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TOPIC:

ACADEMIC IMMIGRATION AND LIABILITY: RISKS AND RESPONSES

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INTRODUCTION:

This NACUANOTE presents an overview of potential liability for immigration advice provided to international students, visitors, and employees on campus. Each year, institutions of higher education sponsor over one million international students on F-1 student visas, as well as numerous other exchange visitors (such as visiting scholars and postdoctoral fellows), and faculty and staff on H-1B or other working visas. Many institutions have an "International Students and Scholars" office that serves as the school's central resource for tracking, supporting, and advising these visitors in compliance with U.S. law. The advisers on F-1 student status are called Designated School Officials (DSOs) [10], and the advisers on J-1 exchange visitor status are called Alternate Responsible Officers (AROs) [11]. The advice provided by individuals in these offices can lead to liability for the individual advisor and/or the institution if something goes wrong.

While the consequences of poor or improper school official advice in many contexts can at times be significant, the impact of DSO and ARO advising can be life-altering. The results of poor or improper international student advising include students not being able to enter the United States in time for a program, obtain work authorization to accept a job, or remain in the United States to fulfill their dreams through education and a chosen career. A 2017

NACUANOTE reviewed best practices for institutions on providing immigration advice.[12] This NACUANOTE focuses on liability by reviewing the relatively few cases on this topic filed in court, and presents suggestions for risk mitigation.

These cases highlight potential institutional risks that can be actively managed in advising practice. We suggest model practices for mitigating institutional and individual risk, with the caveat that an institution's risk tolerance and service expectations will ultimately determine the best practice for each institution. In addition, this NACUANOTE describes legal resources and remedies that may support institutions and their DSO/AROs if they are sued. The NACUANOTE also offers model practices to balance service excellence with risk mitigation. The general principles here would also apply to international advisers working on employment-based immigration cases, such as H-1B temporary visa petitions or permanent residence (green card) applications, as well as some education abroad advisors.

DISCUSSION:

1. Selected Relevant Cases

As the following cases demonstrate, the limited instances of litigation on this topic have resulted in an inconsistency among the courts as to the duty of care owed to international students by DSOs/AROs, and whether the concepts of governmental immunity protect certain DSO/ARO daily job functions. The legal theories in these cases are based generally in tort law, with negligence as the primary cause of action, due to provision of misinformation, negligent and unauthorized practice of law, or avoidable human error. Overall, the case law shows some close calls by the courts, and more potential exposure than many in the field expect. We suggest that counsel confer with international offices regularly to support continued training and refine risk management strategies.

a. ***Doe v. Dordoni***[13]

In this case that turned on the application of official immunity under Kentucky state law applying only to acts performed in the exercise of discretionary functions, an F-1 student sued his school's DSO for negligence for incorrectly advising the student that the Form I-20 "Certificate of Eligibility for Nonimmigrant Student Status" (I-20) he planned to use to enter the United States remained valid.

In February 2015, the DSO became aware of an IT glitch that fed inaccurate data from the school's F-1 student database to the Student and Exchange Visitor Information System (SEVIS). The DSO worked with IT to resolve the glitch and believed it was corrected in March 2015.

In May 2015, the student contacted the DSO to ask if it was safe for him to travel and return with his I-20 even though his I-20 was set to expire in a few days. The DSO checked the school's database, which showed that the student's I-20 was valid through 2017, but failed to check SEVIS to confirm the I-20 program end date in light of the data glitch, and also failed to respond to a subsequent email from the student further expressing concern that his travel I-20 was set to expire within a few days.

The student returned to the United States on May 17, 2015, and was detained when he provided an expired I-20 and SEVIS records indicated that he was no longer in active status. The student was ultimately allowed to enter the United States based on fear of persecution as an asylum seeker.

The district court held that the DSO was entitled to official immunity under Kentucky law. However, on appeal, the circuit court reversed, holding that “Official immunity does not apply to ministerial acts or functions that require "only obedience to the orders of others, or when the officer's duty is absolute, certain, and imperative, involving merely execution of a specific act arising from fixed and designated facts."[14] In other words, Kentucky law protects government employees when they are exercising discretion in the course of their duties, but not for giving guidance that was simply incorrect. The circuit court remanded to the district court to determine whether the negligence standard was met, including whether the DSO acted with reasonable care.

