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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ZHUOER CHEN, an individual; MENGCHENG YU, an individual; JIARONG OUYANG, an individual; JING TAO, an individual, YIFENG WU, an individual, and WANRONG LI, an individual;

Plaintiffs,

vs.

KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; and MARCO RUBIO, in his official capacity as Secretary of State;

Defendants.

Case No. 4:25-cv-03292

MOTION FOR AMENDED PRELIMINARY INJUNCTION

INTRODUCTION

This Court has already ruled unlawful the Government's policy initiated in April 2025, where ICE and the Department of State revoked the visas and terminated the SEVIS status of thousands of students who, for some reason or another, came up in a search of the National Crime Information Center. As to ICE, that policy has been, at least for now, set aside.[1] But the Department of State's revocation of thousands of visas remains and has not yet been overturned, either voluntarily or by order of this or any other Court.

State's revocation policy was unlawful. It was without statutory authority.

State (at least initially) relied on 8 U.S.C. § 1201(i), a little-used provision that grants the Secretary of State or "the consular official" the ability to cancel individual visas. That provision contemplates situations where a visa has been physically granted but an individual has yet to travel to the United States, and State wants to revoke its authority to do so before the individual has engaged in his or her "embarkation." This is a vastly different situation from what happened in April. (The Government has now claimed that the revocations were merely "prudential," and it is not clear if State still relies on this grant of authority for its April revocation policy, and if not, what authority could possibly authorize its policy.)

If State still purports to rely on Section 1201(i), State's claim of authority would be troubling. State's interpretation would give it the authority to render individuals in this country deportable for any reason or no reason at all, effectively depriving individuals of all the due process Congress has provided under the rest of the Immigration and Nationality Act. It would give State officials powers reserved only to the President or to the Secretary of State himself, and then only subject to specific factual findings and procedural protections. And it would then eliminate the jurisdiction of federal courts to hear challenges to these revocations except on appeal from removal proceedings. Those affected by Section 1201(i) revocations would otherwise live in fear, and would have to subject themselves to detention and removal to challenge State's actions. It would turn all of immigration law on its head.

[1] ICE and DHS have appealed the granting of the preliminary injunction.

Thankfully, State's interpretation of Section 1201(i) is overbroad. That provision has the same limited effect Congress had always intended. And, as a result, State's visa revocation policy in this case is not only reviewable under the APA but is also unlawful.

BACKGROUND

A. State performs a mass revocation of F-1 visas based on NCIC status.

Sometime in early April 2025, ICE ran at least thousands of students on an F-1 visa through the National Crime Information Center. *See Patel* Transcript (Doe Dkt. 67, Ex. B), at 4. It then passed all of the hits along to the Department of State. *Id.* State revoked all remaining valid visas of those that came up positive hits and then sent a list of those and others requesting that their SEVIS records be terminated. *Id.*; *see also* Email between DHS and State (Doe Dkt. 52-1 Ex. A) ("We've run the Delta data against our systems. The first tab lists individuals with valid visas – how would you like us to prioritize revocations of the visas …. The second tab is students without a valid visa. We request that DHS terminate SEVIS status for these individuals as there are no valid visas for us to revoke…."). ICE complied, *id.*, which led to this initial lawsuit.

As a result of this lawsuit, and as required by the currently existing preliminary injunction, all SEVIS statuses have been restored. Order (Dkt. 53, at 7-8). But the visas remain revoked. Declaration of Tao (Ex. A) at ¶ 10; Declaration of Wu (Ex. B) at ¶ 9; Declaration of Li (Ex. C) at ¶ 8.

B. State at least initially purports to rely on Section 1201(i).

Normally, the expiration of a visa does not mean one needs to leave the country. Instead, once a visa is expired, "[y]ou can stay in the United States on an expired F-1 visa as long as you maintain your student status."[2] This is because the visa (issued by State) is simply an endorsement "placed in the traveler's passport, a travel document issued by the traveler's country of citizenship."[3] "Having a U.S. visa allows you to travel to a port of entry, airport

[2] https://www.ice.gov/sevis/travel.
[3] https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/frequently-asked-questions/what-is-us-visa.html/.

or land border crossing, and request permission of the Department of Homeland Security (DHS), Customs and Border Protection (CBP) inspector to enter the United States."[4] While State issues Visas and CBP governs decisions regarding entry to the United States, ICE (in conjunction with DOJ) manages deportation. 6 U.S.C. §§ 251-52, 8 U.S.C. § 1229.

But a (as far as Plaintiffs are aware, seldom used) provision of INA, at least as interpreted by State, constitutes an exception. That provision, 8 U.S.C. § 1201(i) states, in full:

> After the issuance of a visa or other documentation to any alien, the consular officer or the Secretary of State may at any time, in his discretion, revoke such visa or other documentation. Notice of such revocation shall be communicated to the Attorney General, and such revocation shall invalidate the visa or other documentation from the date of issuance: Provided, That carriers or transportation companies, and masters, commanding officers, agents, owners, charterers, or consignees, shall not be penalized under section 1323(b) of this title for action taken in reliance on such visas or other documentation, unless they received due notice of such revocation prior to the alien's embarkation. There shall be no means of judicial review (including review pursuant to section 2241 of Title 28 or any other habeas corpus provision, and sections 1361 and 1651 of such title) of a revocation under this subsection, except in the context of a removal proceeding if such revocation provides the sole ground for removal under section 1227(a)(1)(B) of this title.

The plain text of Section 1201 applies to decisions of "the consular officer" (not "a consular officer") or "the Secretary of State" and applies to "a visa or other documentation to any alien" and "such visa or other documentation." A decision and its notice provision to the Attorney General concerns "the visa." When properly invoked, Section 1201(i) "shall invalidate the visa or other documentation from the date of issuance."

Although visas relate only to one's ability to enter the country, and Section 1201(i) discusses and immunizes "actions taken in reliance on such visas" when it received notice "prior to the alien's embarkation," State now appears to take the position that Section 1201(i) permits visa revocations even after one has entered and remains in the United States. This not only prevents the affected person from re-entering the country, it renders the individual immediately deportable, as 8 U.S.C. § 1227(a)(1)(b), titled "Present in violation of law," states:

[4] *Id.*

> Any alien who is present in the United States in violation of this chapter or any other law of the United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 1201(i) of this title, is deportable.

This removability provision is contained within Section 1227(a), which is titled "Classes of deportable aliens," states that "[a]ny alien (including an alien crewman) in and admitted to the United States shall, upon the order of the Attorney General, be removed if the alien is within one or more of the following classes of deportable aliens." It further falls within Subsection 1227(a)(1), titled "Inadmissible at time of entry or of adjustment of status or violates status."

The text of Section 1201(i) further strips jurisdiction when properly invoked. Section 1201(i) states that there shall be no means of "judicial review … of a revocation under this subsection, except in the context of a removal proceeding if such revocation provides the sole ground for removal."

State's notices of visa revocations specifically relied on 8 U.S.C. 1201(i), sometimes referred to as Section 221(i) of the INA. *See, e.g.*, Ex. D (visa revocation notice of Tao) ("your F-1 visa … has been revoked under Section 221(i) of the United States Immigration and Nationality Act"); Ex. E (visa revocation notice of Li) (same).

The Government, for its part, has represented to Plaintiffs' counsel and to the Court in this case that the visa revocations have been revoked "prudentially." *See* 9 FAM 403.11-5(B) (Exhibit F at 7-8); Doe Dkt. 62 at 3. The updates to the Foreign Affairs Manual describing prudential revocations do not list the statutory basis for such revocations. *See id.* (9 FAM 403.11-5(B)(a)) ("Although you usually may revoke a visa only if the individual is ineligible under INA 212(a), or INA 214(b), or is no longer entitled to the visa classification, the Department may revoke a visa if an ineligibility or lack of entitlement is suspected, when an individual would not meet requirements for admission, or in other situations where warranted."). The Government has further represented to Plaintiffs' counsel and this Court that under a prudentially-revoked visa (like an expired visa), an individual may remain in this

country, though the individual cannot leave and return without a new visa. The Foreign Affairs Manual does not expressly state the same, but includes a separate form of revocation described as "[p]rudential [r]evocations [e]ffective [i]mmediately." 9 FAM 402.11-5(C) (*id.* at 9).

It is not clear whether that means a prudential revocation occurs at the time when the State Department makes its decision, or only at the time an affected person leaves the country.

This all operates very differently from Section 1201(i), which automatically has the retroactive effects described above. And any representation by State to the contrary would have no effect, as ICE and DOJ, not State, are in charge of removal decisions. Meanwhile, any representation by ICE that a Section 1201(i) revocation will not lead to deportation is non-binding. *United States v. Cordova-Perez,* 65 F.3d 1552, 1554 (9th Cir. 1995); *see generally United States v. Stacy,* 734 F. Supp. 2d 1074, 1080 (S.D. Cal. 2010).

