In August 2017, President Trump’s speech about immigration in Phoenix provided a good example of the President’s effort to create a racialized sense of national unity – described here as being on the same American “team” – by referencing the need to fight enemies at home and abroad.

72. President Trump and others frequently galvanized voters sympathetic to the white working class by making Latino immigrants, and any political groups that supported DACA or a path to citizenship for undocumented residents, seem like the puppets of heartless corporations and corrupt, faraway political elites. He linked the threat of NAFTA – Mexico taking jobs away from white workers in the Midwest and South – to the threat posed by Latinos – undocumented immigrants who drove down local wages and thereby threatened the few opportunities that remained for longtime residents. This political rhetoric turned a rhetoric of class conflict in the U.S. into racial animus against Mexicans and other Latinos.

73. President Trump told a Phoenix audience that “The fundamental problem with the

immigration system in our country is that it serves the needs of wealthy donors, political activists and powerful, powerful politicians.” Trump told a Mississippi audience that Hillary Clinton “wants a country without borders. She wants trade deals written for the benefit of foreign corporations. She wants a government that ignores the will of the people. [*booing*]”

74. In emphasizing the threat of immigrants, then-candidate Trump has suggested a close political alliance between Mexican Americans and “Mexican illegals,” arguing that “they” (Latinos) share a common agenda regardless of citizenship. In July 2015, for example, he tweeted that “#JebBush has to like the Mexican illegals because of his wife,” suggesting that his opponent’s Mexican American spouse would make Bush overly sympathetic to undocumented immigrants.

75. In June 2016, then-candidate Trump then stated that U.S. District Court Judge Gonzalo Curiel, who had been born in Indiana, ruled against him in a court case because “He’s a Mexican.” CNN Host Jake Tapper countered that “he’s a legal citizen,” a Mexican American, but Trump insisted that the judge’s “very unfair rulings” were an irrational response to the fact that “I’m building a wall,” and that “it’s a wall between Mexico [and the United States], not another country.” According to Trump, Curiel’s Mexican American heritage meant that he could not rule impartially, and that he had an “inherent conflict of interest” because of the candidate’s announced policies related to immigration. House Speaker Paul Ryan labeled Trump’s allegation “the textbook definition of a racist comment.”

76. Other Trump associates and allies have also suggested that Mexican Americans and other Hispanics who opposed the candidate or the president are more loyal to Mexico than to the United States. Adviser Stephen Miller, for example, explained that the Latinos who stepped down from the National Hispanic Advisory Council for Trump in protest of an incendiary speech given in Arizona in September 2016 were simply “professional amnesty lobbyists.”

77. The “us vs. them” rhetoric dovetails with states’ rights rhetoric, and with arguments that the states need to protect their citizens in the face of foreign influences, a political language long associated with the racial politics of the GOP. Rhetoric about the Mexicanization of Arizona, and arguments about the need for more punitive national and local approaches to immigration

enforcement, are bound up with critiques of the Obama Administration's apparent unwillingness to stop undocumented migration.

78. The sharp distinctions that President Trump and others emphasize between Americans and Mexicans, federal corruption and the will of the people, rational citizenship and ethnic loyalty, and our interests and theirs, suggest that managing immigrants and their children will define the future of the United States. These misrepresentations of immigrants and their family members proved critical in the representation of DACA grantees by members of the Trump Administration.

The Trump Administration's Animus: Latinos as Security Risks

79. As articulated by President Trump and his advisers, anti-Latino racial animus has drawn upon old fears of Latin American political radicalism to portray immigrants and the U.S.-born as threats to democracy. Candidate and President Trump, and members of his campaign and Administration, have used discredited statistics to support their arguments for curtailing immigration and building a wall on the U.S.-Mexico border, and for emphasizing that just a few terrorists crossing with "them" might destroy "us." In the twenty-first century, opposition to Muslims in the United States, and fears that terrorists would enter the country through Mexico, have led to common associations in political campaigns between ethnic Mexicans and Middle Eastern terrorists. President Trump and others have therefore connected the Latino Threat to the threat of global terrorism.

80. After 9/11, the U.S. Congress passed legislation that harnessed immigration regulation to national security issues, including the USA Patriot Act of 2001, the Homeland Security Act of 2002, the Enhanced Border Security and Visa Entry Reform Act of 2002, the Intelligence Reform and Terrorism Prevention Act of 2004, the REAL ID Act of 2005, and the Secure Fence Act of 2006. Politicians in border states played on new fears of "outsiders," and anxieties about "Mexicanization" dominated political discussions over the following decade. Websites, internet blogs, and social media have propelled nativist fears and driven fears of the

reconquista around the country.

81. When he announced his campaign for president in June 2015, then-candidate Trump spoke about Mexican immigrants immediately prior to addressing contemporary “Islamic terrorism” and Middle Eastern politics. On the campaign trail, Trump linked immigrant youth directly to terrorism, and he suggested a strong link between Latinos and Middle Eastern refugees. “Since 9/11,” he told an audience in North Carolina, “hundreds of immigrants and their children have been implicated in terrorism and terrorist-related activity in the United States.” The political use of racial codewords that raise concerns about radicalism – including words such as “Raza” and “Aztlán” – has allowed politicians to represent ethnic Mexicans as a threatening and cohesive group. President Trump and others have argued for “extreme vetting” both of Middle Eastern refugees – as potential terrorists – and of Latin American immigrants – as equally important threats to the nation. “In the Cold War,” President Trump told an Ohio audience, “we had an ideological screening test. The time is overdue to develop a new screening test for the threats we face today.”

82. President Trump has often pivoted between discussions of Middle Eastern terrorists and Latino immigrants in order to connect these two threats. Following an attack on U.S. forces in Kabul, Afghanistan, President Trump redefined “security” for a Mississippi audience to remind them of the dangers posed by Mexico and Latin American immigrants: “Our jobs have moved to other countries. Islamic terrorism has spread within our shores. And an open border has crushed low-income workers and threatened, and I mean totally threatened, our security.” He promised a Phoenix audience in August 2017 that “believe me, one way or the other, we’re going to get that wall. Immigration security is also a matter, remember this, of national security. That’s why we’re implementing tough new vetting and screening protocols to keep radical Islamic terrorists out of our country.”

The Trump Administration’s Animus: Fears of “Reconquest”

83. President Trump promoted fears of Mexico’s “reconquest” of the United States

during his presidential campaign, and the campaign slogan “America First” was in part an affirmation that his Administration would stop that process. As Senator, Jeff Sessions had expressed his desire to allow the arrival of immigrants “who really desire to be an American and who want to be a part of our society and deeply desire to make a permanent move, and who want to create a new allegiance from their prior country to their new home in the United States,” a clear critique of Latino immigrants whom Sessions believed were not in fact loyal to the United States.

84. Stephen Miller, President Trump, and others in the current Administration have focused attention on the dangers of “chain migration” as a reference to the dangers of slow demographic takeover by Latin Americans. As Miller has stated, “chain migration” occurs when undocumented residents arrive to the United States, receive visas, go on welfare, attend schools, “and then that person can bring in a relative who can bring in a relative who can bring in a relative.” DACA grantees are represented as threats to the United States important to this chain migration. The backlash against perceived “Mexicanization” through “chain migration” has surged over the last ten years.

85. Under this view, DACA grantees can be understood as dangerous “fifth columnists.” President Trump and other members of his campaign and Administration have repeatedly asserted that illegal immigrants and their families threaten the very existence of the United States. This is political language intended to resonate with audiences who have long been worried about a *reconquista*. “We better get smart. We better get tough,” then-candidate Trump urged voters in Erie, Pennsylvania. “And if we're not smart and we're not tough, we're not going to have a country left. And one of the things I have to talk to you about before I leave is our borders. Illegal immigrants are pouring into our country.” In Arizona, then-candidate Trump told a crowd that Hillary Clinton “doesn't know what she's doing except open borders and let everybody come in and destroy our country by the way.”

86. John Kelly similarly told a Senate Armed Services Committee meeting in 2015 that ISIS had been encouraging terrorists to “infiltrate the southern border” of the United States, and that

In addition to thousands of Central Americans fleeing poverty and violence, foreign nationals from countries like Somalia, Bangladesh, Lebanon, and Pakistan are using the region's human smuggling networks to enter the United States. While many are merely seeking economic opportunity or fleeing war, a small subset could potentially be seeking to do us harm.

87. In the twenty-first century, discussions of Latinos that referenced wars, invasions, shifting political loyalties, chain migration, and the multi-generational attachments of immigrants to their home countries could be used by the Trump campaign and Administration to remind voters that Latin Americans threatened to overrun the United States and, perhaps, undermine U.S. sovereignty.

The Trump Administration's Animus: Entitlements, Veterans, and Voting Rights

88. Since at least the nineteenth century, politicians and organizations have opposed the arrival of new immigrants by highlighting stories and statistics that purport to prove that immigrants drain local and national welfare coffers, and steal other benefits and opportunities that rightly belong to native-born, white U.S. citizens. Such narratives urge voters and others to take for granted that Latinos "abuse," "overburden," or "take advantage of" the political system and welfare state.

89. These types of arguments have been repeated by Trump and his associates. In announcing the RAISE Act in early-August 2017, the President argued that it would "preven[t] new migrants and new immigrants from collecting welfare, and protects U.S. workers from being displaced. And that's a very big thing. They're not going to come in and just immediately go and collect welfare. That doesn't happen under the RAISE Act. They can't do that." Later that month, then-candidate Trump told a Phoenix audience that "years of uncontrolled immigration have ... put great burdens on local schools and hospitals."