On remand, the district court held that the DSO met his duty of care by verifying the student’s record in the university database, and the student did not produce expert testimony to support that a DSO had a duty to check the SEVIS record in addition to the university database, and that reliance on the university system alone was reasonable.[15] The student continued to object to the ruling, arguing that the DSO had “voluntarily assumed” a duty. The court then ruled that under the “voluntarily assumed” duty per state negligence standards, a plaintiff must show physical harm or physical injury, which the student failed to show.[16]

While the University and the DSO prevailed in the end, the larger message from this case is one of caution - a student suffered harm from an error in his immigration status that the DSO failed to catch, which in turn led to extended (and likely expensive) litigation and negative publicity for the school. It is also impossible to know whether the outcome might have been different if the plaintiff had secured expert testimony on whether a DSO should check the SEVIS database before giving immigration advice to a student.

b. ***Hollingsworth v. State of Minnesota***[17]

An international student was arrested by U.S. Immigration and Customs Enforcement and subjected to deportation proceedings because her DSO erroneously issued her I-20 report date more than 60 days prior to the start of classes, causing her SEVIS record to be canceled automatically and her to fall out of status. The student sued the State of Minnesota, Minnesota State Colleges and Universities, the school, and the DSO for negligence and violations of 42 U.S.C. § 1983 for denial of due process.

The Minnesota state appellate court upheld the district court’s dismissal of the student’s claims. The court first held that, like the Family Educational Rights and Privacy Act of 1974 (FERPA), the SEVIS regulations do not create a private right of action against the school. “The consequence for a school's failure to follow INA provisions does not provide nonimmigrant students with a remedy; rather, it results in the withdrawal of government approval for the school’s participation in the student and exchange visitor program.”[18] The court further found that the relationship between an international student and their DSO or sponsoring school does not create a special duty of care to properly maintain the SEVIS database under Minnesota negligence law.[19] Her 42 U.S.C. § 1983 due process claims were dismissed because SEVIS regulations did not give rise to a federal right of enforcement to a nonimmigrant student.[20]

This case is an example of the most leeway from exposure to negligence claims provided to DSOs and AROs for affirmative mistakes in their job duties. As shown in the following examples, other states do not automatically dismiss negligence claims for harm caused by DSO and ARO error.

c. ***Dalgic v. Misericordia University***[21]

A student alleged that Misericordia University caused his Optional Practical Training (OPT) application to be denied when the DSO prematurely submitted a recommendation for OPT in SEVIS (the earliest that the recommendation can be submitted in SEVIS is 90 days before the program end date), and also gave the student outdated instructions for submitting the OPT application, that contained an incorrect fee for the application. The DSO assisted the student with completing the application, which was subsequently denied because more than 30 days had elapsed between the DSO's entering the recommendation into SEVIS and the filing of the I-765 application for OPT. The DSO admitted her error, including a statement that it "was entirely an error on my part," in a letter to USCIS.[22]

The student's complaint alleged negligence and negligent interference with prospective contractual relations against the university. The court held that the university was negligent in causing the denial of the student's OPT application, including a showing of harm in lost employment opportunities. Opposed to the *Hollingsworth* case discussed above, the court further held that a special relationship existed between the DSO and the student to meet the heightened burden of showing negligent interference with a prospective contractual relationship.[23]

In this case, the plaintiff student prevailed, leading to monetary damages against the school caused by the DSO's error. It is not clear whether the DSO consulted the school's counsel before accepting fault in the letter to USCIS. Best practice is for international advisers to bring issues of potential liability to counsel for a candid discussion on balancing the value of an admission in hopes of remedying the situation for the student against the potential liability for the school.

d. ***Gani v. State of New York***[24]

A State University of New York DSO mailed out a student's change of status application from B-2 (visitor) to F-1 (student) on behalf of a student, but USCIS never received the application. The adviser thought that USCIS received it and told the student that it was received. When the student learned it was not received, he filed a second application, but it was untimely filed. By then, the student's B-2 visa had expired, causing him to fall out of status. Subsequent applications to reopen and reconsider were denied because the student unlawfully attended classes while his petition was pending, again on the DSO's incorrect advice.

