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Immigration Legislation and Issues in the 116th Congress

Updated June 19, 2020

Congressional Research Service
https://crsreports.congress.gov
R46419

CRS REPORT
Prepared for Members and
Committees of Congress

Introduction

The 116th Congress has seen considerable committee and floor action on immigration legislation, particularly in the House. The House and/or the Senate have acted on bills addressing a range of immigration issue areas, including border security, immigration enforcement, legalization of unauthorized immigrants, temporary and permanent immigration, and humanitarian admissions. Some of these bills include amendments to the Immigration and Nationality Act (INA), the basis of U.S. immigration law.[1]

Several immigration provisions were enacted as part of larger appropriations and defense authorization bills. These provisions variously address the H-2B visa, U.S. refugee admissions, Afghan special immigrant visas, and the immigration status of Liberians who are long-time U.S. residents, among other issues. Through FY2019 and FY2020 consolidated appropriations measures, the 116th Congress extended the EB-5 Regional Center Program for immigrant investors, the E-Verify employment eligibility verification system, and two other immigration programs, all of which are now authorized through September 30, 2020.

The 116th Congress also enacted stand-alone measures concerning immigration in the Commonwealth of the Northern Mariana Islands and citizenship for children born abroad to parents who are U.S. military servicemembers or U.S. government employees. This report discusses these and other immigration-related measures that have received legislative action in the 116th Congress.[2]

Border Security

The U.S. Department of Homeland Security (DHS), which was established in 2003 in accordance with the Homeland Security Act of 2002 (HSA; P.L. 107-296), is charged with protecting U.S. borders from weapons of mass destruction, terrorists, smugglers, and unauthorized aliens,[3] among other responsibilities. Operationally, border security includes controlling the 328 official air, land, and sea ports of entry (POEs) through which legitimate travelers and commerce enter the country and patrolling the nation's land and maritime borders to prevent unlawful entries of people and goods.[4]

DHS's U.S. Customs and Border Protection (CBP) is responsible for protecting U.S. international land borders and coastal shoreline. At POEs, CBP's Office of Field Operations (OFO) is charged with conducting immigration, customs, and agricultural inspections of travelers seeking admission to the United States. Between POEs, CBP's U.S. Border Patrol (USBP) is charged with enforcing immigration law and other federal laws along the border and preventing unlawful entries into the United States.

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

[2] For the most part, Department of Homeland Security appropriations are not covered in this report. For that information, see CRS Report R46113, *Department of Homeland Security Appropriations: FY2020*.

[3] An alien, as defined in the INA, is any person who is not a citizen or national of the United States (INA §101(a)(3); 8 U.S.C. §1101(a)(3)). *Unauthorized alien*, as used in this report, refers to a foreign national who does not have a lawful immigration status. The term includes both a foreign national who enters the United States without inspection and a foreign national who enters lawfully but then overstays or otherwise violates the terms of his or her visa or admission.

[4] For a discussion of laws governing the admission and exclusion of aliens at the border, see CRS Legal Sidebar LSB10150, *Immigration Laws Regulating the Admission and Exclusion of Aliens at the Border*.

According to CBP data, annual apprehensions of unauthorized migrants between POEs at the U.S. Southwest border reached a 45-year low of about 300,000 in FY2017, but then more than doubled over the next two years. In FY2019, Southwest border apprehensions totaled 851,508, the highest level since FY2007.[5] For the first seven months of FY2020, monthly apprehensions at the southern border have been considerably lower than FY2019 levels.[6]

During the FY2017-FY2019 period, as apprehensions at the Southwest border were generally increasing, there was a notable rise in the number of apprehended migrants from the Northern Triangle countries of El Salvador, Guatemala, and Honduras. This period also saw changes in the demographic composition of migrant flows at the southern border, with persons in family units accounting for more than half of FY2019 apprehensions. While single adults historically had represented a large majority of migrant apprehensions at the southern border, in FY2019 persons in family units and unaccompanied alien children together accounted for 65% of those apprehensions.[7]

The increased number of apprehended migrants in FY2019, combined with the changing characteristics of those migrants, posed considerable challenges to the federal agencies charged with apprehending and processing unauthorized aliens. In Senate testimony in March 2019, the CBP Commissioner stated that the numbers and types of arriving migrants constituted a national security and humanitarian crisis.[8] As reported in a news article at the time, "CBP has warned for months that it isn't able to house and process the current population coming into the [United States], and that it has nowhere to put people between when they turn themselves in to Border Patrol agents and when they are released."[9]

As noted, Southwest border apprehensions in FY2020, as reported in available data to date, are well below FY2019 levels. Among the reasons for this are immigration-related actions taken by the U.S. government in response to the Coronavirus Disease 2019 (COVID-19) pandemic.[10]

The 116th Congress has considered a number of border security-related bills that address treatment of arriving migrants as well as border security resources and operations. In July 2019, it enacted the FY2019 Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act (P.L. 116-26) in response to the challenges posed by large numbers of arriving migrants, particularly families and children. The act provides funding for DHS and the Department of Health and Human Services (HHS), among other federal departments. It specifies in the DHS title that the appropriated funds can only be used for the delineated purposes.[11]

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[5] See CRS Report R46012, *Immigration: Recent Apprehension Trends at the U.S. Southwest Border*.

[6] According to CBP data, Southwest border apprehensions during the first seven months of FY2020 (through April 30, 2020) totaled 206,927. The comparable total for FY2019 was 460,581. CBP data for FY2017-FY2020 are available at https://www.cbp.gov/newsroom/stats/sw-border-migration.

[7] See CRS Report R46012, *Immigration: Recent Apprehension Trends at the U.S. Southwest Border*.

[8] Testimony of CBP Commissioner Kevin K. McAleenan, prepared for U.S. Congress, Senate Committee on the Judiciary, *Oversight of Customs and Border Protection's Response to the Smuggling of Persons at the Southern Border*, March 6, 2019, https://www.judiciary.senate.gov/imo/media/doc/McAleenan%20Testimony.pdf.

[9] Dara Lind, "The border is in crisis. Here's how it got this bad," *Vox*, updated June 5, 2019.

[10] For a discussion of these actions, see CRS Insight IN11308, *COVID-19: Restrictions on Travelers at U.S. Land Borders*; and CRS Legal Sidebar LSB10439, *Entry Restrictions at the Northern and Southern Borders in Response to COVID-19*.

[11] For further information on the DHS funding in this act, see CRS Report R46113, *Department of Homeland Security Appropriations: FY2020*.

Treatment of Arriving Migrants

P.L. 116-26 provides additional operational and support funding to CBP, with the majority allotted for migrant care and processing facilities. The act stipulates, however, that none of that funding will be made available until CBP establishes policies and training programs "to ensure that such facilities adhere to the National Standards on Transport, Escort, Detention, and Search."[12]

Multiple bills passed by the House seek to build on the provisions in P.L. 116-26 to further address standards of care for arriving migrants. One set of measures would require CBP to meet specified needs of migrants in its custody. The Short-Term Detention Standards Act (H.R. 3670) would amend a provision in the HSA that directs CBP to "make every effort to ensure that adequate access to food and water is provided to" individuals it apprehends and detains.[13] H.R. 3670 would revise this provision to require CBP "to make every effort to ensure the provision to an individual apprehended by [CBP] of appropriate temporary shelter with access to bathroom and shower facilities, water, appropriate nutrition, hygiene, personal grooming items, and sanitation needs." Among its other provisions, the bill would task the DHS Inspector General and the U.S. Comptroller General with conducting regular audits and inspections of CBP intake and processing procedures for apprehended individuals. Another House-passed bill, the Humanitarian Standards for Individuals in Customs and Border Protection Custody Act (H.R. 3239), would require CBP to ensure that detainees have access to water, sanitation, and hygiene; food and nutrition; and shelter, as specified.

Medical screening and medical care of arriving migrants is another focus of House legislation. The U.S. Border Patrol Medical Screening Standards Act (H.R. 3525), as passed by the House, would direct DHS to conduct research on the provision of comprehensive medical screening to individuals (particularly vulnerable populations) interdicted by CBP between POEs and issue recommendations for corrective actions. The bill would further require DHS to implement an electronic health record system for individuals in its custody. H.R. 3239, in addition to the provisions discussed previously, would direct CBP, in consultation with HHS and other experts, to develop guidelines and protocols for the provision of health screenings and appropriate medical care to individuals in CBP custody.

Other House-passed bills address treatment of migrants more broadly. The Homeland Security Improvement Act (H.R. 2203), as passed by the House, would establish a new position within DHS for an Ombudsman for Border and Immigration Enforcement Related Concerns. The ombudsman would be responsible for establishing an accessible and confidential process to assist individuals in resolving complaints concerning CBP or DHS's U.S. Immigration and Customs Enforcement (ICE), and for making recommendations to the DHS Secretary to address chronic issues identified through the complaint process. (For further discussion of ICE-related legislation, see "Interior Enforcement.") With respect to CBP, the ombudsman also would be charged with establishing a Border Oversight panel to evaluate and make recommendations on DHS border enforcement policies, strategies, and programs. H.R. 2203 would further direct the ombudsman to appoint a Border Community Liaison in each border patrol sector, with responsibilities including consulting with border communities on the development of CBP and ICE policies, directives, and programs.

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[12] See U.S. Customs and Border Protection, National Standards on Transport, Escort, Detention, and Search, October 2015, https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-teds-policy-october2015.pdf.

[13] HSA §411(m), 6 U.S.C. §211(m).

Border Security Resources

The United States has substantially increased border enforcement resources over the last three decades, as evidenced across a variety of indicators. Particularly since 2001, such increases have included fencing and infrastructure, personnel, and technology.[14]

In recent years, barriers at the Southwest border have been the main focus of discussion and debate about border resources. President Trump's declaration of a national emergency in February 2019 to secure funding for the construction of physical barriers along the U.S.-Mexico border was met by unsuccessful congressional efforts to terminate that declaration.[15] The 116th Congress passed two termination measures—H.J.Res. 46 and S.J.Res. 54—but both were vetoed by the President, and subsequent veto override votes fell short.

