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Primer on U.S. Immigration Policy

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SUMMARY

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Primer on U.S. Immigration Policy

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. U.S. immigration policy contains two major aspects. One facilitates migration flows into the United States according to principles of admission that are based upon national interest. These broad principles currently include family reunification, U.S. labor market contribution, origin-country diversity, and humanitarian assistance.

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

The other major aspect of U.S. immigration policy involves restricting entry to and removing persons from the United States who lack authorization to be in the country, are identified as criminal aliens, or whose presence in the United States is determined to not serve the national interest. Such immigration enforcement is broadly divided between border enforcement—at and between U.S. land, air, and sea ports of entry—and other enforcement tasks including interior enforcement, detention, removal, worksite enforcement, and combatting immigration fraud.

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

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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 to either reside permanently or 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 of this report addresses policies for unauthorized aliens[1] residing in the United States. While intended to be comprehensive, this primer may omit some immigration-related topics. For example, it generally 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.[2] Implementation of INA policies is carried out by 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), U.S. Customs and Border Protection (CBP), and U.S. 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 for Immigration Review (EOIR). The Department of Labor (DOL) operates a foreign labor certification program to ensure that foreign workers do not displace or adversely affect working conditions of U.S. workers.

This report uses specific terms to refer to foreign-born populations having different legal statuses. The legal term *aliens* refers to people who are not U.S. citizens, including those both legally and not legally present. The two main types of aliens lawfully present in the United States are (1) immigrants (this term excludes 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 lawfully and temporarily admitted to the United States for a specified purpose and period of time, including tourists, diplomats, students, temporary workers, and exchange visitors, among others.

The terms *refugees* and *asylees* identify individuals who are not formally classified as immigrants under the INA and refer to persons who are outside of their home countries and unable or unwilling to return 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").[4] Once admitted, refugees and asylees may apply to adjust to lawful permanent resident (LPR) status.

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

[1] The INA defines *alien* as a person who is not a citizen or a national of the United States. See INA §101(a)(3). In this report, the terms *alien*, *foreign national*, and *noncitizen* are synonymous.

[2] 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.

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

[4] INA §101(a)(42), 8 U.S.C. §1101(a)(42).

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. They either entered the United States illegally (*without inspection*) or entered lawfully and temporarily (*with inspection*) but subsequently violated the terms of their admission, typically by *overstaying* their visa duration.[5]

Permanent Immigration[6]

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 immediate relatives of U.S. citizens, and a set of ordered family-sponsored preference immigrants (preference immigrants); 140,000 *employment-based immigrants*; and 55,000 *diversity visa immigrants*.[7] 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. Asylees are adjudicated on a case-by-case basis without a statutorily mandated limit (see "Refugees and Asylees"). Consequently, actual total annual LPRs (immigrants, refugees, and asylees) have exceeded 1 million persons in all but 4 of the past 20 years.

To ensure that foreign nationals from only a few countries do not dominate permanent immigration flows, the INA further specifies a 7% *per-country limit* on the number of family-sponsored preference immigrants and employment-based immigrants from a single country.[8]

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

[6] 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*.

[7] 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 reduced the 55,000 annual ceiling beginning in FY1999 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. The 5,000 offset is nearing an end; for FY2021, the reduction was limited to approximately 150.

[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. Immediate relatives are not subject to annual numerical limits and can acquire LPR status 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 roughly two-thirds of all persons receiving LPR status.[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 adult 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 based on professional accomplishment and ability. The fourth preference category includes various "special immigrants."[11] The fifth preference category is for immigrant investors, a category created in 1990 to benefit the U.S. economy through employment creation and capital investment.[12] Employment-based immigrants also include accompanying spouses and children; are limited to 140,000 total annual admissions; and are

[9] When the demand for such visas exceeds 226,000, the 226,000 limit also acts as a floor, below which the number of family preference immigrants cannot fall. More than 226,000 family preference immigrants can be admitted under current law only if the number of immediate relatives admitted, less the number of any unused employment-based preference numbers from the prior year, is fewer than 254,000 (the difference between 480,000 and 226,000). However, annual admissions of immediate relatives less unused employment-based preference numbers from the prior year have exceeded 254,000 every year since 2001. For instance, in FY2019 (the most recent year for which data are available), immediate relatives totaled 505,765. Thus, under these statutory 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*.

subject to the same 7% per-country limit for each preference category 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, and 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 $1.8 million ($900,000 in rural areas or areas of high unemployment) and create/preserve at least 10 jobs

Source: INA §204, 8 U.S.C. §1154.

Requirements for Prospective Immigrants

To obtain LPR status, prospective immigrants must traverse a multistep process through several federal departments and agencies.[14] If they already reside legally in the United States, obtaining LPR status involves *adjusting status* 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, they must apply for an immigrant visa. All family-based immigrants and most employment-based immigrants require that a relative or an employer, respectively, petition on their behalf. Petitions filed in the United States are adjudicated by USCIS. Petitions filed from overseas are forwarded to DOS's Bureau of Consular Affairs in the prospective immigrant's home country for immigrant visa processing after they have been adjudicated by USCIS.

