

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE; and
MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Plaintiffs,

v.

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

Defendants.

Civil Action No. 1:20-cv-11283

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. On March 13, 2020, President Donald J. Trump declared a national emergency.¹ By that time, Governor Charles Baker had already announced a state of emergency in the Commonwealth of Massachusetts, on March 10, 2020.² These orders were issued in recognition of the fact that the United States, along with the rest of the world, was facing a pandemic without parallel in recent history. SARS-CoV-2, the lethal coronavirus that is sweeping the globe, has forced governments, businesses, and organizations at all levels of society to implement

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

² <https://www.mass.gov/executive-orders/no-591-declaration-of-a-state-of-emergency-to-respond-to-covid-19>.

unprecedented protocols to slow the transmission of the virus and mitigate the still-rising death toll from COVID-19, the disease caused by the virus.

2. The federal government recognized the fact that protection of public safety, together with permitting universities to continue their mission of educating all of their students, depended on those universities' ability to educate students remotely. On March 13, 2020, this recognition took the form of an "exemption" issued by United States Immigration and Customs Enforcement ("ICE"), a division of the Department of Homeland Security, to a preexisting rule that students in the country on certain nonimmigrant student visas ("F-1" visas) must attend most classes in person. Recognizing the depth of the emergency and the needs of both students and educational institutions, ICE provided that students holding those nonimmigrant visas could attend remote classes while retaining their visa status. The government made clear that this arrangement was "in effect for the duration of the emergency."³

3. Since then, numerous universities in the United States, including Harvard University and the Massachusetts Institute of Technology, have offered education to their students remotely. Given that the pandemic continues to rage, with record numbers of infections in the United States every day, Harvard and MIT concluded, after careful planning processes, that, to protect the health and lives of their students, faculty, staff, and communities, they should offer most of their fall 2020 semester curricula online. Several other universities across the country have done the same.

4. The ability to provide remote education during the pandemic is of paramount importance to universities across the country. COVID-19 is a highly contagious disease that

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

spreads from human to human in close contact situations. Medical evidence and official governmental guidance indicate that indoor gatherings of any size are of particular concern. Densely populated classrooms that are attendant with on-campus instruction have the potential to turn into “super-spreader” situations that endanger the health of not only the university community, but also those in the surrounding areas and anyone else with whom community members may come into contact. Indeed, in recognition of the exceptional risk of indoor congregation, Harvard has limited undergraduate on-campus residency to 40% of capacity for the upcoming term. Similarly, MIT has limited undergraduate on-campus residency for the fall to members of the rising senior class and a limited number of additional students.

5. Immediately after the Fourth of July weekend, ICE threw Harvard and MIT—indeed, virtually all of higher education in the United States—into chaos. On July 6, 2020, ICE announced that it was rescinding its COVID-19 exemption for international students, requiring all students on F-1 visas whose university curricula are entirely online to depart the country, and barring any such students currently outside the United States from entering or reentering the United States. ICE also purported to require schools whose classes would be entirely online to submit an “operational change plan” no later than Wednesday, July 15, 2020—nine days after the change was announced. It also announced that universities that have adopted a hybrid model—a mixture of online and in-person classes—will have to certify for each student on an F-1 visa 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.” To do so, universities on a hybrid model will be required to issue a new Form I-20 for each of these students—in some cases, numbering in the thousands per university—by August 4, 2020.

6. ICE's action proceeded without any indication of having considered the health of students, faculty, university staff, or communities; the reliance of both students and universities on ICE's statements that the preexisting exemptions would be "in effect for the duration of the emergency" posed by the COVID-19 pandemic, which continues to this day; or the absence of other options for universities to provide their curricula to many of their international students. Certainly, no notice-and-comment period was provided.

7. ICE's action leaves hundreds of thousands of international students with no educational options within the United States. Just weeks from the start of the fall semester, these students are largely unable to transfer to universities providing on-campus instruction, notwithstanding ICE's suggestion that they might do so to avoid removal from the country. Moreover, for many students, returning to their home countries to participate in online instruction is impossible, impracticable, prohibitively expensive, and/or dangerous.

8. ICE's action also leaves universities across the country, including Harvard and MIT, in the untenable situation of either moving forward with their carefully calibrated, thoughtful, and difficult decisions to proceed with their curricula fully or largely online in the fall of 2020—which, under ICE's new directive, would undermine the education, safety, and future prospects of their international students and their campus community—or to attempt, with just weeks before classes resume, to provide in-person education despite the grave risk to public health and safety that such a change would entail.

9. By all appearances, ICE's decision reflects an effort by the federal government to force universities to reopen in-person classes, which would require housing students in densely packed residential halls, notwithstanding the universities' judgment that it is neither safe nor educationally advisable to do so, and to force such a reopening when neither the students nor the universities have sufficient time to react to or address the additional risks to

the health and safety of their communities. The effect—and perhaps even the goal—is to create as much chaos for universities and international students as possible.

10. Universities and students have been planning the 2020-2021 academic year for months in reliance on ICE’s recognition that the COVID-19 pandemic compelled allowing international students to remain in the country even if their studies had been moved entirely online. ICE’s rescission of that recognition failed to consider numerous weighty interests, and is itself arbitrary and capricious and an abuse of discretion. Further, ICE’s action is procedurally defective under the Administrative Procedure Act. It should be set aside, and the government required to abide by the guidance it put forward in March and on which universities and students relied in planning a fall semester during an ongoing pandemic.

THE PARTIES

11. Plaintiff President and Fellows of Harvard College is a non-profit corporation that is the senior governing board of the organization known as Harvard University (“Harvard”). Harvard is a private research university and the oldest institution of higher learning in the United States. Located in Cambridge, Massachusetts, it provides undergraduate and graduate instruction and degree programs to more than 23,000 students annually, including nearly 5,000 students who study in the United States on F-1 visas. Harvard brings this lawsuit on behalf of itself and its F-1 visa-holding students.

12. Plaintiff Massachusetts Institute of Technology (“MIT”) is a non-profit, private research university located in Cambridge, Massachusetts. It provides graduate and undergraduate instruction to approximately 11,500 students annually, including close to 4,000 students who study in the United States on F-1 visas. MIT brings this lawsuit on behalf of itself and its F-1 visa-holding students.

13. Defendant United States Department of Homeland Security is a federal agency of the United States.

14. Defendant United States Immigration and Customs Enforcement is a division of the United States Department of Homeland Security.

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

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

JURISDICTION AND VENUE

17. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 and 5 U.S.C. § 702. Plaintiffs are persons aggrieved by a final agency action promulgated by Defendants. *See* 5 U.S.C. § 702. Plaintiffs bring this suit for declaratory and injunctive relief to set aside Defendants' action as contrary to law and arbitrary and capricious, *see id.* §§ 705, 706, presenting a federal question, *see* 28 U.S.C. § 1331.

18. Venue is proper in this Court because Plaintiffs reside in this District and no real property is involved. 28 U.S.C. § 1391(e)(1).

19. Plaintiffs have standing to bring this case. Defendants' actions will cause an imminent, concrete, and irreparable risk to Plaintiffs' ability to achieve their educational missions unless halted by this Court.

20. Plaintiffs also have standing to assert claims on behalf of their F-1 visa-holding students, who face the imminent, concrete, and irreparable risk of harm to themselves, their families, their educations, their short-term and long-term health, and their future education and employment prospects if Defendants' actions are not halted by this Court.

21. 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

22. On March 13, 2020, President Donald J. Trump declared a national emergency in response to the COVID-19 pandemic.

23. SARS-CoV-2, which causes the COVID-19 illness, is easily transmitted. The numbers of confirmed cases and deaths from COVID-19 have grown exponentially in the United States since January 2020, and are expected to continue to grow exponentially over the coming months.

24. All human beings share a risk of contracting and, upon contraction, transmitting the virus that causes COVID-19. Any adult who contracts the virus may experience life-threatening symptoms, lifelong health consequences, and death.

25. New information regarding this virus is released daily by public health authorities. People who experience serious cases of COVID-19 and do not die face the prospect of prolonged recovery, including the need for extensive rehabilitation for profound reconditioning, loss of digits, permanent neurologic damage, and the irreversible loss of respiratory capacity.

26. People can also carry and spread the novel coronavirus but be asymptomatic or pre-symptomatic, making testing or seclusion of only those who are symptomatic an ineffective solution.

27. There is no vaccine against COVID-19, nor is there any known medication to prevent infection. The most effective measures to reduce the risk are to attempt to prevent

vulnerable populations from being infected in the first place, and to limit community spread. Physical distancing, or remaining physically separated from known or potentially infected individuals, and vigilant sanitation and hygiene are the most effective measures for protecting people from contracting the novel coronavirus.

28. Evidence indicates that the most likely means of transmission of the coronavirus that causes COVID-19 is through close human-to-human contact, especially indoors. This presents a particular risk for university campuses. Crowded classrooms, dining facilities, and dormitories are commonplace features of ordinary campus life and could lead to large-scale outbreaks of COVID-19 until the pandemic subsides.

29. Nationally, projections by the United States Centers for Disease Control and Prevention (“CDC”) indicate that more than 200 million people in the United States could be infected with the novel coronavirus over the course of the pandemic, and the most severe projections envision as many as 1.5 million deaths.

30. Efforts to contain the spread of this highly contagious disease have included broad shutdowns of society. On March 16, 2020, the CDC and members of the national Coronavirus Task Force issued guidance advising individuals to adopt far-reaching physical distancing measures, such as working from home, avoiding shopping trips and gatherings of more than 10 people, and staying away from bars, restaurants, and food courts.⁴

31. Following this advice, many states, including Massachusetts, recognized the need to take steps to protect the health and safety of their residents from human-to-human and surface-to-human spread of COVID-19. They accordingly issued orders suspending or severely curtailing operations of non-essential businesses, schools, and other locations where individuals congregate.

⁴ https://www.whitehouse.gov/wp-content/uploads/2020/03/03.16.20_coronavirus-guidance_8.5x11_315PM.pdf.

32. Notwithstanding these mitigation measures, COVID-19 cases continue to rise nationwide. New cases in Massachusetts have begun to level off, but the Commonwealth's current guidance reflects a general policy of continued caution, and a particular concern with indoor gatherings.⁵ Moreover, states that have relaxed physical distancing measures, including by allowing indoor gatherings and the opening of locations where individuals congregate—such as Texas, Arizona, and Florida—are now seeing renewed surges and record-setting numbers of COVID-19 cases, hospitalizations, and deaths.

33. To date, there have been more than 3 million confirmed cases of COVID-19 in the United States, which have caused more than 131,000 deaths.⁶

ICE's Initial Response to the Pandemic

34. International students may attend American universities on nonimmigrant F-1 visas. Eligibility to maintain F-1 status is governed by 8 C.F.R. § 214.2.

35. Students on F-1 visas must pursue a “full course of study” during their stay in the United States. 8 C.F.R. § 214.2(f)(5)(i).

36. The regulation defines the extent to which online courses may count toward the full course of study requirement. 8 C.F.R. § 214.2(f)(6)(i)(G) provides: “For F-1 students enrolled in classes for credit or classroom hours, no more than the equivalent of one class or three credits per session, term, semester, trimester, or quarter may be counted toward the full course of study requirement if the class is taken on-line or through distance education and does not require the student's physical attendance for classes, examination or other purposes integral to completion

⁵ See generally COVID-19 Public Health Guidance and Directives, <https://www.mass.gov/info-details/covid-19-public-health-guidance-and-directives> (last visited July 7, 2020).

⁶ *Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> [<https://perma.cc/25D3-UPBH>] (last visited July 7, 2020).

of the class. An on-line or distance education course is a course that is offered principally through the use of television, audio, or computer transmission including open broadcast, closed circuit, cable, microwave, or satellite, audio conferencing, or computer conferencing. If the F-1 student's course of study is in a language study program, no on-line or distance education classes may be considered to count toward a student's full course of study requirement."

37. On March 13, 2020, the Student and Exchange Visitor Program ("SEVP"), a division of ICE, in recognition of the extraordinary circumstances posed by the COVID-19 pandemic and in response to "inquiries concerning the proper status" of international students in the United States on academic visas "who may have [to] face slightly different scenarios related to emergency procedures implemented by SEVP-certified learning institutions" issued guidance concerning F-1 students' ability to maintain their visa status (the "March 13 Guidance").⁷

38. As relevant here, the March 13 Guidance addressed students attending a school that "temporarily stops in-person classes but implements online or alternate learning procedures." The Guidance directed students to "participate in online or other alternate learning procedures and remain in active status" with SEVP. Accordingly, students could participate in remote learning implemented as a result of the pandemic—either in the United States or abroad—while retaining their visa status.

39. The March 13 Guidance indicated that it was a "temporary provision" that would remain "*in effect for the duration of the emergency.*" (Emphasis added.) SEVP also noted that the situation was "*fluid*" and "*difficult*" and that "SEVP will continue to monitor the COVID-19 situation and will adjust its guidance *as needed.*" (Emphases added.)

⁷ <https://www.ice.gov/sites/default/files/documents/Document/2020/Coronavirus%20Guidance%203.13.20.pdf>.

40. The President’s national emergency declaration has not been rescinded or terminated. An emergency in fact continues to persist, as daily COVID-19 cases in the United States have never significantly decreased and have recently begun spiking in several regions.

41. Notwithstanding the March 13 Guidance’s statement that it would remain “in effect for the duration of the emergency,” on June 4, 2020 SEVP issued a “Frequently Asked Questions” document asserting that “SEVP has not issued guidance to international students and schools for the fall semester.”⁸

Harvard’s and MIT’s Response to the Pandemic

42. Both Harvard and MIT substantially closed their campuses and transitioned to online instruction in March 2020. Over the spring and summer, Harvard and MIT each individually engaged in careful, deliberative planning processes that prioritized the health and safety of students, faculty, and staff, as well as the universities’ institutional objectives of delivering educational services and a meaningful experience to their students. Harvard and MIT undertook this planning in part in reliance on SEVP’s statement in the March 13 Guidance that, because of the pandemic, students with F-1 visas would not be required to attend in-person classes in order to retain their visa status, and that the exemption for F-1 students would remain “in effect for the duration of the emergency.”

43. Since March 2020, Harvard has engaged eight formal committees and groups to inform its response to the pandemic, including a University Coronavirus Advisory Group advising on approaches for limiting viral transmission on campus; a Harvard University Health System Medical Expert Advisory Group advising on COVID-19 issues relating to health services for the University; a Face Mask Committee advising on how to provide adequate and effective face

⁸ <https://web.archive.org/web/20200605003435/https://www.ice.gov/doclib/coronavirus/covid19faq.pdf>.

masks for on-campus community members; and a Testing and Tracing Committee convened to consider how best to apply testing and contact tracing practices to protect the community, as and when students, faculty, and staff returned to campus.

44. Similarly, since March 2020, MIT deployed a series of working groups to analyze its (1) short and medium term, (2) ongoing, and (3) long term responses to the pandemic. Among these groups was a team of senior faculty and administrators charged by MIT's senior leadership with examining options and making recommendations for the 2020-2021 academic year. This group drew heavily on public health leaders in all areas of government. It also engaged the community and resulted in a detailed report published to the MIT community on June 12, 2020 summarizing MIT's options based on input from public health and medical experts, guidance from local and state government officials, and consultations with students, faculty, and staff.

45. In addition to these formal structures, Harvard and MIT have consulted on an ongoing basis with epidemiologists, medical experts, industry experts, and others on a wide range of topics relevant to returning students to campus and protecting their safety during instruction.

46. Based on months of study and consultation, the Harvard Graduate School of Design, the Harvard T.H. Chan School of Public Health, Harvard Law School, Harvard Divinity School, and the Harvard Kennedy School of Government announced on June 3, 2020, that all graduate instruction in the fall 2020 semester, beginning September 3, 2020 would take place online. That same day, the Harvard Graduate School of Education announced that all graduate instruction in the 2020-2021 academic year, beginning September 3, 2020, would take place online. The Harvard Faculty of Arts and Sciences announced its decision to offer undergraduate instruction for the 2020-2021 academic year fully online on July 6, 2020. Despite offering coursework entirely online, Harvard is offering on-campus housing to undergraduate students, prioritizing first-year students and those students who are unable to engage effectively in remote

learning from their homes, based on their limited access to technology, socio-economic status, and other considerations. No more than 40% of undergraduate students will be allowed to return to campus in the fall 2020 term.

47. On July 7, 2020, MIT announced that it would implement a hybrid on-campus and online program for the 2020-2021 academic year. Specifically, seniors and a limited number of other students with particular needs will be allowed to return to campus. Students living on campus will take classes online, with some in-person instruction primarily for seniors. Students living off campus will be offered instruction entirely online and will not be permitted to access campus. Graduate programs will vary in the provision of online and in-person instruction.

48. For both Harvard and MIT, increasing the number of in-person sessions beyond those currently planned would increase the risk to faculty, staff, and students of contracting COVID-19.

49. While most faculty members are able to provide instruction remotely under the current distance-learning plans, increased in-person sessions would place these instructors in danger of contracting COVID-19.

50. The median age of the faculty members of Harvard's Faculty of Arts and Sciences is over 60 years old. According to the CDC, older adults are at highest risk for severe illness from COVID-19, meaning they are more likely to "require hospitalization, intensive care, or a ventilator to help them breathe, or they may even die."⁹

51. Dozens of faculty members are advisors to local, state, and international efforts to mitigate the COVID-19 pandemic. Putting these faculty members at increased risk jeopardizes their ability to help society respond to the coronavirus crisis.

⁹ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/older-adults.html>.

52. Both Harvard and MIT intend for their faculty members to focus on providing robust and meaningful learning experiences through the online medium. Requiring those faculty to plan for a potential adjustment to greater on-campus instruction now would substantially detract from that focus.