Another border barrier-related bill (H.R. 1232) has been reported by the House Homeland Security Committee. H.R. 1232 would amend Section 102 of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, as amended (Div. C of P.L. 104-208, 8 U.S.C. §1103 note). Section 102 directs DHS to "install additional physical barriers and roads … in the vicinity of the United States border to deter illegal crossings in areas of high illegal entry" and authorizes DHS to waive legal requirements if necessary to ensure such installation.[16] H.R. 1232 would amend IIRIRA to rescind that waiver authority.

Border security personnel is the subject of multiple bills that have received action. P.L. 116-26 includes a provision (§304) on CBP staffing at the U.S.-Canadian border. It requires DHS to report on the number of CBP officers "assigned to northern border land ports of entry and temporarily assigned to the ongoing humanitarian crisis."

The House and the Senate Homeland Security committees have also advanced measures on border personnel. The House Homeland Security Committee has reported the CBP Workload Staffing Model Act (H.R. 1639), which would amend the HSA to require CBP to develop and implement a workload staffing model for USBP and Air and Marine Operations.[17] The committee has also reported the U.S. Customs and Border Protection Rural and Remote Hiring and Retention Strategy Act of 2019 (H.R. 1598). This bill would direct DHS to issue a strategy to improve the hiring and retention of CBP personnel in rural or remote areas.

The Senate Homeland Security and Governmental Affairs Committee has acted on several CBP staffing-related bills. The Anti-Border Corruption Improvement Act (S. 731), as reported by the committee, would amend the CBP Commissioner's existing discretionary authority to waive the polygraph examination requirement for certain applicants for CBP law enforcement positions. The Securing America's Ports of Entry Act of 2019 (S. 1004), as ordered to be reported by the committee, would direct the CBP Commissioner to hire not fewer than 600 new OFO officers annually, as specified, and an unnamed number of support staff. The Securing America's Borders Act of 2019 (S. 2162), as ordered to be reported, would require the CBP Commissioner to hire

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

[15] U.S. President (Trump), Proclamation 9844 of February 15, 2019, "Declaring a National Emergency Concerning the Southern Border of the United States," 84 *Federal Register* 4949, February 20, 2019. Also see CRS Legal Sidebar LSB10252, *Declarations under the National Emergencies Act, Part 1: Declarations Currently in Effect*; and CRS Legal Sidebar LSB10267, *Definition of National Emergency under the National Emergencies Act*.

[16] See CRS Report R43975, *Barriers Along the U.S. Borders: Key Authorities and Requirements*.

[17] Air and Marine Operations (AMO), a component of CBP, describes its role as follows: "AMO interdicts unlawful people and cargo approaching U.S. borders, investigates criminal networks and provides domain awareness in the air and maritime environments, and responds to contingencies and national taskings." U.S. Customs and Border Protection, "Air and Marine Operations," fact sheet, https://www.cbp.gov/sites/default/files/assets/documents/2019-Apr/FS_2019_AMO_Fact%20Sheet_FINAL_508%20compliant_0.pdf.

not fewer than 600 new USBP agents annually, as specified, and an unnamed number of support staff.

On the subject of border technology, the House and the Senate have acted on the Securing America's Ports Act (H.R. 5273). As passed by the House, the bill would require DHS to submit a plan to Congress to expeditiously scan all commercial and passenger vehicles entering the United States at land POEs using large-scale nonintrusive inspection systems or similar technology. The Senate Homeland Security and Governmental Affairs Committee has ordered H.R. 5273 to be reported in amended form. Among the changes approved by the Senate committee to the House-passed version of the bill, the required plan for universal scanning would need to cover freight rail traffic entering the United States at rail-border crossings along the border in addition to commercial and passenger vehicles entering the United States.

In addition to the above measures, the Operation Stonegarden Authorization Act (S. 2750), as reported by the Senate Homeland Security and Governmental Affairs Committee, would codify an existing DHS program administered by FEMA that awards grants to state and tribal law enforcement agencies to improve border security. S. 2750 proposes to add a new section to the HSA that would authorize the Operation Stonegarden grant program, describe law enforcement agency eligibility, and set forth permitted uses of grant funds, including for equipment and personnel. The bill would also provide for the collection of financial information on grant awards and for administrative oversight of the program.

Border Security Operations

A third category of border security-related bills receiving action in the 116th Congress concerns border security operations. The Counter Terrorist Network Act (H.R. 3526), as passed by the House, would amend the HSA provisions establishing the OFO National Targeting Center (NTC), an entity that collects and analyzes traveler and cargo information in advance of U.S. arrival to identify security risks. H.R. 3526 would task the NTC with an additional duty—to collaborate with appropriate agencies on efforts such as operations to disrupt and dismantle networks that pose terrorist threats. The Operation Stonegarden program, the subject of S. 2750 (discussed above), also seeks to promote cooperation among different agencies to enhance border security. Another bill, the DHS Illicit Cross-Border Tunnel Defense Act (H.R. 5828), as ordered to be reported by the House Homeland Security Committee, would direct CBP to develop a strategic plan to counter illicit cross-border tunnel operations.

Interior Enforcement

ICE has primary responsibility for enforcing federal immigration law within the United States, otherwise known as interior enforcement. It identifies, apprehends, detains (as necessary), and removes unauthorized aliens from the country. Among ICE's removal-related responsibilities, its attorneys represent the U.S. government in removal proceedings before the U.S. Department of Justice's (DOJ's) Executive Office for Immigration Review (EOIR).[18] EOIR immigration judges preside over these hearings.

[18] During a removal proceeding, an EOIR immigration judge decides whether the individual is removable from the country and, if so, whether he or she qualifies for protection or relief from removal. For additional information, see CRS In Focus IF11536, *Formal Removal Proceedings: An Introduction*.

The 116th Congress has acted on legislation concerning ICE detention and removal. The FY2019 Consolidated Appropriations Act (P.L. 116-6) contains a provision requiring ICE to issue a weekly public report with data on detained aliens and aliens enrolled in Alternative to Detention (ATD) programs (Div. A, §226).[19] The Secure and Protect Act of 2019 (S. 1494), as reported by the Senate Judiciary Committee, would increase the number of immigration judges by not fewer than 500 and increase the number of ICE attorneys and staff correspondingly. The National Defense Authorization Act for Fiscal Year 2020 (P.L. 116-92) also includes a removal-related provision (§570B(b)), which would require an ICE immigration officer to consider an individual's military service in determining whether to take certain removal-related actions, such as commencing removal proceedings or executing a final order of removal.

Concerning ICE enforcement more generally, House-passed H.R. 2203, as discussed in "Treatment of Arriving Migrants" above, would establish a new DHS Ombudsman for Border and Immigration Enforcement Related Concerns, whose tasks would include assisting individuals in resolving complaints concerning ICE and making recommendations to address chronic issues.

Unaccompanied Alien Children

Unaccompanied alien children (UAC, unaccompanied children) are defined in statute as children who lack lawful immigration status in the United States, are under age 18, and are without a parent or legal guardian in the United States or without a parent or legal guardian in the United States who is available to provide care and physical custody.[20] In FY2019, the number of UAC and family units[21] arriving at the Southwest border reached record high levels, posing considerable challenges to U.S. federal agencies charged with apprehending and processing unauthorized migrants.

P.L. 116-26 appropriates funding to various agencies for UAC-related activities. It appropriates nearly $2.9 billion to HHS, mostly to support its UAC program. HHS's Office of Refugee Resettlement (ORR) is responsible for the care and placement of unaccompanied children. The act requires HHS to use at least $866 million of the appropriated amount for providing UAC care in state-licensed shelters, and to reverse $385 million in earlier fund reprogramming.[22] It outlines licensing and staffing requirements for unlicensed temporary facilities that are open for more than six months, and lists who should not be housed in unlicensed facilities.[23] P.L. 116-26 provides a total of $145 million to branches of the U.S. military "to respond to the significant rise in

[19] These data are available at U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Detention Management (under Detention Statistics tab), https://www.ice.gov/detention-management. For information on ATD programs, see CRS Report R45804, *Immigration: Alternatives to Detention (ATD) Programs*.

[20] 6 U.S.C. §279(g)(2). For a discussion of unaccompanied alien children and related legislation, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*.

[21] A family unit in this section refers to at least one parent/guardian and at least one child. A child accompanied by any other related adult (e.g., uncle, older sibling, grandparent) is not considered part of a family unit.

[22] HHS had reprogrammed or transferred $385 million from other HHS programs to HHS's Office of Refugee Resettlement, reportedly to cover the additional expenses stemming from the Trump Administration's "zero tolerance policy" on border enforcement. See U.S. Congress, House Committee on Appropriations, *Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Bill, 2020*, report to accompany H.R. 2740, 116th Cong., 1st sess., H.Rept. 116-62 (Washington, DC: GPO, 2019), p. 11.

[23] These include children not expected to be placed with sponsors within 30 days, children under age 13, non-English or Spanish speakers, special needs children, pregnant or parenting teenagers, or anyone who would experience a diminution of legal services as a result of a transfer into such a facility.

unaccompanied minors and family unit aliens at the southwest border."[24] During past migrant surges, the military assisted by facilitating border enforcement-related activities and temporary migrant housing, often by leasing temporary housing facilities to ORR. P.L. 116-26 also appropriates $36 million to ICE for the transportation of UAC from ICE custody to ORR custody.

