

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AHWAR SULTAN, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

Civil Action No. 25-1121 (TSC)

**DEFENDANTS' MEMORANDUM IN OPPOSITION TO
PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER**

TABLE OF CONTENTS

TABLE OF CONTENTS..... I
TABLE OF AUTHORITIESII
INTRODUCTION 1
STATUTORY BACKGROUND 2
 I. Nonimmigrant Students 2
 II. SEVIS 3
FACTUAL BACKGROUND..... 4
 I. Sultan 4
 II. Plaintiffs’ Complaint..... 4
STANDARD OF REVIEW 4
ARGUMENT..... 5
 I. Plaintiffs Fail to Demonstrate a Likelihood of Success on the Merits. 6
 A. The United States Has Not Waived Sovereign Immunity 6
 B. The Agency’s Action Does Not Violate Due Process 9
 II. Plaintiffs Cannot Establish a Likelihood of Immediate Irreparable Harm. 11
 III. The Balance of Harms and the Public Interest Weigh Against Relief..... 14
 IV. The Court Should Limit Relief. 15
 V. The Court Should Require Plaintiffs to Post Security. 19
CONCLUSION..... 19

TABLE OF AUTHORITIES

Cases

Alvarez v. U.S. Immigr. & Customs Enf’t,
818 F.3d 1194 (11th Cir. 2016) 18

Aminjavaheri v. Biden,
Civ. A. No. 21-2246 (RCL), 2021 WL 4399690 (D.D.C. Sept. 27, 2021)..... 1

Armstrong v. Overton,
Civ. A. No. 07-152, 2008 WL 360891 (W.D. Pa. Feb. 8, 2008) 14

Arpaio v. Obama,
797 F.3d 11, 23 (D.C. Cir. 2015) 13

Avramenkov v. INS,
99 F. Supp. 2d 210 (D. Conn. 2000)..... 17

Barahona-Gomez v. Reno,
236 F.3d 1115 (9th Cir. 2001) 15

Basel Action Network v. Mar. Admin.,
285 F. Supp. 2d 58 (D.D.C. 2003) 4

Bennett v. Isagenix Int’l LLC,
118 F.4th 1120 (9th Cir. 2024) 14

Block v. North Dakota ex rel. Bd. of Univ. & Sch. Lands,
461 U.S. 273 (1983)..... 6

Bluman v. FEC,
800 F. Supp. 2d 281 (D.D.C. 2011) 11

Chaplaincy of Full Gospel Churches v. England,
454 F.3d 290 (D.C. Cir. 2006) 5, 12

Chichakli v. Kerry, 203 F. Supp. 3d 48 (D.D.C. 2016) 7

CityFed Fin. Corp. v. Office of Thrift Superv.,
58 F.3d 738 (D.C. Cir. 1995) 12

Clapper v. Amnesty Int’l USA,
568 U.S. 398 (2013)..... 13

Cohen v. United States,
650 F.3d 717 (D.C. Cir. 2011)..... 6

Cudzich v. INS,
886 F. Supp. 101 (D.D.C. 1995)..... 7

Dep’t of State v. Muñoz,
602 U.S. 899 (2024)..... 11

Dick v. Holder,
67 F. Supp. 3d 167 (D.D.C. 2014)..... 8

Dickson v. Off. of Pers. Mgmt.,
828 F.2d 32 (D.C. Cir. 1987)..... 8

Dorfmann v. Boozer,
414 F.2d 1168 (D.C. Cir. 1969)..... 2

Farris v. Rice,
453 F. Supp. 2d 76 (D.D.C. 2006)..... 12

FDIC v. Meyer,
510 U.S. 471 (1994)..... 6

Hafen v. Pendry,
646 F. Supp. 2d 159 (D.D.C. 2009)..... 6

Hall v. Johnson,
599 F. Supp. 2d 1 (D.D.C. 2009)..... 4

Henke v. Dep’t of Interior,
842 F. Supp. 2d 54 (D.D.C. 2012)..... 12

Hospitality Staffing Sols., LLC v. Reyes,
736 F. Supp. 2d 192 (D.D.C. 2010)..... 5

Humphries v. Various Federal USINS Employees,
164 F.3d 936 (5th Cir. 1999) 18

Jimenez-Angeles v. Ashcroft,
291 F.3d 594 (9th Cir. 2002) 15

Kleindienst v. Mandel,
408 U.S. 753 (1972)..... 11

League of Women Voters of the U.S. v. Newby,
838 F.3d 1 (D.C. Cir. 2016)..... 4

League of Women Voters v. Newby,
Civ. A. No. 16-236 (RJL), 2016 WL 8808743 (D.D.C. Feb. 23, 2016)..... 12

Louhghalam v. Trump,
230 F. Supp. 3d 26 (D. Mass. 2017) 10

Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians v. Patchak,
567 U.S. 209 (2012)..... 6

Mayorga v. Meade,
Civ. A. No. 24-22131, 2024 WL 4298815 (S.D. Fla. Sept. 26, 2024) 17

Mdewakanton Sioux Indians of Minn.,
255 F. Supp. 3d 48 (D.D.C. 2017)..... 12

Nken v. Holder,
556 U.S. 418 (2009)..... 13

Pursuing Am. ’s Greatness v. FEC,
831 F.3d 500 (D.C. Cir. 2016) 4

Rauda v. Jennings,
55 F.4th 773 (9th Cir. 2022) 15

Reno v. Am.-Arab Anti-Discrimination Comm.
525 U.S. 471 (1999)..... 15

Richards-Diaz v. Fasano,
233 F.3d 1160 (9th Cir. 2000) 16

Schnapper v. Foley,
667 F.2d 102 (D.C. Cir. 1981)..... 6

Shaughnessy v. United States ex rel. Mezei,
345 U.S. 206 (1953)..... 11

Spadone v. McHugh,
842 F. Supp. 2d 295 (D.D.C. 2012)..... 13

urrani v. U.S. Citizenship & Immigration Servs.,
596 F. Supp. 2d 24 (D.D.C. 2009) 7

Van Dinh v. Reno,
197 F.3d 427 (10th Cir. 1999) 17

Villegas v. Gonzales,
231 Fed. Appx. 755 (9th Cir. 2007)..... 16

Wallace v. Secretary. U.S. Dep’t of Homeland Sec.
616 Fed. Appx. 958 (11th Cir. 2015)..... 18