The student sued the state of New York for negligence, claiming that the state owed him a special duty of care. The court first ruled that the claim was not barred by governmental immunity.[25] Under New York law, governmental immunity applies to discretionary actions of a governmental actor, such as public safety, but does not apply when the state acts in a proprietary capacity similar to traditionally private actors carrying out the same functions.[26] The court found that SUNY's role is the same as any private institution of higher education, meaning that the DSO acted in a proprietary capacity, rendering government immunity inapplicable.

The court then considered the student's negligence claim under traditional negligence standards. It found that the DSO assumed a duty to the student by mailing out the student's application to USCIS and then representing to the student that it had been received when, in fact, it had not.[27] The court held that the DSO did not, however, violate a duty when they provided erroneous advice about studying during the pendency of the change of status application, finding: "[the DSO] was not an attorney, and universities have no fiduciary relationship with their students."[28] Despite the DSO's duty of care in mailing out the application, the court dismissed the student's complaint because the student failed to prove harm in the form of a lost job opportunity that he otherwise would have been able to accept.[29]

While as in the first two cases discussed above the school was not found negligent, in contrast, this case had a peculiar fact pattern. The student claimed he was unable to take a job in 2007 because of the immigration situation, but the judge found that the student would not have been eligible for student employment authorization at that stage in his studies regardless. Additional language in the opinion that a school generally should not be responsible for immigration legal advice is not the common belief. DSOs and AROs guide students in legal matters on a daily basis, and should take that responsibility seriously.[30]

e. ***Henrique La Valle Da Silva Faria v. The Regents of the University of California***[31]

In a pending case that warrants close attention by practitioners in this field, a former international LL.M. student who lost his job as a Senior Advisor in Ernst & Young's International Tax Services Practice sued the University of California, Berkeley, alleging negligence when the university admitted to making an error on his I-20 that caused him to miss the OPT filing deadline. The student alleges he was later arrested and escorted by police to board a flight departing the U.S.[32]

The actual OPT filing deadline for this student was May 6, 2018, but the international office told the student that the deadline was May 9, 2018. The student's application arrived two days late and was denied by USCIS. The university admitted its error and sent a letter explaining this to Ernst & Young, and also to USCIS.

In anticipation of his August 2018 start date with Ernst & Young, the student leased an apartment in New York and purchased furniture and appliances. Having exhausted his financial resources, he asked the university for options and was told to return home. Since then, the university modified information on its website limiting contractual liability to a foreign student. The website also provides a new warning to students that the OPT application is the student's responsibility.

The causes of action contained in the student's complaint include breach of express and implied agreement, negligence, negligent misrepresentation, and negligent interference with prospective contractual relationships.[33] The university moved to strike the complaint based upon qualified immunity and lack of a contractual relationship. Trial is currently scheduled for June 2023.[34]

f. ***Norambuena v. Western Iowa Tech Community College***[35]

This case alleges facts more serious than mere negligence, in that it alleges a community college utilized the J-1 Exchange program to force international students to work at meat packing and dog food factories.[36] The authors include this case, even with the egregious

situation, to emphasize the importance of oversight of the immigration programs delegated to the school by U.S. Immigration and Customs Enforcement (F-1) and the U.S. State Department (J-1). Misuse of these programs, undetected by school administration, can also lead to potential liability.

