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Immigration 101: Executive Branch Agencies Involved with Immigration

While Congress has plenary power over immigration law, the Immigration and Nationality Act (INA), Homeland Security Act (HSA), and other laws grant substantial discretion over immigration policy to the executive branch. Executive branch departments and their components have distinct yet overlapping responsibilities for immigration policy. These include facilitating the lawful admission of foreign nationals and removing those without authorization to be in the United States or who have committed an action that makes them removable (i.e., deportable). Many of these functions fall within the Department of Homeland Security, but several other agencies also have responsibility for carrying out immigration policy, including components of the Departments of Justice, State, Health and Human Services, and Labor.

Department of Homeland Security (DHS)

DHS was established under the HSA in 2002. The HSA abolished the Immigration and Naturalization Service (INS), which was within the Department of Justice (DOJ). It transferred many of INS's functions to the new DHS, a cabinet-level department that incorporated 22 federal agencies.

Three DHS component agencies are responsible for immigration and enforcement functions: U.S. Citizenship and Immigration Services (USCIS), Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP).

U.S. Citizenship and Immigration Services (USCIS)

USCIS oversees lawful immigration to the United States, which includes adjudicating applications for naturalization and *immigration benefits*, such as

- petitions for lawful permanent resident (LPR) status in employment and family-based categories;
- applications for humanitarian protections such as Temporary Protected Status, Deferred Action for Childhood Arrivals, affirmative asylum (for individuals who are not in removal proceedings), immigration parole, and eligibility determinations for refugees; and
- certain applications for nonimmigrants (i.e., individuals present in the United States with temporary visas) such as for those extending their stay or changing to a different nonimmigrant status.

As part of these adjudications, USCIS conducts background and security checks in collaboration with DOJ's Federal Bureau of Investigation.

USCIS also processes employment authorization documents for foreign nationals eligible to work in the United States, travel authorization documents, and intercountry adoptions, and it conducts naturalization ceremonies to confer U.S. citizenship. Together with the Social Security Administration, the agency operates the E-Verify program for employers to confirm immigrant (i.e., permanent) and nonimmigrant (i.e., temporary) workers' U.S. employment eligibility. USCIS asylum officers conduct credible fear screenings for certain migrants subject to *expedited removal* (INA §235(c)(1)) who express an intent to apply for asylum or who fear persecution in their home countries.

Immigration and Customs Enforcement (ICE)

ICE is a law enforcement agency within DHS with responsibility primarily for immigration enforcement in the U.S. interior. Within ICE, Enforcement and Removal Operations (ERO) identifies, arrests, detains, and removes foreign nationals who are unlawfully present or removable. ERO manages the U.S. civil immigration detention system.

ICE's Homeland Security Investigations (HSI) conducts federal criminal investigations of people, goods, money, technology, and contraband, both in the interior and along the border. HSI also enforces provisions of the INA that prohibit the employment of foreign nationals who are not authorized to work in the United States (i.e., *worksite enforcement*).

Customs and Border Protection (CBP)

CBP enforces immigration laws at U.S. land, air, and sea borders, including by processing arriving migrants. Within CBP, the Office of Field Operations (OFO) operates at U.S. ports of entry (POEs), facilitating lawful trade and travel and enforcing border security. OFO officers inspect travel documents and determine whether arriving migrants are admissible under requirements in the INA.

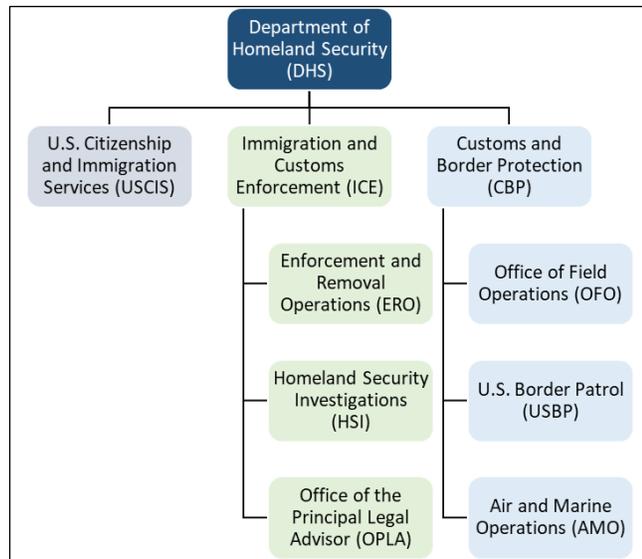
The U.S. Border Patrol (USBP) secures the land border between ports of entry, with responsibility for the detection, prevention, and apprehension of individuals who have entered or are attempting to enter the United States without authorization. USBP operates within geographic-based sectors at the northern, southern, and coastal borders. CBP's Air and Marine Operations (AMO) also operates along the border in air and maritime environments.

