

United States Senate  
WASHINGTON, DC 20510

April 9, 2019

The Honorable Kirstjen Nielsen  
Secretary  
U.S. Department of Homeland Security  
Washington, D.C. 20528

The Honorable R. Alexander Acosta  
Secretary  
U.S. Department of Labor  
Washington, D.C. 20520

Dear Secretary Nielsen and Secretary Acosta:

We write to express our deep disappointment regarding your recent decision to allocate an additional 30,000 H-2B visas this fiscal year – double the number of additional visas allocated last year – without first taking the necessary steps to strengthen the program’s labor, employment, and trafficking protections for workers.

In order to protect both immigrant and American workers, we need to restructure our H-2B visa program. You have regulatory authority to make many of these changes administratively and, while others may require Congressional action, you have yet to propose any legislative reforms to the H-2B program. Absent significant reforms, it is hard to understand how an increase in the number of H-2B visas is in the best interests of American workers or H-2B visa holders. As Senators Blumenthal, Cotton, Durbin, and Grassley stated in a letter to you after your decision last year to increase the number of H-2B visas, “Increases in the number of H-2B visas without strengthening worker protections and enforcement of labor and employment law will only exacerbate [the H-2B program’s] problems.”<sup>1</sup>

While we support efforts to ensure that businesses are able to find and hire critical employees, we have serious reservations about the harmful impact of the H-2B visa program on both immigrant and American workers. Expert studies have demonstrated that the H-2B visa program, which provides no pathway to permanent legal status, leaves workers vulnerable to

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<sup>1</sup> Letter from Senators Richard Blumenthal, Tom Cotton, Richard J. Durbin, and Charles E. Grassley to Kirstjen Nielsen and R. Alexander Acosta (June 6 2018) <https://www.judiciary.senate.gov/imo/media/doc/2018-06-06%20CEG,%20Blumenthal,%20Cotton,%20Durbin%20to%20DHS,%20DOL,%20-%20%20H-2B%20Visas.pdf>.

wage theft, abuse, and trafficking.<sup>2</sup> H-2B workers are often at the mercy of their employers, which means they may be afraid to speak out against poor working conditions.<sup>3</sup> Even when they do speak out, they can struggle to access our justice system to protect themselves from retaliation by their employers.<sup>4</sup> This creates a perverse incentive for unscrupulous employers to hire H-2B workers instead of American workers. Moreover, where employers are able to force H-2B workers to accept poor working conditions, Americans working alongside them may struggle to compel employers to abide by federal labor and employment laws. As a result, American workers in these industries may also be forced to endure exploitative working conditions.

We regret to say that your decision to once again dramatically increase the number of H-2B visas without first implementing much-needed reforms to the program will hurt American and H-2B workers alike.

Given our concerns, we urge you to reconsider your decision and we request that you provide a written report and staff level briefing to the Senate Judiciary Committee justifying your decision to provide an additional 30,000 H-2B visas. Your report and briefing should include relevant data and a detailed explanation of how and why you arrived at this decision. In addition, we urge you to make special provisions to require the re-advertising of positions for any additional visas allocated in order to ensure that U.S. workers will have a realistic and timely opportunity to apply.

We kindly request that you respond to this letter by April 26, 2019. Thank you for your assistance in this matter.

Sincerely,

  
RICHARD BLUMENTHAL  
United States Senate

  
CHARLES E. GRASSLEY  
United States Senate

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<sup>2</sup> 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) <https://www.epi.org/publication/the-h-2b-temporary-foreign-worker-program-examining-the-effects-on-americans-job-opportunities-and-wages/> (“The legal framework of the H-2B program facilitates the exploitation and abuse of migrant workers.”).

<sup>3</sup> Daniel Costa *supra* note 1.

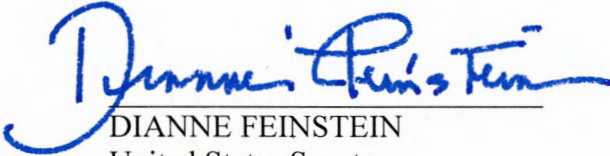
<sup>4</sup> *Id.*; See e.g. Editorial, *Forced Labor on American Shores* N.Y. Times (July 8 2012) <https://www.nytimes.com/2012/07/09/opinion/forced-labor-on-american-shores.html>



RICHARD J. DURBIN  
United States Senate



TOM COTTON  
United States Senate



DIANNE FEINSTEIN  
United States Senate

Cc:

Kevin McAleenan, Commissioner, U.S. Customs and Border Protection