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DACA: Liminal legality and migration management in Obama's immigration policy

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Quito, octubre de 2022.



Leticia Raymundo Tavares

Summary

This thesis will analyze the Deferred Action for Childhood Arrivals (DACA) and how its use of executive action to delay deportation of this specific group of undocumented immigrants fits into the securitist immigration policy implemented by the Obama administration. It seeks to understand the apparent contradiction between the adoption of DACA and the increase in migration control measures during Obama's two terms as president of the US, between 2009 and 2016. In order to achieve this goal, this work takes into account the historic and political context surrounding immigration issues immediately before and during Obama's administration, including his failed campaign promise of comprehensive immigration reform.

This work examines policy documents and speeches made by senior officers of the Obama administration to identify the reasoning behind the adoption of DACA in a context of increased securitization. Using a critical approach to migration management, it analyzes how these two apparently contradictory sets of measures were reconciled in Obama's immigration policy. Finally, it uses the concept of liminal legality to clarify the implications that the adoption of DACA had for its beneficiaries and other undocumented immigrants.

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Introduction

The Deferred Action for Childhood Arrivals (DACA) is an administrative measure adopted by Barack Obama's administration in 2012 that delayed the deportation of a specific group of young undocumented immigrants who arrived in the United States of America before their 16th birthday (US DHS 2012). Until June 2021, around 825,000 young people had benefited from the initiative (Mayorkas 2021).

DACA does not provide its beneficiaries with legal status nor a path to citizenship; it offers only a two-year renewable protection from deportation (US DHS 2012). In spite of that, the program authorizes its beneficiaries to receive work permits, drivers' licenses, and social security numbers, allowing them to access health and education services as well as better employment opportunities (Zatz and Rodriguez, 2015; Dickson, Gindling, and Kitchin, 2017). In this context, DACA beneficiaries have neither a completely legalized status nor a completely illegalized one, but something in-between that leads them to experience different levels of inclusion and exclusion at the same time, resulting in a form of liminal legality (Menjívar 2006; Kubal 2013).

While DACA has had a positive impact on the lives of thousands of otherwise undocumented young immigrants, the same cannot be said about other immigration policies adopted during the Obama administration. Throughout Obama's eight-year presidency, around 3 million people were deported, the highest number for any US president (Nowrasteh 2017). Other measures adopted include increasing the number of detention centers for immigrant families,¹ expanding border control,² increasing punishment for employers who hired undocumented immigrants, and obligating local police departments to cooperate with the federal government's deportation actions (Nowrasteh 2017).

The adoption of DACA in such a context of increased control towards undocumented immigrants presents what seems to be a contradiction in the Obama administration's immigration policy. This contrast is even more evident when taking into account that one of

¹ Amanda Sakuma. "The Failed Experiment of Immigrant Family Detention". *NBC News*, August 3, 2015. <https://www.nbcnews.com/news/latino/failed-experiment-immigrant-family-detention-n403126>

² "Obama Signs \$600 Million Bill to Boost U.S. Border Security". *PBS*, August 13, 2010. <https://www.pbs.org/newshour/show/obama-signs-600-million-bill-to-boost-u-s-border-security>

Obama's campaign promises when he was elected for his first term was comprehensive immigration reform (Zatz and Rodriguez 2015; Wallace 2012).

The adoption of DACA through executive action is often considered a response to Obama's inability to pass immigration reform or even the less ambitious Development, Relief, and Education for Alien Minors Act (DREAM Act) in a heavily polarized US Congress (Wallace 2012; Lowande and Milkis 2014; Skrentny and López 2013). Several authors point out that Obama needed to mobilize the Latino voters for the 2012 election, as they had been essential for his first presidential victory, and that DACA played that mobilizing role by assuring that Obama had a positive result to present in regards to immigration (Wallace 2012; Zatz and Rodriguez 2015; Lowande and Milkis 2014; Skrentny and López 2013). The pressure from civil society movements, especially those comprised of undocumented immigrants who would have benefited from the DREAM Act is also believed to have had some level of influence over the decision (Zatz and Rodriguez 2015; Skrentny and López 2013).

Although all of these factors are undoubtedly important in explaining why DACA was adopted, they do not necessarily explain the contradiction between what the Obama administration promised in his election campaign and the adoption of DACA versus the securitist turn that most of its immigration policy took.

The main goal of this study is to explain how the concession of differed action to this specific group of undocumented immigrants relates to the increase in migration control measures towards other undocumented people in Obama's immigration policy. Using a critical approach to migration management as an analytical lens (Kalm 2010; Geiger and Pécoud 2010), I argue that there might not be a contradiction in Obama's immigration policy, but rather that the partial and unstable inclusion promoted by DACA and the increase in control measures might be two sides of a migration management strategy towards undocumented immigrants in the US. This is because migration management combines a limited and steered openness to migration with control measures to reduce undesirable flows (Kalm 2010; Geiger and Pécoud 2010; Estupiñan Serrano 2014; Domenech 2018). Therefore, it could help reconcile the apparently contradictory measures adopted by Obama. In this context, the question that will guide this investigation is: how does the semi-legal status granted by DACA fit into the Obama administration's strategy for the management of the undocumented population?

Understanding how DACA connects to a securitist immigration policy is relevant for two reasons. The first is that the liminal legality provided by DACA remains a source of insecurity for its beneficiaries even almost ten years after its adoption, as stated in the essay published by two DACAmended³ young immigrants in the New York Times:

When President Barack Obama created the Deferred Action for Childhood Arrivals program in 2012, the program gave a lifeline to undocumented youth who would now have work permits, access to more-affordable higher education, and be safer from deportation. Then, not long after Donald Trump came into office, the new administration attempted to dismantle DACA. The Supreme Court overruled the Trump administration in 2020. But just last month, Judge Andrew Hanen of the U.S. District Court in Houston suspended the program, stating that it was unlawful and no new applications should be approved. (The Biden administration will appeal the ruling.)

The back and forth in the courts has kept a generation of young undocumented immigrants — and their families — in limbo. They live with the fear that their DACA status could be revoked at any time. The most recent setback means that tens of thousands of undocumented cannot gain a work permit, cannot afford to go to college or buy a home and build their lives here.⁴

The “back and forth” mentioned in the excerpt refers to the Trump administration’s attempt to rescind DACA in 2017, which was overruled by the US Supreme Court in 2020,⁵ and to the July 2021 Texas court ruling which deemed DACA unlawful and prohibited the processing of new applications.⁶ This issue is not yet completely resolved, as the Biden administration declared it would appeal the decision and propose a new rule regarding DACA (US The White House 2021b).

³ DACAmended is a term used to refer to persons who have received deferred action under DACA.

⁴ Lorella Praeli and Hina Naveed. “This Can Be the Year We Fulfill Our Promise to Dreamers”. Opinion. *The New York Times*, August 9, 2021. <https://www.nytimes.com/2021/08/09/opinion/daca-dreamers-citizenship.html>

⁵ “Daca: Judge Orders Trump to Restore Undocumented Immigrants Scheme.” *BBC*, December 5, 2020. <https://www.bbc.com/news/world-us-canada-55200208>.

⁶ Brent Kendall and Michelle Hackman. “DACA Immigration Program Invalidated by Federal Judge”. *The Wall Street Journal*, July 17, 2021. <https://www.wsj.com/articles/federal-judge-rules-obama-era-daca-immigration-program-is-illegal-11626471046>.

These recent challenges show that DACA is still in dispute and its beneficiaries are not safe. This is partially due to how fragile the program is. Its legal basis – executive action – creates uncertainty for young undocumented immigrants, as the program could easily be terminated by a future administration (Zatz and Rodriguez 2015).

This leads to the second reason why understanding the articulation between DACA and a securitist immigration policy is important. The Biden administration's upcoming proposals regarding DACA will have a major impact on the lives of thousands of potential beneficiaries who are or would be eligible for the program in upcoming years. Understanding the reasoning behind the immigration policy in the Obama administration might shed some light on the future of US immigration policy, as Biden not only is from the same Democratic party as Obama, but also was vice president during his two terms.

In fact, there is already potential evidence that this contrast persists in the Biden administration's immigration policy. Biden has defended DACA and is trying to negotiate a pathway to citizenship for undocumented young people who arrived in the US as children (US The White House 2021b; Reuters 2021). However, his administration has also adopted several migration control measures, such as continuing to use the Covid-19 related health order Title 42 to automatically deport adults and families caught crossing the border illegally (Human Rights Watch 2021; BBC 2021). In addition, during a visit to Guatemala in June 2021, Biden's vice-president, Kamala Harris, made a strong statement warning potential immigrants not to go to the US border or they would be turned back by border enforcement⁷.

In this context, analyzing the Obama administration's visions and practices around immigration can be enlightening. Understanding the contradiction in Obama's immigration policy – if there is indeed a contradiction – can help identify the rationality behind the adoption of DACA and provide insights on Biden's approach to the topic. In addition, it could provide evidence to help other groups of undocumented immigrants and political activists devise possible strategies to fight for their rights.

From an analytical perspective, the main contribution of this work is to analyze DACA through a critical migration management lens. Even though DACA has been thoroughly

⁷ “Kamala Harris Tells Guatemala Migrants: ‘Do Not Come to US.’” *BBC News*, June 8, 2021. <https://www.bbc.com/news/world-us-canada-57387350>.

examined from multiple perspectives, there are not many analyses that see it from a migration management approach. I believe that this perspective, combined with the concept of liminal legality, can help understand Obama's rationality in migration matters and clarify why this particular group of undocumented immigrants was benefited by DACA.

In order to do that, this project employed a qualitative methodology based on a case study to answer the research question posed above. The research scenario is Barack Obama's presidential administration in the US between 2009 and 2017. The units of analysis are the Obama administration's immigration policies and governmental discourses on migration.

Two research techniques were employed in this work: discourse analysis of speeches made by high-level officers of the Obama administration and document analysis of immigration policy documents. Eleven speeches were analyzed for this work: five by President Obama, four by Department of Homeland Security (DHS) Secretary Janet Napolitano, and 2 by DHS Secretary Jeh Johnson. All transcriptions were obtained from official US government digital archives⁸. In addition, six policy documents from the US federal government were reviewed - five memorandums and one guidelines document -, all obtained from official government archives⁹. In total, 17 documents have been analyzed¹⁰. News articles from the US and international press and specialized academic literature were reviewed as well.

Five of the policy documents analyzed are DHS memorandums that defined the guidelines for measures adopted by the Obama administration. Two of them refer to DACA and DACA+/DAPA and the other three refer to the definition of priorities for apprehension, detention, and deportation. The idea behind this choice was to be able to compare the language and arguments used for each set of programs to gain a better comprehension of Obama's immigration policy as a whole. The guidelines document analyzed is a US Citizenship and Immigration Services (USCIS) webpage that offers detailed orientation for DACA applicants regarding eligibility, application process, appeals, and other relevant topics.

⁸ The transcriptions were obtained from the digital archives of the following websites: <https://obamawhitehouse.archives.gov> and <https://www.dhs.gov>.

⁹ The documents were obtained from the digital archives of the following websites: <https://www.dhs.gov>; <https://www.ice.gov/>, and <https://www.uscis.gov>.

¹⁰ The complete list of documents can be found in appendix 1.

In regards to the speeches, the focus was on discourses made by the President and the DHS Secretaries because those were the high-level officers directly involved with immigration policymaking and implementation. Among the speeches, there are different levels of specificity. Some of the speeches address DACA or comprehensive immigration reform specifically. Others address immigration in general or immigration in the context of border security. Finally, there are two State of the Union speeches among the documents analyzed. These are general speeches that address one year of the Obama administration, covering most of the relevant policy areas, not only immigration policy. The speeches were also addressed at different audiences; some were addressed to the nation as a whole, others were made at more reserved settings with specialized personnel.

The main goal of this selection of speeches was to ensure a comprehensive understanding of the Obama administration's discourse on migration. It was important for me to understand if the discourse changed according to the speaker or the audience, or overtime. It was also relevant to understand the level of importance conferred to immigration issues in more general speeches, where the space to address each policy area is more limited, and to identify which immigration policy topics were included in those speeches.

Two forms of triangulation were used to strengthen the analysis: the triangulation of data through the use of different sources of information - policy documents, discourses, press articles, and specialized literature - and the triangulation of theories, with the use of both liminal legality and a critical approach to migration management to analyze the data.

One limitation of the project was the fact that all the materials analyzed had to be available online. Given the location of the researcher and the movement restrictions in place due to the COVID 19 pandemic, it was not possible to access physical archives of relevant policy documents, speeches, and press records. Therefore, if relevant material was not available online, it was not included in the analysis. Another limitation was the lack of access to working documents and testimonies of members of the Obama administration that reflect the internal process of DACA's policy design, which could have provided interesting insights into the rationale behind the initiative.

