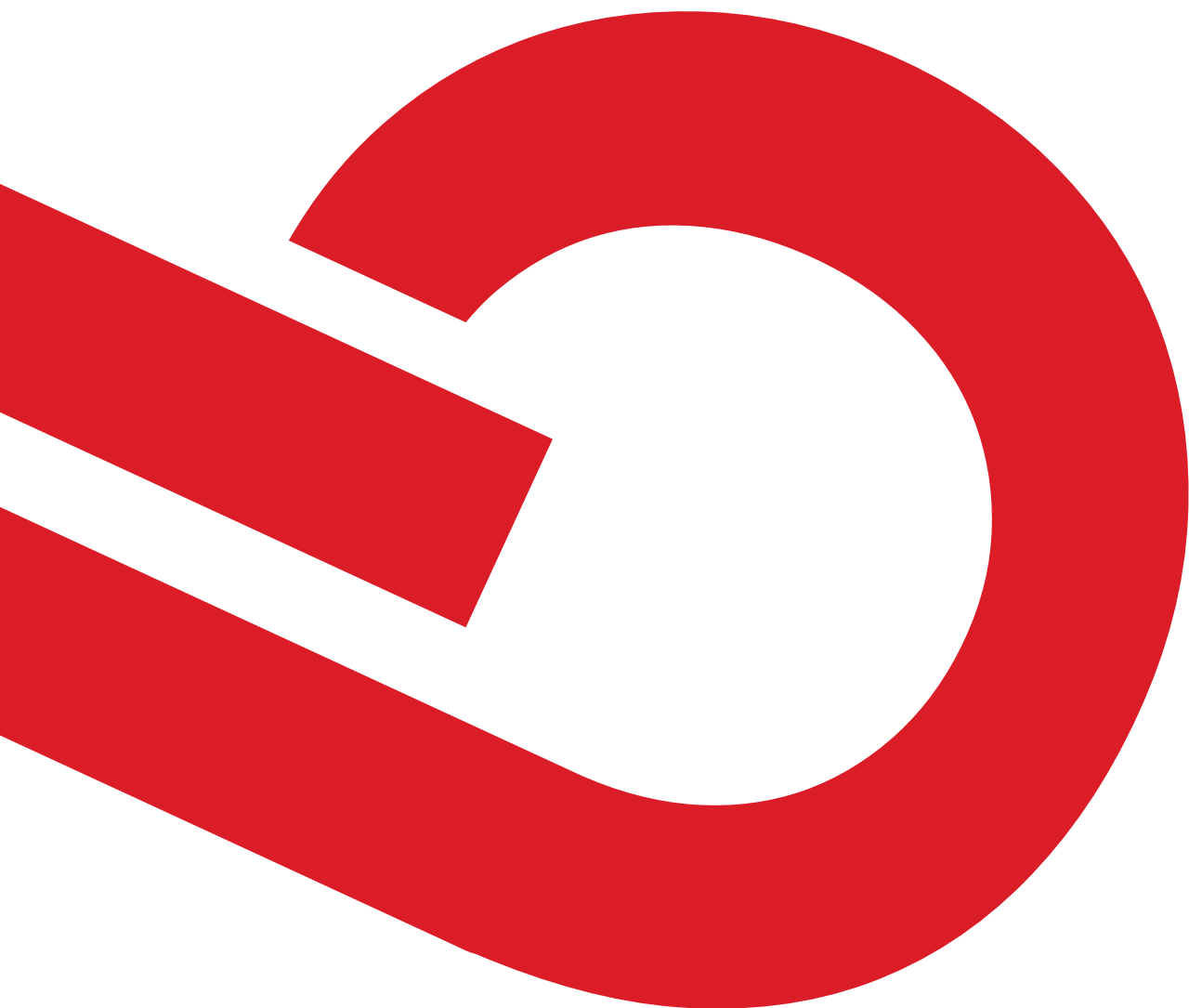




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 **NAATBatt**
INTERNATIONAL

MANAGING WORKER VISAS AFTER THE ELLABELL RAID

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WHAT YOU CAN DO AS A BUSINESS VISITOR (B-1/ESTA)

B-1/ESTA: Permissible Business Visitor Activities

- The B-1 visa/ESTA for commercial or industrial workers is the only visa/status option to permit foreign nationals to travel to the U.S. and perform activities as set forth in the purchase order(s) for the Project. Permissible activities include:
 - **Installation and Commissioning:** Setting up or commissioning commercial or industrial equipment or machinery.
 - **Warranty Service and Repair:** Performing maintenance or repair work on the equipment during the warranty period.
 - **Training:** Training U.S. workers to perform the installation, commissioning, service, or repair of the equipment.
 - **Supervision:** Installation, commissioning, and training.

