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14 THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

15 UNITED STATES DISTRICT COURT

16 NORTHERN DISTRICT OF CALIFORNIA

17 SAN FRANCISCO/OAKLAND DIVISION

18 REGENTS OF THE UNIVERSITY OF
19 CALIFORNIA,

20 Plaintiff,

21 v.

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

27 Defendants.
28

Case No.

COMPLAINT

Administrative Procedure Act Case

Complaint filed:

INTRODUCTION

1
2 1. The Regents of the University of California bring this action under the
3 Administrative Procedure Act to enjoin and set aside an arbitrary, capricious, and procedurally
4 improper action of defendant United States Immigration and Customs Enforcement (“ICE”),
5 announced on July 6, 2020 (“July 6 Directive”), which stands to cause untold harm to the
6 University of California system and its tens of thousands of international students who rely and
7 depend on this country’s foreign-student visa program to gain entry to and remain in the United
8 States to pursue their courses of study. In its stunning Directive, ICE—an agency within
9 defendant United States Department of Homeland Security (“DHS”)—announced that unless
10 colleges and universities deliver their coursework through traditional, in-person classroom
11 instruction in the fall, their international students would be required to leave (on pain of removal)
12 if already in the country or would not be permitted to return to the country for their studies if not
13 presently here. The Directive reversed, without explanation, the policy ICE had implemented in
14 March in response to the national health emergency, which permitted foreign students to retain
15 their visa status while their colleges and universities temporarily migrated to remote education out
16 of safety and health concerns. Worse, in doing so, the Directive entirely ignored the accelerating
17 nature of the national emergency or the reliance colleges and universities, as well as their
18 international students, had placed on that March policy.

19 2. Under any circumstance, the manner and suddenness by which ICE announced and
20 intends to implement its new policy would be shocking in a system that champions the rule of law
21 and public input on agency rules before they are finalized. That the about-face comes against the
22 backdrop of a worsening public health crisis in this country makes it not only unlawful, but cruel
23 and dangerous.

24 3. The background to this lawsuit is by now familiar. On March 4, 2020, Governor
25 Gavin Newsom announced a state of emergency in California.¹ Nine days later, on March 13,

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27 ¹ [https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf)
28 [Proclamation.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf)

1 2020, the President of the United States declared a national emergency.² The novel coronavirus,
 2 the impetus for these declarations and orders, has continued to sweep the globe in the intervening
 3 months, causing over 500,000 deaths to date worldwide—over 133,000 deaths just in the United
 4 States—and has upended the best laid plans of governments, businesses, and organizations of all
 5 kinds, including the nation’s institutions of higher education.

6 4. Early in the crisis, the federal government recognized the extent to which both
 7 public safety and universities’ academic endeavors depended on workable remote education. On
 8 March 13, 2020, ICE issued an “exemption” to an existing rule requiring students in the United
 9 States on certain nonimmigrant student visas (known as “F-1” visas) to attend most classes in
 10 person. That March 2020 exemption provided that, in light of both the international pandemic and
 11 the needs of students and educational institutions in the United States, students holding F-1 visas
 12 could attend classes remotely—that is, by Zoom, Microsoft Meeting, Skype, or similar Internet-
 13 based or dial-in means—while retaining their visa status. ICE stated expressly that this exemption
 14 would remain “in effect for the duration of the emergency.”³ The emergency continues to this
 15 date; by many objective measures, it has gotten worse in many areas of the nation, including in
 16 California.

17 5. In the months since ICE implemented the March policy, colleges and universities
 18 across the United States, including the ten campuses of the University of California system, have
 19 adapted their curricula delivery to educate their students remotely. As the pandemic continues to
 20 wreak havoc across the country, with increasing and record-breaking numbers of infections in the
 21 United States almost every day since Memorial Day 2020, Plaintiff The Regents of the University
 22 of California (“The Regents” or “the University”) concluded, after much careful consideration,
 23 that, to protect the health and lives of its students, faculty, staff, and communities, it should
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25 ² <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak>.

26 ³
 27 https://www.ice.gov/sites/default/files/documents/Document/2020/Coronavirus%20Guidance_3.13.20.pdf.

1 continue to offer most of the fall 2020 term curricula online. Many other colleges and universities
2 throughout the nation have reached the same conclusion.

3 6. Remote education is of paramount importance to colleges and universities during
4 the pandemic. COVID-19 is a highly contagious disease that proliferates most when people are in
5 close physical proximity to one another, and particularly when people are indoors. Medical
6 evidence cites indoor gatherings of any size as particular cause for concern. On-campus
7 instruction is typically undertaken in densely populated classrooms where medically
8 recommended social distancing is not feasible and where the virus tends to linger in the air and
9 spread before dissipating, with the potential to spike cases and endanger the health of not only the
10 university community, but anyone with whom the community members may later come into
11 contact. Given the exceptional risk posed by indoor congregation, campuses in the University of
12 California system have limited on-campus residency and in-person, on-campus instruction.

13 7. Moreover, in choosing to continue to deliver the majority of their coursework
14 through remote, online delivery, the undergraduate and graduate programs of the University of
15 California system are following the guidance and best practices of the overwhelming majority of
16 public health officials and organizations, including the United States Centers for Disease Control
17 and Prevention (“CDC”) and California health officials, while ensuring compliance with various
18 State, county, and municipal governmental orders restricting certain activities during the COVID-
19 19 pandemic.

20 8. Against this widely known backdrop, ICE suddenly announced on July 6, 2020,
21 that it was largely rescinding its COVID-19 exemption for international students for classes
22 beginning fall 2020, by requiring all students here under F-1 visas whose university classes are
23 scheduled to be entirely online to leave the United States or transfer to another institution offering
24 in-person classes. *See* ICE’s “July 6 Directive,” attached as Exhibit 1.⁴ ICE is also requiring
25 schools whose classes are scheduled to be entirely online to submit an “operational change plan”
26 no later than Wednesday, July 15, 2020—a mere nine days after the rescission of the exemption

27 _____
28 ⁴ <https://www.ice.gov/doclib/sevis/pdf/bcm2007-01.pdf>.

1 was announced. Schools, like the University of California, that will *not* be entirely online must
2 update their operational plans by August 1, 2020. ICE further announced that universities
3 adopting a hybrid model providing a mix of online and in-person classes, such as the University
4 of California, must separately certify for each student on an F-1 visa that the “program is not
5 entirely online, that the student is not taking an entirely online course load for the fall 2020
6 semester, and that the student is taking the minimum number of online classes required to make
7 normal progress in their degree program.” To comply, universities on a hybrid model must issue a
8 new certificate of eligibility (commonly referred to as a “Form I-20”) for each of these students
9 by August 4, 2020, less than a month from now. Universities will have to individually evaluate
10 and certify literally thousands of students in just the next few weeks, even as they continue to
11 grapple with how to safely instruct all their students during the coming term.

