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# Immigration Consequences of Unlawful Voting by Aliens

Federal immigration laws provide that aliens who have illegally voted in the United States may be either denied admission to or removed from the country. They may also, depending upon their immigration status, face other adverse consequences, including being ineligible for certain forms of relief from removal or other immigration benefits. This In Focus discusses some of the immigration consequences an alien may face for unlawful voting. For information about federal criminal laws prohibiting unlawful voting, see CRS In Focus IF12742, *Federal Criminal Laws Prohibiting Unlawful Voting*.

## Relevant Grounds of Inadmissibility and Deportability

Aliens who have not been admitted into the United States, including those found in the country after entering without inspection, may be denied admission or removed if they are determined to be inadmissible under 8 U.S.C. § 1182(a). Aliens who have been admitted into the United States (e.g., lawful permanent residents (LPRs)) may be subject to removal if they are determined to be deportable under 8 U.S.C. § 1227(a). Below are a few of the applicable grounds under these removal provisions related to voting.

### Unlawful Voting

Section 611(a) of Title 18 prohibits “any alien to vote” in a federal or mixed election for candidates for “the office of President, Vice President, Presidential elector, Member of the Senate, Member of the House of Representatives, Delegate from the District of Columbia, or Resident Commissioner.” A violation of the statute is punishable as a misdemeanor. The immigration consequences that flow from violating this statute fall under 8 U.S.C. §§ 1182(a)(10)(D)(i) and 1227(a)(6)(A). Both statutes state that an alien “who has voted in violation of any Federal, State, or local constitutional provision, statute, ordinance, or regulation” will be deemed either inadmissible or deportable and therefore barred from admission or subject to removal from the United States. Neither statute requires a criminal conviction to find the alien inadmissible or deportable.

The Board of Immigration Appeals (BIA) and some courts as recently as 2021 have held that an alien who voted in violation of 18 U.S.C. § 611(a) and does not fall within any statutory exception is either inadmissible or deportable regardless of whether the alien knew it was unlawful to vote. This conclusion is based on the fact that courts have held that Section 611(a) is a “general intent crime” that requires only “that the [alien] performed the acts that the law forbids, understanding what he was doing.” Courts have held that, under these circumstances, what is required is that the alien knew he or she was not a citizen and that the unlawful act he or she performed was an act of voting.

For example, the Seventh Circuit held that an alien who voted in a U.S. presidential election violated Section 611(a) even though he alleged that there was no proof that he knew it was unlawful for him to vote. The court explained that Section 611(a) “does not contain the word ‘intentionally’ or the slippery word ‘willfully,’ which sometimes requires proof of knowledge about the law’s commands.”

For aliens voting in state and local elections, the BIA and courts have generally determined that removability under either provision requires proof similar to what is required for Section 611(a). In one case, however, the Ninth Circuit held that an alien accused of voting in violation of state law was not deportable under Section 1227(a)(6)(A) because the court interpreted the state law as requiring proof that a voter knew he or she could not vote, and no such evidence was presented in that case.

Sections 1182 and 1227 provide an exception for an alien who unlawfully voted in either a federal, state, or local election (including an initiative, recall, or referendum). Both provisions do not apply if (1) each natural or adoptive parent of the alien is or was a U.S. citizen (whether by birth or naturalization), (2) the alien permanently resided in the United States before the age of sixteen, and (3) the alien reasonably believed at the time of voting that he or she was a U.S. citizen. The statute that criminalizes aliens voting in federal elections has a similar exception.

### False Claims to U.S. Citizenship

In addition to unlawful voting, an alien who falsely claims to be a U.S. citizen in order to vote (e.g., in a voter registration application) may be subject to certain grounds of inadmissibility or deportability. Under 8 U.S.C. §§ 1182(a)(6)(C)(ii)(I) and 1227(a)(3)(D)(i), an alien who falsely claims to be a U.S. citizen “for any purpose or benefit” under the Immigration and Nationality Act or any other federal or state law may be deemed either inadmissible or deportable. The statutes have similar exceptions as found under unlawful voting, whereas, under these statutes, the alien must have “reasonably believed at the time of making such representation that he or she was a citizen.” The statute that criminalizes making false representations of U.S. citizenship either to register to vote or to vote in any election (18 U.S.C. § 1015(f)) has a similar exception. The criminal statutes that prohibit falsely and willfully representing oneself as a citizen (18 U.S.C. § 911) or making such false representations to obtain a benefit (e.g., 18 U.S.C. § 1015(e)) do not have an exception.

