DISCUSSING REGISTRATION WITH CLIENTS

I. Introduction

In February 2025, the Department of Homeland Security (DHS) announced that it would be rolling out a new process by which every noncitizen who has been in the United States for more than 30 days would be required to "register" under a rarely invoked, antiquated provision of the Immigration and Nationality Act (INA). DHS published an Interim Final Rule (IFR) establishing these new registration requirements in the Federal Register on March 12, 2025, with an effective date of April 11, 2025.[1] **This rule is now in effect**.

Globally, registration programs have historically been used by fascist regimes to further xenophobic, racist, and anti-democratic goals. The registration provisions of our U.S. law first appeared in the Alien Registration Act (ARA) of 1940, when the U.S. government attempted to require all noncitizens to register during World War II with the primary goal of taking inventory of who was within the United States and rooting out communist sympathizers and other so-called subversives during a time of great political suspicion.[2] At that time, the ARA also offered certain noncitizens a path to lawful status in exchange for their compliance with the registration requirements,[3] but for many, registration was a precursor to deportation or incarceration.[4] More recently, the George W. Bush administration used special registration to target and deport noncitizens from mainly Muslim-majority countries following 9/11, an effort that today is widely recognized as discriminatory and racist.[5]

ATTENTION! This alert highlights some of the factors attorneys should consider and discuss with their clients when asked about registration. This alert reflects the ILRC's interpretation and understanding of the registration requirements at the time of writing. However, this is a new and evolving area of immigration practice, and the advice contained herein may change as more information becomes available.

[1] DHS, *Alien Registration Form and Evidence of Registration*, 90 Fed. Reg. 11793 (Mar. 12, 2025).
[2] Morawetz, Nancy and Natasha Fernandez-Silber, *Immigration Law and the Myth of Comprehensive Registration*, 48 U.C. Davis Law Rev. 141 (2014).
[3] *Id.* at 157 (citing 54 Stat. 670, 672 (1940, repealed 1952).
[4] *Id.*
[5] *See generally*, Rights Working Group, Penn State Law, *The NSEERS Effect: A Decade of Racial Profiling, Fear, and Secrecy* (May 2012), https://pennstatelaw.psu.edu/_file/clinics/NSEERS_report.pdf.

II. The New Registration Requirement

A. The new rule and legal challenge—what happened?

Registration was first raised by this administration in an Executive Order on January 20, 2025.[6] In February 2025, DHS announced that it would be rolling out a new process by which every noncitizen who has been in the United States for more than 30 days would be required to "register" under a rarely invoked provision of the INA. Within days of that announcement, USCIS posted a new form on the myUSCIS portal, Form G-325R, Biographic Information (Registration), and issued a press release encouraging all noncitizens to create a myUSCIS account to facilitate their registration. This initial posting happened without any notice and comment, formal rulemaking, or guidance. To date, there are no instructions to accompany this "form."

DHS then published an Interim Final Rule (IFR) establishing these new registration requirements in the Federal Register on March 12, 2025, with an effective date of April 11, 2025.[7] The IFR also announced the creation of Form G-325R, which, according to DHS, creates a mechanism for all unregistered noncitizens to register.

On March 31, 2025, immigrants' rights advocates challenged the IFR in federal district court, arguing that the IFR was issued without sufficient notice and opportunity for public comment.[8] On April 10, the district court denied a request to enjoin or delay the effective date of the new rule, allowing the IFR to take effect as planned on April 11, 2025. Therefore, the new registration requirements announced in the IFR—which are unclear, confusing, and internally contradictory—are now in effect. Litigation is ongoing and advocates should stay informed as it progresses. Meanwhile, advocates must navigate the current registration policy and determine how and when to advise clients and community members.

B. The New Form G-325R

The new form announced in the IFR, Form G-325R, became an effective form for registration on April 11, 2025. DHS has been clear that the central purpose of Form G-325R is to enhance the government's enforcement efforts by gathering information about all noncitizens and using it to locate, apprehend, and remove noncitizens as quickly as possible.[9] Form G-325R seeks to collect sweeping information about noncitizens in the United States, including biographic information; immigration history; physical appearance; detailed information about family members; interactions with the criminal legal system; and what "activities" the noncitizen has "engaged in" while in the United States.[10] The form is only available online, and only in

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[6] Executive Order 14159, *Protecting the American People Against Invasion*, 90 Fed. Reg. 8443 (Jan. 20, 2025).
[7] DHS, *Alien Registration Form and Evidence of Registration*, 90 Fed. Reg. 11793 (Mar. 12, 2025).
[8] *CHIRLA, et. al v. U.S. Dep't of Homeland Security*, Case No. 1:25-cv-00943 (Mar. 31, 2025). The plaintiffs in the case are the Coalition for Human Immigrant Rights, the United Farm Workers of America, CASA Inc., and Make the Road New York. These groups are represented by the National Immigration Law Center, the American Civil Liberties Union, the American Immigration Council, and Robert F. Kennedy Human Rights.
[9] *See* 90 Fed. Reg. at 11797-98.
[10] Form G-325R.

English, and there are no associated instructions. Individuals with limited English proficiency and/or limited access to technology will undoubtedly face obstacles to using this "form" to register.