12 9. Notwithstanding the worsening COVID-19 health crisis, ICE’s action was
13 unaccompanied by any written explanation or statement of rationale for the rescission of the
14 exemption. There is no indication that, in reversing course, ICE considered *any* relevant factors,
15 including, but not limited to, the health of students, faculty, university staff, or communities in
16 which those universities are located; the reliance of students and universities on ICE’s prior
17 statements that the preexisting exemptions would remain “in effect for the duration of the
18 emergency” posed by the COVID-19 pandemic; or the absence of other options for safely
19 educating their international students. And ICE provided the public no advance notice of its
20 intended action, save for a cryptic FAQ issued a month earlier in which ICE stated without
21 elaboration that it had not issued guidance for the fall 2020 term. Neither did it provide the public
22 any opportunity for submission of comments.

23 10. ICE’s action leaves hundreds of thousands of international students in limbo, with
24 no viable options for commencing or continuing their educations within the United States. Just
25 weeks from the start of the fall semester, these students are largely unable to transfer to
26 universities providing more substantial on-campus instruction, notwithstanding ICE’s suggestion
27 that they may attempt to do so to avoid removal. For students in unique programs or fields of
28 study, transferring to another on-campus program may simply be impossible. Others will find

1 themselves faced with the prospect of attempting to transfer mid-program, after having devoted
2 potentially years toward a degree from a particular educational institution, under the tutelage of a
3 particular professor or group of professors. And for many students, returning to their home
4 countries to attend online classes will be impossible or impracticable given time differences,
5 inadequate infrastructure, or other limitations on internet access, including the prohibitive
6 expensive of doing so. In some cases, trying to attend U.S. classes online could even be
7 dangerous.

8 11. ICE's action puts universities between a rock and a hard place: either proceed with
9 a significant portion of instruction delivered remotely—which, under ICE's new directive, would
10 mean the near-certain loss of the vast majority of their international students, to the detriment of
11 both those students and the educational program as a whole—or attempt to significantly increase
12 the amount of in-person education, with mere weeks to plan for the overhaul of existing plans and
13 the implementation of new plans before classes resume, and despite the attendant grave risk to
14 public health and safety, all without any rational reason for doing so.

15 12. ICE's July 6 Directive will adversely affect both teaching and research efforts,
16 undermining the educational experience provided to students. At UC Berkeley, for example, 29%
17 of all graduate students, and approximately 50% of all engineering graduate students, are
18 international students affected by the July 6 Directive. If these students, absent intervention by
19 this Court, are forced to leave the country, it will significantly undermine UC Berkeley's related
20 research programs; UC Berkeley's ability to teach would also be greatly hindered, as the majority
21 of teaching assistants are graduate student instructors.

22 13. ICE's decision appears to be part of a concerted effort by the current
23 administration to force universities to resume in-person classes,⁵ notwithstanding the universities'
24 judgment that it is presently neither safe nor advisable to fully resume in-person instruction—a
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26 ⁵ Acting Deputy Secretary of Homeland Security Kenneth T. Cuccinelli openly
27 acknowledged on July 7, 2020, that the ICE Directive “will ... encourage schools to reopen.” See
28 <https://thehill.com/homenews/administration/506248-cuccinelli-says-rule-forcing-international-students-to-return-home>.

1 conclusion bolstered by the federal government’s own public health officials (including CDC
2 guidance).

3 14. ICE’s decision displays a callous disregard for students, who would be forced to
4 return to crowded classrooms, and faculty—particularly older faculty to whom COVID-19 poses
5 a greater risk—consigned to the same fate. And to force such a reopening when neither the
6 students nor the universities have sufficient time to react to or address the additional risks to the
7 health and safety of their communities creates chaos and only increases the risk of spreading the
8 COVID-19 virus.

9 15. For months, universities and students have prepared for the upcoming academic
10 year in reliance on ICE’s express March 2020 recognition that the COVID-19 pandemic
11 necessitates exempting international students from a regulatory provision that never anticipated
12 such a health crisis and where its application in the present circumstances would be both
13 exceedingly cruel and equally unwise. ICE’s abrupt about-face and rescission of that recognition
14 is a quintessentially arbitrary and capricious act and a profound abuse of discretion. Further,
15 because no advance notice or opportunity for comment was provided, ICE’s action is
16 procedurally defective under the Administrative Procedure Act and must be set aside. ICE should
17 be required under the circumstances to abide by the guidance it put forward in March and on
18 which universities and students have relied in good faith in planning for their fall quarters or
19 semesters during an ongoing pandemic.

20 **THE PARTIES**

21 16. Plaintiff The Regents of the University of California is a corporation authorized
22 and empowered to administer a public trust known as the University of California. Under Article
23 IX, section 9, of the California Constitution, The Regents is vested with full powers of
24 organization and government over the University, including all powers necessary or convenient
25 for the effective administration of the public trust and the advancement of the tripartite mission of
26 the University: to provide excellence in teaching, research, and public service. The Regents’
27 principal offices are in Oakland, Alameda County, California. The University of California is the
28 premier public university system in the world, providing undergraduate and graduate instruction

1 and degree programs to more than 285,000 students annually, including roughly 37,500 students
2 who study in the United States pursuant to F-1 visas.

3 17. Defendant United States Department of Homeland Security is an Executive
4 Department of the United States and an agency within the meaning of 5 U.S.C. § 551(1). DHS, as
5 well as its component agency U.S. Immigration and Customs Enforcement, or ICE, has
6 responsibility for, among other things, administering and enforcing the nation’s visa laws and
7 policies, including the “F-1” visa program.

8 18. Defendant ICE is a component agency within the United States Department of
9 Homeland Security and also an agency within the meaning of 5 U.S.C. § 551(1). ICE has
10 responsibility for, among other things, administering and enforcing the nation’s visa laws and
11 policies, including the Student and Exchange Visitor Program (“SEVP”) and the “F-1” visa
12 program.

13 19. Defendant Chad F. Wolf is the Acting Secretary of the United States Department
14 of Homeland Security. He is sued in his official capacity.

15 20. Defendant Matthew Albence is the Acting Director of United States Immigration
16 and Customs Enforcement. He is sued in his official capacity.

17 **JURISDICTION**

18 21. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 and the
19 APA, 5 U.S.C. § 702. Plaintiff The Regents of the University of California is a juridical person
20 aggrieved by a final agency action promulgated by Defendants. *See* 5 U.S.C. § 702. The Regents
21 brings this suit for declaratory and injunctive relief to set aside Defendants’ action as contrary to
22 law and arbitrary and capricious, *see id.* §§ 705, 706. This case presents a federal question under
23 28 U.S.C. § 1331 and thus is properly brought in the federal district courts.

