The Case for a National Legalization Program without Legislation or Executive Action: Results from Screening for Immigration Legal Options

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Executive Summary
This article presents the results of a study that finds that as many as two million unauthorized immigrants in the United States could have a path to permanent legal status. However, these immigrants may not know that they are eligible for legal status, much less be able to afford the costs or take the necessary steps to obtain it. The two million figure is drawn from an analysis of screening data from 4,070 unauthorized immigrants from 12 states. The study highlights the profound impact that a national project to screen for legal status would have on the entire US population, including eligible immigrants, their family members, and the country at large.

The need for legal screening has become particularly acute in light of the Trump administration's focus on apprehension and deportation of unauthorized immigrants without regard to their length of residence in the United States, family relationships to US citizens and lawful permanent residents (LPRs), or other positive factors. The proposed termination of benefits for many Temporary Protected Status (TPS) holders and Deferred Action for Childhood Arrivals (DACA)[1] recipients would add more than one million individuals — approximately 325,000 (Warren and Kerwin 2017), and 700,000 (Krogstad 2017) people, respectively — to the pool of unauthorized immigrants.

Introduction

For decades, Congress has grappled with comprehensive immigration reform, as well as more limited approaches for specific populations, but has been unable to pass legislation.[2] The last extensive, far-reaching legislation was the 1986 Immigration Reform and Control Act (IRCA),[3] through which 2.7 million people obtained legal status through a general legalization and a Special Agricul-

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[1] On February 26, 2018, the US Supreme Court denied the Trump administration's request for expedited review of the decision of a district court to partially reopen the DACA program. The decision sends the case back to the Ninth Circuit to follow the traditional appeals process, which is expected to take months.

[2] The last time Congress came close to passing a major immigration reform piece of legislation was in 2013. The Senate passed S.744, which offered a path to citizenship, but the House did not vote on the legislation.

[3] Pub. L. No. 99-603, 100 Stat. 3359 (1986).

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tural Workers program (Cooper and O'Neil 2005).[4] Since that time, Congress and the executive branch have created smaller programs that have provided a path to permanent residency for particular populations and special programs to offer temporary protection for select groups of individuals.[5] But there has been no general legalization program.

Anecdotal information has long suggested that many of the approximately 11.1 million unauthorized immigrants living in the United States are eligible for an immigration benefit that would lead to lawful permanent resident (LPR) status. In 2014, working with the Center for Migration Studies and Tom Wong, associate professor at the University of California in San Diego, the Catholic Legal Immigration Network, Inc. (CLINIC), and the National Immigrant Justice Center surveyed member agencies to determine the percentage of DACA applicants who were potentially eligible for legal status. The Potential Eligibility for Relief Survey of Nonprofits (PERSON) study (Wong et al. 2014), the first of its kind, found that an estimated 14.3 percent of DACA applicants were eligible for legal status but did not know it or had not pursued it for other reasons. A subsequent study on implementation of the DACA program found that the charitable legal immigration programs extensively screened DACA applicants for other immigration relief and benefits. These programs reported that roughly 20 to 25 percent of those screened were potentially eligible for a non-DACA immigration benefit or form of relief.[6]

To confirm the findings of the PERSON study and broaden the analysis to the general population, over a three-month period, 16 CLINIC member agencies screened more than 3,000 unauthorized immigrants residing in nine states in the US South. Based on analysis of the screenings, an estimated 15.4 percent of unauthorized immigrants in that region are potentially eligible for legal status. That translates to approximately 600,000 undocumented immigrants. In addition, the project found more than two dozen people who will likely be able to prove that they are US citizens.[7] Screening an additional 1,000 immigrants in California and including data on individuals with ZIP codes from two other states allowed for the extrapolation of data from a dozen states[8] and led to the estimate that 18.5 percent of unauthorized immigrants nationwide are potentially eligible for legal status.

Screening for Immigration Legal Options Project Analysis

Data Collection. To estimate the percentage of undocumented immigrants who are potentially eligible for legal status, we analyzed the case reports from the screening of 4,070 people. These legal screenings were conducted by nonprofit immigration legal services providers in a dozen states. The majority of the screenings took place in conjunction with Know Your Rights presentations.[9] This approach encouraged a wide range of people to come forward, including those who did not expect to be found potentially eligible for legal immigration status. The same screening questionnaire was used in all of the screenings to ensure consistency in data collection. In each legal screening, immigration attorneys or accredited representatives[10] with their supervising attorneys screened

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[4]Congress has enjoyed more success historically in passing legislation to legalize discrete populations (Kerwin 2010).

