

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

JOHNS HOPKINS UNIVERSITY;

Plaintiff,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY;**

**U.S. IMMIGRATION AND CUSTOMS
ENFORCEMENT;**

CHAD WOLF, in his official capacity as
Acting Secretary of the U.S. Department of
Homeland Security; and

MATTHEW ALBENCE, in his official
capacity as Acting Director of the U.S.
Immigration and Customs Enforcement;

Defendants.

Case No. 20-cv-1873

DECLARATION OF SUNIL KUMAR

I, Sunil Kumar, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am the Provost and Senior Vice President for Academic Affairs of Johns Hopkins University and have served in that capacity since September 1, 2016. In this role, I serve as the chief academic officer and one of only two Senior Vice Presidents in the University. As part of my responsibility to ensure that Johns Hopkins fulfills its pedagogical mission as a premier academic and research institution, I oversee and coordinate the university's nine schools, as well as several interdisciplinary programs and academic centers.

2. Before becoming Provost, I was the Dean of the University of Chicago's Booth School of Business, and before that I spent 14 years on the faculty of the Stanford University

Graduate School of Business, where I held multiple positions, including senior associate dean for academic affairs. Born in India, I also hold a Master of Engineering degree in computer science and automation from the Indian Institute of Science in Bangalore, and a Bachelor of Engineering degree from Mangalore University in Surathkal. In 1992, I obtained an F-1 visa in order to study at the University of Illinois at Urbana-Champaign, from which I received a Ph.D. in electrical engineering.

3. Johns Hopkins has 27,000 students and is comprised of nine academic divisions, 11 campuses, and more than 260 programs in the arts and music, humanities, social and natural sciences, engineering, international studies, education, business, and health professions, including medicine, nursing, and public health. The Krieger School of Arts and Sciences and the Whiting School of Engineering (which together constitute the majority of the University's undergraduate students), are primarily located on the Homewood campus in Baltimore. The Bloomberg School of Public Health, the School of Medicine, and the School of Nursing are primarily located on the East Baltimore campus. The Carey Business School and Peabody Institute campuses are primarily located in Baltimore's Harbor East and Mount Vernon neighborhoods, respectively. The Paul H. Nitze School of Advanced International Studies has its primary campus in Washington, D.C., with additional campuses in Bologna, Italy and Nanjing, China. The School of Education has its primary campus on the Homewood campus in Baltimore, but offers courses and programs at our Montgomery County campus (in Rockville, Maryland), and Columbia Center (in Columbia, Maryland).

4. As the chief academic officer, I directly oversee the deans of each of the university's academic divisions. Given the sprawling nature of Johns Hopkins' schools, both in terms of academic discipline and geography, one of the primary objectives of my office is to

support each school in exercising its academic discretion to develop policies, procedures, and practices that best serve its unique needs, while at the same time ensuring that those policies, procedures, and practices further certain fundamental and enduring values of Johns Hopkins as a whole.

5. Among our core values is ensuring the health and safety of the students, faculty, staff, and other members of the Johns Hopkins community.

6. Equally important is the advancement of Johns Hopkins' academic mission, including developing skilled, thoughtful, and culturally sensitive global leaders who will be prepared to address the myriad challenges facing the United States and international community in their respective disciplines. Consistent with Johns Hopkins' global profile, the university's guiding purpose is to educate its students and cultivate their capacity for lifelong learning, to foster independent and original research, and to bring the benefits of discovery to the world. As Johns Hopkins' first president said in his inaugural address, "Our simple aim is to make scholars, strong, bright, useful, and true." This objective remains true today.

