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Immigration Legislation and Issues in the 118th Congress

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Immigration Legislation and Issues in the 118th Congress

This report discusses immigration-related bills that have received congressional action during the first session of the 118th Congress. 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 several bills containing immigration provisions. Two of these bills are appropriations measures: the Continuing Appropriations Act, 2024 and Other Extensions Act (P.L. 118-15) and the Further Continuing Appropriations and Other Extensions Act, 2024 (P.L. 118-22). These laws include language to extend the authorization 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. 118-15 extended these authorizations through November 17, 2023. P.L. 118-22 extends them through February 2, 2024. In addition, the National Defense Authorization Act for Fiscal Year 2024 (P.L. 118-31) addresses a special immigrant classification for long-term current or former employees of the U.S. government abroad.

Multiple other immigration-related bills have seen floor action in only one chamber. These bills address border security, interior enforcement, permanent and temporary immigration, and asylum, among other topics. House-passed measures include the Secure the Border Act of 2023 (H.R. 2), the POLICE Act of 2023 (H.R. 2494), the Schools Not Shelter Act (H.R. 3941), and the Protecting our Communities from Failure to Secure the Border Act of 2023 (H.R. 5283). The Senate has passed the END FENTANYL Act (S. 206) as well as S.J.Res. 18, which would nullify a 2022 Department of Homeland Security (DHS) final rule that concerns the public charge ground of inadmissibility in the Immigration and Nationality Act.

Immigration-related measures that have been reported by a House or Senate committee focus largely on border security and related issues. House committees have reported the Border Security and Enforcement Act of 2023 (H.R. 2640) and the Border Reinforcement Act of 2023 (H.R. 2794), both of which overlap with House-passed H.R. 2, as well as the DHS Border Services Contracts Review Act (H.R. 4467). The border security-related bills reported in the Senate are 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), the Northern Border Coordination Act (S. 2291), and S. 243, which concerns maintenance projects at POEs. Among the other immigration-related bills reported by a Senate committee is the International Trafficking Victims Protection Reauthorization Act of 2023 (S. 920).

This report discusses these and other immigration-related measures that have received congressional action in the 118th Congress. DHS appropriations for FY2024 are addressed in other CRS reports, including CRS Report R47688, *Department of Homeland Security Appropriations: FY2024 State of Play*, and, for the most part, are not covered here.

SUMMARY

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Introduction

This report discusses immigration-related bills that have received congressional action during the first session of the 118th Congress. Many of these bills would amend the Immigration and Nationality Act (INA).[1] 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.[2] The rest of this introduction provides a quick guide to the immigration-related measures receiving action in 2023, organized by type of congressional action. The body of the report provides additional discussion of these bills. It is organized by immigration topic, with the topics being based on the provisions in the included bills. For easy reference, discussions of provisions enacted by the 118th Congress in the body of the report are italicized.[3]

The enacted measures include the Further Continuing Appropriations and Other Extensions Act, 2024 (P.L. 118-22, Division A) and the National Defense Authorization Act for Fiscal Year 2024 (P.L. 118-31). P.L. 118-22 extends through February 2, 2024, the authorization for three immigration programs and a provision concerning supplemental H-2B nonagricultural worker visas.[4] The three programs are the E-Verify employment eligibility verification program, the Conrad State Program for foreign medical graduates, and the special immigrant religious worker program. P.L. 118-31 makes additional visas available for a special immigrant classification for long-term current or former employees of the U.S. government abroad.

Other immigration-related bills have passed only one chamber. The Senate has passed the END FENTANYL Act (S. 206), which concerns inspections at U.S. ports of entry (POEs). The House has passed several measures. The Secure the Border Act (H.R. 2) is a major immigration bill with provisions on border security, asylum, interior enforcement, unaccompanied children, immigration parole, and employment eligibility verification, among other topics.[5] 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), respectively, propose to prohibit the use of schools and certain federal lands to provide housing for certain *aliens* (foreign nationals).[6] The Department of Homeland Security Appropriations Act, 2024 (H.R. 4367) includes a provision authorizing the department to make supplemental H-2B visas available for FY2024.

In addition, the Senate and the House have each passed a measure 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. The Senate 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. The House passed the POLICE Act of 2023 (H.R. 2494), which would add a new criminal ground of deportability to the INA.

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[1] 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.

[2] 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.

[3] For the most part, DHS appropriations are not covered in this report. For information about DHS appropriations for FY2024, see CRS Report R47688, *Department of Homeland Security Appropriations: FY2024 State of Play*.

