

DECEMBER 2010

## S U M M A R Y

Although the prospects for comprehensive immigration reform have faded, policymakers in Washington will eventually need to return their attention to reform of the US immigration system and the question of how to deal with the nation's estimated 11.1 million unauthorized immigrants.

Legalization is a policy option that has been used with some regularity by governments in the United States, Europe, and elsewhere, as discussed in this Policy Brief and subsequent papers in this Migration Policy Institute (MPI) series on US legalization.

Notwithstanding the commonly held perception that the United States has enacted only one legalization program in its history — through the 1986 Immigration Reform and Control Act (IRCA) — these programs have been an enduring and necessary feature of US immigration law and policy since the nation's first quota restrictions in the 1920s. With one exception, US legalization programs have targeted discrete groups of unauthorized or temporary residents, through population-specific programs and through "registry" programs that cover very long-term unauthorized immigrants.

The report shows that even since 1986, more immigrants have legalized through population-specific and registry programs than through IRCA's "general legalization" provisions, the only program of its kind in US history.<sup>3</sup> The IRCA general legalization program (as distinguished from its three population-specific programs) granted legal status to 1.6 million unauthorized immigrants; in contrast, a conservative count finds that more than 2.1 million persons were legalized through the major population-specific and registry provisions since 1986, and a far higher number since the 1920s. (See Table 1 for a list of the largest legalization programs since 1986; and the Appendix for a year-by-year listing of the major legalization programs.)

## MORE THAN IRCA: US Legalization Programs and the Current Policy Debate

By Donald M. Kerwin, Migration Policy Institute

### I. Introduction

The United States has been in the midst of a fractious public debate on immigration reform and, in particular, over how to address its 11.1 million unauthorized residents.<sup>1</sup> An open question remains whether the Obama administration and Congress should at some point pursue a "general" legalization bill that would cover a large percentage of US unauthorized residents; legislation that would extend eligibility to narrower, more defined groups; or a measure that would do both.<sup>2</sup>

This report provides an historical overview of US legalization programs, a primer on the statutory language used to describe them, and a discussion of the current debate over legalization.

#### A. Defining Legalization

The report defines "legalization" as a process that allows US "unauthorized" or temporary residents to become lawful permanent residents (LPRs) and ultimately US citizens.<sup>4</sup> This rough definition excludes three types of laws that could be viewed as "legalizations." Were these laws to be counted as "legalization" programs, the disparity between the number of persons legalized through general and narrower programs would be even more pronounced.

First, the definition excludes laws that prospectively and permanently change the US system of legal immigration and that are of general (not population-specific)

application. Congress has frequently changed the rules governing whom it will admit as immigrants (i.e., LPRs). For example, in 1965, Congress eliminated discriminatory national origin quotas and prioritized family-based immigration.<sup>5</sup> Unlike legalization legislation, changes in legal admission categories can in theory remain in place into perpetuity, and are open to a broad cross-section of unauthorized, temporary, and other immigrants.

Second, this report does not count constitutional amendments and laws that have expanded membership in the polity by correcting discriminatory policies. The 14<sup>th</sup> Amendment, for example, reversed the infamous *Dred Scott* decision, restored the English common law rule of birthright citizenship, and elevated it to a US constitutional right. Congress intended that this right would apply to the children of immigrants.<sup>6</sup> Because of its universal application

**Table 1. Persons Adjusting to Lawful Permanent Resident Status through General, Population-Specific, and Registry Legalization Programs, 1986 to 2009**

Program	General Legalization	Population-Specific and Registry Legalization
Immigration Reform and Control Act (IRCA) general legalization	1,596,912	
IRCA Special Agricultural Worker (SAW) program		1,093,065
IRCA late amnesty applicants	14,907	
Nicaraguan Adjustment and Central American Relief Act (NACARA)		67,092
Haitian Refugee Immigration Fairness Act (HRIFA)		30,476
Cuban-Haitian entrants		37,698
Cancellation of removal		247,079
Former H-1 nurses (including accompanying child or spouse)		12,165
Select parolees		100,098
Select registry programs		72,439
Chinese Student Protection Act of October 9, 1992		53,088
Cuban adjustment program		405,787
Non-Cuban spouses or children of Cuban refugees		29,812
<b>TOTAL</b>	<b>1,611,819</b>	<b>2,148,799</b>

Source: US Department of Justice, Immigration and Naturalization Service, *Statistical Yearbook of Immigration Statistics and Naturalization Service*, (Washington, DC: US Government Printing Office, various years); US Department of Homeland Security (DHS), *Yearbook of Immigration Statistics*, (Washington, DC: DHS, Office of Immigration Statistics, various years).

and prospective reach, the amendment is not a legalization law, though it has “legalized” countless immigrant children.

Similarly, in 1943, the United States repealed the infamous Chinese exclusion laws of the late nineteenth and early twentieth centuries.<sup>7</sup> Unlike legalization programs, US laws to enfranchise particular immigrant (and native) populations can best be seen as attempts to create (prospectively) nondiscriminatory laws, not to legalize discrete groups.

The third are measures that seek to improve the efficiency of legal immigration procedures or to concentrate immigration enforcement resources on particular populations. These include administrative policies that prioritize the removal of convicted criminals and egregious immigration violators over the removal of ordinary status violators. They also include legislation to extend the Immigration and Nationality Act (INA) Section 245(i), which allows the beneficiaries of approved family-based immigration petitions to adjust to LPR status in the United States<sup>8</sup> rather than have to leave the country and face bars to their return.<sup>9</sup> These types of measures have been characterized as “amnesties” in the public debate.<sup>10</sup> By this study’s conservative definition, legislative or administrative measures that may or may not improve immigration procedures and enforcement programs, but that do not extend LPR status to previously ineligible populations, do not qualify as legalization programs.

