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SUMMARY

While comprehensive immigration reform may have moved to the back burner politically, Congress ultimately will need to reform US immigration policy as immigration enforcement alone will not prove effective in dealing with the nation's estimated 11.1 million unauthorized immigrants.

This Policy Brief argues that a carefully planned legalization program is an essential component to successful reform. A large-scale legalization program merits a comprehensive planning process beginning even prior to passage of legislation, as the Department of Homeland Security (DHS) and other stakeholders build infrastructure, finalize policies and procedures, and prepare for a registration process.

The study makes the case that a broad legalization program should begin with an initial registration process that rapidly identifies and vets applicants. Such a process would be the best way and, indeed, the only feasible way to achieve the immigrant integration, public safety, and national security goals of a legalization program. A registration program would screen out public safety and national security threats, and would allow qualified applicants to live and work legally in the United States while they attempted to earn legal permanent status and to integrate into society.

To the extent that the articulated goals of a registration program lead to conflicting programmatic options, the study favors solutions that would encourage the largest number of potentially eligible persons to come forward during the registration process. None of the core goals of a legalization program would be met if large numbers of unauthorized immigrants remained in the shadows of US society.

Many commentators have questioned whether DHS could successfully lead and administer a large-scale legalization program. This Policy Brief concludes that it could, but not without a well-crafted bill, sufficient appropriated funding to build program infrastructure, an unprecedented mobilization of public and private stakeholders, and intensive planning beginning even before passage of legislation.

Structuring and Implementing an Immigrant Legalization Program:

Registration as the First Step

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I. Introduction

Over the last five years, several comprehensive immigration reform (CIR) bills have been introduced in Congress.¹ These proposals would modify the system of legal admissions to the United States, expand immigration enforcement programs, and allow a significant percentage of the nation's unauthorized immigrants to "earn" lawful permanent resident (LPR) status. Lost in the debate over the merits of CIR has been a crucial question: whether a large-scale "earned" legalization program of the kind set forth in these bills could be successfully implemented.

The challenges would be immense and, to date, have not been substantially addressed. There are an estimated 11.1 million unauthorized residents in the United States,² more than four times the number who legalized under the only "general" legalization program in US history, the Immigration Reform and Control Act (IRCA) of 1986.³ If successful, a legalization program would place most unauthorized immigrants on a path to US citizenship. If unsuccessful, it could lead to a less effective and secure US immigration system, to greater national discord over the role of immigrants in US society, and to diminished opportunities to integrate the unauthorized and their families.

An earned legalization program would represent a paradigm shift in US immigration law and policy. Eligibility for

legalization under IRCA turned primarily (albeit not exclusively) on *retrospective* requirements such as past unauthorized presence in the United States and past employment.⁴ Under retrospective legislation, targeted populations are *prima facie* eligible for LPR status on the day that the legislation passes. The resulting program seeks primarily to determine whether applicants have satisfied these requirements.

By contrast, under earned legalization programs (as the name indicates), qualified unauthorized persons must “earn” LPR status *following* passage of the legislation. In these circumstances, a major programmatic challenge is to decide how to treat applicants whose eligibility for LPR status will not be determined for several years.⁵

This study contemplates a graduated registration program that rapidly identifies, screens, and processes applicants. At the end of this process, US Citizenship and Immigration Services (USCIS) would grant temporary legal status, work authorization, and the ability to travel overseas to qualified immigrants. After registration, applicants would be able to earn the right to adjust to LPR status over several years after meeting the kind of substantive eligibility requirements set forth in earned legalization bills (i.e., employment, good moral character, proficiency in English, and payment of a fine).⁶

The study assumes that the goals of a registration process would be to:

- Bring forward the maximum number of unauthorized persons who are *prima facie* eligible to register under the legislation.⁷
- Increase public safety and national security by identifying dangerous criminals and terrorists.
- Place qualified persons who are committed to meeting *prospective* work, English language, and other statutory requirements on a path to citizenship and to full integration into US society.

This report is the first in a series on how to shape, structure, and administer a legalization program. Although CIR does not appear imminent at this writing, the study assumes that the United States will eventually need to revisit legalization as a serious policy option. Deportation-by-attrition enjoys support in some circles, but is neither feasible or desirable, given the size of the US unauthorized population, its role in the US labor market, and the long-term residence, family, and equitable ties that most unauthorized immigrants have established in the United States.⁸

Some have opposed the idea of devoting government resources to plan for a legalization program which may not come to pass. This study takes the opposite view. As IRCA demonstrated, Congress will not be able to craft an effective legalization bill — and federal, state, local, and non-governmental stakeholders will not be able to implement a successful program — without unprecedented planning and coordination beginning well in advance of the passage of legislation.

The legalization series is intended to provide a blueprint on the issues that DHS and other stakeholders would need to address in implementing a legalization program and that Congress would need to consider in crafting legislation. While the series focuses on earned legalization programs, its analysis and recommendations are relevant to more limited, population-specific legalization programs, such as the Development, Relief, and Education for Alien Minors Act (DREAM Act) and the Agricultural Job Opportunities, Benefits, and Security Act of 2009 (AgJobs).⁹

The series draws on the insights of federal, state, and local government officials, business groups, community-based organizations (CBOs), the organized bar, and other entities that need to mobilize and coordinate their work in order for a legalization program to succeed. However, its recommendations are solely those of the Migration Policy Institute (MPI). Additional papers will analyze past US legalization programs, how various unauthorized populations would fare under different legislative scenarios, legal issues in structuring successful legislation, the role of states and localities in carrying out a program, and the “earned” legalization stage of a legalization program.

Section II of this study sets forth the rationale for a registration program. Section III describes the planning and work that need to occur in the periods: (1) prior to passage of legislation; (2) between passage of legislation and the beginning of the registration period; and (3) during the registration application period. It also sets forth a timeline for the prereg-

istration and registration periods. Section IV proposes how applicants should be screened and how they would prove identity and continuous residency. Section V describes the mechanics of a registration program, covering the application form, filing process, fees, appeal of denials, and confidentiality issues. Section VI describes the role of CBOs in a successful program. Section VII summarizes the study’s recommendations.

II. Why a Registration Program?

Most legalization bills have *retrospective* and *prospective* requirements. All legalization bills are retrospective in the sense that they define a class of persons who are potentially eligible to legalize. All have prospective features in that applicants must remain eligible to legalize and must meet other requirements following enactment of the legislation. However, eligibility under retrospective legalization primarily turns on past presence (as in IRCA’s general legalization program), past employment (as in IRCA’s Special Agricultural Workers’ [SAW] program), or other conditions. By contrast, earned legalization bills would only allow persons who meet prospective (postenactment) requirements to secure LPR status.

The different eligibility requirements of IRCA and earned legalization bills argue for distinct program implementation structures. Under retrospective eligibility legislation, targeted populations are *prima facie* eligible for LPR status on the day the

bill passes. Thus, the resulting program must establish that applicants have met the statutory requirements, which can begin at the outset of the application process and be completed in a relatively short time period. IRCA provided a one-year application period (18 months for SAW applicants) for temporary residence.¹⁰ Temporary residents were subsequently required to file for adjustment to LPR status over a one-year period beginning 18 months after they were granted temporary status.¹¹ Under IRCA's SAW program, adjustment to LPR status occurred either one or two years (depending on the degree of qualifying agricultural work completed) after the date that the application period for temporary status ended or, if later, after the applicant was granted temporary status.¹²

By contrast, under an earned legalization program, the government must decide how to treat applicants whose eligibility for LPR status will not be determined for many years. In these circumstances, the government has significant integration, national security, public safety, and program management interests in:

- Attracting, identifying, and screening the largest number of potentially eligible applicants as soon as possible after passage of the legislation.
- Keeping track of applicants over a multiyear period.

- Avoiding the creation of an elaborate and time-consuming adjudicative process for persons who may not ultimately “earn” LPR status.

Individual applicants, in turn, have a strong interest in working and living legally in the United States while they attempt to earn the right to remain permanently. A simple, streamlined, and secure registration program is the best and perhaps only feasible way to meet these goals.

Several practical considerations also bolster the need for a registration program, including the immense size of the US unauthorized population and the immigration enforcement challenges that would be created by a protracted legalization program. An expedited registration process would minimize illegal entries by those hoping to take advantage of the legalization program.

Once the registration period ended, the number of persons potentially eligible to earn LPR status would be fixed, creating a disincentive to illegal entry. In addition, millions of persons could work and live legally in the United States while they attempted to earn LPR status. At the same time, a registration program would provide rigorous national security and public safety screening, both upon submission of the application and after USCIS collected biometric data from applicants. In addition, its fees — which would presumably cover processing costs — would be more modest than the fees for a costly adjudicative process involving time-consuming interviews of

each applicant. As a result, a registration program would be less likely to “price out” potentially eligible applicants and, thus, be less likely to lay the groundwork for a large unauthorized population in the future.

The US Immigration and Naturalization Service (INS), whose functions were subsumed into DHS upon its creation in 2003, created distinct legalization offices, staffing, and procedures to implement IRCA in an attempt to increase the program’s accessibility to immigrants and to distinguish it from INS’s enforcement programs.¹³ By all accounts, this strategy worked well. However, since IRCA, INS and DHS have made significant reforms in application processing, development of data systems, and information sharing, diminishing the need for distinct legalization systems.

We recommend that the nation’s next large-scale legalization program begin with a simple and streamlined registration process designed to bring forward the largest number of potentially eligible applicants.¹⁴ To the extent possible, this program should build on successful application processing and screening procedures.