This research project was guided by the principles of honesty, integrity, and truthfulness. I declare that there are no conflicts of interest. This work was also motivated by the principle of

justice, as it represents an attempt to understand the different treatments offered to groups of undocumented immigrants in the US, with significant repercussions in their access to various services and economic opportunities. It is unlikely that this investigation into the reasons for the adoption of DACA in a context of increased migration control will result in negative consequences for the recipients of DACA or the authorities involved in the design and implementation of the program. However, the evidence provided in this work may be used by individuals and organizations in initiatives aimed at influencing future policy decisions.

Chapter 1. Migration management and liminal legality

As discussed in the introduction, this thesis seeks to identify why the Obama administration decided to offer deferred action and other benefits to certain undocumented immigrants while increasing control measures against their peers and to explain how these apparently contradictory measures were reconciled in his immigration policy. To shed light on the rationality behind these decisions, I will use two different perspectives in my analysis: liminal legality and a critical approach to migration management. This chapter will provide an overview of both.

Before we can analyze DACA, it is necessary to understand migrant “illegality” and why it exists. This definition will be relevant for the comprehension of both liminal legality and migration management. In this context, the first section will explain how migrant “illegality” is constructed, how it benefits states, and how it affects the lives of undocumented immigrants. At this point, it is important to clarify that in this work, illegalized migration will be used interchangeably with undocumented migration and irregularized migration.

The second section will focus on migration management. In this segment, I will introduce the main proposals related to migration management and discuss the critical literature that highlights its contradictions and its neoliberal character. This critical approach can provide a useful framework to analyze DACA because migration management combines a regulated openness to migration according to the receiving states’ economic interests with control measures aimed at reducing unwanted flows. In this sense, migration management provides a framework that can reconcile the contradictory measures adopted by the Obama administration and help explain the rationale behind the adoption of DACA.

Finally, the third section will discuss the concept of liminal legality and how it affects undocumented immigrants. Understanding the role of semi-legal statuses in immigration policy will contribute to a better understating of how the partial and temporary regularization provided by DACA affects its beneficiaries and how it contributes to Obama’s immigration policy.

1.1. Migration policy and migrant “illegality”

In order to understand migrant “illegality”, it is necessary to recognize that it is more than a juridical status. It represents a sociopolitical identity that defines the relationship between immigrants and the state (de Genova 2002). “Illegality” is produced in specific historic and political contexts through different practices and strategies used by states and other actors, such as employers (de Genova 2002; Ellis, Gonzales, and Rendón García 2019).

Immigration law usually draws the limits of “illegality” by defining who is “legal”, and therefore making everyone else “illegal” (Kubal 2013). But this is not a neutral definition; it depends highly on the context and often changes throughout time according to the conditions of specific historic moments, as the law is a field of dispute, often used to mediate political and social conflict (de Genova 2002). In a capitalist state, law can often function as a disciplinary instrument for the subordination of labor, including immigrant labor (de Genova 2002). But there are other factors that also help define “illegality”, such as judicial and administrative decisions, other types of legislation – including labor laws -, immigration enforcement and surveillance practices, and racial discrimination (de Genova 2002; Ellis, Gonzales, and Rendón García 2019; Kubal 2013).

In this context, migrant “illegality” is a process that excludes immigrants from participating in the political entity that is the nation, while also including them physically and socially under vulnerable conditions as illegalized subjects (Ellis, Gonzales, and Rendón García 2019; de Genova 2002). “Illegality”, embodied in restrictive and punitive immigration policies, promotes the subordination of undocumented immigrants’ labor by making them endure long periods of exploitation, oppression, and harassment (de Genova 2002; Ellis, Gonzales, and Rendón García 2019). These measures, combined with the deportability of illegalized immigrants – that is, the possibility that might be deported at any given time – often lead immigrants to adopt self-disciplinary practices (de Genova 2002; Ellis, Gonzales, and Rendón García 2019).

This happens because legislation and enforcement practices adopted by states divide immigrants into different, hierarchized categories according to their legal status, with undocumented ones occupying the lowest level (de Genova 2002; Menjívar 2006; Ellis, Gonzales, and Rendón García 2019). This leads to differentiated treatment and therefore

different forms of inclusion into the receiving society, which means that immigrants' legal status shapes their access to rights, their opportunities for work, and their participation in communities (Menjívar 2006).

However, some authors argue that “illegality” does not necessarily affect every aspect of immigrants' lives (Kubal 2013; de Genova 2002). Illegalized immigrants still engage in social relations that allow them to continue with their daily lives (de Genova 2002; Ellis, Gonzales, and Rendón García 2019). The restrictions caused by “illegality” may vary according to specific contexts as they are a result of the different legislations and enforcement practices adopted by states (Kubal 2013).

In this context, it is clear that immigrant “illegality” is not an external issue that states seek to address through immigration policy, but rather a product of a restrictive immigration policy. In addition, “illegality” has a disciplinary effect that contributes to the subordination and exploitation of immigrant labor. In the next section, I will discuss migration management, a contemporary and widespread framework for handling migration issues, and how it perpetuates illegalized flows.

1.2. Migration management

Migration management is an approach developed in 1993, at the request of the UN Commission on Global Governance (CGG), by Bimal Gosh, an expert who has worked for different United Nations (UN) agencies (Geiger and Pécoud 2010; Estupiñan Serrano 2014). It was developed in a context of globalization, increased migration flows, post-Cold War reconfiguration of power, and doubts about the effectiveness of traditional migration control, which led states to seek new alternatives (Estupiñan Serrano 2014; Domenech 2018).

The concept was the basis for the New International Regime for Orderly Movements of People (NIROMP), a UN proposal for a comprehensive framework for orderly migration (Geiger and Pécoud 2010; Domenech 2018; Estupiñan Serrano 2013). Throughout the 2000s and early 2010s, migration management was adopted and disseminated by several different organizations, such as the International Organization for Migration (IOM), the UN, the European Union, regional consultation forums, and think tanks, and became widespread at a global level (Estupiñan Serrano 2013; 2014; Domenech 2018; Geiger and Pécoud 2010).

Migration management considers migration a natural phenomenon that can be beneficial for sending and receiving countries as well as for migrants, as long as it is adequately managed (Ghosh 2012; Estupiñan Serrano 2014; Kalm 2010). Given that it is not possible or desirable to eradicate migration (Domenech 2018; Kalm 2010), its goal is to make the “movement of people more orderly and predictable as well as productive and humane, based on a commonality and reciprocity of interests of all the actors involved” (Ghosh 2012, 26).

In this sense, migration management would be an alternative path between a restrictive approach focused on migration control and an open border policy with unrestricted freedom of movement (Ghosh 2012; Estupiñan Serrano 2013; 2014). It is based on the principle of “regulated openness”, which combines the provision of increased opportunities for legal immigration according to the demographic and labor market needs of receiving countries with efforts to reduce “irregular” immigration (Ghosh 2012; Estupiñan Serrano 2014; Geiger and Pécoud 2010; Domenech 2018; Kalm 2010).

In order to do that, migration management proposes a comprehensive regime that includes all forms of migration, from refugees to labor migrants (Ghosh 2012; Geiger and Pécoud 2010; Domenech 2018; Estupiñan Serrano 2013). This regime is based on three pillars. The first is the definition of shared policy goals, which should aim to reduce the pressure for “irregular” migration in both sending and receiving countries and increase the cost-effectiveness of migration control (Ghosh 2012). These objectives should also seek to increase transparency regarding immigration law at the national level, minimize negative effects of migration and uphold the human rights of immigrants (Ghosh 2012).

The second pillar is the harmonization of norms and policies through the adoption of a coherent international framework (Ghosh 2012; Geiger and Pécoud 2010; Estupiñan Serrano 2013). This framework is designed as a soft instrument, which could rely on related but independent instruments (binding or non-binding) for support within a harmonized approach (Ghosh 2012). Finally, the third pillar is the adoption of institutional arrangements that promoted better coordination among involved parties at a global level, which includes not only governments but also international organizations, non-governmental organizations (NGOs), expert panels, and the private sector (Ghosh 2012; Geiger and Pécoud 2010; Estupiñan Serrano 2013).

1.2.1 Critical approach to migration management: a neoliberal governmentality

From a critical perspective, migration management is a form of government of populations that advocates for an increase in freedom of movement but within the limits of economic interests (Geiger and Pécoud 2010; Kalm 2010). It is considered a political rationality embedded in the neoliberal governmentality (Estupiñan Serrano 2014; 2013; Kalm 2010).

Governmentality here refers to a specific form of exercise of governmental power targeted at the management of populations (Foucault 1991; Kalm 2010). This power is exercised through a set of institutions, procedures, and analyses, and it is supported by certain forms of knowledge (Foucault 1991). In this context, government consists of governmental technologies and political rationalities (Kalm 2010). Governmental technologies refer to the operative mechanisms used to exercise power (Kalm 2010). Political rationalities are discourses that support the exercise of power, by using a shared vocabulary to conceptualize problems and provide moral justifications for intervention (Kalm 2010; Estupiñan Serrano 2014; Geiger and Pécoud 2010). These discourses are influenced by the relations of power and governmentalities surrounding them (Kalm 2010).

In this context, the political rationality of migration management was heavily influenced by the neoliberal governmentality which has spread throughout public management since the 1970s (Kalm 2010; Estupiñan Serrano 2014; 2013). Liberalism is a form of government through freedom that seeks to steer the actions of individuals instead of forcing them to behave in a certain way; in this sense, it seeks to reduce the role of the government and relies on other sources of authority and on self-regulation to influence behavior (Kalm 2010). However, this freedom is not abstract or complete, but rather limited by certain conditions. The government manages freedom by defining these conditions according to certain goals (Kalm 2010; Estupiñan Serrano 2014; 2013).

In the context of migration management, this means that the main goal of its “controlled openness” is not to promote migrants’ autonomy and freedom of movement, but to foster economic development through the steering of migration flows (Kalm 2010; Estupiñan Serrano 2014; Geiger and Pécoud 2010; Domenech 2018). It seeks to maximize the benefits and the profitability of a labor force that moves mainly from the global South to the global

North while diminishing negative effects associated with it (Kalm 2010; Estupiñan Serrano 2014; Domenech 2018). Migration management does not question the global capitalist structure nor the influence of economic factors on freedom of movement (Geiger and Pécoud 2010).

Although migration management is depicted as a softer alternative to control measures, it is still a form of control, but one that operates more subtly, through selective freedom of movement, the battle against irregular flows, and indirect techniques such as the fostering of neoliberal subjectivities (Kalm 2010; Estupiñan Serrano 2014; 2013; Geiger and Pécoud 2010).

Its discourses usually depict migrants as entrepreneurial neoliberal subjects, who are willing to move from one place to another when required but who also maintain strong bonds to their places of origin and are committed to its economic development (Kalm 2010; Geiger and Pécoud 2010). This discourse then serves as justification for selective practices advocated by countries and international organizations, such as circular migration and voluntary returns, which prevent migrants from settling at the receiving country and allows governments to adjust immigration to their market needs (Kalm 2010; Estupiñan Serrano 2014).

In this sense, Geiger and Pécoud (2010) argue that migration management encompasses an idea mobilized by certain actors to justify interventions, a range of practices, and a range of discourses on migration. It often unites completely different activities under an apparently coherent umbrella, facilitating cooperation (Geiger and Pécoud 2010). The participation of several different actors - such as states, international and regional organizations, NGOs, academia, and the private sector – in migration management and the fragmentation of responsibility among them creates a complex scenario of conflicting interests and strategies. This is exacerbated by the influence that developed migrant-receiving countries – especially the US and the EU countries – have as the main donors for many of those non-state organizations (Geiger and Pécoud 2010; Kalm 2010). This is relevant because those institutions help disseminate migration management and introduce it into developing countries' policy-making as “best practices” that are supposed to benefit immigrants but actually function as a kind of migration control (Geiger and Pécoud 2010).

However, these conflicts of interest are often masked by the representation of migration management as a neutral and technical approach, based on a mutually beneficial consensus. The use of managerial language depoliticizes migration and legitimizes the control measures adopted by governments by granting them “technical” varnish (Geiger and Pécoud 2010; Kalm 2010).

At the same time, migration management discourses frequently refer to the enforcement of human rights and humanitarian law, often portraying migrants as “victims” that need to be defended (Domenech 2018; Geiger and Pécoud 2010). However, few concrete improvements have been made to that end. Migration management has not produced legally binding regimes to protect migrants’ rights, relying only on soft instruments, and some states have used migration management to avoid fulfilling humanitarian law obligations (Geiger and Pécoud 2010).

Finally, migration management’s concern for orderly migration establishes “irregular” or unordered migration as a risk-filled problem, perpetuating the desirable/undesirable immigration flows division and justifying interventions to prevent and stop undesirable flows, thus contributing to the criminalization of irregularized immigrants (Domenech 2018). In this sense, migration management simultaneously promotes the inclusion of immigrants through selective openness and illegalization (Estupiñan Serrano 2014). As discussed in section 1, this inclusion through irregularity plays an important role in the subordination of immigrant labor in the neoliberal capitalist system (Estupiñan Serrano 2014; de Genova 2002; Ellis, Gonzales, and Rendón García 2019). The next section will discuss liminal legality and its role in promoting incomplete and precarious forms of inclusion that reinforce immigrant vulnerability and subordination.

