



KNOW YOUR RIGHTS

A Guide for California
Employers

August 2017



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INTRODUCTION TO IMMIGRATION ENFORCEMENT

Review of Immigration Enforcement: How do people get caught up by ICE?

Immigration and Customs Enforcement (ICE) targets immigrants in a variety of ways and for a variety of reasons. Legally, being undocumented is reason enough to be placed in removal (deportation) proceedings. Even people with lawful status can be placed in proceedings. For example, refugees, asylees, lawful permanent residents (“green card” holders) can find themselves in removal proceedings for reasons like a petty theft from years ago, to staying out of the country for too long. Importantly, immigration offenses are civil and not criminal, which means that they do not go through the criminal justice system; for immigration the consequences are often detention and deportation.¹ Having a prior order of removal, which can result simply from not appearing at a court hearing even as a child, can make someone a target. Executive orders and memoranda by the current Administration make clear that most non-citizens are targets for immigration enforcement.²

ICE identifies and apprehends individuals in a variety of ways. ICE might identify someone when the individual is applying for an immigration benefit (e.g. green card or citizenship), when an individual is entering the U.S., through home and workplace “raids” discussed below, through contact with the criminal justice system, and other methods. While workplace enforcement is the focus of this guide, the number one way individuals are transferred to ICE is through contact with the criminal justice system. This is because of frequent and voluntary cooperation between local law enforcement and ICE. For example, many jails allow ICE agents to come into jails to access databases and interview people. In this way, after serving their sentence and paying their debt to society, immigrants are doubly punished when they are turned over to ICE for what is often a greater penalty—deportation.

What happens once people are in removal proceedings?

Once an individual is in ICE custody, some will have the right to see an immigration judge to fight their case. Here, the first step is to secure a trustworthy immigration attorney. Individuals have the right to have an attorney present. Despite the very high stakes, the government does not provide an attorney for people even if they cannot afford one, like they do in the criminal justice system. Instead, individuals should go through either a local nonprofit or a reliable referral to find an attorney.³

Once in removal proceedings, an individual may be detained locally or transferred to another state while their case proceeds. Many individuals are eligible for a bond hearing. If granted bond, they can fight their case outside of custody. Depending on whether an individual is detained or not, removal cases can take



Rosa's Story

Rosa is a single mother and domestic violence survivor. She made the mistake of shoplifting for necessities to take care of her kids, when her abuser refused to help support her. She was later put into deportation proceedings.

“The only thing I want is to return home to my children because I know they need me.”

months or even years. Immigrant families who may be targets of immigration enforcement should have a plan in place for such scenarios.⁴

What is a home raid?

A home raid is the ICE practice of sending agents to a person's home to arrest the individual for violating immigration laws. During President Obama's Administration, ICE agents went to homes looking for specific individuals but did not often engage in en mass sweeps where several people are picked up at once. Nonetheless, during these targeted actions ICE often arrested bystanders along with the targeted individual. It is unclear what practices the current Administration will follow. Many advocates avoid using the word "raid" because it can spread panic in the community. ICE refers to these practices as "targeted enforcement."

What is a worksite raid?

A worksite raid is the sudden and hostile entry of ICE agents into a workplace for the purpose of detecting and detaining certain workers.⁵ The unexpected and intimidating nature of worksite raids are meant to catch employers and workers off-guard and create chaos. Employers should be prepared to assert their rights and create a safe and orderly environment for workers during an ICE raid. During a raid, armed ICE agents will often seal off all exits, demand that all work cease, corral workers into contained areas, interrogate company representatives and workers, search and seize documents and property, and arrest those unable to prove legal status. Based on what they uncover during worksite raids, ICE may fine employers, bring criminal charges, and deport workers.

Employers should be prepared to assert their rights and create a safe and orderly environment for workers during an ICE raid.

We have not seen high-profile workplace raids since President George W. Bush's second term over a decade ago, but enforcement activity at worksites is an ongoing practice. It is important to prepare in the event that the current Administration reengages in this unsavory tactic.

