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Executive Innovation and Statutory Constraint

The Legal Viability of the Trump Gold Card

Divij Kishore*

Abstract: This article examines the Trump Gold Card program as an exercise of executive authority in immigration law. The article evaluates the program's design and its risk of legal challenge. It argues that the program departs from congressionally authorized employment-based pathways, raises unresolved administrative law concerns, and considers the limits of executive power under the Immigration and Nationality Act.

Introduction

The executive branch has long exercised substantial discretion in the administration of immigration laws.[1] That discretion, however, operates within a statutory framework established by Congress through the Immigration and Nationality Act (INA).[2] In the first 12 months of its second term, the Trump administration announced a new immigration pathway—branded by the administration as the "Trump Gold Card"—that purports to provide a route to lawful permanent residence for foreign nationals who make substantial financial contributions to the federal government.[3] Unlike existing employment-based and investment-based immigrant visa programs, the Trump Gold Card purports to emerge from executive action alone rather than implementing a statutory framework backed by express congressional authorization.[4]

This article examines whether the Trump Gold Card can fit within the statutory structure of U.S. immigration law. Specifically, it discusses the program's legal foundation, administrative layout, and operational highlights. The article evaluates the extent to which the Trump Gold Card departs from congressionally established immigrant visa categories. The Trump Gold Card raises substantial statutory and administrative law concerns. This is because it conditions access to lawful permanent residence on the transfer of a significant sum to the federal government, characterized in current program materials as an irrevocable "gift"[5] to the Department of Commerce, while simultaneously creating an expectation of immigration-related benefits. In doing so, it blurs the line between a donative transfer and a transaction with elements of consideration, all without a clear statutory basis or the procedural safeguards typically required for administrative action of this scope.[6] While the article

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briefly touches on the comparison between the EB-5 Program and the Trump Gold Card, it does not discuss this at length.

The INA establishes a comprehensive statutory framework governing employment-based immigration, including clearly delineated eligibility criteria, numerical limits, and allocation mechanisms.[7] The statute allocates approximately 140,000 employment-based immigrant visas annually, a figure that includes both principal applicants and their derivative beneficiaries.[8] Within this overall cap, EB-1 and EB-2 preference categories each receive 28.6 percent of available visas, resulting in a limited number of visas allocated to individuals qualifying under these classifications.[9] These categories are further subject to per-country limitations, and in practice, demand frequently exceeds available visa numbers, resulting in persistent backlogs and delays in immigrant visa availability. Congress has expressly authorized discrete employment-based immigrant categories, including the EB-1 classification for individuals of extraordinary ability and certain multinational executives, the EB-2 classification for advanced degree professionals and individuals whose work serves the national interest, and the EB-5 Immigrant Investor Program, which permits permanent residence based on qualifying capital investment and job creation.[10]

Each of these pathways is grounded in affirmative statutory authorization and reflects Congress's considered judgment as to the conditions under which employment-based immigrant visas may be issued.[11] By contrast, the Trump Gold Card does not correspond to any congressionally enacted immigrant classification. Rather than establishing eligibility criteria through statute, it conditions access to immigrant visa adjudication on the making of a substantial financial gift to the federal government, without express authorization in the INA for such a mechanism.

Courts have consistently recognized that executive discretion in immigration, while substantial, must operate within the bounds set by Congress.[12] The absence of a statutory basis for a gift-based immigrant pathway therefore raises threshold questions concerning the scope of executive authority under the INA.

Legal and Administrative Origins of the Trump Gold Card

The Trump Gold Card program emerged through a series of executive communications beginning in early 2025,[13] initially framed as a policy response to perceived limitations in existing employment-based and investor visa pathways. Early public statements suggested a program that would operate alongside, or as an alternative to, the EB-5 Immigrant Investor Program, but without the statutory requirements tied to investment in a commercial enterprise or job creation.[14] Subsequent executive action formalized the concept as a distinct pathway, administered through coordination among the Department of Commerce, Department of State, and Department of Homeland Security,[15]

and premised on a substantial financial contribution characterized as a "gift" to the United States.

In its current form, unlike the EB-5 program, which is expressly authorized by statute and subject to detailed regulatory requirements, the Trump Gold Card appears to draw upon existing employment-based immigrant visa classifications, particularly EB-1 and EB-2,[16] without clear statutory direction as to how eligibility criteria within those categories are to be satisfied. Notably, the program does not purport to operate through EB-3 or EB-4 preference categories,[17] which are generally tied to employer sponsorship, labor certification requirements, or specific statutory classifications, including special immigrant categories defined by Congress. It is also important to note that while EB-4 includes a range of distinct classifications, these are themselves grounded in express statutory provisions rather than administrative discretion, and do not function as a residual or catchall category[18] capable of accommodating a new, contribution-based pathway.