Eight J-1 students from Chile allege that they were made to work at food processing factories to pay off debts when enrolled at Western Iowa Tech Community College (WITCC).[37] Per the complaint, employees of the defendant community college and partner staffing agency coached the plaintiffs on hiding the work aspects of the proposed program during their J-1 visa interviews at a U.S. embassy.[38]

The State Department ultimately informed the college that the jobs were not "internships." The college then told the students that they would have to quit their jobs and owe the college $250 a week for room, board, tuition, and fees. In March 2020, the college ended the students' SEVIS records, citing the COVID-19 pandemic, and paid for the students to return home to Chile.[39]

The students sued, alleging various violations of the International Trafficking Victims Protection Reauthorization Act for human trafficking, forced labor, and debt bondage; the Racketeer Influenced and Corrupt Organization Act (RICO), indentured servitude, fraudulent misrepresentation, breach of contract, tortious infliction of emotional distress, violations of the Iowa Wage Payment Collection Law, and respondeat superior.[40] The defendants include the community college along with a number of the college's employees, the staffing agency, and the two food factories in which plaintiffs worked.

In March 2022, the U.S. District Court for the Northern District of Iowa dismissed the RICO, indentured servitude, and respondeat superior claims as well as the tortious infliction of emotional distress claim as against the two food factory defendants but let stand the remaining counts.[41] A trial date is currently anticipated for 2024.[42] Careful oversight of immigration authority on campus is essential to avoiding such a situation, or even a one-off misuse of the J-1 or F-1 program for improper purposes.

2. Mitigation Strategies That Counsel Can Discuss with International Advisers

In most cases, institutional counsel are not expected to be experts on immigration law. That topic is delegated to the trained DSOs and AROs in your International Students and Scholars office. The counsel's office and the international office must have a strong and collegial working relationship, however, to protect the institution and its students. This relationship should include the ability to candidly discuss areas of greatest risk and how to manage exposure, a few examples of which follow.

a. **Use diligence and clarify responsibilities regarding dates used on applications.**

To minimize the risk of error or negligence, standardize the terminology used and employ appropriate disclaimers. By way of example, the "program end date" is a key term in immigration advising, and should be defined clearly in consultation with the registrar's office. Further, a disclaimer regarding the date should be included in official correspondence with international students, e.g., "The I-20 program end date is an estimate. The student is responsible for notifying the international office of any changes to academic plans that would affect the program end date." To standardize the output of information, the adviser can employ templates and automations to insert standard terminology in email follow-ups and e-forms. This practice may

help mitigate IT glitches and human error that can result in the distribution of misinformation and incorrect advice to F-1 students. When contacting students over email directly, consider adding a legal disclaimer to the international adviser's signature, such as "Students and exchange visitors are responsible for reporting to our office any change of address, planned international travel, or plans to apply for OPT/J-1 Academic Training."

As several of the above lawsuits have been contingent upon the provision of incorrect filing windows to students by DSO/ARO's, the regular distribution of a list of important dates and reminders about 30- and 60-day filing windows and reporting requirements is advised. An additional measure that may prove helpful in reviewing dates for students is to check the SEVIS Real Time Interface (RTI) against the institution's database/content management system data (e.g., Sunapsis, Terra Dotta, etc.). Content management systems can get out-of-sync with SEVIS, depending on data entry policies and procedures. In addition to the risk of providing misinformation to students regarding important dates, the adviser should exercise caution with providing information on school websites. To avoid the retention of outdated data, such as government filing fees and other information that is routinely updated by government agencies, consider referring students directly to the government agency's website. Alternatively, consider the inclusion of an "as of" date, and a disclaimer, e.g., "Fees are subject to change at any time. The student is responsible for confirming USCIS form and filing fees."

As examples of clear messaging, the International Program Office at UMASS Amherst has shared various statements that the F-1 student or J-1 exchange visitor would be asked to agree to:

- I understand that the Optional Practical Training (OPT) application is a personal application and I am responsible for all aspects of its preparation, mailing, communication with USCIS, etc. and that this is not the International Programs Office's (IPO) responsibility;
- I understand that it is my responsibility to report any delays in graduation immediately to the IPO;
- I understand that I cannot work in any way after my completion of studies date. I must be approved for OPT before starting any type of employment (whether paid or unpaid), have the Employment Authorization Document (EAD), and the EAD's start date must have arrived;
- I understand the OPT reporting requirements and will report any changes to the IPO;
- I certify that I have reviewed the OPT Workshop information available on our ISS/IPO website;
- I understand that I must continue to check and maintain my UMass student email while on OPT and that failure to do so could impact my immigration status; and
- I give permission for the IPO to open my mail if I use the IPO's address to receive my I-797 notices and my EAD card. The IPO is not responsible for lost or damaged mail.

