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and DOES 1 through 50

14 UNITED STATES DISTRICT COURT
15 CENTRAL DISTRICT OF CALIFORNIA
16 SOUTHERN DIVISION AT SANTA ANA

17 Z.W., C.Y., X.Y., A.G., M.X., Z.L., W.R.,
18 and DOES 1 through 50,

19 Plaintiffs,

20 vs.

21 U.S. DEPARTMENT OF HOMELAND
SECURITY; U.S. IMMIGRATION AND
CUSTOMS ENFORCEMENT; CHAD R.
22 WOLF, Acting Secretary, U.S. Department
of Homeland Security; MATTHEW
23 ALBENCE, Acting Director, U.S.
Immigration and Customs Enforcement,

24 Defendants.
25
26
27
28

Case No. 8:20-cv-01229

Assigned to:

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

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INTRODUCTION

1
2 1. Less than one month after the Supreme Court held that the Executive
3 Branch must “turn square corners” before taking an action that profoundly disrupts the
4 lives of hundreds of thousands of individuals, the Executive Branch has once again
5 acted recklessly and inexplicably to disrupt the lives of hundreds of thousands more.
6 On July 6, Immigration and Customs Enforcement (“ICE”) issued a press release
7 announcing that students at colleges and universities that are offering exclusively
8 online classes in the fall 2020 academic term because of the coronavirus pandemic
9 would be required to leave the United States. This politically motivated directive
10 upended the lives of foreign students who are lawfully present in this country and who
11 contribute immeasurably to the quality of education at the institutions they attend.
12 These students chose to come to the United States to pursue degrees in law, medicine,
13 engineering, and every other academic field. They wish to prepare themselves to lead
14 productive lives that serve and build community wherever they ultimately settle.
15 Access to our outstanding institutions of higher education is one of the greatest gifts
16 that the United States gives the world, and that gift is repaid many times over by the
17 contributions that foreign students make to the United States and to the world as a
18 whole by virtue of the learning they receive. Those contributions reflect their
19 intelligence, compassion, and hard work.

20 2. In the midst of the most dangerous pandemic of the last hundred years,
21 universities and graduate schools have reshaped their educational models to ensure the
22 quality, continuity and safety of their educational programs. Utilizing their educational
23 expertise and recognizing their paramount responsibility to the safety of the university
24 community and the community at large, leadership at these schools have reluctantly
25 accepted the judgments of our nation’s leading public health experts and CDC
26 guidelines and have instituted remote learning and teaching strategies and regimens. It
27 should go without saying that these decisions have not been easy. But it should also be
28

1 readily recognized that a university's decision to go all or principally remote is one of
 2 life and death. Universities are doing their part to flatten the curve and repel the
 3 deadly coronavirus that thrives on crowded settings inside buildings, precisely the
 4 circumstances of normal classroom teaching and university life. And until July 6,
 5 universities were doing so in reasonable reliance on guidance that ICE itself had
 6 provided in March 2020, and that promised a flexible approach of allowing students to
 7 maintain their visas while schools attempted, in good faith and with timely notice to
 8 ICE, to provide the best educational opportunities possible while fulfilling
 9 indispensable obligations to preserve the health of their students and their
 10 communities.

11 3. On July 6, ICE abruptly changed course 180 degrees, without explanation
 12 or even acknowledgement. Its decision effectively punishes foreign students because
 13 their universities have prioritized the health and safety of their academic and local
 14 communities and of the nation by choosing to hold remote classes in the fall term.

15 4. The July 6 Guidelines offer no explanation whatsoever for the complete
 16 reversal in policy. But the facts are that the President of the United States, beset by
 17 falling poll numbers in a fast closing election year, has tweeted repeatedly that CDC
 18 guidelines must be altered and schools must open in the fall no matter the incongruity
 19 with fundamental public health principles and the sound, on-the-ground knowledge
 20 and expertise of university officials as to the safest course for their students and
 21 community. Indeed, on the day that the ICE message was issued, he tweeted that
 22 "SCHOOLS MUST OPEN IN THE FALL!!!"¹ The next day, Acting Deputy
 23 Secretary of Homeland Security Ken Cuccinelli, responding to a question about the
 24 July 6 Guidelines, explained the guidelines were "setting the rules . . . that will, again,
 25 encourage schools to reopen."²

26 ¹ Donald J. Trump (@realDonaldTrump), Twitter (July 6, 2020, 2:40 PM EDT),
 27 <https://twitter.com/realDonaldTrump/status/1280209946085339136?s=20>.

28 ² Johe Bowden, *Cuccinelli Says Rule Forcing International Students to Return Home Will 'Encourage Schools to Reopen'*, The Hill (July 7, 2020),

1 5. ICE’s announcement concerning international students attending
2 institutions that did not offer in-person instruction, or who were not able to take the
3 in-person classes that were offered, is part and parcel of the President’s approach.
4 These guidelines, which adopt a one-size-fits-all approach to higher education, are
5 blunt. They do not reflect the intensely local nature of university decisions, nor do
6 they make exceptions for students at heightened risk from the novel coronavirus.
7 Instead, the guidelines are designed to force institutions of higher education to reopen
8 for the fall term, no matter the cost.

9 6. This life-threatening action makes foreign students pawns in a political
10 drama. Tragically, but unsurprisingly, ICE’s press release was not accompanied by
11 any of the safeguards the APA requires to insure “reasoned decision making” and
12 accountability: notice and comment, rational explanation for the attack on prudent and
13 grounded university decision making, and careful examination of the reliance interests
14 of the students who are suddenly confronted with life and death choices. The ICE
15 announcement makes no sense except as an irrational and cruel action designed to
16 advance objectives having nothing to do with public health, learning, and reasonable
17 immigration policy. The policy is indefensible, and the absence of any record or
18 explanation for its sudden imposition is not just proof of illegality – it is evidence that
19 no rational explanation exists.

20 7. The narratives of plaintiffs, all serious students pursuing meaningful
21 careers, illustrate the irrationality of the ICE announcement and describe the terrible
22 consequences of allowing it to take effect. Students required to come to campus and
23 expose themselves to the coronavirus cannot do so without risking both their health
24 and the health of others. Some students have preexisting conditions that heighten the
25 danger. But if they act in keeping with essential public health practices, maintaining
26 social distancing measures in enclosed spaces with strangers, they will be left asunder,

27 _____
28 <https://thehill.com/homenews/administration/506248-cuccinelli-says-rule-forcing-international-students-to-return-home>.

1 many with literally no place to go because of international travel restrictions to their
2 home nations. They will jeopardize their immigration status and future education and
3 career prospects. Their education will come to a screeching halt. They will be placed
4 in financial calamity.

5 8. This lawsuit seeks the invalidation of the ICE guidelines upon the
6 bedrock principles underlying the APA: reasoned decision making, public notice and
7 hearing, and sensitive consideration of reasonable reliance interests. The government
8 has nothing to lose by giving orderly respect to these mandates; the foreign students,
9 their universities and communities, and those who stand by the rule of law, have
10 everything.

11 **PARTIES**

12 9. Plaintiff Z.W. is a 25 year-old Chinese national entering his second year
13 of study at University of California Irvine School of Law in Irvine, California. After
14 learning about UCI Law's remote learning transition, he entered into a 13-month lease
15 for an apartment in Irvine with monthly rent of \$1,730 and security deposit. He
16 entered into the lease with the expectation that he would be able to continue his
17 education through distanced, remote learning. Z.W. was preparing to apply for a CPT
18 visa so he could intern over the next, 2L summer to further his legal education. His
19 eligibility for the CPT visa, however, will be foreclosed if his F-1 visa is terminated.
20 Similar to all plaintiffs who are Chinese nationals, he is deeply concerned with the
21 financial costs associated with returning to China. He has paid a deposit for his
22 apartment out of pocket, and does not know how he will manage to pay for a return
23 flight to China, or the associated costs of China's mandatory 14-day quarantine. His
24 education will also be essentially prematurely terminated or paused, because of
25 China's prohibition on Google and VPN use, in addition to the 12 hour time
26 difference.

