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# Unauthorized Aliens in the United States

Andorra Bruno

*Congressional Research Service*

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# Unauthorized Aliens in the United States

## **Abstract**

[Excerpt] The unauthorized alien (illegal alien) population in the United States is a key and controversial immigration issue. In recent years, competing views on how to address this population have proved to be a major obstacle to enacting comprehensive immigration reform legislation. The unauthorized alien issue is likely to be a key challenge if, as the Senate Majority Leader and the Speaker of the House have indicated, the 111th Congress takes up immigration reform legislation this year.

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. These estimates can help inform possible policy options to address the unauthorized alien population. According to recent estimates by the Department of Homeland Security (DHS), approximately 10.8 million unauthorized aliens were living in the United States in January 2009. Using different sources, the Pew Hispanic Center has estimated the March 2008 unauthorized resident population at about 11.9 million.

The Immigration and Nationality Act (INA) and other federal laws place various restrictions on unauthorized aliens. 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 alien 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 illegal aliens 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 alien population by across-the-board enforcement of immigration laws.

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 aliens 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. 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.

This report will be updated if developments warrant.

## **Keywords**

immigration, illegal aliens, United States, reform, legislation, Congress, public policy

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**Comments**

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# Unauthorized Aliens in the United States

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## Summary

The unauthorized alien (illegal alien) population in the United States is a key and controversial immigration issue. In recent years, competing views on how to address this population have proved to be a major obstacle to enacting comprehensive immigration reform legislation. The unauthorized alien issue is likely to be a key challenge if, as the Senate Majority Leader and the Speaker of the House have indicated, the 111<sup>th</sup> Congress takes up immigration reform legislation this year.

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. These estimates can help inform possible policy options to address the unauthorized alien population. According to recent estimates by the Department of Homeland Security (DHS), approximately 10.8 million unauthorized aliens were living in the United States in January 2009. Using different sources, the Pew Hispanic Center has estimated the March 2008 unauthorized resident population at about 11.9 million.

The Immigration and Nationality Act (INA) and other federal laws place various restrictions on unauthorized aliens. 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 alien 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 illegal aliens 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 alien population by across-the-board enforcement of immigration laws.

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 aliens 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. 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.

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## Introduction

The unauthorized alien (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 the 109<sup>th</sup> and 110<sup>th</sup> Congresses. The unauthorized alien issue is likely to be a key challenge if, as the Senate Majority Leader and the Speaker of the House have indicated, the 111<sup>th</sup> Congress takes up immigration reform legislation this year.

The Department of Homeland Security (DHS) has primary responsibility for administering and enforcing the Immigration and Nationality Act (INA),<sup>1</sup> 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 aliens 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.<sup>2</sup>

According to recent estimates by DHS based on data from the Census Bureau's American Community Survey and other sources, the unauthorized resident alien population totaled 11.6 million in January 2008 and 10.8 million in January 2009.<sup>3</sup> Using data from the March Current Population Survey<sup>4</sup> and other sources, the Pew Hispanic Center has estimated the unauthorized resident population at 11.9 million for March 2008.<sup>5</sup> In the case of both DHS and the Pew Hispanic Center, the 2008 and 2009 estimates are less than the corresponding estimates for 2007

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<sup>1</sup> 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.

<sup>2</sup> See CRS Report RL33874, *Unauthorized Aliens Residing in the United States: Estimates Since 1986*, by Ruth Ellen Wasem (hereafter cited as CRS Report RL33874).

<sup>3</sup> U.S. Department of Homeland Security, Office of Immigration Statistics, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2008*, by Michael Hoefer, Nancy Rytina, and Bryan C. Baker, September 2009; U.S. Department of Homeland Security, Office of Immigration Statistics, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2009*, by Michael Hoefer, Nancy Rytina, and Bryan C. Baker, January 2010 (hereafter cited as DHS, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2009*). Note: Included in these unauthorized alien estimates are 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).

<sup>4</sup> The Current Population Survey is conducted jointly by the Census Bureau and the Department of Labor's Bureau of Labor Statistics.

<sup>5</sup> Jeffrey S. Passel and D'Vera Cohn, *Trends in Unauthorized Immigration: Undocumented Inflow Now Trails Legal Inflow*, Pew Hispanic Center, October 2, 2008 (hereafter cited as Passel and Cohn, Pew Hispanic Center, *Trends in Unauthorized Immigration*). Note: Included in these unauthorized alien estimates are 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).

(11.8 million by DHS and 12.4 million by Pew).<sup>6</sup> These estimates have spurred analysis and speculation about whether the unauthorized resident population is, in fact, decreasing in size and, if it is, what factors are responsible for the decline.<sup>7</sup> Whether or not the unauthorized resident alien population is declining, however, this population remains sizeable.

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 aliens 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).<sup>8</sup>

## Demographics of Unauthorized Population

Recent reports issued by DHS's Office of Immigration Statistics and the Pew Hispanic Center analyze the U.S. unauthorized resident alien population in January 2009 and March 2008, respectively, providing useful context for a discussion of possible policy options.

