

Congress of the United States
Washington, DC 20515

October 18, 2013

Secretary Tom Perez
U.S. Department of Labor
Frances Perkins Building
200 Constitution Ave NW
Washington DC, 20210

Secretary John Kerry
U.S. Department of State
2201 C Street, NW
Washington, D.C. 20520

Acting Secretary Rand Beers
U.S. Department of Homeland Security
Washington, DC 20528

Dear Secretaries Kerry, Perez, and Acting Secretary Beers:

We are writing regarding an urgent issue under your combined jurisdictions that will have disastrous consequences for the nation's fruit and vegetable producers and the American consumers of these nutritious products if not immediately addressed.

As you know, the H-2A visa is a nonimmigrant visa program that allows U.S. employers to bring foreign nationals to the U.S. to fill low-skill, temporary or seasonal agricultural jobs for which U.S. workers are not available. As a result of the government shutdown, the Department of Labor closed offices that are essential to this program. Therefore, H-2A guestworker applications were not processed during the 16-day shutdown and stacked up precipitously at DOL.

Fruit and vegetable producers are currently in the midst of filing applications for H-2A workers that are essential to the winter harvest. These workers are due to harvest leafy vegetables in California and Arizona, along with citrus and berries in Florida. In addition, H-2A workers are already playing a critical role in the apple harvest occurring nationwide.

Collectively, these activities comprise billions in economic activity that cannot occur without timely participation of H-2A workers. The fruits and vegetables that are harvested by these guest workers are essential elements of federal nutrition programs including WIC and the school lunch and breakfast programs. All of these programs are subject to "Buy American" provisions.

Due to the recent government shutdown, the Department of Labor was unable to execute the vital preliminary duty of processing H-2A applications and issuing labor certifications, and we are gravely concerned that the ensuing backlog of H-2A applications will intensify not only at DOL but also with the essential functions at the U.S. Citizenship and Immigration Services and Department of State.

As each of these agencies return to normal working order, we ask that you execute immediate and aggressive actions to deal with the backlog and work together to streamline the approval of H-2A visa applications and mitigate the delays and impacts that farmers will suffer.

DEPARTMENT OF LABOR

Of the Department of Labor we request the following specific actions be taken immediately.

- *Assign additional staff to the Office of Foreign Labor Certification.* Processing the H-2A applications must be a priority. We ask that DOL/OFLC reallocate staff as necessary to clear the backlog within the next 10 days. Helpful to this process would be making sure the adjudication process focuses on substantive concerns on applications, and not on inconsequential transcription errors.
 - Frankly, since the process is fee-based, DOL should deem the Office of Foreign Labor Certification and related resources necessary to the operation of the H-2A program as essential personnel and thereby keep them operating throughout any future budget disruption. This action alone would eliminate the interagency burden of the current crisis.
- *Prioritize the processing of H-2A visas over others.* These visas require more steps than visa renewals or extensions, so they should come first. The workers under the H-2As have to come in from Mexico (mostly) while the renewals and extension requests already have the worker in the U.S. The work these laborers will do involves perishable products unlike other visa requests. For these reasons H-2A should be processed first.
- *Allow the use of scanned signatures to expedite the process.* As one way to expedite processing DOL Solicitor Patricia Smith has indicated that for purposes of clearing out this shutdown backlog, DOL will allow the OFLC to scan the certifications into .pdf documents and email them directly to the grower petitioners on the same day the certifications are issued. Please confirm this and confirm, also, that personnel involved in the certification process have been informed of this change and will execute it promptly. Indeed, we suggest DOL actually suspend or cease the requirement for original signatures in the future, as that antiquated requirement adds at least 24 unnecessary hours – or more – to the process.
- *Set an 85-mile zone for the area of intended employment.* Foreign labor certifications in the past have carried an 85-mile distance allowance for the area of intended employment. Recently DOL changed that to reflect only a 60-minute travel allowance. This has a negative impact on the ability of growers to move workers to the fields needing harvesting. The 60-minute travel allowance is based on dated (2009) census surveys of urban commute times in metropolitan areas. The crops being harvested are not in metropolitan areas; they are in rural areas, some of which are quite remote. The 60-minute travel allowance puts severe limitations on the ability of growers to use the workers to their full potential and jeopardizes a timely harvest of the perishable crops in question.

DEPARTMENT OF HOMELAND SECURITY/ U.S. CIS

Prioritize H-2A applications, add additional staff resources. The U.S. Customs and Immigration Service should issue specific instructions to its adjudicators to place H-2A applications on the highest priority and should assign additional resources to address the backlog. Additionally, they should accept electronic signatures or email certifications.

DEPARTMENT OF STATE

As with the other agencies, the Department of State must act swiftly to put in place the resources to accommodate this visa backlog.

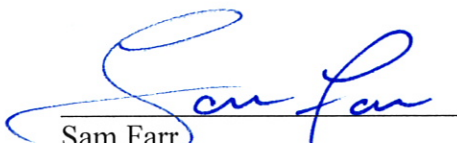
Issue emergency instructions that prioritize and increase staff resources. Just as DOL and DHS/USCIS should beef up personnel to clear this backlog, State must add additional staff to its processing units to enable consular interviews to take place in an expedited manner. In particular key consulates in Hermosillo, Matamoros, Mexico City, Monterrey, Nuevo Laredo, Nogales and Tijuana will require additional resources until the H-2A bottleneck is cleared.

