UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

MANIKANTA PASULA, **LIKHITH BABU GORRELA**, **THANUJ KUMAR GUMMADAVELLI**, **HANGRUI ZHANG**, and **HAOYANG AN**, on behalf of themselves and all those similarly situated,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY;

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT;

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, BOSTON FIELD OFFICE;

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, MANCHESTER SUB-FIELD OFFICE;

KRISTI NOEM, Secretary of the Department of Homeland Security;

TODD LYONS, Acting Director of the Immigration and Customs Enforcement;

Defendants.

No. 1:25-cv-156-SE-TSM

PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' EXPEDITED MOTION FOR A CLASSWIDE PRELIMINARY INJUNCTION

INTRODUCTION

The five named Plaintiffs and over one hundred potential class members are F-1 international students who have been permitted to study at colleges and universities in New Hampshire, Maine, Massachusetts, Rhode Island, and Puerto Rico. They have not violated any rules that would result in the termination of their F-1 student status. Nevertheless, beginning in early April 2025, Defendants abruptly began terminating these students' F-1 student status with the initial reasoning of "OTHERWISE FAILING TO MAINTAIN STATUS." Defendants' termination was solely based on an NCIC [National Crime Information Center] record check and F-1 visa revocations, which were simultaneously reflected in the students' SEVIS records.

Defendants reactivated the named Plaintiffs' (and an unidentified number of class members') SEVIS records in their database starting on or about April 24, 2025 after the commencement of the instant class action lawsuit. But Defendants still have declined to provide a sworn affidavit or stipulate that Plaintiffs and class members have always held valid F-1 student status notwithstanding Defendants' actions. Instead, the only evidence Defendants have produced is the proof of a reactivated SEVIS record of the five named Plaintiffs and the sworn declaration of Andre Watson—an assistant director of the National Security Division of Homeland Security Investigations of Defendants—which was filed in another case in this district (*Liu v. Noem*, 1:25-cv-133-SE-TSM) and makes no reference to the Plaintiffs or class members in this case. *See* Docket Number (DN) 21-2. This sworn declaration "is not evidence that [Plaintiffs and class members'] F-1 student status remains active[.]" *See Liu v. Noem*, No. 25-cv-133-SE, 2025 U.S. Dist. LEXIS 80713, 2025 DNH 057, at *17 (D.N.H. Apr. 29, 2025). This case is no different than *Liu*, and preliminary relief should similarly be granted here.

Absent a preliminary injunction, the prospect of irreparable harm to the five Plaintiffs and class members remains. Defendants fail to explain or confirm whether Plaintiffs and the class members retained their student status during the time period between the SEVIS record termination and the later reactivation. As further explained below, this approximately three-week period of F-1 student status termination will produce real, harmful consequences for Plaintiffs and class members. Defendants suggest that this Court should wait until "an adverse adjudication by U.S. Citizenship and Immigration Services ('USCIS') or by an Immigration Judge ('IJ') on their F-1 [student] status." Govt's Opp. at 2. However, by then, it would be too late for Plaintiffs and class members to receive meaningful relief from this Court. Accordingly, this Court should grant Plaintiffs' and class members' Motion for Preliminary Injunction.[1]

ARGUMENT

1. PLAINTIFFS ESTABLISH THE SUBSTANTIAL LIKELIHOOD OF SUCCESS

a. This Court Has Jurisdiction Over Plaintiffs' and Class Members' APA Claim

This Court has jurisdiction over Plaintiffs' and class members' claims. Defendants argue that there is no case or controversy because "changing a SEVIS record status to 'terminated' does not terminate an individual's nonimmigrant *status*." Govt's Opp. at 14 (emphasis in original). This is incorrect, as Defendants' termination of Plaintiffs' and class members' SEVIS records was, in

[1] Defendants contend that "Plaintiffs cannot plausibly argue that they have demonstrated eligibility for class certification 'for the purposes of preliminary injunctive relief' . . . because the parties have not yet briefed Plaintiffs' claims of class certification (provisional or not)[.]" Govt's Opp. at 27-28. This argument fails to acknowledge that, as discussed during the 11:00 a.m. April 25, 2025 status conference, this extension of class certification briefing was agreed upon to accommodate Defendants' complaint about having insufficient time to prepare for both preliminary injunction and class certification motions.

fact, a termination of their F-1 student status and, thus, constitutes a final agency action under 5 U.S.C. § 704. *Liu*, 2025 DNH 057, at *25-26.

