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California Schools and Immigration in 2025



Presented by

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Overview

- New Changes/Trends/Expected Trends
- ICE Raids/FDNS Site Visits – Plan ahead
- Workforce Changes and I-9 Audits – Plan ahead
- Changes Impacting Foreign Born Employees and Students – Plan Head
- Q&A

■ New Changes/Trends/Expected Trends

- Governmental Raids/Stops/Detentions
- Increase in FDNS Site Visits
- Increase in I-9/E-Verify Audits
- Extreme Vetting – Enhanced Social Media Vetting, Electronic Devices Searches, etc.
- Travel Complications
- Governmental Processing Time Delays
- Visa Revocations for National Security Concerns/Foreign Policy Concerns/Interactions with Police
- Schools with High Numbers of F-1 Revocations for National Security Concerns– Potential to Eliminate School's Ability to have F-1 Students

Positive News – With sufficient planning ahead – though not necessarily all – of this can be managed with the help of immigration counsel.

■ New Changes/Trends/Expected Trends – Related Executive Orders

- **Executive Order 14159 “Protecting the American People Against Invasion” and Executive Order 14165 “Securing Our Borders”**
 - Prioritize enforcement, require registration, collaborate with state and local law enforcement authorizing execution of some immigration functions, recalcitrant country repercussions, end of humanitarian parole programs, detention, physical barriers, visa bonds
- **Executive Order 14161 “Protecting the United States From Foreign Terrorists and Other National Security and Public Safety Threats”**
 - Maximum vetting in visa issuance, status issuance/extensions, and residence cases, examine partial or full bans for some countries

Expected Trend – Increase in ICE Worksite Raids and FDNS Site Visits

What Is an ICE Raid?

- Immigration and Customs Enforcement (ICE) agents raid a worksite (visit a worksite without advance notice or warning) either:
 - to take employees or others at the worksite into custody who ICE suspects are in the United States without authorization or with a removable offense; or
 - to investigate the employer.
- ICE agents are not police officers, but their uniforms may say “Police”, “ICE” or “Federal Agent.” Local police officers and/or other government officials may also be present.
- When ICE agents visit a workplace to question employees and detain those suspected of being in the U.S. without authorization or with a removable offense, the raids can target specific individuals or involve all workers present.
- Agents may arrive unannounced or inform the employer beforehand. They might come with a judge’s warrant or claim to seek a specific person, questioning all employees instead.
- All workers, regardless of immigration status, have the right to remain silent, not sign anything, and consult an attorney before answering questions from immigration officials.
- Schools/Employees are not required to comply unless there is a signed appropriate warrant.

ICE Worksite Raids vs. FDNS Site Visits (cont'd)

What is an FDNS Site Visit?

- Fraud Detection and National Security (FDNS) unit officer may conduct **unannounced** site visits to employers sponsoring foreign nationals in certain visa categories (H-1B, L-1, STEM OPT EAD) and to conduct interviews with employees and employer representatives. Officer is usually in plain clothes and alone (not multiple officers). No warrant is required.
- Officer is verifying information re: the company, employment terms, etc. from the petition/submission. The site visit may occur at the employer's principal place of employment and/or at the worksite location.
- Site visits usually focus on a specific visa petition and the Agent/Officer will likely have a copy of that petition.
- Employee or employer failure to participation with the FDNS can result in a person's pending visa petition being denied or an approved visa petition being revoked. We recommend cooperating with FDNS site visits.
- When any Officer appears first ask for identification to determine what type of Officer has appeared (to determine if it is an ICE Raid or an FDNS Site Visit).

ICE Raids – Plan ahead

FOR EMPLOYERS WITH PUBLIC AND PRIVATE SPACES:

- Define public and private spaces in order to limit access to private areas without a judicial warrant.
- Train all workers to NOT allow ICE agents to enter private spaces in your workplace.

For Public Areas:

- Anyone – including ICE agents – can enter public areas of your business without permission. (Public areas include a quad, parking lot, lobby or waiting area.)
- However, being in a public area does NOT give ICE the authority to stop, question, or arrest just anyone.
- No one can enter a private area of your business without your permission or a judicial warrant. TIP: To show that some areas are private, mark them with a “Private” sign, keep the doors closed or locked, and have a policy that visitors and the public cannot enter those areas without permission.

ICE Raids – Plan ahead

For Private Areas:

- Immigration agents can enter a private area ONLY IF they have a signed judicial warrant. A judicial warrant must be signed by a judge and say “U.S. District Court” or a State Court at the top.
- Judicial arrest warrants identify specific people to be arrested and can be exercised anywhere against the persons identified in the warrant. If ICE has reason to believe that the subject of an arrest warrant is located on your property, ICE can enter your property to make the arrest.
- Judicial search and seizure warrants identify specific locations that can be searched in order to seize evidence.
- If ICE has a judicial warrant that allows them access to your worksite, then you should cooperate.

