

CIVIL COVER SHEET

8:25-cv-738

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

MERCEDES ROURKE-ROGRIGUEZ and ARIWIIO SWAMP

(b) County of Residence of First Listed Plaintiff Akwesasne, NY
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Sean C. Sheely
Holland & Knight, LLP

DEFENDANTSUNITED STATES DEPARTMENT OF EDUCATION and LINDA McMAHON
in her official capacity as Secretary, United States Department of Education

County of Residence of First Listed Defendant Washington, D.C.
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

Unknown

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark <input type="checkbox"/> 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input checked="" type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
Administrative Procedure Act
Brief description of cause:
Violation of 5 U.S.C. § 706(2)

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. **DEMAND \$** Injunctive relief **CHECK YES only if demanded in complaint:**
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

Sean C. Sheely

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT \$405 APPLYING IFP _____ JUDGE AJB MAG. JUDGE DJS

ANTNDC-7162793

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here. United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket. **PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DECLARATION OF MERCEDES ROURKE-RODRIGUEZ

I, Mercedes Rourke-Rodriguez, hereby declare and state as follows:

1. I am a plaintiff in this suit against the U.S. Department of Education and Linda McMahon, and make this Declaration in support of the Complaint and Motion for Temporary Restraining Order and Preliminary Injunction.

2. I am an enrolled member of the Saint Regis Mohawk Tribe (“Tribe”) in New York and have at least 50% Native American blood.

3. I was born in Canada but reside in the United States at 49 County Road 45, Akwesasne, NY 13655.

4. I am 18 years of age, and wish to attend college this fall, but I need federal financial aid in order to do so.

5. To apply for federal financial aid, I must first complete and submit a Free Application for Federal Student Aid (“FAFSA”) form.

6. Previously, members of the Tribe like me could submit a FAFSA form and obtain federal financial aid by getting a Social Security Number and documentation from a Tribal official that they had at least 50% Native American blood. I can satisfy these requirements.

7. However, because of a change made by the U.S. Department of Education in January 2025, I must now obtain one of the following forms of documentation from the U.S. Department of Homeland Security in order to complete and submit a FAFSA:

- Form I-551 PRC with the code S13;
- An unexpired temporary I-551 stamp with the code S13 in a Canadian passport; or

- An unexpired temporary I-551 stamp with the code S13 on an I-94

8. This new documentation requirement has kept me from completing and submitting my FAFSA application.

9. Absent relief from this new documentation requirement, I will not receive the financial aid necessary for me to attend college this fall.

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

Mercedes Rounke-Rodriguez

EXHIBIT B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DECLARATION OF ARIWIIO SWAMP

I, Ariwiiio Swamp, hereby declare and state as follows:

1. I am a plaintiff in this suit against the U.S. Department of Education and Linda McMahon, and make this Declaration in support of the Complaint and Motion for Temporary Restraining Order and Preliminary Injunction.

2. I am an enrolled member of the Saint Regis Mohawk Tribe (“Tribe”) in New York and have at least 50% Native American blood.

3. I was born in Canada but reside in the United States at 357 Cook Road, Akwesasne, NY 13655.

4. I am thirty-four years of age, and wish to attend college this fall, but I need federal financial aid in order to do so.

5. To apply for federal financial aid, I must first complete and submit a Free Application for Federal Student Aid (“FAFSA”) form.

6. Previously, members of the Tribe like me could submit a FAFSA form and obtain federal financial aid by getting a Social Security Number and documentation from a Tribal official that they had at least 50% Native American blood. I can satisfy these requirements.

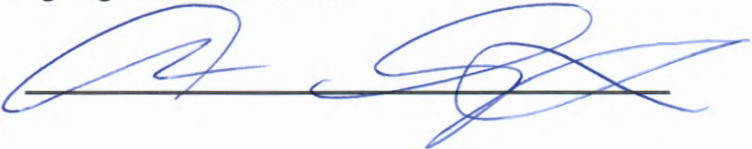
7. However, because of a change made by the U.S. Department of Education in January 2025, I must now obtain one of the following forms of documentation from the U.S. Department of Homeland Security in order to complete and submit a FAFSA:

- Form I-551 PRC with the code S13;
- An unexpired temporary I-551 stamp with the code S13 in a Canadian passport; or
- An unexpired temporary I-551 stamp with the code S13 on an I-94

8. This new documentation requirement has kept me from completing and submitting my FAFSA application.

9. Absent relief from this new documentation requirement, I will not receive the financial aid necessary for me to attend college this fall.

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

A handwritten signature in blue ink is written over a solid black horizontal line. The signature is stylized and appears to be a first name followed by a last name.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MERCEDES ROURKE-ROGRIGUEZ,

and

ARIWIIO SWAMP,

Plaintiffs,

V.

UNITED STATES DEPARTMENT OF
EDUCATION,

and

LINDA MCMAHON,
in her official capacity as Secretary,
United States Department of Education

Defendants.

Civil Action No. 8:25-cv-738 (AJB/DJS)

COMPLAINT

Plaintiffs Mercedes Rourke-Rodriguez and Ariwio Swamp (“Plaintiffs”), by and through their undersigned counsel, hereby file the following Complaint against Defendant the United States Department of Education (“DOE” or the “Department”) and Defendant Ms. Linda McMahon (“Secretary” and together with the Department, “Defendants”) and in support thereof aver as follows:

INTRODUCTION

1. Plaintiffs are present or prospective college students who are members of the Saint Regis Mohawk Tribe (the “Tribe”), a federally recognized Indian tribe; who need federal financial aid to attend college; and whose eligibility for that financial aid has been imperiled by an unlawful change of policy by Defendants.

2. The Tribe's Reservation, located in Akwesasne, New York, is bisected by the United States/Canadian border and many tribal members were born in Canada because the closest hospital is located just across the border in Canada.

3. Plaintiffs and certain other college-age tribal members were born in Canada but, by United States law, are permanent residents of the United States and so are eligible for federal student aid under Title IV of the Higher Education Act.

4. Heretofore, the Department has recognized that American Indians born in Canada ("Jay Treaty students") are permanent residents of the United States and has not required them to provide any proof of this status from the Department of Homeland Security ("DHS") in order to establish their eligibility for financial aid.

5. In January 2025, DOE abruptly reversed course and announced that, henceforth, Jay Treaty students who have not previously received financial aid must submit documentation from DHS of their permanent resident status in order to apply for and receive financial aid.

6. The Department offered no justification for this new requirement, which is arbitrary, capricious, and contrary to law, and will hinder or prevent plaintiffs and other Jay Treaty students from attending college.

PARTIES

7. Plaintiff Mercedes Rourke-Rodriguez is a member of the Tribe, with at least 50% Native American blood, who was born in Canada. She resides in the United States at 49 County Road 45, Akwesasne, NY 13655.

8. Plaintiff Ariwii Swamp is a member of the Tribe, with at least 50% Native American blood, who was born in Canada. He resides in the United States at 357 Cook Road, Akwesasne, NY 13655.

