

ISSUE BRIEF

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Dreaming of Amnesty: Legalization Will Spur More Illegal Immigration

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The Trump Administration announced on September 5 that it was rescinding the Deferred Action for Childhood Arrivals (DACA) administrative amnesty program, with a six-month wind-down period.¹ DACA provided almost 800,000 illegal immigrants who were brought to the U.S. as minors (through the age of 15) with renewable protection from deportation and a pseudo-legal status that allowed the recipient to receive government benefits, such as work authorization and a social security number.

Attorney General Jeff Sessions, in ending the program (which is now down to 690,000 beneficiaries²), declared it “an unconstitutional exercise of authority by the executive branch.”³ In 2016, the courts ruled against the broader Deferred Action for Parents of Americans (DAPA) program, which provided the same type of benefits to different groups of illegal aliens. This left the legally similar DACA indefensible as a matter of law.

Congress is considering legislation that would provide amnesty to those brought illegally to the U.S. as minors, including those who may not have been eligible for the DACA program. One such example is the Solution for Undocumented Children through Careers, Employment, Education, and Defending Our Nation (SUCCEED) Act introduced by Senators

James Lankford (R-OK), Tom Tillis (R-NC), and Orrin Hatch (R-UT).⁴ Such legislative efforts are fundamentally flawed and will encourage more illegal immigration. Rather than implementing amnesty, Congress should focus on a step-by-step process to enhance immigration enforcement and improve the legal immigration system.

Fundamental Problems

Any legislation that provides lawful status to an alien who is unlawfully present in the U.S.—that is, amnesty—raises three fundamental questions. Does such legislation:

1. Encourage more illegal immigration, or discourage it?
2. Guarantee long-term commitment to a working immigration system or kick the can down the road?
3. Uphold the rule of law or weaken it?

Amnesty as Incentive for More Illegal Immigration. An amnesty-centric approach to immigration reform does nothing to discourage additional illegal immigration.⁵ The Immigration Reform and Control Act (IRCA) of 1986 provided 2.7 million illegal immigrants with legal status and access to citizenship.⁶ The House committee that crafted the legislation claimed “a one-time legalization program is a necessary part of an effective enforcement program.”⁷ When Senators discussed the final bill, the sponsor, Senator Alan Simpson (R-WY), promised “that this is it. It is one time. You either show up on

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this one or you will be rejected.”⁸ With 11 million to 12 million illegal immigrants now living in the country, and with a constant push for new amnesties, these promises have proven empty.⁹

There were a few Senators who correctly predicted that the 1986 amnesty would encourage more illegal immigration. Former Senator Jesse Helms (R-NC) argued that “[a]mnesty for the millions of illegal aliens currently in these United States would establish a dangerous precedent which could well encourage additional illegal immigration.”¹⁰ Former Senator Phil Gramm (R-TX) stated that “there may be those in other countries who will say that since we granted amnesty once, maybe we will do it again.”¹¹

More recently, this lesson of history repeated itself, as President Barack Obama’s DACA program and general weakening of immigration enforcement contributed to the surge of unaccompanied minors and families at the U.S. border. Fleeing from violence in Central America, these illegal immigrants “consistently” believed that they were eligible for a legal pass or “permiso” to enter and stay in the U.S., according

to data collected by the Department of Homeland Security.¹²

History has proven time and time again that amnesty and non-enforcement policies only encourage more illegal immigration

Amnesty as an Excuse. Beyond encouraging more illegal immigration and thus further weakening the immigration system, amnesty legislation is generally an excuse to delay other immigration reforms or improve enforcement. For example, if the SUCCEED Act or similar bills were to pass, they would certainly come with promises of “future” border security, increased enforcement, and needed reforms to the legal immigration system.