For all prospective immigrants, USCIS and the consular officer (when the alien lives abroad) or the 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 ensure that prospective immigrants are not ineligible for visas or admission under the INA's grounds for inadmissibility (see the "Visa Issuance and Security" section).

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 (in this case, an LPR slot) allows him/her to *adjust status.* Adjusting status permits a temporary nonimmigrant to become a permanent immigrant without having to return to his/her country of origin to complete visa processing through a DOS consulate.

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

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

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. The 7% per-country cap primarily affects foreign nationals from countries that send relatively large numbers of 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 immigrant petitions USCIS has approved, must wait years before a numerically limited visa (or LPR slot) from DOS becomes available. As of November 1, 2020, the queue of approved family-sponsored immigrants waiting for LPR status numbered 3.8 million persons.[15] As of November 16, 2020, the queue of approved employment-sponsored immigrants waiting for LPR status numbered roughly 1 million persons.[16]

Diversity Immigrant Visa

The diversity immigrant visa fosters legal immigration from countries that send relatively few immigrants to the United States.[17] Each year, 55,000 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.[18]

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. Those selected from the diversity immigrant visa lottery must also meet the standard eligibility criteria required for most immigrants before they are allowed entry into the United States.

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/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 unable or unwilling to return to their home country or country of residence 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.[19] 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 is present in the United States or at a land border or port of entry to the United States.

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[15] 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, 2020*. For more discussion of the visa queue, see CRS Report R43145, *U.S. Family-Based Immigration Policy*.

[16] U.S. Citizenship and Immigration Services, "Form I 140, I 360, I 526 Approved Employment Based Petitions Awaiting Visa Availability by Preference Category and Country of Birth As of November 16, 2020." For background information on how this queue is computed, see archived CRS Report R45447, *Permanent Employment-Based Immigration and the Per-country Ceiling*.

[17] For more information, see CRS Report R45973, *The Diversity Immigrant Visa Program*.

[18] For more information, see CRS Report R45102, *Diversity Immigrants' Regions and Countries of Origin: Fact Sheet*.

[19] While persons seeking refugee status often reside in a second country that is neither their home country nor the United States, some reside in their home countries in certain circumstances. See 8 U.S.C. §1101)(a)(42)(B).

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 are not mandated in statute but set each year by the President, in consultation with Congress. Between FY2000 and FY2019, the annual refugee ceiling number of U.S. refugees admitted averaged 55,934, with a low of 22,544 (in FY2018) and a high of 84,994 (in FY2016).[20] The variation in refugee admissions is largely due to variation in the refugee ceilings set during this time. Annual refugee admissions are typically lower than permitted by the annual refugee ceiling because of delays from processing and screening.

For FY2021, the worldwide refugee ceiling was set at 15,000, the lowest in the 40-year history of the U.S. Refugee Admissions Program. In contrast with prior years' regional allocations, refugee allocations in FY2021 were made by "population of special humanitarian concern." These populations included refugees facing persecution on religious grounds (5,000); refugees from Iraq (4,000); refugees from El Salvador, Guatemala, or Honduras (1,000); and refugees in other specified groups (5,000).[21]

In 2021, the Biden Administration issued two emergency determinations that changed the allocation process back to a regional allocation and increased the FY2021 refugee ceiling to 62,500. The regional allocations are as follows: Africa (22,000), East Asia (6,000), Europe and Central Asia (4,000), Latin America and the Caribbean (5,000), Near East and South Asia (13,000), and an unallocated reserve (12,500).[22]

Asylum is not numerically limited. A foreign national 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.[23] Typically, foreign nationals 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 (see "Removal"). 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 placed in standard removal proceedings and referred to an immigration judge for a hearing on their asylum claims.[24]

Other Pathways to Lawful Permanent Resident Status

In addition to the primary components of permanent immigration discussed above, the INA contains several other pathways to LPR status, though they account for relatively few immigrants each year. The most prominent among these are *cancellation of removal, U nonimmigrant visas,* and *T nonimmigrant status*.[25]

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[20] See U.S. Department of State, Bureau of Population, Refugees and Migration, Office of Admissions – Refugee Processing Center, "Summary of Refugee Admissions as of 30-April-2021." For additional information, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*.

[21] The White House, "Presidential Determination on Refugee Admissions for Fiscal Year 2021," 85 *Federal Register* 71219-71221, November 6, 2020. According to DOS's Refugee Processing Center, 11,814 refugees were admitted in FY2020, and 2,334 have been admitted in FY2021 as of April 30, 2021. Ibid.

[22] Executive Office of the President, "Emergency Presidential Determination on Refugee Admissions for Fiscal Year 2021," 86 *Federal Register* 21159-21160, April 22, 2021; and Executive Office of the President, "Emergency Presidential Determination on Refugee Admissions for Fiscal Year 2021," 86 *Federal Register* 24475-24476, May 7, 2021.

[23] For more information, see CRS Report R45539, *Immigration: U.S. Asylum Policy*.

[24] INA §235(b) defines credible fear as a significant possibility, taking into account the credibility of the statements made by the alien and other facts known to the officer, that the alien could establish eligibility for asylum.

