



CONFIDENTIAL DRAFT FOR COMMENT

CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW

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February xx, 2022

Via Priority Mail USPS to:

Lynn Parker Dupree

Chief Privacy Officer/Chief FOIA Officer
Privacy Office, Mail Stop 0655
Department of Homeland Security
2707 Martin Luther King Jr. AVE SE
Washington, DC 20528-065
Via Fax to 202-343-4011
Via email: foia@hq.dhs.gov

U.S. Immigration and Customs Enforcement
Freedom of Information Act Office
500 12th Street, S.W.
Stop 5004
Washington, D.C. 20536-5004
Via email to: ICE-FOIA@dhs.gov

U.S. Citizenship and Immigration Service
Freedom of Information Act Office
5900 Capital Gateway Drive
Camp Springs, MD xxxxx
Via email: FOIAPAQuestions@uscis.dhs.gov

Re: Freedom of Information Act Request re Immigrant Worker Protections

Dear DHS, USCIS, and ICE FOIA Offices:

This request is made pursuant to the Freedom of Information Act (“FOIA”) on behalf of the following individuals, non-profit organizations, and unions:

_____. (“Requesting Parties”).

Purpose of document request

- The Requesting Parties agree with DHS that its worksite enforcement efforts “can have a significant impact on the well-being of individuals and the fairness of the labor market”¹ and
- The Requesting Parties also agree with DHS that unscrupulous employers exploiting immigrant workers harm “each worker competing for a job,” and “unfairly drive down their costs and disadvantage their business competitors who abide by the law.” *Id.*

¹ See, e.g., Memorandum, Alejandro N. Mayorkas, Sec'y of DHS, Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual, (Oct. 12, 2021),

https://www.dhs.gov/sites/default/files/publications/memo_from_secretary_mayorkas_on_worsite_enforcementwhose_te.pdf.

- The Requesting Parties have supported and continue to support and advocate for a robust, cost-effective, and achievable DHS policy to substantially increase the effectiveness of labor law enforcement and protect all workers from illegal exploitation by permitting immigrant workers in labor disputes to obtain temporary protected status and prompt work permits without the information in their requests being used to deport them.

The Requesting Parties seek copies of the records described below in order to further their understanding and assessment of current DHS policies and practices regarding protections for immigrant workers, including DHS worksite enforcement operations. The Requesting Parties' interest in this information is non-pecuniary and they may use the records obtained to develop administrative or legislative policy recommendations, structure and modify their services for members, constituents, and clients, and will disseminate records obtained to other stakeholders such as worker organizations, labor unions, and state and federal authorities concerned with maximizing the effectiveness of the enforcement of federal, state, and local labor laws, regulations, and rules.

Location of documents sought

This request seeks documents in the possession of the Department of Homeland Security headquarters in Washington D.C. (DHS), Immigration and Customs Enforcement headquarters (ICE), and the United States Citizenship and Immigration Services headquarters (USCIS). Some requests seek documents specifically in the possession of either USCIS, ICE, or DHS. When a request does not specify the location of documents requested, the request is made for records in the possession of DHS, USCIS, and/or ICE.

Handling claimed exemptions

If you locate documents responsive to these requests regarding which you claim an exemption in whole or in part from disclosure, please identify (1) the author and his/her position in the Government, (2) the addressee(s), (3) the date of the document(s), (4) the general topic of the document(s), (5) the number of pages in the document(s), and (6) the specific exemption(s) claimed. If you claim an exemption to part(s) of a document, please produce the portion(s) for which no exemption is claimed and provide the information listed above for the portion(s) for which exemption(s) is/are claimed. This will permit us to determine whether or not to seek administrative or judicial review of your claims of exemption(s).

Time to Respond

If you find it impossible to produce all documents called for by this request within the statutorily prescribed time limits, please produce all documents that are located by you within such time and advise us when you believe the remainder of the documents requested will be produced.

Request for fee waiver

FOIA Request re Deferred Action for Immigrant Workers

February xx, 2022

Page 3 of 7

Because the Requesting Parties are elected officials, non-profit organizations, and unions, and because the information sought will be used solely for non-pecuniary and public policy purposes, we request that a fee waiver be granted in this matter. However, in the event a fee waiver is denied, we request that you process this request immediately and the Center for Human Rights and Constitutional Law agrees to pay all fees reasonably incurred responding to this request while reserving its right to appeal any denial of the fee waiver request. Please advise the undersigned if additional information is needed to adjudicate this request for a fee waiver.

Manner of records production

You may provide copies of the requested records in digital format. Please identify released records in a log or index, date stamp pages, organize and number produced documents so that it is clear what request number or numbers each document responds to, and state whether the records were located in the offices of USCIS, ICE and/or DHS.

