

# Primer on U.S. Immigration Policy

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## Primer on U.S. Immigration Policy

U.S. immigration policy is governed largely by the Immigration and Nationality Act (INA), which was first codified in 1952 and has been amended significantly several times since. U.S. immigration policy contains two major aspects. One facilitates migration flows of foreign nationals into the United States; another focuses on immigration enforcement and removal. Immigration functions authorized by Congress in the INA and other laws are carried out by several executive branch departments and agencies.

The United States has long distinguished permanent from temporary immigration. The INA's permanent immigration categories reflect principles of admission that are based upon national interest, including family reunification, U.S. labor market contribution, origin-country diversity, and humanitarian assistance. The INA provides lawful permanent resident (LPR) status through family and employer-sponsored categories, the diversity immigrant visa, and grants of refugee status and asylum, among others. LPRs may choose to naturalize, or become U.S. citizens, upon meeting requirements specified in the INA. Temporary immigration occurs through the admission of foreign nationals for specific purposes and limited periods of time, and encompasses two dozen categories that include foreign tourists, students, temporary workers, and diplomats.

The executive branch may exercise statutory or executive authority to allow certain noncitizens to enter or remain in the United States on a time-limited basis, including those who have not been admitted through permanent or temporary pathways under the INA and might otherwise be subject to removal. These include Temporary Protected Status (TPS), immigration parole, and Deferred Action for Childhood Arrivals (DACA).

The INA also provides authority for immigration enforcement, including restricting entry to and removing persons from the United States who lack authorization to be in the country or who have such authorization but have committed acts that make them subject to removal. Immigration enforcement functions include border enforcement, interior enforcement, detention, and removal. Some individuals subject to removal may be repatriated; others may be eligible for forms of permanent relief or temporary protection from removal.

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## Introduction

U.S. immigration policy is governed largely by the Immigration and Nationality Act (INA), which was first codified in 1952 and has been amended significantly several times since.<sup>1</sup> Implementation of the provisions in the INA and other laws, including the Homeland Security Act of 2002 (HSA; P.L. 107-296.), is carried out by executive branch agencies. The Department of Homeland Security (DHS), established under the HSA, has primary responsibility for immigration functions through its component agencies: U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Border Protection (CBP), and U.S. Immigration and Customs Enforcement (ICE). The Department of State (DOS) issues visas to foreign nationals overseas through its Bureau of Consular Affairs and manages the U.S. Refugee Admissions Program through its Bureau of Population, Refugees, and Migration. The Department of Justice (DOJ) operates immigration courts through its Executive Office for Immigration Review (EOIR). Immigration courts adjudicate immigration hearings, including removal proceedings. The Department of Health and Human Services' (HHS') Office of Refugee Resettlement (ORR) oversees refugee resettlement and is responsible for the care and custody of unaccompanied children. The Department of Labor (DOL) operates a foreign labor certification program to enforce laws intended to ensure that foreign workers do not displace or adversely affect wages or working conditions of U.S. workers.

This report provides a broad overview of U.S. immigration policy. The first section addresses laws and policies governing how foreign nationals (*aliens*<sup>2</sup>) may enter the United States to either reside permanently or stay temporarily. Related topics within this section include visa issuance and security, naturalization (i.e., the process of obtaining U.S. citizenship), and discretionary permissions to enter or remain in the United States. The second section discusses enforcement policies for excluding certain foreign nationals from admission into the United States and for detaining and removing those who enter the country unlawfully or who enter lawfully but are charged with one of the INA's *grounds of deportability*. While intended to be comprehensive, this primer may omit some immigration-related topics.

## Immigration Inflows and Related Topics

### Visa Issuance and Security

In general, nonresident foreign nationals who wish to come to the United States—either as *lawful permanent residents* (LPRs) through permanent family-sponsored, employment-based, and diversity categories; or as *nonimmigrants* through temporary pathways—must obtain a visa from a U.S. consulate.<sup>3</sup> *Immigrant visas* provide for permanent residence; *nonimmigrant visas* provide for temporary stays. A visa permits a foreign national to travel to a U.S. port of entry and request permission from CBP to enter the country (i.e., apply for admission). In addition, to obtain a visa

<sup>1</sup> The Immigration and Nationality Act (INA, P.L. 82-414) is codified, as amended, at 8 U.S.C. §§1101 et seq.

<sup>2</sup> The INA defines “alien” as a person who is not a citizen or a national of the United States. INA §101(a)(3); 8 U.S.C. §1101(a)(3). In this report, the terms *alien*, *foreign national*, and *noncitizen* are synonymous.

<sup>3</sup> Exceptions include citizens or nationals of the (currently) 42 Visa Waiver Program (VWP) designated countries, Canadian USMCA Professional Workers, and citizens of Canada and Bermuda; 8 C.F.R. §212.1. For more information, see CRS Report RL32221, *Visa Waiver Program*; and DOS, “Travel Without A Visa,” <https://travel.state.gov/content/travel/en/us-visas/tourism-visit/travel-without-a-visa.html>.

a foreign national must establish that he/she meets the requirements for the specific visa classification. Consular officers can deny visas under three main INA provisions:

1. insufficient information under INA Section 221(g),
2. grounds of inadmissibility under INA Section 212(a), and
3. for nonimmigrant applicants, the INA Section 214(b) presumption of seeking permanent residence.

A visa denial under INA Section 221(g) indicates that the DOS consular officer abroad lacks sufficient information to determine if a foreign national is eligible to receive a visa. A consular officer may also disqualify a visa applicant if (1) he/she knows or has reason to believe the alien is inadmissible under INA Section 212(a) (described below) or any other provision of law, or (2) the application fails to comply with INA provisions or regulations. A visa denial under INA Section 214(b) indicates that the foreign national was unable to demonstrate to the consular officer that he/she had sufficient ties to his/her home country to return home.<sup>4</sup> This is the most common reason that DOS denies nonimmigrant visas.

Consular officers must decide whether a foreign national may be denied admission to the United States under the grounds in INA Section 212(a), which include the following:

- health-related grounds,
- criminal grounds,<sup>5</sup>
- security and terrorist concerns,
- public charge risk (e.g., indigence),<sup>6</sup>
- seeking to work without proper labor certification,
- lacking valid entry documents,
- previous illegal U.S. entry and U.S. immigration law violations,<sup>7</sup>
- ineligibility for U.S. citizenship, and
- having been previously removed from the United States.<sup>8</sup>

The INA describes procedures for making and reviewing an inadmissibility determination and specifies conditions under which some of these provisions may be waived.

All visa applicants are required to submit their photograph, fingerprints, and biographic information. Visa applicants are checked against multiple databases and information sources for security purposes. All prospective LPRs and certain prospective nonimmigrants must also submit to physical and mental examinations. Visa applicants generally must be interviewed by a consular officer in person to determine whether they are qualified to receive a visa.<sup>9</sup> Consular officers'

<sup>4</sup> Some nonimmigrant visas, including those for *H-1B specialty occupation workers*, *L intracompany transferees*, *K fiancés*, and *V accompanying family members* allow visa holders to simultaneously seek LPR status.

<sup>5</sup> For more information, see CRS Report R45151, *Immigration Consequences of Criminal Activity*.

<sup>6</sup> For more information, see CRS In Focus IF11467, *Immigration: Public Charge*; and CRS Legal Sidebar LSB10341, *DHS Final Rule on Public Charge: Overview and Considerations for Congress*.

<sup>7</sup> With certain exceptions, persons who depart the United States after being unlawfully present for more than 180 days but less than one year are subject to a 3-year bar on admission; those who depart after being unlawfully present for at least one year are subject to a 10-year bar. INA §212(a)(9)(B); 8 U.S.C. §1182(a)(9)(B).

<sup>8</sup> For more information, see CRS In Focus IF12662, *Immigration: Grounds of Inadmissibility*.

<sup>9</sup> See INA §222(h), 8 U.S.C. §1202(h) and 22 C.F.R. §41.102 (requirements for nonimmigrant interviews), and 22 C.F.R. §42.62 and DOS, "Immigrant Visa Process," <https://travel.state.gov/content/travel/en/us-visas/immigrate/the-> (continued...)

decisions on whether or not to grant foreign nationals a visa are not subject to judicial appeals. Visa applicants who were denied a visa for a particular ineligibility and meet certain conditions may apply to DHS for a waiver of that ineligibility and apply again for a visa.