10. Plaintiff C.Y. is a 27 year-old Chinese national entering her second year of law school at UCI Law. She currently lives in Irvine, California where she moved in 2019 to enroll in her first year of law school. When UCI Law switched to online classes in March 2020 and SEVP issued the March 13 Guidance, C.Y. believed she would be able to continue her studies in the United States regardless of how UCI Law choose to offer classes in the fall. So she leased on-campus housing through spring 2021, and pre-paid rent at a total cost of \$10,380. If she were to have to return to China, she would not be able to recover that rent. Additionally, it would be prohibitively expensive for C. Y. to return to China, as the price of airline ticket from Los Angeles to China has increased several fold since the start of the pandemic and could easily exceed \$10,000. Her family cannot afford to pay the price of her plan ticket back to China, nor can she. It will also be cost-prohibitive to pay for the hotel room in which she would be required to self-quarantine for 14 days after returning to China. If she were forced to return to China in the coming months, C. Y. also fears she will be exposed to the novel coronavirus on the flight to China and become infected, as she heard happened to more than a dozen people on a recent international flight to China. Once in China, C. Y. would not be able to continue to take law school classes due to, among other things, the unavailability in China of tools that UCI Law uses to facilitate online learning, including Google products (e.g., Google Drive) and secure VPNs. Additionally, the 15 to 16 hour time change would make it practically impossible for her to engage in clinical programs in which she has enrolled and to engage in important conferences with fellow students and professors. C. Y. does not feel safe attending in-person classes due to the health risks and therefore planned to take all of her courses online in the fall. The prospect of making C. Y. choose between a potentially unsafe in-person class and a prohibitively costly emergency journey home is causing her severe distress, which she will worries will negatively impact her grades.

11. Plaintiff X. Y. is a 25-year-old Chinese national who has attended UCI Law on an F-1 visa since 2018 and this fall, will be entering her third and final year at UCI Law. In reliance upon the SVEP's March guidance and UCI's June statements that the fall semester would be held remotely, X.Y. and her partner, a UCLA student, entered into a 12-month lease for an apartment in Los Angeles. She also cancelled an August trip to visit family at home in China because she anticipated complications, including travel difficulties and the possibility of not being able to return to the United States to finish her program, resulting from the pandemic. She thought it was safer to stay in place. X. Y. is deeply concerned about the prospect of travel at a time of increased risk of community transmission both nationally in the United States and locally in Los Angeles. Her healthcare plan is effective through UCI enrollment, so she doesn't know if she would have healthcare coverage in China. X. Y. is concerned she will have to drop out of school if she is forced to return to China, because attending live-streamed classes would mean that X. Y. would need to attend school in the middle of the night, and she would have no way to obtain required casebooks. X. Y. had planned to work as a research assistant for a professor during the upcoming semester, but it will be impossible to do so if she is in China. Her ability to apply for a permanent work visa, after being forced to return to China, will be considerably more burdensome than if she remained in the United States, as she had planned.

12. Plaintiff A. G. is a 25-year-old German national who has been attending the University of Southern California Law School (USC Law) in Los Angeles, California, on an F-1 visa, will be entering her third and final year. She lives in Los Angeles, where she is responsible for a lease and is employed through the summer by a law firm. Her responsibilities in the United States include being the sole familial caretaker for her almost 90 year-old great aunt who lives in Los Angeles. A. G. drives her to doctor's appointments and goes grocery shopping for her. A. G. is nervous about the prospect of having to fly if she were forced to return to Germany, where she

1 would need to live with her immediate family. She fears that the return flight will
2 expose her to the novel coronavirus and then put her family members at risk because
3 of their high risk for COVID-19 complications. Her father has four stents in his heart
4 and her mother has high blood pressure. She herself has no known pre-existing
5 conditions, but she would be unable to take advantage of her US health insurance in
6 Germany. If forced to return to Germany, A. G. would have difficulties continuing her
7 studies, as she would need to take her classes in the middle of the night, due to the
8 nine-hour time difference, and textbooks may be difficult to obtain. If USC Law were
9 to transition to hybrid instruction, A. G. would attend in-person classes in order to stay
10 in the country, but would not feel safe doing so.

11 13. Plaintiff M. X. is a 26-year-old Chinese national entering her second year
12 of study at UCI Law. Because of the exemption granted by ICE, and UCI's June
13 announcement of remote instruction in the fall, M. X. decided to plan for the
14 upcoming year by renewing her on-campus lease for a year, and has already begun
15 paying rent under the lease. M. X. planned to continue her studies in the United States,
16 and planned to intern next summer. In order to do so, she would need the CPT visa.
17 Her eligibility for the CPT visa, however, will be foreclosed if her F-1 visa is
18 terminated. She faces the additional financial burden of extremely expensive return
19 flights to China and expenses associated with China's mandatory 14-day quarantine.
20 M. X. does not have the financial means to pay these required costs out of pocket on
21 such short notice. Similarly, it would be effectively impossible for her to continue her
22 studies while in China, due to the time difference and restrictions against Google and
23 VPN use, meaning she would not be able to attend or participate in school even if the
24 time zone were not an issue. If UCI were to transition to hybrid learning solely for
25 international students, M. X. is concerned about the risk of infection in a classroom
26 requiring physical attendance.

1 14. Plaintiff Z. L. is a 25 year-old Chinese national who lives in Los Angeles
2 and is enrolled as a PhD student at University of California, Los Angeles (“UCLA”),
3 focusing on cinema and media studies. She enrolled at UCLA in 2017 and holds an F-
4 1 visa. After UCLA switched to online operations in late March, Z. L. remained in the
5 United States because she did not want to risk her or her parents’ health and safety by
6 traveling to China during a pandemic. She worries about returning to China because
7 traveling will place her at risk of contracting COVID-19, as she will be exposed to
8 people who may be infected with the virus at airports and inside the plane. If she were
9 forced to return to China, Z. L. would not be able to continue her studies for several
10 reasons. For instance, due to the 15-hour time difference between Los Angeles and
11 China, Z. L. will have to attend her online classes at unconventional times. For
12 example, Z. L. will have to call into a 1 p.m. Monday class at 4 a.m. on Tuesday,
13 Beijing time. Watching recorded classes is not an option for her because graduate-
14 level courses are designed to be centered around conversations and dialogue with
15 other students than lecture. Relying on class recordings would deprive her of
16 important opportunities to learn from and with her peers. Z. L. is concerned that
17 taking in-person classes will jeopardize her health, and had been planning to take all
18 of her fall 2020 courses online. In China, Z. L. will not be able to access the print and
19 digital media resources she needs to complete her dissertation, and strict quarantine
20 requirements will likely impair her ability to study for her PhD qualifying exam.
21 Failure of the exam could jeopardize the funding she needs to complete the years-long
22 program she has undertaken. Z. L. housing situation is unsettled and if she returns to
23 China she will have to pay costs of storage for her belongings and car. Not knowing
24 whether she must leave the country or risk serious illness—or even death—is keeping
25 Z. L. tense and causing her great distress.

