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
United States Senator

Thom Tillis
United States Senator

Michael F. Bennet
United States Senator

John R. Thune
United States Senator

Roy Blunt
United States Senator

James E. Risch
United States Senator

Mike Crapo
United States Senator

Dan Sullivan
United States Senator
Doug Jones
United States Senator
Joe Manchin III
United States Senator
Pat Roberts
United States Senator
Lisa Murkowski
United States Senator
John Barrasso
United States Senator
Michael B. Enzi
United States Senator
Kevin Cramer
United States Senator
Johnny Isakson
United States Senator
James Lankford
United States Senator
Susan M. Collins
United States Senator
Ron Wyden
United States Senator
Pat Toomey
United States Senator
Jerry Moran
United States Senator

Bill Cassidy, M.D.
Bill Cassidy
United States Senator

Thomas R. Carper
United States Senator

Lindsey Graham
United States Senator

Todd Young
United States Senator

Rob Portman
United States Senator

Tim Scott
United States Senator

Chellie Pingree
Member of Congress

Andy Harris, M.D.
Member of Congress

Kay Granger
Member of Congress

William R. Keating
Member of Congress
Jack Bergman
Member of Congress

Randy K. Weber
Member of Congress

Rob Bishop
Member of Congress

Bruce Westerman
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Josh Gottheimer
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Scott Tipton
Member of Congress

Henry Cuellar
Member of Congress

Vicente Gonzalez
Member of Congress

Pete Stauber
Member of Congress

Paul Mitchell
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Michael Waltz
Member of Congress

Michael Guest
Member of Congress
Filemon Vela
Member of Congress

Tom Emmer
Member of Congress

Ralph Norman
Member of Congress

Cindy Axne
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Glenn ‘GT’ Thompson
Member of Congress

James P. McGovern
Member of Congress

Roger Marshall, M.D.
Member of Congress

Elise M. Stefanik
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Ann McLane Kuster
Member of Congress

Jefferson Van Drew
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Anthony Brindisi
Member of Congress

Jody Hice
Member of Congress

AILA Doc. No. 19031130. (Posted 3/11/19)
Ralph Abraham, M.D.
Member of Congress

Joe Cunningham
Member of Congress

Tom Malinowski
Member of Congress

Guy Reschenthaler
Member of Congress

Kelly Armstrong
Member of Congress

Denver L. Riggleman
Member of Congress

Barry Loudermilk
Member of Congress

Clay Higgins
Member of Congress

Tom Rice
Member of Congress

John Moolenaar
Member of Congress

Trent Kelly
Member of Congress

Anthony Gonzalez
Member of Congress

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Don Bacon
Member of Congress

David P. Joyce
Member of Congress

Jennifer Wexton
Member of Congress

Jason Crow
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Glenn Grothman
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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
Mike Simpson
Member of Congress

Diana DeGette
Member of Congress

Fred Upton
Member of Congress

H. Morgan Griffith
Member of Congress

Tom Cole
Member of Congress

John Shimkus
Member of Congress

John R. Carter
Member of Congress

Rick Larsen
Member of Congress

Peter Welch
Member of Congress

C. A. Dutch Ruppersberger
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Susan W. Brooks
Member of Congress

Bill Flores
Member of Congress
Andy Barr  
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Lee Zeldin  
Member of Congress

Thomas Massie  
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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