9. The Department of Education is an executive department within the United States government. The Department's headquarters is located in Washington, D.C.

10. The Secretary has overall responsibility for administering the Department and overseeing its constituent bureaus and programs. The Secretary's office is located in Washington, D.C. The Secretary is sued in her official capacity.

JURISDICTION AND VENUE

11. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1362.

12. Venue in this Court is proper under 28 U.S.C. § 1391.

FACTS

Background

13. The Tribe has approximately 16,500 enrolled members, about 8,000 of whom reside on the Tribe's Reservation.

14. American Indians have an aboriginal right to move freely throughout the territory originally occupied by them on both sides of the U.S./Canadian border, and both the Jay Treaty of 1794, 8 Stat. 118, and the Immigration and Nationality Act, 8 U.S.C. § 1359, specifically protect the right of American Indians born in Canada to freely pass the borders of the United States.

15. A federal regulation provides that "[a]ny American Indian born in Canada ... shall be regarded as having been lawfully admitted for permanent residence." 8 CFR § 289.2 (emphasis added).

16. Federal financial aid programs for postsecondary students are authorized under Title IV of the Higher Education Act of 1965 and administered by the Department.

17. The Higher Education Act provides that, "[i]n order to receive any grant, loan, or work assistance under this subchapter, a student must— ... be a citizen or national of the United

receive States, a permanent resident of the United States, or able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident.” 20 U.S.C. § 1091(a)(5) (emphasis added).

18. In turn, a Department regulation provides that, “to be eligible to receive title IV, HEA [Higher Education Act] program assistance, a student must—

- (1) Be a citizen or national of the United States; or
- (2) Provide evidence from the U.S. Immigration and Naturalization Service [now “USCIS”] that he or she—
 - (i) Is a permanent resident of the United States; or
 - (ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident.”

34 CFR § 668.33(a) (emphasis added).

19. To apply for federal financial aid, a student must first complete and submit a Free Application for Federal Student Aid (“FAFSA”) form. Based on the information in a completed FAFSA form, colleges and career schools make an offer of financial aid to eligible students who seek admission.

20. The Federal Student Aid Handbook (“Handbook”), published by the Department, is the authoritative guide for everything having to do with federal student aid, from loans to grants to eligibility. The Handbook is used by college financial aid administrators and counselors who help students file the FAFSA form, verify information, and make corrections and other changes to the information reported on the FAFSA.

The Department’s Former Policy

21. For decades, American Indian students born in Canada (“Jay Treaty students”) have been eligible for Title IV financial aid without requiring them to obtain any proof from DHS of their status as permanent residents of the United States. The Handbook formerly stated

that: “Jay Treaty students ... are not subject to the legal restrictions typically imposed on aliens by the DHS, are not required to obtain documentation from the DHS, and are considered ‘lawfully admitted for permanent residence.’ They must obtain an SSN [Social Security Number] for purposes of applying for Title IV aid.”

22. As a result, in order to submit a FAFSA and obtain federal financial aid, Jay Treaty students were only required to obtain a SSN and documentation from a tribal official that they had sufficient Native American blood (at least 50%) to satisfy Section 289 of the Immigration and Nationality Act, 8 U.S.C. § 1359.

The Department’s New Policy

23. This state of affairs changed radically on January 15, 2025, during the final days of the Biden Administration, when DOE posted an electronic notice on its website announcing that “[a]fter consultation with the Department of Homeland Security (DHS) about acceptable documentation for confirming the Title IV eligibility of American Indians born in Canada (formerly Jay Treaty students), FSA updated the acceptable documentation in the 2024-25 FSA Handbook.”

24. Other than saying that it had consulted with DHS about making this change in required documentation, DOE did not provide any rationale or justification for the change.

25. Jay Treaty students already receiving aid can be exempted from this new requirement if they are “grandfathered” in by their college:

If an American Indian born in Canada claiming Title IV eligibility under the Jay Treaty received Title IV aid in the 2023-24 award year (or any prior award year), then the institution may elect under 34 CFR 668.133(b) to not require such a student to submit additional immigration documentation to establish their title IV eligibility where the documents used to establish that eligibility have not expired, and where the institution does not have reason to believe that the student’s claim of citizenship or immigration status is incorrect.

26. However, students seeking aid for the first time, or students who had previously received aid but who are not “grandfathered” in, have to comply with a new documentation requirement:

If an American Indian born in Canada claiming Title IV eligibility under the Jay Treaty did not previously receive Title IV aid in the 2023-24 award year (or any prior award year) and is seeking to establish their status as an eligible noncitizen for the 2024-25 award year or later, then the student may submit any of the following immigration documentation to establish Title IV eligibility:

- Form I-551 PRC with the code S13;
- An unexpired temporary I-551 stamp with the code S13 in a Canadian passport; or
- An unexpired temporary I-551 stamp with the code S13 on an I-94

27. All of these forms of documentation must be obtained from the U.S. Citizenship and Immigration Services (“USCIS”), an agency within DHS.

28. A Form I-551 is a Permanent Resident Card, commonly known as the Green Card, which is a document issued by DHS to individuals granted lawful permanent resident status in the United States.

29. To obtain a Green Card, a Jay Treaty student must:

- Schedule an appointment and appear in person at the local USCIS office
- Obtain and bring to the appointment:
 - Two passport-style photos;
 - A copy of a government-issued identity document with photograph;
 - A copy of the student’s long form Canadian birth certificate (to establish lineage to claimed tribal ancestors, as well as birth in Canada); and
- Documentation to establish membership, past or present, in each band or tribe for the student and every lineal ancestor (parents and grandparents) through whom the student derives the required percentage of American Indian blood. This documentation must come from the official tribal government or from Indian and Northern Affairs Canada.

30. An I-551 stamp is a temporary stamp placed in a passport, or on an I-94 form (Arrival/Departure Record), that serves as evidence of lawful permanent resident status when a person is waiting to receive their physical Green Card.

31. A Jay Treaty student may obtain a temporary I-551 stamp with the code S13, either in a Canadian passport or on an I-94 form.

32. Obtaining a Canadian passport requires the student to apply through the Canadian government.

33. To obtain an I-94 form, a student must go to the U.S. Customs Port of Entry and go through the Creation of Record process in order to apply for a Green Card.

COUNT I
Violation of the Administrative Procedure Act (“APA”)

34. Plaintiffs re-allege and incorporate by reference the allegations of paragraphs 1-33 above, as if fully set forth herein.

35. Under the APA, a court shall “hold unlawful and set aside agency action ... found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A).

36. It is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, in violation of 5 U.S.C. § 706(2), for the Department to reverse its established practice and require Jay Treaty students seeking financial aid to obtain documentation from DHS of their status as permanent U.S. residents, without providing any rationale or justification for this change.

COUNT II
Violation of the APA

37. Plaintiffs re-allege and incorporate by reference the allegations of paragraphs 1-36 above, as if fully set forth herein.

