

Nonimmigrant Overstays: Overview and Policy Issues

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Nonimmigrants are foreign nationals who are lawfully admitted to the United States for a temporary period and specific purpose (e.g., tourism, study, work). They are required to depart the United States prior to the end of their authorized period of admission, unless they obtain an extension of stay or change of status that permits them to remain in the country. Those who do not depart in time are called *overstayers*. On average, between 1% and 2% of nonimmigrant admissions result in an *overstay* each year, representing approximately 650,000-850,000 overstays annually from FY2016 through FY2022. An estimated 42% of the approximately 11 million unauthorized population living in the United States entered the country legally but overstayed their period of admission.

The Immigration and Nationality Act (INA) includes provisions that are related to the overstay issue, including those that govern the entry and exit of foreign nationals to and from the United States, provide for consequences for overstaying a nonimmigrant admission, and establish requirements for electronic immigration databases and the collection of traveler biometric data.

For decades, Congress has been concerned about nonimmigrant overstays as a component of immigration control. In 1996, Congress mandated the development of an automated entry-exit system that would collect and match records of arrivals and departures and thereby identify nonimmigrant overstays. The issue garnered more intense focus after the September 11, 2001, attacks in which at least three of the 19 hijackers were overstayers. Some Members of Congress have expressed frustration that the entry-exit system is incomplete and that, because of this, the government is unable to identify all overstays, particularly for travelers who exit via land ports. They have also expressed dissatisfaction that only a fraction of the thousands of people who overstay each year are targeted for enforcement by the Department of Homeland Security's (DHS's) Immigration and Customs Enforcement (ICE) even though they are suspected by the government to be in the United States in violation of immigration law.

The lack of a nationwide exit system has made direct, complete measurement of overstays challenging. U.S. transportation hubs and ports of entry were not constructed with exit processing in mind. Given the historical lack of a comprehensive exit-tracking system, the U.S. government and non-governmental researchers have used estimation techniques over the years to study the number and characteristics of the overstay population. DHS has made progress over the last decade in measuring overstays and has produced annual reports with overstay data since 2016. These reports show variation in overstay rates by class of admission and origin country (including whether the traveler is from a country that participates in the Visa Waiver Program (VWP)).

Federal statute confers immigration authorities with broad discretion to determine when it is appropriate to pursue the removal of a foreign national who lacks a legal basis to remain in the country. Resource or humanitarian concerns have typically led authorities to prioritize enforcement actions against subsets of the removable population (e.g., those who have committed certain crimes or pose national security risks). Following the findings of the *9/11 Commission Report*, DHS designed an overstay enforcement model focused on those who are deemed the highest risks to national security and public safety.

There has long been bipartisan agreement that overstays undermine the integrity of the U.S. immigration system. Various measures exist in current policy to encourage the timely departure of nonimmigrants, and other ideas have been proposed to disincentivize overstays. If policymakers choose to take steps to address nonimmigrant overstays, they might consider policy options in the following areas: completion of the entry-exit system, federal

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agency roles in deterrence and prevention, interior enforcement, criminal penalties for overstayers, the E-Verify employment verification system, VWP country eligibility, H-2A and H-2B visa country eligibility, foreign diplomacy, visa bonds, wage withholding, increasing legal immigration pathways, and legalization.

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Introduction

Nonimmigrants are foreign nationals (*aliens*¹) who are lawfully admitted to the United States for a temporary period and specific purpose (e.g., tourism, study, work).² Prior to the end of their authorized period of admission, they are required to depart the United States unless they obtain an extension of stay or change of status that permits them to remain in the country. Those who do not depart on time are called *overstayers*.³ On average, between 1% and 2% of nonimmigrant admissions result in an *overstay* each year, representing approximately 650,000-850,000 overstays annually from FY2016 through FY2022.⁴ While much attention over the years has been focused on individuals who entered the United States surreptitiously, researchers estimate that overstayers outnumbered illegal border crossers between 2008 and 2016.⁵ As of 2017, it was estimated that about 5 million people—approximately 42% of the population residing in the United States without authorization—had entered the country legally but overstayed their period of admission.⁶

For decades, Congress has been concerned about nonimmigrant overstays as a component of immigration control. In 1981, the Select Commission on Immigration and Refugee Policy (SCIRP) cited nonimmigrant visa abuse as a concern and recommended the establishment of a “fully automated system” to track nonimmigrant arrivals and departures from the United States.⁷ Another congressionally convened commission met during the 1990s—the U.S. Commission on Immigration Reform (known as the Jordan Commission)—and noted, “Although overstayers represent a minute portion of [nonimmigrants] admitted each year, they are a significant part of the illegal immigration problem.”⁸ In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA, P.L. 104-208, Division C), Congress mandated the

¹ *Alien* is the term used in the Immigration and Nationality Act (INA) to mean anyone who is not a citizen or national of the United States. It is synonymous with *foreign national*. See INA §101(a)(3) (8 U.S.C. §1101(a)(3)).

² For more information, see CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*.

³ In this report, *overstayer* is used to refer to an individual nonimmigrant who remains in the United States beyond his or her authorized period of stay, and *overstay* is used to refer to the act or event of overstaying. *Visa overstays* is a misnomer because while the person may have used a visa (issued by the U.S. Department of State [DOS]) to travel to the United States, the act of overstaying relates to the period of admission (as determined by U.S. Customs and Border Protection [CBP]). *Visa validity* is the length of time for which a visa is valid for travel to the United States and is a separate matter from the length of time that a nonimmigrant is authorized to stay in the country.

⁴ CRS analysis of the total overstay rates reported in annual U.S. Department of Homeland Security (DHS) Entry/Exit Overstay Reports, FY2016-FY2022. The *overstay rate* is a ratio of events, not individuals. For example, an individual nonimmigrant may enter the United States three times in a fiscal year. If, during the year, that individual leaves on time twice but overstays once, the individual would add three expected departures to the denominator and one overstay to the numerator. Similarly, the number of overstays is a count of events, not individuals.

⁵ Robert Warren, “Sharp Multiyear Decline in Undocumented Immigration Suggests Progress at U.S.-Mexico Border, Not a National Emergency,” CMS Essays (New York: Center for Migration Studies, 2019).

⁶ According to the estimates, the other 58% entered the United States without being inspected by an immigration official. This is referred to as *entering without inspection* (EWI). Robert Warren, “U.S. Undocumented Population Continued to Fall from 2016 to 2017 and Visa Overstays Significantly Exceeded Illegal Crossings for the Seventh Consecutive Year,” *Journal on Migration and Human Security*, vol. 7, no. 1 (2019), pp. 19-22; and Robert Warren and Donald Kerwin, “The 2,000 Mile Wall in Search of a Purpose: Since 2007 Visa Overstays have Outnumbered Undocumented Border Crossers by a Half Million,” *Journal on Migration and Human Security*, vol. 5, no. 1 (2017), pp. 124-136. More recent estimates have not yet been produced, in part due to COVID-19-associated data anomalies.

⁷ Select Commission on Immigration and Refugee Policy, *U.S. Immigration Policy and the National Interest*, staff report, Washington, DC, April 30, 1981, p. xxxiii.

⁸ U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigrant Policy*, Washington, DC, 1997.

development of an automated entry-exit system that would collect and match records of arrivals and departures and thereby identify nonimmigrant overstays. It also mandated the creation of a system to monitor foreign students and exchange visitors in the United States.⁹

The overstay issue garnered more intense focus after the September 11, 2001 attacks in which at least three of the 19 hijackers were overstayers.¹⁰ In 2001 and 2002, Congress mandated the expansion of the monitoring system that came to be known as the Student and Exchange Visitor Information System (SEVIS).¹¹ Congress also amended the entry-exit system's requirements and deadlines on several occasions, including by adding a biometric component in 2001.¹² Today, the biometric entry system is said to be fully operationalized, whereas the biometric exit system is still being implemented.¹³

Over the years, some Members of Congress have expressed frustration over the incomplete exit system and the resulting inability to identify all overstays, particularly by those who exit via land borders.¹⁴ They have also expressed dissatisfaction that only a fraction of the thousands of people who overstay each year are targeted for enforcement by the U.S. Department of Homeland Security's (DHS's) Immigration and Customs Enforcement (ICE) even though many are known by the government to be in the United States in violation of immigration law.¹⁵ Overstays are part of the ongoing debate among policymakers about immigration enforcement priorities at the United States' borders with Mexico and Canada, as well as in the interior of the country.

This report provides an overview of nonimmigrant overstays. It describes the processes by which nonimmigrants obtain visas and are admitted to the United States and the legal consequences for overstaying. It also analyzes recent overstay trends (including by visa category and country) and current government enforcement and prevention efforts. It concludes with a discussion of policy

⁹ For more information on the legislative history of what is now called the Student and Exchange Visitor Information System (SEVIS), see archived CRS Report RL32188, *Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS)* (available to congressional clients upon request).

¹⁰ National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States (9/11 Report)*, July 22, 2004, footnote 33, p. 564. *The 9/11 Commission Report* stated on p. 384, "For a terrorist, travel documents are as important as weapons." A 2004 U.S. General Accounting Office report stated, "Together with other improvements, better information on overstays might contribute to a layered national defense that is better able to counter threats from foreign terrorists." U.S. General Accounting Office, *Overstay Tracking: A Key Component of Homeland Security and a Layered Defense*, GAO-04-82, May 2004, Highlights page. See also U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Ten Years after 9/11: Can Terrorists Still Exploit Our Visa System?*, hearing, 112th Cong., 1st sess., September 13, 2011, Serial No. 112-43; and U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *From the 9/11 Hijackers to Amine El-Khalifi: Terrorists and the Visa Overstay Problem*, hearing, 112th Cong., 2nd sess., March 6, 2012, Serial No. 112-73.

¹¹ The USA PATRIOT Act of 2001 (P.L. 107-56) and the Enhanced Border Security and Visa Reform Act of 2002 (P.L. 107-173). For an illustration of the current processes by which foreign students and exchange visitors are screened and monitored, see CRS Infographic IG10039, *Foreign Students: Screening and Monitoring*.

¹² For more information, see CRS In Focus IF11634, *Biometric Entry-Exit System: Legislative History and Status*.

¹³ For more information, see CRS Report R47541, *Immigration: The U.S. Entry-Exit System*.

¹⁴ See, for example, U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *From the 9/11 Hijackers to Amine El-Khalifi: Terrorists and the Visa Overstay Problem*, hearing, 112th Cong., 2nd sess., March 6, 2012, Serial No. 112-73; U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Overstaying their Welcome: National Security Risks Posed by Visa Overstays*, hearing, 114th Cong., 2nd sess., June 14, 2016, Serial No. 114-75; and U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Visa Overstays: A Gap in the Nation's Border Security*, hearing, 115th Cong., 1st sess., May 23, 2017, Serial No. 115-17.

¹⁵ *Ibid.*

issues and related legislation. The **Appendix** includes a list of nonimmigrant visa categories and data on recent visa issuances.

Nonimmigrant Entry/Exit Control

The Immigration and Nationality Act (INA)¹⁶ includes provisions to control the entry and exit of foreign nationals to and from the United States, consequences for overstaying a nonimmigrant admission, and requirements for electronic immigration databases and the collection of traveler biometrics.

Permission to Travel to the United States

To travel to the United States, foreign nationals generally must first obtain a U.S. visa, which is placed in the traveler's passport. Foreign nationals apply for visas at U.S. embassies or consulates abroad managed by the U.S. Department of State (DOS). There are two broad classes of visas issued by DOS: (1) *immigrant visas* for foreign nationals coming to live permanently in the United States, and (2) *nonimmigrant visas* for foreign nationals coming to visit the United States temporarily. There are 24 major nonimmigrant visa categories and more than 80 specific types of nonimmigrant visas, which are commonly referred to by the letter and numeral that denote their subsection in the INA; for example, B-2 tourists, E-2 treaty investors, F-1 foreign students, H-1B specialty occupation workers, J-1 cultural exchange visitors, or R-1 religious workers (see **Appendix**). In FY2022, DOS issued 6.8 million nonimmigrant visas.¹⁷

A visa applicant is required to submit his or her photograph and fingerprints, as well as full name (and any other name used or by which he or she has been known), age, gender, and date and place of birth. Depending on the visa category, certain documents (e.g., birth certificates, marriage licenses) must be certified by the proper government authorities. All visa applicants are subject to national security reviews using the resources of multiple U.S. federal intelligence and law enforcement agencies. Prospective nonimmigrants may be required to have physical and mental examinations.¹⁸ These reviews are intended to ensure that aliens are not ineligible for visas or admission under the INA Section 212(a) (8 U.S.C. §1184(a)) grounds of inadmissibility.¹⁹ A DOS consular officer must be satisfied that the visa applicant is entitled to nonimmigrant status. The burden of proof is on the applicant to establish eligibility for nonimmigrant status and the type of nonimmigrant visa for which the application is made.²⁰

Notably, Section 214(b) of the INA (8 U.S.C. §1184(b)) generally presumes that all foreign nationals seeking admission to the United States intend to settle permanently; as a result, most foreign nationals seeking to qualify for nonimmigrant visas must demonstrate that they are not

¹⁶ Act of June 27, 1952, ch. 477, as amended, codified at 8 U.S.C. §1101 et seq.

¹⁷ DOS, *Report of the Visa Office 2022*, "Table 1. Immigrant and Nonimmigrant Visas Issued at Foreign Service Posts," 2022. For nonimmigrant visa issuance trends, see CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*.

¹⁸ A consular officer may require an applicant for a nonimmigrant visa to undergo a medical examination if the officer has reason to believe that the applicant may be ineligible for a visa under INA §212(a)(1), the health-related grounds of inadmissibility.

¹⁹ The grounds of inadmissibility under INA Section 212(a) (8 U.S.C. §1182(a)) include health-related grounds, criminal history, security and terrorist concerns, public charge (e.g., indigence), seeking to work without proper labor certification, illegal entrants and immigration law violations, ineligibility for citizenship, and aliens who are unlawfully present or have previously been removed.

²⁰ 22 C.F.R. §41.11(a). For information on eligibility requirements for various nonimmigrant visa categories, see CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*.

coming to reside permanently.²¹ The Section 214(b) presumption is the most common basis for rejecting nonimmigrant visa applications, accounting for three-quarters of ineligibility findings in FY2019.²² There are three nonimmigrant categories for which *dual intent* is allowed, meaning that the applicant is permitted to obtain or continue nonimmigrant status even if they plan to (or have taken steps to) seek lawful permanent resident (LPR) status. Nonimmigrants seeking H-1B visas (specialty occupation workers), L visas (intracompany transferees), or V visas (accompanying family members) are exempt from the requirement to show that they are not coming to the United States to live permanently.

Certain international travelers are eligible to travel to the United States without a visa. These include nationals of the 41 countries participating in the Visa Waiver Program (VWP) who are coming to the United States for visits not to exceed 90 days for business or pleasure.²³ In addition, citizens of Canada and Bermuda do not require a U.S. visa for most travel purposes.²⁴ In FY2022, there were 11.5 million VWP admissions, accounting for 25.6% of all Form I-94 nonimmigrant admissions (see the next section for discussion of Form I-94).²⁵

Inspection and Admission to the United States

A visa does not guarantee admission to the United States,²⁶ but rather allows the visa holder to travel to a U.S. port of entry (POE) and apply for admission. The INA requires the inspection of all aliens who seek entry to the United States.²⁷ Inspection is the formal process of determining whether a noncitizen may lawfully enter the United States.²⁸ During inspection, DHS's U.S. Customs and Border Protection (CBP) officers conduct brief interviews with travelers, examine travel documents, and check travelers' information against law enforcement databases.²⁹ Officers also verify travelers' identities by comparing biographic information (e.g., from passports) and

²¹ The burden of proof is on the applicant to demonstrate to the consular officer that he or she is entitled to nonimmigrant status and that his or her intended activities are consistent with the status for which he or she is applying. (DOS, 9 Foreign Affairs Manual (FAM) §401.1-3(E)). For nonimmigrant classes that require maintenance of a residence abroad, "the applicant must demonstrate permanent employment, meaningful business or financial connections, close family ties, or social or cultural associations, which will indicate a strong inducement to return to the country of origin." (DOS 9 FAM §401.1-3(F)(2)).

²² DOS, *Report of the Visa Office 2019*, "Table XX: Immigrant and Nonimmigrant Visa Ineligibilities (by Grounds for Refusal Under the Immigration and Nationality Act)." Data for more recent years are affected by anomalies associated with the COVID-19 pandemic.

²³ VWP visitors are not eligible to work in the United States. For more information, see CRS Report RL32221, *Visa Waiver Program*.

