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Federal District Court's Permanent Injunction Safeguards International Students

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In a decision of tremendous significance to American colleges, universities, and employers and, perhaps most importantly, to international students on F-1 nonimmigrant visas, the U.S. District Court for the Middle District of North Carolina issued a permanent nationwide injunction blocking the application of the federal immigration policy memo, [Accrual of Unlawful Presence and F, J, and M Nonimmigrants, as well as a corresponding memo with the same title](#).

These U.S. Citizenship and Immigration Services (USCIS) policy memos provided guidance regarding the calculation of “unlawful presence” of those holding student (F nonimmigrant), exchange visitor (J nonimmigrant) or vocational student (M nonimmigrant) status, and their dependents, while in the United States. The court ruled that the government cannot enforce these memos, avoiding potential harmful consequences for international students and scholars.

The case in question, [Guilford College v. Wolf](#), was joined by several prominent U.S. higher education institutions via amicus brief to challenge the USCIS’s attempted reinterpretation of a student’s unlawful presence to cover instances where a student is not actually aware that a student status violation has occurred. The new policy would have represented a significant departure from existing policy, where a student only accrues unlawful presence – which has significant immigration consequences – upon an actual finding by the USCIS or an immigration judge.

In May 2019, the same district court granted a preliminary nationwide

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injunction. The new injunction is permanent and is premised on the agency's failure to follow the [Administrative Procedure Act's notice and comment guidelines](#) before enacting the new policy. Notably, the District Court indicated that even if there were procedural compliance, the Department of Homeland Security (DHS) would be unable to enact the new policy since the interpretation clearly conflicts with statutory text and Congressional intent.

It remains to be seen whether the administration will appeal this decision and how this nationwide injunction might fare in light of the apparent disfavor for such nationwide injunctions expressed by multiple Supreme Court justices in other recent immigration litigation.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work, including Tejas Shah at 312-214-5619 or tejas.shah@btlaw.com, Mercedes Badia-Tavas at (312) 214-8313 or mbadiatavas@btlaw.com, or Michael Durham at 574-237-1145 or m.durham@btlaw.com.

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