

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

August 18, 2022



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Overview

- Background on prosecutorial discretion and labor disputes
- Key recent developments
- Next steps for state and local agencies

Revised Memorandum of Understanding between the Departments of Homeland Security and
Labor Concerning Enforcement Activities at Worksites

I. Purpose

This revised memorandum of understanding (MOU) is entered into by the Department of Homeland Security (DHS) and the Department of Labor (DOL). Its purpose is to set forth the ways in which the Departments will work together to ensure that their respective civil worksite enforcement activities do not conflict and to advance the mission of each Department.

In entering this MOU, both Departments recognize the importance of enforcing labor and immigration laws relating to the worksite. Effective enforcement of labor law is essential to ensure proper wages and working conditions for all covered workers regardless of immigration status. Effective enforcement of immigration law is essential to protect the employment rights of lawful U.S. workers, whether citizen or non-citizen, and to reduce the incentive for illegal migration to the United States. The parties further recognize that effective enforcement of both labor- and immigration-related worksite laws requires that the enforcement process be insulated from inappropriate manipulation by other parties.

II. Affected Components within the Departments

The principal and responsible parties to this MOU are the following components within each Department. On behalf of the Department of Homeland Security, the principal component is U.S. Immigration and Customs Enforcement (ICE). On behalf of the Department of Labor, the principal components are the Wage and Hour Division (WHD), the Office of Federal Contract Compliance Programs (OFCCP), the Occupational Safety and Health Administration (OSHA), the Office of Labor-Management Standards (OLMS), and the Office of the Assistant Secretary for Policy (OASP).

III. Definitions and Understandings

For purposes of this MOU—

- A. A “labor dispute” means a labor-related dispute between the employees of a business or organization and the management or ownership of the business or organization concerning the following employee rights:
- the right to be paid the minimum legal wage, a promised or contracted wage, and overtime;
 - the right to receive family medical leave and employee benefits to which one is legally entitled;
 - the right to have a safe workplace and to receive compensation for work-related injuries;
 - the right to be free from unlawful discrimination;

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



September 30, 2021

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 Dupree
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

Mayorkas ICE Interior Enforcement Priorities Memo Sep 2021/ Memorándum de Mayorkas sobre Individuos Prioritarios para Inmigración Sep 2021



Secretary
U.S. Department of Homeland Security
Washington, DC 20528

**Homeland
Security**

Issue Date: 10/12/2021

Policy Statement 065-06

MEMORANDUM FOR: Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement

Ur M. Jaddou
Director
U.S. Citizenship and Immigration Services

Troy A. Miller
Acting Commissioner
U.S. Customs and Border Protection

FROM: Alejandro N. Mayorkas
Secretary

SUBJECT: **Worksite Enforcement: The Strategy to Protect the American Labor Market,
the Conditions of the American Worksite, and the Dignity of the Individual**

Mayorkas Worksite Enforcement Memo Oct 2021/ Memorándum de Mayorkas sobre Investigaciones en Sitios de Trabajo Oct 2021

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.



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WHITE HOUSE TASK FORCE ON WORKER ORGANIZING AND EMPOWERMENT

REPORT TO THE PRESIDENT

VICE PRESIDENT KAMALA D. HARRIS, CHAIR
SECRETARY OF LABOR MARTIN J. WALSH, VICE-CHAIR

White House Task Force on Worker Organizing and Empowerment Feb 2022/ Grupo de Trabajo de la Casa Blanca Sobre Empoderamiento y Organización de los Trabajadores Feb 2022

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-worksites 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.

**NLRB General
Counsel
Memorandum
on Immigrant
Workers
Nov. 8 2021/
Memorandum
sobre
Trabajadores
Inmigrantes de
la Junta
Nacional de
Leyes de
Relaciones
Laborales
8 Nov. 2021**



United States Department of Labor

July 6, 2022

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?

**USDOL FAQs
on Requesting
Support for
Immigration-
Related
Prosecutorial
Discretion
July 2022/
Preguntas
Frecuentes
sobre Casos de
Inmigración
del Depto. De
Labor Julio
2022**



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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**
<https://www.nlr.gov/sites/default/files/attachments/pages/node-184/investigation-information-for-immigrant-worker-witnesses.pdf>
- **Process for Requesting USDOL Support for Requests to DHS for Immigration-Related Prosecutorial Discretion During Labor Disputes**
<https://www.dol.gov/sites/dolgov/files/OASP/files/Process-For-Requesting-Department-Of-Labor-Support-FAQ.pdf>
- **NILC Fact Sheet on USDOL FAQs**
<https://www.nilc.org/wp-content/uploads/2022/07/Factsheet-on-DOL-FAQs-Deferred-Action-2022-07-07.pdf>
- **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**
<https://www.nilc.org/wp-content/uploads/2021/11/Website-Summary-of-Oct-2021-DHS-Worksite-Enforcement-Memo-2021-11-03.pdf>
- **NILC & NELP Fact Sheet on DHS DOL Deconfliction MOU**
<https://www.nilc.org/issues/workersrights/revised-labor-agency-dhs-mou/>



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Thank You



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