

JAN
2024



TRABAJAMOS
PARA
VIVIR
NO PARA
MORIR

Building Worker Power Through Deferred Action:

A REPORT ON THE FIRST YEAR

Executive Summary

In the one year since the Biden administration's January 13, 2023, announcement of new guidance on labor-based deferred action, the policy has already had a seismic impact on immigrants' rights and workplace justice. The guidance, issued by the Department of Homeland Security (DHS), empowers immigrant workers to file complaints with labor agencies, participate in labor investigations, and to build power together with U.S.-born workers—without the fear of potential deportation hanging over their heads. As a result of this increased worker participation and solidarity, labor agencies have successfully enforced labor standards ranging from protections for fair wages to workplace safety to labor organizing.

The purpose of this report commemorating the one-year anniversary of the deferred action guidance is threefold. First, we celebrate the enormous impact the guidance has had by uplifting workers' voices along with those of organizers and allies who share how deferred action has made a meaningful difference in workplaces, lives, and communities. The report also includes several case studies that illustrate the success of the guidance in the enforcement of labor standards and how it has empowered workers to collectively push back against abusive and exploitative employers and corporations, many of which have outsized influence over the American economy and politics. Second, we report on the outcomes to date of the National Immigration Law Center's (NILC's) "Our Rights, Our Work, Our Home" two-year campaign to support implementation of labor-based deferred action, which includes: training and technical assistance for advocates; co-creation of capacity-building models to maximize access; administrative advocacy with local, state, and federal agencies; direct legal representation; and a pilot project in partnership with 12 organizations with the goal of requesting deferred action for up to 100 workers nationwide.

Finally, even as we celebrate the positive impacts of this guidance, we acknowledge that its implementation to date is only one piece in the broader struggle for worker justice. Exploitation remains pervasive in American workplaces for both immigrant and citizen workers alike. While this guidance offers incredible potential to safeguard immigrant workers and reform American workplaces, the full scope of that potential cannot be realized without a deeper investment of resources for education, organizing, and legal representation, coupled with ongoing partnerships between workers and the agencies charged with protecting and enforcing workplace standards. Accordingly, this report offers recommendations for improving and expanding effective implementation of the guidance and ensuring the continued success of this critical tool in advancing worker and immigrant rights.

Part 1 of the report provides a brief history of the policies and advocacy that led to the new guidance and why it's important. **Part 2** explains how the new streamlined deferred action process works. **Part 3** highlights the work of NILC's campaign to implement the new guidance, "Our Work, Our Rights, Our Home," while **Parts 4** and **5** identify successes and challenges thus far and provides recommendations to the government and funders for improvement. Finally, **Part 6** concludes the report and acknowledges the many local and national partners who contributed and without whom neither this report nor the enormous successes of the last year would have been possible.

Key Findings:

► **Successes:**

- **Worker empowerment and organizing** has supported labor enforcement in a wide range of industries and geographic regions.
- **The new streamlined deferred action process** has expanded its accessibility, accelerated processing times, and yielded more consistent outcomes for workers.
- **Broad labor agency support** at the federal, state, and local levels.

“Deferred Action has multiplied our work as organizers, a challenge but an opportunity to reach many more people than before. We labeled it as ‘A program against fear’ since that is the most frequent obstacle we find when organizing workers. This is the key that was missing for many years to open that door. We were not used to dealing with government agencies very much, but now we do that on a daily basis. We have learned their strengths, their weaknesses, and it has even allowed us to make recommendations to change some practices on their end. All in all, deferred action has changed our lives, as well as workers’ lives.”

– JORGE MUJICA,
Organizer with Arise Chicago

► **Challenges, Barriers, and Areas for Improvement:**

- **Systemic barriers to access to affordable immigration legal services** has prevented eligible workers from applying, particularly in regions that are “legal deserts.”
- **Insufficient resources for worker organizing** exist in areas with widespread abuses, especially in rural communities.
- **Labor agency delays** threaten to frustrate the purpose of the new process by prolonging the time that immigrant workers face employer retaliation.
- **Underrepresented immigrant communities** have had less access to this process including Black; Indigenous; Asian, American, and Pacific Islander (AAPI); and Muslim, Arab, and South Asian (MASA) immigrant workers.

Key Recommendations:

► **For Labor Agencies:**

- Issue Statements of Interest (SOIs) within 30 days of receipt of a request.
- Create mechanisms for expediting the issuance of SOIs, especially in cases that advocates identify as urgent.
- Continue to assert enforcement interests and support prosecutorial discretion at all stages of a labor dispute, including settlement, monitoring, and compliance.

- Support prosecutorial discretion for family members of workers in appropriate cases, including parents in child labor cases.
- Increase access and improve processing of requests for T and U visa certifications for worker-survivors of labor trafficking and other labor-related crimes.
- Require Occupational Safety and Health Administration (OSHA) “state plan” administrations to consider requests and issue SOIs, and to publish guidance for workers seeking their support.

► **For DHS:**

- Clarify that the agency will not share workers’ information with Immigration and Customs Enforcement (ICE) for enforcement purposes.
- Implement renewal process in a way that is accessible to workers who have previously received deferred action and that avoids lapses in their work authorization.
- Grant parole for eligible workers abroad to reenter the United States so they can apply for deferred action and participate in the labor dispute, as well as for workers inside the United States who request parole in place.
- Expand education and community outreach efforts, especially to underserved communities, including meetings with directly impacted workers.

► **For the Biden Administration:**

- Institute quarterly in-person meetings between the federal agencies involved in deferred action, workers, and advocates, to share information and recommend best practices regarding the ongoing implementation of the guidance.
- Broaden the scope of the White House’s H-2B Worker Protection Taskforce (for temporary workers who perform nonagricultural labor) to include the implementation of labor-based deferred action.

“The second time that I came to work in the United States with an H-2A [temporary agricultural worker] visa, the work conditions were very poor, especially the housing, and food that they gave us. It was thanks to deferred action that I found the courage to speak up without the fear of losing my job or not being asked back the following year. I believe that with deferred action, more people will speak up, and employers will have to improve labor and housing conditions.”

– “M,” ANONYMOUS H-2A VISA WORKER IN NORTH CAROLINA

Centro de los Derechos del Migrante

► **For Congress:**

- Pass the Protect Our Workers from Exploitation and Retaliation (POWER) Act, a critical piece of legislation that would codify into law the deferred action process and guidance discussed in this report and ensure that our labor laws are upheld consistently.

► **For Funders:**

- Increase funding for immigration attorneys and advocates to ensure access to labor-based deferred action for all eligible immigrant workers.
- Expand funding support for worker organizing, especially in under-resourced communities including rural communities, the South, and the Midwest.
- Support community education and outreach, especially in underrepresented immigrant communities.



Resilience worker, Christian Martínez.

Photo Credit: *Courtesy of Christian Martínez*

“I was proud to be helping Louisiana recover after Hurricane Ida, but when my employer didn’t pay me and dozens of co-workers, we took action and went together to ask for our unpaid wages, but he pulled a gun on us! We called the police, and they arrested him, and we were able to pursue a claim with the NLRB.”

— CHRISTIAN MARTÍNEZ,

Resilience Worker, Member of Resilience Force in Louisiana

Introduction

For decades, immigrant workers have faced poor working conditions and unfair wages because their employers could retaliate against them based on their immigration status. Abusive employers routinely use threats of calls to ICE and police—implying possible deportation—to prevent immigrant workers from asserting their rights. These threats in turn intimidate immigrant workers into remaining silent about abuses such as wage theft, dangerous working conditions, and sexual harassment.

It should therefore come as no surprise that immigrant workers experience 300 more workplace fatalities and 61,000 more workplace injuries per year than nonimmigrant workers, and 76 percent of immigrant workers experience wage theft.¹ One national study found that undocumented workers experience minimum wage violations at nearly twice the rate of their U.S.-born counterparts in the same jobs.² The injuries and deaths of immigrant children on the job are especially troubling. In a series of articles that ran throughout 2023, *The New York Times* documented how migrant children “are working dangerous jobs in every state, in violation of labor laws,” and how easily employers manage to subvert work site inspections.³

The lack of meaningful protections against employer intimidation has not only had a chilling effect on immigrant workers coming forward to report labor violations but has also stymied labor agencies in investigating abuses and undermined safety and fairness for all workers. Yet over the years, many brave workers have come forward despite the risks in order to assert their rights and—in partnership with immigration and labor advocates—change government policy.

“We were treated in an abusive and inhumane manner. I wouldn’t wish it on anyone. To finally have deferred action, for me, it was like finally breathing. To have a status to be able to work and not be a burden, is the best feeling. I feel safer knowing that I have benefits and rights as a worker. To be able to contribute to this country. I want to thank everyone that helped me and made deferred action possible.”

– FRANKY HERNANDEZ,

Farm Worker in south Georgia, UFW Foundation



Farm workers working in the field in south Georgia.