²⁴ Certain citizens of the Federated States of Micronesia and the Republic of the Marshall Islands are also entitled to travel to the United States as nonimmigrants without visas. In addition, citizens of certain countries are eligible for visa-free travel for visits of up to 45 days to the U.S. territories of Guam and the Commonwealth of the Northern Mariana Islands (CNMI) under the Guam-CNMI Visa Waiver Program. For more information and classes of nonimmigrants who are exempt from the visa requirement, see 8 C.F.R. §212.1.

²⁵ DHS, Office of Immigration Statistics, *Yearbook of Immigration Statistics FY2022*, "Table 25. Nonimmigrant Admissions by Class of Admission: Fiscal Years 2013 to 2022."

²⁶ INA §221(h) (8 U.S.C. §1201(h)).

²⁷ INA §235(a)(3) (8 U.S.C. §1225(a)(3)).

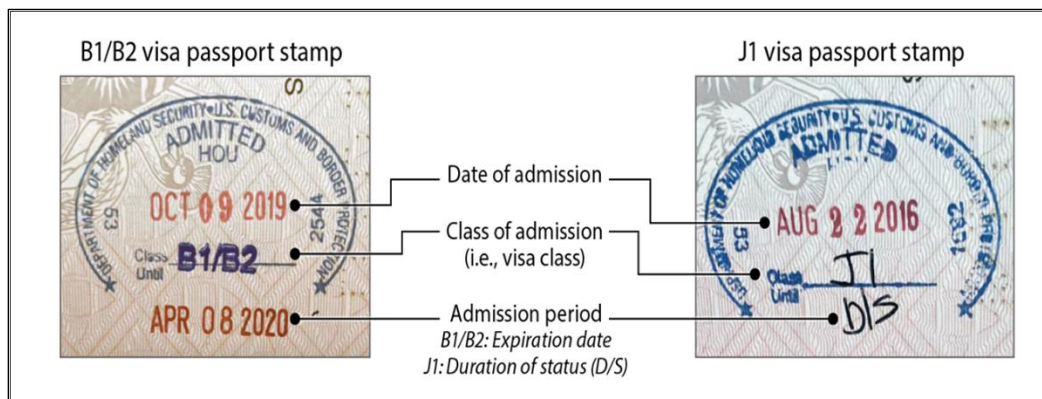
²⁸ For more information on the inspection and admission process, see CRS Report R43356, *Border Security: Immigration Inspections at Ports of Entry*.

²⁹ Primary inspection (the first level of inspection) consists of a brief interview by an immigration inspector, a cursory check of the traveler's documents, and a query of law enforcement databases. Primary inspections are quick. However, if the inspector suspects that the traveler may be inadmissible under the INA or is in violation of other U.S. laws, the traveler is referred to a secondary inspection. During secondary inspections, travelers are more extensively questioned, and travel documents are further examined.

biometrics (e.g., fingerprints, digital photographs).³⁰ CBP inspectors determine whether to admit nonimmigrants (with or without visas) to the United States. As is the case when applying for a visa, the burden of proof is on the applicant to establish eligibility for admission under the nonimmigrant status for which he or she is applying.

When admitting a nonimmigrant, the CBP officer stamps the traveler's passport or other travel document with an admission stamp indicating the date and class of admission (e.g., B-1, F-1, J-1) and the *admitted until* date (i.e., the date by which the nonimmigrant is required to depart the United States absent an extension or change of status) (see **Figure 1**). For most nonimmigrant classes of admission, CBP provides a specific date. Those admitted in A (diplomats), G (representatives of international organizations), F (academic students), J (exchange visitors), and I (media) nonimmigrant classes, however, are typically admitted for *duration of status* (D/S). D/S refers to the time during which a foreign national is engaged in the program or activity for which he or she was admitted. The authorized period of admission ends when the nonimmigrant has accomplished the purpose for which he or she was admitted or is no longer engaged in authorized activities pertaining to that purpose. For example, F-1 students admitted to study in four-year degree programs are required to depart the United States 60 days after the program is completed, unless they are pursuing practical training or another program of study, or have otherwise extended their stay.

Figure 1. Nonimmigrant Admission Stamp Examples



Source: CRS (Jill Wilson; original images on file with the author).

Certain classes of nonimmigrants admitted to the United States are issued an I-94 Arrival-Departure Record (Form I-94) upon admission (see Figure 2).³¹ Form I-94 documents the nonimmigrant's biographical information, country of citizenship, and passport number, as well as the date and class of admission and the date on which the period of authorized admission ends (or "D/S" if admitted for duration of status). This form serves as evidence of the terms of a nonimmigrant's admission. Nonimmigrants exempted from the I-94 requirement include Canadians admitted as visitors for business or pleasure and Mexicans with border crossing cards, who together constitute a majority of nonimmigrant admissions each year.³² Form I-94 used to be

³⁰ In the past, fingerprints were the primary biometric used by CBP during primary inspection; now, facial recognition technology is the primary biometric used for identity verification at POEs. According to CBP, "foreign travelers who have traveled to the United States previously may no longer need to provide fingerprints, as their identity will be confirmed through the touchless facial biometric process." CBP, "CBP Completes Simplified Arrival Expansion at All US Airports," press release, June 2, 2022.

³¹ 8 C.F.R. §235.1(h). CBP issues Form I-94W to nonimmigrants admitted under the VWP.

³² See 8 C.F.R. §235.1(h)(1) for a list of nonimmigrants not required to use Form I-94.

issued in paper form, but CBP now issues an electronic version at air, sea, and land POEs.³³ Nonimmigrants can access their electronic Form I-94 on CBP's website or via the CBP One mobile application.³⁴ In FY2022, there were 44.9 million I-94 nonimmigrant admissions and an estimated 96.8 million total nonimmigrant admissions.³⁵

Figure 2. Sample Electronic Form I-94

U.S. Customs and Border Protection Securing America's Borders	
Get I-94 Number	I-94 FAQ
Admission (I-94) Number Retrieval	
Admission (I-94) Record Number: 69000888062	
Admit Until Date (MM/DD/YYYY): 10/10/2012	
Details provided on Admission(I-94) form:	
Family Name:	LI
First (Given) Name:	LYDIA
Birth Date (MM/DD/YYYY):	01/01/1990
Passport Number:	P123123213
Passport Country of Issuance:	Mexico
Date of Entry (MM/DD/YYYY):	04/11/2012
Class of Admission:	B1

Source: Image copied from <https://www.uscis.gov/i-9-central/form-i-94>.

Selected CBP Passenger Information Systems

The Advance Passenger Information System (APIS) is a CBP database containing information about inbound and outbound air passengers and crew members. Air carriers submit passenger information to APIS prior to flight departure. CBP uses APIS data to assist with the identification of high-risk and inadmissible passengers. CBP vets passenger manifests against law enforcement, customs, and immigration screening databases and terrorist watchlists.

CBP also adds passenger arrival and departure data to the Arrival and Departure Information System (ADIS) biographic database. ADIS is a DHS database that collects and maintains biographic arrival and departure information on non-U.S. citizens traveling in and out of the United States. ADIS is maintained by CBP and the DHS.

³³ CBP used to staple a paper I-94 Form to the arriving traveler's passport, and travelers were supposed to surrender their I-94 upon departure, in part so that CBP could track exits and identify overstayers. In practice, however, this system proved difficult to implement, and paper I-94 receipts often were not collected from departing travelers. In 2013, CBP discontinued issuing paper I-94 Forms for travelers arriving at air and sea ports and did the same at land ports in 2021. In place of paper I-94 receipts for exiting air and sea travelers, CBP relies on carrier exit manifests (passenger lists) to confirm passenger departures (see the "Exit Control" section). For more information on the use of electronic Form I-94, see DHS, CBP, "Definition of Form I-94 To Include Electronic Format," 78 *Federal Register* 18457-18473, March 27, 2013; and DHS, CBP, "Streamlining I-94 Issuance at the Land Border," 87 *Federal Register* 15446-15448, March 18, 2022.

³⁴ CBP One was launched in October 2020. For more information, see CRS Insight IN12166, *CBP One Application: Evolution and Functionality*.

³⁵ DHS, Office of Immigration Statistics, "Table 25. Nonimmigrant Admissions by Class of Admission: Fiscal Years 2013 to 2022," *Yearbook of Immigration Statistics FY2022*. Admissions represent counts of events (i.e., arrivals), not unique individuals. Multiple entries of an individual on the same day are counted as one admission. The majority of short-term admissions from Canada and Mexico are excluded from this total.

Office of Biometric Identity Management (OBIM) and is the main database used by DHS's ICE to identify suspected visa overstayers.

Exit Control

Though Congress mandated the creation of an automated entry-exit system in 1996, implementing the exit portion of the system has been met with a number of challenges. Among those, the U.S. government does not have a long history of collecting exit data from departing travelers.³⁶ As a result, DHS and its predecessor agency have faced inadequate air, sea and land port infrastructure and staffing to implement exit data collection as required by existing law.³⁷ Nevertheless, there have been meaningful developments in recent years, as discussed in the sections below on air, sea, and land exit.

Air Exit

Travelers departing the United States by air present their boarding passes to airport gate agents. This process allows air carriers to provide CBP with required electronic copies of final passenger and crew manifests (via APIS) prior to the departure of all international flights from the United States. These data must be provided prior to securing aircraft doors, and the airline must provide information on who is on the aircraft at the time of departure (not simply who made a reservation for that flight). Airlines are subject to fines for errors in reporting this information.

In addition, some airports have integrated biometric exit capabilities: CBP-owned cameras, typically operated by airlines or airport gate agents, that take live photos of travelers at the exit gates. Facial recognition technology compares the live photo with pictures in the gallery of photos created from the flight's manifest.³⁸ If there is a match, the traveler can board the plane. If there is no match, either the gate agent verifies identity manually or the traveler is directed to a CBP officer stationed nearby, who either uses a handheld device to verify the traveler's identity via fingerprints or manually checks the traveler's documents.³⁹

Sea Exit

Similar to air exit, CBP receives final passenger manifests from commercial sea carriers for all departures from the United States. These manifests indicate who is aboard the vessels. CBP does not currently use biometrics at sea exit.⁴⁰

³⁶ In contrast, Schengen Area European states, among other countries, have required for many years that people pass through passport control booths not only upon admission to the Schengen area but also prior to their departure. For more information, see European Commission, Migration and Home Affairs, "Schengen Area," https://home-affairs.ec.europa.eu/policies/schengen-borders-and-visa/schengen-area_en.

³⁷ Government Accountability Office (GAO), *Border Security: DHS Has Made Progress in Planning for a Biometric Air Exit System and Reporting Overstays, but Challenges Remain*, GAO-17-170, February 2017.

³⁸ The gallery of photos is created from all associated facial images from DHS holdings (e.g., photographs from U.S. passports, U.S. visas, CBP entry inspections, other DHS encounters) that correspond to passengers on the flight manifest.

³⁹ For more information, see CRS Report R47541, *Immigration: The U.S. Entry-Exit System*.

⁴⁰ DHS, *Privacy Impact Assessment for the Traveler Verification Service*, November 14, 2018, p. 43; and GAO, *Facial Recognition Technology: CBP Traveler Identity Verification and Efforts to Address Privacy Issues*, GAO-22-106154, July 27, 2022, p. 3.

Land Exit

Implementing an exit system at land ports is more difficult than in the air and sea environments “due to the major physical, logistical, and operational obstacles involved with electronically collecting an individual’s biographic and biometric data.”⁴¹ Most travelers who enter through land POEs do so as pedestrians or in personally owned vehicles. There typically are not manifests or reporting that may be sent to CBP in advance of departure.⁴² However, CBP has expanded its use of the Biometric Exit Mobile (BE-Mobile) program at land POEs nationwide, allowing CBP officers working *pulse and surge operations* to use mobile technology to create a biometric exit record for a subset of departing travelers.⁴³

Land Exit—Northern Border

At the northern border, the United States and Canada have an agreement, entitled *Beyond the Border*, to exchange biographic entry data of those crossing between the two countries by land.⁴⁴ Thus, an entry into Canada is recorded as an exit from the United States and vice-versa. CBP uses these data to close the loop on a traveler’s entry when, for example, a traveler enters the United States by air or sea but departs by land to Canada.⁴⁵

Land Exit—Southern Border

The United States and Mexico launched an entry-exit information-sharing initiative in December 2017.⁴⁶ A six-month pilot took place on the Mexican side of the San Ysidro POE near San Diego, CA. During this pilot, Mexican immigration authorities collected entry data from a subset of Mexican nationals crossing into Mexico. These data were sent to CBP to create an exit record from the United States.⁴⁷ The pilot is no longer active, having completed its role as a proof of concept, and a full information-sharing agreement has not yet been implemented.⁴⁸

Absent such an agreement, in some cases CBP is able to resolve unknown statuses of previous entries with re-entries: in the absence of exit data, CBP closes the loop on a previous entry if and when it records a re-entry by the same person. However, this does not provide CBP with the date of the previous departure and thus might not always confirm that the individual departed by the required date.

⁴¹ DHS, *Fiscal Year 2022 Entry/Exit Overstay Report*, June 21, 2023, p. 6.

⁴² CBP sometimes receives manifests from private rail or bus lines, but providing them is voluntary for these transportation providers (in contrast to air and sea carriers, which are required to send manifest data).

⁴³ DHS, *Fiscal Year 2022 Entry/Exit Overstay Report*, June 21, 2023, p. 6. *Pulse and surge operations* are short-term enforcement operations that increase the frequency of outbound inspections at specific POEs, either randomly or based on intelligence.

⁴⁴ The agreement was signed in 2011. Initially, the two countries shared information only about third-country nationals (including permanent residents of Canada and lawful permanent residents of the United States). In 2019, the agreement expanded to include Canadian and U.S. citizens.

⁴⁵ DHS, *Fiscal Year 2020 Entry/Exit Overstay Report*, September 30, 2021.

⁴⁶ DHS, *Privacy Impact Assessment for the United States-Mexico Entry/Exit Data Sharing Initiative*, December 14, 2017, <https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp-usmexicoentryexitdatasharinginitiative-december2017.pdf>.

⁴⁷ The most recent information on results of the pilot is from June 2018. CBP and Mexico’s immigration authorities shared 123,683 biographic records, and of those records CBP was able to successfully match over 53,000 events/encounters in ADIS (email to CRS from CBP, August 23, 2023).

⁴⁸ Email to CRS from CBP, October 12, 2023.

Historical Overstay Estimates

The lack of a nationwide exit system makes direct and complete measurement of overstays impossible. U.S. POEs were not constructed with exit processing in mind. For example, U.S. airports—unlike those in many countries—do not have spaces designated for processing travelers leaving the country, and the land POE environment presents major obstacles to identifying all departures (as described above).⁴⁹

In the absence of a comprehensive exit-tracking system, the U.S. government and non-governmental researchers have used surveys and estimation techniques over the years to study the number and characteristics of the overstayer population. Estimation techniques involve assumptions and uncertainties associated with counting the unauthorized population writ large that have made precise estimates of overstayers difficult to generate and have resulted in a range of estimates.⁵⁰

One of the earliest measures of overstayers comes from a survey of unauthorized individuals who obtained lawful permanent resident status under the 1986 Immigration Reform and Control Act (IRCA, P.L. 99-603). This law allowed nearly 2.7 million individuals (out of an estimated total unauthorized population of 3-5 million) to obtain LPR status.⁵¹ A 1992 report from the Department of Justice's (DOJ's) Immigration and Naturalization Service (INS) estimated that overstayers constituted 21% of the population legalized under IRCA.⁵² Subsequent analyses generally estimated that overstayers have accounted for a relatively larger share of the unauthorized population. Multiple estimates by INS in the 1990s attributed between 40% and 50% of the unauthorized population to overstays.⁵³ In contrast, a 2003 INS estimate put the January 2000 resident overstay population at one-third of 7 million unauthorized immigrants (2.3

⁴⁹ See, for example, Marc R. Rosenblum and Faye Hipsman, *Border Metrics: How to Effectively Measure Border Security and Immigration Control*, Migration Policy Institute, January 2016.

⁵⁰ For a description of various methods used to produce such estimates and their related difficulties, see Robert Warren, "Democratizing Data about Unauthorized Residents in the United States: Estimates and Public-Use Data, 2010 to 2013," *Journal on Migration and Human Security*, vol. 2, no. 4 (2014), pp. 305-328; and Jeffrey S. Passel, "Measuring Illegal Immigration: How Pew Research Center Counts Unauthorized Immigrants in the U.S.," Pew Research Center, July 12, 2019.

⁵¹ Nancy Rytina, *IRCA Legalization Effects: Lawful Permanent Residence and Naturalization through 2001*, paper presented at The Effects of Immigrant Legalization Programs on the United States: Scientific Evidence on Immigrant Adaptation and Impacts on U.S. Economy and Society, October 25, 2002.

