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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.	CV 25-40-BU-DLC **FEDERAL DEFENDANTS' RESPONSE TO MOTION FOR TEMPORARY RESTRAINING ORDER**

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INTRODUCTION

Defendants oppose the temporary restraining order ("TRO") which Plaintiffs John Roe and Jane Doe sought *ex parte*, and which this Court granted April 15, 2025. The Court should rescind the TRO (or decline to renew it) and decline to extend any additional preliminary relief (like a preliminary injunction) because it lacks subject matter jurisdiction over Plaintiffs' claims and Plaintiffs are unlikely to be able to state a claim for relief. As such, Plaintiffs cannot establish any likelihood they will succeed on the merits. Further, while Plaintiffs portray themselves as confronting immediate deportation, in fact the deletion of their Student Exchange Visitor Information System ("SEVIS") accounts[1] does not cause or equate to cancellation of F-1 status or Plaintiffs' F-1 visas, and certainly does not make them deportable. Thus, Plaintiffs do not show that imminent irreparable harm is likely. Finally, Plaintiffs also cannot show that the balance of equities tips in their favor or that a mandatory injunction is in the public interest: Holistic control over U.S. immigration by the Executive Branch is in the public interest. Operation of a database like SEVIS is part of that scheme, yet in itself imparts no adverse consequences to Plaintiffs. Thus, judicial interference in SEVIS is not in

[1] Plaintiffs' SEVIS accounts have been restored.

the public interest. Accordingly, the TRO order should be rescinded or not renewed.

BACKGROUND

Plaintiffs are foreign nationals—Iranian Kurd and Turkish—who are nonimmigrant F-1 students currently attending Montana State University ("MSU"), Bozeman. Plaintiffs say they received letters from MSU indicating that, on the morning of April 10, 2025, their SEVIS records were marked as "terminated," with the following notation: "Individual identified in criminal records check and/or has had their VISA revoked. SEVIS record has been terminated." Docs 6-2, 6-3. From the materials submitted in support of the TRO, it does not appear that Plaintiffs followed up on these letters with any direct inquiries to the agency. Plaintiffs aver they have never been convicted of a crime in the United States or elsewhere. Doc. 4, Decl. John Roe, ¶ 19 (Apr. 13, 2025); Doc. 5, Decl. Jane Doe, ¶ 18 (Apr. 13, 2025). By process of elimination and based on purported national trends, Doc. 1, ¶¶ 1–2, Plaintiffs deduce their F-1 statuses have been "unilaterally terminated" by the Department of Homeland Security ("DHS"). *Id*. Plaintiffs conflate the termination of their SEVIS records with a termination of their status as nonimmigrant students. SEVIS is merely a database that tracks information: It

does not and cannot alter F-1 status. *See* Ex. 1, Decl. Andre Watson, ¶¶ 3–4, 13 (Apr. 21, 2025).

Plaintiffs' SEVIS records were designated "terminated" in April 2025 due to their criminal history. Plaintiff John Roe was arrested for Theft—Unauthorized Control Over Property by the Bozeman Police Department on March 5, 2025. *Id*., ¶ 7. Plaintiff Jane Doe was arrested for Partner or Family Member Assault, Causing Bodily Injury to Partner or Family Member—1st Offense by the Montana State University Police on May 19, 2024. *Id*., ¶ 10.

STATUTORY BACKGROUND

I. Nonimmigrant Students

The Immigration and Nationality Act ("INA") allows for the entry of an alien, who "is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study. . . at an established college, university… or other academic institution…." 8 U.S.C. § 1101(a)(15)(F)(i) (hereinafter, "F-1 status"). To be admitted in F-1 status, an applicant must present a Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, issued by a certified school in the student's name, must present documentary evidence of financial support, and must

demonstrate he or she intends to attend the school specified on the student's visa. 8 C.F.R. § 214.2(f)(1)(i).

To maintain F-1 status, an alien must "pursue a full course of study" or "engag[e] in authorized practical training". *Id.*, § 214.2(f)(5)(i). "Optional Practical Training" or "OPT" must be "directly related to [a student's] major area of study" to qualify as authorized training. *Id.*, § 214.2(f)(10). Aliens in F-1 status who received a science, technology, engineering, or mathematics ("STEM") degree may extend participation in the OPT program for up to an additional two years. *Id.*, § 214.2(f)(10)(ii)(C).

