

# CRS Report for Congress

## Immigration-Related Document Fraud: Overview of Civil, Criminal, and Immigration Consequences



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## Summary

In order to enter or remain in the United States and be eligible for various immigration-related benefits, non-citizens (aliens) must comply with a number of document requirements under the Immigration and Nationality Act (INA). Attempts to circumvent these requirements are generally prohibited. Under the INA, an alien who uses, acquires, or produces fraudulent documents for immigration-related purposes may be subjected to civil penalties and denied certain immigration benefits. Additionally, certain fraudulent actions may carry criminal penalties under both the INA or the United States Criminal Code. This report discusses the primary civil, criminal, and immigration-related penalties associated with immigration-related document fraud. It does not discuss criminal statutes generally penalizing fraud or identity theft (other than 18 U.S.C. § 1028), though these statutes could also potentially be used to penalize immigration-related document fraud.

Immigration reform will likely be an issue in the 110<sup>th</sup> Congress, and legislative proposals may contain provisions modifying the scope or penalties of laws restricting immigration-related document fraud. In the 109<sup>th</sup> Congress, several proposals were considered to comprehensively reform the immigration system. Although these proposals were often divergent in approach, many included similar provisions heightening the penalties for immigration-related fraud. Whether similar such proposals will be made in the 110<sup>th</sup> Congress remains to be seen.

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# Immigration-Related Document Fraud: Overview of Civil, Criminal, and Immigration Consequences

## Introduction

Reliable documents that accurately indicate the status and identity of the bearer are critical to the effective administration of immigration law. A range of documents, including immigrant and nonimmigrant visas, permits, border crossing cards, and alien registration receipt cards, may enable an alien to enter the United States and/or be eligible for various benefits for the duration of his or her stay. The integrity of the immigration system depends on the genuineness of (1) the documents indicating the eligibility of a non-citizen (alien) to enter and remain in the United States or receive certain benefits and (2) the records and papers submitted to obtain such documents.

To enter or remain in the United States and be eligible for various immigration-related benefits, aliens must comply with a number of document requirements under the Immigration and Nationality Act (INA),<sup>1</sup> as amended. Attempts to circumvent these document requirements have been prohibited and punishable at least since 1924.<sup>2</sup> Under the INA, an alien who uses, acquires, or produces fraudulent documents for immigration-related purposes may be subjected to civil penalties and denied certain immigration benefits, including the ability to enter or remain in the United States. Further, certain fraudulent actions may carry criminal penalties under both the INA and the United States Criminal Code. This report discusses the primary civil, criminal, and immigration-related penalties associated with immigration-related document fraud. It does not discuss criminal statutes generally barring fraud or identity theft (other than 18 U.S.C. § 1028) that could also potentially be used to penalize immigration-related document fraud.<sup>3</sup>

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<sup>1</sup> Although “document” is not defined statutorily by the INA, for purposes of assessing document fraud, immigration regulations define the term as any “instrument on which is recorded, by means of letters, figures, or marks, matters which may be used to fulfill any requirement” of the INA. 8 C.F.R. §§ 270.1, 1270.1. This definition “includes, but is not limited to, an application required to be filed under...the [INA] and any other accompanying document or material.” *Id.*

<sup>2</sup> See *Noriega-Perez v. United States*, 179 F.3d 1166, 1173 (9<sup>th</sup> Cir. 1999).

<sup>3</sup> Though immigration-related document fraud is specifically penalized by a number of criminal statutes, in many cases such activity could be penalized under statutes that more generally penalize fraudulent activity against the United States. *E.g.*, 18 U.S.C. § 1001 (prohibiting the making of false material representations to the United States); 18 U.S.C. § 1002 (prohibiting the possession of false documents with the intent to enable the defrauding (continued...))

