WORKPLACE RAIDS

Employer Rights and Responsibilities



LEGAL AID AT WORK

Summer 2017

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INTRODUCTION

EMPLOYER RIGHTS & RESPONSIBILITIES

The United States is home to millions of immigrants. In recent months, immigration enforcement efforts have increased and taken many different forms. This has made it advisable for employers to know how to prepare for and respond to an Immigration and Customs Enforcement ("ICE") worksite raid. ²

This document provides information to help employers identify issues they may want to consider before, during, and after an ICE raid.

- 1. In some situations, workplace raids may be conducted by U.S. Customs and Border Protection ("CBP"), another agency within the Department of Homeland Security. For simplicity, this fact sheet will use "ICE" to refer to raids by either ICE or CBP.
- 2. A worksite raid is different from an I-9 audit (briefly discussed on page 9). As used in this document, a "worksite raid" refers to when ICE officers appear at a workplace, usually unannounced, in order to investigate and potentially arrest individuals at the worksite. This could form part of a civil and/or criminal investigation related to federal immigration law. An "I-9 audit," as used in this document, refers to when ICE seeks to inspect an employer's I-9 forms.

DISCLAIMER:

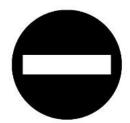
This Fact Sheet is intended to provide accurate, general information regarding legal rights in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, Legal Aid at Work cannot ensure the information in this Fact Sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your rights in your particular situation.

1. Designate Which Areas of Your Business Are Closed to the Public.

As an employer, you may designate which of your business's areas are not open to the public. ICE cannot lawfully enter these private areas without your consent or a judicial search warrant.

Areas open to the public are those you freely allow members of the public to enter. For example, in a restaurant, the public may enter the dining area; therefore, ICE may also enter it. Likewise, ICE can enter the open shopping areas of a mall. But without your consent or a valid judicial search warrant, ICE is generally not authorized to go into areas where the general public is not allowed – for example, a restaurant's kitchen, or a mall's employee break rooms.

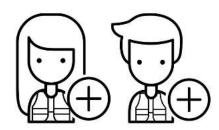
Therefore, it is important to distinguish your business's public and non-public areas. Using "Employees Only" and "Staff Only" signs, physical barriers (doors, partitions, etc.), and other indicators, can be helpful. The more secure you keep these areas from entry by the general public, the better the argument that they are off limits to ICE.



2. Designate Primary Points of Contact.

You may want to ask one or two volunteers who would be comfortable interacting with ICE agents to serve as primary points of contact. The primary points of contact would act as the liaison to ICE. S/he would be responsible for asking to see a warrant, and informing ICE that it does not have your consent to enter the non-public areas of your business. This person should also be trained to contact the local rapid response network, if applicable. See page 8.

As a safeguard, you may designate back-up points of contact in case the primary one is unavailable. If you decide to have primary points of contact, all employees should know who they are and how to contact them.



3. Train Your Employees: Do Not Consent.

You may train every employee, regardless of their position, that they ARE NOT authorized to consent to an ICE search, and that they should communicate this to ICE agents. This is especially important for supervisors and managers because ICE may ask them to consent on your behalf.

You may also train your employees to immediately report any contact with ICE at your business to you or to someone designated as a primary point of contact.

Special attention may be paid to training employees who may be more likely than others to encounter ICE agents first (e.g., receptionists, cashiers, head servers, hosts, front desk staff, security quards).



4. Train Your Employees: Document ICE's Actions.

You may create company policies or procedures to document ICE's actions in your workplace, and train your employees on these procedures. If ICE engages in illegal behavior while on your premises, having documentation could assist you or others in challenging any unlawful search, arrest, or other actions that may have taken place.

For instance, if you have a policy restricting the use of photography and/or video at your business, you may create an exception that applies in the case of an ICE raid.