24 **VENUE**

25 22. Venue is proper in the Northern District of California because this is a civil action
26 in which Defendants are agencies, or officers of an agency, of the United States. The Regents’
27 resides in this District, and no real property is involved. 28 U.S.C. § 1391(e)(1).

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INTRA-DISTRICT ASSIGNMENT

23. Pursuant to Civil Local Rule 3-2(c), intra-district assignment is proper in San Francisco or Oakland, because a substantial part of the events or omissions which give rise to the claims occurred in the County of Alameda.

24. The Regents has standing to bring this case. Unless enjoined by this Court, Defendants’ actions will cause an imminent, concrete, and irreparable injury to The Regents’ finances and its ability to carry out its educational mission, and will pose unacceptable health risks to The Regents’ faculty and others in its campus communities.

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

FACTS

The COVID-19 Pandemic

26. The President of the United States declared a national emergency in response to the COVID-19 pandemic on March 13, 2020.

27. SARS-CoV-2, which causes the COVID-19 illness, is easily transmitted. As of the filing of this Complaint, there have been more than 3.1 million confirmed cases in the United States alone, and more than 133,000 deaths from confirmed cases. California has recorded over 300,000 confirmed cases, and over 6,800 COVID-19-related deaths. Confirmed cases and deaths from COVID-19 have increased exponentially in the United States since January 2020, continue to grow in number, and are expected to continue to increase markedly over the coming months.

28. The virus that causes COVID-19 is highly transmissible and humans have no preexisting immunity. Those who contract the virus may experience life-threatening symptoms, significant and long-lasting health consequences, and in some cases death. Survivors face prolonged recovery, extensive rehabilitation, loss of digits, permanent neurological damage, and irreversible loss of respiratory capacity.

29. Carriers of the virus are often asymptomatic or pre-symptomatic, making testing or seclusion of only symptomatic individuals an ineffective solution for preventing the spread of the virus.

1 30. There is no vaccine against COVID-19. The most effective risk-mitigating
2 measure is to limit community spread by physical distancing, or remain physically separated from
3 known or potentially infected individuals; vigilant sanitation and hygiene are equally important.

4 31. Close human-to-human contact, especially indoors, poses the greatest risk of
5 transmission. University campuses present particular risks, including crowded classrooms, dining
6 facilities, and dormitories, which, until the pandemic subsides and an effective vaccine is
7 developed, could lead to further large-scale outbreaks of COVID-19.

8 32. The most severe projections from the CDC estimate that more than 200 million
9 people in the United States could be infected with the novel coronavirus over the course of the
10 pandemic, with as many as 1.5 million deaths.

11 33. Efforts to contain the spread of this highly contagious disease have included broad
12 shutdowns of businesses, educational institutions, and other aspects of society. On March 16,
13 2020, the CDC and members of the national Coronavirus Task Force issued guidance advising
14 individuals to adopt stringent physical distancing measures, such as working from home, avoiding
15 shopping trips and gatherings of more than 10 people, and staying away from bars, restaurants,
16 gyms, food courts, sporting events, and concerts.⁶

17 34. Following this advice, many states, including California, took steps to protect the
18 health and safety of their residents. States issued orders suspending or severely curtailing
19 operations of non-essential businesses, schools, and other locations where individuals congregate.
20 Many local governments also took action. Indeed, local governments in California—including
21 localities in which University of California campuses operate—were among the first in the nation
22 to recognize the need to take decisive action, and to that end issued “stay-at-home” orders or the
23 like to protect their residents and economies.

24 35. Notwithstanding these mitigation measures, COVID-19 cases continue to rise
25 precipitously nationwide and in California, particularly since the Memorial Day holiday. Current
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27 ⁶ [https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-](https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf)
28 guidance_8.5x11_315PM.pdf.

1 guidance from California reflects a general policy of continued caution, and a particular concern
 2 with indoor gatherings.⁷ California’s continued concern is well-warranted. States such as Florida,
 3 Texas, South Carolina, Louisiana, and Arizona, all of which have relaxed physical distancing
 4 measures—including by allowing indoor gatherings and the opening of locations where
 5 individuals congregate—are now suffering renewed surges and record-setting numbers of
 6 COVID-19 cases, hospitalizations, and deaths.

7 36. To date, there have been more than 3.1 million confirmed cases of COVID-19 in
 8 the United States, which have caused more than 133,000 deaths.⁸

9 ICE’s Initial Response to the Pandemic

10 37. Most international students in the United States attend American universities
 11 pursuant to nonimmigrant F-1 visas. Eligibility to maintain their status is governed by 8 C.F.R. §
 12 214.2.

13 38. By regulation, F-1 visa-holders must pursue a “full course of study” while in the
 14 United States. 8 C.F.R. § 214.2(f)(5)(i).

15 39. Section 214.2 defines the extent to which online courses can help satisfy the “full
 16 course of study” requirement. Since 2003, 8 C.F.R. § 214.2(f)(6)(i)(G) has provided: “For F-1
 17 students enrolled in classes for credit or classroom hours, no more than the equivalent of one class
 18 or three credits per session, term, semester, trimester, or quarter may be counted toward the full
 19 course of study requirement if the class is taken on-line or through distance education and does
 20 not require the student’s physical attendance for classes, examination or other purposes integral to
 21 completion of the class. An on-line or distance education course is a course that is offered
 22 principally through the use of television, audio, or computer transmission including open
 23 broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, or computer
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25 ⁷ See generally Stay Home Q&A, <https://covid19.ca.gov/stay-home-except-for-essential-needs/> (last visited July 10, 2020).

26 ⁸ Coronavirus in the U.S.: Latest Map and Case Count, N.Y. Times,
 27 <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (last visited July 10,
 28 2020).

1 conferencing. If the F-1 student’s course of study is in a language study program, no on-line or
2 distance education classes may be considered to count toward a student’s full course of study
3 requirement.”

4 40. On March 13, 2020, the Student and Exchange Visitor Program (“SEVP”), a
5 division of ICE, recognizing the extraordinary circumstances posed by the pandemic and
6 responding to “inquiries concerning the proper status” of international students in the United
7 States on academic visas “who may have [to] face slightly different scenarios related to
8 emergency procedures implemented by SEVP-certified learning institutions,” issued guidance to
9 address F-1 students’ maintenance of their F-1 visa status during the national emergency (the
10 “March 13 Guidance”).⁹

11 41. As relevant here, the March 13 Guidance governs international students attending
12 a school that “temporarily stops in-person classes but implements online or alternate learning
13 procedures.” The Guidance instructed students to “participate in online or other alternate learning
14 procedures and remain in active status” with ICE. Accordingly, under the Guidance, international
15 students with F-1 visas could engage in remote learning programs, even a complete course of
16 study through remote learning, so long as it was implemented as a result of the pandemic—either
17 in the United States or abroad—without adversely affecting their F-1 visa status.

