

November 16, 2021

ATTORNEY GENERAL RAOUL SUPPORTS FEDERAL EFFORT TO PRIORITIZE WORKPLACE RIGHTS AND SAFETY IN IMMIGRATION ENFORCEMENT

Chicago — Attorney General Kwame Raoul joined a coalition of 11 attorneys general, as well as several local agencies across the country, in a letter supporting the U.S. Department of Homeland Security's (DHS) plan to change its worksite enforcement practices to support enforcement of wage protections, workplace safety, labor rights, and other employment laws and standards.

[In the letter](#), Raoul and the coalition highlight several key recommendations to ensure that DHS' immigration enforcement policies and practices facilitate the ability of state and local labor enforcement officials to advance fair labor standards.

"An individual's immigration status should not affect their right to safe and fair treatment in the workplace," Raoul said. "I urge the Department of Homeland Security to create immigration policies that facilitate the work of labor agencies in protecting labor rights and workplace safety. I am committed to protecting the rights and dignity of all workers, and I will continue to advocate for policies that ensure workers have safe and fair working conditions."

State and local labor enforcement agencies investigate, prosecute, and adjudicate thousands of work-related claims against employers who illegally suppress labor standards and intimidate workers to prevent them from exercising their rights. The key role state and local entities play in labor enforcement makes them indispensable partners in any effort to develop immigration enforcement protocols that prioritize the need to protect the rights of workers. Further, immigrants make up a significant proportion of the workforce in the coalition's respective states and cities. Many vital industries depend on immigrant workers to meet their labor demands and provide critical services and goods to communities. At the same time, immigrant workers, especially those who are unauthorized to work in the United States, are particularly susceptible to abusive and unlawful labor conditions, and are especially vulnerable when bringing these violations to light. As a result, workers can be reluctant or even decline to pursue a case or testify in a legal proceeding out of fear that their employer would respond by reporting them or their family members to immigration authorities.

In today's letter, Raoul and the coalition urge DHS to consider a number of recommendations in its new effort, including:

- Ensuring a clear process for workers cooperating with labor law enforcement agencies to seek protection from deportation through the exercise of prosecutorial discretion.
- Making it explicit that state and local agencies that enforce workplace laws can certify S, T, and U Visas.
- Limiting enforcement based on potentially retaliatory tips from employers, and inform the public that DHS' hotline should not be used for such purposes.
- Establishing clear points of contact for state and local labor enforcement agencies to quickly address concerns and support effective communication with DHS.
- Taking steps to ensure immigrant workers and communities have access to information about their rights and protections.
- Supporting private actions to facilitate the enforcement of labor laws, extending protection to immigrant victims and witnesses to labor violations.
- Barring immigration enforcement activities at courthouses or state or local labor departments.

- Providing state and local labor enforcement agencies with access to witnesses held in civil immigration detention.

Joining Raoul in the letter are the attorneys general of California, Delaware, the District of Columbia, Massachusetts, Michigan, Minnesota, New Jersey, New Mexico, New York and Washington, as well as the Chicago Office of Labor Standards; the city of Philadelphia; the New York City Department of Consumer and Worker Protection; the Seattle Offices of Labor Standards, and Immigrant and Refugee Affairs; the Suffolk County district attorney; the Washtenaw County Prosecutor's Office; and the Washington State Department of Labor and Industries.



November 15, 2021

SENT BY EMAIL TO: Brian.Hyer@HQ.DHS.GOV

Alejandro N. Mayorkas
Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

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

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

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

RE: Policy Statement 065-06, Worksite Enforcement

Dear Secretary Mayorkas, Director Jaddou, Acting Director Johnson, and Acting Commissioner Miller:

We, the Attorneys General of California, Illinois, Massachusetts, and New York; the New York City Department of Consumer and Worker Protection, and the Seattle Offices of Labor Standards and Immigrant and Refugee Affairs; together with the Attorneys General of Delaware, New Jersey, Michigan, Minnesota, New Jersey, New Mexico, Washington, and the District of Columbia; the Washington State Department of Labor and Industries, Suffolk County District Attorney's Office (MA), Washtenaw County Prosecutor's Office (MI), Chicago Office of Labor Standards, and City of Philadelphia, write in response to Policy Statement 065-06, *Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual*, issued by Secretary of Homeland Security Mayorkas on October 12, 2021 (the "Policy Statement"). Each of our jurisdictions oversees robust labor enforcement programs that seek to maintain fair labor conditions for all workers irrespective of immigration status. State and local labor enforcement agencies, along with our federal labor counterparts, have a critical interest in working with the Department of Homeland Security (DHS) to ensure that DHS's immigration enforcement policies and practices also advance a fair labor market, focus on the most unscrupulous employers, and facilitate the work of labor agencies to enforce wage and hour protections, workplace safety, labor rights, and other labor and employment laws. Accordingly, we offer our respective insight, expertise, and partnership in the development of immigration enforcement policies that will also protect vital employment rights.

State and local labor enforcement agencies investigate, prosecute, and adjudicate thousands of work-related claims against employers who illegally suppress labor standards and intimidate workers from exercising their rights. In each of the undersigned states and local jurisdictions, there are labor standards that go above and beyond the requirements of federal law. Some examples include higher minimum wages than the federal requirement of \$7.25 per hour¹, expanded leave laws², and expanded protections from discrimination and retaliation³. Our state and local labor agencies work closely together and with our federal counterparts, often referring cases to each other and in some circumstances investigating matters jointly. The key role played by state and local entities in labor enforcement makes them indispensable partners in any effort to develop immigration enforcement protocols that prioritize the need to protect the rights of workers.

Immigrants make up a significant proportion of the workforce in our respective states and cities.⁴ Many vital industries depend on immigrant workers to meet their labor demands and provide critical services and goods to our communities.⁵ At the same time, immigrant workers, especially those who are unauthorized to work in the United States, are particularly susceptible to abusive and unlawful labor conditions, and are especially vulnerable when bringing these violations to light. All of us have faced experiences where workers have been reluctant or even declined to pursue a case or testify in a legal proceeding out of fear that their employer would respond by reporting them or their family members to immigration authorities.⁶ Immigration enforcement practices that do not account for the need to maintain workplace standards in the

¹ See, e.g., Cal. Lab. Code § 1182.12 (state minimum wage of \$14 per hour for employers with 26 or more employees); 12 NYCRR 142 (state minimum wages of \$12.50-\$15.00 per hour based on industry and geographic area); 820 Ill. Comp. Stat. 105/4(a)(1) (state minimum wage of \$11 per hour); Mass. Gen. Laws ch. 151, § 1 (state minimum wage of \$13.50); Seattle Mun. Code Ch. 14.19 (establishing minimum wage schedule for workers in Seattle).

² See, e.g., Cal. Gov't Code § 12945.2 (family medical leave for employers with 5 or more employees); Seattle Mun. Code Ch. 14.16 (paid sick and safe time for workers in Seattle); N.Y.C. Admin. Code § 20-913 (New York City Earned Safe and Sick Time Act).

³ See, e.g., Cal. Lab. Code § 1019 (barring immigration-related retaliation); Seattle Mun. Code §§ 14.33.020, 14.33.120 (same); N.Y. Labor L. § 215(a) (same).

⁴ U.S. Dep't of Labor, Bureau of Labor Statistics, Foreign-Born Workers: Labor Force Characteristics—2020 (May 18, 2021) (Foreign-born workers made up 17 percent of the total workforce in 2020.) <https://bit.ly/3mfLghK>

⁵ See Xavier Robers and Christian Burks, *Immigrant Essential Workers and COVID-19*, National Conference Of State Legislatures, LegisBrief, July 2021, avail. at <https://bit.ly/2ZoIggQ> (noting that in all but eight states, the share of immigrants in the essential workforce exceeds their share of the general workforce)

⁶ Tom Spiggle, *Why Workplace Abuse Plagues Undocumented Workers*, Forbes, (Aug. 22, 2019), avail. at <https://bit.ly/3nuFY1h>; see also Michael Mechanic, *When Immigrant Farmhands Sued His Clients, This California Lawyer Ratted Them Out to ICE*, Mother Jones (Oct. 3, 2017), avail. at <https://bit.ly/3EidNtd>.

first instance play into the hands of abusive employers and undermine fair labor standards to the detriment of all workers.⁷

The following recommendations are made to strengthen our working relationships and to advance our mutual goals of ensuring that our Nation's workplaces comply with our laws, protecting the working conditions in workplaces around the country, and protecting the rights and dignity of workers.