53. Were Harvard or MIT compelled to increase the number of in-person sessions beyond those currently planned, it would also increase the risk to staff members—including facilities workers, janitorial staff, support staff, and others—of contracting COVID-19 through increased interactions with students and other faculty and staff. Most of these staff members reside outside of the immediate vicinity of their workplaces and are at risk of spreading the virus across the greater Boston area.

54. Students will also be at an increased risk of contracting COVID-19 if Harvard and MIT are compelled to provide more in-person sessions than currently planned.

55. Students, too, relied on the March 13 Guidance. Many students have already incurred substantial, irretrievable costs associated with attending college in the 2020-2021 academic year. Students have taken out loans, made travel arrangements to move to or near campuses, and entered leases for housing arrangements there.

Without Warning, ICE Announces That It Will End The COVID-19 Exemptions

56. On July 6, 2020, without employing notice and comment rulemaking, or even giving students or universities any indication that it was considering revising its policy, SEVP issued a document (the “July 6 Directive”), attached as Exhibit 1,¹⁰ which an accompanying “News Release” described as announcing “modifications ... to temporary exemptions for nonimmigrant students taking online classes due to the pandemic for the fall 2020 semester.”¹¹

¹⁰ <https://www.ice.gov/doclib/sevis/pdf/bcm2007-01.pdf>.

¹¹ <https://www.ice.gov/news/releases/sevp-modifies-temporary-exemptions-nonimmigrant->

57. The July 6 Directive provided that: “Nonimmigrant F-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.” (Emphasis in original.)

58. Moreover, the July 6 Directive ordered that “[a]ctive 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. If not, they may face immigration consequences including, but not limited to, the initiation of removal proceedings.”

59. The July 6 Directive indicated that the “U.S. Department of Homeland Security plans to publish the procedures and responsibilities ... in the near future as a Temporary Final Rule in the Federal Register.” As of the filing of this Complaint, no procedures or responsibilities have been published in the Federal Register.

60. The July 6 Directive further directed that “[s]chools 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 “no later than Wednesday, July 15, 2020.” (Emphasis in original.)

61. Moreover, the July 6 Directive stated “[s]tudents attending schools offering 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,” provided that for each such student, the school “certif[ies] 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

[students-taking-online-courses-during.](#)

course load this semester, and that the student is taking the minimum number of online classes required to make normal progress in their degree program.” Compliance with this requirement would require the university to issue a new Form I-20 for each of its potentially thousands of students on F-1 visas and to do so within 21 business days of the July 6 Directive. Doing so is not only unduly burdensome, but, in many cases, impossible because students are generally not required to register for particular classes until closer to the start of the semester.

62. Neither the July 6 Directive nor its accompanying “News Release” or updated “Frequently Asked Questions”¹² document indicates any consideration of the multitude of factors relevant and important to ICE’s decision to force students holding F-1 visas to attend classes in person as a condition of maintaining their visa status—including when their school has decided to provide classes online only in order to safeguard the health of students, faculty, staff, and the surrounding community.

63. ICE’s Directive reveals no consideration of its action’s impact on the health of students, faculty, staff, or the surrounding communities.

64. Further, ICE’s action of July 6 does not account for the reality that the COVID-19 pandemic continues to this day, and that record daily numbers of infections are being reported in the United States.

65. ICE’s action also did not account for the reliance of both students and universities on ICE’s statements in the March 13 Guidance that the exemptions it announced were due to the COVID-19 pandemic and would be “in effect for the duration of the emergency.”

66. In fact, the July 6 Directive describes the exemptions given in the March 13 Guidance as allowances made “during the height of the Coronavirus Disease (COVID-19)

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

crisis”—entirely disregarding the fact that the present rate of documented cases of infection across the country exceeds those of mid-March by a considerable amount. And that rate continues to climb.

67. The agency also did not consider the absence of other options by which universities affected by the COVID-19 pandemic and concerned for their students' health and welfare might provide their curricula to F-1 students.

68. The July 6 Directive will harm continuing F-1 students immensely. For many students affected by the July 6 Directive, it is infeasible or impossible to attempt to transfer to a program that offers in-person curriculum and therefore allows them to pursue their education from within the United States on F-1 visa status. These students will therefore likely be forced to leave the country. The consequences of this sudden displacement are both financial and personal. In addition to incurring substantial expenses to make international travel arrangements in the midst of a pandemic that has significantly reduced the availability of air travel, as well as losing their homes—in many instances at great cost associated with broken leases—some students will be forced to upend their young children's lives by returning to their home countries, while others' families will be split apart in order to comply with the July 6 Directive.

69. For continuing F-1 students enrolled in a hybrid program who are currently outside of the United States, if the students cannot return to the United States either because of travel restrictions or an inability to get an F-1 entry visa because of the suspension of consular processing of visa applications—all of which were instituted in response to the COVID-19 emergency and remain in effect to this day—these students will lose their F-1 status by the terms of July 6 Directive. In turn, these students would lose their ability to pursue pre-completion internship and experiential learning opportunities, as well as their eligibility for work allowances

in summer and fall 2021, because of the requirement that students maintain F-1 status for the full academic year preceding their access to practical training. *See* 8 C.F.R. § 214.2(f)(10).

70. For F-1 students enrolled in a fully online program, under the July 6 Directive those students cannot lawfully remain in the United States to continue their studies. Unless this Court intervenes, these students will be required to make precipitous arrangements to return to their home countries amid a worldwide pandemic that has caused nations to close their borders and has considerably limited international travel options. They must abandon housing arrangements they have made, breach leases, pay exorbitant air fares, and risk COVID-19 infection on transoceanic flights. And if their departure is not timely, they risk detention by immigration authorities and formal removal from the country that may bar their return to the United States for ten years. 8 U.S.C. § 1182(a)(9).

71. While students could participate in that program from outside the United States, they may have their research and learning inhibited by time zone variations, unavailable, unreliable, or state-managed Internet connections, and other barriers to online learning. Still other students simply cannot participate in online learning in their home countries. For example, some Harvard and MIT students are from Syria, where civil war and an ongoing humanitarian crisis make Internet access and study all but impossible. Others come from Ethiopia, where the government has a practice of suspending all Internet access for extended periods, including presently, starting on June 30, 2020. The value of the education offered by Plaintiffs hinges on the diversity of perspective offered by these international students. Rendering their participation impossible or insignificant will impair the educational experience for all Harvard and MIT students. Moreover, Harvard and MIT also depend on some F-1 graduate students for teaching support in their undergraduate programs. Requiring these students to provide instruction from remote locations in their home countries, potentially with considerable time-zone disparities and

variable Internet connectivity, will make it harder for faculty to coordinate with their student teaching aides and obtain the full benefit of their pedagogy.

72. The July 6 Directive will make continued study at Harvard and MIT impracticable for a sizable portion of the universities' F-1 visa students. The loss of the ability to perform research or fieldwork, or even participate in basic coursework under reasonable conditions, will force many students to interrupt their studies. Many students risk losing their ability to access work allowances because of the requirement that students maintain F-1 status for the full academic year preceding their access to practical training. *See* 8 C.F.R. § 214.2(f)(10). This will significantly disrupt those students' career plans and opportunities, further undermining the value of the educational experience that Harvard and MIT can provide to F-1 visa students. It can be reasonably expected that many students will take leaves of absences or withdraw from Harvard and MIT as a direct result of the July 6 Directive.

73. The July 6 Directive will also cause immense harm to Harvard and MIT. Many of Harvard's curricular programs depend on the presence and diversity of international students. The curriculum at Harvard's Kennedy School of Government, for example, depends on the perspectives of international students, including mid-career public officials from around the world who bring unique viewpoints about different approaches to governance and policy.

74. By threatening to force many F-1 students to withdraw from Harvard and MIT, Defendants have put both schools to an impossible choice: lose numerous students who bring immense benefits to the school or take steps to retain those students through in-person classes, even when those steps contradict each school's judgment about how best to protect the health of the students, faculty, staff, and the entire university community.

75. Indeed, the Administration has acknowledged that ICE's decision is designed to force universities to conduct in-person classes notwithstanding universities' and public

health officials' considered judgments that it is neither safe nor educationally advisable to do so.¹³ As Acting Deputy Secretary of Homeland Security Kenneth T. Cuccinelli stated on July 7, 2020, the ICE Directive "will ... encourage schools to reopen."¹⁴ ICE's decision also reflects the Administration's continued efforts to limit and reduce the presence of F-1 international students in the United States.

CLAIMS FOR RELIEF

Count I (Violation of Administrative Procedure Act, 5 U.S.C. § 706) *The July 6 Directive Is Arbitrary And Capricious Because It Fails To Consider Important Aspects Of The Problem Before The Agency*

76. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

77. The APA requires this Court to hold unlawful and set aside any agency action that is "arbitrary, capricious, an abuse of discretion ... or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). Agency action that is not the product of reasoned decisionmaking is arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n of United States, Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983). An agency that "entirely fail[s] to consider an important aspect of the problem" before it has acted in an arbitrary and capricious manner. *Id.*; see also *Department of Homeland Sec. v. Regents of the Univ. of Calif.*, No. 18-587, 2020 WL 3271746, at *13 (U.S. June 18, 2020).

78. The July 6 Directive is arbitrary and capricious because it "entirely fail[s] to consider ... important aspect[s] of the problem" before ICE. *State Farm*, 463 U.S. at 43. For one, the July 6 Directive entirely fails to consider the significant effects that it will have on universities that have invested considerable time and effort in developing plans for the 2020-2021

¹³ <https://twitter.com/realDonaldTrump/status/1280209946085339136?s=20>.

¹⁴ <https://thehill.com/homenews/administration/506248-cuccinelli-says-rule-forcing-international-students-to-return-home>.

academic year—plans that carefully balance the health and safety of faculty, students, and staff, with their core mission of educating students. The July 6 Directive likewise fails to consider the devastating effects that it will have on international students who will be forced to leave the United States or will be unable to enter to take classes, or those who will not be able to return to their home—or any—country.

79. The July 6 Directive is also arbitrary and capricious because it “fail[s] to address” the “serious reliance interests” that ICE’s repeated prior guidance on this issue engendered. *Regents*, 2020 WL 3271746, at *14; *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016). As the Supreme Court recently explained, “[w]hen an agency changes course, as DHS did here, it must be cognizant” of “serious reliance interests” that its prior approach has “engendered.” *Regents*, 2020 WL 3271746, at *14. “It would be arbitrary and capricious to ignore such matters.” *Id.* Yet that is exactly what the July 6 Directive does. It departs from prior guidance that ICE issued on this subject—including its explicit statement on March 13 that the exemptions for F-1 visa holders due to COVID-19 would be “in effect for the duration of the emergency”—without any reasoned basis for the sudden and dramatic change of position.

80. For these reasons and others, the July 6 Directive must be vacated and “set aside” as “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

Count II (Violation of Administrative Procedure Act, 5 U.S.C. § 706)
The July 6 Directive Is Arbitrary And Capricious Because It Fails To Offer Any Reasoned Basis That Could Justify The Policy

81. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

82. As noted above, the APA requires this Court to hold unlawful and set aside agency action that is “arbitrary, capricious, . . . or otherwise not in accordance with law,” 5 U.S.C. § 706(2)(A), including agency action that is not the product of reasoned decisionmaking. *State*

Farm, 463 U.S. at 43. To satisfy that core requirement of reasoned decisionmaking, an agency must “cogently explain why it has exercised its discretion in a given manner.” *Id.* at 48.

83. The July 6 Directive fails this statutory requirement. The July 6 Directive reflects virtually no reasoned decisionmaking. It identifies a purported “need to resume the carefully balanced protections implemented by federal regulations,” but it does not provide any reasoning why the agency perceives such a need to exist, nor why any resumption of the regime set out in federal regulations must begin in less than two months, while the COVID-19 pandemic continues to rage and the national state of emergency remains in effect.

84. Indeed, the lack of any real justification for the July 6 Directive on its face “reveal[s] a significant mismatch between the [July 6 Directive] and the rationale ... provided,” *Department of Commerce v. New York*, 139 S. Ct. 2551, 2775 (2019), raising the prospect that the July 6 Directive is being used as a cudgel to compel universities to alter their plans for the fall.

85. For these reasons and others, the July 6 Directive must be vacated and “set aside” as “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

Count III (Violation of Administrative Procedure Act, 5 U.S.C. §§ 553, 706)
The July 6 Directive Violates The APA’s Requirement Of Notice-And-Comment Rulemaking

86. Plaintiffs incorporate by reference the allegations of the preceding paragraphs.

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

88. The APA, 5 U.S.C. § 553, requires (with certain exceptions not applicable here) that agencies publish notice of any proposed substantive rule in advance in the Federal Register, and that the public is given an opportunity to comment on proposed rules before they take effect.

89. The July 6 Directive issued by ICE is a “rule” within the meaning of the APA because it is an “agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy.” 5 U.S.C. § 551(4).

90. The July 6 Directive is not an “interpretative rule[], general statement[] of policy, or rule[] of agency organization, procedure, or practice.” 5 U.S.C. § 553(b). To the contrary, it is a substantive rule that alters students’ and universities’ rights and obligations under the law.

91. Absent “good cause” for not doing so, ICE was required to provide notice of its proposal, an opportunity for public comment, and an explanation of the rule ultimately adopted, *see* 5 U.S.C. § 553(b), (c)—none of which it has done.

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

93. Because ICE promulgated the July 6 Directive without notice and comment, in violation of 5 U.S.C. § 553, it and the modifications it announced are unlawful and must be vacated.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully seek the following relief:

1. A temporary restraining order and preliminary and permanent injunctive relief preventing Defendants from enforcing the policy announced in ICE’s July 6 Directive, or promulgating it as a Final Rule;

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

3. A declaration that the policy announced in the July 6 Directive is unlawful;

4. An order awarding Plaintiffs their costs and attorney’s fees; and

5. Any and all other such relief as the Court may deem appropriate.

Dated: July 8, 2020

By: /s/ Felicia H. Ellsworth

William F. Lee (BBO #291960)
Mark C. Fleming (BBO #639358)
Felicia H. Ellsworth (BBO #665358)
WILMER CUTLER PICKERING
HALE AND DORR LLP
60 State Street
Boston, MA 02109
Tel.: (617) 526-6000

Seth P. Waxman (*pro hac vice forthcoming*)
Paul R.Q. Wolfson (*pro hac vice forthcoming*)
Ari Holtzblatt (*pro hac vice forthcoming*)
WILMER CUTLER PICKERING
HALE AND DORR LLP
1875 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
Tel.: (202) 663-6000

EXHIBIT 1

Broadcast Message: COVID-19 and Fall 2020

To: All SEVIS Users

Date: July 6, 2020

Number: 2007-01

General Information

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

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

Temporary Exemptions for the Fall 2020 Semester

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

- 1) Students attending schools operating entirely online may *not* take a full online course load and remain in the United States. The U.S. Department of State will not issue visas to students enrolled in schools and/or programs that are fully online for the fall semester nor will U.S. Customs and Border Protection permit these students to enter the United States. Active students currently in the United States enrolled in such programs must depart the country or take other measures, such as transferring to a school with in-person instruction to remain in lawful status or potentially face immigration consequences including, but not limited to, the initiation of removal proceedings.
- 2) Students attending schools operating under normal in-person classes are bound by existing federal regulations. Eligible F students may take a maximum of one class or three credit hours online (*see 8 CFR 214.2(f)(6)(i)(G)*).
- 3) Students attending schools adopting a hybrid model—that is, a mixture of online and in person classes—will be allowed to take more than one class or three credit hours online. These schools must certify to SEVP, through the Form I-20, “Certificate of Eligibility for Nonimmigrant Student Status,” that the program is not entirely online, that the student is not taking an entirely online course load for the fall 2020 semester, and that the student is taking

the minimum number of online classes required to make normal progress in their degree program. The above exemptions do not apply to F-1 students in English language training programs or M-1 students, who are not permitted to enroll in any online courses (see 8 *CFR* 214.2(f)(6)(i)(G) and 8 *CFR* 214.2(m)(9)(v)).

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

For all students attending schools in the United States this fall 2020, designated school officials (DSOs) must issue new Forms I-20 to each student certifying that the school is not operating entirely online, that the student is not taking an entirely online course load for the fall 2020 semester, and that the student is taking the minimum number of online classes required to make normal progress in their degree program. DSOs must indicate this information in the Form I-20 Remarks field in the Student and Exchange Visitor Information System (SEVIS).

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

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

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

School Reporting and Procedural Requirements

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

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

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

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

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

Disclaimer

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



CIVIL COVER SHEET

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

I. (a) PLAINTIFFS

President and Fellows of Harvard College; Massachusetts Institute of Technology

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

(c) Attorneys (Firm Name, Address, and Telephone Number) Felicia H. Ellsworth, Wilmer Cutler Pickering Hale and Dorr LLP 60 State Street, Boston, MA 02109 617 526 6000

DEFENDANTS

United States Department of Homeland Security; U.S. Immigration and Customs Enforcement; Chad F. Wolf; Matthew Albence

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

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

Attorneys (If Known)

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

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

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

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country).

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

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

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

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

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 5 U.S.C. § 702
Brief description of cause: Challenge agency action as contrary to law, arbitrary and capricious, and/or an abuse of discretion

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 0.00 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 07/08/2020 SIGNATURE OF ATTORNEY OF RECORD /s/ Felicia H. Ellsworth

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. Title of case (name of first party on each side only) President and Fellows of Harvard College v.
United States Department of Homeland Security

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).

- I. 160, 400, 410, 441, 535, 830*, 835*, 850, 891, 893, R.23, REGARDLESS OF NATURE OF SUIT.
II. 110, 130, 190, 196, 370, 375, 376, 440, 442, 443, 445, 446, 448, 470, 751, 820*, 840*, 895, 896, 899.
III. 120, 140, 150, 151, 152, 153, 195, 210, 220, 230, 240, 245, 290, 310, 315, 320, 330, 340, 345, 350, 355, 360, 362, 365, 367, 368, 371, 380, 385, 422, 423, 430, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 560, 625, 690, 710, 720, 740, 790, 791, 861-865, 870, 871, 890, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

4. Has a prior action between the same parties and based on the same claim ever been filed in this court? YES NO [checked]

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES NO [checked]

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES NO

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES NO [checked]

7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).

