UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

Student DOE #1, Student DOE #2, Student DOE #3, Student DOE #4, Student DOE #5, and Student DOE #6, *Plaintiffs*,[1] v. Kristi NOEM, in her official capacity as Secretary of the United States Department of Homeland Security, Todd LYONS, in his official capacity as Acting Director, U.S. Immigration and Customs Enforcement, Ricky J. PATEL, in his official capacity as Newark Special Agent in Charge, Homeland Security Investigations, U.S. Immigration and Customs Enforcement, and John TSOUKARIS, in his official capacity as Newark Field Office Director, Enforcement and Removal Operation, U.S. Immigration and Customs Enforcement, *Defendants*.	Case No. 2:25-cv-2998

MEMORANDUM OF LAW IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

[1] Plaintiffs' Motion to Proceed Under Pseudonyms is forthcoming.

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INTRODUCTION

Plaintiffs are five international students and one recent graduate of Rutgers University ("Rutgers") who have been studying or engaging in Optional Practical Training ("OPT") employment in their areas of study, all on F-1 student visas. They have maintained F-1 status and have remained in good standing with Rutgers, and none of them has engaged in any conduct that would warrant termination of their F-1 status. Plaintiffs dream of completing their degrees, research, and training through Rutgers – a nationally renowned, land-grant university known for its rigorous academic and research programs. They have worked hard, and have made significant sacrifices, to make this possible. In choosing to come from China or India to the United States to study, Plaintiffs relied on existing laws, regulations, and policies. But now their academic and career prospects—along with their emotional and financial well-being—are in terrible jeopardy. Between April 3 and April 8, 2025, U.S. Immigration and Customs Enforcement ("ICE") abruptly terminated the definitive records in the government database used to track their compliance with this status, the Student and Exchange Visitor Information System ("SEVIS"),[2] thus effectively terminating their F-1 status.

[2] The Student and Exchange Visitor Information System ("SEVIS") is "the web-based system that [DHS] uses to maintain information regarding:" F-1 "students studying in the United States[.]" U.S. Dep't of Homeland Sec., *About*

The termination of a SEVIS record by ICE is not merely a clerical action; it communicates that ICE has determined that an F-1 student has failed to maintain status, which carries severe consequences. ICE's termination of a SEVIS record communicates to employers and others that the F-1 visa holder's F-1 status has also been terminated. As a result, for example, SEVIS termination prevents Rutgers from issuing the form I-20 with notation of employment authorization that F-1 visa holders need to work in OPT positions. Garfunkel Decl. ¶¶ 8, 20. And termination of F-1 status immediately terminates employment authorization, prevents the individual and any of their dependents from reentering the United States on their visa should they depart, and renders the individual vulnerable to ICE arrest, detention, and deportation. In this case, ICE terminated Plaintiffs' SEVIS records, effectively terminating their F-1 status, in violation of the relevant regulations, and without providing Plaintiffs notice, adequate explanation, or an opportunity to be heard. Accordingly, Plaintiffs ask this Court for emergent injunctive relief to restore the *status quo ante* and allow them to continue their work and studies in the United States.

Given the imminent and real harms Plaintiffs face as a result of ICE's

SEVIS, https://studyinthestates.dhs.gov/site/about-sevis (last visited Apr. 18, 2025). The database tracks students' compliance with their status. According to the Foreign Affairs Manual, "the SEVIS record is the definitive record of student or exchange visitor status and visa eligibility." 9 FAM 402.5-4(B)(a).

unilateral, unlawful termination of Plaintiffs' SEVIS records, which communicates a termination of their F-1 student status, Plaintiffs request that the Court grant a temporary restraining order to (i) direct Defendants to restore Plaintiffs' SEVIS record and status and set aside any termination of Plaintiffs' SEVIS or F-1 status; and (ii) enjoin Defendants from directly or indirectly enforcing, implementing, or otherwise imposing legal consequences as a result of Defendants' decision to terminate Plaintiffs' SEVIS records or F-1 status, including arresting, detaining, or removing Plaintiffs from the Court's jurisdiction without at least 30 days' notice to the Court and to the Plaintiffs and their counsel.

FACTUAL BACKGROUND

I. F-1 Student Visas and F-1 Status

An F-1 visa is typically required for individuals to enter the United States to attend college or university, among other academic institutions.[3] Students are issued an F-1 visa by the U.S. Department of State at an Embassy or Consulate. Pursuant to 8 U.S.C. § 1101(a)(15)(F)(i), an applicant for an F-1 visa must: (1) have been accepted at an approved institution; (2) intend to enter the U.S. solely to pursue a

[3] *See* 9 FAM. 402.5-5(B); U.S. Citizenship & Imm. Servs., *Handbook for Employers, M-274,* Ch. 7.4.2, F-1 and M-1 Nonimmigrant Students, https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274/70-evidence-of-employment-authorization-for-certain-categories/74-exchange-visitors-and-students/742-f-1-and-m-1-nonimmigrant-students (last updated Apr. 02, 2025).

full course of study at an approved institution; (3) present intent to leave the United States at the conclusion of approved activities, (4) possess sufficient funds to meet the individual's financial needs; and (5) prepare for a course of study.[4] In order to obtain a visa, a designated school official ("DSO") at a school that has been certified to host international students must issue a Form I-20, Certificate of Eligibility for Nonimmigrant (F-1) Students, which indicates acceptance into the school, the program start date, and the student's visa class.[5] Once allowed into the United States on an F-1 visa, an individual "is usually admitted or given an extension of stay for the 'duration of status,'" meaning "the time during which the student is pursuing a full course of study and any additional periods of authorized practical training, plus 60 days following completion of the course or practical training within which to depart."[6] One such form of practical training is "optional practical training" ("OPT"), which is "training that is directly related to an F-1 student's major area of study" and is "intended to provide a student with practical experience in their field

[4] 8 U.S.C. § 1101(a)(15)(F)(i); 9 FAM 402.5-5(C)(a). An F-1 visa holder may also petition for his or her spouse and minor children to enter and remain in the United States during the course of his or her studies, on an F-2 visa.

