

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

PRESIDENTS' ALLIANCE ON)
HIGHER EDUCATION AND)
IMMIGRATION, ET AL.,)
)
Plaintiff,)
)
v.) No. 1:26-cv-13799-FDS
)
UNITED STATES DEPARTMENT)
OF HOMELAND SECURITY, ET)
AL,)
)
Defendants.)

BEFORE THE HONORABLE F. DENNIS SAYLOR
UNITED STATES DISTRICT JUDGE

Motion Hearing

September 3, 2026
10:59 a.m. - 12:38 p.m.

John Joseph Moakley United States Courthouse
Courtroom No. 1
1 Courthouse Way
Boston, Massachusetts 02210

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P R O C E E D I N G S

THE CLERK: All rise.

(The Honorable Court entered.)

THE CLERK: Thank you. You may be seated.

Court is now in session in the matter of Presidents' Alliance on Higher Education and Immigration, et al., versus United States Department of Homeland Security, et al. Civil Action Number 2613799.

Would counsel please identify themselves for the record starting with the plaintiff?

MR. HUGHES: Good morning, Your Honor. Paul Hughes of McDermott Will & Schulte for the plaintiffs in this action, and I'm joined by my colleague Dana McSherry.

MS. MCSHERRY: Good morning, Your Honor.

THE COURT: Good morning.

MR. CELONE: Good morning, Your Honor. Michael Celone on behalf of the United States. I'm with my colleague Oleksiy Isaev.

MR. ISAEV: Good morning, Your Honor. Oleksiy Isaev.

THE COURT: Good morning.

This is a hearing on Plaintiffs' motion for a preliminary injunction or, alternatively, summary judgment. I've read the filings.

Counsel, the floor is yours.

1 MR. HUGHES: Thank you, Your Honor.

2 May it please the Court, Paul Hughes for the
3 plaintiffs. I'd be happy to begin anywhere the Court may
4 prefer.

5 I think there are three issues principally in dispute,
6 whether or not Plaintiffs have demonstrated that we are likely
7 to prevail on the merits; whether we've demonstrated that
8 absent injunctive relief there would be irreparable injury;
9 and, third and finally, if the Court agrees, what is the nature
10 of the relief the Court should enter. I'd suggest turning to
11 each of these in order, but I want to frame things for a moment
12 if I may.

13 International students, I think we know, make
14 incredible contributions to our academic institutions. They're
15 necessary to achieving groundbreaking research. They provide
16 critical medical services, and they enhance the educational
17 experience of all.

18 They provide considerable economic benefits to the
19 U.S. economy. I find it striking that international education
20 is the seventh largest of the services exports of the United
21 States.

22 When there is something that is so consequential to
23 the United States, it is true that the government can change
24 its policy, but when it changes policy in an area that, again,
25 is so consequential, it is absolutely critical that the

1 government abide by the Administrative Procedure Act.

2 That is how those who are directly regulated by the
3 government's actions may participate in the rulemaking and
4 ensure that their perspectives are, in fact, heard and taken
5 into account by the administrative agency.

6 Here, the agency failed, in our view, at every turn.
7 They didn't conduct a proper cost-benefit analysis. They
8 didn't engage in reasoned decision-making. The agency failed
9 to consider less burdensome alternatives that commenters
10 presented to the government, and the government failed to
11 consider material comments that it had an obligation to
12 respond.

13 So that process that, we think, was rushed to achieve
14 a result without actually taking stock of the consequences of
15 this action is unlawful under the Administrative Procedure Act.
16 Ultimately, this final rule should be set aside.

17 Today, we ask the Court either to set aside or
18 postpone the effective date, which is otherwise September 15th,
19 or, alternatively, to grant summary judgment in Plaintiffs'
20 favor. Either way we submit that relief is critical to avoid
21 the otherwise certain irreparable injury that Plaintiffs would
22 face should this rule become effective.

23 Turning to the first point, our likelihood of
24 prevailing, we think that the cost-benefit analysis here simply
25 was inadequate. It's inadequate principally because, while the

1 government recognizes that there would be deenrollment
2 pressure, the government treats those costs as effectively
3 zero.

4 There are different ways that one could potentially
5 model what those costs are and perhaps there's a reasonable
6 debate to be had, but what the government can't do is what it
7 did, is treat those costs as nothing and take them out of the
8 calculus.

9 Second, there's simply no rational connection between
10 the action that the government has taken and the problems that
11 it seeks to solve. In its opposition brief, the government
12 tries to reframe the problem by saying the problem is the lack
13 of routine check-ins, but that doesn't work because SEVIS
14 already has routine check-ins once a semester or more.

15 But setting that aside, that's not the problem that
16 the final rule set out to solve. As to those problems, there
17 is simply no connection between what the government is doing in
18 the final rule and trying to solve those problems.

19 Third, there are a host of less burdensome
20 alternatives that I want to talk about today that the
21 government could have undertaken to try to achieve these
22 objectives, and simply they gave short shrift to it and didn't
23 respond to the commentators' positions that they could achieve
24 their objectives in ways that would not fundamentally upset the
25 international education system.

1 The final point is there's simply a failure to address
2 a whole host and range of comments.

3 The irreparable injury that we'll talk about today, we
4 think, is clear. Universities are already losing student
5 enrollment. We have put forth a considerable record from 15
6 colleges and universities around the country identifying the
7 harms that they are experiencing. This includes e-mails from
8 actual students who are disenrolling because of this final
9 rule.

10 The government, in the opposition they filed last
11 night, doesn't address this wealth of declaratory --
12 evidence -- evidence in the form of declarations really at all,
13 and I think it shows the disenrollment is happening now, and it
14 is irreparable.

15 Further, the redesign of the programs is happening
16 now, and that is also irreparable. And, finally, the
17 administrative burdens that we'll talk about are happening now,
18 and those are clearly irreparable, so all of that irreparable
19 injury will occur and continue to occur absent injunctive
20 relief.

21 Just briefly then on the remedy point, we think that
22 Section 705 authorizes the Court to postpone the effective
23 date. As the First Circuit recently discussed, there is but a
24 single effective date, so if there is postponement of the
25 effective date, it should be postponement of the effective date

1 for the rule as a whole, not just for the nature of the --
2 the -- the members of the plaintiffs who have sued.

3 That's all the more important because the Presidents'
4 Alliance represents -- has members at more than 600 colleges
5 and universities, which represent somewhere between a third and
6 a quarter of all of the institutions nationwide.

7 We think it would be plainly inadministrable to have a
8 narrow remedy, and, more importantly, it won't actually solve
9 the harm because the harm here, disenrollment, is going to
10 occur if there is the considerable uncertainty that the final
11 rule creates as to whether or not international students can
12 come to the United States and complete their degree of study as
13 originally intended.

14 So that's an overview, Your Honor, of the issues that
15 I'd hope to dive into. I'd be happy to pick up at any
16 particular place that could be useful to the Court, or I can,
17 you know, proceed in that order as the Court may prefer.

18 THE COURT: Go ahead.

19 MR. HUGHES: Thank you, Your Honor.

20 As to the likelihood to prevail, beginning with the
21 cost-benefit analysis, DHS acknowledges 443 million dollars'
22 worth of compliance cost, and they do very little to
23 demonstrate why those initial start-up compliance costs are in
24 any way justified by the rule.

25 But more importantly than that, what DHS itself

1 recognizes -- and this is a Federal Register page 45,086 -- DHS
2 recognizes that this rule will have the effect of causing some
3 international students to not choose the United States and
4 instead choose to go elsewhere.

5 But DHS declined explicitly to qualify the nature of
6 that impact. And it's not, though, something that is not
7 subject to qualification. We've provided, through the comment
8 materials, significant calculations as to what the economic
9 effect of that will be, and the government simply refused to
10 engage.

11 What the case law in that says is even when there are
12 predictive judgments about what an economic impact is going to
13 look like in the future, the government can't simply say, well,
14 it's predictive, so we're going to decline to engage in this
15 analysis whatsoever.

16 The government has to under -- to evaluate that
17 material, and if it disagrees with it, it can say why and give
18 a rational basis as to why it disagrees.

19 But here, the government doesn't disagree that there
20 will be a disenrollment effect. It just may disagree with what
21 the actual quantum of that is.

22 But given the enormous value of this industry -- I
23 think the materials suggest that it is upwards currently of
24 50-some-odd billion dollars a year is the economic impact of
25 international students to the United States; the Clemens study

1 says conservatively there would be a 10 percent disenrollment,
2 but even if you discount that and think it's less than 10
3 percent, the economic consequences of this rule are incredible.

4 And the government, though, by suggesting that this is
5 predictive, just wills away or wishes away the economic
6 implications. That --

7 THE COURT: Aren't all economic impact predictive?

8 I mean, isn't this true in every single regulation
9 that has an economic impact?

10 MR. HUGHES: Yes, Your Honor.

11 THE COURT: I mean, it's always predictive; right?

12 MR. HUGHES: Absolutely correct, Your Honor, and
13 that's why *Public Citizen* and all of the case law says the
14 government can't simply say, we're not going to engage in the
15 predictive exercise because it's predictive. They have to
16 engage in the predictive exercise, and if they have a different
17 prediction, they can identify what it is.

18 And, again, we're not in a situation where the
19 government rejects the premise. The government accepts the
20 premise that there will be a decrease in enrollment.

21 They just refuse to engage in the actual
22 quantification of what that impact will be, but engaging in
23 that quantification is necessary for a reasoned cost-benefit
24 analysis, and the government explicitly chose not to do that
25 here.

1 That's arbitrary and capricious on its face because
2 you can't take what we know is going to be a significant
3 economic implication and then treat it as zero because the
4 government simply doesn't want to engage in the predictive
5 exercise of judging what is the impact that they acknowledge is
6 a real impact. They can't simply say, we're going to disregard
7 it and treat it as nothing.