This evolution from an initially conflated or adjacent concept to EB-5 into a program positioned within the employment-based visa framework underscores the central legal question presented by the Trump Gold Card:[19] whether the executive branch may introduce a wealth-based pathway to lawful permanent residence by leveraging existing visa categories that were designed to reward extraordinary ability, advanced professional qualifications, or national interest contributions, rather than financial transfers to the government.

The Trump Gold Card does not appear in the INA.[20] Instead, it relies on an executive order[21] that directs federal agencies to implement a process allowing certain foreign nationals to seek immigrant visa consideration following a substantial financial contribution. On the other hand, the EB-1, EB-2, or EB-5 immigrant visa categories are expressly authorized and defined by statute.[22]

As an administrative matter, an initiative of this scope would ordinarily be expected to be implemented through notice-and-comment rulemaking. At the very least, the action must be supported by a final rule implementing the program through notice-and-comment rulemaking because it purports to establish new eligibility criteria and materially affect immigrant visa allocation, both of which constitute substantive rulemaking under the Administrative Procedure Act.[23] At the time of this writing, U.S. Citizenship and Immigration Services (USCIS) has not promulgated regulations implementing the program through notice-and-comment rulemaking under the Administrative Procedure Act.[24] The absence of formal regulations means that the program is currently operationalized primarily through form instructions and agency guidance. This mode of implementation is unusual for an initiative that purports to affect immigrant visa allocation, eligibility standards, and processing procedures.

In practice, the program appears to function as an administrative gateway through which applicants may seek evaluation under existing EB-1 (extraordinary ability) or EB-2 (national interest waiver) standards.[25] This structural choice is central to the legal questions raised by the program, including whether

the executive branch may condition access to immigrant visa adjudication on a financial contribution not authorized by statute, whether existing EB-1 and EB-2 classifications may be used to accommodate applicants who do not independently satisfy their statutory criteria, and whether such a framework is consistent with the INA's allocation of authority to Congress over the creation and definition of immigrant visa categories.

Petition Structure and Procedural Design

Under the current framework, an individual seeking a Trump Gold Card must make an unrestricted, unconditional, and non-refundable financial contribution of $1 million to the U.S. Department of Commerce (purportedly pursuant to Commerce's gift-acceptance authority), or alternatively have an organization contribute $2 million on the applicant's behalf.[26] However, the ultimate disposition, allocation, and oversight of such funds remain undefined in any statute, regulation, or formal agency guidance.[27] Only after the contribution is made may the applicant file a petition using Form I-140G.

Several aspects of this structure diverge from established employment-based immigration practice.

First, the financial contribution is not contingent on petition approval. There is no escrow mechanism, refund provision, or statutory safeguard in the event of denial, prolonged delay, or program suspension. The contribution must be made prior to adjudication, placing the full financial risk on the applicant. This framework should be distinguished from other employment-based immigrant visa processes where pre-filing costs such as labor market testing under the Program Electronic Review Management (PERM) system are ancillary to a statutory adjudication process and do not themselves constitute the basis for eligibility or access to immigrant visa consideration.[28] By contrast, in the Trump Gold Card program, the financial contribution functions as a threshold condition to access the adjudicatory process, magnifying both the magnitude and the legal significance of the applicant's up-front financial exposure. This distinction is further underscored by the magnitude and character of the required payment, which is both substantially higher than typical pre-filing costs in employment-based processes and operates not as a procedural expense, but as a substantive condition precedent to seeking immigration benefits.

Second, under the Trump Gold Card framework, the petitioner elects whether the application will be evaluated under the EB-1 extraordinary ability standards or the EB-2 national interest waiver standards, although approval of the Trump Gold Card petition does not confer classification under either category.[29] Then, at the stage of immigrant visa processing, the Department of State appears to play its ordinary role in visa adjudication, although current program materials do not clearly specify whether it will independently reassess

classification eligibility.[30] This bifurcated process is unusual because, in the ordinary employment-based framework, USCIS makes a binding determination of classification eligibility at the petition stage, and consular processing is limited to visa admissibility and verification of the approved classification,[31] rather than a de novo reassessment of whether the applicant satisfies the statutory criteria for that classification.

Third, current implementation materials appear to contemplate consular processing following petition approval, but they do not clearly explain the availability or mechanics of adjustment of status within the United States.[32] Although the executive order expressly directed the responsible agencies to establish a process for "visa issuance, and adjustment of status," the presently available program materials do not clearly describe how adjustment of status is meant to operate in practice.[33] Adjustment of status is statutorily available to eligible applicants under 8 U.S.C. § 1255(a) absent an express bar, and agency guidance alone cannot categorically foreclose an immigration benefit authorized by Congress.[34] In employment-based immigration, this pathway is generally available to applicants who satisfy the statutory requirements of § 1255(a), absent an applicable bar under § 1255(c).[35] No such statutory prohibition applies here.

