



Homeland
Security

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Policy Statement 065-06

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

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

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

FROM: Alejandro N. Mayorkas
Secretary

A handwritten signature in blue ink, reading "AN Mayorkas", written over the printed name of the Secretary.

SUBJECT: **Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual**

Thank you for your leadership as we work to more effectively accomplish our Department's critical missions.

Our worksite enforcement efforts can have a significant impact on the well-being of individuals and the fairness of the labor market. Our accomplishments in this area make clear that we can maximize the impact of our efforts by focusing on unscrupulous employers who exploit the vulnerability of undocumented workers. These employers engage in illegal acts ranging from the payment of substandard wages to imposing unsafe working conditions and facilitating human trafficking and child exploitation. Their culpability compels the intense focus of our enforcement resources.

In addition, unscrupulous employers harm each worker competing for a job. By exploiting undocumented workers and paying them substandard wages, the unscrupulous employers create an unfair labor market. They also unfairly drive down their costs and disadvantage their business competitors who abide by the law.

We can most effectively protect the American labor market, the conditions of the American worksite, and the dignity of the individual by focusing our worksite enforcement efforts on unscrupulous employers. This is how we will proceed.

Fundamental Principles

Our Department has a critical role in ensuring that our Nation's workplaces comply with our laws. To best achieve this goal, we must 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.

We will serve these important interests by adopting policies and practices that achieve the following:

- Reduce the demand for illegal employment by delivering more severe consequences to exploitative employers and their agents;
- Increase the willingness of workers to report violations of law by exploitative employers and cooperate in employment and labor standards investigations; and,
- Broaden and deepen mechanisms for coordination between the Department of Homeland Security and the Department of Labor, the Department of Justice, the Equal Employment Opportunity Commission, the National Labor Relations Board, and state labor agencies.

Policy Review

In furtherance of these interests, I am directing the following review of policies to facilitate the development of a Department-wide strategy in line with the principles outlined above:

1. Identify any existing and potential policies that have an impact on the Department's role in supporting the enforcement of employment and labor standards. Such policies include, but are not limited to, ICE's worksite enforcement strategy, the 2011 Memorandum of Understanding between DHS and DOL (as amended in 2016)¹, and policies that may impede non-citizens workers, including victims of forced labor, from asserting their workplace rights. Please present proposed recommendations to me within 60 days of the date of this memorandum.
2. Develop agency plans to alleviate or mitigate the fear that victims of, and witnesses to, labor trafficking and exploitation may have regarding their cooperation with law enforcement in the investigation and prosecution of unscrupulous employers. These plans should, among other things, provide for the consideration of deferred action, continued presence, parole, and other available relief for noncitizens who are witnesses to, or victims of, abusive and exploitative labor practices. In addition, these plans should

¹ Revised Memorandum of Understanding between the Department of Homeland Security and Labor Concerning Enforcement Activities at Worksites (Dec 7, 2011)

provide for the assistance noncitizen victims and witnesses need to participate actively in the investigations and consider ways to ensure that noncitizen victims and witnesses generally are not placed in immigration proceedings during the pendency of an investigation or prosecution. Please present these agency plans to me within 60 days of the date of this memorandum.

3. Identify the policies and measures that are in place to ensure that E-Verify is not manipulated to suppress unauthorized workers from, or to punish unauthorized workers for, reporting unlawful labor practices such as substandard wages, unsafe working conditions, and other forms of worker exploitation. Review any available reports and studies of the use of E-Verify in the context of workplace rights and, within 60 days of this memorandum, please present proposed recommendations to me as to how E-Verify can be further strengthened to ensure it is not misused as a tool of exploitative labor practices.

Immediate Guidance

We will develop a Department-wide approach to worksite enforcement based upon our consideration of the plans and recommendations you present in response to this memorandum. In the interim, the following guidance will govern our worksite enforcement efforts:

- **Cease mass worksite operations.** The deployment of mass worksite operations, sometimes resulting in the simultaneous arrest of hundreds of workers, was not focused on the most pernicious aspect of our country's unauthorized employment challenge: exploitative employers. These highly visible operations misallocated enforcement resources while chilling, and even serving as a tool of retaliation for, worker cooperation in workplace standards investigations. Moreover, such operations are inconsistent with the Department's September 30, 2021 Guidelines for the Enforcement of Civil Immigration Law and the individualized assessment they require. Given these concerns, please ensure we no longer conduct mass worksite operations and instead refocus our workplace enforcement efforts to better accomplish the goals outlined above.
- **Requests for prosecutorial discretion.** I understand the Department of Labor has recently requested support in certain ongoing workplace standards investigations, including by asking that DHS consider whether to exercise prosecutorial discretion for workers who are victims of, or witnesses to, workplace exploitation. These individual requests should be considered on a case-by-case basis, weighing all relevant facts and circumstances. In evaluating these requests, the legitimate enforcement interests of a federal government agency should be weighed against any derogatory information to determine whether a favorable exercise of discretion is merited.

I look forward to working with you on these critical efforts. Please do not hesitate to reach out to me to discuss any aspect of this memorandum.

Thank you again for your leadership.