Photo Credit: Franky Hernández

Those years of advocacy paid off in January 2023, when DHS announced process improvements intended to address employers' use of immigration enforcement as a tool to suppress worker rights: with the support of a local, state, or federal labor agency,⁴ workers could request temporary immigration protections allowing them to participate in a labor investigation or dispute without fear of retaliation. Specifically, the new streamlined guidance allows workers involved in labor disputes to request "deferred action" on deportation and obtain work authorization for a potentially renewable period of two years.⁵

This policy shift is a huge step forward in ensuring that immigrant workers can be protected from deportation while they assert basic rights on the job. The guidance is also significant because the administration has recognized that government has an affirmative role to play in righting this power imbalance between workers and employers.



Photo Credit: Getty Images

Labor leaders and immigration advocates alike agree. “In just one year since its rollout, DHS’s worker protection guidance has had tremendous impact across the service and care sectors,” says **Service Employees International Union (SEIU) Executive Vice President Rocío Sáenz**. “Immigrant workers finally felt confident to come forward and report harassment they’ve experienced on the job, while in the past, they would have kept quiet for fear of immigration-based retaliation. When every worker feels empowered and protected, all workers are stronger.”

CASE STUDY

Preventable Deaths at a Poultry Plant in Gainesville, Georgia

“I was afraid. There was no safety in my job, but there was no other option. When I was in the chicken plant, I was always stuck there, thinking how am I going to find something else—but now [with Deferred Action] I was able to find a new job.”

— ALBA VELÁSQUEZ TURCIOS,

*Former Poultry Worker at Foundation Food Group (FFG) in Gainesville, Georgia,
represented by the National Immigration Law Center*

On January 28, 2021, Gainesville, Georgia, was the site of a tragic and entirely preventable liquid nitrogen leak at a poultry plant that killed six workers. The company was aware of problems with the nitrogen system in the freezer but did not shut down production.⁶ Despite working in proximity to toxic chemicals, workers had not received any emergency training.⁷

In the wake of these horrific events in a community with a history of ICE enforcement, the Gainesville-based grassroots organization Georgia Familias Unidas (GAFU) formed a rapid response coalition, which included NILC and Sur Legal Collaborative among many others, to provide impacted workers with legal assistance, mutual aid, and other community support. Despite their fear of retaliation, workers courageously came forward to tell federal investigators about what transpired in the days leading up to the nitrogen leak and on the day of the leak itself. As a result, the U.S. Department of Labor’s (DOL’s)



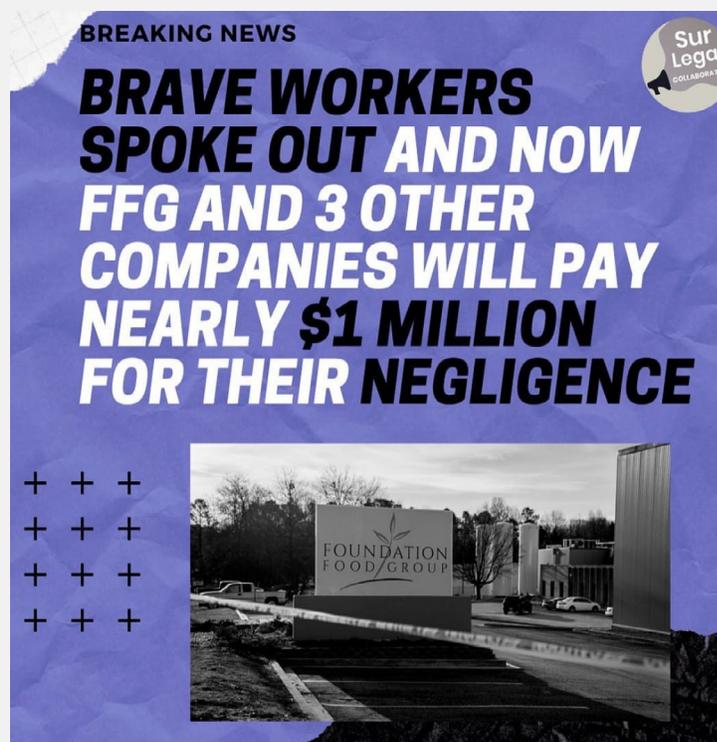
Worker’s memorial day event in Gainesville, GA in 2021, three months after the nitrogen leak, organized with Foundation Food Group workers along with GAFU, National COSH, the Atlanta Labor Council, and others.

Photo Credit: Photo Courtesy of Sur Legal Collaborative

Continued...

Occupational Safety and Health Administration (OSHA) issued 59 citations against the companies involved in the nitrogen leak and over \$1 million in fines, the maximum penalties legally permitted.⁸ Litigation between the agency and poultry company is ongoing.

The bravery of the workers, coupled with zealous advocacy of the coalition partners, led to some of the first grants of deferred action by the Biden administration well before DHS announced formal guidance. Both private attorneys and legal organizations, including Sur Legal Collaborative, NILC, Asian Americans Advancing Justice–Atlanta, and the University of Georgia School of Law’s Community Health Law Partnership Clinic (Community HeLP), stepped up to represent the poultry workers in their deferred action requests at no cost. These early cases demonstrated both the need for formal DHS guidance and the positive impact immigration protections could make in the enforcement of labor laws.



Graphic created by Sur Legal for social media in English and Spanish to educate workers and advocates about the OSHA citations that were issued as a part of their investigation into the nitrogen leak.

María del Rosario Palacios, Founder and Executive Director, Georgia Familias Unidas (GAFU), who worked closely with the 200-plus families who survived the nitrogen leak: “Our efforts in Gainesville demonstrate the power of collective action and advocacy in shaping policies that recognize the essential contributions of undocumented workers, ensuring that they are treated with the dignity and respect they deserve in an industry that feeds so much of the world.”

Part 1: A Brief History of Labor-Based Deferred Action

The new DHS guidance did not come about overnight. For over a decade, immigrant workers, with the support of workers' centers, labor unions, and legal advocates (including NILC) have consistently fought for government policies to ensure that workers could exercise their labor rights without risking immigration enforcement or deportation.

Prior to the 2023 announcement, the federal government made some progress on the issue by adopting a series of policies on “prosecutorial discretion,” which is generally defined as the government’s power to decide whether or not to seek deportation of a person who is not lawfully in the United States⁹ and protocols to separate (or “deconflict”) immigration enforcement in the worksite from the enforcement of labor and employment standards. However, despite repeated urging by advocates, DHS had not clarified the process for workers involved in a labor dispute to affirmatively request protection from deportation.

“We went to the job site where we’d worked to ask him to pay us. Someone called the police on us because they wanted to intimidate us because we are immigrants. The police arrived and told us we could not come into the neighborhood we’d been working in. It was Christmas time, and we needed to buy gifts, there are celebrations, meals, everything for Christmas and—all those hours we had worked [now without pay]...We didn’t have anything to eat, not even gasoline for the car. He left us with nothing.”

— JOEL HERNÁNDEZ AND ÁUREA GARCÍA,

Husband and Wife in the construction industry, North Carolina Justice Center

From Obama to Biden: Evolving Policies

During the Obama administration, DHS issued memoranda that sought to address the problem of worksite immigration enforcement undermining workers’ rights and the ability of labor and employment agencies to effectively enforce labor standards. However, only a handful of individual cases benefited from prosecutorial discretion based on labor disputes under President Obama.

This progress, however incremental, was put on hold during the Trump administration, when agencies were directed to step up workplace immigration enforcement while also taking actions to reduce workers’ rights.¹⁰ One notorious 2018 immigration raid at a meat-processing plant in Tennessee, which targeted over 100 Latinx workers for arrest and detention, resulted in a \$1.17 million settlement against the U.S. government and federal agents, who were accused of racial profiling and excessive force. As *The New York Times* reported in early 2023, the settlement—in a class-action lawsuit brought by NILC, the Southern Poverty Law Center and pro bono law firms—“is very likely the first class settlement over an immigration enforcement operation at a work site.”¹¹

It wasn't until the Biden administration took office that attention to the combined issues of workplace rights and employer exploitation of immigrant workers resumed in earnest. From day one, the Biden–Harris administration promised to “ensure that every worker is protected, can join a union, and can exercise their labor rights—regardless of immigration status—for the safety of all workers.”¹² As Acting Secretary of Labor Julie Su recently stated: “The Biden–Harris administration is committed to protecting all workers, including migrant workers who are particularly vulnerable to exploitation. We know that when one group of workers is allowed to remain vulnerable to abuse, their lack of power undermines all workers' rights.”¹³



Photo Credit: Getty Images

The first significant development came in October 2021, when DHS Secretary Alejandro N. Mayorkas issued a [memorandum](#) focused on ending mass worksite immigration enforcement operations (also known as worksite raids) and directing the agencies to “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.”¹⁴ In addition, the memorandum directed DHS to consider whether to exercise prosecutorial discretion for workers who are victims of, or witnesses to, workplace exploitation.¹⁵

Following the release of the 2021 memorandum, both the National Labor Relations Board and the U.S. Department of Labor issued their own policy memoranda (in [November 2021](#) and [July 2022](#), respectively) clarifying the processes by which workers who want to come forward about labor violations could seek their support for grants of prosecutorial discretion.¹⁶

Meanwhile, a broad coalition of immigrant and worker rights advocates, alongside impacted workers themselves, urged the administration to release official guidance creating an accessible process for workers in labor disputes to request immigration protections. This advocacy resulted in several “test cases”¹⁷ before the formal DHS announcement in which workers received support from the labor agency to apply for deferred action, and which ultimately informed the streamlined process set forth in the guidance.