## B. Taxonomy of US Legalization Programs

US legalization programs can be grouped into three overlapping categories:

registry, population-specific, and general programs.<sup>11</sup> The registry program covers persons who have resided continuously in the United States as of a set date of entry and who meet other eligibility criteria. Congress has advanced the registry entry date several times since the program’s inception in 1929. However, it has never passed legislation to advance the date *automatically* at regular intervals. As a result, this form of legalization is available to large numbers of unauthorized people in the years immediately after Congress updates the date, but to fewer and fewer persons thereafter.

The second type of legalization program covers discrete populations of humanitarian, equitable, or economic interest. The United States has regularly offered LPR status to groups of asylum seekers, persons who have fled refugee-like conditions, and others in need of protection. It has also opted to legalize select groups of workers. Registry beneficiaries might also be viewed as a discrete population of significant humanitarian interest (i.e., long-term unauthorized residents who have established strong equitable ties to the country). However, this report has opted to group them, as the law does, in a separate category.

The third type of program attempts to cover a large percentage of unauthorized persons who are present in the United States at a particular period of time. IRCA updated the registry date and extended legal status to two discrete populations: farm workers and Cuban-Haitian entrants. However, IRCA is best known for its general legalization program, which covered persons who had continuously resided without authorization in the United States from January 1, 1982 to the date of the

bill's enactment.<sup>12</sup>

## II. The History of US Legalization Programs

### A. Registry Programs

The nation's first legalization program fittingly came in response to anomalies created by the nation's first quota restrictions in the 1920s.<sup>13</sup> In 1929, Congress passed legislation that allowed aliens to register with the government if they had arrived prior to June 3, 1921, had resided continuously in the United States since that time, had exhibited good moral character, and were not subject to deportation or ineligible for citizenship.<sup>14</sup> The bill applied to noncitizens without a record of admission: thus, it used the "registry" nomenclature. Successful registrants were considered to have been lawfully admitted for permanent residence as of their entry date.<sup>15</sup>

Since 1929, Congress has updated the qualifying date for registration several times. In 1940, it updated the date to July 1, 1924.<sup>16</sup> In 1958, it advanced the date to June 28, 1940.<sup>17</sup> It also eliminated the requirement that an applicant not be subject to deportation and thus made registry available to aliens who had entered the country illegally or who had violated the terms of their visas. In 1965, Congress updated the date to June 30, 1948.<sup>18</sup> In 1986, IRCA advanced the registry date to January 1, 1972. Under current law, the United States can establish a "record of lawful admission" to LPR status for any alien who

has continuously resided in the United States since January 1, 1972, has good moral character, would not be ineligible for citizenship, and is not inadmissible based on certain grounds or deportable for engaging in terrorist activities.<sup>19</sup>

Congress has considered, but has never passed, legislation that would *automatically* advance the registry at regular intervals. Thus, large numbers of long-term unauthorized persons apply for registry following updates in the entry date, but the numbers decline thereafter. Between 1929 and 1945, for example, an estimated 200,000 immigrants received "registry," with the number of beneficiaries peaking in 1943 after Congress advanced the entry date in 1939.<sup>20</sup> In the two years following IRCA, nearly 50,000 persons adjusted to LPR status under the updated registry provision.

### B. Population-Specific Legalization Programs

Congress has also frequently legalized groups for labor market, humanitarian, and equitable reasons. Some of these groups (like Cubans) have had strong political constituencies, and many have had individual legislative champions.<sup>21</sup> In the case of IRCA, two population-specific programs and an updated registry date were included in legislation better remembered for its *sui generis* general legalization program.

By one count, since 1952 alone, Congress has acted 16 times to extend LPR status to persons in temporary legal status.<sup>22</sup> Between 1946 and 2000, it passed several bills to legalize refugees and similar populations that it had "paroled"

into the country, including more than 175,168 Indochinese following the fall of Saigon and 30,752 Hungarians following the 1956 revolution.<sup>23</sup> “Parole” is a temporary status that the Department of Homeland Security (DHS) can grant “on a case-by-case basis for urgent humanitarian reasons or significant public benefit.”<sup>24</sup>

The nation’s largest population-specific program has been the Cuban Adjustment Act of 1966 (CAA).<sup>25</sup> Under the CAA, Cubans and their accompanying spouses and children who have been admitted or paroled can adjust to LPR status after one year. Between 1960 and 2009, the United States granted LPR status to more than 1 million Cubans, mostly through the CAA.<sup>26</sup> The Immigration Nursing Relief Act of 1989 is an example of a smaller, population-specific program. The legislation allowed persons working as registered nurses under temporary work (H-1) visas as of September 1, 1989 to adjust to LPR status.<sup>27</sup> To qualify, applicants needed to have been employed as registered nurses for at least three years, and their future employment needed to meet labor certification requirements.

Since 1940, the United States has allowed certain unauthorized persons with equitable ties to the United States who are facing deportation or removal to seek LPR status.<sup>28</sup> The legal standards for “suspension of deportation” (renamed “cancellation of removal” in 1996) have changed several times, becoming more restrictive over the years. Among the shifting criteria for this relief have been good moral character, residence for a set period of time, and the hardship that would be caused to a US citizen or LPR family member (and, in

early versions of the law, to the applicant) by his or her deportation.