S. 1494, as reported by the Senate Judiciary Committee, would significantly change processing of unaccompanied children who are apprehended at the U.S. border or a POE and found to be inadmissible[25] to the United States. Current law requires that DHS screen apprehended Mexican and Canadian unaccompanied children to determine if (1) they are at risk of being trafficked, (2) they fear returning to their home country, and (3) they are able to decide independently to return home voluntarily by withdrawing their application for admission.[26] Upon a determination that an unaccompanied child is not at risk of being trafficked, does not fear returning home, and is able to decide to withdraw his or her application, the child can be repatriated. Historically, most UAC from contiguous countries (almost all of whom have been Mexican) have met such conditions and been repatriated promptly.[27] In contrast, unaccompanied children from noncontiguous countries who are apprehended at the U.S. border or a POE and found to be inadmissible to the United States are placed in removal proceedings.[28] They are then referred to ORR, where most are eventually placed with U.S.-based family-member sponsors while they await their immigration court hearings.

Under S. 1494, all unaccompanied children who are apprehended at the U.S. border or a POE and found to be inadmissible to the United States would be processed under revised procedures. These procedures would be the same regardless of whether the children were from contiguous or noncontiguous countries and would include the three-part screening described above. If the DHS officer conducting that screening determined that an unaccompanied child was unable to decide independently to return voluntarily, the child would be placed into removal proceedings (whether or not the officer determined that the child was at risk of being trafficked or feared returning home).

S. 1494 would require an additional screening in cases in which a DHS officer determined, through the three-part screening described above, that an unaccompanied child was not at risk of being trafficked, did not fear returning home, and was able to decide independently to return home voluntarily, but the child chose not to withdraw his or her application. In such cases, the unaccompanied child would be repatriated unless an immigration officer trained in interviewing at-risk children made one of two determinations: (1) it was more likely than not that the UAC

[24] P.L. 116-26, Title II. The bill does not specify how these funds are to be allocated among activities related to UAC versus other migrants.

[25] The INA enumerates grounds of inadmissibility (INA §212(a), 8 U.S.C. §1182(a)), which are grounds upon which aliens are ineligible to receive visas or to be admitted to the United States. These include health, criminal, and security grounds as well as grounds related to the likelihood of becoming a public charge (indigent), alien smuggling, lack of appropriate documentation, and unlawful presence in the United States.

[26] 8 U.S.C. §1232(a)(2)(A). Under INA §235(a)(4), apprehension at the border constitutes an application for admission to the United States. In this case, "withdrawal of application for admission" permits the UAC to return immediately to Mexico or Canada and avoid administrative or other penalties. For further information about special rules on the treatment of UACs, see CRS Legal Sidebar LSB10150, *Immigration Laws Regulating the Admission and Exclusion of Aliens at the Border*.

[27] See, for example, U.S. Government Accountability Office, *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody*, GAO-15-521, July 2015, p. 24.

[28] The removal proceedings referred to in this section are also known as standard removal proceedings or INA Section 240 proceedings. They can be distinguished from expedited removal proceedings (see "Asylum System"). UAC are not subject to expedited removal.

would be trafficked upon return to his or her home country, or (2) it was more likely than not that the UAC would be granted asylum or another specified form of humanitarian relief. In the event of the first determination, the UAC would be referred for removal proceedings; in the event of the second, the UAC would receive a hearing before an immigration judge solely to determine eligibility for asylum or another specified form of relief. If the judge found the UAC was ineligible for asylum or other relief, the child would be repatriated. All such judicial determinations would not be subject to review. S. 1494 would allow DHS to establish new repatriation agreements—not just with Mexico and Canada, with which it currently has agreements, but with any country deemed appropriate.

S. 1494 would also grant DHS discretion to detain inadmissible or removable[29] alien children (other than UAC), including those who were previously classified by DHS as unaccompanied. It would prioritize removal proceedings of such alien children and any family units that include alien minors, with the goal of adjudicating such cases within 100 days. S. 1494 would invalidate the *Flores* Settlement Agreement *(Flores*),[30] which governs detention conditions for inadmissible or removable alien children (including UAC), and requires that detention and release decisions be based only upon existing statutes. It would grant DHS authority to determine appropriate detention conditions for alien children who are part of family units (not UAC), prevent states from requiring that detention facilities for family units be state-licensed, and allow relatively broad conditions for DHS family detention facilities compared to the relatively specific requirements currently outlined in *Flores*.[31] For future civil cases regarding detention conditions for alien children, the bill would prohibit any settlement agreement or consent decree that did not comply with its provisions.

In May 2018, DOJ implemented a "zero tolerance" policy toward illegal border crossing to discourage unlawful migration into the United States.[32] Under the policy, CBP referred all adult illegal border crossers to DOJ for prosecution. CBP reclassified any children accompanying those adults as unaccompanied and transferred them to ORR custody. During the six weeks the policy was in effect, roughly 3,000 children may have been separated from their parents.[33] Subsequent attempts by CBP, ICE, and ORR to reunite the separated children with their parents were hampered, in part, by limitations of the information technology system CBP used to track the children.[34] H.R. 2203, as passed by the House, would require a new Ombudsman of Border and Immigration Enforcement Related Concerns, in coordination with CBP, ICE, and ORR, to develop recommendations for establishing an electronic tracking number system, accessible by all

[29] The counterpart to the INA grounds of inadmissibility, the grounds of deportability (enumerated in INA §237(a), 8 U.S.C. §1227(a)) are grounds upon which an alien can be ordered removed from the United States. These include criminal and security grounds as well as grounds related to inadmissibility at the time of entry, presence in the United States in violation of the law, and violation of the terms or conditions of admission or entry.

[30] *Flores v. Meese—Stipulated Settlement Agreement* (U.S. District Court, Central District of California, 1997). Many terms of the agreement are codified at 8 C.F.R. §§236.3, 1236.3. Also see CRS Report R45297, *The "Flores Settlement" and Alien Families Apprehended at the U.S. Border: Frequently Asked Questions*.

[31] Under S. 1494, facilities would be required to be "secure and safe." DHS would need to ensure that alien minor children and their accompanying parents are provided with "suitable living accommodations" as well as access to drinking water and food. Timely access to medical assistance, including mental health assistance, and access to any other service necessary for the adequate care of a minor child would also have to be provided.

[32] See CRS Report R45266, *The Trump Administration's "Zero Tolerance" Immigration Enforcement Policy*.

[33] For the most recent information on separated families, see U.S. Department of Health and Human Services, "Unaccompanied Alien Children Information," https://www.hhs.gov/programs/social-services/unaccompanied-alien-children/index.html.

[34] For more information, see, for example, Government Accountability Office, *Southwest Border: Actions Needed to Improve DHS Processing of Families and Coordination between DHS and HHS*, GAO-20-245, February 2020.

three agencies, to track the location of children who were separated from their parents or legal guardians.

Legalization of Unauthorized Immigrants

At several points during the past 20 years, Congress has considered legislation to establish pathways to lawful permanent resident (LPR) status for unauthorized immigrants (foreign nationals in the United States without a lawful immigration status). LPRs can live and work permanently in the United States and can become U.S. citizens through the naturalization process.

Past legalization measures have included stand-alone bills that would have established pathways to LPR status for unauthorized childhood arrivals (these bills typically have been referred to as Dream Acts)[35] as well as broader bills, commonly referred to as comprehensive immigration reform bills, which contained provisions that would have enabled unauthorized immigrants more generally to obtain LPR status.[36] These latter bills often have included a standard legalization pathway for unauthorized immigrants generally as well as special, shorter pathways for particular segments of the unauthorized population: unauthorized childhood arrivals and agricultural workers.

In the 116th Congress, legalization efforts have focused on these same two segments of the unauthorized population. The House has passed the American Dream and Promise Act of 2019 (H.R. 6),[37] which would provide a pathway to LPR status for certain unauthorized childhood arrivals, and the Farm Workforce Modernization Act of 2019 (H.R. 5038), which would provide a pathway to LPR status for certain unauthorized foreign agricultural workers. (Both bills would also make eligible for these LPR pathways individuals who have Temporary Protected Status or are under a grant of Deferred Enforced Departure and meet the other eligibility requirements in the bills; for information on legislation in the 116th Congress addressing these forms of relief, see "Temporary Protected Status and Deferred Enforced Departure.")

Childhood Arrivals

Entitled the Dream Act, Title I of H.R. 6 would establish a mechanism for certain individuals in the United States who arrived at a young age and do not have a lawful immigration status to become LPRs.[38] In most cases, these unauthorized childhood arrivals could obtain LPR status through a two-stage process.[39]

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[35] See CRS Report R45995, *Unauthorized Childhood Arrivals, DACA, and Related Legislation*.

[36] The most recent bill of this type to receive floor action was the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744) in the 113th Congress. See CRS Report R43097, *Comprehensive Immigration Reform in the 113th Congress: Major Provisions in Senate-Passed S. 744*.

[37] In terms of legislative process, H.R. 6 was referred to the House Judiciary Committee. Instead of marking up H.R. 6, the committee marked up separate bills covering H.R. 6's Title I on unauthorized childhood arrivals (H.R. 2820) and Title II on Temporary Protected Status/Deferred Enforced Departure (H.R. 2821). The committee-reported versions of H.R. 2820 and H.R. 2821 were then recombined into an amended version of H.R. 6, which was considered on the House floor.

[38] This title would also cover certain individuals who have Temporary Protected Status or are under a grant of Deferred Enforced Departure and qualify as childhood arrivals under its terms. In addition, certain individuals eligible for Temporary Protected Status or Deferred Enforced Departure are separately covered by Title II of H.R. 6, which is discussed in "Temporary Protected Status and Deferred Enforced Departure."

[39] For a more detailed discussion of the Title I provisions on unauthorized childhood arrivals, see CRS Report R45995, *Unauthorized Childhood Arrivals, DACA, and Related Legislation*.