“Deferred action has been transformational for poultry workers in Gainesville—giving them the security and the confidence to participate in criminal investigations against their employer, speak up about safety issues in their workplaces, seek new employment opportunities, seek out personal development opportunities, and to spread awareness throughout their community. Now that some workers are receiving deferred action, other workers, locally and nationwide, are learning of this opportunity to gain protection, and those that were too fearful of speaking out earlier are now beginning to come forward and share their experiences.”

— SHELLY ANAND,

Co-Founder and Executive Director of Sur Legal Collaborative

January 13, 2023: The Breakthrough Moment

All of this progress culminated in the momentous announcement by DHS Secretary Mayorkas at the AFL-CIO headquarters on January 13, 2023, of a clarified, streamlined process by which immigrant workers could request deferred action and work authorization. As Secretary Mayorkas stated that day: “We will hold [unscrupulous employers] accountable by encouraging all workers to assert their rights, report violations they have suffered or observed, and cooperate in labor standards investigations.”¹⁸



Secretary Mayorkas with labor and immigrant rights leaders at the announcement of the new Labor-Based Deferred Action process on Jan 13, 2023, at the AFLCIO headquarters in Washington, DC.

Photo Credit: Jessie Hahn

KEY FEATURES OF THE JANUARY 2023 DHS GUIDANCE

- ▶ A new streamlined process for immigrant workers to obtain deferred action and work authorization if they are involved in a labor dispute.
- ▶ To qualify, workers must receive a letter of support (often called a “Statement of Interest” or “SOI”) from a labor agency – including state and local labor agencies.
- ▶ The DHS website provides an [FAQ](#) setting out specific instructions to labor agencies and to individuals for requesting deferred action under the new process.¹⁹
- ▶ All applications are filed via a centralized office in Montclair, CA, with concurrent filing of Deferred Action and Work Authorization.

As DHS Secretary Mayorkas recognized in announcing the guidance, enforcing the rights of immigrant workers ultimately uplifts the rights of all workers and levels the playing field for law-abiding employers. To be clear, DHS views this process not as a humanitarian effort designed to benefit immigrant workers but as an interagency law enforcement initiative that emanates from the law enforcement interests of labor agencies. As such, the guidance is part of the Biden administration’s “whole of government” approach to using executive authority to promote worker organizing and collective bargaining.²⁰

The guidance and accompanying remarks were hailed by NILC and other advocates across the country as a game changer, providing a significant new level of protection for immigrants seeking to report labor violations. But such policies are rarely self-executing: as this report shows, even with specific guidance in place, much work remains to be done not only to disseminate awareness of labor-based deferred action but to ensure that all immigrant workers who come forward have adequate access to legal assistance in the process.

Why Deferred Action is Important

THE BENEFITS OF LABOR-BASED DEFERRED ACTION

- ▶ Protection from Deportation
- ▶ Work Authorization
- ▶ Social Security Number
- ▶ Access to a Driver's License
- ▶ Access to Reinstatement Remedy in Labor Case

Lawsuit Alleges Employer Retaliated Against Undocumented Worker By Triggering ICE Arrest

Updated March 01, 2019

By Shannon Dooling



Undocumented Restaurant Worker Is Arrested by ICE During Deposition Against His Employer

Listen 1 min

+ Queue



For undocumented workers, demanding better work conditions could mean deportation

Attorney tried deporting dairy worker during lawsuit; worker wins settlement



Part 2: How the New Process Works

The 2023 guidance seeks to establish a straightforward and consistent process that is accessible to workers. For instance, instead of having to file deferred action requests with different USCIS field offices around the country, workers (and their advocates) can now file at a single location in Montclair, California. Requests are decided on a case-by-case basis, and workers receive deferred action and work authorization for two years. But first, workers or their advocates must request and receive a statement of interest from a local, state, or federal labor agency.

Qualifying Labor Violations

US DEPARTMENT OF LABOR SUES MICHIGAN HEALTHCARE FACILITY OVER ALLEGED RETALIATION AGAINST WORKERS AMID WAGE INVESTIGATION

Safe Haven Assisted Living of Haslett agreed to pay \$15K in back wages, damages in January



NEWS RELEASE

Release Number: 2023-33 Date: April 26, 2023

California Labor Commissioner Reaches \$1.47 Million Wage Theft Settlement with Poultry Businesses Affecting more than 300 Workers

Nobu restaurants facing lawsuits over sexual harassment, worker overtime



Child Labor Violations on the Rise as States Look to Roll Back Laws

A wide variety of labor violations can trigger labor agency investigations that form the basis of a labor-based deferred action request:

- ▶ The [U.S. Department of Labor \(DOL\)](#) investigates wage theft (wage and hour violations), occupational safety and health violations, and child labor violations—with many state labor departments having corresponding jurisdiction over comparable state law violations.
- ▶ The [National Labor Relations Board \(NLRB\)](#) handles disputes related to employer retaliation against employees engaged in protected concerted activity, as well as union elections—similar to state agencies such as the California Agricultural Labor Relations Board.
- ▶ The [Equal Employment Opportunity Commission \(EEOC\)](#) investigates allegations of employer discrimination against employees on the basis of their race, color, religion, sex (including pregnancy, sexual harassment and assault, gender identity, and sexual orientation), national origin, disability, age (40 and older), and genetic information.

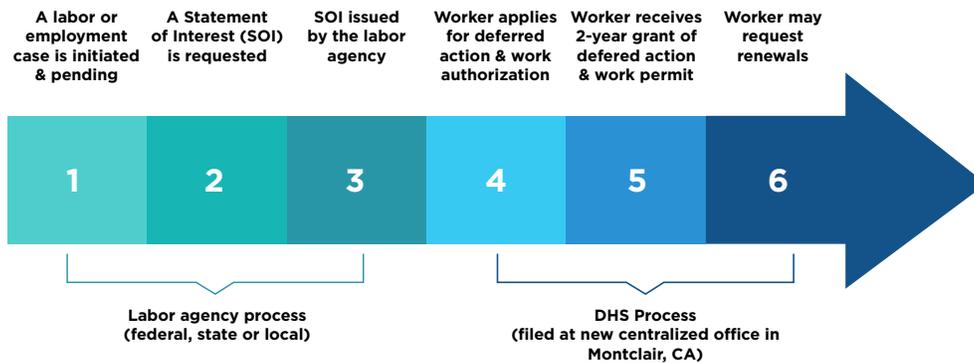
'Codes being broken every day': Dollar General safety violations alarm workers

Federal safety authority Osha has imposed millions in fines on discount retailer which is largest retail chain in US

Investigations into any one of these types of violations can serve as the basis for a deferred action request, and any agency with jurisdiction to enforce these kinds of laws (including state and local prosecutors and state and city labor departments) can issue a letter supporting grants of deferred action.

THE DEFERRED ACTION PROCESS

For Workers Involved in Labor Disputes



The new streamlined process reflects extensive policy advocacy efforts by NILC and many of its partners, as well as DHS's openness to hearing from advocates and workers to design a process that is efficient and accessible.

Once a worker or group of workers witness or experience a violation of federal, state, or local labor law or participate in a labor dispute,²¹ the process for seeking labor-based deferred action is as follows:

- 1 First**, a worker or group of workers must report the violation(s) to a federal, state, or local labor and enforcement agency (see p.13 for a list of such agencies). Ideally, workers engage with and are assisted through this part of the process in partnership with organizers or other worker rights advocates.
- 2 Second**, the workers (or their advocate) must request an SOI from the labor agency where the labor case was filed and that has the authority to enforce the labor laws at issue. The request can be on behalf of a single worker or a group of workers and describes the labor dispute and the need for protections from immigration-based employer retaliation.
- 3 Third**, the labor agency must issue an SOI describing the labor dispute under investigation, the agency's investigative or enforcement interests related to the dispute, and the basis for the labor agency's support for prosecutorial discretion for the workers at the worksite.
- 4 Fourth**, the worker must submit a request for deferred action and employment authorization to USCIS. In their request, the worker must demonstrate they meet all the eligibility requirements for labor-based deferred action, including the support of a labor agency (as demonstrated by the SOI) and proof they worked for the employer during the time period covered by the SOI. DHS considers individual applications for deferred action on a case-by-case basis.
- 5 Fifth**, DHS may exercise prosecutorial discretion in the individual's favor and issue deferred action and employment authorization for two years. Workers may then also request issuance of a social security number.
- 6 Sixth**, workers may be eligible for renewed grants of deferred action and employment authorization if the labor agency has an ongoing interest in the labor dispute that gave rise to the original SOI.



