

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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**JIE FANG;**

**LIFANG LIN;**

**XIAOYU ZHANG,**

**Plaintiffs**

v.

**SARAH SALDAÑA, in her official capacity  
as Director of U.S. Immigration and Customs  
Enforcement;**

**CLASS ACTION COMPLAINT FOR  
INJUNCTIVE AND DECLARATORY  
RELIEF**

**JEH JOHNSON, in his official capacity as  
U.S. Secretary of Homeland Security;**

**Civil Action No.**

**LEON RODRIGUEZ, in his official capacity  
as Director of U.S. Citizenship and  
Immigration Services,**

**Defendants.**  
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Plaintiffs Jie Fang, Lifang Lin, and Xiaoyu Zhang sue Defendants Sarah Saldaña, Jeh Johnson, and Leon Rodriguez and allege as follows:

**INTRODUCTION**

1. This putative class action challenges the U.S. Department of Homeland Security's ("DHS") determination that Plaintiffs and the putative class members they knowingly participated in visa fraud by enrolling at the University of Northern New Jersey ("UNNJ").

2. Plaintiffs are nationals of other countries who entered the United States on student visas and completed undergraduate and graduate university programs here. Upon completion of their academic programs, Plaintiffs engaged in authorized work through optional practical

training (“OPT”), a program which allows foreign graduates of U.S. universities to work for U.S. companies while maintaining student status. The program allows foreign students to “put into practice the skills and education they gain at U.S. universities to benefit the U.S. economy.” Jeh Johnson, DHS Secretary, *Policies Supporting U.S. High-Skilled Businesses and Workers* 3 (Nov. 20, 2014).

3. Before their work through OPT ended, Plaintiffs sought the guidance of academic brokers and recruiters to assist them to enroll in graduate programs that would allow them to further their education in the U.S through continued lawful employment. These brokers steered Plaintiffs to enroll at UNNJ, a university accredited by the Accrediting Commission of Career Schools and Colleges, listed as a bona fide school by the New Jersey’s Department of Education, and approved by the Department of Homeland Security for participation in the student visa program.

4. The agents pushed Plaintiffs to enroll in UNNJ because it offered graduate programs which authorized students to continue their practical education in the United States through authorized work. Specifically, UNNJ allowed its enrollees to participate in Curricular Practical Training (“CPT”), a program similar to OPT which allows foreign university students to work for U.S. businesses while in student status when such work forms part of their academic curriculum. Consistent with Government regulations, UNNJ authorized its enrollees to participate in OPT upon the commencement of their graduate programs.

5. Unbeknownst to Plaintiffs, UNNJ was established by Immigration and Customs Enforcement (“ICE”), the immigration enforcement branch of the Department of Homeland Security. ICE created UNNJ in September 2013 as part of a sting operation to investigate and prosecute academic brokers who ICE believed were likely to commit visa fraud.

6. ICE took extensive measures to make UNNJ appear to be a *bona fide* private university. ICE obtained official accreditation for UNNJ, secured its inclusion on the New Jersey Department of Education's website as a legitimate school, listed UNNJ as a DHS-approved for participation in the student-visa program, set up an official ".edu" website with pictures of the school and its students and which prominently advertised its accreditations, and maintained an active online presence on social media. UNNJ was staffed with an active President, "Dr. Steven Brunetti, Ph.D.," corresponded regularly in his role as "President" with students, maintained a page on UNNJ's website, and who regularly posted both personal and school-related updates on Facebook and Twitter.

7. ICE shut down UNNJ in April 2016 and arrested 21 academic brokers for visa fraud and other related offenses.

8. Immediately following these arrests, ICE began terminating the student status of Plaintiffs and all other foreign students who had enrolled at UNNJ for their "fraudulent enrollment." Without providing Plaintiffs or the other students with a meaningful opportunity to confront any adverse evidence against them or to present evidence of their own, ICE determined across-the-board that all UNNJ enrollees knowingly participated in visa fraud by enrolling in the school for the sole purpose of illegally obtaining and/or maintaining their student status. ICE has provided Plaintiffs with no mechanism for contesting their termination or the agency's determination that they knowingly committed fraud by enrolling in UNNJ.

9. Plaintiffs, in fact, were repeatedly assured by both UNNJ and their agents that the university and the programs it offered were legitimate and complied with all applicable rules and regulations. At no point before April 2016, when ICE terminated their student status, did Plaintiffs know that UNNJ was not a legitimate school or that there was anything amiss with

their enrollment.

