

RESOLUTION OF THE CALIFORNIA FEDERATION OF LABOR

WHEREAS, on October 12, 2021, Department of Homeland Security (DHS) Secretary Alejandro Mayorkas issued Policy Statement 065-06, entitled “Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual,” which: (1) reaffirmed its prior policy of exercising its prosecutorial discretion to provide temporary deferred action status and work permits to some undocumented whistleblowers who assist the DOL, NLRB, and EEOC in enforcing workplace laws; (2) called on the U.S. Immigration and Customs Service (ICE) to suspend engaging in mass enforcement actions at worksites pending further notice; and (3) advised that DHS would be adopting a new department wide policy on these issues.

WHEREAS, on January 13, 2023, DHS issued a new guidance (in lieu of a new policy), in which it advised that: (1) it would now accept and adjudicate requests from state and local labor and employment enforcement agencies, as well as from federal ones, to provide temporary deferred action status, work permits, and other immigration relief to undocumented whistleblowers who report or assist in the investigation or prosecution of laws they are charged with enforcing; (2) it has set up a centralized site managed by the U.S. Citizenship and Immigration Service (USCIS), which will adjudicates requests it receives by email from such agencies for immigration relief for those involved assisting in their cases, and the possibility of expedited consideration of such requests if it was “mission critical” to the agency; (3) it has set up a centralized mailing address for USCIS, which will adjudicate requests that workers or their advocates (including unions) can mail requests for immigration relief, provided that those requests include a letter of support from an enforcement agency; and (4) it provides that where an immigrant whistleblower is already in removal proceedings, or subject to a final order of deportation, workers or their advocates may submit a request for immigration relief to ICE, which will then adjudicate the request.

WHEREAS, while the January 13, 2023 guidance was a step in the right direction, by extending access to California and other state and local agencies the use of an important tool to clean up our epidemic of unlawful employment practices, by protecting witnesses from employer retaliation and deportation, and clarifying how requests for relief may be made, for the policy to be truly effective DHS must make the following additional policy changes:

1. providing immigrants with clear assurances of the confidentiality of the personal information they provide about themselves and their families to obtain protection, so it will not be used by DHS in the future to arrest them, initiate deportation proceedings, or as evidence in deportation proceedings;
2. adjudicating promptly requests for immigration protection of witnesses received from other agencies so they can be protected before retaliation, and not afterward when it will chill any further willingness of workers to stand up for their rights;
3. issuing clear and reasonable criteria for granting or denying deferred action status and work permits, so workers and their advocates can decide whether to seek relief;
4. providing a transparent process, including data gathering and publishing it regarding its implementation of its policy, so the effectiveness of the program will be known; and

5. deciding that ICE will not engage in mass worksite enforcement actions where there is an ongoing labor dispute in progress, even to investigate a crime, if that crime is the possible unlawful entry of workers into the U.S.

WHEREAS, on May 4, 2021, a joint letter was sent to DHS Secretary Alejandro Mayorkas and DOL Secretary Martin J. Walsh by California Labor Commissioner Lilia Garcia-Brower, and 24 other state and local labor enforcement agencies stating the following:

1. They need clear guidance on how to seek deferred action for workers who may have suffered abuse and exploitation on the job and are vulnerable to retaliation;
2. They find that employers sometimes invoke ICE worksite enforcement as a pretext for discharging workers who seek to improve their working conditions;
3. A DHS “policy of exercising prosecutorial discretion only in a few cases and after the fact—after individuals have faced retaliation for coming forward—is almost always too little relief too late;”
4. They want to work with DHS and DOL to ensure that “the actions of DHS support, rather than interfere with, our mandates;” and
5. Implementing these proposed changes will help the administration promote workplaces, lift labor standards, and spur a just recovery.”

WHEREAS, on September 29, 2021, a joint letter was sent to DHS Secretary Mayorkas and DOL Secretary Walsh by a group of 23 mostly national union, civil rights, labor rights, and immigrant rights organizations, including the AFL-CIO, SEIU, IBT (Teamsters), IUPAT (Painters), Jobs with Justice, NDLON, and the National Taskforce on Tradeswomen’s Issues, urging them to adopt a clear process for immigrants to obtain deferred action status, work permits, and other immigration relief, one that will provide for fair and prompt resolution of requests, so immigrants can overcome their legitimate fears of retaliation, assist enforcement agencies, and raise working standards for citizens and noncitizens alike.