[4] The Continuing Appropriations Act, 2024 and Other Extensions Act (P.L. 118-15) included these same extensions through November 17, 2023.

[5] 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.

[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* and *foreign national* are used interchangeably.

Congressional committees have reported a number of other immigration-related bills. In the House, the Border Reinforcement Act of 2023 (H.R. 2794), as reported by the House Homeland Security Committee, includes most of the same provisions as House-passed H.R. 2 on border security.[7] The Border Security and Enforcement Act of 2023 (H.R. 2640), as reported by the House Judiciary Committee, includes most of the same provisions as House-passed H.R. 2 on asylum, interior enforcement, unaccompanied children, immigration parole, and employment eligibility verification, among other topics. (Given these overlaps and House passage of H.R. 2, this report focuses its discussion of these provisions on H.R. 2.) The House Homeland Security Committee has also reported the DHS Border Services Contracts Review Act (H.R. 4467).

Senate committees have reported bills related to border security and human trafficking. The border security-related bills, which were reported by the Senate Homeland Security and Governmental Affairs Committee, are 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), the Northern Border Coordination Act (S. 2291), and S. 243, which concerns maintenance projects at POEs. The International Trafficking Victims Protection Reauthorization Act of 2023 (S. 920), as reported by the Senate Foreign Relations Committee, addresses protections for certain foreign workers employed by diplomats in the United States.

The Senate Appropriations Committee has likewise reported immigration-related measures. Language related to the U.S. refugee program is included in the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2024 (S. 2438). The Department of Homeland Security Appropriations Act, 2024 (S. 2625) would authorize the E-Verify program, the Conrad State Program, the special immigrant religious worker program, and a supplemental H-2B visa provision through the end of FY2024. The Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 2024 (S. 2624) also includes H-2B-related provisions; they would establish temporary policies related to H-2B labor certification.

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.

In FY2023, there were some 2.5 million CBP enforcement encounters at the Southwest border, a historical high.[8] USBP recorded more than 2 million of these FY2023 encounters, and OFO

[7] One substantive difference between these bills is their language requiring a report on Mexican drug cartels. H.R. 2794, as reported, includes a provision like that in H.R. 2, as introduced, which would direct DHS to submit a report to Congress on whether specified Mexican drug cartels meet the criteria to be designated as foreign terrorist organizations. The comparable provision in H.R. 2, as passed, would instead task Congress with commissioning a report to provide "a national strategy to address Mexican drug cartels, and a determination regarding whether there should be a designation established to address such cartels" and information about harm to the United States caused by the cartels (Division A, §123).

[8] 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.

recorded the remaining 430,000.[9] The OFO totals included encounters of persons who used the CBP One mobile application to schedule appointments to present themselves at POEs for processing.[10] CBP has described CBP One as "a key component of DHS's efforts" to "disincentivize attempts to cross between ports of entry."[11] Persons with CBP One appointments processed at POEs are generally placed in removal proceedings[12] (see the "Detention and Removal" section). During these proceedings, they may apply for asylum or other forms of relief from removal. From January 2023 through September 2023, CBP processed about 281,000 individuals with CBP One appointments.[13]

Border Security Resources

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[14] 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 provide for the installation of additional physical barriers, roads, lighting, cameras, and sensors to gain operational control of the southwest border."[15] 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"[16] (§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

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

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

[11] DHS, CBP, "CBP releases November 2023 monthly update," December 22, 2023, https://www.cbp.gov/newsroom/national-media-release/cbp-releases-november-2023-monthly-update#:~:text=In%20November%202023%2C%20CBP%20processed,air%2C%20truck%2C%20and%20rail.

[12] DHS, "Fact Sheet: CBP One Facilitated Over 170,000 Appointments in Six Months, and Continues to be a Safe, Orderly, and Humane Tool for Border Management," August 3, 2023, https://www.dhs.gov/news/2023/08/03/fact-sheet-cbp-one-facilitated-over-170000-appointments-six-months-and-continues-be.

[13] DHS, Office of Homeland Security Statistics, Immigration Enforcement and Legal Processes Monthly Tables—September 2023, "CBP One Appointments" table, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables.

[14] For additional discussion of border barriers, see CRS Insight IN12216, *HSA@20 Episode Companion: Border Enforcement*.

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

[16] 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).

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. 4467, as reported by the House Homeland Security Committee, 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. House-passed H.R. 2 (Division A) and Senate-passed S. 206 would direct CBP to review and update OFO and USBP policies on inspections to address the smuggling of drugs and people across U.S. borders. H.R. 2 would also 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.[17]

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. The application could not be used 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

[17] 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.

