PRACTICE RESOURCES

Practice Alert: SEVIS Records of International Students Being Terminated by ICE

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AILA and partners have received reports of international students (and a few exchange visitors) having their SEVIS record terminated by ICE Student Exchange Visitor Program (SEVP). Many of these individuals have also had their visas revoked by the Department of State. This also includes students who have not engaged in activism. Students with any sort of encounters with law enforcement, including charges that have been dismissed and very old misdemeanors pre-dating their most recent visa issuance, are particularly at risk. Typically, SEVIS records are terminated by the academic institution and not by SEVP. In the current instances, neither the Designated School Official (DSO) at universities nor the students are regularly being notified of this termination. DSOs typically learn of the termination when they run periodic reports of their students and see a discrepancy in the record. The student may find out about a visa revocation by email from DOS, and the DSO may also get a message from SEVP, but in most cases, only when a DSO contacts SEVP about the discrepancy are they told that the record was in fact terminated. Similarly, students who have engaged in protest activities may also have their SEVIS record terminated after the DOS has revoked their visa.

Important reminder: USCIS recently changed its long-standing policy from 2009 on when unlawful presence begins accruing for those who were admitted for duration of status (D/S). As of January 25, 2025 the USCIS website reflects that "[n]onimmigrants admitted for duration of status generally begin accruing unlawful presence the day after their status ends, if they remain in the United States." Previously, an individual admitted in D/S would only begin accruing unlawful presence on the day USCIS denies a request in which it determines a status violation has occurred or on the day an immigration judge issues an order with a finding of a status violation. Because this change was recent, there is uncertainty around how this is being applied in practice at this time.

Attorneys should advise their international student clients to monitor all their email accounts to ensure notice. Attorneys should review all DHS-initiated SEVIS terminations and the student's case file to screen for litigation prior to advising their client of the best possible action.

- Review the email from DHS. NAFSA identified the following typical reasons stated for the termination, which is usually under "otherwise failing to maintain status."
  - Serious adverse foreign policy consequences (INA 237(a)(4)(C)(i)).
  - Identified in a criminal records check (INA 237(a)(1)(C)(i).
  - Individual identified in criminal check and/or has had their visa revoked.
- Make sure you have the following information about the student:
  - Address
  - Graduation date
  - Where they are in the F-1 lifecycle (in school, in 12-month OPT, in STEM OPT)
- Consider SEVIS reinstatement.
  - Do an attorney prescreening to see if reinstatement makes sense and is practicable.
    - It is not for students with open criminal charges or who have worked without authorization, and requires an admission of a status violation, which may not be possible.
    - During reinstatement, the student must be enrolled in school, which limits access to reinstatement for those who have already graduated and are working on OPT.
- Ask the DSO if the SEVIS screen shows the reinstatement option grayed out. Ask for a screenshot if so.
- If reinstatement is an option, ask if the DSO would be willing to recommend reinstatement.
- And if the DSO says yes to reinstatement, act quickly.
  - You will need the DSO recommendation & a reinstatement I-20 before you can file the I-539 form with a fee.
  - File it online, as receipt is immediate.
- Document prep

- Have the student download and document all relevant immigration history.
  - SEVIS record and download ALL I-20s and notes. Save screenshots.
  - Download I-94 & travel history.
  - Keep soft copies (PDF) of your passport, visas, all I-20s, both sides of any EAD.
- Have the student sign a Family Educational Rights and Privacy Act (FERPA) release, a G-28, and an ICE Privacy Waiver (Form 60-001).