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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BUTTE DIVISION

JOHN ROE and JANE DOE, Plaintiffs, -vs- KRISTI NOEM, in her official capacity as Secretary of Homeland Security; the DEPARTMENT OF HOMELAND SECURITY; and TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement, Defendants.	Case No. _____ **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION**

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EMERGENCY RELIEF REQUESTED:

(1) Assume jurisdiction over this matter;

(2) Declare that the termination of Plaintiffs' SEVIS status was unlawful;

(3) Require Defendants to restore Plaintiffs' F-1 student status in the Student and Exchange Visitor Information System (SEVIS);

(4) Require Defendants to set aside the F-1 student status termination decisions as to Plaintiffs;

(5) Prohibit Defendants from terminating Plaintiffs' F-1 student status absent a valid ground as set forth in 8 C.F.R. § 214.1(d), and absent an adequate individualized pre-deprivation proceeding before an impartial adjudicator for each Plaintiff, in which they will be entitled to review any adverse evidence and respond to such evidence prior to determining anew that any Plaintiff's F-1 student status should be terminated;

(6) Prohibit Defendants from arresting, detaining, or transferring Plaintiffs out of this Court's jurisdiction, or ordering the arrest, detention, or transfer of Plaintiffs out of this Court's jurisdiction, without first providing adequate notice to both this Court and Plaintiffs' counsel as well as time to contest any such action;

(7) Prohibit Defendants from initiating removal proceedings against or deporting any Plaintiff on the basis of the termination of their F-1 student status.

INTRODUCTION

In recent weeks federal immigration officials have undertaken unprecedented nation-wide actions rescinding the legal status of hundreds of international students. These students are lawfully present in the United States pursuant to F-1 visas, which permit them to study at universities across the country. This immigration crackdown by the federal government relies upon rarely invoked powers that have never been wielded in such ways. Numerous lawsuits have been filed on these students' behalf, resulting in the issuance of temporary restraining orders. *See, e.g., Xiaotian Liu v. Kristi Noem et al.*, Case No. 25-cv-133-SE (U.S. Dist. Ct., D. New Hampshire, April 10, 2025) (Attached as Exhibit A to the Declaration of Alex Rate). This federal immigration crackdown has now arrived in Montana. Plaintiffs are two graduate students at Montana State University, Bozeman ("MSU"). On Thursday, April 10, 2025, they were notified by MSU that their F-1 status had been revoked and their Student and Exchange Visitor Information Systems ("SEVIS") records were terminated. The University explained, "[w]hen a student's record is terminated, that student is expected to depart the United States immediately. Unlawful presence in

the United States could result in arrest, detention or deportation by federal authorities."

Pursuant to Plaintiffs' Complaint for Declaratory and Injunctive Relief, Plaintiffs request a Temporary Restraining Order to (i) enjoin Defendants from terminating Plaintiff's F-1 student status under the SEVIS [Student and Exchange Visitor] system, and (ii) require Defendants to set aside their termination determination.

FACTUAL BACKGROUND

I. Background on F-1 Student Visa and Status

Under the Immigration and Nationality Act ("INA"), noncitizens can enroll in government-approved academic institutions as F-1 students. *See* 8 U.S.C. § 1101(a)(15)(F). Admitted students living abroad enter the United States on an F-1 visa issued by the U.S. Department of State, and once they enter, are granted F-1 student status and permitted to remain in the United States for the duration of their program as long as the student continues to meet the requirements established by the regulations governing the student's visa classification in 8 C.F.R. § 214.2(f), such as maintaining a full course of study and avoiding unauthorized employment. DHS's Student and Exchange Visitor Program ("SEVP") administers the F-1 student program and tracks information on students with F-1 student status.

An academic institution must obtain formal approval from DHS before it can sponsor a student's F-1 status. An institution must first file an application for School Certification through SEVIS system, a SEVP-managed internet-based system used to track and monitor schools and noncitizen students in the United States. *See* 8 C.F.R. § 214.3. Montana State University has been formally approved to sponsor F-1 students, and has a Designated School Official ("DSO") who advises and oversees the students attending that school.