Washington v. Glucksberg,
521 U. S. 702 (1997)..... 11

Weinberger v. Romero-Barcelo,
456 U.S. 305 (1982)..... 14

Wilson v. Libby,
535 F.3d 697 (D.C. Cir. 2008)..... 7

Statutes

5 U.S.C. § 552a(a)(2)..... 7

5 U.S.C. § 552a(g)(1)(C) 6, 7

5 U.S.C. § 702..... 6

5 U.S.C. § 704(a)(1)..... 7

5 U.S.C. § 706(2) 1

8 U.S.C. § 1101(a)(15)(F)(i)..... 2

8 U.S.C. § 1226(e) 17

8 U.S.C. § 1229a..... 5

8 U.S.C. § 1229a(c)(5)..... 19

8 U.S.C. § 1252(a)(2)(B)(ii). 17

8 U.S.C. § 1252(b)(9) 16, 19

8 U.S.C. § 1252(g) 15, 17

8 U.S.C. § 1372..... 3

8 U.S.C. § 1372(a)(1)..... 3

Regulations

8 C.F.R. § 214.2(f)(1)(i)..... 2

8 C.F.R. § 214.2(f)(10) 2

8 C.F.R. § 214.2(f)(10)(ii) 2

8 C.F.R. § 214.2(f)(10)(ii)(A)..... 3

8 C.F.R. § 214.2(f)(10)(ii)(C)	2
8 C.F.R. § 214.2(f)(10)(ii)(E)	3
8 C.F.R. § 214.2(f)(5)(i).....	2
8 C.F.R. § 214.2(f)(7)	3

Defendants, by and through the undersigned counsel, respectfully file this memorandum in opposition to Plaintiffs' motion for temporary restraining order (ECF No 4, "Pls.' Mot."). For the reasons discussed below, the Court should deny Plaintiffs' motion.

INTRODUCTION

Plaintiffs Ahwar Sultan ("Sultan"), a national of India, and Students for Justice in Palestine at The Ohio State University brings claims under the Administrative Procedure Act, 5 U.S.C. § 706(2), and the First and Fifth Amendments, challenging Immigration and Customs Enforcement's ("ICE's") change of Sultan's record maintained in the Student and Exchange Visitor Information System ("SEVIS"). Plaintiffs, however, conflate the change of Sultan's SEVIS record with a termination of his status as a nonimmigrant student ("F-1 status") and the revocation of his nonimmigrant visa. Plaintiffs thus demand that this Court overlook its jurisdictional limits and grant Sultan extraordinary relief. The Court should decline Plaintiffs' demand.

First, Plaintiffs fail to demonstrate a likelihood of success on the merits: (a) the United States has not waived sovereign immunity; (b) Plaintiffs do not identify a final agency action; and (c) Plaintiffs do not identify a due process violation. Second, Plaintiffs fail to establish irreparable harm because: (a) Plaintiffs' alleged harms are monetary and, thus, by definition reparable at law; and (b) any alleged harms are speculative. And third, the balance of harms and the public interest weigh in favor of the Executive's ability to control immigration.

Accordingly, for the reasons discussed below, the Court should deny Plaintiffs' demand for extraordinary relief, especially because Plaintiffs' demand is that Sultan be granted the requested ultimate relief. *See Aminjavaheeri v. Biden*, Civ. A. No. 21-2246 (RCL), 2021 WL 4399690, at *5 (D.D.C. Sept. 27, 2021) ("Moreover, the D.C. Circuit has cautioned that a preliminary injunction 'should not work to give a party essentially the full relief he seeks on the

merits.” (quoting *Dorfmann v. Boozer*, 414 F.2d 1168, 1173 n.13 (D.C. Cir. 1969) (citations omitted)).

STATUTORY BACKGROUND

I. Nonimmigrant Students

The Immigration and Nationality Act (“INA”), as amended, allows for the entry of an alien, who “is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study. . . at an established college, university, seminary, conservatory, academic high school, elementary school, or other academic institution or in an accredited language training program in the United States.” 8 U.S.C. § 1101(a)(15)(F)(i) (hereinafter, “F-1 status”). To be admitted in F-1 status, an applicant must present a Form I-20, Certificate of Eligibility for Nonimmigrant Student Status, issued by a certified school in the student’s name; present documentary evidence of financial support; demonstrate he or she intends to attend the school specified on the student’s visa; and, if the student attends a public secondary school, demonstrate that he or she has reimbursed the local educational agency administering the school for the full, unsubsidized per capita cost of providing education at the school for the period of the student’s attendance. 8 C.F.R. § 214.2(f)(1)(i). To maintain F-1 status, an alien must “pursue a full course of study” or “engage in authorized practical training[.]” *Id.* § 214.2(f)(5)(i).

“Optional Practical Training” or “OPT” must be “directly related to [a student’s] major area of study” in order to qualify as authorized training. *Id.* § 214.2(f)(10). OPT allows eligible students to obtain temporary employment that is directly related to an alien’s major area of study. *Id.* § 214.2(f)(10)(ii). Aliens in an F-1 status, who received a science, technology, engineering, or mathematics (“STEM”) degree may extend participation in the OPT program for up to an additional two years. *Id.* § 214.2(f)(10)(ii)(C).

OPT can occur while an alien is in school, during breaks, or after a student has completed his or her course of study. *Id.* § 214.2(f)(10)(ii)(A)(1)-(3). While in school, an alien’s status is based on that student pursuing a degree and need not be routinely renewed. *Id.* § 214.2(f)(7). For post-degree completion OPT, there are limits on how long an individual can be unemployed. In particular, aliens in an F-1 status may not accrue more than ninety days of unemployment unless granted a twenty-four-month STEM OPT extension, in which case they may not accrue more than a total of 150 days of unemployment. *Id.* § 214.2(f)(10)(ii)(E). Periods of unemployment longer than those authorized by regulation may be considered a failure to maintain status. *Id.*

II. SEVIS

Congress required that “[t]he [Secretary of Homeland Security], in consultation with the Secretary of State and the Secretary of Education, . . . develop and conduct a program to collect [certain information] from approved institutions of higher education, other approved educational institutions, and designated exchange visitor programs in the United States [certain information] with respect to aliens who have the status, or are applying for the status, of nonimmigrants under subparagraph (F), (J), or (M) of section 1101(a)(15) of this title.” 8 U.S.C. § 1372(a)(1).