[25] For a detailed and complete list of categories of foreign nationals receiving LPR status, see DHS Office of

Cancellation of removal is a discretionary form of relief granted by an immigration judge to aliens in removal proceedings. To receive it, a foreign national must demonstrate substantial ties to the United States, be of good moral character, and not have been convicted of a crime that makes him/her removable. Requirements differ by legal status, with nonpermanent residents facing more stringent requisites than permanent residents.[26] Because an immigration judge grants cancellation of removal at his/her discretion, no fixed standard exists for who merits relief. The foreign national must show that he/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.[27]

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. To qualify for U status, a foreign national must file a petition and establish that he/she (1) suffered substantial physical or mental abuse as a result of having been a victim of qualifying crimes that violated the laws of the United States or occurred in the United States; (2) possesses information about the criminal activity involved as certified by a law enforcement or immigration official; and (3) has been, is being, or is likely to be helpful in the investigation and prosecution of the crime(s) by federal, state, or local law enforcement authorities. U visa recipients, as well as their immediate family members, can acquire LPR status. The INA limits U visas to 10,000 principal applicants annually.[28]

T nonimmigrant status is granted to victims of severe forms of human trafficking.[29] 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 (1) demonstrate that they are victims of a severe form of trafficking in persons; (2) be physically present in the United States, its territories, or a U.S. port of entry either because of such trafficking or because they will participate in related investigations or prosecutions; (3) have complied with requests to assist law enforcement investigating or prosecuting trafficking acts; and (4) 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 (see "Visa Issuance and Security"). The INA limits T status to 5,000 principal applicants annually.

Temporary Immigration

Each year, the United States admits millions of nonimmigrants, such as tourists, foreign students, diplomats, temporary workers, exchange visitors, internationally known entertainers, intracompany business personnel, and crew members on foreign vessels. DOS issues specific types of nonimmigrant visas within 24 major nonimmigrant visa categories. Categories are often referred to by the letter and numeral denoting the related subsection within INA Section 101(a) (e.g., B-2 tourists, F-1 foreign students, H-2A temporary agricultural workers).[30]

Immigration Statistics, *2019 Yearbook of Immigration Statistics*, Table 7.

[26] For example, nonimmigrants and unauthorized aliens who seek cancelation of removal 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).

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

[28] There is no limit for family members who derive U status or T status from the principal applicant, such as spouses, children, or other eligible family members. For more information, see CRS Report R46584, *Immigration Relief for Victims of Trafficking*.

[29] For more information, see CRS Report R46584, *Immigration Relief for Victims of Trafficking*.

[30] For more information, see CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United*

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 generally 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 (see "Visa Issuance and Security").[31] With certain exceptions, nonimmigrants are prohibited from working in the United States.

In recent years, the largest nonimmigrant groups entering the United States have included B-1 business visitors and B-2 tourists (temporary visitors for business or pleasure), Border Crossing Card holders, L intracompany transferees employed with international firms,[32] H-1B professional specialty workers,[33] H-2A agricultural guest workers and H-2B nonagricultural guest workers,[34] J cultural exchange visitors (including professors, students, foreign medical graduates, teachers, resort workers, camp counselors, and au pairs), and F foreign students. In FY2019, for example, DOS consular officers issued 8.7 million nonimmigrant visas, down from a peak of 10.9 million in FY2015. There were approximately 6.5 million tourism and business visas, which comprised about three-quarters of all nonimmigrant visas issued in FY2019. Other notable groups were temporary workers (963,000 or 11.0%), cultural exchange visitors (392,000 or 4.5%), and students (389,000 or 4.4%).[35]

Border Crossing Card

Border crossing cards (BCC) allow Mexican citizens who live in Mexico and are admissible as B-1 business or B-2 tourist visitors to briefly enter the United States. In FY2020, DOS issued 662,536 border crossing cards to Mexican nationals.[36] The BCC may be used for multiple entries and is usually valid 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.[37] U.S. admissions from persons possessing border crossing cards in FY2019 totaled 104.6 million.[38]

States.

[31] 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 FY2019, for example, of the 1,031,765 foreign nationals who were granted lawful permanent resident status, 459,252 (44%) were new arrivals from abroad and 572,513 (56%) adjusted status from a nonimmigrant status while residing in the United States. Data to show the nonimmigrant categories that foreign nationals adjust status from are unavailable. See DHS *2019 Yearbook of Immigration Statistics*, Table 6.

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

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

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

[35] For statistics on nonimmigrant visas by category, see U.S. Department of State, Bureau of Consular Affairs, *Report of the Visa Office 2020*.

[36] U.S. Department of State, Bureau of Consular Affairs, *Report of the Visa Office 2020*, Table XVI.

[37] 8 C.F.R. §212.6.

[38] See DHS, *2019 Yearbook of Immigration Statistics*, Table 25. BCC admissions are computed by subtracting "Total I-94 admissions" from "Total all admissions" in Table 25. Admissions are events, not unique individuals.

Visa Issuance and Security

In general, nonresident foreign nationals who wish to come to the United States, whether permanently or temporarily, must obtain a visa.[39] 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. In addition, visa issuances can be denied under three main 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).