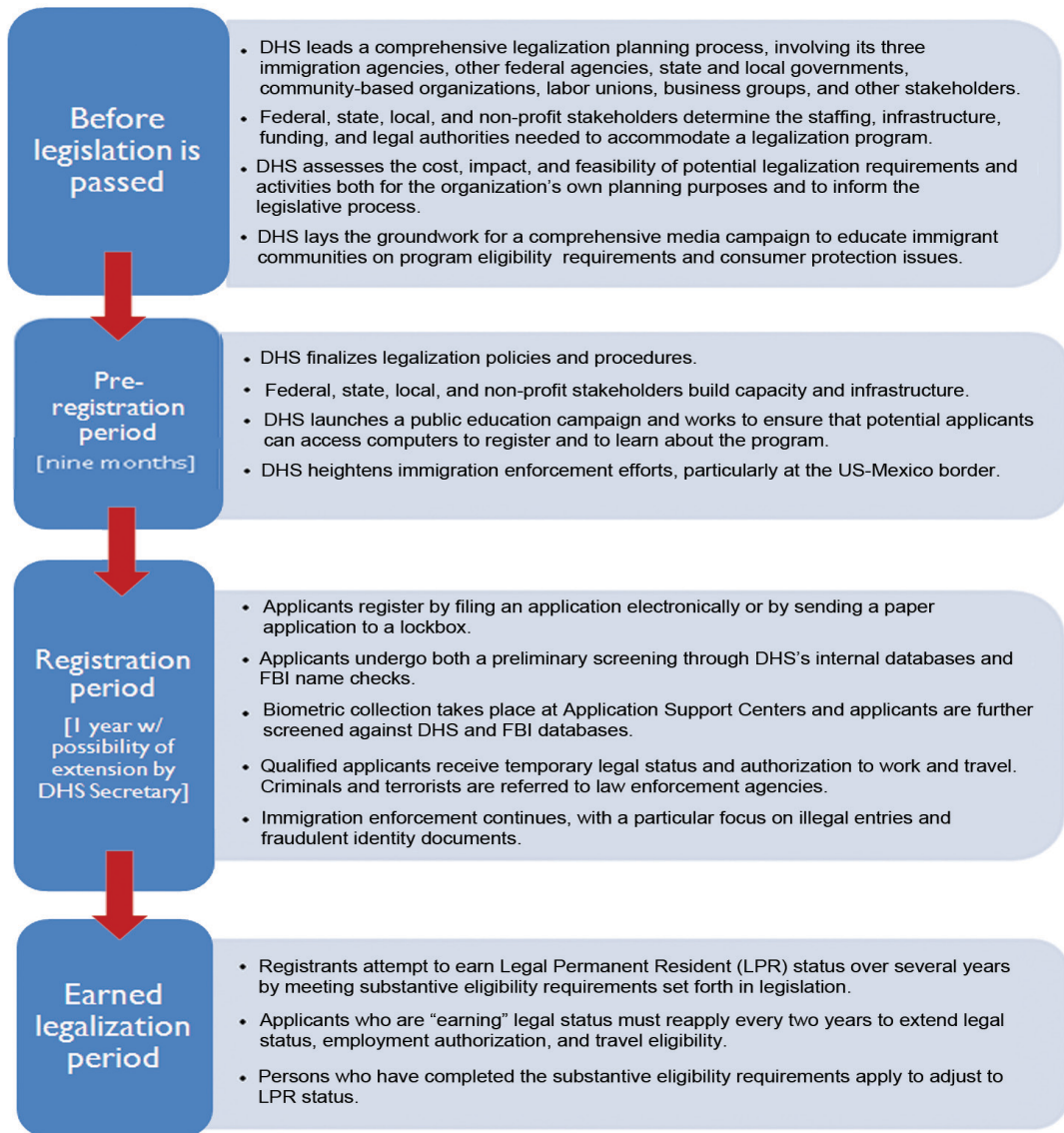
III. What Needs to Happen When: Work Responsibilities and Timeline for the Preregistration and Registration Process

A successful registration program would seek to process the maximum number of eligible unauthorized immigrants while screening out persons ineligible to legalize because they threaten public safety and national security. To accomplish these goals, USCIS must develop a registration system of sufficient scale and flexibility to accommodate the volume, flow, timing, and geographic diversity of applications. Establishing what needs to be accomplished prior to passage of legislation, and during the preregistration and registration process will be one of the first challenges for policymakers. Figure 1 outlines a registration timeline based on the analysis set forth below.

A. Before Legislation Is Passed

INS started planning for IRCA in the early 1980s. As early as 1983, it decided to seek legal exemptions from General Service Administration’s (GSA’s) space acquisition rules and decided to open distinct legalization offices.¹⁵ INS also went through a process of pricing the potential steps and requirements of a legalization program. This allowed it to educate Congress on the cost of different legislative scenarios and, once IRCA passed, to establish work targets based on the size of the legalization office, its staffing level, and other available resources.¹⁶

Figure 1. Registration Timeline



Source: Migration Policy Institute, 2010.

An earned legalization program would require an unprecedented level of planning within DHS, and between DHS and other federal, state, local, and nongovernmental stakeholders. Much of this planning would need to occur prior to

passage of legislation. USCIS already processes 5 million applications for immigration benefits per year.¹⁷ A registration program could triple USCIS's workload within a short period of time and generate immense amounts of

related work over many years. Since fiscal year (FY) 2007, USCIS application receipts and fee revenue have sharply declined, leading to significant loss of capacity.¹⁸ If legislation were to pass without advanced planning, the challenge to expand USCIS staffing and infrastructure would be acute.

USCIS would need to assume the lead role in a legalization program. However, the program would require the dramatic expansion of services by other federal agencies as well. For example, the Department of Justice (DOJ) would need to develop procedures on handling unauthorized persons in removal proceedings, and would need to expand its capacity to accredit the qualified staff of charitable agencies to assist immigrants during the registration process. The Department of State (DOS) would need to encourage the governments of migrant-source countries to produce secure documentation for their unauthorized nationals in the United States and educate their nationals on program eligibility requirements.¹⁹ The Federal Bureau of Investigation (FBI) would need to screen a far higher volume of immigration cases. The Internal Revenue Service (IRS) would need to accommodate an increase in the filing of back taxes, assuming this is a requirement under the law. The Social Security Administration (SSA) would need to process requests by legalizing immigrants seeking to obtain credit for the years they have paid into the system. Federal agencies would need to ensure that their systems interface and can share the information needed to

evaluate registration applications.

State and local responsibilities would be on par with federal responsibilities, and would require commensurate resources and infrastructure. Among their many integration-related functions, states would need to expand their English language infrastructure in response to an English proficiency requirement. Local libraries would need to meet the significantly increased demand for their computer terminals and for Internet access as immigrants seek program information and electronically file their applications. CBO volunteers would need to be mobilized, trained, and supervised.²⁰ Bar associations and charitable legal service providers would need to prepare to provide legal advice to millions of unauthorized immigrants.

Among its tasks, a DHS-led, prelegislation planning process should:

- Assess the cost, time, and impact on existing infrastructure of different legislative requirements; develop programmatic options to address these challenges; and share this information with Congress.
- Forecast the workload and resources required of federal, state, local, CBO, and other legalization stakeholders under different scenarios, both during a legalization program and in subsequent years due to the surge in work created by this program.
- Establish program procedures, working relationships, and clear

lines of communication between the core planning networks.

- Develop and vet draft regulations and application forms, which can be modified once legislation passes.
- Assess the security of passports and identity cards issued by foreign governments, and work with foreign governments to strengthen document security and their capacity to produce them.
- Identify the legal authorities that DHS and other federal agencies will need to carry out this program, including waivers from federal rules on hiring and acquisition of space.
- Develop a comprehensive media campaign to educate immigrant communities on program eligibility and procedural issues, and to address misinformation that will invariably surface.
- Ensure that relevant government databases can accommodate the program and can interface.
- Develop a broad plan to counter document fraud, *notario* fraud, and other threats to the program's integrity.

Prelegislation planning would be the first step in a broad mobilization of federal, state, local, and nongovernmental organizations (NGOs).

We recommend that DHS lead a comprehensive planning process, involving a full-time executive, dedicated staff

from its three immigration branches, and representation from the White House, the departments of State, Justice, Labor, and Health and Human Services, the Internal Revenue Service (IRS), and other federal entities. The process should engage states and localities, CBOs, business groups, labor unions, and other stakeholders. DHS should maintain regular contact with Congress on the cost and operational challenges of meeting different legislative scenarios. Congress should appropriate funding to build the capacity of core stakeholders prior to the program's inception.

B. The Preregistration Period

Preregistration — spanning from the passage of a legalization bill to the beginning of the application period — would be one of the most critical phases of a legalization program. In considering the possible length of this period, Congress and the administration would need to balance what it would take for USCIS and other stakeholders to prepare for a registration program, with the need to counter fraud, minimize illegal entries, and prevent exploitation of the program by criminals and terrorists.

As IRCA demonstrated, foreign nationals would attempt to enter the United States, perhaps in large numbers, following the legislation's passage in the hope of registering for legal status, notwithstanding the likely statutory cutoff date for entry.²¹ In addition, substantial numbers of ineligible persons within

the country would attempt to obtain the program's benefits through fraud. No matter what the length of a preregistration period, criminal enterprises would mobilize to produce fraudulent documents in order to meet identity, physical presence, and other requirements. If experience holds, fraudulent documents would be available almost immediately after passage of legislation. A shorter preregistration period — on the order of six months or less — would reduce illegal entries and fraud, if only because it would limit the length of time in which these offenses could occur.²²

A shorter preregistration period would also allow DHS to begin the registration process more quickly and, thus, identify persons with criminal records and those who might pose a risk to national security at an earlier point in the legalization process. In addition, a shorter period would put the unauthorized on a faster track to legalization and to integration in US society.

On the other hand, IRCA demonstrated the perils of a short preregistration period. It mandated that the general legalization program should begin no later than six months after the bill's enactment and that the initial application period (leading to temporary resident status) would last for one year.²³ The IRCA SAW program's preregistration period lasted slightly longer than six months and its application period was 18 months.²⁴

INS issued final program rules for the first phase of the general legalization program on May 1, 1987, just four days

before it began to accept legalization applications.²⁵ The short time period between the issuance of final regulations and the beginning of the program left INS with virtually no time to conduct internal agency training before the application period began or to conduct multilingual outreach based on these final rules.²⁶ As a result, several of IRCA's key terms were not carefully defined, resulting in successful class action litigation.²⁷ In addition, legalization instructions were not translated into Asian languages until well into the application period.²⁸ Exacerbating matters, INS did not issue a national contract for an IRCA publicity campaign until one month before the start of the application period.²⁹ The planning and preparations required during the preregistration period for an earned legalization bill would be more extensive than they were during IRCA. The period would need to be of sufficient duration to allow USCIS to finalize program procedures, to solicit and incorporate public input on regulations, to strengthen partnerships with other program stakeholders, to conduct multilingual outreach, and to educate and prepare unauthorized immigrants and affected communities for registration. In addition, public and private stakeholders would need to prepare to assist an unprecedented volume of applicants. These entities would need funding to hire staff and to build infrastructure during the preregistration period, while they accommodate their ongoing workloads.

We recommend that Congress set a preregistration period of no less than nine months. This period would be three months longer than IRCA's preregistration period, but the preparations for a program of this size and complexity would require additional time. While stakeholders should begin planning for a legalization program prior to passage of legislation, many would not be able to make significant financial commitments until passage of a bill seems imminent. Given the preparations required by multiple stakeholders to implement a registration program, a strong case could be made for an even longer preregistration period. However, a longer period would increase enforcement pressure on DHS and could result in significant numbers of illegal entries, which would undermine the integrity of the program.

C. The Registration Period

Policymakers would confront a similar trade-off in setting the time limit for a registration period. If immigrants do not have sufficient time to register, one of the main goals of a registration program — to bring forward the maximum number of potentially eligible persons — will be defeated. However, this goal must be weighed against the need to secure the border, to minimize fraud, and to allow eligible applicants to live and work legally in the United States.

