Practice Manual: Labor-Based Deferred Action[1]
September 4, 2024

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I. Introduction

On January 13, 2023, the Department of Homeland Security announced a "streamlined and expedited deferred action request process" for non-citizen workers who have worked or are working in a workplace where a labor agency is investigating or pursuing enforcement of labor rights violations ("Labor-Based Deferred Action").[2] Labor-Based Deferred Action is designed to support the efforts of federal, state, and local labor and employment agencies to enforce labor and employment law and hold abusive employers accountable by mitigating workers' fear of removal or immigration-related retaliation. Labor-Based Deferred Action confers deferred action and work authorization for a four-year period.[3] Those approved may make subsequent requests for additional two-year grants of Labor-Based Deferred Action if supported by the labor or employment agency.[4]

This streamlined process to apply for Labor-Based Deferred Action is the direct result of more than a decade of worker-led organizing to secure concrete protections against immigration-based retaliation by exploitative employers. A long legacy of exploitation of immigrant workers in the U.S., aided by immigration restrictions, employer retaliation, and immigration enforcement, has made it difficult for noncitizen workers to vindicate their labor rights and caused legitimate fears of reporting to labor agencies, undermining labor standards enforcement. In the past several decades, specific instances of employers weaponizing immigration enforcement have illustrated how immigration enforcement can undermine worker organizing and labor enforcement.[5] Starting in 2011, federal agencies began to address this problem through interagency deconfliction agreements that aimed to separate immigration and labor law enforcement in certain instances and to enact protocols for restraint in immigration enforcement while labor agencies are investigating labor violations.[6] But those agreements were insufficient to adequately

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[2] Press Release, U.S. Dep't of Homeland Sec., 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 [hereinafter "DHS Announcement"].
[3] The deferred action grant period announced in January 2023 was two years, but on July 22, 2024, DHS extended the period of time for initial grants of deferred action to four years, and created a process for workers who already received a two-year initial Labor-Based Deferred Action grant to request an extension for an additional two years. *See* U.S. Dep't of Homeland Sec., DHS Support of the Enforcement of Labor and Employment Laws, https://www.dhs.gov/enforcement-labor-and-employment-laws (last updated July 23, 2024) [hereinafter "DHS FAQ"].
[4] Press Release, U.S. Dep't of Homeland Sec., DHS Helps Hold Exploitative Employers Accountable (Jan. 17, 2024), https://www.dhs.gov/news/2024/01/17/dhs-helps-hold-exploitative-employers-accountable.
[5] *See, e.g.*, *Montero v. Immigr. Naturalization Service*, 124 F.3d 381, 382–83 (2nd Cir. 1997) (describing employer reporting unionizing workers to INS to instigate a workplace raid, in which 10 workers were arrested and placed into deportation proceedings).
[6] DOL/DHS Deconfliction MOUs, U.S. Dep't of Labor, https://www.dol.gov/agencies/oasp/resources/deconfliction-mou (last visited Aug. 8, 2024); *see also* Julie Braker, Note, Navigating the Relationship Between the DHS and the DOL: The Need for Federal

protect immigrant workers participating in labor agency investigations, and so immigrant worker leaders, worker centers, unions, and advocates continued to push for stronger policies to protect workers. The Labor-Based Deferred Action process is a testament to the courage and persistence of the brave immigrant workers who have stood up for workers' rights in the face of threats and retaliation.

This Practice Manual is intended for immigration practitioners representing workers applying for Labor-Based Deferred Action. Immigration practitioners should be aware that, as addressed in more detail below, several aspects of the process are rooted in labor and employment law and require experience in those areas (or collaboration with others who have experience). Practitioners may find the Labor-Based Deferred Action Guide for Worker Advocates to be a helpful resource in delving more deeply into the labor-focused aspects of the process.[7] It is notable that most successful efforts to secure Labor-Based Deferred Action for large numbers of workers and hold employers accountable for workers' rights violations have been driven by partnerships between immigration practitioners and worker centers or unions.

This Practice Manual proceeds as follows. Part II describes who is eligible for Labor-Based Deferred Action and explains the application process, including screening and counseling, application components and practice advice, DHS processing, and requests to extend deferred action or renew it. Part III describes related relief, such as prosecutorial discretion in removal proceedings, parole, and U and T Visas. This Practice Manual also includes several appendices. These include a timeline of key DHS memoranda and agreements that incrementally addressed the conflict between immigration and labor enforcement, laying the groundwork for the January 13, 2023 guidance; a template request for a initial Statement of Interest from a labor or employment agency; an intake form for an initial request; a template request for an updated Statement of Interest; an intake form for an extension or renewal request, and know-your-rights information on some common workplace U visa crimes. Additional appendices, including sample labor agency statements of interest, sample cover letters, a sample worker declaration to show employment and request deferred action, sample forms, and a sample parole in place application are available to immigration practitioners who are not government employees, and may be viewed by completing the following form: https://bit.ly/LaborDADocs.

For immigration-related technical assistance questions on Labor-Based Deferred Action, practitioners may contact: Mary Yanik (myanik@tulane.edu), Lynn Damiano Pearson (daforworkers@nilc.org), the legal team at Arriba Las Vegas Worker Center (filings@arribalasvegas.org), Ann Garcia (ann@nipnlg.org), and Jessica Bansal (jessica.b@powerinnumbers.us).

Legislation to Protect Immigrant Workers' Rights, 46 Colum. J.L. Soc. Probs. 329 (2013), https://jlsp.law.columbia.edu/wp-content/blogs.dir/213/files/2017/03/46-Braker.pdf.

[7] Bliss Requa-Trautz, Marisa Díaz, Anita Mathias, and Michelle Lapointe, Deferred Action Protections for Labor Enforcement: A Guide for Worker Advocates (Oct. 2023), https://www.nelp.org/publication/deferred-action-protections-for-labor-enforcement-a-guide-for-worker-advocates/ [hereinafter "Worker Advocates Guide"].

II. Applying for Labor-Based Deferred Action

A. What is Deferred Action?

Deferred action is a discretionary determination by DHS to defer removal as an act of prosecutorial discretion.[8] The legacy Immigration and Naturalization Service formally recognized deferred action as a form of prosecutorial discretion in 1975, indicating that deferred action was warranted when "adverse action would be unconscionable because of the existence of appealing humanitarian factors."[9] While DHS has therefore long held authority to consider deferred action for a variety of humanitarian reasons, the application process has been obscure. DHS has not published information on how to apply for deferred action generally, although it has sometimes provided policy guidance on how the agency will consider requests from certain applicants, such as families of U.S. Armed Forces members.[10]

DHS makes determinations to grant or deny deferred action on a case-by-case basis and a grant of deferred action can be terminated at any time at the agency's sole discretion. There is no statutory or regulatory limit to the length of time for which deferred action can be granted. However, historically, deferred action has been granted for periods of two to four years.[11] Individuals with deferred action are eligible for an employment authorization document with a basic showing of economic necessity.[12] Deferred action recipients can also apply for a Social Security card by applying for employment authorization or directly through an application to the Social Security Administration.[13] Social Security cards issued to deferred action recipients state

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[8] *See* DHS FAQ, *supra* note 3. While the DHS guidance issued on January 13, 2023 specifically references both deferred action and parole in place as forms of prosecutorial discretion available to the agency, the Labor-Based Deferred Action Process relies exclusively on deferred action. *Id*. For more on parole in place, see *infra III.C.*

[9] (Legacy) Immigration and Naturalization Service, Operating Instructions, O.I. § 103.1(a)(1)(ii) (1975).

[10] *See* Memorandum from Jeh Johnson, Sec'y, U.S. Dep't of Homeland Sec., to León Rodriguez, Dir., U.S. Citizenship & Immig. Servs., Families of U.S. Armed Forces Members and Enlistees (Nov. 20, 2014), https://www.dhs.gov/sites/default/files/publications/14_1120_memo_parole_in_place.pdf; *see also* U.S. Citizenship & Immig. Servs., Discretionary Options for Military Members, Enlistees, and their Families, https://www.uscis.gov/military/discretionary-options-for-military-members-enlistees-and-their-families (last updated Apr. 25, 2022).

[11] As discussed in *infra* II.F, DHS recently increased initial grants of Labor-Based Deferred Action from two to four years; *see also* Ben Harrington, Cong. Research Serv. R45158, An Overview of Discretionary Reprieves from Removal: Deferred Action, DACA, TPS, and Others (2018), https://crsreports.congress.gov/product/pdf/R/R45158; *but see* U.S. Citizenship & Immig. Servs., National Engagement - U Visa and Bona Fide Determination Process - Frequently Asked Questions, https://www.uscis.gov/records/electronic-reading-room/national-engagement-u-visa-and-bona-fide-determination-process-frequently-asked-questions (last updated Sept. 23, 2021) (stating that the initial Bona Fide Determination Deferred Action grant is valid for four years).

[12] 8 C.F.R. § 274a.12(c)(14). While USCIS is not permitted to waive the employment authorization application fee for applicants for DACA, 8 C.F.R. § 274a.12(c)(33), that provision does not prohibit fee waiver for other types of deferred action, including Labor-Based Deferred Action.

[13] The Social Security Administration and USCIS have now streamlined the process for requesting a SSN such that relevant questions are included in the I-765. A SSN is automatically sent if employment authorization is approved. For more on this streamlined process, as well as what to do if your client does

"Valid for Work Only with DHS Authorization" because they do not establish employment eligibility on their own, so they must be presented with evidence of employment authorization when used for employment eligibility verification.[14]

Only noncitizens residing in the U.S. can seek deferred action. Deferred action does not authorize entry into the U.S. Therefore, noncitizens who receive deferred action will not be able to travel and re-enter the country without separate authorization.[15]

A grant of deferred action authorizes the noncitizen's presence in the United States. Therefore, while deferred action does not cure unlawful presence already accrued for the purposes of the 3- and 10-year bars, time spent in the U.S. under deferred action will not count toward the accumulation of unlawful presence.[16]

Those who receive deferred action, employment authorization, and a Social Security number are eligible to receive valid state identification, including driver's licenses, in every state.[17] Deferred action grantees can receive Social Security benefits if they are otherwise entitled to them.[18]

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not receive the SSN, see Soc. Sec. Admin., Apply For Your Social Security Number While Applying For Your Work Permit and/or Lawful Permanent Residency, https://www.ssa.gov/ssnvisa/ebe.html.

[14] U.S. employers fill out Form I-9 for each person they hire to verify the employee's identity and employment authorization based on the documents they present. For more information about the I-9 form and the list of acceptable documents, see U.S. Citizenship & Immig. Servs., I-9: Employment Eligibility Verification (Dec. 20, 2022), https://www.uscis.gov/i-9.

[15] It is not yet clear how USCIS will adjudicate requests for advance parole for travel from Labor-Based Deferred Action recipients. For further discussion of advance parole, see *infra III.E*.

[16] Adjudicator's Field Manual, U.S. Citizenship & Immig. Servs., ch. 40.9(b)(3)(J); *Arizona Dream Act Coal. v. Brewer*, 855 F.3d 957, 974 (9th Cir. 2017) (en banc); *Texas v. United States*, 809 F.3d 134, 147–48 (5th Cir. 2015) (explaining that deferred action recipients are "lawfully present" based on agency memoranda); *see also* DHS FAQ, *supra* note 3 ("a noncitizen granted deferred action is considered lawfully present in the United States for certain limited purposes while the deferred action is in effect.").

[17] *See generally* REAL ID Act, 6 C.F.R. §§ 37.11(c)(i)(v); (g)(2) (authorizing issuance of state driver's licenses with valid employment authorization card as proof of identity, but requiring additional proof of lawful presence). DHS Guidance on DACA makes clear that those with DACA or other deferred action are considered lawfully present. *See* U.S. Citizenship & Immig. Servs., Consideration of Deferred Action for Childhood Arrivals (DACA) Frequently Asked Questions (Nov. 3, 2022), https://www.uscis.gov/humanitarian/consideration-of-deferred-action-for-childhood-arrivals-daca/frequently-asked-questions#miscellaneous (see questions Q4, explaining that DACA is identical to any other grant of deferred action, and Q5, explaining that those with deferred action are lawfully present for the purposes of certain public benefits). This means that deferred action recipients can receive federally recognized driver's licenses or identification that are valid under the REAL ID Act. *See* Nat'l Immigr. Law Ctr., REAL ID and Deferred Action for Childhood Arrivals (DACA) (Jan. 2023), https://www.nilc.org/issues/daca/real-id-and-daca/. While some states have attempted to deny licenses to noncitizens with deferred action, those efforts have been stymied by litigation or legislative action and all states are currently issuing state identification to deferred action grantees. For information on further developments in this area, see Nat'l Immigr. Law Ctr., Access to Driver's Licenses for Immigrant Youth Granted DACA (Jul. 22, 2020), https://www.nilc.org/issues/drivers-licenses/daca-and-drivers-licenses/.

[18] Noncitizens in the U.S. must be in lawfully present to receive Social Security Benefits. *See* 42 U.S.C. § 402(y).

However, deferred action grantees are not considered "qualified aliens" for purposes of receiving federal public benefits.[19]

B. Who is Eligible for Labor-Based Deferred Action?[20]

Labor-Based Deferred Action is designed to protect noncitizen workers who have worked or are working in a workplace where a labor agency is investigating or pursuing enforcement of labor rights violations.[21] To establish eligibility, workers must provide "[a] letter or Statement of Interest from a [federal, state, or local] labor or employment agency."[22] ("Statement of Interest" or "SOI"). Applications submitted without a Statement of Interest will be rejected. Any noncitizen covered by a Statement of Interest is eligible to apply for Labor-Based Deferred Action.

1. What is a Labor or Employment Agency Statement of Interest?

A labor or employment agency Statement of Interest is a written request from a federal, state, or local labor or employment agency "asking DHS to consider exercising its discretion on behalf of workers employed by companies identified by the agency as having labor disputes related to laws that fall under its jurisdiction."[23]

Importantly, Statements of Interest generally cover specific worksites and/or workforces, rather than specific individual workers.[24] This is because labor agencies are seeking to protect all potential witnesses in their investigation or enforcement action. For example, if the U.S. Department of Labor's (DOL) Wage and Hour Division is investigating minimum wage

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[19] Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), Pub. L. No. 104–193, 110 Stat. 2105 (Aug. 22, 1996), § 431(b). For more information on benefit eligibility, see Tanya Broder, Gabrielle Lessard, & Avideh Moussavian, Nat'l Immigr. Law Ctr., *Overview of Immigration Eligibility for Federal Programs* (Oct. 2022), https://www.nilc.org/issues/economic-support/overview-immeligfedprograms/ - _ftnref1.

[20] This Section includes a cursory overview of labor and employment aspects of the Labor-Based Deferred Action process. For a more comprehensive discussion, please refer to Worker Advocates Guide, *supra* note 7.

[21] DHS FAQ, *supra* note 3.

[22] DHS FAQ, *supra* note 3.

[23] *See* DHS Announcement, *supra* note 2.

[24] Rarely, a Statement of Interest may cover family members of employees who are potential witnesses to labor law violation. This occurred in at least one case involving deceased workers whose family members were potential witnesses in the agency investigation. There is a strong argument that labor and employment agencies *should* issue Statements of Interest covering workers' family members whenever these are needed for workers to feel safe reporting violations, participating in agency investigations, or otherwise exercising their labor rights. The DOL appears to acknowledge this by recognizing that "undocumented workers who experience labor law violations may fear that cooperating with an investigation will result in the disclosure of their immigration status *or that of family members*, or that it will result in immigration-based retaliation from their employers and adverse immigration consequences for themselves *or their family*." U.S. Dep't of Labor, Process for Requesting a Statement of US DOL Interest During Labor Disputes: Frequently Asked Questions for Workers and Their Representatives (Aug. 1, 2024), https://www.dol.gov/sites/dolgov/files/OASP/files/Process-For-Requesting-DOL-Support-FAQ-English.pdf [hereinafter "DOL FAQ"] (emphasis added).

violations by a company, DOL may issue a Statement of Interest requesting deferred action for any worker employed by the company during the time period relevant to the pending investigation.

Redacted Statements of Interest from each federal labor agency are available by request in Appendix 7.

Tip on navigating practice manual: Immigration practitioners may be referred cases from a union or worker center or otherwise encounter clients who are already covered by a labor or employment agency Statement of Interest. If this is the case, practitioners may skip directly to Screening and Counseling, covered in *infra* II.C.

Immigration practitioners may also encounter clients who have worked at a worksite where a labor rights violation occurred, but do *not* have a labor or employment agency Statement of Interest. If this is the case, practitioners should continue reading below.

The following sections briefly discuss the process to obtain a labor agency Statement of Interest. **For a more comprehensive discussion of labor agency investigations and statement of Interest requests, please refer to *Deferred Action Protections for Labor Enforcement: A Guide for Worker Advocates*.[25]**

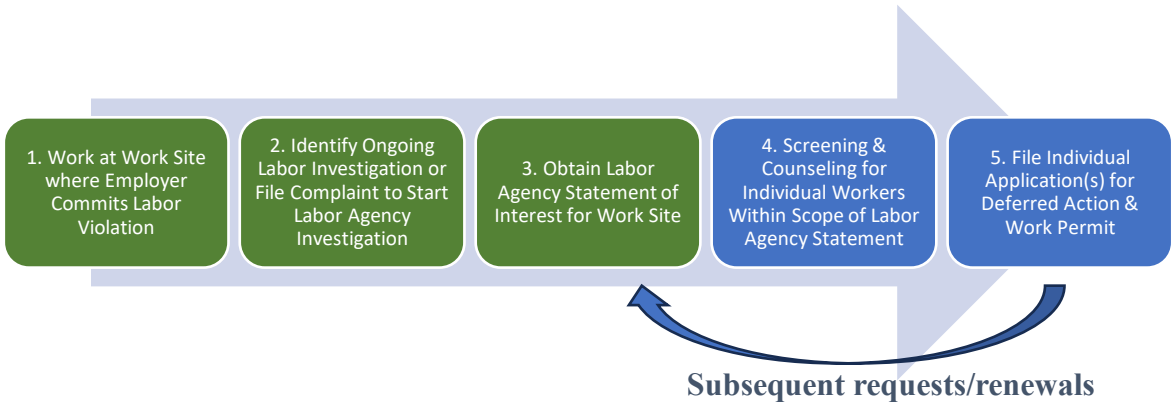
A word of caution: the labor agency processes described in this section are generally intended to be accessible to workers proceeding *pro se*. However, in practice, assistance from experienced attorney or non-attorney advocates is often needed.[26] Worker centers, unions, labor organizers, and labor and employment attorneys are often experts in this area. Immigration practitioners are not typically involved *unless* they are experienced in or take the time to familiarize themselves with labor and employment law or partner with others who are.[27]

[25] Worker Advocates Guide, *supra* note 7.

[26] This is particularly true where workers face barriers to navigating agency processes, such as fear of government officials in the U.S., literacy, and language.

[27] Immigration practitioners are nonetheless encouraged to screen potential clients for labor abuses as they may identify potential eligibility for Labor-Based Deferred Action or other types of labor-based immigration relief. Practitioners should consider identifying labor rights organizations in their communities where they can refer workers who need assistance reporting labor and employment law violations and potentially requesting Statements of Interest. For further discussion of screening best practices, see *infra* II.C.

Figure 1: Five Step process of seeking Labor-Based Deferred Action



In the course of labor investigations, agencies, workers and advocates frequently identify additional violations under the jurisdiction of other labor agencies, which may also lead to filing new complaints, circling back to steps one and two. Labor agencies may also refer violations to other agencies during the scope of the investigation.

2. Identifying and Reporting Labor and Employment Law Violations

Generally, labor and employment agencies issue Statements of Interest only in connection with agency investigations into labor or employment law violations (including agency efforts to enforce judgments). So, before workers can obtain a Statement of Interest, they will first need to either identify an already-pending agency investigation or enforcement effort at a current or former worksite or initiate an investigation by filing their own complaint.[28]

While a full discussion of labor and employment law is beyond the scope of this Practice Manual, Table 1 provides a basic overview of some of the principal federal laws enforced by key federal labor and employment agencies, with links to agency complaint processes. Practitioners should be aware that coverage varies from law to law and is sometimes limited to employers with a certain number of employees or volume of business, and/or employees with a certain amount of time worked.[29] State and local labor laws may provide more expansive labor

[28] Often, the best way to determine whether there is already a pending investigation is to ask the worker if they are aware of anyone else filing a complaint about the violation. In addition, it may be helpful to search publicly available case databases maintained by the NLRB, Nat'l Labor Relations Bd., Cases & Decisions, https://www.nlrb.gov/cases-decisions (last visited Aug. 16, 2024), The OSHA Establishment search tool, https://www.osha.gov/ords/imis/establishment.html (last visited Aug. 16, 2024), and the DOL, U.S. Dep't of Labor, Data Enforcement, https://enforcedata.dol.gov/views/search.php (last visited Aug. 16, 2024). For a general guide on intake to screen for labor disputes relevant to prosecutorial discretion, see Screening for Civil and Labor Rights Violations in Support of Prosecutorial Discretion (Aug. 5, 2021), https://www.nelp.org/wp-content/uploads/Intake-Guide-Screening-Civil-and-Labor-Rights-Violations-in-Support-of-Prosecutorial-Discretion-8-5-2021.pdf.

[29] For example, the Fair Labor Standards Act (FLSA) applies only to employees who: (1) are involved in interstate commerce; (2) work for a business that has at least two employees and does an annual business of at least $500,000; or (3) work for hospitals or certain businesses providing medical or nursing care.

protections than federal law, and state and local labor agencies often have their own complaint processes.

Table 1: Overview of Principal Federal Labor and Employment Laws and Enforcing Agencies

AGENCY	LAWS ENFORCED	EXAMPLES OF VIOLATIONS	TYPICAL STATUTE OF LIMITATIONS	COMPLAINT PROCESS
National Labor Relations Board (NLRB)	National Labor Relations Act ● *Right to organize and engage in "protected concerted activity," (i.e. collective action to improve working conditions)*	An employer cuts a worker's hours for talking to co-workers about poor working conditions. An employer fires a worker for supporting the union.	6 months	https://www.nlrb.gov/guidance/fillable-forms
USDOL Wage and Hour Division (WHD)	Fair Labor Standards Act (FLSA) ● *Minimum wage* ● *Overtime* ● *Child labor* ● *Retaliation*	Workers work over 40 hours in a workweek but do not receive overtime pay.	2 years (3 years for willful violations)	https://www.dol.gov/agencies/whd/contact/complaints
	Family Medical Leave Act ● *Unpaid, job-protected leave for certain family and medical needs*	A new parent is fired for requesting 12 weeks off to care for their newborn.	2 years (3 years for willful violations)	https://www.dol.gov/agencies/whd/contact/complaints
	Labor standards protections of H-2A, H-2B, and H-1B programs ● *Wage, housing, transportation, and disclosure standards*	An employer pays their H-2A agricultural workers by piece rate, and the resulting wage is below the local prevailing wage for U.S. workers in the same occupation.	Best to file as soon as possible, and within 2 years, because of legal ambiguity on the statute of limitations	https://www.dol.gov/agencies/whd/contact/complaints
USDOL Occupational Safety and Health Administration (OSHA)	Occupational Safety and Health Act ● *Health and safety standards* ● *Whistleblower protections*	A construction worksite fails to provide proper fall protection training.	6 months for health and safety violations 30-180 days for whistleblower	https://www.osha.gov/workers/file-complaint

U.S. Dep't of Labor, Fact Sheet #14: Coverage Under the Fair Labor Standards Act (July 2009), https://www.dol.gov/agencies/whd/fact-sheets/14-flsa-coverage.

