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By ESEC at 10:25 am, Oct 16, 2023

October 4, 2023

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
Washington DC 20528

Dear Secretary Mayorkas:

In light of the letter from the Secretary of Health and Human Services (HHS) recommending that the Drug Enforcement Agency (DEA) reclassify cannabis to a Schedule III drug under the Controlled Substances Act (CSA), the United Food and Commercial Workers International Union (UFCW) urges the DEA and the Department of Homeland Security (DHS) to work together to ensure that deferred action is made available to cannabis workers.

The United Food and Commercial Workers International Union (UFCW) is proud to represent nearly 10,000 legal cannabis workers among our 1.2 million members in the food and retail sectors. UFCW believes that all workers, including immigrant workers employed in cannabis related businesses (CRBs) have a right to a safe workplace free from retaliation and deportation.

As the Department of Homeland Security is aware, an immigrant worker who organizes to form a union and have a voice on the job can be eligible for deferred action to protect themselves from employer retaliation for exercising their right to organize. The deferred action process ensures that when there is a labor dispute or investigation on a worksite, the workers or their representatives can request DHS provide the workers up to two years of work authorization (with the possibility of renewal) to mitigate any fear of retaliation.

Workers in the legal cannabis industry are eligible for labor protections just like any other worker. Courts have confirmed that federal wage-and-hour laws apply to the cannabis industry, regardless of its legality under federal drug law.¹ These laws are applied based on who is or is not considered an "employee", rather than on the federal legality of the occupation.

Immigrant workers in the legal cannabis industry should be able to seek deferred action, but current guidance is unclear. The Immigration and Nationality Act (INA) makes inadmissible any alien who admits having committed acts that violate the CSA. Because the INA says an immigrant can be denied legal status if they worked for an illegal business many immigrant cannabis workers are afraid to use deferred action.

¹ See, e.g., *Kenney v. Helix TCS, Inc.*, 939 F.3d 1106 (10th Cir. 2019).

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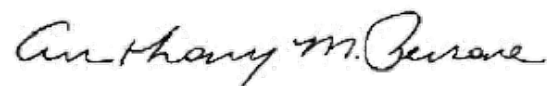
Should cannabis be reclassified as a Schedule III substance, cannabis would still be illegal to manufacture, distribute, or dispense. This would mean that immigrant cannabis workers would be in violation of the INA and thus considered inadmissible. This could have the following consequences for immigrant cannabis workers:

- Ineligibility for adjustment of status (green card) by virtue of a family petition, with no possibility of waiver.
- Ineligibility for adjustment of status (green card) after winning asylee status, with no possibility of waiver (“reason to believe” prong only),
- Mandatory detention if placed into removal proceedings.
- Ineligibility for various forms of relief in relief removal proceedings; and
- Inability to reenter the country after departing.

There are many instances of cannabis workers being subjected to cruel and even inhumane working conditions. In Oregon, a hemp processing facility co-owned by five smaller employers was found to be locking workers into a condemned building where they worked, slept, and ate unable to escape, even in the case of an emergency. Another facility in Grass Valley, Oregon caught fire in late 2022, and experienced small explosions, burning its workers and forcing the town to evacuate. In December 2022, a former cannabis worker executed four workers on a cannabis farm in Oklahoma after attempting to extort money from them. Truelieve, a large multi-state operator, was fined by the Occupational Safety and Health Administration (OSHA) after a worker collapsed and died from breathing cannabis dust in Massachusetts. When cannabis workers do not have access to deferred action, they run the risk of be subjected to even more fear and exploitation.

DEA reclassification must include cooperation from DHS to ensure full deferred action protections for all immigrant cannabis workers. All workers in this industry should feel safe to form unions in their workplaces, alert authorities when they feel that their worksites become unsafe and have assurances that they will be paid the wages they have earned. When President Biden initiated this process of examining our drug classification, he concluded that “Too many lives have been upended because of our failed approach to marijuana. It’s time that we right these wrongs.” UFCW agrees with President Biden and believes that ensuring equal rights for all workers is an integral part of accomplishing this goal.

Sincerely,



International President

cc: Julie A. Su, U.S. Secretary of Labor



U.S. Citizenship
and Immigration
Services

January 2, 2024

Anthony M. Perrone
International President
United Food & Commercial Workers International Union
1775 K Street, NW
Washington, DC 20006

Dear Mr. Perrone:

Thank you for your October 4, 2023 letter to the Department of Homeland Security (DHS) regarding deferred action. I am responding on behalf of the Department.

DHS appreciates your concern for worker safety and rights, and we understand noncitizen workers may fear removal or other immigration-related retaliation if they report violations of law or cooperate in employment and labor standards investigations.

On January 13, 2023, DHS announced that certain noncitizen workers who are victims of or witnesses to the violation of labor rights may access a streamlined and expedited deferred action request process.¹ This announcement provided new guidance to labor agencies regarding processes to seek deferred action for certain workers and announced a centralized intake point for deferred action requests from noncitizen workers that are supported by labor enforcement agencies. The streamlined and expedited deferred action process is intended to protect noncitizen workers from threats of immigration-related retaliation by exploitative employers and allows DHS to efficiently review these time-sensitive requests, provide additional security to eligible workers on a case-by-case basis, and more robustly support the mission of labor agencies. As with any request for deferred action, including by those seeking deferred action based on a labor agency investigation, DHS reviews all positive and negative factors on a case-by-case basis as a matter of discretion, including inadmissibility based on controlled substance offenses.

This streamlined deferred action process improves DHS's longstanding practice of using its discretionary authority to consider labor and employment agency-related requests for deferred

¹ Department of Homeland Security, DHS Announces Process Enhancements for Supporting Labor Enforcement Investigations, January 13, 2023, available at: <https://www.dhs.gov/news/2023/01/13/dhs-announces-process-enhancements-supporting-labor-enforcement-investigations>. Deferred action is a form of prosecutorial discretion to defer removal action (deportation) against a noncitizen who is inadmissible or deportable for a certain period of time. Although deferred action does not confer lawful status or excuse any past or future periods of unlawful presence, a noncitizen granted deferred action is considered lawfully present in the United States for certain limited purposes while the deferred action is in effect. DHS can terminate deferred action at any time, at its discretion.

action on a case-by-case basis. By considering such workers for a discretionary grant of deferred action and employment authorization, DHS aims to protect workers and the workplace. These process enhancements are consistent with Secretary Mayorkas' October 2021 memorandum,² which directed DHS offices and agencies to ensure that DHS fulfills its critical role supporting the important work of labor agencies to enforce wage protections, workplace safety, labor rights, and other laws and standards. More information about these process enhancements is available on the DHS website.³

Thank you again for your letter and interest in this important issue. Should you require any additional assistance, please do not hesitate to contact the Office of Citizenship, Partnership, and Engagement at public.engagement@uscis.dhs.gov.

Sincerely,

A handwritten signature in black ink that reads "Ur M. Jaddou" followed by a long horizontal flourish.

Ur M. Jaddou
Director

² Department of Homeland Security, Memorandum on Worksite Enforcement, October 12, 2021, available at: <https://dhs.gov/publication/memorandum-worksite-enforcement>.

³ Department of Homeland Security, DHS Support of the Enforcement of Labor and Employment Laws, available at: <https://dhs.gov/enforcement-labor-and-employment-laws>.