

Case Study



PROTECTING NONCITIZEN WORKERS WHO ADDRESS LABOR VIOLATIONS Recent Advances in the United States



In partnership with



I. Introduction

In response to decades of organizing and advocacy by workers' organizations and immigrants' rights groups, over the past 2 years the US federal government has taken new steps to protect immigrant workers when they raise labor violations. The US Department of Labor (DOL) and the US Department of Homeland Security (DHS) have each underscored that ensuring all workers, including undocumented workers and those on temporary visas, can come forward and participate in labor investigations and lawsuits is essential for the enforcement of labor laws for all workers. When workers fear that making a complaint will lead to their deportation or early termination of their work authorization, they are unlikely to come forward. This makes them vulnerable to significant abuses like wage theft and allows employers to take advantage of immigrant workers with impunity.

New measures adopted in 2022 and 2023 enable workers to request protection from deportation through deferred immigration action, with the support of local, state, and federal labor enforcement agencies, to pursue their claims without fear. These are important steps towards ensuring that immigration status does not deny a worker access to justice. This note outlines details of the new measures based on interviews with experts and a review of the relevant policy documents, as well as a brief history of prior Memoranda of Understanding since 2011 that laid the foundation for these measures.

A. Background

The United States of America has approximately 28.7 million foreign born workers, comprising around 17 percent of its workforce.ⁱ Around 6.8 million of those workers are undocumented,ⁱⁱ often engaged in agriculture, construction, food services, and other low-wage professions. In 2016, for example, unauthorized immigrant workers were five percent of the workforce but accounted for 15 percent of agricultural workers and 13 percent of construction workers.ⁱⁱⁱ As Professor Janice Fine has observed, "[m]any of the industries most prone to violations such as wage theft and unpaid overtime are also industries that are most heavily populated by immigrant workers."^{iv} Immigrant workers in these sectors may be the least likely to come forward to report abuse to local, state, or federal labor agencies because of their migration

status. For migrant workers on temporary visas tied to their employer, coming forward means risking early termination of their job and work authorization, and for undocumented workers, reporting abuse may lead to their arrest, detention, and deportation by immigration authorities.

Government labor and employment agencies include the DOL, which enforces federal labor law at the national level, and state and city labor agencies, which enforce their own labor laws and investigate violations in their jurisdictions. All of these labor regulators are heavily reliant on workers and civil society bringing complaints about violations to the agencies because they are generally under-resourced and do not generally have strong relationships with vulnerable workers. This is in part because resourcing of immigration enforcement has been overwhelmingly prioritized over labor enforcement. In 2021, government funding for immigration enforcement was nearly 12 times higher than the funding allocated to labor standards enforcement,^v and the Wage and Hour Division of the US DOL (the primary agency tasked with protecting workers' wages and working conditions) employed only 782 investigators responsible for 144 million workers.^{vi}

Federal and state labor regulators are heavily reliant on workers and civil society bringing complaints about violations because the agencies are generally under-resourced as immigration enforcement has been prioritized over labor enforcement.

B. Historical MOUs Between Labor and Immigration Enforcement Agencies

Recognizing this critical and predictable gap in labor enforcement, advocates have pushed for decades to ensure that immigration enforcement does not prevent workers from coming forward to report worksite disputes and violations that impact both citizen and noncitizen workers, including wage theft and health and safety violations. For many years, the primary form of such protection came from a series of memoranda of understanding (MOUs) between

the US DOL and Immigration and Customs Enforcement (ICE), the agency within DHS that arrests, detains, and prosecutes noncitizens for violations of US immigration law.

Under a 2011 MOU, ICE agreed to “refrain from engaging in civil worksite enforcement activities at a worksite that is the subject of an existing DOL investigation of a labor dispute during the pendency of the DOL investigation and any related proceeding.”^{vii} ICE further agreed to give DOL advance notice of a worksite enforcement action; to “make available for interview to DOL any person ICE detains for removal through a worksite enforcement activity”; and to consider DOL requests for temporary parole or deferred action for workers who were not authorized to be in the US but whose testimony or other participation was necessary for a DOL investigation or related proceeding.^{viii} The 2011 MOU also reinforced ICE’s ability to use prosecutorial discretion in individual cases to provide immigration relief to workers who were involved in a labor dispute; this became the basis for the 2023 guidance discussed below.^{ix}