[5] Students and their dependents "must have a Form I-20 to apply for a student visa, to enter the United States, and to apply for benefits." U.S. Dep't of Homeland Sec., *Student Forms*, *Study in the States*, https://studyinthestates.dhs.gov/students/prepare/student-forms (last visited Apr. 21, 2025); 9 FAM 402.5-5(D)(1)(a).

[6] 9 FAM 402.5-5(L)(1)(a).

of study during or upon completion of a degree program."[7]

Notably, an F-1 student visa differs from F-1 student status. The F-1 visa refers only to the document – generally a sticker or stamp in a passport – that grants a noncitizen student permission to enter the United States. F-1 status, on the other hand, refers to that student's formal immigration classification in the United States after they have entered. SEVIS, which is maintained by ICE's Student and Exchange Visitor Program ("SEVP"), tracks F-1 status.

As noted above, Plaintiffs challenge the arbitrary termination of their SEVIS record, thereby effectively terminating their F-1 student status; they have not received any notice that their F-1 student visas were revoked and therefore are not required to and do not challenge visa revocation in this action.[8] ICE's ability to

[7] 9 FAM 402.5-5(N)(4)(a).

[8] In the event any of the Plaintiffs may in the future receive notice that their visas were revoked, moreover, the revocation of an F-1 visa does not constitute a failure to maintain F-1 student status and cannot serve as a basis for agency-initiated termination of F-1 student status in the SEVIS system. DHS's own policy guidance confirms that "[v]isa revocation is not, in itself, a cause for termination of the student's SEVIS record." U.S. Immigr. & Customs Enf't, *Policy Guidance 1004-04 – Visa Revocations* 3 (June 7, 2010), https://www.ice.gov/doclib/sevis/pdf/visa_revocations_1004_04.pdf. Rather, only upon departure after a visa is revoked is the student's SEVIS record terminated, and the student must obtain a new visa from a consulate or embassy abroad before returning to the United States. *See* U.S. Dep't of State, *Guidance Directive 2016-03, 9 FAM 403.11-3 – VISA REVOCATION* (Sept. 12, 2016), https://www.aila.org/library/dos-guidance-directive-2016-03-on-visa-revocation.

terminate F-1 student status "is limited by [8 C.F.R.] § 214.1(d)." *See Jie Fang v. Dir. U.S. Immigr. & Customs Enf't*, 935 F.3d 172, 185 n.100 (3d Cir. 2019). Pursuant to 8 C.F.R. § 214.1(d), DHS can terminate F-1 student status in only three scenarios: (1) when a previously granted waiver under 8 U.S.C. § 1182(d)(3) or (4)[9] is revoked; (2) when a private bill to confer lawful permanent residence is introduced in Congress; or (3) when DHS publishes a notification in the Federal Register identifying national security, diplomatic, or public safety reasons for termination. If DHS wishes to terminate F-1 student status in SEVIS after (or independent of) revocation of an F-1 visa, DHS must comply with 8 C.F.R. § 214.1(d). *See Jie Fang*, 935 F.3d at 185 n.100. DHS has not done so here and has accordingly violated its own rules.

II. SEVIS and Terminations of F-1 Student Status

ICE SEVP administers the F-1 student program and tracks information on students in F-1 student status through SEVIS, a government database that academic institutions use to track international students' compliance with their F-1 status. SEVIS is the "definitive record of student or exchange visitor status." 9 FAM 402.5-4(B). Once a student's SEVIS record is terminated, that student "is no longer in an

[9] These two provisions describe scenarios in which otherwise inadmissible noncitizens are admitted into the United States at the discretion of specific Cabinet members. Neither of these provisions is implicated in the present case.

authorized period of stay in the United States."[10] When ICE terminates a student record in SEVIS, this action communicates that ICE no longer recognizes the student as holding F-1 student status. The ICE website instructs that where the stated "Termination Reason" is "Termination for any violation of status" – as opposed to "Authorized Early Withdrawal," "Change of Status Approved," or "Change of Status Denied" – students must "either apply for reinstatement, or the student and dependents must leave the United States immediately."[11] SEVIS record termination is not reviewable before an Immigration Judge. *Jie Fang*, 935 F.3d at 182-83.

Typically, any updates to a student's status in SEVIS are made by DSOs. "Each school that educates F-1 students has a Designated School Official who monitors, advises, and oversees the students attending his or her institution," *Jie Fang*, 935 F.3d at 175. Under the regulation, DSOs at schools must report through SEVIS when a student fails to maintain status. *See* 8 C.F.R. § 214.3(g)(2). Noncitizen students in F-1 status are "subject to an array of regulations." *Jie Fang*,

[10] U.S. Dep't of Homeland Sec., *Maintaining Accurate SEVIS Records, Study in the States*, https://studyinthestates.dhs.gov/schools/report/maintaining-accurate-sevis-records (last visited Apr. 21, 2025).

[11] *See* U.S. Dep't of Homeland Sec., *Terminate a Student*, *Study in the States*, https://studyinthestates.dhs.gov/sevis-help-hub/student-records/completions-and-terminations/terminate-a-student (last updated Nov. 7, 2024). In terminating Plaintiffs' SEVIS records, ICE initially noted the category "OTHERWISE FAILING TO MAINTAIN STATUS" and later changed this to "OTHER." But there is no basis for contending that any of the other three reasons for termination listed on this webpage would apply to the Plaintiffs.

