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

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.” 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. In the CDC’s words, “[i]mplementation should be guided by what is feasible, practical, acceptable, and tailored to the needs of each community.”

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.” 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.” 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.

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4 Id.
5 Id.
6 Id.
The 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 resources 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 removal—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 States 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. 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.” 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

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14 Tweet by Donald J. Trump, August 18, 2015, https://twitter.com/realdonaldtrump/status/633695559900073984.
the most challenging financial times in modern memory 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. This is an obvious pretext. Until recently, ICE has used its authority to issue guidance to relax certain regulatory requirements during the pandemic. 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. 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.” 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!!!” and indicated that he views the opening of schools as a political issue. 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.” It is also concerning that Stephen Miller, President Trump’s extremely controversial senior advisor who holds incendiary views on immigration, has reportedly advocated for policies that would “hurt elite universities whose staff and students have been highly critical of Mr. Trump.” We call out this policy for what it is: a cruel,

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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/1280576267360867684


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,

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

Joe Neguse
Member of Congress

Katherine Clark
Member of Congress

Seth Moulton
Member of Congress

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Members of Congress

Charles E. Schumer
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Bernard Sanders
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Catherine Cortez Masto
Kirsten Gillibrand
Martin Heinrich
Christopher A. Coons
Thomas R. Carper
Chris Van Hollen
Ron Wyden

Jesús G. “Chuy” García
Nydia M. Velázquez
Gerald E. Connolly
Alexandria Ocasio-Cortez
Bonnie Watson Coleman
Ilhan Omar
Eleanor Holmes Norton
Danny K. Davis
Jamie Raskin
Peter Welch
Lori Trahan
Jan Schakowsky
Yvette D. Clarke
Betty McCollum
Jim Cooper
Hakeem Jeffries
Mark Pocan
Dina Titus
Jackie Speier
Tammy Duckworth
Richard J. Durbin
Tina Smith
Jacky Rosen
Kamala D. Harris
Robert P. Casey, Jr.
Michael F. Bennet
Tom Udall
Patty Murray

Henry C. “Hank” Johnson, Jr.
James P. McGovern
Rosa L. DeLauro
David Price
Judy Chu
Grace F. Napolitano
Juan Vargas
David N. Cicilline
Adam Smith
Deb Haaland
Alan Lowenthal
Diana DeGette
Ted Deutch
Carolyn B. Maloney
Lois Frankel
Peter Welch
Sylvia R. Garcia
Debbie Wasserman Schultz
Gregory W. Meeks
Val B. Demings
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William R. Keating
Albio Sires
Lisa Blunt Rochester
John Yarmuth
Joseph P. Kennedy, III
Filemon Vela
Rashida Tlaib
Tony Cárdenas
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Nita M. Lowey
Mike Doyle
Jahana Hayes
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Jimmy Panetta
Eric Swalwell
Earl Blumenauer