Proskauer

Educational Institutions Take on ICE Directive Targeting International Students

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On July 13, 2020, Proskauer filed an amicus brief on behalf of 15 educational institutions in support of a preliminary injunction sought by Harvard University and MIT in the District of Massachusetts against enforcement of a new policy directive by the U.S. Immigrations and Custom Enforcement agency (ICE). The ICE directive seeks to make the availability of international study in the United States dependent upon whether international students attend class in person notwithstanding the worldwide pandemic.

Background

ICE issued the directive on June 6, 2020, requiring international students enrolled in U.S. schools for fall 2020 on F-1 visas to attend in-person courses at their schools if they wished to retain their visa. In the midst of the COVID-19 pandemic, the directive demands that such international students either transfer to a school with physical instruction (even while many schools have made the public health decision to offer online courses only) and subject themselves, school faculty, staff, and other students, to an increased risk of illness – or be forced to leave the country. The directive also requires schools, who relied on earlier guidance from ICE that such international students may attend online classes and retain their F-1 visa status, to redesign their educational plans and practices for the coming school year in a matter of weeks, when the process ordinarily takes months. Academic institutions across the country immediately responded to ICE's directive, voicing strong opposition – in fact, two days later, Harvard and MIT filed a lawsuit against ICE and the U.S. Department of Homeland Security in the District of Massachusetts seeking a preliminary injunction against the directive.

The directive is an arbitrary and capricious change in policy. In March 2020, given COVID-19, ICE exempted international students with F-1 visas from course requirements that required them to attend in person. This exemption was to remain in effect "for the duration of the emergency." In reliance on this exemption, institutions expected that they would have enough time to create a plan for the academic year 2020-2021 without the fear of losing students. If the directive goes forward, that would no longer be the case.

Our Amicus Brief

The filing of this amicus brief comes at a crucial time, as the directive requires schools to submit an "operational change plan" explaining the format in which they intend to teach students in the upcoming semester in a matter of weeks – a process that ordinarily takes months, even when the country is not in the middle of a public health emergency.

The Proskauer brief emphasizes this unreasonable expectation, as well as ICE's failure to abide by procedure or to provide any explanation for the change in its policy, as it is required to do. Importantly, Proskauer points out that the directive improperly dictates education policy and puts international students at unnecessary additional risk of exposure to COVID-19 while completely disregarding any alternatives even for immunocompromised students. The brief also underscores the significant harm the directive will have on those students whose home countries have closed their borders, leaving the students effectively displaced.

Proskauer filed the brief on behalf of a number of educational institutions, including New York University, University of Rochester, Icahn School of Medicine at Mount Sinai, Glendale Community College, Cabrillo College, The Catholic University of America, San Diego Community College District, The Cooper Union for the Advancement of Science & Art, Rider University, Santa Rosa Junior College, The Art Center College of Design, The Coast Community College District, The South California Institute of Architecture, The South Orange County Community College District, and the Manhattan School of Music.

The Proskauer team, which was led by Joseph O'Keefe, included myself (Om V. Alladi), Will Dalsen, and Hena Vora.

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