

Congress of the United States
Washington, DC 20515

May 18, 2021

The Honorable Antony Blinken
Secretary
U.S. Department of State
2201 C Street NW
Washington, DC 20520

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, DC 20528

Dear Secretary Blinken and Secretary Mayorkas:

Thank you for your leadership and ongoing efforts to rebuild our immigration system while protecting the nation from COVID-19. We support the President's plan to combat the virus and respect the expertise of the Centers for Disease Control and Prevention and the Department of Health and Human Services in developing and implementing appropriate measures to accomplish this objective. The impacts of the virus—including COVID-19 related closures of U.S. consular posts and limitations on travel to the United States—along with the prior administration's restrictions on visa issuance have severely backlogged visa processing. This disruption has imposed considerable hardships on Americans, including those seeking to reunite with their fiancé(e)s, spouses, and children. We are therefore encouraged by various actions the Administration has taken to restore visa processing and prioritize certain categories of applicants including immediate relatives seeking immigrant visas and fiancé(e)s of U.S. citizens.¹ Family reunification must remain a top priority for the Administration.

We are also encouraged by efforts to facilitate the admission of other noncitizens—including individuals who must travel to the United States for emergency or humanitarian purposes, international students, and business travelers. The COVID-19 pandemic and resulting travel restrictions have hit the U.S. academic community particularly hard. The University of California, for example, estimates that it lost approximately \$1.2 billion in revenues across all academic campuses (excluding hospitals) between March and October 2020.² Much of this can be attributed to a decline in enrollment of international students, most of whom pay full tuition and provide an important revenue stream that supports institutional operations as well as financial aid programs for U.S. students. International students also contribute significantly to the U.S. economy—nearly \$41 billion during the 2018-2019 academic year.³ Unfortunately, due

¹ Dept of State, *Immigrant Visa Prioritization* (Apr. 30, 2021), <https://travel.state.gov/content/travel/en/News/visas-news/immigrant-visa-prioritization.html>.

² The University of California, *Systemwide Economic, Fiscal, and Social Impact Analysis* (Jan. 2021) at 28, <https://universityofcalifornia.edu/sites/default/files/economic-impact-report-2021.pdf>.

³ *New NAFSA Data: Despite Stagnant Enrollment, International Students Contribute Nearly \$41 Billion to the U.S. Economy* (Nov. 18, 2019), <https://www.nafsa.org/about/about-nafsa/new-nafsa-data-despite-stagnant->

to the pandemic and restrictive immigration policies of the prior administration, these figures declined for the first time in the 2019-2020 academic year—by \$1.8 billion.⁴

While U.S. universities have largely adapted to ensure safe instruction for students, a significant number of international students remain unable to travel to the United States to begin or resume their studies due to the inability to obtain student visas. Many businesses—from leaders in the technology sector to those within the seasonal hospitality sector that have been particularly hard hit by the pandemic—also depend upon qualified workers from abroad.⁵ Until these issues are addressed, U.S. universities and businesses will continue to experience considerable financial hardships and the United States will further diminish its competitive advantage in attracting the world’s top talent.⁶ As we continue to emerge from the pandemic, we urge you to take additional steps, including the following, to speed family reunification and accelerate our economic recovery.

Increase Capacity for Visa Processing. We appreciate the Department of State’s announcement expanding the parameters to waive the in-person interview requirement for individuals applying to renew a nonimmigrant visa.⁷ However, options for immigrant visa applicants and first-time nonimmigrant visa applicants remain quite limited. Although the degree and speed to which routine processing can resume will certainly vary based on local COVID-related conditions and other restrictions, there are a number of actions that the Department can take to further increase processing capacity both now and in the future.