What is the connection between an I-9 audit and a worksite raid?

Prior to worksite raids, ICE agents often investigate and collect evidence that an employer is hiring undocumented workers. Federal law requires employers to verify the identity and eligibility of their employees at the time of hire using I-9 forms.⁶ Employers must keep copies of the I-9 forms and supporting documents for inspection. At any time, ICE may issue a "notice of inspection" to employers requesting that they make their I-9 forms available for inspection. ICE agents or auditors then review the documents, a process known as an I-9 audit. During an I-9 audit, ICE reviews these forms for compliance and may find discrepancies or suspected false documents. Depending on the results of an audit, the employer can be asked to correct technical or procedural violations or to pay a fine. In some cases, audits may also lead to criminal prosecutions.

If ICE agents find many discrepancies in an employer's I-9 forms, suggesting an employer has hired unauthorized individuals, they may decide to conduct a worksite raid. In some cases, ICE may also have additional evidence, such as witness statements, to support their decision to conduct a worksite raid. ICE must obtain a warrant from a judge to conduct a worksite search for undocumented workers and seize property to use as criminal evidence in the prosecution of these employers.

IMMIGRATION ENFORCEMENT IN THE WORKPLACE

Federal law requires employers to verify a worker's identity and their work eligibility through the federal I-9 form. Non-citizens are asked to show proof of work authorization, whereas U.S. citizens just need to show proof of citizenship. Once a worker has properly filled out this form and presented the necessary supporting documentation, there is no further need to inquire or discuss an employee's immigration status, unless required by federal law.

State law protects workers from discrimination or retaliation due to their actual or perceived immigration status or country of origin. Employers may not request additional or different documents than those required by federal law or refuse to accept documents that appear to be genuine when verifying work eligibility.⁸ Employers also cannot take adverse actions against a worker who is attempting to update their personal information after a lawful change of name or change in federal work authorization documents.⁹ Inducing fear by threatening to report a worker's immigration status or suspected immigration status is considered criminal extortion.¹⁰ Since employers may not discriminate or give preference to workers based on their country of origin or immigration status, it is important to have clear policies that apply to everyone on the worksite.

Given the uncertainty of how the Trump Administration will carry out immigration enforcement, employers should prepare ahead of time for the possibility of worksite targeting. Employers should establish clear guidelines on how it will respond to any law enforcement investigations and entry into workplaces. Internal policies and trainings should educate everyone on the worksite of their right to remain silent and their right to speak to an attorney. Everyone on the worksite should provide employers with emergency contacts for use during an unexpected event at the worksite. Similar to other emergency situations, employers should have a plan in place with a clear chain of command and clear instructions on how to proceed during a worksite raid or surprise criminal investigation.

An employer is responsible for the health and safety of its employees on a worksite. Most employers are required to have a written emergency action plan to ensure safety during a crisis situation. According to the federal Occupational Safety and Health Administration (OSHA), a workplace emergency is "an unforeseen situation that threatens your employees, customers or the public; disrupts or shuts down your operation, or causes physical or environmental damage." Surprise immigration or criminal investigation may cause chaos, and even injury and trauma, and could be considered a workspace emergency. Staff and employees should be trained on their rights during a raid, how to maintain calm and order, and certain employer representatives or supervisors should be tasked with ensuring law enforcement agents do not violate workers' rights, or to document the events if they do, and contacting attorneys. The employer should follow post-emergency procedures to determine which employees have been detained and immediately inform their emergency contacts. The following sections describe some best practices on how to prepare.

RIGHTS AND BEST PRACTICES IF ICE COMES TO THE WORKPLACE

What are an employer's "rights" if ICE comes to the workplace?