8 Now, on the benefits side, I think that is reason
9 enough to say there was not an appropriate cost-benefit
10 analysis. As we explain in the papers, there's also the
11 failure to address the commentary evidence surrounding this.

12 But further, when we look at the -- the benefits side
13 of the ledger, we think that there's very little the government
14 has supplied on the benefits side of the ledger.

15 And this is going to tie to my second argument that,
16 of course, everybody recognizes national security is an
17 important objective. Of course, everybody recognizes that
18 deterrence of fraud is an important objective. These are, of
19 course, important objectives.

20 But just identifying on paper something that is an
21 important objective doesn't mean that the rule is doing
22 anything rationally related to achieving that objective.

23 And so on the benefit side of the ledger, again, as I
24 say, this ties to my second point, there has to be a logical
25 connection between what the claimed benefit is and the nature

1 of the rule in some way achieving progress towards that benefit
2 or else there simply is no meaningful benefit.

3 What the government in response does in its opposition
4 brief is say, well, the benefit is more regular check-ins, but
5 that just moves the goal post to assume that what the
6 government is trying to do is itself a benefit, but that
7 doesn't actually explain why a more -- you know, a check-in
8 every four years is a benefit.

9 But more to the point, that just overlooks what the
10 SEVIS system actually does today, because the SEVIS system, ex
11 ante and the status quo, requires the DSO at each school to
12 update the computer SEVIS system with the actual information
13 about the students, so is the student taking a complete load of
14 class? Is the student currently enrolled and in good standing
15 with the school? What's the student's address? What's the
16 student's graduation date at that point?

17 That has to be entered and provided to the government
18 at every new term of the school, so a school that's on a
19 semester system, that's at least twice a year. A school that's
20 on a quarter system, that's going to happen more often.

21 So in terms of providing information to the
22 government, if that's what it is, that the -- the government is
23 saying this rule accomplishes, that's already done by the
24 status quo.

25 THE COURT: What -- and, obviously, the government's

1 brief was filed last night, and I read it somewhat more rapidly
2 than I might prefer, but don't they say in effect, well, the
3 problem with the SEVIS system is colleges are self-reporting;
4 they're, kind of, making the decision, and the government
5 itself should be making these decisions?

6 In other words, that the student -- the student
7 information now is provided by the colleges themselves as
8 opposed to the student applying directly to the government and
9 saying, here's my course of education.

10 MR. HUGHES: And -- and there's no evidence anywhere
11 in the record that in that chain from the reporting from the
12 colleges and universities to the government that there is any
13 breakdown or routine problem that inaccurate information is
14 being presented.

15 The DSOs who are responsible at these schools for
16 providing that information, they take these jobs very, very
17 seriously because they are declaring to the government under
18 pain of perjury that this information is correct and accurate.

19 And -- and moreover, every two years the schools
20 themselves are audited to ensure that they are in full
21 compliance, and if a school is found not to be providing
22 timely, updated information to the government as is required,
23 the school would be removed from its ability to host F or J
24 students.

25 So the institutions already take this enormously

1 seriously, but more to the point, there's no showing that there
2 is some reporting problem.

3 And the reliance on the DSOs is really critical,
4 because not only do the DSOs have an obligation at the start of
5 each semester or each term to provide this updated information,
6 they have ongoing reporting obligations.

7 So if a student, for example, starts a semester but
8 stops going to class and deenrolls or changes an address or
9 graduates early, the DSO already, under the status quo, has an
10 obligation within 21 days to provide that information to the
11 government.

12 So the government has all of this information in more
13 or less real time, and there's no demonstration that there is
14 some lack of information that the government has that would
15 otherwise accomplish the goals of fraud deterrence or, you
16 know, the -- the couple examples of security.

17 So starting with fraud deterrence, you know, the only
18 example the government says is it points to 2100 examples that
19 it found using the SEVIS system of individuals who it believes
20 have been in the United States for a prolonged period of time
21 under an F visa, but -- but our submission is that just shows
22 the evidence is there and available for the government.

23 There's no doubt -- nobody disagrees that there is
24 some miniscule percentage of individuals who abuse the system,
25 and no -- my clients certainly don't support that.

1 The government already has the tools to address that
2 because that information shows up on SEVIS when an individual
3 is no longer appropriately enrolled at a university, no longer
4 taking a full course load. The government has that information
5 very much in real time. They have the tools to be able to go
6 out and address that.

7 There is no identification or justification as to why
8 changing from the duration of status to a fixed term is
9 necessary to accomplish this. That's that -- that link is
10 simply lacking.

11 And, again, on the -- the national security claim, you
12 know, the government objects to us calling this anecdotal
13 evidence.

14 I just need to observe that their leading example they
15 talk about in the brief is the one example of international
16 students, someone else showing up at a military base and,
17 apparently, claiming that they're an Amazon driver.

18 The source -- if you look at the actual final rule,
19 there's a footnote to a Fox News article. That's the source
20 for this. It's a Fox News article that is -- you know, half of
21 the article is a political piece that is addressing the past
22 administration and using this as an attack on the past
23 administration.

24 I would think that if this were a true national
25 security risk, the government's final rule would not be looking

1 at single incidents that are reported on Fox News but would
2 have actual government information as to here is a robust
3 showing as to where the national security issues are.

4 There's nothing remotely of that sort. We have a
5 handful of popular news articles that have identified a
6 scattered account of incidents.

7 And the point that we make in our brief, I think, is
8 not contested, which is there's no link between -- yes, it
9 is -- there is a possibility that somebody admitted on an F
10 visa could engage in conduct that is illegal in the United
11 States or is otherwise a threat to the United States; nobody
12 disputes that, but there is no demonstration as to how changing
13 from duration of status to this new rule has any remote bearing
14 on that.

15 These are individuals who are -- the government has
16 identified who are already breaking the law, so if they have
17 entered the United States, again, nothing changes about how
18 they enter the United States under this rule. They're going to
19 be in the United States.

20 And so there's no showing as to how changing to DS
21 alters or -- or removing DS alters that, because, again, if the
22 risk is, well, the government wants to know if somebody has
23 stopped attending school, they already have that in the status
24 quo. They get that within 21 days.

25 So I would understand if that's the argument, but the

1 status quo already provides for that. Congress was very clear
2 that there needed to be real-time reporting of the
3 international students if they do things, like stop attending
4 school, that are the kind of thing the government needs to know
5 about, so Congress dealt with that in 1996, and that already
6 exists in the status quo.

7 There's no demonstration how other than asserting
8 national security in the abstract this has any remote bearing
9 on that, you know, broad objective.

10 THE COURT: Let me pause there. I mean, I'm going to
11 ask the government a version of the same question. Can the
12 President just put the label of national security on something
13 and prohibit me from looking behind it?

14 MR. HUGHES: No, Your Honor.

15 THE COURT: I mean, the President has -- is entitled
16 to sweeping deference, I'll put it that way, under *Trump v.*
17 *Hawaii* and the line of cases on national security matters.

18 What is the scope of my authority to look behind that,
19 look behind that label?

20 MR. HUGHES: There needs to be, under any APA
21 analysis, a rational connection between the claim of national
22 security and what it is the government is doing.

23 *Trump v. Hawaii* was a very different situation where
24 the Supreme Court looks at and says, the vetting procedures of
25 individuals coming from certain arguably high-risk nations were

1 not appropriate, so before we allow these individuals into the
2 United States, we need to do different kind of vetting
3 procedures or we need to essentially force the governments of
4 those countries to provide us much more information about those
5 individuals that those nations have uniquely and the United
6 States doesn't have access to. That was the nature of the
7 travel ban litigation in *Trump v. Hawaii*.

8 And the Supreme Court did defer to certain national
9 security justifications of the President about determinations
10 of how -- how do we vet individuals who are coming into the
11 United States and what information do we need to receive about
12 those individuals before we allow them into the United States?

13 This is nothing remotely like this because this is
14 only addressing individuals who have already been admitted into
15 the United States for periods of up to four years.

16 So the notion that there is some national security
17 component about individuals the government has already chosen
18 to admit into the United States and allow to stay in the
19 country for four years is this proposal that some -- there's
20 some national security threat, I think there's simply no
21 logical connection against a backdrop where, under the status
22 quo ante, information has to be provided at the start of every
23 term, and there's a continuing obligation for the DSOs to
24 provide updates.

25 And there's simply no evidence in the rule that that

1 system is in any way broken or deficient or isn't up to the
2 task of providing the government the information that
3 Congress -- now, Congress, as I said, is the one who designed
4 this system -- said the government needed to have.

5 So short of showing that there is a problem, to the
6 Court's question, simply placing the label of national security
7 and citing a couple news articles that involve international
8 students, we don't think is a basis to justify what is a sea
9 change that changes literal decades of past practice.

10 We don't think that gives the logical connection that
11 is required under *State Farm*, and, more broadly, it's arbitrary
12 and capricious under the APA.

13 I've already covered this in my discussions, but there
14 are a host of less burdensome alternatives, and I just want to
15 highlight the -- the comments of the Presidents' Alliance at
16 around pages 9 at NAFSA, around page 5, Georgetown provided a
17 comment letter that's Exhibit 27, Arizona State at 29.

18 The reason I'm pointing out to these comments is they
19 all discuss how the existing SEVIS system works and how their
20 DSOs are so committed to ensuring that that process is accurate
21 and provides the government timely, correct information.

22 Our principal point is that the government has failed
23 to show that, to achieve their stated objectives, that there is
24 anything broken or deficient about this system.

25 The government's best response is that there are not

1 predetermined interactions with officials, but what they fail
2 to show is why predetermined interactions with officials
3 provides more or different or better support for their stated
4 goals than what already occurs, which is very regular
5 interactions with the university and college DSOs that then
6 provide immediate real-time information to the government.

