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To: Office of General Counsel Attorneys & Paralegals

From: Sandra M. Casey *SMC*  
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Date: July 7, 2017

Re: Immigration Update

Over the past several weeks, there has been much activity at the federal level regarding immigration matters. Below is a summary of the impact on campuses.

**I. President Trump's Executive Order 13780 Relating to the International Travel Ban**

On June 26, 2017, the U.S. Supreme Court agreed to hear an appeal of court decisions involving President Trump's Executive Order 13780 (the "Order") entitled "Protecting the Nation from Foreign Terrorist Entry to the United States." The cases will be heard in the first session of the October 2017 term. As you are aware, President Trump issued this most recent Order on March 6, 2017, with an effective date of March 16, 2017, after his initial Executive Order was quickly challenged.

In addition to agreeing to consider the appeal, the Supreme Court granted, **in part**, the Administration's application to stay the preliminary injunctions issued by the courts below. President Trump issued a memorandum, dated June 14, 2017, to various federal agencies, including the Department of Homeland Security, extending the March 16th effective date of the Order to the date the injunctions were lifted. The memorandum directed that enforcement begin 72 hours after the effective date. As a result, enforcement on parts of the Order began on June 29, 2017.

One of the main provisions of the Order being partially enforced is §2(c). This section suspends entry of nationals from **Iran, Libya, Somalia, Sudan, Syria, and Yemen** for 90 days. Enforcement is limited to those who do not have a "bona fide relationship" with a person or entity in the U.S. The other main provisions being partially enforced are §§6(a) and (b), which relate to the suspension of the United States Refugee Admissions Program ("USRAP"). Section 6(a) suspends admission of refugees from any country for 120 days and §6(b) caps the number of refugees who can be admitted in 2017 to 50,000.

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Section 6(a) may be enforced against an individual seeking admission as a refugee who cannot credibly claim a bona fide relationship with a person or entity in the U.S. However, refugees who can claim a bona fide relationship cannot be excluded even if their entry into the U.S. exceeds the 50,000 person cap set forth in §6(b).

Refugees from any country and foreign nationals from **Iran, Libya, Somalia, Sudan, Syria, and Yemen**, who have a credible claim of bona fide relationship are:

1. Those who wish to enter the United States to live with or visit a family member. The Departments of State and Homeland Security have stated that only the following relationships will qualify: “a parent (including parent-in-law), spouse, fiancé, child, adult son or daughter, son-in-law, daughter in-law, sibling, whether whole or half, and including step relationships.”
2. Students from the designated countries who have been admitted to or are currently studying at a college or university;
3. Workers who accepted an offer of employment from an American company; and
4. Lecturers invited to address an American audience.

In summary, the combination of the June 26, 2017 Supreme Court ruling and the June 14, 2017 President’s Memorandum result in the following enforcement:

- a. Foreign nationals from the countries of **Iran, Libya, Somalia, Sudan, Syria, and Yemen**, who are outside of the U.S. as of June 26, 2017, and who do not have the requisite valid visas or cannot demonstrate to the Department of State that they have a credible claim of a bona fide relationship to an individual or entity in the U.S. are not eligible to enter the U.S. while the temporary 90-day suspension remains in effect.
- b. As of 8:00 P.M. EST on June 29, 2017, refugees from any country who do not have a credible claim of a bona fide relationship with an individual or entity in the U.S. will not be able to enter the U.S. for 120 days, unless they were formally scheduled for transit prior to 8:00 PM EST on June 29, 2017.
- c. The Order **does not apply** to individuals who are within the United States or to those who hold a valid visa.
  - Individuals holding valid F, M, or J visas may continue to travel to the U.S. on those visas if they are otherwise valid.

- Please note, travelers must hold a valid visa in order to travel to the U.S., regardless of the Order. Travelers whose visa expires after the effective date of the Order must obtain a new, valid visa to return to the U.S.

d. Exemptions

- The Order exempts several classes of foreign nationals, including U.S. lawful permanent residents (green card holders) and holders of a valid U.S. visa.
- For a **full list of exempted classes**, please see “Exceptions and exemptions” at [http://www.nafsa.org/Professional\\_Resources/Browse\\_by\\_Interest/International\\_Students\\_and\\_Scholars/Travel\\_Advisory\\_for\\_Nationals\\_of\\_Certain\\_Countries\\_Pursuant\\_to\\_Executive\\_Orders/](http://www.nafsa.org/Professional_Resources/Browse_by_Interest/International_Students_and_Scholars/Travel_Advisory_for_Nationals_of_Certain_Countries_Pursuant_to_Executive_Orders/)

e. Waivers

- The Departments of Homeland Security and State can review individual cases and grant waivers on a case-by-case basis if a foreign national demonstrates that his or her entry into the United States is in the national interest, will not pose a threat to national security, and that denying entry during the suspension period will cause undue hardship to a U.S. citizen or entity.

For more information on the Order, please visit the following websites:

- [www.nafsa.org/EOentry](http://www.nafsa.org/EOentry)
- [http://www.nafsa.org/Professional\\_Resources/Browse\\_by\\_Interest/International\\_Students\\_and\\_Scholars/Executive\\_Order\\_Entry\\_Ban\\_Litigation\\_Updates/](http://www.nafsa.org/Professional_Resources/Browse_by_Interest/International_Students_and_Scholars/Executive_Order_Entry_Ban_Litigation_Updates/)

## II. DACA Students

In a memorandum, dated June 15, 2017, rescinding the program known as Deferred Action for Parents of Americans and Lawful Permanent Residents (“DAPA”), the Department of Homeland Security **affirmatively** stated that the June 15, 2012 memorandum that created the Deferred Action for Childhood Arrivals (“DACA”) program will remain in effect. The memorandum creating the DAPA program allowed individuals in the DACA program to apply for a three-year extension of their work authorization. With the rescission of that memorandum, DACA students will only be allowed to apply for a two-year extension of work authorization.

The affirmative statement by the government to keep DACA intact should help allay fears on campuses that DACA students are at risk of being deported and will allow those with work authorizations to pursue employment opportunities.

For more information on the status of the DACA program, please visit the following websites:

- <https://www.dhs.gov/news/2017/06/15/rescission-memorandum-providing-deferred-action-parents-americans-and-lawful>
- [http://www.nafsa.org/Resource\\_Library\\_Assets/Regulatory\\_Information/DACA\\_Resource\\_Page\\_For\\_International\\_Student\\_Advisers\\_and\\_Education\\_Abroad\\_Advisers/](http://www.nafsa.org/Resource_Library_Assets/Regulatory_Information/DACA_Resource_Page_For_International_Student_Advisers_and_Education_Abroad_Advisers/)

### **III. H-1B Premium Processing**

You will recall that in April of this year, the U.S. Citizenship and Immigrations Service (“USCIS”) suspended the premium processing for H-1B petitions. Premium processing expedites the decision-making process on an H-1B petition within two weeks of when it was submitted to USCIS. Suspending this alternative route for approval of an H-1B petition impacted our recruitment of foreign faculty. USCIS announced that starting on June 26, 2017, it will resume premium processing for all H-1B petitions filed for medical doctors under the [Conrad 30 Waiver program](#). The Conrad 30 program allows certain medical doctors to stay in the United States on a temporary visa after completing their medical training to work in rural and urban areas that have a shortage of physicians.

I will update you when the suspension of premium processing has been fully lifted.