F-1 students are subject to an array of regulations, including maintaining a full course of study. 8 C.F.R. § 214.2(f)(6). *See generally* 8 C.F.R. § 214.2(f). F-1 students are also entitled to participate in two types of practical training programs: Curricular Practical Training ("CPT") and Optional Practical Training ("OPT"). *See* 8 C.F.R. § 214.2(f)(10). CPT is any "alternative work/study, internship, cooperative education or any other type of required internship or practicum that is offered by sponsoring employers through cooperative agreements with the school." 8 C.F.R. § 214.2(f)(10)(i)). CPT usually occurs during a student's course of study (i.e., before graduation), and often encompasses paid teaching or assistantship positions for graduate students. OPT consists of temporary employment that is "directly related to the student's major area of study." 8 C.F.R. § 214.2 (f)(10)(ii). OPT usually occurs at the end of the student's course of study (i.e., after graduation).

Once a student has completed their course of study and any accompanying CPT or OPT, they generally have sixty days to either depart the United States or transfer to another accredited academic institution. 8 C.F.R. § 214.2 (f)(5)(iv). If a student has been approved to transfer to another school (including to pursue a higher degree), they are authorized to remain in the United States for up to five months while awaiting matriculation at the transfer institution. 8 C.F.R § 214.2(f)(8)(i). If a student voluntarily withdraws from the F-1 program, he or she has fifteen days to leave the United States.[1] Finally, a student who "who fails to maintain a full course of study without the approval of the DSO or otherwise fails to maintain status," *id.*, must leave the country immediately or seek reinstatement of their status.

II. Termination of F-1 Student Status

Termination of F-1 student status in SEVIS is governed by SEVP regulations. The regulations distinguish between two separate ways a student may fall out of status: (1) a student who "fails to maintain status"; and (2) an agency-initiated "termination of status." *See* 8 C.F.R. § 214.2(f). Students fail to maintain their F-1 student status when they do not comply with the regulatory requirements of F-1 status, such as failing to maintain a full course of study without prior approval, engaging in unauthorized employment, or other violations of the requirements under 8 C.F.R. § 214.2(f). In addition, 8 C.F.R. § 214.1(e)-(g) outlines specific

[1] https://studyinthestates.dhs.gov/sevis-help-hub/student-records/completions-and-terminations/termination-reasons

circumstances where certain conduct by any nonimmigrant visa holder, such as engaging in unauthorized employment, providing false information to DHS, or being convicted of a crime of violence with a potential sentence of more than a year, "constitute a failure to maintain status." DSOs at schools must report to SEVP, via SEVIS, when a student fails to maintain status. *See* 8 C.F.R. § 214.3(g)(2).

On the other hand, DHS's ability to initiate the termination of F-1 student status "is limited by [8 C.F.R.] § 214.1(d)." *Jie Fang v. Director U.S. Immigration & Customs Enforcement*, 935 F.3d 172, 185 n.100 (3d Cir. 2019). Under this regulation, DHS can terminate F-1 student status under the SEVIS system ***only*** when: (1) a previously granted waiver under 8 C.F.R. § 212(d)(3) or (4) is revoked; (2) a private bill to confer lawful permanent residence is introduced in Congress; or (3) DHS publishes a notification in the Federal Register identifying national security, diplomatic, or public safety reasons for termination. *See* 8 C.F.R. § 214.1(d).

Accordingly, the revocation of an F-1 visa does ***not*** constitute a failure to maintain F-1 student status and otherwise cannot serve as a basis for agency-initiated termination of F-1 student status in SEVIS. In DHS's own words, "[v]isa revocation is not, in itself, a cause for termination of the student's SEVIS record." ICE Policy Guidance 1004-04 – Visa Revocations (June 7, 2010).

Rather, if an F-1 visa is revoked after admission, the student is permitted to pursue their course of study uninterrupted. Once that student completes their study and departs from the United States, the SEVIS record would then be terminated, and the student would need to obtain a new visa from a consulate or embassy abroad before returning to the United States. *See* Guidance Directive 2016-03, 9 FAM 403.11-3 – VISA REVOCATION (Sept. 2, 2016).

