



USING A SLEDGEHAMMER TO CRACK A NUT: TRUMP PROCLAMATION BANS CHINESE STUDENTS AND RESEARCHERS LINKED TO CHINA'S "MILITARY-CIVIL FUSION STRATEGY"

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President Trump has issued a [proclamation](#) limiting Chinese students wishing to study in the United States to undergraduates under certain conditions, and limiting Chinese researchers. The proclamation states that the People's Republic of China (PRC) uses some Chinese students, mostly post-graduate students and post-doctoral researchers, to operate as "non-traditional collectors of intellectual property" in the United States. President Trump said that he therefore has determined that the entry of certain PRC nationals seeking to enter the United States "pursuant to an F or J visa to study or conduct research in the United States would be detrimental to the interests of the United States."

The proclamation specifically bans nonimmigrants who enter on an F or J visa "to study or conduct research in the United States, except for a student seeking to pursue undergraduate study, and who either receives funding from or who currently is employed by, studies at, or conducts research at or on behalf of, or has been employed by, studied at, or conducted research at or on behalf of, an entity in the PRC that implements or supports the PRC's "military-civil fusion strategy". The proclamation defines the term "military-civil fusion strategy" as actions by or at the behest of the PRC to acquire and divert foreign technologies, specifically critical and emerging technologies, to incorporate into and advance the PRC's military capabilities.

President Trump has [again relied on INA 212\(f\)](#) to issue this ban on Chinese nationals who enter the US on an F or J visa who are associated with the vague

Chinese "military-civil fusion strategy." This is another case of Trump using 212(f) to rewrite immigration law. Given the vagueness of linking students to China's military-civil fusion strategy, it would empower consular officers, and even CBP officials, to deny a visa or admission to just about any graduate student or researcher from China as the proclamation does not set any parameters. Trump's proclamation will unfortunately also result in needless stereotyping. Just as so many people were branded as communists during the "red scare" under the McCarthy era, graduate students from China will also be associated with China's military-civil fusion strategy. Although the ban is thought to [impact 3,000 out of 360,000](#) Chinese students, many more can be impacted for mere suspicion of being linked to Chinese military-civil fusion strategy.

While there is evidence that the Chinese military has sponsored military scientists to study abroad described as a [process of picking flowers in foreign lands to make honey in China](#), the overall benefits that Chinese graduate students and researchers bring to US universities far outweigh the supposed perils of benefiting China's military progress. American universities will get adversely impacted if they cannot attract students from China in their graduate and doctoral programs who pay the full freight in tuition fees. When Chinese researchers study in the US and write research papers, [they adopt the US model and their papers are peer reviewed before being selected for publication in English](#) that can be accessed by anyone, and not just by the Chinese military. Moreover, 90% of Chinese students are still in the US a decade since they came.

Moreover, there are enough provisions in the INA that would allow a consular officer to deny a visa. In addition to denying an F-1 visa under the usual INA 214(b) for demonstrating immigrant intent, an applicant for a student or research visa can also be denied for security grounds under INA 212(a)(3). Thus, Trump's latest Chinese ban is akin to using a sledgehammer to crack a nut. It also bypasses Congress authority to amend the INA. In fact, there is a proposed bill [sponsored](#) by Senators Cotton and Blackburn that would be even more sweeping by prohibiting to Chinese nationals from receiving visas to the United States for graduate or post-graduate studies in STEM fields. The fact that it will be unlikely for these Senators to pass such a draconian bill through both houses of Congress does not justify Trump's proclamation that rewrites the INA.

The proclamation also contemplates revoking the visas of affected Chinese

students and researchers who are already in the US. Under [other circumstances](#), when a nonimmigrant's visa is revoked while in the US, they can continue to maintain status, but will need to obtain a new visa upon departing the US. Chinese students subject to the ban will likely not be able to apply for new F-1 or J-1 visa unless they qualify for one of the limited exceptions.

Finally, the proclamation leaves open the possibility of further restrictions as it also calls for agency review of "nonimmigrant and immigrant programs" and recommendations for "any other measures requiring Presidential action that would mitigate the risk posed by the PRC's acquisition of sensitive United States technologies and intellectual property."