Accordingly, the Secretary of Homeland Security created SEVIS, “which is a web-based system that the U.S. Department of Homeland Security (DHS) uses to maintain information on Student and Exchange Visitor Program-certified schools, F-1 and M-1 students who come to the United States to attend those schools, U.S. Department of State-designated Exchange Visitor Program sponsors and J-1 visa Exchange Visitor Program participants.” ICE, Student and Exchange Visitor Information System (available at: <https://www.ice.gov/sevis/overview>) (last visited Apr. 12, 2025). ICE maintains SEVIS records in DHS/ICE–001 Student and Exchange Visitor Information System (SEVIS) System of Records. 86 Fed. Reg. 69663 (Dec. 8, 2021) (“DHS/ICE uses, collects, and maintains information on nonimmigrant students and exchange

visitors, and their dependents, admitted to the United States under an F, M, or J class of admission, and the schools and exchange visitor program sponsors that host these individuals in the United States.”).

FACTUAL BACKGROUND

I. Sultan

Sultan is a national of India. Compl. (ECF No. 1) ¶ 44. On or about January 12, 2025, a U.S. Customs and Border Protection officer admitted Sultan into the United States in an F-1 nonimmigrant status. *Id.* ¶¶ 51, 52. On April 3, 2025, Ohio State University informed Sultan that his SEVIS record was changed to terminated. *Id.* ¶ 87.

II. Plaintiffs’ Complaint

On April 15, 2025, Plaintiffs filed their complaint, alleging violations of the First and Fifth Amendments and the APA, 5 U.S.C. § 706(2). *Id.* Relevant to this motion, Sultan alleges that (1) the change of his SEVIS record violated (1) the APA, 5 U.S.C. § 706(2), Pls.’ Mem. (ECF No. 4-1) at 5; (2) the revocation of his F-1 visa violated his procedural and substantive due process rights, *id.* at 9.

STANDARD OF REVIEW

“A [temporary restraining order] is an extraordinary remedy and should be granted sparingly.” *Basel Action Network v. Mar. Admin.*, 285 F. Supp. 2d 58, 60 (D.D.C. 2003). A party seeking a temporary restraining order must make a “clear showing that four factors, taken together, warrant relief: likely success on the merits, likely irreparable harm in the absence of preliminary relief, a balance of the equities in its favor, and accord with the public interest.” *League of Women Voters of the U.S. v. Newby*, 838 F.3d 1, 6 (D.C. Cir. 2016) (quoting *Pursuing Am.’s Greatness v. FEC*, 831 F.3d 500, 505 (D.C. Cir. 2016)); *Hall v. Johnson*, 599 F. Supp. 2d 1, 3 n.2 (D.D.C. 2009) (“The same standard applies to both temporary restraining orders and to

preliminary injunctions”). The moving party bears the burden of persuasion and must demonstrate, “by a clear showing,” that the requested relief is warranted. *Hospitality Staffing Sols., LLC v. Reyes*, 736 F. Supp. 2d 192, 197 (D.D.C. 2010) (quoting *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006)).

ARGUMENT

Plaintiffs conflate the agency’s action here—the change of Sultan’s SEVIS record—with the termination of his F-1 status. *See* Pls.’ Mem. (ECF No. 4-1) at 3 (requesting the Court “preserve the status quo and prevent irreparable harm resulting from the government’s unconstitutional and unlawful termination of his F-1 student status without notice or an opportunity to be heard.”). Plaintiffs include no allegations that ICE has terminated Sultan’s status, which requires: (1) “the revocation of a waiver authorized on his or her behalf under section 212(d) (3) or (4) of the Act;” (2) “the introduction of a private bill to confer permanent resident status on such alien;” or, (3) “notification in the Federal Register, on the basis of national security, diplomatic, or public safety reasons.” 8 C.F.R. § 214.1(d); *see generally* Compl. (ECF No. 1).

Moreover, Plaintiffs include no allegations that ICE has instituted any action to revoke Sultan’s F-1 status or remove him from the United States, which could only occur after ICE instituted removal proceedings and Sultan has an opportunity to appear before an immigration judge. *See* 8 U.S.C. § 1229a; Compl. (ECF No. 1) 90 (“In fact, the most recent search of [Sultan’s] I-94 has no indication that there has been a revocation of any kind.”); Decl. of Andre Watson (Apr. 21, 2025) ¶ 10 (noting termination of a SEVIS record is not termination of nonimmigrant status).

I. Plaintiffs Fail to Demonstrate a Likelihood of Success on the Merits.

A. The United States Has Not Waived Sovereign Immunity

“Sovereign immunity is jurisdictional” and “[a]bsent a waiver, . . . shields the Federal Government and its agencies from suit.” *FDIC v. Meyer*, 510 U.S. 471, 475 (1994). “The burden rests with the Plaintiffs to demonstrate the government’s waiver of immunity.” *Hafen v. Pendry*, 646 F. Supp. 2d 159, 160 (D.D.C. 2009) (citation omitted).

Even though the APA generally waives the government’s immunity, APA section 702 “preserves ‘other limitations on judicial review’ and does not ‘confer[] authority to grant relief if any other statute . . . expressly or impliedly forbids the relief which is sought.’” *Cohen v. United States*, 650 F.3d 717, 724–25 (D.C. Cir. 2011) (quoting 5 U.S.C. § 702) (citing *Schnapper v. Foley*, 667 F.2d 102, 108 (D.C. Cir. 1981) (concluding the government’s immunity remains intact when “another statute expressly or implicitly forecloses injunctive [or declaratory] relief”)); see *Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians v. Patchak*, 567 U.S. 209, 215 (2012) (“[Section 702] prevents Plaintiffs from exploiting the APA’s waiver to evade limitations on suit contained in other statutes.”). “[W]hen Congress has dealt in particularity with a claim and [has] intended a specified remedy’—including its exceptions—to be exclusive, that is the end of the matter; the APA does not undo the judgment.” *Match-E-Be-Nash-She-Wish Band*, 567 U.S. at 216 (quoting *Block v. North Dakota ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273, 286 n.22 (1983)); see *Block*, 461 U.S. at 287 (“A necessary corollary of this rule [that the United States cannot be sued without the consent of Congress] is that when Congress attaches conditions to legislation waiving the sovereign immunity of the United States, those conditions must be strictly observed, and exceptions thereto are not to be lightly implied.”).