Immigration applications and petitions almost all require fees.[40] For example, a U.S. citizen wishing to sponsor his/her foreign-born spouse as an immediate relative must pay $535 when submitting a petition that establishes the familial relationship (USCIS Form I-130).[41] If the spouse is living in the United States on a temporary nonimmigrant visa, the spouse must pay an additional $1,225 to apply to adjust to permanent resident status (USCIS Form I-485).[42] If the spouse resides abroad, he/she must pay a $325 DOS processing fee[43] and a $220 USCIS immigrant fee.[44] As such, fees can represent a substantial financial outlay in some cases.

The application must be complete.[45] 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/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,[46]
- security and terrorist concerns,

[39] Exceptions to this rule include citizens or nationals of the (currently) 39 Visa Waiver Program (VWP) designated countries, Mexican and Canadian NAFTA Professional Workers, and citizens of Canada and Bermuda. For more information, see CRS Report RL32221, *Visa Waiver Program*; and U.S. Department of State, "Travel Without A Visa," https://travel.state.gov/content/travel/en/us-visas/tourism-visit/travel-without-a-visa.html.

[40] USCIS, which processes and adjudicates most immigration-related applications and petitions, operates largely on fee revenue. A fee schedule for all applications and petitions can be found at https://www.uscis.gov/g-1055. For background information, see archived CRS Report R44038, *U.S. Citizenship and Immigration Services (USCIS) Functions and Funding*.

[41] U.S. Citizenship and Immigration Services, "USCIS Immigrant Fee," https://my.uscis.gov/uscis-immigrant-fee/.

[42] Ibid.

[43] Ibid.

[44] Ibid.

[45] Other costs may include legal fees, translation services fees, medical examination costs, fees related to the issuance of any required official documents, and travel expenses.

[46] For more information, see CRS Report R45151, *Immigration Consequences of Criminal Activity*.

- public charge risk (e.g., indigence),[47]
- seeking to work without proper labor certification,[48]
- previous illegal U.S. entry and U.S. immigration law violations,[49]
- 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. A visa denial under INA Section 214(b) indicates that the foreign national was unable to demonstrate to the consular officer that he/she had sufficient ties to his/her home country to return home.[50] This is the most common reason that DOS denies nonimmigrant visas.

In FY2019, 462,422 foreign nationals were issued immigrant visas, and 298,017 immigrant visa applications were initially denied based on ineligibility findings (177,902 of which were ultimately overcome). In the same fiscal year, 8,742,068 foreign nationals were issued nonimmigrant visas, and 3,742,074 nonimmigrant applications were initially denied based on ineligibility findings (830,177 of which were overcome).[51]

All visa applicants are required to submit their photographs, fingerprints, and biographic and demographic information. Visa applicants are checked against multiple databases and information sources for security purposes. All prospective LPRs and certain prospective nonimmigrants must also submit to physical and mental examinations. Visa applicants generally must be interviewed by a consular officer to determine whether they are qualified to receive a visa. Consular officers' decisions on whether or not to grant foreign nationals a visa are not subject to judicial appeals. Visa applicants who were denied a visa for a particular ineligibility, and who meet certain conditions, may apply to DHS for a waiver of that ineligibility.

Visa Waiver Program

The Visa Waiver Program (VWP) allows most citizens or nationals from participating 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., name, address, date of birth) rather than a biometric (e.g., fingerprint) security screening and do

[47] For more information, see CRS In Focus IF11467, *Immigration: Public Charge*; and CRS Legal Sidebar LSB10341, *DHS Final Rule on Public Charge: Overview and Considerations for Congress*.

[48] For more information, see archived CRS Report RL33977, *Immigration of Foreign Workers: Labor Market Tests and Protections*.

[49] 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"). INA §212(a)(9)(B).

[50] 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 do not need to prove they are not coming to reside permanently in the United States.

[51] Note that applications refused does not necessarily equal the number of foreign nationals refused because an applicant can apply for a visa and be found ineligible more than once within the same fiscal year. Note also that a visa application may be denied in one fiscal year and overcome in a subsequent fiscal year. U.S. Department of State, *Annual Report of the Visa Office 2019*, Tables XV, XVI(B), and XX.

not need to be interviewed by a U.S. government official before their trip.[52] In FY2019, roughly 19.7 million pleasure and 3.2 million business visitors entered the United States using the VWP.[53]

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 that allow persons to remain legally in the United States without being legally admitted, 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.[54] 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 are an estimated 320,000 TPS recipients from 10 countries: El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, South Sudan, Sudan, Syria, and Yemen.[55] In 2021, the Biden Administration designated three more countries for TPS: Venezuela, Burma, and Haiti. An estimated 323,000 Venezuelans, 1,600 Burmese, and 100,000-150,000 Haitian nationals could be eligible to apply for TPS under these designations. The Trump Administration terminated TPS for six countries—El Salvador, Haiti, Honduras, Nepal, Nicaragua, and Sudan—but these terminations have not taken effect due to litigation. Certain Liberians and Venezuelans currently maintain relief under a similar administrative mechanism known as Deferred Enforced Departure (DED).

Parole

DHS may *parole* an alien into the United States for urgent humanitarian reasons or significant public benefit at its discretion and on a case-by-case basis. Parole is granted for a specified period and does not constitute formal admission to the United States. Parolees may obtain employment authorization but must depart the United States when the parole expires or, if eligible, be admitted in a lawful status. Parolees may also apply for re-parole.[56]

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

[53] See DHS, *2019 Yearbook of Immigration Statistics*, Table 25.