		An employer gives a worker a less favorable job assignment because they filed an OSHA complaint.	violations, depending on type of violation	
USDOL Office of Federal Contract Compliance Programs (OFCCP)	Executive Order 11246 and other anti-discrimination laws and regulations applicable to federal contractors and subcontractors ● *Prohibiting discrimination based on race, color, sex, sexual orientation, gender identity, religion, national origin, or veteran status* ● *Prohibiting retaliation for inquiring about or disclosing compensation* *Note that OFCCP refers complaints alleging individual discrimination based on race, color, religion, sex, or national origin to EEOC*	A business with federal government contracts fires a worker for talking with co-workers about how much she is paid. A business with federal government contracts discriminates against workers based on sexual orientation.	180 days for discrimination based on race, color, religion, sex, sexual orientation, gender identity, national origin, or compensation inquiries/disclosure 300 days for discrimination based on disability or protected veteran status	https://www.dol.gov/agencies/ofccp/contact/file-complaint
Equal Employment Opportunity Commission (EEOC)	Federal Anti-Discrimination Laws (inc. Title VII and the ADA) ● *Prohibiting discrimination based on race, color, religion, sex, gender identity, sexual orientation, national origin, age, or disability*	An employer uses racial slurs, creating a hostile work environment.	180 or 300 days depending on state/locality	https://www.eeoc.gov/filing-charge-discrimination

Note that workers may bring many cases involving labor rights violations as private civil actions, rather than administrative complaints. Labor agencies will more readily issue Statements of Interest if they have received an administrative complaint because then the agency has a clear enforcement interest in protecting potential witnesses. In at least one case, a state labor agency agreed to issue a Statement of Interest based on pending civil litigation, rather than a pending agency investigation. Generally, labor agencies may be hesitant to do so, so advocates should consider whether workers can file an administrative complaint in addition to pursuing their private civil action for the purposes of requesting an SOI and seeking immigration protection.

3. Obtaining a Labor or Employment Agency Statement of Interest

Once a labor or employment agency investigation has been initiated, workers or their representatives may request that the investigating agency issue a Statement of Interest covering the worksite(s) under investigation.

Labor and employment agency processes to request Statements of Interest vary somewhat but, in general, a request for a Statement of Interest should: (1) Be in writing; (2) Identify the pending agency investigation or enforcement action; (3) Describe how the fear of actual or potential immigration-based retaliation and/or immigration consequences may impact workers' ability to participate in the investigation; (4) Identify the worksite/group of workers that should be covered by the SOI by providing the name of the employer(s), the geographical location(s) of the worksite(s), and the time period relevant to the investigation, and (5) Provide contact information for the requestor. The request should NOT disclose any worker's immigration status or contain sensitive personally identifiable information. In most cases, the request need not name specific workers at all, but rather may be made on behalf of a union, worker center, or simply "a current and/or former employee(s)" of the employer.[30] US DOL specifically directs that Statement of Interest requests should *not* name individual workers.

The request should frame the time-period relevant to the labor or employment law violation, worksite(s), and employer(s) as broadly as possible to cover all current and former employees who could potentially be victims of, or witnesses to, the violation. Specifically, the request should list *all* relevant employers (including any possible joint employers, subcontractors, and staffing agencies), *all* relevant worksites, and the relevant time-period (including the earliest date of evidence of a labor violation through the filing of the agency complaint and anticipated further proceedings, including compliance and monitoring). Since these details will define the scope of workers who are eligible to file for Labor-Based Deferred Action, the request is a key opportunity to advocate for the class of affected workers to be as broad as possible. If the agency may be inclined to limit the scope of the Statement of Interest in any way that might exclude potential witnesses, the request should explicitly address why the Statement of Interest should be broad to prevent or counteract retaliation and facilitate the participation of all potential witnesses.

Practitioners should consult guidance for the relevant agency for further details and requirements. The following table contains links to guidance on the SOI request processes of *federal* labor and employment agencies.

[30] If the request is submitted by an attorney, the attorney should identify themselves as the representative of a current or former employee(s), as applicable, in keeping with attorneys' ethical duties to reveal their interests when dealing with unrepresented persons (here, labor agency investigators and employees). *See* ABA Model Rule of Professional Conduct 4.3. Legal representatives should review applicable professional responsibility rules for their jurisdictions to identify any additional considerations.

Table 2: Federal Labor Agency Guidance on SOIs

FEDERAL AGENCY	WHERE TO SUBMIT SOI REQUEST	SOI GUIDANCE
NLRB	Board Agent assigned to the case, Regional Director, and/or Immigration Coordinator and Immigration.Team@nlrb.gov	https://www.nlrb.gov/guidance/key-reference-materials/immigrant-worker-rights[31]
USDOL (including Wage and Hour Division, OSHA, and OFCCP)[32]	statementrequests@dol.gov	https://www.dol.gov/sites/dolgov/files/OASP/files/Process-For-Requesting-DOL-Support-FAQ-English.pdf
EEOC	District Director and Regional Attorney at local EEOC Field Office	https://www.eeoc.gov/faq/eeocs-support-immigration-related-deferred-action-requests-dhs
DOJ Civil Rights Division	Online form to CRD: https://touchpoints.app.cloud.gov/touchpoints/5eab66b2/submit	https://www.justice.gov/crt/support-workers-deferred-action-requests-dhs

As of the date of this Practice Manual, labor and employment agencies in several states and cities—California, Illinois, Massachusetts, Minnesota, New Jersey, New York, and Philadelphia—have also issued guidance regarding Statement of Interest requests. A number of other state labor and employment agencies, for example Washington State and Oregon, have not posted guidance but have begun issuing Statements of Interest on a case-by-case basis. In addition, some state attorneys general and local district attorneys have provided Statements of Interest based on pending civil or criminal investigations or enforcement actions related to labor or employment laws and the Massachusetts and Minnesota Attorneys General have posted

[31] *See also* Jennifer A. Abruzzo, Gen. Counsel, Nat'l Labor Relations Bd., Ensuring Rights and Remedies for Immigrant Workers under the NLRA, Memo 22-01 (Nov. 8, 2021), https://apps.nlrb.gov/link/document.aspx/09031d45835cbb0c; Joan Sullivan, Assoc. Gen. Counsel, Nat'l Labor Relations Bd., Ensuring Safe and Dignified Access for Immigrant Workers to NLRB Processes, OM 22-09 (May 2, 2022), https://apps.nlrb.gov/link/document.aspx/09031d458375a553.

[32] OSHA may designate its authority to states through OSHA-approved cooperative agreements with state occupational safety and health programs. State plans currently cover workers in private sector and state and local government workers in 22 states. In a state plan state, OSHA's current position is that SOI requests should be directed to the state plan on issues in the state's jurisdiction under the established agreement. State plans are not mandated to implement SOI request protocols at this time. When filing whistleblower complaints in a state plan, be sure to dual file the complaint to preserve the right to federal review of the state determination. Learn more about state plans here: https://www.osha.gov/stateplans.

guidance related to their processes. A living chart of state and local guidance is available at this link.[33]

The absence of published guidance does not mean an agency will *not* issue a Statement of Interest. A worker seeking a Statement of Interest from a labor or employment agency without published guidance should contact the agency to ask how it wishes to receive Statement of Interest requests. They may also wish to put the agency in touch with DHS. DHS has indicated that labor and employment agencies seeking more information about Statements of Interest and Labor-Based Deferred Action may contact laborenforcement@dhs.gov.

A template Statement of Interest request is included in Appendix 2.

When a labor or employment agency decides to issue a Statement of Interest, it must submit the Statement to DHS before distributing it to the requestor.[34] If the labor or employment agency decides not to issue a Statement of Interest, the agency should not communicate with DHS about that request.[35] Agencies that are considering requests for Statements of Interest for the first time should note DHS's guidance, which requires the Statement of Interest be addressed to DHS; describe worksite and workers who are potential witnesses, the labor agency enforcement action, the need for DHS support, and the agency's enforcement interests supporting the request; provide an agency point of contact; and provide workers with a copy of the Statement of Interest.[36]

[33] https://bit.ly/LaborDAResources.
[34] DHS FAQ, *supra* note 3.
[35] *See* DOL FAQ, *supra* note 24, at Q14; U.S. Equal Emp't Opportunity Comm'n, EEOC's Support for Immigration-Related Deferred Action Requests to the DHS: Frequently Asked Questions Q7, https://www.eeoc.gov/faq/eeocs-support-immigration-related-deferred-action-requests-dhs (last visited Aug. 6, 2024).
[36] DHS FAQ, *supra* note 3.

Worker Organizing and Information Sharing: Practitioners representing workers applying for Labor-Based Deferred Action should be aware that workers may have invested (or be prepared to invest) significant effort and courage, potentially as part of collective organizing efforts, in coming forward to report labor and employment law violations. Particularly where Statements of Interest cover many workers, practitioners may be asked to coordinate with unions, workers centers, and other advocates and organizers in assisting workers applying for Labor-Based Deferred Action. Practitioners are encouraged to see Labor-Based Deferred Action as an opportunity not only to assist individual clients, but also to contribute to a larger effort to build power for immigrant workers to transform working conditions for all workers by securing consistent compliance with labor and employment law through organizing, strategic enforcement, and continued advocacy.

Because many Labor-Based Deferred Action cases are rooted in collective organizing efforts, practitioners may be drawn into relationships that extend beyond simply the practitioner and the individual client. For example, practitioners may find that labor and employment attorneys, non-attorney advocates, and organizers are instrumental in the labor agency process and can serve as important resources for the immigration practitioner. Practitioners may also find that workers may have long-standing relationships of trust with co-workers and advocates with whom they have collaborated on the labor case, and workers may seek their support in making significant decisions and navigating the process of seeking Labor-Based Deferred Action. Against this backdrop, practitioners are encouraged to speak openly with their clients about their preferences for sharing information with other workers and advocates. Practitioners should make sure to explain all relevant confidentiality considerations, including when sharing information could defeat attorney-client privilege and what that might mean in their case, but should also not assume that maintaining confidentiality is a worker's primary or only concern, and should ultimately respect the worker's preferences regarding communication and information sharing.[37] Practitioners should also consider whether the sharing of some information between workers or with organizers may be important and useful to strengthening the labor investigation, such as in instances of protected concerted activity where collective action by several workers is legally relevant to demonstrating a labor violation.

C. Screening & Counseling for Labor-Based Deferred Action

Once a Statement of Interest has been, or is likely to be, issued, the next step is for an immigration practitioner to conduct a thorough screening.

1. Immigration Screening Interview

As with any other client seeking an immigration benefit, it is critical to individually assess the worker's complete history in order to counsel them on applying for Labor-Based Deferred Action. Workers may have questions about deferred action or other immigration paths, and they should have the opportunity to receive counseling tailored to their case, in addition to general counseling on the risks and benefits of applying for this temporary benefit.

[37] Practitioners are encouraged to consult the Worker Advocates Guide, *supra* note 7 for further discussion of creative strategies to maintain confidentiality while sharing information between practitioners and organizers.

Alternative legal services models: Many immigration practitioners using this manual will be engaged in a typical attorney-client relationship in which they will provide full representation and sign U.S. Citizenship and Immigration Services ("USCIS") Form G-28 as the worker's representative. However, due to the large scale of workers seeking deferred action often based on a single Statement of Interest, coupled with the limited capacity of non-profit immigration legal organizations and many low-income workers' inability to pay private attorneys, various limited legal services models have emerged to meet this need. These models typically involve day-long legal clinics where workers receive legal assistance in preparing their applications, which can facilitate the filing process either *pro se* or with ongoing representation.

Although ideally workers should be screened for all forms of immigration relief at some point, practitioners preparing Labor-Based Deferred Action should at a minimum assess:

a) Basic Eligibility:

- whether the noncitizen falls within the scope of the Labor Agency Statement of Interest:
  - the worker worked at the covered worksite(s)
  - for the covered employer(s)
  - during the covered time period)

  Note that some SOIs mention specific worksites, while others do not. If no worksite is named, it is sufficient to show the worker worked for the covered employer during the covered time period.

b) Jurisdiction, Equities & Financial Status:

- complete immigration history, as relevant to equities for discretion, and whether USCIS or U.S. Immigration and Customs Enforcement's ("ICE") would have jurisdiction to adjudicate deferred action;
- criminal history, as relevant to equities for discretion;
- where there are negative equities in the case that need to be outweighed, the worker's participation in the labor dispute, their family and community ties, and humanitarian needs;
- financial information to complete the application and/or to apply for a fee waiver.

Relevance of Inadmissibility & Bars: Immigration bars and other grounds of inadmissibility do not constitute bars to eligibility for Labor-Based Deferred Action, nor are there any disqualifying crimes (such as significant misdemeanors in the DACA context). Instead, negative immigration and criminal history will go towards the adjudicator's discretion in weighing of positive and negative equities but should not be presumed to be a barrier to receiving Labor-Based Deferred Action. In particular, the authors are not aware of any case so far in which negative immigration history alone—without any criminal history—has resulted in denial. Advocates also have not observed significant differences in the way ICE and USCIS have approached adjudications. For workers with criminal history, advocates should carefully review the charges and/or convictions and counsel workers that they may need to show more positive equities evidence to be approved and/or that they may face a higher risk of denial.

Although a standard immigration intake form, such as the example provided by ILRC, will generally suffice,[38] a form tailored to this Labor-Based Deferred Action process is available in Appendix 3, which aims to gather all the information needed to fill out the forms required for this process (including a fee waiver, if needed). These are the key areas where practitioners should screen workers in order to advise on Labor-Based Deferred Action eligibility, flag any issues that may complicate the case or pose risks, and identify other potential forms of relief (each of which is discussed in greater detail in subsequent sections).

Table 3: Immigration Screening Criteria for Labor-Based Deferred Action

ISSUE	RELEVANCE TO THIS PROCESS	COUNSELING & CASE STRATEGY
Employment	● Threshold eligibility for Labor-Based Deferred Action. To qualify, the worker must have been employed at the covered worksite(s) by the covered employer(s) during the covered time period stated in the Statement of Interest.	● Workers with informal employment and/or who have worked under a different name may face challenges in proving employment. See *infra* II.D.3 for tips on assisting workers with these issues.
Immigration History	● The guidance states that in cases where workers are in removal proceedings or have prior orders of removal, USCIS will "forward" their applications to ICE for review. ● Because this is a discretionary form of relief, USCIS or ICE could deny deferred action based on negative immigration history. In	● Where clients' immigration history is unclear after the intake interview, practitioners should discuss with clients whether to proceed with the application or delay to investigate further through filing a FOIA immigration records, or FBI background check. ● Advocates should advise client about information being shared with ICE if

[38] Immig. Legal Res. Ctr., Sample Client Intake Form, https://www.ilrc.org/sites/default/files/resources/ilrc_sample_intake_form_-_sept_2019_0.pdf (last updated Sep. 2019).

	adjudications so far, it appears that neither USCIS nor ICE have denied applications solely based on immigration history. However, more extensive immigration history may require additional evidence of positive equities to support the worker's application. See *infra* II.C.3.	application will be forwarded to ICE for review. ● Advocates should counsel clients about the potential need for positive equities evidence if there is substantial negative immigration history (including multiple removals or re-entries, or prior denials of affirmative applications). ● Workers in removal proceedings or with prior removal orders may wish to separately request prosecutorial discretion from OPLA to terminate (or reopen and terminate proceedings).
Criminal History	● Although there is no specific criminal bar to applying for Labor-Based Deferred Action, criminal history is a negative equity that could result in denial. The immigration agencies may also request additional criminal records through RFEs. ● Advocates may need to seek additional evidence of positive equities to counterbalance negative equities stemming from criminal history. See *infra* II.C.3.	● Advocates should request records from the jurisdiction of conviction and/or a state or FBI background check. ● Advocates should advise workers, depending on their individual criminal history, about the possibility of a denial and counsel the worker on the need to submit a more robust application with positive equities evidence. ● Advocates should advise workers about the information shared with DHS through this application and the very small risk of referral for enforcement with workers with significant criminal history, and assess whether the worker is a current priority for removal. So far, no Labor-Based Deferred Action applicants have been referred for enforcement.
Other Immigration Relief	● Whenever possible, workers should receive a full immigration screening to determine U/T visa eligibility arising from the labor dispute, as well as any other forms of immigration relief that may provide a viable path to permanent status. See *infra* III.F. ● Workers who have qualifying U.S. citizen relatives (or are Cuban nationals) may be eligible for parole in place, allowing them to apply to adjust status. See *infra III.C* for a discussion of applying for parole in place in labor cases.	● Advocates should carefully screen any workers who report having suffered direct harm as a result of the labor dispute to determine if they may be eligible for a U/T visa. ● If a worker is T/U eligible, advocates should advise workers on the benefits of these visa programs, and should counsel the worker that they may still apply for deferred action to receive protections and work authorization more quickly. ● Although not part of the new streamlined filing process, advocates should advise workers with pathways to adjustment on the possibility of applying for parole in place at a local field office, in addition to submitting a request for deferred action.

2. Understanding Immigration and Criminal History—FOIAs & Other Record Requests

Depending on what a worker discloses in their screening interview, practitioners may consider submitting FOIA or other record requests to various government agencies to review any negative immigration and criminal history.[39] Depending on the agency or sub-agency, responses to these record requests vary from 30 days to many months. FOIA requests to USCIS for the A File had short processing times at the time of publication of this practice manual, and the A File should generally contain most relevant immigration history. But importantly, practitioners should weigh the consequences of potential delay to seek records and discuss this as well as the implications of potential uncertainty of any negative immigration or criminal history with the worker so the worker can make an informed decision to either proceed with filing or wait for records.

Fast Records Requests: A key consideration in Labor-Based Deferred Action cases is obtaining sufficient information to counsel workers so they can make an informed decision on whether to apply while avoiding unnecessary delays in filing. Since, as noted above, no specific immigration or criminal bars apply to this process, identifying the most efficient way to determine relevant history is key to supporting workers in timely receiving deferred action and work permits. Many advocates have found FBI background checks to be the most efficient way of gathering criminal and most immigration background information to advise their clients on deferred action.

Table 4: Suggested Records Requests & Processing Times for Labor-Based Deferred Action

WORKER REPORTS	TYPE	RECOMMENDED RECORDS	PROCESS	TURNAROUND TIME	PRACTICE POINTERS
Immigration History[40]	**Removal History**	USCIS FOIA	Online Form	A-File requests are currently processed in approximately 30 business days if filed online.[41]	If a worker has an A number, advocates may determine general removal status through the Executive Office of

[39] For a comprehensive guide on filing FOIAs in immigration matters, *see* Immig. Legal Res. Ctr., *A Step-by-Step Guide to Completing FOIA Requests with DHS* (Dec. 2021), https://www.ilrc.org/sites/default/files/resources/new_foia_dhs_practice_advisory_-_2021.pdf.

[40] If the client does not have an A-number, be sure to include all spellings and versions (including past misspellings) of a worker's name to better ensure all their records are located in requests to immigration agencies.

[41] For more information on FOIA requests for A-files, *see* Nat'l Immig. Litig. All., Am. Immig. Council, Nw. Immig. Rts. Project, and Law Offs. of Stacy Tolchin, Nightingale v. USCIS and FOIA Requests for Immigration Case Files (A-Files) (Jan. 18, 2023), https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/nightingale_foia_advisory_updated.pdf.

					Immigration Review ("EOIR") website without a FOIA. Note the EOIR website will not reflect expedited removal orders.
	Border Interactions	FBI Background Check; other FOIAs as needed.	Online or by mail. Requires fingerprinting.	Varies by method but between 2 and 20 days.	FBI background checks should include border arrests and orders of removal, but results are inconsistent. If inconclusive, some advocates may opt to file CBP or OBIM FOIAs, though these often take months to receive a response.
Criminal History	**Federal or unknown jurisdiction**	FBI Background Check	Same as above.	Same as above.	FBI criminal history should include state and border offenses and track closely with what USCIS will see through biometrics.
	State or Local	FBI Background Check or state/local records.	Varies by jurisdiction.	Varies, but can often be requested electronically or by contacting the county clerk's office.	FBI checks alone often suffice, though other records may contain mitigating factors.

3. Counseling

a) Benefits of Approval, Prospects of Success, and Limitations of Temporary Status

Practitioners should review with workers the benefits of deferred action, including work authorization, a Social Security number, access to apply for state identification or a driver's license, and the tolling of unlawful presence, as described in more detail above, see *supra* II.A. Practitioners should also advise workers on the limitations of this temporary status, so that they understand that it does not lead to permanent residency and that it does not entitle them to re-enter the U.S. in the event that they depart.

Practitioners may also want to advise a worker on their prospects of success. To address this question, the authors have considered information shared broadly by practitioners and have also conducted an informal survey of several practitioners and organizations that have assisted large numbers of workers to apply for Labor-Based Deferred Action. The authors particularly wish to thank Arise Chicago, Raise the Floor Alliance, and Arriba Las Vegas Worker Center for providing information to inform this section.

In the first year and a half of Labor-Based Deferred Action applications, the vast majority of applications have been approved. This includes applications from workers with a variety of negative equities, such as a criminal record (including DUIs, domestic violence, controlled substance possession, and multiple misdemeanor arrests), several past deportations, or open removal proceedings. Numerous workers who entered the United States after November 2020, and are thus considered "threats to border security" under the Mayorkas priorities memo have also been approved. These results are consistent with the fact that DHS rightly treats a labor agency Statement of Interest as a strong positive equity, which may outweigh many common negative equities.

USCIS officials have shared that the most common reason for denials of Labor-Based Deferred Action in adjudications so far has been failure to appear for a biometrics appointment or failure to respond to a request for more evidence. The authors deduce that these denials have occurred in cases where the worker applied *pro se* with limited legal assistance but without full representation, leading to a gap in follow-up from the worker because of confusion or a change in address. Additionally, the authors are aware of some denials of applications based on weighing of the equities because of criminal issues, including felony illegal re-entry convictions, allegations of significant fraud, smuggling, or gang membership, and arrest on felony charges after having applied for Labor-Based Deferred Action with the charges open at the time of adjudication. The authors are also aware that some workers who have received a denial have re-applied for Labor-Based Deferred Action with additional positive equity evidence; these applications have generally been approved so far.

Advocates should also advise workers on the possibility of renewals, which will depend on the support and enforcement interests of the labor agency. See *infra* II.G.

b) Sharing Information and Possible Future Immigration Enforcement

Practitioners should counsel each individual client on the risks of providing their personal information to DHS through an application for Labor-Based Deferred Action according to the specific facts of their case. This counseling should be informed by whether DHS already has the client's personal information through immigration benefits applications, ongoing removal proceedings, or ICE supervision.

