

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE; and
MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; CHAD F. WOLF, in
his official capacity as Acting Secretary
of the United States Department of
Homeland Security; and MATTHEW
ALBENCE, in his official capacity as
Acting Director of U.S. Immigration and
Customs Enforcement,

Defendants.

Civil Action No. 1:20-cv-11283

Leave to file granted July 13,
2020

BRIEF OF
THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA;
BSA | THE SOFTWARE ALLIANCE;
INFORMATION TECHNOLOGY INDUSTRY COUNCIL;
INTERNET ASSOCIATION;
SOCIETY FOR HUMAN RESOURCE MANAGEMENT; TECHNET;
ADOBE SYSTEMS INCORPORATED; BOSTON CONSULTING GROUP;
BOX, INC.; DROPBOX, INC.; FACEBOOK, INC.; GITHUB, INC.;
GOOGLE LLC; LINKEDIN CORP.; MICROSOFT CORP.; PAYPAL
HOLDINGS, INC.; SALESFORCE.COM, INC.;
SPOTIFY USA INC.; AND TWITTER, INC.
AS AMICI CURIAE IN SUPPORT OF PLAINTIFFS' MOTION FOR A
TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

TABLE OF CONTENTS

	Page
INTEREST OF THE <i>AMICI CURIAE</i>	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
A. International Students Contribute Substantially to the U.S. Economy When They Are Resident in the United States.	6
B. International Students Provide the Critical Mass Needed to Maintain the Excellence of U.S. Colleges and Universities—Which as a Result Produces Skilled U.S. Graduates and Research Essential to U.S. Businesses.	7
C. International Students’ Employment in the U.S. While They Are Studying And After They Graduate—Under the CPT and OPT Programs—Produces Substantial Benefits For U.S. Businesses and the Economy.	9
D. Students Who Continue to Work for U.S. Businesses—Both Within and Outside the United States—Provide Important Benefits to the Entire Economy.	13
CONCLUSION.....	15
APPENDIX.....	A-1

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Department of Homeland Security v. Regents of the University of California</i> , 140 S. Ct. 1891 (2020)	3, 5, 6
<i>FCC v. Fox Television Stations</i> , 556 U.S. 502 (2009)	3, 5
<i>Motor Vehicle Mfrs. Ass’n of United States, Inc. v. State Farm Mut. Auto. Ins.</i> , 463 U.S. 29 (1983)	3, 5
Other Authorities	
8 C.F.R. § 274a.12(b)(6)(iv).....	10
Jacqueline Alemany, <i>Power Up : Business school leaders to Trump and Congress: Let in more high-skilled foreign workers</i> , Wash. Post (Oct. 15, 2019), https://tinyurl.com/ycvku25c	11
Stuart Anderson, <i>Immigrants and Billion-Dollar Companies</i> , Nat’l Found. for Am. Policy (Oct. 2018), https://tinyurl.com/y6vs9ck6	13, 14
Stuart Anderson & Michaela Platzer, Nat’l Venture Capital Ass’n, <i>American Made: The Impact of Immigrant Entrepreneurs and Professionals on U.S. Competitiveness</i> (Nov. 2006), https://tinyurl.com/yb8don2v	13
Bus. Roundtable, <i>The Economic Impact of Curbing the Optional Practical Training Program</i> (Dec. 2018), https://tinyurl.com/yxgl9trv	11, 12
Grace Carter, Found. for Econ. Educ., <i>How International Students Add Billions to the US Economy</i> (Nov. 1, 2018), https://tinyurl.com/yatlahjh	7
FWD.us, <i>Protecting Optional Practical Training is in our national interest</i> (Dec. 5, 2019), https://tinyurl.com/y7adc5p8	12, 15
Inst. of Int’l Educ., <i>Number of International Students in the United States Hits All-Time High</i> (Nov. 8, 2019), https://tinyurl.com/rv9fdad	6

Rebecca Morgan & Kasey Penfield, NAFSA, *New NAFSA Data: Despite Stagnant Enrollment, International Students Contribute Nearly \$41 Billion to the U.S. Economy* (Nov. 18, 2019), <https://tinyurl.com/ybcp7pdj> 7