## Civil Penalties for Immigration-Related Document Fraud

The primary provision of the INA concerning immigration-related document fraud is INA § 274C.<sup>4</sup> In general, INA § 274C prohibits the fraudulent production, use, or possession of documents in order to either (1) *acquire benefits under the INA* or (2) *satisfy an INA requirement*.<sup>5</sup> Specifically, INA § 274C makes it unlawful for any person or entity (including non-alien) to *knowingly*

- forge, counterfeit, alter, or falsely make<sup>6</sup> any document for the purpose of satisfying an INA requirement or obtaining a benefit under the INA;
- use, attempt to use, possess, obtain, accept, receive, or provide any forged, counterfeit, altered, or falsely made document for the purpose of satisfying an INA requirement or obtaining a benefit under the INA;
- use, attempt to use, provide, or attempt to provide any document lawfully issued to or with respect to a person other than the possessor for the purpose of satisfying an INA requirement or obtaining a benefit under the INA;
- accept, receive or provide any document lawfully issued to or with respect to a person other than the possessor for the purpose of complying with INA § 274A(b) (relating to alien employment verification)<sup>7</sup> or obtaining a benefit under the INA;

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<sup>3</sup> (...continued)

of the United States); 18 U.S.C. §1028 (prohibiting identification document fraud). Moreover, prohibitions on immigration-related fraud may overlap with prohibitions against other specific forms of document fraud. For example, a person who uses another's Social Security number to procure an immigration document could be subject to penalties under both the Social Security Act and the provision of the U.S. Criminal Code prohibiting immigration-related document fraud. 18 U.S.C. § 1546(a) (prohibiting the fraudulent procurement of an immigration document); 42 U.S.C. § 408(a)(8) (criminalizing the unlawful use of a person's Social Security number).

<sup>4</sup> 8 U.S.C. § 1324c.

<sup>5</sup> Though of broader application, INA § 274C was enacted in large part to address the use of false documents to satisfy the work eligibility requirements under employer sanctions provisions, and most reported cases have involved the presentation of fraudulent "green cards," social security cards, or other documents to demonstrate legal eligibility to work. *E.g.*, United States v. Remileh, No. 94C00139, 1995 OCAHO LEXIS 4 (Office of the Chief Administrative Hearing Officer 1995).

<sup>6</sup> For purposes of INA § 274C, the term "falsely make" means to prepare or provide an application or document, with *knowledge or in reckless disregard* of the fact that the application or document (1) contains a false or fraudulent statement or material representation; (2) has no basis in law or fact; or (3) otherwise fails to state a fact material to the purpose for which the application or document was submitted to immigration authorities. 8 U.S.C. § 1324c(f).

<sup>7</sup> INA § 274A generally prohibits persons or entities from employing an alien if the alien is *known* to be an unauthorized alien. 8 U.S.C. § 1324a. It requires employers to complete an  
(continued...)

- prepare, file, or assist another in preparing or filing, any application for benefits under the INA, or any document required under the INA, or any document submitted in connection with such application or document, with *knowledge or in reckless disregard* of the fact that such application or document was falsely made or, in whole or in part, does not relate to the person on whose behalf it was or is being submitted; or
- present before boarding a common carrier for the purpose of coming to the United States a document which relates to the alien's eligibility to enter the United States, and subsequently fail to present such document to an immigration officer upon arrival at a United States port of entry.<sup>8</sup>

Persons or entities found to have violated INA § 274C may be ordered to cease and desist engaging in the unlawful activity and assessed a civil money penalty. In the case of first-time offenders, this penalty is between \$275 and \$2,200 for each fraudulent document or proscribed activity (and between \$250 and \$2,000 for each violation prior to September 1999).<sup>9</sup> For subsequent offenses, the civil penalty is between \$2,200 and \$5,500 (and between \$2,000 and \$5,000 for each violation prior to September 1999).<sup>10</sup>

Immigration authorities may investigate allegations of document fraud either on their own initiative or upon receiving third-party complaints with a substantial probability of validity.<sup>11</sup> Immigration authorities may issue subpoenas to examine evidence against persons or entities being investigated.<sup>12</sup> If immigration authorities conclude that a person or entity has violated § 274C, they may issue a Notice of

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<sup>7</sup> (...continued)