OPT can occur while an alien is in school, during breaks, or after a student has completed his or her course of study. *Id.*, § 214.2(f)(10)(ii)(A)(1)-(3). While in school, an alien's status is based on their pursuit of a degree and need not be routinely renewed. *Id.*, § 214.2(f)(7). For post-degree OPT, there are limits on how long an individual can be unemployed. In particular, aliens in an F-1 status may not accrue more than ninety days of unemployment unless granted a twenty-four-month STEM OPT extension, in which case they may not accrue more than a total of 150 days of unemployment. 8 C.F.R. § 214.2(f)(10)(ii)(E). Periods of unemployment longer than those authorized by regulation may be considered a failure to maintain status. *Id.*

II. SEVIS

Congress required that,

> [t]he [Secretary of Homeland Security], in consultation with the Secretary of State and the Secretary of Education…develop and conduct a program to collect [certain information] from approved institutions of higher education, other approved educational institutions, and designated exchange visitor programs in the United States…with respect to aliens who have the status, or are applying for the status, of nonimmigrants under subparagraph (F), (J), or (M) of § 1101(a)(15) of this title.

8 U.S.C. § 1372(a)(1).

Accordingly, the Secretary of Homeland Security created SEVIS, "which is a web-based system that the U.S. Department of Homeland Security (DHS) uses to maintain information on Student and Exchange Visitor Program-certified schools, F-1 and M-1 students who come to the United States to attend those schools, U.S. Department of State-designated Exchange Visitor Program sponsors and J-1 visa Exchange Visitor Program participants." U.S. Immigration and Customs Enforcement ("ICE"), Student and Exchange Visitor Information System, https://www.ice.gov/sevis/overview (Accessed Apr. 21, 2025). ICE maintains SEVIS records in DHS/ICE–001 Student and Exchange Visitor Information System (SEVIS) System of Records. 86 Fed. Reg. 69663 (Dec. 8, 2021) ("DHS/ICE uses, collects, and maintains information on nonimmigrant students and exchange visitors, and their dependents, admitted to the United States under an

F, M, or J class of admission, and the schools and exchange visitor program sponsors that host these individuals in the United States.").

STANDARD OF REVIEW

A "preliminary injunction is an extraordinary and drastic remedy." *Munaf v. Geren*, 553 U.S. 674, 689–90 (2008). A district court should enter a preliminary injunction only "upon a clear showing that the [movant] is entitled to such relief." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, the moving party must demonstrate (1) that it is likely to succeed on the merits of its claims; (2) that it is likely to suffer an irreparable injury in the absence of injunctive relief; (3) that the balance of equities tips in its favor; and (4) that the proposed injunction is in the public interest. *Id.* at 20. These factors are mandatory. As the Supreme Court has articulated, "[a] stay is not a matter of right, even if irreparable injury might otherwise result" but is instead an exercise of judicial discretion that depends on the particular circumstances of the case. *Nken v. Holder*, 556 U.S. 418, 433 (2009) (quoting *Virginian Ry. Co. v. U.S.*, 272 U.S. 658, 672 (1926)).

At the threshold, a motion for a temporary restraining order or preliminary injunction must be denied if the court lacks subject matter jurisdiction over the claims. *Williams v. Dep't of Just.*, No. 2:24-CV-05406-DDP (AJR), 2024 WL

3915922, at *2 (C.D. Cal. July 25, 2024) (finding no showing of likelihood of success on the merits without subject matter jurisdiction); *Sarah Kent, Inc. v. Stella*, No. CIV. 89-888 AWT, 1989 WL 139222, at *1 (C.D. Cal. Aug. 2, 1989) ("Plaintiff Scott's motion for preliminary injunction is denied as moot, there being no subject matter jurisdiction to address said motion on the merits.").

Because Plaintiffs seek a mandatory injunction (see *infra*), the already high standard for granting a TRO is "doubly demanding." *Garcia v. Google, Inc.*,786 F.3d 733, 740 (9th Cir. 2015). Thus, Plaintiffs must establish that the law and facts clearly favor their position, not simply that they are likely to succeed. *Id.* Further, a mandatory preliminary injunction will not issue unless extreme or very serious damage will otherwise result. *Doe v. Snyder*, 28 F.4th 103, 114 (9th Cir. 2022). As set forth below, no such damage will occur here in lieu of injunction.

ARGUMENT

I. Plaintiffs improperly seek judgment on the merits via emergency application.

By their TRO motion, Plaintiffs are not seeking to merely preserve the status quo on a temporary basis. Rather, they seek an injunction that would alter the status quo by providing the ultimate relief they seek in this litigation. As a matter of law, Plaintiffs are not entitled to what amounts to a judgment on the merits at this preliminary stage. *See Mendez v. U.S. Immigr. and Customs Enf't*, No. 23-

CV-00829-TLT, 2023 WL 2604585, at * 3 (N.D. Cal. Mar. 15, 2023) (quoting *Senate of State of Cal. v. Mosbacher*, 968 F.2d 974, 978 (9th Cir. 1992), for the proposition that "judgment on the merits in the guise of preliminary relief is a highly inappropriate result.").

