



August 16, 2024

DOCKET NO. ED-2023-OGC-0071

PETITION FOR RULEMAKING: DESIGNATION OF THE STUDENT AND EXCHANGE VISITOR INFORMATION SYSTEM (SEVIS) AS A “FEDERAL DATA COLLECTION EFFORT” UNDER 20 U.S.C. § 1094(a)(17)

1. Petitioner’s name and contact information

America First Legal Foundation
611 Pennsylvania Avenue SE #231
Washington, DC 20003
docket@aflegal.org

2. Nature of the request

To amend 34 C.F.R. § 688.14(b)(19) as follows:

~~It will complete, in a timely manner and to the satisfaction of the Secretary, surveys conducted as a part of the Integrated Postsecondary Education Data System (IPEDS), all reports or filings that may be requested or required under the Student Exchange and Visitor Program (SEVP) or the Student and Exchange Visitor Information System (SEVIS), or any other Federal postsecondary institution data collection effort, as designated by the Secretary, regarding data on postsecondary institutions in a timely manner and to the satisfaction of the Secretary.~~

Alternatively, to have SEVP and SEVIS reports and filings each classified as a “Federal postsecondary institution data collection effort” designated by the Secretary. *See, e.g.,* The Department’s Enforcement Authority for Failure to Adequately Report Under Section 117 of the Higher Education Act of 1965, as Amended, 85 Fed. Reg. 72567 (Nov. 13, 2020) (to be codified at 34 C.F.R. § 688).

The proposed amendment corrects an apparent drafting error and resolves ambiguity by conforming the regulation to the controlling statutory language. *Compare* 20 U.S.C. § 1094(a)(17). It also clarifies that institutions of higher education (IHEs) are obligated to collect and report data required under the SEVP and SEVIS programs as a condition for participation in the Title IV student loan program.

3. Petitioner's interest in the requested action

Petitioner America First Legal Foundation (AFL) is a national, nonprofit organization working to promote the rule of law in the United States, prevent executive overreach, protect our citizens' civil rights, and promote public knowledge and understanding of the Constitution and laws of the United States. Our mission includes promoting government transparency and accountability by gathering official information, analyzing it, and disseminating it through reports, press releases, and media, including social media platforms, all to educate the public and to keep government officials accountable for their duty to faithfully execute, protect, and defend the Constitution, laws, and citizens of the United States. AFL has over 259,000 followers on X. Our Founder and President has over 692,000 followers on X.

AFL has unique organizational expertise and interest in the subject matter of this petition. Our President and Executive Director each played key senior leadership roles in developing and implementing immigration policy during the Trump Administration. Our Senior Vice President served as the Department of Education's Acting General Counsel and opened the first Section 117 noncompliance investigations in the Department's history. Under his leadership, the Department's Office of General Counsel issued new Section 117 reporting requirements to expose malign foreign influence on our college campuses¹ and multiple reports to Congress and the public highlighting the problem.² AFL has routinely advocated for the lawful enforcement of our immigration laws and engaged with the Department of Justice and others to protect the civil rights of American students on campus from assault by university administrators and pro-Hamas mobs, which often include or are organized by foreign nationals.³

Finally, SEVP and SEVIS collect critical information that is used by AFL to carry out its public nonprofit mission. *E.g.*, 8 C.F.R. § 214.3(g)(1)(i)–(x), (g)(2)(ii)(A)–(F). This includes information identifying students who are “out of status” and thus subject to removal. 8 C.F.R. § 214.3(g)(1). Nonenforcement concretely harms AFL's

¹ U.S. DEP'T OF EDUC. OFF. OF THE GEN. COUNSEL, INST. COMPLIANCE WITH SECTION 117 OF THE HIGHER EDUC. ACT OF 1965 (Oct. 2020) (available at <https://tinyurl.com/msmk7f4n>).

² *See, e.g., China's Impact on the U.S. Education System: Hearing Before the Permanent Subcomm. on Investigations of the S. Comm. on Homeland Sec. & Governmental Affs.*, 116th Cong. (Feb. 28, 2019) (statement of Gen. Mitchell “Mick” M. Zais, Deputy Sec'y of Educ.) (available at <https://tinyurl.com/yck5rfuw>).

