

INSIGHTS / POLICY

POLICY FAST-MOVING

The US "Gold Card": what it is, and how it differs from EB-5

A programme created by executive order and contested in court, set beside one written into statute more than thirty years ago. The differences matter more than the headlines.

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Information current as of 8 September 2026 Fast-moving: verify before relying on it

KEY TAKEAWAYS

- The Gold Card was established by executive order in September 2025 and works through the existing EB-1 and EB-2 categories. It does not create a new visa category.
- A Gold Card payment is described as a non-returnable gift. An EB-5 investment is made into a U.S. enterprise, is at risk, and may be returned or lost.

- The programme is under legal challenge. Only Congress can repeal or change EB-5, and the EB-5 programme continues to operate.

> **A note on this topic.** The Gold Card is the subject of active litigation and of continuing changes in guidance. This note describes the position as we understand it on the date shown. It makes no prediction about how the litigation will end or whether the programme will continue in its current form.

What the Gold Card is

The "Trump Gold Card" was announced by the President in February 2025 and formally established by Executive Order 14351, signed on 19 September 2025. Under the order and the guidance that followed, an individual who makes a payment of US$1 million to the US government, described in the programme materials as a gift, may be considered for an immigrant visa in the existing EB-1 or EB-2 employment-based categories, with a green card to follow. A corporate version allows a company to make a US$2 million payment on behalf of an employee. A more expensive "Platinum Card", offering long-stay visitor rights rather than residence, was announced as a proposal that would require legislation.

Applications opened in late 2025 through a dedicated government website. A processing fee, widely reported at US$15,000, is payable on application. Public statements by the administration and by the Department of Homeland Security during 2026 have indicated that the number of applications received and petitions filed was in the hundreds, and that very few approvals had been confirmed by mid-year.

The legal footing

The Gold Card does not create a new visa category. It cannot: visa categories and their annual numbers are set by Congress in the Immigration and Nationality Act. Instead, the programme treats a qualifying payment as a factor in adjudicating existing petitions in the EB-1 (extraordinary ability and related) and EB-2 (advanced degree or exceptional ability, including the national interest waiver) categories. Whether the executive branch may do that is the question now before the courts.

On 3 February 2026 the American Association of University Professors and a group of immigrant professionals filed suit in the United States District Court for the District of Columbia, arguing that the programme violates the Administrative Procedure Act and the Immigration and Nationality Act by substituting a payment for the merit-based criteria Congress established, and that it diverts visa numbers from qualified applicants in already oversubscribed categories, including applicants born in India and China. The suit asks the court to declare the programme unlawful and to stop its operation.

The government moved to dismiss in April 2026. A separate action by a transparency organisation seeks records about the programme's design and operation. As of the date of this note we are not aware of a decision on the merits in either case.

How it differs from EB-5

The comparison families most often ask for is with EB-5, and the differences are structural.

	EB-5	GOLD CARD
LEGAL BASIS	Statute, enacted 1990, reformed 2022	Executive order of September 2025 and agency guidance; contested in court
NATURE OF THE CAPITAL	An at-risk investment in a US enterprise; capital may be returned if the investment succeeds, and may be lost	A payment to the US government described as a gift; not returnable
AMOUNT (AS OF SEPTEMBER 2026)	US$800,000 in a targeted employment area or infrastructure project; US$1,050,000 otherwise; inflation adjustment scheduled from 1 January 2027	US$1 million for an individual; US$2 million for a corporate sponsor; plus a processing fee
JOB CREATION	At least 10 full-time US jobs per investor	No job-creation requirement
VISA CATEGORY	EB-5, with reserved categories for rural, high-unemployment and infrastructure projects	Existing EB-1 and EB-2 categories
FAMILY	Investor, spouse and unmarried children under 21	Stated to cover the principal and immediate family, on the same basis as the underlying category
CONDITIONS	Two-year conditional residence, removed on proof of job creation	Adjudicated under the rules of the underlying EB-1 or EB-2 category

Figures as of September 2026 and subject to change. Gold Card terms are as described in the executive order and published guidance, which may be altered or withdrawn.

What a family should not assume

- **That the Gold Card is settled law.** It is an executive programme under legal challenge. It may be upheld, narrowed, enjoined or withdrawn, and a family that has made a non-returnable payment would be affected by any of those outcomes in ways that are not yet known.
- **That it replaces EB-5.** The administration has described the Gold Card as a replacement for EB-5. Only Congress can repeal or alter the EB-5 statute, and it has not done so. The EB-5 programme, including the Regional Center Program authorised through 30 September 2027, continues to operate.
- **That country-of-birth limits do not apply.** The EB-1 and EB-2 categories are subject to the same per-country rules as every other employment-based category. For applicants born in India, those categories have long waits, and one of the claims in the litigation is precisely that the Gold Card adds demand to them.
- **That a payment is an investment.** It is not. An EB-5 investment can lose value, but it is made into an enterprise and may be returned. A Gold Card payment is, on the programme's own terms, a gift to the government.

Our position

Kingsley Private Office does not advise on the Gold Card. We describe it here because families ask, and because a clear account of the differences is more useful than silence. Families interested in it should take advice from licensed immigration counsel who are following the litigation closely, and should revisit that advice whenever the position changes, which it may do without much notice.

SOURCES

Executive Order 14351, "Providing for the Gold Card" (19 September 2025), Federal Register.

Complaint, *American Association of University Professors et al. v. US Department of Homeland Security et al.*, US District Court for the District of Columbia, filed 3 February 2026; and the government's motion to dismiss, April 2026 (as reported).

Statements by the Secretary of Commerce and the Department of Homeland Security on application numbers, April to May 2026, as reported in the press.

US Citizenship and Immigration Services, "EB-5 Immigrant Investor Program", uscis.gov.

Reporting by Bloomberg Law, Newsweek and immigration-law commentators, February to September 2026.

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