The Privacy Act provides exclusive relief to challenge the agency’s decision here. 5 U.S.C. § 552a(g)(1)(C) states:

Whenever an agency . . . fails to maintain any record concerning any individual with such accuracy . . . as is necessary to assure fairness in any determination relating to the qualifications, character, rights, or opportunities of, or benefits to the individual that may be made on the basis of such record, and consequently a determination is made which is adverse to the individual . . . the individual may bring a civil action against the agency, and the district courts of the United States shall have jurisdiction in the matters under the provisions of this subsection.

5 U.S.C. § 552a(g)(1)(C). It is well-settled that the Privacy Act is a comprehensive statutory scheme that precludes other avenues of relief. *See, e.g., Wilson v. Libby*, 535 F.3d 697, 708–09 (D.C. Cir. 2008) (noting that Congress created comprehensive scheme under the Act and the fact that the scheme does not provide relief for individual Plaintiffs does not warrant alteration or supplementation of the framework); *see also Chichakli v. Kerry*, 203 F. Supp. 3d 48, 57 (D.D.C. 2016) (dismissing claims because claims related to unauthorized disclosure of records must be brought pursuant to Privacy Act). Plaintiffs’ requested injunctive relief is not available as a remedy under the provisions they invoke, 5 U.S.C. § 552a(g)(1)(C). *See Dick*, 67 F. Supp. 3d at 187 (“Injunctive relief is not available as a remedy for claims under []§ 552a(g)(1)(C)).”

Here, Plaintiffs’ claims sound in the Privacy Act. Plaintiffs asks this Court to “order Defendants to reinstate Plaintiffs’ valid F-1 student status under the SEVIS system at The Ohio State University.” Pr. Order (ECF No. 4-2). In other words, Plaintiffs demand this Court to modify an entry in a Privacy Act system of records. The Privacy Act, however, precludes review because Sultan is a national of India. 5 U.S.C. § 552a(a)(2) provides, “the term ‘individual’ means a citizen of the United States or an alien lawfully admitted for permanent residence.” 5 U.S.C. § 552a(a)(2). Plaintiffs make no claim, nor can they, that Sultan is either a U.S. citizen or a lawful permanent resident. As such, the United States has not waived sovereign immunity because the Privacy Act precludes judicial review of Plaintiffs’ claims. *See* 5 U.S.C. § 552a(a)(2); 5 U.S.C. § 704(a)(1); *Durrani v. U.S. Citizenship & Immigr. Servs.*, 596 F. Supp. 2d 24, 28 (D.D.C. 2009); *Cudzich v. INS*, 886 F. Supp. 101, 105 (D.D.C. 1995); *Raven v. Panama Canal Co.*, 583 F.2d

169, 171 (5th Cir. 1978) (“[I]t would be error for this Court to allow Plaintiffs, a Panamanian citizen, to assert a claim under the Privacy Act.”).

Moreover, the Court would lack jurisdiction over any such a claim because Sultan has not exhausted his administrative remedies. *See, e.g., Dickson v. Off. of Pers. Mgmt.*, 828 F.2d 32, 41 (D.C. Cir. 1987) (noting federal courts lack jurisdiction over claims for injunctive relief under the Privacy Act until a Plaintiffs presents them to the agency). Plaintiffs include no allegations that Sultan submitted any such request to the agency to have his record amended. *See generally* Compl. (ECF No. 1). As such, the Court lacks subject-matter jurisdiction to hear any Privacy Act claim even if that Act provided Plaintiffs a cause of action. *Dick v. Holder*, 67 F. Supp. 3d 167, 188 (D.D.C. 2014).

Lastly, judicial review under the APA is only available, however, when “there is no other adequate remedy in a court[.]” 5 U.S.C. § 704. Indeed, “Congress did not intend the general grant of review in the APA to duplicate existing procedures for review of agency action.” *Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988).

To be considered “adequate,” the alternative relief available need not provide an identical review that the APA would provide, so long as the alternative remedy offers the “same genre” of relief. *Citizens for Resp. & Ethics in Wash. v. Dep’t of Just.*, 846 F.3d 1235, 1245 (D.C. Cir. 2017) (quoting *El Rio Santa Cruz Neighborhood Health Ctr., Inc. v. Dep’t of Health & Hum. Servs.*, 396 F.3d 1265, 1272 (D.C. Cir. 2005)). Alternative relief “will be deemed adequate ‘where a statute affords an opportunity for de novo district-court review’ of the agency action.” *Garcia v. Vilsack*, 563 F.3d 519, 522 (D.C. Cir. 2009) (quoting *El Rio Santa Cruz*, 396 F.3d at 1270). This is because “Congress did not intend to permit a litigant challenging an administrative denial . . . to utilize simultaneously both [the review provision] and the APA.” *El Rio Santa Cruz*,

396 F.3d at 1270 (internal citation and quotation marks omitted). Where an adequate remedy is available, a Plaintiff lacks a cause of action under the APA to challenge an agency's alleged error. *See Perry Capital LLC v. Mnuchin*, 864 F.3d 591, 621 (D.C. Cir. 2017) (concluding that absence of an adequate alternative remedy is an element of the cause of action created by the APA).

Here, the Privacy Act provides “an adequate remedy.” *Reid v. Fed. Bureau of Prisons*, Civ. A. No. 04-1845 (ESH), 2005 WL 1699425, at *2 (D.D.C. July 20, 2005) (citing *Mittleman v. U.S. Treasury*, 773 F.Supp. 442, 448–49 (D.D.C.1991) (dismissing APA claim in light of statutory scheme and remedy available under Privacy Act)).

In sum, the United States has not waived sovereign immunity, or, alternatively, Plaintiffs have not stated a cause of action under the APA.