DHS must be able to process a high volume of applications during the registration process. Applicants, in turn, would need time to gather identity

documents and supporting materials, which may require contacting local, state, or foreign governments, or a combination thereof. They would also need time to secure legal counsel or a recognized charitable immigration service provider who can guide them in this process. As discussed in Section V, many will also need to save and borrow the money to pay the application fee.

The period to apply for general legalization benefits under IRCA lasted one year (18 months for the SAW program). Although INS had published final regulations before receiving its first application, it also learned on the job during this 12-month period.³⁰ INS benefited from the slow pace of filing during the first months of the program, as eligible immigrants weighed whether the benefits of coming forward outweighed the risk of deportation.³¹ National publicity efforts were modest, ineffective, and almost entirely in English and Spanish. More effective outreach occurred later at the local level.³²

A longer registration period on the order of 12 to 18 months would mitigate some of the workforce demands on USCIS and allow it to direct its public education and outreach activities at populations that are not coming forward in sufficient numbers. More effective outreach during the preregistration period would lead to better-prepared applications and a more inclusive program.

On the other hand, illegal migration would increase during a longer period, placing greater pressure on the Border

Patrol and requiring greater vigilance and resources in verifying entry dates and continuous presence.³³ In addition, over a longer period, more applicants would move and fail to inform USCIS of their change of address. A shorter period (on the order of nine months) would, by definition, allow the government to identify national security threats and criminals on a faster timeline and to provide registration benefits sooner to legitimate applicants.

The program goal should be not just to bring forward applicants, but to screen and approve applications in an expeditious manner. However, if the IRCA experience holds, USCIS should be prepared to receive a high volume of applications at the end of the registration period, whatever its length. The highest monthly volume of general legalization IRCA applications — nearly 20 percent of all applications— occurred during May 1998, near the close of the program’s application window.³⁴ If the experience of IRCA holds true, USCIS will need time to process applications following the registration period and additional time to screen problem cases.

A one-year period would appropriately balance the goals of maximizing the number of eligible persons who come forward to apply, while expediting this process. However, a longer registration period would be justified if registration became a more cumbersome process than the simple, streamlined process envisioned by this study, or in the event of a shorter or less productive preregistration period.

We recommend that Congress establish a one-year registration period, but to revisit this timeline if it proves inadequate. In the alternative, it should establish a mechanism to allow the DHS Secretary to extend the registration period as necessary.

IV. Vetting Registration Applicants: Criminal and National Security Screening, and Proving Identity and Continuous Residence

A. Screening for Criminal, National Security, and Disqualifying Immigration Violations

National security and public safety concerns argue for a more rigorous vetting of applicants than was required (or possible) under IRCA. A substantial challenge would be to conduct thorough security checks on every registration applicant, but without requiring individual interviews, which would be labor intensive and time-consuming.

Under IRCA, applicants appeared in person at legalization offices on at least two separate occasions and multiple government offices reviewed applications before the regional INS processing facility issued a final ruling.³⁵ Once an individual filed his or her application, legalization offices scheduled an interview (Phase I interview).³⁶ At the interview, an applicant met with an adjudicator who would make a recommendation and, if approved and if time

permitted, the adjudicator issued a six-month work authorization card to the applicant.³⁷ An applicant's file was then entered into a database, at which point DOJ and the FBI conducted additional checks.³⁸ The regional processing center then approved or denied the application. If approved, the applicant received a Temporary Resident Alien card and a Social Security card. After 18 months, the applicant could apply to adjust to LPR status.³⁹ The applicant then had an additional interview at the legalization office, where an adjudicator determined his or her eligibility for the permanent resident card (Phase II interview).⁴⁰

Given that the US unauthorized population today is four times greater than the number of persons legalized under IRCA, USCIS should interview applicants during the registration process *only* in exceptional circumstances. Even a required 30-minute interview (with potentially 11 million persons) could lead to a multiyear program. During that time, illegal entries could increase significantly and millions of qualifying persons would remain unauthorized, undermining the core goals of a legalization program. By contrast, a simple and streamlined registration program could process millions of applicants in a relatively short period of time.

DHS and the FBI ultimately would be in the best position to determine the systems that should be utilized to screen applicants. However, they would presumably adopt some of the successful screening procedures used for other USCIS applications. In particular, after

the application is filed, USCIS should run name checks against internal DHS databases such as the Central Index System (CIS) and the Treasury Enforcement Communication System/Interagency Border Inspection System (TECS/IBIS).⁴¹

CIS is a "pointer" system, which leads to and interfaces with other internal DHS data systems. These systems contain biographical and historical information on persons seeking immigration benefits in the United States, including persons who entered the country illegally.⁴² Data fields cover name, date of birth, country of birth, class of admission, and additional information. CIS aggregates information from both USCIS applications for immigration benefits and from records resulting from DHS enforcement actions.⁴³ TECS/IBIS is a "multiagency database containing information from 26 federal agencies" and includes records of known and suspected terrorists, sex offenders, public safety risks, and other persons of interest.⁴⁴

DHS does not have records on unauthorized persons that it has not encountered.⁴⁵ In addition, even where a record exists, screening against a DHS database does not establish an applicant's identity. However, it would allow USCIS to determine ineligibility in certain cases. For example, a CIS hit could provide information on when the applicant was in status or fell out of status (which might be relevant in demonstrating continuous unauthorized presence) and on immigration violations that could make the applicant inadmissible. Registration applicants should also

undergo an FBI name check, but only if the FBI receives sufficient resources, can conduct checks in an expeditious manner, and prioritizes this responsibility. The FBI name check can include a time-consuming, manual review of paper files. If this process were to delay even 2 percent of registration cases, this could affect up to 220,000 applications, lead to a protracted litigation, and bring the registration process to a standstill.

Name check delays have arisen in response to past surges in filings, most recently in the mid-2000s. As of May 2007, 329,160 applications had been delayed due to pending FBI name checks, with 31,144 pending for 33 months or more.⁴⁶ The delays did little to promote national security if only because the applicants remained in the United States while their cases were pending. In addition, INS officials complained that the name check process yielded little actionable information. These backlogs have been all but eliminated, primarily due to a substantial increase in FBI contract staff (from 38 to 250) between FY 2007 and FY 2008.⁴⁷ However, a massive increase in the FBI's workload without sufficient funding could lead to a repeat of this problem.

The CIS Office of the Ombudsman determined that name check delays were no longer a "pervasive and serious" problem, when the FBI demonstrated ability to complete 98 percent of them within 30 days.⁴⁸ This standard may, in fact, be inadequate for a registration program. Thirty days represents a

significant period of time in what must necessarily be a short registration program.

Following collection of biometrics, registration applicants should also be screened (like applicants for most USCIS benefits) against the FBI's Integrated Automated Fingerprint Identification System (IAFIS) system and against DHS's United States Visitor and Immigrant Status Indicator Technology (US-VISIT) program's Automated Biometric Identification System (IDENT) data systems. Once applicants pass the more rigorous biometric screening, USCIS would issue them a secure card that establishes legal status, employment authorization, and the right to leave the United State and to return.

Biometric collection would have two principal purposes in a registration program. First, it would permit the government to screen applicants against criminal and national security databases, thus identifying persons who raise public safety and national security concerns. Second, it would connect the name used by the applicant with his or her biometrics, which would assist in subsequent investigations.

Having biometric markers allows USCIS to screen an applicant against the IAFIS and IDENT systems. IAFIS, the world's largest biometric database, contains the fingerprints and criminal histories for 66 million persons, and for 73,000 known or suspected terrorists provided by US and international law enforcement agencies.⁴⁹ IDENT contains biometric

information on several million persons, including immigration violators, criminals, and known or suspected terrorists identified by US authorities and Interpol.⁵⁰

Finally, DHS's US Immigration and Customs Enforcement (ICE) agency would be able to run applicant information that USCIS discloses against the FBI's National Crime Information Center (NCIC) database. Criminal justice agencies like ICE (unlike USCIS) can search NCIC records to find information on domestic and foreign fugitives, suspected terrorists, sex offenders, certain immigration violators, gang members, and others.⁵¹

While biometric screening should begin during the registration period, it would not be completed for all applicants during this period. USCIS and FBI would need to conduct further investigation in some cases, and there would likely be a surge in filings as the applicant period nears its end. For these reasons, USCIS would not be able to review all applications until after the registration period ends.

We recommend that registration applicants be interviewed only in exceptional circumstances. Applicants should be screened against DHS' internal databases (e.g., CIS and TECS/IBIS) and should undergo the FBI's name check process after filing their applications, provided that the FBI can meet appropriate performance metrics. DHS and the FBI should agree on metrics for expediting name checks. Congress should

provide the DHS Secretary with the authority to forego this process if the FBI cannot meet these metrics. Following collection of biometric information, applicants should be screened against the IAFIS and IDENT data systems.⁵²

1. Biometric Screening Through Application Support Centers

Timely scheduling of biometrics appointments would expedite processing in meritorious cases and rapidly screen out ineligible applicants for criminal, national security, and other reasons. Biometric collection should occur at ASCs, which are located throughout the United States, Guam, and the US Virgin Islands (see Figure 2).⁵³ ASCs collect quality-controlled fingerprints, photographs, signatures, and other biometric data from applicants for immigration benefits.⁵⁴ In FY2005, ASC offices processed roughly 4.3 million applications for immigration benefits.⁵⁵

ASCs were created in response to congressional concerns in the mid-1990s over naturalization applications that had not been cleared by the FBI. Between 1994 and 1997, naturalization filings soared due to the recent eligibility of IRCA beneficiaries to naturalize, a California ballot initiative targeting unauthorized immigrants, and a "green card" replacement program (see Table 1).⁵⁶ As a result, processing backlogs and delays increased significantly.

Table 1. Naturalization Petitions Filed, Granted, and Denied, FY1986-2009

Year	Petitions Filed	Persons Naturalized	Petitions Denied
1986	290,732	279,497	5,980
1987	232,988	223,249	6,771
1988	237,752	240,775	4,304
1989	227,692	232,655	5,200
1990	233,843	267,586	6,516
1991	206,668	307,394	6,268
1992	342,238	239,664	19,293
1993	521,866	313,590	39,931
1994	543,353	429,123	40,561
1995	959,963	485,720	46,067
1996	1,277,403	1,040,991	229,842
1997	1,412,712	596,010	130,676
1998	932,957	461,169	137,395
1999	765,346	837,418	379,993
2000	460,916	886,026	399,670
2001	501,643	606,259	218,326
2002	700,649	572,646	139,779
2003	523,370	462,435	91,599
2004	662,796	537,151	103,339
2005	602,972	604,280	108,247
2006	730,642	702,589	120,722
2007	1,382,993	660,477	89,683
2008	525,786	1,046,539	121,283
2009	570,442	743,715	109,813

Source: DHS, *Yearbook of Immigration Statistics: 2009*. (Washington, DC: DHS, Office of Immigration Statistics, 2010).