Based on BIA precedent, an alien who falsely claims U.S. citizenship in order to vote is inadmissible or deportable so

long as the alien made the false claim, regardless of whether the alien intended to make the false representation.

## Immigration Consequences

As discussed, aliens may be denied admission to the United States or face other adverse immigration consequences, including removal, based upon unlawful voting. Aliens who have not been admitted and have unlawfully voted may be denied admission or placed in removal proceedings, depending on the circumstances. An admitted alien who has unlawfully voted may be placed in removal proceedings.

### Potential Waivers of Inadmissibility or Deportability

An alien who has engaged in unlawful voting is generally not eligible for a discretionary waiver of inadmissibility or removal. Section 1182(d)(3)(A), however, authorizes the waiver of most grounds of inadmissibility, including Section 1182(a)(10)(D), for an alien who seeks to temporarily enter the United States on a nonimmigrant visa (e.g., as a tourist) and based on consideration of certain factors (e.g., the seriousness of the alien's past immigration or criminal violations, reasons for entering the United States).

### Other Immigration Consequences

An alien who unlawfully voted may face other immigration consequences. Aliens pursuing certain forms of relief from removal during proceedings or other immigration benefits must meet specific requirements, such as showing their admissibility or good moral character. Section 1101(f) of Title 8 lists specific classes of aliens deemed to lack good moral character, but it goes on to state that a person may be found to lack good moral character "for other reasons" not specified in the statute. Although aliens who unlawfully voted are not among the listed classes of aliens, the unlawful voting may provide "other reasons" for finding they lack good moral character. Section 1101(f) states that unlawful voting or voter registration and false claims to citizenship may not preclude a finding of good moral character if the alien's natural or adoptive parent is or was a U.S. citizen (through birth or naturalization), the alien resided in the United States before turning sixteen, and the alien reasonably believed he or she was a U.S. citizen.

An alien who unlawfully voted may be ineligible for certain forms of relief or other benefits, including, but not necessarily limited to, adjustment of status, temporary protected status (TPS), cancellation of removal, voluntary departure, and naturalization.

### Adjustment of Status

An alien "who was inspected and admitted or paroled into the United States" may seek to adjust his or her status if, among other things, "the alien is eligible to receive an immigrant visa and is admissible to the United States for permanent residence." An alien who unlawfully voted is inadmissible and thus ineligible to adjust status to an LPR. Immigration officials may not waive this inadmissibility ground for adjustment applicants.

Aliens who unlawfully voted, however, may qualify for certain other forms of adjustment. For example, an alien

admitted to the United States as a refugee or granted asylum who has been physically present in the country for at least one year may seek to adjust his or her status to LPR. The governing statute authorizes the waiver of most grounds of inadmissibility (including those relating to unlawful voting) "for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest."

### Temporary Protected Status

An alien may be granted TPS if the alien's home country is officially designated as unsafe because of an armed conflict, environmental disaster, or other "extraordinary and temporary conditions," and the alien meets other requirements, including being admissible. While a person who unlawfully voted is inadmissible, the TPS statute authorizes the waiver of these grounds "for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest."

### Cancellation of Removal

An alien in removal proceedings who meets certain statutory requirements may be granted cancellation of removal and allowed to adjust to LPR status. The applicant must show, among other things, good moral character during the last ten years the alien has been physically present in the United States. An alien who unlawfully voted could be found ineligible for cancellation of removal if found to lack good moral character.

### Voluntary Departure

An alien in removal proceedings may request to voluntarily depart the United States instead of being removed (and being subject to certain reentry bars). Among other things, the alien must show good moral character for at least the preceding five years. An alien who unlawfully voted could be found ineligible for voluntary departure if found to lack good moral character.

### Naturalization

An alien who has continuously resided in the United States as an LPR for certain periods of time may apply to naturalize. The alien must show, among other things, good moral character. Consistent with § 1101(f), federal regulations list classes of aliens who lack good moral character for naturalization purposes, including those who "committed unlawful acts that adversely reflect upon the applicant's moral character." These "unlawful acts" may include unlawful voting and voter registration and false claims to U.S. citizenship (but not if the applicant qualifies for the exception found in § 1101(f)). Thus, a person who unlawfully voted could be ineligible for naturalization.

## Considerations for Congress

While existing statutes provide adverse immigration consequences for aliens who unlawfully vote, Congress may consider other legislative options. In the 118th Congress, the Safeguard American Voter Eligibility Act (H.R. 8281), which passed the House, would prohibit states from accepting or processing an application to register to vote in a federal election unless the applicant presents documentary proof of U.S. citizenship. The bill would also require states to remove non-U.S. citizens from voter registration rolls for federal elections.

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