7 The next point we talk through is there are other
8 alternative approaches that instead of if there was a
9 commitment to remove duration of status, the -- several
10 commenters said, well, at minimum, if you have an international
11 student who's coming in for a five-year combined degree
12 program, at least give them the five years of their combined
13 degree program, or if there's a Ph.D. program that you know is
14 going to take seven or eight years and that's when the expected
15 conclusion is, give that seven or eight years.

16 And the government's response was, well, they just
17 wished it to be four years, and their justification at best was
18 four years was good because it was a uniform standard.

19 But the rule isn't uniform because it doesn't actually
20 give everyone who enters on an F visa four years. It says the
21 length of the program's expected period of time to be capped at
22 four years.

23 So if someone enters the United States for a two-year
24 program, they're not provided a four-year date certain; they're
25 provided a two-year date certain. So the comments' rationale

1 into which the opposition brief focuses is the need for, sort
2 of, uniformity in the length of somebody's stay is at odds with
3 what this rule does, because, again, the four years is not a
4 definitive period of time. It is a cap.

5 And then, of course, there are other, you know,
6 programs that this rule addresses, so the English language
7 training program under F-1, it's capped at 24 months, and the
8 F-1 public high school students are 12 months. The foreign
9 media representatives that we've not spoken about yet, they
10 have a very arbitrary cap, in our view, of 240 days.

11 So there isn't anything uniform about saying we're
12 setting, you know, one decisive period of time for each of
13 these individuals. It is all bespoke per individual.

14 So for that reason we don't think there's any basis
15 for the government to have set aside an alternative, which is
16 even if you are going to provide a date certain, tailor it to
17 the length of that individual's program without an arbitrary
18 cap that deters some of the, you know, highest-quality
19 students, those who are pursuing Ph.D. degrees in the United
20 States, from having the certainty that they can come to the
21 United States, enroll in a Ph.D. program, and actually conclude
22 their graduate studies while being in immigration status.

23 For many of the same reasons we've discussed, there's
24 a failure to address the -- the comments. We think the
25 deterrence of enrollment comments, the nature of how the

1 programs are, in fact, structured, and I'm going to talk about
2 this a bit in the irreparable injury, the significant reliance
3 interest, all of those comments, we think, don't have reasoned
4 responses.

5 I acknowledge this does in some ways overlap with the
6 earlier issues that we've talked about, the lack of
7 cost-benefit analysis, the lack of the -- making a logical
8 connection with the identified goals and with the less
9 burdensome alternative.

10 But what the APA case law teaches us is a failure to
11 engage with material comments by itself is an APA violation,
12 and it's an important independent APA violation, because, as I
13 said at the outset, the notes and comment process is how those
14 who are directly affected by the agency's actions can
15 participate in that process.

16 This is what precludes agencies from just decreeing on
17 high without any democratic participation from those that are
18 ultimately governed by the regulations that are adopted by the
19 agency.

20 This is -- the core requirement of the APA is that
21 those who are going to be affected can submit comments, and the
22 agency has to meaningfully deal with those comments in order to
23 have a valid, appropriate process under the APA.

24 Before moving, though, to irreparable injury, I do
25 want to touch on the press freedom issues. We've --

1 separately, we've -- we've discussed the issue of international
2 reporters coming to the United States now on a 240-day renewal
3 clock.

4 As the commenters identified, there's, in their view,
5 very serious risk that there will be chilling of the reporting
6 of these individuals because the nature of what they're
7 publishing is part of the material that gets submitted during
8 renewals, and there is a fear that it will cause a chilling
9 from taking reporting positions that are critical of the United
10 States government.

11 The only response that the government offers is
12 simply, there won't -- there will be no chilling. That is
13 the -- the nature of -- of the response. It's just a simple
14 denial.

15 But that fails to actually wrestle with the fact that
16 when reporters are on 240-day renewal clocks, they are going to
17 feel significant pressure to temper their reporting on what
18 is -- they would otherwise report knowing that there is an
19 unreviewable determination.

20 I think it's important also to identify, as this final
21 comment says -- and I acknowledge this doesn't change from the
22 status quo -- but the government's response to everything here
23 is, well, there's an extension of status that is available, and
24 you can extend beyond the four years and the foreign
25 journalists can extend beyond the 240 days, but as the final

1 rule points out, that is unappealable and nonreviewable. That
2 is a discretionary decision of the government, and if it is
3 denied, it is denied without any prospect for judicial review.

4 That is the position the government takes, and I know
5 of no way to get judicial review over a denial of an extension
6 of status denial, so the consequences to a foreign journalist
7 as well as to an international student, if an extension of
8 status is denied, is absolutely catastrophic.

9 From there, Your Honor, I would tend to turn to
10 irreparable injury, but I'm happy to go anywhere else if the
11 Court may prefer.

12 THE COURT: No. Go ahead.

13 MR. HUGHES: On irreparable injury, we talk in three
14 major pieces, the declines in enrollment, the program
15 modifications, and the administrative burdens.

16 Starting with the declines in enrollment, it's
17 important to set at the outset, as I said earlier when we were
18 talking about the cost-benefit analysis, the government doesn't
19 disagree with the premise that there is going to be declines in
20 enrollment. They acknowledge that that is a likely outcome.
21 The only question is the quantum.

22 We've demonstrated concrete evidence from members of
23 the Presidents' Alliance. I'd point the Court to the
24 University of Madison declaration where it copies e-mails
25 received from two students who are disenrolling because of this

1 final rule.

2 And University of Maryland, Baltimore campus
3 identifies 32 admitted students who have since withdrawn and 14
4 who requested deferral, all citing the final rule. University
5 of Pennsylvania demonstrates that there have been dozens of
6 unexpected student withdrawals.

7 University of Wisconsin-Milwaukee says everything for
8 international students is down across the board, a 42 percent
9 decrease in applications, a 29 percent decrease in admissions,
10 38.7 decrease in enrollment.

11 And what the declarations demonstrate is these are
12 irrecoverable decisions. If an international student outside
13 the United States is thinking about where they're going to
14 attend college as an undergraduate or their graduate school
15 studies, they can choose to attend a school in the United
16 States. They can choose to attend a school anywhere outside
17 the United States, but once that choice is made, it is very
18 unlikely to be changed.

19 And what we're facing right now is we are starting the
20 admissions cycle for next year. So right now, students from
21 around the world are thinking about for the year that begins
22 in the fall generally of 2027, where do I want to go? To which
23 schools am I going to apply? Where do I want to continue my
24 educational journey?

25 And right now, those students understand that if they

1 come to the United States, there is uncertainty as to whether
2 or not they will be able to remain in immigration status
3 throughout their duration of their program.

4 It is that fundamental uncertainty that is what leads
5 to the decreased enrollments, the decreased interest, and the
6 loss of students, and that loss of students, as we've
7 demonstrated, is irrecoverable once it occurs, and that is
8 quite clearly irreparable injury.

9 This also has direct financial harms for the loss of
10 tuition and other financial benefits that the universities
11 experience.

12 That too, as another Court in *RENEW Northeast*
13 demonstrates, that there's irreparable injury from the
14 financial harms.

15 I want to focus on this for a moment because in the
16 opposition brief, my colleagues from the government cite the
17 *Wisconsin Gas* and the *Sampson verse Murray* decisions saying
18 that, you know, financial costs aren't generally irreparable
19 injury.

20 And I want to be clear. We don't rest on financial
21 costs. The loss of the students themselves is irreparable
22 injury. I'm going to talk about other irreparable injuries.

23 But on this point, I've just got to disagree. When
24 you look to the *Sampson v. Murray* Supreme Court 1974, it's
25 talking about income that, quote/unquote, ultimately to be

1 recovered, and then further, "The possibility that adequate
2 compensatory or other corrective relief will be available at a
3 later date in the ordinary course of litigation weighs heavily
4 against a claim of irreparable harm."

5 And this is the same thing with *Wisconsin Gas*, you
6 know. Both of these cases are looking at an earlier decision,
7 *Virginia Petroleum Jobbers*, "Recoverable monetary loss may
8 constitute irreparable harm only where the loss threatens the
9 very existence of the movant's business."

10 When the government cites that quote, they leave out
11 the first part, "recoverable monetary loss," and the reason
12 that the situation is different in the APA is because if we win
13 our case at the end of the day, because of the government's
14 sovereign immunity, there is no economic recovery. Any
15 economic loss we find now is irrecoverable, which is what *RENEW*
16 *Northeast* relied upon.

17 But the Court doesn't have to -- to stop there. In --
18 in August 21st of 2025 -- and this wasn't in our opening brief;
19 we would have put it in a reply, but the Supreme Court in the
20 *National Institute of Health verse American Public Health*
21 *Association*, this is 145 Supreme Court 2658, this is what the
22 Supreme Court says, "While the loss of money is not typically
23 considered irreparable harm, that changes if the funds cannot
24 be recouped and are thus irrevocably expended."

25 And that's our circumstance here because the financial

1 outlays cannot be recovered in this case because there's no
2 possibility of an award of financial damages against the
3 government.

4 Again, though, as I said earlier, the financial
5 injuries are far from the only ones that we've demonstrated.
6 The inability for colleges and universities to have their full
7 range of students join their communities has implications for
8 research, for the teaching opportunities, for the medical roles
9 that those students will often fill when they're graduate
10 student residents in college hospitals, for the culture. All
11 of these go to what a university's mission is.

12 And we cite a host of cases from *McMahon* to *Victim*
13 *Rights Law Center* to the *NEA* case all saying obstruction of the
14 mission of an underlying entity is irreparable because you
15 can't take back that time. You can't take back the obstruction
16 of their admission, the ability to actually craft the
17 association of individuals that each college and university
18 wants to have but is being blocked by the final rule.

19 I want to turn, though, to -- a moment to program --
20 both modifications, and -- and, if anything, I think we
21 understated it because there are, sort of, program prohibitions
22 in the final rule that are deeply problematic.

