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Immigration Legislation and Issues in the 118th Congress

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SUMMARY

This report discusses immigration-related bills that have received congressional action in the 118th Congress as of the report's cover date. For the purposes of the report, bills receiving congressional action are the measures that have been enacted into law, passed by one chamber, or reported by a committee.

The 118th Congress has enacted a number of bills containing immigration provisions. These include a series of continuing appropriations measures and the Further Consolidated Appropriations Act, 2024 (P.L. 118-47). These bills extend the authorizations for three immigration programs—the E-Verify employment eligibility verification program, the Conrad State Program for foreign medical graduates, and the special immigrant religious worker program—as well as for a provision concerning supplemental H-2B nonagricultural worker visas. P.L. 118-47 authorizes these provisions through the end of FY2024. It also extends through the end of FY2024 other H-2B-related provisions and refugee provisions known as the Lautenberg Amendment, and amends the temporary Afghan special immigrant visa program. In addition, the Consolidated Appropriations Act, 2024 (P.L. 118-42) and P.L. 118-50, an FY2024 emergency supplemental appropriations act, contain language on noncitizen eligibility for federal benefits. Other measures enacted by the 118th Congress are the National Defense Authorization Act for Fiscal Year 2024 (P.L. 118-31), which makes additional visas available for a special immigrant classification for long-term employees of the U.S. government abroad, and the END FENTANYL Act (P.L. 118-43), which concerns inspections at U.S. ports of entry (POEs).

Another set of immigration-related bills has passed only one chamber. Many of these measures address immigration enforcement and unauthorized immigration. The Senate has passed the Northern Border Coordination Act (S. 2291). The House has passed the Secure the Border Act of 2023 (H.R. 2), the Schools Not Shelters Act (H.R. 3941), the DHS Border Services Contracts Review Act (H.R. 4467), the Protecting our Communities from Failure to Secure the Border Act of 2023 (H.R. 5283), the Detain and Deport Illegal Aliens Who Assault Cops Act (H.R. 7343), and the Laken Riley Act (H.R. 7511). The House has also passed the Department of Homeland Security Appropriations Act, 2025 (H.R. 8752).

Measures concerning the Immigration and Nationality Act's grounds of inadmissibility and deportability have also passed one chamber. The House has passed the POLICE Act of 2023 (H.R. 2494), the Agent Raul Gonzalez Officer Safety Act (H.R. 5585), the Consequences for Social Security Fraud Act (H.R. 6678), the No Immigration Benefits for Hamas Terrorists Act (H.R. 6679), and the Protect Our Communities from DUIs Act (H.R. 6976). The Senate has passed S.J.Res. 18, which would nullify a 2022 Department of Homeland Security (DHS) final rule.

Additional immigration-related bills have been reported by congressional committees. House committees have reported Sarah's Law (H.R. 661), the Standing Up to the Executive branch for Immigration Enforcement Act of 2024 (H.R. 7322), the Emerging Innovative Border Technologies Act (H.R. 7832), and the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2025 (H.R. 9029). Senate committees have reported the Combating Cartels on Social Media Act of 2023 (S. 61), the International Trafficking Victims Protection Reauthorization Act of 2023 (S. 920), the Protecting the Border from Unmanned Aircraft Systems Act (S. 1443), the Enhancing DHS Drug Seizures Act (S. 1464), the Non-Intrusive Inspection Expansion Act (S. 1822), the Department of State Authorization Act of 2023 (S. 2043), and S. 243, which concerns maintenance projects at POEs.

This report discusses these immigration-related measures. DHS appropriations are addressed in other CRS reports, including CRS Report R47663, *Department of Homeland Security Appropriations: FY2024 Provisions*, and CRS Report R48126, *Department of Homeland Security Appropriations: FY2025 Provisions*; for the most part, they are not covered here.

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Introduction

This report discusses immigration-related bills that have received congressional action in the 118th Congress as of the report's cover date.[1] Many of these bills would amend the Immigration and Nationality Act (INA).[2] For the purposes of the report, bills receiving congressional action are the measures that have been enacted into law, passed by one chamber, or reported by a committee.[3] This introduction provides a quick guide to the immigration-related measures receiving action, organized by type of congressional action. The body of the report provides additional discussion of these bills. It is organized by immigration topic, based on the provisions in the included bills. For easy reference, discussions of enacted provisions in the body of the report are italicized.

Among the immigration-related measures that have been enacted by the 118th Congress are appropriations bills.[4] These include a series of continuing appropriations measures[5] and the Further Consolidated Appropriations Act, 2024 (P.L. 118-47). These bills extend the authorizations for three immigration programs—the E-Verify employment eligibility verification program, the Conrad State Program for foreign medical graduates, and the special immigrant religious worker program—as well as for a provision concerning supplemental H-2B nonagricultural worker visas. P.L. 118-47 authorizes these provisions through the end of FY2024. It also extends through the end of FY2024 other H-2B-related provisions and refugee provisions known as the Lautenberg Amendment, and amends the temporary Afghan special immigrant visa program. In addition, the Consolidated Appropriations Act, 2024 (P.L. 118-42) and P.L. 118-50, an FY2024 emergency supplemental appropriations act, contain language on noncitizen (or *alien*[6]) eligibility for federal benefits.

Other measures enacted by the 118th Congress are the National Defense Authorization Act for Fiscal Year 2024 (P.L. 118-31), which makes additional visas available for a special immigrant classification for long-term employees of the U.S. government abroad, and the END FENTANYL Act (P.L. 118-43), which concerns inspections at U.S. ports of entry (POEs).

Another set of immigration-related bills has passed only one chamber. Many of these bills address immigration enforcement and unauthorized immigration. The Senate has passed the Northern Border Coordination Act (S. 2291), which would establish a center to coordinate border security

[1] The bill text and the information on legislative action used in preparing this report come from Congress.gov, the official website for U.S. federal legislative information.

[2] The INA, the basis of U.S. immigration law, is Act of June 27, 1952, ch. 477, as amended, codified at 8 U.S.C. §§1101 et seq.

[3] House or Senate bills receiving action that have been effectively superseded by other bills may not be covered in this report (although they may be included in an earlier version of the report). For example, most of the provisions in the Border Reinforcement Act of 2023 (H.R. 2794), as reported by the House Homeland Security Committee, and the Border Security and Enforcement Act of 2023 (H.R. 2640), as reported by the House Judiciary Committee, are included in House-passed H.R. 2. This report covers these provisions in its discussion of H.R. 2.

[4] While this report covers immigration provisions in appropriations bills, it does not generally cover funding provisions. For information on DHS appropriations, see CRS Report R47663, *Department of Homeland Security Appropriations: FY2024 Provisions*, and CRS Report R48126, *Department of Homeland Security Appropriations: FY2025 Provisions*.

[5] The continuing appropriations measures are the Continuing Appropriations Act, 2024 and Other Extensions Act (P.L. 118-15), the Further Continuing Appropriations and Other Extensions Act, 2024 (P.L. 118-22), the Further Additional Continuing Appropriations and Other Extensions Act, 2024 (P.L. 118-35), and the Extension of Continuing Appropriations and Other Matters Act, 2024 (P.L. 118-40). These bills extended the authorizations for the immigration provisions through November 17, 2023; February 2, 2024; March 8, 2024; and March 22, 2024, respectively.

[6] *Alien* is the term used in the INA for any person who is not a citizen or national of the United States. INA §101(a)(3) (8 U.S.C. §1101(a)(3)). In this report, the words *alien*, *noncitizen*, and *foreign national* are used interchangeably.

activities along the U.S.-Canada border. The House has passed the Secure the Border Act (H.R. 2), a major immigration bill with provisions on border security, asylum, interior enforcement, unaccompanied children, immigration parole, and employment eligibility verification, among other topics,[7] as well as the DHS Border Services Contracts Review Act (H.R. 4467). It has also passed the Detain and Deport Illegal Aliens Who Assault Cops Act (H.R. 7343) and the Laken Riley Act (H.R. 7511), which address detention for aliens who are arrested for certain crimes, among other enforcement issues. Two other House-passed measures—the Schools Not Shelters Act (H.R. 3941) and the Protecting our Communities from Failure to Secure the Border Act of 2023 (H.R. 5283)—propose to prohibit the use of schools and the use of certain federal lands, respectively, to provide housing for certain foreign nationals.[8] In addition, the House has passed the Department of Homeland Security Appropriations Act, 2025 (H.R. 8752).

Both chambers have likewise passed measures concerning the INA grounds of inadmissibility and deportability—the grounds upon which an alien may be respectively denied admission to or removed from the United States. Four House-passed bills would amend the criminal grounds of inadmissibility and/or deportability. They are the POLICE Act of 2023 (H.R. 2494), the Agent Raul Gonzalez Officer Safety Act (H.R. 5585), the Consequences for Social Security Fraud Act (H.R. 6678), and the Protect Our Communities from DUIs Act (H.R. 6976). A fifth bill passed by the House, the No Immigration Benefits for Hamas Terrorists Act (H.R. 6679), would amend the INA national security grounds of inadmissibility and deportability. The Senate has passed S.J.Res. 18, which would nullify a 2022 U.S. Department of Homeland Security (DHS) final rule concerning the public charge ground of inadmissibility.