10. The ICE's blanket fraud determination has far-reaching consequences for Plaintiffs and the other UNNJ students they seek to represent. The determination, which ICE made without providing Plaintiffs with any meaningful opportunity to contest it, makes Plaintiffs ineligible for nearly all future immigration benefits. Plaintiffs seek injunctive and declarative relief.

### **STATEMENT OF FACTS**

#### **Background on Student Visas and Practical Training**

11. Congress has authorized nonimmigrant student status for foreign nationals who enroll in Government-approved academic institutions. 8 U.S.C. § 1101(a)(15)(F). Foreign students enter the United States on an "F-1" visa and are described as being in "F-1 student status." ICE's Student and Exchange Visitor Program ("SEVP") is responsible for administering the F-1 student program and tracking information on students in F-1 status.

12. A school must obtain formal approval from DHS before it can sponsor a student's F-1 status. The approval process is rigorous. A school must first file an application for School Certification on Form I-17 through the Student and Exchange Visitor Information System ("SEVIS"), a SEVP-managed Internet based system to track and monitor schools and foreign students in the United States. 8 C.F.R. § 214.3. The application requires a school to submit to DHS detailed information on its programs of study; accreditations and recognitions; information on its calendar, costs, and demographics; the locations of its campuses and instructional sites; and information on responsible school officials. It must also submit supporting evidence. To obtain DHS approval, universities must provide proof of accreditation from a U.S. Department of Education-recognized accrediting agency and information on each of the school's programs of

study. If approved, the school must submit to periodic recertification, which may be denied for a host of reasons, including a school's failure to operate as a bona fide institution of learning, its failure to employ adequate qualified professional personnel, or its failure to maintain proper facilities for instruction. *Id.* § 214.4(a)(2).

13. When ICE determines that a school's participation in SEVP should be terminated, it provides the school with notice and an opportunity to contest the intended termination. ICE also maintains a practice and policy of informing students of their school's forthcoming termination and providing them an opportunity to transfer to another school or change status before ICE terminates their SEVIS record. ICE provides such students with at least one month of notice, affording them an opportunity to preserve their valid F-1 status.

14. ICE regulations delegate considerable oversight authority to Designated School Officials ("DSOs") – school employees named by a school's president and approved by ICE to monitor, advise, and oversee F-1 students enrolled in the school. 8 C.F.R. § 214.3(l).

15. DSOs are responsible for, among other things, activating and maintaining SEVIS records for the duration of a student's enrollment, including registering a student's participation in CPT; approving or requesting approval for benefits such as employment and reduced course load; and providing students with information needed to make informed decisions regarding maintaining nonimmigrant student status, including counseling students on the number of work hours allowed, the type of employment allowed, and their need to maintain F-1 student status. *See, e.g.,* 8 C.F.R. § 214.2(f)(6)(iii), 9(ii)(D), (10)(i); 214.3(g)

16. One of a DSO's principal responsibilities is to monitor students enrolled in their school and help them maintain compliance with the myriad rules governing F-1 student status. DSOs thus "serve[] as a link between nonimmigrant students and SEVP and play[] a central role

in ensuring the nonimmigrant students at their school maintain status while in the United States.” *Student and Exchange Visitor Program: Training for Designated School Officials* 13 (Oct. 22, 2013) (“DSO Manual”), available at [https://www.ice.gov/doclib/sevis/pdf/SEVP\\_DSO\\_Training.pdf](https://www.ice.gov/doclib/sevis/pdf/SEVP_DSO_Training.pdf).

17. As the ICE recognizes, “[t]here are a number of responsibilities for nonimmigrant students to keep in mind. When one also considers that many of these students are in an unfamiliar culture, and perhaps struggling to become more fluent in English, the role of the DSO becomes more critical in assisting the student to maintain his/her nonimmigrant status. Your understanding of SEVP and nonimmigrant student status will assist you in counseling nonimmigrant students in ways that remind them of their responsibilities and allow them to maintain their nonimmigrant status.” *Id.* at 15. ICE admonishes DSOs that “[b]y carefully attending to the details of the information and the student’s record, a DSO may be able to alert the student to issues that might jeopardize their nonimmigrant status or make it difficult for them to re-enter the United States to continue their studies.” *Id.* at 14.

18. Foreign nationals admitted to the U.S. in F-1 student status may lawfully remain in the country as long as long as they are “pursuing a full course of study at an educational institution approved by the Service for attendance by foreign students, or engaging in authorized practical training following completion of studies . . . .” 8 C.F.R. § 214.2(f)(5)(i). Noncitizens in F-1 status are issued SEVIS Form I-20 by the ICE-approved school the student will attend. 8 C.F.R. § 214.2(f)(1)(i)(A). An F-1 student maintains valid status as long as he or she is “making normal progress toward completing a course of study,” *id.*, and a student who continues from one education level to another (*i.e.*, advancing from a bachelor’s to a master’s program) is considered to be maintaining his or her status. 8 C.F.R. § 214.6(f)(5)(ii). In the case of postgraduate

programs (such as master's and doctorate programs), a school's DSO is responsible for certifying what counts as a full course of study. 8 C.F.R. § 214.2(f)(6)(i)(A)-(B).