Under current law, cancellation of removal can be granted at the discretion of an immigration judge to an unauthorized person who has been continuously physically present in the United States for at least ten years, has been a person of good moral character during that time, has not been convicted of certain offenses that make him or her inadmissible or deportable, and can establish that removal would “result in exceptional and extremely unusual hardship” to his or her US citizen or LPR spouse, parent, or child.<sup>29</sup>

In the 1990s — a decade otherwise characterized by immigration enforcement legislation and significant increases in enforcement spending — Congress passed several bills that extended LPR status to asylum seekers, persons receiving temporary protection, and others in refugee-like situations, including:

- Nationals from the former Soviet Union, Vietnam, Laos, and Cambodia who had been paroled into the United States (after being denied refugee status) in the late 1980s and early 1990s.<sup>30</sup>
- Nationals of the People’s Republic of China (PRC) who had been allowed to remain temporarily in the United States following the repression at Tiananmen Square.<sup>31</sup>
- Nationals of Poland and Hungary, who had been paroled into the United States between November 1, 1989 and December 31, 1991, after being denied refugee status.<sup>32</sup>

- Certain Salvadoran, Guatemalan, and Soviet bloc asylum seekers from the 1980s and early 1990s.<sup>33</sup>
- Nicaraguan and Cuban nationals who had been continuously present since December 1, 1995.<sup>34</sup>
- Haitian asylum seekers who were paroled into the United States from Guantánamo Naval Base in 1991 and 1992, as well as certain unaccompanied Haitian minors.<sup>35</sup>

Two pending population-specific legalization bills have received significant attention and support in the immigration debate that has preoccupied Washington, DC periodically since the mid-2000s. The Development, Relief, and Education for Alien Minors Act (known as the DREAM Act) would provide conditional LPR status to unauthorized persons who entered the United States prior to age 16, have been continuously present for at least five years, have been admitted to an institution of higher education or have earned a high school diploma or a General Education Development diploma (GED), and have not reached age 35.<sup>36</sup> In addition, applicants must be admissible and cannot be deportable on certain grounds.<sup>37</sup> After six years in conditional status, applicants would be able to become LPRs (on a permanent basis) if they have:

- obtained a degree from an institution of higher education, completed at least two years in a program for a bachelor's degree (or higher), or honorably served at least two years in the US military;
- demonstrated good moral character while in conditional status; and

- not become inadmissible or deportable on specified grounds.<sup>38</sup>

A Migration Policy Institute (MPI) study in July 2010 concluded that 2.1 million US residents met the barebones, non-educational requirements for conditional LPR status (i.e., age at arrival, continuous presence, and age at the bill's enactment).<sup>39</sup> However, the study estimated that only 825,000 of the 2.1 million would likely meet the educational and other requirements for permanent (unconditional) LPR status.<sup>40</sup>

The Agricultural Job Opportunities, Benefits, and Security Act of 2009 ("AgJobs") would allow certain unauthorized farm workers and guest workers — and their spouses and minor children — to obtain temporary legal status based on past work history and to obtain LPR status through prospective work.<sup>41</sup> Under the legislation, an alien would be eligible for temporary legal status (a "blue card") if he or she performed agricultural employment for at least 150 days or 863 hours over a 24-month period, or earned at least \$7,500 from agricultural employment in the United States.<sup>42</sup> In addition, he or she would be required to apply for this status during a set period of time, would need to be otherwise admissible, and could not have been convicted of certain crimes. Like the DREAM Act, AgJobs could potentially benefit large numbers of unauthorized immigrants: the bill would allow up to 1.35 million temporary "blue cards" to be issued over a five-year period.<sup>43</sup>

Under the bill, blue-card holders would be eligible to adjust to LPR status if they performed agricultural labor (for different minimum lengths of time) in

each of the three to five years beginning on the date of the bill's enactment, submitted a record or documentation of employment, applied within seven years of enactment, established that they had no federal tax liability, and paid a fine.<sup>44</sup> LPR status could be denied based on fraud, willful misrepresentations, commission of acts that made the alien inadmissible, and convictions for other offenses.<sup>45</sup>

### C. The Immigration Reform and Control Act of 1986

IRCA advanced the registry entry date from June 30, 1948 to January 1, 1972. It also legalized two discrete populations. The Special Agricultural Worker (SAW) program provided temporary status to persons who resided in the United States, performed seasonal agricultural work for at least 90 days during a 12-month period in 1985-86, and could establish their admissibility.<sup>46</sup> "Group 1" temporary residents — those who performed seasonal agricultural work for at least 90 days during each of three one-year periods in 1984, 1985, and 1986 — could adjust to LPR status beginning one year after the end of the SAW program. "Group 2" applicants — those who met the one-year but not the three-year work requirements — had to wait an additional year to receive LPR status.

For temporary residents who had not committed offenses making them deportable, the SAW "adjustment" process consisted of appearing at a legalization office, being photographed and fingerprinted, and receiving a green card.<sup>47</sup> Nearly 1.1 million persons received

LPR status under SAW, including nearly 60,000 Group 1 applicants and more than 1 million Group 2 applicants.<sup>48</sup>

IRCA's second population-specific program covered nationals of Cuba and Haiti who had been designated as "Cuban-Haitian entrants," or who had entered prior to January 1, 1982, whose entry had been recorded by the US Immigration and Naturalization Service (INS), and who had not been admitted as nonimmigrants (temporary immigrants).<sup>49</sup> Applicants also had to meet continuous residence and other requirements.<sup>50</sup>

Cuban-Haitian entrant status had been granted to Cubans who entered illegally or who were paroled into the United States between April 15, 1980 and October 10, 1980 (i.e. the roughly 125,000 Cubans, known as *Marielitos*, whom Castro allowed to leave Cuba for South Florida during this period) and to Haitians who entered illegally or who were paroled into the country prior to January 1, 1981. In 1984, the United States began to grant LPR status to Cuban entrants under the Cuban Adjustment Act of 1966. However, Haitian entrants were not allowed to adjust to LPR status. IRCA's Cuban-Haitian entrant provisions sought to correct the disparate treatment of these two groups by extending LPR status to Haitian entrants.<sup>51</sup>

IRCA's general legalization program provided *temporary* status to persons who had been unauthorized from before January 1, 1982 and who had been continuously present from the date of legislation's enactment, with an exception for "brief, casual and innocent" absences.<sup>52</sup> The act also required that the

applicant be admissible, not have been convicted of a felony or three or more misdemeanors, not have persecuted others, and have registered under the Military Selective Service Act.<sup>53</sup> A person in lawful temporary status could adjust to LPR status if he or she had continuously resided in the United States since receiving temporary status, was admissible, and had not been convicted of a felony or three misdemeanors.<sup>54</sup> Applicants also needed to meet or be “satisfactorily pursuing a course of study” to meet the requirements for English language proficiency and for knowledge and understanding of US history and government.<sup>55</sup> Nearly 1.6 million persons received LPR status under IRCA’s general legalization program.<sup>56</sup>

IRCA sought to reduce illegal immigration on a permanent basis by coupling a broad legalization program with increased border enforcement and a new employment verification and employer sanctions regime designed to reduce the “magnet” (work) that drew people to the United States illegally. Prior to IRCA, it was not against the law to hire unauthorized workers.

