



Immigration

Immigration is a multifaceted policy issue that involves temporarily or permanently admitting foreign nationals (in statute, *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, invoking discretionary authority conferred by statute.

U.S. immigration law uses the term *aliens*, defined by the Immigration and Nationality Act (INA) 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 of aliens into the United States; (2) the enforcement of laws governing the admission, presence, and employment of aliens in the United States; and (3) noncitizen eligibility for federal, state, and local government programs and benefits.

Admission or Entry of Aliens to the United States

The INA provides for the admission or other entry of aliens to the United States. Some aliens are admitted permanently through the family- or employment-based *immigrant* system, and receive “green cards” or lawful permanent resident (LPR) status. Others are admitted as refugees or granted asylum and can later obtain LPR status. Still others are admitted temporarily for specific purposes as *nonimmigrants* (e.g., tourists, students, 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) humanitarian admissions for refugees and asylees. 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. Generally, *refugees* are persons displaced from their home countries because of persecution on a protected ground (e.g., race, religion). Aliens granted LPR status may apply to become U.S. citizens through a process known as *naturalization*, typically after five years of U.S. residence.

In FY2018, roughly 1.1 million aliens became LPRs, including 696,000 through family-sponsored pathways, 138,000 through employment-based pathways, 45,000 through the Diversity Immigrant Visa, 186,000 through the refugee and asylum programs, and 32,000 through other specialized categories. Congress has debated whether and how to restructure the current family- and employment-

sponsored admissions provisions to reflect U.S. interests. Some Members of Congress and President Trump have argued for reducing family-sponsored immigration in favor of a “merit-based” approach that prioritizes education, employability, and English language proficiency. Additionally, President Trump has reduced the refugee admissions ceiling each year, and set the FY2020 ceiling at 18,000, the lowest in the history of the U.S. refugee program.

Temporary Admissions. The INA also provides for the temporary admission of nonimmigrants for limited periods and specific purposes. In FY2018, there were more than 186 million nonimmigrant admissions, most of which were for Mexican and Canadian border crossing activity, tourism, and business travel. A temporary admission, in itself, generally does not provide a pathway to LPR status.

Nonimmigrants also include temporary 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 how many workers should be admitted each year, how admitting temporary workers affects U.S. workers, and whether existing INA provisions should be amended to further limit such effects.

Screening of Applicants for Admission. Aliens seeking U.S. admission as immigrants, nonimmigrants, or refugees are screened outside the United States, typically while applying for visas, and again when they arrive at U.S. ports of entry. As part of the screening, aliens must establish their identities, meet eligibility requirements for their admission categories, and not be inadmissible for reasons pertaining to health, criminal, security, terrorism, or other grounds.

Aliens from certain countries, including those participating in the *Visa Waiver Program* (VWP), may travel temporarily to the United States without a visa. However, VWP travelers and other visa-free travelers are also subject to background checks and screening before and upon U.S. arrival. In FY2018, 22.8 million U.S. admissions occurred through the VWP.

Enforcement of Immigration Laws

The INA prescribes penalties for aliens who violate its restrictions on the admission or entry of aliens; the conditions of aliens’ continued presence in the United States; the employment of aliens; and other provisions. 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 (POE) through which legitimate travelers and commerce enter the United States, and patrolling the nation’s land and maritime borders to interdict illegal

entries between POE. 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. In response to multiple Trump Administration requests totaling more than \$8.3 billion through FY2019 for border barrier construction, Congress has appropriated almost \$3.1 billion. The Administration has redirected an additional \$6.7 billion, mostly from FY2019 defense funds, toward border barrier construction.

In 2018, the Trump Administration briefly pursued a “zero-tolerance” policy of criminally prosecuting all adult illegal entrants. Because the INA and other legal authorities limit the detention period of family units and unaccompanied children, the “zero tolerance” policy resulted in the separation of roughly 3,000 families who illegally crossed the southern border; the President ended the policy by executive order.