In practice, the MOU created a process whereby the office of the inspector general in DHS would meet quarterly with the office of the inspector general for DOL; DHS would share a list of locations where it planned to conduct an audit (effectively, a work site raid) and the DOL would red-flag any locations where they (including the EEOC and the NLRB) had an open investigation.^x

Jessie Hahn from National Immigration Law Center (NILC) observes that in practice the MOUs did help to stop worksite raids in places that the DOL was already investigating, however, worksite raids continued, and from 2017 through 2019 over 1800 people were arrested.^{xi} While these raids were supposedly intended to target exploitative employers, a 2019 report revealed only 16 employers had been prosecuted in 10 years.^{xii} Meanwhile, employers relied on the threat of raids to silence workers and prevent them from raising labor violations. While some noncitizen workers have been able to recover back pay after the DOL investigates and files charges against the employer, overwhelmingly, workers themselves have not benefited from these actions, and raids have instead led to deportation and family separation.^{xiii} In general, whether or not the DOL investigated after a raid had taken place at other worksites was dependent on the individual DOL staff and field offices and still required significant civil society involvement to push for investigations and other remedial measures to take place.

II. New Stronger Measures in 2022-23 for Collaboration Between Labor and Immigration Enforcement Agencies Providing Immigration Relief to Noncitizen Workers

Just as the 2011 MOU was a response to lessons learned from worksite raids in the Bush years, after the raids in 2018-2019, advocates pushed for additional protection in the form of immigration relief for workers involved in labor disputes.

The older MOUs between DHS and DOL did not necessarily help individual unauthorized workers to avoid deportation if they were encountered during a raid. However, immigration authorities have always had prosecutorial discretion to provide immigration relief to individuals they encounter. For example, DHS can use its prosecutorial discretion to refrain from prosecuting and deporting a worker who is in a labor dispute with their employer including for nonpayment of wages. One form of immigration relief is “deferred action” where the agency agrees not to remove an individual who is otherwise deportable; this relief does not by itself grant immigration benefits or status but is rather a reprieve from deportation.^{xiv}

Since 2021, federal labor and immigration agencies have introduced new procedures to enable immigrant workers to proactively seek deferred action if they are involved in, or a witness to, a labor dispute so they can report abuse without fear of deportation.

A. Ending Worksite Raids, and Expanding Immigration Protections in Actions Pursued by State and City Labor Agencies and other Enforcement Bodies

In 2021, the DHS issued a policy statement ordering agency officials to (a) cease mass worksite operations, which “chill[], and even serv[e] as a tool of retaliation for, worker cooperation in workplace standards investigations”; and (b) consider requests for prosecutorial discretion on a case-by-case basis.^{xv} Although migrants working without authorization were more likely to be apprehended in the community than in raids,^{xvi} this policy statement did signal a formal and important shift.

Like the previous MOUs, this 2021 DHS policy discussed the federal DOL but made no mention of labor investigations by state and local agencies. However, state and city labor agencies and other law enforcement actors have increasingly shown willingness to support noncitizen workers' pursuit of labor claims free from fear of adverse immigration action, and in response to the 2021 policy guidance, wrote to DHS recommending further steps to protect immigrant workers.^{xvii} In particular, they recommended that DHS exercise prosecutorial discretion for individuals in removal proceedings to: "prevent government investigations into abusive employers from being thwarted through the detention and/or removal of necessary witnesses"; clarify the process by which state and local agencies can support prosecutorial discretion; and make explicit that local and state labor agencies can certify other forms of immigration relief, such as visas for victims of human trafficking.^{xviii} In states like California, which has the largest undocumented worker population in the US, state agencies are critical partners because the state labor law is robust and enforcement is strong, supported by political commitment.^{xix} Having state and local agencies involved in the certification of claims is thus essential to expand the number of cases that can be brought and protect the largest number of workers.

State labor laws are often more protective, with stronger enforcement supported by political commitment. Involvement of state and local agencies in certification of labor claims for immigration relief substantially increases cases brought on behalf of migrant workers.