38. The Higher Education Act provides that any permanent resident of the United States is eligible for student aid under Title IV, and requires a student seeking aid to provide evidence of their status from DHS only in situations where the student is not yet a citizen or permanent resident of the U.S. 20 U.S.C. § 1091(a)(5).

39. By law, any Indian born in Canada with at least 50% Native American blood is deemed a permanent U.S. resident. 8 U.S.C. § 1359; 8 CFR § 289.2.

40. A provision of the Immigration and Nationality Act, 8 U.S.C. § 1359, exempts Canadian-born Indians from all immigration restrictions imposed by the Act. *See Akins v Saxbe*, 380 F.Supp. 1210, 1219 (D. Me. 1974).

41. It is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, in violation of 5 U.S.C. § 706(2), for the Department to require Jay Treaty students seeking financial aid to obtain documentation from DHS of their status as permanent U.S. residents.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that the Court enter judgment in their favor and against Defendants:

A. Issuing a preliminary injunction enjoining Defendants during the pendency of this action from enforcing their new requirement that Jay Treaty students seeking federal financial aid under Title IV of the Higher Education Act must provide documentation from DHS establishing that they are permanent residents of the United States to be eligible for such financial aid;

B. Holding unlawful and setting aside the Department's new requirement that Jay Treaty students seeking federal financial aid must provide documentation from DHS establishing that they are permanent residents of the United States to be eligible for such financial aid;

C. Awarding Plaintiffs their expenses and fees, including reasonable attorneys' fees; and

D. Granting Plaintiffs such other relief as the Court deems just and proper.

Dated: New York, New York
June 9, 2025

Respectfully submitted,

HOLLAND & KNIGHT LLP

By: /s/ Sean C. Sheely
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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MERCEDES ROURKE-ROGRIGUEZ,

and

ARIWIIO SWAMP,

Plaintiffs,

V.

Civil Action No. 8:25-cv-738 (AJB/DJS)

UNITED STATES DEPARTMENT OF
EDUCATION,

and

LINDA MCMAHON,
in her official capacity as Secretary,
United States Department of Education,

Defendants.

ORDER TO SHOW CAUSE FOR PRELIMINARY INJUNCTION

Upon the reading and filing of the attached Declarations of Sean C. Sheely and Dale White; the accompanying Memorandum of Law and Complaint; and upon the argument of counsel for Plaintiffs it is hereby:

ORDERED, that the above named Defendants show cause before the Hon.

, United States District Court for the Northern District of New York,

on the ____ day of June, 2025 at _____ in the _____ of that day or as soon thereafter as
counsel can be heard, why an Order should not be entered in this matter pursuant to Rule 65 of
the Federal Rules of Civil Procedure enjoining the Defendants during the pendency of this action
from enforcing their new requirement that American Indians born in Canada (“Jay Treaty

students”) seeking federal financial aid under Title IV of the Higher Education Act must provide documentation from the U.S. Department of Homeland Security establishing that they are permanent residents of the United States in order to be eligible for such financial aid; and

SUFFICIENT CAUSE APPEARING THEREFORE, it is

ORDERED, that Defendants are temporarily enjoined during the pendency of this action from enforcing their new requirement that Jay Treaty students seeking federal financial aid under Title IV of the Higher Education Act must provide documentation from the DHS establishing that they are permanent residents of the United States to be eligible for such financial aid;

ORDERED that no security need be posted by the Plaintiffs; and it is further

ORDERED that personal service of a copy of this Order to Show Cause and annexed Memorandum of Law, and Declarations, together with the Complaint, shall be served on counsel for Defendants on or before June ____, 2025, and shall be deemed good and sufficient service; and it is further

ORDERED, that answering papers, if any, shall be served upon counsel for Plaintiffs, to be received on or before June ____, 2025.

Dated: June __, 2025
AT: New York, New York

United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MERCEDES ROURKE-ROGRIGUEZ,

and

ARIWIIO SWAMP,

Plaintiffs,

V.

Civil Action No. 8:25-cv-738 (AJB/DJS)

UNITED STATES DEPARTMENT OF
EDUCATION,

and

LINDA MCMAHON,
in her official capacity as Secretary,
United States Department of Education

Defendants.

**PLAINTIFFS' MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY INJUNCTION**

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TABLE OF CONTENTS

PRELIMINARY STATEMENT	1
STATEMENT OF FACTS	1
The Former Department Policy	2
The New Department Policy.....	3
Impact of the New Policy	4
ARGUMENT	6
I. Preliminary Injunctive Relief Is Appropriate Here.....	6
A. Plaintiffs Face Irreparable Harm Absent Injunctive Relief	6
B. Plaintiffs are Likely to Succeed on the Merits of their Claims.....	7
1. It was Unlawful for the Department to Reverse its Policy without Providing any Rationale for the Change	8
2. The Department’s New Policy is Contrary to Applicable Law	9
C. The Balance of Equities Favors Plaintiffs and the Public Interest Favor Injunctive Relief.....	11
D. No Posting of Security Should Be Required	12
CONCLUSION.....	13

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Akins v Saxbe</i> , 380 F.Supp. 1210 (D. Me. 1974)	2, 11
<i>Am. Wild Horse Pres. Campaign v. Perdue</i> , 873 F.3d 914 (D.C. Cir. 2017)	8
<i>Bennett v. Spear</i> , 520 U.S. 154 (1997)	7
<i>Bowen v. Doyle</i> , 880 F.Supp. 99 (W.D.N.Y. 1995), <i>aff'd</i> , 230 F.3d 525 (2d Cir. 2000)	6
<i>Bowen v. Georgetown Univ. Hosp.</i> , 488 U.S. 204 (1988)	10
<i>Calvillo Manriquez v. Devos</i> , 345 F.Supp.3d 1077 (N.D. Cal. 2018)	7
<i>Castine v. Zurlo</i> , 733 F.Supp.2d 338 (N.D.N.Y. 2010)	5
<i>Cosgrove v. Board of Educ. of Niskayuna Cent. School Dist.</i> , 175 F.Supp.2d 375 (N.D.N.Y. 2001)	12
<i>DHS v. Regents of the Univ. of Cal.</i> , 591 U.S. 1 (2020)	8
<i>Doe I v. Noem</i> , No. 25-cv-00042-RGE, 2025 WL 1203472 (S.D. Iowa Apr. 24, 2025)	6
<i>Doe v. Noem</i> , No. 2:25-cv-00633-DGE, 2025 WL 1141279 (W.D. Wash. Apr. 17, 2025)	6
<i>Du v. U.S. Dept. of Homeland Security</i> , No. 3:25-cv-644, 2025 WL 1220254 (D. Conn. Apr. 28, 2025)	12
<i>Encino Motorcars, LLC v. Navarro</i> , 579 U.S. 211 (2016)	8
<i>FCC v. Fox Television Stations, Inc.</i> , 556 U.S. 502 (2008)	8