To obtain *conditional* LPR status in stage 1, an individual would need to meet a set of requirements, including continuous presence in the United States for at least four years since the date of enactment, initial U.S. entry before age 18, no inadmissibility under specified grounds in the INA[40] and no other specified ineligibilities,[41] and satisfaction of educational requirements. Recipients of Deferred Action for Childhood Arrivals (DACA) would be subject to streamlined application procedures to be established by DHS (for information on legislation in the 116th Congress addressing DACA, see "Deferred Action for Childhood Arrivals"). All applicants would need to submit biometric and biographic data for security and law enforcement background checks. Conditional LPR status would be valid for 10 years.

In stage 2, a conditional LPR would have to meet a second set of requirements (subject to exceptions) to have the conditional basis of his or her status removed and become a full-fledged LPR. Among these requirements are satisfaction of specified education, military service, or employment criteria. Other stage 2 requirements include submission of biometric and biographic data for security and law enforcement background checks, continued clearance of inadmissibility and ineligibility criteria, and satisfaction of the English language and U.S. civics requirements for naturalization.

Under H.R. 6, a conditional LPR could apply to have the condition on his or her status removed at any time after meeting the stage 2 requirements. In addition, the bill would provide that an applicant meeting all the stage 1 and stage 2 requirements at the time of submitting an initial application would be granted full-fledged LPR status directly (without first being granted conditional status).

Agricultural Workers

Title I of the Farm Workforce Modernization Act of 2019 (H.R. 5038) would establish a mechanism for certain agricultural workers to obtain a legal immigration status. It would enable agricultural workers who had performed 180 work days of agricultural labor in the United States during the two years prior to the bill's date of introduction (November 12, 2019) to obtain a new legal temporary status termed certified agricultural worker (CAW) status. Other eligibility requirements for CAW status would include continuous presence in the United States since November 12, 2019, and clearance of specified INA grounds of inadmissibility[42] and other specified criminal ineligibilities. Applicants would need to submit biometric and biographic data for security and law enforcement background checks. The bill would apply to unauthorized immigrants as well as individuals who have Temporary Protected Status or are under a grant of Deferred Enforced Departure (for more information on legislation in the 116th Congress addressing these forms of protection, see "Temporary Protected Status and Deferred Enforced Departure").

CAW status would be valid for 5 1/2 years. Notably, it could be extended in 5 1/2-year increments indefinitely, provided that the individual performed at least 100 work days of agricultural labor in

[40] H.R. 6 specifies the INA grounds of inadmissibility that would apply to applicants for conditional LPR status, which include health, criminal, and security grounds (subject to some waivers), among others.

[41] An individual would be ineligible for conditional LPR status if he or she, for example, had been convicted of a felony offense ("excluding any offense under state law for which an essential element is the alien's immigration status, and any minor traffic offense") or had "ordered, incited, assisted, or otherwise participated in the persecution of any person on account of race, religion, nationality, membership in a particular social group, or political opinion."

[42] H.R. 5038 specifies the grounds of inadmissibility that would apply to applicants for CAW status, which include health, criminal, and security grounds (subject to some waivers), among others.

each of the first five years in each CAW status period and had not become inadmissible or ineligible under specified grounds.[43] To be granted an extension of CAW status, an applicant would also need to submit biometric and biographic data for security and law enforcement background checks.

An individual in CAW status could apply to become an LPR. To be eligible for LPR status, a CAW who had performed 100 work days of agricultural labor each year for 10 years prior to the date of enactment would need to perform 100 work days of such labor for 4 years in CAW status. A CAW who had not performed 100 work days of agricultural labor for 10 years prior to the date of enactment would need to perform 100 work days of such labor for 8 years in CAW status. Applicants would also need to remain clear of the grounds of inadmissibility and ineligibility for CAW status, and would need to submit biometric and biographic data for security and law enforcement background checks. They would also need to pay a $1,000 fee and satisfy any applicable federal tax liability.

Subject to specified requirements, H.R. 5038 would provide for the granting of CAW dependent status to the spouses and children of principal applicants granted CAW status, and for the granting of LPR status to the spouses and children of principal applicants granted LPR status.

Deferred Action for Childhood Arrivals

DHS announced the DACA initiative in June 2012. Under this initiative, certain individuals who were brought to the United States as children and met other criteria would be considered for deferred action on removal for two years, subject to renewal. In addition to protection from removal, DACA beneficiaries may receive work authorization. In September 2017, then-DHS Acting Secretary Duke issued a memorandum rescinding DACA,[44] which prompted legal challenges. Under federal court rulings that followed, individuals who had been granted DACA in the past continued to be able to submit DACA requests. Individuals who had never been granted DACA could not submit requests.[45]

According to the latest DHS data published as of the date of this report, there were approximately 649,070 active DACA recipients as of December 31, 2019.[46] This number was 689,800 at the time of the termination announcement in September 2017.[47]

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[43] By contrast, agricultural worker legalization provisions in past legislation receiving action, such as S. 744 in the 113th Congress, would have limited legal temporary status to a maximum number of years.

[44] U.S. Department of Homeland Security, Memorandum to James W. McCament, Acting Director, U.S. Citizenship and Immigration Services, Thomas D. Homan, Acting Director, U.S. Immigration and Customs Enforcement, Kevin K. McAleenan, Acting Commissioner, U.S. Customs and Border Protection, Joseph B. Maher, Acting General Counsel, Ambassador James D. Nealon, Assistant Secretary, International Engagement, Julie M. Kirchner, Citizenship and Immigration Services Ombudsman, from Elaine C. Duke, Acting Secretary, *Rescission of the June 15, 2012 Memorandum Entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,"* September 5, 2017, https://www.dhs.gov/news/2017/09/05/memorandum-rescission-daca.

[45] See CRS Report R45995, *Unauthorized Childhood Arrivals, DACA, and Related Legislation*.

[46] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Approximate Active DACA Recipients As of December 31, 2019," https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/DACA_Population_Receipts_since_Injunction_Dec_31_2019.pdf.

[47] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Approximate Active DACA Recipients," https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_population_data.pdf. Reasons for the drop in the number of DACA recipients from September 2017 to September 2019 include failure to renew DACA and acquisition

The U.S. Supreme Court heard arguments on the DACA rescission in November 2019 and issued its ruling on June 18, 2020. As stated in the majority opinion: "The dispute before the Court is not whether DHS may rescind DACA. All parties agree that it may. The dispute is instead primarily about the procedure the agency followed in doing so." The court decided that in rescinding DACA, DHS had not provided adequate reasons or followed proper procedures, which led it to conclude that "the rescission must be vacated."[48] The Court's decision does not bar DHS from terminating DACA in the future, although the department would have to comply with procedural requirements in doing so.[49]

Title I of H.R. 6, as discussed above, would direct DHS to establish streamlined procedures for DACA recipients to apply for LPR status under the bill's legalization mechanism for unauthorized childhood arrivals. Other legislation considered by the 116th Congress likewise includes special provisions for the DACA population. A provision (§570B(a)) in P.L. 116-92 prohibits the involuntary separation from the U.S. military of an individual solely because he or she has DACA. The Homeownership for DREAMers Act (H.R. 3154), as reported by the House Financial Services Committee, would provide that DACA recipients could not be deemed ineligible for mortgage loans backed by the Federal Housing Administration, Fannie Mae, Freddie Mac, or the U.S. Department of Agriculture based solely on their DACA status. In addition, a House-reported version of the FY2020 Legislative Branch Appropriations Act (H.R. 2779) included a provision[50] to authorize the use of funds under the act to employ individuals who are DACA recipients.[51]

Temporary Protected Status and Deferred Enforced Departure

Congress created Temporary Protected Status (TPS) in 1990 (P.L. 101-649) to provide relief from removal and work authorization for foreign nationals in the United States from countries experiencing armed conflict, natural disaster, or other extraordinary conditions that prevent their safe return.[52] The United States currently provides TPS to approximately 411,000 individuals from 10 countries.[53] In addition, certain Liberians who have been in the United States since 2002 are protected from removal by Deferred Enforced Departure (DED), a form of blanket relief similar to TPS. Unlike TPS, however, DED is not statutory but emanates from the President's constitutional powers to conduct foreign relations.

The 116th Congress has acted on several bills with provisions on TPS and DED. The Venezuela TPS Act of 2019 (H.R. 549), as passed by the House, would add Venezuela to the list of countries designated for TPS. This designation would last for 18 months and could be extended by the DHS Secretary. Venezuelans who have been continuously present in the United States since the date of

of LPR status.

[48] U.S. Dep't of Homeland Sec. v. Regents of the Univ. of Cal., _ S. Ct. _ , 2020 WL 3271746, at *3 (2020).

[49] See CRS Legal Sidebar LSB10497, *Supreme Court: DACA Rescission Violated the APA*.

[50] The enacted FY2020 Legislative Branch Appropriations Act (P.L. 116-94, Div. E) does not include a DACA employment provision.

[51] For information on current restrictions regarding DACA and federal employment, see CRS Legal Sidebar LSB10244, *Are DACA Recipients Eligible for Federal Employment?*

[52] For more information on TPS, see CRS Report RS20844, *Temporary Protected Status: Overview and Current Issues*.

[53] These countries are El Salvador, Haiti, Honduras, Nepal, Nicaragua, Somalia, South Sudan, Sudan, Syria, and Yemen.

enactment and meet certain other requirements would be eligible to register for TPS. In addition, another TPS-related provision (P.L. 116-92, §570B(a)) prohibits the involuntary separation of a member from the U.S. military solely because that individual has TPS.

The Trump Administration announced terminations of TPS for 6 of the 10 designated countries, but, as of the date of this report, they are on hold pending the outcome of litigation challenging the terminations.[54] If these terminations take effect, some 400,000 individuals currently covered by TPS could lose protection from removal and work authorization.[55] Liberia's DED grant is set to expire on January 10, 2021.