Congressional committees have reported a number of other immigration-related bills. In the House, the Judiciary Committee has reported Sarah's Law (H.R. 661) and the Standing Up to the Executive branch for Immigration Enforcement Act of 2024 (H.R. 7322). The Homeland Security Committee has reported the Emerging Innovative Border Technologies Act (H.R. 7832). The House Appropriations Committee has reported the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2025 (H.R. 9029).

In the Senate, the Homeland Security and Governmental Affairs Committee has reported the Combating Cartels on Social Media Act of 2023 (S. 61), the Protecting the Border from Unmanned Aircraft Systems Act (S. 1443), the Enhancing DHS Drug Seizures Act (S. 1464), the Non-Intrusive Inspection Expansion Act (S. 1822), and S. 243, which concerns maintenance projects at POEs. The Senate Foreign Relations Committee has reported the International Trafficking Victims Protection Reauthorization Act of 2023 (S. 920) as well as the Department of State Authorization Act of 2023 (S. 2043).

Border Enforcement and Security

DHS's U.S. Customs and Border Protection (CBP) is responsible for enforcing immigration laws at the country's 328 official air, land, and sea POEs and patrolling U.S. land and maritime borders. At POEs, CBP's Office of Field Operations (OFO) conducts immigration, customs, and agricultural inspections of persons and goods. Between POEs, CBP's U.S. Border Patrol (USBP) is charged with enforcing immigration laws and other federal laws and preventing unlawful entries into the United States. The INA sets forth procedures for handling different categories of

[7] The Continuing Appropriations and Border Security Enhancement Act, 2024 (H.R. 5525), which includes much of the text of House-passed H.R. 2, was subject to a roll call vote but did not pass the House.

[8] In the Senate, there was a vote on a cloture motion to proceed to the enforcement-related Border Act of 2024 (S. 4361), but the motion was not agreed to and no further action was taken on this measure.

foreign nationals who are *applicants for admission* to the United States.[9] CBP officers generally place applicants who are ineligible for U.S. admission in one of two types of removal proceedings—formal removal proceedings, or streamlined removal proceedings known as *expedited removal* (see the "Detention and Removal" section).[10] In order for a person who is placed in expedited removal to apply for asylum in the United States, the individual must first be determined to have a *credible fear of persecution* (see the "Asylum" section).

In FY2023, there were some 2.5 million CBP enforcement encounters at the Southwest border, a historical high.[11] USBP recorded more than 2 million of the FY2023 encounters, and OFO recorded the remaining 430,000.[12] The OFO totals included encounters of persons who used the CBP One mobile application to schedule appointments to present themselves at POEs for processing.[13] CBP has described CBP One as "a key scheduling tool and part of DHS's efforts to incentivize noncitizens to use lawful, safe, humane, and orderly pathways and processes."[14] Persons with CBP One appointments processed at POEs are generally placed in removal proceedings (see the "Detention and Removal" section). During these proceedings, they may apply for asylum or other forms of relief or protection from removal. From January 2023 through September 2023, CBP processed about 278,000 individuals with CBP One appointments.[15] In FY2024, from October 2023 through April 2024, CBP processed about 313,000 individuals with CBP One appointments.[16]

Border Security Resources and Infrastructure

The United States has substantially increased border enforcement resources over the last three decades, as evidenced across a variety of indicators. These resources have included border barriers and associated infrastructure[17] as well as personnel and technology. The 118th Congress has acted on legislation to bolster resources in each of these areas.

Regarding border barriers and associated infrastructure, Division A of H.R. 2, as passed by the House, would require DHS to resume all activities related to building a wall along the U.S.-Mexico border that were underway or planned prior to January 20, 2021, when President Biden took office. It would amend an existing law that directs DHS to construct "fencing along not less than 700 miles of the southwest border where fencing would be most practical and effective and

[9] INA §235(b) (8 U.S.C. §1225(b)). INA Section 235(a)(1) (8 U.S.C. §1225(a)(1)) defines an *applicant for admission* as "an alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival)."

[10] For additional information, see CRS In Focus IF11343, *The Law of Immigration Detention: A Brief Introduction*.

[11] These Southwest border encounters represented about three-quarters of all encounters nationwide. (The remaining quarter consisted of encounters at the northern land border, coastal borders, and air and sea POEs.) Encounters represent events, not people; the same person can have more than one encounter in a fiscal year. See DHS, CBP, "Nationwide Encounters," https://www.cbp.gov/newsroom/stats/nationwide-encounters.

[12] DHS, CBP, "Nationwide Encounters," https://www.cbp.gov/newsroom/stats/nationwide-encounters.

[13] For additional information about CBP One, see CRS Insight IN12166, *CBP One Application: Evolution and Functionality*.

[14] DHS, CBP, "CBP releases July 2024 monthly update," August 16, 2024, https://www.cbp.gov/newsroom/national-media-release/cbp-releases-july-2024-monthly-update#:~:text=In%20July%202024%2C%20CBP%20processed,air%2C%20truck%2C%20and%20rail.

[15] DHS, Office of Homeland Security Statistics, Immigration Enforcement and Legal Processes Monthly Tables—March 2024, "CBP One Appointments" table, https://ohss.dhs.gov/sites/default/files/2024-08/24-0809_ohss_immigration-enforcement-and-legal-processes-tables-april-2024.xlsx.

[16] Ibid.

[17] For additional discussion of border barriers, see CRS Report R45888, *DHS Border Barrier Funding Through FY2021*.

provide for the installation of additional physical barriers, roads, lighting, cameras, and sensors to gain operational control of the southwest border."[18] H.R. 2 would revise this language to direct DHS to "construct a border wall, including physical barriers, tactical infrastructure, and technology, along not fewer than 900 miles of the southwest border until situational awareness and operational control of the southwest border is achieved"[19] (§103). It also would require DHS to submit an implementation plan, including annual benchmarks and cost estimates for the construction of the additional 200 miles of wall. The bill would further direct DHS to waive all legal requirements necessary to ensure expeditious construction and operation of the border wall.

S. 243 and S. 1464, both of which have been reported by the Senate Homeland Security and Governmental Affairs Committee, also address border barriers and associated infrastructure. S. 243 would require the CBP Commissioner to establish procedures for conducting maintenance and repair projects at POEs below a specified monetary threshold, provided they involve existing infrastructure, property, and capital. S. 1464 would add a new section to the INA to make it unlawful to knowingly destroy or evade U.S. border controls with the intent of securing financial gain, assisting a criminal organization, or violating certain federal laws. The bill would establish penalties for violations.

H.R. 2 includes provisions on border personnel. For example, it would direct CBP to have an active-duty presence of at least 22,000 full-time USBP agents by September 30, 2025. It would also authorize CBP to pay retention bonuses to certain front-line USBP agents.

The House and the Senate have likewise acted on bills that address border-related technology. H.R. 2 includes provisions along these lines. For example, it would direct the CBP Commissioner, in consultation with others, to submit a strategic five-year technology investment plan. Among the required elements, the plan would need to analyze security risks and identify security-related capability gaps at and between POEs along the U.S. northern and southern borders and describe the technology acquisitions needed to address these risks and gaps. S. 1822, as reported by the Senate Homeland Security and Governmental Affairs Committee, would direct CBP to expand its use of nonintrusive inspection systems to scan passenger and commercial vehicles entering or exiting the United States at land POEs to meet specified benchmarks. H.R. 7832, as reported by the House Homeland Security Committee, would authorize CBP to create innovation teams to "identify, integrate, and deploy new, innovative, disruptive" or other technologies that may use artificial intelligence, machine learning, and other "emerging or advanced technologies" to enhance or address capability gaps in border security operations. Each team would be required by the bill to develop operating procedures and metrics, among other things.

H.R. 4467, as passed by the House, concerns contracts above a specified threshold for services performed by contractors along the Southwest border. The bill would require DHS to submit a report to Congress on its active contracts along with a plan to "enhance coordination, minimize overlap, and increase cost effectiveness" with respect to these contracts.

Border Security Operations

The House and the Senate have acted on legislation concerning DHS operations at U.S. borders. *P.L. 118-43 directs CBP to review and update OFO and USBP policies on inspections to address*

[18] P.L. 104-208, Division C, §102(b)(1)(A), as amended, 8 U.S.C. §1103 note.

[19] The bill cites definitions of these terms in other public laws. *Operational control* is defined as "the prevention of all unlawful entries into the United States, including entries by terrorists, other unlawful aliens, instruments of terrorism, narcotics, and other contraband"; see 8 U.S.C. §1701 note. *Situational awareness* is defined as "knowledge and understanding of current unlawful cross-border activity," as specified in 6 U.S.C. §223(a)(7).

smuggling across U.S. borders. House-passed H.R. 2 (Division A) would direct the Secretary of Homeland Security to certify that CBP is fully compliant with federal DNA and biometric collection requirements at U.S. land borders[20] and require CBP to certify that it has access to the criminal history databases of all countries of origin and transit for aliens it encountered.

