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Unauthorized Aliens in the United States: Policy Discussion

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Summary

The unauthorized immigrant (illegal alien) population in the United States is a key and controversial immigration issue. Competing views on how to address this population have been, and continue to be, a major obstacle to enacting immigration reform legislation.

It is unknown, at any point in time, how many unauthorized aliens are in the United States; what countries they are from; when they came to the United States; where they are living; and what their demographic, family, and other characteristics are. Demographers develop estimates about unauthorized aliens using available survey data on the U.S. foreign-born population and other methods. These estimates can help inform possible policy options to address the unauthorized alien population. Both the Department of Homeland Security (DHS) and the Pew Research Center estimate that approximately 11.5 million unauthorized aliens were living in the United States in January 2011. DHS further estimates that there were some 11.4 unauthorized residents in January 2012. Pew has released a preliminary estimate of 11.7 million for the March 2012 unauthorized resident population.

The Immigration and Nationality Act (INA) and other federal laws place various restrictions on unauthorized aliens. In general, they have no legal right to live or work in the United States and are subject to removal from the country. At the same time, the INA provides limited avenues for certain unauthorized aliens to obtain legal permanent residence.

Over the years, a range of options has been offered for addressing the unauthorized resident population. In most cases, the ultimate goal is to reduce the number of aliens in the United States who lack legal status. One set of options centers on requiring or encouraging unauthorized immigrants to depart the country. Those who support this approach argue that these aliens are in the United States in violation of the law and that their presence variously threatens social order, national security, and economic prosperity. One departure strategy is to locate and deport unauthorized aliens from the United States. Another departure strategy, known as attrition through enforcement, seeks to significantly reduce the size of the unauthorized population by across-the-board enforcement of immigration laws.

One of the basic tenets of the departure approach is that unauthorized immigrants in the United States should not be granted benefits. An opposing strategy would grant qualifying unauthorized residents various benefits, including an opportunity to obtain legal status. Supporters of this type of approach do not characterize unauthorized immigrants in the United States as lawbreakers, but rather as contributors to the economy and society at large. A variety of proposals have been put forth over the years to grant some type of legal status to some portion of the unauthorized population. Some of these options would use existing mechanisms under immigration law to grant legal status. Others would establish new legalization programs. Some would benefit a particular subset of the unauthorized population, such as students or agricultural workers, while others would make relief available more broadly.

Contents

Introduction.....	1
Demographics of Unauthorized Population.....	2
Period of Arrival.....	2
Region of Birth.....	3
States of Residence.....	3
Demographic and Family Characteristics.....	4
Labor Force Participation.....	5
Current Law.....	6
Restrictions on Unauthorized Aliens.....	6
Inadmissibility.....	6
Removal.....	7
Penalties.....	7
U.S. Employment.....	7
Other Restrictions.....	8
Relief for Unauthorized Aliens.....	8
Cancellation of Removal.....	8
Adjustment of Status.....	9
Registry.....	9
Asylum.....	9
Policy Options.....	10
Departure of Unauthorized Aliens.....	10
Removal.....	10
Attrition Through Enforcement.....	11
Legal Status for Unauthorized Aliens.....	13
Updating INA Provisions.....	14
Establishing New Mechanisms: Targeted Population.....	14
Establishing New Mechanisms: General Population.....	16
Conclusion.....	18

Tables

Table 1. U.S. Unauthorized Alien Population in 2012, by Period of Arrival.....	3
Table 2. Unauthorized Alien Population in Top States of Residence.....	4
Table 3. Alien Removals from the United States.....	11

Contacts

Author Contact Information.....	18
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Introduction

The unauthorized immigrant (illegal alien) population in the United States is a key and controversial immigration issue. Competing views on how to address this population proved to be a major obstacle to enacting comprehensive immigration reform legislation in past Congresses. The unauthorized immigrant issue remains a key challenge in legislating on immigration reform today.

The Department of Homeland Security (DHS) has primary responsibility for administering and enforcing the Immigration and Nationality Act (INA),¹ the basis of immigration law. Within DHS, U.S. Citizenship and Immigration Services (USCIS) is responsible for immigration and naturalization adjudications and other service functions; Immigration and Customs Enforcement (ICE) is responsible for enforcing immigration law in the interior of the United States, among other responsibilities; and Customs and Border Protection (CBP) is responsible for securing U.S. borders at and between official ports of entry.

It is unknown, at any point in time, how many unauthorized aliens are in the United States; what countries they are from; when they came to the United States; where they are living; and what their demographic, family, and other characteristics are. Demographers develop estimates about unauthorized immigrants using available survey data on the U.S. foreign-born population. These estimates can help inform possible policy options to address the unauthorized alien population.²

DHS and the Pew Research Center (Pew) regularly publish estimates of the unauthorized resident population³ based on data from the Census Bureau's American Community Survey (ACS) and other sources.⁴ According to the DHS estimates, the unauthorized population totaled 11.5 million in January 2011 and 11.4 million in January 2012.⁵ Pew also estimated the 2011 unauthorized resident population at 11.5 million, and using data from the March Current Population Survey (CPS) and other sources, released a preliminary estimate of 11.7 million for the March 2012 unauthorized population.⁶ Both the DHS and Pew estimates suggest that the unauthorized resident

¹ Act of June 27, 1952, ch. 477, codified at 8 U.S.C. §1101 et seq. Prior to 2003, the Immigration and Naturalization Service (INS) of the Department of Justice (DOJ) had primary responsibility for administering and enforcing the INA. Effective March 1, 2003, the Homeland Security Act (HSA; P.L. 107-296, November 25, 2002) abolished INS and transferred most immigration-related functions to the newly created DHS.

² See CRS Report RL33874, *Unauthorized Aliens Residing in the United States: Estimates Since 1986*.

³ These estimates include certain "quasi-legal" aliens who have temporary authorization to remain in the United States, such as applicants for asylum and persons with Temporary Protected Status (TPS).

⁴ Pew had previously based its unauthorized population estimates on the March Current Population Survey, a survey conducted jointly by the Census Bureau and the Department of Labor's Bureau of Labor Statistics, but now uses the ACS. In 2013, Pew released revised unauthorized estimates for 2005-2011 based on the ACS. For an explanation of the data source change, see Jeffrey S. Passel, D'Vera Cohn, and Ana Gonzalez-Barrera, *Population Decline of Unauthorized Immigrants Stalls, May Have Reversed*, Pew Research Center's Hispanic Trends Project, September 23, 2013 (hereinafter cited as Pew Research Center, *Population Decline of Unauthorized Immigrants Stalls*). Pew's Hispanic Trends Project was previously known as the Pew Hispanic Center.

