



United States Government

NATIONAL LABOR RELATIONS BOARD

Office of the General Counsel

1015 Half Street, SE

Washington, DC 20570

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By ESEC at 11:36 am, May 28, 2024

May 28, 2024

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security

Dear Secretary Mayorkas:

I am writing to thank you for implementing a streamlined deferred action request process in cases where there is a labor enforcement interest, and to request that DHS increase the length of deferred action in such cases to a four-year period, to better meet the enforcement needs of labor agencies. While the current two-year period has enhanced our ability to obtain critical testimonial and documentary evidence from workers in support of our investigations and enforcement activities, based on a review of NLRB cases involving immigration issues, we believe that the two-year period is insufficient and that a four-year period would better meet our ability to investigate, prosecute, and/or ensure compliance in the kinds of cases in which we have issued statements of interest.

As demonstrated below, labor cases involving immigrant workers, on average, exceed well over two years. Because such cases have a high likelihood of requiring a period longer than the current two-year period for completion of our enforcement efforts, a four-year grant of deferred action would provide labor agencies with a more appropriate initial length of time necessary to meet our investigative and enforcement needs. It would also provide critical assurance to workers who are charging parties or witnesses in our cases that a grant of deferred action would likely last through the full course of a labor enforcement matter, which we believe will significantly improve likelihood of cooperation, which would in turn, enhance our enforcement efforts. Furthermore, increasing the length of deferred action to a four-year period would ease the administrative burden on labor agencies and DHS, which would allow each of the agencies to dedicate scarce resources directly to enforcement activities. Moreover, increasing the initial period to four years would serve to alleviate the financial burden on workers, many of whom have suffered economic harm because of the labor violations that gave rise to our enforcement interest and who may be unable to afford the cost of applying to renew their deferred action.

While many NLRB cases resolve within a year after a Regional Office completes its investigation and makes a merit determination, our review of cases involving immigration issues demonstrates that cases involving immigrant workers last longer than other types of NLRB cases. For NLRB cases filed from 2003-2020 involving an immigration issue,¹ the average length of time cases remained open was 1190 days (3.26 years). Of this subset, 15% of these

¹ Cases involving an immigration issue include cases where workers requested U/T visa certification, where an employer raised workers' immigration status in an investigation or litigation, and where an employee shared their fear of retaliation based on immigration status, among others.

cases still remain open, meaning that the 1190 days is an underestimate of open case length of time.² Of the cases in which the NLRB has issued statements of interest between 2022-2024, approximately 80% remain open.

Specifically, cases involving immigrant workers present challenges unique to non-U.S. citizen workers – including immigration-related issues that require additional time and resources to complete investigations and ensure that the NLRB can successfully prosecute its cases and obtain all appropriate remedies. Such cases often involve complex legal issues, such as whether certain inquiries by an employer about worker immigration status during the course of an investigation or litigation are themselves an independent violation of law³ and whether remedial or compliance issues related to work authorization of victims of unfair labor practices could threaten to impede the NLRB’s ability to obtain full remedies.⁴ Moreover, workers in these cases often require the Agency to provide language assistance, which adds additional time to an investigation and, where applicable, to an administrative hearing and ensuring compliance with a settlement or Board or court order.

The below are examples of cases in which the NLRB has issued statements of interest, which demonstrate some of these complexities:

- The NLRB issued one of its first statements of interest on May 10, 2022, in a case called _____, which involved an unfair labor practice charge filed on February 15, 2022. During the Region’s investigation, it was able to obtain critical testimony from workers whose representative had requested a statement of interest, but the employer, which had ceased its operations, would not cooperate. Thus, the NLRB’s Regional Office initiated subpoena enforcement proceedings in the Northern District of Texas in October 2022. The Regional Office obtained an order enforcing the investigative subpoena on January 31, 2024. The Region is continuing to seek compliance with the subpoena. Once it receives the necessary information, the Regional Office will potentially have to issue an administrative complaint and litigate the case in front of an administrative law judge more than two years after the statement of interest issued, which will include presenting testimony from the employee witnesses identified during the investigation.
- The NLRB issued a statement of interest on May 12, 2022, in a case called _____, which involved unfair labor practices filed in June 2020. After investigating the case, the NLRB’s Regional Office made a determination that the employer unlawfully threatened employees with termination and closure of its facility because employees engaged in protected concerted activities, terminated a group of employees because they engaged in or were related to individuals who engaged in protected concerted activities and refused to rehire them in subsequent crawfish seasons as it had previously done, all in violation of Section 8(a)(1) of the National Labor Relations Act. A hearing was scheduled to commence on July 25, 2022, but that hearing was postponed indefinitely due to settlement issues presented, in part, because of complex immigration matters,

² Because many cases filed from 2021 to the present are still open and are expected to remain so well into the foreseeable future, they were not included in this analysis.

