

## KEY IMMIGRATION LAWS AND POLICY DEVELOPMENTS SINCE 1986

### 1986

- The *[Immigration Reform and Control Act](#)* (IRCA) (100 Stat. 3359) combines a series of measures aimed at reducing the flow of illegal immigration to the United States with a legalization program for certain unauthorized immigrants. The law contains three key components. First, it increases funding for immigration enforcement and border security, and requires the Immigration and Naturalization Service (INS) to increase the size of the Border Patrol by 50 percent over its 1986 level. Second, the law creates criminal penalties for employers who knowingly hire or recruit unauthorized immigrants. Finally, IRCA creates two legalization programs for unauthorized immigrants living in the United States. One allows unauthorized immigrants who had lived in the United States since 1982 to regularize their status; the other permits people who had worked for at least 90 days in certain agricultural jobs to apply for permanent resident status. Under these programs, roughly 2.7 million people who were then illegally residing in the United States eventually become lawful permanent residents.

In addition to its better known provisions, IRCA authorizes the first Visa Waiver Pilot Program, allowing individuals from certain countries who seek to enter the United States for business or tourism purposes for up to 90 days to do so visa-free. It creates the H-2A guest worker program, which allows employers to sponsor temporary agricultural workers for up to three years to fill labor shortages. Finally, the law requires INS to create a system that states and localities may use to confirm that noncitizens seeking benefits hold lawful immigration status. This system ultimately becomes the Systematic Alien Verification for Entitlements (SAVE) program.

- The *[Immigration Marriage Fraud Amendments](#)* (100 Stat. 3537) create “conditional” permanent residence for noncitizens applying for legal status based on a marriage to a US citizen that is less than two years old. Two years after a sponsored spouse receives conditional permanent residence, he or she must petition to remove the condition by filing a new application and submitting additional proof of a good-faith marriage. The law is intended to prevent noncitizens from using sham marriages to gain admission to the United States.

### 1988

- The *[Anti-Drug Abuse Act](#)* (ADAA) (102 Stat. 4181) adds “aggravated felony” as a

new but limited ground for deportation for noncitizens convicted of certain types of crimes, regardless of the sentence imposed and the longevity of the person's residence in the United States. Just four crimes are listed as aggravated felonies in the 1988 law — murder, drug trafficking, firearms trafficking, and attempt or conspiracy to commit any of these crimes.

As a result of language in IRCA requiring the INS to initiate deportation proceedings against criminal aliens as expeditiously as possible after the date of their conviction, the INS establishes the [Institutional Removal Program](#) (IRP). Through IRP, the INS places noncitizens convicted of criminal offenses in deportation proceedings while they are still serving their criminal sentences. Those who are ordered deported are immediately removed from the country when they are released from criminal custody.

## 1990

- The [Immigration Act of 1990](#) (104 Stat. 4978) raises legal admissions to 50 percent above the pre-IRCA level (mainly in the category of employment-based immigrants), eases controls on temporary workers, and limits the government's power to deport immigrants for ideological reasons. It also expands the aggravated felony category to include nonpolitical crimes of violence for which a prison sentence of at least five years was imposed. The law abolishes judicial recommendations against deportation, ending the ability of sentencing judges to recommend relief from deportation for criminal offenders.

## 1994

- The [Violent Crime Control and Law Enforcement Act](#) (VCCLEA) (108 Stat. 1796) gives the US Attorney General the option to bypass deportation proceedings for certain aggravated felons, enhances penalties for alien smuggling and reentry after deportation, and increases funding for the Border Patrol.
- The [Immigration and Nationality Technical Corrections Act of 1994](#) (108 Stat. 4305) expands the definition of an aggravated felony again to include lesser crimes such as burglary, fraud, and theft.
- [Operation Gatekeeper](#) is introduced in the San Ysidro sector (near San Diego, CA) of the US-Mexico border. Along with VCCLEA, it ushers in an era of sustained resource buildups for border enforcement and detention that have won continuing support from both Democratic and Republican administrations and Congresses. As part of Operation Gatekeeper, INS launches the Automated Biometric Identification System (IDENT) to capture the fingerprints of border crossers. By 2013, IDENT is the world's largest law enforcement biometric identity-verification system, with 148 million records.
- [Proposition 187](#) passes in California, prohibiting the use by unauthorized immigrants of all public services, including education, not mandated by the US Supreme Court's *Plyler v. Doe* (1982) decision. Although court decisions enjoin the law's implementation, the politics surrounding Proposition 187 contribute

