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MEMORANDUM

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From all of us at the Law Office of Eugene Goldstein, we wish you and yours a healthy, happy and safe 2015.

To: International Education Program Administrators

- 1) Lots of Litigation
 - a) Challenges to DACA/and to the New DAPA
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1) Lots of Litigation

a) Challenges to DACA/and to the New DAPA

December was a quiet month for immigration issues. After a lot of anti-immigrant bluster, Congress adjourned for the Christmas recess. Unlike some years when administrative agencies have been known to drop major regulations or changes just before Christmas, the Grinch took a year off.

However, the holiday spirit didn't stop several opponents of the Obama Executive Action immigration reforms from trying to put coal in other people's stockings.

A U.S. District Court judge in Pittsburgh struck down the President's Executive Order in a pending criminal case, even though the government and defense lawyers had argued that the President's Executive Action didn't apply. These positions didn't stop U.S. District Court Judge Arthur Schwab from stating that the Executive Action could affect a deportation proceeding, even when the government said otherwise. Although this decision was pretty far out, and should not receive much deference, it has gotten a lot of publicity. The American Bar Association report of the case may be found [here](#).

Not to be outdone by a renegade Judge in Pittsburgh, Sheriff Joe Arpaio of Phoenix, Arizona filed his own lawsuit alleging that the President's Executive Action was unconstitutional and would violate the Administrative Procedure Act (which means that it should have been published in the *Federal Register*). It did not take long for the local U.S. District Court to dismiss the Sheriff's lawsuit as being beyond that of a local sheriff to challenge, as immigration is an issue which is under federal government control and, therefore, substantially above Sheriff Arpaio's paygrade.

However, the Attorneys General of more than 20 states filed litigation in the U.S. District Court for the Southern District of Texas challenging both the expansion of DACA and the creation of DAPA, (Deferred Action Program for Parents Accountability). The lawsuit claims that the President's actions are a "unilateral suspension of the Nation's immigration laws..." Whether the various states will be found to be able to sue the federal government on a matter within federal government jurisdiction on an issue over which the President has legal authority has been underwritten by 136 law professors who wrote to the White House on November 20. Of course, 136 law professors may be outmatched by one federal judge in south Texas. We will see.

While anti-immigration forces have unleashed their little foxes and are out to spoil the grapes, the *New York Times* reported on December 26, 2014 that it took only ten days from the President's announcement of his plan for an electronic bulletin board to announce that USCIS was immediately seeking to hire 1,000 new employees to work in a new building in the Crystal City neighborhood of Arlington, Virginia. The new office will process DACA and DAPA applications at a cost of \$8 million in lease payments, and more than \$40 million in annual salaries. The *Times* reported that 5,000 people had already applied for the new jobs with titles such as Special Assistant, Management Program Analyst, and Immigration Services Officer. Money is being used from existing accounts and will be repaid by income generated by DAPA and DACA application fees. Senator Jeff Sessions, (R.Alabama) is already fulminating, and has called the new

offices “a clear symbol of the President’s defiance of the American people, their laws and their Constitution”.

b) Challenge to STEM OPT

In other litigation, an organization called The Washington Alliance of Technology Workers (WashTech), describing itself as a collective bargaining organization representing science, technology, engineering, and mathematics (STEM) workers, sued the Department of Homeland Security seeking to eliminate the STEM Optional Practical Training program which was created by the Bush Administration in April, 2008. WashTech has argued that the STEM OPT program causes real harm to American technology workers because U.S. employees prefer to hire STEM OPT workers instead of U.S. workers. The court decided that WashTech represented individuals with an actual stake in the litigation and could, therefore, go ahead with the lawsuit. Whether WashTech will be successful in eliminating STEM OPT is a separate legal question and is yet to be decided. In other words, they can sue, but winning is something else.

2) SEVIS 6.18 Recording Posted

The NAFSA.News of December 9, 2014 announced that SEVP had posted a webinar recording on the functionality of SEVIS 6.16 including a review of the new annual verification requirement for PSDOs and DSOs which was originally released on October 31. The announcement may be found on the NAFSA website.

3) CBP Launches Border Wait Time App

On December 16, 2014 CBP announced the launch of its “Border Wait Time App”. Using the app, “planning your trip across the border just got easier”.