Other provisions in H.R. 2 would limit permissible DHS border-related activities. For example, the bill would allow for the use of the CBP One application or a similar tool only for the inspection of perishable cargo and not for other purposes, such as to enable foreign nationals to schedule appointments at POEs (as mentioned above). The bill would place other restrictions on DHS use of funding. It would specify that DHS could not process for U.S. entry aliens arriving between POEs, and could not provide funds to any nongovernmental organization that "encourages unlawful activity, including unlawful entry, human trafficking" or "facilitate[s] the provision of" services to unauthorized aliens who enter the country after the bill's date of enactment (§115).

H.R. 2 and S. 1443, as reported by the Senate Homeland Security and Governmental Affairs Committee, address unmanned aircraft systems (UAS). H.R. 2 would require CBP's Air and Marine Operations (AMO)[21] to operate UAS on the U.S. southern border 24 hours a day to directly support USBP's work as one of its primary missions. S. 1443 would require DHS to coordinate with other federal agencies to develop a strategy for creating a unified posture on counter-UAS capabilities and protections at certain facilities at or near a U.S. border.

S. 61, as reported by the Senate Homeland Security and Governmental Affairs Committee, concerns the use of social media by transnational criminal organizations. It would direct DHS to submit to Congress an assessment of the use of social media and online platforms by these organizations for specified purposes, including to recruit persons in the United States to provide support for illicit activities in the United States, Mexico, or near a U.S. border. It would further require DHS to develop and implement a strategy to combat this activity.

Both the House and the Senate have acted on measures to enhance coordination among different entities at U.S. borders. H.R. 2 would codify Operation Stonegarden, a DHS program administered by the Federal Emergency Management Agency (FEMA) that provides grants to law enforcement agencies through state administrative agencies. It seeks to promote cooperation and coordination among CBP, USBP, and other federal, state, local, tribal, and territorial law enforcement agencies to improve border security.[22] H.R. 2 would set forth law enforcement agency eligibility requirements for the program and the permitted uses of grant funds.

S. 2291, as passed by the Senate, proposes to establish a Northern Border Coordination Center, which would be co-located along the border with existing DHS components. The center would coordinate the implementation of a northern border strategy, among other functions.

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[20] For additional information about these requirements and their implementation by CBP, see U.S. Government Accountability Office (GAO), *DNA Collections: CBP is Collecting Samples from Individuals in Custody, but Needs Better Data for Program Oversight*, May 23, 2023 (reissued with revisions on June 5, 2023), GAO-23-106252, https://www.gao.gov/products/gao-23-106252.

[21] AMO, a component of CBP, describes its role as follows: "AMO interdicts unlawful people and cargo approaching U.S. borders, investigates criminal networks and provides domain awareness in [t]he air and maritime environments, and responds to contingencies and national taskings." CBP, "Air and Marine Operations," fact sheet, https://www.cbp.gov/sites/default/files/assets/documents/2022-Feb/AMO%20FY21%20Fact%20Sheet_508%20compliant.pdf.

[22] For additional information about Operation Stonegarden, see DHS, FEMA, *FY 2024 Homeland Security Grant Program Fact Sheet*, April 16, 2024, https://www.fema.gov/grants/preparedness/homeland-security/fy-24-fact-sheet.

Interior Enforcement

The INA establishes an enforcement regime to deter violations of federal immigration law. DHS's U.S. Immigration and Customs Enforcement (ICE) has primary responsibility for immigration enforcement activities within the United States. These activities include the identification, arrest, detention, and removal of noncitizens who are unlawfully present in the United States or are otherwise subject to removal.

Detention and Removal

The INA provides for the detention and removal of foreign nationals in a variety of circumstances.[23] ICE describes the mission of its Enforcement and Removal Operations (ERO) directorate as being "to protect the homeland through the arrest and removal of those who undermine the safety of our communities and the integrity of our immigration laws."[24] As part of its work, ERO oversees civil immigration detention facilities across the country.

H.R. 2 (Division B, Title II), as passed by the House, includes provisions on detention and removal. As noted in the "Border Enforcement and Security" section, CBP officers may place foreign nationals who are ineligible for U.S. admission in formal removal proceedings or expedited removal proceedings. The INA generally requires persons placed in either type of proceedings to be detained, although DHS has authority to release some aliens from custody.[25] A person in expedited removal proceedings who is awaiting a credible fear determination is generally detained; a person who receives a positive credible fear determination, and is thereby taken out of expedited removal and placed in formal removal proceedings, is typically released from detention (for further discussion of credible fear, see the "Asylum" section). Most applicants for admission who are placed directly into formal removal proceedings are not detained.[26]

H.R. 2 (Division B, §201) would make various changes to existing procedures for applicants for admission. For example, in the case of an asylum seeker who receives a positive credible fear determination, H.R. 2 would amend the relevant INA provision[27] to specify that the person "shall not be released ... other than to be removed [to the home country] or returned to a [contiguous] country." There would be an exception for release under the INA parole provision, as revised by other sections of H.R. 2 (see the "Immigration Parole" section). H.R. 2 would add the same "shall not be released" and parole exception language to the INA provision[28] that applies to an applicant for admission who is placed directly into formal removal proceedings.

Section 201 would also revise a related INA provision[29] that authorizes the return of an alien who is arriving in the United States by land from a contiguous country back to that country pending a formal removal proceeding. It would add language to this provision to require such a return to the contiguous country when DHS is unable to comply with requirements to detain an alien or cannot

[23] For information on detention, see CRS In Focus IF11343, *The Law of Immigration Detention: A Brief Introduction*. For information on removal, see CRS In Focus IF11536, *Formal Removal Proceedings: An Introduction*; and CRS In Focus IF11357, *Expedited Removal of Aliens: An Introduction*.

[24] DHS, ICE, "Enforcement and Removal Operations," https://www.ice.gov/about-ice/ero.

[25] For additional information, see CRS In Focus IF11343, *The Law of Immigration Detention: A Brief Introduction*.

[26] For further information on immigration detention, including mandatory detention, see CRS In Focus IF11343, *The Law of Immigration Detention: A Brief Introduction*.

[27] INA §235(b)(1)(B)(ii) (8 U.S.C. §1225(b)(1)(B)(ii)).

[28] INA §235(b)(2)(A) (8 U.S.C. §1225(b)(2)(A)).

[29] INA §235(b)(2)(C) (8 U.S.C. §1225(b)(2)(C)).

remove the person to a safe third country (see the "Asylum" section), subject to the same exception referenced above for release under the INA parole provision, as revised by other sections of H.R. 2.

Regarding immigration detention facilities, H.R. 2 (Division B, §202) would require DHS to restore ICE facilities that were in operation on January 20, 2021. The bill would also direct DHS to notify Congress when ICE detention facilities reach specified capacities and, as part of those notifications, to describe the resources needed to detain all foreign nationals subject to mandatory or discretionary detention under the INA. (For information about provisions in H.R. 2 on family detention, see the "Unaccompanied Alien Children" section.)

The House has also taken action on several other bills related to detention. H.R. 7343, as passed by the House, would require DHS to detain any alien who is unlawfully present and charged with, arrested for, convicted of, or admits to committing assault of a law enforcement officer, firefighter, or other first responder. H.R. 7511, as passed by the House, would similarly require DHS to detain an unlawfully present alien who is charged with, arrested for, convicted of, or admits to committing burglary, theft, larceny, or shoplifting. Other provisions of this bill would authorize states to sue DHS for certain decisions or alleged failures related to immigration enforcement (see the "Immigration Enforcement by State Attorneys General" section). H.R. 661, as reported by the House Judiciary Committee, would require ICE to detain a foreign national who is unlawfully present in the United States and has been charged with a crime that resulted in the death or serious bodily injury of another person. The bill would also require ICE to try to obtain information about the identity of any such victim (and the victims of certain other foreign nationals subject to mandatory detention), and provide the victims, or a relative of any deceased victims, with information about the foreign national.

Worksite Enforcement

Worksite enforcement refers to the enforcement of the INA prohibitions on the unlawful employment of foreign nationals in the United States. It is one of the responsibilities of ICE's Homeland Security Investigations (HSI) directorate. Under Section 274A of the INA, it is unlawful for an employer knowingly to hire, recruit or refer for a fee, or continue to employ an alien who is not authorized to be so employed. Employers are further required to participate in the I-9 employment eligibility verification process, in which they examine documents presented by new hires to verify identity and work eligibility, and complete and retain I-9 verification forms.[30] Employers violating these provisions may be subject to civil and/or criminal penalties. Worksite enforcement and electronic employment eligibility verification (described in the next section) are widely viewed as key elements of a strategy to reduce unauthorized immigration.[31]

H.R. 2 (Division B, Title VIII), as passed by the House, would significantly increase existing civil and criminal penalties for violations of the INA's prohibitions on unauthorized employment and requirements to conduct employment eligibility verification, which other provisions of the bill would amend. For example, INA Section 274A(a)(1)(B) currently prohibits the hiring (and in some cases, also the recruiting or referring for a fee) of an individual without complying with existing verification requirements. H.R. 2 would amend this INA provision to generally prohibit the hiring, continued employment, or recruitment or referral of an individual without complying with the bill's expanded verification requirements (discussed in the "Employment Eligibility

[30] 8 U.S.C. §1324a(a).