7. An indispensable component of fulfilling Johns Hopkins' mission is the participation of international students in our academic programs. As a global research university, Johns Hopkins is enriched by its ability to welcome undergraduate and graduate students, faculty, staff, researchers, and trainees with different academic and practical training, experiences, cultural backgrounds, and perspectives. This diversity of thought and experiences is enhanced by attracting and nurturing talent from around the world. The university's diverse academic community includes more than 7,000 international students, faculty, staff, researchers, and trainees, hailing from more than 120 nations. Immigrants, foreign-born scholars, and international students grace every corner of Johns Hopkins' academic footprint, from its most

senior leadership positions to its residence halls, labs, classrooms, music studios, and hospitals. Without participation of Johns Hopkins' international students, the university's academic community as presently constituted would be severely diminished.

8. It is against this backdrop that Johns Hopkins has endeavored to respond to the COVID-19 crisis and navigate the uncertain times in which the university finds itself. In my role as Provost, I have been intimately involved in Johns Hopkins' decision-making regarding the university's response to the COVID-19 pandemic. Among other things, I have (a) ensured that decisions taken during the pandemic are consistent with the independent advice of the Health Advisory Group (which is comprised of expert Johns Hopkins faculty charged with advising the university's senior leadership on COVID-19 issues and ways to continue safely carrying out Johns Hopkins' academic mission); (b) oversaw the university's JHU 2020 Planning efforts, including the Planning Task Force, which is charged with gathering evidence, obtaining advice from COVID-19 and public health experts, and developing and delivering recommendations to the deans and leadership of Johns Hopkins' various schools and programs; and (c) consulted on a daily, ongoing basis with epidemiologists, medical experts, senior administrators at Johns Hopkins' peer schools, and others on a wide range of topics relevant to returning students to campus and protecting their safety during instruction. These endeavors have involved hundreds of hours of meetings, review of data, preparation of planning documents, town halls and other outreach to ensure that our decisions are considered, thoughtful, nuanced and based on the best empirical data and scientific and public health judgments.

9. Flexibility and data-driven responsiveness have been the hallmarks of Johns Hopkins' COVID-19 response. Based in part on the university's status as the one of the world's foremost data sources regarding the COVID-19 pandemic, Johns Hopkins benefits from up-to-

the-minute, world-leading expertise and data regarding the pandemic. This enables Johns Hopkins to make real-time decisions based on the best information available about the pandemic and the disease. Given this unique position, Johns Hopkins has committed to making every effort to provide instruction as we normally would, consistent with the precautions necessary at any given time. For example, if the university's doctors, epidemiologists, and other COVID-19 experts tell us that, based on conditions in the Nanjing campus, it is safe to hold in-person seminars so long as participants wear masks and observe physical-distancing protocols, then academic programs in Nanjing will be permitted to conduct such seminars (if, of course, we further determine it is pedagogically advisable to do so). But if our experts believe the same approach would not be safe at the Homewood campus, such seminars would not be permitted. And if things get worse (or better) in Nanjing (or Baltimore), the university could suspend (or resume) such seminars, or impose appropriate conditions necessary to make them safe.

10. Put simply, it is Johns Hopkins' judgment that a nuanced, fluid approach that accounts for real-time conditions on the ground appropriately balances pursuit of our academic mission with the health and safety of the Johns Hopkins community.

11. As a result of this approach, individual Johns Hopkins academic divisions have adopted varying plans for the fall 2020 semester. For example, the Carey Business School has determined that, so long as it is permissible to do so, students taking in-person courses in the fall will spend part of their time in the classroom with small groups of students and the rest of their time participating with the class remotely, with discussion groups and projects conducted remotely depending on the specifics of the course; our undergraduate programs at the Krieger School of Arts and Sciences, the Whiting School of Engineering, and the Peabody Institute have

similar plans. By contrast, other schools, and individual programs within those schools, are considering adopting an entirely remote curriculum.