YES NO

A. If yes, in which division do all of the non-governmental parties reside?

Eastern Division [checked] Central Division Western Division

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division Central Division Western Division

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES NO [checked]

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Felicia H. Ellsworth

ADDRESS 60 State Street, Boston, Massachusetts 02109

TELEPHONE NO. (617) 526-6000

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Massachusetts

President and Fellows of Harvard College;
Massachusetts Institute of Technology

Plaintiff(s)

v.

United States Department of Homeland Security;
U.S. Immigration and Customs Enforcement; Chad F.
Wolf; Matthew Albence

Defendant(s)

Civil Action No. 1:20-cv-11283

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) United States Department of Homeland Security
2707 Martin Luther King Jr Ave SE
Washington, DC 20528-0485

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are: Felicia H. Ellsworth
WilmerHale
60 State Street, Boston, Massachusetts 02109

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date: 07/08/2020

Signature of Clerk or Deputy Clerk

Civil Action No. 1:20-cv-11283

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Massachusetts

President and Fellows of Harvard College;
Massachusetts Institute of Technology

Plaintiff(s)

v.

United States Department of Homeland Security;
U.S. Immigration and Customs Enforcement; Chad F.
Wolf; Matthew Albence

Defendant(s)

Civil Action No. 1:20-cv-11283

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) U.S. Immigration and Customs Enforcement
500 12th St, SW
Washington, D.C. 20536

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are: Felicia H. Ellsworth
WilmerHale
60 State Street, Boston, Massachusetts 02109

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date: 07/08/2020

Signature of Clerk or Deputy Clerk

Civil Action No. 1:20-cv-11283

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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UNITED STATES DISTRICT COURT

for the

District of Massachusetts

President and Fellows of Harvard College;
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Plaintiff(s)

v.

United States Department of Homeland Security;
U.S. Immigration and Customs Enforcement; Chad F.
Wolf; Matthew Albence

Defendant(s)

Civil Action No. 1:20-cv-11283

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) The Hon. Chad F. Wolf
Acting Secretary of Homeland Security
United States Department of Homeland Security
2707 Martin Luther King Jr. Ave., S.E.
Washington, D.C. 20528

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are: Felicia H. Ellsworth
WilmerHale
60 State Street, Boston, Massachusetts 02109

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date: 07/08/2020

Signature of Clerk or Deputy Clerk

Civil Action No. 1:20-cv-11283

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(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____ .

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

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President and Fellows of Harvard College;
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Plaintiff(s)

v.

United States Department of Homeland Security;
U.S. Immigration and Customs Enforcement; Chad F.
Wolf; Matthew Albence

Defendant(s)

Civil Action No. 1:20-cv-11283

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) Matthew Albence
U.S. Immigration and Customs Enforcement
500 12th St, SW
Washington, D.C. 20536

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you
are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ.
P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of
the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,
whose name and address are: Felicia H. Ellsworth
WilmerHale
60 State Street, Boston, Massachusetts 02109

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint.
You also must file your answer or motion with the court.

CLERK OF COURT

Date: 07/08/2020

Signature of Clerk or Deputy Clerk

Civil Action No. 1:20-cv-11283

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_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____ , and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____ , who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE; and
MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Plaintiffs,

v.

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

Defendants.

Civil Action No. 1:20-cv-11283

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS'
MOTION FOR TEMPORARY RESTRAINING ORDER**

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTRODUCTION	1
STATEMENT.....	3
A. The COVID-19 Pandemic.....	3
B. ICE’s Response To The Pandemic	3
C. Harvard’s And MIT’s Response To The Pandemic.....	4
D. Effects On Harvard And MIT Students	6
E. ICE’s Surprise About-Face.....	7
LEGAL STANDARD.....	8
ARGUMENT	9
I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS	9
A. The Directive Is Arbitrary And Capricious Because It Fails To Consider Either The Harms That The Change Would Impose Or Plaintiffs’ Reliance On ICE’s Prior Policy	9
B. The Directive Is Arbitrary And Capricious Because ICE Has Failed To Articulate Any Plausible Rationale That Could Justify It	13
C. The Directive Violates The APA’s Notice-And-Comment Requirement	16
II. PLAINTIFFS WILL BE IRREPARABLY INJURED ABSENT EMERGENCY RELIEF	17
III. THE REMAINING EQUITABLE FACTORS ALSO FAVOR GRANTING A TEMPORARY RESTRAINING ORDER.....	19
CONCLUSION.....	20

TABLE OF AUTHORITIES

Page(s)

CASES

Amerijet Int’l, Inc. v. Pistole,
753 F.3d 1343 (D.C. Cir. 2014)..... 13

Bruns v. Mayhew,
750 F.3d 61 (1st Cir. 2014)..... 8

Chrysler Corp. v. Brown,
441 U.S. 281 (1979)..... 16

Commerce Bank & Trade Co. v. Prop. Administrators, Inc.,
252 F. Supp. 3d 14 (D. Mass. 2017) 8

Dep’t of Commerce v. New York,
139 S. Ct. 2551 (2019)..... 13, 14, 15

Dep’t of Homeland Sec. v. Regents of the Univ. of California,
No. 18-587, 2020 WL 3271746 (U.S. June 18, 2020) 9, 10, 12, 13

Devitri v. Cronen,
289 F. Supp. 3d 287 (D. Mass. 2018) 19

Encino Motorcars, LLC v. Navarro,
136 S. Ct. 2117 (2016)..... 12, 13

Levesque v. Block,
732 F.2d 175 (1st Cir. 1983)..... 17

Michigan v. EPA,
135 S. Ct. 2699 (2015)..... 10, 15

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463 U.S. 29 (1983)..... 9

New Hampshire Hospital Ass’n v. Azar,
887 F.3d 62 (1st Cir. 2018)..... 16, 17

Perez v. Mortgage Bankers Ass’n,
575 U.S. 92 (2015)..... 17

Rio Grande Cmty. Health Ctr., Inc. v. Rullan,
397 F.3d 56 (1st Cir. 2005)..... 17

United States v. Valverde,
628 F.3d 1159 (9th Cir. 2010) 17

Winter v. Natural Resources Defenses Council, Inc.,
555 U.S. 7 (2008)..... 8

STATUTES AND REGULATIONS

5 U.S.C.
 § 551..... 16
 § 553..... 16, 17
 § 706..... 9, 16

8 U.S.C. § 1101..... 3

8 C.F.R. § 214.2 3

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INTRODUCTION

On July 6, 2020, U.S. Immigration and Customs Enforcement (“ICE”) promulgated a policy that is as cruel as it is capricious. If allowed to stand, ICE’s policy would bar hundreds of thousands of international students at American universities from the United States in the midst of their undergraduate or graduate studies. The policy would also force American universities into an impossible choice: lose these students, who bring enormous benefits to their schools and our country; or act contrary to their considered judgments about how best to protect the health of their students, faculty, staff, and the surrounding public, potentially jeopardizing the health of the entire university community and beyond. ICE’s policy is supported by neither logic nor law, and the Court should enter a temporary restraining order against it.

In March 2020, recognizing that the United States faced a pandemic without parallel in recent history, colleges and universities across the country concluded that they could only protect the health and safety of their student bodies and further their educational missions by making recourse to remote instruction. In apparent acknowledgment of this reality, ICE promulgated guidance establishing an “exemption” to a preexisting rule that required students in the United States on certain nonimmigrant student visas—known as “F-1” visas—to attend classes in person. Since March, hundreds of universities, including Harvard and MIT, have taught their students remotely. While the pandemic continued to rage through June—with record numbers of infections in the United States every day—Harvard and MIT each engaged in a deliberate, months-long planning process, culminating in operational plans that will permit them to prioritize the health and safety of the communities they serve by offering most or all of their fall semester courses online. Several other universities have done the same.

Immediately after Independence Day, however, ICE pulled the rug out. On July 6, ICE

announced it would rescind its COVID-19 exemption for F-1 students, stating in no uncertain terms that students on F-1 visas whose university curricula are entirely online due to COVID-19 must depart the country, and that those already outside the United States may not reenter. The July 6 directive also requires students on F-1 visas whose university curricula provide a mixture of in-person and online offerings to be enrolled in at least some in-person courses, effectively requiring those students to be present in the United States (and in crowded classrooms) or lose their visa status. ICE also required entirely-online schools to submit an “operational change plan” by Wednesday, July 15—nine days after the change was announced—and to require schools offering a hybrid model to provide an updated certification of eligibility as to each student holding an F-1 visa by August 4—just 21 business days after the change was announced.

ICE’s directive betrays no indication that the agency gave any consideration to the health of students, faculty, staff, or university communities; the reliance of students and universities on ICE’s statements that the exemptions were due to the COVID-19 pandemic that continues to this day; or the absence of other options for universities to provide their curricula to many of their international students. Rather, ICE’s decision reflects a naked effort by the federal government to force universities to reopen all in-person classes notwithstanding their informed judgment that it is neither safe nor advisable to do so. The effect—perhaps even the goal—is to create chaos for schools and international students alike. Universities have been planning the 2020-2021 academic year for months in reliance on ICE’s conclusion that the unprecedented COVID-19 pandemic requires permitting students on F-1 visas to study online in this country. ICE’s stunning reversal of its own decision failed to consider numerous weighty interests and is itself therefore arbitrary and capricious and an abuse of discretion.

The Court should enter a temporary restraining order preventing the government from

implementing its rescission, pending briefing and decision of a preliminary injunction motion.

STATEMENT

A. The COVID-19 Pandemic

The Court is familiar with COVID-19, as well as the difficulties the pandemic has posed for the normal operations of businesses, educational institutions, and virtually every other aspect of daily life. COVID-19 is easily transmitted, and the numbers of confirmed cases and deaths from it have grown exponentially in the United States since January 2020, and are expected to continue to do so. University campuses provide a particularly heightened risk for transmission of the coronavirus that causes COVID-19, because the crowded classrooms, dining facilities, and dormitories that are commonplace features of ordinary campus life could cause large-scale outbreaks of COVID-19 until the pandemic subsides. Notwithstanding mitigation measures, cases continue to rise nationwide, and to date there have been more than 3 million confirmed cases of COVID-19 and more than 130,000 deaths.

B. ICE's Response To The Pandemic

International students can obtain F-1 visas to attend American universities. Eligibility to maintain F-1 status is governed by 8 U.S.C. § 1101(a)(15)(F)(i), which requires students to enroll in a “full course of study,” and 8 C.F.R. § 214.2(f), which generally limits the number of online credits that a visa holder may enroll in per term. *See* 8 C.F.R. § 214.2(f)(6)(i)(G) (limiting the number of credits for an F-1 visa to “one class or three credits per session”).

In the early stages of the pandemic, the federal government recognized that many universities would be able to protect their students' health and safety—while continuing to carry out their missions—only by teaching students remotely. Accordingly, on March 9, 2020, ICE's Student and Exchange Visitor Program (“SEVP”) division issued a guidance document recognizing the “fluid and rapidly changing” nature of the situation and stating that the agency

“intend[ed] to be flexible with temporary adaptations,” including “online instruction.” Ex. 1 at 1, 3 (“March 9 Guidance”).¹ Four days later, the division issued another guidance document expressly exempting F-1 visa holders from the rule that they must attend most classes in person. Ex. 2 at 1 (“March 13 Guidance”). ICE stated that students holding F-1 visas could attend remote classes while retaining their visa status, and made clear that this arrangement was “in effect for the duration of the emergency.” *Id.*

C. Harvard’s And MIT’s Responses To The Pandemic

In light of the rapidly developing pandemic, Harvard and MIT substantially closed their campuses and transitioned to online instruction in March 2020. Over the spring and summer, Harvard and MIT each individually engaged in careful, deliberative processes that assigned priority to the safety of students, faculty, staff, and the community, as well as their institutional objectives of continuing to deliver educational services and a meaningful experience to their students. *See* Garber Decl. ¶¶ 6-9; Barnhart Decl. ¶¶ 6-13. Harvard and MIT undertook this planning in part in reliance on SEVP’s statement in the March 13 Guidance that, because of the pandemic, students on F-1 visas would not be required to attend in-person classes, and that the exemption for these students would remain “in effect for the duration of the emergency.” March 13 Guidance at 1. *See* Elliott Decl. ¶ 5; Barnhart Decl. ¶ 12.

Since March 2020, Harvard and MIT each established working groups to inform their responses to the pandemic. Harvard has established eight formal committees and groups to inform its response to the pandemic, including groups advising on approaches for limiting viral transmission on campus and a committee to advise on how to ensure adequate and effective

¹ “Ex.” citations refer to exhibits to the Declaration of Felicia H. Ellsworth in Support of Plaintiffs’ Motion for a Temporary Restraining Order.

contact tracing for on-campus community members. Garber Decl. ¶ 7. Similarly, MIT has created working groups on all aspects of its response, including a team of senior faculty and administrators charged by MIT's senior leadership with examining options and making recommendations for the 2020-2021 academic year. Barnhart Decl. ¶ 7. Both institutions have collaborated with state and local officials as well as other institutions in Massachusetts to analyze their respective responses to the pandemic. Garber Decl. ¶ 8; Barnhart Decl. ¶ 8.

On June 3, 2020, Harvard announced that the majority of its graduate instruction in the fall 2020 semester would take place online, and on July 6, 2020, the Harvard Faculty of Arts and Sciences announced its decision to offer undergraduate instruction for the 2020-2021 academic year fully online. Garber Decl. ¶¶ 15-16. Harvard is offering limited on-campus housing to undergraduate students, prioritizing those students who are unable to engage effectively in remote learning from their homes, based on their limited access to technology, socioeconomic adversity, and other considerations. *Id.* ¶ 16. No more than 40% of undergraduate students will be allowed to return to campus in the fall 2020 term. *Id.*

On July 7, 2020, MIT announced that it would implement a hybrid on-campus and online program for the 2020-2021 academic year. Barnhart Decl. ¶¶ 13-14. Specifically, seniors and a limited number of other undergraduate students with particular needs will be allowed on campus in the fall. *Id.* ¶ 14. Students on campus will be offered online classes, with some in-person instruction. *Id.* Students off campus will be offered instruction entirely online. *Id.* Graduate programs will offer varied amounts of in-person and online instruction. *Id.*

Harvard and MIT reached those decisions after four months of extensive deliberation and consultation with experts, faculty, staff, students, and community members. They cannot easily reverse course now, only weeks before the fall semester, to create plans that include increased in-

person sessions, nor is it their judgment that they could do so without increased risk. *See* Garber Decl. ¶ 17; Barnhart Decl. ¶¶ 16, 20. Both Harvard and MIT intend for their faculty members to focus on providing robust and meaningful learning experiences through online media. Requiring those faculty to plan for a potential adjustment to on-campus instruction now would substantially detract from that focus. Harvard and MIT made a considered judgment that increasing the numbers of in-person sessions beyond those planned would pose risks not only to students, but also to faculty, staff members, and contractors—including facilities workers, janitorial staff, support staff, and others—of contracting COVID-19 through increased interactions with students and other faculty and staff. *See* Garber Decl. ¶¶ 11-13; Barnhart Decl. ¶ 16.

D. Effects On Harvard And MIT Students

Students have also relied on the March 13 Guidance in making arrangements for their education in the fall. *See* Elliott Decl. ¶ 12; Barnhart Decl. ¶¶ 19-20. Many students have already incurred substantial, irrecoverable costs associated with attending college in the 2020-2021 academic year. Students have taken out loans, made travel arrangements to move to or near campuses, and entered leases for housing arrangements.

Moreover, for many students who have remained in the United States during the pandemic in reliance on ICE's March 13 guidance, returning to their home countries may be impractical or extremely burdensome due to travel restrictions, family obligations, or prohibitive cost. Barnhart Decl. ¶ 19. Students who are able to arrange and afford a return home confront the possibility of lengthy flights, where they may be exposed to COVID-infected passengers. Even if students are able to return safely to their home countries, a considerable share of them will face insurmountable hurdles to participating in online instruction, ranging from inadequate, unreliable, or state-managed Internet access, to time zone differences, to personal risks arising from civil unrest or other issues. *See* Elliott Decl. ¶ 12; Barnhart Decl. ¶¶ 19-21, 25-26.

Of the international students who returned abroad during the COVID-19 pandemic, many cannot return to the United States to participate in hybrid or in-person instruction due to travel restrictions imposed by the federal government or an inability to obtain reissue of visa stamps due to the State Department's continued suspension of consular processing of visa applications. Elliott Decl. ¶ 13; Barnhart Decl. ¶ 27. These restrictive measures were introduced due to the pandemic emergency, and they remain in place presumably because the emergency persists.

As a general matter, students must be present in the United States pursuing a full-time course of study in order to retain their F-1 status. Losing F-1 status would have considerable downstream effects for international students. Many plan to begin their careers, or even to pursue employment opportunities during their course of study, using the Optional Practical Training ("OPT") program, which allows eligible students to receive up to 12 months of employment authorization before and/or after completing their academic studies, or STEM OPT, which allows students who have earned a degree in certain science, technology, engineering, and math fields to apply for a 24-month extension of their post-completion OPT employment authorization if certain other criteria are met. *See* Elliott Decl. ¶ 13; Barnhart Decl. ¶¶ 23-24. To take advantage of the OPT program, students must be lawfully enrolled on a full-time basis for one full academic year prior to requesting OPT status. Students who lose their F-1 status are required to start over from scratch; that is, they must reestablish F-1 status and accrue the full academic year in F-1 status from the date it was reinitiated.