to growing public antipathy toward illegal immigration and help lead to the 1996 enforcement laws.

- The INS [overhauls the asylum process and system](#). Most importantly, it creates a new, independent corps of asylum adjudicators within INS and requires that unsuccessful applicants be referred to immigration judges for removal hearings.

## 1996

- The [Antiterrorism and Effective Death Penalty Act](#) (AEDPA) adds new crimes to the definition of aggravated felony. AEDPA also creates the “expedited removal” procedure for arriving noncitizens who border officials suspect of lacking proper entry documents or being engaged in fraud; the procedure is again amended later that year by the [Illegal Immigration Reform and Immigrant Responsibility Act](#).
- The [Illegal Immigration Reform and Immigrant Responsibility Act](#) (IIRIRA) adds new grounds of inadmissibility and deportability, expands the list of aggravated felonies, reforms expedited removal procedures, and reduces the scope of judicial review of immigration decisions. The law requires the mandatory detention of immigrants in standard removal proceedings if they have previously been convicted of certain criminal offenses. It also increases the number of Border Patrol agents, introduces new border control measures, reduces government benefits available to immigrants, toughens procedural requirements for asylum seekers and other immigrants, and mandates a system to monitor both arrivals and departures of immigrants (now US-VISIT). IIRIRA establishes a statutory framework for subsequent cooperation between federal immigration officials and state and local law enforcement officers, known as the 287(g) program. It is not until 2002, however, that the first 287(g) agreement is signed.

The welfare reform law, [Personal Responsibility and Work Opportunity Reconciliation Act of 1996](#) (110 Stat. 2105), amends laws governing immigrant eligibility for public benefits, precluding most lawfully residing immigrants from qualifying for Medicaid, the Children’s Health Insurance Program (CHIP), Temporary Assistance for Needy Families (TANF), food stamps, and Supplemental Security Income (SSI), for five years.

Along with IIRIRA, the law also requires US citizens and lawful permanent residents sponsoring immigrant family members to sign legally enforceable affidavits of support in which sponsors agree to provide financial support for their sponsored relatives should such assistance be required.

## 1997

- The [Nicaraguan Adjustment and Central American Relief Act](#) (NACARA) (111 Stat. 2160) provides several avenues for relief from deportation and adjustment of status for qualified Nicaraguans, Cubans, Salvadorans, Guatemalans, and nationals of former Soviet-bloc countries.

- The **Basic Pilot Program** is created as a way for employers to check whether newly hired employees are authorized to work in the United States. Under the initial version of the program, employers follow a two-step process to confirm that new employees are authorized to work. First, employers call the Social Security Administration (SSA) to verify that the social security number an employee has provided is a valid number that has been issued to that individual. Second, employers enter their new employee's biographical information into a computer database, and submit it to the INS, which verifies that new employees hold lawful immigration status. Basic Pilot eventually becomes the E-Verify program, which allows employers to electronically confirm that new employees are authorized to work. Today, more than 353,000 employers have enrolled in E-Verify.

## 1998

- The **Haitian Refugee Immigration Fairness Act (HRIFA)** provides adjustment of status and relief from deportation benefits to qualified Haitian nationals.

## 1999

- The INS adopts **regulations codifying the United States' international law obligations under the Convention Against Torture (CAT)**. The regulations prohibit the United States from returning an individual to his or her country of origin if the person demonstrates that it is more likely than not that he or she would be tortured upon return.

