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MEMORANDUM

To: **International Education Program Administrators**

From the Desk of Eugene Goldstein:

On November 25, ICE Posted: "Social Media Spreading Misinformation Concerning Alleged Ice Activity". ICE stated: "A statement posted to social media, Nov. 23, is a prime example of the reckless, irresponsible misinformation that continues to mislead the public concerning the mission of U.S. Immigration and Customs Enforcement (ICE)."

The purported incident occurred in Redmond, Washington on November 23 and mentioned that an ICE employee entered a church-homeless shelter while disguised as a homeless woman. The agency statement may be found [here](#).

A statement like this one, though unusual, would not normally be seen as remarkable, except that on the same date, and, assumedly by pure coincidence, TRAC released a report: "Growth in ICE Detention Fueled by Immigrants with No Criminal Conviction" which may be found [here](#). Considering ICE's claims that it is protecting national security by focusing on what it (though not necessarily others) consider to be criminals, these statistics seem to show that ICE itself may be misrepresenting information. Specifically, at the end of 2019 ICE held approximately 50,000 individuals, of which 32,000 (64%) had no criminal convictions.

A review of past ICE news releases about its' raids shows that a substantial number of arrests which are not convictions may be for minor incidents and/or very old ones. It can reasonably be asked if ICE's chagrin at being offended is itself reasonable.

To further reinforce just how the government is protecting our national security, another recent TRAC Report is titled "ICE Detains Fewer Immigrants with Serious Criminal Convictions Under Trump Administration." Serious offenders-assault, burglary and drug trafficking as defined by ICE, has significantly dropped since October, 2016. Simple traffic violations, DUI and illegal reentry have taken their place. A GAO Report:

“Immigration Enforcement, Arrests, Detentions, and Removals, and Issues Related to Selected Populations” dated December, 2019 notes: “The majority of detentions were made up of males, aliens from ... [Mexico, Guatemala, El Salvador and Honduras] ...and noncriminals”. So much for “reckless, irresponsible misinformation.”

To no ones’ surprise, the DHS Office of Inspector General released a study on November 25 entitled: “DHS Lacked Technology Needed to Successfully Account for Separated Migrant Families”. In sum, DHS did not have IT systems to track families for its’ “Zero Tolerance” policies, and that it was aware of these tracking deficiencies when the policy was in effect. It also found that “Zero Tolerance” failed in its’ goal of “detering” “Catch and Release”, releasing thousands of people into the U.S. and holding children in CBP facilities beyond the 72-hour legal limit. The Report may be found [here](#).

Meanwhile, according to a TRAC Report from early December civil immigration litigation during October, 2019 is at an all-time high. Much of the litigation seeks orders against the government that it do something on an application, usually in the visa or naturalization context. These suits are called Mandamus actions. The U.S. District Court in Brooklyn (E.D.N.Y.) leads the nation with 46 suits. Central District of California has 37. According to TRAC, Brooklyn had five times the national average relative to population size. It would appear that the USCIS’ NYC District adjudicators are either overwhelmed, or in a state of paralysis. Go Brooklyn!

Further statistics show that the government’s paper wall does not block only the “huddled masses”, but also college educated professionals. A recent article from [“Mother Jones”](#) discussed 2019s H-1B denial rate of 24% for first time applicants, compared to 6% in 2015. Transfers and extension denials were 12%, up from 3% in 2015. These visas frequently go to U.S. university graduates. President Obama, during his administration, described the need for keeping these individuals as a “no-brainer”.

Another recent article from the [AP](#) notes that the paper wall is not only about H-1Bs. O-1s are also affected. Apparently, dance studios can’t get foreign dance instructors, or if so, only after prohibitive delays. Fred Astaire and Arthur Murray would be appalled.

Practical Stuff

- 1) Congress Passes Liberian Amnesty
- 2) USCIS Announces H-1B Electronic Registration Process Implementation
- 3) ICE Goes Back to School

1) Congress Passes Liberian Amnesty

On December 20, the President signed the National Defense Authorization Act which, among many other things, contains Section 7611 Liberian Refugee Immigration Fairness (LRIF). This new law provides that within one year after enactment, applications for green cards may be filed by Liberian nationals who have continuously been in the U.S. since November 20, 2014. Although the criminal and persecution grounds of exclusion do apply, entry without documents, overstay, and public charge grounds do not. Spouses and unmarried children under 21 may also apply. USCIS announced on December 26 that it is accepting applications. The announcement may be found [here](#). An enormous burden has been taken from the shoulders of the many long term Liberian refugees who sought safety in the US so many years ago.

Every few years, Congress provides an unexpected positive gift. This is one of them. The how and why LRIF came to exist without prior publicity will eventually come out. It will be an interesting story. Unfortunately, this relief leaves out so many others.

2) USCIS Announces H-1B Electronic Registration Process Implementation

Following its' regulatory discussions, USCIS announced on December 6 that employers seeking to file H-1B petitions, including those for advanced degree exemptions must first file and pay a \$10.00 registration fee for each petition for the 2021 season. Upon closure of the registration period, if there is an excess number of registrations filed against the caps, a random selection will be done, and if selected the petitioner may file the H-1B petition on or after April 1. USCIS claims that it will conduct further outreach and training prior to implementing the system and will make a formal "Federal Register" announcement.

According to the USCIS [announcement](#), there will be an initial registration period from March 1 through March 20. USCIS stated that it will post step by step instructions regarding the registration process on its website, together with the key dates and timelines.

Whether large employers will flood the system with inexpensive registrations is a continuing concern. This practice could freeze out the small employer with only one or a few jobs.

A couple of questions have arisen specifically about F-1 students, Cap gap relief will not be activated by registration. It can only happen through the filing of the actual H-1B petition, if the registration has been selected. A further issue: when must the beneficiary's degree actually be in place. It would appear that the Bachelor's degree must have been conferred prior to the actual H-B filing, as the registration is only a

preliminary requirement to the regulatory H-1B petition filing. There is some confusion as to whether USCIS will recognize this principle for the Master's Cap filing. USCIS has been advised of discrepancies in past discussions. It has not yet replied.

3) ICE Goes Back to School

Some results of the University of Farmington sting are now available. It may be remembered that ICE has already gained entrapment experience with its' phony University of Northern New Jersey. In early 2019, ICE closed down its' registration for the University of Farmington in the Detroit suburb, claiming accreditation by the "Accrediting Commission of Career Schools and Colleges", ICE charged \$8,500.00 a year for undergraduates and \$11,000.00 for graduates. ICE/HSI claims that their undercover agents clearly stated to potential enrollees that no academic or vocational programs were offered. ICE arrested 8 recruiters charging them with conspiracy to assist at least 600 foreigners to remain illegally. Ultimately, about 250 students were arrested and 80% given voluntary departure and left. Half of the 20% were ordered deported by an Immigration Judge, or given "expedited removal" by CBP (assumedly upon attempting entry). The remaining 10% have applications for relief of some type pending in Immigration Court. It seems that with this sting, ICE did not permit students to transfer. No mention was made about what ICE did with the tuition it collected.

Best wishes to all for a happy, healthy and an optimistic new year.

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

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