C. The State Plaintiffs are all harmed by the visa revocations.

The plaintiffs in this case, who are bringing claims against the Department of State (like all of the *Chen* plaintiffs)—Jing Tao, Yifeng Wu, and Wanrong (Fiona) Li—are all law-abiding students who have never been convicted of any crime, let alone one implicating public safety or national security. Tao Decl. (Ex. A) ¶ 6; Wu Decl. (Ex. B) ¶ 11; Li Decl. (Ex. C) ¶ 12 They have maintained their F-1 status, complied with the terms of their student visas, maintained academic standing, and contributed to their schools and communities. Tao Decl. ¶ 5; Wu Decl. ¶ 7; Li Decl. ¶ 5. One of them had had previous contact with law enforcement resulting in dismissed charges, while the others have no record whatsoever. Tao Decl. ¶ 6; Wu Decl. ¶ 10; Li Decl. ¶ 12. There is no legal or factual basis for treating these students as threats to public safety or grounds for removal. State's decision to revoke their visas and the visas of thousands of other students is not only unlawful—it is unsupported by evidence, process, or reason.

Jing Tao is a Chinese national who came to the United States on an F-1 visa. Tao Decl. ¶¶ 2-3. She began her studies as a doctoral student in the Political Science program at the University of Texas at Dallas School of Economic, Political, and Policy Sciences in the

Fall of 2023. Tao Decl. ¶ 4. She is expected to graduate in 2028. *Id.* Since starting the program in Fall 2023, Tao has maintained continuous full-time enrollment and strong academic standing, with a current GPA of 3.8. *Id*She received straight A's in Spring and Summer 2024 and has actively contributed to the department's academic community. *Id.* Since starting her program, she has already had a paper accepted for presentation at the Midwestern Political Science Association conference. *Id.* It is currently in the process of publication. *Id.* ¶.

Ms. Tao has never been charged with a crime. *Id.* ¶ 6. Her only contact with law enforcement was in August 2024, when she became frightened of her boyfriend during a verbal altercation and called the police herself. *Id.* While the police took Ms. Tao into custody at the time as a precautionary measure, no charges were ever filed against her. *Id.*

Still, like the plaintiffs listed in the original Complaint, her SEVIS record was unlawfully terminated in April 2025. *Id.* ¶ 7. Within days of that termination, Ms. Tao further received word that her F-1 visa was revoked. *Id.* ¶ 9; *see also* Exhibit D (Email from Guangzhou Consulate) (Apr. 10, 2025). According to the email, her visa had been revoked under 8 U.S.C. § 1201(i). She was further told that this visa revocation was communicated to ICE, which "manages the Student Exchange Visitor Program and is responsible for removal proceedings. Ex. D.The email warned that remaining in the U.S. "can result in fines, detention, and/or deportation." *Id.* Had Ms. Tao's SEVIS status not been restored, she would have been unable to continue her studies, lost her funding for her doctoral program, and been left with no sources of income. Tao Decl. ¶ 9. And because her visa has not been restored, she is unable to go abroad to present her research at conferences in other countries, and has been unable to return home to visit her parents, whom she has not seen in over two years. *Id.* ¶ 10.

Yifeng Wu, another Chinese national, began his undergraduate studies in social work at NYU in the Fall of 2024. Wu Decl. ¶ 4. He maintained a GPA of around 3.5 in his Freshman year. *Id.* ¶ 5. Mr. Wu has never been convicted of any crime, much less a crime of violence. *Id.* ¶ 10. He has one arrest due to unlawful graffiti, but the charges were dropped. *Id.*

Like the others, Mr. Wu learned on April 8th that his SEVIS status was terminated. *Id.* ¶ 5. Mr. Wu also learned that his visa was revoked. *Id.* His SEVIS status was restored as a result of this litigation. *Id.* . ¶ 6. But his visa remains revoked. *Id.* ¶ 9. Because of his revoked visa, Mr. Wu cannot go back to Nanjing for an internship he had successfully applied for over the summer. *Id.* ¶ 11. He also cannot see his family for the duration of his studies, which will take several years, as he only recently finished his freshman year. *Id.* ¶¶ 4-5, 11.

Ms. Wanrong Li, also a Chinese national, graduated from the University of Southern California this past spring with a Master of Science in Analytics. Li Decl. ¶ 3. Her final GPA was 3.8. *Id.* She now works for ByteDance. *Id.* ¶ 4. Her role in e-commerce strategy focuses on developing and optimizing strategies for TikTok's global e-commerce business. *Id.*

In 2022, a neighbor called the police during a domestic dispute Ms. Li had with her boyfriend. *Id.* ¶ 11. Ms. Li was taken into protective custody at the time, but was never arrested or charged with any crime. *Id.* ¶ 11.

On April 6, she received an email from the U.S. Embassy in Tokyo telling her that her visa had been revoked under 8 U.S.C. § 1201(i). *Id.* ¶ 6; Ex. E Her email had functionally the same text as the one sent to Ms. Ting: she was told that this visa revocation was communicated to ICE, which "manages the Student Exchange Visitor Program and is responsible for removal proceedings, and warned that remaining in the U.S. "can result in fines, detention, and/or deportation." *Id.* Two days later, on April 8, she received notice from USC that her SEVIS status had been terminated. Li Decl. ¶ 7; Ex. E. This email also warned her about remaining in the U.S. Ex. E.

Despite these actions (and because of this lawsuit), Ms. Li was able to graduate shortly thereafter. Li Dec. ¶ 9. She now works for ByteDance under SEVIS's Optional Practical Training (OPT) program. *Id.* But, like the others, her F-1 visa has not been restored. *Id.* ¶ 8.

Ms. Li is approved for an H-1B visa to start in October. *Id.* ¶ 10. But until that visa is issued, she is currently in the United States with a visa that has been purported to have been revoked under 8 U.S.C. § 1201(i). *Id.* She cannot visit her family in China, which she hasn't seen in about eight months. *Id.* Her grandmother is elderly, and she greatly desires to spend

time with her while she can. *Id.*. And even once her H1-B visa is granted in October, Ms. Li is reasonably concerned that she will be deemed to have unlawfully remained in the United States, which would likely result in her being denied admission back into the country when she goes to visit her family. *Id.* ¶ 11.

ARGUMENT

To obtain a preliminary injunction, a plaintiff "must establish (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest." *Toyo Tire Holdings of Am. v. Cont'l Tire N. Am., Inc.*, 609 F.3d 975, 982 (9th Cir. 2010) (citing *Winter v. NRDC*, 555 U.S. 7, 20 (2008)). Alternatively, under the Ninth Circuit's "sliding scale test," a "plaintiff can support issuance of a preliminary injunction" if he raises "serious questions going to the merits"; shows that the "balance of hardships tips sharply" in his favor; establishes that a likelihood of irreparable harm exists; and, finally, demonstrates "that the injunction is in the public interest." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1134–35 (9th Cir. 2011) (cleaned up).

Here, Plaintiffs meet all four requirements for a preliminary injunction.

I. Plaintiffs are likely to succeed on the merits.

A. Section 1201(i) does not apply to mass cancellations ordered by subordinate State officials.

8 U.S.C. § 1201(i) states that "[a]fter the issuance of a visa or other documentation to any alien, the consular officer or the Secretary of State may at any time, in his discretion, revoke such visa or other documentation." This contrasts with 8 U.S.C. § 1182(f), which permits the President, only upon the finding that "the entry of any aliens or of any class of aliens into the United States would be detrimental to the interests of the United States," may "suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restricts he may deem to be appropriate."

So, while the INA gives the Secretary of State or the consular officer who issued a visa the right to revoke that visa, it does not give the power to suspend that visa to other parties or

permit the Secretary of State or consular official to delegate that power to others. It also does not give the Secretary of State or any consular official the ability to suspend classes of visas; that authority rests with the President (upon specific factual findings alone). It only allows the Secretary of State or the consular official to make individual determinations on specific visas.

As to immigration officials other than consular officials or the Secretary of State, this makes perfect sense. "Whether to grant a visa is a matter of the consular officer's discretion." *Gill v. Mayorkas*, No. C20-939 MJP, 2021 WL 3367246, at *7 (W.D. Wash. Aug. 3, 2021) (citing 8 U.S.C. § 1201(a)(1)). "Consular officials are also granted discretion to revoke visas." *Id.* (citing 8 U.S.C. § 1201(i)). But "immigration officers are assigned specific nondiscretionary roles regarding visas." *Id.* (citing, by example, 8 U.S.C. § 1201(e)). In contrast, "[n]ot even the Secretary of State has the power to review a consular official's visa decision." *Patel v. Reno*, 134 F.3d 929, 933 (9th Cir. 1997).

