UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

MANIKANTA PASULA, **LIKHITH BABU GORRELA**, **THANUJ KUMAR GUMMADAVELLI**, **HANGRUI ZHANG**, and **HAOYANG AN**, on behalf of themselves and all those similarly situated,

Plaintiffs,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY;

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT;

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, BOSTON FIELD OFFICE;

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, MANCHESTER SUB-FIELD OFFICE;

KRISTI NOEM, Secretary of the Department of Homeland Security;

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

Defendants.

No. _____

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL; REQUEST FOR EXPEDITED TREATMENT, L.R. 7.1(f)

INTRODUCTION

Since at least March 1, 2025[1], Defendant United States Department of Homeland Security ("DHS") and their agents (collectively, "Defendants") began, for unknown and unspecified reasons, unilaterally terminating the F-1 student status of hundreds, if not thousands, of international students and Optional Practical Training ("OPT") participants throughout the United States and then reflecting that termination in the SEVIS [Student and Exchange Visitor] system.[2] Plaintiffs Manikanta Pasula, Thanuj Kumar Gummadavelli, Likhith Babu Gorrela, Hangrui Zhang, Haoyang An, and the proposed class members are the students affiliated with educational institutions in New Hampshire, Maine, Massachusetts, Rhode Island, and Puerto Rico, affected by DHS's unilateral and unlawful termination of F-1 student status. As of April 10, 2025, *NAFSA: Association of International Educators* estimated that more than 800 international students' and scholars' status in the SEVIS system had been terminated nationwide.[3] This number has grown rapidly since then. *Inside Higher Ed* estimates that, as of April 17, 2025, over 240 colleges and universities have identified 1,480-plus international students and recent graduates who have had

[1] On March 27, Secretary of State Marco Rubio said the State Department had revoked 300 or more student visas *since approximately early March* claiming these students were "lunatics" not in the United States just to study, but to engage in activism. *See* Daniella Silva, Chloe Atkins, Julia Ainsley and Abigail Williams, "Trump takes aim at foreign-born college students, with 300 visas revoked," *NBC News* (Mar. 27, 2025), https://www.nbcnews.com/news/us-news/trump-administration-takes-aim-immigrant-students-rcna19834; Marc Caputo, "Exclusive: Trump's 'pro-Hamas' purge could block foreign students from colleges," Axios.com (Mar. 27, 2025), https://www.axios.com/2025/03/27/trump-palestinian-hamas-purge-colleges-protests ("More than 300 foreign students have had their student visas revoked in the three weeks 'Catch and Revoke' has been in operation, the official said. There are 1.5 million student visa-holders nationwide.").

[2] Elizabeth Román, "5 Umass Amherst students have visas revoked," *NHPR* (Apr. 5, 2025), https://www.nhpr.org/2025-04-05/5-umass-amherst-students-have-visas-revoked; Katy Stegall and Esmeralda Perez, "Five USCD students' visas revoked and additional person deported, university confirms," *CBS8* (Apr. 5, 2025), https://www.cbs8.com/article/news/local/five-ucsd-students-f-1-visas-revoked-additional-deported/509-2c257e52-4a31-42f7-8e3e-f6bd92a287b3; Molly Farrar, "Feds quietly revoke visas of multiple Umass, Harvard students," *Boston.com* (Apr. 6, 2025), https://www.boston.com/news/local-news/2025/04/06/feds-quietly-revoke-visas-of-multiple-umass-harvard-students/.

[3] Erica L. Steward, "NAFSA Releases Initial Analysis of Visa Revocations and other Actions Targeting International Students and Scholars," *NAFSA* (Apr. 10, 2025), https://www.nafsa.org/reports-of-actions-targeting-international-students?fbclid=IwZXh0bgNhZW0CMTEAAR5GZENs_RyxYI5MAoN78Xe9b5PHOe21t7SWC5wOXzXCyZSJ3XGOdpLp1xR3Tw_aem_xblT2XvJBYzdE17DPvcKMg.

their legal status changed.[4] As of April 11, 2025, New Hampshire, Maine, Massachusetts, Rhode Island, and Puerto Rico collectively have at least 112 students whose F-1 student status has been terminated.[5]

