

The Trump Administration's Registration Requirement for Immigrants

A Rapid Analysis by the American Immigration Council

On February 25, U.S. Citizenship and Immigration Services [announced](#) that the Trump administration will reanimate a provision of U.S. immigration law that has essentially been dormant for decades: a requirement for all immigrants who did not enter with a visa to register with the federal government after their arrival, and carry proof of their registration with them.

The administration is clarifying which immigrants already count as being registered—please see the section below on “Who the Registration Process Will Affect” for a full explanation of this—and plans to issue a new form for immigrants who are not already registered to submit.

The administration is using this forthcoming registration process alongside federal criminal law—which makes it a crime for immigrants to fail to register or fail to carry proof of registration. In doing so, the Trump administration is giving itself another tool to use against immigrants: the threat of criminal prosecution.

The registration requirement will force many people in the United States—including those who entered without inspection and have had no contact with the federal government during their years living in American communities—to make a choice between two options that both carry serious risk. Many others, such as immigrants who are already deemed registered—which includes both many undocumented immigrants and many who have legal status in the United States—will face a risk of prosecution if they fail to carry registration papers with them at all times.

Background

Being in the United States without immigration status is not a crime. It is a civil violation, for which the civil penalty is deportation. Past efforts to change the law by making it a federal crime to be in the U.S. without authorization, such as the 2005 “Sensenbrenner bill,” have failed.

There is, however, a federal law on the books that declares it to be the duty of all noncitizens 14 or older who have not already been “registered or fingerprinted” to register with the federal government within 30 days of their arrival (8 USC 1302) and allows for them to be criminally prosecuted if they fail to register (8 USC 1306). Another federal law allows any adult immigrant to be prosecuted if they fail to produce evidence of having registered when stopped by a federal agent (8 USC 1304). This law was enacted during World War II, when it required noncitizens to register at their local post office. The law was later integrated into the immigration process, requiring people to register at ports of entry upon their arrival and thus providing no way for people who entered without authorization to comply with the law. Over time, the law and regulations fell into disuse and became outdated; for example, the list of forms that were designated “appropriate” for registration was different from the list of forms that were considered “evidence” of registration.

Furthermore, because there was no way for someone to register after arriving in the United States, the law was unenforceable against those who entered without inspection—it required people to do something the federal government had not created a process for them

to do. With one exception—the post-9/11 National Security Entry-Exit Registration System, discussed below—the federal government has never attempted to require registration of a large group of immigrants who were not already “registered” through a separate immigration benefit or enforcement process.

This is what the Trump administration is now changing. By announcing that it will create a new process permitting anyone to “register” with the federal government, the administration is now laying the groundwork for the registration law to be dusted off and enforced. Furthermore, the administration is [encouraging federal prosecutors](#) to enforce violations of the registration provision—allowing unauthorized immigrants to be swept up in criminal proceedings for failing to comply.

The implementation of this registration process will have two major effects.

The most acute impact will be on immigrants who are not already considered registered. Many immigrants, including millions of people without lawful status, are already deemed to be registered—including anyone who has received a work permit and anyone who has been placed in deportation proceedings. Please see the “Who the Registration Process Will Affect” section, below, for more complete information about which immigrants are deemed registered already and which are not.

However, unauthorized immigrants who have not been deemed registered—including anyone who entered the United States without inspection and has not had any contact with the federal government—will now be placed in a very vulnerable and sensitive position. People who choose to submit a “registration” form may be opening themselves up to being arrested by immigration authorities and placed in removal proceedings. People who choose not to submit the form, on the other hand, may be in danger of criminal prosecution.

Additionally, the Trump administration’s policy raises the possibility that immigrants who are registered—regardless of lawful status—might be criminally

charged and penalized for failing to carry proof of their registration with them at all times.

Federal Laws Regarding Immigrant Registration

8 U.S.C. section 1302, codified via the Alien Registration Act of 1940, requires all noncitizens over the age of 14 who have not already registered, and who are in the U.S. for more than 30 days, to register with the federal government within 30 days of their arrival. Noncitizens under the age of 14 must be registered by a parent or legal guardian. The law allows the attorney general to waive the registration requirement for anyone.

8 U.S.C. sections 1306(a) and 1304 attach criminal penalties for failing to register. Under section 1306(a), any noncitizen who “willfully fails” to register with the government (or the parent of any noncitizen under 14 who fails to do so) after 30 days is guilty of a federal misdemeanor crime. If charged and convicted, it allows the noncitizen (or parent) to be sentenced to up to six months in jail and/or fined up to \$1,000. Under section 1304, any adult who fails to carry proof of registration can be charged with a misdemeanor and fined up to \$100.

The regulations implementing these laws can be found at 8 C.F.R. 264.1.

The Trump Administration’s Efforts to Enforce These Laws

One of the executive orders signed on the first day of the current Trump administration highlighted the registration requirement, instructing the U.S. Department of Homeland Security (along with the State Department and Department of Justice) to “ensure that all previously unregistered aliens comply” with the registration law, and to ensure that failure to comply with the registration requirement is treated as a “civil and criminal enforcement priority.” A [memo](#) sent to federal prosecutors on January 21, instructing them to prioritize criminal prosecutions for immigration-related offenses, listed the criminal registration law (sections 1304 and 1306) among those that should be prosecuted when discovered. However, in order to successfully prosecute

people for failing to register, the government needed to provide a way for them to register to begin with.

