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## United States Senate

COMMITTEE ON THE JUDICIARY  
WASHINGTON, DC 20510-6275

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October 23, 2017

### VIA ELECTRONIC SUBMISSION

Ambassador Robert E. Lighthizer  
Office of the United States Trade Representative  
600 17th Street NW  
Washington, DC 20508

Dear Ambassador Lighthizer,

I write to express ongoing concerns regarding the uncapped TN nonimmigrant classification, a component of the North American Free Trade Agreement (NAFTA) that permits Mexican and Canadian citizens to take high-paying professional jobs in the United States. Given your current review of the NAFTA framework<sup>1</sup> and the many changes to global, regional, and national economies since this provision was implemented almost twenty-five years ago, I ask that you consider renegotiating the guest worker provisions of NAFTA as part of any broader examination of the treaty.

As you know, the TN visa category permits high skilled professionals<sup>2</sup> from our NAFTA treaty partners to work within the United States, imposing almost none of the labor protections or impact analysis required for high skilled workers from other countries, such as those that enter through the H-1B visa program.<sup>3</sup> The list of TN professions is expansive, covering everything from doctors, lawyers, and engineers, to interior designers, librarians, and beekeepers.<sup>4</sup> Although the category is technically “temporary,” it permits an initial stay up to 3 years, and there is no limit on the number of extensions of stay that a TN visa worker may request.<sup>5</sup> Canadian citizens may apply for TN visa status simply by submitting the necessary documentation directly to a Customs and Border Protection (CBP) officer at the port of entry<sup>6</sup>;

<sup>1</sup> See Ltrs to Congressional Leaders from Amb. Lighthizer (May 18, 2017) *available at* <https://ustr.gov/sites/default/files/files/Press/Releases/NAFTA%20Notification.pdf>.

<sup>2</sup> Professionals must be citizens of Mexico or Canada, and must practice in one of the sixty professions listed at 8 C.F.R. 214.6) (c), also at Appendix 1603.D.1 to Annex 1603 of the NAFTA.

<sup>3</sup> H-1B employers must submit a Labor Condition Application (LCA) to the Department of Labor, certifying that certain wage and working conditions will be met. The LCA protects the interests of U.S. workers by requiring H-1B dependent employers to attest that no U.S. workers have been displaced.

<sup>4</sup> See 8 C.F.R. 214.6(c).

<sup>5</sup> USCIS, *TN NAFTA Professionals*, *available at* <https://www.uscis.gov/working-united-states/temporary-workers/tn-nafta-professionals>.

<sup>6</sup> *Id.*

Mexican citizens must apply for a visa but after arrival may, like their Canadian counterparts, extend TN status upon Citizenship and Immigration Services approval.<sup>7</sup>

Evidence suggests that employers will pursue any means available to hire high skill foreign workers,<sup>8</sup> who generally cost less and are more vulnerable than American workers. Given the current administration's focus on protections for the American worker, including efforts to rein in the H-1B program,<sup>9</sup> businesses will be looking for alternative sources of cheap foreign labor to exploit. With few restrictions and a ready supply of nearby professionals, employers are likely to turn to the TN visa category. The TN visa, if left unchanged in its current form, could well undermine the administration's broader efforts.

Indeed, the number of TN visa workers employed in the United States has been growing in recent years. Although the administration does not keep track of the exact number of aliens in TN visa status, statistics that *are* available suggest the number could be approaching 100,000. The Department of State's visa report shows that: 14,768 TN visas were issued in 2016, (along with 9,762 TD visas for spouses and children), another 13,093 were approved in 2015, and 11,207 in 2014, for a total of 39,068 TN visas issued (largely to Mexican workers) in the last three full years.<sup>10</sup> Although Canadian workers are not required to apply for a TN visa, a Canadian news source recently estimated that "30,000 to 40,000" Canadians work in the U.S. in TN status.<sup>11</sup>

This uncapped and under-recognized pool of high skill employees exacerbates the risk to American workers already present in certain industries that rely too heavily on foreign workers.<sup>12</sup> It also constrains the U. S. Government's total discretion over our immigration laws.

Although I recognize there are risks to reopening negotiations regarding any treaty provision, I believe that it would be a mistake to essentially renew the TN temporary worker visa category, without considering the broader implications for the current U.S. economy. Given President Trump's willingness to reevaluate—or reject—any and all of the NAFTA agreement, and in the interest of protecting American workers, I recommend that you specifically include

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<sup>7</sup> *Id.*

<sup>8</sup> See, e.g., Kumar, Bhaswar, *Are you 'extraordinary'? If so you can get around Trump's H-1B order*, Bus. Standard (July 3, 2017) (urging foreign workers to consider the "largely unrestricted" O and EB-1 visa categories to get around the President's executive order, and noting that use of these visa categories is on the rise) available at [http://www.business-standard.com/article/current-affairs/are-you-extraordinary-if-so-you-can-get-around-trump-s-h-1b-order-117070300555\\_1.html](http://www.business-standard.com/article/current-affairs/are-you-extraordinary-if-so-you-can-get-around-trump-s-h-1b-order-117070300555_1.html).

<sup>9</sup> See *Presidential Executive Order on Buy American and Hire American* (Apr. 18, 2017) §§ 2(b), 5; available at <https://www.whitehouse.gov/the-press-office/2017/04/18/presidential-executive-order-buy-american-and-hire-american>.

<sup>10</sup> Dept. of State, *Classes of Nonimmigrants Issued Visas (Including Border Crossing Cards): Fiscal Years 2012 – 2016* available at <https://travel.state.gov/content/dam/visas/Statistics/AnnualReports/FY2016AnnualReport/FY16AnnualReport-TableXVIA.pdf>.

<sup>11</sup> D'Souza, Steven, *Canadians working in U.S./ under NAFTA exemption worry about future under Trump*, CBCNews (Dec. 24, 2016) available at <http://www.cbc.ca/news/world/canadians-us-nafta-visas-1.3910934>.

<sup>12</sup> See, e.g., Ltr from Sens. Grassley Brown Durbin Blumenthal and Reps. Pascrell Gosar and Brat to Sec'y Kelly and Sec'y Huglar (Mar. 29, 2017) available at <https://www.grassley.senate.gov/sites/default/files/constituents/2017-03-29%20CEG%2C%20Durbin%2C%20et%20al.%20to%20DHS%2C%20%20DOL%20-%2060%20Minutes%20story%20on%20H-1B%20Abuse.pdf>.

temporary workers in the ongoing NAFTA review. I also ask that you consider whether the admittance of unlimited temporary workers under a multinational trade agreement—as opposed to through the existing statutory and regulatory frameworks employed by the Departments of State, Homeland Security, and Labor in other worker visa categories—best serves the interests of the American people and American workers.

Thank you in advance for your cooperation with this request. If you have questions, please contact Brad Watts at (202) 224-5225.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Grassley". The signature is fluid and cursive, with a horizontal line drawn underneath the name.

Charles E. Grassley  
United States Senator

Cc: The Honorable Rex Tillerson  
Secretary  
U.S. Department of State