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THESIS

**OVERSTAYS: THE LESSER-KNOWN ILLEGAL
IMMIGRATION ISSUE**

by

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December 2018

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OVERSTAYS: THE LESSER-KNOWN ILLEGAL IMMIGRATION ISSUE

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ABSTRACT

This thesis investigates the issue of “overstays,” or individuals who remain in the United States after the legal length of admission has expired, and asks, “How can the U.S. government develop a policy to reduce the number of people who overstay their legal length of admission?” A review of government reports, congressional testimony, agency documentation, and the relevant laws was conducted to shed light on this persistent and growing issue. This thesis explored the lack of information, resources, and consistency in dealing with overstays within the nation’s immigration system. The thesis proposes two recommendations to address this issue: the first, which assumes no additional resources or support, and a second, more ambitious, one that requires changes in public perception, enforcement, and legislation.

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LIST OF ACRONYMS AND ABBREVIATIONS

ABF	Australian Border Force
B1/B2	Nonimmigrant Visa—Limited Business/Tourism
BVE	Bridging Visa E
CBP	Customs and Border Protection
CBPO	Customs and Border Protection Officer
CRS	Congressional Research Service
CTCEU	Counterterrorism and Criminal Exploitation Unit (CTCEU)
D/S	Duration of Status
DBFTF	Document and Benefit Fraud Task Force
DHS	Department of Homeland Security
DHS-OIG	DHS Office of the Inspector General
DOJ	Department of Justice
DOS	Department of State
EOIR	Executive Office of Immigration Review
ERO	Enforcement Removal Operations
ESTA	Electronic System for Travel Authorization
EWI	entry without inspection
FBI	Federal Bureau of Investigation
GAO	Government Accountability Office
HSI	Homeland Security Investigations
ICE	Immigration and Customs Enforcement
IIRIRA	Illegal Immigration Reform and Immigrant Responsibility Act of 1996
IMACT90	Immigration Act of 1990
INA	Immigration and Nationality Act
INS	Immigration and Naturalization Service
IRCA	Immigration Reform and Control Act of 1986
NIV	nonimmigrant visa

NTA	Notice to Appear
OBIM	Office of Biometric Identity Management
POE	port of entry
RTPIB	Royal Thai Police Immigration Bureau
SAC	Special Agent in Charge
SEVIS	Student and Exchange Visitor Information System
SEVP	Student and Exchange Visitor Program
TRAC	Transactional Records Access Clearinghouse
UN	United Nations
USBP	U.S. Border Patrol
USCIS	U.S. Citizenship and Immigration Services
VWP	Visa Waiver Program

EXECUTIVE SUMMARY

The goal of this thesis is to bring light to the lesser-reported type of “illegal immigrant” in the United States—individuals who overstay their visas’ allowed length of admission—and develop a policy to appropriately deal with this issue. By definition, *illegal immigrant* is applied to an individual who violates a country’s laws.¹ For the United States, the applicable immigration laws are found in the Immigration and Nationality Act (INA).² The term *illegal immigrant* is commonly associated with individuals who cross the United States’ international borders without permission. The *Fiscal Year 2016 Entry/Exit Overstay Report* from the Department of Homeland Security defines an “overstay” as an individual who after being legally admitted to the United States subsequently stays past that length of admission, thus violating the INA, and becomes an illegal immigrant.³ Although the exact number of illegal immigrants in the United States is not known, according to a 2017 blog from the Pew Research Center’s *Fact Tank: News in Numbers*, the estimated number is over 11 million.⁴ Of that number, Immigration and Customs Enforcement (ICE) Officials reported in a 2010 hearing before the House of Representatives that of individuals deemed to be illegally in the United States, 40% are overstays.⁵

Historically, the focus of combating illegal immigration has been aimed at those who enter the United States without inspection. This is not to say that efforts have not been

¹ *Merriam-Webster*, s.v. “illegal immigrant,” accessed November 17, 2018, <https://www.merriam-webster.com/dictionary/illegal%20alien/immigrant>

² 8 U.S.C. §§ 1104-1401–Immigration and Nationality (Suppl. 2 1964), <http://uscode.house.gov/download/annualhistoricalarchives/pdf/2012/2012usc08.pdf>.

³ Department of Homeland Security, *Fiscal Year 2016 Entry/Exit Overstay Report* (Washington, DC: Department of Homeland Security, May 5, 2017), 8, <https://www.dhs.gov/news/2017/05/22/dhs-releases-fiscal-year-2016-entryexit-overstay-report>

⁴ Jens Manuel Krogstad, Jeffrey S. Passel, and D’Vera Cohn, “5 Facts about Illegal Immigration in the U.S.,” *Fact Tank: News in Numbers* (blog), April 27, 2017, <http://www.pewresearch.org/fact-tank/2017/04/27/5-facts-about-illegal-immigration-in-the-u-s/>.

⁵ *Visa Overstays: Can They Be Eliminated? Hearing before the Committee on Homeland Security*, House of Representatives, 111th Cong., 2d sess., March 25, 2010, <https://www.scribd.com/document/327439170/house-hearing-111th-congress-visa-overstays-can-they-be-eliminated>.

made to address the overstay issue, but as this thesis shows, past efforts have been lacking and/or inconsistent. This thesis attempts to address this question: “How can the U.S. government develop a policy to reduce the number of people who overstay their legal length of admission?” To analyze this properly, the number of individuals who overstay and the legal authorities related to immigration in the United States were explored.

Chapters I and II offer the reader an overview of the overstay issue. Chapter I provides the reader insight on the overstay problem. It highlights aspects of the overstay problem, including the increasing numbers of overstays, past national security risks, and factors that motivate individuals to overstay. Chapter II provides an explanation of the relevant laws and regulations related to overstays. Specifically, Chapter II breaks down the process of how an individual visiting the United States navigates the various stages of the immigration system as it relates to the overstay issue. The chapter also highlights the current system and how it might contribute to one’s decision to become an overstay.

Chapter III of the thesis focuses on the number of overstays or, more important, the lack of credible data regarding overstays. The issues of inadequate reporting and unreliable data are discussed along with how these issues have contributed to inefficient action toward overstays. The chapter provides a historical perspective, highlighting government reports dating back to the 1970s that cite needed improvements in identifying overstays. Although progress has occurred in certain areas, the chapter demonstrates that the government has continually fallen behind in addressing the reporting and identification of overstays. In addition, the chapter explores the recent overstay reports issued by DHS, analyzing a breakdown of certain categories and countries. The chapter also brings to light certain caveats regarding the current reporting system that may cast doubt and hinder reliance on the current data.

Chapter III also identifies potential motivators for why an individual chooses to overstay in the United States. Mindful that it is impractical to obtain a statement of fact from individuals who overstay, this chapter explores other factors that may motivate an individual to overstay. The theory of a magnet effect—specifically, that of the prospect of employment opportunity in the United States—is discussed. Acknowledgment of the

existence of this magnet and how the U.S. government has inconsistently dealt with this magnet is highlighted.

The thesis concludes with recommendations for how the U.S. government could address the issue of overstay. The recommendations range from an enforcement-only approach to a balanced approach of awareness and enforcement. Through the research of this issue, it has become clear that in the realm of immigration an all-inclusive answer is seldom applicable; therefore, several recommendations are suggested. A balanced and flexible approach should be considered that provides the government and the potential violators various avenues to avoid and/or resolve the overstay issue.

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In the first paragraph, I mentioned proven truths; what I mean by that is family. Good times or bad, one has family. “You can pick your friends, but not your family” is an old saying. Well if that is true, I want to thank the one who put me with my family. This journey has been tough, but support from my family never wavered. To my mom, Heidi, thank you for being the rock for our family and always encouraging me to keep moving

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I. INTRODUCTION

A. PROBLEM STATEMENT

For 2016, the Department of Homeland Security (DHS) estimated that of the 50 million nonimmigrant visitors who were admitted to the United States at an airport or seaport, approximately 739,000 overstayed their length of admission (“overstays”); of those, approximately 628,000 are believed to still be in the United States.⁶ Although the exact number of individuals illegally present in the United States is not known, it is estimated that the number is over 11 million.⁷ Immigration and Customs Enforcement (ICE) officials reported to Congress that approximately 40% of individuals deemed to be illegally in the United States are overstays, which means approximately 4.4 million of the illegal alien population are visa overstays.⁸ In the past, overstays have constituted a clear threat to the security of the United States: two of the 19 terrorists involved in the September 11, 2001, attacks, for example, were individuals who overstayed their length of admission.⁹ In 2005, a former member of the Philippine government who had overstayed his visa in the United States was subsequently arrested and convicted of espionage-related penalties.¹⁰

⁶ Department of Homeland Security, *Fiscal Year 2016 Entry/Exit Overstay Report* (Washington, DC: Department of Homeland Security, May 5, 2017), 13, <https://www.dhs.gov/news/2017/05/22/dhs-releases-fiscal-year-2016-entryexit-overstay-report>.

⁷ Jens Manuel Krogstad, Jeffrey S. Passel, and D’Vera Cohn, “5 Facts about Illegal Immigration in the U.S.,” *Fact Tank: News in Numbers* (blog), April 27, 2017, <http://www.pewresearch.org/fact-tank/2017/04/27/5-facts-about-illegal-immigration-in-the-u-s/>.

⁸ *Visa Overstays: Can They Be Eliminated? Hearing before the Committee on Homeland Security*, House of Representatives, 111th Cong., 2d sess., March 25, 2010, <https://www.scribd.com/document/327439170/house-hearing-111th-congress-visa-overstays-can-they-be-eliminated>.

⁹ National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report Final Report of the National Commission on Terrorist Attacks upon the United States* (Palmer, AK: Forms in Word, 2004), loc 17,733 of 17,890, Kindle.

¹⁰ *Espionage and Other Compromises of National Security: Case Summaries from 1975 to 2008* (Monterey, CA: Defense Personnel Security Research Center, November 2, 2009), <https://fas.org/irp/eprint/esp-summ.pdf>.

Federal law requires the inspection of all individuals regardless of citizenship prior to entry to the United States.¹¹ After nonimmigrants are legally admitted to United States, there are no requirements for them to check in with the government during the period of their visa, and although an entry–exit system was ordered in the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) in 1996, the exit portion is still not in place.¹² Without a comprehensive system to track who is leaving the country, the government does not have an accurate way to count or identify those who have overstayed their length of admission and remain in the United States. The absence of an exit system has been the subject of numerous government reports, congressional testimony, and think tank analyses over the years. And while the overstay problem is part of the larger illegal immigration problem, it cannot be addressed solely by placing a barrier at the border, increasing patrols by law enforcement, or enacting an exit tracking system, precisely because an exit system works only if and when people show up to exit. It is necessary to know who is still here, but it does not help us predict, prevent, or otherwise mitigate overstay before they occur.

A glaring gap in the discourse or policy work in this area has to do with the overstay themselves: Who are they, why did they come to the United States, do they have anything in common with each other, and could we use that information to develop better policies or procedures to mitigate overstay? In 2017, DHS published an in-depth report on the number of overstay based on airport and seaport entry in one year. Of the 739,478 individuals who overstayed that year, approximately 95% entered as either business/pleasure visitors (tourists) or student visitors.¹³ A consideration of the circumstances, motivations, and activities of those visitors might yield ideas for modifying the terms of those visa categories or for engaging the individuals directly to prevent their overstaying.

¹¹ 8 U.S.C. § 1225–Inspection by Immigration Officers; Expedited Removal of Inadmissible Arriving Aliens; Referral for Hearing, LII/Legal Information Institute, accessed April 19, 2018, <https://www.law.cornell.edu/uscode/text/8/1225>.

¹² Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Public Law 104-828, 104th Cong. 1st sess. (September 30, 1996).

¹³ Department of Homeland Security, “Fiscal Year 2016 Entry/Exit Overstay Report,” 13.

In addition to the total number and visa type of overstay, the same report provides a breakdown by country. This information, too, might have relevance to the overstay phenomenon. For example, a 2016 United Nations (UN) study estimates that over \$445 billion was sent to family members from abroad that year; of that amount, Mexico received nearly \$26 billion. This would seem to point to domestic economic hardship in Mexico and suggests that there are strategies at the economic and diplomatic levels that the United States could use with its Mexican counterparts. By studying the data on the identity, motivations, and commonalities among overstay, it might be possible to identify incentives, penalties, and other elements of a strategy to deter overstay.

B. RESEARCH QUESTION

How can the U.S. government develop a policy to reduce the number of people who overstay their legal length of admission?

C. LITERATURE REVIEW

The purpose of this literature review is to provide an evaluation of literature related to immigration in the United States. The material reviewed comes from various sources: federal legislation, commission reports, congressional testimony, journal publications, think tanks, and business articles. The review for this thesis was limited to government legislation enacted over the years related to immigration as it relates to overstay. Additional literature review in this thesis included an examination of the political, cultural, judicial, and theoretical aspects of immigration.

The current legal authority regarding the U.S. Immigration laws is officially found in Title 8 of the U.S. Code, which is titled “Aliens and Nationality.”¹⁴ Although Title 8 is the legal codification of the nation’s immigration laws, immigration law in the United States is commonly known as the Immigration and Nationality Act or the INA. The current iteration of the INA began in 1952 with the passing of the McCarran–Walter Act, which

¹⁴ 8 U.S.C. §§ 1104-1401–Immigration and Nationality (Suppl. 2 1964), <http://uscode.house.gov/download/annualhistoricalarchives/pdf/2012/2012usc08.pdf>.

reorganized and compiled the nation's immigration laws under Title 8 of the USC.¹⁵ In 1965, the Hart–Celler Act was enacted and was seen as a major change to immigration practices in that it eliminated the immigrant quota system.¹⁶ Since 1965, there have been several addendums to the INA through congressional legislation, including the Immigration Reform and Control Act (IRCA) of 1986, the Immigration Act of 1990 (IMACT90), the IIRIRA, and the Enhanced Border Security and Visa Entry Reform Act of 2002. Every addendum to the INA has affected various sections of the nation's immigration laws, requirements, and authorities. The enactment of IRCA provided the opportunity for certain individuals who were illegally present in the United States to legalize while at the same time it enacted the nation's first immigration rules and regulations for employment in the United States.¹⁷ The passing of IIRIRA came with significant enhancements to the enforcement of the immigration laws and reporting requirements.¹⁸ The Visa Entry Reform Act of 2002 added biometric requirements to the IIRIRA entry–exit requirement and the calls for better reporting and monitoring of foreign students.¹⁹

It is important to note that the aforementioned iterations or amendments to the INA did not occur in a vacuum but rather as part of a response to a social, political, or significant situation or event. Numerous sources document the history of these respective time frames and events. Historian and Pulitzer Prize winner Oscar Handlin has been credited with providing key insight guiding on immigration reform throughout his career.²⁰ In his 1951

¹⁵ “Milestones: 1945–1952,” Office of the Historian, accessed April 21, 2018, <https://history.state.gov/milestones/1945-1952/immigration-act>.

¹⁶ “The Hart-Celler Immigration Act of 1965,” Center for Immigration Studies, accessed April 21, 2018, <https://cis.org/Report/HartCeller-Immigration-Act-1965>.

¹⁷ Immigration Reform and Control Act of 1986 (IRCA), USCIS, accessed April 22, 2018, <https://www.uscis.gov/tools/glossary/immigration-reform-and-control-act-1986-irca>.

¹⁸ Judith Ann Warner, “Illegal Immigration Reform and Immigrant Responsibility Act of 1996,” in *Encyclopedia of Race, Ethnicity, and Society*, ed. Richard Schaefer (Thousand Oaks, CA: SAGE Publications, 2008), 678, <https://doi.org/10.4135/9781412963879.n272>.

¹⁹ Rosemary Jenks, “The Enhanced Border Security and Visa Reform Act of 2002, H.R. 3525,” Center for Immigration Studies, June 1, 2002, <https://cis.org/Enhanced-Border-Security-and-Visa-Reform-Act-2002-HR-3525>.

²⁰ Mae M. Ngai, “Oscar Handlin and Immigration Policy Reform in the 1950s and 1960s,” *Journal of American Ethnic History* 32, no. 3 (Spring 2013): 62–67, <https://doi.org/10.5406/jamerethnhist.32.3.0062>.

book *Uprooted*, he writes, “Once I thought to write a history of the immigrants in America. Then I discovered that the immigrants were American history.”²¹ This phrase has been echoed by many others through the years to say that America is a “nation of immigrants.”²² Handlin’s work and the work of others began a shift on how immigration has been viewed and regulated in the United States. Immigrants were no longer individuals who just came to the United States; they were seen as being part of and contributors to the nation itself. In addition, the types of immigrants expanded as the old national origin quota systems were abandoned, thus opening up visas to multiple ethnicities.