B. The Agency's Action Does Not Violate Due Process

“For a Plaintiff to establish a procedural due process claim, it must show that: (1) it has a protected interest, (2) the government deprived it of this interest, and (3) the deprivation occurred without proper procedural protections.” *Cnty. Fin. Servs. Ass'n of Am. v. FDIC*, 132 F. Supp. 3d 98, 122 (D.D.C. 2015) (citing *Indus. Safety Equip. Ass'n, Inc. v. EPA*, 837 F.2d 1115, 1122 (D.C. Cir. 1988)). Sultan has no property interest in a SEVIS record. *See Yunsong Zhao v. Va. Polytechnic Inst. & State Univ.*, Civ. A. No. 18-0189, 2018 WL 5018487, at *6 (W.D. Va. Oct. 16, 2018) (holding that Plaintiff did not have an property interest in his SEVIS status that would implicate due process); *Bakhtiari v. Beyer*, Civ. A. No. 06-1489, 2008 WL 3200820, at *3 (E.D. Mo. Aug. 6, 2008) (holding that SEVIS regulations and their enabling legislation do not indicate a congressional intent to confer a benefit on nonimmigrant students). This is because the SEVIS database is simply an administrative tool that does not affect the lawfulness of someone's nonimmigrant status. *See Yunsong Zhao*, 2018 WL 5018487, at *4–5; Watson Decl. ¶ 10. For example, regulations permit universities to terminate a SEVIS record, but the Plaintiffs do not

argue that universities have the authority to revoke their immigration status. *See Deore v. Sec’y of DHS*, No. 25-cv-11038, Dkt. 20, slip op. at 7–8, 12–13 (E.D. Mich. Apr. 17, 2025) (Exhibit 1) (finding no likelihood of success on due process claim because “the Court cannot conclude based on the current record whether it is likely that any of the students have lost their F-1 status or have lost any legal rights based solely on the termination of their SEVIS record”). Additionally, “[t]here is no constitutionally protected interest in either obtaining or continuing to possess a visa.” *Louhghalam v. Trump*, 230 F. Supp. 3d 26, 35 (D. Mass. 2017) (collecting cases).¹ As such, Plaintiffs due process claims fail.

Moreover, even if there were such a protected interest, the processes afforded to Plaintiffs would satisfy the Fifth Amendment. *See Mathews v. Eldridge*, 424 U.S. 319, 339–40 (1976); *cf. Hudson v. Palmer*, 468 U.S. 517, 533 (1984) (“[W]e hold that an unauthorized intentional deprivation of property by a state employee does not constitute a violation of the procedural requirements of the Due Process Clause of the Fourteenth Amendment if a meaningful postdeprivation remedy for the loss is available. For intentional, as for negligent deprivations of property by state employees, the state's action is not complete until and unless it provides or refuses to provide a suitable postdeprivation remedy.”). This is because the review procedures available to Plaintiffs (in the event the Plaintiffs had actually lost their lawful nonimmigrant F-1 status) would allow them to seek reinstatement administratively from U.S. Citizenship and Immigration Services (“USCIS”). 8 C.F.R. 214.2(f)(16). And even if there were a reason to believe that Sultan was likely to be placed into removal proceedings, the procedures available to Sultan in immigration court comply with the Fifth Amendment. *See* 8 U.S.C. § 1229a; *see also* 8 U.S.C. § 1201(i) (allowing the review of a visa revocation “in the context of a removal

1

proceeding if such revocation provides the sole ground for removal under section 1227(a)(1)(B) of this title.”²

Lastly, Plaintiffs cannot establish a substantive due process claim. The “two-step inquiry [to determine a fundamental interest] disciplines the substantive due process analysis.” *Dep’t of State v. Muñoz*, 602 U.S. 899, 910 (2024). “First, it insists on a ‘careful description of the asserted fundamental liberty interest.’ Second, it stresses that ‘the Due Process Clause specially protects’ only ‘those fundamental rights and liberties which are, objectively, deeply rooted in this Nation’s history and tradition.’” *Id.* (quoting *Washington v. Glucksberg*, 521 U. S. 702, 720–21 (1997)). While, Plaintiffs appear to describe a fundamental liberty interest—“Sultan’s constitutionally protected speech and peaceful assembly,” Pls.’ Mem. (ECF No. 4-1) at 10, Plaintiffs omit from their description that Sultan is an admitted alien, *i.e.*, an alien’s right to remain in the United States and exercise constitutionally protected speech and peaceful assembly. But, the First Amendment does not protect Sultan from deportation. *See Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953); *see also Kleindienst v. Mandel*, 408 U.S. 753, 766–770 (1972); *Bluman v. FEC*, 800 F. Supp. 2d 281, 287 (D.D.C. 2011). Additionally, Plaintiffs offer no explanation that such a liberty interest is deeply rooted in the nation’s history.

As such, Plaintiffs cannot demonstrate a due process claim.

II. Plaintiffs Cannot Establish a Likelihood of Immediate Irreparable Harm.

“Regardless of how the other three factors are analyzed, it is required that the movant demonstrate an irreparable injury.” *Mdewakanton Sioux Indians of Minn. V. Zinke*, 255 F. Supp.

² Plaintiffs otherwise cannot challenge the revocation of a visa. *See* 8 U.S.C. 1201(i) (“There shall be no means of judicial review (including review pursuant to section 2241 of title 28 or any other habeas corpus provision, and sections 1361 and 1651 of such title) of a revocation under this subsection, except in the context of a removal proceeding if such revocation provides the sole ground for removal under section 1227(a)(1)(B) of this title.”)

3d 48, 51 (D.D.C. 2017). “The basis of injunctive relief in the federal courts has always been irreparable harm.” *Sampson v. Murray*, 415 U.S. 61, 88 (1974); *see also CityFed Fin. Corp. v. Off. of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir. 1995). The Supreme Court’s “frequently reiterated standard requires Petitioners seeking preliminary relief to demonstrate that irreparable injury is *likely* in the absence of an injunction.” *Winter*, 555 U.S. at 22 (emphasis in original). “[I]f a party makes no showing of irreparable injury, the court may deny the motion without considering the other factors.” *Henke v. Dep’t of Interior*, 842 F. Supp. 2d 54, 59 (D.D.C. 2012) (quoting *CityFed Fin.*, 58 F.3d at 747); *see also Chaplaincy of Full Gospel Churches*, 454 F.3d at 297 (“A movant’s failure to show any irreparable harm is . . . grounds for refusing to issue a preliminary injunction, even if the other three factors entering the calculus merit such relief.”). And where a party seeks to change the status quo through action rather than merely to preserve the status quo, typically the moving party must meet an even higher standard than in the ordinary case: the movant must show ‘clearly’ that [it] is entitled to relief or that extreme or very serious damage will result.” *Farris v. Rice*, 453 F. Supp. 2d 76, 78 (D.D.C. 2006) (collecting authorities); *see League of Women Voters v. Newby*, Civ. A. No. 16-0236 (RJL), 2016 WL 8808743, at *1 (D.D.C. Feb. 23, 2016) (“This conclusion is bolstered by the fact that Plaintiffs here seek not to maintain the status quo, but instead to restore the status quo ante, requiring this Court to proceed with the utmost caution.”).

