

United States Senate

WASHINGTON, DC 20510

November 20, 2018

The Honorable L. Francis Cissna
Director
U.S. Citizenship and Immigration Services
U.S. Department of Homeland Security
20 Massachusetts Avenue NW, 4th Floor
Washington, DC 20529

Director Cissna:

We are deeply concerned that recent U.S. Citizenship and Immigration Services (USCIS) policy changes could cause serious harm to international students in the United States, and to our colleges and universities. Specifically, on August 9, USCIS issued guidance providing that individuals on student visas would immediately begin accruing unlawful presence in the United States if they left school or worked without authorization, even if they were never notified of the violation by USCIS or an immigration judge. Under the new policy, international students will be subject to removal and barred from re-entry for up to 10 years before they even know that they have violated the terms of their visa. Given that the immigration system in the United States is complex and difficult to navigate, this change cannot be justified.

Colleges and universities in the United States compete with the world to attract the best and brightest international students. In turn, these students enrich our higher education institutions and benefit our economy and communities. International students and scholars conduct groundbreaking research, help build diplomatic ties, and are often our best ambassadors abroad.

Through their spending in our communities, international students directly contribute to the economy of the United States while attending school. According to NAFSA: Association of International Educators, more than one million international students studying at U.S. colleges and universities contributed \$36.9 billion to our economy and supported more than 450,000 jobs in the United States during the 2016-2017 academic year. That is an estimated three jobs created or supported for every seven international students present in the United States.

The change to the accrual of unlawful presence policy jeopardizes these economic benefits, and is a drastic departure from past practice. The policy change would unnecessarily punish minor or technical violations of immigration status by students, scholars, and exchange visitors who become confused by our complex immigration and academic systems. Furthermore, it is important to note that the unlawful presence bar applies not only to students, but also to their spouses and children who may be entirely unaware of the actions that will result in a multiple-year bar. This policy will also impact employers, who will lose the ability to hire talented foreign college graduates who inadvertently violated status.

The United States competes in a global economy—and this policy change is yet another choice made by the Trump Administration to make the United States less attractive to talented

individuals from abroad. This change will encourage students to look elsewhere to conduct groundbreaking research that helps fuel our economy.

Unnecessarily subjecting students and scholars to the unlawful presence bars is unfair and counterproductive to research and innovation that drives our economy. For that reason, we ask that you rescind these changes to the accrual of unlawful presence policy effective August 9, 2018, and return to the prior longstanding policy, which is a fair approach to enforcing our immigration laws.

Sincerely,



PATTY MURRAY

Ranking Member

U.S. Senate Committee on Health, Education,
Labor and Pensions



DIANNE FEINSTEIN

Ranking Member

U.S. Senate Committee on the Judiciary



BERNARD SANDERS

United States Senator



SHELDON WHITEHOUSE

United States Senator



MICHAEL F. BENNET

United States Senator



RICHARD BLUMENTHAL

United States Senator



TAMMY BALDWIN

United States Senator



MAZIE HIRONO

United States Senator



ELIZABETH WARREN

United States Senator

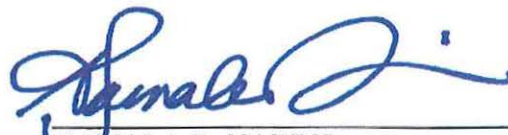


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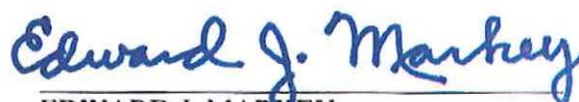
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United States Senator



JEFFREY A. MERKLEY
United States Senator



CHRIS VAN HOLLEN
United States Senator



EDWARD J. MARKEY
United States Senator



**U.S. Citizenship
and Immigration
Services**

January 2, 2019

The Honorable Patty Murray
Ranking Member
Committee on Health, Education,
Labor, and Pensions
United States Senate
Washington, DC 20510

Dear Ranking Member Murray:

Thank you for your November 20, 2018 letter regarding unlawful presence and international students.

U.S. Citizenship and Immigration Services (USCIS) is committed to safeguarding the integrity and promise of the nation's lawful immigration system. Our policies, including the policy memorandum "Accrual of Unlawful Presence and F, J, and M Nonimmigrants" issued on August 9, 2018, faithfully implement the laws that Congress has passed concerning our immigration system.

In 1996, Congress created the unlawful presence grounds of inadmissibility with the passage of the Illegal Immigration Reform and Immigrant Responsibility Act. These inadmissibility grounds are found within section 212(a)(9) of the Immigration and Nationality Act (INA). Under INA section 212(a)(9)(B), foreign nationals who accrue certain amounts of unlawful presence and then depart the United States are inadmissible for three or ten years. Under INA section 212(a)(9)(C), foreign nationals who enter or attempt to reenter the United States unlawfully after accruing over a year of unlawful presence and having been ordered removed are inadmissible to the United States permanently, and must wait outside of the United States for ten years before they can request permission to apply for admission.

The August 9, 2018 policy memorandum did not newly subject F, J, and M nonimmigrants (students and exchange visitors) to these inadmissibility grounds; students and exchange visitors have been subject to these unlawful presence inadmissibility grounds since these grounds were created in 1996. Rather, the August 9, 2018 policy memorandum provides guidance to USCIS officers as to how unlawful presence is calculated for these nonimmigrants to better ensure that individuals who fail to maintain their nonimmigrant status are subject to the consequences that Congress created to deter illegal immigration and prevent recidivist immigration violations.

The August 9, 2018 policy memorandum also does not make "international students ... subject to removal" as you state in your letter. Prior to August 9, 2018, students and exchange visitors who failed to maintain their lawful nonimmigrant status were subject to removal from the United States under INA 237(a)(1). This policy memorandum does not change the regulations, policies, or procedures related to the removal of nonimmigrants who failed to

maintain their nonimmigrant status, who would generally become subject to removal upon failing to maintain their status, unless otherwise protected.

USCIS acknowledges your concern for the dependent spouses and children of students and exchange visitors. However, under the INA, a dependent nonimmigrant's lawful status in the United States is directly linked to the status of the principal nonimmigrant. For example, dependent spouses and children may not precede the principal nonimmigrant to the United States, but may only accompany or follow to join the principal. Similarly, if a principal nonimmigrant fails to maintain their lawful nonimmigrant status, the principal and his or her dependents are subject to removal. The August 9, 2018 policy memorandum does nothing to alter this longstanding principal of U.S. immigration law and policy.

The August 9, 2018 policy memorandum concerning calculation of unlawful presence implements the laws that Congress passed more than 20 years ago. The unlawful presence inadmissibility grounds were created to address scenarios in which foreign nationals could violate U.S. immigration laws for years, depart the United States, and be eligible to return to the United States immediately. By holding student and exchange visitors accountable for their failure to maintain their lawful nonimmigrant status, USCIS is faithfully administering the immigration laws and safeguarding the integrity and promise of our nation's immigration system.

Thank you for your letter and interest in this important issue. The co-signers of your letter will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative and Intergovernmental Affairs at (202) 272-1940.

Respectfully,



L. Francis Cissna
Director