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10

11 **UNITED STATES DISTRICT COURT**
 12 **CENTRAL DISTRICT OF CALIFORNIA**

13 DOE 1, DOE 2, DOE 3, DOE 4,
 14 DOE 5, DOE 6, DOE 7, DOE 8,
 15 DOE 9, DOE 10, DOE 11, DOE 12,
 16 DOE 13, DOE 14, DOE 15, AND
 17 DOE 16

17 Plaintiffs,

18 vs.

19 U.S. DEPARTMENT OF
 20 HOMELAND SECURITY; U.S.
 21 IMMIGRATIONS AND CUSTOMS
 22 ENFORCEMENT; CHAD R. WOLF,
 23 Acting Secretary, U.S. Department of
 24 Homeland Security; and TONY H.
 25 PHAM, Senior Official Performing the
 26 Duties of the Director, U.S.
 27 Immigrations and Customs
 28 Enforcement,

28 Defendants.

Case No.

**COMPLAINT FOR
 DECLARATORY RELIEF,
 VIOLATION OF THE
 ADMINISTRATIVE PROCEDURE
 ACT, 5 U.S.C. § 706 (FAILURE TO
 CONSIDER INTERNATIONAL
 STUDENTS’ RELIANCE
 INTERESTS), VIOLATION OF
 THE ADMINISTRATIVE
 PROCEDURE ACT, 5 U.S.C.
 §§ 553, 706 (FAILURE TO
 COMPLY WITH NOTICE-AND-
 COMMENT REQUIREMENTS),
 AND VIOLATION OF THE DUE
 PROCESS CLAUSE OF THE
 FIFTH AMENDMENT TO THE
 U.S. CONSTITUTION**

DEMAND FOR JURY TRIAL

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1 Plaintiffs Does 1 through 16 (the “Student-Athletes”) complain of defendants
2 U.S. Department of Homeland Security (“DHS”); U.S. Immigrations and Customs
3 Enforcement (“ICE”); Chad R. Wolf, Acting Secretary, U.S. Department of
4 Homeland Security; Tony H. Pham, Senior Official Performing the Duties of the
5 Director, U.S. Immigrations and Customs Enforcement (collectively, “DHS-ICE”)
6 and allege as follows:

7 **INTRODUCTION**

- 8 1. Time is of the essence.
- 9 2. The Student-Athletes are international first-year student-athletes who
10 were recruited to attend universities and colleges (collectively, the “institutions”) in
11 the United States. They have been invited to study at and to engage in athletic
12 competition on behalf of those institutions, accepted offers of scholarships and
13 grants-in-aid to play for those institutions, are enrolled in those institutions, and are
14 prepared to travel to the United States pursuant to valid F-1 visas, attend those
15 institutions, and represent those institutions in NCAA athletic competition.¹
- 16 3. In accepting the invitations from the institutions to enroll and represent
17 the institutions in athletic competition, the Student-Athletes gave up the opportunity
18 to play for other institutions elsewhere in the world, thereby losing the opportunity
19 to continue their athletic development if they cannot personally attend the schools in
20 the United States in which they are enrolled.
- 21 4. The Student-Athletes are required by the institutions to be on campus,
22 in person, to engage in team practices, training activities, and athletic competition.

23
24 ¹ Per DHS, “The F-1 Visa (Academic Student) allows you to enter the United States as a full-time
25 student at an accredited college, university, seminary, conservatory, academic high school,
26 elementary school, or other academic institution or in a language training program. You must be
27 enrolled in a program or course of study that culminates in a degree, diploma, or certificate and
28 your school must be authorized by the U.S. government to accept international students.” *Students
& Employment*, U.S. Citizenship & Immigration Services, <https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/students-and-employment> (*last visited* Oct. 16, 2020).

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1 5. The Student-Athletes are required to submit to a COVID-19 test before
2 leaving their home countries and to submit to a COVID-19 test upon their arrival in
3 the United States. They also are required to quarantine upon arrival in accordance
4 with all applicable rules and guidelines. They have dedicated housing that has been
5 designed to reduce the potential for the spread of SARS-CoV-2. Upon arriving at
6 their institutions in the United States, Student-Athletes will be under the regular
7 supervision of coaching staff and athletic staff and will be required to comply with
8 all of their institution’s and any applicable government health and safety protocols
9 regarding COVID-19. They will be tested for COVID-19 regularly.

10 6. The Student-Athletes are enrolled at institutions that, due to the
11 COVID-19 pandemic, are not offering in-person academic courses to first-year
12 international students. As a consequence, under “Guidance” and rules promulgated
13 by DHS-ICE, Student and Exchange Visitors Program (“SEVP”), and unlike
14 returning international students, the Student-Athletes are being arbitrarily,
15 capriciously, and wrongfully deprived of their ability to attend the institutions that
16 recruited them and to engage in athletic competition on behalf of those institutions.
17 Thus, while students who are United States citizens or are returning international
18 students can attend school and represent in athletic competition the institutions that
19 asked them to do so, the Student-Athletes cannot do so.

20 7. While this result initially may have been the inadvertent result of DHS-
21 ICE’s efforts to deal with the pandemic beginning earlier this year, the simple fact
22 is that the Student-Athletes are being deprived of their opportunities pursuant to the
23 scholarships and grants-in-aid and the invitations they were extended to participate
24 in athletic programs and athletic competition for the institutions.

25 8. Although representatives for the Student-Athletes have attempted to
26 engage in a discussion with DHS-ICE and its representatives, DHS-ICE has not
27 provided any clarification. As a result, because courses and athletic programs—
28 including training, practices, and competition—have begun at the institutions, the

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1 Student-Athletes are on the precipice of losing their ability to represent and engage
2 in athletic competition on behalf of the institutions (or at all), and may face the loss
3 of scholarships, grants-in-aid, and college athletic eligibility, as well as the
4 opportunity to study at a U.S. institution.