Defendants do not produce actual evidence confirming that Plaintiffs and class members have maintained valid F-1 student status, including after Defendants terminated these students' SEVIS records. Instead, Defendants rely on the declaration Defendants filed in the *Liu* case in this district, which only states that "[t]erminating a record in SEVIS does not terminate an individual's nonimmigrant status in the United States. The statute and regulations do not provide SEVP the authority to terminate nonimmigrant status by terminating a SEVIS record, and SEVP has never claimed that it had terminated [Plaintiffs and class members'] nonimmigrant status." DN 21-2, ¶ 11. As the Court explained in *Liu*, "[t]his language is not evidence that [Plaintiffs and class members'] F-1 student status remains active[.]" *See Liu*, 2025 DNH 057, at *17.

After the filing of the instant lawsuit, Plaintiffs asked Defendants for a sworn affidavit stating that Plaintiffs and class members currently maintain active student status. *See* Exhibit UU.[2] Defendants did not respond to Plaintiffs' proposal. Defendants' "refusal to stipulate that it remains active only underscores the equivocal language of Watson's statement." *See Liu*, 2025 DNH 057, at *17. While Defendants do not provide a simple answer to this question with evidence, all evidence leads to the conclusion that Plaintiffs' and class members' F-1 student statuses *were*, in fact, terminated when their SEVIS records were terminated. Plaintiffs have presented evidence that, on or about April 3, 2025, Defendants changed SEVIS records to say, in part, "OTHERWISE *FAILING TO MAINTAIN STATUS*." This reasoning was specifically used to terminate the SEVIS records for two (and perhaps three) named Plaintiffs—Pasula, Gorrela, and possibly

[2] While it is the practice of Plaintiffs' counsel to not attach emails among counsel as exhibits, Plaintiffs' counsel feel that it is necessary on this case.

Gummadavelli—and scores of class members.[3] Indeed, this SEVIS termination reason is triggered when "[t]he student has not maintained status" and "[n]one of the other terminations reasons applies." Exhibit AA. The Declaration of Mr. Watson omits this unequivocal "OTHERWISE FAILING TO MAINTAIN STATUS" language in his declaration, including any explanation for why this language was used or later changed.

While Defendants updated the SEVIS termination reason on or about April 9, 2025 by deleting "FAILING TO MAINTAIN STATUS" from the SEVIS record—and omitted this language in more subsequently terminated cases, including for Plaintiffs Zhang and An—that clerical update does not control the final agency action question, particularly when Defendants (i) refuse to confirm with evidence whether Plaintiffs and class members have maintained their student status on and after April 4, 2025, and (ii) do not even address this update in any sworn affidavit. Moreover, Defendants' own website supports the conclusion that Plaintiffs' and class members' SEVIS termination was, in fact, tantamount to a termination of F-1 student status. According to DHS's website on the termination of SEVIS, "[w]hen an F-1/M-1 SEVIS record is terminated[,]" international students "lose[] all on-and/or off-campus employment authorization[,]" "cannot re-enter the United States on the terminated SEVIS record[,]" ICE "agents may investigate to confirm the departure of the student[,]" and "[a]ny associated

[3] *See* Exhibit MM (including this status language for Plaintiffs Pasula and Gorrela) (emphasis added); Exhibit VV (same); Exhibits A and F (April 4, 2025 university emails to Plaintiffs Pasula and Gorrela indicating "you are out of status"); Exhibit J (April 9, 2025 university email to Plaintiff Gummadavelli indicating that SEVIS record was terminated for "Failure to Maintain Status…"); *see also* Exhibit NN ¶18 ("[b]etween April 4, 2025 and April 11, 2025, I observed and learned of approximately two hundred international students whose SEVIS record was terminated with a terminating reason of 'failure to maintain status'"); Exhibit T ("For a listing of over fifteen students terminated in SEVIS between April 3rd and April 8th, the cause of termination was listed as 'otherwise failing to maintain status.'").

For the two other Plaintiffs (Zhang on April 9, 2025 and An on April 9, 2025), the following language was used at the initial time of the SEVIS record termination: "OTHER-Individual identified in criminal records check and/or has had their VISA revoked. SEVIS record has been terminated." Exhibits N and AAA.