The INA has civil enforcement provisions, distinct from removal or inadmissibility proceedings, to prosecute individuals and entities that engage in immigration document fraud.<sup>10</sup> Apart from the INA, the U.S. Criminal Code classifies knowingly producing or using fraudulent immigration documents (e.g., visas, border crossing cards) as criminal offenses.<sup>11</sup>

## Permanent Immigration<sup>12</sup>

The permanent immigration system provides foreign nationals with LPR status (commonly, a green card).<sup>13</sup> Four major principles underlie the current system of permanent immigration: family reunification, U.S. labor market contribution, origin-country diversity, and humanitarian assistance. These principles are reflected in the different categories that provide LPR status under the INA. Family reunification occurs primarily through family-sponsored immigration. U.S. labor market contribution occurs through employment-based immigration. Origin-country diversity is addressed through the diversity immigrant visa. Humanitarian assistance occurs primarily through the U.S. refugee program and asylum. These permanent immigration pathways are discussed further below.

The INA limits worldwide permanent immigration to 675,000 persons annually: 480,000 *family-sponsored immigrants*, made up of immediate relatives of U.S. citizens, and a set of ordered family-sponsored preference immigrants (preference immigrants); 140,000 *employment-based immigrants*; and 55,000 *diversity visa immigrants*.<sup>14</sup> These numerical limits include spouses and children who accompany the principal immigrants.

This worldwide limit, however, is referred to as a *permeable cap* because immediate relatives are exempt from numerical limits that are placed on family-sponsored immigration (described below) and thereby represent the flexible component of the 675,000 worldwide limit. In addition, the annual number of refugees is determined not by statute but by the President in consultation with Congress. Applications for asylum are adjudicated on a case-by-case basis without a statutorily mandated limit (see the “Refugees and Asylees” section). Consequently, the actual total number

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[immigrant-visa-process/step-10-prepare-for-the-interview/step-11-applicant-interview.html](#) (requirements for immigrant visas).

<sup>10</sup> INA §274C; 8 U.S.C. §1324c.

<sup>11</sup> 18 U.S.C. §1546.

<sup>12</sup> In this report, the term *admissions* broadly refers to the entry of aliens into the United States, either permanently or temporarily. Technically, aliens who immigrate permanently do so either *by being admitted* as LPRs (if arriving from abroad) or *by adjusting status* from a temporary status to LPR status (if residing in the United States). For more information on permanent immigration, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

<sup>13</sup> In this report, the terms *immigrant*, *lawful permanent resident*, and *green card-holder* are synonymous.

<sup>14</sup> See, respectively, INA §201(c), INA §201(d), and INA §201(e). While the diversity visa category has not been directly amended since its enactment, the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA; P.L. 105-100) temporarily reduced the 55,000 annual ceiling beginning in FY1999 by up to 5,000 annually to offset immigrant numbers made available to certain unsuccessful asylum seekers from El Salvador, Guatemala, and formerly communist countries in Europe. In addition, the National Defense Authorization Act for Fiscal Year 2024 (P.L. 118-31) makes additional *special immigrant* EB-4 visas available for current or former employees of the U.S. government abroad who have at least 15 years of service (up to 3,500 in FY2024 and 3,000 in subsequent years). 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 EB-4 visas issued under this provision.

of persons who receive LPR status annually has exceeded 1 million in all but 3 of the past 20 fiscal years.

To ensure that foreign nationals from only a few countries do not dominate permanent immigration flows, the INA further specifies a 7% *per-country limit* on the number of family-sponsored preference immigrants and employment-based immigrants.<sup>15</sup>

## Requirements for Prospective Immigrants

To obtain LPR status, prospective immigrants undergo a multistep process through several federal departments and agencies.<sup>16</sup> If they are present in the United States, they apply for LPR status by *adjusting status*, typically from certain *nonimmigrant* (temporary) statuses to LPR status. If they are outside the United States, they apply for an immigrant visa at a U.S. consulate. All family-based immigrants and most employment-based immigrants require a relative or an employer, respectively, to petition on their behalf. Petitions are submitted to and adjudicated by USCIS. Petitions filed on behalf of a visa applicant outside the United States are first adjudicated by USCIS and then forwarded to DOS's Bureau of Consular Affairs in the prospective immigrant's home country for immigrant visa processing. Most immigration petitions and applications require fees.<sup>17</sup>

For all prospective immigrants, the USCIS adjudicator (when the alien is adjusting status within the United States) or USCIS and the consular officer (when the alien lives abroad) must be satisfied that prospective immigrants are entitled to LPR status and are not ineligible under the INA's grounds of inadmissibility (see the "Visa Issuance and Security" section).<sup>18</sup>

The number of foreign nationals seeking to acquire LPR status each year through family-sponsored and employment-based preference categories typically exceeds the INA-mandated numerical limits for these pathways. Apart from the numerical limits that apply to prospective immigrants from all countries, the 7% per-country cap primarily affects foreign nationals from countries that send relatively large numbers of immigrants to the United States (e.g., Mexico, China, India, the Philippines). As a result, many foreign nationals who qualify for LPR status may have to wait years before a numerically limited green card becomes available.

DOS manages the numerical control of green cards according to the INA's limitations.<sup>19</sup> When a numerically limited green card becomes available, an approved prospective immigrant may apply for an immigrant visa to travel to the United States and, if admitted at a U.S. port of entry by a CBP immigration officer, receive LPR status. If the approved prospective immigrant already resides in the United States as a temporary nonimmigrant, the availability of a green card allows

<sup>15</sup> This means that the total number of (numerically limited) family-sponsored preference immigrants and employment-based immigrants from a single country each year is limited by this provision to 7% of the total (226,000 plus 140,000) or 25,620. For more background, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

<sup>16</sup> For more information, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

<sup>17</sup> USCIS, which processes and adjudicates most immigration-related applications and petitions, operates largely on fee revenue. A fee schedule for all applications and petitions can be found at <https://www.uscis.gov/g-1055>. For background information, see CRS Report R48021, *U.S. Citizenship and Immigration Services (USCIS): Operations and Issues for Congress*.

<sup>18</sup> For more information, see CRS In Focus IF12662, *Immigration: Grounds of Inadmissibility*.

<sup>19</sup> For more information, see DOS, "The Operation of the Immigrant Numerical Control System," [https://travel.state.gov/content/dam/visas/Immigrant%20Visa%20Control%20System\\_operation%20of.pdf](https://travel.state.gov/content/dam/visas/Immigrant%20Visa%20Control%20System_operation%20of.pdf).

him/her to adjust to LPR status without having to return to his/her country of origin to complete visa processing at a DOS consulate.

## Family-Sponsored Immigration

Family-sponsored immigration comprises two groups (**Table 1**). *Immediate relatives* include spouses and minor unmarried children of U.S. citizens and parents of adult (ages 21+) U.S. citizens. Immediate relatives are not subject to annual numerical limits and can acquire LPR status if they meet the standard eligibility criteria required of all immigrants. *Preference immigrants* are numerically limited to 226,000 per year and, unlike immediate relatives, are also bounded by the 7% per-country limit.<sup>20</sup> From FY2014 to FY2023, family-sponsored immigrants accounted for 64% of all persons receiving LPR status.<sup>21</sup>

**Table 1. Family-Sponsored Immigrant Categories**

Category	Individuals in Category	Numerical Limit
<b>Immediate Relatives</b>		
	Spouses and unmarried minor children of U.S. citizens, and parents of adult U.S. citizens	Unlimited
<b>Preference Immigrants</b>		226,000 (floor)
1 <sup>st</sup> Preference	Unmarried adult children of U.S. citizens	23,400 plus unused 4 <sup>th</sup> preference visas
2 <sup>nd</sup> Preference	(A) Spouses and minor children of LPRs (B) Unmarried adult children of LPRs	114,200 plus unused 1 <sup>st</sup> preference visas (with at least 77% reserved for 2 <sup>nd</sup> [A] subgroup)
3 <sup>rd</sup> Preference	Married adult children of U.S. citizens	23,400 plus unused 1 <sup>st</sup> or 2 <sup>nd</sup> preference visas
4 <sup>th</sup> Preference	Siblings of adult U.S. citizens	65,000 plus unused 1 <sup>st</sup> , 2 <sup>nd</sup> , or 3 <sup>rd</sup> preference visas

**Source:** INA §§201(b), 203(a); 8 U.S.C. §§1151(b), 1153(a).

**Note:** LPR = lawful permanent resident.

## Employment-Based Immigration

Employment-based immigration occurs through five numerically limited preference categories (**Table 2**), the first three of which are based on professional accomplishment and ability. The

<sup>20</sup> When the demand for such visas exceeds 226,000, the 226,000 limit also acts as a floor, below which the number of family preference immigrants cannot fall. More than 226,000 family preference immigrants can be admitted under current law only if the number of immediate relatives admitted, less the number of any unused employment-based preference numbers from the prior year as well as any immigrant visas issued to several other relatively minor groups, is fewer than 254,000 (the difference between 480,000 and 226,000). However, annual admissions of immediate relatives less unused employment-based preference numbers from the prior year have exceeded 254,000 every year since 2001. For instance, in FY2023 immediate relatives totaled 551,590. Under these statutory constraints, family-sponsored preference category immigrants are effectively limited to 226,000 per year.