II. Plaintiffs cannot establish the requirements for an injunction.

Plaintiffs conflate the agency's action here—the termination of SEVIS records—with the termination of their F-1 statuses. *See* Doc. 1, ¶¶ 1 ("Plaintiffs John Roe and Jane Doe are two of these students who have unlawfully had their F-1 status terminated"), 2 ("Neither DHS or Immigration nor Immigration and Customs Enforcement [] provided Plaintiffs or their schools any meaningful explanation for terminating their F-1 student status"). This error permeates the TRO brief. *See* Doc. 3 at 13–14 (assuming revocation of F-1 status because of SEVIS termination), 16–18 (same), 19 (arguing no due process prior to "termination of student status"), and the emergency relief requested, *id*. at 5–6 (seeking an order setting aside "the F-1 student status termination" and prohibiting "Defendants from terminating Plaintiffs' F-1 status"). By extension, it permeates the TRO order.

Plaintiffs include no actual evidence that ICE terminated their F-1 statuses. Such termination requires:

- "…the revocation of a waiver authorized on his or her behalf under § 212(d)(3) or (4) of the Act;"
- "…the introduction of a private bill to confer permanent resident status on such alien;" or
- "…notification in the Federal Register, on the basis of national security, diplomatic, or public safety reasons."

8 C.F.R. § 214.1(d). Plaintiffs acknowledge this reality. Doc. 3 at 10. None of these have occurred. Besides the alleged SEVIS account termination, Plaintiffs neither allege nor establish that ICE has instituted any other action to revoke their F-1 statuses or remove them from the United States, which could only occur after ICE instituted removal proceedings and Plaintiffs were given an opportunity to appear before an immigration judge. 8 U.S.C. § 1229a; *see, generally,* Doc. 1.

Once Plaintiffs' SEVIS terminations are correctly disentangled from their F-1 statuses, the entire basis for emergency relief disintegrates. They are not likely to prevail on the merits, and they confront no legitimate threat of irreparable harm from mere SEVIS terminations.

A. Plaintiffs are not likely to succeed on the merits.

Plaintiffs assert DHS revoked their F-1 student statuses on April 10, 2025, and state "Neither DHS or Immigration nor Immigration and Customs Enforcement ('ICE') provided Plaintiffs or their schools any meaningful explanation for terminating their F-1 status." Doc. 1, ¶ 2. Yet the letters that were the source of this information never state Plaintiffs' visas or F-1 statuses were

terminated. Docs. 6-2, 6-3. They merely say Plaintiffs' SEVIS records had been terminated. *Id*. The quoted language from SEVP stated SEVIS termination could have arisen from a criminal records check and/or visa revocation. *Id*. MSU goes on to make various statements about consequences at MSU for "international students with a terminated status" but it does not speak to "F-1" status or SEVP or any government requirements.

Plaintiffs very clearly disavow seeking any kind of remedy in connection with their F-1 visas. Doc. 3 at 19 ("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.") (emphasis in original). Which makes sense: Plaintiffs have no evidence their F-1 visas were revoked, and even if they were, such revocations are not subject to judicial review. 8 U.S.C. § 1201(i) ("There shall be no means of judicial review . . . of a revocation under this subsection, except in the context of a removal proceeding if such revocation provides the sole ground for removal under section 1227(a)(1)(B) of this title.").

Plaintiffs assume "SEVIS record termination" causes, or is equivalent to, cancelation of F-1 status. But, as set forth above, that assumption is incorrect. SEVIS is merely a database: It collects and contains information—it does not

determine or modify alien status. *See* Ex. 1, ¶¶ 3–4, 13. Thus SEVIS termination itself cannot impart any harm to Plaintiffs (see *infra* § B(2)). Isolating the operative agency action as the SEVIS record termination also impacts the available mechanisms for judicial review, and Plaintiffs' likelihood of success on the merits.

1. No waiver of sovereign immunity for SEVIS terminations.

The Court cannot hear Plaintiffs' challenge to the contents of their SEVIS records under the Administrative Procedure Act ("APA") because the APA's waiver of sovereign immunity does not extend to such a claim. Rather, Congress established the Privacy Act of 1974 to address claims related to information held in government databases.