Israel Peña, member and organizer with Voces de la Frontera at May Day march.

Photo Credit: Voces de la Frontera

“When companies hire Hispanic workers, they put pressure on us to do things faster because they know that not everyone is documented. I know that we have rights at work to organize. Employers looked for a way to scare the others so that they would not organize. After I attended the May Day “Day Without an Immigrant” march, my employer fired me. With support from Voces, we organized a collective action with other workers who disagreed with the way I was fired. We requested SOIs from the NLRB and OSHA. We realized that deferred action could be a collective help for all workers, so we started organizing and reaching out to more people—at least six to eight of us have already received deferred action.”

— ISRAEL PEÑA,

Member and Organizer, Voces de la Frontera

“I worked 14 years at Affy Tapple [a candy company], but always through a temp staffing firm. Because we are temporary and undocumented, we have to do jobs that normally are done by three people, and our salaries, even if we do more, are the lowest. We don’t have a voice, we have to stay quiet, endure humiliation, inhumane workloads. It is a dangerous place to work. People get burnt, people fall, and they just put a band-aid and ... okay back to work!”

— FLOR JIMÉNEZ,

Food Production Worker, Arise Chicago



Dozens of workers from Arise Chicago who received deferred action wait to give testimony in the investigation of their employer at the City of Chicago Office of Labor Standards.

Photo Credit: Arise Chicago

Part 3: “Our Rights, Our Work, Our Home”: NILC’s Campaign to Support Labor-Based Deferred Action

NILC has worked for decades to protect and expand the rights of immigrant workers in low-paying jobs. For undocumented workers, this has meant reducing their vulnerability to substandard working conditions and exploitation on account of their immigration status. As part of this long history, in early 2023, NILC created a robust campaign to help ensure the successful implementation of the labor-based deferred action process. The overarching goals of NILC’s two-year campaign, “Our Rights, Our Work, Our Home,” are to build worker power and maximize the impact and reach of deferred action through outreach, education, technical assistance, capacity-building, administrative advocacy, and strategic communications.

“After the first couple weeks of work they stopped paying us on time. The work experience was very bad, it was stressful and because of our status and language skills they totally ignored our requests for stolen wages. My attorneys told me about deferred action and we decided to apply. The process was fast and easy. I was able to insure my car in my name and it gave me the opportunity to change jobs and earn a better salary.”

— “N,” ANONYMOUS DRIVER FOR A BAKERY,
Make the Road New York

NILC’s initial outreach and assessments confirmed two things its deferred action team already surmised: First, not all local labor and immigrant rights organizations were aware of the guidance or well-placed to implement it; second, not enough pro bono, low-cost, or legal services attorneys were available to assist with deferred action applications. Our campaign seeks to address both of these critical gaps. Over the course of 2023, NILC led over 50 trainings on the new deferred action process, most of them national in scope, providing thousands of individual workers, organizers, advocates, and attorneys from every state in the country with the information necessary to begin using labor-based deferred action in their efforts to hold employers accountable. In partnership with dozens of other organizations, NILC also published a series of educational materials breaking down the new process for advocates and organizers.²²

As the need to create additional capacity to support filing deferred action requests grew over the second half of 2023, NILC responded by creating materials and trainings specifically geared towards expanding capacity. We created toolkits and trainings focused on immigration legal clinics, launched a pro bono attorney outreach program, and supported local partners in pursuing various capacity building strategies. The campaign is ongoing through 2024.



Photo Credit: Getty Images

“Our Rights, Our Work, Our Home” Campaign Accomplishments

Publications

[Deferred Action for Workers Fact Sheet](#)

- A two-page overview of the new deferred action process for workers in labor disputes—where it came from, what it is, and why it's important

[Deferred Action Protections for Labor Enforcement: A Guide for Worker Advocates](#)

- Co-authored by the National Employment Law Project, NILC, Arriba Las Vegas, and Jobs with Justice

[Community-facing Multilingual Overview on New Deferred Action Process](#)

- Available in [Arabic](#), [Chinese](#), [English](#), [Hindi](#), [Hmong](#), [Kreyol](#), [Korean](#), [Mixtec](#), [Portuguese](#), [Spanish](#), [Tagalog](#), and [Vietnamese](#)
- Co-authored by NILC and National Immigration Project of the National Lawyers Guild, with support for translations from Fwd.us and the Ready to Stay Coalition

[Labor-Based Deferred Action Practice Manual \(for immigration practitioners\)](#)

- Co-authored by NILC, National Immigration Project, Unemployed Workers United, and Tulane Immigration Clinic

[Toolkit: Immigration Legal Clinics for Workers Seeking Deferred Action](#)

- Co-authored by Justice at Work, Centro Comunitario de Trabajadores – New Bedford, Justice Center of Southeast Massachusetts, and NILC

Training and Technical Assistance

▶ **Trainings**

- NILC has provided over 50 trainings in collaboration with partners, both virtually and in-person, reaching over 4,000 advocates.
- Training topics have ranged from “101” on the new policy, labor-based deferred action trainings tailored to both worker advocates

and immigration practitioners, and trainings on strategies for building capacity for immigration representation, including legal clinics.

- Trainings have been conducted in partnership with national organizations such as ILRC, AILA, ASISTA, National COSH, as well as in specific geographic regions such as California, Illinois, Kansas, Michigan, Missouri, New Mexico, New York, Oklahoma, Pennsylvania, Texas, and Wisconsin.

▶ **Technical Assistance**

- NILC has provided technical assistance to over 250 advocates assisting workers with the new process.
- Technical assistance has included issues arising in both the labor and immigration agencies' parts of the process.
- NILC's technical assistance has reached over 100 organizations in more than 20 states.

Administrative Advocacy

- ▶ NILC advocated zealously with DHS officials to officially announce the policy and to create a streamlined and accessible process.
- ▶ NILC advocated for and participates in quarterly stakeholder meetings with DHS.
- ▶ NILC served as a resource to state and local labor agencies that are still navigating the new policy.

Other Projects and Resources

- ▶ [Podcast for Immigration Practitioners on Coordinating with Worker Rights Advocates](#)
 - Part of the JusticiaLab/Immigration Advocates Network podcast series, partners from SEIU 32BJ, Arise Chicago, and Jobs With Justice.
- ▶ [Capacity Building Models and Strategies for workers seeking deferred action](#)
 - Charts created by NILC and Ready to Stay Coalition with support from CLINIC.

CASE STUDY

In Minnesota, a Landmark Win for Construction Workers

“Construction workers face a lot of abuse and exploitation, especially immigrants. They need a path forward that allows them to stand up for their rights, have protection against retaliation and earn a living. The deferred action program is doing that. We’ve been able to use it to empower workers to get together and organize against exploitation.”

— BURT JOHNSON,

General Counsel, North Central States Regional Council of Carpenters

In 2019, Minnesota passed one of the toughest wage theft laws in the country.²³ But that didn't stop construction contractors from continuing to bilk workers out of wages, including on a high-profile luxury apartment project for the Wilf family, owners of the Minnesota Vikings.

Organizers with the North Central States Regional Council of Carpenters (NCSRCC) and the workers' center Centro de Trabajadores Unidos en la Lucha (CTUL) responded with a public campaign, calling out the Wilf family for using subcontractors with records of exploiting and harassing Black and Latinx workers, while at the same time pledging millions to causes like #BlackLivesMatter.²⁴

With the help of NCSRCC and CTUL, the workers brought their complaints to state officials. In the process, they learned about the availability of deferred action for immigrant workers. “The regional office of the NLRB issued a statement of interest letter, and it has made a huge difference in our ability to make those workers comfortable to organize with the union to make things better,” said **Jorge Durán, NCSRCC's business representative**.

The workers' complaints led Attorney General Keith Ellison to file a lawsuit against one contractor for obstructing a state labor investigation into wage theft and other abuses.²⁵ The settlement of that lawsuit in October 2023 cleared the way for the state's Department of Labor and Industry (DLI) to file a lawsuit in December, seeking \$2.4M in unpaid wages and damages on behalf of workers at 19 construction projects, including the Wilf's development.²⁶

In bringing the lawsuit, **DLI Commissioner Nicole Blissenbach** stated: “Wage theft hurts workers and their families and hurts responsible employers that abide by the law.”²⁷ The lawsuit is ongoing.