b. **Updating SEVIS: High volume, tight deadlines, and advisor fatigue/distraction can lead to manual entry errors in SEVIS that may go unnoticed.**

SEVIS is a government-run database but also a tool to store information and access important data regarding students' applications and timelines. In order to check on a student's status, it is best not to solely rely on the university's content management system. In addition to the university's system, the adviser should check SEVIS's RIT to avoid distributing data that has not

been confirmed. Similarly, after processing an I-20, dates entered in SEVIS and printed on the I-20 should be reviewed, especially around the New Year.

Best practice is to use automations to electronically feed information submitted by the student to SEVIS instead of manually re-entering this information. Other strategies to minimize human error given the importance of each field of data for a student's immigration status including removing distractions such as phone and Microsoft Teams, eliminating background noise by using earbuds or ear plugs, and adopting a regular schedule for information reviews of workshop materials, e-form templates, email templates, etc.

c. **Inaccurate or incomplete information from DSOs/AROs leading to filing or entry challenges: Students and scholars may not always know how to identify errors, understand timing constraints, or know how to find and use information from authoritative sources.**

The international office can empower students to check their own documents and data through trainings and online materials. For example, the school may create a glossary of important terms to standardize language. Study in the States and Education USA are two starting points. Best practice is to build visual and informative tutorials to educate students on what to look for when reviewing F-1 or J-1 documents (e.g., screenshots of the forms with important sections highlighted as a reference).

d. **Program management (J-1) and monitoring of exchange visitors**

A host institution is responsible for monitoring J-1 exchange visitors to ensure they are engaged in the planned activities and are having a positive experience overall. International offices can create pre-arrival and orientation materials to cover the required information listed in eCFR: 22 CFR Part 62 -- Exchange Visitor Program. It is also strongly advised to be familiar with J-1 incident reporting obligations through the Office of Private Sector Exchange Administration's Academic and Government (OPA-AG) unit (https://www.youtube.com/watch?v=ILGgzx-Pd6I). Counsel may choose to ask the on-campus hosts to acknowledge in writing their understanding of institutional policies and their responsibility to report any incidents to the DSO/ARO. For the J-1 international students and scholars, have periodic check-ins (such as perhaps a walk-in or Zoom event for them to meet one another, ask questions of their ARO, and seek advice from the ARO and their fellow exchange visitors). AROs should take note of who does not or cannot attend, and follow up appropriately to ensure that J-1 exchange visitors are engaged with their program. Upon completion of the program, best practice is to conduct an annual program evaluation survey and end of program survey to obtain information that can further enhance the J-1 exchange visitor program on campus. And finally, periodic internal audits and external reviews by an outside consultant or peer can be very helpful.

e. **Unauthorized practice of law (UPL): DSO/ARO scope of liability**

Although the authors are not aware of a court case regarding UPL, this has long been understood to be another potential source of liability for the adviser and the institution. In general, if the information that a DSO or ARO is advising on is derived from government regulations or guidance, the DSO/ARO is operating in their zone of influence or scope. However, if no government regulation or guidance exists, the DSO/ARO must inform the student or scholar that guidance in this area is not published. A DSO/ARO may share known interpretations or practices, but must concurrently inform the student or scholar that they should consult with an immigration attorney on the most suitable legal strategy for their particular

situation. In the midst of a real-time consultation between the DSO/ARO and an international student or scholar discussing concrete implications rather than hypothetical scenarios, however, the boundaries between published government guidance and observed practice can become blurred.

If a government agency sends an inquiry or conducts a site visit, DSO/ARO's should be familiar with the necessary regulatory requirements to respond but should consult with institutional legal counsel regarding institutional responses to these government agency requests. Further discussion of UPL and the scope of legal advice provided by an international office is discussed in a previous NACUANOTE.[43]

f. **Other risk management strategies**

Additional strategies can include conducting internal audits or an outside consultant review of the F-1 or J-1 programs.