The B-1 visa/ESTA requires that the foreign national has a residence in a foreign country that the foreign national has no intention of abandoning, and the foreign national must show an intention to stay in the United States temporarily. Entries with a B-1 visa/ESTA can be denied if the consular officer presumes that the foreign national is an intending immigrant.



USICE I-9 INSPECTION / AUDIT

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Various types of government inspections:

1. *USICE I-9 Inspection*
2. *USCIS or US Department of Labor H-1B Public Access File Inspection*
3. *USCIS Worksite Inspection*
4. *USICE Worksite Raid*

-
- ☐ Be prepared.
 - ☐ Designate a point of contact within the company.
 - ☐ Educate your employees.
 - ☐ Know your rights.
 - ☐ Have a plan.

USICE I-9 Inspection

- Inspection begins with a Notice of Inspection (NOI) from USICE that is hand delivered to the company.
- The purpose of the inspection is to verify that the Forms are properly completed and that the employees are authorized to work.
- NOI informs the company that ICE will be conducting an audit of the employer's Form's I-9, and other documents, and provides the company with a minimum of three (3) business days' notice before starting the inspection.
- NOI provides a date that the ICE Officer will come to your office to start their review.
- NOI allows the employers to waive their allowed Three (3) day notice and provide the documents to the Officer sooner – **NEVER waive your three (3) day notice.**
- Employer is required to provide Forms I-9 and audit trails, which show the actions performed on the I-9 forms.
- Monetary fines may be imposed if forms are not completed properly.
- Criminal penalties may be imposed if there is a pattern and practice of employment of persons not authorized to work in the US.

USICE I-9 Inspection – CONTINUED....

If company receives a USICE NOI:

- The recipient must immediately contact the location's Designated Point of Contact.
- The Designated Point of Contact should contact Human Resources, who will contact internal and external counsel.
- Counsel will contact the ICE Officer to discuss the timing and location involved in providing the required documents.
- The goal is to keep ICE out of your office.



H-1B PUBLIC ACCESS FILE INSPECTION

H-1B Public Access File Inspection

- Conducted by the US Department of Labor or USCIS.
- The purpose of the inspection is to ensure compliance with Labor Condition Application (LCA) obligations under H-1B program.
- Inspection begins with a Notice of Audit that is either mailed or hand delivered to the company.
- During an inspection the Officer will confirm Employers have:
 - Not made false or misleading statements in their LCAs;
 - That they have maintained Public Access Files (PAF);
 - That they have paid the foreign worker the required wage .

H-1B Public Access File Inspection – CONTINUED....

- Officers will review payroll records, timekeeping records, job descriptions, worksite locations.
- Officers may conduct interviews with H-1B workers and others.
- Failure to comply with LCA requirements can lead to:
 - Monetary penalties;
 - Payment of back wages to workers;
 - Debarment from future visa sponsorship.

If company receives a Notice of Audit for H-1B PAF inspection:

- **The recipient must immediately contact the location's Designated Point of Contact.**
- **The Designated Point of Contact should contact Human Resources to discuss a time to provide the requested document.**



USCIS WORKSITE INSPECTION

USCIS Worksite Inspection

- Conducted by the Fraud Detection and National Security (FDNS) unit – part of USCIS.
- The purpose is to prevent immigration benefit fraud and ensure national security and public safety by verifying the accuracy of information provided as part of the immigration process.
- The FDNS officer has authority to recommend that a petition be revoked.
- A worksite visit can occur at any point during the validity of employee's status.
- Worksite visits can be announced or unannounced.
 - Communication of inspection can be in person at worksite, or at employee's home, if an employee is working from home.
 - FDNS has wide discretion in initiating a site visit including contacting HR who signed immigration documents, company attorney or employee.

USCIS Worksite Inspection – CONTINUED....

- During a worksite visit, the Officer will:
 - Talk to the company representative and employee;
 - Make sure that there is an employer/employee relationship;
 - Ensure the job description described in the petition is what the employee is doing;
 - Look at the employee's worksite;
 - Make sure the employee is working at the stated locations;
 - Make sure employee is being paid the proper salary;
 - Make sure the employer is a legitimate, active business;
 - Tour the company facility.