⁵ The January 2012 estimate is the latest released by DHS, as of this writing. U.S. Department of Homeland Security, Office of Immigration Statistics, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012*, by Bryan Baker and Nancy Rytina, March 2013 (hereinafter cited as DHS, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012*).

⁶ Pew Research Center, *Population Decline of Unauthorized Immigrants Stalls*. Pew plans to replace this CPS-based 2012 estimate with an estimate based on 2012 ACS data once those data become available.

population reached a peak in 2007, totaling about 11.8 million and 12.2 million, respectively.⁷ Between 2007 and 2009, the unauthorized population decreased, according to both DHS and PEW. The trend in the size of the unauthorized population since 2009 is uncertain.⁸

Unauthorized aliens enter the United States in three main ways: (1) some are admitted to the United States on valid nonimmigrant (temporary) visas (e.g., as visitors or students) or on border-crossing cards and either remain in the country beyond their authorized period of stay or otherwise violate the terms of their admission; (2) some are admitted based on fraudulent documents (e.g., fake passports) that go undetected by U.S. officials; and (3) some enter the country illegally without inspection (e.g., by crossing over the Southwest or northern U.S. border).

It is unknown what percentages of the current unauthorized resident population entered the United States in these different ways. In past years, researchers have endeavored to make this type of determination. For example, in 2006, the Pew Hispanic Center estimated that about 40% to 50% of the unauthorized immigrants living in the United States that year had entered the country with inspection (i.e., through [1] or [2], above) and that the remaining 50% or more had entered the country without inspection (i.e., through [3], above).⁹

Demographics of Unauthorized Population

Recent reports issued by DHS's Office of Immigration Statistics and the Pew Research Center analyze the demography of the U.S. unauthorized resident population, providing useful context for a discussion of possible policy options.

Period of Arrival

Table 1 breaks down the unauthorized resident population in the United States in 2012 by period of arrival based on an analysis by DHS. It shows that more than half (54%) of the total unauthorized immigrant population in January 2012 entered the United States in the 10 years between 1995 and 2004, and that 87% of this population entered the country before 2005. As discussed below, these data are important for estimating potential numbers of beneficiaries under possible legalization programs, which typically have eligibility cut-off dates.

⁷ DHS, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012*; Pew Research Center, *Population Decline of Unauthorized Immigrants Stalls*.

⁸ The 2009 estimates are 10.8 million (DHS) and 11.3 million (Pew). According to the Pew report: "Although there are indications the number of unauthorized immigrants may be rising, the 2012 population estimate ...in a statistical sense is no different from the 2009 estimate." Pew Research Center, *Population Decline of Unauthorized Immigrants Stalls*, p. 6. Also see DHS, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012*.

⁹ See *Modes of Entry for the Unauthorized Migrant Population*, Pew Hispanic Center, fact sheet, May 22, 2006. This analysis did not estimate entries using fraudulent documents. Also see U.S. General Accounting Office, *Overstay Tracking: A Key Component of Homeland Security and a Layered Defense*, GAO-04-82, May 2004.

Table 1. U.S. Unauthorized Alien Population in 2012, by Period of Arrival

	Number of Unauthorized Aliens (in millions)	Percentage of January 2012 Unauthorized Population
1980-1989	2.0	18%
1990-1994	1.7	15%
1995-1999	2.9	26%
2000-2004	3.3	28%
2005-2011	1.5	14%
Total	11.4	100%

Source: U.S. Department of Homeland Security, Office of Immigration Statistics, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012*, by Bryan Baker and Nancy Rytina, March 2013.

Notes: Table contains estimates of aliens who were unauthorized in January 2012; these aliens may or may not have been unauthorized at the time of their arrival. The analysis assumes that all aliens who arrived in the United States before 1980 had legal status in 2012. Details may not sum to total due to rounding.

Region of Birth

Mexico has historically been the major source country for unauthorized migration to the United States. According to DHS, there were an estimated 6.7 million unauthorized immigrants from Mexico residing in the United States in early 2012, representing 59% of the total unauthorized resident population at the time. According to preliminary Pew estimates for 2012, there were an estimated 6.0 million unauthorized immigrants from Mexico living in the United States that year, representing 52% of the total unauthorized resident population.

In its analysis of the 2012 unauthorized population, DHS produced region of birth estimates. It estimated that there were 8.9 million unauthorized immigrants living in the United States in 2012 from North America, which includes Mexico as well as Canada, the Caribbean, and Central America (78% of the total). According to the DHS analysis, South America accounted for 0.7 million unauthorized aliens in 2012, yielding a combined North America and South America total of 9.6 million (84% of the total unauthorized resident population). Asia accounted for an additional 1.3 million unauthorized immigrants.¹⁰

States of Residence

Table 2 provides state-level unauthorized immigrant estimates for the top nine states of residence of unauthorized aliens for January 2012, as identified by DHS. It also includes available, preliminary state-level estimates for March 2012 by the Pew Research Center. As shown, California is home to more unauthorized immigrants than any other state. DHS estimates that about one-quarter of the U.S. unauthorized population in January 2012 was living in California. Pew estimates California's share of the 2012 unauthorized population at a lower 21%.

¹⁰ DHS, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012*.

Table 2 indicates that under the DHS analysis, the top nine states housed 70% of the total unauthorized resident alien population in 2012. This distribution represents less geographic concentration than in past years, however, when the top states were home to a greater percentage of the total unauthorized population.¹¹

Table 2. Unauthorized Alien Population in Top States of Residence

State	Department of Homeland Security			Pew Research Center	
	State Ranking	Number of Aliens (in thousands)	Percentage of January 2012 Unauthorized Population	Number of Aliens (in thousands)	Percentage of March 2012 Unauthorized Population
California	1	2,820	25%	2,450	21%
Texas	2	1,830	16%	1,750	15%
Florida	3	730	6%	950	8%
New York	4	580	5%	875	7%
Illinois	5	540	5%	450	4%
New Jersey	6	430	4%	525	4%
Georgia	7	400	3%	n/a	n/a
North Carolina	8	360	3%	n/a	n/a
Arizona	9	350	3%	n/a	n/a
Total		8,040	70%	n/a	n/a

Source: CRS Presentation of data analyses in U.S. Department of Homeland Security, Office of Immigration Statistics, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012*, by Bryan Baker and Nancy Rytina, March 2013; and Jeffrey S. Passel, D'Vera Cohn, and Ana Gonzalez-Barrera, *Population Decline of Unauthorized Immigrants Stalls, May Have Reversed*, Pew Research Center's Hispanic Trends Project, September 23, 2013.