<i>Ferguson v. Tabah</i> , 288 F.2d 665 (2d Cir. 1961).....	12
<i>Isserdasani v. Noem</i> , No. 25-cv-283-WMC, 2025 WL 1118626 (W.D. Wis. Apr. 15, 2025).....	6
<i>League of Women Voters of United States v. Newby</i> , 838 F.3d 1 (D.C. Cir. 2016).....	11, 12
<i>Liu v. Noem</i> , No. 1:25-cv-00133-SE-TSM (D.N.H. April 10, 2025).....	6
<i>Loper Bright Enterprises v. Raimondo</i> , 603 U.S. 369 (2024).....	9
<i>Lynch v. City of N.Y.</i> , 589 F.3d 94 (2d Cir. 2009).....	5
<i>Metropolitan Transportation Authority v. Duffy</i> , --- F.Supp.3d ---, 2025 WL 1513369 (S.D.N.Y. 2025).....	10
<i>Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.</i> , 463 U.S. 29 (1983).....	7
<i>National Education Ass’n v. U.S. Department of Education</i> , --- F.Supp.3d ---, 2025 WL 1188160 (D.N.H. 2025)	7
<i>New York v. U.S. Dept. of Homeland Security</i> , 408 F.Supp.3d 334 (S.D.N.Y. 2019).....	9
<i>New York v. U.S. Dept. of Homeland Security</i> , 969 F.3d 42 (2d Cir. 2020).....	11
<i>Nken v. Holder</i> , 556 U.S. 418 (2009).....	11
<i>State of Tennessee v. Department of Education</i> , 104 F.4th 577 (6th Cir. 2024)	7
<i>United States v. Dion</i> , 476 U.S. 734 (1986).....	6
<i>United States v. Michigan</i> , 534 F.Supp. 668 (W.D. Mich. 1982)	6
<i>Utility Air Regulatory Group v. E.P.A.</i> , 573 U.S. 302 (2014).....	10

<i>Walker v. Azar</i> , 480 F.Supp.3d 417 (E.D.N.Y. 2020)	9
<i>Winter v. Nat. Res. Def. Council, Inc.</i> , 555 U.S. 7 (2008).....	6
<i>Wynnewood Refining Co., L.L.C. v. Occupational Safety and Health Review Comm.</i> , 933 F.3d 499 (5th Cir. 2019)	11
Statutes	
5 U.S.C. § 704.....	7
5 U.S.C. § 706(2)	7
8 U.S.C. § 1359 (INA § 289).....	3, 10
20 U.S.C. § 1091(a)(5).....	10
Other Authorities	
8 CFR § 289.2	10
Fed. R. Civ. P. 65(c)	12

Plaintiffs respectfully submit this Memorandum of Law in support of their application for a preliminary injunction enjoining the United States Department of Education (“DOE” or the “Department”) and its Secretary Ms. Linda McMahon (“Secretary,” and together with the Department, “Defendants”) from enforcing their new requirement that American Indians born in Canada (“Jay Treaty students”) seeking federal financial aid under Title IV of the Higher Education Act provide documentation from the DHS establishing that they are permanent residents of the United States to be eligible for such financial aid.

PRELIMINARY STATEMENT

Plaintiffs seek a preliminary injunction to halt a change of longstanding practice by the Department, made during the last days of the Biden Administration, that unlawfully hinders or prevents Plaintiffs from obtaining federal financial aid needed for them to attend college during the upcoming fall semester. The Department’s new requirement has kept Plaintiffs from completing their applications in time to receive an award of financial aid and enroll for the fall semester of academic year 2025-26. They face the imminent, irreparable loss of their ability to attend college this fall absent preliminary injunctive relief.

STATEMENT OF FACTS

Plaintiffs are present or prospective college students who are members of the Saint Regis Mohawk Tribe (the “Tribe”). The Tribe’s reservation is bisected by the United States/Canada border, and plaintiffs were born in Canada. Declaration of Dale T. White submitted herewith, dated June 9, 2025, at ¶ 3. Under federal law extending back to the Jay Treaty of 1794, they are lawful permanent residents of the United States. As such, they are eligible for federal financial aid under Title IV of the National Education Act. Plaintiffs need this financial aid in order to attend college.

Federal financial aid programs for postsecondary students are administered by the Department under Title IV of the Higher Education Act of 1965. To apply for federal financial aid, a student must first complete and submit a Free Application for Federal Student Aid (“FAFSA”) form. *Id.* at ¶ 13. *See also* Declaration of Mercedes Rourke-Rodriguez, dated June 9, 2025, Exhibit A to Declaration of Dale T. White, at ¶ 5; Declaration of Ariwio Swamp, dated June 9, 2025, Exhibit B to Declaration of Dale T. White, at ¶ 5. Colleges use the information on the FAFSA form to determine a student’s eligibility for aid after the student completes the college’s application requirements. Declaration of Dale T. White, dated June 9, 2025, at ¶ 13. The college sends a financial aid award letter to the student around the same time as admission offer letters. *Id.* The student then decides whether he or she can afford to attend college (or which college he or she will attend).

The Federal Student Aid Handbook (“Handbook”), published by the Department, is the authoritative guide for everything having to do with federal student aid, from loans to grants to eligibility. *Id.* at ¶ 14. The Handbook is used by college financial aid administrators and counselors who help students file the FAFSA form, verify information, and make corrections and other changes to the information reported on the FAFSA. *Id.*

The Former Department Policy

American Indians have an aboriginal right to move freely throughout the territory originally occupied by them on both sides of the American/Canadian border, which has been protected both by the Jay Treaty and by statute. *Id.* at ¶ 6. They are entitled to reside in the United States and Congress exempted them from all immigration restrictions imposed by the Immigration and Nationality Act (“INA”). *See Akins v Saxbe*, 380 F.Supp. 1210, 1219-20 (D. Me. 1974).

For decades, DOE explicitly recognized that Indian students born in Canada are eligible for Title IV financial aid without requiring them to obtain any proof from the Department of Homeland Security (“DHS”) of their status as permanent residents of the United States. *Id.* at ¶ 15. The Handbook specifically referred to them as “Jay Treaty students” and stated that: “Jay Treaty students ... are not subject to the legal restrictions typically imposed on aliens by the DHS, are not required to obtain documentation from the DHS, and are considered ‘lawfully admitted for permanent residence.’ They must obtain an SSN [Social Security Number] for purposes of applying for Title IV aid.” *Id.* As a result, in order to apply for federal financial aid, Jay Treaty students were only required to get a SSN and submit documentation from a tribal official that they had sufficient Native American blood (at least 50%) to satisfy Section 289 of the INA. *Id.* at ¶ 16.

The New Department Policy

DOE radically changed this policy on January 15, 2025. *Id.* at ¶ 17. It posted an electronic notice on its website announcing that “[a]fter consultation with the Department of Homeland Security (DHS) about acceptable documentation for confirming the Title IV eligibility of American Indians born in Canada (formerly Jay Treaty students), FSA updated the acceptable documentation in the 2024-25 FSA Handbook.” *Id.* Other than saying that it had consulted with DHS about making this change, DOE did not provide any rationale or justification for this change.

