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THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
 UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO/OAKLAND DIVISION

THE REGENTS OF THE UNIVERSITY
 OF CALIFORNIA, a California
 Corporation,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
 HOMELAND SECURITY; U.S.
 IMMIGRATION AND CUSTOMS
 ENFORCEMENT; CHAD F. WOLF, in
 his official capacity as Acting Secretary of
 the United States Department of
 Homeland Security; and MATTHEW
 ALBENCE, in his official capacity as
 Acting Director of U.S. Immigration and
 Customs Enforcement,

Defendants.

Case No. 3:20-cv-04621

**PLAINTIFF'S EX PARTE MOTION FOR
 TEMPORARY RESTRAINING ORDER;
 MEMORANDUM OF POINTS AND
 AUTHORITIES IN SUPPORT THEREOF**

***[Filed Concurrently with Ex Parte Application
 to Shorten Time and Supporting Declarations]***

Date: July 14, 2020
 Time: TBD
 Ctrm: TBD
 Judge: TBD

Complaint filed: July 10, 2020

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NOTICE OF EX PARTE MOTION AND
MOTION FOR TEMPORARY RESTRAINING ORDER

PLEASE TAKE NOTICE that on July 14, 2020, at __ a.m./p.m. or as soon thereafter as counsel may be heard, at the United States District Court for the Northern District of California, located at 450 Golden Gate Avenue, San Francisco, California 94102, or such other location assigned by the Court, Plaintiff The Regents of the University of California (“The Regents”) will, and hereby does, move for a temporary restraining order against Defendants United States Department of Homeland Security, Acting Secretary of Department of Homeland Security Chad F. Wolf, United States Immigration and Customs Enforcement, and Acting Director of U.S. Immigration and Customs Enforcement Matthew Albence (“Defendants”), pursuant to Federal Rule of Civil Procedure 65(b).

The Regents seeks a temporary restraining order to enjoin Defendants from implementing the July 6, 2020 memorandum (“the Directive”) issued by the Student and Exchange Visitor Program (“SEVP”), a division of the U.S. Immigration and Customs Enforcement (“ICE”). The Directive announced a reversal of prior ICE policy regarding the status of international students holding F-1 nonimmigrant student visas during the COVID-19 pandemic. The Directive instructs, *inter alia*, that “schools adopting a hybrid model – that is, a mixture of online and in person classes” must by August 4, 2020, certify to SEVP for each F-1 visa student that “the student is not taking an entirely online course load for the Fall 2020 semester, and that the student is taking the minimum number of online classes required to make normal progress in their degree program.”¹ Students for whom the school cannot so certify “must leave the country or take alternate steps to maintain their nonimmigrant status such as transfer to a school with in-person instruction”

The University of California has adopted a “hybrid model” for the Fall 2020 semester and thus must comply with the above requirements in less than a month to evaluate literally tens of thousands of students’ courseloads and certify that each meets the Directive’s requirements. This

¹ Further, certified schools that will not be entirely online but will reopen in the Fall must update and submit their operation plans to SEVP by August 1, 2020 as well.

1 will be impossible, as the University does not require students to commit to classes so long before
2 the start of the educational year. It is too late to alter that system now.

3 Plaintiff thus moves for this preliminary relief and will demonstrate that: (1) it is likely to
4 succeed on the merits of its claims under the Administrative Procedure Act (“APA”); (2) Plaintiff
5 and its domestic and foreign students are likely to suffer irreparable harm absent provisional
6 relief; and (3) the balance of equities and the public interest weigh heavily in favor of returning to
7 the status quo existing prior to the issuance of the Directive. Plaintiff’s Motion is based upon this
8 Notice of Motion and Motion; the Memorandum of Points and Authorities below; the currently
9 available administrative record; the Alcocer, Beck, Byington, Christ, Deas, Schooley, and
10 Wakimoto Declarations and exhibits submitted in support of this Motion; and such further
11 evidence and argument as the Court may consider.

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I. INTRODUCTION**

14 The University of California—renowned as the nation’s premier public university system
15 and as a world-class academic and research powerhouse and a key contributor to the California
16 economy and social fabric—has long welcomed international students seeking to pursue unrivaled
17 educational opportunities and, ultimately, their most cherished dreams. These students contribute
18 to rich intellectual discourse across all disciplines, including in the University system’s prized
19 science, technology, engineering, and mathematics (STEM) departments, thereby also
20 contributing to the University’s mission of delivering and supporting world-class teaching and
21 research, as well as to California’s vibrant economy. For decades, the United States’ “F-1” visa
22 program for international, non-immigrant students has made all this possible.

23 In March 2020, faced with the unprecedented COVID-19 pandemic, The Regents moved
24 swiftly to transition the University’s ten campuses to remote teaching to protect the health and
25 safety of their students and faculty, while continuing to meet its core mission of providing a
26 world-class education. Also recognizing the unprecedented nature of the pandemic, defendant
27 United States Immigration and Customs Enforcement (“ICE”), an agency within defendant the
28 Department of Homeland Security (“DHS”), issued an exemption to a preexisting regulation that

1 required international students on F-1 visas to attend classes in person if they wished to remain in
 2 this country. ICE’s March 13, 2020 Guidance (the “March 13 Guidance”) provided critical
 3 assurances that international students could maintain their F-1 visa status while attending classes
 4 on-line “for the duration of the [COVID-19] emergency.”

5 Without warning, on July 6, 2020, Defendants announced that they would largely rescind
 6 the COVID-19 exemption for students on F-1 visas and require such students whose universities
 7 had transitioned to an online-only curriculum to transfer to an institution offering in-person
 8 classes, or leave the United States. This Directive also effectively bars continuing students on F-1
 9 visas who have already left this country from re-entering the United States, if they intend to take a
 10 full online course load in Fall 2020. This arbitrary, capricious, and procedurally defective agency
 11 action now forces The Regents to confront an untenable choice: to put its international students in
 12 immediate jeopardy of having to abandon their studies and leave the country or take steps to
 13 retain them by increasing the number of in-person courses offered for Fall 2020, thereby
 14 increasing the risk that its students, faculty, and staff will be exposed to the virus.

15 The Regents therefore seeks a temporary restraining order to enjoin Defendants from
 16 implementing the Directive. That Directive is not only unjust and unwise, but it violates the
 17 Administrative Procedure Act’s (“APA”) prohibition against agency action that is “arbitrary,
 18 capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. §
 19 706(2)(A). Agency action, like the Directive, purporting to have the force of law must be both
 20 reasonable and reasonably explained. Defendants also failed to satisfy the APA’s notice-and-
 21 comment requirements for agency action that substantively affects rights or obligations, in
 22 violation of 5 U.S.C. § 553. *See* 5 U.S.C. § 706(2)(D) (authorizing the court to set aside agency
 23 action taken “without observance of procedure required by law”). The Regents, therefore, is likely
 24 to succeed on the merits. Further, it and its students will suffer irreparable harm absent relief.
 25 Finally, the balance of equities and the public interest strongly weigh in its favor. Accordingly,
 26 this Court should grant provisional relief enjoining Defendants from enforcing the Directive,
 27 thereby preserving the status quo pending adjudication of the University’s motion for preliminary
 28 injunction and permanent relief.

II. FACTUAL BACKGROUND

A. COVID-19

As the year began, the terms “novel coronavirus” and “COVID-19” meant nothing to most Americans. That soon changed. Since late 2019, when scientists first identified the novel coronavirus, or SARS-CoV-2, the virus that causes COVID-19 has spread to nearly every corner of the world: There are more than 12 million confirmed cases of the disease, and more than half a million people have died from it. Leading the pack is the United States, where there have now been more than 3.1 million confirmed cases and over 133,000 COVID-19-related deaths.² Moreover, because there is no vaccine for COVID-19, the forecast is grim. Epidemiologists predict that the domestic death toll from COVID-19 will exceed 200,000 by November. In California alone, there have been nearly 300,000 confirmed cases and over 6,500 deaths. Modeling from the Centers for Disease Control and Prevention (“CDC”) suggests that as many as 200 million Americans could eventually be infected with COVID-19 and as many as 1.5 million Americans could die.

Certain basic facts about COVID-19 are not genuinely in dispute. For some, it causes symptoms requiring hospitalization or that are life-threatening. In the most severe cases, the virus is fatal. Overwhelming evidence indicates that the most likely means of transmission is through close contact, especially indoors. In light of these facts, state and local governments have implemented the only measures that reasonably can limit community spread of the virus—issuance of shelter-in-place orders, physical (social) distancing, closure of businesses and other venues where people may gather, diligent and regular sanitization and hygiene, and, where possible, contact tracing. Governor Newsom announced a state of emergency in California on March 4,³ and the President of the United States declared a national emergency on March 13.⁴ Yet the rate of infection today is considerably higher than it was in March.

² See *Coronavirus in the U.S.: Latest Map and Case Count*, *N.Y. Times*, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last visited July 10, 2020).

³ *Proclamation of a State of Emergency*, Executive Department, State of California, <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>.

B. ICE's Initial COVID-19 Response

The federal government issues F-1 visas to international students who attend accredited American universities or other academic institutions on a full-time basis. 8 C.F.R. § 214.2(f). The requirements for F-1 visa holders are set forth in 8 C.F.R. § 214.2. That regulation states, in relevant part, that the student must take a full course of study and that no more than “one class or three credits” per semester or quarter may be counted toward the full course of study if the class is taken “on-line or through distance education.” 8 C.F.R. §§ 214.2(f)(5)(i), 214(f)(6)(i)(G). However, in its initial response to the pandemic, ICE recognized the need for flexibility with respect to these requirements. In particular, on March 9, 2020, ICE’s Student and Exchange Visitor Program (“SEVP”) issued guidance (“March 9 Guidance”) advising that “SEVP-certified schools may need to adapt their procedures and policies to address the significant public health concerns associated with the COVID-19 crisis.”⁵ In issuing the guidance, ICE stated that it was “focused on ensuring that nonimmigrant students are able to continue to make normal progress in a full course of study” and that ICE would be “flexible with temporary adaptations,” while further recognizing that “the COVID-19 crisis is fluid and rapidly changing.” *Id.* Further, ICE’s March 9 Guidance contemplated the necessity of “leaving room for schools to comply with state or local health emergency declarations.” *Id.*

Just days later, on March 13, 2020, ICE issued further “Guidance for SEVP Stakeholders” (“March 13 Guidance”) which provided, in relevant part:

If a school closes temporarily but offers online instruction or another alternative learning procedure, nonimmigrant students should participate in online or other alternate learning procedures and remain in active status in SEVIS.... Given the extraordinary nature of the COVID-19 emergency, SEVP will allow F-1 and/or M-1 students to temporarily count online classes towards a full course of study in excess of the limits stated in 8 CFR 214.2(f)(6)(i)(G).... This temporary provision is only in effect for the duration of the emergency and in accordance with the

⁴ *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (March 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak>.

⁵ See <https://www.ice.gov/doclib/sevis/pdf/bcm2003-01.pdf> (“March 9 Guidance”) at p.1.

procedural change documents filed in a timely manner to SEVP.⁶

Further, according to its express terms, this Guidance applied to F-1 visa holders “even if they have left the United States and are taking the online classes from elsewhere.” *Id.* at 1-2.

C. The University of California’s COVID-19 Response

Founded in 1868, the University of California was founded upon a simple but audacious idea: California should establish a great public university available to all—one that would serve equally the children of immigrants and settlers, landowners and barons.⁷ More than 150 years later, the University today is one of the world’s premier educational systems, comprising ten campuses and educating more than 285,000 undergraduate and graduate students annually.⁸ True to its founding principle, the University continues to be available to all—including approximately 37,500 F-1 visa students from across the globe. Decl. of Carol T. Christ (“Christ Decl.”) ¶ 2.

Consistent with federal, state, and local guidance on preventing the spread of COVID-19, and consistent with the March 9 and March 13 Guidances, the University undertook, with substantial investment of time and resources,⁹ to transition its academic curricula to online instruction in March 2020. Since then, the University has engaged in careful, deliberate, and iterative planning processes, prioritizing the health and safety of its entire academic community and that of the surrounding communities, while also continuing to fulfill its mission of providing world-class educational opportunities to all its students. Christ Decl. ¶¶ 2-6 & Exs. A&B; *see also* Decl. of Robert T. Schooley (“Schooley Decl.”) ¶ 15; Decl. of Carrie L. Byington (“Byington Decl.”) ¶¶ 4-6. The University made substantial investment in online solutions, in part based on its reliance on ICE’s March 13 Guidance that international students would not thereby be

⁶ See https://www.ice.gov/sites/default/files/documents/Document/2020/Coronavirus%20Guidance_3.13.20.pdf at 1 (“March 13 Guidance”).

⁷ See <https://www.universityofcalifornia.edu/news/university-california-born> (last visited July 9, 2020).

⁸ See *Fall Enrollment at a Glance (2019)*, University of California, <https://www.universityofcalifornia.edu/infocenter/fall-enrollment-glance> (last visited July 9, 2020).

⁹ The University of California estimates the cost of its COVID-19 response to date to be in the millions of dollars. Decl. of David Alcocer (“Alcocer Decl.”) ¶ 10.

precluded from maintaining their F-1 visa status during the COVID-19 crisis and that the exemption would remain “in effect for the duration of the emergency.” *See* Alcocer Decl. ¶ 10. That emergency continues to this day and likely will for the foreseeable future.

The University has devoted considerable thought, effort, and resources to determine how best to advance its educational mission while protecting its students, faculty, and staff amidst the pandemic. The University and each campus have monitored state and local government data, recommendations, and directives regarding COVID-19 response and have abided by applicable reopening requirements and shelter-in-place restrictions. *See, e.g.,* Christ Decl. ¶¶ 6, 16 & Ex. A; Schooley Decl. ¶¶ 3-4, 7-8; Decl. of Deborah Deas (“Deas Decl.”) ¶¶ 4-7. The University and its campuses have also formed numerous working groups and task forces to assess and proactively plan responses to various scenarios potentially resulting from the pandemic. *See, e.g.,* Christ Decl. ¶¶ 4-9; Schooley Decl. ¶¶ 4, 15; Decl. of Deborah Deas (“Deas Decl.”) ¶¶ 3-5; Decl. of Roger Wakimoto (“Wakimoto Decl.”) ¶¶ 4-5; Decl. of Michael Beck (“Beck Decl.”) ¶¶ 4-6. For example, in February, researchers at UC San Diego (“UCSD”) developed a dynamic compartmental transmission model of COVID-19 to simulate spread among the campus community to provide a quantitative framework for planning in response to the pandemic; they concluded that the University must limit all large-scale gatherings and limit the density of on-campus housing. Schooley Decl. ¶¶ 6-7.

For example, between April and June, UC Riverside’s (“UCR’s”) Instructional Continuity Working Group, comprising faculty, staff, and students, evaluated options for providing a healthy and effective teaching environment for the 2020-21 academic year. Deas Decl. ¶ 4. UCR’s response to the COVID-19 pandemic is coordinated among ten faculty-led working groups, including public health, research ramp-up, budget and finance, student services continuity, student health assistance, instructional continuity, operations & support recovery, testing, employee health assistance, and instructional technology. *Id.* ¶ 6. UCLA’s Emergency Management Planning Group (EMPG) began working on UCLA’s COVID-19 response at the end of February 2020. UCLA’s efforts include its “Back to School” campus-wide working group, and regular consultation between UCLA Health’s infectious control experts, officials from other UC

1 campuses, and officials with the LA County Department of Public Health. *See, e.g.*, Wakimoto
2 Decl. ¶¶ 4-5, 8.

3 At the system-wide level, beginning in March 2020, the Council of the Vice Chancellors
4 of Research (“COVCR”), began holding weekly meetings to provide guidance regarding the
5 impact of the pandemic on university research. Wakimoto Decl. ¶ 4. The University has also
6 created a systemwide Testing and Tracing Task Force (the “Task Force”), which includes subject
7 matter experts, administrators, and faculty, and staff from across the University system. Christ
8 Decl. ¶ 7. The Task Force has emphasized that, for all UC campuses “[t]he cornerstone of
9 mitigation will be decreasing normal campus population density, in order to decrease interactions
10 that may result in person-to-person transmission of the virus.” *Id.*; *see also id.* at Ex. B.

11 Following months of study and consultation with epidemiologists, medical experts, and
12 industry experts, all ten campuses created plans for their Summer and Fall 2020 curricula based
13 on the status of COVID-19 in their specific geographic locations. *E.g., id.* ¶ 5 (UC Berkeley);
14 Deas Decl. ¶¶ 15, 20 (UC Riverside); Schooley Decl. ¶¶ 13-16 (UC San Diego). The campuses
15 have dramatically transformed their approach to instruction for Fall 2020: UC Berkeley intends to
16 conduct limited in-person classes;¹⁰ UC Davis plans to offer most courses remotely; Irvine
17 courses will be remote with minimal exceptions; UCLA is currently all-remote, but anticipates
18 15% to 20% of courses will be in-person or in a hybrid format for the 2020-21 academic year; and
19 UC San Diego hopes for 30% in person classes, with 70% remote or hybrid. Schooley Decl. ¶ 16.
20 Thus, classes will be remote in Fall 2020 for most courses and students. These plans are subject to
21

22 ¹⁰ For example, UC Berkeley’s response to the COVID-19 pandemic has been coordinated by *nine*
23 committees. Christ Decl. ¶ 4. One such committee, the Public Health and Testing Advisory
24 Committee, is chaired by Dr. Nicholas P. Jewell, Emeritus Professor of Biostatistics in the UC
25 Berkeley School of Public Health and includes infectious disease experts, public health
26 epidemiologists, physicians, scientists with expertise in diagnostic testing, statisticians and data
27 scientists. *Id.* Between May and June 2020, this committee evaluated all options for providing a
28 healthy and effective learning environment for the 2020-21 academic year, assessing all options
from full remote instruction to return to mostly in-person instruction. *Id.* ¶ 8. On June 17, 2020,
the committee issued its report recommending that “[t]o the extent that any classes occur in
person” in the Fall 2020 semester, such classes should be limited to “26 [individuals] or under
(including instructors).” The report also explained that “remote access will likely be required for
most if not all classes because at-risk participants may not be able to attend in person.” *Id.* at ¶ 9.