CONCLUSION:

Questions asked of international advisors on campus may lack definitive answers within the federal regulations or guidance provided by government agencies, leaving DSOs and AROs exposed to legal challenge. DSOs and AROs are well-aware of the potential of severe harm to the legal status of their advisees caused by any missteps and may turn to counsel's office of guidance and support. This NACUANOTE has identified cases brought by visa holders against institutions or individuals serving as DSOs or AROs. The outcome of these lawsuits is less important than the general observation that a mistake (or perceived mistake) can lead to litigation, liability, and negative publicity.

We hope to create an open dialogue between international offices and institutional counsel by bringing awareness to these legal challenges and providing insight on best practices for DSO/ARO immigration-related advice.

END NOTES:

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alumni scholar of the University System of Georgia's Executive Leadership Institute (ELI) - 2012, Advanced Leadership Academy (ALA) – 2014, and is the recipient of the NAFSA 2012 Award of Excellence. She holds a Bachelor's degree in International Development from the University of California at Davis, and a Master's degree in Globalization Studies from Dartmouth College.

[4] **Kenneth Reade (kjreade@umass.edu)** has worked in the field of international education since 1989 and is active both regionally and nationally in a number of areas affecting international education and immigration regulatory practice. Ken has been a longtime advocate of federal immigration reform policies and in 2013, Reade was named "Advocate of the Year" by the field's leading professional organization NAFSA: Association of International Educators. He has also served as NAFSA's Region XI (Northeastern United States) chair, as well as a variety of other positions within the association and is a frequent presenter at regional and national NAFSA conferences. In 2010 he received the region's "Distinguished Service Award." Ken joined the International Programs Office at the University of Massachusetts Amherst as Director of International Student and Scholar services in August, 2014. Prior to coming to UMass Ken served in the Office of Visa and Immigration Services at Dartmouth College and other previous international education experiences included positions in London, UK with Central College, Pacific University in Oregon and the University of Illinois Chicago.

[5] **Tina Rousselot de Saint Céran** (trdsc@oie.gatech.edu) is the Director of International Student and Scholar Services at Georgia Institute of Technology where she oversees immigration and support services for international students, scholars, and their families. Tina is a volunteer leader in the field of international education serving as the NAFSA Knowledge Community Chair from 2019-2022, 2022 NAFSA Annual Conference Committee member, NAFSA International Scholar Advising Network Leader from 2016-19, Chair of the South Carolina Association of International Educators from 2017-2018, and South Carolina Association International Educators International Student and Scholar Services Representative from 2015-2017. In the Southeast region, she serves as a professional trainer on the NAFSA Region VII Trainer Corps team. Tina holds a master's in business administration (MBA) from Clemson University, a Bachelor of Arts from Austin Peay State University, and is currently pursuing her Ph.D. in Learning, Leadership, and Organizational Development at the University of Georgia.

[6] **Jazmin Sharif** has worked in international education since 2013. She worked at Southern CT State University primarily with their J and H-1B population before working with Curran, Berger & Kludt (CBK) for two years as a paralegal and legal associate. At CBK, her work included J-1 Conrad waivers, H-1B, PERM, EB-1B and other achievement-based petitions, asylum, APA and mandamus, and prosecutorial discretion. She graduated from Quinnipiac University School of Law (QUSL) in May 2022, was a member of the QUSL Human Trafficking Prevention Project, and passed the CT bar exam in July 2022. She currently works as an Associate Counsel for USCIS. **Disclaimer: Please note that the views expressed in this article are not the views of USCIS or of the United States.

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[9] **Margot Schocket-Greene** is a Legal Assistant at Curran, Berger & Klud. She will receive her BA from Brandeis University in Spring 2023. She has worked with The Right to Immigration Institute since 2020, overseeing the training and development of volunteer advocates.

[10] U.S. Dep.'t of Homeland Security, "Students: What is a DSO?" (April 14, 2014).

