UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHNS HOPKINS UNIVERSITY;

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY;

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT;

CHAD WOLF, in his official capacity as Acting Secretary of the U.S. Department of Homeland Security; and

MATTHEW ALBENCE, in his official capacity as Acting Director of the U.S. Immigration and Customs Enforcement;

Defendants.

Case No. 20-cv-1873

DECLARATION OF STEPHEN GANGE

I, Stephen Gange, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am Executive Vice Provost for Academic Affairs of Johns Hopkins University, where I have served since October 2015. In that role, I collaborate with vice provosts, deans, and university leadership to inform the direction of the University's academic affairs.

2. Before joining the Office of the Provost, I was the Senior Associate Dean for Academic Affairs at the Bloomberg School of Public Health. I joined the faculty of the Bloomberg School in the Department of Epidemiology after receiving a Ph.D. in statistics in 1994 and was promoted to full professor in 2007 before serving as a deputy chair and director of the doctoral program.

3. My academic specialty is epidemiology, and my research focuses on epidemiologic and statistical methods for cohort studies, data science, evaluation of therapies and biomarkers in observational studies, epidemiology and pathogenesis of HIV/AIDS and data management and statistical coordinating centers. For over 25 years, I have focused primarily on issues relating to HIV/AIDS, with experience and scientific leadership that spans basic, clinical, epidemiological, and policy-level research. I am the Principal Investigator of the MACS-WIHS Combined Cohort Study Data Management and Analysis Center and the Epidemiology/Biostatistics Core co-Director for the North American AIDS Cohort Collaboration of Research and Design. I am a Fellow of the American College of Epidemiology and Invited Member of the American Epidemiological Society.

4. At Johns Hopkins, I have been directly involved in, and have overseen, University efforts to devise and implement the continuity of academic programs across the various schools in light of the COVID-19 pandemic. Along with other senior academics and administrators, I have worked diligently since March to ensure Johns Hopkins maintains its high educational standards despite the challenges of the pandemic. Specifically, I chair the Academic Planning Continuity Workgroup, and am a member of the Core and Steering Committees, and help coordinate the work of the other committees within the University. Since March, I have personally spent approximately 500 hours, and the more than 75 members of my faculty and staff university committees, as well as each graduate schools' committees, have collectively spent tens of thousands of hours, planning and strategizing how best to structure our academic programs for the Fall 2020 semester.

Curricular Planning Efforts at Johns Hopkins University Before July 6, 2020

5. In January and February, the University released four statements to the University community with information regarding the rapidly evolving pandemic. By March 10, the decision was made to transition all classes online for the remainder of the semester, and students were asked not to return following Spring Break.

6. Since March 2020, Johns Hopkins has engaged dozens of formal and informal committees and groups to inform its response to the pandemic, including a Health Advisory Group that comprises Johns Hopkins' faculty charged with advising the University's senior leadership on COVID-19 issues. Senior University administrators have also been conferring on weekly, and at times daily, Incident Command Calls to ensure the various schools within Johns Hopkins can continue providing high-quality education in a remote environment that is consistent with public health guidance.

7. On May 5, 2020, the University launched a planning task force, which included six primary work groups—the Research Work Group, Academic Programs Work Group, Student Life Work Group, Health & Safety Work Group, Cross-Cutting Work Groups, and Advisory Groups—comprising 23 separate interdisciplinary teams from across the University that included faculty, staff, and students. Over the next eight weeks, each work group evaluated and documented options for a return to campus and provided the University's deans with broad guidance on safe campus operations so each school, department, and program could develop detailed plans based on particular needs and circumstances. In May 2020, the leadership set out our understanding of compliance regulations in an Online Education Compliance Checklist, appended as **Exhibit A.**

