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Temporary Protected Status: Current Immigration Policy and Issues

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Temporary Protected Status: Current Immigration Policy and Issues

Abstract

[Excerpt] The Immigration and Nationality Act (INA) provides that all aliens (i.e., persons who are not citizens or nationals of the United States) must enter pursuant to the INA. The major categories of aliens are immigrants, refugees and asylees (all admitted for or adjusted to legal permanent residence), and nonimmigrants (admitted for temporary reasons, e.g., students, tourists, or business travelers). Foreign nationals who lack proper immigration authorization are generally of three kinds: (1) those who overstay their nonimmigrant visas, (2) those who enter the country surreptitiously without inspection, and (3) those who are admitted on the basis of fraudulent documents. In all three instances, the aliens are in violation of the Immigration and Nationality Act (INA) and subject to removal.

As a signatory to the United Nations Protocol Relating to the Status of Refugees (hereinafter, U.N. Protocol), the United States agrees to the principle of *nonrefoulement*, which means that it will not return an alien to a country where his life or freedom would be threatened. Nonrefoulement is embodied in several provisions of U.S. immigration law. Most notably, it is reflected in the provisions requiring the government to withhold the removal of aliens to a country in which the alien's life or freedom would be threatened on the basis of race, religion, nationality, membership in a particular social group, or political opinion.

Keywords

temporary protected status, TPS, Immigration and Nationality Act, INA

Comments

Suggested Citation

Seghetti, L., Ester, K., & Wasem, R. E. (2015). *International corporate tax rate comparisons and policy implications* (CRS Report RS20844). Washington, DC: Congressional Research Service.

A previous version of this report can be found here: http://digitalcommons.ilr.cornell.edu/key_workplace/549/



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Temporary Protected Status: Current Immigration Policy and Issues

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September 2, 2015

Congressional Research Service

7-5700

www.crs.gov

RS20844

Summary

When civil unrest, violence, or natural disasters erupt in spots around the world, concerns arise over the safety of foreign nationals from these troubled places who are in the United States. Provisions exist in the Immigration and Nationality Act (INA) to offer temporary protected status (TPS) or relief from removal under specified circumstances. A foreign national who is granted TPS receives a registration document and an employment authorization for the duration of TPS.

The United States currently provides TPS to over 300,000 foreign nationals from a total of 12 countries: El Salvador, Guinea, Haiti, Honduras, Liberia, Nepal, Nicaragua, Sierra Leone, Somalia, Sudan, South Sudan, and Syria. Liberians have had relief from removal for the longest period, first receiving TPS in March 1991 following the outbreak of civil war, and again in 2014 due to the outbreak of the Ebola Virus Disease. The Administration recently designated Nepal for TPS due to the devastation caused by the 7.8 magnitude earthquake.

Under the INA, the executive branch grants TPS or relief from removal. The Secretary of Homeland Security, in consultation with the Secretary of State, has the discretion to issue TPS for periods of 6 to 18 months and can extend these periods if conditions do not change in the designated country. Congress, however, has also provided TPS legislatively.

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Background

The Immigration and Nationality Act (INA) provides that all aliens (i.e., persons who are not citizens or nationals of the United States) must enter pursuant to the INA. The major categories of aliens are immigrants, refugees and asylees (all admitted for or adjusted to legal permanent residence), and nonimmigrants (admitted for temporary reasons, e.g., students, tourists, or business travelers). Foreign nationals who lack proper immigration authorization are generally of three kinds: (1) those who overstay their nonimmigrant visas, (2) those who enter the country surreptitiously without inspection, and (3) those who are admitted on the basis of fraudulent documents. In all three instances, the aliens are in violation of the Immigration and Nationality Act (INA) and subject to removal.

