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## SUMMARY

This Policy Brief examines four types of criteria for earned legalization (English proficiency, employment, continuous presence, and monetary fines) in the five major legalization bills proposed by Congress since 2006 and considers their projected effects on the ability of unauthorized men, women, and children to gain legal status.

Inevitably, lawmakers must define the overall scope of any earned legalization program by balancing inclusive rules and burdensome requirements.

When doing so, they should consider how specific legalization criteria would affect unauthorized women and children, who may warrant special attention because many of them have come to the country to unify with their families, a long-standing goal of US immigration policy and one that is squarely at the center of the country's immigration history. In the case of unauthorized children in particular, the decision to enter or remain in the United States illegally is often made by parents or other adults, and children therefore may have an especially deserving claim to legalize their status.

The analysis finds that language requirements, depending on how they are structured, could exclude the largest number of unauthorized immigrants, with between 3.3 million and 5.8 million unauthorized adults unable to pass the English language tests contemplated by two recent bills. A language requirement also could be costly, as it would demand an estimated \$6 billion to \$12 billion in additional English language instruction at current per-student costs.

Employment rules would exclude the next-largest share of unauthorized immigrants and would fall especially hard on women, who are less likely than unauthorized men to be in the workforce; followed by continuous presence requirements, which would exclude many children, who are likely to have lived in the country for less time than unauthorized adults. The effects of proposals requiring immigrants to pay significant fines are most difficult to predict, but could represent a significant burden given that total fines and fees under some proposals have been as high as \$10,000, or more than half the annual family income for about 2.5 million unauthorized immigrants. Fines would not differentially affect unauthorized men and women, as they have similar incomes.

## Earned Legalization: Effects of Proposed Requirements on Unauthorized Men, Women, and Children

By Marc R. Rosenblum, Randy Capps, and Serena Yi-Ying Lin

Migration Policy Institute

### I. Introduction

Recent congressional proposals for comprehensive immigration reform have included provisions that would extend legal status and an eventual path to citizenship to the more than 11 million unauthorized immigrants who reside in the United States. But Americans have mixed feelings about legalization.<sup>1</sup> In one view, legalization is a practical alternative to costly and potentially disruptive efforts to remove unauthorized immigrants. By offering immigrants incentives to come forward and formalize their status, legalization promises to help track a largely unidentified population, free up enforcement resources for more pressing law enforcement and security concerns, and raise additional tax revenues from immigrant workers. From this perspective, a legalization program should be broadly inclusive to achieve its core goals.

From a different point of view, legalization rewards immigrants who have entered or remained in the United States in violation of the law. Legalization also has the potential to send the wrong signal to future immigrants, prompting new illegal flows and thus undermining effective enforcement. These concerns are amplified by the challenge of preventing fraud in a program that deals with unauthorized immigrants. The only major general US legalization program, authorized by the Immigration Reform and Control Act (IRCA) of 1986,<sup>2</sup> has been widely criticized on precisely these grounds.<sup>3</sup>

Legislative proposals introduced since 2006 have aimed to address these criticisms by imposing new restrictions on a legalization program. Whereas IRCA's general legalization program generally offered *amnesty* to all immigrants who could prove that they had been in the United States for at least five years, current proposals for *earned legalization* would require im-

migrants to meet additional criteria as a condition of legalization, such as learning English, staying employed, and paying a fine. By imposing this more rigorous path to lawful permanent resident (LPR)<sup>4</sup> status, earned legalization would be designed to capture the main benefits of legalization while addressing concerns about unfairly rewarding unauthorized immigrants and undermining enforcement.

This Policy Brief addresses the core tension in proposed earned legalization programs: how to design a rigorous path to LPR status which mitigates concerns about rewarding illegal migration and undermining enforcement, while at the same time structuring the program so that the maximum number of eligible immigrants would be able to qualify and eventually become citizens. This report focuses on how earned legalization requirements might differentially affect unauthorized women and children, who comprise almost half of all unauthorized immigrants despite the popular image of these immigrants as young, single men.

## II. Legislative Proposals for Earned Legalization

This study focuses on the five major proposals for earned legalization introduced in Congress since 2006:

- S. 2611, originally sponsored by Senators Ted Kennedy (D-MA) and John McCain (R-AZ), and passed by the Senate in 2006<sup>5</sup>
- S. 1639, originally sponsored by Senators Kennedy and Jon Kyl (R-AZ), and defeated on the Senate floor in 2007<sup>6</sup>

- H.R. 4321, sponsored by Representatives Luis Gutierrez (D-IL) and Solomon Ortiz (D-TX), and introduced in the House in 2009<sup>7</sup>
- S. 3932, sponsored by Senators Robert Menendez (D-NJ) and Patrick Leahy (D-VT), and introduced in the Senate in 2010<sup>8</sup>
- S. 1038/H.R. 2414 (the AgJOBS bill), sponsored by Senator Dianne Feinstein (D-CA) and Representative Howard Berman (D-CA), a narrower earned legalization proposal that was included in each of the broader immigration bills and also introduced as stand-alone legislation several times since 2001.<sup>9</sup>

These proposals attempt to address concerns related to legalization programs in three main ways. First, lawmakers insist that any legalization program should include a substantial penalty along with recognition that unauthorized immigrants have violated US laws.<sup>10</sup> Sizeable penalties address the concern that legalization would unfairly reward immigrants who have broken the law, and may reduce the risk that legalization will prompt new inflows.

Second, while IRCA's general legalization included purely *retrospective* provisions, meaning that immigrants qualified by providing evidence of their continuous presence in the United States, earned legalization would primarily emphasize *prospective* requirements — the additional criteria immigrants must meet during the legalization process. Continuous presence requirements also intend to reduce the risk that a legalization program would attract new inflows, but retrospective requirements are often both harder to prove and more vulnerable to fraud because many unauthorized immigrants lack a good paper trail. Prospective requirements are theoretically more reliable because immigrants would

establish documentation and provide a biometric identifier such as a fingerprint during the initial registration process, making it possible to track participants and prevent fraud.

Finally, whereas IRCA's general legalization program allowed immigrants to apply for LPR status beginning 18 months after their initial legalization, recent earned legalization proposals would require a longer period of conditional legal status — a minimum of six years in most of the proposals.<sup>11</sup> This prolonged conditional period would allow language and other more onerous legalization requirements to be spread out over time, and would mean that immigrants have a longer track record within the United States prior to receiving a green card — a period during which they would be required to maintain a clean record, pay their taxes, and generally demonstrate their readiness to become successful US residents.

In particular, recent legislative proposals for earned legalization have focused on four main types of eligibility requirements — English language and citizenship skills, employment, continuous presence, and fines (see Table 1):

**1) *English language and citizenship skills.***

Recent proposals would require immigrants to speak English and possibly pass a civics test as part of the legalization process — requirements now imposed on immigrants who naturalize but not on those receiving their green cards.<sup>12</sup> Under the 2006 and 2007 Senate bills, this requirement would have been met through the language and civics test now used to qualify for US citizenship.<sup>13</sup> Bills in the 2009-10 session of Congress (the House CIR-ASAP bill and the Menendez-Leahy Senate bill) would have allowed adjustment to LPR status for immigrants who are satisfactorily pursuing a course of study in English and civics, and CIR-ASAP would

have permitted adjustment for immigrants who earn a US high school degree or GED. The AgJOBS bill (S. 1038/H.R. 2414) did not include a language requirement.

**2) *Employment.*** The Senate bills in 2006 and 2007 would have limited initial registration for conditional legal status to immigrants who could prove that they had worked in three of the previous five years or both of the previous two years. Immigrants would have been required to remain employed (a prospective requirement) throughout the conditional period of six or more years in order to qualify for adjustment to LPR status. The 2009 House bill also included retrospective work requirements for registration and prospective work requirements for adjustment to LPR status, but would have permitted education, military, or community service to satisfy these provisions. The 2009 House bill also would have allowed immigrants to attest to their previous work or service to meet eligibility requirements for registration for conditional status, rather than requiring documentary proof. The 2010 Senate bill did not include a work or service requirement. And the AgJOBS bill was limited to immigrants who could prove that they had worked in US agriculture for 150 days during the previous two years, and would have required between 100 and 150 days of additional agricultural work over the following three to five years as a condition for adjustment to LPR status.