Employment Eligibility Verification form (Form I-9) for each individual they hire for employment in the United States, verifying the employee's eligibility for employment and the facial legitimacy of the identification documents presented by the employee to demonstrate his eligibility to the employer. Persons or entities who violate § 274A are subject to civil penalties, in addition to criminal penalties if they have engaged in a pattern or practice of employing unauthorized aliens. If an alien presents false documentation in order to obtain employment in the United States, he or she may be subject to civil and criminal penalty. *See* INA § 274C(a)(2),(4), 8 U.S.C. § 1324c(a)(2),(4) (providing civil penalties for immigration-related document fraud); 18 U.S.C. § 1546(b) (providing criminal penalties for immigration-related document fraud); 18 U.S.C. § 1015 (criminalizing the making of any false statement or claim relating to citizenship, naturalization, or alien registry); 18 U.S.C. § 1028 (assessing criminal penalties for various forms of document fraud).

<sup>8</sup> 8 U.S.C. § 1324c(a).

<sup>9</sup> 8 C.F.R. §§ 270.3(b)(1)(ii)(A), 1270.3(b)(1)(ii)(A).

<sup>10</sup> 8 C.F.R. §§ 270.3(b)(1)(ii)(B), 1270.3(b)(1)(ii)(B).

<sup>11</sup> 8 C.F.R. § 270.2.

<sup>12</sup> INA § 274C(d)(1), 8 U.S.C. § 1324c(d)(1); 8 C.F.R. § 270.2(c).

Intent to Fine the alleged offender.<sup>13</sup> If the alleged offender contests the issuance of the Notice of Intent to Fine, the respondent may request a hearing regarding the alleged violation within 60 days.<sup>14</sup> Hearings are conducted by administrative law judges under the supervision of the Chief Administrative Hearing Officer of the Department of Justice’s Executive Office of Immigration Review.<sup>15</sup> If a hearing is not requested within this period, or the respondent otherwise waives the right to a hearing, a final order may be issued by immigration authorities.<sup>16</sup> If a hearing is requested, an immigration judge may issue a final order imposing civil penalties if the preponderance of evidence indicates that the accused has violated the requirements of INA § 274C.<sup>17</sup>

The civil penalties for violating § 274C may be waived in limited circumstances for aliens who failed to show the same immigration documents to U.S. immigration authorities as were used to board the carrier to travel to the United States, if the alien is granted asylum or withholding of removal.<sup>18</sup>

## **Criminal Penalties for Immigration-Related Document Fraud**

An alien’s unauthorized presence within the United States — i.e., being an “illegal alien” — is not a crime in and of itself.<sup>19</sup> However, many types of immigration-related document fraud that may facilitate an alien’s entry into or continued presence within the United States are criminal offenses. The following sections will discuss the primary criminal statutes covering immigration-related document fraud, many of which are overlapping in coverage with civil statutes prohibiting immigration-related document fraud.<sup>20</sup> In addition to these statutes, a number of other criminal statutes can potentially be used to prosecute aliens for

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<sup>13</sup> 8 C.F.R. § 270.2(d).

<sup>14</sup> 8 C.F.R. § 270.2(d).

<sup>15</sup> 28 C.F.R. part 68.

<sup>16</sup> 8 C.F.R. § 270.2.

<sup>17</sup> INA § 274C(d)(2)(C); 8 U.S.C. § 1324c(d)(2)(C).

<sup>18</sup> INA § 274C(d)(7).

<sup>19</sup> Unlawful presence is only a criminal offense when an alien is found in the United States after having been formally removed or after departing the United States while a removal order was outstanding. INA § 276; 8 U.S.C. § 1326.

<sup>20</sup> The assessment of a civil penalty for document fraud probably does not prevent the federal government from seeking criminal penalties, as well. *See Hudson v. United States*, 522 U.S. 93 (1997) (double jeopardy clause of the U.S. Constitution protects only against imposition of multiple criminal punishments for the same offense, and civil remedy statutes will generally not be implicated unless civil sanctions are “so punitive either in purpose or effect as to transform what was clearly intended as a civil remedy into a criminal penalty”); *Noriega-Perez v. United States*, 179 F.3d 1166, 1172-74 (9<sup>th</sup> Cir. 1999) (applying *Hudson* test and concluding that fines assessed against a person under INA § 274C were civil rather than criminal in nature, and therefore did not raise double jeopardy considerations).