Some Members of Congress have expressed an interest in providing longer-term relief to TPS holders, most of whom have been living in the United States for at least 19 years. Title II of House-passed H.R. 6 would enable aliens who were eligible for TPS or DED as of January 1, 2017, and have been living in the United States for at least three years before the date of enactment to become LPRs. Certain individuals with TPS or DED protection would also be covered by the legalization provisions in Title I of H.R. 6 (see "Childhood Arrivals") and Title I of H.R. 5038 (see "Agricultural Workers").

Separate from H.R. 6, the 116th Congress has enacted a pathway to LPR status for certain Liberians. P.L. 116-92 includes a section on Liberian Refugee Immigration Fairness (§7611), which allows Liberian nationals who have been continuously present in the United States since November 20, 2014, and meet other requirements—whether or not they were covered by DED—and their family members to obtain LPR status.

Temporary Worker Programs

The INA provides for the admission of nonimmigrants to the United States to perform temporary work. Nonimmigrants are foreign nationals who are admitted to the country for a temporary period of time and specific purpose. Nonimmigrant visa categories are identified by letters and numbers, based on the INA sections that authorize them. The "H" category is the major nonimmigrant visa category for temporary workers. It includes the H-2A visa for agricultural workers and the H-2B visa for nonagricultural workers, as well as the H-1B visa for specialty occupation workers.[56] Foreign workers may also enter the United States through other nonimmigrant visa categories.[57]

H-2A and H-2B Visas

Bringing workers into the United States under either the H-2A program or H-2B program is a multiagency process involving the U.S. Department of Labor (DOL), DHS, and the U.S. Department of State (DOS). As an initial step in the process, a prospective H-2A or H-2B employer must apply for DOL labor certification to ensure that U.S. workers are not available for the jobs in question and that the hiring of foreign workers will not adversely affect the wages and

[54] For information on this litigation, see CRS Legal Sidebar LSB10215, *Federal District Court Enjoins the Department of Homeland Security from Terminating Temporary Protected Status*.

[55] For additional information, see CRS Report RS20844, *Temporary Protected Status: Overview and Current Issues*.

[56] INA Section 214(i)(1) defines *specialty occupation* as "an occupation that requires theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States."

[57] See CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*.

working conditions of U.S. workers. After receiving labor certification, the employer can submit an application, known as a petition, to DHS to bring in foreign workers. DHS's U.S. Citizenship and Immigration Services (USCIS), which administers the nation's lawful immigration system, is responsible for adjudicating H-2A and H-2B petitions. If the petition is approved, a foreign worker who is abroad can then go to a U.S. embassy or consulate to apply for an H-2A or H-2B nonimmigrant visa from DOS. If the visa application is approved, the worker is issued a visa that he or she can use to apply for admission to the United States at a POE.[58] Under DHS regulations, participation in the H-2A and H-2B visa programs is limited to nationals of countries designated annually by DHS, with the concurrence of DOS.[59]

H-2A Visa for Agricultural Workers

The H-2A visa allows for the temporary admission of foreign workers to the United States to perform agricultural labor or services of a temporary or seasonal nature. It is governed by provisions in the INA and by regulations issued by DHS and DOL.[60] It is not subject to a numerical cap.

Title II of H.R. 5038, as passed by the House, proposes significant changes to the H-2A visa, including with respect to required wages. Currently, H-2A employers must pay the highest of several wage rates: the federal or state minimum wage rate, prevailing wage rate, adverse effect wage rate (AEWR), or agreed-upon collective bargaining wage rate. In practice, the AEWR, which is an average hourly wage for field and livestock workers combined in a state or region, is often the highest of these rates. Among its wage-related provisions, H.R. 5038 would retain the requirement for employers to pay the highest of the listed wage rates, but would change the way the AEWR is determined. It proposes to calculate separate AEWRs for individual occupational classifications, preferably by state or region if such data are reported.[61]

Among its other H-2A provisions, H.R. 5038 proposes to establish a six-year Portable H–2A Visa Pilot Program to enable a limited number of H-2A workers to perform agricultural labor for employers who would not need to file H-2A petitions. However, the employers would need to go through a registration process, pay H-2A required wages, and meet other requirements. H.R. 5038 would also allow DHS to approve petitions for H-2A workers to perform year-round agricultural work, subject to an initial annual numerical limitation of 20,000.

H-2B Visa for Nonagricultural Workers

The H-2B visa allows for the temporary admission of foreign workers to the United States to perform nonagricultural labor or services of a temporary nature if unemployed U.S. workers are not available. While the INA does include some H-2B requirements, most are set forth in DHS and DOL regulations.[62] By law, the H-2B visa is subject to an annual numerical cap. Under the

[58] See CRS Report R44849, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues*.

[59] For 2020, nationals of 84 countries are eligible to participate in the H-2A program and nationals of 81 countries are eligible to participate in the H-2B program. See U.S. Department of Homeland Security, "Identification of Foreign Countries Whose Nationals Are Eligible To Participate in the H–2A and H–2B Nonimmigrant Worker Programs," 85 *Federal Register* 3067, January 17, 2020.

[60] For a discussion of H-2A statutory provisions and regulations, including a temporary rule issued by DHS in April 2020 in response to the COVID-19 emergency, see CRS Report R44849, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues*.

[61] For further discussion of the H-2A wage requirements and H.R. 5038, see CRS Report R44849, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues*.

[62] For a discussion of H-2B statutory provisions and regulations, including a temporary rule issued by DHS in May

INA, the total number of aliens who may be issued H-2B visas or otherwise provided with H-2B nonimmigrant status in any fiscal year may not exceed 66,000. In recent years, the demand for H-2B visas has exceeded the cap.[63]

As part of the H-2B application process, employers must accurately indicate the starting and ending dates of their period of need for H-2B workers. Employers are not allowed to stagger the entry of H-2B workers between these starting and ending dates. An exception to this staggered entry prohibition, however, applies to H-2B employers in the seafood industry. First enacted as part of the FY0214 Consolidated Appropriations Act (P.L. 113-76) and then extended in subsequent annual appropriations measures, this provision permits an employer with an approved H-2B petition to bring in H-2B workers under that petition any time during the 120-day period beginning on the employer's starting date of need. In order to bring in workers between day 90 and day 120, though, the employer must conduct additional U.S. worker recruitment.[64]

A provision (§109) in Division A of the FY2020 Further Consolidated Appropriations Act (P.L. 116-94) extends the H-2B seafood industry staggered entry exception for FY2020. Division A also extends for FY2020 other previously enacted H-2B provisions that address H-2B prevailing wage determinations (§110) and prohibit the use of funds in the act to implement certain regulatory provisions related to the H-2B labor certification process (§111).[65]

In addition, P.L. 116-94 includes a provision on H-2B numerical limitations for FY2020 (Div. I, §105). This provision authorizes DHS to increase the number of aliens who may receive H-2B visas in FY2020 beyond the statutory cap upon a determination that the needs of U.S. businesses cannot be met by U.S. workers. The 116th Congress enacted the same provision for FY2019 in P.L. 116-6 (Div. H, §105), and DHS made 30,000 additional H-2B visas available for that year.[66] In early March 2020, DHS announced that it would use the authority provided by P.L. 116-94 to make 35,000 supplemental H-2B visas available for the second half of FY2020, while simultaneously taking steps to "promote integrity in the program" and "combat fraud and abuse."[67] In early April, in the midst of the coronavirus pandemic, DHS said that it was putting the rule on the supplemental visas on hold.[68]

E-3 Visa for Specialty Occupation Workers

The REAL ID Act of 2005 (P.L. 109-13, Div. B, Title V) created a new E-3 nonimmigrant visa category, which is currently limited to nationals of Australia. Like H-1B visas, E-3 visas are for temporary workers in specialty occupations.[69] The E-3 visa category has an annual numerical

2020 in response to the COVID-19 emergency, see CRS Report R44849, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues*.

[63] See CRS Report R44306, *The H-2B Visa and the Statutory Cap*.

[64] This H-2B seafood industry staggered entry provision was also incorporated into the 2015 DHS-DOL interim final rule on H-2B employment. For further discussion of the H-2B staggered entry provision, see CRS Report R44306, *The H-2B Visa and the Statutory Cap*.

[65] See CRS Report R44849, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues*.

[66] See CRS Report R44306, *The H-2B Visa and the Statutory Cap*.

[67] U.S. Department of Homeland Security, "DHS to Improve Integrity of Visa Program for Foreign Workers," March 5, 2020, https://www.dhs.gov/news/2020/03/05/dhs-improve-integrity-visa-program-foreign-workers.

[68] According to DHS, "DHS's rule on the H-2B cap is on hold pending review due to present economic circumstances. No additional H-2B visas will be released until further notice"; Suzanne Monyak, "DHS Halts Extra Guestworker Visas As Unemployment Jumps," *Law360*, April 2, 2020.

[69] INA Section 214(i)(1) defines *specialty occupation* as "an occupation that requires theoretical and practical application of a body of highly specialized knowledge and attainment of a bachelor's or higher degree in the specific

limit of 10,500,[70] which has never been reached. H.R. 2877, as passed by the House, would make Irish nationals eligible for E-3 nonimmigrant visas. The number of E-3 visas available to Irish nationals in a fiscal year—if any—would be equal to the number of the allotted 10,500 visas left unused by Australian E-3 workers in the previous fiscal year. H.R. 2877 would also require the employer of an E-3 visa holder to participate in the E-Verify program (see "Electronic Employment Eligibility Verification").