⁵² This estimate was based on interviews with 83% of the population legalized under IRCA and weighted to represent the entire legalized population. U.S. Department of Justice (DOJ), Immigration and Naturalization Service (INS), *Immigration Reform and Control Act: Report on the Legalized Alien Population*, Washington, DC, 1992. Prior to the creation of DHS in 2003, most immigration-related functions fell under the authority of the Attorney General.

⁵³ See Robert Warren, INS, Statistics Division, "Estimates of the Undocumented Immigrant Population Residing in the United States by Country of Origin and State of Residence as of October 1992," 1994; DOJ, Office of the Inspector General, *Immigration and Naturalization Service Monitoring of Nonimmigrant Overstays*, report I-97-08, Washington, DC, 1997; Michael D. Cronin, Acting Associate Commissioner, Programs, INS, Testimony Regarding Nonimmigrant Overstays before U.S. Congress, House Judiciary Committee, Subcommittee on Immigration and Claims, March 18, 1999; and DOJ, INS, and U.S. Department of Labor, Bureau of International Labor Affairs, *The Triennial Comprehensive Report on Immigration*, 1999.

million).⁵⁴ In addition, a 2004 GAO report measured three small sample cohorts in which overstayers accounted for 27%, 31%, and 57% of the unauthorized population.⁵⁵

By the 2010s, visa overstayers were estimated to be the majority of individuals being added to the unauthorized population (i.e., the *flow* of unauthorized persons).⁵⁶ For example, in 2019, the Center for Migration Studies estimated that the number of individuals overstaying exceeded the number of those entering the country without inspection (EWI) from at least FY2010 through FY2017,⁵⁷ but that EWIs still constituted 58% of the unauthorized population in 2014 (i.e., the *stock* of unauthorized persons).⁵⁸ Researchers have not produced more recent estimates due to data uncertainties associated with the COVID-19 pandemic.

Recent DHS Overstay Estimates

DHS has made progress over the last decade in measuring overstays through (1) improvements in data integration (such as cross-referencing nonimmigrant applications for changes, extensions, and adjustments of status) and (2) the expansion of exit data collection (such as records for northern border land exits through the *Beyond the Border* information sharing agreement with Canada [see the “Land Exit—Northern Border” section]).⁵⁹

To identify an overstay, several pieces of information related to the entry and exit of a nonimmigrant are necessary: (1) the date of admission to the United States; (2) the class of admission (e.g., visa type), which is used to determine the authorized period of admission and thus the date by which the nonimmigrant must depart; (3) whether the nonimmigrant applied for a change, extension, or adjustment of status that would alter the required departure date; and (4) the date of departure (or the lack of a departure record prior to the end of the authorized period of admission). CBP’s Arrival and Departure Information System (ADIS) compiles this information from various federal data systems to create a travel history for each person, allowing for automated identification of potential overstays.⁶⁰

⁵⁴ DOJ, INS, Office of Policy and Planning, *Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000*, January 2003, https://www.dhs.gov/xlibrary/assets/statistics/publications/III_Report_1211.pdf.

⁵⁵ GAO, *Overstay Tracking: A Key Component of Homeland Security and a Layered Defense*, GAO-04-82, May 2004, p.10.

⁵⁶ The *flow* measures changes over time (e.g., population increase per year) whereas the *stock* is a point-in-time measurement (e.g., total population).

⁵⁷ Robert Warren, “U.S. Undocumented Population Continued to Fall from 2016 to 2017, and Visa Overstays Significantly Exceeded Illegal Crossings for the Seventh Consecutive Year,” Center for Migration Studies, January 16, 2019.

⁵⁸ Robert Warren and Donald Kerwin, “The 2,000 Mile Wall in Search of a Purpose: Since 2007, Visa Overstays Have Outnumbered Undocumented Border Crossers by a Half Million,” *Journal on Migration and Human Security*, vol. 5, no. 1 (2017), pp. 124-136.

⁵⁹ For more information on DHS’s progress in identifying and reporting overstays, see GAO, *Department of Homeland Security: Review of the Fiscal Year 2017 Entry/Exit Overstay Report*, GAO-19-298R, February 22, 2019; GAO, *Border Security: DHS Has Made Progress in Planning for a Biometric Air Exit System and Reporting Overstays, but Challenges Remain*, GAO-17-170, February 2017; and DHS, *Fiscal Year 2022 Entry/Exit Overstay Report*, June 21, 2023, pp. 7-8.

⁶⁰ DHS, *Privacy Impact Assessment for Arrival and Departure Information System (ADIS)*, DHS/CBP/PIA-024(c), January 3, 2020, p. 3. For more information on how overstay leads are generated and what DHS does with them, see the “Overstay Enforcement” section.

Types of Overstays

DHS identifies two types of overstays:

- **Suspected in-country overstays** occur when a nonimmigrant's authorized period of admission expires and DHS has no record of departure or change in status for him or her. These events are *suspected* because the nonimmigrant may still be in the United States or may have departed without DHS recording it.
- **Out-of-country overstays** occur when DHS records a nonimmigrant departure after the authorized period of admission expired.

Recent Overstay Trends

Since 2016, DHS has published annual overstay reports based on the information in ADIS that provide direct—but not complete—measurement of overstays.⁶¹ The first report (for FY2015) was limited to temporary visitors for business or pleasure—those arriving with B-1 or B-2 visas and those traveling under the VWP—who entered the United States through an air or sea POE. Subsequent annual reports added most other nonimmigrant categories including students, exchange visitors, and temporary workers.⁶² None of the reports cover nonimmigrants who entered through a land POE.

This section presents and analyzes data from the six most recent DHS annual overstay reports, which cover seven fiscal years: FY2016-FY2022. DHS did not produce a separate report for FY2021 due to the COVID-19 pandemic and related data comparability issues.⁶³ For this reason, we do not include them in our analysis. These reports provide numbers and rates of expected departures and overstay events, broken out by admission category and traveler's country of nationality. As mentioned previously, they include nonimmigrant admissions by air and sea but not land.

Impact of the COVID-19 Pandemic on International Travel and Overstays

The COVID-19 pandemic caused major disruptions in travel worldwide. According to the United Nations World Tourism Organization (UNWTO), worldwide international tourism arrivals were 72% lower in 2020 than in 2019.⁶⁴ Beginning in late March 2020, the Department of State (DOS) suspended routine visa services and provided only mission-critical and emergency services worldwide. This had a significant impact on the provision of visa-related services. DOS posts were able to resume limited services on a post-by-post basis beginning in July 2020, as local conditions allowed. Fewer visa issuances, combined with government-imposed travel restrictions, resulted in fewer arrivals to the United States. International tourism arrivals to the United States were 76% lower in FY2020 and 72% lower in FY2021 than in FY2019.⁶⁵ The lower volume of arrivals was accompanied by a corresponding drop in departures, as illustrated by DHS's FY2022 overstay report, which indicated that the number of expected nonimmigrant departures that year was 56% lower than the pre-COVID-19 four-year

⁶¹ U.S. Department of Homeland Security, Entry/Exit Overstay Reports for FY2016 through FY2022, <https://www.dhs.gov/publication/entryexit-overstay-report>.

⁶² The nonimmigrant categories included in these reports made up 97% of air and sea arrivals. The categories excluded from the analyses in the reports are diplomats, representatives of foreign media, crewmembers, aliens in transit, and Section 1367 special protected classes. See the appendices of these reports for complete lists of included and excluded categories.

⁶³ DHS provided FY2021 data as an appendix in its FY2022 report. FY2022 report is available at https://www.dhs.gov/sites/default/files/2023-07/23_0707_FY22_FY23_CBP_Integrated_Entry_Exit_Overstay_Report.pdf. Prior years are available at <https://www.dhs.gov/publication/entryexit-overstay-report>. DHS's FY2015 report is not included in CRS's analysis because it only included B nonimmigrants and thus is not directly comparable to subsequent reports, which covered almost all other nonimmigrant categories.

⁶⁴ United Nations World Tourism Organization, "Tourism Recovery Tracker," <https://www.unwto.org/tourism-data/unwto-tourism-recovery-tracker>.

⁶⁵ Ibid.

average.⁶⁶ In contrast, the overstay total in FY2022 was nearly 23% higher than the pre-COVID-19 four-year average.⁶⁷

According to UNWTO, worldwide arrivals began to recover in 2022, when there were 39% fewer arrivals than 2019 (down from 72% fewer arrivals in 2020 than in 2019). Early 2023 data indicate a travel rebound: in the first quarter, worldwide international arrivals reached about 80% of arrivals during the same time period in 2019. This is consistent with findings of the Economist Intelligence Unit, which indicate that global travel rebounded in 2022 and 2023, but generally has not yet fully recovered to pre-COVID-19 volume.⁶⁸ In the first quarter of FY2023, international tourist arrivals to the United States were at about 81% of 2019 levels. The increase in arrivals should correspond with an increase in expected departures.

In addition to travel impacts, temporary immigration policies associated with the COVID-19 pandemic impacted the measurement of overstays. For example, in FY2020 and FY2021, DHS's U.S. Citizenship and Immigration Services (USCIS) allowed travelers to apply for certain immigration benefits (e.g., extensions of stay, changes of status) after their authorized periods of stay had expired, and CBP granted a significantly higher number of *satisfactory departures* for VWP travelers who departed after their initial 90-day stay. These changes contributed to the delay in DHS publishing overstay data for FY2021; DHS included FY2021 data as an appendix in its FY2022 report.⁶⁹

Trends in Total Overstays

The total *number* of overstays averaged about 720,000 per year from FY2016 to FY2022.⁷⁰ Prior to the COVID-19 pandemic, FY2016 was the peak year with 739,478 overstays counted. The number of overstays declined in the two fiscal years that followed but—apart from the dramatic COVID-19-related drop in FY2021—have risen since FY2018 to a peak of 853,955 in FY2022 (see **Figure 3**). The vast majority (87% in total from FY2016 through FY2022) were in-country overstays.

DHS calculates overstay *rates* by dividing the number of overstays by the number of expected nonimmigrant departures. The total overstay rate from FY2016-FY2022 was 1.5%. The in-country rate was 1.3%, whereas the out-of-country overstay rate was 0.2%.⁷¹ The annual rate declined from FY2016 to FY2019 before rising considerably since then, peaking at 3.7% in FY2022.

Two phenomena have occurred since FY2019 that may help explain the rise in overstay rates. First, the COVID-19 pandemic, which hit in FY2020 and continued through FY2022, resulted in a much lower volume of arrivals and departures from the United States.⁷² Nonimmigrants who were already in the United States when the pandemic began may not have been able to leave the country before their period of admission expired—due to travel restrictions or illness, for example.

⁶⁶ Calculated by CRS using data from annual DHS Entry/Exit Overstay Reports at <https://www.dhs.gov/publication/entryexit-overstay-report>.

⁶⁷ Ibid.

⁶⁸ Economist Intelligence Unit, "Tourism Outlook 2023," <https://www.eiu.com/n/campaigns/tourism-in-2023/>.

⁶⁹ See page iii of DHS, *Fiscal Year 2022 Entry/Exit Overstay Report*, June 21, 2023.

⁷⁰ This excludes FY2021.

⁷¹ CRS calculation based on summing the number of (in-country or out-of-country or total) overstays in FY2016, FY2017, FY2018, FY2019, FY2020, and FY2022 and dividing by the sum of expected departures (283,167,499) for the same time period.

⁷² United Nations World Tourism Organization, "Tourism Recovery Tracker," <https://www.unwto.org/tourism-data/unwto-tourism-recovery-tracker>.

Second, there was a sharp increase in migration from Venezuela, spurred by economic and political crises there.⁷³ Venezuelans with nonimmigrant visas to travel to the United States contributed to the overstay rate increase since FY2019. In that year, Venezuela was responsible for 1% of expected departures from the United States and 6% of total overstays; in FY2022, Venezuelans constituted 2% of expected departures and 21% of overstays. Since early 2021, Venezuelan nationals in the United States have been eligible for certain forms of relief from removal due to the upheaval in their home country. Venezuelans present in the United States as of January 20, 2021, were granted Deferred Enforced Departure (DED)⁷⁴ until July 20, 2022, and in March 2021, Venezuela was designated for Temporary Protected Status (TPS).⁷⁵ TPS remains in effect for Venezuelans who were present in the United States before July 31, 2023. DHS estimated that 72% of Venezuelans who overstayed their visa in FY2022 were eligible for TPS.⁷⁶ Despite potentially being covered by another lawful status, many Venezuelans were likely to have been counted as overstayers due to the timing of the DED and TPS designations and the corresponding application windows.⁷⁷

⁷³ For more information, see CRS In Focus IF10230, *Venezuela: Political Crisis and U.S. Policy*.

⁷⁴ DED is a temporary, discretionary, administrative stay of removal granted to noncitizens from designated countries. A DED designation emanates from the President's constitutional powers to conduct foreign relations and has no statutory basis. For more information, see CRS Report RS20844, *Temporary Protected Status and Deferred Enforced Departure*.

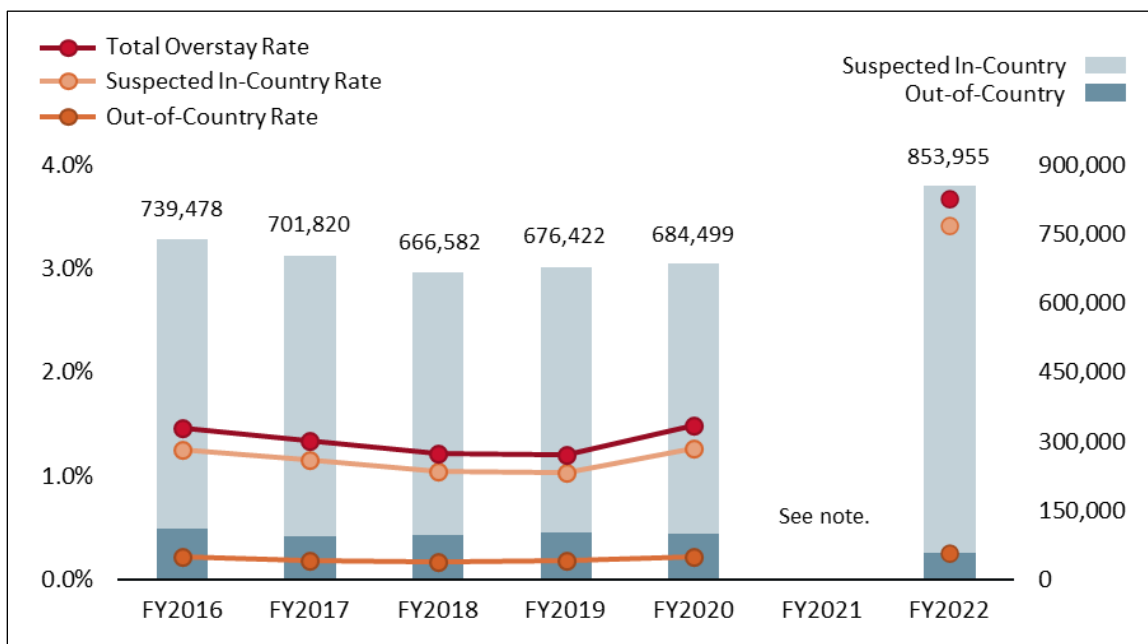
⁷⁵ TPS provides temporary relief from removal and work authorization to foreign nationals—regardless of their immigration status—in the United States from designated countries experiencing armed conflict, natural disaster, or other extraordinary circumstances that prevent their safe return. For more information, see CRS Report RS20844, *Temporary Protected Status and Deferred Enforced Departure*.

⁷⁶ CRS calculation of numbers reported by DHS, *Fiscal Year 2022 Entry/Exit Overstay Report*, p. 14 footnote 33 and p. 19 footnote 34.

⁷⁷ For example, a Venezuelan nonimmigrant who was admitted to the United States prior to start of the pandemic may have been expected to depart after Venezuela was designated for DED, but because of the DED designation was allowed to remain in the United States. Unlike TPS, individuals who benefit from DED do not register for the status; thus, USCIS would not have a record of such status (unless they applied for DED-related work authorization).

Figure 3. Total Overstays: Numbers and Rates

FY2016-FY2020, FY2022



Source: U.S. Department of Homeland Security, Entry/Exit Overstay Reports for FY2016 through FY2022, <https://www.dhs.gov/publication/entryexit-overstay-report>.

