



HSA@20 Episode Companion: Immigration

May 1, 2023

This Insight accompanies the “Immigration” episode of *The Homeland Security Act at 20* podcast series and includes background information on the issues discussed during the podcast.

Click this [link](#) to ask questions, provide feedback, or offer suggestions for future topics. You can also e-mail the podcast team at HSA20@loc.gov. Thank you for your engagement.

Two Parts of Immigration Policy

- Facilitation of noncitizen admissions ([permanent](#) and [temporary](#)) based on principles in the national interest:
 - family reunification,
 - U.S. labor market contribution,
 - origin country diversity, and
 - humanitarian assistance.
- Immigration enforcement and removal of foreign nationals:
 - who lack authorization to be in the country,
 - who have committed certain crimes, or
 - whose presence in the United States is determined not to serve the national interest.

Immigration Policy History Pre-9/11

- Since 1940, the Immigration and Naturalization Service (INS) within the Department of Justice (DOJ) carried out most immigration functions.
 - Exception: the State Department managed consular processing of visas.
- **1952—Immigration and Nationality Act (INA), [P.L. 82-414](#)**
 - The basis of U.S. immigration law.
 - Codified at 8 U.S.C. §1101 et seq.
 - Generally, immigration reforms are implemented through amendments to this act.
- **1986—Immigration Reform and Control Act of 1986 (IRCA), [P.L. 99-603](#)**

Congressional Research Service

<https://crsreports.congress.gov>

IN12153

- Allowed approximately 2.7 million [unauthorized workers](#) already in the United States to become lawful permanent residents.
- Implemented [employer sanctions](#) to discourage future flows of unauthorized workers.
- **1990—Immigration Act of 1990, P.L. 101-649**
 - Increased the caps on the number of [family-sponsored](#) and [employment-based](#) visas.
 - Created several new legal pathways, including:
 - the [Diversity Immigrant Visa Program](#),
 - the [EB-5 immigrant investor program](#), and
 - the H-1B temporary visa program for [temporary professional workers](#).
 - Made changes to some other [nonimmigrant visa categories](#).
 - Established [Temporary Protected Status \(TPS\)](#), which provides humanitarian protection to nationals from certain countries designated by the DHS secretary.
 - Contained some enforcement provisions and expanded IRCA’s employer sanctions.
 - Was the last major law enacted to focus on the legal immigration system.
- **1996—Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), P.L. 104-208, Division C**
 - Required the Attorney General to develop an automated [entry and exit control system](#) for all foreign nationals that would match records of departure for every foreign national with their record of arrival to the United States.
 - Mandated a tracking system for student and exchange visitors.
 - Introduced penalties for unlawful presence in the United States:
 - Three-year bar on readmission for foreign nationals unlawfully present in the United States for more than 180 days (and less than 365 days).
 - Ten-year bar on readmission for foreign nationals unlawfully present in the United States for one year or more.
 - Expanded certain criminal grounds of inadmissibility and deportability and [mandatory detention](#).
 - Introduced the process of [expedited removal](#), which allows removal of certain migrants without a formal hearing, unless they express a fear of persecution or intent to apply for asylum.
 - Allowed INS to enter into agreements with state and local law enforcement agencies to perform certain immigration enforcement functions ([287\(g\) program](#)).

Immigration Policy After 9/11

- **2001—USA PATRIOT Act of 2001, P.L. 107-56**
 - Required the Attorney General to implement the entry-exit system established under IIRIRA “with all deliberate speed and as expeditiously as practicable” and to focus on using biometric technology and tamper-resistant documents.
 - Required that the entry-exit system interface with certain law enforcement databases to identify individuals who pose a threat to national security.
 - Mandated implementation of the [Student and Exchange Visitor Program](#) by January 1, 2003. This program tracks and monitors schools, exchange visitor programs, and

- certain student and exchange visitor nonimmigrants while they visit the United States and participate in the U.S. education system.
- **2002—Homeland Security Act of 2002, P.L. 107-296**
 - [Abolished the INS.](#)
 - The [reorganization plan](#) (as modified) [authorized under the HSA](#) created three new entities within DHS that carried out its functions:
 - Under the Border and Transportation Security Directorate:
 - The Bureau of [Customs and Border Protection](#) (now CBP), which is responsible for border enforcement:
 - at ports of entry (Office of Field Operations), and
 - between ports of entry (U.S. Border Patrol).
 - The Bureau of Immigration and Customs Enforcement (now ICE), responsible for interior enforcement and immigrant detention.
 - Directly reporting to the Secretary:
 - The Bureau of Citizenship and Immigration Services (now USCIS), responsible for adjudication of immigration benefits and naturalization.
 - Other agencies affected:
 - The Office of Refugee Resettlement (ORR) within the Department of Health and Human Services (HHS) was charged with responsibility for the care and custody of [unaccompanied children](#).
 - Agencies unaffected:
 - [Immigration courts](#) within the Executive Office for Immigration Review (EOIR) remained within the DOJ; and
 - Department of State, Bureau of Consular Affairs retained its responsibility for issuing [immigrant and nonimmigrant visas](#) at U.S. embassies and consulates.

Migrant Processing at the Southwest Border

- In March 2020, in response to the COVID-19 pandemic and the public health emergency declared by HHS, the Centers for Disease Control and Prevention invoked authority under Title 42 of the U.S. Code. [Title 42 permits CBP to expel certain foreign nationals](#) without processing them for removal.
- The public health emergency is set to expire on May 11, 2023. Title 42 would no longer apply. [DHS has stated](#) that, at that point, it will process migrants under Title 8.

CBP Data

- [Southwest Land Border Encounters](#)
- [Southwest Land Border Encounters \(by sector and field office\)](#)

FOR MORE INFORMATION

- For more episodes of this podcast series, search “HSA@20” on the CRS website.
- For more information on immigration policy, see:
 - CRS Report R45020, *Primer on U.S. Immigration Policy*, or consult with the following experts:

CRS Immigration Experts:

Area of Expertise	Name
Immigration 101 Briefings	Holly Straut-Eppsteiner
Permanent Immigration	
Family-Sponsored and Employment-Based	William A. Kandel
Diversity Immigrant Visa Program	Jill H. Wilson
EB-5 Immigrant Investor Program	Holly Straut-Eppsteiner
Refugee and Asylum Policy	Andorra Bruno
Citizenship and Naturalization	Holly Straut-Eppsteiner
Temporary Immigration (all nonimmigrant visas other than those listed below)	Jill H. Wilson
H-2A and H-2B Visas	Andorra Bruno
K and V Visas	William A. Kandel
S, T, and U Visas	Abigail F. Kolker
Temporary Protected Status (TPS)	Jill H. Wilson
Deferred Action for Childhood Arrivals (DACA)	Andorra Bruno
Biometric Entry-Exit System	Abigail F. Kolker
Enforcement, Detention, and Removal	Audrey Singer
Unaccompanied Children	William A. Kandel
Immigration and Crime (including 287(g))	Abigail F. Kolker
Immigration Courts and Removal Proceedings	Holly Straut-Eppsteiner
Legalization Programs	Andorra Bruno

NEXT EPISODE

May 15, 2023: Intelligence

Music: “Icas,” by Audiorezout, as carried on freemusicarchive.org, under the terms of its Creative Commons Attribution-NonCommercial 4.0 International license.

Author Information

William L. Painter, Coordinator
Specialist in Homeland Security and Appropriations

Holly Straut-Eppsteiner
Analyst in Immigration Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.