



# Navigating Immigration Enforcement in Ag

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# Legal Disclaimer

We wish to express confidence in the information contained herein. Used with discretion, by qualified individuals, it should serve as a valuable management tool in assisting employers to understand the issues involved and to adopt measures to prevent situations which give rise to legal liability. However, this text should not be considered a substitute for experienced labor counsel, as it is designed to provide information in a highly summarized manner.

The reader should consult with legal counsel for individual responses to questions or concerns regarding any given situation.

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# CURRENT IMMIGRATION CLIMATE

# U.S. Customs and Border Patrol in Central Valley

- ▶ Social media and new outlets stating that U.S. Immigration and Customs Enforcement (“ICE”) had ongoing operations in Kern County.
- ▶ U.S. Customs and Border Protection (“CBP” or “Border Patrol”) operations targeted at enforcement of federal law.
- ▶ Lots of news reports of roundups around the country, with false reports of activity at schools, etc.

# Immigration & Customs Enforcement

- ▶ Enforces the federal prohibition against knowingly employing persons not eligible to be employed in the United States.
- ▶ Enforces the requirement to verify the employment eligibility of all newly hired employees (Form I-9).
- ▶ May appear at your location for a Form I-9 audit, a raid or to detain specific individuals.

# U.S. Customs and Border Protection

- ▶ Oversees customs, immigration, border security, and agricultural protection (imports, invasive species, quarantine, etc.).
- ▶ Facilitates lawful travel and trade into and out of the U.S.
  - ▶ Human trafficking.
  - ▶ Seizure of drugs, illicit currency, illegal imported material.

# President Trump's First Week in Office

- ▶ Executive Orders authorizing and directing the Department of Homeland Security, the Department of Justice, and the Department of State to take all necessary action to immediately repel, repatriate, and remove illegal aliens across the southern border of the United States.

# Trump's Executive Order

- ▶ Declare migrant crossings along the U.S.-Mexico border to be a national emergency.
- ▶ Require people seeking asylum to wait in Mexico.
- ▶ Detaining aliens apprehended on suspicion of violating Federal or State law, until such time as they are removed from the United States.
- ▶ Removing promptly all aliens who enter or remain in violation of Federal law.
- ▶ Pursuing criminal charges against illegal aliens who violate the immigration laws, **and against those who facilitate their unlawful presence** in the United States.

# Should We Expect Immigration Raids?

- ▶ ICE officials: “Agents do targeted enforcement daily and go after individuals but would never do a mass raid going door to door and asking for papers.”
- ▶ Agents and special officers have made “criminal and administrative arrests every day in the course of carrying out their mission to uphold public safety.”
- ▶ “Our arrests are targeted — we don't engage in indiscriminate sweeps or raids.”



# Immigration Agents at the Worksite

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# Visit from Immigration & Customs Enforcement

- ▶ May appear at your location for a Form I-9 audit, a raid or to detain specific individuals.
- ▶ ICE agents may enter **public areas** of your business without permission.
  - ▶ Lobby, waiting area, public streets, etc.
- ▶ ICE agents can enter the private areas of your business only if they have your **consent** or a judicial warrant or court order. This is not the same as an administrative order.

# Administrative Warrant

- ▶ An “ICE warrant” is a form issued by certain immigration officers that names an allegedly deportable non-citizen and directs various federal immigration enforcement agents to arrest that individual.
- ▶ ICE warrants are issued for civil violations of immigration law, not criminal charges.
- ▶ An “ICE warrant” is not a real warrant. It is not reviewed by a judge or any neutral party to determine if it is based on probable cause.
- ▶ They do not give ICE authority to enter private spaces without consent.

U.S. DEPARTMENT OF HOMELAND SECURITY Warrant for Arrest of Alien

File No. \_\_\_\_\_

Date: \_\_\_\_\_

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

This warrant is directed at federal immigration officers, not local law enforcement. Federal regulations only provide authority to ICE agents to execute an immigration warrant.

I have determined that there is probable cause to believe that \_\_\_\_\_ is removable from the United States. This determination is based upon:

Since a charging document is also prepared and issued by ICE agents, its existence does not show that any neutral party has found probable cause that the person is subject to deportation.

- the execution of a charging document to initiate removal proceedings against the subject;
the pendency of ongoing removal proceedings against the subject;
the failure to establish admissibility subsequent to deferred inspection;
biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

None of these checkboxes indicate that there is probable cause of a crime for which a person could be arrested by local law enforcement officers.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

No judge or neutral magistrate is involved in the issuance of an ICE warrant. This warrant does not meet the basic constitutional standard for being a warrant, which is review by a judge.

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at \_\_\_\_\_ (Location)

on \_\_\_\_\_ (Name of Alien) on \_\_\_\_\_ (Date of Service), and the contents of this

notice were read to him or her in the \_\_\_\_\_ (Language) language.

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

# Judicial Warrant

- ▶ A judicial warrant is an official court document, usually with the designation of a specific court, and it is signed by a judge.
- ▶ This means that there has been due process backed by probable cause.

# UNITED STATES DISTRICT COURT

for the

United States of America

v.

)  
)  
)  
)  
)  
)

Case No.