Jay Treaty students already receiving aid can be exempted from this new eligibility requirement if they are “grandfathered” in by their college:

If an American Indian born in Canada claiming Title IV eligibility under the Jay Treaty received Title IV aid in the 2023-24 award year (or any prior award year), then the institution may elect under 34 CFR 668.133(b) to not require such a student to submit additional immigration documentation to establish their title IV eligibility where the documents used to establish that

eligibility have not expired, and where the institution does not have reason to believe that the student’s claim of citizenship or immigration status is incorrect.

Id. at ¶ 18.

However, students seeking aid for the first time, or students who previously received aid but are not “grandfathered” in, have to comply with the following new documentation requirement set forth in the Handbook in order to establish their eligibility for financial aid:

If an American Indian born in Canada claiming Title IV eligibility under the Jay Treaty did not previously receive Title IV aid in the 2023-24 award year (or any prior award year) and is seeking to establish their status as an eligible noncitizen for the 2024-25 award year or later, then the student may submit any of the following immigration documentation to establish Title IV eligibility:

- Form I-551 PRC with the code S13;
- An unexpired temporary I-551 stamp with the code S13 in a Canadian passport; or
- An unexpired temporary I-551 stamp with the code S13 on an I-94

Id. at ¶ 19.

All of these forms of documentation must be obtained from the U.S. Citizenship and Immigration Services (“USCIS”), an agency within DHS. *Id.* at ¶ 20. A Form I-551 is a Permanent Resident Card, commonly known as the Green Card. *Id.* An I-551 stamp is a temporary stamp placed by USCIS on a passport, or on an I-94 form (Arrival/Departure Record), that serves as evidence of lawful permanent resident status when a person is waiting to receive their physical Green Card. *Id.*

Impact of the New Policy

The process to obtain a Green Card involves multiple steps and can take considerable time. To obtain a Green Card, a Jay Treaty student must:

- Schedule an appointment and appear in person at the local USCIS office
- Obtain and bring to the appointment:
 - Two passport-style photos;

- A copy of a government-issued identity document with photograph;
- A copy of the student's long form Canadian birth certificate (to establish lineage to claimed tribal ancestors, as well as birth in Canada); and
- Documentation to establish membership, past or present, in each band or tribe *for the student and every lineal ancestor (parents and grandparents)* through whom the student derives the required percentage of American Indian blood. This documentation must come from the official tribal government or from Indian and Northern Affairs Canada.¹

Id. at ¶ 21.

Alternatively, a Jay Treaty student may obtain a temporary I-551 stamp with the code S13, either in a Canadian passport or on an I-94 form. *Id.* at ¶ 22. Obtaining a Canadian passport, which virtually all of them lack, requires the student to apply through the Canadian government. *Id.* In order to obtain an I-94 form, the student must go to the U.S. Customs Port of Entry and go through the Creation of Record process in order to apply for a Green Card. *Id.* The Creation of Record will allow the student to then submit their FAFSA. *Id.*

Plaintiffs need federal financial aid under Title IV in order to attend college this fall. *Id.* at ¶ 26. However, the new documentation requirement imposed by DOE has hindered or prevented them from completing their FAFSA applications in time to receive an award of financial aid and enroll for the fall semester. Consequently, absent preliminary injunctive relief from the new documentation requirement, Plaintiffs will be unable to attend college this fall. *Id.*

While the Department announced the new documentation requirement via an internet posting on January 15, 2025, Plaintiffs and other tribal members first learned of its existence in March-April 2025 as they began the FAFSA application process. *Id.* at ¶¶ 27–28. They brought the issue to the attention of Tribal officials in late March and Tribal officials then explored

¹ See <https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-an-american-indian-born-in-canada>

options for resolving the problem. *Id.* at ¶ 29. Attempts to resolve the issue through discussions with the Department have thus far proved unsuccessful, and the Tribe decided to sponsor this suit to obtain judicial relief for Plaintiffs and other affected students. *Id.* at ¶ 30.

ARGUMENT

I. Preliminary Injunctive Relief Is Appropriate Here

A preliminary injunction will be issued if the party requesting relief can show (1) irreparable harm and (2) a likelihood of success on the merits. *See Lynch v. City of N.Y.*, 589 F.3d 94, 98 (2d Cir. 2009); *Castine v. Zurlo*, 733 F.Supp.2d 338, 341 (N.D.N.Y. 2010). In addition, the court must consider the balance of equities and whether an injunction is in the public interest. *See Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). All of these factors support the issuance of a preliminary injunction in this case.

A. Plaintiffs Face Irreparable Harm Absent Injunctive Relief

Plaintiffs face irreparable harm absent injunctive relief because they will not obtain federal financial aid necessary for them to attend college this fall, thereby interrupting or halting their education. Federal courts have repeatedly found education interruption to be irreparable harm. *See, e.g., Doe I v. Noem*, No. 25-cv-00042-RGE, 2025 WL 1203472, at *5 & n.1 (S.D. Iowa Apr. 24, 2025) (collecting cases); *Doe v. Noem*, No. 2:25-cv-00633-DGE, 2025 WL 1141279, at *8 (W.D. Wash. Apr. 17, 2025) (collecting cases); *Isserdasani v. Noem*, No. 25-cv-283-WMC, 2025 WL 1118626, at *5 (W.D. Wis. Apr. 15, 2025) (“The loss of timely academic progress alone is sufficient to establish irreparable harm.”); *Liu v. Noem*, No. 1:25-cv-00133-SE-TSM (D.N.H. April 10, 2025), ECF No. 13 (granting a motion for a temporary restraining order on an APA claim based on the termination of an F-1 international student’s record in SEVIS).

Furthermore, plaintiffs have an aboriginal right to reside in the United States that is protected both by treaty and by statute, and they are exempt from DHS requirements applicable to aliens. Plaintiffs are deprived of this fundamental right, and suffer irreparable injury, when DOE requires them to submit to DHS requirements in order to receive financial aid. *See Bowen v. Doyle*, 880 F.Supp. 99, 136 (W.D.N.Y. 1995), *aff'd*, 230 F.3d 525 (2d Cir. 2000) (deprivation of treaty rights constitutes irreparable injury); *United States v. Michigan*, 534 F.Supp. 668, 669 (W.D. Mich. 1982) (“the denial of fundamental rights, such as the denial of treaty rights to fish in certain zones of the Great Lakes without biological justification, can be presumed to be irreparable harm.”); *see also United States v. Dion*, 476 U.S. 734, 739 (1986) (“Indian treaty rights are too fundamental to be easily cast aside.”).

B. Plaintiffs are Likely to Succeed on the Merits of their Claims

Plaintiffs assert claims under the Administrative Procedure Act (“APA”), which authorizes federal courts to hold unlawful and set aside agency actions that are arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. 5 U.S.C. § 706(2). The APA provides a right to judicial review of all “final agency action for which there is no other adequate remedy in a court.” 5 U.S.C. § 704.

