IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

K.O.D.

Plaintiff,

v. No.

KRISTI NOEM, Secretary of the Department
of Homeland Security; and

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

Defendants.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. Beginning in early April 2025, the United States Department of Homeland Security ("DHS") began unliterally terminating the F-1 student status of hundreds of students throughout the United States under the SEVIS (Student and Exchange Visitor) system for unknown and unspecified reasons.[1] Plaintiff K.O.D. is one of these students.[2]

2. Since July 2023, Plaintiff has been studying petroleum engineering as a doctoral student at New Mexico Institute of Mining and Technology in Socorro, New Mexico (hereinafter "New Mexico Tech").

3. Plaintiff has never been charged with a crime in the United States, has never been apprehended or detained by law enforcement, and has not even committed a traffic violation. Nor has Plaintiff participated in protest in the United States or elsewhere.

[1] *See* https://apnews.com/article/international-student-f1-visa-revoked-college-f12320b435b6bf9cf723f1e8eb8c67ae
[2] Plaintiff K.O.D. has filed a Motion for Leave to Proceed Pseudonym along with his Complaint.

4. Plaintiff came to the United States from Ghana to study petroleum engineering. He has authored academic research papers and has presented numerous times at academic conferences around the United States.

5. Prior to DHS's sudden and abrupt revocation of Plaintiff's F-1 student visa was not set to terminate until August 14, 2028.

6. Plaintiff's dream of finishing his doctoral program and obtaining a Ph.D. at New Mexico Tech is now in severe jeopardy because of DHS's decision to abruptly terminate his F-1 student status under the SEVIS system without affirmatively notifying him on or about April 9, 2025.

7. On April 9, 2025, Plaintiff was contacted by an official with New Mexico Tech who requested a meeting to inform Plaintiff that his F-1 student visa had been revoked.

8. According to DHS's SEVIS system database, the termination reason provided in the database stated, "OTHER – Individual identified in criminal records check and/or has had their VISA revoked. SEVIS record has been terminated."

9. Plaintiff was shocked by the news because he has not violated any rules governing the maintenance of his F-1 student status such as "fail[ing] to maintain a full course of study[.]" *See* 8 C.F.R. § 214.2(f)(5)(iv).

10. In light of DHS's unilateral termination of Plaintiff's F-1 student status under the SEVIS system without any notice and sufficient explanation, Plaintiff can no longer pursue his Ph.D. program as an F-1 student, including working as a research assistant and being eligible for scholarship funds. Not being able to work and participate in the studies as a research assistant has placed him in an extremely difficult financial and academic position. In addition, he may face

detention and deportation. Indeed, having and maintaining F-1 student status is critical because it can serve as a form of relief and defense in removal proceedings.

11. At the most elemental level, the United States Constitution requires notice and a meaningful opportunity to be heard. *See Riggins v. Goodman*, 572 F.3d 1101, 1108 (10th Cir. 2009); *see also de la Llana-Castellon v. I.N.S.*, 16 F.3d 1093, 1096 (10th Cir. 1994) ("[N]oncitizens, even those charged with entering the country illegally, are entitled to due process when threatened with deportation."); *Matthews v. Eldridge*, 424 U.S. 319, 322 (1976). No such process was provided here.

12. To be clear, Plaintiff does not challenge the revocation of his F-1 visa in this case, even assuming that his visa was actually revoked.[3] Instead, Plaintiff brings this lawsuit to challenge DHS's unlawful termination of his F-1 student status under the SEVIS system.[4] The revocation of an F-1 visa does *not* constitute a failure to maintain F-1 student status and, therefore, cannot serve as the basis for termination of F-1 student status in the SEVIS system.

13. For the agency-initiated termination of F-1 student status under the SEVIS system, DHS's ability to terminate F-1 student status "is limited by [8 C.F.R.] § 214.1(d)." *See Jie Fang v. Director U.S. Immigration & Customs Enforcement*, 935 F.3d 172, 185 n.100 (3rd Cir. 2019). Under 8 C.F.R. § 214.1(d), DHS can terminate F-1 student status under the SEVIS system 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

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[3] Upon information and belief, Plaintiff has received no direct communications from the U.S. State Department regarding the revocation of his F-1 visa.

[4] There is a difference between an F-1 student visa and an F-1 student status. The former refers only to the document noncitizen students receive the enter the United States, where the F-1 student status refers to students' formal immigration classification in the United States once they enter the country.

notification in the Federal Register identifying national security, diplomatic, or public safety reasons for termination. In other words, under this regulation, the revocation of an F-1 visa does not provide a basis to terminate F-1 student status under the SEVIS system.

