

Congress of the United States
Washington, DC 20510

July 9, 2020

Matthew T. Albence
Deputy Director and Senior Official
Performing the Duties of the Director
U.S. Immigration and Customs Enforcement
500 12th Street, SW
Washington, DC 20536

The Honorable Chad F. Wolf
Acting Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

Dear Deputy Director Albence and Acting Secretary Wolf:

We write to express our deep concern regarding U.S. Immigration and Customs Enforcement's (ICE) announcement of modifications to the Student and Exchange Visitor Program's requirements for international students.¹ This new policy would effectively punish international students at colleges, universities, and other institutions that have decided to move their courses online in order to protect their communities from COVID-19. The proposed policy throws the lives of hundreds of thousands of students, and the operations of hundreds of colleges and universities, into uncertainty just weeks before the start of the fall term, to the detriment of the United States and its institutions of higher education. We are concerned that ICE's guidance is motivated not by public health considerations, but rather by animus toward immigrants, by a goal of forcing schools to reopen even as COVID-19 cases are rising, and by a desire to create an illusion of normalcy during this unprecedented public health emergency. ICE's proposed policy demonstrates a callous disregard for the harm this policy inflicts on international students, and is contrary to public health guidance from authorities within the Administration. We urge you to withdraw this proposed policy immediately, and not to proceed with your stated plans to publish it in the Federal Register as a Temporary Final Rule.²

Due to the Trump Administration's catastrophic mishandling of the pandemic, COVID-19 continues to rage throughout the United States. Institutions of higher education are rightly consulting with local public health officials, and many have decided to move most or all of their courses online to protect their students, faculty, and staff. These plans are consistent with the U.S. Centers for Disease Control and Prevention's (CDC) guidance for such institutions, which says that "virtual-only learning options, activities, and events" are the "lowest risk" setting.³ The

¹ U.S. Immigration and Customs Enforcement, "SEVP modifies temporary exemptions for nonimmigrant students taking online courses during fall 2020 semester," press release, July 6, 2020, <https://www.ice.gov/news/releases/sevp-modifies-temporary-exemptions-nonimmigrant-students-taking-online-courses-during>.

² U.S. Immigration and Customs Enforcement, "Broadcast Message: COVID-19 and Fall 2020," July 6, 2020, <https://www.ice.gov/doclib/sevis/pdf/bcm2007-01.pdf>.

³ Centers for Disease Control and Prevention, "Coronavirus Disease 2019 (COVID-19): Considerations for Institutes of Higher Education," May 30, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/colleges-universities/considerations.html>.

CDC also advises that institutions of higher education “[o]ffer virtual learning and telework options, if feasible,” “[p]ursue virtual group events, gatherings, or meetings, if possible,” and “[e]ncourage telework for as many faculty and staff as possible.”⁴ The CDC guidance is clear: more social distancing is safer, and online solutions are safest for colleges and universities.

The CDC is also clear on its position that institutions of higher education should make decisions best suited to their individual circumstances. The CDC recognizes that institutions “vary considerably in geographic location, size, and structure,” and as a result, administrators will have to “adjust[] to meet the unique needs and circumstances of” their institutions and communities.⁵ In the CDC’s words, “[i]mplementation should be guided by what is feasible, practical, acceptable, and tailored to the needs of each community.”⁶

Instead of providing flexibility to help institutions follow public health recommendations and keep their communities safe, the Trump Administration is proposing rigid rules that put the health of students, faculty, and staff at risk. Administration officials have admitted that this announcement is an attempt to twist the arm of colleges and universities, threatening their students with deportation in order to force the institutions to eliminate or scale back their online learning options. This amounts to the imposition of a one-size-fits-all policy on every institution in the country, regardless of its individual capabilities and circumstances, or the threat COVID-19 poses to the institution’s community.

ICE’s announcement of their plans to force out or deport international students who remain at U.S. colleges and universities and who are taking a full online course load is cruel and unconscionable. These students are already in the United States, are established members of educational communities, and have been determined through the visa screening process to pose no danger to the United States. Some of these students are working in laboratories and supporting critical scientific research at exactly the time when we need more of it, not less.