**3) *Continuous presence.*** The 2006 Senate bill would have established two separate legalization programs: deferred mandatory departure for people who had been in the country at least two years and earned legalization for people continuously present at least five years.<sup>14</sup> The 2007 and 2010 Senate bills proposed shorter

**Table 1. Earned Legalization Requirements in Recent Congressional Reform Proposals**

		2006 Senate Bill (S. 2611)		2007 Senate Bill (S. 1639)	2009 CIR-ASAP (H.R. 4321)	2010 Menendez- Leahy (S. 3932)	AgJOBS (S. 1038/H.R. 2414)
		Earned Legalization	Deferred Departure				
<b>English language – adjustment to LPR<sup>a</sup></b>		Pass citizenship test	Pass citizenship test	Pass citizenship test	Pass citizenship test, course of study, or HS degree or GED	Pass citizenship test or course of study	None
<b>Employment</b>	<b>Registration</b>	Proof of employment during 3 of the previous 5 years	Proof of employment for 2 previous years	Proof of employment during 3 of the previous 5 years	Attestation to employment, education, or military/community service	None	Proof of 150 days of employment in agriculture during previous 2 years
	<b>Adjustment to LPR</b>	Continuous employment for 6 years	Continuous employment for 6 years	Continuous employment for 8-13 years	Continuous employment, education, or military/community service for 6 years	None	100 days/ per year of agricultural work for 5 years or 150 days per year for 3 years
<b>Continuous presence</b>		5 years	2 years	Date of enactment	Date of introduction	Date of introduction	2 years
<b>Fines<sup>a</sup></b>	<b>Registration</b>	\$1,200	\$2,300 - \$5,000	\$5,000	\$500	\$500	\$100
	<b>Adjustment to LPR</b>	\$2,000	\$2,000	\$5,500	\$500	\$1,000	\$400
<b>Derivative benefits</b>		Spouses and children in US or abroad	Spouses and children in US or abroad	Spouse, children, and parents > 65 in US only	Spouses and children in US or abroad	Spouses and children in US or abroad	Spouses and children in US only

<sup>a</sup> S. 1639 would have required conditional immigrants to meet English language requirements within eight years; other bills would have required immigrants to meet English language requirements as a condition of adjustment to LPR status.

<sup>b</sup> Excludes processing fees, which would likely total between \$1,000 and \$1,500 for registration plus adjustment to LPR status.

Source: MPI analysis of legislation.

continuous presence requirements, offering legalization benefits to people in the United States since the date of each bill's introduction, about a one-year requirement given the legislative timeline.<sup>15</sup> The 2009 House bill and the AgJOBS legislation would have permitted unauthorized immigrants to register if they were in the United States at the time the bills were enacted into law (i.e., no retrospective presence requirement).

- 4) Fees and Fines.** All of these bills would have required that legalizing immigrants pay for the processing costs of registration, renewal of documents, and eventually adjustment to LPR status, including associated background checks and new identity cards. These processing fees likely would total \$1,000 to \$1,500.<sup>16</sup> Recent proposals also proposed fines ranging from about \$500 in AgJOBS to about \$10,000 in the 2007 Senate bill.

*Unauthorized immigrants have a different demographic profile than other immigrants or US natives.*

Recent legalization proposals also have provided derivative legalization benefits for the families of qualifying immigrants — meaning that if one member of the family qualified, then his or her spouse and children also would qualify. Under the 2006 Senate bill, CIR-ASAP, and the Menendez-Leahy legislation, derivative benefits would have applied to spouses and children in the United States or abroad. Under the 2007 Senate bill, parents over 65 also would have qualified for derivative benefits, but family members abroad (i.e., people who do not independently meet the bill's requirements for continuous presence in the United States) would not have been eligible for derivative visas. The AgJOBS

proposal also offers derivative benefits to spouses and children already in the United States.

### III. Effects of Eligibility Requirements on Men, Women, and Children

In 2009, there were an estimated 11 million unauthorized immigrants in the United States, down slightly from 12 million in 2007

due to the recession and heightened enforcement.<sup>17</sup>

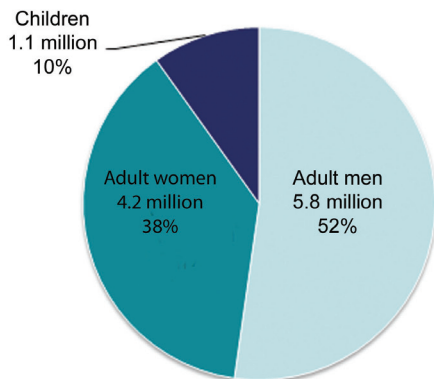
The data analyzed in the report describe the demographic characteristics of this population as of March 2008.<sup>18</sup> Because this Policy Brief depicts the unauthorized population on the eve of the recession, some of characteristics — most notably the length of US tenure

— may have changed, with implications for the findings about the potential impacts of earned legalization requirements, as discussed below.

Unauthorized immigrants have a different demographic profile than other immigrants or US natives. First, they are disproportionately men. While women slightly outnumber men among the entire US adult population (50.7 percent versus 49.3 percent), 58 percent of unauthorized adults are men. Nonetheless, contrary to popular perception, only about half of all unauthorized immigrants living in the United States are adult men (52 percent). About one-third are women, and the remainder are children (see Figure 1).

Unauthorized immigrants are younger than

**Figure 1. Unauthorized Men, Women, and Children in the United States, 2009**



Note: Adults are ages 18 and older.

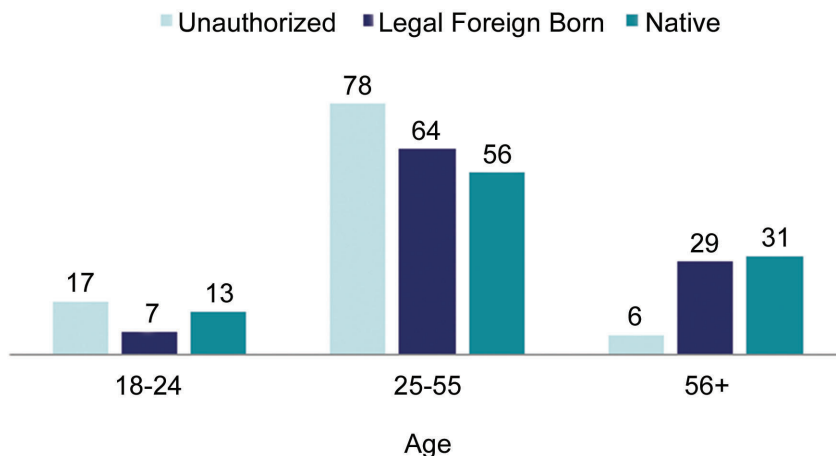
Source: Jeffrey S. Passel and D'Vera Cohn, *U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade* (Washington, DC: Pew Hispanic Center, 2010).

other Americans.

Most people crossing the border illegally do so in their teens, twenties, or thirties, and most immigrants who have been in the country at least 25 years (i.e., since before IRCA) either migrated legally or obtained LPR status through IRCA's general legaliza-

tion provisions or some other mechanism in the intervening period. As a result, almost 80 percent of unauthorized adults are in their prime working years of 25 to 55 (see Figure 2). In fact, only about 6 percent of unauthorized immigrants are age 56 or older and fewer than 2 percent are of retirement age — 65 or older.

**Figure 2. Age Distribution of Adults Living in the United States by Nativity and Immigration Status (Percentage), 2008**



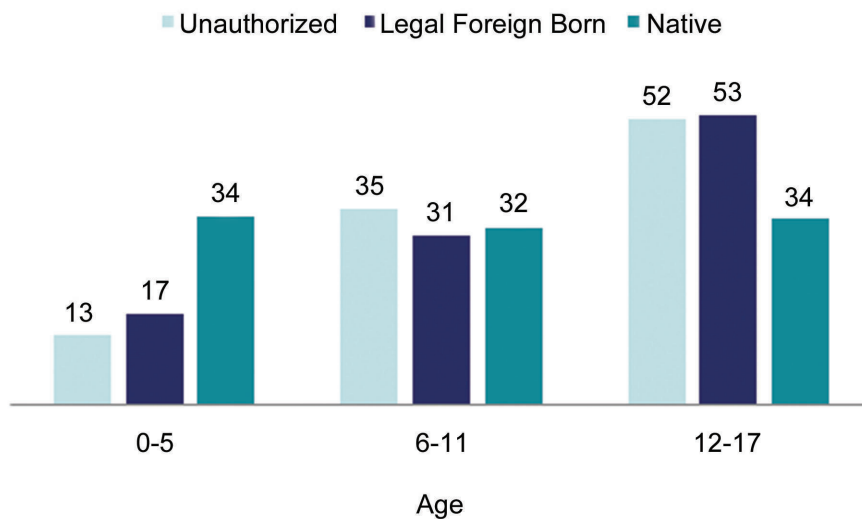
Note: Some percentages do not add to 100 because of rounding.