12. While ensuring flexibility and responsiveness, and preserving for each academic division freedom to adopt nuanced programs tailored to its unique circumstances, Johns Hopkins has implemented a number of university-wide safety measures. For example, in order to reduce the number of students sharing rooms and enhance safety on and around campus, the university secured rooms for its residential undergraduate students in nearby hotels in which they would be charged subsidized rates, despite the higher premium costs borne by the university. In addition, to avoid the risk inherent in a potential late-autumn resurgence of the virus, the university initially announced that in-person instruction for undergraduates would cease after the Thanksgiving holiday, which would allow students to return to their families without the burden and risks associated with a return to campus to complete the semester. To enhance safety and reduce transmission of the COVID-19 virus, the university made the decision to require that all classes of 50 or more students be held only by remote mechanisms.

13. At the time the Planning Task Force and broader Johns Hopkins leadership was developing plans for the fall 2020 semester, we considered the impact that various modes of learning and instruction would have on the immigration status of our international students. In particular, we were aware of, and relying on, the March 13, 2020, United States Immigration and Customs Enforcement (“ICE”) COVID-19 Guidance for Student and Exchange Visitor Program Stakeholders (the “March 13 Guidance”). That guidance explained that students in the United States holding F-1 visas would be permitted to “count online classes towards a full course of study” in the event their school temporarily stopped in-person classes, regardless whether the visa holders remain in the United States. This announcement was important because, before the

March 13 Guidance, international students were permitted to take only one online class per semester and risked visa cancellation if they did not conduct their studies in-person and from the United States. ICE issued the March 13 Guidance the same day the President of the United States declared a national emergency resulting from COVID-19, and the March 13 Guidance stated it would remain “in effect for the duration of the emergency.”

14. In formulating, adopting, and implementing plans for the fall 2020 semester, Johns Hopkins relied on ICE’s assurance that the March 13 Guidance would continue so long as the COVID-19 crisis remained in effect.

15. I was shocked then when I learned on July 6, 2020 that ICE had issued a directive (the “July 6 Directive”) that effectively reverses the March 13 Guidance. As best I understand it (and a great deal of confusion, uncertainty, and anxiety exists around relevant contours), the July 6 Directive requires Johns Hopkins to, among other things, (a) decide, by July 15, whether any academic program will proceed only by remote means and if so, disclose those programs to ICE; (b) update, by August 1, the operational plans on file with ICE for each academic program and determine whether the program will be solely in-person classes, delayed or shortened sessions, or a hybrid of in-person and remote classes; (c) update, on an ongoing basis, the operational plans on file with ICE, within 10 days of any change in the program’s “operational posture”; and (d) update and reissue, by August 4, the I-20 forms for *every single* Johns Hopkins student who holds an F-1 visa.

16. There is no way for Johns Hopkins to comply with these requirements without incurring exposure, risks, and costs that no university should be expected to bear. Updating and reissuing a student’s Form I-20 is a time-consuming process. It requires gathering information from the student, including detailed financial information, as well as university databases. It can

take even an experienced administrator familiar with the process up to 30 minutes to update and reissue a Form I-20. With more than 5,000 students studying at Johns Hopkins on F-1 visas, that translates approximately 2,500 hours of work in the best case scenario. Johns Hopkins' Office of International Student and Scholar Services, which reports up through me, simply lacks the appropriately trained personnel to complete this work consistent with other obligations in the time allotted under the July 6 Directive. And even if the university were staffed and equipped to gather and update students' information in the forms, the July 6 Directive's terms are so confusing and unclear to administrators and students that their impact has upended our planning process for class registration. Without knowing a student's course load and going through an iterative process, the university cannot certify that "the student is not taking an entirely online course load" as the Directive requires. To make matters even more difficult, it is questionable whether the university can even have its entire course catalogue solidified in time for the August 4 deadline. At the end of this process, I-20 forms must be separately signed by both the university and student, under penalty of perjury, in order to certify compliance, which is subject to auditing and severe sanctions for noncompliance.