90. On the campaign trail, then-candidate Trump repeatedly made erroneous claims that immigrants were the cause of financial strain on the welfare system. These claims represented immigrant workers and families as poor, unproductive, and drawn to the United States by the availability of food stamps and free health care. Claims about opportunistic Latinos as drains on

the welfare state have also shaped political rhetoric about Puerto Rico and its U.S. citizens in the aftermath of Hurricane Maria. President Trump appealed to stereotypes about Latinos as welfare-dependent, lazy, and a political burden when he tweeted on September 30th that Puerto Ricans “want everything to be done for them when it should be a community effort.”

91. In advance of the November 2016 election and in the Oval Office, President Trump and others also argued that undocumented immigrants enjoy benefits that are denied to U.S. citizens. President Trump depicts DACA grantees as a group seeking entitlements that they have not in fact earned. It was often suggested that “elites” in the United States supported undocumented immigration, and supported DACA, in order to undercut the well-being of working-class and middle-class white Americans. For Steven Camarota of CIS, the mismanagement and overreach of the DACA program hurt “working class voters ... the very people who put Trump over the top.” It is, he argued, therefore “time to end DACA” precisely because “[t]he employment situation for those [working class voters] without a college education continues to look bleak.” Attorney General Jeff Sessions told a Virginia audience in October 2017 that “This is a compassionate country and lawfully admits more immigrants than any country in the world, but we must recognize that our generous system is being terribly abused.”

92. President Trump and others contrasted the “benefits” provided to undocumented immigrants, including DACA grantees, with those provided to military veterans – U.S. residents who truly deserve adequate care and generous support from their government. In 2014, the candidate tweeted to criticize President Obama’s “dysfunctional Administration when Illegal Aliens get free & better medical care then our Veterans. What a disgrace.” In July 2015, the candidate tweeted that “There Are Homeless Veterans in USA & yet Illegal Aliens Get Government Housing.” In August 2015, he contrasted immigrants with military veterans on public radio, arguing that undocumented residents of the United States “by the way are treated better than our vets. You know are vets are incredible. No, no, the illegal immigrants in many cases, not in all cases, but in many cases are treated better than our veterans.” In August 2016, then-candidate Trump told an Arizona crowd that “we have to listen to the concerns that working people, our

forgotten working people, have over the record pace of immigration and its impact on their jobs, wages, housing, schools, tax bills and general living conditions.”

93. President Trump emphasized that Obama’s executive actions on immigration, including DACA, were also part of the overextension of the welfare state, tied to irresponsible Democratic social service policies such as the Affordable Care Act. In June 2014, President Trump urged his Twitter followers to “Imagine how much tax money it will cost Americans when Obama legalizes 25 million illegal aliens&gives [sic] them free ObamaCare.” In September 2016, then-candidate Trump asked voters in Texas to consider how Hillary Clinton will “afford to give lifetime welfare and entitlements to illegal immigrants.” And he told a Pennsylvania audience that Clinton “wants to give Obamacare to illegal immigrants and wants a total government takeover of care. Her plan also gives Social Security and Medicare to illegal immigrants, by making them citizens – bankrupting these programs for Americans.” Talk of DACA grantees and other immigrants here seems intended to persuade voters of poor fiscal management by the Democratic Party.

94. On the campaign trail, President Trump continually reframed discussions of DACA to emphasize that voters should be worried less about Latino kids and their families, and more about the future of white American youth. Citizen kids are the real “Dreamers” who matter, President Trump argued, and their futures are imperiled by the presence of violent immigrants. He told a crowd in Mississippi that:

Hillary Clinton only talks about the separation of families who choose to come here illegally. I want to focus on the American families who have been permanently separated from their children because of the sanctuary cities and open borders that Hillary Clinton so strongly supports. [*booing*] Where is the sanctuary for American children? Where is that sanctuary? The dreamers we never talk about are the young Americans. Why aren't young Americans dreamers also? I want my dreamers to be young Americans. [*applause*]

95. Making clear that Latino beneficiaries of DACA were also dangerous to “young American dreamers,” Trump demanded to know why “our leaders spend so much time talking about how to help people here illegally, they’re here illegally ... but they don’t try helping

American citizens, some of whom have been devastated by what's happened to their children and their families?" DACA as a program therefore seemed to represent the Obama Administration's turn away from defending and supporting young citizens – especially white citizens – of the United States.

96. Trump repeated these arguments as President. Addressing a joint session of Congress in 2017, he highlighted the case of a 17-year-old U.S. citizen “with unlimited potential who was getting ready to go to college where he would have excelled as a great quarterback” who had been “viciously murdered by an illegal immigrant gang member.” Trump rallied voters by drawing attention to young American citizens such as “21 year old Sarah Root” who had been killed by an undocumented immigrant, according to the candidate, one day after she “graduated from college with a 4.0, [the] top student in her class....” In arguing that “American children” were the real “American dreamers,” the candidate followed an argument developed by CIS, whose writers in 2012 had warned when DACA was implemented that Obama was intent to see the “destruction of their innocent children's futures and of their children’s American dreams” in order to provide “amnesty” for undocumented immigrant youth. President Trump emphasized that undocumented immigrants, including DACA grantees, stood in the way of improving public education for other Americans. “For the money we are going to spend on illegal immigration over the next 10 years,” he told one crowd, “we could provide 1 million at-risk students with a school voucher, which so many people are wanting.”

97. Further, President Trump’s campaign, eager to demonize Latino populations for its own political gain, alleged that undocumented immigrants engage in massive voter fraud. President Trump told audiences that they needed to anticipate voter fraud, alleging in October 2017 that “They’re letting people pour into the country so they can go and vote.” Elsewhere he told supporters that “there’s the issue of illegal immigrants voting.” Republicans associated with the Trump campaign and Administration have continued to associate Latinos with voter fraud. This underscores a narrative about immigrants as cheats, and it helps to define the threat that Latinos – including DACA grantees – seem to pose to U.S. citizenship. It is also a call that

summons voters to the polls interested in countering the power of “illegal” voters and in affirming the rights of real citizens.

98. In sum, during and after his presidential campaign, President Trump drew a stark contrast between immigrants, even DACA grantees, and our “incredible” U.S. military veterans and promising youth. His campaign stressed that undocumented immigrants abuse the welfare state by stealing from entitlement programs meant to serve U.S. citizens. And Trump and others urged voters to understand that their focus should remain above all on the security and advancement of white citizens whose well-being was threatened by programs such as DACA.

The Trump Administration’s Animus: Latinos as Unassimilable and a Cultural Threat

99. President Trump and members of his campaign and Administration have repeatedly asserted that Latinos and other ethnic Mexicans are incapable of, or uninterested in, assimilating into the United States. These concerns about Latinos’ disinterest in assimilation harkens back to the *reconquista* narrative. For example, as a Senator, Jeff Sessions expressed concerns about the “cultural problems” brought by current immigrants. Influential organizations such as FAIR have pressed concerns about the assimilation of Latinos and how the growing number of U.S. residents of Latin American descent, including citizens, is reshaping American culture. Michael Hethmon, General Counsel for FAIR’s Immigration Reform Law Institute admitted in 2012 that he was motivated by concern about the changing “demographic makeup of the entire country. You know, what they call ‘minority-majority.’” He anticipated negative consequences: “How many countries have gone through a transition like that – peacefully, carefully? It’s theoretically possible, but we don’t have any examples.”

100. President Trump and his supporters have raised questions about the assimilation of DACA grantees and other Latinos. Steven Camarota of CIS denounced President Obama’s claim that young people who had received deferred status were “Americans in their heart, in their minds, in every single way but on paper.” Camarota argued instead that most Hispanic DACA grantees were either “functionally illiterate” or had “only ‘basic’ English ability.”

101. Speaking about immigration in Phoenix in August 2016, then-candidate Trump

emphasized that worries about whether Latin American immigrants will in fact become loyal Americans “are valid concerns expressed by decent and patriotic citizens from all backgrounds, all over.” He called assimilation “an important word,” noting that “we want to ensure that it works.” And he urged listeners “to be honest about the fact that not everyone who seeks to join our country will be able to successfully assimilate. Sometimes it’s just not going to work out. It’s our right, as a sovereign nation to choose immigrants that we think are the likeliest to thrive and flourish and love us.”

102. In making such claims, President Trump has referred to the Spanish language as “Mexican” speech, racializing and warning about its use in the United States. He and other politicians have followed a deep tradition of argumentation that has positioned Latin American culture, including the Spanish language, as dangerous, un-American, unassimilable, and perhaps subversive. In making these arguments, politicians have followed the lead of organizations such as U.S. English, another organization founded by John Tanton.

103. President Trump and his associates stoked fears about the cultural Latinization of the United States by raising concern about the “unprecedented” number of immigrants currently living in the United States. He denounced political opponents who had any significant connection to Mexican culture. Mocking fellow Republican Jeb Bush in August 2015, President Trump tweeted “Jeb Bush is crazy, who cares that he speaks Mexican, this is America, English!” President Trump subsequently seemed to use Spanish on several occasions to remind listeners of the cultural differences between Latinos and other Americans. During his final presidential debate with Clinton, for example, he referred to criminals crossing the U.S.-Mexico border as “bad hombres”; and in a press conference about Hurricane Maria, he seemed to mock island residents in his dramatic pronunciation of “Puerto Rico.”

104. In addition, following advisor Stephen Miller and Senator Jeff Sessions and others committed to prioritizing the arrival of English-speaking immigrants, President Trump called for new national quotas and emphasized the need “to select immigrants based on their likelihood of success in U.S. society.” Senator Sessions in 2006 clearly portrayed Latino immigrants as

undesirable under a new quota system, telling the Senate that, “Fundamentally, almost no one coming from the Dominican Republic to the United States is coming here because they have a provable skill that would benefit us and that would indicate their likely success in our society.”