### Period of Arrival

**Table 1** breaks down the unauthorized resident alien population in the United States in 2008 and 2009 by period of arrival based on separate data analyses by DHS and the Pew Hispanic Center. It shows that under the DHS analysis, about one quarter (28%) of the total unauthorized alien population in January 2009 entered the United States in the 2000-2004 period and about one third (36%) of the 2009 unauthorized population arrived in or after the year 2000. The Pew Hispanic Center analysis finds that about one third (31%) of the total unauthorized alien population in March 2008 entered the United States in the 2000-2004 period and that almost half (44%) of the March 2008 unauthorized population arrived in the 2000-2008 years. As discussed below, these data are important for estimating potential numbers of beneficiaries under possible legalization programs, which typically have eligibility cut-off dates.

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<sup>6</sup> For estimates for earlier years, see CRS Report RL33874.

<sup>7</sup> See, for example, Julia Preston, "Decline Seen In Numbers of People Here Illegally," *New York Times*, July 31, 2008, p. A14. This article discusses various explanations that have been offered for the apparent decline in the unauthorized resident population, including increased immigration enforcement and a weakened economy.

<sup>8</sup> 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 I. U.S. Unauthorized Alien Population, by Period of Arrival**

Period of Arrival	Department of Homeland Security		Pew Hispanic Center	
	Number of Unauthorized Aliens (in millions)	Percentage of January 2009 Unauthorized Population	Number of Unauthorized Aliens (in millions)	Percentage of March 2008 Unauthorized Population
1980-1989	2.1	19%	1.6	13%
1990-1994	1.7	16%	2.0	16%
1995-1999	3.1	29%	3.1	26%
2000-2004	3.0	28%	3.7	31%
2005-2008	0.9	8%	1.6	13%
<b>Total</b>	<b>10.8</b>	<b>100%</b>	<b>11.9</b>	<b>100%</b>

**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 2009*, by Michael Hoefler, Nancy Rytina, and Bryan C. Baker, January 2010; and Jeffrey S. Passel and D'Vera Cohn, *Trends in Unauthorized Immigration: Undocumented Inflow Now Trails Legal Inflow*, Pew Hispanic Center, October 2, 2008.

**Notes:** Table contains estimates of aliens who were unauthorized in 2008 and 2009; these aliens may or may not have been unauthorized at the time of their arrival. These analyses assume that all aliens who arrived in the United States before 1980 had legal status in 2008/2009. Details may not sum to total due to rounding.

## Region of Birth

Mexico has historically been the greatest source country for unauthorized migration to the United States. According to DHS, there were an estimated 6.7 million unauthorized aliens from Mexico residing in the United States in early 2009, representing 62% of the total unauthorized resident population at the time. DHS further estimates that there were 8.5 million unauthorized aliens living in the United States in 2009 from North America, which includes Mexico as well as Canada, the Caribbean, and Central America (79% of the total). According to the DHS analysis, South America accounted for 0.7 million unauthorized aliens in 2009, yielding a combined North America and South America total of 9.2 million (85% of the total unauthorized resident population). Asia accounted for an additional 1.0 million unauthorized aliens.<sup>9</sup>

The Pew Hispanic Center's region of birth estimates are similar to DHS's, although the regions used in that analysis are somewhat different. According to the Pew Hispanic Center, there were an estimated 7.0 million unauthorized aliens from Mexico residing in the United States in March 2008, representing 59% of the total unauthorized resident population at the time. In addition, the Pew Hispanic Center estimates that 1.4 million unauthorized resident aliens in 2008 were from Central America, 0.5 million were from the Caribbean, and 0.8 million were from South America, yielding an estimate of 8.9 million (75% of the total) for North America (excluding Canada) and an estimate of 9.7 million (82% of the total unauthorized resident population) for North America and South America (excluding Canada). Another 1.3 million unauthorized aliens were from South and East Asia, according to the Pew Hispanic Center.<sup>10</sup>

<sup>9</sup> DHS, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2009*.

<sup>10</sup> Jeffrey S. Passel and D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, Pew Hispanic Center, April 14, 2009 (hereafter cited as Passel and Cohn, Pew Hispanic Center, *A Portrait of Unauthorized* (continued...))

## States of Residence

**Table 2** provides state-level unauthorized alien estimates for the top nine states of residence of unauthorized aliens for January 2009 and March 2008, as respectively identified by DHS and the Pew Hispanic Center. As shown, California is home to more unauthorized aliens than any other state. DHS and the Pew Hispanic Center estimate that about one quarter of the U.S. unauthorized alien population in January 2009 and March 2008, respectively, was living in California. DHS and the Pew Hispanic Center also identify the same next three top states of residence for unauthorized aliens (in order from highest to lowest unauthorized population: Texas, Florida, and New York). Beginning with the fifth top state, the DHS and Pew Hispanic Center analyses diverge in terms of state order.

**Table 2** indicates that under both the DHS and Pew Hispanic Center analyses, the top nine states housed almost three-quarters of the total unauthorized resident alien population. 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.<sup>11</sup> The **Appendix** contains Pew Hispanic Center unauthorized alien estimates for March 2008 for all states.