[11] U.S. Dep.'t of Homeland Security, Immigration and Customs Enforcement, "RO/ARO" (last accessed Mar. 29, 2023).

[12] Dan Berger, et al. "Ten Key Immigration Concepts for College & University Counsel" (NACUANOTE Sept. 28, 2017). *See also* Dan Berger, et al., "Advising in an Area of Uncertainty" (last accessed March 29, 2023)(NAFSA blog on the challenges of immigration advising on campus).

[13] 806 Fed. Appx. 417, 2020 U.S. App. LEXIS 9483 (6th Cir. Mar. 25, 2020).

[14] *Id.* at 7.

[15] *Doe v. Dordoni*, 2021 U.S. Dist. LEXIS 228228, at *14-15 (W.D. Ky. Apr. 30, 2021).

[16] *Doe v. Dordoni*, 2021 U.S. Dist. LEXIS 228225, at *14 (W.D. Ky. Sept. 29, 2021). The plaintiff subsequently appealed the decision to the Sixth Circuit Court of Appeals, which dismissed the case two months later upon mutual agreement by parties. Civil Docket for Case #: 1:16-cv-00074-DJH-HBB.

[17] No. A14-1874, 2015 Minn. App. Unpub. LEXIS 811 (Aug. 17, 2015).

[18] *Id.* at *6.

[19] *Id.* at *9-10.

[20] *Id.* at *11-12.

[21] 2019 U.S. Dist. LEXIS 111203 (M.D. Pa. July 3, 2019).

[22] *Id.* at *9.

[23] *Id.* at *71 and *75. The parties subsequently settled the case before a trial on damages. Civil Docket for Case #: 3:16-cv-00443-ARC.

[24] 44 Misc. 3d 740 (N.Y. Court of Claims 2014).

[25] These cases are presented to illustrate the risk of liability. For public institutions, each state will have different statutes regarding liability for actions by state employees, and to what extent the state will provide representation of or indemnification for the employee.

[26] *Id.* at 754.

[27] *Id.* at 756.

[28] *Id.* at 758. Further, the court held, "Were I to adopt claimant's position, universities would become de facto insurers of every representation regarding the state of the law made by non-attorneys on their staff, and answerable in damages for the consequences of any errors…. Such a result is particularly unwarranted here." *Id.*

[29] *Id.* at 762.

[30] *See generally* NAFSA, the Association of International Educators, "NAFSA's Statement of Ethical Principles" (Updated March 2019). NAFSA is the professional association of AROs and ROs.

[31] Superior Court of California, No. RG20056679, notice of motion to strike taken under submission at 2021 Cal. Super. LEXIS 56022 (Jan. 20, 2021).

[32] Complaint, 2020 CA Sup. Ct. Pleadings LEXIS 79071 (Cal. Super. Ct. Mar. 2, 2020).

[33] *Id.*

[34] Civil Docket for Case RG20056679, *Faria vs. The Regents of the University of California*, Superior Court of Alameda County, California.

[35] 2021 U.S. Dist. LEXIS 216959 (N.D. Iowa Mar. 30, 2021); 2022 U.S. Dist. LEXIS 59686 (N.D. Iowa Mar. 31, 2022).

[36] Clark Kauffman, "Human-Trafficking Lawsuit against Iowa College Survives Legal Challenge" *Iowa Capital Dispatch* (May 17, 2022).

[37] *Id.*

[38] *Norambuena*, 2022 U.S. Dist. LEXIS 59686, at *7.

[39] *See* Kauffman *supra* n.36.

[40] *Norambuena*, 2022 U.S. Dist. LEXIS 59686, at *18-19.

[41] *Id.* at *73.

[42] Civil Docket for Case #: 5:20-cv-04054-LTS-KEM.

[43] Dan Berger, et al. "Ten Key Immigration Concepts for College & University Counsel" (NACUANOTE Sept. 28, 2017). *See also* Dan Berger, et al., "Advising in an Area of Uncertainty" (last accessed March 29, 2023)(NAFSA blog on the challenges of immigration advising on campus.

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