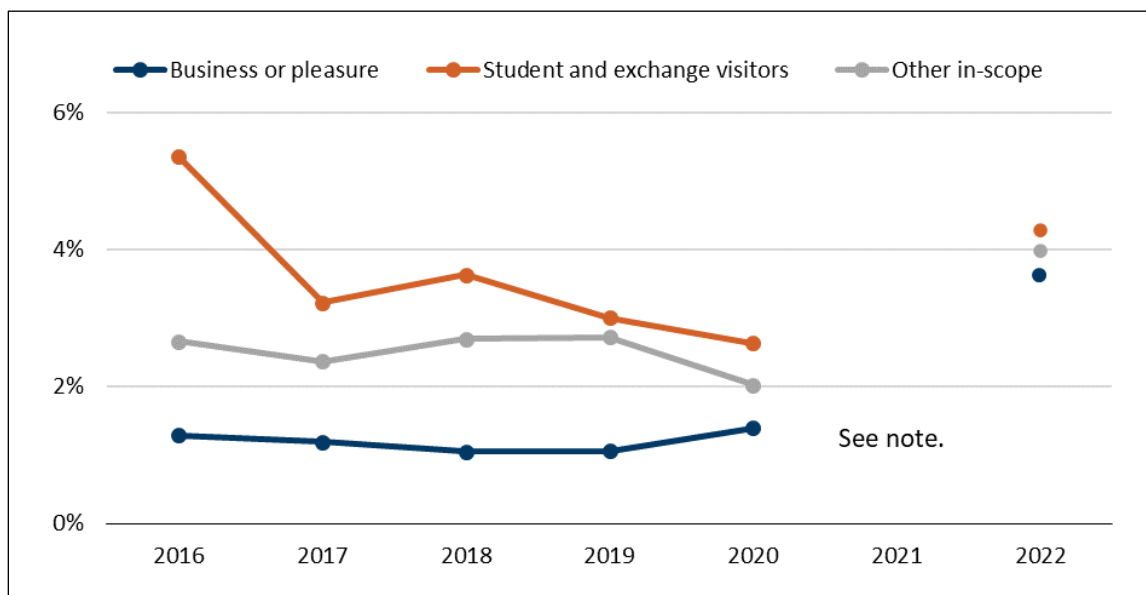
Notes: DHS did not release an FY2021-specific report, instead including the relevant numbers as an appendix to the FY2022 report. DHS specified in this appendix that the accuracy of the FY2021 reported data was impacted by temporary COVID-19-related travel policies. For this reason, FY2021 data are omitted from this figure.

Overstay Trends by Category of Admission

DHS annual overstay reports provide data on overstay events for three broad categories of nonimmigrant admissions: (1) business or pleasure visitors (B-1/B-2 visa holders and VWP travelers), (2) students and exchange visitors (F, M, and J nonimmigrants), and (3) other nonimmigrants (mostly temporary workers). Data for travelers from Canada and Mexico are provided separately because air and sea admissions represent a smaller portion of the Canadian and Mexican travel population.

Visitors for business or pleasure made up the vast majority of overstays: 83% over the FY2016-FY2022 period. Students and exchange visitors made up 9% of all overstays per year on average, and other nonimmigrants accounted for an average of 8%. From FY2016 through FY2020, overstay rates were higher for student/exchange visitors and other nonimmigrants than for business/pleasure visitors. In FY2022, rates for the three categories were similar (**Figure 4**). These trends were similar for both VWP and non-VWP countries.

Figure 4. Overstay Rates by Admission Category
FY2016-FY2020, FY2022



Source: U.S. Department of Homeland Security, Entry/Exit Overstay Reports for FY2016 through FY2022, <https://www.dhs.gov/publication/entryexit-overstay-report>.

Notes: “Business or pleasure” includes WB, WT, B-1, and B-2 admissions. “Student and exchange visitors” includes F, M, and J admissions. “Other in-scope” includes A3, CW1, CW2, EI, E2, E2C, E3, E3D, G5, H1B, H1B1, H1C, H2A, H2B, H2R, H3, H4, K1, K2, K3, K4, L1A, L1B, L2, NATO7, N8, N9, O1, O2, O3, P1, P2, P3, P4, Q1, R1, R2, TN, TD, VI, V2, and V3 admissions.

DHS did not release an FY2021-specific report, instead including the relevant numbers as an appendix to the FY2022 report. DHS specified in this appendix that the accuracy of the reported data was impacted by temporary COVID-19-related travel policies. For this reason, FY2021 data are omitted from this figure.

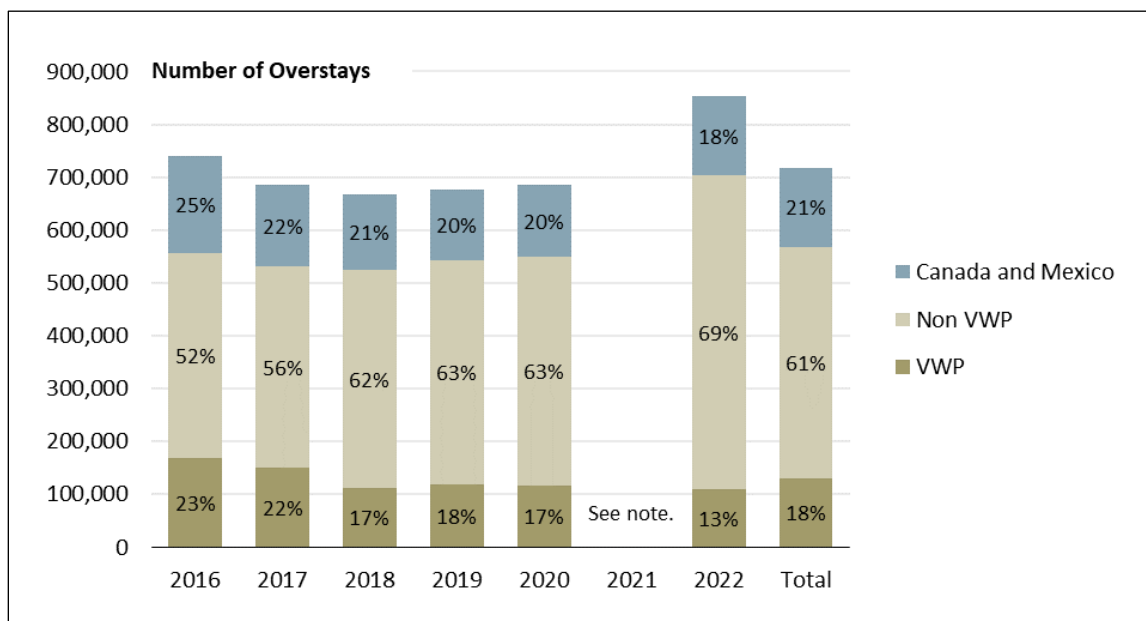
Overstay Trends by Country

As a group, non-VWP countries have consistently had higher overstay totals and rates than VWP countries (**Figure 5**). The average number of overstays from non-VWP countries from FY2016 through FY2022 was 439,000 annually, whereas the VWP average has been 130,000 annually throughout the same period. During this time, VWP countries were underrepresented as a share of total overstays. This is not surprising, given that in order to participate in the VWP, a country must have a low visitor visa refusal rate, a measure correlated with a relatively low likelihood of overstays.⁷⁸ The 40 VWP participating countries accounted for an average of 43% of expected departures from the United States from FY2016 through FY2022, but 18% of overstays.⁷⁹

⁷⁸ For more information on the VWP, including discussion about using the visitor visa refusal rate versus the overstay rate as criteria for participation, see CRS Report RL32221, *Visa Waiver Program*.

⁷⁹ In FY2022, there were 40 countries participating in the VWP. With the addition of Israel on September 27, 2023, there are now 41 participating countries.

Figure 5. Overstay Totals and Shares by Country Grouping
FY2016-FY2020, FY2022



Source: CRS calculation of data from U.S. Department of Homeland Security, Entry/Exit Overstay Reports for FY2016 through FY2022, <https://www.dhs.gov/publication/entryexit-overstay-report>.

Notes: VWP stands for Visa Waiver Program and represents data from the countries that participated in the VWP at the time. (For participating countries by year, see CRS Report RL32221, *Visa Waiver Program*.) Non-VWP includes all other countries except Canada and Mexico. DHS did not release an individual FY2021 report, instead including the relevant numbers as an appendix to the FY2022 report. DHS specified in this appendix that the accuracy of the reported numbers was impacted by temporary COVID-19-related travel policies. For this reason, FY2021 data are omitted from this figure and the “Total” bar does not include FY2021.

Due to their land borders with the United States, Canada and Mexico have unique entry and exit patterns, and the data discussed in this report represent only a minority of nonimmigrant travelers from the two countries. While the majority of travelers from Canada and Mexico enter via land, the overstay data published by DHS represent only travelers who arrived by air and sea.⁸⁰ Still, air and sea travelers from both Canada and Mexico represented a large share of total expected departures and overstay events from FY2016 through FY2020. In this five-year period, Canada accounted for 18% of expected departures and 13% of total overstays, while Mexico accounted for 6% of expected departures and 8% of total overstays. These patterns shifted after the pandemic, with Canada’s share of expected departures and overstays in FY2022 dropping to 13% and 2%, respectively. On the other hand, Mexico’s shares of both measures rose in FY2022, when it accounted for 16% of expected departures and 15% of overstays.

In general, countries with the highest overstay numbers are not the same countries that have the highest overstay rates. **Table 1** lists the 10 countries with highest annual number of overstays in FY2016, FY2017, FY2018, FY2019, FY2020, and FY2022, while **Table 2** lists the 10 countries with the highest overstay rates in the same years. For FY2016 through FY2020, there was no overlap in the list of countries with the 10 highest overstay totals and those with the 10 highest rates. Generally, countries with high overstay rates have a low volume of travel to the United States, so a small number of overstays can still represent a large share of the country’s expected departures. In contrast, countries with a high number of overstays often have a high number of

⁸⁰ For further information, see annual DHS Entry/Exit Overstay Reports.

expected departures so their overstay rate is low. In FY2022, Venezuela was the only country to appear on both lists. As explained earlier, there has been a significant increase in migration from Venezuela in recent years, spurred by the economic and political crises in that country. With few exceptions, countries with the highest overstay totals have rates below 10% and countries with the highest rates have annual totals below 2,000.⁸¹

Table 1. Ten Countries With the Highest Overstay Totals

FY2016, FY2017, FY2018, FY2019, FY2020, and FY2022								
Country	Total	Rate	Country	Total	Rate	Country	Total	Rate
FY2016			FY2017			FY2018		
Canada	125,984	1.5%	Canada	101,281	1.1%	Canada	92,542	1.0%
Mexico	52,958	1.7%	Mexico	51,644	1.8%	Mexico	49,353	1.6%
Brazil	43,248	2.0%	Brazil	37,452	2.0%	India	41,068	2.3%
China	39,061	1.6%	Venezuela	32,129	5.6%	Brazil	40,526	1.8%
India	30,399	2.1%	United Kingdom	28,321	0.6%	Venezuela	37,439	7.3%
United Kingdom	26,244	0.5%	India	28,174	1.7%	China	33,420	1.1%
Venezuela	25,481	4.4%	Colombia	24,064	2.6%	Nigeria	32,197	15.4%
Germany	21,756	1.0%	Nigeria	22,561	11.3%	Colombia	23,819	2.4%
Colombia	21,413	2.4%	China	20,466	0.7%	United Kingdom	16,951	0.3%
Italy	17,297	1.4%	France	17,974	0.9%	Dominican Republic	15,995	3.5%
FY2019			FY2020			FY2022		
Canada	83,674	0.8%	Mexico	77,494	2.5%	Venezuela	176,316	43.1%
Mexico	48,926	1.5%	Canada	57,592	0.6%	Mexico	131,120	3.6%
Brazil	48,299	2.0%	Brazil	52,226	2.5%	Colombia	64,869	5.5%
Venezuela	40,622	8.0%	Colombia	35,490	3.7%	China	31,819	7.2%
India	40,204	2.1%	China	35,119	1.4%	Spain	29,164	5.2%
China	32,190	1.1%	India	34,493	1.8%	India	28,478	3.6%
Colombia	32,074	3.0%	Venezuela	34,201	9.1%	Dominican Republic	27,911	6.6%
Nigeria	19,349	10.1%	United Kingdom	23,341	0.7%	Canada	20,127	0.7%
United Kingdom	18,721	0.4%	Dominican Republic	15,592	3.2%	Brazil	19,820	4.1%
Spain	15,738	1.3%	Philippines	13,907	4.1%	Jamaica	19,548	9.9%

⁸¹ As shown in Tables 1 and 2, the exceptions in individual years are Venezuela in FY2022, which had 176,316 total overstays at a rate of 43.1%; Jamaica in FY2022, which had 19,548 total overstays at a rate of 9.9%; and Nigeria in FY2017 which had 22,561 overstays at a rate of 11.3%, FY2018 which had 32,197 overstays at a rate of 15.4%, and in FY2019 which had 19,349 total overstays at a rate of 10.1%.

FY2016, FY2017, FY2018, FY2019, FY2020, and FY2022								
Country	Total	Rate	Country	Total	Rate	Country	Total	Rate
Six-Year Total (FY2016, FY2017, FY2018, FY2019, FY2020, FY2022)								
Country	Total		Rate					
Canada	481,200		1.0%					
Mexico	411,495		2.2%					
Venezuela	346,188		11.7%					
Brazil	241,571		2.1%					
India	202,816		2.1%					
Colombia	201,729		3.4%					
China	192,075		1.3%					
United Kingdom	125,696		0.5%					
Nigeria	112,590		11.2%					
Spain	101,109		1.7%					

Source: Tabulated by CRS using data from DHS Annual Overstay Reports.

Notes: Rates are rounded to the nearest tenth of a percentage point. Tables reflect totals across the three visa categories reported by DHS. DHS did not release a FY2021-specific report, instead including the relevant numbers as an appendix to the FY2022 report. DHS specified in this appendix that the accuracy of the reported data was impacted by temporary COVID-19-related travel policies. For this reason, FY2021 data are omitted from this table.

Table 2. Ten Countries With the Highest Overstay Rates

FY2016, FY2017, FY2018, FY2019, FY2020, and FY2022								
Country	Rate	Total	Country	Rate	Total	Country	Rate	Total
FY2016			FY2017			FY2018		
Burkina Faso	28.5%	1,520	Djibouti	41.5%	432	Djibouti	43.7%	185
Eritrea	28.1%	721	Solomon Islands	30.0%	105	Yemen	34.5%	1,086
Djibouti	27.7%	112	Tajikistan	28.9%	165	Chad	31.0%	194
Bhutan	25.2%	150	Eritrea	28.5%	973	Eritrea	27.8%	607
Libya	24.2%	525	Chad	28.2%	197	Somalia	24.2%	37
Federated States of Micronesia	23.3%	10	Somalia	21.9%	56	Burundi	22.8%	306
Cabo Verde	20.2%	898	Liberia	21.9%	1,012	Palau	21.6%	8
Liberia	19.9%	834	Libya	19.5%	396	Libya	20.3%	212
Chad	19.3%	140	Laos	17.8%	408	South Sudan	19.9%	69
Laos	18.6%	298	Burkina Faso	17.0%	909	Syria	19.0%	1,491

FY2016, FY2017, FY2018, FY2019, FY2020, and FY2022								
Country	Rate	Total	Country	Rate	Total	Country	Rate	Total
FY2019			FY2020			FY2022		
Chad	45.0%	363	Libya	44.2%	353	Djibouti	53.9%	83
Libya	40.6%	338	Chad	26.1%	171	Liberia	51.2%	464
Djibouti	36.1%	114	Yemen	24.1%	368	Burma	49.7%	1,349
Burundi	35.9%	455	Burundi	23.2%	278	Eritrea	48.6%	273
Mauritania	30.0%	312	Sudan	22.5%	790	Turkmenistan	45.9%	139
Eritrea	27.0%	333	Djibouti	21.6%	38	Venezuela	43.1%	176,316
Yemen	24.9%	436	Laos	21.1%	397	Congo (Brazzaville)	39.9%	166
Somalia	22.1%	29	Eritrea	20.3%	235	Chad	38.5%	165
Sudan	21.4%	962	Mauritania	19.8%	222	Laos	38.3%	174
Laos	17.2%	449	Liberia	17.0%	502	Somalia	38.3%	41
Six-Year Total (FY2016, FY2017, FY2018, FY2019, FY2020, FY2022)								
Country			Rate			Total		
Djibouti			38.4%			964		
Chad			31.2%			1,230		
Eritrea			28.3%			3,142		
Libya			27.5%			2,133		
Burundi			22.9%			1,629		
Somalia			20.6%			214		
Yemen			20.3%			3,389		
Liberia			19.8%			4,029		
Mauritania			19.8%			1,254		
Laos			19.1%			2,070		

Source: Tabulated by CRS using data from DHS Annual Overstay Reports.