³ *See, e.g., Press Release, America First Legal, America First Legal Demands Investigation in the DOJ's Failure to Prosecute Pro-Hamas Violence*, AM. FIRST LEGAL FOUND. (Jan. 5, 2024), <https://tinyurl.com/2x5u5ffe>; *Press Release, America First Legal, America First Legal Probes Biden's Department of Education Over Pro-Hamas College Rallies with Foreign Extremists*, AM. FIRST LEGAL FOUND. (Nov. 6, 2023), <https://tinyurl.com/yn435uu5>; *Press Release, America First Legal, America First Legal Sends Legal Demand Letter Warning Northwestern University About the Consequences for Violating Federal Law to Appease Pro-Hamas Faculty and Students*, AM. FIRST LEGAL FOUND. (May 2, 2024), <https://tinyurl.com/5zurvzc8>.

informational rights. See *Fed. Election Comm'n v. Akins*, 524 U.S. 11, 21 (1998).

4. Justification for the action sought

The evidence is that IHEs may be failing to enforce generally applicable rules of student and faculty conduct against alien students and faculty, even including those who endorse or espouse terrorist activity or support a terrorist organization such as Hamas or Islamic Jihad, to avoid the obligation to report such aliens to the federal government for removal.⁴ Why, precisely, IHEs protect aliens who support terrorism and anti-Semitism, harass American citizens, and violate our laws is unclear. Regardless, the proposed action is needed to ensure that there are potentially severe financial consequences for institutions of higher education that protect foreign students who have violated our immigration and other laws.

A. Background

The barbaric atrocities of October 7, 2023, were immediately followed by an unprecedented wave of anti-Semitic vandalism and violence targeting Jewish and other Americans on our college campuses.⁵ Foreign students, acting as advocates for Hamas and other designated foreign terrorist groups, have played a key role in organizing and perpetrating these outrages. 8 U.S.C. § 1182(a)(3) mandates that, in addition to those who engage in terrorist activity or material support thereof, anyone who “endorses or espouses terrorist activity or persuades others to endorse or espouse terrorist activity or support a terrorist organization” is inadmissible into the United States and ineligible for a visa. As a Foreign Terrorist Organization, supporting Hamas and calling for others to join in Hamas’ “Day of Rage” fits squarely into this criterion.⁶

⁴ Tony Badran, *Why America’s Richest Universities Are Protecting Hate-Filled Foreign Students*, TABLET (Jan. 30, 2024) (emphasis added), <https://tinyurl.com/yc2m2c4r>; Joseph Simonson, *Wary of Deportation, Elite Colleges Won’t Expel Anti-Semitic Foreign Students*, WASH. FREE BEACON (Nov. 27, 2023), <https://tinyurl.com/2sc46zff>.

⁵ See generally *Frankel, et al. v. Regents of the Univ. of Cal., et al.*, Case No. 2:24-cv-4702, Compl. Doc. 1 at ¶¶ 6–22, 57–65, 67, 70–82, 88–113, 127–37, 163–78, 275–313 (C.D. Cal., June 5, 2024), <https://tinyurl.com/3nay7sbz>; *Parizer, et al v. AJP Educational Foundation Inc., et al*, Case No. 1:24-cv-724, Compl. Doc. 1 at ¶¶ 27–39, 42–63, 68–76, 80–100, 105–11, 115, 117–19 (E.D. Va., May 1, 2024), <https://tinyurl.com/36awvr8m>; *Boim v. Am. Muslims for Palestine*, No. 17 C 3591, 2022 WL 1556085, at *1–3 (N.D. Ill. May 17, 2022); see also Paul Sperry, *War College: How a Berkeley Professor Inspired and Engineered Anti-Israel Protests*, REAL CLEAR INVESTIGATIONS (June 19, 2024), <https://tinyurl.com/4hkd4pxc>.

⁶ Letter from Sen. Marco Rubio et al., to Alejandro Mayorkas, Sec’y, Dep’t of Homeland Sec. (Oct. 19, 2023), <https://tinyurl.com/mrs624ar>; Anna Giaritelli, *Mayorkas Endorses Canceling Visas of Foreign Students Who Support Hamas Terrorists*, WASH. EXAMINER (Oct. 16, 2023), <https://tinyurl.com/yxv5hcnf>; George Fishman, *Foreign Students Who Celebrate Hamas Atrocities Can and Should Be Deported*, CTR. FOR IMMIGR. STUD. (Dec. 3, 2023), <https://tinyurl.com/5y7yzhuh>.

