UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

KRISH ISSERDASANI, *et. al.*,

Plaintiffs,

v. **Case No. 3:25-cv-00283-wmc**

KRISTI NOEM, *et. al.*,

Defendants.

BRIEF OF AMICUS CURIAE ACLU OF WISCONSIN FOUNDATION

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ACLU of Wisconsin Foundation, Inc.

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I. INTRODUCTION

Since the end of March 2025, approximately 4,700 students nationwide have had their lawful status to study in this country summarily revoked without notice or an opportunity to respond—actions that multiple federal courts have indicated likely violate administrative law and due process rights, resulting in dozens of TROs and preliminary injunctions issued against the federal government in courts all across the country. Following the near-unanimous court orders stopping the implementation of this illegal policy change, the Department of Justice began representing to certain courts on Friday, April 25, 2025 that affected students would have their status reactivated pending further policy clarification from the agencies involved. It is clear that the recent pivot by the federal government should not moot these 100+ cases pending around the country since they are clearly able to be reversed immediately after dismissal of suits challenging them, and the present likelihood of irreparable injury to the Plaintiffs remains a going concern.

For the reasons outlined below, undersigned Amicus Curiae urge the court to maintain jurisdiction over this case, deny any motions to dismiss the actions as moot, and grant the Plaintiff's request for injunctive relief.

The mass termination of international students' records in the Student and Exchange Visitor Information System ("SEVIS") is the latest action in Defendants' campaign to circumvent statutory requirements and violate the Constitutional rights

of immigrant communities. The timing and uniformity of these terminations demonstrate a nationwide policy by the federal government of mass termination of student status as documented in SEVIS.

Administration officials, including Defendants, have pursued these goals through unlawful actions that are being challenged or have already been enjoined by district courts across the country. The status terminations in the SEVIS system are being indiscriminately made based upon any information that a given student has had an encounter with law enforcement, for something as small as a speeding ticket, or a prior encounter with immigration agents, even if that encounter did not involve unlawful conduct or conviction.

News reports indicate that a DHS task force has been targeting the status of international students.[1] This task force has been using data analytic tools to search the social media histories of about 1.5 million international students who study or work in the United States in an effort to deport international students and recent graduates.[2] The task force is deploying the data analytics tools to identify people on the basis of past charges that would not justify either termination of the F-1 status or their deportation from the United States, municipal traffic violations and dismissed

[1] Julia Ainsley, *Inside the DHS Task Force Scouring Foreign Students' Social Media*, NBC News (Apr. 9. 2025), https://www.nbcnews.com/politics/nationalsecurity/dhs-task-force-scouring-foreign-students-social-media-rcna198532.
[2] *See id.*

charges that were later expunged.[3]

The analytic tools used by this task force are maintained by U.S. Customs and Border Protection's ("CBP") National Targeting Center and National Vetting Center.[4] Upon information and belief, once a student is identified in this automated system, the task force initiates a chain of actions across several agencies and ultimately "informs Immigration and Customs Enforcement agents in local field offices to arrest and deport the student."[5] Thus, the task force is seeking to effect the deportation of international students. But any encounter with criminal law enforcement is *not* grounds for terminating status. Students can only fail to maintain their status and therefore lose their F-1 status on the basis of criminal history if they are convicted of a crime of violence. 8 C.F.R. § 241.1(g).

By unilaterally terminating students' SEVIS records on grounds that fall outside the Defendants' own rules, and providing only vague explanatory notations without any notice to students or opportunity to contest the grounds for these terminations, ICE is misusing SEVIS to circumvent the law and the Constitution, and to drive international students out of the country without due process and in violation of DHS regulations.

[3] Id.
[4] Id.
[5] Id.

II. APPLICABLE LAW

A. Regulatory Framework: Student Visas, F-1, and SEVIS

Under the Immigration and Nationality Act ("INA"), noncitizens can enroll in government-approved academic institutions as F-1 students. 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 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 through SEVIS, 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.

International F-1 students are subject to an array of regulations, including maintaining a full course of study. *See generally* 8 C.F.R. § 214.2(f). F-1 students are also entitled to participate in Curricular Practical Training ("CPT") and Optional Practical Training ("OPT") programs. *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). 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).