105. Sessions also went on record in 2015 supporting an immigration reform modeled on the 1924 Johnson-Reed Act, an Act that provided Nazi Germany a model for racial thinking, and that Sessions applauded for having allowed the United States to accept “assimilated immigrants, and it was good for America.” That Act implemented a national quota system. At his major speech on immigration delivered in Phoenix in August 2016, then-candidate Trump promised to return to an immigration model based on the 1924 national quota system, declaring that his Administration would “keep immigration levels measured by population share within historical norms.”

106. These talking points about the 1924 Act had been developed by John Tanton in the 1980s. Speaking to supporters thirty years ago, Tanton had urged them to push for a “moratorium” on new immigration, and to make that argument by celebrating the fact that “the pause in immigration between 1930-1950, combined with the assimilating experience of fighting side-by-side in the trenches in World War II, gave us a needed pause so that we could assimilate the mass of people who came in the early years of the century.”

107. When President Trump announced major new immigration policy in early-August 2017, he referred to the need to change the 1965 Act and return to the 1924 model of national quotas, calling his Administration’s effort the “biggest change in 50 years” to the immigration system. In March 2016, future Trump advisor Michael Anton defended a quota system that would privilege future European immigrants because it would bring “skills” and values to the United States, and those are “accustom[ed] to liberty.”

108. President Trump’s campaign slogan “America First” clearly signaled an affirmation of U.S. culture and the English language in the face of rising numbers of immigrants. In his “Remarks on Immigration” delivered in Phoenix in August 2016, then-candidate Trump urged voters to “remember, under a Trump Administration it’s called America first. Remember

that.”

109. In raising concerns about Latin American assimilation, anti-immigrant policymakers and others associated with the Trump Administration have warned about the growing use of the Spanish language in the United States; they have raised concerns about immigrants’ “skills” to raise questions about the mental abilities of Latinos and their capacity to adjust to life in the U.S.; and they have suggested establishing national quotas that would likely give preference to immigrants from other parts of the world, and that would gesture to the racial thinking embedded in the 1924 Immigration Act.

The Trump Administration’s Animus: “They’re bringing crime”

110. Throughout his campaign, President Trump referred to Latinos as “criminal aliens” and “bad hombres.” Politicians discussing crime and public safety have drawn upon deeply-rooted stereotypes of ethnic Mexicans as violent, knife-wielding criminals to call for increased deportations, policing of urban neighborhoods, or border enforcement.

111. These have long been stereotypes and associations pushed by anti-immigrant organizations and politicians motivated, at least in part, by racial animus. John Tanton authored an article entitled “Immigration and Criminality in the U.S.A.” in 1993 that linked contemporary criminality to the 1965 Immigration Act, that highlighted immigrant gang activities, and that argued for greater border enforcement in order to reduce the number of “alien prison inmates.”

112. Independent think tanks such as the Migration Policy Institute and Pew Research Center have determined that President Trump and others in his campaign significantly exaggerated the number of “non-citizen criminals” in the United States. Researchers have found no “relationship between immigrant population size by any measure and violent crime, even when controlling for a variety of economic and demographic factors.”

113. Prior to announcing his candidacy for president, President Trump had gone on record to associate Latinos and African Americans with criminality. “Sadly, the overwhelming amount of violent crime in our major cities is committed by blacks and Hispanics,” he tweeted in

2013, “a tough subject-must be discussed.” In 1989, he spent \$85,000 on full-page ads in the four daily papers in New York City to demand a return to the death penalty in the Central Park Five case which (wrongly) accused Latino and African American teenagers of raping a white woman, stating that “muggers and murderers should be forced to suffer.” Even after the teenagers’ sentences were vacated, President Trump wrote in a 2014 *New York Daily News* editorial that those teenagers did “not exactly have the pasts of angels,” and he did not retract his statements.

114. On the campaign trail then-president Trump repeatedly labeled Latino immigrants as “killers” and “murderers” and “cartel” members and “gang members” and other dangerous criminals. When he announced his presidential candidacy in June 2015 he stated that immigrants crossing the U.S.-Mexico border were “bringing drugs. They’re bringing crime.” And he tweeted that “Druggies, drug dealers, rapists and killers are coming across the southern border. When will the U.S. get smart and stop this travesty?” He later tweeted that “We Must Stop the Crime and Killing Machine That Is Illegal Immigration. Rampant Problems Will Only Get Worse.”

115. Members of Trump’s Administration have also marked “Dreamers” and other Latinos with the tag of criminality. When the DREAM Act was considered by Congress in 2010, Stephen Miller, who was at the time spokesperson for Republicans on the Senate Judiciary Committee, emphasized that “Democrat leaders in Washington are asking Americans to pick up the tab for a proposal that would offer amnesty to millions – including those with criminal records.” When President Obama announced the DACA program in 2011, groups such as CIS insisted that every undocumented immigrant regardless of age or employment fell under the category of “illegal aliens,” and that it was dangerous for “ICE to wait until an illegal alien commits a serious crime or two before considering deportation.” The CIS legal policy analyst Jon Feere further argued that “an illegal alien should be removed from the country at the first possible opportunity, before a serious crime is committed.” He admitted that it is “true that most illegal immigrants are not violent,” but he insisted that all were “still likely involved in ID fraud,” and that immigrants who had not yet committed a crime would likely be arrested for “public intoxication” or “DUIs” in the future. Notably, Mr. Feere later became a member of candidate Trump’s Immigration Policy Team

and, after President Trump's inauguration, became an ICE senior adviser.

116. A CIS writer insisted in 2012 that by implementing DACA “the Administration has callously sacrificed countless numbers of American children who are the victims of illegal alien-driven identity theft and other job-related felonies.” Stephen Miller similarly asked a crowd during the Trump campaign to consider “how many of our children are dead because of Sanctuary cities?” As Attorney General, Jeff Sessions has contended that “jurisdictions that adopt so-called ‘sanctuary policies’ also adopt the view that the protection of criminal aliens is more important than the protection of law-abiding citizens and of the rule of law.” Gene Hamilton further admitted in a deposition that in advance of the announcement that DACA was being rescinded he had asked others in DHS to provide information about “how many DACA grantees have ever been convicted of a crime.”

117. Reminders of the Latino Threat provided President Trump a way to highlight law and order, and to align himself politically with law enforcement. In accepting the Republican nomination in July 2016, then-candidate Trump reminded the Cleveland audience that “I have been honored to receive the endorsement of America's Border Patrol Agents, and will work directly with them to protect the integrity of our lawful, lawful, lawful immigration system. Lawful.” He told audiences that undocumented immigrants “mock” law enforcement officials, and he promised that “our local police will be so happy that they don’t have to be abused by these [criminal immigrant] thugs anymore.” President Trump called for new legislation named after law enforcement officers who had been killed by immigrants that would help assure “that criminal immigrants and terrorists are swiftly, really swiftly, identified and removed.” His campaign called for tripling the number of ICE officers in order to identify “the most dangerous criminal illegal immigrants in America who have evaded justice just like Hillary Clinton has evaded justice.”

118. In all of this, President Trump and others contrasted criminal aliens with law enforcement, and the public health problems associated with Latin Americans with the vitality and strength of U.S. society. President Trump as candidate and president, along with his appointees and advisers, focused enormous attention on the presence of transnational Latin American “gangs”

and “cartels” to characterize the threat of young Latinos in the United States, to call for greater border enforcement, and to suggest the importance of rescinding DACA. He called gang members crossing the border “true animals,” and he promised that “the gangs and cartels and criminal syndicates terrorizing our people will be stripped apart one by one. Their day is over.”

119. Much of that focus was directed to the Central American gang MS-13, and both stories of gang violence and images of tattooed gang members were repeated to portray immigrant youth not as “Dreamers” – aspiring students, military officers, and everyday Americans – but as something more sinister. Trump and others in his Administration referenced the Salvadoran gang MS-13 to characterize all Latinos regardless of nationality, including ethnic Mexicans. Campaign supporters and policymakers rarely mentioned MS-13’s origins in El Salvador. Attorney General Jeff Sessions warned that “Because of an open border and years of lax immigration enforcement, MS-13 has been sending both recruiters and members to regenerate gangs that previously had been decimated, and smuggling members across the border as unaccompanied minors.” President Trump emphasized that as president he would assure that “Border crossings will plummet” and then “gangs will disappear.”

120. President Trump invited voters to join him in declaring war on Latin American cartels in the United States, and he berated the Democrats for not taking seriously this Latino Threat. Speaking to a Phoenix crowd in August 2017, just weeks in advance of the DACA announcement issued by Sessions, President Trump celebrated Sheriff Joe Arpaio (whom he would soon pardon) and told attendees that

The people of Arizona know the deadly and heartbreaking consequences of illegal immigration, the lost lives, the drugs, the gangs, the cartels, the crisis of smuggling and trafficking. MS-13 – we’re throwing them out so fast, they never got thrown out of anything like this. We are liberating towns out on Long Island. We’re liberating.

Can you imagine, in this day and age – in this day and age in this country, we are liberating towns. This is like from a different age. We are taking these people. They don’t shoot people, because it’s too fast and not painful. They cut them up into little pieces. These are animals. We are getting them out of here. We’re throwing them in jails, and we’re throwing them out of the country. We’re liberating our towns. (APPLAUSE)

You've seen it. You've lived it, and you elected me to put a stop to it. And we are doing a phenomenal job of putting a stop to it. That I can tell you. (APPLAUSE)

After years of defending other countries borders – can you believe we fight for other countries; we want to defend their borders – we're finally defending our own borders.