As a signatory to the United Nations Protocol Relating to the Status of Refugees (hereinafter, U.N. Protocol), the United States agrees to the principle of *nonrefoulement*, which means that it will not return an alien to a country where his life or freedom would be threatened. Nonrefoulement is embodied in several provisions of U.S. immigration law. Most notably, it is reflected in the provisions requiring the government to withhold the removal of aliens to a country in which the alien's life or freedom would be threatened on the basis of race, religion, nationality, membership in a particular social group, or political opinion.¹

Humanitarian Migrants

Not all humanitarian migrants are eligible for asylum or refugee status. The legal definition of asylum in the INA is consistent with the U.N. Protocol, which specifies that a refugee is a person who is unwilling or unable to return to his country of nationality or habitual residence because of a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The definitions of refugee and asylee are essentially the same in the INA, with the notable difference being the physical location of the persons seeking the status. Those who are in the United States or at a U.S. port of entry apply for asylum, while those who are displaced abroad apply for refugee status. The standards of proof and minimum thresholds are similar, but the procedures and priorities are quite different.²

If the motivation of the migrant is determined to be economic improvement rather than the political reasons that underpin the legal definition, the person is not considered eligible for asylum. This distinction is sometimes difficult to discern, because persecution as well as war may lead to economic hardships, and economic deprivation may trigger persecution or insurrection. Since factors such as extreme poverty, deprivation, violence, and the dislocation brought on by famines or natural disasters may evoke a humanitarian response, the term humanitarian migrants encompasses all those who emigrate to the United States for such reasons, including those who receive asylum.³

¹ Section 208 of INA (8 U.S.C. §1158); Section 241(b)(3) of INA (8 U.S.C. §1231); and Section 101(a) of INA (8 U.S.C. §1101(a)(42)).

² CRS Report R41753, *Asylum and "Credible Fear" Issues in U.S. Immigration Policy*, by Ruth Ellen Wasem; and CRS Report RL31269, *Refugee Admissions and Resettlement Policy*, by Andorra Bruno.

³ The term "humanitarian migrant" is not defined in the INA, nor, in this context, is it meant to imply that a sympathetic policy response is warranted. Rather, it refers to factors underlying the alien's justification for immigration.

The concept of “safe haven” embraces humanitarian migrants. It covers those who may not meet the legal definition of refugee but are nonetheless fleeing potentially dangerous situations. Safe haven also assumes that the host country, in this instance the United States, is the first country in which the fleeing alien arrives safely, or is the country where the alien is temporarily residing when the unsafe conditions occur. Safe haven is implicitly temporary in nature because it is given prior to any decision on the long-term resolution of the alien’s status. It is also a form of blanket relief because it is premised on more generalized conditions of turmoil or deprivation in the country of origin, in contrast to the individual circumstances weighed in the case-by-case asylum process.

In terms of permanent residence over the long term, the United States endorses the internationally held position that voluntary repatriation is the best outcome for refugees. Resettlement in the country to which the asylum seeker fled is considered a secondary option, and resettlement in a third country as the last alternative.

Temporary Protected Status

Temporary Protected Status (TPS) is the statutory embodiment of safe haven for those aliens who may not meet the legal definition of refugee but are nonetheless fleeing—or reluctant to return to—potentially dangerous situations. TPS is blanket relief that may be granted under the following conditions: there is ongoing armed conflict posing serious threat to personal safety; a foreign state requests TPS because it temporarily cannot handle the return of nationals due to environmental disaster; or there are extraordinary and temporary conditions in a foreign state that prevent aliens from returning, provided that granting TPS is consistent with U.S. national interests.⁴

The Secretary of Homeland Security, in consultation with the Secretary of State, can issue TPS for periods of 6 to 18 months and can extend these periods if conditions do not change in the designated country. To obtain TPS, eligible aliens report to the U.S. Citizenship and Immigrant Services (USCIS) in the Department of Homeland Security (DHS), pay a processing fee, and receive registration documents and a work authorization. The major requirements for aliens seeking TPS are proof of eligibility (e.g., a passport issued by the designated country, continuous physical presence in the United States since the date TPS went into effect, timely registration, and being otherwise admissible as an immigrant). The regulation specifies grounds of inadmissibility that cannot be waived, including those relating to criminal convictions and the persecution of others.⁵

Aliens who receive TPS are not on an immigration track that leads to permanent residence or citizenship. The “temporary” nature of TPS is apparent in the regulation. DHS has made clear that information it collects when an alien registers for TPS may be used to institute exclusion or deportation proceedings upon the denial, withdrawal, or expiration of TPS.⁶ Moreover, the TPS provision in the INA states that a bill or amendment that provides for the adjustment to lawful temporary or legal permanent resident (LPR) status for any alien receiving TPS requires a supermajority vote in the Senate (i.e., three-fifths of all Senators) voting affirmatively.⁷

⁴ Section 244 of INA (8 U.S.C. §1254a).