19. Students in valid F-1 status may transfer to another school as long as they follow prescribed procedures. 8 C.F.R. § 214.2(f)(8)(i). An F-1 student who transfers between schools is allowed to remain in the U.S. while transferring as long as the student will begin classes at the new school within five months of transferring from the previous school or within five months of the program completion date, whichever is earlier. *Id.*

20. Regulations authorize certain students in F-1 status to engage in what is known as "practical training" – authorized work that F-1 students may perform related to their major areas of study. 8 C.F.R. § 214.2(f)(10). The regulations authorize noncitizens to perform such work *while in F-1 student status.*

21. Regulations authorize two types of practical study: Curricular Practical Training ("CPT") and Optional Practical Training ("OPT"). CPT is work performed as part of an academic curriculum, and is defined as "alternative work/study, internship, cooperative education, or any other type of required internship or practicum that is offered by sponsoring employers through cooperative agreements with the school." 8 C.F.R. § 214.2(f)(10)(i).

22. ICE entrusts a school's DSO with designating CPT offerings and authorizing individual students to participate in CPT. The authorization process is handled entirely by DSOs without ICE's direct involvement or adjudication. Rather, absent intervention from ICE, DSOs alone are responsible for confirming that a school's practical training opportunity qualifies for CPT.

23. DSOs are responsible for recording a student's participation in CPT in the student's SEVIS record. If a school approves a student for participation in CPT, it will provide

the student with a Form I-20 which includes a written endorsement noting that CPT has been approved and that the student is authorized to work. This CPT-endorsed Form I-20 serves as evidence of the student's authorization to work.

24. There is no restriction on compensation during CPT. So long as it is authorized by a school's DSO, a student may complete CPT through full-time employment with a for-profit corporation and earn monetary compensation for the work performed. Further, F-1 students enrolled in a graduate studies may participate in CPT *at the start of their program* if approved by the school's DSO. *Id.*

25. OPT is temporary employment separate from a student's curricular requirements that is directly related to the student's major area of study. 8 C.F.R. § 214.2(f)(10)(ii)(A). Students may engage in authorized OPT during their annual vacation or when school is otherwise not in session; while school is in session as long as training does not exceed 20 hours a week; or after completion of a course of study. 8 C.F.R. § 214.2(f)(10)(ii)(A)(1)-(3). Training undertaken before a course of study is completed is commonly known as "pre-completion OPT" while training after the course of study has been completed is known as "post-completion OPT." OPT is generally available for up to 12 months, but students with science, technology, engineering, or mathematics degrees may obtain a 24-month extension beyond the initial 12 months of post-completion OPT. 8 C.F.R. § 214.2(f)(10)(C). A student authorized for post-completion OPT may transfer to a new school and maintain his or her F-1 status as long as the student resumes his or her course of study within five months of transferring out of his or her last school or the date OPT authorization ends, whichever is earlier. 8 C.F.R. § 214.2(f)(8)(i).

26. A student who fails to maintain a full course of study or otherwise has his or her F-1 student status terminated may apply for reinstatement. 8 C.F.R. § 214.2(f)(16)(i). A student

may be granted reinstatement if he or she has not been out of status for more than five months at the time of filing (or if the failure to file within five months was due to exceptional circumstances); does not have a record of repeated or willful violations of immigration regulations; is pursuing or intending to pursue a full course of study in the immediate future; has not engaged in unauthorized employment; is not deportable for any reasons other than being present in violation of the law or failing to comply with terms of nonimmigrant status; and establishes that the violation of status resulted from circumstances beyond the student's control or resulted from a reduction in the student's course load that would have been in the DSO's authority to authorize, and that denial of reinstatement would cause the student extreme hardship. 8 C.F.R. § 214.2(f)(16)(i)(A)-(F). There is no appeal from ICE's decision to deny reinstatement. 8 C.F.R. § 214.2(f)(16)(ii).

#### **University of Northern New Jersey and ICE's Sting Operation**

27. In September 2013, ICE's Homeland Security Investigations ("HSI") unit established a university in Cranford, New Jersey called the University of Northern New Jersey ("UNNJ"). HSI established UNNJ as part of an ICE sting operation called "Operation Triple Lindy" targeting unscrupulous academic recruiters and brokers who prey on foreign students seeking to maintain their valid F-1 status. These brokers steer students to enroll in schools whose principal objective is not to provide *bona fide* academic programs, but to enrich their proprietors through substantial fees and tuition while offering students no meaningful educational opportunities.