The APA's waiver of sovereign immunity is contained in 5 U.S.C. § 702. *Cambranis v. Blinken*, 994 F.3d 457, 462-63 (5th Cir. 2021). Waivers of sovereign immunity must be "unequivocally expressed in statutory text…and will not be implied." *Lane v. Pena*, 518 U.S. 187, 192 (1996) (internal citations omitted). The scope of this type of waiver is "strictly construed" in the Government's favor. *Id*. "[T]he 'terms of [the United States'] consent to be sued in any court define that court's jurisdiction to entertain the suit.'" *F.D.I.C. v. Meyer*, 510 U.S. 471, 475 (1994) (quoting *U.S. v. Sherwood*, 312 U.S. 584, 586 (1941)). To invoke the waiver, "the plaintiff must identify some agency action affecting him in a specific

way, which is the basis of his entitlement for judicial review" and "the plaintiff must show that he has suffered legal wrong because of the challenged agency action, or is adversely affected or aggrieved by that action within the meaning of a relevant statute." *Id*. (cleaned up). However, § 702 also "contains enumerated exceptions that limit the reach of its general waiver" including that "[n]othing herein . . . confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought." *See id*. at 463 (quoting 5 U.S.C. § 702). "According to the Supreme Court, '[t]hat provision prevents plaintiffs from exploiting the APA's waiver to evade limitations on suit contained in other statutes.'" *Cambranis*, 994 F.3d at 463 (quoting *Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak*, 567 U.S. 209, 215 (2012) (hereinafter "*Patchak*")).

At least one Court has interpreted § 702 and the Supreme Court's decision in *Patchak* to contain three requirements to trigger the "any other statute" exception of § 702: "(1) the statute must address the same type of grievance the plaintiff asserts in his suit; (2) the statute must deal 'in particularity' with the claim, and (3) Congress must have intended the statute to afford the 'exclusive remedy' for that type of claim/grievance." *Cambranis*, 994 F.3d at 463 (citing *Patchak*, 567 U.S. at 216). Plaintiffs' Complaint seeks an order "[r]equir[ing] Defendants to restore

Plaintiffs' F-1 student status in the Student and Exchange Visitor Information System (SEVIS)." *See, e.g.*, Doc. 1 at 18. To the extent Plaintiffs seek to bring an APA claim for judicial review to amend the status field contained in his SEVIS record, their claims fail because the Privacy Act forecloses relief.

i. The Privacy Act addresses the same type of grievance.

The Complaint alleges that Plaintiffs received notice from Montana State University that their "F-1 student status in SEVIS[2] was terminated." Doc. 1, passim. They challenge the government's alleged "illegal termination of their SEVIS record." *Id.*, ¶ 15. Congress enacted the Privacy Act to address squarely this type of grievance. *See* 5 U.S.C. § 552a(b).

The Privacy Act addresses records held in government databases. 5 U.S.C. § 552a(b). It permits an individual to review agency records, request the agency correct them, appeal to the agency head if the amendment is denied, and submit a

[2] SEVIS is a "system of records" under the Privacy Act, defined as "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual." The Privacy Act defines a "record" as "any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited to, his education, financial transactions, medical history, and criminal or employment history and that contains his name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph." 5 U.S.C. § 552a(a)(4).

statement of disagreement with the records. *Id.* § 552a(d)(1) (access); § 552a(d)(2) (amendment); § 552a(d)(3) (appeal to agency head); § 552a(d)(4) (statement of disagreement). Once an individual has exhausted administrative remedies to amend their records, the Privacy Act contains a consent to suit in federal district court. *Id*., § 552a(d)(3) (exhaustion of administrative remedies); 552a(g)(1)(A) (civil remedies). Thus, the first factor of the *Cambranis* test is met.

ii. The Privacy Act deals "in particularity" with the asserted claims.

The Privacy Act sets forth the contours of the administrative process an agency must follow when an individual requests a record amendment, including submitting a request, the timeline for an agency response, a requirement that a denial includes the basis for the decision, and an appeal if the request is denied. 5 U.S.C. § 552a(d)(2). The Privacy Act also states that agencies must establish particular procedures for the review and amendment process. *Id*. at § 552a(f); *Quinn v. Stone*, 978 F.2d 126, 137 (3d Cir. 1992) (describing the "detailed set of requirements" for amending a record set forth in the Privacy Act). It provides for judicial review of an agency's failure to amend the records, but only after administrative remedies have been exhausted. 5 U.S.C. §§ 552a(d)(1)-(4). It also defines the class of persons who may sue, the venue where suit may be brought, the standard of review, the statute of limitations, and the available remedies

including an order directing the agency to amend a record or to provide access to a record, costs, attorneys fees, and in some cases actual damages. *See* 5 U.S.C. §§ 552a(g)(1)-(5); *see also Block v. North Dakota*, 461 U.S. 273, 286 n.22 (1983) (indicating that "the balance, completeness, and structural integrity" of a statutory provision "belie[s] the contention that it was designed merely to supplement other judicial relief."). Thus, the second factor of the *Cambranis* test is met.

iii. Congress intended for the Privacy Act to provide the exclusive remedy in these types of challenges.