⁵ 8 U.S.C. §240.

⁶ *Ibid.*

⁷ Section 244(h) of INA (8 U.S.C. §1254a).

Nationalities Receiving Temporary Protections

The United States currently provides TPS to over 300,000 foreign nationals from a total of 12 countries: El Salvador, Guinea, Haiti, Honduras, Liberia, Nepal, Nicaragua, Sierra Leone, Somalia, Sudan, South Sudan, and Syria. Liberians have had relief from removal for the longest period, first receiving TPS in March 1991 following the outbreak of civil war and ultimately being redesignated in November 2014 due to the Ebola outbreak.⁸ The estimated number of aliens currently protected range from 270 Sudanese to 204,000 Salvadorans.

In 1990, when Congress enacted the TPS statute, it also granted TPS for one year to nationals from El Salvador who were residing in the United States. Subsequently, the Attorney General, in consultation with the State Department, granted TPS to aliens in the United States from the following countries: Liberia from March 1991 to October 2007; Kuwait from March 1991 to March 1992; Rwanda from June 1995 to December 1997; Lebanon from March 1991 to March 1993; the Kosovo Province of Serbia from June 1998 to December 2000; Bosnia-Herzegovina from August 1992 to February 2001; Angola from March 29, 2000, to March 29, 2003; Sierra Leone from November 4, 1997, to May 3, 2004; and Burundi from November 4, 1997, to May 2, 2009.

Table 1. Countries Whose Nationals in the United States Currently Benefit from Temporary Protected Status

Country	Status	Dates	Estimated Number ^a
El Salvador	TPS	March 2, 2001-September 9, 2016	204,000
Guinea	TPS	November 21, 2014-May 20, 2016	2,000
Haiti	TPS	January 15, 2010-July 22, 2017	50,000
Honduras	TPS	December 30, 1998-July 5, 2016	61,000
Liberia	TPS	October 1, 2007-May 20, 2016	4,000
Nepal	TPS	June 24, 2015-December 24, 2016	10,000-25,000
Nicaragua	TPS	December 30, 1998-July 5, 2016	2,800
Sierra Leone	TPS	November 21, 2014-May 20, 2016	2,000
Somalia	TPS	September 16, 1991-March 17, 2017	270
South Sudan	TPS	November 3, 2011-May 2, 2016	300-500
Sudan	TPS	November 4, 1997-May 2, 2016	600
Syria	TPS	March 23, 2012-September 30, 2016	5,000

Source: CRS compilation of USCIS data.

- a. Estimates based upon USCIS data for designated status or work authorizations. These approximate numbers do not necessarily include all aliens from the countries who are in the United States and might be eligible for the status. USCIS updates these numbers when it renews TPS for nationals from a given country.

⁸ In September 2011, the Liberians who had TPS received relief through Deferred Enforced Departure (DED). The Attorney General can provide, under certain conditions, discretionary relief from deportation by means of the suspension of enforcement of the immigration laws against a particular group of individuals. DED is a common discretionary procedure to provide such relief.

On July 9, 2011, South Sudan became a new nation.⁹ With South Sudan's independence from the Republic of Sudan, which has had TPS since 1997, some questioned their continued eligibility for TPS under the Sudan designation. With the new designation of South Sudan, some individuals now qualify for TPS under the South Sudanese designation, while others may still qualify under the Sudan designation.¹⁰

Leading Concerns

Nepal

On June 24, 2015, citing a substantial but temporary disruption in living conditions as a result of the 7.8 magnitude earthquake (and subsequent aftershocks) that struck the country on April 25, 2015, DHS Secretary Jeh Jonson designated Nepal for TPS for an 18-month period.¹¹ It is estimated that 10,000 to 25,000 nationals of Nepal are eligible for TPS under this designation. Eligible nationals from Nepal must register for TPS within 180 days. TPS for Nepal is set to expire on December 24, 2016.¹²

Guinea and Sierra Leone

On November 21, 2014, Secretary of Homeland Security Jeh Johnson designated Guinea and Sierra Leone for TPS through May 20, 2015,¹³ citing the outbreak of the Ebola Virus Disease (EVD) in West Africa.¹⁴ The current EVD, the first in West Africa, is the largest outbreak and as of November 21, 2014, over 2,400 have died in the two countries and there have been over 6,700 reported cases.¹⁵ Secretary Johnson granted TPS status through May 20, 2015.¹⁶ On June 25, 2015, the Administration extended the registration period for TPS, which expired on May 20, 2015, to August 18, 2015.¹⁷

⁹ CRS Report R41900, *The Republic of South Sudan: Opportunities and Challenges for Africa's Newest Country*, by Ted Dagne (available upon request).

