

Congress of the United States

Washington, DC 20515

January 25, 2024

The Honorable Alejandro Mayorkas
Secretary
Department of Homeland Security
Washington, DC 20528

Dear Secretary Mayorkas,

We write to request that the Department of Homeland Security (DHS) implement a more streamlined process and standard for Deferred Action for Labor Enforcement (DALE) renewal requests. The DALE program was created to give workers the confidence to report workplace violations and abuse without fear of immigration-related retaliation, thereby upholding the lawful and humane labor standards set out by the Department of Labor (DOL). Although we recognize the effort by DHS and DOL to release an initial renewal policy (dated January 17, 2024),¹ for the benefit of the program we request that you consider a more straightforward DALE renewal process to ensure that workers' legal rights are upheld.

We recognize and applaud the important protections provided by DHS' DALE program. However, the uncertainty of the renewability of DALE protections has limited the ability of workers to participate and assert their legal rights ostensibly upheld by the program. Many workers in our districts, particularly those employed in rural and or agricultural labor, are vulnerable to workplace violations due to their physical isolation and the hazardous nature of their work. To truly make the critical protections provided under DALE accessible, DHS must establish a fair and straightforward renewal process as has been previously done with other programs such as the Deferred Action for Childhood Arrivals (DACA) program.

Once an individual has been approved for DALE, they should be able to renew their participation without facing any additional administrative burden. There is grave concern that the updated policy, which now requires workers to obtain additional statements of interest from labor agencies at the point of renewal, creates additional burdens on workers and labor agencies that will inevitably 'drop workers,' which will in turn discourage participation.

DALE was created to address the reality that undocumented immigrant workers are too often left vulnerable to labor violations because of their immigration status. In DHS' own words, the program is meant to "advance the Biden-Harris Administration's commitment to empowering workers and improving workplace conditions by enabling all workers, including noncitizens, to assert their legal rights."² However, eligibility for a two-year protection against deportation with no explicit guarantee of eligibility to renew is insufficient to overcome the vulnerability undocumented workers face in the workplace due to their immigration status.

Workers are often skeptical of DALE, which requires applicants to disclose their immigration status, biometrics, and location to DHS in exchange for short-term protection. The uncertainty of renewability is the largest barrier in promoting program participation to qualified workers. If current participants lose their deferred status after having come forward with this information, other workers will be less likely to participate, thereby potentially enduring ongoing workplace violations. Only by creating access to longer-term protection through a straightforward and streamlined renewal process can DHS fulfill its "important interest" in "increas[ing] the willingness of workers to report violations of law by exploitative employers and cooperate in employment and labor standards investigations."³

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

² <https://www.dhs.gov/news/2023/01/13/dhs-announces-process-enhancements-supporting-labor-enforcement-investigations>

³ https://www.dhs.gov/sites/default/files/publications/memo_from_secretary_mayorkas_on_worksite_enforcement.pdf

The fear of removal that many workers experience must be considered *ex ante* as it determines their likelihood of reporting a workplace violation. Even farmworkers working under H-2A visas may be hesitant to report violations as they rely on their employers for such visas. Thus, to adequately mitigate this fear such that workers are empowered to participate in labor investigations, DHS must provide assurances that, once a worker has come forward and provided their information and biometrics to ICE, so long as they remain a low priority for enforcement, they will be able to continue to renew DALE protection.

As DHS recognized in its DACA Final Rule, DHS has an interest in encouraging candidates for deferred action to come forward.⁴ Proactive self-identification of such individuals will ultimately conserve DHS resources for higher-priority actions. A streamlined renewal process that confirms applicants remain low priorities for removal and thus eligible for prosecutorial discretion would further DHS' interest in conserving their limited resources while ensuring security and stability in applicants' lives and work.

Furthermore, we are concerned that the recently announced renewal policy could have unintended consequences for labor investigations. Workers may be unintentionally incentivized to withhold information or delay reporting to sustain their deferred action status. A streamlined renewal process would eliminate such conflicts of interest, encouraging workers to cooperate in labor investigations without fear of compromising their deferred action status.