Source: Migration Policy Institute (MPI) analysis of data from the March 2008 US Current Population Survey (CPS), Annual Social and Economic (ASEC) Supplement, augmented with assignments of legal status by Jeffrey S. Passel at Pew Hispanic Center.

On the other hand, unauthorized children are *older* than US-born children, and many are adolescents. Both unauthorized and legal immigrant children are older than US-born children because families with very young children are less likely to migrate (or less likely to bring children with them if they do so), and because many immigrants have children after they migrate so that their younger children are primarily US-born. As a result,

while native-born children are evenly distributed across different ages, the majority of legal and unauthorized immigrant children are 12 or older, and just 13 percent of unauthorized children are 5 or younger (see Figure 3). About 47 percent of unauthorized children were at least 5 years old when they entered the United States and about 16 percent were at least 10.

**Figure 3. Age of Distribution of Children Living in the United States, by Nativity and Immigration Status (Percentage), 2008**



*Note:* Some percentages do not add to 100 because of rounding.

*Source:* MPI analysis of data from the March 2008 CPS ASEC Supplement, augmented with assignments of legal status by Passel.

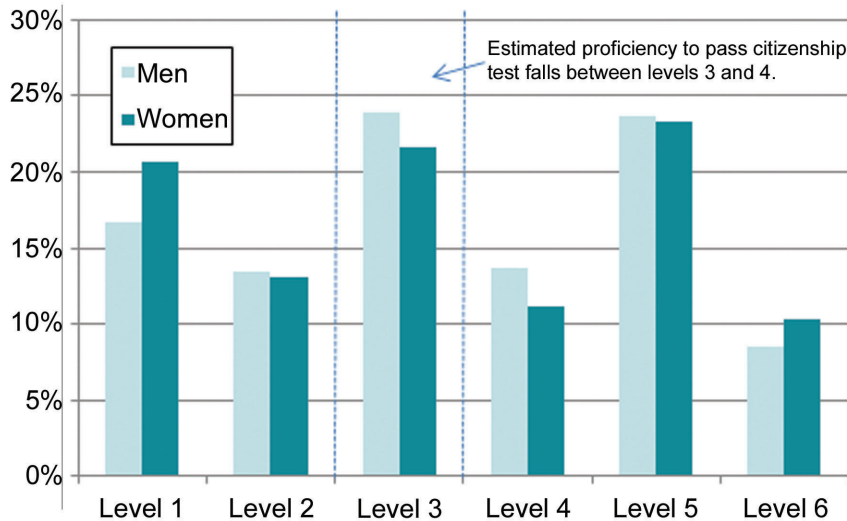
In the remainder of this Policy Brief, we discuss the eligibility of unauthorized immigrants for earned legalization under the aforementioned congressional proposals.

## A. Effects of Language Requirements

Many unauthorized immigrants may not be able to pass the English language and civics tests now required for naturalization. The current US citizenship test has a pass rate

that falls between Level 3 and Level 4 on the National Reporting System for Adult Education (NRS) six-point English Language Proficiency scale.<sup>19</sup> In 2008, about one-third of unauthorized adults had estimated English proficiency below Level 3 and a majority had proficiency below Level 4 (see Figure 4).<sup>20</sup> Women outnumber men by very slight proportions at both ends of the proficiency scale; and similar proportions of men (46 percent) and women (45 percent) have proficiency levels of Level 4 or higher.<sup>21</sup>

**Figure 4. Estimated English Proficiency for Unauthorized Men and Women, 2008**



Sources: MPI analysis of data from the 2000 Census and the March 2008 CPS ASEC Supplement, augmented with assignments of legal status by Passel; and Division of Adult Education and Literacy, *Implementation Guidelines*

### Implications for Legalization Proposals

There are important reasons to include a language requirement in a legalization program: learning English promotes successful integration and economic and social mobility, and boosts immigrant earning power. Requiring that unauthorized immigrants demonstrate a thorough knowledge of English before they can be admitted as LPRs also seeks to address a major source of concern about legalization.

Two of the earned legalization proposals (the 2006 and 2007 Senate bills) would have required immigrants to pass an English language test similar to the citizenship test before they could qualify for permanent residency. Up to 5.8 million unauthorized immigrants (56 percent of unauthorized adults) likely would be excluded by the language requirements in these bills if they were required to reach Level 4 on the NRS scale; a test equivalent to Level 3 would screen out

3.6 million immigrants (35 percent). Older immigrants, those with less education, and others who simply struggle with learning a new language would be most likely to be filtered out by strict English requirements. Many more immigrants would qualify for a legalization program that adopts the broad standards proposed by CIR-ASAP, which would allow immigrants to satisfy the language requirement by completing high school or a GED degree in the United States or by enrolling in a language and civics class; or the Menendez-Leahy bill, which would accept enrollment in a class.

How a language requirement would affect immigrants also depends on whether the requirement would come with additional federal investments in English as a Second Language (ESL) instruction. Analysts estimate that the average English language learner (ELL) requires 110 hours of ESL instruction to move up one level on the NRS scale, and



demand for adult ESL classes already produces waiting lists of up to three years in some states.<sup>22</sup> Thus, an earned legalization program requiring people to reach Level 4 on the NRS proficiency scale would create demand for an additional 1.3 billion hours of ESL instruction. And at a cost of about \$10 per classroom hour to provide ESL instruction,<sup>23</sup> it would cost more than \$12.2 billion to bring the language skills of 5.8 million unauthor-

ized immigrants up to NRS Level 4 (see Table 2), though a portion of these costs could be covered by user fees. For everyone to reach Level 3 would require almost 1 billion hours of instruction, at a price tag of \$10 billion. Moreover, a simple expansion of classes may not be sufficient to ensure high proficiency, as only one-third of people enrolled in existing ESL programs make significant progress after completing a course of study.<sup>24</sup>

**Table 2. Estimated Resources Required for Unauthorized Immigrants to Pass Language Requirements of US Citizenship Test, 2008**

Existing Proficiency	Unauthorized Immigrants	Hours Required	Total Hours (millions)	Funding Required (\$ billion)	Hours Required	Total Hours (millions)	Funding Required (\$ billion)
		<i>To reach NRS level 4</i>			<i>To reach NRS level 3</i>		
Level 1	1,966,000	330	649	\$6.5	220	432	\$4.3
Level 2	1,397,000	220	307	\$3.1	110	154	\$1.5
Level 3	2,397,000	110	264	\$2.6	--	--	--
<b>Total</b>	<b>5,759,000</b>		<b>1,220</b>	<b>\$12.2</b>		<b>586</b>	<b>\$5.9</b>

*Note:* Some columns do not add to column totals because of rounding.

*Sources:* MPI analysis of data from the 2000 Census and the March 2008 CPS ASEC Supplement, augmented with assignments of legal status by Passel; and Division of Adult Education and Literacy, *Implementation Guidelines*.

An earned legalization program that required unauthorized immigrants to reach Level 3 or Level 4 to qualify for LPR status would generate demand for ESL instruction greatly exceeding current federal ESL funding. In 2009, for example, the total federal budgets for English learner education (K-12) and adult English language and civics education grants were \$674 million and \$68 million, respectively.<sup>25</sup> Adult education programs, including ESL as well as other basic education programs, served just 2.5 million people out of a pool of 93 million people who qualified for such programs in 2009, about half of whom are immigrants

needing ESL instruction and the other half of whom are natives needing other forms of basic education.<sup>26</sup> While states vary widely in the level of adult education services they offer, a 2009 survey found waiting lists for adult education programs in 40 out of 42 states.<sup>27</sup>

## B. Effects of Employment Requirements

The overwhelming majority of unauthorized immigrants are employed, but men are much more likely to work than women. Virtually all

(92 percent) unauthorized men worked at some point in 2007 versus just over half (57 percent) of unauthorized women (see Table 3).<sup>28</sup> Young unauthorized women (under age 35) had a still lower employment rate (43 percent) because they were more likely to be raising young children or in school full time.

There was substantial variation in unauthorized women’s employment rates across states with large unauthorized populations, with rates exceeding 60 percent in Florida, New York, and New Jersey at the high end, and rates of just 44 percent and 37 percent, respectively, in Georgia and Arizona. Lower employment among unauthorized women

in these newer immigration states is likely a function of the fact that immigrant populations are more recent and less settled, with fewer employment opportunities, and that unauthorized immigrant populations in these states are younger.

