UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

PARTH ATUL CHATWANI,

Plaintiff,

v.

KRISTI NOEM, Secretary, U.S. Department of Homeland Security & TODD LYONS, Acting Director, U.S. Immigration and Customs Enforcement,

Defendants.

Case No. 25-cv-04024

Judge Sharon Johnson Coleman

PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND MOTION TO CONVERT ORDER TO THAT OF A PRELIMINARY INJUNCTION

INTRODUCTION

Missing from the Defendants' response to Mr. Chatwani's motion is any explanation of why they needed to terminate his SEVIS record and why it cannot be restored. The Defendants' argument boils down to an assertion that their actions have no effect on Mr. Chatwani's continuing lawful status in the United States or his authorization to work here. That is completely inconsistent with the information they provided Mr. Chatwani, which warned him that his Optional Practical Training (OPT) employment authorization had ended, Doc. #8-2 Exhibit M, and official information they provide to schools and the public on their website.

The Defendants' response notes that "[t]o maintain F-1 status, an alien must 'pursue a

full course of study' or 'engage in authorized practical training." Doc. #13 at 3. Defendants do not explain how Mr. Chatwani might conceivably maintain his F-1 status when he has graduated, been approved for 12 months of post-completion OPT, but Defendants terminated that authorization. Doc. #8-2, Exhibit M. The Court should reject the unsupported, counter-intuitive, and contradicted declaration from Defendants' official Andre Watson, that "terminating a record in SEVIS does not terminate an individual's nonimmigrant status in the United States." Doc. #13-1 par.10. His statements "'must be viewed critically' to ensure that the rescission is not upheld on the basis of impermissible *post hoc* rationalization." *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1, 21 (2020) (internal citation omitted). And if the Court is to credit Mr. Watson at all, it should require Defendants to correct their websites and publish that SEVIS termination will not affect F-1 status or previously authorized practical training, so that the "6,900 academic institutions, 45,000 designated school officials, and over 1.2 million foreign students studying in the United States" will have proper guidance. Doc. #13-1, par.2.

The Defendants' argument is essentially that, because this case involves immigration matters, the Executive Branch can do whatever it wants and its actions are not subject to any review in the courts for lawfulness. The Executive Branch's authority over immigration does not extend that far. Non-citizens who have been admitted to the United States still have a right to due process and the Defendants' actions must still be justified in law and not be arbitrary and capricious. A temporary restraining order or preliminary injunction may be an extraordinary remedy but in this case it's less extraordinary than the powers the Defendants are claiming for themselves. If Defendants truly believe that their termination of Mr. Chatwani's SEVIS record has no effect on his ability to remain in the United States and work while his employment authorization card (EAD) is valid then they should have no objection to a court order restraining

them from placing him in removal proceedings for being out of status or later finding that he failed to maintain status or worked without authorization during this period. Mr. Chatwani simply seeks this security so Defendants, who have already provided completely opposite positions on his situation at different times, cannot switch positions yet again when it suits them and penalize him for taking their word for it that he is authorized to stay and work in the United States during the period of OPT granted to him.

Additionally, as the Defendants have now had a chance to respond to his motion, Mr. Chatwani asks that his motion be converted into one for a preliminary injunction granting him the relief requested in his motion for the duration of this litigation.

ARGUMENT

A. Mr. Chatwani's request for relief is not inappropriate for a temporary restraining order or preliminary injunction.

The Defendants' assertion that Mr. Chatwani's request for relief seeks to alter the status quo is curious because they also assert that he is currently in lawful status and authorized to work. Doc. #13, at 5, 7, 12. All Mr. Chatwani seeks is relief from this Court that will prevent the Defendants later concluding otherwise should he, for example, seek a STEM extension of his OPT, as he has stated he wants to do. Doc. # 8-2, par. 12. In other words, he seeks an order requiring the Defendants to honor what they are now asserting is the status quo – that he is in lawful status and authorized to work. It is unclear what objection Defendants have to such an order. Evidently, they expect Mr. Chatwani to just trust them and take their word for it, but he understandably feels he cannot do that in light of the conflicting information they have previously given him. His request for an order enjoining the Defendants from detaining him or placing him in proceedings would clearly preserve the status quo as he is not currently detained or in proceedings.