The completeness of the Privacy Act scheme to view, challenge, and seek amendment of records—and to pursue civil remedies in court if unsuccessful—shows that Congress intended the Privacy Act to provide the exclusive remedy for claims like Plaintiffs'. That conclusion is consistent with the legislative history in which Congress explained that the Privacy Act contained provisions "for the exercise of civil remedies by individuals against the Federal Government through the Federal courts to enforce their rights, with the burden of proof resting on the government." H.R. Report 93-1416 (Oct. 2, 1974) at 4 (*see* Privacy Sourcebook[3] at

[3] S. Comm. on Gov't. Operations & H.R. Comm. on Gov't. Operations, 94th Cong., Legislative History of the Privacy Act of 1974 S. 3418 (Public Law 93-579): Source Book on Privacy at 4 (Comm. Print 1976) (hereinafter "Privacy Sourcebook") *available at* https://www.justice.gov/opcl/paoverview_sourcebook.

297). The House Report further explained that "[t]he section authorizing civil actions by individuals is designed to assure that any individual who has been refused lawful access to his record or information about him in a record or has otherwise been injured by an agency action which was based upon an improperly constituted record, will have a remedy in the Federal District courts." *Id.* at 17 (*see* Privacy Sourcebook at 310). When reconciling the House and Senate versions of the bill, the committee explained the remedies available under the Privacy Act to correct or amend a record, including the applicable standard of proof: "These amendments represent a compromise between the two positions, permitting an individual to seek injunctive relief to correct or amend a record maintained by an agency. In a suit for damages,…the standard for recovery of damages was reduced to 'willful or intentional' action by an agency." *See* Privacy Sourcebook at 862 (citing from the Congressional Record—Senate, Dec 17, 1974—Senate Considers House Substitute of Text of H.R. 16373 to S. 3418 and Adopts Compromise Amendments Identical to those Considered in House). Thus, all three elements of the *Cambranis* test are met by the Privacy Act, and it qualifies as "any other statute" under § 702.

iv. The Privacy Act expressly precludes the relief Plaintiffs seek.

The sovereign immunity limitation of § 702 requires not just that another statute addresses the particular claims asserted, but also that it "forbids the relief sought." 5 U.S.C. § 702. That is true here. Plaintiffs are citizens of Iran and Turkey. As such, they do not qualify as an "individual" under the Privacy Act. Congress intentionally restricted *who* may challenge purportedly erroneous records under the Act to U.S. citizens and Lawful Permanent Residents. 5 U.S.C. § 552a(a)(2) (defining "individual"); *see* H.R. 93-1416 at 11 (Privacy Sourcebook at 304) (explaining the law "would not affect any other foreign nationals."). While Congress extended certain remedial measures of the Privacy Act to citizens of designated countries, neither Iran nor Turkey are one of them. 5 U.S.C. § 552a note. Thus, Plaintiffs are barred from relief under the Privacy Act. *Raven v. Panama Canal Co*., 583 F.2d 169, 170 (5th Cir. 1978); *see also El Badrawi v. Dep't of Homeland Sec.*, 579 F.Supp.2d 249, 279 n. 35 (D. Conn. 2008).

Thus, the Privacy Act triggers the exception of § 702 of the APA that sovereign immunity is not waived if "any other statute explicitly or impliedly forbids the relief sought." 5 U.S.C. § 702; *Patchak*, 567 U.S. at 216; *Cambranis*, 994 F.3d at 462-63. "[W]hen Congress has dealt in particularity with a claim and [has] intended a specified remedy—including its exceptions—to be exclusive, that

is the end of the matter; the APA does not undo the judgment." *Patchak*, 567 U.S. at 216 (cleaned up); *see also Block*, 461 U.S. at 286 n.22. As the Supreme Court noted, "[i]t would require the suspension of disbelief to ascribe to Congress the design to allow its careful and thorough remedial scheme to be circumvented by artful pleading." *Block*, 461 U.S. at 285. Other courts have reached the same conclusion in APA suits challenging government records. *See El Badrawi*, 579 F. Supp. 2d at 279 n.35; *Westcott v. McHugh*, 39 F. Supp. 3d 21, 33 (D.D.C. 2014) ("a plaintiff cannot bring an APA claim to obtain relief for an alleged Privacy Act violation"); *Touchstone Rsch. Grp. LLC v. United States*, No. 18-CV-3451 (OTW), 2019 WL 4889281, at *5-6 (S.D.N.Y. Oct. 3, 2019) (dismissing APA claims because APA's general grant of review was not intended to duplicate existing procedures of Privacy Act). Because the APA's waiver of sovereign immunity does not extend to Plaintiffs' claims, the Court lacks jurisdiction.