Previously filed Exhibit Q (DN 5-20) was intended to contain the SEVIS termination notice of Plaintiff Haoyang An, but erroneously contained such record for Hangrui Zhang. To correct this error, the attached Exhibit AAA contains the SEVIS termination notice of Haoyang An.

[dependent] F-2 or M-2 dependent records are terminated." Homeland Security, "TERMINATE A STUDENT," *the Department of Homeland Security* (Nov. 7, 2024) (attached as Exhibit CC). *See also* Homeland Security, "TERMINATE OR REACTIVATE A DEPENDENT RECORD," *the Department of Homeland Security* (Mar. 17, 2023) ("When a dependent is terminated in SEVIS, it means that dependent is no longer eligible for F-2 or M-2 status.") (attached as Exhibit DD). Indeed, Plaintiffs' and class members' colleges and universities understood the SEVIS record termination to mean the termination of F-1 student status. Exhibit B ("As a result, SEVIS termination means that there is no grace period available for this type of situation, you are out of status."); Exhibit F (same); Exhibit J (same). If this evidence is not enough, the visa revocation notices Plaintiffs and class members received from U.S. Consulates further confirm that they were no longer in status. Exhibit C (remaining "without a lawful immigration status can result in fines, detention, and/or deportation"); Exhibit G (same); Exhibit K (same); Exhibit ZZ (same).

Defendants' reactivation of Plaintiffs' and class members' SEVIS records after the commencement of this lawsuit does not render this case or Plaintiffs' request for preliminary relief moot. While Defendants do not formally raise mootness, any such argument would fail to satisfy Defendants' "heavy burden," especially where Defendants have neither testified that they have abandoned their practice nor conceded that Plaintiffs and the class members have retained their student status. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 189 (2000) (the moving party has the "heavy burden" of showing that "subsequent events [make] it absolutely clear that the allegedly wrongful behavior could not reasonably be expected to recur"); *see also Becker v. FEC,* 230 F.3d 381, 386 n.3 (1st Cir. 2000) ("[W]hile it is true that a plaintiff must have a personal interest at stake throughout the litigation of a case, such interest is to be

assessed under the rubric of standing at the commencement of the case, and under the rubric of mootness thereafter."); *Drewniak v. United States Customs & Border Prot*., 554 F. Supp. 3d 348, 365 (D.N.H. 2021) (holding that standing existed, in part, because the Government did not abandon the challenged practice).

b. The Privacy Act Does Not Bar Review of Defendants' Actions

The Privacy Act does not bar review of Defendants' actions. Contrary to Defendants' contention, Plaintiffs and class members have raised no claim under the Privacy Act, and it simply does not apply. Govt's Opp. at 20-25. Plaintiffs and class members are not seeking to access or challenge the correctness of Defendants' recordkeeping. This is not a case about data correction. Instead, Plaintiffs' and class members' claims are about their F-1 student status. *See Liu*, 2025 DNH 057, at *23-24. Plaintiffs and the class also are not "individual[s]" for the purpose of the Act, as they are neither U.S. citizens nor lawful permanent residents and, thus, their "SEVIS record is not a 'record' under the Privacy Act." *Id*. at *25.

c. A Strong Likelihood of Success on the Merits of Count 1 (APA) Exists

Plaintiffs and class members have established a strong likelihood of success on the merits of Count 1 (APA). Defendants argue that they have the broad authority to terminate an international student's status. *See* Govt's Opp. at 19-20. At least one court has disagreed with Defendants' position. *See Liu*, 2025 DNH 057, at *27 (citing *Jie Fang*, 935 F.3d at 176). However, even assuming that such broad authority exists, Defendants still fail to provide any meaningful explanation as to why and how the mere criminal record check and visa revocation can and should terminate F-1 student status. *See id*. at *30 ("To survive judicial review under the APA, the agency must 'articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made.'") (quoting *Motor Vehicle Ass'n v. State Farm Mut. Auto.*

Ins., 463 U.S. 29, 43 (1983)). This is particularly true when Defendants' own policy confirms that "[v]isa revocation is not, in itself, a cause for termination of the student's SEVIS record." ICE Policy Guidance 1004-04 – Visa Revocations (June 7, 2010) (attached as Exhibit V).

