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MEMORANDUM

To: **International Education Program Administrators**

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I - Reality in Wonderland

1a) Homan Named “Border Czar”

The *New York Times* of Saturday, June 15, 2019 (Page A15) carried an article “President Picks Loyalist, A Former Leader of ICE, To Be His Border Czar.”

Thomas Homan had been acting ICE chief until his permanent appointment got tied up in the Senate. His new job (should he decide to accept it) which doesn't require Senate confirmation, reports directly to the President and may be physically located in the White House. The job is envisioned as coordinating the Defense, Homeland Security, Health and Human Services and Justice Departments based on the President's and his assistant, Steven Miller's thought. How and when turf will be divided and organized is an interesting question considering the turmoil and disorganization within DHS, it is yet to be seen if Mr. Homan will be closer to Alexander II, or to Ivan the Terrible.

1b) Cuccinelli Named Acting Director of USCIS

On June 10, 2019 USCIS announced that the Department of Homeland Security appointed Kenneth T. Cuccinelli II, USCIS Acting Director, effective June 10.

According to the posting:

Cuccinelli previously served as Virginia's attorney general from 2010 to 2014. During his time as attorney general, he led the Commonwealth in fighting human trafficking. Additionally, he led efforts resulting in record enforcement against gangs, health care fraud, and child predators. Cuccinelli also served in the Senate of Virginia from 2002 to 2010 and has practiced law for nearly 25 years.

Cuccinelli earned a mechanical engineering degree from the University of Virginia, a law degree from Antonin Scalia Law School at George Mason University, and a Masters in International Commerce and Policy from George Mason University.

. Former USCIS Director Francis Cissna, was a very knowledgeable expert in immigration law who was knowledgably “reforming” the agency in a conservative direction-but, perhaps, too slowly.

In addition, news reports have noted that Mr. Cuccinelli has no immigration experience and is on record as an LGBTQ opponent who had also advocated an end to birthright citizenship, (which is required by the constitution). He also supported an organization seeking to overthrow Senator Majority Leader McConnell. It has been speculated that Mr. Cuccinelli may, or may not, be “Acting” for quite some time

In fact, a letter was sent on June 18, to Acting Secretary of DHS McAleenan by Chairman Jerold Nadler of the House Judiciary Committee, Elijah Cummings, Chairman of the House Oversight Committee, and Bennie Thompson Chairman of the House Committee on Homeland Security patiently explaining why it is contrary to the Federal Vacancies Reform Act for Mr. Cuccinelli to be given “acting” status, despite the administration’s bureaucratic inventiveness in attempting to comply with this law.

2) USCIS Office of Public Affairs Releasees “Prepared Remarks” for April 18, 2019 “Buy American and Hire American Listening Session”

On April 18, 2019 USCIS’ Office of Public Affairs held a “Buy American and Hire American Listening Session”. Of interest are the following:

- a) As of March 31, the H-1B tip line has received nearly 7,700 tips. Roughly, 30 percent of these tips have resulted in “leads”-the quality of which were not noted.
- b) The H-1B data hub allows the public to see approvals and denials for each petitioner, as well as countries of origin and gender of all H-1B beneficiaries. No reasons were provided for why gender was useful.

3) Litigation Report

a) *Kusuma Nio v. DHS* (MAVNI)

On May 22, 2019 the U.S. District Court for the District of Columbia in *NIO v. DHS*, 17-0998 (WSH) enjoined the USCIS’ policy which prevented naturalization of MAVNI applicants until the Army and Defense Dept. determined that each was suitable for service. The court found that the term “suitable for service” was arbitrary and capricious. In fact, few if any, applicants had been found to be “suitable for service”. In theory, this decision allows MAVNI to serve the purpose for which it was intended It is yet to be seen if the Defense Department can find another bureaucratic response to cripple the program.

b) *Sierra Club v. Trump* (Wall Enjoined)