Finally, the Trump Gold Card requires a $15,000, non-refundable filing fee per covered applicant, which is an amount higher than most USCIS benefit-request filing fees.[36] A family of four may incur $60,000 in petition filing fees alone, without any guarantee of expedited processing or ultimate visa availability. Historically, USCIS has established and adjusted filing fees through notice-and-comment rulemaking under the Administrative Procedure Act, a process designed to ensure transparency, public participation, and reasoned decision-making in the setting of fees that affect access to immigration benefits.[37] To the extent this fee has been introduced through sub-regulatory guidance rather than formal rulemaking, it raises questions as to whether the agency has adhered to the procedural requirements that typically govern the establishment of benefit-request fees.

Regulatory and Operational Uncertainty:

Beyond its structural features, the Trump Gold Card program is characterized by significant regulatory ambiguity.[38] USCIS has not provided guidance on how contributions are to be transmitted, which agency is responsible for receiving, tracking, or auditing such funds,[39] or whether special vetting standards apply beyond those used in other immigrant visa contexts.[40]

Neither USCIS nor the Department of State have clarified how the existing priority-date and visa-availability framework will apply to Trump Gold Card cases.[41] Because the program draws from existing EB-1 and EB-2 visa numbers, applicants may face substantial backlogs despite having made

the required financial contribution.[42] The absence of clarity on these issues complicates any assessment of the program's practical value to applicants.[43]

The administration has suggested that Trump Gold Card petitions will be processed rapidly, yet agencies have not publicly explained the operational basis for expedited adjudication.[44] USCIS has not identified which office will adjudicate these petitions, nor how existing resource constraints will be addressed.[45] Experience with other complex immigration programs suggests that thorough background checks, security vetting, and eligibility assessments are inherently time-intensive.[46]

These uncertainties could be mitigated through administrative measures, such as the introduction of escrow mechanisms pending petition approval, clearer refund policies in the event of program suspension or invalidation, and published guidance governing fund oversight and reporting. While such measures would not cure underlying statutory concerns, they could reduce applicant risk and enhance procedural transparency.

Brief Comparison with the EB-5 Immigrant Investor Program

A comparison with the EB-5 Immigrant Investor Program highlights the distinctive, and legally consequential, features of the Trump Gold Card.[47] EB-5 is a congressionally enacted program designed to promote economic growth through capital investment and job creation.[48] The operational contrast between the EB-5 program and the Trump Gold Card further underscores their structural divergence. EB-5 investors must place capital at risk in a new commercial enterprise and demonstrate the creation of at least ten full-time jobs for U.S. workers.[49] Adjudication in an EB-5 Investor's Petition proceeds in stages, including conditional residence, sustained investment, and subsequent removal of conditions based on job creation evidence.

The Trump Gold Card imposes none of these requirements.[50] It does not require investment, enterprise formation, or job creation.[51] Instead, it relies on a gift to the federal government, with no statutory guidance regarding the use, oversight, or fund reporting.[52] While EB-5 investors benefit from an established regulatory framework and statutory protections, Trump Gold Card applicants operate in an undefined administrative environment.[53]

Most importantly, EB-5 rests on explicit statutory authorization.[54] The Trump Gold Card does not. This distinction is critical to assessing the Trump Gold Card's legal viability.[55] The Supreme Court has emphasized that agencies may not assert broad regulatory authority over matters of significant economic or political consequence without clear congressional authorization. The creation of a wealth-based pathway to lawful permanent residence, particularly one that reallocates immigrant visa numbers from congressionally defined employment-based categories, implicates precisely the type of "major question"

for which courts require an unmistakable statement from Congress. While Congress has expressly authorized investment-based immigration through the EB-5 program, it has not delegated authority to the executive branch to create an alternative gift-based immigrant pathway or to redirect visa numbers reserved for EB-1 and EB-2 applicants. Absent such authorization, the Trump Gold Card is vulnerable to challenge under the "major questions doctrine," under which the Supreme Court has required clear congressional authorization for agency action of vast economic and political significance.

The Supreme Court's application of the major questions doctrine has become increasingly explicit in recent terms. Beyond *FDA v. Brown & Williamson Tobacco Corp.*, the Court has reiterated that agencies must point to clear congressional authorization when asserting regulatory authority over matters of vast economic or political significance.[56]

Immigration policy, and particularly the allocation of immigrant visas conferring lawful permanent residence, has long been recognized as an area of exceptional economic, political, and foreign-relations consequence. Accordingly, any executive action that effectively creates a new wealth-based pathway to permanent residence or materially alters the operation of existing statutory visa categories is likely to invite scrutiny under the major questions doctrine absent a clear statement of congressional intent.