935 F.3d at 175 (citing 8 C.F.R. § 214.2(f)). Requirements for maintaining this status include maintaining a full course of study or engaging in authorized practical training after completing their studies, *see* 8 C.F.R. § 214.2(f)(5)(i), and avoiding unauthorized employment, *see* 8 C.F.R. § 214.2(f)(9).

III. ICE's Arbitrary Terminations of SEVIS Records and F-1 Status

Since the end of March, Defendants have engaged in a large-scale pattern, practice, and/or policy of arbitrarily terminating students' F-1 status by terminating SEVIS records.[12] These F-1 status terminations via SEVIS span at least 240 academic institutions across the country, affecting hundreds – if not thousands – of students.[13] As in the cases of Plaintiffs, this has happened to students across the country without any meaningful explanation or notice, demonstrating a clear pattern,

[12] SEVIS is the "definitive record of student or exchange visitor status." 9 FAM 402.5-4(B). Students whose SEVIS records have been terminated are "no longer in an authorized period of stay in the United States." U.S. Dep't of Homeland Sec., *Maintaining Accurate SEVIS Records*, *supra* n. 10.

[13] *See, e.g.*, Inside Higher Ed, *International Student Visas Revoked* (last visited Apr. 21, 2025), https://www.insidehighered.com/news/global/international-students-us/2025/04/07/where-students-have-had-their-visas-revoked (reporting that "[a]s of April 18, over 240 colleges and universities have identified 1,550-plus international students and recent graduates who have had their legal status changed by the State Department"); *see also* Shev Dalal-Dheini & Amy Grenier, Policy Brief: The Scope of Immigration Enforcement Actions Against International Students at 1, AILA (Apr. 17, 2025), https://www.aila.org/library/policy-brief-the-scope-of-immigration-enforcement-actions-against-international-students ("According to a verified source, ICE has terminated 4,736 SEVIS records since January 20, 2025, the majority on F-1 status.").

practice, and/or policy of abruptly stripping students of lawful status without due process. These terminations are intended to render students immediately out of status and to intimidate immigrant students so that they leave the country.[14] While an F-1 student who has completed a course of study or authorized practical training following completion of studies is afforded a 60-day period to depart, and an F-1

[14] Some students facing visa revocation and/or SEVIS termination have already elected to leave the U.S. rather than live under the threat of immigration detention. *See, e.g.*, Luis Ferré-Sadurni & Hamed Aleaziz, *How a Columbia Student Fled to Canada After ICE Came Looking for Her*, N.Y. Times (Mar. 15, 2025), https://www.nytimes.com/2025/03/15/nyregion/columbia-student-kristi-noem-video.html (reporting that after Columbia University doctoral student learned her F-1 student visa had been canceled and her SEVIS record was terminated, she left the United States in light of the "volatile and dangerous" atmosphere); Momodou Taal (@MomodouTaal), X (Mar. 31, 2025), https://x.com/MomodouTaal/status/1906842790778057173 (Cornell University student likewise elected to leave the United States after he "lost faith [he] could walk the streets without being abducted"); Clara Sophia-Daly, *"Give Up and Go Home": UF Student's Self-Deportation Highlights ICE's Harsher Enforcement*, Miami Herald (Apr. 11, 2025), https://www.miamiherald.com/news/local/education/article303879906.html (reporting on a University of Florida student whose SEVIS record had been terminated and who, after being detained for nine nights at Krome Service Processing Center, where conditions "have risen to the level of being a human rights disaster," he elected to return to Colombia). Defendant Noem has celebrated this, and threatened enforcement action against individuals who do not leave. *See* Kristi Noem (@Sec_Noem), X (Mar. 14, 2025), https://x.com/Sec_Noem/status/1900562928849326488 (saying that she was "glad to see" the Columbia student "self-deport"); Press Release, U.S. Dep't of Homeland Sec., DHS Launches CBP Home App with Self-Deport Reporting Feature (Mar. 10, 2025), https://www.dhs.gov/news/2025/03/10/dhs-launches-cbp-home-app-self-deport-reporting-feature (quoting Defendant Noem as saying that if noncitizens without lawful status do not "self-deport," "we will find them, we will deport them, and they will never return").

student authorized by the DSO to withdraw from classes is afforded a 15-day period to depart, F-1 students like Plaintiffs, whose status in SEVIS has been terminated, are afforded no such grace period.[15]

Moreover, even an allegation of being "out of status" significantly affects a student's chances of reinstating their F-1 student status. *See* 8 C.F.R. § 214.2(f)(16)(i)(A) (providing that USCIS may consider an application for reinstatement only for students who were not "out of status for more than 5 months at the time of filing" or whose failure to file in the five-month period "was the result of exceptional circumstances"). Further, the termination of a student's F-1 status causes significant harm to financial and career prospects, as a student loses all on- and/or off-campus employment authorization.[16] *See, e.g.*, Student Doe #4 Decl. ¶ 13 ("[B]ut now the University has stopped paying me due to the SEVIS record termination . . . . I expect to run out of money in approximately two months. All of this is extremely stressful for me and my family."); Student Doe #6 Decl. ¶ 18 ("Because I was very precise in my calculations for my financial resources during my studies, I cannot afford to delay my studies."). Moreover, a student cannot re-

[15] *See* U.S. Dep't of Homeland Sec., *Terminate a Student*, supra n.11 (explaining the effects of a terminated SEVIS record and that there is no grace period for "termination for any violation of status," requiring students to apply for reinstatement or "leave the United States immediately").
[16] *Id.*

enter the U.S. on the terminated SEVIS record, and any associated F-2 dependent records are also terminated.[17]

Specifically, although ICE has not yet initiated removal proceedings against Plaintiffs or detained them, that threat is constant to Plaintiffs because the SEVIS termination communicates termination of their F-1 status, which places them at risk of ICE enforcement. *See* 8 U.S.C. § 1227(a)(1)(B) (stating that any noncitizen "who is present in the United States in violation of this chapter or any other law of the United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked . . . is deportable"); 8 U.S.C. § 1227(a)(1)(C)(i) (stating that a noncitizen "who was admitted as a nonimmigrant and who has failed to maintain the nonimmigrant status" in which they were admitted, or fails "to comply with the conditions of any such status, is deportable").