Such promises of future action, like Senator Simpson’s broken promises in 1986, cannot bind future Congresses or Administrations. During the IRCA debate, its promoters promised that IRCA would improve border security and that new enforcement measures would make it so difficult for an illegal immigrant to live and work in the U.S. as to make future illegal immigration unthinkable. Instead, all

1. “Memorandum on Rescission of Deferred Action for Childhood Arrivals (DACA),” Acting Secretary Elaine C. Duke, U.S. Department of Homeland Security, September 5, 2017, <https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca> (accessed October 20, 2017).
2. Laura Meckler, “DACA Currently Enrolls About 690,000 Immigrants, Homeland Security Says,” *The Wall Street Journal*, September 7, 2017, <https://www.wsj.com/articles/daca-currently-enrolls-about-690-000-immigrants-homeland-security-says-1504818726> (accessed October 20, 2017).
3. “Sessions Announces End of DACA Program (Full),” CNN, video, September 5, 2017, <http://www.cnn.com/videos/politics/2017/09/05/sessions-trump-daca-decision-full-remarks.cnn> (accessed October 20, 2017).
4. S. 1852, SUCCEED Act, 115th Congress, <https://www.congress.gov/bill/115th-congress/senate-bill/1852> (accessed October 24, 2017).
5. David Addington, “Encouraging Lawful Immigration and Discouraging Unlawful Immigration,” Heritage Foundation *Backgrounder* No. 2786, March 27, 2013, <http://www.heritage.org/immigration/report/encouraging-lawful-immigration-and-discouraging-unlawful-immigration> (accessed October 20, 2017).
6. Emily Badger, “What Happened to the Millions of Immigrants Granted Legal Status Under Ronald Reagan?” *The Washington Post*, November 26, 2014, https://www.washingtonpost.com/news/wonk/wp/2014/11/26/what-happened-to-the-millions-of-immigrants-granted-legal-status-under-ronald-reagan/?utm_term=.5e7561251c1d (accessed October 20, 2017).
7. Report to Accompany H.R. 3810 of the 99th Congress, the Immigration Reform and Control Act of 1986, Report 99-682 (Part 1), Committee on the Judiciary, U.S. House of Representatives, (July 16, 1986), reprinted in 1986 U.S. Code Cong. & Ad. News 5649, 5653, 1986 WL 31950.
8. 99-132 Cong. Rec. S33213-33214, 1986 (October 17, 1986) (S. 1200 Immigration Reform and Control Act of 1986), <https://archive.org/stream/congressionalrec132munit#page/n257/mode/2up> (accessed October 20, 2017).
9. In fact, analysis of government reports on illegal immigration after IRCA found that IRCA may have actually increased illegal immigration as illegal immigrants came to join their newly legalized friends or family. Center for Immigration Studies, “New INS Report,” October 12, 2000, <https://cis.org/New-INS-Report> (accessed October 20, 2017).
10. 99-132 Cong. Rec. S33225-33226, 1986 (October 17, 1986) (S. 1200 Immigration Reform and Control Act of 1986), <https://archive.org/stream/congressionalrec132munit#page/n261/mode/2up> (accessed October 20, 2017).
11. 99-132 Cong. Rec. S33213-33216, 1986 (October 17, 1986) (S. 1200 Immigration and Reform Act of 1986), <https://archive.org/stream/congressionalrec132munit#page/n257/mode/2up> (accessed October 20, 2017).
12. David Inserra, “Most Illegal Immigrants Crossing Border Believe They Are Eligible for Legal Status. Obama’s Actions Make That No Surprise,” *The Daily Signal*, October 30, 2015, <http://dailysignal.com/2015/10/30/most-illegal-immigrants-crossing-border-believe-they-are-eligible-for-legal-status-obamas-actions-make-that-no-surprise/>.

the U.S. got was even more illegal immigration and an overwhelmed system.

By making amnesty the first and central part of legislation, Congress is abdicating its pre-eminent duty to make sure the U.S. has a well-enforced immigration system that is beneficial to the U.S. In essence, Congress never solves the root causes of illegal immigration, instead hoping that another amnesty will work where past ones have not only failed, but made the problem even worse.