¹⁰ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Designation of Republic of South Sudan for Temporary Protected Status," 76, 198 *Federal Register* 63629-63635, October 13, 2011.

¹¹ Previously, legislation was introduced in the House (Nepal Temporary Protected Status Act of 2015; H.R. 2033) that would designate Nepal for TPS.

¹² U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Designation of Nepal for Temporary Protected Status," 80 *Federal Register* 36346-36350, June 24, 2015.

¹³ Liberians were also designated for TPS in the announcement. See **Liberians** below.

¹⁴ U.S. Citizenship and Immigration Services, "Designation of Guinea and Sierra Leone for Temporary Protected Status," 79 *Federal Register* 69502-69502, November 21, 2014.

¹⁵ Nearly 3,000 individuals have died from EVD in Liberia and there have been over 7,000 reported cases. See CRS Report IF00044, *Ebola: 2014 Outbreak in West Africa*, by Nicolas Cook and Tiaji Salaam-Blyther (available upon request).

¹⁶ U.S. Citizenship and Immigration Services, "Designation of Guinea for Temporary Protected Status," 79 *Federal Register* 69511-69515, November 21, 2014; and U.S. Citizenship and Immigration Services, "Designation of Sierra Leone for Temporary Protected Status," 79 *Federal Register* 69506-69511, November 21, 2014.

¹⁷ See U.S. Citizenship and Immigration Services, "Extension of the Initial Registration Period for Guinea, Liberia and Sierra Leone for Temporary Protected Status," 80 *Federal Register*, Number 122, 36551-36552.

Syria

On March 29, 2012, then-Secretary of Homeland Security Janet Napolitano designated the Syrian Arab Republic (Syria) for TPS through September 30, 2013, citing temporary extraordinary conditions that would make it unsafe for Syrian nationals already in the United States to return to the country.¹⁸ Foreign nationals from Syria are among those subject to additional security screenings and background checks in order to obtain a visa to come to the United States because Syria is deemed a state sponsor of terrorism.¹⁹ The ongoing uprising against Syrian President Bashar al Asad had escalated to the point that then-DHS Secretary Napolitano said “conditions in Syria have worsened to the point where Syrian nationals already in the United States would face serious threats to their personal safety if they were to return to their home country.” In the initial granting of TPS, Napolitano made clear that DHS would conduct full background checks on Syrians registering for TPS.²⁰ On January 5, 2015, TPS was once again extended for Syria through September 30, 2016.²¹

Haiti

The devastation caused by the January 12, 2010, earthquake in Haiti prompted calls for the Obama Administration to grant TPS to Haitians in the United States at the time of the earthquake.²² The scale of humanitarian crisis after the earthquake—estimated thousands of Haitians dead and reported total collapse of the infrastructure in the capital city of Port au Prince—led DHS to grant on January 15, 2010, TPS for 18 months to Haitian nationals who were in the United States as of January 12, 2010. Then-Secretary Janet Napolitano stated: “Providing a temporary refuge for Haitian nationals who are currently in the United States and whose personal safety would be endangered by returning to Haiti is part of this Administration’s continuing efforts to support Haiti’s recovery.”²³ On July 13, 2010, Napolitano announced an extension of the TPS registration period for Haitian nationals. Citing the difficulties nationals were experiencing in obtaining documents to establish identity and nationality, and the difficulty in

¹⁸ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “Designation of Syrian Arab Republic for Temporary Protected Status,” 61 *Federal Register* 19026-19030, March 29, 2012.

¹⁹ No nonimmigrant visa under §101(a)(15) of the INA shall be issued to any alien from a country that is a state sponsor of international terrorism unless the Secretary of State determines, in consultation with the Attorney General and the heads of other appropriate U.S. agencies, that such alien does not pose a threat to the safety or national security of the United States.

