

ICE Visits, Raids, and Other Enforcement Activities Best Practices

BACKGROUND:

In the early days of the second Trump Administration, Immigration and Customs Enforcement (ICE)

conducted raids in Chicago and New York City. The administration has stated that it plans to perform raids in three cities per week for an unknown period. More targeted operations (short of actual raids) have occurred in North Texas. ICE agents were also recently spotted in Austin and near a Houston high school, raising concerns that ICE raids could soon be conducted in other counties.

It is, therefore, important for contractors to know what to do when the Department of Homeland Security or Homeland Security Investigations or ICE (DHS/HSI/ICE) shows up at your office or job site. The Fourth Amendment protects against unreasonable searches and seizures. Businesses and employees have specific rights if an agent conducts operations that exceed their authority. Generally, you have the right to an attorney, the right to remain silent, the right to see a warrant, and the right to refuse unauthorized searches. However, what you can and cannot do depends on the scenario.

Scenario 1: ICE WORKSITE RAID

- DHS/ICE or another agency arrives at the employer's premises without warning – hoping to catch employers and employees off guard.
- When ICE arrives at the employer's premises, agents surround the premises and may have aerial presence via airplane or helicopter. The HSI agents enter the business with a judicial warrant. The warrant will have a detailed description of what and where agents will search and potentially seize.
- Additionally, during a worksite raid, if ICE discovers unauthorized workers at the site, they will arrest, detain them, and place them in immigration proceedings.

The Warrant

- It is important to note the distinction between **judicial** and **administrative warrants**.
- A **judicial warrant** is an official court order signed by a judge or magistrate that authorizes a search for private property, seizure, or arrest based on probable cause that a crime is being committed or has been committed.

A judicial warrant will:

- Specify the specific address to be searched;
- Specify the time period in which the search must take place;

- Particularly describe the place or person, or both, to be searched and things to be seized and
 - Be issued by a court and signed by a judge or magistrate.
- If ICE agents present a valid **judicial** warrant, the employer must allow them access to restricted/private areas at the work site.
 - An **administrative** warrant is a document issued by a federal agency, such as DHS/ICE, purporting to document their authority to arrest a person suspected of violating immigration laws. A magistrate or judge does not sign these administrative documents but rather an immigration officer (e.g., ICE agent or immigration judge). Administrative warrants **do not** give ICE officials authority to enter a place with a reasonable expectation of privacy without consent. ICE agents have been alleged of trying to trick unsuspecting people into consenting to a search without a judicial warrant.
 - If ICE agents present an **administrative** warrant, then the employer is not required to provide them with access to restricted/private areas at the work site. However, the agents may enter and/or search any public areas of the work site.
 - A **judicial** warrant can compel employers to turn over documents, such as records indicating or referencing:
 - Work authorization status (e.g., Form I-9s and copies of documents used to support I-9s)
 - Wage and hour records (e.g., payroll summaries, pay stubs, timesheets)
 - Employment agreements
 - Employee rosters
 - Communication with outside payroll services on labor provides
 - Employee ID cards
 - It is likely that a warrant presented at the job site is NOT valid. [Insert Company Name] is an E-Verify contractor who has already passed I-9 audits. The warrant may lack probable cause or might otherwise be defective.

What should employers do:

- Contact corporate counsel: [Insert Name and Contact Information for General Counsel] (if unavailable, contact [Insert Name and Contact Information for Company Leadership] immediately.)
- Discuss with senior leadership if our Owner/Client rights are involved and how to provide notice
- Record the names of the federal agents involved.
- If our corporate counsel agrees:
 - Allow federal agents to access your facility if they present a valid judicial warrant that outside counsel has verified
 - Assign company representatives to accompany each federal agent as they move around your workplace.



- Object to any searches outside the judicial warrant's scope.
- Obtain and/or prepare a list of items seized during the search, if any.
- Workers encountering federal agents at the worksite have the right to remain silent and ask for an attorney. Employers may (but are not required to) tell employees if they choose whether or not to speak with ICE, but employers must not direct employees not to cooperate with ICE.

How does ICE choose who to raid?

Based on recent raids, ICE appears to be targeting individuals with a criminal history; however, during such raids, ICE may question and detain unauthorized individuals who are found in the same location as the individuals who are being targeted (termed “collateral arrests”). ICE has also traditionally targeted businesses with a large Hispanic workforce (e.g., meat processing plants) based on tips/complaints from disgruntled employees and businesses with a history of I-9 violations.

Scenario 2: DHS I-9 AUDITS

- DHS/HSI agent appears at the worksite. The agent produces a “Notice of Inspection” requiring the employer to produce original Form I-9s, copies of supporting documentation, E-Verify cases, if applicable, and other workforce-related documentation (e.g., contractor and staffing agency agreements, federal/local government contracts, etc.) **within three business days.**

What to Expect

- Contact Human Resources immediately and notify them of the I-9 audit. They will contact our general counsel and **[Insert Company Leadership]**.
- Direct any such inquiries to the corporate/business office, where these records are maintained. Contact HR
- **It is likely this will not be a legitimate request.**

Scenario 3: LAW ENFORCEMENT AGENTS INQUIRING ON POSSIBLY UNVERIFIED EMPLOYEE(S) SUSPECTED OF CRIMES

- Employer receives a call or visit from a law enforcement agent seeking to arrest or talk to a particular employee as part of a criminal investigation.

What Should Employers Do

- **First, confirm that the person or persons purporting to be law enforcement agents are who they purport to be. Recent reports have confirmed increased criminal activity involving bad actors posing as ICE agents to target vulnerable individuals. As always,**

employers continue to have a duty to safeguard certain private and sensitive information about their employees. These circumstances make it especially important that employers confirm the identity of anyone representing themselves as law enforcement, primarily by telephone. Authentic law enforcement agents will gladly present and confirm their credentials upon request.

- Refer all such inquiries to Human Resources at the corporate/business office. Absent a valid arrest warrant or judicial warrant, as described above (**administrative warrants are insufficient**), employers do not have to cooperate by providing information or access to employees in private areas. However, refusing to assist in these situations could lead employers to be more targeted for more serious scenarios.