If FDNS Officer comes to company:

- **The recipient must immediately contact the location's Designated Point of Contact.**
- **The Designated Point of Contact should contact Human Resources, who will contact internal and external counsel. Counsel will interact with the Officer.**
- **If FDNS comes to the employee's home, the employee should contact their Human Resources.**
- **HR Business Partner should contact the Designated Point of Contact.**



ICE WORKSITE RAID

USICE Worksite Raid

- The purpose of USICE worksite raid is to locate and/or detain undocumented workers by entering a business premises to investigate and potentially arrest undocumented employees found on site.
- USICE raids can be triggered by I-9 audits that showed many undocumented foreign nationals or by tips from the public or other agencies.
- USICE agents may question, detain or arrest people.

Preparing for an USICE Worksite Raid

- Designate a main company contact to handle USICE interactions and direct agents.
- Conduct regular training sessions so employees understand their rights and obligations.
- Create a workplace plan detailing steps to follow in case of an USICE raid.

USICE – Worksite Raid – Day of Raid

- Host/receptionist should immediately contact the company's Designated Point of Contact.
- The Designed Point of Contact should immediately contact Human Resources, who will contact external counsel upon learning about an impending raid.
- Host/receptionist can tell USICE agent that we have contacted our Designated Point of Contact and our internal and external counsel and to please wait until both have responded/show up before proceeding.
- Only the Designated Point of Contact or counsel should talk to USICE agent.
- Establish procedures for reviewing USICE warrants before allowing access to any non-public areas of the business.

USICE – Worksite Raid - Understanding USICE Authority

- Public vs. Private Areas:
- USICE agents may enter public areas (e.g., lobbies) without permission.
- Private areas require a judicial warrant signed by a U.S. District or State Court judge. Employers must comply with a valid judicial warrants.
 - The warrant must specify the search location, items (payroll records, forms I-9, SSA correspondence, etc.) or individuals sought, and must be issued within the past 14 calendar days.
 - Employers have the right to review the warrant for accuracy (e.g., correct address and validity).
 - If the warrant does not meet legal requirements, officers cannot conduct a search without permission.

USICE – Worksite Raid - Understanding USICE Authority – CONTINUED....

- Employer can accept the warrant but not consent to the search. Search will proceed, but you can later challenge it if there are grounds to do so.
- USICE may demand that equipment be shut down and that no one leaves the premises without permission.
- USICE may move employees into a contained area for questioning.
- Some agents may question employees while other will execute the search of items listed in the warrant.

USICE – Administrative Warrants

- **Administrative Warrants**, i.e. DHS forms I-200 or I-205, signed by USICE, not a Judge, **do not** authorize entry into private areas, and officers cannot enter these areas with an administrative warrant unless granted permission.
- If USICE presents an **Administrative Warrant**, employers:
 - **Are not required** to inform USICE if the employee is present.
 - **Are not required** to lead officers to the employee.
 - Should remind your employees that they have the right to remain silent and request legal representation.

JUDICIAL WARRANTS v. IMMIGRATION WARRANTS

AO 93 (Rev. 12/09) Search and Seizure Warrant

UNITED STATES DISTRICT COURT
for the
Eastern District of California

In the Matter of the Search of
(Briefly describe the property to be searched,
or identify the person by name and address)
Davis, California 95616

Case No.

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer 211-SW-0161 EFB

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the EASTERN District of CALIFORNIA
SEE ATTACHMENT A, ATTACHED HERETO AND INCORPORATED BY REFERENCE

The person or property to be searched, described above, is believed to conceal (identify the person or describe the property to be searched):
SEE ATTACHMENT B, ATTACHED HERETO AND INCORPORATED BY REFERENCE

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property.

YOU ARE COMMANDED to execute this warrant on or before 5-9-2011
(not to exceed 14 days)

☐ in the daytime 6:00 a.m. to 10 p.m. ☐ at any time in the day or night as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to United States Magistrate Judge (name)

☐ I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (when it is appropriate to do so) for _____ day(s) not to exceed 30.
Until, the facts justifying the later specific date of _____

Date and time issued: 4-25-2011 9:10:00 AM

City and state: SACRAMENTO, CALIFORNIA

EDMUND F. BRENNAN, U.S. MAGISTRATE JUDGE
(Signature and title)

Is this the right address?