IRCA reduced the US unauthorized population to between 1.8 million and 3 million persons.<sup>57</sup> However, this population rose dramatically through the 1990s and the first half of the 2000s, peaking at 12 million in 2007.<sup>58</sup> This growth can be attributed in part to the failure of US legal immigration policies — which IRCA left almost entirely intact — to meet US labor market needs during these years. It can also be attributed to inconsistent enforcement of the employer verification laws and to flaws in the employer verification regime that make it difficult

to detect when unauthorized workers present the legitimate documents of others.<sup>59</sup> In addition, IRCA’s failure to provide derivative benefits to family members meant that IRCA beneficiaries had to wait to become LPRs and then petition for family members. This led to substantial backlogs in family-based immigration categories.<sup>60</sup> As a result of these backlogs — which have shortened significantly in the last two years — millions of persons with approved petitions (i.e., who had established a qualifying relationship to a US citizen or LPR) languished for years in unauthorized status.<sup>61</sup>

### III. Legalization Programs and the Current Debate

As the 111<sup>th</sup> Congress comes to a close, IRCA’s legacy continues to bedevil the US immigration debate. Opponents of legalization argue against comprehensive immigration reform based on IRCA’s failure to stem illegal immigration and to permanently reduce the unauthorized population, as IRCA’s supporters had predicted it would. They argue that pending proposals would reprise the IRCA experience and result in large increases in legal and illegal migration. They maintain that stepped-up immigration enforcement programs will, in time, significantly reduce the unauthorized population through removals, attrition, and deterrence.

This proposition is being tested. By virtually every measure, immigration enforcement has substantially expanded in



recent years. In fiscal year 2010, DHS's two immigration enforcement agencies, US Immigration and Customs Enforcement (ICE) and US Customs and Border Protection (CBP), had a combined budget of \$16 billion — three times more than the FY 2002 budget for INS, which included both enforcement and immigration benefit responsibilities.<sup>62</sup> The Border Patrol has long treated border apprehensions as its proxy for estimating illegal migration flows. In FY 2009, apprehensions fell to their lowest level (556,032) since 1973.<sup>63</sup> Employer audits to detect illegal employment have dramatically increased.<sup>64</sup> Removals (deportations) and immigration-related criminal prosecutions have reached record highs.<sup>65</sup> Federal and state partnerships to screen those arrested and imprisoned against immigration databases have increased. The Secure Communities program, which automatically screens arrested persons against criminal and immigration databases, now operates in 658 jurisdictions and 32 states.<sup>66</sup> States and localities have adopted immigration enforcement policies that parallel and, at times, usurp federal policies.<sup>67</sup>

Furthermore, the criterion for US citizenship has itself been questioned, with key Republican lawmakers calling for hearings on the issue of birthright citizenship, which has been a constitutional right since the post-Civil War era. Nearly 100 members of the US House of Representatives have cosponsored legislation that would interpret the 14<sup>th</sup> Amendment's birthright citizenship clause to exclude children whose parents are unauthorized.<sup>68</sup>

Legalization proponents, including the Bush and Obama administrations, have

not defended IRCA. Rather, they have taken pains to distinguish the kind of legalization that they support from IRCA's general legalization provisions and suggest that IRCA's legislative and implementation failures will not be repeated.<sup>69</sup> They argue that pending proposals do not offer an "amnesty" or "reward" illegal behavior, but allow unauthorized persons to earn legal status over many years based on employment, good moral character, payment of a fine, learning English, and other requirements.

## IV. Conclusion

It will be difficult to convince the public of the need for a broad earned legalization program close on the heels of an economic crisis that has cost millions of US jobs and that promises a long and slow labor market recovery.

The consensus view of IRCA's flaws, which has been strongly associated with recent legalization proposals, compounds the difficulty. At the same time, immigration enforcement cannot, by itself, effectively address the challenges posed by unauthorized immigrants. Even in the current economic climate, the US unauthorized population stands at more than 11 million and unauthorized workers constitute more than 5 percent of the US labor force.<sup>70</sup> More than half of the unauthorized arrived before 2000.<sup>71</sup> Unauthorized parents have 5.1 million US resident children, including 4 million US-citizen children.<sup>72</sup> The socioeconomic costs of deporting the unauthorized or otherwise forcing them to leave would be immense. As the 111<sup>th</sup> Congress ends, it has not yet

meaningfully engaged this issue. Lawmakers will ultimately need to do so.

This report does not argue for any particular approach to immigration reform. However, it demonstrates that Congress has consistently found it necessary to legalize discrete immigrant populations that have fallen outside the (permanent) legal immigration system.

These laws have passed with powerful and relatively weak political constituencies, with different levels of support from the executive branch and members of Congress, and with varying degrees of fanfare and controversy. Some have not been viewed as legalization measures at all. Legalization programs have targeted refugee-like groups, immigrant laborers, and persons with strong equitable ties

and long tenure in the United States. If and when Congress seriously revisits this issue, it will need to weigh whether a general legalization bill, narrower legalization programs, or both should be pursued. While broad legislation may better serve the integration and public safety goals of a legalization program, it also makes it far more difficult for legalization proponents to define the target population during public debate in a convincing and clear way. By contrast, opponents of legalization have achieved notable success in casting the potential beneficiaries of “earned legalization” as an undifferentiated group of lawbreakers. In any event, programs targeting well-defined groups have led to the legalization of far more people in US history.