[5]Examples of congressional and administrative actions on behalf of particular immigrant populations include the creation of the Temporary Protected Status (TPS) and Deferred Action for Childhood Arrival (DACA) programs. Congress established TPS through the Immigration Act of 1990 (INA § 244) to protect foreign nationals in the United States from being returned to their home country if it became unsafe during the time they were in the United States. In 2012, President Obama issued an executive order creating DACA to provide work authorization and protection from deportation in two-year renewable increments to certain immigrants who had arrived in the United States as children.

[6]The study reported that DACA applicants were found to be "potentially eligible for permanent relief like U visas, Special Immigrant Juvenile visas, family-based immigration, relief under the Violence Against Women's Act (VAWA), and even derivative citizenship" (Kerwin et al. 2017, 9).

[7]Many of these individuals thought they were undocumented but had likely acquired or derived citizenship. In one instance, it is likely that the screened individual is a US citizen, as well as his father who was deported without knowing that he had likely acquired citizenship. In this instance, the man screened would need to prove that his US citizen father had lived in the United States for a specific period of time.

[8]The states were Alabama, California, Florida, Georgia, Maryland, Michigan, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia.

[9]All people in the United States have certain rights under the US Constitution and other laws. Know Your Rights presentations inform immigrants about their rights when interacting with law enforcement.

[10]Recognition and accreditation are the Department of Justice's process for certification of charitable agencies and their non-attorney staff to represent immigrants in limited circumstances. In particular, accreditation allows non-attorneys to practice immigration law before the Department of Homeland Security and the immigration courts.

participants for potential eligibility for Adjustment of Status under section 245(i),[11] Adjustment of Status under section 245(a),[12] Asylum,[13] Acquired or Derived Citizenship,[14] Military Parole-in-Place,[15] the Nicaraguan Adjustment and Central American Relief Act (NACARA),[16] Non-LPR Cancellation of Removal,[17] Special Immigrant Juvenile Status (SIJS),[18] a T visa,[19] a U visa,[20] and protection under the Violence Against Women Act (VAWA).[21] Those who may be eligible for a family-based petition, but are not eligible to become an LPR for some time due to backlogs in family-based immigration, are not considered to be currently eligible for legal status in this analysis.[22] Because the undocumented represent a very high percentage of the roughly four million people who languish in family-based immigration backlogs, excluding this population from the study's estimates invariably yields a conservative estimate of the number of undocumented persons eligible to legalize. Moreover, people who were found to have inadmissibility factors or bars to legal status are also not considered to be currently eligible for legal status. Altogether, we define a person as being potentially eligible for legal status if the person is currently potentially eligible for at least one of the forms of immigration relief described above and does not have identified problems that would preclude him or her from status.

The average age of those who were screened was 37.4 years. The average length of time they had spent in the United States was 12.9 years. Women account for 57.4 percent of those screened. While 59.8 percent of those screened were born in Mexico, 82 different countries and territories, ranging from Argentina to Zimbabwe, were represented in the data. Among the 4,070 case reports analyzed, 1,437 people, or 35.3 percent, were potentially eligible for legal status. Analysis of the demographics of the individuals screened, as described below, leads to the determination that 18.5 percent of unauthorized immigrants in the United States are potentially eligible for legal status.

Method of Analysis

To estimate the number of unauthorized immigrants potentially eligible for legal immigration status on a nationwide basis, additional analysis was required. We began by analyzing how the likelihood of being potentially eligible for legal status varies by age, length of time in the United States, gender, and country of origin. We regressed potential eligibility for immigration relief on these covariates using a logistic regression:

$$\Pr(1|X) = \beta_0 + \beta_1 \text{age} + \beta_2 \text{age}^2 + \beta_3 \text{years in US} + \beta_4 \text{gender} + \beta_5 \text{region} + \varepsilon$$

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[11] Adjustment of status under section 245(i) of the Immigration and Nationality Act (INA) allows those who meet certain criteria to obtain LPR status in the United States. Without the exception under section 245(i), individuals who are otherwise eligible to immigrate (become LPRs) would need to leave the country and go through a consular process. By departing the United States, many would face bars to returning (Kerwin, Meissner, and McHugh 2011, 11–14).

[12] Adjustment of status under INA section 245(a) is how individuals who entered lawfully and satisfy certain requirements may apply for LPR status in the United States.

[13] Asylum is granted to people who establish they would be persecuted, or have been persecuted, on account of their race, religion, nationality, political opinion, or membership in a particular group.