Publications and works by academics, historians, and subject matter experts have continually guided the framework for immigration policy in the United States. Equally influential and important have been articles, studies, and reports published by think tanks, universities, and government agencies throughout the years. An early example is a document published by the U.S. Census Bureau that estimated there were over one million individuals illegally present in the United States in 1983.²³ Sources of this nature are useful in providing data and figures to the immigration arena. Social and economic issues are not the only driving forces for change to immigration law; at times, change occurs as a result of alarming trends or significant events. In 2000, for example, in response to potential millennium attacks, the U.S. National Security Council received recommendations that efforts should be made to strengthen immigration enforcement.²⁴

D. RESEARCH DESIGN

Research for this thesis included a review of existing data, policy, and known trends related to overstays. This research was conducted to formulate strategies or actions the

²¹ Ngai, 1.

²² David A. Gerber, “What Did Oscar Handlin Mean in the Opening Sentences of *The Uprooted*?” *Reviews in American History* 41, no. 1 (March 2013): 1–2, <https://doi.org/10.1353/rah.2013.0017>.

²³ Jeffrey S. Passel and Karen A. Woodrow, “Change in the Undocumented Alien Population in the United States, 1979-1983,” *The International Migration Review* 21, no. 4 (1987): 1312, <https://doi.org/10.2307/2546516>.

²⁴ National Commission on Terrorist Attacks upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States* loc. 5,673 of 17,890, Kindle,

federal government could implement across the spectrum to prevent or mitigate overstays. Sources include reports from DHS, the Government Accountability Office (GAO), Congress, and other sources, including think tanks and other government agencies for which statistical data have been obtained regarding the number and rate of overstays. Through the course of the research, the difficulty in finding information on who and how many individuals overstayed throughout the years became apparent. The lack of accurate tracking and reporting by the federal government since the 1970s and in the present hinders the ability to identify specific trends and patterns related to individuals who overstay.

This thesis focused on determining patterns and plausible reasons why individuals overstay and subsequently recommends policy to effectively deal with overstays; therefore, the entry–exit system is not a primary focus. This entry–exit system has been the subject of much discussion and debate since the legislative call for it began in 1996.²⁵ Since its inception, it has slowly taken form, with data collected on nonimmigrant visitors at all ports of entry. Although the collection of data at exit is not at the same level as collection of data at entry, completion of this system will not prevent an overstay. It is anticipated that the entry–exit system will provide the government a more timely and accurate report of when an individual overstays but will do nothing to prevent or dissuade a person from violating his or her immigration status.

²⁵ Illegal Immigration and Immigrant Responsibility Act (IIRIRA).

II. OVERVIEW OF THE OVERSTAY ISSUE

This chapter provides an overview of U.S. immigration laws and the process related to individuals who subsequently overstay. In the sections that follow, the reader is provided a breakdown of the laws, regulations, and processes relating to the overstay issue. Understanding the current laws and the actual processes regarding how an individual enters the United States and can become an overstay helps bring problem areas to light. Where weaknesses in a particular area—for example, enforcement—are identified, solutions are proposed to address the issue.

A. IMMIGRATION AND NATIONALITY ACT

As previously indicated the laws related to citizenship and immigration can be found in the INA, which covers all aspects of immigration law to include adjustment, citizenship, entry, and enforcement.²⁶ This thesis is limited to the overstay issue, so the area of focus is nonimmigrants. The INA defines any person who is not a citizen of the United States as an *alien*.²⁷ Aliens who desire to enter the United States in a legal fashion are typically categorized into two classifications, *immigrant* and *nonimmigrant*. An immigrant is an individual who attempts to enter and remain in the United States on a permanent basis and seeks to obtain a lawful permanent resident status.²⁸ The INA defines nonimmigrants as individuals who are not immigrants who fall within a certain set of designated categories.²⁹ A key component of a nonimmigrant is that the person will be admitted to the United States on a temporary basis with the understanding that he or she

²⁶ Immigration and Nationality Act (INA), U.S. Citizenship and Immigration Services, accessed June 22, 2018, <https://www.uscis.gov/laws/immigration-and-nationality-act>.

²⁷ 8 U.S.C. § 1101–Definitions, accessed July 5, 2018, <https://www.gpo.gov/fdsys/granule/USCODE-2011-title8/USCODE-2011-title8-chap12-subchapI-sec1101>.

²⁸ “What Is the Difference between an Immigrant Visa vs. Nonimmigrant Visa?” Customs and Border Protection, accessed April 19, 2018, https://help.cbp.gov/app/answers/detail/a_id/72/~/%2Fwhat-is-the-difference-between-an-immigrant-visa-vs.-nonimmigrant-visa-%3F.

²⁹ 8 U.S.C. 1101–Definitions, accessed June 22, 2018, <https://www.gpo.gov/fdsys/granule/USCODE-2016-title8/USCODE-2016-title8-chap12-subchapI-sec1101>.

will subsequently leave the United States.³⁰ See Table 1 as a reference to the legal authorities regarding nonimmigrants in the INA.

Table 1. Nonimmigrant Sections of the INA³¹

SECTION 211	Documentary requirements.
SECTION 212	General classes of aliens ineligible to receive visas and ineligible for admission; waivers of inadmissibility.
SECTION 214	Admission of nonimmigrants.
SECTION 215	Travel documentation of aliens and citizens.
SECTION 217	Visa waiver program for certain visitors.
SECTION 221	Issuance of visas.
SECTION 222	Applications for visas.
SECTION 237	General classes of deportable aliens.
SECTION 238	Expedited removal of aliens convicted of committing aggravated felonies.
SECTION 239	Initiation of removal proceedings.
SECTION 240	Removal proceedings
SECTION 245	Adjustment of status of nonimmigrant to that of person admitted for permanent residence.

Primarily, nonimmigrants enter the United States with a visa or through the Visa Waiver Program (VWP). The next sections provide a brief description of these two programs to cover the regulations and important differences as they relate to overstays.

B. NONIMMIGRANT VISA

Most aliens seeking to enter the United States on a temporary basis are required to obtain a nonimmigrant visa (NIV). NIVs are issued by the U.S. Department of State (DOS) at embassies or consulates located outside the United States. For an alien to obtain an NIV, the individual must overcome Section 214b of the INA (8 U.S.C. 1184), or the presumption of status. In basic terms, the alien must prove to the DOS that his or her intention is not to remain in the United States on a permanent basis and to meet the requirements of a

³⁰ “What Is the Difference between an Immigrant Visa vs. Nonimmigrant Visa ?” accessed June 22, 2018, https://help.cbp.gov/app/answers/detail/a_id/72/~what-is-the-difference-between-an-immigrant-visa-vs.-nonimmigrant-visa-%3F.

³¹ Immigration and Nationality Act, USCIS, accessed June 22, 2018, <https://www.uscis.gov/ilink/docView/SLB/HTML/SLB/act.html>.

nonimmigrant classification.³² During the visa application process, the applicant must not be inadmissible under Section 212(a) of the INA (8 U.S.C. 1182).³³ Section 212 (a) contains a list of grounds that would make an individual inadmissible at the time of entry. These grounds include, but are not limited to, criminal activity, health grounds, terrorist activity, fraud or misrepresentation, and prior removal from the United States.³⁴

There are approximately 24 nonimmigrant categories, which equate to over 80 different types of visas issued by the DOS.³⁵ Nonimmigrant categories range from tourism, business, education, and diplomacy to specialized areas. Consistently, the most issued class of NIV visa is the B1/B2 Temporary Visitor for Business and Pleasure Nonimmigrants, with an average of over six million being issued from 2013 to 2017.³⁶ Each NIV classification has its own requirements an individual must meet to obtain that specific visa, and each classification has different restrictions on how long that visa entitles an individual to remain in the United States.³⁷ Appendix A provides a list of the current NIV classes issued by the DOS.

C. VISA WAIVER PROGRAM

As indicated in the prior section, most aliens desiring entry into the United States must obtain an NIV as prescribed by the INA. Section 212(a)(7)(B)(ii) of the INA (8 U.S.C. 1182) makes a nonimmigrant inadmissible to the United States without a valid visa.³⁸

³² 8 U.S. Code § 1184—Admission of Nonimmigrants, LII / Legal Information Institute, accessed July 10, 2018, <https://www.law.cornell.edu/uscode/text/8/1184>.

³³ Inadmissibility can be determined at the visa issuance process and also at the port of entry when an individual applies for admission to the United States. Meaning that even if an individual obtained a visa, yet at the time of admission is found inadmissible, that individual could be denied entry to the United States.

³⁴ 8 U.S. Code § 1182—Inadmissible Aliens, LII / Legal Information Institute, accessed July 10, 2018, <https://www.law.cornell.edu/uscode/text/8/1182>.

³⁵ William A. Kandel, *A Primer on U.S. Immigration Policy*, CRS Report No. R45020 (Washington, DC: Congressional Research Service, 2018), 7, <https://fas.org/sgp/crs/homesec/R45020.pdf>.

³⁶ “Table XVIA: Classes of Nonimmigrants Issued Visas—Fiscal Years 2013–2017,” Department of State, accessed July 14, 2018, <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2017AnnualReport/FY17AnnualReport-TableXVIA.pdf>.

³⁷ 8 U.S.C. § 1101—Definitions.

³⁸ 8 U.S.C. § 1182—Inadmissible Aliens.

However, Section 217 of the INA (8 U.S.C. 1187), provides a waiver to the NIV requirement for aliens who meet the criteria listed within Section 217.³⁹ Established in 1986, Section 217, commonly known as the VWP, enables aliens from designated countries the ability to enter the United States for a 90-day period without a visa for visitation related to tourism and/or limited business.⁴⁰

Since 2013, all individuals desiring entry via the VWP must submit an application through the Electronic System for Travel Authorization (ESTA) prior to traveling.⁴¹ Unlike the NIV application process in which an individual has to electronically submit an application and then appear for an interview, if approved via ESTA, the alien can travel to the United States and apply for admission at a designated port of entry (POE). As part of the ESTA process, the alien must provide biographic information and answer several questions regarding his or her history. These questions coincide with inadmissibility rules listed under Section 212(a) of the INA. The I-94W arrival/departure form also requires the individual to acknowledge that he or she waive the right to have a review or immigration hearing regarding admissibility or removal.⁴²

D. ADMISSION

Once nonimmigrants receive permission to apply for admission to the United States, via an NIV or ESTA notification, they must present themselves at a designated POE for inspection. At the POE, each individual goes through a formal immigration inspection by Customs and Border Protection (CBP). During this process, biometric information, including fingerprints and photographs, is recorded and processed in the combined systems managed by the DHS Office of Biometric Identity Management (OBIM). OBIM manages

³⁹ 8 U.S.C. § 1187—Visa Waiver Program for Certain Visitors, LII / Legal Information Institute, accessed July 10, 2018, <https://www.law.cornell.edu/uscode/text/8/1187>.

⁴⁰ Alison Siskin, *Visa Waiver Program*, CRS Report No. RL32221 (Washington, DC: Congressional Research Service, 2015), 3, <https://fas.org/sgp/crs/homsec/RL32221.pdf>.

⁴¹ Siskin, 7.

⁴² U.S. Customs and Border Protection, “I-94W Nonimmigrant Visa Waiver Arrival/Departure Record,” OMB No. 1651-0111 (customs form, December 2016), <https://www.cbp.gov/sites/default/files/assets/documents/2018-Mar/700120%20-%20CBP%20Form%20I-94W%20ENG%20%281216%29%20-%20FINAL%20%28SAMPLE%29.pdf>.

the biometric systems that receives biometric data from various sources, including DOS, CBP, ICE, and the Federal Bureau of Investigation's (FBI's) National Crime Information Center.⁴³ As previously indicated, currently the United States does not employ a biometric exit system. If such a system were implemented, it would provide more consistent data related to individuals exiting the country since it would be linked to data recorded at time of entry.

Upon the completion of the inspection, if the Customs and Border Protection officer (CBPO) believes the individual is not inadmissible under any Section of 212(a) of the INA, the individual will be admitted to the United States. The admission is authorized by placing a stamp in the applicant's passport. The stamp annotates the date the person was admitted, the classification the person was admitted under, and the length of time the individual is allowed to remain in the United States. Figure 1 illustrates the features of the CBP admission stamp.⁴⁴



Figure 1. Admission Stamps⁴⁵

⁴³ "Biometrics," Department of Homeland Security, October 24, 2016, <https://www.dhs.gov/biometrics>.

⁴⁴ National Accelerator Laboratory, "How Would I Know If I Have the Correct Immigration Status upon Arrival?" Coming to SLAC, May 17, 2016, <https://vue.slac.stanford.edu/faq/item/how-would-i-know-if-i-have-the-correct-immigraton-status-upon-arrival>.

⁴⁵ University of Denver, "Preparing for Your Arrival: At the Port of Entry," New Students | International Student & Scholar Services, University of Denver, accessed July 14, 2018, <https://www.du.edu/iss/new-students/arrival-preparation/entry-port.html>.

The admission stamp examples illustrated in Figure 1 were chosen because they represent the most common classifications of admissions and subsequently overstays in the United States. These classifications can be defined as follows:

- Visitors for business or pleasure (B-1/B-2 nonimmigrant)
- VWP business or pleasure (WB or WT nonimmigrants)
- Student or exchange visitors (F, J, M nonimmigrants)

The length of one's admission is regulated by the nonimmigrant classification of the individual attempting to enter. For a VWP, the maximum length of admission is 90 days, without the possibility of extension. NIV holders can be admitted maximum lengths of admission by a CBPO, but the CBPO has discretion to shorten admission length if necessary. For the B1/B2, the normal length of admission is for six months with a maximum of one year. Student and exchange visitors who fall under the F, J, and M classifications are admitted for a duration of status (D/S). D/S is defined as having the ability to remain in the United States in concert with the parameters of that visa classification. For students, typically, F and M visas are issued, and the student is allowed to remain in the United States until his or her program or studies have concluded.⁴⁶ Holders of J visa are usually individuals entering as part of a study or work cultural exchange program, and their D/S ends when their program ends.⁴⁷

As noted at the beginning of this chapter, the INA assumes that a nonimmigrant will remain temporarily in the United States. The INA does provide legislative remedies allowing a nonimmigrant to legally remain in the United States for a longer period of time. Because the legal process is not the overall focus of this thesis, only a brief explanation of these circumstances is provided here. The three primary remedies are (a) a change in one's nonimmigrant status, (b) a temporary extension of stay, and (c) adjustment to an immigrant

⁴⁶ "Student Visa," Department of State, accessed July 14, 2018, <https://travel.state.gov/content/travel/en/us-visas/study/student-visa.html>.

⁴⁷ "J-1 Visa Basics," Department of State, accessed July 14, 2018, <https://j1visa.state.gov/basics/>.

status. If an individual does overstay and does not qualify for one of these remedies, that person may face penalties and repercussions as described in later in this chapter.

E. WELCOMING INFORMATION

The government agencies with responsibility and authority for granting visas, applications, and admissions have embraced today's technology by providing all the required information an alien needs to apply and subsequently travel to the United States on government websites. It appears, however, that these websites are one-sided in regard to the information they provide. For each stage of the process (application, travel, and admission), government websites provide viewers all the relevant information they may need to travel to the United States but little or no information on the repercussions of violating the laws. For example, the DOS website has several subsections that provide detailed information on how to apply, what restrictions exist, definition of a refusal, and visa validity just to name a few.⁴⁸ The DOS website can walk the viewer through the entire process and provide options for which NIV category would be applicable, but nowhere are there warnings not to overstay one's NIV.

Through its website, CBP continues the welcoming information practice as it relates to the admission process. The CBP website provides information, links, and a fact sheet with information for understanding the I-94 form and its transition to an automated process.⁴⁹ In addition, the website provides a link to the CBP I-94 website that enables individuals to query their recent travel, obtain a copy of their I-94, and for those planning to enter at a land POE, fill out the form prior to arrival.⁵⁰

Although not a dominant factor of the website, a compliance section has recently been added to the CBP website. When individuals enter certain information—including

⁴⁸ "About Visas: The Basics," Department of State, accessed July 5, 2018, <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/frequently-asked-questions/about-basics.html>.

⁴⁹ "Arrival/Departure Forms: I-94 and I-94W," Customs and Border Protection, accessed July 28, 2018, <https://www.cbp.gov/travel/international-visitors/i-94>.