**Table 2. Unauthorized Alien Population in Top Nine States of Residence**

State	Department of Homeland Security			Pew Hispanic Center		
	State Ranking	Number of Aliens (in thousands)	Percentage of January 2009 Unauthorized Population	State Ranking	Number of Aliens (in thousands)	Percentage of March 2008 Unauthorized Population
California	1	2,600	24%	1	2,700	23%
Texas	2	1,680	16%	2	1,450	12%
Florida	3	720	7%	3	1,050	9%
New York	4	550	5%	4	925	8%
Illinois	5	540	5%	8	450	4%
Georgia	6	480	4%	7	475	4%
Arizona	7	460	4%	6	500	4%
North Carolina	8	370	3%	9	350	3%
New Jersey	9	360	3%	5	550	5%
<b>Total</b>		<b>7,760</b>	<b>72%</b>		<b>8,450</b>	<b>71%</b>

**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 2009*, by Michael Hoefer, Nancy Rytina, and Bryan C. Baker, January 2010; and Jeffrey S. Passel and D'Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, Pew Hispanic Center, April 14, 2009.

**Notes:** Details may not sum to total due to rounding.

(...continued)

*Immigrants in the United States*). For a comparison of region of birth data for 1986 and 2008, see RL33874. For a comparison of region of birth data for 2000 and 2009, see DHS, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2009*, p. 4.

<sup>11</sup> For a comparison of state of residence data for 2000 and 2009, see DHS, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2009*, pp. 4-5.

## Demographic and Family Characteristics

DHS and Pew Hispanic Center demographers analyzed the gender and age of unauthorized aliens living in the United States in January 2009 and March 2008, respectively.<sup>12</sup> According to DHS, its estimated January 2009 unauthorized alien population of 10.8 million consisted of 9.4 million adults and 1.3 million children under age 18. Among the adults, 5.5 million were men and 4.0 million were women.<sup>13</sup> According to the Pew Hispanic Center, its March 2008 estimate of 11.9 unauthorized residents was composed of 10.4 million unauthorized adults and 1.5 million unauthorized children. The Pew Hispanic Center estimates that men accounted for 6.3 million of the adult total and women accounted for 4.1 million.

With respect to age, the DHS analysis found that a majority of unauthorized aliens were between the ages of 25 and 44. About 61% of all unauthorized aliens living in the United States in January 2009 were in this age group, according to DHS. The Pew Hispanic Center reports that men in the 18-39 age group accounted for about one-third (35%) of the unauthorized alien population as a whole. These demographic data have implications for labor force participation, which is discussed in the next section.

The Pew Hispanic Center analyzed the living arrangements of unauthorized aliens in the United States in March 2008. It reports that 6.7 million adult unauthorized aliens in 2008 (64% of the adult total) lived with a spouse or unmarried partner. Most of these adults (4.3 million) also lived with their minor children. According to the Pew Hispanic Center, almost half of all adult unauthorized aliens in 2008 (48%) lived with their minor children.

Children of unauthorized aliens may be unauthorized aliens themselves or may have legal status. The Pew Hispanic Center estimates that there were 5.5 million children in the United States in 2008 who had at least one unauthorized alien parent. As noted above, 1.5 million of these children were unauthorized aliens. According to the Pew Hispanic Center analysis, the remaining 4.0 million children were born in the United States and, thus, were U.S. citizens.

The Pew Hispanic Center 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 reports that there were 8.8 million people living in mixed-status families in the United States in 2008. Among these 8.8 million were 3.8 million unauthorized adults, 0.5 million unauthorized children, and 4.0 million U.S. citizen children.

These data on demographic and family characteristics of unauthorized aliens may be useful to consider in devising strategies to address the current unauthorized alien 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.

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<sup>12</sup> DHS, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2009*; Passel and Cohn, Pew Hispanic Center, *A Portrait of Unauthorized Immigrants in the United States*.

<sup>13</sup> Details do not sum due to rounding.

## **Labor Force Participation**

Given the age distribution of unauthorized aliens (discussed above), among other factors, it is not surprising that the labor force participation rate of unauthorized aliens is high. The Pew Hispanic Center estimates that there were 8.3 million unauthorized aliens in the labor force in 2008, representing four of every five unauthorized adults in the United States that year. These unauthorized workers accounted for 5% of the civilian labor force. The labor force participation rate was considerably higher for unauthorized men than for unauthorized women. According to the Pew Hispanic Center, 94% of unauthorized men between the ages of 18 and 64 were in the labor force in 2008, compared to 58% of unauthorized women in the same age group.