18 42. The March 13 Guidance expressly stated that, though it was a “temporary
19 provision,” it would remain “*in effect for the duration of the emergency.*” (Emphasis added.) ICE
20 also noted that the situation was “*fluid*” and “*difficult*” and acknowledged that “SEVP will
21 continue to monitor the COVID-19 situation and will adjust its guidance *as needed.*” (Emphases
22 added.)

23 43. The President’s national emergency declaration of March 13, 2020 remains in
24 effect. Indeed, the COVID-19 pandemic is worsening in much of the nation; daily COVID-19
25

26 9

27 [https://www.ice.gov/sites/default/files/documents/Document/2020/Coronavirus%20Guidance_](https://www.ice.gov/sites/default/files/documents/Document/2020/Coronavirus%20Guidance_3.13.20.pdf)
28 [3.13.20.pdf](https://www.ice.gov/sites/default/files/documents/Document/2020/Coronavirus%20Guidance_3.13.20.pdf).

1 cases in much of the United States never significantly decreased, and cases of infection are now
 2 increasing dramatically in a majority of States.¹⁰

3 **The Regents of the University of California’s Response to the Pandemic**

4 44. Campuses across the University of California system moved to online instruction
 5 in March 2020. In the ensuing months, University of California campuses each individually
 6 engaged in careful, deliberate planning processes, prioritizing the health and safety of students,
 7 faculty, and staff, as well as the University’s purpose to deliver world-class educational services
 8 and a meaningful university experience to their students notwithstanding the pandemic. The
 9 University of California schools undertook these actions, among other reasons, in reliance on
 10 ICE’s statements in the March 13 Guidance that, because of the pandemic, students with F-1 visas
 11 would not be required to attend in-person classes to retain their visa status and that the exemption
 12 would remain “in effect for the duration of the [COVID-19 national] emergency.”

13 45. The Regents has put considerable thought, effort, and resources into devising how
 14 best to advance the University’s educational mission in the midst of the ongoing global pandemic.
 15 On May 22, 2020, recognizing the potential need to dramatically transform on-site operations, the
 16 University released the “University of California Consensus Standards for Operation of Campus
 17 and ANR Locations in Light of the SARS-CoV-2 Pandemic.” Numerous working groups and task
 18 forces were also formed to assess and discuss responses to the pandemic. The University has
 19 continuously monitored statewide and local government data regarding COVID-19 and abided by
 20 reopening requirements and shelter-in-place restrictions. All ten campuses have created plans for
 21 their summer and fall 2020 classes based on the status of COVID-19 in their respective locations.
 22 These plans often include a commitment to provide students, faculty, and staff with face
 23 coverings and to implement social distancing and COVID-19 testing requirements where feasible.

24 46. The University of California has also consulted on an ongoing basis with
 25 epidemiologists, medical experts, industry experts, and others on a wide range of topics related to
 26

27 ¹⁰ <https://coronavirus.jhu.edu/data/new-cases-50-states> (as updated on Friday, July 10,
 28 2020 at 03:00 AM EDT).

1 protecting student and public health while continuing to educate students. Indeed, some of the
2 world’s foremost experts on these topics work at the University of California.

3 47. Following months of study and consultation, the University’s campuses have
4 dramatically transformed their approach to the fall 2020 semester: UC Berkeley intends to
5 conduct limited in-person classes; UC Davis plans to offer most courses remotely; Irvine courses
6 will be remote with minimal exceptions; UCLA is currently all-remote, but anticipates 15-20% of
7 courses will be in-person or in a hybrid format for the 2020-21 academic year; UC Merced will be
8 nearly all remote, only allowing those classes that are by their nature hands-on to proceed in-
9 person; UC San Diego hopes for 30% in person classes, with 70% remote or hybrid. In short—
10 classes will be remote for most courses and students on every campus.

11 48. Any increase of in-person sessions will increase the risk to faculty, staff, students,
12 and the broader university community of contracting COVID-19.

13 49. Most faculty members are able to provide instruction remotely and would be put at
14 increased risk of contracting COVID-19 by increased in-person sessions.

15 50. A substantial number of the University’s faculty are over 60 years of age.
16 According to the CDC, older adults are among those at the highest risk of suffering severe illness
17 from COVID-19: such individuals are, according to the CDC, more likely to “require
18 hospitalization, intensive care, or a ventilator to help them breathe, or they may even die.”¹¹

19 51. The University of California intends that its faculty members focus on providing
20 robust and meaningful learning experiences through remote instruction. Requiring faculty to plan
21 at this late date for a potential adjustment to greater on-campus instruction, with all its attendant
22 health risks of having larger numbers of people on campus and in classrooms, would disrupt that
23 focus and likely result in a less-prepared instructional experience for the University’s students,
24 whether domestic or international.

25 52. Were the University’s campuses coerced by ICE into increasing the number of in-
26 person sessions to satisfy the July 6 Directive’s strictures for allowing their international students

27 ¹¹ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>.
28

1 to remain in good standing under the F-1 visa program, it would also increase the health risk to
 2 staff members—including facilities workers, janitorial staff, support staff, and others—through
 3 increased interactions with potentially infected students, faculty, and staff. This, in turn, would
 4 risk exacerbating the spread of the virus across California.

5 53. All students, whether domestic or international, will also be at an increased risk of
 6 contracting COVID-19 if the University of California system is coerced to provide more in-
 7 person sessions this coming term.

8 54. International students, many of whom have already incurred substantial,
 9 irretrievable costs associated with attending college in the United States in the 2020-2021
 10 academic year, relied on the March 13 Guidance when they incurred those costs. For instance,
 11 many international students have already taken out loans to pay for their education and related
 12 expenses, made travel arrangements to move to or near campuses, and entered leases for housing.

13 ICE Abruptly Announces It Will End The COVID-19 Exemptions

14 55. Notwithstanding ICE’s statement in its March 13 Guidance that the exemption
 15 from the in-person education provision of section 214.2 would remain “in effect for the duration
 16 of the emergency,” and also notwithstanding the above-described actions of the University and its
 17 students taken in reliance on those express statements, on June 4, 2020, ICE issued a “Frequently
 18 Asked Questions” (“FAQ”) document¹² asserting that “SEVP has *not* issued guidance to
 19 international students and schools for the fall semester.” (Emphasis added.) No further
 20 explanation of this cryptic statement was provided. Its intent only became clear a month later,
 21 with the issuance of the July 6 Directive.

22 56. On July 6, 2020, without *any* advance notice or opportunity for comment, and
 23 without giving students or universities *any* meaningful indication that it was considering revising
 24 the policy set out in its March 13 Guidance,¹³ ICE issued the “July 6 Directive,” which an

25 ¹² <https://www.ice.gov/doclib/coronavirus/covid19faq.pdf>.