[31] See, for example, Doris Meissner, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*, Migration Policy Institute, January 2013, https://www.migrationpolicy.org/sites/default/files/publications/enforcementpillars.pdf.

Verification" section). H.R. 2 would make it a violation of the prohibition on unauthorized employment to fail to seek electronic verification as required or to knowingly provide false information to the electronic system. It would grant DHS the authority to debar from the receipt of federal contracts, grants, or cooperative agreements persons or entities who have repeatedly violated the unlawful employment prohibitions. DHS would be required to establish an office to accept and handle complaints submitted by state and local government agencies about potential violations.

Employment Eligibility Verification

Under Section 274A of the INA, as noted in the preceding section, employers are required to participate in the I-9 employment eligibility verification process in which they examine documents presented by new hires to verify identity and work eligibility. In addition, employers may elect to participate in the E-Verify electronic employment eligibility verification system, which was authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA; P.L. 104-208, Division C).[32] E-Verify is largely voluntary under federal law but has some mandatory participants, such as certain federal contractors. It is administered by DHS's U.S. Citizenship and Immigration Services (USCIS). Employers who participate in E-Verify electronically verify new hires' employment authorization through Social Security Administration and, if necessary, DHS databases. E-Verify is a temporary program that must be regularly reauthorized to continue operating. *P.L. 118-47 (Division G, §103) extends the authorization of E-Verify through the end of FY2024.*

House-passed H.R. 2 (Division B, Title VIII) would amend INA Section 274A to authorize a new permanent electronic verification system modeled on E-Verify. Under the bill, an employer, after reviewing employee documents evidencing identity and employment authorization and completing a verification form with the employee, would seek confirmation of the employee-provided information through the electronic verification system.

The new electronic verification system proposed in H.R. 2 would be mandatory for all employers seeking individuals for positions in the United States in cases of hiring, recruitment, and referral, with the requirements to participate taking effect over time. Prior to the participation dates, existing requirements to use E-Verify would remain in effect. The verification requirements with respect to hiring would be phased in by employer size. The largest employers (those with 10,000 or more employees) would be required to use the new system six months after the date of enactment and the smallest employers (those with fewer than 20 employees) would be required to use it two years after the date of enactment. The verification requirements with respect to recruitment and referral would take effect 12 months after the date of the enactment. The bill also would provide for mandatory reverification of workers with temporary work authorization, which would be phased in on the same schedule as the verification requirements for hiring.

H.R. 2 includes special provisions for agriculture. The hiring, recruitment and referral, and reverification provisions would not apply to agricultural employment until three years after the date of enactment. In addition, a related "sense of Congress" provision would direct the Secretary of DHS to "ensure that any adverse impact on the Nation's agricultural workforce, operations, and food security are considered and addressed" in implementing electronic employment verification. (§815).

H.R. 2 would require or permit electronic verification in ways not currently allowed under E-Verify. For example, employers would be required to verify the employment eligibility of certain

[32] E-Verify was originally known as the Basic Pilot program.

currently employed individuals who were never checked through E-Verify. This mandate would include, for example, federal workers who were already employed when E-Verify requirements for new hires went into effect. DHS also could authorize or direct a critical infrastructure employer to use the system to the extent the department determined such use would assist in critical infrastructure protection. With respect to voluntary use, employers would be allowed to verify current employees subject to specified requirements. They could also conduct electronic verification after making an offer of employment but before hiring, and could condition a job offer on final verification under the system.

INA Grounds of Inadmissibility and Deportability

The INA enumerates grounds of inadmissibility and deportability. The INA grounds of inadmissibility are those upon which foreign nationals are ineligible to receive visas or be admitted to the United States.[33] These include criminal grounds and security grounds as well as grounds related to health, unlawful presence in the United States, use of fraud or misrepresentation to obtain an immigration benefit, alien smuggling, lack of valid entry documentation, and the likelihood of becoming a public charge (i.e., primarily dependent on public assistance), among others.[34] The INA grounds of deportability are grounds upon which foreign nationals who have been admitted can be removed from the United States.[35] They include criminal grounds and security grounds as well as grounds related to unlawful presence, violations of nonimmigrant status or conditions of entry, alien smuggling, immigration document fraud, and being a public charge, among others.

The 118th Congress has acted on several bills concerning the INA grounds of inadmissibility and deportability. The majority of these bills were passed by the House, and most of these House-passed bills propose to amend the criminal grounds of inadmissibility and/or deportability.[36] The criminal inadmissibility and deportability grounds include specific crimes as well as categories of crimes. A main difference between them is that the deportability grounds largely require the alien to have been convicted of the listed offense, while the inadmissibility grounds for certain crimes may only require that the alien admitted to committing the offense or that immigration authorities have "reason to believe" the alien committed the offense.[37]

Among the House-passed bills, H.R. 2494 would add assault of a law enforcement officer to the list of deportable criminal offenses. This ground would cover individuals who admitted to or were convicted of such an assault. H.R. 6976 would add driving while intoxicated or impaired to both the criminal inadmissibility and deportability grounds. The ground of inadmissibility would cover individuals who admitted to or were convicted of driving while intoxicated or impaired, while the ground of deportability would apply only to individuals convicted of such an offense. H.R. 5585 would add to both sets of criminal grounds "evading arrest or detention while operating a motor vehicle" within 100 miles of the U.S. border. Noncitizens who admitted to a violation or were convicted of this offense would be inadmissible and deportable. H.R. 6678 would add new criminal grounds of inadmissibility and deportability for individuals who admitted to or were

[33] INA §212(a) (8 U.S.C. §1182(a)).

[34] For further discussion, see CRS In Focus IF12662, *Immigration: Grounds of Inadmissibility*.

[35] INA §237(a) (8 U.S.C. §1227).

[36] INA §212(a)(2) (8 U.S.C. §1182(a)(2)) and INA §237(a)(2) (8 U.S.C. §1227(a)(2)), respectively.

[37] For additional discussion, see CRS Report R45151, *Immigration Consequences of Criminal Activity*.

convicted of committing an offense relating to social security fraud, an offense relating to identification document fraud, or a "COVID offense."[38]

Another House-passed bill, H.R. 6679, would amend the INA national security grounds of inadmissibility and deportability.[39] It would create a new inadmissibility ground for foreign nationals who participated in attacks against Israel since October 7, 2023. It would also make such persons deportable. In addition, the bill would revise existing inadmissibility language on persons considered to be engaged in terrorist activity (and thereby inadmissible) to add members and officials of Hamas and Palestinian Islamic Jihad.

The Senate has passed S.J.Res. 18, which concerns implementation of the INA inadmissibility ground on the likelihood of becoming a public charge. Beginning in 1999, interim guidance issued by the former Immigration and Naturalization Service (INS), a predecessor agency to DHS, directed immigration officials making determinations about public charge to consider whether a noncitizen "has become" or "is likely to become" dependent on public cash benefits for income maintenance or long-term institutionalization at government expense, among other factors.[40] Twenty years later, in 2019, DHS issued a final rule that expanded the definition of public charge to consider whether a noncitizen was "more likely than not at any time in the future" to use certain public benefits, including certain noncash benefits. In 2022, DHS published a new final rule that included a definition of public charge similar to that in the 1999 guidance. The rule also specified that USCIS would not consider noncash benefits or participation in certain cash assistance programs (e.g., childcare assistance) in making public charge determinations.[41] S.J.Res. 18 states that "Congress disapproves" the 2022 final rule and that it "shall have no force or effect."

Unaccompanied Alien Children

Unaccompanied alien children (UAC, unaccompanied children) are defined in statute as children who lack lawful immigration status in the United States, are under age 18, and are without either a parent or legal guardian in the United States or a parent or legal guardian in the United States who is available to provide care and physical custody.[42] In FY2022 and FY2023, the number of UAC and family units[43] arriving at the Southwest border reached record high levels, posing considerable challenges to U.S. federal agencies charged with apprehending and processing unauthorized migrants.

H.R. 2 (Division B, §401), as passed by the House, would establish that no presumption exists that an alien child (other than an unaccompanied child) should not be detained for immigration purposes (see the "Detention and Removal" section). It would invalidate the *Flores* Settlement

[38] The bill defines *covered COVID offense* to encompass fraud related to certain loans and grants made available during the COVID-19 pandemic.

[39] INA §212(a)(3) (8 U.S.C. §1182(a)(3)) and INA §237(a)(4)(B) (8 U.S.C. §1227(a)(4)(B), respectively.

[40] U.S. Department of Justice, INS, "Field Guidance on Deportability and Inadmissibility on Public Charge Grounds," 64 *Federal Register* 28689, March 26, 1999.

[41] For additional information, see archived CRS Insight IN11217, *Immigration: Public Charge 2022 Final Rule*.

[42] 6 U.S.C. §279(g)(2). For a discussion of UAC and related legislation, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*.

