

What You Need to Know to Prepare for an ICE Raid or Audit

February 10, 2025

On January 20, 2025, President Trump signed an executive order Declaring a National Emergency at the Southern Border of the United States. This executive order allows for the use of federal funding for border security and the deployment of armed resources to the region.

On January 21, 2025, the Acting Secretary of the DHS, Benamine Huffman, issued a directive rescinding the Biden administration's policy which restricted immigration enforcement near sensitive locations (such as at churches, schools, and hospitals). Since this directive was implemented, employers should be prepared to handle ICE immigration enforcement actions or inspections at these locations as ICE raids are not announced in advance.

WHY DOES ICE VISIT?

ICE agents may visit a premises for a Form I-9 audit, a raid, or to search for specific individuals.

I-9 Audit

- A Form I-9 audit is when ICE visits a business with a Notice of Inspection (NOI) and requests the Form(s) I-9s of the business. The Form I-9 confirms an employee's identity and authorization to work in the US. Employers receive at least three business days to produce the Form(s) I-9 and any other business documentation requested in the NOI.
- If ICE determines that some employees do not have work authorization, the employer will receive a Notice of Suspect Documents and will have 10 days to provide evidence of the employee's identity and work authorization.
- Form(s) I-9 must be retained for all employees physically working on US soil, and must be retained for three (3) years after the date of hire or one (1) year after the worker's last day of work, whichever is later.
- ICE audits may result in civil and criminal fines and penalties.
- Employers should conduct an internal audit of all I-9 files to be sure that the employer has a completed Form I-9 on file for all active employees; retain a completed Form I-9 for all active employees; make corrections to Forms I-9 as soon as an error is identified, and retain I-9s for the mandatory retention period.
- E-Verify employers should conduct an audit of its E-Verify cases, ensure it is using E-Verify as required by state law, implement any necessary corrections, and make sure the mandatory E-Verify poster is posted at all worksites.
- Keep personnel files separate from I-9 files, and ensure each file only contains the relevant documents to that file. Ensure I-9 files are readily accessible. Ensure the documents that may disclose employee personal or protected data and that are not otherwise required to be maintained in the file are not included in that file. Check state laws which dictate what must be maintained as part of a "personnel file" and ensure the personnel file is compliant.

ICE Raid

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The purpose of an ICE raid is to detain undocumented employees. These raids are typically targeted, meaning the agents are not looking for random individuals; rather, they are looking for specific individuals they want to detain. Often, the raid is targeted towards an industry that is known to have an influx of undocumented employees, such as cleaning companies, restaurants, skilled laborers, and construction.

HOW TO PREPARE FOR AN ICE RAID:

Businesses and educational institutions should have a written response plan in place to prepare for an ICE action. The following steps should be taken to prepare for an ICE enforcement action:

- Identify employees such as a receptionist or other front-line employee who will be the first individual an ICE officer will encounter at the premises, ensure this employee is aware of the business response plan for managing an ICE action, and is aware of the designated company representative to manage the ICE interaction.
- Designate a key company representative (such as senior executive, senior human resource administrator, senior school administrator, or in-house legal counsel) to handle questions and serve as the primary contact person with the ICE officers during or after a raid.
- Ensure the designated company representative(s) are trained on the employer's records and retention policy, and how to handle and respond to an ICE raid.
- Ensure that those employees who will be the first contact with the ICE officers direct those officers to the key company representative(s) designated to work with ICE during or after the raid.

Public vs. Private Areas

To prepare for an ICE action, an employer must be aware of ICE's authorization to enter private or public areas with either an administrative or judicial warrant.

Public Areas

ICE agents can enter *public* areas of a school or business without permission, and without a warrant. Public areas include a lobby, reception, or waiting area accessible through an unlocked door, a parking lot open and accessible to the public, or a dining area in a restaurant. If a business or school has an unlocked door and a lobby that is accessible to the public generally, that is likely a public space. However, just being in a public area does not give ICE the authority to stop, question, or arrest anyone it chooses.

Private Areas

ICE agents cannot enter a *private* area without the business's permission, unless they have a judicial warrant. A *judicial warrant* must be signed by a judge, and will generally say "U.S. District Court" or will have a state court listed at the top of the warrant. **An administrative warrant does NOT allow ICE agents to enter private areas without permission.** ICE can only enter the private area of a business with a judicial warrant or with the business's consent. An administrative warrant says, "Department of Homeland Security", and is printed on Form I-200 or I-205.

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Private areas are those such as a back office marked private, a back office that the public is generally not allowed to enter, a classroom where a school does not generally allow the public, or a private parking lot. If a space cannot be entered by the public without being accompanied by someone from the business or school, those are likely private spaces. Businesses should have a written policy that visitors and the public do not enter private areas without permission, or without being accompanied by a representative from the business, and can mark these areas as "private" with a sign, keeping doors closed or locked. However, keep in mind that simply designating an area as "private" won't automatically keep ICE out if they have a judicial warrant, or if they decide to enter without a warrant.