Establishing a straightforward renewal process furthers efficiency efforts outlined by DHS in its January 2023 Process Enhancements release.⁵ DHS recognized the benefits of such a streamlined and less burdensome renewal process in the earlier DACA Final Rule, explaining that it does not require all initial criteria be demonstrated for renewal because it “focuses its renewal adjudications on critical issues such as whether the individual continues to meet the criminality, public safety, national security, and continuous residence guidelines.”⁶ The same approach should be utilized for DALE renewals.

We firmly believe that adopting a straightforward renewal process for DALE, similar to the DACA renewal model, is crucial to protecting workers' rights and preventing conflict with DHS proceedings. It offers a simplified, efficient, and empathetic solution to deconflict labor and immigration law. Undocumented workers and those on temporary visas are subjected to disproportionately high rates of workplace violations, and the DALE program provides them with an important recourse to hold employers accountable without risking removal. A streamlined renewal process recognizes the immense importance of these workers to our communities and gives them confidence in the consistency and reliability of the DALE program.

To that end, we request timely answers to the following:

1. Why must workers obtain additional updated statements of interest from labor agencies? If, as we believe, labor enforcement agencies have a vested interest in the ongoing work authorization of the DALE recipients, why is any further action required by the DOL after the initial determination?
2. What outreach has been conducted thus far to promote the DALE program among potentially eligible workers?
3. What outreach is planned to ensure workers who are eligible for renewals are aware of the new guidance?

We hope that DHS will continue to improve on this important initiative and move forward with its stated commitment to “ensuring that our nation’s workplaces comply with our laws by supporting federal, state, and local labor and employment


⁴ <https://www.federalregister.gov/documents/2022/08/30/2022-18401/deferred-action-for-childhood-arrivals>


⁵ <https://www.dhs.gov/news/2023/01/13/dhs-announces-process-enhancements-supporting-labor-enforcement-investigations>

⁶ <https://www.federalregister.gov/documents/2022/08/30/2022-18401/deferred-action-for-childhood-arrivals>

agencies to accomplish their important work enforcing wage protections, workplace safety, labor rights, and other laws and standards.”⁷ Thank you for your attention to this matter, and we look forward to your response.


Sincerely,

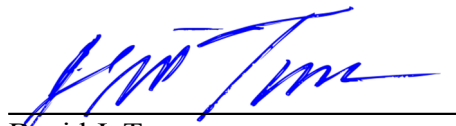

Raúl M. Grijalva
Member of Congress

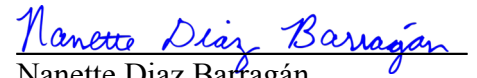

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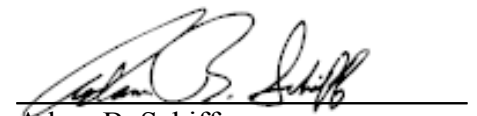

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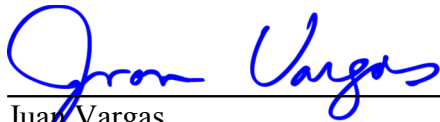
⁷ <https://www.dhs.gov/enforcement-labor-and-employment-laws>



Rashida Tlaib
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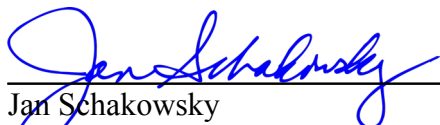
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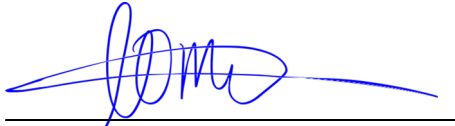
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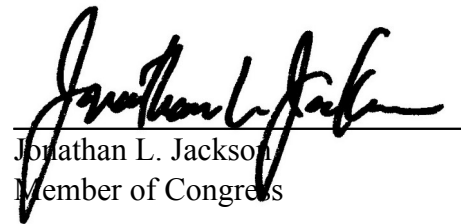
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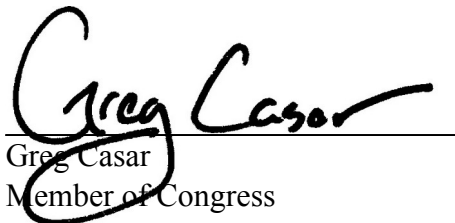
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