## Acknowledgments

The author would like to thank Alan Kraut, Doris Meissner, and Charles Wheeler for their thoughtful comments and guidance on this report; Michelle Mittelstadt and Kate Brick for their insightful edits; and Kristen McCabe for her thorough research and work on the Appendix which represents a centerpiece of the report.

The report is one in a series on how to shape, structure, and administer a legalization program. Additional papers in the series will cover how different unauthorized populations would fare under different legislative scenarios, legal issues in structuring a successful legalization program, the concept of a “registration” program as the first stage of an “earned legalization” program, and the role of states and localities in carrying out a legalization program.

The Migration Policy Institute (MPI) wishes to thank the Open Society Institute for its direct support of MPI’s project on implementation of a legalization program, Unbound Philanthropy for its support of other papers in this series, and the Ford Foundation for its overarching support for MPI’s US immigration policy work.

Appendix

Table A-1. LPR Status Adjustments through General, Population-Specific, and Registry Legalization Programs by Year and Program, 1986 to 2009

Program	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Total	General Legalization Program	Population-Specific and Registry Programs
Immigration Reform and Control Act (IRCA) General Legalization	X	X	X	478,814	823,704	214,003	46,962	18,717	4,436	3,124	3,286	1,439	954	4	413	246	48	33	123	172	202	57	103	72	1,596,912	1,596,912	
IRCA Special Agricultural Worker (SAW) program	X	X	X	X	56,668	909,159	116,380	5,561	1,586	1,143	1,349	1,109	2	4	8	17	7	6	5	11	15	22	13	D	1,093,065		1,093,065
IRCA late amnesty applicants	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	112	2,161	3,088	3,150	3,888	1,160	689	659	14,907	14,907	
Nicaraguan Adjustment and Central American Relief Act (NACARA)	X	X	X	X	X	X	X	X	X	X	X	X	1	11,219	20,364	18,663	9,307	2,498	2,292	1,155	661	340	296	296	67,092		67,092
Haitian Refugee Immigration Fairness Act (HRIFA)	X	X	X	X	X	X	X	X	X	X	X	X	X	D	435	10,064	5,345	1,406	2,451	2,820	3,375	2,448	1,580	552	30,476		30,476
Cuban-Haitian entrants	X	4,634	29,002	2,816	710	213	99	62	47	42	29	10	2	2	2	6	10	D	4	8	D	D	D	D	37,698		37,698
Cancellation of removal	413	2,441	3,772	3,384	889	782	1,013	1,468	2,220	3,168	5,812	4,628	4,000	8,901	12,154	22,188	23,642	28,990	32,702	20,785	29,516	14,927	11,128	8,156	247,079		247,079
Former H-1 nurses (including accompanying child or spouse)	X	X	X	X	2,954	3,069	3,572	2,178	304	69	16	1	1	X	1		X	X	X	X	X	X	X	X	12,165		12,165
<b>Select Parolees</b>																								100,098		100,098	
Parolees, Polish/Hungarian	X	X	X	X	X	X	X	X	X	X	X	20	64	105	39	19	14	3	4	5	4	D	3	X	280		
Parolees, Soviet/Indochinese	X	X	X	X	X	4,998	13,661	15,772	8,253	3,086	2,269	1,844	1,225	1,827	3,163	5,468	6,012	4,199	7,117	3,746	3,677	1,689	882	2,269	91,157		
Parolees, Indochinese																			3,406	3,964	888	D	287	116	8,661		
<b>Select registry programs</b>																								72,439		72,439	
Entered before 7/1/1924	27	22	25	22	16	6	7	9	3	2	6	3	5	7	6	3	1	D	D	D	D	D	D	D	170		
Entered 7/1/1924-6/28/1940	21	71	5	8	2	1	4	X	1	1	X	1	2	1	1	3	1	X	D	X	X	X	D	D	123		
Entered 6/29/1940-1/1/1972	25	8,060	39,999	10,570	4,633	2,282	1,293	938	667	469	368	192	169	166	269	268	303	165	205	307	240	216	179	163	72,146		
Chinese Student Protection Act of October 9, 1992	X	X	X	X	X	X	X	26,915	21,297	4,213	401	142	41	19	22	19	11	D	D	8	D	D	D	D	53,088		53,088
Cuban refugees	29,715	26,618	10,468	4,894	5,240	5,101	5,033	6,509	8,316	9,131	19,602	27,349	12,570	5,687	12,424	20,411	21,108	6,119	14,515	29,599	36,532	20,624	39,452	28,770	405,787		405,787
Non-Cuban spouses or children of Cuban refugees	437	251	525	312	490	385	332	467	416	448	529	618	612	569	992	796	1,266	1,545	1,283	2,325	4,432	2,725	3,304	4,753	29,812		29,812
<b>TOTAL</b>																								1,611,819		2,148,799	

Notes: D = Data withheld to limit disclosure. Prior to IIRIRA, cancellation of removal was known as suspension of deportation.

Source: US Department of Justice, Immigration and Naturalization Service, *Statistical Yearbook of Immigration Statistics and Naturalization Service*, (Washington, DC: US Government Printing Office, various years); US Department of Homeland Security (DHS), *Yearbook of Immigration Statistics*, (Washington, DC: DHS, Office of Immigration Statistics, various years).

## About the Author



Donald Kerwin is Vice President for Programs at the Migration Policy Institute (MPI), overseeing MPI's national and international programs. Mr. Kerwin has written broadly on US immigration policy, national security, and other issues.

Prior to joining MPI, he worked for more than 16 years at the Catholic Legal Immigration Network, Inc. (CLINIC), serving as Executive Director for nearly 15 years. CLINIC is a public interest legal corporation that supports a national network of charitable legal programs for immigrants.