1 change, based on new information that infections are now surging in California and elsewhere.
 2 *E.g.*, Schooley Decl. ¶ 16; Wakimoto Decl. ¶ 9.

3 On May 22, 2020, recognizing the need to dramatically transform on-site operations, The
 4 Regents released the “University of California Consensus Standards for Operation of Campus and
 5 ANR Locations in Light of the SARS-CoV-2 Pandemic.” Christ Decl. ¶ 6, Ex. A. In light of
 6 these recommendations and in reliance on the March 13 Guidance, UC Berkeley’s Chancellor
 7 announced that the Fall 2020 semester would be online with only limited in-person instruction. *Id.*
 8 ¶ 11. Other campuses made similar announcements. *E.g.* Deas Decl. ¶ 15; Schooley Decl. ¶ 13;
 9 Wakimoto Decl. ¶ 9. Even those courses with limited in-person instruction will also allow for
 10 remote attendance. Christ Decl. ¶ 6; Deas Decl. ¶ 15. To implement these recommendations, the
 11 campuses expended further time and resources developing a class schedule that accounted for the
 12 number and nature of courses and whether they would be held entirely online or in person. *E.g.*,
 13 Christ Decl. ¶ 12; Schooley Decl. ¶¶ 13-14; Deas Decl. ¶¶ 15, 20.

14 These precautions have been put in place with additional specific consideration for the
 15 University faculty and others with pre-existing health conditions. Christ Decl. ¶ 17. For example,
 16 the average UC Berkeley faculty member is 52 years old, with many faculty members over the
 17 age of 65. Christ Decl. ¶ 17(d). According to the CDC, while every human is at risk from
 18 COVID-19, older adults are at the highest risk for severe illness or death.

19 UC Berkeley, like all other UC campuses, has spent months preparing for the Fall
 20 semester. *See, e.g.*, Christ Decl. ¶ 16; Deas Decl. ¶ 20; Schooley Decl. ¶ 15. For example, at UC
 21 Berkeley, Fall semester enrollment begins on July 8, 2020, and UC Berkeley students report back
 22 to campus in a few weeks for classes beginning on August 26, 2020. Christ Decl. ¶ 16. Other UC
 23 campuses offer undergraduate classes starting in September. It would be extremely difficult at this
 24 point for any of the campuses to develop a revised educational plan that would enable all
 25 international students to maintain their visas under the Directive. In addition to the University’s
 26 determinations regarding the risk of reopening or adding more in-person instruction, it is an unfair
 27 and unnecessary drain on public resources to require the University to upset months of planning
 28 for the Fall semester within a matter of mere weeks.

D. The Loss of International Students Enrolled Across Campuses Will have Substantial Adverse Effects Throughout the University System.

The loss of international students enrolled at the University will have substantial adverse effects. Nearly 30% of UC Berkeley's graduate programs and 50% of its graduate engineering program students are international students potentially affected by the Directive. *Id.* ¶ 17; *see also* Deas Decl. ¶ 21(b). These graduate students, in addition to performing critical research roles, have obligations as teaching assistants. *Id.* The loss of these students would have significantly detrimental effects on UC Berkeley's ability to carry out its instruction of undergraduates.¹¹ *Id.* The University's research mission also depends on numerous international partnerships and collaborations, which in turn depend on the recruitment and enrollment of the best and brightest students from across the world, particularly in the science, technology, engineering, and mathematics ("STEM") disciplines. Christ Decl. ¶ 18; *see also* Schooley Decl. ¶ 20(b). Even a semester-long disruption in the University's ability to conduct significant STEM research would have detrimental effects on it as an international research university.¹² *Id.* Further, the loss of diversity at the University should international students be forced to withdraw will have a negative pedagogical impact on all students, who will be deprived of the diversity of perspectives and experience that enrich the learning environment. Christ Decl. ¶ 17; *see also* Deas Dec. ¶ 21(d); Schooley Decl. ¶¶ 20(d), 21(g).

As a result, the Directive forces University campuses to choose between losing numerous

¹¹ Tuition paid by international students is significant to UC's finances. *Id.* ¶ 17. International undergraduate students in the University of California system accounted for approximately \$1.1 billion in tuition and fee receipts in the 2019-2020 school year.. Alcocer Decl. ¶ 5. Tuition and fees attributable to international graduate students account for an additional \$350 million. *Id.* ¶ 6. This financial shortfall cannot easily be recouped through enrollment of other students, particularly due to the difference in tuition between in-state and out-of-state students. *Id.* ¶ 9. These negative financial impacts also affect UC's ability to support financial aid and to undertake infrastructure improvements across campuses. *Id.*

¹² Representative research at UC Berkeley that relies in significant part on the enrollment of international students includes, *inter alia*, a project for the U.S. Army in which UC Berkeley students are conducting cutting-edge research related to drone technology and a research program developing projection algorithms to predict COVID-19 cases, hospitalizations, ICU admissions, and ventilator needs at the county and hospital level throughout the United States. In each case, the loss of international students with discrete and unique skillsets would create extensive delays unacceptable to UC's partners and to society writ large. *Id.* ¶ 18.

1 international students who bring immense benefits or taking steps to provide in-person instruction
 2 against the sound judgment of University and public health experts about how best to protect the
 3 health of the University's students, faculty, and staff. *Id.* ¶ 21. Each University campus would be
 4 forced to increase the number of in-person classes available, thereby increasing the risk of
 5 exposure to the COVID-19 virus to other members of the community, including the faculty
 6 required to lead those in-person classes as well as the staff needed to support those in-person
 7 activities. *See, e.g., id.* Further, to comply with the Directive, the University will be required to
 8 reissue thousands of Form I-20 documents for the F-1 visa holders across each of its campuses.
 9 *Id.* at ¶ 17. At UC Berkeley alone, this will require hundreds of staff hours to complete. *Id.*

10 **E. Students' Reliance on ICE's March 13 Guidance**

11 As a result of the University's response to the COVID-19 pandemic, which relied in part
 12 on the March 13 Guidance, all University students in effect have relied on the March 13 Guidance
 13 in planning to attend the University this Fall. International and U.S.-based students alike have
 14 taken out loans and made housing arrangements or moved home for the Fall semester anticipating
 15 that their studies would resume through remote instruction. Many international students have
 16 returned to their home countries in reliance on the government's instruction that their studies
 17 could resume online. Many of those students are now unable to return to the United States
 18 because of travel restrictions, the government's refusal to re-issue visas and, now, the
 19 government's insistence that universities certify that their instruction will proceed in person. *See,*
 20 *e.g., id.* ¶ 19. Other students who have remained in the United States will be forced to leave under
 21 the Directive and will be forced to break leases and pay resulting penalties. *Id.* ¶ 19.

22 Practically, it is too late for any student to transfer to another university, mere weeks
 23 before the start of the Fall semester, especially international students who must find a university
 24 in this country that can certify its intent to offer a mostly in-person curriculum despite the
 25 significant health risks involved in doing so. Even if students wanted to transfer, it is also
 26 unlikely that there would be sufficient alternative in-person programs in the country for all
 27 international students given the substantial liability to universities and the risk to student, faculty,
 28 and staff.

Moreover, international students face emotional and psychological trauma from the sudden and unanticipated disruption to their ability to pursue their education in the United States, the inability to participate in U.S.-based practical training opportunities (e.g. internships) which will further negatively impact their professional prospects, violence and poverty afflicting their home countries, and being forced to return to home country living situations without reliable, high-speed internet access necessary for remote instruction. *E.g. id.* ¶ 19; Schooley Decl. ¶ 21.

F. ICE’s Sudden and Arbitrary Rescission of the March 13 Guidance

Despite the President’s continuing national emergency declaration and the March 13 Guidance’s express statement that its exemption from the in-person class requirement would remain “in effect for the duration of the [COVID-19] emergency,” on July 6, 2020, ICE suddenly and arbitrarily reversed its course, stating:

- 1) recipients of F-1 visas are no longer permitted to “take a full online course load and remain in the United States”;
- 2) “[a]ctive students currently in the United States enrolled in such programs must depart the country or take other measures, such as transferring to a school with in-person instruction to remain in lawful status or potentially face immigration consequences” such as the initiation of removal proceedings;
- 3) no new F-1 visas would issue to students planning to enroll in programs that will be fully online for the fall semester;
- 4) “students attending schools offering a hybrid model – that is, a mixture of online and in person classes – will be allowed to take more than one class or three credit hours online,” provided that for each such student, the school certifies by August 4, 2020, “within 21 business days of publication” of the Directive, “that the school is not operating entirely online, that the student is not taking an entirely online course load for the fall 2020 semester, and that the student is taking the minimum number of online classes required to make normal progress in their degree program.”

The Directive also re-characterizes ICE’s March 13 Guidance, stating that the earlier guidance “instituted a temporary exemption regarding the online study policy for the *spring and summer* semesters.” (emphasis added). Nothing in the March 13 Guidance, however, suggests any such temporal limit. To the contrary, the March 13 Guidance explicitly stated it would remain “in effect for the duration of the emergency.” Nowhere in the Directive or accompanying News Release does ICE provide any justification for the reversal of policy, nor is there any indication

1 that the government undertook any consideration or analysis of relevant factors such as the impact
 2 of the reversal on the health and safety of university students, faculty, and staff, the effect on
 3 public health for the communities surrounding every academic institution affected by the policy
 4 change, or the justifiable reliance on the March 13 Guidance by universities and students in
 5 planning for the Fall 2020 term. The Directive also contains no acknowledgement of the
 6 ongoing—indeed, rapidly-worsening—COVID-19 pandemic.

7 **III. LEGAL STANDARD**

8 The standard for issuing a temporary restraining order is “substantially identical” to the
 9 standard for issuing a preliminary injunction. *Stuhlbarg Int’l Sales Co., Inc. v. John D. Brush &*
 10 *Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001). A temporary restraining order may properly issue
 11 where the plaintiff establishes that (1) it is “likely to succeed on the merits,” (2) it is “likely to
 12 suffer irreparable harm in the absence of preliminary relief,” (3) “the balance of equities” tips in
 13 its favor, and (4) an “injunction is in the public interest.” *Alliance for the Wild Rockies v.*
 14 *Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011) (quoting *Winter v. Nat. Res. Def. Council*, 555 U.S.
 15 7, 20 (2008)). In certain cases, “serious questions going to the merits” and a hardship balance that
 16 tips sharply toward the plaintiff can support the issuance of a temporary restraining order,
 17 assuming the other two *Winter* elements are met. *Alliance for the Wild Rockies*, 632 F.3d at 1132.
 18 Serious questions “need not promise a certainty of success, nor even present a probability of
 19 success, but must involve a fair chance of success on the merits.” *Republic of the Philippines v.*
 20 *Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988) (internal citations omitted). Under the Ninth
 21 Circuit’s “sliding scale” approach, “the elements of the preliminary injunction test are balanced,
 22 so that a stronger showing of one element may offset a weaker showing of another.” *Pimentel v.*
 23 *Dreyfus*, 670 F.3d 1096, 1105 (9th Cir. 2012) (internal citations omitted).

24 **IV. ARGUMENT**

25 This case arises under the Administrative Procedure Act, which requires that the Court set
 26 aside agency action that is, *inter alia*, arbitrary and capricious, otherwise unlawful, or taken
 27 without observing procedure required by law. *See* 5 U.S.C. § 706(2)(A), (D). ICE’s July 6
 28 Directive fails under the APA standard in at least two general respects: it is both (i) arbitrary and

1 capricious for lack of any reasoned explanation and for failure to consider factors plainly relevant
 2 to such a significant reversal of policy, and (ii) defective because ICE failed to provide the public
 3 advance notice of its proposed action or any opportunity to comment on it before finalization.

4 The July 6 Directive is arbitrary, capricious, or otherwise unlawful for at least three more
 5 specific reasons. *First*, ICE failed to offer a reasoned explanation for its sudden reversal of the
 6 March 13 Guidance—which ICE had stated expressly would extend “for the duration of the
 7 emergency.” When the government reverses its own earlier policy, it must “acknowledge and
 8 provide an adequate explanation for its departure from established precedent, and an agency that
 9 neglects to do so acts arbitrarily and capriciously.” *Jicarilla Apache Nation v. U.S. Dep’t of the*
 10 *Interior*, 613 F.3d 1112, 1119 (D.C. Cir. 2010) (internal citations omitted); *see also Encino*
 11 *Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016) (agency departure from prior policy
 12 impermissible without “explaining its changed position”); *Dep’t of Homeland Security v. Regents*
 13 *of the Univ. of Cal.*, No. 18-587, 2020 WL 3271746 (U.S. June 18, 2020) (“Regents”), at *14-15
 14 (slip op.) at 23-24.

15 *Second*, ICE failed to consider important aspects of the problem, including: (1) the health
 16 risks associated with its new policy; the burden on universities of having to certify thousands of
 17 F-1 visa-holding students as complying with the Directive’s strictures regarding in-person
 18 instruction, all by August 4, when most students will not yet committed to their classes; (2) the
 19 impact of the reversal on the finances of, and other costs that must be borne by universities, due to
 20 the loss of tuition from F-1 students who disenroll or from having now to provide safe in-person
 21 instruction and certify that each student engaged in a hybrid program meets the Directive’s
 22 requirements; and (3) the many reliance interests, both of the University and its F-1 students, that
 23 ICE’s now abandoned March 13 Guidance engendered. An agency must grapple with such issues
 24 when it issues a substantive rule affecting the rights or obligations of individuals or entities.¹³ *See*
 25

26 ¹³ ICE concedes its July 6 Directive is intended to operate as a final rule. The Guidance itself
 27 states that the “U.S. Department of Homeland Security plans to publish the procedures and
 28 responsibilities in the below Broadcast Message [the July 6 Directive] in the near future *as a*
Temporary Final Rule in the Federal Register.” (Emphasis added).

1 *Encino Motorcars*, 136 S. Ct. at 2124-2126.

2 *Third*, ICE failed to articulate any rational connection between the facts it found and the
 3 choice it made. *See Northwest Env'tl. Def. Ctr. v. Bonneville Power Admin.*, 477 F.3d 668, 687
 4 n.15 (9th Cir. 2007); *Humane Soc'y of U.S. v. Locke*, 626 F.3d 1040, 1051 (9th Cir. 2010).

5 Further, the July 6 Directive is fatally flawed, because it is a substantive rule affecting the
 6 rights and obligations of the University and its students, and the promulgation of which required
 7 ICE to first give notice to the public of its intent to adopt the rule, and provide any interested
 8 person with an opportunity to comment before the Directive was finalized. 5 U.S.C. § 553(b). It
 9 did not do that and, therefore, the July 6 Directive is unlawful for failure to follow the rulemaking
 10 procedure required by the APA.

11 On both counts, Plaintiff is likely to succeed on the merits. The other preliminary
 12 injunction requirements are likewise readily satisfied. As the supporting declarations make
 13 abundantly clear, the University of California system stands to suffer substantial and irreparable
 14 harm absent a temporary restraining order preserving the status quo. The balance of the equities
 15 also weighs heavily in favor of a TRO: Plaintiff and its students will be injured immediately and
 16 irreparably under the July 6 Directive, while the United States stands to lose nothing if the
 17 Directive is enjoined. After all, a TRO would merely maintain the status quo the government
 18 itself instituted, responsibly, in its March 13 Guidance, which it stated at the time would remain in
 19 place for the duration of the emergency. The emergency is not over. Finally, a TRO is in the
 20 public interest. The value to the public of colleges and universities of having vibrant and diverse
 21 student bodies, including international students, is obvious—that value manifests not merely in
 22 the form of the cultural experiences of individual students or the student body and campus life
 23 generally, but in the economies of the host communities. If the international students leave, that
 24 value to the public is lost. And if, alternatively—in an effort to salvage their international student
 25 bodies—schools try to accommodate the July 6 Directive by reverting to in-person instruction
 26 while the pandemic is still raging and thus risking increased transmission and community spread,
 27 the public is harmed in all the ways public health officials have been warning about.

28 ///

A. THE REGENTS ARE LIKELY TO SUCCEED ON THE MERITS.

1. The Regents Are Likely to Prevail on the First Cause of Action Under the APA Because the July 6 Directive is Arbitrary and Capricious.

The Administrative Procedure Act “sets forth the procedures by which federal agencies are accountable to the public and their actions subject to review by the courts.” *Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992). In evaluating whether agency actions are reasonable and lawful, courts must conduct a “thorough, probing, in-depth review” of the agency’s reasoning and a “searching and careful” inquiry into the factual underpinnings of the agency’s decision. *Citizens to Preserve Overton Park, Inc. v. Volpe*, 401 U.S. 402, 415–16 (1971). A court “shall” set aside agency action if it is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A); *see also Butte Env’tl. Council v. U.S. Army Corps of Eng’rs*, 620 F.3d 936, 945 (9th Cir. 2010). Agency action should be set aside as arbitrary and capricious if the agency fails to explain the basis of its decision, fails to consider all relevant factors and articulate a “rational connection between the facts found and the choice made,” or fails to offer a “reasoned explanation” for departures from preexisting policies. *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (internal citation omitted); *Encino Motorcars*, 136 S. Ct. at 2126 (in explaining its changed position, an agency must also be cognizant that prior policies may have “engendered serious reliance interests that must be taken into account”); *see also Regents*, 2020 WL 3271746, at *14. The Directive fails each of these requirements.

a. The Directive Failed to Offer a Reasonable Explanation for ICE’s Policy Reversal.