So the only request he has made that would arguably change the status quo is his request to have his SEVIS record reactivated for the pendency of this litigation. But again, this is simply Mr. Chatwani's attempt to seek security that his lawful status and employment authorization will be recognized by Defendants in future. If his SEVIS record is reactivated then Defendants can have no basis to later claim he failed to maintain status or worked without authorization.

Defendants' litigation position goes against all prior and continuing public pronouncements and universal understanding of the rules. The Department of Homeland Security's official website for schools, students, and the public, Study in the States, contains formal guidance for school officials, and, is unequivocal: "Once you terminate a student's SEVIS record, the student is no longer in an authorized period of stay in the United States… If the student is still in the United States, they lose all employment authorization they received while in student status. An F or M student who is out of nonimmigrant status must leave the United States, while a student outside of the country cannot reenter the United States using the terminated SEVIS record." https://studyinthestates.dhs.gov/schools/report/maintaining-accurate-sevis-records (last visited April 18, 2025). Exhibit # 3.

The Study in the States website also provides clear guidance to the international students: "The U.S. government takes working illegally very seriously. *** If your DSO knows you are working without permission, they must report it through SEVIS, meaning *your SEVIS record will be terminated. That means that you will have to leave the United States immediately, and you may not be allowed to return.*" https://studyinthestates.dhs.gov/students/work/working-in-the-united-states (last visited April 18, 2025). Exhibit # 4.

In the face of more than two decades of consistent interpretation that "active" and "terminated" classifications in SEVIS do in fact determine an F-1 student's authorized status in

the United States, the Watson Declaration's assertion that "[t]erminating a record in SEVIS does not terminate an individual's status in the United States" must be received skeptically. As Defendants now claim Mr. Chatwani is already in lawful status and authorized to work in the United States, it is unclear why they object to having to take steps to make this clear. This is the basic problem of the Defendants' whole argument. They don't explain at all why Mr. Chatwani's SEVIS record needed to be terminated in the first place or cannot be restored. They assert this action has no effect on his status or employment authorization. If so, then why did they take it and why are they continuing to insist the record remain terminated?[1]

B. The Defendants' argument that Mr. Chatwani has no likelihood of success on his Due Process claim conflicts with other statements they have made.

The Defendants argue that Mr. Chatwani has no liberty or property interest in his SEVIS record but it's unclear exactly what they base this argument on. Doc. #13 at 7-8. They cite several cases that they purport hold this, but none is apposite. *Doe 1 v. DHS*, No. 2:20-cv-09654, 2020 U.S. Dist. LEXIS 218715 at **14-15 (C.D. Cal. Nov. 20, 2020) involved claims by students outside the United States who had not yet begun their course of study at a U.S. university. *Yunsong Zhao v. Va. Polytechnic Inst. & State Univ.*, No. 7:18cv00189, 2018 U.S. Dist. LEXIS 177991 (W.D. Va. Oct. 15, 2018) involved a student suing a university, not DHS or ICE, over the university's termination of his SEVIS record. The Court concluded that the university's termination of the SEVIS record did not affect the student's ability to attend school

[1] The reason given by SEVIS for the termination was "Other - Individual identified in criminal records check and/or has had their VISA revoked. SEVIS record has been terminated." Doc. # 8-2, Exhibit A, par. 8; Exhibit N. The Watson declaration doesn't mention a visa revocation or criminal record, but refers to a CBP encounter occurring in 2022, before Mr. Chatwani was admitted to the United States to attend Northwestern University. Doc. # 13-1, par. 7-8. There is nothing to indicate that he has failed to maintain his status, so there is no reason for Defendants' termination of his SEVIS record and OPT period of authorization.