Here, a rhetoric of liberating towns, “taking these people,” fighting the “animals,” and defending U.S. borders is a language of war, one in which President Trump's campaign urged American voters to see Latinos as dangerous enemies.

The Trump Administration's Animus: Latinos as Gang Members

121. President Trump has characterized Latino immigrants, including DACA grantees, as criminals, gang members and threats to the community. The Administration referred to “gangs” and “cartels” in characterizing Latino youth. “We are putting MS-13 in jail and getting them the hell out of our country,” President Trump noted. “They've taken over towns and cities and we are being really brutal with MS-13 and that's what we should be. They are a bad group and somebody said they are as bad as al-Qaida, which is a hell of a reference.”

122. MS-13 allowed the campaign to remind voters about Latino violence and to tell audiences that Hillary Clinton supported dangerous “catch and release” policies. A focus on MS-13 also allowed the candidate and president to emphasize the danger of any amnesty program, or anything like DACA, that might inadvertently include members of these Latin American cartels. Then-candidate Trump repeatedly argued on the campaign trail in 2016 that the existing policy of “open borders” had led to the murder of “wonderful Americans” by Latino immigrants. He turned moments on the campaign trail into memorial services to denounce Latino immigrants for violent crimes against U.S. citizens. Then-candidate Trump aligned himself with widows and other grieving family members to demonize his political opponent. Standing with “working families,” a term intended to suggest white Americans of modest means, then-candidate Trump offered statements such as the following: “I've spent time with the families of wonderful Americans whose loved ones were killed by the open borders and Sanctuary Cities that Hillary Clinton supports.”

123. By focusing on immigrants as past, present, or future criminals, President Trump

criminalized DACA grantees and associated them with MS-13. Others involved in the Trump campaign did the same. A CIS fellow alleged in October 2015 that the Obama Administration was well aware that at least some DACA grantees had been gang members. As a presidential candidate Trump told audiences that the Obama Administration's decision "not to enforce" immigration laws through DACA and other executive acts led directly to the problem of criminal aliens. Then-candidate Trump promised Arizonans that "We will terminate the Obama Administration's deadly, and it is deadly, non-enforcement policies that allow thousands of criminal aliens to freely roam our streets, walk around, do whatever they want to do, crime all over the place."

124. When then DHS Secretary John Kelly affirmed in March 2017 that while DACA holders are required "to obey the law" in order to maintain that status, "some of them don't," he affirmed the link between young Latinos and dangerous criminality. Mark Krikorian, CIS Director, did the same when he tweeted in October 2017 that the state of Georgia "Issues Far More Drivers Licenses to DACA Recipients than Feds Say Live Here," connecting DACA grantees to legal fraud. In March 2017, Kelly also tweeted about the criminality of Latino youth, noting that "even if they are nine years old, we are taking them out."

The Trump Administration's Animus: Protecting "Our Children"

125. To demonize Latino immigrants and "close the border," President Trump and others sought to shift voters' focus away from what were commonly seen as the positive traits of DACA grantees, and from the fact that because they had crossed the border as children they might be seen as innocent of any crime, to focusing on Latinos as criminals posing threat to white citizens, and in particular to American children and teenagers. On the campaign trail, candidate Trump announced that "the media ignores the plight of Americans who have lost their children to illegal immigrants, but spends day after day pushing for amnesty for those here in total violation of the law," a clear effort to link the well-being of white American youth with the rescinding of DACA.

126. President Trump and others characterized Latino youth as dangerous criminals, and

they argued that the well-being of white American children depended upon increased border enforcement and the deportation of undocumented residents. This version of the Latino Threat Narrative – changing the subject from DACA to criminals and cartels – became more important as the Trump campaign progressed. Senator and future Attorney General Jeff Sessions issued a “critical alert” in late-October 2016, just in advance of election day, declaring “a crisis at our southwest border” that centered on the arrival of terrorists and criminals. “Without a commitment to deport aliens who violate our immigration laws,” Sessions warned, “we lose our ability to protect our communities from criminal aliens, terrorism, and cartel-related crime and violence.” One of candidate Trump’s final tweets before the November 2016 election reaffirmed the campaign’s emphasis on labeling immigrants as criminals. On November 4th the candidate promised New Hampshire voters that “We will end illegal immigration, stop the drugs, deport all criminal aliens & save American lives!”

127. President Trump and others in his Administration continued to describe Latinos in these ways after the election. In President Trump’s first post-election national television interview, he reaffirmed the importance of targeting immigrants as criminals in telling Lesley Stahl of CBS that “What we are going to do is get the people that are criminal and have criminal records, gang members, drug dealers, we have a lot of these people, probably 2 million, it could be even 3 million, we are getting them out of our country or we are going to incarcerate. But we’re getting them out of our country, they’re here illegally.”

128. In attempting to galvanize Republican lawmakers and voters from coast to coast, the Trump Administration has defined the Latino Threat, and in particular the MS-13 threat, as a national emergency. Attorney General Sessions claimed in April 2017 that there are now more than 10,000 members of MS-13 in at least forty states. Addressing a joint session of Congress in February 2017, President Trump announced that he had ordered “an aggressive strategy to dismantle the criminal cartels that have spread across our Nation.” He announced that “We will stop the drugs from pouring into our country and poisoning our youth,” that “my Administration has answered the pleas of the American people for immigration enforcement and border security,”

that “we will soon begin the construction of a great wall along our southern border,” and that “we are removing gang members, drug dealers and criminals that threaten our communities and prey on our citizens.” Just days in advance of the rescinding of DACA in 2017, President Trump reassured another audience that “One by one we are finding the gang members, the drug dealers and the criminals who prey on our people. We are throwing them out of the country or we’re putting the hell [sic], fast in jail.”

The Trump Administration’s Animus: “They’re Rapists”

129. Then-candidate Trump also characterized Mexican immigrants as “rapists” when he announced his presidential campaign. Several weeks later he told a CNN host that “if you look at the statistics of people coming, you look at the statistics on rape, on crime, on everything coming in illegally into this country it’s mind-boggling!” When the host corrected his statistics, then-candidate Trump insisted that “somebody’s doing the raping, Don! I mean somebody’s doing it! Who’s doing the raping? Who’s doing the raping?” Then-candidate Trump also issued statements via twitter to support his claim that border-crossers were connected to sexual violence. That same month he tweeted “@AnnCoulter don’t worry... we clearly don’t have an illegal alien criminal problem. #AdiosAmerica” with a screenshot of a Google search results for “illegal alien rape.” In September 2016, he announced in Houston the detention of “an illegal immigrant in the Austin area who is responsible for nearly a dozen sexual assaults,” and a crime in California “by an illegal immigrant who ... had been convicted for child rape.”

130. While it is not always stated, the migrant “rapists” referenced here are clearly men, and President Trump’s repeated association of “Mexicans” and “illegals” with “rapists” echoed longstanding racial animus against Latinos that labeled both immigrants and the U.S.-born as sexual predators. This Latino Threat Narrative and others drew upon established fears of Latino men and other non-whites as rapists. Author Ann Coulter’s bestselling book decrying Mexican immigration had contended that “America is just bringing in a lot of rapists,” and President Trump had tweeted in May 2015 “.@AnnCoulter’s new book—‘Adios, America! The Left’s Plan to Turn Our Country into a Third World Hellhole’—is a great read. Good job!” After then-candidate Trump

pointed to the danger of Mexican immigrant rapists in his campaign announcement, Ann Coulter celebrated the fact that “nobody talked about Hispanic child-rape until now. That was in his opening speech!”

131. In fact, then-candidate Trump and others used references to male immigrants as rapists and sexual threats for political gain throughout his campaign. During the Republican primary race, for example, candidate Trump charged opponent Marco Rubio as being soft on immigrants who had committed acts of sexual violence, tweeting in February 2016 that “Little Marco Rubio gave amnesty to criminal aliens guilty of ‘sex offenses.’ DISGRACE!” The implication that “Little Marco” was not big enough to handle the menacing physicality of Latinos depended on historical stereotypes about Latin American masculinity and sexuality. It also raised questions about whether a Latino candidate such as Rubio could and would protect women from sexual violence.

132. In categorizing Mexicans as rapists, then-candidate Trump alerted white voters that “criminal immigrants” threatened their wives and daughters, and he portrayed himself as the candidate who would protect white women facing a dangerous invasion of their homes and bedrooms. Following the October 2016 Vice Presidential debate, future White House Press Secretary Sean Spicer tweeted that “.@timkaine wants to [talk] tough on crime - fails to talk about defending rapists and murders.”

The Trump Administration’s Animus: “Vomit” and “Filth”

133. Because of the strong rhetorical link between ethnic Mexicans and negative attributes, policymakers have strategically referenced the dangers posed by Mexicans and Mexican Americans in terms of public health, physical safety, and bodily integrity. President Trump has repeatedly done this, as when he told the Texas Patriots PAC that “Everything’s coming across the border: the illegals, the cars, the whole thing. It’s like a big mess. Blah. It’s like vomit.” Few other U.S. national politicians in recent years have been so brazen in characterizing immigrants in such vulgar bodily terms.

134. Established stereotypes about Mexicans as dirty and unclean have long provided

anti-immigrant organizations with a way to reference the dangers that migrants pose to public health in the United States. It was therefore no accident that Attorney General Jeff Sessions referenced Mexicans' "filth" in a major speech on immigration delivered in April 2017. Such language resonates with deep, historical animosity against Latinos in the United States as Mexicans have been described as early as 1855 as "the most inferior of the race" or "a herd of filthy, vile, degenerate, diseased, sub-human Spics," disparaged for "their filthy habits," and criticized for showing "no ambition to rise beyond the station where destiny, dirt, ignorance and sloth have placed them."