28. Although such brokers are often aware that such schools are acting improperly, they often abuse students' trust and mislead them into believing that such schools are acting lawfully by facilitating practical training through the F-1 program. These brokers exploit the fact

that in many countries, prospective students routinely engage academic brokers to assist with the process of identifying and enrolling in universities. They also take advantage of widespread misinformation concerning the F-1 program and the complexity of the program's rules to convince their clients that the school's offerings are legitimate.

29. By all outside appearances, UNNJ was a legitimate university occupying a building in Cranford and maintaining a highly visible web presence, including an elaborate official website (since taken down but archived at <https://web.archive.org/web/20160327093120/http://www.unnj.edu/>) and highly active Facebook and Twitter accounts. UNNJ's President, "Dr. Steven Brunetti, Ph.D.", maintained a detailed LinkedIn page identifying him as the president of UNNJ and posted regularly on the school's social media accounts. Dr. Brunetti exchanged correspondence with students and met with them in person at UNNJ's office in Cranford.

30. DHS bolstered the university's appearance of legitimacy by listing UNNJ on DHS's official website as certified for participation in SEVP. It also obtained accreditation for UNNJ by the Accrediting Commission of Career Schools and Colleges ("ACCSC"), a U.S. Department of Education-recognized accrediting institution, and by obtaining recognition for UNNJ by the New Jersey Department of Education. UNNJ's website prominently advertised its accreditations, which were independently verifiable.

31. From 2014 to 2016, "Dr. Brunetti" and others posing as UNNJ staff coordinated with various brokers to enroll foreign students at UNNJ. The brokers charged students thousands of dollars for their services on top of the thousands of dollars UNNJ charged for tuition and fees. UNNJ provided brokers with financial kickbacks for recruiting and enrolling students at UNNJ.

32. Brokers principally targeted for enrollment in UNNJ noncitizens in F-1 status who had graduated from undergraduate or graduate programs at a U.S. university and worked lawfully for U.S. companies through OPT. Together, the brokers and UNNJ ensnared these students with promises that they could continue lawfully working in the U.S. through CPT without any immediate need to attend classes at UNNJ. Some students were told that they could not enroll in classes because they were full; others that the school would soon offer classes online. Students were assured, however, that the UNNJ's offering of OPT to students upon enrollment was consistent with applicable regulations governing practical training in the F-1 program.

33. Upon information and belief, UNNJ designated the school's President, Dr. Brunetti, as its Principal DSO. Dr. Brunetti, however, provided noncitizens enrolled in UNNJ with none of the support expected or required of DSOs. Dr. Brunetti did not counsel students on how to maintain their lawful F-1 student status or provide them with appropriate guidance. To the contrary, Dr. Brunetti and other UNNJ staff compounded the misinformation the brokers fed their student clients by ignoring or actively misleading students who sought their guidance. Brunetti discouraged students from seeking guidance on the school's CPT offerings, telling UNNJ enrollees who contacted him not to bother him.

34. Brunetti and other staff repeatedly reassured students that the extensions UNNJ offered to their practical training programs would not pose a problem, and made similar representations to DSOs at other *bona fide* academic institutions when students sought to transfer to UNNJ. Further, consistent with F-1 program regulations, UNNJ provided students with written confirmation that they were authorized to work through CPT from the beginning of their graduate programs.

35. In April 2016, ICE permanently shut down UNNJ. On April 5, 2016, ICE and the Department of Justice announced the arrest of 21 brokers and recruiters for visa fraud and other crimes in connection with the UNNJ operation.

36. Immediately following the operation's public announcement, ICE began terminating the SEVIS records and I-20s for each of the more than 1,000 noncitizens who had enrolled at UNNJ for their "fraudulent enrollment." Specifically, ICE made a blanket finding that any noncitizen who enrolled in UNNJ knowingly participated in visa fraud by enrolling at UNNJ for the sole purpose of illegally obtaining and/or maintaining their F-1 nonimmigrant status. ICE did not provide students with an individualized hearing or any meaningful opportunity to contest its determination that they had committed knowing visa fraud by enrolling in UNNJ.

37. Contrary to its established practice and policy, ICE did not provide these students with any advance notice that the school's SEVIS designation would be terminated, nor any opportunity to transfer to another school or apply for a chance of status before their SEVIS records were terminated.

