



## **MAKING IT REAL: TURNING BROAD LEGALIZATION POLICY GOALS INTO A WORKABLE PROGRAM STRUCTURE AND PROCESS**

### **PROJECT CONCEPT PAPER - NOVEMBER 2009**

With the architecture of immigration reform now being shaped by Congress and the Obama Administration, the Migration Policy Institute is proceeding to establish and staff a small expert working group that would meet four times over the next few months to examine how a legalization program should be structured. With technical support and leadership from a team of senior MPI staff, the group would work to develop detailed scenarios for how key policy, processing and funding issues might be addressed in an eventual bill and implementing regulations. This work would allow the eventual legislation and implementing regulations to be based on a careful and realistic assessment of the significant conceptual and mechanical challenges that must be overcome in order to create a program to legalize the unprecedented 10+ million unauthorized immigrants in a fair and timely manner. The group would consist of roughly 25 people in total, including state and local representatives, DHS officials, Congressional staffers, key NGOs, and immigration and related policy experts.

We are planning to convene this expert working group because we know that decision makers are a long way from being able to answer some of the fundamental questions regarding reform that have been a source of contention in prior bills and that remained unresolved after two legalization planning meetings MPI convened this past summer. One meeting addressed the principles and goals that should guide a legalization program and the lessons that could be taken from IRCA's implementation. The other explored the English language training, state impact assistance and other integration issues that reform will inevitably raise.

MPI's research and briefing materials for the study group meetings would include analysis of eligibility under different legislative scenarios, as well as on the benefits and challenges of different processing scenarios. Given the likely timing of immigration reform legislation, these roundtables would be scheduled over the next six months, beginning in December. The meetings would culminate in a document summarizing the various scenarios and options that we would consider in the spring of 2010. The likely meeting topics are set out below.

No state has a greater stake in a fair, efficient and affordable legalization process than California. We hope that California foundations concerned with these issues will be willing to support an explicit focus within this project on the socio-demographic profile and needs of California's legalizing immigrants and their local communities, and active inclusion of state experts in the expert working group.

## NEED FOR THE WORK

There are a number of powerful imperatives for the process we will be conducting. First, no other institution – including the Department of Homeland Security – is currently thoroughly addressing the fundamental questions we set out below.

Second, absent this project, insufficient attention will be paid to the mechanics and architecture of the bill, which would then undermine the underlying goals of a legalization program. Those goals are straightforward:

- Cover as large a share of the unauthorized population as feasible;
- Provide the maximum opportunity to prove eligibility;
- Legalize the family members of beneficiaries; and
- Have applicants “earn” legalization prospectively following an initial skeletal registration program.

Third, without a serious attempt analyze what should be the parameters of Congressional Budget Office (CBO) scoring of the bill, those supporting immigration reform may find themselves unprepared for the CBO scoring process and presented with a CBO score at the eleventh hour that would cripple chances for passage of reform legislation.

**California focus.** It goes without saying that any successful planning process will need to take special account of the law’s impact on California. The state’s 2.7 million unauthorized immigrants represent 22 percent of the nation’s unauthorized population and 7 percent of the state’s total population – a share that is double that of the nation as a whole. One in 10 California residents lives in a family headed by an unauthorized immigrant and 15 percent of children in the state have an unauthorized parent. One in 10 California workers in 2008 was unauthorized. A third of state’s unauthorized population has less than a ninth grade education; roughly three-quarters of unauthorized adults are LEP. The state’s population is distinct not only for its size, it is more settled than the unauthorized population nationwide – roughly half entered over 10 years ago (versus one-third nationally), making many less likely to return – even in the teeth of the current recession.

## ISSUES TO BE ADDRESSED

### **The Registration Process**

Participants in MPI’s scoping meetings agreed on the need to begin the legalization process with a broad registration program that allows large numbers of unauthorized people to come forward, register with the government, and start the process of legalization. However, there is widespread confusion and disagreement on how a registration program would work. Thus, the study group will need to squarely address:

- Who should be able to register?
- What should applicants be required to provide in order to register?
- How should identity be linked to the biometric information provided?
- What would applicants receive when they register?

- What should the window for registration be and what are some of the trade-offs related to a long or short registration period?
- How should biometric information be collected? Who will take biometric information, how long will it take to “clear” applicants, and what will the consequences of a hit be?
- What will happen to those who do not otherwise qualify for registration?
- What information should be kept confidential and what should not be?