<sup>21</sup> For more information, see CRS Report R43145, *U.S. Family-Based Immigration Policy*.

fourth preference category includes various *special immigrants*.<sup>22</sup> The fifth preference category is for immigrant investors, a category created in 1990 to benefit the U.S. economy through employment creation and capital investment.<sup>23</sup> Employment-based immigrants are limited to 140,000 annually, including accompanying spouses and children, and are subject to the same 7% per-country limit for each preference category as family-sponsored preference immigrants.<sup>24</sup>

**Table 2. Employment-Based Immigrant Categories**

Category	Individuals in Category	Numerical Limit
1 <sup>st</sup> Preference	Priority workers: persons of extraordinary ability in the arts, sciences, education, business, or athletics; outstanding professors and researchers; and certain multinational executives and managers	28.6% of total EB limit (40,040) plus unused 4 <sup>th</sup> and 5 <sup>th</sup> preference visas
2 <sup>nd</sup> Preference	Members of the professions holding advanced degrees or persons of exceptional ability in the sciences, arts, or business	28.6% of total EB limit (40,040) plus unused 1 <sup>st</sup> preference visas
3 <sup>rd</sup> Preference	Skilled shortage workers with at least two years training or experience, and professionals with baccalaureate degrees; and “other (unskilled shortage) workers”	28.6% of total EB limit (40,040) plus unused 1 <sup>st</sup> or 2 <sup>nd</sup> preference visas; “other workers” limited to 10,000.
4 <sup>th</sup> Preference	Special immigrants, including ministers of religion, religious workers other than ministers, certain employees of the U.S. government abroad, and others	7.1% of worldwide limit (9,940); religious workers limited to 5,000 and broadcasters limited to 100. <sup>a</sup>
5 <sup>th</sup> Preference	Employment creation investors who invest at least \$1.05 million (\$800,000 in rural areas, areas of high unemployment, or infrastructure projects) and create/preserve at least 10 U.S. jobs	7.1% of total limit (9,940); 3,000 <i>minimum</i> reserved for investors in rural or high unemployment areas

**Source:** INA §203(b), 8 U.S.C. §1153(b).

- a. Congress has made available additional visas in this category to certain employees of the U.S. government abroad for whom visas are not immediately available by offsetting the number of diversity visas. See footnote 14 and CRS Report R47164, *U.S. Employment-Based Immigration Policy*.

## Diversity Immigrant Visa

The diversity immigrant visa fosters legal immigration from countries that send relatively few immigrants to the United States.<sup>25</sup> Each year, 55,000 visas are made available to nationals of countries from which immigrant admissions totaled less than 50,000 over the preceding five years. Since the visa’s inception in the early 1990s, the regional distribution of diversity

<sup>22</sup> For a complete list of special immigrant categories, see USCIS, “Employment-Based Immigration: Fourth Preference EB-4,” at <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-fourth-preference-eb-4>.

<sup>23</sup> The EB-5 visa was created through the Immigration Act of 1990 (P.L. 101-649). For more background, see CRS Report R44475, *EB-5 Immigrant Investor Program*.

<sup>24</sup> For more information, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

<sup>25</sup> INA §203(c); 8 U.S.C. §1153(c). For more information about diversity visas, see CRS Report R45973, *The Diversity Immigrant Visa Program*.

immigrants has shifted from Western European to African, Eastern European, and Asian countries.<sup>26</sup>

To be eligible for a diversity immigrant visa, foreign nationals must have a high school education or two years of work experience within the past five years in an occupation that requires at least two years of training or experience. Because the demand for diversity visas is much higher than the supply, a lottery is used to randomly select who may apply for one. To receive a diversity visa, lottery selectees must successfully complete the application process (including security and medical screenings and in-person interviews) by the end of the fiscal year for which they registered for the lottery; otherwise, they lose their eligibility.<sup>27</sup>

## Refugees and Asylees

Refugees are processed and admitted to the United States from abroad. A *refugee* is a person who is typically outside their 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.<sup>28</sup> DOS's Bureau of Population, Refugees, and Migration coordinates and manages the U.S. Refugee Admissions Program; USCIS interviews applicants and makes final eligibility determinations. DOS sets annual refugee priorities in collaboration with other agencies.<sup>29</sup>

Refugee status is granted within numerical limits. Refugee admissions differ from other immigrant admissions because they have no statutory numerical limitations. The INA authorizes the President, in consultation with Congress, to set an annual "refugee ceiling." Refugee ceilings and admissions have varied over time.<sup>30</sup> Examining the last 10 fiscal years, the refugee ceiling ranged between 15,000 in FY2021<sup>31</sup> (the lowest on record) and 125,000 in FY2025.<sup>32</sup> During that period, refugee admissions ranged between a low of 11,411 in FY2021 to a high of 100,034 in FY2024.<sup>33</sup> After one year in refugee status, refugees are required to adjust to LPR status.<sup>34</sup> There are no numerical limits on status adjustments for refugees.

An *asylee* is a person who meets the definition of a refugee in terms of persecution or a well-founded fear of persecution but is present in the United States or at a land border or port of entry to the United States.<sup>35</sup> Under the INA, aliens who are physically present in the United States or

<sup>26</sup> See archived CRS Report R45102, *Diversity Immigrants' Regions and Countries of Origin: Fact Sheet* and DHS Office of Homeland Security Statistics, *2023 Yearbook of Immigration Statistics*.

<sup>27</sup> Such individuals may register for the lottery again in subsequent years.

<sup>28</sup> INA §101(a)(42); 8 U.S.C. §1101(a)(42). While persons seeking refugee status often reside in a second country that is neither their home country nor the United States, some reside in their home countries in certain circumstances. See §101(a)(42)(B); 8 U.S.C. §1101(a)(42)(B).

<sup>29</sup> For more information about refugee admissions, see CRS Report R47399, *U.S. Refugee Admissions Program*.

<sup>30</sup> For annual refugee ceilings and admissions from FY1981 through FY2022, see Appendix A in CRS Report R47399, *U.S. Refugee Admissions Program*.

<sup>31</sup> The White House, "Presidential Determination on Refugee Admissions for Fiscal Year 2021," 85 *Federal Register* 71219-71221, November 6, 2020. In May 2021, President Biden issued an emergency presidential determination to raise the FY2021 refugee ceiling to 62,500. See The White House, "Memorandum for the Secretary of State on the Emergency Presidential Determination on Refugee Admissions for Fiscal Year 2021," May 3, 2021.

<sup>32</sup> The White House, "Presidential Determination on Refugee Admissions for Fiscal Year 2025," 89 *Federal Register* 83767, September 30, 2024.

<sup>33</sup> DOS, Bureau of Population, Refugees, and Migration, "Summary of Refugee Admissions as of October 31, 2024," <https://www.wrapsnet.org/admissions-and-arrivals/>.

<sup>34</sup> INA §209(a); 8 U.S.C. §1159(a).

