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## S U M M A R Y

The 1986 Immigration Reform and Control Act (IRCA) was the first legislative attempt to comprehensively address the issue of unauthorized immigration.

The bill included sanctions against employers for the hiring of undocumented migrants, more robust border enforcement, and an expansive legalization program that was unprecedented.

IRCA resulted from a number of political compromises, and balanced the need for stronger immigration enforcement with legalization of a large portion of the unauthorized population.

Although the concepts behind the legislation were sound, there were a number of problems with its design and implementation in each of its major goals: employer accountability, broader enforcement that prevented illegal entries, and legalization of a large population of unauthorized migrants.

While the context of American immigration has changed substantially since 1986, the incentives for immigration to the United States remain the same. Thus, many lessons from the 1986 Immigration Reform and Control Act remain powerful in today's environment.

# Lessons From The Immigration Reform and Control Act of 1986

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## I. Introduction: The Political Context

The United States has struggled with the issue of unauthorized immigration and immigration reform before. The 1986 Immigration Reform and Control Act (IRCA) was the product of that struggle, and provides valuable lessons as immigration reform options are considered today. IRCA was the first and most comprehensive legislation in United States immigration policy to take on the issue of unauthorized migration, utilizing both legalization programs to regularize migrants already in the country and stronger enforcement mechanisms to prevent new entries.

The debate that led to IRCA lasted over a decade, with forms of the eventual bill by Congressman Mazzoli and Senator Simpson proposed in the Congress as early as 1982. The reform that was eventually passed was the product of four sets of political compromises. Those compromises were:

**A link between stronger enforcement of immigration law, both at the border and inside the country, and legalization of the unauthorized immigrant population.**

Demand for a law that would sanction employers for hiring unauthorized immigrants had existed since Senator Paul Douglas first proposed sanctions legislation in the early 1950s. However, these proposals became politically viable only when they first became linked with a legalization program in 1975. This link created the possibility of compromise between strongly opposed political interests. President Carter’s Domestic Council Committee on Illegal Aliens added improvements in border enforcement to the debate, eventually resulting in IRCA legislation that its sponsors described as a “three-legged stool” of employer sanctions, border enforcement, and legalization opportunities.

#### **A balance between strong enforcement and the rights of employers and workers.**

A law preventing employers from hiring unauthorized workers (“employer sanctions”) was thought to be key to controlling future unauthorized immigration, but risked placing too much responsibility for enforcing immigration law on employers by asking them in effect to serve as junior immigration inspectors. Employer sanctions also created the risk that employers, fearing they might inadvertently hire an unauthorized worker, would discriminate against US citizens, permanent residents, and other legal workers of apparent foreign origin. The final legislation created a version of employer sanctions that tried to accommodate these concerns. While it rejected the notion of a national identification card, it introduced a form of verification of legal status for determining eligibility for public benefits (Systematic Alien Verification for Entitlement – SAVE). The employer sanctions provisions in IRCA were also notable for invoking the largest expansion of federal regulatory authority since the enactment of the Occupational Safety and Health Act in 1980, as well as for the fact that the law’s civil and criminal penalties extended to individuals as well as firms.

**A compromise between a “generous” legalization and a “restrictive” one.** The Select Commission on Immigration and Refugee Policy (SCIRP), appointed by President Carter, recommended legalization as the way to deal with what was then seen as a large unauthorized immigrant population. However, legalization was attacked on the grounds that it would encourage further unauthorized immigration and that it would unfairly reward those who had broken the law. Debate on this point centered on three issues: timing (whether legalization would be simultaneous with or follow changes in enforcement); eligibility (who would be eligible for legalization); and process (whether legalized immigrants would receive permanent resident status directly or after passing through a temporary, intermediate status). IRCA embodied compromises on each of these issues.

**Accommodation of the interests of agricultural producers.** Agricultural producers were a key constituency necessary to enact immigration reform. However, the traditional method of meeting demand for agricultural labor – temporary workers – was anathema to many supporters of the IRCA bill. Thus, proposals to replace the H-2 temporary agricultural worker visa program with a larger and less regulated guestworker program failed. As a result, Congress met the interests of both growers and farmworkers’ rights advocates *within* the legalization program by creating special legalization categories for agricultural workers.

## **II. Major Elements of IRCA**

In its final form, the bill contained the following:

**Employer sanctions.** Called the “keystone” of the bill, employer sanctions made three types of activity illegal: 1) the knowing hiring of persons not authorized to work in the United States; 2) the continued employment of persons

not authorized to work (though persons previously employed were not subject to these restrictions); and 3) the hiring of an individual without verifying or correctly documenting the person’s identity and eligibility to work legally in the United States (the so-called “paperwork requirements”).

