CYRUS D. MEHTA & PARTNERS PLLC
US IMMIGRATION & NATIONALITY LAW

FIGHTING BACK TRUMP'S ATTACKS ON FOREIGN STUDENTS

*Posted on May 27, 2025 by Cyrus Mehta & Kaitlyn Box**

In recent weeks, the Trump administration has launched a concerted assault on international students and their ability to remain in the U.S. In the latest volleys against Harvard University, the Trump administration ordered the revocation of Harvard's Student and Exchange Visitor Program (SEVP) certification, which will ban the university from enrolling international students and force international students currently studying at Harvard to transfer or risk falling out of status. After Harvard filed a complaint, a U.S. district court judge ordered the ban to be halted temporarily in the face of ongoing litigation. International students reportedly make up more than a quarter of Harvard's student body.

According to reports, U.S. Immigration and Customs Enforcement has also recently began sending warning notices to certain F-1 students who have been enrolled in the Optional Practical Training (OPT) program for more than 90 days but have not reported any employment status.

The notices afford impacted students 15 days to update their Student and Exchange Visitor Information System (SEVIS) record with employment information. If no action is taken, the student's SEVIS record could then be terminated for a violation of status on the grounds that they failed to timely report OPT employment or exceeded the maximum permissible 90-day period of unemployment during OPT. The notice further warns that failure to take corrective action may result of the student being placed in removal proceedings.

Moreover, the administration has evidenced a desire to thwart international students' ability to remain in the U.S. and work post-graduation. Joseph Edlow, nominated by the president to be the Director of USCIS, stated the following of the OPT program during his Senate confirmation hearing:

> *"I think the way in which OPT has been handled over the past four years, with the help of certain decisions coming out of the D.C. Circuit Court, have been a real problem in terms of misapplication of the law.*
>
> *What I want to see would be essentially a regulatory and sub-regulatory program that would allow us to remove the ability for employment authorizations for F-1 students beyond the time that they are in school."*

Endlow was undoubtedly referring to the U.S. Court of Appeals for the D.C. Circuit's decision in *Washington Alliance of Technology Workers v. the U.S. Department of Homeland Security* ("*Washtech v. DHS*"), which upheld the STEM OPT extension as authorized under the Immigration and Nationality Act. *Washtech* was analyzed at length in a prior blog, which is excerpted here. The case involved a challenge to the rule permitting eligible students in STEM fields to seek an additional 24 month OPT extension beyond the usual 12 month OPT period by the Washington Alliance of Technology Workers (Washtech), a union representing tech workers. Washtech read INA § 101(a)(15)(F)(i) as authorizing DHS to allow F-1 students to remain in the U.S. only until they have completed their course of study, as the provision does not specifically mention post-graduation practical training. The court upheld the STEM OPT extension, reasoning that it is a valid exercise of DHS' authority under in INA § 214(a)(1) to promulgate regulations that authorize an F-1 student's stay in the U.S. beyond graduation. The court further noted that "practical training not only enhances the educational worth of a degree program, but often is essential to students' ability to correctly use what they have learned when they return to their home countries. That is especially so in STEM fields, where hands-on work is critical for understanding fast-moving technological and scientific developments." Judge Pillard, who authored the opinion, noted that the concept of post-coursework practical training for foreign students predates the Immigration and Nationality Act of 1952, pointing to a 1947 rule which "allowed foreign students 'admitted temporarily to the United States . . . for the purpose of pursuing a definite course of study' to remain here for up to eighteen months following completion of coursework for 'employment for practical training' as required or recommended by their school". Practical training has been authorized even prior to the enactment of the INA in 1952.

While there is no explicit authorization in the INA for OPT, it has been around for over 70 years and predates the Immigration and Nationality Act of 1952, as

the court emphasized in *Washtech*. Under *Lorillard v. Pons*, 434 U.S. 575, 580 (1978), Congress is presumed to be aware of an administrative interpretation of a statute and to adopt that interpretation when it reenacts its statutes without change. One can argue the reverse of *Lollilard v. Ponce* in a challenge to a proposed DHS rule that would limit or eviscerate OPT. OPT is so baked into the longstanding interpretation of INA § 101(a)(15)(F)(i) ought to be, which allows a student to enter the U.S. in F-1 status to complete a course of study, and affords additional time beyond the course of study through Optional Practical Training. This is how Congress intended § 101(a)(15)(F)(i) to operate over the several decades even as it amended the Immigration and Nationality Act of 1952 several times. Thus, any curtailment of OPT would arguably not be authorized under INA § 101(a)(15)(F)(i).

Any efforts by the Trump administration to abolish OPT could also be vulnerable to challenges under the Administrative Procedure Act (APA). Abolishing OPT would clearly have a devastating impact on U.S. schools, as international student are likely to enroll in fewer numbers if they cannot pursue practical experience in their fields of study. Perhaps the Trump administration would argue that international students in the workforce limit the ability of U.S. workers to get jobs. However, any attempt to argue that international students attending U.S. schools do not add value to the United States appears to clash with INA § 101(a)(15)(F)(i), which makes clear that international student are a Congressionally authorized category of nonimmigrant visa classification, which is implicitly beneficial to the US.

In 2020, in *Department of Homeland Security v. Regents of the University of California*, the Supreme Court held that the Trump administration had run afoul of the APA when it rescinded the Deferred Action for Childhood Arrivals (DACA) program. Cyrus Mehta discussed this case in a prior blog. The Court found the rescission of DACA to be "arbitrary and capricious," noting that "e do not decide whether DACA or its rescission are sound policies," but only "whether the agency complied with the procedural requirement that it provide a reasoned explanation for its action. Here the agency failed to consider the conspicuous issues of whether to retain forbearance and what if anything to do about the hardship to DACA recipients." Chief Justice Roberts' opinion faulted the administration for not factoring reliance interests, as DACA recipients had enrolled in degree programs, embarked on careers, started businesses, purchased homes, and even married and had children, all in reliance on the

DACA program. The consequences of the rescission would "radiate outward" to DACA recipients' families, including their 200,000 US citizen children, to the schools where DACA recipients study and teach, and to the employers who have invested time and money in training them. Justice Roberts also cited a Brief for 143 Businesses as Amici Curiae, which estimated that hiring and training replacements would cost employers $6.3 billion. In addition, excluding DACA recipients from the lawful labor force may result in the loss of $215 billion in economic activity and an associated $60 billion in federal tax revenue over the next ten years. The reliance interests at issue in any effort to rescind OPT would be similarly weighty. International students enroll in degree programs and pay tuition to U.S. universities in reliance on the assumption that they will be able to gain practical experience in their field of study through OPT employment after graduation. If international students are deterred from studying in the U.S., American universities will suffer, as will U.S. employers who can no longer employ talented foreign graduates. Economists too find OPT to be an economic boon to America and prohibiting OPT will find it musth more difficult for US companies to retain talent.

Trump does not only want to attack and curb practical training but also wants to prevent international students from having the opportunity to come to the U.S. and study at Harvard, America's most prestigious university. Without international students, who should be able their mind or express their views without fear, Harvard will not be Harvard and the American University that has long commanded respect and prestige throughout the world will sink in Trump's swamp. Finally, Trump has also detained and attempted to remove foreign students for expressing lawful speech that his administration disfavors, and so far the courts are pushing back on grounds that their detention was retaliatory and unconstitutional as we have discussed in our blog on our client Mohsen Mahdawi's successful challenge to his unlawful detention.

*Kaitlyn Box is a Partner at Cyrus D. Mehta & Partners PLLC.