<sup>35</sup> INA §208(a)(1); 8 U.S.C. §1158(a)(1).

who arrive in the United States may apply for asylum regardless of their immigration status, subject to certain restrictions.<sup>36</sup> A person who is not in removal proceedings may apply for *affirmative asylum* with USCIS.<sup>37</sup> Persons in removal proceedings may apply for *defensive asylum* (i.e., asylum as a defense against removal) in immigration court (within DOJ's EOIR).<sup>38</sup> Grants of asylum are not numerically limited. Asylees may apply for LPR status one year after being granted asylum.<sup>39</sup> There are no numerical limits on status adjustments for asylees.

## Other Pathways to LPR Status

In addition to the primary components of permanent immigration discussed above, the INA contains several other pathways to LPR status, though they account for relatively few immigrants each year. The most prominent among these are *cancellation of removal*, *U nonimmigrant visas*, and *T nonimmigrant status*.<sup>40</sup>

*Cancellation of removal* is a discretionary form of relief granted by an immigration judge to aliens in removal proceedings and is available to certain LPRs and non-LPRs.<sup>41</sup> Non-LPRs granted cancellation of removal are granted LPR status. To qualify for cancellation of removal and adjustment of status, a non-LPR must have been continuously physically present in the United States for at least 10 years, have been a person of good moral character, have not been convicted of certain enumerated criminal offenses, and establish that their removal would result in exceptional and extremely unusual hardship to a U.S. citizen or LPR parent, spouse, or child. Non-LPR grants of cancellation of removal are limited to 4,000 per year.<sup>42</sup>

*U nonimmigrant status* may be granted to certain victims who help law enforcement agencies investigate and prosecute domestic violence, sexual assault, human trafficking, and certain other crimes.<sup>43</sup> To qualify for U status, a foreign national must file a petition and establish that he/she (1) suffered substantial physical or mental abuse as a result of having been a victim of qualifying crimes that violated the laws of the United States or occurred in the United States; (2) possesses information about the criminal activity involved as certified by a law enforcement or immigration official; and (3) has been, is being, or is likely to be helpful in the investigation and prosecution of the crime(s) by federal, state, or local law enforcement authorities. U status recipients, as well as their immediate family members, can apply for LPR status after three years. The INA limits U status to 10,000 principal applicants annually; there are no annual numerical limits on the number of individuals with U status who can adjust to LPR status.<sup>44</sup>

<sup>36</sup> INA §208; 8 U.S.C. §1158. For information on statutory bars on applying for asylum, see CRS Legal Sidebar LSB10815, *An Overview of the Statutory Bars to Asylum: Limitations on Applying for Asylum (Part One)*.

<sup>37</sup> For more information about affirmative asylum, see CRS Report R48249, *What Is Affirmative Asylum?*.

<sup>38</sup> For more information about defensive asylum, see CRS Report R47504, *Asylum Process in Immigration Courts and Selected Trends*.

<sup>39</sup> INA §209(b); 8 U.S.C. §1159(b).

<sup>40</sup> For a detailed and complete list of categories of foreign nationals receiving LPR status, see DHS, Office of Homeland Security Statistics, *2023 Yearbook of Immigration Statistics*, Table 7.

<sup>41</sup> INA §240A; 8 U.S.C. §1229b.

<sup>42</sup> INA §240A(e); 8 U.S.C. §1229b(e).

<sup>43</sup> INA §101(a)(15)(U); 8 U.S.C. §1101(a)(15)(U).

<sup>44</sup> INA §214(p)(2); 8 U.S.C. §1184(p)(2). There is no limit for family members who derive U status or T status from the principal applicant, such as spouses, children, or other eligible family members. For more information, see CRS Report R47404, *Immigration Relief for Noncitizen Crime Victims*.

*T nonimmigrant status* may be granted to victims of severe forms of human trafficking.<sup>45</sup> To qualify for T status, trafficking victims must (1) demonstrate that they are victims of a severe form of trafficking in persons; (2) be physically present in the United States, its territories, or a U.S. port of entry either because of such trafficking or because they will participate in related investigations or prosecutions; (3) have complied with requests to assist law enforcement investigating or prosecuting trafficking acts;<sup>46</sup> and (4) be likely to suffer unusual and severe harm upon removal. Such aliens must also be admissible to the United States or obtain a waiver of inadmissibility (see the “Visa Issuance and Security” section). T status recipients may remain in the United States for four years and apply for LPR status after three years. The INA limits T status to 5,000 principal applicants annually and adjustment to LPR status by individuals with T status to 5,000 principal aliens annually.<sup>47</sup>

## Naturalization

Under the INA, eligible LPRs may become U.S. citizens through the naturalization process.<sup>48</sup> With some exceptions,<sup>49</sup> naturalization applicants must have resided continuously in the United States as LPRs for five years (three years for the spouses of U.S. citizens<sup>50</sup>) and demonstrate good moral character during the statutory period.

An individual may apply to naturalize by filing an application with USCIS and completing a biometric-based background check. Applicants then undergo an interview with USCIS during which they answer questions about their application and background and take English and civics tests. Those whose applications are approved become U.S. citizens after taking the Oath of Allegiance in a naturalization ceremony.

There are no numerical limits on naturalizations. In FY2024, USCIS naturalized 818,500 U.S. citizens.<sup>51</sup> In 2023, an estimated 25 million naturalized citizens resided in the United States, comprising 52% of the estimated 47.8 million foreign-born U.S. residents.<sup>52</sup> As of January 2024, an estimated 8.7 million LPRs were potentially able to naturalize based on having met age and residency requirements.<sup>53</sup>

A naturalized citizen may have his/her citizenship revoked on the basis that the citizenship was procured illegally, by concealment of material fact, or by willful misrepresentation.<sup>54</sup>

<sup>45</sup> INA §101(a)(15)(T); 8 U.S.C. §1101(a)(15)(T). For more information, see CRS Report R46584, *Immigration Relief for Victims of Trafficking* and CRS Report R47404, *Immigration Relief for Noncitizen Crime Victims*.

<sup>46</sup> Exceptions may be granted to individuals who are unable to cooperate with a request for assistance due to physical or psychological trauma or because they are under age 18. INA §101(a)(15)(T)(i)(III); 8 U.S.C. §1101(a)(15)(T)(i)(III).

<sup>47</sup> INA §214(o)(2), 8 U.S.C. §1184(o)(2); INA §245(l)(4)(A), 8 U.S.C. §1255(l)(4)(A).

<sup>48</sup> INA §316; 8 U.S.C. §1427. For more information, see CRS Report R43366, *U.S. Naturalization Policy* and CRS In Focus IF12322, *Naturalization: Policy Overview and Selected Trends*.

<sup>49</sup> The INA contains provisions for expedited naturalization through qualifying military service, INA §§328, 329; 8 U.S.C. §§1439, 1440. For more information, see CRS Report R48163, *Foreign Nationals in the U.S. Armed Forces: Immigration Issues*.

<sup>50</sup> INA §319; 8 U.S.C. §1429.

<sup>51</sup> USCIS, “Naturalization Statistics,” <https://www.uscis.gov/citizenship-resource-center/naturalization-statistics>, January 24, 2025.

<sup>52</sup> U.S. Census Bureau, 2023 American Community Survey data, 1-year estimates.

<sup>53</sup> Sarah Miller, *Estimates of the Lawful Permanent Resident Population in the United States and the Subpopulation Eligible to Naturalize: 2024 and Revised 2023*, DHS Office of Homeland Security Statistics, September 2024.

<sup>54</sup> INA §340(a); 8 U.S.C. §1451(a).

## Temporary Immigration

*Nonimmigrants* are foreign nationals admitted to the United States for a specified purpose and temporary period, including tourists, diplomats, students, temporary workers, and exchange visitors, among others.<sup>55</sup> Each year, the United States admits millions of nonimmigrants. DOS issues specific types of nonimmigrant visas within 24 major nonimmigrant visa categories. Categories are often referred to by the letter and numeral denoting the related subsection within INA Section 101(a)(15) (e.g., B-2 tourists, F-1 foreign students, H-2A temporary agricultural workers).<sup>56</sup> The INA and federal regulations set terms for nonimmigrant lengths of stay in the United States, which typically include foreign residency requirements and often limit what aliens are permitted to do while in the country (e.g., work, enroll in school).