23 So just as one example, we have a declaration from
24 Grinnell, and in paragraph 13 of that declaration, it talks
25 about their 3-2 program. Grinnell's 3-2 program is you go to

1 Grinnell for three years, and at the end of your fourth year,
2 you get your bachelor's of arts from Grinnell and a liberal
3 arts degree, but then you go to one of their partner schools,
4 so their partner schools include Caltech, RPI here locally,
5 Washington University, Columbia, and you do two years of
6 engineering, and at the end of that, you get a second degree in
7 engineering.

8 Well, what Grinnell understands, and we think this --
9 this may be unlawful now under the final rule because the final
10 rule doesn't allow an international student to come in and get
11 two degrees at the same level.

12 There is this notion of progression that the rule
13 adopts, that you have to progress from one level to the next,
14 and you can't do two seriatim levels.

15 The other kind of prohibition -- and the University of
16 Maryland, Baltimore paragraph 33 has a very good example of
17 this -- there is a prohibition of starting at one degree
18 program and then doing a different degree program that includes
19 a transfer.

20 So University of Maryland, Baltimore explains that
21 they have a popular program where somebody would begin with JD
22 studies at the law school, but then they would enroll in an MBA
23 program at another local college or university, often Johns
24 Hopkins, to do an MBA program there.

25 This rule prohibits that because it's a change -- this

1 rule would find a change in their educational objective and a
2 transfer from one school to another, because under the -- the
3 way the programs work they start at University of Maryland;
4 they transfer to Hopkins; they transfer back to University of
5 Maryland, and the rules explicitly prohibit a transfer of
6 graduate students as well as a second degree at the same level.

7 So these are the existing programs that this rule, we
8 think, make unlawful quite problematically, and having to have
9 us, essentially, either cancel these programs or make them
10 unavailable for international students or redesign those
11 programs, that is quintessential irreparable injury.

12 The final point is the administrative burdens. DHS
13 itself -- and this is at page 45,116 of the final rule -- says
14 the total upfront compliance costs are in the order of 267.9
15 million dollars, so just what DHS says, they're saying this is
16 260-some-odd million dollars for the colleges and universities
17 around the country if this rule goes into effect for them to
18 begin to comply with it.

19 And it's, sort of, easy to see where these costs come
20 from, so the University of California declaration at paragraph
21 37 says just to comply with this rule, that one system has to
22 hire 20 full-time staffers to deal with the burden that this
23 rule is going to implement.

24 Now, 20 is a large number because it's the entire
25 University of California system, but it's one example of they

1 have to go out into the market and hire individuals to deal
2 with the burdens of this rule.

3 Well, it's easy to see the irreparable injury that
4 occurs both with the monetary expenditure that the government
5 recognizes, but also with going out and hiring staff that are
6 to comply with this rule; if the rule's later set aside, that's
7 redundant staff that they don't need that universities don't
8 currently have because this rule doesn't exist.

9 So allowing the rule to come into effect would cause
10 irreparable injury if we're ultimately right that the rule
11 should be finally set aside.

12 From there, Your Honor, I'll just turn to the remedy
13 that we'd request, and we have two forms of -- of potential
14 remedy, and I'll start with the second before I get to the
15 first.

16 On the second is we do believe that summary judgment
17 is appropriate at this time. The rule very clearly provides
18 Rule 56, summary judgment as appropriate can be filed at any
19 time. And if we're right on our point that this is arbitrary
20 and capricious, then I think we are just entitled to summary
21 judgment.

22 The government suggests that there has not been a full
23 provision of the administrative record. The administrative
24 record are the comments that exist.

25 But the government can't rely on comments to refute

1 our points that we've made. The government has to rely solely
2 on what's in the final rule.

3 We have presented to the Court, you know, it's --
4 there are 22,000 comments. We've only presented to the Court a
5 selection of those comments, but we've presented to the Court
6 in the -- we've given the Court a lot of pages of material --
7 of the -- the comments that we think are critical to
8 demonstrate our entitlement to relief.

9 So, you know, understanding that that is a significant
10 ask, to step back, we think, at minimum, Section 705 relief
11 under the APA is warranted.

12 And under Section 705, it authorizes the Court to
13 postpone the effective date of an agency action. We think that
14 that postponement is completely appropriate here.

15 The *Woonasquatucket* case of the First Circuit recently
16 explains that rules have but one effective date, and the nature
17 of Section 705 surely authorizes a Court to set aside the
18 effective date in its entirety.

19 I appreciate the authorization is different than the
20 Court exercising -- and I don't disagree -- its discretion to
21 decide what remedy, if the Court agrees that a remedy is
22 appropriate, the scope of that remedy.

23 We submit, though, for a few reasons that if the Court
24 believes a remedy is appropriate, a postponement of the
25 effective date as a whole, which the First Circuit clearly

1 authorizes the Court to do is entirely warranted.

2 And it's for two distinct reasons. One,
3 administrability, and second, in order to actually prevent the
4 harms that we've identified.

5 Starting with the administrability point, there are
6 more than 600 members of the Presidents' Alliance. I
7 understand there to be, you know, 2,000-and-change colleges and
8 universities that are authorized to have international students
9 in the country, so our -- Plaintiffs represent somewhere
10 between a third and a quarter of all of the colleges and
11 universities.

12 When individuals enter the United States, they're
13 entering at a port of entry. That's -- it's the -- the Customs
14 Border Patrol who makes the determination of what do they get
15 on their -- their I-94. Does it say duration of status, or
16 does it have a fixed time of required departure?

17 There are 328 ports of entry in the United States. If
18 there is a result where only a subset -- we think our -- there
19 are about 2.1 million individuals in the United States who are
20 subject to this rule between Fs and Js, and in the declaration,
21 we've estimated that about 600,000 of those are affiliated with
22 a member of the Presidents' Alliance, so, again, we're at more
23 than a third, it is virtually impossible to administer a system
24 at the 328 distinct U.S. ports of entry for -- to distinguish
25 between who would be a member covered and who would be not a

1 member covered. We don't think that that is a really practical
2 administration.

3 And then stepping to the unions, in addition to the --
4 the association with member institution, we also have several
5 union plaintiffs who have a broader membership base, and making
6 a determination at a U.S. port of entry as to whether or not an
7 individual is a member of a union in good standing that is a
8 party to this lawsuit, I think would be a very difficult and
9 complex task.

10 But setting aside the administrability, we don't think
11 we actually solve the irreparable injury unless there is a
12 postponement of the rule in full, and that's for a couple
13 reasons.

14 The -- one reason -- and I'll get to the larger one in
15 a second -- but one reason, as I just talked about, there are
16 several joint degree programs that you may start at University
17 of Maryland, Baltimore and then transfer to Hopkins and back
18 and forth. Well, if one of those schools is a member of
19 Presidents' Alliance but the other isn't, what happens in those
20 circumstances? I think it leads to quite a bit of
21 administrability problems.

22 But the broader concern we have is right now what is
23 causing the disenrollment? And, again, I know I've said this
24 repeatedly, that disenrollment is not something the government
25 disagrees it; it just won't quantify, but the disenrollment is

1 occurring because of the fundamental uncertainty as to whether
2 or not individuals who are deciding where to pursue their
3 education -- if they come to the United States, they're
4 uncertain as to whether or not they'll be able to complete
5 their education in the United States or after having invested
6 years of time and study and the costs associated with that,
7 they may find themselves out of immigration status and unable
8 to complete their academic degree.

9 If we're in a system where a third of the universities
10 and colleges in the country are with the status quo ante where
11 a duration of status continues to apply but two-thirds are
12 under the new system, that fundamental uncertainty will
13 continue to exist, and we don't actually solve, I think, the
14 real fundamental harm unless the rule is postponed or set aside
15 in its entirety.

16 So that is the relief that we would ask for from the
17 Court if it is inclined to agree that we've otherwise
18 demonstrated entitlement to relief.

19 I'm happy to address any other questions from the
20 Court.

21 THE COURT: I don't know if this is relevant or not,
22 but there's roughly two and a half million students currently
23 in the country, give or take.

24 MR. HUGHES: I think -- our numbers are about 2.1,
25 Your Honor. I think it's somewhere about 1.6 on F visas.

1 THE COURT: Oh, 1.6. Okay.

2 MR. HUGHES: And then about 500,000 on J visas.

3 THE COURT: All right. And I think the government
4 said, well, that number has gone up considerably in recent
5 years. Since 1978, what's the total?

6 Is there anything in the record about that?

7 MR. HUGHES: The total number of students who --

8 THE COURT: Total number of students who have come to
9 the United States, left -- who participated in this visa
10 program, let's put it that way.

11 MR. HUGHES: I don't have that on hand, Your Honor.
12 That's something I can certainly try to find and provide to the
13 Court.

14 But I know we are talking north of 500,000 new
15 students are coming each and every year, and this is a program
16 that's been running for, you know, more than four decades,
17 going on five decades.

18 It is more today than it was before, so it's not
19 entirely linear, but we are talking tens of millions of
20 individuals have come from outside of the United States and
21 received their education in the United States.

22 THE COURT: Okay. Let me hear from the government.

23 MR. HUGHES: Thank you, Your Honor.

24 THE COURT: Why don't we take a moment and stretch our
25 legs. Give the stenographer a short break.

1 MR. CELONE: Good morning, Your Honor.

2 May it please the Court, Michael Celone on behalf of
3 the United States.

4 I'm going to err on the side of brevity because I
5 think this case is actually a bit more straightforward than my
6 colleague would suggest.

7 We would ask the Court to deny Plaintiffs' motion for
8 preliminary injunctive relief for three reasons.

9 First, Plaintiffs are not likely to succeed on the
10 merits because the final rule is adequately supported by the
11 record.

12 Second, Plaintiffs have failed to establish that their
13 members will suffer actual and immediate irreparable harm.

14 Third, the balance of the equities and the public
15 interest weigh favorably for the government given the national
16 security and fraud prevention issues that the rule addresses.