While a visa revocation can be charged as a ground of deportability in removal proceedings, deportability (and the revocation of the visa) can expressly be contested in such proceedings. *See* 8 U.S.C. § 1227(a)(1)(B); 8 U.S.C. § 1201(i). The Immigration Judge may also dismiss removal proceedings where a visa is revoked, so long as a student is able to remain in valid status or otherwise reinstates to F-1 student status. *See* 8 C.F.R. § 1003.18(d)(ii). Only when a final removal order is entered would the status be lost. On the other hand, the Immigration Judge has no ability to review the termination of F-1 student status in SEVIS because the process is collateral to removal proceedings. *See Jie Fang*, 935 F.3d at 183.

III. Plaintiffs and the Termination of their F-1 Student Status

Plaintiff John Roe is a citizen of Iran. *Roe Declaration*, ¶ 2. He currently lives in Bozeman, Montana. *Id.* Roe is a member of the Kurdish ethnic minority. *Id.* ¶ 3. Iranian Kurds have faced historical and ongoing challenges, including discrimination and persecution by the Iranian government. *Id.* His family has

already faced persecution, and he fears that he would be similarly persecuted if he were forced to return to Iran. *Id.*

Roe received his undergraduate degree in Physics with a focus on experimental condensed matter from Azad University – Ilam Branch in July, 2007. *Id.* ¶ 4. He received his F-1 visa to study in the United States on July 26, 2016 from the United State embassy at Nicosia, Cyprus. *Id.* ¶ 5. His current F-1 visa and permission to study and work in university were issued by Montana State University and are valid through August 21, 2026. *Id.*

Roe first entered the United States on August 5, 2016 in Auburn, Alabama to study at Auburn University. *Id.* ¶ 6. He received his master's of science degree in experimental condensed matter physics from Auburn University in July, 2019. *Id.* His research was focus on electrical and optical properties of semiconductors such as Gallium Nitride. *Id.*

Roe has been working towards his Ph.D. in electrical engineering/physics at Montana State University, Bozeman ("MSU") for the past 6 years (since 2019). *Id.* ¶ 7. As part of his Ph.D. program Roe has been employed by MSU as a researcher. *Id.* ¶ 8. He earns $2,200 per month and works approximately 60-65 hours per week. *Id.*

Roe's current research focuses on the origins and underlying mechanisms of single-photon emitters (SPEs) within two-dimensional transition metal

dichalcogenide (TMD) materials. *Id.* ¶ 9. Single-photon emitters are crucial in quantum technologies because they generate one photon at a time, which is essential for controlling information at the quantum level. *Id.* SPEs serve as the cornerstone of quantum computers and related quantum computing technologies. Roe is scheduled to obtain his Ph.D. in December, 2025. *Id.* ¶ 15.

On April 10, 2025, Roe was informed that his SEVIS record was terminated. *Id.* ¶ 17. According to the letter he received by email from MSU, the SEVIS record indicated the following: "Individual identified in criminal records check and/or has had their VISA revoked. SEVIS record has been terminated." *Id.*; (*See also,* Exhibit B to the Declaration of Alex Rate). The letter also provides that "[w]hen a student's record is terminated, that student is expected to depart the United States immediately. Unlawful presence in the United States could result in arrest, detention or deportation by federal authorities." *Id.* ¶ 18.

Roe has never been convicted of a crime in the United States or elsewhere. *Id.* ¶ 19. He has complied with all rules and regulations as an F-1 student. *Id.* He does not understand why his visa was revoked and his SEVIS record was terminated. *Id.* Neither the government nor MSU has provided any additional details or explanation for the change in Roe's SEVIS status or the revocation of his F-1 visa. *Id.* ¶ 20.