Mr. Kerwin is a member of the American Bar Association's Commission on Immigration, a past member of the Council on Foreign Relations' Immigration Task Force, a board member of Jesuit Refugee Services-USA, and an associate fellow at the Woodstock Theological Center.

Mr. Kerwin is a 1984 graduate of Georgetown University and a 1989 graduate of the University of Michigan Law School.

## Endnotes

- 1 Jeffrey S. Passel and D’Vera Cohn, *US Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade* (Washington, DC: Pew Hispanic Center, 2010), 1, <http://pewhispanic.org/files/reports/126.pdf>.
- 2 For an analysis of different legalization policy options, see Marc R. Rosenblum, *Immigration Legalization: Policy Goals and Considerations for Program Design* (Washington, DC: Migration Policy Institute, 2010).
- 3 Pub. L. No. 99-603, 100 Stat. 3359 (Nov. 6, 1986).
- 4 Lawful permanent residents (LPRs) can permanently live and work in the United States, but they cannot vote in federal and state elections, cannot hold certain government jobs, can be removed from the country for a variety of offenses, cannot automatically enter the United States, and do not qualify for many federal benefits on equal terms with US citizens. Time in LPR status — five years for most, three years for spouses of US citizens — is a prerequisite for naturalization.
- 5 Pub. L. No. 89-236, 79 Stat. 911 (Oct. 3, 1965).
- 6 James C. Ho, “Defining ‘American’: Birthright Citizenship and the Original Understanding of the 14<sup>th</sup> Amendment,” *The Green Bag* 9, no. 4 (Summer 2006): 366-378.
- 7 Act to Repeal the Chinese Exclusion Act, to Establish Quotas, and for Other Purposes, Pub.L. 78-199; 57 Stat. 600 (December 17, 1943). These laws suspended the entry of Chinese laborers for ten years, allowed those in the United States who traveled abroad to return only if they could present a certificate of reentry, and prohibited naturalization of Chinese nationals (Act of May 1882); barred entry to all Chinese whether or not they had a “certificate of re-entry” (1888); suspended Chinese immigration for another ten years; and provided for the deportation of those who could not obtain a certificate of residence in the United States within one year (1892); and permanently extended the Chinese exclusion law (1902). See Act of May 6, 1882, 22 Stat. 58; Act of October 19, 1888, 25 Stat. 565; Act of May 5, 1892, 27 Stat. 25; Act of April 29, 1902, 32 Stat. 176.
- 8 Legal Immigration and Family Equity (LIFE) Act and Life Act Amendments of 2000, § 1502, P.L. No. 106-554, 114 Stat. 2763 (December 21, 2000).
- 9 The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), for example, established a three-year bar to reentry for those unlawfully in the United States for more than 180 days, and a ten-year bar for those unlawfully present for one year or more. (INA) § 212(a)(9)(B)(i)(I)-(II).
- 10 Hans von Spakofsky, “Pampering Illegals, Endangering Americans: The Obama Administration’s Immigration Policy,” Heritage Foundation blog, August 9, 2010, <http://blog.heritage.org/2010/08/09/pampering-illegals-endangering-americans-the-obama-administration%E2%80%99s-immigration-policy/>; Susan Carroll, “Feds moving to dismiss some deportation cases: Critics assail the plan as a bid to create a kind of backdoor ‘amnesty,’” *Houston Chronicle*, August 24, 2010, [www.chron.com/dispatch/story.mpl/metro-politan/7169978.html](http://www.chron.com/dispatch/story.mpl/metro-politan/7169978.html).
- 11 Hiroshi Motomura, “What Is Comprehensive Immigration Reform?: Taking the Long View,” *Arkansas Law Review* 63 (2): 225-241. Motomura argues that US legalization programs have historically applied to non-citizens who arrived due to events beyond their control (such as refugees and asylum seekers) and to those who integrated into American society and contributed to the “national future.”
- 12 “Registration” also provides legal status based on unauthorized, continuous presence in the United States over a set period of time. However, it has been a far narrower program than IRCA.

- 13 From 1921 to 1965, a national origins quota system established numerical restrictions on immigration. Introduced as a temporary measure in 1921, the quota system was made permanent in 1924, setting quotas for individual nationalities based on the number of persons of their national origin who were in the United States in 1920. The quotas favored northern and western Europeans and all but shut down entries from southern and eastern Europe and other continents. See Richard A. Boswell, “Crafting an Amnesty with Traditional Tools: Registration and Cancellation,” *Harvard Journal on Legislation* 47: 175-208, 182 (2010).
- 14 Act of March 2, 1929, ch. 536; 45 Stat. 1512-1513.
- 15 Ibid.
- 16 Act of August 7, 1939, ch. 517, 53 Stat. 1243.
- 17 Act of August 8, 1958, Pub. L. 85-616, 72 Stat. 546.
- 18 Act of October 3, 1965, P.L. 89-236, §19, 79 Stat. 911, 920.
- 19 INA §249.
- 20 Richard A. Boswell, “Crafting an Amnesty with Traditional Tools,” 184.
- 21 An exhaustive analysis of why these legalization bills passed would be intriguing, but is beyond the scope of this paper.
- 22 Ruth Ellen Wasem, *Alien Legalization and Adjustment of Status: A Primer* (Washington, DC: Congressional Research Service, 2010), 3, <http://fpc.state.gov/documents/organization/138728.pdf>.
- 23 US Department of Justice (DOJ), *2000 Statistical Yearbook of the Immigration and Naturalization Services* (Washington, DC: DOJ, 2002), 108; US Commission on Immigration Reform, *Refugee and Humanitarian Admissions: Appendices* (Washington, DC: US Commission on Immigration Reform, 1997), 215.
- 24 INA § 212(d)(5)(A).
- 25 Pub. L. 89-732, 80 Stat. 1161 (November 2, 1966).
- 26 US Department of Homeland Security (DHS), *Yearbook of Immigration Statistics: 2009*, “Table 2, Persons Obtaining Legal Permanent Resident Status by Region and Selected Country of Last Residence: Fiscal Years 1820 to 2009,” [www.dhs.gov/xlibrary/assets/statistics/yearbook/2009/table02.xls](http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2009/table02.xls).
- 27 Pub. L. 101-238, 103 Stat. 2099 (Dec. 18, 1989).
- 28 Alien Registration Act of 1940, ch. 439, §20, 54 Stat. 670, 672.
- 29 INA §240A(b). The standard for cancellation of removal is less stringent for an LPR.
- 30 Foreign Operations Appropriations Act for Fiscal Year 1990, Pub. L. 101-167, 103 Stat. 1225 (Nov. 21, 1989); 8 CFR §245.7(b)(2).
- 31 Chinese Student Protection Act of 1992, Pub. L. 102-404, 106 Stat. 1969 (Oct. 9, 1992). The law covered People’s Republic of China (PRC) nationals who had resided continuously in the United States since April 11, 1990 (not counting “brief, casual and innocent absences”) and who had not returned to the PRC for longer than 90 days between that date and the bill’s enactment.
- 32 IIRIRA, §646(b), Pub. L. 104-208, 110 Stat. 3009-546 (Sept. 30, 1996). To qualify, applicants also needed to have been physically present for more than one year and needed to have been admissible, although several grounds of inadmissibility did not apply and others could be waived.
- 33 Nicaraguan and Central American Relief Act (NACARA), Pub. L. 105-100, Title II, 111 Stat. 2193 (Nov. 19, 1997), as contained in the District of Columbia Appropriations Act, 1998, Pub. L. 105-100, 111 Stat. 2193, November 19, 1997. To qualify, persons in these groups needed to demonstrate: (1) seven years of continuous physical presence in the United States; (2) good moral character during that time; (3) they were not removable under certain criminal grounds; and (4) their removal would result in extreme hardship to them