Then, you may train your employees on ways of documenting ICE activity (i.e., video/audio recording, written or electronic notes). You and your employees may document important information such as:

- a. Names of the agents
- b. Number of agents
- c. Whether the agents carried weapons and/or used them
- d. Whether agents blocked exits and/or restricted employees movements or activities
- e. Agents' badge numbers
- f. License plates, if any
- g. Questions asked and any statements made by ICE
- h. Any property taken / searched
- i. Persons questioned
- j. Names of other witnesses (anyone who observed the raid)
- k. Any persons detained
- l. Any details of agents using intimidation or force







For an example of a form to document home raids that may be adapted for use in the workplace, please see Appendix A.

Inform Your Employees: Remain Silent and Ask for an Attorney.

You and your employees have a constitutional right to refuse to speak with ICE agents.³

Therefore, prior to a raid, you may inform your employees that they can refuse to speak with ICE agents. If an employee answers questions, her answers could provide an ICE agent with a reason to detain her, or could be used against someone else.



Employees may also be informed that running away from ICE might, in itself, lead to being detained.

You may tell your employees that, in addition to refusing to answer an ICE agent's questions, they should say they want to speak to an attorney. You may encourage your employees to memorize their attorney's contact information. You may also provide your employees with "red cards," which list a person's rights when 4 interacting with law enforcement. You, or an employee, can give this card to an ICE agent if the agent tries to question you or the employee.

You may also want to post examples of warrants and/or leave red cards by the entry points to your business (front door, back door, etc.).

^{3.} It is critical to convey this information to employees in advance of any raid. Providing this adviceas important as it is--while a raid is underway may be interpreted by ICE as an attempt to obstruct the raid.

^{4.} See prior footnote. It is critical to provide red cards to employees in advance of any raid. Providing this advice--as important as it is--while a raid is underway may be interpreted by ICE as an attempt to obstruct the raid.

Inform Your Employees: Do Not Sign Any Documents.

Prior to an ICE raid, you may also inform your employees they are not required to sign any documents that ICE asks them to sign without first speaking to an attorney. If an employee signs a document before being fully informed, there could be grave consequences, such as expediting a deportation or giving up a right to an attorney or a hearing.



7. Keep Personnel Files and I-9s Separate.

You may also consider keeping your employees' personnel files [which typically contain private information] separate from their I-9 forms. If ICE reviews your I-9 files [lawfully or otherwise] and they are stored with personnel files, it is more likely that ICE will attempt to review the personnel files as well.



1. Try To Identify ICE Agents Promptly.

ICE agents are also known as Department of Homeland Security (DHS) agents.

Misleadingly, ICE agents might also identify themselves as "police" officers. Likewise, their vests and/or clothing might say "POLICE ICE" or "POLICE" or "POLICE U.S.
IMMIGRATION AND CUSTOMS ENFORCEMENT" or "DEPARTMENT OF HOMELAND SECURITY POLICE."

ICE agents might not always identify themselves – they may engage in deception to solicit information.

ICE agents may be dressed either in plain clothes or in uniform.



2. Contact a Raids Response Network.

Various raid rapid response networks have been established to respond to ICE enforcement actions across the country. These rapid response networks differ, but many involve hotlines to report ICE activity, volunteers who can be dispatched to document and monitor ICE agents during raids, and attorneys who can be dispatched during or after the raid to assist those affected. For a list of rapid response networks, see Appendix C. Note that there may be a rapid response network in your area that is not included in this list.



3. Determine the Scope of the Visit. Ask for a Signed, Judicial Search Warrant.

You have a right to refuse to allow ICE to enter the non-public areas of your business. ICE agents can legally do so ONLY IF they (1) obtain your voluntary consent or (2) have a signed, judicial search warrant. ICE may try to convince you—either politely or through threats—that an ICE administrative warrant, an arrest warrant, or no warrant at all is sufficient. However, their entry without (1) or (2) would be illegal.

If ICE agents come to your business, you may instruct your employees to promptly contact you or, if you're unavailable, the primary points of contact. You or the primary points of contact would attempt to determine ICE's purpose: e.g., whether it's an I-9 audit or a worksite raid.

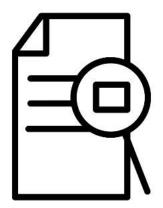
Worksite Raid: If ICE's purpose is to conduct a worksite raid, you may state that you do not consent to a search and promptly request a signed, judicial search warrant. If they do not have one, you may deny them entry by not providing your consent to enter. If there is a warrant, see below.