The Pew Hispanic Center further analyzed the type of work performed by unauthorized aliens and found that unauthorized workers were concentrated in low-skilled jobs. According to the Center, two-thirds of unauthorized alien laborers in 2008 were service workers (30%); construction and extraction workers (21%); or production, installation, and repair workers (15%). The Pew Hispanic Center analysis also considered the representation of unauthorized aliens in occupations and industries among all workers in civilian labor force. It found that unauthorized aliens represented well over their 5% share of the civilian workforce in certain occupations. For example, unauthorized workers accounted for 25% of farm workers; 19% of building, groundskeeping, and maintenance workers; and 17% of construction workers.<sup>14</sup>

The high levels of labor force participation by unauthorized aliens have historically been taken into account in devising ways to address the issue of unauthorized immigration. For example, as discussed below, some strategies have focused on preventing unauthorized aliens 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 aliens 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.

## **Current Law**

The Immigration and Nationality Act and other federal laws place various restrictions on unauthorized aliens. Selected provisions related to unauthorized aliens are described below. These provisions sometimes distinguish between those unauthorized aliens 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.

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<sup>14</sup> Passel and Cohn, Pew Hispanic Center, *A Portrait of Unauthorized Immigrants in the United States*.

## 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, as discussed below, 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.

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,<sup>15</sup> 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 (discussed below) that enable certain unauthorized aliens to adjust status, that is, obtain LPR status without leaving the United States (and thus never triggering the bars).<sup>16</sup>

### Removal

INA §237(a) sets forth grounds for deportation from the United States. These are the companion provisions to the §212(a) inadmissibility provisions discussed above. INA §237(a)(1) generally makes unauthorized aliens deportable (subject to removal). It states that aliens who are present in

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<sup>15</sup> 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.

<sup>16</sup> For further discussion of inadmissibility, see CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*, by Ruth Ellen Wasem.

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.<sup>17</sup> 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 to complete and retain I-9 verification forms. They also may elect to participate in the E-Verify electronic employment eligibility verification system. Employers violating prohibitions on unlawful employment may be subject to civil and/or criminal penalties. Enforcement of these provisions is termed “worksites enforcement.” Because of the prevalence of fraudulent documents and other factors, however, an estimated 8.3 million unauthorized workers were in the labor force in 2008, as noted above.<sup>18</sup>

## **Other Restrictions**

Laws other than the INA also place restrictions on unauthorized aliens. Particularly notable is the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996.<sup>19</sup> Section

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<sup>17</sup> 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.

<sup>18</sup> For further information, see CRS Report RL33973, *Unauthorized Employment in the United States: Issues, Options, and Legislation*, by Andorra Bruno.

<sup>19</sup> P.L. 104-193, August 22, 1996.

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.<sup>20</sup>

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 programs delivering in-kind services necessary for the protection of life or safety, such as soup kitchens and crisis counseling.<sup>21</sup>

Another law that indirectly places restrictions on unauthorized aliens is the REAL ID Act of 2005.<sup>22</sup> The REAL ID Act sets forth minimum document requirements and issuance standards for state-issued driver’s licenses and personal identification cards that must be met in order for such state-issued documents to be recognized by federal agencies for official purposes. The issuance standards appear to require states to verify an applicant’s legal immigration status before issuing a driver’s license or personal identification card.<sup>23</sup>

## **Relief for Unauthorized Aliens**

At the same time that the INA places restrictions on unauthorized aliens, it provides limited avenues for certain unauthorized aliens 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, however, 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.

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<sup>20</sup> P.L. 104-193, §401(c)(1)(A), (B).

<sup>21</sup> For further discussion, see CRS Report RL34500, *Unauthorized Aliens’ Access to Federal Benefits: Policy and Issues*, by Ruth Ellen Wasem.

<sup>22</sup> P.L. 109-13, Division B, May 11, 2005. See CRS Report RL34430, *The REAL ID Act of 2005: Legal, Regulatory, and Implementation Issues*, by Todd B. Tatelman (hereafter cited as CRS Report RL34430).

<sup>23</sup> P.L. 109-13, Division B, §202(c)(2)(B). See CRS Report RL34430, p. 3.

## **Adjustment of Status**

INA §245 enables certain aliens, including 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.<sup>24</sup>

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 he or she is in unlawful immigration status on the date of filing the adjustment of status application, or if he or she 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.<sup>25</sup> Thus, as a means for unauthorized aliens to obtain legal permanent 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 aliens 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.<sup>26</sup> 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, as discussed above. 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, however, 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 political opinion and must meet other requirements. If asylum is granted, the

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<sup>24</sup> For a discussion of the permanent immigration system, see CRS Report RL32235, *U.S. Immigration Policy on Permanent Admissions*, by Ruth Ellen Wasem.

<sup>25</sup> See archived CRS Report RL31373, *Immigration: Adjustment to Permanent Resident Status Under Section 245(i)*, by Andorra Bruno (hereafter cited as archived CRS Report RL31373).

<sup>26</sup> See archived CRS Report RL30578, *Immigration: Registry as Means of Obtaining Lawful Permanent Residence*, by Andorra Bruno (hereafter cited as archived CRS Report RL30578).

alien may remain legally in the United States and, after one year, may apply to adjust to LPR status.

## Policy Options

Over the years, a range of options has been offered for addressing the unauthorized resident alien population.<sup>27</sup> 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 aliens.

