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## IMMIGRATION

# Planning for post-election immigration outcomes in a Harris-Walz v. Trump-Vance presidential race

Angelo A. Paparelli, Partner, Vialto Law (US) PLLC

Manish Daftari, Partner, Vialto Partners LLP

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## Summary

Recent developments have upended many of our [earlier predictions](#) of the likely post-election immigration landscape in the United States. These include:

- Former President Donald Trump's selection of Ohio Senator J.D. Vance as running mate. Mr. Vance has supported restrictions on legal and illegal immigration.
- Mr. Trump's announcement that he is not bound by proposals outlined in Project 2025 (apparently including those restricting legal and illegal immigration), and his recent suggestions of new green card options for noncitizens who have graduated from U.S. colleges and universities, and of additional unspecified immigration avenues prompted, in part, by advances in AI.
- President Biden's decision in July announcing that he would not seek reelection, his endorsement of Vice President Kamala Harris as the Democratic Party's nominee, and her choice of Minnesota Governor Tim Walz for Vice President.
- Vice President Harris's support for strict border controls coupled with an "earned" pathway for undocumented noncitizens to gain legal status and the right to work.
- Gov. Walz's positions on immigration—both as a former Congressman and as Governor—suggest broad support for legal immigration and protections for the undocumented population.

With the parties' conventions concluded, both campaigns in full swing, and early voting already underway, several electoral outcomes are possible. Mobility leaders must therefore prepare for all potential scenarios and brace themselves for the new immigration opportunities and daunting challenges that loom on the horizon.

## **Will there be an election "trifecta?"**

The way forward depends greatly on whether either party wins the presidency and enough down-ballot slots in the House and Senate to achieve a trifecta, i.e., control of both houses of Congress and the White House.

With a trifecta, far-reaching immigration legislation – ranging from highly welcoming to highly restrictive – is attainable, whereas split control likely would perpetuate the current legislative gridlock. This in turn would maintain the continued practice of executive orders that at times become new employment-based immigration programs, but increasingly are struck down by the federal courts.

## **What role will federal courts play?**

Also uncertain is the effect of recent U.S. Supreme Court decisions empowering individual federal judges to interpret and declare immigration law without necessarily deferring to long-standing, or new, immigration agency regulations and policies.

With more than 600 sitting federal district judges and 12 circuit courts of appeal, it is foreseeable that multiple federal district judges might issue divergent interpretations of immigration statutes and executive policies (with some imposing nationwide injunctions). It is also predictable that various federal circuit courts of appeal may likewise issue conflicting rulings, thus requiring review by the Supreme Court.

Immigration stakeholders, especially businesses operating nationwide, may therefore be required to monitor differing judicial interpretations based on the jurisdictional geographies of various circuit courts of appeal, and rely even more on legal counsel to help guide their immigration strategic planning.

Ironically, if immigration law interpretations by the federal courts become a patchwork quilt of conflicting decisions, pressure may grow for Congress to revive and ultimately enact a single Article I Immigration Court (similar to the U.S. Bankruptcy Court) with broad authority to interpret, declare and harmonize immigration laws and agency regulations on a national basis.

## **Enhanced border enforcement—a given**

Though rarely in agreement, Republicans and Democrats are nonetheless aligned on the need for significantly enhanced controls over illegal immigration, particularly at the southern border. Despite the failure of a bipartisan border enforcement bill in the current Congress, both parties have promised to redouble efforts to stanch the flow of unauthorized noncitizens into the U.S., particularly with additional limits on the ability to apply for asylum.

In June President Biden [announced](#) the temporary suspension of entry of noncitizens who enter unlawfully through the southern border, restricted their access to asylum, and ordered the speedier processing of asylum applications.

Kamala Harris committed in her [acceptance speech](#) at the Democratic national convention (DNC) that she would “secure our border,” while pledging to “reform our broken immigration system . . . [and] create an earned pathway to citizenship . . .”