It cannot be reasonably disputed that these students have lost their student status. For example, on April 9, 2025, Thanuj Kumar Gummadavelli was informed by his university that his F-1 student status was terminated because his SEVIS record specifically indicated "*Failure to Maintain Status*: Individual identified in criminal records check and/or has had their VISA revoked. SEVIS record has been terminated." (emphasis added). In other words, Defendants were clear that his student status was terminated. Confirming that the termination of a SEVIS record reflects lack of student status, DHS's own website on the termination of SEVIS states that, "[w]hen an F-1/M-1 SEVIS record is terminated[,]" international students "lose[] all on-and/or off-campus employment authorization[,]" "cannot re-enter the United States on the terminated SEVIS record[,]" ICE "agents may investigate to confirm the departure of the student[,]" and "[a]ny associated F-2 or M-2 dependent records are terminated." Homeland Security, "TERMINATE A STUDENT," *the Department of Homeland Security* (Nov. 7, 2024)). *See also* Homeland Security, "TERMINATE OR REACTIVATE A DEPENDENT RECORD," *the Department of Homeland Security* (Mar. 17, 2023) ("When a dependent is terminated in SEVIS, it means that dependent is no longer eligible for F-2 or M-2 status."). After all, if terminating a SEVIS record has no impact on student status, what would be the point of terminating the SEVIS record? Of course, the termination of the SEVIS record must mean something. And, as in Thanuj's case and others, this

[4] Inside Higher Ed, "International Student Visas Revoked," https://www.insidehighered.com/news/global/international-students-us/2025/04/07/where-students-have-had-their-visas-revoked.

[5] Danny McDonald, et al., "Trump is revoking student visas. How many foreign students are there in New England?," *The Boston Globe* (Apr. 11, 2025), https://www.bostonglobe.com/2025/04/11/metro/student-visas-massachusetts-new-england/.

SEVIS termination meant termination of student status, especially where the students implicated have previously maintained their course of study without issue. Schools too, consistent with DHS's own website, understand that the termination of a SEVIS record amounts to a termination of student status, which causes the student to lose their educational opportunities. And it is this loss of opportunity which may even—circularly—have the effect of DHS later claiming that the students have failed to make "normal progress toward completing a course of study." 8 C.F.R. § 214.2(f)(5). On April 4, 2025, Manikanta Pasula received an email from Rivier University making clear that his SEVIS record was terminated and, thus, he was "out of status" due to the SEVIS termination.

The consequences of Defendants' unilateral and unlawful termination are dire. The termination puts students out of lawful immigration status. Plaintiffs and the class face immigration detention and deportation.[6] Plaintiffs and the class face severe financial and academic hardship. Further, Plaintiffs and the class are not able to obtain their degrees and work pursuant to the Optional Practical Training (OPT) program after graduation. Indeed, Defendants' unilateral and unlawful terminations have severely disrupted the educational opportunities of students who are in the middle of their studies (and in the middle of a semester) and who are simply trying to obtain, often at considerable expense, an education in the United States while following all the rules required of them.

These injuries are real. Plaintiff Linkhith Babu Gorrela's graduation date for his Master's program is May 20, 2025. Without valid F-1 student status, he may not obtain his Master's degree.

[6] *See* Samantha Davis, "Marshall resident detained by ICE on student visa," *Marshall Independent* (Apr. 14, 2025), ("Aditya Wahyu Harsono, a 33-year-old resident of Marshall and Indonesian citizen, was arrested by U.S. Immigration and Customs Enforcement (ICE) agents on March 27. He was in the United States on an active F-1 student visa, which was revoked without warning four days prior to his detainment."), https://www.marshallindependent.com/news/local-news/2025/04/marshall-resident-detained-by-ice-on-student-visa/.

Nor can he participate in the OPT program after graduation. Plaintiff Hangrui Zhang's only source of income is his research assistantship, which has been cut off in light of the termination of his F-1 student status. Plaintiff Haoyang An will have to abandon his Master's program despite having already invested $329,196 in his education in the United States. Similarly, Plaintiff Thanuj Kumar Gummadavelli and Plaintiff Manikanta Pasula have only one semester left before they can complete their Master's degrees and participate in the OPT program. Their graduation is unpredictable and unlikely unless this Court intervenes.

Plaintiffs' Motion for Class Certification is straightforward. This lawsuit only challenges Defendants' revocation of student status. While Defendants' reasons for these mass terminations of student status are unclear, what is clear is that these terminations—across the board—flout the applicable regulations governing student status termination (*see* 8 C.F.R. § 214.1(d)) and the regulations governing failure to maintain student status (*see* 8 C.F.R. § 214.1(e)-(g), 8 C.F.R § 214.2(f)). Indeed, for the entire class, the applicable regulatory criteria has never been satisfied justifying these terminations.

While Plaintiffs' Class Action Complaint seeks relief on behalf of two classes—the Regulatory Class (for the claim in Count 1 alleging violation of the Administrative Procedures Act) and the Due Process Class (for the claim in Count 2)—Class Plaintiffs are currently only seeking through this Motion expedited treatment and resolution of their request to certify the Regulatory Class for the claim in Count 1 of the Class Action Complaint. Immediate (or even provisional) certification of the Regulatory Class will permit this Court to provide broad-based, preliminary relief through Plaintiffs' contemporaneously-filed Motion for Classwide Preliminary Injunction to scores of injured students throughout New Hampshire, Massachusetts, Maine, Rhode Island, and Puerto Rico who are being irreparably harmed. *See Gomes v. Acting Sec'y*, No. 20-cv-

453-LM, 2020 U.S. Dist. LEXIS 77945, at *2 (D.N.H. May 4, 2020) ("The court will provisionally certify the proposed class for the limited purpose of holding expedited bail hearings for class members.").