5 9. DHS-ICE's failure to update its guidance to permit or otherwise
6 confirm that the Student-Athletes who otherwise qualify to do so can enter the
7 United States, remain in the United States, study and participate in athletic activities
8 on behalf of the institutions effectively precludes the Student-Athletes from entering
9 and remaining in the United States. If they were to do so without the requested
10 change or confirmation from DHS-ICE, the Student-Athletes would face the risk
11 that by doing so, they would be deemed to violate the guidance or other laws,
12 thereby forcing them to face possible removal, jeopardizing their ability to return to
13 the United States, and jeopardizing their academic and collegiate athletic
14 opportunities. This outcome is arbitrary and capricious and deprives the Student-
15 Athletes of their rights.

16 10. The Student-Athletes doubt that DHS-ICE intended their guidance to
17 have the results that it has had. However, regardless of DHS-ICE's intent, the
18 reality is that the Student-Athletes are being precluded from entering the United
19 States. DHS-ICE guidance issued in August 2020 informed international students
20 that they are not likely to get visas, that if they get visas, they may be stopped
21 anyway at customs entry points, and that if they get into the United States, they may
22 be deported or forced to leave because they are not eligible to remain in the United
23 States.

24 11. This lack of clarity has caused the Student-Athletes' host institutions to
25 begin suspending their form I-20 Certificates of Eligibility in response to DHS-
26 ICE's unclear guidance. Those suspensions jeopardize the Student-Athletes' visas
27 and prevent the Student-Athletes from personally attending their institutions and
28 engaging in the athletic competitions for which they were recruited.

1 12. The guidance, and/or DHS-ICE's failure to confirm that, subject to
2 compliance with other applicable requirements, the Student-Athletes can enter and
3 remain in the United States and engage in athletic competition for their universities
4 is arbitrary and capricious and otherwise inconsistent with law.

5 13. Therefore, the Student-Athletes seek a determination by this Court
6 confirming that the Student-Athletes may enter and remain the United States and
7 engage in athletic competition (assuming they otherwise comply with the governing
8 and rules), directing that DHS-ICE clarify its guidance and confirm that the Student-
9 Athletes may do so, or enjoin DHS-ICE from precluding the Student-Athletes from
10 doing so.

11 **JURISDICTION AND VENUE**

12 14. This Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331
13 and 5 U.S.C. § 702. The Student-Athletes are persons aggrieved by a final agency
14 action promulgated by DHS-ICE. See 5 U.S.C. § 702. The Student-Athletes bring
15 this suit for declaratory and injunctive relief to set aside DHS-ICE's actions as
16 contrary to law and arbitrary and capricious, see id. §§ 705–706, and as a violation
17 of due process under the Fifth Amendment to the United States Constitution—thus
18 presenting a federal question. See 28 U.S.C. § 1331.

19 15. Venue is proper in this Court because the Student-Athletes are being
20 prohibited from matriculating at institutions within this District and would be
21 residing in this District but for DHS-ICE's actions, and no real property is involved.
22 28 U.S.C. § 1391(e)(1)(B). Venue further is proper in this Court because DHS-ICE
23 are subject to this Court's personal jurisdiction. 28 U.S.C. § 1391(b)(3).

24 16. This Court is authorized to grant the requested relief pursuant to
25 Federal Rule of Civil Procedure 65 and 5 U.S.C. § 705.

26 **THE PARTIES**

27 17. Plaintiff Doe 1 is a citizen of Australia in possession of an F-1 visa and
28 enrolled in a course of study at Loyola Marymount University in Los Angeles,

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1 California, which is not currently offering in-person instruction for first-year
2 students because of the coronavirus pandemic. Doe 1 is an elite athlete, and at
3 LMU, Doe 1 would be a member of an NCAA Division I team.

4 18. Plaintiff Doe 2 is a citizen of Australia in possession of an F-1 visa and
5 enrolled in a course of study at the University of California, Los Angeles
6 (“UCLA”), which is not currently offering in-person instruction for first-year
7 students because of the COVID-19 pandemic. Doe 2 is an elite athlete, and at
8 UCLA, Doe 2 would be a member of an NCAA Division I team.

9 19. Plaintiff Doe 3 is a citizen of Australia in possession of an F-1 visa and
10 enrolled in a course of study at UCLA. Doe 3 is an elite athlete, and at UCLA,
11 Doe 3 would be a member of an NCAA Division I team.

12 20. Plaintiff Doe 4 is a citizen of Australia in possession of an F-1 visa and
13 enrolled in a course of study at UCLA. Doe 4 is an elite athlete, and at UCLA,
14 Doe 4 would be a member of an NCAA Division I team.

15 21. Plaintiff Doe 5 is a citizen of Canada in possession of an F-1 visa and
16 enrolled in a course of study at UCLA. Doe 5 is an elite athlete, and at UCLA,
17 Doe 5 would be a member of an NCAA Division I team.

18 22. Plaintiff Doe 6 is a citizen of Canada in possession of an F-1 visa and
19 enrolled in a course of study at UCLA. Doe 6 is an elite athlete, and at UCLA,
20 Doe 6 would be a member of an NCAA Division I team.

21 23. Plaintiff Doe 7 is a citizen of Great Britain in possession of an F-1 visa
22 and enrolled in a course of study at UCLA. Doe 7 is an elite athlete, and at UCLA,
23 Doe 7 would be a member of an NCAA Division I team.

24 24. Plaintiff Doe 8 is a citizen of Great Britain in possession of an F-1 visa
25 and enrolled in a course of study at UCLA. Doe 8 is an elite athlete, and at UCLA,
26 Doe 8 would be a member of an NCAA Division I team.

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1 25. Plaintiff Doe 9 is a citizen of Israel in possession of an F-1 visa and
2 enrolled to begin a course of study at UCLA. Doe 9 is an elite athlete, and at
3 UCLA, Doe 9 would be a member of an NCAA Division I team.

