

Executive and Administrative Immigration and Higher Education Actions¹

November 17, 2020

This document outlines higher education and immigration-related executive and administrative actions for the incoming Biden/Harris administration. The [Presidents' Alliance on Higher Education and Immigration](#) calls on the incoming administration to consider these actions within its first 100 days. The non-partisan, nonprofit Presidents' Alliance on Higher Education and Immigration brings college and university presidents and chancellors together on the immigration issues that impact higher education. We work to advance just immigration policies and practices at the federal, state, and campus level that are consistent with our heritage as a 'nation of immigrants' and the academic values of equity and openness. The Alliance is composed of approximately 500 presidents and chancellors of public and private colleges and universities, enrolling over five million students in 42 states, D.C., and Puerto Rico.

I. Dreamers and Temporary Protected Status (TPS)

1. **Restore Deferred Action for Childhood Arrivals (DACA).** Direct the U.S. Department of Homeland Security (DHS) to rescind the July 28, 2020 memorandum, [Reconsideration of the June 15, 2012 Memo Entitled "Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children and associated guidance](#), and resume accepting all pending and future initial requests for DACA and advance parole (1.3m).²
2. **Improve DACA Adjudications and Processing.** Direct U.S. Citizenship and Immigration Services (USCIS) to issue guidance (separate from the restoration of initial DACA) to make the following adjudication and processing improvements to DACA:
 - a. Issuance of sequential, instead of overlapping, grants;
 - b. Adjudicate requests filed within one year of expiration;
 - c. Automatic, temporary renewal upon receipt of renewal application;
 - d. Backdating of deferred action grants for recipients who apply for renewal after expiration;
 - e. Expansion of eligibility for fee waivers;
 - f. Re-use biometrics for renewals;
 - g. Exclusion of expunged convictions; and
 - h. Broadening of advance parole grounds for any reason.
3. **Designate Countries for DED.** Issue Presidential Memoranda designating the following countries for Deferred Enforced Departure (DED) through January 15, 2022, providing employment authorization and protection from deportation for upwards of 2.2 million people: Bahamas (14,200), Cameroon, El Salvador (750,000), Guatemala (600,000), Guinea (930), Haiti (100,000), Honduras (400,000), Lebanon, Nepal (36,795), Nicaragua (54,926), Sierra Leone (1,180), Somalia (455), South Sudan (96), Sudan (774), Syria (6,934), Venezuela (200,000), and Yemen (1,646).

¹ For questions or suggested additions regarding this document, please contact jose@presidentsalliance.org or miriam@presidentsalliance.org. This is a living document that is a work in progress.

² Numbers in parentheses in this document represent the approximate number of people that would benefit, when available.

4. **Settle TPS Litigation.** Direct the U.S. Department of Justice (DOJ) and DHS to begin settlement talks in all TPS-related litigation, including *NAACP v. DHS*, *Centro Presente v. Trump*, *Ramos et al v. Nielsen*, *Saget v. Trump*, *Casa De Maryland, Inc. v. Trump*, *Bhattacharai et al v. Nielsen*, *Moreno v. Nielsen*, and *Central American Resource Center v. Cuccinelli*.³
5. **Designate Countries for TPS.** Within six months of issuing DED determinations, direct DHS, USCIS, and the U.S. Department of State (DOS) to review country conditions and issue positive determinations for TPS for the 2.3 million nationals from the countries designated for DED (see above).
6. **Restore CARES Act Emergency Grants.** Direct DOJ and the U.S. Department of Education (Ed) to settle litigation (or not appeal a positive lower court or Court of Appeal decision) related to Eligibility of Students at Institutions of Higher Education for Funds Under the Coronavirus Aid, Relief, and Economic Security (CARES) Act and agree to stop implementation of the rule in regards to the exclusion of undocumented and DACAmented students for emergency grants. Direct Ed to issue interim final regulations rescinding the relevant portion of the rule on an emergency basis.

II. International Students, Scholars, and Alumni

1. **Implement International Student Recruitment Strategy.** Ask Vice President-elect Kamala Harris to lead implementation of an International Education Policy for the United States, building on the foundation laid in the April 19, 2000 [Memorandum on International Education Policy](#).
2. **Rescind Fixed Period of Status Regulation and Restore Duration of Status.** Direct DHS and USCIS to rescind or not finalize, [Establishing a Fixed Time Period of Admission and an Extension of Stay Procedure for Nonimmigrant Academic Students, Exchange Visitors, and Representatives of Foreign Information Media](#); or, if finalized, direct agencies to settle litigation and engage in subsequent rulemaking to fully rescind the rule.
3. **Rescind Unlawful Presence Regulation.** Direct DHS and USCIS to rescind or not finalize proposed rule, [Enhancing the Integrity of the Unlawful Presence Inadmissibility Provisions](#); or, if finalized, direct agencies to settle litigation and engage in subsequent rulemaking to fully rescind the rule.
4. **Expand Online Enrollment Flexibility.** Direct Immigration and Customs Enforcement (ICE) to update its [Frequently Asked Questions for SEVP Stakeholders about COVID-19](#) (August 7, 2020) guidance (and any related or supplementary interagency guidance) to explicitly allow initial international students to enter the United States when enrolled in online-only courses in response to COVID-19 (as opposed to currently only allowing students enrolled in hybrid courses to enter); and direct U.S. Customs and Border Patrol (CBP) to [successfully and correctly implement](#) existing and new guidance.
5. **Rescind H-1B Regulations.** Direct DHS, USCIS, and DOL to rescind or not finalize the following rules: (a) [Strengthening the H-1B Nonimmigrant Visa Classification Program](#) (October 8, 2020); (b) [Modification of Registration Requirement for Petitioners Seeking To File Cap-Subject H-1B Petitions](#) (November 2, 2020); and (c) [Strengthening Wage Protections for the Temporary and Permanent Employment of Certain Aliens in the United States](#) (October 8, 2020). If finalized, direct agencies to settle litigation and engage in subsequent rulemaking to fully rescind the rules.