## 2000

- INS Commissioner Doris Meissner issues **a memorandum describing the principles that should guide INS exercises of "prosecutorial discretion"** in deciding when not to pursue a removal case against a noncitizen. While the concept of prosecutorial discretion has existed in the immigration enforcement realm for decades, the 2000 memo forms the basis of later memoranda issued by the Bush and Obama administrations that outline the use of prosecutorial discretion.

## 2001

- The **Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act** (115 Stat. 272) broadens the terrorism-related grounds of inadmissibility and deportability for noncitizens and calls for implementation of a foreign student monitoring program.
- In **Zadvydas v. Davis**, the US Supreme Court imposes time limits on the INS's power to detain noncitizens pending the execution of their removal orders. If a noncitizen ordered removed has been detained by immigration authorities for six months or longer, he or she may bring an action in federal court challenging the detention and asserting that removal is not likely in the reasonably foreseeable future. Unless the government can rebut such a showing, the person must be released from immigration custody.

## 2002

- The **Enhanced Border Security and Visa Entry Reform Act** (EBSVERA) (116 Stat. 543) requires the development of an interoperable electronic database to be used to share information relevant to noncitizen admissibility and removability. It also requires the implementation of an integrated entry-exit data system. The US-VISIT program (see above) is established to meet this requirement.
- The **Homeland Security Act** (116 Stat. 2135) creates the Department of Homeland Security (DHS). In 2003, nearly all of the functions of INS are transferred to DHS and restructured to become three new agencies: US Customs and Border Protection (CBP), US Immigration and Customs Enforcement (ICE), and US Citizenship and Immigration Services (USCIS). The Executive Office of Immigration Review (EOIR) which has jurisdiction over the immigration courts, is left within the Department of Justice (DOJ).
- The US Attorney General initiates the **National Security Entry-Exit Registration System (NSEERS)**, requiring the registration of nationals of countries designated as harboring terrorists.

NSEERS contains two components. The “special registration” portion of the program requires male noncitizens from designated countries who are already residing in the United States to report for questioning by immigration officials. A separate portion of the program requires male noncitizens from designated countries who are seeking admission to the United States to fill out additional forms and participate in a specialized entry process, which includes having their fingerprints and photographs taken. DHS ends the special registration program in 2003. The separate process governing admission to the United States is ended in 2011.

- The first **287(g) agreement** between DHS and a state or local law enforcement agency, permitting enforcement of certain federal immigration laws, is signed with the state of Florida.
- The **Child Status Protection Act** (CSPA) (116 Stat. 927) provides protection to the noncitizen children of US citizens and lawful permanent residents who “age out” and turn 21 years old while their applications for immigration benefits are pending. The law allows certain individuals to still be counted as “children” even if the adjudication of their applications takes place after they turn 21 years old.

## 2003

- The **Student and Exchange Visitor Information System (SEVIS)**, an automated program for collecting information on foreign students, becomes fully operational.

## 2004

- The **Intelligence Reform and Terrorism Prevention Act of 2004** (IRTPA) (118 Stat. 3638) expands the grounds of inadmissibility and deportability for noncitizens and increases criminal penalties for alien smuggling. The law also requires consular interviews for all

nonimmigrant visa applicants ages 14-79, with limited exceptions.

- DHS launches the [\*\*US-VISIT program\*\*](#), requiring that all travelers to the United States, with the exception of most Mexicans and Canadian temporary visitors crossing at land borders, be fingerprinted and photographed on their arrival in the country. By 2009, the program is in place at almost all land, sea, and air ports of entry.