ICE generally comes to a workplace looking for a specific worker or workers, and/or to access employee records or other information. The number one defense here is to keep ICE out of the workplace entirely

In California, immigration law is irrelevant for purposes of enforcing state labor and employment laws; every worker is protected regardless of immigration status.⁷

and there are a number of legal protections on which an employer may rely. To start, the Fourth Amendment of the U.S Constitution provides that individuals are protected from unreasonable search and seizure. In the workplace, what that means is that on private property, you can deny ICE entry unless they have a warrant signed by a judge. Similarly, you do not have to turn over any documents without a valid search warrant or subpoena signed by a judge. I-9 audits are an exception, since employers are legally required to make these forms and related documents available for inspection to ICE agents. Employers, however, are not required to share other information in an employee's file with ICE agents without a valid warrant or subpoena.

In sum, employers do not have to allow ICE agents into a workplace, or allow them access to employee records or databases unless they have a valid warrant signed by a judge.

If ICE does present a warrant, inspect the warrant to ensure that a judge (and not an ICE agent or other officer) has signed it. This is important because ICE has "ICE warrants" titled as such as the top of the form, which are simply signed by ICE agents (not judges) and are thus not legally enforceable. If you are unsure whether ICE is presenting you with an enforceable judicial warrant, immediately send/fax/scan the warrant to your attorney. An example of a legally enforceable warrant versus an unenforceable ICE warrant is provided below. However, it is worthwhile to note that a variety of factors have to be present in order to have a valid judicial warrant. Please see the ACLU and Catholic Charities resources noted in the Addendum for a deeper discussion regarding these requirements and how to identify them.

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Enforceable Legally Binding Warrant

AO 93 (Rev. 01/09) Search and Seizure Warrant

UNITED STATES DISTRICT COURT
for the
Southern District of California

In the Matter of the Search of)
(Briefly)
or item...)
2943 Reynard Avenue)
San Diego, California)

Case No. '14MJ0396

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

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 Southern District of California
(Identify the person or describe the property to be searched and give its location).
See Attachment A-2.

The person or property to be searched, described above, is believed to conceal (Identify the person or describe the property to be seized).
See Attachment B-2.

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 February 19, 2014
(not to exceed 10 days)

in the daytime 6:00 a.m. to 10 p.m. at any time in the day or night as if 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 Hon. David H. Bartick.
(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 (check the appropriate box) For _____ days (not to exceed 30).

Until, the facts justifying, the later specific date of _____.

Date and time issued: 1/21/2014 5:44 [Signature]
Judge's signature

City and state: San Diego, California Hon. David H. Bartick, U.S. Magistrate Judge
Printed name and title

Non-binding ICE Warrant

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

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

- 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.

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)

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) _____

Form I-239 (Rev. 09/16)



What if the workplace has a public waiting area?

The Fourth Amendment does not carry the same protections in public waiting areas as in private waiting areas. Fourth Amendment protections are based on whether there is a reasonable expectation of privacy in the areas to be searched, and individuals do not expect to have the same level of privacy in public spaces. Thus, unlike in a private waiting area, ICE agents may enter a public waiting area without a search warrant.

Even though ICE agents may be allowed to enter public areas without a warrant, this does not give them free rein to search or detain individuals at will, or even remain on premise. Like in any other situation, individuals who are questioned in public have the right to remain silent and should calmly ask if they are free to leave. Business owners can ask ICE agents who do not have a warrant to leave their property. In other words, without a warrant, ICE agents stand in a similar position as a member of the public, and employers may ask them to leave at any time. If the agents are not there to conduct business or carry out a transaction like other customers or members of the public and their presence is interfering with customers or employees, an employer may ask them to leave.

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What if ICE is asking for a specific individual?

If ICE asks for a specific individual, do not lie and do not hide the individual. If ICE has a valid arrest warrant, ask the individual to walk outside or to a public waiting area. Employers do not have to allow ICE agents to enter any private areas or other areas where other workers are present. Like a valid search warrant, a valid arrest warrant must contain certain components in order to be legally enforceable, such as the time limitations on when it can be executed, a description of the individual, a judge's signature, etc. Here too, ICE may provide "arrest warrants" which are not enforceable. For example, an agent may show an employer an order of removal (deportation) and claim it is an arrest warrant, when these are actually two different types of orders. Neither an "ICE warrant" nor a removal order give ICE the right to enter or inspect the non-public areas of the workplace.