Foreign nationals who apply for temporary admission must demonstrate, both to DOS consular officers at the time they apply for a visa abroad, as well as to CBP officers when they apply for admission upon arrival in the United States, that they are eligible for both nonimmigrant status generally and the specific nonimmigrant status for which they are applying. In addition, because the INA presumes that all aliens seeking admission to the United States are coming to live permanently, nonimmigrant applicants must demonstrate that they intend to depart the United States by the time their authorized period of stay expires (see the “Visa Issuance and Security” section).<sup>57</sup> Some nonimmigrants are permitted to work in the United States (e.g., temporary workers, students pursuing optional practical training).

Some nonimmigrant categories have annual numerical limits; others do not.<sup>58</sup> In FY2023, DOS issued 10.4 million nonimmigrant visas, with the largest number of visa issuances to B-1 business visitors and B-2 tourists (57%); border crossing card (BCC) holders (17%); H-2A, H-2B, and H-1B temporary workers (7%); F-1 foreign students (4%); C-1/D transit/crew members (3%); and J-1 cultural exchange visitors (3%).<sup>59</sup>

In addition to nonimmigrant visas, BCCs allow Mexican citizens who live in Mexico and are admissible as B-1 business or B-2 tourist visitors to briefly enter certain regions of the United States.<sup>60</sup> In FY2023, DOS issued approximately 1.8 million border crossing cards to Mexican nationals.<sup>61</sup> The BCC may be used for multiple entries and is usually valid for 10 years. Current regulations limit BCC holders to visits of up to 30 days within a zone of 25 miles along the border in Texas and California, 55 miles along the New Mexico border, and 75 miles along the Arizona border.<sup>62</sup>

<sup>55</sup> INA §101(a)(15); 8 U.S.C. §1101(a)(15).

<sup>56</sup> For more information, see CRS Report R45040, *Immigration: Nonimmigrant (Temporary) Admissions to the United States*.

<sup>57</sup> INA §214(b); 8 U.S.C. §1184(b). Many temporary visa holders eventually are able to adjust their status to LPR status after they have been admitted to the United States as nonimmigrants. In FY2023, for example, of the 1,172,910 foreign nationals who were granted LPR status, 564,660 (48%) were new arrivals from abroad and 608,260 (52%) adjusted status from a nonimmigrant status while residing in the United States. Data to show the nonimmigrant categories that foreign nationals adjust status from are unavailable. See DHS 2023 *Yearbook of Immigration Statistics*, Table 6.

<sup>58</sup> For a list of nonimmigrant categories and annual numerical limits, see CRS Report R45938, *Nonimmigrant and Immigrant Visa Categories: Data Brief*.

<sup>59</sup> See CRS Report R45938, *Nonimmigrant and Immigrant Visa Categories: Data Brief* and DOS, Bureau of Consular Affairs, *Report of the Visa Office 2023*.

<sup>60</sup> 8 C.F.R. §212.6

<sup>61</sup> DOS, Bureau of Consular Affairs, *Report of the Visa Office 2023*, Table XVI.

<sup>62</sup> 8 C.F.R. §235.1.

The Visa Waiver Program (VWP) allows citizens of 42 participating countries (or jurisdictions)—which must meet a number of qualifying criteria—to enter the United States as temporary visitors for business or pleasure without visas.<sup>63</sup> In FY2023, roughly 15.4 million pleasure and 2 million business visitors entered the United States using the VWP.<sup>64</sup>

Nonimmigrants must depart the United States before their authorized period of admission ends unless they obtain an extension of stay or change of status that permits them to remain in the country. On average, between 1% and 2% of nonimmigrant admissions result in an *overstay* each year.<sup>65</sup> Individuals who overstay are subject to removal from the United States (see the “Immigration Enforcement” section).

## Discretionary Permissions to Enter or Remain in the United States

The executive branch may exercise statutory or executive authority to allow certain noncitizens to enter or remain in the United States. These noncitizens may include individuals who were not legally admitted into the country or who may be subject to removal from the country. These discretionary permissions include Temporary Protected Status (TPS), deferred enforced departure, immigration parole, and Deferred Action for Childhood Arrivals (DACA). They are granted for a temporary period by DHS and do not provide a dedicated pathway to permanent status. Other categories that allow persons to remain in the United States regardless of immigration status, including withholding of removal and deferred action, are described in later sections of this report.

### Temporary Protected Status

When extraordinary conditions such as civil unrest, violence, or natural disasters occur in foreign countries, foreign nationals from those places who are present in the United States may not be able to return home safely. The INA allows the DHS Secretary to designate countries for TPS for periods of 6, 12, or 18 months at a time.<sup>66</sup> Congress has also provided TPS legislatively. As of September 2024, there were approximately 1.1 million individuals in the United States with TPS.<sup>67</sup> As of the cover date of this report, 17 countries were designated for TPS: Afghanistan, Burma, Cameroon, El Salvador, Ethiopia, Haiti, Honduras, Lebanon, Nepal, Nicaragua, Somalia, South Sudan, Sudan, Syria, Ukraine, Venezuela, and Yemen.

Nationals of designated countries already present in the United States may apply for TPS. Individuals granted TPS are eligible for employment authorization, cannot be detained on the basis of their immigration status, and are not subject to removal while they retain TPS. TPS does not provide a recipient with a designated pathway to LPR status; however, a TPS recipient is not barred from acquiring a lawful immigration status (e.g., asylum, nonimmigrant status, LPR status) if he/she meets the requirements.

Applicants apply for TPS with USCIS according to deadlines set in the *Federal Register* notices that announce each TPS designation or extension. These notices specify the dates by which

<sup>63</sup> For more information, see CRS Report RL32221, *Visa Waiver Program*.

<sup>64</sup> See DHS Office of Homeland Security Statistics, *2023 Yearbook of Immigration Statistics*, Table 25.

<sup>65</sup> For more information, see CRS Report R47848, *Nonimmigrant Overstays: Overview and Policy Issues*.

<sup>66</sup> INA §244, 8 U.S.C. §1254a. For more information, see CRS Report RS20844, *Temporary Protected Status and Deferred Enforced Departure*.

<sup>67</sup> For more information, see CRS Report RS20844, *Temporary Protected Status and Deferred Enforced Departure*.

individuals must have continuously resided in the United States in order to qualify. Foreign nationals outside the United States are not eligible for TPS.

## Deferred Enforced Departure

DED may be authorized by the President based on the executive branch's independent constitutional authority rather than any specific statutory authority. It provides a temporary, discretionary, administrative stay of removal to foreign nationals from designated areas. The Administration may use its discretion when applying DED to a particular area by balancing foreign policy, humanitarian, and immigration concerns. DED grants are announced for set periods of time at the President's discretion and may be extended. As of the cover date of this report, certain Palestinians, Lebanese, Liberians, and residents of Hong Kong living in the United States maintain protection under DED.<sup>68</sup> Covered individuals may apply for work authorization but they are not required to apply for DED; DED is triggered during removal proceedings.

## Immigration Parole

The INA authorizes DHS, on a case-by-case basis, to *parole* an alien into the United States for urgent humanitarian reasons or significant public benefit at its discretion.<sup>69</sup> Foreign nationals may request parole inside or outside the United States. Parole is granted for a specified period and does not constitute formal admission to the United States. A parole grant generally does not provide a dedicated path to LPR status.<sup>70</sup> Persons granted parole (parolees) may obtain employment authorization. Those granted parole must depart the United States when the parole expires or, if eligible, be admitted in a lawful status. Parolees may also apply for re-parole.<sup>71</sup>

In recent years, the use of parole processes for specific populations (e.g., special processes set up during the Biden Administration for nationals of Ukraine, Cuba, Haiti, Nicaragua, and Venezuela) have been subject to debate. As of the cover date of this report, many of these processes have been terminated or paused by the Trump Administration.<sup>72</sup>

## Deferred Action for Childhood Arrivals

Under the DACA initiative, established by executive action in 2012, certain individuals without a lawful immigration status who were brought to the United States as children and meet other criteria have been granted deferred action for two years, subject to renewal. DACA eligibility is based on requirements related to age, U.S. residence, education, and criminal history as established in a June 15, 2012, DHS memorandum.<sup>73</sup> Deferred action is “a type of prosecutorial discretion that allows an individual to remain in the United States for a set period of time.”<sup>74</sup>

<sup>68</sup> For more information, see CRS Report RS20844, *Temporary Protected Status and Deferred Enforced Departure*.

