VIALTO PARTNERS

MARCH 14, 2025

IMMIGRATION

Unexpected hurdles: The ripple effects of President Trump's Executive Orders on legal immigration

By Angelo A. Paparelli

Summary

Although the pace of President Trump's Executive Orders (EOs) targeting border enforcement has slowed since Inauguration Day, the repercussions of these and more recent EOs on legal immigration have grown.

This article will outline and assess recent efforts by federal immigration officials in the Department of State (DOS), the Department of Justice (DOJ), and component agencies within the Department of Homeland Security (DHS)—US Citizenship and Immigration Services (USCIS), U.S. Immigration and Customs Enforcement (ICE), and U.S. Customs and Border Protection (CBP)—to implement his many EOs.

While the impact of the EOs on legal immigration suggest more burdens ahead for immigration stakeholders, his public statements about a soon-to-be-detailed "$5 million Gold Card," and on measures that might allow noncitizen graduates of American universities to work in the US after graduation, offer an apparent glimmer of hope, as this article will also explain.

Executive Order 14159: Protecting the American People Against Invasion

This EO, among other things, directed federal immigration officials in DHS, DOJ and DOS to "ensure that all previously unregistered [noncitizens] in the United States comply with the requirements" of the Immigration and Nationality Act (INA) § 262 ("Registration of Aliens") [8 U.S.C. § 1302], and that a noncitizen's failure to apply for registration and be fingerprinted is a federal misdemeanour punishable upon conviction by six months of imprisonment, a fine of up to $1,000, or both under INA § 266(a) [8 U.S.C. § 1306(a)]. In addition, the failure to carry registration documentation is likewise punishable as a misdemeanour under INA § 264(e) [8 U.S.C. § 1304(e)], and subject, upon conviction, to a $100 fine, a 30-day term of imprisonment, or both. Under EO 14159, noncompliance with the registration requirements should be "treated as a civil and criminal enforcement priority." These misdemeanour offenses are characterized as Class C felonies under 18 U.S.C. § 3559(a)(8) because they carry a term of imprisonment of 30 days, and as such, under 18 U.S.C. § 3571(b)(6), the maximum fine is instead $5,000.

The registration requirement is not new, it originated in 1940; but its enforcement is now a Trump administration priority.

In addition to the civil and criminal penalties noted above, an existing USCIS regulation, 8 C.F.R. § 214.1(f), provides that a "non-immigrant's wilful failure to provide full and truthful information requested by DHS (regardless of whether or not the information requested was material) constitutes a failure to maintain non-immigrant status" under INA § 237(a)(1)(C)(i), and thus renders them deportable.

Implementation of EO 14159:

On February 25, 2025, USCIS posted an announcement outlining three categories of noncitizens: (1) those "[who have] already registered"; (2) those "[who] must apply for registration"; and (3) those "[who are] not register[ed]," as follows:

[1] Who has already registered?

Aliens who have already registered include:

- Lawful permanent residents;
- Aliens paroled into the United States under INA 212(d)(5), even if the period of parole has expired;
- Aliens admitted to the United States as non-immigrants who were issued Form I-94 or I-94W (paper or electronic), even if the period of admission has expired;
- All aliens present in the United States who were issued immigrant or non-immigrant visas prior to arrival;
- Aliens whom DHS has placed into removal proceedings;
- Aliens issued an employment authorization document;
- Aliens who have applied for lawful permanent residence using Forms I-485, I-687, I-691, I-698, I-700, even if the applications were denied; and,
- Aliens issued Border Crossing Cards.

[2] Who must apply for registration?

- All aliens 14 years of age or older who were not registered and fingerprinted (if required) when applying for a visa to enter the United States and who remain in the United States for 30 days or longer. They must apply before the expiration of those 30 days.
- The parents and legal guardians of aliens less than 14 years of age who have not been registered and remain in the United States for 30 days or longer, prior to the expiration of those 30 days.
- Any alien, whether previously registered or not, who turns 14 years old in the United States, within 30 days after their 14th birthday.

[3] Who is not registered?

Aliens who have not registered include:

- Aliens who are present in the United States without inspection and admission or inspection and parole;
- Canadian visitors who entered the United States at land ports of entry and were not issued evidence of registration; and,
- Aliens who submitted one or more benefit requests to USCIS not listed in 8 CFR 264.1(a), including applications for Deferred Action for Childhood Arrivals or Temporary Protected Status, who were not issued evidence of registration.