Donald Trump and running mate Sen. J.D. Vance each appeared recently at the [still-unfinished border wall adjoining the Arizona-Mexico boundary](#) and vowed to stop illegal entries. They also renewed pledges to continue the identification and deportation of individuals who have entered the US illegally.

## Harris-Walz on immigration

Besides stricter U.S. border enforcement, Kamala Harris and Tim Walz are likely to support legislation and executive actions that expand employment-based immigration avenues.

Ms. Harris is an [opponent](#) of then-President Trump’s attempt to rescind DACA (Deferred Action for Childhood Arrivals), and a leading [co-sponsor](#) in the Senate of the Fairness for High-Skilled Immigrants Act, a bill which would have alleviated visa backlogs for family- and employment-based green cards.

As Vice President, Ms. Harris supported President Biden’s [Executive Order 14110](#) on the “Safe, Secure and Trustworthy Development and Use of Artificial Intelligence,” which included several directives intended to remove immigration-related impediments that make the U.S. less open to noncitizen talent in the fields of artificial intelligence and other “critical and emerging technologies.” The Biden-Harris administration also [announced](#) additional forms of relief to certain DACA beneficiaries and with U.S. college degrees (as did the [State Department](#)).

These actions, together with her speech at the DNC, suggest that she will promote legislation and executive actions that support comprehensive “reform of our broken immigration system” – especially by creating or expanding access to work visas, employment- and family-based immigrant visa categories and work permits.

As former member of Congress and the sitting governor of Minnesota, Mr. Walz has likewise [supported](#) more open and protective immigration policies, including a path to citizenship status for DACA beneficiaries, essential workers and noncitizens granted TPS (Temporary Protected Status), and signed state legislation authorizing the issuance of Minnesota driver’s licenses to undocumented individuals.

## Trump-Vance on immigration

Our earlier [article](#) extensively discussed Project 2025’s “Mandate for Leadership,” describing it as a possible predictor of immigration policies in a second Trump Administration. This discussion was premised on the authorship of several chapters of the Mandate by officials in positions of leadership during Mr. Trump’s first four-year term.

The former president, however, has recently [stated](#) that he has “nothing to do” with Project 2025 and disagrees with unspecified parts of it; furthermore, an emailed [press statement](#) from his campaign “greatly welcome[d]” Project 2025’s “demise.” Although many Democrats have challenged that denial, we are unable to reliably predict the post-election impact, if any, of Project 2025 in a second Trump term.

What remains, however, are the [transcripts](#) of Mr. Trump’s two interviews with Time Magazine, in which he proposed to deploy the National Guard to apprehend, detain and remove vast numbers of unauthorized noncitizens encountered in the interior of the country, and the [July 8, 2024 Republican Party Platform](#).

Chapter Two of the Republican platform makes the overarching promise to “SEAL THE BORDER, AND STOP THE MIGRANT INVASION [all caps in the original].” Included among its planks are “an aggressive plan to stop the open-border policies,” as well as commitments to “bring back the travel ban,” “begin the largest deportation program in American history,” “prioritize merit-based immigration,” and “[ensure that] those admitted to our country contribute positively to our society and economy, and never become a drain on public resources, . . . [while ending] chain migration, and [putting] American Workers first. . . [with capital letters changed to lowercase].”

Concerning legal immigration, Mr. Trump forecasted in a [podcast interview](#) (as also [reported](#) and welcomed in the Indian press) that during his second term:

**“What I want to do and what I will do is, [that if] you graduate from a college, I think you should get a green card automatically as part of your diploma, a green card to be able to stay in this country.”**

He added that this proposal would also include graduates from two-year junior colleges and doctoral programs, stating:

**“I know of stories where people graduated from a top college or from a college, and they desperately want to stay here... and they can't. They go back to India, they go back to China. They do the same basic company in those places and they become multibillionaires employing thousands and thousands of people.”**

Shortly after the podcast aired, however, Mr. Trump’s campaign press secretary, Karoline Leavitt, issued a statement to clarify that his plan would include an “aggressive vetting process,” to exclude “all communists, radical Islamists, Hamas supporters, America haters and public charges.” She added:

**“[He] believes [that] only after such vetting has taken place, we ought to keep the most skilled graduates who can make significant contributions to America. This would only apply to the most thoroughly vetted college graduates who would never undercut American wages or workers.”**

Mr. Trump spoke more broadly about expanding employment-based legal immigration entries during an [August 15, 2024 press conference](#):

**“We're going to let a lot of people come in, because we need more people, especially with AI coming. The farmers need it, everybody needs it but we're going to make sure they're not murderers and drug dealers.”**

Senator J.D. Vance, Mr. Trump's running mate, has reportedly [espoused](#) largely restrictive views on immigration, including interior roundups and mass deportations, and crackdowns on visa overstays (having sponsored the [Timely Departure Act](#), which would have required applicants for certain visas to post and forfeit a bond of \$5,000 to \$15,000 if they remained beyond their visa admission period).

Mr. Vance has also [criticized](#) the H-1B visa program, labeling it as “an unholy alliance between government and our biggest corporations.” He acknowledged that as a venture capitalist the companies in which he invested made use of this program, but has maintained that he never encouraged the use of the H-1B.

## What should mobility leaders do now to prepare for the post-election aftermath?

While we wait for the November 5th vote and the certification of final election results, there are several measures which companies, in consultation with their legal counsel, should consider, and if appropriate act on, in anticipation that major immigration changes could occur in early 2025:

### Visa and entry bans

Under a new Trump administration, there is a strong possibility that prior visa and entry bans will be reinstated. Accordingly, there are several steps mobility leaders may wish to consider to prepare for potential reinstatement of these bans:

- Identify all employees who may be impacted by future visa and entry bans. Based on the previous bans that were implemented during the first Trump administration, these countries will likely include Chad, Iran, Libya, North Korea, Somalia, Syria, Venezuela, and Yemen.
- Once the impacted employees are identified, companies (as advised by their counsel) should consider discussing with their U.S.-based noncitizen employees (irrespective of visa or residency status) the possible need to limit international travel. Nonimmigrant employees from the identified countries who do not have a work visa stamp in their passport or have a visa that will expire before the end of the year should consider applying for a visa at a U.S. consulate abroad before the end of 2024.

### Temporary Protected Status

For employees who are currently on work permits in the United States under Temporary Protected Status (TPS), there is a risk that a second Trump administration will eliminate existing TPS designations for some countries. Mobility leaders should therefore consider the following steps:

- Identify all employees who are currently working on TPS status.
- For each employee, determine if there are alternative forms of employment authorization or work visa options available. Now is an optimal time in the currently favorable adjudicative environment to consider categories exempt from PERM labor certification such as extraordinary ability, national interest waivers and the Schedule A Group II waiver.
- With the advice of counsel, consider sending employees abroad to work in an executive, managerial or specialized-knowledge role at an affiliate company for at least one year so that they would be eligible to return to the U.S. on an L-1 visa or as an EB1-C immigrant.
- If the impacted employees are not in the permanent residency process, consider starting the process before the end of 2024.

### Prevailing wage changes

An incoming Trump administration may seek to reinstate a regulation under his first term (later rescinded by President Biden) that would have significantly raised prevailing wages for the H-1B H-1B1, E-3, and PERM programs. In order to address this potential impact, employers should consider the following measures in consultation with their counsel:

- Identify all affected noncitizen employees who are paid below an annual wage of \$100,000. While it is uncertain what the proposed prevailing wages will be, the \$100,000 annual wage works as a starting point.
- For these impacted employees, determine if there are alternative visa options such as a spousal employment authorization document (EAD), TN, E-3, and categories exempt from PERM labor certification such as extraordinary ability and national interest waivers.
- For these impacted employees, determine if their salaries could be raised above \$100,000 within the next 1-2 years should prevailing wages be increased.
- If the wages of these potentially impacted employees cannot be raised, consider sending employees abroad to an affiliate company for one year so that they would be eligible to return to the US on an L-1 nonimmigrant visa or EB1-C immigrant visa. In short, consider planning a future foreign assignment in the event of significant prevailing wage increases.