NILC's Pilot Project to Secure Immigration Counsel for Eligible Workers

NILC's Deferred Action Pilot Project had two concurrent goals: first and foremost, to address an urgent and unfilled need for immigration counsel in the early days of the implementation of the new procedures, and second, to garner insights as to how the new deferred action process was playing out around the country.

The project got underway in April 2023 with the goal of securing counsel for up to 100 workers nationwide by June 30, 2024. It began as a partnership with 12 organizations that met three criteria: 1) a worker rights organization had already obtained a statement of interest from a labor agency, 2) workers covered by the SOI were ready and willing to file for deferred action with USCIS, and 3) the organization that obtained the SOI could not represent the workers in their deferred action cases, and there were no other immigration attorneys the workers could afford to pay available to represent them. NILC provided funding to support private counsel for a limited number of workers referred by each partnering organization. The Pilot Project ultimately secured representation for 92 workers across 10 states.²⁸

“The processes with the Department of Labor and the National Labor Relations Board were quick and straightforward. Securing attorneys to pursue deferred action has been the biggest barrier, but thankfully NILC engaged in some quick and creative advocacy to secure funds and top-notch immigration lawyers to take on the cases.”

— KERRY O'BRIEN,
Of Counsel with Resilience Force

Although only a small subset of workers nationally, the pilot project cases are nonetheless instructive in identifying potential trends and patterns across the nation among immigrant workers seeking labor-based deferred action. These include that a majority of immigrant workers seeking deferred action to date are Latinx, about half of whom are women, and that a wide range of labor violations are occurring across industries, including wage theft, sexual harassment, race and national origin discrimination, occupational health and safety violations, and child labor violations in major industries such as meat and seafood processing, food production, construction, landscaping, agriculture, and the service industry.



Image Credit: Elaine Garcia

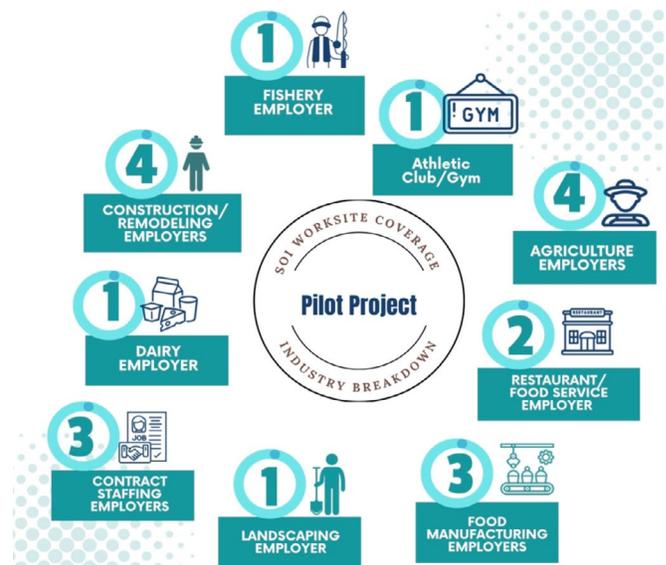


Image Credit: Elaine Garcia

NILC Pilot Project Partners

- ▶ ARISE Chicago (Illinois)
- ▶ Centro de los Derechos del Migrante (national organization; workers in Florida, Georgia, Tennessee, and Utah)
- ▶ Columbia Legal Services (Washington)
- ▶ Justice at Work (Massachusetts)
- ▶ Justice at Work (Pennsylvania)
- ▶ Michigan Immigrant Rights Center (Michigan)
- ▶ North Carolina Justice Center (North Carolina)
- ▶ Resilience Force (national organization, workers in Florida and Louisiana)
- ▶ Sur Legal Collaborative (Georgia)
- ▶ UFW Foundation (Georgia)
- ▶ Voces de la Frontera (Wisconsin)
- ▶ Workers' Defense Project (Texas)



Chicago Workers Collaborative employment law attorney Jacqueline Villanueva taking part in a presentation on deferred action to a group of workers in Elgin, Illinois. Following the presentation, CWC assisted about 60 workers with starting the application process for deferred action.

Photo Credit: Tim Bell

“Being in a position where I can educate, elevate and therefore empower others makes this work so much more fulfilling. It’s not what you can accomplish for the individual, it’s the results we are achieving overall for all workers in these companies where they have for so long taken advantage of a particular group of people because of the power they held over them.”

— JACQUELINE H. VILLANEUVA,
*Bilingual Labor and Employment Staff Attorney,
Chicago Workers' Collaborative*

Part 4: Deferred Action’s Impact: Successes and Challenges

The implementation of the new deferred action guidance has already resulted in the empowerment of immigrant workers coming forward to assert their workplace rights, which has, in turn, resulted in exploitative employers successfully being held accountable for labor violations. Other elements that aided this process include the cooperation and commitment of DHS and labor agencies at the federal, state, and local levels, as well as the tireless work of both labor and immigrant organizers and advocates who have supported workers in seeking this critical protection (as exemplified in the case studies highlighted throughout this report). Following a discussion of the successes of the new guidance over this first year, we present our recommendations to address the issues identified here as well as to ensure the ongoing successful implementation of the guidance as a whole.

CASE STUDY:

Retaliation for Worker Organizing in the Seafood Processing Industry

“At Centro Comunitario de Trabajadores (CCT) I learned about my rights. We got involved in the campaign and when we learned through CCT and Justice at Work that we could apply for work permits it gave me the desire to get involved and help other workers. That is when I became a leader in the Pescando Justicia committee, so that these injustices and retaliation don’t happen again to other workers.”

— MIGUEL CASTRO,

Seafood Processor in New Bedford, Massachusetts, Justice at Work

Eastern Fisheries is one of the largest seafood processing facilities in the New Bedford, Massachusetts area. It has employed hundreds of immigrant workers in low-paying jobs. CCT, a New Bedford-based worker center, and Justice at Work, a Boston-based legal nonprofit that supports organizing of workers in low-paying jobs, has spent years supporting Eastern Fisheries employees to challenge unfair labor practices, including building a comité (committee) led by workers themselves. After a retaliatory firing of an employee who was leading the fight for better working conditions, Justice at Work filed a charge with the NLRB against Eastern



Seafood processing workers with Adrian Ventura, Executive Director of Centro Comunitario de Trabajadores.

Photo Credit: Justice at Work (Massachusetts)

Fisheries and the staffing agency that provided most of Eastern Fisheries' workers, BJ's Temp Service. During the course of the NLRB process, Justice at Work requested a statement of interest to allow unauthorized workers to participate in and benefit from the NLRB case without fear of retaliation based on their work authorization status. Since then, Eastern Fisheries has allegedly continued its retaliation against workers, terminating the contract with BJ's through which over 100 workers were employed.²⁹

In response to Justice at Work's request, the NLRB issued a statement of interest supporting deferred action, and numerous workers expressed interest in applying. However, workers could not afford private immigration attorneys, and there were not enough immigration legal nonprofits to provide free direct representation services to all the eligible workers. So, a partnership was formed between CCT, Justice at Work, and the Justice Center of Southeast Massachusetts' immigration unit to support Eastern Fisheries workers by providing limited legal services and preparing deferred action applications for workers to submit themselves pro se to DHS. Many of those workers have already received approvals of their deferred action requests and work authorization.

Deferred Action Implementation Successes

- ▶ **Worker Empowerment and Organizing to Support Labor Enforcement.** The new process has already proved to be an effective tool to ensure workers feel protected and empowered to come forward and assist labor agencies in enforcing labor laws. More workers have been willing to provide statements to labor agencies regarding their employers, to testify in hearings regarding the violations at their worksites, to support union drives, and to recruit additional co-workers to join them in these efforts. Worker organizing has proven critical in educating and supporting workers both in denouncing labor violations and in navigating the deferred action process.
- ▶ **A Streamlined Process.** The improvements within the streamlined process announced by DHS in January 2023, including the creation of a centralized office with dedicated staff to adjudicate labor-based deferred action cases, has expanded its accessibility, accelerated processing times, and yielded more consistent outcomes. The new guidelines provide for concurrent filing of requests for deferred action and work authorization, clarify the required supporting documents, and make clear that DHS will accept SOIs from state and local—not just federal—labor agencies. In addition, in October 2023, DHS announced that guestworkers on H-2 visas would be allowed to remain in the U.S. to pursue their labor disputes without incurring adverse immigration consequences.³⁰
- ▶ **Robust Labor Agency Participation.** Broad labor agency support at the federal, state, and local levels has been another factor contributing to the effective implementation of labor-based deferred action. All three federal labor agencies—DOL, EEOC, and NLRB—have published guidance on their respective websites on how to request a statement of interest.³¹ Many state and local labor agencies, as well as state attorneys general, have followed suit, including [California](#), [Illinois](#), [Massachusetts](#), [Minnesota](#), [New Jersey](#), [New York](#), and [Philadelphia](#).³² Other labor law enforcement agencies have begun to issue SOIs to address current violations under investigation, even before publicly announcing formal guidelines for requesting SOIs.

