

## Labor & Employment



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## How To Navigate the Administration's Focus On Deporting Illegal Immigrants

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As reported in all forms of media, the Trump administration has launched a nationwide blitz of immigration enforcement that is not likely to abate in the short term. Raids, which the administration has characterized as focused on detaining and deporting those who pose a threat to public safety and national security, have been conducted in New York City, Chicago, Newark, New Jersey, the suburbs of Atlanta, Boston, Denver, Los Angeles, San Francisco, and Austin and San Antonio, Texas, among other places. More than 2,000 arrests have been reported by Immigration and Customs Enforcement ("ICE"), with close to 1,000 detainees (a request that a law enforcement agency hold an inmate for another agency) lodged since this past weekend. Significantly, while immigration enforcement was typically handled almost exclusively by ICE, the recent raids have seen participation by agents of the Federal Bureau of Investigation ("FBI"), Drug Enforcement Administration ("DEA"), the Bureau of Alcohol, Tobacco, Firearms and Explosives, as well as the U.S. Marshals Service.

In another development, ICE has reversed a policy in place during the Biden administration and now permits its agents to raid "sensitive locations" including schools, hospitals, and churches, leading the U.S. Conference of

Catholic Bishops to condemn the new policy as "contrary to the common good" and to declare that it would "turn places of care, healing, and solace into places of fear and uncertainty for those in need, while undermining the trust between pastors, providers, educators, and the people they serve," and "will not make our communities safer."

It is inevitable that the administration's focus on securing the borders and preserving employment opportunities for individuals who are lawfully authorized to work in the country will spill over to the workplace, especially in industries that traditionally employ significant numbers of immigrant workers. We anticipate that there will be enhanced enforcement of the Immigration Reform and Control Act of 1986 ("IRCA"), with emphasis on audits of I-9 forms and removal of undocumented individuals from the workplace. Enforcement actions focusing on the employment relationship can take the form of scheduled document (I-9) audits, which are preceded by receipt of a Notice of Inspection that gives the employer three business days to provide requested documents, as well as unscheduled workplace raids. The remainder of this alert will provide guidance to employers when an agent of ICE, or other law enforcement personnel, show up at a worksite seeking documents or access to the entity's workers.

## WHAT TO DO BEFORE IMMIGRATION AGENTS SHOW UP AT YOUR DOOR

There are certain action items all employers should take **now** in anticipation of a visit from ICE or Customs and Border Protection (“CBP”). They include:

- Appoint a person with authority to be the primary contact in the event of a visit by ICE/CBP or other federal, state, or local law enforcement agencies and conduct necessary training to ensure the point person is prepared to:
  - Review warrants,
  - Contact counsel for advice, and
  - Monitor agents while they are on site and document what occurs during the visit.
- Perform an internal audit of I-9s and other documents that an agent may request to review.
  - Confirm you have I-9s for all current employees and those who recently have been terminated from employment (and ensure that they have been properly completed and that the forms, as well as any documents that the employee presented in support of their I-9 declarations and maintained by the employer, are stored apart from personnel files), destroying those forms that the employer is no longer required to maintain;
  - Make sure you have a list that contains the names of all current employees and should have access to payroll records as well as quarterly wage and hour reports;
  - To the extent you use E-Verify, have confirmations available.
- Consider utilizing E-Verify, a web-based system that allows enrolled employers to confirm the eligibility of their employees to work in the United States, for all new hires.
- If you utilize contractors, leased workers, or temporary employees, review your vendor contract to ensure the requisite safeguards are in place confirming service providers are legally authorized to work in the United States.
- To the extent you have a question about an employee’s immigration status, do not panic or jump to conclusions. Have a conversation with the employee and come up with a plan of action.

## IF YOU RECEIVE A NOTICE OF INSPECTION (BY CERTIFIED MAIL OR DELIVERED IN PERSON)

- Review the Notice of Inspection to identify what documents are being requested and share with counsel to review what needs to be produced.  
**Don’t panic.**
- Gather the documents requested in the Notice within the three-business day window and do not plan to offer any additional documents or information other than those required for inspection; do not waive your right to the three-day waiting period.
- Make copies of all documents being made available for inspection, as the ICE agent will want to review originals.
- Make a record of all documents that are provided to the agent for inspection.
- Make notes of any alleged noncompliance raised by the agent during the inspection and do not make any untruthful statements about the company’s immigration policies or I-9 collection processes.
- Review any identified compliance issues with counsel.

## IF AN ICE AGENT OR AGENT OF ANOTHER FEDERAL, STATE, OR LOCAL ENFORCEMENT AGENCY SHOWS UP AT YOUR DOOR

- Demand to see a judicially issued warrant permitting a search. If there is none, then you can refuse ICE/CBP entry into your workplace.
- If there is a warrant, then review it with counsel to ensure it is valid. This includes checking that it is signed by a judge or magistrate, has the correct address for the workplace to be searched, provides a duration for the search, and describes the scope of the search.
- There are different types of warrants or subpoenas that might come into play, including:
  - A judicial warrant, which allows ICE/CBP to conduct any search as authorized by the warrant. You must comply with a valid judicial warrant.
  - An administrative warrant, which allows ICE/CBP to conduct an arrest or seizure. Administrative warrants do not authorize searches and therefore you do not need to permit a search in this instance.
  - A judicial subpoena, which allows an enforcement agency to request information and/or documents from third parties, like you the employer. Unless you have a legitimate basis to oppose the subpoena, you should generally comply with it.

- An administrative subpoena, which similarly allows ICE/CBP to request information and/or documents from third parties, like you the employer. You do not need to comply with an administrative subpoena, penalties may occur only after the issuer takes additional steps to enforce the subpoena in federal court.
- If the judicial warrant is valid, you should comply with the request for inspection.
- During the inspection, you should watch the agent the entire time.
- Document everything:
  - Record the names and ID numbers of all agents, and
  - Memorialize any conversations with agents.
- If any employee is arrested, ask the agent where the employee is being taken.

The Administration's emphasis on enforcement of immigration laws can be costly for employers, since fines and penalties for I-9 noncompliance are significant, and the disruption of work caused by removal of employees from the workforce can be devastating. Attorneys in the Labor & Employment practice group at Blank Rome are prepared to assist as issues arise.

**For more information or assistance, please contact [Mark Blondman](#), [Gabrielle I. Weiss](#), or another member of Blank Rome's [Labor & Employment](#) group.**

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