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

Agreement (*Flores*),[44] which governs detention conditions for alien children (including UAC) who are inadmissible to or removable from the United States. Instead, H.R. 2 would require that detention and release decisions be based only upon existing statutes. The bill would require DHS to detain family units, including minor children (under age 18), if the adult is criminally charged with unlawful entry. The bill would prevent states from requiring that detention facilities for family units or unaccompanied children be state-licensed.

H.R. 2 would significantly change processing of unaccompanied children who are apprehended at the U.S. border and found to be inadmissible to the United States. Current law requires that DHS screen apprehended unaccompanied children from *contiguous* countries (Mexico and Canada) to determine if (1) they are at risk of being trafficked, (2) they fear returning to their home country, and (3) they are able to decide independently to return home voluntarily by withdrawing their application for admission.[45] Upon a determination that an unaccompanied child is not at risk of being trafficked, does not fear returning home, and is able to decide to withdraw the application for admission, DHS is *authorized* to remove the child. Historically, most children from contiguous countries (almost all of them Mexican) have met such conditions and been repatriated promptly.[46]

Apprehended unaccompanied children from *noncontiguous* countries, in contrast, are required by law to be put immediately into formal removal proceedings.[47] They must then be referred to the U.S. Department of Health and Human Services' (HHS's) Office of Refugee Resettlement (ORR) within 72 hours. Most are eventually placed with U.S.-based family-member sponsors with whom they reside while awaiting their immigration court hearings.[48]

Under H.R. 2 (Division B, §502), *all* unaccompanied children apprehended at the U.S. border and found to be inadmissible to the United States would be processed under the same revised procedures regardless of origin country. These procedures would include the first two (but not the third) screening criteria described above. If the child were determined not to be at risk of being trafficked and not to fear returning home, the bill would authorize immigration officers to permit the child to withdraw the application for admission into the United States, even if the child were unable to make an independent decision to do so. DHS would then be *required* to remove the child.[49]

On the other hand, if the child met at least one of the first two screening criteria, H.R. 2 would require that the child be put into removal proceedings (whether or not the officer determined that the child was at risk of being trafficked or feared returning home) and would be required to

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

[45] 8 U.S.C. §1232(a)(2)(A). Under INA §235(a) (8 U.S.C. §1225(a)), apprehension at the border constitutes an application for admission to the United States. In this case, "withdrawal of application for admission" permits UAC to return immediately to Mexico or Canada and avoid administrative or other penalties. For further information about special rules on the treatment of UAC, see CRS Legal Sidebar LSB10150, *Immigration Laws Regulating the Admission and Exclusion of Aliens at the Border*.

[46] See, for example, GAO, *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody*, GAO-15-521, July 2015, p. 24, https://www.gao.gov/assets/gao-15-521.pdf.

[47] UAC are not subject to expedited removal.

[48] In FY2023, for example, 87% of all unaccompanied children released by ORR were placed with parents or immediate relatives. See HHS, "Latest UC Data - FY2023," https://www.hhs.gov/programs/social-services/unaccompanied-children/latest-uc-data-fy2023/index.html.

[49] Under current law, DHS is authorized but not required to remove such children.

receive a hearing before an immigration judge within 14 days. The bill would extend from 72 hours to 30 days the mandatory period for transferring unaccompanied children to ORR custody.

Under current law, ORR shares limited information about UAC sponsors with DHS.[50] H.R. 2 would require ORR to provide DHS with the sponsor's name, Social Security number, date of birth, location, contact information, and immigration status (if known) prior to the child's placement. DHS would be required to initiate removal proceedings for sponsors residing unlawfully in the United States within 30 days of receiving such information.

Special Immigrants

One of the ways that a foreign national can become a U.S. lawful permanent resident (LPR) is through the permanent employment-based immigration system.[51] This system consists of five preference categories. The fourth preference category (EB4) is for special immigrants and encompasses a hodgepodge of classifications, many of which have a humanitarian and/or public service element.[52] The EB4 category is subject to an annual numerical limit of 9,940 visas under the INA.[53] Given this limit, an insufficient number of visas are available to meet demand for EB4 immigrants. Those approved to receive EB4 visas currently can expect to wait more than three years to receive LPR status.[54]

Employees of the U.S. Government Abroad

The INA authorizes a special immigrant classification for current or former employees of the U.S. government abroad who have at least 15 years of service.[55] In order for such individuals to be granted special immigrant status, the Secretary of State must find that doing so is in the U.S. national interest. *In light of the current wait for EB4 visas, P.L. 118-31 makes additional immigrant visas available for qualified applicants for the U.S. government employee classification if visas are not immediately available to them. For FY2024, it makes up to 3,500 additional visas available; in subsequent years, the number declines to 3,000. To ensure that no immigrant visas are issued beyond current total INA limits, the bill reduces the number of diversity visas available each year by the same number of special immigrant visas (SIVs) issued under this provision.*[56]

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[50] See *ORR Unaccompanied Children Program Policy Guide*, Section 5.10.2, "Limits to Sharing Information with DHS and EOIR," current as of August 1, 2024, https://www.acf.hhs.gov/orr/policy-guidance/unaccompanied-children-program-policy-guide-section-5#5.10.2.

[51] For information on the permanent employment-based immigration system, see CRS Report R47164, *U.S. Employment-Based Immigration Policy*.

[52] INA §203(b)(4) (8 U.S.C. §1153(b)(4)). For background information on the special immigrant category, see CRS Report R43725, *Iraqi and Afghan Special Immigrant Visa Programs*.

[53] Some special immigrants, such as returning LPRs, are exempt from INA numerical limits. In addition, some special immigrant classifications, such as those for certain Iraqis and Afghans who worked for the U.S. government, were created outside the INA (by public laws that did not amend the INA) and are not subject to INA numerical limits; instead, they are subject to separate numerical caps. See CRS Report R43725, *Iraqi and Afghan Special Immigrant Visa Programs*.

[54] See U.S. Department of State (DOS), *Visa Bulletin for September 2024*, "Final Action Dates for Employment-Based Preference Cases," August 2, 2024, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2024/visa-bulletin-for-september-2024.html.

[55] INA §101(a)(27)(D) (8 U.S.C. §1101(a)(27)(D)).

[56] For information on the diversity visa, see CRS Report R45973, *The Diversity Immigrant Visa Program*. For (continued...)

Special Immigrant Juveniles

The INA defines a *special immigrant juvenile* (SIJ) as an unmarried foreign national under age 21 in the United States who possesses a juvenile court order declaring that the juvenile is a ward (dependent) of the court; is unable to be reunified with one or both parents because of abuse, abandonment, or neglect; and is granted SIJ status by DHS.[57] The INA further specifies that it must not be in the alien's best interests to return to the alien's or a parent's home country in order for the juvenile to be eligible for SIJ status. A person with SIJ status can apply to adjust to LPR status under the special immigrant classification for juveniles. Concerns that increasing numbers of UAC are using SIJ status to acquire LPR status have some immigration restriction advocates calling for legislation to narrow the SIJ criteria.[58] H.R. 2 (Division B, §503), as passed by the House, would limit eligibility for SIJ status to those who are not able to reunify with either parent, rather than with one or both parents.[59]

Temporary Program for Religious Workers

The special immigrant classification for religious workers[60] applies to ministers or other individuals engaged in and qualified for a religious occupation or vocation according to the denomination's standards, as specified in DHS regulations. While the statutory provision for the admission of ministers is permanent, the provisions admitting other religious workers[61] have always had a sunset date. *P.L. 118-47 (Division G, §104) authorizes this temporary program through the end of FY2024.*

Temporary Program for Afghan Allies

A temporary SIV program applies to Afghan nationals employed by or on behalf of the U.S. government, or by the International Security Assistance Force (ISAF), in Afghanistan.[62] At the start of the 118th Congress, a total of 38,500 visas were available for issuance to principal applicants after December 2014 under this program.[63] *P.L. 118-47 (Division F, §7034(d)(9)) increases this visa total to 50,500. It also extends the application deadline to December 31, 2025.*

information on the broader permanent immigration system, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

[57] INA §101(a)(27)(J) (8 U.S.C. §1101(a)(27)(J)). For background information, see archived CRS Report R43703, *Special Immigrant Juveniles: In Brief*.

[58] See, for example, Andrew R. Arthur, *Catch and Release Escape Hatches: Loopholes that encourage illegal entry*, Center for Immigration Studies, May 4, 2018, https://cis.org/Report/Catch-and-Release-Escape-Hatches.

[59] For example, a child may not be able to be reunified with her mother, and the mother and father may live apart, in which case the child could not be reunified with one parent (the mother) or both parents. However, the child in this example could be reunified with her father. Current statute would allow her to qualify for SIJ status. By contrast, the provision in Section 503 of H.R. 2 would prevent this child from qualifying for SIJ status because she could be reunified with at least one of her parents, in this case, her father.

[60] INA §101(a)(27)(C) (8 U.S.C. §1101(a)(27)(C)).

[61] INA §101(a)(27)(C)(ii)(II), (III) (8 U.S.C. §1101(a)(27)(C)(ii)(II), (III)).