Additionally, even if Plaintiffs qualified as an "individual" under the Privacy Act, their claim here would still be foreclosed because they have not exhausted the mandatory administrative remedies as required by statute before requesting an amendment to records under § 552a(2)-(3). *See* 5 U.S.C. § 552a(d)(3); *Taylor v. U.S. Treas. Dep't*, 127 F.3d 470, 475 (5th Cir. 1997) (per curiam) (statutory mandate to exhaust administrative remedies is jurisdictional); *Hill v. Air Force*,

795 F.2d 1067, 1069 (D.C. Cir. 1986) (plaintiff seeking to amend inaccurate records must first exhaust); *Barouch v. U.S. DOJ*, 962 F. Supp. 2d 30, 67 (D.D.C. 2013) (exhaustion requirement of Privacy Act is jurisdictional).

2. SEVIS revocation is not final agency action.

Even if justiciable, Plaintiffs would not prevail on their arguments that the SEVIS termination failed to comply with the APA. Doc. 3 at 23–26. Plaintiffs fail to challenge a final agency action as required by the APA. 5 U.S.C. § 704. Two conditions must be satisfied for agency action to be final: "First, the action must mark the 'consummation' of the agency's decisionmaking process—it must not be of a merely tentative or interlocutory nature. And second, the action must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Bennett v. Spear*, 520 U.S. 154, 177–78 (1997) (internal citations omitted). "The core question is whether the agency has completed its decisionmaking process, and whether the result of that process is one that will directly affect the parties." *Franklin v. Massachusetts*, 505 U.S. 788, 797 (1992). In evaluating whether a challenged agency action meets *Bennett*'s two conditions, courts should apply a "flexible" and "pragmatic" approach. *See Abbott Lab'ys. v. Gardner*, 387 U.S. 136, 149–50 (1967), overruled on other grounds, *Califano v. Sanders*, 430 U.S. 99, 105 (1977); *Oregon Nat. Res. Council v. Harrell*, 52 F.3d

1499, 1504 (9th Cir. 1995) (same). Here, under a flexible, pragmatic reading, the termination of an individual's SEVIS record cannot reasonably be viewed as a "consummation" of agency decision making.

First, even if the termination of a SEVIS record is a "consummation of the agency's decisionmaking process," Plaintiffs fail to identify any final agency action. There are no legal consequences to the termination of their SEVIS records, and the government has not terminated Plaintiffs' statuses. *See* Ex. 1, ¶ 13 (noting termination of a SEVIS record is not termination of nonimmigrant status). As such, Plaintiffs fail to allege a challenge to a final agency action.

To the extent Plaintiffs' motion relies on *Jie Fang v. Dir. U.S. Immig. & Cust. Enf't,*, 935 F.3d 172 (3d Cir. 2019), to argue that the termination of a SEVIS record is final agency action, this is misguided because it conflicts with cases like *McBrearty v. Perryman*, 212 F.3d 985 (7th Cir. 2000). *See* Doc. 3 at 23. In *Jie Fang*, DHS conducted a sting operation to catch fraudulent student visa brokers. 935 F.3d at 173–74. During that process, several foreign students were granted nonimmigrant visas and entered the United States only to have their immigration status revoked by DHS at the conclusion of the investigation. *Id*. Because their status had been revoked, the plaintiffs were placed into removal proceedings. *Id*. at 178–79. On appeal, the Third Circuit concluded that the regulation providing

for reinstatement of F-1 nonimmigrant status, 8 C.F.R. § 214.2(f)(16), was not mandatory and that the regulatory appeal procedure was not reviewable in immigration proceedings. *Id*. at 177–78. But the relevant issue in *Jie Fang* was not a SEVIS record; it was the revocation of lawful nonimmigrant status, which led to the students being placed into removal proceedings. *See id*. at 178–79. Indeed, the Ninth Circuit came to the opposite conclusion than *Jie Fang* for another set of former F-1 students involved in a separate sting operation who challenged a SEVIS termination. *See Yerrapareddypeddireddy v. Albence*, CV-20-01476-PHX-DWL, 2021 WL 5324894, at *7 (D. Ariz. Nov. 16, 2021) ("Plaintiffs have produced no evidence showing that there was a finding of visa fraud, and have thus identified no agency action, much less a final agency action, that is subject to judicial review."), *aff'd*, No. 21-17070, 2022 WL 17484323, at *1 (9th Cir. Dec. 7, 2022).

