

PRESIDENTS' ALLIANCE | ON HIGHER EDUCATION AND IMMIGRATION

June 11, 2018

Mr. L. Francis Cissna
Director
U.S. Citizenship & Immigration Services
Department of Homeland Security
20 Massachusetts Avenue, NW
Washington, DC 20529

Dear Director Cissna,

The [Presidents' Alliance on Higher Education and Immigration](https://www.presidentsimmigrationalliance.org) writes in response to the U.S. Citizenship and Immigration Services (USCIS) policy memorandum of May 10, 2018, "[Accrual of Unlawful Presence and F, J, and M Nonimmigrants](#)," to express our grave concerns with the new guidance and to request that USCIS withdraw the memo. The new guidance will have significant adverse impacts on international students and scholars, and will greatly harm our colleges' and universities' ability to recruit and retain international talent.

The memo is a significant departure from long-standing agency interpretation. The memo changes the interpretation that USCIS (and previously INS) have followed since implementation of the 1996 changes to the governing Immigration and Nationality Act. In doing so, it abandons 20 years of fairly consistent agency interpretation. The concerns cited in the memo regarding overstays can be addressed in ways that do not require a major shift in policy.

We believe the memo overstates the problem and rate of overstays. The memo estimates the "total overstay rate was 6.19 percent for F nonimmigrants, 3.80 percent for J nonimmigrants, and 11.60 percent for M nonimmigrants" based on a 2017 DHS report ("*Fiscal Year 2016 Entry/Exit Overstay Report*"), and on that basis, identifies the reduction of "overstays" as a key justification for the new policy. However, a 2018 study by the demographer Robert Warren, shows that the 2017 DHS study was based on faulty data and analysis. In his study, Warren details how DHS greatly overestimated the number of overstays for approximately 30 countries, and that "slightly more than half" of the DHS overstays actually included those who departed the country, but their departures were not recorded. Warren concludes that the "actual number of overstays in 2016 was about half of the number estimated by DHS" (R. Warren, "DHS Overestimates Visa Overstays for 2016; Overstay Population Growth Near Zero During the Year," *Journal of Migration and Human Security*, JMHS Volume 5 Number 4 (2017): 768-779). We request that USCIS conduct a more thorough analysis of overstays, and explore ways to improve verification of departures of temporary visitors and (F-1, J-1, M-1) visa holders before implementing the new policy laid out in the memo.

The new guidance is operationally very complex and will likely result in increased numbers of foreign students, exchange visitors, and scholars being found to have failed to maintain lawful presence, and thus potentially subjecting them to 3-year, 10-year, or permanent bars to re-entry

to the United States. Such failures could be due to unwitting, minor or technical errors committed by themselves or college administrators; indeed, the international students or scholars may not even be aware that they have started to accrue unlawful presence. Under the current system, when a small human error, misinterpretation, or technical glitch in SEVIS occurs, our staff and students are able to make corrections and request reviews and adjustments, without fearing the accrual of unlawful presence.

The implications of this new policy are substantial and highly concerning. American colleges and universities excel because we can attract talent from everywhere. Our campuses are dedicated to attracting, educating, and graduating students from all backgrounds and places. Our institutions can attest to the vital contributions of our international students and scholars on our campuses and in our communities. However, this new policy, with its harsh, unforgiving interpretations of existing law, could deter international students and scholars from coming to study and work here, and from contributing their talents, energy, and innovative ideas to the United States.

Thus, on behalf of the [Presidents' Alliance on Higher Education and Immigration](#), a non-partisan alliance of now over 365 college and university presidents and chancellors, representing public and private institutions from across the nation, we urge USCIS to withdraw this new policy, and work with us and others in higher education to develop appropriate, sensible practices to address any concerns that you may have with regard to overstays and international students and exchange visitors.

Sincerely,



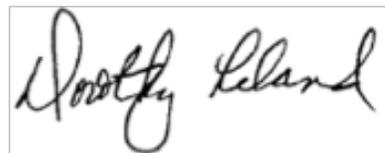
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