document fraud in certain circumstances.<sup>21</sup> Further, persons may be held criminally liable for aiding and abetting or conspiring to commit such offenses.<sup>22</sup>

**Criminal Penalties under INA § 274C.** Besides imposing civil penalties for immigration-related document fraud, INA § 274C also includes criminal penalties for those who prepare or assist in preparing fraudulent immigration documents for a fee or other remuneration. More particularly, failure to disclose a role in the preparation of a falsely made application for immigration benefits may result in a fine and/or imprisonment for up to five years, as well as being prohibited from preparing or assisting in the preparation of any other such applications in the future.<sup>23</sup> Subsequent offenses are subject to fines and imprisonment for up to 15 years.<sup>24</sup>

**Criminal Penalties for Fraud, Forgery, and Misuse of Visas and Other Immigration-Related Documents.** A much broader criminal provision than § 274C of the INA, section 1546 of the United States Criminal Code (18 U.S.C. § 1546) makes it a criminal offense for a person to *knowingly* produce, use, or facilitate the production or use of fraudulent, immigration-related documents such as immigrant or nonimmigrant visas, permits, border crossing cards, alien registration receipt cards, and other documents prescribed by immigration-related statute or regulation. Activities prohibited include *knowingly*

- forging, counterfeiting, altering, or falsely making any immigrant or nonimmigrant visa, permit, border crossing card, alien registration receipt card, or other document prescribed by statute or regulation for entry into or as evidence of authorized stay or employment in the United States;

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<sup>21</sup> See, e.g., INA § 275(a), 8 U.S.C. § 1325(a) (prohibiting aliens from attempting to enter or obtaining entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact, subject to a fine and/or imprisonment of up to six months for the first offense and up to two years for each subsequent offense); 18 U.S.C. § 911 (prohibiting persons from falsely claiming U.S. citizenship, subject to a fine and/or up to three years imprisonment); 18 U.S.C. § 1001 (prohibiting persons from making false material representations to the United States, subject to a fine and/or up to five years imprisonment); 18 U.S.C. § 1002 (prohibiting the possession of false documents with the intent to enable the defrauding of the United States of a sum of money, subject to fine and/or imprisonment of up to five years); 18 U.S.C. §§ 1541-44 (prohibiting passport fraud and misuse, subject to a fine and/or imprisonment of up to either 25 years (if the offense was committed to facilitate an act of international terrorism), 20 years (if the offense was committed to facilitate a drug trafficking crime), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate either an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense)).

<sup>22</sup> 18 U.S.C. § 2 (aiding and abetting); 18 U.S.C. § 371 (conspiracy).

<sup>23</sup> INA § 274C(e)(1); 8 U.S.C. § 1324c(e)(1). “Falsely make” is defined by INA § 274C(f) as preparing or providing an application or document “with knowledge or in reckless disregard of the fact that the application or document contains a false, fictitious, or fraudulent statement or material representation, or has no basis in law or fact, or otherwise fails to state a fact which is material to the purpose for which it was submitted.” 8 U.S.C. § 1324c(f).

<sup>24</sup> INA § 274C(e)(2); 8 U.S.C. § 1324c(e)(2).

- using or attempting to use, possessing, obtaining, or acquiring any such fraudulent document knowing that it was made or obtained unlawfully;
- possessing blank immigration-related permits, engraving plates, or document-producing materials;
- impersonating another to evade immigration laws or apply for an immigrant or nonimmigrant visa, permit, or other document required for entry into the United States;
- offering to sell or otherwise dispose of another person's visa, permit, or other immigration-related document to any person not authorized by law to receive such document;
- making false statements with respect to a material fact in any application, affidavit or other document required by immigration laws and regulations; or
- presenting any document required by immigration laws and regulations that is known to either contain false statements or lack any reasonable basis in law or fact.

Persons convicted of violating § 1546(a) are subject to a fine and/or imprisonment up to either 25 years (if the offense was committed to facilitate an act of international terrorism), 20 years (if the offense was committed to facilitate a drug trafficking crime), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate either an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense).<sup>25</sup>

Section 1546(b) criminalizes the use of fraudulent documents or false attestation to satisfy INA verification requirements relating to the employment of aliens.<sup>26</sup> Persons who violate this provision are subject to a fine and/or imprisonment for up to five years.