²⁰ Secretary of Homeland Security Janet Napolitano, “Temporary Protected Status (TPS) for Syrian Nationals,” press release, March 23, 2012, <http://www.dhs.gov/ynews/releases/20120323-napolitano-statement-syria-tps.shtm>.

²¹ U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, “Extension and Redesignation of Syrian Arab Republic for Temporary Protected Status,” 77, 80 *Federal Register* 245-252, January 5, 2015.

²² The issue of Haitian TPS has arisen several times in the past few years, most notably after the U.S. Ambassador declared Haiti a disaster in September 2004 due to the magnitude of the effects of Tropical Storm Jeanne. A series of tropical cyclones in 2008 resulted in hundreds of deaths and led some to label the city of Gonaives uninhabitable.²² The Administration of President George W. Bush did not to grant TPS or other forms of blanket relief to Haitians, nor was legislation that would have provided TPS to Haitians, such as H.R. 522 in the 110th Congress, enacted. Opponents to Haitian TPS traditionally argue that it would result in an immigration amnesty for unauthorized Haitians and foster illegal migration from the island. CRS Report RS21349, *U.S. Immigration Policy on Haitian Migrants*, by Ruth Ellen Wasem.

²³ U.S. Department of Homeland Security, “Statement from Secretary Janet Napolitano,” press release, January 15, 2010.

gathering the funds required to apply for TPS, the registration period was extended through January 18, 2011.²⁴

Then-Secretary Napolitano extended and re-designated TPS for Haitians on May 17, 2011. The extension was effective July 23, 2011, and enabled eligible individuals who arrived up to one year after the earthquake in Haiti to receive TPS. The re-designation targeted individuals who were allowed to enter the United States immediately after the earthquake on temporary visas or humanitarian parole but were not covered by the initial TPS grant. The extension and re-designation was for a period of 18 months, through January 22, 2013.²⁵ Subsequently, the DHS Secretary extended the designation of Haiti for TPS for 18 months from January 23, 2013, through July 22, 2014.²⁶ In March 2014, TPS for Haiti was extended until January 22, 2016.²⁷

On August 25, 2015, TPS for Haiti was extended for the third time since its re-designation in 2011.²⁸

Liberia

Liberians had relief from removal for the longest period of those who have had TPS or other forms of blanket relief from deportation. They first received TPS in March 1991 following the outbreak of civil war. In 1999, approximately 10,000 Liberians in the United States were given DED after their TPS expired September 28, 1999. Their DED status was subsequently extended to September 29, 2002. On October 1, 2002, Liberia was re-designated for TPS for a period of 12 months, and the status continued to be extended. On September 20, 2006, however, the George W. Bush Administration announced that Liberian TPS would expire on October 1, 2007, and they were once again granted DED until March 31, 2009. On March 23, 2009, President Obama extended DED for Liberians until March 31, 2010, and on March 18, 2010, President Obama once again extended DED for Liberians through September 30, 2011.²⁹ Previously, Liberia's DED status had been extended through September 30, 2014, but with the Ebola outbreak, the country was once again granted TPS status through May 20, 2015.³⁰ On June 25, 2015, the Administration extended the registration period for TPS, which expired on May 20, 2015, to August 18, 2015.³¹

²⁴ U.S. Citizenship and Immigration Services, "Extension of the Initial Registration Period for Haitians Under the Temporary Protected Status Program," 75 *Federal Register* 39957, July 13, 2010.

²⁵ U.S. Department of Homeland Security, "Secretary Napolitano Announces Extension of Temporary Protected Status for Haitian Beneficiaries," press release, May 17, 2011.

²⁶ U.S. Citizenship and Immigration Services, "Extension of the Designation of Haiti for Temporary Protected Status," 77 *Federal Register* 59943-59948, October 1, 2012.

²⁷ U.S. Citizenship and Immigration Services, "Extension of the Designation of Haiti for Temporary Protected Status," 79 *Federal Register* 11808-11814, March 3, 2014.

²⁸ U.S. Citizenship and Immigration Services, "Extension of the Designation of Haiti for Temporary Protected Status," 80 *Federal Register* 51582-51588, August 25, 2015.