As a result of concerns about the burden it would put on employers, the law reserved the largest penalties for “knowing” (as opposed to technical) violations. While employers were required to sign a form attesting that they examined employment documents to determine the applicant’s eligibility, employers were also required to accept any document that “reasonably appears on its face to be genuine,” substantially reducing the burden of verification.

*Employer sanctions have not become an effective tool for enforcement*

An amendment to the IRCA bill, designed to protect legal workers

from any discrimination engendered by employer sanctions, penalized employers for conducting overly aggressive scrutiny of workers’ legal status on the basis of their nationality or national origin. Of the \$123 million increase in the Immigration and Naturalization Service budget allocation from 1986 to 1987, \$33.7 million was dedicated to enforcing employer sanctions.

Employer sanctions have not become an effective tool for enforcement. In part, this may be a result of the compromises made to implement them without overburdening employers or promoting discrimination. It may also be a result of the framers’ decision not to adopt a national identity card. As a result, employers had no reliable, quick way to verify the authenticity of the documents used to prove identity and work authorization. They simply had to maintain a record (I-9 form) demonstrating that they had asked for and examined specific documents from a list of over two dozen defined in the implementing regulations.

As a result, a false document industry has grown to subvert the law’s documentation requirement. It must also be said that employer sanctions have never been aggressively enforced and criminal prosecutions of employer sanctions violations have rarely been carried out successfully.

**Border enforcement.** Following IRCA’s enactment, there was a 50 percent increase in Border Patrol staffing, contributing to a surge in apprehensions of unauthorized aliens along the US-Mexico border. Additional funding was also used to support efforts to expeditiously remove criminal aliens. However, these increases following IRCA were small compared to increases in Border Patrol funding and staffing beginning in 1994 and thereafter.

*Nearly 2.7 million people received permanent residency in the United States as a result of IRCA*

**Legalization of unautho-**

**ized immigrants.** Although IRCA’s political origins lay in the desire to better enforce immigration law, it was the law’s legalization provisions that would have the larger and more enduring effect. In total, over 3 million people applied for temporary residency, and nearly 2.7 million people received permanent residency in the United States as a result of IRCA. IRCA remains the largest immigrant legalization process conducted in history, and the lessons of its legalization programs are relevant today.

### III. Legalization: An Overview

IRCA created two sets of criteria for qualifying for legalization. The first was the product of a long political debate over how generous of a general amnesty should be offered; and the second was the result of a last-minute agreement on agricultural workers. Proponents of legalization originally envisioned the program granting permanent residency directly. In the end, a two-tier process was enacted. Applicants had to qualify first for temporary, then for permanent

status, and were ineligible for public benefits until they gained permanent status.

- **General Legalization Program.**

Unauthorized immigrants who were in continuous residence since January 1, 1982 were eligible for temporary legal status. Applicants had to pay a \$185 filing fee (to pay for the costs of administering the program) and demonstrate that they were of “good moral character” (no criminal record) and that they would not become public charges. Temporary residency lasted 18 months, after which the legalized immigrants became eligible for permanent residency (i.e., “green cards”). In this stage, immigrants had to show proof of English language competency and knowledge of American civics, requirements otherwise met for naturalization. Approximately 1.75 million people applied for legalization through the program and about 94 percent of applications were approved for temporary residency.

- **Special Agricultural Worker Program.**

The Special Agricultural Worker (SAW) program provided permanent residency to aliens who could demonstrate they had 60 days of seasonal agricultural work experience in qualifying crops from May 1985 to May 1986. SAW applicants could apply for permanent residency status without meeting the civics and language requirement for applicants to the general legalization program, and the program was funded through appropriated funds, not applicant fees. Nearly 1.3 million people applied for the SAW program, far more than the 250,000 who were projected to do so.

- **Replenishment Agricultural Worker Program.** To help counter the effects of the SAW program, which growers feared would lead to the exit of many newly legalized workers from the agricultural industry, Congress created a Replenishment Agricultural Worker (RAW) program. RAWs

were required to be temporary residents and work in perishable agriculture for at least 90 days in each of the following three years to gain permanent residency, and an additional two years to gain citizenship. The RAW program has never been used. It is contingent upon the Departments of Labor and Agriculture determining a labor shortage in perishable agriculture.