As to the Regulatory Class in which class certification is sought here, Plaintiffs seek to certify the following nationwide class under Federal Rules of Civil Procedure 23(a) and 23(b)(2):

> All current or future students at (and Optional Practical Training participants affiliated with) any educational institutions (including colleges and universities) in New Hampshire, Massachusetts, Maine, Rhode Island, and Puerto Rico who had their F-1 student status terminated and had their SEVIS immigration record correspondingly terminated by Defendants on or after March 1, 2025 where Defendants' student status termination was neither (i) based on the criteria set forth in 8 C.F.R. § 214.1(d), (ii) because the student failed to maintain student status based on the criteria set forth in 8 C.F.R. § 214.1(e)-(g), nor (iii) because the student failed to make normal progress toward completing a course of study under 8 C.F.R § 214.2(f)(5)(i). This class excludes any current student or Optional Practical Training participant who otherwise satisfies this class definition but who has a pending lawsuit challenging the termination of student status or a SEVIS record.

The proposed class satisfies the requirements of numerosity, commonality, typicality, and adequacy in Rule 23(a) and is readily ascertainable.

The proposed class already includes tens, if not hundreds, of students and OPT participants—and counting—whose F-1 student status (as reflected in the SEVIS system) has been unilaterally terminated by Defendants without compliance with the appropriate regulatory criteria, which is sufficient to satisfy numerosity. The class action raises common legal questions that will generate common answers, including whether Defendants' termination of student status without meeting the criteria for the applicable regulation governing student status termination (*see* 8 C.F.R. § 214.1(d)) and the regulations governing failure to maintain student status (*see* 8 C.F.R. § 214.1(e)-(g), 8 C.F.R § 214.2(f)) violates the law. The class action also raises common factual issues because proposed class representatives and class members are subject to the same practice where student status was terminated without meeting the appropriate regulatory criteria governing

student status termination (*see* 8 C.F.R. § 214.1(d)) or governing failure to maintain student status (*see* 8 C.F.R. § 214.1(e)-(g), 8 C.F.R § 214.2(f)). Proposed class representatives are also adequately represented by a team of attorneys with significant experience in immigrants' rights issues and class action cases from the ACLU of New Hampshire.

Plaintiffs' proposed class likewise satisfies Rule 23(b)(2) because Defendants have "acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Because the Defendants seek to terminate student status wholesale without properly applying the applicable regulatory criteria, they are operating in a manner that is common to all Plaintiffs. The class as a whole is therefore entitled to an injunction enjoining Defendants from revoking student status without complying with the applicable regulatory criteria.

Accordingly, this Court should grant class certification, appoint proposed class representatives as Class Representatives, and appoint their counsel as Class Counsel. Pursuant to L.R. 7.1(h), Plaintiffs respectfully request an expedited schedule and a ruling by May 7, 2025. In the interest of time, Plaintiffs request that the Court forego oral argument on this Motion, or schedule a remote argument on or before May 5, 2025.

I. PROPOSED CLASS DEFINITION

All current or future students at (and Optional Practical Training participants affiliated with) any educational institutions (including colleges and universities) in New Hampshire, Massachusetts, Maine, Rhode Island, and Puerto Rico who had their F-1 student status terminated and had their SEVIS immigration record correspondingly terminated by Defendants on or after March 1, 2025 where Defendants' student status termination was neither (i) based on the criteria set forth in 8 C.F.R. § 214.1(d), (ii) because the student failed to maintain student status based on

the criteria set forth in 8 C.F.R. § 214.1(e)-(g), nor (iii) because the student failed to make normal progress toward completing a course of study under 8 C.F.R § 214.2(f)(5)(i). This class excludes any current student or Optional Practical Training participant who otherwise satisfies this class definition but who has a pending lawsuit challenging the termination of student status or a SEVIS record.

II. PROPOSED CLASS REPRESENTATIVES[7]

Manikanta Pasula

Manikanta Pasula is a 25-year-old F-1 student at Rivier University in New Hampshire. Manikanta is a citizen and national of India. Manikanta came to the United States under an F-1 visa to study at the University of Bridgeport in Connecticut on January 5, 2024. Due to personal reasons, he transferred to Rivier University on January 29, 2024. He is majoring in computer science.

On March 25, 2024, Manikanta was arrested and charged without a valid U.S. license while he was driving with his Indian driver's license (but not an International Driving Permit). However, New Hampshire permits the use of an International Driving Permit for up to 60 days after an international student's arrival in the United States, and Manikanta was driving within that 60-day window. Not being familiar with the United States criminal justice system, he pled guilty and paid a $248 fine. After this incident, he immediately obtained a valid U.S. driver's license.

