

ICE Raids – Preparing and Responding

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Annoying Disclaimer

This presentation and these slides are not legal advice. If you want legal advice, give me a jingle and I am more than happy to oblige.

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Preparing for ICE Audits -- Call your Lawyer!

- When ICE arrives at the worksite, direct the receptionist/managers to contact legal counsel.
- The receptionist should state “Our company policy is to call our lawyer, and I am doing that now.”

Basic Rule—Searching/Access to Private Areas Requires a Warrant

- ICE can mill about public areas (lobbies/parking lots/common areas) etc. without any kind of warrant.
- In order to access an area normally reserved for employees or otherwise not accessible to the public, they have to have a warrant.

Understand Different Types of Warrants – Judicial Warrant

- A “judicial warrant” is a formal written order authorizing a law enforcement officer to make an arrest, a seizure, or a search. A judicial warrant is issued by a judicial court (federal or state).
- ICE officers are permitted to enter any public areas of your workplace but must have a valid search warrant or the company’s consent to enter non-public areas. I would recommend not consenting to any search in areas outside the scope of the search warrant.
- A valid judicial search warrant must be signed and dated by a judge. It will include a timeframe within which the search must be conducted, a description of the premises to be searched, and a list of items to be searched for and seized (e.g., payroll records, employee identification documents, Forms I-9, SSA correspondence, etc.).

Understand Different Types of Warrants – Judicial Warrant

- You can accept the warrant but not consent to the search. If you do not consent to the search, the search will proceed, but you can later challenge it if there are grounds to do so.
- Examine the search warrant to ensure that it is signed by the court, that it is being served within the permitted timeframe, and that the search is within the scope of the warrant (the area to be searched and the items to be seized).

Understand Different Types of Warrants – Administrative Warrant

- Conversely, an “administrative warrant” is a formal written document authorizing a law enforcement officer from a designated federal agency, such as an ICE agent, to usually ask for documents.
- Sometimes it is served with I-9 audit notice (this is a completely different animal than an ICE raid).
- An administrative warrant is issued by a federal agency such as DHS and can be signed by an “immigration judge” or an “immigration officer.” Unlike a judicial warrant, an administrative warrant does not authorize a search. Therefore, an ICE agent who has only an administrative warrant may not conduct a search based on the warrant, though, in certain circumstances, the administrative warrant would authorize the agent to make a seizure or arrest.
- Compare I-9 Audit Notice (which requires 3 days for compliance)—warrants can require immediate compliance.

What Can ICE Do?

- ICE may demand that equipment be shut down and that no one leave the premises without permission. You should comply.
- ICE may move employees into a contained area for questioning.

Employer's Best Practices

- Write down the name of the supervising agent (and identifying badge number) and the name of the U.S. attorney assigned to the case.
- Have at least one company representative follow each agent around the facility. That representative may take notes or videotape the officer but must not interfere with the search. The person should note any items seized and ask if copies can be made before they are taken.
- If agents have a valid search warrant covering locked areas, give them access to those areas if they request.

Employer's Best Practices

- If agents insist on taking a document that is vital to your business operations, explain why it is vital and ask for permission to photocopy it before the original is seized.
- Do not block or interfere with the agents' activities. But, again, you are not required to give the agents access to non-public areas if they did not present a valid search warrant for those areas.
- Object to a search outside the scope of the warrant. However, do not engage in a debate or argument with the agent about the scope of the warrant. Simply state your objection to the agent and make note of it.

Employer's Best Practices

- If agents wish to examine documents designated as attorney-client privileged material (such as letters or memoranda to or from counsel), inform them that the documents are privileged and request that attorney-client documents not be inspected by the agents. If agents insist on taking such documents, you cannot prevent them from doing so. If such documents are seized, try to record in your notes exactly which documents were taken by the agents and your efforts to explain to the agents that the documents were privileged.
- Ask for a copy of the list of items seized during the search. The agents are required to provide an inventory.

Employer's Best Practices

- Company representatives should not give any statements to ICE or allow themselves to be interrogated before consulting with an attorney.
- You may inform employees that they may choose whether to talk with ICE during the raid, but **do not** direct them to refuse to speak to agents when questioned.
- Do not hide employees or assist them in leaving the premises without permission.

Employer's Best Practices

- Do not provide false or misleading information, falsely deny the presence of named employees, or shred or otherwise obscure documents.
- Enforcement actions can sometimes last for hours. If an employee requires medication or medical attention, or if employees have children who need to be picked up from school, communicate these concerns to ICE.
- If an employee is detained or taken into custody, ensure that you assign someone to contact the family, and pay them any money owed for wages.

Employee Rights

- Employees have the right to remain silent and the right to hire an attorney if they choose.
- Ask if your employees are free to leave. If they are not free to leave, they have a right to hire their own attorney. While you should not instruct your employees to refuse to speak to federal agents, they also have the right to remain silent and do not need to answer any questions.
- Employees do not need to answer questions about their immigration status, where they were born, or how they entered the United States. They may exercise their right to remain silent and may ask to speak to an attorney.

Employee Rights

- If ICE tries to determine your employees' immigration status by asking them to stand in groups according to status, they do not have to move, or they can move to an area that is not designated for a particular group.
- Employees may also refuse to show identity documents that disclose their country of nationality or citizenship.
- If an employee has valid immigration documents, they may present them. They should never present false documents.

Make a Plan!

- Be proactive in preparing for an ICE visit.
- Discuss with management the protocols that the company will follow based on the above points. Think of every logistical issue that could arise (“clean room” areas, logistics of turning off equipment, where employees can gather if requested, etc.)
- Create a plan/template to follow so that you are not making decisions clouded by stress.
- I-9 audit/e-verify
 - New employees
 - Existing employees (only under certain circumstances)
 - Note that e-verify is actual knowledge.