

Worker's Rights Protections in Immigration Enforcement Reform

President Obama recently announced that he would use his executive authority to fix pieces of our broken immigration system. These fixes must include the following workers' rights protections, which, along with protection from deportation and work authorization for immigrants with ties to the U.S., are critical to protecting immigrant and U.S. workers from illegal working conditions and retaliation.

1. Strengthen prosecutorial discretion for immigrants protecting civil and labor rights through a U.S. Citizenship and Immigration Service (USCIS) process.

- Take the fear of immigration retaliation and intimidation off of the table in workplace and civil rights disputes by clarifying the process under which immigrants who stand up to protect their civil and labor rights and who are not yet in proceedings can apply for deferred action through USCIS.

2. Strengthen workers' rights during I-9 audits.

- Require U.S. Immigration and Customs Enforcement (ICE), prior to the initiation of any immigration worksite enforcement action including I-9 audits, to find out whether workers have made complaints regarding their labor rights, civil rights, or working conditions within the last 12 months, and to document that the I-9 audit is not likely to depress wages and working conditions. ICE should limit I-9 audits where a labor dispute is pending or where the employer pays above-average wages and benefits.
- Ensure that workers who are affected by an immigration enforcement action, such as an I-9 audit, are able to obtain information they need to protect their rights directly from ICE rather than having to rely on their employer for that information.
- Direct employers conducting self-audits to provide workers with information about the process and an opportunity to contest an employer's erroneous assessment of the worker's immigration status.

3. Strengthen Operating Instruction 287.3a.

- The U.S. Department of Homeland Security (DHS) should revise and strengthen its internal operating instructions regarding enforcement of immigration laws in the workplace to prohibit enforcement actions that undermine workers' rights and reaffirm that noninterference in labor disputes is the current agency policy.

4. Adopt strong civil rights and antiretaliation protections to ensure immigrants' labor and civil rights.

- Adopt a nonretaliation policy that prohibits DHS agents from targeting civil and labor rights defenders for arrest, detention, or deportation and from using information from civil rights investigations in deportation proceedings.
- Prohibit deportations based on arrests that are unconstitutional or violate ICE's own guidelines.
- Adopt policies that require any party with whom DHS contracts, including local and state law enforcement agencies and detention centers, to comply with labor and civil rights laws. DHS should not contract with local and state entities with a pattern and practice of civil rights violations and should terminate any contract with an entity that has been found to have violated labor and civil rights laws.
- Clarify that an employer's misuse of USCIS's E-Verify program to violate workers' rights is actionable under existing labor and employment laws, and revoke an employer's authorization to use E-Verify if one or more of its employees assert their rights under such law.