On May 24, 2019 the U.S. District Court for the Northern District of California granted a preliminary injunction in *Sierra Club, et al. v. Trump*, 19-cv-00892-HSG to prevent defense appropriations from being used for border barrier construction in New Mexico and Arizona. The court found that the plaintiffs were likely to show that the administrations' actions exceeded its' lawful constitutional authority, as well as several statutes.

c) *DHS v Regents of the University of California* (DACA)

On June 28, 2019, the U.S. Supreme Court granted a Writ of Certiorari to review this 9th circuit decision which rejected the administration's efforts to eliminate DACA. The case will be argued at the court's next term which starts in October. A decision should be expected by the end of the term, if not before. The court also consolidated *Trump v NAACP, and McAleenan v Vidal* as both have already been decided in their respective circuits and had writs pending. Several other cases, including *Casa de Maryland* have not yet been completed in their circuit courts, but will be controlled by the Supreme Court's decision. What Congress may do in the interim before the end of the next term in October, and shortly before the next presidential election is an open question. *The New York Times* of Saturday, June 29 had a good discussion of the Court's action and its' implications on page A1.

4) GAO to Respond in Five Months to Congress' Questions About USCIS Backlogs.

On May 31, 2019 the Government Accountability Office (GAO) responded to a letter from several Congressmen which requested GAO review of "several issues regarding the current backlog of immigration cases managed by ... [USCIS]."

GAO advised:

At the current time we anticipate that staff with the required skills will be available to initiate an engagement in about five months.

However, GAO also advised that it will check back with the requestor in five months to see if they are still interested.

II - Practical Items

5) ICE Fee Increases Effective June 24, 2019

USCIS has raised fees effective June 24, 2019. ICE explained in an Announcement on May 22, that the fee increases and addition of several new fees was necessitated by the fact that SEVP was self-financed and that there had been no increase since 2008 despite cost increases due to inflation, "... expanded program operations and enhancements to" SEVIS. The necessity and productivity of those "enhancements" were not discussed, nor was the fact that there are now fewer international students and exchange visitors under the present administration, and that the pool of financial resources is, therefore, smaller. The announcement setting forth the increase and new fees may be found [here](#).

6) SEVP Issues Policy Guidance on: Form I-20 Issuance and School Use of Recruiters

On June 4, 2019 SEVP issued an unnumbered "SEVP Policy Guidance: Form I-20 Issuance and School use of Recruiters." The Guidance was issued in response to a question:

. . .whether recruiters may receive the Form I-20 directly from a school's designated school official (DSO) and control the distribution to the prospective student. For reasons of privacy, security and fraud prevention, the Form I-20 must be issued directly by a school to the nonimmigrant student, his or her dependents, or, for minors, to the parent or guardian of the nonimmigrant student.

The "Policy" is set forth as:

For reasons of privacy, security and fraud prevention, the Form I-20 must be issued by a DSO at an SEVP-certified school and sent directly to a nonimmigrant student, his or her dependents, or, for minors, to the parent or guardian of the nonimmigrant student.

Although justified amidst a welter of acronyms and conclusions, the issue is actually a very, very old one long predating SEVP and most of us and originating in the sale of I-20s by recruiters, primarily in China.

7) DOS Requires Social Media Usage Listings on DS-160/DS-156

On June 4, 2019 the Department of State noted that on May 31, it has updated Form DS-156 (nonimmigrant application form) and DS-160 (immigrant application form)

to require that applicants disclose five years of social media identifiers. Additional details may be found at “About Visas-The Basic FAQ page” on the DOS website. According to AILA:

Applicants are now required to disclose the social media platforms they have used within the previous five years, as well as provide their username(s) for each platform. This information is collected via a drop-down list of the most common platforms. Applicants are prompted to choose all those that are either currently used or have been used within a five-year period.

Passwords for these accounts are not required. Additional questions ask for email addresses and phone numbers used in the past five years. If the applicant is unable to remember exact details, they may insert “unknown”, but they could be further screened on this issue.

