

## United States Senate

WASHINGTON, DC 20510

### COMMITTEES

ARMED SERVICES  
BANKING, HOUSING, AND  
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ENVIRONMENT AND PUBLIC WORKS  
SMALL BUSINESS AND  
ENTREPRENEURSHIP  
VETERANS' AFFAIRS

April 17, 2018

The Honorable Kirstjen Nielsen  
Secretary  
Department of Homeland Security  
3801 Nebraska Avenue, NW  
Washington, D.C. 20528

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BY EXEC SEC  
2018 APR 17 PM 3:20

Dear Secretary Nielsen,

I write today to follow up on our phone conversation regarding the H-2B visa program and its importance to the economy of my home state of South Dakota. As you will see in the examples from more than two dozen South Dakota employers, the H-2B visa program is an essential tool for businesses seeking to supplement full-time domestic laborers with temporary workers.

These positions are often difficult, if not impossible, to fill with domestic workers because of the seasonal nature of the work. The full-time jobs these temporary positions support span several industries. These include hospitality, forestry, tourism, construction, landscaping and other seasonal industries.

In South Dakota, we are fortunate to have one of the lowest levels of unemployment in the nation. According to the U.S. Department of Labor's Bureau of Labor Statistics, unemployment was 3.4 percent in February 2018, well below the national average. However, this presents a problem for South Dakota's seasonal industries. Because the available worker pool is so small, many are simply unwilling to accept seasonal jobs, preferring to continue the job search for a permanent position. Failing to fill these positions can mean canceled contracts, shortened seasons and even closed businesses. All of these negative consequences would come at the expense of domestic workers also employed by these businesses.

On March 23, 2018, President Trump signed into law the Consolidated Appropriations Act of 2018. This law allows the Secretary of Homeland Security, after consultation with the Secretary of Labor, to increase the total number of H-2B visas available if it is determined "...that the needs of American businesses cannot be satisfied in fiscal year 2018 with United States workers who are willing, qualified, and able..."

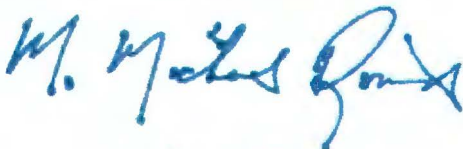
Pursuant to this authority granted to you by Congress, I have attached letters from some of South Dakota's employers illustrating the importance of the H-2B program and the obstacles facing them when trying to fill these positions. These support letters represent merely a fraction of the businesses that have contacted my office about the importance of this program. I am confident that their real-world experiences will help inform the Department of Homeland Security's (DHS) decision making process.

The busy season for H-2B labor is already underway, especially for the tourism and outdoor industries. South Dakota's businesses will need to receive any additional visas as soon as possible. In fiscal year 2017, Congress granted DHS similar authority to provide additional visas. The final rulemaking, however, came far too late in the season for many of my state's businesses to benefit. In order to mitigate the harm that has already been done by this labor shortage, H-2B visa holders will need to be on the job without delay.

Our nation's immigration and labor policies should have as its top consideration the American economy and the American worker. President Trump has to date sought to champion this cause, and I appreciate the role you have played in that effort. In advancement of these goals, I respectfully request that you: 1.) take into account the perspective of South Dakota's small and seasonal businesses, including the inevitable effect on domestic employment, as you weigh decisions related to the H-2B program, and 2.) instruct U.S. Citizenship and Immigration Services officials to take every available measure to expedite processing should DHS make additional visas available this fiscal year.

Again, thank you for the opportunity to work with you on this issue. Please feel free to reach out should you have questions or need clarification about the importance of this program for the economy and people of South Dakota.

Sincerely,

A handwritten signature in blue ink, appearing to read "M. Michael Rounds", with a stylized flourish at the end.

M. Michael Rounds  
United States Senator

CC: The Honorable R. Alexander Acosta



U.S. Citizenship  
and Immigration  
Services

May 17, 2018

The Honorable M. Michael Rounds  
United States Senate  
Washington, DC 20510

Dear Senator Rounds:

Thank you for your April 17, 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 M. Michael Rounds

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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 "L. Francis Cissna", is written over the typed name.

L. Francis Cissna  
Director