- **Designate Alternative Posts.** With respect to embassies and consulates that are unable to reasonably handle in-country demand for visas, we ask that the Department of State designate specific posts with additional capacity to process visas to help address post-specific delays or backlogs. Such information should be published and regularly updated on the Department’s website.
- **Interview Waivers and Remote Interviews.** Section 222(h) of the Immigration and Nationality Act (INA) requires most nonimmigrant visa applicants to submit to an “in-person” interview with a consular officer unless such interview is waived. Section 222(h)(1)(C) of the INA grants the Secretary of State the authority to waive this requirement if the Secretary determines it is in the national interest, or it is necessary

[enrollment#:~:text=Washington%2C%20November%2018%2C%202019%20%E2%80%93,the%202018%2D2019%20academic%20year.](#)

⁴ *New NAFSA Data Show First Ever Drop in International Student Economic Value to the U.S.* (Nov. 16, 2020), <https://www.nafsa.org/about/about-nafsa/new-nafsa-data-show-first-ever-drop-international-student-economic-value-us>.

⁵ *See, e.g.,* Alicia Caldwell, *Ban on New Foreign Workers Left U.S. Jobs Unfilled, Even in Covid Downturn*, Wall Street Journal (Feb. 15, 2021), <https://www.wsj.com/articles/ban-on-new-foreign-workers-left-u-s-jobs-unfilled-even-in-covid-downturn-11613409911>.

⁶ For example, with nearly 50% of its international enrollments hailing from restricted countries, Yale University stands to lose up to \$33.8 million in tuition-based revenues. Information on file with the House Judiciary Subcommittee on Immigration and Citizenship. *See, also,* American Council on Education Letter to Secretaries Blinken and Mayorkas (Mar. 18, 2021) <https://www.acenet.edu/Documents/Letter-State-DHS-Fall-2021-031821.pdf>.

⁷ Dept. of State, *Expansion of Interview Waiver Eligibility* (Mar. 11, 2021), <https://travel.state.gov/content/travel/en/News/visas-news/expansion-of-interview-waiver-eligibility.html>.

because of “unusual or emergent circumstances.”⁸ Given the “unusual” and “emergent” circumstances proliferated by the COVID-19 pandemic, we encourage you to exercise this authority to waive the interview requirement for certain categories of nonimmigrants (including students and temporary workers with imminent start dates), or at a minimum, waive the “in person” aspect of the interview in favor of a remote interview process utilizing secure video technology. Either way, consular officers would still be required to conduct interviews, under INA § 222(h)(2), if there are security issues or other concerns regarding an applicant and could also require an interview on a case-by-case basis if there are questions regarding the applicant’s identity or visa eligibility.

Similarly, the Department of State could also conduct remote interviews of immigrant visa applicants. The INA only requires immigrant visa applications to be “signed by the applicant in the presence of the consular officer...” Further, although 22 C.F.R. § 42.62(b) requires every immigrant visa applicant to “be interviewed by a consular officer...” there is no requirement that such interview take place “in-person.” As such, if the Department establishes a process for applications to be executed in the presence of a consular officer, immigrant visa interviews could also be conducted remotely.

The COVID-19 pandemic has laid bare the severe impact that the current interview policy can have on the ability of embassies and consulates to continue operations during an emergency. To the extent that the use of secure video technology to conduct remote visa interviews is not readily available, we urge you to take immediate steps to ensure that such technology is ready to deploy as soon as practicable, as part of the Department of State’s ongoing work to improve remote and telework capacities beyond the current pandemic. It is critical that visa issuing posts be prepared the next time a public health or other international crisis requires them to shutters their doors.

Expand National Interest Exemptions. Although various Presidential Proclamations restrict the entry of individuals who were physically present in certain countries during the 14-day period preceding entry, exceptions can be made for “any noncitizen whose entry would be in the national interest.”⁹ We were encouraged by the recent announcement expanding the national interest exemption (NIE) for F-1 and M-1 students seeking to begin or continue an academic or vocational program on August 1, 2021, as well as the clarification that such students will automatically be considered for an NIE.¹⁰ However, more can done to ensure that legitimate travel by those who do not pose a risk of transmitting COVID-19 is not unnecessarily hampered.