Nat’l Found. for Am. Policy, *The Importance of International Students to American Science and Engineering* (Oct. 2017), <https://tinyurl.com/y4fkav4y> 8, 9

Nat’l Sci. Bd., *2018 Science & Engineering Indicators* (2018), <https://tinyurl.com/yc4ko6mo> 14

Nat’l Security Comm’n on Artificial Intelligence, *Interim Report – November 2019* (Nov. 2019), <https://tinyurl.com/y2f58mkd> 14

Jeremy L. Neufeld, Niskanen Ctr., *Optional Practical Training (OPT) and International Students After Graduation: Human Capital, Innovation, and the Labor Market* (Mar. 2019), <https://tinyurl.com/ycv76qhd> 12

New Am. Econ., *Not Coming to America: Falling Behind in the Race to Attract International Students* (July 2020), <https://tinyurl.com/y72darqr> 7, 9, 14

Presidents’ Alliance on Higher Education and Immigration, *International Students Affected by ICE COVID-19 Guidance for Fall 2020* (July 10, 2020), <https://bit.ly/3ehEJfo> 4

Neil G. Ruiz, Brookings, *The Geography of Foreign Students in U.S. Higher Education: Origins and Destinations* (Aug. 2014), <https://tinyurl.com/ydawdwdq> 15

U.S. Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey*, <https://tinyurl.com/y37psonn> (last modified July 2, 2020) 11

U.S. Citizenship and Immigration Servs., *Optional Practical Training (OPT) for F-1 Students*, <https://tinyurl.com/y7czsoyy> (last visited July 12, 2020) 11

U.S. Citizenship and Immigration Servs., *Foreign Academic Students*, <https://tinyurl.com/ycushsq2> (last visited July 12, 2020) 10

U.S. Dep’t of Commerce, *Education Service Exports*, <https://tinyurl.com/y9opcf2p> (last visited July 12, 2020) 7

U.S. Dep’t of Homeland Security, *STEM OPT Extension Overview*,
<https://tinyurl.com/y9helxkv> (last visited July 12, 2020) 11

U.S. Immigration and Customs Enforcement, *Frequently Asked
Questions for SEVP Stakeholders about COVID-19*,
<https://tinyurl.com/ybtb4thb> (last updated July 6, 2020) 4

Madeline Zavodney, Nat’l Found. for Am. Policy, *International
Students, STEM OPT and the U.S. STEM Workforce* (Mar. 2019),
<https://tinyurl.com/yb7w2hay> 12

INTEREST OF THE *AMICI CURIAE*

Amici are 19 associations and individual companies—identified in the Appendix to this brief—that together represent the businesses that power the American economy. They file this brief to bring to the Court’s attention the benefits to the economy—and to American society as a whole—from the more than one million international students who choose to study at our country’s educational institutions, as well as the serious adverse economic consequences that will result from Defendants’ July 6 Directive.

International students are *amici*’s customers when they are resident in the United States; their future employees—both in the United States and around the world; and their future customers in other nations, both individually and as employees responsible for the purchasing decisions of other businesses in those countries. These students contribute substantially to the U.S. economy when they are resident in the United States. And without international students, American educational institutions face a sudden loss of critical mass—jeopardizing their ability to maintain their standards of excellence; produce research that helps keep U.S. businesses on the cutting edge of innovation; and provide the training that makes American students a strong talent pool for their future employers.

Amici and their members have relied on longstanding federal policies permitting international students to study in the United States and have a strong interest in preserving these students’ ability to remain in the United States during the extraordinary conditions resulting from the lethal SARS-CoV-2 virus. *Amici* and their members will therefore be harmed substantially if Defendants’ July 6 Directive is permitted to take effect.