135. In the first months of the Obama presidency, some pundits and politicians had blamed an outbreak of influenza on immigrant Mexicans despite the fact that fears of the virus, and its association with Mexico, were exaggerated. In later months, when large numbers of Central American refugees crossed into the United States, politicians and members of the press identified young Latinos as a national health threat. Arizona Sheriff Joe Arpaio highlighted the uncleanness of Latin Americans in 2009:

All these people that come over, they could come with disease. There's no control, no health checks or anything. They check fruits and vegetables, how come they don't check people? No one talks about that! They're all dirty.

Leaders of the American Family Association in 2015 blamed Central American immigrants for spreading measles and Enterovirus D68, despite the lack of any evidence, and argued that immigrants brought dangerously poor hygiene from Latin America:

We [in the United States] have vaccinations and hygiene and cleanliness and we teach people in western civilization how to go to the bathroom properly, how to take care of things, how to do things in a sanitary way. Do you not think that when we open our borders to a glut of people from another world who have never been trained, don't know that, that that's not going to bring in disease?"

136. Some blamed the purported arrival of disease-ridden Latinos on DACA grantees, concluding that youth from Central America were encouraged by lax immigration enforcement and excellent educational opportunities to come to the United States after 2012.

137. As a political candidate, Trump frequently racialized Mexicans by referring to them

as a threat to public health. In July 2015, soon after announcing his candidacy, President Trump declared that Mexicans were responsible for “tremendous infectious disease ... pouring across the border.” He tweeted to “@SenTedCruz In addition to the criminals among the illegal aliens what about all the infectious diseases they brought to US.” Others involved in his campaign and Administration similarly fanned fears about Latin Americans as disease agents. John Kelly told a Senate committee in 2015 that terrorists might intentionally spread ebola “as a weapon” into the United States through migrants and refugees. “It’s a scary proposition,” he concluded.

The Trump Administration’s Animus: Anchor Babies and Families

138. Republican opposition to immigrant youth, and to DACA grantees in particular, fits into a long history of animus that centers on fears and concerns about Latino youth, including those born in the United States. Those fears drove the forced sterilization of ethnic Mexican women in California and other states during the twentieth century. While the *reconquista* narrative developing since the 1970s has focused primary attention on the “invasion” of the United States, worries about Latinas giving birth in this country has been just as important.

139. In 1979, Labor secretary Ray Marshall worried that “the children of today’s illegal aliens” might be “the seeds of a bitter civil-rights struggle in the 1990s.” And Stanford historian David Kennedy warned in 1996 that U.S.-born Latinos might create “a kind of Chicano Quebec ... in the American Southwest.” Such fears prompted John Tanton to see the problem of immigration control as a problem of global population control. Aligning himself with environmental organizations worried about overpopulation, Tanton pushed for border enforcement and birth control in the hope that non-European immigrants would not come to the United States and have children. “Can homo contraceptivus compete with homo progenitiva if borders aren’t controlled?” he asked, contrasting white citizens with Latin Americans.

140. In recent years, anti-immigrant organizations in the United States have become more intent to deny rights to immigrant families, immigrant children, and the growing numbers of U.S.-born citizens with immigrant parents. Peter Brimelow, author of the influential book *Alien Nation*, founded the website VDARE.com (named after Virginia Dare, the “first white child” born

in the New World) to underscore the importance of reducing non-white reproduction, and he used that white nationalist platform to promote the careers of politicians such as Kobach and President Trump. Politicians proposed eliminating birthright citizenship in the name of reducing undocumented immigration. Senator Jeff Sessions stated his opposition to birthright citizenship:

People do not believe you should be able to break into America, have a baby and then the baby becomes a citizen, and the whole family says, ‘We can’t go home. My child is a citizen. It’s an unfair way to gain priority in the application for legal immigration into America.

As the 2016 Republican presidential candidate, President Trump announced that he would also deny citizenship to U.S.-born children of immigrants – so-called “anchor babies.”

141. While the United States had provided racially-segregated education for Latino children for many decades, animus towards young immigrants has also focused on representing Latinos as mentally deficient or unsuitable for higher education. These were important themes in Arizona’s anti-immigrant efforts during the early-twenty-first century. Racial animus has shaped educational policies, and President Trump referenced longstanding questions about the intelligence of Latinos, and of immigrant kids including DACA grantees, when he told supporters in June 2015 that Mexico does not send “its best and finest” to the United States.

142. Codewords for Latino inferiority – many of which referenced Mexican immigrants – justified discriminatory practices in education. Tanton, for example, asked his followers to consider “What are the differences in educability between Hispanics (with their 50% dropout rate) and Asiatics (with their excellent school records and long tradition of scholarship)?” States such as California, Arizona, Kansas, Alabama, and Georgia have passed laws to discourage the public education of immigrant children or make it impossible for them to attend local public universities, and Kobach worked on a FAIR lawsuit in 2004 to fight a Kansas statute providing in-state college tuition to undocumented immigrants.

143. Latino students have therefore been a source of concern for politicians for decades, raising worries about assimilation, radical politics, chain migration, racial integration, and more.

The opposition of President Trump, Jeff Sessions, Kris Kobach, and others to DACA students fits into a pattern of historical nativism directed at both immigrant and U.S.-born Latinos students that began in the early-twentieth century.

The Trump Administration's Animus: "The Wall"

144. Anti-immigrant politicians, activists, and voters have found many ways to characterize the threat of Latinos in recent years, as the preceding pages make clear. President Trump, Sessions, Kobach, Miller, and others have referenced historical characterizations of immigrants and their children as disease-ridden, dirty, subversive, lazy, dishonest, criminal, cruel, stupid, insensitive, violent, and more. References to these dangers posed by Latinos in general, and by Mexican and Central American immigrants in particular, proved critical to Republican efforts to mobilize voters and unite the GOP in 2016. As noted earlier, however, contemporary politicians resist speaking too forcefully, too often, in ways that directly reference racial or ethnic inferiority. Few politicians see themselves as racists, and fewer still see an electoral advantage in being associated with open racial animus. Such an association risks alienating members of the public who believe that biological distinctions of race, and gross declarations about inferiority, are offensive and dangerous. Politicians have therefore used racial code words, and dog whistle politics, to articulate their positions and their views in ways that resonate with historical narratives and seem more acceptable to contemporary Americans.

145. During the Trump campaign, and in the first months of the Trump Administration, the term that has been used most often and most successfully to convey racial animus towards Latinos, and to remind voters of the Latino Threat Narrative, is "the wall." Kobach claims to have played a major role in designing plans to build and pay for that wall. As candidate and president, Donald Trump has repeatedly promised to erect a militarized barrier between the United States and Mexico in the interest of protecting citizenship, jobs, public health, public safety, national security, the welfare system, and more. White House counselor Kellyanne Conway reminded Americans just days prior to the rescinding of DACA that "The president ran on building the wall, won on building the wall, and has remained steadfastly committed to doing it. Anybody who's

surprised by that has not been paying attention for over two years.”

146. As Conway noted, references to constructing a wall were critical to the Trump campaign, and talk of further militarizing the border has resonated with large numbers of voters in the United States familiar with the Latino Threat Narrative. Those references have reminded audiences of the distinctions between “us” and “them”; and talk of “the wall” has been open and wide-ranging enough to allow listeners the opportunity to recall and prioritize the best reasons for building such a barrier. Some voters might see it protecting “us” against job- or welfare-stealing immigrants; others might think first about the need to block MS-13 and other criminal organizations, drug dealers, and rapists; and others might prioritize controlling the arrival of diseased refugees or stopping undocumented immigrants from voting in U.S. elections. President Trump, Kobach, Miller, Sessions, and their associates on the campaign or in the White House have urged voters to worry about various combinations of all of these threats, making “the wall” a powerful “dog whistle” to summon a wide range of negative sentiments related to Latinos in recent years.

147. “The wall” is not an entirely new racial codeword. Other Republicans in the past who pushed anti-immigrant agendas to build electoral support promised to build such a barrier to protect voters from the Latino Threat. Pat Buchanan based his 1996 presidential campaign – clearly grounded in racial animus against Latinos – on that guarantee. In 2006, Iowa Congressman Steve King proposed building an electrified fence along the U.S.-Mexican border, noting that “We do this to livestock all the time.” In the 2012 primary season, Republican candidate Herman Cain demanded an electrified fence: “It’s going to be 20 feet high. It’s going to have barbed wire on the top. It’s going to be electrified. And there’s going to be a sign on the other side saying, ‘It will kill you – Warning.’”

148. Many racial code words have informed recent immigration policies, guiding how Americans understand “the wall” and how they understand programs such as DACA. Understanding how “the wall” and other codewords work requires an understanding of historical context, of concepts such as chain migration, and an appreciation of the ways that politicians have

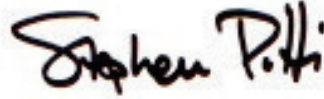
articulated the threats associated with Latino youth.

G. CONCLUSIONS

149. Racial code words link race to other categories of devaluation. In recent years, politicians have connected Latinos as a group to criminality, terrorism, cultural depravity, racial mixing, sexual violence, voter fraud, and other threats. Animus towards Latinos has been a key feature of contemporary U.S. politics, and it certainly proved critical during the Trump presidential campaign. Racial animus shapes discussions of immigration, border enforcement, and policies affecting undocumented residents of the United States – including those covered by DACA. Racially coded speech has played a central role in mobilizing the electorate since the 1960s, and that racially coded language – or “dog whistle politics” – has taken new forms in recent decades as politicians have stoked and responded to the “Latino Threat.” In characterizing Latinos, President Trump and other politicians have drawn upon well-established, negative stereotypes while developing new ones.