### Departure of Unauthorized Aliens

Current law, as explained above, places various restrictions on unauthorized aliens. They 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 aliens are in the United States in violation of the law and that their presence variously threatens social order, national security, and economic prosperity.

### 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 removals of aliens from the United States for FY2004 through FY2008. It includes both expedited and non-expedited removals. Under current policies, removals of unauthorized resident aliens are non-expedited removals. As shown in **Table 3**, there were 245,424 non-expedited removals in FY2008. These removal proceedings are typically conducted before an immigration judge, whose decision can be appealed to the Board of Immigration Appeals (BIA). More streamlined expedited removal procedures, by contrast, may 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.<sup>28</sup>

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<sup>27</sup> 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.

<sup>28</sup> See CRS Report RL33109, *Immigration Policy on Expedited Removal of Aliens*, by Alison Siskin and Ruth Ellen Wasem.

**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	245,424	113,462	358,886

**Source:** CRS Presentation of data from U.S. Department of Homeland Security, Office of Immigration Statistics, *Immigration Enforcement Actions: 2008, July 2009*.

As **Table 3** illustrates, non-expedited removals increased by about 30% between FY2004 and FY2008. In FY2008, however, non-expedited removals accounted for less than 1% of the estimated 12 million unauthorized aliens in the United States at the time.

The option of removing some 12 million resident unauthorized aliens 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.<sup>29</sup>

### Attrition Through Enforcement

Because of the high cost of removing unauthorized aliens, among other considerations, some who favor the departure of unauthorized aliens from the United States advocate an alternative approach, known as attrition through enforcement. 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.

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.<sup>30</sup>

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.<sup>31</sup> Increased ICE enforcement of INA prohibitions on

<sup>29</sup> U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, *Nomination of Hon. Julie L. Myers*, hearing, 110<sup>th</sup> Cong., 1<sup>st</sup> sess., September 12, 2007 (Washington: GPO, 2008), p. 11.

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

<sup>31</sup> *Ibid.* In June 2008, President George W. Bush issued an executive order to require federal contractors to conduct (continued...)

unlawful employment represents another way to address unauthorized employment by current workers.

Multiple bills have been introduced in recent Congresses to address unlawful employment.<sup>32</sup> Many of these bills would phase in a requirement for all employers to participate in E-Verify or another electronic employment eligibility verification system. Some of the bills would go beyond the current E-Verify requirement to conduct verification in cases of hiring and in certain cases of referral or recruitment, to also require the verification of current employees. For example, the Secure America Through Verification and Enforcement Act of 2009 (SAVE Act; H.R. 3308), as introduced in the 111<sup>th</sup> Congress, would make E-Verify permanent and would phase in a requirement that all employers use it to verify the employment authorization of new hires and current employees. A similar bill of the same name (S. 1505) has been introduced in the Senate. A provision to permit—but not require—employers participating in E-Verify to verify the employment eligibility of existing employees was included in the Senate-passed version of the FY2010 Department of Homeland Security Appropriations Act, 2010 (H.R. 2892), but this provision was not retained in the final enacted version.<sup>33</sup>

Other possible elements of an attrition through enforcement strategy include the following, as identified by Jessica Vaughan in a 2006 CIS report: “measures to curb misuse of Social Security and IRS identification numbers; partnerships with state and local law enforcement officials; expanded entry-exit recording under US-VISIT [U.S. Visitor and Immigrant Status Indicator Technology automated entry and exit data system]; increased non-criminal removals; and state and local laws to discourage illegal settlement.”<sup>34</sup> Among the related bills in the 111<sup>th</sup> Congress, H.R. 3308 and S. 1505 include provisions that would authorize appropriations for additional ICE agents and would direct DHS to expand training of state and local law enforcement officers in federal immigration enforcement. The Illegal Immigration Enforcement and Social Security Protection Act of 2009 (H.R. 98) would, among other provisions, require Social Security cards to contain an encrypted machine-readable electronic identification strip unique to the bearer.

## 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 aliens 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. In the current economic climate, some who

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(...continued)

electronic employment eligibility verification. A final rule to implement the executive order became applicable on September 8, 2009. The rule requires covered federal contracts to contain a new clause committing contractors to use E-Verify “to verify that all of the contractors’ new hires, and all employees (existing and new) directly performing work under Federal contracts, are authorized to work in the United States.”

<sup>32</sup> See CRS Report R40848, *Immigration Legislation and Issues in the 111<sup>th</sup> Congress*, coordinated by Andorra Bruno, and archived CRS Report RL34204, *Immigration Legislation and Issues in the 110<sup>th</sup> Congress*, coordinated by Andorra Bruno.

<sup>33</sup> The final version is P.L. 111-83, October 28, 2009.

<sup>34</sup> 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>.

support granting legal status to unauthorized aliens have argued for legalization as a way to generate increases in wages and spending and generally promote economic recovery.<sup>35</sup>

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 aliens; 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 are similar in some respects to the general legalization program enacted as part of the Immigration Reform and Control Act (IRCA) of 1986.<sup>36</sup> 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 earned adjustment is that the unauthorized alien “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 aliens 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 and the INA registry provision, discussed above.