⁵⁰ "I-94: Official Website Compliance Check," Customs and Border Protection, accessed July 28, 2018, <https://i94.cbp.dhs.gov/I94/#/compliance-search>.

but not limited to name, date of birth, and passport number—the compliance section queries its database and provides information related to their stay.⁵¹ The information provided relates to the individuals’ admission date, length of admission, and remaining time or an out-of-status notification.⁵² As part of this enhancement, CBP announced that e-mail notifications would be sent to individuals admitted under the VWP toward the end of their length of admission status.⁵³ CBP indicated that this notification would come from a specific e-mail address (Staycompliance-donotreply@cbp.dhs.gov.valid) and would be sent to individuals who CBP believed were still in the United States with a total of 10 days left on their legal length of admission.⁵⁴ The e-mail notification is limited to individuals who entered under the VWP, with expansion to other nonimmigrant classes coming in the future.⁵⁵ It should be noted that unlike other sections—that is, those that inform one how to travel to the United States and that aid in that matter, which are prominently displayed—the compliance section is relegated to a subsection and has to be searched for.

The government websites, however, do not provide potential visitors the consequences of overstaying. As depicted in this section, the U.S. government is proficient in providing detailed information to individuals regarding the visa and admission process. The government is so proficient in this area that one could argue that it may supply more information than necessary. For example, the CBP website has numerous links that provide potential travelers a step-by-step process on how to enter the United States. It also includes a four-minute video titled “You’ve Arrived,” which shows the admission process in detail. It appears, however, that these websites are one-sided in regard to the information they provide; it focuses on the welcoming aspects and not the warning aspects. For each stage of the process (application, travel, and admission), government websites provide viewers

⁵¹ “CBP Reminds Travelers of Time Remaining in the US with Expanded I-94 Website Feature and Email Notifications,” Customs and Border Protection, January 5, 2018, <https://www.cbp.gov/newsroom/national-media-release/cbp-reminds-travelers-time-remaining-us-expanded-i-94-website>.

⁵² “I-94: Official Website Compliance Check.”

⁵³ “CBP Reminds Travelers of Time Remaining.”

⁵⁴ Customs & Border Protection.

⁵⁵ “Traveler Compliance” Customs and Border Protection,” accessed June 14, 2018, <https://www.cbp.gov/travel/international-visitors/i-94/traveler-compliance>.

all the relevant information they may need to travel to the United States but little or no information on the repercussions of violating the laws. For example, the DOS website has several subsections that provide detailed information on how to apply, what restrictions exist, definition of a refusal, and visa validity just to name a few, but there is nothing like the warning sticker on a pack of cigarettes, which is now mandated to let the consumer be aware of the ill effects of nicotine, there are no clear warnings of the danger of overstaying and its consequences. In the recommendation section, suggestions are made for how to provide a balanced approach to help and educate visitors to the government websites related to visiting the United States.

F. PENALTIES AND REPERCUSSIONS

Once an individual overstays, that person becomes amenable to deportation, also known as “removal” under Section 237 of the INA (8 U.S.C. 1255).⁵⁶ Like the inadmissibility charges under Section 212, the 237 section provisions cover many areas; for the purpose of this research, the charges that primarily relate to overstays are discussed. Figure 2 shows the sections of law usually applied to overstays.

INA § 237(a)(1)(B)	In United States in Violation of INA or Other U.S. Law (Overstays) or whose Nonimmigrant Visa has been Revoked or has committed marriage fraud
INA § 237(a)(1)(C)(i)	Nonimmigrant Violator of Status or Condition of Admission

Figure 2. Nonimmigrant Removal Charges⁵⁷

Section 237(a)(1)(B) is normally used for individuals who overstay their length of admission, and 237(a)(1)(C)(i) is used against F and J visa holders who have violated their terms of admission under their program. An individual is formally charged through the service of a Notice to Appear (NTA), which entitles the individual to an immigration hearing. Exceptions to this are aliens who enter under the VWP. In the removal paperwork

⁵⁶ 8 U.S.C. § 1255—Adjustment of Status of Nonimmigrant to That of Person Admitted for Permanent Residence, accessed July 14, 2018, <https://www.law.cornell.edu/uscode/text/8/1255>.

⁵⁷ *Immigration Law Pocket Field Guide 2017 Edition*, 2017th ed. (Charlottesville, VA: Matthew Bender & Company, Inc., 2016), 181.

used in accordance with Section 217, Section 237(a)(1)(B) is cited as the charge, but the alien does not see an immigration judge because he or she waived that right as a condition of entry. In the next section, the differing removal procedures for NIV and VWP aliens are discussed in further detail.

G. HEARING VERSUS NO HEARING

As noted in Section C of this chapter, there is a significant difference in how overstays with an NIV and those who enter the VWP are dealt with. The waiver of rights is a key difference in the VWP and nonimmigrant process. In most cases, if an NIV overstays, he or she is entitled to a hearing administered by the Executive Office of Immigration Review (EOIR). The EOIR is part of the Department of Justice (DOJ) and thus independent of the DHS. These hearings are presided over by an immigration judge who makes a decision that can affect an individual's immigration status. Each case is different, but most individuals awaiting a hearing are not held in custody.

In contrast, an individual who enters under the VWP does not have these same options; he or she waived the right to an immigration hearing prior to entry. Unlike an NIV visitor who goes before EOIR, a VWP violator can be taken into custody and removed at the earliest convenience of the U.S. government.

The hearing process administered by EOIR can be lengthy. Syracuse University, through its Transactional Records Access Clearinghouse (TRAC), constantly conducts research on data related to immigration removal hearings.⁵⁸ In June of 2018, the TRAC indicated that a growing backlog in EOIR significantly delays immigration proceedings, and the time to a decision being made has increased from less than one year to close to a year and half.⁵⁹ For those waiting on a decision to be made, unlike the VWP individual, the NIV individual is still in the United States. By remaining in the United States, that

⁵⁸ Syracuse University, "TRAC: About Us," accessed August 27, 2018, <http://trac.syr.edu/aboutTRACgeneral.html>.

⁵⁹ Syracuse University, "Immigration Court Backlog Jumps While Case Processing Slows," accessed August 27, 2018, <http://trac.syr.edu/immigration/reports/516/>.

person may be able to find employment or other ways to adjust status—for example, through a petition from a U.S. citizen, likely through a marriage.

The pages that follow present DHS statistics showing that fewer VWP individuals overstay than do NIV individuals. Knowing that the VWP process severely limits the ability of one who overstays to remain in the United States, could this be factor in why less VWP overstay? Just as important, could an examination of the difference in the law provide a solution? This particular question is addressed in the recommendations section because it relates to the overall overstay issue.

H. WHAT ARE THE CHANCES OF BEING CAUGHT, OR IS ANYONE LOOKING?

Immigration enforcement tends to work on an ever-moving pendulum. These shifts in the pendulum can be equated to the presidential administrations or which party controls the Congress at the time. There appears to be no true consistency and focus related to immigration enforcement. For those who want to remain in the United States after being admitted, this may weigh heavily in a decision about whether or not to overstay.

To put it in perspective, if someone is thinking about robbing a bank, what is the likelihood that that person would commit that crime if he or she noticed a police officer standing in front of the bank? Common sense (not always associated with criminals) would dictate that one would not attempt the crime at that time. The officer at that moment represents a deterrent, a de-motivator. Once that deterrent is removed, the individual might reevaluate and then decide to proceed with this crime. This thought process can be applied to the overstay area as well. If one is contemplating overstaying and remaining in the United States, that person may look for deterrents.

As previous sections in this chapter highlighted, there are currently no glaring warning signs against overstaying; however, there are various magnets that might draw one to the United States, all of which can be seen as motivators and not deterrents. The probability of running into a police officer on the corner scenario is relatively low for one who overstays, and over the past decade, the U.S. government has at times publicly announced that certain immigration violations were not a priority.

Prioritization by an agency or administration often dictates what is and what is not addressed. Knowing that something is not being prioritized can also factor into whether someone will or will not do something. In a 2011 memo authored by ICE Director John Morton and titled *Civil Enforcement Action: Priorities for the Apprehension, Detention and Removal of Aliens*, there is no mention of overstays as a priority; the focus is on those who have committed a crime.⁶⁰ In 2014, DHS Secretary Jeh Johnson issued the memo “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants,” which served as marching orders for CBP, ICE, and the U.S. Citizenship and Immigration Services (USCIS). This memo further deprioritized noncriminal illegal immigrants and individuals deemed not a public safety threat from investigation and/or arrest.⁶¹ Could these public notifications have influenced an individual’s decision to overstay? Unfortunately, there is no way to know if there were increases or decreases in overstays; DHS had little faith in its recording and reporting methods until the issuance of its first overstay report in 2016. If this data had been available over the past 10 years, one could potentially analyze and theorize whether there were increases or decreases in the number of overstays during shifts in enforcement policies.

I. CHAPTER SUMMATION

This chapter provides an overview of the laws and procedures regarding nonimmigrants and the overstay issue. As demonstrated, the process has many components, and it clearly does not operate on a straight line or in a linear process. Several exceptions and waivers can potentially make any case of one who overstays a different or unique incident. Although there are avenues and loopholes, the laws regarding the illegality of overstaying are clearly documented in the INA. While the United States has laws and agencies to address overstays, it continues to be a problem.

⁶⁰ John Morton, “Civil Enforcement Action: Priorities for the Apprehension, Detention and Removal of Aliens” (official memorandum, Washington, DC: Immigration and Customs Enforcement, March 2, 2011), <https://www.ice.gov/doclib/news/releases/2011/110302washingtondc.pdf>.

⁶¹ Jeh Johnson, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants” (official memorandum, Washington, DC: Department of Homeland Security, November 30, 2014), https://www.dhs.gov/sites/default/files/publications/14_1120_memo_prosecutorial_discretion.pdf.

One might ask, Are overstays really a concern? The simple answer is yes. Chapter III explains that overstays are a federal responsibility and fall under the purview of DHS. Second, there have been numerous cases in which someone who overstayed has been involved in crimes of violence and/or terrorism. In 1997, the New York City Police Department arrested Lafi Khalil, an overstay who was planning to bomb the New York City subways.⁶² Zacarias Moussaoui, a citizen of France, was arrested in August of 2001 for being an overstay.⁶³ Moussaoui is now commonly known as the twentieth 9/11 hijacker for his believed links to the 9/11 attacks.⁶⁴ In congressional testimony in 2016, the matter of Artur Samarin was brought as an example of an individual who overstayed and was arrested for numerous violations, including fraud and rape.⁶⁵ Samarin entered the United States legally, overstayed, and then used a fraudulently obtained identity to blend into a local community.⁶⁶ Although these examples are just a snapshot, there is no denying that at times overstays have become not just an immigration issue but a public safety issue. As a result, it would be negligent not to appropriately address this matter.

⁶² Department of Justice, Office of the Inspector General, *Bombs in Brooklyn: How the Two Illegal Aliens Arrested for Plotting to Bomb the New York Subway Entered and Remained in the United States*, Special Report (Washington, DC: Department of Justice, Office of the Inspector General, March 1998), <https://oig.justice.gov/special/9803/>.

⁶³ Department of Justice, Office of the Inspector General, *A Review of the FBI's Handling of Intelligence Information Related to the September 11 Attacks* (Washington, DC: Department of Justice, Office of the Inspector General, June 2006), 176, <https://oig.justice.gov/special/s0606/chapter4.htm>.

⁶⁴ Billy Hallowell, "Convicted Terrorist Known as the '20th Hijacker' Has a Stunning Claim about the 9/11 Attacks," *The Blaze*, November 17, 2014, <http://www.theblaze.com/news/2014/11/17/convicted-terrorist-known-as-the-20th-hijacker-has-a-stunning-claim-about-the-911-attacks/>.

⁶⁵ DHS In Today's Dangerous World: Examining the Department's Budget and Readiness to Counter Homeland Threats: Hearing before Committee on Homeland Security, House of Representatives, 114th Congress (2016), <https://www.gpo.gov/fdsys/search/pagedetails.action?collectionCode=CHRG&browsePath=114%2FHOUSE%2FCommittee+on+Homeland+Security&granuleId=CHRG-114hhrg22624&packageId=CHRG-114hhrg22624&fromBrowse=true>. <https://homeland.house.gov/hearing/dhs-in-todays-dangerous-world/>

⁶⁶ H.R., DHS In Today's Dangerous World.

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III. OVERSTAY PROBLEMS: REPORTING AND INCENTIVES

As indicated in Chapter II, overstays are classified as illegal immigrants. Immigration is a federal responsibility; therefore, U.S. government agencies have authority in this matter. To make the reader aware of the difficulties the government has faced in reporting and tracking overstays, a brief background on this matter is provided. The government has been unable to accurately count the number of overstays, which means it does not have the necessary information to address this issue appropriately.

A. INADEQUATE REPORTING AND DATA

Today, illegal immigration is a topic of constant debate, but it is not a new topic. Illegal immigration, although now at the forefront of politics and media, has been observed by watchdogs and accountability agencies for years. To put it in perspective, the GAO has published reports on illegal immigration for over 40 years. In a report issued in August of 1973, the GAO highlighted the fact that the Immigration and Naturalization Service (INS) (ceased operations in 2003) had trouble identifying overstays and that the INS record systems were not accurate.⁶⁷ In a subsequent report published in 1980, the GAO noted continuing problems in the INS's ability to identify and track overstays.⁶⁸ This report found that the current system employed by the INS was counterproductive and did not support enforcement efforts.⁶⁹ The GAO also found that the reliance on paper documents and unreliable technology was a hindrance to accurate reporting.⁷⁰ A factor in obtaining accurate numbers regarding overstays is directly linked to the technology available at the time. Prior to the advent and continued development of the digital age, all relevant

⁶⁷ Government Accountability Office, *Need for Improvements in Management Activities of the Immigration and Naturalization Service* (Washington, DC: Government Accountability Office, August 14, 1973), 1, 7, <https://www.gao.gov/products/090643>.

⁶⁸ Government Accountability Office, *Controls Over Nonimmigrant Aliens Remain Ineffective* (Washington, DC: Government Accountability Office, September 11, 1980), 20, <https://www.gao.gov/products/GGD-80-87>.

⁶⁹ Government Accountability Office, 25.

⁷⁰ Government Accountability Office, 25, 29.

information related to overstays had to be manually entered.⁷¹ In the 1980 GAO report, it was noted that the current system had a steady input error rate and was backlogged.⁷² In a 2017 report, the GAO found that since 2013, although DHS had made improvements in determining the number of overstays through advances in technology, inconsistencies still occur and continued improvements are needed.⁷³ These examples are just a small sampling of reporting conducted by the GAO on the overstay matter. Since the release of these initial reports, the GAO has published over 125 other reports mentioning or referring to overstays.

The GAO is not alone; several other U.S. government entities have been studying and reporting about overstays over the years. The Congressional Research Service (CRS), the research arm for the U.S. Congress, lists more than 160 reports related to overstays. The overstay matter is nothing new to Congress itself; a search of its website revealed close to 300 records of committee reports and legislative records that mention overstays. The DHS Office of the Inspector General (DHS-OIG) issued a report in 2017 citing technological issues that have hampered DHS in accurately tracking overstays.⁷⁴ From these reports the lack of adequate technology to accomplish the given task and lack of commitment by the agencies responsible has constantly hindered the government's ability to know who and how many people have overstayed.

In 1996, Congress mandated the creation of an entry–exit system to record data for those entering and departing the United States with the passing of the IIRIRA.⁷⁵ In concert with this mandate was the requirement for the collection of information to be disseminated to government agencies regarding individuals who overstayed their legal length of

⁷¹ Government Accountability Office, 25.

⁷² Government Accountability Office, 26.

⁷³ Government Accountability Office, *Border Security: DHS Has Made Progress in Planning for a Biometric Air Exit System and Reporting Overstays, but Challenges Remain* (Washington, DC: Government Accountability Office, February 27, 2017), 12, 29, <https://www.gao.gov/products/GAO-17-170>.

⁷⁴ DHS Office of the Inspector General, *DHS Tracking of Visa Overstays Is Hindered by Insufficient Technology* (Washington, DC: Department of Homeland Security-Office of the Inspector General, May 1, 2017), 1–4, https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-56-May17_0.pdf.

