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A Primer on U.S. Immigration Policy

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Summary

U.S. immigration policy is governed largely by the Immigration and Nationality Act (INA), which was first codified in 1952 and has been amended significantly several times since. At a fundamental level, U.S. immigration policy can be viewed as two sides of a coin. One side emphasizes the faciliation of migration flows into the United States according to principles of admission that are based upon national interest. These broad principles currently include family reunification, labor market contribution, humanitarian assistance, and origin-country diversity.

The United States has long distinguished permanent immigration from temporary migration. Permanent immigration occurs through family and employer-sponsored categories, the diversity immigrant visa lottery, and refugee and asylee admissions. Temporary migration occurs through the admission of visitors for specific purposes and limited periods of time, and encompasses two dozen categories of visitors, including foreign tourists, students, temporary workers, and diplomats.

The other side of the immigration policy coin emphasizes the restriction of entry to and removal of persons from the United States who lack authorization to reside in the country, are identified as criminal aliens, or whose presence in the United States is not considered to be in the national interest. Such immigration enforcement is broadly divided between border enforcement—at and between ports of entry—and other enforcement tasks including detention, removal, worksite enforcement, and combatting immigration fraud.

The dual role of U.S. immigration policy creates challenges for balancing major policy priorities, such as ensuring national security, facilitating trade and commerce, protecting public safety, and fostering international cooperation.

Contents

Introduction 1
Immigration Inflows and Related Topics 1
Permanent Immigration 2
Family-Sponsored Immigration 3
Employment-Based Immigration 3
Visa Queue 4
Diversity Immigrant Visa 5
Refugees and Asylees 5
Other Pathways to Lawful Permanent Resident Status 6
Requirements for Permanent Admissions 6
Temporary Admissions 7
Requirements for Temporary Admission 7
Visa Waiver Program 7
Border Crossing Card 8
Visa Issuance and Security 8
Types of "Quasi-legal" Status 9
Temporary Protected Status 9
Parole 10
Naturalization 10
Immigration Enforcement 10
Border Security at Ports of Entry 11
Border Security Between Ports of Entry 11
Detention 12
Removal 13
Programs Targeting Criminal Aliens 14
Options for Aliens in Removal Proceedings 14
Worksite Enforcement 15
Combatting Immigration Fraud 15
Unauthorized Aliens 16
Immigration Law Regarding Unauthorized Aliens 17
Deferred Action 17

Tables

Table 1. Family-Sponsored Immigrant Categories 3
Table 2. Employment-Based Immigrant Categories 4

Contacts

Author Information 17

Introduction

This report provides a broad overview of U.S. immigration policy. The first section addresses policies governing how foreign nationals enter the United States either to reside permanently or to stay temporarily. Related topics within this section include visa issuance and security, forms of quasi-legal status, and naturalization. The second section discusses enforcement policies both for excluding foreign nationals from admission into the United States, as well as for detaining and removing those who enter the country unlawfully or who enter lawfully but subsequently commit crimes that make them deportable. The section also covers worksite enforcement and immigration fraud. The third section addresses policies for unauthorized aliens residing in the United States. While intended to be comprehensive, this primer may omit some immigration-related topics. It does not discuss policy issues or congressional concerns about specific immigration-related policies and programs.

Immigration Inflows and Related Topics

U.S. immigration policy is governed largely by the Immigration and Nationality Act (INA), which was first codified in 1952 and has been amended significantly several times since.[1] Implementation of INA policies is carried out by multiple executive branch agencies. The Department of Homeland Security (DHS) has primary responsibility for immigration functions through several agencies: U.S. Citizenship and Immigration Services (USCIS), Customs and Border Protection (CBP), and Immigration and Customs Enforcement (ICE). The Department of State (DOS) issues visas to foreign nationals overseas, and the Department of Justice (DOJ) operates immigration courts through its Executive Office of Immigration Review (EOIR).

Foreign-born populations with different legal statuses are referred to throughout this report. The term *aliens* refers to people who are not U.S. citizens, including those legally and not legally present.[2] The two basic types of legal aliens are (1) immigrants (not including refugees and asylees) and (2) nonimmigrants. *Immigrants* refers to foreign nationals lawfully admitted to the United States for permanent residence.[3] *Nonimmigrants* refers to foreign nationals temporarily and lawfully admitted to the United States for a specific purpose and period of time, including tourists, diplomats, students, temporary workers, and exchange visitors, among others.

Refugees and *asylees* refer to persons fleeing their countries because of persecution, or a well-founded fear of persecution, on account of race, religion, nationality, membership in a particular social group, or political opinion (see "Refugees and Asylees"). Refugees and asylees are not classified as immigrants under the INA, but once admitted, they may adjust their status to lawful permanent resident (LPR).

Naturalized citizens refers to LPRs who become U.S. citizens through a process known as naturalization (described below), generally after residing in the United States continuously for at least five years. *Noncitizens* are persons who have not naturalized and may include immigrants as well as nonimmigrants.

Unauthorized aliens refers to foreign nationals who reside unlawfully in the United States and who either entered the United States illegally ("without inspection") or entered lawfully and

[1] The INA (P.L. 82-414) is Act of June 27, 1952, ch. 477, codified, as amended, at 8 U.S.C. §§1101 et seq.

[2] In this report, the terms "alien," "foreign national," and "noncitizen" are synonymous.

[3] In this report, the terms "immigrant," "lawful permanent resident" (LPR), and "green card-holder" are synonymous.

temporarily ("with inspection") but subsequently violated the terms of their admission, typically by "overstaying" their visa duration.[4]

Permanent Immigration[5]

Four general principles underlie the current system of permanent immigration: family reunification, U.S. labor market contribution, origin-country diversity, and humanitarian assistance. These principles are reflected in different components of permanent immigration. Family reunification occurs primarily through family-sponsored immigration. U.S. labor market contribution occurs through employment-based immigration. Origin-country diversity is addressed through the Diversity Immigrant Visa. Humanitarian assistance occurs primarily through the U.S. refugee and asylee programs. These permanent immigration pathways are discussed further below.