Definitions

The terms “document” or “documents” as used in this request refer to all forms of communication preserved in some physical form, including, but not limited to, spreadsheets, data compilations, directives, indices, orders, reports, emails, text messages, letters, instructions, guidances, manual sections, training materials, memoranda, reviews, and transcripts, whether maintained in paper, digital, video, audio tape, or any other form.

The term “immigrant” refers to immigrants and migrants, including undocumented workers, guest workers, and other non-citizen workers.

The term “labor dispute” means a dispute as defined in the December 7, 2011 Revised Memorandum of Understanding between the Departments of Homeland Security and Labor (available at https://www.dol.gov/sites/dolgov/files/OASP/DHS-DOL-MOU_4.19.18.pdf).

The term “labor law complaints” means complaints to or cooperation with local, state, or federal labor law agencies regarding employment-related issues.

The term “deferred action requests” is *limited* to requests for deferred action sought by immigrants or local, state, or federal labor law agencies as permitted by DHS policies as set forth, for example, in the DHS Announces Process Enhancements for Supporting Labor Enforcement Investigations, Release Dated January 13, 2023 (“January 13, 2023 Process Enhancements”), Policy Statement 065-06 dated October 12, 2021 (Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual), and the Addendum to the Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites dated May 2016.

Unless otherwise indicated in each request below, the Requesting Parties only seek access to copies of documents created, modified, issued, or received by USCIS, ICE or DHS between

January 1, 2019, and the present. If this limitation does *not* apply, the requests below will state that documents are requested “regardless of date created” or will provide a timeframe for requested records.

Documents requested

1. All documents regarding in whole or in part DHS, USCIS, and ICE policies and practices regarding the confidentiality of information about workers identified in deferred action requests and their work permit applications such that the information they provide about themselves or their family members will not be used to arrest them or initiate removal proceedings against them or as evidence against them in a removal hearing.
2. All documents written, received, or sent on or after January 1, 2020, regarding deferred action requests and related employment authorization requests submitted by an immigrant worker, or organization assisting or representing an immigrant worker, or a labor law agency, including but not limited to the requests and supporting documents and USCIS’s, ICE’s or DHS’s consideration of and responses to the requests. All confidential data exempt from disclosure should be redacted prior to the production of the requested records.
3. All documents whenever dated regarding written, received, or sent on or after January 1, 2020, regarding requests for expedited processing of a deferred action request or related application for employment authorization submitted by an immigrant worker, or organization assisting or representing an immigrant worker, or a labor law agency, including but not limited to the requests and supporting documents and USCIS’s, ICE’s or DHS’s consideration of and responses to the requests. All confidential data exempt from disclosure should be redacted prior to the production of the requested records.
4. All documents whenever dated regarding what precise information and documentation must be provided when submitting a deferred action request in order for the request to be approved.
5. All documents whenever dated regarding the criteria, standards, and burden of proof to be used when determining whether to grant or deny deferred action requests.
6. All documents regarding in whole or in part the DHS January 13, 2023 Process Enhancements including but not limited to (a) documents relied upon to finalize the Process Enhancements, (b) comments, (c) directions, (d) guidances, (e) training materials, (f) communications with other departments or agencies, and (g) data collection.
7. All documents regarding in whole or in part implementation of Policy Statement 065-06 issued by Alejandro N. Mayorkas, Sec’y of DHS, Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual, (Oct. 12, 2021) including but not limited to (a) comments, (b) directions, (c) guidances, (d) training materials (e) communications with other agencies, (f) data collection, and (g) documents relating to the three (3) areas the Policy Statement identifies at pages 2 and 3 for

review under the heading Policy Review.

8. All documents regardless of date created regarding in whole or in part the Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites (Dec. 7, 2011) ("hereinafter "2011 Revised Memorandum"),² including but not limited to (a) comments, (b) directions, (c) guidances, (d) training materials (e) communications with other agencies, (f) data collection.

9. All documents regardless of date created regarding in whole or in part the Addendum to the Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites (May 2016) (hereinafter "Addendum to Revised Memorandum"),³ including but not limited to (a) comments, (b) directions, (c) guidances, (d) training materials (e) communications with other agencies, (f) data collection.

10. All documents regardless of date created regarding in whole or in part (a) directions, (b) guidance, (c) training materials and/or (d) data collection regarding the factors to be considered or circumstances under which an immigrant may be granted a U visa based on work-place or employment-based victimization, including but not limited to directives or guidance for implementation of U Nonimmigrant Status Bona Fide Determination Process FAQs (Sep. 23, 2021) as relates to immigrant victims of work-related crimes.⁴

11. All documents regardless of date created regarding in whole or in part (a) directions, (b) guidance, (c) training materials and/or (d) data collection regarding factors to be considered or circumstances under which an immigrant victim of work-related trafficking may be granted a T visa, including but not limited to directives or guidance for implementation of the 2009 Memorandum from Acting USCIS Deputy Director Aytes relating to immigrants with labor law complaints and including data on T visas issued to victims of employment based crimes.