Indeed, recent arrests indicate that detention is a very realistic fear for Plaintiffs. One example concerns Rümeysa Öztürk, a PhD student in child development at Tufts University. ICE terminated Ms. Öztürk's SEVIS designation without providing her notice. Then, while she was walking in her neighborhood, "a hooded and masked officer in plainclothes approached her and grabbed her wrists.

[17] *Id.*

Five additional officers then surrounded her, took her cell phone, and handcuffed her. Ms. Ozturk was driven away in an unmarked vehicle." Opinion and Order at 6, *Öztürk v. Hyde et al.*, No. 1:25-cv-00374 (WKS) (D. Vt. Apr. 18, 2025), ECF No. 104 (D. Vt). ICE then alleged her removability based solely on the fact that her SEVIS designation had been revoked and that she was deportable under 8 U.S.C. § 1227(a)(1)(B).[18] Another example stems from the case of Aditya Harsono, a 33-year-old father of a child with special needs who was completing OPT employment at a healthcare company and applying for status through his U.S. citizen wife. Mr. Harsono's status was similarly terminated without prior notice and he was arrested in his workplace as part of a ruse by plainclothes ICE officers. Although an immigration judge granted Mr. Harsono bond, DHS has appealed that decision, preventing release.[19] Both Ms. Öztürk and Mr. Harsono remain in ICE custody. Plaintiffs live in constant fear that immigration enforcement will arrest and detain them. *See, e.g.*, Student Doe #1 Decl. ¶ 18 ("I am looking over my shoulder everywhere I go. I don't know whether I should go outside, because I hear that ICE

[18] *See* First Am. Pet. for Writ of Habeas Corpus and Compl. at 8, *Öztürk v. Hyde et al.*, No. 1:25-cv-00374-WKS, (D. Vt. Mar. 28, 2025), ECF No. 12.

[19] Coral Murphy Marcos, *Indonesian Student Detained by ICE after US Secretly Revokes His Visa*, The Guardian (Apr. 19, 2025), https://www.theguardian.com/us-news/2025/apr/19/aditya-wahyu-harsono-immigration-indonesia (reporting the detention of an F-1 student visa-holder working under OPT a few days after his visa was revoked).

can come at any time and arrest me . . . . The fear is debilitating."). Given several highly publicized stories of the sudden detention of international F-1 students, these fears are objectively reasonable.

IV. Arbitrary Terminations of Plaintiffs' SEVIS Records and F-1 Status

Student Does are all current PhD or master's degree students at Rutgers University, or a recent graduate, who are working on OPT under their F-1 student visas. Plaintiffs are accomplished students and researchers in health sciences, engineering, and software design. While in the United States on their F-1 student visas, none of the Plaintiffs have engaged in any conduct that would threaten their status; none of the Plaintiffs engaged in unauthorized employment, made false statements to DHS, or were convicted of a crime of violence, which would constitute a failure to maintain status under 8 C.F.R. §§ 214.1(e)-(g). They abided by the "array of regulations" imposed on noncitizens under F-1 status. *Jie Fang*, 935 F.3d at 175 (citing 8 C.F.R. § 214.2(f)).

Nevertheless, in early April, each Plaintiff's SEVIS record was terminated. Four Plaintiffs' records read: "OTHERWISE FAILING TO MAINTAIN STATUS – Individual identified in criminal records check and/or has had their VISA revoked. SEVIS record has been terminated." Student Doe #1 Decl. ¶ 12; Student Doe #2 Decl. ¶ 9; Student Doe #3 Decl. ¶ 10; Student Doe #6 Decl. ¶ 15. Then on April 8,

and without any explanation or notice, this was changed to "OTHER - Individual identified in criminal records and/or has had their VISA revoked. SEVIS record has been terminated." Garfunkel Decl. ¶ 17. The remaining two Plaintiffs, who received their initial SEVIS record termination notifications on April 8, were notified that the termination reason was: "OTHER – Individual identified in criminal records check and/or has had their VISA revoked. SEVIS record has been terminated." Student Doe #4 Decl. ¶ 10; Student Doe #5 Decl. ¶ 8. Rutgers University informed all Plaintiffs about these terminations by email, and only one Plaintiff was provided with further information from ICE regarding the terminations. Garfunkel Decl. ¶ 16; Student Doe #2 Decl. ¶ 9; Student Doe #3 Decl. ¶ 10; Student Doe # 4 Decl. ¶ 9; Student Doe #5 Decl. ¶ 8; Student Doe #6 Decl. ¶ 14. That one Plaintiff, who is on OPT, received an email from ICE SEVP stating that their OPT authorization period had ended, that their SEVP portal account was to close, and that their account was to become read-only by April 19, 2025. Student Doe #1 Decl. ¶ 13.

When ICE SEVP terminated Plaintiffs' SEVIS records, it communicated to the Plaintiffs that their F-1 status was terminated. However, DHS did not terminate Plaintiffs' F-1 status pursuant to any of the three grounds in 8 C.F.R. § 214.1(d), and there is no evidence that Plaintiffs have engaged in conduct that would violate 8 C.F.R. §§ 214.1(e)-(g) or 8 C.F.R. § 214.2(f). Instead, DHS terminated Plaintiffs' SEVIS records without providing notice, individualized justification, or an

opportunity to refute the stated basis for termination, providing only a vague notation that gave no clarification to Plaintiffs and Rutgers. In the process, DHS violated its own policies and the relevant regulations.