26 15. Plaintiff W. R. is a 26-year-old Chinese national entering his second year
27 of school at UCI Law School who currently lives near Irvine, California in San Juan
28

1 Capistrano. Several months ago in March, UCI Law announced its decision to conduct
2 remote instruction. Around that same time, W.R. received an exemption from ICE to
3 remain in the United States with his wife, who is a permanent resident alien living in
4 San Juan Capistrano and owns a business in the United States. If he is forced to return
5 to China, he will be separated from his wife. He will also suffer financial losses based
6 on decisions made in reliance on his ability to stay in the United States for his studies.
7 If he is required to return to China, W. R.'s financial burden will also be compounded
8 by the high cost of travel to China in the era of COVID-19, with average one-way
9 economy flights priced at close to \$10,000 (more than eight times the cost of a single
10 flight to China before the pandemic). Additionally, passengers arriving from outside
11 China are financially responsible for room and board associated with China's
12 mandatory 14-day quarantine, which would also be a financial hardship for W. R. If
13 he is required to return to China, W. R.'s legal education will not be able to continue
14 for all practical purposes. He will not be able to participate in classes, important
15 group, or conduct necessary research due to the 15 to 16 hour time zone difference
16 and China's strict ban against Google and VPN usage, both of which are required to
17 access the research databases and at UCI Law. W. R. will also be unable to benefit
18 from the student legal clinic in which he is enrolled for the upcoming fall semester if
19 he has to return to China. If he is required to attend in-person instruction, W. R. is
20 concerned for his health and safety due to threat of exposure to the novel coronavirus.

21 16. Defendant United States Department of Homeland Security is a federal
22 agency of the United States.

23 17. Defendant United States Immigration and Customs Enforcement is a
24 division of the United States Department of Homeland Security.

25 18. Defendant Chad F. Wolf is the Acting Secretary of the United States
26 Department of Homeland Security. He is sued in his official capacity.

1 19. Defendant Matthew Albence is the Acting Director of the United States
2 Immigration and Customs Enforcement. He is sued in his official capacity.

3 **JURISDICTION AND VENUE**

4 20. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331
5 and 5 U.S.C. § 702. Plaintiffs are persons aggrieved by a final agency action
6 promulgated by Defendants. *See* 5 U.S.C. § 702. Plaintiffs bring this suit for
7 declaratory and injunctive relief to set aside Defendants’ action as contrary to law and
8 arbitrary and capricious, *see id.* §§ 705–706, and as a violation of due process under
9 the Fifth Amendment to the United States Constitution—thus presenting a federal
10 question, *see* 28 U.S.C. § 1331.

11 21. Venue is proper in this Court because Plaintiffs reside in this District—
12 specifically, a majority attend UCI and reside in or near Irvine—and no real property
13 is involved. 28 U.S.C. § 1391(e)(1)(C).

14 22. Plaintiffs have standing to bring this case. Defendants’ actions will cause
15 an imminent, concrete, and irreparable risk of harm to Plaintiffs, their families, their
16 educations, their short-term and long-term health, and their future education and
17 employment prospects unless halted by this Court.

18 23. This Court is authorized to grant the requested injunctive relief pursuant
19 to Federal Rule of Civil Procedure 65 and 5 U.S.C. § 705.

20 **FACTS**

21 **Higher Education and the COVID-19 Pandemic**

22 24. The world is in the midst of the global COVID-19 pandemic.

23 25. Because humans lack built-up immunity to, or a vaccine against or
24 effective treatment for, the novel SARS-CoV-2 virus that causes COVID-19, the only
25 way to mitigate the effects of the virus today is to stop its spread.

26 26. State and local governments have responded to the pandemic with
27 unprecedented containment measures such as stay-at-home orders that instructed state
28

1 residents to avoid leaving their residences. At one point, 42 states instituted such
2 orders.³

3 27. On March 4, 2020, California Governor Gavin Newsom declared a state
4 of emergency in light of the COVID-19 pandemic.⁴

5 28. On March 9, the University of California at Berkeley suspended in-
6 person instruction.⁵

7 29. On March 10, the University of California campuses at Davis, Irvine, Los
8 Angeles, Riverside, and Santa Barbara followed suit, as did the University of Southern
9 California.⁶

10 30. On March 19, Governor Newsom announced a statewide stay-at-home
11 order.⁷ Among other things, this order forbade universities from continuing to operate
12 in-person classes, including the schools plaintiffs attend.

13 31. While the order has been amended to loosen restrictions, the order could
14 be tightened again at any time.

15 32. COVID-19 infections are surging across the country and in California.
16 Nationwide, three million COVID-19 cases have been diagnosed, and more than
17 132,000 people have died.⁸ Meanwhile, cases are on the upswing: 50,000 new cases
18 were reported nationwide on six of the first eight days in July. The total reported cases
19 on ten days since June 26 has exceeded the prior single-day record set on April 6. And
20 on July 8, the number of reported daily cases broke 60,000 for the first time.⁹

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22
23 ³ Jasmine C. Lee *et al.*, *See How All 50 States Are Reopening (and Closing Again)*, N.Y. Times (July 8, 2020),
24 <https://www.nytimes.com/interactive/2020/us/states-reopen-map-coronavirus.html>.

⁴ <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>

⁵ <https://news.berkeley.edu/2020/03/09/as-coronavirus-spreads-uc-berkeley-suspends-in-person-instruction/>

⁶ <https://www.latimes.com/california/story/2020-03-10/ucla-to-cancel-most-in-person-classes-until-early-april-to-protect-against-coronavirus>

⁷ Executive Order N-33-20, Executive Dep't State of California (March 19, 2020).

⁸ *Cases in the U.S.*, Ctrs. for Disease Control & Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited July 10, 2020).

⁹ See <https://www.nytimes.com/2020/07/09/world/coronavirus-updates.html> (last visited July 9, 2020);

33. In California, over 296,000 people have tested positive for the novel coronavirus.¹⁰ On July 8, an average of 7,000 new cases were reported in the state every day. Since June 29, California has reported its five highest daily new case totals since the pandemic began. These new cases are not the result of more testing - California's test positivity rate has also increased over the last several weeks.¹¹ Daily hospital admissions for COVID-19 patients have risen every day since June 18. And the trendline is positive, suggesting COVID-19 in California is likely to get even worse. On July 8, the state reported its highest number of COVID-19 deaths to date.

34. Both in California and nationwide, the COVID-19 pandemic is worse than at any point during the spring academic semester.

35. In recognition of the continuing threat COVID-19 posed to its students, staff, and faculty, on June 23, the University of California, Irvine School of Law ("UCI Law") announced that all second- and third-year law students would only be able to take on-line courses.¹²

36. Likewise, on June 26, the University of California at Berkeley Law School ("Berkeley Law") announced that it would conduct the fall 2020 term entirely online.¹³ Berkeley Law determined that restrictions on the number of students in a classroom and the requirement that classrooms be disinfected between classes would make offering safe, in-person instruction infeasible.

37. Schools in the University of California system are not alone in moving some or all students fully online in the fall semester. Harvard University¹⁴ and the University of Southern California¹⁵ will offer exclusively online instruction to all

¹⁰ COVID-19 Statewide Update, STATE OF CAL., <https://update.covid19.ca.gov> (last updated July 10, 2020).

¹¹ Daily State-by-State Testing Trends: California, Johns Hopkins University & Medicine Coronavirus Research Center, <https://coronavirus.jhu.edu/testing/individual-states/california> (last visited July 10, 2020).

