

Frequently Asked Questions on ALRB's Role in Supporting Immigration-Related Prosecutorial Discretion

The Agricultural Labor Relations Board (ALRB) oversees and protects the rights of agricultural employees to organize themselves in negotiating the terms and conditions of their employment, including whether or not to have labor unions represent them. Effective investigation of complaints and enforcement of workers' rights depends on the cooperation of workers. The ALRB enforces rights under the ALRA regardless of the immigration status of the impacted workers. The ALRB does not enforce immigration laws. **Therefore, the ALRB does not ask about immigration status. Workers in California are protected by California labor laws including the Agricultural Labor Relations Act (ALRA) regardless of immigration status.**

Nonetheless, some workers may fear that providing information to the ALRB may result in retaliation based on their immigration status or lead to the disclosure of their immigration status or that of their family members. To address this fear and ensure appropriate enforcement of rights under the ALRA, the ALRB has developed a process for workers to request the ALRB submit a Statement of Interest during an active ALRB investigation or proceeding to the U.S. Department of Homeland Security (DHS) in support of a worker's request to DHS for immigration-related prosecutorial discretion.

1. What is immigration-related "prosecutorial discretion"?

Because DHS cannot respond to all immigration violations within its jurisdiction, it exercises prosecutorial discretion to determine if or when to pursue removal (deportation) of immigrants. DHS may exercise prosecutorial discretion at any step in the immigration process, such as deciding whom to detain or release or deciding whether to settle or dismiss a case. One type of prosecutorial discretion is called "deferred action." Although deferred action does not confer lawful status, a noncitizen granted deferred action is considered lawfully present in the United States for certain limited purposes and may be eligible for work authorization.

An immigration attorney can help you decide if prosecutorial discretion or other forms of immigration relief may help you. (See #11 below.)

2. Does the ALRB support requests for immigration-related prosecutorial discretion for workers involved in the ALRB cases?

Yes. The ALRB may submit Statements of Interest in certain active investigations or proceedings against an employer to allow for it to fully investigate potential labor violations while protecting workers. The ALRB will consider requests on a case-by-case basis for a Statement of Interest where it is conducting an active investigation or litigating a case against your employer. You may request that the ALRB submit a

Statement of Interest. Typically, the ALRB will submit a Statement of Interest for an entire worksite and not name individual workers.

3. How do I ask the ALRB for a statement of interest in support of my request that DHS grant deferred action?

If you believe the ALRB has an active investigation or proceeding against your employer, you can send the request to GeneralCounsel@alrb.ca.gov with the subject line "Request for Submission of Statement of Interest." A request may be made by a worker, advocate, or representative. Requests may also be made on behalf of a group of workers.

Requests should include the following information:

- Name and address of the employer;
- Worksite addresses;
- ALRB case number, if any;
- A brief description of the case and the impact of the violations on workers;
- A description of any retaliation or threats (or fear of such) workers at the worksite may have witnessed or experienced related to labor disputes or violations and/or immigration status;
- A point of contact, who can respond to follow up questions from the ALRB.

NOTE: Disclosure of individual worker names is not necessary to establish that the ALRB has an active investigation or proceeding. When emailing a request, requesters **should not** disclose:

- Individual workers' immigration histories or needs;
- Sensitive or personally identifiable information, including dates of birth, Social Security Numbers, or Alien Registration Numbers.

4. After I submit my request to the ALRB for a Statement of Interest, what will the ALRB do?

The ALRB will decide on a case-by-case basis whether to submit a Statement of Interest to support a request for prosecutorial discretion to DHS and may contact the requester for more information. The ALRB never communicates with your employer about your request. If the ALRB decides to support the request, the ALRB will send DHS a Statement of Interest and provide the requester with a copy of the statement.

5. What happens if the ALRB declines to submit a Statement of Interest?

If the ALRB decides not to submit a Statement of Interest to DHS, the ALRB will inform requester or their representative in a timely manner. Statements of Interest are wholly discretionary and decided on a case-by-case basis. If the ALRB decides not to provide a Statement of Interest, the ALRB will not communicate with DHS about the request. A decision not to submit a Statement of Interest will not affect the ALRB's labor investigation or proceedings.

6. Does submission of a Statement of Interest by the ALRB convey any immigration status or protection to a worker?

No. A submission by the ALRB of a Statement of Interest to DHS does not confer immigration status, nor any specific immigration protection, to individual workers. Instead, an individual worker must request deferred action from DHS and include the ALRB's submission of a Statement of Interest as part of that request.

7. Does the submission of a Statement of Interest guarantee that DHS will use immigration-related prosecutorial discretion in a particular case?

No. DHS exercises sole discretion in deciding whether to exercise immigration-related prosecutorial discretion. The submission of a statement of interest from the ALRB does not guarantee that DHS will grant prosecutorial discretion in any individual case.

8. Will ALRB seek prosecutorial discretion for me?

No. ALRB's role is limited to supporting requests for prosecutorial discretion by submitting a Statement of Interest explaining why the exercise of discretion in a particular case will aid ALRB's active investigation or proceedings. Individual workers, or their advocates or representatives, must independently request that DHS exercise its prosecutorial discretion. For more information on how to request prosecutorial discretion from DHS, visit: <https://www.dhs.gov/enforcement-labor-and-employment-laws>. Below (question #11) is information about how you can find pro bono legal service providers.

9. Will the ALRB keep the information contained in a request confidential?

In keeping with the ALRB's standard practices, to the maximum extent permitted by law, the ALRB will keep requests for a Statement of Interest confidential. The ALRB will share Statements of Interest with DHS, but such Statements typically will not contain any personally identifiable information of any individual, such as names, birth dates, etc., without their prior permission and notification.

10. Can the ALRB provide a Statement of Interest to DHS without receiving a request?

Yes. Where appropriate, the ALRB can submit a Statements of Interest regarding a worksite's labor dispute to further its investigation or proceedings on its own without receiving a request.

11. Where can I get more information??

Questions about the process outlined above may be directed to GeneralCounsel@alrb.ca.gov before a request is submitted.

Consistent with ALRB's enforcement role, the ALRB cannot provide legal advice on the benefits and risks of seeking immigration-related prosecutorial discretion. Individuals should seek immigration law advice before deciding whether to request a Statement of Interest or whether to submit a request for the use of prosecutorial discretion to DHS.

For a list of pro bono legal service providers funded by the State of California:
<https://www.cds.ca.gov/benefits-services/more-services/immigration-services/immigration-services-contractors> [English].