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US IMMIGRATION & NATIONALITY LAW

IMMIGRATION UPDATE - MARCH 17, 2025

Posted on March 17, 2025 by Cyrus Mehta

Headlines:

U.S. Arrests and Detains Permanent Resident Protester, Raising First Amendment Concerns – The Trump administration has said it plans to expand arrests and deportations based on foreign policy grounds.

DOS Expands Foreign Affairs Functions Exempted From Public Notice Requirements; Significant Effects on Agency Rulemaking and Adjudications Likely – The declaration effectively constitutes an expansion to other federal agencies of the exemption of "foreign affairs" functions from Administrative Procedure Act requirements.

DHS Designates New Form for Registration and Fingerprinting – Following the Department of Homeland Security's announcement that certain noncitizens in the United States must register and be fingerprinted, the agency released an interim final rule designating a new form for that purpose, effective April 11, 2025.

ICE Empties Guantanamo of Migrants; CBP Reduces Temporary Processing Facilities Along Southwest Border – U.S. Immigration and Customs Enforcement moved the last 40 migrants who had been detained at the U.S. Naval Base in Guantanamo Bay, Cuba, back to the United States.

April Visa Bulletin Announces Retrogression of China and India EB-5 Final Action Dates, Unavailability of EB-4 Immigrant Visas for Rest of Fiscal Year – The Department of State's Visa Bulletin for April 2025 reports that increased demand and number use by China and India in the EB-5 unreserved immigrant investor green card category, combined with increased Rest of World demand and number use, has made it necessary to retrogress the final action dates.

DOS Resumes Processing of Following-to-Join Relatives of Refugees in

United States – The annual limits will reset with the start of the new fiscal year on October 1, 2025.

CDC Removes COVID-19 Vaccination Requirement for Immigrant Visa Applicants – U.S. embassies and consulates will no longer refuse an immigrant visa application for failure to present documentation that the applicant received the COVID-19 vaccination.

OFLC to Delete Records From FLAG – Those with cases in the Foreign Labor Application Gateway system older than five years from the date of final determination should download them by March 19, 2025.

Details:

U.S. Arrests and Detains Permanent Resident Protester, Raising First Amendment Concerns

On March 8, 2025, U.S. Immigration and Customs Enforcement (ICE) agents arrested and detained Mahmoud Khalil, a recent Columbia University graduate, Syrian immigrant, and pro-Palestinian protester who is a permanent resident of the United States. On March 10, 2025, a U.S. district judge ordered that Mr. Khalil not be removed from the United States pending a ruling on his petition.

According to reports, Secretary of State Marco Rubio personally signed off on the revocation of Mr. Khalil's permanent resident status after receiving information from the Department of Homeland Security that Mr. Khalil had participated in "pro-Hamas rallies" at which pro-Hamas propaganda was distributed. The Trump administration has said it plans to expand arrests and deportations based on foreign policy grounds under the Immigration and Nationality Act: "An alien whose presence or activities in the United States the Secretary of State has reasonable ground to believe would have potentially serious adverse foreign policy consequences for the United States is deportable." Otherwise lawful statements, beliefs, or associations cannot be used as grounds for exclusion or deportation, unless the Secretary of State "personally determines that the alien's admission would compromise a compelling United States foreign policy interest."

The Khalil case has raised First Amendment concerns about people's right to express views that differ from those of the U.S. government. Commenters have noted, for example, that in a concurring opinion in the 1945 Supreme Court

case, *Bridges v. Wixon*, Justice Francis Murphy wrote that "once an alien lawfully enters and resides in this country he becomes invested with the rights guaranteed by the Constitution to all people within our borders." Although DHS stated that Mr. Khalil had participated in "pro-Hamas" activities, Baher Azmy, legal director of the Center for Constitutional Rights and one of Khalil's attorneys, said that his detention "has nothing to do with security; it is only about repression. The United States government has taken the position that it can arrest, detain, and seek to deport a lawful permanent resident exclusively because of his peaceful, constitutionally protected activism. In this case, in support of Palestinian human rights and an end to genocide in Gaza." It was unclear what evidence DHS used to determine that Mr. Khalil's actions constituted "pro-Hamas" activities. Hamas is a designated terrorist organization.

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DOS Expands Foreign Affairs Functions Exempted From Public Notice Requirements; Significant Effects on Agency Rulemaking and Adjudications Likely

Secretary of State Marco Rubio published a notice on March 14, 2025, that includes a statement dated February 21, 2025, reiterating that the Department of State's (DOS) foreign affairs purview includes "all policy related to the protection and travel of U.S. citizens overseas, visa operations and visa issuance, implementation of the Arms Export Control Act, and implementation of the Mutual Educational and Cultural Exchange Act of 1961."

