Congressional Research Service
Informing the legislative debate since 1914

Immigration Legislation and Issues in the 114th Congress

Updated September 9, 2016

Congressional Research Service
https://crsreports.congress.gov
R44230

CRS REPORT
Prepared for Members and
Committees of Congress

Summary

The House and the Senate have considered immigration measures on a variety of issues in the 114th Congress. The Consolidated Appropriations Act, 2016 (P.L. 114-113) extends four immigration programs through September 30, 2016: the EB-5 immigrant investor Regional Center Pilot Program, the E-Verify employment eligibility verification system, the Conrad State program for foreign medical graduates, and the special immigrant religious worker program. P.L. 114-113 also contains provisions on the Visa Waiver Program and certain nonimmigrant visa categories.

Other enacted immigration-related measures include the Border Jobs for Veterans Act of 2015 (P.L. 114-68) on border security personnel, the Adoptive Family Relief Act (P.L. 114-70) on intercountry adoption, the National Defense Authorization Act for Fiscal Year 2016 (P.L. 114-92) on the Afghan special immigrant visa program, the Fixing America's Surface Transportation (FAST) Act (P.L. 114-94) on border infrastructure, the Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114-125) on preclearance operations, and the Edward "Ted" Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015 (P.L. 114-136) on border security vulnerabilities.

The House and the Senate have each passed several other immigration-related bills. Among the House-passed bills are the Northern Border Security Review Act (H.R. 455), the Preclearance Authorization Act of 2015 (H.R. 998), the Border Security Technology Accountability Act of 2015 (H.R. 1634), the Enforce the Law for Sanctuary Cities Act (H.R. 3009), the Promoting Resilience and Efficiency in Preparing for Attacks and Responding to Emergencies (PREPARE) Act (H.R. 3583), the Border and Maritime Coordination Improvement Act (H.R. 3586), the American SAFE Act of 2015 (H.R. 4038), the Southwest Border Security Threat Assessment Act of 2016 (H.R. 4482), and the Department of Homeland Security Strategy for International Programs Act (H.R. 4780). The Senate has passed the Department of State Operations Authorization and Embassy Security Act, Fiscal Year 2016 (S. 1635). The House and the Senate have both passed versions of the National Defense Authorization Act for FY2017 (S. 2943), which include different immigration-related provisions.

In addition, various bills on border security, interior enforcement, visa security, and asylum, among other issues, have been considered by a House or Senate committee. Border security-related measures have been reported by the House Homeland Security Committee (H.R. 399) or the Senate Homeland Security and Governmental Affairs Committee (S. 461, S. 750, S. 1808, S. 1864, S. 1873, S. 2976). Interior enforcement provisions are included in bills ordered to be reported by the House Judiciary Committee (H.R. 1147, H.R. 1148, H.R. 1153) or reported by the House Appropriations Committee (H.R. 3128). Several of these interior enforcement bills contain key provisions on other immigration issues, such as employment eligibility verification (H.R. 1147); visa security and naturalization (H.R. 1148); and expedited removal, asylum, parole, and unaccompanied alien children (H.R. 1153). Visa security provisions are likewise included in H.R. 5203, as ordered to be reported by the House Judiciary Committee, and H.R. 5253, as ordered to be reported by the House Homeland Security Committee. H.R. 1149, as ordered to be reported by the House Judiciary Committee, also addresses unaccompanied alien children.

This report discusses these and other immigration-related issues that have received legislative action or are of significant congressional interest in the 114th Congress. Department of Homeland Security appropriations are addressed in CRS Report R44053, *Department of Homeland Security Appropriations: FY2016*, and, for the most part, are not covered here.

Contents

Introduction 1
Border Security 1
- Border Security Strategy and Metrics 2
- Border Security Resources 3
- Preclearance Operations 5
- Entry-Exit System 6
- Expedited Removal 6
- Access to Federal Lands and DHS Waiver Authority 7

Interior Enforcement 8
- Criminal Sanctions 8
- Inadmissibility, Deportability, and Relief from Removal 9
- Detention of Aliens 10
- Removal-Related Resources 10
- Prosecutorial or Enforcement Discretion and Deferred Action 11
- Student and Exchange Visitor Information System (SEVIS) 13
- State and Local Involvement in Immigration Enforcement 13

Employment Eligibility Verification and Worksite Enforcement 14
Visa Security 16
Asylum and Refugee Status 18
- Lautenberg Amendment on Refugees 20

Unaccompanied Alien Children 20
Parole 21
Afghan Special Immigrant Visas 21
Visa Waiver Program 22
USCIS Adjudications 24
H-2B Nonagricultural Worker Visa 24
Naturalization 25
- Posthumous Citizenship for Filipino Veterans of World War II 26

Other Issues and Legislation 26
- Immigrant Investors 26
- Special Immigrant Program for Religious Workers 27
- Waivers for Foreign Medical Graduates 27
- H-1B and L Nonimmigrant Visa Fees 27
- Intercountry Adoption 28
- Executive Action on Immigration 28

Contacts

Author Information 29

Introduction

Although immigration has not been a front-burner issue in the 114th Congress, the House and the Senate have acted on a number of immigration-related measures. Border security has been the focus of much of this legislative activity, with the House and the Senate considering legislation on border security strategy and metrics, border resources, and preclearance operations, among other areas of border security, and enacting specific measures on components including border infrastructure, border security vulnerabilities, and preclearance operations. The 114th Congress has likewise enacted measures on intercountry adoption, Afghan special immigrant visas, and the Visa Waiver Program, among other issues, and has extended the E-Verify employment eligibility verification system and several other immigration programs through FY2016.

Interior enforcement and visa security are the subjects of several bills that have received congressional action. The former measures variously concern such issues as criminal sanctions; inadmissibility, deportability, and relief from removal; state and local involvement in immigration enforcement; and worksite enforcement, while the latter address visa issuances, among other issues. Other immigration-related issues of congressional interest include asylum, refugees, and unaccompanied alien children.

This report discusses these and other immigration-related issues that have received legislative action or are of significant congressional interest in the 114th Congress.[1]

Border Security

The Department of Homeland Security (DHS), which was established in 2003 in accordance with the Homeland Security Act of 2002 (HSA; P.L. 107-296), is charged with protecting U.S. borders from weapons of mass destruction, terrorists, smugglers, and unauthorized aliens.[2] Border security involves securing the many means by which people and things can enter the country. Operationally, this means controlling the official ports of entry (POEs) through which legitimate travelers and commerce enter the country and patrolling the nation's land and maritime borders to prevent illegal entries.

DHS's U.S. Customs and Border Protection (CBP), created by the George W. Bush Administration as it established DHS, protects 7,000 miles of U.S. international land borders with Mexico and Canada and 95,000 miles of coastal shoreline. The Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114-125) amends the HSA to authorize U.S. Customs and Border Protection.

At ports of entry, the CBP Office of Field Operations (OFO) is responsible for conducting immigration, customs, and agricultural inspections of travelers seeking admission to the United States. Between POEs, CBP's U.S. Border Patrol (USBP) is responsible for enforcing immigration law and other federal laws along the border and for preventing unlawful entries into the United States. According to USBP data, apprehensions of unauthorized migrants have declined since FY2005, reaching a 40-year low in FY2011. Apprehensions remain at historically low levels although there have been some upticks in recent years driven by apprehensions of

[1] For the most part, Department of Homeland Security appropriations are not covered in this report. See CRS Report R44053, *Department of Homeland Security Appropriations: FY2016*.

[2] An alien is any person who is not a citizen or national of the United States.

Central American families and unaccompanied alien children (UAC) at the Southwest border (see "Unaccompanied Alien Children").[3]

Border security has been an important issue for the last several Congresses. In recent years, some Members of Congress have proposed to strengthen border security as part of a "comprehensive immigration reform" bill, while others have argued that Congress should not consider other immigration reforms until the border has been secured.

Border Security Strategy and Metrics

DHS, CBP, OFO, and USBP all have published strategic plans, but they have not laid out a comprehensive operational strategy for securing U.S. borders or published clear metrics for measuring and evaluating border security.[4] The absence of such a strategy and metrics arguably has contributed to disagreements about the existing level of border security.

In the 114th Congress, the Secure Our Borders First Act of 2015 (H.R. 399), as reported by the House Homeland Security Committee, would establish new requirements concerning border strategy and metrics.[5] One of the cornerstones of H.R. 399 is the requirement that the Secretary of Homeland Security gain *situational awareness* and *operational control*[6] over both the southern and northern borders. For the southern border, the bill would require that certain elements be met within a specified time period in order for the Secretary to attest that he has achieved operational control. In addition, H.R. 399 would create a Border Security Verification Commission (BSVC) to certify whether DHS has established situational awareness and operational control of the border. The bill specifies the composition of the BSVC, among other items.

H.R. 399 would direct the Secretary to submit an operational plan. The bill would require the plan to include a variety of items, such as an assessment of principal border security threats, a description of the staffing requirements for all the border security functions of the border security components in DHS, a prioritized list of research and development objectives to enhance the security of U.S. international borders, and identification of impediments to the deployment of technologies.

H.R. 399 would further require the development of metrics for each of the four functional zones along the border—land (at and between POEs), air, and sea ports of entry—within 120 days of enactment.[7] The bill specifies what should be included in each metric for each functional zone along the border. Similarly, the Department of Homeland Security Border Security Metrics Act of 2015 (S. 1864), as reported by the Senate Committee on Homeland Security and Governmental Affairs, the National Defense Authorization Act for FY2017 (S. 2943), as passed by the Senate, and the DHS Accountability Act of 2016 (S. 2976), as reported by the Senate Committee on

[3] For a discussion of unaccompanied child arrivals, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*.

[4] For further discussion of border security strategies, see CRS Report R42969, *Border Security: Understanding Threats at U.S. Borders*; for further discussion of border security metrics, see CRS Report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*.

[5] See archived CRS Report R43879, *H.R. 399, the Secure Our Borders First Act of 2015: Report in Brief*.

[6] Operational control is defined in the bill as the prevention of *all* unlawful entries. The bill would adopt the language found in the Secure Fence Act of 2006 (§2(b) of P.L. 109-367).

[7] After the submission of the first set of metrics (within 120 days of enactment of the act), H.R. 399 would require metrics to be submitted annually.

Homeland Security and Governmental Affairs, would also require the Secretary to develop metrics for the same functional zones of the border.

The Border and Maritime Coordination Improvement Act (H.R. 3586), as passed by the House, would amend the Homeland Security Act of 2002 by establishing certain border security joint task forces.[8] H.R. 3586 would require the Secretary of Homeland Security to (1) submit to Congress a maritime operations coordination plan for DHS components responsible for maritime security missions, (2) establish a process to prevent unauthorized migrants from obtaining or using a Transportation Worker Identification Credential, and (3) conduct a cost-benefit analysis of co-locating aviation and maritime operational assets. Furthermore, H.R. 3586 would require CBP's Office of Air and Marine Operations (AMO) to employ a risk-based assessment to inform its asset deployment.