Likewise, the power to limit the Secretary of State and the consular officer who granted the visa to individual determinations also makes sense. The Secretary of State's or consular officer's cancellation of entire classes of visas would otherwise run contrary to the statutory and regulatory scheme for admission that runs through the INA. Likewise, the limitation of judicial review would have significant constitutional concerns if it permitted the Secretary of State to exclude entire classes or groups of individuals, particularly those already present, *see* § X, below, outside the specific statutory and regulatory scheme for removability. *Knoetze v. Dep't of State*, 634 F.2d 207, 210 (5th Cir. 1981) ("aliens within the country are constitutionally entitled to procedural due process") (*citing Schaughnessy v. U.S.*, 345 U.S. 206 (1953)); *see also of Kwong Hai Chew v. Colding*, 344 U.S. 590, 596 (1953). And it makes no sense to give the President limited power to revoke classes of visas, subject to ordinary judicial review, *see Washington v. Trump*, 847 F.3d 1151, 1163 (9th Cir. 2017), while giving lesser officials unlimited power, not subject to review except in individual removal proceedings.

As the *Patel* hearing transcript (*Doe* Dkt. 67 Ex. B) makes clear, these visa cancellations were not the result of individual decisions made by the Secretary of State or by any consular official. Rather, this was a single, unified policy made by ordinary State officials working with

ICE officials to do mass cancellations. Such authority is limited to the President alone, if at all, and only based on the findings required by 8 U.S.C. § 1182(f).

State may argue that the cancellations were rubber-stamped by consular officials. *See* Exs. D & E (email regarding cancellation from the Ghanzou and Tokyo Consular Offices). But there is no evidence in the record, nor can State provide any, that these were individual discretionary decisions by consular officials. State cannot simply borrow the immunity provided by 8 U.S.C. § 1201(i), by ordering consular officials to do its dirty work. This would be an end-around the rule that consular discretion is exercised by consular officials alone. *Patel*, 134 F.3d at 933.

Moreover, State's potential argument ignores exactly what Plaintiffs are trying to "set aside" under the APA. 5 U.S.C. § 706(2). They are trying to set aside the broad policy by State officials that led to the visa cancellations, rather than the individual visa cancellations themselves, which simply must be undone as a remedy to make Plaintiffs whole. *See Pietersen v. Dep't of State*, 138 F.4th 552, 560 (D.C. Cir. 2025) ("well settled that when plaintiffs pursue forward-looking challenges to the lawfulness of regulations or policies governing consular decisions, courts may review them"); *see also Make The Rd. New York v. Wolf*, 962 F.3d 612, 630 (D.C. Cir. 2020) (distinguishing between challenges to individual "orders denying discretionary relief" and to broader challenges to "implementing" a "scheme") (emphasis removed); *see generally Bennett v. Spear*, 520 U.S. 154, 177 (1997).

B. Section 1201(i) only applies to individuals who have not yet travelled to the U.S.

8 U.S.C. § 1201(i) similarly only applies to individuals who have yet to enter the country. A visa is an endorsement "placed in the traveler's passport, a travel document issued by the traveler's country of citizenship." [5] "Having a U.S. visa allows you to travel to a port of entry, airport or land border crossing, and request permission of DHS, CBP inspector to

[5] https://travel.state.gov/content/travel/en/us-visas/visa-information-resources/frequently-asked-questions/what-is-us-visa.html/.

enter the United States."[6] A visa is not necessary in and of itself to remain in the country (though failing to comply with the terms of a visa, such as overstaying beyond the terms of your visa, may make your deportable, 8 U.S.C. § 1227(a)(1)(C)). Indeed, ICE's own FAQs make clear that "[y]ou can stay in the United States on an expired F-1 visa as long as you maintain your student status." [7]

The way State interprets Section 1201(i), then, does not make logical sense. According to State's interpretation, Section 1201 allows any State official to terminate entire classes of visas of people who have already used them.

But that does not comport with the language of Section 1201(i). Section 1201(i) is not about the cancellation of a visa for those who have entered the country. Instead, Section 1201(i) expressly immunizes "transportation companies, and masters, and commanding officers, agents, owners, charterers, or consignees" who permit travel to the country on a visa: unless they received due notice of such revocation prior to the alien's embarkation."

In that light, and given the meaning of a visa, State's authority is clear. It permits cancellation of an issued visa "at any time" ***prior to when the recipient travels to the United States***. Any other interpretation would have serious constitutional consequences, and one would expect the provision to clearly state that State has the power to render an already legally admitted alien deportable. *See, e.g., Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1106 (9th Cir. 2001) ("courts have often read limitations into statutes that appeared to confer broad power on immigration officials in order to avoid constitutional problems"). It would also render certain situations entirely arbitrary. For instance, Section 1201(i) likely cannot go back so far in time to revoke visas that already expired on their own terms. But why could the Secretary render deportable someone who has legally entered under Section 1201(i) for the length of the visa period, but no longer? No explanation seems rational.

Likewise, State's interpretation of Section 1201(i) would render superfluous other provisions. For instance, 8 U.S.C. § 1182(a)(3)(C), the provision which was used by State to

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[6] Id.

[7] https://www.ice.gov/sevis/travel.

purportedly cancel the green card of Mahmoud Khalil, *see Khalil v. Trump*, 2025 WL 1514713 (D.N.J. May 28, 2025), requires specific findings about foreign policy and does not purport to include any jurisdiction stripping. *See also* Donald Trump, Additional Measures to Combat Anti-semitism 90 FR 8847, § 3(e) (instructing DHS, DOE, and DOJ to require universities to "monitor and report" campus activism to determine whether activists may be deemed inadmissible under 8 U.S.C. § 1182(a)(3)). The INA—for proper constitutional reasons—provides layers of procedural due process. *See, e.g., Castillo–Villagra v. INS*, 972 F.2d 1017 (9th Cir. 1992); *Barraza Rivera v. INS*, 913 F.2d 1443, 1447 (9th Cir. 1990). But under State's theory, all of that can be washed away, as a State official simply needs to recite the magic phrase "1201(i)" to not only remove all pre-removal-proceedings process entirely but to render the removal proceedings process effectively illusory. After all, the State would simply be relying on the unbridled discretion of its officials in any challenge.

State may point to two provisions that it may argue as contrary to this commonsense reading. The first, from Section 1201(i) itself, is that there "shall be no means of judicial review … except in the context of a removal proceedings if such revocation provides the sole ground for removal." State may claim that it suggests that State does have the power to render someone in this country removable. But that ignores the problem that Section 1201(i) was trying to get out. At a time when visas were entirely physical, it made sense that some DHS officials might allow an individual to enter the country on a visa that had been revoked under Section 1201(i) prior to embarkation. In that case, the alien would be deportable because he never entered the country on a valid visa in the first place. And it makes sense that this would only be challengeable in removal proceedings because the doctrine of consular non-reviewability would ordinarily not permit a person outside the country to challenge a visa decision. *Knoetze*, 634 F.2d at 210 (citing *Schaughnessy*). The jurisdiction stripping simply prevents someone from getting an improper benefit by entering the country on an already-revoked visa. But it would completely upend the entirety of the regulatory scheme if it could apply to individuals who have already entered on a visa. Then, the Secretary could render illusory any argument, protected by the constitutional right to due process, that someone

should not be removed for failure to comply with their visa, simply by invoking Section 1201(i).

State may separately point to 8 U.S.C. § 1227(a)(1)(b), which renders someone deportable who is "present in violation of law," which is defined as "[a]ny alien who is present in the United States in violation [of law] or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 1201(i) of this title." But this again is simply Congress just solving the same problem as above—what to do about someone who entered the country on a visa that had been revoked at the time of entry. And the structure of Section 1227 confirms this: Section 1227(a)(1)(b) is a component of 1227(a)(1), that is, "Inadmissible at time of entry or of adjustment of status or violates status." But someone who has had their visa revoked under 1221(i) was not, at the time of entry or adjustment of status, inadmissible. Nor, as explained above, have they violated status, even by remaining in the country without a visa under State's interpretation.

C. At minimum, Section 1201's stripping of judicial review does not apply to the broader policy decisions seeking to be set aside in this case.

As the D.C. Circuit explained in Pietersen, it is "well settled that when plaintiffs pursue forward-looking challenges to the lawfulness of regulations or policies governing consular decisions, courts may review them." 138 F.4th at 560; *see also Make The Rd. New York v. Wolf*, 962 F.3d 612, 630 (D.C. Cir. 2020) (distinguishing between challenges to individual "orders denying discretionary relief" and to broader challenges to "implementing" a "scheme") (emphasis removed); *Nakka v. USCIS*, 111 F.4th 995, 1002 ("When interpreting similar jurisdiction-stripping provisions of the immigration statutory scheme, the Supreme Court has long distinguished between the 'direct review of individual denials' of applications and 'general collateral challenges to [unlawful] practices and policies.'") (Brackets original) (citing *McNary v. Haitian Refugee Center*, 498 U.S. 479, 492 (1991), and *Reno v. CSS*, 509 U.S. 43, 56 (1993)).