1.3. Liminal legality in migration policy

Liminal legality, sometimes referred to as semi-legality, is a concept developed by Cecília Menjívar in the early 2000s during her research on Central American immigrants in the US (Chacon 2015). In her conceptualization, Menjívar (2006) draws on anthropologist Victor Turner’s concept of “liminality”, defined as the transition period between two stable conditions, which creates structural invisibility for those who are not classified in any of the

two categories. Menjívar (2006) also relies on the concept of “legal non-existence” proposed by Susan Coutin, which refers to the reality of “being physically present and socially active, but lacking legal recognition” (Menjívar 2006, 1007).

In this context, Menjívar and other authors question the dichotomy between legalized and illegalized migration, where everything that is not strictly and completely in accordance with law is deemed illegal (Menjívar 2006; Kubal 2013). Instead, they argue that there is a stratified variety of statuses created by the law that result in different and fragmented forms of membership (Menjívar 2006; Kubal 2013). The concept of “liminal legality” refers to the various situations that are in the spectrum between a completely regular legal status and total legal exclusion, and that often combine characteristics of both conditions (Menjívar 2006; Kubal 2013). It is, therefore, an ambiguous status, in-between documented and undocumented (Menjívar 2006). It is important to clarify that these statuses are not a process or a phase from an undocumented status to a documented one (Menjívar 2006).

These liminal legality statuses create a situation of vulnerability and subjugation that compromises immigrants’ rights, as legal status shapes their access to society (Menjívar 2006; Kubal 2013). Menjívar (2006) argues that legal status influences all of the spheres of immigrants’ lives, as it affects their opportunities, access to rights and social programs, and legitimizes their presence. Legal status also has an impact on how immigrants themselves perceive their place in the receiving society (Menjívar 2006).

Alternatively, Kubal (2013) claims that immigrants’ lack of legal status only affects them in certain contexts, mainly those that pertain to their relationship with the state. In this sense, the lack of legal status is just one element of immigrants’ experiences, and it only affects other areas of life insofar as it restricts their actions and relations (Kubal 2013). The experience of “illegality” is contextual and is only relevant when accompanied by forms of exclusion, as immigrants often lack legal guarantee of certain rights, but have de facto access to them – like work (Kubal 2013). However, both authors agree that legal status is not the only determinant of integration, as other factors, including migrants’ agency, condition their membership and their access to services and opportunities (Menjívar 2006; Kubal 2013).

These liminal legality statuses are created by the strict immigration laws of receiving countries, which make it difficult to obtain and maintain legal status, thus creating a grey area

between legality and “illegality” (Menjívar 2006). Kubal (2013) emphasizes that other types of legislation affecting immigrants, as well as enforcement practices by both state and non-state entities, also help determine the boundaries of liminal legality. These elements are part of a regime that is designed to keep immigrants in vulnerable and undetermined legal statuses, simultaneously subject to exclusion and precarious forms of integration (Kubal 2013; Menjívar 2006).

Kubal (2013) also points out that neoliberal regimes, which often adopt a strong rhetoric against irregularized immigration, actually perpetuate liminal legality statuses and often have low rates of immigration enforcement against the illegalized population. This is partially stimulated by the tension between “national” interests – which claim for more control –, the needs of a globalized neoliberal economy, and the international and constitutional human rights regimes that limit states’ possibilities for action (Kubal 2013).

Throughout this chapter, I have discussed the idea that migrant legality and “illegality” are not external realities that states seek to address through migration policy, but rather that they are created by states through immigration law and its enforcement. In this context, “illegality” has a disciplinary role in ensuring the subordination of immigrant labor, by promoting the incomplete integration of illegalized immigrants as a vulnerable and exploitable workforce. I have also addressed migration management and how it combines a regulated openness with measures to reduce irregular immigration in a regime that caters to the neoliberal economic interests of developed countries. Finally, I have discussed how liminal legality challenges the legalized/illegalized binary by showing that there are several stratified forms of belonging between these two poles. In the next chapter, I will present the historical context in which DACA was created, to provide a basis for the analysis which will be conducted in chapter 3, where I will use the concepts discussed here to analyze the adoption of deferred action in a context of increased migration control.

Chapter 2. The broken promise of immigration reform and a new hope for young undocumented immigrants

The main goal of this chapter is to introduce the historic and political environment that led to the adoption of DACA by the Obama administration in 2012. In order to analyze this decision, it is relevant to understand the legal constraints and political interests that shaped it.

This chapter is comprised of three sections. The first describes the growth of the undocumented population in the US and the historic factors that contributed to it. The second addresses Obama's campaign proposal of immigration reform in 2008 and provides an overview of his immigration policy and his attempts to advance the reform agenda. Finally, the third section contextualizes the decision to establish DACA through executive action.

2.1. The growth of the undocumented population in the US

The undocumented immigrant population in the US experienced a significant growth between the 1990s and the late 2000s, going from 3.5 million people in January 1990 to 11.6 million in January 2008, according to estimates from the US Department of Homeland Security (US DHS 2000; Hoefler, Rytina, and Baker 2009). Immigrants from Latin American countries have consistently represented the majority of the undocumented population: in 1990, 78,4% of the estimated undocumented immigrants came from Latin America, and Mexicans alone made up 58,3% of this population (US DHS 2000). By 2008, 76% of the undocumented population was comprised of people from Latin American countries (Hoefler, Rytina, and Baker 2009). A more detailed overview of the demographics of the undocumented population during the Obama administration and its implications for immigration policy decisions will be presented in the following sections. However, before going into that, it is important to understand the reasons for the growth of the undocumented population. In this context, I will address some of the issues that shaped US immigration policy in this period: the securitization process and the policy decisions that contributed to an increase in the number of undocumented immigrants.

2.1.1. The securitization of US immigration policy

Immigration to the US has gone through different phases throughout history, but discrimination and differential treatment towards certain racialized foreign-born populations, such as the Chinese in the 19th century and more recently the Mexicans, have constantly been a part of US immigration policy (Levesque and DeWaard 2021; Hutchison 2020; Baxter and Nowrasteh 2021).

The first phase of immigration, from the late 1700s to 1860, was characterized by mainly British and Northern European immigrants. The second phase, which extended between 1860 and 1920, saw the arrival of Southern and Eastern European immigrants and was marked by a racial divide based on cultural differences and expectations of assimilation (Levesque and DeWaard 2021; Baxter and Nowrasteh 2021). This culminated in the third phase, between 1920 and 1960, characterized by a nativist approach and the development of selective immigration policies based on national origin, such as the National Origins Quota Act of 1924 (Levesque and DeWaard 2021; Baxter and Nowrasteh 2021).

The fourth phase of immigration consisted of the adoption of a preference system that privileged those with highly demanded skills or American family members. This, coupled with the end of the Bracero Program, a temporary workers program for Mexicans, led to a significant increase in undocumented immigration (Levesque and DeWaard 2021). There was also a shift in national origins from Europe to Latin America and Asia, with growing xenophobia. This resentment was increasingly framed in bipartisanship terms from the 1990s onward, with the Republican Party gathering votes among white Americans in immigration receiving areas who favored more restrictive policies (Levesque and DeWaard 2021).

Levesque and DeWaard (2021) argue that the US is now in the fifth phase of immigration, where politicians have capitalized on the fear of white culture decline due to demographic change and foreign access to permanent residence. They have used this anxiety to create a divisive politics of fear and worthiness based on stereotypes of immigrants as threats. These stereotypes that characterize immigrants as “welfare-parasites,” “violent criminals” or “job thieves” are not new, but they have gained momentum with the greater attention placed on immigration in the aftermath of the terrorist attacks of September 11, 2001 (Hutchison 2020).

Mabee (2007) argues that the terrorist attacks, coupled with a perception that globalization had changed the nature of risk, making it more globalized, led to a securitization process in US policy. One of the consequences of such a process was the creation of the concept of “homeland security”, which included immigration (Mabee 2007). This resulted in the securitization of immigration policy, adding a new dimension of national security to existing fears, as it established a link between immigration and terrorism (Hutchison 2020; Levesque and DeWaard 2021).

As part of this process, in 2002, the Immigration and Naturalization Services (INS) - which had operated inside the US Department of Justice since 1940 - and other federal agencies responsible for immigration enforcement were restructured under the responsibility of the newly created Department of Homeland Security (Baxter and Nowrasteh 2021). The old structure was replaced by three agencies: Customs and Border Protection (CBP), which is responsible for border enforcement; Immigration and Customs Enforcement (ICE), which is in charge of immigration enforcement inside the US; and Citizenship and Immigration Services (CIS) (Baxter and Nowrasteh 2021; Gonzales and Raphael 2017), responsible for overseeing lawful immigration (US CIS 2022). Following these changes, there were significant increases in interior enforcement activity and in the number of employees of both ICE and CBP, which led to greater surveillance and increased risk of removal for immigrants (Gonzales and Raphael 2017).

This securitization process has contributed to a discourse that divides immigrants between the good ones – those hard-working people who assimilate into US culture and do not fall into any of the three derogatory stereotypes – and those who are threats to US culture, ethnic composition, jobs, and security (Levesque and DeWaard 2021). Because being a good immigrant is also contingent on having legal status, this creates another layer of stratification, as illegalized immigrants are considered undeserving of staying in the US. This has important consequences for immigrants’ lives and access to rights, as the uncertainty of legal and semi-legal statuses is used as a tool of control, while those considered undeserving are increasingly criminalized (Levesque and DeWaard 2021).

While the securitization of US immigration policy has had an impact on the growth of the undocumented population, there is another, longer-term factor that also contributed to this situation: the policy decisions adopted over the last 40 years.

2.1.2. Immigration policy decisions and their effect on the undocumented population

Policy decisions have helped shape the undocumented population throughout US history, by defining who is “legal” and who is “illegal” (de Genova 2002). In this section, we will focus on two policy issues that have contributed to the growth of the undocumented population over the last 40 years. The first one is the lack of consensus around immigration reform, which has left millions of illegalized immigrants with no path to regularization. The second one is the set of restrictive legislation measures that was adopted in the 1990s.

The last comprehensive immigration reform approved in the US Congress was the Immigration Reform and Control Act (IRCA) of 1986, which adopted two sets of measures: legalization for around three million undocumented immigrants, and increased border control and penalties for employers who hired undocumented workers. The legalization element succeeded, but the control measures were incapable of reducing undocumented immigration, due to the fact that IRCA did not establish a path for unskilled workers to immigrate legally (Skrentny and López 2013; Baxter and Nowrasteh 2021). Since then, there have been several attempts to pass comprehensive immigration reform, but none has been successful (Skrentny and López 2013).

During the Clinton administration, in the 1990s, immigration legislation was passed, but it brought few benefits for immigrants, and those were mostly directed at highly skilled workers, relatives of US citizens, or European immigrants (Baxter and Nowrasteh 2021). At the same time, these pieces of legislation - the Personal Responsibility and Work Opportunity Reconciliation Act (Welfare Reform), the Antiterrorism and Effective Death Penalty Act (AEDPA), and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) - significantly increased migration control and the criminalization of immigrants (Baxter and Nowrasteh 2021; de Genova 2014; Gonzales and Raphael 2017). The Welfare Reform, for example, made the majority of noncitizens – including legalized immigrants - ineligible for most means-tested federal benefits, and allowed states to adopt similar measures (de Genova 2014; Baxter and Nowrasteh 2021).

But it was IIRIRA that had the biggest impact on immigrants. This bill increased the number of criminal violations that were considered grounds for deportation, including certain non-

violent offenses that were deemed misdemeanors when committed by US citizens; similar provisions were also included in AEDPA (de Genova 2014; Gonzales and Raphael 2017). IIRIRA also established that deportation was mandatory for any immigrants with a prison sentence of one year or longer, regardless of their legal status (de Genova 2014; Gonzales and Raphael 2017). These provisions were applied retroactively, meaning that even legalized immigrants could now be deported for past crimes that were not considered deportable offenses at the time of their convictions (Gonzales and Raphael 2017). Moreover, IIRIRA restricted the eligibility for relief from removal and introduced mandatory detention for almost all "deportable criminal aliens", with automatic deportation at the end of their prison sentences (de Genova 2014; Gonzales and Raphael 2017).

IIRIRA also introduced summary deportation and detention for people apprehended at the border – including asylum seekers -, allowing border authorities to make the final decision with no possible judicial review (de Genova 2014). In fact, IIRIRA restricted immigrants' access to immigration courts and reduced immigration judges' authority to review decisions, analyze the merits of individual cases, and grant relief from removal (de Genova 2014). Besides, both IIRIRA and AEDPA included provisions that allowed cooperation between federal agencies and local law enforcement authorities in immigration enforcement matters (de Genova 2014). This kind of cooperation would later become very important in Obama's immigration policy through initiatives like the 287(g) agreements and the Secure Communities program, which will be discussed in the next section (Gonzales and Raphael 2017).