[14] Children born abroad to at least one US citizen parent may have acquired citizenship depending on how long the US citizen parent resided in the United States before the child was born. Children born abroad and who become lawful permanent residents may automatically derive citizenship under certain circumstances, which includes having a US citizen parent.

[15] Military parole-in-place is a status granted to those who entered the United States unlawfully, but who are the parent or spouse of a member of the US Armed Forces. This status confers important benefits, such as work authorization, an authorized stay, and the potential ability to adjust status based on a petition filed by a US citizen spouse or child over 21.

[16] Certain Guatemalan and Salvadoran nationals may qualify for benefits under the Nicaraguan Adjustment and Central American Relief Act (Pub. L. No. 105-100, 111 Stat. 2160 (1997)).

[17] Certain individuals who have resided in the United States for at least 10 years may be eligible for the relief of cancellation of removal if they are placed into removal proceedings.

[18] Children under 21 who have been the victims of abuse, abandonment, or neglect at the hands of a parent may qualify for SIJS, which is a pathway to LPR status.

[19] Victims of a severe form of human trafficking may qualify to stay in the United States and obtain employment authorization and, after three years, LPR status.

[20] People who have suffered substantial physical or mental harm as a result of being the victim of certain listed crimes may qualify for U nonimmigrant status and ultimately LPR status.

[21] Abused spouses of US citizens or LPRs may be able to self-petition for LPR status. Their children may also qualify. In addition, non-abused spouses whose children have been abused by the US citizen or LPR parent may qualify, as may the abused children.

[22] Under the legal immigration system, a person may have to wait for years, even decades, after the LPR or US citizen family member or an employer petitions for him or her before being able to secure LPR status.

Table 1. Comparison of Screening Demographic Data with the Census Bureau's American Community Survey.

	Case Reports	ACS Estimates
Age	37.4	36.3
Years in US	12.9	13.3
Male	42.6%	54.2%
Mexico	59.8%	49.3%
Latin America and the Caribbean	36.3%	26.1%

Age and age squared are included in the model because some forms of legal status are open only to young people (e.g., SIJS), while at the same time, those who are older may also be more likely to have families (e.g., US citizen children), which also opens up additional possibilities for them. Because the relationship between eligibility and age is not likely a linear one, age squared is included in the model. Number of years in the United States can also affect potential eligibility, as the particular experiences that undocumented immigrants have in the country may open up possibilities for legal status. Gender is included in the model because certain forms of immigration relief affect women more than men (e.g., VAWA).[23] Country of origin can be an important determinant. For the purposes of the analysis, immigrants' countries of birth were grouped into regions using census world region designations.

After analyzing our survey pool with our model, we used the results to simulate the predicted probability of eligibility for legal status for the broader undocumented population. To do so, we estimated the likely undocumented population using the American Community Survey (ACS) Five-Year Public Use Microdata and the Warren (2014) method of logical edits. Put all together, we modeled the likelihood of potential eligibility for immigration relief using our sample of case reports. We used these results to simulate out-of-sample predicted probabilities of likelihood for potential immigration relief using the ACS five-year microdata, which then allowed us to make a national estimate.

Table 1 compares average age, average length of time in the United States, gender, and region of birth between our sample of case reports and estimates for the total undocumented population.

Results

An estimated 18.5 percent of undocumented immigrants are potentially eligible for legal status. With an estimated 11.1 million undocumented immigrants in the United States, this translates into approximately two million people.

Although among the sample of 4,070 case reports, 35.3 percent were found to be potentially eligible for immigration relief, the national estimate is lower. Table 1 explains why. To begin, among the sample of case reports, men (30.3 percent) were significantly less likely to be potentially eligible for immigration relief than women (39.1 percent) ($p < .001$). Because women were overrepresented in our survey population as compared with the estimated national undocumented population in the United States, we must decrease our national estimate. With respect to country of origin, those who were born in Mexico (24.4 percent) were significantly less likely to be eligible for immigration relief when compared to those who were born in other parts of the world (51.5 percent) ($p < .001$). As those born in Mexico comprise nearly half of the estimated undocumented population in the United States, this also has the effect of decreasing our national estimate.[24]

It must be noted that immigrants can move in and out of eligibility for legal status. On one hand, a person currently ineligible for legal status may become the victim of a crime and thereby become eligible. On the other hand, an immigrant may "age out" of a benefit. Alternately, a person may lose or gain eligibility by moving from one state to another, as may happen with SIJS. State and federal laws may also change who is eligible for legal status. Therefore, it is important for noncitizens to seek advice from qualified legal practitioners to understand their legal options.