E. ICE's Surprise About-Face

On July 6, ICE abruptly changed course, throwing higher education institutions like Harvard and MIT into chaos and causing significant anxiety among international students. ICE announced it was rescinding its COVID-19 exemption for international students, requiring all students on F-1 visas whose curricula are entirely online due to COVID-19 to depart the country

if they are currently present, and barring any such students currently abroad from entering or reentering the United States. Ex. 3 at 1 (“July 6 Directive”). ICE also required schools whose classes would be entirely online to submit an “operational change plan” no later than Wednesday, July 15, 2020—nine days after the change was announced—and required universities to file a new form with the agency for each of its thousands of students on F-1 visas by August 4, 2020. *Id.* at 3.

ICE announced this sea change without notice or comment and without any explanation of its consideration of the health of students, faculty, university staff, or the surrounding communities, the reliance of both students and universities on ICE’s statements that the exemptions would be “in effect for the duration of the emergency” posed by COVID-19, or the absence of other options for universities to provide their curriculum to many of their international students. Even though the COVID-19 pandemic is still ongoing—indeed, it is increasing throughout the nation—ICE’s decision means to force universities to conduct in-person classes notwithstanding university and public health officials’ judgment that it is neither safe nor educationally advisable to do so.

LEGAL STANDARD

A court evaluating a motion for a temporary restraining order considers the traditional four factors for emergency relief: (1) the likelihood the movant will succeed on the merits; (2) whether the movant is likely to suffer irreparable harm in the absence of preliminary relief; (3) the balance of equities; and (4) whether an injunction is in the public interest. *Commerce Bank & Tr. Co. v. Prop. Administrators, Inc.*, 252 F. Supp. 3d 14, 16 (D. Mass. 2017); *see Winter v. Natural Resources Defenses Council, Inc.*, 555 U.S. 7, 20 (2008); *Bruns v. Mayhew*, 750 F.3d 61, 65 (1st Cir. 2014). All four factors are satisfied here.

ARGUMENT

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

Plaintiffs are likely to succeed on the merits of their claims. The Administrative Procedure Act (APA) directs courts to “set aside” agency action that is “arbitrary, capricious, [or] an abuse of discretion,” or that is taken “without observance of procedure required by law.” 5 U.S.C. § 706(2)(A), (D). The July 6 Directive fails these basic statutory requirements, for at least three reasons. First, the Directive “entirely fail[s] to consider ... important aspect[s] of the problem,” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983), namely (a) the significant harms imposed on universities and students by ICE’s change in position and (b) the reliance interests engendered by ICE’s prior statements taking the contrary position. Second, the Directive does not identify *any* reasoned explanation, much less one that could justify ICE’s decision. Finally, the Directive violates the APA’s notice-and-comment rulemaking requirement.

A. The Directive Is Arbitrary And Capricious Because It Fails To Consider Either The Harms That The Change Would Impose Or Plaintiffs’ Reliance On ICE’s Prior Policy

Plaintiffs are likely to succeed on their claim that the July 6 Directive is arbitrary and capricious because it “entirely fail[s] to consider ... important aspect[s] of the problem.” *State Farm*, 463 U.S. at 43; *see also Dep’t of Homeland Sec. v. Regents of the Univ. of California*, No. 18-587, 2020 WL 3271746, at *11 (U.S. June 18, 2020). The Directive’s abrupt about-face regarding the legal regime governing international students in the United States will have profound effects on Plaintiffs and their international student populations—forcing Plaintiffs to abruptly reconsider plans that they drew up over a months-long process to protect the health and safety of their community members, and imposing devastating consequences on international students who will be forced to leave the United States or be barred from returning in the fall. But

the Directive contains no evidence *at all* that ICE considered these significant effects in devising its new policy—or the fact that Plaintiffs and their students had relied on ICE’s own prior policy in formulating their fall plans. ICE may not announce such a dramatic policy shift “without any consideration whatsoever” of these effects. *Regents*, 2020 WL 3271746, at *13. “That alone” renders the Directive arbitrary and capricious, requiring vacatur. *Id.* at *14.

1. The policy announced by the Directive will certainly impose significant harms on Plaintiffs and their students, faculty, and staff. It is a basic rule of administrative law that an agency must “pay[] attention to the advantages *and* the disadvantages of [its] decisions.” *Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015). But the Directive reflects no consideration of the considerable harms that ICE’s new policy imposes on Plaintiffs and their students, faculty, and staff.

For one, the policy announced by the Directive will require Plaintiffs to reconsider plans that they have spent months drafting with the input of a broad array of experts and that are designed to protect the safety and health of all of their community members—and to do so only weeks before the fall semester begins. Since March 2020, Harvard and MIT have engaged in extensive deliberative processes. *See* Garber Decl. ¶ 6; Barnhart Decl. ¶¶ 6-10. Harvard, for instance, convened eight formal committees and groups to inform its response to the pandemic, including a Coronavirus Advisory Group that advised the University on approaches for limiting viral transmission on campus and a Medical Expert Advisory Group that advised the University on COVID issues relating to health services. Garber Decl. ¶ 7. MIT has likewise established a series of working groups to analyze the impact of the pandemic and develop plans for the 2020-2021 academic year, and engaged in robust consultation with the community and health experts. Barnhart Decl. ¶¶ 6-7. Based on these extensive efforts, Harvard concluded that the vast

majority of its degree-granting schools would not be able to safely implement university-wide in-person learning for the fall semester. Garber Decl. ¶ 15. MIT concluded that most of its classes could not safely be offered in-person on a university-wide basis. Barnhart Decl. ¶¶ 13-14.

The policy announced by the Directive wholly upends Plaintiffs' plans, as well as similar plans formulated by other colleges and universities across the country. As of July 6, ICE's policy requires both Harvard and MIT either to go back to the drawing board and draft new operational plans only weeks before students were scheduled to begin the fall semester or to absorb the considerable academic disruption, community health risk, and additional cost inflicted by ICE's go-home order. After months of careful planning, Plaintiffs cannot be expected to turn on a dime, overhaul their physical plants, and develop and implement COVID-safe plans based on university-wide in-person instruction. Garber Decl. ¶ 17; Barnhart Decl. ¶¶ 16, 20. In effectively requiring both schools to implement such new measures, the Directive imposes a substantial (and, as explained below, irreparable) harm on Plaintiffs themselves.

ICE's new policy also imposes devastating harms on international students. If Plaintiffs do not alter their operational plans, ICE's new policy will leave thousands of international students enrolled at both Plaintiff institutions without meaningful access to educational resources in the fall semester—a semester that is now only weeks away. For instance, there are students at both institutions who remained in the United States after Plaintiffs shifted to online education in the spring—whether because those students' home countries were unsafe, travel restrictions would bar them from reentry to the United States if they left, or they simply had no home to which they could return. *See* Elliott Decl. ¶¶ 12-13; Barnhart Decl. ¶¶ 19-21, 26-27. Other students simply *cannot* participate in online learning in their home countries. Some are from countries like Syria or Ethiopia, in which civil war or other crises have made Internet access and

study all but impossible. Others might be drafted in their home countries, might face threats or abuse based on their sexual orientation, or might not be able to access mental health treatments. These students will be unable to learn if ICE's new policy goes into effect. They cannot transfer to other educational institutions at this late date, so they will be forced to forfeit their education-based visas and return to their countries of origin—in many cases returning to conditions of social unrest, economic instability, or other threats to their continued safety.

The Directive contains no indication that the agency considered any of these substantial harms that its policy change would impose on Plaintiffs and their students. Because it “should have considered those matters but did not,” its “failure was arbitrary and capricious in light of the APA.” *Regents*, 2020 WL 3271746, at *15.

2. As importantly, the Directive does not reflect any consideration of the “serious reliance interests” that ICE engendered by previously—and repeatedly—stating in formal agency guidance that international students could remain in the United States while taking classes online. *Regents*, 2020 WL 3271746, at *14; *Encino Motorcars, LLC v. Navarro*, 136 S. Ct. 2117, 2126 (2016). As discussed, *supra* pp. 3-4, on March 9, 2020, SEVP issued a guidance document stating the agency's policy to permit “temporary adaptations”—including shifts to “online instruction”—that universities might take to protect student health and safety. March 9 Guidance at 1, 3. On March 13, 2020, ICE issued guidance expressly permitting F-1 students to “participate in online or other alternate learning procedures” and stating that such classes would be counted “toward a full course of study” notwithstanding prior regulations. March 13 Guidance at 1. The March 13 Guidance explicitly assured that the policy would be “in effect for the duration of the emergency.” *Id.*; *see also id.* at 1-2 (same policy for international students who return to their home countries but continue to take classes online).

Defendants cannot dispute that “the duration of the emergency” has not ended. Acting in reliance on the agency’s guidance that its March policy—permitting F-1 visa holders to study online and retain their visa status—would remain in place as long as “the emergency” continued, Plaintiffs engaged in extensive deliberative processes that took into account a wide range of factors, the health and safety of their community members first and foremost among them. *See supra* p. 10. Both schools expressly relied on ICE’s guidance regarding international students—that, “[g]iven the extraordinary nature of the COVID-19 emergency,” international students would be able to enroll in online-only programs consistent with federal law—in formulating their decisions. *See* Elliott Decl. ¶ 5; Barnhart Decl. ¶ 12. International students enrolled at Harvard and MIT likewise made plans on the basis of the agency’s announcements—including traveling to or remaining here, leasing property, and forgoing opportunities to attend other institutions.

The Directive does not even acknowledge these “serious reliance interests,” *Encino Motorcars*, 136 S. Ct. at 2126, much less explain why they were (in the agency’s view) less important than whatever factors motivated the agency’s decision. “Making that difficult decision was the agency’s job, but the agency failed to do it.” *Regents*, 2020 WL 3271746, at *15.

B. The Directive Is Arbitrary And Capricious Because ICE Has Failed To Articulate Any Plausible Rationale That Could Justify It

Plaintiffs are also likely to succeed on their claim that the July 6 Directive is arbitrary and capricious because it does not articulate *any* rationale that would justify ICE’s decision. It is “a fundamental requirement of administrative law ... that an agency set forth its reasons for decision; an agency’s failure to do so constitutes arbitrary and capricious agency action.” *Amerijet Int’l, Inc. v. Pistole*, 753 F.3d 1343, 1350 (D.C. Cir. 2014). “[C]onclusory statements will not do; an agency’s statement must be one of *reasoning*.” *Id.* (internal quotation marks omitted); *see also Dep’t of Commerce v. New York*, 139 S. Ct. 2551, 2569 (2019) (an agency

must “articulate[] a satisfactory explanation for [its] decision”). Here, the Directive sets forth no reasoning sufficient to justify the agency’s dramatic change of policy. The sole strand of reasoning articulated in the Directive appears to be that, although some “accommodations” with respect to visas may be required “to provide flexibility to schools and ... students,” there is now a “concordant need to resume the carefully balanced protections implemented by federal regulations.” July 6 Directive at 1.

Such *ipse dixit* is insufficient to justify a policy change of such magnitude. For one, to the extent the Directive’s reasoning is taken at face value, the justification it offers fails at the threshold. To the extent the premise of the Directive’s reasoning is that the public-health conditions that justified the issuance of the COVID-19 exemption in March 2020 have abated, that premise is mistaken. The national emergency the President declared on March 13, 2020, is still in effect. The number of COVID-19 cases in the United States passed three million this week, and the number of daily new cases (currently roughly 50,000) is *double* what it was only one month ago.² To the extent the agency’s decision here rested on its public-health judgment, basic principles of administrative law required it to “examine[] ‘the relevant data’”—including the fact that the rate of viral spread in the United States is increasing, not decreasing—and to “articulate[] ‘a satisfactory explanation’ for [its] decision, ‘including a rational connection between the facts found and the choice made.’” *Dep’t of Commerce*, 139 S. Ct. at 2569 (quoting *State Farm*, 463 U.S. at 43). In stark contrast to the planning decisions made by Plaintiffs after months of consultation, deliberation, and recourse to expertise, the Directive’s conclusory statement bears no resemblance to such a reasoned decision.

² See *Coronavirus in the United States: Latest Map and Case Count*, N.Y. Times, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> [<https://perma.cc/25D3-UPBH>] (last visited July 7, 2020).

Indeed, ICE’s abrupt change of policy—unsupported by any apparent “attention to the advantages and the disadvantages of [its] decision[],” *Michigan*, 135 S. Ct. at 2707—appears driven not by a reasoned evaluation of the policy considerations but by political factors untethered to the merits of the policy. “[V]iewing the evidence as a whole,” it is hard to understand ICE’s decision “in terms of” its stated rationale; rather, the evidence “reveal[s] a significant mismatch between the decision the [agency] made and the rationale [it] provided.” *Dep’t of Commerce*, 139 S. Ct. at 2575. A high-level agency official has openly acknowledged, in fact, that the real basis for the change was not any conclusion that the public-health emergency had eased, but rather that the Administration has decided to use students’ visas as a cudgel to coerce universities into resuming in-person classes—contrary to universities’ judgments made to protect the health and safety of their communities. Just last night, Acting Deputy Secretary of Homeland Security Ken Cuccinelli stated that the purpose of the agency’s change in policy was to “encourage schools to reopen.” Bowden, *Cuccinelli Says Rule Forcing International Students To Return Home Will ‘Encourage Schools To Reopen,’* *The Hill*, July 7, 2020.³ The Directive, in other words, offers “an explanation for agency action that is incongruent with” public statements regarding ICE’s change in policy. *Dep’t of Commerce*, 139 S. Ct. at 1575.

“The reasoned explanation requirement . . . is meant to ensure that agencies offer genuine justifications for important decisions, reasons that can be scrutinized by courts and the interested public.” *Id.* at 2575-2576. The agency has failed to satisfy that requirement, and Plaintiffs are therefore likely to succeed on this claim, too.

³ <https://thehill.com/homenews/administration/506248-cuccinelli-says-rule-forcing-international-students-to-return-home> (last visited July 7, 2020).

C. The Directive Violates The APA's Notice-And-Comment Requirement

Finally, Plaintiffs are also likely to succeed on their claim that the Directive violates the APA's notice-and-comment requirement. The APA requires this Court to hold lawful and set aside agency action taken "without observance of procedure required by law." 5 U.S.C. § 706(2)(D). The Directive was issued in contravention of the APA's procedural requirements and should be set aside on that basis. The Directive is a "rule" within the meaning of the APA, as it is "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy." *Id.* § 551(4). In general, the "agency process for formulating, amending, or repealing [such] a rule" (*id.* § 551(5)) must comply with the APA's requirements of notice-and-comment rulemaking. *Id.* § 553. While the APA exempts certain rules from notice and comment procedures, *see id.* § 553(b), the Directive does not fall within any of those exemptions. Rather, it is a "substantive" rule that ICE was required to—and did not—issue pursuant to § 553's notice and comment provisions.

First, the Directive is plainly a substantive rule subject to notice-and-comment requirements. As the Supreme Court has explained, an agency must employ notice-and-comment procedures before issuing a rule that has the "force and effect of law." *Chrysler Corp. v. Brown*, 441 U.S. 281, 302-303 (1979); *N.H. Hosp. Ass'n v. Azar*, 887 F.3d 62, 70 (1st Cir. 2018). The Directive does just that: It obligates F-1 students to take an in-person course load to study in the United States, on pain of visa revocation, and obligates universities that were offering online instruction to submit operational change plans to the agency. It also conditions "maintain[ing] [noncitizens'] F-1 and M-1 nonimmigrant status" on their compliance with the policy. July 6 Directive at 1. And the Acting Deputy Secretary of Homeland Security yesterday referred to the July 6 Directive as "setting the rules" for the fall 2020 semester. Bowden, *supra*.

No exceptions to the notice-and-comment requirement apply. ICE cannot, for instance, defend the Directive as an interpretive rule not subject to the notice-and-comment requirement. *See* 5 U.S.C. § 533; *Perez v. Mortgage Bankers Ass’n*, 575 U.S. 92, 96 (2015). An interpretive rule cannot “create[] rights, assign[] duties, or impose[] obligations, the basic tenor of which [are] not already outlined in the law itself.” *N.H. Hosp. Ass’n*, 887 F.3d at 70. But the Directive *does* “assign[] duties” to universities and students via a dramatic reversal in agency policy. *Id.*

Nor can ICE argue that “good cause” would support issuing the Guidance without going through notice-and-comment procedures. There is no plausible argument here that notice and/or public comment would be “impracticable, unnecessary, or contrary to the public interest.” 5 U.S.C. § 553(b)(B). This standard imposes a “high bar,” pursuant to which the exception applies “only in those narrow circumstances in which ‘delay would do real harm.’” *United States v. Valverde*, 628 F.3d 1159, 1164 (9th Cir. 2010); *see also Levesque v. Block*, 723 F.2d 175, 184 (1st Cir. 1983) (the good cause exception “is narrowly construed”). Here, by contrast, it is the sudden imposition of the policy change—without notice and only weeks before the fall semester begins—that will “do real harm.” *Id.* Plaintiffs are thus likely to succeed on this claim, too.

II. PLAINTIFFS WILL BE IRREPARABLY INJURED ABSENT EMERGENCY RELIEF

Plaintiffs readily satisfy the other requirements for emergency relief. Harvard and MIT will be irreparably injured if ICE’s policy change takes effect. An injury is irreparable when it “cannot adequately be compensated for either by a later-issued permanent injunction, after a full adjudication on the merits, or by a later-issued damages remedy.” *Rio Grande Cmty. Health Ctr., Inc. v. Rullan*, 397 F.3d 56, 76 (1st Cir. 2005). Plaintiffs’ injury satisfies that standard.

ICE has thrown both Harvard and MIT—and much of higher education throughout the country—into chaos. Only weeks before the start of the fall semester, ICE is now demanding that Plaintiffs scrap the plans that Plaintiffs developed over months designed to protect the health

and safety of their students, faculty, and staff, as well as their broader communities in Cambridge and the Greater Boston area. Elliott Decl. ¶ 9; Barnhart Decl. ¶¶ 16, 20. Conversely, if Plaintiffs abide by their plans to operate as safely as possible, the Directive will cause many international students to withdraw or not enroll, thus irreparably damaging Plaintiffs' ability to maintain their vibrant and diverse educational communities. Elliott Decl. ¶¶ 10-11.