Marine Operations (AMO)[18] 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. 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.[19] H.R. 2 would set forth law enforcement agency eligibility requirements for the program and the permitted uses of grant funds.

S. 2291, as reported by the Senate Homeland Security and Governmental Affairs Committee, 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.

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.[20] 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."[21] As part of its work, ERO oversees civil immigration detention in facilities across the country.

[18] 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.

[19] For additional information about Operation Stonegarden, see DHS, FEMA, *FY 2023 Homeland Security Grant Program Fact Sheet*, February 27, 2023, https://www.fema.gov/grants/preparedness/homeland-security/fy-23-fact-sheet.

[20] 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*.

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

H.R. 2 (Division B, Title II), as passed by the House, includes provisions on detention and removal. The INA sets forth procedures for immigration officers to follow in handling different categories of foreign nationals who are *applicants for admission* to the United States.[22] Applicants who are ineligible for U.S. admission may be placed in one of two types of removal proceedings—formal removal proceedings, or streamlined removal proceedings known as *expedited removal*. The INA generally requires applicants for admission who are placed in either type of removal proceedings to be detained, although DHS has authority to release some aliens from custody.[23] In order for a person who is placed in expedited removal proceedings 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). Under current policy, a person 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. Most applicants for admission who are placed directly into formal removal proceedings are not detained.[24]

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[25] 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[26] that applies to an applicant for admission who is placed directly into formal removal proceedings.

Section 201 would also revise a related INA provision[27] 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 remove the person to a safe third country (see the "Asylum" section).[28]

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.)

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

[22] INA §235(b) (8 U.S.C. §1225(b)). INA §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)."

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

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

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

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

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

[28] This language includes an exception for release under the INA parole provision, as revised by H.R. 2.

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.[29] 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.[30]

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 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).[31] E-Verify is largely voluntary 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. 118-22 extends the authorization of E-Verify through February 2, 2024.* S. 2625, as reported by the Senate Appropriations Committee, would authorize the E-Verify program 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

[29] 8 U.S.C. §1324a(a).

[30] 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.

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

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 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 grounds of inadmissibility are those upon which foreign nationals are ineligible to receive visas or be admitted to the United States.[32] These include criminal grounds (which encompass convictions for certain crimes) 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. The grounds of deportability are grounds upon which foreign nationals can be removed from the United States.[33] They include criminal grounds (which encompass convictions for certain crimes) 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.

Implementation of the inadmissibility ground concerning the likelihood of becoming a public charge is the subject of S.J.Res. 18, as passed by the Senate. Beginning in 1999, interim guidance

[32] INA §212(a) (8 U.S.C. §1182(a)).

[33] INA §237 (8 U.S.C. §1227).

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.[34] 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 under the Biden Administration published a new final rule that included a definition of pubic 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.[35] S.J.Res. 18 states that "Congress disapproves" the 2022 final rule and that it "shall have no force or effect."

H.R. 2494, as passed by the House, would amend the INA grounds of deportability by adding assault of a law enforcement officer to the list of deportable criminal offenses. This ground would cover individuals who have been convicted of or have admitted to such an assault. Commission of assault is not among the current criminal grounds of deportability in the INA, although an individual may be removed on the basis of an assault conviction if, for example, the assault is an *aggravated felony*.[36]

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.[37] In FY2022 and FY2023, the number of UAC and family units[38] 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 Agreement (*Flores*),[39] 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

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

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

[36] For the INA definition of *aggravated felony*, see INA §101(a)(43) (8 U.S.C. §1101(a)(43)). For additional discussion, see CRS Report R45151, *Immigration Consequences of Criminal Activity*.

[37] 6 U.S.C. §279(g)(2). For a discussion of UAC and related legislation, see CRS Report R43599, *Unaccompanied Alien Children: An Overview*.

[38] 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.

[39] 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*.

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.[40] 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 his or her application, 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.[41]

Apprehended unaccompanied children from *noncontiguous* countries, in contrast, are required by law to be put immediately into formal removal proceedings.[42] 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.[43]

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.[44]

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 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.[45] 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

[40] 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*.

[41] 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.

[42] UAC are not subject to expedited removal.

[43] 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.

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

[45] See *ORR Unaccompanied Children Program Policy Guide*, Section 5.10.2, "Limits to Sharing Information with DHS and EOIR," revised August 7, 2023.