In 1995, INS initiated its Citizenship USA program to reduce naturalization backlogs. At the time, INS relied on the FBI to check fingerprints, a high percentage of which had been taken by CBOs. In the early 1980s, INS and the FBI developed a policy that if the FBI did not respond within 60 days (45 days in some offices), INS would presume that the check had uncovered no criminal record and would proceed with adjudicating the petition. An accounting firm engaged by DOJ to review the Citizenship USA program reported that between August 31, 1995

and September 30, 1996, the FBI had returned 124,111 fingerprint cards to INS as “unclassifiable” and had no record of having conducted fingerprint checks on 61,366 persons.⁵⁷ The report concluded that 18 percent of the more than 1 million persons who had naturalized during this period had not undergone a criminal background check.

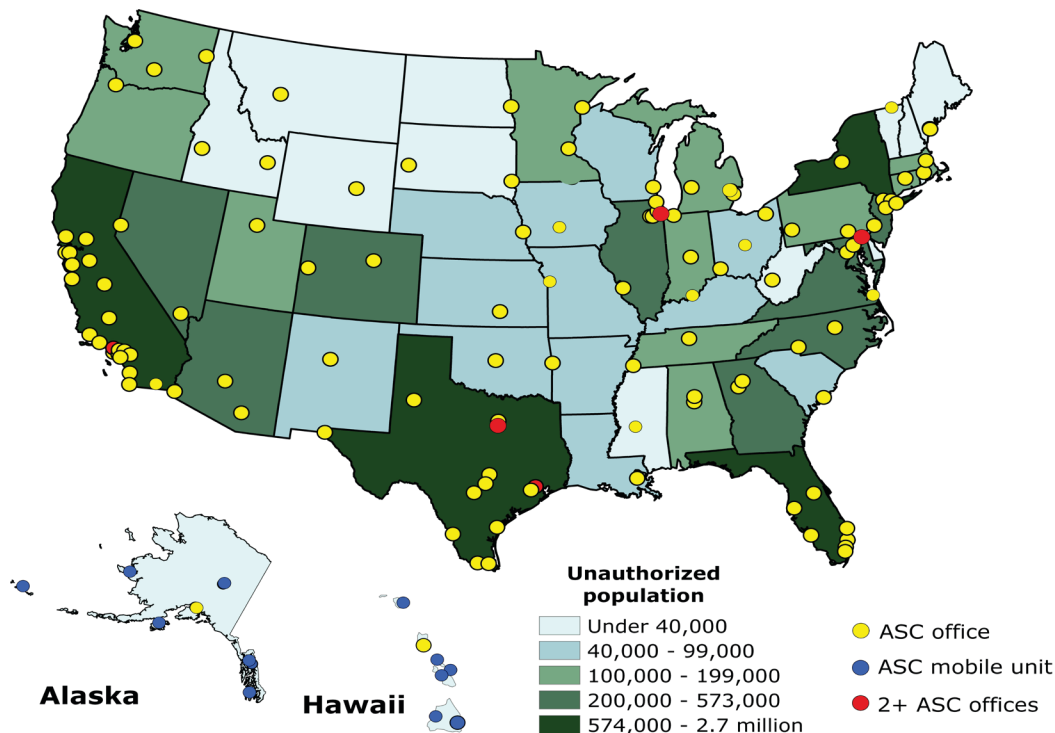
Subsequently, congressional appropriators mandated that only INS, state and local law enforcement agencies, US consular offices, and US military offices

could take fingerprints for the purposes of conducting criminal background checks for immigration benefits.⁵⁸ This requirement led to the creation of ASCs.

ASCs represent the most obvious site for collecting biometric information, and their role could easily be expanded to encompass identity verification. Unlike post offices, libraries, or federal buildings, ASCs exist for the specific purpose of taking fingerprints and photographs. In addition, they handle a high volume

of work, provide “clean” and “classifiable” digital fingerprints, and are located in areas with heavy concentrations of unauthorized immigrants (see Figure 2). Each ASC also has on-site USCIS personnel to oversee the quality of operations and to resolve customer-service issues. Biometric screening at ASCs is by appointment. USCIS would need to develop a mechanism to manage the flow of applicants to them during the registration process.

Figure 2. Application Support Centers by Concentration of the Unauthorized Population



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Source: Jeffrey S. Passel and D’Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States* (Washington, DC: Pew Hispanic Center, 2009), <http://pewhispanic.org/reports/report.php?ReportID=107>; US Citizenship and Immigration Services, “USCIS Service and Office Locator – Application Support Center,” https://egov.uscis.gov/crisgwi/go?action=offices.type&OfficeLocator.office_type=ASC.

We recommend that biometric appointments be scheduled within one month of the application's filing and that biometric collection and screening of identity documents occur at Application Support Centers.

2. Establishing Identity

Perhaps the most challenging aspect of the registration process would be to establish an applicant's identity. Proving an unauthorized immigrant's *actual* identity can be more challenging than "verifying" a false identity used for obtaining work. Historically, establishing the real or birth name of immigrants has not been a consistent priority for US immigration officials. In fact, untold numbers of immigrants have lost their birth names during the immigration process, often at the hands of immigration officials. In addition, the actual name of an applicant is not decisive in determining whether he or she presents a public safety or national security risk. Biometric screening will occur whether the applicant uses his real name or not. It will also "lock in" the name used by the applicant, with biometric information, which will increase security and safety prospectively.

At the same time, coming out of the shadows and more fully joining US society would require applicants to identify themselves correctly. This often would entail giving up identities that they have used or taken from others. A program designed to further the rule of law should not begin by condoning continued violations of the law. In addition,

it is likely that terrorist groups, drug cartels, human trafficking rings, and other criminal enterprises would try to plant confederates in the United States and legalize them through this program. If experience holds, they would select agents who do not appear in criminal or national security databases, and would not otherwise come to the attention of the authorities. While it might be difficult to screen out "clean" operatives, subsequent law enforcement investigations would benefit from knowing their true names. For these reasons, USCIS should establish a rigorous process for identifying registration applicants.

The vetting that would take place following receipt of the registration application and biometric collection would establish the identity of certain applicants who are already present in immigration and criminal databases. However, it would not authenticate the identity of most applicants. To meet this need, USCIS officials should review the identity documents of applicants during their appointments for biometric collection at ASCs. USCIS's Fraud Detection and National Security (FDNS) division and ICE's Forensic Document Laboratory (FDL) should serve as resources in this process.

FDL's mission is "the detection and deterrence of travel and identity document fraud" as "the only federal crime laboratory dedicated exclusively to the forensic examination of travel and identity documents."⁵⁹ FDNS works closely with ICE, CBP, FDL, and external intelligence and law enforcement agencies to screen

cases and resolve hits. FDNS could also assist in resolving matches that result from IBIS/TECS checks.

A rigorous identity requirement would further safety and security. By contrast, lax identity requirements would make the program vulnerable to fraud and compromise its integrity. Applications for Temporary Protected Status (TPS) — a temporary immigration status granted to nationals from designated countries on humanitarian grounds — faces the same, if not greater, challenges in establishing identity and presence. Most recently, DHS Secretary Janet Napolitano granted TPS to Haitian nationals in the United States who were unable to return safely to their country because of the January 12, 2010, earthquake and its aftermath.⁶⁰

An applicant for TPS can prove identity and nationality by presenting a passport, a birth certificate accompanied by photo identification, or a national identity document bearing his or her photograph or fingerprint.⁶¹ USCIS also accepts secondary evidence in the form of affidavits from friends or family members who have close personal knowledge of the date and place of an applicant's birth and his or her parents' nationality. This generous evidentiary standard is appropriate in circumstances in which applicants cannot obtain passports or other government-issued identity documents.⁶² Although USCIS prefers primary evidence, it has noted that "several reliable secondary source documents will often help the adjudicator to confirm [an applicant's] nationality."⁶³

We recommend that USCIS officials who are specially trained in identity fraud review the documents of applicants at the time of biometric collection at ASCs, drawing on the expertise of USCIS's Fraud Detection and National Security (FDNS) division and ICE's Forensic Document Laboratory (FDL). DHS, FBI, and other law enforcement agencies should make it a priority to track the source of fraudulent identity documents presented at ASCs and investigate and prosecute criminal enterprises involved in large-scale or systemic fraud.

3. Tier One Documents

The registration program proposed in this study places the onus on migrant source countries to produce secure identity documents for their nationals. With nearly 11 million unauthorized immigrants in the United States, USCIS needs assistance in meeting the practical burden of identity verification.

A passport would be the preferred form of identity for registration applicants because it has the strongest security features, including high-quality papers and adhesives, special or optically variable inks, holograms, digital photos, and machine-readable zones.⁶⁴ Electronic passports issued by other countries also may contain an electronic device that can simultaneously read multiple cards' radio frequency identification (RFID) signals from a distance.⁶⁵

A consular identification card (CID) with a photograph and reasonable fraud-prevention features should also be accepted as proof of identity. Many unauthorized immigrants already possess CIDs as the result of recent initiatives to popularize their acceptance and use. Given that Mexican nationals represent 60 percent of the US unauthorized population, Mexican identity cards deserve particular attention in planning for a registration program.⁶⁶ Mexican CIDs can be obtained in each of Mexico's 53 consular offices in the United States. An applicant for a CID must produce the same documents that are required for a passport — a birth certificate and a second form of identification. The CID contains a unique identification number, optically variable features (e.g. hologram, color-shifting inks), an ultraviolet image, micro-printing, a secure laminate, encoded information, an integrated photograph and signature, and is machine-readable.⁶⁷

A centralized validation system links consular databases to Mexican government databases, and Mexico does not issue CIDs to individuals with criminal records. Improved security features have made both the Mexican consular ID and passport equally secure. In addition, Mexican consulates have significantly expanded their capacity to produce identity documents in recent years, issuing 7.7 million CID cards and 4.7 million passports since 2002.⁶⁸

Of course, passports, CIDs, and other government-issued documents can be obtained through the use of “breeder” documents and by other fraudulent

means.⁶⁹ However, since applicants for Mexican CIDs must show the same documents as passport applicants and since both documents have biometric and other security features, CIDs should be accepted as primary evidence of identity, absent proof of substantial fraud in the production and use of these documents. As stated, the FBI, DOS, DHS, and other government stakeholders should monitor and share information on the security of foreign identity documents, and DHS should rely on this information in assessing the credibility of the relevant documents.⁷⁰

We recommend that the United States place the onus on immigrant source countries to provide identity documents to their nationals, to enhance the security of these documents, and to minimize the risk of fraud. USCIS should require secure, government-issued, biometrically enhanced (Tier One) documents to establish identity in most cases, but allow less secure evidence of identity to be presented if Tier One documents cannot be obtained. Passports and secure CIDs should be treated as Tier One identity documents. The FBI, DOS, DHS, and other government agencies should make it a priority to share real-time information on the security of foreign identity documents and on best practices for verifying their integrity. DHS should make programmatic adjustments based on the intelligence it receives on the security of particular documents.