⁷⁵ Omnibus Consolidated Appropriations Act of 1997, Public Law 104-208, U.S. Statutes at Large 110 (1996), Pub. L. No. H.R. 3610 (1996), 558–59, <https://www.gpo.gov/fdsys/pkg/STATUTE-110/pdf/STATUTE-110-Pg3009.pdf>.

admission.⁷⁶ Since the enactment of the IIRIRA, there have been significant developments in biometric technology. In 2004, with the enactment of 8 U.S.C. 1365b, the requirement of a biometric entry–exit system was added to the 1996 IIRIRA requirement.⁷⁷ CBP collects biometric data at entry at all POEs; at the time of this research, however, CBP is still unable to meet the legislative and technological requirements for tracking biometrics for those exiting the United States.⁷⁸ In 2016, CBP officials testified to Congress that although there is a 100% collection of nonimmigrant biographic data for entry and exit at airports, this is not the case for land border POEs.⁷⁹ CBP officials further testified that although there is a developing data-sharing program between the United States and Canada at the northern border POEs regarding entry and exit between the two countries, there is no program in place with Mexico, and as a result, consistent exit data are not obtained at the southern border.⁸⁰

Having incomplete or inaccurate information and data can hinder the implementation of a successful policy or course of action. In several reports, the GAO referenced the fact that DHS had not provided overstay reports because of the belief that the reports were not accurate.⁸¹ A 2014 report compiled by the Bipartisan Policy Center

⁷⁶ Omnibus Consolidated Appropriations Act of 1997, Public Law 104-208, U.S. Statutes at Large 110 (1996), 559.

⁷⁷ 8 U.S.C. 1365b, Biometric Entry and Exit Data System.

⁷⁸ Department of Homeland Security, Comprehensive Biometric Entry-Exit Plan Report to Congress Fiscal Year 2016 Report to Congress (Washington, DC: Department of Homeland Security, April 20, 2016), 4.

⁷⁹ *Overstaying Their Welcome: National Security Risks Posed by Visa Overstays: Hearing before the Subcommittee on Border and Maritime Security*, House of Representatives, 114th Cong., 2nd Session., June 14, 2016, 11, <https://www.gpo.gov/fdsys/search/pagedetails.action?collectionCode=CHRG&browsePath=114%2FHOUSE%2FCommittee+on+Homeland+Security&granuleId=CHRG-114hhrg24378&packageId=CHRG-114hhrg24378&fromBrowse=true>.

⁸⁰ *Overstaying Their Welcome*, 11.

⁸¹ Government Accountability Office, *Border Security*, 26.

indicated that since the 1990s, information on overstays had come from various sources and untimely data.⁸²

B. CURRENT DATA

In 2016, after years of being unable to provide a required overstay report, DHS released the *Entry/Exit Overstay Report Fiscal Year 2015*, which provided data regarding the arrival and exit of individuals from various countries to and from the United States.⁸³ Although the report provided limited information, with compiled data relating to nonimmigrant entries and exits made at air and sea POEs only, the issuance of the report was seen as a step forward for DHS in trying to meet statutory reporting requirements.⁸⁴ In this initial report, data were limited to the country of citizenship and referred to the NIV business/tourism⁸⁵ and VWP categories of nonimmigrants.⁸⁶ Figure 3 shows the total numbers for the 2015 report.

Nonimmigrant Admissions	Nonimmigrant Overstays
44,928,381	527,127

Figure 3. 2015 Nonimmigrant Admissions and Overstays⁸⁷

In 2017, DHS released its second overstay report, titled *Fiscal Year 2016 Entry/Exit Overstay Report*. This report, like its predecessor, provides data from the air and sea POE environment; unlike its predecessor, however, the report includes not only

⁸² Immigration Task Force-Bipartisan Policy Center, *Entry-Exit System Progress, Challenges, and Outlook*. Washington, DC: Bipartisan Policy Center, May 2014, 3, <http://bipartisanpolicy.org/wp-content/uploads/sites/default/files/BPC%20Immigration%20Entry-Exit%20System%20Progress,%20Challenges,%20and%20Outlook.pdf>.

⁸³ Department of Homeland Security, *Entry/Exit Overstay Report: Fiscal Year 2015* (Washington, DC: Department of Homeland Security, January 19, 2016), 1.

⁸⁴ Department of Homeland Security, 1.

⁸⁵ Tourism/Business is being defined as nonimmigrants that enter for either tourism, B-2 NIV or WT under VWP or limited business B-1 NIV or WB under the VWP.

⁸⁶ Department of Homeland Security, *Entry/Exit Overstay Report: Fiscal Year 2015*, 7–8.

⁸⁷ Department of Homeland Security, 7.

business/tourism and VWP nonimmigrants but also data on students and other nonimmigrants described as “in-scope.”⁸⁸ DHS defines “in-scope nonimmigrants” as individuals who are temporary workers and dependents in the categories of intercompany transfer, media, investors, trainees, and similar categories.⁸⁹ The 2017 report shows an increase in the number of total visitors and overstay, but it would be hard to say that the number actually increased from the prior report because the 2017 report included categories not previously counted. For 2016, DHS reported that 50 million nonimmigrant visitors were admitted and of that number, 739,478 (1.5 %) had overstayed their length of admission.⁹⁰ These numbers once again show the country of citizenship of the individuals who enter and subsequently overstay, but with the additional categories examined one can now focus more on which nonimmigrant category overstays the most. As indicated in Table 2, individuals who enter as business/tourism, VWP, and students are numerically the top number of overstays for 2016.

Table 2. FY 2016 Summary Overstay Rate for Nonimmigrant Visitors to the United States via Air and Sea POEs⁹¹

Admission Type	Expected Departures	Out-of-Country Overstays	Suspected in-Country Overstays	Total Overstays	Total Overstay Rate	Suspected in-Country Overstay Rate
VWP Countries Business or Pleasure Visitors	21,616,034	18,476	128,806	147,282	0.68%	0.60%
Non-VWP Countries Business or Pleasure Visitors (excluding Canada)	13,848,480	23,637	263,470	287,107	2.07%	1.90%

⁸⁸ Department of Homeland Security, *Fiscal Year 2016 Entry/Exit Overstay Report*, 11.

⁸⁹ Department of Homeland Security, 11.

⁹⁰ Department of Homeland Security, 11.

⁹¹ Department of Homeland Security, 13.

Admission Type	Expected Departures	Out-of-Country Overstays	Suspected in-Country Overstays	Total Overstays	Total Overstay Rate	Suspected in-Country Overstay Rate
and Mexico)						
Student and Exchange Visitors (excluding Canada and Mexico)	1,457,556	38,869	40,949	79,818	5.48%	2.81%
All Other In-Scope Nonimmigrant Visitors (excluding Canada and Mexico)	1,427,188	13,504	29,498	43,002	3.01%	2.07%
Canada and Mexico Nonimmigrant Visitors	12,088,020	16,193	166,076	182,269	1.51%	1.37%
TOTAL	50,437,278	110,679	628,799	739,478	1.47%	1.25%

Analyzing the two DHS overstay reports provides insight in certain areas. The most common nonimmigrants to overstay are those in the business/pleasure (tourism) categories. Unlike other NIV categories, the B1/B2 visas do not require supporting petitions from business, relatives, or schools. Knowing that the tourism categories are the greater risk, one might suggest that limitations be placed in this area, but this could result in unwanted consequences.

The World Trade Organization (WTO) a part of the UN in a 2018 publication indicated that international tourism has continued to grow over the past few years.⁹² In regard to the United States, the WTO estimated that foreign tourism equated to over \$210

⁹² World Trade Organization, *UNWTO Tourism Highlights: 2018 Edition* (Geneva, Switzerland: World Trade Organization, 2018), 2, <https://www.e-unwto.org/doi/book/10.18111/9789284419876>.

billion in receipts for 2017.⁹³ With such a large economic factor at stake, the idea of limiting tourism as a whole may not be the most prudent course of action. Using this data, however, may help channel policy in the right direction. It is important to mention again that the number of VWP visitors is significantly larger than NIV visitors while at the same time, the number of VWP overstay is less than those who enter with an NIV.

Although it is impossible to determine what makes an individual overstay, there are some known factors. Unlike NIV nonimmigrants, VWP nonimmigrants have limited opportunities to remain legally in the United States because adjustment of status is severely limited to certain categories. In addition, VWP nonimmigrants are unable to extend their stay and are also subject to an expeditious removal if they violate their status. In addition, most VWP nonimmigrants come from countries that are economically stable, have governments that are not oppressive, are democratic in nature, and have opportunities for employment. On the basis of these factors, one could surmise that individuals from VWP countries may have fewer motivating factors to remain in the United States.

C. REPORTING CAVEATS

Although the 2017 DHS report provides data that can be used to analyze overstay, a few caveats should be kept in mind. First, the data are limited to airport and seaport data only. Biographic and biometric information is not collected at the land borders at exit. Second, the figures may be skewed when it comes to citizens of Canada and Mexico. As indicated in Section A of this chapter, the United States and Canada are developing a data-sharing program at the northern border POEs regarding entry and exit between the two countries.⁹⁴ CBP further indicated that there is no program in place with Mexico; as a result, consistent exit data are not obtained at the southern border.⁹⁵ Although the Canadian data sharing is currently in effect, the data are limited to citizens of other countries (not the

⁹³ World Trade Organization, 8.

⁹⁴ H.R., *Overstaying Their Welcome*, 11.

⁹⁵ H.R., *Overstaying Their Welcome*.

United States or Canada) who enter Canada.⁹⁶ For Mexico, currently there is no data sharing in place, and CBP does not regularly conduct outbound inspections for the purposes of collecting biographic departure information.⁹⁷ As such, there is no way to record the number of citizens of Mexico, or in fact any citizen, who depart the United States via the United States–Mexico land border.

A third caveat is the way CBP obtains the departure information in the airport and seaport environment. Unlike entry for which biographic and biometric data are collected by a CBPO in an inspection area, no mandatory outbound inspection is conducted by CBP. CBP receives biographic information only through a third party, the carriers (air and/or sea). Departure information in the airport and seaport environment is electronically transmitted by the carriers.⁹⁸ A DHS-OIG report published in 2017 pointed out that the reliance on the airline departure information can be problematic because it was determined that not all the electronic information was entirely accurate.⁹⁹ The report states that inaccurate information obtained that was subsequently analyzed by ICE for possible action had resulted in investigative leads being sent out on individuals who had actually departed the United States but were perceived to be illegally present in the United States. Other instances of inaccurate reporting led ICE to close investigations on individuals with criminal histories because the information indicated that the individual had departed the United States, when in fact the individual had not.¹⁰⁰

It is important for the reader to know these caveats for several reasons. Although DHS has improved the reporting of information regarding nonimmigrant visitors, there are still gaps related to this information. Exit data is not collected at every POE. The exit data collected at the airports and seaports are transmitted from an outside source and the amount and accuracy of this data is not a 100% reliable. Without outbound departures being

⁹⁶ Canada Border Services Agency, “Entry/Exit Initiative: Enhancing Border Security and the Integrity of Immigration Programs,” June 1, 2018, <https://www.cbsa-asfc.gc.ca/btb-pdf/ebsiip-asfipi-eng.html>.

⁹⁷ Department of Homeland Security, *Fiscal Year 2016 Entry/Exit Overstay Report*, 7.

⁹⁸ DHS Office of the Inspector General, *DHS Tracking of Visa Overstays Is Hindered by Insufficient Technology*, 17.

⁹⁹ DHS Office of the Inspector General, 19–20.

¹⁰⁰ DHS Office of the Inspector General, 20–21.

recorded at all POEs, the chance of erroneous numbers in overstay reporting is always a possibility. Individuals whom the government believes are still in the United States, may in fact have left through a land POE without the government's knowledge. In addition, although biographic information is collected at the airport and seaports, without a biometric match, there is no 100% fail-safe method in effect to ensure that the true individual departed the United States.

Accurate reporting can be more vital than the amount of reporting. If part of the solution to the overstay issue is having a robust enforcement approach, accuracy will be essential for that approach to be effective. As mentioned earlier, ICE resources were used with negative results as a result of inaccurate reporting. Unfortunately, this is not a new dilemma; the GAO reported in 1980 that inaccurate reporting led to the INS spending a significant amount of workforce energy that led to minimal results.¹⁰¹ It is important to keep these inconsistencies and gaps in mind because they could hinder the creation of an all-inclusive policy to deal with the overstay issue.

D. CATEGORIES AND COUNTRIES

As previously indicated, the nonimmigrant categories with the largest number of overstays are the business/tourism, VWP, and student sections.¹⁰² For the countries required to obtain a B1/B2 NIV, Brazil had over 39,000 overstays in the United States of more than 2 million admissions.¹⁰³ Brazil is followed by Venezuela, Colombia, China, and India as the top five countries in the total number of overstays in the United States for this category.¹⁰⁴ In the VWP category, the United Kingdom led the 38 participants in the program with 23,472 overstays of 4,709,633 admissions.¹⁰⁵ Rounding out the top five in

¹⁰¹ Government Accountability Office, *Controls Over Nonimmigrant Aliens Remain Ineffective*, 27.

¹⁰² The tourism/business NIV is the B1/B2; B1 is for limited business and B2 is for tourism. Individuals applying for entry under the VWP are admitted as either a WB, waiver for business (equivalent to a B-1) or WT, waiver for tourism (equivalent to a B-2). Although the student category can be broken down into the three specific NIV classifications (F, J, and M), for the purpose of this report, they will not be separated and will be referenced as students.

¹⁰³ Department of Homeland Security, *Fiscal Year 2016 Entry/Exit Overstay Report*, 16.

¹⁰⁴ Department of Homeland Security, 16–19.

¹⁰⁵ Department of Homeland Security, 15.

that category were Germany, Italy, Spain, and France.¹⁰⁶ In the student category, China was the leader in overstays with 18,075 of 360,334 admissions.¹⁰⁷ Saudi Arabia, South Korea, India, and Brazil followed China in this category.

Looking strictly at total numbers, one could assume that the higher number, the greater concern, but that may not give an accurate view of the overall issue. How one views this matter could depend on how one interprets the threat of illegal immigration. If one is concerned about possible terrorist attacks, a high rate of overstays from countries with historical terrorist links might be problematic. For espionage concerns, if high rates of overstays are found from countries with a past practice of spying, that could be one's primary concern. If one's concern is that overstays take away jobs or become a burden on public services, overstays from those countries will be a concern.

An issue that arises here is what is important? Importance is more often decided not by those to whom the mission falls but by those with legislative or political control. This conundrum of what is more important and who makes that determination highlights the difficulties in dealing with illegal immigration as a whole and is not limited to the overstay issue.

In an attempt to prioritize the numbers per se, ICE uses the Counterterrorism and Criminal Exploitation Unit (CTCEU) within Homeland Security Investigations (HSI).¹⁰⁸ As the name suggests, the CTCEU has responsibilities in the counterterrorism realm, but one of its primary functions is reviewing data on nonimmigrant visitors and sending leads to HSI field offices for possible action related to overstays and student status violators.¹⁰⁹ The CTCEU prioritizes national security and public safety leads sent to HSI field offices for investigative action.¹¹⁰ Those overstays deemed not to be a national security or public

¹⁰⁶ Department of Homeland Security, 14–15.

¹⁰⁷ Department of Homeland Security, 20.

¹⁰⁸ “Counterterrorism and Criminal Exploitation Unit,” Immigration and Customs Enforcement accessed July 7, 2018, <https://www.ice.gov/counterterrorism-and-criminal-exploitation-unit>.

¹⁰⁹ Government Accountability Office, *Border Security*, 29.

¹¹⁰ DHS Office of the Inspector General, *DHS Tracking of Visa Overstays Is Hindered by Insufficient Technology*, 4.

safety priority are sent to the local Enforcement Removal Operations (ERO) office for action.

Although ICE has an asset in place to determine priorities for enforcement action, a 2011 GAO report noted that over a four-year period between 2006 and 2010, ICE reported that only 3% of its work hours were focused on overstay cases.¹¹¹ The aforementioned report indicated that ICE's varying and numerous enforcement priorities were a factor in the overall low number of hours spent and arrests made related to overstays.¹¹² In a 2017 report titled *Border Security: DHS Has Made Progress in Planning for a Biometric Air Exit System and Reporting Overstays, but Challenges Remain*, the GAO found that since its prior reports, DHS, including ICE, has done little to change its priorities regarding overstays, outside those who were deemed a national security or public safety risk.¹¹³ Having the numbers and data may be useful in addressing the overstay issue, but if the government cannot commit the resources to address those in the United States, the data become stagnate. Knowing which category or which country has the highest number of overstays can be helpful in trying to develop a policy to address the overstay issue, but actions should not be based solely on this information.

