

United States Senate

WASHINGTON, DC 20510

May 27, 2020

The Honorable Donald J. Trump
President of the United States
The White House
1600 Pennsylvania Ave NW
Washington, DC 20500

Dear President Trump,

We write today to urge you to consider the important role non-immigrant temporary visa programs will play in aiding post-pandemic economic recovery in America. Any changes to these programs should be very narrowly tailored to prevent additional damage to the already struggling American small businesses who rely on the assistance made possible through these visas.

The coronavirus pandemic has brought devastating loss of life and livelihood across our country. As we begin to reopen, we know you have many difficult decisions to make to ensure the road to recovery balances economic wellbeing with the safety of every American. In part, that balance requires consideration of vulnerable American businesses across all industry sectors, including farming, forestry, packing, hospitality, healthcare, and communications and information technology, all which rely on non-immigrant guest workers to survive.

The marked impact that the coronavirus has had on the job market is undeniable. Nearly 33 million Americans are unemployed, and close to 8 million American small businesses are at risk of shuttering forever. Some of these struggling small businesses rely on labor that many Americans may not be qualified or able to perform, even in the aftermath of the pandemic, and some of these businesses operate in industry sectors that are not experiencing high unemployment—in contrast with the overall national unemployment figures—or in particular geographical locations where qualified labor is scarce. American businesses that rely on help from these visa programs should not be forced to close without serious consideration. Guest workers are needed to boost American business, not take American jobs.

One area where this concern is particularly pronounced is in industries that rely heavily on the H-2A and H-2B programs. As you know, the H-2A and H-2B programs are temporary and seasonal guest worker visa programs that allow businesses to find the help they need when no American worker is available or qualified to fill in the gaps. The pandemic has tested the resiliency of our food supply chain, and your Administration has recognized the critical importance of H-2A and

H-2B employment in stabilizing our economy. We applaud both the Department of Homeland Security and the Department of Agriculture's swift response to the food shortage crisis by publishing temporary final rules easing restrictions on H-2A and H-2B employers, allowing them access to certified workers who are already in the country. This is a step in the right direction, but please don't stop there. Continue to protect American farmers and other small business owners who work hard to provide our country with fresh food and other vital services by not pausing issuance of H-2A visas in the future.

Similarly, over 5,000 employers across 49 states rely on the H-2B program to get needed guest workers to help keep their forestry, landscaping, seafood, and hospitality businesses open. While not considered agriculture workers, many of the businesses that use H-2B assistance also employ people in positions essential to the U.S. food supply chain, such as processing, manufacturing, food packing, and transporting food across the country.

Before an employer can qualify for participation in the H-2A or H-2B program, they must establish the lack of American workers who are able, willing, qualified, and available to do the temporary work. They have to advertise the job opening to American workers through the Department of Labor (DOL) at [SeasonalJobs.dol.gov](https://www.dhs.gov/seasonal-jobs), and receive DOL certification demonstrating they have met this criteria. In 2019 alone, DOL certified over 300,000 positions. Although not that many visas were ultimately issued, it shed important light on the need many businesses faced. The economic devastation that has occurred due to necessary precautionary measures taken to slow the spread of coronavirus would only be exacerbated if vulnerable businesses do not get the temporary labor they need to stay afloat.

Due to the temporary and seasonal nature of the work, it is exceedingly difficult to find American workers, even now, who wish to work only on a temporary basis. Many of the jobs lost since March are not temporary or seasonal. Much of the furloughed or laid off workforce are likely looking to return to the jobs they were forced to leave. As some of us have said before, we are afraid the unemployment insurance compensation included in the CARES Act has created a disincentive for many American furloughed or laid off workers from finding new jobs, especially those seasonal or temporary in nature.

The need for nonimmigrant labor is not limited to the H-2A and H-2B programs. Your April 22, 2020, Presidential Proclamation suspending many immigrant visas for 60 days recognized that exceptions were necessary to ensure American businesses in many industry sectors were able to get the extra help needed from foreign workers during this extremely challenging time. For example, your Proclamation exempted aliens seeking to enter the United States on immigrant visas to work as healthcare professionals, medical researchers, or perform work essential to combating, recovering from, or otherwise alleviating the effects of the pandemic. Companies in industry sectors across our economy have and will continue to play critical roles in responding to and recovering from the coronavirus. Many of these companies will need assistance from various visa programs to continue to offer vital services.

There is a school of thought that believes in order to protect the American worker we must prevent any guest worker or employment-based visas from being issued. We share the goal of promoting American workers. However, this view is rooted in the mistaken assumption that guest worker visas, and the businesses that rely on them, are one-size-fits-all, and that all foreign employment programs have the same skill requirements, criteria, or length of stay. This would mean that all employment-based or guest worker visas are the same, and any American who is unemployed would qualify or desire to take the jobs guest workers fill. That is just not true. Furthermore, our guest worker system includes important protections for U.S. workers: numerical limits for many nonimmigrant workers, and requirements for employers to comply with labor market protections established by Congress. These protections, as well as the individual features of our various guest worker visa programs, including the H-2A, H-2B, and H-1B programs, are designed to ensure that foreign workers do not unfairly compete with U.S. workers for employment vacancies.

In preparing additional actions affecting the labor market, we advise that you consider a flexible, data-driven approach that will ensure an adequate supply of labor across all industries—especially those critical to our recovery efforts. We believe that the following provisions would ensure positions do not go unfilled in industries that rely on foreign workers:

- No suspension on issuance of H-2B or H-2A visas.
- Exemptions for all employers operating in any essential critical infrastructure industry, as identified by the Cybersecurity and Infrastructure Security Agency.
- A provision permitting individual businesses to apply for an exemption to any restrictions, upon showing that the business is likely to experience irreparable harm (permanent and severe financial loss) if unable to employ the nonimmigrant worker in the United States.
- A requirement that the Department of Labor gather and regularly report on employment vacancies in industry sectors that utilize nonimmigrant labor.
- A provision enabling the Administration to quickly lift restrictions in any industry sectors for which data indicate persistent vacancies and in any occupations for which data suggest either low unemployment or a consistent level of open jobs for advanced degree holders.

As we begin to reopen and recover, we ask you cautiously approach any changes to our nonimmigrant guest worker programs. Please keep American businesses, American workers, and the American economy as a whole in mind during any future actions that may limit employment based or guest worker visa programs so that we can get back to pre-pandemic levels of growth as quickly and safely as possible.

Sincerely,



Lindsey O. Graham
U.S. Senator



John Cornyn
U.S. Senator



Mike Crapo
U.S. Senator



James E. Risch
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