

Building Immigration Legal Capacity for Labor-Based Deferred Action: Models & Strategies

The Department of Homeland Security's (DHS) new [guidance](#) supporting deferred action for workers in labor disputes has enormous potential to protect immigrant workers from deportation and exploitative working conditions, while at the same time building power for workers and immigrant communities. However, eligible workers often face barriers to applying for this protection due to the lack of access to immigration representation. Worker rights organizations supporting directly impacted communities are confronting the limited capacity of immigration direct services organizations to represent workers, and many workers cannot afford the costs of hiring private attorneys. The two charts below offer models, strategies, and approaches to expanding immigration legal services capacity. *Note: although zealous labor and employment advocacy is an essential piece of this new process, these charts are only intended to address immigration capacity for workers seeking deferred action.*

Models for Immigration Legal Services Delivery

	Description	Resource Assumptions	Considerations	Challenges/Opportunities for Organizers and Advocates	Challenges/Opportunities for Potential Beneficiaries
Full Scope Representation	A potential beneficiary of Deferred Action navigates the entire legal process with full support from immigration legal advocates. Attorney or Department of Justice (DOJ) Accredited Representative is assigned to represent beneficiary in all steps of the legal process.	The capacity of legal service providers and advocates allows them to support beneficiaries through every step of the process. Legal advocates are tied to the case from beginning to end. This level of representation can be conducted via a legal clinic model.	If legal resources and capacity are limited it is possible to prioritize this support for the most complex and nuanced cases and to rely on a different support model for other, more straightforward cases.	Challenge: Community members may see organizers as an extension of the legal team and expect to receive updates or case-specific information from them. Opportunity: Organizers likely have the strongest relationships with potential beneficiaries and can serve as trusted messengers of information. There is a very clear delineation between the role of the organizer and legal advocate which prevents challenges presented with other models.	Challenge: It is harder to develop a sense of community amongst a group of beneficiaries while going through the legal process as each case is handled individually. Opportunity: Beneficiaries will receive individualized support and not have to be concerned about the nuances of each step in the legal process.
Limited Scope Assistance/ Pro Se Assisted	A potential beneficiary of Deferred Action navigates the legal process with support from legal advocate for parts of the legal process, parts of process that are not conducted with support of legal advocate are navigated with guidance received from advocate, general information, resources and templates.	Legal support resources are scarce and the ability to provide additional legal support is not an option. Capacity limitations of legal service providers and advocates prevent them from providing full representation. However, the legal support provided to beneficiaries includes advising and assistance through the most difficult parts of the process.	This model prioritizes providing support with the most technical portions of the legal process. Limited legal services are typically part of a day-long legal workshop or clinic, where attorneys are paired with individual applicants. A worker with a straightforward case who has the necessary documents could theoretically have an application prepared at a single legal clinic, though careful screening and advising would still be necessary to identify potential risks and/or other immigration issues that require further consultation and advising.	Challenge: Ensuring workers receive adequate legal advice to make an informed and individualized decision on whether to apply for deferred action. Lack of legal support beyond the clinic for issues that may arise later in the worker's case. Opportunity: Advocates can leverage resources to support larger groups of workers to apply and receive work authorization in a more timely manner. Given the trusted relationships that organizers and advocates develop with workers, ongoing communication can support workers beyond the legal clinic.	Challenge: If a worker's case presents complexities, it may force the beneficiary out of the model as additional legal resources, advising, and advocacy are required to determine if they can proceed. Opportunity: Workers who cannot afford a lawyer or find pro bono representation can still apply for deferred action and receive an EAD. If this model is developed intentionally, it can create a sense of empowerment and ownership of their own process. Applicants who entered the U.S. on temporary work visas and are currently in status may have fewer concerns proceeding <i>pro se</i> .

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<p>Applying <i>Pro Se</i> (on one's own behalf)</p>	<p>A potential beneficiary of Deferred Action navigates legal process by themselves using the guidance of general information, resources, and templates.</p>	<p>Legal support resources are scarce and the ability to provide other types of legal services models described here is not an option. In the absence of any intervention from a legal service provider, potential beneficiaries are forced to navigate the legal system by relying on general guidance and trusted resources.</p>	<p>Connecting individuals to reliable, accurate and trusted information is most important. Individuals with complex cases will need to connect with a legal advocate that can help determine eligibility and advise on how to address complexities of case, as it is not recommended that any complex cases continue process in <i>pro se</i> manner.</p>	<p>Challenge: Workers with negative histories who face enforcement risks may apply without legal advice, putting themselves at risk of DHS taking immigration enforcement actions against them. Workers may lean on organizers and non-legal advocates for legal guidance outside their scope and abilities, which could lead non-legal advocates or organizers to unlawfully provide legal advice and could unintentionally result in harm to potential beneficiaries. It may be harder to establish meaningful relationships with beneficiaries since there is no one closely following each case. Opportunity: Organizers likely have the strongest relationships with potential beneficiaries and can serve as trusted messengers of key information.</p>	<p>Challenge: Difficult to navigate the process without any legal support, higher likelihood of falling victim to fraud from bad actors. Difficult to navigate any nuance or challenge presented within legal process. Risk of workers applying who risk denials and referrals for ICE enforcement. Opportunity: Although it's the least ideal option for beneficiary and poses some risks, it's still a process that would allow them to access a benefit. Applicants who entered the U.S. on temporary work visas and are currently in status may have fewer concerns proceeding <i>pro se</i>.</p>
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Strategies for Building Immigration Legal Services Capacity for Labor-Based Deferred Action Cases