²⁹ U.S. Citizenship and Immigration Services, "Filing Procedures and Automatic Extension of Employment Authorization and Related Documentation for Liberians Provided Deferred Enforced Departure," 75 *Federal Register* 15715, March 30, 2010.

³⁰ U.S. Citizenship and Immigration Services, "Designation of Liberia for Temporary Protected Status," 79 *Federal Register* 69502-69502, November 21, 2014.

³¹ See U.S. Citizenship and Immigration Services, "Extension of the Initial Registration Period for Guinea, Liberia and Sierra Leone for Temporary Protected Status," 80 *Federal Register*, Number 122, 36551-36552.

Central America

Whether to grant blanket relief to nationals from neighboring Central American countries has perplexed policymakers for several decades. The only time Congress has specifically granted TPS was in 1990 to nationals of El Salvador.³² In the aftermath of Hurricane Mitch in November 1998, then-Attorney General Janet Reno announced that she would temporarily suspend the deportation of aliens from El Salvador, Guatemala, Honduras, and Nicaragua. On December 30, 1998, the Attorney General designated TPS for undocumented Hondurans and Nicaraguans in the United States as of that date because, they maintained, Honduras and Nicaragua had such extraordinary displacement and damage from Hurricane Mitch as to warrant TPS. Prior to leaving office in January, the Clinton Administration said it would temporarily halt deportations to El Salvador. In 2001, the George W. Bush Administration decided to grant TPS to Salvadorans following two earthquakes that rocked El Salvador.

Over the years, the George W. Bush Administration granted, and now the Barack Obama Administration has continued to grant, TPS to Central Americans from El Salvador, Honduras, and Nicaragua. Their rationale has been consistent when announcing the re-designation: “There continues to be a substantial, but temporary, disruption of living conditions in Nicaragua resulting from Hurricane Mitch, and Nicaragua remains unable, temporarily, to handle adequately the return of its nationals.”³³ Similarly, the *Federal Register* notice re-designating Salvadoran TPS stated: “There continues to be a substantial, but temporary, disruption of living conditions in El Salvador resulting from a series of earthquakes in 2001, and El Salvador remains unable, temporarily, to handle adequately the return of its nationals.”³⁴

Legislation

Because aliens granted TPS are not eligible to become legal permanent residents (LPRs) in the United States, a special act of Congress is required for such aliens to adjust to LPR status.³⁵ Legislation that would have allowed nationals from various countries that have had TPS to adjust to LPR status had been introduced in past Congresses, but not enacted. Similar provisions had also been included as part of comprehensive immigration reform (CIR) legislation in the 113th Congress.³⁶ The Senate-passed CIR legislation, S. 744, did not include specific provisions for foreign nationals with TPS to adjust status, but many would have qualified for the registered provisional immigrant status that S. 744 as passed would have established.³⁷

³² For historical analysis, see out of print CRS Report 97-810, *Central American Asylum Seekers: Impact of 1996 Immigration Law*, by Ruth Ellen Wasem (available upon request.)

³³ U.S. Citizenship and Immigration Services, “Extension of the Designation of Nicaragua for Temporary Protected Status,” 78 *Federal Register* 20128-20133, April 3, 2013.

³⁴ U.S. Citizenship and Immigration Services, “Extension of the Designation of El Salvador for Temporary Protected Status,” 78 *Federal Register* 2013-12793, May 30, 2013.

³⁵ For example, Congress enacted legislation in 1992 that allowed Chinese who had deferred enforced departure following the Tiananmen Square massacre to adjust to LPR status (P.L. 102-404). The 105th Congress passed legislation enabling Haitians to adjust status (P.L. 105-277).

³⁶ See archived CRS Report R40848, *Immigration Legislation and Issues in the 111th Congress*, coordinated by Andorra Bruno; archived CRS Report RL34204, *Immigration Legislation and Issues in the 110th Congress*, coordinated by Andorra Bruno; and archived CRS Report RS22111, *Alien Legalization and Adjustment of Status: A Primer*, by Ruth Ellen Wasem.

³⁷ See archived CRS Report R43097, *Comprehensive Immigration Reform in the 113th Congress: Major Provisions in Senate-Passed S. 744*, by Ruth Ellen Wasem.

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