intervenor's motion to dismiss the action under the first-filed rule, finding that the rule does not apply when both actions are pending in the same court. ***Gray v. CJS Solutions Grp., LLC***, 2020 WL 4476440 (D. Minn. 8/4/2020).

■ **Fed. R. Civ. P. 12(f); motion to strike portion of complaint denied.** While agreeing with the defendant that a portion of the plaintiff's complaint contained "irrelevant and immaterial matter," Judge Brasel denied the defendant's motion to strike where the defendant made "no attempt to demonstrate how" the disputed portion of the complaint was "prejudicial to it." ***Bishop v. St. Jude Med. S.C., Inc.***, 2020 WL 4352682 (D. Minn. 7/29/2020).

■ **Fed. R. Civ. P. 11 AND 37; motion for sanctions denied.** While criticizing plaintiff's counsel's conduct, Judge Frank denied the defendant's motion for sanctions under Rule 11 for failure to comply with the rule's safe harbor provision, and also denied the defendant's request for Rule 37 sanctions where the defendant had "not identified any discovery order with which the Plaintiff has failed to comply." ***Marshall v. Smith & Nephew, Inc.***, 2020 WL 4339221 (D. Minn. 7/28/2020).

■ **Objections to order compelling video depositions overruled.** Describing video depositions as the "new normal" in the face of covid-19, Judge Nelson overruled the plaintiff's objections to an order by Magistrate Judge Bowbeer that required depositions to be conducted remotely. ***Grupo Petrotemex, S.A. DE C.V. v. Polymetrix AG***, 2020 WL 4218804 (D. Minn. 7/23/2020).

■ **Fed. R. Civ. P. 30(e); motion to strike untimely deposition errata sheet.** While finding that the defendant's motion to strike errata sheet "lack[ed] a basis in the rules," Magistrate Judge Thorson recommended that the third-party defendant's request to extend the deadline to submit the errata sheet be denied where the third-party defendant waited more than six months before raising the issue with the court. No objections were filed to the report and recommendation, and it was adopted by Judge Davis. ***Anderson v. NAES Corp.***, 2020 WL 3848107 (D. Minn. 6/8/2020), *Report and Recommendation adopted*, 2020 WL 3839803 (D. Minn. 7/8/2020).

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IMMIGRATION LAW

JUDICIAL LAW

■ **Dream on: DACA, the Supreme Court, and more.** On 6/18/2020, the U.S. Supreme Court rejected the government's effort to end the Deferred Action for Childhood Arrivals Program (DACA) and remanded the case for further consideration, not because the Department of Homeland Security (DHS) had no authority to do so, but because it failed to provide a reasoned explanation for this. In a 5 to 4 majority opinion authored by Chief Justice John G. Roberts, Jr., the Court ruled that the Court held jurisdiction to review DHS's rescission of DACA under the Administrative Procedure Act (APA). The majority ruled that DHS's action violated the APA by being "arbitrary and capricious," specifically by its failure to consider whether to continue only the deferred action part of the DACA program without benefits and that "omission alone renders Acting Secretary Duke's decision arbitrary and capricious." In addition, the Court found DHS had failed to address the considerable reliance interests created by the DACA program on those DACA applicants and their families if DACA was ended. "It [DHS] was required to assess whether there were reliance interests, determine whether they were significant, and weigh any such interests against competing policy concerns." ***DHS v. Regents of the University of California***, 590 U.S. _____, No. 18-587, *slip op.* at 23, 26 (2020). *https://www.supremecourt.gov/opinions/19pdf/18-587_5ifl.pdf*

On 7/17/2020, Judge Paul W. Grimm (U.S. District Court for the District of Maryland), following the U.S. Supreme Court's DACA decision, vacated DHS's rescission of DACA and returned DACA policy to its pre-9/5/2017 status. He further enjoined DHS from implementing or enforcing the rescission and from taking any other action to end DACA not in compliance with applicable law. ***Casa de Maryland, et al., v. DHS, et.al.***, No. 8:17-cv-02942-PWG (D. Md. 7/17/2020). *https://www.courtlistener.com/recap/gov.uscourts.mdd.403497/gov.uscourts.mdd.403497.97.0.pdf*

On 7/28/2020, DHS Acting Secretary Chad Wolf issued a memorandum ("Reconsideration of the June 15, 2012 Memorandum Entitled 'Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children'") that rescinded the 2017 and 2018 memoranda revoking DACA. Acting Secretary Wolf noted that while DACA policy is under review, DHS will reject all first-time DACA requests; adjudicate all pending and future properly submitted DACA renewal requests (and associated applications for employment authorization) from current beneficiaries; limit the period of any deferred action granted to one year; and reject all pending and future applications for advance parole from beneficiaries of the DACA policy. *https://www.dhs.gov/sites/default/files/publications/20_0728_s1_daca-reconsideration-memo.pdf*

ADMINISTRATIVE ACTION

■ **President Trump suspends entry of immigrants and nonimmigrants alike.** On 6/22/2020 (and 6/29/2020), President Trump issued Proclamation 10052 (and an Amendment) ("Suspension of Entry of Immigrants and Nonimmigrants Who Present a Risk to the United States Labor Market During the Economic Recovery Following the 2019 Novel Coronavirus Outbreak"), continuing his 4/22/2020 Proclamation 10014 that suspended entry of immigrants into the United States while, at the same time, expanding it to include nonimmigrants. The proclamation went into effect on

6/24/2020 at 12:01am (EDT). Those affected include the following individuals seeking entry:

1. H–1B or H–2B visa holder, and any foreign national accompanying or following to join;
2. J visa holder, to the extent that (s)he is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any foreign national accompanying or following to join; and
3. L visa holder, and any foreign national accompanying or following to join.