Second, Plaintiffs have administrative remedies available to them to inquire about the termination of their SEVIS records and, if necessary, seek correction. But they have simply chosen not to avail themselves of available administrative remedies. Indeed, as DHS explains on its website, there are administrative processes available after SEVIS termination: Students can pursue correction, seek reinstatement, or depart and obtain a new SEVIS record. *See* https://studyinthestates.dhs.gov/sevis-help-hub/student-records/certificates-of-

eligibility/reinstatement-coe-form-i-20 (Accessed Apr. 21, 2025). These processes are pursued through the school's Designated School Official. *Id*.

Third, if Plaintiffs were to be placed into immigration proceedings via a Notice to Appear, they would receive notice of any allegations of deportability against them and have an opportunity to contest the allegations before an Immigration Judge ("IJ"). 8 U.S.C. §§ 1229(a)(1), 1229a. After that, Plaintiffs would have an opportunity to administratively appeal the IJ's decision to the Board of Immigration Appeals, *see* 8 C.F.R. § 1003.1(b), and then ultimately get judicial review through a petition for review directly with the Ninth Circuit. 8 U.S.C. § 1252(a)(1). Thus, as the Fifth Circuit observed in the analogous context of asylum termination, "it represents only an intermediate step in a multi-stage administrative process, succeeded (or accompanied) by removal proceedings before an IJ and intra-agency appeal to the BIA." *See Qureshi v Holder*, 663 F.3d 778, 781 (5th Cir. 2011).

3. SEVIS terminations did not violate due process.

Plaintiffs argue termination of their F-1 student status in SEVIS violated their Fifth Amendment rights because it denied them due process. Doc. 3 at 21–23. At least two courts, however, have determined that no notice or opportunity to be heard are required before termination in SEVIS. *See Yunsong Zhao v. Virginia*

Polytechnic Inst. & State Univ., No. 7:18CV00189, 2018 WL 5018487, at *6 (W.D. Va. Oct. 16, 2018) (holding that plaintiff did not have an property interest in his SEVIS status that would implicate due process); *Bakhtiari v. Beyer*, No. 4:06-CV-01489 (CEJ), 2008 WL 3200820, at *3 (E.D. Mo. Aug. 6, 2008) (holding that SEVIS regulations and their enabling legislation do not indicate a congressional intent to confer a benefit on nonimmigrant students). Similarly, "[t]here is no constitutionally protected interest in either obtaining or continuing to possess a visa." *Louhghalam v. Trump*, 230 F. Supp. 3d 26, 35 (D. Mass. 2017) (collecting cases).

Even if Plaintiffs were subsequently placed into removal proceedings, they would be afforded due process in those proceedings. *See, e.g., Calderon Salinas v. U.S. Atty. Gen.*, 140 F. App'x 868, 870 (11th Cir. 2005) (indicating that aliens were provided due process in removal proceedings because "[t]hey were given notice and opportunity to be heard in their removal proceedings"). An IJ would need to determine whether Plaintiffs are removable as charged. 8 U.S.C. §§ 1229a(a), (c). If they received an adverse decision, they would have the right to appeal before the Board of Immigration Appeal. 8 U.S.C. § 1229a(c)(5). If unsuccessful at the Board, Plaintiffs could obtain Article II judicial review by filing a petition with the appropriate court of appeals. 8 U.S.C. § 1252(a)(5).

Plaintiffs could *then* advance their constitutional claims, as well as other claims connected to detention and/or removability. *See* 8 U.S.C. § 1252(b)(9).

B. Plaintiffs fail to establish likely and imminent irreparable harm.

A "possibility" of irreparable harm is insufficient; irreparable harm must be likely absent an injunction. *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009); *see also Winter*, 555 U.S. at 22 (rejecting the Ninth Circuit's earlier rule that the "possibility" of irreparable harm, as opposed to its likelihood, was sufficient in some circumstances to justify a preliminary injunction). To satisfy this factor, Plaintiffs must demonstrate "a particularized, irreparable harm beyond mere removal." *Nken*, 556 U.S. at 438 (Kennedy, J., concurring). Plaintiffs here cannot establish a likelihood of such immediate, irreparable harm. Their claims are premised on several bases, but none withstand scrutiny.