[62] For additional information about this program, see CRS Report R43725, *Iraqi and Afghan Special Immigrant Visa Programs*.

[63] For information about how Congress has increased the visa allotment in past Congresses, see CRS Report R43725, *Iraqi and Afghan Special Immigrant Visa Programs*.

Nonimmigrants

Nonimmigrants are foreign nationals who are lawfully admitted to the United States for a temporary period of time and specific purpose (e.g., tourism, study, work). Nonimmigrant visa categories are identified by letters and numbers based on the INA sections that authorize them.[64] The 118th Congress has acted on bills containing various provisions related to existing nonimmigrant visas.

Domestic Employees of International Representatives in the United States (A-3 and G-5 Visas)

For two decades, Congress has been actively legislating to counter human trafficking.[65] It enacted the Trafficking Victims Protection Act of 2000 (TVPA; P.L. 106-386, Division A) and subsequent reauthorizations, including the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA; P.L. 110-457).[66] Through this legislation, Congress has aimed to eliminate human trafficking within the United States by creating grant programs for both victim services and law enforcement, enhancing criminal laws, and conducting oversight of the effectiveness and implications of U.S. anti-trafficking policy.

Noncitizen domestic workers in the United States—for example, nannies and housekeepers—are seen as particularly vulnerable to human trafficking.[67] Among them are domestic workers for official and diplomatic visa holders in the United States; these workers are admitted to the United States on A-3 and G-5 nonimmigrant visas. According to the U.S. Department of State's (DOS's) Office to Monitor and Combat Trafficking in Persons

> Although it is rare that diplomats subject domestic workers to involuntary servitude or other forms of exploitation, on those occasions when it does occur, the problem is a grave and challenging one for host governments to address.[68]

In the 118th Congress, the International Trafficking Victims Protection Reauthorization Act of 2023 (S. 920), as reported by the Senate Committee on Foreign Relations, includes provisions to amend the TVPRA to expand existing protections for A-3 and G-5 nonimmigrants. For example, the bill would codify the in-person registration program for A-3 and G-5 nonimmigrants, which provides these workers with information on their legal rights and how to contact the National Human Trafficking Hotline. S. 920 would task the Secretary of State with administering the

[64] For additional information about nonimmigrant categories, see CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*.

[65] For additional information on U.S. anti-trafficking efforts, see CRS Report R47466, *Trafficking in Persons: Grants for Victim Services in the United States*; and CRS Report R46584, *Immigration Relief for Victims of Trafficking*.

[66] Most recently, the 117th Cong. passed legislation, including the Abolish Trafficking Reauthorization Act of 2022 (P.L. 117-347) and the Trafficking Victims Prevention and Protection Reauthorization Act of 2022 (P.L. 117-348), intended to further enhance the federal government's anti-trafficking efforts.

[67] See, for example, Sameera Hafiz and Michael Paarlberg, *The Human Trafficking of Domestic Workers in the United States: Findings from the Beyond Survival Campaign*, Institute for Policy Studies and the National Domestic Workers Alliance, 2017, https://ips-dc.org/wp-content/uploads/2017/03/Beyond-Survival-2017-Report_FINAL_PROOF-1-1.pdf.

[68] DOS, Office to Monitor and Combat Trafficking in Persons, *How Governments Address Domestic Servitude in Diplomatic Households*, June 28, 2018, https://2017-2021.state.gov/how-governments-address-domestic-servitude-in-diplomatic-households/. Also see Justice in Motion, *Visa Pages: U.S. Temporary Foreign Worker Visas: A-3 and G-5 Visas*, March 2021, https://www.justiceinmotion.org/_files/ugd/64f95e_49f2590cd5ad48a9a76d2852a1b44739.pdf; and Polaris Project, *Labor Trafficking on Specific Temporary Work Visas: A Data Analysis 2018-2020*, June 23, 2022, https://polarisproject.org/labor-trafficking-on-specific-temporary-work-visas-report/.

program and expanding it nationwide. The bill would also require the Secretary of State to inform foreign missions and international organizations of the labor rights of A-3 and G-5 workers and the legal consequences for employers who violate these rights, and it would require employers to annually report the wages paid to such workers.

Agricultural Workers (H-2A Visas)

The H-2A visa allows for the temporary admission of foreign workers to the United States to perform seasonal or temporary agricultural labor. It is not subject to a numerical cap. H-2A visa issuances have grown sharply over the past decade, increasing more than fourfold from 65,345 in FY2013 to 310,676 in FY2023.[69]

Under the INA, DHS cannot approve an employer's petition to bring in H-2A workers unless the employer has applied to the U.S. Department of Labor (DOL) for labor certification.[70] To grant labor certification, DOL must find that U.S. workers are not available to perform the needed work and that the employment of foreign workers will not adversely affect the wages and working conditions of similarly employed U.S. workers. DOL regulations govern the H-2A labor certification process, including applicable wage requirements. These regulations specify that H-2A employers must pay the highest of several wage rates: the federal or state minimum wage rate, prevailing wage rate, adverse effect wage rate (AEWR), or agreed-upon collective bargaining wage rate. Historically, the AEWR has often been the highest of these rates.

DOL provides the methodologies for determining AEWRs and prevailing wage rates. It issued final rules in February 2023 and October 2022, respectively, to revise its AEWR methodology for certain agricultural occupations and its standards and procedures for making prevailing wage determinations.[71] The 2023 AEWR rule has been particularly controversial.[72] In announcing its publication, DOL said that the revised methods were needed "to ensure accurate wage rates are offered and paid to workers performing more skilled jobs which command higher pay" and "to better prevent H-2A workers' employment negatively affecting the wages of U.S. workers in similar positions."[73] On the other hand, the American Farm Bureau Federation has said the rule "will inflict considerable wage increases on farmers of all sizes who use the H-2A program."[74]

In addition to prevailing wages, the 2022 rule addresses other aspects of the H-2A program, including joint employment, housing requirements, and DOL enforcement authority. DOL argues

[69] For additional information about H-2A visas, see CRS Report R44849, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues*. For FY2023 visa data, see DOS, Bureau of Consular Affairs, Table XV(B), https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics/annual-reports/report-of-the-visa-office-2023.html.

[70] INA §218(a)(1) (8 U.S.C. §1188(a)(1)).

[71] DOL, Employment and Training Administration (ETA), "Adverse Effect Wage Rate Methodology for the Temporary Employment of H–2A Nonimmigrants in Non-Range Occupations in the United States," 88 *Federal Register* 12760, February 28, 2023; and DOL, ETA and Wage and Hour Division (WHD), "Temporary Agricultural Employment of H–2A Nonimmigrants in the United States," 87 *Federal Register* 61660, October 12, 2022.

[72] For information about the AEWR methodology adopted in the February 2023 rule, see CRS In Focus IF12408, *Adverse Effect Wage Rate (AEWR) Methodology for Temporary Employment of H-2A Nonimmigrants in the United States.*

[73] DOL, ETA, "US Department of Labor announces final rule to modify how it sets adverse effect wage rates in the H-2A program," February 27, 2023, https://www.dol.gov/newsroom/releases/eta/eta20230227.

[74] Veronica Nigh, "AEWR Methodology Change a Blow to Growers," American Farm Bureau Federation, March 30, 2023, https://www.fb.org/market-intel/aewr-methodology-change-a-blow-to-growers. The American Farm Bureau Federation describes itself as "the national advocate for farmers, ranchers and rural communities"; see https://www.fb.org/about/who-we-are.

that this rule will strengthen worker protections, improve the H-2A application process, and ease regulatory burdens on employers.[75] Others disagree. The self-described libertarian Cato Institute, for example, maintains that the rule will make hiring H-2A workers more costly and bureaucratic and will result in higher food prices for consumers.[76]

H.R. 2 (Division B, §816), as passed by the House, would repeal the February 2023 and October 2022 rules and provide that "any new rules that are substantially the same as such rules may not be issued."

Nonagricultural Workers (H-2B Visas)

The H-2B visa allows for the temporary admission of foreign workers to the United States to perform nonagricultural labor of a temporary nature.[77] As under the H-2A visa, prospective H-2B employers must apply to DOL for labor certification before they can petition DHS to bring in H-2B workers. Unlike the H-2A visa, the H-2B visa is subject to a statutory annual numerical cap. Under the INA, the total number of aliens who may be issued H-2B visas or otherwise provided with H-2B nonimmigrant status in any fiscal year may not exceed 66,000. Each year since FY2017, Congress has included a provision in omnibus appropriations legislation to authorize DHS to increase the number of foreign nationals who may receive H-2B visas beyond the statutory cap upon a determination that the needs of U.S. businesses cannot be met by U.S. workers.[78] *P.L. 118-47 (Division G, §105) enacts this provision for FY2024*. House-passed H.R. 8752 (§406) would enact this provision for FY2025.

In recent years, notwithstanding existing DOL regulations, Congress has enacted language as part of DOL appropriations acts that sets forth temporary policies related to H-2B labor certification. This language provides for the staggered entry of H-2B seafood industry workers and the determination of H-2B prevailing wages, and addresses the definitions of H-2B *temporary need* and other concepts in H-2B regulations.[79] *This language has been enacted for FY2024 by P.L. 118-47 (Division D, §§109-111).* H.R. 9029 (§§109-111*),* as reported by the House Appropriations Committee, would enact these same provisions for FY2025.