38. ICE placed many of the students in removal proceedings in Immigration Court by issuing them Notices to Appear ("NTAs") which charged them with being removable from the United States under 8 U.S.C. § 1227(a)(1)(C)(i) for failure to maintain or comply with the conditions of the nonimmigrant status under which they were admitted.

### **Immigration Consequences of a Fraud Finding**

39. An official finding that a noncitizen has knowingly participated in visa fraud comes with far-ranging consequences, making such an individual ineligible for nearly all immigration benefits.

40. Section 212(a)(6)(C)(i) of the Immigration and Nationality Act ("INA"), 8 U.S.C.

1182(a)(6)(C)(i), states that “[a]ny alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit under the chapter is inadmissible.” Such individuals “are ineligible to receive visas and ineligible to be admitted to the United States.” § 1182(a). Any such individual in the United States is ineligible to adjust their status and become a lawful permanent resident (i.e. a “green card” holders). *Id.* § 1255(a). ICE’s blanket fraud finding thus renders all UNNJ enrollees *permanently* and *forever* barred from permanent admission to the United States, subject only to a narrow discretionary waiver available only to individuals with a spouse or parent who is a U.S. citizen or lawful permanent resident *and* who would suffer *extreme hardship* if the discretionary waiver were not granted from the Government. *See id.* §§ 1182(d)(3); 1182(i).

41. ICE’s across-the-board fraud finding also renders UNNJ enrollees ineligible for reinstatement of their F-1 status because a student who has a record of “willful violations of Service regulations” is categorically ineligible for reinstatement. 8 C.F.R. § 214.2(f)(16)(i)(B).

42. At least two students formerly enrolled at UNNJ who have returned to China have had their visa applications denied or delayed by U.S. consulates abroad based on their inadmissibility under § 1182(a)(6)(C)(i). Based on ICE’s blanket finding that every noncitizen who reenrolled in UNNJ knowingly participated in visa fraud, none of the Plaintiffs or others who enrolled at UNNJ will ever be able to receive any immigration benefits in the future without applying for a discretionary waiver for which they may not be eligible. They have essentially been blacklisted at all levels of the U.S. immigration system with no way to challenge meaningfully ICE’s determination that they knowingly committed visa fraud.

### JURISDICTION

43. This Court has jurisdiction over this matter under 28 U.S.C. § 1331 (federal question jurisdiction), 28 U.S.C. § 1346 (United States as a defendant), and the United States Constitution.

44. There are no administrative remedies available to Plaintiffs. ICE has determined that Plaintiffs knowingly committed visa fraud and there is no established mechanism for Plaintiffs to challenge that determination administratively.

### VENUE

45. Venue is proper in the Eastern District of New York under 28 U.S.C. § 1391(e)(1)(C) as Plaintiff Jie Fang (Brooklyn, New York) resides in the Eastern District of New York and Defendants are officers or employees of the United States. Additionally, Mr. Fang was issued an NTA from ICE's New York field office, which is responsible for all boroughs of New York City and Long Island. Venue is also proper under 28 U.S.C. § 1391(e)(1)(B) because ICE agents coordinated directly with a substantial number of academic brokers located in the Eastern District of New York, including the broker who enrolled Plaintiff Xiaoyu Zhang, whose office was located in Flushing, New York.

### PARTIES

46. **Plaintiff Jie Fang** is a native and citizen of the People's Republic of China who currently resides in Brooklyn, New York. Mr. Fang first entered the United States in March 2011 to study at Murray State University in Murray, Kentucky. After graduating from Murray State in December 2014 with a bachelor's degree in finance, Mr. Fang moved to New York to commence his post-completion OPT with Forte Capital Group in January 2015. During his OPT

period, Mr. Fang also worked with other companies, namely Achievers Only Network, ABC Global Systems, and Premium Merchant Funding.

47. Towards the end of his OPT period, Mr. Fang decided that he wanted to pursue graduate studies in finance and had heard about UNNJ through a friend. Mr. Fang contacted Philip Li and Sofia Zhang of Excellent Student Service to assist him with enrollment in UNNJ. Ms. Zhang informed Mr. Fang that he could legally work on CPT without attending classes. Mr. Fang conducted research online and saw that UNNJ was listed as an approved school on the DHS website, fully accredited, and had an active official webpage and social media accounts. At the end of December 2015, he paid Excellent Student Services \$2,000 and provided his application materials to the agency which submitted them to UNNJ on his behalf. Mr. Fang was accepted to UNNJ in late January 2016 and he paid Excellent Student Services another \$1,700.