SUMMARY OF ARGUMENT

Supreme Court precedent interpreting the Administrative Procedure Act (“APA”) required Defendants—in making their July 6 decision regarding requirements for international student visa holders—to consider the serious consequences for the U.S. business community and the entire economy that would result from a directive requiring more than half of all international students to leave the country, and also to take account of the substantial reliance interests of U.S. businesses that would be disrupted by such a decision. Defendants failed to satisfy those basic requirements.

First, Defendants did not consider the harm to businesses and the economy that will result from the loss of the tens of billions of dollars that international students contribute to U.S. GDP each year.

Second, they failed to address the critical role played by international students in maintaining the world-leading status of U.S. educational institutions—which ensures that those schools’ U.S. students will learn the skills that businesses need and that the research conducted at those schools will enable American businesses to continue leading the world in innovation.

Third, Defendants did not take account of the substantial benefits to U.S. businesses from international students’ employment in the United States during and after their course of study, or businesses’ reliance on international students to provide a critical element of their workforce.

Fourth, they ignored the significant long-term benefits to businesses and the entire economy from international students who remain in the United States, and from those who find permanent employment outside the United States.

Because Defendants failed to undertake the analysis required by the APA, the Directive is invalid. Plaintiffs' motion for preliminary relief should be granted.

ARGUMENT

Defendants Violated the APA By Failing To Consider The Consequences Of Their Decision For The U.S. Business Community And The Business Community's Very Substantial Reliance Interests.

The Supreme Court has long held that agency action is arbitrary and capricious—and must be vacated under the APA—when the agency “entirely fail[s] to consider an important aspect of the problem” before it. *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins.*, 463 U.S. 29, 43 (1983); accord, *Department of Homeland Security v. Regents of the University of California* (“*Regents*”), 140 S. Ct. 1891, 1910 (2020).

In addition, “[w]hen an agency changes course, as DHS did here, it must be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account.” *Regents*, 140 S. Ct. at 1913 (internal quotation marks omitted). Explaining that “[i]t would be arbitrary and capricious to ignore such matters,” the *Regents* Court vacated the agency's decision because it had failed to consider the relevant reliance interests—including the burden on employers and the consequences for the U.S. economy. *Id.* (internal quotation marks omitted); *see also FCC v. Fox Television Stations*, 556 U.S. 502, 515 (2009) (requiring agency to offer a “more detailed” explanation when its new policy rests on determinations that contradict its earlier policy and undermines reliance interests).

Defendants' July 6 Directive will have a dramatic effect on international students. One study found that more than half of the international students studying

in the United States—over 575,000 people—could have their education interrupted, and might be unable to complete their degrees. *See* Presidents’ Alliance on Higher Education and Immigration, *International Students Affected by ICE COVID-19 Guidance for Fall 2020* (July 10, 2020), <https://bit.ly/3ehEJfo>; *see also* Plaintiffs’ Mem. in Support of TRO Motion (“Plaintiffs’ Mem.”) at 12 (Dkt. 5) (“ICE’s new policy will leave thousands of international students enrolled at both Plaintiff institutions without meaningful access to educational resources in the fall semester.”).

Many of these students forced to leave the country will not be able to continue their course of study at U.S. institutions. And those who *are* able to study from outside the United States will, as a practical matter, lose opportunities to work at U.S. businesses while they study, and after graduation, that otherwise would be available under the Curricular Practical Training and Optional Practical Training programs.¹ (These programs are discussed at pages 9-12, below.)

By suddenly forcing so many international students out of the country, the July 6 Directive will inflict significant harm on the U.S. business community in at least four respects. First, international students contribute substantially to the U.S. economy when they are resident in the United States. Second, the departure of these students

¹ Defendants have indicated that international students outside the United States may as a legal matter participate in these programs. U.S. Immigration and Customs Enforcement, *Frequently Asked Questions for SEVP Stakeholders about COVID-19* at *9-10, <https://tinyurl.com/yb4tb4thb> (last updated July 6, 2020). But the huge practical difficulties in identifying, recruiting, deciding whether to hire, and on-boarding an international student living outside the United States—including the technological, national security, and time zone barriers identified by Plaintiffs (Mem. 6-7 & 18-19) will make it impossible for companies to hire international students under these programs. In addition, uncertainty about whether an international student would be able to return to the United States to complete his or her education and/or work assignment would further deter companies from continuing their practice of hiring international students under these programs.

