

# Preparing for I-9 Audits & ICE Worksite Raids in an Era of Increased Immigration Enforcement

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This is an informational session.

This presentation is not legal advice.

This information is not tailored to anyone's specific circumstances.

# Agenda

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- Background
- Preparing for ICE Worksite Raids
  - Public vs. Private Areas
  - Judicial vs. Administrative Warrants
- Preparing for I-9 Audits
- Your Questions

# Public vs. Private Areas

PUBLIC	PRIVATE
<ul style="list-style-type: none"> <li>• ICE has authority to approach / question people in public spaces (i.e. lobby or parking area) without a warrant.</li> <li>• People still have the right to remain silent and to contact an attorney.</li> </ul>	<ul style="list-style-type: none"> <li>• To search or enter a private area, ICE needs a <b><u>valid judicial warrant</u></b> signed by a federal or state judge (or consent).</li> <li>• If ICE agents gain access to a private area—through a warrant or consent—they can arrest people if they have a valid warrant for that person or probable cause to believe the person is “removable” from the U.S.</li> </ul>

# Preparing for ICE Worksite Raids

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- **Identify someone to be the “Point Person” if ICE agents arrive.**
- **If ICE arrives, staff should contact the Point Person and:**
  - Stay calm and professional.
  - Request ID (name, badge/ID number, telephone # & business card).
  - While waiting for the Point Person, the initial contact person can say to ICE:  
*This is a private area of our facility / private property, and our facility does not permit unauthorized individuals, including law enforcement, to enter the facility without a signed judicial warrant. Please wait in a public area while we obtain further guidance.*
  - Contact immigration attorney.

# “Point Person” Responsibilities:

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- Should be familiar with how to review warrants and subpoenas.
- Request a warrant and verify if it meets all legal requirements.
- Should document everything:
  - Keep copies of any documents presented.
  - Take notes, photographs, or videos (if comfortable) of the visit.
  - Note any access ICE gains to information or records.
  - Obtain receipt for any records taken by ICE. Try to make copies of documents.
- Have a backup person.

# Warrant Distinctions

ADMINISTRATIVE WARRANT	JUDICIAL WARRANT
<ul style="list-style-type: none"> <li>• Commonly relied on by ICE.</li> <li>• Signed by an immigration officer or immigration judge.</li> <li>• These warrants <b><u>do not</u></b>:               <ul style="list-style-type: none"> <li>• Authorize ICE agents to enter private property / private areas.</li> <li>• To enter private areas (absent a judicial warrant), ICE needs consent, which you have no legal obligation to give.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• To be valid it must be:               <ul style="list-style-type: none"> <li>• Issued by a court;</li> <li>• Signed by a judge or a magistrate (<b><u>not</u></b> an immigration judge or agent);</li> <li>• State the address of the premises to be searched (check for your exact address); <b><u>and</u></b></li> <li>• Be executed within the limited time frame specified on the warrant.</li> </ul> </li> </ul>

# JUDICIAL WARRANTS v. IMMIGRATION WARRANTS

AO 93 (Rev. 12/09) Search and Seizure Warrant

**UNITED STATES DISTRICT COURT**

for the  
Eastern District of California

In the Matter of the Search of  
(briefly describe the property to be searched  
or identify the person by name and address)

Case No.

Davis, California 95616

**SEARCH AND SEIZURE WARRANT**

To: Any authorized law enforcement officer **2:11-SW-0161 EFB**

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 EASTERN District of CALIFORNIA  
(Identify the person or describe the property to be searched and give its location):  
SEE ATTACHMENT A, ATTACHED HERETO AND INCORPORATED BY REFERENCE

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, ATTACHED HERETO AND INCORPORATED BY REFERENCE

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 5-9-2011  
(not to exceed 14 days)

☒ in the daytime 6:00 a.m. to 10 p.m. ☐ at any time in the day or night as I 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

(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: 4-25-2011  
9:10:00 AM

City and state: SACRAMENTO, CALIFORNIA

Edmund F. Brennan  
EDMUND F. BRENNAN, U.S. MAGISTRATE JUDGE  
(Printed name and title)

Is this the right address?