Exchange Visitors (J Visas)

The J visa allows for the temporary admission to the United States of exchange visitors, which include professors, research scholars, students, and foreign medical school graduates (FMGs).[80] As described in DOS regulations, the purpose of the Exchange Visitor Program is to "increase

[75] DOL, ETA and WHD, "Temporary Agricultural Employment of H–2A Nonimmigrants in the United States," 87 *Federal Register* 61660, 61661 (Executive Summary), October 12, 2022.

[76] David Bier, "DOL's New H-2A Final Rule Will Increase Food Inflation," Cato Institute, October 14, 2022, https://www.cato.org/blog/dols-new-h-2a-final-rule-will-increase-food-inflation.

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

[78] For additional information about H-2B numerical limitations, see CRS Report R44306, *The H-2B Visa and the Statutory Cap*.

[79] For further information about these provisions, see CRS Report R44849, *H-2A and H-2B Temporary Worker Visas: Policy and Related Issues*.

[80] For additional information about J visas, see CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*.

mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchanges."[81]

FMGs who enter the United States on J visas to receive graduate medical education and training are subject to a foreign residency requirement. They must return to their home countries for at least two years after completing their U.S. education or training before they can apply for certain other nonimmigrant visas or LPR status, unless they are granted a waiver of this requirement. Under a temporary program, known as the Conrad State Program or the Conrad 30 Program, states may request waivers on behalf of FMGs who agree to work for at least three years in medically underserved areas designated by the Secretary of HHS as having a shortage of health care professionals. Established in 1994 by P.L. 103-416, the program initially applied to aliens who acquired J status before June 1, 1996, and has been regularly extended. *P.L. 118-47 (Division G, §102) authorizes the Conrad State Program through the end of FY2024.*

Nonimmigrant Overstayers

At the end of their authorized period of admission, nonimmigrants 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*.[82]

Under current law, there are various immigration-related consequences for overstaying, but the act of overstaying itself is not a crime.[83] H.R. 2 (Division B, §601), as passed by the House, would establish civil and criminal penalties for overstaying including fines and possible imprisonment.

Humanitarian Immigration Mechanisms

International events in recent years—such as the 2021 U.S. military withdrawal from and Taliban takeover in Afghanistan and Russia's February 2022 invasion of Ukraine—have resulted in significant displacement of persons in the affected countries. Such events, together with large-scale migration to the U.S. Southwest border that reached historic highs in FY2023, have led policymakers to focus increased attention on various statutory forms of humanitarian immigration relief. These forms of relief, which include asylum, refugee status, and immigration parole, are each subject to a separate set of requirements and processes.

Asylum

Large numbers of foreign nationals have come to the U.S. Southwest border in recent years seeking asylum. In general, under the INA, foreign nationals arriving in or present in the United States may apply for asylum. Asylum applications are not subject to filing fees. Both DHS's USCIS and the U.S. Department of Justice's (DOJ's) Executive Office for Immigration Review (EOIR) make decisions on asylum applications. Asylum applicants may receive employment authorization, but, if not otherwise eligible to work, they may not be granted such authorization "prior to 180 days after the date of filing of the application for asylum."[84]

[81] 22 C.F.R. §62.

[82] For additional information, see CRS Report R47848, *Nonimmigrant Overstays: Overview and Policy Issues*.

[83] For additional information, see CRS Report R47848, *Nonimmigrant Overstays: Overview and Policy Issues*.

[84] INA §208(d)(2) (8 U.S.C. §1158(d)(2)).

A core requirement for asylum (and refugee status, as discussed in the next section) is satisfaction of the INA definition of a *refugee*. This definition generally provides that a refugee is a person who is outside his or her country and is unable or unwilling to return because of "persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion."[85] There are no numerical limits on asylum. Persons granted asylum (asylees) are employment eligible incident to their status. They can apply for LPR status after one year of physical presence in the United States as asylees.

While the INA generally allows foreign nationals present or arriving in the United States to apply for asylum, there are some statutory restrictions on the ability to apply for and to be granted asylum. For example, under the INA *safe third country* provision, a person is ineligible to apply for asylum if that person "may be removed, pursuant to a bilateral or multilateral agreement," to a third country where the "alien's life or freedom would not be threatened on account of" a protected ground and "where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection."[86] Statutory grounds for denying an asylum application include the applicant's conviction for a "particularly serious crime," "reasonable grounds" for considering the applicant a danger to national security, and the applicant's firm resettlement in another country prior to arriving in the United States.[87]

In addition, the INA provides for an arriving foreign national who lacks proper entry documentation or engages in fraud or misrepresentation to obtain such documentation or other immigration benefit to be removed from the United States without a hearing or other review through the expedited removal process unless the person expresses an intent to apply for asylum or a fear of persecution. If an arriving alien placed into expedited removal expresses such fear or intent, a USCIS asylum officer must determine if the individual has a *credible fear of persecution*. (This term is defined in the INA to mean that there is a "significant possibility" that the alien could establish eligibility for asylum.[88]) If the officer makes a positive credible fear finding, the person is referred to EOIR for a formal removal proceeding; during that proceeding, the person can be considered for asylum or other applicable forms of immigration relief. If the officer makes a negative finding, the person can request a review by an EOIR immigration judge. If the judge upholds the negative credible fear finding, the person is subject to removal.

H.R. 2 (Division B, Title I), as passed by the House, would amend the INA to place additional restrictions on the ability to apply for and be granted asylum. For example, the bill would amend the INA safe third country provision to eliminate the underlying requirement for a bilateral or multilateral agreement. The bill would further limit eligibility to apply for asylum to persons who are present in the United States or who arrive in the United States at a POE; persons who arrive between POEs would no longer be eligible. In addition, someone who arrived in the United States after transiting through a third country would be ineligible to apply for asylum unless that person had applied for humanitarian protection in the transit country and been denied, or was a victim of a severe form of trafficking and as such was unable to apply for protection in transit. The bill would also add new criminal and other bases for denying an asylum application.

As noted, arriving foreign nationals who are placed in expedited removal must pass a credible fear screening to be able to pursue an asylum application. H.R. 2 would amend the statutory definition of credible fear of persecution (cited above) to raise the adjudicatory standard. Under

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

[86] INA §208(a)(2)(A) (8 U.S.C. §1158(a)(2)(A)).

[87] INA §208(b)(2)(A) (8 U.S.C. §1158(b)(2)(A)).

[88] INA §235(b)(1)(B)(v) (8 U.S.C. §1225(b)(1)(B)(v)).

the bill, to make a positive credible fear finding, the asylum officer would have to determine that it was "more likely than not" that the person could establish eligibility for asylum.

Among its other asylum-related provisions, H.R. 2 would add statutory constraints on the interpretation of some of the terms in the INA refugee definition, such as *persecution*. The bill would specify, for example, that a person could not be found to have experienced persecution based only on "the conduct of rogue foreign government officials acting outside the scope of their official capacity" (§107). The bill also would impose a fee of not less than $50 on asylum applications.[89]

Refugee Status

As it does for asylum, the INA sets forth the requirements for a foreign national to be granted refugee status. Refugee status is the counterpart to asylum for persons who are outside the United States; prospective refugees undergo processing abroad. DOS coordinates and manages the U.S. refugee admissions program, while DHS USCIS officers interview refugee applicants and make final determinations about eligibility for refugee status. Like asylum applicants, refugee applicants must satisfy the INA definition of a *refugee* (discussed above). Persons who are admitted to the United States as refugees are employment eligible incident to their status. After one year of physical presence in the United States, they are required to apply for LPR status.[90]

Unlike the asylum system, the U.S. refugee admissions program is subject to numerical limitations. The President, after consultation with Congress, is responsible for setting an annual ceiling on refugee admissions. The refugee ceiling for FY2024 is 125,000.[91]

Access to the U.S. refugee program is based on a set of processing priorities. An individual must fall under a processing priority (or category) to be considered for refugee admission to the United States. Among the refugee program's processing priorities are Priority 1 (P-1) and Priority 2 (P-2).[92] P-1 covers individual cases referred to the U.S. refugee program by designated entities based on the individuals' circumstances and apparent need for resettlement. P-2 covers groups of special humanitarian concern to the United States, which may be defined by their nationalities, ethnicities, or other characteristics. P-2 groups are identified by DOS in consultation with DHS and other entities. Each P-2 group is subject to particular eligibility criteria and access procedures.

There are long-standing P-2 groups for members of certain religious minority groups in Eurasia and the Baltic countries and in Iran. These particular P-2 groups are subject to a reduced evidentiary standard for meeting the definition of a refugee in accordance with statutory provisions known as the Lautenberg amendment (first enacted in 1989 as part of P.L. 101-167).[93] The Lautenberg amendment has been regularly extended over the years, although at times there

[89] For further discussion of the asylum-related provisions in H.R. 2, see CRS In Focus IF12522, *The Secure the Border Act (H.R. 2): Asylum-Related Reforms*.