Notes: Pew state-level estimates for 2012 are available only for the six states shown; state ranking information is not available. Details may not sum to total due to rounding.

Demographic and Family Characteristics

DHS and Pew demographers analyzed the gender and age of unauthorized immigrants living in the United States in January 2012 and March 2010, respectively.¹² According to DHS, its estimated January 2012 unauthorized population of 11.4 million consisted of 10.3 million adults and 1.1 million children under age 18. Among the adults, 5.5 million were men and 4.8 million were women.¹³ According to Pew, its March 2010 estimate of 11.2 unauthorized residents¹⁴ was composed of 10.2 million unauthorized adults and 1.0 million unauthorized children.

¹¹ For a comparison of state of residence data for 2000 and 2011, see U.S. Department of Homeland Security, Office of Immigration Statistics, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011*, by Michael Hoefler, Nancy Rytina, and Bryan C. Baker, March 2012.

¹² DHS, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012*; Jeffrey S. Passel and D'Vera Cohn, *Unauthorized Immigrant Population: National and State Trends, 2010*, Pew Hispanic Center, February 1, 2011 (hereinafter cited as Pew Hispanic Center, *Unauthorized Immigrant Population, 2010*).

¹³ Details do not sum due to rounding.

¹⁴ Please note that Pew has since issued a revised unauthorized population estimate of 11.4 million for 2010. See Pew (continued...)

With respect to age, the DHS analysis found that a majority of unauthorized immigrants were between the ages of 25 and 44. About 61% of all unauthorized aliens living in the United States in January 2012 were in this age group, according to DHS. Pew estimated that the median age of an unauthorized adult in 2010 was 36.2 years old.¹⁵ These demographic data have implications for labor force participation, which is discussed in the next section.

Children of unauthorized immigrants may be unauthorized immigrants themselves or may have legal status. Pew estimated that there were 5.5 million children in the United States in 2010 with at least one unauthorized parent. As noted, 1.0 million of these children were unauthorized aliens. According to the Pew analysis, the remaining 4.5 million children were born in the United States and, thus, were U.S. citizens. Pew also developed estimates of “mixed-status” families (i.e., families with at least one unauthorized parent and at least one U.S.-born child). It reported that there were at least 9 million people living in mixed-status families in the United States in 2010.¹⁶

These data on demographic and family characteristics of unauthorized immigrants may be useful to consider in devising strategies to address the current unauthorized population. The data on living arrangements and mixed-status families, for example, suggest that strategies focused on unauthorized aliens as individuals (whether these strategies are aimed at removing these aliens from the United States or granting them legal status to remain in the country, as discussed below) will likely have a significant effect on other family or household members, including U.S. citizen children.

Labor Force Participation

Given the age distribution of unauthorized aliens, among other factors, it is not surprising that the labor force participation rate of unauthorized immigrants is high. Pew estimated that there were 8.0 million unauthorized aliens in the labor force in 2010, representing almost four of every five unauthorized adults in the United States that year. These unauthorized workers accounted for 5.2% of the civilian labor force.¹⁷

Historically, the high levels of labor force participation by unauthorized immigrants have been taken into account in devising ways to address the issue of unauthorized immigration. For example, some strategies have focused on preventing unauthorized immigrants from obtaining employment through the use of electronic employment eligibility verification systems. Some strategies to legalize the status of unauthorized aliens have similarly looked to the role of these aliens as workers. For example, proposals have been offered in the past to enable unauthorized immigrants to obtain temporary legal status through guest worker programs. Other proposals would make a work history in the United States a prerequisite for obtaining legal permanent resident (LPR) status.

(...continued)

Research Center, *Population Decline of Unauthorized Immigrants Stalls*.

¹⁵ Paul Taylor, Mark Hugo Lopez, Jeffrey S. Passel, and Seth Motel, *Unauthorized Immigrants: Length of Residency, Patterns of Parenthood*, Pew Hispanic Center, December 1, 2011 (hereinafter cited as Pew Hispanic Center, *Unauthorized Immigrants: Length of Residency, Patterns of Parenthood*).

¹⁶ Ibid.

¹⁷ Pew Hispanic Center, *Unauthorized Immigrant Population, 2010*.

Current Law

The Immigration and Nationality Act and other federal laws place various restrictions on unauthorized immigrants. Selected provisions related to unauthorized aliens are described below. These provisions sometimes distinguish between those unauthorized immigrants who entered the country illegally, and those who entered legally but stayed beyond their authorized period of admission or otherwise violated the terms of their admission.

Restrictions on Unauthorized Aliens

Inadmissibility

Section 212(a) of the INA enumerates grounds of inadmissibility—grounds upon which aliens are ineligible for visas and admission to the United States. They include health-related grounds, security- and terrorism-related grounds, and immigration law violations. Some grounds of inadmissibility may be waived, as specified in the INA. Aliens seeking legal admission to the United States must satisfy State Department consular officials abroad that they are not ineligible for visas, and they must satisfy DHS inspectors upon entry to the United States that they are not ineligible for admission.

INA §212(a)(6)(A) generally limits the ability of illegal entrants to be legally admitted to the country. It states:

An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.

The INA does permit the legal admission of illegal entrants in certain limited circumstances. For example, INA §212(a)(6)(A) contains an exception for certain aliens who have been subjected to battery or extreme cruelty. More generally, INA §208 enables illegal entrants and other unauthorized aliens to apply for asylum, which, if granted, would allow them to remain permanently in the United States (see “Asylum”).