**Criminal Penalties for Fraud or False Statements Relating to Naturalization, Citizenship, or Alien Registry.** Section 1015 of the United States Criminal Code (18 U.S.C. § 1015) criminalizes acts of fraud relating to naturalization, citizenship, or alien registry. Specifically, it is a criminal offense for a person to *knowingly*

- make any false statement under oath, in any case, proceeding, or matter relating to, or under, or by virtue of any law of the United States relating to naturalization, citizenship, or registry of aliens;
- with intent to avoid any duty or liability imposed or required by law, deny that he or she has been naturalized or admitted to be a citizen, after having been so naturalized or admitted;
- use or attempting to use any certificate of arrival, declaration of intention, certificate of naturalization, certificate of citizenship or other documentary evidence of naturalization or of citizenship, or any duplicate or copy thereof, knowing the same to have been

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<sup>25</sup> 18 U.S.C. § 1546(a).

<sup>26</sup> INA § 274A; 8 U.S.C. § 1324a.

- procured by fraud or false evidence or without required appearance or hearing of the applicant in court or otherwise unlawfully obtained;
- make any false certificate, acknowledgment or statement concerning the appearance before him or her or the taking of an oath or affirmation or the signature, attestation or execution by any person with respect to any application, declaration, petition, affidavit, deposition, certificate of naturalization, certificate of citizenship or other paper or writing required or authorized by the laws relating to immigration, naturalization, citizenship, or registry of aliens;
  - make any false statement or claim that he is, or at any time has been, a citizen or national of the United States, with the intent to obtain, for himself or another, any federal or state benefit or service, or to engage unlawfully in employment in the United States; or
  - make any false statement or claim that he or she is a citizen of the United States in order to register to vote or to vote in any U.S. election.<sup>27</sup>

Persons convicted of such offenses are subject to fine and/or imprisonment for up to five years.

**General Criminal Penalties for Document Fraud.** Section 1028 of the United States Criminal Code (18 U.S.C. § 1028) criminalizes fraud and related activity in connection with identification documents and document authentication features. Specifically, it is a criminal offense for an individual to *knowingly*

- produce an identification document, authentication feature, or a false identification document without lawful authority;
- transfer an identification document, authentication feature, or a false identification document knowing that such document or feature was stolen or produced without lawful authority;
- possess with intent to use unlawfully or transfer unlawfully *five or more* identification documents (other than those issued lawfully for the use of the possessor), authentication features, or false identification documents;
- possess an identification document (other than one issued lawfully for the use of the possessor), authentication feature, or a false identification document, with the intent such document or feature be used to defraud the United States;
- produce, transfer, or possess a document-making implement or authentication feature with the intent such document-making implement or authentication feature will be used to produce a false identification document or to make another document-making

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<sup>27</sup> 18 U.S.C. § 1015. However, an alien is not subject to criminal penalty for making a claim of citizenship in order to vote or register to vote in an election if each parent of the alien is or was a U.S. citizen, the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making the false statement or claim that he or she was a citizen of the United States.

implement or authentication feature that will be used to produce a false identification document;

- possess an identification document or authentication feature that is or appears to be an identification document or authentication feature of the United States, knowing that such document or feature was stolen or produced unlawfully;
- transfer, possess, or use, without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, or in connection with a violation of federal law or a state or local felony; or
- traffic in false or actual authentication features for use in false identification documents,<sup>28</sup> document-making implements, or means of identification.<sup>29</sup>

In general, persons convicted of such offenses are subject to a fine and/or imprisonment for up to one, five, or 15 years, depending on the particular offense and circumstances, including whether the fraudulently produced or obtained identification document or authentication feature is or appears to be (1) issued by or under the authority of the United States or (2) a birth certificate, a driver's license, or personal identification card.<sup>30</sup> A person convicted of an offense under this section is subject to imprisonment for up to 20 years if he or she (1) has previously been convicted of an offense under this section, (2) committed an offense under this section to facilitate a drug trafficking crime, or (3) committed an offense under this section in connection with a crime of violence.<sup>31</sup>

The Intelligence Reform and Terrorism Prevention Act of 2004 raised the maximum criminal penalty from 25 to 30 years imprisonment for persons who commit an offense under § 1028 to facilitate an act of terrorism.<sup>32</sup>

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<sup>28</sup> The REAL ID Act of 2005 amended 18 U.S.C. § 1028 to make it a crime to traffic in actual authentication features for use in false identification documents, document-making implements, or means of identification. Previously, the statute had only prohibited the trafficking of false authentication features. P.L. 109-13, Division B, § 203 (2005).