In FY2019, DHS’s Customs and Border Protection (CBP) apprehended 851,508 migrants at the southern border—the highest number since FY2007. Another 126,001 migrants were determined to be inadmissible at POE. Many of those apprehended at the southern border migrated from El Salvador, Guatemala, and Honduras, including many families and unaccompanied children. In January 2019, in response to increased numbers of migrants arriving at the southern border without entry documents, DHS implemented the Migrant Protection Protocols (MPP), which require many asylum seekers to wait in Mexico while U.S. immigration courts process their cases. To date, over 60,000 migrants have been placed into MPP. In addition, the Trump Administration has implemented new rules restricting access to the U.S. asylum system for aliens arriving at the southern border, including rendering aliens ineligible for asylum if they have transited through third countries, transferring aliens to “safe third countries” to pursue asylum there, and changes in asylum processing at border facilities.

Interior Enforcement. Interior enforcement refers to immigration law enforcement within the U.S. interior. For instance, worksite enforcement involves enforcing prohibitions on employing aliens who are not authorized to work in the United States. Another interior enforcement responsibility involves removing aliens who illegally entered the United States or entered legally but violated the terms of their admission. Depending upon circumstances, aliens may be detained pending their removal. In FY2019, DHS’s Immigration and Customs Enforcement (ICE), the primary agency tasked with interior enforcement, removed 85,958 individuals arrested for having violated immigration or criminal laws.

An estimated 10.5 million unauthorized aliens reside in the United States, raising a number of policy questions. For example, in 2016 an estimated 5.6 million children were living with unauthorized alien parents in “mixed-status” households. Some observers favor creating a pathway to LPR status for at least some unauthorized aliens, while others support removing all unauthorized aliens. Questions also have been raised about which aliens should be priorities for removal, how many resources should be devoted to removal, 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.

Noncitizen Eligibility for Government Programs

Federal laws restrict noncitizens’ eligibility for *federal means-tested public benefits*, like Medicaid, although there are certain exceptions (e.g., LPRs with substantial U.S. work histories). Restrictions also apply to eligibility for other federal, state, and local public benefits, which include retirement, welfare, and a range of government programs. DHS has issued new “public charge” regulations making it more difficult for noncitizens to obtain LPR status if they have used or are likely to use Temporary Assistance for Needy Families (TANF), non-emergency Medicaid, the Supplemental Nutrition Assistance Program (SNAP), or certain other federal public benefits.

Trump Administration Policies

During the 115th and 116th Congresses, the Trump Administration has pursued a broad range of immigration policies through executive branch action, including imposing entry restrictions known as the “travel ban,” terminating the Deferred Action for Childhood Arrivals (DACA) initiative, instituting the “zero tolerance” policy regarding illegal border crossing, building barriers along the U.S. border with Mexico, restricting legal immigration based on use of public benefits, and establishing a variety of asylum restrictions. Courts have blocked some of these actions. For proposals such as border barrier construction and restricting family-sponsored immigration, the Administration has sought congressional action, while also pursuing executive actions in some cases.

Selected Action in the 116th Congress

Although the 116th Congress has not enacted major immigration reform, it did provide emergency appropriations for humanitarian assistance and security at the southern border. In addition, among other bills enacted into law, the National Defense Authorization Act for FY2020 includes provisions to allow certain Liberians to apply for LPR status, increase the number of special immigrant visas for Afghan allies, and provide immigration protections for military service members.

In addition, several discrete immigration-related measures passed one chamber, including legislation to provide LPR status to certain unauthorized childhood arrivals and others currently residing in the United States with temporary protection from removal, establish a new temporary-to-permanent immigration status for certain agricultural workers, revise the per-country limits on employment-based immigrants, provide automatic citizenship to foreign-born children of U.S. citizen members of the Armed Forces or government employees, impose medical screenings and standards of care for aliens in CBP custody, create a border ombudsman, authorize CBP to engage in certain counterterrorist activities, and prevent entry of aliens seeking to interfere in U.S. elections. To date, none of these proposals have been enacted.

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