

United States Senate

WASHINGTON, DC 20510

January 15, 2020

VIA ELECTRONIC SUBMISSION

The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

The Honorable Eugene Scalia
Secretary
U.S. Department of Labor
Washington, D.C. 20520

Dear Acting Secretary Wolf and Secretary Scalia:

We are writing today to express our concern regarding the potential approval of additional foreign guest workers on H-2B visas during fiscal year 2020.

Section 105 of Division I of the Further Consolidated Appropriations Act, 2020 gives Acting Secretary Wolf the discretionary authority to distribute additional H-2B visas above and beyond the annual 66,000 cap only after he, in consultation with Secretary Scalia, determines that “the needs of American businesses cannot be satisfied in fiscal year 2020 with United States workers who are willing, qualified, and able to perform temporary nonagricultural labor.”¹ As we said in our April 2019 letter to then-Secretary Nielsen and then-Secretary Acosta on this same issue, we strongly believe that it would be a mistake to increase the allocation of H-2B visas above the statutory cap “without first taking the necessary steps to strengthen the program’s labor, employment, and trafficking protections for workers.”²

While we understand the needs of employers who legitimately rely on seasonal H-2B workers if American workers cannot meet the demand, we continue to have concerns about the harmful impact that the program has on both American workers and foreign guest workers. Studies have shown that the H-2B visa program leaves immigrant workers vulnerable to wage theft, abuse, and trafficking.³ Because they are often at the mercy of their employers, H-2B

¹ Public Law 116-94.

² Letter from Senators Richard Blumenthal, Charles E. Grassley, Richard J. Durbin, Tom Cotton, and Dianne Feinstein to Kirstjen Nielsen and R. Alexander Acosta (April 9, 2019)

https://www.feinstein.senate.gov/public/_cache/files/a/f/af0d0c28-a621-4a97-a770-f88d41ff2e7d/9522979EA4886CCD656EEB8FA66E9150.04.09.19---dhs-and-dol---h-2b-visa.pdf

³ See e.g., Polaris, *Human Trafficking on Temporary Work Visas* (June 5, 2018), 25-28, <https://polarisproject.org/sites/default/files/Human%20Trafficking%20on%20Temporary%20Work%20Visas%20A%20Data%20Analysis%202015-2017.pdf> (regarding trafficking in the H-2B visa program); Daniel Costa, *The H-2B Temporary Foreign Worker Program* Economic Policy Institute (June 8, 2016)

workers may also be too scared to speak out against poor working conditions.⁴ They may also have difficulties accessing the justice system to protect themselves from employer retaliation if they do speak out.⁵ These realities of the H-2B program, as it operates today, incentivize unscrupulous employers to hire H-2B workers instead of American workers and create poor working conditions for immigrant workers and American workers alike.

Therefore, absent significant regulatory and legislative reforms to the program, we do not believe that an increase in the number of H-2B visas is in the interests of either American workers or H-2B visa holders.

We ask that you maintain careful records of your assessment prior to any exercise of discretion to increase the allocation in H-2B visas in fiscal year 2020. If Acting Secretary Wolf does make a determination that American workers are not adequate to serve U.S. business needs and that an increase in H-2B visas is warranted, we request that you provide a detailed written report and staff-level briefing to the Senate Judiciary Committee justifying and explaining how you arrived at that determination.

Sincerely,


RICHARD BLUMENTHAL
United States Senate


CHARLES E. GRASSLEY
United States Senate


RICHARD J. DURBIN
United States Senate


TOM COTTON
United States Senate


DIANNE FEINSTEIN
United States Senate

[job-opportunities-and-wages/](#) (“The legal framework of the H-2B program facilitates the exploitation and abuse of migrant workers.”).

⁴ Daniel Costa *supra* note 3.

⁵ *Id.*; See e.g. Editorial, *Forced Labor on American Shores* N.Y. Times (July 8 2012) <https://www.nytimes.com/2012/07/09/opinion/forced-labor-on-american-shores.html>