

One [Non-magic] Word...
...Opens the Path to Permanent Legal Status for Eight Million Immigrants
By Larry Kleinman ¹

In law and legislation, the fates of millions can turn on a single word. Insert a “no”, for example, and rights or remedies vaporize. -

The destiny and well-being of millions of immigrants with substantial roots in our country is obstructed by the word (technically, the *number*) “1972” in section 249 of the Immigration and Nationality Act (INA). **Congress could change that *one word*, 1972, to “2016.”** And *Voilà!* As many as eight million immigrants in the U.S.—undocumented or unauthorized—could **immediately apply for “lawful permanent resident” status** and, starting five years later, for U.S. citizenship.

Those millions would include virtually all who have or would qualify for DACA status, plus all who would have qualified for DAPA,² all who have Temporary Protected Status (TPS) or would qualify for the DREAM and PROMISE Act (HR6), plus the vast majority of those who would qualify under the proposed Farm Workforce Modernization Act or the Citizenship for Essential Workers Act.

Unlike the terms of those proposals, applicants would not be subject to years in temporary, limbo statuses. They would not face new/additional prerequisites such as education completion or language fluency. They would pay no fines or penalties.

There would be *no need for new regulations or agency operating instructions and no new forms or extra fees*. It’s way more than “shovel ready” as folks used to say during the Great Recession recovery. It’s fully built and ready for occupancy. To implement it, the U.S. Citizenship and Immigration Services (USCIS) would only need dramatically augment its workforce to process applications, financed by an existing application fee³.

It’s called “Registry”

“Registry” has been part of U.S. immigration law since 1929. Since 1940, it has operated as a sort of statute of limitations on deportation and status-less-ness. That year, Congress

¹ Larry (larrykleinman@capacesleadership.org) co-founded PCUN and sister organizations in Woodburn, Oregon. Today he is a senior adviser to the CAPACES Leadership Institute in Woodburn and to the Fair Immigration Reform Movement (FIRM), the nation’s largest immigrants’ rights network, based at Community Change in Washington DC. Many of his essays and chronicles are posted at www.pcun.org (“News” tab, Larry Kleinman’s Writings).

² DAPA, or “Deferred Action for Parents of Americans” was an administrative relief program proposed by the Obama Administration in November 2014 to offer temporary permission to work and protection from deportation to millions of undocumented immigrants with U.S. citizen children. Federal courts blocked the program’s implementation and President Trump canceled it shortly after taking office.

³ The current fee for the I-485 “Adjustment of Status” application is \$1,140 (\$750 for children 14 or younger). There is a fee waiver available to some applicants.

set 1924 as the cut-off. If you'd been residing in the country since then and met some basic criteria, you could stay permanently.

In 1952, Congress named that provision "Registry." On three occasions, the Congress has moved up the cut-off: in 1958 (from 1924 (to 1940), in 1965 (to 1948), and in 1986 (to 1972 as part of IRCA, the Immigration Reform and Control Act). It's remained there ever since, so it's no wonder Registry garners little attention, even among immigration law practitioners. The small pool of eligible immigrants evaporated decades ago.

How does the Registry process work?

Registry is one basis for "adjustment of status" to lawful permanent residence or "green card" status. Applicants must show that they possess "good moral character", defined in INA section 101(f) for various immigration processes. Certain criminal convictions, for example, are disqualifying. (For the full download on Registry and its history, go to: <https://www.uscis.gov/policy-manual/volume-7-part-o-chapter-4>.)

Significantly, *an applicant does not have to show that they are unlikely to become a "public charge"*, a bar the Trump Administration elevated in order to exclude millions of working-class immigrants from receiving permanent residence via family-based visas. (Appropriately, the Biden Administration in its first 100 days rescinded this measure.) Adjustment of status applicants generally receive work authorization during the adjudication process. They are not required to depart the U.S. and return, as is the cases for most family-based visas. This means Registry applicants wouldn't trigger the "three and ten-year bar" punishments, enacted in 1996, which force undocumented/unauthorized immigrants to remain outside the country if they depart for any reason.

Why didn't someone think of this sooner?

Though the "amend-one-word" path *not* a new idea, relatively few—even in the immigrants' rights movement—are familiar with it. For example, we regularly hear about beneficiaries of IRCA's "amnesty" but rarely, if ever, encounter or hear of someone who attained residence through Registry.

Despite its obvious appeal, Registry never got traction among immigration policy insiders because of its perceived political "sticker-shock" effect, evidenced by the potency of "amnesty" as an anti-immigrant weapon. Simply put, we concluded that we did not have the political strength to win the battle to benefit so many *and* require comparatively less from them. The failure to enact even a more restrictive path seems to validate the accuracy of this calculation.