48. Mr. Fang worked for his employer on CPT from February 15, 2016 until the first week of April when he received a letter from ICE terminating his student status. About two weeks later, Mr. Fang received a letter from ICE requesting that he call to schedule a meeting at ICE's office in New York City. The following week, Mr. Fang went to ICE's office and was issued an NTA. Mr. Fang's Immigration Court hearing is scheduled for March 17, 2017.

49. **Plaintiff Lifang Lin** is a native of the People's Republic of China who currently resides in Syracuse, New York. Ms. Lin originally entered the United States in January 2008 to pursue a bachelor's degree in accounting at Syracuse University. She graduated in December 2012 and worked as an accounting tutor on post-completion OPT. In October 2012, Ms. Lin returned to China while she waited for her graduate studies in the U.S. to commence. She re-entered the U.S. in July 2013 to pursue a master's degree in finance at Syracuse University and graduated in December 2014. After graduation, Ms. Lin started working in February 2015 on

post-completion OPT for BNY Mellon and later worked for the Bonadio Group, an accounting firm in New York.

50. In December 2015, Ms. Lin contacted Philip Li from Excellent Student Service to assist her with enrolling in a new academic program. Mr. Li recommended UNNJ's CPT program and told her that she could continue working for her employer on full time CPT as a student at UNNJ. After researching online and seeing that UNNJ was recognized by DHS as an authorized school for the F-1 program, Ms. Lin decided enroll there. Ms. Lin expected to be enrolled starting in January 2016, but her program start date as listed on her I-20 was not until February 10, 2016 — less than two months before UNNJ was shut down by the Government. On April 5, 2016, Ms. Lin found out from human resources personnel at her job that UNNJ was part of a DHS sting operation and that the school was shut down. Later that month, ICE agents appeared at her house and handed her an NTA. She does not currently have a hearing date set for Immigration Court. Ms. Lin currently has a pending application for adjustment of status to lawful permanent resident based on her marriage to a U.S. citizen.

51. **Plaintiff Xiaoyu Zhang** is a native and citizen of the People's Republic of China who currently resides in Dallas, Texas. Ms. Zhang originally entered the United States in August 2011 on an F-1 student visa to pursue a bachelor's degree in journalism at the University of Texas ("UT"). Ms. Zhang graduated from UT in December 2013 and worked as a contractor for Apple from January 2014 to January 2015 with her post-completion OPT. In February 2015, Ms. Zhang contacted Tiffany Xue with U.S. Quickly Consulting Center to help her find a graduate school in which to enroll. Ms. Xue informed her that there were schools that offered a full time CPT program where students were not required to attend classes. Ms. Zhang submitted her application materials to Ms. Xue who applied to UNNJ on her behalf. Ms. Zhang received

an acceptance letter from UNNJ a few days later. As this was the first time she had ever heard of UNNJ, Ms. Zhang researched the school online and saw that it was certified by both DHS and the State of New Jersey. Based on her research and Ms. Xue's assurances, Ms. Zhang decided to enroll in UNNJ's master's in information systems program and paid \$4,000 in tuition. In April 2015, Ms. Zhang was also accepted to the University of North Texas ("UNT") for enrollment for the fall semester, but she opted to defer her enrollment until fall 2016.

52. In May 2015, Ms. Zhang started working as a business analyst for American Technology Consulting, LLC with her CPT provided by UNNJ. In March 2016, Ms. Zhang's contract with her employer expired and she informed Ms. Xue that she wanted to transfer from UNNJ to UNT where she would commence studies in the fall. After several weeks had gone by without any progress on the transfer, Ms. Zhang unsuccessfully tried to contact Ms. Xue and UNNJ. She searched UNNJ online, and much to her surprise, found out that UNNJ was shut down in early April 2016 and that Ms. Xue had been arrested. Ms. Zhang received her termination letter from ICE the following week and worked with UNT to transfer her SEVIS record and obtain a new I-20. UNT provided Ms. Zhang with a new I-20 and she applied for reinstatement in May 2016. Her reinstatement application was rejected due to a filing error and she resubmitted it in June 2016. Ms. Zhang's reinstatement application remains pending and she is currently attending classes at UNT. Ms. Zhang was never contacted directly by ICE officers and never received an NTA, although her former employer told her that ICE officers did go to her former office to inquire about her.

53. **Defendant Sarah Saldaña** is the Director of Immigration and Customs Enforcement ("ICE"). In this capacity, she is responsible for all ICE enforcement operations and the administration of the Student Exchange Visitor Program. She is ultimately responsible for

the operation related to UNNJ and the decision to terminate Plaintiffs' SEVIS records and I-20s for their enrollment at UNNJ, as well as the decision to issue NTAs to UNNJ students. Ms. Saldaña is sued in her official capacity.