150. In sum, a climate of racial animus has surrounded recent political campaigns, including the Trump presidential campaign. Anti-immigrant politics in twenty-first century Arizona provided a testing ground and a model for national Republican Party responses to the Latino Threat. Many leaders important to the Trump campaign, and prominent in the Trump Administration, were involved in Arizona efforts to halt immigration and restrict the rights of resident immigrants. Organizations founded by John Tanton – CAIR, FAIR, and Numbers USA – have been key to the development of President Trump’s immigration policies, including his decision to rescind DACA. Many leading members of President Trump’s Administration and advisers to the President, including Jeff Sessions and Kris Kobach and Stephen Miller, have strong ties to one or more of these organizations. Anti-immigrant politicians have described DACA grantees and other immigrants as a danger to “everyday Americans,” to national security, to public health, and to the safety of the American public. The Trump Administration has routinely exaggerated the number of undocumented immigrants in the United States and their negative impact on U.S. society. The racially coded speech used by the Trump campaign, and by the Trump

Administration, reminds voters of the “Latino Threat.” In recent years, the most powerful and enduring political term for this purpose has been “the wall,” a phrase that coalesces many threatening racial narratives, and that shapes discussions and debates about DACA grantees.

A handwritten signature in black ink that reads "Stephen Pitti". The signature is written in a cursive, slightly slanted style.

Executed on December 9, 2017

Dr. Stephen Pitti, Ph.D.

EXHIBIT 2

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

REGENTS OF THE UNIVERSITY	)	
OF CALIFORNIA, ET AL.,	)	
<i>Plaintiffs-Appellees-Cross-Appellants</i>	)	Nos. 18-15068, 18-15069, 18-15070,
	)	18-15071, 18-15072, 18-15128, 18-15133,
v.	)	18-15134
	)	
U.S. DEPARTMENT OF	)	DECLARATION OF
HOMELAND SECURITY, ET AL.,	)	DR. OTTO SANTA ANA
<i>Defendants-Appellants-Cross-Appellants</i>	)	
_____	)	

Dr. Otto Santa Ana, Ph.D., pursuant to 28 U.S.C. § 1746, declares as follows:

A. INTRODUCTION

1. I am a tenured full professor at University of California, Los Angeles (UCLA). I was appointed at UCLA as Assistant Professor in 1994, promoted to Associate Professor in 2001, and was promoted to full Professor in 2013.

2. I received a B.A. in Anthropology from the University of Arizona in 1977. I received a M.A. in Linguistics with a major in General Linguistics from the University of Arizona in 1981. I received a Ph.D. in Linguistics from the University of Pennsylvania in 1991.

3. I have been the recipient of various fellowships in recognition of my scholarship, including from the Ford Foundation and the Rockefeller Foundation. Most recently, I was a Templeton Fellow at the University of Notre Dame Institute for Advanced Study from 2015 to 2016.

4. My primary field of research and teaching centers on linguistics and the critical analysis of public discourse especially with regard to the use of metaphors and metonymy by public officials, politicians, the media, and members of the public in shaping public discourse and advancing political objectives.

5. I teach or have taught graduate level and undergraduate-level courses on Critical Discourse Analytic Methods, Mass Media Research Methods, Representations of Latinos in Newspapers and in Television News, and Metaphor and Text Media Representations of Latinos.

B. QUALIFICATIONS

6. I serve as Vice Chair of the César Chávez Department of Chicana & Chicano Studies, University of California, Los Angeles.

7. I have served on the governing board of the National Association of Senior Scholars of Color as a founding co-director since 2007. I also serve on the honorary editorial board of the *Applied Linguistics Journal*, the editorial board of the *Journal of Language and Politics*, and have served on the editorial board of the *Journal of Linguistic Anthropology* since 2001. I have refereed journal articles on the use of metaphor in society.

8. I am the author of two major publications that examine the representation of Latinos in public discourse: *Juan in a Hundred: Representation of Latinos on Network News* (University of Texas Press, 2013) and *Brown Tide Rising: Metaphoric Representations of Latinos in Contemporary Public Discourse* (University of Texas Press, 2002). I co-edited *Arizona Firestorm: Global Immigration Realities, National Media, and Provincial Politics* (Rowman & Littlefield, 2012) (with Celeste González de Bustamante), a collection of book chapters by experts who examine the political, economic, historical, and legal issue surrounding Arizona's SB 1070, with special attention to the shaping of public discourse by politicians, government officials, the media, and members of the public. *Juan in a Hundred* received the 2013 Ralph J. Bunche Award of the American Political Science Association awarded to the best scholarly work in political science that explores ethnic and cultural pluralism; *Brown Tide Rising* was recognized by the American Political Science Association as the best book of 2002 on ethnic and

racial political ideology and/or political theory.

9. I have served as an expert in four cases involving discriminatory intent of a public official; defamation on Spanish language radio; verbal sexual harassment in spoken Spanish; and racial hate language in spoken Mexican Spanish.

C. RESEARCH DESIGN AND METHODOLOGY

10. Working with a team of researchers, I prepared a preliminary report in December 2017 that studied then-candidate and now-President Donald J. Trump's language as it related to the characterization of Latinos, Latino immigrants, and DACA grantees. This study is founded on cognitive science theory and is operationalized using an empirical discourse analytic method. Specifically, *conceptual metaphor theory* is a thirty-year-old research enterprise developed in universities across the world. Conceptual metaphor theory argues that above other structures of language, metaphor is a principal cognitive structure that people use to make sense of behavior, objects, and people. The specific method utilized in this study is an empirically grounded version of Critical Discourse Analysis that is based on conceptual metaphor theory. The report, scores of examples, and additional findings can be found at <https://www.thepresidentsintent.com/>.

11. Cognitive science has shown that people use conceptual metaphors to makes sense of, and to communicate to one another about the world. First, it turns out that to think about or talk about any particular topic, from breakfast cereal to family life, from nationhood or patriotism, people only use a handful of conceptual metaphors per topic. When they speak about any topic at length and repeatedly, they use those few metaphors consistently. Second, those handful of metaphors typically tend to be semantically congruent, meaning (in the case of political discourse) that they tend to create a narrative or tell a story. As such, we can empirically operationalize these insights to study Trump's metaphor usage on a given issue, in this case his

public discourse about immigrants, immigration and its relation to the nation.

12. Definition: When we refer to metaphor we are not talking about poetic turns of phrase. Rather we are talking about prosaic, commonplace, unremarkable expressions. In cognitive linguistics a conceptual metaphor refers to the understanding of one idea in terms of another. Textbook examples are the understanding of quantity in terms of directionality, e.g. “the price of peace is rising,” or the understanding of love in terms of insanity, e.g. “I’m crazy about that woman.” It turns out that people use these relatively inconspicuous metaphors to organize their experiences in all conceptual domains, including political domains.

13. Definition: A metonym is a type of metaphor in which the word or phrase that is used stands in for another word of the same semantic domain. For example the metonymic phrase, “Give him a hand,” employs reference to a part of the body to stand in for the whole person addressed. It uses the semantic domain of the human body. Here, a small part represents the whole. Metonyms can operate as code words in political discourse, typically whereby a small portion of a population is falsely extended to the whole.

14. The research team conducted both qualitative and quantitative studies of the President’s public discourse. The quantitative study involved a systematic computer-assisted review of 347 speeches and 6,963 tweets. This data was drawn from the President’s public discourse delivered between August 2015 and mid-September 2017. The corpus totals 824,207 words. The quantitative corpus analysis was preceded by a qualitative research project. The qualitative study was an intensive inductive analysis of 11 carefully chosen speeches and 297 highly relevant tweets.

15. The research team used time-tested protocol to avoid selection bias and interpretation bias. To avoid selection bias, the protocol involves locating a reliable source of a large amount of

data, and establishing the data-gathering criteria, e.g. date-range, discourse type, etc., and then gathering all the discourse data in a single download. The downloaded data are then comprehensively analyzed. An individual datum was not highlighted while ignoring other data; the team did not “cherry-picked” the data to argue for a preordained hypothesis. The speeches analyzed were obtained from <http://www.presidency.ucsb.edu>, and the tweets analyzed were obtained from <http://www.trumptwitterarchive.com>.

16. The team undertook a qualitative inductive analysis following a rigorous protocol to avoid interpretive bias. The researchers do not begin with a hypothesis. Instead, the metaphors are discovered by systematically applying an inductive method to the speeches, phrase by phrase, sentence by sentence. First a pair of team members work together to locate individual instances of metaphor (tokens) of one of the President’s speeches, sentence by sentence, labeling the source and target conceptual domains of each token, and placing the token with its labeling context into a growing table of metaphors. Another pair of researchers works independently to analyze the same speech, again sentence by sentence. Then these four researchers meet to compare their work, to develop a consensus description of the token. In a third pass, the tokens are again reviewed by other members of the research team, again independently, with the goal of finding the commonly accepted consensus label. No tokens are discarded even if they do not fit the general pattern. In this way, the interpretation of each token is determined by consensus.

17. When this protocol is followed, a metaphor pattern emerges inductively. It turns out that people only use a handful of conceptual metaphors consistently when they speak about any topic at length and repeatedly. We locate these metaphors one by one. When compiled, the variation we originally find reduces to just a few conceptual metaphors that typically are semantically congruent. We work with a clear success criterion: the best inductive analysis is the one that

captures the greatest number of metaphor tokens. The constellation of conceptual metaphors of political speeches and statements can be summarized as a narrative.