¹² <https://www.law.uci.edu/news/press-releases/2020/fall-2020-semester-planning-update-06232020.pdf>

¹³ <https://www.law.berkeley.edu/article/fall-instruction-memo-6-26-20/>

¹⁴ <https://www.bostonherald.com/2020/07/06/all-harvard-university-students-will-take-online-classes-this-fall-amid-coronavirus/>

¹⁵ <https://coronavirus.usc.edu/2020/07/01/7-1-letter-on-student-housing-and-course-schedules/>

1 students. Massachusetts Institute of Technology¹⁶ and Yale University¹⁷ will bring
 2 some students back to campus for a handful of in-person classes, but most classes will
 3 be offered exclusively online. Other schools, like Brown University,¹⁸ California
 4 Institute of Technology,¹⁹ and Johns Hopkins University,²⁰ have not yet announced
 5 their plans.

6 38. Schools are right to be cautious. Public health leaders believe the United
 7 States is still contending with the first wave of coronavirus infections.²¹ Most public
 8 health experts expect that, even if the first wave is eventually contained, a second
 9 wave of infections will take hold in the fall or winter.²²

10 **The F-1 Student Visa Program**

11 39. The United States has labeled students as “non-immigrants” and operated
 12 a student visa program since at least 1921.²³ Although the F-1 program has changed
 13 over the years, millions of students have entered the country with F-1 visas since at
 14 least 2000, as far back as public records are available.²⁴

15 40. For the Fall 2019 term, there are currently 44,485 international students
 16 in the University of California (“UC”) system. 27,189 of those are undergraduate
 17 students, and 17,295 are graduate students.²⁵

18 41. According to a report published by the U.S. Immigration and Customs
 19 Enforcement (“ICE”), the total number of Student and Exchange Visitor Information
 20 System (“SEVIS”) records for active F-1 and M-1 students was 1,551,373 in the
 21 calendar year 2018. Asia remains the number-one continent of origin for
 22

23 ¹⁶ <https://covid19.mit.edu/further-decisions-about-the-fall-semester>

24 ¹⁷ <https://covid19.yale.edu/announcements/fall-2020>

25 ¹⁸ <https://covid.brown.edu/updates/brown-students-postponing-preregistration-until-august-updating-coursesbrown>

26 ¹⁹ <https://coronavirus.caltech.edu/updates/general/6252020>

27 ²⁰ <https://covidinfo.jhu.edu/university-messages-and-announcements/planning-for-fall-and-beyond/>

28 ²¹ <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/first-and-second-waves-of-coronavirus>

²² <https://www.ama-assn.org/delivering-care/public-health/harvard-epidemiologist-beware-covid-19-s-second-wave-fall>

²³ <https://web.archive.org/web/20140205165423/http://www.iie.org/Who-We-Are/History>

²⁴ <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics.html>

²⁵ <https://www.universityofcalifornia.edu/infocenter/fall-enrollment-glance>

1 nonimmigrant students, with 1,165,483 student records. China (478,732), India
 2 (251,290), and South Korea (88,867) sent the largest numbers of students in both
 3 calendar years 2017 and 2018.²⁶

4 42. There were 145,564 Optional Practical Training (“OPT”) students in the
 5 calendar year 2018, including 69,650 science, technology, engineering, and
 6 mathematics (“STEM”) OPT students.²⁷ There were 151,525 curricular practical
 7 training (“CPT”) students who reported working for an employer in the calendar year
 8 2018, a 14-percent increase since 2017.²⁸

9 43. In 2018, California hosted 302,073 nonimmigrant students, 19.5 percent
 10 of all nonimmigrant students in the United States, and more than any other state.²⁹

11 **SEVP’s Response to the COVID-19 Pandemic**

12 44. On March 9, 2020, the Student and Exchange Visitor Program (“SEVP”)
 13 issued a Broadcast Message providing guidance on COVID-19 and its implications for
 14 nonimmigrant F and M students (“March 9 Guidance”). In this guidance, SEVP
 15 recognized that “SEVP-certified schools may need to adapt their procedures and
 16 policies to address the significant public health concerns associated with the COVID-
 17 19 crisis.” SEVP provided schools with a template that schools could use to report
 18 those changes to SEVP. SEVP assured schools and students, however, both that
 19 “SEVP is focused on ensuring that nonimmigrant students are able to continue to
 20 make normal progress in a full course of study as required by federal regulations,” and
 21 that “SEVP intends to be flexible with temporary adaptations.” SEVP further
 22 recognize[d] that the COVID-19 crisis is fluid and rapidly changing” and “[f]or that
 23 reason” assured schools that it was “leaving room for schools to comply with state or
 24 local health emergency declarations.”

25
 26 ²⁶ <https://www.ice.gov/doclib/sevis/pdf/sevisByTheNumbers2018.pdf>

27 ²⁷ *Id.*

28 ²⁸ *Id.*

29 ²⁹ *Id.*

1 45. On March 13, 2020, President Donald J. Trump declared that COVID-19
2 had created a national emergency.³⁰ This emergency is ongoing.

3 46. On March 13, 2020, as governors across the country began to sign stay-
4 at-home orders and many institutions of higher education began to switch to remote-
5 teaching options, the SEVP issued a follow-up to the March 9 Guidance (“March 13
6 Guidance”) addressing “inquiries” that SEVP had received about various “different
7 scenarios” a school or student might face, and instructing schools and students how
8 the transition to online classes would affect nonimmigrant students’ visa status.³¹

9 47. The March 13 Guidance presented students with three scenarios they
10 might face: a complete school shutdown, a switch to online learning while the student
11 remained in the United States, and a switch to online learning while the student moved
12 outside of the United States.³² In all three scenarios, SEVP assured students that they
13 would be able to remain in compliance with the terms of their visas.

14 48. SEVP assured students and schools that it would treat school shutdowns
15 the same way it treated “short-term breaks in the school calendar.” International
16 students would remain eligible for their visas if they “intend[ed] to resume their
17 course of study when classes resume.”³³

18 49. For institutions that switched to online education, and “[g]iven the
19 extraordinary nature of the COVID-19 emergency,” SEVP waived the limits for
20 online courses laid out in 8 C.F.R. §§ 214.2(f)(6)(i)(G) and 214.2(m)(9)(v). SEVP
21 waived these limits for both international students who remained in the United States
22 and those who chose to travel abroad during the period of online instruction.³⁴ SEVP
23 explained that these waivers would remain in place for “the duration of the [COVID-
24 19] emergency”

25 ³⁰ [https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak)
26 [coronavirus-disease-covid-19-outbreak](https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak)

27 ³¹ https://www.ice.gov/sites/default/files/documents/Document/2020/Coronavirus%20Guidance_3.13.20.pdf

28 ³² *Id.*

³³ *Id.*

³⁴ *Id.*

1 50. At the end of the March 13 Guidance, SEVP noted that “[d]ue to “the
2 fluid nature of this difficult situation, this guidance may be subject to change.”
3 Nowhere in the March 13 Guidance, however, did SEVP suggest or even hint that it
4 intended to change the values that underlay the March 9 and March 13 guidance, such
5 as to abandon the “focus” it had announced, just six days before, on “ensuring that
6 nonimmigrant students are able to continue to make normal progress in a full course
7 of study.” March 9 Guidance. Similarly, nowhere in the March 13 Guidance did
8 SEVP suggest or hint that it no longer “intend[ed] to be flexible with temporary
9 adaptations” or would deny schools “room ... to comply with state or local health
10 emergency declarations.” March 9 Guidance. To the contrary, SEVP made clear that
11 it planned to monitor factual changes in the COVID-19 situation: “SEVP will
12 continue to monitor the COVID-19 situation and will adjust its guidance as needed.”