as the university in question allows students to attend regardless of their immigration status and thus the student's property interest in his ability to attend school was distinct from his property interest in the maintenance of his SEVIS record. *Id.* at **12-13. Because the plaintiff was not suing a government agency over the government agency's termination of the SEVIS record, the issue of the effect of termination of the SEVIS record on the plaintiff's immigration status was not in play. The case involved a university official's performance of a ministerial duty to update SEVIS when a student failed to maintain a full course load. *Id.* at **4, 15. That is distinct from this situation where Mr. Chatwani is arguing that a government immigration agency made a substantive decision to terminate his SEVIS record with the intent of revoking his lawful immigration status and employment authorization. Finally, *Fenghui Fan v. Brewer*, No. H-08-3524, 2009 U.S. Dist. LEXIS 51567 (S.D. Tx. June 17, 2009), does not even discuss whether a student has a liberty or property interest in a SEVIS record. It assumed without deciding that the plaintiff had a liberty or property interest in continuing their graduate medical education and then dismissed the case on other grounds. *Id.* at *20.

The most that can be discerned from the Defendants' argument on this point is that it does not believe Mr. Chatwani has a liberty or property interest in his SEVIS record because the termination of this record does not alter his immigration status or his ability to work pursuant to his OPT and EAD. Doc. #13 at 8 ("regulations permit universities to terminate a SEVIS record, but the plaintiff does not argue that universities have authority to revoke his immigration status."). But if that is what the Defendants argue, it completely contradicts other information they have given Mr. Chatwani. Specifically, he received an email when his SEVIS record was terminated stating that his "OPT period has ended." Doc. #8-2, Exhibit M. Similarly, his SEVP portal shows that his employment authorization ended on 04/04/2025. Exhibit 2. Not

surprisingly, both Mr. Chatwani and his employer interpreted these notices to mean he was not authorized to work after April 4, 2025. Additionally, Defendants' website states that SEVIS termination results in loss of F-1 status. The Defendants' argument that the SEVIS termination does nothing to change Mr. Chatwani's immigration status or employment authorization cannot be taken seriously under these circumstances. And if it is, then it is hard to see what harm is done by providing Mr. Chatwani the relief he seeks to ensure he is protected from further inconsistent decisions by the immigration agencies supervised by DHS.

The Defendants' other reason for arguing that his Due Process claim is unlikely to succeed is that an application for reinstatement would provide him all process that is due. Doc. #13 at 8. Reinstatement is not an option for F-1 students like Mr. Chatwani who have graduated and are on a period of post-completion OPT. It is only available where the student "is currently pursuing, or intending to pursue, a full course of study in the immediate future at the school which issued the Form I-20...." 8 C.F.R. §214.2(f)(16)(i)(C). Anyway, reinstatement is not an appeal whereby agency decisions to terminate SEVIS records are administratively reviewed. It is a process for students to ask USCIS to forgive a voluntary or inadvertent violation of status due to of acts of god, mistakes of their Designated School Official (DSO), or innocent oversights by themselves. *See* 8 C.F.R. § 214.2(f)(16)(F)(describing violations of status caused by illness; closure of the school; natural disaster; oversight, inadvertence, or neglect by the DSO; or carrying less than a full course load that the DSO might authorize). None of this applies to Mr. Chatwani, who has done nothing to violate his F-1 status.

C. Mr. Chatwani's claims are distinct from claims made under the Privacy Act and involve final agency action.

Mr. Chatwani's claims are not brought under the Privacy Act and the Defendants do not cite any law supporting its argument that a claim over unlawful termination of a SEVIS record may

only be brought under the Privacy Act. Doc. # 13 at 9-10. The Privacy Act is a mechanism by which people may request information in government records about themselves, seek to correct such records, or sue over unlawful disclosure of those records. 5 U.S.C. §§ 552a(b), (d). Mr. Chatwani is not seeking to do any of those things but rather seeks to challenge, not a mistake in his records, but the complete termination of his SEVIS record. The Privacy Act says nothing about SEVIS records or challenges to SEVIS terminations by U.S. immigration agencies. The section of the Privacy Act Defendants cite that purportedly "prohibits" foreign nationals from "challenging records" in fact simply defines an individual under the Privacy Act as a U.S. citizen or lawful permanent resident. 5 U.S.C. § 552a(a)(2). It does not prohibit non-U.S. citizens or lawful permanent residents from suing under other statutes. Notably, non-U.S. citizens and lawful permanent residents can do some things prohibited to them under the Privacy Act via the Freedom of Information Act (FOIA), 5 U.S.C. § 552(3)(A)(stating requests for information in government records can be made by "any person"), and can sue over violations of the FOIA, *id.* §552(4)(B). The Privacy Act is thus very far from being a clear statement that judicial review of unlawful agency action to terminate a SEVIS record is barred.