4. Secondary Proof of Identity

The program's documentation requirements — and its preference for Tier One documents — should be a feature of its communications campaign. However, some applicants would not understand document requirements until too late in the application period to obtain them, some governments would refuse to provide identity documents to their nationals, and others would lack the capacity to provide them in sufficient numbers.

Under IRCA, an applicant could establish identity (in order of preference) by presenting a passport, birth certificate, national identity document with a photograph and fingerprints, driver's license or a similar document with a photograph, baptismal record/marriage certificate, or affidavits.⁷¹ Since passage of the REAL ID Act of 2005, fewer unauthorized persons have drivers' licenses.⁷² REAL ID created national standards for the issuance of state licenses, including proof of legal presence in the United States: it sought to restrict unauthorized immigrants from obtaining US drivers' licenses and using them for identification purposes. REAL ID standards, procedures, and requirements must be met by May 10, 2011, if state-issued licenses are to be accepted as valid identification by the federal government.⁷³ Nonetheless, some percentage of unauthorized persons will still have drivers' licenses and they should constitute secondary proof of identity. Other second-tier evidence could include identification cards (with photos and identifying information) from government agencies, schools, or employers.

*We recommend that secondary evidence of identity be permitted in cases in which applicants cannot obtain Tier One documents. Registration applicants relying on secondary documents should be required to certify that they could not obtain core documents.*⁷⁴

5. Breeder Documents

The integrity of identity documents can be compromised by the “breeder” documents used to obtain them. Thus, the security of breeder documents and the standard of review that takes place *before* foreign governments issue such documents should be a significant priority in preparing for registration.

Breeder documents are “the fundamental physical evidence accepted by national authorities to establish a *prima facie* claim to identity.”⁷⁵ An imposter may use fraudulent birth certificates, drivers' licenses, voter cards, or social security cards to obtain a national identity card or passport. They may also use the genuine documents of others to obtain identity documents. Birth certificates, in particular, have varying levels of security depending on the issuing entities' vital records and birth certificate policies. In 2000, the Office of Inspector General for the Department of Health and Human Services reported that 6,422 entities issued US birth certificates and more than 14,000 different versions of legitimate US birth certificates were in existence.⁷⁶ Between 85 and 90 percent of the birth certificate fraud encountered by INS and by DOS's Passport Services Section resulted from genuine birth certificates held by imposters.⁷⁷

We recommend that DHS and DOS provide technical assistance and support to foreign governments to improve the reliability of breeder documents.⁷⁸ The United States should make it a diplomatic priority to encourage the governments of nations with large US unauthorized populations to establish the controls necessary to issue secure identity documents.⁷⁹ It should also continually monitor the security of government-issued IDs, share this information with Congress, and adjust the registration program accordingly.

6. Establishing Continuous Residence

An earned legalization program would likely require applicants to be present *and* unauthorized in the United States as of the date of the bill's introduction, its enactment, or some third date. It may also require them to remain present during the registration period, with exceptions for brief departures from the country. It would be difficult for unauthorized persons to document their continuous presence in the United States. However, short preregistration and registration periods would limit the time that ineligible persons have to enter the country illegally following the cutoff date for entry. Heightened border enforcement during this period may also be necessary to deter and reduce illegal entries.

Screening of applicant information against the CIS database would provide information on legal entries and proof of presence (whether legal or unauthorized) in some cases. The fact that an applicant is not in DHS's records would also serve as evi-

dence of unauthorized status. In addition, as discussed below, registration applications should require applicants to list their most recent date and form of entry, and to attest to the accuracy of this information.

We recommend that USCIS permit applicants to submit scanned tax, social security, school, financial, medical, and utility records that demonstrate continuous presence. While not foolproof, these procedures and requirements would support a finding of "continuous unauthorized presence," while also encouraging eligible immigrants to apply.

7. Issuance and Renewal of a Secure Identity Card

USCIS would issue successful registration applicants with a card that establishes their temporary legal status, authorization to work, and right to travel. Annual renewal of the card could overtax USCIS, particularly since the earned legalization period could last many years. In addition, registrants would not want any interruption in their work eligibility, legal status, or ability to travel. At the same time, the government would have a strong interest in maintaining contact with registrants during this period and ensuring that they retain their eligibility to adjust to LPR status, do not engage in disqualifying behavior, and intend to proceed with the earned legalization process. A two-year renewable card would address these competing concerns.

The green card has become progressively more secure in recent years. In 1998, INS issued a green card that incorporated

digital photographs and fingerprints, holograms, micro-printing, and other security features.⁸⁰ The newest card, which DHS began to issue on May 11, 2010, includes laser engraved fingerprints, optical media storage of all digital files (including biometrics), color shifting ink, a holographic image of the cardholder, a radio frequency identification tag (RFID) that allows DHS agents to access cardholder information remotely, unique background design, and micro-image pictures of state flags and presidents.⁸¹ A registration program would benefit significantly from the progress in making the green card more tamper-resistant, difficult to counterfeit, and secure.

We recommend that USCIS issue successful applicants, following their biometric screening, a two-year renewable card that would establish their eligibility to work, temporary legal status, and right to travel. The registration card should include the security features of an LPR (“green”) card.

V. The Mechanics of a Registration Program

This study has, thus far, considered the planning and implementation work at the different stages of the registration process. It also has made recommendations on how public safety and national security screening should take place, and on how identity and continuous presence should be established. This section addresses several logistical issues, including:

- The content of the application form
- Whether applications should be filed by mail or electronically
- How access to online program information can be expanded
- Whether applicants would need to present themselves in person and, if so, for what purpose and where
- How a registration program should be structured
- How much it should cost to register and who should bear the costs
- Whether applicants should be able to appeal denials
- Which (denied) applicants should be placed in removal proceedings and when applicant information should be disclosed to law enforcement agencies.

1. Application Form

USCIS will need to create a simple, streamlined application form that captures basic biographical and eligibility information. The broad legalization programs proposed in comprehensive immigration reform legislation over the last five years would have incorporated the AgJobs and DREAM Act legislation. If Congress passes a bill that includes multiple legalization programs, unauthorized immigrants would want to preserve their eligibility under different programs in the event they do not qualify in one particular program. Approximately 2.1 million unauthorized immigrant youth and adults, for example, could be eligible to apply for

legal status under the DREAM Act legislation pending in Congress.⁸² One possibility would be to create one application form for multiple legalization programs. This could streamline the administrative process. However, it might also confuse registrants who qualify for one but not other programs, and it could complicate messaging and public education.

The decision on whether to include multiple programs on the same form should be made in consultation with immigrant advocates, CBOs, and other stakeholders. In order to maximize the number of potential registrants, DHS would need to seek wide input from CBOs on the ease of use and clarity of any registration form. It would be nearly impossible to meet the timeframe for registration proposed in this study unless USCIS has prepared several iterations of draft forms based upon differing legislative proposals and can move to finalize the form quickly upon passage of a law.

We recommend that USCIS begin to vet draft registration applications even prior to passage of legislation.⁸³ USCIS should run market tests on multiple forms to determine which one would be most likely to encourage the largest number of potentially eligible immigrants to apply. The application should request basic biographic information on the applicant and on his or her immediate family; the date, place, and manner of the applicant's last entry; current immigration status; the basis of the claim to register; questions on arrests, convictions, commission of crimes, and membership in

terrorist organizations; and certification as to the accuracy of the answers. Applicants should be permitted to provide scanned documents that help to establish identity and continuous unauthorized residence in the United States.

2. Electronic vs. Paper Applications: The Business Transformation Initiative

USCIS would need a way to accept applications and fees, and to issue receipts to the millions unauthorized persons who could apply to register over a short period of time. It would need to accommodate this influx on top of its normal workload of 5 million immigration applications per year.⁸⁴

IRCA's application process was entirely paper-based. Since IRCA, technology, computer access, and computer literacy have vastly improved. USCIS should take advantage of these developments. Electronic filing would allow unauthorized immigrants to receive registration benefits faster, eliminate transcription and other errors associated with handling paper files, and potentially provide significant cost savings. At present, only eight USCIS forms can be submitted electronically, and USCIS requires nonelectronic submission of supporting documents for many of these forms.⁸⁵

USCIS has begun shifting from a paper-based to an electronic case-management system through its Business Transformation Initiative (BTI).⁸⁶ The BTI, which

began in 2008, has three goals. First, it seeks to enhance security through storing, retrieving, and providing access to greater volumes of biometric data; performing faster, more direct security checks; and improving communication among partner agencies.⁸⁷ Second, it seeks to improve customer service by allowing applicants to establish online accounts, to update personal profiles, and to complete, file, and track the progress of their applications. Third, it seeks to improve USCIS's operational efficiency through central storage of digitized cases, better case management and tracking, and faster processing and data sharing.

BTI was originally scheduled to permit online applications for citizenship in FY2009, immigrant applications in FY2010-2011, humanitarian applications in FY2012, and nonimmigrant applications in FY2013.⁸⁸ However, USCIS subsequently decided to begin electronic filing with simpler, higher volume, nonimmigrant cases.⁸⁹ It plans to process electronic applications for the following: nonimmigrant applications from August 2010 to November 2011; remaining nonimmigrant applications in July 2011 to October 2012; immigrant benefits in January 2012 to March 2013; humanitarian benefits in July 2012 to September 2013; and naturalization benefits in January 2013 to March 2014.⁹⁰

Through BTI, USCIS plans to create a system in which individuals will be able to file their paperwork electronically, either on their own or through a third

party. It plans to develop a technical standard called External Data Interface Standards (EDIS) that enable a third party to transfer digital immigration benefit data directly and securely to USCIS.⁹¹ An analogous system has developed in recent years for filing taxes. As with registration, individuals who electronically file their tax returns benefit from a process that can be accessed from the privacy of their homes, that minimizes transcription errors, and that delivers refunds faster than the paper filing system.⁹²

USCIS should assess how long and how much additional funding it would take for BTI to accommodate a registration program. It would be impractical, at best, to create a parallel, pre-BTI processing system for up to 11 million applications that would ultimately need to be incorporated in USCIS's new electronic case-management system. Conversely, it would create long-term efficiencies to fold the registration program at its inception into the BTI system. In addition, since a registration program would resemble the TPS process, developing the BTI capability for TPS would prepare the new system for a registration program.