In addition to greatly expanding enforcement, IIRIRA made legalization through marriage, family or employment extremely difficult. The Act introduced three- and ten-year bans for undocumented immigrants living in the US for over six months, meaning that in order to apply for legal status, the immigrant would first have to leave the country for three or ten years (de Genova 2014; Baxter and Nowrasteh 2021; Lind 2016). It also further limited eligibility for cancellation of removal (Lind 2016).

In the years following the adoption of these pieces of legislation, deportations and detention increased significantly. However, much like the enforcement component of IRCA, that did not result in a reduction of the undocumented population; in fact, it had the opposite effect (de Genova 2014; Baxter and Nowrasteh 2021; Gonzales and Raphael 2017; Lind 2016). The

increased enforcement and more severe penalties introduced by IIRIRA made crossing the border riskier and disrupted traditional circular migration patterns, encouraging immigrants not only to settle in the US, but also to bring their families (Gonzales and Raphael 2017; Lind 2016). At the same time, the three- and ten-years bans stimulated undocumented immigrants who could have qualified for legalization in the pre-IIRIRA period to stay illegalized, in order to avoid having to leave their families and jobs (Baxter and Nowrasteh 2021; Lind 2016; de Genova 2014).

In this context, the growth of the undocumented population in the US can be attributed, at least partially, to the adoption of restrictive measures that criminalize immigration and to the absence of immigration legislation that offers alternatives for legalization and legal immigration. Skrentny and López (2013) argue that the difficulty in passing new immigration reform is due to the failure of IRCA to avoid the establishment of a large undocumented population, which has increased resistance to new forms of amnesty, and to the belief of part of the electorate that undocumented immigrants are morally underserving of legalization. Hutchison (2020), in his turn, argues that the post 9/11 securitization process mentioned in the previous section has effectively limited any possibility of immigration reform, in addition to normalizing enforcement as the go-to response to immigration, building on the precedents established by IIRIRA (Lind 2016).

In addition, the fourth and fifth phases of immigration have seen the escalation of political and mediatic discourses that reinforce the image of immigrants as threats to white Americans' way of life mentioned in section 2.1.1 (Levesque and DeWaard 2021). While the US immigration policy has long been racialized and discriminatory, favoring white immigrants of Anglo-Saxon descent, the diversification of countries of origin, the resentment towards immigrants due to the loss of jobs caused by deindustrialization, and the fear of demographic changes caused by immigration and its geographic redistribution have strengthened this narrative, further hindering immigration reform efforts (Levesque and DeWaard 2021).

As a result of these policy decisions (or lack thereof, in the case of immigration reform), the undocumented population in the US grew steadily since IRCA, stabilizing at around 11 million people in the 2010s (Baker 2021). The next section will present an overview of the demographic characteristics of this population in the first years of the Obama administration.

2.1.3. An overview of the undocumented population in the United States between 2008-2012

In 2008, when Barack Obama first campaigned for president, the estimated undocumented population in the US was around 11.6 million people (Hoefler, Rytina, and Baker 2009). The majority of this group had come from Mexico - an estimated 7 million people - with large numbers of immigrants from other Latin American countries, especially Guatemala, El Salvador, and Honduras (Hoefler, Rytina, and Baker 2009). Around 57% of this population was comprised of males, with higher percentages in younger age groups (18 - 34 years) (Hoefler, Rytina, and Baker 2009). Those between 18 and 24 years of age accounted for 13.8% of the total undocumented population, while the age group from 25 to 34 years included approximately 35.3% (Hoefler, Rytina, and Baker 2009).

By 2012, the year DACA was created, the total number of undocumented immigrants had slightly fallen to 11.4 million (Baker and Rytina 2013). Mexico, El Salvador, Guatemala, and Honduras remained the most common countries of origin – together, they accounted for 73% of the total undocumented population (Baker and Rytina 2013). There was a slight reduction in the proportion of males to 53% of this population, with a higher percentage of them in the 25 to 34 age group (Baker and Rytina 2013). The group aged between 18 and 24 years included 12.3% of the total undocumented population and the group aged between 25 and 34 represented 32.4% (Baker and Rytina 2013).

These estimates demonstrate that the undocumented population in the United States during Obama's 2008 campaign and his first term was largely comprised of Latino immigrants of working age, with similar numbers of men and women, although with a higher percentage of men in younger age groups (Baker and Rytina 2013). The implications that these demographics might have had in the decision to adopt DACA will be further explored in the next sections.

2.2. Obama's promise of immigration reform

This section will discuss the differences in how immigration was addressed during Obama's first presidential campaign and once he took office, with a focus on the promise of comprehensive immigration reform.

2.2.1. The 2008 presidential campaign

Barack Obama's main proposal regarding immigration in the 2008 presidential campaign was comprehensive immigration reform (Skrentny and López 2013; Wallace 2012). His proposal was very similar to previous versions based on the same approach used in IRCA: a combination of increased control measures to reduce illegalized migration and measures that offered some form of earned legalization for undocumented immigrants (Skrentny and López 2013; Baxter and Nowrasteh 2021).

Skrentny and López (2013) and Wallace (2012) argue that the immigration reform proposal was a form of appealing to Latino voters. Although immigration reform was not a main priority for the Latino electorate, the fact that most of the undocumented immigrants potentially benefited by immigration reform were Latino, as demonstrated in section 2.1.3, is believed to have had some mobilizing effect in favor of Obama (Skrentny and López 2013; Wallace 2012).

This effort to mobilize the Latino electorate probably stemmed from the recognition of their increasing influence due to their growing voting-age population. Since the 1960s, political campaigns, especially at the presidential level, have tried to reach this group, and by 2000 these appeals were considered a necessary part of any Democrat or Republican campaign, even though Democrats have been more successful in mobilizing the Latino vote (Wallace 2012). The 2008 campaign was an example of this. Obama chose to run with a message of change and hope that was effective at mobilizing Latino voters (Wallace 2012). This was reflected not only in an overwhelming majority of Latino votes for Obama - 67% versus 31% for the Republican candidate John McCain – but also in the increase in Latino turnout (Wallace 2012; Skrentny and López 2013). Due to this, Latinos played an important role in securing Obama's victory in 2008 (Wallace 2012).

The next section will focus on the Obama administration's immigration policy and whether they delivered on their promise to the Latino electorate.

2.2.2. Obama's immigration policy

Once elected, Obama's immigration policy differed substantially from the expectations that his voters had placed on him (Wallace 2012). The Obama administration was incapable of passing immigration legislation in Congress: it could not secure the approval of comprehensive immigration reform nor of the more limited Development, Relief, and Education for Alien Minors Act (DREAM Act) (Wallace 2012; Baxter and Nowrasteh 2021; Zatz and Rodriguez 2015).

The DREAM Act is a piece of legislation that has been introduced in US Congress several times since 2001, with slight variations in its content (Zatz and Rodriguez 2015). If approved, the DREAM Act would make certain undocumented immigrants who arrived in the US before the age of sixteen eligible for conditional permanent residence, providing them with a path to citizenship (Zatz and Rodriguez 2015; Keyes 2013). In order to qualify for conditional permanent residency, the immigrants would have to meet certain criteria: being within a specific age range, which varies between a minimum of 12 and a maximum of 35 years; having resided in the US for a minimum of five years; having obtained a high school diploma or equivalent or being admitted to a US higher education institution; and having good moral character - which means not having significant criminal convictions nor posing a security risk (Zatz and Rodriguez 2015; Keyes 2013). The conditional permanent residency could become permanent residence if the immigrant obtained a certain level of higher education or joined the military (Keyes 2013).

Despite the multiple attempts, often with bipartisan support, the DREAM Act has never passed both the Senate and the House of Representatives (Keyes 2013). Sometimes, this was due to the fact that the DREAM Act was introduced as part of larger comprehensive immigration reform legislation or it was attached to bills regarding other topics, and thus when those initiatives failed, so did the DREAM Act (Olivas 2020; Zatz and Rodriguez 2015). In 2007, a bill was introduced by the Republicans in the Senate, but it failed to reach the minimum of 60 votes to be put to debate. In December 2010, during the Obama administration, a version of the DREAM Act passed the House of Representatives by a 216-198 vote. However, the bill did not reach the 60 votes necessary to move forward in the Senate, falling short by 5 votes. At the time, most Republican Senators, as well as five Democrat Senators, voted against the bill (Olivas 2020).

The Obama administration's inability to pass immigration reform legislation and the DREAM Act is largely attributed to extreme party polarization and to Republicans' refusal to negotiate, even though some of them had supported previous immigration reform proposals (Skrentny and López 2013; Lowande and Milkis 2014). Olivas (2020), on his turn, adds that the introduction of multiple ambitious policy initiatives in Congress at the same time at the beginning of Obama's first term, coupled with the complexity of the immigration issue and its implications for other policy areas, might have had an impact on his administration's ability to push the issue forward.

In addition to not fulfilling his promise of comprehensive immigration reform, Obama used his executive authority to adopt several measures that had negative consequences for undocumented immigrants (Wallace 2012). The main one was the increase in deportation and removals of undocumented immigrants. During Obama's two terms, his administration deported around 3 million people, earning him the nickname "deporter-in-chief" (Nowrasteh 2017; Skrentny and López 2013). He vowed to focus deportations on criminals and developed mechanisms to that end, such as the Secure Communities program and the 287(g) agreements, which allowed local law enforcement forces to collaborate with the Department of Homeland Security's Immigration and Customs Enforcement (ICE) in deportations (Skrentny and López 2013; Wallace 2012).

The Obama administration also increased the number of detention centers for immigrant families¹¹, expanded border control¹², and increased punishments for employers who hired undocumented immigrants (Nowrasteh 2017). Skrentny and López (2013), Wallace (2012), and Zatz and Rodriguez (2015) argue that one likely goal of this control-focused approach was to demonstrate to restrictionists that Obama was capable of controlling undocumented flows in order to gain support for immigration reform, which never happened.

Throughout Obama's two terms, civil society organizations, especially those comprised of DREAMERS – the young undocumented immigrants who would have benefited from the

¹¹ Amanda Sakuma. "The Failed Experiment of Immigrant Family Detention". *NBC News*, August 3, 2015. <https://www.nbcnews.com/news/latino/failed-experiment-immigrant-family-detention-n403126>

¹² "Obama Signs \$600 Million Bill to Boost U.S. Border Security". *PBS*, August 13, 2010. <https://www.pbs.org/newshour/show/obama-signs-600-million-bill-to-boost-u-s-border-security>

approval of the DREAM Act –, tried to ensure solutions for the undocumented population. While their primary goal was a permanent legislative solution, after realizing that such a compromise was highly unlikely, they started pressuring Obama to use executive action in 2011 (Zatz and Rodriguez 2015). The Obama administration was initially reluctant, but as the 2012 presidential election approached, there was a need to mobilize the Latino electorate once again (Lowande and Milkis 2014). Faced with the possibility of a Republican bill to give visas to young immigrants, the Obama administration decided to use its discretionary administrative powers to create DACA (Lowande and Milkis 2014; Skrentny and López 2013).

The policy was a way to appeal to the Latino population that was dissatisfied with Obama's deportation policy by showing them that he cared about their interests even though he could not pass immigration reform (Lowande and Milkis 2014; Wallace 2012; Skrentny and López 2013). DACA likely contributed, at least to some extent, to Obama's overwhelming victory among Latino voters in 2012, when he secured 71% of the Latino votes (Lowande and Milkis 2014).

In this sense, it is possible to identify contradictions between Obama's campaign discourse and his administration's actions once in office. His immigration policy was in itself contradictory, combining increased and stricter enforcement with measures to provide some form of relief for certain groups of immigrants. DACA falls into the second category. To understand the implications of the program, the next section will provide a detailed overview of it.

2.3. DACA: a new hope

DACA was created on June 15, 2012, through a memorandum by the Secretary of Homeland Security, Janet Napolitano (US DHS 2012). It consists in a form of prosecutorial discretion that delays deportation for certain immigrants for renewable periods of two years and grants them work authorizations and permission to receive identification documents and social security numbers. It does not, however, grant them lawful status or a pathway to citizenship (US DHS 2012; Lowande and Milkis 2014; Zatz and Rodriguez 2015).

The eligibility criteria established in the memo include: having arrived in the US before the age of sixteen; having resided in the US continuously for at least five years and being present in the date of the memo; being in school, having obtained a diploma or general education development certificate, or having been honorably discharged from the Coast Guard or Armed Forces; not having been convicted of multiple or significant misdemeanors or felonies and not posing a threat to public safety or national security; and being under the age of thirty (US DHS 2012). The memo also states that deferred action is granted on an individual case basis and is under the discretion of the US government (US DHS 2012).