According to the announcement:

The app provides estimated wait times and open lane status at land ports of entry allowing travelers to make an informed decision of where and when to cross the border. Wait times for pedestrian and passenger and commercial vehicle crossings are broken down by lane type (standard, SENTRI, NEXUS, FAST, Ready Lane, etc.). Travelers can download the app for free from Apple’s App Store and Google Play...

Travelers can locate the three ports of entry closest to their location and then map the best route to the crossing of their choice. For example, the app allows travelers in the Buffalo, New York area to compare wait times at the Peace Bridge, Rainbow Bridge and Lewiston Queenston Bridge and will then direct them to whichever crossing they chose.

The app was developed by CBP and does not require individuals to register or provide any personal information. CBP does not store or have access to any information regarding travelers using the app.

4) CBP Liaison Meeting Minutes Discuss Automatic Revalidation

The Minutes of a liaison meeting between CBP and AILA on November 21, 2014 contains, among many items, one on Automatic Revalidation. The Q and A follows:

Automatic Revalidation Issues

[AILA] members continue to report a lack of consistency in CBP recognition and utilization of the automatic revalidation procedures under 22 CFR §41.112(d). Some ports of entry refuse to recognize the revalidation regulation, while others reluctantly admit the applicant with the indication that “next time” they need a valid visa. In some instances, airlines refuse to board passengers on flights between Mexico or Canada and the U.S. unless a valid unexpired visa is presented.

a. What documents must an applicant for admission seeking automatic revalidation present to CBP?

Admission under the automatic visa revalidation provision is available to all individuals who meet the criteria in 8 CFR 214.1(b) and 22 CFR §41.112(d). Automatic revalidation applies to F, J and Q nonimmigrants arriving from Adjacent Islands as well the contiguous territories- Canada and Mexico.

b. Is it recommended to travel with a copy of page 21 of the most recently published CBP Carrier Information Guide
<http://www.cbp.gov/sites/default/files/documents/Carrier%20Information%20Guide-%20English.pdf>), listing the requirements for automatic revalidation?

No. CBP officers are trained in applying automatic revalidation requirements.

This useful guidance about automatic revalidation may be found [here](#).

Despite CBP’s assurance, students may wish to carry this Guidance with them.

5) Obama Administration Eases Restrictions on Cuba

On December 17, the Obama Administration made several announcements regarding Cuba which will substantially change U.S. Cuba relations from what they have been over the last 50 years. Although changes will incur incrementally and gradually over time, we should expect a new group of students coming from Cuba. Exactly when they will arrive and how these students will be funded is yet undetermined. We look forward to these positive developments. Regulations will need to be written and published, and in some cases, legislation will need to be changed.

6) Departments of State, and Homeland Security Solicit Public Input for Policy Recommendations

The *Federal Register* of December 30, 2014 carried a “Notice of Request for Information” by DOS and DHS seeking public recommendations “on improving and modernizing the legal immigration system...” focused on a series of 14 questions. Included are concerns about nonimmigrant (including F-1 and J-1) consular visa processing, changes of nonimmigrant visas and adjustment to immigrant status, entry procedures, and “the most important policy and operational changes that would attract the world’s most talented researchers to U.S. universities, national laboratories and other research institutions,” among others.

The agencies have provided a rare opportunity for serious public input-one that shouldn’t be missed.

The *Federal Register* notice may be found [here](#).

7) California Service Center Publishes Quarterly Stakeholder Newsletter

On December 31, 2014 the California Service Center released its *Quarterly Stakeholder Newsletter*. The *Newsletter* discusses its October 9th National Teleconference held jointly with the Vermont Service Center and links to a PowerPoint on filing tips for these categories on H-1B and R-1 (religious worker) issues.

The CSC Director, Kathy Baran acknowledged that customer feedback “is invaluable to service centers. She also noted the limited opportunities service centers have to interact with and address questions and answers with our stakeholders in an open forum.”

Perhaps, VSC and CSC should use that thought for a New Year’s resolution.

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

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

Note (After all, we are lawyers!): The information provided in this Memorandum is not legal advice. Transmission of this information is not intended to create, and receipt by you does not constitute, an attorney-client relationship. Readers must not act upon any information without first seeking advice from a qualified attorney. Neither the publisher, nor any contributor is responsible for any damages resulting from any error, inaccuracy, or omission contained herein.