Roe is scared about his safety and future due to the termination of his F-1 student visa status. *Id.* ¶ 21. The uncertainty of his legal standing in the United

States has caused immense stress as he has worked diligently for years to pursue his academic and professional goals. *Id.* Losing his F-1 status puts Roe's education, research, and career trajectory at risk, and he fears being forced to leave the country before he can complete his Ph.D. program. *Id.* ¶ 22. This sudden disruption has made him feel vulnerable and anxious, not only about his immediate situation but also about the stability and direction of his life in the years to come. *Id.* Roe's entire academic and professional identity is rooted in the path he built in the United States, and the possibility of losing that is devastating. *Id.* The sudden revocation of his visa without any additional information and the risk it engenders to his future has left him feeling overwhelmed and deeply unsettled.

As a direct consequence of the termination of his SEVIS record, Roe fears immigration detention and deportation as he may not have valid student status. *Id.* ¶ 23. Moreover, he is no longer authorized to work as a research assistant, nor is he eligible to receive any stipend from his Ph.D. program. *Id.* ¶ 24. This has placed him in an extremely difficult financial and academic position, as his research assistantship is not only his only source of income but also a core component of his doctoral training. *Id.*

Roe has worked towards his Ph.D. for 6 years and is only 8 months away from receiving his doctoral degree. *Id.* ¶ 25. As a direct consequence of the termination of his SEVIS record, his ability to get this advanced degree is in

jeopardy. *Id.* This disruption has caused irreparable harm to both his academic trajectory and personal well-being, undermining years of effort and jeopardizing the continuation of his education. *Id.*

What's more, the termination of Roe's SEVIS record is directly threatening the wellbeing of his close family members as well. Roe's sister is currently enrolled in a graduate program at the University of Colorado, Boulder. *Id.* ¶ 16. He is her only family member in the United States and provides her with financial support. *Id.*

Plaintiff Jane Doe is a citizen of Turkey. *Doe Declaration*, ¶ 3. She currently lives in Bozeman, Montana. *Id.* Roe received her current F-1 visa to study in the United States on November 23, 2021. *Id.* ¶ 4. She first arrived in the United States on an F-1 visa in 2014. *Id.* ¶ 5. She completed a dual undergraduate degree program at Montana State University, Bozeman ("MSU") on May 7, 2017, receiving her degree in microbiology. *Id.*

Doe returned to Montana to start her graduate studies at MSU in December, 2021. *Id.* ¶ 6. She has been a full-time student since January 17, 2022. *Id.* Doe has been working towards her master's degree in microbiology at MSU for the past three and a half years. *Id.* ¶ 7. As part of her master's degree program Doe has been employed at MSU as a teacher's assistant for pre-nursing and pre-medical classes. *Id.* ¶ 8.

Doe is scheduled to complete her master's degree program and graduate on May 8, 2025 with a cumulative GPA of 3.98. *Id.* ¶¶ 12, 15. She is scheduled to defend her professional paper on April 18, 2025. *Id.* ¶ 14. Her current research focuses on Phylogenetic Analysis in Environmental Microbiology. *Id.* ¶ 13.

On April 10, 2025, Doe was informed that her SEVIS record was terminated. *Id.* ¶ 16. According to the letter she received by email from MSU, the SEVIS record indicated the following: "Individual identified in criminal records check and/or has had their VISA revoked. SEVIS record has been terminated." *Id.* (*See also,* Exhibit C to the Declaration of Alex Rate). The letter also provides that "[w]hen a student's record is terminated, that student is expected to depart the United States immediately. Unlawful presence in the United States could result in arrest, detention or deportation by federal authorities." *Id.* ¶ 17.

Doe has never been convicted of a crime in the United States or elsewhere. *Id.* ¶ 18. She has complied with all rules and regulations as an F-1 student. *Id.* She does not understand why her visa was revoked and her SEVIS record was terminated. *Id.* Neither the government nor MSU has provided any additional details or explanation for the change in her SEVIS status or the revocation of her F-1 visa. *Id.* ¶ 19.