- **Other Programs.** Two other legalization programs with limited terms were also enacted. Section 429 of the 1952 Immigration and Nationality Act, (the “registry”), which allows long-term unauthorized immigrants present before a certain date to petition to adjust their status to permanent residency, was updated by nearly 30 years to January 1, 1972. It affected nearly 60,000 people. A limited program to allow certain Cuban and Haitian “special entrants” who arrived in the United States before 1982 was also enacted to correct the imbalance in treatment between natives of the two countries.

## IV. Key Lessons from IRCA

Many of the lessons from IRCA provide guidance for any future legalization program.

### Scope: Who Was Included and Excluded?

A substantial percentage of unauthorized migrants were eligible and able to legalize. However, IRCA left out some groups and its implementation was uneven.

- **Legalization led to mixed-status families.** Those who arrived in the five years between the January 1, 1982 cut-off date for the general legalization and the law’s 1987 implementation were ineligible for the program. Many of these people were the immediate relatives of people who did qualify for legalization. The INS originally

held that legalized migrants should wait until receiving permanent residency and then apply to sponsor family members for immigration through normal channels. Because this policy left a large number of families in a mixed legal-illegal status, the INS eventually provided “indefinite voluntary departure,” allowing many families to stay together in a semi-legal status. Immigration advocates criticized the implementation of this policy, known as “family fairness,” as being too arbitrary and unevenly applied.

- ***There were “dropouts” from the two-tiered system.*** Through 2001, up to 12 percent of applicants for temporary status did not go on to receive permanent residency. These percentages are even higher for the SAW program, though it is unclear how many were denied temporary status to begin with, how many reverted to unauthorized status, and how many returned to their country of origin.
- ***There was no plan for those who did not qualify.*** Some estimates report that the unauthorized population only fell by about half from 1986 (3.1 million) to 1988 (1.9 million). With the failure of border and sanctions enforcement to reduce incentives for unauthorized migration, those who did not legalize became the nucleus of the unauthorized population today.
- ***Outreach was not universally effective.*** The national publicity effort on the legalization program was late in reaching its zenith and some constituencies, particularly non-Hispanic immigrants, were disadvantaged. A contract planned for local publicity never materialized. As a result, outreach was often done on an ad hoc basis with the help of community organizations with other responsibilities. Even this effort was delayed by the initial reluctance of many immigrant organizations to collaborate too closely with the INS.

## Implementing IRCA

IRCA authorized the US government to make life-changing decisions for nearly 3 million people in just a few years. The extraordinary challenge of this mass bureaucratic administration of justice led the INS to create a temporary, parallel structure of local offices, processing facilities, and staff separate from INS district offices. The local Legalization Office staff interviewed the applicant and forwarded the application to Regional Processing Facilities for review. Denied applicants could appeal to the Legalization Appeals Unit. In addition, the INS designated a number of private and religious organizations as Qualified Designated Entities (QDEs). The organizations assisted immigrants in applying for legalization and in return were promised a \$15 reimbursement by the INS for every completed application.

- ***The timing and structure of funding for legalization was a challenge.*** Because the general legalization program was to be self-funded through application fees, the INS could not request an appropriation from Congress. It funded the start-up costs of the program by borrowing against its normal budget. Although application fees generated more revenue than was needed to administer the program, fewer applications were received than expected early in the application process. This led the INS to scale down its legislative staff midway, only to be overwhelmed by a surge of applications at the end of the application period. In contrast, the SAW program was funded through an allocation of tax dollars and also collected application fees. The program’s higher-than-expected participation meant that the government collected \$107 million more from the program than it had allocated to administer it, almost all of which was used for purposes unrelated to the SAW program.

- ***The QDE program was helpful but imperfect.*** The QDEs played an important administrative guidance and outreach role, particularly at the local level, that the INS simply could not fill alone. However, some QDEs were little more than legalization entrepreneurs determined to collect the reimbursement fee while providing little true assistance. Other legitimate QDEs suffered financially because applicants sought their advice and services, but filed their applications directly with the INS.
- ***Immigration backlogs increased following IRCA.*** Before the legalization program began, there was already a backlog for benefits applications in the INS. That backlog substantially increased because INS resources were partially diverted by IRCA. Additionally, the number of people receiving permanent residency through IRCA created an increase in applications for family reunification immigration for which the INS's resources were inadequate.