The past year and a half of practice, with thousands of deferred action applications filed, provide some reassurance that the risk of enforcement action based on these applications is low under the current administration. The authors are not aware of any workers who faced increased enforcement (arrest, more restrictive supervision, detention, or deportation) based on an application for Labor-Based Deferred Action. This includes workers with negative criminal and immigration history, including final removal orders. Some workers have benefited from de-escalated enforcement after they filed an application, such as no longer being ordered to depart the United States, being released from detention, or being subject to less onerous ICE supervision conditions. In these instances, the workers were already facing enforcement action from ICE for reasons unrelated to their eligibility for Labor-Based Deferred Action. In cases where Labor-Based Deferred Applications were denied, the authors are not aware of any instances of referrals to ICE Enforcement & Removal Operations for enforcement.

Nonetheless, workers should be counseled on the general risks of sharing information with DHS. DHS has not made any formal guarantee that information in an application for Labor-Based Deferred Action will not be used against a worker in a future proceeding or action. And DHS's enforcement practices may change in the event of a new administration.

Note on risk assessment in light of the upcoming election: With the upcoming presidential election in November 2024, both practitioners and clients may be nervous about changes in adjudication of Labor-Based Deferred Action or immigration enforcement in general in the event of a second Trump Administration. The most common concern among clients so far seems to be the fear that a Trump Administration will revoke deferred action and the accompanying work permits of those who were previously approved through this process. This fear is understandable but it appears very unlikely, as DHS has never in the past issued mass revocations of deferred action or work permits and it is not clear that they have any administrative mechanism for doing so even if the program became a political target.

In discussing additional risks and the many uncertainties involved, practitioners may want to refer to policy changes made under the first Trump Administration. During the first Trump Administration, DHS effectively eliminated its enforcement priorities, meaning that agents were instructed to arrest, detain, and deport any deportable immigrant. While Trump's DHS increased enforcement through workplace and community raids, collateral arrests, increased detention, and increased deportations, it still faced operational constraints in locating, arresting, and removing deportable immigrants. Additionally, USCIS modified its guidance to provide for issuance of Notices to Appear (NTAs) upon the denial of any application

where the applicant was not lawfully present in the United States. In practice, however, despite the policy change, practitioners did not generally observe a broad expansion in USCIS issuance of NTAs. Practitioners should be aware that Trump has announced plans to revive and expand on the policies of his first Administration should he be elected a second time.[42]

Individual clients may assess the probability and magnitude of these risks differently and may come to different conclusions. For example, a worker in a food processing factory may see the risk in the resumption of workplace raids under Trump as the most serious threat and therefore may want to move forward in applying for Labor-Based Deferred Action to have a chance at obtaining work authorization to guard against worksite enforcement. On the other hand, a construction worker who has never had any past contact with the immigration agencies but lives with his fully undocumented family may be very fearful about disclosing address history with the uncertainty of the presidential election and may prefer to delay his application to see the election results. Practitioners should answer questions and help clients understand the risks, in relation to each client's priorities. Informed by this conversation, each client should make the ultimate decision as to whether to apply as soon as possible or wait and see.

The recent increase in grants from two to four years may also impact a worker's decision to proceed with applying, since once they are approved, they will enjoy immigration protections throughout the next administration regardless of election outcome.

If Trump were to be reelected, the lame-duck period may also present an opportunity for advocacy to push for all pending applications to be adjudicated as quickly as possible and before the inauguration on January 20, 2025.

Practitioners should advise workers who are in removal proceedings or have final removal orders that their applications will be adjudicated by ICE, rather than USCIS, which may entail different risks. USCIS has provided a centralized filing location, regardless of workers' current immigration status. However, where USCIS determines that an applicant is in removal proceedings or has a final removal order, USCIS will "forward" the request to ICE for adjudication.[43] The Homeland Security Investigations' Parole and Law Enforcement Programs Unit ("HSI PLEPU") then adjudicates these cases, in consultation with the relevant ERO and OPLA offices. Practitioners should explain the involvement of ICE and its subagencies in these cases so that clients can make an informed decision to proceed or not in submitting an application.

[42] *See, e.g.*, Charlie Savage, Maggie Haberman, & Jonathan Swan, *Sweeping Raids, Giant Camps and Mass Deportations: Inside Trump's 2025 Immigration Plans*, N.Y. TIMES (Nov. 11, 2023), https://www.nytimes.com/2023/11/11/us/politics/trump-2025-immigration-agenda.html.

[43] *See* DHS FAQ, *supra* note 3 ("USCIS and ICE, as appropriate, will consider and make a case-by-case determination of the deferred action request and USCIS will consider all related Forms I-765, if submitted.").

With respect to counseling on risks if an application is denied, ICE officials have stated in stakeholder meetings that they will only consider enforcement action in Labor-Based Deferred Action cases if the worker's case is denied *and* the worker is either a national security or public safety risk. DHS may consult the current enforcement priority categories in making this determination. The current categories that are prioritized for enforcement are set forth in Secretary Mayorkas's 2021 Memorandum and include 1) national security risks 2) public safety risks, and 3) border security risks.[44] Practitioners should pay special attention to criminal history that may rise to a public safety priority as defined in the Mayorkas Memo that could potentially lead to a denial and enforcement action. Although the border security category ostensibly prioritizes recent arrivals who entered unlawfully after November 1, 2020, advocates have not reported additional scrutiny of those applications submitted through this process. As noted above, advocates have not reported any escalated enforcement action against a Labor-Based Deferred Action applicant after denial.

c) Fears of Employer Retaliation

Labor advocates and organizers frequently contend with employer retaliation in the course of investigations and organizing drives, regardless of whether workers seek Labor-Based Deferred Action or not. For example, retaliation continues to be in the most frequently cited claim in EEOC filings and is reported in more than half of Title VII discrimination complaints.[45] While retaliation is unlawful it is often not possible to prevent employer retaliation, only to remedy it. Workers should be counseled about collecting evidence of retaliation to present to investigators. Labor-Based Deferred Action is one strategy to limit the potential consequences of retaliation, including threats of immigration consequences.

Neither USCIS nor ICE will contact an applicant's employer when adjudicating an application for Labor-Based Deferred Action. If an employer learns that a worker is seeking immigration protection from another source, such as from another worker or a news article discussing the case, it is unlikely that the employer will be able to gain access to the Labor-Based Deferred Action application via a FOIA request.[46]

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[44] Alejandro N. Mayorkas, Sec'y, U.S. Dep't of Homeland Sec., Guidelines for the Enforcement of Civil Immigration Law (Sept. 30, 2021), https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf. Although previously subject to litigation, the administration's discretionary authority to prioritize enforcement against certain noncitizens was upheld, thus reinstating these priorities. *See U.S. v. Texas*, 143 S. Ct. 1964 (2023).

[45] 2023 Annual Performance Report, Equal Employment Opportunity Commission (Feb. 23, 2024), https://www.eeoc.gov/2023-annual-performance-report; EEOC Releases Fiscal Year 2020 Enforcement and Litigation Data, Equal Employment Opportunity Commission (Feb. 26, 2021), https://www.eeoc.gov/newsroom/eeoc-releases-fiscal-year-2020-enforcement-and-litigation-data.

[46] USCIS generally does not release records to third parties absent the subject's consent unless the requestor can show "there is no privacy interest in the records, or . . . there is a public interest in the records that outweighs the subject's privacy interests." U.S. Citizenship & Immig. Servs., Form G-639, Freedom of Information/Privacy Act Request, 8 (Nov. 3, 2022), https://www.uscis.gov/sites/default/files/document/forms/g-639.pdf. Applications for Labor-Based Deferred Action may also be exempt from disclosure under FOIA Exemption 7.

Some labor rights advocates have expressed concern that an employer could use a worker's request for immigration relief against them if there is litigation of their labor case, such as if the employer contests the labor agency's fines and/or if the worker files a private civil action against the employer. For example, an employer may try to intimidate a worker by seeking aggressive discovery into their requests for immigration relief or, in the rare cases that proceed to depositions or trial, an employer may try to cast doubt on a worker's testimony by suggesting the worker is exaggerating or fabricating labor law violations to obtain immigration relief.[47] In either situation, there are potentially effective strategies to respond, including using standard strategies to rehabilitate witness credibility, seeking a protective order against immigration-related discovery, or filing motions in limine to exclude such evidence at trial.[48] Strategies will vary depending on the type of case being investigated or litigated, and the role of the labor agency involved. However, these strategies are not foolproof. In particular, the availability of protective orders may vary across different jurisdictions, and employers may serve broad discovery requests that encompass workers' requests for immigration relief even if employers were not previously aware workers made such requests. Accordingly, in an abundance of caution, practitioners should consider advising workers about the possibility their employer may try to obtain information about their request for immigration relief and/or use that request to discredit them in their labor case. Practitioners may also want to advise workers that keeping their requests for immigration relief confidential will decrease the likelihood that their employer will raise these arguments in litigation, so that workers may make an informed decision about whether and with whom to share the fact that they have applied for Labor-Based Deferred Action.

d) Fears of Criminal Consequences of Applying

Workers may fear arrest, detention, and prosecution for crimes that they may have committed that could come to light through their application for Labor-Based Deferred Action. These fears are most relevant to workers who have worked under a false name or Social Security number at their job and workers who work in illicit industries.

Large numbers of workers without permission to work use a false name or false Social Security number to obtain employment, sometimes with the acquiescence or even encouragement of their employer. Immigration practitioners should note that a range of state and federal laws prohibit the use of—and sometimes specifically working under—false names or Social Security numbers, and that negative immigration consequences could accrue from this practice.[49] Although disclosing "other names used" on immigration forms does not itself carry immigration or

[47] *See, e.g., Cazorla v. Koch Foods of Miss. L.L.C.*, 838 F.3d 540 (5th Cir. 2016) (holding that U visa applications may be discoverable as impeachment evidence under some circumstances, but acknowledging the potential chilling effects and strong public interest in maintaining confidentiality).
[48] *See, e.g., Rivera v. Nibco, Inc.*, 364 F.3d 1057 (9th Cir. 2004).
[49] It is a federal felony to use a false Social Security Number with the intent to deceive and obtain something of value. *See* 42 U.S.C. 408(a)(7)(B). There is a circuit split on the immigration consequences of this crime. *Compare Munoz-Rivera v. Wilkinson*, 986 F.3d 587 (5th Cir. 2021) (holding that conviction for using a false SSN is a crime involving moral turpitude because it involves dishonesty) *with Beltran-Tirado v. I.N.S.*, 213 F.3d 1179 (9th Cir. 2000) (holding that conviction under 42 U.S.C. 408(a)(7)(B) is not a crime involving moral turpitude because legislative history of Section 408 shows Congress did not believe using a false Social Security number to work constituted moral turpitude).

criminal consequences, practitioners may want to consider establishing proof of employment during the period of the labor dispute without using evidence that could expose them to criminal liability or immigration consequences. See *infra* II.D.3 for guidance on selecting evidence for the application to minimize these risks.

For workers whose employers are engaged in illicit industries such as cannabis cultivation or sex work, advocates should provide additional counseling on the risks of disclosing this employment in a Labor-Based Deferred Action application. Workers should be aware that engagement in work that is considered criminal activity under federal law could become a barrier to adjustment of status if they later become eligible for other permanent forms of relief.[50] Practitioners should evaluate if the worker can apply for Labor-Based Deferred Action without specifically disclosing the type of work in which they were engaged, depending on the language in the Statement of Interest, the name of the employer, and other factors.

e) Counseling Clients on the Work Permit Application Fee or Fee Waiver

There is no cost to request deferred action. However, the streamlined process for applying for Labor-Based Deferred Action requires that workers simultaneously apply for employment authorization. These streamlined applications must be accompanied by the appropriate fee for the I-765 application or a fee waiver, Form I-912.[51] Without a fee waiver, the application costs $520 as of this writing.[52] The form to request a fee waiver is lengthy, and advocates report that USCIS is generally exercising increased scrutiny of fee waiver applications, though USCIS has reported that the vast majority of fee waivers submitted for Labor-Based Deferred Action have been approved.

To be successful, an applicant will often need to submit significant accompanying documentation, depending on the grounds for their eligibility. While applicants who receive a means-tested benefit (or whose children receive such a benefit)[53] can generally just submit proof of their eligibility, applicants seeking waiver of fees on the ground that their income is at or below 150 percent of the Federal Poverty Guidelines will generally be expected to produce tax returns, paystubs, and/or other documentation of their low income. Practitioners should counsel the noncitizen on the time to fill out the fee waiver application and the expected supporting documentation, as some applicants may choose to pay the application fee rather than delay filing

[50] However, grounds of inadmissibility based on these illicit activities may be waived if the worker is eligible for a U or T visa in addition to Labor-Based Deferred Action. U.S. Citizenship & Immig. Servs., Form I-192, Instructions for Application for Advance Permission to Enter as a Nonimmigrant, https://www.uscis.gov/sites/default/files/document/forms/i-192instr.pdf.

[51] U.S. Citizenship & Immig. Servs., Form I-912, Instructions for Request for Fee Waiver (Sept. 3, 2021), https://www.uscis.gov/sites/default/files/document/forms/i-912instr.pdf.

[52] U.S. Citizenship & Immig. Servs., Form I-765, Application for Employment Authorization, https://www.uscis.gov/i-765.

[53] Alison Kamhi, Elizabeth Taufa, Kate Mahoney, and Rachel Prandini, Immig. Legal Res. Ctr., New USCIS Fee Exemptions for Survivors of Abuse, Trafficking, and Other Crimes, https://www.ilrc.org/sites/default/files/2024-03/03-24 new USCIS fee exemptions.pdf (last visited Aug. 21, 2024).

their application and still risk possible denial of the fee waiver, resulting in rejection and return of the underlying application.[54]

f) Counseling Guestworkers

Guestworkers, whose temporary immigration status is tied to their employer, often suffer labor exploitation and may be eligible for Labor-Based Deferred Action under labor agency SOIs.[55] Since guestworkers are only permitted to work legally for their petitioning employer, Labor-Based Deferred Action can offer a significant benefit: temporary permission to remain in the U.S. for four years, notwithstanding expiration of their authorized stay as guestworkers, and a work permit that allows them to work for any employer in the U.S.

Guestworkers, as with all clients, may have different goals. Some guestworkers want only seasonal employment so that they can return to the home country for long stretches to be with family, whereas other guestworkers want to stay and work in the U.S. without returning home if possible. Guestworkers may also want to preserve their eligibility for future guestwork visas or other immigration paths. Counseling for guestworkers should be tailored to their specific goals and concerns. In general, practitioners preparing to counsel a guestworker can anticipate three specific concerns that commonly arise among contingent status workers: 1) the potential of loss of their status in the event of termination of their employment; 2) immigration implications of travel outside the U.S.; and 3) eligibility for future guestwork visas.

First, in workplaces under labor agency investigation, guestworkers often rightfully fear that their employer may terminate some or even all employees. While retaliatory termination is a common fear not limited to immigrant workers, it has much broader implications for guestworkers: termination will generally trigger a time-limited grace period, after which the worker falls out of valid status, and may also mean they and their families are ejected from employer-provided housing and reported to federal agencies. Practitioners counseling workers on this fear should advise on the length of the grace period after termination for the guestworker's particular status. The Guestworker Tab of this spreadsheet provides the latest information on the applicable grace period.[56] Regulations typically prohibit unauthorized employment during the post-termination grace period, but guestworkers in most statuses can seek to transfer to a new employer, subject to their visa category's processes for approving transfer applications. Practitioners should also advise on the availability and timeline of seeking Labor-Based Deferred Action, because approval of deferred action before the end of the grace period will prevent the worker from accruing unlawful presence. Because of this, the federal Department of Labor has developed a system to identify and expedite requests for Statements of Interest in workplaces with H-2A or H-2B workers. Other agencies may also be willing to fast-track SOI consideration for guestworkers. At least some labor agencies have been willing to write an expedite request letter that satisfies USCIS's Expedite Criteria for guestworkers who are terminated and facing a

[54] If the need to apply for work authorization is caused by an underlying labor violation, then the labor agency (specifically the NLRB) may seek reimbursement of the filing fee from the employer through the labor agency adjudication as part of a consequential damages award. Even in compelling cases that the NLRB is pursuing zealously, that reimbursement will likely take months or years.
[55] DHS FAQ, *supra* note 3, at Q20.
[56] https://bit.ly/LaborDAResources.

time-limited grace period.[57] DHS also suggests that guestworkers filing for Labor-Based Deferred Action state their current immigration status and date of expiration of that status (with a Form I-94) in their written request for deferred action to alert adjudicators to the urgency of these requests.[58] If no other status is obtained during the grace period, then the worker faces the choice of remaining in the U.S. in unlawful status and beginning to accrue unlawful presence, or departing to their home country. Guestworkers can also file for an extension or change of status, and if they apply even after they fall out of status, USCIS will consider their request timely if the reason for the delay was a labor dispute.[59] A worker who departs the U.S. is not eligible for Labor-Based Deferred Action, which can only be conferred while the applicant is in the U.S., though they could seek parole to return to the United States. See *infra* III.D.

Second, guestworkers may have questions about travel to their home country. Some guestworkers (such as most H-2A and some H-2B) engage in seasonal employment, traveling to the U.S. for work each year and then home to their country of origin at the end of the season. Other guestworkers (such as H-1B workers) may reside in the U.S. for several years but periodically visit their country of origin or other countries and then re-enter the U.S. using the same valid visa. Though questions about travel are not unique to guestworkers, they are more likely to arise in counseling guestworkers, many of whom have some expectation for the ability to travel to their home country. Therefore, it is essential in counseling guestworkers to advise them of the limits of deferred action: namely, that workers can only apply for deferred action from within the U.S. and that deferred action, by itself, does not permit re-entry to the U.S. after travel. Guestworkers who imminently want to return to their home country, either at the conclusion of their guestworker employment or after a termination, may not want to pursue Labor-Based Deferred Action because of these restrictions. (Advance parole would permit re-entry after travel, but it is not yet clear of those with Labor-Based Deferred Action are eligible and on what basis, as this is still currently being tested and has not yet been adjudicated. See *infra* III.E.)

Third, guestworkers may be concerned about their eligibility for future guestwork visas, with their current employer or through another. It can be difficult to advise guestworkers about future employment through guestworker employers, since all visas are employer-petitioned and depend on an offer of employment. But, mindful of this limitation and the role of employers and their agents in the visa process, practitioners can help guestworkers worried about future guestwork employment by advising on negative equities and inadmissibility, as relevant for both consular processing and for admission at the border (assuming the visa is issued). The most common issue is a guestworker's overstay of their visa and accrual of unlawful presence, which could be related to a labor dispute. Practitioners should tell workers that they should make sure that any future consular application (DS-160) fully and accurately reflect their dates of travel to and from the

[57] *See infra* II.E.3; USCIS Expedite Criteria, U.S. Citizenship & Immigration Services (last updated March 21, 2024), https://www.uscis.gov/forms/filing-guidance/expedite-requests.
[58] DHS FAQ, *supra* note 3, at Q20.
[59] USCIS Updates Guidance on Untimely Filed Extension of Stay and Change of Status Requests, U.S. Citizenship & Immigration Services (Jan. 24, 2024), https://www.uscis.gov/newsroom/alerts/uscis-updates-guidance-on-untimely-filed-extension-of-stay-and-change-of-status-requests. Some guestworkers have successfully applied for a change of status to a B-1 visitor to extend their permitted stay, but importantly, this status does not include work authorization.

U.S., as discrepancies can lead to the denial of their visa or denial of entry to the U.S. Helpfully, workers who receive Labor-Based Deferred Action are authorized to remain in the U.S. after approval, and so workers should bring their approval for deferred action to any consular interview and to border processing to demonstrate that remaining in the U.S. after expiration of their guestworker status was authorized and does not make them inadmissible. The Department of State is also in the process of updating their training manuals to instruct consular officials that that guestworkers should be not penalized for remaining in the U.S. after their authorized stay expires if the reason for the overstay was a labor dispute.[60] Practitioners should advise guestworkers that even where they are eligible for a guestworker visa, and face no negative equities or grounds of inadmissibility that could impact consular processing or admission at the border on a valid visa, they must be sponsored by an employer who is offering them employment and petitioning for guestworker visas.

D. Preparing a Labor-Based Deferred Action Application

Once the practitioner has confirmed a worker falls within the scope of a labor agency Statement of Interest and the worker has decided that they would like to proceed with applying for Labor-Based Deferred Action, the practitioner can assemble the full application packet. This section describes the components of the application packet, including both the forms and evidence, and strategies for identifying concerning negative equities and outweighing them.

Table 5: Foundational Best Practices for Labor-Based Deferred Action Applications

DO'S	DON'T'S
Emphasize enforcement interests of the labor agency. The Statement of Interest is a significant positive equity present in every application for Labor-Based Deferred Action.	Overwhelm adjudicator with voluminous labor/employment agency records or brief merits or severity of labor violation (no "substantial harm," "extreme hardship," or specific "helpfulness" required).
Prove employment, to show the worker falls within scope of SOI.	Overload on positive equities (community support letters, detailed worker declaration, medical records) where there are not significant negative equities.
Disclose & appropriately frame known negative equities (especially criminal history).	

[60] H-2 Working Group Meeting Notes, White House Domestic Policy Council (April 17, 2024) (on file with authors).

1. Contents of Deferred Action and Employment Authorization Packet

The newly announced guidance includes a short list of requirements for a request for Labor-Based Deferred Action and work authorization.[61] The requirements are as follows:

- Form G-325A, Biographic Information;
- Form I-765, Application for Employment Authorization, with the appropriate fee or Form I-912, request for a fee waiver;
- Form I-765WS, Worksheet;
- A written request signed by the noncitizen stating the basis for the deferred action request;
- A Statement of Interest from a labor or employment agency;
- Evidence to establish that the noncitizen falls within the scope of workers specified in the Statement of Interest;
- Where negative equities have been identified, evidence of any additional factors supporting a favorable exercise of discretion;
- Proof of the noncitizen's identity and nationality; and
- If applicable, any document used to lawfully enter the United States or other evidence relating to the noncitizen's immigration history or status.

USCIS has confirmed that passport-size photos are not required.

In addition to these components, practitioners should prepare a short cover letter, see Appendix 8, available by request only. The letter should generally be under three pages, and it should primarily demonstrate that the worker falls within the scope of the Statement of Interest.[62] If the practitioner believes that USCIS should have jurisdiction over the case but the record may be unclear (for example, for client who was in removal proceedings that were dismissed), then the cover letter may address jurisdiction explicitly. If there are any significant negative equities (primarily, criminal history), then the cover letter may want to appropriately contextualize those facts and discuss how positive equities in the case outweigh the negative equities. An example cover letter addressing criminal history as a negative equity is in Appendix 9, by request only. The cover letter should list out contents of application packet, preferably organized by tabs matching the evidence criteria listed above.

[61] DHS FAQ, *supra* note 3, at Q3.

[62] While an earlier edition of this manual suggested disclosing all known entries and exits from the U.S., in the past year practitioners have reported receiving approvals (without any requests for more evidence) of applications even where the cover letter did not detail entries and exists. This suggests that a full accounting of entries and exists does not seem to be required. Where immigration history will be known to the agency, the best practice is to affirmatively disclose and appropriately frame it in the cover letter.