Manikanta is in the process of completing his third semester. After this semester, he has one more semester before he can get his degree and also apply for OPT in the field of computer science. He has spent approximately $45,000 on his education in the United States.

On April 4, 2025, Manikanta received an email from Rivier University that the State

[7] The declarations of the Proposed Class Plaintiffs attached to Plaintiffs' Motion for Classwide Preliminary Injunction are incorporated by reference.

Department revoked his visa. In the same email, the University indicated that his SEVIS record was terminated and that he was out of status due to the SEVIS termination.

On April 10, 2025, Manikanta separately received an email from the U.S. Consulate General, Mumbai, that confirmed that his visa was revoked. The email from the U.S. Consulate General indicated that "[r]emaining in the United States without a lawful immigration status can result in fines, detention, and/or deportation."

The termination is a significant concern to Manikanta, as his legal status in the United States is entirely dependent on the SEVIS record being active and in good standing. Further, the termination will affect his ability to successfully complete his academic program and pursue OPT, which is an essential part of his career development and future plans.

Likhith Babu Gorrela

Likhith Babu Gorrela is a 23-year old F-1 student at Rivier University in New Hampshire. Likhith is a citizen and national of India. On August 19, 2023, Likhith came to the United States on an F-1 student visa. He initially received a visa to attend the University of New Haven's Master's program in Supply Chain Management. However, he transferred his studies to Rivier University to obtain a Master's degree in Computers and Information Systems. Likhith has maintained a GPA of 3.6 through consistent dedication and academic integrity. He is in the final stage of his program, with only one course remaining and a few classes left to attend before he completes all degree requirements.

On May 30, 2024, Likhith was charged without a valid U.S. license while he was driving with an International Driving Permit. Thereafter, he immediately obtained a valid U.S. driver's license while the charge was pending. This charge was then nolle prossed.

On April 4, 2025, the school informed Likhith about the termination of his SEVIS record.

However, he did not receive any notice or explanation as to why his criminal issue (driving without a valid license) was sufficient to terminate his student status. On April 8, 2025, Likhith received an email from the U.S. Embassy in India that his visa was revoked.

In light of this termination of his F-1 student status, he may not be able to graduate. His graduation date is May 20, 2025. His eligibility for this OPT program is also in jeopardy. Likhith is also concerned about possible immigration detention and deportation.

Thanuj Kumar Gummadavelli

Thanuj Kumar Gummadavelli is a 23-year old F-1 student at Rivier University in New Hampshire. Thanuj is a citizen and national of India. Thanuj entered the United States in December 2023 to begin his Master's program in computer science.

In August 2024, Thanuj was charged with speeding and a traffic misdemeanor for failing to carry a valid U.S. driver's license. He was instead carrying a valid international driving permit at the time, but he was outside the 60-day window in which this international driving permit was valid in New Hampshire. Before his scheduled September 11, 2024 court date, he obtained his U.S. driver's license. On September 11, 2024, he presented his U.S. license before a judge and the charge was nolle prossed. He pled guilty to speeding at the court date and paid the required $124 fine.

On April 9, 2025, Thanuj received an email from Rivier University that his F-1 student status was terminated because his SEVIS record specifically indicated "*Failure to Maintain Status*: Individual identified in criminal records check and/or has had their VISA revoked. SEVIS record has been terminated." (emphasis added). In other words, Defendants were clear that his student status was terminated. On April 11, 2025, Thanuj received an email from the U.S. Embassy in India that his visa was revoked.

Thanuj has a fear for his safety and future because of the termination of his F-1 student status. The termination has put his education and career trajectory at risk, including whether he could finish his studies and obtain his degree. In light of the termination, his plan of graduating and completing his Master's program is in jeopardy. For his Master's degree, both his advisor and the department expect him to complete the coursework program by December 2025.

Hangrui Zhang

Hangrui Zhang is a 23-year old F-1 student at Worcester Polytechnic Institute (WPI) in Massachusetts. Hangrui is a citizen and national of China. Hangrui entered the United States in August 2023 to begin his Ph.D. in Electronic and Computer Science at WPI. During these years, he has kept a GPA of 4.0 out of 4.0.

In December 2024, stemming from a misunderstanding, Hangrui was arrested and charged with a misdemeanor. However, his case was dismissed through the pretrial diversion.

On April 9, 2025, Hangrui was informed that his SEVIS record was terminated. The SEVIS record indicated the following: "OTHER – Individual identified in criminal records check and/or has had their VISA revoked. SEVIS record has been terminated." The termination of his F-1 visa status has left him deeply worried about both his personal safety and long-term future. Not knowing where he stands legally in the United States has caused significant emotional distress, especially after years of dedicated effort toward his academic and career aspirations.