The suspension applies only to those:

1. outside the United States on the effective date of the proclamation;
2. not in possession of one of the aforementioned nonimmigrant visas that is valid on the effective date of the proclamation and through which the foreign national seeks entry; and
3. without an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on the effective date of the proclamation or issued on any date thereafter permitting him or her to travel to the United States and seek entry or admission.

The proclamation does not apply to:

1. lawful permanent resident of the United States;
2. foreign national who is the spouse or child of a United States citizen;
3. foreign national seeking to enter the United States to provide temporary labor or services essential to the United States food supply chain; and
4. foreign national whose entry would be in the national interest as determined by the secretaries of State and Homeland Security.

Other key points:

1. The Secretary of State shall implement the proclamation as it applies to issuance of nonimmigrant visas, with consular officers determining, in their discretion, whether a nonimmigrant has established eligibility for an exception;
2. The Secretary of Homeland Security shall implement the proclamation as it applies to the entry of nonimmigrants;
3. The Secretary of Health and Human Services shall, as necessary, provide guidance to the secretaries of State and Homeland Security for implementing measures that could reduce the risk that foreign nationals seeking admission or entry to the United States may introduce, transmit, or spread SARS–CoV–2 within the United States;
4. The Secretary of Labor shall, in consultation with the Secretary of Homeland Security and consistent with applicable law, consider promulgating regulations or take other appropriate action to ensure that the presence of foreign nationals who have been admitted or otherwise provided a benefit, or who are seeking admission or a benefit, pursuant to an EB–2 or EB–3 immigrant visa or an H–1B nonimmigrant visa, does not disadvantage United States workers in violation of section 212(a)(5)(A) or (n)(1) of the INA (8 U.S.C. 1182(a)(5)(A) or (n)(1));
5. The Secretary of Homeland Security shall take steps, consistent with applicable law, to prevent certain foreign nationals with final orders of removal; inadmissible or deportable from the United States; or arrested for, charged with, or convicted of a criminal offense in the United States, from obtaining eligibility to work in the United States; and as soon as practicable, and consistent with applicable law, consider promulgating regulations or take other appropriate action regarding the efficient allocation of visas pursuant to section 214(g)(3) of the INA (8 U.S.C. 1184(g)(3)) and ensuring that the presence in the United States of H–1B nonimmigrants does not disadvantage United States workers.
6. Nothing in the proclamation shall be construed to limit the ability of an individual to seek asylum, refugee status, withholding of removal, or protection under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, consistent with the laws of the United States.
7. The proclamation shall expire on 12/31/2020, and may be continued as necessary. Within 30 days of the effective date, and every 60 days thereafter, while the proclamation is in effect, the Secretary of Homeland Security shall, in consultation with the secretaries of State and Labor, recommend any modifications as may be deemed necessary. **85 Fed. Reg. 38,263-267** (6/25/2020). *https://www.govinfo.gov/content/pkg/FR-2020-06-25/pdf/2020-13888.pdf.* **85 Fed. Reg. 40,085-086** (Amendment) (7/2/2020). *https://www.govinfo.gov/content/pkg/FR-2020-07-02/pdf/2020-14510.pdf*

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INTELLECTUAL PROPERTY

JUDICIAL LAW

Trademark: TRO barring use of plaintiff's trademarks in sale of N95 respirators. Judge Nelson recently granted 3M Company's motion for a temporary restraining order against defendants Matthew Starsiak, AMK Energy Services LLC, and John Does 1 through 10 related to the use of 3M's trademarks in the sale of 3M N95 respirators. 3M sued defendants alleging defendants falsely claimed to represent 3M and used 3M's name and trademarks without authorization in a false and deceptive scheme to sell 3M N95 respirators during the global covid-19 pandemic. During the outbreak of covid-19, 3M increased its production of 3M-brand respirators to ensure that an adequate supply was available while also pledging to not increase prices on its N95 respirators and to work to eliminate fraud and price-gouging by third parties. Defendants contacted 3M to purchase N95 respirators. Defendants claimed that Sir Richard Branson, founder of the Virgin Group, and the Gates Foundation wished to purchase 900 billion respirators for underserved populations in the world. While defendants were trying to purchase billions of 3M-branded N95 respirators from 3M, they were simultaneously trying to find buyers willing to purchase them at a higher price. Defendants identified themselves as 3M's "number one sales team" and as a "3M authorized distributor," claiming to have "hundreds of millions of [N95 respirator] stock available." To determine whether injunctive relief, in the form of a TRO, is warranted, a court weighs: (1) the likelihood of success on the merits; (2) the threat of irreparable harm to the movant in the absence of relief; (3) the balance between that harm and the harm injunctive relief would cause to the other litigants; and (4) the public interest. The court found 3M was likely to