

Congress of the United States
Washington, DC 20515

July 30, 2014

The Honorable Jeh Johnson

Secretary

U.S. Department of Homeland Security

3801 Nebraska Ave, NW

Washington, D.C. 20528

Dear Secretary Johnson:

We welcome President Obama's announcement that he will be drawing on your recommendations for executive action to begin to fix the broken immigration system. We write to offer recommendations regarding the Department of Homeland Security's (DHS) treatment and protection of our nation's immigrant workers. Addressing their needs is an urgent matter as Congress continues to seek a permanent legislative solution through comprehensive immigration reform.

Over 8 million undocumented immigrant workers live in the U.S. and play an integral role in our workforce.¹ While they have a presence in a wide variety of sectors of the U.S economy, they disproportionately hold low-wage jobs that leave them vulnerable to abuse.² They are the farmworkers who put food on our tables, the domestic workers who care for our children and the elderly, and the workers vital to our manufacturing, food processing, hospitality, and service industries. Undocumented workers represent 53 percent of all seasonal agricultural workers,³ 17 percent of the construction industry and 12 percent of the food service industry.⁴ They are an instrumental part of the U.S. economy and enforcement of their workplace rights is of utmost importance.

The Immigration Reform and Control Act of 1986 (IRCA) brought immigration enforcement to the workplace with provisions requiring employers to verify the identity and work authorization of its employees. Since then, there has been an increasing disconnect between workplace rights that exist on paper and the ability of undocumented workers to exercise those rights. Although

¹ Pew Research Hispanic Trends Project, *Unauthorized Immigrant Population: National and State Trends, 2010*, available at <http://www.pewhispanic.org/2011/02/01/v-workers/>

² Pew Hispanic Center, "A Portrait of Unauthorized Immigrants in the U.S." 2009, available at <http://pewhispanic.org/files/reports/107.pdf>

³ U.S. Department of Labor, *The National Agricultural Workers Survey*, available at <http://www.doleta.gov/agworker/report9/chapter1.cfm>

⁴ Pew Hispanic Center, "A Portrait of Unauthorized Immigrants in the U.S." 2009, available at <http://www.pewhispanic.org/2009/04/14/a-portrait-of-unauthorized-immigrants-in-the-united-states/>

most of our nation's employment and labor laws extend to all employees regardless of immigration status, undocumented workers remain vulnerable to exploitative employers who use their lack of status as a means of retaliation.

As a result, numerous labor and civil rights violations have come to light over the years. The stories below, illustrate how immigration enforcement, when misused by employers, can undermine workers' ability to enforce their workplace rights:

- In Seattle, WA, three undocumented construction workers whose employer owed them collectively over \$30,000 filed a wage complaint with the Washington State Department of Labor. A few days later, ICE arrived at the home of one of the workers and took him into custody. Out of fear of deportation, the two other workers have since dropped their claims.⁵
- In San Francisco, CA, workers at Mi Pueblo supermarket chain have been trying to join a union for years in order to address issues of unfair hiring practices and wage and hour violations. Soon after the United Food and Commercial Workers (UFCW) began to organize workers, the supermarket announced that it had decided to voluntarily join the E-Verify program to screen new hires for immigration status. In response, UFCW scheduled a boycott of the supermarket for a month. However, before the boycott was to begin, Mi Pueblo announced that ICE had launched an I-9 audit of the entire supermarket chain. Although many workers have quit out of fear, the union continues to organize.⁶
- In Milwaukee, Wisconsin, on May 29, 2012, over 150 workers from Palermo's Pizza factory signed a petition to unionize. The next day, Palermo gave workers a letter indicating that ICE had conducted an I-9 audit and the workers were required to re-verify their immigration status. As a result of complaints that Palermo was undermining a unionization effort, ICE wrote Palermo suspending its audit. Yet, one day after received notice that ICE was no longer pursuing enforcement action against it, Palermo fired 75 striking workers.⁷
- Ofsel Andrade worked in the shipping department of Terra Universal in Fullerton, California when ICE conducted a worksite raid in 2010. Forty-three workers were arrested and placed in deportation proceedings. However, Andrade was not arrested that day. Instead of hiding, he agreed to serve as a named plaintiff in a class action against his former employer. The case sought back wages for years of unpaid wages, exploitation, and discrimination on behalf of hundreds of workers. After he joined the lawsuit, he was pressured to drop the case by his former employer. Andrade refused and shortly thereafter, ICE agents arrested Andrade in his home and, placed him in immigration detention, where he was held for three weeks until released on bond. Evidence indicates that Terra Universal informed ICE of Andrade's immigration status in retaliation for filing the lawsuit. Fearing reprisals the two other named plaintiffs' withdrew from the