<sup>69</sup> INA §212(d)(5); 8 U.S.C. §1182(d)(5).

<sup>70</sup> Cubans are an exception because Congress established a special pathway to LPR status for Cuban parolees under the Cuban Adjustment Act of 1966 (P.L. 89-732).

<sup>71</sup> For more information, see CRS Report R46570, *Immigration Parole*.

<sup>72</sup> See, for example, DHS, “Termination of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans,” 90 *Federal Register* 56, March 25, 2025. For more information on Biden Administration-era special parole processes, see CRS Report R47654, *Immigration Options for Immigration Parolees*; for information on legal debates and changes under the second Trump Administration, see CRS Legal Sidebar LSB11102, *Humanitarian Parole Authority: A Legal Overview and Recent Developments* and CRS Legal Sidebar LSB11265, *Recent White House Actions on Immigration*.

<sup>73</sup> For more information, see CRS Report R46764, *Deferred Action for Childhood Arrivals (DACA): By the Numbers*.

<sup>74</sup> USCIS, “Glossary,” <https://www.uscis.gov/tools/glossary>.

To qualify for DACA, an individual must have been under age 31 as of June 15, 2007 (the issue date of the memorandum), physically present in the United States, entered the United States no later than five years before the memorandum's issue date, and have been continuously resident since then. In addition, the individual must have been under age 16 at the time of initial entry. As of the end of FY2024, there were 537,730 active DACA recipients.<sup>75</sup>

Like those covered by TPS, DED, and granted parole, DACA recipients can apply for employment authorization but have no dedicated path to LPR status. DACA has been subject to ongoing litigation challenging its legality but remains in effect as of the cover date of this report.<sup>76</sup> Currently, USCIS processes only DACA renewal applications and accompanying applications for employment authorization; it does not process initial DACA requests from individuals who have never had DACA.<sup>77</sup>

## Immigration Enforcement

Immigration enforcement involves the identification, investigation, apprehension, detention, prosecution, and removal (deportation) of foreign nationals who are inadmissible and/or become removable. Immigration enforcement encompasses enforcement of the INA's civil provisions (e.g., violations of admission requirements) as well as its criminal provisions (e.g., improper entry, marriage fraud, alien smuggling).

Two DHS agencies are primarily responsible for immigration enforcement. CBP is responsible for border security where foreign nationals enter at U.S. land, air, and sea ports of entry (POEs) and along U.S. borders between POEs.<sup>78</sup> ICE is responsible for enforcing immigration laws in the U.S. interior, including worksite enforcement; ICE also oversees immigration detention. Both agencies effectuate removals and returns of foreign nationals.

### Border Enforcement at Ports of Entry

Foreign nationals may arrive in the United States at 328 land, air, and sea POEs, which are managed by CBP's Office of Field Operations (OFO). OFO had 26,030 officers on staff at the end of FY2023.<sup>79</sup> OFO has the dual responsibility for facilitating the flow of lawful travel and trade while providing security at POEs against inadmissible persons and unlawful goods (e.g., unlawful firearms, imports, narcotics).

This includes screening at multiple points in the immigration process. DHS uses screening tools to distinguish low-risk travelers who may be eligible for expedited admissions processing from lesser-known, higher-risk travelers who are usually subject to more extensive secondary

<sup>75</sup> At that time, DACA recipients' average age was 30.6. USCIS, "Count of Active DACA Recipients as of September 30, 2024," available from USCIS, "Immigration and Citizenship Data," <https://www.uscis.gov/tools/reports-and-studies/immigration-and-citizenship-data>.

<sup>76</sup> For more information, see CRS Legal Sidebar LSB10625, *The Legality of DACA: Recent Litigation Developments*.

<sup>77</sup> USCIS, "Consideration of Deferred Action for Childhood Arrivals," <https://www.uscis.gov/DACA>, January 24, 2025.

<sup>78</sup> This report does not cover immigration enforcement along U.S. coastal waters, which the U.S. Coast Guard, Alien Migrant Interdiction Operations oversees. For more information, see DHS, Office of Homeland Security Statistics, *U.S. Coast Guard Maritime Response Activities Fiscal Year 2020-2023*.

<sup>79</sup> U.S. Government Accountability Office (GAO), *U.S. Customs and Border Protection: Efforts to Improve Recruitment, Hiring, and Retention of Law Enforcement Personnel*, GAO-24-107029, September 2024.

inspections.<sup>80</sup> Possession of a visa by a foreign national does not guarantee U.S. admission; a CBP officer may find the individual inadmissible.<sup>81</sup>

DHS is responsible for implementing an automated entry-exit system at POEs, a task Congress mandated in 1996.<sup>82</sup> Congress added a biometric requirement in 2001.<sup>83</sup> While CBP collects a portion of the requisite biographic and biometric data from noncitizens at various stages of their entry to and exit from the United States, the implementation of a fully automated biometric system has proven to be challenging.<sup>84</sup> DHS has fully implemented the biometric entry system at all U.S. ports of entry. Reportedly, the biometric exit system currently captures information on about 80% of foreign nationals aged 14-79 departing the United States via participating commercial air carriers. The biographic and biometric exit system is at various stages of completion for air, sea, and land POEs.<sup>85</sup>

## Border Enforcement Between Ports of Entry

Border enforcement between POEs protects against unauthorized land border entry into the United States. CBP's U.S. Border Patrol (USBP) works to prevent the unlawful entry of persons and contraband into the country between POEs at U.S. southern and northern land borders (approximately 6,000 miles) and coastal borders (2,000 miles). USBP's objectives include predicting, detecting, and identifying threats to national security; deploying personnel, equipment, and intelligence to secure the border; and classifying, prioritizing, and mitigating known threats.<sup>86</sup>

DHS reported in 2021 that since receiving authorization from Congress in 1996, approximately 701 miles of primary barriers have been built along the U.S.-Mexico border, which spans nearly 2,000 miles.<sup>87</sup> The second Trump Administration has announced plans to construct additional miles of border wall.<sup>88</sup> Tactical infrastructure also includes roads, gates, bridges, and lighting designed to support border enforcement and disrupt and impede illicit activity. Surveillance technology assists CBP in the detection, identification, and apprehension of individuals illegally entering the United States between POEs. Ground technology includes sensors, cameras, and radar tailored to fit specific terrain and population densities. Manned and unmanned aerial and

<sup>80</sup> For more information, see CRS Report R46783, *Trusted Traveler Programs*.

<sup>81</sup> INA §221(h); 8 U.S.C. §1201(h).

<sup>82</sup> This requirement was enacted in the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA, P.L. 104-208), Section 110.

<sup>83</sup> Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act, P.L. 107-56), Section 414.

<sup>84</sup> For more information, see CRS Report R47541, *Immigration: The U.S. Entry-Exit System*.

<sup>85</sup> For more information, see CRS Report R47541, *Immigration: The U.S. Entry-Exit System*.

<sup>86</sup> USBP, *2024-2028 Strategy*, March 2024.

<sup>87</sup> CBP and U.S. Army Corps of Engineers, "Border Wall Status – January 8, 2021." For more information, see CRS Report R45888, *DHS Border Barrier Funding Through FY2021* and U.S. Government Accountability Office, *Southwest Border Security: Additional Actions Needed to Better Assess Fencing's Contributions to and Operations and Provide Guidance for Identifying Capability Gaps*, GAO-17-331, February 2017. During the Biden Administration, wall construction was largely halted; however, some projects were approved to complete gaps in existing border barriers. See DHS, "DHS to Address Life, Safety, and Operational Requirements in the U.S. Border Patrol's Yuma Sector," July 28, 2022, and CRS Report R47979, *DHS Border Barrier Funding Developments: FY2021-FY2024*.

