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MEMORANDUM

To: International Education Program Administrators

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1) DREAM Act Defeated

Much has already been written and said about the defeat of the DREAM Act in the Senate on December 18, 2010. The defeat was a tremendous disappointment to many whose lives and futures will be negatively impacted. The image I see is that of the Bangladeshi taxi cab driver's daughter with a 4.0 average who will not be going to medical school.

Although it would appear that the chances for a reincarnation of the DREAM Act in the next two years are grim – strange things are known to happen in politics, especially when compromises are needed to pass legislation desired by both sides. We will see.

Of interest is the "News Analysis" in the *New York Times* of December 19, 2010, which may be reviewed by clicking [here](#); as well as the "National Latino Top 10: Reasons Senators Voted Against Dream Act" in *My Latino Voice*. Click [here](#) to view the article.

2) DHS Secretary Napolitano "Highlights Agency's Major Accomplishments in 2010"

It is the New Year and we have just survived another season of major accomplishment lists by various entities. Among the accomplishments of DHS were a new record for overall removal of illegal aliens (which did not help to pass the DREAM Act), and prioritizing apprehension and removal of aliens who pose a threat to public safety. Of course, the mission of the agency was to deport only those aliens who proved a threat to public safety so, by definition, all deportees must have posed a threat. Of course, the securing and management of our borders was continued with the deployment of historic levels of personnel, technology and resources to the Southwest border, including Predator Unmanned Aerial System (UAS) coverage along the entire Southwest border for the first time. UAS development has been a relief to all the border patrolmen who have been standing side to side holding hands for so many years. Not only can they now rest, but they no longer will need to object to being required to hold hands with same sex partners. Oh well, another year shot to hell!

3) Former ICE Leadership May be Liable for Violations of Constitutional Rights

The *New York Times* of December 18, 2010 reported that a federal judge in Bridgeport, Connecticut ruled that Julie L. Myers, former Director of ICE, as well as other senior officials, could be held liable for ICE officers' violations of constitutional rights of illegal aliens who were arrested in predawn raids three years ago in New Haven, Connecticut. Although the trial is still months away, the

lawsuit survived a motion to dismiss. The city of New Haven had approved a plan to offer I.D. cards to all city residents, including an estimated 15,000 illegal immigrants. Advocates for the plaintiffs felt that the raids were made in retaliation for the New Haven policy and that the responsibility for the raids began at the top. Apparently, one of the major allegations is that the agency's emphasis on arresting fugitives was changed to arresting non criminals who were then counted against a quota system for criminal arrests. By definition, any individual arrested was therefore, a criminal. The story may be found by clicking [here](#).

4) H-1 Visa Issues

◆ H-1B Visa Count

On December 14, 2010 USCIS updated the H-1B cap count to note that as of December 10, 2010, approximately 52,400 H-1B cap-subject petitions were receipted against the 65,000 total cap.

Further, USCIS has receipted nearly 19,100 H-1B petitions against the 20,000 cap for aliens with advanced degrees. These numbers continue to be significantly below the totals for 2009.

◆ I-129 Export Compliance Attestation Suspended Until February 20, 2011

The new form I-129 carries a "deemed export compliance attestation" in Part 6. Although the form went into effect on December 23, 2010, USCIS announced that Part 6 was being suspended until February 20, 2011 for use by petitioners for the H-1B, H-1B1, L, and O-1a categories. The suspension of this section was made with U.S. Department of Commerce agreement, and sought a "certification regarding the release of controlled technology or technical data to foreign persons in the United States." The petitioner is required to certify that the company has reviewed Export Administration Regulations and the International Traffic in Arms Regulations and has determined whether or not an export controlled license is required to release any controlled technology or technical data to the foreign national beneficiary. Specifically, the language would state that a Department of Commerce or Department of State license is not needed for release of such technology to a foreign individual, or that a license is required. No reason was provided for this sixty day suspension, and no prediction for any further suspensions has been made.