The benefits of registration — legal status, ability to travel, work authorization, and protection from deportation — would provide an incentive for unauthorized immigrants to find a way to file their applications electronically if so required. More tellingly, since 2008, DOS has required that all nonimmigrant visa applications be completed, signed,

and submitted electronically.⁹³ It has recently announced a similar electronic immigrant visa application process, which will ultimately replace the paper-based process.⁹⁴ Applicants for immigrant visas must download application forms and a growing number of consulates, such as the US consulate in Ciudad Juárez, Mexico, require electronic submission of all forms, including copies of birth certificates, marriage certificates, and other supporting documents. To negotiate this process, applicants must have access to a computer, the Internet, a printer, and a scanner. This has not dissuaded immigrants from consular processing and there is little reason to think they would be any less resourceful during a registration process.⁹⁵

Lockboxes — which are located in Chicago, Dallas, and Phoenix — are intake facilities that process applications, accept fees, and provide receipts for accepted applications.⁹⁶ Data captured at lockboxes are then entered into a USCIS database for use at a USCIS Service Center or the National Benefits Center.⁹⁷

The system operates as a partnership between USCIS and the US Department of Treasury, and has been designed to meet needs that would be significant priorities in a registration program. In particular, the lockbox system can deposit fees in a timely manner, handle a massive volume of applications, respond to surges in filing, and convert paper applications into electronic form.⁹⁸ According to the USCIS Ombudsman's office, the system can process 36,000 paper filings per day, but could increase personnel

within 90 days and process 90,000 paper filings per day.⁹⁹ At full capacity, USCIS could accept 11 million applications in 123 days. While the lockbox system mostly handles paper applications, it can also accommodate electronic filing and process remittances.¹⁰⁰

A paper-based filing option would benefit unauthorized immigrants who lack the requisite language skills, computer literacy, access to computers, or reliable Internet connections. Studies show that immigrants are less likely than natives to have access to or to use a computer and the Internet. The digital divide between the foreign-born and natives mimics patterns of inequality found in education and poverty.¹⁰¹ Latinos, especially Mexican Americans, are less likely to use computers and the Internet than other ethnic groups.¹⁰² Unauthorized immigrants who are illiterate or low-literate, limited English proficient (LEP), or who lack computer skills will be less likely (absent assistance) to apply to register online.¹⁰³

We recommend that USCIS develop its BTI system with the recognition that it may need to accommodate a registration program. USCIS should also expedite BTI's ability to process TPS applications, which would test the new system's ability to accommodate a registration program. Given the immensity of the target population and the need for an efficient program, registration should be primarily an electronic process. USCIS should develop incentives — such as shorter

processing times and allowing applicants to track their applications — to encourage electronic filing. However, the program should also offer a paper filing option for applicants who lack sufficient computer literacy. The USCIS lockbox system should be used, at the very least, to accept paper applications and to convert them into electronic form.

3. Immigrant Access to Program Information

As of August 11, 2000, recipients of federal financial assistance must ensure that their services are accessible to LEP persons and, thus, do not discriminate on the basis of national origin in violation of [Title VI of the Civil Rights Act of 1964](#).¹⁰⁴ An Executive Order titled “Improving Access to Services for Persons with Limited English Proficiency” requires federal agencies to examine the services they provide, identify the need for those services by LEP individuals, and provide “meaningful access” to them.¹⁰⁵ At the very least, this law would require USCIS to translate the registration application and other program information into multiple languages.

Commentators have proposed that USCIS establish mobile kiosks — specifically designed as registration application centers — at libraries, schools, post offices, and other public places. While USCIS should attempt to maximize access to the program, mobile kiosks would not be as necessary if a user-friendly, multilingual, electronic registration process could be made available

at any computer with Internet access.¹⁰⁶

The American Recovery and Reinvestment Act of 2009 (ARRA) appropriated \$7.2 billion to improve broadband access to underserved communities.¹⁰⁷ The funds are being distributed by the Department of Agriculture’s Rural Utilities Service and the Department of Commerce’s National Telecommunication Information Administration through two grant programs, the Broadband Initiatives Program (BIP) and the Broadband Technology Opportunities Program (BTOP).¹⁰⁸

We recommend that Congress and the administration invest in programs to strengthen and improve the computer capabilities and Internet access of immigrant-serving CBOs. In addition, USCIS should partner with the agencies involved in ARRA broadband access program in order to ensure that CBOs and unauthorized immigrants have access to computers and the Internet by the time a registration program begins.

4. The Cost of Registration and Timing of Payment of a Penalty

A high registration fee could discourage some unauthorized immigrants from participating in the program, and would require many immigrants to borrow significant amounts of money.¹⁰⁹ In 2007, the median annual household income of unauthorized immigrants was \$36,000, compared with \$50,000 for persons born in the United States.¹¹⁰ Poverty rates among unauthorized

immigrants significantly exceed those of US-born persons.¹¹¹

Under recent legislative proposals, penalty fees due at the first stage of the legalization process would have been as high as \$5,000 *per person*, excluding processing fees.¹¹² Penalties and fees of \$5,000 would exceed the household income of 25 percent of unauthorized persons, and fees of \$10,000 would exceed the household income of 59 percent of the unauthorized.¹¹³ These costs would work at cross-purposes to a registration program's core goal of furthering immigrant integration. They would particularly impoverish low-income families with multiple beneficiaries. Additionally, they would lead to growth in predatory lending in immigrant communities.

On the other hand, USCIS is funded through a fee-based system that seeks to recover the full costs of processing applications.¹¹⁴ A registration fee will, in all likelihood, need to cover the costs of processing applications, screening applicants, and issuing secure identification cards.

An equally pressing financial issue — which arose during IRCA — is the potential delay in the availability of fee revenues.¹¹⁵ Sufficient funding will be needed to build the necessary systems and infrastructure on the program's front end. Most of this funding could subsequently be recouped by fee revenues. However, fees would not be available at the outset of the program.¹¹⁶

The TPS program is a reasonable stand-

in for registration. Like TPS applicants, registration applicants: (1) would need to appear at an ASC for biometric collection and screening; (2) would not have to undergo an interview by USCIS;¹¹⁷ (3) would likely have to reregister multiple times; and (4) would face similar difficulties in establishing identity and meeting other program requirements. However, the TPS fee of \$50, plus \$340 to file for employment authorization and \$80 for biometric collection, does not fully cover processing costs. USCIS uses the surcharge placed on other fees to subsidize TPS, refugee, asylum and other humanitarian applications, military naturalization cases, and fee waivers.¹¹⁸

The fee for naturalization — \$595, with an additional \$80 fee for biometric collection — may come closer to approximating the cost of processing a registration application. However, the naturalization process involves an in-person interview for each applicant, which the registration process would not. On the other hand, registration would result in authorization to work. Employment authorization applications cost an additional \$340. Thus, the registration processing cost may be closer to \$1,000, which would be a significant burden for low-income applicants.

USCIS might conceive of the registration process as the beginning of an integrated program leading to legalization and, thus, the appropriate point at which to penalize applicants for violations of the law. Penalty fees, which have been a feature of earned legalization bills, would provide a needed infusion of

funding for the program, assuming that this funding is not diverted for immigration enforcement or other programs. However, deferring payment of the fine would allow larger numbers of applicants to register, require fewer applicants to go into debt, and afford them more time to work and to save money to pay the penalty.

Although a cost-based registration fee would likely still be high, deferral of the penalty fee would mitigate the need for fee waiver. A waiver would increase USCIS processing costs and would raise the fee for those not receiving waivers. USCIS would not be able to adjudicate a high volume of fee waiver requests and to streamline the registration process.

The registration program would best be viewed as an initial screening. It would not result in LPR status for applicants, but would be followed by a multiyear earned legalization program. The idea of a penalty reflects the judgment that unauthorized persons should be punished for past behavior in return for being placed on a path to LPR status and, ultimately, citizenship. Since adjustment to LPR status would occur at a later stage in the legalization process, the penalty should be assessed at that later stage.

We recommend that Congress appropriate sufficient funding to build the necessary infrastructure prior to the start of the program. Applicants should also be charged a fee that covers the cost of administering the registration program, including application processing, fingerprints

and photographs, database checks, and issuance of a secure identification card. The fee should not cover the full cost of systemic improvements that would benefit subsequent applicants for immigration benefits. A penalty — if required by statute — should not be assessed until the earned legalization stage of the program. If Congress provides for fee waivers, we recommend that USCIS develop a system to process requests without adjudicating (i.e., personally reviewing) each one.¹¹⁹

5. Denial of Registration Benefits and Appeals of Denials

USCIS would be able to deny registration benefits based on its review of the application, its examination of identity documents at the ASC, and its screening both before and after biometric collection. As a matter of equity, applicants should be able to appeal negative decisions. In an application pool of this magnitude, there would invariably be large numbers of incorrect denials.

INS created a Legalization Appeals Unit (LAU) to handle appeals of application denials in the general legalization and SAW programs during IRCA.¹²⁰ LAU served as the central adjudicatory system for legalization, remanding cases to regional processing offices if it disagreed with a decision, and publishing precedent decisions to help guide and standardize adjudications.¹²¹ With a staff of only ten examiners and one attorney, LAU struggled to accommodate its workload and faced a backlog of over 3,000 general legalization cases a year after

the program ended.¹²²

The USCIS Administrative Appeals Office (AAO) has jurisdiction over the appeals from decisions on most immigration petitions and applications that are entered by USCIS regional service centers and district offices, including employment-based petitions, TPS applications, and others.¹²³ In 2004, AAO received 20,¹²¹ cases for review.¹²⁴ If even 1 percent of registration applications were denied and appealed, it would increase AAO's workload fivefold. The potential for a massive increase in the AAO workload underscores the need for sufficient resources, for clarity in the implementing regulations and policies, and for effective community outreach on program eligibility and procedures.

We recommend that applicants be able to appeal negative eligibility determinations to the AAO. Congress should appropriate substantial funding for AAO to increase staffing and training for this purpose. In addition, it should grant USCIS the authority to fill AAO and other positions without having to seek mid-year budget reprogramming requests. DHS should develop regulations and instructions that clarify the terms and standards used to determine eligibility. This will be essential in creating an efficient registration process, and in reducing the number of appeals and the likelihood of class action litigation.

6. Confidentiality Issues: Referral of Denied Applicants for Removal and Prosecution

As the details and eligibility rules for registration become apparent, CBP and ICE would need to work together and DOS would need to liaise with migrant-source countries to minimize the number of migrants seeking to enter the United States illegally to participate in the program. Yet the more that enforcement muscle is flexed during the registration process, the less likely eligible persons would be to come forward to apply for benefits.

How should a registration program balance the need for continued enforcement with the desire to seek maximum participation? The best option would be to commence removal proceedings only against persons who are denied registration benefits based on fraud or on criminal or security grounds. Such a policy would encourage the largest number of potentially eligible persons to come forward, while also furthering public safety, national security, and the integrity of the program.¹²⁵ Of course, unauthorized persons who are denied registration benefits would not be able to work legally and could be placed in removal proceedings if they subsequently came to DHS's attention for other reasons. In fact, the far smaller unauthorized population post-registration would be subject to DHS's extensive immigration enforcement apparatus. However, placing denied applicants in removal proceedings *during* the registration period would inhibit unauthorized persons from coming forward, defeating the program's national security, public safety, and integration goals.