There is a "presumption" that final agency action is reviewable under the APA. *Sackett v. E.P.A.*, 566 U.S. 120, 129 (2012). Final agency action is not merely the specific last act that harms a challenger under the APA. Instead, any "final" action that is "fairly traceable" to the harm suffered may be challenged under the APA. *Bennett*, 520 U.S. at 177. And for an action to be final, "two conditions must be satisfied." *Id.* "First, the action must mark the 'consummation' of the agency's decision-making process." Id. at 177-78 (citation omitted). "[S]econd, the action must be one by which 'rights or obligations have been determined,' or from which 'legal consequences will flow.'" *Id.* at 178. A policy that has "direct and appreciable legal consequences" constitutes final agency action challengeable under the APA. *See generally Bennett v. Spear*, 520 U.S. 154, 177 (1997). The challenge to the policy of using the NCIC to revoke visas, or, alternatively, the policy of revoking visas because ICE has unlawfully revoked SEVIS status, as this Court already found, qualifies.

1. The revocations here are contrary to 22 C.F.R. § 41.122(e).

22 C.F.R. § 41.122(e) allows for a consular official to revoke a visa under Section 221(i) in 9 instances, none of which apply here:

> (1) The alien obtains an immigrant visa or an adjustment of status to that of a permanent resident;
>
> (2) The alien is ordered excluded from the United States under INA 236, as in effect prior to April 1, 1997, or removed from the United States pursuant to INA 235;
>
> (3) The alien is notified pursuant to INA 235 by an immigration officer at a port of entry that the alien appears to be inadmissible to the United States, and the alien requests and is granted permission to withdraw the application for admission;
>
> (4) A final order of deportation or removal or a final order granting voluntary departure with an alternate order of deportation or removal is entered against the alien;
>
> (5) The alien has been permitted by DHS to depart voluntarily from the United States;
>
> (6) DHS has revoked a waiver of inadmissibility granted pursuant to INA 212(d)(3)(A) in relation to the visa that was issued to the alien;

> (7) The visa is presented in connection with an application for admission to the United States by a person other than the alien to whom the visa was issued;
>
> (8) The visa has been physically removed from the passport in which it was issued; or
>
> (9) The visa has been issued in a combined Mexican or Canadian B–1/B–2 visa and border crossing identification card, and the immigration officer makes the determination specified in § 41.32(c) with respect to the alien's Mexican citizenship and/or residence or the determination specified in § 41.33(b) with respect to the alien's status as a permanent resident of Canada.

Because none of these reasons are satisfied, the cancellations are invalid. *Wong v. Dep't of State*, 789 F.2d 1380, 1385 (9th Cir. 1986).

In *Noh*, the Ninth Circuit found that challenges to Section 1201(i) visa revocations are not challengeable for failure to follow the requirements of 22 C.F.R. § 41.122. *Noh v. I.N.S.*, 248 F.3d 938, 941 (9th Cir. 2001). But in *Noh*, the Court found that the Deputy Assistant Secretary of Visa Services was acting as a delegate of the Secretary of State, not as a consular official. (The petitioner in *Noh*, in contrast to the plaintiffs here, did not challenge whether the Secretary of State's authority under Section 1201(i) was delegable). And to the extent that the Government is defending its revocations because they were ultimately made by consular officials, that defense is simply not available to them here.

2. The policy is without legal authority, is arbitrary and capricious, and is not supported by substantial evidence.

The policy of using the NCIC to revoke visas, or, alternatively, the policy of revoking visas because ICE has unlawfully revoked SEVIS status, is without legal authority for the reasons explained in Sections A and B above. The policy simply is not permitted by Section 1201(i), and no other statutory provision permits it, either.

The policy is also arbitrary and capricious and unsupported by substantial evidence. The Government is likely to defend the policy on the basis that NCIC hits mean that the policy is designed to cancel visas and make deportable undesirable criminals. But, as the Plaintiffs in this case show, that government interest, if valid in the first instance, cannot be

met by simply doing a basic NCIC hit and terminating the visas of whoever shows up. Plaintiffs in this case show why.

Look at Jing Tao. Ms. Tao has never been arrested or charged with any crime, much less convicted. Tao Decl. ¶ 6. Instead, Ms. Tao ended up on the NCIC hit list because she called the police to protect herself against her boyfriend during a (verbal) fight. *Id*. The police took her into protective custody as a precautionary measure. *Id.* ¶ But because that protective custody was listed on NCIC, the mass visa cancellation program led to Ms. Tao's visa being revoked. *Id.* ¶ 7.

The other Plaintiffs are no different. The only significant difference between Li's situation and Tao's was that a neighbor called the police instead of Li herself. Li Decl. ¶ 12. But like Tao, Li was never arrested or charged with any crime. *Id*. Wu was arrested (but not convicted) of graffiti. Wu Decl. ¶ 10. But Congress has specifically made convictions (not arrests) of certain crimes grounds for removal. 8 U.S.C. § 1227(a)(2). And graffiti is not one of those crimes.

Section 1201(i) was not designed to do an end-around of the limits of 8 U.S.C. § 1227(a)(2). State's attempt to do so is arbitrary and capricious. And even if it was not in the abstract, the sloppy nature in which State did so here render its entire policy arbitrary and capricious as implemented. Moreover, the sloppy nature of connecting NCIC hits to criminal conduct renders those hits insufficient to show substantial evidence to support the policy. The policy should be set aside, and the visas should be reinstated as a result.

III. The other preliminary injunction factors support an injunction here.

Plaintiffs are already suffering irreparable harm. Due to their expired visas, they are unable to leave the country, whether it is to participate in academic conferences, work, vacation, or see family. *See* Background Section, above, and cited Declarations. Meanwhile, the balance of the equities necessarily tips in favor of the Plaintiffs, as the government "cannot suffer harm from an injunction that merely ends an unlawful practice." *Rodriguez v. Robbins*, 715 F.3d 1127, 1145 (9th Cir. 2013). For much the same reason, requiring the executive to

conform to the limitations placed by Congressional acts is always in the public interest. *E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 679 (9th Cir. 2021).

IV. The Court should set aside the visa revocation program and require restoration of all visas unlawfully revoked.

Under 5 U.S.C. § 706(2), this Court may "hold unlawful and set aside agency action." Under U.S.C. § 705, "the reviewing court . . . may [also] issue all necessary and appropriate process to postpone the effective date of an agency action or to preserve status or rights pending conclusion of the review proceedings."

"The factors considered in determining whether to postpone pursuant to § 705 'substantially overlap with the . . . factors for a preliminary injunction.'" *Nat'l TPS All. v. Noem*, No. 25-CV01766-EMC, 2025 WL 957677, at *20 (N.D. Cal. Mar. 31, 2025) (quoting *Immigrant Legal Res. Ctr. v. Wolf*, 491 F. Supp. 3d 520, 529 (N.D. Cal. 2020) ("ILRC")). For timing purposes, "[t]he 'status quo' to be restored is 'the last peaceable uncontested status existing between the parties before the dispute developed.'" *Id.* at *19 (quoting *Texas v. Biden*, 646 F. Supp. 3d 753, 771 (N.D. Tex. 2022), and citing *Boardman v. Pac. Seafood Grp.*, 822 F.3d 1011, 1024 (9th Cir. 016) (stating that "[t]he 'purpose of a preliminary injunction is to preserve the status quo ante litem pending a determination of the action on the merits,'" and "'[s]tatus quo ante litem' refers to 'the last uncontested status which preceded the pending controversy'")). Here, if the Court is not ready to set aside the policy at issue under Section 706, postponement under Section 705 should maintain the status quo from the time prior to State's visa revocations, as this was the last peaceable uncontested status before the dispute developed.

Where agency action is challenged as a violation of the APA, nationwide relief is commonplace. *See E. Bay Sanctuary Covenant v. Biden*, 993 F.3d 640, 680-81 (9th Cir. 2021) (in APA case, noting that there is "no general requirement that an injunction affect only the parties in suit" and, "[w]hen a reviewing court determines that agency regulations are unlawful, the ordinary result is that the rules are vacated—not that their application to the individual petitioners is proscribed"). And nothing in *Trump v. CASA*, 606 U.S. ----, 145 S. Ct.

2540 (2025), disturbed that rule. As the majority made clear, "[n]othing we say today resolves the distinct question whether the Administrative Procedure Act authorizes federal courts to vacate federal agency action. *See* 5 U.S.C. § 706(2) (authorizing courts to 'hold unlawful and set aside agency action')." *Id.* 2554 at n.10; *see also id.* at 2567 (stating similar) (Kavanaugh, J., concurring).

This Court properly postponed or set aside ICE's mass SEVIS cancellations under the APA. Dkt. 53 at 17-20. It should do the same with State's unlawful mass visa revocations.

