



## IMMIGRATION UPDATE - JULY 13, 2020

*Posted on July 13, 2020 by Cyrus Mehta*

### Headlines:

**[SEVP Says F-1 and M-1 Students Attending Schools Entirely Online Due to Pandemic Must Not Enter or Remain in United States](#)** – In a move that stunned, dismayed, and confused international students studying in the United States, U.S. institutions of higher education, and others, the Student and Exchange Visitor Program announced that nonimmigrant F-1 and M-1 students taking only online classes due to the pandemic for the fall 2020 semester cannot enter into or remain in the United States.

**[USCIS Furlough Plans for August 3 Continue to Move Forward](#)** – USCIS is expected to furlough more than two-thirds of its employees as of August 3, 2020, for at least a month and up to three months or more, if Congress does not pass sufficient emergency funding.

**[Proposed Rule Would Include Pandemic-Related "Emergency Public Health Concerns" for Consideration in Asylum/Withholding of Removal Eligibility Determinations](#)** – EOIR issued a proposed rule that would amend existing regulations to clarify that DHS and DOJ may consider emergency public health concerns based on communicable disease due to potential international threats from the "spread of pandemics" when deciding whether there are reasonable grounds for regarding a person as a danger to the security of the United States and, thus, ineligible for asylum or withholding of removal.

**[DOJ Settles With Florida Company Re Immigration-Related Discrimination Claims](#)** – The settlement resolves claims that Bel USA discriminated against work-authorized non-U.S. citizens by requiring them to provide specific and unnecessary immigration documents when verifying their work authorization.

**[President Trump Alludes to New Plans for DACA](#)** – After President Trump's

attempt to end Deferred Action for Childhood Arrivals through the Supreme Court failed, at least in the short term, he referred to an "executive order" and a "bill" interchangeably that would make unspecified reforms.

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### **Details:**

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## **SEVP Says F-1 and M-1 Students Attending Schools Entirely Online Due to Pandemic Must Not Enter or Remain in United States**

In a move that stunned, dismayed, and confused international students studying in the United States, U.S. institutions of higher education, and others, the Student and Exchange Visitor Program (SEVP) announced on July 6, 2020, that nonimmigrant F-1 and M-1 students taking only online classes due to the pandemic for the fall 2020 semester cannot enter into or remain in the United States. The announcement said:

The U.S. Department of State will not issue visas to students enrolled in schools and/or programs that are fully online for the fall semester nor will U.S. Customs and Border Protection permit these students to enter the United States. Active 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. If not, they may face immigration consequences including, but not limited to, the initiation of removal proceedings.

Harvard University and the Massachusetts Institute of Technology (MIT) immediately filed suit. " threw Harvard and MIT—indeed, virtually all of higher education in the United States—into chaos," the suit says. Cornell University is organizing an amicus brief on behalf of other Ivy League schools. Johns Hopkins University in Baltimore also filed suit, along with the state of California and others. California's Attorney General Xavier Becerra called the policy "arbitrary and capricious." "Shame on the Trump administration for risking not only the education opportunities for students who earned the chance to go to college but now their health and well-being as well," he said, expressing concerns that the policy "could put everybody at risk of getting the coronavirus or being subject to deportation" if they don't comply. "Not on our watch," he said.

International students, who number approximately 1 million, reportedly contributed nearly \$41 billion in the 2018-19 academic year to the national economy, according to NAFSA: Association of International Educators. Many graduate students work only online, even without a pandemic. The new policy has left many such students in limbo, confused or considering leaving their educational pursuits in the United States and applying to universities in other countries instead. Some universities are planning tentatively to use a "hybrid" model of part in-person and part remote learning. Meanwhile, President Trump said he would order a review of universities' tax-exempt status and funding.

#### Details:

- SEVP notice, <https://bit.ly/2Cu4hsh>
- Harvard/MIT complaint, [https://www.harvard.edu/sites/default/files/content/sevp\\_filing.pdf](https://www.harvard.edu/sites/default/files/content/sevp_filing.pdf)
- "Harvard, MIT Sue Trump Administration Over Rule Barring International Students," CNBC, <https://www.cnbc.com/2020/07/08/harvard-mit-sue-trump-administration-over-rule-barring-international-students.html>
- "Trump Speeds Up Plans to Force Foreign Students, Others Out of U.S.," Forbes, <https://www.forbes.com/sites/stuartanderson/2020/07/07/trump-speeds-up-plans-to-force-foreign-students-others-out-of-us/#4c15f4602493>
- "California Becomes First State to Sue Trump Administration Over Student Visa Policy," NBC News, <https://www.nbcnews.com/news/us-news/california-becomes-first-state-sue-trump-administration-over-student-visa-n1233381>
- "Maybe I Shouldn't Have Come!": U.S. Visa Changes Leave Students in Limbo," New York Times, <https://www.nytimes.com/2020/07/09/world/international-students-visa-reaction.html>
- "University of California to Sue Feds Over Student Visa Rule," Politico, <https://www.politico.com/states/california/story/2020/07/08/university-of-california-to-sue-feds-over-student-visa-rule-1298801>
- "One Million Foreign Students Risk Being Frozen Out of U.S. Colleges. Some Might Never Come Back," CNN, <https://www.cnn.com/2020/07/08/americas/international-student-visa-united-states-intl-hnk/index.html>

