

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

COMMONWEALTH OF MASSACHUSETTS,
STATE OF COLORADO, STATE OF
CONNECTICUT, STATE OF DELAWARE,
DISTRICT OF COLUMBIA, STATE OF
ILLINOIS, STATE OF MARYLAND, STATE
OF MICHIGAN, STATE OF MINNESOTA,
STATE OF NEVADA, STATE OF NEW
JERSEY, STATE OF NEW MEXICO, STATE
OF OREGON, COMMONWEALTH OF
PENNSYLVANIA, STATE OF RHODE
ISLAND, STATE OF VERMONT,
COMMONWEALTH OF VIRGINIA, and
STATE OF WISCONSIN,

Plaintiffs,

v.

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

Defendants.

Civil Action No. 20-11311

Plaintiff States' Status Report

On July 14, 2020, the Court directed the Plaintiff States to file a status report on Tuesday, July 21, 2020 informing the Court how they intend to proceed in light of the announcement at a July 14, 2020 hearing in the related case, *Presidents and Fellows of Harvard College v. Department of Homeland Security*, No. 20-11283 (D. Mass.), that the Defendants would rescind the July 6, 2020 policy directive announced by broadcast message and the July 7,

2020 Frequently Asked Questions (FAQ) document related to the Student Exchange and Visitor Program (“SEVP”) that threatened the Plaintiff States with multifaceted irreparable harms. *See* PI Mem., ECF No. 4, at 3-12 (detailing harm to the States’ proprietary, sovereign, and quasi-sovereign interests). Accordingly, the Plaintiff States state as follows:

1. The Plaintiff States filed a complaint and motion for temporary restraining order and preliminary injunction on July 13, 2020 to challenge an unlawful policy directive that disallowed students from obtaining F-1 and M-1 student visas to reside in the United States in order to attend our colleges and universities unless their schools were offering, and each individual student was taking, sufficient in-person courses in their area of study. *See* ECF Nos. 1 and 2. This directive came in the midst of a pandemic during which many colleges and universities (a) plan to offer fully or partially online courses of study for the fall semester in order to protect the health and safety of their students, faculty, and staff, as well as the public; and (b) expect that programs and students may need to shift back and forth between remote and in-person learning depending on the community trends of the virus, outbreaks on campus, and specific factors for individual students and faculty such as illness, exposure to COVID-19, or compromised immune systems. *See* ECF No. 1 at 16-17.

2. On July 14, 2020, one day after the Plaintiff States filed this lawsuit, Defendants announced at a hearing before this Court that they would withdraw the July 6 broadcast message and related July 7, 2020 FAQ document, rescind their implementation, and revert to a prior policy laid out in documents promulgated on March 9, 2020 and March 13, 2020 (the “March policy”). *See President and Fellows of Harvard College*, ECF No. 119.

3. In light of this concession, this Court found the Plaintiff States’ preliminary injunction motion which sought rescission of these documents, ECF No. 2, to be moot on July 14, 2020. *See* ECF No. 13.

4. Since then, Defendants have removed from the ICE Coronavirus website, <https://www.ice.gov/coronavirus>, the July 6 broadcast message and July 7 FAQ. They have not, however, yet published any notice that the July 6 policy directive has been rescinded, nor any directive to implement this rescission and guide a return to the March policy. Further confusion may be caused by the fact that the press release announcing the policy directive remains on the ICE Coronavirus website, including specific details about the parameters for online courses that were allowed under the directive. <https://tinyurl.com/y9rsnp88>.

5. Moreover, Defendants have not rescinded all of the actions that followed from the July 6 directive. For example, the July 6 broadcast message indicated that “[t]he U.S. Department of State will not issue visas to students enrolled in schools and/or programs that are fully online for the fall semester.” See <https://tinyurl.com/y3trzgky>. Accordingly, the U.S. State Department’s Foreign Affairs Manual (“FAM”), which sets forth policies and procedures for visa processing, was amended on July 9, 2020, to say that “If an F-1 or M-1 applicant does not plan to take any in-person classes in the United States and could complete the intended course of study online from his or her residence abroad, but prefers for other reasons to be in the United States while pursuing the intended study online, his or her purpose of travel is not solely to pursue a full course of study *at an approved institution*, and [the state department official] should refuse the application pursuant to INA 214(b).” 9 FAM 402.5-5(C).a.(2)(a) (emphasis in original), <https://fam.state.gov/FAM/09FAM/09FAM040205.html>.

6. This section of the FAM has not been revised or rescinded, and remains on the State Department’s website as of the time of filing of this status report.

7. Moreover, no further guidance has issued as to how the rescission of the July 6 directive and return to the March policy will affect students returning from abroad or initial

students who are currently abroad and have not yet received their visas but have been accepted to study at our colleges and universities in the fall.

8. The Plaintiff States have heard from colleges and universities in our States that, after the Defendants' agreement on July 14, 2020 to rescind the implementation of the July 6 directive, students have nevertheless been told by consular officers at the State Department or other government officials or websites that they will need updated I-20 forms or other proof that their programs of study are not entirely online if they wish to obtain visas and/or enter the country. As recently as today, July 21, 2020, student visa applications have been denied or put on administrative hold due to lack of evidence of in-person classes.

9. The Plaintiff States believe that further guidance is needed to fully rescind the July 6 policy directive and, specifically, to provide clarity and additional details—to our schools and students, as well as to consular officials and CPB officers at the country's borders—as to how the flexibility provided by the March policy will be applicable to new and returning students.

10. The Plaintiff States conferred with defense counsel, Assistant United States Attorney Rayford A. Farquhar, on July 20, 2020, and while Mr. Farquhar represented that his clients were working expeditiously to promulgate a new guidance or directive implementing the agreement reached on July 14, he did not know for certain when such guidance or directive would be published.

11. For the above-stated reasons, the Plaintiff States' position is that Defendants have not fully executed their commitments to implement the rescission of the July 6 directive and to return to the March policy.

12. The Plaintiff States understand and recognize that it may take time for Defendants and their sister agencies to take necessary action to implement the rescission.

13. The Plaintiff States will therefore await the further contemplated actions from the Defendants implementing the rescission of the July 6 and July 7 documents and will if need be meet and confer with the Defendants as to whether Defendants' actions to date and in the coming days suffice to resolve the Plaintiff States' claims for relief in this action. The Plaintiff States respectfully request that they be permitted to provide an additional status report in this matter by August 24, 2020, and represent that they do not oppose a corresponding 41-day extension of the Defendants' 60 days to respond to the Plaintiff States' July 14, 2020 complaint.

Date: July 21, 2020

Respectfully submitted,

MAURA HEALEY

Attorney General
Commonwealth of Massachusetts

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CERTIFICATE OF SERVICE

I, Abigail B. Taylor, counsel for Plaintiffs, hereby certify that this document has been filed through the Court's ECF system and will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF). On July 21, 2020, this document was delivered by email to:

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