Best practices for employers during a worksite raid

Employers should employ the following best practices in the event that ICE comes to the workplace. Many of these recommendations are from National Immigrant Law Center's (NILC) guide, *IMMIGRATION ENFORCEMENT: Know Your Patients' and Your Rights*.

- ▶ Establish a written policy that certain areas of the workplace are not open to the general public. Where possible, visually indicate the same using signs. For example, your waiting room may be open to the public, but your policy can indicate that individuals must be invited to enter into rooms, offices and records areas. Alternatively, the waiting room may be open only to customers and persons accompanying them, while the public must remain in areas outside of the building.
- ▶ Provide posters and educational materials advising rights that individuals have if confronted with ICE agents. In particular, that they have the right to refuse to answer questions from immigration agents and to ask that a lawyer be present if they are questioned.
- ▶ Train your front desk person to inform immigration officials that only the designated individuals are authorized to review a warrant or to consent to entry into private areas, and to decline to answer any questions.

- ▶ Designate and train an individual regarding how to engage with ICE agents. This individual should know how to get in contact with your attorney immediately. They should also role play this scenario so that they are prepared to react in a stressful situation.
- ▶ If immigration agents ask permission or attempt to enter a private area, the designated individual should state explicitly that he/she does not consent to entry without a warrant. If the agents state that they have a warrant, the designated person should be ready to review the warrant and/or immediately share the warrant with their attorney to review its validity. Importantly, “ICE warrants” are not legally binding enforceable warrants. If the agents indicate that they are planning to get a warrant, contact a lawyer and try to have that person present for the search.
- ▶ The designated individual should be trained to examine search warrants to ensure that they are 1) signed by a judge, 2) still valid (served in the permitted time frame), and 3) to understand the scope of the warrant (what area can be searched and what items can be seized).
- ▶ Immediately after ICE agents arrive, the employer’s attorney, an immigration attorney, and union representatives should be contacted and asked to come to the worksite. The designated staff person at the worksite should ask for the name of the supervising ICE or other law enforcement agents, as well as the name of the U.S. attorney assigned to the case (if relevant). The designated staff person should be trained to document any search and seizure of property, either by openly video recording or keeping a list of items taken or people detained.
- ▶ Train your employees not to separate themselves based on immigration status since this is a method ICE may use to get workers to disclose their status and target certain individuals.

Employers should not engage in any activities that could support a harboring or obstruction of justice charge such as hiding employees, aiding in their escape from the premises, providing false or misleading information, denying the presence of specific named employees, or shredding documents.

Best practices for employees during worksite raids

Employers should make information available regarding what to do if ICE agents enter the workplace. Because contact with ICE will likely be stressful and because ICE agents themselves can be intimidating and coercive, employees should engage in role play and practice so that they feel more confident in a stressful situation. Employers can share this information through “Know Your Rights” trainings at work, posted written materials, videos, and the dissemination of materials that employees can take home, ideally in English, Spanish, and any other languages spoken at your workplace. When sharing this information, do not separate employees by immigration status (U.C. citizens v. LPR, asylee, etc.)

Below are key rights and best practices for immigrants when confronted with ICE officials. Additionally, other recourses including Know Your Rights materials geared toward immigrants are available at the end of this document.

- ▶ Everyone in the U.S. has certain rights, regardless of immigration status.
- ▶ You have the right to remain silent.
- ▶ Stay calm, do not run.
- ▶ Do not sign anything without first speaking with an immigration attorney.
- ▶ Do not carry your “matricula consular” or any other document that identifies you as a citizen of another country.

- ▶ Do carry a valid lawful permanent resident card (“green card”), or other proof of other lawful status, if you have it. Do not carry any documents that were obtained fraudulently or that are not yours.
- ▶ AB 60 driver’s licenses are appropriate to carry and are not proof that you are a noncitizen.
- ▶ Do have a plan in place for you and your family in the event that you are apprehended by ICE.
- ▶ See the ILRC’s family preparedness plan, under the resources list below, regarding additional steps that your family can take to prepare in advance of contact with ICE.
- ▶ If you are detained by ICE:
 - You have the right to an immigration attorney.
 - You may have the ability to fight your case. To preserve this right, do not sign anything without speaking to an attorney!