Plaintiffs has failed to demonstrate irreparable harm sufficient to warrant extraordinary injunctive relief. Plaintiffs claim, “Sultan faces immediate and irreparable harm from Defendants’ arbitrary termination of his SEVIS status, including the abrupt cessation of his academic pursuits, loss of employment authorization, and imminent threat of detention or deportation.” Pls.’ Opp’n (ECF No. 4-1) at 10–11.

First, Plaintiffs do not include allegations that he will lose his ability to complete his academic studies. *See Liu v. Noem*, Civ. A. No. 25-0716, 2025 WL 1141023, at *3 (S.D. Ind. Apr. 17, 2025) (“But each Plaintiff relies on a conclusory statement that they will not be able to complete their studies and has not designated evidence showing that they would not be able to resume and complete their academic programs if they prevail on the merits in this case.”) (collecting cases); *see generally* Compl. (ECF No. 1). Additionally, the harm is speculative because a movant cannot show “certain[] impending” injury when the asserted injury is based on a “speculative chain of possibilities,” *Clapper v. Amnesty Int’l USA*, 568 U.S. 398, 410 (2013), or on “speculation about the decisions of independent actors,” *id.* at 414. As the D.C. Circuit has cautioned: “Because of the generally contingent nature of predictions of future third-party action,” a court should be “sparing in crediting claims of anticipated injury by market actors and other parties alike.” *Arpaio v. Obama*, 797 F.3d 11, 23 (D.C. Cir. 2015).

Second, Plaintiffs do not include allegations that U.S. Citizenship and Immigration Services has revoked any employment authorization, which could only occur after USCIS provided Sultan notice and he has an opportunity to respond. *See* 8 C.F.R. § 274a.14(b); *see generally* Compl. (ECF No. 1). Nonetheless, the loss of employment, a monetary injury, does not constitute irreparable harm. “Monetary injuries alone, even if they are substantial, ordinarily do not constitute irreparable harm.” *Spadone v. McHugh*, 842 F. Supp. 2d 295, 301 (D.D.C. 2012) (citations omitted).

Third, any claims related to the possibility of detention and removal proceedings do not constitute irreparable injury. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) (“[T]he burden of removal alone cannot constitute the requisite irreparable injury.”). Indeed, courts have recognized short detention periods do not even create irreparable harm. *See Griffin v. Vaughn*, 112 F.3d 703,

706 (3d Cir.1997) (fifteen-month long stint in administrative detention does not constitute atypical or significant hardship); *Armstrong v. Overton*, Civ. A. No. 07-152, 2008 WL 360891, at *2 (W.D. Pa. Feb. 8, 2008) (thirty days of solitary confinement did not create irreparable harm to warrant an injunction). Additionally, Sultan is free to depart the United States on his own. See *Bennett v. Isagenix Int'l LLC*, 118 F.4th 1120, 1129 (9th Cir. 2024).

Lastly, to the extent Plaintiffs claim a violation of the First Amendment is per se irreparable harm, Plaintiffs make no showing there is no First Amendment violation here. Even so, a preliminary injunction is an extraordinary remedy, where a Plaintiff must show a “clear and present need for equitable relief” to guard against an “imminen[t]” injury. *Chaplaincy of FullGospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). But, Plaintiffs do not demonstrate such an imminent injury to the exercise of their First Amendment rights.

As such, the Court should find that Plaintiffs has not established irreparable harm.

III. The Balance of Harms and the Public Interest Weigh Against Relief.

The party seeking a preliminary injunction must show that the balance of equities tips in their favor and that the injunction is in the public interest. *Winter*, 555 U.S. at 20. A court “should pay particular regard for the public consequences” of injunctive relief. *Id.* at 24 (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)).

Here, the public interest weighs in favor of denying the motion. “Control over immigration is a sovereign prerogative.” *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Review*, 959 F.2d 742, 750 (9th Cir. 1992); see *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (“Our cases have long recognized the power to . . . exclude aliens as a fundamental sovereign attribute exercised by the Government’s political departments largely immune from judicial control.”); *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952) (“[A]ny policy towards aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign

relations,” and such “matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.”). Thus, the balance of the equities weighs in favor of the Government.

IV. The Court Should Limit Relief.

Plaintiffs demand the Court “[e]njoin Defendants from detaining Plaintiffs pending the instant case.” Pr. Order (ECF No. 4-2).

As an initial matter, 8 U.S.C. § 1252(g) bars relief here. The Supreme Court in *Reno v. Am.-Arab Anti-Discrimination Comm.* analyzed § 1252(g) and found that it applies to “three discrete actions that the Attorney General may take: her ‘decision or action’ to ‘commence removal proceedings, *adjudicate* cases, or *execute* removal orders.” 525 U.S. 471, 482 (1999) (emphasis in original). The Supreme Court, in making this ruling, determined that “Section 1252(g) was directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion.” *Id.* at 485 n.9. This includes the Executive’s “discretion to abandon the endeavor” without judicial interference. *Id.* at 483–84; *see also Barahona-Gomez v. Reno*, 236 F.3d 1115, 1120 (9th Cir. 2001) (“It is this very decision to either ‘abandon the endeavor’ or to adjudicate it that Congress wished to preserve from judicial review.”). As a result, section 1252(g) prohibits district courts from hearing challenges to the Attorney General’s decision and actions about whether, when, and where to commence removal proceedings. *See Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 598-99 (9th Cir. 2002). Plaintiffs’ request, however, is linked to the Attorney General’s discretion to commence proceedings, as well as the conclusion of those proceedings, and therefore, the Court is barred from granting such relief.