Similarly, the Defendants are incorrect when they assert that the termination of Mr. Chatwani's SEVIS record was not a final agency action. Doc. # 13 at 10-12. Neither of the cases that Defendants cite, *Dhakal v. Sessions*, 895 F.3d 532 (7th Cir. 2018) or *McBrearty v. Perryman*, 212 F.3d 985 (7th Cir. 2000), involved a SEVIS termination thus neither is as close to the facts in this case as *Jie Fang v. Director of ICE*, 935 F.3d 172 (3d Cir. 2019). They do not contradict the crucial determination made in *Jie Fang* that reinstatement is not a mandatory review process and thus the failure to pursue it does not defeat finality. *Id.* at 182-83. They are also distinct because they involve agency decisions denying asylum (Dhakal) and adjustment of status (McBrearty),

both of which can be reviewed in removal proceedings. Termination of student status and denial of reinstatement cannot because an immigration judge has no authority to grant F-1 student status or reinstatement. *Jie Fang*, 935 F.3d. at 184. The immigration judge can only terminate proceedings if F-1 status is restored by the agency while proceedings are in progress.

The Defendants again argue that the facts in *Jie Fang* are distinct from this case because those students had their "status" terminated whereas Mr. Chatwani has only had his SEVIS record terminated. But, as demonstrated above, that is empty semantics. Absent placement in removal proceedings termination of a student's SEVIS record is the only way a student's F-1 status can be terminated. Only some of the plaintiffs in *Jie Fang* had been placed in removal proceedings. Others had not and were in the exact same situation as Mr. Chatwani, a terminated SEVIS record but no other action taken against them. *Jie Fang*, 935 F.3d at 183. Again, if the Defendants' position is that a terminated SEVIS record does not result in termination of lawful status or employment authorization, they can have no reasonable objection to the relief Mr. Chatwani is seeking here to provide him with the security that the Defendants will not later retreat from this position.

D. Defendants' argument that Mr. Chatwani will not suffer irreparable harm is nonsensical.

This argument is founded almost entirely on Defendants' strange and contradictory position that the termination of his SEVIS record does not result in the loss of his status or employment authorization. Doc.#13 at 11-13. As already discussed this is contradicted by Defendants' unambiguous statements that termination in SEVIS puts Mr. Chatwani and others like him out of F-1 status. Nor is Mr. Chatwani's fear of detention and removal with or without removal proceedings speculative in light of the Defendants' actions in other cases. Defendants have pursued an aggressive policy of detaining and instituting removal proceedings against foreign

nationals they believe are removable. This aggressive enforcement has included efforts to remove some of these foreign nationals without providing a hearing in removal proceedings, under various justifications, including expansion of expedited removal and the use of the Enemy Aliens Act. Given the extraordinary increase in aggressiveness of enforcement under the present Administration, Mr. Chatwani's fears of detention and removal are concrete and realistic.

Nor are Defendants' assertions availing that it is Northwestern University's own choice, "not Defendants" to not employ him. Doc. #13 at 12. Defendant Noem has made clear her intent to go after schools she thinks are not in compliance or who defy the government, by threatening to terminate their SEVIS authorization altogether, and/or to criminally prosecute school officials for false information. Exhibit 6. It is indeed the Defendants, and not Northwestern or any other third party, who control Mr. Chatwani's ability to gain employment. In an environment of "aggressively targeting international students," the Defendant's suggestion that any employer's decision to employ Mr. Chatwani is "unfettered" does not pass the laugh test. *Id.* Exhibit 5.[2]

Finally, Defendants' reliance on this week's decision from the Southern District of Indiana, *Jelena Liu v. Noem,* is inapposite. All of the plaintiffs there were undergraduates attending classes, none of whom had OPT terminated like Mr. Chatwani has. In denying the TRO on the grounds that those plaintiffs could not demonstrate irreparable harm, the district court noted that "a plaintiff may be able to show that loss of a specific job, perhaps if tied to a specific academic opportunity or faculty member, to be irreparable harm." Doc. #13-2, No.25-cv-716, Dkt. 24, slip op.at 7 (S.D. Ind. Apr. 17, 2025). This describes Mr. Chatwani. *See* Doc. # 8-2, Exhibits K and L.