	Description	Assumptions	Challenges	Opportunities	Resources
<p>Legal Fellowships</p>	<p>Several grant-making organizations provide funding for new attorneys to work as fellows in host organizations. These roles are typically funded for fellows to represent low-income and vulnerable populations. At least two of these organizations—Equal Justice Works and Justice Catalyst—granted fellowships in 2022 to organizations doing labor-based immigration work.</p>	<p>There is an agency that has ability, infrastructure, and support to host a legal fellow.</p>	<p>Two important things to note with fellowships: 1) the application process is long, typically starting in the fall for a fellowship starting the following fall and 2) legal fellowships require the host organization have at least one licensed attorney on staff who can supervise the fellow's legal work.</p>	<p>Legal fellowships allow for additional capacity and resources that may not have already been available to an organization's effort. The fellowship program provides infrastructure to connect interested applicants with qualified host organizations, and projects can be tailored to fit both the organization's and the individual's specific goals.</p>	<p>Equal Justice Works: https://www.equaljusticeworks.org/become-a-host-organization/ Justice Catalyst: https://justicecatalyst.org/ Skadden: https://www.skaddenfellowships.org/ Immigrant Justice Corps: https://justicecorps.org/ Note: IJC requires that the organization apply to become a host beforehand, and then a fellow is placed with an organization. It also hosts non-legal "Community Fellows" who provide bilingual screening and other assistance.</p>

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<p>Department of Justice (DOJ) Recognition and Accreditation</p>	<p>In the world of immigration law, non-attorneys can become “accredited” by the Department of Justice, which allows them to represent individuals before DHS, including USCIS (and with “full” accreditation, to appear in immigration court). To become accredited, individuals undergo extensive training on immigration law and become equally qualified as their attorney counterparts to prepare immigration filings. Individual DOJ accredited representatives must be employed by an agency that obtains or already has “Recognition” status which is also granted by the DOJ. Having a staff member with DOJ Accreditation can significantly increase an organization’s capacity to represent individuals before immigration agencies.</p>	<p>There is a nonprofit organization that has the ability, infrastructure, and support for housing an Accredited Representative long term. If the nonprofit is not already recognized by the Department of Justice, it has made a commitment to pursue Recognition status and work towards establishing long term immigration legal services as part of their work.</p>	<p>The Recognition process and Accreditation process can take at least 3-6 months assuming the organization has already decided to implement this strategy and has existing staff members who would become accredited. Obtaining Recognition and Accreditation requires that the organization commit to investing in the infrastructure required to operate a direct legal services program and will be responsible for all legal work conducted by its legal staff. Candidates for Accreditation must receive substantial hands-on training and experience with a wide range of immigration processes (not just Deferred Action for workers). In addition, Accredited Representatives are limited in the remote work that they can conduct as their accreditation and permission to practice law is tied to a physical address location that receives Recognition from the DOJ.</p>	<p>DOJ Accreditation allows for the creation of professional development opportunities for team members to pursue careers in legal work. Usually, the best Accredited Representatives come from immigrant communities that have personal experience with the immigration system but never had the opportunity to go to law school. Nonprofit organizations that do not have the budget to hire attorneys may provide legal services to their members or clients through Accredited Representatives.</p>	<p>To learn more about this program, please see the DOJ website: https://www.justice.gov/eoir/recognition-and-accreditation-program. If a current staff member is interested in becoming an Accredited Representative, CLINIC offers a toolkit and step by step guide: https://cliniclegal.org/toolkits/recognition-accreditation.</p>
<p>Partnership with Law School Clinic(s)</p>	<p>There are many law school clinical programs around the country dedicated in whole or in part to assisting immigrants, where law students work under the supervision of clinical professors to provide direct representation to individuals. The relatively straightforward nature of these deferred action applications lends them well to supervised student work.</p>	<p>There is a Law School Clinic in your community with the capacity and ability to take on new cases or assist with limited legal services and/or legal clinics.</p>	<p>Law School Clinics will have limited capacity and will likely not be able to meet the demand on their own. However, their legal resources could be used to leverage other resources and used for a very targeted part of the beneficiary community.</p>	<p>It allows for the leverage of resources and capacity from educational institutions. Students gain experience working directly with immigrant communities and may build future capacity and expertise for immigration representation.</p>	<p>To identify law schools with public interest clinical programs, see https://www.americanbar.org/groups/center-pro-bono/resources/directory_of_law_school_public_interest_pro_bono_programs/.</p>
<p>Partnership with Immigration Legal Service Provider</p>	<p>Partner with Immigration Legal Service provider to streamline referrals and/or co-host immigration legal clinics.</p>	<p>There is an immigration legal service provider in your community that has the capacity and funding to take on deferred action cases.</p>	<p>Most immigration legal service providers have limited resources and capacity. Some may rely heavily on “fee for service” models to sustain their work, or work under grant restrictions that limit the types of cases they can handle. Most immigration legal service providers don’t have the ability to quickly expand capacity as additional staff and training time will need to be accounted for in the planning.</p>	<p>This type of partnership can help build a more sustainable long term legal services infrastructure in a community. It allows for creative and unique ways for joint funding proposals that leverage the strengths of each organization (worker rights and immigration) partnering to meet the need.</p>	<p>National Immigration Legal Services Directory: https://www.immigrationadvocates.org/legaldirectory/</p>