Notes: Rates are rounded to the nearest tenth of a percentage point. Tables reflect totals across the three visa categories reported by DHS. DHS did not release a FY2021-specific report, instead including the relevant numbers as an appendix to the FY2022 report. DHS specified in this appendix that the accuracy of the reported data was impacted by temporary COVID-19-related travel policies. For this reason, FY2021 data are omitted from this table.

For most countries, overstay rates were higher in FY2022 compared to the pre-COVID-19 trend. This is partially explained by the fact that some countries had an increased number of overstays despite a low number of total expected departures relative to the pre-COVID-19 trend. Some countries saw particularly large increases in FY2022. For example, Venezuela's total overstay rate increased from 8.0% in FY2019 to 43.1% in FY2022. In turn, the share of total overstays attributed to Venezuela increased from 6% in FY2019 to 21% in FY2022. Colombia and Mexico

both saw their overstay rates approximately double from FY2019 to FY2022. Colombia's share of total overstays increased from 5% to 8%, and Mexico's share increased from 7% to 15%.⁸²

DHS overstay reports also provide a breakdown of overstays by category of admission and country. In FY2022, Venezuela and Mexico had the highest number of overstays among visitors for business or pleasure, accounting for 23% and 17%, respectively, of the total among this admission category. Among students and exchange visitors, China and India were outliers with 16% and 9% of the total overstays in this category. For the "other" admission category (comprised mostly of temporary workers), Mexico and India each accounted for about 11% of total overstays, and the Philippines accounted for 10%.⁸³

Immigration-Related Consequences of Overstaying

Overstaying a nonimmigrant admission can result in several consequences under the INA. A nonimmigrant who overstays the authorized period of admission is subject to removal from the United States⁸⁴ and is no longer eligible for the VWP.⁸⁵ Furthermore, the nonimmigrant visa of someone who overstays is void beginning after the conclusion of the authorized period of stay,⁸⁶ which means that it can no longer be used for travel to the United States. In addition, a noncitizen admitted on the basis of a nonimmigrant visa who overstays is ineligible to be readmitted to the United States as a nonimmigrant unless he or she obtains a new visa in his or her country of nationality (or when the Secretary of State determines that extraordinary conditions exist).⁸⁷

Overstaying a nonimmigrant admission can also affect a noncitizen's ability to (1) be issued a visa or be readmitted to the United States after leaving the country, (2) extend or change one's nonimmigrant status, or (3) adjust one's status to that of an LPR. Each of these three consequences is explained in the sections below.

Three- and 10-Year Bars on Admissibility

Persons who overstay a period of nonimmigrant admission accrue unlawful presence, which can have consequences for their ability to be granted visas or be admitted to the United States in the future. The INA establishes bars to U.S. admission for persons who are unlawfully present in the country for more than 180 days and subsequently depart. Persons who depart after being unlawfully present in the United States for more than 180 days but less than one year are subject to a 3-year bar on admission. Those who depart after being unlawfully present for at least one year are subject to a 10-year bar. There are certain exceptions to the accrual of unlawful presence for purposes of the 3- and 10-year bars. For example, persons under age 18 and persons with pending asylum applications (unless they have engaged in unauthorized employment) do not

⁸² Colombians and Mexicans were among the top nationalities of foreign nationals encountered by U.S. Border Patrol crossing the Southwest border illegally in FY2022 and FY2023 (see CRS Report R47556, *U.S. Border Patrol Encounters at the Southwest Border: Fact Sheet*). While such encounters do not contribute to overstay rates, both trends are indicative of increased migration from those countries to the United States.

⁸³ For more details, see DHS, *Fiscal Year 2022 Entry/Exit Overstay Report*, June 21, 2023.

⁸⁴ INA §237(a)(1)(C)(i) (8 U.S.C. §1227(a)(1)(C)(i)). Whether or not ICE pursues removal of an overstay depends on a number of factors. See the "Overstay Enforcement" section.

⁸⁵ INA §217(a)(7) (8 U.S.C. §1187(a)(7)).

⁸⁶ INA §222(g)(1) (8 U.S.C. §1202(g)(1)).

⁸⁷ INA §222(g)(2) (8 U.S.C. §1202(g)(2)). DOS interprets this requirement to apply to each and every subsequent nonimmigrant visa for which an overstayer applies. See Charles Gordon et al., *2 Immigration Law and Procedure* § 18.03 (Matthew Bender, rev. ed., 2023).

accrue unlawful presence.⁸⁸ In addition, nonimmigrants who file an application for a change or extension of status before their status expires do not accrue unlawful presence for up to 120 days while their application is pending (unless they have engaged in unauthorized employment).⁸⁹ Nonimmigrants admitted for duration of status do not accrue unlawful presence unless and until DHS, an immigration judge, or the Board of Immigration Appeals (BIA) finds a status violation in the context of a request for an immigration benefit or during removal proceedings.⁹⁰

Extension of Stay and Change of Status

Some nonimmigrants admitted to the United States might want to apply to DHS for an extension of stay or change of status. For example, an H-1B temporary worker might request an extension of stay if their employer wants to continue their employment, or a B-2 tourist might request to change to F-1 student status in order to pursue an academic degree.

To be granted an extension of stay, a nonimmigrant must have maintained his or her status. If the authorized period of stay ended before the nonimmigrant applied to extend his or her stay, then he or she would be ineligible for an extension of stay.⁹¹ Certain classes of nonimmigrants are ineligible for extensions of stay. These include VWP travelers and nonimmigrants admitted for duration of status.⁹²

To change from one nonimmigrant status to another, a person must have been lawfully admitted as a nonimmigrant and must have maintained that status, including by not overstaying.⁹³ Certain classes of nonimmigrants—including VWP travelers—are not permitted to change from one nonimmigrant classification to another.⁹⁴

Adjustment of Status (LPR)

Overstaying a nonimmigrant admission has significant implications for a person's ability to obtain LPR status from within the United States (a process known as *adjustment of status*). Under the INA, there are different ways in which a foreign national can obtain LPR status, the most common being through a qualifying family relationship with a U.S. citizen or LPR, or a relationship with a U.S. employer. In general, under the permanent family-based and employment-based immigration systems, the sponsoring relative or employer files an immigrant petition with DHS on behalf of the beneficiary. If the petition is approved and the beneficiary is in

⁸⁸ INA §212(a)(9)(B) (8 U.S.C. §1182(a)(9)(B)).

⁸⁹ INA §212(a)(9)(B)(iv) (8 U.S.C. §1182(a)(9)(B)(iv)).

⁹⁰ 9 FAM 302.11.

⁹¹ Exceptions to this rule are found in 8 C.F.R. §214.1(c)(4). Furthermore, nonimmigrants who file to extend their status prior to the expiration of their period of stay do not accrue unlawful presence for up to 120 days while the application is pending, provided that they do not engage in unauthorized employment (INA §212(a)(9)(B)(iv) (8 U.S.C. §1182(a)(9)(B)(iv))).

⁹² See 8 C.F.R. §214.1(c)(3). If F-1 or J-1 nonimmigrants admitted for duration of status have a change in circumstances such that the end date of their program needs to be changed, the Designated School Official or Responsible Officer in charge of their program can issue a revised USCIS Form I-20 (Certificate of Eligibility for Nonimmigrant Student Status) or DOS Form DS-2019 (Certificate of Eligibility for Exchange Visitor Status (J-Nonimmigrant)) with a new end date.

⁹³ INA §248 (8 U.S.C. §1258). Nonimmigrants who file to change their status prior to the expiration of their period of stay do not accrue unlawful presence for up to 120 days while the application is pending, provided they do not engage in unauthorized employment (INA §212(a)(9)(B)(iv) (8 U.S.C. §1182(a)(9)(B)(iv))).

⁹⁴ See INA Section 248 (8 U.S.C. §1258) for details.

the United States, the beneficiary can apply to DHS to adjust status in accordance with INA Section 245, if eligible, at the appropriate time.⁹⁵

Adjustment of status under INA Section 245 (8 U.S.C. §1255) is subject to various restrictions. With the exception of someone who qualifies as a battered immigrant under the INA, the Section 245 adjustment of status process is available only to a foreign national who has been inspected and admitted or paroled into the United States.⁹⁶ In addition, it is generally not available to a person who subsequent to a lawful entry “is in unlawful immigration status on the date of filing the application for adjustment of status or who has failed ... to maintain continuously a lawful status since entry into the United States” or who has engaged in unauthorized employment.⁹⁷ Most nonimmigrants who overstay their authorized period of admission would be excluded on one or more of these grounds. Unless they qualify for an exception described below, they would be ineligible to adjust status under Section 245. Another provision makes a person who is not in a lawful nonimmigrant status ineligible for adjustment of status under the permanent employment-based system.⁹⁸

Section 245 contains exceptions to its various prohibitions for certain adjustment of status applicants. These exceptions enable certain persons who have overstayed a nonimmigrant admission to adjust status. Most notably, a person applying to adjust status under the family-based system who is the spouse, unmarried minor child, or parent of a U.S. citizen⁹⁹ is not subject to the prohibitions described above relating to unlawful status and unauthorized employment.¹⁰⁰ There is a narrower exception that applies to most prospective employment-based immigrants. It allows such persons to adjust status despite having engaged in some prohibited behavior (e.g., not maintaining lawful status, not being in a nonimmigrant status, engaging in unauthorized employment) provided that they have not done so for an aggregate period of more than 180 days.¹⁰¹

Overstay Enforcement

Federal statute provides immigration authorities with broad discretion to determine when it is appropriate to pursue the removal of an alien who lacks a legal basis to remain in the country. Resource and humanitarian concerns have typically led authorities to prioritize enforcement actions against subsets of the removable population (e.g., those who have committed certain crimes or pose national security risks).¹⁰² Following the findings of the *9/11 Commission Report*, DHS designed an overstay enforcement model focused on the people who are deemed the highest risks to national security and public safety.¹⁰³ Over the years, DHS has designed various strategies

⁹⁵ For additional information about the permanent family-based and employment-based immigration systems, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

⁹⁶ INA §245(a) (8 U.S.C. §1255(a)).

⁹⁷ INA §245(c)(2) (8 U.S.C. §1255(c)(2)).

⁹⁸ INA §245(c)(7) (8 U.S.C. §1255(c)(7)).

⁹⁹ Persons with these relationships to a U.S. citizen are termed *immediate relatives* in INA Section 201(b) (8 U.S.C. §1151(b)). In the case of a parent, the U.S. citizen must be at least age 21.

¹⁰⁰ INA §245(c)(2) (8 U.S.C. §1255(c)(2)).

¹⁰¹ INA §245(k) (8 U.S.C. §1255(k)).

¹⁰² See CRS Legal Sidebar LSB10578, *The Biden Administration’s Immigration Enforcement Priorities: Background and Legal Considerations*.

¹⁰³ See DHS, Deputy Under Secretary for Management, *Comprehensive Strategy for Overstay Enforcement and Deterrence*, December 31, 2020, p. 2 (hereinafter, “Comprehensive Strategy for Overstay Enforcement, 2020”); and (continued...)

to prioritize enforcement actions. While enforcement priorities have varied by administration, the overstayer population has never been a priority on its own, but rather by association with a specified priority such as national security or public safety.¹⁰⁴

In September 2021, DHS Secretary Alejandro Mayorkas announced new enforcement guidelines, which include background on DHS's use of prosecutorial discretion.¹⁰⁵ These guidelines were developed after President Biden revoked former President Trump's immigration enforcement guidelines in January 2021.¹⁰⁶ In his memo explaining the new guidelines, Mayorkas wrote:

The fact [that] an individual is a removable noncitizen therefore should not alone be the basis of an enforcement action against them. We will use our discretion and focus our enforcement resources in a more targeted way. Justice and our country's well-being require it.

By exercising our discretionary authority in a targeted way, we can focus our efforts on those who pose a threat to national security, public safety, and border security and thus threaten America's well-being. We do not lessen our commitment to enforce immigration law to the best of our ability.

This is how we use the resources we have in a way that accomplishes our enforcement mission most effectively and justly.¹⁰⁷

The memorandum underscores that DHS lacks the resources to pursue the removal of all persons in the United States subject to removal. Instead, ICE relies on these enforcement priorities to guide the use of prosecutorial discretion in arrest and removal actions. ERO considers foremost whether individuals present a threat to national security or public safety, drawing on intelligence

National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States (9/11 Report)*, July 22, 2004. Prior to 2003, no resources had been committed exclusively to the enforcement of visa noncompliance (see Statement of John Morton, Assistant Secretary, U.S. Immigration and Customs Enforcement, in U.S. Congress, House Committee on Homeland Security, *Visa Overstays: Can they be Eliminated?*, hearing, 111th Cong., 2nd Sess., March 25, 2010, Serial No. 111-60).

¹⁰⁴ For information on ICE enforcement priorities during the Obama, Trump, and Biden Administrations, see memoranda from the Obama Administration: U.S. Department of Homeland Security, U.S. Immigration and Customs Enforcement, Memorandum to All ICE Employees, John Morton, Assistant Secretary, *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, June 30, 2010, <https://www.ice.gov/doclib/news/releases/2010/civil-enforcement-priorities.pdf>; and John Morton, *Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens*, U.S. Immigration and Customs Enforcement, March 2, 2011, <https://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>. March 2, 2011; memorandum during the Trump Administration: U.S. Department of Homeland Security, Memorandum to Kevin McAleenan, Acting Commissioner, U.S. Customs and Border Protection, Thomas D. Homan, Acting Director, U.S. Immigration and Customs Enforcement, Lori Scialabba, Acting Director, U.S. Citizenship and Immigration Services, Joseph B. Maher, Acting General Counsel, Dimple Shah, Acting Assistant Secretary for International Affairs, Chip Fulghum, Acting Undersecretary for Management, from John Kelly, Secretary, *Enforcement of the Immigration Laws to Serve the National Interest*, February 20, 2017, https://www.dhs.gov/sites/default/files/publications/17_0220_S1_Enforcement-of-the-Immigration-Laws-to-Serve-the-National-Interest.pdf (hereinafter, "Kelly memorandum"); and memorandum during the Biden Administration: U.S. Department of Homeland Security, Memorandum to Tae D. Johnson, from Alejandro N. Mayorkas, Secretary, *Guidelines for the Enforcement of Civil Immigration Law*, September 30, 2021 (hereinafter, "Mayorkas memorandum").

¹⁰⁵ See, Mayorkas memorandum.

¹⁰⁶ See, Executive Order 13993, "Revision of Civil Immigration Enforcement Policies and Priorities," 86 Federal Register 7051, January 20, 2021 and Executive Order 13768, "Enhancing Public Safety in the Interior of the United States," 82 Federal Register 8799, January 25, 2017. Also see CRS Legal Sidebar LSB10578, *The Biden Administration's Immigration Enforcement Priorities: Background and Legal Considerations*.

¹⁰⁷ See Mayorkas memorandum, p. 2.

databases, immigration status, criminal history, and other factors.¹⁰⁸ During this process, individuals whom ICE identifies as enforcement priorities may be overstayers, but it is unlikely that being an overstayer alone would trigger removal.

Federal Agency Roles in Overstay Enforcement¹⁰⁹

ICE: ICE is the lead overstay enforcement agency and has primary responsibility for suspected in-country overstays. ICE is responsible for identifying overstays, classifying priority targets, and carrying out enforcement actions. Within ICE, HSI and ERO get referrals of suspected overstayers from CBP. HSI's Counter Threat Lead Development Unit investigates overstays who pose a potential danger to national security or public safety. ERO is responsible for locating and taking enforcement action, including removal, if appropriate.

CBP: CBP is the lead on maintaining information on out-of-country overstays. At ports of entry, CBP collects biographic and biometric information on all arriving individuals. CBP is responsible for determining the *admissibility* of arrivals and their authorized period of admission. The agency informs DOS and other entities, including ICE and USCIS, of overstay violations.

USCIS: USCIS processes and adjudicates applications for immigration benefits such as extensions of stay, changes of status, work authorization, and naturalization. In doing so, USCIS may determine that an applicant is inadmissible or removable based on unlawful presence, such as by overstaying. If USCIS determines that someone is removable, it may issue a notice to appear (NTA), a charging document that commences removal proceedings. USCIS also shares information with ICE for investigation purposes by making referrals of individuals who may be potential overstayers.

DOS: DOS accesses information from CBP that identifies overstayers through ADIS. This information may be used to revoke a visa in advance of an out-of-country overstayer returning to the United States or to deny a visa application from someone who has overstayed.