17. Similarly, compliance with the July 15 deadline to inform ICE whether any programs will proceed only through remote instruction is impracticable. Consistent with the university's flexible and responsive approach to the pandemic, a number of academic divisions have not yet determined whether they will offer in-person instruction in addition to remote programs. That decision depends not only on COVID-19 trends, but on the unique pedagogical requirements of each program. In particular, certain programs involve in-person components in labs accompanied by on-line instruction. In such instances I believe that the core educational component of the course is the lab. This will proceed in person if conditions permit. Despite the

core component of such courses proceeding in person, ICE has not specified whether it would qualify for the hybrid modality. ICE's current approach seems to fixate on time rather than pedagogical value of the in-person component. Even absent uncertainty on this point and others like it, balancing all interests at play is agonizingly difficult, and for many Johns Hopkins programs, it simply is not possible to complete that process and make a decision by July 15. Throughout the planning process, we have emphasized being prepared to shut down in-person instruction gracefully and to provide students with incentives to leave campus when public health considerations so require. We are investing significantly to enable most courses to be able to make this transition and thereby minimize disincentives to depopulating the campus. We approach with the utmost seriousness the submissions and certifications ICE requires of us, yet we cannot in good conscience definitively commit to one or another modality by the tight deadlines ICE has imposed, unexpectedly, right as we are trying simultaneously to cope with a pandemic and plan semesters and curricula across all of our programs.

18. These difficulties are particularly acute given the profound implications of the July 6 Directive for students and the Johns Hopkins academic community. Under the Directive, students enrolled in a program that has determined to offer only remote learning will lose their visas and be required to leave the United States. Similarly, students enrolled in a program that, like the Carey Business School, begins the semester with some in-person component risk losing their visas mid-semester if conditions (including state or local "shut-down" orders) require suspension of in-person learning, as occurred during the spring semester.

19. Losing students potentially affected by the ICE policy change from campus would be calamitous. Many university curricular programs depend on the presence and diversity of international students and help our students prepare for the world. The curricula at the

university's various schools—from the School of Advanced International Studies to its undergraduate programs to the School of Medicine—draw frequently on the perspectives of international students, from 18-year old freshmen speaking about their experiences growing up abroad to mid-career public officials from around the world who bring unique viewpoints about different approaches to governance and policy. The absence of such expertise and perspective diminishes the education for the university and all its students. Even in an entirely remote-learning environment, students and the university benefit immensely from proximity to the university's libraries, laboratories, and other facilities. Forcing all Johns Hopkins' students with F-1 visas to desert our campuses would deprive the university of their innovative research contributions, stunt the development of scholarship, and undermine Johns Hopkins' mission of bringing the benefits of discovery to the world. It would also have a severe economic impact on both the university as well as the students and families that have invested in their educations at our institution. It would so alter the nature of Johns Hopkins and most of our academic programs as to render them virtually unrecognizable.

20. The impact on the students themselves is even worse. Johns Hopkins' international students are leading the charge on innovative, life-saving research (including COVID-19 research) that would come to a halt if they were not permitted to start the fall 2020 semester or abruptly forced to leave campus midway through if conditions require suspension of in-person learning. Losing their visa status would also deprive these students of associated work permits that allow them to obtain employment in the United States for a period of time after they obtain their Johns Hopkins degree (known as "Optional Practical Training" or "OPT"). Still other students would face deplorable conditions in their home countries, whether from COVID-19, civil war, unreliable (or no) Internet connections, repressive regimes that do not permit

studying sensitive academic materials, other factors. And the practical implications of uprooting from their lives in the United States are considerable, including lost security deposits and broken lease fees, disruption to the lives of some students' young children, exorbitant costs for last-minute transoceanic flights—not to mention the risk of contracting COVID-19 during unnecessary additional travel in the midst of a raging pandemic. Many of these students would also have to begin their academic programs essentially anew given the difficulties of gaining recognition in certain countries of programs and credits in the United States. These daunting prospects will force many students to interrupt their studies, harming them and Johns Hopkins alike.