I-9 Audit: If ICE's purpose is to conduct an I-9 audit, ICE is required to give you at least three business days to produce employee I-9s. ICE agents can show up at your business unannounced and request to see employee I-9s; without three days' notice, however, they cannot immediately inspect them unless you consent or they have a signed, judicial search warrant. In such a case, you may assert your right to proper notice and deny ICE access to employee I-9s until the threeday period has lapsed. During these three days, you may want to contact an attorney.

4. If There Is a Warrant, Examine It.

ICE often does not have the type of warrant that would authorize them to enter the private areas of your business without your consent. If they claim to have a warrant that authorizes them to enter, ask to examine it.

Determine what type of warrant it is: administrative immigration, judicial arrest, or judicial search warrant. See below #5.



5. Determine the Type of Warrant.

There are three types of warrants an ICE agent may present: (a) an administrative immigration warrant; (b) a judicial arrest warrant; or (c) a judicial search warrant. For examples of each, see Appendix B.

Administrative Immigration Warrant

Judicial Arrest Warrant

Judicial Search Warrant



These warrants do not allow ICE to enter non-public areas of your business.

These warrants purport to authorize an ICE agent to arrest persons suspected of violating immigration laws. They are signed by an immigration officer, not a judge. They are sometimes designated in one of the margins as ICE Form I-205 (warrant of removal/deportation) or I-200 (warrant for arrest of alien). Even if an employee is named in the warrant, an administrative immigrant warrant generally does not give ICE the authority to enter the private areas of your business without your consent.





These warrants do not allow ICE to enter non-public areas of your business.

Judicial arrest warrants authorize law enforcement to arrest the person named in the warrant based on probable cause that s/he has broken a law. They are signed by a judge. They generally do not authorize ICE to search your business' non-public areas in order to arrest an employee, even if that person is named in the warrant.

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These warrants do allow ICE to enter non-public areas of your business.

A judicial search warrant is signed by a judge and authorizes law enforcement to search the specific, identified premises and seize identified items.

Ensure that it has not expired. Warrants may be ineffective if they specify a date or dates for the raid that has already passed.

Ensure that it correctly identifies the places to be searched, including your business's address or items to be seized.

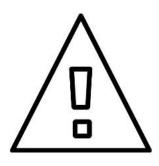
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NOTE: These warrants are rarely used by ICE.

Exceptions to Warrant Requirement: There are a few exceptions to the warrant requirement that ICE might use to try to enter your business without a warrant or your consent. One exception is "exigent circumstances." This exception only applies when there is an event requiring immediate action, for example, to prevent death, apprehend a fleeing suspect, or stop the destruction of evidence. ICE may not, itself, create an exigent circumstance to justify entering non-public areas without consent or a warrant. If ICE claims this (i.e., that there is an emergency and they must immediately enter a non-public area to arrest one of your employees) or any other exception to the warrant requirement applies, you may still refuse consent. If ICE enters anyway, you should continue to verbally refuse consent and document ICE's actions, but do not obstruct their entry.

6. If ICE Does Not Have a Judicial SEARCH WARRANT, Do Not Consent.

If ICE agents do not have a valid judicial search warrant, you have a right to deny them entry into non-public areas of your business. ICE agent's might insist, including through intimidation, that they do not need a warrant, or that an 'administrative warrant" is all they need. As noted before, this is not the case, and the search would be illegal. If ICE agents enter anyway, you should continue to verbally refuse consent and document their actions, but do not obstruct their entry.

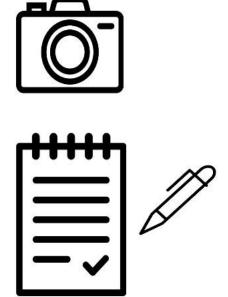


7. Communication with Employees During a Raid:

Once a raid is underway, if employees ask you whether they are required to speak to an ICE agent, you may let them know they have the right to speak or not to speak to the agent. If they ask you whether to sign a document that ICE gives them, you can let them know they can refuse to sign the document or they can sign the document. Important: Please note that this is different from how you may want to communicate this information to your employees before a raid occurs. See page 5, #5 above.

