June 6, 2023

U.S. Citizenship and Immigration Services
Department of Homeland Security
Via electronic delivery to: laborenforcement@dhs.gov

RE: Statement of Interest – HyLife Foods Windom, LLC
File No.: ICR-202300061

Dear DHS Official:

The Minnesota Department of Labor and Industry ("DLI") submits this Statement of Interest in support of any request for prosecutorial discretion including, but not limited to, deferred action or parole, as well as work authorization in the form of an employment authorization document ("EAD"), on behalf of workers impacted by the suspected violations of Minnesota wage and hour laws involving HyLife Foods Windom, LLC ("HyLife"). This Statement of Interest is consistent with the DHS Memorandum, "Worksite Enforcement: The Strategy to Protect the American Labor Market, the Conditions of the American Worksite, and the Dignity of the Individual," dated October 12, 2021, and the DHS Guidance that was issued on January 13, 2023.

Nature of Investigation, Worksite, and Impacted Workers

DLI's Labor Standards Division is currently investigating potential wage and hour violations committed by HyLife, including unpaid wages in violation of the Minnesota Fair Labor Standards Act, the Minnesota Payment of Wages Act, and related rules, that occurred at any time during the period of May 8, 2021 to present ("Investigative Period"). DLI is specifically investigating workplace practices at HyLife’s pork processing plant in Windom, Minnesota; it is estimated that this location has employed more than 1,000 employees during DLI’s Investigative Period. It is understood that approximately half of these employees work under H-2B visas attached to their employment at HyLife.

Jurisdiction and Authority

DLI’s Labor Standards Division enforces and ensures compliance with state labor and employment laws that apply to Minnesota’s workforce, including, but not limited to, the Minnesota Fair Labor Standards Act (Minn. Stat. § 177), the Minnesota Payment of Wages Act and related wage and hour laws (Minn. Stat. § 181), the Minnesota Child Labor Standards Act (Minn. Stat. § 181A), and the associated Administrative Rules issued by the Department (Minn. R. 5200). These laws protect employees in Minnesota regardless of their immigration status. Among other remedies, DLI has authority to order penalties, back wages, and liquidated damages.

Enforcement Interests

DLI is committed to serving all Minnesotans and recognizes that workers in Minnesota who do not have immigration status to lawfully work are especially vulnerable to exploitative workplace practices and
may be less likely to file complaints or participate in an investigation of their employer out of fear of retaliation, including adverse employment action in relation to their immigration status. DLI's investigation of HyLife aligns with its interest to ensure workplace protection laws are followed, particularly in relation to Minnesotan workers at greater risk of suffering labor and employment violations. The exercise of prosecutorial discretion and the granting of work authorization would be vital in this investigation to instill in impacted workers the necessary security and stability to continue to exercise their rights and to assist in DLI's investigation.

Need for DHS Support

DLI believes that prosecutorial discretion and issuance of an EAD would help to ensure that impacted workers can fully and freely participate in DLI's investigative processes and, in turn, would help DLI to successfully pursue and obtain appropriate remedies in this matter. DLI has evaluated the following factors and based thereon has determined that there is a strong government interest in supporting requests for prosecutorial discretion and granting work authorization requests from workers involved in the HyLife wage and hour investigation:

1. Worker fear of retaliation for complaining or participating in an investigation;
2. DLI's need for witnesses to participate in the investigation and possible administrative action or litigation;
3. DLI's ability to continue to investigate this case and to obtain and provide all available remedies under the law;
4. Whether immigration or other law enforcement against workers could impede DLI's ability to enforce the labor and employment laws within its jurisdiction; and
5. The likelihood that immigration or other law enforcement could be an instrument used to undermine employer compliance with protections afforded to all workers under DLI's jurisdiction and/or give rise to further immigration-based retaliation.

In this case, a grant of deferred action for HyLife's employees, in addition to employment authorization, could be of great assistance to DLI's investigation and the ability to obtain all appropriate remedies.

Scope of Impacted Workers and Duration

DLI requests deferred action, as well as employment authorization, for workers employed at HyLife in Windom, Minnesota at any time during the Investigative Period who make a request to DHS. DLI supports deferred action for a period of two years, or during the pendency of DLI’s investigation and any related proceedings. If future extensions or renewals are needed because of the pendency of DLI’s enforcement efforts, DLI would support an extension of this period.

Please feel free to contact Jessica Grosz, Labor Standards Division Director, at jessica.grosz@state.mn.us with any follow up questions.

Sincerely,

Nicole Blissenbach
Commissioner
Minnesota Department of Labor and Industry

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