E. OVERSTAY RATES AND NIV DENIALS

The DHS report provides the total number of overstays for a country and also overstay rate for that country. The rate is the percentage of admissions that overstay during that fiscal year. For Brazil, in the business/tourist category, the rate was 1.9%, derived from the 39,000 overstays out of 2 million admissions mentioned earlier.¹¹⁴ When looking at the percentage rate, quite often the overstay percentages are higher for countries that have fewer admissions. For example, in the student category, the country of Eritrea had the

¹¹¹ Government Accountability Office, *Overstay Enforcement: Additional Mechanisms for Collecting, Assessing, and Sharing Data Could Strengthen DHS's Efforts but Would Have Costs*, Report to the Committee on Homeland Security and Governmental Affairs, U.S. Senate (Washington, DC: Government Accountability Office, April 15, 2011), 21, <https://www.hsdl.org/?abstract&did=6197>.

¹¹² Government Accountability Office, 22.

¹¹³ Government Accountability Office, *Border Security*, 29.

¹¹⁴ Department of Homeland Security, *Fiscal Year 2016 Entry/Exit Overstay Report*, 20.

highest percentage rate of overstays with 77.78%, with 91 aliens who overstayed of the 117 who were admitted.¹¹⁵ China, the country with the largest number of overstays in this category had a rate of 5.02%.¹¹⁶ For overall rates, the student category had the higher rate of overstays with a 5.48% (79,818) out of 1,457,556 admissions, tourist/business category had a rate of 2.07% (287,107) out of 13,848,480 admissions and the VWP category had 21,616,034 admissions with a rate of .68% (147,282).¹¹⁷

The DHS overstay report provides figures, but it also raises questions with few definite answers. Knowing the number of individuals and countries from which they originate provides a quantitative view of the problem, but relying on these numbers alone can provide a skewed view. For example, one could theorize that if Brazil had the highest rate, DOS and DHS are not doing enough to address this issue for overstays from Brazil. This would be an assumption based on one published report. One report, although informative, does not provide all the facts or known data. The DOS processes NIV applications and either issues or denies a visa. The denials are based on whether an individual can prove to the counselor officer that he or she does not intend to remain in the United States as an immigrant; if no, the alien is inadmissible under the INA. The number of denials, although maintained by DOS, is not readily known to the public. DOS releases an annual report related to the refusal of B NIVs in an adjusted rate format as it relates to country applications for the VWP.¹¹⁸ The data released by DOS are strictly in percentage format with no actual total numbers associated with it. The lack of the total number of visa refusals makes a comparative analysis to the actual number of overstays and percentage rate of overstays to the adjusted rate of denials difficult to calculate and may lead to misleading information.

¹¹⁵ Department of Homeland Security, 21.

¹¹⁶ Department of Homeland Security, 16, 20.

¹¹⁷ Department of Homeland Security, 13.

¹¹⁸ "Calculation of the Adjusted Visa Refusal Rate for Tourist and Business Travelers Under the Guidelines of the Visa Waiver Program," 1–3, Department of State, accessed July 13, 2018, <https://travel.state.gov/content/dam/visas/Statistics/Non-Immigrant-Statistics/refusalratelanguage.pdf>.

To develop a focused strategy in addressing overstays, consideration should be made for analyzing all relevant data, including the rate of refusals as it relates to actual overstays, to see if any patterns could be derived from the data. Taking this a step further, an in-depth analysis of the denials and overstays should be made to see if information or data exist to help create indicators of potential overstays. This analysis could be conducted via a detailed review of the applications of visa refusals and confirmed overstays. By analyzing demographics (sex, age, race, education, profession); country where overstays resided before coming to the United States, and social media data of those previously denied or those who overstayed, threat indicators may be established to help DOS scrutinize future applicants. For instance, if analysis finds that 50% of all individuals from Thailand who overstayed are males between 25 and 30 years of age with a high school education and come from the Trat Province, warning indicators could be developed for DOS and CBP. DOS could use these indicators to further scrutinize individuals from that area during the NIV process. CBP could use this information during the admission process to limit one's approved length of admission to the United States.

F. INCENTIVE

Individuals from other countries visit the United States for various reasons, including tourism, business, and education. In addressing the overstay issue, an obvious question arises: Why does one overstay? It would be impossible to know what made each one of estimated millions of overstays in the United States decide to remain. One can think of various reasons—including economic, political, cultural, or societal—for an individual to remain in the United States. An alternative to speculation in this circumstance is to evaluate the current system and policy and try to identify where there may be flaws or incentives that provide one an opportunity or reason to overstay. In Chapter II, some of these flaws were described under several heading (“Welcoming Information,” “Hearing vs. No Hearing,” and “Is Anyone Looking”). The next section explains one of the primary incentives for individuals to overstay as well as why efforts to mitigate this area have not been successful.

G. MAGNET EFFECT

In the immigration realm, the term *magnet effect* has been commonly discussed as a way to describe the trigger, or what draws people to come to the United States.¹¹⁹ The magnet effect has been linked to various areas, including the availability of jobs, the changing of laws and policies by the U.S. government, and access to welfare assistance, to name a few.

One of most popular magnet effects is the chance for employment. Many individuals, legal and illegal, come to the United States for employment purposes. Individuals who obtain immigrant or nonimmigrant visas for employment categories come to the United States with the intention of legally working in the country based on already having a position offered to them. In 2017, the Pew Research Center estimated that eight million illegal immigrants were employed in the U.S. civilian workforce, which equated to roughly 5% of the total workforce.¹²⁰ Taking the number of illegal immigrants in the United States, estimated at 11 million, and factoring in the estimate by the Pew Research Center of eight million illegal immigrants being employed, roughly 73% those who are in the country illegally are employed. Although this estimate would be difficult to verify, a known fact is that individuals in the United States illegally, including overstays, are able to find employment.

In 1986, in attempt to detract from the magnet of employment, Congress passed the IRCA into law. The enactment of IRCA created the nation's first immigration rules and regulations related to employment in the United States.¹²¹ The passing of IRCA required all employers in the United States to verify through identification and documents and subsequently certify on government forms (Form I-9) that an employee is authorized to work in the United States.¹²² IRCA also created administrative and criminal penalties for

¹¹⁹ George J. Borjas, "Immigration and Welfare Magnets," *Journal of Labor Economics* 17, no. 4 (1999): 608, <https://doi.org/10.1086/209933>.

¹²⁰ Krogstad, Passel, and Cohn, "5 Facts about Illegal Immigration in the U.S."

¹²¹ Immigration Reform and Control Act of 1986 (IRCA).

¹²² Claire Bergeron, Muzaffar Chishti, and Doris Meissner, "At Its 25th Anniversary, IRCA's Legacy Lives On," *Policy Beat*, November 11, 2016, <https://www.migrationpolicy.org/article/its-25th-anniversary-ircas-legacy-lives>.

employers who do not abide by the aforementioned regulatory requirements or who knowingly hire unauthorized workers.¹²³ IRCA was the government’s first law focused on deterring illegal immigration by targeting a known draw or magnet, as described by the DOJ of the Inspector General in a 1996 report:

The intent of the employer sanctions provisions is to reduce the magnet of jobs that draws illegal immigrants to this country and to preserve those jobs for U.S. citizens and aliens authorized to work in the U.S. As a result of the 1986 law, all employees must present evidence to the employer of their identity and employment eligibility at the time of hire.¹²⁴

Although the U.S. government took action in 1986 to address one of the “magnets”— employment—32 years have passed, and with the current estimate of 11 million individuals illegally present in the United States, one could question the effectiveness of the IRCA as a deterrent to the magnet. Over this time frame, ICE and its predecessor, the INS, took varying approaches to address the employment of illegal aliens. Jerry Kammer, a journalist and senior research fellow with the Center for Immigration Studies, conducted a review of what he interprets as a failed worksite enforcement program and published his findings in his 2017 book titled *What Happened to Worksite Enforcement? A Cautionary Tale of Failed Immigration Reform*. Kammer provides a breakdown of the different government administrations that held power since the enactment of IRCA and depicts the various changes in direction regarding enforcement of the laws pertaining to work site enforcement, also known as employment sanctions.¹²⁵ In his opening, Kammer lists the following as the main reasons the elements of IRCA have not detracted the employment magnet that encourages one to remain in the United States illegally:

- Structural flaws written into the legislation

¹²³ Bergeron.

¹²⁴ Department of Justice-Office of the Inspector General, *Immigration and Naturalization Service Efforts to Combat Harboring and Employing Illegal Aliens in Sweatshops* (Washington, DC: Department of Justice-Office of the Inspector General, May 1996), <https://oig.justice.gov/reports/INS/e9608/index.htm#EXECUTIVE%20DIGEST>.

¹²⁵ Jerry Kammer, *What Happened to Worksite Enforcement? A Cautionary Tale of Failed Immigration Reform* (Washington DC: Center for Immigration Studies, 2017), 1.

- The political clout of business interests and immigration advocacy groups who resisted enforcement
- The demoralization of federal immigration authorities who faced that resistance
- The ambivalence of public opinion that, while favoring limits on immigration, often recoiled from the human consequences of enforcing those limits¹²⁶

Keeping Kammer’s reasoning in mind it would appear that the lack of consistent enforcement in regard to IRCA has limited the law’s ability to succeed. With varying priorities and limited resources, there has been a continued shift on how agencies responsible for enforcing the elements of IRCA conduct their work. This question was asked in Chapter II: “Is anyone looking for the overstays?” Could this lack of attention in fact be another magnet?

H. SUMMARY

This chapter was written to highlight some of the problem factors that the government has faced in dealing with the overstay issue. The first part of this chapter provided the reader a numerical perspective of the overstay issue and highlighted the fact that much work is still needed in the area of accurate reporting. Although the government has continually noted in GAO and other audit reports that there have been gaps in gathering information and publishing data, in the overall time span, very little progress has been made. As this chapter showed, while improvements were made in obtaining data, the accuracy of this data is still in doubt.

The second part of this chapter was to identify potential motivators for why an individual chooses to overstay in the United States. As initially indicated, an actual statement of fact from individuals who overstay is unlikely because this would entail

¹²⁶ Jerry Kammer, What Happened to Worksite Enforcement? A Cautionary Tale of Failed Immigration Reform (Washington DC: Center for Immigration Studies, 2017), 1.

receiving information directly from these individuals. As an alternative being able to ask individuals directly, a review of existing factors that could contribute to one's decision was conducted. As shown through research and data, although not conclusive, one can infer that the magnet effect can contribute to an immigrant's becoming an overstay. In Chapter IV, keeping this theory in mind as well as the information from the prior chapters, recommendations are made to address the overstay issue as a whole.

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IV. RECOMMENDATIONS AND CONCLUSION

This thesis was written to explore the issue of overstays in the United States. The previous chapters illustrated that overstays have been a persistent issue that has not received consistent attention. Overstays have added to the illegal immigration population and in some circumstances have been involved in terrorist activity in the United States. The ability to say without a doubt that a nonimmigrant visitor has left the United States is still not a reality. Although there have been recent improvements in recording and tracking, the government is still unable to determine with 100% accuracy if an individual actually did depart or has remained in the United States.

In the sections to follow, policy recommendations are made based on the analysis conducted throughout this thesis. Recommendation I is based on the assumption that changes in the current legislation are not obtainable and additional funding is unavailable.

Recommendation II is a more ambitious approach proposing a strategy that attempts to be all-inclusive and that has various components, including enforcement, education, deterrents, and alternatives. This recommendation has been derived based on the study of current policies, which at times were either too enforcement based or too ineffective. A balance of all resources available to the government may be the best way to dissuade an individual from overstaying.

A. RECOMMENDATION I: STRENGTHENING EXISTING COMPONENTS

When attempting to address a problem, it is commonplace to be in a situation in which all the necessary means to fix that problem are not available or practical. For immigration-related issues, this is a norm. As described in the preceding chapters, government reports and congressional testimony indicate that the lack of resources, direction, and personnel have hindered agencies' efforts to address immigration issues. With this in mind, the following recommendation is based on the assumption that only the existing resources and structure are available; therefore, a focused approach on enforcement is attempted. The subsections to follow provide examples of how to implement this approach.

1. Retool Agency Components

The number of overstays continues to grow, and as government reports have consistently pointed out, enforcement of overstays has been a low priority. This section recommends that efforts be made to retool existing agency components to adequately address the overstay issue. An example of retooling existing components occurred in 2005 when the U.S. Border Patrol (USBP) in conjunction with the DOJ initiated Operation Streamline in the Del Rio area of Texas.¹²⁷ Operation Streamline, has expanded to most of the southwest border of the United States and is defined as a zero-tolerance approach for entry without inspection (EWI).¹²⁸ In this operation, zero tolerance is applied to an individual deemed amenable to criminal prosecution for violation of 8 U.S.C. 1325, “Improper Entry by an Alien,” in federal court.¹²⁹ In these cases, the alien who in the past may have been only administratively removed (i.e., deported in accordance with the INA) will be prosecuted and, if convicted, sentenced to federal incarceration and then removed from the United States.¹³⁰ In a GAO report, CBP indicated that Operation Streamline was a program intended to deter individuals from attempting to enter without inspection, by adding harsher consequences instead of just an administrative removal.¹³¹ Effects of the program vary depending on where one stands on the immigration issue. Those who believe the policy to be too harsh have indicated that the program is too expensive and has not accomplished its deterrent factor. On the basis of the drop of overall apprehensions that have occurred on the southwest border of the country, however, there are those who believe the program has been effective.

¹²⁷ Carla N. Argueta, *Border Security: Immigration Enforcement Between Ports of Entry*, CRS Report No. R42138 (Washington, DC: Congressional Research Service, April 19, 2016), 8, <https://fas.org/sgp/crs/homsec/R42138.pdf>.

¹²⁸ Argueta, 8.

¹²⁹ Argueta, 8.

¹³⁰ Argueta, 8–9.

¹³¹ Government Accountability Office, *Alien Smuggling: DHS Needs to Better Leverage Investigative Resources and Measure Program Performance along the Southwest Border* (Washington, DC: Government Accountability Office, July 22, 2010), 39, <https://www.gao.gov/products/GAO-10-328>.

2. Coordinated Enforcement Effort

For overstays, there has been no significant operation or enforcement action akin to Operation Streamline (zero-tolerance approach for entry without inspection).¹³² In keeping with the current government administration mantra of deterrence, it is recommended that ICE develop a coordinated enforcement operation with public advertisement and media notification in demonstrating that the location and apprehension of overstays is now a priority. Law enforcement agencies have employed similar techniques in combating narcotics in schools, as well as drinking and driving, to alert the public of the dangers and consequences. Similar tactics have also been employed by ICE. In 2013, as part of DHS's Blue Campaign targeting human trafficking, ICE used advertising through the use of billboards, pamphlets, and images to raise public awareness of this issue.¹³³

3. Reevaluate Current Efforts

HSI and ERO have numerous priorities ranging from criminal to administrative violations, and both branches indicate the need for additional personnel. For a proactive enforcement approach to work, ICE would have to reevaluate and re-task its existing personnel to truly make the location and apprehension of overstays a priority. The CTCEU sends out leads to HSI field offices for overstays considered to be a national security or public safety threat in addition to leads for student status violators. Those overstays who are not deemed a national security or public safety priority are sent to the local ERO office for action.

Each branch within ICE has established priorities, and the hiring of new personnel is costly and time-consuming, so the practicality of shifting a large number of resources to the overstay issue would undoubtedly have a negative effect on agencies' other priorities. To send a meaningful deterrent message and to make the most of the existing resources, an in-depth threat analysis should be conducted based on the data obtained from DHS overstay

¹³² Argueta, "Border Security: Immigration Enforcement Between Ports of Entry," 8.

¹³³ "DHS Blue Campaign," Immigration and Customs Enforcement, June 6, 2013, <https://www.ice.gov/factsheets/dhs-blue-campaign>.

reports. The term *threat* in this context would be equated those countries with highest number of overstays. Much like police initiatives that focus on high crime rates, this system would be used to identify countries whose citizens have historically had a higher rate of overstaying. By focusing efforts on these chronic violators and conducting enforcement actions, it is anticipated that awareness would be created that the apprehensions of overstays is now a priority and that ICE is looking for those violators.

4. Preventive Measures

Concurrent with this interior enforcement initiative, DHS and DOS should coordinate information relating the number of overstays from a given country and review the visa denial rates from those countries to determine common trends. For example, if the Anywhere Province in China has been determined to have a higher number of overstays as well as a high number of visa denials, a stronger review of visa applications from that province should be conducted. In addition, to serve as a deterrent, the number of issued visas should be limited from countries with high overstay rates.