### ***Section 245(i) Eligibility Date Extension***

Under current law, as discussed above, 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

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<sup>35</sup> 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, 111<sup>th</sup> Cong., 1<sup>st</sup> sess., April 30, 2009, <http://www.migrationpolicy.org/pubs/Testimony-04-30-2009.pdf>.

<sup>36</sup> 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.

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.<sup>37</sup> More recently, those who favor giving immigration relief to unauthorized aliens have looked increasingly toward broader legalization strategies, as discussed below.

### ***Registry Eligibility Date Extension***

At present, acquisition of legal permanent residence through the INA registry provision, as explained above, 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 the 106<sup>th</sup> and 107<sup>th</sup> 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.<sup>38</sup> Bills to advance the registry date continue to be introduced, but this approach to obtaining legal status, like a Section 245(i) extension, is no longer 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 the past several Congresses. One set of bills, known as AgJOBS, would authorize a legalization program for certain agricultural workers. Another set of bills, known as the DREAM Act, would enable certain unauthorized alien 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 incremental approach and try to enact historically popular measures, such as AgJOBS and the DREAM Act, 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.

### ***AgJOBS 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. A proposal containing H-2A reform and legalization provisions was the subject of serious negotiations in 2000 but was never enacted. Since the 108<sup>th</sup> Congress, major immigration legislation combining H-2A reform and agricultural worker legalization has been known as the Agricultural Job Opportunities, Benefits, and Security Act, or AgJOBS. In addition to stand-alone AgJOBS bills, AgJOBS titles have been included in recent comprehensive immigration bills, including the bill (S. 2611) passed by the Senate during the 109<sup>th</sup> Congress.

Similar House and Senate AgJOBS bills in the 111<sup>th</sup> Congress (H.R. 2414, S. 1038), like their predecessors, include a two-stage legalization program for agricultural workers. Under both bills,

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<sup>37</sup> See archived CRS Report RL31373.

<sup>38</sup> See archived CRS Report RL30578.

the Secretary of DHS would grant “blue card status” to an alien worker who had performed a requisite amount of work during 2007 and 2008 and meets other requirements. No more than 1,350,000 blue cards could be issued during the five-year period after enactment. To be eligible to adjust to LPR status, an alien in blue card status would have to meet a set of requirements, including performing additional agricultural work for three to five years. Spouses and children of aliens granted blue card status and LPR status would be eligible for the same status.<sup>39</sup>

### ***DREAM Act***

The DREAM Act has been introduced in every Congress since the 107<sup>th</sup> Congress. In the 110<sup>th</sup> Congress, the Senate considered, but failed to invoke cloture on, a DREAM Act bill. The versions of the DREAM Act that have been introduced in the 111<sup>th</sup> Congress (H.R. 1751, S. 729), like the DREAM Act bills introduced in prior Congresses, would enable eligible unauthorized students to adjust to LPR status in the United States through cancellation of removal (see above). While in legalizing its 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. To be eligible for cancellation of removal/adjustment of status under H.R. 1751 and S. 729, an alien would have to demonstrate, among other requirements, that he or she had been continuously physically present in the United States for at least five years, had not yet reached age 16 at the time of initial entry, and had been admitted to an institution of higher education in the United States or had earned a high school diploma or the equivalent in the United States.

Unlike under the existing INA cancellation of removal procedure, an alien granted cancellation of removal under H.R. 1751 and S. 729 would be adjusted initially to *conditional* permanent resident status. To have the condition removed and become a full-fledged LPR, the alien would have to meet additional requirements, including completing either at least two years in a bachelor’s or higher degree program in the United States or at least two years of service in the uniformed services. Under both bills, aliens could affirmatively apply for cancellation of removal without first being placed in removal proceedings.<sup>40</sup>

### **Establishing New Mechanisms: General Population**

In 2005 and 2006, during the 109<sup>th</sup> Congress, immigration reform took center stage, with both the House and Senate ultimately passing major immigration bills. The prospect of enacting a large-scale program to legalize unauthorized aliens led legalization advocates to shift their focus away from more limited efforts to update INA provisions or establish targeted legalization programs and toward broader reform proposals. The bill passed by the Senate in the 109<sup>th</sup> Congress (S. 2611) contained a new general legalization program, as discussed below. The House-passed bill (H.R. 4437) contained no such provisions, and the two bills were never reconciled.

The large-scale mechanisms to grant legal (or quasi-legal) status to unauthorized aliens that were included in bills introduced in the 109<sup>th</sup> Congress and in subsequent Congresses took different

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<sup>39</sup> For further information, see CRS Report RL32044, *Immigration: Policy Considerations Related to Guest Worker Programs*, by Andorra Bruno (hereafter cited as CRS Report RL32044).

<sup>40</sup> For further information, see CRS Report RL33863, *Unauthorized Alien Students: Issues and “DREAM Act” Legislation*, by Andorra Bruno.