Yet most women who did not work were married to men who were employed, and the percentage of women who either worked or had a working spouse was 88 percent, much higher than the rate of employment for women alone. Overall, while 78 percent of unauthorized immigrants worked during 2007, 93 percent either worked or were married to someone who did.

**Table 3. Employment of Unauthorized Immigrants and their Spouses, by Gender, 2007**

	Men		Women		Total	
	Number	%	Number	%	Number	%
Employed: individual	5,868,000	93	2,367,000	58	8,235,000	79
Employed: individual or spouse	5,948,000	94	3,405,000	83	9,353,000	90
<b>Total</b>	<b>6,294,000</b>	<b>100</b>	<b>4,086,000</b>	<b>100</b>	<b>10,380,000</b>	<b>100</b>

Source: MPI analysis of data from the March 2008 CPS ASEC, augmented with assignments of legal status by Passel.

These gender differences reflect divergent marital patterns among male and female unauthorized immigrants: in 2008 a majority of unauthorized men (59 percent) were single or did not have a spouse living with them, while an almost equal number of unauthorized women were married with their spouses present (58 percent; see Table 4). Moreover, married unauthorized men were much more likely to be sole wage earners than married women. As a result, 20 percent of all unauthorized men were employed but had nonworking spouses, compared with just

5 percent of unauthorized women. At the same time, 25 percent of women were not working but had a working spouse, compared with just 1 percent of men.

Child care and other family responsibilities are the primary reasons women do not work, while the reasons men do not work are more varied. In 2007, 77 percent of unauthorized women who did not work reported they had household or family obligations compared with just 11 percent of men, while 49 percent of women out of the labor force had children

living with them compared with just 31 percent of men. School enrollment was the most common reason men did not work (32 percent), and school was the second most com-

mon reason for women (9 percent). Inability to find work, illness, and disability were also common reasons why unauthorized men and women did not work (see Table 5).

**Table 4. Marriage and Employment Patterns of Unauthorized Immigrants (Percent), 2008**

Marriage and Employment Status	Men			Women		
	In Labor Force	Not in Labor Force	Total	In Labor Force	Not in Labor Force	Total
Single/ spouse absent	54	5	59	29	12	41
Married with spouse present:						
Spouse in Labor Force	19	1	20	24	25	49
Spouse Not in Labor Force	20	1	21	5	5	9
<b>Total</b>	<b>93</b>	<b>7</b>	<b>100</b>	<b>58</b>	<b>42</b>	<b>100</b>

Note: Percentage may not total 100 due to rounding.

Source: MPI analysis of data from the March 2008 CPS ASEC Supplement, augmented with assignments of legal status by Passel.

**Table 5. Reasons Unauthorized Immigrants Reported Not Working, 2007**

Reasons for Not Working	Men		Women		Total	
	Number	%	Number	%	Number	%
Taking care of home or family	53,000	11	1,314,000	77	1,366,000	63
Going to school	147,000	32	160,000	9	307,000	14
Ill or disabled	64,000	14	85,000	5	149,000	7
Retired	46,000	10	76,000	4	122,000	6
Could not find work	65,000	14	31,000	2	96,000	4
Other unspecified reasons	89,000	19	47,000	3	137,000	6
<b>Total</b>	<b>464,000</b>	<b>100</b>	<b>1,713,000</b>	<b>100</b>	<b>2,177,000</b>	<b>100</b>

Source: MPI analysis of data from the March 2008 CPS ASEC, augmented with assignments of legal status by Passel.

Finally, unauthorized women and men have different employment patterns across industries. Men outnumber women in almost all industries due to their larger numbers in the unauthorized population and higher labor force participation (see Table 6). In 2007, men were the overwhelming majority of unauthorized workers in construction, and about two-thirds in manufacturing, trade, professional services, and leisure and hospi-

tality. Women accounted for about two-thirds of the unauthorized in education and health services, and roughly half in other services (including personal services, such as maids and child care workers). Unauthorized men also far outnumbered women in agriculture (251,000 to 36,000), which accounted for only 4 percent of all unauthorized workers, according to the CPS.<sup>29</sup>

**Table 6. Unauthorized Workers by Industry and Sex, 2007**

Industry	Men		Women		Total	
	Number	% All Unauthorized Workers	Number	% All Unauthorized Workers	Number	% All Unauthorized Workers
Construction	1,651,000	29	30,000	1	1,681,000	21
Leisure and hospitality	827,000	15	447,000	21	1,274,000	16
Professional and business services	751,000	13	303,000	14	1,054,000	13
Manufacturing	715,000	13	337,000	15	1,053,000	13
Wholesale and retail trade	600,000	11	286,000	13	886,000	11
Other services	245,000	4	272,000	13	517,000	7
Educational and health services	158,000	3	321,000	15	479,000	6
Agriculture, forestry, fishing, and hunting	251,000	4	36,000	2	287,000	4
Transportation and Utilities	243,000	4	43,000	2	285,000	4
Financial Activities	135,000	2	86,000	4	221,000	3
Information	57,000	1	13,000	1	70,000	1
Mining	16,000	0	2,000	0	18,000	0
<b>Total</b>	<b>5,649,000</b>	<b>100</b>	<b>2,176,000</b>	<b>100</b>	<b>7,825,000</b>	<b>100</b>

Notes: Some columns do not add to 100 percent due to rounding.

Source: MPI analysis of data from the March 2008 CPS ASEC, augmented with assignments of legal status by Passel.

## Implications for Legalization Proposals

The importance of unauthorized immigrants to the economy has been central to arguments in favor of legalization, and economic arguments in favor of legalization are borne out by data confirming that the vast majority of unauthorized immigrants work. Yet work requirements, depending on how they are structured, still could limit the scope of legalization, as a total of about 2.2 million unauthorized immigrants (20 percent) did not work in 2007.

While almost all unauthorized men worked in 2007, 42 percent of unauthorized women were not employed, with the majority of non-working women caring for children or other family members. As a result, a personal work requirement would exclude up to 1.7 million unauthorized women — 1.3 million of whom are stay-at-home immigrant mothers and caregivers. About 17 percent of unauthorized women (680,000 women) would be unable to meet a broader work requirement that provided visas on the basis of an individual's employment or derivative visas on the basis of a spouse's employment compared to just 6 percent of men (350,000 men). Thus, in the context of a work requirement, allowing derivative applications for legalization would be an important way to permit women to qualify through their husbands' work histories, though women would still face greater difficulties meeting work requirements. Allowing work requirements to be satisfied through a family member also would reduce paperwork for the Department of Homeland Security (DHS) and processing costs — which are difficult to quantify — because only one person would be required to document their employment record in families with more than one worker.

At the same time, a work requirement structured this way (like any derivative visa)

also could place women who are in abusive relationships at risk by giving their husbands control over their legalization access. The Violence Against Women Act<sup>30</sup> recognizes the need for women to escape abusive relationships by allowing unauthorized women who are married to abusive LPRs or citizens to apply for LPR status on their own and by establishing generous evidentiary standards for women and children in these cases. Some earned legalization proposals would provide similar protections to women and children escaping abusive relationships by expanding derivative benefits to include former spouses or children when termination of the qualifying relationship was the result of domestic violence, battery, or extreme cruelty.<sup>31</sup>

An additional way to address the gender bias and disproportionate impact on families of a work requirement would be to permit waivers for primary caregivers. Expanding a work requirement to include other types of contributions, such as school or community service (as in the CIR-ASAP bill), also would broaden the scope of a legalization program. In 2007, for example, 14 percent of nonworking unauthorized immigrants were in school (see Table 5).

Overall, employment is the second most significant legalization requirement under consideration — and our data may underestimate the effect of a work requirement because the CPS employment data analyzed cover a period just before the recession began in December 2007, and more recently fewer unauthorized immigrants are employed. Overall US unemployment increased from 4.4 percent to 10.6 percent between December 2006 and January 2009 before falling back to 9.8 percent in November 2010.<sup>32</sup> Mexican and Central American immigrants — the best proxy for the unauthorized in the monthly unemployment data — experienced an even greater rise in unemployment, from 5.2

percent in December 2006 to a high of 14.0 percent in February 2010 before falling back slightly to 11.8 percent in November 2010.<sup>33</sup> Employment among immigrant men fell particularly steeply in the construction industry, with jobs in this sector contracting by 17 percent overall between the third quarter of 2007 and the third quarter of 2009, and immigrant construction jobs shrinking by 23 percent.<sup>34</sup> Most of the job losses were in lower- and middle-skilled construction occupations, populated largely by Latin American immigrants with limited formal educations and English skills — many of whom are unauthorized. If a legalization program were based on employment during three of the past five years, this could prove difficult if most of the years had high unemployment, particularly for men. If economic conditions improve significantly, then a standard including just the most recent year or two would be more generous.