<sup>88</sup> For example, in March 2025 CBP announced plans to complete seven miles of new border wall in the USBP's Rio Grande Valley Sector with FY2021 funds. CBP, "CBP awards first border wall contract of President Trump's second term," March 15, 2025.

marine surveillance vessels patrol regions inaccessible by motor vehicle.<sup>89</sup> At the end of FY2023, according to CBP data, there were approximately 19,000 U.S. Border Patrol agents on staff.<sup>90</sup>

In recent years, CBP has had record-high levels of enforcement encounters at the Southwest border. Encounters have reflected a diverse array of national origins and a relatively high rate of children and families, many seeking asylum.<sup>91</sup> Border enforcement encounters began to slow at the end of FY2024.<sup>92</sup>

Although CBP is primarily responsible for border enforcement, other agencies also play a role; including ICE, which provides transportation support and detention space and carries out removals; and ORR, which is responsible for the care and custody of unaccompanied alien children apprehended at the border.<sup>93</sup>

## Interior Immigration Enforcement

ICE's Enforcement and Removal Operations (ERO) is responsible for interior immigration enforcement, which involves the identification, apprehension, detention, supervision, transportation, and removal of aliens who violate U.S. immigration laws. These may include aliens who entered the United States without inspection, overstayed a nonimmigrant visa, or otherwise violated the terms of a lawful admission. DHS has prosecutorial discretion to set civil immigration enforcement priorities, which may vary over time and across Administrations.<sup>94</sup>

ERO operates programs to identify criminal and other removable aliens, including the Criminal Alien Program (CAP),<sup>95</sup> which "identifies, locates and arrests noncitizens in the custody of other law enforcement agencies, as well as those noncitizens released from other law enforcement agencies who were arrested for criminal activity."<sup>96</sup> CAP includes a data sharing infrastructure, or interoperability, between DHS and DOJ that screens for both immigration and criminal violations when individuals are booked into prisons or jails that participate in the program. To pursue known at-large criminal aliens and fugitive aliens outside of controlled settings (i.e., administrative offices or custodial settings), ICE uses the National Fugitive Operations Program. ICE's Section

<sup>89</sup> See archived CRS Insight IN11040, *Border Security Between Ports of Entry: Homeland Security Issues in the 116th Congress*.

<sup>90</sup> GAO, *U.S. Customs and Border Protection: Efforts to Improve Recruitment, Hiring, and Retention of Law Enforcement Personnel*, GAO-24-107029, September 2024.

<sup>91</sup> Among all CBP encounters at the Southwest border, the proportion with children and family units was 41% in FY2025 through February, 43% in FY2024, 39% in FY2023, and 30% in FY2022. CBP, "Nationwide Encounters," <https://www.cbp.gov/newsroom/stats/nationwide-encounters>. See also Figure 2 in archived CRS Report R47556, *U.S. Border Patrol Encounters at the Southwest Border: Fact Sheet*.

<sup>92</sup> CBP, "Nationwide Encounters," <https://www.cbp.gov/newsroom/stats/nationwide-encounters>.

<sup>93</sup> Unaccompanied alien children are children who are under age 18, lack lawful immigration status in the United States, and do not have a parent or legal guardian in the United States, or a parent or legal guardian who is available to provide care and physical custody. For more information, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*.

<sup>94</sup> For more information, see CRS Legal Sidebar LSB10578, *The Biden Administration's Immigration Enforcement Priorities: Background and Legal Considerations* and CRS Legal Sidebar LSB10362, *Immigration Arrests in the Interior of the United States: A Primer*.

<sup>95</sup> The program has also been referred to as the Criminal Apprehension Program. An ICE website, <https://www.ice.gov/identify-and-arrest/criminal-alien-program>, updated January 27, 2025, refers to this program as the Criminal Alien Program; its FY2024 annual report uses Criminal Apprehension Program; ICE, *ICE Annual Report FY2024*, p. 93.

<sup>96</sup> ICE, *ICE Annual Report FY2024*, p. 15.

287(g) program allows DHS to delegate certain immigration enforcement functions to specially trained state and local law enforcement officers, under federal supervision.<sup>97</sup>

ICE's interior enforcement responsibility includes worksite enforcement, which is conducted by ICE's Homeland Security Investigations (HSI) directorate. The INA prohibits an employer from knowingly hiring, recruiting or referring for a fee, or continuing to employ an alien who lacks work authorization.<sup>98</sup> Employers who violate prohibitions on unauthorized employment may be subject to civil monetary penalties and/or criminal penalties.

## Detention and Case Management

ICE's ERO is responsible for the nation's civil immigration detention system. The INA authorizes—and in some cases requires—DHS to detain foreign nationals who are subject to removal from the United States. Detention statutes are multifaceted and depend on several factors, such as whether the individual is seeking admission or has been lawfully admitted into the country, has engaged in certain proscribed conduct, and has been issued a final order of removal. Four INA provisions provide a framework for immigration detention:

- INA Section 236(a) generally *authorizes* the detention of aliens pending a decision on whether the alien is to be removed from the United States and permits those who are not subject to mandatory detention to be released on bond or their own recognizance;
- INA Section 236(c) generally *requires* the detention of aliens who are removable because of specified criminal activity or terrorism-related grounds;
- INA Section 235(b) generally *requires* the detention of applicants for admission who appear subject to removal, including aliens arriving at a POE and certain other aliens who have not been admitted or paroled into the United States; and
- INA Section 241(a) generally *requires* an alien subject to a final order of removal to be held during the 90-day period when the alien's removal is effectuated. DHS may detain an alien beyond 90 days if the agency cannot effectuate removal and the alien falls within certain categories.<sup>99</sup>

In FY2024, apprehended aliens were held in 129 ERO detention facilities.<sup>100</sup> That year, ERO primarily detained aliens apprehended by CBP at the Southwest border and transferred to ICE custody, and aliens with criminal histories apprehended by ERO in the U.S. interior. ICE detained 37,684 persons at the end of FY2024.<sup>101</sup> Detention capacity is controlled largely through funding made available in congressional appropriations. Because detention capacity is limited, ICE may

<sup>97</sup> For background information, see CRS In Focus IF11898, *The 287(g) Program: State and Local Immigration Enforcement*.

<sup>98</sup> INA §274A; 8 U.S.C. §1324a.

<sup>99</sup> This material is adapted from CRS In Focus IF11343, *The Law of Immigration Detention: A Brief Introduction*. For more information on standards and criteria for making detention decisions, see also CRS Report R45915, *Immigration Detention: A Legal Overview*.

<sup>100</sup> This number includes facilities owned and operated by ICE, a state or local entity, or a contractor and excludes "hold rooms, hospital, and juvenile facilities." ICE, *Annual Report Fiscal Year 2024*, p. 22. See also ICE, "Detention Management," <https://www.ice.gov/detain/detention-management>.

<sup>101</sup> ICE, *Annual Report Fiscal Year 2024*, p. 23.

prioritize detaining certain populations (e.g., those subject to mandatory detention under the INA, those considered public safety or national security threats, and flight risks).<sup>102</sup>

ICE also manages a *non-detained docket* of individuals released from custody who are awaiting removal proceedings or subject to final orders of removal. At the end of FY2024, there were 7.6 million people on the non-detained docket, a nearly 25% increase from FY2023.<sup>103</sup> Some individuals on the non-detained docket are supervised under ERO's Alternatives to Detention (ATD) program. This program allows ICE to monitor certain aliens subject to removal who have been released into the United States, using technology (e.g., mobile applications, ankle monitors) and case management options (e.g., home visits, virtual check-ins).<sup>104</sup> ICE reported 179,000 ATD participants as of the end of FY2024.<sup>105</sup>

## Removal Processes

Removing foreign nationals who violate U.S. immigration and other laws is central to immigration enforcement, and the INA provides broad authority to DHS and DOJ to remove certain foreign nationals from the country. These persons include unauthorized aliens as well as lawfully present aliens who commit certain acts that make them removable. Any foreign national found to be inadmissible (either before or after U.S. entry; see the "Visa Issuance and Security" section for information on grounds of inadmissibility) or deportable under grounds specified in the INA may be ordered removed.

Grounds of deportability specified in INA Section 237(a) include the following:

- being inadmissible at the time of entry<sup>106</sup> or violating one's immigration status;
- committing certain criminal offenses, including crimes of "moral turpitude," aggravated felonies, alien smuggling, and high-speed flight from an immigration checkpoint;<sup>107</sup>
- failing to register with DHS (if required) or committing document fraud;
- being a security risk (including violating any law relating to espionage, engaging in criminal activity that endangers public safety, partaking in terrorist activities, or assisting in Nazi persecution or genocide);
- becoming a public charge within five years of entry; or
- voting unlawfully.

