How State and Local Labor Standards Enforcement Agencies Can Support Workers’ Requests to DHS for Immigration Relief

August 18, 2022
Overview

- Background on prosecutorial discretion and labor disputes
- Key recent developments
- Next steps for state and local agencies
DHS-DOL
Worksite Enforcement Memorandum of Understanding
Dec 2011/
Acuerdo entre Depto de Labor y Depto de Seguridad Nacional sobre Investigaciones en Sitios de Trabajo
Dic 2011
Affirmative Immigration Relief

- Immigration threats chill workers
- DHS already has the power to defer its enforcement
- Labor agencies can seek relief from DHS
MEMORANDUM TO:  
Tae D. Johnson  
Acting Director  
U.S. Immigration and Customs Enforcement

CC:  
Troy Miller  
Acting Commissioner  
U.S. Customs and Border Protection

Ur Jaddou  
Director  
U.S. Citizenship and Immigration Services

Robert Silvers  
Under Secretary  
Office of Strategy, Policy, and Plans

Katherine Culliton-González  
Officer for Civil Rights and Civil Liberties  
Office for Civil Rights and Civil Liberties

Lynn Parker Dugree  
Chief Privacy Officer  
Privacy Office

FROM:  
Alejandro N. Mayorkas  
Secretary

SUBJECT:  
Guidelines for the Enforcement of Civil Immigration Law

This memorandum provides guidance for the apprehension and removal of noncitizens.

I am grateful to you, the other leaders of U.S. Immigration and Customs Enforcement, and our frontline personnel for the candor and openness of the engagements we have had to help shape this guidance. Thank you especially for dedicating yourselves – all your talent and energy – to the noble law enforcement profession. In executing our solemn responsibility to enforce immigration
Fundamental Principles

Our Department has a critical role in ensuring that our Nation’s workplaces comply with our laws. To best achieve this goal, we 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.
Support Enforcement of Labor and Employment Standards

**Recommendation:** Consistent with Secretary Mayorkas’s October 12, 2021 directive, instruct the Department of Homeland Security to develop and implement immigration enforcement policies that facilitate the important work of the Department of Labor (and other sister agencies) to protect organizing and collective bargaining rights and enforce wage, workplace safety, and other standards. As longer-term undertakings, DHS should be instructed to: (1) conduct a comprehensive Department-wide policy review to ensure that DHS policies support the enforcement of employment and labor standards, including the rights to organize and bargain collectively; and (2) develop component plans to ensure that victims of, and witnesses to, labor exploitation and unfair labor practices are unafraid to cooperate with law enforcement in its investigation and prosecution of unscrupulous employers.

**Background:** Worker power is undermined by the ability of companies to exploit vulnerable workers—in particular, unauthorized workers. Such exploitative employers drive down wages, discourage organizing, and create unsafe working conditions for all workers. Secretary Mayorkas’s directive to DHS Components was intended to guard against these kinds of exploitation by: (1) halting mass-worksite operations (i.e., highly visible operations that result in the simultaneous arrest of hundreds of workers and have the effect of chilling worker cooperation in workplace-standards investigations); and (2) directing DHS Components to support DOL workplace-standards investigations by considering, on a case-by-case basis, the exercise of prosecutorial discretion for certain workers who are victims of or witnesses to workplace incidents.
OFFICE OF THE GENERAL COUNSEL

MEMORANDUM GC 22-01 November 8, 2021

TO: All Regional Directors, Officers-in-Charge, and Resident Officers

FROM: Jennifer A. Abruzzo, General Counsel

SUBJECT: Ensuring Rights and Remedies for Immigrant Workers Under the NLRA

From the inception of the National Labor Relations Act, the NLRB and reviewing courts have widely recognized that the Act’s statutory protections are afforded in equal measure to all covered workers, regardless of their status as immigrants to this country.\(^1\) As far back as 1984, the Supreme Court in *Sure-Tan, Inc. v. N.L.R.B.*, 467 U.S. 883, 891-892 (1984), confirmed that undocumented workers are statutory employees entitled to protection under the NLRA. In order for all workers to be able to exercise their rights under the Act, we must zealously guard the right of immigrant workers to be free of immigration-related intimidation tactics that seek to silence employees, denigrate their right to act together to seek improved wages and working conditions, and thwart their willingness to report statutory violations. I am resolved to hold fully accountable those entities that, by targeting immigrant workers and their workplaces, undermine the policies of the NLRA and the nation’s immigration laws.
Process for Requesting Department of Labor Support for Requests to the Department of Homeland Security for Immigration-Related Prosecutorial Discretion During Labor Disputes

Frequently Asked Questions For Workers and Their Representatives

1. Does the Department of Labor take requests to express support for immigration-related prosecutorial discretion for workers involved in labor disputes?
Next Steps for State & Local Labor Enforcement Agencies

- Consider drafting public guidance for requests for support for prosecutorial discretion
- Prepare to receive and respond to requests for support even before your guidance is finalized
- Gather resources
- Consider reaching out to DHS in advance of submitting your first letter of support
Factors to Consider in Labor Agency Guidance

- Asserting broad “enforcement interests”
- Avoiding restrictions on remedies under labor laws
- Satisfying “expediting criteria” at USCIS
- Covering workers throughout the life cycle of a case
- Length of time for request of prosecutorial discretion
- Importance of competent independent immigration counsel
Resources/Recursos

- Important Information About NLRB Investigations for Immigrant Workers

- Process for Requesting USDOL Support for Requests to DHS for Immigration-Related Prosecutorial Discretion During Labor Disputes

- NILC Fact Sheet on USDOL FAQs

- National COSH: Four Facts for Immigrant Workers
  https://nationalcosh.org/sites/default/files/Four%20Facts%20for%20Undocu%20Workers%20%28ENG%29.pdf

- NILC Fact Sheet on Mayorkas Worksite Enforcement Memo

- NILC & NELP Fact Sheet on DHS DOL Deconfliction MOU
  https://www.nilc.org/issues/workersrights/revised-labor-agency-dhs-mou/
Jessie Hahn
Senior Labor & Employment Policy Attorney
National Immigration Law Center

Hahn@nilc.org
Thank You