Visa Allocation and Systemic Effects

The Trump Gold Card program's reliance on EB-1 and EB-2 visa numbers raises questions about the structure and operation of the employment-based immigration system, including the potential for increased competition within numerically capped categories, the displacement of applicants who independently satisfy statutory criteria, and resulting pressure on existing allocation and priority-date frameworks, as discussed in this section.[57] EB-1 and EB-2 visa numbers come from a fixed, numerically capped pool, and additional demand within these categories correspondingly reduces visa availability for applicants who already satisfy the governing statutory criteria.[58] These categories are numerically capped, subject to per-country limitations, and are already oversubscribed.[59] EB-1 and EB-2 function as primary employment-based pathways for highly skilled individuals, such as researchers, physicians, entrepreneurs, and other professionals, whose work may advance U.S. economic, scientific, public health, or other national interests, particularly where Congress has expressly incorporated a national-interest determination, as in the EB-2 national interest waiver framework.[60]

To the extent the Trump Gold Card program relies on numerically capped employment-based visa categories, it introduces the risk of increased competition for already limited EB-1 and EB-2 visa numbers, which are themselves subject to long-standing backlogs.[61] Employment-based immigrant visas are

numerically capped and allocated through a priority-based system.[62] These constraints operate in conjunction with per-country limitations that further restrict visa availability for applicants from high-demand countries. As reflected in the Department of State's Visa Bulletin, demand in these categories has, in many instances, exceeded annual visa supply for extended periods, resulting in significant waiting times for otherwise qualified applicants.[63] Courts have recognized that additional demand within a numerically constrained visa allocation system places structural pressure on visa availability, resulting in delays for otherwise eligible applicants.[64]

More broadly, this approach raises questions about whether it alters the balance Congress has struck between merit-based and investment-based immigration, as reflected in the INA's allocation of distinct visa categories and numerical limits, including whether financial contribution may be substituted for statutory eligibility within employment-based classifications and whether visa numbers allocated to merit-based categories may be effectively redirected toward a wealth-based pathway.[65] Congress has expressly authorized investment-based immigration through the EB-5 program, which is governed by distinct statutory requirements and numerical allocations.[66] By contrast, Congress has not authorized the substitution of financial contribution for statutory eligibility in employment-based immigrant categories, nor has it permitted the executive branch to prioritize wealth-based access within visa classifications designed to reward extraordinary ability or service to the national interest.[67] The systemic effect of such a shift, if sustained, would extend beyond individual applicants and reshape the allocation priorities of the entire employment-based immigration system.[68]

Prospective Legal Challenges

The Trump Gold Card has already become the subject of legal challenge, with pending litigation raising claims grounded in statutory interpretation, administrative law, and constitutional principles.[69] A recently filed complaint challenges the program on the grounds that it exceeds executive authority under the INA, was implemented without notice-and-comment rulemaking, and unlawfully conditions access to immigration benefits on substantial financial contributions not authorized by Congress.[70] Beyond the claims asserted in that action, potential challengers could also include U.S. employers, prospective immigrants adversely affected by altered visa allocation dynamics, or organizations asserting institutional or competitive injury.

The ongoing challenge to the Trump Gold Card also raises constitutional concerns, including whether the program operates as an unauthorized revenue-generating mechanism in tension with Congress's Article I authority over federal taxation and spending.[71] That theory implicates a threshold question as to whether the program functions, in substance, as a revenue-raising measure

implemented by the executive branch without congressional authorization. Although Congress has permitted agencies to impose fees tied to the recovery of administrative costs, the Trump Gold Card's required financial contribution does not appear to be clearly tethered to such costs and instead appears to operate as a condition for access to immigration benefits.[72] To the extent the program is characterized as raising revenue rather than administering a statutory scheme, it may be subject to challenge as an encroachment on Congress's exclusive authority under Article I to impose taxes and control federal revenues.[73]

This issue is analytically distinct from recent litigation over the $100,000 H-1B fee, in which the challenged payment was defended as part of the administration of an existing statutory visa program.[74] Here, by contrast, the Gold Card appears to make a financial transfer to the federal government itself a condition of access to immigration benefits outside any clearly authorized statutory framework.[75]

The INA establishes immigrant visa categories, eligibility criteria, and numerical limits through a comprehensive statutory framework enacted by Congress.[76] Challengers are therefore likely to argue that the INA does not authorize the executive branch to create new immigrant pathways or to reallocate visa numbers absent explicit congressional action.[77] They may further contend that the program exceeds the executive branch's delegated authority and is *ultra vires* the INA.[78] In addition, challengers may assert violations of the Administrative Procedure Act, including that the program was implemented without notice-and-comment rulemaking[79] and is arbitrary and capricious insofar as it departs from statutory design without adequate explanation.[80]

At its core, any resulting litigation will test whether the executive branch may, consistent with the INA and separation-of-powers principles, effectively create a new immigrant category through administrative action alone, particularly in an area of significant economic and political consequence.[81]

Conclusion

The Trump Gold Card represents a novel attempt to introduce a wealth-based route to lawful permanent residence without clear statutory authorization within the existing framework of U.S. immigration law. Although framed as an administrative innovation, the program raises substantial legal and procedural questions. Its reliance on executive action, the absence of express congressional authorization for a gift-based immigrant pathway, and persistent operational uncertainty collectively invite scrutiny under established principles of statutory interpretation and administrative law.