Without F-1 student status, his ability to continue his studies, contribute to research, and pursue his professional goals is in jeopardy. He is terrified of being compelled to leave the United States before completing his Ph.D., which would interrupt everything he has worked for. Hangrui is no longer permitted to work as a research assistant, nor can he receive financial support from his doctoral program. This has created serious academic and financial hardship, as the assistantship

was not only his sole income source but also an essential part of his Ph.D. training.

As a second-year doctoral student, Hangrui is expected to prepare a publication under his advisor's supervision. However, because he is now unable to conduct research, this could significantly slow his academic progress and delay major milestones, including his Ph.D. qualification. Hangrui has already fulfilled most of the coursework requirements. At this stage of his doctoral studies, research has become his primary focus. As a Ph.D. candidate, his department has a Diagnostic Examination Requirement which says: The doctoral student is required to complete the diagnostic examination requirement during the first year beyond the M.S. degree (or equivalent number of credits, for students admitted directly to the Ph.D. program) with a grade of Pass. As a student who was admitted directly into the Ph.D. program, he is currently completing the M.S. degree requirements and is scheduled to take the associated examination next year.

However, since the termination of his SEVIS record, his funding has been cut off, forcing him to halt his research activities with his advisor. This disruption has had a serious impact on the progress of his work, and his Research Advisor and Committee will assess his performance within the context of these challenges. If he fails this examination, he will be removed from the graduate program, effectively ending his pursuit of a Ph.D.

Haoyang An

Haoyang An is a 25-year-old F-1 student at Worcester Polytechnic Institute (WPI) in Massachusetts. Haoyang is a citizen and national of China. Haoyang first came to the United States under an F-1 visa to study at the University of Connecticut on August 18, 2018. On August 24, 2022, Haoyang graduated with the Bachelor of Arts in Applied Mathematics. On September 5, 2022, Haoyang started to pursue his first Master's degree at Boston University. On May 19, 2024, he obtained a Master of Science degree in Applied Business Analytics. On August 22, 2024,

Haoyang started his second Master's degree at WPI. Haoyang has one more semester left to finish his degree. He was planning to apply for a PhD program at WPI next semester. For his undergraduate and master programs, Haoyang has invested $329,196 so far for his United States education.

In September 2023, Haoyang had a misdemeanor charge for driving without an active insurance policy in Massachusetts. Later, this offense was dismissed.

On April 9, 2025, WPI International Student Officer notified that Haoyang that his F-1 student status in the SEVIS record was terminated based on the following reason: "OTHER – Individual identified in criminal records check and/or has had their VISA revoked. SEVIS record has been terminated." Haoyang did not receive any email from the U.S. Embassy on his visa revocation. In light of the termination, Haoyang's plan to complete his Master's degree in Data Science and his plan to apply for a Ph.D. program in the United States is in jeopardy. Haoyang is also concerned about possible immigration detention and deportation.

ARGUMENT

"By its terms, [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 398 (2010). Class certification is thus appropriate where the proposed class satisfies the four requirements of Rule 23(a)—numerosity, commonality, typicality, and adequacy of representation—and at least one of the categories of Rule 23(b). *See id.*

These criteria are met here, where over one hundred students and OPT participants—and counting—in New Hampshire, Massachusetts, Maine, Rhode Island, and Puerto Rico have had their F-1 student status unilaterally terminated by Defendants without compliance with the appropriate regulatory criteria. Those students and OPT participants form the proposed class.

Civil rights actions such as this one are particularly amenable to class treatment. Rule

23(b)(2) was enacted to "facilitate the bringing of class actions in the civil-rights area." 7A Wright & Miller, *Federal Practice & Procedure* § 1775 (3d ed. 2018). The arguments in favor of class certification are especially strong in this context, where many individual class members are unlikely to be able to pursue their claims individually due to their financial circumstances, language ability, and access to counsel. *See, e.g.*, *Torrezani v. VIP Auto Detailing, Inc.*, 318 F.R.D. 548, 554 (D. Mass. 2017) (class certification is favored where the Court "can reasonably infer that substantially all of the class members have limited financial resources and would find it difficult to pursue the claims themselves."). Class certification is thus particularly appropriate here, and all the requisite elements of Rule 23 have been met.

I. The Proposed Class Meets the Requirements of Rule 23(a).

A. The proposed class easily satisfies the numerosity requirement.

Rule 23(a)(1) requires that a class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(l). "Impracticability of joinder means only that it is difficult or inconvenient to join all class members, not that it is impossible to do so." *Bond v. Fleet Bank (RI), N.A.*, No. CIV.A. 01-177 L, 2002 WL 31500393, at *4 (D.R.I. Oct. 10, 2002). The First Circuit has recognized that numerosity has a "low threshold." *Garcia-Rubiera v. Calderon*, 570 F.3d 443, 460 (1st Cir. 2009). "Generally, classes over forty in size have been held to be sufficiently numerous." *Ruiz v. NEI Gen. Contracting, Inc.*, 719 F. Supp. 3d 139, 149 (D. Mass. 2024).

