

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

COMMONWEALTH OF MASSACHUSETTS, et.
al.,

Plaintiffs,

v.

Civil Action No. _____

UNITED STATES DEPARTMENT OF
HOMELAND SECURITY, et. al.,

Defendants.

DECLARATION OF KIM HOWARD

I, Kim Howard, pursuant to 28 U.S.C. § 1746, hereby declare and affirm,

1. I am the Director of the Office of International Education at the University of Vermont and State Agricultural College (hereinafter referred to as “UVM”) located in Burlington, Vermont. My educational background includes a master’s of education degree (higher education and student affairs administration) from the University of Vermont (2001) and a bachelor’s degree (ethnic studies) from the University of California at Berkeley (1993). I have been employed as the Director of the Office of International Education since the fall of 2008.

2. I submit this declaration in support of Massachusetts’s litigation challenging the policies announced on July 6, 2020 by “Broadcast Message” and to be published as a Temporary Final Rule to amend requirements of the Student and Exchange Visitor Program (the “Rule”).

3. I have compiled the information set forth below through personal knowledge and from UVM’s personnel who have assisted me in gathering this information from our institution. I have also familiarized myself with the Rule in order to understand its immediate impact on UVM.

Background on the University of Vermont and State Agricultural College and International Student Population

4. UVM is a public research university in Burlington, Vermont, accredited by the New England Commission of Higher Education (NECHE). It was founded in 1791 and is the state's land-grant university. UVM operates with a mission to create, evaluate, share, and apply knowledge and to prepare students to be accountable leaders who will bring to their work dedication to the global community, a grasp of complexity, effective problem-solving and communication skills, and an enduring commitment to learning and ethical conduct. UVM's vision is to be among the nation's premier research universities with a comprehensive commitment to a liberal arts education, environment, health, and public service.

5. UVM is an instrumentality of the State of Vermont and received approximately \$42,509,000 in state appropriations during FY 20, representing 11.1% of the general fund or 6.0% of the total current operating budget.

6. During the 2019-20 academic year, UVM hosted 10,700 undergraduate students, 1,627 graduate students, 478 medical students, 33 Post-Baccalaureate students, and 743 non-degree students. UVM offers more than 100 majors in 7 undergraduate schools and colleges, 54 master's degree programs, 26 doctoral programs, 35 accelerated master's programs, an M.D. program, and 4 pre-professional advising options (pre-medical, pre-dental, pre-vet, pre-law). UVM is supported by more than 4,200 dedicated faculty and staff members.

7. UVM had five hundred and sixty-six (566) active F-1 students in SEVIS as of July 10, 2020. This number includes students on OPT/in their "grace periods." These students hold citizenship from 67 countries.

8. UVM had five hundred and twenty-four (524) international F-1 students who were enrolled in coursework at UVM as of the end of the add/drop period for spring 2020. Of these students, 111 attested in writing to the Office of International Education that they were leaving the United States. According to the Student and Exchange Visitor Information System (SEVIS), 193 students have left the United States since March 1, 2020.

9. As of July 9, 2020, UVM has issued initial I-20s for thirty-seven (37) newly-admitted students requiring an F-1 visa (20 graduate and 17 undergraduate). UVM also has an additional fourteen (14) students whose I-20 requests are in progress. International students are charged non-resident tuition rates.

Economic Harm to the University of Vermont and State Agricultural College

10. In light of the Rule, there are a number of reasons why international students might disenroll for fall 2020, including, but not limited to:

- a. **Students may withdraw from UVM if they fear a mid-semester change to their visa status that would require them to leave the United States.**

Specifically, students may pre-emptively withdraw from UVM if they believe there is a possibility that UVM will need to go to fully remote instruction mid-semester.

- b. **Students may transfer to another institution or otherwise withdraw from UVM to avoid losing the eligibility to apply for CPT/OPT practical training authorization.** CPT and OPT may serve as stepping stones to further employment. If UVM is forced to terminate F-1 records for students who remain out of the United States, and those students would otherwise be in their last two semesters at UVM, they will lose their qualification for Optional Practical

Training (OPT). These students may therefore withdraw from UVM for the duration of the effectiveness of this Rule. If students in their last two semesters at UVM who are in the U.S. believe other universities are more likely to remain in-person for the duration of the effectiveness of this Rule, students may transfer to other universities from UVM. Or, like students who remain outside of the U.S., they may withdraw for the entire year, in the hopes of enrolling at a later point, in order to preserve their last two concurrent semesters of F-1 status (and thus their eligibility to apply for OPT authorization) at a later point. In addition, students who withdraw for one or more semesters would be ineligible for Curricular Practical Training (CPT) experiences for two semesters upon their return, which would especially harm students who have required training experiences at the undergraduate level for which there is no exception to the two-semester rule. If a student reasonably believes that they would be unable to make progress towards their degree upon returning, that could significantly influence a student's decision.

- c. **Students may transfer if they believe another institution can guarantee their F-1 status.** Students may transfer if they believe there is a university that can better guarantee in-person instruction, and will not need to go remote mid-semester, thus allowing them to remain in the United States in accordance with the Rule.

Administrative Burdens and Planning Disruptions

11. As requested by the March 9, 2020 guidance, UVM notified DHS by email on March 12, 2020, of the University's operational changes. See Exhibit A.

12. UVM has adopted a plan for safe and healthy return to campus in compliance with Vermont state law, which includes academic calendar adjustments, variations to mode of instruction, class size limitations, and other public health measures. See Exhibit B.