Processing for Removal

USCIS, ICE, and CBP may charge foreign nationals in the interior or at the border with grounds of deportability (INA §237) and inadmissibility (INA §212) and process them for removal from the United States. DHS commences *formal*

removal proceedings (INA §240) when it issues a *Notice to Appear* (NTA) charging document and files it in an immigration court. ICE's Office of the Principal Legal Advisor (OPLA) represents DHS during removal proceedings.

Figure 1. DHS Immigration Components



Source: CRS.

Department of Justice

Executive Office for Immigration Review (EOIR)

Within DOJ, EOIR's Office of the Chief Immigration Judge operates the nation's immigration courts system.

Immigration Judges (IJs) adjudicate immigration court proceedings, which are civil administrative proceedings and include removal proceedings that DHS commences as described above. IJs determine whether foreign nationals are subject to removal and if they are eligible for relief or protection from removal, including defensive asylum, withholding of removal, and protection under the United Nations Convention Against Torture. Parties to the proceedings may appeal an IJ's decision to EOIR's Board of Immigration Appeals, the highest administrative body for interpreting and applying immigration laws.

EOIR's Office of the Chief Administrative Hearing Officer adjudicates INA provisions related specifically to employer sanctions, including unlawful hiring of unauthorized workers (INA §274A), unfair immigration-related employment practices (INA §274B), and immigration-related document fraud (INA §274C).

Department of State (DOS)

Bureau of Consular Affairs

DOS's Bureau of Consular Affairs is responsible for issuing immigrant and nonimmigrant visas at U.S. embassies and consulates around the world to foreign nationals residing outside the United States. During the visa issuance process, DOS works in conjunction with USCIS, which in many cases must first approve petitions and applications before DOS may issue a visa.

Because of the INA's numeric limitations on certain immigrant visa categories (INA §§202, 203), even if USCIS has approved a petition the petitioner may have to wait for a visa number to become available. Even though a visa has been issued allowing a foreign national to travel to the United States, a CBP inspector must approve the foreign national's admission at a POE.

Bureau of Population, Refugees, and Migration (PRM)

PRM coordinates and manages the U.S. Refugee Admissions Program. PRM works with nongovernmental organizations (NGOs), international organizations, and U.S. embassy contractors who pre-screen refugees at Resettlement Support Centers (RSCs) abroad. RSCs submit cases to USCIS, which conducts in-person interviews and makes final determinations on eligibility for admission. As with all arriving migrants, refugee admissions must be approved by a CBP officer at a POE. RSCs also work with U.S.-based NGOs and faith-based organizations to resettle refugees. PRM provides resettlement assistance to refugees after they arrive in the United States, including initial reception, housing, food, and clothing.

Department of Health and Human Services

Office of Refugee Resettlement (ORR)

ORR provides additional resettlement assistance to newly arrived refugees, asylees, and certain other eligible groups, including time-limited cash and medical assistance, case management services, English classes, and employment services.

ORR is also responsible for the care and custody of unaccompanied children apprehended by DHS while they await removal proceedings in immigration courts. ORR houses children in its network of NGO-operated shelters until it can place them with a sponsor (typically, a family member).

Department of Labor

Office of Foreign Labor Certification (OFLC)

Employers seeking to hire foreign nationals through permanent immigration categories or temporary nonimmigrant programs must first obtain labor certification from OFLC. Employers must demonstrate that there are not sufficient U.S. workers available and willing to fill the position at or above the average (*prevailing*) wage for the occupation. The process is designed to ensure that U.S. workers' wages and working conditions are not adversely impacted by admitting foreign workers. In this process, OFLC coordinates with USCIS, which adjudicates employer petitions; and DOS, which issues immigrant and nonimmigrant visas.

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