The F-1 student status terminations threaten Plaintiffs' education and career trajectories, financial well-being, and mental health. *See, e.g.*, Student Doe #1 Decl. ¶ 17 ("By the end of April I do not know how I will afford these expenses," including rent, insurance, phone bill, groceries, and car lease.); Student Doe #4 Decl. ¶ 13 ("When I was informed of my SEVIS record termination, I was only a few months away from completing my PhD at Rutgers, but now I cannot complete my research or work towards that degree, and I am afraid I will not be able to prepare the lab work necessary to defend my dissertation which I have been planning to do in August 2025. . . . I expect to run out of money in approximately two months," which is "extremely stressful for me and my family."); *id.* at ¶ 12 ("Since my SEVIS record has been terminated, I was told that I cannot go to the lab, which means I will need to dispose of all my in-process experiments and start over," delaying research in the medical sciences that is designed to benefit people living with debilitating disorders and conditions); Student Doe #6 Decl. ¶ 18 ("Since I was informed of my SEVIS record termination, I have had knots in my stomach and crying spells several times a day. I am overcome with stress and disbelief and I have intermittent disturbed sleep.").

These terminations also place Plaintiffs at risk of immediate arrest, detention and deportation – an outcome other students have already faced, as described *supra*. The anxiety of potential arrest and detention weighs on Plaintiffs daily, causing them to fear even going outside. *See, e.g.*, Student Doe #6 Decl. ¶ 19 ("I am afraid to leave my home out of fear that I will be detained. I feel that I am in a home prison. I wake up several times in the middle of night thinking that someone is there to get me"). Moreover, correcting Plaintiffs' SEVIS records to reflect that their F-1 student status was never terminated is critical as maintenance of student status is a defense in potential removal proceedings. *See, e.g.*, *Matter of C-*, 9 I&N Dec. 100 (B.I.A. 1960) (holding that respondent had maintained student status despite conviction and thirty-day workhouse sentence, and sustaining appeal). Termination of student status also prevents an individual from re-entering the United States after departure;[20] jeopardizes any future reinstatement of F-1 student status due to accrual of time out of status, *see Jie Fang*, 935 F.3d at 176 (noting that to be eligible for reinstatement, a student should not be out of a valid F-1 student status for more than 5 months); and prevents them from adjusting status to a different non-immigrant status (such as H-1B) or a more permanent status (such as lawful permanent resident) where

[20] U.S. Dep't of Homeland Sec., *Student Forms*, *Study in the States*, https://studyinthestates.dhs.gov/sevis-help-hub/student-records/completions-and-terminations/terminate-a-student (last visited Apr. 21, 2025)

adjustment is not permitted if the applicant failed to maintain status.[21]

LEGAL STANDARD

A temporary restraining order is a provisional remedy designed to preserve the status quo until there is an opportunity to hold a hearing on an application for a preliminary injunction. *Granny Goose Foods, Inc. v. Bhd. of Teamsters & Auto Truck Drivers Loc. No. 70 of Alameda Cnty.*, 415 U.S. 423 (1974); *Hope v. Warden York Cnty. Prison*, 956 F.3d 156, 161 (3d Cir. 2020). The same factors that govern a motion for a preliminary injunction apply to a TRO. A petitioner must first show "two critical factors" – a likelihood of success on the merits and that they are "more likely than not to suffer irreparable harm in the absence of preliminary relief." *Durel B. v. Decker*, 455 F.Supp.3d 99, 106 (D.N.J. 2020) (quoting *Reilly v. City of Harrisburg*, 858 F.3d 173, 179 (3d 2017) (internal quotation marks omitted). "If these two gateway factors are met, then the Court considers the remaining two

[21] *See* U.S.C.I.S. Policy Manual, Chapter 4 - Extension of Stay, Change of Status, and Extension of Petition Validity, https://www.uscis.gov/policy-manual/volume-2-part-a-chapter-4 (last visited Apr. 21, 2025) ("In general, USCIS does not approve an extension of stay or change of status for a person who failed to maintain the previously accorded status or where such status expired before the filing date of the application or petition."); *see also* INA 245(c)(2); 8 CFR 245.1(b)(5) (barring certain applicants who are not in lawful immigration status on the date of filing their application from adjusting their status to permanent resident); 8 CFR 245.1(b)(6) (barring certain applicants who ever failed to continuously maintain a lawful status since entry into the United States from adjusting their status unless they can show that their failure to maintain status was through no fault of their own or for technical reasons).

factors which aim to balance the equities of the parties: the possibility of harm to other interested persons from the grant or denial of the injunction, and the public interest." *Id.* (internal quotation marks omitted); *see also Doe #1 v. Trump*, No. 25-CV-2825 (MCA), ECF No. 13 at 2-3 (D.N.J. Apr. 17, 2025) (noting that when "the Government is the opposing party, the last two factors merge for purposes of the Court's TRO analysis") (citation omitted). These factors are readily satisfied here.

ARGUMENT

In the face of an unprecedented attempt by ICE to arbitrarily render them out of F-1 status without due process of law and in violation of the agency's own regulations and the U.S. Constitution, Plaintiffs seek a TRO to preserve the status quo – namely, to maintain their ability to continue living freely in the United States, and to continue studying and/or working to support themselves and their families pursuant to the terms of their F-1 student status. This TRO is necessary to ensure they are not subject to the arbitrary termination of that status, ICE detention, and removal, and can protect their future academic and career prospects while this Court has an opportunity to review the claims in the present case.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIMS THAT THE TERMINATION OF THEIR F-1 STUDENT STATUS WAS UNLAWFUL AND UNCONSTITUTIONAL.

Defendants' termination of Plaintiffs' F-1 student status via the SEVIS system was unlawful for several independent reasons: First, the terminations violate the Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (C)-(D), because they are arbitrary, capricious, an abuse of discretion, they exceed the Defendants' statutory authority, they were made without observing the procedure required by law, and are otherwise not in accordance with the law or the agency's own rules in violation of the *Accardi* doctrine. (Count I).[22] Second, they violate the Due Process Clause of the Fifth Amendment to the Constitution (Count II).