Another ground of inadmissibility (INA §212(a)(9)(B)) makes aliens who in the past were illegally present in the United States inadmissible to the country for a period of time. Known as the 3- and 10-year bars, these provisions apply to all aliens except LPRs. They state that an alien who was unlawfully present in the United States for more than 180 days but less than one year, and who voluntarily departs the country and again seeks admission within three years, is inadmissible, and that an alien who has been unlawfully present in the United States for one year or more and seeks admission within 10 years of such alien’s departure or removal date is inadmissible. Unlawful presence is defined to include presence in the United States without admission or parole,¹⁸ as well as presence after the expiration of an authorized period of stay. The impact of the 3- and 10-year bars has been mitigated to some extent by separate INA provisions

¹⁸ Parole is discretionary authority that may be exercised by DHS to allow an alien to enter the United States temporarily (without being formally admitted) for urgent humanitarian reasons or when the entry is determined to be for significant public benefit.

that enable certain unauthorized aliens to adjust status, that is, obtain LPR status without leaving the United States (and thus never triggering the bars).¹⁹

Removal

INA §237(a) sets forth grounds for deportation from the United States. These are the companion provisions to the §212(a) inadmissibility provisions. INA §237(a)(1) generally makes unauthorized aliens deportable (subject to removal). It states that aliens who are present in the United States in violation of the INA or any other U.S. law, or who were admitted as nonimmigrants but have failed to maintain the conditions of that status, are deportable. It further makes deportable, aliens who were inadmissible at the time of entry or adjustment to LPR status.

Penalties

Various INA provisions establish penalties for aliens who attempt to enter the United States in violation of the law and for those who assist them. For example, under INA §275(a):

Any alien who (1) enters or attempts to enter the United States at any time or place other than as designated by immigration officers, or (2) eludes examination or inspection by immigration officers, or (3) attempts to enter or obtains entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, shall, for the first commission of any such offense, be fined under title 18, United States Code, or imprisoned not more than 6 months, or both, and, for a subsequent commission of any such offense, be fined under title 18, United States Code, or imprisoned not more than 2 years, or both.

Under INA §275(b), an alien who is apprehended while entering or trying to enter the United States at an undesignated time or place is subject to a civil penalty of between \$50 and \$250 for each entry or attempted entry. This penalty is doubled for those previously subject to a penalty under this subsection. These fines are in addition to any other applicable civil or criminal penalties. INA §276 enumerates stiffer penalties, including criminal penalties, for certain aliens removed from the United States who subsequently enter, attempt to enter, or are found in the country.

U.S. Employment

Under INA §274A, it is unlawful for an employer to knowingly hire, recruit or refer for a fee, or continue to employ an unauthorized alien.²⁰ Employers are further required to participate in a paper-based (I-9) employment eligibility verification system in which they examine documents presented by new hires to verify identity and work eligibility, and complete and retain I-9 verification forms. They also may elect to participate in the E-Verify electronic employment eligibility verification system.²¹ Employers violating prohibitions on unlawful employment may be subject to civil and/or criminal penalties. Enforcement of these provisions is termed “worksite

¹⁹ For further discussion of inadmissibility, see CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*.

²⁰ In this context, “unauthorized alien” refers to those who lack employment authorization. It includes both those without legal status and those with some type of legal status who are not authorized to work in the United States.

²¹ See CRS Report R40446, *Electronic Employment Eligibility Verification*.

enforcement.”²² Because of the prevalence of fraudulent documents and other factors, however, an estimated 8.0 million unauthorized workers were in the labor force in 2010, as noted.

Other Restrictions

Laws other than the INA also place restrictions on unauthorized immigrants. Particularly notable is the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996.²³ Section 401 of PRWORA makes unauthorized aliens and certain legal aliens ineligible for any “federal public benefit,” with some limited exceptions. “Federal public benefit” is broadly defined as:

(A) any grant, contract, loan, professional license, or commercial license provided by an agency of the United States or by appropriated funds of the United States; and

(B) any retirement, welfare, health, disability, public or assisted housing, postsecondary education, food assistance, unemployment benefit, or any other similar benefit for which payments or assistance are provided to an individual, household, or family eligibility unit by an agency of the United States or by appropriated funds of the United States.²⁴

The statutory exceptions to this general prohibition are limited mainly to emergency services, such as emergency medical assistance under Medicaid and short-term, non-cash emergency disaster relief, and to programs delivering in-kind services necessary for the protection of life or safety, such as soup kitchens and crisis counseling.²⁵

Relief for Unauthorized Aliens

At the same time that the INA places restrictions on unauthorized immigrants, it provides limited avenues for certain unauthorized immigrants to obtain LPR status.

Cancellation of Removal

Cancellation of removal is a discretionary form of relief authorized by INA §240A that an alien can apply for while in removal proceedings before an immigration judge. If cancellation of removal is granted, the alien’s status is adjusted to that of an LPR. INA §240A(b) authorizes the Attorney General to cancel the removal/adjust the status of certain “nonpermanent residents” who are inadmissible to or deportable from the United States. To be eligible for this form of relief, the alien, among other requirements, must have been continuously physically present in the United States for the prior 10 years and must establish that removal would result in exceptional and extremely unusual hardship to the alien’s citizen or LPR spouse, parent, or child.

²² See CRS Report R40002, *Immigration-Related Worksite Enforcement: Performance Measures*.

²³ P.L. 104-193, August 22, 1996, as amended.

²⁴ P.L. 104-193, §401(c)(1)(A), (B); 8 U.S.C. §1611(c)(1)(A), (B).

²⁵ For further discussion, see CRS Report RL34500, *Unauthorized Aliens’ Access to Federal Benefits: Policy and Issues*.

Adjustment of Status

INA §245 enables certain aliens, including certain unauthorized aliens, to adjust to LPR status in the United States. In order to benefit from INA §245, an alien must be otherwise eligible for LPR status (e.g., on the basis of a family relationship or job skills), among other requirements.²⁶

To adjust status under INA §245(a), an alien must have been inspected and admitted or paroled into the United States, unless the alien qualifies for self-petitioning under special battered alien provisions. Furthermore, unless the alien is covered by the battered alien provisions, he or she is not eligible to adjust status under INA §245(a) if, for example, he or she is in unlawful immigration status on the date of filing the adjustment of status application, or has failed to maintain lawful status since entry into the United States. There are some exceptions to these lawful status requirements, including for spouses, minor children, and parents of U.S. citizens. INA §245(a) largely benefits nonimmigrants—aliens legally admitted to the United States for a temporary and specific purpose, such as foreign students—who are eligible for LPR status.