Defendant

## ARREST WARRANT

To: Any authorized law enforcement officer

**YOU ARE COMMANDED** to arrest and bring before a United States magistrate judge without unnecessary delay

(name of person to be arrested)

who is accused of an offense or violation based on the following document filed with the court:

- Indictment     Superseding Indictment     Information     Superseding Information     Complaint
- Probation Violation Petition     Supervised Release Violation Petition     Violation Notice     Order of the Court

This offense is briefly described as follows:

Date: \_\_\_\_\_

Issuing officer's signature

City and state: \_\_\_\_\_

Printed name and title

### Return

This warrant was received on (date) \_\_\_\_\_, and the person was arrested on (date) \_\_\_\_\_  
at (city and state) \_\_\_\_\_.

Date: \_\_\_\_\_

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# Your Property Rights


- ▶ The Fourth Amendment protects employers from unreasonable searches and seizures in the workplace.
- ▶ Therefore, ICE/CBP generally must have a judicial warrant to enter areas of business premises from which the public is excluded.
- ▶ However, there are exceptions to the warrant requirement:
  - ▶ Open Fields Doctrine: Entry into an open field, even if a trespass, is not a search within the meaning of the Fourth Amendment.
  - ▶ Hot pursuit.
  - ▶ **Consent.**

# Your Property Rights - Consent

- ▶ If you consent to a search, then a warrant is not required to enter your property.
- ▶ Should you demand a warrant?
  - ▶ YES!

# Immigrant Worker Protection Act

- ▶ California law prohibits an employer from allowing federal immigration agency enforcement authorities warrantless access to nonpublic areas and from releasing employee records to those authorities **without a subpoena or judicial warrant.**
- ▶ You **cannot** provide voluntary consent to immigration enforcement agents to enter any nonpublic areas of a place of work.

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- ▶ An employer can take the immigration enforcement agent to a nonpublic area, where employees are not present, for the purpose of verifying whether the agent has a judicial warrant or subpoena.
  - ▶ Once you view the warrant or subpoena, accompany the federal agents during the search, take note of any seized items and only allow the agent access to records or premises specified in the warrant or subpoena.

# Required Notice of Inspection

- ▶ California law requires employers provide employees notice of an impending inspection.
- ▶ Upon receipt of Notice of Inspection of I-9s or other employment records, employer has 72 hours to post notice to employees, including:
  - ▶ the name of the investigating immigration agency;
  - ▶ the date the employer received notice;
  - ▶ the nature of the inspection, if known; and
  - ▶ a copy of the Notice of Inspection.



# Employer Rights and Obligations if Immigration Agents are at the Door

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# Prepare in Advance

- ▶ Have a game plan for addressing ICE visits
  - ▶ Who is the designated representative who will meet with the agents?
  - ▶ Does the representative have a check list of what to ask for when an agent arrives?
  - ▶ Are employees trained to direct agents to the designated representative?
  - ▶ Do employees know how to contact the designated representative to alert them to the agent's presence?
  - ▶ Does the representative have authority (and contact information) to call the company's attorney if needed?

# Training the Company Representative

- ▶ Confirm ID, take a card or photo of ID/badge.
- ▶ Keep a copy of the subpoena or warrant.
  - ▶ If you are uncertain of the legality, email a copy to your counsel and ask the agent to wait while you confirm with legal counsel.
- ▶ If the ICE agents only have an administrative warrant looking for an employee, the employer does not have to say if that employee is working on location that day and they do not have to take ICE to that employee.

# Preparing for a Visit

- ▶ Review your employment eligibility verification practices and procedures.
- ▶ Ensure your staff consistently implements those practices and procedures, such as by periodically auditing the I-9 Forms they help prepare.
- ▶ Review your recordkeeping practices to ensure I-9 Forms are kept for the longer of three years after employment starts or one year after employment ends.



# Best Practices for Addressing Employee Concerns

# Addressing Employee Concerns

- ▶ The recent activity may have many employees on edge.
- ▶ This does **not** mean that the employee is not in the U.S. legally and employers should not make such a presumption.
  - ▶ **Never presume that as it undermines your I-9s**
- ▶ Many workers may know someone who is an immigrant, whether in the U.S. legally or not, or may simply be concerned about the potential for racial profiling.

# Educate Employees on the Company's Legal Obligations

- ▶ Explain how agents are to be directed to the designated representative.
- ▶ Explain that you cannot give consent so the only way the federal agents will get access is through a judicial warrant.

# Educate Employees on the Company's Protocol

- ▶ Explain the company's policy for reporting an absence if needed.
- ▶ Explain the company's policy for providing time off to attend to legal matters, for employees themselves or family members.

# Responding To Employee Fears

- ▶ Consider providing general information to your employees about resources that provide immigration services for “friends and family” who may have concerns, rather than providing it to specific employees.
- ▶ Do not provide assistance in the form of funds or direct referrals to immigration service providers for any employees who have given you knowledge about their lack of work eligibility. **You may not legally employ them!**
- ▶ Remind employees of the need to rely on accurate and verified information, not rumors.

# Responding To Employee Fears

- ▶ If employees need to return to Mexico in order to proceed with gaining eligibility, consider providing a leave of absence for “personal reasons.”
- ▶ Consider doing nothing...
  - ▶ Difficult to disengage once you begin.
  - ▶ Other employees will learn of any assistance you provide any individual employee and will approach you.
  - ▶ There are serious consequences beyond knowingly employing an illegal alien when an employer takes it a step further and provides direct assistance to an employee.



# QUESTIONS?

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