Whether the program survives judicial review will depend on how courts assess the scope of executive discretion under the INA and the extent to which Congress has (or has *not*) delegated authority to reshape employment-based

immigration pathways. Until those questions are resolved, the Trump Gold Card remains an experiment that tests the outer boundaries of administrative power in immigration law and the durability of Congress's role in structuring the nation's immigrant visa system.

Notes

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1. Arizona v. United States, 567 U.S. 387, 396-97 (2012).
2. Immigration and Nationality Act (INA), 8 U.S.C. § 1101 et seq.; INS v. Chadha, 462 U.S. 919, 940-41 (1983).
3. Exec. Order No. 14351, 90 Fed. Reg. 46,031 (Sept. 19, 2025).
4. *See* U.S. Const. art. I, § 8, cl. 4; *cf.* Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 585-87 (1952).
5. Exec. Order No. 14351, *supra* note 3, §§ 1, 2(a) (stating that the program facilitates entry of individuals who provide a "significant financial gift to the Nation" and authorizes eligibility for an immigrant visa upon making an "unrestricted gift" to the Department of Commerce).
6. Exec. Order No. 14351, *supra* note 3.
7. 8 U.S.C. §§ 1151-1153.
8. 8 U.S.C. §§ 1151(d), 1153(b).
9. 8 U.S.C. § 1152(a)(2).
10. 8 U.S.C. § 1153(b)(1), (2), (5).
11. *Id.*
12. Wu v. Fonfa, 2:19-CV-229 JCM (BNW), 2020 U.S. Dist. LEXIS 112405, at 12-13 (D. Nev. June 26, 2020) (noting that agency discretion "exists only to the extent Congress has delegated it").
13. *See* D. Kishore, *Investing in the American Dream: EB-5 vs. the Trump Gold Card*, Flagship Law (2025), https://flagshiplaw.com/investing-in-the-american-dream-eb-5-vs-the-trump-gold-card/ (discussing early public framing of the program and its positioning relative to EB-5).
14. 8 U.S.C. § 1153(b)(5) (establishing the EB-5 Immigrant Investor Program, including capital investment and job creation requirements).
15. *See* Kishore, *supra* note 13 (describing the interagency structure contemplated by early Gold Card materials and public statements).
16. 8 U.S.C. § 1153(b)(1)-(2) (defining EB-1 and EB-2 immigrant classifications and their statutory eligibility criteria).
17. 8 U.S.C. § 1153(b)(3)-(4) (defining EB-3 and EB-4 categories, including labor certification requirements and special immigrant classifications established by statute).
18. *See, e.g.*, Scialabba v. Cuellar de Osorio, 573 U.S. 41, 48-49 (2014) (recognizing that immigrant visa classifications are specifically defined by statute and not subject to ad hoc administrative expansion).
19. *See* Kishore, *supra* note 13 (noting tension between wealth-based access and statutorily defined eligibility pathways within the INA framework).
20. 8 U.S.C. § 1101 et seq.

21. *See* U.S. Const. art. II, § 3; *see also* Youngstown Sheet & Tube Co. v. Sawyer, 343 U.S. 579, 585-89 (1952) (establishing limits on executive authority absent congressional authorization).

22. 8 U.S.C. § 1153(b)(1), (b)(2), (b)(5).

23. 5 U.S.C. § 553; Perez v. Mortgage Bankers Ass'n, 575 U.S. 92, 96-97 (2015) (distinguishing legislative rules, which require notice and comment, from interpretive rules).

24. 5 U.S.C. § 553.

25. *See* 8 U.S.C. § 1153(b)(1)-(2); *cf.* Gonzales v. Oregon, 546 U.S. 243, 258-60 (2006).

26. Exec. Order No. 14351, *supra* note 3, *The Gold Card*, § 2(a); *Instructions for Form I-140G, Immigrant Petition for the Gold Card Program* (Nov. 19, 2025).

27. *See* Kishore, *supra*, note 13 (noting the absence of formal statutory or regulatory guidance governing the structure and use of funds under the proposed program); *see also* 15 U.S.C. § 1522 (authorizing the Department of Commerce to accept gifts, without establishing a comprehensive framework governing their allocation in this context).