8) DOS Recognizes Automatic 5-Year Extension of Venezuelan Passports

On June 7, the Department of State recognized a Presidential Decree signed by “Interim President Juan Guaido” of Venezuela to extend Venezuelan passport validity for an additional five years past the printed expiration date. DOS will recognize this extension as well as CBP.

9) J-1 Waivers Discussed at April 11 DOS /AILA Liaison Meeting

On April 11, 2019 AILA met with the Department of State. Among the highlights are several items of interest for those working with J-1 waivers:

- Marcia Pryce, the long-time head of the Waiver Review Division (WRD) retired at the end of last year. Chief Thomas D. Parrillo is the new head of WRD.
- WRD officers are assigned cases based on the type of waiver application.
- WRD’s volume has increased. There has been an increase in hardship waivers and advisory opinions. This, along with the need to relocate staff to other priorities, has increased processing times.

- DOS indicated that there has been no increase or decrease in staffing at WRD, but did explain that several states had recently bunched their 30 Conrad waiver cases all together. While there are likely not more applications, the applications sent in are coming at a greater pace than has been seen before.
- The regulatory agenda includes a new regulation regarding no objection waivers. DOS indicated that it remains on the regulatory agenda, but timing continues to be pushed due to other priorities.
- DOS indicated that it was making headway on discussions as to whether telemedicine would qualify as a practice upon which physicians could obtain a waiver. However, due to the government shutdown, these discussions slowed down. DOS did not guarantee that they would follow Department of Health and Human Services (HHS) recommendations on this issue, but they appear likely to defer to the HHS. DOS indicated that it may be best for AILA to further engage directly with HHS on this topic.
- DOS indicated that it could not compel J-1 exchange program sponsors to provide old SEVIS information to exchange visitors absent a regulation. AILA noted that the Bureau of Educational and Cultural Affairs' (ECA) "suggestions" are often implemented by program sponsors and asked that State encourage ECA to request that program sponsors provide this information.
- In the event an IAP-66/DS-2019 is not available (because it is lost or illegible), a letter from the previous sponsor may suffice to complete the adjudication on the waiver. The letter must include the program number, funding source, and dates of program.

10) USCIS Releases H-4 Work Statistics by Country

On May 28, 2019 USCIS released a set of statistics on I-765 work authorization applications for H-4 status holders for Fiscal years 2015-2019 (as of March 29, 2019). The statistics are by country of birth. Considering this administration's actions to eliminate H-4 employment, the statistics are interesting. Of 120,514 initial applications, 7,345 are from China, 110,549 are from India, and 641 are from the Philippines. All other countries are in single or double figures.

11) Recent H-1B, DACA Statistics

a) H-1B

On June 14, USCIS released a set of statistics for the most frequently used nonimmigrant categories. The statistics are by year. The 2019 statistics are for six months. The most dramatic changes were in the H-1B category. In 2015 there was a 22.3% completion rate where an RFE (Request or Evidence) was issued. In 2019 that rate was 48%. The general approval rate in 2015 was 83.2%, and in 2019 the rate was 60.5%

b) DACA

According to USCIS' statistics released on June 14, there are 669,080 DACA applicants as of April 30, 2019. 353,510 are female, 315,520 are male. 518,990 are single. The New York, Newark-Jersey City statistical area (NY, NJ, PA) has 43,560, second to Los Angeles, Long Beach-Anaheim, CA with 83,520. The largest DACA sending country was Mexico with 535,980.

12) New York Times on USCIS F-1 Work Authorization Delays

The *New York Times* of June 17, carried a story "Visa Delays at Backlogged Immigration Service Strand International Students" (page A16). In short, as we all know, USCIS is taking so long to adjudicate summer OPT applications, that the jobs and internships are being withdrawn. Whether the article will have any impact on USCIS is yet to be seen.

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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