

Mr. Alejandro Mayorkas, Secretary
U.S. Department of Homeland Security
245 Murray Lane SW
Washington, D.C. 20528

Mr. Marty Walsh, Secretary
U.S. Department of Labor
200 Constitution Ave NW
Washington, D.C. 20210

Dear Secretary Mayorkas and Secretary Walsh:

Congratulations on your recent confirmations. We look forward to partnering with the administration and your departments in the important work ahead. As officials with a mandate to enforce labor rights and standards at the state and local level, we know that our efforts will only be successful if all workers, regardless of immigration status, are willing to engage with our agencies. Unless we can protect workers from status-based retaliation, they will fear cooperating with our investigations. The Biden administration has the opportunity to implement policies that will protect, not target, immigrant working people and embolden them to come forward to file complaints when their rights are violated. This is crucial to our efforts to improve working conditions in our states, counties and cities.

A high percentage of the workers in dangerous and abusive industries are immigrants. However, these same industries generally experience low numbers of complaints. Robust worker participation is essential to the success of labor investigations, but fear of employer retaliation is a real and rational concern that has deterred immigrant workers from organizing and cooperating with our agencies. Our efforts to root out abuse and exploitation would be significantly improved if workers felt safer coming forward. The federal government taking steps such as providing workers with deferred action and work authorization would help to strengthen labor standards enforcement at the state and local level.

The Department of Homeland Security acknowledges that immigration enforcement can interfere with the exercise of labor rights and has developed tools to protect workers who are involved in labor disputes. However, we believe it remains difficult for immigrant workers to access such protections and we need clearer guidance that those protections extend to workers who engage with state and local labor agencies. Occupational safety and health laws, for example, are enforced by state agencies in a number of states, and most wage claims are brought to state agencies because of higher state minimum wages.

State, county and local agencies 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. When workers seek to improve their workplace conditions by raising concerns, some employers attempt to invoke ICE worksite enforcement as a pretext for discharging workers. 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 arriving too late.

The work of our agencies must be respected by Immigration and Customs Enforcement, and we need better procedures to prevent interference with our investigations. We ask you to quickly reconstitute the Interagency Working Group to Ensure the Consistent Enforcement of Labor, Employment and Immigrations laws and include an advisory team of state and local labor agencies. We can make valuable contributions to this process, and request an opportunity to be at the table to help develop appropriate protocols and hone them over time.

Formalizing the process to ensure that immigration enforcement does not conflict with the enforcement mandates not just of the Department of Labor, but also of the National Labor Relations Board and the Equal Employment Opportunity Commission was a significant accomplishment from the Obama years. As the new administration reaffirms those protocols and looks to further improve interagency functions, we ask you to take concrete steps to ensure that federal immigration enforcement will not interfere with enforcement of state and local labor and employment laws as well.

Our states, counties and cities have taken and will continue to take active steps to prevent immigration-based retaliation and ensure that immigrant workers in exploitative industries are able to recover stolen wages and improve working conditions. We look forward to working with your federal agencies to ensure that the actions of DHS support, rather than interfere with, our mandates. Implementing these proposed changes will help the administration promote safe workplaces, lift labor standards, and spur a just recovery.

Sincerely,

To sign on to this letter, follow this link: <https://forms.gle/3VtTn6fTs9GHiLQc8>