A. The Terminations Violate the Administrative Procedure Act and the *Accardi* Doctrine (Count I).

Plaintiffs are likely to prevail on their claim that the termination of Plaintiffs' F-1 student status via the SEVIS system violates the Administrative Procedure Act (APA). As a preliminary matter, it is well-established in this Circuit that the termination of F-1 student status is a final agency action that this Court has jurisdiction to review. *Jie Fang*, 935 F.3d at 182 ("[t]he order terminating these

[22] While not at issue on this TRO Motion, the Plaintiffs have also argued that the terminations are part of a pattern or practice of Due Process violations, in light of the hundreds of similar terminations that have occurred since late March. Compl. ¶¶ 60-68.

students' F-1 visas marked the consummation of the agency's decisionmaking process, and is therefore a final order"); *Doe #1,* 25-CV-2825-MCA-LDW, ECF 13 at 4-5 & n.5; *Patel v. Bondi*, 25-CV-101, 2025 WL 1134875 *2 (W.D. Pa. Apr. 17, 2025). Under the APA, this Court "shall . . . hold unlawful . . . agency action" that it finds to be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," "in excess of statutory jurisdiction, authority, or limitations, or short of statutory right," and/or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (C)-(D). Agency action is arbitrary and capricious where the agency "offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise." *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co. (State Farm)*, 463 U.S. 29, 43 (1983).

In this case, Defendants acted *ultra vires* because they had no statutory or regulatory authority to terminate Plaintiffs' F-1 student status, and their actions in doing so in contravention to their own regulation constituted an arbitrary, capricious, and unlawful government action that was taken in excess of Defendants' authority under applicable statutes and regulations. Critically, DHS's ability "to terminate an F-1 [student status] is limited by [8 C.F.R.] § 214.1(d)." *Jie Fang*, 935 F.3d at 185 n.100. Under this regulation, DHS can terminate student status only when: (1) a previously granted waiver under 8 U.S.C. § 1182(d)(3) or (4) is revoked; (2) a

private bill to confer lawful permanent residence is introduced in Congress; or (3) DHS publishes a notification in the Federal Register "on the basis of national security, diplomatic, or public safety reasons." None of these three circumstances were present here. Plaintiffs have never been granted waivers under 8 U.S.C. § 1182(d)(3) or (4), and therefore could not have had them revoked. No private bills have been introduced in Congress to confer lawful permanent residence relating to any of the Plaintiffs. And DHS has not published a relevant notification on the Federal Register relating to anything that would impact Plaintiffs' ability to maintain F-1 student status. Because none of these three scenarios could justify the termination of Plaintiffs' student status, DHS has clearly acted without authority and in violation of its own rules. Accordingly, Defendants' termination of Plaintiffs' SEVIS records was also a violation of the *Accardi* doctrine because in terminating the records, ICE failed to follow the federal agency's own rules, including 8 C.F.R. § 214.1(d). *See Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *Leslie v. Att'y Gen. of U.S.*, 611 F.3d 171 (3d Cir. 2010) (describing "the long-settled principle" applied in *Accardi* "that rules promulgated by a federal agency that regulate the rights and interests of others are controlling upon the agency").

Moreover, nothing in Plaintiffs' records provides a known statutory or regulatory basis for termination or even for determining that any of the Plaintiffs have failed to maintain their F-1 status. To maintain status, students must comply

with the requirements of 8 C.F.R. § 214.2(f), such as maintaining a full course of study, as well as those under 8 C.F.R. § 214.1(e)-(g). Failure to comply with these regulations can constitute a failure to maintain status, but Plaintiffs fulfilled all of these requirements. Importantly, none of the Plaintiffs' interactions with the criminal legal system – including driving and traffic violations, or dismissed and/or expunged charges, *see, e.g.*, Student Doe #5 Decl. ¶ 7 (acknowledging parking and driving violations, as well as a dismissed and expunged case) – trigger § 214.1(g); that they were allegedly "identified in criminal records check," as the notation in SEVIS reads, cannot therefor have any legal effect on their status.

In *Student Doe #1 v. Trump,* the Honorable Madeline Cox Arleo, United States District Judge Arleo for the District of New Jersey issued a temporary restraining order for an identically situated plaintiff. 2:25-cv-2825-MCA-LDW, ECF 13 at 4-5 (Apr. 17, 2025). In that action, the student demonstrated a "substantial, if not overwhelming likelihood of success on the merits" by establishing that they had remained in compliance with the terms of their status and that Defendants had not met the requirements of 8 C.F.R. § 214.2(f) before terminating the student's SEVIS status. *Id*. (quoting *Isserdasani v. Noem*, No. 25-283, 2025 WL 1118626, at *1 (W.D. Wis. Apr. 15, 2025)); *see also Patel*, 2025 WL 1134875 *2 (issuing a temporary restraining order for a student who established a prima facie case that she maintained her F-1 status and the termination of her SEVIS status was not pursuant

to regulations).[23]

Because Plaintiffs have remained in compliance with their F-1 status and the Defendants here unlawfully terminated Plaintiffs' F-1 student status ultra vires of any statutory or regulatory authority, Defendants' termination should be set aside pursuant to 5 U.S.C. § 706(2)(A),(C), and (D) as arbitrary, capricious, an abuse of discretion, outside of their authority, and otherwise not in accordance with the law. Defendants' termination of Plaintiffs' SEVIS records also violates the *Accardi* doctrine because in terminating the records, ICE failed to follow the federal agency's own rules, including 8 C.F.R. § 214.1(d). *See Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *Leslie v. Att'y Gen. of U.S.*, 611 F.3d 171 (3d Cir. 2010) (describing "the long-settled principle" applied in *Accardi* "that rules promulgated by a federal agency that regulate the rights and interests of others are controlling upon the agency"). "[G]overnment agenc[ies are] not free to disregard [their] own regulations." *De Jesus Martinez v. Nielsen*, 341 F.Supp.3d 400, 409 (D.N.J. 2018)