Plaintiffs' students will also face irreparable harm if the Directive takes effect. First, although the Directive suggests that students may transfer to universities with an in-person model this fall semester, that is essentially impossible; it is far too late for students to transfer to most other universities in the United States for the upcoming academic year, even if they would want to. Second, some students currently in the United States will face prohibitive difficulties and costs in traveling back to their home countries, placing them at legal peril if they remain in the United States out of immigration status and at potential physical peril if they can depart successfully. Elliott Decl. ¶¶ 12-13; Barnhart Decl. ¶¶ 19-21. Third, students who do return to or stay in their home countries will face enormous challenges continuing their educations, whether due to inadequate or nonexistent Internet access, time zone differences making it impossible for them to participate in class discussions, and fundamental safety concerns. *Id.*

Even if Plaintiffs were somehow able to implement increased in-person or hybrid instruction, many international students would be unable to return to campus because of closures of consular services limiting their ability to obtain visas and travel restrictions that prevent them from leaving their home countries or entering the United States. Elliott Decl. ¶ 13; Barnhart Decl. ¶ 27. Additionally, students participating in hybrid programs from outside the United States would lose their ability to access critical benefits of their nonimmigrant student visa

programs, such as Curricular Practical Training employment and Optional Practical Training employment. Elliott Decl. ¶ 13; Barnhart Decl. ¶¶ 23-24.

In sum, ICE has casually disregarded the extensive planning universities have undertaken over the past few months and thrown the lives of tens of thousands of students into sudden disarray. Students in online-only programs must now consider how they may make the needed arrangements to leave the country and resume their study in remote conditions, often not conducive to their education. Students in hybrid programs must consider how they may enter the country for forced in-person instruction so as to avoid losing their F-1 status. The confusion the Directive has sown thus not only threatens to disrupt this nation's institutions of higher learning; it also will cause severe personal hardship to these international students.

III. THE REMAINING EQUITABLE FACTORS ALSO FAVOR GRANTING A TEMPORARY RESTRAINING ORDER

The remaining equitable factors also favor granting the relief sought. Courts “must weigh the irreparable harm to [Plaintiffs] against the harm to the Government and must determine whether a preliminary injunction would be in the public interest.” *Devitri v. Cronen*, 289 F. Supp. 3d 287, 297 (D. Mass. 2018). “These two inquiries merge in a case like this one, where the Government is the party opposing the preliminary injunction.” *Id.*

While Plaintiffs and their students will suffer irreparable injury as demonstrated above, the government is not harmed by having to adhere to procedures that it announced in March 2020 and that it stated would remain “in effect for the duration of the emergency”—an emergency that is still ongoing. The public and government have an interest in ensuring that higher education institutions are able to provide the best possible educational experience to students *while* also taking necessary precautions to mitigate the COVID-19 public health crisis. When considering the implications of COVID-19 for international students in March, ICE wrote

that “SEVP is focused on ensuring that nonimmigrant students are able to continue to make normal progress in a full course of study,” and that “nonimmigrant students should participate in online or other alternate learning procedures” that universities implement in light of “the extraordinary nature of the COVID-19 emergency.” March 9 Guidance at 1.

In contrast, the Directive has the hallmarks of a politically motivated maneuver to—in the words of the Acting Deputy Secretary of Homeland Security—“encourage schools to reopen,” without regard to the public health judgment of the schools and experts about whether that is safe for students, faculty, and staff. Bowden, *supra*. Plaintiffs’ goal is to welcome all students back to campus for in-person learning as soon as it is safe. However, after four months of close consultation with experts and internal deliberation—and in reliance on ICE’s own prior guidance—Plaintiffs determined that it is not yet prudent to do so. The harm to Plaintiffs and their students from denying a temporary restraining order pending consideration of the issues far outweighs the government’s interest in going back on its word due to its single-minded desire to deny the pandemic conditions and reopen everything, no matter the health risk.

Moreover, the Directive is also contrary to the public interest because it arbitrarily and capriciously hinders universities’ efforts to reduce the chance of community spread of COVID-19. Because higher education institutions do not exist in a vacuum, an outbreak at one poses a threat to the health and safety of everyone in the surrounding community, and ultimately across the Commonwealth. As between a reckless reopening and a carefully planned and orderly system that puts the health of the entire community first, the public interest favors the latter.

CONCLUSION

The Court should enter a temporary restraining order preventing Defendants from implementing the July 6 Directive.

Dated: July 8, 2020

Respectfully submitted,

/s/ Felicia H. Ellsworth
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CERTIFICATE OF SERVICE

I, Felicia H. Ellsworth, counsel for Plaintiffs, hereby certify that this document has been filed through the Court's ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). This document is being sent by express courier to the Defendants at the addresses below and by email.

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2707 Martin Luther King Jr. Ave., S.E.
Washington, D.C. 20528

United States Immigration and Customs Enforcement
500 12th St., S.W.
Washington, D.C. 20536

The Hon. Chad F. Wolf
Acting Secretary of Homeland Security
United States Department of Homeland Security
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Matthew Albence
Acting Director of United States Immigration and Customs Enforcement
United States Immigration and Customs Enforcement
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/s/ Felicia H. Ellsworth
FELICIA H. ELLSWORTH

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS**

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE; and
MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Plaintiffs,

v.

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

Defendants.

Civil Action No. 1:20-cv-11283

DECLARATION OF CYNTHIA BARNHART

I, Cynthia Barnhart, hereby state under the penalty of perjury that the following statements are true and accurate to the best of my knowledge, based on my personal knowledge as well as information compiled and verified by other MIT employees, and that I could testify to these matters if called to do so:

1. I am the Chancellor of the Massachusetts Institute of Technology (“MIT” or the “Institute”), a position I have held since 2014. I have been a member of MIT’s faculty since 1992. In addition to serving as Chancellor, I am currently a Ford Foundation Professor of Engineering and a Professor in the Department of Civil and Environmental Engineering. I

previously served as Associate and Acting Dean of the School of Engineering and co-directed both the Operations Research Center and the Center for Transportation and Logistics.

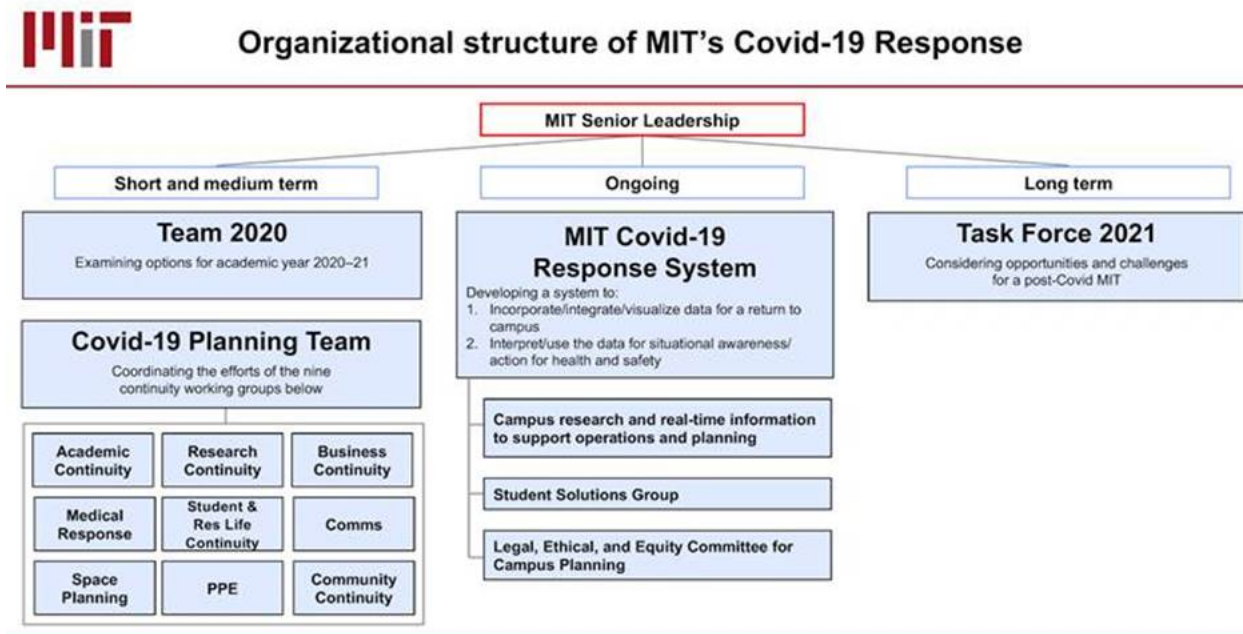
2. In my role as Chancellor, I am a member of MIT President L. Rafael Reif's senior leadership team and am responsible for all aspects of undergraduate and graduate education and residential life. I also have oversight over MIT's international students, including oversight over MIT's International Students Office ("ISO"), which provides support for MIT's thousands of international students.

3. MIT currently has 3,873 active students holding F-1 visas, including students on Optional Practical Training ("OPT"), which allows eligible students to receive up to 12 months of employment authorization before completing their academic studies and/or after completing their academic studies, and students on STEM OPT, which allows students who have earned a degree in certain science, technology, engineering, and math fields to apply for a 24-month extension of their post-completion OPT employment authorization if certain other criteria are met. In addition, MIT has 459 newly admitted students who have not started their programs or F-1 visa status.

4. In my role as Chancellor, I have worked collaboratively for the last several months with President Reif, MIT's leadership, faculty, staff, scholars, alumni, students, parents, and outside advisors in the development and implementation of MIT's plans and operations during the COVID-19 pandemic, including our plans for undergraduate and graduate education this fall.

5. On March 10, 2020, MIT announced that the Institute would suspend in-person classes and transition to virtual instruction for the remainder of the semester, and asked that students not return to campus after spring break. That decision, in which I was directly involved, was made with the goals of helping protect the MIT and broader community against the spread of COVID-19 while delivering excellent education to our students. In a matter of days, the vast majority of MIT's students left campus and the Institute transitioned to online learning for our students.

6. Recognizing that the uncertainty and public health risks posed by COVID-19 for the summer and the future academic year, the Institute quickly shifted to planning for the future. We deployed working groups to analyze and advise on all aspects of the Institute's COVID-19 planning. The following chart lays out some of the different working groups that have been working actively since March on these efforts:



7. One of the working groups established by the Institute was a team of senior faculty and administrators charged in late March 2020 by MIT's senior leadership with examining options and making recommendations for the 2020-2021 academic year. This team—known as Team 2020—worked extensively throughout April, May, and June 2020 to formulate these recommendations and guidance.

8. Team 2020 drew heavily on the expertise and opinions of MIT community members and other local, national, and global leaders in public health. The efforts to employ the expertise and input of the community were significant and included, among other things, numerous community-wide and subgroup-specific surveys, community events such as town halls and small group

discussions, daily morning meetings to discuss issues and solicit input, and senior team meetings with individual academic schools. Team 2020 and MIT's senior leadership received regular input from public health experts on their projections for the course of the pandemic and mitigating efforts.

9. The efforts to prepare for the fall semester have also involved significant and time-intensive participation by many segments of the MIT community. For example, in response to Team 2020's request to the MIT community for input on the options for the fall, we had wide-ranging participation, including:

- a. 425 participants in brainstorming "charettes," a type of intense, collaborative, design process, conducted over the course of multiple days in 69 different breakout sessions, led by another 90 volunteers serving as facilitators and notetakers;
- b. 900 completed and 900 partial responses to an online form, comprising 27,000 text comments; and
- c. 17 self-organized group discussion sessions among students, parents, faculty, staff, and other MIT community members.

10. In addition, President Reif, Provost Martin Schmidt, Vice President for Research Maria Zuber, and I attended town halls with the faculty of each of our five Schools and our College of Computing to present options for the fall and solicit input.

11. These efforts all happened simultaneously with significant additional planning in each of our academic departments, laboratories, centers, and among our students and scholars. Our undergraduate and graduate student leaders provided thoughtful input on the planning for the fall—all while maintaining their education remotely.

12. As part of my work evaluating the options and making recommendations for the fall semester, members of Team 2020 and I reviewed and/or were briefed on the COVID-19 Guidance

for Student and Exchange Visitor Program (“SEVP”) that the United States Immigration and Customs Enforcement (“ICE”) issued in response to the COVID-19 pandemic. On March 13, 2020, ICE issued COVID-19 Guidance for Student and Exchange Visitor Program Stakeholders (“March 13 Guidance”). Pursuant to the March 13 Guidance, students in the United States holding F-1 visas are allowed to “count online classes towards a full course of study” in the event their school temporarily stopped in-person classes, regardless of whether the visa holders remained in the United States or departed the United States. The March 13 Guidance stated that it would remain “in effect for the duration of the emergency.”

13. After months of analysis and deliberation, MIT announced on July 7, 2020 that it would allow only a very limited number of undergraduates to be on campus during the Fall 2020 semester in order to help protect the community against COVID-19. In his letter to the community, attached hereto as Exhibit 1, President Reif described the difficult and complicated decision and MIT’s reliance on the bedrock principles of “protecting the health of our entire community, preserving our ability to deliver on MIT’s mission of teaching and research, enabling students to stay on track to their degrees—and doing all this with equity, fairness and caring.” The decision was informed by the current public health situation and “reflects our awareness of how much we do not know about the future of the virus or the efforts to fight it. As the pandemic continues to rage across the US, we believe our approach represents the best, most responsible way for our community to begin to resume residential education. Crucially, it preserves our capacity to make it possible for any student on campus who may develop Covid-19 to isolate in place.”

14. In an effort to balance community safety and student experience and success, MIT announced the following decisions for coursework for the upcoming academic year:

- a. Of the undergraduates, only rising seniors will be invited back to campus for the fall; other undergraduates may be invited back to campus in the spring (subject to re-evaluation before the start of the spring semester);
- b. In addition, a small number of other students whose circumstances require special consideration (for example, because of safety or hardship reasons) will be allowed to request access to campus housing; and
- c. For undergraduate students not living on campus, subjects will be taught online; for undergraduate and graduate students on campus, there will be a combination of online and in-person instruction.

15. On July 6, 2020, ICE issued Fall 2020 COVID-19 Guidance (“July 6 Directive”).

The July 6 Directive largely withdraws the exception that SEVP announced in March. The July 6 Directive states that if a school provides only online course instruction in the fall, students holding F-1 visas may not remain in the United States to pursue their studies. It provides that students holding F-1 visas “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.” It is our current understanding that if the July 6 Directive takes effect, MIT students with F-1 student visas who are enrolled in remote programs will face immigration consequences if they do not leave the country within 15 days of the start of the Fall 2020 term. Further, it is our understanding that MIT students with F-1 student visas who are enrolled in programs that are a hybrid of remote and in-person learning but remain outside the United States will not be permitted to participate in their coursework remotely and also maintain their F-1 visa status.

16. The July 6 Directive, if it takes effect, will have significant negative impacts on MIT students and MIT as an institution. First, as detailed above, MIT has expended tremendous energy

over the preceding four months to develop guidance for the Institute's operations to take reasonable measures to prioritize the health and safety of its students, faculty, staff, and the surrounding community while maintaining the vibrant and rigorous educational community at the Institute. Because of the timing of the July 6 Directive, MIT will not be able to significantly change its plans and procedures or to alter the structure of its remote learning programs at this stage.

17. International students at MIT bring enormous value to the intellectual community in the form of diverse perspectives and varied research interests. Those students are involved in cutting-edge research and contribute through their participation in the collaborative learning environment as well as by acting as teaching assistants for undergraduate students. Given the timing and implications of the July 6 Directive, MIT is faced with an impossible choice of either losing students who bring immense benefits to the school in order to follow its current, well-considered plan, or taking steps to retain international students that contradict its reasoned public health judgments in response to the pandemic.

18. The July 6 Directive also creates an enormous administrative hurdle for MIT during a time when administrators are devoting the majority of their time and effort to respond to the pandemic. Under the Directive, schools must update all F-1 records and issue a new Form I-20 to all F-1 visa students no later than August 4, 2020. MIT will be required to generate thousands of forms in under a month to verify eligibility to pursue studies in the U.S.

19. The short timeframe of the July 6 Directive before the start of the fall semester not only makes it difficult for the Institute to change course; it makes it even more difficult for international students to make alternative arrangements. International flights are expensive and in the case of many countries, direct flights are unavailable, necessitating multiple transfers, which increases the risk of COVID-19 with each leg of the journey. International students will need to make arrangements for housing in their home countries and will likely face financial hardship in

breaking leases or finding subletters for their housing, if permitted, in the United States. Some of our F-1 visa students are living in emergency on-campus housing that has been provided by MIT. In many cases, providing this emergency on-campus housing was essential to ensuring that students, including F-1 students, could continue their academic progress during the pandemic. Requiring these students to leave the United States will mean they must leave the emergency housing that was set up specifically to ensure their ability to continue their studies.

20. For students with families and children, these challenges are exacerbated. Significant others of our F-1 students will need to make alternative arrangements and many of our students with young children will face difficulties in enrolling students in daycares and schools outside of the country. Some families will be forced to split apart in order to comply with the July 6 Directive.

21. Leaving the United States will also result in unique hardships for some of our students. For example, some of our students with disabilities have housing accommodations that would not be available to them in their home countries. Other students could face risk of arrest or other persecution in their home countries based on their sexual orientation or gender identity.

22. F-1 students are heavily involved in research at MIT. It will be very difficult for some students to continue their research remotely—even where direct lab work is not a principal component of a student's work—because coordinating research collaboration and accessing necessary resources will not be possible in their home countries.

23. Many F-1 students also planned to pursue employment through OPT or OPT with the STEM extension. If they are forced to leave the United States under the July 6 Directive, they will be unable to pursue their OPT plans. We have heard from many of our students who planned to use OPT to launch their careers, and the pause in their F-1 status will prevent them from doing so.