18. After the qualitative inductive method has located the small handful of semantically related metaphors in the carefully specified subset of speeches and tweets, we use the power of computers to systematically review the whole corpus of over 340 speeches and 6900 tweets in order to test whether or not our qualitative analysis captures the patterning of the large data set. The qualitative analysis was confirmed in the full corpus.

19. Both the qualitative inductive analysis and quantitative computer-assisted analysis employ rigorous research protocol that minimize bias. The data can be independently retrieved, and the method can be independently replicated, which provides a high degree of scientific reliability.

D. SUMMARY OF OPINIONS

20. In his public discourse on immigration then-candidate and now-President Trump employs a set of metonyms (code words) that gives his discourse significantly greater persuasive power by demonizing immigrants, including DACA grantees, by associating all unauthorized immigrants with an infinitesimal subset of violent and dangerous felons.

21. As is the case for all speakers when they speak repeatedly about a single topic, the President's discourse on immigration uses a small number of conceptual metaphors. However, his most frequently repeated metaphors articulate a factually inaccurate and racially repugnant plotline. These conceptual metaphors constitute the characters of a trope or storyline that will be familiar to students of U.S. history: the AMERICA AS FORTRESS. His narrative in brief: The United States is under existential attack from Mexico. Mexico sends ruthless criminal immigrants to wreak havoc throughout the nation. While previous traitorous politicians allowed

this invasion to continue unabated until the United States has come to the brink of collapse, Trump alone is the one person, the hero, who can save America from this invasion. The President uses his code words to give greater persuasive power to his narrative, by falsely excoriating the vast majority of immigrants and exaggerating the danger to the country. Finally, the President uses two rhetorical devices, Pre-emption and Paralipsis, to ostensibly distance himself from his incendiary statements.

22. Trump's conceptual metaphor usage articulates a consistently discriminatory and powerfully persuasive political message that sustains and reinforces false presuppositions and a racially discriminatory view of immigrants, Mexicans, and U.S. Latinos.

E. FINDINGS

Trump's Metonyms (Code Words)

23. Trump uses metonymy to create code words that gives his discourse significantly greater persuasive power by labeling the vast preponderance of unauthorized immigrants with demonizing terms. He uses several code words.

24. First, Trump frequently uses "MS-13," a notorious gang composed of one-third immigrants and two-thirds U.S. citizens, as a metonymy for all Latino immigrants. This metonym attributes the violent behavior of a tiny subset to peaceful and productive Latino immigrants. Combining both immigrant and citizens, the largest estimated number of MS-13 gang members constitute far less than one-tenth of one percent of all unauthorized immigrants.

25. Second, Trump often uses "criminal alien," the two percent of unauthorized immigrants who are charged with felonies, to refer to all unauthorized immigrants. Through this term, he attributes felonious conduct to all unauthorized immigrants who do not commit felonies, such as when he said the following in a speech:

If I'm elected, we will impose tough new mandatory minimum federal prison sentences for anyone who illegally re-enters the country after previously being deported. And we will swiftly remove and deport all criminal aliens from this country, and dismantle the gangs and cartels preying on our citizens. Either we win this election, or we lose the country.

26. Third, Trump repeatedly uses the names of just twelve American individuals who were killed by “criminal aliens” to refer to the “countless Americans” or their families killed by “criminal aliens.” The threat of violence of twelve killers is thus attributed to all unauthorized immigrants. Hence, Trump states that every American is an imminent victim of brutal violence at the hands of an unauthorized immigrant. For example, Trump said in a speech, “Countless Americans are killed by illegal immigrants because our government won’t do its job. These include amazing Americans like Sergeant Brandon Mendoza, of Mesa Arizona, who was killed by an illegal immigrant with a criminal record who should have been deported.” (Trump’s following sentences invoked the names of Kris Eggle, Nick Erfle, and Grant Ronnebeck and detailed their murders).

27. Fourth, Trump conflates children who were brought without authorization by their parents with U.S.-born children of Latino immigrants. He repudiates both groups of children as not “our children,” and with the latter, through his criticism of birthright citizenship, argues that they are not entitled to U.S. citizenship.

28. Trump’s characterization of immigrants from Mexico and other Central American countries is intended to instill and provoke negative feelings, animus, against those groups, including DACA grantees.

29. Fifth, the President employs the code word “open border” to refer to the immigration policy and the purported actual state of U.S./Mexico border under the Obama administration, or a possible Hillary Clinton presidency. He frequently denounced “open borders as dangerous” and

argued that an open-border policy allows criminals, drugs, and murderers to flow into the country. He also described open borders as weak and broken, thus leaving America vulnerable to crime, drugs, and lawlessness. He explicitly argued that drugs coming from the southern border into the United States is poisoning American communities with crime and death. For example, in a speech to law enforcement regarding MS-13, he said the following:

For many years, they exploited America's weak borders and lax immigration enforcement to bring drugs and violence to cities and towns all across America. They're there right now because of weak political leadership, weak leadership, weak policing, and in many cases because the police weren't allowed to do their job.

Since this terminology aligns with the other metaphors, it instantly recalls the leading conceptual metaphor of a nation under attack by invasion.

Trump's Narrative Is Built on a Few Related Conceptual Metaphors

30. Trump's leading metaphor is the fundamental organizing principle behind his discourse about immigrants and the state of this country: NATION AS FORTRESS UNDER ATTACK. He repeatedly described the U.S. as having a "broken border" or "open border" that imperils the American people causing its "homes, cities, and towns" to be "overrun" and "ravaged" by the murderous criminal enemy force from Mexico. Mexico is described as the enemy, whose leaders "send" or "push" its worst people to attack America. He uses the code word "criminal aliens" to describe that attacking force and attribute the felonies committed by two percent of unauthorized immigrants to all unauthorized immigrants.

Trump's Metaphors about the U.S. and Mexico

31. Trump depicts Mexico as the enemy of the United States. He portrays Mexico as the "second deadliest country in the world" and uses this to support his call for a wall between the countries. He declared that the politicians of Mexico were "far smarter than ours" and that Mexico is taking advantage by "killing us at the border and at trade!" He asserted that Mexican

Leaders “push” or “send” “the worst elements of society” to America, such as rapists, killers, and illegal drugs such as heroin. In a televised interview, he made the following remarks:

People are flowing into this country. People in many cases, who are very bad. They are sending their criminals and they are not going to help us. I’m sure there’s going to be some wonderful people, but for the most part those people are not going to be helping. We are getting criminals, gang members, the worst of the worst, and were just letting them flow right in. And now they’re going to be voting? The Democrats like this and they wanted to help.

32. Trump’s narrative NATION AS FORTRESS UNDER ATTACK has stock heroes and traitors. It is telling that Trump used the same negative metaphors for unauthorized immigrants and for Mexico, to smear his political opponents. Trump characterized them as dangerous criminal enemies of the nation who victimize the American people.

33. The Traitors: Trump labels as the traitors of America, Hillary Clinton, Barak Obama, and Republicans who don’t support Trump’s policies. He condemns these politicians as “corrupt” and “weak” based on their views on immigration policies and implied that these politicians were “complicit” in the “crime” and “devastation” resulting from “illegal immigration.” He vilifies the idea of amnesty as an action that would lead to the downfall of America.

34. The Hero: Trump promotes himself as a savior to the American public because he vows to “[f]ind, arrest, jail and deport,” every criminal alien in the United States, and because he will bring justice to “every mom who has lost her child to illegal immigration” through building a wall and defunding sanctuary cities. His catchphrase is “take back our country,” which can be seen in tweets and speeches such as when he tweeted, “We must stop the crime and killing machine that is illegal immigration. Rampant problems will only get worse. Take back our country!” (8/11/15 0:58). He also paints himself as a strong provider because he will build a wall that “will bring back [America] dreams” and deport illegal immigrants who have stolen American jobs.

35. He depicts himself as a brave patriot and “protector” of America. He depicts the police, military, and Border Patrol using the same metaphors he uses for himself. For example, he said, “One by one, we’re liberating our American towns. Can you believe that I’m saying that? I’m talking about liberating our towns. This is like I’d see in a movie: They’re liberating the town, like in the old Wild West, right?” Additionally, he depicted Sherriff Arpaio as a hero, such as when he tweeted, “I am pleased to inform you that I have just granted a full Pardon to 85 year old American patriot Sheriff Joe Arpaio. He kept Arizona safe!” (8/26/2017 2:00:33 AM). He urges that Americans must take back the country allegedly “stolen by immigrants.”

36. In the same way that Trump paints his political enemies, and the nation’s existential enemies with the same villainous metaphors, Trump described himself using the same positive metaphors that he uses to characterize the U.S. military, the police, and the border patrol: both he and they are brave strong defenders of the country.

37. Trump used metaphors to describe America as having its existence threatened by weakened borders and unimpeded waves of criminal immigrants flowing into the nation. He describes the uncontrolled influx of a large immigration population as the result of the lax enforcement of immigration policy by stupid or complicit politicians. For example, he tweeted:

“A nation WITHOUT BORDERS is not a nation at all. We must have a wall. The rule of law matters. Jeb just doesn’t get it.” (8/11/15 0:58).

During a speech delivered at Prescott Valley, Arizona, he similarly said, “Countless Americans who have died in recent years would be alive today if not for the open border policies of this Administration.”

