



# ALTHOUGH DOS RESUMES VISA PROCESSING FOR FOREIGN STUDENTS, THE ENHANCED VETTING GUIDANCE UNDERMINES AMERICAN VALUES OF FREE SPEECH AND EXPRESSION

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On June 18, 2025, the Department of State [resumed visa processing](#) for new and returning students and exchange visitors (F, M, and J nonimmigrants) but [announced](#) enhanced social media and online presence screening and vetting procedures. All applicants for F, M, and J nonimmigrant visas will be instructed to adjust the privacy settings on all of their social media profiles to "public" at their visa interviews. If the consular officer finds them otherwise eligible for the visa sought, the officer will issue the student an INA § 221(g) decision while they gather more information and documentation before issuing a final determination.

The [guidance directs](#) consular officers to review visa applicants' online presence for "any indications of [hostility](#) towards the citizens, culture, government, institutions or founding principles of the United States." Consular officers will review more than just social media accounts with particular attention to applicants with a [history of political activism](#). Officers will comprehensively screen every visa applicant "for potential security and non-security related ineligibilities." Although the online content found may not alone be sufficient to deny a student's visa, officers will conduct additional vetting to determine if the applicant will respect U.S. laws and "engage only in activities consistent with" their status. While some travelers have taken to temporarily wiping their social media accounts, consular officers will be taking screenshots during their vetting process to preserve records of their findings.

Lack of a public online presence or refusal to make sites accessible will [raise a](#)

[red flag](#). If no derogatory information is found, the officer may make a decision on the visa application. However, according to the guidance, "if potentially derogatory information is found, post should refuse the case under the appropriate refusal code; or, if needed, post should call the applicant back for a follow-up interview."

According to the guidance, consular posts may resume processing of expedited appointment requests and are directed to prioritize physicians applying for J visas and applicants studying at U.S. universities where international students constitute 15 percent or less of the total student body.

The guidance is very authoritarian and not befitting American values that cherish freedom of speech and expression, and is aimed at stifling all forms of critical speech that is integral to a student's expression. For instance, a student may have randomly posted on social media about the blandness of American cuisine because of the dominance of McDonalds in a small town he visited in comparison to New York or San Francisco. Could this post now be used as a basis to refuse the student visa because he displayed hostility towards US culture? Or what if a student of international affairs writes an essay in the college newspaper critical of President Trump's decision to bomb Iran without Congressional authorization even though many elected representatives in Congress share this view? One can go on and on with ridiculous examples of how a student may be refused a visa under this policy.

Unfortunately, it is difficult to challenge a consular officer's refusal of a student visa but there may be some legal foundation. In [Kleindienst v. Mandel](#), the Supreme Court held that the government has broad discretion to refuse entry of a noncitizen seeking entry to the US. So long as there is a "facially legitimate and bona fide reason" to refuse entry, courts will not question that decision or weigh it against the First Amendment rights of those seeking to communicate with the noncitizen. One may be able to argue in court that denying a student visa to one who has posted critically against "McDonald culture" does not meet the "facially legitimate and bona fide reason" standard, but courts have still historically been reluctant to question a consular officer's decision or gone behind it so long as the officer provided a decision. It may be more feasible to seek review in court if the challenge intersects with a claim under the First Amendment and if US based plaintiffs are involved. In [American Academy of Religion v. Napolitano](#), the Second Circuit Court of Appeals held that the lower district court had jurisdiction to consider US organizations' First Amendment

claims despite consular non-reviewability in the denial of a B visa to an Islamic scholar. The Court found the First Amendment rights of U.S. organizations are at stake when foreign scholars, artists, politicians and others are excluded, quoting from *Kleindienst v. Mandel* that the organizations have a First Amendment right to "'hear, speak, and debate with' a visa applicant." The appeals court also found that the government cannot exclude an individual from the U.S. on the basis of "material support" for terrorism without affording him the "opportunity to demonstrate by clear and convincing evidence that he did not know, and reasonably should not have known, that the recipient of his contributions was a terrorist organization."

The State Department policy will either dissuade or deprive thousands of foreign students from studying in the US. It will also lead to processing delays as consular officers will be required to vet all student visa applicants for potential security and non-security ineligibility. This in turn will further undermine the ability of US universities to enroll foreign students who generally pay fees at full freight. It will erode America's credibility as a destination to attract the best and the brightest, and it will also undermine the ability of universities to foster critical thinking as well as sow fear lest one's published views lead to retaliation. The policy could also be applied arbitrarily, potentially leading to visa denials based on innocuous or irrelevant online activity. This could further support a challenge by demonstrating that the policy lacks clear standards and is inconsistent with American values of free speech and expression. Furthermore, the policy's potential to dissuade or deprive foreign students from studying in the U.S. could undermine the ability of U.S. universities to foster critical thinking and academic exchange. This impact on U.S. institutions could strengthen the argument that the policy is detrimental to the First Amendment interests of U.S. entities.

If Trump's State Department does not come to its senses and rescinds its unwise policy, visa applicants who have been baselessly denied visas and impacted US organizations should consider challenging the policy in federal court under *American Academy of Religion v. Napolitano*.