Immigrants might also have difficulty documenting their work histories, especially in industries with substantial informal employment such as construction, hospitality, services, and agriculture. Some of these industries employ more men while others employ more women. Few unauthorized immigrants likely would qualify for an AgJOBS program, since so few unauthorized men and even fewer unauthorized women work full-time in agriculture.<sup>35</sup> In general, there are many fewer farmworkers in the United States today than in 1986 when IRCA was passed; and unauthorized immigrants work in a much wider range of industries.

### **C. Effects of a Continuous Presence Requirement**

Most unauthorized immigrants have been in the United States for at least two years and would be eligible for legalization under a

system which makes two years of continuous presence in the United States a requirement for registration. But a much longer continuous presence requirement would exclude a substantial number of immigrants, and the effects of any continuous presence requirement would fall disproportionately on children. In 2008, a one-year continuous presence requirement would have reduced the number of people eligible to legalize by about 5 percent, while a two-year requirement would have reduced the eligible population by 9 percent, and a five-year requirement would have resulted in a 26 percent reduction (see Table 7). Men would have been slightly more likely than women to be excluded by a five-year requirement (27 percent versus 21 percent).

Compared with adults, children would have experienced greater reductions in eligibility — 6 percent, 10 percent, and 32 percent, respectively, for one-, two-, and five-year requirements. More children would have been excluded if they had had to meet a presence requirement independently of their parents, as would have been the case in the 2007 Senate bill. This is especially true for younger children, who have been in the country for a shorter period (see Table 8). For adults, however, it does not make much difference whether the presence requirements have to be met independently or can be met through derivative applications.

### **Implications for Legalization Proposals**

Any legalization program must include a cutoff period no later than the date a bill is signed — and arguably no later than the date on which a bill is introduced — to ensure that legalization does not encourage additional illegal migration. But a longer continuous presence requirement may be justified because work, community, and family connections increase over time, and these factors make longer-term, and presumably better inte-

**Table 7. Unauthorized Immigrants Eligible for Legalization under Different Continuous Presence Requirements, 2008**

Continuous Presence Requirements		Women		Children		Total	
		%	Number	%	Number	%	Number
<i>No presence requirement</i>		100	3,578,000	100	1,376,000	100	11,005,000
1-year requirement	Met by immigrant	94	3,433,000	96	1,251,000	91	10,389,000
	Met by immigrant, spouse, and/or parent	95	3,450,000	96	1,297,000	94	10,466,000
2-year requirement	Met by immigrant	90	3,323,000	93	1,157,000	84	9,924,000
	Met by immigrant, spouse, and/or parent	90	3,353,000	94	1,237,000	90	10,060,000
5-year requirement	Met by immigrant	72	2,780,000	78	778,000	57	7,897,000
	Met by immigrant, spouse, and/or parent	73	2,841,000	79	933,000	68	8,162,000

Source: MPI analysis of data from the March 2008 CPS ASEC Supplement, augmented with assignments of legal status by Passel.

**Table 8. Proportion of Unauthorized Children by Age and Continuous Presence in the United States, 2008**

Continuous Presence In the United States	Age		
	0-5	6-11	12-17
1 year	32	8	6
1 – 5 years	62	40	25
More than 5 years	6	52	69
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>

Source: MPI analysis of data from the March 2008 CPS ASEC Supplement, augmented with assignments of legal status by Passel.

grated immigrants more attractive candidates for legalization.

Yet a prolonged continuous presence also could limit the benefits of a broad registration program. A one-year presence requirement that could be met by the immigrant, spouse, or parent would exclude 5 percent of the unauthorized population (about 540,000 people). A two-year requirement would exclude 9 percent (950,000), while a five-year requirement would exclude 26 percent (about 2.8 million). New illegal inflows appear to have diminished beginning in about 2006 and have fallen sharply during the current economic downturn, however. With a smaller unauthorized population mainly reflecting diminished recent inflows, the same continuous presence requirements could exclude fewer people if legislation were enacted before the US economy and labor market fully recover from the recession — especially if the requirements are limited to one or two years.<sup>36</sup>

As with an employment requirement, a retrospective continuous presence requirement could exclude more people than this report calculates if immigrants lack the rent receipts,

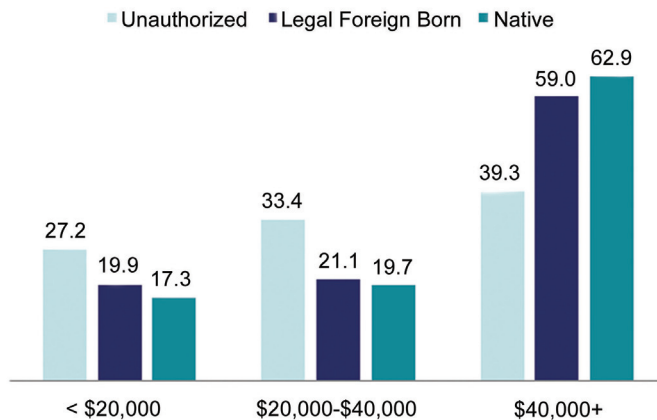
utility statements, bank statements, or other records needed to prove their continuous presence.

Finally, the greatest impact from a long continuous presence requirement would be on unauthorized children — a group seen by many as among the most deserving of legalization<sup>37</sup> — because so many families with children have been in the country for short periods of time. Sixteen percent of unauthorized children would fail to meet a two-year requirement and 43 percent would be unable to meet a five-year requirement. Allowing children to meet a presence requirement through their parents would help, but even this more generous rule would exclude almost one-third of all unauthorized children under a five-year standard. Only a shorter presence requirement (one or two years) could raise the number of children who would qualify.

#### D. Effects of Fees and Fines

Immigrants have somewhat lower incomes on average than US natives, and unauthorized immigrants have lower incomes than legal

**Figure 5. Family Income, by Immigration Status (Percentage), 2007**



Source: MPI analysis of data from the March 2008 CPS ASEC Supplement, augmented with assignments of legal status by Passel.



immigrants (see Figure 5). Differences in family income somewhat understate the gaps in earnings because unauthorized immigrant households have more workers per household on average (1.75) than US-born households (1.23).<sup>38</sup> The income distributions of men and women are very similar, as are the income levels of unauthorized families with and without children. By contrast, among legal immigrant and native-born families, household incomes are significantly higher in households with children compared to those without.<sup>39</sup>

### Implications for Legalization Proposals

The immigration benefit system is strictly fee-funded, and fees to cover processing costs in a legalization program likely would add up to between \$1,000 and \$1,500, as noted previously. Proposals for earned legalization would impose additional monetary costs, in the form of fines. Fines are justified because they represent a concrete punishment for violating the law. Indeed, such penalties are a core feature distinguishing an “earned legalization”

from an “amnesty.” Moreover, revenues from fines may be targeted to services such as ESL classes to help meet language requirements and subsidies for low-income immigrants to purchase health insurance, in which case there would be a direct link between higher fines and support for needed services.

Immigrants’ low incomes could constrain their ability to pay high fines, however. Our analysis suggests that fines set at \$4,000 or higher (for a total over \$5,000 in fines and fees) would represent a significant share of unauthorized immigrants’ income — more than one-quarter of household income for 25 percent of unauthorized immigrants (see Table 9). Fines at this level could exclude many from participation in a legalization program. Fines and fees totaling in the range of \$10,000, as proposed in the 2007 Senate bill, would represent more than one-quarter of household income for 59 percent of all unauthorized immigrants, and more than half of annual household income for 25 percent of all unauthorized immigrants.

**Table 9. Legalization Fines and Fees as a Percentage of Annual Income for Unauthorized Families, 2007**

		Fines and Fees Are:			
		\$1,000	\$2,000	\$5,000	\$10,000
<b>Percent of the unauthorized population for which fines and fees would be:</b>	>25% of household income	3	6	25	59
	>33% of household income	3	4	18	49
	>50% of household income	2	3	7	25

Source: MPI analysis of data from the March 2008 CPS ASEC Supplement, augmented with assignments of legal status by Passel.