WHAT TO DO DURING AN ICE ACTION:

- If ICE officers arrive at the premises, immediately contact the company's designated representative who should then immediately contact legal counsel. The company's designated representative should also tell ICE that legal counsel has been contacted, and ask ICE to wait for counsel before proceeding with their inspection.
- Ensure that the employee who makes first contact with ICE (such as receptionist or host) and all workers employed at the premises do NOT interact with the ICE agents. Only the company's designated representative should speak with ICE. If ICE agents have questions or requests, employees should say nothing or tell the ICE agent to talk to the company representative designated to handle ICE questions.
- The designated representative should ask the ICE officer for the officer's identification, name, and badge number, and should write this information down.
- Ask the officer if they have a warrant.
- If ICE has a warrant, check the details of the warrant. Ask for a copy of the warrant and send it to counsel. A judicial warrant should be signed and dated by a judge, include a time frame for a search, describe what is to be searched (such as I-94 records, employee documents, payroll records etc.), and list things to be searched and seized. If it does not contain all of these details, the warrant is not valid. Contact counsel immediately. You can accept the warrant, but tell the officers you do not consent to the search to preserve your right to contest the search at a later date.
- If ICE has an administrative warrant (i.e., Form I-200 or I-205) with the employee's name on it, you do NOT have to state if the employee is working on that day or not. You do NOT have to take the agent to the employee named on the warrant, even if he or she is at work at the time.
- If ICE does not have a judicial warrant, you should allow them to enter any public areas of the business, but they cannot enter into any private areas without consent. You may state they do not have permission to enter the private areas.
- If ICE attempts to search the business beyond the scope of the warrant, do not physically interfere with the search, but physically state that you object to the search.
- Do not do any of the following during the scope of the search:

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- Do not physically interfere with the officers' search of the premises.
- Do not lie or provide false information to officers.
- Do not destroy or hide documents.
- Do not assist employees with hiding from officers.
- Do not run from an ICE agent.
- Do not assist or encourage employees to leave.
- Employees may decide whether or not they want to speak with ICE. Do not direct employees not to cooperate with ICE or to refuse to answer questions.
- If ICE confiscates items during a raid, ask the officers for a list of all items taken during the raid. If ICE arrests any individuals, ask ICE officers where the individual is being taken.
- After the raid, the designated company representative should document all details of the raid including details regarding how many agents were present (inside and outside), how agents were dressed and armed, and documents or individuals taken. Contact immigration legal counsel.

ICE REQUESTS FOR SCHOOL RECORDS

- If ICE enters a school's premises, they are only allowed to enter public areas if they do not have a judicial warrant.
- The school should not turn over any student records without consulting with counsel to ensure that the individual requesting the student or parent record has the proper authority.
- The Family Educational Rights and Privacy Act (FERPA) addresses who may access student records. FERPA generally prohibits schools from disclosing any personally identifiable information about a student without written consent from a guardian or the eligible student. In the absence of written consent, ICE will generally be required to possess a valid court order or subpoena to access a specific student record.
- There are specific exceptions to FERPA that apply in limited situations, such as the case in which ICE requests access to student records to monitor the stay of international students in limited study abroad programs.
- School districts have varying policies on whether ICE has access to its facilities or personnel, so it is important to be aware of your school's policy in this regard. (For example, schools within the Chicago Public School District do not allow ICE access to its facilities or personnel unless ICE provides the school with a criminal warrant).

PROOF OF LEGAL STATUS REQUIRED FOR ANYONE 18 YEARS OF AGE OR OLDER WHO IS NOT A US CITIZEN OR US NATIONAL

- Anyone who is not a US Citizen or a US National and who is 18 years of age or older is required by Section 264(e) of the Immigration and Nationality Act (INA) to carry with them and have in their possession "evidence of registration document" at all times, including when traveling domestically or just going about daily life. This means that anyone falling into this description (which includes Lawful Permanent Residents) must carry proof of their status

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in the US with them at all times. Proof of legal status in the US includes documents such as a Form I-94, valid EAD card, or valid Lawful Permanent Resident card (i.e., "Green Card").

- An individual who fails to comply with these provisions can be found guilty of a misdemeanor, and shall upon conviction for each offense be fined not to exceed \$100 or be imprisoned not more than thirty days, or both.
- Nonimmigrant visa holders should always retrieve their most recent I-94 record after each re-entry to the US following international travel (including re-entry via land ports of entry) from the following website: <https://i94.cbp.dhs.gov/home>. They should print the I-94 record and keep it on their person along with their other evidence of legal status (e.g., Visa, Approval Notice, Passport Stamps, Employment Authorization Document (EAD), etc.)

CONCLUSION

Businesses, schools, employees, and students must be ready and well prepared to address immigration actions by ICE during the foreseeable future. For further discussion, please contact our Immigration Team for assistance.