As an initial matter, the Directive turns a blind eye to the reliance colleges and universities and their international students placed on the March 13 Guidance in planning for the Fall 2020 semester. Having stated in that earlier Guidance that the policy would remain in effect “for the duration of the emergency,” it was nothing short of shocking that ICE would announce in the Directive that F-1 students would not be allowed into the country or, if already here, would be required to leave the country, if their schools are not intending to provide traditional classroom

1 instruction, and that universities would have to certify by August 4 that the courses selected by
 2 thousands of international students in hybrid programs meet the Directive's in-person classroom
 3 strictures. The July 6 Directive never acknowledges what the March 13 Guidance actually said:
 4 that it would remain in place for the duration of the emergency. The Directive instead states that
 5 ICE had only provided guidance for the "spring and summer semesters." That is not correct.

6 Even where authorized to do so, when a federal agency reverses its own prior policy, it
 7 must "acknowledge and provide an adequate explanation for its departure from established
 8 precedent, and an agency that neglects to do so acts arbitrarily and capriciously." *Jicarilla*, 613
 9 F.3d at 1119 (D.C. Cir. 2010) (internal citation omitted); *see also Encino Motorcars*, 136 S. Ct. at
 10 2126 (agency cannot depart from prior policy without "explaining its changed position");
 11 *Regents*, 2020 WL 3271746, at *14-15 (finding that DHS's decision to rescind DACA was
 12 arbitrary and capricious, in part because DHS's memorandum rescinding the DACA policy failed
 13 to consider certain aspects of policy). Thus, reversing a pre-existing policy requires a "more
 14 detailed justification than what would suffice for a new policy created on a blank slate." *FCC v.*
 15 *Fox Telev'n Stns., Inc.*, 556 U.S. 502, 515 (2009).

16 Here, as discussed, the Directive represents a complete reversal of Defendants' earlier
 17 Guidance on not only the existence and severity of the COVID-19 pandemic but, more
 18 importantly, the ability of students studying on F-1 visas "to continue to make progress in a
 19 normal course of study." *See* March 9 Guidance at 1. The failure to provide any justification for
 20 the reversal is contrary to law and requires that the Directive be set aside.

21 **b. The Directive Failed to Consider Important Aspects of the**
 22 **Problem, Including the Reliance of Plaintiff and Its Students on**
 23 **the March 13 Guidance.**

24 Further, the Directive fails to consider, much less evaluate, the significant reliance
 25 interests of both the University and its affected students engendered by the current DHS/ICE
 26 policy. *Regents*, 2020 WL 3271746 at *4; *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 106
 27 (2015) (government must provide special justification "when its prior policy has engendered
 28 serious reliance interests that must be taken into account"). The Directive also fails to consider the
 health risks that a broader re-opening of in-person classes would entail; the burdens on the

1 universities (and the likely impossibility) of having to certify, by August 4, that the courses
 2 chosen by each F-1 visa holder in a hybrid program comply with the in-person classroom
 3 strictures of the Directive; and the financial and other impacts the Directive would have on
 4 universities and their educational programs, as well as on students, faculty and staff.

5 The March 13 Guidance expressly permitted F-1 students to “participate in online or other
 6 alternate learning procedures” and assured universities and students that the policy would be “in
 7 effect for the duration of the emergency.” *See* March 13 Guidance; *see also id.* at 1-2 (applying
 8 same policy to international students who return to their home countries and continue to take
 9 classes on-line). To change this policy with no notice and without considering any of these
 10 effects, is an arbitrary, capricious, and unreasoned agency action. It must be set aside.

11 Based in part on the March 13 Guidance, the University started preparing and planning for
 12 the Fall 2020 semester four months ago. *See* Christ Decl. ¶ 3. Specifically, at each campus, the
 13 University engaged its faculty in the assessment and development of COVID-19 recovery and
 14 resiliency planning to ensure the safety of its university community while continuing to carry out
 15 its education and research mission. *See generally id.*, ¶¶ 4-17. The University invested millions of
 16 dollars and thousands of faculty hours tackling important considerations impacting health and
 17 safety. Alcocer Decl., ¶ 10. At UC Berkeley alone, nine committees of experts across numerous
 18 disciplines have worked for months to determine the University’s best course forward in the Fall.
 19 Christ Decl., ¶ 4. Relying on the fact that international students would continue their studies
 20 online, the University administration and various working groups devised a complex course
 21 schedule that accounted for the large number of courses and the nature of individual courses and
 22 the feasibility of transitioning those courses to online instruction. *Id.* ¶ 12. The University’s Fall
 23 semester curriculum assumed that international students would continue to be enrolled at the
 24 University even if their classes would be held primarily online. *Id.* at ¶¶ 11-16. Also relying on
 25 the March 13 Guidance, the University’s Fall curriculum assumed that international graduate
 26 students would continue in their roles as teaching assistants. Similarly, the University’s budget for
 27 the Fall semester assumed the continued enrollment of international students. Alcocer Decl., ¶¶ 5-
 28 6. The disenrollment of international students from the University in the Fall semester alone

1 resulting from the enforcement of the Directive could be substantial, and likely cannot be made
2 up by extending offers at this late date to U.S.-based students. *Id.*

3 UC's students who hold F-1 visas relied on the March 13 Guidance as well. *See* Christ
4 Decl. ¶19. Many international students continued to live near their campuses in reliance on the
5 fact that they could continue their instruction, albeit online, through the Fall semester. *Id.* If the
6 Directive is enforced, those students who remained in the U.S. during the Summer would be
7 forced to break their leases at great expense. *Id.* Those students who have already left the country
8 planning to return for the Fall semester, have not made plans to transfer to other universities – and
9 are to suffer significant interruption in their education with negative impacts to their career
10 prospects. Other international students will be unable to participate in U.S.-based practical
11 training opportunities like internships that will further impact their development of practical skills
12 and professional networks.

13 Had these international students known that Defendants would abruptly issue its
14 Directive, thereby reversing the March 13 Guidance, these students could have made other
15 arrangements for Fall 2020. Now, it is too late to expect students to transfer to other universities,
16 especially for those students in specialized courses of study, as the Directive suggests that
17 students may do. Moreover, similarly-situated universities dealing with the devastating effects of
18 COVID-19—indeed, all of them—would also be forced to primarily offer online instruction. The
19 government's facile instruction that international students simply enroll in a different university
20 offering in-person instruction is particularly cruel under the circumstances.

21 Beyond reliance interests, the Directive is oblivious to other important aspects of the
22 problem. Among other things, Defendants failed to consider the social, academic, and research
23 impacts of their decision. Many students have already reported the emotional and psychological
24 harm from the sudden, unanticipated about-face in the government's immigration policy. Others
25 have expressed concern about being forced to return to the violence and poverty afflicting their
26 home countries or being forced to return to their home countries where there may not be adequate
27 access to reliable high-speed internet required for remote learning technologies.

28 The Directive also fails to account for the various benefits and contributions made by

international students to institutions of higher learning. *All* students benefit from a diversity of perspectives and experiences. Depriving universities of a key element of their diverse student bodies does real damage to the institution of learning and to all students' educational experience. Moreover, international students play critical roles in the University's research partnerships as discussed above. The threat to the University's research objectives caused by the removal of international students merely because their coursework will take place online in the midst of a global pandemic is substantial. In some cases, the setback in research due to the loss of the unique skillsets of many international students is months, if not years. *See* Christ Decl. ¶ 18; Deas Decl. ¶¶ 21(a), 23; Schooley Decl. ¶ 20(a). Further, Defendants have not acknowledged, much less analyzed or considered, the extreme setback to public health that their July 6 Directive represents. As a result of the significant losses threatened by the disenrollment of thousands of international students, the July 6 Directive will likely force universities to prematurely revert to in-person instruction, upending any gains made by communities in quelling the rapid spread of COVID-19 and squandering the past sacrifice of millions across this country. Many of these harms are explained further below, in the discussion of irreparable harm, and detailed more completely in the attached declarations. But in addition to the Court's evaluation of the gravity of the harms for purposes of that separate prong of the TRO test, it must consider ICE's lack of attention to these harms in evaluating the reasonableness of the agency's action. Here, the July 6 Directive lacks the *sine qua non* of lawful agency action: reasoned decision-making. *See Regents*, 2020 WL 3271746, at *15.

c. Defendants Failed to Explain Any Basis for the Directive.

The Directive is arbitrary and capricious also because it does not articulate *any* rationale that would justify ICE's decision. It is "a fundamental requirement of administrative law ... that an agency set forth its reasons for decision; an agency's failure to do so constitutes arbitrary and capricious agency action." *Amerijet Int'l, Inc. v. Pistole*, 753 F.3d 1343, 1350 (D.C. Cir. 2014) (internal citation omitted). "[C]onclusory statements will not do; an agency's statement must be one of *reasoning*." *Id.* (internal marks omitted); *see also Dep't of Commerce v. New York*, 139 S. Ct. 2551, 2569 (2019) (an agency must "articulate[] a satisfactory explanation for [its] decision").

1 The two and one-half page Directive fails this threshold test. It threatens to inflict grievous
 2 harm on hundreds of thousands of F-1 visa-holding university students who were invited to study
 3 at American universities, including the potential for removal proceedings to make them leave,
 4 without providing *any* explanation—much less a clear and adequate explanation—as to why.

5 The sole statement that might be considered a “justification” is the statement that while
 6 “accommodations to provide flexibility to schools and nonimmigrant students” may be made,
 7 such accommodation must be weighed against “a concordant need to resume the carefully
 8 balanced protections implemented by federal regulations.” Compl., Ex. A at 1. Such threadbare
 9 and cryptic justification is woefully deficient, if for no other reason than the fact that it cannot
 10 possibly be based on “the relevant data,” such as the well-documented fact that the COVID-19
 11 health crisis is currently intensifying, not abating. *See Dep’t of Commerce v. New York*, 139 S. Ct.
 12 at 2569. This is demonstrable from the simple fact that the rate of infections and hospitalizations
 13 is greater today than it was when the March 13 Guidance issued. Moreover, the government itself
 14 is predicting that as many as 1.5 million people may ultimately die from COVID-19 illness, with
 15 nearly 210,000 of those deaths occurring by November 1. Thus, to the extent that this statement
 16 can be read as the federal government’s justification for its abrupt about-face from its March 13
 17 Guidance, it is inadequate as insufficiently based on fact and reason.

18 Moreover, DHS has admitted publicly that the *actual* basis for the reversal of the policy
 19 rests on political considerations rather than rational decision-making after reasoned deliberation
 20 and consultation with experts. Acting Deputy Secretary of Homeland Security Kenneth Cuccinelli
 21 set pretext aside when he plainly announced, on July 7, 2020, that the F-1 visa policy change is
 22 designed to “encourage schools to reopen.”¹⁴

23 In light of Defendants’ failure to provide any comprehensible rationale for its about-face,
 24 the Directive rescinding the March 13 Guidance should be set aside. *SEC v. Chenery Corp.*

25
 26 ¹⁴ John Bowden, *Cuccinelli says rule forcing international students to return home will*
 27 *‘encourage schools to reopen’* (July 7, 2020, 4:17 PM),
 28 <https://thehill.com/homenews/administration/506248-cuccinelli-says-rule-forcing-international-students-to-return-home>

1 (“*Chenery II*”), 332 U.S. 194, 196–97 (a court cannot “be compelled to guess at the theory
 2 underlying the agency’s action; nor can a court be expected to chisel that which must be precise
 3 from what the agency has left vague and indecisive.”); *Nat’l Ass’n of Home Builders v. Norton*,
 4 340 F.3d 835, 849 (9th Cir. 2003) (same).

5 **2. The Regents Will Likely Prevail on Its Second APA Cause of Action,**
 6 **Because the Directive is a Substantive Rule that Did Not Comply with**
 7 **the APA’s Notice and Comment Requirements**

8 The Regents are also likely to succeed on its claim that the Directive purporting to rescind
 9 the March 13 Guidance also fails to meet the APA’s procedural requirements. The Directive is a
 10 legislative rule compelling universities to take certain action, not previously required, under pain
 11 of being deemed out of compliance. Indeed, ICE states in the Directive itself that it intends to
 12 publish its content at some future time in the Federal Register as a Temporary Final Rule.

13 Because the Directive is a legislative rule, DHS was required to abide by the full panoply of APA
 14 procedures, including providing notice and an opportunity for public comment. It failed to do so.

15 Under the APA, courts must set aside agency action that is taken without observance of
 16 procedures required by law. 5 U.S.C. § 706(2)(D). An agency’s substantive rules must go through
 17 the APA’s notice and comment rulemaking requirements before they become effective. *See* 5
 18 U.S.C. § 553(b), (c); *San Diego Air Sports Ctr., Inc. v. F.A.A.*, 887 F.2d 966, 971 (9th Cir. 1989).
 19 A rule is substantive if it “narrowly limits administrative discretion” or establishes a “binding
 20 norm” that “so fills out the statutory scheme that upon application one need only determine
 21 whether a given case is within the rule’s criterion.” *Colwell v. Dep’t of Health & Human Servs.*,
 22 558 F.3d 1112, 1124 (9th Cir. 2009). Put another way, an agency’s substantive rule that has the
 23 “force and effect of law” is subject to the APA’s notice and comment procedures. *Chrysler Corp.*
 24 *v. Brown*, 441 U.S. 281, 302-303 (1979); *accord Ciox Health, LLC v. Azar*, 435 F. Supp. 3d 30,
 25 66 (D.D.C. 2020) (explaining that “a rule is legislative, and therefore must undergo notice and
 26 comment, when it ‘change[s] the law,’” and concluding that HHS’s amended rule and guidance
 27 regarding fees for delivering health records was a legislative rule subject to notice and comment)
 28 (*quoting Nat’l Res. Def. Council v. EPA*, 643 F.3d 311, 320 (D.C. Cir. 2011)).

Here, the Directive is a substantive rule for which the APA’s notice and comment

requirements applied. Among other things, because the University is adopting a hybrid model – that is, a mixture of on-line and in-person classes –for the Fall 2020 semester, the Directive compels the University to certify to SEVP for each of its 37,000-plus F-1 students that, among other things, “the student is not taking an entirely on line course load” by August 4, 2020. Christ Decl. ¶ 17(f). This is a significant burden on the University as it will require thousands of hours of staff time, further exacerbated by the fact that only designated school officials certified by DHS may perform these tasks, thereby significantly limiting the University’s ability to adapt to this substantial added burden. *Id.* The Directive also compels F-1 visa students to take courses in-person to be able to remain in the United States to continue pursuing their studies or face the threat of visa revocation or even removal. ICE/SVEP is also conditioning the UC students’ maintenance of their F-1 nonimmigrant status upon compliance with the Directive. The Directive is indisputably a substantive rule, subject to notice and comment requirements.

B. THE REGENTS AND ITS STUDENTS ARE LIKELY TO SUFFER IRREPARABLE HARM.

The Directive is already inflicting severe and irreparable harm on the University. UC is being forced right now to grapple with decisions with life-altering consequences for its international students as well as serious impacts to the health and safety of everyone affiliated with the University and the communities that it serves. The Directive presents the University with a Hobson’s choice: reopen more of its lecture halls, dormitories, and dining halls at great risk to the health of all of its students, faculty, and staff, *or* effectively prevent UC students who hold F-1 visas the opportunity to carry out their studies and, thus, deprive all other UC students of the diversity of opinion and perspective that they expect and is central to the pedagogy of a world-class academic institution. UC’s impossible decision threatens irreparable consequences for its academic community, including the immediate loss of valued students and the erosion of any gains made to date in protecting its community from an even higher rate of transmission of the potentially deadly COVID-19 virus. That the Directive theoretically permits UC students with F-1 visas to transfer to another university does not materialize into realistic options for UC students at this time. In this situation, “[a] delay, even if only a few months, pending trial represents precious,

productive time irretrievably lost.” *Enyart v. Nat’l Conference of Bar Examiners, Inc.*, 630 F.3d 1153, 1166 (9th Cir. 2011) (internal citation omitted). Moreover, it is no solution to permit international students to take a “hybrid” course load where then any international student with a pre-existing medical condition that makes him or her susceptible to severe illness resulting from COVID-19 would be unfairly discriminated against for opting not to attend in person classes.

The Directive further creates economic harm to the University. *See* Alcocer Decl. ¶¶ 5-6. Moreover, the budget shortfall will also prevent the University from carrying out planned infrastructure and capital improvements to its campus facilities. *Id.* ¶ 9. Even before the Directive, the University was reeling from the economic fall-out of the COVID-19 pandemic and the resultant transition to on-line learning. Indeed, the University spent millions developing its COVID-19 recovery and resiliency plans, which investment would be rendered meaningless if the University were forced to abandon its well-considered plan to protect the health of its community. *Id.* ¶ 10. Furthermore, the University estimates that it will have to expend significant resources to reissue I-20 forms for the thousands of students affected by the Directive. *See* Christ Decl., ¶ 17.

More importantly, if the Directive is implemented, the University will suffer the loss of many international students that are vital to the pedagogy of its lecturers, the vibrancy of its culture, and the success of its research programs. The University and surrounding community will further lose the substantial economic benefit from international students. Christ Decl. ¶ 19(d).

C. THE BALANCE OF EQUITIES AND THE PUBLIC INTEREST WEIGH HEAVILY IN FAVOR OF A TEMPORARY RESTRAINING ORDER.

The final elements of the preliminary injunction test—the balance of the equities and the public interest—merge when the government is a party. *See League of Wilderness Defs./Blue Mountains Biodiversity Project v. Connaughton*, 752 F.3d 755, 766 (9th Cir. 2014). In assessing these factors, courts consider the impacts of the injunction on nonparties as well. *See id.* at 766.