INA §245(i), originally enacted in 1994 as a temporary provision and extended several times, enables certain aliens who entered the United States without inspection or who are not otherwise eligible for §245(a) to adjust status. Currently, to be eligible to adjust status under §245(i), the alien must be the beneficiary of a family- or employment-based immigrant visa petition or a labor certification application filed by April 30, 2001.²⁷ Thus, as a means for unauthorized aliens to obtain legal permanent resident status, this provision is limited by both the 2001 eligibility date and the requirement for a family or employment tie.

Registry

Another mechanism for unauthorized immigrants to acquire lawful permanent residence is registry. Last updated by a 1986 law, the registry provision (INA §249) allows for the creation of a record of lawful admission for permanent residence for an alien who lacks such a record; has continuously resided in the United States since before January 1, 1972; and meets other specified requirements.²⁸ Because it requires continuous residence since before 1972, the registry provision has limited applicability today.

Asylum

The INA asylum provisions represent a humanitarian exception to the general bar against the admissibility of unauthorized aliens. INA §208 provides that any alien who is in, or who arrives in, the United States, regardless of his or her status, may apply for asylum. To be eligible for asylum, an alien must show that he or she has been persecuted or has a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or

²⁶ For a discussion of the permanent immigration system, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

²⁷ See archived CRS Report RL31373, *Immigration: Adjustment to Permanent Resident Status Under Section 245(i)*, (hereinafter cited as archived CRS Report RL31373).

²⁸ See archived CRS Report RL30578, *Immigration: Registry as Means of Obtaining Lawful Permanent Residence*, (hereinafter cited as archived CRS Report RL30578).

political opinion and must meet other requirements. If asylum is granted, the alien may remain legally in the United States and, after one year, may apply to adjust to LPR status.²⁹

Policy Options

Over the years, a range of options has been offered for addressing the unauthorized resident population.³⁰ In most cases, the ultimate goal is to reduce the number of aliens in the United States who lack legal status. Many of these options fall under one of two broad categories: (1) reducing the unauthorized population through departure of unauthorized aliens from the United States and (2) reducing the unauthorized population through the grant of legal (or quasi-legal) status to unauthorized immigrants.

Departure of Unauthorized Aliens

Current law places various restrictions on unauthorized aliens. They typically have no legal right to live or work in the United States and are subject to removal from the country. One set of options for addressing the unauthorized resident population centers on requiring or encouraging illegal aliens to leave the country. Those who support this approach argue that these individuals are in the United States in violation of the law and that their presence variously threatens social order, national security, and economic prosperity.³¹

Removal

One departure strategy is for ICE, the DHS entity responsible for immigration enforcement within the United States, to locate and deport unauthorized aliens from the country. **Table 3** provides data on ICE removals of aliens from the United States for FY2004 through FY2012. It includes both expedited and non-expedited removals. Under current laws and policies, removals of unauthorized resident aliens are non-expedited removals. As shown in **Table 3**, there were 255,886 non-expedited removals in FY2012. These removal proceedings are typically conducted before an immigration judge, whose decision can be appealed to the Board of Immigration Appeals (BIA). Expedited removal procedures under INA §235(b), by contrast, generally apply to arriving aliens at ports of entry who lack proper documentation or who have committed fraud or willful misrepresentation of facts, and to certain newly arrived aliens in the interior of the country.

²⁹ See CRS Report R41753, *Asylum and "Credible Fear" Issues in U.S. Immigration Policy*.

³⁰ Options have likewise been put forth for addressing the related issue of future arrivals of unauthorized aliens. These options, which include enhanced border security measures and reform of the existing legal temporary and permanent immigration systems, are beyond the scope of this report.

³¹ See, for example, Jon Feere, *The Myth of the "Otherwise Law-Abiding" Illegal Alien*, Center for Immigration Studies, October 2013, <http://cis.org/myth-law-abiding-illegal-alien>; and Steven A. Camarota, *Amnesty for Illegal Immigrants and the Employment Picture for Less-Educated Americans*, Center for Immigration Studies, February 2013, <http://cis.org/amnesty-for-illegal-immigrants-and-the-employment-picture-for-less-educated-americans>.

Table 3. Alien Removals from the United States

Fiscal Year	Non-expedited Removals	Expedited Removals	Total Removals
2004	189,651	51,014	240,665
2005	158,543	87,888	246,431
2006	170,311	110,663	280,974
2007	213,186	106,196	319,382
2008	247,079	112,716	359,795
2009	287,670	105,787	393,457
2010	273,164	109,867	383,031
2011	266,089	122,320	388,409
2012	255,886	163,498	419,384

Source: CRS Presentation of data from U.S. Department of Homeland Security, Office of Immigration Statistics, *Immigration Enforcement Actions: 2010*, June 2011 (FY2004-FY2008); *Immigration Enforcement Actions: 2011*, June 2012 (FY2009); *Immigration Enforcement Actions: 2012*, December 2013 (FY2010-FY2012).

As **Table 3** illustrates, the number of non-expedited removals was considerably higher at the end of the FY2004-FY2012 period than at the beginning, although there were increases and decreases in the intervening years. Even during the FY2009 peak year for non-expedited removals, however, these removals accounted for less than 3% of the DHS-estimated 10.8 million unauthorized immigrants in the United States at the time.

The option of removing the entire unauthorized resident population was raised at the 2007 Senate Homeland Security and Governmental Affairs Committee hearing on the nomination of Julie Myers to be assistant secretary of ICE. At the hearing, Senator Susan Collins stated that “there are those who have advocated that we should somehow try to locate, detain, and deport all 12 million people [who are in the United States illegally],” and asked Myers how much such an effort would cost. Myers estimated the total cost at roughly \$94 billion.³²

Attrition Through Enforcement

Because of the high cost of removing unauthorized immigrants from the United States, among other considerations, some who favor the departure of unauthorized immigrants advocate an alternative approach, known as attrition through enforcement. This strategy has received renewed attention in connection with state and local efforts to deter the presence of unauthorized aliens in their jurisdictions. Mark Krikorian of the Center for Immigration Studies (CIS), who supports this approach, describes attrition through enforcement as follows:

This means steady, across-the-board enforcement of our immigration laws (something we have never even tried before) so that not only would fewer illegal immigrants come here, but more who are already here would give up and deport themselves.

³² U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Nomination of Hon. Julie L. Myers*, hearing, 110th Cong., 1st sess., September 12, 2007 (Washington: GPO, 2008), p. 11.

