

Government Rescinds Policy Barring International Students Taking Online-Only Courses from Staying in the U.S.

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On July 14, 2020, in response to a lawsuit filed by Harvard University and Massachusetts Institute of Technology, U.S. Immigration and Customs Enforcement (ICE) **has agreed to rescind a policy** that would have barred international students taking online-only courses from staying in the U.S. in the fall 2020 semester.

What has happened in the past two weeks?

Typically, there are limitations to the number of online courses that international students (including F-1 academic students and M-1 vocational students) may take per semester. Due to COVID-19, for the 2020 spring and summer semesters, the Student and Exchange Visitor Program (SEVP) of ICE instituted a **temporary regulatory exemption** in March 2020 permitting F-1 and M-1 students to take more online courses than normally allowed. As a result of this exemption, international students were able to take all their classes online during the spring and summer semesters, whether they remained in the U.S. during the pandemic or returned to their home countries.

On July 6, 2020, ICE abruptly changed its course and announced **modifications to temporary exemptions** for nonimmigrant students taking online classes due to the COVID-19 pandemic for the fall 2020 semester. The July 6 announcement provided that F-1 academic students and M-1 vocational students may not take a full online course load and remain in the U.S.

Active students currently in the U.S. enrolled in such programs were required to depart the country or take other measures, such as transferring to a school with in-person instruction, to remain in lawful status. New students accepted by such programs would not be able to commence their study in the U.S. since U.S. Consulates overseas had suspended visa processing operations, and U.S. Customs and Border Protection would not permit these students to enter the U.S.

On July 8, 2020, Harvard and MIT **filed a lawsuit** in the U.S. District Court for the District of Massachusetts, seeking to block the implementation of these modifications. At a hearing held on July 14, 2020, U.S. District Judge Allison Burroughs announced that the government had agreed to rescind the **July 6 policy** and its related **Frequently Asked Questions**, and return to the status quo as established by the **March policy**, which allows international students to take all of their classes online, whether they remain in the U.S. or not.

What will happen next?

The Harvard/MIT lawsuit is still open and the government should take formal action to rescind the July guidance and FAQ. However, it is not clear whether the government has abandoned its position or will attempt to issue a new directive. We will closely monitor this situation and provide updates accordingly.

This is part of a series of our COVID-19 alerts providing clients with practical advice on measures they can take to navigate through these troubled times. Please contact the authors or your Miller Canfield attorney with further questions.

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This information is based on the facts and guidance available at the time of publication and may be subject to change.