17 On the merits, Plaintiffs are not likely to succeed
18 because DHS engaged in reasoned decision-making and acted
19 within the scope of their authority.

20 Under the *State Farm* test, the Court need only ask
21 whether the agency articulated a rational connection between
22 the facts found and the choices made.

23 THE COURT: Let me pause you there. Is there a
24 rational connection here between this rule and national
25 security? I mean, the government invokes the phrase national

1 security over and over and over and over again, but isn't all
2 the evidence anecdotal?

3 I think in your brief, there are, I think, five
4 episodes involving 10 or 11 people. And I -- I mean, maybe I'm
5 stating the obvious, but I'll state it. Someone who wants to
6 take a photograph -- a foreign student who wants to take a
7 photograph of a military base could do that within four years.
8 Such a student could do it on a tourist visa.

9 What is the connection exactly between these -- this
10 small number of isolated incidents and this rule?

11 Is there really a rational connection?

12 MR. CELONE: I think, on balance, Your Honor, the
13 implications, given the kind of administrative processing
14 change, is not necessarily outweighed by -- or is outweighed by
15 the potential for the government's ability to understand where
16 the 2.3 million individuals who are here on a visa are, and it
17 just -- it's designed --

18 THE COURT: Is that really going to -- in other words,
19 three Chinese students or whatever the number is decide to go
20 to Camp Grayling, Michigan, to take photographs of the base.
21 Is this program really going to stop that or prevent it or slow
22 it down?

23 I mean, isn't that -- I mean, I don't -- I'm sorry to
24 be so blunt, but that seems, obviously, untrue to me, just,
25 obviously, untrue.

1 And my concern, to step back, is that what's going on
2 here in terms of national security is the government is hiding
3 behind these doctrines that gives the President vast powers on
4 national security matters that he does not possess in other
5 types of matters.

6 And by slapping this label of national security on
7 this issue, it permits the government to say, well, yes, this
8 is going to cause all kinds of problems, but national security,
9 so the Court's review either is to be entirely deferential or
10 does not exist at all.

11 And I'm struggling to see any real, rational
12 connection between the national security issues identified,
13 which is not even half-a-dozen isolated incidents over a period
14 of nearly 50 years, and this change. There are immigration and
15 other issues, but I just want to focus on national security.

16 What is your response to that?

17 MR. CELONE: Sure.

18 And I certainly understand the -- the Court's concern,
19 and -- but I would point to the idea that I think my clients
20 were looking not just to the national security implications but
21 the potential fraud.

22 And I think the idea of the rule was -- the ability to
23 collect certain biometrics on a more routine basis, so if there
24 were to be an individual who had been arrested and committed of
25 certain felonies, that that necessarily wouldn't be reported in

1 the SEVIS system because that is an administrative tool that
2 the schools provide.

3 And there were certain instances of fraud in which
4 educational providers were engaging in these type of
5 pay-to-stay schemes in which there was a so-called diploma mill
6 of sorts in which the schools that are the very institutions
7 that are providing updates to the SEVIS system were engaging in
8 fraudulent behavior.

9 And so I will certainly not dismiss the national
10 security concerns, but I think on balance, the ability of the
11 government to collect biometrics and engage in a more routine,
12 kind of, understanding of -- and to ensure that the integrity
13 of the visa programs are upheld, and I think I would, kind of,
14 point to the idea that every time we go through TSA and
15 security to go on the airplanes, like, you take off your shoes
16 because there was one incident of a potential shoe bomber, and,
17 like, obviously, there are major implications for that --

18 THE COURT: The shoe rule is connected to the shoe
19 bomber --

20 MR. CELONE: Sure.

21 THE COURT: -- in other words, and if what the
22 government said is we propose a rule where you don't get a
23 student visa without supplying biometrics, maybe that's
24 rational, maybe not, but there's at least, you know, some
25 connection at least on what you've indicated.

1 But a four-year cap doesn't have anything to do with
2 national security. I mean, it just means the Chinese or
3 Russian student has -- has four years to take their
4 photographs, right, or there are -- and they can do it on a
5 tourist visa anyway, you know. There are lots of ways people
6 can come into the United States legally, never mind illegally.

7 And if judicial review means anything, if I have any
8 power at all to do judicial review, which I think I do under
9 the APA, I have to look and see what is the rule that the
10 government proposes and what is the articulated basis for that
11 rule? How did you respond to comments?

12 And I'm just struggling to see a rational
13 connection -- and I'm using the word advisedly -- rational
14 connection between this rule and national security.

15 MR. CELONE: And you certainly have opportunity --

16 THE COURT: I'll call that a question. Put a question
17 mark at the end of that sentence.

18 MR. CELONE: No. And I understand the Court's
19 frustration, and I would -- I would think this is actually a
20 much different case if foreign students were precluded from
21 coming to the United States at all based on these type of
22 singular or smaller incidents of national security or fraud.

23 But that's not the case, and I would also remind the
24 Court that this is not a cap on admission. This is not a cap
25 on four-year student visa.

1 It's merely, kind of, an administrative checkpoint
2 after four years in which there's an opportunity to
3 establish there's either further need to continue with academic
4 studies, and the rule provides a, kind of, safe harbor as well
5 for individuals who meet that four year -- after the four-year
6 period, they're not asked to leave the country.

7 It's a means of providing or submitting a form
8 indicating that there's additional time that's needed, and even
9 while that form is being adjudicated or pending, there's no
10 lapse in status. There's no lapse in their ability to continue
11 in their academic engagement.

12 THE COURT: And no review and no appeal. I mean, even
13 someone who's here illegally, typically has -- well, I'm
14 overstating it somewhat, but the point is the same. You're
15 here illegally, but you're -- have applied for asylum or you've
16 applied for bond or whatever; you have the right to a BIA
17 appeal. There's some process for most of the people within
18 that system and -- or a large percentage of the people in that
19 system.

20 Here, there's no process at all. It's like one
21 person, right, sitting at a desk in Washington who says, no,
22 I'm a fan of, you know, Purdue, so I'm not letting anybody who
23 wants to go to Indiana participate. I -- and there's no appeal
24 from that. There's no process.

25 I'm jumping around here, and I think the uncertainty

1 point in terms of the ultimate impact and the potential
2 irreparable harm is enormous.

3 This is not -- it's not like buying a car or buying a
4 plane ticket to go to the beach. It's a course of educational
5 study that for most people is a gigantic expense and commitment
6 of a big part of their lives, and whether or not you can
7 continue that program, other than a very generic, basic,
8 four-year undergraduate program, would be at the -- potentially
9 the whim of one person from which no appeal is possible.

10 MR. CELONE: So I'll be the first to admit, Your
11 Honor, that -- the benefit of international students to this
12 country, and I've been a direct beneficiary of the tremendous
13 diversity of experience and diversity of viewpoints that that
14 provides.

15 But I think my understanding of the rule is that there
16 is a slight motion to reopen in which additional evidence could
17 be submitted, and I would certainly hope that my clients would
18 not engage in that type of cavalier idea of engaging in that
19 type of Purdue discrimination, so to speak, but --

20 THE COURT: I went to a Big Ten school. Maybe I'll do
21 a carveout. You can discriminate against -- I don't know --
22 Ohio State or Michigan.

23 Still, the point is that the government -- and I'm way
24 ahead of your argument, I'm sorry -- but the government, kind
25 of, dismisses with a wave of its hand this whole thing about

1 uncertainty and the impact on enrollment, and it -- it strikes
2 me that it is huge, that it's not a minor issue.

3 But let me get you back on track here before I -- I
4 think you were -- you were talking about your view that the
5 final rule is adequately supported by the record. Why don't I
6 stop talking and let you talk for a little while.

7 MR. CELONE: No. And this certainly is a serious
8 matter, Your Honor, and it has huge implications, but I think
9 at this stage, preliminary injunctive relief is an
10 extraordinary remedy.

11 And I think reasonable minds can certainly differ on
12 the necessity or the costs-and-benefits analysis, but at this
13 stage, I think as long as there is that, kind of, connection
14 between the facts found, and the choice this -- that it's made
15 was reaffirmed this year in *Bruno Project Rescue versus CDC*,
16 and I think as long as there is a connection between the
17 vulnerabilities that the agency had found in the duration of
18 status program and the implication of the rule and how it would
19 replace the indefinite duration of status with a standardized
20 checkpoint, and I think the -- back to the argument, on the --
21 the costs issue, so DHS had reasonably found that the benefits
22 of the rule outweighed its costs.

23 And I would just point the Court to OMB Circular A-4,
24 which pointed out that agencies are not required to monetize
25 certain benefits that are inherently too difficult to quantify,

1 such as national security.

2 And in the 11th Circuit, the *Citadel Securities versus*
3 *SEC* case this year held that the government does not need to
4 constrain -- or administrative law does not constrain agencies
5 only when -- or to promulgate rules only when there's a gold
6 standard of quantitative data.

7 THE COURT: And I understand that principle and what
8 the circular says, but the problem, as I raised with
9 Plaintiffs' counsel, is all of this sort of thing is
10 predictable, right, and you can't just say, well, you know, we
11 can't -- we don't really know. It's speculative. We can't
12 really predict what the economic impact is going to be, and,
13 therefore, we don't need to take it into account. I'm talking
14 not about the cost of compliance, but the impact on the
15 educational institutions and really the United States.

16 I mean, if -- if the government proposed banning
17 imported cars, it wouldn't -- you wouldn't be able to say,
18 well, there's going to be an impact on Toyota dealers, but we
19 can't really quantify that because it's speculative. It's
20 obvious.

21 It the government said no medicine can be provided to
22 a child under the age of five, you wouldn't say -- you -- which
23 would result in who knows how many childhood deaths, the
24 government couldn't say, well, we don't need to take that into
25 account because it's not quantifiable.