Implications of the Data

While an estimated 18.5 percent of undocumented immigrants are potentially eligible for legal status, it is unclear how many of these individuals will file immigration applications in the near future or, in fact, at any time. As many as two million people have been potentially eligible for legal status but have not applied. This suggests that there are limiting factors, including, significantly, a lack of knowledge about US immigration laws and access to legal service providers. Other obstacles that may impede someone from filing an application or having a petition filed for them include the application and, possibly, legal costs involved with filing.

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[23] Men also may be victims of domestic violence.

[24] We note that while more research is needed on this question, it appears that men born in Mexico were more likely to be subject to permanent bars due to multiple unauthorized entries.

Table 2. Screening Results Show Percentage of Participants Who Are Potentially Eligible for Different Types of Immigration Relief.

Type of Relief	% Eligible (Unweighted)
245(i)	2.73
Adjustment of Status	16.08
Asylum	42.88
Citizenship	1.07
Military Parole-in-Place	0.78
NACARA	1.07
Non-LPR Cancellation of Removal	14.91
SIJS	6.53
T visa or U visa	11.11
VAWA	2.83

Based on analysis of the data, the average annual earnings among those who are potentially eligible for immigration relief is $21,000. This makes the costs of filing an application or petition for legal status prohibitive for many. In addition, potentially eligible immigrants might not be able to secure the documents needed to submit with an application or petition. And, in this time of heightened fear, immigrants might be reluctant to make themselves known to the government by filing an application or petition. An additional limiting factor is that, according to the analysis, a substantial number of people would be potentially eligible for relief only once they are in removal proceedings. This is because there are forms of relief that can be obtained only once someone is in removal proceedings and because, for some people, the only option for seeking relief will be through the immigration court system. The percentage (unweighted) of people eligible for particular types of relief is shown in Table 2.

The potential benefits of a large-scale screening program, however, are significant. If people are identified and pursue legal status in the numbers anticipated by this study, it would have a long-term, positive impact on individuals, families, communities, and the country. Legalization of status in general helps keep families together, improves the stability of the workforce, increases tax revenues, and helps protect people from abuse by unscrupulous employers, landlords, and others who would take advantage of a person's lack of status. It also removes them from the threat of deportation in an era of heightened enforcement under changed governmental priorities. While screening-based legalization is not a substitute for congressional or executive action to protect the undocumented population, it can help a significant number of people in the absence of legislation, and should be viewed as a legalization program in its own right.

Recommendations

The data project that approximately two million immigrants who are currently undocumented are potentially eligible for legal status, but they either do not know it or have not pursued it. Given the life-changing impact of legal status on immigrants, their families, and US communities, it is imperative to conduct a massive, nationwide screening and legalization effort.

Increasing access to high-quality, low-cost legal service providers will be essential if the goal is to reach and serve a high percentage of the potentially eligible. Although there is a benefit to be gained if undocumented immigrants know they are eligible for legal status, to secure such status, most will need legal assistance. As a component of building capacity, legal training focused on complex immigration law, practice, and court skills is essential. For example, in immigration court, an applicant for asylum is more than five times more likely to be granted asylum when represented than when unrepresented.[25] Training on screening immigrants and conducting large-scale screening workshops that involve multiple sectors of the community — legal, faith-based, union, municipal government, and more — will also increase the number of immigrants who ultimately gain legal status.

If large-scale screening is not available in communities, public outreach and education to encourage immigrants to seek legal advice are vital, preferably before the immigrants come into contact with immigration enforcement authorities. Community education will be particularly important in remote and underresourced communities, with hard-to-reach immigrant populations and limited pro bono and charitable legal service providers.

It is imperative for the legal services community to screen, serve, and ultimately provide legal protection to the eligible 18.5 percent of the undocumented immigrant community. But it is also the duty of Congress to legislate a solution for the approximately 11.1 million undocumented immigrants who have been living, raising families, working, and worshiping in the United States for years and even decades. Their contributions should not be devalued or ignored.

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[25] Transactional Records Access Clearinghouse, http://trac.syr.edu/immigration/reports/491/.

Conclusion

Using the case reports of 4,070 undocumented immigrants who received immigration legal screenings, we estimate that 18.5 percent of the total undocumented population in the United States is potentially eligible for legal status. This translates into approximately two million people. More work is needed on what happens after undocumented people learn about potential eligibility for legal status, and whether and under what conditions this information will lead to the filing of an application or a petition on their behalf. The data, however, make clear that a large number of undocumented immigrants may have legal avenues to remain in the United States. Legal status for up to two million people will result in growth in home ownership, greater tax revenues at the state and federal levels, and increased educational attainment. Moreover, legal status for two million people will protect and strengthen families and communities.

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