28. *See* 20 C.F.R. § 656.17 (establishing labor certification recruitment requirements under the PERM process); *cf.* 8 U.S.C. § 1153(b)(2)-(3) (defining statutory eligibility for EB-2 and EB-3 classifications independent of recruitment expenditures).

29. Exec. Order No. 14351, *supra* note 3, *The Gold Card*, § 2(b); *Instructions for Form I-140G, Immigrant Petition for the Gold Card Program*, *supra* note 26.

30. *The Trump Gold Card*, https://www.trumpcard.gov/ (describing "petition approval and visa adjudication" after fee payment, noting that USCIS and the U.S. Department of State may require additional information, and stating that successful applicants receive lawful permanent resident status as an EB-1 or EB-2 visa holder "[a]s appropriately determined by the U.S. Department of Homeland Security and subject to availability").

31. *See* 8 C.F.R. § 204.5 (governing adjudication of employment-based immigrant petitions by USCIS); 22 C.F.R. § 42.41(a) (providing that consular officers determine visa eligibility, including admissibility, based on an approved petition).

32. *Instructions for Form I-140G, Immigrant Petition for the Gold Card Program*, *supra* note 26; *cf.* 8 U.S.C. § 1255(a); *cf.* Exec. Order No. 14351, *supra* note 3, § 4 (directing establishment of procedures for visa issuance and adjustment of status, to the extent consistent with law).

33. Exec. Order No. 14351, *supra* note 3, § 3(a) (directing the Secretary of Commerce, the Secretary of State, and the Secretary of Homeland Security to establish a process for "application and expedited adjudication of Gold Card petitions, visa issuance, and adjustment of status"); *see also The Trump Gold Card*, *supra* note 30 (describing petition approval and visa adjudication, but not clearly setting out the mechanics of adjustment of status).

34. 8 U.S.C. § 1255(a), (c) (governing eligibility for adjustment of status and enumerating statutory bars); *see also* INS v. St. Cyr, 533 U.S. 289, 307-08 (2001) (emphasizing that eligibility for immigration relief created by statute may not be curtailed by agency action absent clear congressional authorization).

35. 8 U.S.C. §§ 1255(a), (c), (k); *see* Babaria v. Jaddou, 87 F.4th 963, 969-71 (5th Cir. 2024); Chaudhry v. Holder, 705 F.3d 289, 292-93 (7th Cir. 2013).

36. *I-140G, Immigrant Petition for the Gold Card Program* (Dec. 10, 2025) (listing $15,000 fee per person); *Instructions for Form I-140G, Immigrant Petition for the Gold*

Card Program, *supra* note 26 (stating fee "will not be refunded regardless of the action taken" on the petition).

37. *See* 5 U.S.C. § 553(b)-(c) (requiring notice-and-comment rulemaking for substantive rules); 8 U.S.C. § 1356(m) (authorizing USCIS to set fees at a level that ensures recovery of adjudication and related costs); *see also* U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 88 Fed. Reg. 402 (Jan. 4, 2023) (final rule establishing USCIS fee schedule through notice-and-comment procedures).

38. Exec. Order No. 14351, *supra* note 3; *Form I-140G, Immigrant Petition for the Gold Card Program*, *supra* note 36; *Instructions for Form I-140G, Immigrant Petition for the Gold Card Program*, *supra* note 26.

39. *See* Kishore, *supra* note 13 (noting the absence of clear interagency guidance regarding the handling and oversight of funds associated with the proposed program); *see also* 15 U.S.C. § 1522 (authorizing the Department of Commerce to accept gifts, without specifying an integrated oversight framework involving USCIS).

40. *Instructions for Form I-140G, Immigrant Petition for the Gold Card Program*, *supra* note 26; *Form I-140G, Immigrant Petition for the Gold Card Program*, *supra* note 36.

41. *Visa Availability and Priority Dates,* U.S. Citizenship & Immigr. Serv. (Jan. 24, 2025); *The Visa Bulletin*, U.S. Dep't of State, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin.html; *Visa Bulletin for January 2026*, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2026/visa-bulletin-for-january-2026.html (employment-based charts); *Visa Bulletin for February 2026*, https://travel.state.gov/content/travel/en/legal/visa-law0/visa-bulletin/2026/visa-bulletin-for-february-2026.html (employment-based charts); 8 U.S.C. §§ 1151-1153.

42. Exec. Order No. 14351, *supra* note 3; *Visa Bulletin for January 2026* (showing cut-off dates/retrogression in EB categories); *Visa Bulletin for February 2026* (showing cut-off dates/retrogression in EB categories).