To avoid the threat of deportation, these students have few options. According to the ICE guidance, the alternatives are for students to disrupt their education by “transferring to a school with in-person instruction” or “depart the country.”⁷ It is cruel and senseless to force international students to make this choice. With fall terms beginning in just a few weeks at many colleges across the country, along with required quarantine periods before classes begin, it is too late for many students to transfer to equivalent academic programs. Moreover, it is unwise to force students in the United States to travel at a time when the CDC recommends that individuals “avoid all nonessential international travel.”⁸ And, in some cases, students cannot return to their home countries even if they want to, in part because there are few or no flights available.⁹ The

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ U.S. Immigration and Customs Enforcement, “SEVP modifies temporary exemptions for nonimmigrant students taking online courses during fall 2020 semester,” press release, July 6, 2020, <https://www.ice.gov/news/releases/sevp-modifies-temporary-exemptions-nonimmigrant-students-taking-online-courses-during>.

⁸ Centers for Disease Control and Prevention, “Travel Health Notices,” <https://wwwnc.cdc.gov/travel/notices>.

⁹ The Nation, “What About the International Students?,” Jimin Kang, June 15, 2020, <https://www.thenation.com/article/world/international-students-coronavirus/>.

Administration’s previous immigration restrictions also make it unclear whether students who leave the country will be allowed to reenter when their schools return to in-person classes, further exacerbating fears about the consequences of departure. Moreover, many international students will be functionally unable to continue their studies from abroad, because they will be returning to locations without stable internet connectivity, because their countries might block them from accessing needed websites and online resources¹⁰ or communicating freely with professors and classmates, or because the time difference makes active course participation unrealistic, among other limitations.

In addition to international students already in the United States, ICE is threatening to bar international students who were planning to begin their studies at U.S. institutions that have moved online. Colleges and universities that recognize the value of having international students in their communities will need to make dramatic adjustments to their operations in order to accommodate ICE’s arbitrary new policy, potentially in contradiction to local public health guidelines. Even institutions that were already planning to adopt hybrid learning models that comply with ICE’s guidance might have to issue thousands of new Form I-20s to their international students with little notice before the start of the fall term—a sign of how poorly-conceived and designed this new ICE policy is. And if a college or university implements an in-person or hybrid model, and then later shifts to online-only classes because of a COVID-19 outbreak, then international students will fall out of status and become subject to removal¹¹—an operational nightmare. Preventing institutions from swiftly and appropriately responding to an outbreak during a pandemic that has already infected more than three million people in the United States¹² is an unacceptable risk to public health.

International students contribute immensely to the United States. They add value to their learning communities, bringing diverse viewpoints and experiences benefiting all other members of their communities. They also contribute to the economy; by one estimate, international students contributed nearly \$41 billion to the American economy and supported 458,290 jobs during the 2018-2019 academic year.¹³ As President Trump noted five years ago, “When foreigners attend our great colleges & want to stay in the U.S., they should not be thrown out of our country.”¹⁴ The sudden removal of international students would weaken the country economically precisely when our fragile economy cannot afford another self-inflicted blow, and would undermine higher education as one of our most significant and valuable exports. This decision also will severely impact the budgets of many colleges and universities during some of

¹⁰ Wall Street Journal, “Colleges Brace for Sharp Drop in Foreign Students, Especially From China,” Melissa Korn, July 7, 2020, <https://www.wsj.com/articles/colleges-brace-for-sharp-drop-in-foreign-students-especially-from-china-11594114202>.

¹¹ BuzzFeed News, “Some Schools Are Now Online-Only Due To The Coronavirus. ICE Says Their International Students Must Leave The US,” Adolfo Flores and Hamed Aleaziz, July 6, 2020, <https://www.buzzfeednews.com/article/adolfoflores/foreign-students-online-schools-college-ice-deport>.

¹² Johns Hopkins University & Medicine Coronavirus Resource Center, “COVID-19 Dashboard,” <https://coronavirus.jhu.edu/map.html>.

¹³ NAFSA: Association of International Educators, “NAFSA International Student Economic Value Tool,” <https://www.nafsa.org/policy-and-advocacy/policy-resources/nafsa-international-student-economic-value-tool-v2>.

¹⁴ Tweet by Donald J. Trump, August 18, 2015, <https://twitter.com/realDonaldTrump/status/633695559900073984>.

the most challenging financial times in modern memory¹⁵ and could result in increased college costs and student debt for domestic students.