[54] INA §244, 8 U.S.C. §1254a. For more information, see CRS Report RS20844, *Temporary Protected Status and Deferred Enforced Departure*.

[55] 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.

[56] For more information, see CRS Report R46570, *Immigration Parole*.

Naturalization

Under U.S. immigration law, all LPRs may become U.S. citizens through a process known as naturalization. With some exceptions, naturalization requirements include the following:

- residing continuously in the United States as LPRs for five years;
- demonstrating possession of good moral character;
- demonstrating basic English skills and knowledge of U.S. history and civics; and
- taking an oath of allegience to the United States.[57]

Annual naturalizations averaged 717,195 between FY2010 and FY2019, with 843,593 foreign nationals naturalizing in FY2019.[58] In 2019, census data indicate that an estimated 23.2 million naturalized citizens resided in the United States, comprising 52% of the estimated 44.9 million foreign-born U.S. residents.[59]

Immigration Enforcement

Immigration enforcement involves the identification, investigation, apprehension, detention, prosecution, and deportation (removal) of foreign nationals who are inadmissible and/or violate U.S. laws and become removable. Immigration enforcement encompasses enforcement of the INA's *civil* provisions (e.g., violations of admission requirements) as well as its *criminal* provisions (e.g., improper entry, marriage fraud, alien smuggling). CBP is responsible for border security where foreign nationals enter at U.S. land, air, and sea ports of entry (POEs) and along U.S. borders between POEs. ICE is responsible for enforcing immigration laws in the U.S. interior, including worksite enforcement.[60]

Border Security at Ports of Entry

Foreign nationals arrive in the United States at any of the 329 land, air, and sea POEs. 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 the law.[61]

In FY2019, about 410 million travelers (U.S. citizens and noncitizens) entered the United States, including roughly 249 million land travelers, 136 million air passengers and crew, and 26 million

[57] For more information, see CRS Report R43366, *U.S. Naturalization Policy*; and CRS In Focus IF10884, *Expedited Citizenship through Military Service*.

[58] U.S. Department of Homeland Security, *Yearbook of Immigration Statistics 2019*, Table 20.

[59] U.S. Census Bureau, 2019 American Community Survey data, 1-year estimates, accessed by CRS on January 5, 2021, at United States Census Bureau, "Explore Census Data," https://data.census.gov/cedsci/. Noncitizens include LPRs, lawful temporary nonresidents, and unauthorized aliens. DHS has estimated that 9.2 million of the estimated 13.6 million LPRs residing in the United States in 2019 were eligible to naturalize based on their length of time living in the country. See Bryan Baker, *Estimates of the Lawful Permanent Resident Population in the United States and the Subpopulation Eligible to Naturalize: 2015-2019*, DHS Office of Immigration Statistics, September 2019.

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

[61] INA 221(h), 8 U.S.C. §1201(h).

sea passengers and crew. During the same period, about 288,000 aliens were denied admission and 13,000 aliens were arrested on criminal warrants.[62]

CBP has the dual responsibility for facilitating the flow of lawful travelers, immigrants, and trade while providing security at and between POEs against inadmissible persons and contraband.[63] This 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.[64]

DHS is 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, the Government Accountability Office (GAO) reports that implementation of a fully automated biometric system has proven challenging. DHS has fully implemented the biometric *entry* system at all U.S. ports of entry. Reportedly, the biometric *exit* system currently captures information on about 60% of foreign nationals aged 14-79 departing the United States via commercial air carriers. Other technologies are gradually being employed at air, sea, and land POEs.[65]

Border Security Between Ports of Entry

Border security between POEs protects against 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. Border security has received greater attention since the terrorist attacks on September 11, 2001.

CBP's unauthorized migration control strategy between POEs strives for *operational control*, which the agency describes as "the ability to perceive and comprehend the operating environment (*situational awareness*), mobilize assets, infrastructure and barriers to prevent criminal activity (*impedance and denial*), and respond to and resolve any illicit cross-border incursions (*response and resolution*)."[66] Impedance and denial, in particular, involve investments in physical infrastructure described below. They also encompass "enforcement with consequences," which includes making migrants who commit crimes face criminal charges and incur penalties (including incarceration) prior to removal.

CBP's border security strategies and investments include the construction and maintenance of tactical infrastructure, installation and monitoring of surveillance technology, and the deployment of U.S. Border Patrol agents to prevent unlawful entries of people and contraband into the United States (e.g., unauthorized migrants, terrorists, firearms, narcotics). Tactical infrastructure includes

[62] U.S. Department of Homeland Security, U.S. Customs and Border Protection, "CBP Enforcement Statistics Fiscal Year 2021," https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics (for admission denied and arrest figures); U.S. Customs and Border Protection, "On a Typical Day in Fiscal Year 2019, CBP…," https://www.cbp.gov/newsroom/stats/typical-day-fy2019 (for all other figures). Annual figures in text are derived by multiplying daily figures in the CBP source by 365. FY2020 statistics are available, but are not presented because the COVID-19 pandemic significantly limited international travel in that year.

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

[64] For more information, see CRS Report R46783, *Trusted Traveler Programs*.