1) Create Opportunities for Regular Communication Between State and Local Labor Enforcement Agencies and DHS.

Effective channels of communications are crucial to ensure that immigration operations do not undermine labor law enforcement. These channels can be strengthened by establishing designated points of contact between enforcement agencies and engaging in regular regional meetings.

a. Establish Points of Contact for DHS and its Component Agencies.

Designating regional points of contact for DHS, as well as for USCIS, ICE, and CBP, would provide state and local labor enforcement officials a channel to quickly address concerns where we see or anticipate that immigration enforcement may have a negative impact on our labor enforcement efforts. Given the local nature of our labor enforcement work, and the regional decision-making process for many enforcement actions, there is a need for specific, regional lines of communication to be established.

There are a number of situations in which a regional contact with ICE could facilitate quick problem-solving. One example occurred in 2015, when the Massachusetts Attorney General Office's Fair Labor Division was investigating a commercial laundry, Bay State Linen, and its staffing agency, Country Temp, for minimum wage and overtime violations. Shortly after the office conducted a site visit, the employer called a meeting of all the immigrant workers and said that he knew who was cooperating with the government, and threatened that anyone who cooperated would face dire consequences, including arrest and deportation. Without an established point of contact for DHS, state investigators could only assure workers that any "tips" to ICE would be considered illegal retaliation. When ICE did not conduct a workplace raid, nine workers agreed to testify, which resulted in more than \$700,000 in restitution paid to 113 employees. DHS can ensure that raids are avoided in future situations like this one by establishing regional contacts. For example, if a key witness in a state labor case is detained by ICE, the state agency could reach out to the regional contact to request that the witness not be removed and thereby prevented from participating in the case. Also, if the state or local labor agency suspects that an immigration enforcement action was prompted by an employer, it could inform the regional contact. Accordingly, ICE could halt its enforcement action as it investigates whether an employer sought to manipulate the immigration enforcement process to retaliate against a worker.

⁷ Andrew Khouri, *More Workers Say Their Bosses Are Threatening to Have them Deported*, L.A. TIMES, Jan 3, 2018 <https://lat.ms/3Cwby5n>

Importantly, each of these examples highlights that time is of the essence in arranging inter-jurisdiction communication and coordination. Relying on established points of contacts will eliminate delay in a local jurisdiction receiving a response from DHS or its component agencies, thus preventing any potential irreparable immigration-related consequences from impacting state and local labor enforcement efforts.

b. Hold Periodic Regional Meetings.

Once regional points of contact are identified, regional quarterly meetings with DHS and its component agencies should be initiated in an effort to establish working relationships, keep labor enforcement agencies informed about relevant aspects of immigration operations, and address any persistent, recurring issues. These meetings could include a cross-training component so that labor enforcement agencies can better understand the immigration enforcement process, as they relate to worksite enforcement, and federal partners can learn about unique features of state and local labor law enforcement that may impact worksite enforcement activities.

2) Include State and Local Labor Agencies in the Deconfliction Process.

We recommend that state and local labor enforcement agencies be included in the deconfliction process that was established in the 2011 Memorandum of Understanding with the U.S. Department of Labor (USDOL), and, in 2016, amended to include the participation of the National Labor Relations Board (NLRB) and the Equal Employment Opportunity Commission (EEOC).⁸ The deconfliction process allows labor law enforcers to identify circumstances or locations where immigration enforcement operations could disrupt labor enforcement efforts or interfere in a labor dispute. By halting immigration enforcement actions during a labor dispute, ICE can prevent its enforcement actions from interfering with labor organizing or labor law enforcement activities, or from being used by employers as a means to retaliate against workers who have exercised their labor rights,⁹ thereby mitigating the *in terrorem* effect that such actions have on potential witnesses in government investigations.

By failing to include state and local labor enforcement agencies, the current deconfliction process leaves out many worksites where immigration enforcement action could interfere with labor enforcement efforts. A mechanism should exist for state and local jurisdictions to flag, at their discretion, worksites or employers where labor enforcement activities are occurring, and where ICE should avoid conducting workplace immigration enforcement actions, absent the circumstances contemplated in the 2011 MOU.¹⁰

⁸ U.S. Dep't. of Homeland Security and U.S. Dep't. of Labor, Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites (Mar. 31, 2011)

⁹ *Id.* p. 1.