## Legal Issues and Challenges

The INS had broad flexibility in establishing the regulations for implementing IRCA, and it won praise for a collaborative rulemaking process. In general, it used its administrative discretion in favor of the applicant. However, on a few issues, e.g., the definition of “continuous presence,” it insisted on a strict interpretation of the statute. In such cases where litigation ensued, the government generally lost.

- ***Legal challenges to IRCA tended to expand the legalization and make it more consistent.*** IRCA contained a number of internal inconsistencies: for example, immigrants who had entered the country illegally by the 1982 cutoff date were automatically eligible for legalization, while those who entered legally before that date

and became unauthorized did not always qualify. The courts gave the latter group the broadest opportunity possible to qualify for legalization. However, the court battles were an expensive, protracted way to fine-tune the program.

## Fraud, Documentation, and Security Requirements

Legalization participants were required to produce documentation demonstrating their eligibility and to undergo security checks to make sure that they were not excludable under any other provision of US law. Participants in the general legalization program were required to show three forms of evidence: proof of identity, proof of residence, and proof of sufficient financial resources to avoid becoming a public charge. Affidavits from the applicant or third parties were often relied on, and a “preponderance of the evidence” standard was used to determine eligibility. Participants in the SAW program were required to prove that they had worked in the agricultural industry for the qualifying length of time, usually by presenting an affidavit of support from their former employer, after which the burden of proof lay on the INS to disprove the claim.

- ***Affidavits were a useful but problematic form of documentation.*** When considering a population that, by its very nature, is “unauthorized,” sworn affidavits were an almost indispensable part of the documentation process. A number of class action lawsuits led the INS to broadly accept such affidavits with minimal known instances of misuse. However, applications for SAW legalization were suspected to have contained many falsified affidavits, and the INS had little investigative capacity to disprove them.
- ***Security checks were only part of the initial process.*** Before going to the

Regional Processing Facilities, every application for temporary residency was cross-checked against a number of criminal database watchlists. Security checks were not systematically run during the second-tier application for permanent resident status.

## Integration Measures and the Impact on States and Localities

The general legalization program required that applicants complete an English/civics class or pass a test in those subjects to gain permanent residency. As permanent residents they would be exempt from the English/civics test requirement of the naturalization application process. The SAW program did not have an English/civics requirement.

States were responsible for providing the courses needed to qualify for permanent residency. They also absorbed the public assistance and public health services costs of the legalizing population. (Legalized immigrants were barred from federal public benefits for five years. It was anticipated that the burden would fall on the states to provide benefits.) To reimburse states for these anticipated costs, IRCA provided \$1 billion per fiscal year for four years under the State Legalization Impact Assistance Grant (SLIAG) program. States were also eligible to receive funds from the application fees for the second tier (permanent residency) of the legalization process.

- ***The value of IRCA's English and civics requirement was uneven.*** Applicants for permanent residency under the general legalization program were required to meet an English and civics requirement, the first in the history of US immigration policy. Applicants could fulfill the requirement in a number of ways, including by attending 40 hours of instruction in an INS approved course of study; they did not have to pass a uniform test (though they had the option to

do so). As no English and civics requirements were imposed on SAW applicants, they had an easier path to legalization. At the same time, the availability of education courses also (at least anecdotally) created demand for further English and civics instruction among the legalizing population.

- ***There were problems with disbursement of funds to states.*** Federal reporting requirements led to significant delays for state disbursements, and, in turn, to the funding for providers. These problems were exacerbated as many applicants waited until the end of the eligibility period before applying for permanent residency, delaying the stream of money for states.

*States were responsible for providing the courses needed to qualify for permanent residency*

## IV. Conclusion: The Relevance of IRCA

Clearly there are lessons to be learned from IRCA, but changes in the economic, social, and political context must be taken into account. What are some of the differences, similarities, and their implications for future reform?

### Differences Between 1986 and Today

- ***Larger and better-known undocumented population.*** The science of estimating the unauthorized population has improved, giving policymakers a better idea of the size and scope of potential legalization. The number of unauthorized immigrants is now estimated to be at least 10 million persons and growing – over three times the size of the estimated unauthorized population in 1986.
- ***Population has spread out.*** The unauthorized population is now much more dispersed across the nation and is no longer as concentrated in urban areas.