CONCLUSION

The Court should amend its preliminary injunction to postpone or set aside the Department of State's unlawful NCIC visa policy and, as a result, require State to restore the visas of Plaintiffs and others which were purported to be revoked under the policy. It should leave the injunction as to ICE and DHS in place.

Dated: July 30, 2025

Respectfully submitted,
DEHENG LAW OFFICES PC

/s/ *Justin Sadowsky*
Justin Sadowsky
Attorneys for Plaintiffs Zhuoer Chen, Mengcheng Yu, Jiarong Ouyang, Jing Tao, Yifeng Wu, and Wanrong Li

EXHIBIT A

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ZHUOER CHEN, an individual; MENGCHENG YU, an individual; JIARONG OUYANG, an individual; JING TAO, an individual; YIFENG WU, an individual; and WANRONG LI, an individual;

Plaintiffs,

vs.

KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; and Marco Rubio, in his official capacity as Secretary of State;

Defendants.

Case No. 3:25-cv-03292-SI

DECLARATION OF JING TAO

I, Jing Tao, hereby declare as follows:

1. I am a Plaintiff in this case.

2. I am a citizen of China and I live in Dallas, Texas.

3. I am here on an F-1 visa.

4. I am currently a Ph.D. candidate in Political Science at the University of Texas at Dallas, with an expected graduation date of 2028. Since starting the program in Fall 2023, I have maintained full-time enrollment and strong academic standing, with a current GPA of 3.8. I received straight A's in Spring and Summer 2024 and have actively contributed to the department's academic community. Since starting my program, I have already had a paper accepted for presentation at the Midwest Political Science Association conference which is currently in the publication process.

5. At all times, I have complied with the terms of my F-1 visa.

6. I have never been charged with a crime. My only contact with law enforcement was in August 2024, when I became frightened of my boyfriend during a verbal altercation and called the police myself. While the police took me into custody at the time as a precautionary measure, no charges were ever filed against me.

7. My SEVIS record was unlawfully terminated in April 2025. Within days of that termination, I further received word that my F-1 visa was revoked.

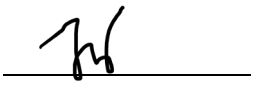
8. My SEVIS status has been restored.

9. Had my SEVIS status not been restored, I would have been unable to continue my studies, lost my funding for my doctoral program, and been left with no sources of income.

10. And because my visa has not been restored, I am unable to go abroad to present my research at conferences at other countries, and have been unable to return home to visit my parents who I have not seen in over two years.

11. I respectfully and urgently request an order from the Court to restore my F-1 visa.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Declaration is executed in Dallas, Texas on July 25, 2025



Jing Tao

EXHIBIT B

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And Wanrong Li

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ZHUOER CHEN, an individual; MENGCHENG YU, an individual; JIARONG OUYANG, an individual; JING TAO, an individual; YIFENG WU, an individual; and WANRONG LI, an individual; Plaintiffs, vs. KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; and Marco Rubio, in his official capacity as Secretary of State;	Case No. 3:25-cv-03292-SI **DECLARATION OF YIFENG WU**

Defendants.

I, Yifeng Wu, hereby declare as follows:

1. I am a Plaintiff in this case.

2. I am a citizen of China and I live in New York, New York.

3. I am here on an F-1 visa.

4. I began my undergraduate studies in social work at NYU in Fall 2024.

5. After maintaining a GPA of around 3.5 during my freshman year, I learned on April 8th that my SEVIS status was terminated.

6. My SEVIS status has been restored as a result of this litigation.

7. At all times, I have complied with the terms of my F-1 visa.

8. On April 10th, I received word from the State that my F-1 visa was cancelled.

9. Although my SEVIS status was restored on April 29th, my visa has not been restored.

10. I have never been convicted of any crime, much less a crime of violence. I have one arrest due to unlawful graffiti, but the charges were dropped.

11. Because of my revoked visa, I cannot return to Nanjing for an internship I had successfully applied for over the summer. I also cannot see my family for the duration of my studies.

12. I respectfully and urgently request an order from the Court to immediately restore my F-1 visa.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Declaration is executed in New York, New York on July 28, 2025.

Yifeng Wu

EXHIBIT C

Andre Y. Bates (SBN 178170) (aybates@dehengsv.com)
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Keliang (Clay) Zhu (SBN 305509) (czhu@dehengsv.com)
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Zhuoer Chen, Mengcheng Yu,
Jiarong Ouyang, Jing Tao, Yifeng Wu,
And Wanrong Li

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ZHUOER CHEN, an individual; MENGCHENG YU, an individual; JIARONG OUYANG, an individual; JING TAO, an individual; YIFENG WU, an individual; and WANRONG LI, an individual;

Plaintiffs,

vs.

KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; and Marco Rubio, in his official capacity as Secretary of State;

Case No. 3:25-cv-03292-SI

DECLARATION OF WANRONG LI

Defendants.

I, Wanrong Li, hereby declare as follows:

1. I am a Plaintiff in this case.

2. I am a citizen of China and I live in Los Angeles, California.

3. I graduated from the University of Southern California this past spring with a Master of Science in Analytics. My final GPA was 3.8.

4. I now work for ByteDance. My role is in e-commerce strategy, focusing on developing and optimizing strategies for TikTok's global e-commerce business.

5. At all times I have complied with the terms of my F-1 visa.

6. On April 6, I received an email from the U.S. Embassy in Tokyo telling me that my visa had been revoked under 8 U.S.C. § 1201(i). I was told that this visa revocation was communicated to ICE, which manages the Student Exchange Visitor Program and is responsible for removal proceedings. The email warned that remaining in the U.S. "can result in fines, detention, and/or deportation."

7. Two days later, on April 8, I received notice from USC that my SEVIS status had been terminated. This email also warned me about remaining in the U.S.

8. My SEVIS status was restored as a result of this litigation. But my visa remains revoked.

9. Despite these actions (and because of this lawsuit), I was able to graduate shortly thereafter. I now work for ByteDance under SEVIS's Optional Practical Training (OPT) program.

10. I am approved for an H-1B visa to start in October. But until that visa is issued, I am currently in the United States with a visa that has been purported to have been revoked under 8 U.S.C. § 1201(i). I cannot visit my family, who live in China and who I have not seen in about 8 months. My grandmother is elderly and she greatly desires to spend time with her while she can.

11. Even once my H1-B visa is granted in October, I am reasonably concerned that, absent this Court retroactively setting aside my visa cancellation, I will be deemed to have unlawfully remained in the United States, which would likely result in me being denied admission back into the country when I go to visit her family.

12. I have never been convicted of a crime. In 2022, a neighbor called the police during a domestic dispute I had with my boyfriend. I was taken into protective custody at the time but was never arrested or charged with any crime.

13. I respectfully and urgently request an order from the Court to restore my F-1 visa.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Declaration is executed in Los Angeles, California, on July 25, 2025.

Wanrong Li

EXHIBIT D

U.S. Visa Revocation Notification - (F1)- TAO, JING/ E35307135

GN

Guangzhou, NIV Inquiries <GuangzhouNIVI@state.gov>

To: Tao, Jing

Thursday, April 10, 2025 at 1:02 AM

Dear applicant TAO, JING,

We are writing about an important and serious matter in reference to your nonimmigrant student (F-1) visa.

On behalf of the United States Department of State, the Bureau of Consular Affairs Visa Office hereby informs you that additional information became available after your visa was issued. As a result, your F-1 visa with expiration date 25-APR-2028 has been revoked under Section 221(i) of the United States Immigration and Nationality Act, as amended.

The Bureau of Consular Affairs Visa Office has alerted the Department of Homeland Security's Immigration and Customs Enforcement, which manages the Student Exchange Visitor Program and is responsible for removal proceedings. They may notify your designated school official about the revocation of your F-1 visa.

Remaining in the United States without a lawful immigration status can result in fines, detention, and/or deportation. It may also make you ineligible for a future U.S. visa. Please note that deportation can take place at a time that does not allow the person being deported to secure possessions or conclude affairs in the United States. Persons being deported may be sent to countries other than their countries of origin.

Given the gravity of this situation, individuals whose visa was revoked may wish to demonstrate their intent to depart the United States using the CBP Home App at https://www.cbp.gov/about/mobile-apps-directory/cbphome.

As soon as you depart the United States, you must personally present your passport to the U.S. embassy or consulate which issued your visa so your visa can be physically cancelled.

You must not attempt to use your visa as it has been revoked. If you intend to travel to the United States in the future, you must apply for another U.S. visa and a determination on your eligibility for a visa will be made at that time.

Sincerely,

Nonimmigrant Visa Unit

U.S. Consulate General Guangzhou

EXHIBIT E

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And Wanrong Li

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

ZHUOER CHEN, an individual; MENGCHENG YU, an individual; JIARONG OUYANG, an individual; JING TAO, an individual; YIFENG WU, an individual; and WANRONG LI, an individual;

Plaintiffs,

vs.

KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland Security; TODD LYONS, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement; and Marco Rubio, in his official capacity as Secretary of State;

Case No. 3:25-cv-03292-SI

DECLARATION OF WANRONG LI

Defendants.

I, Wanrong Li, hereby declare as follows:

1. I am a Plaintiff in this case.

2. I am a citizen of China and I live in Los Angeles, California.

3. I graduated from the University of Southern California this past spring with a Master of Science in Analytics. My final GPA was 3.8.

4. I now work for ByteDance. My role is in e-commerce strategy, focusing on developing and optimizing strategies for TikTok's global e-commerce business.

5. At all times I have complied with the terms of my F-1 visa.

6. On April 6, I received an email from the U.S. Embassy in Tokyo telling me that my visa had been revoked under 8 U.S.C. § 1201(i). I was told that this visa revocation was communicated to ICE, which manages the Student Exchange Visitor Program and is responsible for removal proceedings. The email warned that remaining in the U.S. "can result in fines, detention, and/or deportation."

7. Two days later, on April 8, I received notice from USC that my SEVIS status had been terminated. This email also warned me about remaining in the U.S.

8. My SEVIS status was restored as a result of this litigation. But my visa remains revoked.

9. Despite these actions (and because of this lawsuit), I was able to graduate shortly thereafter. I now work for ByteDance under SEVIS's Optional Practical Training (OPT) program.

10. I am approved for an H-1B visa to start in October. But until that visa is issued, I am currently in the United States with a visa that has been purported to have been revoked under 8 U.S.C. § 1201(i). I cannot visit my family, who live in China and who I have not seen in about 8 months. My grandmother is elderly and she greatly desires to spend time with her while she can.

11. Even once my H1-B visa is granted in October, I am reasonably concerned that, absent this Court retroactively setting aside my visa cancellation, I will be deemed to have unlawfully remained in the United States, which would likely result in me being denied admission back into the country when I go to visit her family.

12. I have never been convicted of a crime. In 2022, a neighbor called the police during a domestic dispute I had with my boyfriend. I was taken into protective custody at the time but was never arrested or charged with any crime.

13. I respectfully and urgently request an order from the Court to restore my F-1 visa.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Declaration is executed in Los Angeles, California, on July 25, 2025.

Wanrong Li

Wanrong Li

EXHIBIT F

9 FAM 403.11

(U) NIV REVOCATION

(CT:VISA-2150; 04-29-2025)
(Office of Origin: CA/VO)

9 FAM 403.11-1 (U) STATUTORY AND REGULATORY AUTHORITIES

9 FAM 403.11-1(A) (U) Immigration and Nationality Act

(CT:VISA-1; 11-18-2015)

(U) INA 221(i) (8 U.S.C. 1201(i)).

9 FAM 403.11-1(B) (U) Code of Federal Regulations

(CT:VISA-1; 11-18-2015)

(U) 22 CFR 41.122.

9 FAM 403.11-2 (U) NIV REVOCATION

(CT:VISA-1; 11-18-2015)

(U) Regulations no longer distinguish between invalidation and revocation in cases when it is determined that the bearer of a visa is ineligible. The visa should be revoked in accordance with INA 221(i), 22 CFR 41.122 and this subchapter.

9 FAM 403.11-3 (U) WHEN TO REVOKE A VISA

9 FAM 403.11-3(A) (U) When You May Revoke Visas

(CT:VISA-1948; 03-07-2024)

(U) There are four circumstances under which you may revoke a visa:

(1) **(SBU)** You determine the individual overstayed, rendering the visa void under INA 222(g), or you determine that the individual is ineligible under INA 212(a) to receive such visa, unless an AO or SAO would be required for an ineligibility finding;

(2) **(U)** The individual is not eligible for the visa classification (this includes ineligibility under INA 214(b));

(3) **(U)** The visa has been physically removed from the passport in which it was issued; or

(4) **(U)** The individual is subject to an IDENT Watchlist record in System Messages for an arrest or conviction of driving under the influence, driving while intoxicated, or similar arrests/convictions (DUI) that occurred within the previous five years, pursuant to 9 FAM 403.11-5(B) paragraph c, below.

9 FAM 403.11-3(B) (U) When You May Not Revoke A Visa

(CT:VISA-1463; 02-01-2022)

a. **(U)** You do not have the authority to revoke a visa based on a suspected ineligibility or based on derogatory information that is insufficient to support an ineligibility finding, other than a revocation based on driving under the influence (DUI). A consular revocation must be based on an actual finding that the individual is ineligible for the visa.

b. **(U)** Under no circumstances should you revoke a visa when the individual is in the United States, or after the individual has commenced an uninterrupted journey to the United States, other than a revocation based on driving under the influence (DUI). Outside of the DUI exception, revocations of individuals in, or en route to, the United States may only be done by the Department's Visa Office of Screening, Analysis, and Coordination (CA/VO/SAC).

9 FAM 403.11-4 (U) REVOCATION PROCEDURES

9 FAM 403.11-4(A) (U) Visa Revocations by Consular Officers

(CT:VISA-2088; 10-02-2024)

(U) Although the decision to revoke a visa is a discretionary one, you should not use this authority arbitrarily. When practicable:

(1) **(U)** Notify the individual of the intention to revoke the visa;

(2) **(U)** Allow the individual the opportunity to show why the visa should not be revoked; and

(3) **(U)** Request the individual to present the travel document in which the visa was issued.

9 FAM 403.11-4(A)(1) (U) Required Procedures

(CT:VISA-2088; 10-02-2024)

a. **(U) Informing Individual of Intent to Revoke Visa:**

(1) **(U)** Notify the individual of the intent to revoke a visa if such notification is practicable. The notice of intent to revoke a visa affords the individual the opportunity to demonstrate why the visa should not be revoked. An after-the-fact notice that the visa has already been revoked is not sufficient unless prior notice of intent to revoke was not practicable.

(2) **(U)** A prior notification of intent to revoke a visa would not be practicable if, for instance, you do not know the whereabouts of the individual, or if the individual's departure is believed to be imminent. In cases where the individual can be contacted and travel is not imminent, prior notice of intent to revoke the visa is normally required, unless you have reason to believe that a notice of this type would prompt the individual to attempt immediate travel to the United States.

b. **(U) Physical Cancellation of Visa:** If a decision to revoke the visa is reached after the case has been reviewed, print or stamp the word "REVOKED" in large block letters across the face of the visa. Also date and sign this action. If you are at a post other than the one where the visa was issued, the title and location of your post should be written below the signature.

c. **(U) If the Individual Possesses Another Valid U.S. Visa:** When you have taken action to revoke a visa, you should determine whether the individual holds another current U.S. visa in the same or another passport. You should revoke that visa as well, if the grounds for revoking the first visa apply to any other visa the individual may hold, or if independent grounds for revocation apply. In the latter case, if practicable, give the individual an opportunity to rebut or overcome that ground(s) of ineligibility.

d. **(SBU) Entering Revocations into CLASS:** Revoke the visa in NIV and enter any new ineligibilities or derogatory information into CLASS. Prompt entry into CLASS is essential. In addition to the ineligibilities, enter the lookout code "VRVK" into CLASS when you revoke a visa but you cannot physically cancel it. Send a CLOK Deletion request for the VRVK lookout, whether entered by a visa section or by the Department, before a new visa can be issued, or the revoked visa can be reinstated following the revocation. CLASS may also show a CBP-entered VRVK lookout from TECS. Follow guidance in 9 FAM 303.3-5(H) paragraph 19(c) on removing VRVK lookouts when a new visa is issued, or the revoked visa is being reinstated.

e. **(SBU) Visa Erroneously Issued by Another Consular Section:** If you determine that a consular section has erroneously issued a visa, you should inform that section in detail of your findings. Such a report could form the basis for revoking the visa, initiated by the issuing consular section or by the reporting consular section, with the concurrence of the issuing consular section.

If there is a difference of opinion between consular sections, the case should be submitted to the Department (VO-Revocations@state.gov) for guidance.

9 FAM 403.11-4(A)(2) (U) When to Notify Department Regarding Revocation

(CT:VISA-1948; 03-07-2024)

a. **(U)** If a visa is physically cancelled before the individual's departure to the United States, then there is no need to report the revocation to the Department, except in cases involving A, G, C-2, C-3, or NATO visas.

b. **(U)** L/CA, the Diplomatic Liaison Division (CA/VO/DO/DL), the Chief of Protocol (S/CPR), and the appropriate country desk should be promptly notified whenever any diplomatic or official visa, or any visa in the A, G, C-2, C-3, or NATO classification is revoked.

c. **(U)** See 9 FAM 403.11-4(C)(1) below for more information about notifying the Department of visa revocations that may have political, public relations, or law enforcement consequences.