14. DHS's own policy guidance confirms that "[v]isa revocation is not, in itself, a cause for termination of the student's SEVIS record." ICE Policy Guidance 1004-04 – Visa Revocations (June 7, 2010) (emphasis added). Rather, if the visa is revoked, **the student is permitted to pursue his course of study in school**, but upon departure, the SEVIS record is terminated, and the student must obtain a new visa from a consulate or embassy abroad before returning to the United States. *See* Guidance Directive 2016-03, 9 FAM 403.11-3 – VISA REVOCATION (Sept. 12, 2016). If DHS wishes to terminate F-1 student status under the SEVIS system after (or independent of) revocation of a 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.

JURISDICTION AND VENUE

15. Jurisdiction is proper under 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (federal defendant), and 5 U.S.C. § 702 (right of review).

16. Defendants have waived their sovereign immunity for suits seeking injunctive relief against constitutional and statutory violations. 5 U.S.C. § 702.

17. Venue is proper in the District of New Mexico under 28 U.S.C. § 1391 as Plaintiff resides in New Mexico.

PARTIES

18. Plaintiff is a native and citizen of the Republic of Ghana who currently resides in New Mexico. He has resided in New Mexico since July 2023. Since July 2023, he has been a doctoral student at New Mexico Tech studying and reaching petroleum engineering.

19. Defendant Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). She is sued in her official capacity.

20. Defendant Todd Lyons is the Acting Director of the Immigration and Customs Enforcement ("ICE"), a component of DHS. He is sued in his official capacity.

FACTS

Background on F-1 Student Visa and Status

21. Under the statute, noncitizens can enroll in government-approved academic institutions as F-1 students. *See* U.S.C. § 1101(a)(15)(F). Students enter the United States on an F-1 visa issued by the U.S. Department of State. Then, once they enter the United States with an F-1 visa, students are granted F-1 student status and permitted to remain in the United States for the duration of status (D/S) as long as the student continues to meet the requirements established by the regulations governing the student's visa classification in 8 C.F.R. § 214.2(f), such as maintaining a full course of study and avoiding unauthorized employment. DHS's Student and Exchange Visitor Program (SEVP) is in charge of administering the F-1 student program and tracking information on students in F-1 student status.

22. An academic institution must obtain formal approval from DHS before it can sponsor a student's F-1 status. An institution must first file an application for School Certification through the Student and Exchange Visitor Information (SEVIS) system, a SEVP-managed

Internet-based system to track and monitor schools and noncitizen students in the United States. *See* 8 C.F.R. § 214.3.

23. “Each school that educates F-1 students has a Designated School Official (‘DSO’) who monitors, advise, and oversees the students attending his or her institution.” *Jie Fang*, 935 F.3d at 175.

24. For noncitizen students, they are “subject to an array of regulations.” *Id.* (citing 8 C.F.R. § 213.2(f)). “These include maintaining a full course of study[.]” *Id.* (citing 8 C.F.R. § 214.2(f)(6)). Curricular Practical Training (‘CPT’) is any ‘alterative work/study, internship, cooperative education, or any other type to required internship or practicum that is offered by sponsoring employers through cooperative agreements with the school’ that is an ‘integral part of an established curriculum.’” *Id.* (quoting 8 C.F.R. § 214.(f)(1)(i)). CPT usually occurs during the course of study and before its completion.

25. “The other is Optional Practical Training (‘OPT’) which consists of temporary employment that is ‘directly related to the student’s major area of study.’” *Id.* (quoting 8 C.F.R. § 214.2(f)(1)(ii)). OPT usually occurs at the end of the completion of the studies.

26. “Once a student has completed his or her course of study and any accompanying practical training, he or she has sixty days to either depart the United States or transfer to another accredited academic institution and seek a transfer of the F-1 visa.” *Id.* (citing 8 C.F.R. § 214.2(f)(5)(iv)). “If a student voluntarily withdraws from the F-1 program, he or she has fifteen days to leave the United States.” *Id*. “A student who ‘fails to maintain a full course of study without the approval of the DSO or otherwise fails to maintain status’ must depart the United States immediately or seek reinstatement.” *Id*. (quoting 8 C.F.R. § 214.2(f)(5)(iv)).

27. Under the regulation, DSOs at schools must report through SEVIS and SEVP when a student fails to maintain status. *See* 8 C.F.R. § 214.3(g)(2). SEVIS termination is governed by SEVP policy and regulations.

28. The regulations distinguish between two separate ways a student may fall out of status: (1) a student who "fails to maintain status": and (2) an agency-initiated "termination of status."

