

Congress of the United States
Washington, DC 20510

August 13, 2020

The Honorable Chad Wolf
U.S. Department of Homeland Security
Office of the Secretary
Washington D.C. 20528

Dear Acting Secretary Wolf:

We write to request that you immediately revise recent guidance to colleges and universities that would prohibit international students on new F-1 and M-1 visas with a full-time online course load from entering the United States. ICE should not be creating disparate treatment between new and existing students. Many institutions of higher education will begin classes in the coming weeks, the majority of whom are planning predominantly online instruction, and there is still ongoing disruption stemming from your agency's guidance for students located abroad. There are an estimated 250,000¹ international students planning to enter the United States for the coming academic year, either as new or returning students. These students and universities need clear answers in order to plan their lives and prepare for their studies for the upcoming fall term.

On July 14, 2020, in response to a legal challenge, Immigration and Customs Enforcement (ICE) agreed to withdraw² a July 6 directive that would have barred existing international students from taking exclusively on-line courses at U.S. colleges and universities. However, to date, neither ICE nor the Department of State have published a clear guidance to ensure that the Department of State accepts visa applications from students whose course of studies would be online, leading to confusion for students who should be eligible to enter into the United States.

ICE subsequently re-issued its Spring 2020 FAQs on July 15, 2020, and then on August 7, 2020, issued revised FAQs that merged guidance into a single document.³ The August 7 guidance purports to revise some of the FAQs "to reflect the fall 2020 semester," and to archive and rescind certain FAQs that were "specific to the spring or summer semester." The guidance states that students in Initial status (i.e. new students) who have not yet arrived in the U.S. should remain in their home countries.⁴ In your August 7th response to our previous correspondence, you reemphasized this, stating that "F and M students in new or initial status after March 9, 2020 will not be able to enter the United States to enroll in a U.S. school as a nonimmigrant student for the fall term to pursue a full course of study that is 100 percent online."⁵ The August 7, 2020 FAQ also rescinded an important FAQ from the July 15, 2020, and prior versions of the FAQs,

¹ <https://www.acenet.edu/Documents/Letter-DHS-ICE-Directive-072220.pdf>

² Transcript of Hearing, *President and Fellows of Harvard College et al v. United States Department of Homeland Security et al*, No. 1:20-cv-11283 (D. Mass. July 14, 2020), ECF No. 119.

³ <https://www.ice.gov/doclib/coronavirus/covid19faq.pdf>

⁴ <https://www.ice.gov/doclib/coronavirus/covid19faq.pdf>

⁵ <https://www.ice.gov/doclib/coronavirus/covid19faq.pdf>

which allowed schools to register the Student and Exchange Visitor Program (S) records of initial students already in the United States and to thereafter “follow the guidelines the school provides to all its F and M students related to COVID-19.” Before rescinding that FAQ, ICE changed the wording of the question, making it appear as if it had only been applicable to the spring.⁶

With respect to newly enrolled international students, DHS should recognize that colleges and universities are exploring a variety of instruction models, including hybrid in-person and remote instruction as well as innovative attendance schedules, to best serve students’ health and education needs simultaneously. Implementing a blanket, one-size-fits-all policy in which all new international students are banned from entering the United States shuts off avenues of instruction unnecessarily.

We request that you immediately revise the August 7th FAQ to affirmatively state that, during the course of this pandemic, all international students enrolled in full-time study at a U.S. college or university can enter the United States regardless of their method of instruction or whether they are a new student, and that schools can register the Student and Exchange Visitor Program (SEVIS) records of students in Initial status once the student has been admitted to the United States. Additionally, ICE should ensure reporting flexibility to accommodate the rapidly shifting enrollment status that is normal during this time of year, but exacerbated during a global pandemic; international education experts have requested similar relief.⁷ At a time of so much uncertainty and instability for higher education, the Trump Administration must cease its interference with colleges and universities trying to plan for the education, health, and safety of all their students.

We look forward to your prompt response as our nation works to respond to this pandemic and afford students the ability to continue their education throughout this difficult time.

Sincerely,

/s/ Patty Murray
United States Senator

/s/ Pramila Jayapal
Member of Congress

/s/ Elizabeth Warren
United States Senator

/s/ Edward J. Markey
United States Senator

⁶ The July 15, 2020 wording of the question was, “Due to COVID-19, what is the requirement for Initial status students who have already arrived in the United States?” In rescinding it, ICE changed the wording of the question to, “Due to COVID-19, what is the requirement for Initial status students who have already arrived in the United States for the spring 2020 semester.”

⁷ <https://www.nafsa.org/sites/default/files/media/document/NAFSA%20SEVP%20Letter%20to%20Director%20Can%20ty%20071020%20Signature%20Redacted.pdf>

United States Senators

Tammy Baldwin
Richard Blumenthal
Cory A. Booker
Thomas R. Carper
Christopher A. Coons
Catherine Cortez Masto
Tammy Duckworth
Dianne Feinstein
Kristen Gillibrand
Kamala D. Harris
Mazie Hirono
Tim Kaine
Amy Klobuchar
Patrick Leahy
Robert Menendez
Jack Reed
Jacky Rosen
Bernard Sanders
Charles E. Schumer
Tom Udall
Chris Van Hollen
Mark R. Warner
Sheldon Whitehouse
Ron Wyden

Members of Congress

Earl Blumenauer
Lisa Blunt Rochester
Tony Cárdenas
André Carson
Ed Case
Judy Chu
Gilbert R. Cisneros, Jr.
Yvette D. Clarke
Danny K. Davis
Susan A. Davis
Peter A. DeFazio
Veronica Escobar
Adriano Espaillat
Lois Frankel
John Garamendi
Jesús G. "Chuy" García
Sylvia R. Garcia
Raul M. Grijalva
Denny Heck
Henry C. "Hank" Johnson, Jr.
William R. Keating
Joseph P. Kennedy, III
Rick Larsen
Andy Levin
Alan Lowenthal
Carolyn B. Maloney
James P. McGovern
Grace Meng
Seth Moulton
Eleanor Holmes Norton
Ilhan Omar
Jimmy Panetta
David E. Price
Mark Pocan
Katie Porter
Ayanna Pressley
Jamie Raskin
Lucille Roybal-Allard
Jan Schakowsky
Albio Sires
Adam Smith
Rashida Tlaib

Dina Titus
David Trone
Juan Vargas
Filemon Vela
Nydia M. Velázquez
Bonnie Watson Coleman
Peter Welch
Frederica S. Wilson
Susan Wild