“As labor leaders, we witness construction employers exploiting workers’ immigration status to suppress their rights, jeopardizing their pay and union participation. The implementation of deferred action by DHS is a welcome step, empowering us to engage with workers, ensuring they know they can unite with the union and resist such oppressive practices.”

— ANTHONY ABRANTES,

Assistant Executive Secretary Treasurer, Eastern Atlantic States Regional Council of Carpenters

Deferred Action Implementation Challenges

- ▶ **Systemic Lack of Access to Immigration Legal Counsel.** One of the greatest barriers to obtaining deferred action is the lack of access to affordable immigration legal services to assist eligible workers in filing their applications with USCIS. For this reason, hundreds, if not thousands, of workers who are covered by an SOI and eligible for labor-based deferred action, have not been able to apply for the protection. Several factors contribute to this challenge, including that: most workers’ rights organizations do not have in-house immigration services; many nonprofits that offer immigration services are already at capacity; many workers in low-paying jobs cannot afford private immigration attorneys; and some cases involving large numbers of

immigrant workers occur in rural and/or under-resourced communities that are “legal deserts” in terms of immigration services. While worker and immigrant rights advocates have sought innovative solutions such as organizing pro se legal clinics with volunteer attorneys to serve large groups of workers, efforts to build capacity among workers’ rights organizations through additional funding of legal and support services are essential to ensure the guidance serves its intended purpose of encouraging workers to come forward to report and participate in labor disputes.

- ▶ **Inadequate Support for Worker Organizing.** Immigrant workers are often isolated and unaware of their rights in the workplace or how to enforce them. Those who do stand up or complain often face retaliation, further exploitation, and potential deportation—which is the very problem this guidance was intended to address. Without the support provided by worker rights organizations and organizers, immigrant workers may never become aware of how to file a complaint with a labor enforcement agency; even if they are aware, they may fear retaliation for doing so, or lack familiarity with the protections against retaliation. Worker rights organizations, especially nonprofit workers’ centers, provide critical information, support, and resources to empower workers. Unfortunately, workers in many areas of the country, including some where workplaces abuses are endemic and well-known, do not have adequate or any access to workers’ centers. Expanded support for worker organizing, especially in the Deep South and Midwest, is essential.

“What I want other workers to know is don't lose hope or get discouraged. Now I feel safer speaking up about unsafe working conditions I experience. I have become an active leader at CWC and have even gone to Springfield to fight for new rights.”

— BRISA CHÁVEZ,

Worker at Hearthside Food Solutions and Ferrara Candy Company, Chicago Workers' Collaborative



Brisa Chavez at a protest organized by Chicago Warehouse Workers for Justice.

Photo Credit: Chicago Workers' Collaborative

- ▶ **Delays in Issuance of Statements of Interest.** Some labor agencies, including DOL and EEOC, have acknowledged delays of several months in issuing SOIs. These delays threaten to frustrate the purpose of the new process by prolonging the time that employers can retaliate against immigrant workers, thereby impeding the workers’ participation in labor investigations already underway and leaving them in a prolonged uncertain state while they await the labor agency’s determination. Given that once the workers receive an SOI, they must separately seek immigration counsel and then file with USCIS and await adjudication before receiving deferred action and work authorization, these delays significantly extend the timeline for a worker to obtain immigration protections. While the DOL has recently adjusted its internal procedures for processing SOI requests in order to issue them more quickly, it is still critical that labor agencies be able to turn around these requests in a timely manner to combat the chilling effect that immigration-related retaliation has in worksites with undocumented workers.

- ▶ **Expanding Education and Outreach to Under-Represented Communities.** Although NILC and its local and national partners have made it a priority to raise awareness about labor-based deferred action, many advocates and workers remain unaware of this important protection. In particular, very few Black, Indigenous, AAPI, and Muslim and Arab immigrant workers have requested labor-based deferred action. Another vulnerable community that stands to benefit from labor-based deferred action are immigrant child laborers, who have been afraid to come forward to seek protection—even in cases where SOIs have been issued—not only out of fear of employer retaliation but also due to the risk that their family members could face criminal charges or be placed in removal proceedings.³³

“I have always wanted to come out of the shadows because I've always felt excluded from American society—despite paying taxes, living here, and working here. I want to be a part of this country. When I heard about this opportunity, it gave me the strength to apply and feel a part of this country. It was difficult to make the decision to apply. The process was a very serious process, but I am glad I did it.”

— ADOLFO,
Janitor in California, Bet Tzedek

Part 5: Recommendations

As the new labor-based deferred action process moves into its second year, we offer concrete steps government agencies can take to ensure that they deliver robust protections for immigrant workers and strengthen labor agencies' enforcement interests. We also provide recommendations for actions the Biden administration, Congress, and funders can take in the coming year.

For labor agencies:

- ▶ Endeavor to issue SOIs within 30 days of receipt of a request. In cases where more time is needed for the agency to decide whether to issue the SOI, it should communicate clearly with the workers and their advocates about the status of the request and an estimate for when a decision is expected.
- ▶ Create mechanisms for expediting the issuance of SOIs in cases that advocates identify as particularly urgent, such as when an employer is actively retaliating against organizing efforts or whistleblowers, or a worker is facing imminent removal from the U.S.
- ▶ Assert their enforcement interests, and issue SOIs, for the full range of cases that implicate the agencies' jurisdiction and enforcement mandates, such as cases involving parallel private litigation in court and cases where the terms of a settlement have not yet been fully executed. Labor agencies should continue to assert enforcement interests in supporting prosecutorial discretion for all employees who are potential witnesses to, or victims of, labor exploitation, including beyond the two-year period contemplated in initial SOIs.

- ▶ Support deferred action for family members of impacted workers—particularly when such protections are critical to workers feeling safe enough to report abuse or participate in investigations, such as cases where the workers are minor children relying on the support of family members to navigate labor agency processes.
- ▶ Increase access and improve processing of requests for T and U visa certifications for worker-survivors of labor trafficking and other labor-related crimes.
- ▶ While all federal and many state agencies already have policies for certifying T and U visa requests, labor agencies should endeavor to increase transparency and reduce processing delays. In addition, when deferred action would provide temporary protection to survivors of criminal activity before they can obtain U or T visas, labor agencies should ensure that SOIs remain available to those workers—even if the case has been referred to another agency with criminal law enforcement jurisdiction.
- ▶ Federal OSHA should require "state plan" OSHA administrations to consider requests and issue statements of interest, and to publish guidance for workers seeking their support for prosecutorial discretion and labor-based deferred action. Federal OSHA should provide training and technical assistance to state plan OSHA administrations regarding prosecutorial discretion and effective drafting of statements of interest.

For DHS:

- ▶ Publicly clarify that worker information provided in deferred action requests will not be shared with ICE for enforcement purposes and internally train staff accordingly. Ensuring confidentiality of these requests will encourage workers to avail themselves of this protection, which will in turn increase worker participation in labor disputes.
- ▶ Grant renewals expansively to workers who have previously received deferred action and ensure efficient processing to avoid any lapses in workers' employment authorization.
- ▶ Exercise its parole authority to further support workers for which parole is a stronger immigration remedy. Specifically, workers cannot apply for deferred action from outside the United States, which often excludes temporary guestworkers who have returned home from accessing this process. DHS should grant parole for workers abroad to reenter the U.S. so they can apply for deferred action and participate in labor disputes. Further, "parole in place" is another immigration remedy specifically referenced in the January 13, 2023, guidance, which allows individuals to be lawfully "paroled" into the U.S. without departing and receive work authorization. DHS should endeavor to make these and other forms of parole available to maximize worker protection and participation in labor disputes.
- ▶ Expand education and community outreach efforts, including translations of web content into more languages, so that all eligible workers in all industries can access deferred action. Outreach should include meeting virtually and in-person not only with advocates on the ground, but with directly impacted workers.
- ▶ Approve deferred action for family members of eligible workers in appropriate cases where the labor agency has indicated the need for such support to facilitate workers coming forward to report abuse or participate in an investigation.

For the Biden Administration:

- ▶ Institute quarterly in-person meetings between workers, advocates, and the federal agencies (DHS, DOL, NLRB, and EEOC) involved in this process, to share information and insights regarding the ongoing implementation of labor-based deferred action.
- ▶ Broaden the scope of the White House's H-2B Worker Protection Taskforce to include the implementation of labor-based deferred action.

“As someone who was there with the workers every step of the way, it was extremely challenging to help H-2A visa holders through the deferred action process, given that the laws and the design of the H-2A program were not exactly in the workers’ favor. Understanding that they could be sent back to Mexico for speaking out, being mistreated or worse, was a tough reality, especially considering that the deferred action process was taking too long to be implemented. Now that it’s fully up and running, I feel positive about the benefits that deferred action will bring to our H-2A farmworker community.”