The goal would be to get the total illegal population to start shrinking from one year to the next instead of allowing it to simply keep growing. Over time, the size of the problem would decrease, and we would then be able to decide what further steps, if any, are warranted.³³

In 2012, Steven Camarota, also of CIS, cited DHS estimates indicating that the unauthorized alien population was decreasing to argue that large numbers of long-time unauthorized residents do leave the United States as circumstances change. While he did not directly address the attrition through enforcement strategy, his comments can be viewed as supporting the feasibility of that approach. Moreover, he explicitly rejected as “simply wrong,” the argument that “established illegal immigrants will never leave and therefore they must be amnestied.”³⁴

According to Krikorian, making it more difficult for unauthorized aliens to find jobs in the United States is probably the most important part of an attrition strategy. To this end, he calls for an expansion of the E-Verify electronic employment eligibility verification system, first by executive order and eventually by legislation to make it mandatory for all employers to verify the employment eligibility of all workers.³⁵ Increased ICE enforcement of INA prohibitions on unlawful employment represents another way to address unauthorized employment by current workers.³⁶

Related Legislation

Multiple bills have been introduced in recent Congresses to address unlawful employment and immigration enforcement within the United States more generally.³⁷ Many of the bills related to unauthorized employment in the 113th Congress would phase in a requirement for all employers to participate in E-Verify or another electronic employment eligibility verification system. These bills include the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), as passed by the Senate, and the Legal Workforce Act (H.R. 1772), as ordered to be reported by the House Judiciary Committee. While both of these bills would establish a permanent, mandatory electronic eligibility verification system based on E-Verify, the measures differ in other respects. For example, H.R. 1772 would allow employers to conduct electronic verification after making an offer of employment but before hiring, and to condition a job offer on final verification under the system.⁷ These practices are not permitted under current E-Verify requirements. In another notable departure from current restrictions, some employment eligibility verification bills would require the verification of all previously hired workers.³⁸

³³ Mark Krikorian, “Attrition by Enforcement is the Best Course of Action,” *Spartanburg (S.C.) Herald – Journal*, September 30, 2007, <http://www.cis.org/node/460> (hereinafter cited as Krikorian, “Attrition by Enforcement is the Best Course of Action”).

³⁴ Steven A. Camarota, “DHS Estimates: Long-Time Illegals Do in Fact Self Deport,” Center for Immigration Studies, February 14, 2012, <http://www.cis.org/camarota/long-time-illegals-do-self-deport>.

³⁵ Krikorian, “Attrition by Enforcement is the Best Course of Action.” Also see CRS Report R40446, *Electronic Employment Eligibility Verification*.

³⁶ For a discussion of other possible elements of an attrition through enforcement strategy, see Jessica Vaughan, *Attrition Through Enforcement: A Cost-Effective Strategy to Shrink the Illegal Population*, Center for Immigration Studies Backgrounder, April 2006, <http://www.cis.org/Enforcement-IllegalPopulation>.

³⁷ See CRS Report R43320, *Immigration Legislation and Issues in the 113th Congress*,. Also see archived CRS Report R42036, *Immigration Legislation and Issues in the 112th Congress*; and archived CRS Report RL34204, *Immigration Legislation and Issues in the 110th Congress*.

³⁸ See, for example, H.R. 830 in the 113th Congress.

In addition to its provisions on unlawful employment, Senate-passed S. 744 includes separate provisions on immigration enforcement within the United States. In the House, the SAFE Act (H.R. 2278), as ordered to be reported by the House Judiciary Committee, addresses interior enforcement. Although both bills would increase criminal penalties associated with federal immigration violations and would establish new INA grounds of inadmissibility and deportability, there are significant differences among the measures.³⁹

Legal Status for Unauthorized Aliens

One of the basic tenets of the departure approach is that unauthorized aliens in the United States should not be granted benefits. An opposing strategy would grant qualifying unauthorized immigrants various benefits, including an opportunity to obtain legal status. Supporters of this type of approach do not characterize unauthorized aliens in the United States as lawbreakers, but rather as contributors to the economy and society at large. Some who support granting legal status to unauthorized immigrants have argued for legalization as a way to generate increases in wages and spending and generally promote economic recovery.⁴⁰

A variety of proposals have been put forth over the years to grant some type of legal status to some portion of the unauthorized population. In some cases, the proposals are explicitly intended to benefit unauthorized immigrants; in other cases, both unauthorized aliens and legal temporary residents may benefit. Some of these options would use existing mechanisms under immigration law to grant legal status, while others would establish new mechanisms. Some would benefit a particular subset of the unauthorized population, while others would make relief available more broadly.

Some recent legalization proposals bear similarities to the general legalization program enacted as part of the Immigration Reform and Control Act (IRCA) of 1986.⁴¹ IRCA §201(a) authorized a two-stage legalization program, through which eligible applicants would first be granted temporary resident status and then after 18 months could apply to adjust to LPR status. To be eligible for temporary status, an alien had to establish that he or she had resided continuously in the United States in an unlawful status since January 1, 1982, and was admissible to the United States. To subsequently adjust to LPR status, a temporary resident had to file a timely application, establish continuous U.S. residence since the granting of temporary resident status, establish admissibility to the United States, and meet requirements concerning basic citizenship skills.

In the past several years, supporters of proposed programs to grant LPR status to unauthorized aliens have described these programs as providing for “earned adjustment.” The concept of

³⁹ See CRS Report R43320, *Immigration Legislation and Issues in the 113th Congress*. Also CRS Report R43192, *Immigration Enforcement: Major Provisions in H.R. 2278, the Strengthen and Fortify Enforcement Act (SAFE Act)*.

⁴⁰ See, for example, written testimony of Doris Meissner, Migration Policy Institute, prepared for U.S. Congress, Senate Committee on the Judiciary, Subcommittee on Immigration, Border Security and Citizenship, *Comprehensive Immigration Reform in 2009, Can We Do It and How?*, hearing, 111th Cong., 1st sess., April 30, 2009, <http://www.migrationpolicy.org/pubs/Testimony-04-30-2009.pdf>; and Robert Lynch and Patrick Oakford, *The Economic Effects of Granting Legal Status and Citizenship to Undocumented Immigrants*, Center for American Progress, March 20, 2013, <http://www.americanprogress.org/wp-content/uploads/2013/03/EconomicEffectsCitizenship-6.pdf>.