◆ USCIS Announces Prospective Publication of Rule to Require a Prefiling Registration for H-1B Petitions

In a highly unusual announcement, USCIS advised on December 28, 2010 that it was preparing a "Notice of Proposed Rulemaking" for a registration requirement for prospective H-1B petitioners to electronically register petitions subject to the H-1B cap prior to the actual filing of the H-1B petition. USCIS stated that it would propose:

...to establish a mandatory internet based electronic registration process for U.S. employers seeking to file H-1B petitions for alien workers subject to either the 65,000 or 20,000 caps. This registration process would allow U.S. employers to electronically register for consideration of available H-1B cap numbers. The mandatory proposed registration process will alleviate administrative burdens on USCIS Service centers and eliminate the need for U.S. employers to needlessly prepare and file H-1B petitions without any certainty that an H-1B cap number will ultimately be allocated to the beneficiary named on that petition.

Apparently, USCIS wants to get some preliminary reaction to this new and unusual regulatory effort.

5) Visa Developments

◆ DOS Releases Visa Category Statistics for FYs '04-'10

On December 15, 2010 AILA posted a chart setting forth non immigrant visa issuances by visa categories for fiscal year 2004 through fiscal year 2010. Of interest are the lines for F-1, F-2, J-1, and J-2 as well as H-1Bs. The statistics follow:

Visa Category	FY-2004 Issuances	FY-2005 Issuances	FY-2006 Issuances	FY-2007 Issuances	FY-2008 Issuances	FY-2009 Issuances	FY-2010* Issuances
F1	218,898	237,890	273,870	298,393	340,711	331,208	385,131
F2	18,893	18,061	20,748	22,036	23,193	21,817	25,216
H1B	138,965	124,099	135,421	154,053	129,464	110,367	117,363
J1	254,504	275,161	309,951	343,946	359,447	313,597	320,769
J2	27,875	28,661	30,104	32,236	32,642	31,944	32,789

*Preliminary data through 9/30/2010

◆ Visa Processing Changes in Mexico

The Nafsa.news of December 14, 2010 set forth an announcement from the U.S. Embassy in Mexico regarding new visa procedures. As of January 10, 2011 most applicants will be required to go an to Applicant

Service Center (ACS) prior to Consular section interviews. The ACS staff will collect the biometrics which will be reviewed by the Consular officers prior to interviews. The entire announcement may be found [here](#).

◆ U.S. Consulates in India Reorganized

The U.S. Embassy in India has announced that the Embassy in New Delhi and Consulates in Mumbai, Chennai, Kolkata, and Hyderabad will now accept visa applications from across India at all visa facilities, regardless of the applicant's home address or city of residence. The announcement may be viewed by clicking [here](#).

6) USCIS Initiative Against Unauthorized Practice of Law; AILA Announces Launch Consumer Protection Website

On December 8, 2010 USCIS announced an initiative to combat the unauthorized practice of immigration law. This announcement took many many years to happen and finally recognizes that immigration fraud is not a victimless crime. The announcement noted that the initial focus of the program will include New York among other cities and will seek to collect input from government partners as well as community stakeholders. Whether the community stakeholders will trust USCIS to protect them is yet to be determined.

On December 6, 2010 AILA debuted StopNotarioFraud.org to combat the unauthorized and unscrupulous practice of law. Click [here](#) to view. The website contains videos, news articles and other materials for victims and consumers with referrals to appropriate state agencies for reporting abuse. The site also provides a warning against individuals advising about secret laws or special connections or influence, and advises against signing either blank applications or applications with false information. The site also warns against those who would help the victim "find" a sponsor or spouse to obtain a green card.

7) I-290B Under Review

The "Federal Register" of November 16, 2010 carried a 60 day Notice of Information Collection for form I-290B – Notice of Appeal to the Office of Administrative Appeals. This form is used for AAO appeals, as well as for Motions to Reopen/Reconsider. The notice mentions that there were an estimated 28,734 forms filed annually. That's a lot of USCIS mistakes!

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Many thanks for your comments, your suggestions and for referring your students, scholars and faculty members.

Please let me know if you have any questions, or if you would like copies of any of the materials covered.

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