— ALMA SALAZAR YOUNG,

Systemic Change Organizing Coordinator - Georgia, UFW Foundation

For Congress:

- ▶ Pass the POWER Act. The Protect Our Workers from Exploitation and Retaliation (POWER) Act³⁴ is essentially a legislative version of the deferred action process discussed throughout this report. Introduced by Rep. Judy Chu (D-CA) and Rep. Robert C. “Bobby” Scott (D-VA), the POWER Act would help workers exercise their rights to organize for safe working conditions and fair wages without fear of retaliation. Key provisions of the bill include expanding eligibility for U visas for workers who are involved in a workplace claim and who fear or have been threatened with force, physical restraint, serious harm, or other abuses. The POWER Act would also allow stays of removal and employment authorization for workers who have filed or are material witnesses in a workplace claim.

“Before DHS’s announcement, employers knew immigrant workers may be too afraid to report labor abuses to the appropriate authorities or provide relevant evidence or testimony to labor agencies on ongoing investigations. The POWER Act would build on and codify DHS’s new policy so that we can permanently put an end to threats to immigrant workers and improve workplace conditions for all Americans.”

— REP. JUDY CHU,

28th District of California, in a March 28, 2023, press statement³⁵

For Funders:

- ▶ Fund immigration legal assistance, the lack of which threatens to undermine this victory and the significant opportunities for redressing workplace exploitation and building worker power that the new guidance presents. Thousands of workers around the country are currently covered by SOIs and presumptively eligible for this protection but have been unable to file deferred action requests with DHS due to the difficulties locating immigration counsel. Local worker rights organizations urgently need significant new funding support to hire immigration attorneys, paralegals, and organizers to expand their capacity to take advantage of the opportunities presented by labor-based deferred action.
- ▶ Support worker organizing efforts by funding worker centers and other groups building power among immigrant workers will help realize the full promise of these protections. Funders should direct resources into building both organizing and legal representation capacity in rural and other under-served regions where resources for immigrant workers have historically been scarce, such as the South and the Midwest.
- ▶ Fund outreach, education, and legal support to underrepresented immigrant communities such as Black, AAPI, and MASA communities so that they can access this process. This includes funding multilingual resources and grassroots groups working directly with these immigrant populations.

"It's really exciting to be able to offer this concrete benefit. There are so many people who are eligible who have no idea that they are eligible. There has to be a better way to make that known."

— CAROL BROOKE,

Senior Attorney, North Carolina Justice Center

Part 6: Conclusion and Acknowledgements

Conclusion

All of us, regardless of immigration status, deserve to work in a safe environment, earn a living wage, and to be able to speak up about workplace abuse without fear of retaliation. The groundbreaking new guidance discussed in this report can have a positive impact for all workers across the country facing unfair or unsafe labor practices— even more so if it is codified into law through the POWER Act.

We hope that this report will not only help spur passage of the POWER Act but will also encourage DHS; federal, state, and local labor agencies; and the Biden administration to take up as many of our recommendations as possible and inspire more funders to help advocates connect immigrant workers to deferred action. Most of all, we hope that that our report will help as many immigrant workers as possible benefit from these new protections and leverage them to build the power of all workers.

Acknowledgments

NILC thanks the following local and national organizations for their partnership and dedication to supporting immigrant workers and for their generosity in contributing to this report:

1. [Arise Chicago](#) partners with workers and faith communities to fight workplace injustice through education and organizing and advocating for public policy changes website.
2. [Bet Tzedek](#) is a Los Angeles-based legal service provider that provides justice, stability, and hope to those experiencing discrimination, disparities, and exploitation.
3. [Centro Comunitario de Trabajadores](#) strives to enhance the immigrant working experience through community building and organizing.
4. [Centro de los Derechos del Migrante](#) supports migrant workers to defend and protect their rights, build worker power, remove barriers to justice and advocate for fair labor migration policies.
5. [Chicago Workers' Collaborative](#) is an Illinois-based worker center whose mission is to promote the creation of stable, living wage jobs with racial and gender equity through leadership development, advocacy, direct action and community resources.
6. [Columbia Legal Services](#) advocates for laws that advance social, economic and racial equity using policy advocacy and litigation.
7. [Georgia Familias Unidas](#) is a mutual aid support network that supports poultry workers in Georgia.
8. [Justice at Work](#) (Massachusetts) is a multilingual legal nonprofit founded solely to support organizations of workers in low-paying jobs.
9. [Justice at Work](#) (Pennsylvania), formerly known as Friends of Farmworkers, has a long history of providing free legal assistance for low-wage and immigrant workers in Pennsylvania.
10. [Justice Center of Southeast Massachusetts](#) is a subsidiary of South Coastal Counties Legal Services, Inc., a private, non-profit law firm which provides free legal help in priority civil matters to low-income residents in Southeast Massachusetts.
11. [Make the Road New York](#) is a nonprofit community-based membership organization with over 25,000 low-income members dedicated to building the power of immigrant and working-class communities to achieve dignity and justice through organizing, policy innovation, transformative education, and survival services.
12. [Michigan Immigrant Rights Center](#) is a legal resource center for Michigan's immigrant communities.
13. [The North Carolina Justice Center](#) works to eliminate poverty in North Carolina by ensuring that every household in the state has access to the resources, services, and fair treatment it needs to achieve economic security.
14. [Resilience Force](#) is a voice for the emerging workforce that helps us come home after climate disasters: the Resilience Workforce.
15. [Service Employees International Union](#) representing 2 million service and care workers.

16. [Sur Legal Collaborative](#) is an immigrant and worker rights nonprofit organization based in Atlanta, Georgia, that seeks to democratize legal knowledge and provide legal support to movements fighting for economic, racial, and social justice in the South.
17. [UFW Foundation](#) For 15 years, the UFW Foundation has mobilized farm workers and their organizations across the country to advocate for more equitable policies, such as immigration reform, pesticide protections, heat standards, hazard pay, and other worker protections.
18. [The United Brotherhood of Carpenters and Joiners](#) is one of the largest skilled trades unions in North America, representing a half million of the safest, most productive workers in the industry.
19. [Voces de La Frontera](#) is a membership-based community organization led by low-wage workers, immigrants, and youth whose mission is to protect and expand civil rights and workers' rights through leadership development, community organizing, and empowerment.
20. [Workers' Defense Project](#) is a community organization that builds power for low-wage, immigrant workers in the Texas construction industry.

Endnotes

1. Josselyn Andrea Garcia Quijano, "Workplace Discrimination and Undocumented First-Generation Latinx Immigrants," The University of Chicago Crown Family School of Social Work, Policy, and Practice, *Advocates Forum* (2020), <https://crownschool.uchicago.edu/student-life/advocates-forum/workplace-discrimination-and-undocumented-first-generation-latinx> (last visited Jan 1, 2024).
2. Annette Bernhardt et al., "Broken Laws, Unprotected Workers: Violations of Labor and Employment Laws in America's Cities," Center for Urban Economic Development, National Employment Law Project, and UCLA Institute for Research on Labor and Employment (2015), <https://s27147.pcdn.co/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf> (last visited Jan. 1, 2024).
3. Hannah Dreier, "Alone and Exploited, Migrant Children Work Brutal Jobs Across the U.S.," *New York Times* (Feb. 25, 2023), https://www.nytimes.com/2023/02/25/us/unaccompanied-migrant-child-workers-exploitation.html?action=click&pgtype=Article&state=default&module=style/n-migrant-child-labor&variant=show®ion=MAIN_CONTENT_1&block=storyline_top_links_recirc (last visited Jan. 1, 2024).
4. Throughout this report, we use the term "labor agency" to refer to federal, state, and local governmental agencies with authority to enforce labor and employment laws, including the U.S. Department of Labor, the National Labor Relations Board, the Equal Employment Opportunity Commission, and state and city equivalents.
5. U.S. Department of Homeland Security, "DHS Announces Process Enhancements for Supporting Labor Enforcement Investigations" (Jan. 13, 2023), <https://www.dhs.gov/news/2023/01/13/dhs-announces-process-enhancements-supporting-labor-enforcement-investigations> (last visited Jan. 1, 2024).
6. U.S. Chemical Safety and Hazard Investigation Board, "Fatal Liquid Nitrogen Release at Foundation Food Group, Investigation Report" (Dec. 2023), at 7–8, 23–24, https://www.csb.gov/assets/1/6/fg_investigation_report_publication_copy.pdf (last visited Jan. 3, 2024).
7. *Ibid.*
8. U.S. Department of Labor, OSHA, "US Department of Labor cites Foundation Food Group Inc., three other companies after Jan. 28 investigation finds six deaths were preventable," Press release (July 23, 2021), <https://www.osha.gov/news/newsreleases/national/07232021> (last visited Jan. 3, 2024).
9. U.S. Immigration and Customs Enforcement, "Doyle Memorandum: Frequently Asked Questions and Additional Instructions" (Dec. 21, 2023), <https://www.ice.gov/about-ice/opla/prosecutorial-discretion> (last visited Jan. 3, 2024).