24. In addition to the concerns with post-completion OPT status, students holding F-1 visas typically have the opportunity to pursue pre-completion practical training, internship, and

experiential learning opportunities within the United States, which complement the in-classroom instruction provided by MIT. In many cases, these opportunities are with preeminent U.S.-based labs, centers, and companies. In other cases, students have research assistantships or other experiential opportunities with MIT labs or faculty. Some of these opportunities are simply not available to students residing outside the United States. And those that are permitted may be extremely difficult to pursue from abroad, as students would need to coordinate meetings and other efforts with team members and supervisors in the United States.

25. The Institute also relies on international graduate students to help teach some of the courses at the Institute. If F-1 students are prevented from returning to or remaining in the United States under the July 6 Directive, they will be forced to attempt teaching in the face of time zone difficulties and internet connectivity issues. Some F-1 students will be returning to home countries where the internet has been made unavailable by the governments in those countries. Other countries have put in place severe internet restrictions that make websites and platforms essential to academic progress unavailable.

26. This week, we have also heard from students who will face dangers if forced to return to their home countries. Civil unrest and violence are ongoing in many of the countries where our international students will return and those conditions will not only make remote learning and teaching difficult, but they will pose potential harms to our students. In addition, many F-1 students are from countries or communities that are experiencing greater numbers of daily COVID-19 cases than Massachusetts or Cambridge. The health risks associated with COVID-19 are particularly acute for our F-1 students who have underlying conditions that place them at high risk of severe illness related to COVID-19.

27. If forced to leave the United States, many students will face a difficult and uncertain path to returning to the United States to continue their educations. At this stage, U.S. consular

offices are closed for routine visa appointments. Even when the consular services reopen in the students' home countries, many students live great distances from the consular offices and will be required to pay large sums to reinstate their visas. Many countries have long waits for future visa appointments and will be delayed in returning to complete their degrees if they are forced to return home at this stage.

28. Moreover, the July 6 Directive directed that schools offering a hybrid model “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.” To comply with this requirement, MIT would need to issue a new Form I-20 for each of its potentially thousands of students on F-1 status and to do so within 21 business days of the July 6 Directive. Doing so is not only unduly burdensome, but, in many cases, impossible because students are generally not required to even register for particular classes until closer to the start of the semester.

29. In addition to harms described above affecting large numbers of MIT students, the Institute has also heard from individual students from all parts of the world who will face challenges by remaining in or being forced to return to their home countries:

- a. Not being safe or welcome in their home country because of their sexual orientation;
- b. Restricted Internet access, limitations on electricity, and internet firewalls that make certain communication tools unavailable, making remote learning difficult, if not impossible;
- c. Social unrest; and
- d. Flight restrictions that make airline tickets prohibitively expensive.

30. MIT's goal is to welcome all students back to campus for in-person learning as soon as it can responsibly do so. At this point, however, it would not be feasible for MIT to safely implement Institute-wide in-person learning for the Fall 2020 semester. MIT invested significant time devising, planning, and implementing the 2020-2021 curriculum in a manner that did not anticipate widespread in-person learning, and it would not be possible for MIT to implement the necessary safety measures required for Institute-wide in-person learning for the Fall semester, particularly in light of the uncertainty surrounding COVID-19.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on this day, July 8, 2020

/s/ Cynthia Barnhart
Cynthia Barnhart

EXHIBIT 1

Further decisions about the Fall semester

July 07, 2020

To the members of the MIT community,

This letter outlines our latest decisions about the Fall semester.

The content focuses mainly on undergraduates. But I hope everyone will take time to understand our choices, because they highlight the deep changes we must all make, and sustain, to continue protecting our community against Covid-19.

You will also find some key details for graduate students and an important message for staff. We will share more information as soon as we have it.

You can learn more about all the decisions covered here in this extensive FAQ.

How we decided

As we described previously, in planning for the Fall, we took a very MIT approach: broadly consultative, science-based and intensely analytic.

To navigate the many painful trade-offs, we relied on bedrock principles: protecting the health of our entire community, preserving our ability to deliver on MIT's mission of teaching and research, enabling students to stay on track to their degrees – and doing all this with equity, fairness and caring.

In terms of public health, our strategy is conservative and reflects our awareness of how much we do not know about the future of the virus or the efforts to fight it. As the pandemic continues to rage across the US, we believe our approach represents the best, most responsible way for our community to begin to resume residential education. Crucially, it preserves our capacity to make it possible for any student on campus who may develop Covid-19 to isolate in place.

Yet however sound and careful our process, I know these decisions come with a real human cost. They will require all of us, especially our students, to adjust to a new set of hard realities – coming on top of a long season of Covid-driven disruption and dislocation. I wish we could offer you an easier answer, but Covid-19 is simply not yet under control.

Given the many Covid-prevention requirements we have spelled out before – such as mandatory testing, face coverings and physical distancing, and restricted building access – as well as the decisions below, we should all expect a temporary version of MIT that will feel unfamiliar and far from ideal. But I am hopeful that, once we become accustomed to this new reality, we will adapt constructively and find relief and inspiration in getting back to the work of teaching and learning.

What we decided

For undergraduates

Keeping the whole community safe will require that everyone living or working on campus be tested for the virus as often as twice a week, that each undergraduate living on campus has a private room and that the overall campus population – students, faculty, postdocs and staff – be kept far below our normal levels. Those constraints mean that we can invite back only a limited number of undergraduates for the Fall term.

We are inviting back two groups:

- **Rising seniors**, because they have the least flexibility to satisfy degree requirements and because being on campus is especially important for essential work in their programs, from

capstone subjects to lab research and theses.

- **And a relatively small fraction of other students whose circumstances require special consideration in terms of their safety, living conditions, visa status or other hardship.** We will announce the process to be considered for this second category soon.

Please note: Yesterday, the Department of Homeland Security (DHS) issued new rules about international students studying in the US at institutions that are shifting to online teaching for the Fall term. This ruling has potentially serious implications for our international students, both undergraduate and graduate; we are reviewing the details and will be in touch with all affected students as soon as possible.

Some seniors will be eager to return to campus. Others whose academic requirements lend themselves to remote learning may prefer not to return to campus this semester. We urge you to talk through this decision with your family, your academic advisor and the undergraduate administrator for your department.

We appreciate the thoughtful position of the 2021 Class Council that seniors should be guaranteed space on campus for both semesters, and we know it must feel sharply disappointing that so many elements of the typical pre-pandemic senior class experience are out of reach. However, given the tight Covid-imposed limits on the number of students we can responsibly house, committing now to having the senior class in residence for both Fall and Spring would have the unintentional result of keeping many other students from having any campus experience this academic year.

As a matter of equity, we believe it is important, in this academic year, to enable every student to spend at least one term on campus. Our current hope is to offer every first-year, sophomore and junior the opportunity to be on campus for the Spring semester.

To help make that possible, we will spend the Fall term studying how to make campus residential life work best in the shadow of the virus and will closely track medical and policy advances that could help protect against it and control its spread. What's more, with new housing coming online by the start of the Spring term, we also expect to have more beds available.

Under our current plan, *given the facts we know at this time*, seniors would *not* be on campus next spring. If conditions change fundamentally – for example, if an effective vaccine or treatment becomes widely available – we would be delighted to offer seniors the opportunity to be on campus for the Spring term as well.

To attend to the incoming Class of 2024, we are working on innovative strategies for delivering a special MIT first-year experience. First-year students will receive more information about these efforts next week.

Other important decisions about the Fall semester:

- **For students not living on campus, subjects for undergraduates will be taught online. For students on campus, there will be a combination of online and in-person instruction.** Departments will make arrangements to make sure all students are able to make progress academically. Because MIT has helped pioneer online learning, our faculty members have access to first-class expertise and resources as they reinvent their classes for the Fall term. This past spring, faculty rose to the challenge of making their subjects digital in two frantic weeks. This summer, they are drawing on what they learned through that process to further adapt and prepare. We are striving to deliver a compelling educational experience that meets MIT's standards of excellence. To the faculty members and instructional staff reading this letter: Please know how much we appreciate the exceptional efforts you are making this summer to make our first full Covid-era semester a success for everyone.
- We know that many undergraduate students and their families may be facing significant financial pressures as a result of the pandemic. To help ease those concerns, we are taking a number of steps:
 - **We are eliminating the tuition increase announced in early March.**

- **We will provide a Covid-era grant of \$5,000 to offset what undergraduates pay for attending MIT.** Students who owe MIT more than \$5,000 will receive a \$5,000 credit. Students who owe MIT \$5,000 or less will have their bill zeroed out.
- **We are** adjusting our aid budget to meet families' increased financial needs.
- **In calculating aid awards for students living off-campus, we will assume a room-and-board expense of \$4,000 per semester, which will serve to increase financial aid and help defray living expenses.**
- **We will offer each student, whether remote or on-campus, a paid undergraduate research, teaching or service opportunity, with a stipend up to \$1,900.**
- Because the ability to collaborate on p-sets and projects is so essential to the MIT experience, **we will loan a cellular-enabled Apple iPad and Apple Pencil** to any undergraduate student (or graduate TA) who does not already have one, or who wishes to upgrade relative to what they own. These will be available to all enrolled students, on or off campus. Many faculty members will expect students to have these tools in hand for class collaboration, so we encourage everyone eligible to enroll in this program. As we did last Spring, MIT will loan wifi hotspots and computing equipment, including laptops, to those who need them. Technical support by phone or email is available to all, 24/7.
- We aim to protect our on-campus residential community by creating as much separation as possible from potential sources of infection. Along with limits on our Covid-19 testing capacity and necessary limits on the population allowed in our facilities, this unfortunately means that **undergraduates who do not live on campus will have no access to campus facilities or in-person instruction.**
- Since safety demands that we cannot allow cooking in shared undergraduate residence hall kitchens, **all undergraduates living on campus must enroll in a meal plan.** MIT will subsidize the cost of individual plans by 40%.
- As part of the overall effort to reduce the possibility of infection and transmission, **the FSILGs will be closed for the Fall semester.** MIT will work with alumni to subsidize costs for house operations, so they can open once it is safe to do so.
- We know this news will also be disappointing, but to eliminate the possibility of transmission and infection during games and matches, **there will be no competitive athletics in the Fall semester.** Institutions around the country in Division III have announced similar decisions.

You will find more answers in this detailed FAQ. We will also host an online forum so you can get a better sense of what the Fall term will be like and how we arrived at our decisions:

Fall 2020: An online forum for MIT undergraduates and families

July 15

Time TBD

Students and families will receive an invitation to the forum by email

Please also watch your email for further correspondence on the wide range of issues around undergraduate student life and academics.

For graduate students

Many graduate students resumed their work on campus in mid-June, following rigorous public health rules and protocols. For new and returning graduate students in the Fall, we will continue to follow rules as determined by health authorities, and you can expect a combination of online and in-person instruction.

However, beyond these basics, we know you need much more information to make your own decisions, including whether coming to MIT physically for the Fall is the best option for you. For international students, yesterday's ruling by DHS further complicates the situation.

Because graduate programs vary so much in their length, nature and need for campus facilities, Fall plans will also differ by program, and many details are still being finalized. After course schedules

are released on July 17, you can expect to hear directly from your department or program about plans for the Fall term.

For now, for more information on more general topics like Covid testing and housing policy, please consult the FAQ.

For MIT employees

Watching our entire community learn to cope with a pandemic has highlighted how deeply MIT depends on the dedication, initiative, adaptability and brilliant problem-solving of all the people who work here. Please know how much I personally appreciate the patience, care and creativity you have poured into your work this spring.

Some of you have continued to work on campus since Covid first arrived. Some have since returned, or will soon, as part of our research ramp-up. Some have not set foot on campus since March.

Whatever your role or circumstances, I expect you will have questions and concerns about what the fall will look like for you and the people you work with. I know that MIT's decisions on such subjects will matter very much to you and your families; centrally and in every unit, we are working through them now. We will share news with you as soon as we can.

* * *

Together, the decisions outlined here amount to a carefully considered forecast for this fall. Its accuracy – and our shared health and safety – certainly depend on the course of the pandemic. But they also depend on each and all of us: On our conscientious care for one another and on our ability to learn from and make the best of this unexpected challenge.

I'm in. I hope you are too.

Sincerely,

L. Rafael Reif

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS**

PRESIDENT AND FELLOWS OF HARVARD
COLLEGE and MASSACHUSETTS
INSTITUTE OF TECHNOLOGY,

Plaintiff,

v.

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

Defendants.

Civil Action No. 20-cv-11283

DECLARATION OF MARK C. ELLIOTT

I, Mark C. Elliott, hereby state under the penalty of perjury that the following statements are true and accurate to the best of my knowledge, and that I could testify to these matters if called to do so:

1. I am Vice Provost for International Affairs of Harvard University (“Harvard” or the “University”), and am also the Mark Schwartz Professor of Chinese and Inner Asian History. As Vice Provost, I have responsibility for supporting Harvard’s community of international students, scholars, and faculty at Harvard, as well as advancing Harvard’s international academic initiatives and Harvard’s global strategy.
2. I have been deeply involved in the University’s response to the COVID-19 pandemic. Beginning in February 2020, members of Harvard’s administration began developing policies and

guidance in response to the pandemic. Since that time, I have worked with fellow administrators, as well as experts across the University and throughout the world, to make thoughtful and reasoned decisions for our operations that prioritize the safety of Harvard's students, faculty, and staff. As the Vice Provost of International Affairs, I have been especially focused on providing guidance to international students, and have collaborated extensively with fellow University administrators and the Harvard International Office ("HIO").

3. I have carefully reviewed the COVID-19 Guidance for the Student and Exchange Visitor Program ("SEVP") issued by United States Immigration and Customs Enforcement ("ICE") in response to the COVID-19 pandemic. On March 13, 2020, ICE issued COVID-19 Guidance for Student and Exchange Visitor Program Stakeholders ("March 13 Guidance"). Pursuant to the March 13 Guidance, students in the United States holding F-1 or M-1 visas are allowed to "count online classes towards a full course of study" in the event their school temporarily stops in-person classes, regardless of whether the visa holders remain in the United States or departed the United States. Prior to the March 13 Guidance, international students were permitted to take only one online class per semester. The March 13 Guidance stated that it would remain "in effect for the duration of the emergency."

4. On March 10, 2020, Harvard President Lawrence Bacow announced that the University would transition to virtual instruction for the remainder of the Spring 2020 semester, and asked that students not return to campus after the upcoming spring break. The HIO provided additional guidance to Harvard's international students to assist them with the transition to remote learning.

5. Over the course of many weeks after the initial decision to transition to remote learning in March 2020, and in reliance on the March 13 Guidance and its representation that it would remain "in effect for the duration of the emergency," Harvard made preparations for the Fall

2020 semester. In light of the public health risks presented by the COVID-19 pandemic, the majority of Harvard's 12 degree-granting schools will operate in a full remote learning environment for at least the Fall 2020 semester.

6. On June 4, 2020, HIO provided by email information regarding remote learning to international students enrolled at several of Harvard's schools for the Fall 2020 semester. An example of one such email, which was sent to incoming students at the Harvard Kennedy School ("HKS"), is attached as Exhibit 1. An email to returning students enrolled at the Graduate School of Design, the Graduate School of Education, the T.H. Chan School of Public Health, Harvard Law School, the Harvard Divinity School, and HKS is attached as Exhibit 2. The emails to new incoming students advised that students should plan to begin their studies remotely. With respect to returning students, Harvard advised that "[c]urrent federal government guidance allows continuing international students and students in F-1 or J-1 status transferring from another U.S. institution to continue their studies remotely and remain in valid visa status." Ex. 2. In reliance on the March 13 Guidance, Harvard explained that the exception provided in the March 13 Guidance "will still apply to continuing students in summer and fall 2020." Ex. 2.

7. On July 6, 2020, ICE issued a "Broadcast Message: COVID-19 and Fall 2020" ("July 6 Directive"). The July 6 Directive largely withdraws the exception that ICE announced in March. The July 6 Directive states that if a school determines that it will provide only online course instruction in the fall, students holding F-1 visas may not remain in the country to receive instruction. It provides that students holding F-1 visas "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." It is our current understanding that if the July 6 Directive takes effect, Harvard

students with F-1 visas who are enrolled in remote programs will face immigration consequences if they do not leave the country within 15 days of the start of the Fall 2020 term.

8. The July 6 Directive, if it takes effect, will have significant negative impacts on Harvard as an institution and on Harvard's students.

9. With respect to Harvard as an institution, Harvard has expended tremendous resources on developing protocols for its operations to protect the safety of its students, faculty, staff, and the surrounding community. Because of the timing of the July 6 Directive, and the significant time and coordination required to implement public safety measures, Harvard will struggle to develop an entirely new set of guidance and potentially alter the structure of its remote learning programs at this stage, particularly if it seeks to prioritize the health and safety of its students, faculty, and staff.

10. As described in more detail below, the July 6 Directive will make it impracticable for certain of Harvard's international students to continue to study at Harvard and make progress toward their degrees, while imposing academic and living conditions for others that will prompt them to take leaves from their programs—or drop out altogether.

11. By virtue of the fact that the July 6 Directive is likely to result in far fewer international students enrolled at Harvard during the coming academic year, the July 6 Directive will affect Harvard in at least the following additional ways:

a. Harvard and its students benefit enormously from the participation of international students. Indeed, many of Harvard's curricular programs depend critically on the presence and diversity of international students. Harvard places great emphasis on a diverse student body, and international students offer perspectives that other students otherwise may never experience. The curriculum at HKS, for example—where approximately 47% of students are international students—depends on the perspectives of international

students, including mid-career public officials from around the world who bring unique viewpoints about different approaches to governance and policy. And even if students do not meet in classrooms, they can still—from appropriate distances or online—share valuable elements of on-campus life, such as participation in extracurricular activities. The loss of international students from Harvard would deprive Harvard’s students of one of the great benefits of their experience here.

b. Several of Harvard’s schools will also be harmed financially if a substantial number of international students do not enroll in the fall. As one example, nearly 50% of GSD’s student body is international; losing the tuition of even a portion of those students would be significant to GSD.

c. Harvard relies on the contributions of its international graduate students as Teaching Fellows in its undergraduate courses. Requiring these Teaching Fellows to provide instruction from remote locations in their home countries, potentially with considerable time-zone disparities and variable Internet connectivity, will make it harder for faculty to coordinate with their Teaching Fellows and obtain the full benefit of their pedagogy.