Doe is scared about her safety and future due to the termination of her F-1 student visa status. *Id.* ¶ 20. The uncertainty of her legal standing in the United

States has caused immense stress as she have worked diligently for years to pursue her academic and professional goals. *Id.* Losing her F-1 status puts her education, research, and career trajectory at risk, and she fears being forced to leave the country before she can complete her master's program. *Id.* ¶ 21. This sudden disruption has made Doe feel vulnerable and anxious, not only about her immediate situation but also about the stability and direction of her life in the years to come. *Id.* Doe's entire academic and professional identity is rooted in the path she has built in the United States, and the possibility of losing that feels overwhelming and deeply unsettling. *Id.*

As a direct consequence of the termination of Doe's SEVIS record, she fears immigration detention and deportation as she may not have valid student status. *Id.* ¶ 22. Moreover, she is no longer authorized to work as a teaching assistant. *Id.* ¶ 23. This has placed her in an extremely difficult financial and academic position, as her teaching assistantship is not only her only source of income but also a core component of her master's training. *Id.*

Plaintiffs likely accrue unlawful presence daily as they may be out of immigration status, which significantly affects their chances of reinstating F-1 student status in the future. *See Jie Fang v. Director United States Immigration & Customs Enforcement*, 935 F.3d 172, 176 (3d Cir. 2019) (noting that a student

should not have been out of a valid F-1 student status for more than 5 months for a reinstatement application).

STANDARD OF REVIEW

Emergency injunctive relief, whether it is a temporary restraining order or a preliminary injunction, is warranted when a plaintiff demonstrates: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of preliminary relief; (3) that the equities balance in the plaintiff's favor; and (4) that preliminary injunctive relief would serve the public interest. *See Winter v. NRDC*, 555 U.S. 7, 20 (2008). To obtain preliminary injunctive relief, a complainant need show only a likelihood of success on the merits; they need not demonstrate actual success. *See Winter,* 555 U.S. at 32. As explained below, Plaintiffs are likely to succeed on the merits of their claims, they face irreparable harm absent injunctive relief, the equities balance in their favor, and injunctive relief is in the public interest. Indeed, another federal court issued a temporary restraining order in a similar case last week involving another student subjected to a similarly arbitrary F-1 status termination. *See Liu v. Noem*, Exhibit A to Rate Declaration.

ARGUMENT

Defendants' termination of Plaintiffs' F-1 student status under the SEVIS system was unlawful – and Plaintiffs are likely to succeed on the merits of their claims - for two reasons: First, the termination violates the Administrative

Procedure Act. Second, the termination violates the United States Constitution's Due Process Clause. To be clear, Plaintiffs do *not* challenge the revocation of Plaintiffs' F-1 *visa* in this case. Instead, Plaintiffs bring this lawsuit to challenge DHS's unlawful termination of their F-1 student *status* in the SEVIS system.[2] "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *See Matthews v. Eldridge*, 424 U.S. 319, 322 (1976), quoting *Armstrong v. Manzo,* 380 U. S. 545, 380 U. S. 552 (1965). No such process was provided here with respect to the termination of student status, warranting relief under Count 1 of Plaintiffs' Complaint. Further, as to Counts 2, 3 and 4 in Plaintiffs' Complaint, the revocation of an F-1 visa does *not* constitute a failure to maintain F-1 student status under the SEVIS system and, therefore, cannot serve as a basis for termination of F-1 student status in the SEVIS system. For the agency-initiated termination of F-1 student status in the SEVIS system, DHS's ability to terminate F-1 student status "is limited by [8 C.F.R.] § 214.1(d)." *See Jie Fang*, 935 F.3d at 185 n.100. Under 8 C.F.R. § 214.1(d), DHS can terminate F-1 student status under the SEVIS system *only* when: (1) a previously granted waiver under 8 U.S.C. § 1182(d)(3) or (4) is revoked; (2) a private bill to confer lawful permanent residence is introduced in Congress; or (3)

[2] There is a difference between a F-1 student visa and F-1 student status. The F-1 student visa refers only to the document noncitizen students receive to enter the United States, whereas F-1 student status refers to students' formal immigration classification in the United States once they enter the country.