The INA limits worldwide permanent immigration to 675,000 persons annually: 480,000 *family-sponsored immigrants,* made up of family-sponsored immediate relatives of U.S. citizens ("immediate relatives"), and a set of ordered family-sponsored preference immigrants ("preference immigrants"); 140,000 *employment-based immigrants*; and 55,000 *diversity visa immigrants*.[6] This worldwide limit, however, is referred to as a "permeable cap" because immediate relatives are exempt from numerical limits placed on family-sponsored immigration (described below) and thereby represent the flexible component of the 675,000 worldwide limit. In addition, the annual number of refugees is determined not by statute but by the President, in consultation with Congress.[7] Consequently, *actual* total annual LPRs (immigrants, refugees, and asylees) have averaged roughly 1 million persons during the past decade.

To ensure that a few countries do not dominate permanent immigration flows, the INA further specifies a "per-country limit" or "cap" limiting the number of family-sponsored preference immigrants and all employment-based immigrants from any single country to 7% of the limit in each preference category.[8]

[4] Also counted in this population are persons with parole or other forms of "quasi-legal" status (described below).

[5] In this report, the term "admissions" broadly refers to the entry of aliens into the United States, either permanently or temporarily. Technically, aliens who immigrate permanently do so either *by being admitted* as LPRs (if arriving from abroad) or *by adjusting status* from a temporary nonimmigrant status to LPR status (if residing in the United States). For more information on permanent immigration, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

[6] See, respectively, INA §201(c), INA §201(d), and INA §201(e). While the diversity visa category has not been directly amended since its enactment, the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA; P.L. 105-100) temporarily decreases the 55,000 annual ceiling. Beginning in FY1999, this ceiling has been reduced by up to 5,000 annually to offset immigrant numbers made available to certain unsuccessful asylum seekers from El Salvador, Guatemala, and formerly communist countries in Europe who are being granted immigrant status under special rules established by NACARA. The 5,000 offset is temporary, but it is not clear how many years it will be in effect to handle these adjustments of status.

[7] Between 1995 and 2016, the annual number of U.S. refugee admissions averaged 63,355, fluctuating between a low of 26,785 (in 2002) and a high of 98,973 (in 1995). Asylees are adjudicated on a case-by-case basis without a statutorily mandated limit. See DHS Office of Immigration Statistics, *2016 Yearbook of Immigration Statistics*, Table 13. For additional information, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*.

[8] For more background, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

Family-Sponsored Immigration

Family-sponsored immigration consists of two immigrant groups (**Table 1**). *Immediate relatives* include spouses and minor unmarried children of U.S. citizens and parents of *adult* U.S. citizens. An unlimited number of immediate relatives can acquire LPR status each year if they meet the standard eligibility criteria required of all immigrants. *Preference immigrants*, on the other hand, are numerically limited to 226,000 per year and, unlike immediate relatives, are also bounded by the 7% per-country limit.[9] In recent years, family-sponsored immigrants have accounted for two-thirds of all permanent immigration.[10]

Table 1. Family-Sponsored Immigrant Categories

Category	Individuals in Category
Immediate Relatives	
	Spouses and unmarried minor children of U.S. citizens, and parents of adult U.S. citizens
Preference Immigrants	
1st Preference	Unmarried adult children of U.S. citizens
2nd Preference	(A) Spouses and minor children of LPRs
	(B) Unmarried adult children of LPRs
3rd Preference	Married children of U.S. citizens
4th Preference	Siblings of adult U.S. citizens

Source: INA §§203(a)(b), 8 U.S.C. §§1153(a)(b).

Note: LPR = lawful permanent resident.

Employment-Based Immigration

Employment-based immigration occurs through five numerically limited preference categories (**Table 2**), the first three of which are ranked by professional accomplishment and ability. The fourth preference category includes various "special immigrants,"[11] and the fifth preference category includes immigrant investors (i.e., EB-5 visa holders), a category created in 1990 to benefit the U.S. economy through employment creation and capital investment.[12] Employment-based immigrants include accompanying spouses and children of qualifying LPRs, are limited to

[9] The 226,000 limit is a floor, below which the number of family preference immigrants cannot fall (as long as the demand for such visas exceeds 226,000). More than 226,000 family preference immigrants can be admitted under current law only if the number of immediate relatives admitted is less than 254,000 (the difference between 480,000 and 226,000). However, annual admissions of immediate relatives have exceeded 254,000 every year since 1999. For instance, in FY2016 (the most recent year for which data are available), immediate relatives totaled 566,706. Under these immigration policy constraints, family-sponsored preference category immigrants are effectively limited to 226,000 per year.

[10] For more background, see CRS Report R43145, *U.S. Family-Based Immigration Policy*.

[11] For a complete list of special immigrant categories, see USCIS, "Special Immigrants," at https://www.uscis.gov/humanitarian/special-immigrants.

[12] The EB-5 visa was created through the Immigration Act of 1990 (P.L. 101-649). For more background, see CRS Report R44475, *EB-5 Immigrant Investor Visa*.

140,000 total annual admissions, and are subject to the same 7% per-country limit as family-sponsored preference immigrants.[13]

Table 2. Employment-Based Immigrant Categories

Category	Individuals in Category
1st Preference	Priority workers: persons of extraordinary ability in the arts, sciences, education, business, or athletics; outstanding professors and researchers; and certain multinational executives and managers
2nd Preference	Members of the professions holding advanced degrees or persons of exceptional ability in the sciences, arts, or business
3rd Preference (skilled)	Skilled shortage workers with at least two years training or experience, professionals with baccalaureate degrees
3rd Preference (unskilled)	Unskilled shortage workers
4th Preference	"Special immigrants," including ministers of religion, religious workers other than ministers, certain employees of the U.S. government abroad, and others
5th Preference	Employment creation investors who invest at least $1 million ($500,000 in rural areas or areas of high unemployment) and create at least 10 new jobs

Source: INA §204, 8 U.S.C. §1154.

Visa Queue

The number of foreign nationals seeking to immigrate to the United States each year through family-sponsored and employment-based preference categories typically exceeds the INA-mandated numerical limits. Prospective immigrants are further constrained by the 7% per-country cap that primarily impacts foreign nationals from countries that send many immigrants to the United States (e.g., Mexico, China, India, Philippines). As a result, many foreign nationals who meet the U.S. immigrant qualifications and whose petitions have been approved by USCIS must wait years before a numerically limited visa from DOS becomes available.