In November 2021, a new related internal guidance was issued by the National Labor Relations Board (NLRB), a federal agency and quasi-judicial body that handles claims related to employees' rights to organize and unfair labor practices. The guidance to NLRB staff indicated the agency will seek immigration relief upon request by a complainant or witness "to protect these workers in the exercise of their statutory rights and allow for vigorous enforcement of the Act."^{xx} A NLRB factsheet also indicates that the NLRB will not ask witnesses their immigration status or share any information about them to DHS unless the individual requests they do so to support an application for immigration relief.^{xxi}

B. Department of Labor Guidance (2022) on Process for Migrant Workers Requesting DOL Support to Obtain Immigration Relief from DHS During Labor Disputes

On July 6, 2022, the DOL published a detailed process for individuals to seek its assistance to obtain deferred action. The guidance was issued in the form of a Frequently Asked Questions (FAQ) document entitled “Process for Requesting Department of Labor Support for Requests to the Department of Homeland Security for Immigration-Related Prosecutorial Discretion During Labor Disputes.”^{xxii} According to the FAQ, a worker or their attorney can email the DOL with a request for support in urging the DHS to exercise prosecutorial discretion in their case, and the DOL will provide such support “on a case-by-case basis to strengthen DOL’s enforcement and worker protection efforts.”^{xxiii} To secure a letter of support, the individual requesting assistance should include information demonstrating that they are involved in a labor dispute and that remaining in the US would facilitate a labor claim or other enforcement action. The request should include:

- A description of the labor dispute and how it is related to the laws enforced by DOL;
- A description of any retaliation or threats workers at the worksite may have witnessed or experienced related to labor disputes; and
- A description of how fear among workers at the worksite of potential immigration-related retaliation or other immigration enforcement in the future is likely to deter workers from reporting violations related to the labor dispute to DOL or otherwise cooperating with DOL.^{xxiv}

Advocates have emphasized that workers should not include information about their immigration status in the letter, both because such information is not relevant to or necessary for the DOL’s enforcement interest, and because including that information could potentially foreclose certain avenues of immigration relief down the line.^{xxv}

Under the DOL guidance, requests for a letter may be brought on behalf of a group of workers, by an individual worker, or their representative. The DOL may also produce a Statement of Interest for a worker without first receiving a request, presumably based on its

own worksite investigation. Advocates urge that the letter should be brought to cover an entire worksite where there is a dispute, because this increases the number of individuals who can come forward and apply for protection while also reducing the agency burden.^{xxvi} It is not necessary for the DOL to have already started investigating the worksite for alleged violations; indeed, part of the goal and benefit of this process is to alert DOL to violations that workers would otherwise be afraid to raise or not have the time and resources to pursue on their own. As one advocate noted, this process can hopefully raise awareness of and bring enforcement action in cases that were not otherwise an agency priority, as the DOL and other agencies can generally only focus on large, systemic cases of abuse given their limited resources.^{xxvii}

Under a July 2022 Guidance, requests to DOL for a letter of support to obtain deferred immigration action can be brought by an individual worker, their representative, a group of workers or workers at an entire worksite.

In deciding whether or not support the individual request, the DOL will look at a range of factors including but not limited to:

- DOL's need for witnesses to participate in its investigation and/or possible enforcement;
- Whether DHS's use of immigration-related prosecutorial discretion would support DOL's interest in holding labor law violators accountable for such violations;
- Whether workers are experiencing retaliation, threats of retaliation, or fear retaliation and/or may be "chilled" from reporting violations of the law or participating in DOL enforcement;
- Whether immigration enforcement concerning workers who may be witnesses to or victims of a violation of laws within DOL's jurisdiction could impede DOL's ability to enforce the labor laws or provide all available remedies within its jurisdiction;
- Likelihood that immigration enforcement could be an instrument used to undermine DOL's enforcement of laws in the geographic area or industry and/or give rise to further immigration-based retaliation.^{xxviii}

The DOL says it will respond to such requests within 30 days and may also follow up with requests for additional information. If the DOL decides that issuing a letter of support for the individual worker would support the DOL's mandate, it will issue a Statement of DOL Interest "informing DHS that DOL believes DHS's use of its prosecutorial discretion for employees at a particular worksite is necessary for DOL to effectively carry out its mission, and that therefore it supports workers' requests for immigration-related prosecutorial discretion."^{xxx} This may be provided both to the worker and DHS, but it is the worker's responsibility to request prosecutorial discretion from DHS. The statement does not itself provide any protection or legal benefit to the individual worker. If the DOL declines to provide a letter of support, it will not share that information with DHS.^{xxx} This guidance put a process in place for DOL but did not address DHS action.