E. The Defendants have articulated no clear reason why Mr. Chatwani's SEVIS record

[2] "Policy Brief: The Scope of Immigration Enforcement Actions Against International Students," American Immigration Lawyers Association (April 17, 2025).

has to be terminated thus they have provided no evidence of harm to themselves or the public interest by granting Mr. Chatwani relief.

The Defendants' explanation for why they need to terminate Mr. Chatwani's SEVIS record is hollow. The only thing resembling an explanation they have provided is the Watson declaration asserting that they identified Mr. Chatwani as someone "encountered" by U.S. Customs and Border Protection (CBP) and found inadmissible. This incident occurred almost three years ago when Mr. Chatwani was attempting to enter the United States in F-1 status to attend a different school and CBP mistakenly found him to be inadmissible for not having a proper visa, because of a misunderstanding over the payment of his tuition. Doc. #8-2, Exhibit A, par. 3. The Department of State later issued Mr. Chatwani a new F-1 visa, not once but twice. *Id.*, par. 4, 6. CBP also found him admissible and allowed him to enter the United States in F-1 status. *Id.*, par. 6. Being found in a database is not a reason to terminate a SEVIS record. Nothing in Officer Watson's statement establishes or even suggests that anything has happened since Mr. Chatwani's last admission to make him inadmissible, deportable, or otherwise an undesirable person to stay in the United States.

Additionally if, as the Defendants contend, Mr. Chatwani's SEVIS termination does not even have the effect of putting him out of lawful status or making him unauthorized to work, the question is why did it need to happen in the first place? Why does it continue to need to happen? If Defendants have identified no reason to remove Mr. Chatwani and don't even think he is out of status, why not simply restore his SEVIS record so his status is clear and he and his employer are secure in his authorization to work and complete his OPT? They don't have a reason because they did not terminate Mr. Chatwani's SEVIS record in good faith. It was a tactic to intimidate him into leaving the United States and abandoning his F-1 status and OPT without receiving due process. Allowing the Defendants to engage in such tactics is not in the public interest and

certainly does not outweigh Mr. Chatwani's interest in fair treatment and a clear resolution of his immigration status in this country.

CONCLUSION

The Defendants cites to the broad power the Executive Branch has over immigration decisions. Doc. #13 at 13. But that does not mean the Executive can act in blatant disregard of the law without any oversight. In this case they have terminated Mr. Chatwani's SEVIS record without any reason justified in law. They have then tried to scare him by telling him this termination has ended his status and employment authorization and subjects him to removal. But when challenged, they have abruptly changed course and claimed the SEVIS termination is a meaningless gesture that has no effect on his status. Mr. Chatwani has no way to navigate this confusing and contradictory behavior by the Defendants without assistance from this Court. Therefore, the Court should grant his request for preliminary injunctive relief for the duration of this litigation.

Respectfully Submitted,

s/Scott D. Pollock

Scott D. Pollock
Christina J. Murdoch
Scott D. Pollock & Associates, P.C.
105 W. Madison St., Suite 2200
Chicago, IL 60602
(312) 444-1940
Spollock@lawfirm1.com

CERTIFICATE OF SERVICE

I, Scott D. Pollock, certify that the above Plaintiff's Reply in Support of Motion for Temporary Restraining Order and Motion to Convert Order to that of a Preliminary Injunction was served on April 18, 2025 on counsel of record for the Defendants via the Court's ECF filing system.

s/Scott D. Pollock
Attorney for the Plaintiffs

Scott D. Pollock
105 W. Madison St., Suite 2200
Chicago, IL 60602
(312) 444-1940
spollock@lawfirm1.com