4 26. Plaintiff Doe 10 is a citizen of Italy in possession of an F-1 visa and
5 enrolled in a course of study at UCLA. Doe 10 is an elite athlete, and at UCLA,
6 Doe 10 would be a member of an NCAA Division I team.

7 27. Plaintiff Doe 11 is a citizen of New Zealand in possession of an F-1
8 visa and enrolled in a course of study at UCLA. Doe 11 is an elite athlete, and at
9 UCLA, Doe 11 would be a member of an NCAA Division I team.

10 28. Plaintiff Doe 12 is a citizen of New Zealand in possession of an F-1
11 visa and enrolled in a course of study at UCLA. Doe 12 is an elite athlete, and at
12 UCLA, Doe 12 would be a member of an NCAA Division I team.

13 29. Plaintiff Doe 13 is a citizen of New Zealand in possession of an F-1
14 visa and enrolled in a course of study at UCLA. Doe 13 is an elite athlete, and at
15 UCLA, Doe 13 would be a member of an NCAA Division I team.

16 30. Plaintiff Doe 14 is a citizen of Norway in possession of an F-1 visa and
17 enrolled in a course of study at UCLA. Doe 14 is an elite athlete, and at UCLA,
18 Doe 14 would be a member of an NCAA Division I team.

19 31. Plaintiff Doe 15 is a citizen of Norway in possession of an F-1 visa and
20 enrolled in a course of study at UCLA. Doe 15 is an elite athlete, and at UCLA,
21 Doe 15 would be a member of an NCAA Division I team.

22 32. Plaintiff Doe 16 is a citizen of Spain in possession of an F-1 visa and
23 enrolled in a course of study at UCLA. Doe 16 is an elite athlete, and at UCLA,
24 Doe 16 would be a member of an NCAA Division I team.

25 33. Several of the Student-Athletes are members of their universities'
26 basketball teams, and their season has already begun. The first intercollegiate
27 competition is scheduled for November 25, 2020. Because, prior to that
28 competition, these basketball players must arrive in the United States, quarantine,

1 and be properly trained to participate on their teams, time is of the essence. Without
2 immediate relief, they are likely to suffer substantial and irreversible harm.

3 34. Defendant United States Department of Homeland Security is a federal
4 agency of the United States.

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

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

9 37. Defendant Tony H. Pham is the Senior Official Performing the Duties
10 of the Director, United States Immigration and Customs Enforcement. He is sued in
11 his official capacity.

12 **STANDING AND JUSTICIABILITY**

13 38. DHS-ICE's guidance is primarily directed at international students,
14 including the Student-Athletes, to inform them of the necessary steps they must take
15 to comply with U.S. immigration laws, as well as of the way that DHS-ICE
16 interprets and will enforce those laws with respect to international students when
17 they enter and while they remain in this country.

18 39. Because DHS-ICE's guidance is either unclear, thereby resulting in
19 institutions not issuing or deferring I-20 Certificates of Eligibility, or bars the
20 Student-Athletes' ability to enter and/or remain in the United States for the coming
21 in the current academic quarter or semester, the Student-Athletes have suffered a
22 cognizable injury for purposes of Article III. Such injury is imminent because the
23 Student-Athletes are now precluded from entering the United States and, if they
24 enter, are likely to be directed to leave after arrival. The Student-Athletes face the
25 imminent pecuniary harm associated with futile flights, cancelled housing
26 arrangements, and the other concrete financial impacts of relocating for university
27 only to be refused entry or ejected shortly after entry.

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1 40. Furthermore, the Student-Athletes face the imminent harm of being
2 arbitrarily denied the legal privilege to travel to and reside in the United States. As
3 previously alleged, all the Student-Athletes have been accepted to, and are enrolled
4 in, U.S. universities and issued visas to pursue their studies with appropriate
5 immigration status. Aside from their arbitrary and capricious omission from DHS-
6 ICE’s guidance permitting students to attend U.S. universities this fall in person
7 while taking an entirely online course of study, the Student-Athletes would be
8 permitted to come to the United States. Moreover, each is prepared to do so and has
9 been planning to do so. In fact, but for DHS-ICE’s guidance, the Student-Athletes
10 would already be in the United States. Thus, the Student-Athletes face imminent
11 pecuniary and legal injuries as a result of DHS-ICE’s arbitrary and capricious
12 guidance.

13 41. In the alternative, to the extent DHS-ICE simply declines to clarify the
14 application of its guidance to the Student-Athletes, the Student-Athletes have
15 experienced and will continue to experience an understandable chilling effect on
16 their legal privilege to travel to and reside in the United States to obtain an
17 education and further their careers. In addition to the other stressors of starting
18 college during a pandemic in another country, these students are faced with the
19 impossible decision whether to proceed as planned for this quarter or semester and
20 risk being refused entry or thereafter ordered deported, or whether to forego the
21 educational and athletic opportunities obtained through hard work. They face the
22 decision whether to expend their time and money attempting to enter into this
23 country without any certainty that they will be permitted to do so. Indeed, given
24 that one of the Student-Athletes’ universities already has, based on DHS-ICE’s
25 guidance, begun deferring the I-20 Certificates of Eligibility until the winter term,
26 the Student-Athletes effectively are precluding from entering the United States and,
27 if they did enter, face the prospect of being precluding from engaging in athletic
28 activities and of being deported, either of which jeopardizes their futures.

1 42. This quandary is not conjectural or contingent. The Student-Athletes
2 are otherwise prepared to attend the universities that recruited them. They face the
3 decision *right now* whether to make preparations to come to this country, many of
4 which involve partially or wholly non-refundable expenses, or to make alternative
5 plans. These young people should not have to bear the financial and legal detriment
6 of emigrating without proper legal status—or at least potentially unclear legal
7 status—before they can seek relief.