The Department’s new policy constitutes final agency action: (1) it marks the consummation of the agency’s decision-making process—it is not merely tentative or interlocutory in nature; and (2) it determines obligations and legal consequences will flow from it. *See Bennett v. Spear*, 520 U.S. 154, 177-78 (1997). Similar actions by the Department have been found to constitute final agency action subject to review under the APA. *See State of Tennessee v. Department of Education*, 104 F.4th 577, 598-601 (6th Cir. 2024) (guidance documents from Department were final agency action); *Calvillo Manriquez v. Devos*, 345

F.Supp.3d 1077, 1095-96 (N.D. Cal. 2018) (Department’s change of criteria enabling students to discharge their loans constituted final agency action); *National Education Ass’n v. U.S. Department of Education*, --- F.Supp.3d ----, 2025 WL 1188160, at *15-17 (D.N.H. 2025) (Department’s letter addressing diversity, equity, and inclusion programs was final agency action).

1. *It was Unlawful for the Department to Reverse its Policy without Providing any Rationale for the Change*

Under the APA, an agency must “examine the relevant data and articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made,” *Motor Vehicle Mfrs. Ass’n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quotation marks omitted), consider all “important aspect[s] of the problem” when setting forth that explanation, *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 30 (2020) (quoting *State Farm*, 463 U.S. at 43), and, if the agency’s action represents a change in positions, “be cognizant that longstanding policies may have engendered serious reliance interests” and ensures that those reliance interests are “taken into account.” *Id.* (quotation marks omitted).

Where an agency action changes prior policy, it need not demonstrate “that the reasons for the new policy are better than the reasons for the old one.” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2008). It must, however, “show that there are good reasons for the new policy.” *Id.*; see *Am. Wild Horse Pres. Campaign v. Perdue*, 873 F.3d 914, 923 (D.C. Cir. 2017) (agencies must “offer a reasoned explanation for” deviations from past agency practice).

Here the Department failed utterly to provide any rationale or justification for its abrupt and radical change in policy. It merely said that it was “updating” its policy “[a]fter consultation with the Department of Homeland Security (DHS) about acceptable documentation for confirming the Title IV eligibility of American Indians born in Canada (formerly Jay Treaty

students).” The agency did not even attempt to offer “good reasons” for this change because there are none. While the new policy may promote bureaucratic convenience by broadening the use of the Green Card system, it conflicts with the governing law (as discussed in the next section of this brief). “Where the agency has failed to provide even [a] minimal level of analysis, its action is arbitrary and capricious.” *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016).

In similar circumstances, the Southern District of New York enjoined DHS from implementing a new policy because the agency failed to articulate any justification for the change. The court concluded that:

In short, Defendants do not articulate why they are changing the public charge definition, why this new definition is needed now, or why the definition set forth in the Rule—which has absolutely no support in the history of U.S. immigration law—is reasonable. The Rule is simply a new agency policy of exclusion in search of a justification.

New York v. U.S. Dept. of Homeland Security, 408 F.Supp.3d 334, 349 (S.D.N.Y. 2019).

The same is true here. ED’s “updated” documentation requirement is simply a new agency policy—which has absolutely no support in the history of U.S. immigration law or in the Higher Education Act—in search of a justification. Because this new policy lacks any rationale, it is unlawful and the Department should be preliminarily enjoined from implementing it. Instead, the long-standing prior policy should remain in place pending the resolution of this litigation.

2. The Department’s New Policy is Contrary to Applicable Law

More fundamentally, the Department’s new policy contravenes applicable law and so must be vacated regardless of any justification the agency might devise for it. “[A] rule is contrary to law [when] an agency has attempted to promulgate a rule that countermands a higher

authority, such as Congress or the Constitution.” *Walker v. Azar*, 480 F.Supp.3d 417, 429 (E.D.N.Y. 2020). “Congress enacted the APA ‘as a check upon administrators whose zeal might otherwise have carried them to excesses not contemplated in legislation creating their offices.’” *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 391 (2024) (quoting *United States v. Morton Salt Co.*, 338 U.S., 632, 644 (1950)).

Congress has provided that any permanent resident of the United States is eligible for student aid under Title IV, and only requires a student seeking aid to provide evidence of their status from DHS if the student is *not yet* a citizen or permanent resident:

In order to receive any grant, loan, or work assistance under this subchapter, a student must—

* * *

(5) be a citizen or national of the United States, a permanent resident of the United States, or able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident;

20 U.S.C. § 1091(a)(5).

Jay Treaty students, by law, are permanent residents of the United States. Section 289 of the INA, 8 U.S.C. 1359, gives persons with at least 50% Native American blood who were born in Canada the legal right to live and work indefinitely in the U.S. And a long-standing DHS regulation, 8 CFR § 289.2, provides that any American Indian born in Canada who qualifies under section 289 of the Act “shall be regarded as having been lawfully admitted for permanent residence.”

DOE has no authority under the Higher Education Act to require Jay Treaty students to obtain documentation of their permanent resident status from DHS (a Green Card) in order to apply for aid under Title IV. The Act requires a student seeking financial aid to provide evidence of their status from DHS *only* if the student is *not yet* a citizen or permanent resident.

DOE lacks authority to impose a DHS documentation requirement on the Jay Treaty students.

“[A]n administrative agency's power to promulgate legislative regulations is limited to the authority delegated by Congress.” *Bowen v. Georgetown Univ. Hosp.*, 488 U.S. 204, 208 (1988).

“An agency has no power to ‘tailor’ legislation to bureaucratic policy goals by rewriting unambiguous statutory terms.” *Utility Air Regulatory Group v. E.P.A.*, 573 U.S. 302, 325-26 (2014). “Under the APA therefore, a reviewing court must set aside agency actions that exceed the agency's delegated authority.” *Metropolitan Transportation Authority v. Duffy*, --- F.Supp.3d ---, 2025 WL 1513369, at *27 (S.D.N.Y. 2025).

Further, the INA specifically exempts Canadian-born Indians from all of the restrictions it imposes on aliens, such as obtaining a Green Card. *See Akins v Saxbe*, 380 F.Supp. at 1219. DOE (in consultation with DHS) cannot thwart this congressional exemption by leveraging the financial aid process to require Jay Treaty students to obtain Green Cards. *See Wynnewood Refining Co., L.L.C. v. Occupational Safety and Health Review Comm.*, 933 F.3d 499, 501 (5th Cir. 2019) (an agency cannot subvert a congressional directive).

For all of these reasons, the Department’s new policy is contrary to law and so must be vacated pursuant to the APA.

C. The Balance of Equities Favors Plaintiffs and the Public Interest Favor Injunctive Relief

In cases like this one, where a preliminary injunction is sought against a federal agency, the final two factors that the Court must weigh -- the balance of harms and the public interest -- merge. *See Nken v. Holder*, 556 U.S. 418, 435 (2009); *New York v. U.S. Dept. of Homeland Security*, 969 F.3d 42, 86 (2d Cir. 2020). Both of these factors support a grant of injunctive relief here.