DACA was adopted through executive action, meaning the Obama administration used its discretionary capacities to decide not to prosecute its beneficiaries at this time. While the president does not have the autonomy to change admission criteria without Congress' authorization, it does have permission to exercise different forms of deportation discretion: parole, deferred action and deferred enforced departure (Skrentny and López 2013). Obama had already made extensive use of executive action to address several other policy issues that he could not approve in Congress, such as education reform, revoking a policy that prohibited federal government funding for NGOs that offered family planning and abortion services abroad, and the adoption of stricter fuel economy standards; DACA was yet another example (Lowande and Milkis 2014).

However, the fact that DACA is based on executive action makes it fragile, as another president could easily use their prosecutorial discretion to put an end to the program, as President Donald Trump unsuccessfully tried to do in 2017¹³. The executive action nature of DACA has also been a matter of judicial dispute. An example of that is the fact that, in 2014, the Obama administration tried to extend DACA by removing its age cap and by creating the Deferred Action for Parents of Americans (DAPA), which would benefit the undocumented parents of US citizens and legal permanent residents (US DHS 2014a). However, these changes were never implemented, as they were enjoined by a decision made by Texas judge Andrew Hanen (Coutin et al. 2017).

Another clear case in point is the recent decisions made by the same judge in 2021 ruling that DACA was unlawful because Congress had not granted the executive branch legal authority

¹³ "Daca: Judge Orders Trump to Restore Undocumented Immigrants Scheme." *BBC*, December 5, 2020. <https://www.bbc.com/news/world-us-canada-55200208>.

to offer such benefits to undocumented immigrants. The program is currently accepting only renewals as the Biden administration appeals the decision¹⁴.

In spite of that, DACA has had positive effects for its beneficiaries by allowing them to access health and education services as well as better employment opportunities (Zatz and Rodriguez, 2015; Dickson, Gindling, and Kitchin, 2017). Because the US Citizenship and Immigration Services (USCIS) divulged the eligibility criteria very well, those who were ineligible did not have to face the risks of applying only to be rejected (Zatz and Rodriguez 2015). However, due to the prosecutorial discretion basis of DACA and its temporary nature, its beneficiaries remain subject to a high level of uncertainty that traps them in a state of “permanent temporariness” (Menjívar 2006). This point will be further discussed in chapter 3.

This chapter has highlighted the contradictions in Barack Obama’s immigration policy. While he promised immigration reform in his presidential campaign, he was unable to deliver on that promise once elected. But beyond that, he adopted several measures during his administration that negatively impacted undocumented immigrants. In this sense, DACA represents another contradiction, as it introduces a form of relief for a part of that population in a very securitist context. While the need to mobilize Latino support for the 2012 elections influenced the decision to adopt DACA, I believe a deeper analysis is required. The following chapter will seek to identify the logic behind these apparent contradictions and explain how the liminal and fragile status provided by DACA contributed to Obama’s immigration policy.

¹⁴ Kendall, Brent, and Michelle Hackman. “DACA Immigration Program Invalidated by Federal Judge.” *The Wall Street Journal*, July 17, 2021. <https://www.wsj.com/articles/federal-judge-rules-obama-era-daca-immigration-program-is-illegal-11626471046>.

Chapter 3. The intersection of migration management and liminal legality

The objective of this chapter is to present the findings of the document analysis process to understand how DACA fits into the Obama administration's securitist immigration policy. The analysis of the 17 policy documents and speeches indicates that Obama's immigration policy incorporates many features of migration management, which helps explain how it reconciles DACA with increased enforcement measures. Moreover, DACA reinforces the dichotomy between the good/bad immigrant, legitimizing the securitist approach towards other undocumented immigrants. Finally, the semi-legal and temporary status provided by DACA has a disciplinary role over the beneficiaries themselves, as they must make themselves visible to the state and continue to fulfill the criteria of "good immigrant" to maintain their status. In this sense, DACA can be understood as a part of the structure of management and control of the immigrant population during the Obama administration.

The chapter is organized into four sections. The first section will provide an overview of the findings regarding the logic behind the Obama administration's immigration policy in general, where some important background elements will be explored. The second section will present findings related specifically to DACA and its connection to the dichotomy between worthy and unworthy undocumented immigrants. The third section will analyze the relationship between Obama's immigration policy and migration management and will examine DACA as a form of liminal legality. Finally, the fourth section will discuss the disciplinary role of DACA in Obama's immigration policy.

3.1. The rationale behind Obama's immigration policy

The analysis of government discourses on migration has brought to light several elements that can help understand how DACA fits into Obama's immigration policy. First of all, a common idea present in most of the analyzed speeches - seven in total - is that of a "broken immigration system" (US The White House 2012; 2013a; 2014b; 2014a; US DHS 2009b; 2011c; 2016). Obama and his Homeland Security Secretaries, Janet Napolitano and Jeh Johnson, all refer to this idea to explain the challenges faced by US immigration policy.

According to the analyzed speeches, the Obama administration considered the American immigration system to be broken for several reasons. One of them is that the system was

considered outdated (US The White House 2013a; US DHS 2009b; 2011c). First, because it was based on a patchwork of different norms that had not kept up with evolving criminal practices and policy needs and therefore did not provide adequate tools and funding for enforcement and border security (US DHS 2009b; 2011c; 2015). Second, because it did not properly address the needs of different economic sectors, as its strict requirements made immigration too difficult for highly skilled workers in the STEM fields and entrepreneurs, as well as for workers in other sectors such as agriculture and services (US The White House 2012; 2013a; 2013b; 2014b; 2014a; US DHS 2009b; 2015). This was considered to have a negative effect on the economy, as it harmed companies' access to qualified personnel and stopped skilled immigrants from creating businesses and jobs in the US (US The White House 2012; 2013a; 2013b; 2014b; 2014a; US DHS 2009b; 2015). In addition, immigration laws made legal family reunification processes too lengthy (US The White House 2013a; 2014b; US DHS 2009b).

At the same time, the system was considered broken because it was ineffective in preventing illegal entries, which resulted in the increase of the undocumented population (US The White House 2013a; 2014b; US DHS 2009b). It also kept undocumented immigrants “in the shadows”, as it did not provide any form of regularization that would require them to face consequences for breaking immigration laws (US The White House 2013a; 2013b; 2014b; US DHS 2009b; 2011c; 2016). Obama even compared this situation to a form of amnesty (US The White House 2014b), as it allowed undocumented workers to enjoy the benefits of living in the US without the responsibilities, such as paying taxes (US The White House 2013a; 2013b; 2014b; US DHS 2009b; 2011c; 2016).

This situation was considered to have negative effects on the labor market, as undocumented workers' vulnerability resulted in labor laws violations and lower wages, which also affected American workers – by lowering salaries and weakening unions - and companies – by giving an unfair advantage to employers that violated the law (US The White House 2013a; 2014b; US DHS 2009b). In addition, the Obama administration recognized that the system had negative impacts on families with undocumented members, as the only regularization alternatives available required immigrants to be separated from their families for long periods of time, thus encouraging these people to stay undocumented (US The White House 2014b; US DHS 2015).

The final reason is the inefficient use of resources. The Obama administration claimed that the immigration system allowed for the use of enforcement resources on low-priority targets such as college students and people who were providing for their families instead of criminals. In their view, enforcement resources should be focused on undocumented immigrants who present threats to public safety (US The White House 2013a; 2014b; US DHS 2009b; 2011c; 2013; 2015; 2016).

In this context, “broken immigration system” summarizes the multiple issues criticized by the Obama administration, but it also indicates that they are not isolated problems, but rather part of a systemic failure. This is in line with the historical background discussed in section 2, which indicates that several of the problems in the American immigration system are a consequence of restrictive legislation and practices that limited paths to lawful status and criminalized immigration (Baxter and Nowrasteh 2021; de Genova 2014; Gonzales and Raphael 2017). However, it is worth noticing that despite the use of such a strong term, the Obama administration did not seem to question the fundamentally securitist character of the system, which is at the center of the problem. Rather, their speeches point to the need of an update of the existing structure to better respond to certain policy needs, without compromising the central role of control and enforcement in immigration policy. The use of the term “broken immigration system” also has a political and rhetoric character, aimed at drawing attention to the subject and helping to justify the need for comprehensive action.

In this sense, several of the analyzed speeches point to comprehensive immigration reform as the solution for this “broken immigration system”, but denounce the lack of effort of the US Congress in pursuing this solution. There are frequent claims of this “congressional inaction”, often with reference to specific proposals that were not discussed or approved, as well as calls to action demanding that US Senators and Representatives negotiate a bipartisan compromise to approve either immigration reform or the DREAM Act (US The White House 2012; 2013a; 2013b; 2014b; 2014a; US DHS 2009b; 2011c; 2013; 2015; 2016). This leads to another category that appears frequently in the speeches, but which is also supported by policy documents: executive action, which refers to different measures that can be adopted by the Executive power without the need for congressional approval.

In the Obama administration’s discourse, executive action is portrayed as a short-term fix for the “broken immigration system” in the absence of a legislative solution (US The White

House 2012; 2013a; US DHS 2013). An analysis of policy documents shows that the Obama administration did use this prerogative to make changes to immigration enforcement. Some examples of the use of executive action are DACA, its expansion, and DAPA, all of which are aimed at delaying deportation of certain groups of undocumented immigrants (US DHS 2012; 2014a). Another example is a series of memorandums published by the DHS which established priorities for deportation (US DHS 2011a; 2011b; 2013). Both of the examples try to address one of the flaws of the “broken immigration system”, that is, the inefficient use of resources for removal.

In this context, the Obama administration’s calls to action and references to “congressional inaction” could be interpreted as a strategy to highlight the tension between the executive and legislative powers and the difficulties Obama faced in passing legislation. They helped justify the lack of progress towards Obama’s campaign promise of comprehensive immigration reform by framing it as a consequence of Congress’s unwillingness to act (Lowande and Milkis 2014). At the same time, the explicit mentions to Republicans as the ones responsible for the failures to pass immigration reform and the DREAM Act in specific speeches (US The White House 2012; 2014b) reinforce the idea of a partisan divide on immigration issues. Under these circumstances, the use of executive action is especially relevant because it demonstrates the Obama administration’s commitment to fixing the “broken system”; it is a way of reassuring his voters that he is trying to address their concerns even in the face of congressional gridlock (Lowande and Milkis 2014; Skrentny and López 2013).

It is also important to take into account that calls to congressional action and the resort to executive action were used by the Obama administration in several policy areas, not just immigration issues (Lowande and Milkis 2014). Examples of that can be found in the two State of the Union speeches analyzed for this work, which includes other calls to action in areas such as taxation and housing (US The White House 2013b; 2014a). In addition, Lowande and Milkis (2014) highlight some of the cases in which Obama used executive action to advance certain agendas in the areas of environmental and women’s issues.

The use of executive action by the Obama administration, combined with allegations of “congressional inaction”, was not only a way to bypass Republican opposition, but also to build stronger electoral support for the Democratic party (Lowande and Milkis 2014). This effect is clear in the case of DACA, as the program helped shift Latino voters’ opinions on

Obama – which were initially ambivalent due to his deportation policy – and assured him a majority of the Latino vote in the 2012 elections (Lowande and Milkis 2014; Skrentny and López 2013).

All of these elements are important to understand how the Obama administration conceptualizes and presents its initiatives on immigration policy. However, there is another very relevant element that appears in the analyzed speeches: the simultaneous defense of more control measures to curb illegal immigration and of solutions that can help certain groups of undocumented immigrants to regularize their migration status. In several of the analyzed speeches, President Obama and his Homeland Security Secretaries talk about both issues, presenting them not as contradictory approaches, but as complementary ones (US The White House 2012; 2013a; 2013b; 2014b; US DHS 2009a; 2009b; 2011c; 2013; 2015; 2016).

In his speech about comprehensive immigration reform, for example, President Obama criticizes the “broken immigration system” and defends the need to update it (US The White House 2013a). When listing actions that he has taken to fix the system, he mentions DACA, but he also mentions the increase in border security, aimed at reducing the flow of undocumented immigration, and the prioritization of undocumented criminals in deportation processes (US The White House 2013a). Moreover, when he talks about the principles for immigration reform, both enforcement and a pathway to citizenship for undocumented immigrants are mentioned, as described below:

First, I believe we need to stay focused on enforcement. That means continuing to strengthen security at our borders. It means cracking down more forcefully on businesses that knowingly hire undocumented workers. (...)

Second, we have to deal with the 11 million individuals who are here illegally. We all agree that these men and women should have to earn their way to citizenship. But for comprehensive immigration reform to work, it must be clear from the outset that there is a pathway to citizenship. (Applause.)

We’ve got to lay out a path -- a process that includes passing a background check, paying taxes, paying a penalty, learning English, and then going to the back of the line, behind all the folks who are trying to come here legally. That’s only fair, right? (Applause.) (...)

