

United States Senate

WASHINGTON, DC 20510

August 24, 2022

Hon. Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
301 7th St, SW
Washington, DC 20528

RECEIVED

By ESEC at 1:03 pm, Aug 24, 2022

Dear Secretary Mayorkas:

As you are aware, a company's ability to exploit vulnerable immigrant workers threatens the historic potential of the Bipartisan Infrastructure Law (BIL) to advance the Biden Administration's goal of creating good, union jobs throughout the country. Exploitation of immigrant workers "drives down wages, discourages organizing, and creates unsafe working conditions for *all* workers."¹ We are encouraged the Department of Homeland Security (DHS) is planning to address this problem by announcing a process to provide immigration protections and work authorization for immigrant witnesses and victims of labor law violations. We write to briefly identify several core components necessary to ensure this much-needed process is effective.

First, it is imperative that DHS announce its new process swiftly. It has now been more than nine months since DHS called for development of a plan to "provide for the consideration of deferred action, continued presence, parole, and other available relief for noncitizens who are witnesses to, or victims of, abusive and exploitative labor practices."² Workers cannot wait any longer for these much-needed protections.

Second, DHS's process must include a centralized office within USCIS that is charged with consistent, expedited processing of requests from immigrant witnesses and victims of labor and rights violations for parole (where eligible), deferred action, and employment authorization.

Finally, DHS must commit to using the full range of its prosecutorial discretion authority, including granting stays of removal and release from detention where applicable.

A process to protect immigrant witnesses and victims of labor rights violations that includes these components will go a long way toward securing the infrastructure investment's potential to promote equitable, sustainable economic growth for working families. I am hopeful that your

¹ White House Task Force on Worker Organizing and Empowerment: Report to the President at 28, <https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/2022/02/OSEC20220195.pdf>

² Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual (Oct. 12, 2021), at https://www.dhs.gov/sites/default/files/publications/memo_from_secretary_mayorkas_on_worksite_enforcement.pdf.

leadership on this issue will act urgently to demonstrate the Administration's support for workers at this critical time of deep public investment in our nation's infrastructure.

Sincerely,



Robert Menendez
United States Senator



Bernard Sanders
United States Senator



U.S. Citizenship
and Immigration
Services

September 29, 2022

The Honorable Robert Menendez
United States Senate
Washington, DC 20510

Dear Senator Menendez:

Thank you for your August 24, 2022 letter to the U.S. Department of Homeland Security (DHS). Secretary Mayorkas asked that I respond on his behalf.

On October 12, 2021, Secretary Mayorkas issued a memorandum titled *Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual*.¹ This memorandum recognizes the harm unscrupulous employers inflict on noncitizen workers they exploit, business competitors they undercut, and U.S. workers they undermine. It also underscores the critical role DHS plays in ensuring our nation's workplaces comply with our laws.

In response to this memorandum, U.S. Citizenship and Immigration Services (USCIS), and in conjunction with other DHS components, thoroughly reviewed existing policies and processes to identify those that strengthen the Department's efforts to support enforcement of labor and employment standards, including by influencing a noncitizen worker's willingness to assert their workplace rights and cooperate with labor and employment investigations and prosecutions. USCIS is updating policies and processes as appropriate based on this review. For example, in January 2022, we updated the USCIS Policy Manual to explain in more detail how labor and employment agencies may request expedited processing of a pending application or petition where, for example, a noncitizen victim or witness is cooperating with a federal, state, or local agency and is in need of employment authorization because the respective agency is seeking back pay or reinstatement in court proceedings.

Understanding that relief from removal for workers who fall within the scope of a labor agency investigation can be critical for a worker's willingness to report violations of law, USCIS and U.S. Immigration and Customs Enforcement (ICE) have already processed requests for deferred action supported by labor agencies in support of their mission, including the U.S. Department of Labor (DOL) and the National Labor Relations Board (NLRB).

¹ See October 12, 2022 Memorandum from Secretary Mayorkas, Policy Statement 065-06, *Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual*, found at https://www.dhs.gov/sites/default/files/publications/memo_from_secretary_mayorkas_on_worksite_enforcement.pdf

Furthermore, USCIS continues to work closely with DHS counterparts and labor agency colleagues to develop clearer processes for workers involved in labor disputes to request deferred action and employment authorization. USCIS evaluates all positive and negative factors of each case and whether these factors warrant a favorable exercise of discretion. Where a labor agency articulates that eliminating the threat of removal and providing a grant of employment authorization will help to increase a worker's willingness to report labor violations and/or participate in investigations in support of the agency's legitimate mission, DHS will generally consider this to be a strong positive factor. The decision whether to grant deferred action is made on a case-by-case basis in the exercise of discretion. If USCIS grants deferred action and employment authorization, both are granted for a period of up to two years.

In July, DOL published a fact sheet outlining its process for seeking support from DOL for requesting prosecutorial discretion from DHS. In May, the NLRB released a new protocol to advance immigrant worker protections to freely exercise rights under the National Labor Relations Act and safely participate in NLRB investigations. While there is an existing process for adjudicating labor-based requests for deferred action, USCIS is finalizing operational details of a more streamlined process in coordination with ICE. We look forward to publishing more details about this effort soon. In the interim, we continue to support labor agencies by evaluating requests for prosecutorial discretion on a case-by-case basis, as noted above.

Thank you again for your letter and interest in this important issue. Senator Sanders, who cosigned your letter, will receive a separate, identical response. Should you require any additional assistance, please have your staff contact the USCIS Office of Legislative Affairs at (240) 721-3801.

Respectfully,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", with a long horizontal flourish extending to the right.

Ur M. Jaddou
Director