The February 25 announcement from USCIS makes it clear that process will be forthcoming. It encourages everyone who has not already been deemed registered to create a USCIS online account, which can then be used to submit the registration form when such a form is ultimately published.

Once there is a way to register, federal prosecutors will be able to criminally charge people for the crime of failing to register or failing to carry evidence of registration with them. This will allow them to prosecute unauthorized immigrants who previously could not be criminally prosecuted. U.S. Immigration and Customs Enforcement agents may also be deputized as criminal law enforcement officers for this purpose, permitting them to arrest people on both civil immigration charges and criminal law violations.

Who the Registration Process Will Affect

Federal regulations include a list of forms which are considered sufficient for registration. According to the USCIS announcement, anyone who has been issued one of the following documents *and who has been fingerprinted by the federal government* is considered “registered” under the law and will not need to submit new registration through the forthcoming process. However, they may need to carry proof of their documentation with them if they want to avoid criminal charges.

- I-94 (Arrival-Departure Record) which covers:
 - People admitted with non-immigrant visas.
 - People paroled into the U.S. under 212(d)(5) of INA.
 - People who have been granted permission to depart without the institution of deportation proceedings.
- I-95, Crewmen's Landing Permit—Crewmen arriving by vessel or aircraft.

- I-184, Alien Crewman Landing Permit and Identification Card—Crewmen arriving by vessel.
- I-185, Nonresident Alien Canadian Border Crossing Card—Citizens of Canada or British subjects residing in Canada.
- I-186, Nonresident Alien Mexican Border Crossing Card—Citizens of Mexico residing in Mexico.
- I-221, Order to Show Cause and Notice of Hearing—People against whom deportation proceedings are being instituted.
- I-221S, Order to Show Cause, Notice of Hearing, and Warrant for Arrest of Alien—People against whom deportation proceedings are being instituted.
- I-551, Permanent Resident Card—Lawful permanent residents of the United States.
- I-766, Employment Authorization Document—People with work permits.
- I-862, Notice to Appear—People against whom removal proceedings are being instituted.
- I-863, Notice of Referral to Immigration Judge—People against whom removal proceedings are being instituted.

Many immigrants who do not have full legal status in the United States nevertheless have one or more of these documents and are thus considered registered. For example, most of the [3.7 million immigrants](#) who are currently in deportation proceedings before an immigration judge have been issued one of the documents above. Similarly, many immigrants have work permits, including many people with Temporary Protected Status or Deferred Action for Childhood Arrivals and many asylum applicants. People who have been paroled into the United States are considered registered even if the period of their parole has expired.

Immigrants who do not have any of these documents may be considered unregistered. This includes people who entered without inspection and have had no

subsequent contact with the federal government because they have previously been unable to seek legal status or even to register a—population that may number in the millions. It also includes people who have applied for some benefits, such as TPS or DACA, but who have not been fingerprinted and whose applications have not been approved.

NSEERS: An Earlier Registration Effort Raising Serious Constitutional Issues

The only modern effort to enforce the registration provision was the National Security Entry-Exit Registration System (NSEERS), created in the wake of 9/11. NSEERS did not apply to all unauthorized immigrants, but instead to men over the age of 16 on non-immigrant visas from one of a list of 24 countries the Bush administration declared were “havens for terrorists.” (All but one of these countries were majority-Muslim; the exception was North Korea.) Immigrants subjected to NSEERS were required to show up at local immigration offices to submit themselves for fingerprinting and interviews, and to check in at designated intervals afterward.

In some cases, NSEERS was used for immigration enforcement. In the first two months of the program, 1,000 people who had registered were detained by immigration officials, almost all of them on immigration violations for violating the terms of their status. Within the first year of the program, 83,000 immigrants had registered, and 13,000 of them had been placed into civil immigration proceedings. In other cases, community raids appeared to use the information provided to NSEERS to track down immigrants who had registered after their status had expired.

The implementation of NSEERS raised serious concerns under the First Amendment and the Equal Protection Clause of the Fourteenth Amendment, because it explicitly targeted men from specific, overwhelmingly Muslim-majority countries. This is different from the current registration effort, which targets certain immigrants who entered the United States without inspection, regardless of nationality. Under NSEERS,

criminal prosecution of people for failing to register was not common; now, it is an explicit goal of the administration.

Fear and Uncertainty

The new registration policy forces “unregistered” immigrants to choose between two risky options. Choosing to submit the designated form to the federal government, once it is available, may put them at risk of being placed in removal proceedings. Choosing not to submit it may put them at risk of future criminal prosecution for failing to register if they are apprehended by ICE at a later point.

Additionally, it raises the possibility that immigrants who are already registered—including those with legal status—may be arrested and prosecuted for failing to carry proof of their registration with them at all times or failing to provide it to law enforcement when asked.

It is essential that individuals who may be affected by this policy consult with a competent and reputable immigration lawyer, if at all possible, to receive the most appropriate advice for their circumstances.

Immigrant communities around the United States are already living in fear of the Trump administration’s scaled-up immigration enforcement efforts. News of the registration requirement is likely to exacerbate the fear and anxiety in these communities.

Anxiety, especially when stoked by rumors and misinformation, can strike people who are not in fact targeted by a policy; it can also terrorize people (whether targeted or not) to the point of harm for themselves and their families. During the first Trump administration, for example, early reports of a regulation restricting access to legal immigration status for use of certain government benefits (the “public charge” regulation) led to noticeable and persistent declines in the use of public benefits including food stamps and Head Start—including benefits that were not ultimately restricted by the regulation, and persisting after the Biden administration rescinded the regulation.