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. In many cases, these proposed programs have been two-stage programs, in which the 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 in order to, as it is sometimes termed, "get right with the law" and "earn" relief, as discussed above. Work requirements are common at both stages, and applicants often must pay fines. Other requirements at the adjustment to LPR status stage may include payment of federal income taxes and demonstration of basic citizenship skills. These adjustments of status are typically not subject to any existing INA numerical limitations. H.R. 4321 in the 111<sup>th</sup> Congress, for example, proposes to establish a two-stage legalization program along these lines. Under some two-stage legalization proposals, such as the McCain-Kennedy bill introduced in the 109<sup>th</sup> Congress (S. 1033), 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.

S. 2611, as passed by the Senate in the 109<sup>th</sup> Congress, proposed to establish a new one-stage legalization mechanism for eligible aliens. Under this bill, the Secretary of DHS would have adjusted the status of an alien (and the alien's spouse and minor children) to LPR status if the alien filed an application establishing eligibility and paid a fine. The eligibility requirements included that the alien was physically present in the United States on or before April 5, 2001 (five years before the date of introduction of S. 2611), and was not legally present as a nonimmigrant on April 5, 2006. Among the other requirements, the alien would have had to establish employment for at least three years during the April 5, 2001-April 5, 2006, period and for at least six years after enactment, and would have had to establish payment of income taxes during these required employment periods. The alien also would have been subject to a citizenship skills requirement. S. 2611 included a "back of the line" provision, which would have required eligible aliens to wait to adjust to LPR status. The provision would have prohibited the Secretary of DHS from adjusting the status of aliens under the legalization program until visas became available for aliens whose permanent employment-based or family-based petitions had been filed by the date of enactment of S. 2611. Adjustments of status under the S. 2611 legalization program would not have been subject to numerical limits.

S. 1639, a major immigration reform bill considered in the Senate in the 110<sup>th</sup> Congress, took a different approach to enabling unauthorized aliens to obtain LPR status. This bill would have established a new nonimmigrant category (the Z category) for certain aliens in the United States. The Z classification would have covered aliens who had been continuously physically present in the United States since January 1, 2007 (the bill was introduced in June 2007), and were employed, and specified family members. To be eligible for Z status, an alien could not have been lawfully present in the United States as a nonimmigrant on January 1, 2007, or on the date of application for Z status. Aliens applying for Z status would have been subject to a penalty fee. The period of admission for a Z nonimmigrant would have been four years. Provided that he or she continued to be eligible for nonimmigrant status and met additional requirements, the alien could have sought an unlimited number of four-year extensions of the period of admission. There would have been no limitation on the number of aliens who could be granted Z status.

Under S. 1639, the Secretary of DHS could have adjusted the status of a Z nonimmigrant to LPR status if specified requirements were met. Unlike S. 2611 and many other reform proposals, however, S. 1639 did not propose to establish a separate adjustment of status program. Instead, it would have required Z nonimmigrants to file an immigrant petition through a revised employment-based immigration system. The revised 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. Z nonimmigrants applying to adjust status would have been eligible for additional points based on recent agricultural work experience, authorized U.S. employment experience, home ownership, and medical insurance.<sup>41</sup> To become an LPR, a Z nonimmigrant with an approved immigrant petition would have needed to file an adjustment of status application in person at a U.S. consulate abroad. S. 1639 also included a “back of the line” provision that would have prohibited a Z nonimmigrant from adjusting to LPR status until after immigrant visas became available for approved family-based or employment-based petitions filed before May 1, 2005.

### *To Obtain Temporary Residence and Other Statuses*

Other proposals have sought to provide relief to unauthorized aliens in the United States without providing them with a pathway to LPR status. Some, such as the Alien Accountability Act of 2003 and the Temporary Worker Registration and Visa Act of 2005, would have created mechanisms for unauthorized aliens to obtain nonimmigrant status, while others, such as the Comprehensive Enforcement and Immigration Reform Act of 2005, would have enabled unauthorized aliens to remain in the United States for a certain period of time but would not have granted them an established legal immigration status.

The Alien Accountability Act (H.R. 3651), introduced in the 108<sup>th</sup> Congress, would have required unauthorized aliens in the United States as of the bill’s date of introduction to register with DHS. Aliens who did so and met other eligibility requirements could have applied for a new “W” nonimmigrant visa for unauthorized aliens that the bill would authorize. Employment would not have been a strict requirement for W status, but the alien would have had to demonstrate an adequate means of financial support. The new category, which would not have been numerically limited, would have sunset six years after the first alien was granted W status. The initial period of authorized admission of a W nonimmigrant would have been one year and could have been renewed up to five times in one-year increments. H.R. 3651 would not have established a special mechanism for W nonimmigrants to adjust to LPR status, but would not have precluded them from doing so if they satisfied the applicable requirements under current law.

Under H.R. 3651, registered aliens who were not eligible for or did not apply for W status and who met other requirements would be given the opportunity to voluntarily depart from United States. If they did so in a timely fashion, the Secretary of DHS would disregard their unlawful presence and unlawful entry, if applicable, for purposes of future determinations under the INA.