The USCIS announcement is ambiguous, however, because it does not explain why those in category [3] above, who have not registered, are not included in category [2], i.e., those who "must apply for registration." The posting states that "DHS will soon announce a form and process requiring registrants (and parents or guardians of minors under 14)

to open a USCIS online account by February 25, 2025 in preparation for the registration process. Form "G-325R Biographic Information (Registration)" is to be used for online registration.

On March 12, 2025, USCIS published an interim final regulation (IFR) effective in 30 days, with a 30-day comment period, addressing the registration requirements.

The IFR adds some clarity to the registration requirement but is also ambiguous.

The IFR makes clear that Canadian non-immigrants for business or pleasure who have not been issued a Form I-94 (arrival/departure record) and are considered by USCIS as not having registered, must register online by completing Form G-325R. Submission of their Form G-325R must occur within 30 days of March 12, 2025, just like other noncitizens who must newly register.

The IFR also points to an existing USCIS regulation, 8 C.F.R. § 264.1(e)(3), which stipulates that any noncitizen in any non-immigrant category who has not previously been fingerprinted and who has failed to maintain non-immigrant status must apply "at once" for fingerprinting.

The IFR also adds to the ambiguity arising from the February 25, 2025 USCIS announcement. Whereas the announcement states that noncitizens "who have **applied for** lawful permanent residence using Form… I-485" are considered as "already registered," the IFR states: "In some cases, the acceptable evidence of registration at… is the result of **an approved application only, which may leave denied or pending applicants without any acceptable evidence that they have complied with the requirement to register.** (Emphasis added.)

Executive Order 14161: Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats

This EO directed federal immigration officials in DOS, DOJ and DHS to:

(a) "promptly" improve vetting and screening processes for all foreign nationals, including noncitizens who entered the country since January 19, 2025;
(b) review all visa programs to identify and prevent misuse by foreign actors harmful to US security, economy, politics, or culture;
(c) recommend measures to counter foreign nationals undermining US constitutional rights, including freedom of speech and religion; and
(d) evaluate and recommend enhancements to immigrant assimilation programs to promote adherence to US constitutional principles and identity.

Implementation of EO 14161:

On March 3, 2025, USCIS—acting under the authority of EO—published a Paperwork Reduction Act (PRA) notice, with a 60-day comment period, announcing its intention "to collect standard data on immigration forms and/or information collection systems," in order to comply with this EO and thereby "establish screening and vetting standards and procedures to enable USCIS to assess an alien's eligibility to receive an immigration-related benefit from USCIS." The March 3 PRA notice did not address the registration requirement or clarify the noted ambiguity concerning categories of unregistered persons required to register.

Separately, on March 5, 2025, USCIS also published another PRA notice in reliance on EO 14161 and the agency's asserted need to collect "all information necessary for a rigorous vetting and screening of all grounds of inadmissibility or bases for the denial of immigration-related benefits." This notice, likewise with a 60-day public comment period, announced USCIS's intention to collect on immigration forms and/or information collection systems "social media identifiers ('handles') and associated social media platform names from applicants." The agency's stated purpose for this collection is "to enable and help inform identity verification, national security and public safety screening, …vetting, and related inspections."

As noted above, EO 14161 requires federal officials to identify noncitizens who are perceived to pose harm to US security, economy, politics, or culture; undermine US constitutional rights, including freedom of speech and religion; and assimilate to US constitutional principles and identity. USCIS has apparently concluded that the collection of noncitizens' social media handles will help the agency discern such harms or ascertain the extent of immigrant assimilation and loyalty to American values.[1]

In a separate action, DOS has reportedly authorized the use of artificial intelligence to review "tens of thousands of… social media accounts" of F-1 (academic student), M-1 (vocational student), and J-1 (exchange visitor) non-immigrants in the Student-Exchange Visitor Information System (SEVIS) in order to identify and cancel the visas of certain foreign nationals, e.g., those "who appear to support Hamas or other designated terror groups."

Immigration stakeholders concerned about the disclosure of noncitizen social media profiles and postings, and the AI-assisted scrutiny of the same by federal immigration officials should therefore consider alerting their affected populations to these rapidly evolving practices and consider the submission of a comment to the March 5, 2025 PRA notice.