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- ¹ However, immigrants can be detained in jail during removal proceedings, which blurs the line between civil and criminal cases. One federal criminal immigration-related offense that you may have heard of is “illegal re-entry,” the most prosecuted federal crimes 8 USC § 1326. To violate this law, an individual need only re-enter the U.S. unlawfully with a prior order of removal.
- ² Executive Order: Enhancing Public Safety in the Interior of the United States, Executive Order, The White House (Jan. 25, 2017); Implementing the President’s Border Security and Immigration Enforcement Improvements Policies, John Kelly, Department of Homeland Security Secretary (Feb. 20 2017).
- ³ See the Addendum for a guidance on securing a trustworthy attorney.
- ⁴ Know Your Rights and What Immigrant Families Should Do Now, and Family Preparedness Plan available at www.ilrc.org/community-resources
- ⁵ For more information see [The Dynamics of an ICE Raid](#) by Josie Gonzalez, Gonzalez & Harris
- ⁶ See ICE’s Fact Sheet on 1-9 inspections available at <https://www.ice.gov/factsheets/i9-inspection>
- ⁷ Cal. Lab. Code § 1171.5; Cal. Civ. Code § 3339; Cal. Gov. Code § 7285; Cal. Health & Safety Code § 24000.
- ⁸ Cal. Lab. Code § 1019.1(a)(1)-(4).
- ⁹ Cal. Lab. Code § 1024.6.
- ¹⁰ Cal. Pen. Code § 519.

ADDENDUM

ADDITIONAL RESOURCES FOR EMPLOYERS AND EMPLOYEES

Resources for Employees:

A. List of free/low-cost legal service providers

1. For California, see Community Resources for Immigrants, at www.ilrc.org/community-resources
2. Nationwide, see www.immigrationadvocates.org/nonprofit/legaldirectory

- B.** Immigration Legal Resource Center (ILRC) “Red Card” and Cartoon displaying how they are used. The Red Card is a card listing rights when confronted with ICE officials.
1. Available at <https://www.ilrc.org/red-cards>
- C.** Know Your Rights: What to do if You’re Stopped by Police, Immigration Agents or the FBI, American Civil Liberties Union (ACLU)
1. Available at <https://www.aclu.org/know-your-rights>
- D.** ILRC post-election materials. This site is updated regularly. In particular, please see:
1. Know Your Rights and What Immigrant Families Should Do Now
 2. Family Preparedness Plan
 3. Available at www.ilrc.org/community-resources
- E.** Know Your Rights, Learn How to Protect You and Your Family During Immigration Raids, CASA de Maryland, Inc.
1. Available at <http://wearecasa.org/resources/know-your-rights>
- F.** Know Your Rights, A Guide to Your Rights When Interacting with Law Enforcement, Catholic Legal Immigration Network, (CLINIC)
1. Available at www.cliniclegal.org

Resources for Employers:

- G.** Know Your Rights: A guide to Workplace Rights for Immigrants, Catholic Legal Immigration Network, Inc.
1. Available at www.ready-california.org/resource
- H.** Health Care Providers and Immigration Enforcement: Know Your Rights, Know Your Patients’ Right, National Immigrant Law Center (NILC)
1. Available at <https://www.nilc.org/get-involved/community-education-resources/know-your-rights/>
- I.** 5 Ways to Fight Raids With Power Not Panic, California Immigrant Youth Justice Alliance (CIJYA)
1. Available at <http://www.ciyja.org/fighticeraidswithpowernotpanic>
- J.** What to do if Immigration Comes to Your Workplace, National Employment Law Project, National Immigration Law Center
1. Available at www.ready-california.org/resource
- K.** Workplace Raids, Employer Rights and Responsibilities, Legal Aid at Work (Summer 2017)
1. Available at www.ready-california.org/resource