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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.<sup>1</sup> Nine days later, on March 13,

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27           <sup>1</sup> <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.<sup>2</sup> 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.”<sup>3</sup> 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 <sup>2</sup> <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak>.

26 <sup>3</sup>  
 27 [https://www.ice.gov/sites/default/files/documents/Document/2020/Coronavirus%20Guidance\\_3.13.20.pdf](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.<sup>4</sup> 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 <sup>4</sup> <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,<sup>5</sup> 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 <sup>5</sup> 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.<sup>6</sup>

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                   <sup>6</sup> [https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20\\_coronavirus-  
28 guidance\\_8.5x11\\_315PM.pdf](https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf).

1 guidance from California reflects a general policy of continued caution, and a particular concern  
2 with indoor gatherings.<sup>7</sup> 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.<sup>8</sup>

### 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 <sup>7</sup> See generally Stay Home Q&A, <https://covid19.ca.gov/stay-home-except-for-essential-needs/> (last visited July 10, 2020).

26 <sup>8</sup> 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”).<sup>9</sup>

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  
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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.<sup>10</sup>

### 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  
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27 <sup>10</sup> <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."<sup>11</sup>

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

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”) document<sup>12</sup> 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,<sup>13</sup> ICE issued the “July 6 Directive,” which an

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

26 <sup>13</sup> 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  
(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.”<sup>14</sup>

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

- 
- 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 <sup>14</sup> [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.<sup>15</sup> 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.”<sup>16</sup>

### 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 <sup>15</sup> <https://twitter.com/realDonaldTrump/status/1280209946085339136?s=20>.

27 <sup>16</sup> <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           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,

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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

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### **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](mailto: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](mailto: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](http://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.