DHS publishes a notification in the Federal Register identifying national security, diplomatic, or public safety reasons for termination. In other words, under this regulation, the revocation of an F-1 visa does *not* provide a basis to terminate F-1 student status under the SEVIS system. DHS's own policy guidance confirms that "[v]isa revocation is *not*, in itself, a cause for termination of the student's SEVIS record." ICE Policy Guidance 1004-04 – Visa Revocations (June 7, 2010) (emphasis added).[3] Rather, if the visa is revoked, *the student is permitted to pursue his course of study in school*, but upon departure, the SEVIS record is terminated, and the student must obtain a new visa from a consulate or embassy abroad before returning to the United States. *See* Guidance Directive 2016- 03, 9 FAM 403.11-3 – VISA REVOCATION (Sept. 12, 2016).[4] If DHS wishes to terminate F-1 student status under the SEVIS system after (or independent of) revocation of an F-1 visa, DHS must comply with 8 C.F.R. § 214.1(d). *See Jie Fang*, 935 F.3d at 185 n.100. DHS has not done so here.

I. Plaintiffs Are Likely to Prevail on Their Claims That the Termination of Their F-1 Student Status Was Unlawful.

Defendants' termination of each Plaintiff's F-1 student status in SEVIS was unlawful for two independent reasons: First, it violates the Due Process Clause of

[3] https://www.ice.gov/doclib/sevis/pdf/visa_revocations_1004_04.pdf.

[4] https://www.aila.org/library/dos-guidance-directive-2016-03-on-visa-revocation.

the Fifth Amendment, U.S. Const. amend. V (Count 1); and second, it violates the Administrative Procedure Act (APA), 5 U.S.C. § 706(2)(A) as arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law, including the regulatory regime at 8 C.F.R. § 214.1(d). Relatedly, final agency action contrary to a constitutional right—in this case due process—also violates the APA. 5 U.S.C. § 706(2)(B).

A. THE TERMINATION OF PLAINTIFFS' F-1 STUDENT VISA STATUS VIOLATES THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION

At the most elemental level, the United States Constitution requires notice and a meaningful opportunity to be heard. "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *See Matthews v. Eldridge*, 424 U.S. 319, 322 (1976), quoting *Armstrong v. Manzo*, 380 U.S. 545 (1965). This right extends to both citizens and noncitizens alike, and there is an express system of notice that must be followed for international students before DHS may terminate their F-1 student status. Plaintiffs were not afforded the most basic of notice nor opportunity to be heard that was owed to them before having their F-1 student status terminated.

Defendants' termination of each Plaintiff's F-1 student status straightforwardly violates the Fifth Amendment's Due Process Clause. As admitted noncitizen students already in the United States, Plaintiffs clearly have

due process rights. "'[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent.'" *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). As to noncitizens' due process rights, "due process is satisfied if notice is served in a manner "reasonably calculated" to ensure that it reaches the alien. *See Farhoud v. INS*, 122 F.3d 794, 796 (9th Cir. 1997).

In this case, Defendants failed to satisfy even these basic principles of due process. Defendants did not provide *any* notice to any Plaintiff or their school about the decision to terminate Plaintiffs' F-1 student status. Instead, Plaintiffs learned about their status termination only because their school discovered it during the school's periodic inspection of SEVIS records—a discovery that may have come days after the status had actually been terminated for Plaintiffs.

Nor did Defendants comply with the due process requirement to provide adequate explanation and a meaningful opportunity to respond. Defendants recorded a vague boilerplate reason for each Plaintiff's F-1 student status in SEVIS: "Individual identified in criminal record check and/or had had their VISA revoked. SEVIS record has been terminated." The letter did not include any further information as to what why Plaintiffs' F-1 status had been revoked, or how they might seek further information about their specific situations, or even of any available procedures they could follow to challenge the termination.