Note: only the person, property, & areas specified may be searched

Is it still current?

Is it actually signed by a judge?

**IF THE ANSWER TO ALL OF THESE IS YES, THEN IT IS LIKELY A VALID JUDICIAL WARRANT**

**DEPARTMENT OF HOMELAND SECURITY**  
**U.S. Immigration and Customs Enforcement**  
**WARRANT OF REMOVAL/DEPORTATION**

File No: \_\_\_\_\_  
Date: \_\_\_\_\_

To any immigration officer of the United States Department of Homeland Security:

(Full name of alien)

who entered the United States at \_\_\_\_\_ on \_\_\_\_\_  
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States based upon a final order by:

☐ an immigration judge in exclusion, deportation, or removal proceedings  
☐ a designated official  
☐ the Board of Immigration Appeals  
☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

**THESE ARE VISUAL CUES THAT THIS IS AN IMMIGRATION WARRANT**

(Signature of immigration officer)

(Title of immigration officer)



# Complying With a Valid Judicial Warrant

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- If the ICE agents present a **valid judicial warrant**:
  - Comply with its terms and document everything.
  - Give agents access to the facility sufficient to detain the person identified, or gather information required, under the warrant.
  - Work with the agents to minimize disruption—consider arranging for agents to meet with staff and affected employees in a separate room.
  - Do not block or interfere with ICE activities or the agents.
  - Object to a search outside the warrant's scope, but don't argue with the agent. Simply state your objection to ICE to make note of it.

# No Valid Judicial Warrant?

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- If the agents **do not have a judicial warrant** signed by a judge, it is appropriate to deny them entry to private areas. You may say:
  - *We have a policy of denying access without a valid judicial warrant.*
  - *Without a signed judicial warrant, I am not authorized to grant you access to the facility. Please leave the grounds so that there is minimal disruption to the normal operations of our facility.*
- If ICE agents present an **administrative (immigration) warrant**:
  - Politely decline entry to non-public areas.
  - You do not need to provide any information about individuals.
  - If you have a lawyer, call them.

# Preparing for I-9 Audits in an Era of Increased Enforcement

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- **Review Your I-9 Compliance Program**

- Check that you are using the correct version of Form I-9—currently 08/01/23
- Conduct I-9 training for all representatives assisting with the process, focusing on how to accurately complete and retain I-9 forms
  - Ensure copies of instructions are provided to all new hires along with the form
  - Establish consistent, non-discriminatory document review practices
  - Ensure copies of section 2 documentation are being consistently retained or not
  - Develop policy re: virtual inspection & ensure compliance
- Consider E-Verify as an added layer of protection

# Preparing for I-9 Audits

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- **Prepare for a potential audit by Conducting an Internal Audit**
  - Check your I-9 records to ensure each I-9 is properly completed, signed, and dated; does not contain discrepancies; and is not missing information.
  - Common errors include: missing signatures, incomplete information, late completion or expired Section 2 documents. Can result in significant penalties if detected by ICE during an audit.
  - Employers who fail to comply with the regulations risk fines, other civil penalties, and possible criminal liability.
  - Consult with legal counsel to ensure you are conducting the audit strategically (i.e. sampling %, correction process, messaging to employees, memos to attach to forms).

# Preparing for I-9 Audits

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- **In the Event of an Audit, have a Plan**

- Designate a specific company representative to manage any investigations or inquiries to ensure a streamlined response and appropriate advocacy to ICE.
- Be prepared to provide documentation quickly and efficiently to minimize disruptions to the business.
- Employers typically only have three business days to turn over Forms I-9.
- Employers are given 10 business days to correct technical errors in the event of an audit- avoid the scramble by self-auditing

# Your Questions?

