

February 9, 2022

The Honorable Alejandro Mayorkas
Secretary
U.S. Department of Homeland Security
245 Murray Lane, SW
Washington, DC 20528

The Honorable Martin J. Walsh
Secretary
U.S. Department of Labor
200 Constitution Avenue, NW
Washington, DC 20210

Dear Secretary Mayorkas and Secretary Walsh:

We write on behalf of seasonal businesses in our states to urge you to provide expeditious H-2B cap relief to address the seasonal labor shortages caused by the inadequate H-2B visa cap. Specifically, we urge that the Department of Homeland Security (DHS), in consultation with the Department of Labor (DOL), utilize the authority provided by Congress to release the maximum allowable number of additional H-2B visas for Fiscal Year 2022 (FY22). We further request that your agencies take steps to process pending H-2B applications in advance of the start of the April 1 hiring period for the second half of FY22, including by instituting emergency procedures previously used by DOL to address labor certification processing delays.

American businesses from industries such as tourism and hospitality, landscaping, fairs and carnivals, seafood processing, golf courses, reforestation, contractors and horse racing depend on seasonal employment to meet the demand across many industries. Without meaningful H-2B cap relief, many 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 action to release and process 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.

As Congress has allowed in each of the past five fiscal years, the current FY22 Continuing Resolution continues to provide the Department of Homeland Security the authority to lift the existing annual 66,000 H-2B visa cap. In the past year, DHS has provided supplemental cap relief in the amounts of 22,000 in May 2021 and 20,000 in January 2022. While these supplemental visas helped some employers, they were not sufficient to satisfy the total need for H-2B workers. Additionally, the release of these visas did not occur until well into many businesses' peak seasons, which caused significant harm to these employers.

We urge you to release all allowable additional visas as soon as possible to make certain workers can begin working on April 1, 2022, the start date for the second half of FY22. According to your Departments' January 28, 2022 temporary final rule titled "Exercise of Time-Limited Authority to Increase the Fiscal Year 2022 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program and Portability Flexibility for H-2B Workers Seeking To Change Employers," DHS is authorized to release a total of 64,716 additional visas this fiscal year.

As you know, the first half H-2B visa cap for FY22 was reached on September 30, 2021, almost two months earlier than previous years. The urgency and high level of need for nonagricultural worker visas prompted your agencies to announce, for the first time ever, the release of an additional 20,000 H-2B visas in the first half of

the fiscal year. This leaves tens of thousands of additionally authorized visas available for the remainder of FY22.

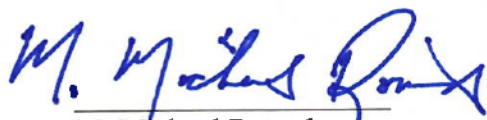
As a result, we encourage you to release and process the authorized 44,716 additional visas in a manner that will make certain all H-2B workers can begin work on the April 1, 2022 start date for the second half of FY22. These additional visas are imperative, as evidenced by the Office of Foreign Labor Certification announcement that between January 1-3, 2022, the Foreign Labor Application Gateway System for the peak filing season received 7,875 applications from employers for more than 136,555 worker positions with an April 1, 2022 or later work start date. This is more than quadruple the number of H-2B visas currently available for the second half of the fiscal year.

In a December 20, 2021 press release, DHS outlined the agency's intention to "implement policies that will make the H-2B program even more responsive to the needs of our economy." It is clear from the number of applications received during the filing period for the second half of FY22 that the release of the remaining H-2B worker visas would be responsive to the needs of our economy.

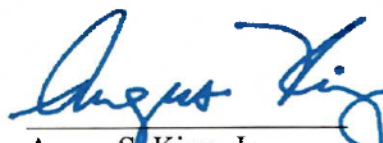
We are also concerned that the unprecedented demand for the program has led to delays in processing labor certifications at DOL that, without emergency procedures, will prevent employers from completing the H-2B application process before the April 1, 2022 start date for the second half of FY22. In the second half of FY21, employers assigned to the final review group did not receive a first action from DOL until late February and a labor certification until March. This year, DOL is already running a week behind compared to last year, with a larger group of total applications to process. At this rate, it appears DOL may not finish processing labor certifications for the final review group until late March, making it impossible for employers to complete the full H-2B process before April 1. In 2016, due to similar processing delays, DOL instituted emergency procedures to allow employers to begin U.S. worker recruitment prior to receiving their first actions from DOL. We request that DOL again institute these emergency procedures, which will allow employers to submit their recruitment reports immediately upon receiving a Notice of Acceptance from DOL, saving two weeks.

Given the growing demand for H-2B workers as our economy continues to reopen and employers continue to struggle with staffing shortages, we urge DHS to promptly make available all 64,716 additional H-2B visas authorized under law and urge DOL to allow employers to utilize emergency procedures for their applications to expedite processing times. These vital American businesses depend on access to a sufficient number of seasonal H-2B workers on April 1. We thank you in advance for your attention to this pressing matter.

Sincerely,



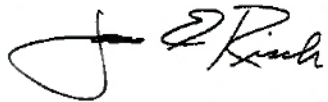
M. Michael Rounds
United States Senator



Angus S. King, Jr.
United States Senator



Lindsey O. Graham
United States Senator



James E. Risch
United States Senator



Lisa Murkowski
United States Senator



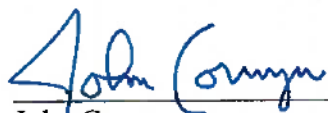
Rob Portman
United States Senator



Roy Blunt
United States Senator



Cynthia M. Lummis
United States Senator



John Cornyn
United States Senator



Mike Crapo
United States Senator



Christopher A. Coons
United States Senator



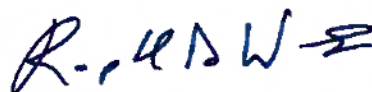
Michael F. Bennet
United States Senator



Robert Menendez
United States Senator



Jeanne Shaheen
United States Senator



Raphael Warnock
United States Senator

/s/ Thomas R. Carper
Thomas R. Carper
United States Senator



Joe Manchin III
United States Senator



Mark R. Warner
United States Senator



John Thune
United States Senator



John Hickenlooper
United States Senator



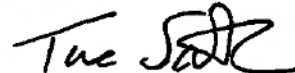
Susan M. Collins
United States Senator



Tim Kaine
United States Senator



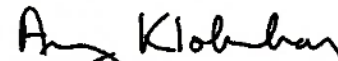
Pat Toomey
United States Senator



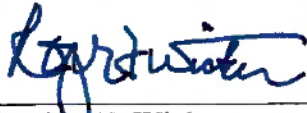
Tina Smith
United States Senator



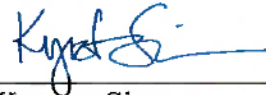
Kevin Cramer
United States Senator



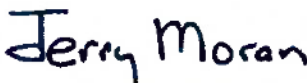
Amy Klobuchar
United States Senator



Rodger F. Wicker
United States Senator



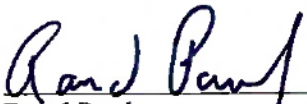
Kyrsten Sinema
United States Senator



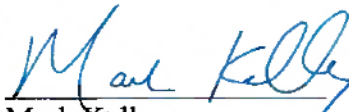
Jerry Moran
United States Senator



Ron Wyden
United States Senator



Rand Paul
United States Senator



Mark Kelly
United States Senator



John Barrasso, M.D.
United States Senator



Dianne Feinstein
United States Senator



Tim Scott
United States Senator