The myUSCIS system requires the account holder to complete certain fields in order to submit Form G-325R and confirm under penalty of perjury that the contents are true and correct. While noncitizens applying for benefits turn over similar information to show eligibility for possible lawful status, there is no "benefit" associated with Form G-325R. For instance, registration does not confer the right to remain in the United States, authorization to work, or protection against deportation. It is an enforcement tool and a scare tactic. This stands in contrast to the 1940 registration program—the last general registration—during which there was a benefit to registering. Those that registered under that program were promised leniency and ultimately many were granted status.[11]

C. Combating misinformation

Misinformation about registration and Form G-325R is widespread on the internet and media. Indeed, even messages from DHS are legally misleading and confusing. If discussing registration, attorneys should address misinformation directly. Here are some prevalent, yet **false messages** that are circulating:

- "Everyone has to register using the new form."

This is FALSE. Per the INA, existing regulations, and current guidance, certain individuals have already been registered and fingerprinted through their previously filed applications or entry documents.[12] Attorneys must familiarize themselves with the existing regulations and review each client's case carefully to determine whether the INA and regulations require them to file the new Form G-325R. See **Part III**.

- "Registration offers a path to lawful status."

This is FALSE. Form G-325R is not an application for benefits, and individuals who register will not gain lawful status or other permission to remain in the United States. On the contrary, DHS indicates that Form G-325R is an enforcement tool to help DHS identify and locate noncitizens for potential deportation.

Unfortunately, the term "registration" is similar to "registry," a separate provision found in INA § 249. Under "Registry," certain noncitizens who have been in the United States since before January 1, 1972 may qualify for lawful permanent residency. The current "Registration" requirement under INA § 262 does not confer any status or permission to stay in the U.S. Attorneys should dispel any misunderstanding that submitting Form G-325R offers a path to lawful status or the right to remain in the U.S.

- "Everyone must register immediately."

This is FALSE. Again, many noncitizens are already registered because they have filed or received one of the documents listed in the INA or regulations. Attorneys should assess whether the noncitizen is already registered and whether they qualify for another immigration

[11] Morawetz at 158.
[12] DHS, *Alien Registration Form and Evidence of Registration*, 90 Fed. Reg. 11793 (Mar. 12, 2025).

benefit that counts as registration. If not, the noncitizen should be advised of the consequences of registering and not registering, so that they can determine their course of action. Even those considering the new registration form should be advised of their rights against self-incrimination. See **Part IV.B**.

- "If you register, you can come back to the U.S. legally"

Registration provides no new pathway to re-enter legally. There is no guarantee that a noncitizen who leaves the United States will qualify to return. To legally return to the United States, noncitizens must qualify for a visa or benefit to enter. Additionally, once someone leaves, they potentially face additional hurdles to legal return, including inadmissibility for unlawful presence and/or for a prior removal order. For some, leaving the U.S. would mean forfeiting an application for relief. Under the INA, the consequences of departing the U.S. will be different for everyone depending on their circumstances. The new registration requirement does not create a new pathway to legal status or any exemption to the consequences that may attach when a noncitizen leaves the United States, nor does it exempt registrants from being placed in removal proceedings.

DHS has indicated that it will facilitate departure for those who register and are not here lawfully, including promises of financial assistance for travel and "stipend payments" for those who depart voluntarily or "self deport" as DHS calls it. "Self deportation" used in this context is not a process recognized by our immigration laws, but rather a shorthand that DHS is using to scare noncitizens into leaving on their own. Simply leaving the U.S. on one's own, without formal process, is not a "deportation order."

Until now, DHS has only "facilitated" departures when individuals have gone through some legal process resulting in a removal order, expedited removal, or in some cases, voluntary departure. DHS has rolled out the CBP Home app for noncitizens to register their intent to depart the U.S., but the agency is silent on the legal underpinnings of such a departure and has provided no special mechanism to avoid adverse immigration consequences of departure. Whether DHS will implement formal steps to a self-deportation, such as signing paperwork, remains to be seen. Under the INA, the consequences of departing the U.S. will be different for everyone depending on their circumstances.

III. Who Is Already Registered?

WARNING! At the time of writing, USCIS has launched an online tool called "Do I Need to Register?" that is designed to help noncitizens determine whether they are required to register. But this tool is incomplete, as it does not account for certain registration documents and processes, is inconsistent with the INA and regulations in some respects, and contains vague language with respect to certain registration documents. Attorneys must conduct independent research and screen each client to determine whether they are required to register.

By statute, both DHS and the Department of State have the authority to implement registration procedures. INA § 262 establishes a general registration requirement for those who are within the United States *and* who are not already registered and fingerprinted under Section 221(b) of the INA. Apart from the visa process outlined at INA §221(b), the regulation at 8 CFR § 264.1 provides further guidance on who may be registered.

A. Certain visa applicants

The first thing to consider is whether a noncitizen has already registered pursuant to INA § 221(b). It is important to note that USCIS's online tool for determining who is registered does not appear to incorporate registration under Section 221(b) registration at all. This section states that any noncitizen "who applies for a visa shall be registered in connection with his visa application." It is unclear at what step in the visa process a person is formally registered. Yet, advocates will argue that filing or approval of a visa petition, such as an I-130, is a form of registration under INA § 221(b) because the beneficiary has "applie[d] for a visa." Certainly, at the point where fingerprints are collected, the applicant has a strong case to assert that they are registered.