In addition, it would create significant burdens on DHS enforcement programs and immigration court resources. If even 5 percent of 11 million unauthorized immigrants failed to qualify to register and were placed in removal proceedings, this would more than double the workload of the already overwhelmed immigration court system. In FY2009, 391,829 legal proceedings, bond redeterminations, and motions entered the U.S. immigration court system.¹²⁶ By the end of September 2010, immigration courts struggled to adjudicate an unprecedented 261,083 cases, with the average case pending for 456 days.¹²⁷

A legalization bill would likely exclude from eligibility different categories of persons who are at different stages of the criminal justice and removal process, including criminals with outstanding warrants. At the same time, it would defeat the purpose of the program to disqualify the growing number of unauthorized persons who have received criminal sentences or been ordered removed based solely on immigration status or immigration-related related violations. In addition, some of the “criminal” categories in immigration law, such as “aggravated felonies,” include relatively minor crimes committed years in the past that should not disqualify registration applicants.¹²⁸

Under IRCA, information furnished in support of an application could only be used to make a determination on the application.¹²⁹ It could not be provided to DOJ for law enforcement purposes without the applicant’s consent. However, applicants could be placed in deportation proceedings and criminally prosecuted if they were found to have committed fraud. To immunize all applicants who have engaged in fraud from removal and prosecution would undermine the integrity of the program. It would interfere with the kind of large-scale criminal investigations into document fraud and identity theft that would be vital to the ensuring the program’s integrity.

We recommend that Congress and DHS structure the registration program so that applicants who are denied registration benefits based on non-immigration-related criminal or national security grounds be referred for removal proceedings. Similarly, USCIS should be able to disclose information to law enforcement agencies on applicants who raise public safety or national security concerns. Confidentiality should also be waived — as it was during IRCA — when an applicant knowingly and willfully falsifies or conceals a material fact or makes a false, fictitious, or fraudulent statement. However, confidentiality should not preclude USCIS from disclosing information to law enforcement agencies that would benefit an applicant or his or her family members.¹³⁰

VI. The Role of Community-Based Organizations

Under IRCA, applicants could file for program benefits at special legalization offices established by INS or with Qualified Designated Entities (QDEs). QDEs consisted of voluntary agencies; state, local, and community organizations; and persons with sufficient qualifications, competence, and experience to assist immigrants.¹³¹ They educated immigrant communities, helped applicants prepare their applications, and received applications on behalf of the government. They received \$15 for every application that they processed and submitted to INS for adjudication.¹³² National umbrella agencies for networks of QDEs received an additional \$1 per application.¹³³ The IRCA QDE experience demonstrates the value of engaging CBOs that can prepare a large volume of applicants and partner with USCIS in educating and reaching out to immigrant communities, particularly hard-to-reach populations such as LEP immigrants or those in remote or rural locations.

A major rationale for QDEs was the felt need to create a bridge between INS and target communities in order to allay immigrants' fears of coming forward.¹³⁴ QDEs submitted 19 percent of the applications filed during IRCA and helped immigrants prepare many more self-filed applications.¹³⁵ However, most immigrants proved comfortable filing applications directly with the INS legalization offices.

The recent high volume of workplace audits, new post-arrest immigration status screening programs, and the historically high removal (deportation) rates may make some immigrants hesitant to come forward unless they can be assured that doing so will not lead to their own or to a family member's arrest, removal, or prosecution. However, it is likely — as occurred during IRCA — that the overwhelming majority of eligible immigrants would be willing to avail themselves of a once-in-a-generation opportunity to gain legal status by filing their applications directly with USCIS. Robust confidentiality rules and the absence of in-person interviews should further embolden immigrants to participate in the program. For this reason, CBOs would not need to serve as intermediaries for the government in receiving applications, as QDEs did during IRCA.

We recommend that CBOs play a lead role in educating immigrant communities and in assisting them to negotiate the registration process. However, CBOs should not be charged with accepting applications on the government's behalf.

1. Board of Immigration Appeals (BIA) Recognition and Accreditation Issues

Federal law allows the accredited nonattorneys of recognized nonprofit religious, charitable, and social service organizations to represent immigrants. The BIA, which is situated in DOJ's Executive Office for Immigration Review (EOIR), evaluates and approves

applications for agency recognition and individual accreditation. An individual with partial accreditation can represent aliens before DHS. Fully accredited representatives can represent immigrants before DHS, in removal proceedings, and in appeals to BIA. EOIR updates the roster of recognized organizations and accredited representatives quarterly. As of August 2010, it listed 760 recognized organizations and 988 accredited individuals.¹³⁶

BIA would need to expand its staffing and other resources during the preregistration period so that it could evaluate a higher volume of recognition and accreditation applications in anticipation of and in the early stages of a registration program. Even without a legalization program, the dearth of *pro bono* representation and BIA-accredited representatives has led to an increase in the unauthorized practice of law.¹³⁷ Fraudulent or merely ineffective legal advice can bankrupt immigrants, prejudice their ability to gain legal status, and delay government processing of applications.¹³⁸ Press coverage of the immigration reform debate has led to spikes in unauthorized practice, with *notarios* seeking prepayment from potential legalization beneficiaries and promising to deliver benefits that do not yet exist.¹³⁹

BIA-recognized agencies would also need to play a role in public education and community outreach. They would need to educate unauthorized immigrants on the process for applying, on how to obtain competent legal assis-

tance, and on basic eligibility criteria. However, their forte would be direct legal services and group processing sessions to program beneficiaries.

We recommend that CBOs not be permitted to provide legal services during a registration and legalization program unless they become BIA-recognized and their non-attorney staff become accredited. Congress should appropriate sufficient funding so that BIA can accommodate the increased volume of recognition and accreditation applications resulting from this program. Congress, DHS, and DOJ should make it a priority to expand the network of federally recognized charitable legal agencies, rather than create a new, legalization-specific certification process. The BIA-recognition and accreditation process should not be available to notarios (forprofit, nonattorney practitioners) or nonattorneys without sufficient training and expertise.¹⁴⁰ Nonprofit organizations should make it a priority to begin the process of applying for recognition and securing training for appropriate staff so that they can become accredited prior to passage of legislation.¹⁴¹

VII. Conclusion

While IRCA successfully legalized 2.7 million unauthorized immigrants, it has been widely criticized for failing to meet its promise to stem illegal migration. This failure has been alternately attributed to the insufficient commitment of INS and DHS to enforce the law, to the

susceptibility of the US employment verification process to document fraud, to the mismatch between US legal immigration policies and its labor market and family reunification needs, and to the significant number of unauthorized immigrants that IRCA did not legalize. Many commentators have pointed to the experience of IRCA — and its aftermath — in arguing that an earned legalization program could not be successfully implemented and would fail to achieve its goals.

The papers in this series attempt to anticipate and respond to the likely challenges in implementing a large-scale legalization program. This study argues that the goals of a legalization program would best be served by an initial registration process, leading to work authorization and renewable legal status for qualified immigrants, and referring applicants who present public safety or national security concerns to the relevant law enforcement agencies. The registration proposal builds on the lessons of IRCA, post-IRCA processing reforms developed in response to surges in application filings, and improvements (both preceding and following 9/11) in applicant screening, data systems, and

the security of identity documents. CIR legislation would also benefit from an immigration enforcement system that is far better resourced than was the INS enforcement regime.

This study does not offer the perfect registration plan. Conditions on the ground will change in the years leading to passage of legislation, and the substance of a legalization bill will affect how it should be implemented. Instead, the attempt is to outline the extensive, coordinated planning that would need to begin even prior to passage of legislation, and to highlight the issues and trade-offs that public and private stakeholders would need to consider in preparing for and crafting a program. The policy brief recommends the programmatic options that would bring forward the maximum number of potentially eligible applicants. None of the goals of a legalization program would be served if potential applicants did not come forward at high rates. The study assumes that a large-scale legalization program can achieve its broad goals, but not without a commitment to planning and implementation that befits a program of this magnitude and ambition.

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The study is the first in a series of papers on how to shape, structure, and administer a legalization program. Additional papers in the series will cover past US legalization programs, how different unauthorized populations would fare under different legislative scenarios, legal issues in structuring a successful legalization program, and the role of states and localities in carrying out a legalization program.

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Any opinions and views contained in this policy brief are those of the authors and do not reflect the views of the Department of Justice.

Endnotes

- 1 *Secure America and Orderly Immigration Act*, S. 1033, 109th Cong., 1st sess.; *Comprehensive Immigration Reform Act of 2006*, S. 2611, 109th Cong., 2nd sess. ; *A bill to provide for comprehensive immigration reform and for other purposes*, S. 1639, 110th Cong., 1st sess. ; *Comprehensive Immigration Reform for America's Security and Prosperity Act of 2009*, HR 4321, 111th Cong., 1st sess.; *The Comprehensive Immigration Reform Act of 2010*, S. 3932, 111th Cong., 2nd sess.
- 2 Jeffrey S. Passel and D'Vera Cohn, *U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade* (Washington, DC: Pew Hispanic Center, 2010), 1, <http://pewhispanic.org/files/reports/126.pdf>.
- 3 *Immigration Reform and Control Act (IRCA)*, Public Law 99-603, US Statutes at Large 100 (1986): 3359.
- 4 IRCA also had prospective features, making it something of a hybrid legalization program. To obtain LPR status, applicants needed to meet English language and civics requirements or be “satisfactorily pursuing a course of study” to this end. IRCA § 201(a); Immigration and Nationality Act (INA) § 245A(b)(1)(D).
- 5 LPRs can permanently live and work in the United States. However, 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. After several years (typically five), LPRs can apply to naturalize.
- 6 During the registration period, applicants would also prepare for the second stage of a legalization program by, for example, taking English language classes and saving monies for program fees, penalties, and fines.
- 7 Congress could also extend eligibility to: (1) close family members of unauthorized immigrants who do not qualify on their own; (2) certain categories of individuals in removal proceedings; (3) the beneficiaries of AgJobs, DREAM or other population-specific programs; (4) Temporary Protected Status (TPS) beneficiaries, certain parolees, and others who cannot legitimately be expected to return home; and, (5) certain nonimmigrants (i.e., H-1B workers) or health care workers whose permanent presence would serve the national interest.
- 8 Passel and Cohn, *U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade*, 1, 5, 8-9. Nearly 8 million of the 11.1 million US unauthorized residents work. More than one-half arrived before 2000. They have 5.1 million US resident children, including 4 million US-citizen children.
- 9 *Development, Relief, and Education for Alien Minors Act of 2009*, S. 729, 111th Cong., 1st sess.; *American Dream Act*, HR 1751, 111th Cong., 1st sess.; *Agricultural Job Opportunities, Benefits, and Security Act of 2009*, HR 2414, 111th Cong., 1st sess.
- 10 IRCA § 201(a); INA § 245A(a)(1)(A).
- 11 IRCA §201(a); INA § 245A(b)(1)(A).
- 12 IRCA § 302(a); INA § 210(a)(2).
- 13 Susan González Baker, *The Cautious Welcome: The Legalization Programs of the Immigration Reform and Control Act* (Santa Monica, CA and Washington, DC: RAND Corporation and Urban Institute, 1990), 4.
- 14 Doris Meissner, Deborah W. Meyers, Demetrios G. Papademetriou, and Michael Fix, *Immigration and America's Future: A New Chapter* (Washington, DC: Migration Policy