The balance of the equities tips in Plaintiffs’ favor “because a preliminary injunction will ‘not substantially injure other interested parties.’” *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016). A preliminary injunction will simply preserve the FSA eligibility and documentation requirements for Jay Treaty students that have been in place for a number of years. The Department cannot contend that it will be substantially injured by the continuation of this *status quo*. It merely will be precluded from implementing its new policy pending the resolution of this litigation. *See New York v. U.S. Dept. of Homeland Security*, 969 F.3d at 87 (“Any time the government is subject to a preliminary injunction, it necessarily suffers the injury of being prevented from enacting its preferred policy,” but this does not constitute a substantial injury).

Finally, “[t]he public interest weighs in favor of injunctive relief because it is in the public interest to ensure executive agencies follow immigration laws.” *Du v. U.S. Dept. of Homeland Security*, No. 3:25-cv-644, 2025 WL 1220254, at *5 (D. Conn. Apr. 28, 2025). “There is generally no public interest in the perpetuation of unlawful agency action. To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.” *League of Women Voters*, 838 F.3d at 12 (internal quotations and citation omitted). Moreover, it is in the public interest to ensure that students can pursue their education and obtain their degrees “without facing arbitrary, drastic obstacles.” *Du*, 2025 WL 1220254, at *5.

D. No Posting of Security Should Be Required

The provision in Fed. R. Civ. P. 65(c) that security shall be given “in such sum as the court deems proper” indicates that “the district court is vested with wide discretion in the matter of security.” *Ferguson v. Tabah*, 288 F.2d 665, 675 (2d Cir. 1961). “A district court may

dispense with the posting of security entirely where the parties sought to be enjoined or restrained ‘have not shown that they will likely suffer harm absent the posting of a bond.’”

Cosgrove v. Board of Educ. of Niskayuna Cent. School Dist., 175 F.Supp.2d 375, 399 (N.D.N.Y. 2001) (quoting *Doctor’s Associates, Inc. v. Stuart*, 85 F.3d 975, 985 (2d Cir. 1996)). Here the Department will not suffer any harm absent the posting of a bond by the plaintiffs. It faces no financial loss if the longstanding FSA documentation requirements for Jay Treaty students are restored during the pendency of this case. Accordingly, no bond should be required. *See id.* at 400.

CONCLUSION

For the reasons stated herein, Plaintiffs respectfully request that the Court grant their Motion for a Preliminary Injunction enjoining the Department during the pendency of this action from enforcing its new requirement that Jay Treaty students must establish their eligibility for federal financial aid under IV of the Higher Education Act by providing documentation from DHS demonstrating that they are permanent residents of the United States.

Respectfully submitted,

/s/ Sean C. Sheely

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MERCEDES ROURKE-ROGRIGUEZ,

and

ARIWIIO SWAMP,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
EDUCATION,

and

LINDA MCMAHON,

in her official capacity as Secretary,
United States Department of Education

Defendants.

Civil Action No. 8:25-cv-738 (AJB/DJS)

DECLARATION OF SEAN C. SHEELY

I, SEAN C. SHEELY, hereby declare and state as follows:

1. I am a partner at the law firm of Holland & Knight LLP, attorneys for Plaintiffs and am fully familiar with the facts and circumstances of this action.

2. I make this Declaration pursuant to Federal Rule of Civil Procedure 65 and Local Rule 7.1, in support of Plaintiffs' application by order to show cause for the relief of a preliminary injunction.

3. Plaintiffs are proceeding by way of order to show cause rather than by notice of motion in an effort to prevent the continuing irreparable harm being caused and threatened by Defendants' unlawful change in the requirements for applying for federal student aid under Title IV of the Higher Education Act, as more specifically set forth in the Complaint filed in this

action and Plaintiffs' Memorandum of Law in Support of their Motion for a Preliminary Injunction and the accompanying Declaration of Dale T. White.

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

/s/ Sean C. Sheely
Sean C. Sheely

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MERCEDES ROURKE-ROGRIGUEZ,

and

ARIWIIO SWAMP,

Plaintiffs,

v.

UNITED STATES DEPARTMENT OF
EDUCATION,

and

LINDA MCMAHON,

in her official capacity as Secretary,
United States Department of Education

Defendants.

Civil Action No. 8:25-cv-738 (AJB/DJS)

DECLARATION OF DALE T. WHITE

I, DALE T. WHITE, hereby declare and state as follows:

1. I am an enrolled member of the Saint Regis Mohawk Tribe (“Tribe”) in New York and the Tribe’s General Counsel.
2. The Plaintiffs in this action are members of the Tribe. They have authorized me to, and I do, make this Declaration on their behalf in support of their Complaint and Motion for Preliminary Injunction.
3. The Tribe’s Reservation, located in Akwesasne, New York, is bisected by the U.S./Canadian border and some tribal members were born in Canada because the closest hospital is located in Cornwall, Ontario just across the border.
4. Although these tribal members were born in Canada, and are technically Canadian citizens, most have always lived in the United States either on or off the Reservation.

5. The Tribe has approximately 16,500 enrolled members, about 8,000 of whom reside on the Tribe's Reservation.

6. Because the border established between Canada and the United States runs across the aboriginal lands of Indians, including the Tribe, the Jay Treaty of 1794, 8 Stat. 118, between the U.S. and Great Britain, gives Indians born in Canada the right to freely pass the borders of the United States.

7. Section 289 of the Immigration and Nationality Act ("INA"), 8 U.S.C. 1359, gives persons with at least 50% Native American blood who were born in Canada the legal right to live and work indefinitely in the U.S.

8. A long-standing federal regulation provides that "[a]ny American Indian born in Canada [who qualifies under section 289 of the INA] ... shall be regarded as having been lawfully admitted for permanent residence." 8 CFR § 289.2 (emphasis added).

9. Federal financial aid programs for post-secondary students are authorized under Title IV of the Higher Education Act of 1965 and administered by defendant U.S. Department of Education ("DOE" or the "Department").

10. A number of members of the Tribe who seek or are pursuing post-secondary education apply for and receive financial aid under Title IV in order to do so.

11. The Higher Education Act provides that, "[i]n order to receive any grant, loan, or work assistance under this subchapter, a student must— ... be a citizen or national of the United States, a permanent resident of the United States, or able to provide evidence from the Immigration and Naturalization Service that he or she is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident." 20 U.S.C. § 1091(a)(5) (emphasis added).

12. A Department regulation provides that, “to be eligible to receive title IV, HEA [Higher Education Act] program assistance, a student must—

- (1) Be a citizen or national of the United States; or
- (2) Provide evidence from the U.S. Immigration and Naturalization Service [now “USCIS”] that he or she—
 - (i) Is a permanent resident of the United States; or
 - (ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident.”