Commonwealth of the Northern Mariana Islands

The Consolidated Natural Resources Act of 2008 (P.L. 110-229) extended U.S. immigration laws to the Commonwealth of the Northern Mariana Islands (CNMI), a U.S. territory in the Pacific. P.L. 110-229 aimed, in particular, to provide for federal regulation and oversight of the admission of foreign workers to the territory. It established a transition period (currently scheduled to end on December 31, 2029) to accommodate the move from the former CNMI foreign worker permit system to the U.S. immigration system, during which it authorized the issuance of CNMI-Only Transitional Worker (CW-1) visas. This visa classification allows CNMI employers to apply for permission to employ foreign workers who are otherwise ineligible to work under the nonimmigrant worker categories in the INA. P.L. 110-229 also created a CNMI-only investor visa for persons who previously had investor permits under the territorial system.

In the 115th Congress, the Northern Mariana Islands Economic Expansion Act (P.L. 115-53) revised the CW-1 classification such that CW-1 visas are generally no longer available to workers who will be performing jobs classified as construction and extraction occupations by DOL.[71] The Northern Mariana Islands U.S. Workforce Act of 2018 (P.L. 115-218) set decreasing annual numerical limitations on the CW-1 visa during the transition period. In the 116th Congress, H.R. 4479, as ordered to be reported by the House Natural Resources Committee, would allow for 3,000 CW-1 workers in construction and extraction occupations for each of FY2020, FY2021, and FY2022. These workers would be limited to nationals of countries eligible to participate in the H-2B program in 2018 (see "H-2B Visa") who are performing disaster- or emergency-related work. They would not be counted against the CW-1 annual caps.

Other legislation considered in the 116th Congress focuses on long-time CNMI residents. Beginning in 2011, USCIS established special parole programs that granted permission to certain populations to reside in the CNMI (see "Parole"). These populations included immediate relatives of U.S. citizens legally residing in the CNMI and certain CNMI-born individuals considered "stateless."[72] In December 2018, USCIS announced plans to end the CNMI parole programs in accordance with Executive Order 13767.[73]

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specialty (or its equivalent) as a minimum for entry into the occupation in the United States."

[70] INA §214(g)(11).

[71] Exceptions are provided for workers who have maintained continuous CW-1 status for the same employer since before October 1, 2015.

[72] For more information, see U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Parole for Immediate Relatives of U.S. Citizens and Certain Stateless Individuals," January 17, 2017, https://www.uscis.gov/legal-resources/immigration-commonwealth-northern-mariana-islands-cnmi/parole-immediate-relatives-us-citizens-and-certain-stateless-individuals.

[73] U.S. Department of Homeland Security, U.S. Citizenship and Immigration Services, "Termination of the Categorical Parole Programs for Certain Individuals Present in the Commonwealth of the Northern Mariana Islands (CNMI)," June 28, 2019, https://www.uscis.gov/news/alerts/termination-categorical-parole-programs-certain-individuals-present-commonwealth-northern-mariana-islands-cnmi. Note that the body of this news alert was issued on December 27,

The Northern Mariana Islands Long-Term Legal Residents Relief Act (P.L. 116-24) establishes a new CNMI Resident Status for certain individuals, including those granted parole under the terminated parole programs. This status allows an individual to be treated as an alien lawfully admitted to the Commonwealth only. H.R. 560, as passed by the House, would provide CNMI Resident Status to two categories of long-term CNMI residents not covered by P.L. 116-24: workers and investors who were originally admitted and authorized to stay indefinitely when the CNMI controlled immigration to the territory.

Permanent Employment-Based Immigration

The current employment-based LPR (*green card*) system consists of five numerically limited preference categories.[74] To qualify within one of these employment-based (EB) categories, a foreign national must be (1) a person of extraordinary ability in a specified area, (2) a person of exceptional ability in a specified area, (3) a shortage worker who is either skilled (or professional) or unskilled, (4) a person who meets the definition of a *special immigrant*,[75] or (5) an investor who will start a business that creates at least 10 new jobs.[76] (These preference categories are commonly referred to as EB-1, EB-2, etc.) The INA allocates 140,000 admissions annually for all employment-preference immigrants (including accompanying family members). How prospective immigrants apply for employment-based LPR status depends on where they reside. If they live abroad, they may apply as new immigrant arrivals. If they reside in the United States, they may apply to *adjust status* from a temporary (nonimmigrant) status (e.g., H-1B temporary specialty occupation worker) to LPR status.[77]

EB-1, EB-2, and EB-3 Workers

Currently, there is a backlog of almost 1 million foreign nationals and accompanying family members lawfully residing in the United States who have been approved for, and are waiting to receive, employment-based green cards.[78] Most are being sponsored through the first three employment-based categories. The backlog exists, and is projected to increase each year, because the number of foreign workers who self-sponsor or are sponsored by U.S. employers for green cards each year exceeds the INA annual allocation. In addition to this numerical limit, there is a statutory 7% per-country ceiling applied to each preference category, which prevents the monopolization of employment-based green cards by foreign nationals from a few countries. This per-country ceiling has created decades-long waits for nationals from large migrant-sending countries such as India and China.

2018; the alert was updated in June 2019 following enactment of P.L. 116-24.

[74] For an overview of the U.S. system of permanent admissions, of which employment-based immigration is a main component, as well as information about the five employment-based preference categories, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

[75] Special immigrants include religious workers, long-serving employees of the U.S. government abroad, and Iraqi and Afghan nationals who have worked on behalf of the U.S. government in their home countries. See CRS Report R43725, *Iraqi and Afghan Special Immigrant Visa Programs*.

[76] See CRS Report R45447, *Permanent Employment-Based Immigration and the Per-country Ceiling*.

[77] See CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*.

[78] See CRS Report R46291, *The Employment-Based Immigration Backlog*. A large proportion of these workers are seeking to adjust from H-1B nonimmigrant status to LPR status through the first three employment-based categories. For more information, see CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*.

Legislation under consideration in the 116th Congress would significantly impact the first three employment-based categories. The Fairness for High-Skilled Immigrants Act (H.R. 1044), as passed by the House, would eliminate the 7% per-country ceiling. It would allocate employment-based visas to prospective immigrants by application date on a *first-come, first-served* basis without regard to country of origin. However, it would not reduce the backlog because it would not increase the number of foreign nationals receiving green cards. As passed by the House, H.R. 1044 would include a three-year transition period from the current system to the new system. A related bill of the same name has been introduced in the Senate as S. 386, and is under consideration by the Senate Judiciary Committee.[79]

Separately, Section 207 of House-passed H.R. 5038, the Farm Workforce Modernization Act of 2019, would increase the number of immigrant visas available for EB-3 preference category immigrants from the current 40,040 to 80,040. The additional 40,000 immigrant visas would be reserved for qualified workers who either could perform agricultural labor in the United States or could demonstrate employment as an H–2A temporary agricultural worker in the United States for 100 days in each of 10 years.[80] This latter group of qualified agricultural workers would be able to self-petition for immigrant visas, whereas all other EB-3 prospective immigrants would still need an employer to petition on their behalf. The agricultural worker immigrant visas would not be subject to the 7% ceiling governing all employment-based immigrant visas or to the labor certification requirements for all EB-3 immigrant visas.[81] (For additional discussion of H.R. 5038, see "Agricultural Workers.")

EB-4 Special Immigrants

Special immigrants comprise the fourth category of permanent employment-based admissions under the INA. Over the years, various special immigrant classifications have been established in statute. While the classifications cover different groups, there are some common elements across multiple beneficiary populations, such as U.S. government employees or other public service-type workers.[82] The 116th Congress has acted on legislation on the permanent special immigrant category for juveniles and the temporary special immigrant programs for Afghans employed by or on behalf of the U.S. government and for nonminister religious workers.

Special Immigrant Juveniles

The INA defines a *special immigrant juvenile* (SIJ) as an unmarried foreign national under age 21 in the United States who possesses a juvenile court order declaring that he or she is a ward (dependent) of the court; is unable to be reunified with *one or both parents* because of abuse, abandonment, or neglect; and is granted SIJ status by DHS. The INA further specifies that to be eligible for SIJ status, it must not be in the alien's best interests to return to his or her home

[79] For further discussion of S. 386 and the issue of removing the per-country ceiling for employment-based immigrants, see CRS Report R46291, *The Employment-Based Immigration Backlog*.

[80] For more information on the H-2A temporary agricultural worker program, see CRS Report R44849, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues*.

[81] Before an individual can be granted an EB-3 visa, DOL must determine through its foreign labor certification program that (1) there are insufficient able, willing, qualified, and available U.S. workers to perform the work in question; and (2) the employment of foreign workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. INA §212(a)(5), 8 U.S.C. §1182(a)(5).

[82] For background information on the special immigrant category, see CRS Report R43725, *Iraqi and Afghan Special Immigrant Visa Programs*.

country.[83] A person with SIJ status can apply to adjust to LPR status through the fourth employment-based immigrant category for special immigrants. Concerns that increasing numbers of unaccompanied alien children are using SIJ status to acquire LPR status have some immigration enforcement advocates calling for legislation to narrow the SIJ criteria.[84]

S. 1494, as reported by the Senate Judiciary Committee, would limit eligibility for SIJ status to those who are not able to reunify with *either parent*, rather than with one or both parents.[85] The bill would also give DHS the nonreviewable discretion to determine (1) if an order of dependency or custody had been granted by the court primarily to provide LPR status to the foreign national, and (2) whether the court had appropriate jurisdiction to do so.

Afghan Special Immigrants

The FY2009 Omnibus Appropriations Act (P.L. 111-8) established a temporary special immigrant visa (SIV) program to grant LPR status to certain Afghan nationals employed by or on behalf of the U.S. government in Afghanistan; this classification, as amended, also applies to certain employees of the International Security Assistance Force.[86] This Afghan SIV program was initially capped at 1,500 principal aliens annually for FY2009 through FY2013, but a subsequent series of laws provided additional visas. By the start of the 116th Congress, 14,500 visas had been made available for issuance after December 19, 2014, subject to an application deadline of December 31, 2020.[87]

In the 116th Congress, P.L. 116-6 (Div. F, §7076) provided an additional 4,000 visas for this Afghan SIV program, for a total of 18,500 visas available for issuance after December 19, 2014, but made no change to the application deadline. This law also made the funding for the additional 4,000 visas conditional on DOS developing a system for prioritizing the processing of Afghan SIV applications and submitting specified reports. P.L. 116-92(Div. A, §1219) modifies the Afghan SIV eligibility criteria to eliminate certain requirements. It also increases the number of visas available for issuance to 22,500 and extends the application deadline to December 31, 2021.