26 ¹³ Section 553(b) of the Administrative Procedure Act, 5 U.S.C. § 553(b), requires that
 27 “notice of proposed rule making shall be published in the Federal Register, unless persons subject
 28 thereto are named and either personally served or otherwise have actual notice thereof in
 accordance with law. The notice shall include-
 (Continued...)

1 accompanying “News Release” describes as announcing “modifications ... to temporary
2 exemptions for nonimmigrant students taking online classes due to the pandemic for the fall 2020
3 semester.”¹⁴

4 57. In the July 6 Directive, ICE re-characterized its March 13 Guidance, saying that, in
5 that earlier guidance, “SEVP instituted a temporary exemption regarding the online study policy
6 for the *spring and summer* semesters” (emphasis added). Nothing in the March 13 Guidance,
7 however, says anything about its exemption being limited to the spring and summer 2020
8 semesters. Quite to the contrary, the March 13 Guidance stated very clearly that it would remain
9 “in effect *for the duration* of the emergency.” (Emphasis added.)

10 58. The July 6 Directive provides that: “Nonimmigrant F-1 ... students attending
11 schools operating entirely online may *not* take a full online course load and remain in the United
12 States. The U.S. Department of State will not issue visas to students enrolled in schools and/or
13 programs that are fully online for the fall semester nor will U.S. Customs and Border Protection
14 permit these students to enter the United States.” (Emphasis in original.)

15 59. Moreover, the July 6 Directive instructs that “[a]ctive students currently in the
16 United States enrolled in such programs must depart the country or take other measures, such as
17 transferring to a school with in-person instruction to remain in lawful status. If not, they may face
18 immigration consequences including, but not limited to, the initiation of removal proceedings.”

19 60. The July 6 Directive indicates that, regardless of the label ICE applies to it, ICE
20 intends its *content* to have the force and effect of a final rule. The Directive expressly states the
21 “U.S. Department of Homeland Security plans to publish the procedures and responsibilities in
22 the below Broadcast Message in the near future *as a Temporary Final Rule* in the Federal

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- 23 (1) a statement of the time, place, and nature of public rule making proceedings;
24 (2) reference to the legal authority under which the rule is proposed; and
25 (3) either the terms or the substance of the proposed rule or a description of the subjects
and issues involved.

26 *None* of that occurred with respect to the July 6 Directive.

27 ¹⁴ [https://www.ice.gov/news/releases/sevp-modifies-temporary-exemptions-](https://www.ice.gov/news/releases/sevp-modifies-temporary-exemptions-nonimmigrant-)
28 [nonimmigrant-](https://www.ice.gov/news/releases/sevp-modifies-temporary-exemptions-nonimmigrant-)

1 Register.” (Emphasis added.) As of the filing of this Complaint, the Directive’s procedures and
2 responsibilities have not yet been published in the Federal Register.

3 61. The July 6 Directive further instructs that “[s]chools that offer *entirely online*
4 *classes or programs or will not reopen* for the fall 2020 semester must complete an operational
5 change plan and submit it to” ICE “no later than Wednesday, July 15, 2020.” (Emphasis in
6 original.)

7 62. Moreover, the July 6 Directive states that “[s]tudents attending schools offering a
8 hybrid model—that is, a mixture of online and in person classes—will be allowed to take more
9 than one class or three credit hours online,” but also instructs that the school must, for each such
10 student, “certify to SEVP, through the Form I-20, ‘Certificate of Eligibility for Nonimmigrant
11 Student Status,’ that the program is not entirely online, that the student is not taking an entirely
12 online course load this semester, and that the student is taking the minimum number of online
13 classes required to make normal progress in their degree program.” Compliance with this proviso
14 requires that each institution issue a new Form I-20 for *each* of its potentially thousands of F-1
15 visa-holding students, who within the University of California total approximately 37,500
16 students system-wide. Further, it instructs that each institution must undertake this extraordinarily
17 burdensome task within 21 business days of July 6—that is, by August 4, 2020. Doing so within
18 such a short period of time is not only unduly burdensome, but, in most cases will be impossible
19 because many of the University’s students are generally not required to register for particular
20 classes until much closer to the start of the semester. Thus, the University is not likely to know by
21 the August 4 deadline which international students will, and which will not, qualify as being
22 engaged in a hybrid course of study or whether that study meets the Directive’s requirements for
23 continued exemption from the regulations’ in-person study requirements.

24 63. The July 6 Directive is unaccompanied by any explanation whatsoever for ICE’s
25 rescission of the exemption in the March 13 Guidance, even though that prior Guidance was, per
26 ICE’s own statements, intended to continue in effect for the duration of the COVID-19
27 emergency. Neither the July 6 Directive nor its accompanying “News Release” or updated FAQ
28 document indicates that ICE considered in any way the factors relevant to its decision to coerce

1 international students to attend classes in person as a condition of maintaining their F-1 visa
2 status—including whether their school has decided to (or the host state, county, or municipality
3 has required that the school) provide classes online to safeguard the health of students, faculty,
4 staff, and the surrounding community.

5 64. Simply stated, the July 6 Directive reveals no consideration whatsoever by ICE of
6 its impact on the health of students, faculty, staff, or the surrounding communities.

7 65. Further, ICE’s action of July 6 accounts for neither the ongoing reality of the
8 COVID-19 pandemic nor the record numbers of infections that are reported daily across the
9 United States.

10 66. The July 6 Directive also does not account in any way for the reliance interests of
11 both students and universities on ICE’s statements on the March 13 Guidance, or that the
12 exemptions ICE announced in that March guidance were a result of the extraordinary COVID-19
13 pandemic and therefore would be “in effect for the duration of the [COVID-19 national]
14 emergency.” As noted, the July 6 Directive attempts unsuccessfully to re-characterize the March
15 13 Guidance as having been applicable only to “the spring and summer semesters,” despite the
16 fact that the March 13 Guidance does not say that and instead says something quite the opposite:
17 that the exemption would apply *for the duration* of the public health emergency.

18 67. In fact, the July 6 Directive describes the exemptions established in the March 13
19 Guidance as allowances that were made “*during the height* of the Coronavirus Disease (COVID-
20 19) crisis” (emphasis added)—entirely disregarding the fact that the present rate of documented
21 infections in the United States far exceeds the rate of infections in March. And that rate continues
22 to climb, precipitously, in most areas of the country.

23 68. ICE also did not consider the absence of or risks associated with other options by
24 which universities affected by the COVID-19 pandemic and concerned for their students’ and
25 faculty’s health and welfare might provide their curricula safely and effectively to students,
26 including F-1 students.