[23] Indeed, over the past week, several other district courts have issued temporary restraining orders similar to the one sought here, and on similar legal theories. *See, e.g., C.S. v. Noem*, No. 2:25-cv-00477-WSS, ECF 22 (W.D. Pa. Apr. 15, 2024); *Doe v. Noem*, No. 2:25-cv-00040- DLC, ECF 11 (D. Mont. Apr. 15, 2025); *Doe v. Trump*, No. 4:25-cv-00175-AMM, ECF 7 (D. Ariz. Apr. 15, 2025); *Hinge v. Lyons*, No. 1:25-cv-01097-RBW, ECF 11 (D.D.C. Apr. 15, 2025); *Rantsantiboom v. Noem*, No. 0:25-cv-01315-JMB-JFD, ECF 20 (D. Minn. Apr. 15, 2025); *Wu v. Lyons*, No. 1:25-cv-01979-NCM, ECF 9 (E.D.N.Y. Apr. 11, 2025); *Zheng v. Lyons*, No. 1:25-cv-10893-FDS, ECF 8 (D. Mass. Apr. 11, 2025); *Liu v. Noem*, No. 25-cv-133-SE, ECF 13 (D.N.H. April 10, 2025).

(citing *Accardi*, 347 U.S. at 268).

In sum, Defendants' termination of Plaintiff's F-1 student status violates the APA and the *Accardi* doctrine, and Plaintiffs have an overwhelming likelihood of success on the merits of their claims.

B. The Terminations Violate Plaintiffs' Fifth Amendment Due Process Rights (Count II).

Defendants' baseless termination of Plaintiffs' F-1 student status without affording them notice, adequate explanation, or a meaningful opportunity to be heard also violates the Due Process Clause of the Fifth Amendment to the Constitution. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) ("The fundamental requirement of due process is the opportunity to be heard at a meaningful time and in a meaningful manner."). As admitted noncitizen students in the United States, Plaintiffs indisputably have due process rights. *See Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("the Due Process Clause applies to all persons within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent"); *see also Jie Fang*, 935 F.3d at 185 (holding that district court had jurisdiction to review claim that termination of students' F-1 status violated the Due Process Clause). Moreover, "principles of due process require an agency to follow its own regulations, which have the force of law." *Marshall v. Lansing*, 839 F.2d 933, 943 (3d Cir. 1988).

In this case, Defendants ignored these constitutional requirements. Except for one Plaintiff who received an email from ICE SEVP, Defendants did not provide notice to Plaintiffs or Rutgers about their decision to terminate Plaintiffs' SEVIS status.[24] Rather, Rutgers only learned about the SEVIS record terminations through their regular checks of the SEVIS system, and communicated the change to Plaintiffs. Garfunkel Decl. ¶¶ 9, 14, 15, 18, 19, 21. Nor did Defendants comply with the requirements of providing adequate explanation and a meaningful opportunity to respond. Instead, Defendants provided only a vague, ambiguous, boilerplate explanation for all of the known terminations of Rutgers students' SEVIS records since the end of March, including Plaintiffs – and ICE inexplicably *changed* this notation in most Plaintiffs' files without any explanation to either Rutgers or its students. Garfunkel Decl. ¶¶ 9-10, 14-15, 17. Both notations plugged into SEVIS by ICE are inconsistent with due process as they did not provide Plaintiffs with sufficient notice, adequate explanation, or any opportunity whatsoever to contest the factual basis for the termination. Moreover, the blanket notations are factually incorrect as to all Plaintiffs: None of the Plaintiffs have been informed about a visa revocation, Plaintiffs have maintained their student status,

[24] As noted *supra*, one Plaintiff received an email from ICE SEVP, stating that the student's OPT authorization period had ended, the same day she received notice from Rutgers of the SEVIS termination. Student Doe #1 Decl. ¶ 13.

and none of the Plaintiffs have any criminal records that would justify termination of that status pursuant to 8 C.F.R. § 214.1(g). Thus, neither a criminal record check nor a failure to maintain student status could serve as the basis for terminating Plaintiffs' F-1 student status.

For these reasons, although not necessary to the decision of this matter given the merit of the APA claims discussed above, Plaintiffs are highly likely to succeed on their claims that Defendants' failure to provide notice, adequate explanations, and a meaningful opportunity to contest the termination of their F-1 student status also violated the Due Process Clause.

II. PLAINTIFFS FACE IRREPARABLE HARM IN THE ABSENCE OF IMMEDIATE RELIEF.

Plaintiffs will suffer irreparable injury if Defendants' termination determinations are not set aside and enjoined. First, Plaintiffs face possible detention and deportation because of the unlawful presence stemming from this termination. "[D]eportation is a drastic measure and at times the equivalent of banishment of exile." *Fong Haw Tan v. Phelan*, 333 U.S. 6, 10 (1948). The termination determinations result "in the loss 'of all that makes life worth living'" given the risk of deportation. *Bridges v. Wixon*, 326 U.S. 135, 147 (1945). Given the recent, well-publicized cases of DHS revoking visas and/or status and then immediately detaining students, Plaintiffs are understandably anxious that they may experience

the same.[25] Each day, they struggle with the idea that as a result of their SEVIS terminations, they have no proof of status, and could be whisked away by masked DHS agents to a distant detention facility, like other students who have recently made headlines. *See, e.g.*, Student Doe #5 Decl. ¶ 11 (stating the fact that "I may be subject to enforcement actions" by ICE "has caused me worry about leaving my home"); Student Doe #6 Decl. ¶ 19 ("I wake up several times in the middle of the night thinking that someone is there to get me.").