But the political environment may now be changing. Registry is garnering attention and even mainstream support.⁴

Why choose “2016” as the “One Word”?

Any given cut-off date seems arbitrary. Settling on 2016—five years as of 2021—mirrors the five-year presence requirements in DACA and DAPA, as well as IRCA’s section 245A legalization.

Some might argue that setting the minimum residence at five years does not comport with Registry’s history, pointing out that fifteen is the fewest number of years ever required. A possible fallback position, therefore, could be ten years, or 2011. (Migration Policy Institute estimates that at least 6,800,000 undocumented/unauthorized immigrants have been in the U.S. since before 2012.) DACA beneficiaries and all the other sub-groups mentioned above would still qualify under a 2011 cut-off. However, more recent asylum applicants, whose numbers sharply increased starting in 2014, would not.

Visualizing the path to the One Word change

2021 could well be the year to update and reactivate Registry. An interwoven set of bold shifts could pave the way but our collective resolve and unity—or lack thereof—might become decisive to fulfilling the opportunity.

The legislative stars may be aligning around *Registry as our only vehicle capable of navigating the opaque and somewhat arbitrary strictures of “budget reconciliation”*—our only path to Senate approval.

In sum, we can argue that the One Word amendment:

- Updates longstanding immigration law and doesn’t create any “special path”;⁵
- Takes the simplest and readiest possible path for all concerned;
- Regularizes the status of millions of workers/families who helped our nation doing essential work during this dangerous and painful period of our history;
- Fulfills the priority to offer a path to permanent status for DACA, TPS and similarly highlighted and positively regarded constituencies;
- Keeps with the self-funding approach to the application process;
- Reduces, de facto, the family preference visa backlogs, given that a sizeable portion of those on waiting lists are in the US and would rightly prefer Registry;

⁴ See Fwd.us 4/15/21 post: <https://www.fwd.us/news/immigration-registry> and The Chicago Sun Times 5/11/21 editorial: <https://chicago.suntimes.com/2021/5/11/22420760/registry-act-1929-undocumented-immigrants>

⁵ I acknowledge that the term “registry” has unfortunate associations, e.g., “Muslim registry”. An assertive public and community education campaign would be required to make the differences well known and understood.

- Sidesteps a drawn-out, divisive legislative/political battle by enacting the change within a vehicle that provides a myriad of benefits that will command the attention of many constituencies, rather than focus entirely on immigrants;
- Gets a key immigration reform done, overcoming decades of failure;
- Uplifts the spirit of swiftly re-building our nation, not bogging down in the tired, divisive debates (though other immigration stakeholders may press for *their* fix).

Getting to Fifty Plus One

This essay was first drafted in the late spring of 2020. Today's set of key unknowns is considerable smaller. As of this June 2021 updating, the budget reconciliation opening will occur in October 2021 and likely be a one-shot proposition. That points to a mega-sized bill, not unlike the recent American Rescue Plan Act.

Based on those assumptions, changing the Registry date stands out as the most politically and legislatively viable option. For the “audience of one”, a/k/a, the Senate Parliamentarian, the One Word Amendment stands the best chance of surviving the so-called “Byrd Bath” scrutiny. The Amendment requires no “process” or eligibility criteria changes in substantive law, the kind of provision which the Parliamentarian has disallowed in previous attempts to use budget reconciliation.

For the audience of 51—Senators plus the Vice President—and to increase both Byrd Bath success and political viability, a tax of, say \$1,000, could be levied on every applicant to generate revenue for infrastructure—the kind of budget impact required for reconciliation. While admittedly a highly inequitable imposition, it mirrors the Affordable Care Acts “tax” on those without health insurance; it also echoes the \$1,000 penalty imposed for “245i” adjustment of status in the 1990s. A \$1,000 tax would fit the call by pro-immigration evangelicals for a “restitution-based immigration reform,” giving some cover to centrists and center-right politicians.

And for those 51, pressure will skyrocket to get a mega-sized bill passed early in FY 2022 so that its good effects are as evident as possible to voters before the mid-term elections. And by October 2021, all the pressure behind DREAM, TPS, farmworker and essential worker paths to status can converge to propel the One Word Amendment as the only viable path to legislative action on immigration.

Advancing the Registry date will help conjure a new meaning for the word “2016”, indelibly stained by its association with Trump's election. That's another modest but compelling reason to enact the One Word Amendment!