10. Josh Bivens et al., "Ten Actions That Hurt Workers During Trump's First Year," Economic Policy Institute (Jan. 12, 2018), <https://www.epi.org/publication/ten-actions-that-hurt-workers-during-trumps-first-year/> (last visited Jan. 1, 2024).
11. Miriam Jordan, "In Rare Victory, Immigrants Prevail in Suit Over Meat Plant Raid," *New York Times* (Feb. 23, 2023), <https://www.nytimes.com/2023/02/27/us/meat-plant-raid-immigrants-tennessee.html> (last visited Jan. 1, 2024).
12. Biden for President, "The Biden Plan for Securing Our Values As a Nation of Immigrants" (Oct. 20, 2023), <https://web.archive.org/web/20201023233634/https://joebiden.com/immigration/> (last visited Jan. 1, 2024).
13. The White House, "Biden-Harris Administration Releases Report of the H2B Worker Protection Taskforce" (Oct. 19, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/19/biden-harris-administration-releases-report-of-the-h-2b-worker-protection-taskforce/> (last visited Jan. 1, 2024).
14. For a more detailed discussion of this memo, see National Immigration Law Center, "Department of Homeland Security's Worksite Enforcement Memorandum: What You Need to Know" (Nov. 3, 2021), <https://www.nilc.org/wp-content/uploads/2021/11/Website-Summary-of-Oct-2021-DHS-Worksite-Enforcement-Memo-2021-11-03.pdf>.
15. *Ibid.* at 3.
16. For a timeline of key memos and interagency agreements between DHS and labor agencies from 2011 to 2022 that have incrementally recognized the conflict between immigration and labor enforcement, see NILC, Tulane University Immigrant Rights Clinic, Unemployed Workers United, and National Immigration Project of the National Lawyers Guild, Appendix I, "Practice Manual: Labor-Based Deferred Action," March 24, 2023, https://www.nilc.org/wp-content/uploads/2023/03/2023_24March-labor-deferred-action-advisory.pdf.
17. In addition to the Gainesville, GA case discussed on p. 7-8, workers and advocates in Chicago, Las Vegas, and Louisiana helped shape this process. See, respectively, David Roeder, "El Milagro in Chicago threatened Workers for Speaking Out: NLRB" *Chicago Sun-Times*, Mar. 29, 2023, <https://chicago.suntimes.com/business/2023/3/29/23662248/el-milagro-chicago-threatened-workers-nlrb> (last visited January 2, 2024); Janelle Calderon, "Immigrant Painters Who Say Employer Threatened Deportation Get Wage Theft Settlement," *The Nevada Independent*, Jan. 17, 2023, <https://thenevadaindependent.com/article/immigrant-painters-who-say-employer-threatened-deportation-get-wage-theft-settlement> (last visited Jan. 2, 2024); James Finn, "How Crawfish Workers in Louisiana's Cajun Country Helped Reshape the U.S. Immigration System," *NOLA.com*, Sept. 5, 2023, https://www.nola.com/news/business/louisiana-crawfish-workers-reshaped-us-immigration-rules/article_6a6e59a0-d18a-11ed-b7a2-eb5ee6e1f79e.html (last visited Jan. 2, 2024).
18. U.S. Department of Homeland Security, "DHS Announces Process Enhancements for Supporting Labor Enforcement Investigations" (Jan. 13, 2023), <https://www.dhs.gov/news/2023/01/13/dhs-announces-process-enhancements-supporting-labor-enforcement-investigations> (last visited Jan. 1, 2024).
19. U.S. Citizenship and Immigration Services, "DHS Support of the Enforcement of Labor and Employment Laws" (originally published Jan. 13, 2023), <https://www.uscis.gov/working-in-the-united-states/information-for-employers-and-employees/dhs-support-of-the-enforcement-of-labor-and-employment-laws> (last visited Jan. 4, 2024).
20. The White House, "White House Task Force On Worker Organizing and Empowerment: Report to the President" (Feb. 2022), <https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/2022/02/OSEC20220195.pdf> (last visited Jan. 1, 2024).
21. Many different workplace hazards and conditions constitute violations, including denying workers' wages, exposing workers to unsafe conditions, sexually harassing or abusing workers, and interfering with workers' rights to organize.
22. See NILC Resource Page, "Deferred Action for Workers in Labor Disputes," <https://www.nilc.org/issues/workersrights/deferred-action/>.
23. Minnesota Department of Labor and Industry, "Wage Theft Law" (May 2019), <https://www.dli.mn.gov/business/employment-practices/wage-theft-law> (last visited Jan. 1, 2024).
24. North Central States Regional Council of Carpenters, "Carpenters, Community Groups Demand Accountability" (Sept. 10, 2020), <https://northcountrycarpenter.org/news/carpenters-community-groups-demand-accountability> (last visited Jan. 1, 2024).
25. Max Nesterak, "Minnesota AG Reaches Settlement with Contractor Over Obstructing Investigation of Labor Abuse," *Minnesota Reformer* (Oct. 5, 2023), <https://minnesotareformer.com/2023/10/05/minnesota-ag-reaches-settlement-with-contractor-over-obstructing-investigation-of-labor-abuses/> (last visited Jan. 1, 2024).

26. Max Nesterak, "Minnesota Regulators Seek \$2.4 Million for Construction Workers in Historic Wage Theft Case," *Minnesota Reformer* (Dec. 19, 2023), <https://minnesotareformer.com/2023/12/19/minnesota-regulators-seek-2-4-million-for-construction-workers-in-historic-wage-theft-case/> (last visited Jan. 1, 2024).
27. Minnesota Department of Labor and Industry, "DLI Seeks \$2.4 Million in Back Wages and Liquidated Damages in Enforcement Action Against Construction Subcontractors" (Dec. 19, 2023), <https://www.dli.mn.gov/news/dli-seeks-24-million-back-wages-and-liquidated-damages-enforcement-action-against-construction> (last visited Jan. 1, 2024).
28. Immigration counsel could not be located for every worker referred by partnering organizations, and some workers decided not to move forward with their cases after a screening interview with an immigration attorney.
29. Ben Berke, "New Bedford Seafood Plan Follows Through on Mass Termination of Immigrant Workers," *The Public's Radio* (April 3, 2023), <https://thepublicsradio.org/article/new-bedford-seafood-plant-follows-through-on-mass-termination-of-immigrant-workers> (last visited Jan. 1, 2024).
30. The White House, "Strengthening Protections for H-2B Temporary Workers: Report of the H-2B Worker Protection Taskforce" (Oct. 2023), <https://www.whitehouse.gov/wp-content/uploads/2023/10/H-2B-Worker-Protection-Taskforce-Report.pdf> (last visited Jan. 1, 2024).
31. U.S. Department of Labor, "US Department of Labor posts process for seeking its support for immigration-related prosecutorial discretion during labor disputes," <https://www.dol.gov/newsroom/releases/sol/sol20220706> (last visited Jan. 1, 2024); U.S. Equal Employment Opportunity Commission, "EEOC's Support for Immigration-Related Deferred Action Requests to the DHS: Frequent Asked Questions," <https://www.eeoc.gov/fag/eeocs-support-immigration-related-deferred-action-requests-dhs> (last visited Jan. 1, 2024); and National Labor Relations Board, "Guidance: Immigrant Worker Rights," <https://www.nlr.gov/guidance/key-reference-materials/immigrant-worker-rights> (last visited Jan. 1, 2024).
32. Some states have more than one agency or government body that has issued guidance on deferred action.
33. Maria Sacchetti and Lauren Kaori Gurley, "A Cleaning Company Illegally Employed a 13-Year-Old. Her Family is Paying the Price," *Washington Post*, (March 3, 2023), <https://www.washingtonpost.com/business/2023/03/03/child-labor-workers-fallout-migrants/> (last visited Jan. 1, 2024).
34. Office of Rep. Judy Chu "Reps. Chu, Scott Re-Introduce POWER Act to Create Safe, Just Workplaces for Every Worker in America," Press release (March 28, 2023), <https://chu.house.gov/media-center/press-releases/reps-chu-scott-re-introduce-power-act-create-safe-just-workplaces-every> (last visited Jan. 1, 2024).
35. *Ibid.*



Cover Photo Credit:
Getty Images

This report was authored by Meredith Cabell, Lynn Damiano Pearson, and Jessie Hahn, with editorial support from Joanna Cuevas Ingram, Lisa Graybill, Michelle Lapointe, Josh Stehlik, and Subha Varadarajan.



www.nilc.org