29. For failure to maintain F-1 student status under the SEVIS system, students fail to maintain their status when they do not comply with the regulatory requirement, such as failing to maintain a fully course of study, engaging in unauthorized employment, or other violations of their requirements under 8 C.F.R. § 214.2(f). In addition, 8 C.F.R. § 214.1(e)-(g) outlines specific circumstances where certain conduct by any nonimmigration visa holder, such as engaging in unauthorized employment, providing false information to DHS, or being convicted of a crime of violence with a potential sentence of more than a year, "constitute a failure to maintain status."

30. For the agency-initiated termination of F-1 student status under the SEVIS system, DHS's ability to terminate 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 F-1 student status under the SEVIS system 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 identifying national security, diplomatic, or public safety reasons for termination.

31. Accordingly, the revocation of an F-1 visa does *not* constitute a failure to maintain F-1 student status and, therefore, cannot serve as a basis for termination of F-1 student status in

the SEVIS system. If an F-1 visa is revoked before the student's arrival in the United States, the student may not enter, and his SEVIS record is terminated. However, the SEVIS record may not be terminated as a result of visa revocation after a student has been admitted into the United States because the student is permitted to continue the authorized course of study. *See* ICE Policy Guidance 1004-04 – Visa Revocations (June 7, 2010).[5]

32. DHS's own policy guidance confirms that "[v]isa revocation is not, in itself, a cause for termination of the student's SEVIS record." *Id*. Rather, if the visa is revoked, the student is permitted to pursue his course of study in school, but upon departure, the SEVIS record is terminated, and the student must obtain a new visa from a consulate or embassy abroad before returning to the United States. *See* Guidance Directive 0216-03, 9 FAM 403.11-3 – VISA REVOCATION (Sept. 12, 2016).[6]

33. While a visa revocation can be charged as a ground of deportability in removal proceedings, deportability can be contested in such proceedings. *See* 8 U.S.C. § 1227(a)(1)(B); 8 U.S.C. § 1201(i). The Immigration Judge may also even dismiss removal proceedings where a visa is revoked, so long as a student is able to remain in valid status or otherwise reinstates to F-1 student status. *See* 8 C.F.R. § 1003.18(d)(ii)(B). Only when a final removal order is entered would the status be lost.

34. The Immigration Judge has no ability to review the F-1 student status termination in the SEVIS system because the process is collateral to removal proceedings. *See Jie Fang*, 935 F.3d at 183.

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[5] https://www.ice.gov/doclib/sevis/pdf/visa_revocations_1004_04.pdf
[6] https://www.aila.org/library/dos-guidance-directive-2016-03-on-visa-revocation

35. For students who have failed to maintain F-1 status may seek reinstatement. Under regulations, “a district director in the U.S. Citizenship and Immigration Services (‘USCIS’) ‘may consider’ reinstating a student who demonstrates that he or she: 1) ‘has not been out of [valid F-1] status for more than 5 months at the time of filing the request for reinstatement’ or that ‘the failure to file within the 5 month period was the result of exceptional circumstances and that the student filed the request for reinstatement as promptly as possible under these exceptional circumstances;’ 2) does ‘not have a record of repeated or willful violations of Service regulations’; 3) is pursuing or intends to pursue a full course of study; 4) has not engaged in unauthorized employment; 5) is not deportable on any ground other than 8 U.S.C. § 1227(a)(1)(B) and (C)(i); and 6) can prove that the violation of status resulted from circumstances beyond the student’s control, or that the violation relates to a reduction in the student’s course load that would have otherwise been permitted if authorized by the school and that failure to approve reinstatement would result in extreme hardship to the student.” *Jie Fang*, 935 F.3d at 176 (citing and quoting 8 C.F.R. § 214.2(f)(16)(i)(A)-(F)).

Termination of Plaintiff’s F-1 Student Visa and Status

36. Plaintiff is a 38-year-old doctoral student at New Mexico Tech who has been pursuing a Ph.D. in petroleum engineering since August 2023.

37. Plaintiff is a citizen and national of the Republic of Ghana.

38. Plaintiff received his bachelor’s degree in Ghana and his master’s degree in Italy.

39. Plaintiff applied for and obtained an F-1 student visa to enter the United States to begin his Ph.D. program at New Mexico Tech.

40. Plaintiff received financial aid which covered tuition, living expenses, and compensation for his work as a research assistant.

41. On or about April 9, 2025, Plaintiff was contacted by Valerie Maez, New Mexico Tech's International Programs Coordinator, who requested an urgent meeting with Plaintiff.

42. At that meeting, Ms. Maez informed Plaintiff that school officials had discovered, via the SEVIS database, that Plaintiff's student status had been terminated and provided him with a copy of the record.