threatens the ability of U.S. educational institutions to sustain critical mass—which they need in order to maintain their standards of excellence, to train the American students who will make up the talent pool available to *amici* and other U.S. companies in the future, and to perform the research that keeps U.S. businesses on the cutting edge of innovation. Third, international students are an important source of employees for U.S. businesses while they are students and after they graduate. Finally, they become valuable employees and customers of U.S. businesses whether they remain in the United States or return to their home countries.

If the July 6 Directive is permitted to stand, international students' spending in the United States will be reduced substantially, and large numbers of U.S. businesses will be unable to continue their practice of employing international students while they are in school and after they graduate. Moreover, the quality of education and research at U.S. colleges and universities will be undermined, threatening the competitiveness of U.S. businesses.

Here, as in *Regents*, *State Farm*, and *Fox*, Defendants failed to consider this important aspect of the problem—the substantial adverse effects of the July 6 Directive on the U.S. business community—and did not in any way address the disruption of the business community's relevant, extensive reliance interests based on the longstanding policy permitting international students to reside in the United States, and on the March decision stating that “for the duration of the emergency” international students would continue to be able to reside in the country and take courses remotely. Plaintiffs' Mem. at 12. Indeed, the July 6 Directive does not mention these consequences or

reliance interests. *Regents*, 140 S. Ct. at 1913 (looking to agency decision to determine whether agency addressed reliance interests).

Because Defendants did not consider this important aspect of the problem and ignored important reliance interests, the July 6 Directive violates the APA and must be vacated. *See Regents*, 140 S. Ct. at 1914 (vacating agency decision for failure to consider similar reliance interests, citing Brief for 143 Businesses as *Amici Curiae*).

A. International Students Contribute Substantially to the U.S. Economy When They Are Resident in the United States.

International students residing in the United States make a substantial contribution to U.S. GDP, and have a particularly significant impact in towns and cities where colleges and universities are located. During the 2018-2019 academic year there were more than 1 million such students attending institutions of higher education in the United States.² Reducing by half or more the number of international students resident in the United States—even for a single school year—will hurt the economy, amplifying the adverse economic effects of the ongoing pandemic.

International students contribute billions of dollars to the U.S. economy each year. In the 2018-2019 academic year alone, “international students at U.S. colleges and universities contributed nearly \$41 billion to the U.S. economy and supported 458,290

² Inst. of Int’l Educ., *Number of International Students in the United States Hits All-Time High* (Nov. 8, 2019), <https://tinyurl.com/rv9fdad>.

jobs.”³ “[F]or every seven international students living in the US, three jobs are supported due to their presence.”⁴

Indeed, international education “ranked as the country’s fifth-largest service export” in 2019.⁵ Small businesses—from coffee shops to book stores—in communities around the country benefit significantly from the presence of international students.⁶

If, as projected, the July 6 Directive forces more than half of all international students to leave the country, the negative impact on the economy would be substantial. Defendants did not address these economic consequences—or the reliance interests of businesses supported by international students—when they adopted the July 6 Directive.

B. International Students Provide the Critical Mass Needed to Maintain the Excellence of U.S. Colleges and Universities—Which as a Result Produces Skilled U.S. Graduates and Research Essential to U.S. Businesses.

The loss of international students as a result of the July 6 Directive threatens the very existence of educational programs—for both American and international students—that are critical to training the employees U.S. businesses need and supporting the research that enables America to lead the world in innovation.

³ Rebecca Morgan & Kasey Penfield, NAFSA, *New NAFSA Data: Despite Stagnant Enrollment, International Students Contribute Nearly \$41 Billion to the U.S. Economy* (Nov. 18, 2019), <https://tinyurl.com/ybcp7pdj>.