Since 2007, the recession has led to declining incomes for unauthorized immigrants, like many people in the United States. Income declines have likely made any proposed fines and fees even more burdensome than our analyses suggest. Setting fines and fees too high also could lead to reduced revenues by pricing many unauthorized immigrants out of the market. In other cases, high fines would force immigrants to take out loans and/or leave them more vulnerable to exploitative working conditions, both propositions that work against successful social and economic integration.

Even with substantial fines and fees, mechanisms could be developed to lower the financial burden on legalizing immigrants. Fines could be back-loaded and paid over an extended period of time, though such an arrangement could place long-term economic burdens on some immigrants. Lawmakers could also prorate economic penalties by income or exempt low-income immigrants from certain penalties, an approach that would maximize the inclusiveness of a legalization program, but reduce revenues. A third possibility would be for nonprofit organizations to provide loans to cover some legalization costs, as certain organizations currently do to help immigrants pay their detention bonds.

## IV. Conclusion

The logic of earned legalization requires that some immigrants be screened out. Questions about the scope of a legalization program — how many immigrants would be eligible for initial registration and later on for permanent residency — reflect a tension between two conflicting goals: ensuring that such a program is inclusive so that most unauthorized immigrants can adjust their status and making the rules burdensome enough to

avoid unduly rewarding illegal immigration and inviting more in the future.<sup>40</sup> Ultimately, how lawmakers will answer these questions depends on how they weight these competing priorities.

When it comes to setting legalization criteria, this Policy Brief finds that English proficiency requirements would exclude the largest numbers of immigrants seeking legalization, followed by work requirements, continuous presence requirements, and then economic penalties — though these generalizations depend on how each of these requirements may be structured. Since English language proficiency is an important component of earned legalization proposals, as well as a cornerstone of immigrant integration more generally, investment in ESL instruction nationally is an important policy goal that emerges from our research.

Unauthorized immigrants generally work at high rates, but the economic downturn has depressed their employment as with other US workers. In the current economic climate, employment requirements are likely to exclude more people from legalizing than we project here. Lower family incomes due to the recession could also reduce participation in a legalization program with high fines and fees. Moreover, the reduction in new illegal immigration experienced since shortly before the recession's onset may mean that fewer people than we estimate would still be in the country and come forward by the time a legalization program is enacted.

Lawmakers designing legalization systems should consider how specific legalization rules would affect unauthorized men, women, and children differentially. While the common image of unauthorized immigrants is of young, single men, in reality the population also includes many women and children. Women and children are sympathetic cases

for legalization because many of them have come to the country to unify with their families, a long-standing goal of US immigration policy and one that is squarely at the center of the country's immigration history. In the case of unauthorized children in particular, the decision to enter or remain in the United States illegally is often made by parents or other adults, and children therefore may have an especially deserving claim to legalize their status. Yet requirements found in recently proposed earned legalization programs generally would be more favorable toward men than women or children.

English language requirements would affect women and men equally, but employment requirements would fall disproportionately on unauthorized women, many of whom are out of the workforce because they are stay-at-home mothers and caregivers. We also find that while unauthorized women and men have similar tenures in the United States, unauthorized children would be particularly likely to be excluded by lengthy continuous presence requirements.

Finally, our analysis identifies a pair of considerations for any legalization program, regardless of its scope. First, legalization rules generally should be applied at the family level rather than individually. Derivative benefits would reduce administrative costs for DHS by limiting the number of family members required to prove eligibility. Derivative benefits also are consistent with profamily principles that are central to US immigration policy. In addition, a legalization program

without derivative benefits would force some people to choose between lawful status and family unity, as some family members would qualify while others would not. After IRCA, which did not offer derivative benefits, many newly legal immigrant men were unable to sponsor their spouses and children for LPR status, with the unintended consequences of extending waiting periods for legal immigration applications and expanding incentives for illegal migration.

Yet derivative benefits also could put some women and children at risk because

abusive parents or spouses could use their control over the immigration application process to keep them in violent homes. Policy-makers could mitigate this risk by extending derivative benefits to women and children who have recently departed abusive relationships (in addition to current spouses and children) and by making it relatively easy for unauthorized women in abusive relationships to apply directly for benefits and to prove their work and residency histories so they are less dependent on abusive men for access to primary documents.

Second, legalization programs should place greater emphasis on *prospective* requirements during a period of conditional or provisional status than on *retrospective* enrollment qualifications. In general, retrospective presence and work requirements are less reliable because verifying them must rely on historical documents, affidavits from employers or landlords, and/or attestations from unauthorized immigrants. On one hand, any document-based system of this kind would be

*English language requirements would affect women and men equally, but employment requirements would fall disproportionately on unauthorized women, many of whom are out of the workforce because they are stay-at-home mothers and caregivers.*

prone to fraud, permitting some immigrants to qualify for the system on the basis of a falsified record. On the other hand, some eligible immigrants would lack a paper trail to prove their work or residence histories and strict documentation standards would wrongly exclude some people. Robust immigration enforcement within the United States since 2006 may have driven some unauthorized immigrants deeper underground, making documentation even more difficult. The longer the retrospective requirement, the more severe the reliability problem; and lawmakers concerned about

fraud and inefficiency in a legalization system should therefore rely primarily on prospective requirements.

When policymakers contemplate legalization in the future — proposals that inevitably would include some unauthorized immigrants while excluding others — they should recognize that earned legalization requirements would affect unauthorized men, women, and children in different ways and should be crafted in an even-handed way.

## Acknowledgments

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The report is one in a series on how to shape, structure, and administer a legalization program. Additional papers in the series cover the concept of a “registration” program as the first stage of an “earned legalization” program, the history of US legalization programs dating to the 1920s, and policy design considerations for legalization programs in Europe and the United States.

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## Endnotes

- 1 See e.g., Randal C. Archibold and Megan Thee-Brenan, “Poll Shows Most in U.S. Want Overhaul of Immigration Laws,” *New York Times*, May 3, 2010, [www.nytimes.com/2010/05/04/us/04poll.html](http://www.nytimes.com/2010/05/04/us/04poll.html).
- 2 *Immigration Reform and Control Act of 1986 (IRCA)*, Public Law 603, 99th Congress, 2nd session. IRCA included a general legalization, discussed in this Policy Brief, as well as three population-specific legalization programs (chiefly the Special Agricultural Worker program). IRCA’s primary general legalization program gave legal status to any otherwise-admissible unauthorized immigrant who had resided continuously in the United States at least since January 1, 1982. The Special Agricultural Worker (SAW) program gave legal status to unauthorized immigrants who had performed at least 90 days of agricultural work during the 12-month period ending May 1, 1986. For a more detailed discussion of IRCA’s legalization programs, see Donald M. Kerwin, *More than IRCA: US Legalization Programs and the Current Policy Debate* (Washington, DC: Migration Policy Institute, 2010), [www.migrationpolicy.org/pubs/legalization-historical.pdf](http://www.migrationpolicy.org/pubs/legalization-historical.pdf).
- 3 On IRCA’s shortcomings, see Susan Gonzalez Baker, “The ‘Amnesty’ Aftermath: Current Policy Issues Stemming from the Legalization Programs of the 1986 Immigration Reform and Control Act,” *International Migration Review* 31, no.1 (1997): 5-27; David North, “A Bailout for Illegal Immigrants? Lessons from the Implementation of the 1986 IRCA Amnesty,” Center for Immigration Studies Backgrounder (Washington, DC: Center for Immigration Studies, 2010), [www.cis.org/irca-amnesty](http://www.cis.org/irca-amnesty).
- 4 Lawful permanent resident (LPR) status, commonly known as having a green card, is the primary form of permanent legal status. Immigrants with LPR status may apply for US citizenship after five years, or three years if married to a US citizen.
- 5 *Comprehensive Immigration Reform Act of 2006*, S. 2611, 109th Congress, 2nd session.
- 6 *Comprehensive Immigration Reform Act of 2007*, S. 1639, 110th Congress, 1st session.
- 7 *Comprehensive Immigration Reform for America’s Security and Prosperity Act (CIR-ASAP)* of 2009, H.R. 4321, 111<sup>th</sup> Congress, 1st session.
- 8 *Comprehensive Immigration Reform Act of 2010*, S. 3932, 111th Congress, 2nd session. The 2010 Senate bill tracks closely to earlier proposals (which were not offered as bills) by Senators Charles Schumer (D-NY) and Lindsey Graham (R-SC) and by Senators Harry Reid (D-NV), Richard Durbin (D-IL), Schumer, Menendez, and Feinstein; see Schumer and Graham, “The Right Way to Mend Immigration,” *Washington Post*, March 19, 2010, [www.washingtonpost.com/wp-dyn/content/article/2010/03/17/AR2010031703115.html](http://www.washingtonpost.com/wp-dyn/content/article/2010/03/17/AR2010031703115.html); and Reid et al., “Real Enforcement with Practical Answers for Immigration Reform (REPAIR) Proposal,” <http://reid.senate.gov/newsroom/upload/REPAIR-proposal.pdf>.
- 9 *Agricultural Job Opportunities, Benefits and Security Act*, S. 1038/H.R. 2414, 111th Congress, 1st session.
- 10 See, among many examples, President Obama’s statement that unauthorized immigrants “should be required to register, pay their taxes, pay a fine, and learn English. They must get right with the law before they can get in line and earn their citizenship.” White House, “Remarks by the President on Comprehensive Immigration Reform,” July 1, 2010, [www.whitehouse.gov/the-press-office/remarks-president-comprehensive-immigration-reform](http://www.whitehouse.gov/the-press-office/remarks-president-comprehensive-immigration-reform).
- 11 The 2006 and 2007 Senate bills would have permitted immigrants to adjust to LPR status only after everyone with applications for green cards pending as of the date of the bills’ introduction