43. The SEVIS record stated that Plaintiff's student status had been terminated for: "OTHER – Individual identified in criminal records check and/or has had their VISA revoked. SEVIS record has been terminated."

44. Plaintiff has never been arrested or charged with a crime in the United States or elsewhere. Plaintiff has never even received a parking ticket or traffic citation while living in the United States.

45. Plaintiff has never engaged in protest activity in any manner (including against the United States government).

46. This termination has put Plaintiff's education, research, and career trajectory at risk. Plaintiff is unable to complete his studies nor is he able to work as a research assistant.

47. Plaintiff education and living costs are entirely subsidized by scholarship and grant funding which he no longer eligible to receive, which affects his ability to pay for basic necessities such as housing and food costs.

48. This termination may also put Plaintiff in immediate detention and deportation – an outcome other students have already faced.[7]

CLAIMS FOR RELIEF

COUNT 1
VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION
(Unlawful F-1 Student Status Termination)

49. The foregoing allegations are realleged and incorporated herein.

50. The United States Constitution requires notice and a meaningful opportunity to be heard. See (cite).

51. Defendants terminated Plaintiff's F-1 student status under the SEVIS system without (i) notifying him about his termination decision, (ii) failing to provide Plaintiff with an individualized hearing before an impartial adjudicator, and (iii) failing to provide Plaintiff with adverse evidence and an opportunity to confront and respond to such evidence.

52. Defendants' disregard for complying with the well-established due process principles violated Plaintiff's due process rights.

COUNT 2
VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT—ARBITRARY AND CAPRICIOUS AGENCY ACTION
(Unlawful F-1 Student Status Termination)

53. The foregoing allegations are realleged and incorporated herein.

54. Defendants' termination of Plaintiff's F-1 student status under the SEVIS system is a final agency action. *See Jie Fang*, 935 F.3d at 182 ("[t]he order terminating these students' F-1

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[7] *See, e.g.*, *Ozturk v. Trump*, No. 25-cv-10695-DJC, 2025 U.S. Dist. LEXIS 64831 (D. Mass. Apr. 4, 2025).

visas marked the consummation of the agency's decision making process, and is therefore a final order").

55. Defendants' termination violates the Administrative Procedure Act (APA) and should be set aside pursuant to 5 U.S.C. § 706(2)(A) as arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law, including the regulatory regime at 8 C.F.R. § 214.1(d).

56. 56. Under 8 C.F.R. § 214.1(d), Defendants have no statutory or regulatory authority to terminate Plaintiff's SEVIS record or status based simply on revocation of a visa.

57. Moreover, in making its finding that Plaintiff's student status should be terminated, Defendants did not consider any facts relevant to Plaintiff's individual circumstances nor did it provide any explanation, let alone reasoned explanation, justifying its determination. Defendants' lack of consideration of any relevant facts specific to Plaintiff before making its determination was arbitrary and capricious and in violation of the APA.

COUNT 3
VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION
(Unlawful Detention)

58. The foregoing allegations are realleged and incorporated herein.

59. The Fifth Amendment requires fair, pre-deprivation process when a person's liberty hangs in the balance.

60. In light of the unlawful termination of Plaintiff's SEVIS record and F-1 student status, Plaintiff is at risk of abrupt detention without prior notice. Plaintiff is a doctoral student who has not committed any crime or even traffic violations. Plaintiff has ensured that he complied with all rules. *See Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (finding immigration detention

must further twin goals of (1) ensuring noncitizen's appearance during removal proceedings and (2) preventing danger to the community). There is no credible argument for Plaintiff's immigration detention, preventing him from pursuing his studies.

PRAYER FOR RELIEF

Plaintiff asks that this Court grant the following relief:

1. Assume jurisdiction over this matter;
2. Declare that Defendants' termination of Plaintiff's F-1 student status under the SEVIS system without affording him sufficient notice and opportunity to be heard violated Plaintiff's Fifth Amendment due process rights and the APA;
3. Issue an injunction requiring Defendants to provide adequate individualized proceedings before an impartial adjudicator for Plaintiff in which he will be entitled to review any adverse evidence and respond to such evidence prior to determining whether Plaintiff's F-1 student status should be terminated;
4. To order Defendants to reinstate Plaintiff's valid F-1 student status under the SEVIS system at New Mexico Tech or provide Plaintiff with a reasonable period to maintain his valid F-1 status by allowing him to transfer to another DHS-approved school if his reinstatement at New Mexico Tech is not accepted;
5. Enjoin Defendants from detaining Plaintiff pending the instant case;
6. Award attorney's fees and costs; and
7. Order any further relief this Court deems just and proper.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION OF NEW MEXICO

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