The balance of the equities and the public interest weigh overwhelmingly in favor of granting a temporary restraining order to the Regents to maintain the status quo, in advance of the August 4 deadline to submit Form I-20 certifications to ICE. Compl., Ex. A at 2. While UC and its students holding F-1 visas will be severely impacted should the Directive be implemented, the

Defendants face no articulable harm should the Court grant a temporary restraining order. Since Defendants intended for the March 13 Guidance to remain “in effect for the duration of the emergency,” they cannot now claim that they will be harmed by the continuation of their sound, prior policy. As discussed in detail above, the public health emergency caused by the COVID-19 pandemic is ongoing, and there is no reasonable basis to contend otherwise. Further, the reversal in policy appears to stem from a desire to reopen schools regardless of whether doing so will harm the health and lives of university students, faculty, and staff and place other with whom university community members come into contact at risk. The balance of equities between UC’s goal of protecting the health and well-being of its community and maintaining its academic freedom on the one hand, and a federal government seeking to recklessly force in person activity at universities on the other, tips sharply in favor of granting the temporary restraining order. It is abundantly in the public interest that Defendants be enjoined from carrying out their arbitrary and capricious plan to force the premature transition of universities to in-person learning.

Finally, a temporary restraining order is appropriate where, as here, the hardship balance tips sharply toward the plaintiff, and the plaintiff has articulated “serious questions going to the merits.” *Alliance for the Wild Rockies*, 632 F.3d at 1132. The Regents have demonstrated “a fair chance of success on the merits” on their claims and irreparable harm if the Directive is permitted to proceed. Further, the balance of equities and the public interest favors the Regents.

V. CONCLUSION

For all the above reasons, this Court should issue a TRO which (i) enjoins Defendants from proceeding with their July 6 Directive and (ii) orders that Defendants preserve the status quo ante pending adjudication of this dispute on the merits.

1 Dated: July 10, 2020

Respectfully submitted,

2 CROWELL & MORING LLP

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO/OAKLAND DIVISION

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA, a California
Corporation,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; CHAD F. WOLF, in
his official capacity as Acting Secretary of
the United States Department of
Homeland Security; and MATTHEW
ALBENCE, in his official capacity as
Acting Director of U.S. Immigration and
Customs Enforcement,

Defendants.

Case No.:

DECLARATION OF DAVID ALCOCER

***[Filed Concurrently with Ex Parte Application
to Shorten Time]***

Date: July 13, 2020

Time: TBD

Ctrm: TBD

Judge: TBD

Complaint filed: July 10, 2020

1 I David Alcocer, declare:

2 1. I am Associate Vice President for Budget Analysis and Planning at the University
3 of California (the “University”), Office of the President (“UCOP”). The matters set forth herein
4 are true and correct of my own personal knowledge and, if called as a witness, I could and would
5 testify competently thereto.

6 2. As Associate Vice President for Budget Analysis and Planning, I am responsible
7 for overseeing the University’s system-wide operating budget and University policies regarding
8 the allocation of revenues across campuses.

9 3. I received my B.S. in Political Science from Massachusetts Institute of
10 Technology, a Master of Industrial Relations (M.I.L.R.) from Cornell University, and a Master of
11 Business Administration (M.B.A.) from Cornell University. I have worked in my current role as
12 Associate Vice President for Budget Analysis and Planning for UCOP since July 2016.

13 4. As part of my role as Associate Vice President for Budget Analysis and Planning, I
14 am very familiar with University tuition and fees, the expenses attendant with running one of the
15 nation’s largest and best systems of higher education, and the financial impact that international
16 student enrollment and tuition and fee payments by such international students have on the overall
17 budget of the University of California. Tuition and fees assessed to international students
18 typically range from approximately \$29,000 to \$44,000 per year, depending on the program (*e.g.*,
19 undergraduate, graduate academic, or graduate professional) in which they are enrolled.

20 5. Based on 2019-20 student enrollment levels and tuition and fee rates, the total
21 tuition and fees attributable to international undergraduate students in the University of California
22 system was approximately \$1.1 billion.

23 6. Further, based on 2019-20 student enrollment levels and tuition and fee rates, the
24 total tuition and fees attributable to international students in graduate academic programs in the
25 University of California system was approximately \$270 million. The total tuition and fees
26 attributable to international students in graduate professional programs in the University of
27 California system was approximately \$80 million.

28

1 7. Given this significant financial contribution international students make to the
2 University of California system's revenue base through the payment of tuition and fees alone,
3 widespread disenrollment of international students from University programs that may occur if
4 the University is unable, for safety and other reasons, to offer sufficient in-person education
5 opportunities to comply with ICE's July 6 Directive is expected to substantially impact the
6 University's financial health and stability.

7 8. The financial impact of reduced international student enrollment cannot be offset
8 by enrolling additional California resident students due to the substantially lower tuition paid by
9 California resident students. While an international undergraduate student is currently charged
10 approximately \$44,000 per year, students with California-resident status are charged
11 approximately \$14,000 per year.

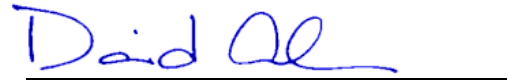
12 9. The massive potential loss of revenue that would result from the widespread
13 disenrollment of international undergraduate and graduate students from the University of
14 California system would also adversely impact remaining University of California students.
15 Campuses rely on the tuition and fees paid by international students to maintain the academic
16 infrastructure that is required to support to all students, including faculty, academic advisors,
17 student services, financial aid programs, and maintenance of the University's buildings and
18 grounds. For example, tuition and fees paid by international undergraduate students provide an
19 estimated \$80 million in financial aid to California resident undergraduate students. Given that
20 the tuition and fees attributable to international students represent approximately 30 percent of
21 total tuition and fees received by the University system, the impact on campus operations would
22 be significant.

23 10. The University of California has expended substantial sums to prepare an
24 educational curriculum for the Fall 2020 term that provides high-quality educational services,
25 often through remote means, while protecting the safety of the system's students, faculty, and
26 other employees, as well as the greater university communities that thrive based on the presence
27 of our campuses and educational programs. ICE's July 6 Directive will upset that careful
28 preparation, at considerable cost to the University, and likely cost the University millions of

1 dollars in additional expenses if in-person educational options must now be developed and
2 implemented to ensure the continued presence of international students in the University system.

3 I declare under penalty of perjury under the laws of the United States that the foregoing is
4 true and correct to the best of my knowledge.

5 Executed in Oakland, California, on this 10th day of July 2020.

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8 David Alcocer
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THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO/OAKLAND DIVISION

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA, a California
Corporation,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; CHAD F. WOLF, in
his official capacity as Acting Secretary of
the United States Department of
Homeland Security; and MATTHEW
ALBENCE, in his official capacity as
Acting Director of U.S. Immigration and
Customs Enforcement,

Defendants.

Case No.: 3:20-cv-04621

DECLARATION OF MICHAEL BECK

***[Filed Concurrently with Ex Parte Application
to Shorten Time]***

Date: July 14, 2020
Time: TBD
Ctrm: TBD
Judge: TBD

Complaint filed: July 10, 2020

DECLARATION OF MICHAEL BECK

I, Michael J. Beck, declare:

1. The matters set forth herein are true and correct of my own personal knowledge and, if called as a witness, I could and would testify competently thereto.

2. I am the Administrative Vice Chancellor at the University of California, Los Angeles (UCLA). I have held this role since March 2016. I also chair the Emergency Management Planning Group (EMPG) at UCLA.

3. UCLA has over 45,000 students. Approximately two-thirds are undergraduate students, and one-third are graduate students. Approximately 7,400 students with F-1 visas are currently eligible to enroll for fall 2020.

4. Throughout the novel coronavirus (COVID-19) outbreak, I have worked extensively at UCLA and in collaboration with other UC campuses on our response to the pandemic, and I serve as UCLA's primary administrator in charge of managing UCLA's COVID-19 response and recovery actions. As part of those efforts, I established the University of California's systemwide "Back to School" working group, which meets weekly to share campus response plans and efforts across University of California campuses.

5. As Administrative Vice Chancellor at UCLA, I also serve as a member of the University's Council of Vice Chancellors for Administration, consisting of vice chancellors for Administration (or similar) from each of the University's ten campuses, Lawrence Berkeley Laboratory, and UC Agriculture and Natural Resources. In that role, I have participated in regular calls with other campus vice chancellors to discuss the University's preparations and response to the COVID-19 pandemic. During those calls, the vice chancellors regularly discuss the measures each campus has taken in response to the COVID-19 pandemic, and coordinate systemwide policies and responses to COVID-19, which are applicable to all of the University's campuses.

6. In my efforts regarding COVID-19 response, I regularly consult with UCLA Health's infection disease experts, as well as officials from other UC campuses, and officials with the LA County Department of Public Health (DPH). I have participated as a member of the LA

1 County Department of Public Health Higher Education COVID-19 Recovery Focus Group, which
 2 provided recommendations and feedback on its anticipated guidelines for institutions of higher
 3 education.

4 7. I began working on UCLA's COVID-19 response at the end of February 2020. I
 5 was instrumental in establishing the Academic Continuity Task Force and the Future Planning
 6 Task Force and its various work groups, to address ramping up research, future planning for
 7 learning, academic continuity, and addressing testing, physical distancing, and remote working.
 8 Among other responsibilities within the EMPG, I consulted UCLA's Chancellor in his March 11,
 9 2020, decision to transition UCLA to remote instruction and I aided the research ramp-up
 10 committee.

11 8. Beginning on March 11, 2020, UCLA suspended nearly all in-person classes and
 12 transitioned to remote learning for nearly all instructional activities. UCLA did so after careful
 13 consideration based on the opinions of public health agencies and experts and with a focus on the
 14 health and safety of UCLA's students, faculty, and staff.

15 9. The University of California has created a systemwide Testing and Tracing Task
 16 Force (the "UC Task Force") to make recommendations for all University locations in response to
 17 the COVID-19 pandemic. The UC Task Force is chaired by Dr. Carrie L. Byington, MD,
 18 Executive Vice President of UC Health; Theresa Maldonado, PhD, Vice President of the UC
 19 Office of Research and Innovation; and Larry Anstine, CEO emeritus, UC Irvine Health; and
 20 includes subject matter experts, administrators, faculty (including Academic Senate
 21 representation), and staff from across the UC system.

22 10. I am familiar with and have reviewed the COVID-19 Guidance for the Student and
 23 Exchange Visitor Program ("SEVP") issued by United States Immigration and Customs
 24 Enforcement ("ICE") in response to the COVID-19 pandemic. On March 13, 2020, ICE issued
 25 COVID-19 Guidance for Student and Exchange Visitor Program Stakeholders ("March 13
 26 Guidance"). Pursuant to the March 13 Guidance, students in the United States holding F-1 or M-1
 27 visas are allowed to "count online classes towards a full course of study" in the event their school
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1 temporarily stops in-person classes, regardless of whether the visa holders remain in the United
2 States or departed the United States. The March 13 Guidance stated that it would remain “in effect
3 for the duration of the emergency.”

4 11. After consulting with campus leadership, being informed by the systemwide and
5 campus studies and groups described above and to address the public health concerns in Los
6 Angeles County, and in reliance on the March 13 Guidance and its representation that it would
7 remain “in effect for the duration of the emergency,” on June 15, 2020, UCLA announced it will
8 offer only limited in-person instruction for the Fall 2020 quarter (the “Fall 2020 Plan”). Per the
9 recommendation of public health experts and the assessment of UCLA’s Future Planning Task
10 Force, and to minimize the risks associated with the COVID-19 pandemic, UCLA anticipates that
11 only 15% to 20% of courses offered during the Fall 2020 quarter will be offered in an on-site or
12 hybrid (i.e., partially online and partially on-site) format. All in-person and hybrid classes also
13 have limited enrollments due to the requirement to maintain 6-foot physical distancing within the
14 classroom or laboratory, which results in an occupancy level of about 20-25% of normal. The
15 remainder of courses offered at UCLA during the Fall 2020 quarter will be offered via remote
16 means. As recommended by public health experts and based on the Future Planning Task Force
17 assessment, almost all classes, including those with in-person instructional activities, will also be
18 provided via a remotely delivered method. Among other things, this ability for students to
19 participate remotely allows for individuals with an elevated risk for serious illness from COVID-
20 19 are not required to sacrifice their personal wellbeing as a condition of participating in their
21 education.

22 12. While the Fall 2020 Plan may need to be adjusted based on continued increases in
23 COVID-19 cases in the community, and based on local, state and federal public health orders and
24 guidance, UCLA does not expect that it will be able to significantly increase the amount of in-
25 person instruction before the beginning of the Fall quarter due to the need to reduce density of
26 UCLA’s campus, which includes approximately 45,000 undergraduate and graduate students.
27 UCLA, along with other UC campuses are actually contemplating reducing in-person activities on
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1 campus further as a result of the current surge of COVID cases in California. If UCLA were to
2 significantly increase the number of in-person course offerings during the Fall 2020 quarter, it
3 would increase the population and density of students, faculty, and staff on UCLA's campus and
4 could pose a public health risk to everyone on UCLA's campus by significantly increasing the
5 risks of transmitting the virus among the UCLA community, and potentially beyond. Notably, if
6 UCLA were to significantly increase the number of in-person course offerings during the Fall
7 2020 quarter it would be difficult for UCLA's students, faculty, and staff to maintain physical
8 distancing requirements as directed by public health agencies and experts to minimize the risk of
9 transmission. UCLA is actually considering further reducing the planned campus population for
10 the fall based on current conditions.

11 13. For example, for the limited number of in-person classes that UCLA expects to
12 offer during the Fall 2020 quarter, UCLA has limited occupancy in classrooms to maintain the
13 CDC recommended six-foot physical distancing between individuals wearing face coverings.
14 Seats will need to be marked at distances recommended by the CDC and the LA County
15 Department of Public Health, to be at least six feet apart.

16 14. Further, the State of California has yet to authorize in-person classes for higher
17 education. To comply with county, state, and federal physical distancing guidelines, most UCLA
18 classrooms must be limited to 20-25% capacity. This also limits the number of in-person
19 offerings. Undergraduate housing is anticipated to be limited to approximately 55% of normal
20 capacity, though this may be limited even more if COVID-19 continues to worsen in Los
21 Angeles. UCLA is developing a contingency plan to transition back to all remote classes if
22 necessary.

23 15. The status of UCLA's anticipated 7,400 international students with F-1 visas was
24 an important concern in planning for Fall 2020. UCLA has relied on the March 13 Guidance
25 permitting remote learning in developing the Fall 2020 Plan. For example, UCLA considered that
26 certain students would need to return to campus for certain limited activities that cannot as
27 effectively be conducted remotely, such as some laboratory courses, some performing arts classes,
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1 and some courses in clinical health fields. Based on the March 13 Guidance, UCLA made the
 2 transition to largely remote learning with confidence that our students would be able to continue
 3 their studies and conduct valuable research while being in the same time zone as their professors
 4 and peers and remaining close to the resources and facilities they would need. UCLA also did so
 5 based on the confidence that UCLA's international students would be in the United States if
 6 further reopening of in-person facilities became feasible. These considerations were critical to the
 7 development of UCLA's Fall 2020 Plan because, as the LA County Department of Public Health
 8 has repeatedly emphasized, decreasing normal campus population density is essential to decrease
 9 interactions that may result in person-to-person transmission of the virus.

10 16. On July 6, 2020, ICE issued a "broadcast message" entitled "COVID-19 and Fall
 11 2020" ("July 6 Directive"). The July 6 Directive largely withdraws the exception that ICE
 12 announced in March.

13 17. The July 6 Directive states that "schools adopting a hybrid model – that is, a
 14 mixture of online and in person classes –" must by August 4, 2020, certify to SEVP for each F-1
 15 visa student that, among other things, "the student is not taking an entirely online course load."
 16 Students for whom the school cannot so certify "must leave the country or take alternative steps
 17 to maintain their nonimmigrant status such as transfer to a school with in-person instruction."

18 18. The July 6 Directive, if allowed to proceed, will have significant negative impacts
 19 on UCLA and on UCLA's students.

20 19. For months, UCLA has committed substantial time and resources analyzing the
 21 evolving threat of COVID-19 and devising plans to continue to pursue its education and research
 22 mission while also focusing on the health and safety of its students, faculty, staff, and the
 23 surrounding community. UCLA's Fall Quarter begins on September 28, 2020, with instruction
 24 beginning on October 1, 2020, and enrollment for Fall Semester courses began on June 24, 2020.
 25 Because UCLA's undergraduates are on a quarter schedule, UCLA has assessed those courses
 26 that are anticipated to be offered in person subject to public health orders permitted it. The ability
 27 to proceed with in person offerings will be impacted by the changing status of the pandemic and
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1 local, state and federal guidelines and directives. Given the already limited number of options
2 available to UCLA to conduct in-person classes in compliance with physical distancing and other
3 requirements, the July 6 Directive substantially burdens UCLA's ability to adapt to changing
4 circumstances by further inhibiting UCLA's options.

5 20. Additionally, it would be highly burdensome for UCLA to comply with the July 6
6 Directive's August 4, 2020 deadline for reissuing Form I-20 documents for UCLA's nearly 7,400
7 eligible F-1 visa students. UCLA would be required to reissue approximately 7,400 Form I-20
8 documents for its F-1-visa international students, each populated with student-specific remarks.
9 However, only Designated School Officials certified by the U.S. Department of Homeland
10 Security perform these tasks, significantly limiting UCLA ability to adapt to this substantial and
11 added burden.

12 21. Based on my experience planning UCLA's responses to COVID-19, I estimate that
13 increased hybrid or fully in-person classes are possible in some fashion in a later academic quarter
14 this school year. This would require students, including international students, to return to
15 campus. If UCLA's F-1 visa international students were required to leave the United States to
16 continue their education, some students may not be allowed to reenter the U.S. once greater in-
17 person coursework resumes because their visas will have since lapsed. And even if they were
18 permitted to return to the United States, these students likely would have trouble securing campus
19 or community housing on such short notice and in the middle of the academic year.

20 22. Nor is it ideal for students to participate in distance learning from a country outside
21 of the United States. If UCLA's international students are forced to return to their home countries
22 to continue their education, many of those students will be several time zones away from Los
23 Angeles. These students would face serious difficulty accessing office hours, labs, or other
24 courses during ordinary waking hours in their time zones.

