

Immigration Enforcement: Employer/Workforce Considerations

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The current immigration environment



The current immigration environment

- Administration promised record-breaking deportations to address illegal immigration and criminal aliens
- Going after low-hanging fruit to pump up their numbers
- Easier to find people at places of employment, immigration appointments, etc. (captive audience)

The current immigration environment

- All non-citizen employees are potential targets
- Enforcement is overly broad at the moment, detain first, ask questions later
- Profiling occurs

Why should employers care?

- Employers are responsible for ensuring that employees are authorized to work in the U.S.
- Substantial penalties for being wrong about the above.
- Employers care about their workforce

Who enforces laws regarding authorization to work?

- ICE – Immigration and Customs Enforcement
- U.S. Department of Labor
- These agencies use everything from document inspections to immigration raids to enforce the law

How ICE approaches employers

- Immigration raids – after people, not documents
- Warrants/Subpoenas
 - Administrative
 - Judicial
- Notices of Inspection

ICE authority to enter

- **Public areas** – ICE has the right to enter public areas (i.e., lobby)
- **Private areas** – To enter private areas of a business, ICE needs either:
 - Consent (think vampire, don't invite in)
 - A *judicial* warrant signed by a judge
- If ICE states they have a warrant, ask to see it and review it

Judicial Warrant

UNITED STATES DISTRICT COURT

for the

In the Matter of the Search of _____)
(Briefly describe the property to be searched)
or identify the person by name and address)) Case No. _____
)
)
)

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 _____ District of _____
(Identify the person or describe the property to be searched and give its location):

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal *(Identify the person or describe the property to be seized):*

YOU ARE COMMANDED to execute this warrant on or before _____ *(not to exceed 14 days)*
 in the daytime 6:00 a.m. to 10:00 p.m. at any time in the day or night because good 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)

Pursuant to 18 U.S.C. § 3103a(b), 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: _____

Judge's signature

City and state: _____

Printed name and title

Administrative Warrant

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

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

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

ICE raids - preparing

- Identify public and private spaces and use signage/security processes for private spaces
- Prepare ICE visit cheat sheet
- Place a cheat sheet at points of entry or with points of contact

ICE raids - preparing

- Prepare and train your team—identify a point person, second in command, and first contact employees.
- Inform managers of company expectations and inform employees of their rights should a raid occur

ICE raids - during

- It can be scary when officers in military gear descend on a workplace with guns.
- Staff should not panic or run in the event of an ICE raid.
- Staff should in no way interfere with ICE.

ICE raids - after

- Contact counsel.
- Document all ICE interactions. Ask employees to provide written statements. Identify and segregate documents requested by ICE.
- Secure any video footage of the worksite during the time of the raid

ICE raids - after

- Meet with employees to alleviate any concerns or stress.
- If employees were removed during the raid, call their emergency contact.
- If employees were detained during the raid and it does not appear they will be released before the end of their shift, call their emergency contact.

ICE “visits”

- Designate one point person and two backups to deal with ICE during a visit (make sure at least one is always on site).
- Designated employees should have the authority to speak with ICE.
- Designated employees should have an attorney on stand-by in the event of an ICE visit.

ICE visits

- Point person should ask ICE if they have a warrant. If they do, ask to see it and review it.
- Staff should know that they do not need to speak with ICE, and they should politely refer ICE to an employer representative.
- Staff should not give permission to ICE for anything (easier said than done).
- Staff should politely say ICE needs to speak with X.

Precautionary Measures

How can employees limit risk?

- Non-citizen employees are now subject to increased scrutiny.
- Any interactions with authorities may trigger immigration scrutiny, even if no citation or arrest

How can employees limit risk?

- Carry documentation/copies with them on their person.
- Being able to produce current evidence of valid immigration status may resolve any issue quickly.

How can employees limit risk?

- Don't give authorities a reason to interact with you.

How can employees limit risk?

- A lot of encounters with immigration start with traffic stops.
- Make sure their vehicle's inspection, registration, etc., is up-to-date.
- Make sure their vehicle's lights work, etc.
- Don't speed or otherwise draw the attention of the authorities.

I-9 Process

I-9 Employment Eligibility Verification

- Employers are responsible for checking that employees are authorized to work in the U.S.
- Started in 1986, so almost all employees are covered.
- Employers cannot knowingly employ people who do not have valid work authorization

I-9 Employment Eligibility Verification

- Employers must verify employment eligibility within 3 business days of hire
- Remember: Review documents and complete I-9 on Day One!
- The rule is to review original documents within 3 business days, but do it on Day One or Two.

I-9 Employment Eligibility Verification

- Form I-9 is the federal form employers must use to verify employment eligibility.
- Use only for employees, not contractors.
- Have Form I-9 instructions available and at the ready.
- M-274 Employer Handbook.