13 51. On March 20, 2020, ICE posted links to the March 9 and March 13
14 guidance documents on its website together with some sample Questions and Answers
15 geared to be helpful to students. One such Q and A read:
16 “Can nonimmigrant students participate in online classes?”
17 “*SEVP is committed to remaining flexible* in allowing schools to make temporary
18 procedural adaptations *so nonimmigrant students can continue to make normal*
19 *forward progress* in their program of study. They can temporarily engage in distance-
20 learning, either from within the U.S. or outside the country, in light of COVID-19.
21 SEVP will provide updated guidance *as additional* information concerning the scope
22 and length of this situation becomes clearer.” (Emphasis added.)

23 52. For the four months following the release of the March 9 and March 13
24 guidance documents, students and schools engaged in extensive efforts to plan for the
25 fall academic year, trusting that SEVP’s March 9 Guidance and March 13 Guidance,
26 as reiterated in the other communications, accurately reflected the approach that SEVP
27
28

1 would take to the visa status of international students during the COVID-19
2 emergency.

3 53. The nation's COVID-19 emergency is not over. President Trump has not
4 withdrawn the declaration of a national state of emergency. In California, COVID-19
5 infection and death rates remain consistent with—and indeed are exceeding—the
6 levels when the March Guidances were issued, as noted above.

7 54. Yet on July 6, 2020, SEVP suddenly and without notice announced a
8 rollback of the exemptions put in place for the spring and summer 2020 terms.³⁵

9 55. The new guidelines (“July 6 Guidelines”) require students whose
10 institutions choose to conduct the fall 2020 term entirely online to exit the United
11 States. The announcement states that:

12 Nonimmigrant F-1 and M-1 students attending schools operating
13 entirely online may **not** take a full online course load and remain in the
14 United States. The U.S. Department of State will not issue visas to
15 students enrolled in schools and/or programs that are fully online for
16 the fall semester nor will U.S. Customs and Border Protection permit
17 these students to enter the United States. Active students currently in
18 the United States enrolled in such programs must depart the country or
19 take other measures, such as transferring to a school with in-person
instruction to remain in lawful status. If not, they may face
immigration consequences including, but not limited to, the initiation
of removal proceedings.³⁶

20 56. The July 6 Guidelines also made clear that students whose in-person
21 classes were switched online partway through the term would be required to leave the
22 United States:

23 Schools should update their information in the Student and Exchange
24 Visitor Information System (SEVIS) within 10 days of the change if
25 they begin the fall semester with in-person classes but are later
26 required to switch to only online classes, or a nonimmigrant student

27 ³⁵ [https://www.ice.gov/news/releases/sevp-modifies-temporary-exemptions-nonimmigrant-students-taking-online-](https://www.ice.gov/news/releases/sevp-modifies-temporary-exemptions-nonimmigrant-students-taking-online-courses-during)
28 [courses-during](https://www.ice.gov/news/releases/sevp-modifies-temporary-exemptions-nonimmigrant-students-taking-online-courses-during)

³⁶ *Id.*

1 changes their course selections, and as a result, ends up taking an
2 entirely online course load. Nonimmigrant students within the United
3 States are not permitted to take a full course of study through online
4 classes. If students find themselves in this situation, they must leave
the country or take alternative steps to maintain their nonimmigrant
status such as a reduced course load or appropriate medical leave.³⁷

5
6 57. The July 6 Guidelines further bar students whose institutions have gone
7 either hybrid or in-person from taking a fully online curriculum:

8 These schools must certify to SEVP, through the Form I-20,
9 “Certificate of Eligibility for Nonimmigrant Student Status,” certifying
10 that the program is not entirely online, that the student is not taking an
11 entirely online course load this semester, and that the student is taking
the minimum number of online classes required to make normal
progress in their degree program.

12
13 58. Nowhere in the July 6 Guidelines does SEVP state that the COVID-19
14 emergency has ended, whether as a formal or a factual matter. Indeed, the July 6
15 Guidelines are entirely silent on “the COVID-19 situation” that SEVP had said it was
16 planning to monitor and would make the basis of any change in guidance.

17 59. Nowhere in the July 6 Guidelines does SEVP acknowledge its prior
18 commitment, in the March 9 Guidance, to allow international students “to make
19 normal progress in a full course of study,” “to be flexible with temporary
20 adaptations,” or allow schools “room ... to comply with state or local health
21 emergency declarations.”

22 60. Nowhere in the July 6 Guidelines does SEVP give any consideration to
23 the reliance that international students and schools may have placed, in making their
24 respective plans for the coming academic year, on the March 9 and March 13
25 guidance documents, on the nation’s longstanding commitment to the F-1 Visa
26 program, and on the expectation that any changes SEVP would announce to the March

27
28 ³⁷ *Id.*

1 9 and 13 guidance would reflect a good-faith assessment of materially changed
2 circumstances in light of the values expressed in those documents.

3 61. The July 6 Guidelines thus reflect a complete but unacknowledged
4 repudiation of the approach SEVP laid out on March 9 and March 13 to addressing the
5 implications of the COVID-19 pandemic for holders F-1 and M-1 visas.

6 62. The July 6 Guidelines also fail to address numerous important issues that
7 any reasoned decision would consider. For example, the July 6 Guidelines do not
8 include an exception for students who cannot attend classes because they are at an
9 elevated risk to COVID-19 due to pre-existing health conditions, nor do they contain
10 an exception for students living with family members or roommates who are at an
11 elevated risk to COVID-19.

12 63. The July 6 Guidelines also do not include an exception for students who
13 are forced into online classes because the state institutes a stay-at-home order that
14 shuts down their educational institution.

15 64. The July 6 Guidelines also do not include an exception for students who
16 are forced to come back to the United States because their schools have gone hybrid
17 or remained in-person.

18 65. The July 6 Guidelines also do not include an exception for students who
19 cannot access the internet in their country of origin, for students who cannot safely
20 travel or who cannot travel at all to their country of origin, or for students who fear
21 suffering injury or death if they return to their country of origin.

22 66. In summary, the July 6 Guidelines completely abandon, without
23 explanation, both the substantive guidance SEVP provided on March 9 and March 13
24 and the approach SEVP announced it would take to considering any changes to that
25 guidance. The July 6 Guidelines also ignore the public-health-informed decisions of
26 schools and government officials to limit or cease in-person teaching. They do not
27 include a safety valve for even the worst coronavirus outbreaks. They do not allow for
28

1 any of the flexibility necessary to safely manage an increasingly dangerous pandemic.
2 The July 6 Guidelines do nothing but expel students from the United States because of
3 circumstances outside of the students' control, no matter the consequences for the
4 students, the schools, or the country.

5 67. Students at schools that have not yet announced their fall plans do not
6 know if the July 6 Guidelines apply to them or whether they will be able to remain in
7 the United States for the fall term.

8 68. Even students at schools who have announced some in-person course
9 offerings may not have not yet assigned students to classes. International students at
10 these schools do not know if they will be able to enroll in an in-person class, a
11 necessity of continuing to study in the United States under the July 6 Guidelines.
12 Some of these schools do not finalize class schedules until after the beginning of the
13 academic term, creating a possibility that students will be required to leave the United
14 States in the middle of the semester.

15 69. In a Broadcast Message released on the same day as the July 6
16 Guidelines, SEVP stated that schools are required to notify SEVP if they intend to
17 only offer remote instruction by July 15, 2020.³⁸ Schools choosing to offer some in-
18 person instruction are required to notify SEVP by August 1. If a school decides or is
19 required to cease in-person instruction over the course of the semester, it must notify
20 SEVP of that change within 10 calendar days.