1. No "irreparable" constitutional harm.

First, Plaintiffs claim the mere allegation of a constitutional infringement is sufficient to constitute irreparable harm. Doc. 3 at 26. Yet, as set forth above, Plaintiffs' due process claims are illusory: There is no deprivation of due process because SEVIS termination in and of itself imparts no rights to process, and any

steps toward actual immigration proceedings or deportation *will* require additional process.

2. No irreparable harm from not completing studies.

Plaintiffs also claim that they will be unable to complete their graduate degrees. Doc. 3 at 26. There are at least three problems with this contention. First, it assumes that all of the immigration proceedings yet to occur will be resolved adverse to Plaintiffs and will result in Plaintiffs' deportation. Plaintiffs have not acknowledged the reality or necessity of these proceedings, let alone established an adverse outcome / deportation are imminent and likely. Unless and until such a showing, nothing prevents Plaintiffs from carrying on with their studies.

Second, even if removal were imminent and likely, Plaintiffs have provided no evidence that the credits earned at MSU would be lost or invalidated. Even if Plaintiffs were removed, nothing precludes Plaintiffs from transferring their completed credits from MSU to another college or university either in their home country or in another country and completing their degrees. Plaintiffs have not submitted any evidence showing that MSU would not accept additional credits earned at another university and issue a degree to Plaintiffs, or that the credits they earned at MSU cannot be transferred to another institution.

Plaintiffs claim their inability to work causes "extreme financial hardship." Doc. 3 at 27. As an initial matter, Plaintiffs do not establish that SEVIS termination causes a loss of F-1 status, which in turn causes an inability to work. Indeed, this is not the case. *See* Ex. 1, ¶¶ 3–4, 13. It is also well established that a claim of monetary loss, on its own, is not irreparable harm. *See*, *e.g.*, *Am. Passage Media Corp. v. Cass Commc'ns, Inc*., 750 F.2d 1470, 1474 (9th Cir. 1985) (claim of monetary loss only an irreparable injury if plaintiff demonstrates that it is "threatened with extinction" or with "being driven out of business"). Accordingly, Plaintiffs' claims of financial hardship from being unable to work cannot constitute "irreparable" harm.

3. No imminent irreparable harm from arrest or removal.

Plaintiffs claim they may be detained and placed in removal proceedings because of the termination of their SEVIS records and purported termination of their F-1 statuses. Again, as set forth above, SEVIS termination does not cause loss of F-1 status or make Plaintiffs eligible for removal. *See* Ex. 1, ¶¶ 3–4, 13. Even if it did, removal proceedings cannot constitute an irreparable injury because Plaintiffs can depart the United States and easily avoid them. *See Bennett v. Isagenix Int'l LLC*, 118 F.4th 1120, 1129 (9th Cir. 2024). More importantly, Plaintiffs do not state that a notice to appear ("NTA") in immigration court has

been issued or that there have been attempts to serve them with an NTA. Accordingly, Plaintiffs' claims that they may be detained and placed in immigration proceedings are speculative at best.

Furthermore, removal itself is not recognized as irreparable harm. *Nken*, 556 U.S. at 438 (Kennedy and Scalia, JJ., concurring, noting that, with passage of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 110 Stat. 3009–546, aliens removed from the United States acquired the ability to seek review of their removal orders, so "the burden of removal alone cannot constitute the requisite irreparable injury").

Mere speculative allegations of irreparable harm, without more, fall far short of the required likelihood of imminent harm. *See, e.g.*, *Winter*, 555 U.S. at 22.

C. The public interest favors denial of the TRO.

The "public interest" and "balance of equities" factors merge where the government is the opposing party. *Nken*, 556 U.S. at 435. Neither factor weighs in Plaintiffs' favor. Even where the government is the opposing party, courts "cannot simply assume that ordinarily, the balance of hardships will weigh heavily in the applicant's favor." *Id*. at 436 (citation and internal quotation marks omitted). Here, the public interest weighs in favor of denying the application because "[c]ontrol over immigration is a sovereign prerogative." *El Rescate Legal Servs.*,

Inc. v. Exec. Off. of Immigr. Rev., 959 F.2d 742, 750 (9th Cir. 1992). The public interest lies in the Executive's ability to enforce U.S. immigration laws. Ad hoc and emergency judicial review on an incomplete record, where statute largely precludes judicial review, and where abundant process remains before any possible irreparable harm, is not in the public interest.

CONCLUSION

For all the above reasons, Defendants request that the application for TRO be denied.

DATED this 21st day of April, 2025.

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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 6,146 words, excluding the caption and certificates of service and compliance.

DATED this 21st day of April, 2025.

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