WHEREAS, on July 15, 2022, a joint letter was sent to DHS Secretary Mayorkas and DOL Secretary Walsh, by a group of 30 organizations and elected officials, led by the Center for Human Rights and Constitutional Law (CHRCL), and including California State Senator Maria Elena Durazo (individually and as Chair of California Latino Legislative Caucus), Sacramento Mayor Darrell Steinberg, Los Angeles County Board of Supervisor (and former U.S. Labor Secretary) Hilda Solis, Los Angeles County Federation of Labor, UFCW Local 770, UNITE-HERE Local 11, AFSCME Local 3930 (United Domestic Workers), Workers United, SEIU, National Nurses United, UCLA Labor Center, LULAC, CRLA, Thai Community Development Center, Asian Americans Advancing Justice-Southern California, Bet Tzedek Legal Services, CHIRLA, CARECEN, CLUE-LA, and others, providing legal and policy arguments in support of DHS adopting a more robust policy granting deferred action status and work permits to immigrant whistleblowers, one that would clearly extend the right of California and other state and local agencies to secure protection for witnesses assisting them in prosecuting abusive employers, would provide for prompt adjudication, clear and reasonable criteria for granting or denying a request, and a transparent process.

WHEREAS, as set forth below these additional changes in DHS policies sought by labor, community, and state agencies are fully consistent with earlier calls by the AFL-CIO to organize workers regardless of immigration status, to protect immigrant whistleblowers who are necessary to enforce our nation's labor and employment laws, and to create a clear separation between immigration enforcement and labor enforcement.

WHEREAS, in 2000, the AFL-CIO Executive Council issued a statement on Immigration which "calls for the enactment of whistleblower protections providing protected immigration status for undocumented workers who report violations of worker protection laws or cooperate with federal agencies during investigations of employment, labor and discrimination violations."

WHEREAS, in 2005, the AFL-CIO adopted a resolution stating that "immigrant workers should have equal and full workplace rights, including the right to organize, full job portability and protections for whistleblowers"

WHEREAS, in 2013, the AFL-CIO adopted Resolution 22 entitled "Immigration Enforcement: Building Community Trust," that noted the vital role played by immigrants in building our country and our labor movement, that the proper role of our labor agencies is to enforce minimum workplace standards, that forcing immigration enforcement presence into all aspects of public life makes us less safe and less just, and that workers were now running away from labor inspectors at job sites, and demanded "a clear separation of immigration enforcement from local law enforcement and other functions of government because we want safe workplaces, campuses, and communities."

WHEREAS, in 2022, the AFL-CIO adopted Resolution 11 entitled Advancing a Humane Pro-Worker Immigration Agenda," which among other things calls on affiliates to "Organize all workers, regardless of status, and pursue concrete protections and work permits for immigrants who seek to form or join a union, bargain a contract or otherwise take collective action to make our workplaces safe and fair."

WHEREAS, the U.S. Supreme Court's decision in *Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137 (2002), which held that the NLRB has no authority to grant reinstatement and lost future wages to undocumented workers discharged in violation of the National Labor Relations Act, because it conflicts with the employer sanctions provisions of the Immigration Reform and Control Act, has now been applied to bar such relief under other federal and state protective labor legislation, leaving undocumented whistleblowers extremely vulnerable to employers who threaten to call "immigration" or fire them if they complain about unlawful, dangerous, or unfair working conditions, assist government agencies to prosecute abusive employers, or join with other workers to organize a union to protect themselves.

WHEREAS, stronger DHS policies, practices, and instructions, as set forth below, are necessary for undocumented workers to feel sufficiently protected from employer retaliation and deportation that they will report and assist in the investigation and prosecution of

employers violating the workplace rights, or to otherwise engage in labor disputes at work, including concerted action and union organizing.

THEREFOR BE IT RESOLVED AS FOLLOWS:

1. DHS should issue a policy and guidance providing undocumented immigrants with clear assurances of the confidentiality of the personal information they provide about themselves and their families to obtain protection, so it will not be used by DHS in the future to arrest them, initiate deportation proceedings, or as evidence in deportation proceedings;
2. DHS should adjudicate promptly requests for immigration protection of witnesses received from other agencies so they can be protected before retaliation, and not afterward when it will chill any further willingness of workers to stand up for their rights;
3. DHS should adopt clear and reasonable criteria for granting or denying deferred action status and work permits, so workers and their advocates can decide whether to seek relief;
4. DHS should provide a transparent process, including data gathering and publishing it regarding its implementation of its policy, so the effectiveness of the program will be known; and
5. DHS should adopt a policy and practice continuing in effect in 2021 decision to cease mass worksite enforcement actions where there is an ongoing labor dispute in progress, even where it is acting to investigate a crime if the crime is only the possible unlawful entry of workers into the U.S.