8. By May 19, the Research Workgroup published a Guidelines Draft (a final version was published June 12 and updated June 30). A week later, the Johns Hopkins Return to Campus Guide was sent to the community for feedback. On June 4, the Academic Programs Work Group disseminated Instructional Guidelines that focused on options to accommodate the needs of instructors and students while maintaining health and safety in the learning environment. On June 12, the Health and Safety Workgroup published Draft Recommendations for COVID-19 Screening, Testing, and Tracing. Johns Hopkins entered Phase 1 of Reopening on June 15, which included resumption of laboratory research, made possible in part by announcements that Maryland and Baltimore were permitting broader reopening. On June 30, the University announced presumptive plans for fall 2020, assuming a transition from Phase 1 to Phase 2A, which includes beginning mixed-modality undergraduate instruction for the fall semester on August 31. *See* **Exhibit B** (Johns Hopkins Homewood Undergraduate Experience – Fall 2020 Return to Campus, highlighting "proposed key changes for Fall 2020"). The Peabody Institute also announced their presumptive plans for fall 2020 on June 30 and each of the graduate schools has been finalizing their fall plans. *See* **Exhibit C** (June 30 Letter to Peabody students).

9. The mixed-modality plan adopted by Johns Hopkins would create a largely hybrid system that would enable students to choose their mode of study. No individual student would be forced to take any in-person courses if they are at particular risk of infection, cannot do so in accordance with recommended guidelines, or are otherwise not comfortable doing so. For example, all classes with 50 or more students would be offered remotely in light of the difficulties of satisfying social distancing requirements with that number of students and the constraints of our physical space. As noted in the Return to Campus Instructional Guidelines,

courses should be designed so that all enrolled students receive an equal opportunity to master course learning objectives regardless of modality. Importantly, students from one modality should not be disadvantaged relative to students attending in another modality (e.g., students attending remote/online because of self-isolation vs. students attending class in-person). Particular challenges may occur when providing instruction to students who are attending both in-person and remotely/online. Some activities, engagement strategies, and assessments may be amenable to some modalities and not others. For some courses, it may be appropriate to provide separate, modified, or alternative activities that achieve the same learning objective or assessment. Instructors have been asked to prepare for how to handle these scenarios and discuss with their program directors whether separate sections (in-person and remote/online) should be developed or other adjustments made to ensure an equitable student experience.

10. To further mitigate the risk inherent in a potential late-autumn resurgence of the virus, University leadership also announced that in-person instruction for undergraduates would cease after the Thanksgiving holiday. Classes after Thanksgiving would resume online for the duration of the term. This approach would allow students to return home to their families for the Thanksgiving holiday, while eliminating the burden of an additional return flight, as well as the risk that students might come back to campus carrying the virus and become a "super-spreader" in a community that houses vulnerable faculty, staff, and other students. Taken together, these nuanced, data-driven, fluid decisions and policies were the product of hundreds of hours of careful planning over several months.

11. With respect to laboratories, Johns Hopkins leadership, together with representatives across multiple Johns Hopkins schools, have worked extensively to ensure that critical research (including research into COVID-19) could safely continue to be conducted in

laboratory environments. This included a review of cleaning standards for all relevant equipment and machinery, protocols for social distancing by research staff within laboratories, as well as proper protective equipment for all research staff. In total, the Johns Hopkins leadership expended hundreds of hours discussing and strategizing for the optimally safe approach to laboratory work under the circumstances, to ensure that Johns Hopkins researchers are able to continue their work—much of which is critically important to, among other things, the global battle against COVID-19. Phase 1 lab readiness is based on a Principal Investigator ("PI")-driven approach, with school and university oversight. PIs are the most knowledgeable about the details of their research space, workflow, personnel, shared instrumentation, and program priorities. The guidance provided was developed for initial reopening and is intended to align with the resumption of low-risk activities. Every laboratory must have an approved reopening plan as well as a shut-down plan (in the event of increased infection rates) in place before occupancy. Approval of reopening plans is by the relevant Dean's Office. Wherever possible, work on all projects will be commenced to enhance research momentum and resume research training for all, but not all projects can or will commence at the same time. All lab personnel and PIs have been advised that they are expected to fully comply with university guidance and lab-specific protocols, and personnel will be provided easy means for reporting violations.