Here, the estimated number of members already in the class far exceeds this low threshold required for numerosity. New Hampshire, Maine, Massachusetts, Rhode Island, and Puerto Rico collectively have at least 112 students whose F-1 student status has been terminated. [8]

[8] Danny McDonald, et al., "Trump is revoking student visas. How many foreign students are there in New England?," *The Boston Globe* (Apr. 11, 2025), https://www.bostonglobe.com/2025/04/11/metro/student-visas-massachusetts-

Furthermore, where, as here, only declaratory and injunctive relief is sought for a class, Plaintiffs are not required to identify the exact class members and number, and there is a relaxation of the requirement of a rigorous demonstration of numerosity. *See McCuin v. Sec'y of Health & Hum. Servs.*, 817 F.2d 161, 167 (1st Cir. 1987).

Moreover, Defendants are terminating student status without complying with the appropriate regulatory requirements each day. In other words, "an influx of future members will continue to populate the class at indeterminate points in the future . . . ." *Gomes v. Acting Sec'y, U.S. Dep't of Homeland Sec.*, 561 F. Supp. 3d 93, 99 (D.N.H. 2021) (internal citation omitted). This fact makes joinder not merely impracticable but effectively "impossible." *Id.*

B. The proposed class representatives present issues of fact and law in common with the class.

Rule 23(a)(2) requires that "questions of law or fact" be "common to the class." Fed. R. Civ. P. 23(a)(2). "[A] single question of law or fact common to the members of the class will satisfy the commonality requirement." *Clough v. Revenue Frontier, LLC*, No. 17-CV-411-PB, 2019 WL 2527300, at *3 (D.N.H. June 19, 2019) (quoting *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 369 (2011)). All that is required is that the "claims must depend upon a common contention" that "is capable of classwide resolution." *Dukes*, 564 U.S. at 350. Accordingly, courts in this Circuit have recognized that, like numerosity, the commonality requirement is "a low bar." *See, e.g.*, *Wright v. S. New Hampshire Univ.*, 565 F. Supp. 3d 193, 202 (D.N.H. 2021).

This case raises relatively simple legal questions common to the proposed class, any one of which, alone, satisfies the requirement of at least "a single common question" of law and fact shared by all members of the proposed class. All class members assert the same common legal

new-england/. Based on information and belief, Plaintiffs are aware that there are at least 30 additional students and OPT participants from New Hampshire.

question of whether these student status terminations violate the applicable regulations governing student status termination (*see* 8 C.F.R. § 214.1(d)) and the regulations governing failure to maintain student status (*see* 8 C.F.R. § 214.1(e)-(g), 8 C.F.R § 214.2(f)). Indeed, for the entire class, the applicable regulatory criteria has never been satisfied justifying these terminations, leading this case readily susceptible for class resolution.

The regulations distinguish between two separate ways in which a student may fall out of status: (1) a student who "fails to maintain status," which is ordinarily monitored and determined by a DSO; and (2) an agency-initiated "termination of status."

Under the first way, F-1 student status can be terminated (and then subsequently reflected in the SEVIS system) if students fail to maintain their status. Under 8 C.F.R. § 214.2(f)(5), an international student does not maintain status if the student fails to make "normal progress toward completing a course of study." In addition, 8 C.F.R. § 214.1(e)-(g) outlines specific circumstances where certain conduct by any nonimmigrant visa holder—such as engaging in "[a]ny unauthorized employment[,]" "willful failure to provide full and truthful information requested by DHS[,]" and "conviction in a jurisdiction in the United States for a crime of violence for which a sentence of more than one year imprisonment may be imposed"—constitute "a failure to maintain [student] status[.]" However, none of these conditions under either 8 C.F.R. § 214.2(f)(5) or 8 C.F.R. § 214.1(e)-(g) occurred for the Class Plaintiffs and class who have had their student status unilaterally revoked. These class members have made "normal progress toward completing a course of study" under 8 C.F.R. § 214.2(f)(5). And the conditions of 8 C.F.R. § 214.1(e)-(g) have not been met. These students have not been convicted of any crimes of violence. They have not engaged in any unauthorized employment. And they have not provided any false information to DHS.

Under the second way for agency-initiated termination of F-1 student status, DHS's ability to terminate F-1 student status "is limited by [8 C.F.R.] § 214.1(d)." *Jie Fang v. Director United States Immigration & Customs Enforcement*, 935 F.3d 172, 185 n. 100 (3d Cir. 2019). Under this regulation, Defendants can terminate student status *only* when: (1) a previously granted waiver under 8 U.S.C. § 1182(d)(3) or (4) is revoked; (2) a private bill to confer lawful permanent residence is introduced in Congress; or (3) DHS publishes a notification in the Federal Register identifying national security, diplomatic, or public safety reasons for termination. But, for Class Plaintiffs and the entire class, none of these criteria has been satisfied, yet their student status has been revoked anyway.

