U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Office of the Director (MS 2000)
Camp Springs, MD 20588-0009

U.S. Citizenship and Immigration Services

July 25, 2025 **IP-2025-0001**

Implementation Plan

SUBJECT: USCIS Implementation Plan of Executive Order 14160 – Protecting the Meaning and Value of American Citizenship

Background

On January 20, 2025, President Trump issued Executive Order 14160, Protecting the Meaning and Value of American Citizenship. *See* 90 Fed. Reg. 8449 (2025) (E.O.). The E.O. provides that the following categories of individuals will no longer be considered to be born "subject to the jurisdiction" of the United States and therefore will no longer be U.S. citizens at birth:

(1) children whose "mother was unlawfully present in the United States and the father was not a United States citizen or lawful permanent resident at the time of said person's birth"; and
(2) children whose "mother's presence in the United States at the time of said person's birth was lawful but temporary (such as, but not limited to, visiting the United States under the auspices of the Visa Waiver Program or visiting on a student, work, or tourist visa) and the father was not a United States citizen or lawful permanent resident at the time of said person's birth."

Currently, a preliminary injunction is in place, preventing the Government from implementing the E.O. *See Barbara v. Trump*, No. 2025 DNH 079P, 2025 WL 1904338 (D.N.H. July 10, 2025). However, the Government is preparing to implement the E.O. in the event that it is permitted to go into effect.[1] OCC provides this memorandum to address legal questions relevant to the implementation of the E.O. Specifically, this memorandum will address:

(1) the meaning of "unlawfully present";
(2) the meaning of "presence" that is "lawful but temporary" and which immigration statuses or other types of lawful presence may fall into that category; and
(3) whether children born in the United States to a person whose presence is "lawful but temporary" would have lawful immigration status.

[1] The court stated, "Nothing in this order should be construed as conflicting with the Supreme Court's ruling in *[Trump v. CASA*, *Inc*., 606 U.S. ---- (2025)], including its specific holding allowing executive agencies to develop and issue public guidance about the Executive's plans to implement the Executive Order." *Barbara v. Trump*, No. 2025 DNH 079P, 2025 WL 1904338, at *16.

Analysis

The Meaning of "Unlawfully Present"

Congress defined the term "unlawfully present" for purposes of inadmissibility under INA 212(a)(9) at INA 212(a)(9)(B)(ii) and provided certain exceptions to the accrual of unlawful presence at INA 212(a)(9)(B)(iii). While this definition of unlawfully present does not expressly apply to the term as used in the E.O.,[2] USCIS generally uses the same definition outside of the INA 212(a)(9) context and applies that same approach here.[3]

The term "unlawfully present" is defined in INA 212(a)(9)(B)(ii) to mean: an alien "present in the United States after the expiration of the period of stay authorized by the Attorney General or [] present in the United States without being admitted or paroled." Aliens present in the United States in lawful immigration status or as parolees are not unlawfully present. *See, e.g.,* AFM Ch. 40.9.2(b)(1). USCIS has moreover determined that aliens who have no lawful status but who nonetheless are considered to be in a period of stay authorized are not unlawfully present. *See, e.g.,* AFM Ch. 40.9.2(b)(3).

Importantly, unlawful status and unlawful presence are not synonymous. *See* AFM Ch. 40.9.2(a)(2). For example, aliens paroled into the United States have no lawful immigration status, but they are nonetheless considered to be in a period of stay authorized and therefore are not unlawfully present. The fact that the alien is not unlawfully present does *not* mean that the alien's status in the United States is lawful. The fact that an alien has no lawful immigration status does not mean, under the express language of the statute, that they are unlawfully present for the purposes of determining inadmissibility. *See* 8 U.S.C. 1182(a)(9)(B).