21 70. The SEVP has not provided an explanation for its departure from the
22 March 9 and March 13 guidance documents

23 71. But on July 7, Ken Cuccinelli, the Senior Official Performing the Duties
24 of the Deputy Secretary of Homeland Security ("DHS") and the Senior Official
25 Performing the Duties of the Director of the United States Citizenship and
26 Immigration Services ("USCIS"), made clear his views about students enrolled in
27

28 ³⁸ <https://www.ice.gov/doclib/sevis/pdf/bcm2007-01.pdf>

1 online courses, or enrolled at institutions offering only online courses. “There isn’t a
 2 reason for a person holding a student visa to be present in the country . . . they don’t
 3 have a basis to be here. . . . I don’t frankly follow why a student visa holder would be
 4 here if their school isn’t functioning.”³⁹

5 72. On July 6, at 2:40 p.m. Eastern Time, President Donald Trump tweeted
 6 his support for the opening of schools by stating, “SCHOOLS MUST OPEN IN THE
 7 FALL!!!”⁴⁰

8 73. President Trump continued to pressure other institutions beyond
 9 universities to open in the fall by threatening to cut funding otherwise.⁴¹

10 74. At 4:11 p.m., he accused the Democratic Party and the presidential
 11 candidate Joe Biden of supporting closure of schools for political reasons and not
 12 health reasons.⁴²

13 **The Effects of the July 6 Guidelines on International Students**

14 75. Plaintiffs either attend schools that are exclusively offering online
 15 education in the fall to all students or to students similarly situated to plaintiffs.

16 76. It is impossible for students to transfer to a different law school for the
 17 start of the fall 2020 term. Even if it were possible to transfer, it would be impractical
 18 to move, perhaps across the country, in the midst of the COVID-19 pandemic.

19 77. Under the July 6 Guidelines, plaintiffs will have no choice but to leave
 20 the United States. They will be ripped from their communities and their academics.
 21 Their carefully-laid financial, health, employment, immigration, and personal plans—
 22 made under the assumption that SVEP would not revoke its March 13 Guidance for
 23 the “duration of the emergency”—will be upended.

24
 25
 26 ³⁹ <https://www.mediaite.com/tv/watch-ken-cuccinelli-and-cnns-brianna-keilar-battle-in-absurd-20-minute-debate-on-immigration-covid-and-confederate-flags/>

27 ⁴⁰ <https://twitter.com/realDonaldTrump/status/1280209946085339136>

28 ⁴¹ <https://www.nytimes.com/2020/07/08/us/politics/trump-schools-reopening.html>

⁴² <https://twitter.com/realDonaldTrump/status/1280232979781111808>

Housing

1
2 78. Some plaintiffs have signed leases and acquired housing under the
3 assumption that they would be present in the United States during the fall term. If the
4 July 6 Guidelines are enforced and these plaintiffs are forced to leave the United
5 States, these plaintiffs will either have to break their lease and lose their security
6 deposits, which would result in a loss to their credit score, or continue to pay rent until
7 the lease terminates.

8 79. Plaintiffs will likewise have to procure housing in their country of origin.
9 While some plaintiffs may be able to live with family, others have no safety net in that
10 country, and will be forced to find housing with adequate internet connections and
11 access to study space with little notice, perhaps before they leave the United States.

12 80. When some plaintiffs relocated to the United States to enter their
13 respective academic programs, they brought all of their belongings and livelihoods.
14 Because they justifiably expected to remain in the United States for years of
15 education, they did not build a safety net in their countries of origin. They terminated
16 their housing, sold their furniture, and gave away the belongings that they could not
17 bring with them to the United States. These plaintiffs do not have a ready-made home
18 in their respective home countries.

19 81. If schools reopen in the spring, plaintiffs who were forced to leave the
20 United States under the July 6 Guidelines will be forced to return to the United States,
21 likely on short notice, in order to maintain their visa status.

22 82. These students, who may have abandoned the housing they secured for
23 the fall term because of the July 6 Guidelines, will find it difficult or impossible to
24 secure adequate, affordable housing. When it comes to signing leases, plaintiffs often
25 do not have the luxury of choice. Foreign students often do not have robust credit
26 scores because of their shorter credit histories and newer bank accounts. Any
27 abandonment of housing secured for the fall semester only accentuates these problems
28

1 – as does the possibility of having to find housing remotely in their institution’s city
2 with only a few weeks’ notice once spring term plans are announced.

3
4 *Travel*

5 83. The COVID-19 pandemic affects countries worldwide. Multiple
6 countries have shut down their borders and banned all transnational flights. Others
7 have specifically barred flights from the United States. Plaintiffs attempting to comply
8 with the July 6 Guidelines may not be able to find flights back to their home countries.

9 84. Even if each plaintiff is able to find a flight itinerary that will eventually
10 take her home, that itinerary will necessarily include multiple stops over different
11 continents.

12 85. This itinerary is not simply inconvenient. It is a health risk. As an airline
13 passenger, the plaintiff would spend hours in a confined space surrounded by shared
14 surfaces - exactly the kind of prolonged exposure that creates substantial risk of
15 contracting the novel coronavirus. This is in addition to the added risks associated
16 with airports, whether it be standing in security lines or waiting at the gate to board an
17 aircraft.

18 86. Such an itinerary is also exorbitantly, perhaps prohibitively, expensive.
19 As noted above, airfare may exceed \$10,000 – especially given the need to book on
20 short notice. In addition, for students returning to countries, such as China, that have
21 imposed a quarantine on incoming travelers, the students would have to pay for 14
22 days’ lodging while they quarantine.

23 87. If a plaintiff’s academic institution decides to permit in-person teaching
24 in the spring semester, Plaintiffs will have to once again pay for another set of flights
25 and expose themselves to other travelers in order to return to the United States.

26 88. The financial and logistical challenges that Plaintiffs face multiply for
27 international students with dependents.

Health Risks

89. Forcing students to return to their countries of origin does more than put them at increased risk of exposure to the novel coronavirus during transit. In order to accommodate the course schedule and participate in extracurricular activities, plaintiffs, some of whom will not be given the option of asynchronous class participation, will be forced to maintain irregular sleep schedules.⁴³ These sleep schedules will put students at a disadvantage compared to their peers, which poses a particular harm to plaintiff in classes that are graded on a curve.

90. Plaintiffs are also burdened with health insurance costs. Many plaintiffs have already paid for their 2020–2021 health insurance plans through their university—plans that will do nothing for them in their country of origin. These plaintiffs may need to buy health insurance in their home countries. Foregoing health insurance during the pandemic is not a realistic nor preferred option for plaintiffs. However, given the costs associated with health insurance and the price of their now-useless American insurance, plaintiffs may go uncovered.

Education Inequities

91. The July 6 Guidelines make it difficult or impossible for plaintiffs to participate fully in class. Students in different time zones are forced to choose between attending online classes in the middle of the night or watching recorded classes.⁴⁴ Students watching recordings will be harmed because they cannot ask questions during class, participate in class discussion, or otherwise have a visible presence. But students who attempt to participate as the class occurs must stay alert for two to three hours of lecture at inopportune times, often in the middle of the night. Either way,

⁴³ <https://www.tandfonline.com/doi/full/10.1080/09291016.2015.1103942>; <https://mail.google.com/mail/u/1/#inbox/FMfcgwxwJWjBjvRFDqNrMVnNJctWDINWW?projector=1&messagePartId=0.1>

⁴⁴ See, e.g., Kelsey J. Griffin, *Hundreds of Harvard Law Students Criticize Plans for Online Fall Semester*, Harv. Crimson (June 17, 2020, 9:11 PM), <https://www.thecrimson.com/article/2020/6/17/hls-online-fall-semester/>.