Among the other related measures considered in the 114th Congress, the Edward "Ted" Kaufman and Michael Leavitt Presidential Transitions Improvements Act of 2015 (P.L. 114-136) requires the Secretary of Homeland Security to submit a report on border security vulnerabilities during a presidential transition, including steps to address such vulnerabilities. The Northern Border Security Review Act (H.R. 455), as passed by the House, would direct the Secretary of Homeland Security to submit a northern border threat analysis. A similar bill by the same name (S. 1808), as reported by the Senate Committee on Homeland Security and Governmental Affairs, would also require a northern border threat analysis. An additional bill, the Southwest Security Threat Assessment Act of 2016 (H.R. 4482), as passed by the House, would direct the Secretary to submit a Southwest border threat analysis, followed by a Border Patrol Strategic Plan. While these bills may not appear to address issues of strategy and metrics, such threat analyses could provide a baseline for future planning.

Border Security Resources

Across a variety of indicators, the United States has substantially expanded border enforcement resources over the last three decades. Particularly since 2001, such increases have included border security personnel, fencing and infrastructure, and surveillance technology.[9]

One of the requirements in H.R. 399 involves the components of CBP maintaining a minimum number of personnel. The bill, as reported by the House Homeland Security Committee, would permit the Chief of the Border Patrol to transfer agents, who desire such transfers, to high-traffic areas. The bill would permit the Chief of the Border Patrol to provide an incentive bonus to such agents. The Border Jobs for Veterans Act of 2015 (P.L. 114-68) directs the Secretary of Homeland Security to consider the expedited hiring of qualified veterans as CBP officers. It also directs the Secretary of Homeland Security, in consultation with the Secretary of Defense, to enhance recruitment of members of the Armed Forces who are separating from military service for CBP officer positions.

H.R. 399 would further require that infrastructure, technology, and equipment requirements be met as part of achieving situational awareness and operational control of the border. Among these requirements are the following:

[8] The bill specifies the authorization of Joint Task Force-East, Joint Task Force-West, and Joint Task Force-Investigation. The Secretary would also be granted the authority to create additional joint task forces.

[9] See CRS Report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*.

- The deployment of certain types of technology in specified southern border patrol sectors within one year of enactment.[10]
- In addition to what already has been constructed, the erection of fencing in specified southern border patrol sectors within 18 months of enactment.[11] *The bill makes a distinction between "fencing" and "vehicle fence."*[12]
- The completion of road construction and road maintenance projects in specified border patrol sectors within 18 months of enactment.[13]
- The construction of forward-operating bases in specified border patrol sectors within one year of enactment.[14]

The Fixing America's Surface Transportation Act (FAST Act; P.L. 114-94) authorizes appropriations for surface transportation infrastructure and planning. The FAST Act allows states that share a border with Mexico or Canada to designate up to 5% of their Surface Transportation Block Grant funds for border infrastructure projects that are eligible for the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users (SAFETEA-LU) Coordinated Border Infrastructure Program.[15]

The Border Security Technology Accountability Act of 2015 (H.R. 1634), as passed by the House, would amend the Homeland Security Act of 2002 to address cost-related issues associated with technology arrayed along the border. The bill would require DHS border security technology acquisition programs that have significant lifecycle cost estimates to demonstrate that they have acquisition program baselines approved by the relevant authorities. Also, the bill would require DHS to demonstrate that such programs are meeting agreed-upon cost, schedule, and performance thresholds complying with Federal Acquisition Regulations. A Senate bill by the same name (S. 1873), as reported by the Senate Committee on Homeland Security and Governmental Affairs, includes the same provisions.

The Cross-Border Trade Enhancement Act of 2015 (S. 461), as reported by the Senate Committee on Homeland Security and Governmental Affairs, would allow the CBP commissioner to enter into cost-sharing or reimbursement agreements in order to perform certain CBP services at ports of entry. An individual entering into such an agreement would be required to pay a fee to reimburse CBP for the costs of providing such services.[16] The commissioner also would be authorized to accept donations.

Additionally, the Promoting Resilience and Efficiency in Preparing for Attacks and Responding to Emergencies (PREPARE) Act (H.R. 3583), as passed by the House, would add language to the Homeland Security Act of 2002 establishing the Federal Emergency Management Agency's

[10] The bill specifies, at a minimum, the types of technology to be deployed and in which border patrol sectors.

[11] The bill specifies, at a minimum, the number of miles of fence and the types of fence to be erected and in which border patrol sectors.

[12] "Fencing" is erected to prevent pedestrians from unlawfully crossing the border, while the construction of "vehicle fencing" provides a barrier to prevent vehicles from illegally crossing the border.

[13] The bill specifies, at a minimum, the types of projects to be completed and in which border patrol sectors.

[14] The bill specifies, at a minimum, the number of bases to be constructed and in which border patrol sectors. It also specifies the requirements for these bases.

[15] For more information on the SAFETEA-LU Coordinated Border Infrastructure Program, see http://www.fhwa.dot.gov/safetealu/summary.htm.

[16] CBP's Reimbursable Services Program and Donation Acceptance Program were originally authorized through Section 559 of the Consolidated Appropriations Act, 2014.

(FEMA's) Operation Stonegarden Grant Program (OPSG).[17] OPSG is designed to enhance cooperation and coordination between the U.S. Border Patrol and local, tribal, territorial, state, and federal law enforcement agencies in order to secure the border.

Preclearance Operations

Preclearance is the practice of undergoing immigration, customs, and agriculture inspections by CBP officers on foreign soil before boarding a direct flight to the United States. Once in the United States, individuals are not required to undergo further inspection. CBP has had preclearance operations since 1952, when it started such operations at the Toronto Pearson International Airport.[18] It was not until 1986, however, that Congress authorized preclearance in foreign countries.[19] Since FY2014, Congress has prohibited the use of funds for new CBP preclearance operations, with few exceptions.[20]

The Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114-125) permits the Secretary of Homeland Security to establish preclearance operations in a foreign country to prevent terrorists and other security threats and inadmissible persons from entering the United States, among other things. In establishing preclearance operations, P.L. 114-125 requires the Secretary to provide an initial notification to the relevant congressional committees no later than 60 days before entering into a preclearance agreement with a foreign country. The Secretary must provide these committees with various assessments and certifications about the preclearance operations, including a certification that at least one domestic (i.e., U.S.) passenger air carrier operates at the site and that any such domestic air carriers would have access to the preclearance operations comparable to that of foreign air carriers.

P.L. 114-125 sets forth an implementation plan requirement for the CBP commissioner. This requirement stipulates that if the commissioner has not filled the positions of CBP officers (CBPOs) who were reassigned to preclearance operations and finds that processing times at domestic POEs from which the CBPOs were reassigned to preclearance operations have significantly increased, he or she must submit a plan to the relevant congressional committees for reducing processing times at those POEs. If the commissioner does not submit the plan within 60 days after making such a determination, the commissioner may not begin preclearance operations at an additional POE in any country until the plan is submitted.

P.L. 114-125 calls for the rescreening of passengers arriving in the United States from foreign airports with preclearance operations if the Administrator of the Transportation Security Administration determines that the government of that foreign country has not maintained security standards comparable to those at U.S. airports. The law also allows the CBP

[17] U.S. Federal Emergency Management Agency, *FY 2013 Homeland Security Grant Program*, 2015, https://www.fema.gov/fy-2013-homeland-security-grant-program. FEMA is part of DHS.

[18] U.S. Customs and Border Protection, *Preclearance Expansion*, Fiscal Year 2015 Guidance for Prospective Applicants, September 2014, http://www.cbp.gov/sites/default/files/documents/Final%20Preclearance%20Guidance_092014.pdf.

[19] P.L. 99-570, §3128; 19 U.S.C. §1629.

[20] P.L. 113-76, §564. This came about after DHS reached an agreement with the government of the United Arab Emirates (UAE) to set up a preclearance facility in the Abu Dhabi International Airport in April 2013. Some Members of Congress raised objections to the Abu Dhabi program because, among other issues, no U.S. air carriers fly directly from Abu Dhabi to the United States, arguably giving the UAE-owned Etihad Airlines a competitive advantage over U.S.-owned carriers. See for example: Letter from Hon. Michael McCaul, Hon. Bennie Thompson, Hon. Bill Shuster, et al. to Janet Napolitano, Secretary of Homeland Security, April 18, 2013; and U.S. Congress, House Committee on Foreign Affairs, Subcommittee on Terrorism, Nonproliferation, and Trade, *The Abu Dhabi Pre-Clearance Facility: Implications for U.S. Business and National Security*, 113th Cong., 1st sess., July 10, 2013.

commissioner to enter into cost sharing agreements with airport authorities in foreign countries where preclearance operations have been established.

Entry-Exit System

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA; P.L. 104-208, Div. C), as amended, requires DHS to maintain an automated, biometric entry-exit system that collects a record of every alien arriving to and departing from the United States. DHS's Office of Biometric Identity Management (OBIM), formerly known as the United States Visitor and Immigration Status Indicator Technology (US-VISIT) program, is responsible for collecting and storing these data and providing entry-exit information to other components within DHS and to other federal agencies. The entry-exit system has been a subject of ongoing congressional attention because—in spite of the mandate—DHS collects only biographic data (i.e., it does not collect biometric data) from certain visitors entering the United States, and it does not collect *any* data from certain visitors leaving the United States.[21]

H.R. 399 would require the Secretary of Homeland Security to submit an implementation plan to the relevant committees of Congress to execute a biometric *exit* data system. The bill would create a six-month pilot program to test the biometric exit system prior to its implementation. The bill sets forth staggered deadlines for full implementation of the exit system.

Expedited Removal

The Immigration and Nationality Act (INA)[22] includes provisions on expedited removal (§235(b)).[23] Under these provisions, an alien who lacks proper documentation or has committed fraud or willful misrepresentation of facts to gain admission into the United States is inadmissible and may be removed without any further hearings or review,[24] unless the alien indicates an intention to apply for asylum[25] or another form of relief from removal based on a fear of persecution.

The Asylum Reform and Border Protection Act of 2015 (H.R. 1153), as ordered to be reported by the House Judiciary Committee, would require the Secretary of Homeland Security to establish quality control procedures to assure that screening questions asked during the expedited removal

[21] Biometric data include fingerprints and digital photographs, and may be used to confirm an individual's identity against previously recorded biometric data (i.e., by matching fingerprints); biographic data include names, birthdates, and other identifying information and can be connected to an individual's case history and immigration records, but cannot confirm the identity of arriving and departing passengers. In general, visitors traveling by air or sea are required to provide biometric data at ports of entry, and carriers provide DHS with biographic data (based on passenger lists) upon their exit. For further discussion of the entry-exit system, see CRS Report R43356, *Border Security: Immigration Inspections at Ports of Entry*.

[22] The INA is Act of June 27, 1952, ch. 477; 66 Stat. 163; codified as amended at 8 U.S.C. §1101, et seq.