had received their green cards, an estimated six years under S.2611 and eight years under S.1639. Immigrants adjusting to LPR status also would be subject to annual limits under the 2007 legislation, so that some would have faced an estimated 13 years in conditional status before having an opportunity to adjust to LPR status. The 2009 and 2010 bills would have allowed legalizing immigrants to adjust to LPR status when green card backlogs were cleared or in six (under H.R. 4321) or eight (S.3932) years, whichever came first. AgJOBS would not impose an additional waiting period for immigrants adjusting to LPR status beyond the work requirements of three to five years.

- 12 IRCA's general legalization program also included a language requirement which could be satisfied by completing 40 hours of English language instruction.
- 13 The 2006 Senate bill would have required immigrants to pass the citizenship test as a condition for adjustment from conditional to LPR status. The 2007 Senate bill would have required immigrants to take the citizenship test or to be enrolled in or on a waiting list for English classes during the first four years of conditional status, and to pass the citizenship test within eight years as a condition for extending conditional status or adjusting to LPR status.
- 14 The deferred mandatory departure program would have provided for up to three years of work authorization, but would have required people to exit the United States and reenter prior to obtaining an immigrant visa or a new nonimmigrant visa (a "touch-back" provision). The earned legalization program would have provided people with conditional status and an eventual opportunity to obtain LPR status without a touch-back provision.
- 15 The 2007 Senate bill also included a touch-back provision; Menendez-Leahy did not. The 2007 measure would not have provided nonquota green cards for legalizing immigrants, so that newly legal immigrants with conditional legal status would have competed for green cards with other workers and family members in the visa backlog and would not have had a guaranteed path to LPR status or citizenship. The four other bills discussed here all would have provided nonquota green cards for immigrants who meet the qualifications to adjust to LPR status.
- 16 Current US Citizenship and Immigration Services (USCIS) processing fees for comparable services include \$340 for temporary nonimmigrants applying for an employment authorization card, \$545 for a conditional resident who obtains LPR status through marriage to remove the conditions on his or her residence, and \$1,010 to adjust from temporary nonimmigrant to LPR status.
- 17 Jeffrey S. Passel and D'Vera Cohn, *U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade* (Washington, DC: Pew Hispanic Center, 2010), <http://pewhispanic.org/reports/report.php?ReportID=126>.
- 18 This Policy Brief is based on analyses using data from the 2008 US Current Population Survey (CPS), March Social and Economic Supplement, except where noted. The 2008 CPS data were augmented with assignments of legal status to noncitizens by Jeffrey S. Passel at the Pew Hispanic Center, and some of the findings described here have been previously published in Pew Hispanic Center reports. For a full description of the data, methodology for developing the data, and characteristics of unauthorized immigrants, see Passel and Cohn, *U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade*. These data are based on estimates of the size and characteristics of unauthorized immigrants from other data sources and, like all survey data, have a margin of error due to sampling, missing data, and other factors. For some questions, such as those concerning employment, the data refer to employment patterns from the previous year, in this case 2007.

- 19 The National Reporting System for Adult Education (NRS) scale offers only an approximate guide as to who would qualify for citizenship under existing guidelines because language proficiency requirements for citizenship are evaluated qualitatively, and vary depending on where and by whom the examination is administered. Level 1 is equivalent to beginning English as a Second Language (ESL) literacy; Level 2 equals low beginning ESL literacy; Level 3, high beginning ESL literacy; Level 4, low intermediate ESL literacy; Level 5, high intermediate ESL literacy; and Level 6, advanced ESL literacy.
- 20 For more details on the six English proficiency levels, see Division of Adult Education and Literacy, *Implementation Guidelines: Measures and Methods for the National Reporting System for Adult Education* (Washington, DC: US Department of Education, 2010), [www.nrsweb.org/pubs/default.aspx](http://www.nrsweb.org/pubs/default.aspx). Our calculations are based on a combination of spoken English proficiency and educational attainment data from the 2000 Census and 2008 CPS. We tabulated 2000 census data to estimate the levels of English proficiency of unauthorized immigrants by age, time in the United States, educational attainment, and self-reported English-speaking ability. We then applied these distributions to tabulations from 2008 CPS with imputations of immigrants' legal status provided by Jeffrey S. Passel at Pew Hispanic Center. For more on this methodology, see Margie McHugh, Julia Gelatt, and Michael Fix, *Adult English Language Instruction in the United States: Determining Need and Investing Wisely* (Washington, DC: Migration Policy Institute, 2007), [www.migrationpolicy.org/pubs/NCIIP\\_English\\_Instruction073107.pdf](http://www.migrationpolicy.org/pubs/NCIIP_English_Instruction073107.pdf).
- 21 There are no data on a language requirement for children because children usually naturalize through their relationship to a parent or other adult visa-holder, and are therefore exempt from taking the naturalization English language test.
- 22 National Association of Latino Elected and Appointed Officials Educational (NALEO) Fund, *The ESL Logjam: Waiting Times for Adult ESL Classes and the Impact on English Learners* (Los Angeles: NALEO Educational Fund, 2006), [www.naleo.org/downloads/ESLReportLoRes.pdf](http://www.naleo.org/downloads/ESLReportLoRes.pdf); also see National Council of State Directors of Adult Education (NCSDAE), *Adult Student Waiting List Survey 2009-2010* (Washington, DC: NCSDAE, 2010), [www.naepdc.org/publications/2010%20Adult%20Education%20Waiting%20List%20Report.pdf](http://www.naepdc.org/publications/2010%20Adult%20Education%20Waiting%20List%20Report.pdf).
- 23 McHugh, Gelatt, and Fix, *Adult English Language Instruction in the United States: Determining Need and Investing Wisely*, 6.
- 24 Jeanne Batalova and Michael Fix, "A Profile of Limited English Proficient Adult Immigrants," *Peabody Journal of Education* 85 (4): 511-534.
- 25 US Department of Education, *Guide to US Department of Education Programs: 2009* (Washington, DC: Department of Education, 2009), [www2.ed.gov/programs/gtep/gtep.pdf](http://www2.ed.gov/programs/gtep/gtep.pdf). States, localities, and private actors also fund language and civics classes, with these funding sources varying widely across different locations. At the state level, Nevada contributed 17 cents for every dollar of federal spending on adult education in 2007 compared to 87 cents for Florida. Considering all types of nonfederal contributions, Florida and California ratios of nonfederal-to-federal spending were \$8 to \$1 and \$7 to \$1, respectively, while state, local, and private sources in Kansas, Nebraska, and Texas spent about 30 cents to the federal dollar; see McHugh, Gelatt, and Fix, *Adult English Language Instruction in the United States: Determining Need and Investing Wisely*, 10.
- 26 NCSDAE, *Legislators' Resource Book* (Washington, DC: NCSDAE, 2009), [www.ncsdae.org/Copy%20of%20Final%20Blue%205-16-07.pdf](http://www.ncsdae.org/Copy%20of%20Final%20Blue%205-16-07.pdf).
- 27 Ibid.; also see Jeanne Batalova and Margie McHugh, *DREAM vs. Reality: An Analysis of Po-*