25 23. Further, the loss of international students will adversely impact the diversity of
26 UCLA's student body, disrupting the diverse learning and social environment UCLA strives to
27 offer all of its students. Maintaining a diverse student body is critical to UCLA's mission and to
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1 the educational experience of its students. If the July 6 Directive causes UCLA's international
 2 students to either take a leave of absence or withdraw entirely, it will not only harm the
 3 educational experience of those international students, but also the educational experience of
 4 UCLA's domestic and California-resident students.

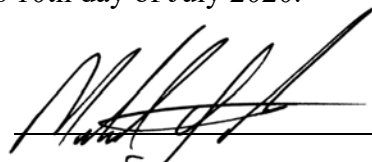
5 24. UCLA would also lose revenue in addition to losing the diverse learning
 6 environment that UCLA and its students, faculty, and staff value. UCLA does not allow students
 7 to defer, meaning that international students could choose to leave UCLA to attend other
 8 universities if they were not able to relocate to Los Angeles. Students, therefore, may leave
 9 UCLA to attend another university that will offer on-campus learning in the midst of the
 10 pandemic. The loss of revenue from such actions would cause irreparable harm to UCLA.

11 25. Even if UCLA were permitted by local health conditions and authorities and able
 12 to implement in-person or hybrid (i.e., partial in-person, partial virtual) instruction for all F-1 visa
 13 students, such that they could remain in the United States, significant burdens would remain for
 14 UCLA and international students. While a hybrid program might allow domestic students to
 15 select only online courses if they have health conditions that place them at a greater risk (or
 16 simply want to avoid the greater risk of infection that in-person instruction imposes), under the
 17 July 6 Directive, F-1 students will not have that option.

18 26. The July 6 Directive requires in-person participation at levels that could pose a
 19 significant health risk to these students that is not being imposed against any other students
 20 attending higher education institutions.

21 27. I declare under penalty of perjury under the laws of the United States that the
 22 foregoing is true and correct.

23 Executed in Los Angeles, California, on this 10th day of July 2020.

24 
 25 _____
 26 Michael Beck

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THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO/OAKLAND DIVISION

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA, a California
Corporation,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; CHAD F. WOLF, in
his official capacity as Acting Secretary of
the United States Department of
Homeland Security; and MATTHEW
ALBENCE, in his official capacity as
Acting Director of U.S. Immigration and
Customs Enforcement,

Defendants.

Case No.:

**DECLARATION OF DR. CARRIE L.
BYINGTON**

***[Filed Concurrently with Ex Parte Application
to Shorten Time]***

Date: July 14, 2020
Time: TBD
Ctm: TBD
Judge: TBD

Complaint filed: July 10, 2020

1 I, Carrie L. Byington, M.D., declare:

2 1. I am Executive Vice President for the UC Health and a Professor of Pediatric
3 Infectious Diseases at the University of California, San Francisco. I am a medical doctor,
4 specializing in pediatric infectious diseases. My research has focused on the clinical management
5 and prevention of respiratory infection and the development of diagnostic technology for the
6 recognition of pathogens with pandemic potential. I have worked on the prevention and control
7 of infectious diseases in the United States and internationally. Among other experience, I have
8 planned emergency infrastructure for universities, was responsible for protecting Team USA
9 athletes and staff from Zika Virus during the 2016 Olympic Games in Brazil, and chaired the
10 American Academy of Pediatrics Committee on Infectious Diseases during the Ebola and Zika
11 outbreaks (2014-2018).

12 2. I received my B.S. in biology from Texas A&M University, *cum laude*, in 1985,
13 and my M.D. from Baylor College of Medicine in 1989. I completed a pediatric residency at
14 Baylor College of Medicine and I completed a fellowship in Pediatric Infectious Diseases at the
15 University of California, San Francisco.

16 3. My research focuses has been on respiratory pathogens and pandemics. My career
17 in academic medicine has bridged clinical care and public health. Before I began my position at
18 UC (2019), I was Senior Vice President for Health Sciences and Vice Chancellor for Health
19 Services at Texas A&M University (2017-2019); Distinguished Service Professor at University of
20 Utah (2015); Director and Principal Investigator, Utah Center for Clinical and Translational
21 Science (2015-2016); Associate Vice President of Faculty and Academic Affairs at the University
22 of Utah Health Sciences Center (2013-2016); Co-Director and Principal Investigator at the Utah
23 Center for Clinical and Translational Science (2013-2016); Benning Presidential Professor of
24 Pediatrics at the University of Utah Health Sciences Center (2010-2016); Vice Chair (Oversight
25 Research Enterprise) of the Department of Pediatrics at the University of Utah Health Sciences
26 Center (2009-2013); Associate Director of the University of Utah Center for Clinical and
27 Translational Science (2008-2013); Associate Chair for Clinical Research of the Department of
28 Pediatrics at the University of Utah Health Sciences Center (2007-2009); Professor of Pediatrics,

1 Division of General Pediatrics and Division of Pediatric Infectious Diseases at the University of
 2 Utah Health Sciences Center (2006-2016); Lowell Bennion Public Service Professor at the
 3 University of Utah (2001-2002); Associate Professor, Division of General Pediatrics and Division
 4 of Pediatric Infectious Diseases at the University of Utah Health Sciences Center (2000-2006);
 5 Assistant Professor, Division of General Pediatrics and Division of Pediatric Infectious Diseases
 6 at the University of Utah Health Sciences Center (1995-2000); and Assistant Professor for the
 7 Division of Ambulatory Pediatrics at Baylor College of Medicine (1992-1993).

8 4. Since January 1, 2020, I have been collaborating with UC leadership and its
 9 campus hospital leaders regarding UC's emergency response to COVID-19. Our goal has been to
 10 prioritize the health and safety of our students, staff, and faculty at UC and the patients in its
 11 health system. I currently lead and serve on numerous COVID-19 advisory groups for the
 12 national, state, and UC's response to the virus.

13 5. Beginning March 18, 2020, I have chaired a subcommittee of the UC Office of the
 14 President (UCOP) Management Response Team (MRT) named the UC Health Coordinating
 15 Committee (the UC-HCC) to advise on UC Health's response to the pandemic. The UC-HCC
 16 members include representatives from the entire UC System of standing and ad hoc working
 17 groups established by UC Health to provide subject matter expertise in domains including clinical
 18 research, education, public health, infectious disease, laboratory medicine, critical care medicine,
 19 telehealth, pharmacy, and other disciplines, as well as ethical, legal, and social issues related to
 20 UC Health's response to the pandemic. Among other things, I, as Chair of the UC-HHC, have
 21 been offering UC Health leaders, the Council of UC Chancellors, the UC President, and the UC
 22 Board of Regents, my expert advice through the UC-HCC and the incident command structure at
 23 each UC Health location, collaborating with internal stakeholders, and coordinating with various
 24 federal and state public health officials, other health systems, and relevant professional
 25 organizations. A narrative of many of the activities related to the UC-HCC COVID-19 response is
 26 found in my written updates to the UC Board of Regents available at: [https://www.ucop.edu/uc-](https://www.ucop.edu/uc-health/staff/bios/carrie_byington.html)
 27 [health/staff/bios/carrie_byington.html](https://www.ucop.edu/uc-health/staff/bios/carrie_byington.html)
 28

1 6. The UC-HCC has smaller subsections dedicated to targeted efforts for the UC to
2 respond to COVID-19. There is a UC-HCC Executive Group, a Government Outreach branch
3 and a Planning Team. Within the Planning Team, there are individuals with expertise in clinical
4 research, education, laboratories, bioethics, and public health. These groups work with existing
5 UC systemwide groups to provide recommendations to UC for its response to COVID-19.

6 7. COVID-19 is a respiratory virus that easily infects humans. Infections may range
7 from asymptomatic to life-threatening. Patients typically present with acute respiratory signs and
8 symptoms, which can escalate in some patients to respiratory failure and other serious, life-
9 threatening complications with organ damage to the heart and kidneys and blood clotting. The
10 most common symptoms are fever, cough, and shortness of breath. Other identified symptoms
11 include muscle aches, headaches, chest pain, diarrhea, coughing up blood, sputum production,
12 runny nose, nausea, vomiting, sore throat, confusion, lack of senses of taste and smell, and
13 anorexia. Due to the respiratory impacts of the disease, individuals may require oxygen therapy,
14 and in severe cases, patients may need to be intubated and receive mechanical ventilation or be
15 placed on ECMO. People of every age can and have contracted COVID-19, including severe
16 cases. Severe cases and deaths have been reported at every age, Geriatric patients are at the
17 greatest risk of severe cases, long-term impairment, and death. Likewise, those with
18 immunologic conditions and with other pre-existing conditions, such as hypertension, certain
19 heart conditions, lung diseases (e.g., asthma, COPD), diabetes mellitus, obesity, and chronic
20 kidney disease, are at high risk of a life-threatening COVID-19 illness. Pregnant women are also
21 recognized as a group that may have more severe infection with COVID-19 resulting in
22 hospitalization and need for intensive care.

23 8. COVID-19 is readily spread through respiratory transmission. Importantly,
24 asymptomatic person to person transmission of COVID-19 is common. People may transmit the
25 virus even when they exhibit no symptoms and may transmit in the days before symptoms appear.
26 The viral loads are high in both asymptomatic and pre-symptomatic individuals. All people are
27 susceptible to COVID-19, as it is a novel virus. Even, 6 months into the pandemic, ~95% of the
28 US population remains susceptible to COVID-19 with similar proportions susceptible world-

1 wide. All people are capable of getting COVID-19 because of the ease with which it spreads
2 through person to person contact. The virus is spread through droplet transmission; that is, when
3 an infected individual speaks, coughs, sneezes, and the like, they expel droplets which can
4 transmit the virus to others in their proximity. There is growing evidence that COVID-19 is also
5 aerosolized, such that tiny droplets containing the virus remain in the air and can be inhaled by
6 others who come into contact with that air and that COVID-19 can be transmitted in that fashion.
7 The virus is also known to be spread through the touching of contaminated surfaces, for example,
8 when an infected person touches a surface with a hand they have coughed into and then another
9 person touches that same surface before it has been disinfected and then touches their face.

10 9. There is not yet any FDA-approved vaccine against COVID-19 that could be used
11 to immunize the population to the virus. As a result, the only ways to limit its spread is through
12 non-pharmaceutical interventions such as self-isolation, social distancing, frequent handwashing,
13 mask or face covering wearing, and disinfecting surfaces. Self-isolation involves not physically
14 interacting with those outside one's household. Social or physical distancing is maintaining at
15 least six feet of distance between individuals, which can also be implemented within one's
16 household. Each of these interventions is aimed at keeping infected individuals far enough apart
17 from other individuals so that they do not transmit the virus. Similarly, wearing a mask or face
18 covering is meant to prevent an infected individual from spreading droplets of the virus which
19 could infect others. Frequent handwashing and regular disinfecting of surfaces can help curb
20 spread via contaminated surfaces.

21 10. Transmission of COVID-19 can occur in any location where there is close
22 proximity (less than six feet) between individuals. Activities that occur indoors are considered
23 higher risk than those that occur outdoors. And because transmission of the virus can occur via
24 environmental surfaces, there is also risk of spread of the virus at any location where multiple
25 individuals touch surfaces. Some individuals who are infected with the virus do not have any
26 symptoms but can transmit the virus and/or are infectious before they develop any symptoms.
27 This means that isolating only persons known to be infected or exhibiting symptoms of infection
28 will not stop the spread of infection. Young people, including those in the college age group may

1 be less likely to exhibit symptoms than older individuals. To prevent increasing the scope of the
2 outbreak of COVID-19, we must assume that anyone could be infected and transmit infection to
3 others.

4 11. Due to the lack of adequate testing, the time lag in getting results back from
5 laboratories, lengthy incubation time, and varied start and end points of stay at home
6 requirements, we may never definitively determine the full effects of stay-at-home orders and
7 social distancing. But social distancing has worked to slow the spread of respiratory viruses
8 generally and in places that are ahead of California and the United States in the current pandemic.
9 There is evidence that cities and states that implemented stay-at-home orders earlier than
10 California and kept them in place until transmission was under control are experiencing reduced
11 transmission. There is also evidence beginning to suggest that the ending of stay-at-home orders
12 and other mitigation measures is leading to increased transmission. However, transmission of the
13 virus will continue through the population until the development and widespread use of a vaccine
14 and/or herd immunity develops.

15 12. Due to the ease of transmission, the high risk to certain segments of the population,
16 and the fact that the virus will continue to surge unless and until wide-spread vaccination and/or
17 herd immunity is achieved, individuals will need to continue to take steps to prevent infection.
18 Indoor classrooms and lecture halls are a prime area for increased transmission of COVID-19, due
19 to the close proximity of a large number of individuals—students and faculty—in a limited space.
20 This close proximity allows for the transmission of the virus via droplets and aerosols between
21 various individuals. A classroom or lecture hall also has a large number of common surfaces that
22 multiple people touch: the doors, seats and desks. While surface transmission is not the main way
23 that COVID-19 is spread, it remains the case that available evidence suggests the virus can be
24 transmitted in that way.

25 13. The virus is readily spread through droplet and aerosol transmission, so in public
26 spaces, particularly indoor spaces, the density and proximity of the number of people present are
27 the critical factors in assessing likelihood of transmission. If a classroom or lecture hall has
28 higher density of and proximity between individuals than another public space, then regardless of

1 mitigation measures, the location is not safer in terms of transmission of COVID-19 than another
 2 public space that has lesser density and proximity. While efforts at environmental
 3 decontamination are important public health interventions, the most effective measure to curb
 4 transmission of the virus is to reduce the density of exposure to strangers, which necessarily
 5 occurs in classrooms and lecture halls. Based on this information, UC-HCC has recommended
 6 that the UC campuses maintain reduced density of the populations on their campuses. While I am
 7 not recommending complete remote learning, the best practice to stop the spread of the virus is to
 8 decrease density as much as possible. This means that only a very small number of classes that
 9 absolutely cannot be conducted remotely should be done in person. To protect the safety of
 10 students and the campus communities, the majority of teaching should occur via online
 11 technology.

12 14. Action to disperse thousands of students from the United States—the epicenter of
 13 the COVID-19 virus pandemic—to various countries throughout the world endangers both, the
 14 students, and the communities where they travel and may accelerate the pandemic. We would
 15 expect that many students who would be traveling would be infected with COVID-19. They
 16 might be asymptomatic or symptomatic. All non-essential travel should be avoided during a
 17 pandemic to protect public health. 8 counties where there are UC campuses—Sacramento, Yolo,
 18 Los Angeles, Merced, San Diego, Santa Barbara, and Riverside, Orange— are on the California
 19 Department of Health’s monitoring list of local governments with elevated disease transmission
 20 and upticks in hospitalizations. Students living in these areas may be more likely to have
 21 asymptomatic infection.

22 15. There is clear evidence that the virus is not under control in the United States and
 23 particularly in California. For example, California’s positivity and hospitalization rates are
 24 trending upward in the 14-day average and there have been 100,928 new cases in the last 14 days.
 25 Student travel, therefore, would pose a grave danger to each country where students were sent and
 26 likely cause spikes in cases in these countries.

27 16. In addition, sending students from California, where COVID-19 virus is in an
 28 accelerated state, to universities in other jurisdictions where on-campus learning is more prevalent

1 would pose a similar risk. This conclusion is based on what we know about how this virus is
2 transmitted and how symptoms may or may not be exhibited. To minimize transmission and
3 spread of the virus and deaths it will cause, the primary goal must be to minimize people's contact
4 with other people who might be infected with the virus. When dealing with infectious diseases
5 that are transmitted via aerosols and/or droplets, the public health response is not to simply assert
6 that other interventions are sufficient. It is to isolate or quarantine those who may be infectious to
7 others. In the ordinary course, the public health approach is to maximize protection and minimize
8 risk. In the instant case, there are public health interventions that are available to minimize the
9 risk of transmission of COVID-19 for international students, namely, to allow international
10 students to stay where they are rather than requiring them to board planes and disperse across the
11 US or among many different countries.

12 I declare under penalty of perjury under the laws of the United States that the foregoing is
13 true and correct to the best of my knowledge.

14 Executed in Oakland, California, on this 10th day of July 2020.

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18 Dr. Carrie L. Byington, M.D.
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THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

UNITED STATES DISTRICT COURT
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THE REGENTS OF THE UNIVERSITY
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UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; U.S.
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Homeland Security; and MATTHEW
ALBENCE, in his official capacity as
Acting Director of U.S. Immigration and
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Case No.:

**DECLARATION OF CHANCELLOR
CAROL T. CHRIST**

***[Filed Concurrently with Ex Parte
Application to Shorten Time]***

Date: July 14, 2020
Time: TBD
Ctm: TBD
Judge: TBD

Complaint filed: July 10, 2020

1 I, Carol T. Christ, declare:

2 1. I am Chancellor of the University of California, Berkeley ("UC Berkeley"). As
3 Chancellor, I oversee the entire UC Berkeley campus, including the divisions of Administration,
4 Finance, Research, Student Affairs, Undergraduate Education, University Development, and
5 Alumni Relations. Each of these divisions at UC Berkeley is led by a vice chancellor. The
6 matters set forth herein are true and correct of my own personal knowledge and, if called as a
7 witness, I could and would testify competently thereto.

8 2. UC Berkeley has over 42,000 students. Approximately two-thirds are
9 undergraduate students, and one-third are graduate students. Our records show that over 6,400
10 UC Berkeley students hold F-1 visas, and there are over 37,000 University of California students
11 system-wide who hold F-1 visas.

12 3. I have been directly involved in UC Berkeley's response to the COVID-19
13 pandemic. Specifically, beginning in March 2020, members of UC Berkeley's administration
14 began developing policies and guidance in response to the COVID-19 pandemic. Since that time,
15 I have worked closely with fellow administrators, as well as experts across the University, the UC
16 Office of the President, and state and local public health agencies such as the California
17 Department of Public Health and the City of Berkeley Public Health Division, to make decisions
18 for our operations with a focus on the safety of UC Berkeley's students, faculty, and sta .