Special Immigrant Religious Workers

Religious workers are also the subject of a special immigrant category. DHS regulations define a *religious worker* as a minister or an individual engaged in and qualified for a religious occupation or vocation according to the denomination's standards. While the statutory provision for the admission of ministers of religion is permanent, the provision admitting other religious workers has always had a sunset date. The 116th Congress extended the special immigrant program for

[83] For background information, see archived CRS Report R43703, *Special Immigrant Juveniles: In Brief*.

[84] See, for example, Andrew R. Arthur, *Catch and Release Escape Hatches: Loopholes that encourage illegal entry*, Center for Immigration Studies, May 4, 2018.

[85] For example, a child may not be able to be reunified with her mother, and the mother and father may live apart, in which case the child could not be reunified with one parent (the mother) or both parents. However, the child in this example could be reunified with her father. Current statute would allow her to qualify for SIJ status, By contrast, the provision in S. 1494 would prevent this child from qualifying for SIJ status because she could be reunified with at least one of her parents (in this case, her father).

[86] P.L. 111-8, Div. F, Title VI, 8 U.S.C. §1101 note. A separate permanent special immigrant visa classification covers Afghans (and Iraqis) who have worked for the United States as translators or interpreters. See CRS Report R43725, *Iraqi and Afghan Special Immigrant Visa Programs*.

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

nonminister religious workers through September 30, 2019, in P.L. 116-6 (Div. H, §102) and through September 30, 2020, in P.L. 116-94 (Div. I, §102).

EB-5 Immigrant Investors

The fifth preference category under the INA employment-based immigration system is for immigrant investors coming to the United States. The stated aim of the immigrant investor visa, commonly referred to as the EB-5 visa, is to benefit the U.S. economy, primarily through employment creation and an influx of foreign capital. EB-5 visas are designated for individuals wishing to develop a new commercial enterprise in the United States. The INA stipulates that for an investor to qualify, the enterprise must create or preserve at least 10 jobs, and the individual must invest a specified amount of capital in the enterprise.[88]

In 1992, P.L. 102-395 authorized a temporary program to achieve the economic activity and job creation goals of the EB-5 visa category by encouraging investment in economic units known as Regional Centers.[89] The Regional Center Program is intended to provide a coordinated focus for foreign investment toward specific geographic regions. The overwhelming majority of EB-5 immigrant investors come through this program. P.L. 116-6 extended the Regional Center Program through September 30, 2019 (Div. H, §104), and P.L. 116-94 extends it through September 30, 2020 (Div. I, §104).

Asylum and Refugee Status

The INA provides for the granting of asylum and refugee status to foreign nationals who meet the act's definition of a refugee as well as other requirements particular to each category. There is no fee for applying for these types of humanitarian relief. The INA defines a *refugee*, in general, as a person who is unable or unwilling to return to his or her home country because of persecution or a well-founded fear of persecution based on one of five characteristics: race, religion, nationality, membership in a particular social group, or political opinion. After one year in the United States as an asylee (a person granted asylum) or a refugee, an individual can apply for LPR status.[90]

While applicants for asylum and refugee status are subject to the same persecution standard, procedures under the programs differ. Depending on the circumstances, foreign nationals who are present in the United States or arriving in the United States (whether or not at POEs) may be able to apply for asylum with USCIS or seek asylum before an EOIR immigration judge during removal proceedings. The INA provides that an arriving foreign national who lacks proper immigration documents or engages in fraud or misrepresentation can be placed in a streamlined removal proceeding known as expedited removal. If, however, an alien placed in expedited removal expresses a fear of persecution and a USCIS asylum officer determines that the individual has a *credible fear of persecution* (defined in the INA to mean that there is a "significant possibility" that the alien could establish eligibility for asylum), then he or she is

[88] A 2019 DHS final rule substantially revised the EB-5 program. See U.S. Department of Homeland Security, "EB–5 Immigrant Investor Program Modernization," 84 *Federal Register* 35750, July 24, 2019.

[89] P.L. 102-395, Title VI, §610. DHS regulations define a Regional Center as a public or private economic unit engaged in the promotion of economic growth, improved regional productivity, job creation, and increased domestic capital investment. 8 C.F.R. §204.6(e).

[90] In the case of refugees, the INA requires application for LPR status after one year. INA §209(a), 8 U.S.C. §1159(a).There is no comparable statutory requirement for asylees.

referred to an EOIR immigration judge for a hearing.[91] By contrast, refugees are processed and admitted to the United States from abroad. DOS's Bureau of Population, Refugees, and Migration (PRM) coordinates and manages the U.S. refugee program, and USCIS makes final determinations about eligibility for admission.

Asylum System

S. 1494, as reported by the Senate Judiciary Committee, would make changes to the statutory asylum process.[92] It would tighten the credible fear of persecution standard described above by redefining the term to mean that "it is more likely than not that the alien would be able to establish eligibility for asylum." For an officer to make a positive credible fear finding, he or she would also need to determine that "it is more likely than not that the statements made by the alien or on behalf of the alien are true."

Among the other changes S. 1494 would make to the asylum system, only those foreign nationals who entered the United States at a POE would be able to apply for asylum. The bill also proposes to add new grounds of ineligibility for asylum. It would make ineligible an individual who has been convicted of a felony, has been previously removed from the United States, or is inadmissible under an INA ground of inadmissibility (excluding the grounds related to public charge, labor certification, and documentation requirements). S. 1494 would also make ineligible for asylum a national of a country in Central America that has a U.S. refugee application and processing center (which the bill would separately establish; see "Refugee Admissions Program") or that is contiguous to a country with such a center (other than Mexico).

Refugee Admissions Program

Under the INA, the annual number of refugees that can be admitted into the United States, known as the refugee ceiling, and the allocation of the ceiling are set by the President after consultation with Congress at the start of each fiscal year.[93] Subject to these numerical limitations, an individual overseas who is a refugee, as defined above, may be admitted to the United States if he or she is not firmly resettled in a foreign country, is found to be of special humanitarian concern to the United States, and is admissible under the applicable grounds of inadmissibility in the INA.[94]

As noted earlier, PRM coordinates and manages the U.S. refugee program. P.L. 116-6 includes a provision in Division F (Department of State, Foreign Operations, and Related Programs Appropriations Act, 2019, §7073(b)(3)) stating that none of the funds appropriated under that division or any other act "may be used to downsize, downgrade, consolidate, close, move, or relocate the Bureau of Population, Refugees, and Migration, Department of State, or any

[91] See CRS Report R45539, *Immigration: U.S. Asylum Policy*. This report discusses statutory asylum provisions as well as asylum-related policies implemented by the Trump Administration. Also see CRS In Focus IF11363, *Processing Aliens at the U.S.-Mexico Border: Recent Policy Changes*; and CRS Infographic IG10017, *Processing of Adults and Family Units Arriving at the Southern Border Without Valid Documents*.

[92] For background information on asylum, see CRS Report R45539, *Immigration: U.S. Asylum Policy*.

[93] For fiscal years prior to FY2020, Presidents set annual worldwide refugee ceilings and regional allocations (that is, allocations of the annual ceilings among the regions of the world). For FY2020, the President set a worldwide refugee ceiling (of 18,000). Rather than allocating this ceiling by region, however, he allocated it by "population of special humanitarian concern." See CRS Insight IN11196, *FY2020 Refugee Ceiling and Allocations*. For general background, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*.

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

activities of such Bureau, to another Federal agency." P.L. 116-94 (Div. G, §7062(b)(2)) includes the same language for FY2020.

S. 1494, as reported by the Senate Judiciary Committee, would amend the INA provisions on refugee admissions temporarily to direct DOS, in consultation with DHS, to establish refugee application and processing centers to accept and process refugee applications.[95] It would require that one center be located in Mexico and that at least three centers be located in Central America. S. 1494 would further direct DOS and DHS to prescribe fees for applications received and adjudicated at the centers. S. 1494 specifies that these amendments would be in effect for three years and 240 days.

Lautenberg Amendment on Refugees

Special legislative provisions facilitate relief for certain refugee groups. The "Lautenberg amendment," first enacted in 1989 as part of P.L. 101-167, required the Attorney General (now the DHS Secretary) to designate categories of Soviet and Indochinese nationals for whom less evidence would be needed to prove refugee status. In the case of Soviet nationals, the original law stipulated that certain religious minority groups were to be designated as categories.[96] The Lautenberg amendment also provided for the adjustment to LPR status of certain former Soviet and Indochinese nationals denied refugee status.

P.L. 108-199 amended the Lautenberg amendment to add a new provision, known as the "Specter amendment," that directed the Attorney General to establish categories of Iranian religious minorities who could qualify for refugee status under the Lautenberg amendment's reduced evidentiary standard. The Lautenberg amendment has been regularly extended over the years, although at times there have been lapses between extensions. The amendment was extended through September 30, 2019, by P.L. 116-6 (Div. F, §7034(m)(5)), and is currently extended through September 30, 2020, by P.L. 116-94 (Div. G, §7034(l)(5)).

