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June 9, 2021

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The White House  
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Washington, DC 20500

Vice President Kamala Harris  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, DC 20500

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Secretary of Labor  
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Washington, DC 20210

Xavier Becerra  
Secretary of Health and Human Services  
200 Independence Avenue, S.W.  
Washington, D.C. 20201

Marcia Fudge  
Secretary of Housing and Urban Development  
451 7th Street S.W.,  
Washington, DC 20410

Alejandro Mayorkas  
Secretary of Homeland Security  
Washington, DC 20528

Ron Klain  
Chief of Staff  
The White House  
1600 Pennsylvania Avenue, N.W.  
Washington, DC 20500

Re: U.S. Labor and Immigration Policy and Employment of Immigrant Workers

Your Honors:

In our opinion, our U.S. labor and immigration laws and policies are failing our country along with our U.S. companies and businesses. U.S. companies and businesses are languishing daily seeking to employ the workers they require to stay in business, as well as maintaining and growing their companies. But the sad reality is that currently there are not enough ready, willing and able employees to fulfill the needs of our American businesses. At the same time, our U.S. Government is releasing thousands of immigrant/foreign persons into our country on a daily basis who could, but for the labor and immigration laws and policies of country, serve to fulfill many of the dire and immediate needs of our American businesses.

In April 2020, the United States Government Accountability Office ("GAO") presented its H-2B Visas – Additional Steps Needed to Meet Employers' Hiring Needs and Protect U.S.



Workers report to Congress. The Report was commissioned because in recent years the demand for H-2B visa workers has steadily increased as the national unemployment rate has declined. H-2B visas are intended to help employers fill non-agricultural positions when no U.S. workers are available. The GAO Report found that between 2010 and 2018 the request by U.S. employers for H-2B visa workers almost doubled and the need for additional workers remained extreme. The GAO Report further found that while federal agencies have identified various programs changes that consider employers' hiring needs and protect U.S. workers, gaps still remain in the implementation of the programs. The GAO reported that the Department of Homeland Security, in consultation with the Department of Labor, has identified options for changing the H-2B visa process to address employers' hiring needs. However, the Department of Homeland Security and the Department of Labor have not taken any action (known to us) in order to address this situation, and American companies and businesses continue to struggle finding available, qualified, and eligible workers.

But a viable and very simple solution to help remedy this U.S. worker shortage is right before us and at hand.

This past February President Biden issued an Executive Order reinstating the Obama-era practice of "Catch and Release," whereby alien persons who have made an illegal border crossing are given a Notice and Date to Appear and then released almost immediately into the community while he or she awaits a hearing in immigration court. Most are released from Department of Homeland Security custody without consideration, monitoring, or consequence. A recent U.S Congressional Report stated that the current average wait time for an immigration hearing is now 869 days. Once released, the undocumented aliens/immigrants are free to travel within our country at will. Notwithstanding, most of the released undocumented aliens/immigrants have few, if any assets, and little or no means to support themselves and their families other than through U.S. Government assistance, illegal (cash) employment, or basic criminal activity. While the "Catch and Release" policy may in theory be sound, the true reality is that it is failing because there is no way for the government to keep track of where the undocumented aliens/immigrants go after they are released, and because there are simply too many of them to effectively monitor. Under the current policy there will be hundreds of thousands of undocumented aliens making illegal crossings because they have no fear of being detained by the border patrol or the Department of Homeland Security. This does not just pose a threat to our national security; it is also a safety and health threat to our American communities.

A viable alternative to undocumented alien detention or the bare policy of "Catch and Release" would be a program where undocumented aliens/immigrants who are in the country and waiting for immigration hearings could register with the Department of Homeland Security and then be eligible to be employed by U.S. companies and businesses who are also registered under the same program. Under such a program the employing companies or businesses would hire the eligible employees at competitive prevailing wages, provide the employees health insurance, and establish escrow or bank accounts for each employee where all required and applicable federal, state and local taxes would be withheld and deposited for remittance to the appropriate taxing authority. Such a program would serve to allow the undocumented



aliens/immigrants to become legally employed while waiting for their immigration hearing, which would in turn allow them to legally support themselves and their families, thus providing relief from government assistance. Such a program would further serve to allow the undocumented aliens/immigrants to reside in the United States with dignity and basic human rights. Such a program would especially benefit American companies and businesses with an additional readily available source of desperately needed workers. A win-win for both sides.

It is well documented that there are thousands and thousands of immigrants presently waiting to come across the border. Most will come across illegally, thereby exacerbating the present undocumented aliens/immigrants border crisis. Such a new policy as suggested above is not only needed, but it is one that just makes sense for our U.S. employers and our country moving forward.

