

Harvard, MIT sue Trump admin to block deportation of online-only students

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Harvard University and the Massachusetts Institute of Technology today sued the Trump administration to block an action that forces foreign students with nonimmigrant visas to leave the United States or transfer to different schools that offer in-person classes. The schools' complaint, filed in US District Court for the District of Massachusetts, asks for a temporary restraining order and permanent injunction preventing the administration from enforcing the new policy issued by US Immigration and Customs Enforcement (ICE).

In the complaint, Harvard and MIT said:

By all appearances, ICE's decision reflects an effort by the federal government to force universities to reopen in-person classes, which would require housing students in densely packed residential halls, notwithstanding the universities' judgment that it is neither safe nor educationally advisable to do so, and to force such a reopening when neither the students nor the universities have sufficient time to react to or address the additional risks to the health and safety of their communities. The effect—and perhaps even the goal—is to create as much chaos for universities and international

students as possible.

The ICE policy will be especially problematic for Harvard and MIT students from certain countries, such as “Syria, where civil war and an ongoing humanitarian crisis make Internet access and study all but impossible,” the lawsuit said. “Others come from Ethiopia, where the government has a practice of suspending all Internet access for extended periods, including presently, starting on June 30, 2020.”

The policy also bars F-1 students who are currently outside the US “from entering or reentering the United States,” the lawsuit said.

Online-only students may face “removal”

The ICE change to the Student and Exchange Visitor Program, announced Monday, said that “Nonimmigrant F-1 and M-1 students attending schools operating entirely online may *not* take a full online course load and remain in the United States.” The US will not issue new visas to such students, and “[a]ctive students currently in the United States enrolled in such programs must depart the country or take other measures, such as transferring to a school with in-person instruction to remain in lawful status,” ICE said. “If not, they may face immigration consequences including, but not limited to, the initiation of removal proceedings.”

While a fully online course load isn’t allowed, ICE said that nonimmigrant F-1 students may avoid deportation proceedings by attending schools that use a “hybrid model” of online and in-person classes.

This is a problem for thousands of students at Harvard and MIT. Harvard told students that “all course instruction (undergraduate and graduate) for the 2020-21 academic year

will be delivered online,” while MIT said that “most undergraduate instruction will take place online this fall,” with lab work and some other types of instruction taking place “in small groups, when possible.” Harvard has nearly 5,000 students who study in the US on F-1 visas, and MIT has nearly 4,000 such students.

Under the ICE rule change, F-1 students enrolled in an online-only program “must abandon housing arrangements they have made, breach leases, pay exorbitant air fares, and risk COVID-19 infection on transoceanic flights” or “risk detention by immigration authorities and formal removal from the country” if they do not leave the US promptly, the schools’ lawsuit said.

ICE didn’t seek public comment, schools say

The Harvard/MIT suit points out that, on March 13, ICE issued an exemption to the rule that F-1 students must attend classes in person, at which time “the government made clear that this arrangement was ‘in effect for the duration of the emergency.’” Yet the pandemic is raging on, and President Trump’s “national emergency declaration has not been rescinded or terminated,” the complaint said.

Harvard and MIT argue that ICE’s ruling violates the US Administrative Procedure Act. The rule change “is arbitrary and capricious because it fails to consider important aspects of the problem before the agency... fails to offer any reasoned basis that could justify the policy,” and it violates a requirement to provide public notice and take comments, the schools’ lawsuit said.

Harvard and MIT told the court:

ICE’s action proceeded without any indication of having

considered the health of students, faculty, university staff, or communities; the reliance of both students and universities on ICE's statements that the preexisting exemptions would be "in effect for the duration of the emergency" posed by the COVID-19 pandemic, which continues to this day; or the absence of other options for universities to provide their curricula to many of their international students. Certainly, no notice-and-comment period was provided.

ICE's action leaves hundreds of thousands of international students with no educational options within the United States. Just weeks from the start of the fall semester, these students are largely unable to transfer to universities providing on-campus instruction, notwithstanding ICE's suggestion that they might do so to avoid removal from the country. Moreover, for many students, returning to their home countries to participate in online instruction is impossible, impracticable, prohibitively expensive, and/or dangerous.

The ICE action gives schools "an impossible choice: lose numerous students who bring immense benefits to the school or take steps to retain those students through in-person classes, even when those steps contradict each school's judgment about how best to protect the health of the students, faculty, staff, and the entire university community," the complaint also said.

Princeton University announced that it is filing a brief supporting the Harvard/MIT lawsuit.

"ICE is unable to offer the most basic answers"

ICE argues in an FAQ that its new approach "carefully balance[s] public health concerns against the varied

approaches that schools and universities are taking to combat the spread of COVID-19.” ICE also said that “the health and safety of all students is of the utmost importance” but said government officials determined that “remote learning from outside the United States, in-person classes, and a hybrid model that combined both in-person and online classes provided the best options for flexibility for nonimmigrant students to continue education with health risks associated with international travel at this time.”

The ICE FAQ said the Department of Homeland Security “coordinated with its government partners” at the State Department and US Customs and Border Protection before making the change. But Harvard and MIT say the concerns of schools and students were ignored.

“The announcement disrupts our international students’ lives and jeopardizes their academic and research pursuits,” MIT President L. Rafael Reif wrote, adding that “ICE is unable to offer the most basic answers about how its policy will be interpreted or implemented.”

Meanwhile, President Trump today criticized the Centers for Disease Control and Prevention for issuing what he called “very tough & expensive guidelines for opening schools” and threatened to “cut off funding” if schools don’t reopen this fall.

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