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 voluntarily withdraws from the F-1 program, "he or she has fifteen days to leave the United States." 8 C.F.R. § 214.2(f)(5)(iv). A student who "fails to maintain a full course of study without the approval of the DSO or otherwise fails to maintain status," must leave the country immediately or seek reinstatement of their status. 8 C.F.R. § 214.2(f)(5)(iv).

B. Termination of F-1 Student Status

Termination of F-1 student status in SEVIS is governed by SEVP regulations, which distinguish between two 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 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."

Designated school officials ("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). DHS and the government's ability to initiate the termination of F-1 student status "is limited by 8 C.F.R. § 214.1(d)." *Jie Fang v. Dir. 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 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) 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).

When ICE terminates a student record in SEVIS, this action reflects that ICE no longer considers the student in F-1 student status. The ICE SEVIS Help Hub, *Terminate a Student* webpage[6] instructs that where the stated "Termination Reason" is "Termination for any violation of status"—as opposed to "Authorized Early Withdrawal," "Change of Status Approved," or "Change of Status Denied"—this

[6] https://studyinthestates.dhs.gov/sevis-help-hub/student-records/completions-and-terminations/terminate-a-student (last accessed April 25, 2025).

ends the student's "Duration of Status" with "[n]o grace period," and "the student must either apply for reinstatement, or the student and dependents must leave the United States immediately." According to the Department of State website[7] for F-1 students, "Failure to depart the United States on time will result in being out of status. Visas of individuals who are out of status are automatically voided (Section 222(g) of the Immigration and Nationality Act)."

While individuals whose F-1 status or SEVIS records have been terminated can apply for reinstatement, there is no opportunity to seek review of the status termination itself, and it does not prevent ICE enforcement actions as a result of those terminations. In fact, a student must already be out of status to be considered for reinstatement. *See* 8 C.F.R. § 214.2(f)(7)(iii), (8)(i). Moreover, reinstatement is entirely at the discretion of USCIS, and no appeal is available to the student. *Jie Fang*, 935 F.3d at 176.

In several recent cases, this Court and others have determined that the termination of a student's SEVIS record also terminates a student's F-1 student status. *See, e.g.*, *Student Doe v. Noem*, No. 2:25-cv-01103- DAD-AC, 2025 WL 1134977, at *6 (E.D. Cal. Apr. 17, 2025); *Roe v. Noem*, No. CV 25-40- BU-DLC, 2025 WL 1114694, at *3 (D. Mont. Apr. 15, 2025); *Isserdasani v. Noem*, No. 25-cv-00283-WMC, 2025 WL 1118626, at *5 (W.D. Wis. Apr. 15, 2025); *Liu v. Noem*,

[7] https://travel.state.gov/content/travel/en/us-visas/study/student-visa.html (last accessed April 25, 2025).

No. 25-cv-133-SE, op. at 3 (D.N.H. April 10, 2025). Defendants' attempt to argue in this case and others that the termination of the F-1 records in SEVIS of 4700 students was not related to a termination of their F-1 status strains all credulity.

III. ARGUMENT

A. Courts Throughout the Country Have Already Granted Temporary Restraining Orders and Injunctions in Similar Cases Involving Termination of Students' SEVIS Records.

With the estimated 4,700 students whose SEVIS records have been terminated over the past two weeks, more than 100 lawsuits have been filed across the country seeking a temporary restraining order ("TRO") to address the same or similar claims that Plaintiffs have asserted in this case.

Along with this Court, district courts in other jurisdictions have already granted TROs, finding that plaintiffs have demonstrated a substantial likelihood of success on the merits of their claims and would suffer irreparable injury without those courts' intervention.

The facts underlying those courts' decisions to issue a TRO are similar to the facts here. *See, e.g.*, *Doe v. Trump*, No. 4:25-cv-00175-AMM, Doc. 7, at 2 n.1 (D. Ariz. Apr. 15, 2025). These courts have found that students whose SEVIS records were terminated without notice established a substantial likelihood of success on the merits of their claims. *See, e.g.*, *Liu v. Noem*, No. 25-cv-133-SE, Doc. 13, at 3 (D.N.H. April 10, 2025). These courts have also found that students whose SEVIS

records were terminated with no notice will suffer irreparable harm without intervention from a court. *See, e.g.*, *Doe v. Noem*, No. 2:25-cv-00040-DLC, Doc. 11, at 8 (D. Mont. Apr. 15, 2025).