## 2005

- The [\*\*REAL ID Act\*\*](#) (119 Stat. 302) establishes statutory guidelines for removal cases, expands terrorism-related grounds for inadmissibility and deportability, includes measures to improve border infrastructure, and requires states to verify an applicant's legal status before issuing a driver's license or personal identification card that may be accepted for any federal purpose.
- DHS launches the [\*\*Secure Border Initiative\*\*](#), a plan to assist the Border Patrol in attaining "operational control" of the border through the construction of fencing and the deployment additional agents and new technology along the border. One component of the Secure Border Initiative is SBInet, which is intended to create a "virtual fence" through interconnected cameras, ground sensors, and radar. Eventually, DHS abandons the SBInet program in 2011, after a series of reports from the Government Accountability Office (GAO) highlight design flaws and program deficiencies.
- DHS and DOJ launch [\*\*Operation Streamline\*\*](#) in Del Rio, Texas. Through the program, the government files criminal charges for crimes such as illegal entry and illegal reentry against virtually all noncitizens apprehended for entering the country without authorization. Operation Streamline is eventually expanded to parts of five additional Border Patrol sectors along the US-Mexico border.
- The House passes the [\*\*Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005\*\*](#), which seeks to address illegal immigration with increased interior enforcement and border security measures and most notably criminalizes violations of federal immigration law, including unlawful presence. Known as the Sensenbrenner bill, after its sponsor, the legislation is not considered in the Senate; it serves, however, as the spark for major immigrant-rights rallies in cities across the United States in 2006.

## 2006

- The Senate passes a bill to enact "[\*\*comprehensive immigration reform\*\*](#)," a term that is used to describe legislation that would combine heightened border security measures and reform of the country's legal immigration system with a legalization program for unauthorized immigrants. However, the House of Representatives declines to take up the Senate bill, and the measure dies in the 109th Congress.
- Congress enacts the [\*\*Secure Fence Act\*\*](#) (120 Stat. 2638) after the Senate fails to pass immigration legislation (Sensenbrenner bill, see above) that had passed the House

in 2005. The law calls for more than 700 miles of double-reinforced fence to be built along the border with Mexico, through the US states of California, Arizona, New Mexico, and Texas in areas that had experienced illegal drug trafficking and illegal immigration. It authorizes more lighting, vehicle barriers, and border checkpoints and put in place more advanced equipment, such as sensors, cameras, satellites, and unmanned aerial vehicles, in an attempt to increase control of illegal immigration into the United States.

- President George W. Bush [deploys 6,000 National Guard troops to the Southwest border](#) as part of “Operation Jump Start,” a two year stop-gap measure aimed at increasing border security while CBP hired and trained additional Border Patrol agents.

## 2007

- A [new comprehensive immigration reform bill](#), crafted by Senators John McCain (R-AZ) and Edward M. Kennedy (D-MA) is introduced in the Senate. The bill is backed by President George W. Bush, but it ultimately dies during a Senate procedural vote.
- The Senate declines to pass the [Development, Relief, and Education for Alien Minors \(DREAM Act\)](#), a bill that would grant legal status to certain unauthorized immigrant youths who were brought to the United States as children and who graduated from high school and either attended college or served in the military. The DREAM Act was brought to the floor as a stand-alone measure after it became clear that Congress would not enact a comprehensive immigration reform bill during 2007.
- Arizona enacts the [Legal Arizona Workers Act \(LAWA\)](#), becoming the first state to require that all state employers use the federal E-Verify program to confirm that new employees are authorized to work. Though the law is immediately challenged in federal court, the US Supreme Court ultimately upholds its constitutionality in the 2011 decision [Chamber of Commerce v. Whiting](#).
- Participation in the [287\(g\) program](#) grows significantly, as the federal government signs 26 new cooperative 287(g) agreements allowing designated state and local law enforcement officers to participate in immigration enforcement. ICE signs an additional 28 such agreements in 2008.