[23] For a detailed discussion of expedited removal, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*; and archived CRS Report RL33109, *Immigration Policy on Expedited Removal of Aliens*. Currently, expedited removal is only applied to aliens: arriving at ports of entry; arriving by sea who are not admitted or paroled; or who are present in the United States without being admitted or paroled, are encountered by an immigration officer within 100 air miles of the U.S. international land border, and have not established to the satisfaction of an immigration officer that they have been physically present in the United States continuously for the 14-day period immediately preceding the date of encounter.

[24] Under expedited removal, both administrative review and judicial review are limited generally to cases in which the alien claims to be a U.S. citizen or to have been previously admitted as a legal permanent resident, refugee, or asylee.

[25] See archived CRS Report RL32621, *U.S. Immigration Policy on Asylum Seekers*.

process are conducted and recorded in a uniform manner. The bill would require that, where practical, any sworn statement taken during the process be accompanied by a recording of the interview that served as the basis for the statement. Such recordings would be included as evidence in the record or any further proceedings involving the alien. H.R. 1153 also would require the Secretary to ensure that a competent interpreter who is not affiliated with the government of the asylum seeker's home country is used, if the interviewing officer does not speak the language and there is no federal, state, or local government employee who is able to interpret.

Access to Federal Lands and DHS Waiver Authority

Access to Federal Lands

More than 40% of the southern border abuts federal and tribal lands overseen by the Department of Agriculture (USDA) or the Department of the Interior (DOI), including some areas that have been identified as "high-risk areas" for marijuana smuggling and illegal migration.[26] USDA and DOI have signed Memoranda of Understanding (MOUs) with DHS concerning information sharing with respect to border security and DHS access to these lands. Some Members of Congress have argued that DHS should have more complete access to public lands for law enforcement purposes, though Border Patrol officials have testified that existing MOUs allow USBP to carry out its border security mission.[27]

Legislation considered in the 114th Congress would broaden DHS authority on such lands. S. 750, as reported by the Senate Homeland Security and Governmental Affairs Committee, would instruct USDA and DOI to provide CBP personnel with immediate access to federal lands within Arizona for certain border security activities. More broadly, H.R. 399, as reported by the House Homeland Security Committee, would give DHS immediate access to USDA and DOI lands within 100 miles of the international land borders with Mexico and Canada for border security activities; and it would explicitly prohibit USDA or DOI from impeding or restricting such activities.

DHS Waiver Authority

In general, federal agencies are required to review the potential impact of proposed projects on natural and cultural resources prior to committing resources to a project.[28] These environmental and other review requirements may delay the construction of certain border infrastructure; but existing law grants DHS broad authority to waive legal requirements that might delay construction of border barriers.[29]

---

[26] See CRS Report R42346, *Federal Land Ownership: Overview and Data*; also see U.S. Government Accountability Office, Border Security: Additional Actions Needed to Better Ensure a Coordinated Federal Response to Illegal Activity on Federal Lands, GAO-11-177, November 2010, p. 15.

[27] See, for example, U.S. Congress, House Committee on Natural Resources, Subcommittee on National Parks, Forests, and Public Lands, *The Border: Are Environmental Laws and Regulation Impeding Security and Harming the Environment?* 112th Cong., 1st sess., April 15, 2011.

[28] See, among other laws, the National Environmental Policy Act of 1969 (42 U.S.C. §§4321 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. §§1531 *et seq.*), and the National Historic Preservation Act (16 U.S.C. §§470 *et seq.*).

[29] IIRIRA, §102(c), as amended by the REAL ID Act of 2005, P.L. 109-13, Div. B, §102. See generally CRS Report R43975, *Barriers Along the U.S. Borders: Key Authorities and Requirements*.

H.R. 399, as reported by the House Homeland Security Committee, would exempt application of specific laws (previously waived by the Secretary of DHS in 2008 with respect to certain border construction projects) to CBP border construction projects and border security operations on federal lands under DOI and USDA jurisdiction within 100 miles of U.S. international land borders.[30]

Interior Enforcement

In addition to establishing a comprehensive set of rules governing the admission, continued presence, and departure of foreign nationals,[31] the INA establishes an enforcement regime to deter violations of federal immigration law. Some violations are subject to civil monetary penalties; other violations may be subject to criminal fines and imprisonment; and still others, if committed by an alien (foreign national), may be grounds for denying the alien admission into the country, removing the alien from the United States, or making the alien ineligible for certain immigration benefits (e.g., adjustment to lawful permanent resident (LPR) status) or relief from removal.[32] Immigration and Customs Enforcement (ICE) within DHS has primary responsibility for immigration enforcement activities within the United States.

The Michael Davis, Jr. in Honor of State and Local Law Enforcement Act (H.R. 1148), as ordered to be reported by the House Judiciary Committee, would modify the INA's enforcement provisions applicable to persons found within the United States ("interior enforcement" provisions). Other bills containing interior enforcement provisions that have been the subject of legislative activity in the 114th Congress include H.R. 1153, as ordered to be reported by the House Judiciary Committee; the Enforce the Law for Sanctuary Cities Act (H.R. 3009), as passed by the House; and the Department of State Operations Authorization and Embassy Security Act, Fiscal Year 2016 (S. 1635), as passed by the Senate and as ordered to be reported by the House Foreign Affairs Committee with an amendment.

Criminal Sanctions

H.R. 1148, as ordered to be reported by the House Judiciary Committee, would make numerous changes to existing immigration-related criminal offenses.[33] Among other things, it would amend existing criminal statutes concerning passport and immigration-related document fraud. In each case, the modifications would generally involve widening the scope of proscribed conduct and heightening the available criminal penalties,[34] at least when certain aggravating circumstances exist.

[30] U.S. Department of Homeland Security, "Determination Pursuant to Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, as Amended," 73 *Federal Register* 19077-19078, April 8, 2008.

[31] A foreign national is any person who is not a citizen or national of the United States. The term is synonymous with alien and noncitizen.

[32] For a discussion of removal, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*.

[33] The provisions contained in H.R. 1148 closely resemble provisions found in H.R. 2278, as reported by the House Judiciary Committee in the 113th Congress. For more extensive discussion of modifications proposed by the previous bill, see archived.CRS Report R43192, *Immigration Enforcement: Major Provisions in H.R. 2278, the Strengthen and Fortify Enforcement Act (SAFE Act)*.

[34] For background on existing criminal offenses, see archived CRS Legal Sidebar WSLG563, *An Overview of Immigration-Related Crimes*.

H.R. 1148 would revise the criminal statutes addressing unlawful entry by an alien,[35] and would revise the criminal statutes related to unlawful reentry of an alien in violation of an outstanding order of removal,[36] including by increasing available penalties in certain circumstances. It would expand the scope of the unlawful entry and reentry statutes to expressly cover illegal border crossings, regardless of whether a crossing occurred while the alien was under surveillance by immigration authorities. H.R. 1148 would make the unlawful presence of an alien a criminal offense. Similarly, the Stop Sanctuary Policies and Protect Americans Act (S. 2146) would increase penalties for aliens who reenter after being denied admission to the United States or excluded, deported, or removed from the United States. In October 2015, a cloture motion on a motion to proceed to S. 2146 failed.

Inadmissibility, Deportability, and Relief from Removal

The INA provides that aliens who engage in specified activities, including various forms of criminal conduct and activities posing a threat to U.S. security (e.g., terrorism), are generally barred from admission and subject to removal.[37] Some forms of conduct also may make an alien ineligible for many forms of relief from removal (e.g., asylum). The most significant immigration consequences typically attach to aliens convicted of any offense that is defined as an "aggravated felony" by the INA.[38]

H.R. 1148, as ordered to be reported by the House Judiciary Committee, and H.R. 1153, as ordered to be reported by the House Judiciary Committee, would add new grounds for alien inadmissibility and/or deportability to the INA.[39] For example, H.R. 1148 includes provisions that would make aliens who commit certain fraud-related offenses, or who are involved with criminal street gangs, inadmissible or deportable. It also would modify the grounds of inadmissibility to cover crimes of domestic violence, child abuse, stalking, and violation of protection orders (all of which are already grounds for deportability). H.R. 1148 would amend the grounds of inadmissibility to expressly cover aggravated felony convictions (already a ground for deportability) and additional firearms offenses.

H.R. 1148 would make changes to the INA's definition of aggravated felony. Among other things, the bill would designate as aggravated felonies criminal convictions for unlawful entry, presence, or reentry, as long as the length of imprisonment for the offense is at least a year. H.R. 1148 also would designate driving-under-the-influence (DUI) convictions as aggravated felonies

[35] INA §275.

[36] INA §276.

[37] See archived CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*; and archived CRS Report RL32480, *Immigration Consequences of Criminal Activity*.

[38] INA §101(a)(43) provides a list of crimes deemed to be aggravated felonies for immigration purposes, which Congress has repeatedly expanded over the years to cover additional crimes. The definition is not limited to offenses punishable as felonies (i.e., punishable by at least a year and a day imprisonment); certain misdemeanors are also defined as aggravated felonies for INA purposes. See generally archived CRS Legal Sidebar WSLG454, *Will Immigration Reform Legislation Revisit the Definition of "Aggravated Felony"?*; and archived CRS Report RL32480, *Immigration Consequences of Criminal Activity*.

[39] The grounds of inadmissibility generally apply to aliens who have not been lawfully admitted into the United States, including (1) aliens outside the United States who seek to obtain visas or admission at ports of entry; (2) aliens within the United States who seek to adjust their status to that of lawful permanent residents; and (3) aliens who entered the United States unlawfully. The grounds for deportability, in contrast, apply to aliens who were lawfully admitted into the United States.

in certain circumstances. In addition, H.R. 1148 would make streamlined removal processes[40] potentially applicable to a broader category of criminal aliens.

H.R. 1153 would broaden the INA ground of inadmissibility related to the commission of genocide, torture, and extrajudicial killings[41] by, among other things, rendering inadmissible any alien who committed a war crime or a widespread or systematic attack against a civilian population. The bill also would allow the President to publicly release the visa records of aliens deemed inadmissible under this ground of inadmissibility.

Another bill, S. 1635, as passed by the Senate, would amend certain inadmissibility-related provisions in the INA. Section 401 of S. 1635 would amend the ground of inadmissibility related to child abduction so that the ground applies regardless of the country where the child is located. Currently, this ground of inadmissibility does not apply if the child is located in a country that is party to the Hague Convention on the Civil Aspects of International Child Abduction. Section 402 of Senate-passed S. 1635 would amend INA Section 214(b), which provides, in part (with some specified exceptions), that every applicant for nonimmigrant status "shall be presumed to be an immigrant" until he or she establishes eligibility for nonimmigrant status. INA Section 214(b) is the most common basis for State Department denials of nonimmigrant visas. Exceptions in INA Section 214(b) apply to H-1B (professional specialty workers), L (intracompany transferees), and V (LPR spouses and children) visas. Section 402 would eliminate these exceptions and thus make the presumption of immigrant intent apply to all prospective nonimmigrants. These changes to the INA inadmissibility-related provisions were not included in S. 1635, as ordered to be reported by the House Committee on Foreign Affairs.

Detention of Aliens

Under the INA, individual aliens placed in removal proceedings are potentially subject to detention, but also could be released on parole or bond.[42] Certain categories of aliens, however, are subject to mandatory detention during removal proceedings.