¹⁰ This includes where the Homeland Security Secretary directs the enforcement activity, where the ICE Director or Deputy Director determines the activity is independently necessary to advance an investigation relating to national security, the protection of critical infrastructure, or a

We would like to discuss how we might build upon the deconfliction protocol already in place at the federal level in order to ensure that state and local labor enforcement matters are similarly deconflicted and not inadvertently undermined by immigration-related worksite enforcement.

3) Limit Enforcement Based on Potentially Retaliatory Tips to the ICE Tip Hotline and Inform the Public that ICE Processes Should Not Be Used for Retaliation.

When unscrupulous employers discover they are under investigation for labor law violations, they search for ways to discourage their workers from cooperating. One method they have utilized is the use or threat of using the ICE hotline to report undocumented workers and have them detained. Too often, government investigations into violations of labor statutes have been set back when key witnesses are arrested by ICE and placed in deportation proceedings. In the aftermath, employers will use these arrests to intimidate other potential witnesses and will use innuendo to suggest that they were responsible for ICE detaining the witness collaborating with state and local law enforcement. This has a massive chilling effect on other workers who are currently collaborating or may have collaborated with agencies investigating the employers' unlawful practices.

The Massachusetts Attorney General's Office saw the concrete harm caused by a retaliatory tip in 2017, when an undocumented worker was seriously injured after falling from a ladder at work. His employer had allowed its workers' compensation policy to lapse and invited the worker to the office to pick up a check "to help him out" while the insurance was worked out. Unbeknownst to the worker, the employer had tipped off ICE, and he was arrested just moments after leaving the employer's office. The Office's investigation into workers' compensation fraud was limited by its initial inability to communicate with the worker while detained by ICE.

Furthermore, many state and local labor standards include anti-retaliation provisions that protect employees from being threatened over their participation in investigations or court proceedings. For example, California's Labor Code specifies that unlawful retaliation includes, "[t]hreatening to contact or contacting immigration authorities." Cal. Labor Code § 1019(b)(1)(D).¹¹ Likewise, New York Labor Law specifies that prohibited retaliatory acts include "threatening to contact or contacting United States immigration authorities or otherwise reporting or threatening to report an employee's suspected citizenship or immigration status . . . to a federal, state or local agency." N.Y. Lab. Law § 215(a). Similarly, Seattle's labor standards prohibit employers from taking "any action that would dissuade a reasonable [worker] from exercising their rights" in response to that worker's participation in an investigation, including "engaging in unfair immigration-related practices." Seattle Mun. Code 14.33.20, 14.33.120.

Unfortunately, unscrupulous employers sometimes attempt to punish their employees for the exercise of their labor law rights by threatening them with referrals to or visits from immigration

federal crime other than a violation relating to unauthorized employment, or when the Secretary of Labor or other USDOL official requests the enforcement activity. *Id.* pp. 2-3.

¹¹ See also Cal. Lab. Code § 244 (an adverse action includes, "Reporting or threatening to report an employee's, former employee's, or prospective employee's suspected citizenship or immigration status, . . . to a federal, state, or local agency").

officials.¹² In order to prevent situations like the one described above, and violations of the above-referenced laws, we recommend that ICE inform the public that an immigration tip should not be used as a way to retaliate against a worker and refrain from taking action on any tip that involves nothing more than an alleged immigration status violation due to the risk that there is an improper motive. Informing employers that the retaliatory use of ICE's tip line, I-9 audits, or making threats to report employees to ICE, may constitute unlawful retaliation under state, local, and federal laws would help reduce employers' attempts to dissuade workers from assisting in the enforcement of labor laws.

4) Implement Policies and Procedures to Alleviate Fears of Deportation for Witnesses Collaborating with State and Local Law Enforcement Agencies.