8 **THE FACTS**

9 **Higher Education and the COVID-19 Pandemic**

10 43. The world is in the midst of the global COVID-19 pandemic. Because
11 humans lack built-up immunity to, a vaccine against, or effective treatment for
12 SARS-CoV-2, the virus that causes COVID-19, the only way to mitigate the effects
13 of the virus today is to stop its spread.

14 44. State and local governments have responded to the pandemic with
15 unprecedented containment measures, such as stay-at-home orders that instructed
16 state residents to avoid leaving their residences. At one point, forty-two states
17 instituted such orders.

18 45. On March 4, 2020, California Governor Gavin Newsom declared a
19 state of emergency in light of the COVID-19 pandemic.

20 46. On March 9, the University of California at Berkeley suspended in-
21 person instruction.

22 47. On March 10, the University of California campuses at Davis, Irvine,
23 Los Angeles, Riverside, and Santa Barbara followed suit, as did the University of
24 Southern California.

25 48. On March 19, Governor Newsom announced a statewide stay-at-home
26 order. Among other things, this order forbade universities from continuing to
27 operate in-person classes, including the schools the Student-Athletes are admitted to
28 attend.

1 49. COVID-19 infections are continuing to plague much of the country,
2 including California. Nationwide, more than 8,000,000 COVID-19 cases have been
3 diagnosed, and more than 210,000 people have died from the disease.

4 50. On June 26, the University California at Berkeley Law School
5 (“Berkeley Law”) announced that it would conduct the fall 2020 term entirely
6 online.² Berkeley Law determined that restrictions on the number of students in a
7 classroom and the requirement that classrooms be disinfected between classes would
8 make offering safe, in-person instruction infeasible. It conducted orientation for
9 new students online, and the fall semester commenced on Monday, August 17.

10 51. On August 3, UCLA announced that it would conduct 8% of the fall
11 semester’s courses in person and the remainder of instruction would take place
12 online. However, little more than two weeks later, new directives from local health
13 authorities required UCLA to backtrack, shifting entirely to remote instruction, with
14 few exceptions.³

15 52. Schools in the University of California system are not alone in moving
16 some or all students fully online in the fall semester. More than 300 schools are
17 now offering exclusively online instruction to all students, including Harvard
18 University, Princeton University, the University of Pennsylvania, and the University
19 of Southern California.⁴ Over 1,000 other academic institutions—including Loyola
20

21 ² Press Release, Univ. of Cal. Berkeley (June 23, 2020), [https://www.law.berkeley.edu/
22 article/fall-instruction-memo-6-26-20/](https://www.law.berkeley.edu/article/fall-instruction-memo-6-26-20/).

23 ³ Bulletin, Univ. of Cal., Los Angeles (Aug. 3, 2020), [https://covid-19.ucla.edu/fall-update-shift-
to-primarily-remote-instruction-reduced-housing/](https://covid-19.ucla.edu/fall-update-shift-to-primarily-remote-instruction-reduced-housing/).

24 ⁴ See, e.g., Rick Sobey, *All Harvard University Students Will Take Online Classes This Fall Amid*
25 *Coronavirus*, Boston Herald (July 7, 2020), [https://www.bostonherald.com/2020/07/06/all-
26 harvard-university-students-will-take-online-classes-this-fall-amid-coronavirus/](https://www.bostonherald.com/2020/07/06/all-harvard-university-students-will-take-online-classes-this-fall-amid-coronavirus/); Letter from
27 Charles F. Zukoski & David Wright to Univ. of S. Cal. (July 1, 2020),
28 <https://coronavirus.usc.edu/2020/07/01/7-1-letter-on-student-housing-and-course-schedules/>; E-
mail from Chris Eisgruber to Princeton (August 7, 2020),
[https://www.princeton.edu/news/2020/08/07/fall-2020-update-undergraduate-education-be-fully-
remote](https://www.princeton.edu/news/2020/08/07/fall-2020-update-undergraduate-education-be-fully-remote).

1 Marymount University, Northwestern University, Rutgers University, and
 2 Swarthmore College—are offering primarily online courses with only a few in-
 3 person courses.⁵

4 53. Schools are right to be cautious. Public health leaders believe the
 5 United States is still contending with the first wave of coronavirus infections,⁶ and
 6 there is widespread concern that re-opening college campuses will cause the virus to
 7 spread and endanger the lives of staff, faculty, students, and those who live in
 8 surrounding communities.⁷ Indeed, the Pac-12 and Big 10 college athletic
 9 conferences decided to postpone their 2020 fall seasons for football and other fall
 10 sports due to concerns about student-athletes’ safety—and later modified their
 11 decisions in the ever-changing environment.

12 54. Forecasts of continued virus spread through the winter coupled with
 13 stringent state guidelines for reopening colleges and universities cast doubt on the
 14 viability or likelihood that schools will be able to legally or safely offer in-person
 15 classes after the conclusion of the fall 2020 term. For example, under August 7,
 16 2020, draft guidance issued by the State of California, colleges and universities will
 17 not be permitted to resume in-person classes unless local epidemiologic conditions
 18 meet certain thresholds, testing resources are available and public health capacity
 19 exists to respond to outbreaks, and the schools are able to implement extensive (and
 20 expensive) social distancing and virus prevention protocols.⁸

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 22
 23 ⁵ See The College Crisis Initiative, Davidson Coll., <https://collegecrisis.shinyapps.io/dashboard>
 (last visited Oct. 13, 2020).

24 ⁶ See Lisa Lockerd Maragakis, *First and Second Waves of Coronavirus*, Johns Hopkins Med.
 25 (Aug. 14, 2020), <https://www.hopkinsmedicine.org/health/conditions-and-diseases/coronavirus/first-and-second-waves-of-coronavirus>.

26 ⁷ Yascha Mounk, *Cancel College*, The Atlantic (Aug. 8, 2020), <https://www.theatlantic.com/ideas/archive/2020/08/cancel-college/615064/>.