⁴ Grace Carter, Found. for Econ. Educ., *How International Students Add Billions to the US Economy* (Nov. 1, 2018), <https://tinyurl.com/yatlahjh>. For the 2017-2018 academic year, the Department of Commerce reported “\$45.3 billion in education exports, which supported over 455,000 U.S. jobs.” Int’l Trade Admin., U.S. Dep’t of Commerce, *Education Service Exports*, <https://tinyurl.com/y9opcf2p> (last visited July 12, 2020).

⁵ New Am. Econ., *Not Coming to America: Falling Behind in the Race to Attract International Students 2* (July 2020), <https://tinyurl.com/y72darqr>.

⁶ See, e.g., Carter, *supra* n.4.

International students comprise a significant portion, and often the majority, of graduate students in numerous science, technology, engineering, and mathematics (“STEM”) disciplines. “At approximately 90 percent of U.S. universities, the majority of full-time graduate students (master’s and Ph.D.s) in computer science and electrical engineering are international students.”⁷ The numbers are striking⁸:

U.S. University Graduate Programs with a Majority of International Students

Field	Number of U.S. Universities with More Than 50 Percent International Students in Graduate School Program (2015)	Percentage of U.S. Universities with a Majority of International Students in Graduate School Program (2015)
Electrical Engineering	175	93%
Computer Science	237	88%
Industrial/Manufact. Engineering	70	88%
Economics	97	77%
Mechanical Engineering	111	73%
Civil Engineering	94	70%
Chemical Engineering	63	64%
Mathematics/Applied Math.	74	49%

Source: National Science Foundation, Survey of Graduate Students and Postdoctorates, NFAP calculations. U.S. students include lawful permanent residents. Note: analysis limited to programs with at least 30 full-time students.

For universities with large graduate programs, international students in 2015 represented a *majority* of all graduate students in electrical engineering, computer science, industrial and manufacturing engineering, economics, mechanical engineering, civil engineering, and chemical engineering.⁹

If these students are barred from studying in the U.S. until the SARS-CoV-2 pandemic ends, many of them will not return: they will switch to programs of study elsewhere in the world. And without international students, many U.S. STEM programs will contract sharply and ultimately cease to exist. The former chair of Ohio State University’s department of chemical and biomolecular engineering observed that

⁷ Nat’l Found. for Am. Policy, *The Importance of International Students to American Science and Engineering* 13 (Oct. 2017), <https://tinyurl.com/y4fkav4y>.

⁸ *Id.* at 7.

⁹ *Id.*

“professors require a significant number of graduate students and there are not enough domestic students alone in certain fields.”¹⁰ That same conclusion has been expressed by other leaders in academia.¹¹

Defendants failed to consider the impact upon these programs of a dramatic reduction in international students—and the consequences for U.S. businesses that rely on these programs to provide U.S. students with the skills that businesses require in their future employees. Nor did they consider the impact on research by academic institutions that often partner with U.S. businesses—which threatens the edge in innovation that has been a foundation of American prosperity.

C. International Students’ Employment in the U.S. While They Are Studying And After They Graduate—Under the CPT and OPT Programs—Produces Substantial Benefits For U.S. Businesses and the Economy.

Identifying, training, and retaining a talented workforce is critical to the success of every business—particularly for large American companies that compete in today’s global economy. Those companies face the additional challenge of ensuring that their headquarters teams embody the diversity of background, language, and culture needed to create and sell products and services in a host of very different markets around the world. And these companies must staff their offices around the world with employees

¹⁰ *Id.* at 8.

¹¹ For example, Dr. Rajika Bhandari, a former senior research advisor with the Institute of International Education and currently the President and CEO of the IC3 Institute, has noted that when international student enrollment declines, “[t]here have been departments that have faced the threat of having to end their programs Then the question becomes: Can an institution afford to keep a program afloat, not just for international students, but for American students as well?” *Not Coming to America*, *supra* n.5 at 6.

who are able to navigate international markets, and who also are familiar with American business norms.

For these reasons, U.S. and international students both are essential components of the talent pipelines for many *amici* companies. The July 6 Directive will disrupt companies' recruiting plans, making it impossible to bring on board international students that businesses, including *amici*, had planned to hire, and disrupting the recruiting process on which companies have relied to identify and train their future employees.

