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Trump Administration Rescinds Rules on Foreign Students Studying Online

Move settles lawsuit brought by Harvard, MIT; returns to the status quo of guidance issued in the spring

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The Trump administration has agreed to rescind [rules it issued last week](#) barring international students from being in the U.S. if they were taking classes only online, a rare reversal by the government on immigration policy.

The action resolves for now a [lawsuit filed by Harvard University and the Massachusetts Institute of Technology](#) in Boston federal court.

It came as officials at the White House and the Department of Homeland Security were considering scaling back the new rules, according to people familiar with the matter. That could pave the way for the Trump administration to issue a modified policy in coming weeks. One option that the administration could still pursue would apply the more restrictive rules only to newly enrolling students, two of the people said.

At a short hearing Tuesday afternoon, U.S. District Judge Allison D. Burroughs confirmed that an agreement had been reached. She said the government would rescind the policy, withdraw an FAQ detailing the rules and return to the status quo of guidance issued in the spring.

That will allow foreign students to come to or stay in the U.S. even if their schools have shifted to online-only instruction for the fall, in light of the coronavirus pandemic. It provides significant relief for [schools that had been fretting over how the rules would affect enrollment](#) for the coming fall.

In their suit, the two Boston-area universities argued that U.S. Immigration and Customs Enforcement's decision to issue the new policy was "arbitrary and capricious" because the agency had previously allowed international students to remain in the country on their visas when classes moved to online instruction last spring. At the time, ICE had announced its policy would remain in effect for the duration of the emergency, and the universities said they were relying on the earlier guidance as they planned for the coming school year.

ICE had said in a court filing Monday that the springtime allowance was only intended to be temporary, and that it indicated in March that it would continue to adjust its guidance.

The agency didn't immediately respond to a request for comment on Tuesday's reversal. The White House referred requests for comment to ICE.

Harvard and MIT said in a court filing Tuesday, before the hearing, that they and their students would face "irreparable injury" if an injunction wasn't granted. They had also filed declarations from students who said they wouldn't be able to participate in online instruction from their home countries, because of government restrictions or poor internet service.

Harvard President Lawrence Bacow said he was delighted by the reversal, calling it a significant victory over a disruptive directive. He said that if the government issues a new rule, Harvard would again seek judicial relief.

MIT President L. Rafael Reif said: "These students make us stronger, and we hurt ourselves when we alienate them. This case also made abundantly clear that real lives are at stake in these matters, with the potential for real harm."

The rules already had a practical impact on some students: In several court filings, universities reported that U.S. immigration officers blocked students' entry to the U.S. at airports because they were coming to attend universities that are planning to teach remotely.

U.S. Customs and Border Protection declined to comment on the issue.

Under the rules that had been proposed last week, international students enrolled at schools planning to teach online-only courses this coming semester would need to leave the U.S. or wouldn't be permitted to come at all, and those whose schools are offering hybrid or in-person classes would need to be here to participate.

Schools planning to teach a mix of in-person and remote courses would be required to host their international students on campus, blocking many students stuck abroad because of coronavirus-related travel restrictions and visa delays from enrolling at all. The rules ensure that, should a school opt to switch to online-only instruction if the pandemic worsens, that decision would amount to forcing their international students to leave the country.

Colleges and foreign students criticized the rules, saying they erected unnecessary obstacles that would prevent some from continuing or beginning their academic careers.

Nearly 60 colleges and universities filed a friend-of-the-court briefing Monday, followed by a flurry of similar legal briefs from additional colleges, higher education associations, companies including [Adobe Systems](#) Inc., [Microsoft](#) Corp. and Twitter Inc. and others, an extraordinary rallying of forces on short notice.

Attorneys general from 17 states and the District of Columbia also sued, as have the University of California and 20 other research universities from the western U.S. In all, nine separate lawsuits challenging the new rules were filed.

A small group of House Republicans had also been drafting a letter calling on ICE to rescind its policy.

“Frankly, I think it’s better that people want to come and get educated here,” said Rep. Rodney Davis (R., Ill.) who organized that effort.

Following the intense blowback against the rules, officials at the White House and DHS began discussing paring them back, the people familiar with the matter said.

If the administration moves to apply the more restrictive rules only to newly enrolling students, it would ensure that international students already living in the U.S. wouldn’t need to suddenly leave the country. Most new students are already facing the prospect of missing the fall semester because of visa processing delays. The administration hasn’t made a final decision, officials said.

ICE had said online-only instruction is problematic because it allows international students to live anywhere in the U.S. for their studies—a potential national-security risk—and the remote instruction could give them extra time to pursue things beyond their studies.

Typically, international students aren’t permitted to take more than one online course per semester, a rule meant to ensure students aren’t enrolling in dodgy academic programs and exploiting their visas to maintain legal immigration status in the U.S.

Last week, Ken Cuccinelli, a top official at DHS, ICE’s parent agency, defended the policy on CNN, saying he didn’t see any reason foreign students would need to be present in the U.S. if their courses would be fully virtual. He added that he hoped the new rules would “encourage schools to reopen”—a phrase that was cited by Harvard and MIT in their lawsuit.

“International students should never be used as political fodder to force colleges to open their doors,” New York Attorney General Letitia James said Tuesday.

Ms. James, among those who joined the multistate suit Monday, said the ICE rule threatened the health of students, faculty and others, and would “drain and divert” limited resources as schools might scramble to shift their reopening plans.

The ICE rules proposed this week, combined with several other immigration-policy changes, could result in the number of new international students on American campuses falling by 63% this fall, **the National Foundation for American Policy, a nonpartisan think tank studying immigration and trade policy, projected in a report published Monday.**

There were nearly 1.1 million international students at U.S. colleges in the 2018-19 academic year, including those working after graduation while on student visas.

They provide much-needed tuition revenue for many schools, as overseas students often pay full freight, and a drop in enrollment could result in a significant financial hit for schools. Institutions and students also say being around those from diverse backgrounds enriches classroom discussions and the campus environment.

<https://www.wsj.com/articles/white-house-weighs-scaling-back-rules-on-foreign-students-studying-online-11594746772>