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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Commonwealth of Massachusetts et al,

Plaintiffs,

v.

United States Immigration and Customs
Enforcement, et al.,,

Defendants.

Case No. _____

DECLARATION OF KYLE THOMAS,
STATE OF OREGON HIGHER
EDUCATION COORDINATING
COMMISSION

Pursuant to 28 U.S.C. § 1746, I, KYLE THOMAS, hereby declare and affirm:

1. I am the Director of Legislative and Policy Affairs for the State of Oregon Higher Education Coordinating Commission. I have been employed in this position since November 2016, and I have worked in higher education since January 2011. I have personal knowledge of the following information and am competent to testify to the same.

2. I submit this declaration in support of the State of Oregon's participation in litigation challenging the policies announced on July 6, 2020 by "Broadcast Message" and to be

published on some future date as a Temporary Final Rule to amend requirements of the Student and Exchange Visitor Program (the “Rule”).

3. The information compiled in this declaration is based on publicly-available documents and information and my personal knowledge of the Oregon higher education system. I also am familiar with the Rule and understand its immediate impact on Oregon’s higher education system and on Oregon in general.

4. The State of Oregon and Oregon’s higher education system will be dramatically, irreversibly, negatively affected by the proposed temporary rule of the Immigration and Customs Enforcement (ICE) to limit or restrict foreign students with F-1 and M-1 visas from continuing their education if some or all of the education is online due to the COVID-19 pandemic. ICE’s newly-announced proposed temporary rule, not yet finalized or registered in the Federal Register, proposes to affect the Fall 2020 education term, just six to eleven weeks away for most private and public higher education institutions.

5. The State of Oregon, established in 1859, is a unique, mostly rural state with a young, educated, hard-working population. Oregon has just under 100,000 square miles of land with just over four million residents, so under 40 people per square mile live here (Source: Oregon Blue Book 2019). We are ninth largest in our nation by land, and twenty-second largest by population (Source: U.S. Census Bureau). We are a young, educated state -- over 25% of Oregonians are under 18 years of age, 10% are foreign born, over 33% have bachelor’s degrees, and over 90% have high school diplomas (Source: U.S. Census Bureau). We are located in the Pacific Northwest with strong ties to Asia, along with strong ties to Canada and Central and South America through the Interstate-5 corridor and the Pacific Ocean. Over 62% of Oregonians over age 16 are in the civilian labor force – meaning we are a working state (Source: U.S. Census Bureau). Oregon has relatively small urban population centers in Portland (653,000), Salem (173,000), and Eugene (171,000) (Source: U.S. Census Bureau). Although small in population,

we fight above our weight in technology, innovation, health care, construction, forestry, agri-

business, and other major economic sectors, perhaps most famously including our adult beverages -- wine, beer, and distilled spirits (Source: Oregon Blue Book; U.S. Census Bureau).

6. Oregon's higher education system is crucial for supporting all of Oregon's business and industries, especially as the state attempts to respond to and ultimately recover from the COVID-19 global pandemic. In particular, our over 13,000 currently enrolled international students (per student records data and private institution-provided information), who are predominantly studying here on F-1 and M-1 visas, contribute to our economy and provide diversity of thought and background that allows our state higher education institutions and ultimately our state economy to continue growing, diversifying and thriving. These international students are directly adversely affected by ICE's proposed rule change, and as an educated estimate, I expect the rule change will impede or prohibit over half of these international students from continuing their studies in Oregon. The loss of this economic contribution and diversity of thought, background and talent is irreplaceable unless and until these students can return to their studies.

7. Oregon has seven public universities, 17 public community colleges, 20 private authorized universities, 21 private exempt authorized universities, as well as technical and professional programs. The State of Oregon budgets over \$836 million towards its public universities (2019-2021 Legislatively Approved Budget), but the public university operating expenses vastly exceed this figure, and international students contribute heavily towards closing the revenue-expense gap. Similarly, the State of Oregon budgets over \$644 million towards its public community colleges throughout the state, but again the operating expenses vastly exceed this state contribution, and international students contribute significantly towards closing this revenue-expense gap.

8. Oregon's public universities educate over 260,000 students including over 10,000 international students. Our largest public universities are Oregon State University in Corvallis and Bend, University of Oregon in Eugene, and Portland State University in Portland. All of our

public universities are outstanding -- Oregon State University has an internationally and nationally-recognized online education program in addition to its nationally-acclaimed engineering and oceanography and business programs, while University of Oregon has internationally-renowned professional and sports programs, Portland State University is internationally recognized for its urban planning and urban campus, and Oregon Institute of Technology carries out internationally-recognized science and technology programs and collaborates directly with the state's technology and science sectors. Although less well known internationally, our regional universities also play an important role in our state. Eastern Oregon University, located in rural LaGrande in remote eastern Oregon, educates over 3,000 students including over 50 international students, and provides agri-business, biology, health and related education programs as well as all typical university degree programs. Western Oregon University, located in Monmouth in rural Willamette Valley near the State's Capitol of Salem, educates nearly 5,000 students including 200 international students, and maintains programs in corrections administration, policing, education, and other important degrees in governmental services, as well as traditional university programs. Southern Oregon University, located in Ashland in southern Oregon in the Rogue Valley near the northern California border, enrolls over 8,000 students and over 40 international students, and is known for offering comprehensive programs in the fine arts.