1 students will be put at a substantial disadvantage compared to their classmates taking
2 the same class during normal hours.

3 92. Forcing plaintiffs to return to their countries of origin will severely limit
4 their practical learning opportunities. In law school, meeting and communicating with
5 clients, supervisors, and team members constitute a large part of clinical experience.
6 While any remote learning complicates these experiences, substantial time differences
7 like those faced by plaintiffs make them almost impossible. For example, many
8 clinical students have trouble scheduling meetings with clients who lack access to
9 technology when they all reside in the same city; these meetings simply will not occur
10 when the student attorney and the client must contend with a 16-hour difference.

11 93. The same applies to pro bono opportunities, many of which involve client
12 intake interviews or group work. Limited pro bono opportunities will disadvantage
13 international students, as some law schools confer graduation honors based on the
14 number of pro bono hours completed.⁴⁵

15 94. For some plaintiffs, participating in online classes in their countries of
16 origin may not be an option at all. Internet access, which is absolutely necessary for
17 remote learning, is not guaranteed in some countries. Some countries have restricted
18 internet access while others, like Ethiopia,⁴⁶ block it altogether. Without adequate
19 internet access, students cannot take online classes at all.

20 95. Other countries heavily monitor internet activity and curtail access to
21 some resources. Beyond potentially exposing students to government harassment
22 because of the contents of their studies, these restrictions will make it difficult or
23 impossible for students in these countries to continue their studies.

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26 ⁴⁵ See, e.g., *Pro Bono Program Code and Guidelines*, UCI Law, <https://www.law.uci.edu/about/public-service/public-interest/probono/program-guidelines.html> (last visited July 8, 2020).

27 ⁴⁶ Bethlehem Feleke, *Internet Cut Off in Ethiopia amid Outcry over Death of Singer-Activist*, CNN (June 30, 2020, 2:59
28 PM), <https://www.cnn.com/2020/06/30/africa/ethiopia-singer-killing-sparks-protest-intl/index.html>.

1 96. China, for example, limits access to Google web products.⁴⁷ Many
 2 schools, including UC Irvine, use Google products like Gmail and Google Drive to
 3 communicate and collaborate on academic and clinical assignments – and this is even
 4 more true now that teaching has moved online. If students cannot access these
 5 resources, they will be locked out of their education.⁴⁸

6 *Immigration Consequences*

7 97. The July 6 Guidelines prevents students whose schools will operate
 8 entirely online from applying for Curricular Practical Training (“CPT”) and Optional
 9 Practical Training (“OPT”) visa programs. CPT allows international students to work
 10 in their field of study while they are enrolled in their academic program.⁴⁹ OPT allows
 11 students to work in the United States for one year after graduation.⁵⁰ To be eligible for
 12 OPT, students must have been enrolled in school full-time for one year, maintain valid
 13 F-1 status, and be physically present in the United States at the time of application.⁵¹
 14 Cancelling the F-1 visa or forcing international students to return to their countries of
 15 origin will make these students ineligible for CPT and will prevent them from
 16 applying to OPT.

17 98. Some international students have applied for permanent resident status,
 18 better known as the green card, and are waiting for approval. Plaintiffs are concerned
 19 that the new SEVP rule may extend the waiting time for students who must leave the
 20 United States because their schools will operate entirely online.

21
 22 ⁴⁷ <https://www.businessinsider.com/major-us-tech-companies-blocked-from-operating-in-china-2019-5>

23 ⁴⁸ Virtual Private Networks (“VPNs”), the typical solution to internet tracking and restrictions imposed by authoritarian
 24 regimes, are heavily restricted in China. Because only government-approved VPNs are accessible, the VPN does nothing
 25 to secure against government intrusion. See <https://www.techradar.com/news/coronavirus-sees-china-crack-down-on-vpns>. And, in plaintiffs’ experience, the VPNs which are available so severely throttle internet speeds that video chat –
 26 necessary to participate in online courses – is almost impossible to use.

27 ⁴⁹ *F-1 Curricular Practical Training (CPT)*, Berkeley Int’l Office,
 28 <https://internationaloffice.berkeley.edu/students/employment/cpt> (last visited July 8, 2020).

⁵⁰ *Optional Practical Training (OPT) for F-1 Students*, U.S. Citizenship & Immigration Servs.,
<https://www.uscis.gov/opt> (last updated Apr. 22, 2020).

⁵¹ *Id.*; see also *F-1 Optional Practical Training (OPT)*, Berkeley Int’l Office,
<https://internationaloffice.berkeley.edu/students/employment/opt> (last visited July 8, 2020).

Inequities in Employment Opportunities

1 99. Because of the risks associated with COVID-19, law schools across the
 2 nation have postponed to January their On-Campus Interviews (OCI), a yearly event
 3 where law firms travel to law school campuses to interview and recruit students for
 4 summer associate positions and eventual full-time employment. OCI is a competitive
 5 and important process for students.

6 100. The July 6 Guidelines, however, deny plaintiffs the opportunity to
 7 physically attend OCI or fully participate in OCI. If schools hold OCI in person,
 8 Plaintiffs are practically blocked from participating because Plaintiffs will be required
 9 to find flights, find housing, self-quarantine, and ensure that they are free from
 10 COVID-19—if they are eligible to enter the United States at all.

11 101. If schools decide to hold virtual OCI, plaintiffs have to interview in the
 12 middle of the night and compete against domestic students who are interviewing in
 13 normal business hours.

14 102. Furthermore, employers will easily be able to identify the immigration
 15 status of plaintiffs. By simply asking about the time zone or city that plaintiffs are in,
 16 employers can filter out international students among their interviewees. Due to the
 17 additional cost and precarious nature of sponsoring foreign nationals, some employers
 18 may avoid hiring international students for summer associate positions.⁵²

CLAIMS FOR RELIEF**Count 1: (Violation of Administrative Procedure Act, 5 U.S.C. §706)****The July 6 Guidelines are Arbitrary and Capricious Both Because They Fail to Adequately Consider the Reliance Interests of Millions of F-1 and M-1 Visa Holders and Because They Fail to Provide a Reasoned Explanation.**

24 103. Plaintiffs incorporate the allegations contained in the preceding
 25 paragraphs.

26
 27 ⁵² The disadvantages imposed on international students who are not participating in OCI are similar to Plaintiffs' disadvantages. The students will still have to interview in odd hours via Zoom and will indirectly disclose their immigration status.

104. The APA requires this Court to “hold unlawful and set aside agency action, findings, and conclusions found to be...arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. §706(2)(A). Agency action must be the result of reasoned analysis. *Motor Vehicle Mfrs. Ass’n of United States, Inc. v. State Farm Mu. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983).

105. This standard applies even when an agency is altering existing guidance. When an agency changes course, the agency must “be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account.” *Encino Motorcars LLC v. Navarro*, 136 S. Ct. 2117, 2120 (2016).

106. As noted above, the United States has a long history of inviting international students to study as “non-immigrants” pursuant to a student visa program. International students admitted to well-established and high-quality institutions, such as those in the UC system, often have multiple options available to them. They choose to come study in the United States in reliance on the integrity of the visa program and the expectation that their student visas will remain valid as long as they are committed to their studies at their academic institutions.

107. The March 9 and March 13 guidance documents set forth a reasonable framework for addressing the implications of COVID-19 for F-1 and M-1 visas, as well as for updating the guidance in light of changes to the COVID-19 situation. The July 6 Guidelines identify no material changes to the COVID-19 situation since March 13, and ignore entirely the approach and rationale underlying the March 9 and March 13 guidance documents.

