



Labor & Employment ADVISORY ■

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DHS Reverses Course – International Students Allowed to Continue Studies and Employment in the U.S.

by [Keri-Ann Griggs](#)

Yesterday, following litigation brought by Harvard and MIT on July 8, 2020 in the District of Massachusetts, the Department of Homeland Security's Immigration and Customs Enforcement (ICE) rescinded its July 6, 2020 policy directive that would have forced international students to leave the U.S. or transfer schools and denied them visas or entry into the U.S. to continue their studies if their educational institutions resorted to online-only instruction for the fall because of the COVID-19 pandemic.

Harvard and MIT were joined (via amici briefs) by more than 200 higher education institutions, including [all Ivy League schools](#) and the [Presidents' Alliance on Higher Education and Immigration](#), which includes 180 higher education institutions, in opposing ICE's new policy directive. Had it gone into effect, the directive would have negatively impacted more than [half a million](#) international students in the U.S., including those lawfully working for a U.S. employer pursuant to an F-1 work authorization and those enrolled in programs relevant to aiding the COVID-19 response efforts. ICE's surprise policy directive caught the higher education industry off guard, with some directors of international students reporting finding out about the change in policy at the same time, or after, their students. ICE announced the policy change in a news release on July 6, 2020 without apprising institutions ahead of time and required compliance with certain aspects of the directive by impossible deadlines, include requiring education institutions to take some measures by July 15 – merely seven business days after ICE's surprise announcement.

The new ICE policy sent pandemonium throughout higher education across the U.S. as many universities and colleges scrambled to revise academic plans already in place for the fall semester, or to strategize to find recourses that would allow them to retain and support their international students. Some international students were faced with the dilemma of having to immediately make arrangements to depart to their home countries, or attempt to apply to and be accepted in a matter of days into another program that would meet the newly announced criteria to allow them to stay. And international students who had returned to their home countries for the summer (or earlier in the spring when many institutions sent students home due to the pandemic) were faced with being denied the opportunity to return to the U.S. to continue their studies.

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As with many immigration initiatives we have recently seen, the impact of the directive on students, educational institutions, and U.S. employers was not fully thought through before the policy was announced. Due to the pandemic, some countries are not allowing the entry of international flights, which means some students were facing the predicament of not being able to stay but not being able to return home. Others who had become parents to U.S. citizen children were frantically trying to obtain passports for their children, but met with extensive processing delays due to the pandemic and shutdowns. The [declarations](#) submitted in support of the lawsuit shed light on the human impact of this cobbled-together policy.

The experience of [one Harvard student](#) who was who stopped in Belarus and barred from entering the U.S. to return to school because of the new policy reminds me of my own experience as an international student at Yale. In January 2000, I was stopped at JFK Airport in New York by Customs and Border Protection (CBP) officers and threatened with being denied reentry into the U.S. due to a policy I was not aware of. As an undergraduate freshman, I had not yet honed my legal skills. I believe my arguments to CBP officers that day amounted to begging and groveling – a strategy that any immigration lawyer will tell you is still a last recourse with immigration authorities (the essence of a *nunc pro tunc* filing). However, I remember the despair that gripped me as my aspiration of completing my studies in the U.S. began fleeing before my eyes. Being the nerd that I was, I was genuinely more devastated at the thought of forgoing my final exams that week than by the threat of deportation. Thankfully, the matter was resolved and I was allowed to reenter (and managed to graduate cum laude from Yale later on). Needless to say, thereafter, I did my best to remain attuned to all requirements of immigration law and changes related to my status.

ICE's July 6 policy directive sent a similar sense of panic through the minds of thousands of international students. Some were having to make immediate plans for departure without completing their studies, some were frantically trying to obtain travel documents for their U.S. citizen children who they did not want to leave behind if forced to depart the U.S., and others were having difficult conversations with employers that their employment would be involuntarily terminated because of this new policy. This past week, we have had conversations with international students working as doctors, and their U.S. employers, to find legal means to continue the important work they do that benefits the U.S. economy and society.

The news that ICE will rescind its policy because of the court's ruling is being welcomed by many higher education institutions, employers, and advocates. However, we, as immigration practitioners, are still holding our breath to see ICE's formal announcement revoking this policy. We know all too well that a court's decision does not automatically trigger agency action (for example, following the recent Supreme Court decision on Deferred Action for Childhood Arrivals (DACA), *Department of Homeland Security v. Regents of the University of California*, almost a month later, the Department of Homeland Security has not indicated how it will implement the Court's decision or whether it will allow first-time DACA applicants to apply for DACA).

We will continue to monitor future developments on this topic. Please contact our team with any questions or concerns.

Alston & Bird has formed a multidisciplinary [response and relief team](#) to advise clients on the business and legal implications of the coronavirus (COVID-19). You can [view all our work](#) on the coronavirus across industries and [subscribe](#) to our future webinars and advisories.

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