

Congress of the United States

Washington, DC 20515

September 29, 2022

The Honorable Alejandro Mayorkas
Secretary
Department of Homeland Security
301 7th Street, SW
Washington, DC 20528

RECEIVED

By ESEC at 1:54 pm, Sep 29, 2022

Dear Secretary Mayorkas:

Under your leadership, the Department of Homeland Security (DHS) has recognized the crucial role it has in facilitating the ability of *all* workers to report violations of law and cooperating with employment and labor standards investigations. As you recognized in your October 2021 memo, the “Department has a critical role in ensuring that the Nation’s workplaces comply with our laws” and “must adopt immigration enforcement policies to facilitate the important work of the Department of Labor and other government agencies to enforce wage protections, workplace safety, labor rights, and other laws and standards.”¹

We share the Department’s aim of promoting fairness, equity, and civil rights, and the White House’s goal of creating “good-paying union jobs.”² We write to urge you to act quickly to protect labor and civil rights by establishing an effective process to provide immigration protections and work authorization for witnesses and victims of labor and civil rights violations, thereby ensuring all workers, regardless of immigration status, can exercise their rights.³ As the White House Task Force on Worker Organizing and Empowerment has recognized, without a clear process to provide immigration protections and work authorization for immigrant workers who defend their labor and civil rights, exploitation “drive[s] down wages, discourage[s] organizing, and create[s] unsafe working conditions for all workers.”⁴

We applaud the Department of Labor’s (DOL) decision to issue clarifying guidance aimed at guaranteeing that workers—regardless of immigration status—can file labor complaints and assert their labor rights.⁵ It is essential that DHS follow the lead of DOL and release guidance and clarify the process by which these workers who witness or are subject to civil or workplace rights violations may seek protection. To be effective, this process should include, at a minimum, the following components:

- Consistent processing by United States Citizenship and Immigration Services (USCIS), where immigrants in civil rights or labor disputes can affirmatively request parole and deferred action (where eligible);
- Concurrent processing of employment authorization applications by USCIS;

¹ Memo from Secretary Mayorkas, 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), <https://www.dhs.gov/publication/memorandum-worksite-enforcement>.

² President Biden’s Bipartisan Infrastructure Law, <https://www.whitehouse.gov/bipartisan-infrastructure-law/>.

³ This is one of the Congressional Progressive Caucus’s recommendations for Executive Action. See CPC Issues Executive Action Agenda for Biden Administration, March 17, 2022, <https://progressives.house.gov/2022/3/congressional-progressive-caucus-issues-executive-action-agenda-for-biden-administration>.

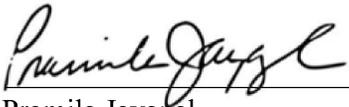
⁴ White House Task Force on Worker Organizing and Empowerment: Report to the President at 28, <https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/2022/02/OSEC20220195.pdf>.

⁵ Dep’t of Labor, “U.S. Department of Labor Posts Process for Seeking its Support for Immigration-Related Prosecutorial Discretion During Labor Disputes” (Jul. 6, 2022) <https://www.dol.gov/newsroom/releases/sol/sol20220706>.

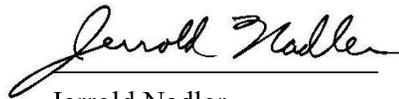
- A commitment to using the full range of prosecutorial discretion, including stays of removal and release from detention where applicable;
- An expedited process timeline for adjudicating applications in a timely manner;
- The re-establishment of an interagency working group including DHS, DOL, the National Labor Relations Board (NLRB), Equal Employment Opportunity Commission (EEOC), and other relevant federal agencies to avoid communication delays and ensure timely protections for workers; and
- Guidance on handling requests for immigration protections supported by state and local agencies enforcing civil rights and workplace laws.

From day one, the Biden-Harris Administration has promised to “ensure that every worker is protected, can join a union, and can exercise their labor rights—regardless of immigration status—for the safety of all workers.”⁶ Establishing a clear, effective process to provide immigration protections and work authorization to immigrants who assert their civil and labor rights is an essential step in achieving this vision. Your leadership on this issue will secure our potential to “grow the economy sustainably and equitably so that everyone gets ahead for decades to come.”⁷

Sincerely,



Pramila Jayapal
Chair
Congressional Progressive Caucus



Jerrold Nadler
Chair
House Judiciary Committee



Zoe Lofgren
Chair
Subcommittee on Immigration and
Citizenship



Veronica Escobar
Member of Congress



Raúl Grijalva
Member of Congress

CC: Hon. Martin J. Walsh, Secretary of Labor
Amb. Susan E. Rice, Director, Domestic Policy Council

⁶ The Biden Plan for Securing Our Values as a Nation of Immigrants, <https://joebiden.com/immigration/>.

⁷ See *supra* n.2.



U.S. Citizenship
and Immigration
Services

November 1, 2022

The Honorable Pramila Jayapal
U.S. House of Representatives
Washington, DC 20515

Dear Representative Jayapal:

Thank you for your September 29, 2022 letter to the U.S. Department of Homeland Security (DHS). Secretary Mayorkas asked that I respond on his behalf.

As noted in your letter, 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 emphasizes the critical role DHS plays to ensure our nation's workplaces comply with our laws.

In response to this memorandum, U.S. Citizenship and Immigration Services (USCIS), 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 encouraging a noncitizen worker to assert their workplace rights and cooperate with labor and employment investigations and prosecutions. USCIS is updating policies and processes 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 is often critical for a worker's willingness to report violations of law, USCIS and U.S. Immigration and Customs Enforcement (ICE) processed requests for deferred action supported by labor agencies in furtherance of their missions, including the U.S. Department of Labor and the National Labor Relations Board.

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

While there is an existing process for adjudicating labor-based requests for deferred action, USCIS is finalizing operational details for an improved process in coordination with ICE. We look forward to publishing more details about this effort soon. In the interim, DHS continues 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. The cosigners of your letter will receive separate, identical responses. 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", followed by a horizontal line extending to the right.

Ur M. Jaddou
Director