

Congress of the United States
Washington, DC 20515

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.

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United States Senator

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United States Senator

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United States Senator

John R. Thune
United States Senator

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James E. Risch
United States Senator

Mike Crapo
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Dan Sullivan
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Doug Jones
United States Senator

Kevin Cramer
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Joe Manchin III
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Johnny Isakson
United States Senator

Pat Roberts
United States Senator

James Lankford
United States Senator

Lisa Murkowski
United States Senator

Susan M. Collins
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John Barrasso
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Ron Wyden
United States Senator

Michael B. Enzi
United States Senator

Pat Toomey
United States Senator

Jerry Moran
United States Senator

Bill Cassidy
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Thomas R. Carper
United States Senator

Lindsey Graham
United States Senator

Todd Young
United States Senator

Rob Portman
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Tim Scott
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Andy Harris, M.D.
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Trent Kelly
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Don Bacon
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Ed Perlmutter
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Jason Crow
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Mike Bost
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Dusty Johnson
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Ron Estes
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David Schweikert
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Elissa Slotkin
Member of Congress

French Hill
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Jim Cooper
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Sharice Davids
Member of Congress

Roger Williams
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Rob Woodall
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Rodney Davis
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Patrick McHenry
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Robert Wittman
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Michael R. Turner
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Mike Simpson
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Diana DeGette
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Rick Larsen
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H. Morgan Griffith
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Tom Cole
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CC Alex Acosta