Absent other factors, unlawful presence in the United States is a civil violation, not a criminal offense, and removal and its associated administrative processes are civil proceedings. The INA provides for multiple types of removal processes. DHS may commence *formal removal proceedings* by issuing a foreign national a Notice to Appear charging document and filing it with

<sup>102</sup> See ICE, *Annual Report Fiscal Year 2024*, p. 22 and CRS Report R45915, *Immigration Detention: A Legal Overview*.

<sup>103</sup> ICE, *Annual Report Fiscal Year 2024*, p. 27.

<sup>104</sup> See ICE, "Alternatives to Detention," <https://www.ice.gov/features/atd>.

<sup>105</sup> ICE, *Annual Report Fiscal Year 2024*, p. 29.

<sup>106</sup> Grounds of inadmissibility are outlined in INA Section 212; 8 U.S.C. §1182. If individuals are removed because they were inadmissible at the time of entry, they are removed under INA Section 212, not INA Section 237. For more information, see CRS In Focus IF12662, *Immigration: Grounds of Inadmissibility*.

<sup>107</sup> Crimes of moral turpitude are determined by case law. For more information, see CRS Report R45151, *Immigration Consequences of Criminal Activity*.

an immigration court within DOJ's EOIR.<sup>108</sup> Formal removal proceedings typically consist of multiple hearings before an EOIR immigration judge.<sup>109</sup> At the conclusion of proceedings, an immigration judge determines whether a foreign national is removable as charged. The immigration judge may grant certain forms of relief or protection (e.g., asylum, cancellation of removal) for which the alien has applied.

Under streamlined removal procedures, including *expedited removal* and *reinstatement of removal* (i.e., when DHS reinstates a removal order for an individual previously removed),<sup>110</sup> opportunities for relief and review are generally limited. Expedited removal allows DHS to remove an alien without a formal hearing under certain statutory conditions.<sup>111</sup> However, individuals subject to expedited removal may have an opportunity to pursue applications for asylum and other forms of protection from removal.<sup>112</sup>

Aliens with a final removal order must generally be removed by DHS within 90 days, during which time they may be detained.<sup>113</sup> Individuals with a final order of removal may be repatriated by DHS to their country of citizenship or to a third country. This process requires cooperation from the country designated for removal, which must confirm the individual's nationality, issue travel documents, and accept their physical return. Under a 2001 Supreme Court decision (*Zadvydas v. Davis*), detained aliens subject to removal orders but for whom there is "no significant likelihood of removal in the reasonably foreseeable future" must be released into the United States after six months, with limited exceptions.<sup>114</sup> DHS considers countries that refuse or delay the repatriation of their citizens to be *recalcitrant* or *uncooperative*.<sup>115</sup> Foreign nationals who have been removed generally are ineligible to return to the United States for a minimum of five years.<sup>116</sup>

In other instances, foreign nationals may be repatriated through *returns*, including *voluntary returns*, *voluntary departure*, and *withdrawal of petition for admission*. Returns require foreign nationals to leave the United States promptly but exempt them from certain penalties associated with removal.

## Defenses Against Removal

INA provisions permit certain removable aliens to remain in the United States, either permanently or temporarily. Some of these options have already been described in previous sections of this report. Options that provide permanent relief by conferring or leading to LPR status include cancellation of removal (see the "Other Pathways to LPR Status" section) and defensive asylum

<sup>108</sup> INA §239; 8 U.S.C. §1229. For more information on immigration courts, see CRS Report R47077, *U.S. Immigration Courts and the Pending Cases Backlog*.

<sup>109</sup> INA §240; 8 U.S.C. §1229a. For more information about formal removal proceedings, see CRS In Focus IF11536, *Formal Removal Proceedings: An Introduction*.

<sup>110</sup> For more information about reinstatement of removal, see CRS In Focus IF11736, *Reinstatement of Removal Orders: An Introduction*.

<sup>111</sup> INA §235(b)(1); 8 U.S.C. §1225. For more information about expedited removal, see CRS In Focus IF11357, *Expedited Removal of Aliens: An Introduction*.

<sup>112</sup> For more information, see CRS Report R48078, *Credible Fear and Defensive Asylum Processes: Frequently Asked Questions*.

<sup>113</sup> INA §241(a); 8 U.S.C. §1231(a).

<sup>114</sup> For more information, see CRS Report R45915, *Immigration Detention: A Legal Overview*.

<sup>115</sup> For more information, see CRS In Focus IF11025, *Immigration: "Recalcitrant" Countries and the Use of Visa Sanctions to Encourage Cooperation with Alien Removals*.

<sup>116</sup> INA §212(a)(9)(A); 8 U.S.C. §1182(a)(9)(A). For more information, see CRS In Focus IF12484, *The Statutory Bars to Reentry into the United States*.

applied for during removal proceedings (see the “Refugees and Asylees” section).<sup>117</sup> Individuals may also obtain temporary protection from removal through TPS, DED, and DACA (see the “Discretionary Permissions to Enter or Remain in the United States” section). Additional options that provide temporary relief from removal include withholding of removal, Convention Against Torture (CAT) protection, and deferred action.

Withholding of removal may be granted to foreign nationals who can demonstrate that it is more likely than not that if removed to their home country they would be persecuted on account of their race, religion, nationality, membership in a particular social group, or political opinion. Like asylum, withholding of removal protects people from removal to a country where they fear persecution. Withholding of removal is granted by an EOIR immigration judge. Unlike asylum, an immigration judge has no discretion and must grant withholding of removal to applicants who meet the requirements.<sup>118</sup> In addition, to be granted withholding of removal, applicants must prove that it is “more likely than not” that they will be persecuted based on a protected ground.<sup>119</sup>

CAT protection may be granted by an immigration judge to individuals who fear torture in their home country. To qualify, applicants must demonstrate that it is more likely than not that they will be tortured directly by or with the acquiescence of the government of their country of origin.<sup>120</sup> Withholding of removal and CAT protection provide no path to LPR status and allow for possible removal to a third country.<sup>121</sup>

Deferred action is a form of prosecutorial discretion exercised by DHS that temporarily defers removal against a covered individual.<sup>122</sup> Examples of deferred action may include DHS terminating removal proceedings, declining to initiate removal proceedings, or declining to execute a final order of removal. DACA is one type of deferred action (see the “Deferred Action for Childhood Arrivals” section). DHS has also implemented policies to provide deferred action to workers cooperating in employment and labor standards investigations, certain relatives of U.S. servicemembers and veterans, and crime victims awaiting adjudication of a petition for U nonimmigrant status.<sup>123</sup>

<sup>117</sup> If an individual is subject to removal but has not been placed in removal proceedings, they may apply for affirmative asylum.

<sup>118</sup> For more information, see CRS Report R48078, *Credible Fear and Defensive Asylum Processes: Frequently Asked Questions*.

<sup>119</sup> INA §241(b)(3)(A); 8 U.S.C. §1231(b)(3)(A), *INS v. Stevic*, 467 U.S. 407, 424, 429–30 (1984) (explaining that an application for withholding of removal must “be supported by evidence establishing that it is more likely than not that the alien would be subject to persecution on one of the specified grounds.”). For more information, see CRS Report R48078, *Credible Fear and Defensive Asylum Processes: Frequently Asked Questions*.

<sup>120</sup> See archived CRS Report RL32276, *The U.N. Convention Against Torture: Overview of U.S. Implementation Policy Concerning the Removal of Aliens* (available to congressional clients upon request to CRS).

<sup>121</sup> For more information, see “Asylum and Related Forms of Relief” in CRS Report R48078, *Credible Fear and Defensive Asylum Processes: Frequently Asked Questions*.

<sup>122</sup> According to DHS, “Although deferred action does not confer lawful status or excuse any past or future periods of unlawful presence, a noncitizen granted deferred action is considered lawfully present in the United States for certain limited purposes, while the deferred action is in effect.” DHS, “DHS Support of the Enforcement of Labor and Employment Laws,” January 6, 2025.

<sup>123</sup> See USCIS, “DHS Support of the Enforcement of Labor and Employment Laws,” last updated January 24, 2025.

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