This brief boilerplate language cannot satisfy the requirements of the Due Process Clause for the simple reason that none of its (disjointed) phrases describe Plaintiffs' circumstances. Both the Plaintiffs have closely followed all applicable rules and regulations to maintain their F-1 student status. Thus, the "failure to maintain status" charge cannot apply to any Plaintiff whose SEVIS record reflected that language. Neither of the Plaintiffs has ever been convicted of a crime. Finally, neither one of the Plaintiffs have been notified by the State Department that their F-1 visas have been revoked (presumably meaning that they could all still be active). As a result, Plaintiffs are left to wonder what the basis or explanation for their status termination is. They have no meaningful opportunity to defend themselves against hollow and inapplicable boilerplate charges.

Accordingly, Defendants' failure to provide notice, adequate explanations, and meaningful opportunity to contest the termination of each Plaintiff's F-1 student status is in violation of the Due Process Clause.

B. THE TERMINATION OF PLAINTIFFS' F-1 STUDENT STATUS WAS UNLAWFUL UNDER THE ADMINISTRATIVE PROCEDURE ACT.

Defendants' termination of each Plaintiff's F-1 student status under SEVIS is a final agency action. *See Jie Fang*, 935 F.3d at 182 ("The order terminating these students' F-1 visas marked the consummation of the agency's decision-making process, and is therefore a final order[.]"). Defendants' termination of each

Plaintiff's F-1 student status under SEVIS violates the Administrative Procedure Act (APA) and should be set aside pursuant to 5 U.S.C. § 706(2) as arbitrary, capricious, an abuse of discretion, contrary to constitutional right, contrary to law, in excess of statutory jurisdiction, and in violation of the *Accardi* doctrine and federal agencies' own rules, *see Accardi v. Shaughnessy*, 347 U.S. 260 (1954).

Under 8 C.F.R. § 214.1(d), Defendants have no statutory or regulatory authority to terminate either of Plaintiff's F-1 student status in SEVIS based simply on revocation of a visa. Additionally, nothing in Plaintiffs' (lack of) criminal history, academic record, or other applicable history or record provides a statutory or regulatory basis for termination or even for determining that either Plaintiff has failed to maintain their F-1 status.

Additionally, in making the determination that each Plaintiff's student status should be terminated, Defendants did not consider any facts relevant to Plaintiffs' individual circumstances nor did they provide any explanation, let alone reasoned explanation, justifying their determination. As a result, Defendants arbitrarily and capriciously terminated each Plaintiff's F-1 student status under SEVIS. Moreover, Defendants terminated each Plaintiff's F-1 student status under SEVIS without affording them meaningful notice and an opportunity to be heard, contrary to Plaintiffs' constitutional right to procedural due process. Therefore, Defendants' termination of each Plaintiff's F-1 student status under SEVIS is arbitrary and

capricious, an abuse of discretion, contrary to constitutional right, contrary to law, and in excess of statutory jurisdiction. 5 U.S.C. § 706(2).

Defendants' actions also were not in accordance with DHS's own rules. Defendants have adopted a policy, or have engaged in a pattern-and-practice, of unilaterally terminating students' F-1 student status in SEVIS for reasons that do not rise to the level required for termination under 8 C.F.R. § 214.1. 75. Beginning on or around April 4, 2025, Defendants unilaterally terminated the F-1 student status of multiple students nationwide *en masse*, including Plaintiffs. Defendants did not affirmatively notify the affected students or their schools. Instead, school DSOs learned, via SEVIS, that Defendants had terminated certain students' F-1 student statuses. In SEVIS, Defendants recorded the same boilerplate reason in all cases: "Individual identified in criminal records check and/or has had their VISA revoked. SEVIS record has been terminated." Defendants deliberately did not clarify whether the affected students had been identified in a criminal records check, whether their F-1 visa had been revoked, or both—willfully denying students notice of the grounds for the terminations.

This policy and/or pattern-and-practice constitutes a final agency action and violates the Administrative Procedure Act (APA) and should be set aside pursuant to 5 U.S.C. § 706(2) as arbitrary, capricious, an abuse of discretion, contrary to constitutional right, contrary to law, and in excess of statutory jurisdiction, and a

violation of the *Accardi* doctrine and federal agencies' own rules, *see Accardi v. Shaughnessy*, 347 U.S. 260 (1954). Accordingly, Plaintiffs are likely to prevail on the merits of their claims that Defendants violated their rights under the due process clause and Administrative Procedure Act.