C. Department of Homeland Security's Streamlined Deferred Action Process (2023)

On January 13, 2023, DHS announced its own process for supporting noncitizen workers in labor disputes in order to request immigration relief through deferred action, which can generally last up to two years and may be accompanied by work authorization.^{xxxi} While this form of discretionary relief for noncitizen workers is not new, the January 2023 guidance outlined a streamlined and centralized process by which DHS can review time-sensitive applications and issue both deferred action and complementary work authorization. Notably, this guidance allows workers to submit a letter of support from a broad range of government agencies and actors, which can include state attorneys-general, local labor agencies, the National Labor Relations Board, and the DOL. This gives workers more opportunities to seek assistance, and different actors an incentive to act on behalf of immigrant workers. Further, and building from the 2022 DOL guidance, the new DHS guidance applies not only to individual victims of a labor violation but also to witnesses, e.g., other employees at the same worksite whose participation in a labor investigation and case is necessary for the agency to document and pursue its case.

DHS ' new streamlined process enables migrant workers in labor disputes to apply for deferral of removal -- with work authorization for up to 2 years -- based on a letter of support from a broad range of national, state and local labor agencies and other enforcement actors.

According to the new guidance, applications for deferred action should include a letter of support (Statement of Interest) from a local, state, or federal labor agency, outlining (a) the "enforcement or jurisdictional interest of the labor agency and how it relates to the mission of the labor agency"; (b) the worker or workers covered by this Statement of Interest; and (c) why prosecutorial discretion for these workers would support the labor agency's interest.^{xxxii} All applications will go to a single streamlined office, part of the United States Citizenship and Immigration Services (USCIS), to be reviewed and adjudicated, along with an application for work authorization.^{xxxiii}

USCIS will make a case-by-case determination of eligibility and has said that it will only alert ICE about applications for deferred action for individuals who are in removal (deportation) proceedings or have a final order of removal. This should mean that unauthorized immigrants who are not already on ICE's radar will not be arrested and put in removal proceedings simply because they came forward to request protection. For individuals who are in deportation proceedings, however, or have previously been ordered deported but remained in the US, the system should permit ICE to close the removal proceedings or potentially reopen them in order to grant deferred action. The DHS goal, however, is to allow unauthorized immigrants an opportunity to pursue their labor claims without fear of arrest and deportation.

A notable advantage of this system is the opportunity to apply simultaneously for work authorization so that an individual granted deferred action can support themselves and leave an abusive employer while pursuing a labor claim. Applicants for employment authorization during their period of deferred action must show "an economic necessity for employment" and pay the \$410 application fee unless eligible for a fee waiver.^{xxxiv} By streamlining the application process, those awarded deferred action should hopefully get work authorization faster than through the normal process.

A request for expedited review must be made by a senior-level official of the labor or employment agency, and if it includes a request for employment authorization, it should also demonstrate that this employment authorization is “mission-critical and goes beyond a general need to retain a particular worker or person. Examples include, but are not limited to, a noncitizen victim or witness cooperating with a federal, state, or local agency who is in need of employment authorization because the respective agency is seeking back pay or reinstatement in an enforcement action or other court proceeding.”^{xxxv}

Advocates note that a key benefit of this program is that it enables workers to leave an exploitative employer and negotiate a better employment arrangement without being tied to a single employer.^{xxxvi} This can be a critical step, in the absence of a visa portability, to support migrant workers and interrupt exploitative work conditions. Questions still remain in relation to the implementation of this program; for example, many advocates are asking how an individual worker can become aware of and take advantage of a worksite-wide letter that is filed with DHS; how individuals who do have prior orders of removal will be treated in practice, as deferred action is still a matter of discretion; and how temporary workers—agricultural workers and others on short-term visas—can most effectively expedite their requests so they do not fall out of status while waiting for a claim to be processed. There are also questions about whether temporary workers and others who are not in the US can make use of this process, through parole or other mechanisms, to be in the US to pursue a labor claim. Nevertheless, this process is a significant step for immigrant workers to be able to receive immigration protection while pursuing labor claims and will assist labor agencies in uncovering violations and securing the assistance of noncitizen victims of, and witnesses to, labor violations.