The recruiting process for international students begins with programs that allow students to work while they are studying in the United States. The Curricular Practical Training ("CPT") program permits "alternative work/study, internship, cooperative education, or other type of required internship or practicum offered by sponsoring employers through cooperative agreements with [a student's] school."¹² The Optional Practical Training ("OPT") program allows up to one year of temporary employment that is directly related to the international student's major area of study, which can occur either before the student graduates and/or after her studies are complete.¹³ Students in STEM fields may obtain a two-year extension of their post-graduate OPT.¹⁴

Through these programs, U.S. companies such as *amici* are able to employ talented international students trained at U.S. educational institutions—getting the

¹² U.S. Citizenship and Immigration Servs., *Foreign Academic Students*, <https://tinyurl.com/ycushsq2> (last visited July 12, 2020); see 8 C.F.R. § 274a.12(b)(6)(iv).

¹³ U.S. Citizenship and Immigration Servs., *Optional Practical Training (OPT) for F-1 Students*, <https://tinyurl.com/y7czsoyy> (last visited July 12, 2020).

¹⁴ U.S. Dep't of Homeland Security, *STEM OPT Extension Overview*, <https://tinyurl.com/y9helxkv> (last visited July 12, 2020).

benefit of the students' U.S. education as well as their international perspective—and the student obtains the benefit of work experience with a U.S. company. As the Business Roundtable has explained, the OPT program “benefits the U.S. economy by supplying additional well-educated workers and consumers, which in turn leads to additional job creation through indirect and induced effects.”¹⁵

That is especially true with respect to jobs in science, technology, engineering, and math—the areas of focus for the majority of OPT employees—because the United States has a shortage of workers in these areas. Indeed, just last fall, business school deans and CEOs issued an open letter stating that the failure to fill “an estimated three million open STEM jobs” is “a crisis” and highlighting the decline of international-student enrollment as part of the problem.¹⁶ Even in the midst of the pandemic, the unemployment level for “computer and mathematical occupations” is only 4.3%.¹⁷

The OPT program is “a safety valve for tight labor markets and a source of STEM workers,”¹⁸ that is needed to support continued U.S. economic growth. A 2019 research paper found that “greater numbers of OPT participants lead to higher levels of innovation, measured by the number of patents”—resulting from “direct innovation by

¹⁵ Bus. Roundtable, *The Economic Impact of Curbing the Optional Practical Training Program* 3 (Dec. 2018), <https://tinyurl.com/yxgl9trv>.

¹⁶ Jacqueline Alemany, *Power Up : Business school leaders to Trump and Congress: Let in more high-skilled foreign workers*, Wash. Post (Oct. 15, 2019), <https://tinyurl.com/ycvku25c>.

¹⁷ U.S. Bureau of Labor Statistics, *Labor Force Statistics from the Current Population Survey*, <https://tinyurl.com/y37psonn> (last modified July 2, 2020).

¹⁸ Madeline Zavodney, Nat'l Found. for Am. Policy, *International Students, STEM OPT and the U.S. STEM Workforce* 18 (Mar. 2019), <https://tinyurl.com/yb7w2hay>.

OPT participants and indirect spillover effects caused by a larger supply of highly educated workers.”¹⁹

The July 6 Directive will make it impossible for large numbers of international students to participate in the CPT and OPT programs.²⁰ The U.S. will “nonsensically be sending . . . these graduates away to work for our global competitors and compete against us . . . instead of capitalizing on the investment in their education here in the U.S.”²¹ A 2018 study found that significant decreases in international student visas and participation in the OPT program would contribute to “[a] loss of 443,000 jobs over the next decade—including 255,000 jobs held by native-born workers,” and “[a] 17-cent decline in the average real hourly wage by 2028.”²²

Closing off more than half of all international students from participating in the recruiting pipeline for American businesses will thus harm companies and the entire economy, and will disrupt reliance expectations based on prior policies permitting international students to remain in the United States. But, again, Defendants did not consider these consequences and reliance interests when they developed the July 6 Directive.