or to their US citizen or lawful permanent resident spouses, children, or parents. Persons subject to certain criminal grounds of removal need to demonstrate that they had been physically present in the United States for a continuous period of not less than ten years; had been persons of good moral character during that period; and that their removal would have resulted in “exceptional and extremely unusual hardship” to a US citizen or LPR spouse, parent, or child.

- 34 8 CFR § 245.13 (a) and (g). To qualify, Cubans and Nicaraguans had to be otherwise admissible, and to have applied for adjustment before April 1, 2000.
- 35 Haitian Refugee Immigration Fairness Act (HRIFA) of 1998, Division A, Title IX, Sec. 902, Pub. L. 105-277, 111 Stat. 2681-538 (Oct. 21, 1998). To qualify, a Haitian must have been continuously physically present in the United States since December 31, 1995; must not have been inadmissible (with certain exceptions); and must have: (1) filed for political asylum before December 31, 1995; (2) been paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or been paroled for emergent reasons or reasons deemed strictly in the public interest; or (3) been unmarried and under age 21 at the time of his or her arrival, and either: (1) arrived without parents and had remained in the United States without parents since his or her arrival; (2) became orphaned since arriving in the United States; or (3) was abandoned by his or her parents or guardians prior to April 1, 1998, and had since remained abandoned. The act also covered the Haitian spouses, children, or unmarried sons or daughters of principal beneficiaries. 8 CFR §245.15(b); 8 CFR §245.15(e).
- 36 US Senate, Development, Relief and Education for Alien Minors Act of 2009, S. 729, 111<sup>th</sup> Cong, 1<sup>st</sup> session, §4(a)(1), [www.govtrack.us/congress/bill.xpd?bill=s111-729](http://www.govtrack.us/congress/bill.xpd?bill=s111-729). US House of Representatives, American Dream Act, H.R. 1751. 111<sup>th</sup> Cong, 1<sup>st</sup> session, [www.govtrack.us/congress/bill.xpd?bill=h111-1751](http://www.govtrack.us/congress/bill.xpd?bill=h111-1751).
- 37 Ibid., §4(a)(1)(C).
- 38 Ibid., §5(c)(3) and (d).
- 39 Jeanne Batalova and Margie McHugh, *DREAM vs. Reality: An Analysis of Potential DREAM Act Beneficiaries* (Washington, DC: Migration Policy Institute, 2010), 4, [www.migrationpolicy.org/pubs/DREAM-Insight-July2010.pdf](http://www.migrationpolicy.org/pubs/DREAM-Insight-July2010.pdf).
- 40 Ibid., 17.
- 41 US Senate, Agricultural Job Opportunities, Benefits, and Security Act of 2009, 111<sup>th</sup> Cong., 1<sup>st</sup> session, [www.govtrack.us/congress/bill.xpd?bill=s111-1038](http://www.govtrack.us/congress/bill.xpd?bill=s111-1038); US House of Representatives, Agricultural Job Opportunities, Benefits, and Security Act of 2009, 111<sup>th</sup> Cong., 1<sup>st</sup> session, [www.govtrack.us/congress/bill.xpd?bill=h111-2414](http://www.govtrack.us/congress/bill.xpd?bill=h111-2414).
- 42 Ibid., §101(a)(1).
- 43 Ibid., §101(h).
- 44 Ibid., §103(a), (d).
- 45 Ibid., §103(b).
- 46 IRCA, §302(a).
- 47 Susan González Baker, *The Cautious Welcome: The Legalization Program of the Immigration Reform and Control Act* (Santa Monica, CA and Washington, DC: The Rand Corporation and the Urban Institute, 1990), 103.
- 48 Nancy Rytina, US Immigration and Naturalization Service, Office of Policy and Planning, “IRCA Legalization Effects: Lawful Permanent Residence and Naturalization through 2001,” Exhibit 1 (Paper presented at Mary Woodward Lasker Center, National Institute for Health, October 25, 2002), [www.dhs.gov/xlibrary/assets/statistics/publications/irca0114int.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/irca0114int.pdf).
- 49 IRCA, §202 (b).