Amnesty as Law Breaker. Fairness and equality under the law are fundamental American principles. Amnesty proposals, however, reward those who have broken the law. Beyond incentivizing additional illegal immigration, amnesty is unfair to all law-abiding Americans, legal immigrants, and those waiting to come legally to the U.S. Instead of jettisoning the rule of law with amnesty, Congress should ensure that immigration best serves the U.S.'s interests and that the immigration system is easier to use and navigate by those seeking legal entry. Ultimately, amnesty unfairly favors those who have broken U.S. laws at the expense of those who obey them.

A Better Path Forward

No one denies that minors brought to the U.S. illegally through no fault of their own represent a unique challenge. But Congress has a greater responsibility to U.S. citizens, legal immigrants, and the rule of law to ensure that the U.S. immigration system is well enforced and serving American interests, and to prevent even more minors from being smuggled into the U.S. illegally in the future.¹³ Congress should:

- **Enhance border security.** The U.S. southern border would benefit from judicious increases in Customs and Border Protection agents; additional technological assets and infrastructure including drones, cameras, sensors, and various barriers where appropriate; and more facilities
- **Strengthen immigration enforcement.** U.S. laws must be enforced if additional illegal immigration is to be deterred. The U.S. should judiciously increase the number of Immigration and Customs Enforcement (ICE) agents; expand the 287(g) program that trains and deputizes state and local law enforcement officers to assist the ICE in enforcing U.S. immigration laws; curb sanctuary cities; expedite removals of illegal immigrants caught at U.S. borders; streamline the removal process;¹⁴ increase resources to immigration courts; ensure that aliens show up at court hearings by maximizing the use of detention facilities and the expanded use of cost-effective alternatives to detention, such as GPS-tracking anklets; and increased enforcement against employers who knowingly hire illegal aliens.¹⁵
- **Improve the legal immigration process.** Legal immigration is a distinct issue from illegal entry or overstay, and the two should not be conflated. Through legal immigration, the U.S. can welcome individuals from across the globe who seek to enter this nation, and do so in a way that serves U.S. security and economic interests. These interests can best be served by recognizing the importance of highly skilled immigration and ensuring that guest worker programs are truly temporary in nature and provide employers with legal labor in high-demand fields.
- **Take a step-by-step approach.** After improving enforcement and the legal immigration system, trends in illegal immigration should change for the better. After ensuring that these reforms are having the desired effects, then—and only then—should Congress discuss potential solutions for

13. Heritage research agrees with many of the enforcement elements of President Trump's immigration priorities. See news release, "Trump Administration Immigration Policy Priorities," The White House, October 8, 2017, <https://www.whitehouse.gov/the-press-office/2017/10/08/trump-administration-immigration-policy-priorities> (accessed October 20, 2017), and David Inserra, "Ten-Step Checklist for Revitalizing America's Immigration System: How the Administration Can Fulfill Its Responsibilities," Heritage Foundation *Special Report* No. 160, November 3, 2014, <http://www.heritage.org/immigration/report/ten-step-checklist-revitalizing-americas-immigration-system-how-the>.

14. Hans von Spakovsky, "Streamlining the Alien Removal Process and Lifting an Unnecessary Burden from Federal Appeals Courts," Heritage Foundation *Backgrounder* No. 2017, September 28, 2017, <http://www.heritage.org/courts/report/streamlining-the-alien-removal-process-and-lifting-unnecessary-burden-federal-appeals> (accessed October 20, 2017).

15. Inserra, "Ten-Step Checklist for Revitalizing America's Immigration System."

those here illegally. This does not mean blanket amnesty, but merely that such a difficult conversation should only occur after essential reforms are implemented and proven effective.

Reforming the U.S. Immigration System the Right Way

Amnesty proposals that incentivize more illegal immigration and do not solve the fundamental problems with the U.S. immigration system must be rejected. Congress should fulfill its responsibility—with active cooperation of the executive branch—of achieving a proven and effective enforcement process and a legal immigration system that ensures safe and effective admissions that benefit the United States as a whole.

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