Finally, courts across the country adjudicating the same or similar claims currently before this Court have ordered the same type of relief Plaintiffs seek here. *See, e.g.*, *Liu*, No. 25-cv-133-SE, Doc. 13, at 5 (enjoining the government from terminating plaintiff's F-1 status and ordering the government to set aside its termination decision); *Wu v. Lyons*, No. 1:25-cv-01979-NCM, Doc. 9, at 1-2 (E.D.N.Y. Apr. 11, 2025) (enjoining defendant from terminating plaintiff's SEVIS record and F-1 status, ordering defendant to set aside its decision to terminate plaintiff's status); *Hinge v. Lyons*, No. 1:25- cv-01097-RBW, Doc. 11, at 10 (D.D.C. Apr. 15, 2025) (enjoining the government from commencing removal proceedings while TRO is in effect); *Zheng v. Lyons*, No. 1:25-cv-10893-FDS, Doc. 8, at 1 (D. Mass. Apr. 11, 2025) (enjoining defendant from "arresting or detaining plaintiff" based on revocation of her F-1 student visa); *Doe*, No. 4:25-cv-00175-AMM, Doc. 7, at 2 (ordering that defendants' actions in terminating plaintiff's status "shall have no legal effect and shall not obstruct Plaintiff in continuing to pursue their academic and employment pursuits," and enjoining defendants from "arresting and detaining Plaintiff pending these proceedings, transferring Plaintiff away from the jurisdiction of this District pending these proceedings, or removing Plaintiff from the United

States pending these proceedings").

The above-cited courts recognized the unlawfulness of Defendants' actions and the severity of the resulting harms, and this Court should consider those cases persuasive here.

B. The Terminations Violated the Due Process Rights of International Students Who Have Not Violated The Terms of Their Status And Yet Find That Status Terminated Without Notice or an Opportunity to Respond.

Defendants' termination of Plaintiff's F-1 student status violates the Fifth Amendment's Due Process Clause. Due process requires notice and a meaningful opportunity to be heard. *Matthews v. Eldridge*, 424 U.S. 319, 322 (1976). An essential principle of due process is that a deprivation of life, liberty or property "be preceded by notice and opportunity for hearing appropriate to the nature of the case." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542 (1985).

As a rule, non-citizen immigrants within the United States are entitled to due process protections. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 693, 121 S.Ct. 2491, 150 L.Ed.2d 653 (2001) (holding that "the Due Process Clause applies to all `persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent"). These protections include the right to challenge the government's claim that it can summarily remove a noncitizen found within the United States. *See Floroiu v. Gonzales*, 481 F.3d 970, 974 (7th Cir.2007) (holding that due process requires that aliens receive a meaningful opportunity to be

heard in deportation proceedings); *Kerciku v. INS*, 314 F.3d 913, 917-18 (7th Cir.2003) (same); *see also Bayo v. Chertoff*, 535 F.3d 749, 752 (7th Cir. 2008).

Earlier this month, the Supreme Court once again reaffirmed that "it is well established that the Fifth Amendment entitles aliens to due process of law" and they are entitled to notice and opportunity to be heard "appropriate to the nature of the case." *Trump v. J. G. G.*, 604 U.S. ___, 2025 WL 1024097 (April 7, 2025) (*citing Reno v. Flores*, 507 U.S. 292, 306 (1993) *and Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). *Trump v. J.G.G.* arose out of this administration's use of the 1798 Alien Enemies Act to remove alleged Venezuelan gang members without any notice or process at all, an action which the Supreme Court rejected, ruling that notice and an opportunity to challenge such removals was required by the Constitution. Similarly, a unanimous Supreme Court ruled that the government must correct the lack of process when an "administrative error" sent Kelmar Abrego Garcia to a prison in El Salvador. *Noem v. Abrego Garcia*, 604 US __, 2025 WL 1077101 (April 10, 2025). Taken together, the cases of these SEVIS record terminations, of J.G.G. and Abrego Garcia, show that these Defendants have engaged in a pattern of ignoring the due process rights of noncitizens in this country.