38. For Trump, the linchpin of the survival of the nation is the “Great Wall,” which will allow him to regain control of the border, and close the breach in Fortress America. It is the opposite of the “Open Border” policy and purported state of affairs that exists, as the President

repeated asserts. Trump expressed urgency for his “Great Wall” as the only way to keep the “nation secure.” It is notable that his references to the “Great Wall” echoes his political catchphrase: Make America Great Again. He asserts that this “Great Wall” will bring an end to the “disease” afflicting American communities, namely immigrant “rapists and killers coming across the southern border. For example, he tweeted

“The Wall is a very important tool in stopping drugs from pouring into our country and poisoning our youth (and many others)! If....the wall is not built which it will be the drug situation will NEVER be fixed the way it should be!” #BuildTheWall (4/24/2017 12:28:01 PM)

39. To reiterate, the narrative of Trump’s discourse, as revealed his conceptual metaphors, is that America, a once great fortress, is under siege by “criminal aliens” from Mexico. Mexico is intentionally sending violent criminals, drug cartels, and human traffickers to America, and Mexico is aided by stupid or complicit politicians. Trump is the only brave hero that can “make America great again” by directing law enforcement to expel the invading force and through building a Great Wall.

Trump’s Metaphors about Immigrants

40. Trump’s conceptual metaphors of unauthorized immigrants are linked to his leading metaphor: IMMIGRANT AS CRIMINAL, AS DANGER, and AS DISEASE. He states that all unauthorized immigrants are fundamentally criminals because they broke the law by crossing the border and causing states to incur expenses for public safety, health, and education. Additionally, as criminals, they threaten the very fabric of the U.S. and the rule of law. We will elaborate these metaphors below.

41. Trump identifies the immigrants crossing the southern border as enemy soldiers, as an army of “criminal gangs” who show no remorse to Americans. In a speech to the NRA, he said the following:

It was this conviction that stirred the heart of a great American patriot on that day, April, 242 years ago. It was the day that Paul Revere spread his Lexington alarm -- the famous warning that "the British are coming, the British are coming." Right? You've all heard that, right? The British are coming. Now we have other people trying to come, but believe me, they're not going to be successful. That I can tell you. Nothing changes, right, folks? Nothing changes. They are not going to be successful. There will be serious hurt on them, not on us.

42. Trump also groups all Mexican and Central American immigrants together as the enemy army of "criminal gangs" that has victimized American communities. He tweeted "Again illegal immigrant is charged with the fatal bludgeoning of a wonderful and loved 64 year old woman. Get them out and build a WALL!" (8/11/15 0:29). Further, he said the following:

In Washington, D.C. region, at least 42 alien minors from the border surge have been recently implicated in MS-13-related violence, including 19 charged in killings or attempted killings. You say, what happened to the old days where people came into this country, they worked and they worked and they worked, and they had families, and they paid taxes, and they did all sorts of things, and their families got stronger, and they were closely knit? We don't see that. Failure to enforce our immigration laws had predictable results: drugs, gangs and violence. But that's all changing now.

He paints all unauthorized immigrants in the U.S. as a "threat to the security and future" of our children and all "civilized people." He denounces this immigrant population as being "criminals, rapists, and thieves," and expresses frustration that these "killers" can "walk across the border," commit a crime, and still be allowed to "receive free health care."

43. Trump depicts unauthorized immigrants as "animals" claiming that they are all hyper-violent gang members who "don't like shooting people because it's took quick." He repeatedly employs this metaphor by providing vivid and gruesome examples of exactly twelve cases of a U.S. citizen who was murdered by one of these "animals," as justification for the harshest treatment of each and every unauthorized immigrant. For example, he said the following:

Since January '16 -- think of this -- MS-13 gang members have brutally murdered 17 beautiful, young lives in this area on Long Island alone. Think of it. They butcher those little girls. They kidnap, they extort, they rape and they rob. They prey on children. They shouldn't be here. They stomp on their victims. They beat them with clubs. They

slash them with machetes, and they stab them with knives. They have transformed peaceful parks and beautiful, quiet neighborhoods into bloodstained killing fields. They're animals.

Trump's Metaphors about U.S. Citizens

44. Trump depicts American citizens as victims suffering from the absence of a border wall and poor immigration enforcement. He places blame on sanctuary cities and the immigration policies of past administrations, such as when he said, "Countless Americans who have died in recent years would be alive today if not for the open border policies of this President Obama and Hillary Clinton." Further, he asserts that Americans are often forgotten or ignored by the political establishment.

Two of Trump's Rhetorical Devices

45. All speakers use rhetorical devices to attempt to persuade their listeners to accept the spoken message. Scholars of rhetoric have commented that the President often relies two key rhetorical devices that most speakers rarely use in formal public discourse: Pre-emption and Paralipsis. The rhetorical purpose of these devices is to give the speaker ostensive emotional distance from the statements he or she is making without repudiating those statements. Trump used them to give him psychological cover, to evade responsibility for his offensive statements about immigrants and Mexico.

46. Pre-emption takes the form of a mild positive claim followed by a series of strong negative claims. Trump begins a new topic in a speech or conversation by offering a small or mild compliment about a group, followed with a stream of negative statements that make up the major claim in his speech. For example, Trump tweeted, "I love the Mexican people but Mexico is not our friend. They're killing us at the border and they're killing us on jobs and trade. FIGHT!" (6/30/15 12:57).

47. Paralipsis takes the form of a series of negative claims into which a minor positive claim is inserted, followed by more negative claims. We found that Trump repeatedly inserts a faintly positive statement into a string of negative statements about immigrants or Mexico. For example, in a speech on the day he announced his run for presidency, he said the following:

Mexico sends its people. They are not sending their best. They are not sending you. [pointing to audience] They are not sending you. [pointing to audience] They are sending people that have lots of problems, and they are bringing those problems to us. They are bringing drugs, they are bringing crime, their rapists, and some I assume are good people but I speak to border guards and they tell us what we are getting. and it only makes common sense. It only makes common sense. They are sending us not the right people get it's coming from more than Mexico. It's coming from all over South and Latin America, and it's coming probably probably from the Middle East. but we don't know because we have no protection and we have no confidence. We don't know what's happening.

In this quote, he disparages Mexico for intentionally dispatching its worst people to the US, and he casts slurs on ninety-eight percent of Mexican and other Latin American immigrants. Trump hedges his offensive statements with paralipsis, but note that in this paralipsis he suggests that he has not personally known any Mexican immigrant who is not a felon.

Drilling Down to Legally Protected Groups

48. As discussed above, Trump characterizes Mexico and (Mexican) immigrants as being the invading enemy of the U.S. within his nation as fortress narrative, and he attributes the violent actions of two percent of unauthorized immigrants to all unauthorized immigrants.

49. Trump at times conflates U.S. citizens by birthright and those who are unauthorized because they were brought to the U.S. as children. He repeatedly expresses hostility toward US Latino children, specifically hostility towards their right to U.S. citizenship because of the Birthright Citizenship clause of the 14th Amendment. Trump employs the disparaging term, “anchor babies,” for U.S. Latinos who are born to immigrants, despite their citizenship by constitutional directive. This suggests his concern is not their legal status, but rather their non-

white race, and displays his disdain for their heritage as Mexican-Americans, Salvadoran-Americans, and so forth. For example, he said the following in a speech:

So, we have 300,000 babies a year that you will have to take care of, we all have to take care of your [it] in the case of other countries, including Mexico, they do not do that. It does not work that way. You do not walk up the border one day and all the sudden we have another American citizen. Mexico does not do not do it. Very few places do it. We are the only place just about that is stupid enough to do it.

50. Trump tries to appropriate the terms DREAMers and Sanctuary Cities for the families of his constituency. Trump is ambivalent about the group of activists called the DREAMers, but he clearly expresses derision about the power of their self-describing term, DREAMer, such as when he said, “Where is the sanctuary for American children? Where is that sanctuary? The dreamers we never talk about are the young Americans. Why aren’t young Americans dreamers also? I want my dreamers to be young Americans.”

51. Trump expresses concern that U.S. Latinos will vote Democrat if they stay in the United States. In a televised interview, he said, “We are getting criminals, gang members, the worst of the worst, and were just letting them flow right in. And now they’re going to be voting? The Democrats like this and they wanted to help. These people are going to be voting a hundred percent for Democrats.”

52. Then-candidate Trump repeatedly cited the Indiana-born United States District Judge Gonzalo P. Curiel’s identity as a “Mexican” as evidence that Curiel could not be impartial in the California class-action lawsuit against Trump University. Curiel has said, “[t]he deliberate confusion of ethnicity for nationality is one of the most casually cruel rhetorical devices available in this country,” yet that is precisely what Donald Trump did to Curiel over the summer. For example, in a CNN interview with Jake Tapper, the following exchange occurred:

Tapper: But you’re saying you can’t do his job because of that.
Trump: Look, he’s proud of his heritage, OK? I’m building a wall. We are

building a wall. He's a Mexican. We're building a wall between here and Mexico. The answer is, he is giving us very unfair rulings, rulings that people can't even believe. This case should have ended years ago in summary judgement.

53. Trump denies he is racist, such as when he tweeted "Mitt Romney had his chance to beat a failed president but he choked like a dog. Now he calls me racist—but I am least racist person there is." (11/06/16).

F. CONCLUSION

54. Trump's public discourse, in which he repeatedly uses several related conceptual metaphors to describe immigrants, Mexicans, and U.S. Latinos as the enemy, as disease, as criminal, and as animalistic, is discriminatory and racist according to standard definitions of racism. Trump speaks as if U.S. citizens suffer each day at the hands of immigrants. This scapegoating of Latino immigrants reinforces and capitalizes on his core constituency's economic and cultural insecurities in order to advance Trump's political objectives.

Executed on March 18, 2018



Dr. Otto Santa Ana, Ph.D.