



MEMORANDUM

CONFIDENTIAL

ATTORNEY CLIENT PRIVILEGED

To: Utility & Transportation Contractors Association

From: Florio Perrucci Steinhardt Cappelli & Tipton, LLC

Date: March 12, 2025

Re: Procedures for Responding to U.S. Immigration and Customs Enforcement at Work Sites

Factual Background

On January 25, 2025, President Donald J. Trump issued Executive Order 14159 directing increased U.S. Immigration and Customs Enforcement (“ICE”) presence throughout the United States to expedite the removal of certain illegal immigrants from the United States.

Issue

Whether contractors are required to comply with ICE agents that show up at construction sites and offices seeking to deport alleged illegal immigrants.

Answer

Yes. Contractors must comply with ICE agents that show up at construction sites and offices if the ICE agents have the appropriate warrants.

Legal Background

Generally, ICE agents are permitted to enter public areas of a contractor’s place of business or construction site without permission. However, this does not permit ICE agents the unfettered right to stop, question, or arrest employees of the contractor. Anyone coming into contact with ICE agents in public areas has the right to remain silent and request an attorney. Employees cannot be directed by the contractor to not cooperate with ICE, even if they do not wish to speak with ICE.

ICE agents may come to a construction site as part of an investigation into an employer and its employees for an I-9 audit. As part of an I-9 audit, ICE agents may visit a jobsite to review employers’ records for worker authorization. During the I-9 audits, the ICE agents provided a Notice of Inspection requiring the contractor to produce original Form I-9s, copies of supporting documents, and other workforce related documentation including employment contracts and

project contracts. In these instances, a construction company should be provided at least three business days to comply with an I-9 audit

However, ICE agents are also permitted to show up to a construction site unannounced and enter private property if the ICE agents have a signed judicial warrant. The warrant must have a detailed description of where the ICE agents are going to search and what the ICE agents may potentially seize. During one of these unannounced searches, if ICE discovers undocumented workers at the site, ICE will likely arrest and detain the workers. In addition to the judicial warrant permitting access to the private and public areas of a construction site, the judicial warrant could compel contractors to turn over documents such as: (1) work authorization status reports; (2) wage and hour records; (3) employment agreements; (4) employee rosters; (5) communication with outside payroll services; and (6) employee ID cards. If ICE agents present a valid judicial warrant, the contractor and its employees are required to promptly comply with the ICE agents and the judicial warrant.

An administrative warrant is a warrant issued by a federal agency. These warrants do not authorize ICE agents to enter a place where there is a reasonable expectation of privacy, without consent. An employer is not required to provide ICE agents access to restricted/private areas at the construction site but the ICE agents are permitted to access and search public areas. If ICE agents provide an administrative warrant with an employee's name on it, the contractor and its employees may, but are not required to, say if the employee is working that day. The contractor and its employees are not required to show ICE agents where the employee is located in the place of business or at the construction site.

Legal Analysis

Due to the uncertainty surrounding ICE searches and seizures, it is recommended that all construction employers take certain steps to protect their construction sites and offices.

In the event of an ICE search pursuant to a judicial or administrative warrant, employers should provide training to their employees regarding the proper steps, including immediately contacting appropriate supervisors or management should ICE agents enter the workplace. It is recommended that the employer designate at least one individual as the contact person to speak with ICE agents. These designated individuals should be trained on their legal obligations concerning granting access to the building or construction site, requesting confirmation and review of the ICE judicial or administrative warrant, and that each individual must avoid taking any action that could be viewed as obstructing justice.

Further, in the event that ICE agents, with only an administrative warrant, seek to enter a private building or area of the worksite, the designated individual should have the authority to consent to grant or deny access to private areas to ICE agents. If ICE agents have a judicial warrant, the designated individual should request a copy of the judicial warrant and read it before granting permission to the ICE agents to enter a private space.

Contractors should begin having discussion with all employees and hold trainings regarding responding to ICE agents at the main office, or satellite offices, and at construction sites.

Contractors should designate certain individuals as those responsible for speaking with ICE agents and reviewing warrants and requests from ICE agents.

It is important that such employees first identify that the individuals are actual ICE agents. Additionally, employers are required to safeguard private and sensitive information about their employees. In the event the ICE agents do not have a valid administrative or judicial warrant, employers do not have to cooperate with the ICE agents and do not need to provide access to private areas of the office building or construction site. However, employees should not obstruct or provide false information to ICE agents to prevent the lawfully permitted actions of the ICE agents.

Conclusion

Accordingly, contractors should begin to formulate their workplace, and worksite plans for interacting with ICE agents in preparation for ICE searches. It is recommended that contractors designate certain individuals as those individuals authorized to speak with and deal with ICE agents. Contractors should work with their attorneys to conduct training on the different warrants and authority of ICE.