¹⁹ Jeremy L. Neufeld, Niskanen Ctr., *Optional Practical Training (OPT) and International Students After Graduation: Human Capital, Innovation, and the Labor Market* 5 (Mar. 2019), <https://tinyurl.com/yev76qhd>.

²⁰ See note 1, *supra*.

²¹ FWD.us, *Protecting Optional Practical Training is in our national interest* (Dec. 5, 2019), <https://tinyurl.com/y7adc5p8>.

²² Bus. Roundtable, *supra* n.15 at 1 (modeling “a scenario in which new immigration policies led to a 35 percent reduction in the issuance of foreign-born student visas and a 60 percent decline in OPT participation by 2020 a scenario in which new immigration policies led to a 35 percent reduction in the issuance of foreign-born student visas and a 60 percent decline in OPT participation by 2020.”).

D. Students Who Continue to Work for U.S. Businesses—Both Within and Outside the United States—Provide Important Benefits to the Entire Economy.

Some international students who participate in the CPT and OPT programs are able to continue to work in the United States by obtaining an H-1B visa; some find jobs with their U.S. employer outside the United States; and many return to their home country, or another nation, and find work with a new company. Whichever path the international student takes, the U.S. economy, and U.S. businesses, reap important benefits—benefits that will be lost if the July 6 Directive takes effect.

The benefits provided by international students who stay and work here are indisputable. For example, as of October 2018, approximately one-quarter of the private billion-dollar start-up businesses in the U.S. were founded by individuals who originally entered the United States on an F-1 visa.²³ Another survey found that firms founded by individuals who came to the U.S. as students constituted nearly half of the immigrant-founded businesses backed by venture capitalists.²⁴

Former students themselves have attested to the benefits of international study in the United States and the work opportunities it affords. For example, Cloudflare's Canadian co-founder Michelle Zatlyn relied on OPT to work in the United States after earning her degree and went on to found the highly successful Internet infrastructure and security company. She views OPT as integral to the creation of the company and

²³ *Id.* at 11; see also Stuart Anderson, Nat'l Found. for Am. Policy, *Immigrants and Billion-Dollar Companies 2* (Oct. 2018), <https://tinyurl.com/y6vs9ck6>.

²⁴ Stuart Anderson & Michaela Platzer, Nat'l Venture Capital Ass'n, *American Made: The Impact of Immigrant Entrepreneurs and Professionals on U.S. Competitiveness* 17 (Nov. 2006), <https://tinyurl.com/yb8don2v>.

considers the program “[t]he best thing the U.S. government has done on immigration.”²⁵

America’s future competitiveness depends on attracting and retaining talented international students. In its 2019 interim report to Congress, the National Security Commission on Artificial Intelligence stated that “[t]he American [Artificial Intelligence] talent pool depends heavily on international students and workers. Our global competitiveness hinges on our ability to attract and retain top minds from around the world.”²⁶

Individuals who come here as international students are also essential to educating the next generation of inventors. “In the STEM fields, a very large percentage of the faculty and researchers are people who came to the United States to begin with as international students.”²⁷ “In 2015, 30 percent of science and engineering faculty were foreign-born individuals with doctorates from U.S. schools—a group largely made up of those who came to the United States on student visas—compared to just 12 percent in 1973.”²⁸

To the extent international students leave the United States—either upon graduation or after completing employment through the OPT program—those individuals frequently are employed by U.S. companies in offices outside the United States, because they combine experience in America with familiarity with the language

²⁵ *Immigrants and Billion-Dollar Companies*, *supra* n.23 at 9, 18.

²⁶ Nat’l Security Comm’n on Artificial Intelligence, *Interim Report – November 2019* at *39 (Nov. 2019), <https://tinyurl.com/y2f58mkd>.

²⁷ *Not Coming to America*, *supra* n.5 at 7.