54. **Defendant Jeh Johnson** is the Secretary of Homeland Security and heads the Department of Homeland Security ("DHS"). ICE is a subdivision of DHS. As Secretary of Homeland Security Mr. Johnson is ultimately responsible for all actions taken by ICE. Mr. Johnson is sued in his official capacity.

55. **Defendant Leon Rodriguez** is the Director of U.S. Citizenship and Immigration Services ("USCIS"), the agency within DHS responsible for adjudicating visa petitions and most other applications for immigration benefits. Mr. Rodriguez is sued in his official capacity.

#### CLASS ACTION ALLEGATIONS

56. Plaintiffs bring this action as a class action on behalf of themselves and all others similarly situated pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure. The class consists of the following ascertainable members:

All foreign students who enrolled at UNNJ and who were subjected to ICE's blanket determination that they knowingly participated in visa fraud by enrolling in UNNJ.

57. The precise number of noncitizens who fall within the class definition is known only to Defendants, but based on public statements by the Government, the class likely consists of approximately 1,076 foreign students, making joinder of all members impracticable.

58. A community of interest exists between the named Plaintiffs and members of the class in that there are questions of law and fact that are common to all Plaintiffs and class members. Plaintiffs and the class members they seek to represent challenge the determination that they have committed fraud or a material misrepresentation making them ineligible in the

future for any immigration benefits or admission into the U.S. All Plaintiffs and class members have all had their student status terminated by ICE because ICE determined that they committed fraud/material misrepresentation by enrolling at UNNJ.

59. The claims or defenses of the representative Plaintiffs and of Defendants are typical of the claims or defenses of the class. Although the relevant parties currently face different immigration related procedural situations (whether currently subject to an NTA in the U.S., not currently subject to an NTA in U.S., or currently residing abroad), they all have the same claim against Defendants: ICE has improperly determined that they committed fraud/material misrepresentation barring them from obtaining immigration benefits or admission to the United States in the future.

60. The named Plaintiffs will fairly and adequately protect the interests of the class because they, like all class members, are subject to the same unlawful fraud/material misrepresentation determination made by ICE based their enrollment at UNNJ.

61. Individual suits by each member of the class would be impracticable because they would create a risk of inconsistent or varying adjudications and would establish incompatible standards of conduct for the parties opposing the class.

62. The number of individual suits would impose an undue burden on the courts as it would require the adjudication of potentially thousands of separate lawsuits.

63. Plaintiffs' lead counsel, Ira J. Kurzban, has a 37 year history of experience in immigration-related class action cases and can adequately represent the interests of class members as well as the named plaintiffs.

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION:**

**VIOLATION OF THE FIFTH AMENDMENT OF THE U.S. CONSTITUTION—  
FAILURE TO PROVIDE PROCEDURAL DUE PROCESS**

64. Plaintiffs incorporate paragraphs 1 to 63 as if fully stated herein.

65. ICE's determination that Plaintiffs knowingly participated in visa fraud was not accompanied by constitutionally adequate procedural protections and violated Plaintiffs due process rights. ICE made this determination on an across-the-board basis for *every* noncitizen who enrolled at UNNJ without any individualized hearing.

66. This determination violated due process by: (i) failing to provide Plaintiffs with individualized hearings before impartial adjudicators before determining that Plaintiffs knowingly committed visa fraud; (ii) failing to provide Plaintiffs with adverse evidence and an opportunity to confront and respond to such evidence; and (iii) failing to provide Plaintiffs with an opportunity to present evidence on their behalf.

67. Rather than comply with these well-established due process principles, ICE simply made a blanket determination that any student who ever enrolled at UNNJ knowingly participated in visa fraud regardless of the facts surrounding each student's case. ICE's complete disregard for consideration of Plaintiffs' individual circumstances and its blanket, indiscriminate determination that every noncitizen who enrolled in UNNJ knowingly committed visa fraud violated Plaintiffs procedural due process rights.

**SECOND CAUSE OF ACTION**

**VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT—ARBITRARY AND  
CAPRICIOUS AGENCY ACTION: Visa Fraud Determination**

68. Plaintiffs incorporate paragraphs 1 to 63 as if fully stated herein.

69. ICE's finding that Plaintiffs engaged in knowing visa fraud in connection with their enrollment at UNNJ violates the Administrative Procedure Act ("APA") and should be set aside pursuant to 5 U.S.C. § 706(2)(A) as arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law.