<sup>29</sup> 18 U.S.C. § 1028(a).

<sup>30</sup> 18 U.S.C. § 1028(b).

<sup>31</sup> 18 U.S.C. § 1028(b)(3).

<sup>32</sup> P.L. 108-458, § 7216 (amending 18 U.S.C. § 1028(b)(4)). The version of the Intelligence Reform and Terrorism Prevention Act that initially passed the House would have extended the applicability of § 1028 to cover fraud and related activity involving an identification document, authentication feature, or false identification document that is or appears to be issued by a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, or an international government or quasi-governmental organization. Additionally, it would have raised the maximum prison sentences for various violations of § 1028 which were not committed to facilitate terrorist activity.

## Consequences of Immigration-Related Document Fraud upon Admission, Removal, and Eligibility for Immigration-Related Benefits

Immigration-related document fraud also bears upon an alien's eligibility to enter or remain in the United States, and in certain circumstances such fraud may make the alien ineligible for certain other immigration-related benefits. These statutory grounds may be waived by immigration authorities in certain circumstances.

**Effects of Immigration-Related Document Fraud upon Inadmissibility.** The INA categorizes certain classes of aliens as inadmissible — “ineligible to receive visas and ineligible to be admitted to the United States.”<sup>33</sup> Any alien who has, by fraud or willful misrepresentation of a material fact, sought to procure or has procured either admission into the United States or a benefit under the INA is inadmissible.<sup>34</sup> A final order under INA § 274C is not necessary to make such a determination, though a final order is also a specific ground for inadmissibility.<sup>35</sup> An alien who falsely represents himself or herself to be a U.S. citizen for any purpose or benefit under the INA or any other federal or state law is also inadmissible for life, except under narrow circumstances.<sup>36</sup> There is no immigrant waiver available for inadmissibility on this ground.

A separate ground for inadmissibility exists for aliens who have been convicted of or have admitted committing a crime of moral turpitude.<sup>37</sup> Actions constituting crimes of moral turpitude are defined by judicial and administrative case law rather than by statute. In general, crimes that are considered to evidence an evil or predatory intent constitute crimes of moral turpitude. Fraud, forgery, counterfeiting, and perjury have all been recognized as crimes of moral turpitude.<sup>38</sup> Accordingly, immigration-related document fraud may also constitute a crime of moral turpitude in certain circumstances, making the offending alien inadmissible.

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<sup>33</sup> INA § 212(a); 8 U.S.C. § 1182(a).

<sup>34</sup> INA § 212(a)(6)(C)(i); 8 U.S.C. § 1182(a)(6)(C)(i).

<sup>35</sup> INA § 212(a)(6)(F); 8 U.S.C. § 1182(a)(6)(F).

<sup>36</sup> INA § 212(a)(6)(C)(ii); 8 U.S.C. § 1182(a)(6)(C)(ii). An alien will not be deemed inadmissible if each parent of the alien is or was a U.S. citizen, the alien permanently resided in the United States prior to attaining the age of 16, and the alien reasonably believed at the time of making a representation of U.S. citizenship that he or she was a citizen.

<sup>37</sup> INA § 212(a)(2)(A)(1); 8 U.S.C. § 1182(a)(2)(A)(1).