43. *Instructions for Form I-140G, Immigrant Petition for the Gold Card Program*, *supra* note 26; *The Visa Bulletin*, *supra* note 41 (priority date mechanics).

44. Exec. Order No. 14351, *supra* note 3 (directing agencies to establish fees to cover costs of expedited processing).

45. *Form I-140G, Immigrant Petition for the Gold Card Program*, *supra* note 36 (does not identify an adjudicating office); *Impact of the Homeland Security Act on Immigration Functions Transferred to DHS, FY 2024 Report*, U.S. Citizenship & Immigr. Serv., https://www.uscis.gov/sites/default/files/document/reports/ihsaiftdhs_fy24.pdf (discussing backlog growth drivers including staffing/resource constraints); *2024 Annual Report*, https://www.dhs.gov/sites/default/files/2024-07/24_0628_cisomb_2024-annual-report.pdf (systemic processing/backlog issues).

46. *2024 Annual Report*, *supra* note 45 (systemic processing/backlog issues); *Historic Processing Times*, U.S. Citizenship & Immigr. Serv. (showing multi-month median processing for major form types over FY 2020-25).

47. 8 U.S.C. § 1153(b)(5); EB-5 Reform and Integrity Act of 2022, Pub. L. No. 117-103, div. BB, tit. I, 136 Stat. 49, 107-39; *see also* Kishore, *supra* note 13.

48. 8 U.S.C. § 1153(b)(5); Matter of Izummi, 22 I. & N. Dec. 169, 175-76 (BIA 1998); H.R. Rep. No. 101-723, pt. 1, at 49-50 (1990).

49. 8 U.S.C. § 1153(b)(5)(A); 8 C.F.R. § 204.6(j)(4); Matter of Izummi, 22 I. & N. Dec. at 179-81.

50. Exec. Order No. 14351, *supra* note 3; *Instructions for Form I-140G, Immigrant Petition for the Gold Card Program*, *supra* note 26.

51. *Id.*

52. Exec. Order No. 14351, *supra* note 3; 8 U.S.C. § 1101 et seq. (absence of any Gold Card or gift-based immigrant provision).

53. 8 U.S.C. § 1153(b)(5); 8 C.F.R. §§ 204.6, 216.6; EB-5 Reform and Integrity Act of 2022, Pub. L. No. 117-103; *Immigrant Petition for the Gold Card Program*, *supra* note 36; *Instructions for Form I-140G, Immigrant Petition for the Gold Card Program*, *supra* note 26.

54. 8 U.S.C. § 1153(b)(5); Chang v. United States, 327 F.3d 911, 920-21 (9th Cir. 2003) (recognizing EB-5 as a statutory immigrant category).

55. FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120 (2000); West Virginia v. EPA, 142 S. Ct. 2587 (2022).

56. *See, e.g.*, West Virginia v. EPA, 597 U.S. 697, 721-23 (2022); Biden v. Nebraska, 143 S. Ct. 2355, 2372-73 (2023).

57. Exec. Order No. 14351, *supra* note 3; 8 U.S.C. §§ 1153(b)(1)-(2).

58. *See* 8 U.S.C. §§ 1151(d), 1153(b) (establishing the worldwide numerical limitation on employment-based immigrant visas and allocation across preference categories); *see also* the Introduction (noting that the statute allocates approximately 140,000 employment-based immigrant visas annually and that EB-1 and EB-2 each receive 28.6 percent of available visas).

59. 8 U.S.C. §§ 1151(d), 1152(a)(2); *The Visa Bulletin*, *supra* note 41.

60. *See* 8 U.S.C. §§ 1153(b)(1), (b)(2)(B); Matter of Dhanasar, 26 I. & N. Dec. 884, 889-92 (AAO 2016); Poursina v. U.S. Citizenship & Immigr. Servs., 936 F.3d 868, 871-73 (9th Cir. 2019); Flores v. Garland, 72 F.4th 85, 90-92 (5th Cir. 2023).

61. *See* 8 U.S.C. §§ 1151(d), 1152(a)(2), 1153(b); *The Visa Bulletin*, *supra* note 41; Scialabba v. Cuellar de Osorio, 573 U.S. 41, 46-47, 56-58 (2014) (explaining how numerical limits and priority-date queues operate under the INA).

62. 8 U.S.C. §§ 1151(d), 1153(b); Scialabba v. Cuellar de Osorio, 573 U.S. 41, 46-47, 56-58 (2014); *see also* American Competitiveness in the Twenty-First Century Act of 2000 §§ 106(a)-(b), Pub. L. No. 106-313, 114 Stat. 1251, 1254-55 (codified at 8 U.S.C. §§ 1184(g)(4), (h)(2)(E)) (authorizing extensions of H-1B nonimmigrant status for certain beneficiaries of approved employment-based immigrant petitions during periods of immigrant visa unavailability).