8. Ensure ICE Activity is Documented.

Regardless of whether ICE has a valid judicial search warrant, you should consider documenting ICE's actions. You and your employees may accompany ICE agents throughout their search. While you should NOT interfere with or obstruct ICE's search, you may document everything that happens and the individuals and/or objects seized. If you choose to permit your employees to engage in recording in the event of an ICE worksite raid, ensure they know so they can decide whether they want to do so. You may also want to discuss the possibility of having your primary points of contact wear distinctive clothing or accessories (i.e., fluorescent vests, bands, etc.). This may reduce employee confusion. See page 3, #2 above.



AFTER AN ICE RAID

1. Contact a Raids Response Network.

Various raid response networks have been established in distinct geographic regions to respond to and document ICE activity. You may reach out to a raid response network during or after the ICE raid to report the activity and to assist in mobilizing community and legal support for detained workers. See Appendix C.



2. Obtain Contact Information of the Detention Facility.

You may request information from ICE agents regarding the name, location, and phone number of the ICE detention facility or facilities where your employees are being held. However, depending on the ICE agent, this information might or might not be provided. As an alternative, you may familiarize yourself with surrounding detention facilities, as detained individuals are often transported and held at nearby locations, including city and county jails.

You may also attempt to use ICE's online detainee locator system to locate detained employees:

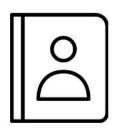
https://locator.ice.gov/odls/home Page.do.



AFTER AN ICE RAID

3. Notify the Emergency Contacts of Those Detained.

If any of your employees have been detained by ICE, once ICE has left you may want to notify their emergency contacts. If the employee did not provide an emergency contact, you may determine whether other employees have this information and can either provide that information or inform the contact themselves. You may also consider connecting the emergency contact with the detained employee's consulate.



4. Determine Whether You Want To Assist Your Detained Employees in Obtaining Legal Representation.

If any of your employees have been detained, you may consider whether you want to help them obtain legal representation. Without legal representation, it will be much more difficult for your employees to successfully defend themselves.

For organizations that provide immigration legal services, you can visit:

https://www.immigrationadvocates.org/nonprofit/legaldirectory/.

For private immigration lawyers, you can visit:

http://www.ailalawyer.org/.

You may also consider writing letters of support for detained employees.



AFTER AN ICE RAID

5. Determine Whether To Post Your Detained Employee's Bond, if Available, While S/he Awaits Further Action.

After ICE has detained a person, it will typically set a bond to ensure someone's presence at a future proceeding. Immigration or deportation proceedings can take years to conclude. By posting bond for your employee, you can help ensure they do not have to spend that time incarcerated.



Remember: Follow Applicable Employment Laws

You must, for instance, pay your employees for work they have already performed-even if they have been detained.

You may also not discriminate against individuals, based on their race, religion, national origin, including language, or a variety of other protected bases, in anticipation of a raid or after a raid.

These and other workplace rights apply to all workers, regardless of immigration status.

For more information, visit Legal Aid at Work's website: www.legalaidatwork.org

There you can find fact sheets on workers' rights. For example: https://legalaidatwork.org/factsheet/undocumented-workers-employment-rights/

LEGAL AID AT WORK

Our organization engages in litigation, direct services, policy work and community education to defend and expand the civil and labor rights of lowwage workers, community members, and students.

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Appendix A ADDITIONAL RESOURCES

If you or your employees would like more information on ICE raids, see:

-National Employment Law Center and National Immigration Law Center, "WHAT TO DO IF IMMIGRATION COMES TO YOUR WORKPLACE" Guide

http://www.nelp.org/publication/what-to-do-if-immigration-comes-to-your-workplace/

Immigrant Defense Project, Sample Raid Documentation Template https://www.immigrantdefenseproject.org/wp-content/uploads/2016/03/home-raid-poster-ENG-2017.pdf

If you or your employees would like more information on immigration-related topics, see:

-Legal Aid at Work (www.legalaidatwork.org)