<sup>38</sup> *See, e.g.*, *Jordan v. De George*, 341 U.S. 223 (1951) (fraud); *Morales-Carrera v. Ashcroft*, 74 Fed.Appx. 324 (5<sup>th</sup> Cir. 2003) (unpublished) (forgery); *Balogun v. Ashcroft*, 270 F.3d 274 (5<sup>th</sup> Cir.2001) (forgery); *Morasch v. INS*, 363 F.2d 30 (9<sup>th</sup> Cir. 1966) (forgery); *United States ex rel. Karpay v. Uhl*, 70 F.2d 792 (2<sup>nd</sup> Cir.1934) (perjury); *United States ex rel. Boraca v. Schlotfeldt*, 109 F.2d 106 (7<sup>th</sup> Cir. 1940) (perjury); *In re Seda*, 17 I. & N. Dec. 550 (BIA 1980) (forgery); *Matter of A* — , 5 I. & N. Dec. 52 (BIA 1953) (forgery).

### **Effects of Immigration-Related Document Fraud upon Deportability.**

Immigration-related document fraud is also a ground for deportation. Any alien who is subject to a final order under INA § 274C is deportable, although this designation may be waived if (1) the alien was admitted for lawful permanent residence; (2) no previous civil money penalty was imposed against the alien under § 274C; and (3) the offense was committed solely to assist, aid, or support the alien's spouse or child (and no other individual).<sup>39</sup> A violation, attempt to violate, or conspiracy to violate § 1546 of the United States Criminal Code (relating to fraud and misuse of visas and other entry documents) is also a ground for removal.<sup>40</sup> In certain circumstances, an alien who enters a fraudulent marriage to be permitted entry into the United States or falsely claims U.S. citizenship is also deportable.<sup>41</sup> Further, criminal convictions for certain forms of immigration-related document fraud may constitute either aggravated felonies under the INA or crimes of moral turpitude, both of which constitute grounds for deportation.<sup>42</sup>

**Other Immigration Consequences of Immigration-Related Document Fraud.** Immigration-related document fraud has a number of other immigration consequences. As previously discussed, in certain circumstances immigration-related document fraud may constitute either a crime of moral turpitude or an aggravated felony. Aggravated felonies, crimes of moral turpitude, and falsely giving testimony to receive INA benefits all prevent an alien from being found to possess good moral character,<sup>43</sup> which is a necessary requirement for an alien to become a U.S. citizen.<sup>44</sup> Such crimes may also limit an offending alien's ability to be granted certain benefits and remedies under the INA. Among the benefits that may be denied in certain circumstances to an alien who has committed and/or been convicted of immigration-related document fraud include the following:

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<sup>39</sup> INA § 237(a)(3)(C); 8 U.S.C. § 1227(a)(3)(C).

<sup>40</sup> INA § 237(a)(3)(B)(iii); 8 U.S.C. § 1227(a)(3)(B)(iii).

<sup>41</sup> INA § 237(a)(1)(G), 8 U.S.C. § 1227(a)(1)(G) (relating to marriage fraud); INA § 237(a)(3)(D), 8 U.S.C. § 1227(a)(3)(D).

<sup>42</sup> A violation of either 18 U.S.C. § 1546 (relating to fraud and misuse of visas, permits, and other entry documents) or 18 U.S.C. § 1543 (relating to falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument) that results in at least 12 months' imprisonment generally constitutes an aggravated felony making an alien deportable. *See* INA § 101(a)(43)(P), 8 U.S.C. § 1101(a)(43)(P); INA § 237(a)(2)(A)(iii), 8 U.S.C. § 1227(a)(2)(A)(iii). Certain crimes relating to document fraud, such as forgery, fraud, and perjury, are recognized as crimes of moral turpitude. *See infra* at 9 & n. 38. An alien who is convicted of a crime of moral turpitude within five years of admission into the United States (10 years for aliens who are assisting in the investigation of a criminal organization) for which a sentence of a year or more may be imposed is deportable. INA § 237(a)(2)(A)(i), 8 U.S.C. § 1227(a)(2)(A)(i).

<sup>43</sup> INA § 101(f); 8 U.S.C. § 1101(f).

<sup>44</sup> INA § 316(a); 8 U.S.C. § 1427(a).

