March 4, 2019

The Honorable Kirstjen Nielsen
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

Dear Secretary Nielsen,

As you know, H. J. Res. 31 – Consolidated Appropriations Act, 2019 (Pub. L. 116-6), signed into law on February 15th, 2019, confers authority to the Secretary of the Department of Homeland Security (DHS) to, in her discretion and in consultation with the Secretary of Labor, release up to approximately 69,320 additional temporary, non-immigrant H-2B visas in excess of the statutory annual cap of 66,000.

According to Department of Labor (DOL) data, the demand for temporary, seasonal workers, with a start date between April 1, 2019 and the end of fiscal year 2019, exceeds 95,000 workers—almost three times the number of available H-2B visas for that time period. Given the near historic low unemployment rate, the constant oversubscription to the program and its importance to our local economies, we strongly urge you to use the discretion afforded your office in the most recent appropriations bill to release, without delay and to the greatest extent allowed by law, additional H-2B visas sufficient to meet the certified demand of our seasonal employers.

If significant H-2B cap relief is not provided, there will be severe consequences for seasonal businesses and our economy generally. Several seasonal businesses denied access to the program due to the insufficient availability of visas have already been forced to scale back their operations, cancel or default on contracts, lay off full-time U.S. workers, and, in some cases, shutter their operations entirely. Failing to release additional H-2B visas will only result in more closures or scale backs for these businesses. We would also note that while we were pleased to see you exercise your discretion to release additional visas in previous years, the 15,000 additional visas released in both FY 17 & FY 18, were wholly inadequate to meet the demonstrated, certified needs of our seasonal employers.

Further, in past years, rulemaking associated with the release of additional visas significantly delayed our employers’ access to them. We do not believe that additional rulemaking is required this year due to the timing of the law’s enactment. In 2017 and 2018, Congress did not pass the DHS appropriations until April and March, respectively. The announcement of the release of the additional 15,000 visas in each of these years was not made until the summer (July 17, 2017 and May 31, 2018). At those times, both DHS and DOL asserted that additional rulemaking was required because labor certifications provided in early winter were deemed to have become
“stale” necessitating a fresh test of the labor market. This is not the case now. This year’s labor certifications have been issued within the past two (2) months and thus are concurrent with current labor market conditions. We urge the Department to announce quickly its intention to exercise the authority provided by Congress by providing the full amount of visas authorized and simply continue processing H-2B petitions until any additional visa allotment is exhausted.

As a result of the discretion conferred by the recently passed appropriations bill, your department has the opportunity to assist these seasonal employers by allowing them access to a labor pool that can meet their demonstrated and certified needs. As such, we urge you to expeditiously release a sufficient number of additional visas (up to the 69,320 allowed by law) to allow these vital businesses to continue to fulfill their contracts, retain their American workers, make additional capital investments, expand their businesses and maximize their contribution to the American economy.

Sincerely,

M. Michael Rounds
M. Michael Rounds
United States Senator

Thom Tillis
Thom Tillis
United States Senator

Michael F. Bennet
Michael F. Bennet
United States Senator

John R. Thune
John R. Thune
United States Senator

Roy Blunt
Roy Blunt
United States Senator

James E. Risch
James E. Risch
United States Senator

Mike Crapo
Mike Crapo
United States Senator

Dan Sullivan
Dan Sullivan
United States Senator
Jack Bergman
Member of Congress

Henry Cuellar
Member of Congress

Randy K. Weber
Member of Congress

Vicente Gonzalez
Member of Congress

Rob Bishop
Member of Congress

Pete Stauber
Member of Congress

Bruce Westerman
Member of Congress

Paul Mitchell
Member of Congress

Josh Gottheimer
Member of Congress

Michael Waltz
Member of Congress

Scott Tipton
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Michael Guest
Member of Congress
Filemon Vela
Member of Congress

Roger Marshall, M.D.
Member of Congress

Tom Emmer
Member of Congress

Elise M. Stefanik
Member of Congress

Ralph Norman
Member of Congress

Ann McLane Kuster
Member of Congress

Cindy Axne
Member of Congress

Jefferson Van Drew
Member of Congress

Glenn ‘GT’ Thompson
Member of Congress

Anthony Brindisi
Member of Congress

James P. McGovern
Member of Congress

Jody Hice
Member of Congress
Ralph Abraham, M.D.
Member of Congress

Barry Loudermilk
Member of Congress

Joe Cunningham
Member of Congress

Clay Higgins
Member of Congress

Tom Malinowski
Member of Congress

Tom Rice
Member of Congress

Guy Reschenthaler
Member of Congress

John Moolenaar
Member of Congress

Kelly Armstrong
Member of Congress

Trent Kelly
Member of Congress

Denver L. Riggleman
Member of Congress

Anthony Gonzalez
Member of Congress
Don Bacon
Member of Congress

David P. Joyce
Member of Congress

Jennifer Wexton
Member of Congress

Jason Crow
Member of Congress

Glenn Grothman
Member of Congress

Dusty Johnson
Member of Congress

Lauren Underwood
Member of Congress

Steve Watkins
Member of Congress

Ed Perlmutter
Member of Congress

Dan Newhouse
Member of Congress

Mike Bost
Member of Congress

Ron Estes
Member of Congress
David Schweikert  
Member of Congress

Elissa Slotkin  
Member of Congress

French Hill  
Member of Congress

Jim Cooper  
Member of Congress

Sharice Davids  
Member of Congress

Roger Williams  
Member of Congress

Rob Woodall  
Member of Congress

Ted S. Yoho, D.V.M.  
Member of Congress

Rodney Davis  
Member of Congress

Patrick McHenry  
Member of Congress

Robert Wittman  
Member of Congress

Michael R. Turner  
Member of Congress
Blaine Luetkemeyer  
Member of Congress

Suzanne Bonamici  
Member of Congress

Bill Huizenga  
Member of Congress

Steve Stivers  
Member of Congress

Vicky Hartzler  
Member of Congress

David B. McKinley, P.E.  
Member of Congress

Chris Stewart  
Member of Congress

Chris Collins  
Member of Congress

Adam Kinzinger  
Member of Congress

Betty McCollum  
Member of Congress

Tom Reed  
Member of Congress

Tim Walberg  
Member of Congress
Larry Bucshon, M.D.  
Member of Congress

Don Young  
Member of Congress

Sean Patrick Maloney  
Member of Congress

Emanuel Cleaver II  
Member of Congress

Bill Johnson  
Member of Congress

Ann Wagner  
Member of Congress

Doug Lamborn  
Member of Congress

Garret Graves  
Member of Congress

Frank Lucas  
Member of Congress

Steve Chabot  
Member of Congress

Brad Wenstrup  
Member of Congress

Markwayne Mullin  
Member of Congress
Andy Barr
Member of Congress

Lee Zeldin
Member of Congress

Thomas Massie
Member of Congress

Ken Buck
Member of Congress

Michael K. Conaway
Member of Congress

Brett Guthrie
Member of Congress

Bob Gibbs
Member of Congress

Billy Long
Member of Congress

Robert Latta
Member of Congress

Matt Cartwright
Member of Congress

CC Alex Acosta
Secretary, United States Department of Labor