²⁸ *Id.* at 4 (citing Nat’l Sci. Bd., *2018 Science & Engineering Indicators*, Ch. 5 p.7 (2018), <https://tinyurl.com/yc4ko6mo>).

and culture of their home country. The practical training offered by OPT “directly contributes to the retention of talented individuals who have already developed familiarity with American culture, business and research practices, and entrepreneurial spirit through their training and research at our nation’s higher education institutions.”²⁹ And even if individuals work for other companies outside the United States, their education and work experience in the United States enables them to serve effectively as “bridges” between U.S. and other businesses in foreign markets.³⁰

The July 6 Directive, and resulting expulsion of international students, will make it much more difficult for *amici* to continue to realize these very significant benefits, and threatens significant harm to the U.S. businesses that have relied on them. Defendants were obligated to address those consequences in their decision-making process—but they failed to do so.

CONCLUSION

The motion for a temporary restraining order and preliminary injunction should be granted.

²⁹ *Protecting Optional Practical Training*, *supra* n.21.

³⁰ Neil G. Ruiz, Brookings, *The Geography of Foreign Students in U.S. Higher Education: Origins and Destinations* 2 (Aug. 2014), <https://tinyurl.com/ydawdwdq>.

Dated: July 13, 2020

Steven P. Lehotsky (BBO # 665908)
U.S. CHAMBER LITIGATION
LITIGATION CENTER
1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5337
sletotsky@uschamber.com

*Counsel for the Chamber of Commerce
of the United States of America*

Respectfully submitted,

/s/ Allison Aviki
Allison Aviki (BBO # 688328)
Lauren Goldman (*pro hac vice* forthcoming)
MAYER BROWN LLP
1221 Avenue of the Americas
New York, NY 10020-1001
(212) 506-2500
aaviki@mayerbrown.com

Andrew J. Pincus (*pro hac vice* forthcoming)
Joshua Silverstein (*pro hac vice* forthcoming)
MAYER BROWN LLP
1999 K Street, N.W.
Washington, D.C. 20006
(202) 263-3000

Counsel for Amici Curiae

APPENDIX

The association *amici* are:

- The Chamber of Commerce of the United States of America, which is the world’s largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than 3 million companies and professional organizations of every size, in every industry sector, and from every region of the country.
- BSA | The Software Alliance, which is the leading advocate for the global software industry before governments and in the international marketplace with headquarters in Washington, DC, and operations in more than 30 countries.
- Information Technology Industry Council, which is a global advocate and thought leader for the technology industry whose members include more than 70 of the leading innovation-driven companies from all corners of the information and communications technology sector.
- Internet Association (the “Association”), which represents more than 40 of the world’s leading technology companies. The Association’s mission is to foster innovation, promote economic growth, and empower people through a free and open Internet.
- Society for Human Resource Management, which is the world’s largest association devoted to human resource (“HR”) management. It

represents more than 300,000 individual members, with titles from HR Generalists to Chief Human Resource Officers, working at organizations that are one-person consulting firms to organizations that are Fortune 500 companies.

- TechNet (Technology Network), which is the national, bipartisan network of technology CEOs and senior executives that promotes the growth of the innovation economy. Its diverse membership includes more than 70 dynamic American businesses ranging from startups to the most iconic companies on the planet and represents over three million employees and countless customers in the fields of information technology, e-commerce, the sharing and gig economies, advanced energy, cybersecurity, venture capital, and finance.

The company *amici* are:

- Adobe Systems, Inc.
- Boston Consulting Group
- Box, Inc.
- Dropbox, Inc.
- Facebook, Inc.
- GitHub, Inc.
- Google LLC
- LinkedIn Corp.
- Microsoft Corp.

- PayPal Holdings, Inc.
- salesforce.com, inc.
- Spotify USA Inc.
- Twitter, Inc.

CERTIFICATE OF SERVICE

I certify that on July 13, 2020, the foregoing was electronically submitted to the Clerk of Court for the U.S. District Court for the District of Massachusetts using the Court's electronic case filing system. Accordingly, notice of this filing will be sent to all counsel of record.

/s/ Allison Aviki
Allison Aviki (BBO # 688328)