Lead Generation and Prioritization

On a daily basis, CBP's ADIS creates an automated list of overstay leads by matching nonimmigrant departure data and extensions of stay or status changes to arrival records.¹¹⁰ This list is then vetted against CBP's Automated Targeting System-Passenger (ATS-P), which applies screening rules (as defined by ICE) to the suspected in-country overstay leads to determine the level of priority for each system-identified overstay.¹¹¹ DHS describes ATS-P as a "decision support tool" that compares traveler information "against law enforcement, intelligence, and other enforcement data using risk-based scenarios and assessments."¹¹² The list of in-country leads is sent to ICE for vetting; CBP vets the list of out-of-country leads.¹¹³

In-Country Leads and Enforcement Actions

Suspected in-country overstayers are nonimmigrants whose initial authorized period of admission has expired and for whom no departure, extension of stay, or change of status has been recorded. ICE's Homeland Security Investigations (HSI) Counter Threat Lead Development Unit (CTLD)

¹⁰⁸ CRS email correspondence with ICE-ERO, October 15, 2023. "ICE enforcement priorities ensure ICE officers undertake intensive review and analysis of a subject's immigration status, criminal history, and aggravating/mitigating factors before initiating enforcement action."

¹⁰⁹ Information in this text box draws from Comprehensive Strategy for Overstay Enforcement, 2020, p. 3.

¹¹⁰ DHS, *Fiscal Year 2022 Entry/Exit Overstay Report*, June 21, 2023, p. 7. For more information on ADIS, see the text box, "Selected CBP Passenger Information Systems").

¹¹¹ DHS, *Fiscal Year 2022 Entry/Exit Overstay Report*, June 21, 2023, p. 8.

¹¹² DHS, Privacy Impact Assessment Update for the Automated Targeting System, DHS/CBP/PIA-006(e), January 13, 2017.

¹¹³ Comprehensive Strategy for Overstay Enforcement, 2020, p. 4.

oversees the program for in-country enforcement of overstays.¹¹⁴ CTLD sends in-country leads on those who are suspected to pose a national security or public safety threat to HSI field offices for further investigation.¹¹⁵ This includes coordinating with local authorities and other sources to locate subjects and determine whether to pursue a criminal arrest and/or an administrative arrest for further criminal or removal proceedings.¹¹⁶

HSI also works with relevant interagency partners, including the Federal Bureau of Investigation's (FBI's), Joint Terrorism Task Force to assist in identifying overstays with potential links to counterterrorism.¹¹⁷ It also works to identify individuals who are highly trained foreign military students and are absent without leave, in support to the U.S. Department of Defense (DOD).¹¹⁸ In addition, HSI works with the International Criminal Police Organization (INTERPOL), focusing on overstayers wanted for serious crimes.¹¹⁹

In-country overstayers who do not meet the criteria for priority investigation are referred to the National Criminal Analysis and Targeting Center (NCATC), part of ICE's Enforcement and Removal Operations (ERO).¹²⁰ NCATC coordinates with CTLD for further vetting and review and determines enforcement actions. ERO field offices are responsible for carrying out appropriate enforcement actions such as arrest and removal.

Out-of-Country Leads and Enforcement

Out-of-country leads are generated for those who have a departure recorded, but their departure occurred after the authorized period of admission ended. ADIS generates possible out-of-country overstay leads, and CBP is responsible for daily vetting and review. If an overstay is confirmed, the individual's nonimmigrant visa will not be recognized as valid by CBP, or the individual may lose eligibility to participate in the VWP.¹²¹ Additionally, the person's reentry eligibility may be subject to a 3- or 10-year bar (see the "Three- and 10-Year Bars on Admissibility" section).

Data on Enforcement Actions

DHS's enforcement activities related to overstays include lead generation, arrests, indictments, convictions, and removals. The enforcement statistics in DHS's publicly available reports, however, do not generally identify when these activities are directed at overstays. To better understand overstay enforcement actions, CRS requested from DHS data on certain enforcement actions against overstayers.¹²² In HSI's capacity to identify leads of overstayers considered a threat, CTLD analyzes records of over one million overstayers annually who may present a threat to national security or public safety.¹²³ CTLD prioritizes potential threat-level leads and sends

¹¹⁴ DHS, *Fiscal Year 2022 Entry/Exit Overstay Report*, June 21, 2023. On February 24, 2022, the Counterterrorism and Criminal Exploitation Unit (CTCEU) was renamed as Counter Threat Lead Development Unit (CLTD), see <https://studyinthestates.dhs.gov/2022/10/dsos-read-these-faqs-about-campus-sentinel>.

¹¹⁵ Comprehensive Strategy for Overstay Enforcement, 2020, p. 8.

¹¹⁶ Ibid.

¹¹⁷ DHS, *Fiscal Year 2022 Entry/Exit Overstay Report*, June 21, 2023, p. 9.

¹¹⁸ Ibid.

¹¹⁹ Comprehensive Strategy for Overstay Enforcement, 2020, p. iii.

¹²⁰ Ibid, p. 5.

¹²¹ Ibid, p. 9.

¹²² CRS email correspondence with DHS, May 17, 2023.

¹²³ DHS, *Fiscal Year 2022 Entry/Exit Overstay Report*, June 21, 2023, p. 17, https://www.dhs.gov/sites/default/files/2023-07/23_0707_FY22_FY23_CBP_Integrated_Entry_Exit_Overstay_Report.pdf.

them to HSI field offices to investigate. CTLD sends other leads outside their scope of investigation to ERO for further vetting. If the lead justifies further investigation, leads are passed onto ERO field offices (as mentioned above).

The data presented in **Table 3** indicate the results of overstay leads reviewed by CTLD and sent to HSI field offices by fiscal year, and reflect only investigations that fell under CTLD's scope (see the "In-Country Leads and Enforcement Actions" section).¹²⁴

Table 3. HSI CTLD Overstay Leads, FY2018-FY2022

	FY2018	FY2019	FY2020	FY2021	FY2022
Potentially Viable Leads Reviewed by CTLD					
Total	366,735	392,738	623,795	107,805	88,479
Leads Sent to HSI Field Offices by CTLD					
Total	8,968	9,671	8,015	2,378	231
Arrests Reported by the Field					
Total	1,808	1,819	1,147	428	106
Criminal	138	124	110	92	41
Administrative	1,670	1,695	1,037	336	65
Indictments					
Total	117	123	66	71	36
Convictions					
Total	57	83	63	27	32

Source: CRS email correspondence with DHS, May 17, 2023.

Notes: Data for FY2023(TD) run through March 24, 2023. The data for FY2018 through FY2022 reflect the results of overstay leads reviewed and sent to the field by HSI National Security Division CTLD (formerly CTCEU). These statistics are only reflective of investigations that fell under CTLD's scope. Arrest, indictment, and conviction statistics may reflect arrests, indictments, or convictions that occurred during a fiscal year that were the result of a lead sent to the field or initiated by the field during a previous fiscal year. Administrative arrests generally are arrests for civil violations of immigration laws, made in the interior of the United States. These statistics refer to events, not individuals. There may be overlaps between categories whereby an individual is captured in more than one category.

Table 3 presents data on overstay leads, arrests, indictments, and convictions. There was an increase in the number of leads reviewed in FY2018 through FY2020, followed by a substantial drop in FY2021 and FY2022. Since FY2019, there has been a decline in the number of overstay leads sent to HSI field offices, as well as in the number of arrests of overstayers. However, over the entire period, the criminal arrest share of all overstay arrests increased from 10% or lower in FY2018 through FY2020, to 21% in 2021, and 39% in FY2022.

The impact of the pandemic, including a drastic reduction in nonimmigrant arrivals and a pause in certain enforcement actions, contributed to the decrease in the number of potentially viable leads and arrests starting in FY2020.¹²⁵ At the beginning of the COVID-19 pandemic, ICE announced that it would "delay enforcement actions" for individuals who did not pose a public safety risk.

¹²⁴ CRS was unable to obtain similar data for ERO's enforcement actions, including arrests and removals.

¹²⁵ DHS, ICE, "Updated ICE statement on COVID-19," press release, March 18, 2020, <https://www.ice.gov/news/releases/updated-ice-statement-covid-19>.

The Biden Administration's changes in enforcement priorities may have also played a role in a reduction in the number of administrative arrests that began in FY2020.¹²⁶

Policy Considerations

While attention to migration at the U.S.-Mexico border in recent years has overshadowed the issue of nonimmigrant overstays, there has long been bipartisan agreement that the incidence of overstays undermines the integrity of the U.S. immigration system.¹²⁷ Various measures exist in current policy to encourage the timely departure of nonimmigrants, and other ideas have been proposed to disincentivize overstays. In addition, some observers have proposed allowing nonimmigrant overstayers who meet certain criteria to adjust to lawful permanent status. If policymakers choose to take steps to address nonimmigrant overstays, they might consider policy options in the following areas:

- completion of the exit system
- DOS and CBP roles in deterrence and prevention
- interior enforcement
- criminal penalties
- E-Verify
- VWP country eligibility
- H-2A and H-2B country eligibility
- foreign diplomacy
- visa bonds
- wage withholding
- increasing legal immigration pathways
- legalization

Completion of the Exit System

As described previously, the congressional mandate to create an automated entry-exit system has been met with a number of challenges over the years. The biometric *entry* system is said to be fully operationalized, whereas the biometric *exit* system is still being developed and implemented. Some Members of Congress have expressed frustration over the lack of completion of the exit system and the resulting inability to identify all overstays, particularly by those who exit via land POEs.¹²⁸

¹²⁶ See CRS Legal Sidebar LSB10578, *The Biden Administration's Immigration Enforcement Priorities: Background and Legal Considerations*.

¹²⁷ See, for example, U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Ten Years after 9/11: Can Terrorists Still Exploit Our Visa System?*, hearing, 112th Cong., 1st sess., September 13, 2011, Serial No. 112-43; U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *From the 9/11 Hijackers to Amine El-Khalifi: Terrorists and the Visa Overstay Problem*, hearing, 112th Cong., 2nd sess., March 6, 2012, Serial No. 112-73; U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Overstaying their Welcome: National Security Risks Posed by Visa Overstays*, hearing, 114th Cong., 2nd sess., June 14, 2016, Serial No. 114-75; and U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Visa Overstays: A Gap in the Nation's Border Security*, hearing, 115th Cong., 1st sess., May 23, 2017, Serial No. 115-17.

¹²⁸ Ibid.

The exit system is currently in varying degrees of completion depending on mode of travel (i.e., air, land, or sea) and the type of information gathered (i.e., biographic vs. biometric data).¹²⁹ (See **Table 4.**) Biographic data are captured on all commercial passengers exiting the United States by air or sea, because the air and sea carriers are required to submit passenger manifests for international departures via APIS. For land exit, the collection of biographic data at the northern border is accomplished through the *Beyond the Border* partnership with Canada (discussed previously in the “Land Exit—Northern Border” section); however, neither biographic nor biometric data are collected for all departures at the southern land border.

Various pilot procedures have been put in place temporarily at the southern land border, including kiosks that took photos of exiting pedestrians and matched them to entry photos.¹³⁰ Congress could dedicate more resources to DHS to evaluate and expand these pilots to develop a comprehensive land exit system. As another option, Congress could mandate DHS to prioritize working with the Mexican government to put in place an agreement similar to the *Beyond the Border* agreement that the United States has with Canada.

Table 4. Status of the Biographic and Biometric Exit System

Mode of Travel	Biographic	Biometric
Air exit	Complete	Approximately 80% of in-scope travelers
Sea exit	Complete	Incomplete
Land exit—northern border pedestrians	Complete	Incomplete
Land exit—northern border vehicles	Complete	Incomplete
Land exit—southern border pedestrians	Incomplete; using re-entry data	Incomplete
Land exit—southern border vehicles	Incomplete; using re-entry data	Incomplete

Sources: DHS, *Traveler Verification Service*, DHS/CBP/PIA-056, November 14, 2018, and Government Accountability Office, *Facial Recognition Technology: CBP Traveler Identity Verification and Efforts to Address Privacy Issues*, GAO-22-106154, July 27, 2022; email communication from CBP to CRS, April 12, 2023.

In 2021, DHS reported that it would begin a pilot at certain land ports along the northern border to allow travelers to self-report their exits to Canada.¹³¹ Travelers would use the Self-Reporting Mobile Exit (SRME) function within CBP One’s I-94 mobile application (which functions similarly to CBP’s I-94 website). The SRME function would use geolocation to confirm a traveler’s location outside the United States (up to one mile). The pilot was ongoing as of May 2023. If successful, CBP plans to expand the pilot to the southern border.¹³²

¹²⁹ For more information, see CRS Report R47541, *Immigration: The U.S. Entry-Exit System*.

¹³⁰ CRS meeting with CBP OFO officials at the San Ysidro POE, August 28, 2023.

¹³¹ DHS, *Privacy Impact Assessment for CBP One™*, DHS Reference No. DHS/CBP/PIA-068, February 19, 2021, p. 14.

¹³² *Ibid.*

DOS and CBP Roles in Deterrence and Prevention

Some policymakers have raised questions about what the U.S. government might do to more effectively deter or prevent nonimmigrants from overstaying. Suggestions include stricter visa adjudications by consular officers, particularly in countries with high overstay rates; verbal or written warnings by consular officers and/or admissions officers regarding the consequences of overstaying; and notifications sent to nonimmigrants ahead of their required departure dates.

Consulates regularly evaluate whether the foreign nationals they have approved for nonimmigrant visas travel and return as expected. Adverse findings may result in higher visa refusal rates in the future. Consular officers do not, as a general rule, warn visa applicants about the consequences of overstaying; nor do CBP officers warn nonimmigrants at the time of admission.¹³³ In addition to stamping the passport with the expiration date of their authorized period of admission, CBP sends notification emails to VWP and certain non-VWP travelers 10 days before their authorized period of stay will expire. The same classes of travelers receive a second email if CBP has no evidence of their departure and their period of stay has expired, notifying them that they have overstayed in the United States.¹³⁴ As mentioned previously, travelers who use the CBP One mobile application can access their electronic I-94 Form, which tells them how many days they have left in their authorized period of stay.

Legislative proposals have been introduced that would require nonimmigrant visa applicants to acknowledge that they have been notified of the terms and conditions of their visas and the consequences for violating such terms, including overstaying.¹³⁵ DHS has proposed other strategies to deter overstays, including enhancing its communications to nonimmigrant students and the schools that host them, notifying more travelers before and after an overstay occurs, and improving the collection of information from employers about H-2 workers who do not report to work.¹³⁶

Interior Enforcement

Some Members of Congress have expressed dissatisfaction that only a small fraction of the thousands of overstayers residing in the United States are targeted for enforcement by ICE, despite the fact that they are known by the government to be in violation of immigration law. In a 2015 hearing on overstays, Representative Martha McSally, Chair of the Subcommittee on Border and Maritime Security of the Committee on Homeland Security, noted concerns about the size of the overstay population in her opening remarks:

I am concerned that there are unidentified National security and public safety risks in a population that large, which has historically been the primary means for terrorist entry to

¹³³ Information from in-person conversations with DOS employees, July 25, 2023; and information from email to CRS from CBP, April 18, 2023. CBP maintains an I-94 website that includes an FAQ with the question, “What happens if I overstay my admission period without receiving an extension?” <https://i94.cbp.dhs.gov/I94/#/faq>

¹³⁴ Email to CRS from CBP, April 18, 2023. The classes of nonimmigrants receiving email notifications are B1/B2 (business or tourism visitors), E-1 and E-2 (treaty traders and investors), K (intended spouses of U.S. citizens), L (intracompany transferees), R (religious workers), and VWP travelers.

¹³⁵ See, for example, S. 2192 in the 115th Congress.

¹³⁶ DHS, *Comprehensive Strategy for Overstay Enforcement and Deterrence: FY2019 Report to Congress*, July 17, 2020.

the United States. In order to tackle the challenge, the Department has to first identify those who overstay their visa in the first place.¹³⁷

Despite these broad concerns, DHS does not have the resources to locate and remove the five million overstayers estimated to be living in the United States.¹³⁸ Rather, as discussed previously, DHS relies on a system whereby law enforcement components generate leads based on information that identifies suspected overstays, and sifts out for possible enforcement those who present the largest risk to the American public.¹³⁹

Congress could choose to shift interior enforcement priorities to focus greater resources and intelligence-gathering on the removal of overstayers. The Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744), as passed by the Senate in the 113th Congress, sought to address the overstayer population by directing the Secretary of Homeland Security to initiate removal proceedings for persons who were admitted to the United States as nonimmigrants after the date of the enactment of the act and overstayed their authorized period of admission. The HUMANE Act of 2019 (H.R. 2522), as introduced in the 116th Congress, included a provision to make a person who overstayed for 30 days subject to detention and removal within 90 days. While no appropriations would have been authorized as part of either of these bills, they would have required DHS to shift enforcement priorities to focus on overstay cases.