1 And at least there is record evidence that the impact
2 of this economically, just focusing on the dollars, is going to
3 be huge, you know. Is it 1 billion, 5 billion, 10 billion, 100
4 billion? Nobody knows, but it's huge.

5 And the rulemaking, kind of, brushed that aside and
6 said, well, you know, we don't -- we can't really quantify
7 this. It's speculative, and, therefore, we're not taking it
8 into account; right?

9 I mean, isn't that basically what the government said?

10 MR. CELONE: I think my understanding is that it's not
11 necessarily that there will not be any impact and potential
12 costs, but I think the idea that, A, the loss of enrollment is
13 speculative in the sense that this is not precluding
14 international students -- like, if -- it would be a completely
15 different case if this were saying international students are
16 now precluded from coming to the United States, then there's
17 an, obviously, direct causal link between that type of decision
18 and the costs and the loss of tuition that would incur.

19 But I think even before the rule was promulgated or
20 even proposed, there was a 2.7 decrease in international
21 student enrollments, and that was on -- that was in addition to
22 the 10 percent decline in nonimmigrant visas as a whole, and so
23 I think the idea that there is this fundamental cost from this
24 rule, which does not preclude international students'
25 enrollment, it merely provides an administrative checkpoint for

1 the opportunity to establish the bona fides of the educational
2 program and to ensure the integrity of the nonimmigrant
3 classifications as a whole.

4 It would be a very different circumstance, Your Honor,
5 if this were saying that international students couldn't come
6 to this country, then there's a direct causal link between the
7 costs and all of the tuition that international students
8 contribute.

9 But here, the idea that -- there are so many variables
10 that go into whether or not an individual chooses to come to
11 this country, the idea that a prospective administrative hurdle
12 after four years of submitting another form indicating that
13 there's additional need for the academic program length to
14 continue or it's -- it -- my understanding is that DHS felt the
15 need to no longer have the millions of individuals here
16 indefinitely or without the ability to account for them, and
17 outsourcing that type of compliance function to the schools was
18 effectively undermining their ability to engage in the
19 compliance and -- and their oversight responsibilities as
20 statutorily required.

21 And I think the -- going back to, kind of, the --
22 whether or not the rule was arbitrary and capricious, DHS had
23 adequately considered alternatives to the final rule.

24 And so commenters had suggested relying on the student
25 education -- Student and Exchange Visitor Information System to

1 conduct targeted enforcement, but DHS properly rejected that
2 alternative because the SEVIS system is merely a data-reporting
3 system for schools, and it's not a tool for ensuring
4 immigration status compliance.

5 And SEVIS does not allow for that direct, periodic
6 review by immigration officers, which is essential to mitigate
7 fraud by verifying the bona fide student status and to mitigate
8 the national security threats by collecting biometrics.

9 And as to reliance interests, DHS acknowledged that
10 students and -- and universities have established plans around
11 duration of status, but under *Regents*, it only requires an
12 agency to take serious reliance interests into account. It
13 does not require the agency to preserve the prior policy.

14 And the 32-day comment period was also lawful. The
15 APA prescribes no minimum time period for comment, and the
16 question is whether the public had a meaningful opportunity to
17 participate, and, kind of, similarly to this Court's finding in
18 *California versus Kennedy*, 30 days was meaningful where the
19 agency received 26,000 comments. And the 22,000 comments
20 received here is emblematic of that. And, finally --

21 THE COURT: But it does tend to suggest -- I mean,
22 it's -- 32 days is barely legal. I think there's -- I forget
23 where it's located, but I think there's a strong preference for
24 at least 60 days, and it does tend to suggest that the
25 government was trying to push this through at high speed rather

1 than taking the comments of the affected communities seriously.

2 It certainly -- you know, the government didn't have
3 to pick a 32-day period. They could have made it 60 or 90 or
4 120. And doesn't it tend to suggest that this was a process
5 designed to -- well, to accelerate the adoption of the rule as
6 opposed to giving the affected parties a fair opportunity to
7 not just comment but to gather evidence?

8 Because that's certainly what it feels like to me, you
9 know. Can I say it's illegal? Probably not, but it seems to
10 me to be part of the mix here of to what extent the government
11 was taking its duties seriously and weighing costs and
12 benefits.

13 MR. CELONE: And I certainly understand that, Your
14 Honor, and, again, I acknowledge the seriousness of the
15 implications here, and I think the -- all I would point to is
16 the idea that there was 22 -- there were 22,000 comments
17 provided does not necessarily indicate that there was not a
18 meaningful opportunity to participate, and I think if --

19 THE COURT: But just as a concrete example, I think
20 the government says, well, in terms of disenrollment or
21 discouragement of foreign students, there's only one study, and
22 it's, you know, a limited number of people, and -- well, I
23 don't know when the study was performed, but when you have 32
24 days, it doesn't really give you a whole lot of time to do very
25 much in terms of, you know, gathering evidence or surveying the

1 field or attempting to ascertain what might really happen;
2 right?

3 I don't know how anyone was supposed to, in a 32-day
4 period, come up with an elaborate social science study that
5 quantifies the expected impact on foreign enrollment.

6 So it isn't just, you know, were comments made,
7 because a lot of comments were made in a short period of time,
8 but it's also the evidence underlying those comments, I guess,
9 that the government says, well, there's a lack of evidence or
10 there's incomplete evidence on some of these points, but when
11 you only allow 32 days, it doesn't really give you much time to
12 collect that evidence, I guess is the point I'm trying to make.

13 MR. CELONE: And I think the -- kind of, speaking to
14 the study aspects, it -- that type of, kind of, prospective or
15 hypothetical aspects of what a hypothetical student may decide
16 based on the change in rulemaking is too attenuated to show
17 that there's this direct causal link between the promulgation
18 of the rule and an individual's decision not to come to the
19 United States because of that additional administrative
20 paperwork that's required after four years as a means of
21 establishing, yes, there's additional time that's needed and to
22 provide biometrics.

23 THE COURT: That just seems to me to be contrary to
24 common sense. I mean, you know, let's take a hypothetical
25 student from -- an Asian student who wants to come here and

1 study electrical engineering, and the student thinks that his
2 English is proficient enough in order to do well, and he gets
3 here, and he's struggling in his classes. He says, you know, I
4 need to do a little detour here and bone up my English in order
5 to be able to complete this program, but that's going to make
6 it five years rather than four, and if it is five years and
7 somebody says no, now you've wasted four years, a whole lot of
8 money; your credits may or may not transfer to some other
9 institution, and this all may be a giant waste of time.

10 And wouldn't that hypothetical student say, you know,
11 I could go to Sydney or London or some other place and not have
12 this concern?

13 It just seems to me to be self-evident, I guess, that
14 students are going to take this into account when deciding
15 whether to study here, this kind of, you know, will they be
16 able to do this for more than four years, and what are the
17 consequences if they don't get that extension? What kind of
18 program are they in? How good is their English? What if
19 something happens along the way that you don't foresee?

20 MR. CELONE: Again, I acknowledge that the gravity of
21 these situations and the choices that individuals have to make,
22 and, again, I will be the very first to admit how beneficial
23 international students are to this country.

24 But I think going back to the statutory authority that
25 the department has, so 8 U.S.C., Section 1184a specifically

1 prescribes the secretary with the authority to prescribe the
2 time and conditions for nonimmigrant admissions, and the D.C.
3 Circuit explained in the *Washington Alliance of Technology*
4 *Workers* that the Immigration and Nationality Act identifies who
5 may enter temporarily and for what reason leaving to the
6 secretary of homeland security the authority to prescribe the
7 time and conditions for that admission.

8 THE COURT: That's a basic grant of authority. If you
9 didn't have that, the whole thing would be illegal, so you need
10 the basic grant of authority, but that's throughout
11 administrative law.

12 I mean, the Clean Air Act says, you know, EPA shall
13 set standards for emissions, and that doesn't mean they can
14 violate the APA when they do.

15 They have a statutory authority to set the standard.
16 The standard has to be -- I literally don't know what I'm
17 talking about here, so bear with me -- but, you know, the
18 standard has to, in some level, be rational, achievable,
19 subject to whatever scientific or environmental review is
20 appropriate under the circumstances, right.

21 I mean, that's just a basic grant of authority.
22 Without that, this would be easy. I would shut it down. So
23 that only gets you so far.

24 So when the secretary does exercise his or her
25 authority under the statute by rulemaking, it has to follow the

1 APA, and the APA says, well, you have to do these certain
2 things, weigh the costs and benefits and so on, and, as I see
3 it anyway, that's where we are, so.

4 MR. CELONE: Understood, Your Honor.

5 And I think at this stage, given the extraordinary
6 remedy of preliminary injunctive relief, Plaintiffs have to not
7 only establish likelihood of success on the merits, which we've
8 just, kind of, gotten into, but they also have to establish
9 irreparable harm.

10 And I think that's where they fundamentally fail here.
11 I think the -- the First Circuit explained in *Charlesbank*
12 *Equity Fund*, and I believe Your Honor had found below that the
13 irreparable harm is a necessary showing, and it must rest on
14 more than mere surmise.

15 And Plaintiffs alleged declines in enrollment are
16 entirely based on conjecture at this point and macroeconomic
17 modeling and unverified survey responses and has been putting
18 aside whether or not there was additional time for evidence
19 collection.

20 There's no irreparable -- immediate irreparable harm
21 based on this type of hypothetical decision-making that puts
22 aside all of the different variables that go into
23 decision-making as far as certain enrollment decisions, and
24 especially given the decrease in international enrollments
25 prior to the rule even being proposed.

1 And -- and I think that speculative and hypothetical
2 allegations fail to establish the particularized evidence of
3 the imminent harm that's necessary to justify injunctive relief
4 at this stage.