H.R. 1148, as ordered to be reported by the House Judiciary Committee, would seek to augment the ability of immigration authorities to detain aliens identified for removal until their removal may be effectuated. Some provisions seek to ensure that certain categories of aliens—particularly those involved in criminal activity or deemed to pose a threat to the community—remain detained throughout the removal process and until removed. Other provisions of the bill would make unlawfully present aliens convicted of one or more DUI offenses and aliens removable on account of involvement with criminal street gangs subject to mandatory detention during removal. Other provisions would establish detention requirements that are more generally applicable to any alien placed in removal proceedings or ordered removed.

Removal-Related Resources

It has been argued that in order to increase the number of people located and removed from the United States, there needs to be an increase in removal resources. In 2014, there were an

[40] A streamlined removal process is one in which an alien can be removed with limited or no review by the immigration courts. For more on these processes, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*.

[41] INA §212(a)(3)(E)(iii).

[42] For a discussion of detention policy and practices, see archived CRS Report RL32369, *Immigration-Related Detention*.

estimated 11.3 million resident unauthorized aliens in the United States;[43] estimates of other removable aliens, such as LPRs who commit crimes, are elusive. ICE has stated that it has the resources to remove approximately 400,000 foreign nationals a year.[44]

In addition, the immigration courts have a backlog of more than 450,000 cases.[45] H.R. 1153 would specify that, subject to appropriations, for each year from FY2015 through FY2017 the Attorney General shall increase the number of immigration judges by not less than 50 over the number funded in FY2014. H.R. 1148 and H.R. 1153 would increase the number of ICE attorneys who represent the government in removal cases before the immigration courts. H.R. 1148 would require the Secretary of Homeland Security to increase the number of ICE trial attorneys by 60. Similarly, in each year from FY2015 through FY2017, H.R. 1153 would require the Secretary of Homeland Security to increase the number of trial attorneys by not less than 60, subject to appropriations. H.R. 1148 also would direct the Secretary to increase the number of ICE deportation officers and support staff, subject to appropriations.

Prosecutorial or Enforcement Discretion and Deferred Action

Since 2011, the Obama Administration has issued several documents that provide guidance regarding the exercise of prosecutorial discretion in immigration enforcement activities. The most prominent recent DHS statements concerning its broad enforcement priorities were issued in November 2014.[46] According to DHS:

> Due to limited resources, DHS and its components cannot respond to all immigration violations or remove all persons illegally in the United States. As is true of virtually every other law enforcement agency, DHS must exercise prosecutorial discretion in the enforcement of the law. And, in the exercise of that discretion, DHS can and should develop smart enforcement priorities, and ensure that use of its limited resources is devoted to the pursuit of those priorities.[47]

The Administration also has claimed that the exercise of such discretion can promote humanitarian interests.

Others, however, have suggested that the Administration's prosecutorial discretion policies constitute an abdication of its statutory responsibilities.[48] Critics have taken issue, in particular,

---

[43] Jeffery S. Passel and D'Vera Cohn, *Unauthorized Immigrant Population Stable for Half a Decade*, Pew Research Center, Washington, DC, July 22, 2015.

[44] U.S. Department of Homeland Security, Memorandum to All ICE Employees, from John Morton, Director, Customs and Immigration Enforcement, *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens* March 2, 2011, p. 1.

[45] Unpublished data from the Executive Office for Immigration Review (EOIR) provided to CRS. Data are through July 31, 2015.

[46] See CRS Report R43852, *The President's Immigration Accountability Executive Action of November 20, 2014: Overview and Issues*; archived CRS Report R43798, *The Obama Administration's November 2014 Immigration Initiatives: Questions and Answers*; and CRS Legal Sidebar WSLG1125, *The Obama Administration's Announced Immigration Initiative: A Primer*.

[47] U.S. Department of Homeland Security, Memorandum to Thomas S. Winkowski, Acting Director, U.S. Immigration and Customs Enforcement, R. Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection, Leon Rodriquez, Director, U.S. Citizenship and Immigration Services, and Alan D. Bersin, Acting Assistant Secretary for Policy, from Jeh Charles Johnson, Secretary of Homeland Security, *Policies for the Apprehension, Detention, and Removal of Undocumented Immigrants*, November 20, 2014, p. 2.

[48] For further discussion of executive discretion in the area of immigration, see CRS Report R43782, *Executive Discretion as to Immigration: Legal Overview*; and archived CRS Report R42924, *Prosecutorial Discretion in Immigration Enforcement: Legal Issues*.

with the Administration's deferred action initiatives to provide temporary relief (though not legal immigration status) to certain qualifying aliens who the Administration has not prioritized for removal. These initiatives include the Administration's Deferred Action for Childhood Arrivals (DACA) initiative that began in 2012, as well as the Administration's November 2014 proposals for an expansion of DACA and the establishment of the Deferred Action for Parents of Americans and Lawful Permanent Residents (DAPA) program.[49] There has been significant dispute about whether the granting of deferred action and work authorization to unlawfully present aliens can be justified as an appropriate exercise of executive discretion in the field of immigration enforcement. Although the use of deferred action by immigration authorities has historically been seen as a valid exercise of prosecutorial or enforcement discretion, some have claimed that "large-scale" deferred action initiatives like DACA or DAPA are not authorized by the INA and are otherwise impermissible.

The proposed DAPA initiative and DACA expansion are subject to ongoing legal challenge. In November 2015, a federal appellate court upheld a lower court's injunction in the case of *Texas v. United States*, preventing implementation of DAPA and the DACA expansion.[50] On June 23, 2016, an equally divided Supreme Court affirmed the appellate court ruling, leaving the injunction in place.[51]

H.R. 1148, as ordered to be reported by the House Judiciary Committee, contains provisions that would respond to the Obama Administration's initiatives, apparently with the intent of foreclosing certain exercises of prosecutorial discretion and promoting more vigorous enforcement of federal immigration law. The bill would require annual reports on exercises of prosecutorial discretion. It also seeks to bar DHS from using any funds to finalize, implement, administer, or enforce select guidances regarding prosecutorial discretion and other matters issued since 2011, including the memorandum announcing the DAPA initiative and intended DACA expansion. The bill also would bar federal funds from being used to consider any new or previously adjudicated DACA application (also see "Executive Action on Immigration").

A related but narrower provision is included in the DHS Appropriations Act, 2016 (H.R. 3128), as reported by the House Appropriations Committee. Section 560 of that measure would prohibit any DHS or other federal funding from being used for an expansion of DACA or for DAPA while the preliminary injunction issued in *Texas v. United States* against implementation of these proposals remains in effect.

[49] Under the DACA initiative, certain individuals who came to the United States as children and meet other criteria can be considered for temporary administrative relief from removal. The Administration's proposed expansion of the DACA initiative would cover a broader pool of childhood arrivals. Under DAPA, certain individuals who are the parents of U.S. citizens or LPRs and meet other criteria could be considered for temporary administrative relief from removal. See archived CRS Report R43798, *The Obama Administration's November 2014 Immigration Initiatives: Questions and Answers*; archived CRS Report R43747, *Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions*; and CRS Report R43852, *The President's Immigration Accountability Executive Action of November 20, 2014: Overview and Issues*.

[50] See generally CRS Legal Sidebar WSLG1437, *Fifth Circuit Declines to Lift Injunction Barring Implementation of the Obama Administration's 2014 Deferred Action Programs*. The legal challenge does not address the Administration's decision to prioritize the arrest and removal of certain categories of aliens.

[51] See CRS Legal Sidebar WSLG1607, *Frequently Asked Questions Regarding the Supreme Court's 4-4 Split on Immigration*.

Student and Exchange Visitor Information System (SEVIS)

Congress first mandated a foreign student and exchange visitor tracking system in 1996, and then expanded the system's requirements for an electronic tracking system after the September 11, 2001, terrorist attacks.[52] This monitoring system, known as the Student and Exchange Visitor Information System (SEVIS), became operational in 2003.[53] It is administered by ICE's Student and Exchange Visitor Program (SEVP), which also certifies schools as being eligible to accept foreign students. ICE is developing a new system, known as SEVIS II, in an effort to address limitations in the current SEVIS system.

H.R. 1148, as ordered to be reported by the House Judiciary Committee, contains several provisions related to SEVP and SEVIS. Among other provisions, H.R. 1148 would change accreditation requirements for academic institutions and flight schools accepting foreign students, and require periodic background checks for those accessing SEVIS. The bill would make changes to the law to try to accelerate the process of withdrawing a school's certification to prevent problematic institutions from accepting foreign students. It also would increase penalties for fraud related to visa documents committed by the owner or certain employees of SEVP-certified schools, and prohibit individuals convicted of such fraud from holding a position of authority at any school that accepts foreign students.[54]

State and Local Involvement in Immigration Enforcement

The role that states and localities play in enforcing federal immigration law has been a topic of significant interest in recent years.[55] Some states and localities, concerned about what they perceive to be inadequate federal enforcement of immigration law, have sought to independently enforce federal law and to penalize conduct that may facilitate the presence of unauthorized aliens within their jurisdictions. Other states and localities, in contrast, have proscribed activities (e.g., sharing information, honoring federal requests to hold aliens) that could assist in federal immigration enforcement, sometimes because such jurisdictions disagree with federal enforcement priorities.[56]

At least until 2012, there had been considerable debate regarding the ability of states and localities to act independently to enforce federal immigration law, or to impose criminal sanctions upon activities that facilitate unauthorized immigration, apart from any sanctions imposed under federal law. In its decision in the case of *Arizona v. United States*, however, the Supreme Court found that existing federal law contemplates states and localities having a limited role in

[52] IIRIRA (P.L. 104-208), USA Patriot Act of 2001 (P.L. 107-56), and Enhanced Border Security and Visa Reform Act of 2002 (P.L. 107-173).

[53] For more information on the history of SEVIS, see archived CRS Report RL32188, *Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS)*.

[54] These provisions are similar to those in Senate-passed S. 744 in the 113th Congress. For further discussion, see archived CRS Report R43097, *Comprehensive Immigration Reform in the 113th Congress: Major Provisions in Senate-Passed S. 744*.

[55] See generally archived CRS Report R41423, *Authority of State and Local Police to Enforce Federal Immigration Law*; and archived CRS Report R42719, *Arizona v. United States: A Limited Role for States in Immigration Enforcement*.

[56] For further discussion of state and local restrictions on participation in federal immigration enforcement, and their interplay with federal law, see CRS Report R43457, *State and Local "Sanctuary" Policies Limiting Participation in Immigration Enforcement*.

immigration enforcement.[57] The Court indicated that the ability of states to criminally sanction immigration-related activities is limited, even when these sanctions mirror those of the federal government. The Court also ruled that states generally cannot arrest aliens on the basis of suspected removability except with express federal statutory authorization or pursuant to the request, approval, or instruction of federal immigration authorities.