[65] For more information, see CRS In Focus IF11634, *Biometric Entry-Exit System: Legislative History and Status*.

[66] U.S. Customs and Border Protection, *2020 U.S. Border Patrol Strategy*, August 2019; and *U.S. Customs and Border Protection Strategy 2021-2026*, publication 1280-1220, December 2020.

physical barriers between POEs which vary by age, purpose, form, and location. Since receiving authorization from Congress in 1996, DHS has built 653 miles of several types of barriers along the U.S.-Mexico border, which spans nearly 2,000 miles.[67] Tactical infrastructure also includes roads, gates, bridges, and lighting designed to support border enforcement and disrupt and impede illicit activity. Surveillance technology assists CBP in the detection, identification, and apprehension of individuals illegally entering the United States between POEs. Ground technology includes sensors, cameras, and radar tailored to fit specific terrain and population densities. Manned and unmanned aerial and marine surveillance vessels patrol regions inaccessible by motor vehicle.[68] In FY2019, 19,648 U.S. Border Patrol agents were stationed nationwide, with most (17,731) at the Southwest border.[69]

Apprehensions of unauthorized migrants, a widely cited border security metric, are positively related to unauthorized migrant flows.[70] 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. Since 2000, apprehensions generally declined, with some fluctuations, to a 46-year low of 310,531 in FY2017.[71] Apprehension levels subsequently increased to 859,501 in FY2019 before declining to 405,036 in FY2020. They have since increased to 898,949 in the first eight months of FY2021.[72]

In March 2020, CBP curtailed its processing of those not considered *essential travelers* due to the global COVID-19 pandemic. Those affected included mostly asylum seekers arriving at the Southwest border. Under a public health order (referred to as *Title 42*) that was issued by the U.S. Department of Health and Human Services' Centers for Disease Control and Prevention, CBP expelled most migrants back to Mexico or in some cases their home countries.[73] As of the cover date of this report, Title 42 was still in effect for single adult migrants and some migrant families.

In past years, debates centered on how much immigration enforcement affected migrant flows compared with other factors like the U.S. unemployment rate.[74] More recently, some commentators have cited both anticipation and enactment of more or less restrictive policies by

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[67] For more information, see CRS Report R45888, *DHS Border Barrier Funding*; and CRS Insight IN11193, *Funding U.S.-Mexico Border Barrier Construction: Current Issues*.

[68] See archived CRS Insight IN11040, *Border Security Between Ports of Entry: Homeland Security Issues in the 116th Congress*.

[69] U.S. Customs and Border Protection, U.S. Border Patrol Fiscal Year Staffing Statistics (FY 1992 - FY 2019), accessed June 7, 2021, https://www.cbp.gov/sites/default/files/assets/documents/2020-Jan/U.S.%20Border%20Patrol%20Fiscal%20Year%20Staffing%20Statistics%20%28FY%201992%20-%20FY%202019%29_0.pdf.

[70] See for example, Thomas J. Espenshade, "Using INS Border Apprehension Data to Measure the Flow of Undocumented Migrants Crossing the U.S.-Mexico Frontier," *International Migration Review*, vol. 29 (Summer 1995), pp. 545-565. For more on border security metrics, see archived CRS Report R44386, *Border Security Metrics Between Ports of Entry*. Apprehension figures include those at the northern, southern and coastal borders. See also U.S. Department of Homeland Security, *Border Security Metrics Report*, August 5, 2020.

[71] U.S. Customs and Border Protection, "Stats and Summaries," *Nationwide Illegal Alien Apprehensions, Fiscal Years 1925-2019*, at https://www.cbp.gov/newsroom/media-resources/stats.

[72] U.S. Customs and Border Protection, "CBP Enforcement Statistics Fiscal Year 2021," at https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics. In March, 2020, apprehension statistics were expanded to include *expulsions* under Title 42 (Public Health) of the U.S. code. The CBP currently reports statistics for *encounters* which include both Title 8 apprehensions and Title 42 expulsions.

[73] CRS Report R46755, *The Law of Asylum Procedure at the Border: Statutes and Agency Implementation*.

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

the Trump and Biden Administrations, respectively, as an additional cause of fluctuations in apprehension levels.[75]

Detention

The INA authorizes—and in some cases requires—DHS to detain foreign nationals who are subject to removal from the United States. Detention rules are multifaceted and depend on several factors, such as whether the individual is seeking admission or has been lawfully admitted into the country, has engaged in certain proscribed conduct, and has been issued a final order of removal. Four INA provisions provide a framework for immigration detention:

- INA Section 236(a) generally *authorizes* the detention of aliens pending a decision on whether the alien is to be removed from the United States and permits those who are not subject to mandatory detention to be released on bond or their own recognizance;
- INA Section 236(c) generally *requires* the detention of aliens who are removable because of specified criminal activity or terrorism-related grounds;
- INA Section 235(b) generally *requires* the detention of applicants for admission who appear subject to removal, including aliens arriving at a POE and certain other aliens who have not been admitted or paroled into the United States; and
- INA Section 241(a) generally *requires* an alien subject to a final order of removal to be held during the 90-day period when the alien's removal is effectuated. DHS may detain an alien beyond 90 days if the agency cannot effectuate removal and the alien falls within certain categories.[76]

DHS detained 510,854 aliens during FY2019.[77] The amount of detention space is controlled largely through congressional appropriations.