5 And I think the enrollment decline theory really
6 fundamentally ignores the fact that the final rule provides
7 that a timely filed extension application will authorize the
8 continued pursuit of a full course of study until the agency
9 adjudicates the application.

10 And the -- the program modifications cited by
11 Plaintiffs are the kind of ordinary operational adaptations
12 that do not constitute irreparable harm.

13 The -- the final rule accommodates the academic
14 progression and expressly ensures that students who demonstrate
15 a continued need for academic progress may apply for an
16 extension to complete their programs.

17 And I think this is a fundamentally different case
18 from the cases that Plaintiffs cite in the *Association of*
19 *American Universities* where the Courts in those situations
20 confronted the direct and immediate costs to federal research
21 funding.

22 This is not the type of imminent, immediate harm that
23 the cutting of financial grants to universities or to research
24 institutions provide.

25 Here, DHS has not terminated any funding, has not cut

1 any research grants, and certainly has not prohibited any type
2 of academic program or the ability for foreign students to
3 enroll in academic programs writ large.

4 And Plaintiffs' complaints regarding the
5 administrative burdens are the type of compliance costs that
6 constitute mere economic loss that do not support the finding
7 of irreparable harm either.

8 And pointing to *Sampson versus Murray*, the Supreme
9 Court had explicitly held that mere injuries, however
10 substantial, in terms of money, time, and energy expended are
11 not enough to establish irreparable harm, nor do the purported
12 processing delays establish irreparable harm.

13 The First Circuit in *Anversa versus Partners*
14 *HealthCare* held that the duration of an administrative
15 proceeding without more does not suffice for establishing
16 prejudice for the purposes of injunctive relief.

17 And under the rule, a timely filed extension
18 application permits the student to continue studying while it
19 is adjudicated.

20 So the -- and I think this all goes back to the
21 fundamental idea that this is not a hard cap on four-year
22 admission period. It's merely an administrative requirement
23 after that four years.

24 I -- and I hope I'm correct on this. I almost see it
25 as -- or the way my clients have explained it to me is it's

1 somewhat analogous to a renewal and the idea that -- I don't
2 want to minimize this by any means -- but the idea of renewing
3 a book at a library; I need more time to continue reading. I
4 need more time to continue engaging in my academic progress.

5 And, again, I'm not deminimizing -- or not minimizing
6 the -- that analogy is probably not entirely apt, but it's an
7 administrative process and by no means a hard cap or limit on
8 enrollment to four years.

9 And, kind of, similarly, the plaintiffs' reliance on
10 *Massachusetts versus Department of Education* is also without
11 merit. That case involved statutory fines and potential loss
12 of Title 4 eligibility. But, again, this rule imposes no
13 comparable penalties, no fines, no type of immediate harm that
14 is not beyond speculation.

15 And I think the adequate transition period to
16 accommodate the programmatic changes also provides a
17 fundamental safe harbor for individuals who are here on a
18 duration of status are -- when the rule comes into effect on
19 September 15th, it's not like they're required to leave the
20 country. They remain grandfathered in under the duration of
21 status program.

22 And it's -- even the individuals who arrive after
23 September 15th, it's the duration of -- effectively, they have
24 four -- after four years, they're able to apply for renewal,
25 and while that application is pending, they remain in lawful

1 status. They are permitted to continue engaging in their
2 academic program.

3 And so I think for those reasons, it's -- at this
4 stage of the litigation, it's improper to find that right now
5 there is such imminent irreparable harm to warrant the
6 preliminary relief of precluding this rule from going into
7 effect, and --

8 THE COURT: I'm sorry. Go ahead.

9 MR. CELONE: No. Go ahead, Your Honor.

10 THE COURT: Talk to me about the I visa program, the
11 press aspect of this.

12 MR. CELONE: So my understanding, Your Honor, is that
13 96 percent or so of I visa holders do not engage in employment
14 that lasts beyond 240 days.

15 And so the -- again, it goes to this idea that my
16 clients felt the need to impose a -- kind of, an opportunity to
17 have that kind of routine check-in and to ensure that the
18 integrity of the nonimmigrant visa programs are being upheld.

19 And, again, it goes to there's an opportunity for
20 renewal, and it's a matter of ensuring that individuals are
21 here for the purpose of -- of what the nonimmigrant programs
22 entitle them to, and it's not being used for certain other
23 activities that go beyond journalistic reporting, such as
24 promotional material or some type of other engagement.

25 THE COURT: Can I take into account the possibility of

1 punishment or denial of renewal based on speech that's critical
2 of the government?

3 I don't think it's any secret that the administration
4 has demonstrated a certain unhappiness, let's put it that way,
5 with unfavorable press coverage, and wouldn't this give the
6 administration the power to deny the renewal of a visa to a
7 foreign journalist who the administration thought was unfairly
8 criticizing the United States, and the related point of
9 chilling of reporting so that the reporter doesn't make the --
10 or, you know, report the unfavorable story because he or she's
11 concerned about losing her visa or not having her visa renewed?

12 MR. CELONE: And, again, I certainly hope that that
13 would not occur, but I certainly also understand the
14 seriousness and the implications of that given the current
15 climate and circumstances.

16 But I -- my understanding is that it would be strictly
17 in place to ensure that there is a need for this continued
18 employment and that it would not necessarily go to that it
19 would -- it is a content-neutral type of rule.

20 And I think at this stage, when it comes to APA
21 relief, it's not necessarily the mechanism to look at certain
22 constitutional violations if there were -- especially, in the
23 event that the rule has not gone into effect and individuals
24 have not been denied on a purported First Amendment basis, so I
25 think at this stage, it's entirely premature given that the

1 rule has not come into effect and no individuals have even
2 engaged in this process yet.

3 And I think, finally, on the balance of the equities,
4 Your Honor, it likewise does not favor emergency relief at this
5 stage, so under *Nken*, when the government is a defendant, as
6 here, the balance of the equities -- the balance of the
7 hardships and the public interests merge.

8 And, again, we -- the government recognizes the
9 substantial contributions that international students and
10 universities make to this country and especially this area,
11 but DHS also has the responsibility for enforcing the
12 immigration laws and detecting fraud and protecting national
13 security.

14 And the Supreme Court in *Holder versus Humanitarian*
15 *Law Project* found that the government's interest to national
16 security is an urgent objective of the highest order.

17 And so I think for those reasons the public interest
18 strongly favors compliance with the immigration laws,
19 strengthening the integrity of the nonimmigrant
20 classifications, and deterring threats to national security.

21 And, finally, Your Honor, Plaintiffs' alternative
22 request for summary judgment is premature because the
23 administrative record has not yet been produced.

24 Plaintiffs take issue with the consideration that the
25 agency made with respect to the comments, and that is not

1 necessarily entirely reflected in the final rule.

2 And so the agency is in the process of compiling that
3 administrative record, but until it has done so and produced it
4 before the Court, under Section 706 of the APA and *Overton*
5 *Park*, we would ask the Court not to enter final judgment and
6 setting aside the rule until that record has been produced.

7 THE COURT: What is your response to Plaintiffs'
8 argument that if I do grant relief, it has to be, in effect,
9 nationwide, that it can't be limited to the 600-or-so member
10 institutions of the plaintiffs?

11 What is your response to that?

12 I mean, certainly, you know, nationwide injunctions
13 and nationwide relief is disfavored, and for very good reasons,
14 but -- well, what is your response? I'll leave it that way.

15 MR. CELONE: And I will acknowledge the complications
16 that would go into effect if this were limited to the
17 plaintiffs at issue.

18 But, again, the Supreme Court has made very clear in
19 *CASA -- Trump versus CASA*, the impropriety of enjoining a
20 rulemaking or executive order on a nationwide basis, and it
21 goes to the equitable relief of preliminary injunctions to the
22 individuals or the plaintiffs who were before the Court.

23 And so if this were a class action, it would be a
24 different story, then, but Plaintiffs are not representing all
25 affected parties, and so the idea that all affected parties

1 subject to the rule are not before this Court, the Supreme
2 Court under *CASA* has held that that type of equitable relief is
3 improper, but, again, I acknowledge the certain complications
4 that would come into effect if it were not -- if it were so
5 limited.

6 So if Your Honor has no further questions, we would
7 ask that the Court deny Plaintiffs' motion for preliminary
8 relief in its entirety.

9 THE COURT: All right. I'll give them an opportunity
10 for reply.

11 MR. HUGHES: Thank you, Your Honor.

12 And I'll be brief on rebuttal. I'm just going to talk
13 very briefly through the merits, irreparable injury, relief,
14 and conclude from there.

15 Starting with the merits or the likelihood of success,
16 Your Honor, the -- I think I can't underscore enough the
17 government -- the final rule agrees with us in the fundamental
18 premise that this rule is going to deter international students
19 from pursuing their education in the United States, at least
20 some subset of international students. I think the Court
21 called it the logical result, but it's what DHS said.

22 And so let me quote from the final rule. This is at
23 page 450,086, "DHS acknowledges that the rule may have an
24 impact on U.S. competitiveness in attracting foreign students
25 and exchange visitors. Any reduction in enrollment could

1 potentially diminish the economic benefits that foreign
2 students and exchange visitors contribute to the U.S. economy."

3 So at page 450,086 of the final rule, the government
4 agrees with our fundamental premise that this makes the United
5 States a less attractive place and causes disenrollment, which
6 has the irreparable injury.

7 The question, then, is: How do you calculate that?
8 What's the economic impact?

9 But the government -- although they recognize the
10 premise -- they zero it out by saying it's speculative and
11 they -- they're not going to address the evidence.

12 They can't do that. I think the Court is well aware
13 they can't simply say, we're not going to engage in economic
14 analysis because it's predictive. That is the nature of
15 economic analysis.

16 The government, though, is not saying that this is too
17 attenuated or that people are going to disenroll for other
18 reasons. They admit on the face of the rule that we're right
19 that the effect of the rule is to cause disenrollment.