H.R. 1148, as ordered to be reported by the House Judiciary Committee, includes several provisions that seem intended to override aspects of the Supreme Court's ruling in *Arizona* and provide states and localities with express statutory authorization to engage in immigration enforcement activities. Among other provisions, H.R. 1148 would authorize states and localities to arrest and transfer removable aliens to federal immigration authorities' custody and permit states and localities to impose their own criminal penalties for conduct constituting a criminal offense under federal immigration law. Other provisions in H.R. 1148 would require greater information sharing by federal, state, and local authorities for immigration purposes and would encourage the continuation and expansion of cooperative arrangements with states or localities on immigration enforcement matters, including through written agreements under INA Section 287(g).[58] Under S. 3100, which was the subject of an unsuccessful cloture motion, a state or locality that complies with a federal request to hold aliens (i.e., a detainer) would be deemed to be an agent of DHS and would be authorized to take actions to comply with the detainer.

H.R. 1148 and S. 3100 also would condition certain federal funding for states and localities upon their cooperation in enforcing federal immigration law. House-passed H.R. 3009 and S. 2146 would limit the availability of certain types of federal funding for states and localities that restrict the sharing of immigration status information with federal authorities.

Employment Eligibility Verification and Worksite Enforcement

Employment eligibility verification and worksite enforcement (one component of interior enforcement) are widely viewed as key elements of a strategy to reduce unauthorized immigration. Under Section 274A of the INA, it is unlawful for an employer to knowingly hire, recruit or refer for a fee, or continue to employ an alien who is not authorized to be so employed. Employers are further required to participate in a paper-based (I-9) employment eligibility verification system in which they examine documents presented by new hires to verify identity and work eligibility, and to complete and retain I-9 verification forms. Employers violating prohibitions on unlawful employment may be subject to civil and/or criminal penalties. Enforcement of these provisions, termed "worksite enforcement," is the responsibility of ICE.

While all employers must meet the I-9 requirements, they also may elect to participate in the E-Verify electronic employment eligibility verification system.[59] E-Verify is administered by DHS's U.S. Citizenship and Immigration Services (USCIS). Participants in E-Verify electronically verify new hires' employment authorization through Social Security Administration and, if necessary,

[57] Arizona v. United States, 132 S. Ct. 2492, 567 U.S. _ (2012). For further discussion, see archived CRS Report R42719, *Arizona v. United States: A Limited Role for States in Immigration Enforcement*.

[58] INA §287(g) authorizes the Secretary of DHS to enter written agreements that enable specially trained state or local officers to perform specific functions relative to the investigation, apprehension, or detention of aliens, during a predetermined time frame and under federal supervision.

[59] While E-Verify is primarily a voluntary program, there are some mandatory participants. See CRS Report R40446, *Electronic Employment Eligibility Verification*.

DHS databases.[60] E-Verify is a temporary program. With the enactment of P.L. 114-113 (Div. F, §572), it is now authorized through September 30, 2016.[61]

Several bills on electronic employment eligibility verification have been introduced in the 114th Congress.[62] One measure, the Legal Workforce Act (H.R. 1147), has seen legislative action. H.R. 1147, as ordered to be reported by the House Judiciary Committee, would amend INA Section 274A to permanently authorize a new electronic verification system modeled on E-Verify. Under the bill, an employer, after reviewing employee documents evidencing identity and employment authorization and completing a verification form with the employee, would seek confirmation of the employee-provided information through the electronic verification system.

The new electronic verification system proposed in H.R. 1147 would be mandatory for all employers in cases of hiring, recruitment, and referral. The verification requirements with respect to hiring would be phased in by employer size, with the largest employers (those with 10,000 or more employees) required to participate six months after the date of enactment and the smallest employers (those with less than 20 employees) required to participate two years after the date of enactment. The requirements with respect to recruitment and referral would apply one year after the date of enactment. The bill also would provide for mandatory reverification of workers with temporary work authorization, which would be phased in on the same schedule as the verification requirements for hiring. Special provisions would apply to agriculture; the hiring, recruitment and referral, and reverification provisions would not apply to agricultural workers until two years after the date of enactment. Prior to these phase-in dates, existing requirements to use E-Verify would remain in effect.

H.R. 1147 would require or permit electronic verification in ways not currently allowed under E-Verify. Employers could conduct electronic verification after making an offer of employment but before hiring, and could condition a job offer on final verification under the system. Verification of previously hired individuals would be mandatory in some cases (such as federal, state, and local government employees). DHS could authorize or direct a critical infrastructure employer to use the system to the extent DHS determines is necessary for critical infrastructure protection. In addition, employers could verify current employees on a voluntary basis.

H.R. 1147 would significantly increase existing civil and criminal penalties for violations of the revised INA Section 274A prohibitions on unauthorized employment and for violations of requirements to conduct verification. It would make it a violation of the prohibition on unauthorized employment to fail to seek electronic verification as required or to knowingly provide false information to the electronic system. H.R. 1147 would provide for the blocking of social security numbers from use in the verification system in cases of misuse and in other specified circumstances. It also would enable individuals to limit use of their social security numbers or other information for verification purposes.

In addition, H.R. 1147 includes language to expressly preempt any state or local law that relates to the hiring, employment, or verification of the employment eligibility of unauthorized aliens. At the same time, a state or locality could exercise its authority over business licensing and similar laws as a penalty for failure to use the verification system, and a state, at its own expense, could

[60] For additional information on E-Verify, see Ibid.

[61] The authorization for E-Verify, which at the start of the 114th Congress was due to expire on September 30, 2015, was previously extended through December 11, 2015, by the Continuing Appropriations Act, 2016 (P.L. 114-53); through December 16, 2015, by the Further Continuing Appropriations Act, 2016 (P.L. 114-96); and through December 22, 2015, by the Further Continuing Appropriations Act, 2016 (P.L. 114-100).

[62] See, for example, S. 1032 and H.R. 841, as introduced in the 114th Congress.

enforce the revised INA Section 274A provisions, under specified terms. The bill also would require DHS to establish an office to receive complaints from state and local agencies about potential violations.

Among its other provisions, H.R. 1147 would direct DHS to establish an Identity Authentication Employment Eligibility Pilot Program, which would "provide for identity authentication and employment eligibility verification with respect to enrolled new employees."[63]

Visa Security

The recent series of terrorist attacks in the United States and abroad has refocused attention on U.S. visa issuance and national security screening procedures that undergird the admission of foreign nationals to the United States. The Department of State (DOS) and DHS both play key roles in administering the law and policies on the admission of aliens to the United States. All foreign nationals seeking visas must undergo admissibility reviews performed by DOS consular officers abroad. These reviews are intended to ensure that applicants are not ineligible for admission to the United States under the grounds for inadmissibility spelled out in INA Section 212. These criteria include health-related grounds, criminal history, security and terrorist concerns, public charge (e.g., indigence), and previous immigration offenses.[64]

Consular officers use the Consular Consolidated Database (CCD) to screen visa applicants. Records of all visa applications are now automated in the CCD, with some records dating back to the mid-1990s. The CCD has stored photographs of all visa applicants in electronic form since February 2001 and 10-finger scans since 2007. In addition to containing comments by consular officers and the outcome of any prior visa application, the system links to other security databases to flag problems that may have an impact on the issuance of a visa.

The Visa Integrity and Security Act of 2016 (H.R. 5203), as ordered to be reported by the House Judiciary Committee, would place new statutory requirements on applications for visas. The bill would specify that a visa application could not be approved unless it is signed by all parties required to sign the application. Applications for immigrant visas would be required to be signed in the presence of a consular officer. H.R. 5203 would specify that no application for a visa could be approved unless it is complete, and no document accompanying an application could be accepted unless it is either in English or translated into English and is certified as complete and accurate. Visa applications also could not be approved unless a background check is performed for the applicant and any derivatives. And the background checks would need to include a review of the applicant's social media activity. By comparison, the similarly named Strong Visa Integrity Secures America Act (H.R. 5253), as ordered to be reported by the House Homeland Security Committee, would require that DOS, to the greatest extent practicable and in a risk-based manner, review the social media accounts of visa applicants who reside in high-risk countries.[65] This bill would also raise the burden of proof for foreign nationals to prove that they are entitled to visas or

[63] H.R. 1147, §13.

[64] See CRS Report R43589, *Immigration: Visa Security Policies*, and archived CRS Report R41104, *Immigration Visa Issuances and Grounds for Exclusion: Policy and Trends*.

[65] In determining whether a country is high risk, the Secretary of State would be required to consider the following: (1) the number of nationals of that country identified in U.S. databases related to the identities of known or suspected terrorists; (2) the country's cooperation with U.S. anti-terrorism efforts; and (3) any other criteria that the Secretary of State deems appropriate.

any other type of entry document from the current standard of "to the satisfaction of the consular officer" to "by clear and convincing evidence."

H.R. 5203 would require that any applicant for a visa based on a biological relationship undergo DNA testing to confirm the biological relationship. (Similar provisions would apply to those seeking immigration benefits through USCIS; see "USCIS Adjudications.") In addition, under H.R. 5203, if a visa applicant is a national of Iran, Iraq, Somalia, Syria, Sudan, Yemen, or any other country specified by the Secretary of State, as appropriate, the application could not be approved without a Security Advisory Opinion (SAO).[66]

Although DOS's Consular Affairs is responsible for issuing visas, DHS agencies perform related functions.[67] There was discussion of assigning all visa issuance responsibilities to DHS when the department was being created, but the Homeland Security Act of 2002 drew on compromise language stating that DHS would issue regulations regarding visa issuances and DOS would continue to issue visas. The question of which agency should take the lead in visa issuances continues to be debated.

Along these lines, Title IV of H.R. 1148, as ordered to be reported by the House Committee on the Judiciary, would give the Secretary of Homeland Security "exclusive authority to issue regulations, establish policy, and administer and enforce the provisions of the [INA] and all other immigration or nationality laws relating to the functions of consular officers of the United States in connection with the granting and refusal of a visa." The bill would broaden the exception to the confidentiality requirement relating to the sharing of information with foreign governments, including by allowing such sharing for purposes of "determining a person's deportability or eligibility for a visa, admission, or other immigration benefit," or any other instance when "the Secretary of State determines that it is in the national interest."[68] A provision in S. 1635 (§403), as passed by the Senate, would broaden the conditions under which the Secretary of State may release records pertaining to visa applications. This provision was not included in S. 1635, as ordered to be reported by the House Committee on Foreign Affairs.

H.R. 1148 would narrow DOS's authority to waive personal interviews for visa applicants and would add national security and "high risk of degradation of visa program integrity" as reasons for requiring a personal interview.[69] The legislation also would give consular officers the authority *not* to interview visa applicants deemed to be ineligible for the visas they are seeking. In addition, H.R. 1148 would give DHS the authority to refuse or revoke any visa if the Secretary determines that such refusal or revocation is necessary or advisable in the security interests of the United States.[70]

---

[66] An SAO is a U.S. government mechanism to coordinate third-agency checks on visa applicants about whom the State Department has security-related concerns. Applicants identified for an SAO require in-depth review by multiple federal agencies. The bill would provide for some exceptions to the SAO requirement, including for any alien: for whom a consular officer determines an SAO is not appropriate; applying for an A, G, or NATO visa; or whose admittance is required under international obligations.