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- 15 William Yates, former Chief of Domestic Operations, US Citizenship and Immigration Services (USCIS), interview with author, October 12, 2010.
 - 16 Ibid.
 - 17 US Department of Homeland Security (DHS), USCIS Ombudsman, *Annual Report 2010* (Washington, DC: DHS, 2010), 10, www.dhs.gov/xlibrary/assets/cisomb_2010_annual_report_to_congress.pdf.
 - 18 Ibid; 75 CFR § 33445.33488 (2010), <http://edocket.access.gpo.gov/2010/2010-13991.htm>.
 - 19 As discussed below, foreign governments, particularly consular offices, would need to educate their unauthorized nationals on the program and issue millions of secure identification documents to them.
 - 20 One idea is to create a national volunteer program devoted to expanding the capacity of CBOs engaged in this work.
 - 21 The cutoff date for IRCA's general legalization program was well before the date of the bill's enactment. Applicants needed to establish continuous unauthorized presence beginning on January 1, 1982. For the SAW program, applicants had to demonstrate seasonal agricultural work between May 1985 and May 1986. IRCA legislators did not want to encourage illegal migration or to reward individuals who lacked sufficient ties to the United States. Unlike in IRCA, eligibility for earned legalization would turn on meeting *prospective* requirements, not on a long period of *past* illegality. Congress would ultimately determine the date by which applicants would need to enter the United States to qualify for the program. The two most likely options are the date of introduction of the legislation or the date of enactment.
 - 22 There will likely be a need for increased border enforcement during the registration period in order to prevent ineligible foreign nationals from entering the United States to apply for program benefits.
 - 23 IRCA § 201(a); INA § 245A(a)(1)(A).
 - 24 IRCA § 302(a); INA § 201(a)(1)(A).
 - 25 González Baker, *The Cautious Welcome*.
 - 26 Elizabeth Rolph and Abby Robyn, *A Window on Immigration Reform: Implementing the Immigration Reform and Control Act in Los Angeles* (Santa Monica, CA and Washington, DC: RAND Corporation and Urban Institute, 1990), 74.
 - 27 Lucas Guttentag, "A Brief Introduction to Judicial Review In Relation to IRCA Legalization," (Yale Law School Workshop Series Readings, fall 2009), www.law.yale.edu/documents/pdf/Clinics/Immigration_Reading5.pdf.
 - 28 Rolph and Robyn, *A Window on Immigration Reform*, 80.
 - 29 González Baker, *The Cautious Welcome*, 121.
 - 30 Rolph and Robyn, *A Window on Immigration Reform*, 74-75.
 - 31 Ibid.
 - 32 González Baker, *The Cautious Welcome*, 121.
 - 33 Fraud might likewise increase during a longer period, but fraud would present a significant challenge whatever the length of the registration period.
 - 34 US Department of Justice (DOJ), *Immigration Reform and Control Act: Report on the Legalized Population* (Washington, DC: DOJ, Immigration and Naturalization Service, 1992).
 - 35 Rolph and Robyn, *A Window on Immigration Reform*, 75.
 - 36 Ibid.
 - 37 Ibid.

- 38 Ibid.
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- 40 Ibid.
- 41 As discussed in Section V, the registration application should require basic biographical information, including name (with any aliases), date of birth, country of birth, gender, marital status, date and manner of entry, and information about the applicant’s spouse and children. The program’s publicity campaign should stress that applicants can apply in their own names without penalty and should not resort to using any other names (i.e. names used in order to work).
- 42 DHS, *Privacy Impact Assessment for the Central Index System* (Washington, DC: DHS, 2007), 2-3, www.dhs.gov/xlibrary/assets/privacy/privacy_pia_uscis_cis.pdf.
- 43 Ibid, 6.
- 44 DHS, *Privacy Impact Assessment for the Computer Linked Application Information Management System (CLAIMS 4)* (Washington, DC: DHS, 2008), 15, www.dhs.gov/xlibrary/assets/privacy/privacy_pia_cis_claims4.pdf.
- 45 Unauthorized or “undocumented” persons may have difficulty documenting their identity, date of entry, and past presence in the country.
- 46 DHS, USCIS Ombudsman, *Annual Report 2008* (Washington, DC: DHS, 2008), 6, www.dhs.gov/xlibrary/assets/CISOMB_Annual_Report_2008.pdf.
- 47 DHS, USCIS Ombudsman, *Annual Report 2009* (Washington, DC: DHS, 2009), 35. www.dhs.gov/xlibrary/assets/cisomb_annual_report_2009.pdf.
- 48 Ibid, 35.
- 49 US Federal Bureau of Investigation (FBI), “The Integrated Automated Fingerprint Identification System,” www.fbi.gov/hq/cjisd/iafis.htm.
- 50 Testimony of Kathleen Kraninger, Deputy Assistant Secretary for Policy (Screening Coordination), and Robert A. Mocny, Director, US-VISIT, National Protection and Programs Directorate, before the House Appropriations Committee, Subcommittee on Homeland Security, *Biometric Identification*, 111th Cong., 1st sess., March 19, 2009, www.dhs.gov/ynews/testimony/testimony_1237563811984.shtm.
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- 58 *Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998*, HR 2267, 105th Cong., 1st sess:

- 59 DHS, “Protect Against Fraud and Counterfeiting,” www.dhs.gov/files/programs/protecting-fraud.shtm
- 60 75 CFR § 3476 (2010).
- 61 8 CFR §244.9(a)(1).
- 62 USCIS, “Temporary Protected Status – Haiti Questions and Answers,” (accessed July 13, 2010), www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=b7755a40a79b6210VgnVCM100000082ca60aRCRD&vgnnextchannel=68439c7755cb9010VgnVCM10000045f3d6a1RCRD.
- 63 Ibid.
- 64 International Organization for Migration (IOM), “Security Features and New Directions,” www.iom.int/jahia/Jahia/about-migration/managing-migration/passport-visa-systems/security-features-and-new-directions/cache/offonce;jsessionid=C4FE791CB4A2BDD7CEFBFFBDC6CCA8C5.worker01.
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- 67 GAO, *Consular Identification Cards Accepted Within the United States, but Consistent Federal Guidance Needed* (Washington, DC: GAO, 2004), www.gao.gov/new.items/d04881.pdf.
- 68 Ibid.
- 69 GAO, *Undercover Tests Reveal Significant Vulnerabilities in State’s Passport Issuance Process* (Washington, DC: GAO, 2009) www.gao.gov/new.items/d09447.pdf.
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- 71 8 CFR §245a.2(d).
- 72 *Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief, 2005*, Public Law 109-13, 109th Cong., 1st sess. (May 11, 2005).
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- 75 Susan Ginsburg, *Securing Human Mobility in an Age of Risk* (Washington, DC: Migration Policy Institute, 2010), 193.
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- 78 Ibid., 194-196.
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- 82 Jeanne Batalova and Margie McHugh, *DREAM vs. Reality: An Analysis of Potential DREAM Act Beneficiaries* (Washington, DC: Migration Policy Institute, 2010), www.migrationpolicy.org/pubs/DREAM-Insight-July2010.pdf.
- 83 DHS would also need to seek certain exemptions from Office of Management and Budget (OMB) rules regarding approval of application forms at the earliest possible stage, preferably prior to passage of legislation. Approval of applications can often take in excess of a year.
- 84 DHS, USCIS Ombudsman, *Annual Report 2009*. The number of nonregistration applications to USCIS may slightly decrease during a registration program as some eligible immigrants would chose to register in lieu of other forms of immigration relief.
- 85 USCIS, "Forms Currently Available for e-Filing and Form-Specific e-Filing Instructions" (accessed July 26, 2010), www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=f3fe194d3e88d010VgnVCM10000048f3d6a1RCRD&vgnnextchannel=9059d9808bcbd010VgnVCM100000d1f1d6a1RCRD.
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- 92 GAO, *Tax Filing Season- IRS Met Many 2009 Goals, but Telephone Access Remained Low and Enforcement Could Be Improved* (Washington, DC: GAO, 2009), www.gao.gov/new.items/d10225.pdf. In 2009, the IRS electronically processed 68 percent of the 139 million individual federal tax returns filed, up from 59 percent in 2007.
- 93 73 CFR § 23067.23069 (2008), <http://edocket.access.gpo.gov/2008/E8-9336.htm>.
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- 101 Hiroshi Ono and Madeline Zavodny, *Immigrants, English Ability and the Digital Divide* (Bonn, Germany: Institute for the Study of Labor, 2007).
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- 106 USCIS mobile application kiosks could also call unwanted attention to unauthorized immigrants or may simply erode the safety, confidentiality, and privacy benefits of applying for registration benefits from the comfort of one's own home or community center.
- 107 National Governors Association (NGA), *State Opportunities under the American Recovery and Reinvestment Act* (Washington, DC: NGA, 2009), www.nga.org/Files/pdf/ARRABROADBAND.PDF.
- 108 Federal Communications Commission (FCC), *Connecting America: The National Broadband Plan* (Washington, DC: FCC, 2010), X1, 10, 167, <http://download.broadband.gov/plan/national-broadband-plan.pdf>. One hundred million US households lack broadband. Sixty-five percent of Americans use broadband at home, with below average usage by persons in low-income households, Hispanics, and rural Americans.
- 109 Elizabeth Russell List, *Pathways to Citizenship: Navigating and Financing United States Residency and Citizenship* (Milwaukee, WI: United Neighborhood Centers of America, www.runonthebank.net/uploads/XO/1243597416_Pathways%20to%20Citizenship%20-%20Executive%20Summary.pdf). One option would be for NGOs to create and administer an interest-free loan program for registration applicants. The program would be based on the model that has long been successful in funding refugee travel to the United States. Another possibility would be to establish public-private revolving loan programs like those designed to support naturalization.
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- 114 INA § 286(m).
- 115 González Baker, *The Cautious Welcome*, 69-72.
- 116 INS set IRCA's temporary resident fees at \$185 per adult and \$50 per minor child, with a cap of \$420 per family. Fees did not include fingerprints, photographs or medical examinations. INS requested advanced spending authority from its own account to initiate the IRCA program, an option that may not be available to DHS.
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when applicants fail to provide documentary proof of nationality or identity, although applicants may be required to appear in other instances.

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- 130 For example, USCIS should be able to provide law information agencies with the address of an applicant’s family members in the event of an accident or other emergency involving the applicant.
- 131 IRCA § 201(a); INA § 245A(c)(2).
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Donald Kerwin is Vice President for Programs at the Migration Policy Institute (MPI), overseeing MPI's national and international programs. Prior to joining MPI, Mr. Kerwin 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.

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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.

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