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.[46] 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.[47] The EB4 category is subject to an annual numerical limit of 9,940 visas under the INA.[48] 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 almost five years to receive LPR status.[49]

Employees of the U.S. Government Abroad

The INA contains a special immigrant classification for current or former employees of the U.S. government abroad who have at least 15 years of service.[50] 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. In FY2024, up to 3,500 additional visas will be made 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 issued under this provision.[51]

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,

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

[47] 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*.

[48] 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*.

[49] See U.S. Department of State (DOS), *Visa Bulletin for October 2023*, "Final Action Dates for Employment-Based Preference Cases," September 8, 2023, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2024/visa-bulletin-for-october-2023.html.

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

[51] For information on the diversity visa, see CRS Report R45973, *The Diversity Immigrant Visa Program*. For information on the broader permanent immigration system, see CRS Report R42866, *Permanent Legal Immigration to the United States: Policy Overview*.

abandonment, or neglect; and is granted SIJ status by DHS.[52] 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.[53] 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.[54]

Temporary Religious Workers

The special immigrant classification for religious workers[55] 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[56] have always had a sunset date. *P.L. 118-22 extends this temporary program through February 2, 2024.* S. 2625, as reported by the Senate Appropriations Committee, would authorize the special immigrant religious worker program through the end of FY2024.

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.[57] 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.[58] 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

[52] 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*.

[53] See, for example, Andrew R. Arthur, *Catch and Release Escape Hatches: Loopholes that encourage illegal entry*, Center for Immigration Studies, May 4, 2018.

[54] 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.

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

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

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

[58] 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*.

Reauthorization Act of 2008 (TVPRA; P.L. 110-457).[59] 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 on 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.[60] 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.[61]

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 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 298,336 in FY2022.[62]

Under the INA, an employer cannot submit a petition to DHS to bring in H-2A workers until it has applied to the U.S. Department of Labor (DOL) for labor certification.[63] 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

[59] Most recently, the 117th Congress 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.

[60] 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.

[61] 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/.

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

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

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.[64] The 2023 AEWR rule has been particularly controversial.[65] 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."[66] 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."[67]

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 that this rule will strengthen worker protections, improve the H-2A application process, and ease regulatory burdens on employers.[68] 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.[69]

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.[70] 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.

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[64] 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.

[65] 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*.

[66] 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.

[67] 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.

[68] 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.

[69] 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.

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

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.[71] The most recent provision of this type was enacted as part of the Consolidated Appropriations Act, 2023 (P.L. 117-328). *P.L. 118-22 extends this H-2B authority through February 2, 2024.* Both H.R. 4367, as passed by the House, and S. 2625, as reported by the Senate Appropriations Committee, include supplemental H-2B visa provisions for FY2024.

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.[72] This language was last enacted for FY2023 in P.L. 117-328. S. 2624, as reported by the Senate Appropriations Committee, would enact these same provisions for FY2024.

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).[73] As described in DOS regulations, the purpose of the Exchange Visitor Program is to "increase mutual understanding between the people of the United States and the people of other countries by means of educational and cultural exchanges."[74]

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 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. 118-22 extends the Conrad State Program through February 2, 2024.* S. 2625, as reported by the Senate Appropriations Committee, would authorize this program through the end of FY2024.

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

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

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

[74] 22 C.F.R. §62.

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*.[75]

Under current law, there are various immigration-related consequences for overstaying, but the act of overstaying itself is not a crime.[76] 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."[77]

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."[78] 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

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

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

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

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

determining a claim to asylum or equivalent temporary protection."[79] 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.[80]

In addition, the INA provides for an arriving foreign national who lacks proper entry documents or engages in fraud or misrepresentation 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.[81]) 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 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.[82]

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

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

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

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

[82] 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*.

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.[83]

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.[84]

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).[85] 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 longstanding 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 a statutory provision known as the Lautenberg amendment (first enacted in 1989 as part of P.L. 101-167).[86] The Lautenberg amendment has been regularly extended over the years, although at times there have been lapses between extensions. It was last extended (through the end of FY2023) by P.L. 117-328. S. 2438, as reported by the Senate Appropriations Committee, would extend the Lautenberg amendment through the end of FY2024.

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."[87] 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

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

[84] 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.

[85] 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.

[86] For additional information on this provision, see CRS Report R47399, *U.S. Refugee Admissions Program*.

[87] 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)).

in the United States. A person granted parole (parolee) may receive work authorization.[88] 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.[89]

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.[90]

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.

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

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.

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

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

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

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.

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