When a visa becomes available, it allows an approved prospective immigrant to travel to the United States and, if admitted to the country by an immigration officer at a port of entry, receive LPR status. If the approved prospective immigrant already resides in the United States on a nonimmigrant visa, the availability of a visa allows him or her to "adjust status" (i.e., change from a temporary nonimmigrant to a permanent immigrant with LPR status) without having to return to the country of origin to complete visa processing through a DOS consulate. As of November 1, 2017, the queue of approved family-sponsored and employment-based immigrants waiting for visas numbered 4.1 million persons.[14]

[13] For more information, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

[14] U.S. Department of State, National Visa Center, Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center as of November 1, 2017, accessed by CRS on June 22, 2018, at https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingList/WaitingListItem_2017.pdf. For more discussion of the visa queue, see CRS Report R43145, *U.S. Family-Based Immigration Policy*.

Diversity Immigrant Visa

The diversity immigrant visa fosters legal immigration from countries that send relatively few immigrants to the United States.[15] Each year, 50,000 visas are made available to selected natives of countries from which immigrant admissions totaled less than 50,000 over the preceding five years. Since the visa's inception in the early 1990s, the regional distribution of diversity lottery immigrants has shifted from Western European to African and Eastern European countries.[16]

To be eligible for a diversity immigrant visa, foreign nationals must have a high school education or two years of work experience within the past five years in an occupation that requires at least two years of training or experience to perform. Diversity immigrant visa applicants are selected by lottery. Winners of the diversity immigrant visa lottery must also meet the standard eligibility criteria required for most immigrants.

Refugees and Asylees

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 is embodied in several INA provisions, notably in those defining refugees and asylees. A *refugee* is a person who is outside his or her home country (a second country that is not the United States) and is unable or unwilling to return because of persecution, or a well-founded fear of persecution, on account of five possible criteria: (1) race, (2) religion, (3) nationality, (4) membership in a particular social group, or (5) political opinion. An *asylee* is a person who meets the definition of a refugee in terms of persecution or a well-founded fear of persecution but who has been admitted in the United States or is present at a land border or port of entry to the United States.

Refugee status is granted within numerical limits. Refugee admissions differ from other immigrant admissions because their annual number, known as the *refugee ceiling*, and their allocation by world region are not mandated in statute but set each year by the President, in consultation with Congress. For FY2018, the worldwide refugee ceiling was set at 45,000, allocated among world regions (Africa, East Asia, Europe and Central Asia, Latin America/Caribbean, and Near East/South Asia).[17]

Asylum is granted on a case-by-case basis and is not numerically limited. An alien in the United States may "affirmatively" apply to USCIS for asylum or may "defensively" seek asylum before an immigration judge during proceedings that determine an individual's removability under the INA.[18] Typically, aliens arriving at a U.S. port of entry who lack proper immigration documents for admission or who engage in fraud or misrepresentation are placed in expedited removal (described below); however, if they express a fear of persecution, they receive a "credible fear" review by a USCIS asylum officer and—if found to have credible fear—are referred to an immigration judge for a hearing.[19]

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[15] For more information, see archived CRS Report R41747, *Diversity Immigrant Visa Lottery Issues*.

[16] Ibid.

[17] U.S. Department of State, U.S. Department of Homeland Security, U.S. Department of Health and Human Services, Proposed Refugee Admissions For Fiscal Year 2018, Report to the Congress, accessed by CRS on June 22, 2018, at https://www.state.gov/documents/organization/274857.pdf. According to State Department's Refugee Processing Center, 15,383 individuals have been admitted as refugees as of June 15, 2018. For more information, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*.

[18] For more information, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*.

[19] INA §235(b) defines credible fear as a significant possibility, taking into account the credibility of the statements

Other Pathways to Lawful Permanent Resident Status

In addition to the primary components of permanent immigration discussed above, there are several other pathways to LPR status, though they account for relatively few immigrants. The most prominent among these are *cancellation of removal, U nonimmigrant visas,* and *T status*.[20]

Cancellation of removal is a discretionary, case-by-case form of relief granted by an immigration judge to aliens in removal proceedings. To receive it, an alien must demonstrate substantial ties to the United States, be of good moral character, and not have been convicted of a crime that makes him or her removable. More specific requirements differ by legal status.[21] Because an immigration judge grants cancellation of removal at his or her discretion, no fixed standard exists for who merits relief. The alien must show that he or she is eligible for and deserves the relief. Grants of cancellation of removal are limited to 4,000 LPRs and 4,000 nonpermanent residents per year.[22]

U nonimmigrant visas are granted to certain victims who help law enforcement agencies investigate and prosecute domestic violence, sexual assault, human trafficking, and other crimes. After meeting specific requirements, U visa recipients, as well as their immediate family members, can acquire LPR status. The INA limits U visas to 10,000 per year.

T status is granted to alien victims of severe forms of human trafficking.[23] T status recipients may remain in the United States for four years and apply for LPR status after three. To qualify for T status, trafficking victims must also (1) be physically present in the United States, its territories, or a U.S. port of entry either because of such trafficking or to participate in related investigations or prosecutions; (2) have complied with requests to assist law enforcement investigating or prosecuting trafficking acts; and (3) be likely to suffer unusual and severe harm upon removal. Such aliens must also be admissible to the United States or obtain a waiver of inadmissibility. The INA limits T status to 5,000 principal aliens annually.

Requirements for Permanent Admissions

To obtain LPR status, prospective immigrants must traverse a multistep process through several federal departments and agencies.[24] If they already reside legally in the United States, obtaining LPR status involves adjusting from a temporary nonimmigrant status to lawful permanent resident status. If they live abroad and have not established a lawful residence in the United States, their petitions are forwarded to DOS's Bureau of Consular Affairs in the home country after they have been adjudicated and approved by USCIS. The consular officer (when the alien lives abroad) and USCIS adjudicator (when the alien is adjusting status within the United States) must be satisfied the alien is entitled to the immigrant status. These reviews are intended to

made by the alien and other facts known to the officer, that the alien could establish eligibility for asylum.

[20] For a detailed and complete list of categories of foreign nationals receiving LPR status, see DHS Office of Immigration Statistics, *2015 Yearbook of Immigration Statistics*, Table 7.

[21] For example, nonimmigrants and unauthorized aliens must establish that removal would result in "exceptional and extremely unusual hardship" to the alien's citizen or LPR spouse, parent, or child. That same standard does not apply to immigrants (LPRs) who seek cancelation of removal.