9. The role of our public community colleges also cannot be overstated – these schools exist mainly in rural areas throughout our state and educate over 260,000 students every year, including over 2,000 international students. Oregon's community colleges exist in and heavily economically support Oregon's small towns and rural communities. For example, Tillamook Bay Community College in Tillamook, Oregon, famous for Tillamook cheese and ice cream, educates over 2,200 students including over 30 international students, in a town with a population of just over 5,300. Linn-Benton Community College in Albany, Oregon, a former logging and timber town, educates over 17,000 students including 300 international students, in a

town with a population of just over 54,000. Klamath Community College in rural Klamath Falls educates nearly 6,000 students including 68 international students in a town of just over 20,000. Southwestern Oregon Community College, located in the economically-challenged rural coastal town of Coos Bay, educates over 6,400 students including 32 international students in a town of just over 16,000. This is just to highlight some of our community colleges, all of which are equally important to our local communities and our state.

10. In addition to Oregon's public universities and community colleges, numerous private universities, some religiously-affiliated and some not, as well as numerous professional and technical degree programs, all expand student options and opportunities within the state. Reed College in Portland, Lewis and Clark College and Law School in Portland, George Fox University in Newberg (Oregon's wine country), University of Portland (Catholic university), Willamette University in Salem across from the state's Capitol (including its Tokyo International University - America campus), Multnomah University and Corban University in Portland and Salem, Linfield University and Pacific University in the Willamette Valley, Warner Pacific University, and Bushnell University and New Hope Christian College and Mt. Angel Seminary, all provide four-year degree programs and numerous post-graduate and professional programs for Oregon's students. Additionally, specialized schools such as Pacific Northwest College of Art, DeVry University, Northwest College of Naturopathic Medicine, and numerous other schools provide advanced professional and technical programs to prepare Oregon's students for entering the workforce. The Oregon Alliance of Independent Colleges and Universities includes 15 private non-profit schools. With more than 260 areas of study among them, Alliance institutions contribute significantly to Oregon's talent pool by conferring a significant percentage of the state's high-demand undergraduate and graduate degrees. Alliance schools spend just over \$950 million a year in their communities on instructions, salaries, benefit and operations. They employ people in 8,483 total jobs which results in nearly \$550 million for Oregonian families.

Students at Alliance institutions spend over \$1.1 million per day in their communities on

lodging, transportation and personal expenses. Although specific data for these private institutions is less readily available, these higher education institutions educate over 40,000 additional Oregon students, including approximately 1,300 international students.

11. Over 8% of Oregon's public universities and nearly 1% of Oregon's public community colleges are international students, nearly all of whom pay full tuition to their respective schools in addition to buying books, paying rent, buying groceries and eating out in restaurants currently hit hard by COVID-19 closures, using local travel and entertainment and gyms (also hit hard by COVID-19 closures). Oregon has been particularly affected by COVID-19, with official unemployment currently at over 14% (as of May 2020), according to the Bureau of Labor Statistics.

12. At Oregon State University, international students pay tuition of approximately \$30,000 plus books and living expenses of roughly \$17,300, nearly all of which goes into the local economies in Corvallis and Bend. At Western Oregon University in Monmouth, international students pay \$8,280 in tuition and approximately \$16,200 in books and living expenses. At Eastern Oregon University in LaGrande, international students pay \$20,880 in tuition and books and living expenses of approximately \$17,000. At Tillamook Bay Community College in Tillamook, international students pay approximately \$5,500 in tuition and \$12,000 in books and living expenses. At Linn-Benton Community College in Albany, international students pay approximately \$12,000 in tuition and \$14,000 in books and living expenses. At Southwestern Oregon Community College in Coos Bay, international students pay approximately \$13,365 in tuition and \$15,000 in books and living expenses. At Treasure Valley Community College in remote Ontario, international students pay approximately \$9,900 in tuition and \$11,500 in books and living expenses. These are mere examples of the monies coming in from international students to our local and state economies where Oregon's public higher education institutions are located.

13. Based on the number of international students at Oregon's public universities and community colleges, and assuming conservatively that just 50% of our international students are affected by the proposed ICE rule change and will be unable to begin or continue their education at Oregon's public higher education institutions. This is true for a variety of ICE rule-related issues: new students will not be able to obtain F-1 and M-1 visas to begin their course of study; existing students who cannot study from within the United States will withdraw; students will transfer to schools in other states less hard-hit by COVID-19 to date that have schools presently able to avoid the need for online classes; and students who will stop studies altogether because they cannot safely relocate to their home country or elsewhere due to COVID-19 or safety issues or visa/travel restrictions in order to study remotely.