2. Forms

The applicant must sign immigration forms where indicated on the G-28, G-325A, I-765, and, where applicable, I-912. Electronic signatures (such as through Adobe PDF) are not accepted, but USCIS continues to accept photocopies or scans of signatures.[63]

- G-28, Notice of Entry of Appearance as Attorney
- G-325A, Biographic Information (for Deferred Action): Applicants should fill out all fields with accurate information, including disclosing any "other names used" as well as their residences for the past five years. Because this form specifically requests residence addresses, practitioners should not substitute an office mailing address for the client residence address. The form also includes employment history for the past five years. Practitioners should be especially attentive to fully and accurately reporting the employment history that brings the applicant within the scope of the SOI. In the event the SOI covers employment that was more than five years ago, practitioners should list that employment on the G-325A or an addendum to the form, even though it falls outside the time period requested on the form.
- I-765, Application for Employment Authorization: Applicants should fill out all fields with accurate information, including disclosing any "other names used." In Part 2, Item 27, the Eligibility Category is (c)(14) for noncitizen granted deferred action.
- I-765WS, Worksheet: Work authorization has been routinely approved without additional documentary evidence in support of the noncitizen's statement and list of income, expenses, and assets in this worksheet. The noncitizen's statement can be a single paragraph, explaining their need for a work permit (for example, based on the need to provide for family or oneself or other life goals furthered by work authorization). A sample I-765WS is included as Appendix 13, by request only.
- $520[64] or I-912 Request for Fee Waiver: For fee, money order, personal check, cashier's check, or Form G-1450 to pay by credit card. If submitting fee waiver, then submit evidence in support of the reason for which the noncitizen seeks to waive the fee (proof of receiving means-tested benefit, proof of income such as tax returns or W-2s, or proof of financial hardship such as medical bills and outstanding debt).[65]

3. Evidence of Employment & Identity

All applications must include evidence that demonstrates that the applicant falls within the scope of the labor agency Statement of Interest. This is the most important evidentiary issue that adjudicators assess in these cases, since this link is required to demonstrate that protection for the applicant furthers the enforcement interests of the labor agency.

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[63] *See* Policy Manual, U.S. Citizenship & Immig. Servs., Volume 1, Part B, Chapter 2: Signatures, https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-2 (last updated July 18, 2024).

[64] This is the current filing fee for the I-765. Practitioners can confirm the current filing fee for form I-765 on the USCIS website. *See* U.S. Citizenship & Immig. Servs., Filing Fees, https://www.uscis.gov/forms/filing-fees (last updated May 15, 2024).

[65] For more on this, *see* Am. Immig. Lawyers Assoc., Practice Pointer: Best Practices for Preparing and Filing Form I-912, Request for Fee Waiver (Oct. 26, 2021), https://www.aila.org/advo-media/aila-practice-pointers-and-alerts/practice-pointer-best-practices-preparing-filing.

Typically, this means proof of employment that shows the applicant was employed by the company named in the Statement of Interest during the time period listed at the relevant worksite, if specified. Sources of evidence of employment may include:

- W-2s
- Pay stubs
- Timecards
- Contracts or other documentary evidence
- Labor agency records that list affected workers
- Short declaration describing employment terms (dates, position, work site) (see example at Appendix 12, available by request only).

One form of proof of employment is sufficient. It is not necessary to overwhelm the adjudicator with multiple forms of evidence. If you provide a W-2 as the proof of employment for an SOI that is limited in scope to only part of that year, then you may need to also provide further evidence that links the employment to the date range listed in the SOI. For example, if a SOI covers workers from July 2023 until the culmination of the investigation, and the W-2 provided is for 2023, DHS may request additional evidence to show that employment occurred during the covered period.

Applicants must also prove their identity and nationality. They therefore should include the biographical page of a valid passport, if available.[66] If the applicant does not have a passport, they could submit other government-issued identification along with a birth certificate to prove nationality, if needed.[67]

Dealing with Employment Under a False Name: Some immigrant workers work under a false name (pseudonym) or false Social Security Number (SSN) when they lack employment authorization and a valid Social Security number. Advocates have reported that this has not presented an issue in receiving a grant of Labor-Based Deferred Action. Any alternative name used for employment or any other purpose should be listed on the G-325A and I-765 in "All other names used," with no requirement to explain further for these forms.

Practitioners have two options for navigating this complication in proving employment. First, practitioners can forego submitting any proof of employment that bears the false name or false SSN and can instead assist their clients in writing a short, one-page sworn declaration that speaks to the basic facts of their employment, including the name of their employer and worksite, their date of hire, and their general responsibilities at the job. Some advocates find this to be the most straight-forward way to show employment in these circumstances, with the additional benefit of avoiding the disclosure of working under a false name or SSN. Second, and alternatively, practitioners can submit proof of employment

[66] Passports do not require translation.
[67] Birth certificates and other identification that is in another language should be accompanied by an English translation and a certificate of translation.

that bears the false name or SSN and present other evidence to connect the false name to the client, such as a photo ID or statement from the worker that they used the false name in their employment. The worker statement linking the two names could be in the worker's written request for deferred action or in a declaration.

Advocates report that working under a false name or SSN does not seem to be a significant negative equity in these cases. A few attorneys received Requests for Evidence from USCIS in 2023, soon after this process was announced, asking for proof beyond the worker's statement to link the worker's real name with the pseudonym shown on employment records. More recently, advocates have not seen any additional scrutiny of cases where the applicant has worked under a false name or SSN. Dozens of these cases have been approved without issue.

4. Written Request

All applications must include a signed, written request from the applicant. Some advocates have satisfied this requirement by asking the applicant to sign the cover letter (see example in Appendix 8, available by request only). Others have preferred to have the applicant submit a separate short statement (relating their assent to the practitioner's filing of the application to seek immigration protection) that is attached as an exhibit (see example in Appendix 12, available by request only), to allow the advocate to make last minute revisions to the cover letter without further client review. This written request can be very brief and does not need to be sworn under penalty of perjury, as for declarations. If the applicant does not speak English, then the request should include a certificate of translation. When including client declarations, remember that the adjudicator is not the labor agency investigator, and it is not necessary nor appropriate to include significant detail pertaining to labor violations that are under the jurisdiction of the corresponding labor agency.

5. Immigration Documents

Applications should include available immigration documents. DHS asks that an application include any document used to lawfully enter the U.S. and also requests other evidence relating to the noncitizen's immigration history or status. Practitioners should evaluate if their client has any of the following documents that should be included in the application:

- I-94 and visa or travel document if the applicant was inspected and admitted or paroled
- Notice to Appear or other documents from immigration court, if the applicant is in removal proceedings
- Parole, Order of Release on Recognizance, or Order of Supervision, if the applicant was arrested by immigration agents and then released
- Any removal order (expedited removal order, administrative removal order, final removal order, reinstated removal order), if the applicant was ordered removed

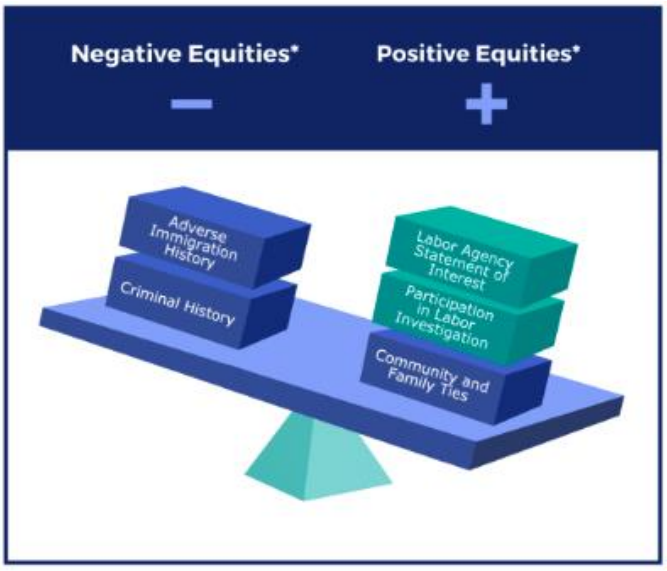
If the noncitizen has never encountered immigration officials, then there is no need to include documentation. If the noncitizen is aware of immigration history such as a past removal order but

does not have the removal order itself, practitioners should assess and counsel on whether it is necessary to wait for the result of a record request. Some applicants may want to proceed in the interest of time, especially if the removal order can be confirmed through other means, such as the EOIR website. Generally, applications that do not include a copy of a prior removal order have not resulted in an additional request for evidence or denial. The cover letter should disclose any removal history.

6. Additional Equities Evidence

Since the enforcement interests of a labor agency are a significant positive equity in all of these cases, additional equities evidence is not required unless there are negative equities in the case that should be outweighed. The primary negative equity that practitioners should assess is criminal history, because this appears to be the reason for every known substantive denial to date, which are rare overall. If the applicant has criminal history, then it is important to disclose to appropriately frame the incidents, knowing that the incidents will likely appear as a result of the biometrics appointment and background check. As in other USCIS cases, it is best practice to submit a certified record of disposition for a criminal case without submitting additional documents like the police report that may contain damaging and unproven allegations. Minor history such as municipal infractions and traffic or parking tickets are not likely to be viewed as a significant negative equity, and so do not need to be included in the application, nor do they require additional positive equities evidence to outweigh.

Figure 2: Weighing the Equities in Labor-Based Deferred Action[68]



For more significant criminal history, practitioners should assess from the record how damaging the offense may be and decide what positive equities to include in the application to outweigh. The guidelines from the Mayorkas priorities memo may be helpful in assessing aggravating factors (gravity of the offense and sentence, harm caused, sophistication, use of a dangerous

[68] This graphic is borrowed from the Worker Advocates Guide, *supra* note 7.

weapon, and a serious prior record) as well as mitigating factors in criminal history.[69] For serious offenses such as violent felonies, practitioners can also draw on legal strategies for other discretionary relief, such as emphasizing the 3Rs: responsibility, regret, and rehabilitation.

For positive equity evidence to outweigh significant negative equities, practitioners can consider the following:

- Proof of participation in the labor agency proceedings: Because the streamlined deferred action process is designed to protect potential witnesses even in early stages of the labor agency's investigation, individual workers applying for initial deferred action are not required to prove any specific helpfulness. However, where the worker actively participated in the labor dispute (organizing) or in the agency proceedings (filing the complaint, being interviewed, providing evidence, testifying, etc.), this will be a compelling positive equity. Practitioners should emphasize how the worker has supported or is supporting the agency's enforcement efforts in general terms that are accessible to an immigration adjudicator that likely lacks familiarity with labor agency-specific processes. Evidence could include communications with the labor agency offering assistance from worker by name, short agency records with the worker's name (for example, agency complaint, receipt of complaint, settlement agreement, or administrative or judicial order), or other evidence of cooperation (worker affidavit, list of witnesses including the worker's name, etc.).
- Family ties: Birth certificates or other proof of status for any U.S. citizen children or spouse that demonstrate ties.
- Community ties: Letters from community, political, or faith leaders, and other evidence of community involvement.
- Humanitarian needs: Diagnosis records for medical conditions or injuries for the applicant or household members, which may or may not be tied to the labor violation.

In the event of significant negative equities, practitioners should also prepare a more detailed cover letter that draws on the positive equities evidence to contextualize the negative equities and argue that positive equities outweigh and militate in favor of approval.

7. Filing Deferred Action Applications

All Labor-Based Deferred Action applications should be filed at the USCIS "central intake point." Because this intake point is also receiving other, non-DACA deferred action applications, it is important to use the full address provided by USCIS, which includes "Attn: Deferred Action – Labor Investigations":[70]

> USCIS
> Attn: Deferred Action – Labor Investigations
> 10 Application Way
> Montclair, CA 91763-1350

[69] Alejandro N. Mayorkas, Sec'y, U.S. Dep't of Homeland Sec., Guidelines for the Enforcement of Civil Immigration Law (Sept. 30. 2021), https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf.
[70] DHS FAQ, *supra* note 3, at Q3.

Applications that are erroneously sent to other addresses may be significantly delayed and may be denied if the reviewing adjudicator is not trained in this process.

E. DHS Processing of Initial Deferred Action Applications

1. Jurisdiction Over the Deferred Action Application—USCIS vs. ICE

Per DHS guidance, "USCIS will only forward to U.S. Immigration and Customs Enforcement (ICE) requests for deferred action that are submitted by noncitizens who are in removal proceedings or have a final order of removal. USCIS and ICE, as appropriate, will consider and make a case-by-case determination of the deferred action request and USCIS will consider all related Forms I-765, if submitted."[71]

Accordingly, applications from those in removal proceedings before EOIR and with final orders of removal will be forwarded to ICE for adjudication. Applications from those who were expelled without ever being ordered removed, such as for those subject to Title 42 expulsions, will be adjudicated by USCIS. If an applicant previously had a final removal order, but it has been reopened and dismissed or terminated based on prosecutorial discretion before the filing of the application for Labor-based Deferred Action, then USCIS will adjudicate the case. Cases with both executed and unexecuted orders of removal (meaning, respectively, individuals who were deported under a prior order and those who received an order who remained in the United States) will be forwarded to ICE for adjudication.

USCIS will decide whether to forward the application to ICE based on the results of the applicant's biometrics appointment. Applications forwarded to ICE are adjudicated by HSI's Parole and Law Enforcement Programs Unit, which consults with the relevant ERO and OPLA offices, and then renders a decision. If ICE approves deferred action, then the USCIS adjudicators in Montclair will then consider the I-765 application for employment authorization.

Practitioners should note that ICE approval of a request for Labor-Based Deferred Action will not have any automatic effect on ongoing removal proceedings or an outstanding final order of removal. Separate from this streamlined deferred action process, practitioners with clients in proceedings or with a final order of removal should consider seeking prosecutorial discretion from the relevant OPLA office. For more information on those requests, see III.A.

Where the applying noncitizen is not in removal proceedings and has not received a removal order, the USCIS adjudicators in Montclair will adjudicate both the deferred action and employment authorization applications.

[71] DHS FAQ, *supra* note 3, at Q6.

2. Timeline of Application Processing

When DHS announced the process enhancements for workers applying for deferred action, the agency emphasized that the centralized intake point "will allow DHS to efficiently review these time-sensitive requests."[72] The agency further recognized the "time-sensitive labor agency enforcement interests" and remarked that efficient processing of these applications will reduce the risk of retaliation from employers under investigation.[73] However, DHS has not published any goals for processing times for these requests, and neither the deferred action request (supplemented by Form G-325A) nor the (c)(14) category of I-765 adjudicated in Montclair are listed on the USCIS processing times tool as of this writing.[74] DHS has shared in stakeholder meetings that its goal for these cases is an average processing time of 120 days, and it is meeting this goal on average as of July 2024.[75]

These applications, like most adjudicated by USCIS, are processed in two stages: first, review by the mail room, which if successful results in a receipt notice, and second, review by an adjudicator, who will approve the application, request more evidence, or deny the application.

In the first stage, the Montclair mail room will determine if all of the necessary components to the application are included in the filing, including the correct edition of forms and the filing fee or fee waiver. If a fee waiver is included, the fee waiver will be adjudicated. If the application is complete, then the mail room should send a receipt notice to both the applicant and the attorney for the I-765, which serves as acknowledgement of the receipt of the entire application.[76] USCIS is sometimes also sending a notice of Online Account Access or receipt for the filing of the G-325A. Receipt notices should issue relatively quickly, and applicants who do not receive a receipt notice within 3 weeks of filing should reach out to DHS through the DHS CRCL office at communityengagement@hq.dhs.gov.[77] A biometrics appointment notice is typically mailed soon after a receipt notice is issued.

In the second stage, a USCIS or DHS-HSI adjudicator will review the application to make a decision on deferred action.[78] If the adjudicator finds the evidence to be sufficient and determines that the positive equities outweigh any negative equities, then the agency will issue an approval notice. The adjudicator can also issue a request for more evidence, seeking specific supplemental evidence in the case, or can issue a denial, without giving the applicant the

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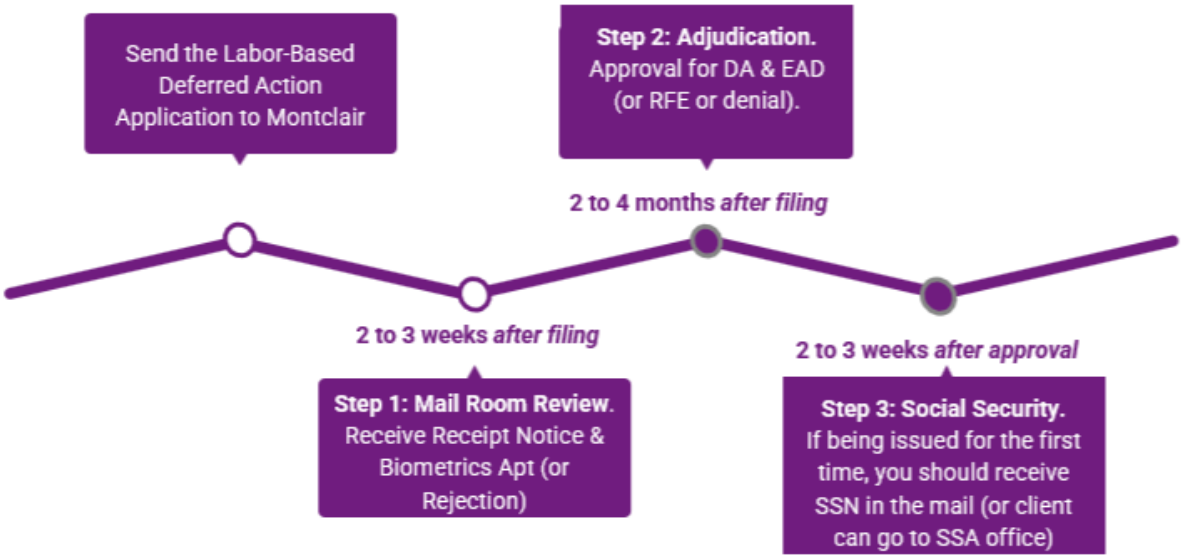
[72] DHS Announcement, *supra* note 2.
[73] DHS Announcement, *supra* note 2.
[74] *See* U.S. Citizenship & Immig. Servs., Check Case Processing Times, https://egov.uscis.gov/processing-times/ (last visited Aug. 21, 2024).
[75] DHS CRCL Stakeholder Meeting Notes (July 31, 2024) (on file with authors).
[76] Applicant notices seem to be sent to the applicant's current address as listed on the G-325A, even if other forms list alternate addresses (such as the attorney's office or a P.O. Box).
[77] Because of a surge in applications filed in April 2024 before the new fee rule went into effect, there was a significant delay of a few months for receipt notices during Summer 2024. This delay issue has been resolved, as of this writing.
[78] The authors understand that USCIS routes the deferred application based on the result of the biometrics appointment, checked against DHS databases. Applicants who are in removal proceedings or who have been removed will have their applications forwarded to DHS-HSI to adjudicate deferred action.

opportunity to provide additional information. USCIS is making these adjudications generally 2 to 4 months after the initial filing, with some outlier cases taking longer. Those applications forwarded for adjudication by DHS-HSI appear to take more time, with wider variation in processing time.

Figure 3: Typical Timeline for DHS Processing of Initial Labor-Based Deferred Action Applications



3. Expedite Requests

Some cases may be eligible for an expedite request under the USCIS Expedite Criteria,[79] which will speed up adjudication. USCIS will evaluate requests for expedited processing according to its criteria, but the standard language in many labor agency Statements of Interest requesting expedited consideration is generally *not sufficient* to satisfy these criteria. The three expedite criteria most likely to be relevant to Labor-Based Deferred Action applications are: emergencies and urgent humanitarian reasons, non-profit organization interests, and U.S. Government interests.[80] The last criteria, relating to U.S. Government interests, specifically includes "cases identified as urgent by other government agencies, including labor and employment agencies."[81] But not all Labor-Based Deferred Action cases will meet this expedite criteria, which requires the case be "of a scale or uniqueness that requires immediate action to prevent real and serious harm to U.S. interests" and that a "senior-level official" make the expedite request.[82] This means that the labor agency may need to write a separate letter requesting expedite and providing explanation that satisfies this criteria. It is helpful that the criteria list seeking employment authorization for the purposes of an agency seeking back pay or reinstatement specifically as a

[79] Policy Manual, U.S. Citizenship & Immig. Servs., Chapter 5 - Requests to Expedite Applications or Petitions, https://www.uscis.gov/policy-manual/volume-1-part-a-chapter-5 (last updated July 18, 2024).
[80] *Id.*
[81] *Id.*
[82] *Id.*

meritorious expedite request.[83] The DHS guidance on labor deferred action further references and reiterates these criteria in the section for labor agencies.[84]

Any time-sensitive deadline, such as an upcoming hearing or other proceeding with the labor agency or the risk that a guestworker will fall out of status at the end of a post-termination grace period or otherwise depart the United States, should be immediately communicated to the labor agency and emphasized in the deferred action filing to USCIS. Consider large bold font on the first page of the cover letter to draw visual attention to a time-sensitive deadline.

4. Biometrics

Following the receipt notice, the applicant and the attorney should receive notice of a biometrics appointment at the closest USCIS Field Office's Application Support Center. This should be a single biometrics appointment for fingerprinting, signature, and photos for both deferred action and the employment authorization document. Because of this biometrics collection, Labor-Based Deferred Action applicants do not need to submit passport-size photos in the original application.

Completing the biometrics appointment as soon as possible will facilitate faster processing of the Labor-Based Deferred Action application. If a worker misses their appointment, there are instructions on the biometrics notice for how to reschedule, but it will delay the application. If a worker misses their appointment and does not request rescheduling, then their application may be denied.

5. Responding to Requests for Evidence (RFE)

Requests for more evidence are not common in these applications, but when issued, they give the applicant the opportunity to address what the adjudicator believes is a deficiency in the original application. The most common request for more evidence in these applications so far has been for additional evidence of employment, where the adjudicator found the initially submitted evidence to be inadequate proof that the applicant worked at the worksite described in the Statement of Interest. The best practice is to file a response with the best information available as soon as possible.

6. Approval of Labor-Based Deferred Action

If the worker's application for Labor-Based Deferred Action is approved, USCIS or DHS-HSI will issue an approval notice granting deferred action for four years. The notice will state the expiration date of the deferred action. This letter is evidence of the worker's deferred action status, and they should carry a copy of it with them. Because the grant of deferred action is neither an admission nor a parole, the approval notice will not contain an I-94 record.

USCIS should consider the employment authorization application immediately after deferred action is approved. Because the new guidance streamlines this process, workers should not need to submit any additional evidence, unless the agency finds the initial packet inadequate and

[83] *Id*.
[84] DHS FAQ, *supra* note 3.

requests more evidence. Practitioners should expect to receive notice of a decision on the employment authorization application soon after receiving approval of the deferred action. If more than 3 weeks passes, practitioners should reach out for technical assistance to communityengagement@hq.dhs.gov.

Related to the employment authorization document, the Social Security Administration is supposed to mail cards with the newly assigned Social Security Number soon after the EAD is issued based on the information provided in Form I-765 where an SSN is requested. But practitioners are reporting significant delays in receiving the SSN cards or not receiving the SSN cards at all. Because many employers require a Social Security Number for the purposes of completing a Form W-4 upon hiring, workers will urgently want their SSN. Many practitioners are directing those approved for deferred action to go directly to the local Social Security Administration with their EAD to apply in person for the SSN, after which the SSN card is typically mailed in a few weeks.