[22] For more information, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*.

[23] For background information, see archived CRS Report RL34317, *Trafficking in Persons: U.S. Policy and Issues for Congress*.

[24] For more information, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

ensure that prospective immigrants are not ineligible for visas or admission under the INA's grounds for inadmissibility (see section on "Visa Issuance and Security").

Temporary Admissions

Each year, the United States admits millions of nonimmigrants, including tourists, foreign students, diplomats, temporary workers, exchange visitors, internationally known entertainers, foreign media representatives, intracompany business personnel, and crew members on foreign vessels. DOS issues 87 specific types of nonimmigrant visas within 24 major nonimmigrant visa categories. Categories are often referred to by the letter and numeral denoting their subsection within INA Section 101(a) (e.g., B-2 tourists, E-2 treaty investors, F-1 foreign students).

Requirements for Temporary Admission

Foreign nationals who apply for temporary admission must demonstrate, both to DOS consular officers at the time they apply for a visa in their home countries, as well as to CBP officers when they apply for admission upon arrival in the United States, that they are eligible for both nonimmigrant status and the specific requested nonimmigrant visa. In addition, because the INA presumes that all aliens seeking admission to the United States are coming to live permanently, nonimmigrant applicants must demonstrate that they intend to stay for a temporary period and a specific purpose.[25] With certain exceptions, nonimmigrants are prohibited from working in the United States.[26]

In recent years, the most numerous nonimmigrants entering the United States have included B-1 business visitors; B-2 tourists; Border Crossing Card holders; L intracompany transferees employed with international firms;[27] H-1B professional specialty workers;[28] H-2A agricultural guest workers and H-2B nonagricultural guest workers;[29] J cultural exchange visitors (including professors, students, foreign medical graduates, teachers, resort workers, camp counselors, and au pairs); and F foreign students.[30]

Visa Waiver Program

The Visa Waiver Program (VWP) allows nationals from certain (mostly high income) countries to enter the United States as temporary visitors for business or pleasure without obtaining visas from U.S. consulates abroad. Those entering the country under the VWP undergo a biographic (e.g.,

[25] Many temporary visa holders ultimately are able to adjust their status to LPR status after they have been admitted to the United States as nonimmigrants. In FY2016, for example, of the 1,183,505 foreign nationals who were granted lawful permanent resident status, 618,078 were new arrivals from abroad and 565,427 adjusted status from a nonimmigrant status while residing in the United States. Data showing from what nonimmigrant categories foreign nationals adjust status are not publically available. See DHS *2016 Yearbook of Immigration Statistics*, Table 6, at https://www.dhs.gov/immigration-statistics/yearbook/2016/table6.

[26] For a list of nonimmigrant visa categories, see archived CRS Report RL31381, *U.S. Immigration Policy on Temporary Admissions* (available to congressional clients upon request to CRS).

[27] For more background, see archived CRS Report RL32030, *Immigration Policy for Intracompany Transfers (L Visa): Issues and Legislation*.

[28] For more information, see CRS Report R43735, *Temporary Professional, Managerial, and Skilled Foreign Workers: Policy and Trends*.

[29] For more information, see CRS Report R44849, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues*.

[30] For statistics on nonimmigrant visas by category, see U.S. Department of State, Bureau of Consular Affairs, *Report of the Visa Office 2016*.

name, address, date of birth) rather than a biometric (e.g., fingerprint) security screening and do not need to be interviewed by a U.S. government official before their trip.[31] In FY2016, roughly 18.7 million pleasure and 3.1 million business visitors entered the United States using the VWP.[32]

Border Crossing Card

Mexican citizens who live in Mexico and who are admissible as B-1 business or B-2 tourist visitors can apply for a border crossing card (BCC) to gain short-term entry into the United States. In FY2017, roughly 1.1 million Mexican nationals were issued border crossing cards.[33] The BCC may be used for multiple entries and is valid usually for 10 years. Current rules limit BCC holders to visits of up to 30 days within a zone of 25 miles along the border in Texas and California, 55 miles along the New Mexico border, and 75 miles along the Arizona border.[34] U.S. admissions from persons possessing border crossing cards in FY2016 totaled 101.9 million.[35]

Visa Issuance and Security

All nonresident foreign nationals who wish to come to the United States, whether permanently or temporarily, must obtain a visa. A visa permits a foreign national to travel to a U.S. port of entry and request permission from CBP to enter the country. To obtain a visa, foreign nationals must establish their qualification for a specific visa under its admission criteria. Visa issuances to the United States can be denied under three INA provisions:

- insufficient information under INA Section 221(g);
- the grounds of inadmissibility under INA Section 212(a); and
- for nonimmigrant applicants, the presumption of seeking permanent residence under INA Section 214(b).

Visa applications must be complete. A visa denial under INA Section 221(g) indicates that the DOS consular officer abroad lacks sufficient information to determine if a foreign national is eligible to receive a visa. A consular officer may also disqualify a visa applicant if (1) he or she knows or has reason to believe that the alien is inadmissible under INA Section 212(a) (described below) or any other provision of law; or (2) the application fails to comply with INA provisions or regulations.

All foreign nationals must undergo admissibility reviews. Consular officers must decide whether a foreign national is excludable under the grounds in INA Section 212(a), which include the following:

- health-related grounds;
- criminal grounds;
- security and terrorist concerns;

[31] For more information, see CRS Report RL32221, *Visa Waiver Program*.

[32] See DHS, *2016 Yearbook of Immigration Statistics*, Table 25, at https://www.dhs.gov/immigration-statistics/yearbook/2016/table25.

[33] U.S. Department of State, Bureau of Consular Affairs, *Report of the Visa Office 2017*, Table XVII.

[34] 8 C.F.R. §212.6.

[35] See DHS, *2016 Yearbook of Immigration Statistics*, Table 25, at https://www.dhs.gov/immigration-statistics/yearbook/2016/table25.

- public charge risk (e.g., indigence);[36]
- seeking to work without proper labor certification;[37]
- illegal U.S. entry and U.S. immigration law violations;
- ineligibility for U.S. citizenship; and
- having been previously removed from the United States.

The INA describes procedures for making and reviewing an inadmissibility determination, and specifies conditions under which some of these provisions may be waived.

