



**U.S. Immigration  
and Customs  
Enforcement**

Cliff Johnson  
Director  
MacArthur Justice Center  
University of Mississippi School of Law  
481 Chucky Mullins Drive  
University, MS 38677

Dear Mr. Johnson:

Thank you for your October 28, 2021 letter to the Department of Homeland Security (DHS) regarding worksite enforcement policies. Your letter was referred to U.S. Immigration and Customs Enforcement (ICE) for response.

On October 12, 2021, Secretary Mayorkas issued a memorandum, *Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual*, to ICE, U.S. Citizenship and Immigration Services, and U.S. Customs and Border Protection regarding worksite enforcement and DHS' role in ensuring the well-being of individuals and the fairness of the labor market. This memorandum recognizes the critical role that DHS and its component agencies play in ensuring that workplaces in the United States comply with our laws.

ICE plays a central role in implementing the interior enforcement strategy of DHS. ICE works diligently to protect the public from crimes of victimization and exploitation. This includes strategically targeting and investigating individuals and businesses who exploit noncitizens (based upon their lack of lawful immigration status) through dangerous work conditions and underpayment, utilizing those noncitizens as a business model to maximize profits. ICE's strategy prioritizes investigating the most egregious violators while ensuring victims receive the necessary services and support they desperately need.

ICE acknowledges the requests made in your letter and provides the following developing processes across the Department. DHS is in the process of developing a department-wide approach to worksite enforcement. In support of the aforementioned memorandum, ICE intends to develop and issue a new agency policy based on the principles set out in the memorandum, as well as provide much needed updates to current policy to include:

- Clarify the process for certain victims and witnesses of violations of law by exploitive employers to receive prosecutorial discretion and other available immigration benefits, including the process for partner-agencies (including state and local agencies) to refer victims for prosecutorial discretion or immigration benefits.

- Develop an improved deconfliction process to better ensure that ICE does not execute worksite enforcement activities or other civil immigration enforcement activities at companies with ongoing labor investigations or disputes.
- Set out baseline procedures to ensure that ICE, to the greatest extent possible, ensures that it does not effectuate civil immigration enforcement activities against a noncitizen based solely on a tip or referral from an exploitive employer or an employer who is retaliating against the noncitizen for engaging in union activities or reporting violations of civil rights or laws relating to workplace conditions or labor standards.

On March 5, 2021, ICE formally presented the ICE Case Review (ICR) process to stakeholders as another channel through which noncitizens and their families and representatives can request that ICE exercise prosecutorial discretion. An exercise of prosecutorial discretion by ICE will focus on arrest, detention, and/or removal and will not impact any decision made by the Department of Justice's Executive Office for Immigration Review. The ICR process serves as a review of ICE field office decisions to deny prosecutorial discretion and/or continue detention and may be initiated through the ICR mailbox; it is not intended as a Headquarters-level unit to initiate a case review. ICR team members refer cases not initially presented to local ICE field offices back to the respective field office(s) for review and inform the requestor that the Senior Reviewing Official (SRO) will not review the case at that time. Failure to submit a case directly to the local ICE field office may result in a delayed response. The ICE Enforcement and Removal Operations (ERO) SRO's team consists of experienced ICE ERO Field Supervisors that are familiar with the *Guidelines for the Enforcement of Civil Immigration Law*, issued by Secretary Mayorkas on September 30, 2021, and coordinate all requests received with the local ICE field office to determine what, if any, discretion will be exercised. Cases involving individuals detained in ICE custody or pending imminent removal will be prioritized, and response times for resolution will vary.

Additionally, ICE has ceased mass worksite operations and is developing a process to receive requests for prosecutorial discretion from workers who are victims of, or witnesses to, workplace exploitation in order to support Department of Labor (DOL) investigations. Further, DHS and ICE are working to modify the Memorandum of Understanding between DHS and DOL.

DHS is committed to engaging in an open dialogue and we thank you for your interest in this important topic. We look forward to continuing the dialogue to ensure a fair and effective worksite enforcement policy as we strive to create an immigration system that is consistent with America's core values.

Thank you again for your letter. Should you wish to discuss this matter further, please do not hesitate to contact the ICE Office of Partnership and Engagement at [iceope@ice.dhs.gov](mailto:iceope@ice.dhs.gov).

Cliff Johnson  
Director, MacArthur Justice Center  
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Sincerely,

A handwritten signature in black ink that reads "Francey L. Youngberg". The signature is written in a cursive style with a large, prominent "F" and "Y".

Francey L. Youngberg  
Assistant Director  
Office of Partnership and Engagement

cc: Amelia McGowan, Director of Immigration Law, Mississippi Center for Justice  
Max Meyers, Immigration Attorney, Mississippi Center for Justice