The expert working group would also consider the related logistical issues involved in a legalization program: Where will people go to register? Who will assist them? Will there be a “paper” filing option, or will the entire process be electronic? Will applicants need to return to the same location to pick up a registration card? Will any be interviewed?

One critical issue throughout the work will be DHS’s plans and preparations for legalization. The working group’s meetings will attempt to expose DHS to the best thinking on how to craft a successful program, and establish ties between DHS and the groups that will ultimately partner with them in carrying out the program. In addition, the meetings will encourage and provide a forum to discuss DHS’s planning activities, at a time when anti-reform groups – and some members of the Congress – are questioning the propriety of DHS legalization planning efforts. While DHS officials and Hill staffers will be invited to participate in our meetings/roundtable discussions, the framework for the gatherings will not be limited by DHS’s current planning efforts on these issues.

### **Beyond Registration: the Broader Legalization Process**

Beyond initial registration, the expert working group will consider the substantive requirements of a legalization program from an implementation perspective. Substantive eligibility requirements will likely include presence in the country on a set date (possibly the date of introduction of the legislation), employment, good moral character, and some level of proficiency in English. Some of the core implementation issues include:

- The cut-off dates for eligibility;
- The level and timing of funding to DHS and how applicant fees and penalties will be used;
- Funding for NGOs that will provide application assistance and community education;
- Confidentiality issues related to application information;
- Applicant exemption from most grounds of inadmissibility, particularly those that relate to unauthorized status;
- The availability of humanitarian waivers for other grounds of inadmissibility;
- Burdens of proof and evidentiary standards, especially regarding presence on the date of eligibility;
- The need to define operational terms unambiguously; and
- DHS marketing and public relations capacities.

An important set of issues that will require a separate analysis involve immigrant integration and the design of the integration title of a bill. Key issues would include:

- Possible standards for English language acquisition, when in the process applicants will be required to meet them and the circumstances under which waivers may be used for those who cannot;
- Projected impact of English language acquisition requirements on the existing federal/state/local service delivery infrastructure, sources of funding to meet the expected new demand for instruction, and assessment and testing options that could ease the flow of applicants through the legalization process;
- State and local “impact assistance” mechanisms, including funding levels, appropriate uses of funds, possible sources of funds, formulas for distribution, and the program’s alignment with other federal and state integration efforts; and
- The eligibility of individuals in different phases of the legalization process for key public benefits and services.

This session would also consider innovative earned legalization measures being implemented in other countries, such as whether there might be different legalization timelines for people who demonstrate higher levels of English language proficiency and, perhaps, other indicia of integration.

A related theme will be the need for transparency in how the Congressional Budget Office “scores” immigration reform legislation. This is a very consequential issue since a high score from CBO at the end of the negotiating process could derail the legislation. To cite just one of many questions in this regard, will the bill’s score include the full range of public benefit burdens on states and localities that might result from a legalization program (including those costs related to the potential eligibility of legalization beneficiaries to purchase subsidized health coverage) – and if so, what will be the basis for projection of these costs?

### **The California Dimension**

The California thrust of the planning and implementation work would have several elements. The first would be to convene one or two meetings of the study group in California in order to give the group access to state-level experts and leaders with a range of technical expertise and institutional knowledge. One meeting would likely be in Southern (Los Angeles) and one in Northern California (Bay Area). Second, MPI would include prominent, knowledgeable Californians in the study group. Their participation would involve some modest travel expense. And third, we would analyze the impacts of differing eligibility and integration reform scenarios for California’s unauthorized population under (a) comprehensive immigration reform; (b) DREAM Act; and (c) AG JOBS. The work would draw on previous work done by MPI demographic staff including Randy Capps’ report to the Rosenberg Foundation *The Characteristics of the Unauthorized Population in the United States, California and Los Angeles*; MPI’s 2007 report *Adult English Language Instruction in the United States: Determining Need and Investing Wisely*; and our 2008 report, *Los Angeles on the Leading Edge*.

Each of the MPI principals who would be involved in this project played a role in the implementation and evaluation of the 1986 legalization program under IRCA. They include:

***Donald Kerwin***, MPI Vice President and former Executive Director of CLINIC;

***Doris Meissner***, MPI Senior Fellow and former Commissioner of the INS;

***Margie McHugh***, Co-director of MPI’s National Center on Immigrant Integration Policy and former Executive Director of the New York Immigration Coalition;

***Demetri Papademetriou***, President and Founder of MPI;

**Michael Fix**, MPI Senior Vice President and Director of Studies and Principal Investigator of the multi-year Ford-funded study of IRCA's implementation.

**CONTACT**

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