Although not expressly premised upon EO 14161, other noteworthy developments affecting consular visa practice have recently taken place:

- President Trump issued a February 12, 2025 Presidential Action ("One Voice for America's Foreign Relations") that declares as U.S. policy the requirement that consular officers and other DOS employees "faithfully implement the President's [foreign] policy" or face discipline, and orders Secretary of State to "revise or replace the Foreign Affairs Manual [FAM] and direct subordinate agencies to remove, amend, or replace any handbooks, procedures, or guidance." Volume 9 of the FAM contains detailed instructions to consular officers compiled over decades on the legal and procedural requirements for approving or refusing immigrant and non-immigrant visa applications. Thus, it remains to be seen how the new One Voice mandate will result in any forthcoming FAM revisions. Historically, FAM amendments have not entailed formal procedures for public notice and the opportunity to comment before they become effective—unlike published proposed and final agency regulations.
- The State Department on February 18, 2025 announced new and more restrictive limitations on the circumstances when non-immigrant visa applicants are eligible for a waiver of an in-person consular interview. Going forward, only applicants "who previously held a visa in the same category that expired less than 12 months prior to the new application" are eligible for interview waiver. In practical terms, this includes most foreign nationals in the United States who hold non-immigrant work visa status, since most of them hold expiring visas issued more than a year ago.

[1] According to the Trump administration, one such value is the adoption of English as our country's official language. This is reflected in a March 1, 2025 EO (not yet assigned a number in the *Federal Register*), "Designating English as the Official Language of The United States." This EO expressly rescinded EO 13166 ("Improving Access to Services for Persons with Limited English Proficiency"), and also authorized the Attorney General to "rescind any policy guidance documents issued pursuant to Executive Order 13166 and provide updated guidance, consistent with applicable law." This rescission would seemingly include former Attorney General Merrick B. Garland's November 21, 2022 memorandum to all federal agencies, "Strengthening the Federal Government's Commitment to Language Access," as well as several agencies' "language access plans," accessible at Digital.gov.

Executive Order 14168: Defending Women from Gender Ideology Extremism and Restoring Biological Truth to the Federal Government

This EO, among other things, directs the Secretaries of State and Homeland Security to "implement changes to require that government-issued identification documents, including passports, visas, and Global Entry cards, accurately reflect the holder's sex." The EO defines "sex" as "an individual's immutable biological classification as either male or female." It also states: "Agency forms that require an individual's sex shall list male or female and shall not request gender identity."

Implementation of EO 14168:

On February 11, 2025, in reliance on EO 14168, DOS published a new page under "Passport Help," entitled "Sex Marker in Passports," that stated:

> Under the Executive Order, we will no longer issue US passports or Consular Reports of Birth Abroad (CRBAs) with an X marker. We will only issue passports with an M or F sex marker that match the customer's biological sex at birth.
>
> If you submit a passport application requesting an X marker or requesting a sex marker that differs from the sex marker at your birth, you may experience delays getting your passport. You may receive a letter or email requesting more information. We will issue you a new passport that matches your biological sex at birth, based on your supporting documents and our records about your previous passports.

The new page also contained answers to frequently asked questions. The FAQs indicated that previously issued US passports are proof of US citizenship and identity, and can be used for entry into the United States until the passport's expiration date, without restrictions unless another country imposes limitations.

Separately, on February 7, 2025, Secretary of State Marco Rubio issued a cable (25 STATE 11402) to all "visa-issuing" consular posts to implement EO 14168 in the adjudication of noncitizen applications for US visas. The cable states:

> Generally, the sex listed on the foreign passport should be considered as prima facie evidence of the applicant's sex as defined in the E.O. However, there may be instances when a consular officer becomes aware that the sex listed on the foreign passport may not be the applicant's sex as defined in the E.O. In such cases, the adjudicator should confirm the applicant's sex as defined in the E.O., indicate that sex on the visa, and add a case note documenting any discrepancy between the passport and the visa to prevent issues at the POE (port of entry).

The wilful failure to list biological sex at birth on a US visa application could lead to not merely refusal of the visa, but also a ground of permanent visa ineligibility and inadmissibility. According to a recent newspaper report, the State Department has issued a February 24, 2025 cable in reliance upon a different EO—EO 14201 (Keeping Men Out of Women's Sports)—which stated:

> The 24 February state department cable obtained by the Guardian instructs visa officers to apply Immigration and Nationality Act section 212(a)(6)(C)(i)—the "permanent fraud bar"—against trans applicants. Unlike regular visa denials, this section triggers lifetime exclusion from the United States with limited waiver possibilities.
>
> "In cases where applicants are suspected of **misrepresenting their** purpose of travel or **sex**, you should consider whether this misrepresentation is material such that it supports an ineligibility finding," reads the directive from the US secretary of state, Marco Rubio.