9 FAM 403.11-4(B) (SBU) Procedures When Derogatory Information Received

(CT:VISA-2088; 10-02-2024)

a. **(SBU)** If you receive derogatory information on an individual outside the context of a pending visa application, and the information may be sufficient to render the individual ineligible for a visa, you should first check the CCD to determine whether the individual may be in possession of a valid visa. If not, the individual's name should be entered in CLASS under the appropriate "P" (quasi) ineligibility code, pending some future visa application by the individual. If the individual does have a valid visa, you should follow the required procedures for processing visa revocation, in accordance with this section.

b. **(SBU)** When reviewing a visa for revocation because of information which may come to light after issuance of a visa, and the subject is either in the United States or en route, or the information involves a potential ineligibility that requires an AO or SAO, you must seek and obtain Department guidance by contacting the VO Visa Revocations unit (VO-Revocations@state.gov) in VO/SAC.

c. **(U)** See 9 FAM 402.8-8, Procedures to be Followed When Derogatory Information Received.

9 FAM 403.11-4(C) (U) Revoking Visas in Sensitive

Cases

9 FAM 403.11-4(C)(1) (U) Keeping Department Informed in High Profile Cases

(CT:VISA-1948; 03-07-2024)

a. **(U)** You should be alert to the political, public relations, and law enforcement consequences that can follow a visa revocation and should work with the Department to ensure that all legally available options are fully and properly assessed. The revocation of the visa of a public official or prominent local or international person can have immediate and long-term repercussions on our political relationships with foreign powers and on our public diplomacy goals in a foreign state. The visa laws must be applied to such persons like any others, recognizing that certain visa categories, particularly A's and G's, are not subject to the same standards of ineligibility as others. Hasty action, however, must be avoided in such high-profile visa cases and you should seek the Department's guidance before any visa revocation unless unusual and exigent circumstances prevent such a consultation. Consultation both within the mission and with the Department may result in a decision that the Department, rather than the consular officer, should undertake the revocation, since Department revocations pursuant to the Secretary's revocation authority provide more flexibility in managing the relevant issues.

b. **(U) When to Consult with the Department:**

(1) **(U)** You are responsible for keeping the Department (CA/VO/SAC, CA/VO/F, L/CA, and the appropriate country desk) informed of visa actions that may affect our relations with foreign states or our public diplomacy, or that may affect or impede ongoing or potential investigations and prosecutions by U.S. and other cooperating foreign law enforcement agencies.

(2) **(U)** This is particularly true when you use the power granted under INA 221(i) as implemented in 22 CFR 41.122 and this section, to revoke the visas of officials of foreign governments, prominent public figures, and subjects or potential subjects of U.S. and foreign criminal investigations.

(3) **(U)** In such cases, you should seek the Department's guidance before any visa revocation unless unusual and exigent circumstances prevent such a consultation. In the rare cases in which advance consultation is not possible, you should inform the Department immediately after the revocation.

c. **(SBU) Requesting Department Concurrence Before Revocation:** In cases in which a SAO to CA/VO/SAC or an AO to L/CA is required to make an ineligibility finding, you must notify the CA/VO/SAC revocations team (VO-Revocations@state.gov) so it may consider whether a prudential revocation would be appropriate. If a visa is prudentially revoked by the Department, a

new AO or SAO would still be required if the individual submitted a new visa application. You do not need to request the Department's concurrence to revoke a visa under 214(b) or 212(a) grounds that do not require an AO or SAO.

9 FAM 403.11-4(C)(2) (U) Diplomatic and Official Visas

(CT:VISA-1650; 11-21-2022)

(U) You must keep in mind that most A, G, C-2, C-3, and North Atlantic Treaty Organization (NATO) visa categories are exempt from most INA 212(a) ineligibility provisions per 22 CFR 41.21(d). Precipitant action must be avoided in cases involving foreign government officials and other prominent public figures. Consultations at post and with the Department might result in the decision that the Department, rather than the consular officer, should undertake the revocation. The Department's revocation authority provides more flexibility in managing relevant issues. For example, Department revocations may be undertaken prudentially, rather than based on a specific finding of ineligibility and are not subject to the 22 CFR 41.122 requirement with respect to notification to the individual.

9 FAM 403.11-4(C)(3) (U) When Revocation Subject is Subject of Criminal Investigation

(CT:VISA-2088; 10-02-2024)

a. **(U)** In cases in which the individual whose visa is revocable is also the subject of a criminal investigation involving U.S. law enforcement agencies, action without prior Department consultation and coordination could:

   (1) **(U)** Jeopardize an ongoing investigation;

   (2) **(U)** Prejudice an intended prosecution;

   (3) **(U)** Preclude apprehension of the subject in the United States;

   (4) **(U)** Put informants at risk; or

   (5) **(U)** Damage cooperative law enforcement relationships with foreign police agencies.

b. **(SBU)** When you suspect that the visa revocation may involve U.S. law enforcement interests, consult with the law enforcement agencies at post and inform the Department (CA/VO/SAC revocations team at VO-Revocations@state.gov) of the case and of post's proposed action, to permit consultations with potentially interested entities before a revocation is made. Law enforcement's interest in the continued ability of an individual to travel is not a reason to decline to revoke or submit a revocation to the Department when you know or suspect the individual to be ineligible for the visa. The Department can assist law enforcement and other agencies with facilitating

travel for individuals who are or may be ineligible for visas, so coordination with the Department is essential in such cases. Direct questions about travel facilitation to the travel facilitation team at LawEnforcementVisa@state.gov.

c. **(U)** In deciding what cases to report in advance to the Department, err on the side of prudence. It is always better to report cases requiring no Department action rather than having to inform the Department after the fact in a case that has adverse consequences for U.S. law enforcement or diplomatic interests. Contact CA/VO/SAC and other functional bureaus, as appropriate.

9 FAM 403.11-5 (U) REVOCATION OF VISAS BY THE DEPARTMENT

(CT:VISA-1948; 03-07-2024)

a. **(U)** When the Department revokes a visa, when possible, a revocation notice will be sent to the consular section by email furnishing a point of contact in the Visa Office. You must follow the instructions in the revocation notice.

b. **(U)** Although the Department is not required to notify an individual of a revocation done pursuant to the Secretary's discretionary authority, you should do so unless instructed otherwise, especially in cases where the revoked visa was issued to a government official.

9 FAM 403.11-5(A) (U) Notice to Department of Presence in United States

(CT:VISA-2150; 04-29-2025)

a. **(SBU)** Whenever you believe that an individual, whose visa is subject to revocation, has commenced an uninterrupted journey to, or is already in the United States and physical cancellation of the visa is not possible, immediately inform the Department (CA/VO/SAC) of the grounds of ineligibility or other adverse factors by email at VO-Revocations@state.gov.

b. **(U)** Upon receipt of your report, the Department will decide whether the visa should be revoked. Alternatively, the Department may inform DHS of the data submitted and give DHS an opportunity to initiate proceedings under the pertinent provisions of INA 237. If the latter course is followed, the Department will request that DHS advise the Department of the individual's date of departure and destination, so the individual's *visa may be physically canceled after their* departure from the United States.

9 FAM 403.11-5(B) (U) Prudential Revocations

(CT:VISA-2150; 04-29-2025)

a. **(U)** Although you usually may revoke a visa only if the individual is ineligible

under INA 212(a), or INA 214(b), or is no longer entitled to the visa classification, the Department may revoke a visa if an ineligibility or lack of entitlement is suspected, when an individual would not meet requirements for admission, or in other situations where warranted. This is known as a "prudential revocation." In addition to the conditions described in 9 FAM 403.11-5(A) above, the Department may revoke a visa when it receives derogatory information directly from another U.S. Government agency, including a member of the intelligence or law enforcement community. These requests are reviewed by CA/VO/SAC/RC, which forwards an electronic memo requesting revocation to a duly authorized official in the Visa Office, along with a summary of the available intelligence and/or background information and any other relevant documentation. When prudential revocation is approved, the subject's name is entered into CLASS, the visa case status is updated to "Revoke", and the revocation is communicated within the Department and to other agencies by the following means:

(1) **(SBU)** For a prudential revocation, the "VRVK" code will be entered as well as any applicable quasi-ineligibility ("P") code that corresponds to the suspected ineligibility. The visa case status will be updated to "Revoked".

(2) **(SBU)** We notify NTC of *every* revocation. *We also* send a revocation notice to the issuing post with specific processing instructions, *including instructions to contact CA/VO/SAC/RC with any concerns or questions about the revocation*. If the revocation relates to INA 212(a)(3)(A) or (B), DHS's Counterterrorism and Criminal Exploitation Unit is also notified.