Criminal Penalties

Over the years, policymakers have proposed stricter penalties for nonimmigrants who overstay. As explained in the “Immigration-Related Consequences of Overstaying” section, under current law there are various immigration-related consequences for overstaying, but the act of overstaying itself is not a crime. Bills have been introduced in recent congresses that would establish criminal penalties, fines, and possible imprisonment for overstaying.¹⁴⁰

E-Verify

A longstanding policy idea for addressing the unauthorized population in the United States is to make it more difficult for unauthorized persons, including overstayers, to find paid employment. Current law makes it unlawful to knowingly hire or continue to employ an unauthorized alien. It also requires employers to examine documents presented by new hires to confirm their identity and work authorization and to complete and retain employment eligibility verification (I-9)

¹³⁷ U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Overstaying Their Welcome: National Security Risks Posed by Visa Overstays*, hearing, 114th Cong., 2nd sess., June 14, 2016, p. 1. The 9/11 terrorist attacks intensified Congress’s longstanding concern about the inability to identify, locate, and remove overstayers.

¹³⁸ Given resource constraints, DHS has adopted different approaches over the years for prioritizing immigration enforcement actions against different classes of removable aliens. For more information, see CRS Legal Sidebar LSB10578, *The Biden Administration’s Immigration Enforcement Priorities: Background and Legal Considerations*.

¹³⁹ An example of how an overstay may be identified for removal is the high-profile case of an unlawfully present Brazilian national convicted of murder who recently escaped prison while serving a life sentence in Pennsylvania. He was eventually captured by law enforcement. The sister of the fugitive, an in-country overstayer, is being processed for removal after she “chose not to assist” the authorities. See Miriam Jordan, “The Pennsylvania Fugitive: Why Wasn’t He Deported?”, *The New York Times*, September 9, 2023.

¹⁴⁰ See, for example, H.R. 2 (passed by the House) and H.R. 2640 in the 118th Congress.

forms.¹⁴¹ The ready availability of genuine-looking fraudulent documents, however, has effectively undermined the I-9 process.¹⁴²

E-Verify, an electronic employment eligibility verification system, builds on the I-9 process by requiring participating employers to submit information about their new hires (e.g., name, date of birth) to be checked against information in Social Security Administration and DHS databases to verify identity and work eligibility. E-Verify is largely voluntary, although it has mandatory participants such as certain federal contractors.¹⁴³ In addition, it is a temporary program that must be regularly extended through reauthorization by Congress.

Legislation to make an E-Verify-like system permanent and mandatory has been introduced in Congress over the years, although the provisions in the proposals have varied. These bills include broad immigration measures, such as the Secure the Border Act of 2023 (H.R. 2), as passed by the House in the 118th Congress, as well as stand-alone bills.¹⁴⁴

Visa Waiver Program Country Eligibility

Visa Refusal Rate versus Overstay Rate

For a country to qualify for the VWP, it must have had a *nonimmigrant visitor visa refusal rate* of less than 3% in the previous fiscal year or have averaged less than 3% over the previous two fiscal years.¹⁴⁵ This rate represents the proportion of individuals whose applications for tourist or business visas (B visas) have been rejected by U.S. consular officials in their home countries.¹⁴⁶

Some observers maintain that the nonimmigrant visa refusal rate is “not sufficiently probative” of a country’s eligibility because it is based on decisions made by consular officers rather than on the behavior of nonimmigrants.¹⁴⁷ When the VWP was conceived, policymakers expected that the number of nonimmigrants who overstayed the terms of their entry under this program would be a better standard for future program participation, but it was not used at the time because of the lack of reliable data on overstays. Now that overstay data have improved, there may be more support for replacing the nonimmigrant visitor visa refusal rate with the overstay rate. Advocates of expanding the VWP have also suggested that the refusal rate threshold could be raised and used in

¹⁴¹ INA §274A (8 U.S.C. §1324a).

¹⁴² Sadikshya Nepal, *Moving Beyond Amnesty and Border Security as the Solutions for Undocumented Migration*, Bipartisan Policy Center, April 1, 2021.

¹⁴³ For additional information on E-Verify, see DHS, “E-Verify,” <https://www.e-verify>.

¹⁴⁴ See, for example, H.R. 319, as introduced in the 118th Congress.

¹⁴⁵ INA §217(c)(2)(A) (8 U.S.C. §1187(c)(2)(A)).

¹⁴⁶ From October 2008 to July 2009, the Secretary of Homeland Security, in consultation with the Secretary of State, could waive the nonimmigrant visitor visa refusal rate (as was authorized in P.L. 110-53). The waiver authority allowed DHS to admit countries into the VWP that had met all of the security requirements if they had a low overstay rate and a declining nonimmigrant visitor visa refusal rate that was below 10% in the previous fiscal year. However, the Secretary of Homeland Security’s authority to waive the nonimmigrant visitor visa refusal rate is suspended until the airline passenger exit system is able to match an alien’s biometric information with relevant watchlists and manifest information. The suspension of the waiver is required by P.L. 110-53, Section 711. For more information, see CRS Report RL32221, *Visa Waiver Program*; and CRS Report R46300, *Adding Countries to the Visa Waiver Program: Effects on National Security and Tourism*.

¹⁴⁷ U.S. Congress, House Committee on the Judiciary, *Visa Waiver Permanent Program Act*, report together with additional views to accompany H.R. 3767, 106th Cong., 2nd sess., H.Rept. 106-564 (Washington, DC: GPO, 2000), p. 32.

conjunction with the overstay rate as criteria for joining the program.¹⁴⁸ From the 110th Congress to the 116th Congress, multiple bills were introduced that would have either replaced the nonimmigrant visitor visa refusal rate criterion with the overstay rate or required its use in conjunction with the visa refusal rate.¹⁴⁹

Removal of Countries from VWP Based on Overstay Rates

A country can be terminated from the VWP if the Secretary of Homeland Security, in consultation with the Secretary of State, determines that a country's participation undermines U.S. law enforcement, including immigration enforcement.

Argentina and Uruguay are former members of the VWP. Argentina joined in 1996, but the United States removed it in 2002 after poor economic conditions in the country led to an increase in the number of Argentine nationals entering the United States under the VWP and remaining illegally past the 90-day period of admission.¹⁵⁰ Uruguay joined in 1999, but it was removed in 2003 because a recession in Uruguay led to an increasing number of Uruguayan citizens entering the United States under the VWP and violating the terms of their admission by working and overstaying.¹⁵¹

Bills introduced in the past would have terminated a country's participation in the VWP if the country's overstay rate exceeded 3%.¹⁵²

Public Campaign to Deter VWP Overstays

As of December 2017, VWP countries that have an overstay rate greater than 2% must initiate a public information campaign to educate their citizens about the conditions for admission to the United States.¹⁵³ If this does not reduce overstay violations, a country could be removed from the

¹⁴⁸ Testimony of Steven Bucci, Director of the Douglas and Sarah Allison Center for Foreign and National Security Policy at the Heritage Foundation, in U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *Combatting Terrorist Travel: Does the Visa Waiver Program Keep Our Nation Safe?*, hearings, 114th Cong., 1st sess., March 17, 2015, H.Hrg. 114-8 (Washington, DC: GPO, 2015).

¹⁴⁹ For example, the Jobs Originated through Launching Travel (JOLT) Act would have required countries to have both a nonimmigrant visitor visa refusal rate and an overstay rate of less than 3% in order to participate in the VWP. The JOLT Act was first introduced in the 112th Congress (S. 2233, S. 3199, and H.R. 5741), and the Senate Committee on the Judiciary Subcommittee on Immigration, Refugees and Border Security held a hearing on promoting international tourism in which they addressed the bill. Similar bills (also called JOLT Act) were introduced in the 113th, 114th, 115th, and 116th congresses. Other bills that would have incorporated overstay rates in the determination of VWP country participation include the Visa Waiver Program Enhanced Security and Reform Act (introduced in the 112th, 113th, and 114th congresses; H.R. 2686 and S. 1507 in the 114th Congress) and the Secure Travel and Counterterrorism Partnership Program Act of 2011 (H.R. 959 and S. 497 in the 112th Congress). None of these bills were voted on.

¹⁵⁰ In addition, many Argentine nationals were using the VWP to obtain entry to the United States solely for the purpose of proceeding to the Canadian border and pursuing an asylum claim in Canada. According to Citizenship and Immigration Canada, between 1999 and 2001 more than 2,500 Argentines filed refugee claims in Canada after transiting the United States under the VWP. DOJ, INS, "Termination of the Designation of Argentina as a Participant Under the Visa Waiver Program," 67 *Federal Register* 7944, February 21, 2002.

¹⁵¹ In 2002, Uruguayan nationals were two to three times more likely than all nonimmigrants, on average, to have been denied admission at the border. Uruguayan air arrivals had an apparent overstay rate of more than twice that of the average apparent overstay rate for all air-arrival nonimmigrants. DOJ, INS, "Attorney General's Evaluations of the Designations of Belgium, Italy, Portugal, and Uruguay as Participants Under the Visa Waiver Program" 68 *Federal Register* 10954, March 7, 2003.

¹⁵² See, for example, the Secure Travel and Counterterrorism Partnership Program Act of 2011 (H.R. 959 and S. 497 in the 112th Congress).

¹⁵³ DHS, "Secretary Kirstjen Nielsen Announces Targeted Security Enhancements to the Visa Waiver Program," press (continued...)

program, as occurred with Argentina and Uruguay. In its FY2022 overstay report, DHS states that, in consultation with the Department of State, it “will engage with countries exceeding this threshold to undertake active efforts to reduce their overstay rates.”¹⁵⁴ Congress could conduct oversight to determine the extent to which these measures have been implemented and effective.

H-2A/H-2B Country Eligibility

Overstay rates are considered in determining whether countries are eligible to participate in the nonimmigrant H-2A agricultural worker and H-2B nonagricultural worker visa programs. In accordance with DHS regulations, the Secretary of Homeland Security, with the concurrence of the Secretary of State, annually designates countries whose nationals are eligible to participate in each program. Under the regulations, the factors to be considered in making these determinations include measures related to the ability of the U.S. government to execute final orders of removal against nationals of a country as well as “other factors as may serve the U.S. interest.”¹⁵⁵ Among the other factors specified by DHS in implementing this designation requirement are “nonimmigrant visa overstay rates for nationals of the country (including but not limited to H-2A and H-2B nonimmigrant visa overstay rates).”¹⁵⁶

DHS has made it clear that these other factors can result in a country being excluded or removed from the H-2A and/or H-2B eligibility list. In making its eligibility determinations, for some years the department has specifically addressed how nonimmigrant overstay rates can lead to a country losing its H-2A or H-2B designation. For example, the DHS notice designating countries for the November 2021-November 2022 period included the following:

DHS believes that countries with more than 50 expected departures in a given fiscal year whose nationals overstay at [a] rate of more than 10 percent (i.e., at least 5 overstays) present an appreciable and considerable degree of risk to the integrity of these nonimmigrant programs.¹⁵⁷

As such, DHS, with the concurrence of DOS, generally will terminate the H-2A and/or H-2B designations of countries that fit these criteria, absent countervailing evidence that it is not in the U.S. interest to do so.¹⁵⁸ In that same notice, DHS removed Mongolia from the list of H-2A-eligible countries based on its estimate that in FY2019, 40.3% of Mongolian H-2A visa holders had overstayed their authorized periods of admission. By contrast, DHS estimated that none of Mongolia’s H-2B visa holders had overstayed in FY2019 and re-designated the country as eligible for the H-2B program for the November 2021-November 2022 period.¹⁵⁹

Wage Withholding

Another idea that has been suggested to incentivize nonimmigrant workers to leave the United States at the end of their authorized periods of stay is to withhold a portion of their wages, which

release, December 15, 2017, <https://www.dhs.gov/news/2017/12/15/secretary-kirstjen-nielsen-announces-targeted-security-enhancements-visa-waiver>.

¹⁵⁴ DHS, *Fiscal Year 2022 Entry/Exit Overstay Report*, June 21, 2023, p. 13.

¹⁵⁵ 8 C.F.R. §214.2(h)(5)(i)(F).

¹⁵⁶ DHS, “Identification of Foreign Countries Whose Nationals Are Eligible To Participate in the H-2A and H-2B Nonimmigrant Worker Programs,” 87 *Federal Register* 67930, November 10, 2022.

¹⁵⁷ DHS, “Identification of Foreign Countries Whose Nationals Are Eligible To Participate in the H-2A and H-2B Nonimmigrant Worker Programs,” 86 *Federal Register* 2689, 2690, January 13, 2021.

¹⁵⁸ *Ibid.*

¹⁵⁹ *Ibid.*, pp. 2690-2691.

they could receive only after an on-time departure and return to their home countries. These wage withholding ideas typically have been limited to temporary workers who fill positions that do not require formal higher education. They have been proposed in various contexts. For example, wage withholding has been suggested as a component of a larger bilateral worker agreement with Mexico for nonseasonal workers outlined in a 2020 Cato Institute white paper:

A small portion of each individual worker's earnings would be paid into an account that could be liquidated only upon the worker's return to Mexico shortly after the end of his visa. If the worker instead remains in the United States—lawfully or unlawfully—the account would be forfeited.¹⁶⁰

Wage withholding has also been included in various measures on nonimmigrant agricultural workers introduced in Congress over the years. For example, bills proposing to amend the H-2A visa program or authorize new temporary agricultural worker visas have included language to establish a trust fund in the U.S. Treasury to provide “a monetary incentive” for nonimmigrant workers “to return to their country of origin upon expiration of their visas.” These bills would have required agricultural employers to withhold a portion of their nonimmigrant workers’ wages and transfer those amounts into the trust fund. Once back in their home countries, the workers could have applied for the withheld funds. As part of the application, they would have had to show that they had “complied with the terms and conditions of the [visa] program.”¹⁶¹

Visa Bonds

Visa bonds can also serve as a financial incentive for nonimmigrants to depart the United States on time. Current law authorizes consular officers to require visa bonds from certain applicants for B or F nonimmigrant visas who are otherwise eligible for such visas if the consular officer is not fully satisfied that the applicant will maintain status or depart on time.¹⁶² In practice, however, these *maintenance of status and departure bonds* are rarely, if ever, used. DOS guidance to consular officers discourages their use for several reasons, including (1) “the mechanics of posting, processing, and discharging a bond are cumbersome, and many DHS offices are reluctant to accept them”; (2) requiring a bond may be misinterpreted as asking for a bribe from the visa applicant, and (3) a bond is not an effective guarantee of departure because some potential migrants are willing to pay large sums of money to immigrate illegally.¹⁶³

In 2019, then-President Trump issued a presidential memorandum related to nonimmigrant overstays.¹⁶⁴ In response, DOS announced a visa bond pilot program to “assess the operational feasibility of posting, processing, and discharging visa bonds, in coordination with the Department of Homeland Security (DHS), to help assess the burden on government agencies and identify any practical challenges related to visa bonds.”¹⁶⁵ The program was “designed to apply to nationals of specified countries with high overstay rates to serve as a diplomatic tool to encourage

¹⁶⁰ Michael Clemens, “Chapter 3: Shared Border, Shared Future: A U.S.-Mexican Bilateral Worker Agreement,” in *12 New Immigration Ideas for the 21st Century*, ed. Alex Nowrasteh and David J. Bier, Cato Institute, May 13, 2020, <https://www.cato.org/white-paper/12-new-immigration-ideas-21st-century>.

¹⁶¹ The quoted text appears in multiple bills, including, for example, H.R. 4065, as introduced in the 110th Congress; H.R. 1773, as reported by the House Judiciary Committee in the 113th Congress; and H.R. 6417, as introduced in the 115th Congress. A related bill with similar wording (H.R. 2086) was introduced in the 117th Congress.

¹⁶² INA §221(g)(3) (8 U.S.C. §1201(g)(3)).

¹⁶³ 9 FAM 403.9-8(A).

¹⁶⁴ Executive Office of the President, “Combating High Nonimmigrant Overstay Rates, Memorandum for the Secretary of State, the Attorney General, and the Secretary of Homeland Security,” 84 *Federal Register* 19853-19854, April 29, 2019.

¹⁶⁵ DOS, “Visas: Visa Bond Pilot Program,” 85 *Federal Register* 74875-74883, November 23, 2020.

foreign governments to take all appropriate actions to ensure their nationals timely depart the United States after making temporary visits.”¹⁶⁶ No bonds were issued under the program, and it expired after six months.