USCIS likewise has taken steps to implement the biological-sex-at-birth mandate of EO 14168. On March 2, 2025, without forewarning, and to the extreme dismay of immigration stakeholders who had just prepared and transmitted paper applications with required evidence and payment of the required filing fees, USCIS issued new editions of several immigration forms with virtually immediate effect (as of March 3, 2025 and March 4, 2025)—all dated January 20, 2025, President Trump's first day in office.

These included the following forms: N-400 (Application for Naturalization), I-485 (Application to Register Permanent Residence or Adjust Status), I-485 Supp J (Confirmation of Valid Job Offer or Request for Job Portability), I-131 (Application for Travel Documents, Parole Documents, and Arrival/Departure Records) and I-134 (Declaration of Financial Support). These new editions were annotated as effective immediately (as of March 3, 2025 and March 4, 2025).

The prior versions of these forms allowed applicants to specify their gender as: male, female or "other gender identity," and did not require disclosure of biological sex at birth. Regrettably, however, USCIS did not disclose how the agency would handle applications submitted using the prior forms that are received after March 3rd or 4th.

Whether USCIS accepts and adjudicates or rejects and returns such prior versions can mean the difference between continued lawful status, on the one hand, or, ineligibility for the benefit requested, an immigration status violation, and—under a February 28, 2025 Policy Memorandum penned by DHS Secretary Kristi Noem ("Issuance of Notices to Appear . . . in Cases Involving Inadmissible and Deportable Aliens")—a referral of the hapless applicant to appear before an immigration judge in a removal hearing.

Fortunately, however, perhaps prompted by federal court litigation initiated by the American Immigration Lawyers Association and private attorneys that sought injunctive relief, USCIS on March 8, 2025 extended the deadline for filing the January 20, 2025 versions of the above forms to April 3 or 4, 2025.

Executive Order 14151: Ending Radical and Wasteful Government DEI Programs and Preferencing

This EO, among other things, declared that "Americans deserve a government committed to serving every person with equal dignity and respect, and to expending precious taxpayer resources only on making America great." It also directed each agency head, in consultation with the Attorney General, within 60 days, to "recommend actions… to align agency or department programs, activities, policies, regulations, guidance, employment practices, **enforcement activities**… and **litigating positions with the policy of equal dignity and respect**…" (Emphasis added.)

On February 19, 2025, Acting Chair Lucas stated:

> The EEOC is putting employers and other covered entities on notice: if you are part of the pipeline contributing to our immigration crisis or abusing our legal immigration system via illegal preferences against American workers, you must stop. The law applies to you, and you are not above the law. **The EEOC is here to protect all workers from unlawful national origin discrimination, including American workers**
>
> …
>
> **Unlawful bias against American workers**, in violation of [the prohibition against national origin discrimination in] Title VII, **is a large-scale problem in multiple industries nationwide**
>
> …
>
> **Many employers have policies and practices preferring**… **visa holders or other legal immigrants over American workers**—in direct violation of federal employment law prohibiting national origin discrimination. Cracking down on this type of unlawful discrimination will shift employer incentives… **decreasing abuse of the United States' legal immigration system**. (Emphasis added.)

Other recent actions similarly suggest that the Trump administration intends to vigorously target employers that are seen as favoring or are perceived to favor noncitizen workers, and thereby seen to be disfavoring US citizens.

As reported on February 17, 2025 in Bloomberg Law, Alberto Ruisanchez, who headed the DOJ's Immigrant and Employee Rights (IER) section, has been replaced. IER is charged with investigating and enforcing actions by employers which amount to citizenship status discrimination under INA § 274B [8 U.S.C. § 1324b]. This action comes in the wake of a May 2024 letter from then-Senator JD Vance, criticizing IER for devoting insufficient attention to investigating discriminatory instances of noncitizen preference over US citizens and permanent residents.

This focus on enforcement of the prohibition against citizenship status discrimination which could be seen as perpetrated against US citizens is consistent with Project 2025's Mandate for Leadership, Ch. 17 ("Department of Justice"), p. 568, which urged the DOJ to:

> **Pursue aggressive enforcement of the immigration laws within the Immigrant and Employee Rights Section of the Civil Rights Division to ensure that no American citizen is discriminated against in the employment context in favor of a temporary or foreign worker**. (Bolding interregional.)

