

United States Senate

WASHINGTON, DC 20510

May 1, 2024

The Honorable Kristen Clarke
Assistant Attorney General for Civil Rights
Civil Rights Division
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Mr. Alberto Ruisanchez
Chief
Immigrant and Employee Rights Section
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Assistant Attorney General Clarke and Chief Ruisanchez,

We write to ensure that the Department of Justice (“DOJ”) is faithfully carrying out its statutory duty to protect American workers from employment practices that privilege asylum seekers, parolees, and other aliens over American citizens. Recent reports suggest that these practices are growing in prevalence, but the Civil Rights Division is nowhere to be found.

As you know, U.S. citizens are “protected individuals” against whom employers cannot discriminate under the Immigration and Nationality Act (“INA”).¹ In fact, they are more than protected—they are preferred. The INA provides that “it is not an unfair immigration-related employment practice for a person or other entity to prefer to hire, recruit, or refer an individual who is a citizen or national of the United States over another individual who is an alien” if both are fully qualified for the position.² Federal law thus instructs employers to put a thumb on the scale in favor of U.S. workers: as one federal appellate court put it, “if you have a U.S. citizen and a foreigner with exactly the same qualification, you take the U.S. citizen.”³

One would thus expect the officials tasked with enforcing the INA’s prohibition on citizenship discrimination to be at least as concerned about U.S. citizen victims as they are about aliens. But if that is true, then its truth has been obscured by recent events.

¹ 8 U.S.C. §§ 1324b(a)(3)(A), 1324b(a)(1)(B).

² 8 U.S.C. § 1324b(a)(4).

³ See *Hayatdavoudi v. Univ. of Louisiana Sys. Bd. of Trustees*, 240 F.3d 1073 n.11 (5th Cir. 2000) (unpublished) (concluding that this statement of the law is “correct”); *Light-Age, Inc. v. Ashcroft-Smith*, 922 F.3d 320, 322 n.1 (5th Cir. 2019) (“An unpublished opinion issued after January 1, 1996, is not controlling precedent, but we may consider the opinion as persuasive authority.”); 5th Cir. R. 47.5.1 (Fifth Circuit panels decline to publish opinions only when a case has been decided “on the basis of well-settled principles of law”); see also *Cook v. Colvin*, No. 13-3046, 2015 WL 893053, at *13 (W.D. La. Mar. 2, 2015) (“Although an unpublished Fifth Circuit decision does not constitute precedent, the fact that it is unpublished reflects the panel’s opinion that the case addresses well-settled principles of law.”).

In a recent two-year stretch,⁴ the Immigrant and Employee Rights Section (“IER”) released 46 press releases about actions it has taken to enforce the INA’s anti-discrimination provisions.⁵ Of those, less than 20% concerned any discrimination against U.S. citizens and only two concerned exclusively discrimination against U.S. citizens, rather than discrimination against both citizens and non-citizens. It would seem, then, that a disproportionate share of IER’s resources have been deployed to protect precisely those workers that federal law disfavors, all else being equal.

That might be defensible if discriminatory employers rarely favored aliens, or if the problem of discrimination against U.S. citizens were receding, but instead discrimination against U.S. citizens is increasingly commonplace. In the last administration, IER itself launched a “Protecting U.S. Workers Initiative” in recognition of the need to “target[], investigat[e], and bring[] enforcement actions against companies that discriminate against U.S. workers in favor of foreign visa workers.”⁶

That initiative yielded dozens of investigations, numerous settlements, and millions of dollars of compensation for American workers.⁷ But in the first month of this administration, the White House revoked the “Buy American and Hire American” executive order that spurred the creation of the Protecting U.S. Workers Initiative, shifting IER’s enforcement priorities away from the protection of American citizens and toward the protection of aliens.⁸

Employers have taken advantage of IER’s leniency. Collaborating with advocacy organizations like the Tent Partnership for Refugees, a long list of American employers have begun to blatantly discriminate on the basis of citizenship and immigration status, even committing themselves to numerical hiring quotas. Starbucks has committed to hiring 10,000 refugees across all its markets (including the U.S. market),⁹ Amazon has committed to hiring 5,000 refugees in the United States alone,¹⁰ and numerous others—including Hyatt Hotels, PepsiCo, and Pfizer—have committed to hiring 500 refugees or more.¹¹ The INA prohibits hiring decisions that are made “because of” an American job seeker’s U.S. citizenship.¹² Can employers’ numerical hiring quotas coexist with that mandate?