Unscrupulous employers often prey on undocumented immigrant workers by subjecting them to abusive schemes that violate workplace laws because they know these workers are vulnerable and less likely to assert their workplace rights. The sustained cooperation of all workers, including those who lack work authorization, is essential to state and local law enforcement agencies' ability to combat unlawful employment practices. Despite their best intentions, enforcement efforts by state and local law enforcement agencies can take several years, particularly when litigation is involved. Vulnerable workers' fear of retaliation by abusive employers, including the fear that employers will report workers to ICE, hinders law enforcement agencies' ability to obtain reliable witnesses to provide necessary evidence in such cases. Overcoming such fears, which are typically well-founded, is very challenging without federal policies and protocols protecting workers from detention and/or deportation. Therefore, DHS can facilitate the enforcement of state and local labor and employment laws by implementing policies and protocols aimed at alleviating the risk of deportation for workers who are assisting law enforcement agencies.

a. Create a Clear Process for Prosecutorial Discretion for Workers Cooperating with Labor Law Enforcement Agencies.

Prosecutorial discretion, including deferred action, is a long-standing tool available to DHS that could protect workers who are critical witnesses in labor law enforcement actions. However,

¹² See Charlotte S. Alexander, *Anticipatory Retaliation, Threats, and the Silencing of the Brown Collar Workforce*, 50 Am. Bus. L.J. 779 (2013). See also Sponsor's Memo, New York Senate Bill S5791 (2019), avail. at <https://www.nysenate.gov/legislation/bills/2019/S5791> ("there are increasing reports that vulnerable immigrant workers are being threatened with deportation consequences in order to prevent their reporting unlawful or dangerous working conditions."). In Seattle, for example, the Office of Labor Standards (OLS) investigated and ultimately settled with a construction company after workers complained that the company was violating multiple labor standards and had threatened to use the E-Verify system to inform government authorities of employees' immigration status if they participated in a wage theft investigation. In another case in which the employer settled allegations under Seattle's paid sick and safe time and wage theft ordinances, workers reported that the employer had threatened to make false reports to immigration authorities, causing the workers to lose their housing and be placed in removal proceedings, in retaliation for workers' assertion of their right to be paid for all hours worked.

prosecutorial discretion cannot allay fears that employers will report undocumented workers collaborating with labor investigations to ICE when their use is limited to instances where workers have already been detained. These fears prevent workers from acting as witnesses in labor investigations in the first place. Thus, we recommend that DHS clarify the process to affirmatively seek prosecutorial discretion in order to protect witnesses in investigations of unlawful employment practices by federal, state, and local law enforcement agencies. Understanding this process can allow workers cooperating with enforcement agencies' investigations into unlawful employment practices to come forward and seek protection from deportation *before* they find themselves reported to ICE.

Clarifying how requests can be made for the exercise of prosecutorial discretion would strengthen state and local law enforcement by facilitating the participation of critical witnesses. Increasing other law enforcement agencies' ability to hold employers that profit from exploiting vulnerable undocumented workers accountable would also advance DHS's own goal of deterring such employers from hiring unauthorized workers.

Further, clarifying this process would allow law enforcement agencies to allay the fears of potential witnesses by providing a mechanism to ensure that they will not be subject to detention and potential deportation, thus allowing those witnesses to participate in labor investigations. Agencies will be able to inform necessary witnesses of how prosecutorial discretion, including deferred action, works to protect witnesses from detention and deportation, and thus facilitate their future cooperation in investigations and litigation.¹³

- b. Exercise Prosecutorial Discretion to Dismiss Removal Proceedings, Set Reasonable Bonds, Administratively Close Cases, and Re-open Cases with Final Removal Orders Involving Undocumented Workers who are Collaborating with or are Necessary Witnesses in Labor Investigations.

We also recommend that DHS utilize prosecutorial discretion for persons already in removal proceedings to prevent government investigations into abusive employers from being thwarted through the detention and/or removal of necessary witnesses. The detention and removal of witnesses to alleged labor standards violations, and even the threat of detention and removal, hinders effective investigation by impeding or preventing government access to witnesses, testimony, records, and other evidence of labor violations. Additionally, the destabilizing effects of removal proceedings, detention, and deportation on a government witness can frustrate labor investigations and preclude successful enforcement of federal, state, and local labor laws.