This interpretation of INA §§ 262(a) and 221(b) is consistent with information that DHS and the Department of State have long provided to visa applicants at all stages of their application process. Once an I-130 is approved, and the case is transferred to the National Visa Center (NVC), the applicant is instructed to pay visa fees and file Form DS-260, Immigrant Visa Electronic Application. When the DS-260 is filed, the NVC confirmation notice informs the applicant, "You have successfully submitted an Immigrant Visa and Alien Registration Application (Form DS-260)." See **Appendix A**, Sample DS-260 Confirmation Notice. Noncitizens who have completed the DS-260 will use this confirmation notice to show registration under Sections 262(a) and 221(b).

But even before the DS-260 is completed, arguably any noncitizen for whom the NVC has opened an immigrant visa case is already considered registered. The plain language of the statute refers to registration as a step *before* visa application.[13] INA § 203(g) sets out the "termination of registration" for those who fail to apply for a visa within a year, indicating that the step of registration perhaps occurs at the stage of submitting a visa petition, or visa petition approval. When an applicant with a pending NVC case fails to contact the NVC for a year or more, the NVC notifies the applicant that it intends to terminate the case under INA § 203(g). Even when the applicant has taken no action beyond having an approved I-130, this termination notice states, "Section 203(g) of the [INA] requires the U.S. Department of State to terminate the registration of any alien who does not apply for an immigrant visa within one year of notification that an immigrant visa is available." See **Appendix B**, NVC Termination Notice. Termination notices sent by USCIS also cite Section 203(g). See **Appendix C**, I-130 Termination Notice. The plain language of Sections 262(a), 221(b), and 203(g) of the INA, coupled with DHS and DOS's longstanding messaging to visa applicants, indicates that these processes are a form of registration.

For those pursuing visa pathways from within the United States, advocates should maintain that any application or petition with fingerprints comports with registration. In addition to immigrant visa applicants, early reports from the field indicate that USCIS considers an applicant for U non-immigrant status, after biometrics have been taken, as registered. Those in

[13] INA § 203(g) states, "The Secretary of State *shall terminate the registration* of any alien who fails to apply for an immigrant visa within one year following notification to the alien of the availability of such visa, but the Secretary *shall reinstate the registration* of any such alien who establishes within 2 years following the date of notification of the availability of such visa that such failure to apply was due to circumstances beyond the alien's control." (Emphasis added.)

that posture who filled out the G-325R online have received notices from USCIS indicating that they are already registered. See **Appendix D**, G-325R Courtesy Notice. All advocates should use this information to demonstrate that USCIS acknowledges these processes as methods of registration, although not specifically mentioned in their website guidance. Arguably, this is because these applications—including I-360 petition as well—are "visa" processes that comport with INA § 221(b).

B. Registration forms under the regulations

Beyond INA 221(b), regulations set out other means of registration through various immigration documents and pathways.[14] The regulation has never been comprehensively updated since it was first published in 1960, and DHS did not do a comprehensive update in the recent IFR. Since that time, new pathways that collect information from noncitizens and result in fingerprint/biometric collection have emerged. As noted, it seems USCIS knows that documents beyond those listed here result in registration.[15]

The regulation sets out two separate lists: one purporting to be forms that a person uses to register, and the other purporting to be documents that are evidence of registration. USCIS acknowledges that either having submitted an application in the first list "and provided fingerprints,"[16] or having a document that is a proof of registration from the second list, satisfies the noncitizen's duty. Yet, the lists and guidance are practically confusing, not only because they are not up-to-date, but also because they do not acknowledge that the noncitizen's duty should be fulfilled by taking the step "to apply" for registration.

Documents listed as "registration forms" in the regulation include:

Certain entry documents:

- I-67 Inspection Record for Hungarian refugees
- I-94 Arrival-Departure Record
- I-95 Crewman's Landing Permit

Certain immigration applications:

- I-485 Application for Status as Permanent Resident
- I-590 Registration for Classification as Refugee
- I-687 Application for Status as a Temporary Resident under INA § 245A
- I-698 Application to Adjust Status from Temporary to Permanent Resident under INA § 245A
- I-700 Application for Status as a Temporary Resident under INA §210
- I-817 Application for Voluntary Departure under Family Unity Program

[14] 8 CFR §§ 264.1(a) and (b).
[15] As noted in Section III.A, noncitizens with pending petitions for U nonimmigrant status who have attempted to register using Form G-325R have received "courtesy notices" stating that they are already registered. See Appendix D. This underscores that the regulation is out of date, as even USCIS seems to be acknowledging forms of registration not listed therein.
[16] This caveat is not in the regulation at 8 C.F.R. § 264.1, but rather it appears only on USCIS's interpretation. *See* USCIS, *Alien Registration Requirement*, https://www.uscis.gov/alienregistration (last updated May 6, 2025).

- G-325R Biographic Information (Registration)

Certain notices of approval of lawful status:

- I-691 Notice of Approval for Status as a Temporary Resident under INA § 245A
- I-181 Memorandum of Creation of Record of LPR Status

In addition to "registering" based on having filed or received one of the above forms, certain documents are considered "evidence of registration."[17] USCIS indicates anyone "issued" one of these documents is already registered, and thus these documents evidence registration even if expired:

Certain arrival records:

- I-94 Arrival-Departure Record
- I-95 Crewmen's Landing Permit
- I-184 Alien Crewman Landing Permit and Identification Card
- I-185 Nonresident Alien Canadian Border Crossing Card
- I-186 Nonresident Alien Mexican Border Crossing Card

Certain immigration charging documents:

- I-221 or I-221S Order to Show Cause, Notice of Hearing, and Warrant for Arrest for Deportation for noncitizens "against whom deportation proceedings are being instituted"
- I-862 Notice to Appear for noncitizens "against whom removal proceedings are being instituted"
- I-863 Notice of Referral to Immigration Judge for noncitizens "against whom removal proceedings are being initiated"

Certain identification cards:

- I-551 Permanent resident card
- I-766 Employment Authorization card

Miscellaneous other documents:

- USCIS Proof of Alien G-325R Registration
- Any valid, unexpired nonimmigrant DHS admission or parole stamp in a foreign passport[18]

Many noncitizens, including many who have applied for benefits—and even some in lawful status—are not represented in the list of documents that "count" for registration under the regulation, notwithstanding that many such applications or petitions require fingerprints. This has created a legal confusion as to whether applications and processes where individuals have provided biometrics (including fingerprints and biographical information) are sufficient. On the USCIS website, the agency asserts that those "who submitted one or more benefit requests to USCIS not listed in 8 CFR § 264.1(a), including applications for deferred action or

[17] 8 CFR § 264.1(b).
[18] 8 CFR § 264.1(b). This last item is listed as a note to the regulation.

Temporary Protected Status," who were not issued one of the documents that count as evidence of registration, are not registered. Yet, individuals who have attempted to submit G-325R while in process for U nonimmigrant status and have completed biometrics have received notices saying they are already registered. See **Appendix B**.

Additionally, the guidance does not account for those who have applied directly for a document which "counts" as evidence for registration, such as a work permit. USCIS indicates that any of the above documents will count as registration, but does not specify how those who have applied for certain proofs of registration will be treated after applying but before receiving the registration document. For instance, many people have applied for work authorization by submitting the I-765, but have not yet received an employment authorization document. The work authorization card (Form I-766) is proof of registration by regulation and USCIS guidance, yet the Form I-765 is not mentioned. By statute, the noncitizen's duty is "to apply" for registration. An applicant cannot control at what stage DHS ultimately collects biometrics, the lengthy backlogs, and the fact that documents that count as evidence of registration might be obtained through pathways not set out in the first list. Thus, while not accounted for in USCIS guidance, ultimately, one hopes that the noncitizen's duty is satisfied by taking steps to register by filing ***any*** application that results in one of the listed registration documents.

NOTE: A word on the online "Do I need to register?" tool for applicants. The only agency guidance on registration appears on the USCIS registration landing page. There are no further instructions or guidance. Yet, that page now provides a link to a tool, called "Do I need to register?" to determine whether one should submit Form G-325R. At the time of writing, this tool is incomplete, as it does not account for certain registration documents and processes, is inconsistent with the INA, regulations, and the agency's own guidance in some respects. The online tool suggests that the listed documents and processes only satisfy the registration requirement if they were filed or obtained since the noncitizen's last entry into the United States. This temporal requirement is not reflected in INA § 262 or 8 CFR § 264.1 or on the limited website guidance.

Note also that, while the regulation lists Notices to Appear (and Orders to Show Cause) as "evidence of registration," USCIS's online tool suggests that these documents will only constitute proof of registration if the noncitizen has been "placed in proceedings," meaning the document has also been filed with the immigration court. While the regulation describes these charging documents as indicating that "removal [or deportation] proceedings are being initiated,"[19] it does not appear to require that the charging document actually be filed with the immigration court. Noncitizens whose clients have been served with any of these charging documents will use it to show proof of registration.

The tool is silent on the consular visa process and those who have had biometrics taken in conjunction with unlisted pathways. It also does not account for those who are eligible for and have directly applied for a document that is evidence of registration, such as an application for a work permit. Legal practitioners should not rely on the tool to assess registration requirements.

[19] 8 CFR § 264.1(b).

IV. Considerations Before Submitting Form G-325R

If you can identify that the person ever received an NTA, I-94, or other document listed in the regulation as discussed in Section III above, they appear to be already registered.[20] The list of registration applications and documents does not require the document to be current. For those who are not clearly registered already, advocates would need to gather a great deal of information to properly lay out the potential consequences of registering and not registering. Thus, advocates should be wary of making broad announcements that all noncitizens must register with the new form. For many, that advice is incorrect.

Additionally, with full consultation, unregistered noncitizens who have never interacted with U.S. immigration authorities might qualify for a benefit that counts as registration, such as adjustment of status, and registering via that application might be the best way to register. For those who do not qualify for a benefit that meets the registration requirement, Form G-325R might be the only means of complying. These noncitizens will need to understand the consequences of submitting or not submitting the form and make an informed decision about how to proceed.

NOTE: Keep in mind that, as discussed above, USCIS's online tool does not appear to capture all avenues for registration in the INA itself, and certain applications and petitions may constitute registration even though they are not listed in the regulation or the online tool. Some noncitizens who have already applied for a benefit and submitted biometrics and fingerprint data, such as U, T, or VAWA petitioners, may be considered registered. See **Appendix B** (Sample G-325R Courtesy Notice provided to U applicant who attempted to register). There is little guidance, and the parameters of the law are unknown at this time. Advising on Form G-325R requires explaining legal consequences and that many pieces of this new rule are still unknown, so that clients can make as informed of a decision as possible about whether to complete Form G-325R.