Know your rights materials, sample letters and helpline on immigrant workers' rights - https://legalaidatwork.org/ourprograms/immigrant-and-ethnic-minority-workers/

-National Immigration Law Center (www.nilc.org)

Know your rights materials on ICE raids - https://www.nilc.org/protectyourself/

Know your rights materials on I-9 audits - https://www.nilc.org/wp-content/uploads/2015/11/I-9-audits-primer-2009-07-23.pdf

-National Employment Law Project (ww.nelp.org)

Know your rights materials on Social Security No Match Letters - https://www.nilc.org/wpcontent/uploads/2015/12/top_ten_tips_11-07-07.pdf

-Immigrant Legal Resource Center (www.ilrc.org)

Community Legal Resources – https://www.ilrc.org/community-resources Family Preparedness Plan – https://www.ilrc.org/family-preparedness-plan

Know your rights materials on DACA-

https://www.ilrc.org/sites/default/files/resources/daca_community_info_sheet_march_1_2017_clean.pdf

The Basics on ICE Warrants and ICE Detainers -

https://www.ilrc.org/sites/default/files/resources/ice_warrants_summary.pdf

-National Day Laborer Organizing Network (http://altotrump.com)

Know your rights materials -- http://altotrump.com/resources/know-your-rights/

-Catholic Legal Immigration Network, Inc. (www.cliniclegal.org)

Know your rights materials (In-depth factsheet on interacting with law enforcement, including ICE) -

https://cliniclegal.org/sites/default/files/resources/presidential-transition/Know-Your-Rights-Law-Enforcement.pdf

If you or your employees would like to find an immigration attorney, you can visit:

- -Immi (www.immi.org)
- -Immigration Advocates Network (www.immigrationadvocates.org)
- -American Immigration Lawyers Association (www.aila.org)

Appendix B READING A WARRANT

If ICE agents do not have a valid judicial search warrant, you have the right to refuse them entry. For a warrant to be valid, it must meet the following:



ADMINISTRATIVE IMMIGRATION WARRANTS

These types of warrants (sometimes referred to as warrants of removal or deportation, or warrants for arrest of alien) are NOT search warrants!

These warrants do not give ICE the authority to enter the non-public areas of your business. You may deny ICE access to these areas of your business.

ICE Form I-205 (8/07) Page 1 of 2



ADMINISTRATIVE IMMIGRATION WARRANTS (continued)

U.S.	DEPARTMENT OF HOMELAND	SECURITY Warrant for Arrest of Allen
		File No
		Date:
To:	Immigration and Nationality Ac	ized pursuant to sections 236 and 287 of the t and part 287 of title 8, Code of Federal f arrest for immigration violations
I hav	e determined that there is probable ca	ause to believe that
is ren	novable from the United States. This	s determination is based upon:
	the execution of a charging docum	nent to initiate removal proceedings against the subject;
	the pendency of ongoing removal	proceedings against the subject;
	the failure to establish admissibili	ity subsequent to deferred inspection;
	databases that affirmatively indicate,	ject's identity and a records check of federal , by themselves or in addition to other reliable acks immigration status or notwithstanding such status in law; and/or
		ne subject to an immigration officer and/or other indicate the subject either lacks immigration status or vable under U.S. immigration law.
	ARE COMMANDED to arrest and gration and Nationality Act, the above	take into custody for removal proceedings under the ve-named alien.
		(Signature of Authorized Immigration Officer)
		(Signature of Authorized Immigration Officer)
		(Printed Name and Title of Authorized Immigration Officer)
	Cer	rtificate of Service
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	(Name of Alien) on	(Date of Service) , and the contents of thi
ice we	ere read to him or her in the	(Language)
	Name and Signature of Officer	Name or Number of Interpreter (if applicable)

Form I-200 (Rev. 09/16)



A valid arrest warrant must:

- Be signed by a judge.
- Correctly state the name of the person to be arrested.

AO 442 (Rev. 11/11) Arrest Warrant

If the warrant appears valid, ICE can arrest the named person if s/he is found in the public areas of your business. In general, however, it does not allow ICE to enter the private areas of your business in order to carry out the arrest.

