



**Ghosts from the Past: *SAW and Future Legalization Are Not the Same Thing***  
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Critics of the bipartisan efforts to bring about a legalization program as a component of a future comprehensive reform law may play a golden oldie: raising the specter of fraud in order to defeat such a bill. In a letter to ICE Director John Morton, Congressman Lamar Smith similarly argued last year that the Department of Homeland Security's (DHS) current Deferred Action for Childhood Arrival (DACA) program will invite thousands of undocumented immigrants to falsify documents proving that they meet the requirements of the program, likening it to the Special Agricultural Worker (SAW) legalization program of 1986. By conjuring up ghosts of the past, Congressman Smith not only confused the nature of legalization and deferred action, but ignored the dramatic changes in immigration adjudication and enforcement that have taken place since 1986.

While DHS must of course be diligent in combatting fraud, the lessons learned, the technology, and the people such a future program would be designed to serve, would work together to limit the potential for rampant fraud. It should also be noted that for the most part, allegations of fraud were tied primarily to the SAW program, rather than the legalization program opened to other undocumented immigrants.

**What is SAW legalization?**

In 1986, the Immigration Reform and Control Act (IRCA) authorized two types of legalization programs for undocumented immigrants. One provision provided for legalization of persons who could establish entry before 1982. The other, the Special Agricultural Workers ([SAW](#)) program, required applicants to prove that they resided in the United States and had worked in agriculture for at least 90 days in the 12 months preceding application.

**Was fraud an issue under the SAW program?**

The design of the SAW program led to numerous challenges for adjudicators, many of whom, according to the Congressional Research Service (CRS), found it difficult to determine legitimate from fraudulent applications.

CRS researchers concluded, "Congress mandated that the INS determine eligibility for a population whose migration histories and employment practices are unsuited to the construction of a documentary record of evidence." [For example, m](#)Many workers were paid in cash, thus having no records of employment history. [Therefore, l](#)Letters asserting that an individual had worked for a farmer were the basis of many applications and the burden of proof was on the INS to disprove the claim.

In hundreds of thousands of cases, qualified applicants unable to produce documentation turned to notaries ~~and labor contractors~~ for assistance. ~~Nonetheless, While many some~~ have acknowledged that fraudulent documents ~~were a problem~~ resulted, ~~although~~ many of those

using fraudulent documents were actually qualified applicants who simply could not obtain the documents from the employers and labor contractors for whom they had actually worked.

### **What will a future legalization program for agricultural workers look like?**

Since as of this writing, there is currently no bill that has been introduced, this analysis is based on the Statement of Principles announced by the bipartisan “Group of Eight.” ~~early last week.~~ The portion of a future Comprehensive Immigration Reform (CIR) bill that will be closest to the SAW program will be a provision to legalize workers who have performed and will continue to perform agricultural work. Based on the Statement of Principles, such a program in a future bill will probably be similar to the AGJOBS bill which was incorporated into CIR bills in 2009 and 2010. Under the AGJOBS provisions, qualified individuals would only obtain permanent lawful residence by continuing to perform agricultural work for a number of years after having been granted an initial work authorization. Applicants would be subject to criminal background checks and would have their cases adjudicated on an individual basis.

### **Why is any agricultural legalization program significantly different from SAW?**

The requirement to continue to perform agricultural work for a number of years in the future should keep any potential fraud in check. It will be much preferable for an immigrant who has not performed agricultural work in the past who wishes to become a lawful permanent resident to qualify under the general legalization provisions of any bill contemplated by the bipartisan group because there will be no requirement to perform agricultural work in the future.

There will also be virtually no incentive for fraud under the general legalization provision because applicants will probably have to demonstrate that they were present in the United States on ~~the day in 2012 in which the bill was introduced~~ a specific date detailed in the bill, rather than for a number of years in the past as in IRCA’s general legalization program in which applicants applied for in 1987-1988. Even though those applicants had to meet the much more burdensome requirement of demonstrating that they had resided in the U.S. for more than five years (from January 1, 1982) there was virtually no fraud by applicants under that part of the legalization program. Furthermore, it will be very easy for DHS to zero in on those applications which have even a minimal possibility of fraud because those applications will be the ones in which the applicants have stated that they only recently entered the U.S. before the 2012 required date of entry and do not have much supporting documentation.

In addition, and perhaps more importantly, the government has ~~gotten smarter~~ focused more resources on building programs that reduce the likelihood of fraud. For example,

- Applicants will undergo biometric security checks that far surpass the fingerprint checks conducted in 1986.
- Since 1986, both Congress and the executive branch have learned from their mistakes. Significant legislation, such as Temporary Protected Status, NACARA, and HRIFA, and the regulations and policies that implemented them, have established evidentiary standards, acceptable forms of documentation, and more protections against fraud.

### **Is DHS prepared to tackle fraud?**

DHS places a high priority on ensuring against fraud in the benefit application process. In addition to biometric security checks, DHS resources are put towards a variety of programs to monitor fraud, including:

- **INS Forensic Document Laboratory** → placed in ICE after INS was abolished.

- Provides forensic examination of documents for handwriting, stamp and seal impressions, ink analysis and other attributes as well as analyzing the biometric data.
- Provides evidentiary support and expert testimony when needed.
- **USCIS Fraud Detection and Admissibility** → must confirm not only that the aliens are eligible for the particular immigration status they are seeking, but also whether they should be rejected because of other requirements of the law.
- **Office of Fraud Detection and National Security (FDNS)** → works with law enforcement to identify systemic fraud in the application process.
  - If ICE declines criminal investigation, USCIS can initiate an administrative review process to determine if the benefit requested should be denied and the individual placed in removal proceedings.
  - USCIS has increased the number of FDNS officers, analysts, and staff.
  - DHS Inspector General recognized and praised USCIS's anti-fraud efforts.

### **Is fraud really the issue?**

Maintaining the integrity of the system should be a goal for all involved in drafting and implementing a future legalization law and this Committee is right to expect the Secretary and other DHS personnel to give a full accounting of how they plan to implement this new program. But concerns over fraud must be balanced against competing, and equally important issues such as creating a fair system, creating an efficient system, ensuring confidentiality of the process, providing access, especially for pro se applicants, and maximizing the opportunity of the young people who deserve a chance to succeed.