70. In making its finding that Plaintiffs engaged in knowing visa fraud, the agency did not consider any facts relevant to Plaintiffs' individual circumstances nor did it provide any explanation, let alone reasoned explanation, justifying its determination. Rather than considering relevant facts specific to each student, ICE merely pre-determined as a *fait accompli* that any student who ever enrolled at UNNJ engaged in fraud. The *only* fact considered by ICE in making this determination was the fact of the students' enrollment in UNNJ. The agency's lack of consideration of any other relevant facts specific to individual students before making its determination was arbitrary and capricious and in violation of the APA.

### **THIRD CAUSE OF ACTION**

#### **VIOLATION OF THE ADMINISTRATIVE PROCEDURE ACT—ARBITRARY AND CAPRICIOUS AGENCY ACTION: Unlawful Termination of F-1 Status**

71. Plaintiffs incorporate paragraphs 1 to 63 as if fully stated herein.

72. ICE's termination of Plaintiffs' F-1 student status violates the Administrative Procedure Act ("APA") and should be set aside pursuant to 5 U.S.C. § 706(2)(A) as arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with the law.

73. Until ICE unilaterally shut down UNNJ, Plaintiffs complied with every rule and regulation governing the F-1 visa program. UNNJ was DHS-certified to sponsor students in F-1 status; UNNJ's DSO certified Plaintiffs' participation in a *bona fide* CPT program; and Plaintiffs obtained a facially valid Form I-20 confirming the validity of their F-1 status while participating

in CPT.

74. In unilaterally terminating Plaintiffs' F-1 status immediately upon announcing its shutdown of UNNJ, ICE failed to provide Plaintiffs with notice or any opportunity to maintain their valid F-1 student status prior to its termination. In direct contravention of ICE's established practice and policy, ICE failed to provide Plaintiffs with any opportunity to transfer to another school or apply for a change of status before terminating their SEVIS records – an action which caused Plaintiffs immediately to be “out of status.”

#### **ATTORNEYS' FEES**

75. Plaintiffs incorporate paragraphs 1 to 74 as if fully stated herein.

76. As a result of Defendants' unlawful actions, Plaintiffs were required to retain legal counsel and to pay counsel reasonable attorneys' fees. Plaintiffs qualify for fees, expenses, and costs under the Equal Access to Justice Act.

77. Pursuant to the Equal Access to Justice Act (“EAJA”), 5 U.S.C. § 504 and 28 U.S.C. § 2412, Plaintiffs are entitled to recover their costs, expenses, and fees because the Defendants' actions are not and have not been substantially justified.

#### **RELIEF REQUESTED**

**WHEREFORE**, Plaintiffs respectfully request that this Court enter judgment in their favor and:

- a. Certify this action as a class action and award all relief granted to the class as a whole;
- b. Declare that ICE's determination that Plaintiffs knowingly participated in visa fraud by their enrollment at UNNJ violated Plaintiffs' Fifth Amendment due process rights; violated the APA and was arbitrary and capricious, an abuse of

discretion, and otherwise not in accordance of the law;

- c. Issue an injunction requiring DHS and any of its officers, employees, managers and directors, including those at ICE and USCIS, to provide adequate individualized proceedings before an impartial adjudicator for each Plaintiff in which they will be entitled to review any adverse evidence, respond to such evidence, and present favorable evidence on their behalf prior to determining whether each individual student who enrolled at UNNJ committed fraud;
- d. Issue an injunction requiring an impartial adjudicator as part of the above described individualized administrative proceedings to develop of proper record as to whether any student for whom a fraud determination is sustained is immune from a fraud determination on the basis of entrapment by DHS;
- e. Issue an injunction barring DHS and any of its officers, employees, managers and directors, including those at ICE and USCIS, prior to providing constitutionally adequate individualized proceedings (i) from relying on a noncitizen's past enrollment in UNNJ to deny the noncitizen any immigration-related benefit; (ii) from posting on DHS computer systems that Plaintiffs and the class members have committed fraud in relation to their enrollment at UNNJ and requiring that any such notations be removed from DHS computer systems; (iii) from providing directly or indirectly to any other agency of the U.S. government or a foreign government a statement or electronic transmission that Plaintiffs and the class members have committed fraud in relation to their enrollment at UNNJ; and (iv) from using any fraud determination to deny or delay the adjudication of any immigration related petition or application filed by Plaintiffs or class members;

- f. Declare that ICE unlawfully terminated Plaintiffs' F-1 student status without affording them a reasonable opportunity to preserve their valid status by transferring to another DHS-approved school or applying for a change of status;
- g. To order DHS to reinstate Plaintiffs' valid F-1 status and provide Plaintiffs with a reasonable period to maintain their valid F-1 status by transferring to another DHS-approved school or apply for change of status.

Dated: November 18, 2016

Respectfully submitted,

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