



ISSUE BRIEF | Center for Homeland Security & Immigration

AMERICA FIRST REFORMS TO FOREIGN STUDENT VISAS

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TOPLINE POINTS

- ★ Unlike most nonimmigrant visa categories that authorize an admissions period of a fixed time, foreign students are admitted for an indefinite amount of time known as “duration of status.”
- ★ Duration of status admission is problematic because the time authorized in the U.S. depends on the behavior of the foreign student instead of a defined time period set by the government. This raises national security and immigration integrity concerns because they are insufficiently vetted after their admission and because immigration consequences are not triggered until after the government discovers the foreign student has violated the terms of the visa.
- ★ The America First approach to foreign students calls for ending duration of status treatment, increasing screening and vetting while the foreign student is in the U.S., and imposing immigration consequences on those who violate their status.

Under U.S. immigration law, aliens who are admitted to the country for a temporary amount of time generally receive nonimmigrant visas. Most nonimmigrant visa categories authorize an alien to be admitted to the United States for a fixed period, a concept known as “date certain” admission. This is because the alien and the government know the precise date that the alien’s nonimmigrant status expires before the alien is admitted to the U.S.

For example, [H-1B nonimmigrant workers](#), who typically do tech or data entry work, are admitted for three years, usually with an October 1 start date. Under the law, the petitioning employer may request to extend the alien worker’s H-1B for an additional

three-year period. Foreign tourists are generally admitted on a [B-2 visa](#) with authorization to be in the U.S. for 180 days. Unless granted an extension or change in the visa category, they must depart the U.S. on the date specified on their visa; otherwise, they will begin accruing unlawful presence. Under the law, an alien who accrues six months to one year of unlawful presence is barred from reentering the U.S. for three years, while aliens who accrue one year or more of unlawful presence are barred from reentering the U.S. for 10 years.

On the other hand, foreign students who receive [F-1 nonimmigrant visas](#) and a few other nonimmigrant categories (such as J and I visas) are admitted to the U.S. for an indefinite time, a concept known as “duration of status.” The significance of duration of status admission is that the alien’s behavior, in this case, a student pursuing a course of study, controls how long the alien may remain in the U.S. This undefined period of authorization in the U.S. and lack of periodic follow-up vetting is problematic for several reasons. For example, foreign students engaging in espionage or who otherwise pose a national security threat could do so undetected for many years, causing great harm to the U.S. Foreign students who become radicalized after admission to the U.S. or lied on their visa applications could avoid immigration consequences entirely. Similarly, students who drop out of school may remain in the U.S. for years before their visa violation is discovered. And unlike aliens admitted with a “date certain” visa, foreign students do not start accruing unlawful presence toward the three- and 10-year bars until after the government catches them violating their status.

Another problematic aspect of the current foreign student visa policy is the post-graduation work authorization known as [Optional Practical Training](#). Through this program, all aliens admitted on a student visa are allowed to work in the U.S. for one year after completing their degrees. Aliens who obtain U.S. degrees in the science, technology, engineering, and mathematics fields can work for an additional two years, giving them a total of three years post-degree to try to obtain a work visa. This program has no basis in statute and was created and expanded by the executive branch. And because of the legal fiction that these foreign graduates are “students,” they are [exempt](#) from payroll taxes under U.S. tax law, which makes them a cheaper alternative to similarly skilled American graduates. If Congress wants aliens who were admitted on student visas to have work eligibility upon completing their degrees, they should pass legislation that authorizes this behavior.

The Trump Administration recognized these national security and immigration integrity concerns and attempted to move foreign students from duration of status to date certain or fixed admission periods. In the [proposed regulation](#), the Department of Homeland Security wrote:



Admission for [duration of status,] in general, does not afford immigration officers enough predetermined opportunities to directly verify that aliens granted such nonimmigrant statuses are engaging only in those activities their respective classifications authorize while they are in the United States. In turn, this has undermined DHS's ability to effectively enforce compliance with the statutory inadmissibility grounds related to unlawful presence and has created incentives for fraud and abuse.

Unfortunately, this regulation was not finalized before the change in administration in January 2021, and the Biden Administration subsequently [withdrew](#) the proposed regulation on July 2, 2021.

Student visa integrity has taken on new significance in the aftermath of the antisemitic, pro-Hamas protests that have proliferated across American campuses since the October 7 terrorist attack against Israel. These unlawful protests have resulted in assaults on law enforcement, property damage, violations of university policies, and the hurling of antisemitic slurs. The foreign students participating in these acts have likely breached the terms of their student visas, including triggering the grounds of [inadmissibility](#) for (1) committing crimes involving moral turpitude, (2) espousing or providing support of terrorist activities, (3) adversely affecting U.S. foreign policy, and (4) misrepresenting facts in the visa process. It is possible that if the Trump Administration's duration of status regulation were in effect, some of these foreign student offenders would have had their visas revoked and been ordered removed from the country during a screening and vetting check-in before their engaging in the recent protests.

U.S. Immigration and Customs Enforcement (ICE) has jurisdiction over student visas in the U.S., and they should immediately investigate all documented cases of foreign students participating in these unlawful demonstrations. Those who have violated the terms of their student visas should be found inadmissible on the relevant grounds. Then, the Department of State should revoke their visas and ICE should remove them from the country.

America First Reforms to Student Visas:

The foreign student visa program can be beneficial for the United States and for aliens who come here to learn from our academic institutions. However, the current immigration policy for foreign students exposes our country to national security vulnerabilities and presents integrity challenges to the legal immigration system. The America First approach to reforming foreign student visas includes:



- Eliminate the open-ended admission period for foreign student visas and replace it with a date certain admission period, consistent with most other nonimmigrant visa categories.
- Increase screening and vetting by ICE, including an assessment of all grounds of inadmissibility and removability, after foreign students have been admitted to ensure that they remain eligible for the visa.
- Prioritize the cancellation of visas and removal from the country of foreign students who fail national security vetting or who are found inadmissible for supporting terrorist organizations.
- Establish a five-year mandatory bar to re-entry for any foreign student found inadmissible or removable for espousing or providing support for terrorist organizations.
- Prohibit foreign students from obtaining degrees or taking classes in fields that raise national security concerns.
- Require foreign students to post a financial bond as a condition of entry to ensure they do not overstay their visas.
- Terminate the Optional Practical Training work permit program, which was not authorized by Congress and advantages foreign “student” workers to the detriment of American graduates. Such a work permit program should only be created by Congress through a transparent legislative process.

Conclusion

Millions of foreign students come to the United States to receive an education from our high-caliber educational system. While most do so for legitimate reasons, a subset of this large population exploits the student visa system for espionage or to undermine our national security. Others simply espouse views that are antithetical to the American way of thinking and contrary to the principles of our Constitution.

The only way to ensure that foreign students are complying with their visas and do not pose a threat to the U.S. is to align their admission to the date certain structure that applies to nearly all nonimmigrant visas. Ending duration of status treatment would restore control of this part of the immigration system to the federal government and ensure that foreign students are subjected to periodic screening and vetting if they intend to prolong their education in our country. The America First approach to foreign students is one that welcomes their contributions to our educational system but ensures that those we allow into our country do not do so to cause harm.