27 ⁸ COVID-19 Industry Guidance: Institutions of Higher Education, Cal. Dep’t of Health (Aug. 7,
 28 2020), <https://files.covid19.ca.gov/pdf/guidance-higher-education--en.pdf>.

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The F-1 Student Visa Program

55. The entry of international students into the United States is subject to a three-step process: the Department of State approves issuance of a visa, U.S. Customs & Border Protection allows entry into the United States, and then ICE and SEVP, the institution, and the student ensure compliance while the student is in the United States.

56. The United States has labeled students as “non-immigrants” and operated a student visa program since at least 1921. Although the F-1 program has changed over the years, millions of students have entered the country with F-1 visas since at least 2000, as far back as public records are available.⁹

57. For the fall 2019 term, there were 44,485 international students in the University of California (“UC”) system. 27,189 of those were undergraduate students, and 17,295 were graduate students.¹⁰

58. According to a report published by ICE, the total number of Student and Exchange Visitor Information System (“SEVIS”) records for active F-1 and M-1 students was 1,551,373 in the calendar year 2018.¹¹ Asia remains the number-one continent of origin for nonimmigrant students, with 1,165,483 student records. China (478,732), India (251,290), and South Korea (88,867) sent the largest numbers of students in both calendar years 2017 and 2018.¹²

⁹ Visa Statistics, U.S. Dep’t of State, <https://travel.state.gov/content/travel/en/legal/visa-law0/visa-statistics.html> (last visited Sept. 22, 2020).

¹⁰ *Fall Enrollment at a Glance*, Univ. of Cal., <https://www.universityofcalifornia.edu/infocenter/fall-enrollment-glance> (last visited Sept. 21, 2020).

¹¹ Per DHS, “The M-1 visa (Vocational Student) category includes students in vocational or other nonacademic programs, other than language training.” *Students & Employment*, U.S. Citizenship & Immigration Services, <https://www.uscis.gov/working-in-the-united-states/students-and-exchange-visitors/students-and-employment> (last visited Oct. 16, 2020).

¹² U.S. Immigration & Customs Enforcement, 2018 SEVIS By the Numbers Report, available at <https://www.ice.gov/doclib/sevis/pdf/sevisByTheNumbers2018.pdf>.

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DHS-ICE’s Response to the COVID-19 Pandemic

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59. Before March 2020, international students enrolled in classes could not take “more than the equivalent of one class or three credits per session, term, semester, trimester, or quarter . . . if the class is taken online or through distance education and does not require the student’s physical attendance for classes, examination or other purposes integral to completion of the class.” 8 C.F.R. § 214.2(f)(6)(i)(G). The purpose behind these in-person instruction requirements is to thwart the illicit “diploma mill” industry and has nothing to do with concerns germane to the Student-Athletes, their host institutions (which are not “diploma mills”), or the COVID-19 pandemic.¹³

60. Since the outbreak of SARS-CoV-2 and COVID-19, DHS-ICE has issued multiple sets of guidance regarding international students attending college in the United States.

61. On January 29, 2020, in recognition of the growing danger of the COVID pandemic, DHS-ICE issued a broadcast message through the Student and Exchange Visitor Information System (“SEVIS”), advising of prudential steps that academic institutions should take vis-à-vis students currently abroad and international students currently within the country to minimize harm cause by the virus in the United States.

62. On March 9, 2020, DHS-ICE issued another broadcast message through SEVIS, stating that DHS-ICE would take a flexible approach with respect to international students then studying in the United States to permit their institutions to respond to the growing health concerns by taking temporary measures, including increasingly transitioning to online instruction and suspending

¹³ See, e.g., George Gollin, Emily Lawrence & Alan Contreras, *Complexities in Legislative Suppression of Diploma Mills*, 21 Stan. L. & Pol’y Rev. 1, 11 (2010).

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1 in-person classes.¹⁴ However, the March 9 Guidance stated, “This guidance applies
2 to students who are currently enrolled in a program of study and is not intended for
3 new or initial students who are outside the United States.”

4 63. On March 13, 2020, DHS-ICE issued a new guidance document “[a]s
5 follow up” to the March 9 Guidance.¹⁵ The March 13 Guidance stated that it would
6 honor the visas held by foreign students enrolled at American academic institutions,
7 even if their institutions transitioned to all-online courses, for “the duration of the
8 [coronavirus] emergency.” However, the March 13 Guidance did not address any
9 scenarios applicable to the Student-Athletes, who are first-year students that have
10 begun a course of study at institutions within the United States but not in-person
11 academic courses.

12 64. On July 6, 2020, DHS-ICE reversed course, issuing a new guidance
13 document that required all foreign students whose American institutions had
14 transitioned to online-only instruction to leave the country. The guidance did not
15 provide an explanation for the reversal in policy. Nor did the July 6 Guidance
16 address the status of international first-year students admitted to their institutions
17 and planning to begin their course of study in the fall 2020 term.

18 65. The July 6 Guidance’s change of approach created confusion at many
19 academic institutions, some of which filed lawsuits to request that the government
20 reconsider its new approach, primarily because nothing had changed with respect to
21 the COVID pandemic, and institutions still perceived a need to curtail in-person
22 classes and rely on online instruction to safeguard the health of their students,
23 instructors, and broader communities.

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26 ¹⁴ The “March 9 Guidance,” a true and correct copy of which is attached as Exhibit A and
27 incorporated herein by reference

28 ¹⁵ The “March 13 Guidance,” a true and correct copy of which is attached as Exhibit B and
incorporated herein by reference (together with the March 9 Guidance, the “March Guidance”).