B. MIT

The Massachusetts Institute of Technology (MIT) is an “institution of higher education” under the Higher Education Act.⁷ It actively solicits international students.⁸ Its website reports that more than eleven percent of its undergraduate students and more than forty percent of its graduate students are aliens.⁹ According to the National Contagion Research Institute, MIT’s Section 117 reporting between 2014 and 2019 reveals receipt of \$859,071,692 in foreign funds.¹⁰

On October 8, 2023, the “MIT Coalition Against Apartheid” issued a statement stating in relevant part:

Palestine@MIT and the MIT Coalition Against Apartheid hold the Israeli regime responsible for all unfolding violence We are committed to supporting decolonization efforts in Palestine, and we recognize our role to oppose Zionism from within the imperial core. For more information about Palestinian resistance against Israeli occupation, check out some resources here.

Until liberation,

MIT Coalition Against Apartheid
Palestine@MIT
Brandeis Students for Justice in Palestine
Wellesley Students for Justice in Palestine
Boston University Students for Justice in Palestine
MIT Black Graduate Student Association
MIT Reading for Revolution
MIT National Organization of Minority Architects Students
All Souls Movement¹¹

⁷ 20 U.S.C. § 1070 et seq.

⁸ *STEM Classification, Explore the Program*, MIT (last accessed July 7, 2024), <https://tinyurl.com/bddkneke>.

⁹ *Statistics & Reports*, MIT REGISTRAR’S OFF., <https://tinyurl.com/bdeb35sm> (last visited Aug. 6, 2024) (Number calculated using 2023–2024 data from MIT by dividing the “Total Non-U.S.” undergraduate student number, 505, by the “Grand Total” undergraduate student number, 4,576. The same process was followed to calculate the percent of alien graduate students: 3,000 “Total Non-U.S.” graduate students divided by 7,344 total graduate students.).

¹⁰ Bass, et al, *The Corruption of the American Mind: How Foreign Funding in U.S. Higher Education by Authoritarian Regimes, Widely Undisclosed, Predicts Erosion of Democratic Norms and Antisemitic Incidents on Campus* at 27, NETWORK CONTAGION RSCH. INST. (2024), <https://tinyurl.com/3bjdse6n>

¹¹ Joint Statement on the Current Situation in Palestine (Oct. 8, 2023), <https://tinyurl.com/2s374ubn> (emphasis added); see also Adam Sabes, *Pro-Hamas Statement Quietly Scrubbed from MIT Website as School Faces Congressional Investigation*, CAMPUS REFORM (Mar. 13, 2024), <https://tinyurl.com/4de99rub>.

On November 9, 2023, the Coalition Against Apartheid held a violent protest in support of Hamas.¹² According to Sally Kornbluth, MIT's president, the “protest—which became disruptive, loud and sustained through the morning hours—was organized and conducted in defiance” of “guidelines that were personally conveyed to organizers” ahead of time.¹³ However, Kornbluth stated that, to avoid “collateral consequences for the students, such as *visa issues*,” the student protestors who knowingly defied MIT policies governing student actions would “remain enrolled at MIT and will be able to attend academic classes and labs.”¹⁴

Kornbluth's promise to keep foreign students enrolled despite violating guidelines and creating safety risks for Jewish and other American students has facilitated support for Hamas. On March 8, 2024, the House Committee on Education and the Workforce sent a letter to the President and Chair of MIT describing numerous antisemitic incidents at MIT, almost all with a nexus to foreign students.¹⁵ For example:

- The anti-Israel student group Coalition Against Apartheid has disrupted classes, harassed Jewish students, promoted violence, and violated other MIT rules in the course of conducting anti-Israel demonstrations and other activities.¹⁶
- MIT invited Dalia Mogahed, who has endorsed Hamas' terrorist attack on Israel, to lecture on Islamophobia. Mogahed wrote that “resistance, including struggle against a colonial occupation force, is not only acknowledged under international law but explicitly endorsed” and that “[a]s an occupied population, Palestinians inherently possess the right to resist.”¹⁷
- Multiple MIT faculty and staff have made antisemitic remarks and justified Palestinian terrorism,¹⁸ including MIT Postdoctoral Associate

¹² Andrew Lapin, *MIT Partially Suspends Students Who Occupied Building for Pro-Palestinian 'Die-In'*, JERUSALEM POST (Nov. 14, 2023), <https://tinyurl.com/2uj7b5bs>.