Second, this termination will result in extreme financial and academic hardship to Plaintiffs. Plaintiffs are unable to work when their status is terminated, so they have been terminated from their respective positions under OPT or have been unable to continue their research and labwork. *See* Student Doe #1 Decl. ¶ 17 ("By the end of April, I do not know how I will afford [basic] expenses, and I am extremely concerned for my wellbeing and safety, as well as my family in India whom I send money to."); Student Doe #4 Decl. ¶ 13 ("It was already difficult to cover my living expenses on that stipend, but now that I am without any income I expect to run out of money in approximately two months. All of this is extremely

[25] *See, e.g.*, *Tufts Student Recounts Her Detention by ICE, Says She Feared for Her Life in New Court Filing*, CBS News (Apr. 12, 2025), https://www.cbsnews.com/boston/news/tufts-student-rumeysa-ozturk-ice-detained/ (reporting on Öztürk's harrowing experience during her arrest and her transfer to a detention facility in Louisiana).

stressful for me and my family."). The harm to Plaintiffs' career prospects is likely irreparable for the additional reason that the Defendants' actions interrupt hard-won academic research and post-graduate roles, thereby making it more difficult for Plaintiffs to complete their degrees and/or find future employment in their fields of study.

Third, this termination will likely result in the accrual of time out of status daily, which is a critical factor for Plaintiffs' future reinstatement of F-1 student status. *See Jie Fang*, 935 F.3d at 176 (noting that to be eligible for reinstatement, a student should not be out of a valid F-1 student status for more than 5 months).

In *Doe #1*, the district court found that the student's similar fears and concerns were "not hypothetical or speculative" and that the irreparable harm "cannot be redressed by a legal or an equitable remedy . . . if a TRO is not issued." 25-CV-2825-MCA-LDW, ECF 13 at 5; *accord Patel*, 25-CV-101, 2025 WL 1134875 *2. The same is true here.

By contrast, Defendants have no substantial interest in terminating Plaintiffs' SEVIS records. Plaintiffs have not engaged in any conduct that would lawfully trigger termination of their F-1 student status. They have maintained status under the requirements enumerated in 8 C.F.R. § 214.2(f). Indeed, granting a temporary restraining order would merely maintain the status quo that has been in place for months, if not years, allowing Plaintiffs to complete the courses of study and related

employment that brought them to the United States.

III. THE EQUITIES STRONGLY FAVOR INJUNCTIVE RELIEF, WHICH IS IN THE PUBLIC INTEREST.

Defendants have no legitimate interest in enforcing these unconstitutional and unlawful terminations or in exceeding Defendants' statutory and regulatory authority by terminating Plaintiffs' F-1 student status in a manner that is contrary to federal law, and "the public interest is on the side of protecting constitutional rights." *Miller v. Skumanick*, 605 F. Supp. 2d 634, 647 (M.D. Pa. 2009), *aff'd sub nom. Miller v. Mitchell*, 598 F.3d 139 (3d Cir. 2010). Moreover, there is no harm to the public if Plaintiffs' SEVIS records are restored. Plaintiffs are hard-working students and recent graduates. Many Plaintiffs are engaged in research that has the potential to significantly improve society, including new technologies to treat disease, *see* Student Doe #4 Decl. ¶¶ 5, 12, sustainable power, *see* Student Doe #6 Decl. ¶¶ 12-13, and cancer research, *see* Student Doe #2 Decl. ¶ 8. Their continued engagement in their academic programs and/or degree-related employment benefits their communities and the United States by contributing to the pursuit of knowledge in their fields of expertise, and via cultural exchange with their classmates, coworkers, and professors.

"[I]f a plaintiff demonstrates both a likelihood of success on the merits and irreparable injury, it almost always will be the case that the public interest will favor

the plaintiff." *Amalgamated Transit Union Loc. 85 v. Port Auth. of Allegheny Cnty.*, 39 F.4th 95, 109 (3d Cir. 2022) (quoting *Am. Tel. & Tel. Co. v. Winback & Conserve Program, Inc.*, 42 F.3d 1421, 1427 N.8 (3d Cir. 1994)). Thus, the balance of equities and the public interest both strongly favor a temporary restraining order.

CONCLUSION

For all the reasons provided above, the Court should issue a temporary restraining order (i) directing Defendants to restore Plaintiffs' SEVIS record and status and set aside any termination of Plaintiffs' SEVIS or F-1 status; and (ii) enjoining Defendants from directly or indirectly enforcing, implementing, or otherwise imposing legal consequences as a result of Defendants' decision to terminate Plaintiffs' SEVIS records or F-1 status, including arresting, detaining, or removing Plaintiffs from the Court's jurisdiction without at least 30 days' notice to the Court and to the Plaintiffs and their counsel.

Date: April 22, 2025

Respectfully submitted,
/s/ Farrin R. Anello

American Civil Liberties Union of New Jersey Foundation
Jeanne LoCicero
Farrin R. Anello
Molly K.C. Linhorst
[redacted]
Newark, New Jersey 07102
(973) 854-1715

jlocicero@aclu-nj.org

Rutgers Immigrant Community Assistance Project (RICAP)
Center for Law and Justice
Jason Hernandez*
Jessica Rofe**
Leena Khandwala
123 Washington Street
Newark, New Jersey 07102

Gibbons P.C.
John J. Gibbons Fellowship in
Public Interest and Constitutional Law
Lawrence S. Lustberg, Esq.
Ruth O'Herron, Esq.
One Gateway Center
Newark, NJ 07102
(973) 596-4500
llustberg@gibbonslaw.com
roherron@gibbonslaw.com

Attorneys for Plaintiffs

* *application for admission forthcoming*
** *pro hac vice motion forthcoming*