19 4. UC Berkeley's response to the COVID-19 pandemic is coordinated by nine
20 committees, each of which is chaired by a member of my cabinet. Each of these committees
21 ultimately reports to me. Key among these committees is UC Berkeley's Public Health and
22 Testing Advisory Committee, which is chaired by Dr. Nicholas P. Jewell, Emeritus Professor of
23 Biostatistics in the UC Berkeley School of Public Health, and includes infectious disease experts,
24 public health epidemiologists, physicians, scientists with expertise in diagnostic testing,
25 statisticians and data scientists.

26 5. As Chancellor, I also serve as a member of the University's Council of
27 Chancellors, consisting of chancellors from each of the University's ten campuses and convened
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1 by the UC President. In that role, since March 2020, I have participated in regular calls with other
 2 campus Chancellors to discuss the University's response to the COVID-19 pandemic. During
 3 those calls, the Chancellors regularly discuss the measures each campus has taken in response to
 4 the COVID-19 pandemic, and coordinate systemwide policies and responses to COVID-19,
 5 which are applicable to all of the University's campuses. Currently, these calls occur twice per
 6 week, and they have occurred as frequently as five times per week.

7 6. On May 22, 2020, the University of California identified a number of Consensus
 8 Standards to govern the operation of all University of California campus locations in light of the
 9 COVID-19 pandemic and to guide University of California campuses in developing
 10 individualized plans for addressing the COVID-19 pandemic. A true and correct copy of the
 11 Consensus Standards is attached as Exhibit A. Among other things, the Consensus Standards
 12 provide that each campus' plan should "identify metrics or indicators for prudently increasing
 13 (and decreasing) in-person/on-site activities as local circumstances dictate" and should "include
 14 measures to reasonably address students, faculty, and staff who . . . are at increased risk for severe
 15 illness in the event they contract COVID-19."

16 7. The University of California has created a systemwide Testing and Tracing Task
 17 Force (the "UC Task Force") to make recommendations for all University locations in response to
 18 the COVID-19 pandemic. The UC Task Force is chaired by Dr. Carrie L. Byington, MD,
 19 Executive Vice President of UC Health; Theresa Maldonado, PhD, Vice President of the UC
 20 Office of Research and Innovation; and Larry Anstine, CEO emeritus, UC Irvine Health; and
 21 includes subject matter experts, administrators, faculty (including Academic Senate
 22 representation), and staff from across the UC system. In a statement dated June 4, 2020, the UC
 23 Task Force emphasized that, for all UC campuses, "[t]he cornerstone of mitigation will be
 24 decreasing normal campus population density, in order to decrease interactions that may result in
 25 person-to-person transmission of the virus."

26 8. Between May and June 2020, the UC Berkeley Public Health and Testing
 27 Advisory Committee evaluated options for providing a healthy and effective teaching and
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1 learning environment for the 2020-21 academic year and to assess the risk of transmission
 2 associated with classroom instruction. Among other things, I specifically asked the Public Health
 3 and Testing Advisory Committee to evaluate three potential scenarios for instruction during the
 4 2020-2021 academic year: (1) full remote instruction and predominantly remote work being done
 5 in the operations and research realms; (2) a hybrid approach that includes both in-person and
 6 remote elements; and (3) return to mostly in-person instruction, research and operations.

7 9. In a report dated June 17, 2020, the UC Berkeley Public Health and Testing
 8 Advisory Committee proposed a series of recommendations. The Public Health and Testing
 9 Advisory Committee's Report (the "Committee Report") significantly informed UC Berkeley's
 10 decisions regarding the Fall 2020 semester and also how to safely bring research scientists back to
 11 campus over the summer. Key among those recommendations was the recommendation that "[t]o
 12 the extent that any classes occur in person" in the Fall 2020 semester, such classes should be
 13 limited to "26 [individuals] or under (including instructors)." A true and correct copy of the
 14 Committee Report is attached as Exhibit B. The report also explained that "remote access will
 15 likely be required for most if not all classes because at-risk participants may not be able to attend
 16 in person."

17 10. I am familiar with and have reviewed the COVID-19 Guidance for SEVP [Student
 18 and Exchange Visitor Program] Stakeholders issued by United States Immigration and Customs
 19 Enforcement ("ICE") on March 13, 2020, in response to the COVID-19 pandemic ("March 13
 20 Guidance"). Pursuant to the March 13 Guidance, students in the United States holding F-1 or M-1
 21 visas are allowed to "count online classes towards a full course of study" in the event their school
 22 temporarily stops in-person classes, regardless of whether the visa holders remain in the United
 23 States or departed the United States. Prior to the March 13 Guidance, international students were
 24 permitted to take only one online class per semester. The March 13 Guidance stated that it would
 25 remain "in effect for the duration of the emergency."

26 11. After consulting with campus leadership, being informed by the systemwide and
 27 campus studies and groups described above, and in reliance on the March 13 Guidance and its
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1 representation that it would remain “in effect for the duration of the emergency,” on June 17,
 2 2020, I announced that UC Berkeley will offer only limited in-person instruction for the Fall 2020
 3 semester (the “Fall 2020 Plan”). Per the recommendation of public health experts outlined in the
 4 Committee Report, and to minimize the risks associated with the COVID-19 pandemic,
 5 instruction in large courses at UC Berkeley for the Fall 2020 semester will be offered only by
 6 remote means. UC Berkeley currently plans to offer in-person instruction for certain smaller
 7 courses, as well as for smaller discussion groups that are part of larger courses. However, as
 8 recommended by public health experts in the Committee Report, almost all academic offerings,
 9 including those with in-person instructional activities, will also be provided via a remotely
 10 delivered method. Among other things, this ability for students to participate remotely ensures
 11 that individuals with an elevated risk for serious illness from COVID-19 are not required to
 12 sacrifice their personal wellbeing as a condition of participating in their education, while allowing
 13 UC Berkeley to practice social distancing and other precautionary measures for those courses or
 14 other activities that must be held in-person. While the Fall 2020 Plan may need to be adjusted
 15 based on continued increases in COVID-19 cases in the community, and based on local, state and
 16 federal guidance and/or restrictions, we do not expect that we will be able to significantly increase
 17 the amount of in-person instruction before the beginning of the Fall semester.

18 12. UC Berkeley specifically relied on the March 13 Guidance in developing the Fall
 19 2020 Plan. For example, UC Berkeley considered that certain students would need to return to
 20 campus for certain limited activities that cannot be conducted remotely, such as some student
 21 athletic activities. Based on the March 13 Guidance, UC Berkeley spent significant time and
 22 resources developing a complicated class schedule for the Fall 2020 semester that carefully
 23 accounted for the number and nature of classes that would be offered in-person or online. These
 24 considerations were critical to the development of UC Berkeley’s Fall 2020 Plan because, as the
 25 June 4 Task Force Statement emphasized, “[t]he cornerstone of mitigation will be decreasing
 26 normal campus population density, in order to decrease interactions that may result in person-to-
 27 person transmission of the virus.”
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1 13. On July 6, 2020, ICE issued a “broadcast message” entitled “COVID-19 and Fall
2 2020” (“July 6 Directive”). The July 6 Directive largely withdraws the exception that ICE
3 announced in March.

4 14. The July 6 Directive states that “schools adopting a hybrid model – that is, a
5 mixture of online and in person classes –” must by August 4, 2020, certify to SEVP for each F-1
6 visa student that, among other things, “the student is not taking an entirely online course load.”
7 Students for whom the school cannot so certify “must leave the country or take alternative steps
8 to maintain their nonimmigrant status such as transfer to a school with in-person instruction.”

9 15. The July 6 Directive, if allowed to proceed, will have significant negative impacts
10 on UC Berkeley and on UC Berkeley’s students.

11 16. For months, UC Berkeley has committed substantial time and resources analyzing
12 the evolving threat of COVID-19 and devising plans to continue to pursue its education and
13 research mission while also focusing on the health and safety of its students, faculty, sta , and the
14 surrounding community. UC Berkeley’s Fall Semester begins on August 26, 2020, and enrollment
15 for Fall Semester courses began on July 8, 2020. Because of the timing of the July 6 Directive and
16 its upcoming deadlines, the significant time and coordination required to implement public safety
17 measures, and the rising COVID-19 numbers in Berkeley and the San Francisco Bay Area, it is
18 unlikely that UC Berkeley will be able to develop a plan that enables all of its international
19 students to maintain their visas under the July 6 Directive.

20 17. Since the July 6 Directive is likely to result in far fewer international students
21 enrolled at UC Berkeley during the coming academic year, the July 6 Directive will adversely
22 a ect UC Berkeley in many ways. Following are some examples:

- 23 a. Approximately 29% of all UC Berkeley graduate students, and approximately 50%
24 of UC Berkeley engineering graduate students, are international students affected
25 by the July 6 Directive. If these students were forced to take leaves from their
26 program or drop out entirely, it would significantly and detrimentally affect UC
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Berkeley's related research programs, in which UC Berkeley's international graduate students play a critical role, as described in more detail below.

- b. The majority of UC Berkeley's teaching assistants are graduate student instructors. If the approximately 29% of graduate students, and 50% of engineering graduate students, who are international students were forced to take leaves from their program or drop out entirely, UC Berkeley's ability to conduct instructional activities would be seriously and detrimentally affected.
- c. Approximately 17% of UC Berkeley undergraduate computer science majors and 14% of UC Berkeley undergraduate engineering majors are international students impacted by the July 6 Directive. If these students were required to leave the country and continue their studies remotely from another country, it would severely limit their ability to participate in practical training opportunities such as internships and also diminish the reach of UC Berkeley students into the job market – a reach that is important to UC Berkeley's reputational standing.
- d. If, on the other hand, UC Berkeley were required to conduct in-person courses to a greater extent than what is recommended by the numerous public health experts upon whose recommendations UC Berkeley's Fall 2020 Plan is based, it could put UC Berkeley students, faculty, and staff at significant and unnecessary risk. For example, the average UC Berkeley faculty member is 52 years old, and many UC Berkeley faculty members are over the age of 65, placing many UC Berkeley faculty at a significantly elevated risk of serious illness if they were to contract COVID-19. Likewise, many UC Berkeley students (including international students impacted by the July 6 directive) and staff have pre-existing conditions such as asthma, heart disease, diabetes, and other risk-factors for serious illness associated with COVID-19.
- e. The tuition paid by out-of-state and international students – which is higher than that paid by California resident students – provides significant support to UC

Berkeley's ability to conduct world-class research and to provide world-class education to all of its students.

- f. Under the July 6 Directive, UC Berkeley will be required to reissue nearly 6400 Form I-20 "Certificate of Eligibility for Nonimmigrant Student Status" documents for its F-1-visa international students, each populated with student-specific remarks. UC Berkeley estimates that it will require 150-200 hours of staff time to reissue these Form I-20 documents. However, only Designated School Officials certified by the U.S. Department of Homeland Security perform these tasks, significantly limiting UC Berkeley's ability to adapt to this substantial and added burden.
- g. Loss of international students will adversely impact the diversity of UC Berkeley's student body. Maintaining a diverse student body is critical to UC Berkeley's mission and to the educational experience of its students. If the July 6 Directive causes UC Berkeley's international students to either take a leave of absence or withdraw entirely, it will not only harm the educational experience of those international students, but also the educational experience of UC Berkeley's domestic and California-resident students.

18. In addition, as an international research university, UC Berkeley depends on numerous international partnerships and collaborations. UC Berkeley's ability to enroll and engage international students is critical to those partnerships and to conducting research in key science, technology, engineering, and mathematics ("STEM") disciplines. In addition to international students who choose to take leaves of absence or drop out, the July 6 Directive could discourage international students from enrolling at UC Berkeley in the future. Such a result would impair UC Berkeley's ability to recruit the best and brightest students and faculty and to conduct significant research in STEM disciplines, and would significantly and detrimentally affect UC Berkeley's reputation as an international research university. The following are just three

1 examples of how the July 6 Directive could significantly limit UC Berkeley's ability to conduct
2 research.

- 3
- 4 a. Under a project sponsored by the United States Army, four UC Berkeley students
5 are conducting cutting-edge research related to flight plan and object detection for
6 drone aircraft. All four of the students working on this project are international
7 students. Without these students, UC Berkeley would not be able to fulfill the
8 milestones and deliverables required by the U.S. Army for this project, which
9 began on May 1, 2020, and ends on February 27, 2022, impacting not only UC
10 Berkeley's research capacity, but the Army's program goals to transition to this
11 technology.
- 12 b. Another UC Berkeley research program is creating 7-day and 14-day projections
13 of COVID-19 cases, hospitalizations, ICU admissions and ventilator needs at
14 county and hospital levels in the United States. This project is extremely time-
15 sensitive, and particularly important now as new COVID-19 cases reach record
16 levels. Without the participation of two international students who have been
17 working in this project, it would not be possible to provide the short-term
18 projections generated through this project in sufficient time for those projections to
19 meaningfully impact the planning and allocation of hospital and public health
20 resources during the current pandemic.
- 21 c. A third UC Berkeley research project, funded by the National Science Foundation,
22 is researching the security, privacy, and integrity of data information on the of the
23 internet, such as COVID-19 tracing information and robotic algorithms. Without
24 the support of a key international graduate student who has the discrete skill set to
25 work on this project, UC Berkeley expects that this project would be delayed by at
26 least a year.

27 19. UC Berkeley's international students, many of whom remain in the United States
28 based on the March 13 Guidance, will also face significant harm if the July 6 Directive takes

1 e ect. UC Berkeley has heard from students from all over the world who will face challenges by
 2 remaining in or being forced to return to their home countries, including:

- 3 a. Emotional and psychological trauma from the sudden and unanticipated disruption
 4 to their ability to pursue their education in the United States.
- 5 b. Being unable to participate in U.S.-based practical training opportunities, such as
 6 internships and jobs, which could significantly and detrimentally impact their
 7 ability to develop practical skills and professional networks.
- 8 c. Violence and poverty afflicting their home countries.
- 9 d. Being forced to break leases or other housing contracts and pay resulting penalties
 10 as a result of unexpectedly relocating to their home countries.
- 11 e. Returning to a home country and living situation where the sort of reliable, high-
 12 speed internet access necessary for remote learning is unavailable or prohibitively
 13 expensive.
- 14 f. Purchasing airfare to return home at higher, last-minute prices.

15 20. Even if UC Berkeley were permitted by local health conditions and authorities and
 16 able to implement in-person or hybrid (i.e., partial in-person, partial virtual) instruction for all F-1
 17 visa students, such that they could remain in the United States, significant burdens would remain
 18 for UC Berkeley and international students. While a hybrid program might allow domestic
 19 students to select only online courses if they have health conditions that place them at a greater
 20 risk (or simply want to avoid the greater risk of infection that in-person instruction imposes),
 21 under the July 6 Directive, F-1 students will not have that option.

22 21. As a result, the July 6 Directive forces UC Berkeley to choose between losing
 23 numerous international students who bring immense benefits to the school or take steps to provide
 24 in-person instruction against the judgment of UC Berkeley and public health experts about how
 25 best to protect the health of the University's students, faculty, and sta . UC Berkeley would be
 26 forced to increase the number of in-person courses available, increasing the risk of exposure to the
 27 COVID-19 pandemic to many other members of the UC Berkeley community, including the
 28

1 faculty required to lead those in-person courses as well as the staff needed to support those in-
2 person activities.

3 I declare under penalty of perjury under the laws of the United States that the foregoing is
4 true and correct to the best of my knowledge.

5 Executed in Berkeley, California, on this 10th day of July 2020.

6
7 Carol T. Christ

8 Carol T. Christ
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THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO/OAKLAND DIVISION

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA, a California
Corporation,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; CHAD F. WOLF, in
his official capacity as Acting Secretary of
the United States Department of
Homeland Security; and MATTHEW
ALBENCE, in his official capacity as
Acting Director of U.S. Immigration and
Customs Enforcement,

Defendants.

Case No.:

**DECLARATION OF VICE
CHANCELLOR AND DEAN
DEBORAH DEAS**

***[Filed Concurrently with Ex Parte
Application to Shorten Time]***

Date: July 14, 2020
Time: TBD
Ctrm: TBD
Judge: TBD

Complaint filed: July 10, 2020

1 I, Deborah Deas, declare:

2 1. I am the Vice Chancellor of Health Sciences for the University of California,
3 Riverside (“UCR”), and am also the Dean of the School of Medicine and chief liaison for UCR
4 with the Riverside County Department of Public Health (“RCDPH”). The matters set forth herein
5 are true and correct of my own personal knowledge and, if called as a witness, I could and would
6 testify competently thereto.

7 2. UCR has over 25,000 students. Approximately 22,000 are undergraduate students,
8 and 3,500 are graduate students. Our records show that over 1,600 UCR students hold F-1 visas.

9 3. I have been directly involved in UCR’s response to the COVID-19 pandemic.
10 Beginning in March 2020, members of UCR’s administration began developing policies and
11 guidance in response to the COVID-19 pandemic. Since that time, I have worked closely with
12 fellow administrators, as well as experts across the University and at the Riverside County
13 Department of Public Health (“RCDHP”) to assist in making decisions for our operations that
14 prioritize the safety of UCR’s students, faculty, and staff.

15 4. Over the course of several months between April and June, UCR’s Instructional
16 Continuity Working Group evaluated options for providing a healthy and effective teaching and
17 learning environment for the 2020-21 academic year. The Working Group included faculty, staff,
18 and student members, and its work was informed by consultation with the Academic Senate,
19 department chairs, deans, vice chancellors, the Registrar, Facilities Services, other UC campuses,
20 and other UCR faculty and staff. The Working Group’s proposed Instructional Continuity Plan
21 was reviewed by UCR’s Public Health committee and approved by campus leadership. The
22 guiding principles of the Working Group were to prioritize the safety of all members of our
23 campus community; extend access to education to the greatest extent possible; and create
24 flexibility at both the individual and institutional levels.

