The Honorable Chad F. Wolf
Acting Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

Dear Acting Secretary Wolf:

We write on behalf of seasonal businesses in our states from industries such as tourism and hospitality, landscaping, fairs and carnivals, seafood processing, golf courses, reforestation, contractors and horse racing, who continue to struggle with seasonal labor shortages that are made worse by the inadequate H-2B visa cap. Under the “Further Consolidated Appropriations Act, 2020”, the Secretary of the Department of Homeland Security (DHS), in consultation with Secretary of the Department of Labor (DOL), is authorized to provide expeditious H-2B cap relief for our local businesses’ upcoming seasonal labor needs.

These American businesses depend on seasonal employment to meet the demand across many industries. Without immediate and meaningful H-2B cap relief, seasonal businesses will be forced to scale back operations, cancel or default on contracts, lay off full-time U.S. workers and, in some cases, close operations completely. By taking quick action to release additional H-2B visas, seasonal businesses and U.S. workers across the country will avoid these harmful consequences, and instead, help contribute to the American economy.

The recently passed Fiscal Year 2020 Further Consolidated Appropriations bill provides DHS with the authority to lift the existing 66,000 H-2B visa cap. The language is identical to the language that was enacted in each of the past three years. In each of those years, DHS has provided supplemental cap relief in the amounts of 15,000, 15,000 and 30,000 respectively. While these supplemental visas helped some employers who were shut out of the program, they were not sufficient to satisfy the total need for H-2B workers. Additionally, these visas were not released until well into many businesses’ peak seasons, which caused significant harm to the seasonal industry. We urge you to release a significant number of additional visas as soon as possible to prevent this from happening in FY 20. According to the Department’s May 2019 rule entitled “Exercise of Time-Limited Authority to Increase the Fiscal Year 2019 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program,” you are authorized to release 64,716 additional visas under this language.

As you know, the first half H-2B visa cap for FY 20 was reached on November 15, 2019, almost a month earlier than previous years. The DOL has certified the need for approximately 51,000 H-2B workers with a date of need between October 1 and March 31 with approximately 2,500 petitions still under review. Therefore, between 18,000 and 20,500 needed H-2B worker positions will remain vacant without the expeditious release of additional visas.
Additionally, the Office of Foreign Labor Certification (OFLC) announced that within the first 24 hours of opening the Foreign Labor Application Gateway System for peak filing season that opened on January 2, 2020, employers filed 4,930 applications for more than 87,298 worker positions with an April 1, 2020, or later, work start date. By the end of the filing deadline on January 6, 2020, OFLC had received a total of 5,677 H-2B applications requesting 99,362 worker positions. This is more than triple the number of visa applications currently available for the second half of the fiscal year.

As a result, we urge DHS to release the maximum number of additional visas without delay. Congress was clear in the report accompanying the “Consolidated Appropriations Act, 2020” that DHS rely on past rulemaking and act as quickly as possible in releasing additional visas. The report language states that, “USCIS is encouraged to leverage prior year materials relating to the issuance of additional H-2B visas, to include previous temporary final rules, to improve processing efficiencies.” As you know, the FY 19 temporary final rule was only released eight months ago, and there are no new legislative authorities or technical facts to review. Therefore, additional rulemaking should not be required.

Given the continued low unemployment and growing demand for H-2B workers, as evidenced by the recent number of applications for the second half of the fiscal year, we urge the Department to promptly make available all 64,716 additional visas authorized under the law as soon as possible. These vital American businesses depend on the expeditious release of a sufficient number of additional visas. We thank you in advance for your attention to this pressing matter.

Sincerely,

M. Michael Rounds
United States Senator

Angus S. King, Jr.
United States Senator

Lindsey O. Graham
United States Senator

Christopher A. Coons
United States Senator

Thom Tillis
United States Senator

Thomas R. Carper
United States Senator
James E. Risch
United States Senator

Dan Sullivan
United States Senator

Lisa Murkowski
United States Senator

Rob Portman
United States Senator

Roy Blunt
United States Senator

Michael B. Enzi
United States Senator

Cory Gardner
United States Senator

Benjamin L. Cardin
United States Senator

Michael F. Bennet
United States Senator

Chris Van Hollen
United States Senator

Doug Jones
United States Senator

Mark R. Warner
United States Senator

Ron Wyden
United States Senator

Kyrsten Sinema
United States Senator

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

Mike Crapo
United States Senator

Tina Smith
United States Senator

John Barrasso, M.D.
United States Senator

John Thune
United States Senator

James Lankford
United States Senator

Pat Roberts
United States Senator

Jerry Moran
United States Senator

Rodger F. Wicker
United States Senator

Tim Scott
United States Senator

Rand Paul
United States Senator

Cindy Hyde-Smith
United States Senator
Andy Harris, M.D.
Member of Congress

Jack Bergman
Member of Congress

Steve Chabot
Member of Congress

Vicente Gonzalez
Member of Congress

Pete Stauber
Member of Congress

Greg Stanton
Member of Congress

Joyce Beatty
Member of Congress

Paul Mitchell
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Chellie Pingree
Member of Congress

William R. Keating
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Justin Amash
Member of Congress

John R. Curtis
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Lloyd Smucker
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Dan Bishop
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Bruce Westerman
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Josh Gottheimer
Member of Congress
Ed Perlmutter  
Member of Congress

Mike Gallagher  
Member of Congress

Dean Phillips  
Member of Congress

Derek Kilmer  
Member of Congress

Joe Neguse  
Member of Congress

Joe Wilson  
Member of Congress

Doug Collins  
Member of Congress

Dusty Johnson  
Member of Congress

Jason Crow  
Member of Congress

Abigail D. Spanberger  
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Van Taylor  
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Jefferson Van Drew
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Glenn 'GT' Thompson
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French Hill
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Sharice L. Davids
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Susan Wild
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John H. Rutherford
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Rob Woodall
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Rodney Davis
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Patrick McHenry
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Kathy Castor
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Brett Guthrie  
Member of Congress

Lee Zeldin  
Member of Congress

Thomas Massie  
Member of Congress

Bob Gibbs  
Member of Congress

Billy Long  
Member of Congress

Ken Buck  
Member of Congress

Robert E. Latta  
Member of Congress

CC:  
The Honorable Eugene Scalia  
Secretary  
U.S. Department of Labor  
200 Constitution Avenue, NW  
Washington, DC 20210