12. As of July 9, 2020, the University had sent 47 unique messages to the Johns Hopkins' community, and the work groups had published for public review and comment four draft and two final reports. The views reflected in those reports were also informed by hundreds of Zoom meetings, dozens of presentations, multiple student surveys, 788 unique feedback comments, and the discussions from eight town halls.

13. In addition to these formal deliberative structures, our administration has consulted on an ongoing basis with epidemiologists, medical experts, industry experts, and others on a wide range of topics relevant to returning students to campus and protecting their safety during instruction.

14. The Johns Hopkins' leadership decided to adopt the above mixed-modality learning plan for several reasons, including the following, among others: *First*, safety considerations needed to factor into our decisions as we responded to the marked resurgence of the COVID-19 virus across the United States, as tracked carefully by the University's own Coronavirus Resource Center. The health and lives of our students (who, as graduate students, are often older, mid-career professionals) and faculty (over a third of whom are over age 60), can be appropriately protected by reducing in-person coursework to the levels appropriate for the risks identified at a particular point in time. During the onset of COVID-19, for example, we concluded that in-person coursework should be avoided altogether. *Second*, such a mixed approach, varied among Schools, would help to further our academic mission worldwide, including the fight against the COVID-19 pandemic.

15. The above decisions were made in reliance on the COVID-19 Guidance for the Student and Exchange Visitor Program ("SEVP") issued by United States Immigration and Customs Enforcement ("ICE") in response to the COVID-19 pandemic. I have carefully reviewed this guidance. On March 13, 2020, ICE issued COVID-19 Guidance for Student and Exchange Visitor Program Stakeholders ("March 13 Guidance"). Pursuant to the March 13 Guidance, students in the United States holding F-1 or M-1 visas are allowed to "count online classes towards a full course of study" in the event their school temporarily stops in-person classes, regardless whether the visa holders remain in the United States. Before the March 13

Guidance, international students were permitted to take only one online class per semester. The March 13 Guidance stated it would remain "in effect for the duration of the emergency."

The July 6, 2020 Directive

16. On July 6, 2020, ICE issued a "Broadcast Message: COVID-19 and Fall 2020" ("July 6 Directive"). I have personally reviewed the July 6 Directive, which largely withdraws the exception that ICE announced in March. The July 6 Directive states that if a school determines it will provide only online course instruction in the Fall, students holding F-1 visas may not remain in the country to receive instruction. It provides that students holding F-1 visas "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 including, but not limited to, the initiation of removal proceedings." It is our current understanding that if the July 6 Directive takes effect, Johns Hopkins students with F-1 visas who are enrolled in remote programs will face immigration consequences if they do not leave the country within 15 days of the start of the Fall 2020 term.

17. Johns Hopkins currently has approximately 5,000 active students holding F-1 visas, including those students on Optional Practical Training ("OPT"). This program allows eligible students to receive up to 12 months of employment authorization before completing their academic studies and/or after completing their academic studies. Students on STEM OPT allows students who have earned a degree in certain science, technology, engineering, and math fields to apply for a 24-month extension of their post-completion OPT employment authorization if certain other criteria are met. In addition, Johns Hopkins has approximately 2,000 newly admitted students who have not started their programs or F-1 visa status but who have been issued initial Forms I-20 under pre-SEVP fall 2020 guidance.

18. Many students, including students on F-1 visas, at Johns Hopkins have actively contributed to the University's efforts in the global battle against COVID-19. Although we shut down much laboratory research for several months in light of the pandemic, we permitted research into COVID-19 to continue, and our faculty, staff, graduate students and trainees, including those on F-1 visas, have contributed substantially to our knowledge about COVID-19. Furthermore, the Johns Hopkins' epidemiology program, among others, is supported by grants provided to international student researchers.