ICE must obtain travel documents to repatriate removable foreign nationals. Because some countries refuse to provide travel documents or delay doing so, ICE has regularly released sizeable numbers of detainees following their full detention term, including criminal aliens—an outcome that has been criticized by some Members of Congress.[78] The U.S. Supreme Court has ruled that foreign nationals who are subject to a final removal order and are facing indefinite detention pending DHS's efforts to secure their removal generally may not be detained for more than six months.[79]

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[75] For more information, see CRS Report R46012, *Immigration: Recent Apprehension Trends at the U.S. Southwest Border* and CRS Report R45489, *Recent Migration to the United States from Central America: Frequently Asked Questions*.

[76] This material is adapted from CRS In Focus IF11343, *The Law of Immigration Detention: A Brief Introduction*. For more information on standards and criteria for making detention decisions, see also CRS Report R45915, *Immigration Detention: A Legal Overview*.

[77] U.S. Department of Homeland Security, Office of Immigration Statistics, *Annual Flow Report, Immigration Enforcement Actions: 2019*, Table 5, September 2020.

[78] U.S. Congress, House Committee on the Judiciary, *Oversight of United States Immigration and Customs Enforcement*, opening statement of the Honorable Bob Goodlatte, Chairman, 114th Cong., 2nd sess., September 22, 2016. For more information, see CRS In Focus IF11343, *The Law of Immigration Detention: A Brief Introduction*; and archived CRS Report RL32369, *Immigration-Related Detention*.

[79] Zadvydas v. Davis, 533 U.S. 678, 693 (2001).

Removal

Removing foreign nationals who violate U.S. immigration and other laws is central to immigration enforcement, and the INA provides broad authority to DHS and DOJ to remove certain foreign nationals from the country. These persons include 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 foreign national who has already been lawfully admitted, the U.S. government must prove that the individual has violated one of the grounds of deportation specified in INA Section 237(a):

- being inadmissible at the time of entry[80] 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;[81]
- 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 removability 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., some criminal offenses, terrorist activities) may render foreign nationals ineligible for most forms of relief and may make them subject to a more streamlined removal process, 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 proceeding whether a foreign national 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 individual), opportunities for relief and review are generally limited. Under expedited removal (INA §235(b)), an alien who is inadmissible because he/she lacks proper documentation or has committed fraud or willful misrepresentation to gain U.S. admission may be removed without any further hearings or review, unless he/she indicates an intention to apply for asylum.

[80] Grounds of inadmissibility are outlined in INA Section 212, 8 U.S.C. Section 182. If individuals are removed because they were inadmissible at the time of entry, they are removed under INA Section 212, not INA Section 237.

[81] Crimes of moral turpitude are determined by case law. For more information, see CRS Report R45151, *Immigration Consequences of Criminal Activity*.

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

Following an order of removal, a foreign national 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, persons in removal proceedings generally have no right to government-provided counsel, although they may obtain counsel at their own expense.[82]

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.[83] Programs targeting criminal aliens for removal have grown substantially since DHS was established in 2002.

ICE currently operates several programs to identify and remove criminal and other removable aliens, including the *Criminal Alien Program* (CAP), an umbrella program for coordinating the agency's resources.[84] 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.[85]

Options for Aliens in Removal Proceedings

INA provisions permit certain removable aliens to remain in the United States, either permanently or temporarily.[86] 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.[87] Options that provide temporary relief include

[82] For more information, see CRS In Focus IF11357, *Expedited Removal of Aliens: An Introduction*; CRS Legal Sidebar LSB10150, *Immigration Laws Regulating the Admission and Exclusion of Aliens at the Border*; and CRS Report R43892, *Alien Removals and Returns: Overview and Trends*.

[83] The Immigration Reform and Control Act (P.L. 99-603) made deporting aliens who had been convicted of certain crimes a formal enforcement priority. The law required the Attorney General "in the case of an alien who is convicted of an offense which makes the alien subject to deportation … [to] begin any deportation proceeding as expeditiously as possible after the date of the conviction."

[84] For more information, see CRS Insight IN11335, *COVID-19's Effect on Interior Immigration Enforcement and Detention*; and CRS Legal Sidebar LSB10362, *Immigration Arrests in the Interior of the United States: A Primer*.

[85] For background information, see archived CRS Report R44627, *Interior Immigration Enforcement: Criminal Alien Programs*.

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

[87] 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. For more information, see CRS Report R45539, *Immigration: U.S. Asylum Policy*.

withholding of removal, Convention Against Torture (CAT) protection, Deferred Enforced Departure, and deferred action.

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 deportation 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.[88]

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.[89]

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.[90]

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 lacks a statutory authority; it is a form of administrative discretion. Persons for whom deferred action is in effect are not considered to be unlawfully present. 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.[91]

Under the Deferred Action for Childhood Arrivals (DACA) initiative, certain individuals without a lawful immigration status who were brought to the United States as children and 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 in 2012 by the Obama Administration through an executive branch memorandum.[92] 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.[93]

[88] For more information, see CRS Report R45539, *Immigration: U.S. Asylum Policy*.