27 69. The July 6 Directive will harm continuing F-1 students immeasurably. For many
28 students affected by the July 6 Directive, it will be infeasible or impossible to transfer to another

1 program that offers an in-person curriculum, thereby allowing them to pursue their education
2 from within the United States on F-1 visa status. Thus, these students will likely be forced to
3 leave the country. For many, this means the disruption of years of study and investment in the
4 program they must now leave mid-stream. The consequences of this sudden displacement, for
5 both new and continuing international students, are both financial and personal, and in all events
6 are likely to be devastating. These students will now be forced to incur substantial expenses to
7 make international flight arrangements in the midst of a pandemic that has significantly reduced
8 the availability of air travel. They will also lose their homes, in many instances at great cost
9 associated with leases that must now be broken. Not only that, but the many affected students
10 who are parents of children will be forced to upend their children's lives by returning to their
11 home countries, and affected students with spouses in the United States on some other type of
12 visa, such as a work visa, are at risk of being torn away from their spouse (and children where
13 applicable) in order to comply with the July 6 Directive.

14 70. For continuing F-1 visa students enrolled in a hybrid program who are currently
15 outside of the United States, if the students cannot return to the United States either due to travel
16 restrictions or an inability to get an F-1 entry visa because of the suspension of consular
17 processing of visa applications—which suspension was instituted in response to the COVID-19
18 emergency and remains in effect to this day—these students will lose their F-1 status by the terms
19 of July 6 Directive. In turn, these students would lose their ability to pursue pre-completion
20 internship and experiential learning opportunities, as well as their eligibility for work allowances
21 in summer and fall 2021, because of the requirement that students maintain F-1 status for the full
22 academic year preceding their access to practical training. *See* 8 C.F.R. § 214.2(f)(10).

23 71. F-1 students enrolled in a fully online program *cannot* lawfully remain in the
24 United States to continue their studies under the July 6 Directive. Unless this Court enjoins
25 implementation of the July 6 Directive, these students will be required to make precipitous
26 arrangements to return to their home countries amid a worldwide pandemic that has caused
27 nations to close their borders (particularly to residents of the United States, where infection rates
28 are higher than in many other countries) and that has considerably limited international travel

1 options. And if their departure is not timely, these students risk detention by immigration
2 authorities and formal removal from the United States, which may bar their return to the United
3 States for ten years. 8 U.S.C. § 1182(a)(9).

4 72. While some international students could attempt to participate in their university's
5 online educational program from outside the United States, they may have their research and
6 learning opportunities inhibited by time zone variations; unavailable, unreliable, or state-
7 restricted Internet connections; and other barriers to online learning. Still other students simply
8 cannot participate in online learning in their home countries. For example, University of
9 California students hail from countries such as Syria, Somalia, and Yemen, where civil war and
10 ongoing humanitarian crises make Internet access and study all but impossible. Others come from
11 Ethiopia, where the government has a practice of suspending all Internet access for extended
12 periods, including for a period that started on June 30, 2020, and continues to this date. At least
13 one student hails from North Korea, a country notorious for its repression of its citizens and the
14 suppression of the free flow of information. In some or all of these circumstances, attempting to
15 access their education through remote, online means may even pose dangers to their safety.

16 73. Further, the value of the education offered by Plaintiff hinges in many cases on the
17 diversity of perspective offered by these international students. Rendering their participation
18 impossible or insignificant will impair the educational experience and diminish its value for *all*
19 University of California students. Moreover, the University of California system depends on F-1
20 graduate students to provide teaching support in many undergraduate programs. Requiring these
21 students to provide instruction from remote locations in their home countries or elsewhere abroad,
22 potentially with considerable time-zone disparities and variable Internet connectivity, will make it
23 harder for faculty to coordinate with their teaching aides and benefit fully from their teaching
24 contributions.

25 74. The July 6 Directive will make continued study at University of California
26 institutions impracticable for a significant portion of their F-1 visa students. The loss of the ability
27 to perform research or field work, or even participate in basic coursework under reasonable
28 conditions, will force many students to abandon or at least postpone their studies for years. Many

1 students risk losing their ability to access work allowances due to the requirement that students
2 maintain F-1 status for the full academic year preceding their access to practical training. *See* 8
3 C.F.R. § 214.2(f)(10). This will significantly disrupt those students' career plans and
4 opportunities, further undermining the value of the educational experience that the University's
5 campuses can provide. It can be reasonably expected that the July 6 Directive will lead many
6 students to take extended leaves of absence or withdraw from the University's campuses entirely.
7 This harms everyone—the student, the University, and the people here and abroad who otherwise
8 might have benefited from that person's university-gained expertise.

9 75. The July 6 Directive will also cause immense harm to the University of California.
10 Many curricular programs depend on the presence and diversity of international students.

11 76. Moreover, F-1 students' tuition payments account for a significant percentage of
12 the University's overall revenues, and they help make possible the provision of financial aid to
13 those domestic students who could not otherwise afford to attend a University of California
14 institution of higher education. The disenrollment of any substantial number of these international
15 students would likely have a profound adverse effect on the University's ability to continue to
16 provide the world-class educational programs for which it is known and on its ability to offer
17 access to those who could not otherwise afford to attend.

18 77. Loss of out-of-state tuition will similarly undermine research at University of
19 California campuses. At UCLA, for example, absent out-of-state tuition from international
20 students, the campus will not have sufficient revenue to support the remaining graduate student
21 researchers. And the impact on research writ large will be catastrophic. At UCLA, one out of five
22 graduate students is an international student, with particular concentrations in the science,
23 engineering, and medical departments, areas of study in which most research cannot be done
24 remotely. The sudden removal, absent intervention by this Court, of a principal investigator on
25 such a project would be hugely detrimental, particularly given the importance of research in these
26 fields to better understanding SARS-CoV-2.

27 78. The harm to research caused by the July 6 Directive will be long-lasting, unless
28 enjoined by this Court, as international students will be discouraged from enrolling at the

1 University. A declination in the number of international students coming to the United States will,
 2 for the reasons noted, greatly undermine future research and teaching efforts at University of
 3 California campuses.

4 79. By threatening to force many F-1 students to withdraw from the University of
 5 California system, ICE has given the University and its campuses an untenable choice: lose
 6 numerous students who bring immense benefits to the University, or take steps to retain them
 7 through in-person classes, even when those steps increase the risk to the health of the students,
 8 faculty, staff, and the entire university community during the continuing COVID-19 pandemic.

9 80. Indeed, the Administration has effectively acknowledged that ICE’s decision is
 10 designed to force universities and other educational institutions to conduct in-person classes
 11 notwithstanding universities’ and public health officials’ considered judgments that it is neither
 12 safe nor educationally advisable to do so.¹⁵ As Acting Deputy Secretary of Homeland Security
 13 Kenneth T. Cuccinelli stated on July 7, 2020, the ICE Directive “will ... encourage schools to
 14 reopen.”¹⁶

CLAIMS FOR RELIEF

Count I (Violation of Administrative Procedure Act, 5 U.S.C. § 706) The July 6 Directive Is Arbitrary And Capricious

17 81. Plaintiff incorporates by reference the allegations of the preceding paragraphs.