- ***Application backlog has grown.*** IRCA itself created a backlog of benefits applications, but a relatively small backlog existed before then. In contrast, a 1.5 million case backlog currently exists.
- ***Changed structure of immigration administration.*** The creation of the Department of Homeland Security divided for the first time the former INS's enforcement functions (Customs and Border Protection for the border; Immigration and Customs Enforcement for the interior) and administrative functions (Citizenship and Immigration Services). While this division of enforcement and benefits functions may allow each agency to focus on its separate function, the lack of common leadership may lead them to work at cross purposes with one another.
- ***The wages of unskilled workers have fallen behind.*** The earnings of low-skilled workers have generally grown more slowly relative to the wages of other workers since 1986. Because unauthorized workers tend to be less skilled, legalized workers in the future may face greater challenges in the labor market than did those legalized by IRCA, unless they are able to obtain more education and training.
- ***The agricultural sector is no longer the major employer of undocumented migrants.*** While a high percentage of agricultural workers continue to be unauthorized, unauthorized workers today are employed in low-skilled fields other than agriculture. In fact, only a small share of all unauthorized workers are employed in agriculture.
- ***Border enforcement alone has been proven an inadequate enforcement strategy.*** In 1986, border enforcement was arguably inadequate. Since then, despite new strategies and increased resources, border

enforcement has not been able to deter rising levels of unauthorized immigration to the US.

- ***Have security concerns shifted public attitudes?*** Today's public may be more accepting of possible enforcement tools such as uniform identification cards or biometric identification. Fear of sanctions-related discrimination may be less intense than it was in 1986.
- ***International cooperation is a more realistic possibility.*** Since 1986, the United States has signed a major free trade agreement with Mexico and the two countries have built a far more stable and substantive record of cooperation. Bilateral relationships have also deepened with many other countries whose nationals are heavily represented in the unauthorized population. This creates the possibility of cooperation with source country governments on issues such as documentation and border enforcement.

## Similarities and Prospects for the Future

- ***Unauthorized immigration is still driven by employment.*** Despite IRCA's employer sanctions statute, demand for unauthorized immigrant workers remains a central factor in unauthorized immigration. Over 90 percent of unauthorized males are employed.
- ***A comprehensive approach is still necessary.*** A new immigration reform package would need to address the two primary issues that IRCA tried to resolve: the unauthorized population and the ongoing demand for and supply of unauthorized workers. However, consideration should now be given to a more expansive set of issues, such as increases in demand for family reunification immigration, along with tools such as temporary worker programs.



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## Additional Task Force Publications

### Independent Task Force on Immigration and America's Future: The Roadmap

By Michael Fix, Doris Meissner, and Demetrios G. Papademetriou

### Restoring Common Sense and Integrity to the US Immigration System: A Personal Vision

By Demetrios G. Papademetriou

### Unauthorized Migrants: Numbers and Characteristics

By Jeffrey S. Passel, Pew Hispanic Center

### Twilight Statuses: A Closer Examination of the Unauthorized Population

By David A. Martin, Migration Policy Institute and the University of Virginia

### Lessons from the Immigration Reform and Control Act of 1986

By Kevin O'Neil and Betsy Cooper

### Legalization: A Comparative Perspective

By Demetrios G. Papademetriou

## Additional MPI Resource

### Migration Information Source Special Issue on Unauthorized Immigrants

This Special Issue of MPI's online resource for reliable data and timely analysis examines employer sanctions; characteristics of unauthorized immigrant families and workers; removals; and legalization programs. It is available at [www.migrationinformation/special\\_unauthorized.cfm](http://www.migrationinformation/special_unauthorized.cfm).

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

This report was commissioned as part of MPI's Independent Task Force on Immigration and America's Future. The task force is a bipartisan panel of prominent leaders from key sectors concerned with immigration, which aims to generate sound information and workable policy ideas.

The task force's work focuses on four major policy challenges:

- The growing unauthorized immigrant population
- Immigration enforcement and security requirements
- Labor markets and the legal immigration system
- Integrating immigrants into American society

The panel's series of reports and policy briefs will lead to a comprehensive set of recommendations in 2006.

Former Senator Spencer Abraham (R-MI) and former Congressman Lee Hamilton (D-IN) serve as co-chairs, and the task force's work is directed by MPI Senior Fellow Doris Meissner, the former Commissioner of the Immigration and Naturalization Service.

The approximately 25 task force members include high-ranking members of Congress who are involved in shaping legislation; leaders from key business, labor and immigrant groups; and public policy and immigration experts. MPI, a nonpartisan think tank dedicated to the analysis of the movement of people worldwide, is partnering with Manhattan Institute and the Woodrow Wilson International Center for Scholars for this project.

For more information on the Independent Task Force on Immigration and America's Future, please visit:

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