ICE Raids - Plan ahead

For Private Areas (cont):

- Without a judicial warrant, ICE agents need YOUR permission to enter private areas of your business.
- If ICE agents try to enter a private area, you should say: “This is a private area. You cannot enter without a judicial warrant signed by a judge. Do you have a judicial warrant?”
- If ICE agents tell you that they have a judicial warrant, ask for a copy and read it.
- There is a difference between a judicial warrant and an administrative warrant. An administrative warrant does NOT allow agents to enter private areas without your permission. Administrative warrants are not from a court. They often say “Department of Homeland Security” and are often on Forms I-200 or I-205. If an ICE agent presents only an administrative warrant, which identifies an individual to be placed in ICE detention or removal proceedings, an employer can respond that the employer can only cooperate if the ICE agent presents a judicial warrant.

Judicial vs. Administration Warrant

Judicial Warrant

- Signed by a judicial court; federal court judge or magistrate; state court judge or magistrate
- Must comply
- Formal written order authorizing a law enforcement officer to make an arrest, a seizure, or a search
- Take a picture so can ascertain which it is.

Administrative Warrant

- Signed by Agency
 - Immigration Judge
 - ICE/CBP other federal agent
- Compliance only if within scope
- Does not authorize a search, but, in some circumstances, it may authorize a civil arrest or seizure.
- Contact counsel and provide the picture.

Judicial vs. Administrative Warrant

Judicial Warrant vs. ICE Administrative Document

UNITED STATES DISTRICT COURT - Issued by a 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)

540 Oak Avenue
Davis, California 95616

Case No.

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

Read attachments to make sure they are regarding YOU and YOUR address, not someone else's.
The person or property to be searched, described above, is believed to conceal (Identify the person or describe the property to be searched):
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)
Date for warrant, 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
at 10:00 AM

City and state: SACRAMENTO, CALIFORNIA

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

Signed by a JUDGE.

U.S. Department of Justice
Immigration and Naturalization Service

Warrant of Removal/Deportation

File No: _____
Date: _____

To any officer of the United States Immigration and Naturalization Service:

_____ (Full name of alien)
who entered the United States at _____ (Place of entry) on _____ (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 district director or a district director's 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:
Section 241(a)(5) of the Immigration and Nationality Act (Act), as amended.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General 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 the appropriation. "Salaries and Expenses Immigration and Naturalization Service 2002," including the expense of an attendant if necessary.

(Signature of INS official)

(Print name of official)

(Date and office location)

ICE Raids – Plan ahead

Sample warrants are available at:

- <https://www.uscourts.gov/sites/default/files/ao442.pdf> (judicial arrest warrant);
- <https://www.uscourts.gov/sites/default/files/ao093.pdf> (judicial search and seizure warrant);
- https://www.ice.gov/sites/default/files/documents/Document/2017/I-200_SAMPLE.PDF and
- https://www.ice.gov/sites/default/files/documents/Document/2017/I-205_SAMPLE.PDF (DHS administrative warrants).

ICE Raids – Plan ahead

What power does the school have if the federal government requests information on a student or parent for the purposes of immigration enforcement?

- In general, the Family Education Rights and Privacy Act of 1974 (FERPA) requires that schools withhold information that could identify students to third parties, including federal immigration officials.
- Furthermore, FERPA prohibits schools from disclosing personally identifiable information in a student's education records without consent or a subpoena. Even if presented with a subpoena, the school should consult with the school attorney to determine the validity of the subpoena before disclosing any information.
- Moreover, schools generally do not need to and should not inquire about or keep records on the immigration status of students and/or their family members.
- It is recommended that schools establish clear protocols for staff and faculty to follow if an immigration official asks a school for student information or for access to a student. Do not obstruct their activities by hiding others, providing false information, or destroying documents.

ICE Raids – Plan ahead

HOW EMPLOYERS CAN PREPARE FOR ICE ACTIONS

1. Make a written response plan ahead of time

- Make a plan that works for you.
- Practice – just like a fire drill. You will be more prepared if you know what to say and do.
- Have counsel on retainer who can assist you in determining how to proceed (review warrant, etc.) if ICE appears.

2. Identify who on your team will speak with ICE agents

- Ensure the team knows how to reply.
- Provide a script to front-line workers (e.g., receptionists, Human Resources staff, supervisors).

POSSIBLE SCRIPT IF ICE AGENTS APPEAR

ICE Raids/FDNS Site Visits – Plan ahead

WHEN ICE COMES ON THE PROPERTY

- Try to Stay Calm. Be Professional and Be Respectful.
- Immediately call _____
- Message to ICE Agent: “Can you please show me your warrant? I need to let my supervisor know that this is happening and that’s who I’m calling now while I work with you.”