III. Lessons Learned

The different guidance and cooperation between immigration and labor agencies over the years have been fought for and achieved by workers’ rights groups, including unions and immigrant workers’ organizations, who recognized that effective labor law enforcement requires safe participation and access to justice for all workers, regardless of their immigration status. Advocates have observed that even with this new, streamlined guidance, noncitizen workers will probably still need assistance from civil society in pursuing their claims. Individual

workers will want to consult with an immigration attorney prior to filing their application for deferred action in order to weigh the risks of coming forward but also to understand the different forms of immigration relief to which they may be entitled. The process of requesting a Statement of Interest from a labor agency may also need or at least significantly benefit from having a representative conduct the outreach to the relevant agency.

Advocates are also waiting to see how ICE will adjudicate cases where the worker is in removal proceedings or was previously deported, and how it will treat requests from individuals in private litigation—e.g., where the worker, not the labor agency, has initiated a claim in court.^{xxxvii} As noted earlier, most labor enforcement in the US relies on private individuals coming forward and pursuing claims, given the lack of agency resources; it remains to be seen whether such cases can receive support for purposes of deferred action.

It is also unclear whether individuals who are arrested and detained by ICE will practically have the opportunity to make the application for deferred action prior to their removal if they haven't started the process of requesting a letter of support before their arrest. Lawyer JJ Rosenbaum notes that lawyers, workers' centers and other service providers who see clients either in immigration detention facilities or in the community should be able to develop screening tools now that there is an incentive to screen for possible labor violations that would lead to immigration relief.^{xxxviii} Previously, this type of individualized screening would have been too time-consuming and labor-intensive when the identification of a labor claim did not trigger any further protection. However, now that it can lead to deferred action, advocates can screen for these claims, which in turn strengthens the DOL's ability to initiate and pursue labor investigations. The goal, Rosenbaum notes, is for this new guidance to create the type of partnerships necessary to do labor enforcement and to provide "a bridge over fear" that allows labor inspectors to focus on their role in enforcing worker protections.^{xxxix}

For the full Research and Policy Brief and further information on how governments and businesses can improve migrant workers' access to justice for wage theft globally, visit www.migrantjustice.org/wagethefta2j.

© Migrant Justice Institute, 2023. All material in this report is provided under a Creative Commons Attribution-NonCommercialNoDerivatives 4.0 International (CC BY-NC-ND 4.0) license.

This Case Study should be cited as follows: Migrant Justice Institute, *Protecting Noncitizen Workers who Address Labor Violations: Recent Advances in the United States* (Migrant Justice Institute, 2023)