For nonimmigrant applicants, a visa denial under INA Section 214(b) indicates that the foreign national was unable to demonstrate to the consular officer that he or she had sufficient ties to his or her home country to return home.[38] This is the most common reason that DOS denies nonimmigrant visas.

All visa applicants are required to submit their photographs, fingerprints, and biographic and demographic information. All prospective LPRs and certain prospective nonimmigrants must also submit to physical and mental examinations. Visa applicants are checked against multiple databases and information sources for security purposes. Consular officers' decisions on whether or not to grant foreign nationals a visa are not subject to judicial appeals.

Types of "Quasi-legal" Status

Two immigration mechanisms that allow persons to remain legally in the United States without being legally admitted into the country, Temporary Protected Status and parole, are described below. Other options, including Deferred Enforced Departure, withholding of removal, and deferred action, are described in later sections of this report.

Temporary Protected Status

When extraordinary conditions such as civil unrest, violence, or natural disasters occur in foreign countries, foreign nationals from those places who are present in the United States may not be able to return home safely. The INA allows DHS, in consultation with DOS, to grant Temporary Protected Status (TPS) to such foreign nationals, provided that doing so is consistent with U.S. national interests.[39] Congress has also provided TPS legislatively.

While TPS beneficiaries may obtain employment authorization, TPS does not provide a path to LPR status. DHS can designate TPS for 6 to 18 months and may extend it if conditions do not change in the designated country. Based on the most recent designations for each country, there

[36] For more information, see archived CRS Report R43220, *Public Charge Grounds of Inadmissibility and Deportability: Legal Overview* (available to congressional clients upon request to CRS).

[37] For more information, see archived CRS Report R43223, *The Framework for Foreign Workers' Labor Protections Under Federal Law* (available to congressional clients upon request to CRS).

[38] Some nonimmigrant visas, including *H-1 professional workers*, *L intracompany transfers*, *K fiancé visas*, and *V accompanying family members* allow visa holders to simultaneously seek LPR status. The same is true for beneficiaries of T and U nonimmigrant status (for victims of human trafficking and crime, respectively). Nonimmigrants seeking one of these visas or statuses are not required to prove they are not coming to reside permanently in the United States.

[39] INA §244, 8 U.S.C. §1254a. For more information, see CRS Report RS20844, *Temporary Protected Status: Overview and Current Issues*.

are an estimated 317,600 TPS recipients from 10 countries: El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, Sudan, South Sudan, Syria, and Yemen.[40]

Parole

DHS may, at its discretion and on a case-by-case basis, "parole" an alien into the United States for urgent humanitarian reasons or significant public benefit. Parole does not constitute formal admission to the United States and is not classified as a formal immigration status (e.g., nonimmigrant, immigrant). It is granted for a specified period of time. Parolees may obtain employment authorization but must leave when the parole expires or, if eligible, be admitted in a lawful status.[41]

Naturalization

Under U.S. immigration law, all LPRs may become U.S. citizens through a process known as naturalization. With some exceptions, aliens must do the following to naturalize:

- reside continuously in the United States as LPRs for five years;
- demonstrate that they possess good moral character;
- demonstrate basic English skills and knowledge of U.S. history and civics; and
- take an oath of allegience to the United States.[42]

An estimated 43.7 million foreign-born persons resided in the United States in 2016, roughly divided between 21.2 million (49%) naturalized citizens and 22.5 million (51%) noncitizens.[43]

Immigration Enforcement

Immigration enforcement encompasses enforcement of the INA's *civil* provisions (e.g., violations of admission conditions) as well as its *criminal* provisions (e.g., marriage fraud, alien smuggling). It involves border security where foreign nationals enter the United States (at ports of entry) and along U.S. borders (between ports of entry), as well as enforcing immigration laws in the U.S. interior, including worksite enforcement.[44] Immigration enforcement also involves the

[40] Figures for estimated TPS holders from individual countries come from Federal Register announcements. For more information on TPS countries, see https://www.uscis.gov/humanitarian/temporary-protected-status.

[41] For more information, see CRS Report R44230, *Immigration Legislation and Issues in the 114th Congress*.

[42] For more information, see archived CRS Report R43366, *U.S. Naturalization Policy*; and archived CRS Report RL31884, *Expedited Citizenship Through Military Service: Current Law, Policy, and Issues* (available to congressional clients upon request to CRS).

[43] U.S. Census Bureau, 2016 American Community Survey data, 1-year estimates, accessed by CRS on June 22, 2018, at American Factfinder, https://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml. Noncitizens include LPRs, lawful temporary nonresidents, and unauthorized aliens. DHS has estimated that two-thirds of the estimated 13.1 million LPRs residing in the United States in 2013 were eligible to naturalize based on their length of time living in the country. See DHS Office of Immigration Statistics, *Estimates of the Lawful Permanent Resident Population in the United States: January 2013*, by Bryan Baker and Nancy Rytina, September 2014. As of this writing, this report represented the most recent publicly available DHS estimate for this population.

[44] This report does not cover immigration enforcement along U.S. coastal waters which is handled by the U.S. Coast Guard, Alien Migrant Interdiction Operations. For more information, see https://www.gocoastguard.com/about-the-coast-guard/discover-our-roles-missions/migrant-interdiction.

identification, investigation, apprehension, prosecution, and deportation of foreign nationals who violate U.S. laws and become removable.

Border Security at Ports of Entry

Foreign nationals arrive in the United States at one of 329 ports of entry (POEs), including land checkpoints, airports, and seaports. They are met by CBP officers whose primary immigration enforcement mission is to ensure that such travelers are eligible to enter the United States and to exclude inadmissible foreign nationals. Possession of a visa by a foreign national does not guarantee U.S. admission if a CBP officer finds the individual inadmissible under law.[45]

About 390 million travelers (citizens and noncitizens) entered the United States in FY2016, including roughly 251 million land travelers, 119 million air passengers and crew, and 20 million sea passengers and crew. During the same period, about 274,000 aliens were denied admission and 21,000 aliens were arrested on criminal warrants.[46]

To balance facilitating the flow of lawful travelers with the competing interest of ensuring border security and immigration enforcement, DHS relies on a risk management strategy that includes screening at multiple points in the immigration process, beginning well before travelers arrive at U.S. POEs. DHS and other departments involved in the "inspection" process use screening tools to distinguish known, low-risk travelers who may be eligible for expedited admissions processing from lesser-known, higher-risk travelers who are usually subject to more extensive secondary inspections.[47]

DHS is also responsible for implementing an electronic entry-exit system at POEs, a task Congress mandated in 1996. While CBP collects a portion of the requisite biographic and biometric data from noncitizens at various stages of their entry to and exit from the United States, implementation of a fully automated biometric system has proven challenging.[48]

Border Security Between Ports of Entry

Border security between POEs focuses on unauthorized land border entry into the United States, which has been a concern for Congress since the 1970s, when unauthorized migration first registered as a major national issue. It has received greater attention since the September 11, 2001, terrorist attacks.