¹³ Sally Kornbluth, *Today's Protest and Counterprotest*, Off. of the President (Nov. 9, 2023), <https://tinyurl.com/489etpc9>.

¹⁴ *Id.* (emphasis added).

¹⁵ Letter from the Hon. Virginia Foxx, Chairwoman, H. Comm. on the Edu. and the Workforce, to Dr. Sally Kornbluth, President, MIT, and Mark P. Gorenberg, Chair of the Corp., MIT (Mar. 8, 2024), <https://tinyurl.com/yrs95dsb>.

¹⁶ *Id.* at 3–4.

¹⁷ *Id.* at 3 (citing Alec Schemmel, *Speaker at MIT's 'Standing Together Against Hate' Event Endorsed Hamas Terrorism as Lawful 'Resistance'*, WASH. FREE BEACON (Feb. 5, 2024), <https://tinyurl.com/9vn5f4u5>).

¹⁸ Letter from the Hon. Virginia Foxx, *supra* note 15, at 5–7.

Afif Aqrawabi, who has made numerous virulently antisemitic statements on social media, including:

- “Zionism is a mental illness,” “[t]here’s no need for such evil to infect our world, for what?! So that Israeli’s [sic] can continue to consider themselves God’s chosen people, supreme to the rest, and deserving of your tax money to fund their lifestyle?!”; “[d]on’t be afraid of these Zionist fucks! They bark loudly but are the weakest among us.”¹⁹

C. IHE lawlessness has led to civil rights violations

The “visa issues” referred to by MIT include nonimmigrant visas issued to foreigners, such as an F-1 foreign-student nonimmigrant visa. The law is:

[A]n alien having a residence in a foreign country which he has no intention of abandoning, who is a bona fide student qualified to pursue a full course of study and who seeks to enter the United States temporarily and solely for the purpose of pursuing such a course of study . . . approved by the Attorney General **after consultation with the Secretary of Education**, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student, and if any such institution of learning or place of study fails to make reports promptly the approval shall be withdrawn

8 U.S.C. § 1101(a)(15)(F)(i) (emphasis added). Federal law also requires monitoring foreign students to include reporting the date of the alien’s termination of enrollment and the reason for such termination (including graduation, disciplinary action or other dismissal, and failure to re-enroll). *See* 8 U.S.C. § 1372 et seq.

The evidence suggests that MIT and other IHEs are intentionally undermining these laws to protect alien students and faculty who espouse support for Hamas.²⁰ According to one authoritative source:

In November of last year, for example, the presidents of Columbia University and Barnard College announced the establishment of the “Doxing Resource Group” in response to “Arab, Muslim, and Palestinian students,” who participated in the rallies cheering terrorism and the murder of Jews, having their names and photos publicized “by third parties.” This was doxing, according to the presidents: “a dangerous form of intimidation” that is “unacceptable.” For this initiative, Columbia and Barnard “have retained

¹⁹ *Id.* at 5 (citing various Twitter posts).

²⁰ Simonson, *supra* note 4.

experts in the field of digital threat investigation and privacy scrubbing to support our impacted community members.”

That is, the schools hired people—who will work with the Offices of General Counsel, the Offices of the Provost, and Barnard College Information Technology—to *erase whatever damning footprint their foreign students may have left online, which could be used as grounds for visa revocation and deportation*. It should be noted that foreign students are not merely exercising their rights to free speech, whether determined by the First Amendment or university administrators: Foreign students are not U.S. citizens, and their entry and presence in this country are strictly conditional. Once these conditions are violated, the violators have no right to stay or exercise rights that belong to citizens.²¹

The evidence further suggests that there is a meaningful correlation between large numbers of alien students and faculty, especially those originating in the Islamic Middle East, and campus anti-Semitism that violates Title VI. For example, Harvard University, MIT, Columbia University, and the University of California Los Angeles each host sizable numbers of alien students and faculty and have also been the site of significant Title VI violations.²² Bass et al have concluded that foreign funding of IHEs “predicts” campus erosion of democratic norms and anti-Semitism.²³ Regardless, it is clear that MIT and other IHEs have chosen to undermine the immigration laws that Congress enacted to protect American students for the benefit of pro-Hamas aliens.