The Plaintiff has a constitutionally protected property interest in their SEVIS record. *See ASSE Int'l, Inc. v. Kerry*, 803 F.3d 1059 (9th Cir. 2015) (recognizing protected property interest in participating in exchange visitor program). DHS

terminated Plaintiff's SEVIS record based on improper grounds without prior notice of the facts forming the basis for the termination and without an opportunity for Plaintiff to respond and correct any mistakes or misunderstanding of the facts, violating due process.

In this case, Defendants failed to satisfy these basic principles of due process. Defendants did not provide any prior notice to any Plaintiff or his school about the decision to terminate Plaintiffs F-1 student status. Instead, Plaintiff, like 4700 students around the country, learned of these terminations through an email or because their schools discovered it during the school's periodic inspection of SEVIS records—a discovery that came days after the status had actually been terminated for most Plaintiffs.

Nor did Defendants comply with the due process requirement to provide adequate explanation and a meaningful opportunity to respond. Defendants record vague boilerplate reasons for each student's terminated F-1 student status in SEVIS: "Individual identified in criminal record check and/or had had their VISA revoked. SEVIS record has been terminated." For most students, this boilerplate language was prefaced with "OTHERWISE FAILING TO MAINTAIN STATUS." For others, the language was slightly different: "OTHER: Individual identified in criminal records check and/or has had their VISA revoked. SEVIS record has been terminated."

This boilerplate language cannot satisfy the requirements of the Due Process

Clause because none of its phrases describe students' circumstances. Students who have closely followed all applicable rules and regulations to maintain their F-1 student status, are suddenly dropped from the system. As a result, students are left clueless as to the basis or explanation for their status termination. They have no meaningful opportunity to defend themselves against inapplicable boilerplate charges.

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

C. The Terminations Violated the Administrative Procedures Act When Defendants Failed to Follow Their Own Regulations.

Defendants' termination of each student's F-1 student status under the SEVIS system also violates the Administrative Procedure Act (APA) in multiple ways. As a preliminary matter, Defendants' termination of each student's F-1 student status is a final agency action which this Court has jurisdiction to review under the APA. *See Jie Fang v. Dir. U.S. Immigration & Customs Enforcement*, 935 F.3d 172, 182 (3d Cir. 2019). There is no opportunity for students to seek administrative review of DHS's unilateral termination.

As to the substantive APA violations, the termination of each student's F-1 student status was (1) not in accordance with law (including regulation), (2) arbitrary and capricious, and (3) contrary to a constitutional right. *See* 5 U.S.C. § 706(2).

Defendants' termination of each student's F-1 student status was "not in accordance with law." 5 U.S.C. § 706(2)(A). DHS's ability "to terminate an F-1 [student status] is limited by 8 C.F.R. § 214.1(d)." *Jie Fang*, 935 F.3d at 185 n.100. Under this regulation, DHS can terminate student status 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) DHS publishes a notification in the Federal Register identifying national security, diplomatic, or public safety reasons for termination. 8 C.F.R. § 214.1(d). None of those occurred here.

The revocation of a visa is not a regulatory ground for termination of F-1 student status. 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). The State Department's Foreign Affairs Manual clarifies that, if an F-1 visa is revoked, the student is permitted to pursue his course of study uninterrupted, and only upon the student's ultimate post-graduation departure from the United States does their F-1 student status in SEVIS terminate. *See* Guidance Directive 2016-03, 9 FAM 403.11-3 – VISA REVOCATION (Sept. 12, 2016).

The regulatory framework governing F-1 status terminations reflects that an individual's permission to remain in the United States is governed by the relevant

requirements set out in federal regulations, not by the visa. In the case of F-1 students, those requirements are set out in 8 C.F.R. § 214.2(f) and 8 C.F.R. § 214.1(e)-(g). Plaintiffs assert that they have complied with all requirements listed in these regulatory provisions.

Because Defendants terminated Plaintiff's F-1 student status without a reason appearing in statute or regulation, Defendants' terminations violate 5 U.S.C. § 706(2)(A) as not in accordance with the law, including 8 C.F.R. § 214.1(d).

