



Immigration

Immigration is a broad, multifaceted policy issue that involves temporarily or permanently admitting foreign nationals (aliens) into the United States and enforcing immigration laws. It is a perennial topic of congressional oversight and legislation. In recent years, the executive branch has taken the lead in implementing numerous policy initiatives, relying on discretionary authority conferred by statute.

During the 115th Congress, the Trump Administration has pursued various immigration policies through executive branch action, including the imposition of entry restrictions known as the “travel ban,” the termination of the Deferred Action for Childhood Arrivals (DACA) initiative, and the “zero tolerance” policy regarding illegal border crossing. Courts have blocked some of these actions. For other proposals, such as constructing a border wall and restricting family-based immigration, the Administration has sought congressional action.

U.S. immigration law is concerned with *aliens*, a term defined by the Immigration and Nationality Act to mean persons who are not U.S. citizens or U.S. nationals (e.g., persons born in American Samoa). Aliens are also referred to as *noncitizens* or *foreign nationals*.

Overview of Key Issues

U.S. immigration policy can be divided into three broad areas, involving (1) the permanent or temporary admission or entry of aliens into the United States; (2) the enforcement of laws governing aliens’ entry, presence, and employment in the United States; and (3) noncitizens’ eligibility for federal, state, and local government programs and benefits.

Admission or Entry of Aliens to the United States

The Immigration and Nationality Act (INA) provides for the admission or other entry of aliens to the United States. Some aliens are admitted “permanently,” through family- or employment-sponsored *immigrant* visas, or as refugees, and they receive “green cards” or lawful permanent resident (LPR) status. Others are admitted temporarily for specific purpose through *nonimmigrant* visas (e.g., tourists, students, or temporary workers).

Permanent Admissions. Four major principles underlie U.S. policy on permanent immigration: (1) reunifying families, (2) admitting immigrants with needed skills, (3) diversifying immigrant flows by country of origin, and (4) providing humanitarian refuge. The first three principles form the basis for the INA’s complex set of numerical limits and preference categories for permanent immigration. In contrast, the INA gives the President discretion, in consultation with Congress, to determine annually the number of refugees admitted to the United States. *Refugees* are persons displaced from their home countries because of

persecution on a protected ground (e.g., race or religion). Aliens admitted as immigrants or refugees may apply to become U.S. citizens through a process known as naturalization, typically after five years of U.S. residence.

In FY2017, roughly 1.1 million aliens became LPRs, including 749,000 through family-sponsored pathways, 138,000 through employment-sponsored pathways, 52,000 through the Diversity Immigrant Visa, 146,000 through the refugee and asylum programs, and 43,000 through other specialized categories. Congress has debated whether and how to restructure the current family- and employment-sponsored admissions provisions to reflect U.S. needs and interests. President Trump capped FY2017 refugee admissions at 50,000 in the “travel ban” executive orders after the Obama Administration had set the original cap for that year at 110,000.

Temporary Admissions. The INA also provides for the admission of nonimmigrants for specific periods of time and purposes. In FY2017, there were more than 181 million nonimmigrant admissions, most of which were for local border crossing activity, tourism, and business travel. A temporary admission, in itself, generally does not provide a pathway to U.S. citizenship.

Nonimmigrants also include guest workers on H-1 and H-2 visas, whose admission to the United States is subject to various restrictions intended to minimize their impact on the domestic labor market. An ongoing debate centers on whether and how admitting temporary workers affects U.S. workers, as well as whether the INA should be amended to limit such effects.

Screening of Applicants for Admission. Aliens seeking admission to the United States as immigrants or nonimmigrants are screened both outside the United States, typically while applying for visas, and at a U.S. port of entry when they seek admission. As part of the screening, aliens must establish their identity, meet eligibility requirements for their admission category, and not be inadmissible on INA grounds pertaining to health, criminal, security, terrorism, or other grounds.

Aliens from certain countries, including those participating in the *Visa Waiver Program* (VWP), may temporarily travel to the United States without a visa. However, VWP travelers and other visa-free travelers are subject to background checks and screening before and upon U.S. arrival. In FY2017, more than 22 million U.S. admissions occurred through the VWP program.

Enforcement of the Immigration Laws

The INA also prescribes a range of penalties and other consequences for aliens and, in some cases, other persons

who run afoul of the INA's restrictions on the admission or entry of aliens; the conditions of aliens' continued presence in the United States; the employment of aliens; and other matters. Initiatives to enforce these laws fall into two main categories: border security and interior enforcement.