Note: only the person, property, & areas specified may be searched

Is it still current?

Is it actually signed by a judge?

IF THE ANSWER TO ALL OF THESE IS YES, THEN IT IS LIKELY A VALID JUDICIAL WARRANT

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement
WARRANT OF REMOVAL/DEPORTATION

File No: _____
Date: _____

To any immigration officer of the United States Department of Homeland Security:

(Full name of alien) _____
who entered the United States at _____ on _____
(Place of entry) (Date of entry)

subject to removal/deportation from the United States based upon a final order by:

☐ an immigration judge in exclusion, deportation, or removal proceedings
☐ a designated official
☐ the Board of Immigration Appeals
☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

THESE ARE VISUAL CLUES THAT THIS IS AN IMMIGRATION WARRANT

(Signature of immigration officer) _____
(Title of immigration officer) _____

Steps to Protect Private Areas

- ☐ Mark private areas with "**Private**" signs to clearly designate restricted access.
- ☐ Keep doors closed or locked to prevent unauthorized entry.
- ☐ If USICE attempts to enter a private area without a judicial warrant or a valid warrant, do not interfere but inform them that they **do not** have permission to enter the private area.

USICE – Worksite Raid – During the Raid - Employers

If USICE presents a valid warrant:

- ☐ Note the timeframe and scope of the search.
- ☐ Monitor/follow agents to ensure they do not exceed the warrant's limits.
- ☐ Take notes, take video recording of the agents.
- ☐ Write down the name of the supervising agent and the name of the US attorney assigned to the case.
- ☐ Note any documents the agents take and ask to copy documents before they are taken.
- ☐ If agents go beyond the warrant's scope, verbally object and document any violations.
- ☐ Protect documents covered by **attorney-client privilege** and refuse to release them until legal counsel is consulted.
- ☐ If agents take privileged documents, document what was taken and take photos if possible.

USICE – Worksite Raid – During the Raid – Employers – CONTINUED....

- ☐ Request reasonable accommodations with regard to documents that are vital to your operations, i.e. request permission to copy document.
- ☐ Object to a search that is outside the scope of the warrant.
- ☐ Do not interfere with agents activities.
- ☐ Ask for a list of the items seized during the search.
- ☐ Inform employees of their right to remain silent and to request an attorney if questioned by USICE.
- ☐ Do not direct your employees not to cooperate with USICE/answer their questions. It is the employee's choice
- ☐ Do not hide employees. If an employee is detained, ask USICE where they are being taken so their attorney and family can locate them

USICE – Worksite Raid – During the Raid – Employees

- ☐ Employees should **not** run away, as this could give USICE a legal basis for arrest.
- ☐ Employees are **not required** to hand over IDs or immigration documents.
- ☐ Never provide false documents or provide false information.
- ☐ Employees are **not required** to answer questions about their immigration status, where they were born or how they entered the US.
- ☐ Do not say you were born in the US if you were not, and do not claim to be a US citizen if you are not one.
- ☐ Employees have the right to remain silent and request an attorney.
- ☐ Employees **do not** have to sign any paperwork until consulting with an attorney.
- ☐ Any information shared with USICE can be used against the employee later.

USICE – Worksite Raid – After the Raid – Employees

- Document the raid - Record details of USICE activity, including:
 - Number of officers present;
 - Areas searched;
 - Whether officers were in uniform or armed;
 - Whether employees were prevented from leaving;
 - Any instances of mistreatment;
 - Preserve any surveillance footage of the raid;
 - Notify the employees' union if applicable.

- Investigation does not end after the agents depart.