- 50 IRCA, §202 (a).
- 51 Baker, *The Cautious Welcome*, 49-51.
- 52 IRCA §201(a); INA § 245A (a)(2) and (3).
- 53 INA § 245A (a)(4).
- 54 INA § 245A (b)(1).
- 55 INA § 245A (b)(1)(D).
- 56 Rytina, "IRCA Legalization Effects: Lawful Permanent Residence and Naturalization through 2001."
- 57 Michael Fix and Jeffrey S. Passel, *Immigration and Immigrants: Setting the Record Straight* (Washington, DC: Urban Institute, 1994), 23-24, [www.urban.org/UploadedPDF/305184\\_immigration\\_immigrants.pdf](http://www.urban.org/UploadedPDF/305184_immigration_immigrants.pdf).
- 58 Passel and Cohn, *U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade*, 1.
- 59 Doris Meissner and Donald Kerwin, *DHS and Immigration: Taking Stock and Correcting Course* (Washington, DC: Migration Policy Institute, 2009), 27-30, [www.migrationpolicy.org/pubs/DHS\\_Feb09.pdf](http://www.migrationpolicy.org/pubs/DHS_Feb09.pdf).
- 60 Ibid.
- 61 Ibid., 64-66.
- 62 Meissner and Kerwin, *DHS and Immigration: Taking Stock and Correcting Course*, 100; Department of Homeland Security Appropriations Act, FY 2010, H.R. 2892, P.L. 111-83, [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111\\_cong\\_bills&docid=f:h2892enr.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h2892enr.txt.pdf).
- 63 DHS, *Immigration Enforcement Actions: 2009* (Washington, DC: DHS, 2010), 3, [www.dhs.gov/xlibrary/assets/statistics/publications/enforcement\\_ar\\_2009.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement_ar_2009.pdf); Transactional Records Access Clearinghouse (TRAC), "National Trends in Apprehensions and Staffing" (Syracuse, NY: TRAC, 2006), <http://trac.syr.edu/immigration/reports/141/include/rep141table2.html>.
- 64 Julia Preston, "Illegal Workers Swept from Jobs in 'Silent Raids,'" *New York Times*, July 9, 2010, [www.nytimes.com/2010/07/10/us/10enforce.html](http://www.nytimes.com/2010/07/10/us/10enforce.html); Cam Simpson and Miriam Jordan, "More Employers Face Immigration Audits," *Wall Street Journal*, November 20, 2009, <http://online.wsj.com/article/SB125866577819456287.html>.
- 65 DHS, *Immigration Enforcement Actions: 2009*, 4; TRAC, *Immigration Enforcement Under Obama Returns to Highs of Bush Era* (Syracuse, NY: TRAC, 2010), <http://trac.syr.edu/immigration/reports/233/>.
- 66 US Immigration and Customs Enforcement (ICE), Secure Communities, "Activated Jurisdictions" (accessed September 28, 2010), [www.ice.gov/doclib/about/offices/secure-communities/pdf/sc-activated.pdf](http://www.ice.gov/doclib/about/offices/secure-communities/pdf/sc-activated.pdf).
- 67 State laws typically condition receipt of benefits and services on a person's immigration status, seek to penalize employers for hiring unauthorized immigrants and landlords for renting to them, and use local police to screen for immigration status.
- 68 The Birthright Citizenship Act of 2009, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., H.R. 1868 interprets the 14<sup>th</sup> Amendment to deny citizenship to the children of unauthorized parents. As of September 30, 2010, the bill had 95 cosponsors: [www.govtrack.us/congress/bill.xpd?bill=h111-1868](http://www.govtrack.us/congress/bill.xpd?bill=h111-1868)
- 69 Even faith-based groups grounded in traditions that value "forgiveness" avoid the term "amnesty."
- 70 Passel and Cohn, *U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade*, 1, 9.
- 71 Ibid., 9.
- 72 Ibid., 5.

© 2010 Migration Policy Institute. All Rights Reserved.

No part of this publication may be reproduced or transmitted in any form by any means, electronic or mechanical, including photocopy, or any information storage and retrieval system, without permission from the Migration Policy Institute. A full-text PDF of this document is available for free download from [www.migrationpolicy.org](http://www.migrationpolicy.org).

Permission for reproducing excerpts from this report should be directed to: Permissions Department, Migration Policy Institute, 1400 16<sup>th</sup> Street, NW, Suite 300, Washington, DC 20036, or by contacting [communications@migrationpolicy.org](mailto:communications@migrationpolicy.org).

Suggested citation: Kerwin, Donald M. 2010. *More than IRCA: US Legalization Programs and the Current Policy Debate*. Washington, DC: Migration Policy Institute.

The Migration Policy Institute (MPI) is an independent, nonpartisan, nonprofit think tank dedicated to the study of the movement of people worldwide. The institute provides analysis, development, and evaluation of migration and refugee policies at the local, national, and international levels. It aims to meet the rising demand for pragmatic responses to the challenges and opportunities that migration presents in an ever more integrated world. MPI produces the Migration Information Source, at [www.migrationinformation.org](http://www.migrationinformation.org).

The Migration Policy Institute (MPI) legalization series addresses how to shape, structure, and administer a legalization program, with the intent of providing a blueprint on the issues that Congress would need to consider in crafting legislation and that the US Department of Homeland Security (DHS) and other stakeholders would need to address in its implementation.

Papers in the MPI US legalization series will analyze how any broad legalization program should begin with a registration process that rapidly identifies, screens, and processes potential applicants; how various unauthorized populations would fare under differing legislative scenarios; legal issues in structuring successful legislation; and the role of states and localities in implementing such a program.

For more information, visit:

[www.migrationpolicy.org/research/usimmigration](http://www.migrationpolicy.org/research/usimmigration)



1400 16th Street NW  
Suite 300  
Washington, DC 20036  
202 266 1940 | 202 266 1900 (fax)