DHS exercise of prosecutorial discretion could be particularly helpful to government labor investigations when key witnesses are in immigration detention facilities or removal proceedings or are subject to removal orders or reinstatement of removal orders. DHS exercise of prosecutorial discretion would support enforcement of American labor laws by preserving agency access to witnesses, protecting our ability to obtain testimony and evidence, and allowing some measure of security for witnesses so they may be helpful throughout labor investigations.

¹³ See generally Wadhia, Shoba Sivaprasad, *Demystifying Employment Authorization and Prosecutorial Discretion in Immigration Cases*, 6 Colum. J. Race & L. 1 (2016).

Using prosecutorial discretion to dismiss or administratively close removal proceedings, stay execution or reinstatement of removal orders, re-open orders of deportation or removal, and ensure that reasonable bond amounts are set to release detained workers would help guarantee that witnesses necessary to hold abusive employers accountable are not lost. Similarly, ICE should develop protocols to better identify whether a detainee is engaged in a labor dispute, has cooperated with labor enforcement authorities, or has suffered labor violations before removing the person or transferring them to a facility outside of their local area. Additionally, as further discussed below, DHS should use prosecutorial discretion strategically in cases where ICE enforcement efforts threaten to thwart private litigation efforts to hold employers accountable for significant violations of employment laws.

c. Make Explicit that State and Local Agencies that Enforce Workplace Laws Can Certify S, T, and U Visas, and Provide Clear Guidance.

In addition to deferred action and prosecutorial discretion, clarifying the availability S, T, and U visas for workers collaborating with government labor investigations would strengthen state and local law enforcement agencies' abilities to pursue unscrupulous employers by removing the looming threat of detention and potential deportation.

8 U.S.C. § 1101(a)(15)(U) provides that “U visas” are available to noncitizens who meet certain criteria including, *inter alia*, that the individual “has been helpful, is being helpful, or is likely to be helpful to a Federal, State, or local law enforcement official, . . . or to other Federal, State, or local authorities investigating or prosecuting criminal activity described [above]”. Some state and local labor enforcement agencies have developed an understanding of the U visa process and certified Form I-918B supplements, and some have taken steps to communicate to cooperating witnesses and the public that they are certifying agencies. However, it would be helpful to the efforts of state and local labor agencies for DHS to further publicize their authority to so certify and to provide them with guidance about how to do so.

We appreciate that DHS’s U Visa Law Enforcement Guide¹⁴ includes “state Departments of Labor” in a list of the types of agencies that can certify Form I-918B. However, state labor agencies are not mentioned anywhere else in this Guide, in the shorter Overview Guide¹⁵, on the Instructions for Supplement B, U Nonimmigrant Status Certification,¹⁶ or on the main website

¹⁴ Department of Homeland Security, *U Visa Law Enforcement Resource Guide For Federal, State, Local, Tribal and Territorial Law Enforcement, Prosecutors, Judges, and other Government Agencies*, (2019). Retrieved November 8, 2021 at: https://www.dhs.gov/sites/default/files/publications/20_1228_uscis_u-visa-law-enforcement-resource-guide.pdf (p. 2).

¹⁵ Department of Homeland Security, *U Visa Immigration Relief for Victims of Certain Crimes*, Retrieved on November 8, 2021 at: <https://www.dhs.gov/sites/default/files/publications/U-Visa-Immigration-Relief-for-Victims-of-Certain-Crimes.pdf>

¹⁶ United States Citizenship and Immigration Services, *Form I-918 Instructions for Supplement B, U Nonimmigrant Status Certification*, (2021). Retrieved on November 8, 2021 at: <https://www.uscis.gov/sites/default/files/document/forms/i-918supbinstr.pdf>

page describing U visas.¹⁷ We recommend that you state explicitly, in more prominent locations on your website and materials, that state and local agencies that enforce labor and employment laws may certify U visas. DHS should also provide state and local agencies with guidance on understanding their obligations as certifying agencies and in correctly completing Form I-918B.

Likewise, we recommend that you consider adding similar references to state and local labor agencies in the publications concerning T and S visas, which currently make no reference to such labor agencies, even though these agencies may have jurisdiction that includes the investigation or prosecution of labor trafficking and of criminal organizations or enterprises, respectively.

5) Facilitate Access to Detained Witnesses.