5. Summation

This section describes a recommendation focused solely on an enforcement-minded approach; therefore, the likelihood of full implementation is unlikely. Although a change in priorities within ICE would not need congressional approval, these actions would be scrutinized and questioned by many. As of this writing, a full-out enforcement approach would receive mixed support in the media. The liberal side will undoubtedly call this a misuse of assets because it does not target the “bad of the bad” but rather those who are just trying to improve their lives. The conservative side would most likely praise the action as taking a stern look toward illegal immigration but call for even further action. Countries with citizens being removed from the United States might call for suspension of the program for various reasons, a common one being that it negatively affects its citizens and forces them into hiding or incarceration. A lesser known reason to the general public would be that the removal of a country’s citizens from the United States may have a negative impact on the economic situation of that country.

The economies of many countries rely on money being sent back by its citizens working in the United States to their home country. In 2017, the UN issued a report estimating that Mexico receives approximately \$28 billion annually from its citizens living abroad.¹³⁴ The UN report indicated that approximately \$445 billion was remitted by migrants working in other countries, with the top receiving countries being India, China, the Philippines, and Mexico.¹³⁵ Three of these countries (India, China, and Mexico) also rank high on the number of their citizens who overstay their permitted length of stay in the United States during 2016, with Mexico having close to 53,000, China over 39,000, and India over 30,000.¹³⁶ The UN reported that 75% of the remitted funds sent back by the migrant works are used by the families to pay bills, for housing, and to purchase daily essentials, including food.¹³⁷ Countries for which the influx of funds from the United States helps their populace may have less incentive to help the United States in assisting in the repatriation of its citizens, thus creating another obstacle for the United States in its enforcement initiatives because travel documents are needed to remove an individual.

Another glaring issue that would affect an enforcement surge as recommended in this section is the cost. For 2016, it was estimated that ICE spent \$3.2 billion on immigration enforcement, including locating, arresting, processing, and removal of overstays.¹³⁸ In an article debating the costs of removal versus the cost of illegal immigration, the Center for Immigration Studies indicated that in 2016 the enforcement process by ICE for illegal aliens averaged nearly \$11,000 per individual. If the estimated number of overstays is approximately four million, enforcement action would cost roughly \$44 billion. Fiscally, such an operation does not seem feasible; taking into consideration the limited detention space and the strain such actions would put on the EOIR, this action

¹³⁴ United Nations, International Fund for Agricultural Development, *Sending Money Home: Contributing to the SDGs, One Family at a Time* (Rome, Italy, June 2017), 29, <https://www.ifad.org/web/knowledge/publication/asset/39407416>.

¹³⁵ United Nations, International Fund for Agricultural Development, 7, 24, 28.

¹³⁶ Department of Homeland Security, *Fiscal Year 2016 Entry/Exit Overstay Report*, 16–30.

¹³⁷ United Nations, International Fund for Agricultural Development, *Sending Money Home*, 39.

¹³⁸ Octavio Blanco, “How Much It Costs ICE to Deport One Undocumented Immigrant,” *CNNMoney*, April 13, 2017, <https://money.cnn.com/2017/04/13/news/economy/deportation-costs-undocumented-immigrant/index.html>.

would seem not to be a realistic or obtainable goal. With a constant increase in the illegal alien population in the overstay category alone of roughly 600,000 a year, however, new steps should be taken to address those who are already here and deter future overstays. The next section highlights a more rounded recommendation to address the overstay issue.

B. RECOMMENDATION II: BALANCING AWARENESS, ENFORCEMENT AND ACTION

The phrase “a balanced approach” is constantly used in describing a way to address a problem. To address the overstay issue, it is recommended that the approach be not only balanced in its implementation but also layered, or multi-layered, to address known weaknesses in the current policies being employed. To achieve a balanced approach, efforts would have to be implemented to deter individuals from overstaying in the future and offer a proactive approach to address those who have already overstayed. The subsections that follow provide examples of how to address these issues.

1. Deterrence through Awareness

As highlighted in Chapter III, the U.S. government is very proactive in providing helpful information to potential travelers; at the same time, the government falls short lacks in providing information and warnings related to violating the INA. In 2018, CBP announced the enactment of an e-mail notification program for individuals who are nearing the end of their stay or who have already overstayed.¹³⁹ This program is limited to nonimmigrants who entered under the VWP, but it is anticipated that the program will be expanded to other individuals in the future. Although this is a step forward in regard to notification, as a deterrent to prevent one from deciding to overstay, it would appear that the program is being implemented too late in the overall process. To provide a more meaningful or deterring message, the consequences of becoming an overstay should be highlighted earlier in the admission process.

¹³⁹ Customs and Border Protection, “CBP Reminds Travelers of Time Remaining in the US with Expanded I-94 Website Feature and Email Notifications.”

A 2017, research paper published in the *Journal of Consumer Marketing* studied the effects of image-based persuasion in advertising.¹⁴⁰ Although this report focused on the effects of images in advertising products, it underlines the importance of pictures and images in advertising.¹⁴¹ The report indicates that images are more readily assimilated by an individual than words alone, which would indicate that a visual aid may assist in getting an effective message across to the viewer.¹⁴² Effective advertisement of the consequences of overstaying as described in the paragraphs that follow can be implemented in several ways.

For those who apply for an NIV, the DOS has the first opportunity to make individuals aware that becoming an overstay in the United States is illegal and could have severe consequences. DOS could accomplish this by using a layered approach. The first and most significant way would be via the online application process of the DS-160. To heighten awareness, an acknowledgment statement should be added as part of the existing signature block. This statement would require the applicant to acknowledge a statement that could be phrased as follows: “I understand that if I, the applicant, violate my terms of admission or overstay my length of admission, I may be subject to fines, arrest, incarceration, and/or removal.” Having an individual acknowledge that there could be potential negative impacts if he or she overstays is a great awareness tool. Much like a flashing warning sign, this may make an individual aware of the hazards. In addition, by acknowledging this, in the event that the individual becomes an overstay, the signed statement could be used as evidence for the government in an administrative hearing, indicating that the individual knew overstaying was a violation of the law. Unlike the ESTA process in which the applicant waives his or her right to hearing, this would be a warning that the applicant would acknowledge, similar to the warning against perjury and false statements that are already on the application.

¹⁴⁰ Marine Kergoat, Thierry Meyer, and Alain Merot, “Picture-Based Persuasion in Advertising: The Impact of Attractive Pictures on Verbal Ad’s Content,” *Journal of Consumer Marketing* 34, no. 7 (November 13, 2017): 624, <https://doi.org/10.1108/JCM-01-2016-1691>.

¹⁴¹ Kergoat, Meyer, and Merot, 632.

¹⁴² Kergoat, Meyer, and Merot, 625.

A second layer could be added by DOS on their website—specifically, the NIV sections. This can be accomplished by placing a warning message on the bottom of every related page, indicating the negative consequences of becoming an overstay. The final area within the DOS realm would be in the visa offices themselves. Advertisements of initiatives or programs is nothing new in government offices, and this would be no different. A poster or sign highlighting possible incarceration or deportation may make the individual realize that the U.S. government take this issue seriously.

For those who enter through the VWP, notification of the consequences of overstaying could easily be implemented by way of the ESTA process. All VWP participants have to use ESTA, acknowledging that they have no right to contest removal or see an immigration judge; an acknowledgment of the dangers of overstaying could easily be added to the process.

As indicated in previous chapters, all individuals desiring entry into the United States from a foreign point of origin are subject to an immigration inspection, during which an individual's citizenship and alienage is determined.¹⁴³ These inspections are conducted at POEs staffed by government employees and designated as government facilities in the United States.¹⁴⁴ Within these facilities are government markings and signage that provide various types of information to visitors, including which line to stand in or penalties for violating U.S. laws. The warning signs are typically geared toward deterring the smuggling of contraband into the United States, which can include narcotics, fruit, meat, and weapons. In addition, there are signs regarding the declaration requirements for currency. These signs and warnings provide visitors information related to their upcoming inspection. Although there are numerous warning signs related to the upcoming inspection, there are no warnings regarding individuals' responsibility to abide by laws once they leave the POE.

The concept of visual advertising that portrays consequences is currently employed by ICE in the area of marriage fraud. In 2014, ICE began an initiative to make individuals

¹⁴³ Ruth Ellen Wasem, *Border Security: Inspections Practices, Policies, and Issues*, CRS Report No. RL32399 (Congressional Research Service, May 26, 2004), 11, <https://www.everycrsreport.com/reports/RL32399.html>.

¹⁴⁴ Wasem, 8.

aware of the dangers and consequences of committing marriage fraud.¹⁴⁵ As part of this initiative, ICE created pamphlets and posters highlighting the consequences of committing marriage fraud. The posters, which have been distributed to various city, state, and federal organizations, contain images of two aisles—one in a church and one in jail—in a way that captures attention, as seen in Figure 4.¹⁴⁶

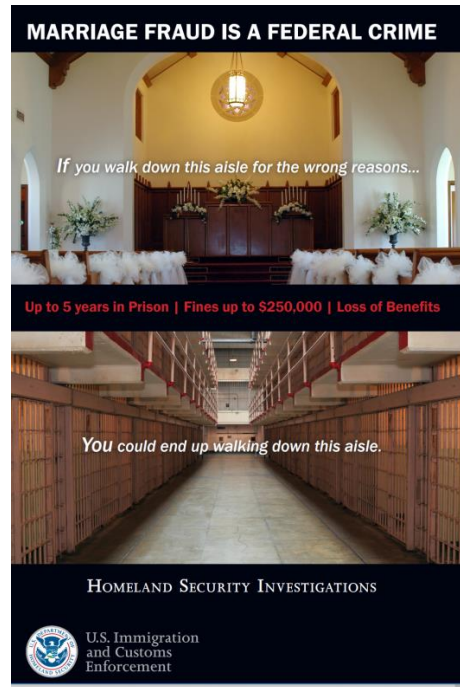


Figure 4. HSI Marriage Fraud Initiative¹⁴⁷

The ICE-HSI posters are referenced in this thesis as an example of a preventive measure that CBP could employ to deter overstays. By displaying an image that visually stimulates and provides a written message, CBP may be able to make individuals more

¹⁴⁵ “ICE Leading Nationwide Campaign to Stop Marriage Fraud,” Immigration and Customs Enforcement, April 2, 2014, <https://www.ice.gov/news/releases/top-story-ice-leading-nationwide-campaign-stop-marriage-fraud>.

¹⁴⁶ Immigration and Customs Enforcement.

¹⁴⁷ “Identity and Benefit Fraud,” Immigration and Customs Enforcement, accessed August 16, 2018, <https://www.ice.gov/identity-benefit-fraud>.

aware of the consequences of becoming an overstay. All visitors have to pass through a POE, so CBP has the opportunity to make a visual presentation of this issue by implementing posters or digital messages on TV screens. In addition, upon conclusion of the inspection, all nonimmigrants should be provided an information card that warns them of the penalties of becoming an overstay.

In addition to advertisement at the POE, CBP should make the dangers and consequences of overstaying a prominent feature on its website. An example of such a tactic can be seen on the Royal Thai Police Immigration Bureau (RTPIB) website. The RTPIB website has a rotating banner on its home page highlighting the penalties of being an overstay and providing online services to potential visitors.¹⁴⁸ In addition, the RTPIB has taken advantage of social media as an advertisement tool by publishing an informational video regarding the penalties and consequences of overstaying ones' visit in Thailand. The YouTube video, titled "New Overstay Thailand Regulation" highlights a change in Thailand's immigration law relating to overstays.¹⁴⁹ Although not of high quality, the video highlights the changes in the law with the added consequences of being barred from reentering the country if one is found to have overstayed.¹⁵⁰ CBP has several videos on its website that encourage travel to the United States and explain procedures at entry, but these videos do not enlighten the viewers about the dangers and consequences of violating the U.S. immigration laws, specifically overstaying one's admission.

To maintain an effective awareness campaign, the capabilities of USCIS should be used as well. For nonimmigrants to extend their stay or adjust status, they have to use USCIS services, whether virtually or in person. Warnings regarding overstaying one's status could be added to the USCIS website. In addition, to reinforce the importance of not overstaying, USCIS should provide a warning statement on all forms that one might use to apply for an extension or adjustment of status. On most applications for an immigration

¹⁴⁸ Royal Thai Police Immigration Bureau, "Immigration Bureau: Immigration Office," accessed August 16, 2018, <https://www.immigration.go.th/index>.

¹⁴⁹ Thai Immigration, "New Overstay Thailand Regulation," YouTube video, 2:38, posted by Thai Immigration, January 19, 2016, <https://www.youtube.com/watch?v=NQkaE2aido4>.

¹⁵⁰ Thai Immigration, "New Overstay Thailand Regulation."

benefit, there is a certification section in which individuals acknowledge knowing that if they provide false information and/or documentation, as seen in Figure 5, they are subject to possible penalties.¹⁵¹ It is recommended that a phrase be added to this section indicating that applicants are aware that they are subject to removal from the United States if they are deemed to have violated their length of admission. Although one could argue that the effectiveness of these paper warnings is in doubt because fraud in immigration benefits has been a prevalent issue for the INS and now for the USCIS, the placement of this warning does advise the applicant and also promotes the message that the government is cognizant of the overstay issue.¹⁵²

Applicant's Certification

I certify, under penalty of perjury, that the information in my form and any document submitted with my form is true and correct. Copies of any documents I have submitted are exact photocopies of unaltered original documents, and I understand that USCIS may require that I submit original documents to USCIS at a later date. Furthermore, I authorize the release of any information from any and all of my records that USCIS may need to determine my eligibility for the benefit that I seek.

Figure 5. Applicant's Certification¹⁵³

In regard to ICE, it is responsible for monitoring and maintaining the Student and Exchange Visitor Information System (SEVIS) under the Student and Exchange Visitor Program (SEVP); therefore, it would seem appropriate for ICE to also participate in a

¹⁵¹ "Application to Extend/Change Nonimmigrant Status," U.S. Citizenship and Immigration Services, accessed August 18, 2018, <https://www.uscis.gov/i-539>.

¹⁵² Government Accountability Office, *Immigration Benefit Fraud: Focused Approach Is Needed to Address Problems* (Washington, DC: Government Accountability Office, February 15, 2002), 12, <https://www.gao.gov/products/GAO-02-66>.

¹⁵³ "Application to Extend/Change Nonimmigrant Status," U.S. Citizenship and Immigration Services, Accessed December 23, 2016 and August 18, 2018. <https://www.uscis.gov/i-539>.

proactive public awareness campaign with the goal of dissuading overstays.¹⁵⁴ As indicated in the DHS overstay report published in 2017, student nonimmigrant visitors had the highest percentage of overstays, with a 5.48% rate equating to 79,818 out of over 1.4 million admitted.¹⁵⁵ Unlike other classes of nonimmigrants, those in the student NIV program are highly scrutinized and monitored. For aliens to study or participate in an exchange program, they must apply to a school or program approved by the U.S. government, and through the use of SEVIS, an electronic review and tracking of individuals' attendance is conducted.¹⁵⁶ ICE is the agency with responsibilities for the SEVP; therefore, ICE provides detailed information on several webpages within its website regarding SEVIS and the steps a nonimmigrant must complete. Much like its sister agencies, ICE is lacking in the consequences section. There are no warnings to dissuade one from overstaying. Although there is a section on the ICE website with a paragraph about maintaining an individual's status and a link to the DHS webpage titled "Study in the States," the ramification of overstaying one's admission is not made known.¹⁵⁷ By creating warning banners related to overstays in the student-related sections of its website, ICE would be actively targeting the message to the class of highest offenders.

For most parents, a common phrase heard from children is, "I didn't know that it was wrong." In the case of overstays, one could argue the same thing based on the lack of awareness in place regarding the conditions of one's status and length of stay. A proactive advertisement approach by the government is needed for two main reasons: First, it makes the public aware that non-adherence to the law is illegal and has repercussions. Second, and perhaps more important, highlighting the consequences through a proactive approach, emphasizes the message that this matter is important to the U.S. government and that the

¹⁵⁴ Andorra Bruno et al., *Immigration Legislation and Issues in the 113th Congress*, CRS Report No. R43320 (Washington, DC: Congressional Research Service, November 4, 2014), 22–23, <https://fas.org/sfp/crs/homsec/R43320.pdf>.

¹⁵⁵ Department of Homeland Security, *Fiscal Year 2016 Entry/Exit Overstay Report*, 13.

¹⁵⁶ Alison Siskin, *Monitoring Foreign Students in the United States: The Student and Exchange Visitor Information System (SEVIS)* (Washington, DC: Congressional Research Service, January 14, 2005), 4–6.