Endnotes

- ⁱ American Immigration Council, “Immigrants in the United States,” Sept. 21, 2023, available at <https://www.americanimmigrationcouncil.org/research/immigrants-in-the-united-states>.
- ⁱⁱ Migration Policy Institute, “Profile of the Unauthorized Population: United States,” *available at* <https://www.migrationpolicy.org/data/unauthorized-immigrant-population/state/US> (accessed Jan. 21, 2023).
- ⁱⁱⁱ Jeffrey S. Passel & D’Vera Cohn, Pew Forum for Research, “Unauthorized Immigrant Workforce is Small but with More Women,” Nov. 27, 2018, *available at* <https://www.pewresearch.org/hispanic/2018/11/27/unauthorized-immigrant-workforce-is-smaller-but-with-more-women/>.
- ^{iv} Janice Fine, “Segmentation and the Role of Labor Standards Enforcement in Immigration Reform,” 5 J. Migration & Hum. Security 431 at 432 (2017); *see also* Annette Bernhardt, Ruth Milkman & Nik Theodore, National Employment Law Center, *Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America’s Cities* (2009), *available at* <https://www.nelp.org/publication/broken-laws-unprotected-workers-violations-of-employment-and-labor-laws-in-americas-cities/>; Ilna Mangundayao, Celine McNicholas, Margaret Poydock & Ali Sait, Economic Policy Institute, *More than \$3 billion in stolen wages recovered for workers between 2017 and 2020* Dec. 22, 2021.
- ^v Daniel Costa, Economic Policy Institute, *Threatening migrants and shortchanging workers*, (Dec. 15, 2022), *available at* www.epi.org/259743.
- ^{vi} *Id.* At 6.
- ^{vii} Department of Homeland Security & Department of Labor, “Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites,” Mar. 31, 2011, *available at* <https://www.dol.gov/sites/dolgov/files/ofccp/regs/compliance/directives/files/DHSICE-DOLMOU-Final3-31-2011ESQA508c.pdf>.
- ^{viii} *Id.* at 3.
- ^{ix} Interview with Jessie Hahn, NILC, Jan. 23, 2023. The MOU was updated in 2016 to add the Equal Employment Opportunity Commission (EEOC) and the National Labor Relations Board (NLRB) to the agreement. The NLRB’s Office of General Counsel has reflected that such interagency engagement is essential in order for the immigration and labor agencies to “deconflict” their operations: “Deconfliction helps ensure that individuals who cooperate with labor investigations can do so without fear of retaliation, and that the enforcement of immigration laws is not manipulated to thwart effective enforcement of employment and labor laws.” Department of Homeland Security et al., “Addendum to the Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites,” May 2016, *available at* https://www.nilc.org/wp-content/uploads/2021/11/MOU-Addendum_4.19.18.pdf.
- ^x Interview with Jessie Hahn, NILC, Jan. 23, 2023.
- ^{xi} National Immigration Law Center, “Worksite Immigration Raids,” January 2020, *available at*: <https://www.nilc.org/issues/workersrights/worksite-raids/>.
- ^{xii} TRACImmigration, “Few Prosecuted for Illegal Employment of Immigrants,” May 30, 2019, *available at* <https://trac.syr.edu/immigration/reports/559/>.

^{xiii} For example, after a 2019 raid of Koch Foods' poultry processing plant, where 680 immigrant workers were arrested by ICE, the US government filed a lawsuit resulting in backpay for 126 workers. But many of the workers were detained and deported after the raid. US Equal Employment Opportunity Commission, "Koch Foods Settles EEOC Harassment, National Origin And Race Bias Suit," Aug. 1, 2018, *available at* <https://www.eeoc.gov/newsroom/koch-foods-settles-eeoc-harassment-national-origin-and-race-bias-suit> ; Renae Merle, *The Washington Post*, "As workplace raids multiply, Trump administration charges few companies," Aug. 9, 2019, *available at* <https://www.washingtonpost.com/business/2019/08/09/workplace-raids-multiply-trump-administration-charges-few-companies/>; Ashton Pittman, *Mississippi Free Press*, "Feds Indict Poultry Execs After 2019 Mississippi ICE Raids; No Charges for Koch, PECO," Aug. 6, 2020, *available at* <https://www.mississippifreepress.org/5078/feds-indict-poultry-execs-after-2019-mississippi-ice-raids-no-charges-for-koch-peco>

^{xiv} *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483–84 (1999) ("At each stage [of the removal process] the Executive has discretion to abandon the endeavor, and at the time [the Illegal Immigration Reform and Immigrant Responsibility Act of 1996] was enacted the INS had been engaging in a regular practice (which had come to be known as 'deferred action') of exercising that discretion for humanitarian reasons or simply for its own convenience.").

^{xv} Alejandro Mayorkas, Secretary, Department of Homeland Security, 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," Oct. 12, 2021.

^{xvi} Interview with JJ Rosenbaum, Global Labor Justice-International Labor Rights Forum, Jan. 10, 2023.

^{xvii} Attorneys General Letter to Secretary Mayorkas, Director Jaddou, Acting Director Johnson, and Acting Commissioner Miller re: Policy Statement 065-06, Worksite Enforcement, Nov. 15, 2021, *available at* <https://www1.nyc.gov/assets/dca/downloads/pdf/media/DHS-Labor-Enforcement-Letter-110521.pdf>. This included the Attorneys General of California, Illinois, Massachusetts, and New York; the New York City Department of Consumer and Worker Protection, and the Seattle Offices of Labor Standards and Immigrant and Refugee Affairs; together with the Attorneys General of Delaware, New Jersey, Michigan, Minnesota, New Jersey, New Mexico, Washington, and the District of Columbia; the Washington State Department of Labor and Industries, Suffolk County District Attorney's Office (MA), Washtenaw County Prosecutor's Office (MI), Chicago Office of Labor Standards, and City of Philadelphia.