Providing state and local labor enforcement agencies with access to witnesses held in detention centers is critical. For logistical efficacy, DHS and its component agencies should place potential witnesses in the detention center nearest to where the relevant labor violation occurred. They should also consider temporarily releasing witnesses, allowing detained individuals to post a reasonable bond, or guaranteeing access to detention centers in order to promote the development of testimony and resolution of labor law violations.

6) Do Not Conduct Any Immigration Enforcement Activities at State or Local Labor Departments or Courthouses.

ICE enforcement actions against workers in state or local departments of labor or in courthouses undermines our ability to ensure the well-being of all workers and the fairness of the labor market. Even one courthouse immigration arrest reinforces unscrupulous employers' threats that undocumented workers who complain of labor violations or cooperate with investigators will face arrest and deportation. We have all encountered reluctant witnesses whose reluctance has been exacerbated by immigration enforcement in courthouses in recent years. We urge DHS to recognize courthouses and state or local labor departments to be safe havens from immigration enforcement so that immigrant victims may avail themselves of the legal protections to which all workers are entitled.

7) Support Private Actions to Vindicate Immigrant Workers' Rights.

DHS should work to facilitate the enforcement of labor laws by private actors as well as governmental enforcement actions. Private litigation has long played a critical role in enforcing discrimination, wage and hour, and other worker protection laws.¹⁸ Most workplace laws explicitly create a role for private lawsuits by including a private right of action and attorneys'

¹⁷ United States Citizenship and Immigration Services, *Victims of Criminal Activity: U Nonimmigrant Status*, (2018). Retrieved on November 2021 at: <https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-criminal-activity-u-nonimmigrant-status>

¹⁸ See, e.g. J. Maria Glover, *The Structural Role of Private Enforcement Mechanisms in Public Law*, 53 Wm. and Mary L. Rev. 1137, 1148-50 (2012).

fees for plaintiffs.¹⁹ Given the limited resources of federal, state, and local government enforcement agencies, private lawsuits are crucial to meaningful enforcement of labor laws.²⁰ DHS component agencies should encourage such litigation by, for example, extending protections for victims of and witnesses to labor violations to those participating in private actions.

8) Educate Immigrant Workers about their Rights and Protections.

We are heartened by DHS' commitment to strong and fair enforcement of labor laws. However, for that commitment to have maximum impact on the affected communities of workers, more than just interagency cooperation is necessary.

One of the primary challenges to state and local agencies' effective enforcement of labor laws is the lack of worker engagement with the agencies. This is particularly a problem in high-violation industries where employees are often fearful of retaliation by their employer.²¹ Some groups of low-wage workers are particularly susceptible to immigration status-related threats.²²

State and local efforts to counter this problem, such as including anti-retaliation provisions in their labor standards, are somewhat effective. But a critical tool in ensuring effective enforcement of labor laws is educating the workforce about their rights and protections. This is best accomplished in concert with worker advocacy groups, non-governmental organizations, and other community stakeholders.²³

Accordingly, when DHS and its component agencies adopt policies that facilitate state and local enforcement of labor laws, they should devote resources to communicating those policies to the affected groups of workers. This can be accomplished by direct, public-facing statements and by partnering with advocacy organizations, non-governmental entities, and other stakeholders.

We thank you for your consideration of these recommendations and look forward to a productive dialogue about how best to accomplish our shared goals.

¹⁹ *E.g., id.* at 1149.

²⁰ *Id.* at 1153-54.

²¹ *See, e.g.,* Laura Huizar (National Employment Law Project), *Exposing Wage Theft Without Fear: States Must Protect Workers from Retaliation*, 2019. Available at Exposing Wage Theft Without Fear - National Employment Law Project (nelp.org), last accessed on October 25, 2021.

²² *Id.* at 9; *see also* Charlotte S. Alexander, *Anticipatory Retaliation, Threats, and the Silencing of the Brown Collar Workforce*, 50 Am. Bus. L.J. 779 (2013).

²³ *See* Janice Fine, Tim Bartley, *Raising the Floor: New Directions in Public and Private Enforcement of Labor Standards in the United States*, 61 J. Indus. Rel. 252 (2018).

Sincerely,



Rob Bonta
California Attorney General



Kwame Raoul
Illinois Attorney General



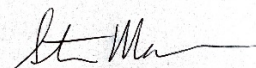
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