¹⁵⁷ "Student Process Steps: How to Navigate the U.S. Immigration System," Immigration and Customs Enforcement, accessed August 18, 2018, <https://www.ice.gov/sevis/students>; "Study in the States," Department of Homeland Security, <https://studyinthestates.dhs.gov/>.

government is paying attention. Going back to the analogy of deciding to commit a crime, if one has that intention and knows no one is looking, the dissuading factors would quickly dissipate. On the other hand, in the matter of overstaying, if someone has doubts and those doubts are now hindered by the possibility of being caught due to an increased government presence, this may lessen the possibility that an individual decides to overstay.

Although an awareness campaign may get the message out that it is illegal to overstay, to make the message effective, the U.S. government must also be persistent in enforcing the applicable laws related to overstays, as discussed in the following section.

2. Consistent Enforcement

Consistent enforcement of the nation's immigration laws has not been a standard practice in the United States. As indicated in Chapter III of this thesis regarding enforcement of immigration laws in the workplace, since 1986 the U.S. government has changed its approaches and tactics, ranging from a hardline approach to enforcement or a soft-gloves approach. Mark Krikorian, the executive director for the Center of Immigration Studies, is a frequent congressional witness on immigration matters. His view is that constant immigration enforcement will lead to the decrease of illegal immigration because the arrests will encourage others to leave. He emphasizes, however, that the United States has never had a consistent approach on enforcing the nation's immigration laws.¹⁵⁸

In concert with other policy recommendations, a consistent enforcement policy is recommended. As mentioned throughout this thesis, there has been constant focus and attention geared toward illegal immigration as it relates to EWI, but the focus on overstay enforcement has not been consistent or prominent. In fact, there have been times when the agencies responsible for enforcement were restricted from enforcing parts of the immigration laws through the establishment of governmental directives. A recent example of these restrictions occurred in 2014 with the issuance of the "Policies for the Apprehension, Detention and Removal of Undocumented Immigrants" memorandum by

¹⁵⁸ Mark Krikorian, "Attrition through Enforcement Will Work" (blog), Center for Immigration Studies, April 2, 2006, <https://cis.org/Attrition-Through-Enforcement-Will-Work>.

DHS Secretary Jeh Johnson.¹⁵⁹ This memorandum created priorities for immigration enforcement, thus limiting the agencies to enforce only the laws related to these priorities. In 2017, DHS agencies responsible for immigration enforcement were instructed to no longer restrict enforcement activities and are apparently becoming more proactive.¹⁶⁰ The agencies tasked to enforce the INA have limited resources and numerous responsibilities, so a consistent, targeted approach should be developed.

To do this, DHS and its components should start with a manageable initiative but one that could communicate to potential violators that enforcement is taken seriously and that there are consequences. The first area to take this stance would be for one of the magnets mentioned previously—the opportunity to find employment. In 2017, ICE began to renew its focus on enforcing immigration laws in the workplace by announcing that it will prioritize this programmatic area and increase its time working on these types of investigations.¹⁶¹ Employment and the economic benefits will continue to be a magnet for individuals. To combat this incentive, a balanced approach that addresses both parts of the employment angle, the employee and employer, is necessary. The use of regulatory methods to fine employers or criminal investigations that end with arresting employers would address the source—that is, the employers. In concert with this, administrative arrests that focus on the supply end, illegal aliens, would have to be factored in. It is not a standard practice for ICE to arrest those individuals found to be out-of-status during an I-9 inspection.¹⁶² In reality, based on the resources of ICE, to do so would be impractical. If a deterrent message is to be sent, ICE should focus its efforts on the employers determined to be the biggest violators and then focus its resources on addressing those violators with

¹⁵⁹ Johnson, “Policies for the Apprehension, Detention and Removal of Undocumented Immigrants.”

¹⁶⁰ John Kelly, “Enforcement of the Immigration Laws to Serve the National Interest” (official memorandum, Washington, DC: Department of Homeland Security, February 20, 2017), <https://www.dhs.gov/publication/enforcement-immigration-laws-serve-national-interest>.

¹⁶¹ Muzaffar Chishti Bolter, Sarah Pierce, and Jessica Bolter, “Shifting Gears, Trump Administration Launches High-Profile Worksite Enforcement Operations,” Policy Beat, January 24, 2018, <https://www.migrationpolicy.org/article/shifting-gears-trump-administration-launches-high-profile-worksite-enforcement-operations>.

¹⁶² “Form I-9 Inspection Overview,” U.S. Immigration and Customs Enforcement, January 8, 2018, <https://www.ice.gov/factsheets/i9-inspection>.

the means at their disposal, including criminal charges, regulatory fines, and/or administrative arrests.

Although employment is an incentive for individuals to remain in the United States, enforcement in the workplace alone will not address or deter the issue. With an estimated four million plus overstays in the United States and hundreds of thousands overstaying on a yearly basis, identifying and arresting all the violators is not a realistic approach. ICE's enforcement components prioritize overstays for investigation based on national security and public safety threats. This practice should continue, but the following suggestions should be considered in concert with the aforementioned awareness campaigns as a way of deterring individuals from overstaying.

Through an examination of existing data, including rate of visa refusals at U.S. consulates and embassies and the overstay data maintained by the DHS, a threat-based matrix could be established. This matrix would identify the nations with the highest rate of refusals and overstays. By identifying the leading violators, a coordinated enforcement on recent overstays—two years or less—would be initiated. Although this coordinated surge may be criticized by some members of the public and media, the tactic is no different from a coordinated police surge in designated high-crime areas. The primary focus would be to apprehend the violators, but the secondary focus would be to convey the message that the act of overstaying is no longer a secondary concern and is being enforced. The matrix would identify the countries with the highest number of violators, and the goal would be to get out the message to dissuade future individuals from overstaying because the consequences outweigh the risk. The threat matrix approach can also be used in the area of VWP as well.

3. Creation of New Policies and Laws

The prior subsections list recommendations that could be implemented in some respect without changes to law or overall policy. Although those recommendations are a start, as this research has shown, either there are factors that create opportunities for individuals to overstay, or the repercussions may not have enough “bite” to really deter one from acting. In addition, one must be cognizant that mistakes can be made; an individual

might have overstayed and subsequently wants to resolve the situation, but the options are limited. To provide a balanced or “carrot-and-stick” approach, the following recommendations are suggested. Knowing that some of these recommendations would require an amendment or change to the INA or other federal laws, the likelihood of this occurring is low, unless the governing bodies can come to a consensus.

4. The “Stick”

Individuals who enter the United States via an NIV and subsequently overstay their length of admission can be placed in removal proceedings in which an immigration judge with the EOIR will make a determination whether that the individual should be removed or can remain in the United States. The hearing process administered by the EOIR can be a timely process; a majority of those in removal proceedings are not in custody while awaiting their hearing dates. Syracuse University, through TRAC, constantly conducts research on data related to immigration removal hearings.¹⁶³ In June of 2018, the TRAC indicated that a growing backlog in the EOIR significantly delays immigration proceedings, and the time for a decision to be made has increased from less than one year to close to a year and half.¹⁶⁴ Those waiting for a decision while in a quasi-limbo status in the United States may be able to find employment or another ways to adjust status—for example, through a petition from a U.S. citizen, likely through a marriage. This ability to remain and possibly find employment can be seen as another incentive to violate one’s status and become an overstay, since the repercussions do not outweigh the potential gains.

In contrast, an individual who enters the United States under the VWP does not have these same options. As previously described in this thesis, applicants under the VWP have waived their right to an immigration hearing if they are found to be in violation of the INA, including overstaying their length of admission. Unlike NIV visitors who overstay their length of admission and will be served an NTA and then go before the EOIR, a VWP violator can be taken into custody and removed at the earliest convenience of the U.S. government. The lack of hearing is not the only disadvantage of the VWP for those looking

¹⁶³ Syracuse University, “TRAC: About Us.”

¹⁶⁴ Syracuse University, “Immigration Court Backlog Jumps While Case Processing Slows.”

for opportunities to remain in the United States; another major difference between the two programs is that except in certain circumstances, a VWP applicant is ineligible to adjust status. The lack of a hearing and the inability to adjust status can be very problematic for an individual wishing to stay in the United States. Immigration lawyers are cognizant of this as well, and in some cases, place public notices on their websites warning potential visitors of the disparities between the two programs and the disadvantages of the VWP for those desiring to remain in the United States.¹⁶⁵

Could this lack of options be a reason that, numerically and statistically, individuals admitted under the VWP overstay less than those admitted with an NIV, even though more individuals enter as visitors under the VWP than the NIV?¹⁶⁶ Unfortunately, this a question that may not be answered reasonably because it would require asking individuals about their decisions process at the time. A counter to the idea that the lack of a hearing or not having the ability to adjust status for VWP applicants who do not overstay could be that individuals under the VWP are for the most part are economically stable, come from countries with governments that are not oppressive and democratic in nature, and have opportunities for employment; thus individuals from VWP countries would be less likely to want to remain in the United States. Many countries that require an NIV do not have the aforementioned options, and as a result, remaining in the United States, even as an overstay, may be an incentive to risk violating the law. Part of this policy recommendation is to lessen the incentive to overstay once admitted; therefore, a deterrent should be added to the NIV process similar to those in place with the VWP. It is therefore recommended as described in the following paragraph that a change be implemented in the NIV application process and subsequent law pertaining to visa issuance.

Similar to the regulation prescribed in Section 217(b) of the INA where an applicant must waive his or her right to an immigration hearing, a similar requirement should be

¹⁶⁵ Robert Reeves and Eric Welsh, “Dangers and Limitations of Entry Under the Visa Waiver Program,” Reeves Immigration Law Group (blog), April 26, 2011, <https://www.rreeves.com/immigration-news/dangers-and-limitations-of-entry-under-the-visa-waiver-program/>.

¹⁶⁶ Department of Homeland Security, *Fiscal Year 2016 Entry/Exit Overstay Report*, 13.

added to the visa application section of Section 222 of the INA.¹⁶⁷ Section 222 of the INA details the requirements to apply for an NIV. A subsection could be added using similar language as in Section 217(b). This requirement could be instituted in the NIV application process in which the applicant must acknowledge and certify understanding of this condition when electronically signing this application. Similar to the process being implemented in the VWP via ESTA, the electronic record will be on file and maintained by the U.S. government. By implementing this requirement at the NIV application stage, the applicant is notified in the beginning that a violation of the INA, including violation of one's length of admission, will be terms for automatic removal. Although some might claim that negating a removal hearing is "un-American," this procedure is already authorized in the INA as it relates to the VWP, and in certain cases at the POEs, expedited removal is used with an individual being removed without a hearing.¹⁶⁸ For the U.S. government, the addition of this waiver requirement would lessen the number of new cases brought before the EOIR; this policy would not be retroactive and applied only to new NIV applicants going forward. The intent of an NIV is to provide an individual a limited stay in the United States; much like the VWP, it is counterproductive for the U.S. government to provide opportunities for individuals to remain in the United States past their length of admission.

During the NIV process, the individual must prove to the consular officer that he or she does not have the intent to remain in the United States and that the purpose is to visit for a limited time and subsequently leave the United States.¹⁶⁹ As part of the NIV process, the applicant must sign the DS-160 application on which applicants acknowledge that they are providing truthful answers and could face penalty charges if the information is

¹⁶⁷ 8 U.S. Code § 1187—Visa Waiver Program for Certain Visitors.

¹⁶⁸ 8 CFR § 235.3—Inadmissible Aliens and Expedited Removal, accessed August 28, 2018, <https://www.gpo.gov/fdsys/granule/CFR-2012-title8-vol1/CFR-2012-title8-vol1-sec235-3>.

¹⁶⁹ 8 U.S.C. § 1184—Admission of Nonimmigrants, accessed August 28, 2018, <https://www.gpo.gov/fdsys/granule/USCODE-2011-title8/USCODE-2011-title8-chap12-subchapII-partII-sec1184>.

determined to be untruthful.¹⁷⁰ Having declared that their information is truthful and that their intent is not to become an immigrant (an individual who desires to remain in the United States), the subsequent act of applicants' overstaying their length of admission in theory negates their acknowledgment on the DS-160; they have now become individuals who desire to remain in the United States—that is, immigrants. By adding a waiver of rights portion similar to the one in the VWP, the U.S. government would have the ability to quickly remove an individual who had already declared no intent to permanently remain in the United States. The inclusion of this amendment to the NIV application process would not preclude an individual who entered the United States from applying for an extension of stay or adjustment of status if that person meets the requirements for such benefits. The purpose of this amendment to the process is to (a) inform applicants at the beginning that they will be subject to immediate removal and (b) provide the U.S. government a more expedient and less costly way to enforce the INA.

As indicated previously, an individual who commits fraud or misrepresentation in the NIV application process could face criminal charges, including perjury. There are no applicable criminal charges for overstaying one's length of admission. In 2015 and 2017, Representative Lou Barletta (R-PA-11) introduced bills in the House of Representatives that would criminalize the act of overstaying one's admission.¹⁷¹ The current bill before Congress, H.R. 643, titled "Visa Overstay Enforcement Act of 2017," would make overstaying one's length of admission a misdemeanor for the first offense, and subsequent violations would result in a felony conviction.¹⁷² The bill requires that notice of the penalties for overstaying be made known during the application and admission process and places restrictions on individuals attempting to obtain a new visa or reenter the United

¹⁷⁰ "DS-160: Frequently Asked Questions," Department of State, accessed August 28, 2018, <https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/forms/ds-160-online-nonimmigrant-visa-application/ds-160-faqs.html>.

¹⁷¹ Lou Barletta, "Barletta Bill Makes Overstaying Visa Criminal Offense," Congressman Lou Barletta, January 27, 2017, <https://barletta.house.gov/media-center/press-releases/barletta-bill-makes-overstaying-visa-criminal-offense-0>.

¹⁷² Visa Overstay Enforcement Act of 2017, Pub. L. No. H.R. 643 (2017), <https://www.congress.gov/bill/115th-congress/house-bill/643/text>.

States.¹⁷³ Criminalizing overstaying one's length of admission could be seen as another deterrent to a decision to overstay. A recommendation for this bill would be the inclusion of a clause mandating that if an individual is convicted under this law, that person would be found in violation of Section 237(a)(1)(b) of the INA, Present in Violation of Law, and subject to removal. Having this addition would forgo the need to have a separate hearing before the EOIR to determine if the individual should be removed.

5. The "Carrot"

The preceding paragraph details the creation of law that for all practical purposes address future overstays. Those individuals who are currently in the United States as overstays, would not be affected these new laws. These individuals have limited options to resolve their status. If they are unable to adjust or change status, they can leave on their own, remain in the United States illegally, or be apprehended and possibly removed. In addition, current laws also limit options. Section 212(a)(9)(B)(i)(I) of the INA (8 U.S.C. 1182) bars individuals from entering the United States for three years if they were previously in the United States unlawfully for a period over a 180 days but less than a year.¹⁷⁴ Individuals who remain in the United States unlawfully for more than a year are subject to being barred from entering the United States for 10 years.¹⁷⁵ A way to provide another option can be seen in Australia.

In Australia, the primary immigration agency is the Australian Border Force (ABF). Much like its U.S. counterparts, the ABF has a traditional law enforcement approach to unlawful noncitizens, with the possibility of arrest, incarceration, and deportation as a result. What the ABF has its disposal that the U.S. agencies do not is a service-based and noncustodial alternative. Through the Home Affairs Department, the Australian government has created a balanced approach to dealing with the overstay issue using its website and alternative enforcement programs.

¹⁷³ "Visa Overstay Enforcement Act."

¹⁷⁴ 8 U.S. Code § 1182–Inadmissible Aliens.

¹⁷⁵ 8 U.S. Code § 1182–Inadmissible Aliens.

The Home Affairs website has a section titled “Status Resolution Service.” This is an informational area that targets individuals who have become or may soon become overstays. The webpage reemphasizes that a noncitizen must be lawful while in Australia and that this is primarily done through a visa.¹⁷⁶ The site mentions that the ABF is the law enforcement arm and actively seeks individuals in violation of the law. It lays out the consequences, but it is equally balanced in providing options to an individual who is or might become an overstay.¹⁷⁷ The webpage has a hyperlink to a section titled “My visa is about to expire or expired.” The webpage offers two main options: “I want to depart” and “I want to extend my stay.” A review of both options reiterates the repercussions of being in Australia unlawfully, with the possibility of arrest, detention, and removal. Both sites, however, provide a softer approach, with the goal to help the individual avoid the enforcement side and eventually depart Australia without a reentry ban. This softer approach is made possible through the existing Bridging Visa E (BVE) program.