The notice further declares that "all efforts, conducted by any agency of the federal government, to control the status, entry, and exit of people, and the transfer of goods, services, data, technology, and other items across the borders of the United States, constitute a foreign affairs function of the United States under the Administrative Procedure Act ." This effectively constitutes an expansion to other federal agencies of the exemption of these "foreign affairs" functions from the APA's requirements.

Commenters noted that this determination could have significant effects on rulemaking and adjudications of several agencies. For example, NAFSA said this means that agencies such as DOS and the Departments of Homeland Security and Labor could issue new immigration and border-related regulations without notice and comment; make legal challenges based on APA violations more

difficult; and potentially reduce transparency in immigration-related adjudications, including removal proceedings.

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DHS Designates New Form for Registration and Fingerprinting

Following the Department of Homeland Security's (DHS) announcement that certain noncitizens in the United States must register and be fingerprinted, the agency released an interim final rule designating a new registration form, G-325R, for that purpose, effective April 11, 2025. There is no fee. DHS requests comments on the interim rule by May 12, 2025.

According to DHS:

- With limited exceptions (e.g., for visa holders who have already been registered and fingerprinted (through their application for a visa) and A and G visa holders), those above the age of 14 who remain in the United States for 30 days or longer must apply for registration and be fingerprinted before the expiration of 30 days.
- Similarly, parents and legal guardians must ensure that their children below the age of 14 are registered.
- Any noncitizen, regardless of previous registration, who turns 14 years old in the United States must update their registration and be fingerprinted within 30 days after their 14th
- Green card holders (permanent residents) who obtained their green cards under age 14 must register by filing Form I-90, to replace their green cards, and be fingerprinted, upon reaching age 14. They should file Form I-90 instead of Form G-325R.
- Willful failure or refusal to apply to register or to be fingerprinted is punishable by a fine of up to $5,000 or imprisonment for up to six months, or both.
- Those who register under these requirements will receive a "certificate of alien registration or alien registration receipt card" and must "at all times carry and have in their personal possession." Such persons also must notify DHS in writing of any changes of address.

Contact your Alliance of Business Immigration Lawyers attorney for advice in specific situations.

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ICE Empties Guantanamo of Migrants; CBP Reduces Temporary Processing Facilities Along Southwest Border

According to reports, on March 11, 2025, U.S. Immigration and Customs Enforcement (ICE) moved the last 40 migrants who had been detained at the U.S. Naval Base in Guantanamo Bay, Cuba, back to the United States, thus emptying out the Guantanamo detention center. This was the second time the Trump administration brought migrants to Guantanamo and then removed them. In February, 177 Venezuelans were brought to Guantanamo and then repatriated to Venezuela, and on March 2, 48 were brought to the United States from Guantanamo. About 290 migrants have been brought to Guantanamo and then flown out following President Trump's order to take migrants there.

It was unclear why the 40 migrants were flown from Guantanamo to the international airport in Alexandria, Louisiana, as no announcements were made. The move occurred shortly before a U.S. district court was scheduled to hear several cases challenging aspects of the Guantanamo detention policy. The operation has cost a reported $16 million so far, with a staff of about 1,000 security personnel and contractors, many from U.S. military bases.

Also, on March 13, 2025, following a drop in apprehensions along the U.S. southwest land border, U.S. Customs and Border Protection (CBP) announced that it is closing some of the temporary processing facilities in that area. "CBP no longer has a need for them as illegal aliens are being quickly removed. The U.S. Border Patrol has full capability to manage the detention of apprehended aliens in its permanent facilities. Manpower and other resources dedicated to temporary processing facilities will be redirected toward other priorities and will speed CBP's progress in gaining operational control over the southwest border," said Pete Flores, Acting CBP Commissioner.

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April Visa Bulletin Announces Retrogression of China and India EB-5 Final Action Dates, Unavailability of EB-4 Immigrant Visas for Rest of Fiscal Year

The Department of State's Visa Bulletin for April 2025 reports that increased demand and number use by China and India in the EB-5 unreserved immigrant investor green card category, combined with increased Rest of World demand

and number use, has made it necessary to retrogress the final action dates to hold number use within the maximum allowed under the fiscal year (FY) 2025 annual limits. The bulletin states that it may also become necessary to establish a final action date for Rest of World countries if demand and number use continue to increase.