The Temporary Worker Registration and Visa Act of 2005 (H.R. 4065), introduced in the 109<sup>th</sup> Congress, would have similarly established a process for registering aliens who had been continuously unlawfully present and employed in the United States since a specified date (the employment requirement would not apply to spouses and children of registrants). Eligible aliens

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<sup>41</sup> For additional information on the point system in S. 1639, see archived CRS Report RL34030, *Point Systems for Immigrant Selection: Options and Issues*, by Ruth Ellen Wasem and Chad C. Haddal.

would have applied for this registration, which would have been valid for six months. Registered aliens would have been eligible for a new “W” temporary worker visa established by the bill. To obtain a W visa, a registered alien would have had to apply at a consular office in his or her home country not later than six months after his or her registration was approved. The bill would have placed no numerical limit on the W visa.

Under H.R. 4065, the initial period of authorized admission for a W nonimmigrant would have been three years and could have been extended in three-year increments without limit. The bill would have required that W nonimmigrants, except for spouses and children, be continuously employed but would have placed no restriction on the type of work they could perform. W nonimmigrants would not have been prohibited from changing to another nonimmigrant classification or adjusting to LPR status, but H.R. 4065 would have made no special provision for them to do so.

The Comprehensive Enforcement and Immigration Reform Act of 2005 (S. 1438), also introduced in the 109<sup>th</sup> Congress, would have authorized DHS to grant a new status—Deferred Mandatory Departure (DMD) status—to certain aliens, and to their spouses and children, present and employed in the United States since before specified cut-off dates. Aliens lawfully present in the United States as nonimmigrants would have been ineligible. This bill would have placed no limit on the number of aliens who could have received DMD status. DHS could have granted an alien DMD status for a period of up to five years.

Aliens in DMD status could not have applied to change to a nonimmigrant status or, unless otherwise eligible under INA §245(i), to adjust to LPR status. Aliens who complied with the terms of DMD status and departed prior to its expiration date would not have been subject to the INA provision that bars previously unlawfully present aliens from being admitted to the United States for 3 or 10 years (see “Inadmissibility” section, above). If otherwise eligible, these aliens immediately could have sought admission as nonimmigrants or immigrants, but they would not have received any special consideration for admission. Aliens granted DMD status who failed to depart prior to the expiration of that status would have been ineligible for any immigration benefit or relief, except for specified forms of humanitarian relief, for 10 years.<sup>42</sup>

## Conclusion

It has been several years since Congress considered immigration reform legislation, and it remains unclear whether the 111<sup>th</sup> Congress will take up the issue. Competing legislative priorities, the 2010 midterm elections, and the state of the economy are all seen as obstacles to congressional action on immigration reform, especially if the reform packages under discussion include legalization for unauthorized aliens. Unemployment rates in the United States, in particular, have been regularly cited in arguments against taking steps in the near term to expand immigration. At the same time, advocates for immigration reform and legalization have

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<sup>42</sup> Provisions establishing a different version of DMD status were included in S. 2611, as passed by the Senate in the 109<sup>th</sup> Congress. Aliens who were unable to meet the presence and employment requirements in S. 2611 for adjustment to LPR status but who had been present and employed in the United States for a shorter specified period and met other requirements would have been eligible for DMD status. For additional information on these provisions, see CRS Report RL32044.

maintained that the economic recession and the coincident stabilization (or perhaps decrease) in the unauthorized alien population offer a unique opportunity to pursue comprehensive reform.

## Appendix. State Unauthorized Alien Populations

**Table A-1. Estimated Unauthorized Alien Population, by State, 2008**

State	Population Estimate
California	2,700,000
Texas	1,450,000
Florida	1,050,000
New York	925,000
New Jersey	550,000
Arizona	500,000
Georgia	475,000
Illinois	450,000
North Carolina	350,000
Virginia	300,000
Maryland	250,000
Colorado	240,000
Nevada	230,000
Massachusetts	190,000
Washington	180,000
Tennessee	150,000
Oregon	150,000
Pennsylvania	140,000
Indiana	120,000
Minnesota	110,000
Michigan	110,000
Utah	110,000
Connecticut	110,000
Alabama	100,000
Ohio	95,000
Wisconsin	85,000
New Mexico	80,000
South Carolina	70,000
Kansas	70,000
Louisiana	65,000
Arkansas	60,000
Iowa	55,000
Oklahoma	55,000
Nebraska	45,000

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<b>State</b>	<b>Population Estimate</b>
Missouri	45,000
Kentucky	45,000
Mississippi	35,000
Hawaii	35,000
Idaho	35,000
Delaware	30,000
District of Columbia	30,000
Rhode Island	30,000
New Hampshire	20,000
Wyoming	<10,000
South Dakota	<10,000
Alaska	<10,000
Vermont	<10,000
Maine	<10,000
Montana	<10,000
North Dakota	<10,000
West Virginia	<10,000
<b>Total All States</b>	<b>11,900,000</b>

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**Source:** CRS Presentation of data from Jeffrey S. Passel and D’Vera Cohn, *A Portrait of Unauthorized Immigrants in the United States*, Pew Hispanic Center, April 14, 2009.

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