And the third principle is we've got to bring our legal immigration system into the 21st century because it no longer reflects the realities of our time. (Applause.) (...) (US The White House 2013a, 5–6).¹⁵

In this context, it seems clear that the increase in enforcement measures during the Obama administration was not only a way to gain leverage with Congress in order to approve comprehensive immigration reform, as some authors have suggested (Skrentny and López 2013; Wallace 2012; Zatz and Rodriguez 2015). Rather, enhancing the enforcement of immigration law was an important goal of Obama's immigration policy. This becomes even clearer with a comparative analysis of how often enforcement is mentioned and how much space is dedicated to it in speeches in comparison with solutions for undocumented immigrants. On the one hand, all speeches but one address enforcement, often in detail - even those focused specifically on DACA or immigration reform (US The White House 2012; 2013a; 2013b; 2014b; US DHS 2009b; 2009a; 2011c; 2013; 2015; 2016). However, more general speeches, such as the State of the Union speeches, or speeches focused on immigration in general, either do not mention or only briefly mention DACA and immigration reform (US The White House 2014a; US DHS 2009a; 2009b; 2011c; 2013; 2016). This is especially noticeable in the speeches of the Homeland Security Secretaries (US DHS 2009a; 2009b; 2011c; 2013; 2016), which is in line with the securitist approach that has dominated US immigration policy since the 2000s and that considers undocumented immigration as a potential national security threat (Levesque and DeWaard 2021).

The recognition that enforcement is an important issue for the Obama administration is relevant because it highlights that Obama did not challenge the idea of immigrant illegality. The main goal of DACA or a pathway to citizenship was not to remove the conditions that cause illegality, but rather redefine them by regularizing the situation of the undocumented population already present in the US while also trying to avoid new entrances to prevent new growth in this population.

An example of this is the tension between the ideas of the US as a “nation of immigrants” and a “nation of laws”, which appears in some of President Obama's and Secretary Napolitano's

¹⁵ Speech delivered by President Barack Obama at Del Sol High School in Las Vegas, Nevada, to an audience composed of federal officers from the executive and legislative powers, mayors, labor and business leaders, and students. The speech was delivered on January 29th, 2013, nine days after Obama was sworn in for his second term as President of the United States.

speeches (US DHS 2009b; 2011c; US The White House 2013a; 2014b; 2012). On the one hand, the argument of the US as a “nation of immigrants”, used to justify DACA and immigration reform, includes references to the role of immigration in American history and appeals to certain American values, such as freedom, opportunity for all, hard work, and a spirit of citizenship linked to responsibility and dedication rather than to a place of birth. On the other hand, “nation of laws” refers to the respect for and enforcement of American laws (US DHS 2009b; 2011c; US The White House 2013a; 2014b; 2012).

The adoption of DACA and the defense of comprehensive immigration reform create tension between these two ideas because providing a regularization alternative for undocumented immigrants would mean benefiting people who broke the country’s immigration laws. In this context, the governmental speeches try to reconcile these ideas by justifying the pardon of those who broke the law. There are three arguments that the Obama administration uses for this purpose: the first is the economic contributions that regularization could bring to the US in the form of taxes, economic activity, and job creation, often with the use of concrete examples to reinforce it (US The White House 2012; 2013a; 2014b; 2014a; US DHS 2009b).

The second argument is the lack of resources to deport all undocumented immigrants. According to Obama’s, Napolitano’s and Johnson’s speeches, given the impossibility to deport all undocumented people, the government must use its resources efficiently by prioritizing immigrants who present the greatest threats (US The White House 2012; 2013a; 2014b; US DHS 2009b; 2009a; 2011c; 2013; 2016; 2015). This leads to the third argument: the division of the undocumented population into different categories, according to specific criteria, that will define whether they should be deported or pardoned. The excerpt below is a good example of this reconciliation attempt:

I want to say more about this third issue, because it generates the most passion and controversy. Even as we are a nation of immigrants, we’re also a nation of laws. Undocumented workers broke our immigration laws, and I believe that they must be held accountable — especially those who may be dangerous. That’s why, over the past six years, deportations of criminals are up 80 percent. And that’s why we’re going to keep focusing enforcement resources on actual threats to our security. Felons, not families. Criminals, not children. Gang members, not a mom who’s

working hard to provide for her kids. We'll prioritize, just like law enforcement does every day.

But even as we focus on deporting criminals, the fact is, millions of immigrants in every state, of every race and nationality still live here illegally. And let's be honest – tracking down, rounding up, and deporting millions of people isn't realistic. Anyone who suggests otherwise isn't being straight with you. It's also not who we are as Americans. After all, most of these immigrants have been here a long time. They work hard, often in tough, low-paying jobs. They support their families. They worship at our churches. Many of their kids are American-born or spent most of their lives here, and their hopes, dreams, and patriotism are just like ours. As my predecessor, President Bush, once put it: "They are a part of American life." (US The White House 2014b, 3).¹⁶

This section of the speech clearly presents two different groups of undocumented immigrants: "criminals" – or enforcement priorities, as they are referred to in policy documents - and "families", "children", and "people who work hard". For the purpose of this work, and building on the terminology used by María Barbero (2019), I will refer to the first group as the "unworthy undocumented immigrants", and the second group will be referred to as "worthy undocumented immigrants", in a reference to whether or not they are perceived as worthy of pardoning by the Obama administration.

In this context, it is interesting to analyze the criteria established by the Obama administration to classify the undocumented population between these two categories. The paragraphs below, extracted from two different speeches, one by President Obama and one by Secretary Napolitano, present the criteria to qualify for regularization under Obama's comprehensive immigration reform proposal:

Now here's the thing: We expect people who live in this country to play by the rules. We expect that those who cut the line will not be unfairly rewarded. So we're going to offer the following deal: If you've been in America for more than five years; if you have children who are American citizens or legal residents; if you register, pass a criminal background check, and you're willing to pay your fair share of taxes -- you'll be able to apply to stay in this country temporarily without fear of deportation (US The White House 2014b, 3).

¹⁶ Televised speech addressed to the nation, delivered by President Barack Obama at the White House Cross Hall on November 20th, 2014.

A tough and fair pathway to earned legal status will mandate that illegal immigrants meet a number of requirements—including registering, paying a fine, passing a criminal background check, fully paying all taxes, and learning English (US DHS 2009b, 7).¹⁷

The criteria to qualify for DACA, in their turn, are presented in the June 2012 DHS Memorandum entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children”:

The following criteria should be satisfied before an individual is considered for an exercise of prosecutorial discretion pursuant to this memorandum:

- came to the United States under the age of sixteen;
- has continuously resided in the United States for a least five years preceding the date of this memorandum and is present in the United States on the date of this memorandum;
- is currently in school, has graduated from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
- has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and
- is not above the age of thirty (US DHS 2012, 1).

Although there are differences between the two sets of criteria, two important points appear in both: a minimum of five years of residence in the US and no relevant criminal record. This last requirement is aligned with the enforcement priorities established by the DHS in the March 2011 Memorandum on “Civil Immigration Enforcement: Priorities for the Apprehension Detention, and Removal of Aliens”, the June 2011 Memorandum “Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens” and the 2014 Memorandum on “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants”. The enforcement priorities consist of individuals who have been convicted of crimes, represent a threat to national security, have repeatedly violated immigration law or have recently arrived at the US (US DHS 2014b; 2011b; 2011a).

¹⁷ Speech delivered by Secretary of Homeland Security Janet Napolitano at an event open to the public organized by the Center for American Progress, a non-partisan policy institute, in Washington D.C., on November 13th, 2009.

In this context, it is clear that obedience to the law is an important element in the categorization of the “worthy immigrant” (Barbero 2019). Those who have not committed any relevant crimes besides immigration law violations might be able to enter that category if they follow the steps required to be considered deserving of the pardon, such as registering, paying a fine and taxes, and learning English – in the case of immigration reform - or completing an education, serving the armed forces and arriving as a child to qualify for DACA. Those who did commit relevant crimes, however, will face all of the increased enforcement measures adopted by the Obama administration.

Therefore, this categorization helps to reconcile the ideas of “a nation of immigrants” and a “nation of laws” by showing that Obama is committed to punishing and expelling the “unworthy criminals” who have repeatedly violated the law – which is demonstrated by the significant increase in deportations during the Obama administration. At the same time, he is willing to offer the opportunity of regularization to those hard-working undocumented immigrants who are willing to make sacrifices and earn it. This approach appeals to a kind of American humanitarianism that is willing to give opportunities to immigrants in need (Barbero 2019).

It also appeals to a longstanding stereotype of the hard-working independent person who is willing to make sacrifices to achieve their goals, which has long been applied to immigrants under the idea that they must earn their permission to stay in the US (Levesque and DeWaard 2021). This idea has become stronger in US immigration policy discussions since IRCA was passed, in 1986. Since then, the notion of amnesty has lost space to the idea of an “earned pathway to citizenship” (Barbero 2019). This idea is very clear in the excerpt of Secretary Napolitano’s speech mentioned above, where she refers to comprehensive immigration reform as “[a] tough and fair pathway to earned legal status” (US DHS 2009b, 7).

Hence, I argue that there is not a contradiction between increased enforcement and regularization attempts for the undocumented population in the Obama administration’s immigration policy; rather, these two elements are combined in a single strategy for the management of undocumented immigrants. In this setting, this population is categorized as “worthy” or “unworthy” according to criteria defined by the government; the ones who fit into the first category might have access to some form of status adjustment, while the ones in the second category are faced with increased enforcement.

3.2. DACA and the worthy undocumented immigrant

At this point, it is important to analyze how this strategy adopted by Obama's administration is reflected on DACA. As discussed in chapter 1, Obama promised comprehensive immigration reform in his 2008 campaign, but once in office, he was unable to secure the approval of either immigration reform or other legislative measures such as the DREAM Act (Wallace 2012; Baxter and Nowrasteh 2021; Zatz and Rodriguez 2015). It was in this context that DACA was created through prosecutorial discretion, a form of executive action.

The DHS memorandum that created DACA and the speech made by President Obama on the day of its publication provide important insights for this analysis. First of all, it is possible to identify some of the elements discussed in the previous section in Obama's speech:

In the absence of any immigration action from Congress to fix our broken immigration system, what we've tried to do is focus our immigration enforcement resources in the right places. So we prioritized border security, putting more boots on the southern border than at any time in our history - today, there are fewer illegal crossings than at any time in the past 40 years. We focused and used discretion about whom to prosecute, focusing on criminals who endanger our communities rather than students who are earning their education. And today, deportation of criminals is up 80 percent (US The White House 2012, 1).¹⁸

In this excerpt, Obama appeals to the idea of "congressional inaction" to justify the need to use executive action to fix the "broken immigration system". In another part of the speech, he reinforces that idea by calling upon Congress to approve the DREAM Act and provide a definitive solution to young undocumented immigrants that arrived in the US as children. Then, Obama refers to the need to prioritize enforcement resources and narrates some of the results of his immigration policy as evidence that his prioritization efforts have been successful in reducing undocumented immigration and deporting unwanted immigrants. To do this, he compares the categories of criminals and students to illustrate who are these unwanted – or unworthy – immigrants (US The White House 2012).

¹⁸ Televised speech addressed to the nation, delivered by President Barack Obama at the White House Rose Garden on June 15th 2012.

The argument of prioritization and efficient use of resources is also used in the memorandum that established the guidelines for DACA. The document claims that “immigration laws must be enforced in a strong and sensible manner” (US DHS 2012, 2) and that it is necessary to ensure that enforcement resources are not used in low priority cases (US DHS 2012). At this point, the memorandum presents the criteria that individuals must meet in order to be considered low priority cases under DACA, which have already been transcribed above.

These criteria describe the worthy undocumented immigrant: young educated immigrants, who are not criminals, and who arrived in the US very young and have been there for a relevant amount of time. By looking closely into these characteristics, it is possible to identify certain elements that might have influenced their definition.

First, because the beneficiaries of DACA arrived in the US at a young age, it is assumed that they had no intention of breaking the law. In fact, this is explicitly stated in the DHS memo (US DHS 2012) and reiterated by Obama in his speech, where he blames the parents of these young immigrants for their situation (US The White House 2012). This discourse of innocence is important because it justifies the choice of allowing these people to stay in the US, helping to reconcile the paradox between a nation of immigrants and a nation of laws.

Second, because these immigrants arrived at a young age, have been in the US for a few years, and have or are pursuing some level of education, they probably speak English and are likely to have assimilated American culture, at least partially. This idea is also reinforced both in the DACA memo and in Obama’s speech, in passages such as “young people who (...) know only this country as home” (US DHS 2012, 1) and “[t]hey are Americans in their heart, in their minds, in every single way but one: on paper” (US The White House 2012, 1) and in references to how they do not even speak the language of their home countries, or to how similar they are to American citizens (US DHS 2012; US The White House 2012).