25 5. The Instructional Continuity Working Group developed the UCR COVID-19
26 Instructional Continuity Plan, which in turn was built on the UCR COVID-19 Planning
27 Framework and Related Protocols. Collectively these plans relied on guidance from the Riverside
28 County public health officer, the State of California Public Health, the Centers for Disease

Control or other Federal guidance, the Academic Senate, department chairs, deans, vice chancellors, the Registrar, Facilities Services, and the campus Public Health committee.

6. UCR's response to the COVID-19 pandemic is coordinated among ten faculty-led working groups, including public health, research ramp-up, budget and finance, student services continuity, student health assistance, instructional continuity, operations & support recovery, testing, employee health assistance, and instructional technology. As the Vice Chancellor of Health Sciences, I worked collaboratively across the campus to set up the various committees that have responsibility for looking at the precautionary and public health measures as they relate to COVID-19, with the overall goal to ensure the public health and well-being of the population on campus as well as the population that we serve in our communities.

7. Along with UCR Chancellor Kim Wilcox, I oversee the COVID-19 working groups and committees, with further oversight by the campus public health committee. The public health committee vets all of the operating procedures, ramp-up for research, institutional and instructional continuity efforts, and other initiatives developed by the other working groups to ensure that public health issues are considered within the frameworks developed as part of the response to COVID-19.

8. From the beginning of the pandemic, UCR leadership met initially daily and later several times a week to discuss developments and keep our campus informed and safe. We monitored our local situation and consulted on a daily basis with the California Department of Public Health, RCDPH, University health officials, and the UC Office of the President, to assess the risk of transmission associated with classroom instruction.

9. On March 8, 2020, UCR Chancellor Kim A. Wilcox and Interim Provost and Executive Vice Chancellor Thomas M. Smith announced that while they were not suspending ordinary instructional activity at that time, the situation could change within the week. A meeting with the Academic Senate's Executive Council was organized to review senate policies affecting possible changes to course instruction, assignments, exams, grading, and syllabi.

10. On March 10, 2020, UCR Chancellor Kim A. Wilcox and Interim Provost and Executive Vice Chancellor Thomas M. Smith announced that Winter quarter final exams would

1 not be held in person and that instructors should plan to teach Spring quarter courses completely
 2 remote through at least April 3, and potentially for the entire quarter. UCR advised students living
 3 on campus that they could elect, based on their personal situations, to return to off-campus living
 4 at least through the start of the spring term on April 3, 2020.

5 11. On March 13, in response to a public health order from the Riverside County
 6 Public Health officer issued on the same day, UCR announced that it was making immediate
 7 adjustments to its operations to protect the health and safety of the UCR community. While
 8 residence halls remained open, students could elect to return to off-campus housing. Winter
 9 quarter final exams and instruction for at least the first week of spring quarter were to continue
 10 remotely. On March 14, UCR announced that the University had been ordered to stop offering in-
 11 person classes by the Health Officer of the County of Riverside, effective March 16, 2020 through
 12 April 3, 2020.

13 12. I am familiar with and have reviewed the COVID-19 Guidance for the Student and
 14 Exchange Visitor Program (“SEVP”) issued by United States Immigration and Customs
 15 Enforcement (“ICE”) in response to the COVID-19 pandemic. On March 13, 2020, ICE issued
 16 COVID-19 Guidance for Student and Exchange Visitor Program Stakeholders (“March 13
 17 Guidance”). Pursuant to the March 13 Guidance, students in the United States holding F-1 or M-1
 18 visas are allowed to “count online classes towards a full course of study” in the event their school
 19 temporarily stops in-person classes, regardless of whether the visa holders remain in the United
 20 States or departed the United States. Prior to the March 13 Guidance, international students were
 21 permitted to take only one online class per semester. The March 13 Guidance stated that it would
 22 remain “in effect for the duration of the emergency.”

23 13. After the decision to transition to remote learning for at least the first week of
 24 Spring quarter 2020, and in reliance on the March 13 Guidance and its representation that it
 25 would remain “in effect for the duration of the emergency,” and also in response to the Riverside
 26 County Public Health officer’s revised public health orders, on March 18, UCR announced that
 27 the campus closure would continue through at least April 30, and that UCR would continue to
 28 transition to remote instruction for the entire Spring quarter.

14. On March 31, 2020, after consulting with campus leadership, including the Chair and Vice Chair of the Academic Senate, and colleagues at other UC campuses, UCR announced its decision to continue remote instruction through summer 2020. UCR also continued to monitor and comply with the Riverside County Public Health Orders throughout spring and summer.

15. On June 17, 2020, in reliance on the March 13 Guidance, Chancellor Kim A. Wilcox and Interim Provost and Executive Vice Chancellor Thomas M. Smith announced that all classes in the Fall quarter would continue to be available in remote formats at least through the Fall quarter, and that any class that is approved to be offered in person would be able to accommodate students who could not attend on-campus courses.

16. On July 8, 2020, there were 856 new cases of COVID-19 in Riverside, as compared to two new cases on March 13, 2020, when the March 13 Guidance was issued.

17. On July 6, 2020, ICE issued a “Broadcast Message: COVID-19 and Fall 2020” (“July 6 Directive”). The July 6 Directive largely withdraws the exception that ICE announced in March.

18. The July 6 Directive states that “schools adopting a hybrid model – that is, a mixture of online and in person classes –” must by August 4, 2020, certify to SEVP for each F-1 visa student that, among other things, “the student is not taking an entirely online course load.” Students for whom the school cannot so certify “must leave the country or take alternative steps to maintain their nonimmigrant status such as transfer to a school with in-person instruction.”

19. The July 6 Directive, if it takes effect, will have significant negative impacts on UCR as an institution and on UCR’s students.

20. For months, UCR has committed substantial time and resources analyzing the evolving threat of COVID-19 and devising plans to continue to pursue its education and research mission while also focusing on the health and safety of its students, faculty, staff, and the surrounding community. Because of the timing of the July 6 Directive and its upcoming deadlines, the significant time and coordination required to implement public safety measures, and the rising COVID-19 numbers in Riverside County, it is unlikely that UCR will be able to

1 develop a plan that enables all of its international students to maintain their visas under the July 6
2 Directive.

3 21. Since the July 6 Directive is likely to result in far fewer international students
4 enrolled at UCR during the coming academic year, the July 6 Directive will adversely affect UCR
5 in at least the following additional ways:

- 6 a. Approximately one-third of all UCR graduate students are international students
7 affected by the July 6 Directive. If these students were forced to take leaves from
8 their program or drop out entirely, it would significantly and detrimentally affect
9 UCR's related research programs, including research into agriculture, air quality,
10 food science, engineering, and biomedical sciences, in which UCR's international
11 graduate students play a critical role, as described in more detail below.
- 12 b. The vast majority, if not all, of UCR's teaching assistants are graduate student
13 instructors. If the approximately one-third of graduate students who are
14 international students were forced to take leaves from their program or drop out
15 entirely, UCR's ability to conduct instructional activities would be seriously and
16 detrimentally affected.
- 17 c. The tuition paid by out-of-state and international students is significant to UCR's
18 finances and supports UCR's ability to conduct world-class research and to
19 provide world-class education to its students, as well as provide health care to
20 surrounding communities through its community-based medical school.
- 21 d. Loss of international students will adversely impact the diversity of UCR's
22 student body. Maintaining a diverse student body is essential to achievement of
23 academic excellence and to meaningful, lifelong learning. If the July 6 Directive
24 causes UCR's international students to either take a leave of absence or withdraw
25 entirely, it will not only harm the educational experience of those international
26 students, but also the educational experience of UCR's domestic and California-
27 resident students.

22. If, on the other hand, UCR were required to conduct in-person courses to a greater extent than what is recommended by the numerous public health experts upon whose recommendations UCR's Fall 2020 Plan is based, it could put UCR students, faculty, and staff at significant and unnecessary risk.

23. In addition, as an international research university, UCR depends on numerous international partnerships and collaborations. UCR's ability to enroll and engage international students is critical to those partnerships, and to conduct research in key science, technology, engineering, and mathematics ("STEM") disciplines. In addition to international students who choose to take leaves of absence or drop out, the July 6 Directive could discourage international students from enrolling at UCR in the long term. Such a result would impair UCR's ability to recruit the best and brightest students and faculty and to conduct significant research in STEM disciplines, and would significantly and detrimentally affect UCR's reputation as an international research university. The following are just three examples of how the July 6 Directive would significantly limit UCR's ability to conduct research:

a. International graduate students participate in UCR's Biomedical Sciences program, which rotates graduate students through laboratories within the department focusing on differing research focus areas within biomedical research. Only after a commitment of nine months of training and study in multiple labs do the students select the scientific research area and principal investigator with whom they want to focus their research and ultimately their future careers in science. If the July 6 Directive causes the international graduate students in this program to leave, the significant investment of time and resources by UCR into these students will be lost, and the research already conducted on behalf of principle investigators within the program will be compromised.

b. International graduate student researchers are included on grants, funded by the federal government in many cases, which are only paid when certain deliverables are met. If the July 6 Directive causes international graduate students being paid by grant funding to withdraw or take an extended leave of absence, the funding of those

research projects would be jeopardized, leaving the project and its principal investigator without financial support, thereby compromising the quality of research already underway.

c. International graduate student researchers are also often included on grants that are funded for a predetermined period of time, with no guarantee of extension if the work is not completed by the original deadline. If the July 6 Directive causes international graduate students included in these grants to withdraw or take an extended leave of absence, the funding is not jeopardized, but the ability to complete the work is put at risk due to the unique experience and knowledge of the graduate student researcher.

24. UCR's international students, many of whom remain in the United States based on the March 13 Guidance, will also face significant harm if the July 6 Directive takes effect. UCR has heard from its students from all over the world who will face challenges by remaining in or being forced to return to their home countries, including:

- a. Violence and poverty afflicting their home countries;
- b. Fear of becoming infected with COVID-19 while traveling to their home country;
- c. Increased health risks if forced to attend classes in person;
- d. Lack of access to uncensored and reliable internet if forced to attend courses online from their home country;
- e. Lack of access to courses due to time differences if forced to return to their home country;
- f. Inability to complete certain research or instruction online, or complete certain degree programs remotely; and
- g. Inability to participate in Optional Practical Training, or temporary employment, in California, in a student's area of study, thereby foregoing invaluable practical experience.

25. Although UCR is implementing some in-person or hybrid (i.e., partial in-person, partial virtual) instruction, such that students on F-1 visas could remain in the United States, significant burdens still remain for UCR and international students. The following are examples:

- a. International students are unable to return home for fear of changing F-1 requirements and the effect that would have on their ability to complete their education;
- b. Increased health risks to international students who are forced to take in-person classes regardless of any risk-factors they may have, such as asthma, diabetes, or heart disease;
- c. An increased burden on UCR in trying to continue to offer courses to its international students while complying with state, local, federal, and international laws and guidance regarding degree programs, disability accommodation, and health risks and guidance.

26. Although a hybrid program might allow domestic students to select only online courses if they have health conditions that place them at a greater risk (or simply want to avoid the greater risk of infection that in-person instruction imposes), under the July 6 Directive, F-1 students are denied this agency. The July 6 Directive not only precludes F-1 students from an all-online course schedule, it mandates that F-1 students “tak[e] the minimum number of online classes required to make normal progress in their degree program.” Accordingly, vulnerable or concerned F-1 students would be forced to participate in in-person learning, despite the risks.

27. By threatening to force many F-1 visa holders to leave the country, the July 6 Directive forces UCR to make an impossible choice: lose and cause injury to numerous students who bring immense benefits to the school or take steps to retain those students that contradict UCR’s judgment about how best to protect the health of the University’s students, faculty, and staff.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed in Riverside, California, on this 10th day of July 2020.



Dr. Deborah Deas

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO/OAKLAND DIVISION

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA, a California
Corporation,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; CHAD F. WOLF, in
his official capacity as Acting Secretary of
the United States Department of
Homeland Security; and MATTHEW
ALBENCE, in his official capacity as
Acting Director of U.S. Immigration and
Customs Enforcement,

Defendants.

Case No.:

**DECLARATION OF ROBERT T.
SCHOOLEY**

***[Filed Concurrently with Ex Parte
Application to Shorten Time]***

Date: July 14, 2020
Time: TBD
Ctrm: TBD
Judge: TBD

Complaint filed: July 10, 2020

1 I, Robert T. Schooley, declare:

2 1. I am a Distinguished Professor of Medicine in the Division of Infectious Diseases
3 and Global Public Health in the School of Medicine at the University of California, San Diego
4 (“UCSD”), and am also Senior Director of International Affairs, and Interim Faculty Director of
5 Global Education. In the latter two roles, I supervise the UCSD Study Abroad Program, direct the
6 International Students & Programs Office, and direct the offices responsible for visa processing
7 for international students, faculty and scholars. My laboratory currently conducts research on oral
8 drug development for treatment of COVID-19. I am also the Editor-in-Chief of *Clinical Infectious*
9 *Diseases*, the most highly cited infectious disease journal in the United States. Since January
10 2020, the journal has received over 3500 manuscripts related to COVID-19. I have been directly
11 involved in the editorial review of over half of these submissions and have been responsible for
12 oversight of the review process for all of them. The matters set forth herein are true and correct of
13 my own personal knowledge and, if called as a witness, I could and would testify competently
14 thereto.

15 2. UCSD has more than 39,000 students. Approximately three-quarters are
16 undergraduate students, and one-quarter are graduate students, including medical students. Our
17 records show that over 9,000 UCSD students, from more than 100 countries, hold F-1 visas.
18 UCSD hosts one of the largest international student populations in the country.

19 3. I have been centrally involved in UCSD’s and the University of California’s
20 systemwide response to the COVID-19 pandemic. I am a member of the systemwide Testing and
21 Tracing Task Force (the “Task Force”), which provides recommendations for all University
22 locations in response to the COVID-19 pandemic. The Task Force, which was formed in March
23 2020, originally met twice a week and now meets weekly to address the University’s response to
24 COVID-19. I also consult with individual Faculty Senate bodies across campuses.

25 4. I am a member of UCSD’s Continuity of Research Task Force, which was
26 organized by Vice Chancellor for Research Sandra Brown and is co-chaired by Senior Associate
27 Vice Chancellor of Research Miroslav Krstic and Dean James McKerrow. The Continuity of
28 Research Task Force is guided by UCSD infectious disease experts and works with the WHO, the

1 CDC, and state and local public health experts, as well as UCSD's Emergency Operations Center,
 2 Environmental Health & Safety, IT Services, Facilities, Academic Senate leadership, and
 3 numerous other on-campus organizations, to provide guidelines for implementing a return to on-
 4 site research, scholarship, and creative activity while protecting the health and safety of all
 5 members of the UCSD community.

6 5. In addition, I provide advice related to COVID-19 to the Mayor of the City of San
 7 Diego on an *ad hoc* basis, and serve on an advisory committee to the San Diego County
 8 Supervisor Nathan Fletcher regarding proper guidelines and protocols for re-opening in response
 9 to the pandemic. I recently published an article in *Science* magazine on this subject, titled
 10 "Reducing transmission of SARS-CoV-2," co-authored with Kimberly A. Prather and Chia C.
 11 Wang.

12 6. In February 2020, in response to a request for guidance on COVID-19 from UCSD
 13 Chancellor Pradeep Khosla, I worked with mathematical modeling researchers at UCSD to
 14 provide a quantitative framework for planning and analysis in response to the pandemic. We
 15 developed a dynamic compartmental transmission model of COVID-19 to simulate spread among
 16 the campus community. The model considered the impact of campus density, classroom density,
 17 dorm density, and extracurricular activities to predict transmission based on introduction of new
 18 cases. Based on the model, we concluded that we needed to limit large-scale gatherings,
 19 including classrooms, and limit the density of on-campus housing.

20 7. As a result of our mathematical modeling and other research, the Continuity of
 21 Education Task Force evaluated the entire UCSD curriculum with faculty to identify which
 22 courses needed to be face-to-face, and which could be conducted remotely to develop a hybrid
 23 model of instruction. I am a member of that Committee. Our goal was to make the campus as
 24 functional as possible, while still meeting its educational and service missions, and protecting the
 25 health of our students, faculty, and community.

26 8. In March 2020, UCSD's Continuity of Education Task Force was formed to
 27 prepare faculty and students for conducting the Spring quarter remotely. Additional task forces
 28

1 were also formed, including the Return to Research Committee, Return to Learn Program, and
 2 additional focus groups addressing travel, sports, and other areas.

3 9. On March 11, 2020, the Office of the Chancellor announced that while the UCSD
 4 campus would remain open, Winter quarter final exams would be administered remotely. The
 5 Campus decision was guided by three goals: (1) to protect the health of students, faculty and staff;
 6 (2) to help slow the spread of the virus in California and the nation; and (3) to ensure the
 7 continuity of our teaching and research.

8 10. On March 13, 2020, the Office of the Chancellor announced that instruction for the
 9 entire Spring quarter would be delivered remotely. At the same time, most research was
 10 suspended, with some exceptions for experiments that were near completion, or essential,
 11 including laboratory activity related to COVID-19 research.

12 11. Due to the rapid transition to remote learning at the end of the Winter quarter,
 13 students were sent home during the last week of Winter quarter instruction, took their exams
 14 remotely, and were not brought back after spring break. But many international students were
 15 unable to go home during that period due to the travel restrictions and emerging global pandemic.
 16 Others knew that if they did go home, they might be unable to return. As a result, over a thousand
 17 students remained in the dorms. Because of the high number of international, first-generation,
 18 and foster-care students enrolled in our educational programs whose education depends on their
 19 continued housing and other services being provided on campus, UCSD made the decision not to
 20 fully close on-campus housing and services. UCSD accordingly maintained operation of
 21 residential dorms for those students, who have physically remained on campus and are also
 22 conducting remote instruction learning remotely.