CBP's unauthorized migration control strategy between POEs has involved "prevention through deterrence," or concentrating personnel, infrastructure, and surveillance technology along heavily trafficked border regions. More recently, CBP's strategy has involved "enforcement with consequences," which includes making migrants who commit crimes face criminal charges and incur penalties (including incarceration) prior to removal. For Mexican nationals, this can include repatriation to Mexican locations geographically remote from where migrants were apprehended. Criminal charges, penalties, and formal removal generally bar migrants from legally entering the United States for varying lengths of time. Remote repatriation is intended to disrupt migrant smuggling networks and reduce the likelihood that removed migrants will reenter the country illegally.

[45] INA 221(h), 8 U.S.C. §1201(h).

[46] Data provided to CRS on May 31, 2017, by U.S. Customs and Border Protection, Office of Legislative Affairs.

[47] For more information, see CRS Report R43356, *Border Security: Immigration Inspections at Ports of Entry*.

[48] Ibid.

The United States has substantially increased appropriations for personnel, fencing, infrastructure, and surveillance technology for border enforcement over the last three decades, particularly after 2001. Since receiving authorization from Congress in 1996, DHS has built 653 miles of several types of barriers along the U.S.-Mexico border. CBP also employs land-based, aerial, and marine surveillance technologies.

The most widely cited metric of border security is unauthorized migrant apprehensions, which are usually positively related to the flow of unauthorized migrants.[49] Annual apprehensions were relatively low in the 1960s, climbed sharply after 1965, and reached peaks of roughly 1.7 million in both 1986 and 2000. They have fallen since then to 310,531 apprehensions in FY2017.[50] The extent to which reduced inflows resulted from more effective enforcement rather than other factors, like the U.S. economic downturn in the late 2000s, remains subject to debate.[51]

Detention

U.S. law provides broad authority to detain foreign nationals awaiting the outcomes of their removal proceedings. The law mandates detention for certain categories of aliens, including those

- arriving to the United States with fraudulent or no documentation;
- who are inadmissible or deportable on criminal or national security grounds;
- who are certified as terrorist suspects; or
- with final orders of deportation (with some limitations).

Detention priorities are specified in statute and regulations and have been expanded legislatively in recent years. Other detained aliens include persons who are arrested for being illegally present in the United States. Most detained aliens are quickly returned to their country of origin through a process known as expedited removal (described below). Aliens not subject to mandatory detention may be either detained, paroled, or released on bond.

DHS detained 352,880 noncitizens during FY2016.[52] The amount of detention space, which has increased from 21,100 beds in FY2002 to 34,000 beds in FY2016, is controlled almost exclusively through congressional appropriations. In FY2016, almost all detained aliens had been prioritized for removal because they had committed specific felony crimes, multiple misdemeanors, or specific immigration violations targeted by ICE.[53]

The U.S. Supreme Court has ruled that the detention of unauthorized foreign nationals generally may not last beyond six months. In addition, ICE must obtain travel documents to repatriate foreign nationals. Because some countries refuse to provide such documents or do so in a protracted manner, ICE has regularly released sizeable numbers of detainees following their full detention term, including criminal aliens—an outcome that has been criticized repeatedly by some Members of Congress.[54]

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[49] For more on border security metrics, see CRS Report R44386, *Border Security Metrics Between Ports of Entry*.

[50] U.S. Customs and Border Protection, "Stats and Summaries," *Nationwide Illegal Alien Apprehensions, Fiscal Years 1925-2017*, accessed by CRS on June 22, 2018, at https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Total%20Apps%20FY1925-FY2017.pdf

[51] For more information, see CRS Report R42138, *Border Security: Immigration Enforcement Between Ports of Entry*.

[52] DHS Office of Immigration Statistics, *DHS Immigration Enforcement: 2016*, December 2016. As of this writing, this report represented the most recent publicly available DHS estimate for this population.

[53] Ibid., p. 4.

[54] U.S. Congress, House Committee on the Judiciary, *Oversight of United States Immigration and Customs*

Removal

Removing foreign nationals who violate U.S. immigration laws is central to immigration enforcement, and the INA provides broad authority to DHS and DOJ to remove certain foreign nationals from the country. This includes unauthorized aliens as well as lawfully present foreign nationals who commit certain acts that make them removable. Any foreign national found to be inadmissible (either before or after U.S. entry) or deportable under grounds specified in the INA may be ordered removed.

To remove a lawfully admitted alien, the U.S. government must prove that the noncitizen has violated one of the following six grounds of deportation specified in INA Section 237(a):

- being inadmissible at the time of entry[55] or violating one's immigration status;
- committing certain criminal offenses, including crimes of "moral turpitude," aggravated felonies, alien smuggling, and high-speed flight from an immigration checkpoint;[56]
- failing to register with DHS (if required) or committing document fraud;
- being a security risk (including violating any law relating to espionage, engaging in criminal activity that endangers public safety, partaking in terrorist activities, or assisting in Nazi persecution or genocide);
- becoming a public charge within five years of entry; or
- voting unlawfully.

The INA describes procedures for making and reviewing a removal determination, and specifies conditions under which certain grounds of removal may be waived. DHS officials may exercise some discretion in pursuing removal orders, and certain removable aliens may be eligible for permanent or temporary relief from removal. Other grounds for removal (e.g., criminal, terrorist) render foreign nationals ineligible for most forms of relief and may make them subject to more streamlined (expedited) removal processes, both at the U.S. border and within the U.S. interior.

Under the standard removal process, an immigration judge from EOIR determines in a civil judicial proceeding whether an alien is removable. The immigration judge may grant certain forms of relief (e.g., asylum, cancellation of removal), and removal decisions are subject to administrative and judicial review.