³<https://cliniclegal.org/resources/humanitarian-relief/temporary-protected-status-and-deferred-enforced-departure/challenges>

6. **Optional Practical Training (OPT).** Direct DHS and ICE to implement the following guidance changes to improve and support students on OPT and Curricular Practical Training (CPT):
 - a. Allow international students on OPT or STEM OPT an extension period of up to 60 additional days to secure qualifying practical work experience;
 - b. Permit applicants to file OPT applications from abroad; and
 - c. Extend the F-1 “cap gap” work permit until the date upon which the change from student to employee is adjudicated.
7. **Improvement of State Department Adjudications.** Direct DOS to improve visa processing abroad by taking the following steps, and ensure cooperation of other relevant agencies to prioritizing processing student, exchange visitor, and scholar visas:
 - a. Revise the Foreign Affairs Manual to eliminate burdens and barriers to the issuance of international student and scholar visas, especially the broad denial grounds under [9 FAM 402.5-5\(E\)\(1\)](#).
 - b. Issue interview waivers and provisional approval of visas;
 - c. Institute priority appointments for international student and exchange visa applicants and prioritize the rescheduling of cancelled appointments; and
 - d. Institute policies to ensure the timely visa issuance and renewal for professors, researchers, scientists, and others.
8. **Clarify and Expand Dual Intent for International Students.** To expand dual intent for international students and scholars, direct:
 - a. The U.S. Department of State to update its manual, 9 FAM 402.5-5(E)(1) (U), to clarify that the likelihood that a student may apply to change or adjust status in the future is not itself a basis for a denial of a visa and that adjudicators should only look to the student’s intent at the time of initial visa application;
 - b. The U.S. State Department to issue a new cable, similar to the 2004 Rice cable (see Cable, DOS, 04-State-274068 (Dec. 28, 2004)) that directs consular officers to refer to the FAM provisions at 9 FAM 402.5-6(F)(b) on 214b for exchange visitors in adjudicating visa applications; and
 - c. DHS to utilize its authority to “clarify the circumstances under which U.S. employers may directly sponsor [F-1] students for [lawful permanent resident] status” without going through the interim step of an H-1B “dual intent” visa.
9. **Commit to Defend and Expand OPT and CPT.** Direct DOJ, in collaboration with ICE, should commit to defending CPT, OPT, and STEM OPT in *Washtech* vs. DHS, including their authority to continue and expand such programs under 8 C.F.R. § 214.2(f)(10).
10. **Rescind Travel Ban Proclamations.** Issue proclamations rescinding the travel bans: (a) [Presidential Proclamation Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats](#) (September 24, 2017); and (b) [Proclamation on Improving Enhanced Vetting Capabilities and Processes for Detecting Attempted Entry](#) (January 31, 2020).
11. **Rescind Non-Immigrant Ban Proclamation.** Issue a proclamation rescinding the non-immigrant visa ban, [Proclamation Suspending Entry of Aliens Who Present a Risk to the U.S. Labor Market Following the Coronavirus Outbreak](#) (June 22, 2020).
12. **Rescind Immigrant Ban Proclamation.** Issue a proclamation rescinding [Proclamation Suspending Entry of Immigrants Who Present Risk to the U.S. Labor](#)

[*Market During the Economic Recovery Following the COVID-19 Outbreak*](#) (April 22, 2020)]

13. **Rescind Visa Ban on Chinese Students Proclamation.** Issue a proclamation rescinding the May 29, 2020 [*Proclamation on the Suspension of Entry as Nonimmigrants of Certain Students and Researchers from the People’s Republic of China*](#), which suspends the entry of certain Chinese international students and scholars.

III. Refugees and Other Immigrant Students

1. **Public Charge.** Direct DOJ, DHS, USCIS, and DOS to rescind [*Inadmissibility on Public Charge Grounds*](#) (August 14, 2019); direct agencies to settle litigation and engage in subsequent rulemaking to fully rescind the rule.
2. **Fee Schedule.** Direct DOJ, DHS, and DHS to rescind [*U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements*](#) (August 3, 2020); direct agencies to settle litigation and engage in subsequent rulemaking to fully rescind and replace the rule.
3. **Refugee Cap.** Issue a presidential determination issuing a refugee cap of 125,000 for FY 2021.