The Meaning of "Presence" that is "Lawful but Temporary"

Unlike the term unlawfully present, the INA does not define "presence" that is "lawful but temporary." USCIS will define presence that is lawful but temporary to include aliens who are lawfully present, *i.e.* in a period of authorized stay that requires reapplication for retention, or whose period of lawful presence in time limited, for duration of status, or otherwise not perpetual. Using that definition, aliens whose presence is lawful but temporary include:

- Aliens granted withholding of removal under INA 241(b)(3) or withholding of deportation under former INA 243;

---

[2] E.O. 14160 does not reference the statutory definition, and the statutory provision itself makes clear that the definition applies to the relevant paragraph. See INA 212(a)(9)(B)(ii) ("Construction of unlawful presence. *For purposes of this paragraph,* an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled." (italicized for emphasis).)

[3] However, in the context of NTA policy rollout, the FO recently took the position that the INA 212(a)(9)(B)(iii) exception to accruing unlawful presence for those who have a pending asylum application is limited to the context of determining whether an alien is inadmissible under that specific provision and does not render the alien lawfully present as a general matter. USCIS is therefore generally issuing NTAs to aliens with a pending Form I-589 after rendering an unfavorable decision on a separate benefit request pursuant to Section VI of the NTA PM ("USCIS will issue an NTA where, upon issuance of an unfavorable decision on a benefit request, the alien is not lawfully present in the United States.")

- Aliens granted withholding of removal or deferral of removal under the Convention Against Torture;
- Aliens granted voluntary departure, satisfactory departure, or a stay of removal;
- IMMACT 90 Family Unity beneficiaries;
- LIFE Act Family Unity beneficiaries;
- Nonimmigrants (unless listed separately below), including dual intent categories[4] and T and U nonimmigrants;
- Citizens of the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau residing in the United States pursuant to Compacts of Free Association;
- Parolees;
- TPS beneficiaries to include applicants establishing prima facie eligibility;
- Visa Waiver Program entrants;
- Deferred action recipients[5]; and
- Deferred Enforcement Departure recipients.

By contrast, aliens whose presence is lawful and *not* temporary include:

- American Indians born in Canada who entered the U.S. under INA 289;
- Asylees;
- Conditional permanent residents;
- Lawful permanent residents;
- Refugees; and
- Individuals who are nationals but not also citizens of the United States.[6]

Status of children born to mothers in the United States in lawful but temporary status

Children born in the United States to fathers who are not United States citizens, lawful permanent residents, or U.S. nationals and mothers who are in lawful but temporary status do not acquire United States citizenship at birth. DHS and USCIS will propose appropriate action to ensure that birth in the United States to individuals who possess lawful immigration status does not result in any negative immigration consequence for the child.

Presently, children of parents present in the United States on diplomatic visas are not subject to the jurisdiction of the United States pursuant to 8 U.S.C. 1401(a) but are entitled to acquire lawful immigration status by registering. *See* 8 CFR 101.3. USCIS intends to broaden this practice to permit the children of aliens that possess lawful but temporary status to register to acquire any lawful status that at least one parent possesses. This section of the Code of Federal Regulations addresses the existing

[4] "Dual intent categories" refers to certain categories of nonimmigrants who are permitted to take steps toward becoming lawful permanent residents without affecting their nonimmigrant status.
[5] There is room for debate regarding whether deferred action and DED, which are grounded in prosecutorial discretion, qualify as "lawful status." For purposes of the E.O, however, it does not matter if they qualify as lawful but temporary or unlawful.
[6] These individuals are not aliens and their presence in the United States is lawful. Children will only be non-citizen United States nationals if they are born in American Samoa or Swains Island to non-citizen United States National or alien parents. *See* 8 U.S.C. 1101(a)(3); 8 U.S.C. 1101(a)(22); 8 U.S.C. 1101 (a)(29); 8 U.S.C. 1408

population of children whose situation is most closely analogous to the alien children of mothers in lawful but temporary status, as it governs the provision of status to the children of foreign diplomatic officers born in the United States but not subject to the jurisdiction of the United States. To fill any regulatory gaps before such a proposal could be implemented, the Department would propose to defer immigration enforcement against such children.