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1 66. On July 24, 2020, perhaps in response to these lawsuits, DHS-ICE
2 issued another guidance document, repudiating its July 6 Guidance and explaining
3 that it would again follow the relaxed enforcement standards expressed in the March
4 Guidance.¹⁶ However, for the first time, DHS-ICE’s July 24 Guidance contained a
5 section titled, “Summary of March 2020 Guidance for Initial Students,” which
6 suddenly contained a new statement:

7 In accordance with March 2020 guidance, F and M
8 students in new or initial status after March 9, 2020, will
9 not be able to enter the United States to enroll in a U.S.
10 school as a nonimmigrant student for the fall term to
11 pursue a full course of study that is 100 percent online.

12 Neither the March Guidance nor the July 24 Guidance provided a rationale for
13 treating first-year international students differently from those who had already
14 begun a course of study at their host institutions.

15 67. On August 7, 2020, DHS-ICE issued a guidance document titled
16 *Frequently Asked Questions for SEVP Stakeholders about COVID-19*.¹⁷ This
17 August 7 Guidance explained that an academic institution “*should* not issue a Form
18 I-20 ‘Certificate of Eligibility for Nonimmigrant Student Status,’ for a student in
19 new or Initial status who is outside the United States and plans to take
20 classes . . . fully online.” (Emphasis added). However, the August 7 Guidance
21 acknowledged that the State Department is in charge of issuing nonimmigrant
22 student F and M visas, and that a student expecting to take an online-only course of
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27 ¹⁶ The “July 24 Guidance,” a true and correct copy of which is attached as Exhibit C and
incorporated herein by reference.

28 ¹⁷ The “August 7 Guidance,” a true and correct copy of which is attached as Exhibit D.

1 study “*likely* will not be able to obtain an F-1 or M-1 visa to study within the United
2 States.”¹⁸

3 68. Accordingly, the Student-Athletes are left in a state of confusion. The
4 March Guidance indicates that DHS-ICE will refrain from enforcing the regulations
5 requiring in-person study for international students who were already enrolled in
6 coursework at U.S. institutions. That guidance does not provide any rationale for
7 treating first-year international students differently, but instead simply states that it
8 does not apply to them. The July 24 Guidance states that first-year international
9 students “will not be able to enter the United States” to take only online courses, but
10 then the August 7 Guidance indicates that it is up to the State Department to decide
11 who receives visas, and indicates that obtaining a visa is the deciding factor as to
12 whether an international student can come to the United States. If a student can
13 obtain a valid visa (just like the Students-Athletes) are they or aren’t they allowed to
14 enter the country (absent any other bars to entry)? Will or will not their institutions
15 be precluded from issuing form I-20 Certificates of Eligibility allowing the
16 Students-Athletes to remain in the United States even if their courses are all online,
17 just as returning international students re authorized to remain in the United States?
18 Will the Guidance require institutions to refuse to issue form I-20 Certificates of
19 Eligibility to the Student-Athletes, thereby forcing them to leave the United States?
20 Will DHS-ICE attempt to deport them for taking only online courses while allowing
21 students in the same situation, just one year ahead, to stay in the country?

22 69. The host institutions similarly are left in the impossible position of
23 complying with a literal reading of the July 24 Guidance, or trying to reconcile that
24 guidance with the August 7 Guidance, while risking their approved status as
25 student-visa holders should they “get it wrong.” Therefore, the host institutions, like
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27 ¹⁸ These conflicting and confusing statements are shown in the attached Exhibit E, which
28 highlights statements that would exclude the Student-Athletes in red and statements that would
permit them entry in green.

1 other institutions across the country, are taking conservative approaches to avoid
 2 running afoul of DHS-ICE to the Student-Athletes' detriment. For instance, because
 3 of the July 24 Guidance, UCLA has taken the position that all first-year international
 4 students should not come to the United States.¹⁹ In fact, UCLA has begun
 5 suspending or deferring its form I-20 Certificates of Eligibility for some 2,400 first-
 6 year international students, including the Student-Athletes, effectively removing the
 7 legal basis for their abilities to enter and/or remain in the United States.

8 70. Additionally, none of the guidance documents states what will happen
 9 after the fall 2020 term. DHS-ICE appear not to have committed to a particular
 10 course of action if the COVID pandemic emergency continues beyond 2020.

11 71. The distinction between first-year international students and non-first-
 12 year international students is arbitrary, and any decision to treat them differently
 13 would be capricious and not consistent with law. This *ad hoc* promulgation of
 14 guidance documents, while understandable in many ways because of the emergency,
 15 has left Student-Athletes in a state of unknowing, having prepared for years for the
 16 opportunities before them.

17 72. Accordingly, the Student-Athletes seek a declaration that the July 24
 18 Guidance, as it applies to first-year international students, was improperly issued in
 19 violation of the Administrative Procedure Act and the Due Process Clause of the
 20 Fifth Amendment to the U.S. Constitution. The Student-Athletes further seek a
 21 declaration that the March Guidance should apply to first-year international student-
 22 athletes to the same extent that it applies to international students who are a year or
 23 more ahead of them in their studies. The Student-Athletes further seek an injunction
 24 against DHS-ICE, prohibiting them from enforcing the law with respect to the
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 27 ¹⁹ See COVID-19 Updates F-1 Students FAQs, Univ. of Cal. Los Angeles,
 28 <https://www.internationalcenter.ucla.edu/covid-19-updates/f-1-student-faqs#961262662-4-ucla-is-planning-to-offer-classes-in-a-hybrid-model-for-the-fall-quarter-but-my-classes-will-be-entirely-online-will-i-be-able-to-enter-the-us-and-maintain-valid-f-1-status> (*last visited* October 20, 2020).

1 Student-Athletes differently than they would with respect to other returning
2 international students until such time as DHS-ICE issue a properly promulgated
3 rule, consistent with the APA and due process.

4 **FIRST CAUSE OF ACTION**

5 ***For Declaratory Relief***

6 73. The Student-Athletes reallege and incorporate by reference the
7 paragraphs 1 through 72 above.

8 74. The Student-Athletes contend that, under applicable federal law and the
9 March Guidance, first-year international students like the Student-Athletes may
10 lawfully enter the United States if they have valid F-1 visas to participate in
11 intercollegiate competition, even though their universities may only be providing
12 online courses to them during the coronavirus pandemic.