108. The July 6 Guidelines ignores the assurances SEVP has made to hundreds of thousands of students for well over twenty years that, as long as they remain in compliance with their academic programs, they will be able to remain in the United States at the institutions where they study.

1 109. The July 6 Guidelines also ignore the reasonable reliance that students
2 and schools alike placed in the approach to reconciling the impact of COVID-19 on F-
3 1 and M-1 visa requirements set forth in the March 9 and March 13 guidance
4 documents.

5 110. The Supreme Court has recently emphasized that agencies modifying a
6 previous policy are “required to assess whether there were reliance interests,
7 determine whether they were significant, and weigh any such interests against
8 competing policy concerns.” *Department of Homeland Security v. Regents of Univ. of*
9 *California* 591 U.S. ____ (slip op., at 26) (2020).

10 111. The July 6 Guidelines are arbitrary and capricious because they fail to
11 consider these important reliance interests. Revoking international students’ visas
12 when the students have done everything in their power to remain in compliance with
13 U.S. immigration law in the midst of a pandemic—and after SEVP announced at the
14 outset of the pandemic that the United States would honor these visas during the
15 pandemic despite the shift to online classes—disregards the reliance interests of these
16 students in maintaining their visa status and their ability to continue studying in the
17 United States. The long history of the United States’ F-1 visa program, together with
18 the SEVP’s March 13 announcement, created a reasonable and justifiable expectation
19 among students that they could maintain their visa status so long as they progressed in
20 their particular course of study in whatever way that course of study was offered by
21 their academic institution.

22 112. The reliance interests of F-1 visa holders extend further still. As
23 discussed above, plaintiffs have executed leases worth thousands of dollars for the
24 upcoming school year. Many have paid for expensive health insurance plans that are
25 now useless. Many will be forced to store or abandon property in the United States if
26 they are required to exit the country on short notice. Many would not have paid tens of
27

1 thousands of dollars in tuition to American universities had they known they could not
2 be present in the country for the fall term.

3 113. This reliance was justifiably premised on SEVP's March 9 and March 13
4 guidance. For example, the March 13 guidance advised F-1 Visa holders that the
5 spring 2020 exemptions from online learning restrictions would exist "in effect for the
6 duration of the emergency."

7 114. Apart from the failure to address reliance interests, an agency's failure to
8 provide "reasoned analysis" for this sudden change in policy is "arbitrary, capricious,
9 an abuse of discretion, or otherwise not in accordance with the law." 5 U.S.C.
10 §706(2)(a). Here, the July 6 Guidelines fail to offer any reasonable consideration of
11 the painful consequences of the Guidelines for students, schools, and communities.
12 For example, the Guidelines contain no discussion of the implications of this new
13 policy for public health, of the status of the COVID-19 situation and how it is
14 different now than it was in March in a way that is material for this guidance, or of
15 how and why this guidance better serves the purposes of the F-1 visa program, such as
16 allowing "students to make normal forward progress in their studies," than does the
17 prior guidance. The Guidelines lack even an acknowledgment of, let alone a
18 justification for, the extraordinary human suffering they will cause.

19 115. For these reasons and others, the July 6 Guidelines must be vacated and
20 "set aside" as "arbitrary, capricious, an abuse of discretion, or otherwise not in
21 accordance with law." 5 U.S.C. § 706(2)(A).

22 **Count II: (Violation of Administrative Procedure Act, 5 U.S.C. §§ 553,706)**

23 **The July 6 Guidelines Violates the APA's Notice-And-Comment Requirements.**

24 116. Plaintiffs incorporate the allegations contained in the preceding
25 paragraphs.

1 117. The APA requires this Court to hold unlawful and set aside any agency
2 action taken “without observance of procedure required by law.” 5 U.S.C.
3 § 706(2)(D).

4 118. The APA, 5 U.S.C. § 553, requires that any agency desiring to implement
5 a rule go through the process of notice-and-comment in order to give the agency the
6 benefit of the expertise of those most impacted by the potential rule-making.

7 119. The July Guidelines did not go through any such process. Instead, DHS
8 plans to “publish the procedures and responsibilities in the Federal Register as a
9 Temporary Final Rule.”⁵³

10 120. The July 6 Guidelines formalize a reversal of previous ICE guidance and
11 thus is subject to notice and comment requirements. They are not an interpretive rule
12 that could be issued without notice and comment requirements. *Mt. Diablo Hospital*
13 *Dist. v. Bowen*, 860 F.2d 951, 956 (9th Cir. 1988).

14 121. DHS has failed to provide any “good cause” that would justify bypassing
15 the notice and comment period. 5 U.S.C. §553 (b)(3)(B) The good cause exception is
16 only available to agencies if the agency has “good cause” to believe the process would
17 be “impracticable, unnecessary, or contrary to the public interest.” *Western Oil & Gas*
18 *Ass’n v. U.S. Environmental Protection Agency*, 633 F.2d 803, 810 (9th Cir. 1980).

19 122. The agency has yet to “publish[] reasons for thinking” the good cause
20 applies to the rules in question. *Id.*

21 123. DHS has failed to demonstrate how threatening to deport over one
22 million students in the middle of a global pandemic could possibly qualify as good
23 cause.

24 124. By promulgating the July 6 Guidelines without notice and comment, ICE
25 violated 5 U.S.C. § 553 and § 706. The modifications it announced are unlawful and
26 must be vacated.

27 ⁵³ [https://www.ice.gov/news/releases/sevp-modifies-temporary-exemptions-nonimmigrant-students-taking-online-](https://www.ice.gov/news/releases/sevp-modifies-temporary-exemptions-nonimmigrant-students-taking-online-courses-during)
28 [courses-during](https://www.ice.gov/news/releases/sevp-modifies-temporary-exemptions-nonimmigrant-students-taking-online-courses-during)

Count III: (Violation of the Due Process Clause of the Fifth Amendment)

**The July 6 Guidelines Deprive Plaintiffs of their Visa Status
Without Due Process of Law.**

125. Plaintiffs reallege and incorporate by reference each and every allegation contained in the preceding paragraphs.

126. Due process protections extend to “all ‘persons’ within the United States, including [non-citizens], whether their presence here is lawful, unlawful, temporary, or permanent.” *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001). Nonimmigrant students are lawfully present in this country.

127. Nonimmigrant students have significant liberty and property interests, protected by the Due Process Clause, in their visas and/or access to educational programs to which they have been admitted and in which they have invested time, energy, and money. The “very essence” of due process is the “protection of the individual against arbitrary action.” *Board of Regents of State Colls. v. Roth*, 408 U.S. 564, 584 (1972). The July 6 Guidelines are so arbitrary, both in substance and the manner in which they were implemented, that they unlawfully deprive Plaintiffs of their constitutionally protected liberty and property interests.

128. As a result of the foregoing constitutional violations, Plaintiffs will suffer irreparable injury.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully seek the following relief:

1. A declaration that the policy announced in the July 6 Guidelines is unlawful and unlawfully promulgated;

2. A temporary restraining order and preliminary and permanent injunctive relief preventing Defendants from enforcing the policy announced in July 6 Guidelines, or promulgating it as a Final Rule;

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1 3. An order vacating and setting aside the policy announced in the July 6
2 Guidelines and reinstating the March 13 Guidance;

3 4. An order awarding Plaintiffs their costs and attorneys' fees; and

4 5. Any and all other such relief as the Court may deem appropriate.

5
6 DATED: July 10, 2020

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24 ** Filer attests that all signatories listed, and on whose behalf the filing is submitted,
25 concur in the filing's content and have authorized the filing.
26
27
28