- **Critical Infrastructure NIEs.** Current Department of State guidance limits the issuance of NIEs to business travelers who seek to enter the United States to “provide vital support

⁸ See also 22 C.F.R. § 41.102(c) (“the Secretary may waive the requirement of personal appearance of an individual applicant or a class of applicants if the Secretary determines that such waiver is in the national interest.”) and 22 C.F.R. 41.102(d) (“the Deputy Assistant Secretary for Visa Services may waive the requirement of personal appearance of an individual applicant or a class of applicants if the Deputy Assistant Secretary determines that such waiver is necessary as a result of unusual or emergent circumstances.”).

⁹ See e.g., Presidential Proclamation 10143, Suspension of Entry as Immigrants and Nonimmigrants of Certain Additional Persons Who Pose a Risk of Transmitting Coronavirus Disease, 86 Fed. Reg. 7467 (Jan. 28, 2021).

¹⁰ Dept of State, *National Interest Exceptions for Certain Travelers from China, Iran, Brazil, South Africa, Schengen Area, United Kingdom, and Ireland* (Apr. 26, 2021), <https://travel.state.gov/content/travel/en/News/visas-news/national-interest-exceptions-for-certain-travelers-from-china-iran-brazil-south-africa-schengen-area-united-kingdom-and-ireland.html>.

for critical infrastructure.”¹¹ We urge the Departments of State and Homeland Security to adopt an expansive interpretation of both “vital support” and “critical infrastructure” to ensure that U.S. companies and organizations have ready access to personnel and other individuals who are essential to ensuring their success and future growth as they resume regular operations. Critical infrastructure NIEs should be available to individuals whose work stimulates economic development at the national, state, or local level, and consideration should be given to work that has a net positive effect on ancillary industries as well.

- **CBP NIE Processing.** We understand that U.S. Customs and Border Protection (CBP) recently advised stakeholders that as of March 28, 2021, the CBP Coronavirus Coordination Cell is no longer processing most NIE requests, directing such requests to the Department of State. Given that the Department of State is already operating at a significantly reduced capacity, and many “critical infrastructure” business travelers could be admitted under an existing visa or under the Visa Waiver Program, we urge you to explore alternative options to help reduce the current backlogs at consular posts. Such options may include granting blanket NIEs to certain categories of business travelers or restoring CBP’s role in processing NIEs for specific visa types impacted by this change on a temporary basis.
- **Communicating with Airlines.** We further ask that you ensure that the parameters of the exceptions to the various Presidential Proclamations are clearly communicated by CBP to all passenger airlines to ensure that travelers who qualify for an exception are not improperly refused permission to board planes that are destined for the United States.

We thank you for your attention to these urgent matters and would welcome the opportunity to discuss these recommendations with you at your earliest convenience.

Sincerely,



Zoe Lofgren

Chair

House Subcommittee on Immigration and
Citizenship



Alex Padilla

Chair

Senate Subcommittee on Immigration,
Citizenship, and Border Safety



Jerrold Nadler

Chairman

House Judiciary Committee



Richard J. Durbin

Chair

Senate Judiciary Committee

¹¹ *Id.*



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cc: The Honorable Tom McClintock, Ranking Member, House Subcommittee on Immigration and Citizenship
The Honorable John Cornyn, Ranking Member, Senate Subcommittee on Immigration, Citizenship, and Border Safety
The Honorable Jim Jordan, Ranking Member, House Judiciary Committee
The Honorable Chuck Grassley, Ranking Member, Senate Judiciary Committee
The Honorable Richard Shelby, Vice Chairman, Senate Appropriations Committee
The Honorable Michael McCaul, Ranking Member, House Foreign Affairs Committee
The Honorable Kay Granger, Ranking Member, House Appropriations Committee