UNITED STATES	DISTRICT COURT
	or the
United States of America V. Defendant) Case No.)))
V.115-523-5137-52-51	WARRANT
To: Any authorized law enforcement officer	WARRANT
YOU ARE COMMANDED to arrest and bring befor (name of person to be arrested) who is accused of an offense or violation based on the followin Indictment	mation Superseding Information Complaint
Date:	Issuing officer's signature
City and state:	
	Printed name and title
	and the person was arrested on (fee)
at (city and state)	, and the person was arrested on (date)
Date:	Arresting officer's signature
	Printed name and title



JUDICIAL SEARCH WARRANTS

To be valid, ICE's search warrant must:

- Be signed by a judge.
- Correctly identify the place to be searched, including your business's address and items to be seized, if any.
- · Contain an issuance and expiration date.

You may examine the warrant to determine whether everything is filled out properly. You may also want to double check to ensure it has not expired.

If the warrant is valid, it authorizes ICE to enter the non-public areas of your business.

If the warrant does not appear to be valid, you may refuse ICE entry to your business. If ICE agents enter anyway, you should continue to verbally refuse consent and document their actions, but do not obstruct their entry.

AO 93 (I	Rev. 11/13) Search and Seizure Warrant			
	UNITED S	STATES DI	STRICT 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	H AND SEIZU	RE WARRANT	
To:	Any authorized law enforcement officer			
	An application by a federal law enforcemen following person or property located in the	3	formey for the government requ District of	ests the search
(identy)	the person or describe the property to be searched and	a give us toculony.		
	YOU ARE COMMANDED to execute this		517.671	(not to exceed 14 days)
	in the daytime 6:00 a.m. to 10:00 p.m.	I at any time in the	ne day or night because good c	ause has been established.
	Unless delayed notice is authorized below, y from whom, or from whose premises, the pro- ty was taken.			
as requ	The officer executing this warrant, or an off ired by law and promptly return this warrant			
_			(United States M	
§ 2705	Pursuant to 18 U.S.C. § 3103a(b), I find that (except for delay of trial), and authorize the ty, will be searched or seized (check the appropri	officer executing		
	for days (not to exceed 30) until, th	he facts justifying	, the later specific date of	
Date a	nd time issued:		Judge's	signature
C'r.	1-1			7475C1W1V2C
City ar	nd state:		Printed no	one and title

Appendix C

RAPID RESPONSE NETWORKS

NATIONAL

United We Dream - 844.363.1423 National Korean American Service & Education Consortium - 844.500.3222

REGIONAL

Alabama

Montgomery - Southern Poverty Law Center - 800.591.3656

Arizona

Phoenix - United Farm Workers Foundation - 877.881.8281

California

San Francisco – San Francisco Immigrant Legal & Education Network (SFILEN) - 415.200.1548
Alameda County – Alameda County Immigration Legal & Education Partnership (ACILEP) - 510.241.4011
Los Angeles – Coalition for Humane Immigrant Rights' of Los Angeles (CHIRLA) - 888.624.4752
Central Valley (Monterey, Fresno, Tulare, and Kern Counties) – United Farm Workers Foundation - 877.881.8281

Georgia

Atlanta – Asian Americans Advancing Justice - 404.890.5655 Atlanta – Georgia Latino Alliance for Human Rights - 770.454.5232

Illinois

Chicago – Illinois Coalition for Immigrant & Refugee Rights - 855.435.7693

Maryland

Maryland - CASA de Maryland - 301.431.4185

New York

New York- Immigrant Defense Project - 212.725.6422 Long Island - Long Island Dream Act Coalition -516.387.2043

Pennsylvania

Pennsylvania - CASA - 301.431.4185

Philadelphia - New Sanctuary Movement of Philadelphia - 267.333.9530 (Spanish), 267.345.5248 (Indonesian)

Texas

Austin - Linea de Defensa Comunitaria - 512.270.1515

Washington

San Juan County - San Juan County Immigrant Protection Group - 360.376.7101, 206.365.2225

Virginia

Northern Virginia - CASA - 301.431.4185