Practitioners may want to directly inform the labor agency that issued the Statement of Interest or work with the labor/employment attorney or organizer in touch with that labor agency to inform them that deferred action has been granted.

Tips on updating information at work: Practitioners should advise workers about the implications of providing employers with a temporary employment authorization document. Per federal regulations and the USCIS Employer Handbook, employers are required to **re-verify** an employee's work authorization on or before the expiration date on the employment authorization document provided to establish work eligibility.[85] If a worker is not able to produce a new, unexpired work authorization document at that time, they may be terminated from their employment. If an employer fails to request an updated employment authorization document, workers have no affirmative duty to tell the employer their work permit has expired.

Workers who have previously worked under a different name and/or social security number (whether valid or invalid) may have questions about updating their information with their employer after they receive an employment authorization document. The AFL-CIO advises that, in this situation: "The right approach to take will vary depending on circumstances and context, including existing language in collective bargaining agreements."[86] California explicitly protects workers from retaliation for updating their information at work.[87] Some Collective Bargaining Agreements also protect workers in this situation. Workers should

[85] 8 C.F.R. § 274a.2(b)(vii); U.S. Citizenship & Immig. Servs., USCIS Employer Handbook Pt. 6.1, https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274 (last updated Apr. 17, 2024).
[86] *See* AFL-CIO, Injury to All Campaign Toolkit (April 2024) at 54 (on file with authors).
[87] *See, e.g.*, Cal. Labor Code § 1024.6; *see also* Legal Aid at Work, Updating your Social Security Number With Your Employer, https://legalaidatwork.org/factsheet/updating-your-social-security-number-with-your-employer/ (last visited Aug. 21, 2024).

consult with their union, worker center, or attorney about the best way to proceed in their individual circumstance.

Some workers have experienced retaliation when updating their social security number on file with their employer. In this case, advocates should consider whether the retaliation constitutes reverification as a form of retaliation under the Immigration and Naturalization Act.[88]

7. Denials

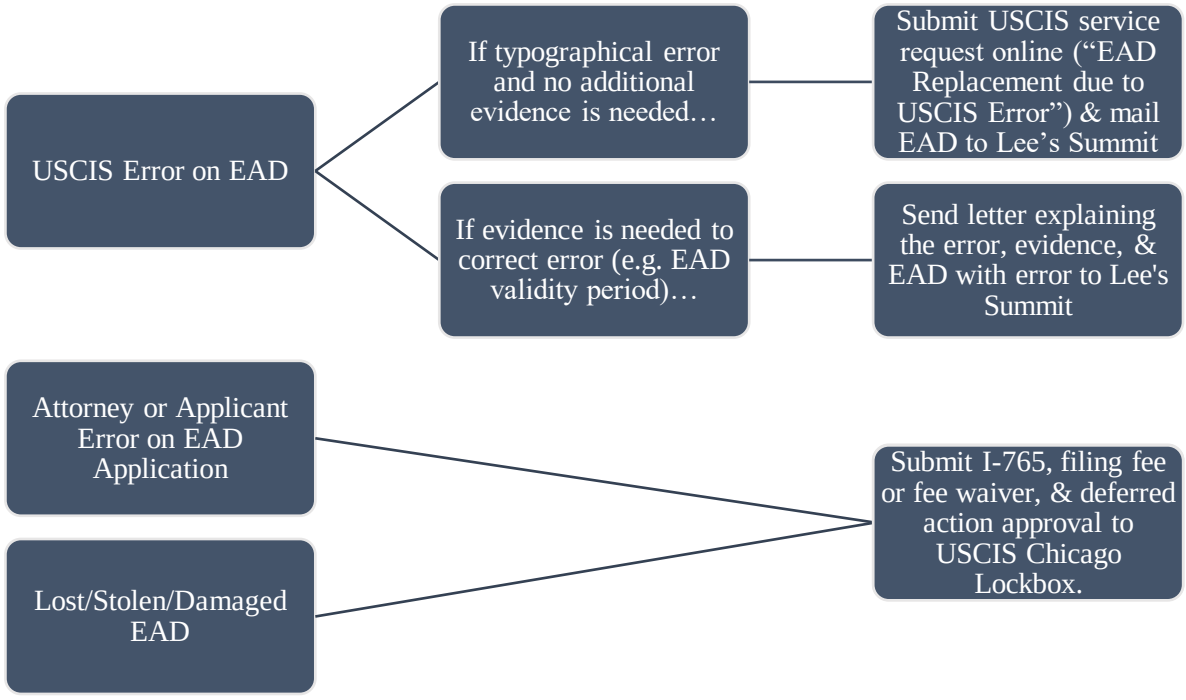
As with every affirmative immigration application, there is a possibility of denial. The most common reasons for denials as well as practice advice for dealing with denial are discussed in *supra* II.C.3. As with other applications, DHS will not return the filing fee required to request employment authorization in the event of a denial.[89] As noted above, practitioners have had some success in resubmitting denied cases with additional positive equities evidence.

8. Correcting Errors or Seeking Replacement EADs

Practitioners have reported sometimes receiving receipt notices, approvals, or work permits that contain errors, such as the wrong name, wrong birth date, or even wrong photo. If practitioners discover errors in receipt notices, before the application has been adjudicated, then a correction can be requested online through USCIS's e-Request tool.[90] For errors discovered after adjudication, DHS has updated its Labor-Based Deferred Action frequently asked questions with instructions on how to seek correction of these errors as well as seek replacement for a lost, stolen, or damaged work permit.[91] The following chart shows the current avenues for these requests as a visual summary of the instructions cross-referenced in the long and convoluted website for Form I-765 in general.[92]

[88] Types of Discrimination, Civil Rights Division, U.S. Dep't of Justice, https://www.justice.gov/crt/types-discrimination (last updated Jan. 18, 2017).
[89] *See* DHS FAQ, *supra* note 3.
[90] To make an e-Request to correct errors, select "Typographical Error" under "Service Request." Case Inquiry, U.S. Citizenship & Immigration Services, https://egov.uscis.gov/e-request/Intro.do (last visited Aug. 21, 2024).
[91] DHS FAQ, *supra* note 3, at Q13.
[92] DHS FAQ, *supra* note 3, at Q13 (referring to Direct Filing Addresses for Form I-765, Application for Employment Authorization, U.S. Citizenship & Immig. Services, https://www.uscis.gov/i-765-addresses (last updated Aug. 20, 2024)).

Figure 4: How to Correct Errors in Employment Authorization Documents



Practitioners should check the USCIS website for the most updated addresses for these filings.[93] As of this writing, the addresses are:

> For USCIS Error, mail via USPS only to:
>
> USCIS
> Lee's Summit Production Facility
> Attn: I-765 Replacement Cards
> 7 Product Way
> Lee's Summit, MO 64002
>
> For attorney/applicant error, or Lost/Stolen/Damaged EAD, mail to:
>
> USCIS Chicago Lockbox
>
> U.S. Postal Service (USPS):
> USCIS
> Attn: AOS
> P.O. Box 805887
> Chicago, IL 60680
>
> FedEx, UPS, and DHL deliveries:
> USCIS
> Attn: AOS (Box 805887)
> 131 S. Dearborn St., 3rd Floor
> Chicago, IL 60603-5517

[93] Direct Filing Addresses for Form I-765, Application for Employment Authorization, U.S. Citizenship & Immig. Services, https://www.uscis.gov/i-765-addresses (last updated Aug. 20, 2024).

F. Extending Initial Grant of Deferred Action to Four Years

On July 22, 2024, DHS extended the period of time for initial grants of deferred action from two to four years, and created a process for workers who already received a two-year initial Labor-Based Deferred Action grant to request an extension for an additional two years.[94] The change in length of deferred action grants took effect immediately, such that initial applications approved on or after July 22, 2024 should be for four years of deferred action. Workers who were granted deferred action for a two-year period can request an extension of an additional two years of deferred action and work authorization. USCIS will not automatically add two years to existing deferred action and employment authorization grants; workers must affirmatively request this extension. There is not a deadline by which recipients of two-year deferred action must request an extension to four years; the extension of an additional two years of deferred action are added to the original date of expiration of the status (making a total of four years regardless of when the worker submits the request). In this way, the date of extension approval does not change the total amount of time of the grant of deferred action. As with other types of Labor-Based Deferred Action applications, DHS aims to process extension requests within 120 days.

Extensions require a new filing fee or an application for a fee waiver, even for workers who recently paid a filing to receive a two-year grant of deferred action. In addition to the filing fee, the request for an extension requires submission of many of the same forms and supporting evidence as the initial application for deferred action. Those forms must be updated with new addresses, employment, or any other new or changed information so that they are accurate and complete when they are filed as part of an extension application. An intake form for an extension application is in Appendix 5. The list of requirements for an extension request for Labor-Based Deferred Action and work authorization are as follows:

- Form G-325A, Biographic Information, with "Labor DA Extension" written on top, a sample G-325A is provided in Appendix 14 by request;
- Form I-765, Application for Employment Authorization, with the appropriate fee or request for a fee waiver;
- Form I-765WS, Worksheet;
- A written request signed by the noncitizen stating the desire to increase the deferred action request from two to four years;
- The Statement of Interest from a labor or employment agency that supported the initial deferred action request;
- Copy of the approval notice for the initial deferred action request (if available); and
- Proof of the noncitizen's identity and nationality.

[94] *See* DHS FAQ, *supra* note 3; *see also* Nat'l Immig. Project and Nat'l Immig. Law Ctr., Updates on the Department of Homeland Security's Recent Announcement on Extending Initial Grants of Deferred Action to Four Years (Aug. 5, 2024), https://nipnlg.org/work/resources/dale-community-explainer-updates-department-homeland-securitys-recent-announcement.

A sample cover letter for a pro se extension request is at Appendix 10, by request only.

The original SOI the worker used to apply for their initial grant of deferred action can be used to request an extension to four years even if the SOI states that it supports deferred action for only two years. DHS adjudicates extension grants on a case-by-case basis and will conduct background and immigration checks on these applicants, but USCIS will generally reuse the fingerprints on file unless the G-325A lists a different name. If USCIS needs new biometrics, they will mail out a notice for a biometrics appointment. In all cases, USCIS will use biometrics to run a background check before approving the extension request.

At the conclusion of the four-year period of deferred action, a worker may want to apply for a renewal using the process established by DHS in January 2024. *See infra* II.G.

Table 6: Filing Requirements for Extensions of Initial Grants versus Subsequent Requests (Renewals)

DOCUMENT TYPE	EXTENSIONS OF INITIAL GRANTS (FROM 2 TO 4 YEARS)	SUBSEQUENT REQUESTS (RENEWALS)
Statement of Interest	Yes **(same one as initial request)**	Yes **(must provide updated one from the labor agency)**
I-765/I-765 WS	Yes	Yes
G-325A	Yes	Yes
Signed Statement	Yes **(requesting 4 years extension)**	Yes **(requesting subsequent grant)**
Proof of identity	Yes	Yes
Prior Approval notice	Yes	Yes (as part of immigration history)
Other Immigration Documents	No	Yes
Proof of Employment	No	Yes
Filing fee (or Fee Waiver)	Yes	Yes
Evidence for favorable exercise of discretion	No	Optional

G. Subsequent Requests for Deferred Action after Initial Approval (Renewals)

DHS announced guidance for workers to request renewal of deferred action in January 2024.[95] The guidance indicates that workers may request an additional two-year period of deferred action only where the labor agency has issued an "updated" Statement of Interest "explaining the continued need for workers to assist in their investigation or prosecution, or in the enforcement of any court order or settlement agreement."[96] The updated Statement of Interest must meet the same requirements as the initial Statement of Interest (described in *supra* II.B.3) "and also

[95] Press Release, U.S. Dep't of Homeland Sec., DHS Helps Hold Exploitative Employers Accountable (Jan. 17, 2024), https://www.dhs.gov/news/2024/01/17/dhs-helps-hold-exploitative-employers-accountable.
[96] DHS FAQ, *supra* note 3.

describe the scope of workers who are in need of continued protection based on the procedural posture of the labor agency's investigation, prosecution, or enforcement actions."[97] Like with the initial statement of interest, DHS requires labor and employment agencies to email DHS a copy of the updated statement of interest to laborenforcement@dhs.gov before providing a copy to workers who will seek a subsequent request for deferred action.[98] Some labor agencies, including the U.S. DOL have incorporated reference to the updated DHS FAQs, which feature the renewals guidance, into their own Labor-Based Deferred Action FAQs.[99] For guidance on seeking Statements of Interest from labor agencies, including collaborating with labor/employment attorneys, worker centers, and unions, see *supra* II.B. A template request for an updated Statement of Interest is included as Appendix 4.

If an updated Statement of Interest is issued, then the immigration practitioner can prepare a renewal application with the same components as an initial application, see *supra* II.D. An intake form for a renewal application is provided in Appendix 5 and a sample cover letter is included in Appendix 11 by request only.

DHS instructs that renewal applications should be submitted at least 120 days before the expiration of their deferred action to prevent gaps in deferred action and related employment authorization.[100] However, DHS also instructs that renewal applications should not be submitted more than 180 days before the expiration of deferred action.[101] Practitioners should calendar carefully for this specific window to seek renewal, and also coordinate with labor/employment attorneys, worker centers, and unions to make sure that an updated SOI is requested and hopefully received so that the immigration practitioner has sufficient time to update the Labor-Based Deferred Action materials and submit the applications.

Workers who requested and were granted deferred action before the streamlined Labor-Based Deferred Action process was announced in January 2023 have requested and consistently been granted renewals. These renewals have been granted fairly quickly, typically in less than two months, but this speed of adjudication depends on the volume of case filings and is not guaranteed in the future. As in the initial application, the proof of employment must show that the individual applicant falls within the scope of the Statement of Interest, meaning that the date, employer, and worksite match the request from the labor agency.

III. Other Types of Immigration Relief Stemming from Labor Disputes

A. Prosecutorial Discretion in Removal Proceedings

Applications for Labor-Based Deferred Action, even if approved, will not resolve open removal proceedings nor vacate final orders of removal. Therefore, practitioners may want to seek

[97] *Id*.
[98] *Id*.
[99] *See, e.g.*, DOL FAQ, *supra* note 24.
[100] DHS FAQ, *supra* note 3, at Q17.
[101] DHS FAQ, *supra* note 3, at Q17.

prosecutorial discretion from the relevant OPLA office on behalf of their client.[102] Practitioners can request prosecutorial discretion from OPLA at any time, including a) when the labor dispute is initiated b) when the Statement of Interest is received, or c) when deferred action is granted. In fact, a May 2024 EOIR regulation states that immigration judges have discretionary authority to terminate removal proceedings where noncitizens have been granted deferred action.[103] One option is to file the request as early as possible in the labor dispute process and supplement the request later with the Statement of Interest, USCIS receipt, and/or approval notice as needed. Practitioners may want to seek termination, stipulations, administrative closure, continuance or other prosecutorial discretion, depending on whether the noncitizen wishes to pursue relief in removal proceedings.

In any such request, practitioners should rely on the Doyle Memo, issued on April 3, 2022 implementing the DHS enforcement priorities originally presented in the Mayorkas Memo within immigration court removal proceedings.[104] While OPLA attorneys could not rely on the Doyle Memo while the Mayorkas Memo on which it relies was vacated, the July 28, 2023 decision in *United States v. Texas* in the U.S. Supreme Court reinstituted both memoranda.[105] The Mayorkas Memo recognizes that DHS lacks resources to enforce the immigration laws in every possible circumstance and lays out a framework for DHS to prioritize arrest and removal in certain categories of cases and to exercise discretion in others. The Mayorkas Memo instructs immigration officials to focus on three broad categories of noncitizens for enforcement action: those who pose a threat to national security, public safety, or border security.[106]

The Doyle Memo states that OPLA's goal in exercising prosecutorial discretion is to "preserve limited government resources" and help alleviate the court backlogs, while achieving "just and fair outcomes" and advancing the mission of DHS.[107] While the guidance encourages OPLA attorneys to exercise prosecutorial discretion for individuals who are not deemed enforcement priorities, OPLA attorneys continue to have broad discretion to make their own assessments and pursue removal.

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[102] *See generally* U.S. Immig. & Customs Enf't, Doyle Memorandum: Frequently Asked Questions and Additional Instructions, https://www.ice.gov/about-ice/opla/prosecutorial-discretion (updated May 15, 2024); Nat'l Immig. Project, Practice Advisory: Advocating for Prosecutorial Discretion Under the Biden Administration's Prosecutorial Discretion Guidance (Sept. 15, 2023), https://nipnlg.org/work/resources/practice-advisory-advocating-prosecutorial-discretion-under-biden-administrations.

[103] 89 Fed. Reg. 46742 (May 29, 2024); *see generally* 8 C.F.R. §§ 1003.18(d)(1)(ii); 1003.1(m)(1)(ii).

[104] Memorandum from Kerry A. Doyle, ICE Principal Legal Advisor, Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion (Apr. 3, 2022), https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf [hereinafter "Doyle Memo"]; Memorandum from Alejandro N. Mayorkas, DHS Sec'y, Guidelines for the Enforcement of Civil Immigration Law (Sept. 30, 2021), https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf [hereinafter "Mayorkas Memo"].

[105] *United States v. Texas*, 143 S. Ct. 1964 (2023); U.S. Immig. & Customs Enf't, Doyle Memorandum: Frequently Asked Questions and Additional Instructions, https://www.ice.gov/about-ice/opla/prosecutorial-discretion (updated May 15, 2024).

[106] Mayorkas Memo, *supra* note 104, at 3.

[107] Doyle Memo, *supra* note 104, at 1, 9.

In addition to referencing the Doyle Memo and the Mayorkas Memo on which it relies, practitioners should cite to the October 12, 2021 Worksite Enforcement Memo[108] as support for their prosecutorial discretion request and may also consider referring to the 2011 Morton Memo on prosecutorial discretion for victims, witnesses, and plaintiffs.[109] It is the authors' understanding that OPLA offices have not received any further guidance from the ICE Principal Legal Advisor beyond those memos.

Regional OPLA offices vary in both the timeline and outcome of their decisions on requests for prosecutorial discretion. At least four OPLA offices have agreed to several joint motions to reopen and terminate for workers seeking Labor-Based Deferred Action. Practitioners may wish to consult with others who have submitted prosecutorial discretion requests to the relevant OPLA office to understand local practice. If OPLA does not respond timely or declines to join the request, practitioners should consider filing a motion to terminate proceedings with the immigration court citing its discretionary authority to terminate proceedings based on a grant of deferred action.[110]

B. Parole

DHS can grant parole, in its discretion, to noncitizens seeking admission to the United States on a "case-by-case basis for urgent humanitarian reasons or significant public benefit."[111]

Practitioners may wish to argue that a labor agency Statement of Interest establishes both an urgent humanitarian interest in granting parole and a significant public benefit that would result from a grant of parole. While DHS has not established a streamlined process to apply for parole based on a labor agency Statement of Interest akin to its process for requesting deferred action, parole is referenced in agency guidance regarding the need to deconflict labor and immigration enforcement. First, the Labor-Based Deferred Action FAQs references "parole in place" as one of "multiple mechanisms" that exist in U.S. immigration law "to provide employment authorization to noncitizen workers and protect them from removal."[112] Second, the 2021 Worksite Enforcement Memo lists "parole" as one of the mechanisms DHS should consider "for noncitizens who are witnesses to, or victims of, abusive and exploitative labor practices."[113]

This section discusses several different types of parole: "parole in place," for individuals who are physically present in the United States but have never been lawfully admitted; "humanitarian

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[108] Alejandro N. Mayorkas, Sec'y, U.S. Dep't of Homeland Sec., Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual, Policy Statement 065-06 (Oct. 12, 2021), https://www.dhs.gov/sites/default/files/publications/memo_from_secretary_mayorkas_on_worksite_enforcement.pdf [hereinafter "Worksite Enforcement Memo"].
[109] John Morton, Dir., U.S. Immig. & Customs Enf't, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs, Policy No. 10076.1 (June 17, 2011), https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf.
[110] *See supra* note 103.
[111] INA § 212(d)(5)(A).
[112] *See* DHS FAQ, *supra* note 3.
[113] Worksite Enforcement Memo, *supra* note 108.

parole" and significant "public benefit parole," for individuals who are outside the United States and need an entry document to enter the country; and "advance parole," for individuals who are presently in the United States and wish to travel abroad and return.[114] Travel with parole, whether through advance parole, humanitarian parole, or significant public benefit parole, satisfies the requirement that noncitizens seeking to adjust status be "inspected and admitted or paroled" and therefore may clear the path for adjustment of status for noncitizens who have an immigrant visa available.[115]

C. Parole in Place

Parole in place is available to noncitizens who are present in the U.S. without being admitted.[116] A grant of parole makes a noncitizen eligible for an employment authorization document.[117] USCIS may waive fees associated with applications for employment authorization for parole in place grantees.[118] As with deferred action, parole authorizes the noncitizen's presence in the U.S. Therefore, while parole does not cure unlawful presence already accrued for the purposes of the 3- and 10-year bars, time spent in the U.S. under parole will not count toward the accumulation of unlawful presence.[119] Parole grantees are considered "qualified aliens" and are thereby eligible for some federal public benefits.[120] A grant of parole in place can be terminated by DHS at any time.

A significant benefit of parole in place is that it may clear the way for adjustment of status for applicants who have an immigrant visa available to them and are barred from adjusting only because they entered the United States without inspection and have never been lawfully admitted. Adjustment of status generally requires that a noncitizen be admitted or paroled; parole in place satisfies this requirement.[121] Practitioners should carefully study their clients' cases to determine if a parole application would be appropriate in certain cases, for example if they have a qualifying relative through whom they could adjust status if granted parole.

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[114] For a more in-depth discussion of parole generally and each of these three types of parole specifically, *see* Elizabeth Carlson and Joanna Mexicano Furmanska, Cath. Legal Immig. Network, Inc., All About Parole (Aug. 2022), https://www.cliniclegal.org/resources/parole/all-about-parole-practice-advisory.
[115] INA § 245(a).
[116] INA § 212(d)(5)(A). *See also* Memorandum from Paul W. Virtue, INS General Counsel, to INS Officials, "Authority to Parole Applicants for Admission Who are Not Also Arriving Aliens," Legal Op. 98-10 (Aug. 21, 1998), https://drive.google.com/file/d/1Igrvoh7Ms-DGoN9gg7-H2onBLmNgiQJY/view (discussing authority to grant parole to non-citizens who are physically present inside the United States).
[117] 8 C.F.R. § 274.a12(c)(11).
[118] U.S. Citizenship & Immig. Servs., Instructions for Request for Fee Waiver Form I-912 (Sept. 3, 2021), https://www.uscis.gov/sites/default/files/document/forms/i-912instr.pdf (listing Form I-765 as eligible for fee waiver for categories of employment eligibility other than DACA).
[119] INA § 212(a)(9)(B)(ii); Adjudicator's Field Manual, U.S. Citizenship & Immig. Servs., ch. 40.9.2(b)(1), https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm40-external.pdf (last visited Aug. 21, 2023) ("An alien does not accrue unlawful presence . . . if he or she has been inspected and paroled into the United States and the parole is still in effect.").
[120] PRWORA § 431(b)(4), *supra* note 19; *see also* Tanya Border & Gabrielle Lessard, Nat'l Immig. Law Ctr., O*verview of Immigrant Eligibility for Federal Programs* (May 2024), https://www.nilc.org/issues/economic-support/overview-immeligfedprograms/.
[121] *See* INA § 245(a).