The BVE is authorized under the Migration Act of 1958 and can be seen as a transition visa. If granted, the BVE provides an individual a legal status for a temporary time frame. The BVE is used for individuals who try to adjust their status to a more permanent one and for those who are making arrangements to depart but do not want to fall into an unlawful status, which has more serious repercussions. Applying for the BVE is not a guarantee that one will be approved; there are some exempt categories, including a criminal history, national security reasons, and fraud.¹⁷⁸

As previously stated, if one is an overstay in the United States, there are limited options to resolve immigration status. For most overstays, there is no other legal recourse to deal with this issue or to provide them an opportunity to come out of the shadows without fear of detention. Taking into consideration the approach that Australia uses, a similar BVE

¹⁷⁶ Department of Home Affairs, “Status Resolution Service,” Department of Home Affairs, accessed April 14, 2018, <https://www.homeaffairs.gov.au/trav/visa/visa-about-to-expire-or-expired/status-resolution-service>.

¹⁷⁷ Department of Home Affairs.

¹⁷⁸ “Why Has My Visa Application Been Refused?” Department of Home Affairs, accessed April 14, 2018, <https://www.homeaffairs.gov.au/lega/lega/form/immi-faqs/why-has-my-visa-application-been-refused>.

program could implemented in the United States. To avoid providing an amnesty option or directly affecting other sections of the INA adversely, a BVE in the United States should be limited to those individuals who have overstayed their admission and remained in United States less than a year. A major hurdle with the enactment of a BVE-type program is that it would take congressional action to be implemented. In the current political climate, this may be a difficult task, but if the program is balanced with a sense of helping an individual and with adequate repercussions for violators, this may appease legislators. To reach this goal, the following parameters are recommended:

- Bridge visas would provide an individual 45 additional days to depart the United States without facing deportation or being barred from entering the country for three years.
- Applicants would have to apply with ICE and be fingerprinted at the time of the application.
- A minimal cost for the application would be charged to cover the biometric process.
- Applicants would be ineligible if they have committed any crime, become a national security interest, or committed fraud on their application.
- Applicants would acknowledge that if they apply for a bridge visa and are granted this visa, they will comply with the conditions and depart on or before the 45-day mark.
- As part of the application process, applicants would waive any right to immigration hearing if they violate the conditions of bridge visa.
- In accordance with Section 222 of the INA, individuals' original visas would be cancelled because they overstayed, and they would have to reapply for a new visa if they desire to return to the United States.

- With enactment of a bridge visa program, ICE would create a service-based webpage for this program.

The creation of a bridge visa program in the United States would be seen as a way to provide overstays a grace period to depart the country without hiding in the shadows and fearing immediate incarceration. The program also provides the government the opportunity to conduct checks on individuals and evaluate each application on merit. To do this effectively, outreach will also be key. Those who are in violation may not trust a government program, and it will take a softer approach to create a sense of trust. Developing public service announcements using all applicable media and creating an informative website would be as important as the creation of the statutory authority.

C. CONCLUSION

On August 7, 2018, as this thesis was being finalized, DHS issued its third overstay report. A summation of the report showed a continuing trend in the number of overstays in the United States. For the second straight year, the number of overstays was over 700,000.¹⁷⁹ The 2018 report covered FY 2017, and like prior reports, the data obtained are limited to air and seaport arrivals and departures only.¹⁸⁰ The 2018 report indicated that over 52 million nonimmigrants entered the United States, with 701,900 overstaying their length of admission, equating to a 1.33% rate of overstaying.¹⁸¹ Taking overall percentages into account, there were fewer overstays in FY 2017 than in FY 2016, but the sheer number of 700,000 is still alarming. The 2018 report indicates that as of May of 2018, the number of in-country overstays from the 2017 numbers is 421,325.

The overstay issue as described in this thesis is not a new phenomenon, but as the recent data show, it is a persistent and growing trend. Based on the 2017 and 2018 reports, in the span of two years, approximately 1.4 million individuals overstayed their legal length

¹⁷⁹ Department of Homeland Security, *Fiscal Year 2017 Entry/Exit Overstay Report* (Washington, DC: Department of Homeland Security, August 7, 2018), 10, <https://www.dhs.gov/publication/fiscal-year-2017-entryexit-overstay-report>.

¹⁸⁰ Department of Homeland Security, 12.

¹⁸¹ Department of Homeland Security, 12.

of admission. Unlike with the individuals who cross a border and come into the United States without inspection, for which a true number may never be known, with the overstay issue, the U.S. government has an idea of how many are violating the INA. With this continued growth, it would appear that new policies and actions should be developed to address this issue. These actions are presented as recommendations in this thesis.

As indicated in the beginning of this thesis, one of the goals of the research was to make the reader aware of the overstay issue in the United States and to know that it is a continuing problem related to illegal immigration. Historically, the focus on illegal immigration has been aimed at those who enter the United States without inspection, but the number of those who overstay has continued to rise. As previously stated, a constant fear is that terrorist individuals will enter the United States without inspection and subsequently wreak havoc in the country. At the time of this thesis report, there are no known reports of an individual coming into the country as an EWI and carrying out a terrorist attack in the United States. In contrast, several terrorist incidents have been committed by individuals who overstayed their length of admission. The most notable are Satam al-Suqami and Nawaf al-Hazmi, two of the nineteen 9/11 hijackers.¹⁸² Does the foregoing statement mean the U.S. government should not focus on EWIs because no terrorists have entered that way? Absolutely not. If the government were to abandon its focus on EWIs, a greater vulnerability would occur. As stressed in this thesis, there must be a balance, one that can address all the perceived vulnerabilities. The proposed policy recommendations attempted to incorporate a balanced yet focused approach by addressing several areas of the immigration process and by providing information and the ability to enforce the INA in a reasonable manner.

The U.S. immigration system is a large and complex entity. When one tries to analyze, modernize, or fix the system, one encounters obstacles and “rabbit holes” that complicate even the simplest of tasks. Immigration is a system of laws, rules, and legislation, but it has a human element: At the end of the day, the system has a direct impact

¹⁸²*National Commission on Terrorist Attacks upon the United States, The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks upon the United States*, loc. 17,734 of 17,890, Kindle.

on human beings. One of the overall problems is that no solution, no matter how sound, will be accepted by everyone. Many variables are at play, and the probability that changes and adjustments to the immigration system will be accepted by everyone is nil; undoubtedly someone or some section of society may not benefit from the change. There is no doubt that improvements to the current system are needed, but the individuals who end up with these tasks should keep in mind that even if the most efficient and fair system is developed, there will be those who will differ in opinion. It is the duty of those in government to ensure that the best policies and laws are in place for the security and prosperity of the nation.

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APPENDIX. NIV CHART

The following chart contains Nonimmigrant Visa Classifications.¹⁸³

Nonimmigrants

Symbol	Class	Section of law
A1	Ambassador, Public Minister, Career Diplomat or Consular Officer, or Immediate Family	INA 101(a)(15)(A)(i).
A2	Other Foreign Government Official or Employee, or Immediate Family	INA 101(a)(15)(A)(ii).
A3	Attendant, Servant, or Personal Employee of A1 or A2, or Immediate Family	INA 101(a)(15)(A)(iii).
B1	Temporary Visitor for Business	INA 101(a)(15)(B).
B2	Temporary Visitor for Pleasure	INA 101(a)(15)(B).
B1/B2	Temporary Visitor for Business & Pleasure	INA 101(a)(15)(B).
C1	Alien in Transit	INA 101(a)(15)(C).
C1/D	Combined Transit and Crewmember Visa	INA 101(a)(15)(C) and (D).
C2	Alien in Transit to United Nations Headquarters District Under Section 11.(3), (4), or (5) of the Headquarters Agreement	INA 101(a)(15)(C).
C3	Foreign Government Official, Immediate Family, Attendant, Servant or Personal Employee, in Transit	INA 212(d)(8).
CW1	Commonwealth of Northern Mariana Islands Transitional Worker	Section 6(d) of Public Law 94-241, as added by Section 702(a) of Public Law 110-229.
CW2	Spouse or Child of CW1	Section 6(d) of Public Law 94-241, as added by Section 702(a) of Public Law 110-229.
D	Crewmember (Sea or Air)	INA 101(a)(15)(D).
E1	Treaty Trader, Spouse or Child	INA 101(a)(15)(E)(i).
E2	Treaty Investor, Spouse or Child	INA 101(a)(15)(E)(ii).
E2C	Commonwealth of Northern Mariana Islands Investor, Spouse or Child	Section 6(c) of Public Law 94-241, as added by Section 702(a) of Public Law 110-229.
E3	Australian Treaty Alien coming to the United States Solely to Perform Services in a Specialty Occupation	INA 101(a)(15)(E)(iii).
E3D	Spouse or Child of E3	INA 101(a)(15)(E)(iii).
E3R	Returning E3	INA 101(a)(15)(E)(iii).
F1	Student in an academic or language training program	INA 101(a)(15)(F)(i).
F2	Spouse or Child of F1	INA 101(a)(15)(F)(ii).
F3	Canadian or Mexican national commuter student in an academic or language training program	INA 101(a)(15)(F)(iii).
G1	Principal Resident Representative of Recognized Foreign Government to International Organization, Staff, or Immediate Family	INA 101(a)(15)(G)(i).
G2	Other Representative of Recognized Foreign Member Government to International Organization, or Immediate Family	INA 101(a)(15)(G)(ii).
G3	Representative of Nonrecognized or Nonmember Foreign Government to International Organization, or Immediate Family	INA 101(a)(15)(G)(iii).
G4	International Organization Officer or Employee, or Immediate Family	INA 101(a)(15)(G)(iv).
G5	Attendant, Servant, or Personal Employee of G1 through G4, or Immediate Family	INA 101(a)(15)(G)(v).
H1B	Alien in a Specialty Occupation (Profession)	INA 101(a)(15)(H)(i)(b).
H1B1	Chilean or Singaporean National to Work in a Specialty Occupation	INA 101(a)(15)(H)(i)(b1).
H1C	Nurse in health professional shortage area	INA 101(a)(15)(H)(i)(c).
H2A	Temporary Worker Performing Agricultural Services Unavailable in the United States	INA 101(a)(15)(H)(ii)(a).
H2B	Temporary Worker Performing Other Services Unavailable in the United States	INA 101(a)(15)(H)(ii)(b).
H3	Trainee	INA 101(a)(15)(H)(iii).
H4	Spouse or Child of Alien Classified H1B/B1/C, H2A/B, or H-3	INA 101(a)(15)(H)(iv).
I	Representative of Foreign Information Media, Spouse and Child	INA 101(a)(15)(I).
J1	Exchange Visitor	INA 101(a)(15)(J).
J2	Spouse or Child of J1	INA 101(a)(15)(J).
K1	Fiance(e) of United States Citizen	INA 101(a)(15)(K)(i).
K2	Child of Fiance(e) of U.S. Citizen	INA 101(a)(15)(K)(iii).
K3	Spouse of U.S. Citizen awaiting availability of immigrant visa	INA 101(a)(15)(K)(ii).
K4	Child of K3	INA 101(a)(15)(K)(iii).
L1	Intracompany Transferee (Executive, Managerial, and Specialized Knowledge Personnel Continuing Employment with International Firm or Corporation)	INA 101(a)(15)(L).
L2	Spouse or Child of Intracompany Transferee	INA 101(a)(15)(L).
M1	Vocational Student or Other Nonacademic Student	INA 101(a)(15)(M)(i).
M2	Spouse or Child of M1	INA 101(a)(15)(M)(ii).
M3	Canadian or Mexican national commuter student (Vocational student or other nonacademic student)	INA 101(a)(15)(M)(iii).
N8	Parent of an Alien Classified SK3 or SN3	INA 101(a)(15)(N)(i).
N9	Child of N8 or of SK1, SK2, SK4, SN1, SN2 or SN4	INA 101(a)(15)(N)(ii).
NATO 1	Principal Permanent Representative of Member State to NATO (including any of its Subsidiary Bodies) Resident in the U.S. and Resident Members of Official Staff; Secretary General, Assistant Secretaries General, and Executive Secretary of NATO; Other Permanent NATO Officials of Similar Rank, or Immediate Family	Art. 12, 5 UST 1094; Art. 20, 5 UST 1098.
NATO 2	Other Representative of member state to NATO (including any of its Subsidiary Bodies) including Representatives, Advisers, and Technical Experts of Delegations, or Immediate Family; Dependents of Member of a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement or in Accordance with the provisions of the "Protocol on the Status of International Military Headquarters"; Members of Such a Force if Issued Visas	Art. 13, 5 UST 1094; Art. 1, 4 UST 1794; Art. 3, 4 UST 1796.
NATO 3	Official Clerical Staff Accompanying Representative of Member State to NATO (including any of its Subsidiary Bodies), or Immediate Family	Art. 14, 5 UST 1096.
NATO 4	Official of NATO (Other Than Those Classifiable as NATO1), or Immediate Family	Art. 18, 5 UST 1098.
NATO 5	Experts, Other Than NATO Officials Classifiable Under NATO4, Employed in Missions on Behalf of NATO, and their Dependents	Art. 21, 5 UST 1100.
NATO 6	Member of a Civilian Component Accompanying a Force Entering in Accordance with the Provisions of the NATO Status-of-Forces Agreement; Member of a Civilian Component Attached to or Employed by an Allied Headquarters Under the "Protocol on the Status of International Military Headquarters" Set Up Pursuant to the North Atlantic Treaty; and their Dependents	Art. 1, 4 UST 1794; Art. 3, 5 UST 877.
NATO 7	Attendant, Servant, or Personal Employee of NATO1, NATO2, NATO 3, NATO4, NATO5, and NATO6 Classes, or Immediate Family	Arts. 12-20, 5 UST 1094-1098.

¹⁸³ "22 CFR 41.12—Classification Symbols," accessed July 10, 2018, <https://www.gpo.gov/fdsys/granule/CFR-2012-title22-vol1/CFR-2012-title22-vol1-sec41-12>.

O1	Alien with Extraordinary Ability in Sciences, Arts, Education, Business or Athletics	INA 101(a)(15)(O)(i).
O2	Alien Accompanying and Assisting in the Artistic or Athletic Performance by O1	INA 101(a)(15)(O)(ii).
O3	Spouse or Child of O1 or O2	INA 101(a)(15)(O)(iii).
P1	Internationally Recognized Athlete or Member of Internationally Recognized Entertainment Group	INA 101(a)(15)(P)(i).
P2	Artist or Entertainer in a Reciprocal Exchange Program	INA 101(a)(15)(P)(ii).
P3	Artist or Entertainer in a Culturally Unique Program	INA 101(a)(15)(P)(iii).
P4	Spouse or Child of P1, P2, or P3	INA 101(a)(15)(P)(iv).
Q1	Participant in an International Cultural Exchange Program	INA 101(a)(15)(Q)(i).
R1	Alien in a Religious Occupation	INA 101(a)(15)(R).
R2	Spouse or Child of R1	INA 101(a)(15)(R).
S5	Certain Aliens Supplying Critical Information Relating to a Criminal Organization or Enterprise	INA 101(a)(15)(S)(i).
S6	Certain Aliens Supplying Critical Information Relating to Terrorism	INA 101(a)(15)(S)(ii).
S7	Qualified Family Member of S5 or S6	INA 101(a)(15)(S).
T1	Victim of a severe form of trafficking in persons	INA 101(a)(15)(T)(i).
T2	Spouse of T1	INA 101(a)(15)(T)(ii).
T3	Child of T1	INA 101(a)(15)(T)(ii).
T4	Parent of T1	INA 101(a)(15)(T)(ii).
T5	Unmarried Sibling under age 18 of T1	INA 101(a)(15)(T)(ii).
T6	Adult or Minor Child of a Derivative Beneficiary of a T1	INA 101(a)(15)(T)(ii).
TN	NAFTA Professional	INA 214(e)(2).
TD	Spouse or Child of NAFTA Professional	INA 214(e)(2).
U1	Victim of criminal activity	INA 101(a)(15)(U)(i).
U2	Spouse of U1	INA 101(a)(15)(U)(ii).
U3	Child of U1	INA 101(a)(15)(U)(ii).
U4	Parent of U1 under 21 years of age	INA 101(a)(15)(U)(ii).
U5	Unmarried Sibling under age 18 of U1 under 21 years of age	INA 101(a)(15)(U)(ii).
V1	Spouse of a Lawful Permanent Resident Alien Awaiting Availability of Immigrant Visa	INA 101(a)(15)(V)(i) or INA 101(a)(15)(V)(ii).
V2	Child of a Lawful Permanent Resident Alien Awaiting Availability of Immigrant Visa	INA 101(a)(15)(V)(i) or INA 101(a)(15)(V)(ii).
V3	Child of a V1 or V2	INA 203(d) & INA 101(a) (15)(V)(i) or INA 101(a) (15)(V)(ii).

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