U.S. Citizenship and Naturalization

The INA delineates how a person may acquire U.S. citizenship.[97] Under INA Section 320, a child born outside the United States automatically acquires U.S. citizenship if he or she (1) has at least one parent who was a U.S. citizen at the time of the child's birth, (2) is under age 18, and (3) is residing in the United States in the citizen parent's legal and physical custody.[98] Children born to U.S. military servicemembers and U.S. civil servants who are stationed and living abroad do not receive automatic citizenship under the INA because they do not meet the third requirement for U.S. residence. The Citizenship for Children of Military Members and Civil Servants Act (P.L. 116-133) changes this by providing that a foreign-born child of a U.S. citizen member of the Armed Forces or government employee automatically acquires U.S. citizenship even if the child is not residing in the United States.

[95] For information on how refugee processing is currently conducted, see CRS Report RL31269, *Refugee Admissions and Resettlement Policy*.

[96] P.L. 101-167, as originally enacted, referenced individuals "who are or were nationals and residents of the Soviet Union." This language was subsequently amended to read, "who are or were nationals and residents of an independent state of the former Soviet Union or of Estonia, Latvia, or Lithuania."

[97] For background information on how foreign nationals acquire U.S. citizenship, see archived CRS Report R43366, *U.S. Naturalization Policy*.

[98] 8 U.S.C. §1431.

The INA allows noncitizens who serve in the U.S. military and meet certain requirements to acquire U.S. citizenship through an expedited naturalization process.[99] Recent media reports have described cases of noncitizen U.S. veterans who served in and were honorably discharged from the U.S. military, neglected to apply for citizenship, subsequently were convicted of crimes that made them removable, and were then deported to their countries of origin.[100] Legislative proposals have been introduced regularly in Congress to require the U.S. military to help ensure that noncitizen enlistees are both made aware of expedited citizenship and assisted in the application process. P.L. 116-92 (§570D) requires each branch of the U.S. military to provide counseling to enlisted noncitizen military servicemembers regarding how to apply for U.S. naturalization.

Other Issues and Legislation

Electronic Employment Eligibility Verification

Employment eligibility verification is widely viewed as a key element in a strategy to reduce unauthorized immigration.[101] Under the INA, it is unlawful for an employer to knowingly hire, recruit or refer for a fee, or continue to employ an alien who is not authorized to be so employed. Employers are further required to participate in a paper-based (I-9) employment eligibility verification system in which they examine documents presented by new hires to verify identity and work eligibility, and complete and retain I-9 verification forms.[102]

While all employers must meet the I-9 requirements, they also may participate in the USCIS-administered E-Verify electronic employment eligibility verification system. E-Verify is largely voluntary but has some mandatory participants, such as certain federal contractors.[103] Participants in E-Verify electronically verify new hires' employment authorization through Social Security Administration and, if necessary, DHS databases. E-Verify is a temporary program. The 116th Congress extended the program through September 30, 2019, in P.L. 116-6 (Div. H, §101), and through September 30, 2020, in P.L. 116-94 (Div. I, §101).

Title III of H.R. 5038, as passed by the House, would direct DHS to establish an electronic employment eligibility verification system. The new system would be modeled on—and would replace—E-Verify, and would be permanent. Mandatory participants in E-Verify would be required to use the new verification system. In addition, participation in the new system would be mandatory for "a person or entity hiring, recruiting, or referring for a fee an individual for agricultural employment in the United States." The participation requirement for the agricultural industry with respect to hiring would be phased in by employer size. The effective dates for mandatory participation would be tied to the application period for the agricultural worker legalization program in Title I of H.R. 5038 (see "Agricultural Workers").

[99] Under these provisions, a member of the military can naturalize after one year of military service in peacetime and immediately during wartime. INA §328, 8 U.S.C. §1439; INA §329, 8 U.S.C. §1440. See CRS In Focus IF10884, *Expedited Citizenship through Military Service*.

[100] See, for example, Maria Ines Zamudio, "Deported U.S. Veterans Feel Abandoned By The Country They Defended," *NPR, WBEZ*, June 21, 2019.

[101] For further information about employment eligibility verification and the E-Verify system, see CRS Report R40446, *Electronic Employment Eligibility Verification*.

[102] INA §274A, 8 U.S.C. §1324a.

[103] For further information on the federal contractor requirements, see the U.S. Department of Homeland Security's E-Verify page on Federal Contractors at https://www.e-verify.gov/employers/federal-contractors.

Waivers for Foreign Medical Graduates

Foreign medical graduates (FMGs) may enter the United States on J-1 nonimmigrant visas in order to receive graduate medical education and training. Such FMGs must return to their home countries after completing their education or training for at least two years before they can apply for certain other nonimmigrant visas or LPR status, unless they are granted a waiver of this foreign residency requirement. States are able to request waivers on behalf of FMGs under a temporary program, known as the Conrad State Program or the Conrad 30 Program. Established in 1994 by P.L. 103-416, it initially applied to aliens who acquired J status before June 1, 1996, and has been regularly extended. The 116th Congress extended the program through September 30, 2019, in P.L. 116-6 (Div. H, §103) and through September 30, 2020, in P.L. 116-94 (Div. I, §103).

Treaty Traders and Treaty Investors

Treaty traders and investors may enter the United States on E-1 or E-2 nonimmigrant visas, respectively. To qualify for either visa, a foreign national must be a citizen or national of a country with which the United States maintains a treaty of commerce and navigation.[104] In addition, the foreign national must demonstrate that the purpose of coming to the United States is, in the case of the E-1 visa, "to carry on substantial trade, including trade in services or technology, principally between the United States and the treaty country"; or, in the case of the E-2 visa, "to develop and direct the operations of an enterprise in which the national has invested, or is in the process of investing, a substantial amount of capital."[105] H.R. 565, as passed by the House, would make nationals of Portugal eligible for E-1 and E-2 nonimmigrant visas if the government of Portugal provides similar nonimmigrant status to nationals of the United States.

Parole

Parole is a means by which an alien may be permitted to physically enter the United States without being deemed to have been "admitted" into the country for immigration purposes. The INA authorizes the Attorney General (now the DHS Secretary) to "parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission into the United States."[106] Parole does not constitute formal admission to the United States; an individual granted parole is still considered to be an applicant for admission.[107] Over the years, the former Immigration and Naturalization Service (INS) and DHS established special parole programs for certain populations.

S. 1494, as reported by the Senate Judiciary Committee, would place restrictions on the DHS Secretary's parole authority. It would amend the INA parole provisions to delineate the particular circumstances in which the Secretary could grant humanitarian or significant public interest parole. It also would specify that the Secretary could not grant parole "according to eligibility

[104] 8 C.F.R. §214.2(e)(6). A treaty country includes a foreign state that is accorded treaty visa privileges under Section 101(a)(15)(E) of the INA by specific legislation. For the current list of countries that qualify, see U.S. Department of State, "Treaty Countries," https://travel.state.gov/content/visas/en/fees/treaty.html.

[105] INA §101(a)(15)(E), 8 U.S.C. §1101(a)(15)(E).

[106] INA §212(d)(5), 8 U.S.C. §1182(d)(5).

[107] For additional discussion of parole, see CRS Report R45158, *An Overview of Discretionary Reprieves from Removal: Deferred Action, DACA, TPS, and Others*.

criteria describing an entire class of potential parole recipients," and that the parole authority could not be used "to supplement established immigration categories without an Act of Congress." Separately, a provision in Executive Order 13767 directs the Secretary "to ensure that [INA] parole authority … is exercised only on a case-by-case basis in accordance with the plain language of the statute."[108]

Executive Action on Immigration

The No BAN Act (H.R. 2214), as reported by the House Judiciary Committee, would amend an INA provision that, in main part, authorizes the President to suspend, or impose restrictions on, the entry into the United States of any aliens as immigrants or nonimmigrants whenever the President finds that the entry of such aliens would be detrimental to U.S. interests.[109] Under the revision proposed by H.R. 2214, the President could temporarily suspend, or impose restrictions on, the entry of aliens as immigrants or nonimmigrants

> if the Secretary of State, in consultation with the Secretary of Homeland Security, determines, based on specific and credible facts, that the entry of any aliens or any class of aliens into the United States would undermine the security or public safety of the United States or the preservation of human rights, democratic processes or institutions, or international stability.

This authority would be subject to statutory limitations, including requirements to narrowly tailor the suspension or restriction on entry and to specify its duration. In addition, prior to the President issuing an entry suspension or restriction, the Secretary of State and the Secretary of Homeland Security would need to consult Congress and provide specific evidence supporting the need for the suspension or restriction and its proposed duration. The amended provision would further allow for an individual or entity in the United States who has been harmed by a violation of the provision to seek relief in federal court. Among its other provisions, H.R. 2214 would terminate specified executive orders and presidential proclamations. These include Executive Order 13769, Executive Order 13780, and Presidential Proclamation 9645, known collectively as the "Travel Ban."[110]

Access to Counsel

Access to counsel is an issue that arises in different contexts in the U.S. immigration system, including in interactions between foreign nationals seeking U.S. entry at POEs and CBP officers.[111] The Access to Counsel Act of 2020 (H.R. 5581), as reported by the House Judiciary Committee, would amend the INA to ensure that a covered individual seeking entry into the United States has the opportunity to consult with counsel and an interested party (such as a relative) during the CBP inspection process. For purposes of H.R. 5581, covered individuals include LPRs returning from trips abroad, refugees, and foreign nationals with valid visas seeking immigrant or nonimmigrant admission.

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[108] Executive Order 13767, "Border Security and Immigration Enforcement Improvements," 82 *Federal Register* 8793, January 30, 2017.

[109] INA §212(f), 8 U.S.C. §1182(f).

[110] For further discussion, see CRS Legal Sidebar LSB10458, *Presidential Actions to Exclude Aliens Under INA § 212(f)*.

[111] For a comparison of procedural protections (including access to counsel) available to aliens arriving at the U.S. border and within the United States, see CRS Legal Sidebar LSB10150, *Immigration Laws Regulating the Admission and Exclusion of Aliens at the Border*.

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