Accordingly, all class members raise the same Administrative Procedures Act legal claims that these student status terminations were performed without complying to the applicable regulations. A determination that Defendants' conduct is unlawful here "will resolve an issue that is central to the validity of each one of the claims in one stroke." *Dukes*, 564 U.S. at 350.

Proposed class representatives and proposed class members also share a common core of facts: Each class member, as a factual matter, is subject to the same practice where student status was terminated without meeting the appropriate regulatory criteria governing student status termination (*see* 8 C.F.R. § 214.1(d)) or governing failure to maintain student status (*see* 8 C.F.R. § 214.1(e)-(g), 8 C.F.R § 214.2(f)). As a result, if Defendants' termination practices are to persist, class members will continue to have their studies interrupted and lives upended. They may even be subject to detention and deportation. Proposed class representatives and proposed class members, thus, will "have suffered the same injury." *Dukes*, 564 U.S. at 350. And that common injury is clearly "capable of classwide resolution." *Id.* Should the Court agree that Defendants' practices of terminating student status without satisfying the applicable regulatory criteria are

unlawful, all who fall within the class will benefit from the requested relief: an injunction declaring the practice unlawful and enjoining Defendants from enforcing it against other students and OPT participants without complying with the necessary regulatory criteria. Thus, a common answer as to the legality of the challenged policies and practices will "drive the resolution of the litigation." *Dukes*, 564 U.S. at 350.

Individual variation among Plaintiffs' questions of law and fact does not defeat commonality. *See, e.g.*, *Gomes*, 561 F. Supp. 3d at 100-01 (class certification granted despite individual differences among class members, where common issues pervade). Moreover, any factual differences that may exist among proposed class representatives and proposed class members in this case are immaterial to their claims, which challenge Defendants' termination of student status without complying with the applicable regulatory criteria.

C. The class representatives' claims are typical of those of the class.

Where commonality looks to the relationship among class members generally, typicality under Rule 23(a)(3) focuses on the relationship between the proposed class representative and the rest of the class. *See George v. Nat'l Water Main Cleaning Co.*, 286 F.R.D. 168, 176 (D. Mass. 2012) (citing 1 William B. Rubenstein, *Newberg on Class Actions* § 3:26 (5th ed. 2012)). In practice, however, the analysis of typicality and commonality "tend to merge." *Levy v. Gutierrez*, 448 F. Supp. 3d 46, 68 (D.N.H. 2019). To satisfy Rule 23(a)(3), "a class representative must be part of the class and possess the same interest and suffer the same injury as the class members." *Id.* at 156.

Typicality is established when the claims of the named plaintiffs and the class involve the same conduct by the defendant, "regardless of factual differences." *Hawkins ex rel. Hawkins v. Comm'r of New Hampshire Dep't of Health & Human Servs.*, No. CIV. 99-143-JD, 2004 WL 166722, at *3 (D.N.H. Jan. 23, 2004). "For purposes of demonstrating typicality, '[a] sufficient

nexus is established if the claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory.'" *In re Relafen Antitrust Litig.,* 231 F.R.D. 52, 69 (D. Mass. 2005) (quoting *In re Terazosin Hydrochloride Antitrust Litig.,* 220 F.R.D. 672, 686 (S.D. Fla. 2004)).

Here, the interests of the proposed class representatives and the proposed class members are aligned. The proposed class representatives are members of the class and have suffered the same injury as the proposed class members, namely that the Defendants have revoked student status without meeting the criteria of the applicable regulations. In such circumstances, the representative's claims are "obviously typical of the claims . . . of the class," and satisfy Rule 23(a)(3). *Baggett v. Ashe*, No. 2013 WL 2302102, 2013 WL 2302102, at *1 (D. Mass. May 23, 2013).

Moreover, there is no risk that issues involving the proposed class representatives' individual claims will impede their litigation on behalf of the class. Because the proposed class representatives are challenging the same practice of student status terminations that fail to satisfy any regulatory criteria and seeking the same relief without regard to the outcome of their own efforts to reinstate their student status, they "can fairly and adequately pursue the interests of the absent class members without being sidetracked by [their] own particular concerns." *In re Credit Suisse-AOL Sec. Litig.*, 253 F.R.D. 17, 23 (D. Mass. 2008).

D. The proposed class representatives and class counsel can adequately represent the class.

Finally, the named plaintiffs and their counsel will "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Two factors must be satisfied to fulfill this prerequisite: "(1) the absence of potential conflict between the named plaintiff and the class members and (2) that counsel chosen by the representative parties is qualified, experienced and

able to vigorously conduct the proposed litigation." *Adair v. Sorenson*, 134 F.R.D. 13, 18 (D. Mass. 1991) (internal quotations omitted).