Harm to Johns Hopkins Due to the July 6 Directive

19. The July 6 Directive, if it takes effect, will have significant negative impact on Johns Hopkins as an institution and on Johns Hopkins' students. As described in more detail below, the July 6 Directive will make it impracticable for certain of Johns Hopkins University's international students to continue to study at Johns Hopkins and progress toward their degrees, while imposing academic and living conditions for others that will prompt them to take leave from their programs—or drop out altogether.

20. By virtue of the fact that the July 6 Directive is likely to result in far fewer international students enrolled at Johns Hopkins during the coming academic year, the July 6 Directive will affect Johns Hopkins in at least the following additional ways:

a. Requiring additional students (i.e., all F-1 students) to attend in-person classes after Thanksgiving risks negatively impacting the health and wellness of Johns Hopkins' students, faculty, and staff—as well as the broader community of their families and neighbors. It likewise risks continuation of the valuable efforts of Johns Hopkins' students and researchers in the battle against COVID-19, and therefore poses an even broader public health risk.

b. Several of the researchers involved in such work are themselves F-1 visa holders. While under the current mixed-modality plan they would have been able to continue their laboratory work while taking a course-load of entirely remote classes, some students' course plans would be insufficient for their continued visa status. Forcing them to choose between altering their curricular plans or leaving the country altogether would be extremely disruptive to their research efforts.

c. Several of Johns Hopkins schools will be harmed financially if a substantial number of international students do not enroll in the fall. As one example, nearly 20% of our student body is international; losing the tuition of even a portion of those students would be significant to Johns Hopkins.

d. Johns Hopkins relies on the contributions of its international graduate students as teaching assistants in its undergraduate courses. Requiring these teaching assistants to provide instruction from remote locations in their home countries, potentially with considerable time-zone disparities and variable Internet connectivity, will make it harder for faculty to coordinate with their teaching assistants and obtain the full benefit of their pedagogy.

e. The new July 6 ICE guidance also places an immense administrative burden on the University. Each form requires soliciting detailed information concerning the fall plans from up to all 5,000 of our new and continuing students who are planning to arrive or remain in the U.S. for fall 2020. Based on the "reporting burden" as stated on the I-20 itself, processing these forms will require up to 2,500 hours of labor, by a regular, fully-trained student advising team of nine

Johns Hopkins Designated School Officials ("DSOs") across multiple Schools. Under normal circumstances, given the steps necessary for the creation and issuance of each individual form, a single I-20 form may take the university up to 30 minutes to fully process from requesting the needed information from the student to sending out the form. That could therefore represent about 288 hours of work per DSO, without any deterioration of speed, in the three-week span afforded by the SEVP guidance, with a deadline of August 4. The total time worked over three weeks by all nine DSOs is 1,012.5 hours at JHU (9 DSOs x 37.5 hours/week x 3 weeks = 1,012.5 work hours). Even if only half of the 5,000 students require a reissued I-20, the team of DSOs is still looking at up to 1,250 hours of work—just for this task.

f. This very tight timeframe renders it virtually impossible for University administration to change course safely and with the same, appropriate degree of planning and deliberation as described above—which had been undertaken in previous months in reliance on the March 13 guidance.

g. The vagueness of the July 6 ICE guidance also places Johns Hopkins and our F-1 students at risk of factors beyond our control. The directive only mandates that F-1 students participate in coursework that is "not entirely online," but our University's leadership is not certain precisely how many hours, or credits, of in-person instruction is necessary to fulfill the directive for our students, or to preserve our SEVP accreditation.

21. Attached hereto as **Exhibit A** is a true and correct copy of the Johns Hopkins Online Education Compliance Checklist.

22. Attached hereto as **Exhibit B** is a true and correct copy of the "JHU Fall Undergraduate Experience – Fall 2020 Return to Campus."

23. Attached hereto as **Exhibit C** is a true and correct copy of a June 30 Letter to Students at the Peabody Institute.

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

Dated: Baltimore, Maryland
July 12, 2020

Stephen Gange