20 So once they have admitted that -- I don't think they
21 can deny it; it's pretty clear, but they've admitted it on the
22 face of the rule. They have to take that forward and model it
23 out. They fail to do that explicitly.

24 Just to briefly touch on the I visa issue, the
25 document 2.8 in ECF is the declaration from The NewsGuild, a

1 union that represents journalists including international
2 journalists.

3 And there's evidence, for example, at paragraph 8
4 about how many journalists come to the United States for long
5 periods of time because they're on long-term assignments in the
6 United States.

7 Many of those individuals -- and there's evidence
8 around this -- have signed long-term leases that extend well
9 beyond 240 days. Their kids are enrolled in U.S. schools on an
10 ongoing basis. They have spouses or partners who are in the
11 United States.

12 For all these reasons, there are many international
13 media visa holders who have longer duration and are truly
14 directly impacted by this rule.

15 Paragraph 13 of that declaration, moreover, explains,
16 you know, one example where a particular member of the
17 international media was directly criticized and attacked by
18 government officials for having reported on allegations that an
19 ICE officer caused the death of a protestor, and because there
20 was dislike of that reporting activity, there was complaints
21 brought against that media individual.

22 We think the nature of retaliation is real and that
23 the effect of this rule, by putting a 240-day repeat check-in
24 where what these journalists is writing has to be submitted,
25 has an immediate First Amendment chilling effect, and none of

1 that is addressed in the comments and is reason to set aside
2 that piece of the rule as well.

3 Turning to irreparable injury, the government, in its
4 opposition, doesn't address the 15-or-so declarations that we
5 supply from all of -- from the Presidents' Alliance's various
6 members around the country.

7 Those 15 declarations provide very rich, real evidence
8 of the ongoing harms, including specific e-mails from
9 international students who are saying, I'm not coming to the
10 United States any longer because of the final rule.

11 We have that evidence. Yes, we have the predictive
12 evidence. Yes, we have all of the other -- the logical
13 evidence to show it, but we also have examples of international
14 students saying, I'm no longer going to come because of this
15 final rule. So the disenrollment, which is -- I think everyone
16 agrees is irreparable when that happens, that is happening now,
17 and we have evidence demonstrating it.

18 It's, of course, the logical result, but it's fully
19 backed up by the vociferous record that we've compiled and put
20 to the Court in the form of multiple declarations.

21 Moreover, the government doesn't contest our showing
22 that certain existing programs are simply impossible to
23 accomplish under the rule and those programs either have to be
24 disallowed for international students or international students
25 can't continue with their -- their studies who are in those

1 programs because they conflict with the upward progression and
2 the no transfer rules that apply to graduate students. The
3 government doesn't contest that. That's real, ongoing
4 irreparable injury if this rule isn't set aside.

5 Finally, the government itself says there are 267
6 million dollars of start-up compliance costs. The *RENEW* case
7 in -- in this Court, the Supreme Court's *National Institute of*
8 *Health* case make abundantly clear that economic injury is
9 irreparable injury for purposes of injunctive relief if it
10 cannot be recouped.

11 I've already read from the *Sampson* case my friend
12 relied upon where the premise there was irreparable -- monetary
13 loss is not irreparable where the money can be recovered.

14 Here, nobody is paying the Presidents' Alliance back
15 the 267 million dollars that the government recognizes are
16 start-up costs. That too is irreparable injury. It's not
17 necessary, but it's clear, and it's there.

18 On the scope of relief, I think under the First
19 Circuit's decision, it is clear that Section 705, by its plain
20 text, empowers this Court to postpone the effective date of the
21 rule, and that postpones the effective date of the entire rule
22 because there is but one effective date.

23 I agree the Court has discretion and uses its
24 equitable judgment as to when fashioning a relief how broad or
25 narrow to make it, but the Court certainly has that authority,

1 you know.

2 Justice Kavanaugh in *Corner Post* underscored in a
3 separate concurrence that -- that the APA in Section 705 is
4 quite distinct from the broad-floating preliminary injunctive
5 authority that was at issue under *CASA* but is instead a remedy
6 that Congress specifically wrote into the statute in the
7 context of agency rulemaking, and Congress knew that when it
8 said a Court is empowered to postpone the effective date, that
9 it postpones the effective date for the rule as a whole.

10 So the Court, as the First Circuit has said, clearly
11 has that power. Then the question is whether or not the Court
12 should exercise that power.

13 I think I heard my colleague on the administrability
14 agree that it would be painfully unadministrable to say that
15 somewhere -- you know, a third to a fourth of the nation's
16 colleges and universities, the rule doesn't apply to, but it
17 does to everybody else.

18 We're talking about individual one-on-one decisions
19 that are made by CBP guards at the more than 300 ports of entry
20 around the United States and figuring out if somebody would be
21 within the scope of an injunction or outside the scope of
22 injunction based on where they go to school or if they are a
23 member of one of the plaintiff unions I think would be grossly
24 unadministrable.

25 But setting aside the administrability, I also don't

1 think there's a demonstration that the Court would fully cure
2 the -- the -- the irreparable injury my clients face through a
3 partial injunction.

4 Because, again, the key threat we face is the dire
5 uncertainty of an international student who's trying to decide
6 where do I -- I'm considering this fall where I want to go next
7 year. Am I applying to schools in the United States, or am I
8 applying to schools in London? Where do I want to go?

9 A rule that only applies to 600 colleges and
10 universities, I think only leaves the uncertainty that much in
11 place, and when that uncertainty is in place, the United States
12 as a whole becomes a place that foreign students, when
13 considering where in the world they want to bring their
14 talents, where they want to pursue their education, becomes
15 that much less attractive.

16 So we think for the Court to offer full relief to our
17 clients using the authority that Congress provided in Section
18 705 to postpone the effective date is the appropriate outcome.

19 I will just touch on summary judgment, of course, if
20 the Court thinks it's appropriate after the administrative
21 record, we'd defer to the Court's judgment.

22 But there's nothing further in the administrative
23 record that helps the government's case because the government
24 has to justify its action. It is not arbitrary and capricious
25 on the face of the regulation of the final rule.

1 When the administrative record comes, it's just more
2 comments. More comments only potentially help the plaintiffs
3 because it's more material we can show the government didn't
4 respond to, so I don't think there's any kind of prohibition
5 here.

6 Again, we defer to the Court's discretion. We just
7 note that granting summary judgment now truncates the whole
8 question of what scope -- what is the nature of preliminary
9 relief the Court should issue if the Court views summary
10 judgment appropriate.

11 THE COURT: And I assume you agree that, whether I
12 grant or deny preliminary relief, that's an appealable order.

13 MR. HUGHES: Yes, Your Honor. Yes, I would agree
14 that's an appealable order.

15 And, again, that's why we've at least opened the
16 possibility of final relief because if we've shown it, it, sort
17 of, takes off -- the scope-of-relief issue off the table,
18 because if we've shown it, then we just get the classic 706
19 set-aside relief, and we don't even have to have this debate
20 about one scope or another, and that's why we've cross-moved
21 for -- or we moved for both injunctive relief as well as
22 summary judgment.

23 Again, we recognize the Court has flexibility to
24 determine what is the best course of litigation, but we've left
25 that as a possibility.

1 Your Honor, I'm happy to answer any final questions.
2 I -- I -- I appreciate the commentary, but international
3 students are just not library books. This is -- renewal
4 decisions matter immensely.

5 International students who are thinking about where am
6 I going to do a seven- or eight-year Ph.D. program contribute
7 immensely to laboratories. They don't know if it's going to be
8 seven or eight or nine years depending on how their research
9 goes.

10 Those are the students that benefit the United States
11 immensely. They benefit us by bringing their talents here.
12 They make us the most competitive in research, and they
13 contribute to our economy enormously.

14 The United States wants those students coming here to
15 pursue their studies, not going elsewhere, and when we tell
16 those students that we can't -- that they have to renew an
17 unappealable decision, you know, four years later, and they
18 don't know if they're going to have an immigration benefit or
19 status to go the length of their program, the United States
20 becomes a much, much less attractive place for those students
21 to pursue their degrees.

22 That's happening now. The evidence is there and
23 clear. We think that the status quo that existed for the past
24 four-plus decades is appropriate and serves the government's
25 interests.

1 Again, vacatur here doesn't mean the government can't
2 try again. If it wants to try again, it can go forth and try
3 to explain why this rule is actually justified.

4 Again, the relief here does not say it's impossible to
5 do. What it says is what the government has done is not
6 provide a rational way to get to the outcome that they seek.
7 And we think that is correct and appropriate for all the
8 reasons we've discussed today.

9 Thank you, Your Honor.

10 THE COURT: Okay. I'm going to pause it there. I'm
11 taking this under advisement.

12 September 15th is 12 days away, of which I think only
13 seven are business days, really six and a half at this point.
14 There's a lot going on here.

15 I know I'm not likely to be the last word on this
16 issue, but I still want to try to get it right, and one
17 possibility is that I might issue a brief TRO to give myself
18 some more time. I don't know that I'm going to do that, but
19 I'm just putting that possibility out there.

20 My fervent hope is to issue whatever decision I issue,
21 which may be something less than perfection given the amount of
22 time I have, but to issue that by no later than September 14th,
23 but it is a possibility that I may think I need a little bit
24 more time, and I may take it, but we'll see how all that
25 unfolds.

1 All right. Thank you, and we'll stand in recess.

2 Thank you.

3 THE CLERK: All rise.

4 (The Honorable Court exited.)

5 (Adjourned at 12:38 p.m.)

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

I, Jennifer M. Vaillancourt, do hereby certify that the foregoing is a correct transcript from the record of proceedings taken on September 3, 2026, in the above-entitled matter to the best of my knowledge, skill, and ability.

/s/ Jennifer M. Vaillancourt

September 7th, 2026

Jennifer M. Vaillancourt, RPR, CSR
Official Court Reporter

Date