Defendants' termination of Plaintiff's F-1 student status was "arbitrary [and] capricious." 5 U.S.C. § 706(2)(A). Agency action is arbitrary and capricious if the agency cannot "'articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.'" *Chamber of Com. of United States v. Sec. & Exch. Comm'n*, 115 F.4th 740, 750 (6th Cir. 2024) (quoting *Motor Vehicle Mfrs. Ass'n of U.S., Inc., v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

Here, there is no rational connection between the facts and the Government's choices. Defendants appear to have initiated a wave of F-1 student status terminations without even considering any Plaintiff's individual circumstances. Instead, regardless of their circumstances, each student received the same decision with the same boilerplate explanation that does not even accurately explain Plaintiff's criminal history or immigration status. Such a decision is arbitrary and

capricious agency action that the APA prohibits.

The APA prohibits agency actions that are "contrary to constitutional right." 5 U.S.C. § 706(2)(B). *See Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 414 (1971), *abrogated on other grounds by Califano v. Sanders*, 430 U.S. 99 (1977); *Dep't of Com. v. New York*, 588 U.S. 752, 792 n. 5 (2019). Because Defendants violated Plaintiff's constitutional right to due process of law, their termination of the Plaintiff's F-1 student status also necessarily violated the APA.

D. Subsequent Reactivation of SEVIS Records Does Not Moot The Need for Injunctive Relief.

On April 25, 2025, reports began to circulate from various district courts that the government was announcing plans to rescind the terminations of the SEVIS records of international students across the country, presumably as a result of the scores of TROs and Preliminary Injunctions issued against these terminations. In as much as an easily reversible step offers little protection for this plaintiff or others, the Amicus ACLU of Wisconsin urges this Court to issue a ruling declaring such terminations, without due process and without compliance with applicable law and regulation, to be illegal. *See Friends of the Earth Inc. v Laidlaw Environmental Serv.*, 528 U.S. 167,189 (2000) ("a defendant claiming that its voluntary compliance moots a case bears the formidable burden of showing that it is absolutely clear the allegedly wrongful behavior could not reasonably be expected to recur.").

Defendants' voluntary restoration of SEVIS records does not relieve or

eliminate the irreparable harm. On this point, *A.O. v. Cuccinelli*, 457 F. Supp. 3d 777 (N.D. Cal. 2020) is instructive. In *A.O.*, a class of plaintiffs brought claims against the United States Citizenship and Immigration Services ("USCIS") challenging a new immigration policy (the "reunification authority requirement") that resulted in the denials of Special Immigrant Juvenile petitions. *Id*. at 783. Plaintiffs sought a preliminary injunction enjoining the application of the policy. *Id*. Shortly after litigation commenced, USCIS voluntarily abandoned the reunification authority requirement and argued that plaintiffs' claims were moot. *Id*. at 787. The district court rejected USCIS's mootness argument. *Id*. at 787-90 ("[i]t is difficult to conceive of a new policy that could be more easily abandoned or altered in the future than one resting upon a recent legal re-interpretation."). It also rejected USCIS"s argument that its policy changes undermined plaintiffs' irreparable harm. *Id*. at 794-95. Rather, in granting the preliminary injunction under the APA, the court acknowledged the "feelings of fear and uncertainty" caused by USCIS's conduct and held that such harms—coupled with USCIS's inability to show that the policy changes were permanent—met the irreparable harm test. *Id*. at 795 ("Such emotional and psychological harms will not be remedied by an award of damages and are, therefore, irreparable.") (citations omitted).

As in *A.O.*, Plaintiff's F-1 status (and, by extension, his studies and livelihood) is still in jeopardy of erroneous and process-less deprivation. *See also Rogers v.*

Virginia State Registrar, 507 F. Supp. 3d 664, 677-74 (E.D. Va. 2019) (granting preliminary injunction because attorney general opinion did not moot case or absolve irreparable harm).

IV. CONCLUSION

For the foregoing reasons, amicus curiae ACLU of Wisconsin Foundation urges the Court to declare that the termination of the Plaintiff's F-1 status violated the due process guarantees of the Fifth Amendment and was arbitrary and capricious and contrary to law in violation of the Administrative Procedures Act, that preliminary injunctive relief is proper and necessary, and that the issue is not mooted by the government's late declarations regarding a planned change or reconsideration of internal policy.

Dated: April 27, 2025

Respectfully submitted,

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