Employment Eligibility Verification

Department of Homeland Security U.S. Citizenship and Immigration Services

USCIS
Form I-9
OMB No.1615-0047
Expires 07/31/2026

START HERE: Employers must ensure the form instructions are available to employees when completing this form. Employers are liable for failing to comply with the requirements for completing this form. See below and the [Instructions](#).

ANTI-DISCRIMINATION NOTICE: All employees can choose which acceptable documentation to present for Form I-9. Employers cannot ask employees for documentation to verify information in **Section 1**, or specify which acceptable documentation employees must present for **Section 2** or Supplement B, Reverification and Rehire. Treating employees differently based on their citizenship, immigration status, or national origin may be illegal.

Section 1. Employee Information and Attestation: Employees must complete and sign Section 1 of Form I-9 no later than the **first day of employment**, but not before accepting a job offer.

Last Name (Family Name)		First Name (Given Name)		Middle Initial (if any)	Other Last Names Used (if any)	
Address (Street Number and Name)			Apt. Number (if any)	City or Town		State ZIP Code
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number		Employee's Email Address		Employee's Telephone Number	
<p>I am aware that federal law provides for imprisonment and/or fines for false statements, or the use of false documents, in connection with the completion of this form. I attest, under penalty of perjury, that this information, including my selection of the box attesting to my citizenship or immigration status, is true and correct.</p>			Check one of the following boxes to attest to your citizenship or immigration status (See page 2 and 3 of the instructions.):			
			<input type="checkbox"/> 1. A citizen of the United States			
			<input type="checkbox"/> 2. A noncitizen national of the United States (See Instructions.)			
			<input type="checkbox"/> 3. A lawful permanent resident (Enter USCIS or A-Number.)			
<input type="checkbox"/> 4. A noncitizen (other than Item Numbers 2. and 3. above) authorized to work until (exp. date, if any)						
			If you check Item Number 4. , enter one of these:			
USCIS A-Number		OR	Form I-94 Admission Number		OR	Foreign Passport Number and Country of Issuance
Signature of Employee					Today's Date (mm/dd/yyyy)	

If a preparer and/or translator assisted you in completing Section 1, that person **MUST** complete the [Preparer and/or Translator Certification](#) on Page 3.

Section 2. Employer Review and Verification: Employers or their authorized representative must complete and sign **Section 2** within three business days after the employee's first day of employment, and must physically examine, or examine consistent with an alternative procedure authorized by the Secretary of DHS, documentation from List A OR a combination of documentation from List B and List C. Enter any additional documentation in the Additional Information box; see Instructions.

	List A	OR	List B	AND	List C
Document Title 1					
Issuing Authority					

I-9 Employment Eligibility Verification

- **Section 1** is where the employee fills in their information.
- Important choices:
 - A citizen of the United States;
 - A noncitizen national of the United States (rare);
 - A lawful permanent resident (green card holder);
 - A noncitizen (authorized to work until exp. date).

I-9 Employment Eligibility Verification

- **Section 2** is the employer review and verification.
- Pay close attention to Section 2
- Need to review a number of potential documents to verify two things:
 - Identity; and
 - Employment Authorization.

I-9 Employment Eligibility Verification

- List A documents – verify both identity and employment authorization.
- List B documents – verify identity only
- List C documents – verify employment authorization only
- Employers cannot dictate which documents are provided, and cannot ask for particular documents.
- Employers must accept documents that appear genuine on their face.

I-9 Employment Eligibility Verification

- List A documents – verify both identity and employment authorization, and include
 - *U.S. Passport or U.S. Passport Card*
 - *Permanent Resident Card or Alien Registration Receipt Card (Form I-551)*
 - Foreign passport that contains a temporary I-551 stamp or temporary I-551 printed notation on a machine-readable immigrant visa
 - *Employment Authorization Document that contains a photograph (Form I-766)*
 - Foreign passport with Form I-94 or Form I-94A with Arrival-Departure Record, and containing an endorsement to work . . .

I-9 Employment Eligibility Verification

- List B documents – verify identity only, and include
 - Driver's license or ID card issued by a State or outlying possession of the United States, provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address
 - ID card issued by federal, state, or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address
 - School ID card with a photograph
 - U.S. Military card or draft record
 - Native American tribal document
 - Driver's license issued by a Canadian government authority

I-9 Employment Eligibility Verification

- List C documents – verify employment authorization only.
 - *U.S. Social Security Card*
 - Certification of report of birth issued by the Department of State (Forms DS-1350, FS-545, FS-240)
 - *Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal*
 - Native American tribal document
 - U.S. Citizen ID Card (Form I-197)
 - Identification Card for Use of Resident Citizen in the United States (Form I-179)
 - *Employment authorization document issued by the Department of Homeland Security (DHS)*

I-9 Employment Eligibility Verification

Common issues

- Same person makes the same mistake over and over again.
- Employer section left incomplete (i.e., no expiration date listed).
- Employer section completed late.
- Employer does not write down the expiration date.