[89] 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).

[90] For more information, see CRS Report RS20844, *Temporary Protected Status and Deferred Enforced Departure*.

[91] For more information, see U.S. Citizenship and Immigration Services, "Consideration of Deferred Action for Childhood Arrivals (DACA), Frequently Asked Questions," February 4, 2021; and National Immigration Forum, "Deferred Action Basics," April 15, 2016.

[92] For more information, see CRS Report R45995, *Unauthorized Childhood Arrivals, DACA, and Related Legislation*.

[93] For more information, see CRS Legal Sidebar LSB10497, *Supreme Court: DACA Rescission Violated the APA*; and CRS Legal Sidebar LSB10057, *District Court Enjoins DACA Phase-Out: Explanation and Takeaways*.

Worksite Enforcement

The INA prohibits the employment of individuals who lack work authorization.[94] 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.[95]

Combatting Immigration Fraud

Immigration fraud generally encompasses document fraud and/or benefit fraud. Some view immigration fraud as a continuum of events, because people may commit document fraud to engage in benefit fraud.[96] 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.[97] The INA also has civil enforcement provisions, distinct from removal or inadmissibility proceedings, to prosecute individuals and entities that engage in immigration document fraud.[98] 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.[99]

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.[100]

Unauthorized Aliens

Determining how to address the unauthorized alien population residing in the United States has long been among the most divisive immigration issues facing Congress. Unauthorized aliens consist of those who (1) entered the country without inspection, (2) were admitted on the basis of

[94] An estimated 7.6 million unauthorized workers were employed in the U.S. civilian labor force in 2017. Abby Budiman, "Key Findings about U.S. immigrants," Pew Research Center, August 20, 2020.

[95] 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 employment. Congress strengthened 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*.

[96] U.S. House of Representatives, Committee on the Judiciary Subcommittee on Immigration and Claims, *Hearing on Visa Fraud and Immigration Benefits Application Fraud*, May 20, 1997.

[97] INA §212(c), 8 U.S.C. §1182(c).

[98] INA §274(c), 8 U.S.C. §1324(c).

[99] 18 U.S.C. §1546.

[100] For more information, see CRS Report RL33809, *Noncitizen Eligibility for Federal Public Assistance: Policy Overview*; and CRS Report R46339, *Unauthorized Immigrants' Eligibility for COVID-19 Relief Benefits: In Brief*.

fraudulent documents, or (3) violated their authorized period of stay.[101] 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.[102] According to recent and widely cited estimates, the size of the unauthorized alien population increased from about 8.6 million in 2000 to a peak of 12.2 million in 2007, and has fluctuated between 11.0 and 11.5 million since that time.[103] 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, fluctuating U.S. unemployment, crime in Central America, and other factors.[104]

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 and those seeking asylum.

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 States. Other strategies would grant qualifying unauthorized residents various immigration benefits, including an opportunity to obtain legal immigration status.[105]

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[101] Estimates suggest that each year, hundreds of thousands of foreign nationals overstay their nonimmigrant visas and consequently become unauthorized aliens. For more information, see CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States* and archived CRS Report RS22446, *Nonimmigrant Overstays: Brief Synthesis of the Issue*. One estimate of the number of nonimmigrant overstays based on 2017 data suggests that 62% of all unauthorized aliens who arrived in the United States in 2016 became unauthorized after they overstayed their nonimmigrant visas. See Robert Warren, "US Undocumented Population Continued to Fall from 2016 to 2017 and Visa Overstays Significantly Exceeded Illegal Crossings for the Seventh Consecutive Year," *Journal on Migration and Human Security*, vol. 7 (2019), pp. 19-22.

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

[103] Julia Heinzel, Rebecca Heller, and Natalie Tawil, "Estimating the Legal Status of Foreign-Born People," Congressional Budget Office (CBO), Working Paper 2021-02, March 2021, Figure 9; U.S. Government Accountability Office (GAO), *Department of Homeland Security: Review of Report on Agency Estimates of Foreign Nationals Unlawfully Residing in the U.S.*, GAO-19-640R, September 10, 2019; Randy Capps, Julia Gelatt, Ariel G. Ruiz Soto, and Jennifer Van Hook, *Unauthorized Immigrants in the United States: Stable Numbers, Changing Origins*, Migration Policy Institute, December 2020. DHS's Office of Immigration Statistics and the Center for Migration Studies have produced comparable older estimates of the size of the unauthorized population. See Bryan Baker and Nancy Rytina, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2012*, DHS Office of Immigration Statistics, 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.

[104] Robert Warren, "Reverse Migration to Mexico Led to US Undocumented Population Decline: 2010 to 2018," *Journal on Migration and Human Security*, vol. 8 (2020), pp. 1-10; Randy Capps, Julia Gelatt, Ariel G. Ruiz Soto, and Jennifer Van Hook, *Unauthorized Immigrants in the United States: Stable Numbers, Changing Origins*, Migration Policy Institute, December 2020; and Jeffrey S. Passel and D'Vera Cohn, *U.S. Unauthorized Immigrant Total Dips to Lowest Level in a Decade*, Pew Research Center, November 27, 2018.

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

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