- cancelling an alien's removal from the United States (relief from removal denied to legal permanent residents convicted of an aggravated felony and nonpermanent residents who commit immigration-related document fraud);
- granting an alien asylum (relief from removal denied to aliens convicted of an aggravated felony);
- withholding an alien's removal from the United States (relief from removal denied to aliens convicted of one or more aggravated felonies with an aggregate sentence of five or more years, unless they are more likely than not to face torture if removed);
- adjusting an alien's status to legal permanent residency (benefit denied to aliens designated as inadmissible, including those who have committed document fraud);
- permitting the alien to voluntarily depart the United States before or after a removal proceeding against the alien is completed (benefit denied *before or after* a removal proceeding is completed to aliens who have committed an aggravated felony, and also denied to aliens seeking voluntary departure *after* proceedings have been completed if the aliens have not possessed good moral character for the five years preceding); and
- providing nationals of countries that have been designated as experiencing widespread upheaval with temporary protected status within the United States (benefit denied to aliens who have committed crimes of moral turpitude, have multiple criminal convictions, or have been convicted of one felony or two or more misdemeanors in the United States).

Additional background on the immigration-related consequences of criminal activity can be found in CRS Report RL32480, *Immigration Consequences of Criminal Activity*, by Michael John Garcia.

## Possible Legislative Issues in the 110<sup>th</sup> Congress

Immigration reform will likely be an issue in the 110<sup>th</sup> Congress, and legislation may be introduced affecting laws penalizing immigration-related document fraud. Comprehensive immigration reform was a notable issue in the 109<sup>th</sup> Congress, and although no major legislation was enacted on this matter, there appeared to be broad support for increasing the penalties for immigration-related document fraud.<sup>45</sup> Notable proposals made in the 109<sup>th</sup> Congress included the following:

- amending and rewriting 18 U.S.C. chapter 75 (concerning passport, visa, and entry document fraud) to heighten available penalties (including by permitting the seizure and forfeiture of property and proceeds traceable to an offense), to cover additional activities relating to the trafficking of fraudulent documents, to make it a crime to defraud any person on an immigration-related matter, and to extend criminal jurisdiction to cover extraterritorial offenses;
- heightening the criminal penalties for entering into marriages or commercial enterprises for the purpose of evading immigration requirements;
- expanding the categories of fraud-related activity making an alien inadmissible or deportable; and
- providing special procedures for aliens believed to have committed certain fraud-based offenses when such aliens declare an intention to apply for humanitarian-based relief from removal (e.g., asylum, withholding of removal), while generally exempting such aliens from criminal liability for such offenses if they are granted relief from removal.<sup>46</sup>

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<sup>45</sup> The most notable pieces of comprehensive immigration legislation considered in the 109<sup>th</sup> Congress were H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, which was introduced by Representative James Sensenbrenner on December 6, 2005, and passed the House as amended on December 16, 2005, and S. 2611, the Comprehensive Immigration Reform Act of 2006, which was introduced by Senator Arlen Specter on April 7, 2006, and passed the Senate as amended on May 25, 2006, by a vote of 62-to-36. The bills most notably diverged with respect to the treatment of unauthorized aliens in the United States. Whereas the House favored imposing more stringent penalties for unlawful presence (including making unlawful presence a criminal offense), the Senate opposed such measures and favored an approach that would have made a significant portion of unauthorized aliens eligible for adjustment to legal immigrant status. Despite these notable differences, the two bills contained similar (but not identical) provisions increasing the penalties for immigration-related document fraud.

<sup>46</sup> By regulation, immigration authorities do not pursue civil penalties under INA §274C (concerning civil penalties for immigration-related document fraud) against aliens arriving from a country where they have a well-founded persecution. (8 C.F.R. §§270.2(j), 1270.2(j)). The United States Attorney's Manual does not currently contain guidelines binding federal prosecutors from pursuing criminal prosecutions under chapter 75, Title 18,

(continued...)

Similar proposals may be introduced in the 110<sup>th</sup> Congress, either individually or as part of legislation aimed at comprehensively reforming U.S. immigration policy.

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<sup>46</sup> (...continued)

U.S.C. against arriving aliens granted humanitarian relief from removal. Nevertheless, prosecutions of such aliens (as opposed to prosecutions of aliens denied humanitarian relief from removal) are traditionally rare.