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Partnership with Consulates	Partner with consulates to expedite issuance of identity documents, provide facilities to hold legal clinics, and secure resources to pay immigration filing fees and potentially private attorney fees for deferred action applicants.	Consulate is aware of new deferred action for workers program.	Workers may come from countries whose consulates do not have the budgets to assist. Consular offices may only be located in large metro areas far away from workers.	Currently Mexican Consulate in Chicago, Atlanta, and Milwaukee is assisting Mexican nationals with filing fees and private representation in labor-based deferred action requests.	For more information on the the Mexican Consulate Protection Division: https://consulmex.sre.gob.mx/index.php
Pro Bono/ Low Bono Private Attorneys	Referral system to private attorneys that can provide legal support pro bono or “low bono.”	Private immigration attorneys may not yet be familiar with this new prosecutorial discretion process, and they may be willing to partner on these cases – particularly given the relatively straightforward nature of the applications. Consider seeing if a local private attorney will agree to a “low bono” or batch rate (if there are many workers in need of representation) to provide legal screenings and prepare the applications.	Many interested pro bono/low bono attorneys may not have a background in these processes and may need ongoing training, technical guidance, and support.	It allows nonprofit organizations to leverage the expertise, resources, and capacity of private law firms. Even pro bono attorneys who do not have capacity to take on whole cases may be potential volunteers for limited legal services/clinic service deliver models.	1. Volunteer Recruitment Posting Tool: www.wetheaction.org 2. Reach out to local American Immigration Lawyers Association (AILA) local chapter Pro Bono Liaison.
Digital/Tech Tools	Justicia Lab Platforms including Immi (preliminary immigration assessment tool) and Reclamo (wage theft recovery tool)	Justicia Lab Platforms: Reclamo is an easy-to-use tool designed to help worker advocates retrieve stolen wages for workers. Using a mobile-responsive, plain-language screening tool and interview, advocates can now automatically complete the New York State Department of Labor form, submit a demand letter to an employer, and more. Other regions are in development.	Development to take Reclamo to different jurisdictions (state DOL forms, state labor law analysis, jurisdictional interview update) will require time and resources. Commitment to train and provide user feedback to help Justicia Lab continue to refine the tool. Development to customize the universal intake assessment hub that fit organizational needs of worker and immigrant rights advocates in different regions; administrative support to track/refer assessments and help orgs coordinate with each other. Commitment to train and provide user feedback to help Justicia Lab continue to refine the tool.	Reclamo could be used by workers' groups and advocates and link out to the universal immigration assessment for workers who have immigration questions. The universal immigration assessment empowers clients with information about potential eligibility and provides immigration orgs a running start to provide services, with a focus on deferred action and other forms of relief that surface.	Information on Reclamo app available here: https://reclamoapp.org/en Information about JusticiaLab here: https://www.justicialab.org/blog/justicia-lab-launches-reclamo-the-most-comprehensive-platform-to-date-to-help-immigrant-workers-fight-back-against-wage-theft

Ready to Stay is a national coalition working to build field capacities and coordination for effective implementation of a large-scale immigration legalization program. Visit <https://readytostay.org/> for more information.

Established in 1979, the National Immigration Law Center (NILC) is one of the leading organizations in the U.S. exclusively dedicated to defending and advancing the rights of immigrants with low income. Visit <https://www.nilc.org/> for more information.