The Ninth Circuit has held § 1252(g) applies to the discretionary decision to commence removal proceedings. *See Rauda v. Jennings*, 55 F.4th 773, 777–78 (9th Cir. 2022) (denying stay of removal pending appeal in habeas action because “[n]o matter how [petitioner] frames it, his

challenge is to the Attorney General’s exercise of his discretion to execute [his] removal order, which we have no jurisdiction to review.”); *Jimenez-Angeles v. Ashcroft*, 291 F.3d at 598–99 (“We construe § 1252(g), which removes our jurisdiction over ‘decision[s] . . . to commence proceedings’ to include not only a decision in an individual case *whether* to commence, but also *when* to commence, a proceeding.”); *Richards-Diaz v. Fasano*, 233 F.3d 1160, 1165 (9th Cir. 2000) (“We are in no position to review the timing of the Attorney General’s decision ‘to commence proceedings.’”), *vacated on other grounds by Fasano v. Richards-Diaz*, 533 U.S. 945, 121 S.Ct. 2584, 150 L.Ed.2d 745 (2001); *Sakkarapope v. Gonzales*, 212 Fed. Appx. 642, 643 (9th Cir. 2006); *Cortez-Felipe v. INS*, 245 F.3d 1054, 1057 (9th Cir. 2001) (“The Attorney General has discretion regarding when and whether to initiate deportation proceedings.”); *Villegas v. Gonzales*, 231 Fed. Appx. 755, 756 (9th Cir. 2007) (“[T]he decision of when to commence proceedings is within the government’s discretion and does not violate the alien’s right to due process or equal protection.”). As demonstrated in *Sakkarapope*, the Attorney General has discretion to commence removal proceedings against noncitizens who are charged as removable, including individuals as removable pursuant to 8 U.S.C. § 1227(a)(1)(C)(i) for failure to maintain status. 212 Fed. Appx. at 643. As a result, Plaintiffs cannot request that the Court prohibit the Executive Branch from executing the very actions Congress has authorized. In other words, Congress—through the INA and the REAL ID Act—divested federal courts from hearing claims related to removal. 8 U.S.C. § 1252(b)(9). This includes claims related to decisions made in connection with the commencement of removal proceedings. *Id.* § 1252(g).

Moreover, the INA explicitly bars judicial review of the discretionary decision over whether or not to detain someone placed in removal proceedings. Section 1226(e) provides that: “The Attorney General’s discretionary judgment regarding the application of this section shall

not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention of any alien or the revocation or denial of bond or parole.” 8 U.S.C. § 1226(e). Section 1226(e) covers the initial detention of noncitizens. The INA also precludes review over “any . . . decision or action of the Attorney General . . . the authority for which is specified under this subchapter [8 U.S.C. §§ 1151 to 1381] to be in the discretion of the Attorney General. . .” 8 U.S.C. § 1252(a)(2)(B)(ii). As a result, § 1252(a)(2)(B)(ii) bars relief that would impact where and when to detain a noncitizen. *Mayorga v. Meade*, Civ. A. No. 24-22131, 2024 WL 4298815, at *7 (S.D. Fla. Sept. 26, 2024) (applying § 1226(e) to hold that a § 1226(a) detainee “failed to establish that his detention is subject to review”); *Saadulloev, v. Garland*, No. 3:23-CV-00106, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (recognizing that there is no judicial review of the threshold detention decision); *Van Dinh v. Reno*, 197 F.3d 427, 433 (10th Cir. 1999) (finding that judicial review of decision to transfer a detainee is inappropriate due to lack of jurisdiction); *Salazar v. Dubois*, No. 17-cv-2186 (RLE), 2017 WL 4045304, at *1 (S.D.N.Y. Sept. 11, 2017) (concluding that the district court “does not have authority to issue an order to change or keep [an alien] at any particular location”); *Avramenkov v. INS*, 99 F. Supp. 2d 210, 213 (D. Conn. 2000) (refusing to grant petitioner’s request for an injunction to prevent transfer because “Congress has squarely placed the responsibility of determining where aliens are to be detained within the sound discretion of the Attorney General.”).

Similarly, § 1252(g) independently bars relief here. If the government chooses to charge Sultan as removable and thereafter detain him, such an action would arise “from the decision [and] action” to “commence proceedings.” 8 U.S.C. § 1252(g). This includes reviewing the *method* by which the Secretary of Homeland Security chooses to commence removal proceedings.

For instance, in *Wallace v. Secretary, U.S. Dep't of Homeland Sec.*, Plaintiffs “challenged defendants’ allegedly wrongful failure to issue him a notice to appear” on the basis that it deprived him of the opportunity to renew an application for adjustment of status. 616 Fed. Appx. 958, 959 (11th Cir. 2015). The Eleventh Circuit determined that the district court correctly determined that it lacked subject matter jurisdiction “under § 1252(g), based on the statutory provision’s plain language, its interpretation by the Supreme Court and our sister circuits, and this Court’s application of § 1252(g) to bar analogous challenges to the government’s initiation of removal proceedings.” *Id.* at 961; *see also Humphries v. Various Federal USINS Employees*, 164 F.3d 936, 946 (5th Cir. 1999) (“Assuming *arguendo* that Humphries were to recover damages for the alleged involuntary servitude as well as the alleged mistreatment while in detention, these judgments would in no way imply the invalidity of Humphries’ detention or exclusion.”); *Alvarez v. U.S. Immigr. & Customs Enf’t*, 818 F.3d 1194, 1203 (11th Cir. 2016) (“By its plain terms, [§ 1252(g)] bars us from questioning ICE’s discretionary decisions to commence removal—and thus necessarily prevents us from considering whether the agency should have used a different statutory procedure to initiate the removal process.”); *Saadulloev*, 2024 WL 1076106, at *3 (W.D. Pa. Mar. 12, 2024) (“The Government’s decision to arrest Saadulloev on April 4, 2023, clearly is a decision to ‘commence proceedings’ that squarely falls within the jurisdictional bar of § 1252(g).”). As a result, the discretionary decision to detain a noncitizen who has been charged as removable is a decision that the Court has no jurisdiction to review.

As a result, Plaintiffs are unable to demonstrate that their claims warrant relief as the Court has no jurisdiction to review an agency’s discretionary decision to commence proceedings and

subsequent detention based on the commencement of those proceedings. Ultimately, Congress has insulated such discretionary decisions from judicial review.³

V. The Court Should Require Plaintiffs to Post Security.

Federal Rule of Civil Procedure 65(c) states, “The court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” Fed. R. Civ. P. 65(c). To the extent that the Court grants relief to Plaintiffs, Defendants respectfully request that the Court require Plaintiffs to post security in an appropriate amount.

CONCLUSION

For the reasons stated above, Defendants respectfully request that the Court deny Plaintiffs’ motion for emergency relief.