³ See, e.g., *Lifeway Foods*, NLRB Case 13-CA-169510, Advice Memorandum dated June 7, 2016.

⁴ See, e.g., *Mezonos Maven Bakery, Inc.*, 357 NLRB 376 (2011) (workers barred from receiving backpay where employer violated IRCA).

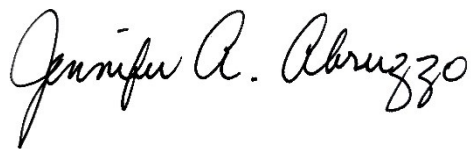
including the employer's utilization of nonimmigrant visa programs. While progress has been made in settlement negotiations, there is still not an approved settlement agreement in this case.

- The NLRB issued a statement of interest on September 8, 2022, in a case called _____, based on an unfair labor practice charged filed on August 8, 2022. The Regional Office investigated the case and made a merit determination in late 2022. The Regional Office issued an administrative complaint in March 2023. In October 2023, the employer issued subpoenas to the workers demanding documents establishing work authorization status. The NLRB subsequently filed a petition to revoke the subpoenas and an administrative law judge granted the petition, stating that "inquiry into the immigration status of the terminated employees has not been shown to be relevant to this merits proceeding regarding the complaint allegations and any remote chance that the inquiry might lead to relevant evidence is far outweighed at this stage by concerns over the chilling effect that inquiries into immigration status has on employees' willingness to participate in the Board's processes or otherwise exercise their rights under the Act."

The
case is currently ongoing.

Based on the above, we respectfully request that DHS increase the period of deferred action in cases where a labor agency submits a statement of interest to four years. Increasing the period would significantly improve the ability to secure worker testimony and ensure workers are willing and available to continue to participate in our enforcement efforts. It would, therefore, better meet the investigative and enforcement needs of labor agencies and enhance our ability to successfully enforce labor law and effectuate our mission. Thank you again for your work thus far in assisting labor agencies in our enforcement efforts and we greatly appreciate your consideration of this request.

Sincerely,



Jennifer A. Abruzzo
General Counsel
National Labor Relations Board



U.S. Citizenship
and Immigration
Services

September 12, 2024

Jennifer A. Abruzzo
General Counsel
National Labor Relations Board
1015 Half Street, SE
Washington, DC 20570

Dear Ms. Abruzzo:

Thank you for your May 28, 2024 letter to the U.S. Department of Homeland Security (DHS) regarding the positive impacts of our approach to worksite enforcement, which includes a streamlined and expedited deferred action request process for noncitizen workers who are victims of, or witnesses to, the violation of labor rights. I am responding on behalf of the Department and apologize for the delay.

Through the expedited deferred action request process, DHS continues to enforce our laws by supporting federal, state and local labor and employment agencies enforcing wage protections, workplace safety, labor rights, and other laws and standards. Since January 13, 2023, when DHS announced the centralized intake process for noncitizen workers who are victims of, or witnesses to, the violation of labor rights to request deferred action, DHS has received thousands of requests for deferred action under this process. In granting deferred action based on labor agency investigations, DHS has supported the efforts of the NLRB and over 50 other labor and employment agencies across the United States and protected more than one thousand noncitizen workers. On January 17, 2024, DHS announced the process for requesting renewal of deferred action for noncitizen workers based on a labor agency enforcement interest.¹

We appreciate your feedback and recommendations regarding the deferred action period length initially granted to workers cooperating with National Labor Relations Board (NLRB) enforcement activities. DHS appreciates the NLRB's thoughtful review of cases involving noncitizens, and its conclusion that a two-year initial period of deferred action is insufficient to investigate, prosecute, and/or ensure compliance in cases where the NLRB issued statements of interest. After careful review and consideration of issues raised by NLRB and other labor agencies and stakeholders, on July 22, 2024, DHS updated [its guidance](#) to reflect that initial requests for deferred action based on a labor agency investigation can be granted on a case-by-case-basis for a period of up to four years.

¹ <https://www.dhs.gov/news/2024/01/17/dhs-helps-hold-exploitative-employers-accountable>.

As you know, deferred action can protect noncitizen workers from threats of immigration-related retaliation from exploitative employers. These process enhancements build on DHS's longstanding practice of using discretionary authority to consider labor and employment agency-related requests for deferred action on a case-by-case basis. These enhancements also advance the Administration's commitment to empower workers and improve workplace conditions by enabling all workers, including noncitizens, to assert their legal rights.

Thank you again for your letter and interest in this important issue. Should you require additional assistance, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Ur M. Jaddou", followed by a horizontal line extending to the right.

Ur M. Jaddou
Director