ICE is conveniently trying to blame existing regulations, which prohibit online-only coursework, for this new move.¹⁶ This is an obvious pretext. Until recently, ICE has used its authority to issue guidance to relax certain regulatory requirements during the pandemic.¹⁷ In addition, this public health crisis is precisely the type of extraordinary situation that warrants issuing emergency measures to provide regulatory flexibility to students through the publication of a Special Student Relief in the Federal Register. To date, the Department of Homeland Security (DHS) has declined to use this authority to aid institutions of higher education in responding to the pandemic, despite requests that it do so.¹⁸ Instead, with this new callous and defective policy, DHS and ICE are impeding institutions' ability to respond to the COVID-19 pandemic and protect the health of students, faculty, and staff. ICE stated that its previously issued guidance from March 9, 2020, would remain "in effect for the duration of the emergency."¹⁹ With the United States obviously still facing a major emergency, that previous guidance—upon which institutions and students reasonably relied—should remain in effect.

Recent statements by Administration officials suggest that DHS and ICE released this guidance as a pretext to force institutions of higher education to reopen against the advice of public health experts and local officials. The directive was issued the same day that Donald Trump declared: "SCHOOLS MUST OPEN IN THE FALL!!!"²⁰ and indicated that he views the opening of schools as a political issue.²¹ Ken Cuccinelli, Senior Official Performing the Duties of the Deputy Secretary for DHS, openly admitted in a television interview that he believes the policy will "encourage schools to reopen."²² It is also concerning that Stephen Miller, President Trump's extremely controversial senior advisor who holds incendiary views on immigration,²³ has reportedly advocated for policies that would "hurt elite universities whose staff and students have been highly critical of Mr. Trump."²⁴ We call out this policy for what it is: a cruel,

¹⁵ Washington Post, "ICE is putting international students in a terrible position—and hurting America," Margarita Konaev, July 8, 2020, <https://www.washingtonpost.com/opinions/2020/07/08/ice-is-putting-international-students-terrible-position-hurting-america/>.

¹⁶ BuzzFeed News, "Some Schools Are Now Online-Only Due To The Coronavirus. ICE Says Their International Students Must Leave The US," Adolfo Flores and Hamed Aleaziz, July 6, 2020, <https://www.buzzfeednews.com/article/adolfoflores/foreign-students-online-schools-college-ice-deport>.

¹⁷ U.S. Immigration and Customs Enforcement, "Broadcast Message: Coronavirus Disease 2019 (COVID-19) and Potential Procedural Adaptations for F and M nonimmigrant students," March 9, 2020, <https://www.ice.gov/doclib/sevis/pdf/bcm2003-01.pdf>.

¹⁸ Letter from NAFSA: Association of International Educators to DHS Acting Secretary Chad Wolf, March 16, 2020, <https://www.nafsa.org/sites/default/files/media/document/NAFSA%20Letter%20to%20DHS%20Regulatory%20Issues%20and%20COVID19.pdf>.

¹⁹ U.S. Immigration and Customs Enforcement, "COVID-19: Guidance for SEVP Stakeholders," March 13, 2020, https://www.ice.gov/sites/default/files/documents/Document/2020/Coronavirus%20Guidance_3.13.20.pdf.

²⁰ Tweet by Donald J. Trump, July 6, 2020, <https://twitter.com/realDonaldTrump/status/1280209946085339136>.

²¹ Tweet by Donald J. Trump, July 6, 2020, <https://twitter.com/realDonaldTrump/status/128023297978111808>.

²² Tweet by CNN Politics, July 7, 2020, <https://twitter.com/CNNPolitics/status/1280576267360886784>.

²³ Southern Poverty Law Center, "Stephen Miller: The Breitbart Emails," <https://www.splcenter.org/stephen-miller-breitbart-emails>.

²⁴ Financial Times, "US considered ban on student visas for Chinese nationals," Demetri Sevastopulo and Tom Mitchell, October 2, 2018, <https://www.ft.com/content/fc413158-c5f1-11e8-82bf-ab93d0a9b321>.

senseless, and xenophobic attempt to use noncitizens as political pawns in order to financially coerce colleges and universities to reopen campuses this fall, despite what is best for public health. This policy is dangerous to the health and well-being of numerous communities.

ICE's arbitrary new policy is irrational and xenophobic, and risks the health of students, faculty, and staff. We urge you to rescind this proposed policy immediately and to collaborate productively with institutions of higher education to enable a smooth start to the academic year for all students. We also request a staff briefing to discuss the Administration's rationale for this reckless policy by July 16, 2020.

Sincerely,

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| Elizabeth Warren United States Senator | Edward J. Markey United States Senator | Ayanna Pressley Member of Congress | Jerrold Nadler Member of Congress |
| Jeffrey A. Merkley United States Senator | Richard Blumenthal United States Senator | Zoe Lofgren Member of Congress | Pramila Jayapal Member of Congress |
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