18 82. The APA requires that this Court hold unlawful and set aside agency action that is
 19 “arbitrary, capricious, an abuse of discretion ... or otherwise not in accordance with law.” 5
 20 U.S.C. § 706(2)(A). Agency action that is not the product of reasoned decision making is
 21 inherently arbitrary and capricious. *Motor Vehicle Mfrs. Ass’n of United States, Inc. v. State*
 22 *Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). And an agency that “entirely fail[s] to consider
 23 an important aspect of the problem” before it acts in an arbitrary and capricious manner when it
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25
 26 ¹⁵ <https://twitter.com/realDonaldTrump/status/1280209946085339136?s=20>.

27 ¹⁶ <https://thehill.com/homenews/administration/506248-cuccinelli-says-rule-forcing-international-students-to-return-home>.
 28

1 finalizes its action. *Id.*; see also *Department of Homeland Sec. v. Regents of the Univ. of Calif.*,
2 No. 18-587, 2020 WL 3271746, at *13 (U.S. June 18, 2020).

3 83. The July 6 Directive is arbitrary and capricious because it “entirely fail[s] to
4 consider ... important aspect[s] of the problem” before ICE. *State Farm*, 463 U.S. at 43. At the
5 outset, Plaintiff notes that the July 6 Directive contains no explanation whatsoever for ICE’s
6 rescission of the March 13 Guidance. It reflects no consideration of the Directive’s significant
7 effects on universities and other institutions of higher education, many of which expended
8 considerable time and effort balancing community health and safety with core educational
9 pursuits in devising plans for the 2020-21 academic year. The July 6 Directive similarly fails to
10 consider the utter havoc it will wreak on the international students it most directly affects—who
11 will be forced to leave the United States or will be unable to enter to take classes, or who will not
12 be able to return to their home country, or possibly any other, or the diminution in the value of the
13 education that the universities can provide to *any* students in the absence of a significant number
14 of international students and the unique perspectives they bring.

15 84. The July 6 Directive is also arbitrary and capricious because it “fail[s] to address”
16 the “serious reliance interests” that ICE’s prior Guidance on this issue engendered. *Regents*, 2020
17 WL 3271746, at *14. As the Supreme Court explained just days ago, “[w]hen an agency changes
18 course, as DHS did here, it must be cognizant” of “serious reliance interests” that its prior
19 approach has “engendered.” *Regents*, 2020 WL 3271746, at *14. “It would be arbitrary and
20 capricious to ignore such matters.” *Id.* Yet the July 6 Directive does precisely this. It departs from
21 prior guidance that ICE issued with respect to maintaining an active F-1 student visa during the
22 COVID-19 health crisis—including its explicit statement on March 13 that the COVID-19-related
23 exemptions for F-1 visa holders would remain “in effect for the duration of the emergency”—
24 without *any* reasoned basis (indeed, without any stated basis whatsoever) for ICE’s sudden
25 reversal of position.

26 85. Not only does the July 6 directive fail to account for its devastating effect on
27 students and universities, but it fails to proffer any reasoned basis that could justify such an abrupt
28 policy shift. To satisfy the core requirement of reasoned decision-making, an agency must

1 “cogently explain why it has exercised its discretion in a given manner.” *State Farm*, 463 U.S. at
2 448.

3 86. The July 6 Directive, which reflects no reasoned decision-making whatsoever,
4 flouts this basic statutory requirement. It identifies a purported “need to resume the carefully
5 balanced protections implemented by federal regulations,” but provides no reasoning why the
6 agency perceives such a need to exist, nor why any resumption of the regime set out in federal
7 regulations must begin in less than two months, while the COVID-19 pandemic continues to rage
8 and worsen and the national state of emergency remains in effect.

9 87. Indeed, the lack of any real justification for the July 6 Directive on its face
10 “reveal[s] a significant mismatch between the [July 6 Directive] and the rationale ... provided,”
11 *Dep’t of Com. v. New York*, 139 S. Ct. 2551, 2775 (2019), raising the prospect that the July 6
12 Directive is being used for no other purpose than to, purely for political reasons, coerce
13 universities to alter their plans for the fall. Statements by administration officials such as Acting
14 Deputy Secretary Kenneth Cuccinelli, quoted earlier, bear this out.

15 88. The July 6 Directive is patently “arbitrary, capricious, an abuse of discretion, [and]
16 otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Accordingly, it must be set aside.

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

18 ***The July 6 Directive Violates The APA’s Requirement Of Notice-And-Comment Rulemaking***

19 89. Plaintiff incorporates by reference the allegations of the preceding paragraphs.

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

22 91. The APA, 5 U.S.C. § 553, requires (with certain exceptions not applicable here)
23 that agencies publish notice of any proposed substantive rule in advance in the Federal Register,
24 and that the public be given an opportunity to comment on that proposed rule before it is finalized
25 and takes effect. That Federal Register notice must include: “(1) a statement of the time, place,
26 and nature of public rule making proceedings; (2) reference to the legal authority under which the
27 rule is proposed; and (3) either the terms or the substance of the proposed rule or a description of
28 the subjects and issues involved.” 5 U.S.C. § 553(b).

1 92. The July 6 Directive was not noticed in advance, provided none of the information
2 required by § 553(b), and provided no opportunity for public comment whatsoever.

3 93. The July 6 Directive issued by ICE is a “rule” within the meaning of the APA
4 because it is an “agency statement of general or particular applicability and future effect designed
5 to implement, interpret, or prescribe law or policy.” 5 U.S.C. § 551(4). ICE all but concedes this:
6 it openly states in the Directive that it intends in the near future to publish the Directive’s
7 “procedures and responsibilities” in the Federal Register as a “Temporary Final Rule.”

8 94. The July 6 Directive is not an “interpretative rule[], general statement[] of policy,
9 or rule[] of agency organization, procedure, or practice.” 5 U.S.C. § 553(b). To the contrary, it is
10 a substantive rule that alters students’ and universities’ rights and obligations under the law by
11 requiring that students who are F-1 visa holders either transfer to an institution offering in-person
12 classes and attend those in-person classes, or leave the country, and by prohibiting the return to
13 the country of F-1 visa holders who cannot meet the Directive’s requirements.

14 95. Absent “good cause” for not doing so, ICE was required to provide notice of its
15 proposal in the Federal Register, an opportunity for public comment on the proposal, and an
16 explanation of the rule ultimately adopted, as well as a response to the comments it received, see
17 5 U.S.C. § 553(b), (c)—none of which it has done. Agencies cannot “avoid notice and comment
18 simply by mislabeling their substantive pronouncements.” *Azar v. Allina Health Servs.*, 139 S. Ct.
19 1804, 1812 (2019).