I-9 Employment Eligibility Verification

Common issues

- Don't backdate anything!
- Social Security Cards contain different designations (with DHS authorization only).
- New hires present expired documents.
 - It may be that a receipt notice, along with the expired document, provides employment authorization.

I-9 Employment Eligibility Verification

Common issues

- How to handle receipt notices.
- Generally, code on employment authorization must match code on receipt notice (for example, C9 = C9).
- Generally, the receipt notice must show a filing date before the expiration of the current employment authorization.

Preparing for an I-9 Inspection

- Self-audit sample of I-9s.
- Review a random sample of I-9 forms over a couple of years.
- Random sample - don't select only those forms for non-citizens.
- Note potential issues with sticky notes. Don't make any changes to the forms until you are sure a change is needed.

Preparing for an I-9 Inspection

- If you retain copies of supporting documentation, review those as well.
- If the random audit reveals issues, expand the audit.

I-9 Inspection

- Typically receive either Notice of Inspection or Administrative Subpoena.
- Employers receive 3 business days to produce I-9s for inspection.

I-9 Inspection

- Make sure HR receives the Notice of Inspection or Subpoena immediately.
- Review forms and make them available in an organized fashion.
- ICE will often request other documentation, such as employee rosters, payroll records, etc.

I-9 Inspection – What is ICE looking for?

- ICE will check to make sure a Form I-9 exists for each person hired by the employer after 11/6/1986
- Forms were timely and properly completed
- Whether the documents presented by employees were authentic
- How the employer handles social security no-match letters and the employees identified in the letters

I-9 Inspection – What is ICE looking for?

- ICE will not let an employer off the hook without at least finding something minimal.
- ICE is very nitpicky in their review of I-9s

I-9 Inspection - Results

- ICE will issue a notice of the results, which may include the employer's available actions such as becoming compliant with IRCA, responding to ICE's determinations regarding worker documents and violations

I-9 Inspection - Results

- Notice of Suspect Documents
- Notice of Discrepancies
- Notice of Technical or Procedural Failures Warning Notice
- Notice of Intent to Fine

I-9 Inspection - Results

- Fines can be significant and per violation

Quick Intro to Immigration

- Employers are not obligated to sponsor any employees for immigration status
- However, some immigration classifications require employer sponsorship - if the employer chooses to do so

Quick Intro to Immigration

- Generally, the higher the educational level, the more immigration options available
- The U.S. immigration system is designed to protect U.S. workers

Common work authorizations employers encounter

- EAD (Employment Authorization Document)
- Normally unrestricted employment authorization (at least on its face)

Common work authorizations employers encounter

- Multiple possible bases for EADs
 - Pending asylum application
 - Temporary Protected Status
 - Parole
 - Pending green card application
 - Optional Practical Training for foreign students

F-1 academic student

- Students attending academic institutions full-time in the U.S.
- Curricular Practical Training (“CPT”) or Optional Practical Training (“OPT”)

F-1 academic student

- CPT is pre-completion practical training authorized by the University. No separate EAD required.
- OPT is either pre- or post-completion practical training authorized by both the University and USCIS. EAD required.

F-1 academic student

- OPT is a common employment authorization
- Unrestricted in terms of employer, but work must be in student's field

F-1 academic student

- STEM OPT
- Longer period of OPT available to those who majored in STEM fields
- Requires the employer to participate in E-Verify
- Develop training plan

TN NAFTA (Citizens of Canada and Mexico)

- Specific schedule of occupations under USMCA
- Common for citizens of Canada in professional occupations
- Relative ease of application
- Letter from employer and proof of qualifications may be presented directly at the U.S./Canadian border
- Can be difficult for management and sales positions

H-1B (Specialty Occupation)

- In the news a lot
- US IT workers generally detest H-1B status
- Misunderstood

H-1B (Specialty Occupation)

- Normally the next step for an F-1 student in the U.S. who pursues employment during or after OPT
- Physicians, engineers, professors, etc.

H-1B (Specialty Occupation)

- H-1B cap (65,000 nationwide per fiscal year)
- Annual H-1B lottery
- H-1B cap-exempt institutions
- New \$100,000 proclamation fee

H-2B Temporary Nonagricultural Workers

- Seasonal workers
- Hotels, ski resorts, landscaping, builders, etc.
- Typically does not make sense for one position

H-2B Temporary Nonagricultural Workers

- 3-step process
- Labor certification through the U.S. Department of Labor (test U.S. job market)
- H-2B Petition through USCIS
- H-2B visa processing at U.S. Consulate abroad

Thank You!

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