## 2008

- ICE introduces the [Secure Communities](#) program in seven jurisdictions. The program uses new technology to screen the fingerprints of individuals arrested in state and local jails against IDENT, the DHS database that tracks immigration history, at the same time that their fingerprints are run against IAFIS, the FBI database that tracks criminal history. Successive Congresses, and both the Bush and Obama administrations, provide continued support for Secure Communities. By August 2012, the program is operational in 97 percent of all state and local jurisdictions nationwide.
- ICE launches a series of highly visible worksite enforcement operations at businesses suspected of hiring large numbers of unauthorized immigrants. The most controversial of these actions occurs in Postville, IA, where immigration officers arrest 389 unauthorized immigrants at the Agriprocessors meat packaging plant. Federal officials label the action

as “the largest criminal worksite enforcement ever in the United States.”

## 2009

- The Obama administration implements a series of immigration policy changes, including the creation of an ICE Office of Detention Policy and Planning (ODPP), which is tasked with designing and implementing a civil detention system. ICE also issues [new guidelines](#) to field offices regarding workplace enforcement, instructing agents to pursue evidence against employers of unauthorized workers before pursuing actions against the workers.

## 2010

- In [Padilla v. Kentucky](#) (2010), the US Supreme Court holds that criminal defense attorneys must advise their clients of the possible deportation consequences of pleading guilty to a criminal offense. Not doing so, the court finds, may constitute “ineffective assistance of counsel” in violation of the 6th Amendment.
- Arizona enacts the [Support Our Law Enforcement and Safe Neighborhoods Act](#) (better known by its bill number, SB 1070), which requires state law enforcement officers to inquire into a person’s immigration status whenever they have reasonable suspicion that a stopped individual may be unlawfully present in the country. The law also makes it a state crime for unauthorized immigrants to work, and for noncitizens to fail to comply with federal immigrant registration requirements. In addition, it allows law enforcement officers to arrest without a warrant individuals who are believed to be deportable based on past criminal offenses. Immigrant advocates immediately challenge the constitutionality of SB 1070; in July 2010, DOJ joins the suit. Ultimately, in June 2012 the [Supreme Court issues a ruling in Arizona v. United States](#), striking down most of the law but upholding the constitutionality of the section that allows officers to ask stopped individuals about their immigration status.

## 2011

- ICE Director John Morton issues a [memorandum outlining the agency’s use of prosecutorial discretion](#) and urging agents to prioritize the use of immigration enforcement resources to target noncitizens who have committed serious criminal offenses.
- Five states (Alabama, Utah, Georgia, South Carolina and Indiana) enact laws loosely modeled after Arizona’s SB 1070. Lawsuits are filed in all five states, challenging the laws’ constitutionality.

## 2012

- ICE begins a [review of all cases pending before the country’s immigration courts](#) with the goal of closing out cases that merit prosecutorial discretion.
- The Obama administration announces the [Deferred Action for Childhood Arrivals \(DACA\)](#) initiative, which allows certain unauthorized immigrants who

arrived in the United States before the age of 16 to apply for a work permit and two-year protection against deportation. As of March 2013, more than 154,000 individuals have been granted protection under DACA.

## 2013

- DHS publishes a new **final rule** allowing the immediate relatives of US citizens to file waivers of unlawful presence from within the United States. The rule is intended to make it easier for certain unauthorized immigrants who qualify to apply for lawful permanent residence to do so.
- **President Obama** and a **bipartisan group of key senators** each present new blueprints for comprehensive immigration reform. Like the 2006 and 2007 proposals, the measures would combine strengthened border enforcement and a reform of the country's legal immigration system with a legalization program for unauthorized immigrants.

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Cover Design: April Siruno, MPI

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With the politics and policy issues of immigration more complex and contentious than ever, it is vitally important that policymakers and the American public have solid information, fact-based analysis, and sound policy ideas on which to base their discussions, and, ultimately, their decisions. Through its US Immigration Policy Program, MPI is providing careful analysis of existing policies and articulating a series of pragmatic, workable policy proposals to overhaul an outdated US immigration system so it can better reflect current realities and needs for US society, employers, communities, and native-born and immigrant residents alike.