A. Advising on the risks and consequences of registering and not registering

Under the ABA Model Rules of Professional Conduct, "A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law."[21] To do this, the attorney must exercise "independent professional judgment and render candid advice," which may include not only the attorney's interpretation of the law, but also "considerations such as moral, economic, social and political factors, that may be relevant to the client's situation."[22] Given these guidelines on what it

[20] The online USCIS Registration tool indicates that the person should have received the document since last entry, but this is not in the regulation.
[21] ABA Model Rules of Professional Conduct, Model Rule 1.2(d) (2025). Remember that each state has its own set of rules of professional responsibility, and attorneys must familiarize themselves with the specific rules in the state(s) in which they are licensed and/or practice.
[22] Model Rule 2.1.

means to practice law, attorneys must be well-versed on the potential consequences of registration (and failure to register) to properly advise clients. Ultimately, the client must determine whether to file Form G-325R for themselves and their children.[23]

Attorneys may choose the cases they take and the scope of representation in each client agreement.[24] Attorneys may decide that completing Form G-325R is beyond the scope of representation in a particular case.

B. What are the consequences of registering?

1. Potential detention and removal

The IFR is very clear that a central purpose in creating Form G-325R is to enhance and streamline immigration enforcement efforts, including detention and removal of noncitizens.[25]

For some noncitizens, the information gathered through Form G-325R will be sufficient for DHS to commence expedited removal under INA § 235(b), or reinstatement of removal under INA § 241(a)(5). These are both fast-track removal processes in which the noncitizen may not have access to counsel and may not have an opportunity to fight their case in court before being removed.

For others, registration will provide DHS with sufficient information to initiate removal proceedings, because Form G-325R requires the person to address alienage and immigration status. In removal proceedings, the government always bears the burden of proving that someone is a noncitizen.[26] This burden of proof is an important safeguard to ensure due process in removal proceedings: DHS must prove, using lawfully obtained evidence, that someone is not a citizen before moving to deport them. Submission of Form G-325R requires the noncitizen to provide all the information DHS needs to meet its burden of proof, undermining this essential due process protection enshrined in the INA and supported by the U.S. Constitution.[27]

Form G-325R also requires the noncitizen to disclose to DHS any criminal arrests or convictions. These admissions could also lead to additional grounds of removability that may limit the noncitizen's options for seeking relief in removal proceedings.

2. Exposure to criminal liability

The Form G-325R requires immigrants to disclose information about criminal activity, including use of controlled substances and crimes for which they have not been arrested or convicted. The form requires noncitizens to also detail all activities undertaken and intended while in the United States. In addition, providing information about place of birth, entries, and immigration

[23] Model Rule 1.2(a) ("[A] lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.").
[24] Model Rule 1.2(c) ("A lawyer may limit the scope of representation if the limitation is reasonable under the circumstances and the client gives informed consent.").
[25] 90 Fed. Reg. at 11797.
[26] 8 CFR § 1240.8(c).
[27] *Woodby v. INS*, 385 U.S. 276, 285-86 (1966).

status raises liability for federal crimes related to immigration. On January 21, 2025, the Acting Attorney General directed all federal prosecutors and federal law enforcement agencies to prioritize immigration enforcement and prosecutions of immigrants.[28] There are several federal criminal offenses that focus specifically on behaviors involved in migration, including: whether you enter or reenter the country lawfully; whether you properly register and carry immigration paperwork on you; and whether you assist people to enter illegally or harbor people who are undocumented. The memorandum from the Acting Attorney General redirects the full energy of the Department of Justice to punish immigration-status based offenses.

Given this, Form G-325R also threatens certain noncitizens' Constitutional rights. Every person in the United States, regardless of immigration status, has certain rights under the Constitution, including the right not to incriminate oneself, protected under the Fifth Amendment to the Constitution.

Form G-325R asks registrants to state whether they have ever committed a crime for which they were not arrested. This question is familiar to legal practitioners because it is used on other USCIS applications. Those applications, however, are instruments to seek an affirmative benefit in which the applicant has the burden of proof. Most people, regardless of immigration status, are not sufficiently familiar with state and federal laws to be able to draw legal conclusions about certain conduct that may or may not constitute a crime. People who fill out Form G-325R therefore risk incriminating themselves, either correctly or incorrectly, by attempting to analyze their own potential criminal liability.[29] Since this question cannot be left blank in order to submit the form, the only way to exercise the right against self-incrimination is not to submit the form.

Form G-325R may also raise criminal liability for certain immigration-related crimes. Under 8 USC § 1325, any noncitizen who enters or attempts to enter the United States without inspection, or who enters or attempts to enter the United States by fraud or misrepresentation, may be convicted of a misdemeanor. The statute of limitations for this statute, like most federal crimes, is five years, meaning that anyone who entered the U.S. without permission in the last five years and fills out Form G-325R will self-incriminate and expose themselves to possible prosecution for this federal crime.

Similarly, 8 USC § 1326 criminalizes reentry or attempted reentry following any denial of admission, exclusion, deportation, or removal from the United States. The penalties for Section 1326 are harsh, including up to 20 years' imprisonment for noncitizens who reenter after being previously convicted of an aggravated felony. Unlike Section 1325, the statute of limitations on "illegal reentry" does not begin to run until the noncitizen is "found in" the United States; therefore, a noncitizen who was deported and reentered many years ago may still be

[28] Acting Att'y Gen., U.S. Dep't of Justice, *Interim Policy Changes Regarding Charging, Sentencing, And Immigration Enforcement* (Jan. 21, 2025), available at AILA Doc. 25012912.