### Possible reversal of Biden and Obama executive actions

Employers should anticipate that if Mr. Trump is elected, several executive actions by Democratic presidents may be at risk of elimination or restriction. These include DACA (Deferred Action for Childhood Arrivals), and special parole authority under the Immigration and Nationality Act benefiting particular nationalities (such as citizens of Ukraine, Afghanistan, Venezuela, Cuba, Nicaragua, and Haiti, the spouses, children, and parents of active duty military members, veterans, or those in the Selected Reserve of the U.S. Armed Forces, and the June 18, 2024 executive action allowing for parole in place for noncitizen spouses and children of U.S. citizens, who have resided in the U.S. for at least 10 years, and for waivers of visa ineligibility and inadmissibility to certain graduates of U.S. colleges and universities.

In order to prepare for potentially adverse actions affecting these categories of noncitizens by an incoming Trump Administration, or by the federal courts, employers should consult with their attorneys to consider whether the following options may be available:

- Determine if there are alternative visa options such as an EAD based on spouse's work authorization, TN, E-3, etc., and categories exempt from PERM labor certification such as extraordinary ability, national interest waivers and the Schedule A Group II waiver.
- Consider assignments to other countries with more welcoming immigration options, such as Canada or Mexico, to allow for remote work on US projects, or possible one-year abroad options in executive, managerial or specialized-knowledge positions to qualify for L-1 nonimmigrant or EB-1C immigrant visa eligibility after a year abroad. or possible "D3" inadmissibility waivers on an expedited basis for noncitizens with U.S. degrees, as allowed by recent Department of State guidance in the Foreign Affairs Manual.

### **Possible expansion of Biden and Obama executive actions**

If Vice President Harris is elected but control of Congress remains divided or is held solely by Republicans, comprehensive immigration reforms are much less likely. In that case, she may well announce additional executive actions to benefit discrete groups of noncitizens, such as the undocumented parents of U.S. citizens and permanent residents, and noncitizens who were age-barred under the DACA program. Such actions – although subject to possible reversal by the courts – would open new pathways for companies to hire now-ineligible workers and help mitigate ongoing demographic changes that portend a shrinking U.S. workforce. Companies should therefore consider developing recruitment strategies and channels to attract such workers and enlist their immigration counsel to help apply on their behalf.

### **Continuing focus on immigration worksite compliance**

Whether Republicans or Democrats prevail in November, employers in the U.S. should anticipate that federal immigration authorities will continue to investigate and enforce existing immigration laws in the coming years.

These laws still prohibit the knowing employment of unauthorized workers, penalize acts of unlawful discrimination based on citizenship status, national origin or alienage, and impose sanctions on employers that fail to maintain required business records such as Form I-9s, E-Verify records and employment-based requests for immigration benefits.

U.S.-based businesses should therefore consider taking prompt action to review their immigration compliance policies and practices, and address any identified lapses. Special focus should be given to employer programs or conduct that DHS or DOJ investigators may view as favoring noncitizens over U.S. citizens and lawfully authorized workers such as asylees and refugees.

In short, we believe that any new administration will likely perceive that if the U.S. is to stem the flow of illegal immigration, then stricter border controls and enhanced worksite enforcement must go hand in hand.

# Conclusion

As can be seen, no matter the outcome of the November election, the immigration landscape is likely to witness monumental changes in 2025. Mobility leaders and their organizations should therefore begin developing suitable strategies now.

The immigration attorneys of Vialto Law are here to help.

## Contact us

For a deeper discussion on the above, please reach out to your Vialto Partners point of contact, or alternatively:

### Angelo Paparelli

[angelo.paparelli@vialto.com](mailto:angelo.paparelli@vialto.com)

Partner, Vialto Law (US) PLLC

### Manish Daftari

[manish.daftari@vialto.com](mailto:manish.daftari@vialto.com)

Partner, Vialto Partners LLP

Further information on Vialto Partners can be found here: [www.vialtopartners.com](http://www.vialtopartners.com)

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