21. The implications, financial and otherwise, for Johns Hopkins are also considerable. There can be no doubt that a number of international students faced with a choice between obtaining a Johns Hopkins degree via remote instruction from abroad, or instead enrolling in a program that permits them to live in the United States, or a program in another country, or no program at all, will opt for an alternative to Johns Hopkins. For many programs, particularly advanced degrees that attract a substantial proportion of international students, in-class instruction may be only a minor aspect of the academic experience, with far greater emphasis on research, laboratory work, internships, or networking. For example, some students choose to study at Johns Hopkins over other institutions based largely on their desire to conduct research in the university's laboratories, with less consideration for course work. Separately, in some countries—for example, China and India—degrees from foreign institutions earned via remote instruction are not recognized and can mean some graduates are ineligible for some categories of jobs in those countries. The inevitable consequence of these factors is that Johns Hopkins will lose students, which not only reduces tuition payments to the university but

requires additional cash outlays from the university for teaching assistants, residential advisors, laboratory assistants, and similar positions that these students would have filled. The impact of this cannot be overstated. The Carey Business School, for example, has an extensive international student body and will face serious financial stress as a result of the number of students who may be forced to withdraw or defer enrollment. Similarly, the university stands to lose money it has paid to secure hotel rooms, subsidized by university funds and under long-term leases, that would not be needed if students with F-1 visas are forced to leave campus.

22. The prospect of these eventualities makes the already daunting task of weighing the risk of COVID-19 with the fulfillment of academic imperatives extraordinarily complex and extremely vexing. The Johns Hopkins programs that were considering remote-only curricula cannot in good faith make a decision on that issue by July 15. As a result, the July 6 Directive requires Johns Hopkins to make representations to ICE about the intentions of its academic programs that, at best, are incomplete.

23. Beyond the July 15 deadline, the July 6 Directive puts both the university and its students in an untenable position: lose numerous students who bring immense benefits to the school, or take steps to retain those students through a rigid, unvarying commitment to in-person classes, even to the extent those steps contradict the judgments each school would otherwise make about how best to protect the health of the entire university community. And the Directive puts both Johns Hopkins and our students at the mercy of factors entirely outside of our control. Even if the university undertakes the immense burden of processing thousands of I-20 forms in a timely fashion over a very short period, and alters the carefully crafted curricula to ensure that in-person options are available at all schools, we still face the risk of falling out of compliance

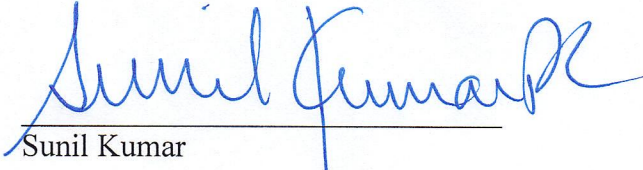
with the Directive if public health considerations or further government directives force the university to go purely online in the face of a fall 2020 viral resurgence.

24. The dilemma the Directive poses for our overall planning compromises welfare and pedagogy across the university and its entire student body. As things previously stood, we had carefully and conscientiously planned—with input from all concerned, including our world-class experts on public health—to put on the best curricula and offerings we could over the course of the upcoming semester, subject to ongoing adjustments and continually balancing the risks from COVID-19 against various educational objectives. For some programs, that meant a hybrid approach; for others, it meant relying exclusively or predominantly on online classes. The Directive now skews the calculus in favor of in-person classes, potentially at the expense of public health and, in some cases, pedagogical preference.

25. Johns Hopkins cannot forsake its institutional duty and academic imperatives by taking steps that would diminish the participation of international students in our academic programs. But neither can we abdicate our responsibility to act in the best interest of the safety and well-being of our community. The July 6 Directive will force us to choose one or the other. I do not know how we can do that, much less make the decisions and commitments ICE is demanding starting July 15.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: Baltimore, Maryland
July 12, 2020



Sunil Kumar