Practitioners may be familiar with military parole in place and parole in place for families separated under the Trump administration's "zero tolerance" policy, both of which use DHS's parole authority to prevent deportations and prevent family separation.[122] Most recently, the Biden administration announced a new program making spouses of U.S. citizens eligible to apply for parole in place.[123]

Although parole in place is referenced in the DHS guidance on Labor-Based Deferred Action, officials have indicated that the central intake point in Montclair, CA is not prepared to accept parole in place requests and there is no streamlined process for applicants who wish to request parole in place based on a labor agency Statement of Interest. Instead, requests for parole in place must be submitted to the local USCIS Field Office using Form I-131, Application for Travel Document. Applicants may handwrite "Labor-Based Parole in Place" in Part 2 rather than checking any box.[124] USCIS accepts fee waiver requests for Form I-131.[125]

Practitioners report very different responses from different USCIS Field Offices to applications for parole-in-place based on labor agency statements of interest. At one Field Office, after providing a receipt notice and accepting the filing fee, an application lingered for months without decision and Field Office personnel have been unresponsive to requests for status updates. Two other Field Offices have indicated explicitly that they will not even consider requests for parole in place based on labor agency statements of interest.

However, at least one USCIS Field Office has granted parole in place for several workers on the basis of a labor agency Statement of Interest. In that case, the workers first applied for—and received—deferred action via the streamlined process. Practitioners then obtained a second Statement of Interest for the same group of workers addressed to the local USCIS Field Office specifically requesting parole in place and submitted individual applications on behalf of several workers, each of whom had a clear path to adjust status if parole in place were granted. The

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[122] U.S. Citizenship & Immig. Servs., Discretionary Options for Military Members, Enlistees and Their Families, https://www.uscis.gov/military/discretionary-options-for-military-members-enlistees-and-their-families (last updated May. 2, 2024); U.S. Dep't of Homeland Sec., Interagency Task Force on the Reunification of Families, Initial Progress Report ii (June 2, 2021), https://www.dhs.gov/sites/default/files/publications/21_0602_s1_family-reunification-task-force-120-day-progress-report.pdf.

[123] White House, Fact Sheet: President Biden Announces New Actions to Keep Families Together, (June 18, 2024), https://www.whitehouse.gov/briefing-room/statements-releases/2024/06/18/fact-sheet-president-biden-announces-new-actions-to-keep-families-together.

[124] *See* U.S. Citizenship & Immig. Servs., Discretionary Options for Military Members, https://www.uscis.gov/military/discretionary-options-for-military-members-enlistees-and-their-families (instructing that military parole in place applicants handwrite military PIP in Part 2) (last updated May 2, 2024).

[125] U.S. Citizenship & Immig. Servs., I-131, Application for Travel Document, https://www.uscis.gov/i-131 (last updated Aug. 19, 2024); *see also* U.S. Citizenship & Immig. Servs., Instructions for Request for Fee Waiver Form I-912 (Sept. 3, 2021), https://www.uscis.gov/sites/default/files/document/forms/i-912instr.pdf (listing Form I-131 as eligible for fee waiver if applying for humanitarian parole); in one USCIS field office returned the fee filed by a parole in place applicant and granted parole.

requests were granted within three months without interview, and the fees were returned. A sample parole in place application is included in Appendix 15, by request only.

D. Requests for Noncitizens Presently Outside the United States

Labor-Based Deferred Action is only available to those who are present in the United States, and so noncitizens who are covered by a Statement of Interest but are located outside the United States will need to obtain an entry document to cross the border. Workers who have returned to their home country, including undocumented workers and especially guestworkers (on H-2A, H-2B, H-1B, J-1 or other guestworker visas) may fall within this category. Unless the noncitizen is independently eligible for a visa or other permission to enter, the likely mechanism for permission to enter the U.S. is parole. Parole is not a formal admission, but with parole, the noncitizen can obtain an entry document at a U.S. consulate or embassy and present that at the border to seek entry and permission to temporarily remain in the U.S. for the duration of the parole.

The guidance published on January 13, 2023 does not discuss parole into the U.S.[126] DHS has no other published guidance on whether or how the agency will consider requests for immigrants in labor disputes to enter the U.S. on parole. While there have been a few successful cases where an immigrant worker has obtained parole to enter the United States over the past decade, it is not clear what those cases mean for DHS treatment of labor-related parole requests in general. There are thus many unknowns in seeking permission for a noncitizen worker abroad to enter the U.S. based on their participation in a labor dispute.

The key open questions in this type of request are which sub-agency (USCIS, ICE, or CBP) will adjudicate these parole requests[127] and whether these requests will be considered humanitarian or significant public benefit parole.[128] Individuals can apply directly for humanitarian parole, but processing times can be very long,[129] and the criteria are not a perfect fit for noncitizen workers

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[126] *See* DHS FAQ, *supra* note 3.

[127] Under a 2008 memo, DHS has allocated authority among its three sub-agencies for the different parole programs. Memorandum of Agreement Between DHS-USCIS, DHS-ICE, and DHS-CBP for the Purposes of Coordinating the Concurrent Exercise by USCIS, ICE, and CBP of the Secretary's Parole Authority Under INA § 212(d)(5)(A) with Respect to Certain Aliens Located Outside of the United States (Sept. 29, 2008), https://www.ice.gov/doclib/foia/reports/parole-authority-moa-9-08.pdf. That allocation of authority does not specifically address request for immigrant workers in labor disputes, but three listed categories are relevant. First, requests based on urgent medical, family, and related needs are allocated to USCIS. *Id*. Second, requests for noncitizens who participate in "administrative . . . proceedings, and/or investigations, whether at the federal, state, local, or tribal level of government" are allocated to ICE. *Id*. Third, requests for noncitizens who will participate in civil proceedings where all parties are private litigants are allocated to USCIS. *Id*.

[128] While the INA refers only to a single, unitary authority to "parole" applicants for admission, DHS has administratively created distinct processing for two types of parole: humanitarian parole and significant public benefit parole. *Id*. DHS construes requests based on urgent medical, family, and related needs as requests for humanitarian parole. DHS treats requests by a law enforcement agency for persons of "law enforcement interest" such as witnesses as requests for significant public benefit parole. *Id*.

[129] Advocates report long delays as well as inconsistent adjudication of humanitarian parole applications. *See generally* Nat'l Immig. Forum, Explainer: Humanitarian Parole, Part III Section E (Mar. 24, 2022),

seeking to enter the U.S. to participate in agency proceedings.[130] Significant public benefit parole is generally faster and does not require a fee, but it must be requested directly by a government agency and sometimes entails ongoing monitoring.[131] It is our understanding that labor and employment agencies should reach out directly to DHS for support on inter-agency parole requests for noncitizens outside the United States.

There are a number of considerations in deciding whether to seek humanitarian or significant public benefit parole from USCIS or ICE.[132] Table 7 below outlines the significant differences as of this writing. Please reach out for technical assistance as you consider a parole request.

Table 7: Comparing Humanitarian and Significant Public Benefit Parole for Applicants Outside the United States

	HUMANITARIAN PAROLE	SIGNIFICANT PUBLIC BENEFIT PAROLE
Adjudicating agency	ICE (if currently in removal proceedings or has been deported) or USCIS (if no removal proceedings or deportation)	ICE (to participate in administrative or judicial proceedings) or USCIS (in some other instances)
Who applies?	Individual seeking parole or a petitioner in the U.S.	Law enforcement agency
Application fee?	$630, as of this writing, or can seek waiver of fees	None
Application requirements	I-131, I-134 (must have financial supporter)	Completed by law enforcement agency
Ongoing monitoring	Rare	Common
Processing Time	Months or years, as of this writing	Likely fast
Eligible for a work permit?	Agency has discretion to grant work authorization after entry into the U.S. if not inconsistent with purpose of the parole	Agency has discretion to grant work authorization after entry into the U.S. if not inconsistent with purpose of the parole

https://immigrationforum.org/wp-content/uploads/2022/03/Explainer-Humanitarian-Parole.pdf (discussing backlogs and high rates of denials).

[130] U.S. Citizenship & Immig. Servs., Guidance on Evidence for Certain Types of Humanitarian or Significant Public Benefit Parole Requests, https://www.uscis.gov/humanitarian/humanitarian-parole/guidance-on-evidence-for-certain-types-of-humanitarian-or-significant-public-benefit-parole-requests (last updated June 23, 2022).

[131] There is not much public information about inter-agency significant public benefit parole requests. *See* U.S. Dep't of Homeland Sec., Privacy Impact Assessment for the ICE Parole and Law Enforcement Programs Unit Case Management Systems DHS/ICE/PIA-049 (Dec. 3, 2018), https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-plepucms-december2018.pdf.

[132] USCIS acknowledges that a request for parole can be based on both humanitarian and significant public benefit reasons. U.S. Citizenship & Immig. Servs., Humanitarian or Significant Public Benefit Parole for Individuals Outside the United States, https://www.uscis.gov/humanitarian/humanitarianpublicbenefitparoleindividualsoutsideUS (last updated Aug. 19, 2024).

E. Advance Parole & Travel Outside the United States

A grant of deferred action does not permit a grantee to travel abroad and reenter the United States. Nevertheless, recipients of deferred action may wish to travel outside of the United States while they hold this status. Advance parole is the traditional route to seek advance permission to re-enter the U.S. after travel abroad.[133]

USCIS has the authority to grant advance parole in its discretion,[134] but it is not yet clear what standard the agency will apply for advance parole for recipients of Labor-Based Deferred Action or even if USCIS will grant advance parole to Labor-Based Deferred Action recipients at all. In some instances where USCIS has announced new guidance on deferred action, the agency has expressly foreclosed the availability of advance parole.[135] The current DHS guidance on Labor-Based Deferred Action does not address advance parole at all.[136] In the past, some practitioners have reported that USCIS has receipted and approved advance parole for non-DACA deferred action recipients in general, before the announcement of Labor-Based Deferred Action.[137] This path is still being tested for those who receive Labor-Based Deferred Action under the new DHS guidance, with adjudication pending but as of yet no approvals.[138]

But practitioners should be mindful of the fact that, even if advance parole is granted, deferred action grantees seeking to reenter the United States with advance parole are subject to inspection

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[133] *See generally* Adjudicator's Field Manual, U.S. Citizenship & Immig. Servs., ch. 54, https://www.uscis.gov/sites/default/files/document/policy-manual-afm/afm54-external.pdf (last visited Aug. 21, 2024); *see also* Elizabeth Carlson and Joanna Mexicano Furmanska, Cath. Legal Immig. Network, Inc., *All About Parole* 31 (Aug. 2022), https://www.cliniclegal.org/resources/parole/all-about-parole-practice-advisory ("The eligibility criteria [for advance parole] vary depending on the underlying basis for the advance parole request.").

[134] INA § 212(d)(5)(A).

[135] *See, e.g.*, U.S. Citizenship & Immig. Servs., Special Immigrant Juvenile Policy Update National Engagement (Apr. 27, 2022), https://www.uscis.gov/sites/default/files/document/outreach-engagements/National_Engagement-Special_Immigrant_Juvenile_Policy_Updates-Q%26A.pdf ("SIJ classified noncitizens granted deferred action under this policy will not be eligible to apply for advance parole.").

[136] DHS FAQ, *supra* note 3.

[137] There is also an ambiguous reference to advance parole for non-DACA deferred action recipients in an old USCIS report. U.S. Citizenship & Immig. Servs., USCIS Advance Parole Documents, USCIS (Jan. 6, 2017), https://www.dhs.gov/sites/default/files/publications/USCIS%20-%20USCIS%20Advance%20Parole%20Documents.pdf ("As noted in the report, although USCIS is unable to provide volume data on non-DACA deferred action recipients who obtained advance parole documents because USCIS systems currently do not track this information electronically, USCIS is able to identify that individuals who obtained advance parole documents because DACA recipients were a small portion of the total group.").

[138] Non-DACA deferred action recipients seeking advance parole who seek to apply, understanding the risk of denial, could fill out Form I-131 Application for Travel Document, enclose a fee or fee waiver and other supporting evidence, and submit to the filing address for "All other applicants (including re-entry permit applicants)." U.S. Citizenship & Immig. Servs., Direct Filing Addresses for Form I-131 Application for Travel Document, https://www.uscis.gov/i-131-addresses (last updated Aug. 1, 2024); U.S. Citizenship & Immig. Servs., I-131 Application for Travel Document, https://www.uscis.gov/i-131 (last updated Aug. 1, 2024).

at the port of entry and could be barred from reentering. Customs and Border Protection ("CBP") officers make case-specific determinations at the port of entry about whether a noncitizen who is seeking admission into the United States is inadmissible or should be denied entry for other reasons. For that reason, practitioners considering pursuing advance parole should carefully screen their client's case for all grounds of inadmissibility because of the risk of being denied re-entry even with approved advance parole. The screening should include scrutiny to identify permanent bar issues,[139] 3-and-10-year bar issues, and criminal grounds of inadmissibility. Practitioners should note that deferred action grantees with unexecuted removal orders[140] will likely be viewed as having executed the removal order upon departure from the United States.

F. Other related relief–T & U Nonimmigrant Visas

The labor dispute underlying the worker's eligibility for deferred action can potentially rise to eligibility for T/U Nonimmigrant Status depending on the facts of an individual worker's case. DHS acknowledges the potential intersections of these visa programs in its guidance on Labor-Based Deferred Action. As these statuses provide a pathway to permanent legal residency and generous waivers of grounds of inadmissibility—and are not mutually exclusive to applying for deferred action—advocates should be sure to screen for them and employ a holistic strategy to the worker's overall immigration case.

Many federal and state labor and employment agencies will consider requests for U or T certifications of helpfulness. This presents an alternative to traditional law enforcement certifiers (police, prosecutors, and courts), some of whom may view workplace crimes as primarily civil matters outside their purview. Labor agencies may also issue certifications for cases that have been closed, so long as there was a labor investigation within the statute of limitations. Some noncitizen crime victims are fearful of reporting to traditional law enforcement because of the association with policing, arrests, and jails—and, in some areas, information-sharing or even joint operations with ICE. Finally, labor and employment agencies hold particular expertise in understanding crimes related to workplace power dynamics and so they may be more equipped to investigate workplace crimes than traditional law enforcement.

Recent changes have improved the U and T visa processes, though there are still significant delays in the U visa program. While U and T visa applications have no filing fees, the onerous fees for the waiver of inadmissibility and other associated applications are now waived.[141] T visa-specific regulations effective August 28, 2024 have further improved the T visa process by expanding access to work authorization during the pendency of the application, interpreting the

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[139] *But see Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012) (travel outside of the United States on advance parole does not constitute a "departure" and does not trigger the unlawful presence 10-year bar under INA § 212(a)(9)(B)(i)(II)).

[140] As described in *infra II.E.1*, USCIS is unlikely to accept jurisdiction over cases where the applicant has a final order of removal or is in removal proceedings. However, individuals in that situation may have applied for deferred action with ICE ERO.

[141] *See* 89 Fed. Reg. 6,194 (Jan. 31, 2024); *see also* Alison Kamhi, Elizabeth Taufa, Kate Mahoney, and Rachel Prandini, Immig. Legal Res. Ctr., New USCIS Fee Exemptions for Survivors of Abuse, Trafficking, and Other Crimes, https://www.ilrc.org/sites/default/files/2024-03/03-24%20new%20USCIS%20fee%20exemptions.pdf (last visited June 28, 2024).

requirement of being "present on account of the trafficking" more broadly, and clarifying travel on advance parole with T nonimmigrant status.[142]

Both T and U Nonimmigrant Status provide significant benefits including a path to long term status, inclusion of derivatives, and generous waivers of grounds of inadmissibility. T petitions have a significantly shorter backlog and do not require a law enforcement certification, which is required for U petitions. However, T petitions require that the petitioner suffered labor trafficking, whereas workers can seek U Nonimmigrant Status based on trafficking or other qualifying criminal activity. Practitioners should screen for U and T eligibility whenever possible and discuss these pathways to permanent status—and interim protections[143] such as Continued Presence and Bona Fide Determination Deferred Action—with workers who might be eligible. Table 8 compares the various immigration benefits that may be available to workers.

Table 8: Comparison of Immigration Benefits

	U NONIMMIGRANT STATUS	T NONIMMIGRANT STATUS	CONTINUED PRESENCE[144]	BONA FIDE DETERMINATION/DEFERRED ACTION FOR PENDING U PETITIONS	LABOR-BASED DEFERRED ACTION
Benefits	Protection from deportation, work permit	Protection from deportation, work permit, eligibility for federal benefits	Protection from deportation, work permit, eligibility for federal benefits	Protection from deportation, work permit	Protection from deportation, work permit
Eligibility	Must suffer *qualifying crime* & substantial abuse	Must suffer *labor trafficking*	Must suffer *labor trafficking* and be eligible for T	Must suffer *qualifying crime* and have petitioned for U nonimmigrant status	Must fall within the scope of Statement of Interest

[142] *See* 8 C.F.R. §§ 214.200-214.216; *see also* Coal. to Abolish Slavery & Trafficking, Training & Resources, *Overview of the 2024 T Final Rule*, https://castla.app.box.com/v/2024TVisaRegsOverview (last updated July 2024).

[143] ICE guidance additionally instructs its officials to refrain from taking civil immigration enforcement action against victims with pending applications for SIJ status, U status, T status, or VAWA relief absent exceptional circumstances. U.S. Immig. & Customs Enf't, Using a Victim-Centered Approach with Noncitizen Crime Victims, ICE Directive 11005.3 (August 10, 2021), https://www.ice.gov/doclib/news/releases/2021/11005.3.pdf.

[144] Although Continued Presence offers similar benefits to deferred action, when available it is preferred because it provides greater access to federal benefits, as well as strong evidence of law enforcement cooperation in support of the T Nonimmigrant Status Petition. *See* U.S. Immig. & Customs Enf't, Center for Countering Human Trafficking, Continued Presence Resource Guide (July 2021), https://www.ice.gov/doclib/human-trafficking/ccht/continuedPresenceToolkit.pdf.

			nonimmigrant status		
Backlog	10-15 years	1-3 years	None (but can only be issued by ICE and may several months to process)	5 years[145]	None
Length of Protection	4 years	4 years	2 years (renewable)	4 years (renewable)	4 years (potentially renewable in 2 year increments)
Long-term Pathway	Pathway to Green Card	Pathway to Green Card	None (but see T Nonimmigrant Status)	None (but see U Nonimmigrant Status)	None

1. Identifying Labor Trafficking & Eligibility for T Nonimmigrant Status

Labor trafficking occurs in all types of industries and workplaces under a wide variety of circumstances. While it is beyond the scope of this advisory to provide an in-depth discussion of the legal elements of labor trafficking,[146] practitioners should look for indications that the worker felt coerced into working against their will. Some other important practice pointers for screening are that labor trafficking:

- Does NOT need to involve movement or confinement—any type of exploitation where a person feels forced to provide labor involuntarily.
- Does NOT need to be the reason the worker initially entered the United States. They can be trafficked within the country after any type of entry (EWI, tourist or guestworker visa, etc.).
- Does NOT require workers to not have been paid so long as labor was obtained through force, fraud, or coercion.
- Can involve a range of labor abuse: threats against immigration status, sexual assault, physical confinement and withholding of payments, documents, or personal freedom.

[145] *See* U.S. Citizenship & Immig. Servs., Check Case Processing Times, https://egov.uscis.gov/processing-times/ (last visited Aug. 21, 2024).

[146] The Coalition to Abolish Slavery and Trafficking (CAST) offers a range of trainings on identifying human trafficking, practice advisories on various topics, and ongoing technical assistance through a monthly working group call. *See* Coal. to Abolish Slavery & Trafficking, Training & Resources, https://www.castla.org/training-resources/training/ (last updated Mar. 1, 2023).

2. Identifying Labor-Based Eligibility for U Nonimmigrant Status

Practitioners should whenever possible screen for all qualifying crimes and consider all certifiers, including traditional law enforcement as well as labor and employment agencies.[147] Know-your-rights materials on some common workplace U crimes is included in English and Spanish in Appendix 6.

The following chart summarizes certifying authority for federal labor agencies, with citations to relevant agency guidance. Further, the Immigration Center for Women and Children maintains a national database of U and T visa certifying officials and agencies, which may be helpful in identifying potential certifiers.[148]

Table 9: Labor Agencies Certifying U and T Visas

LABOR AGENCY	U/T CERTIFYING AUTHORITY?	CRIMES AGENCY WILL CERTIFY
U.S. DOL WHD[149]	Yes	Trafficking, Involuntary Servitude, Forced Labor, Peonage, Witness Tampering, Obstruction of Justice, Extortion, Fraud in Foreign Labor Contracting
U.S. DOL OSHA[150]	Yes	Trafficking, Involuntary Servitude, Forced Labor, Peonage, Witness Tampering, Obstruction of Justice, Extortion, Fraud in Foreign Labor Contracting, Murder, Manslaughter, and Felonious Assault; will consider other QCA's[151]
EEOC[152]	Yes	Trafficking, any qualifying crime related to its enforcement of discrimination laws
NLRB[153]	Yes	Trafficking, any qualifying crime related to its enforcement of labor laws

[147] For a full list of U-Visa Qualifying Crimes, see U.S. Citizenship & Immig. Servs., Victims of Criminal Activity: U Nonimmigrant Status, https://www.uscis.gov/humanitarian/victims-of-human-trafficking-and-other-crimes/victims-of-criminal-activity-u-nonimmigrant-status (last updated Apr. 2, 2024).
[148] Immig. Ctr. for Women and Children, U Visa Certifier and CP Collaborative Database, https://www.icwclaw.org/icwc-u-visa-certifier-and-cp-database (last visited Aug. 21, 2024).
[149] U.S. Dep't of Labor, U and T Visa Certifications, https://www.dol.gov/agencies/whd/immigration/u-t-visa (last visited Aug. 21, 2024).
[150] Readout, U.S. Dep't of Labor, U.S. Department of Labor expands OSHA's Ability to Protect All Workers by Certifying Special Visa Applications to Ensure Effective Enforcement (Feb. 13, 2023), https://www.osha.gov/news/newsreleases/readout/02132023.
[151] U.S. Dep't of Labor, Occupational Safety and Health Administration, Whistleblower Protection Program, U and T Visa Certifications, https://www.whistleblowers.gov/ut_visa#:~:text=Among%20other%20criteria%20OSHA%20considers,OSHA%20to%20attest%20that%20the (last visited Sept. 3, 2024).
[152] U.S. Equal Emp't Opportunity Comm'n, EEOC Procedures: Requesting EEOC Certification for U Nonimmigrant Classification (U visa) Petitions in EEOC Cases, https://www.eeoc.gov/eeoc-procedures-requesting-eeoc-certification-u-nonimmigrant-classification-u-visa-petitions-eeoc (last visited Aug. 21, 2024).
[153] Nat'l Labor Relations Bd., Immigrant Worker Rights, https://www.nlrb.gov/guidance/key-reference-materials/immigrant-worker-rights (last visited September 3, 2024); see also Richard A. Siegel, Assoc. Gen. Counsel, Nat'l Labor Relations Bd., Updated Procedures in Addressing Immigration Status Issues

State Agencies[154]	Varies by state	Varies by state

The DHS guidance on Labor-Based Deferred Action additionally provides a mechanism for labor agency officials to request that USCIS expedite a worker's pending immigration benefits unrelated to the Labor-Based Deferred Action process.[155] The guidance includes (but does not limit) such benefits to "Form I-765, Application for Employment Authorization, submitted outside of a request for labor investigation-based deferred action under the centralized intake process, Form I-485, Application to Register Permanent Residence or Adjust Status, Form I-130, Petition for Alien Relative, U Bona Fide Determination." Accordingly, advocates who identify workers with an existing pending form of relief with USCIS should consider asking that the labor agency request expedition from USCIS in a letter that meets the USCIS expedite criteria, namely that it is written by a person with authority to represent the agency, that it demonstrates interests that are "pressing and substantive," and, where seeking expedite of work permit processing, that the need for work authorization is critical to the mission of the requesting agency and beyond the general need to retain a worker.[156]

that Arise During NLRB Proceedings, Memorandum OM 11-62 (June 7, 2011), https://apps.nlrb.gov/link/document.aspx/09031d45818801f9.