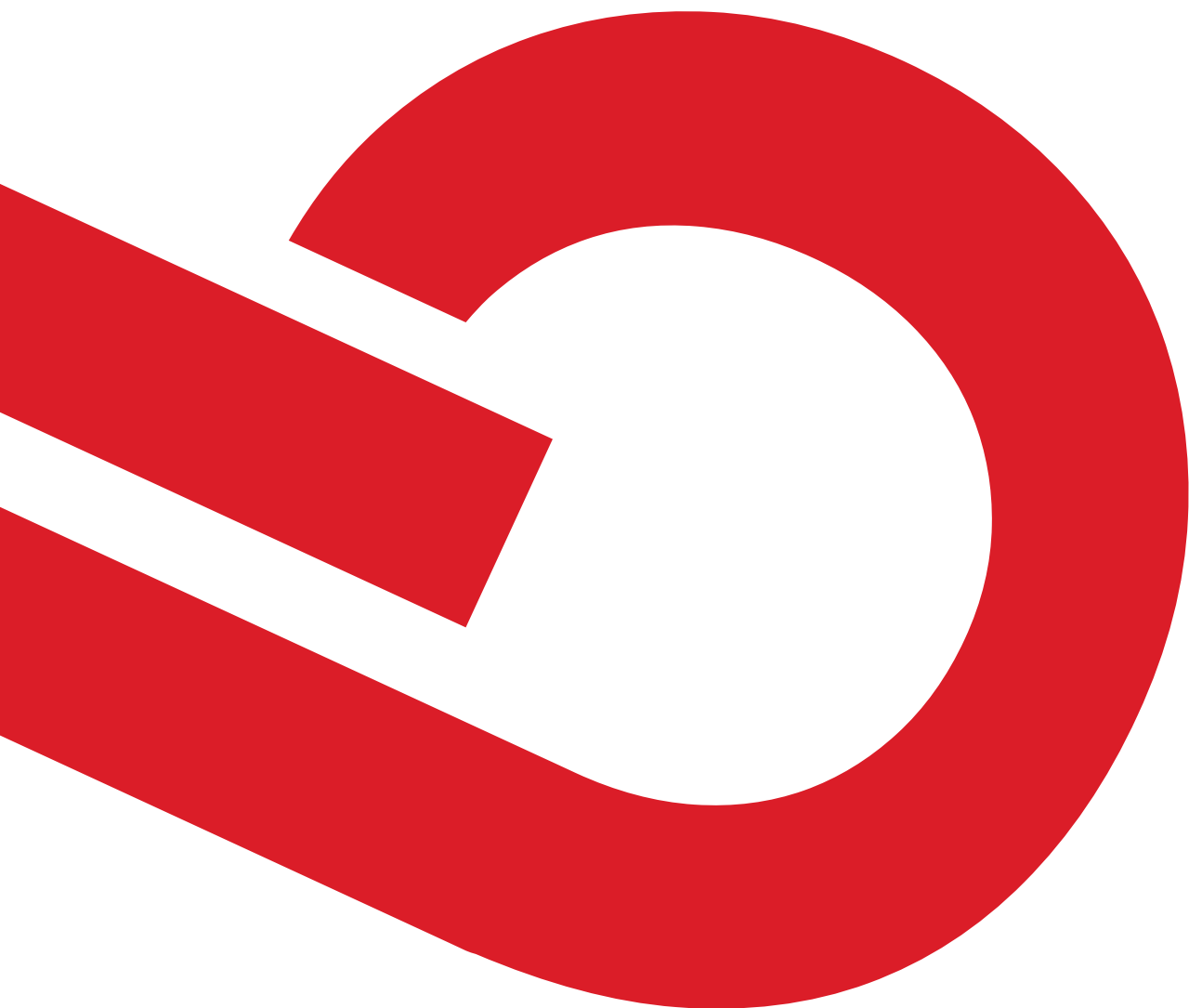
- Agents will review documents taken and the investigation can continue for many months

IN CLOSING: USICE WORKSITE RAID

DO's and DON'Ts During Worksite Raid

1. Do stay calm and professional.
2. Do direct the Officers/Agents to your selected internal point of contact.
3. Do examine the search warrant.
4. Do verify the Officers/Agents identity and contact information. Ask for identification.
5. Do write down the names of the Officers/Agents and take notes during the visit.
6. Do accompany the Officers/Agents and watch if they are complying with what is written in the warrant.
7. Do object to a search that is outside the scope of the warrant.
8. Do inform employees of their right to remain silent and to request an attorney if questioned by USICE.
9. Do ask for a list of any items seized during the search and make a list of those items.

1. Do not hide employees.
2. Do not direct your employees to not cooperate with USICE or to not answer their questions. It is the employee's choice.
3. Do not conceal, lie or mislead the Officers/Agents. Avoid providing any misleading information.
4. Do not alter, destroy, create false or tamper with documents requested by the Officers/Agents.
5. Do not intervene with the raid, but if the Officers/Agent goes beyond the warrant authority, you should verbally object and document.



THANK YOU



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