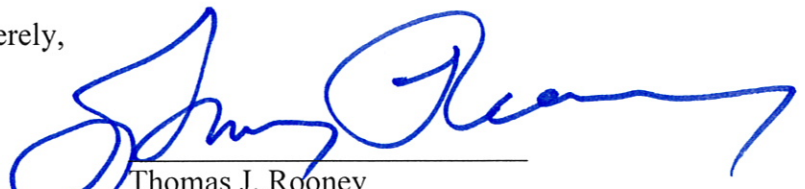
Shorten the interview process. We ask State to quickly develop a shortened interview process for workers who have participated in the H-2A program for two or more years.


All these actions are geared toward expediting the process so workers can be in the field as soon as possible to save tender perishable crops.

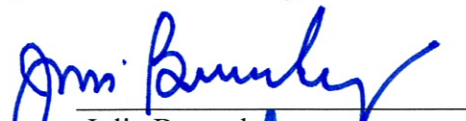
With the pending harvest of perishable crops, the urgent issuance of H-2A visas is a matter of national food security. Unlike other visa approvals, crops that rely on H-2A workers will rot and result in permanent losses including American jobs if these visas cannot be issued in a timely manner. The threat to American agriculture and consumers is real and demands your full attention. We thank you for your interest in addressing this urgent issue for American agriculture and consumers and look forward to your response as soon as possible.

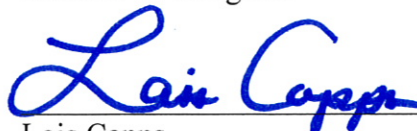
Sincerely,

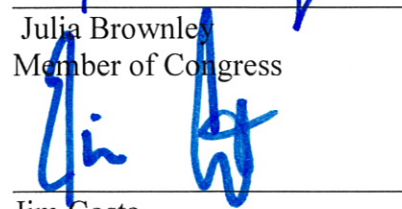

Sam Farr
Member of Congress

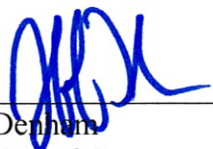
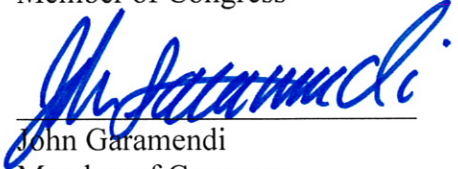
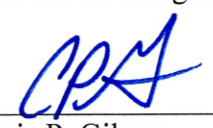


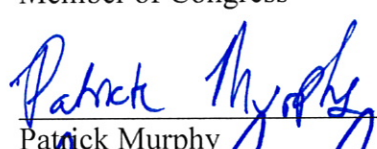
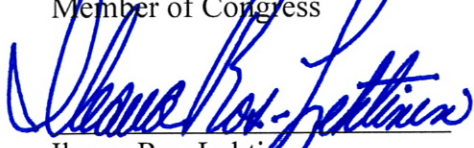

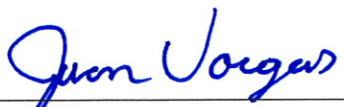

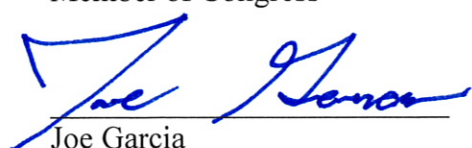
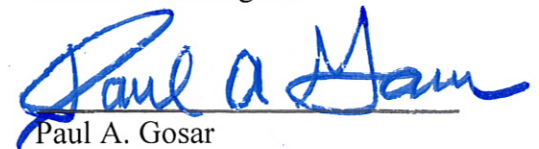
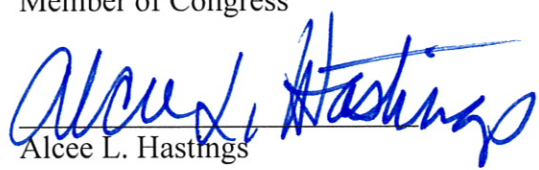
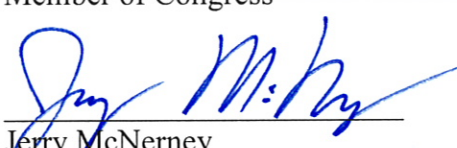
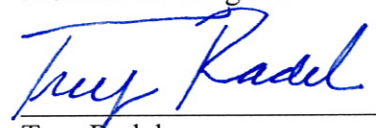
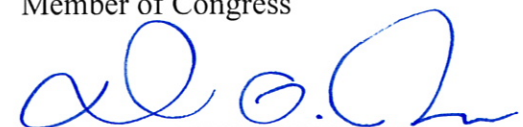
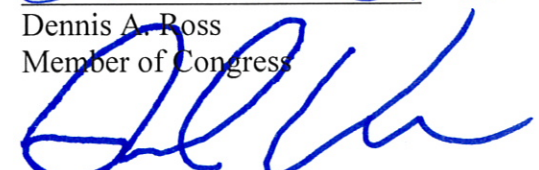
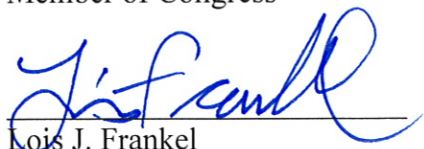

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