13 75. On information and belief, and per DHS-ICE's statements in the July
14 24 Guidance and the August 7 Guidance, DHS-ICE have taken the position that
15 regardless of whether they have valid F-1 visas, first-year international students like
16 the Student-Athletes may not lawfully enter the United States pursuant to those visas
17 and participate in intercollegiate competition if their universities provide only online
18 courses to them.

19 76. Therefore, an actual and justiciable controversy exists between the
20 Student-Athletes, on the one hand, and DHS-ICE, on the other hand.

21 77. Pursuant to 28 U.S.C. § 2201, the Student-Athletes seek a judicial
22 declaration from this Court confirming that the Student-Athletes' contentions, as
23 stated above, are correct.

24 78. A declaration is necessary in order that the parties' dispute may be
25 resolved and that they may be aware of their respective rights and duties

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SECOND CAUSE OF ACTION

For Violation of the Administrative Procedure Act, 5 U.S.C. § 706

Failure to Consider Student-Athletes’ Reliance Interests

79. The Student-Athletes bring this Second Cause of Action only if DHS-ICE contends that the allegations stated in paragraphs 75 and 76 above are false and if DHS-ICE contends that the Student-Athletes’ allegation as stated in paragraph 74 above is incorrect.

80. The Student-Athletes reallege and incorporate by reference paragraphs 1 through 72, 74, and 75 above.

81. The APA requires this Court to “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). Agency action must be the result of reasoned analysis. *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 57 (1983).

82. This standard applies even when an agency is altering existing guidance. When an agency changes course, the agency must “be cognizant that longstanding policies may have engendered serious reliance interests that must be taken into account.” *Encino Motorcars LLC v. Navarro*, 136 S. Ct. 2117, 2120 (2016).

83. *Post hoc* justifications for a policy change are not sufficient—the change must be the result of reasonable consideration of the interests potentially affected and the goals that the change is intended to achieve. *Dep’t of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. ___, 140 S. Ct. 1891, 1908–09 (2020); *see also Dep’t of Commerce v. N.Y.*, 588 U.S. ___, 139 S. Ct. 2551, 2575 (2019) (the Administration’s position that adding the citizenship question to the census would help enforce the Voting Rights Act “the sole stated reason” for the addition “seem[ed] to have been contrived”).

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1 84. As noted above, the United States has a long history of inviting
2 international students to study as “non-immigrants” pursuant to a student visa
3 program. International students admitted to America’s high-quality academic
4 institutions often have multiple options available to them. This is especially true of
5 elite student-athletes. They choose to come study in the United States in reliance on
6 the integrity of the visa program and the expectation that their student visas will be
7 honored as long as they are committed to their studies at their academic institutions.

8 85. The March Guidance did not provide any reason why or indication that
9 DHS-ICE would treat the Student-Athletes any differently than they would
10 international students who already had begun coursework.

11 86. The July 24 Guidance, for the first time and without any explanation or
12 stated rationale, stated that the March Guidance prohibited first-year international
13 students, ostensibly including Student-Athletes, from entering the country if their
14 host institutions only offer online instruction during the pandemic.

15 87. DHS-ICE provided no rationale for prohibiting first-year international
16 students from entering the country, aside from stating, “In accordance with March
17 2020 Guidance” However, the prohibition on first-year international students
18 from entering the country is not, in fact, “[i]n accordance with” the March
19 Guidance.

20 88. The prohibition on first-year international students from entering the
21 country is inconsistent with the March Guidance’s treatment of international
22 students entering their second year of studies or beyond, who are allowed to stay in
23 the country regardless of whether their host institutions only offer online instruction
24 during the pandemic.

25 89. The prohibition on first-year international students from entering the
26 country is inconsistent with the March Guidance’s statement that DHS-ICE
27 “intend[] to be flexible with temporary adaptations.” DHS-ICE further
28 “recognize[d] that the COVID-19 crisis is fluid and rapidly changing” and “[f]or

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1 that reason” assured schools that it was “leaving room for schools to comply with
2 state or local health emergency declarations.”

3 90. As applied to the Student-Athletes, the prohibition on entry is even
4 more arbitrary and capricious because some schools count participation in
5 intercollegiate athletics as in-person coursework, while others do not. Moreover, the
6 Student-Athletes are subject to strict health protocols to avoid the spread of COVID-
7 19 while participating in athletic programs.

8 91. As applied to the Student-Athletes who obtain on-campus employment,
9 the prohibition on entry is even more arbitrary and capricious because federal
10 regulations count on-campus employment as part of a “full course of study.” Thus,
11 regardless of whether academic coursework is fully online, the July 24 Guidance
12 might not apply simply if the student has a job.

13 92. The prohibition on first-year international students from entering the
14 United States is inconsistent with the realities of the coronavirus pandemic and
15 localities’ needs to respond to unanticipated increases in infection rates, including at
16 host institutions. In the case of the Student-Athletes, this is even more true because
17 they are required to be tested for COVID-19 prior to leaving their home countries,
18 required to be tested upon arrival in the United States, have strictly controlled
19 housing, would be under the close supervision of university physicians, and would
20 be tested regularly to ensure that the Student-Athletes can engage in intercollegiate
21 competition safely.

22 93. The Supreme Court has recently emphasized that agencies modifying a
23 previous policy are “required to assess whether there were reliance interests,
24 determine whether they were significant, and weigh any such interests against
25 competing policy concerns.” *Dep’t of Homeland Sec. v. Regents of Univ. of Cal.*,
26 591 U.S. ___, 140 S. Ct. 1891, 1915 (2020).