2. PLAINTIFFS AND CLASS MEMBERS WILL SUFFER IRREPARABLE HARM ABSENT THE COURT'S INTERVENTION

Plaintiffs and class members will suffer irreparable harm absent this Court's intervention. Defendants' argument in response primarily hinges on the question of whether their voluntary reactivation of the SEVIS record after the commencement of this lawsuit eliminates the irreparable harm Plaintiffs and class members face. *See* Govt's Opp. at 11-14. This argument fails.

Defendants do not declare with evidence or otherwise stipulate that Plaintiffs and class members have maintained valid F-1 student status after Defendants terminated their SEVIS records. Historically, the activation of the SEVIS record was construed as having a valid F-1 student status. Thus, it would not have been difficult for Defendants to stipulate or provide an affidavit conceding that all Plaintiffs and class members have valid F-1 student status in light of the reactivation of their SEVIS records. Defendants have consciously refused to do so. Moreover, Defendants' choice of submitting the declaration Defendants used in the *Liu* matter—instead of providing a uniquely tailored affidavit explaining the meaning of the previous termination of the SEVIS record and recent reactivation of the record as to the five Plaintiffs and class members—underscores the necessity of this Court's intervention to protect Plaintiffs' and class members' F-1 student status during the litigation of this case.

Defendants are also silent on the effect of the purported new SEVP [Student and Exchange Visitor Program] policy that Defendants filed in *Liu*. *See Liu*, 1:25-cv-133-SE-TSM, DN 25-2 (attached as Exhibit WW). What is more confusing is whether that policy is even a final SEVP

policy.[4] In any event, this purported new SEVP policy does not alter the analysis because the policy does not indicate what the SEVIS record reactivation means as to Plaintiffs' and class members' maintenance of their F-1 student status. If there was any further doubt that this purported new policy does not eliminate the need for preliminary relief, the policy goes on to state that the policy "is not a substitute for applicable legal requirements, nor is it itself a rule or a final action by SEVP." Exhibit WW; *Doe*, 1:25-cv-1998-VMC, DN 43, at *30 n.12 ("Defendants suggested that policies do not confer the same rights as law and regulations do.") (attached as Exhibit XX).

Preserving Plaintiffs' and class members' valid F-1 student status is critical for their defense in removal proceedings and against immigration detention. Defendants do not dispute that most of Plaintiffs' and class members' visas have been revoked.[5] The visa revocation, standing alone, allows Defendants to place Plaintiffs and class members in removal proceedings and detain them. *See* 8 U.S.C. § 1227(a)(1)(B). However, the Immigration Judge may dismiss removal proceedings where a visa is revoked, so long as a student is able to remain in valid status or otherwise is reinstated to F-1 student status. *See* 8 C.F.R. § 1003.18(d)(ii)(B); *see also* Exhibit U. And Defendants do not refute the fact that they have placed international students in removal proceedings and detained them. *Compare* Pet's Brief (DN 5-1) at 4 n.7 *with* Govt's Opp. at 14. Moreover, once Plaintiffs and class members are placed in removal proceedings and detained, it would be too late to receive meaningful "student status" relief from this Court through the instant

[4] In *Liu*, Defendants suggested that this was a new policy on April 29, 2025. *See Liu*, 1:25-cv-133-SE-TSM, DN 25-1, at *4 (Apr. 29, 2025). However, in another case involving 133 international students, Defendants shared with the District Court for the Northern District of Georgia on April 30, 2025 during the status conference that "Defendants took the position that the policy was *not final*, and thus it was not clear the effect the policy would have on the [p]laintiffs in th[at] case." *Doe v. Bondi*, 1:25-cv-1998-VMC, DN 43, at *30 (N.D. Ga. May 2, 2025) (preliminary injunction order) (emphasis added) (attached as Exhibit XX).

[5] Plaintiff Hangrui Zhang is the only named Plaintiff whose visa has not been revoked. While Plaintiffs do not precisely know the reason for the non-revocation, it is likely due to the fact that Plaintiff Zhang's visa already expired on August 20, 2024 and thus there was no need for the U.S. government to revoke his visa. Exhibit YY. Plaintiffs also confirmed that Plaintiff Haoyang An's visa has been revoked. Exhibit ZZ.

case. For example, immigration detention will not permit Plaintiffs and class members to attend their classes; thus, they will be prevented from making normal progress in their degree programs under 8 C.F.R. § 214.2(f)(5)(i). Then, Plaintiffs and class members may be out of their F-1 student status under the regulation, independent from Defendants' unilateral and unlawful termination of their F-1 student status. In such a scenario, this Court's relief—which is limited to Defendants' unilateral termination of F-1 student status—would not be meaningful for Plaintiffs and class members by then.