Border Security. Border security involves securing the means by which people and goods enter the country. Operationally, this requires controlling the official ports of entry through which legitimate travelers and commerce enter the United States, and patrolling the nation's land and maritime borders to interdict illegal entries. Federal law gives the Department of Homeland Security (DHS) broad authority to deploy physical barriers along U.S. borders and to waive the application of various laws that impede their construction. The Trump Administration has sought and may continue to seek appropriations to construct a singular physical barrier known as the "wall" along most or all of the southern border between Mexico and the United States.

In FY2017, DHS's Customs and Border Protection (CBP) apprehended 303,916 aliens illegally crossing the southern border and 6,615 aliens illegally crossing the northern and U.S. coastal borders. Many of those apprehended at the southern border migrated from El Salvador, Guatemala, and Honduras, including many families and unaccompanied children. The INA and other legal authorities limit the detention of family units and unaccompanied children who have been apprehended while illegally entering the United States. In 2018, the Trump Administration briefly pursued a "zero-tolerance" policy of criminally prosecuting all illegal entrants, which resulted in the separation of children from their parents for more than 2,600 families who illegally crossed the southern border; the President ended the policy by executive order.

Interior Enforcement. Interior enforcement refers to immigration law enforcement within the U.S. interior. For instance, worksite enforcement applies to aliens not authorized to work in the United States. Another interior enforcement responsibility involves removing aliens who illegally entered or remained in the United States. Depending upon circumstances, aliens may be detained pending their removal. In FY2017, DHS's Immigration and Customs Enforcement (ICE), the primary agency tasked with interior enforcement, removed 81,603 individuals arrested for violating immigration or criminal laws.

An estimated 11 million unauthorized aliens reside in the United States, raising a number of policy questions. Many live in "mixed-status" households with U.S. citizen children and spouses. Some observers favor creating a pathway to citizenship for at least some unauthorized aliens, while others support their removal. Questions also have been raised about which aliens should be priorities for removal, the adequacy of financial and other resources devoted to removal, whether removal should be expedited, how expedited processes could affect aliens' rights, and how to deal with "recalcitrant" countries that do not fully cooperate in the repatriation of their citizens and nationals.

Aliens' Eligibility for Government Programs

Federal laws restrict aliens' eligibility for *federal means-tested public benefits*, like Medicaid, although there are certain exceptions (e.g., LPRs with substantial U.S. work history). Restrictions also apply to aliens' eligibility for other *federal, state, and local public benefits*, which include retirement, welfare, and a range of government programs. DHS recently proposed new regulations that would make it more difficult for aliens to obtain LPR status if they use or are likely to use welfare, non-emergency Medicaid, the Supplemental Nutrition Assistance Program (SNAP), or certain other federal public benefits.

Recent Congressional Action

Although the 115th Congress has not enacted immigration laws considered major or comprehensive, the House and the Senate did enact several discrete immigration-related measures, including legislation to facilitate more expedient business travel between Asian countries and the United States, increase the number of temporary nonagricultural workers, and provide additional immigrant visas for foreign nationals assisting the U.S. military overseas.

The 115th Congress also considered legislative proposals centering on several prominent immigration issues. These included granting LPR status to unlawfully present aliens brought to the United States as children (current beneficiaries of the DACA program); bolstering border security, including appropriating funds for President Trump's proposed border "wall"; altering or terminating the Diversity Immigrant Visa and possibly allocating some or all of its visas to other permanent immigration pathways; revising and, in most cases, reducing family-based permanent immigration; replacing the existing employment-sponsored immigration system with an entirely merit-based approach; and replacing LPR status for parents of U.S. citizens with a new five-year renewable nonimmigrant visa. While many of these initiatives saw congressional action, none have been enacted into law.

Potential Action in the 116th Congress

With the change in majority of the House, the focus of congressional action on immigration is expected to shift. Legislation in the 116th Congress may include permanent immigration relief for DACA beneficiaries and foreign nationals with Temporary Protected Status (TPS). Some Members may also seek to act as a check against the Trump Administration's concerted focus on immigration enforcement, including a reassessment of border wall funding, a review of ICE's priorities for removing foreign nationals, and possible investigations into certain enforcement programs such as the "zero tolerance" policy and the resulting family separations. However, priorities for immigration policy legislation may differ in the Senate, where the majority from the previous Congress has increased.

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