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January 24, 2019

The Honorable Alexander Acosta
Secretary of Labor
200 Constitution Ave NW
Washington, DC 20210

Dear Mr. Secretary:

As you know, the Department of Labor's Office of Foreign Labor Certification utilizes the iCERT System to allow businesses to electronically file applications and documentation to seek temporary labor certification for the H-2A and H-2B visa programs. Businesses that seek an H-2B visa for a foreign worker who will arrive in the United States between April 1 and September 30th are permitted to submit their application immediately after midnight on January 1. According to the Department, on January 1, 2019, almost 23,000 login attempts were made to the iCERT System, an increase from 721 attempts on January 1, 2018. The iCERT System received applications for almost 98,000 workers on January 1st alone.

The Department states that due to this massive increase in login attempts and applications, the iCERT System crashed shortly after midnight on January 1st and remained non-functional until January 7th. The crash of the iCERT System impacted the ability of thousands of businesses to seek the available 33,000 H-2B visas, causing uncertainty for many businesses who already struggle to find the workforce necessary to continue operations. My office heard immediately from numerous Oklahoma businesses who were unable to access the system, several of whom still have casework issues my staff is working to resolve. To resume operations of the iCERT System, the Department stated it increased the system's processing to 50 load-balanced servers. Unfortunately, one of those servers did not allow access to the iCERT System and for several hours on January 7th, some users remained unable to access the system. Despite the outage and the prolonged inability of some to access the system, the Department surprisingly announced it would not change how it processed applications and would continue utilizing procedures announced on June 1, 2018.

To help Congress and the American people better understand the cause of the iCERT System failure and to identify any necessary improvements requiring Congressional action, please respond to the following questions no later than February 10:

1. What office within the Department is responsible for operating the iCERT System and ensuring it is operational?
2. Does the Department have written procedures to undertake if the iCERT System crashes? If so, what are they?
3. When the iCERT System was designed, what was the intended capacity for the system?

a. How many logins and pending applications was it intended to be able to process at one time?

4. How much did the iCERT System's crash cost the Department and what was the cost associated with getting the system back online?

5. Has the Department determined that human error contributed to the system crash and, if so, what disciplinary actions will be taken?

6. Now that the iCERT System is back online, what steps will the Department take to prevent another crash?
   a. What changes in capacity does the Department plan for the iCERT System?
   b. Does the Department anticipate paying a contractor to upgrade the system to ensure another crash does not occur? If so, how much?
   c. If the iCERT System failed to meet expected capacity capabilities, what steps has the Department taken or will the Department take to determine why the system failed to meet capacity requirements?

7. Who made the determination that the Department would continue to process applications based on the June 2018 regulations instead of developing a new system that took into account the week-long crash of the iCERT System? Why was this decision made?

8. Has the department considered altering its June 1, 2018 procedures for processing H-2B applications?

9. Before H-2B application periods begin, does the Department forecast the number of applications that are anticipated?
   a. If so, how many applications were anticipated on January 1st for workers entering the country between April 1st and September 30th of this year?
   b. If so, is that estimate shared with the office responsible for operating the iCERT System to ensure the system is prepared to handle the number of submissions anticipated?

Every business owner should first seek to hire qualified Americans before considering foreign workers. The H-2B visa program should be used as a last resort for businesses who cannot find anyone else to fill needed roles. However, the federal government should not have an H-2B process that is unnecessarily difficult or even impossible for the average small business to navigate. If legislative changes are necessary to improve how the Department of Labor, in cooperation with the Department of Homeland Security, processes then approves H-2B applications, I know that my colleagues stand ready to consider those changes upon your recommendation.

Thank you for your attention to this matter not just to ensure this problem does not happen in the future, but to rectify the situation for all currently impacted businesses.

In God We Trust,

JAMES LANKFORD
United States Senator