14. Based on average tuition and books/living expenditures across the state at \$22,267, the direct economic loss to the state of the proposed ICE rule change just for the 2020-2021 school year is \$144,735,500. Additional direct economic losses arise from the resulting loss in university and community college income, and anticipated layoffs from these direct economic losses. I conservatively estimate that the \$144,735,500 in direct economic losses from the proposed ICE rule change will directly lead to loss of over 2,800 living-wage jobs across the state (assuming average \$50,000 per year higher education positions). Additional direct economic losses impact other higher education students. Because international students predominantly pay full tuition, this full tuition payment offsets the reduced tuition paid by domestic students, who receive financial aid to support their education. Although direct figures are difficult to obtain, I conservatively estimate that the impact of the proposed ICE rule change will mean *all* other students will pay more in tuition and fees, and several hundred domestic students may no longer be able to afford their current higher education program.

15. The indirect losses from the proposed ICE rule change are even more daunting. If just half of the international students cannot begin or cannot continue their studies due to the ICE rule change, then millions of dollars are taken from rural and urban local apartments, restaurants,

bookstores, grocery stores, movie theaters, gyms – all the same businesses drastically impacted by COVID-19. For example, if just one international student currently in Oregon and enrolled in Fall courses that will be partially or entirely online due to COVID-19 may be forced to leave the country, leaving on-campus housing or local apartment complexes unable to rent their spaces, reducing school or local income by \$6,000 to \$12,000 or more, and those same international students will not be spending the approximately \$2,500 to \$5,000 on food, clothing, books, and entertainment in the school year. Multiplied by the approximately 5,000 to 6,000 (half of international students) affected, this means \$42,500,000 to \$102,000,000 in lost local income.

16. Furthermore, while Oregon understands that ICE is not particularly concerned with the lives, safety, livelihoods and well-being of Oregon's international students, the impact on them is unfathomable. Many students will not be able to begin their course of study as planned and as already paid for (college tuition, fees, travel, visa fees), and some of these students will have lost this money and permanently lost the opportunity to study here. Many international students are English language learners, but their online and English-language instruction may not be counted towards in-person learning requirements under the ICE rule such that their studies are effectively ended. Many international students have established families here, and their spouses or children may be without a mother or father if the international student is required to leave. International students nearing completion of their programs also are likely to lose their opportunity to reach degree completion, as it is unknown when the students may be able to return in order to complete their program.

17. Further challenging for all of Oregon's higher education institutions is the fact that this proposed ICE rule change comes amid these same institutions attempting to navigate and comply with state public health directives and the Governor's executive orders. Oregon has been reacting to the COVID-19 outbreak since March, including the recent spike in new

confirmed cases and further virus spread, including announcing necessary precautions to protect

human life and health. Many of Oregon's higher education institutions have already announced to students their plans for partially online classes this Fall, in order to allow students to plan their lives accordingly, providing these students with some semblance of predictability during these highly uncertain pandemic times. Governor Brown's Executive Order 20-28, issued on June 12, 2020, prohibits in-person instruction and residential activities at colleges and universities unless strict restrictions are met for coverings, social distancing, sanitization, monitoring compliance, and isolation and enforcement procedures in place. Consistent with this Executive Order, the Oregon Health Authority and HECC issued joint guidance the same day, establishing extensive standards for social distancing (over six feet), hand hygiene, small cohort sizes for all group activities, protective equipment (face coverings, barriers), frequent environmental cleaning and disinfection routines, isolation and contact tracing for persons with COVID. Oregon's public and private higher education institutions have all acted upon and consistent with the Executive Order and OHA-HECC guidance.

18. The proposed ICE rule change inhibits if not prohibits Oregon's higher education institutions from complying with the Governor's Executive Order and OHA-HECC guidance with using some or mostly online courses if the school has international students. The proposed ICE rule change upends each school's and students' planning and attempts to create predictability, forcing perhaps dramatic changes to the Fall term, or else these schools continuing with their announced plans and preventing international students from continuing their studies, to the extreme detriment of the students, the schools, the local economies, and the whole state.

19. Oregon's higher education institutions planned and acted in reliance upon the existing ICE rules, and have already proceeded towards announcing and planning their Fall school programming, which begins in just six to eleven weeks for most schools. These schools detrimentally relied on the existing ICE rules, which ICE now proposed to upend and change at the last minute for no stated or good reasons. Oregon's international students have already purchased their flights to return to school. These international students have already rented

apartments and signed leases. These international students have already enrolled in classes and paid fees and tuition and purchased books. And Oregon's schools have already planned and budgeted for their arrivals – planning which will be upended to the cost of hundreds of jobs.

20. Perhaps most concerning, the proposed ICE rule change forces Oregon's higher education institutions into a Hobson's choice: either change course last minute (again) and have mostly or fully in-person classes at the significant risk of human health and life due to COVID-19 and risking violation of the Governor's Executive Orders and local public health official directives; or continue with partially online courses as planned for human life and health and safety and effectively banish thousands of international students from beginning or resuming their education.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED on July ____, 2020.

KYLE THOMAS
State of Oregon
Higher Education Coordinating Commission