63. 8 U.S.C. § 1152(a)(2); 8 U.S.C. §§ 1151(d), 1153(b); *The Visa Bulletin*, *supra* note 41.

64. Babaria v. Jaddou, 87 F.4th 963, 969-71 (5th Cir. 2024); Nakka v. U.S. Citizenship & Immigration Servs., 111 F.4th 995, 1004-06 (9th Cir. 2024); Meina Xie v. Kerry, 780 F.3d 405, 408-09 (D.C. Cir. 2015).

65. 8 U.S.C. § 1153(b)(1)-(2), (b)(5).

66. 8 U.S.C. § 1153(b)(5); Pub. L. No. 117-103, div. BB, tit. I, 136 Stat. 49.

67. 8 U.S.C. § 1153(b)(1)-(2); FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 160-61 (2000).

68. 8 U.S.C. §§ 1151-1153; Arizona v. United States, 567 U.S. 387, 396-97 (2012).

69. Complaint, American Ass'n of Univ. Professors v. Dep't of Homeland Sec., No. 1:26-cv-00300 (D.D.C. filed February 3, 2026), https://f9c23fd5-1644-4a5f-a561-d04e6b5736d6.usrfiles.com/ugd/f9c23f_117437ff2f244a9cb137a74d419220ee.pdf.

70. *Id.* ¶¶ 109-10, 114-15, 119, 123-24, 127-28, 131-32, 136-38 (alleging *inter alia* that the program exceeds executive authority under the Immigration and Nationality Act, was implemented without notice-and-comment rulemaking, and conditions access to immigration benefits on unauthorized financial contributions).

71. U.S. Const. art. I, § 8, cl. 1; *id.* ¶¶ 136-38 (alleging that the program lacks statutory and constitutional authority and unlawfully raises revenue by conditioning immigration benefits on financial contributions).

72. 8 U.S.C. § 1356(m) (authorizing immigration-related fees at a level that ensures recovery of the full costs of providing adjudication and naturalization services); *id.*, ¶¶ 123, 131, 138 (alleging that the Trump Gold Card payment operates as a *quid pro quo* for immigration-related advantage, was established outside ordinary fee rulemaking, and is used to raise revenue rather than recover administrative costs).

73. U.S. Const. art. I, § 8, cl. 1; *see also* 8 U.S.C. § 1356(m) (authorizing immigration-related fees tied to cost recovery).

74. U.S. Const. art. I, § 8, cl. 1; Complaint, *supra* note 67, ¶¶ 136-38; *cf.* Complaint, Chamber of Com. of the U.S. v. U.S. Dep't of Homeland Sec., No. 1:25-cv-03675-BAH (D.D.C. Oct. 16, 2025); Order, *id.* (D.D.C. Dec. 23, 2025); Mem. Op. at 55-56, *id.* (granting summary judgment to the government and sustaining the challenged $100,000 H-1B fee within the H-1B framework).

75. U.S. Const. art. I, § 8, cl. 1; Complaint, *supra* note 69, ¶¶ 136-38; *cf.* Complaint, Chamber of Com. of the U.S. v. U.S. Dep't of Homeland Sec., No. 1:25-cv-03675-BAH (D.D.C. Oct. 16, 2025); Order, *id.* (D.D.C. Dec. 23, 2025); Mem. Op. at 55-56, *id.* (granting summary judgment to the government and sustaining the challenged $100,000 H-1B fee within the H-1B framework).

76. 8 U.S.C. §§ 1151-1153; Arizona v. United States, 567 U.S. 387, 396-97 (2012) (finding that Congress enacted a "comprehensive framework" governing immigration).

77. FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 159-61 (2000).

78. City of Arlington v. FCC, 569 U.S. 290, 297-98 (2013) (Agencies must act within bounds of authority delegated by Congress); West Virginia v. EPA, 142 S. Ct. 2587, 2609 (2022) (Reinforces scrutiny when agencies claim transformative power).

79. 5 U.S.C. §§ 553(b)-(c); Dep't of Homeland Sec. v. Regents of the Univ. of Cal., 140 S. Ct. 1891, 1905-06 (2020); Perez v. Mortg. Bankers Ass'n, 575 U.S. 92, 96-97 (2015) (Legislative rules require notice and comment).

80. Motor Vehicle Mfrs. Ass'n v. State Farm, 463 U.S. 29, 43 (1983) (Agencies must offer reasoned explanations for departures from statutory schemes); Dep't of Homeland Sec. v. Regents, 140 S. Ct. at 1910 (Failure to consider reliance interests and statutory structure is arbitrary).

81. INS v. Chadha, 462 U.S. 919, 940-41 (1983); West Virginia v. EPA, 142 S. Ct. at 2608-10.