20 96. ICE has made no reasoned “good cause” finding for failing to follow the APA’s
21 procedural requirements here, nor could it.

22 97. Because ICE promulgated the July 6 Directive without notice and an opportunity
23 for comment, in violation of 5 U.S.C. § 553, it and the modifications it announced are unlawful
24 and must be vacated.

25 **PRAYER FOR RELIEF**

26 Wherefore, Plaintiff respectfully seeks the following relief:

27 1. A declaration that the policy announced in the July 6 Directive is arbitrary and
28 capricious;

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

3 3. An order preventing Defendants from enforcing the policy announced in ICE’s
4 July 6 Directive, or promulgating it as a Final Rule or “Temporary Final Rule,” without at least
5 first providing notice and an opportunity for public comment;

6 4. An order awarding Plaintiff’s costs and attorney’s fees; and

7 5. Any and all other such relief as the Court may deem appropriate.
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1 Dated: July 10, 2020

Respectfully submitted,

2 CROWELL & MORING LLP

3
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**THE REGENTS OF THE UNIVERSITY OF
CALIFORNIA**

Exhibit 1

Broadcast Message: COVID-19 and Fall 2020

To: All SEVIS Users

Date: July 6, 2020

Number: 2007-01

General Information

Temporary procedural adaptations related to online courses permitted by the Student and Exchange Visitor Program (SEVP) during the height of the Coronavirus Disease (COVID-19) crisis will be modified for the fall 2020 semester. There will still be accommodations to provide flexibility to schools and nonimmigrant students, but as many institutions across the country reopen, there is a concordant need to resume the carefully balanced protections implemented by federal regulations. The U.S. Department of Homeland Security plans to publish the procedures and responsibilities described in the below Broadcast Message in the near future as a Temporary Final Rule in the Federal Register. This message is intended to provide additional time to facilitate the implementation of these procedures.

Due to COVID-19, SEVP instituted a temporary exemption regarding the online study policy for the spring and summer semesters. This policy permitted F and M students to take more online courses than normally allowed for purposes of maintaining a full course of study to maintain their F-1 and M-1 nonimmigrant status during the COVID-19 emergency.

Temporary Exemptions for the Fall 2020 Semester

For the fall 2020 semester, SEVP is modifying these temporary exemptions. In summary, temporary exemptions for the fall 2020 semester provide that:

- 1) Students attending schools operating entirely online may *not* take a full online course load and remain in the United States. The U.S. Department of State will not issue visas to students enrolled in schools and/or programs that are fully online for the fall semester nor will U.S. Customs and Border Protection permit these students to enter the United States. Active 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 including, but not limited to, the initiation of removal proceedings.
- 2) Students attending schools operating under normal in-person classes are bound by existing federal regulations. Eligible F students may take a maximum of one class or three credit hours online (*see 8 CFR 214.2(f)(6)(i)(G)*).
- 3) Students attending schools adopting 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. These schools must certify to SEVP, through the Form I-20, “Certificate of Eligibility for Nonimmigrant Student Status,” that the program is not 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 above exemptions do not apply to F-1 students in English language training programs or M-1 students, who are not permitted to enroll in any online courses (see 8 *CFR* 214.2(f)(6)(i)(G) and 8 *CFR* 214.2(m)(9)(v)).

Forms I-20 Requirements and Maintaining Student Records for the Fall 2020 Semester

For all students attending schools in the United States this fall 2020, designated school officials (DSOs) must issue new Forms I-20 to each student certifying 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. DSOs must indicate this information in the Form I-20 Remarks field in the Student and Exchange Visitor Information System (SEVIS).

Schools must update and reissue all Forms I-20 to reflect these changes in program enrollment and student information within 21 business days of publication of this Broadcast Message (by Aug. 4, 2020.) When issuing new Forms I-20, please prioritize students who require new visas and are outside of the country.

For the fall 2020 semester, continuing F and M students who are already in the United States may remain in Active status in SEVIS if they make normal progress in a program of study, or are engaged in approved practical training, either as part of a program of study or following completion of a program of study. If a school changes its operational stance mid-semester, and as a result a nonimmigrant student switches to only online classes, or a nonimmigrant student changes their course selections, and as a result, ends up taking an entirely online course load, schools are reminded that nonimmigrant students within the United States are not permitted to take a full course of study through online classes. If nonimmigrant students find themselves in this situation, they must leave the country or take alternative steps to maintain their nonimmigrant status such as transfer to a school with in-person instruction.

For the fall 2020 semester, continuing F and M students outside of the United States, whose schools of enrollment are only offering online classes, may remain in Active status in SEVIS if they are taking online courses and are able to meet the normal full course of study requirements or the requirements for a reduced course of study. Only students enrolled at a school that is only offering online coursework can engage in remote learning from their home country. In this case, DSOs should annotate the student's record to make it clear that the student is outside the US but taking full time online courses as that is the only choice offered by the school.

School Reporting and Procedural Requirements

- 1) Schools that offer *entirely online classes or programs* or *will not reopen* for the fall 2020 semester *must* complete an operational change plan and submit it to SEVP@ice.dhs.gov no later than Wednesday, July 15, 2020. The subject line must read: "Fall 2020 (Fully Online/Will not Reopen) – School Name and School Code."
- 2) Certified schools that will not be entirely online but will reopen in the fall and that will use any of the following educational formats must update their operational plans by August 1, 2020 and include whether they will be:

- Solely in-person classes, or
- Delayed or shortened sessions, or
- A hybrid plan of in-person and remote classes.

These plans shall also be submitted to SEVP@ice.dhs.gov and the subject line must read: “Fall 2020 (in person/hybrid/modified session) – School Name and School Code

- 3) Schools should update their operational plans if circumstances regarding their operational posture change within 10 calendar days.

SEVP will continue to develop and provide resources to stakeholders on ICE.gov, including answers to frequently asked questions, to clarify and expand upon information in this Broadcast Message.

Disclaimer

This Broadcast Message is not a substitute for applicable legal requirements, nor is it itself a rule or a final action by SEVP. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil or criminal matter.



CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California Corporation

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Jennifer S. Romano (SBN 195953), Crowell & Moring LLP, 515 S. Flower St. 40th Fl., Los Angeles, CA 90071; 213.622.4750

DEFENDANTS

Please see attachment A.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
X 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for PTF and DEF for Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- X 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation-Transfer 8 Multidistrict Litigation-Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 5 U.S.C. § 706
Brief description of cause: Challenge to the agency's directive regarding in-person learning exemptions for F-1 student visa recipients during the COVID-19 pandemic.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ JURY DEMAND: Yes X No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 07/10/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Jennifer S. Romano

ATTACHMENT A

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