Here, there is no conflict—much less anything close to a conflict fundamental to the suit that would prevent a plaintiff from meeting the adequacy requirement. *See Cf. Matamoros v. Starbucks Corp.*, 699 F.3d 129, 138 (1st Cir. 2012). The proposed class representatives have alleged the same injuries—arising from the Defendants' termination of student status without meeting the applicable regulatory criteria—and they seek the same injunctive and declaratory relief, which will apply equally to the benefit of all class members.

In addition, "counsel chosen by the representative party is qualified, experienced, and able to vigorously conduct the proposed litigation." *Id.* The proposed class would be represented by pro bono counsel from the ACLU of New Hampshire. Proposed class counsel have extensive experience litigating class action lawsuits and other complex cases in federal court. *See* Declaration of Gilles Bissonnette, Esq., Exhibit A.

For the same reasons, counsel also satisfy the requirements of Rule 23(g) and should be appointed as class counsel.

II. The Proposed Class Meets the Requirements of Rule 23(b)(2).

Finally, "[i]n addition to meeting the four requirements of Rule 23(a)," the Plaintiffs "must show that the proposed class falls into one of the three defined categories of Rule 23(b)." *Reid v. Donelan*, 297 F.R.D. 185, 192 (D. Mass. 2014). Here, the relevant category is Rule 23(b)(2), which applies when "the party opposing the class has acted or refused to act on grounds generally applicable to the class, so that final injunctive relief or corresponding declaratory relief is appropriate with respect to the class as a whole." *Id.*

The "prime examples" of Rule 23(b)(2) cases are civil rights cases like this one, where the claim asserts that the defendants have "engaged in unlawful behavior towards a defined group."

Reid, 297 F.R.D. at 193. The rule also applies to a case such as this one, where "a single injunction or declaratory judgment would provide relief to each member of the class." *Dukes*, 564 U.S. at 360-61 (as opposed to cases in which each class member would need an individual injunction or declaration, or in which each class member would be entitled to an individualized award of money damages).

The claims asserted here satisfy these requirements. Defendants have engaged in unlawful behavior towards the entire class. And because every member of the class is entitled to relief from this unconstitutional and otherwise unlawful practice of terminating student status without complying with the appropriate regulatory criteria, an appropriate injunction or declaration will provide relief on a classwide basis. "The key to the (b)(2) class is the indivisible nature of the injunctive or declaratory remedy warranted - the notion that the conduct is such that it can be enjoined or declared unlawful only as to all of the class members or as to none of them." *Dukes*, 564 U.S. at 360.

CONCLUSION

Plaintiffs respectfully request that the Court grant this Motion and enter an order certifying the proposed class under Rule 23(b)(2); appoint proposed class representatives as Class Representatives; and appoint their counsel from the ACLU of New Hampshire as Class Counsel.

Plaintiffs and similarly situated members,

By and through their Counsel,

Dated: April 18, 2025

Respectfully submitted,

/s/ SangYeob Kim

Gilles R. Bissonnette (NH Bar: 265393)
Henry Klementowicz (NH Bar: 21177)
SangYeob Kim (NH Bar: 266657)
Chelsea Eddy (NH Bar: 276248)
AMERICAN CIVIL LIBERTIES UNION OF NEW HAMPSHIRE FOUNDATION
18 Low Avenue
Concord, NH 03301
603.227.6678
gilles@aclu-nh.org
henry@aclu-nh.org
sangyeob@aclu-nh.org
chelsea@aclu-nh.org

Ronald L. Abramson (NH Bar: 83593)
SHAHEEN & GORDON P.A.
180 Bridge Street
Manchester, NH 03104
603.792.8472
rabramson@shaheengordon.com

Carol Garvan (NH Bar: 21304)
Zachary L. Heiden*
Heather Zimmerman*
AMERICAN CIVIL LIBERTIES UNION OF MAINE FOUNDATION
P.O. Box 7860
Portland, Maine 04112
207.619.8687
cgarvan@aclumaine.org
heiden@aclumaine.org
hzimmerman@aclumaine.org

Fermín L. Arraiza-Navas*
#215705 (US District Court Puerto Rico)
AMERICAN CIVIL LIBERTIES UNION PUERTO RICO CHAPTER
Union Plaza, Suite 1105
416 Avenida Ponce de León
San Juan, Puerto Rico 00918
787.753.9493
farraiza@aclu.org

Lynette Labinger*
Cooperating counsel,
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF RHODE ISLAND
128 Dorrance Street, Box 710
Providence, RI 02903
401.465.9565
LL@labingerlaw.com

Counsel for Plaintiffs
** Application for admission pro hac vice forthcoming*