[67] For example, USCIS approves immigrant petitions, ICE operates the Visa Security Program in selected U.S. embassies abroad, and CBP inspects all people who enter the United States. For further discussion of visa issuances, see CRS Report R43589, *Immigration: Visa Security Policies*.

[68] H.R. 1148, §§405, 402. H.R. 1148 also would eliminate language in INA §222(f) providing that the sharing of visa or permit-related information with foreign governments shall be "on the basis of reciprocity."

[69] H.R. 1148, §403.

[70] This new authority for DHS would supplement INA §221(i), which provides that after a visa has been issued, the consular officer and the Secretary of State have discretion to revoke the visa at any time. A similar provision was included in H.R. 2278, as reported by the House Judiciary Committee in the 113th Congress. For further discussion, see

Some in Congress have been particularly interested in the Visa Security Program (VSP), which the ICE Office of International Affairs (OIA) operates in certain high-risk consular posts. As described by DHS, the VSP sends ICE special agents with expertise in immigration law and counterterrorism to foreign consulates, where they perform visa security activities that complement the DOS visa screening process. According to DHS, the VSP provides law enforcement resources not available to consular officers. One of the major tasks for VSP agents is to screen visa applicants to determine their risk profiles. In 2011, however, the U.S. Government Accountability Office (GAO) released an evaluation of the VSP that identified several shortcomings. Most importantly, perhaps, GAO stated that ICE has not expanded the VSP to key high-risk posts despite well-publicized plans to do so.[71]

Several bills that have received action have provisions related to the VSP. H.R. 1148 would seek to expand the VSP by requiring DHS to conduct an onsite review of all visa applications and supporting documentation before adjudication, at the top 30 visa-issuing posts designated jointly by the Secretaries of State and Homeland Security as high-risk posts. It also would call for expedited clearance and placement of DHS personnel at overseas embassies and consular posts. The Department of Homeland Security Strategy for International Programs Act (H.R. 4780), as passed by the House, would require the Secretary of DHS within 180 days of enactment to submit to Congress a comprehensive three-year strategy for international programs in which DHS personnel and resources are deployed abroad for vetting and screening of persons seeking to enter the United States. H.R. 5203 would require that within four years of enactment, DHS assign employees to each consular and diplomatic post that issues visas. The bill would also authorize the Secretary of State to charge additional fees on passports and visa applications in support of the ICE Visa Security Program.

H.R. 5253, as ordered to be reported by the House Homeland Security Committee, would amend the HSA to require DHS to assign, in a risk-based manner, employees to at least 50 visa-issuing posts based on specified criteria including the adequacy of border and immigration control and the level of terrorist activity in such country. The employees of these Visa Security Units would, among other duties, screen visa applicants against appropriate criminal, national security, and terrorism databases. At not fewer than 50 posts where DHS employees are not assigned, the bill would require the Secretary of DHS, in a risk-based manner, to assign employees to remotely perform the duties of the Visa Security Units. These assignments of personnel would be required to occur no later than three years after enactment. H.R. 5253 would also require ICE to establish a Visa Security Advisory Opinion Unit to conduct visa security reviews on visa applicants at the request of DOS using information maintained by DHS.

Asylum and Refugee Status

The United States has long held to the principle that it will not return a foreign national to a country where his or her life or freedom would be threatened. This principle is notably incorporated in the INA provision (§101(a)(42)) that requires foreign nationals who are seeking refugee status or asylum to demonstrate that they are unable or unwilling to return to their home countries because of persecution or a well-founded fear of persecution based on one of five

archived CRS Report R43192, *Immigration Enforcement: Major Provisions in H.R. 2278, the Strengthen and Fortify Enforcement Act (SAFE Act)*.

[71] U.S. Government Accountability Office, *Border Security: DHS's Visa Security Program Needs to Improve Performance Evaluation and Better Address Visa Risk Worldwide*, GAO-11-315, March 31, 2011.

characteristics: race, religion, nationality, membership in a particular social group, or political opinion.

While applicants for asylum and refugee status are subject to this same persecution standard, procedures under the programs differ. Foreign nationals arriving in or present in the United States may apply for asylum with USCIS, or they may seek asylum before a Department of Justice Executive Office for Immigration Review (EOIR) immigration judge during removal proceedings. The INA requires that a foreign national arriving at a U.S. port of entry who lacks proper immigration documents or engages in fraud or misrepresentation be placed in expedited removal; if, however, the alien expresses a fear of persecution and a USCIS asylum officer determines that the individual has a "credible fear of persecution" (defined in the INA to mean that there is a "significant possibility" that the alien could establish eligibility for asylum)[72] then he or she is referred to an EOIR immigration judge for an asylum hearing.[73] By contrast, refugees are processed and admitted to the United States from abroad. The Department of State coordinates and manages the U.S. refugee admissions program, while USCIS officers interview refugee applicants and make final determinations about eligibility for admission.[74]

H.R. 1153, as ordered to be reported by the House Judiciary Committee, would amend existing asylum procedures. Among the changes, the bill would add an additional requirement to the INA definition of "credible fear of persecution" cited above. Under H.R. 1153, in order for a USCIS officer to determine that an alien has a credible fear of persecution and thus is no longer subject to expedited removal and can be considered for asylum, the officer would need to determine that there is a significant possibility that the alien could establish eligibility for asylum, as currently required, and that "it is more probable than not that the statements made by the alien in support of the alien's claim are true." (For a discussion of H.R. 1153's proposed changes to asylum procedures applicable to unaccompanied alien children, see "Unaccompanied Alien Children.")

H.R. 1153 also would amend INA Section 101(a)(42), which, as discussed above, sets forth the persecution standard for refugee or asylee status, and would establish new grounds for terminating such status. The bill would deem an individual who has been persecuted, or has a well-founded fear of persecution, for failure or refusal to comply with any law or regulation that prevents the individual from directing the upbringing and education of his or her child (including with respect to homeschooling) to have been persecuted, or to have a well-founded fear of persecution, on account of membership in a particular social group. Subject to DHS discretionary waiver authority and to an exception for certain Cubans, H.R. 1153 would provide for the termination of the refugee or asylee status of an individual who returns to his or her home country without a compelling reason.

The American Security Against Foreign Enemies (SAFE) Act of 2015 (H.R. 4038), as passed by the House, would place additional requirements on the admission of refugees who are nationals or residents of Iraq or Syria, or who were in either country after March 1, 2011. In order for any such individual to be admitted to the United States as a refugee, the Secretary of Homeland Security, with the unanimous concurrence of the Director of the Federal Bureau of Investigation and the Director of National Intelligence, must certify to Congress that the individual is not a threat to national security. In January 2016, a cloture motion on a motion to proceed to H.R. 4038 failed in the Senate.

[72] INA §235(b)(1)(B)(v).

[73] This discussion of asylum is adapted from archived CRS Report R41753, *Asylum and "Credible Fear" Issues in U.S. Immigration Policy*.

[74] See CRS Report RL31269, *Refugee Admissions and Resettlement Policy*.

H.R. 4731, as ordered to be reported by the House Judiciary Committee, would limit the President's ability to admit and resettle refugees in the United States. It would set the annual refugee ceiling at 60,000, with provisions for the President to submit recommended revisions to that number to Congress, and would enable states and localities to block the resettlement of refugees in their jurisdictions. Among its other provisions, H.R. 4731 would require the termination of an individual's refugee status in specified circumstances, would provide for refugees to apply to adjust to LPR status after three years in the United States (compared to the current one year), and would authorize DHS to conduct recurrent background checks of admitted refugees until they adjust to LPR status.

Lautenberg Amendment on Refugees

Special legislative provisions facilitate relief for certain refugee groups. The "Lautenberg amendment," first enacted in 1989, required the Attorney General (now the Secretary of DHS) to designate categories of former Soviet and Indochinese nationals for whom less evidence would be needed to prove refugee status, and provided for adjustment to LPR status for certain former Soviet and Indochinese nationals denied refugee status. P.L. 108-199 amended the Lautenberg amendment to add a new provision, known as the "Specter amendment," to direct the Attorney General to establish categories of Iranian religious minorities who may qualify for refugee status under the Lautenberg amendment's reduced evidentiary standard. The Lautenberg Amendment has been regularly extended over the years, although at times there have been lapses between extensions. There was such a lapse at the beginning of FY2016. With the enactment of P.L. 114-113 (Div. K, §7034(k)), however, the Lautenberg amendment is now in effect through September 30, 2016.

Unaccompanied Alien Children

Unaccompanied alien children (UAC, unaccompanied children) are defined in statute as children who lack lawful immigration status in the United States, are under the age of 18, and are either without a parent or legal guardian in the United States or without a parent or legal guardian in the United States who is available to provide care and physical custody.[75] In FY2014, UAC apprehensions at the Southwest border reached an all-time peak of 68,500, more than quadruple the number of apprehensions in FY2011. They subsequently declined to 39,970 in FY2015. In the first nine months of FY2016, UAC apprehensions numbered 42,591, a 62% increase over the 26,266 apprehensions during the first nine months of FY2015 but a 25% decline from the 56,477 apprehensions during the first nine months of FY2014.

Congress is considering legislation that would amend current law to redefine UAC and modify several aspects of how unaccompanied children are handled upon apprehension and thereafter, among other things. Two UAC-related pieces of legislation have been ordered to be reported by the House Judiciary Committee: H.R. 1153 and the Protection of Children Act of 2015 (H.R. 1149).

H.R. 1153 would amend the definition of unaccompanied alien children and provisions in current law that apply to UAC asylum seekers. Under the act, UAC asylum seekers would be treated similarly to other (adult) asylum seekers. Notably, USCIS would no longer be given initial jurisdiction to review UAC asylum petitions.

[75] For a discussion of unaccompanied alien children and related legislation, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*.

H.R. 1149 would amend current law to require that unaccompanied children from noncontiguous countries be immediately returned to their countries of origin if certain criteria are met. Current law provides only for the return of children from contiguous countries (i.e., Mexico and Canada). The bill also would amend current law to permit the Secretary of State to negotiate repatriation agreements between the United States and any foreign country the Secretary deems appropriate.

H.R. 1149 would require that all unaccompanied children be screened. (Current law only requires the screening of unaccompanied children from contiguous countries, although in practice all UAC are screened.) A child who is determined through the screening process not to be a victim of a severe form of trafficking in persons and not to be at risk of becoming such a victim if returned to his or her home country and not to have a possible claim to asylum would be placed in removal proceedings. The bill also would differentiate between UAC who do not meet the screening criteria (i.e., who are determined to be trafficking victims or to have possible asylum claims) and those who do, requiring the former to be transferred to the Department of Health and Human Services (HHS) no later than 30 days after the screening determination is made. Like H.R. 1153, H.R. 1149 would no longer give USCIS initial jurisdiction over unaccompanied children's asylum petitions.