27 94. DHS-ICE’s actions in issuing the July 24 Guidance were arbitrary and
28 capricious because they failed to make the required assessment when they (perhaps

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1 inadvertently) upended the Student-Athletes’ lives by prohibiting them entry to
2 study and compete. Nearly 100 years of policy welcoming international students to
3 study in the United States, and the similarly engrained tradition of U.S. universities
4 seeking the best athletic talent from around the world to participate in NCAA
5 competition, informed the Student-Athletes’ reasonable beliefs that they would be
6 permitted entry to the United States pursuant to their lawfully-obtained and valid F
7 visas. Revoking international students’ visas when students have done everything in
8 their power to remain in compliance with U.S. immigration law in the midst of a
9 pandemic—and after DHS-ICE announced at the outset of the COVID pandemic
10 that the United States would honor these visas during the pandemic despite the shift
11 to online classes—disregarded the reliance interests of these students in taking
12 advantage of their visa status and their ability to study in the United States. The
13 long history of the United States’ F-1 visa program, together with the fact that no
14 guidance document purported to abrogate this program prior to the July 24
15 Guidance, created a reasonable and justifiable expectation among students that they
16 could maintain their visa status so long as they adhered to the requirements of their
17 visas.

18 95. The Student-Athletes reasonably relied on the statements made in the
19 March Guidance in moving forward with their plans to come to the United States to
20 study—that DHS-ICE would be flexible and allow international students to pursue
21 their studies in this country without interruption because of transitions to online
22 learning.

23 96. DHS-ICE have not provided an explanation as to why they would treat
24 first-year students, in general, or the Student-Athletes, specifically, differently from
25 others similarly situated but who had begun their courses of study a year or more
26 before them.

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1 97. DHS-ICE have not provided information demonstrating that they took
2 into consideration the hardships that first-year students, in general, or the Student-
3 Athletes, specifically, would suffer because of their disparate treatment.

4 98. For these reasons and others, the July 24 Guidance must be declared
5 “arbitrary, capricious, an abuse of discretion, [and] otherwise not in accordance with
6 law.” 5 U.S.C. § 706(2)(A).

7 **THIRD CAUSE OF ACTION**

8 ***For Violation of the Administrative Procedure Act, 5 U.S.C. §§ 553, 706***

9 ***Failure to Comply with Notice-and-Comment Requirements***

10 99. The Student-Athletes bring this Third Cause of Action only if DHS-
11 ICE contends that the allegations stated in paragraphs 75 and 76 above are false and
12 if DHS-ICE contends that the Student-Athletes’ allegation as stated in paragraph 74
13 above is incorrect.

14 100. The Student-Athletes reallege and incorporate by reference paragraphs
15 1 through 72, 74, 75, and 81 through 98 above.

16 101. The APA requires this Court to hold unlawful and set aside any agency
17 action taken “without observance of procedure required by law.” 5 U.S.C.
18 § 706(2)(D).

19 102. The APA, 5 U.S.C. § 553, requires that any agency desiring to
20 implement a rule go through the process of notice-and-comment in order to give the
21 agency the benefit of the expertise of those most impacted by the potential
22 rulemaking.

23 103. The July 24 Guidance was unlawfully promulgated without the
24 required notice and comment periods. After meeting widespread resistance to the
25 July 6 Guidance, DHS-ICE reversed course and stated they would adhere to the
26 March Guidance. However, DHS-ICE issued the July 24 Guidance without any
27 notice or commentary.

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1 109. The Student-Athletes reallege and incorporate by reference paragraphs
2 1 through 72, 74, 75, and 81 through 98 above.

3 110. The Student-Athletes have established a substantial voluntary
4 connection with the United States by obtaining student visas, gaining admission to
5 American academic institutions, deciding to accept invitations to matriculate and
6 represent U.S. universities in intercollegiate competition and in so doing foregoing
7 other opportunities to study and compete in other countries, and preparing to live,
8 work, study, and compete in this country. *See Ibrahim v. Dep't of Homeland Sec.*,
9 669 F.3d 983, 996 (9th Cir. 2012).

10 111. The Student-Athletes have significant liberty and property interests,
11 protected by the Due Process Clause, in their visas and access to educational and
12 athletic programs to which they have been admitted recruited and, as the next steps
13 in their educations and careers, in which they have invested significant time, energy,
14 and money. The “very essence” of due process is the “protection of the individual
15 against arbitrary action.” *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 584
16 (1972). The July 24 Guidance was so arbitrary, both in substance and the manner in
17 which it was implemented, that it threatens to unlawfully deprive Student-Athletes
18 of their constitutionally protected liberty and property interests.

19 112. As a result of these constitutional violations, the Student-Athletes will
20 suffer irreparable harm.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, the Student-Athletes seek the following relief:

- 23 1. Expedited proceedings pursuant to Federal Rule of Civil Procedure 57;
24 2. A declaration that the March Guidance must be applied to the Student-
25 Athletes to the same extent as it is applied to international students who have
26 progressed beyond their first year of study;
27 3. A declaration that the policy announced in the July 24 Guidance that
28 adversely affects first-year international students, including the Student-Athletes,

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1 while not adversely affecting other international students was unlawful and
2 unlawfully promulgated;

3 4. Permanent injunctive relief prohibiting DHS-ICE from enforcing the
4 July 24 Guidance or promulgating it as a final rule adversely against the Student-
5 Athletes;

6 5. Declaratory and injunctive relief requiring DHS-ICE to administer the
7 SEVP program with respect to the Student-Athletes consistent with the manner in
8 which it is administered with respect to international students who have progressed
9 beyond their first year of study;

10 6. An order requiring DHS-ICE to modify the July 24 Guidance and the
11 August 7 guidance in accordance with the foregoing;

12 7. An order awarding the Student-Athletes their costs and attorneys' fees;
13 and

14 8. Such other, further, and different relief as the Court may find just and
15 proper.

16 DATED: October 21, 2020 PASICH LLP

17 By: /s/ Kirk Pasich
18 Kirk Pasich

19 Attorneys for Plaintiffs
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