Further, even assuming that the reactivation of the SEVIS record was meant to restore Plaintiffs' and class members' F-1 student status, Defendants do not provide any affidavit to explain their F-1 student status between the SEVIS record termination date and the SEVIS record reactivation date. As reflected in the screenshot of Plaintiffs' SEVIS event histories, Plaintiffs and class members have gaps between the SEVIS record termination and reactivation dates. Exhibit VV. This gap may seem marginal. It is not. Such a gap, no matter how small, can be used against Plaintiffs and class members for their future discretionary benefits when they apply for the Optional Practical Training (OPT), change their schools, and/or change their status to another nonimmigrant or immigrant status. As the H-1B notice of intent to deny example shows, Defendants can force Plaintiffs and class members to leave the United States and return with a new visa instead of allowing them to change their status in the United States. Exhibit QQ at 2 ("If the petition is approved, it will be forwarded to a U.S. consulate abroad for visa processing.").

Defendants suggest that this Court can wait since Plaintiffs' and class members' concern involves pure discretionary benefit application adjudication by USCIS, or until USCIS denies such application. Govt's Opp. at 12. However, by that point, it would be too late to receive meaningful relief from this Court. For example, if this Court provides relief *after* USCIS denies a student's

OPT application or change of nonimmigrant status application—as the H-1B example shows—it is unlikely that this Court's relief would be meaningful. In such a situation, the student would have to rely on USCIS's grace of reconsidering its earlier denial decision after this Court's ruling. Otherwise, the student would have to file a separate lawsuit seeking *nunc pro tunc* relief for a court to issue an order directing USCIS to re-adjudicate the discretionary application. However, *nunc pro tunc* relief in immigration relief is often considered an extraordinary request. *See Compere v. Riordan*, 368 F. Supp. 3d 164, 171-72 (D. Mass. 2019) (noting that *nunc pro tunc* relief in immigration cases requires extraordinary circumstances).

Finally, *A.O. v. Cuccinelli*, 457 F. Supp. 3d 777 (N.D. Cal. 2020), is instructive here. In *A.O.*, a class of plaintiffs brought claims against USCIS challenging a new immigration policy that resulted in the denials of Special Immigrant Juvenile ("SIJ") petitions. *Id.* at 783. Plaintiffs sought a preliminary injunction enjoining the application of the policy. *Id.* Shortly after litigation commenced, USCIS voluntarily abandoned the reunification authority requirement and argued that its policy changes undermined plaintiffs' irreparable harm. *Id.* at 794–95. The court disagreed, highlighting the "feelings of fear and uncertainty" caused by USCIS's conduct and held that such harms—coupled with USCIS's inability to show that the policy changes were permanent—easily satisfied irreparable harm. *Id.* at 795. As in *A.O.*, the F-1 status of the five Plaintiffs and class members is still at risk.[6] Given Defendants' track record for sudden, unannounced policy changes, a preliminary injunction is the only way to protect Plaintiffs from irreparable harm.[7]

[6] *See also Rogers v. Virginia State Registrar*, 507 F. Supp. 3d 664, 673–74 (E.D. Va. 2019) (granting injunction because attorney general opinion did not moot case or absolve irreparable harm); *NJOY, LLC v. iMiracle (HK) Ltd.*, --- F. Supp. 3d ----, 2024 U.S. Dist. LEXIS 237508, 2024 WL 5324728, at *7 (S.D. Cal. Dec. 20, 2024) ("[T]he Court finds that voluntary cessation is insufficient to demonstrate a lack of irreparable harm.").

[7] The balance of hardships and public interest weight heavily in Plaintiffs and class members' favor. Absent Plaintiffs and class members' failure to comply with the governing rules as F-1 international students, Defendants should not arbitrarily or unlawfully terminate their F-1 student status in a manner that is inconsistent with their own regulations.

Plaintiffs and similarly situated members,

By and through their Counsel,

Dated: May 5, 2025

Respectfully submitted,

/s/ SangYeob Kim

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