12. All documents regardless of date created regarding in whole or in part (a) directions, (b) guidance, (c) training materials and/or (d) data collection regarding implementation of the USCIS, Policy Memorandum, Revised Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Removable Aliens, PM-602-0050 (Nov. 7, 2011) relating to immigrants the subject of deferred action requests.⁵

² Available at https://www.dol.gov/sites/dolgov/files/OASP/DHS-DOL-MOU_4.19.18.pdf

³ Available at <https://www.eeoc.gov/mou/addendum-revised-memorandum-understanding-between-departments-homeland-security-and-labor>

⁴ See <https://www.uscis.gov/records/electronic-reading-room/u-nonimmigrant-status-bona-fide-determination-process-faqs>.

⁵ See

<https://www.uscis.gov/sites/default/files/document/memos/NTA%20PM%20%28Approved%20as%20final%2011-7-11%29.pdf>. Such recognition is critical to addressing workers' fears of coming forward to cooperate with labor and civil rights enforcement.

FOIA Request re Deferred Action for Immigrant Workers

February xx, 2022

Page 6 of 7

13. All documents regarding in whole or in part communications between any of the following: USCIS, ICE, DHS, DOL, DOJ, EEOC and/or NLRB, regarding policies or practices relating to deferred action requests.
14. All documents regarding in whole or in part communications between any of the following: USCIS, ICE, DHS, DOL, DOJ, EEOC and/or NLRB, regarding policies or practices relating to ICE workplace enforcement.
15. All documents regarding in whole or in part communications between DHS, USCIS and/or ICE and any local or state labor law agencies addressing the submission of deferred action requests.
16. All documents regarding in whole or in part communications between DHS, USCIS and/or ICE and any local or state labor law agencies addressing the submission of expedited deferred action requests.
17. All documents regarding in whole or in part communications between DHS and any members of Congress or the White House addressing granting or denying immigrants with labor law complaints or involved in labor disputes deferred action status or work permits or the process or criteria for doing so.
18. All documents dated, received or sent from January 1, 2020 to the present regarding in whole or in part the cost of adjudication deferred action requests and/or related applications for employment authorization.
19. All documents dated, received or sent from January 1, 2020 to the present regarding in whole or in part the cost of adjudication deferred action requests and/or related applications for employment authorization on an expedited basis.
20. All documents dated, received or sent from January 1, 2020 to the present relating to requests from the DOL, including DHS's responses to such requests, relating to ICE not conducting enforcement actions at work sites during labor enforcement activities .
21. Regardless of when dated, to the extent not provided in response to a previous request, all documents setting forth DHS, USCIS and /or ICE policies regarding the duration of DAS and/or EADs to be granted in response to deferred action requests and related applications for employment authorization.
22. All documents whenever dated setting forth the policy or practice of the former INS or DHS regarding the issuance of DAS and/or EADs to victims of trafficking *prior* to the enactment of federal legislation creating T visas available to victims of trafficking in October 2000.
23. All documents whenever dated setting forth the policy or practice of the former INS or DHS regarding the issuance of DAS and/or EADs to victims of serious crimes *prior* to the enactment of federal legislation creating U visas available to victims of serious crimes in October

FOIA Request re Deferred Action for Immigrant Workers

February xx, 2022

Page 7 of 7

2000.

24. All documents relating to instances in which ICE engaged in a worksite enforcement activity under Section III.B of the Addendum to the 2011 Revised Memorandum dated May 2016, including when ICE provided notice to any relevant labor agency under Section III.C.

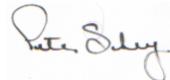
25. All documents whenever dated setting forth the policy or practice of ICE regarding the adjudication of deferred action requests relating to immigrants in removal proceedings or the subjects of removal orders including but not limited to the criteria to use in making ICE decisions, training materials, and data collected regarding the number of requests received, whether requests were approved or denied, and the length of time required to adjudicate the requests.

26. All documents dated, received or sent from January 1, 2020 to the present relating to the criteria used to grant or deny requests for deferred action and data collected regarding such requests *other than “deferred action requests” relating to labor issues as defined above*, including for example manual sections, guidances, memos, instructions, training materials, and data collected such as number of requests pending at the start of a period, number received, number approved or denied, reasons for approval or denial, etc..

If we do not hear from you by the expiration of the statutory time period, we will deem your non-response to be a denial of this request and may seek prompt administrative and thereafter judicial review.

If you have any questions please feel free to call the undersigned at (323) 251-3223, or email at pschey@centerforhumanrights.org.

Sincerely,



Peter A. Schey, Esq.
Center for Human Rights and
Constitutional Law

ccs: Requesting parties