

United States Senate

WASHINGTON, DC 20510-0803

April 2, 2018

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

The Honorable R. Alexander Acosta
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20510

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BY EXEC SEC
2018 APR -3 AM 11:56

Dear Secretary Nielsen and Secretary Acosta:

Now that the Consolidated Appropriations Act for fiscal year (FY) 2018 has been signed into law, we urge you to take decisive action without delay to ensure that small and seasonal businesses in our states can get the workers necessary to ensure a successful season. Due to the time-sensitive nature of seasonal businesses, we also urge you to take immediate steps to re-open the petition process and adjudicate any pending labor certifications that demonstrate the requirements set forth in this legislation. We believe that your Departments can take these actions, using the authority provided under this law, without the need for additional rulemaking.

Under Division M, Extensions, Title II, Section 205 of the FY 2018 Consolidated Appropriations Act (P.L. 115-141), the Secretary of Homeland Security, in consultation with the Secretary of Labor, has the authority to approve petitions for admission under the H-2B Nonimmigrant Temporary Worker program up to the new statutory level set in the bill for the current fiscal year.

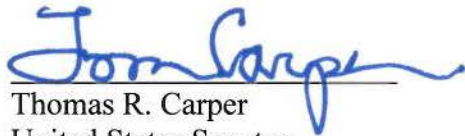
This authority was also provided in FY 2017. Despite this, only 15,000 additional visas were ultimately provided by the Secretary of Homeland Security even though Congress included language providing greater authority to issue additional visas to meet legitimate American seasonal business needs. Additionally, due to the late enactment date of the FY 2017 funding bill, and confusion at the Department regarding the need for additional rulemaking before exercising the new authority, the additional visas were provided very late in the season, and many businesses were unable to hire the seasonal workers they needed.

Small and seasonal businesses help our local communities thrive. In fact, small businesses across the country often rely on seasonal workers to help them operate during their peak seasons throughout the year. As you know, the statutory allocation for the current fiscal year was reached on February 27, 2018. As a result, many small businesses are left unable to get the workers they need, leading to potential reductions in operating hours or closures. Under the authority provided by Congress, the Department of Homeland Security can immediately help businesses hire the workers they need and help local economies as they head into their peak seasons.

We encourage you to make efforts to allow for efficient processing for additional applications and request that you inform us as soon as possible as to the process you will use to issue additional visas and the number of additional visas you intend to issue. This will not only help to alleviate concerns among employers, but it will also reduce the inevitable time-consuming inquiries to your agencies. By taking the necessary steps now, your agencies can streamline the process and help employers get their employees sooner.

Thank you for your attention to this important issue. We thank you for your consideration of this request and urge that you act as soon as possible.

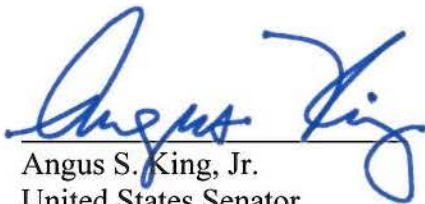
Sincerely,



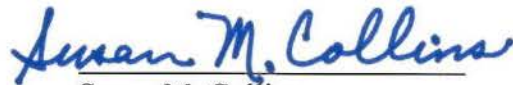
Thomas R. Carper
United States Senator



Thom Tillis
United States Senator



Angus S. King, Jr.
United States Senator



Susan M. Collins
United States Senator



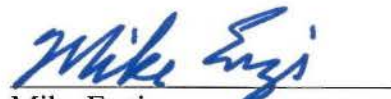
Christopher A. Coons
United States Senator



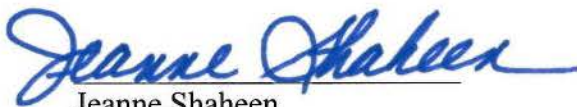
Cory Gardner
United States Senator



Jack Reed
United States Senator



Mike Enzi
United States Senator




Jeanne Shaheen
United States Senator



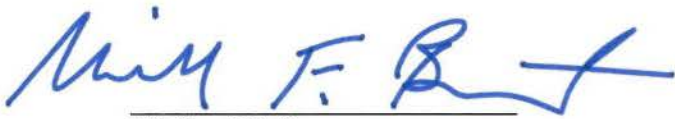
Todd Young
United States Senator



Sheldon Whitehouse
United States Senator



Pat Roberts
United States Senator



Michael F. Bennet
United States Senator



John Thune
United States Senator



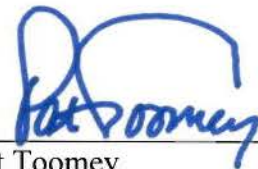
Mark R. Warner
United States Senator



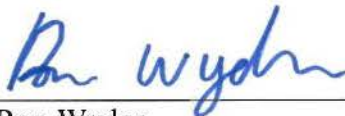
John Cornyn
United States Senator



Heidi Heitkamp
United States Senator



Pat Toomey
United States Senator



Ron Wyden
United States Senator



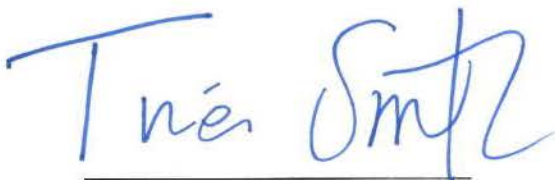
Roy Blunt
United States Senator



Amy Klobuchar
United States Senator



M. Michael Rounds
United States Senator



Tina Smith
United States Senator



John Barrasso
United States Senator



Debbie Stabenow
United States Senator



James Lankford
United States Senator



Gary C. Peters
United States Senator



Jeff Flake
United States Senator



Lindsey O. Graham
United States Senator



Dan Sullivan
United States Senator



Rob Portman
United States Senator



Bill Cassidy, M.D.
United States Senator



Orrin Hatch
United States Senator



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

April 25, 2018

The Honorable Thomas R. Carper
United States Senate
Washington, DC 20510

Dear Senator Carper:

Thank you for your April 2, 2018 letter. Secretary Nielsen asked that I respond on her behalf.

Your letter urges Secretary Nielsen and Secretary Acosta 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 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.¹ 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 April 11 testimony, Congress placed limitations on H-2B visas to protect American workers. But it also clearly could not have been Congress's intent for the lawful administration of the program to put American employers out of business.

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

The Honorable Thomas R. Carper

Page 2

Thank you again for your letter and for your interest in this important matter. The co-signers of your letter will receive separate, identical responses. 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