1. **NO Warrant**

- If ICE does **not** have a warrant:
- Message: “Without a warrant I am not authorized to give you access. I will need to have you speak with my supervisor. I cannot do anything without calling my supervisor.”

2. **WARRANT**

- If ICE shows you a warrant, verify its validity and scope (contact counsel).
- If valid, you need to cooperate with ICE. Warrant may limit what ICE can do/access, so it is important to read it and to enable counsel to help with the process.
- Message: “Please let me look at the warrant and take a photo of it. I am going to need to contact my supervisor about this. I intend to cooperate with you.”
- Take a picture of the warrant and email it to _____ and immediately call _____.

ICE Raids – Plan ahead

- The plan may include:
 - If a determination is made that a valid warrant is presented, the school may want to decide in advance whether to request that the arrest not take place in a private communal space (such as a dorm) or on school property.
 - The school may want to decide in advance whether the school would want to try to negotiate the place of arrest so that others are protected from interaction and viewing of such an arrest.
 - The school may want to decide in advance whether to prepare a document that may be handed to a student or faculty member regarding their rights in such an interaction. Consult counsel to review any document to avoid an obstruction charge if this is considered.
 - Training staff to ensure they do not obstruct the governmental officer or instruct anyone to flee. Such actions may be charged as obstruction and similar criminal offenses.

Reminders for Employees During a Raid

Stay calm and do not run away (Anyone who tries to run away is likely to be suspected of being undocumented and is more likely to be arrested. It is safer for the employees to continue working, ask if they are being detained, and calmly ask if they may leave.)



You may remain silent or tell the ICE agent that you want to remain silent. If you do speak, do not lie. (You do not have to answer any questions about your immigration status, background, or your colleagues. If you answer questions, the immigration officials may ask you for your immigration documents.)



You can ask to speak with a lawyer.



You do NOT have to sign any documents or answer questions without your lawyer present.

During an ICE Raid

When ICE shows you an administrative warrant with an employee's name on it:

- You do NOT have to say if that person works there or if that person is there on that day.
- You do NOT have to take the ICE agents to the employee named on the warrant (even if he or she is at work at the time).
- If you are willing, you CAN video or record what the ICE agents do at your workplace. (To help ensure agents do not violated rights).
- Remain cordial and non-confrontational.

What if ICE Agents Try to Stop, Question, Detain, or Arrest a Worker and/or Student?

- ICE agents may try to stop, question, or even arrest a worker without the proper authority. The best way for workers and students to protect their rights is to stay silent and ask for an attorney.
- Workers and students do not have to hand over any IDs or papers to ICE.
- All workers and students have this right.

Expected Trend – Increased I-9/ E-Verify Audits

What is a Form I-9 Audit?

- A Form I-9 audit is when ICE comes to your business to check if you followed the rules for Form I-9.
- Form I-9 confirms a worker's identity and authorization to work in the U.S.

Employer I-9 Requirements

- A completed Form I-9 is required for all new employees.
- If an employer's employment authorization will expire, re-verify before the original employment authorization expiration date.
- Do not ask a worker to fill out a Form I-9 more than once unless their work permit is about to expire or you have another valid, legal reason.
- Uniformly maintain or don't maintain copies of the I-9 documents used to verify. (Don't keep some and not keep others.) Best practice is to uniformly maintain only the documents used to verify or re-verify. (If an employee provides more than required – do not maintain the additional documents not used to verify or re-verify as that can lead to a separate document abuse offense).
- Retain Form I-9 for all terminated employees either one year from the date of termination *or* three years from date of hire, **whichever is later**. (See the separate slide later for examples.)

Expected Trend – Increased I-9/ E-Verify Audits

I-9 Verification: Civil Violations & Penalties

- Failure to Complete or Properly Complete I-9 Forms
- Making false statements on the I-9 Form
- Knowing Hire – employing foreign national knowing he/she is not work authorized
- Continuing to employ foreign national once employer has learned that he/she is not work authorized
- Penalties
 - Unauthorized worker - \$716 - \$28,619 per worker
 - Paperwork violations - \$288 - \$2,861 for each I-9 form

Expected Trend – Increased I-9/ E-Verify Audits

Factors Used to Determine I-9 Fines

1. Whether the employer knowingly hired undocumented workers or committed a paperwork violation
2. Prior offenses
3. The percentage of total reviewed I-9s that have violations, and
4. Other factors such as business size, good faith, seriousness, employment of unauthorized aliens, and history.