13. There is a significant administrative burden in implementing new systems to comply with the Rule: UVM will need to re-issue I-20s for every student when we otherwise should be preparing for and executing other student retention activities; given that some students have imminent visa appointments and near-term travel plans, that has meant that we have already needed to begin this work to ensure neither students' visa appointments nor travel are disrupted. We will need to determine for each individual student that her or his individual academic situation complies with the Rule. If the spread of the virus is such that UVM is forced to go fully remote for public health reasons, we would need to assist students in trouble-shooting departure from the U.S. which, given the number of countries from which our students hail, would be complicated and time-consuming.

14. Schools administering F-1 programs have 21 days to report other operational changes; requiring that we report operational changes related to COVID-19 within only 10 days is a burden that was not present prior to March 2020.

Harmful Impact on Educational Mission

15. While the impact on an individual student under the Rule is obvious, the loss to UVM and the process of education, research, and discovery is a further consequence. Students who are denied visas, or have their visas revoked, will experience a negative impact on their progression to a degree, adding significant time and potentially cost to their education. UVM will have lost students who enrich the learning of other students, our faculty, and our community. Some of these students, through no fault of their own, will not be able to return when UVM is

able to return to in-person teaching. When UVM accepts a student into a program, we have an obligation to provide access to the curriculum they entered. The Rule does not allow us to meet our obligation.

16. Certain programs and populations of students will be met with heavier burdens.
 - a. Clinical placements in our health, education, and social service fields are for credit and are in person activities. However, if a COVID-19 surge is severe enough to cause UVM to revert to all online/remote teaching, it is also likely these types of placements will no longer be able to support an in-person component. The course may instead finish with simulations and remote content delivery, which would not be in alignment with the Rule and would require F-1 status to be revoked. International students would need to leave the country, and would be at risk for not being able to complete their program at a later date.
 - b. Graduate students engaged in lab work have multiple relationships with UVM:
 - i. While engaged in research, if they have a full course load, they may not be registered for research credit. If their coursework reverts entirely to remote means, and they are not registered for research credits, they would not have an official record of in-person research activity that term and could be required to leave. This would be a loss to the students' progress and to the faculty their research supports, including delays to actual work, by the publications that would be delayed, and the loss of mentorship activities that support their career progression. In some situations, research labs are able to remain functional even when courses are transitioned to

remote means because a separate set of health and safety protocols guide the research labs relative to classrooms.

- ii. Graduate students also have student employee relationships with research labs in their role as graduate research assistants (GRAs). They must be enrolled full time to hold a GRA. If that enrollment is based only on courses that transition to remote means, and they are required to leave the country, they can no longer participate in the research directly, even if they could participate at a distance through data analysis and preparation of manuscripts, they can no longer be paid, and may no longer be financially able to continue their education.
- iii. Graduate students have significant mentorship roles in a laboratory that are not captured by credit registration. They both teach and mentor undergraduate students and more junior graduate students. Under the Rule, even if the lab is still active, the international student must leave the country if their coursework all transitions to remote instruction and they can no longer perform this critical role in the lab. This is a loss that affects both faculty and other students in addition to the effect on the international student themselves.
- iv. Removal of F-1 status will disrupt the role many students play as graduate teaching assistants (GTAs). Should the delivery mode of courses need to change, GTAs are a crucial part of educational delivery to students in a remote setting. GTAs with F-1 status who are required to leave the country will lose their GTA positions, and the courses, faculty, and

students they support will be negatively impacted. The F-1 student will be losing a critical source of their educational funding that allowed them to pursue their education at UVM, which will have both short and long-term impacts through no fault or choice of their own.

- v. Faculty depend on their graduate students to perform critical functions and maintain continuity as new people, including undergraduate students, join research labs and educational projects. Additionally, these graduate students contribute their own ideas to strengthen the research enterprise as they pursue their independent work. Studies have shown that research progress is enhanced by a diversity of thought within laboratory settings. The presence of international students provides a significant contribution to the research enterprise.

Impact on Health of Students

17. Travel restrictions in an international student's home country may challenge the ability of the student to depart UVM's campus safely should there be a mid-semester alteration to their visa status, and such travel (in some cases students may require airline flights longer than 12 hours, and may require multiple airline trips and lengthy delays in layover airports) may additionally increase students' potential exposure to COVID-19. For some students, departure from the U.S. could decrease their access to appropriate health care.

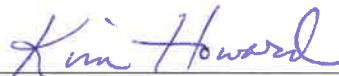
Economic Harm to Students

18. Students who lose F-1 status may suffer significant personal economic effects, including, but not limited to, their ability to obtain work visas (CPT/OPT) after the academic

year, incurring additional expenses to return to their home country, such as travel costs and short-term housing in their home country, continuation of expenses within the United States even while absent, such as off-campus leases or lease termination penalties, and increased educational costs if and when they are able to reengage, as detailed above. Additionally, depending upon whether their home country's air space is open and/or whether there are sufficient commercial transportation options available to their home country, the cost of finding a third country to which to travel and live until borders are open would be a significant financial burden. Currently all commercial air travel is suspended for multiple countries where our students hold citizenship, and commercial air travel is limited for a number of other countries where our students hold citizenship.

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

Executed this 12th day of July, 2020



Kim Howard
Director of the Office of International Education
University of Vermont

State of Vermont
County of Chittenden

Singed/attested and sworn to before me on July 12, 2020, by Ms. Kim Howard.


Notary Public