12. Harvard’s international students, many of whom remain in the United States based on the March 13 Guidance, will also face significant harm if the July 6 Directive takes effect. The University has heard from students from all parts of the world who will face challenges by remaining in or being forced to return to their home countries, including:

- a. The possibility of being drafted into their home country’s armed forces;
- b. Threats and abuse based on their sexual orientation;
- c. Lack of adequate mental health treatment from qualified professionals;
- d. Excessive costs, including exorbitant airline tickets that were a minimum of \$4,000, or forfeiting a lease at the student’s own expense;

e. Inadequate and unreliable Internet access or government-imposed Internet shutdowns and restrictions on access to online resources;

f. Time-zone differences that will force students to participate in or teach classes throughout the night.

13. Even if Harvard were to implement in-person or hybrid (i.e., partial in-person, partial virtual) instruction, such that students on F-1 visas could remain in the United States, significant burdens would remain for international students. Many of Harvard's international students are first-year students or students who have returned to their home countries. These students would be unable to get to campus because of the State Department's suspension of consular processing of visa applications, which affects their ability to obtain initial visas if they are new students, or obtain new visa stamps to support their reentry if their current stamps have expired. Other students face travel restrictions that prevent them from leaving their home countries or entering the United States (or both). Moreover, students participating in hybrid programs from outside the United States—either because they choose to remain abroad or because they are unable to return to the United States—would relinquish their F-1 status and therefore lose their ability to access critical benefits of the F-1 visa program, such as Curricular Practical Training employment and Optional Practical Training employment at the end of the academic year. This would further harm Harvard as an institution and the students who lose these opportunities.

14. Although a hybrid program might allow domestic students to select only online courses if they have health conditions that place them at a greater risk (or simply want to avoid the greater risk of infection that in-person instruction imposes), under the July 6 Directive, F-1 students are denied this agency. The July 6 Directive not only precludes F-1 students from an all-online course schedule, it mandates that F-1 students “tak[e] the minimum number of online classes

required to make normal progress in their degree program.” Accordingly, vulnerable or concerned F-1 students would be forced to participate in in-person learning, despite the risks.

15. By threatening to force many F-1 visa holders to withdraw from Harvard, the July 6 Directive puts Harvard to an impossible choice: lose numerous students who bring immense benefits to the school or take steps to retain those students that contradict Harvard’s judgment about how best to protect the health of the University’s students, faculty, and staff.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 8, 2020

/s/ Mark C. Elliott
Mark C. Elliott

EXHIBIT 1

From: Harvard International Office <internationaloffice@harvard.edu>
Sent: Wednesday, June 3, 2020 4:01 PM
To: Rossi, Kathryn F <kathryn_rossi@harvard.edu>
Subject: Information for HKS International Students Regarding Remote Learning

[View this email in your browser](#)



PLEASE DO NOT RESPOND TO THIS AUTOMATED EMAIL.

Dear Students,

Congratulations on your admission to the Harvard Kennedy School (HKS) and welcome to the Harvard community. We know this is a difficult and confusing time and we at the Harvard International Office (HIO) assume you will have many questions regarding HKS's decision to offer online teaching for the fall semester of the 2020-2021 academic year. There are some key points we would like to make about the impact of this decision on international students, specifically those who will be **starting** their programs at Harvard this fall.

1. While current federal government guidance allows continuing international students and students in F-1 or J-1 status transferring from another U.S. institution to continue their studies remotely and remain in valid visa status, the current guidance does not apply to NEW students coming from overseas.

Prior to this emergency situation, international students were only permitted to take one on-line class per semester. It was a huge exception for the government to allow international students to study fully remotely either from within the U.S. or from outside the U.S. and still maintain their visa status during the spring semester 2020. This current exception will still apply to continuing students in summer and fall 2020; however, it does not apply to new students starting new programs. While we expect additional government guidance in the coming months, at this time we must assume that incoming international students will not be afforded the same flexibility in online learning

as continuing students.

2. It is therefore our recommendation that international students starting new programs, who are not transfers from other academic programs in the U.S., should not plan to come to the U.S. this fall, even if they are successful in getting a visa appointment and receive a visa, but should instead plan to begin their studies remotely outside the U.S.

3. Due to the COVID-19 pandemic, U.S. embassies and consulates around the world remain closed to all but emergency services, and the suspension of processing routine visas, including F-1 and J-1 student visas, remains in effect

It is our understanding that this suspension is likely to last into the summer (and perhaps beyond), and that the vast majority of newly admitted international students will experience considerable difficulty and delay in scheduling visa interviews. In addition, there remains in place a complex set of travel restrictions and bans in the U.S. and around the world, and airlines are offering far fewer flights than normal.

You may have already received your Form I-20/DS-2019 and initiated your visa application with the U.S. embassy/consulate. You may have even scheduled an appointment. To our knowledge no incoming Harvard student has actually received a visa so far. If you have, please share that [information with us](#). We will be amending the start dates of these forms to the appropriate date in January and you will receive either an electronic copy or a physical copy. This amended document will not require an additional SEVIS fee if you have already paid it. If you have not received your Form I-20/DS-2019, you will be receiving the original document with the appropriate dates. It will be possible for you to enter the U.S. as early as 30 days prior to this date to get yourself settled before starting classes in January of 2021.

4. It is important that you understand that you should not plan to come to the U.S. this fall to begin your studies since your program at HKS will be done remotely. While you may study full-time from outside the U.S., as a new student you will violate the terms of your student visa status if you enter the U.S. to study remotely this fall.

If you are accepted to a one-year program:

- Your program is a one-year program, and you will only be able to attend in-person classes for one semester. If you choose the F-1 student visa, you will not be eligible to apply for optional practical training (OPT) following your program as that benefit only applies to those who accrue nine months of student visa status in the U.S. If the guidance on this issue changes, we will let you know as soon as possible.
- You may want to consider a J-1 student visa if you have significant funding from a source other than personal or family funds. Students in J-1 status would qualify for 5 months of [Academic Training \(AT\)](#). This is enough time to get additional training in the U.S. before returning home. You can find more information about J-1 versus F-1 visas [here](#).

If you are accepted to a multi-year program:

- Since you will only be able to attend in-person classes for one semester, you may or may not be eligible for work authorization for internships in the U.S. during the summer of 2021, depending on your program requirements:
 - MPA/ID students will be eligible to use curricular practical training (CPT) for summer 2021 internships in the U.S., as the internship is a requirement of the program.
 - MPP and MPA students will not be eligible to use curricular practical training (CPT) or optional practical training (OPT) for internships in the U.S. during the summer of 2021. If the guidance on this issue changes, we will let you know as soon as possible. You may want to consider a J-1 student visa if you have

significant funding from a source other than personal or family funds. You can find more information about J-1 versus F-1 visas [here](#).

If you have any questions, please reach out to the HIO Advisor assigned to HKS, Briana Gerrish (briana_gerrish@harvard.edu).

We hope to welcome you to the Harvard campus in 2021 to continue your program at HKS. We hope you and your loved ones are well and staying safe.

Best,
Harvard International Office
1350 Massachusetts Ave.
Suite 864
Cambridge, MA 02138

PLEASE DO NOT RESPOND TO THIS AUTOMATED EMAIL.



This email was sent to kathryn_rossi@harvard.edu

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Harvard International Office · 1350 Massachusetts AVE · #864 · Cambridge, MA 02139-3710 · USA

EXHIBIT 2

From: Harvard International Office <internationaloffice@harvard.edu>

Sent: Thursday, June 4, 2020 7:24 PM

To: Rossi, Kathryn F <kathryn_rossi@harvard.edu>

Subject: Information for Continuing International Students Regarding Remote Learning

[View this email in your browser](#)



PLEASE DO NOT RESPOND TO THIS AUTOMATED EMAIL.

Dear Students,

We hope you and your loved ones are well and staying safe. We know this is a difficult and confusing time and we at the Harvard International Office (HIO) assume you will have many questions regarding many schools' announcements on June 3, 2020 to offer online teaching for the fall semester or for the 2020-2021 academic year. There are some key points we would like to make about the impact of this decision on international students.

1. Current federal government guidance allows continuing international students and students in F-1 or J-1 status transferring from another U.S. institution to continue their studies remotely and remain in valid visa status.

Prior to this emergency situation, international students were only permitted to take one on-line class per semester. It was a huge exception for the government to allow international students to study fully remotely either from within the U.S. or from outside the U.S. and still maintain their visa status during the spring semester 2020. This current exception will still apply to continuing students in summer and fall 2020. If we receive additional government guidance in the coming months, we will forward it to you.

2. Due to the COVID-19 pandemic, U.S. embassies and consulates around the world remain closed to all but emergency services, and the

suspension of processing routine visas, including F-1 and J-1 student visas, remains in effect.

It is our understanding that this suspension is likely to last into the summer (and perhaps beyond), and that the vast majority of international students who need a visa stamp will experience considerable difficulty and delay in scheduling visa interviews. If you are outside the U.S. and need to renew your visa, you should attempt to schedule an appointment at your consulate as soon as possible even if you will not be returning to the U.S. in the fall. If you are able to make an appointment, please share that [information with us](#). If you are still in the U.S., you may want to consider not travelling overseas this summer if at all possible.

In addition, there remains in place a complex set of travel restrictions and bans in the U.S. and around the world, and airlines are offering far fewer flights than normal. If you are outside the U.S., you should plan to stay outside the U.S. and learn remotely in that country. If you remained in the U.S., as stated earlier, current government guidance allows continuing international students to study fully remotely from within the U.S. for the duration of the emergency.

3. COVID-19 Exception 5-Month Rule

At the present time, we assume that the exception made to the 5-month rule for students remaining out of the U.S. will continue to apply to travel through at least the fall 2020 semester. It is our expectation that if global travel continues to be limited due to COVID-19, this exception should continue.

4. Leaves of Absence

If you are contemplating a leave of absence for the fall semester, please follow the Leave of Absence Policy your school currently has in place. If approved you should then contact your [HIO Advisor](#).

Please know the HIO is working hard to provide you with as much information as possible. We are working on a webpage designed to answer the most

frequently asked questions regarding remote learning that we receive from our international students. We will be hosting webinars for students so that they can hear each other's questions and have more interactive, direct, and hopefully reassuring contact with our office regarding these matters. If you have any questions, as always you may reach out to the [HIO Advisor](#) assigned to your school.

Best,
Harvard International Office
1350 Massachusetts Ave.
Suite 864
Cambridge, MA 02138

PLEASE DO NOT RESPOND TO THIS AUTOMATED EMAIL.



This email was sent to kathryn_rossi@harvard.edu

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**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MASSACHUSETTS**

PRESIDENT AND FELLOWS OF
HARVARD COLLEGE and
MASSACHUSETTS INSTITUTE OF
TECHNOLOGY,

Plaintiffs,

v.

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

Defendants.

Civil Action No. 1:20-cv-11283

DECLARATION OF ALAN M. GARBER

I, Alan M. Garber, hereby state under the penalty of perjury that the following statements are true and accurate to the best of my knowledge, and that I could testify to these matters if called to do so:

1. I am Provost of Harvard University (“Harvard” or the “University”), a role I have held since 2011. As Provost, I oversee academic activities throughout Harvard’s twelve degree-granting schools.

2. I am trained as a physician and economist. In addition to serving as Provost, I am the Mallinckrodt Professor of Health Care Policy at Harvard Medical School, a Professor of Economics in the Harvard Faculty of Arts and Sciences, a Professor of Public Policy in the Harvard Kennedy

School of Government, and a Professor in the Department of Health Policy and Management in the Harvard T.H. Chan School of Public Health.

3. Across Harvard's twelve degree-granting institutions, Harvard enrolled more than 23,000 students in the 2019-2020 academic year, including approximately 5,000 students who study in the United States on nonimmigrant student visas. Students travel from every state of the United States and virtually every country in the world to attend Harvard.

4. Because of my role as Provost, as well as my training in medicine, I have been deeply involved in Harvard's response to the COVID-19 pandemic. Harvard's administrators have worked with Harvard faculty and staff—including experts in infectious diseases, immunology, virology, epidemiology, biostatistics, crisis management, economics, and health care policy—state and local leaders, administrators and experts at other universities, and experts around the world to develop a response to COVID-19 that prioritizes both the health and safety of the Harvard and greater Boston communities and provides opportunities for students to continue their educational pursuits.

5. On March 10, 2020, Harvard President Lawrence Bacow announced that the University would transition to virtual instruction for the remainder of the semester, and asked that students not return to campus after the upcoming spring break. That decision, in which I was involved, was made with the dual objectives of providing the best possible education to Harvard's students while limiting the spread of COVID-19 among students, faculty, and staff.

6. Since the initial decision to transition to remote learning for the remainder of the Spring 2020 semester, Harvard has worked tirelessly on planning for the Fall 2020 semester. Harvard spent weeks determining the course of action for the Fall 2020 semester that would most effectively balance the health and safety of the campus community and the educational experience of Harvard students.

7. Public health experts and peer institutions have helped inform that plan. Harvard has convened or participated in several committees and groups in developing the University's response to the COVID-19 pandemic. For example, the University Coronavirus Advisory Group, which I chair, is comprised of 20 individuals from across the University, affiliated hospitals, and MIT, and is tasked with advising the University on approaches for limiting viral transmission on campus. The Harvard University Health Services Medical Expert Advisory Group, made up of eight experts in epidemiology, infectious disease, and emergency preparedness, advises the University on COVID issues related to health services for the University. A 12-member Face Mask Committee advises the University on providing adequate and effective face masks for on-campus community members.

8. Harvard has also collaborated with other institutions and public officials in responding to the COVID-19 pandemic. For example, I am a member of the Massachusetts Higher Education COVID-19 Testing Group, which includes administrators from 15 colleges and universities in Massachusetts, and which has provided guidance to the Governor of Massachusetts on testing strategy for higher education institutions.

9. In addition to the formal committees and groups, Harvard has consulted with experts in epidemiology, disease modeling, testing and screening, building and ventilation design, and medical subspecialties to address safety protocols for any in-person instruction.

10. Based on our formal and informal meetings and collaborations, Harvard determined that it would be extremely difficult—if not impossible—to hold classes in lecture halls and other classrooms without a substantial likelihood that COVID-19 would spread rapidly and widely on campus, endangering the health and lives of those on and off campus.

11. Public health considerations have been at the forefront of our deliberations. Among other factors, we considered, in the context of what we currently understand about the transmission and spread of COVID-19, the safety of our classrooms, campus housing, and other campus

buildings. With respect to classrooms, we determined that it would be costly and time-prohibitive to install the necessary ventilation systems to prevent the spread of the virus, or to otherwise configure most classrooms to ensure safe distancing. With respect to campus housing, which is largely dormitory-style, we determined that we could only provide quarantine and isolation capacity, with the possibility of limited social distancing, for 40% of our undergraduates at any time. Furthermore, we considered that it would be difficult under normal density conditions to prevent students from deviating from practices known to reduce the spread of COVID-19 (e.g., removing masks or declining to maintain appropriate distancing).

12. We also considered the health and safety of faculty and campus staff. The median age of the faculty members of the Faculty of Arts and Sciences (which includes Harvard College), for example, is over 60, meaning that many are at higher risk of developing complications from COVID-19. Many of our staff are also at increased risk for contracting COVID-19, in particular those staff members whose work brings them into close contact with students, such as dining hall and dormitory staff. Many of those workers live in communities where the rates of complication from infection of COVID-19 are highest, which heightens the risk that staff members, their families, and their communities could become infected or face complications if remote learning and reduced density strategies were not in place.

13. Additionally, although we have learned much about COVID-19 in the past several months, a tremendous amount of uncertainty remains. Some of the questions experts have not yet answered are the extent to which a person infected with COVID-19 has any immunity from future infection and the duration of any such immunity; why some individuals with documented COVID-19 infections do not have antibody levels that indicate exposure to the virus; and the extent to which the virus may be transmitted even when taking precautions such as social distancing, washing hands, and wearing masks.

14. Because a significant portion of Harvard's undergraduate and graduate student community is comprised of international students, the ability of students who hold nonimmigrant student visas to continue their education at Harvard also played a key role in our decision-making process. On March 13, 2020, the United States Immigration and Customs Enforcement ("ICE") issued COVID-19 Guidance for Student and Exchange Visitor Program stakeholders ("March 13 Guidance"). Pursuant to the March 13 Guidance, students in the United States holding F-1 or M-1 visas are allowed to "count online classes towards a full course of study" in the event their schools temporarily stopped in-person classes, regardless of whether the visa holders remained in the United States or departed the United States. The March 13 Guidance stated that it would remain "in effect for the duration of the emergency." Based on the significant time, effort, and coordination required to plan for and implement public safety measures on campus, Harvard had no choice but to rely on the March 13 Guidance in preparing for the Fall 2020 semester.

15. The majority of Harvard's 12 degree-granting schools will operate in a full remote learning environment for at least the Fall 2020 semester. Certain of Harvard's schools will conduct the majority of instruction virtually, with limited in-person instruction. For example, Harvard Medical School and Harvard Dental School will continue to offer limited clinical education as required by licensure bodies. Harvard Business School will also have a hybrid setup that facilitates teaching to a mix of in-person and remote students.

16. On July 6, 2020, President Bacow, Edgerley Family Dean of the Faculty of Arts and Sciences Claudine Gay, and Danoff Dean of Harvard College Rakesh Khurana announced that up to 40% of Harvard College students, including all first-year students, would return to campus. A copy of that announcement is attached as Exhibit 1. Limiting the number of undergraduate students who will return to campus in Fall 2020 will allow for single-occupancy dorm rooms, limits on the number of individuals sharing bathrooms, and a sufficient number of isolation and quarantine rooms.