Under streamlined removal procedures, including expedited removal and reinstatement of removal (i.e., when DHS reinstates a removal order for a previously removed alien), opportunities for relief and review are generally limited. Under expedited removal (INA §235(b)), an alien who lacks proper documentation or has committed fraud or willful misrepresentation to gain admission into the United States is inadmissible. That individual may be removed without any further hearings or review, unless he or she indicates an intention to apply for asylum.

Enforcement, opening statement of the Honorable Bob Goodlatte, Chairman, 114th Cong., 2nd sess., September 22, 2016. For background information, see archived CRS Report RL32369, *Immigration-Related Detention*.

[55] Grounds of inadmissibility are outlined in INA §212. If individuals are removed because they were inadmissible at the time of entry, they are removed under INA §212, not INA §237.

[56] Crimes of moral turpitude are determined by case law. For more information, see archived CRS Report RL32480, *Immigration Consequences of Criminal Activity* (available to congressional clients upon request to CRS).

Two other removal options that are often referred to as "returns"—*voluntary departure* and *withdrawal of petition for admission*—require aliens to leave the United States promptly but exempt them from certain penalties associated with other types of removal.

Following an order of removal, an alien is generally ineligible to return to the United States for a minimum of five years and possibly longer depending on the reason for and type of removal. Absent other factors, unlawful presence in the United States is a civil violation, not a criminal offense, and removal and its associated administrative processes are civil proceedings. As such, aliens in removal proceedings generally have no right to free government-provided counsel, although they may obtain counsel at their own expense.[57]

Programs Targeting Criminal Aliens

Although all unauthorized aliens are potentially subject to removal, the removal of criminal aliens (noncitizens who have been convicted of a crime in the United States) has been a statutory priority since 1986. Programs targeting criminal aliens for removal have grown substantially since DHS was established in 2002.

ICE currently operates several programs that identify and remove criminal and other removable aliens, including the *Criminal Alien Program* (CAP), an umbrella program for coordinating the agency's resources.[58] CAP includes a data sharing infrastructure, or "interoperability," between DHS and DOJ that screens for both immigration and criminal violations when individuals are booked into jail.

To pursue known at-large criminal aliens and fugitive aliens outside of controlled settings (i.e., administrative offices or custodial settings), ICE uses the *National Fugitive Operations Program* (NFOP). In addition to programs using DHS personnel, ICE's *Section 287(g)* program allows DHS to delegate certain immigration enforcement functions to specially trained state and local law enforcement officers, under federal supervision.[59]

Options for Aliens in Removal Proceedings

Provisions in the INA permit certain removable aliens to remain in the United States, either permanently or temporarily.[60] Options that provide permanent relief by conferring or leading to lawful permanent resident status include cancellation of removal (discussed above) and "defensive" asylum applied for during removal proceedings.[61] Options that provide temporary

[57] For more information, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*.

[58] For more information, see CRS Report R44627, *Interior Immigration Enforcement: Criminal Alien Programs*.

[59] For more background, see archived CRS Report R42057, *Interior Immigration Enforcement Prior to 2014: Programs Targeting Criminal Aliens*.

[60] For more information on permanent and temporary forms of relief from removal, see CRS Report R43892, *Alien Removals and Returns: Overview and Trends*.

[61] Applying for asylum while in removal proceedings is referred to as a *defensive* claim because it acts as a defense to one's removal. In contrast, *affirmative* asylum claims typically occur upon arrival to the United States.

relief include withholding of removal,[62] the Convention Against Torture,[63] Deferred Enforced Departure,[64] and deferred action (described below).

Worksite Enforcement

The INA prohibits the employment of individuals who lack work authorization.[65] Its provisions, sometimes referred to as employer sanctions, make it 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. ICE's worksite enforcement program primarily targets cases involving critical infrastructure or employers who commit "egregious" violations of criminal statutes and engage in worker exploitation. Employers who violate prohibitions on unauthorized employment may be subject to civil monetary penalties and/or criminal penalties.[66]

Combatting Immigration Fraud

There are two general types of immigration fraud: document fraud and benefit fraud. Some view immigration fraud as a continuum of events, because people may commit document fraud to engage in benefit fraud. The INA addresses immigration fraud in several ways. It makes "misrepresentation" (e.g., obtaining a visa by falsely representing a material fact or entering the United States by falsely claiming U.S. citizenship) a ground for inadmissibility.[67] The INA also has civil enforcement provisions, distinct from removal or inadmissibility proceedings, to prosecute individuals and entities that engage in immigration document fraud.[68] Apart from the INA, the U.S. Criminal Code classifies knowingly producing or using fraudulent immigration documents (e.g., visas, border crossing cards) as criminal offenses.[69]

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[62] Withholding of removal may be given to foreign nationals who can demonstrate a clear probability (above 50%) that if removed to their home country, they would be persecuted on account of their race, religion, nationality, membership in a particular social group, or political opinion. Like asylum, withholding of removal protects people from being deported to a country where they fear persecution. Unlike asylum, an immigration judge has no discretion and must grant withholding of removal to alien applicants who meet the requirements.

[63] The Convention against Torture (CAT) is a rarely granted protection from removal for individuals who fear torture in their home country. To qualify, applicants must demonstrate a clear probability (above 50%) that they will be tortured directly by or with the acquiescence of the government of their country of origin. For more background, see archived CRS Report RL32276, *The U.N. Convention Against Torture: Overview of U.S. Implementation Policy Concerning the Removal of Aliens* (available to congressional clients upon request to CRS).

[64] Deferred Enforced Departure (DED), which is granted based upon the executive branch's independent constitutional authority rather than any specific statutory authority, allows aliens relief from removal from the United States for a designated period of time. Aliens receive DED while in removal proceedings. The Administration may use its discretion when applying DED by balancing foreign policy, humanitarian, and immigration concerns.

[65] An estimated 8 million unauthorized workers were employed in the U.S. civilian labor force in 2014. Jeffrey S. Passel and D'Vera Cohn, "Size of U.S. Unauthorized Immigrant Workforce Stable After the Great Recession," Pew Research Center, November 3, 2016.