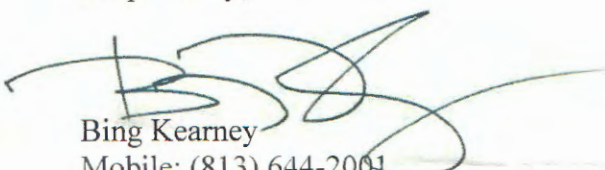
It is estimated that there are approximately 40,000,000 illegal immigrants presently residing in the United States (1/8th of the U.S. population) since the estimate of 11,000,000 has not been upgraded since 2005.

Please confirm in writing that the U.S. Government will or will not allow our companies to employ illegal immigrants which are coming into the United States by the hundreds of thousands and that the government wants or does not want them to be employed, insured, and all applicable taxes withheld and properly paid.

Upon your receipt of this correspondence please advise in writing what process or procedure that our companies are immediately allowed to follow in seeking to legally employ the undocumented aliens/immigrants addressed here.

Thank you for your prompt attention to this matter.

Respectfully,



Bing Kearney  
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U.S. Citizenship  
and Immigration  
Services

July 29, 2021

Bing Kearney  
9625 Wes Kearney Way  
Riverview, FL 33578

Dear Mr. Kearney:

Thank you for your June 9, 2021 letter to the Department of Homeland Security (DHS). Secretary Mayorkas asked that I respond on his behalf.

We agree that it is important for U.S. employers to have access to available, qualified, and willing workers to operate and grow businesses. In this regard, Congress has authorized a number of employment-based categories to help meet U.S. employer needs.<sup>1</sup> U.S. employers who are seeking workers may, under conditions prescribed by applicable law, request that noncitizens obtain the appropriate immigrant or nonimmigrant classification.<sup>2</sup> All U.S. employers must verify the employment eligibility and identity of all employees hired to work in the United States by completing an Employment Eligibility Verification form (Form I-9) for all employees.<sup>3</sup> Employers who hire or continue to employ individuals knowing that they are not authorized to be employed in the United States may face civil and criminal penalties.

DHS is committed to ensuring that our policies and procedures achieve the goal that our government services are broadly available to the public and that our immigration system is fair, efficient, humane, and consistent with the Immigration and Nationality Act. We are also committed to working with Congress on continuing to restore our shared American values to the immigration system, and DHS will explore opportunities to encourage economic growth and job creation with commonsense immigration reforms within the boundaries of the applicable law.

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<sup>1</sup> With respect to the H-2B program, in particular, we note that Congress again delegated its authority to increase the number of available H-2B visas in Section 105 of the Consolidated Appropriations Act, 2021. As in prior years, DHS consulted with U.S. Department of Labor (DOL), and, in light of increased labor demands and balancing the interest of U.S. workers, DHS announced a supplemental increase of 22,000 visas for the H-2B program on April 20, 2021. The additional visas were made available via a [temporary final rule](#) published in the *Federal Register* on May 25, 2021. As mentioned in the April 2020 Government Accountability Office report that you cited, DHS will continue to work with DOL—as it has done in prior years—if and when Congress delegates the authority to make additional H-2B visas available beyond the statutory cap.

<sup>2</sup> More information is available at <https://www.uscis.gov/tools/how-do-i-guides/how-do-i-guides-for-employers> and <https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/employer-information>.

<sup>3</sup> Additional information is available in the Handbook for Employers M-274 at this link: <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274>.



In January, the Biden Administration launched a broad, whole of government effort to reform our immigration system, including sending to Congress legislation that creates a new system to responsibly manage and secure our border, provide a pathway to citizenship, and better manage migration across the Hemisphere. On February 2, 2021, President Biden issued Executive Order 14012, *Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans* (E.O. 14012). Section 1 of E.O. 14012 states:

[I]t is essential to ensure that our laws and policies encourage full participation by immigrants, including refugees, in our civic life; that immigration processes and other benefits are delivered effectively and efficiently; and that the Federal Government eliminates sources of fear and other barriers that prevent immigrants from accessing government services available to them.

Section 3(a) directs the Secretary of State, Attorney General, and Secretary of Homeland Security to:

- (i) identify barriers that impede access to immigration benefits and fair, efficient adjudications of these benefits and make recommendations on how to remove these barriers, as appropriate and consistent with applicable law; and
- (ii) identify any agency actions that fail to promote access to the legal immigration system . . . and recommend steps, as appropriate and consistent with applicable law, to revise or rescind those agency actions.

Consistent with this Executive Order, DHS has been conducting a comprehensive review of existing regulations, orders, guidance documents, policies, and other similar agency actions in order to eliminate sources of fear and other barriers that prevent noncitizens from accessing the immigration system. This review is ongoing and the public will be promptly notified of changes to the immigration system and processing.<sup>4</sup>

Thank you again for your letter and interest in this issue. Should you require any additional assistance, please do not hesitate to contact me.

Sincerely,



Tracy L. Renaud  
Acting Director

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<sup>4</sup> USCIS publicizes changes through many communication modes, including the Federal Register, [Facebook](#), [Twitter](#), and its [News webpage](#).