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COMMITTEE ON  
WAYS AND MEANS

Congress of the United States  
House of Representatives  
Washington, DC 20515-4100

April 25, 2018

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BY EXEC SEC  
2018 APR 26 AM 6:51

The Honorable Kirstjen Nielsen  
Secretary  
U.S. Department of Homeland Security  
3801 Nebraska Avenue, NW  
Washington, DC 20528

Dear Secretary Nielsen,

I write today on behalf of employers in the state of South Dakota whose operations are threatened by the lack of available H-2B visas they rely on to staff up for seasonal peaks.

South Dakota's unemployment rate ranks among the nation's lowest. While this is a source of pride, it also means that finding employees can be very challenging, especially in rural areas. This jobs gap affects many of our industries, but most especially those related to the seasonal tourism sector.

In recent weeks, dozens of South Dakota business owners have notified me that they will have to limit or shut down operations this summer if the cap on H-2B visas is not raised to meet their needs.

After you stated a desire for additional input beyond planned consultation with Secretary Acosta, my staff repeatedly contacted your office to coordinate a phone call so I could communicate the dire circumstances facing my constituents. These attempts were rebuffed. Therefore, I am writing you to express the time-sensitive and critical circumstances in my district.

Thank you for your consideration. Please let me know if further materials documenting the need in South Dakota would aid you in your decision making.

Sincerely,

KRISTI NOEM  
Member of Congress

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**U.S. Citizenship  
and Immigration  
Services**

May 22, 2018

The Honorable Kristi Noem  
U.S. House of Representatives  
Washington, DC 20515

Dear Representative Noem:

Thank you for your April 25, 2018 letter. Secretary Nielsen asked that I respond on her behalf.

Your letter urges Secretary Nielsen to take decisive action regarding the H-2B visa provisions contained in the Consolidated Appropriations Act, 2018 (Public Law 115-141), signed by the President on March 23, 2018.

As a general matter, there is a statutory cap of 66,000 on the total number of foreign nationals who may be issued an H-2B visa or otherwise granted H-2B status during a fiscal year. *See* Immigration and Nationality Act (INA) § 214(g)(1)(B). Up to half of that allocation (33,000) is available during the first half of any given fiscal year, and the remainder is available during the second half of the fiscal year. *Id.* § 214(g)(10). However, section 205 of Div. M of the Consolidated Appropriations Act, 2018, Pub. L. 115-141, which was signed into law by the President on March 23, 2018, provides the Secretary of Homeland Security with discretion, after consultation with the Secretary of Labor, to increase the H-2B cap for the current fiscal year under prescribed circumstances.

As with the essentially identical provision authorizing the Secretary to augment the H-2B statutory cap in Fiscal Year 2017, the Department did not ask for, and does not wish to have, this discretion. I share Secretary Nielsen's opinion that Members of Congress have the best information to know the "right" number of H-2B visas needed to support American businesses without harming American workers.<sup>1</sup> This is because congressional representatives have the best understanding of their constituencies and the needs of their local employers.

Further, I share the Secretary's desire to work together with Congress to limit H-2B visas to employers with truly temporary needs, and to find solutions to most effectively allocate available H-2B visas throughout the year. As Secretary Nielsen noted to lawmakers during her recent testimony, Congress placed limitations on H-2B visas to protect American workers. But it also clearly could not have been Congress' intent for the lawful administration of the program to

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<sup>1</sup> *See* Testimony of DHS Secretary Nielsen, House Committee on Appropriations, Subcommittee on Homeland Security, Fiscal Year 2019 Budget Hearing – Department of Homeland Security (April 11, 2018) (<https://appropriations.house.gov/calendararchive/eventsingle.aspx?EventID=395210>).

The Honorable Kristi Noem

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put American employers out of business. DHS is in the final stages of the interagency process to implement section 205 of Div. M of the Consolidated Appropriations Act, 2018. DHS cannot comment on how many additional visas may be authorized before it is published in the *Federal Register*.

Thank you again for your letter and interest in this important matter. Should you require any additional assistance, please have your staff contact the U.S. Citizenship and Immigration Services Office of Legislative Affairs at (202) 272-1940.

Respectfully,

A handwritten signature in blue ink, appearing to read "LFC", is positioned above the printed name.

L. Francis Cissna  
Director