⁵ National Employment Law Project, *Workers' Rights on ICE: How Immigration Reform Can Stop Retaliation and Advance Labor Rights*, (2013), 9, available at: http://nelp.3cdn.net/79a636339c0e2dcf72_17m6b8j1i.pdf

⁶ *Id.* Also see, "E-Verification of Mi Pueblo Workers Sparks Fear and Ire," *In These Times*, available at http://inthesetimes.com/working/entry/14100/mi_pueblo_comes_under_scrutiny_as_it_submits_to_e-verify_program

⁷ "Fight over immigrant Firings," *NY Times*, July 27, 2012, available at <http://www.nytimes.com/2012/07/28/business/striking-palermos-pizza-workers-say-immigrants-were-fired-to-stop-a-union.html>

case, but Andrade remained, despite the emotional distress caused by his employer's retaliation.⁸

Many undocumented workers fear reporting workplace abuse because it can lead to their deportation and separation from their family. According to a National Employment Law Project study on low-wage industries, in America's three largest cities where immigrants comprised a majority of the sample, 43% of workers who filed complaints alleging workplace violations experienced retaliation such as employers calling ICE to report the employee's status.⁹ At the same time, immigrant workers' vulnerability and silence has resulted in employer immunity for workplace violations. The same study found that over 76% of undocumented workers had worked off the clock without pay, 84% of undocumented workers had received less than the legally-required over time rate, and 37% had received less than the minimum wage.¹⁰

The lack of protections for undocumented workers hurts workers and employers alike. Immigration enforcement actions against workers can result in severe financial problems for employers, especially for those in industries that are unable to find U.S. worker replacements. Further, undocumented workers living under the constant threat of deportation are less likely to report labor violations, lodge complaints, or join labor unions—resulting in poorer wages and conditions for all workers.

This crisis requires bold action. In order for immigrants to be able to assert their civil and labor rights against abusive employers, they must be protected from deportation and retaliation. We recommend that DHS provide an affirmative mechanism of relief that will permit workers to step out of the shadows and enforce their rights without fear of employer retaliation.

The enclosed civil and labor rights policy recommendations have broad support. Both the Senate-passed immigration reform bill (S.744) and the House bipartisan comprehensive immigration reform bill (H.R. 15) create stronger protections for workers involved in serious civil and labor rights abuses. These administrative recommendations, if implemented together, would be a constructive step forward in allowing immigrant workers to realize their basic employment rights.

Sincerely,



Member of Congress



Member of Congress

⁸ Class Action Complaint for Damages, Declaratory and Injunctive Relief, *Morales et al., v. Terra Universal, Inc.*, No. CV 10-6490 (C.D. Cal. Aug. 31, 2010). See also, Freedom From Fear Award: Osfel Andrade, available at <http://freedomfromfearaward.com/celebrate/osfelandrade>

⁹ National Employment Law Project, "Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities," available at <http://www.nelp.org/page/-/brokenlaws/BrokenLawsReport2009.pdf?nocdn=1>

¹⁰ *Id.* See also National Employment Law Project, "Workplace Violations, Immigration Status, and Gender" (2011) available at http://www.nelp.org/page/-/Justice/2011/Fact_Sheet_Workplace_Violations_Immigration_Gender.pdf?nocdn=1



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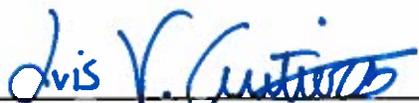
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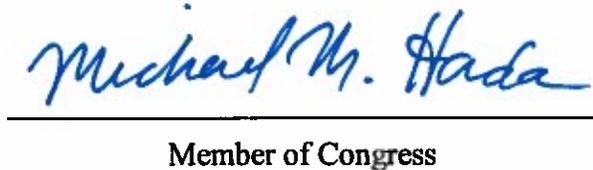

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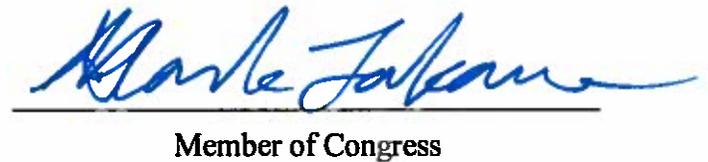

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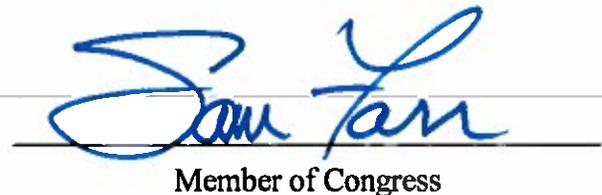

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