The bulletin also includes a reminder that immigrant visas for FY 2025 in the EB-4 category, which includes certain religious workers under the SR visa category, remain unavailable. The bulletin notes that annual limits will reset with the start of the new fiscal year on October 1, 2025. "At that point, embassies and consulates may resume issuing immigrant visas in this category to qualified applicants," the bulletin says.

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DOS Resumes Processing of Following-to-Join Relatives of Refugees in United States

Following a preliminary injunction in *Pacito v. Trump*, the Department of State (DOS) announced on March 14, 2025, that it has resumed processing of following-to-join beneficiaries who are relatives of refugees already in the United States.

DOS said it will "communicate directly with beneficiaries whose appointments were previously canceled to reschedule these appointments." The agency said it also will continue processing any application for which the following-to-join refugee beneficiary has already been interviewed. "Beneficiaries wishing to continue their applications will require a sponsor to fund their medical exams and travel to the United States," DOS said.

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CDC Removes COVID-19 Vaccination Requirement for Immigrant Visa Applicants

Effective March 11, 2025, the Centers for Disease Control and Prevention (CDC) has removed from its technical instructions to panel physicians the requirement that immigrant visa applicants receive the COVID-19 vaccination, the Department of State (DOS) announced.

Based on the CDC's updated guidance to panel physicians, U.S. embassies and consulates will no longer refuse an immigrant visa application for failure to

present documentation that the applicant received the COVID-19 vaccination. "Applicants whose medical exams are unexpired and otherwise still valid for travel to the United States, and whom a consular officer previously found ineligible based solely on the applicant's failure to establish vaccination against COVID-19, may have a new medical exam issued by the panel physician without a fee," DOS said. To request this, affected applicants "should reach out to the U.S. embassy or consulate at which they executed their application for an immigrant visa."

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OFLC to Delete Records From FLAG

On March 11, 2025, the Department of Labor's Office of Foreign Labor Certification (OFLC) announced that its record deletion program will begin at 12 midnight on Thursday, March 20, 2025. The following OFLC programs will be affected:

- Prevailing Wage Determinations (PWD)
- Permanent Labor Certification Applications (PERM)
- Temporary Labor Certification Applications (H-2A, H-2B, CW-1 visas)
- Temporary Labor Condition Applications (H-1B, H-1B1, E-3 visas)

OFLC said that those with cases in the Foreign Labor Application Gateway (FLAG) system older than five years from the date of final determination should download them by March 19, 2025.

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Firm in the News

Cyrus Mehta was quoted by *Forbes* in Trump Promises to Deport Migrants for Their Foreign Policy Views. He said, "I do not think one can challenge Secretary Rubio's determination in an immigration court that the noncitizen's presence or activities in the United States would have potentially adverse foreign policy consequences described in the letter. On the other hand, the very constitutionality of the provision may be challenged in the Court of Appeals after the noncitizen has received a removal order under First Amendment principles and their ties to the United States." The article says Mr. Mehta

believes that a lawful permanent resident would have the best chance to challenge the law, but a temporary visa holder could succeed, particularly an H-1B or L-1 visa holder. Those visas are dual intent, he noted, and the individuals can show ties to the United States. Mr. Mehta added that a lawful permanent resident seeking readmission from a trip abroad who is placed in removal proceedings can assert that the burden is on the Department of Homeland Security to establish, through clear and convincing evidence, that the individual is inadmissible. However, the burden is on a temporary visa holder to establish that they are entitled to admission clearly and beyond doubt, he said. Mr. Mehta also noted that "“There is a potential constitutional issue under … First Amendment case law with giving the Secretary of State the authority to authorize removal for what the statute hypothesizes would be lawful activity."

Mr. Mehta was featured on the ITV Gold On Point podcast series on President Trump's immigration policies.

Mr. Mehta was featured in a Reuters segment, U.S. Judge Temporarily Blocks Deportation of Columbia Student. He said, "Green card holders have rights. They just cannot be picked up in the way he has been and detained incognito. The person should have been convicted of a crime, a deportable offense. I don't believe Mr. Khalil has been convicted of such an offense, from what I know. You could also initiate deportation proceedings if a green card holder has provided material support to a terrorist organization, which is what the Trump administration has been alleging." He added that in such cases, the government has a high burden of proof and involvement in protests for Palestinian rights would not typically constitute material support to terrorism.

Mr. Mehta authored an article on LinkedIn, Let's Fight to Uphold Our Rights to Free Speech and the Rights of Green Card Holders.

Mr. Mehta was quoted by the *Washington Examiner* in Immigrant Activists Decry Trump Registration Requirement: 'Terrorize People.' His views on the registration program are reflected in the article.

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