(3) **(SBU) Silent Revocation:** If law enforcement interests require that the subject remain unaware of U.S. Government interest, post will be informed of the revocation but instructed not to notify the subject, through a "silent revocation". *Unless a subject is already in law enforcement custody, all "prudential revocations effective immediately" under 9 FAM 403.11-5(C) below will be considered to be silent revocations*.

b. **(SBU)** All the Department's revocations are prudential revocations, which do not constitute permanent findings of ineligibility. Prudential revocations simply reflect that, after visa issuance, information surfaced that has called into question the subject's continued eligibility for a visa. Subjects of prudential revocations are free to reapply and reestablish their eligibility. If a subject of a CLASS code of "VRVK" and "DPT-00" or any quasi-ineligibility code that requires an SAO (e.g., P3B, P212f), reapplies, you must submit an SAO to CA/VO/SAC. An AO usually is not required following non-security revocations, unless the quasi-ineligibility code relates to an ineligibility for which an AO is required (e.g., P2I, P3A2). In the case of visas revoked by another post, coordinate with the revoking post to ensure you have all information essential to making an eligibility determination. If there is disagreement between posts about whether an ineligibility applies, contact your L/CA portfolio holder.

c. **(U) Prudential Revocation for Driving Under the Influence:** Either the

consular section or the Department has the authority to prudentially revoke a visa based on a potential INA 212(a)(1)(A) ineligibility when an IDENT Watchlist Record appears in System Messages for a CJIS Search of US-VISIT or a CJIS Search of OBIM record. Before doing so, re-send the fingerprints to NGI to obtain a RAP sheet for an arrest or conviction of driving under the influence, driving while intoxicated, or similar arrests/convictions (DUI) that occurred within the previous five years. This does not apply when the arrest has already been addressed within the context of a visa application; i.e., the individual has been through the panel physician's assessment due to the arrest. This does not apply to other alcohol related arrests such as public intoxication that do not involve the operation of a vehicle. Unlike other prudential revocations, you do not need to refer the case to the Department but can prudentially revoke on your own authority. Process the revocation from the Spoil tab NIV and add P1A3 and VRVK lookouts from the Refusal window.

9 FAM 403.11-5(C) (SBU) Prudential Revocations Effective Immediately

(CT:VISA-2150; 04-29-2025)

a. ***(SBU)*** *The Department may revoke a visa, effective immediately, on a case-by-case basis at the written request of the Department of Homeland Security in extraordinary cases where a visa holder poses a significant security threat to the United States, and the Department of Homeland Security has no other basis for removal. This includes both a visa holder who is at the port of entry but has not yet been admitted or a visa holder who has status inside the United States. Revocation at port of entry makes it possible for the Department of Homeland Security to deny admission on the basis that the alien lacks a valid visa.*

b. ***(SBU)*** *Immediate revocation for visa holders physically present within the United States, where the visa revocation will be used as the sole basis as removal by DHS, requires heightened scrutiny and compliance with the procedure outlined in the following subsection. Under the INA, these revocations may be subject to judicial review.*

c. ***(SBU) Requests for an Immediate Revocation:*** *The Department will consider approving revocation of a visa, effective immediately, in certain circumstances. As these circumstances generally will involve an alien at or traveling to a U.S. port of entry, or otherwise an alien who is subject to an enforcement action by DHS, these requests will generally come from DHS components. In such scenarios, the Department will require that DHS headquarters submit an electronic letterhead memo to the Department requesting immediate revocation and outlining the facts of the case and the steps that DHS has taken. Specifically, the memo must:*

(1) ***(SBU)*** *Reflect a request from DHS Headquarters (not a field office or component agency) and be requested at the Deputy Assistant Secretary, or*

equivalent, level. The memo must reflect clearance by relevant legal and operational offices, and be addressed to the Deputy Assistant Secretary of the Visa Office;

*(2) **(SBU)** Describe the nature of the security threat and enforcement interest and establish that immediate visa revocation is essential to remove the alien from the United States; and*

*(3) **(SBU)** Articulate whether law enforcement interests require that the subject remain unaware of the U.S. Government interest (to necessitate a "silent revocation").*

*d. **(SBU)** Every request for immediate revocation will be cleared through the VO Front Office, including consultation with L/CA and the VO Managing Director if the circumstances fall short of an imminent threat to national security or public safety.*

*e. **(SBU)** If approved, the Department will return a letterhead memo to the Department of Homeland Security specifying that the Department has revoked the visa, effective immediately, with the effective date of the revocation, and will specify that the immediate revocation was made at the request of DHS. This letter will generally be approved for use by DHS in immigration court if necessary for the removal of the subject from the United States. If denied, the Department will notify the Department of Homeland Security of its decision. The Visa Office, as previously described in 9 FAM 403.11-5(B), will enter the subject's name into CLASS and the visa case status will be updated to "Revoked."*

9 FAM 403.11-6 (U) RECONSIDERATION OF REVOCATIONS

9 FAM 403.11-6(A) (U) Reinstatement Following Revocation

(CT:VISA-2088; 10-02-2024)

(SBU) In cases where the visa has been prudentially revoked by the Department, the individual must apply for a new visa if they wish to travel to the United States. The appropriate venue for the individual to refute the basis of the revocation or present new information following a Department prudential revocation is a new application and interview. The Department usually will not reinstate a visa unless the visa was revoked because of our error (e.g., the Department mistakenly revoked the visa of someone with the same name). If a visa has been revoked at post and you later determine that the reason for revocation has been overcome and the individual is no longer ineligible, or if the visa was revoked by the Department in error, and the visa has not been physically cancelled, then the visa

should be reinstated in accordance with the appropriate procedure as indicated below. Follow the procedures listed below promptly in every case.

(1) **(SBU) If Visa Has Been Revoked but No Further Action Taken:** If the visa has not been physically canceled, and if notices of revocation have not been sent, enter a summary of the pertinent facts into the case notes in CCD indicating that the revocation was withdrawn. Posts should submit CLOK removal requests for any revocation-related entries and contact the CA Service Desk for removal of the red REVOKED banner in the CCD (or contact VO-Revocations@state.gov if the revocation was processed by the Department).

(2) **(U) If Visa Has Been Revoked and Physically Canceled:** If a visa has been revoked and the revoked visa physically canceled, the individual may apply for a new visa; however, they may not travel on the physically cancelled visa.

(3) **(SBU) If Revocation Appears to Have Been Overcome at Stopover Location:** If, after interviewing the individual, the consular officer at the stopover post concludes that the basis for revocation has been overcome, the individual is no longer ineligible. If the visa has not been physically cancelled, reinstatement of the visa in accordance with 9 FAM 403.11-6(A) above may be warranted. The stopover post should inform the revoking post in detail of its findings, cc'ing CA/VO/SAC. Such a report could form the basis for reinstatement of the visa initiated by the revoking post or the stopover post, if it had the concurrence of the revoking post.

(4) **(SBU) Resolving Differences of Opinion:** If posts have a difference of opinion, the case should be submitted to the Department (L/CA for non-security related revocations or CA/VO/SAC for security, foreign policy, or human rights related revocations) for determination. Should a determination to reinstate the visa be made, the revoking post, which may be presumed to hold the bulk of pertinent data on the case, would have the responsibility to take the reinstatement actions described above, and update and revise entries in CLASS.

9 FAM 403.11-7 (U) ACTIONS BY DHS

9 FAM 403.11-7(A) (U) Cancellation of Visas by Immigration Officers Under 22 CFR 41.122(e)

(CT:VISA-2088; 10-02-2024)

a. **(U) When a visa is canceled by a DHS officer, one of the following notations will normally be entered in the individual's passport:**

(1) **(U)** Canceled. Adjusted;

(2) **(U)** Canceled. Excluded. DHS (Office) (Date);

(3) **(U)** Canceled. Application withdrawn. DHS (Office) (Date);

(4) **(U)** Canceled. Final order of deportation/voluntary departure entered DHS (Office) (Date) Canceled. Departure required. DHS (Office) (Date);

(5) **(U)** Canceled. Waiver revoked. DHS (Office) (Date); and

(6) **(U)** Canceled. Presented by impostor. DHS (Office) (Date).

b. **(U)** Except when a visa is canceled after the individual's status has been adjusted to that of a permanent resident, DHS will inform the consular section that issued the visa of the cancellation action. The I-275, Withdrawal of Application/Consular Notification form, will be used to inform consular officers at the issuing office of the cancellation action. The I-275 form and any other attached forms should not be released to individuals or their representatives.

9 FAM 403.11-7(B) (U) Voidance of Counterfeit Visas

(CT:VISA-1275; 05-10-2021)

(U) When DHS has determined through examination that a visa has been altered or is counterfeit, it will void the visa by entering one of the following notations on the visa page, together with the action officer's signature, title, and office location:

(1) **(U)** Counterfeit visa per testimony of individual (file number); or

(2) **(U)** Counterfeit visa per telecon, letter, e-mail from U.S. Embassy (U.S. Consul).