- "As Universities Seek to Block Visa Rules, Trump Threatens Tax Status," New York Times, <https://www.nytimes.com/2020/07/10/us/f1-student-visa-lawsuit.html>
- "After ICE Cracks Down on Online Learners, International Students Scramble for Backup Plans," Washington Post, <https://www.washingtonpost.com/education/2020/07/10/student-visas-ice-international-students/>
- President Trump's tweet about university tax status, <https://twitter.com/realDonaldTrump/status/1281616586273468416>

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### **USCIS Furlough Plans for August 3 Continue to Move Forward**

U.S. Citizenship and Immigration Services (USCIS) is expected to furlough more than two-thirds of its employees beginning August 3, 2020, for at least a month and up to three months or more, if Congress does not pass sufficient emergency funding. The furlough of approximately 13,400 USCIS employees is likely to have an enormous negative impact on the U.S. immigration system, effectively halting most adjudications.

There are several unknowns, according to the Alliance of Business Immigration Lawyers (ABIL):

- The furlough may not go into effect. Congress may yet act to provide USCIS with bridge funding. Reportedly, members of both the U.S. House of Representatives and Senate Appropriations Committees are working with USCIS on its funding request. USCIS funding may be provided as part of a "Phase 4" COVID-19 pandemic relief bill, or as a separate appropriation.
- The furlough may affect some types of applications more than others. Because in-person adjudications, like adjustment of status (I-485) and naturalization, require more staff than paper adjudications like H-1B petitions, the furloughs may hit local offices harder than the regional processing centers where most employment-based adjudications are done.
- The furlough should not affect the ability to file applications, meaning employees can obtain benefits from timely filed extensions, but furloughs will likely affect processing times, which means that applications will take

much longer to be decided.

- The furlough may affect the Premium Processing service, although USCIS may decide to retain the service due to the extra revenue it brings.

ABIL recommends filing any extensions of status needed in August, September, and October by August 1, 2020. Contact your ABIL attorney for advice in specific situations.

#### Details:

- Federal News Network, "Furlough Notices Arrive for Some 13,400 USCIS Employees,"  
<https://federalnewsnetwork.com/workforce/2020/06/furlough-notices-arrive-for-some-13400-uscis-employees/>
- Commonwealth, "U.S. Immigration Agency to Furlough Workers,"  
<https://commonwealthmagazine.org/immigration/us-immigration-agency-to-furlough-workers/>

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### **Proposed Rule Would Include Pandemic-Related "Emergency Public Health Concerns" for Consideration in Asylum/Withholding of Removal Eligibility Determinations**

The Department of Justice's Executive Office for Immigration Review issued a proposed rule on July 9, 2020, that would amend existing regulations to clarify that the Departments of Homeland Security (DHS) and Justice may consider emergency public health concerns based on communicable disease due to potential international threats from the "spread of pandemics" when deciding whether there are reasonable grounds for regarding a person as a danger to the security of the United States and, thus, ineligible for asylum or withholding of removal.

The proposed rule provides that this application of the statutory bars to eligibility for asylum and withholding of removal would be effectuated at the credible fear screening stage for those in expedited removal proceedings "to streamline the protection review process and minimize the spread and possible introduction into the United States of communicable and widespread disease." The proposed rule also would allow DHS to exercise its prosecutorial discretion regarding how to process individuals subject to expedited removal who are

determined to be ineligible for asylum in the United States on certain grounds, including "being reasonably regarded as a danger to the security of the United States." Finally, the proposed rule would "modify the process for evaluating the eligibility of aliens for deferral of removal who are ineligible for withholding of removal as presenting a danger to the security of the United States."

Jennifer Minear, president of the American Immigration Lawyers Association, called the proposed rule "an unconscionable attempt to scapegoat vulnerable people who are seeking humanitarian protection under the pretextual ruse of safeguarding the public health."

Comments on the proposed rule are due by August 10, 2020.

#### Details:

- Proposed rule, <https://bit.ly/3gQymBg>
- "Trump Admin Plans to Block Asylum Seekers From U.S. by Citing Public Health Risk of COVID-19," <https://www.nbcnews.com/politics/immigration/trump-admin-plans-block-asylum-seekers-u-s-citing-public-n1233253>

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## **DOJ Settles With Florida Company Re Immigration-Related Discrimination Claims**

The Department of Justice announced that it reached a settlement with Bel USA LLC (Bel USA), an online distributor and retailer of customized promotional products located in Miami-Dade County, Florida. The settlement resolves claims that Bel USA discriminated against work-authorized non-U.S. citizens by requiring them to provide specific and unnecessary immigration documents when verifying their work authorization, because of their citizenship or immigration status.

Under the terms of the settlement agreement, Bel USA will pay a civil penalty of \$100,000, train its employees about the antidiscrimination requirements, and be subject to reporting and monitoring.