Expected Trend – Increased I-9/ E-Verify Audits

Resources to Consult with I-9 Questions

- Handbook for Employers (Form M-274)
 - <https://www.uscis.gov/i-9-central/handbook-employers-m-274>
- USCIS I-9 Central
 - <https://www.uscis.gov/i-9-central/complete-and-correct-form-i-9>
- I-9 Form Instructions
 - <https://www.uscis.gov/i-9>
- Consult Legal Counsel

Expected Trend – Increased I-9/ E-Verify Audits

Information regarding I-9 Audits

- Audit Notice – Administrative Subpoena
 - Triggers 3 Days to Comply
 - Always Requests other information
 - Employee Information
 - Social Security Mismatch letters received
 - Payroll Records
 - Time Cards
 - I-9s for the Prior 3 years (may request I-9s without including a timeframe)
 - Independent Contractor Information

Expected Trend – Increased I-9/ E-Verify Audits

- Employer Responses
 - Comply
 - Request Extension of Time
 - Disruptive to Normal Operations
 - Overly burdensome
 - Will Comply within reasonable timeframe
 - Refuse to Comply
 - Government must go to Federal Court to enforce subpoena – Standard: Seriously disruptive to normal business operations

Expected Trend – Increased I-9/ E-Verify Audits

- Helping Employers Plan in Advance for I-9 Audits
 - Self-Audit I-9s and Correct all I-9s
 - Identify and prepare missing I-9s
 - Ensure Corrections comply with Legal Requirements for Transparency of Correction.
 - Purge I-9s according to Retention Rules
 - Ensure I-9 maintenance system complies with Legal Requirements
 - Ensure I-9 re-verification reminder system functioning
 - Ensure I-9 verification/re-verification personnel properly trained with sufficient personnel
 - Ensure Policies and Procedures are place governing I-9 Compliance Actions

Expected Trend – Increased I-9/ E-Verify Audits

- Ensure appropriate calculation of the I-9 purge date before purging any I-9s.
- Purge I-9 forms according to retention rules (Retain Form I-9 for all terminated employees either one year from date of termination or three years from date of hire, **whichever is later**)

Examples

Start Date	End Date	Date of Purge
1/15/2010	2/15/2010 (1 mo employment)	1/16/2013 (3 yrs from hire)
1/15/2010	2/15/2011 (1 yr, 1 mo employment)	1/16/2013 (3 yrs from hire)
1/15/2010	1/15/2012 (2 yrs employment)	1/16/2013 (3 yrs from hire)
1/15/2010	2/15/2012 (2 yrs, 1 mo employment)	2/16/2013 (1 yr from term)

Changes for Foreign Born Faculty and Students – Plan Ahead

- Potential for Workforce Changes – Status and Work Authorization Revoked for Some (certain TPS, Humanitarian Parole, etc.)
- ICE Raids – Legally required to carry evidence of lawful immigration status at all times.
- Enhanced Vetting of Social Media with the Potential for Revocation of Student Visas
- Acknowledge Extreme Vetting of Backgrounds (organizational affiliations, personal affiliations, prior activities (criminal and political) may place at risk immigration status.
- If international travel requires obtaining a visa to return to the U.S., individuals should plan ahead. Acknowledge it may take longer to secure a visa.
- Verify with counsel whether there are unexpected changes impacting travel and/or additional documentary requirements directly before departing the U.S.
- Any foreign national with any prior arrest, conviction, or negative prior interaction with U.S. immigration, should consult an attorney before traveling internationally.

Changes for Foreign Born Faculty and Students – Plan Ahead

It is important for foreign born employees and students to know their rights in advance of any interaction with ICE. What are those rights if they are questioned or detained by ICE?

- Ask “Am I free to go?” If so, depart.
- They have the right to speak with and be represented by an attorney (not at government cost). Whereas they can ask whether they may call their attorney at that moment, unfortunately, the ICE officer may not permit that at the moment.
- They have a right to not sign anything they do not understand or sign anything that indicates they wish to depart the U.S. without appearing before an Immigration Judge.
- Request a local phone call.
 - They should memorize phone numbers of family/friends with legal status. Ensure the designated family/friends have their attorney’s contact information.
 - Immigrants have the right to call their consulate.

What are the constitutional rights that may be implicated?

- All people in the United States, regardless of immigration status, have certain rights and protections under the U.S. Constitution and can state:
- I do not wish to speak with you, answer your questions, or sign or hand you any documents based on my 5th Amendment rights under the United States Constitution.
- I do not give you permission to enter my home based on my 4th Amendment rights under the United States Constitution unless you have a warrant to enter, signed by a judge or magistrate with my name on it that you slide under the door.
- I do not give you permission to search any of my belongings based on my 4th Amendment rights.

Overall Takeaways

- Planning is a key for success- especially with rapid changes in policies/procedures.
- Collaboration with counsel in planning provides greater protection.
- Understanding the difference between an ICE raid and an FDNS Site Visit and will enable informed decisions about when to cooperate.
- Preparing and executing plans for ICE and I-9 governmental actions enables the best chance to minimize resulting issues.
- Understanding the changing landscape/expected changes empowers better informed decisions geared toward great success.

Q&A



Thank you!