- tential DREAM Act Beneficiaries* (Washington, DC: Migration Policy Institute, 2010), [www.migrationpolicy.org/pubs/DREAM-Insight-July2010.pdf](http://www.migrationpolicy.org/pubs/DREAM-Insight-July2010.pdf).
- 28 Native women (62 percent) are more likely to be in the labor force than legal immigrant women (55 percent) and unauthorized immigrant women (57 percent).
  - 29 It is likely that unauthorized immigrants who work in agriculture are more highly under-represented in the CPS data than other unauthorized workers because it is harder to survey migrant workers in the fields and given their seasonal employment (the CPS Annual Social and Economic Supplement survey is conducted in late February and early March). There is no generally accepted estimate of the differential in undercount between agricultural workers and other unauthorized immigrants. The Department of Agriculture's National Agriculture Statistics Service estimated that there were a total of 996,000 hired farm workers and agricultural service workers in 2008, about 53 percent of whom (530,000 workers) were estimated to be unauthorized, according to a Congressional Research Service (CRS) analysis of National Agricultural Workers Survey data. CRS also reported that 557,000 hired farm workers were expected to perform at least 150 days of work in 2008 (based on the Department of Agriculture's Farm Labor Survey), a number that includes both legal and unauthorized workers. See Linda Levine, *Farm Labor Shortages and Immigration Policy* (Washington, DC: CRS, 2009), [www.nationalaglawcenter.org/assets/crs/RL30395.pdf](http://www.nationalaglawcenter.org/assets/crs/RL30395.pdf).
  - 30 The *Violence Against Women Act* passed as part of the *Violent Crime Control and Law Enforcement Act of 1994*, Public Law 322, 103rd Congress, 2nd session.
  - 31 The 2007 Senate bill would have provided derivative benefits for up to two years after the termination of an abusive relationship; the 2006 legislation would have provided derivative benefits for up to five years; and the CIR-ASAP measure would have imposed no time limits on this type of derivative benefit. The Menendez-Leahy legislation would not have provided derivative benefits to former spouses after the termination of an abusive relationship.
  - 32 US Bureau of Labor Statistics (BLS), "Data Retrieval: Labor Force Statistics (CPS): Household Data: Table A-1. Employment status of the civilian population by sex and age," (Washington, DC: US Department of Labor, BLS), accessed December 20, 2010, [www.bls.gov/webapps/legacy/cpsatab1.htm](http://www.bls.gov/webapps/legacy/cpsatab1.htm).
  - 33 These unemployment rates are not seasonally adjusted and are taken from Migration Policy Institute (MPI) analysis of monthly CPS data without legal status assignments. See MPI Data Hub, "Unemployment Rates by Selected Demographic Characteristics, January 2000 to September 2010," (Washington, DC: MPI), accessed December 20, 2010, [www.migrationinformation.org/datahub/charts/laborforce.4.shtml](http://www.migrationinformation.org/datahub/charts/laborforce.4.shtml).
  - 34 Randy Capps, Michael Fix, and Serena Yi-Ying Lin, *Still an Hourglass? Immigrant Workers in Middle-Skilled Jobs* (Washington, DC: MPI, 2010), [www.migrationpolicy.org/pubs/sectoral-brief-Sept2010.pdf](http://www.migrationpolicy.org/pubs/sectoral-brief-Sept2010.pdf).
  - 35 With CRS reporting that 557,000 hired farm workers – legal and unauthorized – were expected to perform at least 150 days of work in 2008, the total number of unauthorized farmworkers potentially eligible for legalization under AgJOBS would be unlikely to be more than 500,000, or less than 5 percent of the total unauthorized population; Levine, *Farm Labor Shortages and Immigration Policy*.
  - 36 A 2010 report by the US Department of Homeland Security (DHS) suggests that the unauthorized population may have fallen by more than 1 million, or nearly 10 percent, since the recession began. See Michael Hoefer, Nancy Rytina, and Bryan C. Baker, *Estimates of the Un-*



*authorized Immigrant Population Residing in the United States: January 2009* (Washington, DC: Office of Immigration Statistics, DHS, 2010), [www.dhs.gov/xlibrary/assets/statistics/publications/ois\\_ill\\_pe\\_2009.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2009.pdf). Mexican emigration data also show a dramatic decrease in movement from Mexico to the United States. Border apprehensions are at a historical low for the last several decades, with the US Border Patrol reporting in December 2010 that apprehensions had dropped to 463,382 in fiscal 2010; see US Border Patrol, "Illegal Alien Apprehensions by Fiscal Year," accessed December 29, 2010, [www.cbp.gov/linkhandler/cgov/border\\_security/border\\_patrol/apps.ctt/apps.pdf](http://www.cbp.gov/linkhandler/cgov/border_security/border_patrol/apps.ctt/apps.pdf). All of these data point to a significant decline in illegal immigration, which means that a higher share of unauthorized immigrants in the country now are long-term residents when compared with the more prosperous years before 2008. For more, see Passel and Cohn, *U.S. Unauthorized Immigration Flows*; Hofer, Rytina, and Baker, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2009*; and Instituto Nacional de Estadística y Geografía (INEGI), *En el 2009 Se Rompe el Patrón Estacional de la Emigración Internacional en México* (Aguascalientes. Mexico: INEGI, 2009), [www.inegi.org.mx/inegi/contenidos/espanol/prensa/comunicados/migracion09.asp](http://www.inegi.org.mx/inegi/contenidos/espanol/prensa/comunicados/migracion09.asp).

- 37 Support for legalization for unauthorized children has kept the DREAM Act on Congress' agenda since 2001, including in December 2010 when the measure passed the House but was defeated on a procedural vote in the Senate.
- 38 Jeffrey S. Passel and D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States* (Washington, DC: Pew Hispanic Center, 2009), 16, <http://pewhispanic.org/files/reports/107.pdf>.
- 39 In Figure 5, the legal status of families is based on the nativity status of the head and spouse (if present). In 2007, median income for native families with children was about \$59,000, compared to \$44,000 for families without children. Legal immigrant families with children earned \$45,000, while those without children earned \$39,000. However, median family income was \$30,000 for unauthorized families both with and without children.
- 40 Also see Marc R. Rosenblum, *Immigrant Legalization in the United States and European Union: Policy Goals and Program Design* (Washington, DC: MPI, 2010), [www.migrationpolicy.org/pubs/legalization-policydesign.pdf](http://www.migrationpolicy.org/pubs/legalization-policydesign.pdf).

## About the Authors



Marc R. Rosenblum is a Senior Policy Analyst at the Migration Policy Institute (MPI) and Co-Director of MPI's Regional Migration Study Group.

He is the author of *The Transnational Politics of US Immigration Policy* (University of California, San Diego Center for Comparative Immigration Studies, 2004) and has also published over 30 academic journal articles, book chapters, and policy briefs on immigration, immigration policy, and US-Latin American relations. He is the coeditor (with

Daniel Tichenor) of *The Oxford Handbook of International Migration* (Oxford University Press, forthcoming).

Dr. Rosenblum earned his B.A. from Columbia University and his Ph.D. from the University of California, San Diego, and is an Associate Professor of Political Science at the University of New Orleans. He was a Council on Foreign Relations Fellow detailed to the office of US Sen. Edward Kennedy during the 2006 Senate immigration debate, and was involved in crafting the Senate's immigration legislation in 2006 and 2007. He also served as a member of President-Elect Obama's Immigration Policy Transition Team in 2009.



Randy Capps is a Senior Policy Analyst and demographer at MPI. Dr. Capps has published national studies of the health and well-being of immigrants' children, development of young children of immigrants, education of first- and second-generation children of immigrants, trends in benefits use by immigrant families, implications of health care reform for immigrant adults and children, and the impact of immigration enforcement activities on children of the unauthorized. He has also published widely on immigrant integration at the state and local level..

Prior to joining MPI, Dr. Capps was a researcher in the Immigration Studies Program at the Urban Institute from 1993 through 1996, and from 2000 through 2008. Dr. Capps received his Ph.D. in Sociology from the University of Texas in 1999, and received his M.P. Aff., also from the University of Texas, in 1992.



Serena Yi-Ying Lin is a former Data/Statistical Analyst at MPI. She provided quantitative research and project management support across MPI's programs and for MPI's National Center on Immigrant Integration Policy. She is a co-author on studies of the impact of the recession on global migration patterns, the integration of immigrants in the US labor force, and the US immigration detention system.

Before coming to MPI, Ms. Lin worked as an economist for the Division of International Labor Comparisons at the US Bureau of Labor Statistics.

She has a Master's degree in Public Policy from Georgetown University and earned her undergraduate degree from the National Taiwan University. She has also studied at the Tokyo University of Foreign Studies.

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1400 16th Street NW  
Suite 300  
Washington, DC 20036

202 266 1940  
202 266 1900 (fax)

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