H.R. 1149 would require HHS to provide DHS with identifying information about the individual with whom an unaccompanied child will be placed. The act also would require DHS to investigate the immigration status of any such individual. If the individual is unlawfully present in the country, the act would require DHS to initiate removal proceedings within 30 days of receiving information about his or her immigration status.

Parole

Parole is a temporary authorization to enter the United States. The INA authorizes the Attorney General (now the DHS Secretary) to "parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission into the United States."[76] Parole does not constitute formal admission to the United States; an individual granted parole is still considered an applicant for admission.

H.R. 1153, as ordered to be reported by the House Judiciary Committee, would limit the DHS Secretary's parole authority. It would amend the INA parole provisions to delineate the circumstances in which the Secretary could grant humanitarian parole or public interest parole. It also would prohibit the granting of parole to aliens who have been found ineligible for refugee status.[77]

Afghan Special Immigrant Visas

P.L. 111-8 established a special immigrant program through which certain Afghans could be granted lawful permanent resident status in the United States.[78] To be eligible, Afghan nationals must have been employed by or on behalf of the U.S. government or the International Security Assistance Force in Afghanistan for not less than one year during a specified period; provided

[76] INA §212(d)(5)(A).

[77] Parole has been granted in some such cases. Currently, for example, under the Central American Minors (CAM) in-country refugee program, applicants who are found ineligible for refugee status are considered on a case-by-case basis for parole. See CRS Report R44020, *In-Country Refugee Processing: In Brief*.

[78] See CRS Report R43725, *Iraqi and Afghan Special Immigrant Visa Programs*.

documented valuable service to the U.S. government; and experienced "an ongoing serious threat as a consequence of the alien's employment by the United States government."

The Afghan special immigrant program was originally capped at 1,500 principal aliens (excluding spouses and children) annually for FY2009 through FY2013, with a provision to carry forward any unused numbers from one fiscal year to the next. Several laws passed by the 113th Congress amended the program's numerical limitations to provide for additional visas through FY2016. The last of these enactments (P.L. 113-291) provided for an additional 4,000 Afghan principal aliens to be granted special immigrant status during the period from the law's December 19, 2014, enactment date until September 30, 2016. The law also extended the employment period for eligibility until September 30, 2015, and the application deadline until December 30, 2015.

The National Defense Authorization Act (NDAA) for Fiscal Year 2016 (P.L. 114-92, §1216) includes amendments to the Afghan special immigrant visa program. It increases from 4,000 to 7,000 the number of additional special immigrant visas available for issuance after December 19, 2014. These visas will remain available until used. The act also modifies the employment requirements for post-September 2015 applicants and extends both the employment period for eligibility and the application deadline until December 31, 2016. These same provisions were included in another FY2016 NDAA bill (H.R. 1735, §1216) that was vetoed by the President.

The National Defense Authorization Act (NDAA) for Fiscal Year 2017, as passed by the House (S. 2943, §1216), would extend the employment period for eligibility and the application deadline until December 31, 2017, for the Afghan special immigrant visa program. For applications filed after the date of enactment, eligibility would be limited to Afghans employed in Afghanistan (1) to serve as interpreters and translators while traveling away from U.S. embassies and consulates with personnel of the Department of State or the U.S. Agency for International Development, or while traveling off-base with U.S. military personnel; or (2) to perform sensitive activities for U.S. military personnel stationed in Afghanistan.[79] The Senate-passed version of S. 2943 includes no provisions on the Afghan special immigrant visa program.

Visa Waiver Program

The Visa Waiver Program (VWP) allows nationals from certain countries to enter the United States as temporary visitors for business or pleasure without first obtaining a visa from a U.S. consulate abroad.[80] Aliens entering under the VWP must get approval from the Electronic System for Travel Authorization (ESTA), a web-based system that checks the aliens' information against relevant law enforcement and security databases, before they can board a plane to the United States. To qualify for the VWP, the INA specifies that a country must: offer reciprocal privileges to U.S. citizens; have had a nonimmigrant refusal rate[81] of less than 3% for the previous year; issue its nationals machine-readable passports that incorporate biometric identifiers; certify that it is developing a program to issue tamper-resistant, machine-readable visa documents that incorporate biometric identifiers, which are verifiable at the country's port of entry; participate in several information-sharing agreements, including one on lost and stolen travel documents; and

[79] H.R. 4909, as passed by the House, includes the same text as House-passed S. 2943. The Afghan special immigrant visa provisions comprise §1216 of H.R. 4909.

[80] As of July 2016, 38 countries are eligible to participate in the VWP. For further information on the VWP, see CRS Report RL32221, *Visa Waiver Program*.

[81] The nonimmigrant refusal rate is the number of people from the country who were refused a B tourist visa in the previous year and who could not overcome the denial, divided by the total number of people from the country who applied for a B visa in the previous year.

not compromise the law enforcement or security interests of the United States by its inclusion in the program.

The Visa Waiver Program Improvement and Terrorist Travel Prevention Act of 2015 (H.R. 158), as passed by the House, was enacted as part of P.L. 114-113, and makes several changes to the VWP.[82] Most significantly, the act prohibits people who were present in certain countries at any time since March 1, 2011, from traveling under the VWP. The specified countries include

- Iraq and Syria;
- any country designated by the Secretary of State as having repeatedly provided support for acts of international terrorism under any provision of law,[83] or
- any other country or area of concern[84] deemed appropriate by the Secretary of DHS.

The prohibition does not apply to those who were in the country to perform specified military or official VWP government duties. In addition, anyone who is a dual national of a VWP country and one of these specified countries (e.g., a dual national of Belgium and Iran) is ineligible to travel under the VWP. The act provides the Secretary of DHS with the authority on a case-by-case basis to waive the restriction on traveling under the VWP.

P.L. 114-113 requires as of April 1, 2016, that all foreign nationals traveling under the VWP present an electronic passport (e-passport). No later than October 1, 2016, each VWP country has to certify that it has in place mechanisms to validate machine-readable passports and e-passports at each port of entry.[85] The act also requires, no later than 270 days after enactment, that each program country with an international airport certify, to the maximum extent allowed under the laws of the country, that it is screening each foreign national who is admitted to or departs from that country using relevant INTERPOL databases and notices or other means designated by the Secretary of DHS.[86]

Under the act, the Secretary of DHS, in consultation with the Director of National Intelligence and the Secretary of State, is also required to annually evaluate program countries to identify any country whose nationals present a "high risk" to U.S. national security. The Secretary of DHS can suspend a program country if it presents a high risk to U.S. national security. Moreover, P.L. 114-

[82] For a detailed discussion of the VWP provisions in P.L. 114-113, see the "Legislation in the 114th Congress" section in CRS Report RL32221, *Visa Waiver Program*.

[83] Examples of acts that use the term "repeatedly provided support for acts of international terrorism" include §6(j) of the Export Administration Act of 1979 (50 U.S.C. 2405), §40 of the Arms Export Control Act (22 U.S.C. 2780), and §620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371). Currently, the designated countries are Iran, Sudan, and Syria.

[84] The act requires the Secretary of DHS, in consultation with the Director of National Intelligence, to make this determination. The criteria to make the determination include whether the presence of a foreign national in that area or country increases the likelihood that the foreign national is a credible threat to U.S. national security, whether a foreign terrorist organization has a significant presence in the area or country, and whether the country or area is a safe haven for terrorists. DHS has designated Libya, Somalia, and Yemen as "countries or areas of concern." U.S. Customs and Border Protection, *Visa Waiver Program Improvement and Terrorist Travel Prevention Act Frequently Asked Questions*, https://www.cbp.gov/travel/international-visitors/visa-waiver-program/visa-waiver-program-improvement-and-terrorist-travel-prevention-act-faq, accessed July 20, 2016.

[85] This requirement does not apply to travel between countries within the Schengen Area. The Schengen Area enables citizens of the European Union (EU), as well as many non-EU nationals, to cross select international borders in Europe without being subject to border checks. See European Commission, *Migration and Home Affairs: Schengen Area*, November 13, 2015, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/borders-and-visas/schengen/index_en.htm.

[86] This screening requirement does not apply to those traveling between countries within the Schengen Area.

113 makes changes to the ESTA system, allowing the Secretary of DHS to shorten the validity period of or revoke any ESTA determination and requiring the collection of information on an applicant's previous or multiple citizenships.

The Department of Homeland Security Appropriations Act, 2016 (S. 1619), as reported by the Senate Appropriations Committee, includes a provision (§567) that would allow the Secretary of DHS to designate Poland as a VWP country regardless of the statutory requirements for participation.

H.R. 5253, as ordered to be reported by the House Committee on Homeland Security, also contains provisions related to the VWP. This bill would require that no later than one year after enactment, the Commissioner of CBP screen electronic passports at airports by reading the passports' embedded chip, and to the greatest extent practicable, utilize facial recognition technology or other biometric technology, as determined by the Commissioner, to screen travelers. The bill would also require CBP, in a risk-based manner, to continuously screen individuals issued any visa and individuals who are in or will soon be arriving in the United States against the appropriate criminal, national security, and terrorism databases.

USCIS Adjudications

U.S. Citizenship and Immigration Services performs multiple functions, including the adjudication of immigration petitions and applications.[87] USCIS must confirm that all applicants are eligible for the particular immigration status they are seeking, or alternatively, determine they should be rejected because they fail to meet the legal requirements.

H.R. 5203, as ordered to be reported by the House Judiciary Committee, would require DHS to proactively screen eight different types of immigration petitions or applications for immigration fraud and national security threats. The bill would place requirements on immigration petitions and applications like those it would place on visa applications (see "Visa Security"). It would specify that an immigrant or nonimmigrant petition or application could not be approved unless it is signed by all required parties. It would further specify that no petition or application could be approved unless it is complete, and that no accompanying documents could be accepted unless they are either in English or translated into English, with any translation certified as complete and accurate. Petitions and applications also could not be approved unless a background check is performed for the applicant and any derivatives. In addition, H.R. 5203 would require that any applicant for a benefit based on a biological relationship undergo DNA testing to confirm the biological relationship.

H-2B Nonagricultural Worker Visa

The H-2B visa—one of the visa categories established by the INA for temporary workers—allows for the temporary admission of foreign workers to the United States to perform nonagricultural labor or services of a temporary nature if unemployed U.S. workers are not available. The H-2B program is administered by USCIS and the U.S. Department of Labor (DOL). By law, the H-2B visa is subject to an annual numerical cap. Under the INA, the total number of aliens who may be issued H-2B visas or otherwise provided with H-2B nonimmigrant status in any fiscal year may not exceed 66,000. After several years in which fewer than 66,000

[87] For more on USCIS, see CRS Report R44038, *U.S. Citizenship and Immigration Services (USCIS) Functions and Funding*.

H-2B visas were issued, the H-2B cap was reached in FY2014 and in FY2015. In May 2016, USCIS announced that it had received a sufficient number of petitions to reach the FY2016 cap.