#### Details:

- Settlement agreement, <https://www.justice.gov/opa/press-release/file/1292246/download>
- Press release,

<https://www.justice.gov/opa/pr/justice-department-settles-florida-based-promotional-products-distributor-and-retailer>

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## President Trump Alludes to New Plans for DACA

After President Trump's attempt to end Deferred Action for Childhood Arrivals (DACA) through the Supreme Court failed, at least in the short term, he gave an interview on July 10, 2020, to Telemundo in which he referred to an "executive order" and a "bill" interchangeably that would make unspecified reforms. Congress has not passed a bill related to DACA, but he said he planned to sign "an immigration bill that a lot of people don't know about." He said he would "be signing a major immigration bill as an executive order, which the Supreme Court now, because of the DACA decision, has given me the power to do that."

Legal commenters noted that immigration law cannot be changed through executive order. Several immigration-related bills are floating around, including a 600-page merit-based proposal supported by Jared Kushner, President Trump's son-in-law and senior advisor, and a bill passed by House Democrats, but any chances of passage of immigration reform appear dim before the presidential election in November.

Details:

- "Por qué Trump no puede reformar el sistema migratorio por decreto y sin el Congreso: explicación de los expertos," Univision, <https://bit.ly/328CEjk>
- "Trump anuncia una 'reforma migratoria' por decreto y hasta republicanos le responden que no tiene autoridad," Univision, <https://bit.ly/3iXyyAv>
- "Trump Is Still Looking for a DACA Deal," Politico, <https://www.politico.com/news/2020/07/10/trump-daca-deal-356789>

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## Firm in the News

**Cyrus Mehta** was quoted in various media on several topics:

Re Trump's new policy for F-1 students:

- "Risk COVID, But Study on Campus is the New Message for International Students in the U.S.," Times of India, <https://timesofindia.indiatimes.com/business/india-business/risk-covid-bu-t-study-on-campus-is-the-new-message-for-international-students-in-us/articleshow/76836207.cms>
- "Aged-Out Indian Students in U.S. Are Most Vulnerable Under New ICE Guidelines," Times of India, <https://timesofindia.indiatimes.com/world/us/aged-out-indian-students-in-us-are-most-vulnerable-under-new-ice-guidelines/articleshow/76850792.cms>
- "U.S. Academicians, Lawmakers Call Foreign Student New Guideline as 'Horrorifying'," Economic Times, <https://economictimes.indiatimes.com/nri/visa-and-immigration/us-academicians-lawmakers-call-foreign-student-new-guideline-as-horrifying/articleshow/76830361.cms>
- "How the New Rule for Foreign Students in U.S. Affects Indians?," Business Standard, [https://www.business-standard.com/podcast/international/how-the-new-rule-for-foreign-students-in-us-affects-indians-120070701318\\_1.html](https://www.business-standard.com/podcast/international/how-the-new-rule-for-foreign-students-in-us-affects-indians-120070701318_1.html)
- "Trump Administration Slams Door on F-1 Visa Students Attending Online-Only Classes," India West, [https://www.indiawest.com/news/global\\_indian/trump-administration-slams-door-on-f-1-visa-students-attending-online-only-classes/article\\_e8cf44a2-c013-11ea-a2de-17156d1688e3.html](https://www.indiawest.com/news/global_indian/trump-administration-slams-door-on-f-1-visa-students-attending-online-only-classes/article_e8cf44a2-c013-11ea-a2de-17156d1688e3.html)
- "Will Donald Trump's New Diktat Kill the American Dream for Students from Gujarat?," Ahmedabad Mirror, <https://ahmedabadmirror.indiatimes.com/ahmedabad/cover-story/will-trumps-new-diktat-kill-the-american-dream-for-students-from-gujarat/articleshow/76843163.cms>

Interviews on TV programs re the F-1 student policy:

- BBC Hindi News, <https://www.bbc.com/hindi/media-53347482>
- CNBC-TV18, [https://twitter.com/cnbctv18news/status/1280472572576989185?s=12&fbclid=IwAR0Kp3Q3nmKAXzd7zBysTQAvlYClgxwTnXuZ\\_j3\\_FYcYRRz6hd1wCq](https://twitter.com/cnbctv18news/status/1280472572576989185?s=12&fbclid=IwAR0Kp3Q3nmKAXzd7zBysTQAvlYClgxwTnXuZ_j3_FYcYRRz6hd1wCq)



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Re H-1Bs:

- "New Red Flags Inside Trump H1B Crackdown: Top U.S. Immigration Attorney,"  
<https://www.outlookindia.com/newscroll/new-red-flags-inside-trump-h1b-crackdown-top-us-immigration-attorney/1875552>

Re the nonimmigrant visa ban:

- "Trump's Immigration Order Targeted Women and Children," Forbes,  
<https://www.forbes.com/sites/stuartanderson/2020/07/06/trumps-immigration-order-targeted-women-and-children/#2a7d4e2c5c1b>

Other—quoted with other legal scholars:

- "Midyear Report—Top 5 Immigration Rulings," Law 360,  
<https://www.law360.com/articles/1289571/midyear-report-top-5-immigration-rulings-of-2020>

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