[29] Even immigration attorneys may lack the legal knowledge to competently answer this question if they are not familiar with criminal law in the state where the potentially criminal conduct occurred. Additionally, the question is so broad, many might misinterpret what activities should be disclosed (and for advocates, it will be very hard to know the vast range of activities to screen for to answer the question.)

prosecuted if the government was not aware of their return to the country before they filed Form G-325R.[30]

3. The fifth amendment right against self-incrimination

Because Form G-325R requires answers to questions that are potentially self-incriminating, attorneys should explain the Fifth Amendment right against self-incrimination. This is critical because, as described above, the form requires answers to certain questions in order to be submitted; a person registering will be required to answer certain questions, and if they do not, they cannot submit the form.

The Fifth Amendment right against self-incrimination protects all individuals within the United States; it is not limited only to U.S. citizens or those with lawful immigration status.[31] The Fifth Amendment provides two distinct but related protections: first, the right of the individual to remain silent when there is a real fear of incrimination in a criminal proceeding; and second, the prohibition on the use of coerced confessions.[32] The right to remain silent, and not to be coerced into criminal omissions, attaches in any context where answering a question "might tend to subject [one] to criminal responsibility."[33] In other words, the Fifth Amendment extends not only to a witness being asked to testify in a courtroom, but also when filling out a form under penalty of perjury.

For noncitizens who would incriminate themselves by filling out Form G-325R, and so choose not to submit the form, the Fifth Amendment may provide a viable defense against allegations of criminal noncompliance.[34]

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[30] *United States v. Ayon-Brito*, 981 F.3d 265, 270 (4th Cir. 2020) (listing cases from various federal courts of appeals recognizing "found in" as a continuing offense), *cert. denied*, 142 S. Ct. 162 (2021); *accord United States v. Oronalbarra*, 831 F.3d 867, 870 (7th Cir. 2016) ("Illegal re-entry is a 'continuing offense' that is committed from the moment the defendant reenters the country until federal immigration agents gain ... knowledge of her presence, her identity, and her unlawful immigration status") (citation omitted); *United States v. Mendez-Cruz*, 329 F.3d 885, 889 (D.C. Cir. 2003) ("Reentry was clearly an act committed during the offense of being found in the United States because that offense is a continuing violation that commences with the illegal entry"); *United States v. Santana-Castellano*, 74 F.3d 593, 598 (5th Cir. 1996) ("Where a deported alien enters the United States and remains here with the knowledge that his entry is illegal, his remaining here until he is 'found' is a continuing offense because it is 'an unlawful act set on foot by a single impulse and operated by an unintermittent force.... "), *cert. denied*, 517 U.S. 1228 (1996).

[31] *Woodby*, 385 U.S. at 285-86.

[32] *See Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973).

[33] *Id.* (quoting *McCarthy v. Arndstein*, 266 U.S. 34, 40 (1924)).

[34] The current registration is distinguishable from the issues addressed in *Rajah v. Mukasey*, 544 F.3d 427 (2d Cir. 2008). In that case, the court addressed the special registration provision following Sept. 11, 2001. The court found special registration to be a required condition to the provided benefit of staying in the U.S., whereas the intent behind the current general registration is to deport noncitizens. *Rajah* discussed the required disclosure of information related to immigration status as appropriate to maintaining the civil regulation of immigration, noting immigration information collection in that case was not an area "permeated with criminal statutes." *See Albertson v. Subversive Activities Control Board*, 382 U.S. 70 at 79, 86 S.Ct. 194 (1965). The Form G-325R is only for those who are not otherwise registered (all those who entered legally have been registered) and instead broadly asks about any criminal activity, and all activities in the U.S., "information which would almost necessarily provide the basis for criminal proceedings." Additionally, the

C. What are the consequences of not registering?

1. Potential denial of immigration benefit or relief

Those with potential applications for status might face negative discretionary decisions for failure to register (although, as discussed above in Section II, arguably many benefits applications that require biometrics and fingerprints should constitute registration, and USCIS has indicated that at least some such applications do count, see **Appendix B**). Immigration authorities have historically considered violations of the law—such as failure to file or pay taxes or failure to obey court orders—as potential negative factors when assessing good moral character and when exercising discretion.[35] At a minimum, the agency may consider whether a person acted willfully before denying a benefit for failure to register. For benefits requiring good moral character, the good moral character showing is usually limited to a period of time, and the passage of time can limit the impact of a negative factor. Nonetheless, USCIS's current policy is to issue an NTA following most adverse benefits decisions.[36] DHS policies on prosecutorial discretion and whether failure to register would be a negative factor are subject to change with changes in the political climate.

2. Potential criminal misdemeanor liability for "willful" failure to comply with registration requirements

Under INA § 266(a), noncitizens who "willfully" fail or refuse to register or be fingerprinted, or who "willfully" fail to register on behalf their child who is under the age of 14, may be charged with the crime of a misdemeanor and sentenced to up to six months imprisonment, or a fine of up to $5,000,[37] or both.

It is important to remember that a noncitizen can only be convicted for failing to register if the failure was "willful." In criminal jurisprudence, the Supreme Court has held that "willfulness" requires "a voluntary, intentional violation of a known legal duty." *U.S. v. Bishop*, 412 U.S. 346, 360 (1973). Because we have yet to see widespread enforcement of these criminal provisions following the introduction of the general registration requirement (Form G-325R), we do not yet know what the courts will require to establish "willfulness" in this context. Under the plain language of the statute, failing to register by accident or due to lack of knowledge or technological ability should not sustain a conviction under the INA § 266.