⁴¹ P.L. 99-603, November 6, 1986. The general legalization program was authorized by IRCA §201(a) and added to the INA as §245A. IRCA §302(a)(1) authorized a separate legalization program for seasonal agricultural workers, added to the INA as §210.

earned adjustment is that the unauthorized immigrant “earns” legal status through contributions to society, which typically include work (or education or military service), payment of a fine, payment of income taxes, and learning English and civics.

Updating INA Provisions

One way to enable some unauthorized immigrants in the United States to legalize their status would be to update the eligibility dates for existing mechanisms through which eligible aliens can obtain LPR status. Over the years, multiple bills have been introduced in Congress to extend the eligibility dates for the INA §245(i) provision (see “Adjustment of Status”) and the INA registry provision (see “Registry”).

Section 245(i) Eligibility Date Extension

Under current law, as discussed, the ability to adjust status under INA §245(i) is limited to aliens who are beneficiaries of an immigrant visa petition or labor certification application filed by April 30, 2001. This April 2001 eligibility date was enacted in December 2000. Multiple bills have been introduced since then to extend the date. A §245(i) extension bill (which would have extended the filing deadline to the earlier of April 30, 2002, or the date that was 120 days after the promulgation of final regulations) was on the verge of being enacted on September 11, 2001, but the events of that day precluded congressional action and subsequent efforts to enact such legislation failed.⁴² More recently, those who favor giving immigration relief to unauthorized immigrants have looked toward broader legalization strategies, as discussed below.

Registry Eligibility Date Extension

At present, acquisition of legal permanent residence through the INA registry provision requires continuous residence in the United States since before January 1, 1972. The 1972 date was put in place by IRCA. Multiple bills to advance the registry date were introduced in past Congresses. Some of these bills proposed to institute a “rolling registry date” system, in which the registry date would have advanced in one-year increments in each of a specified number of years. None of these registry bills saw any action beyond committee referral.⁴³ This approach to obtaining legal status, like a §245(i) extension, is not currently a focus of attention among legalization advocates.

Establishing New Mechanisms: Targeted Population

Two sets of immigration bills containing legalization programs for two different segments of the unauthorized population have been regularly introduced in recent Congresses. One set of bills would authorize a legalization program for certain agricultural workers. Another set of bills, known as the DREAM Act, would enable certain unauthorized immigrants who arrived in the United States as children (often described as students) to become LPRs. There has been ongoing debate among supporters of legalization in recent years as to whether it is advisable to pursue an

⁴² A §245(i) extension bill, H.R. 1885 in the 107th Congress, passed the Senate on September 6, 2001. The House was scheduled to consider H.R. 1885, as passed by the Senate, under suspension of the rules on September 11, 2001. See archived CRS Report RL31373, *Immigration: Adjustment to Permanent Resident Status Under Section 245(i)*.

⁴³ See archived CRS Report RL30578, *Immigration: Registry as Means of Obtaining Lawful Permanent Residence*.

incremental approach and try to enact measures to grant legal status to certain segments of the unauthorized population, such as agricultural workers and students, as stepping stones to a broader legalization, or whether the better strategy is to press for these more limited legalization programs only as part of one larger package.

Agricultural Worker Bills

Since the late 1990s, major immigration legislation has been regularly introduced in Congress that would help make legal agricultural workers more readily available to U.S. employers. Such legislation has often combined a reform of the existing H-2A temporary agricultural worker program with a legalization program for certain agricultural workers in the United States. Beginning in the 108th Congress, major immigration legislation combining H-2A reform and agricultural worker legalization was known as the Agricultural Job Opportunities, Benefits, and Security Act, or AgJOBS. AgJOBS was regularly introduced in Congress as stand-alone legislation and was a standard feature of comprehensive immigration reform bills in past Congresses.⁴⁴

More recently, there has been a move away from the AgJOBS formulation with its H-2A reform component. Instead, Senate and House bills on foreign temporary agricultural workers in the 113th Congress would combine establishment of new temporary agricultural worker visas with provisions to enable certain unauthorized aliens to obtain legal temporary or permanent immigration status in the United States. The agricultural worker provisions in S. 744, as passed by the Senate, would establish a two-stage legalization program, through which farm workers who had performed a requisite amount of agricultural work in past years and who satisfy other requirements could obtain a temporary resident status, termed “blue card” status. After performing additional agricultural work and meeting other requirements, these workers could apply for LPR status.⁴⁵ An alternative proposal in the House, the Agricultural Guestworker Act (H.R. 1773), as ordered to be reported by the House Judiciary Committee, would allow certain unauthorized aliens to obtain legal temporary status under a new agricultural worker visa program.⁴⁶

DREAM Act Bills

The Development, Relief, and Education for Alien Minors Act, or DREAM Act, has been regularly introduced in recent Congresses. In the 111th Congress, the House approved DREAM Act language as part of another bill.⁴⁷ DREAM Act legislation, which sometimes carries a different name, would enable eligible unauthorized students to adjust to LPR status in the United States through cancellation of removal (see “Cancellation of Removal”). While in legalizing its

⁴⁴ Major immigration bills with AgJOBS titles included the Comprehensive Immigration Reform Act of 2006 (S. 2611), as passed by the Senate in the 109th Congress, and the Comprehensive Immigration Reform Act of 2011 (S. 1258), as introduced in the 112th Congress. A stand-alone AgJOBS bill has not been introduced in the 113th Congress.

⁴⁵ The agricultural worker legalization program in S. 744 is similar in some respects to the legalization provisions included in recent AgJOBS bills.

⁴⁶ See CRS Report R43161, *Agricultural Guest Workers: Legislative Activity in the 113th Congress*.