[66] The 1986 Immigration Reform and Control Act (IRCA) requires all employers to verify identity and work authorization by examining documents presented by new hires and to complete and retain employment eligibility verification (I-9) forms. For most employers, this system serves as the primary mechanism for verifying employement. Congress attempted to strengthen employment verification with E-Verify, a USCIS-administered program that verifies employment electronically. While mandatory for federal employment, E-Verify is largely voluntary. For more information, see CRS Report R40446, *Electronic Employment Eligibility Verification*.

[67] INA §212(c).

[68] INA §274(c).

[69] 18 U.S.C. §1546.

In addition to relying on document inspection to determine if noncitizens are eligible for federal benefits, USCIS operates the Systematic Alien Verification for Entitlements (SAVE) system, which provides federal, state, and local government agencies access to data on immigration status. USCIS does not determine benefit eligibility; rather, SAVE enables program administrators to ensure that only those noncitizens and naturalized citizens who meet their own programs' eligibility rules actually receive public benefits.[70]

Unauthorized Aliens

Determining how to address the unauthorized alien population residing in the United States has arguably been among the most divisive immigration issues facing Congress. Unauthorized aliens consist of those who (1) entered the country surreptitiously without inspection, (2) were admitted on the basis of fraudulent documents, or (3) overstayed their nonimmigrant visas.[71] In all three instances, the aliens violated the INA and may be removed. Aliens who attempt to enter the United States illegally and those who assist them also are subject to INA-mandated penalties.

Because the exact number of unauthorized aliens residing in the United States remains unknown, demographers have developed methods to estimate their population size and characteristics.[72] According to the most recent and widely cited estimates available, the size of the unauthorized alien population increased from 8.6 million in 2000 to a peak of 12.2 million in 2007. It has fluctuated between 11.0 and 11.5 million since that time.[73] Scholars attribute the general decline and changing country-of-origin composition in illegal migration flows in recent years to increased border security, relatively large numbers of alien removals, high U.S. unemployment, crime in Central America, and other factors.[74]

Options proposed for addressing the unauthorized alien population often emphasize reducing its size. Some approaches would require or encourage unauthorized aliens to depart the United

[70] For more information, see CRS Report R40889, *Noncitizen Eligibility and Verification Issues in the Health Care Reform Legislation*.

[71] Estimates suggest that each year, hundreds of thousands of foreign nationals overstay their nonimmigrant visas and consequently become unauthorized aliens. For more information, see archived CRS Report RS22446, *Nonimmigrant Overstays: Brief Synthesis of the Issue*. One estimate of the number of nonimmigrant overstays based on 2014 data suggests that two-thirds of all unauthorized aliens who arrived in the United States in 2014 became unauthorized after they overstayed their nonimmigrant visas. See Robert Warren and Donald Kerwin, "The 2,000 Mile Wall in Search of a Purpose: Since 2007 Visa Overstays have Outnumbered Undocumented Border Crossers by a Half Million," *Journal on Migration and Human Security*, vol. 5 (2017), pp. 124-136.

[72] For more information, see archived CRS Report RL33874, *Unauthorized Aliens Residing in the United States: Estimates Since 1986*.

[73] Jens Manuel Krogstad, Jeffrey S. Passel and D'Vera Cohn, "5 facts about illegal immigration in the U.S.," Pew Research Center, April 27, 2017. DHS's Office of Immigration Statistics and the Center for Migration Studies have produced comparable older estimates of the unauthorized population size. See DHS Office of Immigration Statistics, "Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012," by Bryan Baker and Nancy Rytina, March 2013; and Robert Warren, "US Undocumented Population Drops Below 11 Million in 2014, with Continued Declines in the Mexican Undocumented Population," *Journal on Migration and Human Security*, vol. 4 (2016), pp. 1-15.

[74] See, for example, Robert Warren, "US Undocumented Population Drops Below 11 Million in 2014, with Continued Declines in the Mexican Undocumented Population," *Journal on Migration and Human Security*, vol. 4 (2016), pp. 1-15; Pew Research Center, "More Mexicans Leaving Than Coming to the U.S.," by Ana Gonzalez Barrera, November 19, 2015; and Migration Policy Institute, "Central American Immigrants in the United States," by Gabriel Lesser and Jeanne Batalova, April 5, 2017.

States. Other strategies would grant qualifying unauthorized residents various immigration benefits, including an opportunity to obtain legal immigration status.[75]

Immigration Law Regarding Unauthorized Aliens

Federal law places various restrictions on unauthorized aliens. In general, they have no legal right to live or work in the United States and are subject to removal from the country. At the same time, the INA provides limited forms of immigration relief for some unauthorized aliens to be legally admitted to the country, including crime victims or those seeking asylum. Unauthorized aliens who were present illegally in the United States for between 6 and 12 months are barred from readmission to the United States for 3 years, and those present for more than 1 year are barred for 10 years (the "3- and 10-year bars").[76]

Deferred Action

For unauthorized aliens who cannot obtain LPR status, existing mechanisms enable some to remain in the United States. One such mechanism, *deferred action*, is defined by DHS as "a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion." Deferred action is not an immigration status and does not have a statutory authority; it is a form of *administrative* discretion. Examples of deferred action may include DHS terminating removal proceedings, declining to initiate removal proceedings, or declining to execute a final order of removal. Approval of deferred action means that no action will be taken against a removable alien for a specified time or in some cases indefinitely.

Under the Deferred Action for Childhood Arrivals (DACA) initiative begun by DHS in June 2012, certain individuals without a lawful immigration status who were brought to the United States as children and who meet other criteria may be granted deferred action for two years, subject to renewal. DACA recipients can apply for employment authorization but are not afforded a pathway to a legal immigration status. DACA was initiated not by congressional legislation but by the Obama Administration. The Trump Administration announced the planned rescission of the DACA initiative on September 5, 2017, but due to federal court orders enjoining the rescission, DACA remains in effect pending the outcome of further litigation.[77]

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[75] For background information, see archived CRS Report R41207, *Unauthorized Aliens in the United States: Policy Discussion*; and CRS Report R43097, *Comprehensive Immigration Reform in the 113th Congress: Major Provisions in Senate-Passed S. 744*.

[76] For more information, see archived CRS Report R41207, *Unauthorized Aliens in the United States: Policy Discussion*.

[77] For more information, see CRS Report R44764, *Deferred Action for Childhood Arrivals (DACA): Frequently Asked Questions*; and CRS Legal Sidebar LSB10136, *DACA Rescission: Legal Issues and Litigation Status*.

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