[154] For a list of state labor agencies that certify in California, New York, and Illinois, see Eunice Cho, Nat'l Emp. Law Project, *U-Visas for Victims of Crime in the Workplace: A Practice Manual* (May 2014), https://www.nelp.org/wp-content/uploads/2015/03/U-Visas-for-Victims-of-Workplace-Crime-Practice-Manual-NELP.pdf.

[155] *See supra* note 33.

[156] *See* Policy Manual, U.S. Citizenship & Immig. Servs., Volume 1, Part A, Chapter 5: Expedite Requests, https://www.uscis.gov/policy-manual/volume-1-part-b-chapter-2 (last updated July 18, 2024).

IV. Appendices

Appendix 1: Timeline of Prior DHS Guidance on Labor Disputes

Advocates and workers have been raising concerns about the conflict between immigration and labor enforcement for over a decade. Those efforts included high-profile organizing campaigns that generated public outcry over the excesses of immigration enforcement during the Bush and Trump administrations, such as mass worksite raids, impersonation of federal workplace safety inspectors to entrap immigrant workers, and immigration enforcement in retaliation against workers exercising their labor rights.[157] In response, DHS has increasingly recognized the enforcement interests of labor law agencies and the need for DHS to consider case-by-case prosecutorial discretion in immigration enforcement to further that interest.

Below is a timeline of the key DHS memos and agreements that have incrementally recognized the conflict between immigration and labor enforcement, laying the groundwork for the most recent guidance. All of the Obama-era memoranda and agreements have remained in effect since they were issued, including during the Trump administration when many other immigration enforcement memoranda were repealed. Every major guidance document on immigration enforcement priorities during the Biden administration has included some consideration of the exercise of labor rights, although some of those have been enjoined or remain the subject of litigation.

Over the course of this time period, in addition to these policy statements, DHS has granted several requests for deferred action for immigrant workers involved in labor disputes on a case-by-case basis.

- June 2011: Then-ICE Director John Morton issued a memo ("the Morton Memo") to remind officers of their authority to exercise prosecutorial discretion "in removal cases involving . . . victims and witnesses" and [158] that "[p]articular attention should be paid to: . . . individuals engaging in a protected activity related to civil or other rights (for example, union organizing or complaining to authorities about employment discrimination or housing conditions) who may be in a non-frivolous dispute with an employer, landlord, or contractor."

- December 2011: ICE and the DOL signed an MOU that commits ICE to considering DOL requests for "a temporary law enforcement parole or deferred action to any witness needed for [an agency's] investigation of a labor dispute during the pendency of the [agency's] investigation and any related proceedings where such witness is in the country

[157] Steven Greenhouse, *U.S. Officials Defend Ploys to Catch Immigrants*, N.Y. TIMES, Feb. 11, 2006, https://www.nytimes.com/2006/02/11/us/us-officials-defend-ploys-to-catch-immigrants.html; *see generally* AFL-CIO, Am. Rights at Work Educ. Fund, Nat'l Emp't Law Project, *ICED OUT: How Immigration Enforcement Has Interfered with Workers' Rights* (March 2015), https://s27147.pcdn.co/wp-content/uploads/2015/03/ICED_OUT.pdf.

[158] John Morton, Dir., U.S. Immig. & Customs Enf't, Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs, Policy No. 10076.1 (June 17, 2011), https://www.ice.gov/doclib/foia/prosecutorial-discretion/certain-victims-witnesses-plaintiffs.pdf.

unlawfully."[159] The memo also created the deconfliction process, where ICE agrees to refrain from conducting worksite enforcement operations at worksites under investigation by the DOL for a labor dispute, subject to narrow exceptions.[160]

- May 2016: ICE and the DOL, NLRB, and EEOC signed an addendum to the 2011 MOU, which, among other terms, included the NLRB and EEOC as agencies that could request temporary law enforcement parole or deferred action for witnesses.[161] The addendum also extends the deconfliction process to include labor dispute investigations by the NLRB and EEOC.

- May 2016: HSI updated the instructions to its agents on worksite immigration enforcement during labor disputes to reflect the agency's commitments under the MOUs with the federal labor agencies. Those instructions require immigration agents to look for indications that immigration enforcement may be used to suppress the exercise of labor rights.[162]

- May 2021: The memo to ICE's Office of the Principal Legal Advisor (OPLA) (the "Trasviña memo") on interim prosecutorial discretion priorities included "status as a victim, witness, or plaintiff in civil or criminal proceedings" as a mitigating factor supporting the exercise of discretion[163]In addition, the memo expressly noted that cases "will merit dismissal in the absence of serious aggravating factors" where "a noncitizen is a cooperating witness or confidential informant or is otherwise significantly assisting state or federal law enforcement." The memo defined "law enforcement" to include "enforcement of labor and civil rights laws."[164]

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[159] U.S. Dep't of Homeland Sec. and U.S. Dep't of Labor, Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites (Dec. 7, 2011), https://www.dol.gov/sites/dolgov/files/OASP/DHS-DOL-MOU_4.19.18.pdf.
[160] *Id.*
[161] U.S. Dep't of Homeland Sec., U.S. Dep't of Labor, U.S. Equal Emp't Opportunity Comm'n, Nat'l Lab. Rels. Bd., Addendum to the Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites (May 5, 2016), https://www.nlrb.gov/sites/default/files/attachments/basic-page/node-4684/dol-ice_mou-addendum_w.nlrb_osha.pdf.
[162] These instructions were referred to as Operating Instruction 287.3(a) when first published in 1996 and then later designated as ICE Special Agent's Field Manual (SAFM) 33.14(h). Peter T. Edge, Exec. Assoc. Dir., Homeland Sec. Investigations, Guidance on Civil Inspections of the Employment Eligibility Verification Form (Form I-9) During Labor Disputes (May 10, 2016), https://www.nilc.org/wp-content/uploads/2016/11/ICE-Guidance-on-I-9-Audits-During-Labor-Disputes-2016-05-10.pdf.
[163] John D. Trasviña, Principal Legal Advisor, Immig. & Customs Enf't, Interim Guidance to OPLA Attorneys Regarding Civil Immigration Enforcement and Removal Policies and Procedures (May 27, 2021), https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_interim-guidance.pdf.
[164] This memo was suspended after an injunction of the interim prosecutorial discretion priorities on August 19, 2021. *See* Mem. Op. & Order, *Texas v. United States*, Civ. No. 6:21-cv-00016 (S.D. Tex. Aug. 19, 2021) (enjoining the implementation of interim prosecutorial discretion priorities contained in the January 20, 2021 Pekoske memo and the February 18, 2021 Johnson memo). The Trasviña memo was additionally superseded in 2022 by the Doyle OPLA memo.

- September 2021: Secretary Mayorkas issued a memo ("the Mayorkas memo") to further define prosecutorial discretion priorities for DHS's civil immigration enforcement.[165] The memo recognizes the important benefit of immigrants participating in investigations and legal proceedings that enforce labor, housing, and other laws.[166]

- October 2021: Secretary Mayorkas issued a memo ("Worksite Enforcement memo" or "October 12 memo") outlining efforts at DHS to support the exercise of workplace rights, representing a significant shift toward developing a role to complement efforts to enforce labor and employment standards.[167] The memo calls for the agency 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." The memo directed DHS to develop recommendations for how the agency can "alleviate or mitigate" the fear immigrant workers experience when considering whether to report violations and cooperate with labor enforcement agencies. Notably, the memo states that plans should provide for consideration of deferred action, parole, and other available relief for workers. The memo also further instructs DHS to consider requests from DOL for deferred action for worker witnesses or complainants on a case-by-case basis, weighing the "legitimate enforcement interests of a federal government agency" against "any derogatory information to determine whether a favorable exercise of discretion is merited."

- April 2022: A new OPLA prosecutorial discretion memo[168] ("the Doyle memo") reiterated that "status as a victim of crime or victim, witness, or party in legal proceedings, including related to human trafficking and labor exploitation" is a mitigating factor to consider in assessing whether a noncitizen is a threat to public safety.[169]

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[165] Alejandro N. Mayorkas, Sec'y, U.S. Dep't of Homeland Sec., Guidelines for the Enforcement of Civil Immigration Law, (Sept. 30, 2021), https://www.ice.gov/doclib/news/guidelines-civilimmigrationlaw.pdf.

[166] This memo was vacated by a district court in Texas in 2022, Mem. Op. & Order, *Texas v. United States*, No. 6:21-cv-00016 (S.D. Tex. June 10, 2022), but then reinstated in 2023 once the Supreme Court held on writ of certiorari review that the plaintiff states did not have standing to challenge the memo. *U.S. v. Texas*, 599 U.S. 670, 686 (2023).

[167] Worksite Enforcement Memo, *supra* note 108.

[168] Kerry E. Doyle, Principal Legal Advisor, Immig. & Customs Enf't, Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion (April 3, 2022), https://www.ice.gov/doclib/about/offices/opla/OPLA-immigration-enforcement_guidanceApr2022.pdf.

[169] OPLA stopped applying sections of this memo that relied on the September 30, 2021 Mayorkas Memo when that memo was vacated but then "began fully implementing" the memo on July 28, 2023. U.S. Immig. & Customs Enf't, Prosecutorial Discretion & the ICE Office of the Principal Legal Advisor, https://www.ice.gov/about-ice/opla/prosecutorial-discretion (last updated May 25, 2024).

Appendix 2: Template Request for a Statement of Interest from Labor or Employment Agency

XXX 202X

Re: Request for Statement of Interest
[Case Name] [Case/Inspection Number]

To Whom It May Concern:

I write as attorney for [former] employees for [EMPLOYER] in [CASE NAME], [CASE NUMBER] before [AGENCY]. We write to request [AGENCY] submit a Statement of Interest to support worker victims and witnesses in this case who may wish to apply to the Department of Homeland Security for prosecutorial discretion, including, but not limited to, deferred action or parole, and work authorization.

[DESCRIBE LEGAL BASIS OF COMPLAINT, CURRENT STATUS, AND CLIENT [WORKER] PARTICIPATION. E.g., CASE NAME alleges violations of the minimum wage and overtime provisions of the Fair Labor Standards Act. The case is currently pending before the LOCATION District Office of the Department of Labor's Wage and Hour Division [LABOR AGENCY].

[DESCRIBE STAKES of potential or actual retaliation on the labor investigation. E.g. Fear of immigration retaliation has made numerous workers, including CLIENT, reluctant to participate in DOL's investigation. Workers' fear is particularly acute in this case because their employer explicitly threatened to report several workers to immigration earlier this month after a meeting at the workplace during which workers complained about ongoing wage theft and other labor law violations. A history of worksite immigration raids in the region has further contributed to a pervasive chilling effect that is deterring worker cooperation in the ongoing DOL investigation.]

Therefore, we request [AGENCY] issue a Statement of Interest in this case to support individual applications for deferred action and/or parole, and work authorization, from workers to facilitate [AGENCY]'s [pending investigation, litigation, or enforcement interests] and to counteract the chilling effect on labor disputes caused by the fear of immigration-based retaliation, consistent with the criteria in [DOL or other agency's]'s guidance on this process. ["Process for Requesting Department of Labor Support for Requests to the Department of Homeland Security for Immigration-Related Prosecutorial Discretion During Labor Disputes," Department of Labor (July 6, 2022), *available at* https://www.dol.gov/sites/dolgov/files/OASP/files/Process-For-Requesting-Department-Of-Labor-Support-FAQ.pdf].

We request the Statement of Interest include all workers employed by [EMPLOYER] at [WORKSITE(S)] at any time from [DATES RELEVANT TO LABOR DISPUTE], as these workers are all potential victims and witnesses in [CASE NAME] during the pendency of the agency's investigation and litigation, or during the period of any enforceable judicial order or decree, including any period of compliance and monitoring.

Thank you for your attention to this matter. If any further information is needed, please do not hesitate to contact me at [CONTACT INFO].

Appendix 3: Intake Form for Labor-Based Deferred Action and Employment Authorization

Intake Form for Labor-Based Deferred Action & Employment Authorization[1]

Date: _____ Interviewer Name: _____

Last Name(s), First Name: _____

Preferred Language: _____

Date of Birth: _____

Best Contact:_____ Alternative Contact: _____

BIOGRAPHICAL INFORMATION

➔ ***Fill out Form G-325 and save a PDF***

EMPLOYMENT INFORMATION

Where do you work currently?
Industry:

Dates of employment at [Employer(s) listed in Statement of Interest]

Did you use your real name with this employer? □ Yes □ No

How did they pay you?

IMMIGRATION HISTORY

Do you have an immigration lawyer working on your case? □ Yes □ No
If so, who?

Do you give permission to contact your attorney? □ Yes □ No

Country/Countries of Origin, Nationality, or Citizenship:[2] _____

Current Immigration Status *(on work visa? expired work visa? no status?)*

[1] This intake form is part of the Labor-Based Deferred Action Practice Manual created by the Tulane Immigrant Rights Clinic, Organized Power in Numbers, the National Immigration Project (NIPNLG), the National Immigration Law Center, and Arriba Las Vegas Worker Center.
[2] Check the current list of designations and redesignations for Temporary Protected Status for the worker's country of origin: https://www.uscis.gov/humanitarian/temporary-protected-status.

If work visa expired, when?

Immigration History Chart

Date of Entry	**Place of Entry**	**Status at Entry and Manner of Entry** *(EWI, inspection & parole, inspection & admission*)	**CPB/ICE Interaction at the border?**	**Date of Exit**	**Method of Exit** *(travel via ground or flight, voluntary departure, removal, etc.)*

For those who have received a visa: Have you ever stayed in the United States after your visa expired? □ Yes □ No
If so, when?

Have you ever left the United States after your visa expired? □ Yes □ No
If so, when?

Have you ever been arrested or detained by ICE or DHS? □ Yes □ No
If yes, explain (dates, applications, resolutions):

Have you ever had any hearings in front of an Immigration Judge? □ Yes □ No
If yes, explain (dates, applications, resolutions):

Have you ever been ordered removed by an immigration judge? □ Yes □ No
If yes, explain (dates, applications, resolutions):
Have you ever been deported? □ Yes □ No
If yes, explain:

Has any family member filed an immigration petition on your behalf? □ Yes □ No
If so, when? Was it approved? Where is it at now?

Have you ever applied for any immigration benefit yourself? □ Yes □ No
If so, when?

Was it approved? □ Yes □ No

Family Ties to the United States

Name	DOB	Relationship[3]	Health Issues[4] (if any, what are you doing to support them?)	Immigration Status	Permission to Contact?

Are you a member of any community organizations? (churches, clubs, unions etc.) □ Yes □ No
If yes, which?

Do you have any health conditions for which you're receiving treatment? □ Yes □ No
If so, explain and get contact info for treating medical professional:

[3] Workers with certain qualifying relatives (including parents, siblings, and children over 21) may be able to adjust status and obtain permanent status. If the worker has never been admitted or paroled into the U.S, practitioners evaluate the worker's eligibility for parole in place.
[4] Workers who support relatives with health issues or disabilities may be eligible for Cancellation of Removal if they are in removal proceedings and meet other requirements.

Have you ever been arrested or had trouble with the police in the U.S. or any other country?
□ Yes □ No

Criminal History Chart

Charge	Date	Location and Arresting Agency	Court Location and Case Result	Penalty

Have you ever missed any court dates? □ Yes □ No

If yes, explain why:

If any criminal convictions: Have you completed any programming related to these offenses (treatment for substance abuse driver's education and alcohol abuse for DUI, any counseling or therapy?

LABOR-BASED RELIEF

Labor-Based U and T Visa[5]

Have you ever worked somewhere where you wanted to leave the job but you felt forced or tricked to keep working? □ Yes □ No
What happened?

Has any employer (or someone who worked for them) ever threatened you? □ Yes □ No
What did they say?
Has any employer (or someone who worked for them) ever threatened to deport you or commented on your immigration status? □ Yes □ No
What did they say?

Has any employer (or someone who worked for them) ever tried to harm you by hitting you, threatening you with anything that could be a weapon, or touching you inappropriately?
□ Yes □ No

Did the police or any other government agents ever come to your workplace? □ Yes □ No

[5] These questions are designed to flag issues that may require further investigation: they are not exhaustive and will not conclusively establish whether the worker may be eligible for a U or T visa based on trafficking or other qualifying crimes.

If so, when and do you know why?

Have you ever been recruited for a job in the U.S. in your home country? □ Yes □ No
If so, were you told anything about the job that turned out to be not true, such as your pay, housing conditions, or immigration status?

OTHER RELIEF

U Visa
Have you been the victim of a crime in the US? □ Yes □ No
If yes, explain where, when, what happened:

If yes, did anyone call the police? □ Yes □ No

If yes, were you physically or emotionally harmed? □ Yes □ No

VAWA
If the worker has a US Citizen or permanent resident spouse or parent
Have you been physically, sexually, verbally, or emotionally abused, assaulted, or otherwise hurt or mistreated by your US citizen or permanent resident spouse or parent? □ Yes □ No
If yes, explain.

Has your child been physically, sexually, verbally or emotionally abused, assaulted, or otherwise hurt or mistreated by your US citizen or permanent resident spouse or parent? □ Yes □ No

a. If yes, explain.

SIJS
If the worker is under 21

Where are your parents now?

If either parent is absent, when was the last time you heard from them?

Does your mother care for you, provide housing, food and clothing, and talk to you a lot?
If no, explain. □ Yes □ No

Does your father care for you, provide housing, food and clothing, and talk to you a lot?
If no, explain. □ Yes □ No

Have you ever been harmed or neglected by either of them? □ Yes □ No
What happened?

Asylum/Withholding
Do you have fear of returning to your home country? □ Yes □ No
If so, why?

Have you ever requested asylum in any way before (at the border, in immigration court, with USCIS etc.) □ Yes □ No

If so, when and has there been a decision?

Military Parole in Place
Do you have any family members serving the US military? □ Yes □ No

If yes, who and how are you related to them?

Marriage-Based Parole in Place
If the worker has a US Citizen spouse

Were you married to your USC spouse as of June 17, 2024? □ Yes □ No

Have you lived in the US for more than 10 years (without leaving) as of June 17, 2024?[6] □ Yes □ No

ASSESSING FOR I-765 WORKSHEET AND/OR I-912 FEE WAIVER FOR EAD

What do you do for work?_____

How often are you paid? _____

What is your typical paycheck?

Are you currently working right now? □ Yes □ No

If not, are you receiving unemployment benefits? □ Yes □ No

Are you the primary financial support for your household? □ Yes □ No

How many people live in your house?

How much money do the other people living in your house make each year?

What are your expenses during the year? How much do you spend on:

Financial Information Chart

Rent/Mortgage:		
Food:		
Utilities:		
Childcare/care for your parents:		

[6] Check the entry information on page 2 to confirm the worker entered EWI. Workers will need further screening on immigration and criminal history to confirm that they qualify.

Insurance:		
Loans/credit cards:		
Car payment:		
Commuting Costs:		
Medical Expenses:		
School Expenses:		
Anything else?		

Do you own property? □ Yes □ No

If yes, what? (home, land, car, truck, etc)

Approximate value of each asset:

IF NOT REQUESTING I-912 FEE WAIVER, STOP HERE.

Have you or anyone in your family ever received one of these benefits?
□ Medicaid □ Supplemental Nutrition Assistance Program (SNAP, formerly called Food Stamps)
□ Temporary Assistance to Needy Families (TANF) □ Supplemental Security Income (SSI)

Do you receive money from any of these sources?
□ Money from your parents □ Money from your ex-spouse (Alimony) □ Child Support
□ Educational stipends □ Pensions □ Unemployment benefits
□ Social Security Benefits □ Veteran's Benefits
□ Money from other people living in your household

Have you filed taxes? □ Yes □ No

Has anything significant changed in your life since you filed your tax returns (loss of job, significant expenses, promotion, etc.)?

□ Yes □ No

Have you had any situations recently that have caused you to spend more money (ex: eviction, family emergency, medical expenses)?

□ Yes □ No

Do you have the following documents (review and make a plan to gather documents relevant to eligibility)?

- If eligible based on income → Income Tax Forms (1040/1040EZ) or Other Proof of Income (Pay Stubs/W-2/Receipts from Check Cashing)
- If eligible based on means-tested benefit → proof of means-tested benefit
- If eligible based on financial hardship → Proof of Rent or Mortgage Payment (Lease, Rent Receipt); Proof of Utility Bills (Receipts or Bills); Other significant expenses (Receipts for food, gas, car payment, insurance, etc.); Proof of Income

LABOR-BASED DEFERRED ACTION WORKSHEET

Records to request from worker in all cases:

- ✓ ID docs: Passport, birth certificate, or consular ID
- ✓ Proof of employment
- ✓ Prior immigration documents (if applicable)
- ✓ Any criminal records

Case-Specific Considerations

☐ Worker has prior immigration history.

- Worker can still apply, but should be counseled that the request may be adjudicated by ICE
- Consider requesting prosecutorial discretion from OPLA if worker is in proceedings
- Consider FBI & FOIA options as needed, but counsel worker on potential delay

☐ Worker has prior criminal history.

- Review records to assess potential risks of applying
- Request records from FBI or local agency as needed and counsel worker on risk of denial
- Consider submitting mitigating or positive equities evidence to counterbalance negatives

☐ Worker used other name/identity at worksite.

- Where possible, avoid submitting documents that show false name or other PII
- Consider using alternative proof of employment such as a declaration from the worker

☐ Worker appears eligible for labor-based T or U.

- Additional eligibility screening
- Assist worker with reporting/requesting cert from labor agency
- Worker can apply for deferred action for short-term protection and EAD

☐ Worker may be eligible to adjust status.