Third, they do not have relevant criminal records, which is the main criterium for categorizing an unworthy undocumented immigrant. And last, all of the beneficiaries are young people, as they had to be under the age of thirty to apply for DACA.

All of these characteristics point to a populational group that could represent a useful addition to the workforce, as they are young, educated, already integrated into American society and

culture - and often even have some level of loyalty to the US -, and are not considered threats to national or public security. The potential contributions – economic and otherwise, e.g. through military service - of these immigrants is one of the arguments that appear in both President Obama’s speech and the DHS memo as justifications for DACA (US DHS 2012; US The White House 2012). In addition, the supposed innocence of this population contributes to the acceptance of DACA by the American population (Zatz and Rodriguez 2015). In this context, it is possible to argue that there was an economic interest in the choice of the beneficiaries of DACA.

The criteria used for DACA were largely based on the requirements to qualify for different versions of the DREAM Act (Zatz and Rodriguez 2015). DACA, however, does not provide the same benefits that the DREAM Act would grant if approved. As mentioned in chapter 1, the DREAM Act would provide DREAMERS with legal status and a pathway to citizenship. DACA only provides temporary relief from deportation and access to certain benefits, such as a work permit, social security number, health insurance, driver’s licenses, among others. The final paragraph of the DACA memo is very clear about this, stating that:

This memorandum confers no substantive right, immigration status, or pathway to citizenship. Only the Congress, acting through its legislative authority, can confer these rights. It remains for the executive branch, however, to set forth policy for the exercise of discretion within the framework of the existing law. I have done so here (US DHS 2012, 3).

In his speech, Obama also recognizes that DACA is a temporary solution and that only Congress can provide a permanent answer for this population (US The White House 2012). This means that while DACA does bring several benefits for its beneficiaries and increased their access to services and opportunities (Zatz and Rodriguez 2015; Dickson, Gindling, and Kitchin 2017), it also leaves them in a state of permanent insecurity (Menjívar 2006). On the one hand, they must renew DACA and their work permits every two years, in a bureaucratic and expensive process. On the other hand, because DACA is a form of executive action, there is always the risk that the program might be terminated due to a change in government (Zatz and Rodriguez 2015).

Another aspect of DACA that is relevant for this analysis is that it is granted on a case-by-case basis, as stated in its memorandum (US DHS 2012). Therefore, applicants must submit

documentation to prove that they meet the requirements for the program, including the five-year continuous residency requirement (USCIS 2021). This can be a challenge for undocumented immigrants, as due to their lack of legal status they are often alienated from institutions that could provide this sort of evidence, such as health institutions or social services. This means that they might have gaps in documentation, especially if they were out of school, which could compromise their chances of qualifying for DACA (Coutin et al. 2017).

3.3. Migration management and liminal legality in the Obama administration

Based on the analysis of policy documents and governmental speeches on migration, it is possible to identify various similarities between the rationale behind the Obama administration's immigration policy and migration management. First, both advocate for a controlled increase in openness to migratory flows, but at the same time adopt control measures aimed at diminishing unwanted flows. As discussed in chapter 1, migration management presents itself as a humane approach that seeks to make migration more organized and predictable (Ghosh 2012; Estupiñan Serrano 2014; Kalm 2010). But from a critical perspective, migration management is part of a neoliberal governmentality, which seeks to adjust migratory flows to the demands of economic growth (Kalm 2010; Geiger and Pécoud 2010; Estupiñan Serrano 2014).

This contradiction between openness and control is clear in the Obama administration's discourse about comprehensive immigration reform, which defends adjustments in the immigration system to facilitate the immigration of highly skilled professionals as well as workers for specific areas such as agriculture on the one hand, and increased enforcement to stop and prevent flows of undocumented immigration, on the other (US The White House 2013a; US DHS 2009b; US The White House 2013b).

Another example of this is the Senate Bill "S.744 - Border Security, Economic Opportunity, and Immigration Modernization Act"¹⁹, introduced by Democrat Senator Charles Schumer

¹⁹ Senate Bill "S.744 - Border Security, Economic Opportunity, and Immigration Modernization Act" was not among the documents initially selected for analysis. However, its revision was relevant for a better understanding of the Obama administration's proposal for immigration reform. Due to time constraints, it was not possible to review the complete bill; the analysis was based on the summary and on specific sections of the bill. The version chosen for analysis was the one introduced to the Senate on April 17, 2013.

and a group of seven other Democrat and Republican senators and supported by the Obama administration (US Congress 2013b). Although it was never enacted, this immigration reform proposal created a status adjustment program for undocumented immigrants, with specific provisions for certain groups - potential DREAM Act beneficiaries and agricultural workers (US Congress 2013a).

It also established a non-immigrant agricultural worker program and introduced a merit-based points immigration system, divided into two tracks. In the first track, immigrants are divided into two tiers and granted points according to their level of education, employment experience, entrepreneurship in certain fields, whether they work in a high-demand occupation, knowledge of the English language, age, country of origin, and family relationships. The second track included employment-based and family based-immigrants (US Congress 2013b; 2013a). Each of these categories had a worldwide annual cap, but certain groups were not subject to this limit, such as people with extraordinary abilities in certain fields, researchers, multinational executives, physicians, doctors, and people who earned a STEM (science, technology, engineering, and mathematics) graduate degree in the US (US Congress 2013b). In addition, the bill updated the non-immigrant visa program, increasing the cap for STEM occupations on certain visa categories and creating a new visa category for entrepreneurs. It also included several proposals for increasing border security and measures to avoid the employment of undocumented workers (US Congress 2013b).

In this context, it is possible to argue that the bill would have promoted more openness to migratory flows, as it increased the annual immigration cap and the number of visas for several categories, created new types of visas for certain groups, and offered a solution for undocumented immigrants to regularize their situation. However, a closer examination shows that most of the changes benefit certain groups of immigrants that are considered economically interesting for the US. These include agricultural workers, skilled immigrants in general but especially those in STEM fields, entrepreneurs, and people who work in fields where there is a labor force deficit. The criteria for the merit-based system also demonstrate this preference, as they assign more points to people who are younger, have higher educational levels, and have employment experience in certain fields (US Congress 2013a).

This means even though the proposal might have led to greater openness, this openness is mostly for immigrants who would fulfill labor market needs or contribute to specific

economic sectors. In addition, the bill seeks to increase border control in order to reduce the number of irregularized entries and punish employers who hire undocumented immigrants, contributing to the marginalization of this group. This all points to an effort to steer migration towards specific sectors of the economy by combining some level of openness with increased control measures.

This is also reflected in the seeming contradiction between the creation of DACA and the adoption of several previously mentioned enforcement measures, such as deportation, stricter labor market control, and family detention. These measures seek to reduce irregularized migration not only directly, but also indirectly, by creating a deterrence effect that discourages new flows. This is the reason why recent entries are included among the Obama administration enforcement priorities (US DHS 2011c; 2011a; 2013; 2011b). In this sense, it is clear that Obama's immigration policy and proposals privilege certain immigrant populations as worthy – both from an economic and a moral perspective - while trying to reduce the flow of unwanted immigrants. In addition, much like in the migration management rhetoric, migration control is also partially justified by a humanitarian speech that advocates for the need to protect immigrants by combatting smugglers and drug traffickers who put them at risk (Geiger and Pécoud 2010; US DHS 2009b).

Another similarity between migration management and Obama's immigration policy is the technocratic speech. Geiger & Pécoud (2010) argue that migration management plays a depoliticizing role in migration policy-making by presenting its practices as technical and neutral. The use of managerial language and the stated objective of a “triple-win” hide the conflicts of interests and asymmetries of power that influence policy-making and legitimize the strict control measures adopted by the government (Geiger and Pécoud 2010).

This use of managerial language appears both in the Obama administration's speeches and in policy documents. The need to promote efficient use of limited enforcement resources is frequently used to justify certain measures, such as the prioritization of the deportation of criminals and DACA (US DHS 2012; 2014a; US The White House 2012; 2014b; US DHS 2011c). The main argument is that, given the limited resources for enforcement and the large number of undocumented immigrants, it would be impossible to deport them all. Therefore, the government should prioritize the removal of those who present the greatest threat to society (US The White House 2012; 2014b; US DHS 2011c).

These measures are also referred to as strong and sensible enforcement (US DHS 2012), humane enforcement (US DHS 2014a), intelligent use of resources (US DHS 2011c), and common-sense policies and priorities (US DHS 2013; US The White House 2013a). When used alongside statistics that describe how much deportations have increased or how much investment has been made in border security, this language presents Obama's immigration policy measures as a logical and technical solution that aims to increase government efficiency and achieve certain enforcement goals.

Finally, the dichotomy between the good and the bad immigrant that is present in migration management is also represented in Obama's immigration policy, but in this case, the dichotomy applies not only between legalized and illegalized immigrants but also among illegalized immigrants (Barbero 2019; Coutin et al. 2017). Due to the impossibility to deport the large undocumented population in the US, the Obama administration decided to manage this group by dividing them into two categories: the worthy undocumented immigrants and the unworthy undocumented immigrants.

The unworthy undocumented immigrant, as mentioned before, is the criminal, or the enforcement priority. The worthy undocumented immigrant, in its turn, is still the neoliberal entrepreneur, but in this case, they have broken immigration law. Therefore, it is necessary to justify their pardoning by appealing to redeeming features. The beneficiaries of DACA fit into this category very well because not only do they represent an important prospective labor force who often fits the neoliberal subject stereotype, but also did not have the intention of breaking the law, which makes it easier to justify their pardoning. Besides that, DACA beneficiaries also represent a kind of super-citizen, who embodies American values and has chosen to contribute and be loyal to the US even though they endured years of formal exclusion due to being undocumented (Barbero 2019). This shows that Obama's immigration policy combined a nationalist perspective with certain aspects of migration management, by adding adherence to American values as another criterion for the definition of desirable immigrants, in addition to the potential economic contribution criteria.

In this sense, DACA, much like migration management, represents a form of "control with a human face" (Domenech 2013, 121), as its beneficiaries had to earn their access to permanence in the US by complying with the Obama administration's definition of worthy

undocumented immigrant (Barbero 2019). The program is still serving the same purpose of more openly restrictive policies – that of controlling migratory flows, in this case through the selection of which undocumented immigrants are allowed to stay and which will be criminalized and deported – but this control is now framed under a humanitarian discourse of “providing opportunities to innocent young immigrants” (Barbero 2019; Domenech 2013). It is a way of reconciling human rights with securitist measures (Domenech 2013), as DACA also helps legitimize the increase in enforcement measures against unworthy undocumented immigrants.

In this context, it is possible to argue that Obama’s immigration policy is based on an approach that has its specificities, but that incorporates many aspects of migration management, like combining increased enforcement and regulated openness. In this case, the adoption of DACA was not a contradiction, but rather part of the openness axis of the strategy. However, the operationalization of DACA through prosecutorial discretion resulted in a very limited opening, as its beneficiaries did not receive a proper regular status nor a path for permanent regularization.

Instead, DACA beneficiaries are subject to a form of liminal legality, as they find themselves in a situation in between a regular, documented status and a completely undocumented one (Menjívar 2006; Kubal 2013). This intermediate status combines characteristics of both situations because while DACA has provided them with several benefits that ensured greater access to social and economic opportunities and greater social participation, they are still subject to great uncertainty due to the temporary character of DACA and its legal fragility (Menjívar 2006; Kubal 2013; Coutin et al. 2017). In this context, DACA beneficiaries are still in a situation of vulnerability, as they remain in a permanent state of deportability (Menjívar 2006; Kubal 2013; de Genova 2002).

3.4. The disciplinary role of DACA

To understand the disciplinary role that DACA plays, it is necessary to comprehend how Obama’s immigration policy legitimizes illegality. According to de Genova (2002) and Barbero (2019), migrant illegality is produced through law-making in a historical, tactical, and racialized process that defines categories of differentiation. The main goal of illegalization is not to completely exclude the illegalized subjects, but rather to include them

in society in a situation of prolonged vulnerability (de Genova 2002). This situation of vulnerability and legal precarity is a way of promoting the subordination of the labor force, resulting thus in a supply of cheap labor available to meet the needs of the economy (de Genova 2002).

It is important to keep in mind that illegality is not a fixed category; it changes over time according to the tactical interests of the states (de Genova 2002; Barbero 2019). At the same time, how immigration law is enforced and the processes of criminalization result in an unequal application of immigration law which usually has negative impacts for racialized communities (Barbero 2019).

In this context, it is important to notice that legalizations are also a disciplinary tool (de Genova 2002). First, because they can only take place after a process of illegalization. Second, because legalizations do not eliminate illegality: due to their sporadic and limited character, they only reconfigure it by redefining the limits of who is included in this category. By defining the subject who is eligible for legalization, states also reinforce the illegality of all the other subjects (de Genova 2002). Furthermore, the subjects of legalization have often endured so much time under the threat of deportability that the subordination of labor is maintained even after legalization (de Genova 2002).

