

Possible Presidential Proclamation on Temporary Visas in June;

Advocacy Needed Now

By [Dan Berger](#) and [Stephen Yale-Loehr](#)

It now [appears likely that President Trump will issue a Proclamation](#) this month suspending entry to the United States of foreign nationals on certain temporary visas to address current high unemployment rates. This Q&A sets out our best understanding of the draft Proclamation, based on insights from Amy Nice, a well-respected immigration policy advisor. There is still strong advocacy by the [business](#) and [academic](#) communities ([see also here](#)), and even [some Republican lawmakers](#), to temper or stop limits on temporary work programs.

One thing we know from the immigration decision-makers in the Trump administration is that priorities and specific content of policies change frequently. While we know the administration wants to reduce legal immigration, any of the items mentioned below may be dropped in a final Proclamation for political or legal reasons.

Even the threat of a Proclamation will have a [chilling effect](#) on international students and scholars wanting to come to the United States, and will add more uncertainty about whether international students and scholars will be able to come here this fall as schools open up. When/if there is a new Proclamation, we will analyze it carefully to evaluate its scope and effect, and write an updated Q&A.

What is the latest prediction of what will be in the Proclamation?

It appears the Proclamation will suspend entry for H-1B, H-2B, L-1B, and certain J-1 exchange visitors for between 120 and 180 days. This could affect those who won the H-1B lottery this year, and plan to arrive in the US for an October 1 start date. As far as we know, the Proclamation is less likely to affect cap subject H-1Bs.

We do not know which J-1 categories are likely to be impacted. It may be that the only J-1 categories where entry is suspended are those participating in the summer work and travel program, or perhaps the intern and trainee categories. It is less likely that the J-1 student and J-1 research and scholar categories will be suspended.

When will we know more?

The April 22 Proclamation that [suspended entry of certain immigrants](#) stated that in 50 days (June 12), the Administration would decide whether to extend the immigrant entry ban and/or modify it to include certain temporary visa holders. Our best estimate is that a new Proclamation will come during the last half of June. The [Presidents' Alliance](#) currently has a briefing scheduled on June 18, but will adjust as needed.

Who will be exempted from the nonimmigrant Proclamation?

That is a key question, and an area in particular where advocacy now is crucial. The April 22 green card ban had so many exceptions that it actually affected very few people. The [recent restrictions on Chinese graduate students](#) have still not been fleshed out with clear guidance. It is quite likely that the new proclamation will exempt some nonimmigrant healthcare and other essential workers, but the rest is unclear.

What does this mean for international students coming to the United States for the fall term (assuming at least some schools will have an in-person fall term)?

This means continued uncertainty, with more students deferring or not making it to class on time. Students abroad now deciding whether to ask for J-1 or F-1 student visas have a difficult choice: J-1 exchange visitors may be affected by the Proclamation, while F-1 students may be affected by [future planned rulemaking cutting back post-graduation work authorization known as optional practical training](#). U.S. consulate appointments for visas are currently quite limited, and the ability to come to the United States is further restricted by [COVID-19 related travel bans](#) (in particular, Europe and Brazil).

What are some arguments against these restrictions at a time of high unemployment?

In addition to the various hyperlinks above, computer-related unemployment rates are still quite low (2.8%). 76% of H-1Bs are for computer-related jobs or engineering, and most STEM OPT participants work in low unemployment occupations. [Research](#) has shown that H-1B workers create jobs for U.S. workers. [Research](#) also shows that H-1B workers complement U.S. workers, fill employment gaps in many STEM occupations, and expand job opportunities for all. Finally, H-1B workers and F-1 students working on optional practical training account for less than 4% of the total U.S. workforce. Thus, restricting eliminating these visa categories would not significantly decrease unemployment.

Will the Proclamation be challenged in court?

Various business and academic groups are considering litigation to try to overturn the Proclamation immediately after it is issued. While section 212(f) of the U.S. immigration statute allows the President to bar noncitizens from entering if they are "detrimental to the interests of the United States," such bans [are not unlimited](#). Courts have upheld prior entry bans that focused on foreign policy issues, such as terrorism. By contrast, it is unclear whether courts would uphold a ban on certain foreign workers based on high unemployment, a domestic issue.

Even if the President does not issue a new Proclamation, we expect more efforts by the administration to limit immigration, including new regulations, guidance, and travel restrictions. We also expect continued litigation and attempts at congressional oversight. It will be a year of great uncertainty and change. The best we can do for international

students and scholars is keep sharing the latest information and let them know we will be there for them. We will continue to [advocate for reasonable immigration policies](#), [support congressional candidates](#) who support sensible immigration reform, and adapt to what comes.