Foreign Diplomacy

According to DHS annual overstay reports, certain countries account for a high proportion of nonimmigrant overstays, and others consistently have high overstay rates.¹⁶⁷ Some observers support raising the overstay issue with foreign governments and possibly imposing consequences for countries whose nationals overstay at a high rate or number.¹⁶⁸ Others make the case that the United States should prioritize other foreign policy issues, and that foreign governments have little control over whether their citizens overstay.¹⁶⁹ Among other things, former-President Trump’s 2019 presidential memorandum related to overstays directed the Secretary of State to “engage with the governments of countries with a total overstay rate greater than 10 percent” in order to “identify conditions contributing to high overstay rates among nationals of those countries and methods to address those conditions.”¹⁷⁰ It is unclear if any such engagements occurred.

Increasing Legal Immigration Pathways

Many policymakers and other interested observers have long argued that effective strategies to combat illegal immigration must include accessible pathways for foreign nationals to legally enter and remain in the United States.¹⁷¹ For example, the 2022 Los Angeles Declaration on Migration and Protection, which was endorsed by the United States and 20 other Western Hemisphere countries, expressed support for “regular pathways” as a way to make migration “safer and more orderly.”¹⁷² Although legal pathway ideas are often focused on preventing unlawful entries, they may also offer a way to address overstays. Related proposals have included permanent and/or temporary immigration options.

Some permanent legal pathway proposals are a response to the difficulties of obtaining LPR status that stem from numerical limits on permanent immigration. These numerical caps prevent most individuals without a college degree from qualifying for employment-based immigration

¹⁶⁶ Ibid.

¹⁶⁷ According to the reports, the countries with the highest overstay rates do not typically account for a high share of total overstays; conversely, the countries with the highest number of overstays do not typically have the highest overstay rates. See the “Overstay Trends by Country” section of this CRS report.

¹⁶⁸ For example, the Visa Bond Pilot Program (described above in the “Visa Bonds” section) was described as “a potential diplomatic tool to encourage foreign governments to take all appropriate actions to ensure that their nationals timely depart the United States after making temporary visits.” DOS, “Visas: Visa Bond Pilot Program,” 85 *Federal Register* 74875-74883, November 23, 2020.

¹⁶⁹ Statement of David T. Donahue, Deputy Assistant Secretary of State for Consular Affairs, Department of State, in U.S. Congress, House Committee on Homeland Security, Subcommittee on Border and Maritime Security, *From the 9/11 Hijackers to Amine El-Khalifi: Terrorists and the Visa Overstay Problem*, hearing, 112th Cong., 2nd sess., March 6, 2012, Serial No. 112-73, p. 21.

¹⁷⁰ Executive Office of the President, “Combating High Nonimmigrant Overstay Rates, Memorandum for the Secretary of State, the Attorney General, and the Secretary of Homeland Security,” 84 *Federal Register* 19853-19854, April 29, 2019.

¹⁷¹ See, for example, Ronald Brownstein, “How legal immigration might solve two of America’s toughest problems,” *CNN*, May 30, 2023, <https://www.cnn.com/2023/05/30/politics/immigration-border-security-worker-shortages-fault-lines/index.html>.

¹⁷² White House, *Los Angeles Declaration on Migration and Protection*, June 10, 2022, <https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/los-angeles-declaration-on-migration-and-protection/>.

and lead to long wait times for other applicants for family-based and employment-based immigrant status.¹⁷³ Some observers point out that these limits create incentives for foreigners to travel to the United States on temporary visas and overstay.¹⁷⁴ Some support expanding eligibility for employment-based immigrant visas to more applicants without college degrees.¹⁷⁵ Others support raising numerical limits for existing visa categories to reduce wait times.¹⁷⁶

Congress and the executive branch have taken action to allow beneficiaries of family-based immigrant visa petitions to enter the United States on a temporary basis to await their permanent visas. Such policies may reduce incentives for family members to use tourist or other nonimmigrant visas to travel to the United States and overstay rather than waiting for years in their home countries before being reunited with U.S. family members. In 2000, for example, Congress created the K-3, K-4, and V nonimmigrant visas to reunite family members who had been or could be separated for long periods during the process of immigrating to the United States due to numerical limits on immigrant visas. These temporary visas allowed certain spouses and children of LPRs and U.S. citizens to travel to and remain in the United States while waiting for their permanent, family-based visa.¹⁷⁷ In addition, DHS established special parole programs to allow certain U.S. citizens and LPRs to apply for parole for their family members in Haiti or Cuba.¹⁷⁸ In July 2023, DHS announced that eligibility for “family reunification parole” was being expanded to cover nationals of Colombia, El Salvador, Guatemala, and Honduras.¹⁷⁹ If approved, family members from those countries would be allowed to live and, in many cases, work in the United States while they awaited LPR status.¹⁸⁰

A recent example of a congressional proposal to create a new temporary pathway is the Temporary Family Visitation Act, which has been introduced in the past three congresses.¹⁸¹ This bill would create a B-3 nonimmigrant visa classification for the purpose of visiting relatives in the United States for up to 90 days. Currently, many B-2 visa applicants desiring to visit relatives in the United States are denied visas due to concerns that they will overstay their six-month authorized period of admission.¹⁸² This bill seeks to avoid such visa denials by putting in place

¹⁷³ Under current law, up to 10,000 employment-based visas per year are available for workers without college degrees (out of a total of 140,000 employment-based visas available per year). In addition, family- and employment-based preference immigrants are subject to a *per-country cap*, which limits the number of immigrants from any single country to no more than 7% of the total annual limit. For more information, see CRS Report R47164, *U.S. Employment-Based Immigration Policy*.

¹⁷⁴ See, for example, Michael Clemens, Cindy Huang, and Jimmy Graham et al., *Migration Is What You Make It: Seven Policy Decisions that Turned Challenges into Opportunities*, Center for Global Development, May 30, 2018.

¹⁷⁵ See, for example, David J. Bier, “Ten Irrational and Infuriating Aspect of U.S. Legal Immigration,” Cato Institute, August 9, 2017.

¹⁷⁶ See, for example, Alex Nowrasteh, David J. Bier, Daniel Griswold, et. al, “12 New Immigration Ideas for the 21st Century,” Cato Institute, May 13, 2020.

¹⁷⁷ These visas were created in the Legal Immigration Family Equity Act (LIFE Act; P.L. 106-553), enacted on December 21, 2000. No V visas have been issued since FY2007 because in order to qualify for a V visa, the LPR spouse or parent had to have filed the petition for their spouse or child before December 21, 2000. K-3 and K-4 visas continue to be issued.

¹⁷⁸ For more information on these programs, see CRS Report R46570, *Immigration Parole*.

¹⁷⁹ DHS, “DHS Announces Family Reunification Parole Processes for Colombia, El Salvador, Guatemala, and Honduras,” press release, July 7, 2023.

¹⁸⁰ For more information on these parole programs, see CRS Report R46570, *Immigration Parole*.

¹⁸¹ The Temporary Family Visitation Act was H.R. 8617 in the 116th Congress, H.R. 3215/S. 1635 in the 117th Congress, and H.R. 5155 in the 118th Congress.

¹⁸² As explained earlier, Section 214(b) of the INA (8 U.S.C. §1184(b)) generally presumes that all foreign nationals seeking admission to the United States intend to settle permanently. The Section 214(b) presumption is the most (continued...)

safeguards against overstaying. To be approved for a B-3 visa, the applicant must express intent to depart by the end of 90 days and must not have overstayed in the past. Furthermore, U.S. family members would not be allowed to petition for their relatives to obtain B-3 visas if anyone they petitioned for in the past had overstayed. B-3 nonimmigrants would also be prohibited from changing status within the United States; in other words, they would not be allowed to switch to another status in order to stay in the United States longer.

Legalization

Another approach that has been suggested for addressing visa overstayers living in the United States, and the resident unauthorized population more generally, is to enable them to adjust status and become LPRs. To make LPR status generally available to unauthorized immigrants would require the enactment of new adjustment of status mechanisms. Over the years, legislation has been introduced to establish such mechanisms for unauthorized persons in the United States who satisfy specified continuous presence and other requirements. For example, S. 744, as passed by the Senate in the 113th Congress would have established a multistep, multiyear process to enable eligible unauthorized aliens to transition into a provisional legal status and ultimately to LPR status.¹⁸³ More recently, the DIGNIDAD (Dignity) Act of 2023 (H.R. 3599), as introduced in the 118th Congress, proposes to establish a different multistep, multiyear process through which unauthorized aliens who satisfy certain requirements could obtain LPR status. Supporters of legalization proposals routinely argue that the intended beneficiaries have earned a pathway to lawful status based on their contributions to the United States. Opponents commonly counter that such proposals reward immigration law violators and may incentivize future unauthorized immigration.

common basis for rejecting nonimmigrant visa applications, accounting for three-quarters of ineligibility findings in FY2019.

¹⁸³ For further information about this bill, see archived CRS Report R43097, *Comprehensive Immigration Reform in the 113th Congress: Major Provisions in Senate-Passed S. 744*.

Appendix. Nonimmigrant Visa Categories

Visa Category	Description	Initial Duration of Stay	FY2022 Visa Issuances
A-1	Ambassador, public minister, career diplomat, or consul, and immediate family	Duration of assignment	9,395
A-2	Other foreign government official or employee, and immediate family	Duration of assignment	85,752
A-3	Attendant, servant, or personal employee of A-1/A-2, and immediate family	Up to three years	808
B-1	Visitor for business	Six months to one year	21,943
B-2	Visitor for pleasure	Six months to one year	5,905
B-1/B-2	Visitor for business and pleasure	Six months to one year	3,228,199
B-1/B-2/BCC	Border crossing cards for Mexicans	Up to 30 days (or longer if coupled with B-1 or B-2)	1,182,329
B-1/B-2/BCV	Mexican Lincoln Border Crossing Visa	Up to 30 days (or longer if coupled with B-1 or B-2)	62,153
C-1	Person in transit	Up to 29 days	8,643
C-1/D	Combination transit/crew member	Up to 29 days	253,424
C-2	Person in transit to United Nations Headquarters	Up to 29 days	32
C-3	Foreign government official and immediate family, attendant, servant, or personal employee in transit	Up to 29 days	3,337
CW-1	Commonwealth of the Northern Mariana Islands (CNMI) transitional worker	Up to one year	1,041
CW-2	Spouse or child of CW-1	Up to one year	244
D	Crew member	Up to 29 days	7,381
E-1	Treaty trader, immediate family, and employee	Up to two years	5,383
E-2	Treaty investor, immediate family, and employee	Up to two years	45,878
E-2C	CNMI treaty investor, immediate family	Up to two years	34
E-3	Australian specialty occupation professional	Up to two years	4,731
E-3D	Spouse or child of E-3	Up to two years	3,292
E-3R	Returning E-3	Up to two years	2,631
F-1	Foreign student (academic or language training program)	Duration of study (limited to 12 months for secondary school students)	411,131
F-2	Spouse or child of F-1	Duration of study	25,887
F-3	Border commuter academic or language student	Duration of study	0
G-1	Principal resident representative of recognized foreign member government to international organization, staff, and immediate family	Duration of assignment	4,382

Visa Category	Description	Initial Duration of Stay	FY2022 Visa Issuances
G-2	Other representative of recognized foreign member government to international organization, staff, and immediate family	Duration of assignment	13,092
G-3	Representative of nonrecognized or nonmember foreign government to international organization, staff, and immediate family	Duration of assignment	357
G-4	International organization officer or employee, and immediate family	Duration of assignment	19,944
G-5	Attendant, servant, or personal employee of G-1 through G-4, and immediate family	Up to three years	281
H-1B	Temporary worker—professional specialty occupation	Specialty occupation: up to three years; Department of Defense research and development: up to five years	206,002
H-1B-1	Free trade agreement professional from Chile or Singapore	Up to one year	2,376
H-2A	Temporary worker—agricultural workers	Up to one year	298,336
H-2B	Temporary worker—nonagricultural workers	Up to one year (up to three years in the case of a one-time event)	124,644
H-3	Temporary worker—trainee	Trainee: up to two years Special education exchange visitor program trainee: up to 18 months	695
H-4	Spouse or child of H-1B, H-1B-1, H-2A, H-2B, or H-3	Same as H-1, H-2, or H-3 spouse/parent	137,246
I	Representative of foreign information media, spouse and child	Duration of employment	9,917
J-1	Cultural exchange visitor	Duration of program	284,486
J-2	Spouse or child of J-1	Duration of program	30,579
K-1	Fiancé(e) of U.S. citizen	Valid for four months; must marry within 90 days of entry to adjust to LPR status	21,351
K-2	Child of K-1	Same as parent	3,441
K-3	Spouse of U.S. citizen awaiting LPR status	Up to two years	5
K-4	Child of K-3	Up to two years or until 21 st birthday	1
L-1	Intracompany transferee (executive, managerial, and specialized personnel continuing employment with international firm or corporation)	Up to three years; up to one year when beneficiary is coming to open or be employed in a new office	72,958
L-2	Spouse or child of L-1	Same as spouse/parent	78,448

Visa Category	Description	Initial Duration of Stay	FY2022 Visa Issuances
M-1	Vocational student	Duration of study	5,271
M-2	Spouse or child of M-1	Same as spouse/parent	242
M-3	Border commuter vocational or nonacademic student	Duration of study	0
NATO-1	Principal permanent representative of member nations to North Atlantic Treaty Organization (NATO), high ranking NATO officials, and immediate family members	Tour of duty	15
NATO-2	Other representatives of member states to NATO (including any of its subsidiary bodies) and immediate family members; members of a force entering in accordance with provisions of NATO agreements, and their dependents	Tour of duty	7,370
NATO-3	Official clerical staff accompanying a representative of a member state to NATO, and immediate family	Tour of duty	3
NATO-4	Officials of NATO (other than those classifiable as NATO-1), and immediate family	Tour of duty	163
NATO-5	Experts employed in missions on behalf of NATO (other than NATO-4 officials), and their dependents	Tour of duty	62
NATO-6	Civilian employees of a force entering in accordance with the provisions of NATO agreements or attached to NATO headquarters, and their dependents	Tour of duty	863
NATO-7	Attendant, servant, or personal employee of NATO-1 through NATO-6, and immediate family	Up to three years	0
N-8	Parent of certain special immigrants (pertaining to international organizations)	Up to three years, as long as special immigrant remains a child	13
N-9	Child of N-8 or of certain special immigrants (pertaining to international organizations)	Up to three years, or until no longer a child, whichever is shorter	1
O-1	Person with extraordinary ability in the sciences, arts, education, business, or athletics	Up to three years	19,102
O-2	Person accompanying and assisting in the artistic or athletic performance by O-1	Up to three years	11,586
O-3	Spouse or child of O-1 or O-2	Up to three years	6,234
P-1	Internationally recognized athlete or member of an internationally recognized entertainment group and essential support	Up to five years for individual, up to one year for group or team	20,287
P-2	Artist or entertainer in a reciprocal exchange program and essential support	Up to one year	59
P-3	Artist or entertainer in a culturally unique program and essential support	Up to one year	5,294
P-4	Spouse or child of P-1, P-2, or P-3	Same as spouse/parent	1,717
Q-1	International cultural exchange program participant	Up to 15 months	1,057

Visa Category	Description	Initial Duration of Stay	FY2022 Visa Issuances
R-1	Religious worker	Up to 30 months	4,098
R-2	Spouse or child of R-1	Up to 30 months	1,806
S-5	Witness or informant in criminal matter	Up to three years	0
S-6	Witness or informant in terrorism matter	Up to three years	0
S-7	Spouse or child of S-5 and S-6	Up to three years	0
T-1	Victim of a severe form of trafficking in persons	Up to four years; may adjust to LPR status if conditions are met	0
T-2	Spouse of T-1	Same as T-1	32
T-3	Child of T-1	Same as T-1	208
T-4	Parent of T-1 under 21	Same as T-1	27
T-5	Unmarried sibling under age 18 of T-1 under 21	Same as T-1	18
T-6	Adult or minor child of T-2, T-3, T-4, or T-5	Same as T-1	21
TN	NAFTA professional	Up to three years	33,361
TD	Spouse or child of TN	Up to three years	16,575
U-1	Victim or informant of criminal activity	Up to four years; may adjust to LPR status if conditions are met	178
U-2	Spouse of U-1	Same as U-1	114
U-3	Child of U-1	Same as U-1	1,191
U-4	Parent of U-1 under age 21	Same as U-1	18
U-5	Unmarried sibling under age 18 of U-1 under age 21	Same as U-1	40
Total			6,815,120

Source: Visa Category, Description, Duration of Stay: §§101(a)(15), 212, and 214 of the Immigration and Nationality Act (8 U.S.C. §§1101(a)(15), 1182, and 1184); and 8 C.F.R. §214. FY2022 Visa Issuances: U.S. Department of State, *Report of the Visa Office 2022*, Table XV (B).

Notes: Some visa categories allow for an extension of stay. For more information, see the Appendix in CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*.

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