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MEMORANDUM

To: **International Education Program Administrators**

I - Reality Check

The last month has been a quiet one for SEVP, USCIS and international education (except, perhaps, for what the present administration is teaching the rest of the world about the United States). With vacations and a concentration by the administration on crimes against humanity on our southern border, little has been happening in international education administration.

- 1) TRAC Statistics
 - a) Asylum Court Appearance Rates
 - b) ICE Shifts Away from Detention of Serious Criminals
 - c) Asylee Applicants Trapped in Mexico Have Little Access to Lawyers
- 2) ICE to Fine Undocumented Immigrants Seeking Sanctuary in Churches

II - Practical Items

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- 3) USCIS Updates Form G-639, Freedom of Information Act/Privacy Act Request
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I - Reality Check

1) TRAC Statistics

a) Asylum Court Appearance Rates

On June 18, TRAC issued a report noting that as of the end of May 2019 “... almost six out of every seven [asylum seeking] families released from custody had shown up for their initial court hearing”. If the family had a lawyer, the rate was 99%. It would seem that the Obama administration’s “catch and release” policy was working.

b) ICE Shifts Away from Detention of Serious Criminals

A TRAC Report of June 25 noted that over a 27 month period ending December 31, 2018 there was:

...a dramatic drop in the number of individuals held who had committed serious crimes. Despite the increasing number of individuals ICE detained, fewer and fewer immigrants convicted of serious felonies were arrested and held in custody by the agency. Their numbers had dropped by over twelve hundred (-1,253), while total ICE detainees ballooned by over eighty-six hundred (8,676) during the same period. Immigrants who had never been convicted of even a minor violation shot up 39 percent.

Prior Memos have noted that ICE reports of arrest operations generally exaggerate their effectiveness at removing serious criminal offenders by grouping minor offenders and “collateral arrests” with serious offenders. In its’ July threatened national sweep of those present in the US with final orders for removal, it was reasonably assumed that ICE would follow its’ pattern and overstate its statistics by arresting those who were ordered deported “in absentia”. In fact, these threats resulted in only 35 arrests, although they have, unquestionably, put the undocumented population into a prolonged state of fear.

c) Asylee Applicants Trapped in Mexico Have Little Access to Lawyers

According to a TRAC Report on July 29, it was found that of those subjected to the administration’s “Migration Protection Protocols” which requires asylee applicants to wait in Mexico for their hearing, finding a lawyer to represent them in Immigration Court is extremely difficult. Without a lawyer, chances of winning asylum are minimal. As of June 2019, of 12,997 pending cases, 163 were represented (1.3%). Generally, approximately 20% of cases have representation.

TRAC reports may be found at <https://trac.syr.edu/>

2) ICE to Fine Undocumented Immigrants Seeking Refuge in Churches

On July 2, the *Washington Post*, and on July 5, the *New York Times* carried stories about ICE levying fines against undocumented migrants who have sought sanctuary in churches. One fine was \$314,007.00, another was \$497,777. ICE claims that it can levy a fine of up to \$799.00 each day on an undocumented individual who has been ordered deported, but who has not departed. The *Post* story may be found [here](#).

As these people do not have employment authorization, ICE's collection efforts should be interesting. Perhaps, ICE should reopen medieval debt dungeons, or perhaps, arrange for a Memorandum of Understanding with the U.S. Navy to make these people galley slaves. Will ICE award a productivity bonus to the employee who came up with this fine idea, or just realize that maybe, they had spent too much time in the hot sun?

II - Practical Items

1) Form I-129 Revision

The *Federal Register* of June 27, carried a "60-Day notice" by USCIS that the public has until August 26 to comment on a proposed revision to Form I-129 Petition for Nonimmigrant Worker. The form is often used for H-1B, O-1, and other nonimmigrant petitions. Estimated respondents are 294,751. Unfortunately, the Notice does not make it clear what the proposed changes will be. The Notice may be found [here](#).

2) "H-1B Registration Tool" Notice

As part of its' changes in the H-1B cap filing process, USCIS plans to institute a pre-filing registration process. The *Federal Register* of June 27, carried a "60 day notice" regarding this process with responses due no later than August 26. USCIS estimates that the proposed "tool" will have 192,918 respondents. No specifics were provided regarding the "tool". The Notice may be found [here](#).

3) USCIS Updates Form G-639, Freedom of Information Act/Privacy Act Request

On July 12, USCIS announced that it's new edition of Form G-639, with an edition date of 6/20/19, will be required starting September 3, after which the prior edition of 4/17/17 will be rejected.

Form G-639 can be a useful tool for an individual to determine their prior immigration history, or to obtain copies of lost records. Unfortunately, it can take many months for a response. It is without fee.

4) H-1B Filing Locations Change

The latest update of the USCIS webpage entitled “Direct Filing Addresses for I-129 Petition for Nonimmigrant Worker” published on July 2, 2019 has several changes in the instructions pertaining to which Service Center an H-1B I-129 must be filed. No notice was provided to notify the public about these changes. For those filing H-1B petitions, it is imperative that these new instructions be consulted.

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.