Dated: April 21, 2025
Washington, DC

Respectfully submitted,

EDWARD R. MARTIN, JR., D.C. Bar #481866
United States Attorney

BRIAN P. HUDAK
Chief, Civil Division

By: /s/ Joseph F. Carilli, Jr.
JOSEPH F. CARILLI, JR.
Assistant United States Attorney
601 D Street, NW
Washington, DC 20530

³ If placed in removal proceedings, Sultan is not without recourse as an Immigration Judge will determine whether Sultan is removable as charged. 8 U.S.C. §§ 1229a(a), (c). If Sultan receives an adverse decision, he has the right to appeal before the Board of Immigration Appeal. 8 U.S.C. § 1229a(c)(5). And if unsuccessful at the Board, Sultan will have an opportunity to obtain Article II judicial review by filing a petition for review with the appropriate court of appeals. 8 U.S.C. § 1252(a)(5). At this stage, Sultan will have the opportunity to challenge constitutional claims, as well as other claims connected to detention and/or removability. *See* 8 U.S.C. § 1252(b)(9).

(202) 252-2525

Attorneys for the United States of America

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AHWAR SULTAN, et al.,

Plaintiffs,

v.

DONALD J. TRUMP, et al.,

Defendants.

Civil Action No. 25-1121 (TSC)

PROPOSED ORDER

UPON CONSIDERATION of Plaintiffs' motion for temporary restraining order, and the entire record herein, it is hereby

ORDERED that Plaintiffs' motion is DENIED.

SO ORDERED:

Date

TANYA S. CHUTKAN
United States District Judge

Exhibit A

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

AHWAR SULTAN, *et. al.*,

Plaintiff,

v.

DONALD J. TRUMP, *et.al.*,

Defendant.

No. 1:25-cv-01121

DECLARATION OF ANDRE WATSON

I, Andre Watson, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am the Senior Official within the National Security Division (NSD) for Homeland Security Investigations (HSI). I am a career member of the Senior Executive Service with the rank of Assistant Director. Prior to becoming the Assistant Director of NSD, I served on a detail assignment to the U.S. Department of Homeland Security in the capacity of Principal Deputy Assistant Secretary for the Countering Weapons of Mass Destruction Office. I have additionally served as the HSI Special Agent in Charge in Baltimore, M.D., Deputy Special Agent in Charge in Washington, D.C., Assistant Special Agent in Charge in Houston, T.X., and Supervisory Special Agent in Blaine, W.A. I have also previously served in Headquarters assignments such as Chief of Staff to the Deputy Director of U.S. Immigration and Customs Enforcement (ICE), Chief of Intelligence for the U.S. Department of Justice, International Organized Crime and Intelligence Operations Center, and various supervisory positions within NSD.

2. As the Senior Official within NSD, I oversee the National Security Division as well as Student and Exchange Visitor Program (SEVP) functions in support of ICE efforts to identify, disrupt and dismantle transnational criminal enterprises and terrorist organizations that threaten the security of the United States. These efforts encompass all investigations and aspects of terrorism, special interests involving state and non-state actors, human rights violators and war criminals, as well as compliance and oversight functions for over 6,900 academic institutions, 45,000 designated school officials, and over 1.2 million foreign students studying in the United States.

3. SEVP was created in the wake of the September 11, 2001, terrorist attacks to provide integrity to the immigration system by collecting, maintaining and analyzing information so only legitimate nonimmigrant students or exchange visitors can gain entry in the U.S. Through a database housing information pertaining to schools and students, called the Student and Exchange Visitor Information System (SEVIS), SEVP manages and tracks nonimmigrants in the F, M, and J categories. To eliminate vulnerabilities related to the nonimmigrant visa program, Congress first introduced statutory language mandating the development of a program to collect data and improve tracking of foreign students in the Illegal Immigration Reform and Immigrant Responsibility Act of (IIRIRA) of 1996. In 2001, Congress expanded the foreign student tracking system when it enacted PATRIOT ACT, and in 2002, Congress strengthened the tracking system yet again through the Enhanced Border Security and Visa Entry Reform Act, noting concerns with national security and emphasizing the need to carefully track student status and information. Accordingly, these laws and regulations demonstrate a clear congressional directive that ICE closely monitor foreign students and the schools in which they enroll by vigorously enforcing statutory and regulatory requirements.

4. Congress provided broad statutory authority under 8 U.S.C. § 1372 for the Government “to develop and conduct a program to collect” information regarding nonimmigrant students and exchange visitors and to “establish an electronic means to monitor and verify” certain related information. This is the statutory authority underpinning SEVIS. Inherent in that authority is SEVP’s ability to update and maintain the information in SEVIS and, as such, to terminate SEVIS records, as needed, to carry out the purposes of the program.

5. The Counter Threat Lead Development Unit (CTLTD), a component of HSI’s National Security Division, is specifically responsible for analyzing information related to alien nonimmigrant visa holders, who are lawfully admitted to the United States but violate the terms of their admission, pose a threat to national security or public safety and/or are involved in criminal activity for field referral and further investigation. CTLTD receives over one million alien violator records each year, primarily from U.S. Customs and Border Protection (CBP) Arrival and Departure Information System (ADIS), as well as from the Student and Exchange Visitor Information System (SEVIS).

6. I am aware of the above-captioned lawsuit and the motion for temporary restraining order (TRO) filed by the Plaintiff in this matter. I provide this declaration based on my personal knowledge, reasonable inquiry, and information obtained from various records, systems, databases, other Department of Homeland Security (DHS) employees, and information portals maintained and relied upon by DHS in the regular course of business.

7. AHWAR SULTAN (SULTAN) is a citizen and national of India, who was last admitted to the United States as an F-1 nonimmigrant visa holder. SULTAN’s information was run against criminal databases and was a verified match to a criminal history record for Criminal

Trespass by the Ohio State University Police Department on April 25, 2024. At that time, the disposition of the charge was Dismissed.

8. Based on SULTAN's criminal history, on April 3, 2025, SEVP amended SULTAN's SEVIS record to reflect this information by setting the record designation to "terminated."

9. Terminating a record in SEVIS does not terminate an individual's nonimmigrant status in the United States. The statute and regulations do not provide SEVP the authority to terminate nonimmigrant status by terminating a SEVIS record, and SEVP has never claimed that it had terminated the nonimmigrant status of Plaintiff. Furthermore, the authority to issue or revoke visas for nonimmigrant students lies with the Department of State, not SEVP. Terminating a record within SEVIS does not effectuate a visa revocation.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 21st day of April 2025.

**ANDRE R
WATSON** Digitally signed by
ANDRE R WATSON
Date: 2025.04.21
01:25:24 -04'00'

Andre Watson, Assistant Director
National Security Division
Homeland Security Investigations
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security