34 CFR § 668.33(a) (emphasis added).

13. To apply for federal financial aid, a student must first complete and submit a Free Application for Federal Student Aid (“FAFSA”) form. The colleges a student lists on the FAFSA form use it to determine his or her eligibility for aid after the student completes the college’s application requirements. The college sends a financial aid award letter to the student which details the costs of attending the college for an academic year, as well as any grants, scholarships, work-study, or loans the student is eligible to receive. Most colleges send out financial aid award letters around the same time as admission offer letters. *See* <https://studentaid.gov/help/financial-aid-package>

14. The Federal Student Aid Handbook (“Handbook”), published by the Department, is the authoritative guide for everything having to do with federal student aid, from loans to grants to eligibility. The Handbook is used by college financial aid administrators and counselors who help students file the FAFSA form, verify information, and make corrections and other changes to the information reported on the FAFSA. *See* <https://www.wfcorp.com/resources/federal-student-aid-handbook/>

15. For decades, American Indians born in Canada (“Jay Treaty students”) have been eligible for Title IV financial aid without requiring them to obtain any proof from DHS of their status as permanent residents of the United States. The FSA Handbook formerly stated that: “Jay

Treaty students ... are not subject to the legal restrictions typically imposed on aliens by the DHS, are not required to obtain documentation from the DHS, and are considered ‘lawfully admitted for permanent residence.’ They must obtain an SSN [Social Security Number] for purposes of applying for Title IV aid.” *See* <https://fsapartners.ed.gov/knowledge-center/fsa-handbook/2024-2025/vol1/ch2-us-citizenship-eligible-noncitizens>

16. As a result, in order to submit a FAFSA form and obtain federal financial aid, Jay Treaty students were only required to get a SSN and documentation from a tribal official that they had sufficient Native American blood (at least 50%) to satisfy Section 289 of the Immigration and Nationality Act, 8 U.S.C. § 1359.

17. On January 15, 2025, without any advance notice to the public, DOE posted an electronic notice on its website announcing that “[a]fter consultation with the Department of Homeland Security (DHS) about acceptable documentation for confirming the Title IV eligibility of American Indians born in Canada (formerly Jay Treaty students), FSA updated the acceptable documentation in the 2024-25 FSA Handbook.” *See* <https://fsapartners.ed.gov/knowledge-center/library/electronic-announcements/2025-01-15/american-indian-born-canada-formerly-jay-treaty-student-student-eligibility> (emphasis added).

18. Jay Treaty students already receiving aid can be exempted from this new eligibility requirement if they are “grandfathered” in by their college:

If an American Indian born in Canada claiming Title IV eligibility under the Jay Treaty received Title IV aid in the 2023-24 award year (or any prior award year), then the institution may elect under 34 CFR 668.133(b) to not require such a student to submit additional immigration documentation to establish their title IV eligibility where the documents used to establish that eligibility have not expired, and where the institution does not have reason to believe that the student’s claim of citizenship or immigration status is incorrect. *See id.*

19. However, students seeking aid for the first time, or students who had previously received aid but whom the college does not grandfather in, were faced with a new documentation requirement in order to establish their eligibility for financial aid:

If an American Indian born in Canada claiming Title IV eligibility under the Jay Treaty did not previously receive Title IV aid in the 2023-24 award year (or any prior award year) and is seeking to establish their status as an eligible noncitizen for the 2024-25 award year or later, then the student may submit any of the following immigration documentation to establish Title IV eligibility:

- Form I-551 PRC with the code S13;
- An unexpired temporary I-551 stamp with the code S13 in a Canadian passport; or
- An unexpired temporary I-551 stamp with the code S13 on an I-94

See id.

20. All of these forms of documentation must be obtained from the U.S. Citizenship and Immigration Services (“USCIS”), an agency within DHS. A Form I-551 is a Permanent Resident Card, commonly known as the Green Card. An I-551 stamp is a temporary stamp placed by USCIS on a passport, or on an I-94 form (Arrival/Departure Record), that serves as evidence of lawful permanent resident status when a person is waiting to receive their physical Green Card.

21. To obtain a Green Card, a Jay Treaty student must:

- Schedule an appointment and appear in person at the local USCIS office
- Obtain and bring to the appointment:
 - Two passport-style photos;
 - A copy of a government-issued identity document with photograph;
 - A copy of the student’s long form Canadian birth certificate (to establish lineage to claimed tribal ancestors, as well as birth in Canada); and
 - Documentation to establish membership, past or present, in each band or tribe for the student and every lineal ancestor (parents and grandparents) through whom the student derives the required percentage of American Indian blood. This documentation must come from the official tribal government or from Indian and Northern Affairs Canada. *See* <https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-an-american-indian-born-in-canada>

22. A Jay Treaty student may obtain a temporary I-551 stamp with the code S13, either in a Canadian passport or on an I-94 form. Obtaining a Canadian passport, which virtually all of them lack, requires the student to apply through the Canadian government. In order to obtain an I-94 form, the student must go to the US Customs Port of Entry and go through the Creation of Record process in order to apply for a permanent resident card (Green Card). The Creation of Record will allow the student to then submit their FAFSA. .

23. The FAFSA for the 2025-26 academic year opened on Nov. 18, 2024, and will close on June 30, 2026. However, students who wait until the 2026 deadline miss out on financial aid for the fall and spring semesters, and would only be able to receive aid for 2026 summer classes. Additionally, many states and colleges have their own application deadlines for aid, which typically are earlier than the federal FAFSA deadline. *See* <https://www.bankrate.com/loans/student-loans/fafsa-deadlines/>

24. Further, while federal student loans and Pell Grants function like an entitlement, federal campus-based aid is more limited: each college gets a fixed allocation of Federal Supplemental Educational Opportunity Grant (FSEOG) and Federal Work-Study (FWS) funding, so the money can run out. *See* <https://www.savingforcollege.com/article/fafsa-deadlines#:~:text=Regardless%20of%20the%20deadlines%20for,11:59%20pm%20Central%20Time.>

25. As set forth in the declarations of Plaintiffs Mercedes Rourke-Rodriguez and Ariwio Swamp, attached to this Declaration as Exhibits A and B, the new documentation requirement has kept Plaintiffs from completing their FAFSA applications.

26. Plaintiffs need federal financial aid under Title IV in order to attend college this fall and, absent relief from the new documentation requirement, Plaintiffs will not receive the financial aid necessary for them to attend college this fall.


27. While the Department announced the change of policy via a website posting on January 15, 2025, neither Plaintiffs nor the Tribe learned about it until much later.

28. Plaintiffs and other tribal members first learned of the existence of the new requirement in March-April 2025 as they began the application process.

29. The new requirement was brought the issue to the attention of Tribal officials in late March 2025 and the Tribe then explored options for resolving the problem directly with the Department.

30. Attempts to resolve the issue through discussions with the Department have thus far proved unsuccessful, and so the Tribe decided to sponsor this law suit to obtain judicial relief for plaintiffs and other affected members of the Tribe.

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


Dale T. White