Academic programming for Harvard College students who return to campus will remain remote in order to maintain adequate safety protocols. Apart from the first-year students, other students who will be permitted to return to campus include those who are unable to access the online curriculum effectively from off-campus locations due to a variety of factors, such as limited or no access to the internet and living conditions not conducive to study. Many of these students are international students.

17. Harvard's goal is to welcome all students back to campus for in-person learning as soon as it is safe to do so. At this stage, however, it would not be feasible for Harvard to safely implement University-wide in-person learning for the Fall 2020 semester. The decision to continue remote learning through the Fall 2020 semester was due to, among other considerations, the time and expense of implementing safety measures in our classrooms and other campus facilities, and the difficulty of protecting the health and safety of our students, faculty, and staff. Harvard invested a substantial amount of time in devising, planning, and implementing the Fall 2020 semester in a manner that did not anticipate widespread in-person learning, and it would not be possible for Harvard to implement the necessary safety measures required for University-wide in-person learning by September 2, 2020 (the first day of the Fall semester for most of Harvard's schools), particularly in light of our evolving understanding of COVID-19. Indeed, the schools that are planning to offer limited in-person instruction decided against offering full in-person instruction in large part because of the challenges of protecting the health and safety of those on campus.

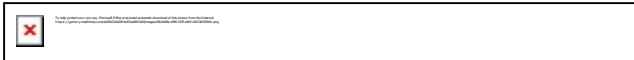
I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on July 8, 2020

/s/ Alan M. Garber

Alan M. Garber

EXHIBIT 1



Dear members of the FAS community,

On June 15, the Faculty of Arts and Sciences provided an [interim report](#) on fall planning efforts that outlined three possible pathways for how we might return students to campus. After careful deliberation, and informed by extensive input from our community, we write today to [announce](#) our plans to bring up to 40% of our undergraduates to campus, including all first-year students, for the fall semester. Assuming that we maintain 40% density in the spring semester, we would again bring back one class, and our priority at this time is to bring seniors to campus. Under this plan, first years would return home and learn remotely in the spring. We also will invite back to campus those students who may not be able to learn successfully in their current home learning environment.

In making this consequential decision, we have been guided by the same core principles we established at the outset of this crisis: to put health and safety first, protect the academic enterprise, leverage our breadth and diversity, and preserve access and affordability. Some of the attributes that we most value about our campus are exactly the things that make adaptation to pandemic conditions particularly challenging. Our bustling urban environment, the ease of grabbing the T into Boston, our intergenerational residential communities that house 98% of our undergraduates, our global research community of students, faculty, staff, postdocs, and visitors from around the world—Harvard was built for connection, not isolation. Without a vaccine or effective clinical treatments for the virus, we know that no choice that reopens the campus is without risk. That said, we have worked closely with leading epidemiologists and medical

experts to define an approach that we believe will protect the health and safety of our community, while also protecting our academic enterprise and providing students with the conditions they need to be successful academically.

Harvard is eager to welcome students and scholars back to campus and recapture the residential liberal arts and sciences experience that is core to our identity. In our planning efforts, we have sought a path to bringing all students back as soon as conditions allow, while continuing their academic progress in the meantime and remaining a vibrant research community across our broad range of disciplines. But we also recognize that, fundamentally, there is an intrinsic incompatibility between our highly interactive, residential Harvard College experience and the social distancing needed to mitigate COVID-19 transmission. The recent upturn in COVID-19 cases in certain states illustrates the difficulty of making predictions, even well-informed ones, about the evolution of this virus. Given this uncertainty, we determined that our fall plan must enable us to bring back as many students as possible while providing sufficient margin to accommodate an escalation in the prevalence of COVID-19 in our area. Anything less and we could find ourselves again facing the prospect of asking our students to leave, on short notice, prior to the end of the semester. Given the constraints imposed by our existing housing inventory, we have made a decision that enables up to 40% of undergraduate students to learn from campus in appropriate accommodations, while retaining the ability to isolate and quarantine up to 250 individuals at a time. Absent an effective vaccine or clinical therapy, this reduced density, together with a high-cadence

viral testing program and universal adoption of public health practices such as face masks and frequent handwashing, is needed to safely host a significant number of undergraduates on campus. This finding is supported by extensive modeling by our public health experts.

Choosing which students would be invited to campus was not easy, and we have enormous sympathy for sophomores and juniors as they consider the prospect of not starting their fall term in Cambridge. We could not help but recognize the unique position that first-year students find themselves in, making the transition to college in these strange times. They have not yet begun to build their Harvard network of faculty, advisors, and friends or learn about life in the Yard. Even with the many adaptations that will be in place this fall, we see enormous value in having them on campus in our residential system. Though we are far from a decision about spring, as we describe below, making sure that seniors have their final semester on campus, to finish their thesis work and complete their four-year journey, is a priority we hold dear. With the experience of sophomores and juniors in mind, we have decided to extend to all students who spend the year studying away from campus the opportunity to attend Summer School in Cambridge without tuition charge in 2021. This program, described in more detail below, was designed also in recognition of the many international students and those with pre-existing medical conditions who may not be able to join us on campus during the academic year.

REMOTE TEACHING AND LEARNING

The interim planning report established that all course instruction (undergraduate and graduate) for the 2020-21 academic year will be delivered online. Students will learn remotely, whether or not they live on campus. With that in mind, we have taken the following steps:

- **Academic calendar and course scheduling:** The fall term will begin as planned on September 2, 2020. The instructional day will be expanded to accommodate synchronous instruction across a range of time zones. The Registrar will soon issue guidance about fall semester course scheduling to the academic departments.
- **Excellence in remote teaching:** As we work to prepare for the fall, we are guided by the recognition that the success of remote teaching depends on our ability to create and sustain strong connections among students and between students and faculty. Harvard's learning technologists and specialists in innovative pedagogy are supporting faculty and teaching fellows in the development of fall courses and the design of activities and assignments that take advantage of the remote format and enable students to achieve key goals, including for hands-on learning in lab and art-making courses. We are increasing instructional support by recruiting graduate students as Bok Media and Design Fellows and Remote Support Teaching Fellows. The Bok Center has also designed its [fall teaching conference](#) to help teaching fellows prepare for their remote teaching responsibilities. More information about

required [instructor trainings](#) and other [remote ready resources](#) is available online.

- **Excellence in remote learning:** We are working to ensure that all students are prepared for remote learning. The Academic Resource Center has assembled [dedicated remote learning resources](#) and will be offering orientations to all incoming first-year undergraduate students.
- **Grading:** The emergency grading systems that were put in place in the spring semester will not continue into the fall semester. Fall courses for all students will return to regular grading.
- **International students:** Guidance for international students continues to evolve at a rapid pace. A town hall for international undergraduate students will be held on July 8 and the graduate student town hall meetings on July 7 and 8 will also include detailed information for international students. The latest guidance and resources are available from the [Harvard International Office](#). One of the reasons that we determined early in our process that we would rely upon remote instruction was that we expect many international students will encounter challenges entering the country given that consular offices are not processing F1 visas.

LEARNING REMOTELY FROM CAMPUS

We know that students are eager to be on campus and we too are eager to

return to full residential operations. Informed by a careful review of our residential capacity, the academic needs of our students, and guidance from public health experts, we have defined the group of undergraduate students who will be invited to learn from campus this fall—first-year students and those who must be on campus to progress academically.

All first-year undergraduate students will be invited to campus for the fall

semester. This will enable first-year students to benefit from a supported transition to college-level academic work and to begin to build their Harvard relationships with faculty and peers. Both online and dorm-based programs will be in place to meet these needs. Over the last few weeks, there has been frequent communication with our first-year students about their transition to Harvard and this will continue as we approach the start of the academic year.

We are committed to ensuring a secure and supportive learning

environment for all students. While all courses will be taught remotely, we understand that some students may not be able to learn successfully in their current home learning environment. If a student believes they will have remote learning challenges this fall, we ask that they please complete this [form](#) by Monday, July 13. Student submissions will be reviewed by a committee of faculty and staff in order to identify what specific supports may be needed, including whether it may be necessary for a student to reside on campus.

Accommodations in the Yard Dorms and the Houses will be adapted to

meet new public health standards. Enrolled undergraduate students who will be learning remotely from campus will live in single bedrooms with a shared bathroom. Students will be distributed across the first-year dorms and a number of upper-class Houses in order to achieve a maximum residential density of 40%. The dorms and Houses are undergoing physical modifications to support our public health goals. These include enhanced cleaning schedules, personal safety training and protective equipment for custodians, security guards, and House staff, improved air handling and filtration in shared spaces, hand sanitizer and wipe stations, and signage outlining our public health community guidelines.

Campus access will be restricted to safeguard our community's health.

There will be restrictions on inter-house access to dining areas and to non-residential Harvard buildings, with the exception of Harvard University Health Services. We hope to provide some access to athletic and recreational facilities, as part of our commitment to overall wellness, though guidance for that is not yet final. No off-campus visitors will be allowed into Harvard buildings, and this will include enrolled Harvard students who are not in residence on campus. With these measures in place, we are confident that we can support campus-based remote learning while also safeguarding our residential community's health and safety.

Move-in and move-out procedures and timelines will be different. While the academic calendar for the fall semester will not change, there will be

additional considerations for students who will be learning remotely from campus. Students will receive instructions regarding the protocol for a phased arrival to campus prior to the start of the semester. All students will move out for the semester by November 22 and will complete reading period and exam period from home. The standard process for granting exceptions will be followed.

This decision has implications for our Athletics program. We anticipate that the Ivy League will issue a decision on July 8 about fall sports competitions and training. Even in the absence of this guidance, we acknowledge that our medium density plan will necessarily place limits on what athletic activities are possible at Harvard this fall. An enhanced focus on wellness will be important for all members of our community. Wellness programming and resources will be developed by the Department of Athletics, Harvard University Health Services' Center for Health and Wellness, the Dean of Students Office and other partnering organizations.

UNDERGRADUATE COST OF ATTENDANCE

Tuition and fees: Tuition and fees will remain [as announced](#) for the 2020-21 academic year.

Room and board for students learning from home: For enrolled students who are living away from campus and attending classes remotely, obviously

there will be no room and board costs included on their term bill.

Remote room and board allowance for students receiving financial aid:

For enrolled students receiving financial aid who are not living on campus, the Griffin Financial Aid Office will use a “COVID-19 Remote Room and Board” allowance of \$5,000 per semester in calculating their aid award. In general, this will allow students to be supported by financial aid while studying at home. Standard room and board charges will be applied for students who are invited to live on campus, and Financial Aid budgets and awards will be adjusted to reflect that as approved.

Term-time work: Students receiving financial aid have been relieved of the term-time work expectation in the fall, replacing it with scholarship in the calculation of their financial aid award. This recognizes the current challenges of finding work and the public health considerations of work that is not remote. This does not mean that students can’t or won’t choose to work, but rather that there is no expectation of a work contribution to meet their cost of attendance. While aid awards will reflect this change for the year, we will review the policy for the spring term in the context of the latest public health guidelines.

Summer School credit: In recognition of the fact that many of our students will not have a residential campus experience this year, all enrolled undergraduate students who will be learning remotely from home for the full academic year 2020-21 will be eligible to come to campus to take two courses at the Harvard

Summer School in the summer of 2021 under a special arrangement that waives tuition; room and board will be subsidized for students receiving financial aid.

DEFERRALS AND LEAVES OF ABSENCE

The deadline for first-year students to [defer enrollment](#) has been extended to July 24, 2020. For upperclassmen deciding whether to take a [Leave of Absence](#), the College has trained a special team of advisors to help students and families. They can offer support in terms of thinking through the decision, explaining the logistics of the process, and directing students to resources before, during, and after the leave. Advisors can be reached at fall2020advising@fas.harvard.edu.

HEALTH AND SAFETY

Harvard University aims to provide a campus environment that enables the pursuit of our teaching and research mission while protecting the health and safety of our community. With the restart of campus-based research over the summer, Harvard University Health Services [led](#) the implementation of required training, daily symptom attestation using the Crimson Clear web portal, viral testing, and standard public health practices such as physical distancing requirements, limits on gathering sizes, use of face coverings in public spaces, and careful hygiene. Our return to campus-based academic operations is

predicated on our community's adoption of these public health practices designed to limit the spread of the virus and to keep each other and our families safe. These measures meet or exceed those in place across the Commonwealth of Massachusetts.

Health and Safety in the Houses and Dorms

Because COVID-19 is highly contagious, an individual's actions can have serious implications for the health of the broader community. Though an undergraduate student may be at relatively low risk of complications associated with COVID-19, for example, their actions can impact the families of dining workers, security guards, House staff, and others who make residential life possible. The Faculty of Arts and Sciences promotes shared responsibility for the health and well-being of our campus community. We are truly in this together. **It is important that all students who will reside on campus in Fall 2020 read, understand, and be prepared to abide by the rules and guidelines that will be in place in the fall in order to make an informed decision about residency.** Those guidelines, as developed by Harvard University Health Services, will include, among other features, the requirement that students and residential staff participate in a viral testing program that will begin with an initial screening upon arrival, followed by testing for the virus every three days while in residence. The frequency of testing may increase or decrease depending on the prevalence of infection within the Harvard community and the region, along with other factors influencing the likelihood of exposure to the virus. Additional testing may be warranted if a student or

residential staff member develops symptoms of COVID-19. The campus public health protocols will also include daily attestations of symptoms, as well as requirements to self-isolate in the event of a positive test, to talk to a healthcare professional if experiencing symptoms consistent with COVID-19, or to quarantine for known exposure to a positive case. We have established dedicated housing for quarantine and isolation, with sufficient space to appropriately house 250 individuals.

Expectations of students in residence are outlined in the undergraduate Social Compact available [here](#).

Monitoring

We have established an index of key public health factors, both on campus and in the surrounding Boston community, that we will monitor continuously. Among these are:

- The number of individuals in our community that has tested positive for the virus.
- The number of symptomatic individuals in our community.
- The Harvard community's compliance with testing and other required public health practices.
- Boston-area healthcare readiness indicators.

As we have seen over the last several weeks, with spikes to record levels of infection emerging in other parts of the country, the course of the virus can

change quickly. We must be ready to respond to changing conditions and have built flexibility into every level of our operations. For example, we are prepared to seamlessly transition between touchless food pick-up and more traditional dining operations as conditions dictate. As a community we must assume that change and adjustment are part of daily life and a key attribute of informed and responsible management in a pandemic.

RESUMING RESEARCH AND OTHER CAMPUS OPERATIONS

The decision regarding undergraduate residential operations does not change the guidance to faculty, postdocs, staff, and graduate students that has already been issued regarding campus-based research or other operations. Current information on restarting research in Science and SEAS can be found [here](#).

Current information on library operations can be found [here](#). The University's latest travel guidance can be found [here](#). This decision also maintains existing University guidance that most faculty, postdocs, and staff will continue to work remotely, through at least the end of the summer, unless otherwise directed by the academic division or their manager. Answers to many questions about administrative operations across the FAS can be found [here](#).

IMPLICATIONS FOR SPRING

As the description of our monitoring program makes clear, attempting definitive decisions now about things that will happen in six months would provide only a

false sense of certainty. Instead, we want our community to know that we are anticipating three scenarios for undergraduate residential life in spring 2021:

- Lower residential density than fall, retaining only those students who must learn remotely from campus. We would pursue this option only if conditions worsened so that we could not manage the campus safely with 40% of students in residence as provided for in this plan.
- Continuing medium residential density, returning those students who must learn remotely from campus and one class cohort. As mentioned at the outset, the current priority cohort is the senior class.
- Higher residential density, returning those who must learn remotely from campus and more than one class cohort.

As we have noted earlier, we would like to bring back students as quickly and safely as we can. Clearly, the third option above would be our preferred path. However, much will depend on the status of the virus, our success in containing any campus-based infections, and the willingness of the entire community—our students, faculty, and staff—to abide by our protocols for testing, social distancing, facial covering, and other public health measures. We anticipate making a decision about the spring semester in early December, including setting a date for a delayed start of the semester. We will update the community regularly throughout the fall.

We are sure you have many questions that we have not answered here.

Invitations have already gone out for a number of virtual town hall meetings where more information will be provided and questions can be addressed.

- FAS Faculty Town Hall: July 6 at 1 p.m. EDT
- FAS Administrators Town Hall: July 6 at 2 p.m. EDT
- College Students and Parents Town Hall: July 6 at 3 p.m. EDT
- GSAS Town Halls: July 7 at 9 a.m. EDT (returning students), July 8 at 9 a.m. EDT (incoming students)

Harvard College will hold a [series](#) of webinars throughout the summer to address particular student concerns.

The process of planning for the fall semester has only strengthened our commitment to the residential liberal arts and sciences experience as the means to pursuing our mission of educating leaders for our society and our diverse community of scholars; in fact, the planning process itself demonstrated the power that comes from bringing a breadth of disciplines to bear on a hard problem. This decision was informed by the models of data scientists, analyses of economists, the perspective of historians, the protocols of privacy experts, insights of life scientists, principles of philosophers, and the expertise of so many more members of our community. We are enormously grateful to the more than 100 members of our faculty and administration who have worked tirelessly to adapt Harvard to the demands the pandemic has placed on us while maintaining our commitment to academic excellence and inclusion.

As one member of our planning group reminded us last week, we navigate this history-making moment without a roadmap. Harvard will be changed by the choices we make now, and this crisis gives us an incredible opportunity to change it for the better. As we shift from planning to implementation and management, we will define mechanisms for engagement, conversations, and feedback. As we have already seen, this community has unlimited wisdom to contribute and it is our most cherished resource.

Stay safe and healthy,

Larry Bacow

Claudine Gay

Rakesh Khurana