²¹ Badran, *supra* note 4 (emphasis added).

²² See *Kestenbaum v. Harvard*, Case No. 1:24-cv-10092, Compl. Doc. 1 at ¶¶ 184–200 (D. Mass., Jan. 10, 2024), <https://tinyurl.com/25brnun6>; *Louis D. Brandeis Ctr. for Hum. Rts. Under L. v. Harvard*, Case No. 1:24-cv-11354, Compl. Doc. 1 at ¶¶ 202–41 (D. Mass. May 22, 2024) (available at <https://tinyurl.com/4pvufbav>); *Statistics*, HARVARD INT’L OFF., <https://tinyurl.com/2twjr9pn> (last visited Aug. 6, 2024) (**Harvard** had a population of 9,970 international students and scholars, including 975 of its roughly 6,600 undergraduates during the 2022-2023 school year); Complaint, *C.S. v. Columbia Univ.*, No. 1:24-cv-03232 (S.D.N.Y. Apr. 29, 2024) (available at <https://tinyurl.com/ycykznyh>); *Statistics*, Columbia Int’l Students & Scholars Off., <https://tinyurl.com/bden6uxf> (last visited Aug. 6, 2024) (**Columbia** states that it hosts “one of the largest international student and scholar populations in the U.S.” with 23,246 “Total international students and scholars” in Fall 2023); *Frankel*, *supra* note 5; *Facts & Figures*, UCLA, <https://tinyurl.com/5n9xe949> (last visited Aug. 6, 2024) (**UCLA** states that seven percent of its undergraduate students and seventeen percent of its graduate students are “International Non-Residents,” altogether tallying more than 6,347 international students); Complaint, *StandWithUs Ctr. for Legal Just., et al., v. Mass. Inst. of Tech.*, No. 1:24-cv-10577 (D. Mass. Mar. 7, 2024), <https://tinyurl.com/3hzac9w5>; *Statistics & Reports*, MIT REGISTRAR’S OFF., *supra* note 9.

²³ Bass, et al, *supra* note 10, at 19-21.

D. The proposed action will improve Federal data collection and disincentivize lawlessness, abuse, and civil rights violations by MIT and other IHEs

The proposed action, whether in the form of an amended rulemaking or Secretary's designation, will create incentives for IHEs to comply with 8 U.S.C. § 1101(a)(15)(F) and other similar laws that Congress has written to govern the entry of alien students and faculty into the United States. It will improve the quality and integrity of an important Federal postsecondary institution data collection effort. Also, the proposed action will directly conform the regulation to 20 U.S.C. § 1094(a)(17).

Additionally, the proposed action will disincentivize lawlessness, abuse, and civil rights violations by MIT and the other IHEs that have chosen to protect alien students and faculty who, at a minimum, espouse support for Hamas in violation of their visas. These IHEs are engaged in nothing more or less than a scheme or artifice to violate American immigration laws with reckless disregard for the fact that they are fostering anti-Semitism against American citizens in violation of Title VI of the Civil Rights Act of 1964 by doing so. By conditioning Title IV eligibility on full compliance with SEVP and SEVIS, the Department will disincentivize MIT and other IHEs from gaming the system and knowingly engaging in false or fraudulent reporting omissions.²⁴

Conclusion

Therefore, AFL respectfully requests that this petition for rulemaking or designation be granted.

Respectfully Submitted,

/s/ Reed D. Rubinstein

Reed Rubinstein

Juli Haller

AMERICA FIRST LEGAL
FOUNDATION

611 Pennsylvania Avenue SE #231
Washington, DC 20003

²⁴ The proposed action could expose an IHE to False Claims Act liability for at once participating in Title IV while manipulating its internal disciplinary process to avoid truthful SEVP and SEVIS reporting. *See, e.g.*, 31 U.S.C. § 3729(1)(B).