^{xviii} *Id.*

^{xix} Interview with Jessie Hahn, NILC, Jan. 23, 2023.

^{xx} Memorandum, Office of General Counsel, National Labor Relations Board, "Ensuring Rights and Remedies for Immigrant Workers Under the NLRA," Nov. 8, 2021, at 2 ("upon request by a charging party or witness, the NLRB will seek immigration relief including deferred action, parole, continued presence, U or T status, a stay of removal, or other relief as available and appropriate, to protect these workers in the exercise of their statutory rights and allow for vigorous enforcement of the Act."). In this memorandum, the Office of General Counsel also noted that it would continue to partner with foreign embassies and consulates to expand joint efforts to protect foreign workers. This coordination with DHS to certify and support individual worker cases has been particularly important given that the NLRB can also adjudicate the underlying labor claim and because many immigration enforcement actions have been triggered by workers taking collective action to protect labor violations like wage theft or health and safety violations at their workplace.

^{xxi} NLRB, Office of the General Counsel, Important Information About NLRB Investigations for Immigrant Workers, May 2, 2022.

^{xxii} US Department of Labor, "Process for Requesting Department of Labor Support for Requests to the Department of Homeland Security for Immigration-Related Prosecutorial Discretion During Labor

Disputes,” July 6, 2022, available at <https://www.dol.gov/sites/dolgov/files/OASP/files/Process-For-Requesting-Department-Of-Labor-Support-FAQ.pdf>.

^{xxiii} *Id.*

^{xxiv} *Id.* At 2.

^{xxv} Interview with Marisa Diaz, National Employment Law Center, January 17, 2023; National Immigration Law Center, “New DHS Guidance on Prosecutorial Discretion for Labor Disputes,” January 2023.

^{xxvi} *Id.*

^{xxvii} Interview with Marisa Diaz, Jan. 17, 2023.

^{xxviii} *Id.* at 3.

^{xxix} *Id.*

^{xxx} *Id.* at 4.

^{xxxi} US Department of Homeland Security, “DHS Announces Process Enhancements for Supporting Labor Enforcement Investigations,” Jan. 13, 2023, available at <https://www.dhs.gov/news/2023/01/13/dhs-announces-process-enhancements-supporting-labor-enforcement-investigations>.

^{xxxii} *Id.*

^{xxxiii} US Department of Homeland Security, DHS Support of the Enforcement of Labor and Employment Laws, available at <https://www.dhs.gov/enforcement-labor-and-employment-laws> (accessed January 13, 2023). According to the DHS guidance and related FAQs, noncitizen workers requesting deferred action should submit the following forms and information to the United States Citizenship and Immigration Services (USCIS): a written request signed by the noncitizen stating the basis for the deferred action request; a letter or Statement of Interest from a labor or employment agency supporting the request; evidence to establish that the worker falls within the scope identified in the labor or employment agency letter, such as W-2s, pay stubs, time cards, or other documentary evidence to demonstrate that the worker was employed during the period identified in the labor or employment agency statement; evidence of any additional factors supporting a favorable exercise of discretion; proof of the noncitizen’s identity and nationality; if applicable, any document used to lawfully enter the United States or other evidence relating to the noncitizen’s immigration history or status; Form G-325A, Biographic Information (for Deferred Action); Form I-765, Application for Employment Authorization, with the appropriate fee or request for a fee waiver; and Form I-765WS, Worksheet.

^{xxxiv} U.S. Citizenship and Immigration Services (USCIS), I-765, Application for Employment Authorization, available at <https://www.uscis.gov/i-765> (accessed Jan. 17, 2023).

^{xxxv} U.S. Department of Homeland Security, DHS Support of the Enforcement of Labor and Employment Laws (accessed January 17, 2023).

^{xxxvi} Interview with Nina DiSalvo, Towards Justice, Feb. 2, 2023; Interview with Ben Botts, Centro de los Derechos del Migrante, Feb. 9, 2023.

^{xxxvii} Interview with Marisa Diaz, NELP, Jan. 17, 2023; Interview with Jessie Hahn, NILC, Jan. 23, 2023.

^{xxxviii} Interview with JJ Rosenbaum, Global Labor Justice-International Labor Rights Forum, Jan. 10, 2023.

^{xxxix} *Id.*