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current administration has tasked the Department of Justice to prioritize enforcement of criminal provisions related to immigration.

[35] *See, e.g.,* 12 USCIS-PM F.5 (discussing good moral character in context of naturalization application); 1 USCIS-PM E.8 (discussing discretionary analysis in benefits adjudication generally).

[36] *See* USCIS, *Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens* (Feb. 28, 2025), https://www.uscis.gov/sites/default/files/document/policy-alerts/NTA_Policy_FINAL_2.28.25_FINAL.pdf.

[37] While INA § 266 references a maximum fine of $1,000, Congress has increased the maximum fines for Class B and C misdemeanors. *See* 18 USC § 3571(b).

3. Potential deportability

Being convicted for false or fraudulent registration under INA § 266 will also expose the noncitizen to deportability under INA §§ 237(a)(3)(B).[38] Although this offense requires "willfulness," it remains to be seen how DHS will interpret inadvertent errors caused by confusion when filling out the form.

D. By what deadline would a client need to register to avoid these consequences?

For those who are considering whether to register using Form G-325R, the IFR, INA, and existing regulations are unclear as to when one must register to avoid potential criminal penalties. A general registration requirement was not in effect before April 11, 2025. Yet the government provided no guidance on how much time those who are already in the U.S. before the effective date have to register to avoid criminal prosecution. Statements from DHS officials have used the word "immediately," but have provided no deadline. The new IFR does not set a deadline to come into compliance.

INA § 266(a) states that noncitizens aged 14 or older (and parents registering on behalf of their children under age 14) who "remain[] in the United States for 30 days or longer" must apply for registration *and* be fingerprinted "before the expiration of such 30 days." On its face, this statutory language is itself contradictory, as it suggests both that noncitizens must register only if they are in the United States for more than 30 days but must do so before they reach 30 days.

E. Conclusion

The new registration requirement has already begun to instill fear and confusion in communities. While we continue to fight back against this hateful and unconstitutional policy, we can also protect our clients by giving them good information when they ask questions about registration so that they can make informed decisions for themselves and their families. Advocates must communicate that the law in this space is evolving and many answers are unknown; the analysis in this advisory may change, and it is critical that advocates stay informed as we learn more. Only by laying out risks and uncertainties are clients equipped to make the personal decision about what course of action to take in their individual cases.

[38] In addition, noncitizens can also be found deportable under INA § 237(a)(3)(A) for failing to timely update their address with DHS, even without a conviction. This ground can be overcome if the failure to update address was not willful or the noncitizen demonstrates that it was "reasonably excusable."

San Francisco
t: 415.255.9499
f: 415.255.9792

Washington D.C.
t: 202.777.8999
f: 202.293.2849

Houston

San Antonio

www.ilrc.org

About the Immigrant Legal Resource Center

The Immigrant Legal Resource Center (ILRC) works with immigrants, community organizations, legal professionals, law enforcement, and policy makers to build a democratic society that values diversity and the rights of all people. Through community education programs, legal training and technical assistance, and policy development and advocacy, the ILRC's mission is to protect and defend the fundamental rights of immigrant families and communities.

U.S. DEPARTMENT of STATE
CONSULAR ELECTRONIC APPLICATION CENTER

Online Immigrant Visa and Alien Registration Application (DS-260)

Immigrant Visa and Alien Registration Application Confirmation

Thank You

You have successfully submitted an Immigrant Visa and Alien Registration Application (Form DS-260). You must bring to your visa interview proof that you submitted this form by printing a confirmation page using the below button. Do not print a copy of this screen; use the below PRINT CONFIRMATION button to print a page with a unique barcode related to your visa application. You can print a confirmation from this website at any time.

Next Step

Your Immigrant Visa and Alien Registration Application (Form DS-260) was sent to the National Visa Center (NVC) for review. **However, NVC will not review your Form DS-260 until they have received the required financial and civil documents that you must also submit.** If you have not sent NVC those items, please do so now. Visit http://nvc.state.gov (English) or http://nvc.state.gov/espanol (Spanish) and review Steps 4-6 for instructions.

NVC will review your DS-260 IV application, financial, and civil documents upon receipt of all documents. If the documents you submitted are insufficient or incomplete, NVC will send instructions on how to correct your submission. NVC cannot schedule your visa interview until your supporting documentation is complete.

Your Visa Interview

Once you have a visa interview appointment, you need to:

1. Obtain and submit photographs that meet the Department of State's visa requirements.
2. Review the information for the U.S. Embassy where your visa interview will occur.

Please use the buttons below for information on these items as well as instructions for submitting documents to NVC.

During the interview with a consular officer, you will be required to sign your application by providing a "biometric signature" – in other words, your fingerprints. By providing this biometric signature, you are certifying under penalty of perjury that you have read and understood the questions in your immigrant visa application. You are also certifying that all statements that appear in your immigrant visa application have been made by you and are true and complete to the best of your knowledge and belief. At the time of your interview, you will also be required to certify under penalty of perjury that all statements in your application and those made during your interview are true and complete to the best of your knowledge and belief.

This confirms the submission of the Immigrant Visa and Alien Registration application for:

Name Provided:	[INFO REDACTED]
Country/Region of Origin (Nationality):	
Completed On:	
Case No:	
Confirmation No:	

[case barcodes-- redacted]

THIS IS NOT A VISA

Version 1.4

[redacted]

[redacted]

SAN FRANCISCO, CA [redacted]
United States Of America

[redacted]

[redacted]-2023

NVC Case Number: [redacted]

Dear [redacted]

We refer to your application for an immigrant visa. Section 203(g) of the Immigration and Nationality Act requires that your registration be canceled and any petition approved on your behalf canceled, if you do not apply for your immigrant visa within one year of being advised to do so.