23 12. I am familiar with and have reviewed the COVID-19 Guidance for the Student and
 24 Exchange Visitor Program ("SEVP") issued by United States Immigration and Customs
 25 Enforcement ("ICE") in response to the COVID-19 pandemic. On March 13, 2020, ICE issued
 26 COVID-19 Guidance for Student and Exchange Visitor Program Stakeholders ("March 13
 27 Guidance"). Pursuant to the March 13 Guidance, students in the United States holding F-1 or M-
 28 1 visas are allowed to "count online classes towards a full course of study" in the event their

1 school temporarily stops in-person classes, regardless of whether the visa holders remain in the
 2 United States or departed the United States. Prior to the March 13 Guidance, international
 3 students were permitted to take only one online class per semester. The March 13 Guidance
 4 stated that it would remain “in effect for the duration of the emergency.”

5 13. After considerable time and deliberation, and in consultation with campus
 6 leadership and the campus-wide committees, in addition to public health officials and our own
 7 experts, and in reliance on the March 13 Guidance and its representation that it would remain “in
 8 effect for the duration of the emergency,” on April 28, the Office of the Chancellor announced
 9 that UCSD intended to offer courses across all of their “divisions, colleges, programs and majors
 10 through a combination of in-person and remote instruction” in the Fall quarter. The
 11 announcement also acknowledged that “some students may not be able to safely travel to campus
 12 for fall quarter” and pledged to “continue to offer remote instruction as part of our approach for
 13 fall 2020 in a way that ensures students who cannot be present”—including international
 14 students—“are still able to have a rich and high-quality educational experience.”

15 14. On May 5, 2020, the Office of the Chancellor announced the launch of the Return
 16 to Learn program, which involved a team of UC San Diego clinicians, molecular biologists,
 17 technologists, infectious disease experts, bioinformatics specialists, disease modelers, public
 18 health experts, and others, in an effort to develop best practices to safely offer an in-person
 19 college experience to its students.

20 15. For months, UCSD has committed substantial time and resources analyzing the
 21 evolving threat of COVID-19 and devising plans to continue to pursue its education and research
 22 mission while also focusing on the health and safety of its students, faculty, staff, and the
 23 surrounding community. In making these plans for fall, UCSD sought to balance addressing
 24 concerns for public health and safety with preserving our academic mission of teaching and
 25 research, and has undertaken careful planning to address the unique circumstances of our
 26 community and to enable our students to make educational progress both safely and successfully.

27 16. Although it is still uncertain, in the Fall quarter, UCSD currently plans to use a
 28 hybrid model, including a mixture of approximately 30% of course sections offered completely

1 in-person and the remaining 70% of courses offered in an on-line or hybrid format. We have used
 2 mathematical modeling to set the upper limit of a physical class size. Based on the best available
 3 guidance, in-person sections are limited to no more than 50 students, with many smaller than that.
 4 This severely limits our in-person teaching capacity. Department chairs consulted with faculty
 5 about which courses must be conducted in person because of their educational content, and which
 6 can be conducted with digital tools in order to make best use of in-person teaching capacity.
 7 Decisions have been made in anticipation of the Fall quarter that begins in late September and
 8 student enrollment in these classes has already begun.

9 17. Since the May 5 announcement, the number of cases in the County of San Diego
 10 has been rising. The County of San Diego is now seeing daily positivity rates of 6 - 10%, despite
 11 an earlier sustained rate of 2%.

12 18. On July 6, 2020, ICE issued a “Broadcast Message: COVID-19 and Fall 2020”
 13 (“July 6 Directive”). The July 6 Directive largely withdraws the exception that ICE announced in
 14 March.

15 19. The July 6 Directive states that “schools adopting a hybrid model – that is, a
 16 mixture of online and in person classes –” must by August 4, 2020, certify to SEVP for each F-1
 17 visa student that, among other things, “the student is not taking an entirely online course load.”
 18 Students for whom the school cannot so certify “must leave the country or take alternative steps
 19 to maintain their nonimmigrant status such as transfer to a school with in-person instruction.”

20 20. The July 6 Directive, if it takes effect, will have significant negative impacts on
 21 UCSD and on UCSD’s students.

- 22 a. Approximately 23% of all UCSD students are international students. If these
 23 students were forced to take leaves from their program or drop out entirely, it
 24 would significantly and detrimentally affect UCSD’s research and teaching
 25 programs, in which UCSD international students, both graduate and
 26 undergraduate, play a critical role.
- 27 b. International students return to their home countries to leadership positions with an
 28 understanding of and affinity for the United States. These students are among the

most effective ambassadors for good will toward the U.S., including its educational institutions. If these students were forced to take leaves from their program or drop out entirely as a result of the July 6 Directive, it would significantly and detrimentally affect not only UCSD's reputation as an international research and educational institution, but the goodwill towards U.S. education system generally.

- c. The tuition paid by out-of-state and international students is significant to UCSD's finances and supports UCSD's ability to conduct world-class research and to provide world-class education to its students.
- d. Loss of international students will adversely impact the diversity of UCSD's student body. Maintaining a diverse student body is critical to UCSD's mission and to the educational experience of its students. If the July 6 Directive causes UCSD's international students to either take a leave of absence or withdraw entirely, it will not only harm the educational experience of those international students, but also the educational experience of UCSD's domestic and California-resident students.

21. UCSD's international students, many of whom remain in the United States based on the March 13 Guidance, will also face significant harm if the July 6 Directive takes effect. UCSD foresees that a large proportion of our international students will face serious challenges by remaining in or being forced to return to their home countries, including:

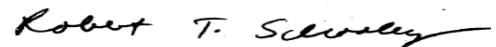
- a. Violence and poverty afflicting their home countries;
- b. Fear of being unable to complete their educational programs;
- c. The inability to participate in hands-on research, one of the most important aspects of an education at UCSD;
- d. Difficulty attending courses due to time zone differences;
- e. Difficulty attending courses due to unreliable internet connections and internet censorship;

- f. Being unable to participate in U.S.-based practical training opportunities, such as internships and jobs;
- g. Lack of exposure to American culture and their American peers; and
- h. The inability to act as a teaching assistant, an important aspect of research and academic learning.

22. As a result, the July 6 Directive forces UCSD to choose between losing numerous international students who bring immense benefits to the school or take steps to provide in-person instruction against the judgment of UCSD and public health experts about how best to protect the health of the University's students, faculty, and staff. UCSD would be forced to increase the number of in-person courses available, increasing the risk of exposure to the COVID-19 pandemic to many other members of the UCSD community, including the faculty required to lead those in-person courses as well as the staff needed to support those in-person activities.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed in San Diego, California, on this 10th day of July 2020.



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THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO/OAKLAND DIVISION

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA, a California
Corporation,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; CHAD F. WOLF, in
his official capacity as Acting Secretary of
the United States Department of
Homeland Security; and MATTHEW
ALBENCE, in his official capacity as
Acting Director of U.S. Immigration and
Customs Enforcement,

Defendants.

Case No.:

**DECLARATION OF ROGER M.
WAKIMOTO**

***[Filed Concurrently with Ex Parte Application
to Shorten Time]***

Date: July 14, 2020
Time: TBD
Ctrm: TBD
Judge: TBD

Complaint filed: July 10, 2020

1 I, Roger M. Wakimoto, declare:

2 1. I am Vice Chancellor of Research and Creative Activities at the University of
3 California, Los Angeles (“UCLA”). My office oversees all research activities across the UCLA
4 campus, including all disciplines. As part of my role, I encourage inter-disciplinary research and
5 foster relationships across departments. The matters set forth herein are true and correct of my
6 own personal knowledge and, if called as a witness, I could and would testify competently
7 thereto.

8 2. UCLA has over 45,000 students. Approximately two-thirds are undergraduate
9 students, and one-third are graduate students. Our records show that approximately 7,400 UCLA
10 students hold F-1 visas.

11 3. I received my B.S. in Meteorology from San Jose State University in 1976, and my
12 Ph.D. in Geophysical Sciences from the University of Chicago in 1981. I was previously a
13 member of the UCLA faculty in the Department of Atmospheric Sciences for twenty-two years,
14 and I have served as the Director of the Earth Observing Laboratory; Director of the National
15 Center for Atmospheric Research; and Assistant Director of the National Science Foundation
16 (“NSF”).

17 4. The University of California (“UC”) has a system-wide committee of the Vice
18 Chancellors of Research, which we call the Council of Vice Chancellors of Research
19 (“COVCR”). I participate in COVCR. In March 2020, in response to COVID-19 and its impact
20 to the University of California, the COVCR began weekly meetings. In the weekly meetings, we
21 discuss the impact of the pandemic on university research. We provide related guidance to the
22 UC system.

23 5. I also am a member of the UCLA COVID-19 Future Planning Task Force (“Task
24 Force”), which is addressing issues surrounding ramp-up of educational instruction, research,
25 sports, and campus events in response to COVID-19, and is providing options and
26 recommendations for the Fall quarter 2020.

27 6. In March 2020, UCLA and other campuses initially responded to COVID-19 by
28 permitting only essential activity to continue on the campus. Limited research activity was

1 allowed to continue, but only where necessary and essential. Those researchers were largely in
2 the fields of science, engineering, and medicine.

3 7. I am familiar with and have reviewed the COVID-19 Guidance for the Student and
4 Exchange Visitor Program (“SEVP”) issued by United States Immigration and Customs
5 Enforcement (“ICE”) in response to the COVID-19 pandemic. On March 13, 2020, ICE issued
6 COVID-19 Guidance for Student and Exchange Visitor Program Stakeholders (“March 13
7 Guidance”). Pursuant to the March 13 Guidance, students in the United States holding F-1 or M-1
8 visas are allowed to “count online classes towards a full course of study” in the event their school
9 temporarily stops in-person classes, regardless of whether the visa holders remain in the United
10 States or departed the United States. Prior to the March 13 Guidance, international students were
11 permitted to take only one online class per semester. The March 13 Guidance stated that it would
12 remain “in effect for the duration of the emergency.”

13 8. After consulting with campus leadership, the COVCR, the LACDPH, and in
14 reliance on the March 13 Guidance and its representation that it would remain “in effect for the
15 duration of the emergency,” on June 4, 2020, I announced that UCLA would began ramping up
16 on-campus research. This announcement was the culmination of extensive planning and
17 consultation. As a result, over four thousand researchers were allowed to return to campus,
18 representing approximately 25% density of campus research activity. In the past four weeks of
19 increased research activity, only one positive case of COVID-19 has been confirmed as related to
20 research activities. The researchers identified for the ramp-up were selected to return to campus
21 based on a review of over 800 applications that described the need for in-person access to campus
22 facilities.

23 9. Although Fall 2020 quarter plans for UCLA are still uncertain, currently UCLA
24 expects to hold approximately 15-20% of its courses in person with proper physical distancing,
25 and to maintain the 25% density of research activity currently in place.

26 10. We do not know when we will be able to ramp up from our 25% density of
27 research activity. We do not know whether we will be required to ramp down from 25% density
28

1 of research activity. The ultimate determination for instruction and research ramp-up is highly
2 dependent on the course of the pandemic and we continue to monitor the facts, consult with our
3 internal experts, and rely on county, state, and federal guidance to evaluate the next steps.

4 11. It is possible that on-campus research will be able to ramp up with less risk than
5 in-person course instruction. This is because in a research environment, it is easier to manage
6 physical distancing and population density than in a traditional classroom. Individual researchers,
7 including students and faculty, can physically spread out, stagger their work over a twenty-four-
8 hour period, or alternate daily schedules far more easily than a classic lecture format.

9 12. Not all research is laboratory-based. In some fields, access to libraries is a
10 significant part of research. For example, researchers in some departments cannot access rare
11 books virtually. In addition, even when research can be done electronically, it cannot always be
12 done remotely. For example, research involving highly sensitive intellectual property, proprietary
13 information, protected health information or information subject to security restrictions cannot be
14 performed in certain countries or certain facilities. Internet connectivity in certain locations can
15 also restrict the ability to perform research.

16 13. UCLA's Research Ramp-Up Plan Guidelines were prepared over months of
17 careful planning and analysis of the evolving threat of COVID-19. UCLA has spent considerable
18 time devising plans to continue to pursue its education and research mission while also focusing
19 on the health of its students, faculty, staff, and its goals of maintaining critical and world-
20 renowned research.

21 I declare under penalty of perjury under the laws of the United States that the foregoing is
22 true and correct to the best of my knowledge.

23 Executed in Los Angeles, California, on this 10th day of July 2020.

24 

25
26 Roger M. Wakimoto
27
28

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO/OAKLAND DIVISION

THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA, a California
corporation,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; CHAD F. WOLF, in
his official capacity as Acting Secretary of
the United States Department of
Homeland Security; and MATTHEW
ALBENCE, in his official capacity as
Acting Director of U.S. Immigration and
Customs Enforcement,

Defendants.

Case No. : 3:20-cv-04621

**[PROPOSED] ORDER GRANTING
PLAINTIFF THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA'S *EX*
PARTE MOTION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE AS TO WHY A
PRELIMINARY INJUNCTION SHOULD
NOT ISSUE**

Complaint filed: July 10, 2020

1 Having considered Plaintiff The Regents of The University of California's ("Plaintiff" or
 2 "The Regents") *Ex Parte* Motion for a Temporary Restraining Order and Order to Show Cause as
 3 to Why a Preliminary Injunction Should Not Issue ("TRO Motion"), the briefs and arguments of
 4 counsel, the evidence filed in support of and in opposition to this motion, and the Complaint, all
 5 on file in this action, and being fully advised,

6 IT IS HEREBY ORDERED THAT:

- 7 1. Plaintiff has demonstrated that (a) it is likely to succeed on the merits of its claims
 8 under the Administrative Procedure Act that the July 6, 2020 directive of the
 9 Student and Exchange Visitor Program as promulgated by defendants U.S.
 10 Immigration and Customs Enforcement and U.S. Department of Homeland
 11 Security ("the Directive") should be set aside as arbitrary, capricious, or otherwise
 12 not in accordance with law, (b) the Directive is causing, and will cause, irreparable
 13 harm to The Regents and its international students who hold F-1 visas, absent
 14 provisional relief, and (c) the balance of equities and the public interest weigh
 15 heavily in favor of provisional relief in the form of maintaining the status quo
 16 existing prior to the issuance of the Directive. Accordingly, the Court hereby
 17 GRANTS The Regents' *Ex Parte* Motion for a Temporary Restraining Order
 18 pursuant to Federal Rule of Civil Procedure 65 and the inherent equitable powers
 19 of the Court.
- 20 2. The Court further ORDERS that Defendants United States Department of
 21 Homeland Security, Acting Secretary of Department of Homeland Security Chad
 22 F. Wolf, United States Immigration and Customs Enforcement, and Acting
 23 Director of U.S. Immigration and Customs Enforcement Matthew Albence
 24 (collectively, "Defendants") are enjoined from implementing the Directive, or any
 25 portion thereof.
- 26 3. Defendants are hereby ORDERED to immediately return to the administration of
 27 F-1 visas by ICE's Student and Exchange Visitor Program ("SEVP") to the state of
 28 its operation pursuant to the March 13, 2020 "Guidance for SEVP Stakeholders"

1 (“March 13 Guidance”) prior to the issuance of the Directive, using the same
 2 means, methods, and policies for considering and granting F-1 visas and the
 3 related requests of international students to study in the United States as were
 4 utilized pursuant to the March 13 Guidance which was in place prior to the
 5 issuance of the Directive on July 6, 2020, including without limitation:

- 6 a. restoration of the temporary provision permitting current F-1 visa students,
 7 both currently residing in the United States or abroad, to pursue a full
 8 course of study from certified universities in the United States and, in so
 9 doing, “to temporarily count online classes towards a full course of study in
 10 excess of the limits stated in 8 CFR 214.2(f)(6)(i)(G)” for the Fall 2020
 11 semester and for the duration of the COVID-19 emergency (*see* March 13
 12 Guidance);
- 13 b. restoration of the granting of new F-1 visas to eligible non-immigrant
 14 students intending to enroll in certified universities in the United States to
 15 pursue a full course of study and, in doing so, to temporarily count online
 16 classes towards a full course of study in excess of the limits stated in 8
 17 CFR 214.2(f)(6)(i)(G) for the Fall 2020 quarter or semester and for the
 18 duration of the COVID-19 emergency;
- 19 c. suspension of any requirement that certified universities that “will not be
 20 entirely online but will reopen in the fall and that will use “[a] hybrid plan
 21 of in-person and remote classes” in the Fall 2020 quarter or semester be
 22 required to update and submit their operational plans to SEVP by August 1,
 23 2020 (*see* the Directive at pp. 2-3); and
- 24 d. suspension of any requirement that, by August 4, 2020, certified
 25 universities in the United States adopting a “hybrid model – that is, a
 26 mixture of online and in person classes” which F-1 visa students will be
 27 attending in the Fall 2020 quarter, or semester be required to update and re-
 28 issue new Forms I-20 (*see* the Directive at p. 2); and

- e. restoration of the policy that certified universities may continue to implement procedural adaptations to comply with state or local health emergency declarations.

IT IS FURTHER ORDERED that Defendants appear via Zoom, telephonically, or in person to the extent permitted, in Courtroom ____ of this Court, located at 450 Golden Gate Avenue, San Francisco, California 94102, on July __, 2020 at _____ AM/PM, or as soon thereafter as the matter may be heard, then and there to SHOW CAUSE, if any, as to why it or he should not be enjoined and prevented during the pendency of this action from (1) directly or indirectly implementing the Directive, or any portion thereof, and (2) directed to immediately return to the administration of F-1 visas to the state of its operation pursuant to the March 13 Guidance prior to the issuance of the Directive, using the same means, methods, and policies for considering and granting F-1 visas and requests of international students to study in the United States as were utilized before the issuance of the Directive.

Plaintiff shall not be required to post a bond for issuance of this Order.

This Order and supporting papers must be served on Defendants as soon as possible, but no later than _____, ____, 2020. Defendants' opposition papers shall be filed on or before _____, 2020, at _____ AM/PM, and Plaintiff's reply shall be filed on or before _____, 2020, at _____ AM/PM.

IT IS SO ORDERED, this ____ day of _____, 2020.

The Honorable
UNITED STATES DISTRICT JUDGE