⁴ April 1, 2022 to April 1, 2024.

⁵ *Immigrant and Employee Rights Section News*, U.S. Department of Justice, https://www.justice.gov/crt/immigrant-and-employee-rights-section-news?search_api_fulltext=&start_date=03/01/2022&end_date=&sort_by=field_date&page=0. In that timespan, IER also issued one press release unrelated to any specific enforcement actions.

⁶ *Departments of Justice and State Partner to Protect U.S. Workers from Discrimination and Combat Fraud*, U.S. Department of Justice, <https://www.justice.gov/opa/pr/departments-justice-and-state-partner-protect-us-workers-discrimination-and-combat-fraud>.

⁷ *The Protecting U.S. Workers Initiative*, Center for Immigration Studies, <https://cis.org/Report/Protecting-US-Workers-Initiative>.

⁸ *Id.*; Austin T. Fragomen, Jr., Careen Shannon & Daniel Montalvo, *Immigr. Legis. Handbook* § 1:19 (Aug. 2023) (“The rescission of the BAHA order signaled the Biden Administration’s intent to review many of the new regulations and policies that have impacted employment-based immigration in recent years.”).

⁹ *Starbucks*, Tent Partnership for Refugees, <https://www.tent.org/partner/starbucks/>.

¹⁰ Amazon Staff, *Amazon commits to hiring 5,000 refugees by the end of 2024*, Sept. 20, 2022, <https://www.aboutamazon.com/news/workplace/amazon-commits-to-hiring-5-000-refugees-by-the-end-of-2024>.

¹¹ *Advancing Our Purpose of Care: Diversity, Equity and Inclusion at Hyatt*, Hyatt Hotels, 2022, <https://about.hyatt.com/content/dam/hyatt/woc/2022DEIRreport.pdf>; *PepsiCo*, Tent Partnership for Refugees, <https://www.tent.org/partner/pepsico/>; *Pfizer*, Tent Partnership for Refugees, <https://www.tent.org/partner/pfizer/>.

¹² 8 U.S.C. § 1324b(a)(1)(B).

Some companies, like Tyson Foods, even provide employment benefits exclusively to non-citizens. Tyson has spent significant sums “reimburs[ing] team members for citizenship application fees” and retaining organizations that “provide immigrants with legal services, such as employment authorization renewals and petitions for citizenship.”¹³ In theory, these benefits may be open to all-comers. But how many U.S. citizens need their employers to pay citizenship application fees?

To ensure that the Civil Rights Division and its Immigrant and Employee Rights Section are faithfully enforcing federal law for the benefit of U.S. citizens, we would like answers to the following questions by **May 31, 2024**:

- Is IER currently investigating any companies for unlawfully using refugee hiring quotas? If so, how many such investigations have been undertaken in the last two years? If not, will IER begin investigating employers that have made hiring commitments to the Tent Partnership for Refugees?
- Please state the percentage of total IER investigations, settlements, and litigation matters in the last two years that have involved only U.S. citizen victims.
- Please provide guidance on whether it is lawful to provide employment benefits solely to non-citizen employees. If it is unlawful, is the Civil Rights Division investigating any companies for this misconduct? Will it begin to?

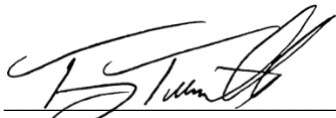
Sincerely,



JD Vance
United States Senator



Mike Lee
United States Senator



Tommy Tuberville
United States Senator

¹³ *Tyson Foods Commits More Than \$1 Million to Expand Legal and Citizenship Support for Team Members*, Tyson Foods, Apr. 12, 2022, <https://www.tysonfoods.com/news/news-releases/2022/4/tyson-foods-commits-more-1-million-expand-legal-and-citizenship-support>.