You were advised of this requirement on [redacted]-2022, but we have not received a response from you since then. As a result, you are hereby notified that your application for a visa has been canceled and any petition approved on your behalf has also been canceled.

Your application may be reinstated and any petition revalidated if, within one year, you can establish that your failure to pursue your immigrant visa application was due to circumstances beyond your control.

If you have any questions or are experiencing difficulty in complying with the above instructions, please contact the **NATIONAL VISA CENTER.**

Sincerely,

Director
National Visa Center
U.S. Department *of* State
Contact: **nvc.state.gov/ask**

Case Number:
Principal Applicant: [redacted]

Letter
11-04 Termination Letter 1

PIVOT TL1

[redacted]

[redacted]

SAN FRANCISCO, CA [redacted]
United States Of America

[redacted]

07-FEB-2024

NVC Case Number: [redacted]

Dear [redacted]

This office previously notified you that as of 05-FEB-2023 your registration for an immigrant visa was cancelled and any petition approved on your behalf was also cancelled. We informed you that your application might be reinstated if, within one year, you could establish that your failure to pursue your immigrant visa application was due to circumstances beyond your control.

Since you have failed to do so, the record of your registration and any petition approved on your behalf and all supporting documents have been destroyed; any Department of Labor certification has been returned to your prospective employer.

Principal Applicant: [redacted]
Case Number:

Sincerely,

Director, National Visa Center

Letter
11-04 Termination Letter 2

PIVOT TL2

THE UNITED STATES OF AMERICA

I-797 | NOTICE OF ACTION | DEPARTMENT OF HOMELAND SECURITY U.S. CITIZENSHIP AND IMMIGRATION SERVICES

Receipt Number		Case Type
[redacted]		I130 - PETITION FOR ALIEN RELATIVE
Received Date	**Priority Date**	**Petitioner**
C 019	/2019	[redacted]
Notice Date	**Page**	**Beneficiary**
[redacted]	1 of 1	[redacted]

Notice Type: Revocation Notice

In accordance with title 8, Code of Federal Regulations (CFR) section 205.1(a)(1), the approval of the petition is automatically revoked as of the date of approval because the Department of State (DOS) has terminated the registration of the beneficiary under Section 203(g) of the Immigration and Nationality Act (INA).

INA 203(g) states, in part:

> The Secretary of State shall terminate the registration of any alien who fails to apply for an immigrant visa within one year following notification to the alien of the availability of such visa, but the Secretary shall reinstate the registration of any such alien who establishes within 2 years following the date of notification of the availability of such visa that such failure to apply was due to circumstances beyond the alien's control.

The automatic revocation of the approval of this case may not be appealed. Additionally, USCIS will not reopen or reconsider cases that have been automatically revoked solely because DOS terminated the registration of the beneficiary pursuant to INA 203(g).

In such cases, DOS must first reinstate the visa registration (pursuant to 22 CFR 42.83(d)) before USCIS can take any further action on the case. Therefore, any motions filed for cases that have been automatically revoked solely due to the individual's failure to apply for an immigrant visa within one year following notification of the availability of such visa will be dismissed.

However, this automatic revocation does not preclude or prohibit the filing of a new Form I-130 with a new fee. You may also contact the USCIS Contact Center at 800-375-5283 or 800-767-1833 (TDD for the hearing impaired).

Please see the additional information on the back. You will be notified separately about any other cases you filed.

USCIS encourages you to sign up for a USCIS online account. To learn more about creating an account and the benefits, go to https://www.uscis.gov/file-online.

California Service Center
U.S. CITIZENSHIP & IMMIGRATION SVC
P.O. Box 30111
Laguna Niguel CA 92607-0111

USCIS Contact Center: www.uscis.gov/contactcenter

Receipt Number		Case Type
redacted		G325R - BIOGRAPHIC INFORMATION (REGISTRATION)
Received Date	**Priority Date**	**Alien**
04/11/2025		redacted
Notice Date	**Page**	
04/25/2025	1 of 1	

c/o
redacted

Notice Type: Courtesy Notice

Upon review of the information you provided in your Form G-325R - Biographic Information (Registration) and government records, it appears that you have already complied with your duty to register and provide fingerprints (if required) under section 262 of the Immigration and Nationality Act (8 U.S.C. 1302). As a result, USCIS will not continue processing your Form G-325R, schedule you for a biometrics appointment, or provide you with evidence of registration.

If you believe that this notice is in error and that you must register and provide fingerprints (if required) because you have not yet complied with the registration statute, you may submit a new Form G-325R. If you submit a new Form G-325R, you should explain in the Additional Information section why you believe that you have not yet complied with the registration requirement and may upload any evidence or documents you believe are relevant.

If you have other questions, please call the USCIS Contact Center at 1-800-375-5283 (within the United States) or at 212-620-3418 (if outside the United States) or visit our web site at www.uscis.gov. If you are hearing impaired, please call our TDD at 1-800-767-1833.

Please see the additional information on the back. We will notify you separately about any other cases you have filed.

USCIS encourages you to sign up for a USCIS online account. To learn more about creating an account and the benefits, go to https://www.uscis.gov/file-online.

USCIS HQ
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