II. Plaintiffs Are Facing Irreparable Harm and Will Continue to Do So Absent Emergency Injunctive Relief.

Plaintiffs will suffer irreparable harm if Defendants' termination of their F-1 student status is not set aside and enjoined. At the outset, when "a constitutional right is being threatened or impaired, a finding of irreparable injury is mandated." *ACLU of Ky. v. McCreary Cnty., Ky.*, 354 F.3d 438, 445 (6th Cir. 2003), aff'd, 545 U.S. 844 (2005). Plaintiffs' due process rights are being impaired. *See supra* Section I.A. Plaintiffs also face the imminent risk – indeed, likelihood – that they will be unable to complete their graduate studies, that they will be unable to earn an income, and support their families. *See,* Declarations of John Roe and Jane Doe. These possibilities are devastating to Plaintiffs, who have devoted years to the particular scientific fields in which they specialize. *Id.* Plaintiffs also currently face the serious risk of immediate arrest and detention for deportation because they no longer have lawful status to remain in the United States. "[D]eportation is a drastic measure and at times the equivalent of banishment of exile." *Fong Haw Tan v. Phelan, 333 U.S. 6, 10 (1948)*.

In addition, this termination will result "in the loss 'of all that makes life worth living'" for Plaintiffs' academic studies and career trajectory. *Bridges v. Wixon*, 326 U.S. 135, 147 (1945). Plaintiffs will not be able to continue their pursuit of advanced degrees in the near future. Additionally, Plaintiffs have lost authorized university employment, resulting in Plaintiffs experiencing extreme financial hardship.

III. The Balance of Equities and Public Interest Strongly Favor Plaintiffs.

The requested emergency relief would restore Plaintiffs' ability to safely remain in the United States so that they can complete their degrees—something they have spent years working towards—and any associated employment and training programs— a necessity in supporting their livelihoods. By contrast, Defendants can advance no substantial interest in terminating Plaintiffs' F-1 student status. Indeed, granting emergency relief would merely maintain the status quo that has been in place for the many years that each Plaintiff has been in the United States as a rules-following F-1 student. Defendants also cannot have a legitimate interest in enforcing an unconstitutional and unlawful action. "When a constitutional violation is likely, . . . the public interest militates in favor of injunctive relief because it is always in the public interest to prevent violation of a party's constitutional rights." *Miller v. City of Cincinnati*, 622 F.3d 524, 540 (6th

Cir. 2010). Thus, the balance of equities and the public interest strongly favor a temporary restraining order and preliminary injunction.[5]

CONCLUSION

For the reasons stated above, this Court should issue a temporary restraining order, followed by a preliminary injunction, as requested in Plaintiffs' motion to protect the status quo and ensure that Plaintiffs are able to continue attending classes and pursuing their degrees free from the government's arbitrary, unnecessary, and unconstitutional actions that have so abruptly upended Plaintiffs' lives and studies.

Pursuant to Rule 7.1(c)(3) of the Local District Rules of Procedure, Plaintiffs are not providing a proposed order. However, a proposed order can be produced upon Order from the Court.

Dated this 14th day of April, 2025.

s/Alex Rate

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[5] Based on the equities and the public interest, the Court should also exercise its discretion not to require Plaintiffs to post a security bond under Fed. R. Civ. P. 65(c) in connection with the injunctive relief sought. *See Concerned Pastors for Social Action v. Khouri*, 220 F. Supp. 3d 823, 829 (E.D. Mich. 2016).

CERTIFICATE OF COMPLIANCE

Pursuant to Local Rule 7.1(d)(2)(E), the attached brief is proportionately spaced, has a typeface of 14 points and contains 5,548 words, excluding the caption and certificate of compliance.

DATED this 14th day of April, 2025.

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