As part of the application process, prospective H-2B employers must accurately indicate the starting and ending dates of their period of need for H-2B workers. Employers are not allowed to stagger the entry of H-2B workers based on a single date of need. An exception to this staggered entry prohibition, however, applies to H-2B employers in the seafood industry. First enacted as part of the Consolidated Appropriations Act, 2014, and subsequently incorporated into the 2015 DHS-DOL interim final rule on H-2B employment, this provision permits an employer with an approved H-2B petition to bring in H-2B workers under that petition any time during the 120 days beginning on the employer's starting date of need. In order to bring in workers between day 90 and day 120, though, the employer must conduct additional U.S. worker recruitment.[88]

P.L. 114-113, the FY2016 Consolidated Appropriations Act, contains several provisions related to the H-2B visa. Among these are provisions to extend the H-2B seafood industry staggered entry exception and to exempt certain returning H-2B workers from the annual cap of 66,000 for FY2016. The latter, which is based on a provision in effect for FY2005-FY2007, would exempt from the FY2016 H-2B cap returning H-2B workers who were counted against the cap in FY2013, FY2014, or FY2015. In addition, the law contains language on H-2B prevailing wage determinations and would prohibit using the funds in the act to implement certain regulatory provisions related to the H-2B labor certification process.

The Senate FY2017 Departments of Labor, Health and Human Services, and Education, and Related Agencies (LHHS) appropriations bill (S. 3040), as reported by the Senate Appropriations Committee, would extend the H-2B seafood industry staggered entry exception. It also includes language like that in P.L. 114-113 concerning H-2B prevailing wage determinations[89] and prohibiting the use of funds in the act to implement certain regulatory provisions related to the H-2B labor certification process. The House FY2017 LHHS appropriations bill (H.R. 5926), as reported by the House Appropriations Committee, contains the same provision as the Senate bill and P.L. 114-113 on prevailing wage determinations but does not include the prohibitions on funding the regulatory provisions related to the H-2B labor certification process. The House-reported bill also includes a broader staggered entry exception. Under this bill, this exception would apply to all H-2B employers, not just those in the seafood industry.

The House FY2017 Department of Homeland Security appropriations bill (H.R. 5634), as reported by the House Appropriations Committee, would extend the H-2B returning worker provision. It would exempt from the FY2017 H-2B cap returning H-2B workers who were counted against the cap in FY2014, FY2015, or FY2016.

Naturalization

H.R. 1148, as ordered to be reported by the House Judiciary Committee, contains language amending statutory provisions on naturalization. Among other things, the bill would (1) bar aliens involved in many terrorism or crime-related activities from satisfying the naturalization requirement for good moral character; (2) clarify that the list of conduct identified in the INA as barring a finding of good moral character is not exhaustive, and that when considering whether an applicant possesses good moral character, immigration authorities may consider that applicant's conduct at any time; (3) bar the naturalization of any alien determined by the Secretary of DHS to

[88] For additional information on the H-2B visa, see CRS Report R44306, *The H-2B Visa and the Statutory Cap: In Brief*.

[89] Determinations of the wage rates that H-2B employers must offer and pay workers.

have been at any time described in the security-related grounds of deportability or inadmissibility; (4) bar consideration or approval of naturalization applications while proceedings are pending that could result in the applicant's removal, loss of LPR status, or denaturalization; (5) limit judicial review of naturalization delays and denials; (6) purport to authorize the Attorney General to denaturalize persons who have engaged in specified conduct involving terrorism or support for terrorism, the receipt of military training from a terrorist organization, or activities committed with the purpose of overthrowing or opposing the U.S. government through violence or other unlawful means; and (7) strengthen immigration consequences for unlawful procurement of naturalization.[90]

Posthumous Citizenship for Filipino Veterans of World War II

The INA provides for the granting of posthumous citizenship to noncitizens who die while serving in an active-duty status in the U.S. Armed Forces during periods of military hostilities. Existing requirements serve to exclude certain otherwise qualified individuals who enlisted in the Philippines during World War II. H.R. 3449, as ordered to be reported by the House Judiciary Committee, would amend the INA to extend posthumous citizenship to otherwise qualified noncitizens who enlisted, reenlisted, extended enlistment, or were inducted into the U.S. Armed Forces in the Philippines and died as a result of such active duty service during World War II. Specified naturalization and other immigration benefit provisions would not apply to the surviving spouses, children, or parents of such individuals.

Other Issues and Legislation

Immigrant Investors

There is currently one immigrant visa category specifically for foreign investors (LPR investors) coming to the United States. LPR investors comprise the fifth preference category under the employment-based immigration system in the INA, and this immigrant visa is commonly referred to as the EB-5 visa.[91] The basic purpose of the LPR investor visa is to benefit the U.S. economy, primarily through employment creation and an influx of foreign capital to the United States. Employment-based LPR investor visas are designated for individuals wishing to develop a new commercial enterprise in the United States. The INA stipulates that for an investor to qualify for an EB-5 visa, the enterprise must employ at least 10 people, the investor must invest $1 million ($500,000 if the enterprise is in a targeted employment area)[92] into the enterprise, and the business and jobs created must be maintained for a minimum of two years.[93]

In 1992, a pilot program was authorized under the EB-5 visa category to achieve the economic activity and job creation goals of that category by encouraging investment in economic units known as Regional Centers.[94] The Regional Center Program is intended to provide a coordinated

[90] See archived CRS Report R43192, *Immigration Enforcement: Major Provisions in H.R. 2278, the Strengthen and Fortify Enforcement Act (SAFE Act)*.

[91] For a discussion of employment-based immigration and the preference categories, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

[92] A targeted employment area is a rural area or an area of high unemployment.

[93] INA §§203(b)(5) and 216A.

[94] P.L. 102-395, Title VI, §610, October 6, 1992. A Regional Center is defined as any economic unit, public or private, engaged in the promotion of economic growth, improved regional productivity, job creation, and increased domestic

focus for foreign investment toward specific geographic regions. The overwhelming majority of EB-5 immigrant investors come through this program. P.L. 114-113 (Div. F, §575) reauthorizes the Regional Center Program through September 30, 2016.[95]

Special Immigrant Program for Religious Workers

Special immigrants comprise the fourth preference category under the employment-based immigration system in the INA.[96] Over the years, the special immigrant category has been used to confer immigration benefits on particular groups, and there are various subcategories of special immigrants under current law. Ministers of religion and religious workers make up the largest number of special immigrants. Religious work is currently defined as habitual employment in an occupation that is primarily related to a traditional religious function and recognized as a religious occupation within the denomination. While the INA provision for the admission of ministers of religion is permanent, the provision admitting religious workers has always had a sunset date. P.L. 114-113 (Div. F, §573) extends the authorization for the special immigrant religious worker program through September 30, 2016.[97]

Waivers for Foreign Medical Graduates

Foreign medical graduates (FMGs) may enter the United States on J-1 nonimmigrant visas in order to receive graduate medical education and training. Such FMGs must return to their home countries after completing their education or training for at least two years before they can apply for certain other nonimmigrant visas or LPR status, unless they are granted a waiver of the foreign residency requirement. States are able to request waivers on behalf of FMGs under a temporary program, known as the Conrad State Program or the Conrad 30 Program. Established by a 1994 law, this program initially applied to aliens who acquired J status before June 1, 1996. The Conrad State Program has been extended several times, most recently by P.L. 114-113 (Div. F, §574), which makes it applicable to aliens who acquire J status before September 30, 2016.[98]

H-1B and L Nonimmigrant Visa Fees

P.L. 114-113 adds $4,500 to the combined filing fee and fraud prevention and detection fee paid by employers of L-1 intracompany employees and $4,000 to the combined filing fee and fraud prevention and detection fee paid by employers of H-1B professional specialty workers; in both instances the requirements are limited to employers with 50 or more employees in the United States where more than 50% of the employees are in H-1B, L-1A, or L-1B nonimmigrant status. The authority for the fee increases expires on September 30, 2025. This provision also establishes

capital investment.

[95] The authorization for this program was previously extended through December 11, 2015, by the Continuing Appropriations Act, 2016 (P.L. 114-53); through December 16, 2015, by the Further Continuing Appropriations Act, 2016 (P.L. 114-96); and through December 22, 2015, by the Further Continuing Appropriations Act, 2016 (P.L. 114-100).

[96] For a discussion of employment-based immigration and the preference categories, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

[97] The authorization for this program was previously extended through December 11, 2015, by the Continuing Appropriations Act, 2016 (P.L. 114-53); through December 16, 2015, by the Further Continuing Appropriations Act, 2016 (P.L. 114-96); and through December 22, 2015, by the Further Continuing Appropriations Act, 2016 (P.L. 114-100).

[98] See the preceding footnote.

a 9–11 Response and Biometric Exit Account in the Treasury and allocates 50% of the newly added H-1B and L-1 fees (up to $1 billion) to this account to implement a biometric entry-exit system. The remaining 50% of the additional fees is allocated to general Treasury.

Intercountry Adoption

Intercountry adoption, like domestic adoption, establishes a permanent legal parent-child relationship between a minor and an adult(s) who is not already the minor's legal parent(s) and terminates the legal parent-child relationship between the adoptive child and any former parent(s). For an intercountry adoption to occur, the foreign country must permit adoptions by foreign nationals, and prospective parents must comply with that country's adoption rules. Once the adoption is finalized in the foreign country, the U.S. citizen parent must apply for a visa to allow the child to immigrate to the United States.

In the 114th Congress, the Adoptive Family Relief Act (P.L. 114-70) seeks to relieve some of the financial burden experienced by prospective American adoptive parents of children from the Democratic Republic of the Congo, which has halted the issuance of exit visas for adopted children. The act waives the immigrant visa fee for any visa issued after March 26, 2013, for a lawfully adopted child of a U.S. citizen if the immigrant child was unable to use the original visa because of extraordinary circumstances (including the denial of an exit permit) beyond the control of the immigrant child and/or the adoptive parents.

Executive Action on Immigration

In November 2014, President Obama announced his Immigration Accountability Executive Action to revise some U.S. immigration policies and initiate several programs.[99] The executive action included 10 DHS memoranda and 2 White House memoranda. S. 534 would prohibit any DHS or other federal funding from being used to carry out the policy changes in 11 of the 12 DHS and White House memoranda.[100] In February 2015, a cloture motion on a motion to proceed to the measure failed. The bill has received no further consideration.

Like S. 534, H.R. 1148, as ordered to be reported by the House Judiciary Committee, proposes to prohibit any DHS or other federal funding from being used to carry out the policy changes in the same 11 memoranda issued in November 2014. (For a discussion of related provisions in H.R. 1148, see "Prosecutorial or Enforcement Discretion.")

[99] See CRS Report R43852, *The President's Immigration Accountability Executive Action of November 20, 2014: Overview and Issues*.

[100] S. 534 does not cite the DHS memorandum *Personnel Reform for Immigration and Customs Enforcement Officers*, dated November 20, 2014.

Author Information

Andorra Bruno, Coordinator
Specialist in Immigration Policy

Carla N. Argueta
Analyst in Immigration Policy

Jerome P. Bjelopera
Specialist in Organized Crime and Terrorism

Michael John Garcia
Legislative Attorney

William A. Kandel
Analyst in Immigration Policy

Alison Siskin
Specialist in Immigration Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.