[90] For additional information on refugee admissions, see CRS Report R47399, *U.S. Refugee Admissions Program*.

[91] U.S. President (Biden), "Presidential Determination on Refugee Admissions for Fiscal Year 2024," Presidential Determination No. 2023-13 of September 29, 2023, 88 *Federal Register* 73521, October 25, 2023.

[92] For information on these and other processing priorities for FY2024, see DOS, DHS and HHS, *Proposed Refugee Admissions for Fiscal Year 2024, Report to the Congress*, https://www.state.gov/report-to-congress-on-proposed-refugee-admissions-for-fiscal-year-2024/#:~:text=For%20FY%202024%2C%20the%20President,resettled%20in%20the%20United%20States.

[93] For additional information on these provisions, see CRS Report R47399, *U.S. Refugee Admissions Program*.

have been lapses between extensions. *P.L. 118-47 extends the Lautenberg amendment through the end of FY2024 (Division F, §7034(k)(2)).*

Immigration Parole

Immigration parole, another statutory form of humanitarian relief, is more loosely defined in the INA than either asylum or refugee status. Section 212(d)(5) of the INA gives the DHS Secretary discretionary authority to "parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States."[94] The terms *urgent humanitarian reasons* and *significant public benefit* are not defined for the purposes of immigration parole. Immigration parole is official permission to enter (if outside the country) and remain temporarily in the United States. A person granted parole (parolee) may receive work authorization.[95] A parolee does not have a dedicated pathway to LPR status but may be able to obtain such status if eligible under an existing avenue, such as asylum.[96]

Parole authority has been used over the years for a variety of purposes, including to create programs to enable persons outside the United States who belong to particular groups to enter the country. DHS under the Biden Administration, for example, has established parole programs for nationals of particular countries, including Ukraine, Cuba, Haiti, Nicaragua, and Venezuela, among others.[97]

House-passed H.R. 2 (Division B, §701) would amend the INA to place restrictions on the executive branch's use of parole authority. Among these amendments, the bill would prohibit the granting of parole to persons inside the United States except for certain family members of U.S. military personnel on active duty. It would revise the existing statutory description of parole to prohibit the DHS Secretary from granting parole "according to eligibility criteria describing an entire class of potential parole recipients." The bill would specify that

> The term "case-by-case basis" means that the facts in each individual case are considered and parole is not granted based on membership in a defined class of aliens to be granted parole. The fact that aliens are considered for or granted parole one-by-one and not as a group is not sufficient to establish that the parole decision is made on a "case-by-case basis".

H.R. 2 would further add statutory definitions of *urgent humanitarian reason* and *significant public benefit*. The former, for example, would be limited to situations such as medical emergencies, the imminent death of a close family member, or the return to the United States of an applicant for LPR status.

Among its other provisions, H.R. 2 would limit parole grants to a maximum duration of one year. It also would make parolees ineligible for employment authorization, with the exception of certain family members of U.S. military personnel on active duty and certain Cubans who are being sponsored for LPR status by their U.S. citizen or LPR family members.

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[94] INA §212(d)(5) (8 U.S.C. §1182(d)(5)). Parole under INA Section 212(d)(5) is distinct from the release of an arrested alien on *conditional parole*, as authorized in INA Section 236(a) (8 U.S.C. §1226(a)).

[95] For additional information on parole, see CRS Report R46570, *Immigration Parole*.

[96] For information on potential LPR pathways for parolees, see CRS Report R47654, *Immigration Options for Immigration Parolees*.

[97] For information about the listed parole programs, see CRS Report R47654, *Immigration Options for Immigration Parolees*.

Section 201 in Division B also addresses immigration parole. It provides that an applicant for admission (such as a person who arrives at the U.S. Southwest border) who is in expedited removal or formal removal is only eligible for release on immigration parole, as revised by the provisions described above.

Other Issues and Legislation

Public Benefit Eligibility for Migrants from the Freely Associated States

In the 1980s and 1990s, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau signed Compacts of Free Association (COFA) with the United States. COFA migrants are afforded certain immigration-related benefits that permit them to live, study, and work in the United States. Since the compacts went into effect, thousands of migrants from the Freely Associated States (FAS) have established residence in U.S. states and territories. Prior to 1996, FAS citizens residing in the United States were eligible for federal public benefits. However, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA; P.L. 104-193) barred FAS citizens, among others, from most federal public benefits, including Medicaid, the Supplemental Nutrition Assistance Program (SNAP), Temporary Assistance for Needy Families (TANF), and Supplemental Security Income (SSI). It did so by not identifying FAS citizens as *qualified aliens*.[98] The Consolidated Appropriations Act, 2021 (P.L. 116-260) modified PRWORA by restoring COFA migrants' eligibility for Medicaid. It also exempted them from other restrictions to Medicaid, such as the five-year bar.[99] *P.L. 118-42 (Division G, Title II, §209(f)) adds COFA migrants to the list of qualified aliens under PRWORA[100] for public benefit programs generally (i.e., not only for Medicaid). It also exempts them from other restrictions, including the five-year bar.*

Ukrainian Parolee Eligibility for Refugee-Like Benefits

P.L. 117-128 (Title IV, §401) made Ukrainians who were paroled into the United States between February 24, 2022, and September 30, 2023,[101] and meet other requirements eligible for "resettlement assistance, entitlement programs, and other benefits" to the same extent as persons admitted as refugees (with the exception of the State Department's Reception and Placement Program for newly arriving refugees[102]). This provision thus made these Ukrainian parolees eligible for most federal public benefits, including Medicaid, SNAP, TANF, and SSI, as well as refugee assistance programs administered by HHS's Office of Refugee Resettlement.[103] *P.L. 118-*

[98] See 8 U.S.C. §1641. For additional information, see "Appendix: Qualified Aliens," in CRS Report R47318, *Unauthorized Immigrants' Eligibility for Federal and State Benefits: Overview and Resources*.

[99] Many qualified aliens are prohibited from receiving certain federal public benefits for the first five years after entry/grant of status, often referred to as the *five-year bar* (8 U.S.C. §1613).

[100] 8 U.S.C. §1641.

[101] This provision also covered specified family members of these parolees who were paroled in after September 30, 2023.

[102] For information on the Reception and Placement program, see CRS Report R47399, *U.S. Refugee Admissions Program*.

[103] For information about these refugee assistance programs, see HHS, Administration for Children and Families, "Office of Refugee Resettlement," https://www.acf.hhs.gov/orr.

50 (Division B, §301) amends this provision to make these benefits available to Ukrainians who are paroled in between February 24, 2022, and September 30, 2024.

Prohibition on Housing Certain Foreign Nationals

H.R. 3941, as passed by the House, would prohibit the use of facilities at public elementary or secondary schools or institutions of higher education that receive federal financial assistance to provide shelter or housing to foreign nationals who have not been granted admission to the United States.

H.R. 5283, as passed by the House, would prohibit the use of federal funds to provide housing on any land under the administrative jurisdiction of the National Park Service, the Bureau of Land Management, the United States Fish and Wildlife Service, or the Forest Service to foreign nationals who have not been granted U.S. admission.

Ineligibility for Immigration Relief

Two House-passed bills discussed above that propose to amend the INA grounds of inadmissibility and deportability would also make foreign nationals who engage in certain acts ineligible for immigration relief, such as asylum. H.R. 5585 would render a noncitizen ineligible for immigration relief if the noncitizen admits to or is convicted of evading arrest or detention while operating a motor vehicle within 100 miles of the U.S. border. H.R. 6679 would make a foreign national who participated in attacks on Israel since October 7, 2023, ineligible for immigration relief.

Immigration Enforcement by State Attorneys General

House-passed H.R. 7511 and H.R. 7322, as reported by the House Judiciary Committee, would similarly amend the INA to grant standing to a state attorney general or other authorized state officer to bring an action in a federal district court alleging a violation of specified INA provisions that harms the state or its residents. The specified INA provisions in the bills concern detention and removal, visa sanctions for recalcitrant countries,[104] and immigration parole.

Visa Waiver Program

The Visa Waiver Program (VWP) allows nationals from specified countries to enter the United States as temporary visitors for business or pleasure without first obtaining a visa.[105] Section 722 of S. 2043, as reported by the Senate Foreign Relations Committee, would prohibit the Secretary of State from nominating a country to the VWP if that country subjects any U.S. citizen to separate entry rules or visa regulations or otherwise discriminates against any U.S. citizen on the basis of race, religion, ethnicity, national origin, or membership in a protected class.

[104] Countries that systematically refuse or delay the repatriation of their citizens are considered by DHS to be "recalcitrant," also called "uncooperative." For additional information, see CRS In Focus IF11025, *Immigration: "Recalcitrant" Countries and the Use of Visa Sanctions to Encourage Cooperation with Alien Removals*.

[105] INA §217 (8 U.S.C. §1187). 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*. The U.S. State Department maintains an updated list of VWP participants on its "Visa Waiver Program" page, https://travel.state.gov/content/travel/en/us-visas/tourism-visit/visa-waiver-program.html.

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