In addition, the proliferation of semi-legal statuses in recent years has added another layer of complexity to illegality (Kubal 2013). That is because while liminal legality statuses might give immigrants certain benefits, the temporal uncertainty that these statuses entail is used as a form of control (Coutin et al. 2017; Levesque and DeWaard 2021).

As discussed in section one, it is clear, from the analysis of speeches and policy documents, that the Obama administration never questioned the idea of “illegality”. Even though they recognize that the large undocumented population in the US is a result of the “broken immigration system”, their proposals – of comprehensive immigration reform, the DREAM Act, or DACA – never intended to eliminate “illegality”. Rather, these proposals consist of different forms of legalization that would redefine who is considered undocumented.

The governmental speeches on immigration do not address “illegality” as something deliberately created by the government, but rather as something that the “broken immigration

system” has failed to deal with. While the Obama administration does recognize that state action – or inaction – has contributed, to some extent, to the current situation of the undocumented population, they do not claim that the state has created “illegality”, but rather that it was unable to address it because it could neither stop illegalized flows from entering the US nor provide legal alternatives that met 21st-century demands. This implies that “illegality” is a fact that states must address, concealing the fact that it is constructed by states (Barbero 2019).

This discourse, like much of migration management discourse, blurs the political character of “illegality” by portraying it as a technical issue – if the problem is an out-of-date system, then the solution is to update the system to meet current needs, not question it (Geiger and Pécoud 2010). The move away from a legislative – and therefore political - solution and towards an executive one, based on the efficient use of resources, and the display of the managerial discourse mentioned earlier, also contribute to this depoliticization process (Geiger and Pécoud 2010).

In this context, DACA can be considered as a form of legalization adopted by the Obama administration. Despite not providing legal status, it serves the same purpose as other legalizations: redefining the limits of illegality (de Genova 2002). The choice of neoliberal and innocent young super-citizens as worthy undocumented immigrants establishes a model of good citizenship that criminalizes all the other undocumented immigrants – who cannot rely on the innocence discourse -, but especially those who are considered unworthy immigrants (Barbero 2019). This helps justify the increased enforcement and control measures against this unworthy population, thus functioning as a disciplinary power over them.

At the same time, DACA has disciplinary power over its beneficiaries, due to its liminal legality (Levesque and DeWaard 2021; Barbero 2019). Because of the temporary and discretionary character of the program, its beneficiaries must stay within the limits of the worthy undocumented immigrant to preserve their status. At the same time, they remain in a more vulnerable social position (Kubal 2013). Finally, their participation in the program makes them susceptible to increased surveillance, as they must make themselves visible to the state by generating documentation to participate in the program (Barbero 2019; Coutin et al. 2017).

In conclusion, given the information collected during the document analysis, Obama's immigration policy can be considered to include elements of migration management that extend to the undocumented population already residing in the US. In this context, the liminal legality status granted by DACA is a part of the controlled openness axis of the migration management approach, but it also serves as an instrument of control and discipline over DACA beneficiaries and the rest of the undocumented population.

Conclusions

This work has focused on understanding how the liminal legality status granted by DACA fits into the Obama administration's management efforts towards the undocumented population through the analysis of a corpus of US immigration policy documents and speeches. It strived to shed some light on the apparent contradiction between the enactment of DACA and the series of securitist measures adopted during President Obama's administration and to explain how the semi-legal status of DACA beneficiaries relates to these two sets of measures.

Through the examination of policy documents and high-level officers' speeches, it became clear that, in the Obama administration's rationality, there was no contradiction between DACA and increased control measures; rather, they are seen as complementary approaches. This realization, coupled with other elements identified in the analyzed documents, points towards a political rationality that has many elements in common with migration management. Some of these elements are the use of technical language focused on efficiency and smart use of resources and the increased border control measures to restrain irregularized flows, as well as its humanitarian representation as a form of immigrant protection.

But a key similarity found between Obama's immigration policy rationality and migration management was the categorization of immigrants as either desirable or undesirable ones. This categorization is relevant because the signaling out of a desirable group helps to justify the increased control measures over those deemed undesirable.

In both cases, the desirable immigrant is the neoliberal subject who can contribute to the economy of the receiving country, in a "win-win" situation. In this context, this neoliberal immigrant should be entrepreneurial, autonomous, and flexible – to adjust to market needs –, and should always be striving to increase their human capital. This aspect of desirability is reflected in the Obama administration's governmental discourse through the description of immigrants as hard-working people who want to pursue an education, start new companies, and create jobs in the US. Obama and his Secretaries also reinforce this idea by using examples of how immigrants have contributed to the economy – including, for example, mentions of major US companies Google and Yahoo!, which were founded with the participation of immigrants (US The White House 2013a).

But while migration management also postulates that desirable migration is legal, the documents and speeches analyzed to show that the Obama administration extended that division to undocumented immigrants due to the large size of this population and the impossibility to deport them all. In this context, the unworthy undocumented immigrant is the criminal, who represents a threat to public safety and who must face harsher control measures such as deportation.

The worthy undocumented immigrant, in its turn, must be that entrepreneurial economic subject, but also possess some kind of redeeming feature that justifies the provision of a form of status adjustment even though they violated immigration law. In governmental speeches about immigration reform, this worthy undocumented immigrant is hard-working, family-oriented, and willing to endure certain penalties and integrate into American culture in order to earn their new status. In the case of DACA, this redeeming feature is the beneficiaries' lack of intention to break the law, as they were taken to the US as minors. In addition, the fact that they spent a significant part of their lives in the receiving country and that they usually know the language and culture, and might even have some form of loyalty to the US, also contributes to their redemption. These arguments are repeated both in policy documents and in governmental speeches as justifications for the adoption of DACA.

On this basis, it is possible to argue that the political rationality of migration management is reflected in the Obama administration's immigration policy. In this context, DACA operates like a tool or a technology of migration management, aimed at undocumented immigrants. Much like visas allow countries to choose who comes into the country – at least in a legalized way -, DACA allows the American government to select which undocumented immigrants will receive some form of relief according to its interests. And while economic concerns played a part in this choice, other interests – such as political and electoral ones – might also have influenced this decision.

This is important because it shows that the Obama administration never questioned immigrant illegality, which is reinforced by other passages of policy documents and especially speeches. Even though Obama and his officers attribute the size of the undocumented population in the US to a broken immigration system, the solutions they propose – be it immigration reform or DACA – do not intend to eliminate illegality completely. On the contrary, the adoption of these solutions is always coupled with increased control measures aimed at illegalized

immigrants considered dangerous and recent illegalized flows. Therefore, the openness measures they proposed serve to redesign the limits of legality according to the receiving state's interest.

In this sense, what DACA does is to redefine the limits of legality and “illegality” by establishing these “educated and innocent young undocumented immigrants who did not intend to break the law” as the model of worthy undocumented immigrant. However, that definition also reinforces the criminalization of all other undocumented immigrants, especially those considered unworthy, and justifies enhanced control measures while also increasing their vulnerability to economic exploitation.

In addition, the status provided by DACA implies a condition of liminality as it leaves beneficiaries in a state of permanent temporariness and deportability. Despite providing undeniable benefits, DACA does not confer rights or legal status, and the uncertainty generated by the programs' frail legal status and discretionary character keeps its beneficiaries in a vulnerable position. In this sense, DACA can act as a form of discipline and control over its beneficiaries, as they have to appear to the state to participate in the program, and they must continue to fit the model of the worthy undocumented immigrant in order to maintain their DACAmented status.

Overall, DACA fits into Obama's immigration policy as a technology for the management and control of the undocumented population. Coupled with other policy measures – such as enforcement priorities -, it allowed his administration to divide, classify and discipline this population through the simultaneous use of limited openness - in the form of liminal legality - and increased control.

This work contributes to the literature on DACA by combining two different analytical perspectives - critical migration management and liminal legality – to explain the relationship between DACA and the overall securitist immigration policy of the Obama administration. It has also tried to contribute to a better understanding of the rationality behind the adoption of DACA beyond immediate electoral motivations. I believe the comprehension of such logic might provide useful insights for the analysis of the immigration policies of other administrations, both Democrat and Republican, but especially for those adopted by the Biden

administration in the near future, given Biden's role as vice president during Obama's two terms.

In regards to the broader migration management debate, the main contribution of this work is its analysis of migration management as a political rationality present in US immigration policy. Even though none of the policy documents or speeches analyzed make explicit reference to migration management, it is possible to identify several coincidences between the discourses and practices of migration management and those of the Obama administration. By focusing on migration management as the underlying logic of Obama's immigration policy, it is possible to reconcile the apparently contradictory measures his administration adopted.

This suggests that the migration management rationality is present even when there is no direct appeal to it and that states can mobilize specific elements of this regime as needed to justify their actions. This could point to a widespread influence of migration management in national immigration policies around the world, or it could be evidence that migration management is a variation of the migration control rationality that has permeated developed countries' immigration policies for decades, but with an updated discourse that uses human rights and a positive portrayal of immigration to justify its practices. At the same time, the analysis conducted throughout this thesis explores how a liminal legality status, as a technology of government, can be used to control an undocumented population in the context of migration management.

In addition, this research effort evidences the complexities involved in the categorization of the immigration population. While migration management reinforces neoliberal subjectivities and privileges economic interests, the example of DACA shows that other considerations – of a moral, political, social, and cultural character – also influence the immigration policies and practices adopted by states. In the case of Obama's immigration policy, notions of innocence, redemption, and deservingness played an important role in the definition and justification of measures such as DACA and his proposals for comprehensive immigration reform. Finally, this work has shown that liminal legality can function as a disciplinary tool in migration management.

While this thesis has attempted to contribute to a better understanding of the articulation between migration management and liminal legality in Obama's immigration policy, several

other issues deserve further examination. One of them is the issue of race: how does the racialized character of DACA and the political and electoral interests of the Democratic party articulate with the migration management rationality? Another important topic is the effect of DACA on the fight for comprehensive immigration reform and/or the DREAM Act. While there are several studies on the effects of DACA on its beneficiaries and their families, it would be interesting to understand if DACA has strengthened the efforts for more comprehensive solutions for undocumented immigrants or if it has had a demobilizing effect.

Comparative perspectives could also contribute to a better understating of American immigration policy and how it relates to partisan politics. On the one hand, exploring whether the combination of securitist measures and regulated openness was adopted in previous Democratic administrations and if it is being used in the Biden administration might lead to a deeper comprehension of the Democratic logic on immigration policy. This analysis could help identify whether the political rationality of migration management is part of a broader Democratic rationality in migration issues or something specific to the Obama administration. On the other hand, an analysis of the immigration policy in different Republican administrations could provide a better understanding of whether there is a Republican rationality and whether migration management is a part of it as well. A comparison between Democratic and Republican rationalities could provide insights on the differences and similarities between these approaches, which might be useful not only for academic analysis but also for civil society's efforts to protect undocumented immigrants' rights.

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Annexes

Annex 1. List of documents analyzed

1. Policy documents

- Memorandum “Civil Immigration Enforcement: Priorities for the Apprehension, Detention and Removal of Aliens.” US Department of Homeland Security. 2011.
- Memorandum “Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens.” US Department of Homeland Security. 2011.
- Memorandum “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children.” US Department of Homeland Security. 2012.
- Memorandum “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and with Respect to Certain Individuals Who Are the Parents of U.S. Citizens or Permanent Residents.” US Department of Homeland Security. 2014.
- Memorandum “Policies for the Apprehension, Detention and Removal of Undocumented Aliens.” US Department of Homeland Security. 2014.
- Web page “Consideration of Deferred Action for Childhood Arrivals (DACA).” U.S. Citizenship and Immigration Services. 2021.

2. Speeches

2.1. Speeches made by President Obama

- “Remarks by the President on Immigration.” US The White House. June 2012.
- “Remarks by the President on Comprehensive Immigration Reform.” US The White House. January 2013.
- “Remarks by the President in the State of the Union Address.” US The White House. February 2013.
- “President Barack Obama’s State of the Union Address.” US The White House. January 2014.

- “Remarks by the President in Address to the Nation on Immigration.” US The White House. November 2014.

2.2. Speeches made by the Secretaries of Homeland Security

- “Remarks by Secretary Napolitano at the Council on Foreign Relations.” US Department of Homeland Security. July 2009.
- “Prepared Remarks by Secretary Napolitano on Immigration Reform at the Center for American Progress.” US Department of Homeland Security. November 2009.
- “Secretary Napolitano’s Remarks on Smart Effective Border Security and Immigration Enforcement.” US Department of Homeland Security. October 2011.
- “Remarks by Secretary of Homeland Security Janet Napolitano at the National Press Club.” US Department of Homeland Security. August 2013.
- “Remarks by Secretary of Homeland Security Jeh Johnson at the National League of Cities Congressional City Conference - As Delivered.” US Department of Homeland Security. March 2015.
- “Remarks by Secretary of Homeland Security Jeh C. Johnson on the State of Homeland Security.” US Department of Homeland Security. February 2016.