⁴⁷ In December 2010, the House approved a DREAM Act amendment to an unrelated bill (H.R. 5281). The Senate failed, on a 55-41 vote, to invoke cloture on a motion to agree to the House-passed DREAM Act amendment, and H.R. 5281 died at the end of the Congress. See CRS Report RL33863, *Unauthorized Alien Students: Issues and “DREAM Act” Legislation*.

target population through the cancellation of removal procedure the DREAM Act is arguably using an existing mechanism under immigration law, the legislation is also effectively creating a new legalization program with a tailored set of procedures and requirements. An alien granted cancellation of removal under the DREAM Act would be adjusted initially to a *conditional* legal status. To have the condition removed and become a full-fledged LPR under standard versions of the DREAM Act, the alien would have to meet additional requirements.⁴⁸

Establishing New Mechanisms: General Population

In 2005 and 2006, during the 109th Congress, and in 2013, during the 113th Congress, immigration reform took center stage. In the 109th Congress, these efforts led to passage of major immigration bills in the Senate and the House. The bill passed by the Senate (S. 2611) contained a new general legalization program. The House-passed bill (H.R. 4437) contained no such provisions, and the two bills were never reconciled. In 2013, the Senate again passed a major immigration bill (S. 744) that included a general legalization program.

The large-scale mechanisms to grant legal (or quasi-legal) status to unauthorized immigrants that were included in bills introduced in the 109th Congress and in subsequent Congresses took different forms. These various proposals can be seen as striking different balances between the granting of relief to unauthorized aliens on the one hand and the imposition of requirements, such as penalties and wait times (in consideration of the aliens' unlawful status and of other aliens' lawful pursuit of legal status), on the other.

To Obtain LPR Status

A number of proposals have been put forward in recent years to grant LPR status to a significant portion of the unauthorized population. Under these various proposals, applicants typically must meet a set of requirements in order to, as it is sometimes termed, “get right with the law” and “earn” relief. Continuous physical presence requirements and work requirements are common, and applicants often must pay fines. Other requirements may include payment of federal income taxes and demonstration of basic citizenship skills. These proposals also commonly include a “back of the line” provision, which would require eligible aliens to wait to adjust to LPR status. The waiting period is often pegged to when visas become available for aliens whose permanent employment-based or family-based petitions were filed under current law prior to enactment of the legalization program, and is also sometimes defined as a minimum number of years. Under these legalization proposals, adjustments of status are typically not subject to any existing INA numerical limitations.

New mechanisms for adjustment to LPR status have taken different forms. For example, S. 2611, as passed by the Senate in the 109th Congress, proposed to establish a one-stage legalization program for eligible aliens. More recent comprehensive immigration bills, including Senate-passed S. 744 in the 113th Congress, have often included two-stage legalization programs, in which eligible aliens first apply for some type of temporary status and then apply to adjust to LPR status. At each stage, applicants must meet a set of requirements.⁴⁹ Under some two-stage

⁴⁸ No stand-alone DREAM Act bills have been introduced in the 113th Congress as of this writing, although related provisions are included in S. 744, as passed by the Senate. See CRS Report RL33863, *Unauthorized Alien Students: Issues and “DREAM Act” Legislation*.

⁴⁹ For a discussion of the legalization provisions in S. 744, see CRS Report R43097, *Comprehensive Immigration* (continued...)

legalization proposals, unauthorized aliens would apply for temporary guest worker status in the first stage and then could apply to adjust to LPR status in the second stage.⁵⁰ Another version of a two-stage legalization mechanism would have aliens first apply for temporary legal status, and then apply to adjust to LPR status under current law, as opposed to through a special legalization program.⁵¹

To Obtain Temporary Residence and Other Statuses

Another category of proposals has sought to provide relief to unauthorized immigrants in the United States without providing them a pathway to LPR status. One subset of these proposals would create mechanisms for unauthorized aliens to obtain nonimmigrant status, in some cases as temporary workers. Some of these proposals would place a limit on the number of years an alien could be in the nonimmigrant status, while others would allow aliens to remain in the nonimmigrant status indefinitely, provided that they continued to meet the applicable requirements.⁵²

A second subset of proposals would enable eligible unauthorized immigrants to remain in the United States for a certain period of time but would not grant them an established legal immigration status. Instead they would be granted a type of “quasi-legal” status that would enable them to remain in the United States temporarily. One type of “quasi-legal” status that was proposed for unauthorized aliens in past Congresses was termed Deferred Mandatory Departure (DMD) status. Under one concept of DMD status, this status would be granted for a limited period of time to unauthorized aliens who meet a set of requirements to enable the aliens to leave the United States and to seek legal admission as nonimmigrant or immigrant aliens from abroad. The aliens would not receive any special consideration for that admission, but, if they complied with the terms of DMD status and departed prior to its expiration date, they would not be subject to the ground of inadmissibility discussed above that bars previously unlawfully present aliens from being admitted to the United States for 3 or 10 years. Aliens in DMD status who did not depart prior to the expiration of that status would have been ineligible for immigration benefits or relief.⁵³

(...continued)

Reform in the 113th Congress: Major Provisions in Senate-Passed S. 744.

⁵⁰ See, for example, the Secure America and Orderly Immigration Act (S. 1033), as introduced in the 109th Congress.

⁵¹ See, for example, S. 1639 in the 110th Congress. This bill would have established a new nonimmigrant category (Z category) for aliens in the United States who met specified requirements. To obtain LPR status, Z nonimmigrants would have needed to file an immigrant petition through a revised employment-based immigration system. This system would have been a multi-tiered point system and would have had a tier for merit-based immigrants with points allotted based on four factors: employment, education, English and civics, and family relationships.

⁵² See, for example, the Alien Accountability Act of 2003 (H.R. 3651), as introduced in the 108th Congress, and the Temporary Worker Registration and Visa Act of 2005 (H.R. 4065), as introduced in the 109th Congress.

⁵³ This concept of DMD status was proposed in the Comprehensive Enforcement and Immigration Reform Act of 2005 (S. 1438), as introduced in the 109th Congress. Provisions establishing different versions of DMD status were included in S. 2611, as passed by the Senate in the 109th Congress, and in the Comprehensive Immigration Reform Act of 2007 (S. 1348), as introduced in the 110th Congress. Under these latter bills, aliens who had been present and employed in the United States for a specified period and met other requirements, but who were unable to meet the presence and employment requirements for adjustment to LPR status, would have been eligible for DMD status.

Conclusion

How to address the unauthorized immigrant population remains a key point of disagreement in discussions about immigration reform legislation. Senate-passed S. 744 would enable potentially very large numbers of unauthorized resident aliens to obtain LPR status through new general and targeted legalization programs. It remains to be seen in the current environment if agreement can be reached on the unauthorized immigrant issue—whether on a legalization-focused strategy that involves establishing new adjustment of status mechanisms and/or amending current law, or on a primarily departure-based approach, or on some combination of the two.

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