- Additional screening on bars
- Consider parole in place if worker was never admitted or paroled

IF NO BOXES ARE CHECKED, WORKER MAY PROCEED WITH APPLYING FOR DEFERRED ACTION AFTER BEING COUNSELED ON RISKS AND BENEFITS.

IN MOST CASES, WORKERS WITH CHECKED BOXES CAN ALSO PROCEED, BUT MAY NEED ADDITIONAL COUNSELING & ADVOCACY.

Appendix 4: Template Request for Updated Labor Agency Statement of Interest

XXX 202X

Re: Request for Updated Statement of Interest
[Case Name] [Case/Inspection Number]

To Whom It May Concern:

I write as attorney for [former] employees for [EMPLOYER] in [CASE NAME], [CASE NUMBER] before [AGENCY]. [AGENCY] issued an initial Statement of Interest to support worker victims and witnesses in this case applying for deferred action on [DATE]. I now write to request an Updated Statement of Interest, so that workers who have received deferred action can seek renewal so they continue to be protected from retaliation.

I request the Updated Statement of Interest include all workers covered in the initial Statement of Interest [repeat scope of initial SOI]. [If relevant, you can also request an expanded scope for an updated statement of interest]

Thank you for your attention to this matter. If any further information is needed, please do not hesitate to contact me at [CONTACT INFO].

Appendix 5: Intake Form for Extension or Renewal of Labor-Based Deferred Action

Labor-Based Deferred Action Extension/Renewal Intake Form

Client: _____ _____
Last Name, First Name Date

Legal Worker Performing Intake: _____

Eligibility?

Extension: Review prior approval for deferred action. If the initial approval was for two years, then the applicant is eligible for extension.

Renewal: Review prior approval(s) for deferred action. If the applicant has already received an extension so that they have been approved for four total years of deferred action, or was initially granted four years of deferred action, then the applicant must seek renewal. Renewal requires an Updated Statement of Interest. If the worker or their advocate have obtained an Updated Statement of Interest, then review it for any changes to scope of workers covered for renewal. If the scope has changed, review the prior deferred action application or ask the applicant if they fall within the new scope and review evidence of employment to make sure it still matches scope of the Statement of Interest.

G-325A:

- Are you still married/unmarried?
- I have your last address as _____. Do you still live there? [If no, gather any new address history. You can delete address history that now falls outside of the last five years.]

- I have your last job as being a _____ for _____ Do you still work there? [If no, gather any new work history. You can delete work history that now falls outside of the last five years, except do not delete the work history that makes the worker eligible for Labor-Baded Deferred Action.]

I-765:

- Update address, if changed.
- Update marital status, if changed.
- Update passport information, if changed.
- Update current status to "deferred action" if still in deferred action period.
- Update previous I-765 filings & SSA section (add Social Security Number and check no to requesting a new SSN).

I-765 WS:

- Last time, you told me that you owned [previous property]. Do you still own [previous

property]?

- Do you any other property (vehicles, a home, land or anything of significant value)? How much would you estimate it is worth total?

- Do you have any savings? How much would you estimate is in your savings right now?

    - Okay it sounds like you have _____ total in property and savings right now. Does that sound right?

- How much does your job pay you per pay period? How often do you get paid?

    - Okay it sounds like you make about _____ total per year at your current job. Does that sound right?

- What are your approximate yearly expenses? [Refer to previous amount—would you say your expenses are about the same, more or less? How much?]

- Why do you want to renew your work permit?

Equities:

- Have you had any interactions with law enforcement since you filed your first deferred action application—any arrests or accusations against you?

- Have you had any interactions with immigration agents since you filed your first deferred action application—any arrests or detention?

[If no new interactions, t
Identity Evidence:

Check proof of identity, likely passport, to see if it is still current.

Written Request
As part of this request, we have to include a written request from you for the protection. I wrote up a short statement based on what I know about your case. I will read it now for your approval. Please tell me if you would like to change anything.
Sample Renewal Written Request: I ask for continued immigration protection so that I can continue pursuing my labor rights and be safe from the risk of deportation. I was granted two years of protection and permission to work. I now ask for an extension to four years of protection so that I can continue to work lawfully and without fear of retaliation.
Sample Renewal Written Request: I ask for continued immigration protection so that I can continue pursuing my labor rights and be safe from the risk of deportation. I want accountability for what the [company] has done. Everyone should be paid fairly for their work. Everyone should have safe housing. No one should be threatened and intimidated just because they stand

up for themselves and others. [If participating in labor agency case] I want to keep helping the [labor agency]. It feels good to see that standing up for my rights is paying off.

I-912 (if interested in seeking waiver of $510 filing fee)

- Do you or anyone in your family receive any benefits from the government, like food stamps, health insurance through Medicaid or other program, or welfare?
    - Do you have any document or card that shows you are in this program?
    - Great can you send it to me?
- [If not eligible based on means-tested benefit] Have you filed taxes?
    - Great can you send me your tax returns?
    - Has anything significant changed in your life since you filed your tax returns (loss of job, significant new expenses, getting a raise)?
    - Check tax returns for eligibility against the I-912P (and also cross-check against income listed on I-765WS).
- [If not eligible based on means-tested benefit or income] Have you had any other situations recently that have caused you to spend more money, like an eviction, family emergency, medical expenses, or something else like that)?
    - Review in depth questions about income and expenses in the I-912

Appendix 6: Know-Your-Rights on Workplace U Eligibility in English and Spanish

You Have the Right to Organize!

You have the **right** to organize with other workers to **speak up and demand solutions** if you are not paid your full wages or experience unsafe working conditions, poor housing, violations of your work contract, or are not getting what you were promised by your employer when you were recruited.

Many workers fear that the employer will retaliate against them if they do speak up and try to assert their rights.

Federal law protects your efforts to assert your rights, to demand what was promised to you, and to report your employer's misconduct to authorities

If you do make a complaint and your employer retaliates, the law may offer some protections.

U Nonimmigrant Status or "U Visa"

A "U Visa" is an immigration benefit for "victims" of certain crimes. A U Visa may provide a pathway to lawful status and, eventually, permanent residency (a "green card").

To get a U-Visa, you must meet the following ***three*** requirements:

1. Crime Requirement
you must have been the victim of a crime in the United States

2. Helpfulness Requirement
you must have helped police and/or prosecutors

3. Harm Requirement
the crime must have hurt you physically or mentally

Source: https://www.ilrc.org/sites/default/files/resources/proseuvisamanual_english.pdf

Last updated: August 19, 2024
Originally Drafted for Alianza de Trabajadores de Marisco y Pescado by Aseem Mehta
Review & Updates by Mary Yanik

In addition to these three requirements, you might need to ask for forgiveness if you have violated certain laws in the past, like immigration or criminal laws. For instance, if you crossed into the U.S. without papers, you can file a form to ask for forgiveness. The government is typically generous in granting waivers for minor immigration violations or minor crimes, so it is important to be honest about any mistakes you have made and ask for forgiveness. If you have committed multiple crimes or one serious crime, then you should consult an immigration attorney for help.

Benefits of a U Visa

If you do qualify and your applications for a U Visa are approved, you will receive:

1. Temporary legal immigration status for four years to you and certain immediate family members (for adults, this includes your unmarried children under the age of 21 and your spouse from a legal marriage)
2. Permission to work lawfully for four years
3. Opportunity to apply to become a legal permanent resident in the United States after three years.

Qualifying Crimes for U Visa Protections from Workplace Violations

You may be eligible to obtain a U Visa if you are the victim of certain qualifying crimes. **Some of these qualifying crimes may take place at work**, and some actions by your employer may be qualifying crimes.

These crimes include:

- Witness Tampering & Obstruction of Justice
- Fraud in Foreign Labor Contracting
- Involuntary Servitude, Forced Labor & Peonage

Witness Tampering & Obstruction of Justice

- Definition: An employer may engage in "witness tampering" or "obstruction of justice" if they **intentionally** create obstacles to workers speaking up and seeking to protect their legal rights.
    - This may include the employer preventing someone from testifying, intimidating a worker into silence, causing someone to withhold or damage necessary documents, or blocking a person's communication with law enforcement.

Last updated: August 19, 2024
Originally Drafted for Alianza de Trabajadores de Marisco y Pescado by Aseem Mehta
Review & Updates by Mary Yanik

Examples of Violations that May be a Qualifying Crime

- When a worker is threatened, harassed or intimidated by the employer to withdraw, lie or stop following up on a complaint made to a labor protection agency or other law enforcement official.

- Employer actions may include threats to contact police or ICE, harm family members or threaten to fire the worker or evict the worker from company housing.

Fraud in Foreign Labor Contracting

- Definition: If an employer **intentionally** recruited or hired a person outside of the United States by making **false promises about what a worker should expect during their job** (including the type of work, working conditions, hours, or wages that would be paid).

Examples of Violations that May be a Qualifying Crime

- A situation in which an employer lied or misrepresented the terms and conditions of employment housing, fees/debts owed to labor brokers, food and transportation, ability to work at other places of employment, or other promises in the work contract.

- If a worker is required to complete work that is very different from what was described during recruitment or in the contract.

Involuntary Servitude, Forced Labor, and Peonage

- Definition: When an employer **intentionally** pressures a worker to keep working against their will by:
    - Force or threats of force
    - Serious harm or threats of harm to the worker or someone else
    - Abuse or threatened abuse of legal processes (including threats of deportation)
    - Using **debt** or the threat of debt to force a worker to work against their will

- A worker may experience involuntary servitude or forced labor ***even if*** **he/she has been paid wages for their work**.
    - What is key is that the situation is one in **which the worker has been coerced into working against their will.**
    - **The harms of the coercion may be physical, psychological, financial, or reputational**.

Last updated: August 19, 2024
Originally Drafted for Alianza de Trabajadores de Marisco y Pescado by Aseem Mehta
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Examples of Violations that May be a Qualifying Crime

- Employers may pressure a worker into working against his or her will by underpaying wages, requiring that the worker pay off debts, and threatening deportation or to call the police or ICE if the worker refuses to work.

- Employers may also seize of identification documents, passports or plane tickets, threaten harm to family members, or threaten eviction from employer-provided housing to force a worker to keep working against his or her will.

Helping with an Investigation

To be eligible for a U Visa, you must have helped a law enforcement official to investigate the criminal activity. Then the official must sign a form saying that you reported the crime and helped the investigation when requested. There are many ways of doing this:

Ways to Help with an Investigation

- File a written complaint with state or federal labor agency or police
- Answer questions during a law enforcement investigation
- Provide documents regarding the misconduct to investigators
- Testify as a witness during a legal proceeding

Often, the most difficult part of a U visa application may be convincing a government official to sign a document acknowledging that you were helpful in investigating the crime. In order for you to qualify, the person who committed the crime need not have been arrested nor convicted. But a government official must sign that you reported the crime and helped in any way that was requested. Many different government officials may sign this form, including the police, judges, prosecutors, and officials from labor agencies like the Department of Labor.

The most important thing is that **you cooperated with the investigation of the crime**. This may include reporting the crime and answering questions of investigators.

Showing Harm from the Crime

When you apply for a U visa, you must show that you suffered substantial harm from the crime committed against you. You do not have to have a physical injury, but you should explain the

Last updated: August 19, 2024
Originally Drafted for Alianza de Trabajadores de Marisco y Pescado by Aseem Mehta
Review & Updates by Mary Yanik

extent of how you were hurt from the crime. You could explain changes to your behavior or mood and mental state because of the crime. If you are seeing a therapist or social worker, you might want to include a statement from them about how you have been affected by the crime. You should include a detailed statement of how and why you were hurt by what happened to you.

Applying for a U Visa

- To apply for the U visa, you have to submit your petition for status (form **I-918)** and the certification of helpfulness from a government official (form **I-918 Supplement B**).
- If you violated certain laws and need to seek forgiveness, you should also submit a waiver application (form **I-192**).
- If you want to petition for certain immediate family members, you should also submit forms for them (form **I-918 Supplement A**).
- To request permission to work while you wait for your U visa petition to be processed, you should also submit a work permit application (form **I-765**). You should also submit work permit application forms for any family member who is a part of your application too.
- There are no fees in applying for the U visa, for any of these forms!

Time Considerations

The process takes a long time. There is currently a long line to obtain a U Visa, even if you qualify. After you have obtained all of the documents and submitted your application, **it currently may take over 10 years to receive a final decision on your U visa.** While the agency reviews pending applications to issue **deferred action (temporary protection from deportation) and work permits for those in the waiting line**, even that process takes several years.

Last updated: August 19, 2024
Originally Drafted for Alianza de Trabajadores de Marisco y Pescado by Aseem Mehta
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Tienes Derecho de Organizar!

Usted tiene el **derecho** de organizarse con otros trabajadores para quejarse y **exigir soluciones** si no le pagan su salario completo o si se encuentra trabajando en condiciones peligrosas, si las viviendas proporcionadas por su empleador se encuentran en malas condiciones, o si usted no está recibiendo lo que tu empleador prometió cuando te recluto.

Muchos trabajadores temen que su empleador tome represalias contra ellos si se quejan e intentan ejercer sus derechos.

La ley federal protege sus esfuerzos de ejercer sus derechos, de demandar lo que fue prometido, y de reportar a las autoridades la mala conducta del empleador.

Si usted se queja y su empleador toma represalias, la ley puede ofrecer protecciones.

Estatus U de No Inmigrante o "Visa U"

La "Visa U" es un beneficio de inmigración que está reservado para inmigrantes "victimas" de ciertos crímenes. Una Visa U puede ofrecer un camino a estatus legal y, eventualmente, residencia permanente (una "tarjeta verde" o "green card").

Para obtener una Visa U, usted tiene que cumplir ***tres*** requisitos:

Requisito de Crimen	Requisito de Ayuda	Requisito de Daño
Usted tiene que haber sido víctima de un crimen en los Estado Unidos.	Usted tiene que haber ayudado a la policía y/o a los abogados de gobierno.	Usted tiene que haber sufrido daño físico o mental como resultado del crimen.

Origen: https://www.ilrc.org/sites/default/files/resources/proseuvisamanual_english.pdf

Actualizado: August 19, 2024
Preparado para Alianza de Trabajadores de Marisco y Pescado by Aseem Mehta
Revisiones y Actualizaciones hechas por Mary Yanik del Tulane Immigrant Rights Clinic

Además de estos requisitos, es posible que usted tenga que pedir perdón si ha violado ciertas leyes en el pasado como leyes de inmigracion o leyes criminales. Por ejemplo, si usted entró a los Estados Unidos sin papeles, podrá presentar una solicitud de perdón. En general, el gobierno suele ser generoso en dar exenciones por violaciones menores de inmigracion o crímenes menores. Por esa razón, es importante ser honesto sobre cualquier error que haya cometido y pedir perdón. Si usted ha cometido varios delitos o un delito grave, debe consultar a un abogado de inmigracion para obtener ayuda.

Beneficios de una Visa U

Si usted califica y sus aplicaciones para una Visa U son aprobadas después del largo proceso de años de adjudicación, usted recibirá:

1. Estatus legal temporal por cuatro años para usted y ciertos miembros de su familia inmediata (para adultos, esto incluye sus hijos menores de 21 años que son solteros y su esposo/a legal);
2. Permiso de trabajo legal por cuatro años;
3. Después de tres años, la oportunidad de aplicar para residencia permanente en los Estados Unidos.

Crímenes Elegibles para Protección de Visa U contra Violaciones Laborales

Usted puede ser elegible para obtener una Visa U si es víctima de ciertos crímenes elegibles. **Algunos de estos crímenes elegibles pueden suceder en su lugar de trabajo** y algunas acciones de su empleador pueden ser crímenes elegibles.

Estos crímenes incluyen:

- Manipulación de Testigos y Obstrucción de la Justicia
- Fraude en la Contratación de Mano de Obra Extranjera
- Servidumbre Involuntaria, Trabajo Forzado, y Peonaje

Manipulación de Testigos y Obstrucción de la Justicia

- Definición: Un empleador puede ser culpable de "manipulación de testigos" o "obstrucción de la justicia" si **intencionalmente** crea obstáculos para empleados que desean proteger sus derechos legales.
    - Ejemplos incluyen un empleador que evita que alguien testifique, intimide a un trabajador para que no hable, haga que alguien retenga o destruya documentos

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necesarios, o bloquee las comunicaciones entre un trabajador y agencias laborales como el Departamento de Trabajo (Department of Labor), la Comisión de Igualdad de Oportunidades en el Empleo (Equal Employment Opportunity Commission), la Junta Nacional de Relaciones Laborales (National Labor Relations Board), u otras agencias y oficiales encargados de hacer cumplir la ley.

Ejemplos de Violaciones que Podrían ser Crímenes Elegibles

- Cuando un trabajador es amenazado, acosado, o intimidado por el empleador para retirar, mentir, o dejar de seguir su queja en una agencia de protección laboral u otro oficial del gobierno encargado de hacer cumplir la ley.
- Acciones de un empleador pueden incluir amenazas de contactar la policía o ICE, de causar daño a miembros de su familia, despedir o desalojar al empleado de viviendas proporcionadas por el empleador.

Fraude en la Contratación de Mano de Obra Extranjera

- Definición: Si un empleador **intencionalmente** reclutó o contrató a un extranjero fuera de los Estados Unidos haciendo **promesas falsas sobre lo que el empleado debería esperar del trabajo** (incluyendo el tipo de trabajo, condiciones laborales, horas, o el salario que se pagaría).

Ejemplos de infracciones que pueden ser delitos calificados

- Una situación en la que un empleador mintió o falsificó los términos y condiciones de vivienda laboral, tarifas/deudas adeudadas a intermediarios laborales, comida y transporte, capacidad para trabajar en otros lugares de empleo o otras promesas en el contrato de trabajo.
- Si se requiere que un trabajador complete un trabajo que es muy diferente de lo que se describió durante el reclutamiento o en el contrato.

Servidumbre involuntaria, trabajo forzado y peonaje

- Definición: Cuando un empleador presiona **intencionalmente** a un trabajador para que siga trabajando en contra de su voluntad por ejemplo por:
  - Fuerza o amenazas de fuerza
  - Daños graves o amenazas de daño al trabajador o a otra persona

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- Abuso o amenaza de abuso de los procesos legales (incluidas amenazas de deportación)
- Usar deudas o la amenaza de endeudarse para obligar a un trabajador a trabajar en contra de su voluntad

- Un trabajador puede sufrir servidumbre involuntaria o trabajo forzado ***incluso si*** **se le ha pagado un salario por su trabajo.**
  - Lo que es clave es que la situación es una en la que el trabajador ha sido obligado a trabajar en contra de su voluntad.
  - Los daños de la coacción pueden ser físicos, psicológicos, económicos o de reputación.

Ejemplos de infracciones que pueden ser un delito calificado

- Si los empleadores presionan a un trabajador que trabaje en contra de su voluntad pagando salarios insuficientes, exigiendo que el trabajador pague sus deudas y amenazando con deportarlo o llamar a la policía/ICE si el trabajador niega a trabajar.
- Si los empleadores confiscan documentos de identificación, pasaportes o boletos de avión, amenazan con dañar a los miembros de la familia o amenazan con el desalojo de la vivienda proporcionada por el empleador para obligar al trabajador a seguir trabajando en contra de su voluntad.

Ayudando con una investigación

Para ser elegible para una visa U, tienes que haber ayudado a un oficial del gobierno a investigar la actividad criminal. Luego, el oficial debe firmar un formulario diciendo que usted denunció el delito y ayudó a la investigación cuando se le solicitó. Hay muchas maneras de hacer esto:

Formas de Ayudar Con Una Investigación

- Presentar una queja por escrito ante la agencia laboral del estado o federal u otro official.
- Responder preguntas durante una investigación policial.
- Proporcionar documentos sobre la situación a los investigadores.
- Testificar como testigo durante un proceso legal.

Usualmente, la parte más difícil de una solicitud de visa U puede ser convencer a un oficial del gobierno de que firme un documento reconociendo que usted ayudó a investigar el crimen. Para que usted califique, la persona que cometió el crimen no necesita haber sido arrestada ni condenada. Pero

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un oficial del gobierno tiene que firmar que usted denunció el crimen y ayudó en cualquier forma solicitada. Muchos tipos de oficiales gubernamentales pueden firmar este formulario, incluidos la policía, jueces, fiscales y oficiales de agencias laborales como el Departamento de Trabajo, la Comisión de Igualdad de Oportunidades en el Empleo, la Junta Nacional de Relaciones Laborales u otras agencias estatales y locales.

Lo más importante es **que cooperaste con la investigación del crimen**. Esto puede incluir denunciar el delito y responder preguntas de los investigadores.

Mostrando Daño del Crimen

Cuando solicitas una visa U, debes demostrar que sufriste un daño sustancial por el delito cometido contra ti. No es necesario que tengas una lesión física, pero tienes que explicar el grado en que usted resultó perjudicado por el crimen. Podrías detallar los cambios en su comportamiento o estado de ánimo y estado mental debido al delito. Si estás viendo a un terapista o trabajador social, es posible que quieras incluir una declaración de ellos sobre cómo has sido afectado por el crimen. Debes incluir una declaración con detalles de cómo y por qué lo lastimó lo que le sucedió.

Aplicando para una visa U

- Para aplicar a una visa U, tienes que presentar tu petición de estatus (formulario **I-918**) y la certificación de ayuda de un oficial del gobierno (formulario **I-918, Suplemento B**).
- Si violaste ciertas leyes y necesitas buscar el perdón, también debes presentar una aplicación de exención (**formulario I-192**).
- Si deseas presentar una petición para ciertos miembros de la familia inmediata, también debes enviar formularios para ellos (formulario **I-918, Suplemento A**).
- Para solicitar permiso para trabajar mientras que estés esperando que se procese tu solicitud de visa U, también debes presentar una solicitud de permiso de trabajo (**formulario I-765**). También debes enviar aplicaciones por permiso de trabajo para cualquier miembro de la familia que también forme parte de tu solicitud.
- ¡No hay cargos por solicitar la visa U, para cualquiera de estos formularios!

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Consideraciones de tiempo

El proceso demora mucho tiempo. Actualmente hay una larga fila para obtener una Visa U, incluso si calificas. Una vez que hayas obtenido todos los documentos y enviado tu solicitud, **puede tardar más de 10 años recibir una decisión final sobre tu visa U**. Si bien la agencia revisa las solicitudes pendientes para emitir **acción diferida (protección temporal contra la deportación) y permisos de trabajo para quienes están en la fila de espera**, incluso ese proceso lleva varios años.

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Practitioners may view these documents by completing the following form: https://bit.ly/LaborDADocs.

Appendix 7: Sample Labor Agency Statements of Interest

Appendix 8: Sample Cover Letter Requesting Labor-Based Deferred Action

Appendix 9: Sample Cover Letters for Labor-Based Deferred Action with Criminal History

Appendix 10: Sample Cover Letter for Pro Se Extension Request

Appendix 11: Sample Renewal Cover Letter and Worker Request

Appendix 12: Sample Declaration Regarding Employment and Request from Labor-Based Deferred Action Applicant

Appendix 13: Sample I-765 Worksheet

Appendix 14: Sample G-325A for Extension Application

Appendix 15: Sample Parole in Place Application