The investigation and enforcement policies announced in EO 14151, as reflected in the noted actions of the EEOC and DOJ, should be read in the context of other DOJ "Investigative And Charging Priorities," including "Immigration Enforcement" (capitalization in original), and specifically including 8 U.S.C. §§ "1324-1328" as announced in a February 5, 2025 memorandum from Attorney General Pam Biondi.

Included in 8 U.S.C. §§ 1324 through 1328 are four key immigration provisions:

- INA § 274 (a felony prohibiting, among other things, **encouraging or inducing** a noncitizen "to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be **in violation of law**"),
- INA § 274A (relating to the employment eligibility verification Form I-9 paperwork obligations),
- INA § 274B (noted above), and
- INA § 274C (penalties for "document fraud") including preparing, filing or assisting 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**" (Note that 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 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." (Emphasis and bullet points added.)

Given the newly announced focus on immigration enforcement, employers that sponsor noncitizens for employment-based immigration benefits may wish to consider reviewing (under the direction of legal counsel who can afford privileges and protections under the attorney-client privilege and the work product exception to disclosure) all internal immigration compliance protocols and practices.

This proactive measure, in general, might include a review of the employer's:

(a) general and immigration-related recruitment and hiring policies, practices and activities;
(b) Department of Labor (DOL) H-1B labor condition application (LCA) and PERM labor certification compliance;
(c) Form I-9 (employment eligibility verification) and E-Verify policies and records; and
(d) the accuracy of all or a representative random sampling of the factual representations contained in petitions and applications previously submitted to any federal immigration agency (DHS, State and DOL) in connection with requests for employment-based immigration benefits.

Recent Presidential Announcements

On February 25, 2025, President Trump, with Secretary of Commerce (Howard Lutnick) at his side, announced a new "Gold Card" that would grant permanent residency and a path to US citizenship for noncitizens who invest $5 million. Unlike the current tax treatment of US citizens and permanent residents, $5 million Gold Card investors who receive a green card through this route would be exempt from US taxes on income and assets earned or held abroad. Details of the program, according to Secretary Lutnick, were to be revealed in two weeks.

As the White House transcript of remarks before a February 26, 2025 cabinet meeting reflects, he added:

> I get calls from, as an example, companies where they want to hire the number one student at a school. A person comes from India, China, Japan, lots of different places, and they go to Harvard, the Wharton School of Finance. They go to Yale. They go to all great schools. And they graduate number one in their class, and they are made job offers, but the offer is immediately rescinded because you have no idea whether or not that person can stay in the country. I want to be able to have that person stay in the country.
>
> These companies can go and buy a gold card, and they can use it as a matter of recruitment.

He returned to the topic in his March 4, 2025 State of the Union address:

> With [the] goal [of balancing the budget] in mind, we have developed in great detail what we are calling the gold card, which goes on sale very, very soon. For $5 million, we will allow the most successful job-creating people from all over the world to buy a path to US citizenship.
>
> It's like the green card but better and more sophisticated. And these people will have to pay tax in our country. They won't have to pay tax from where they came. The money that they've made, you wouldn't want to do that. But they have to pay tax, create jobs. They'll also be taking people out of colleges and paying for them so that we can keep them in our country instead of having them be—being forced out. No. 1 at the top school, as an example, being forced out and not being allowed to stay and create tremendous numbers of jobs and great success for a company out there.

Many questions about the Gold Card proposal remain unanswered, including:

- How can the President issue immigrant visas or green card status in the absence of federal immigration and tax legislation?
- Will the Gold Card visa program supplant or run concurrently with the existing EB-5 immigrant visa program which requires only a minimum investment of $800,000?
- Given the existing statutory **limit** on the annual number of immigrant visas that may be issued, what will be stated as legal authority for the **unlimited** issuance of permanent residency visas through the Goal Card program?

Notwithstanding doubts about how this program can be lawfully launched, President Trump's remarks about the deserving need of US employers to hire noncitizens with degrees from American colleges and universities are heartening.

Conclusion

No matter the fate or desirability of the Green Card visa program, and the possibly more welcoming attitude toward immigration benefits for American-degreed noncitizens, US employers must nevertheless reckon with the added burdens of time, expense and energy imposed by agency actions implementing President Trump's post-inauguration Executive Orders. The complexity of the attendant legal issues and magnitude of potential business risks suggest that they should (pardon the brazen self-promotion) keep their immigration counsel on speed dial.

Contact us

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

- Angelo A. Paparelli, Immigration Partner, angelo.paparelli@vialto.com

Further information on Vialto Partners can be found at vialto.com