



How Employers Can Prepare for Immigration Audits and Visits

April 2, 2025



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Agenda

- Current Landscape of Immigration Enforcement
- General Tips
- Employment-Specific Concerns
- Healthcare-Specific Concerns

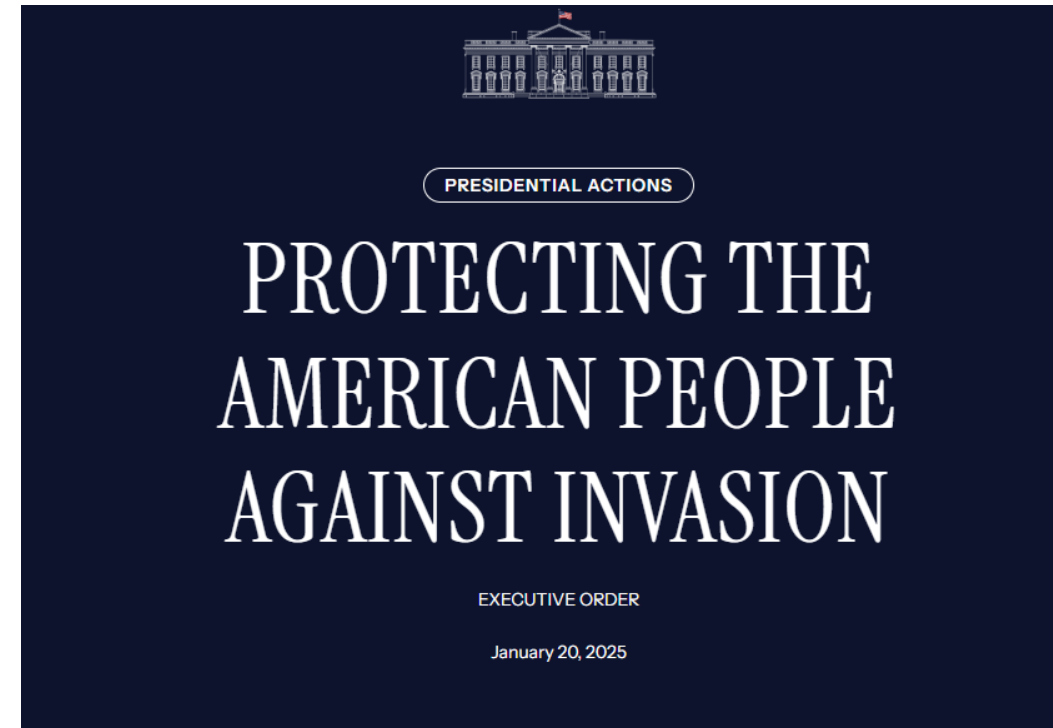




Current Landscape of Immigration Enforcement

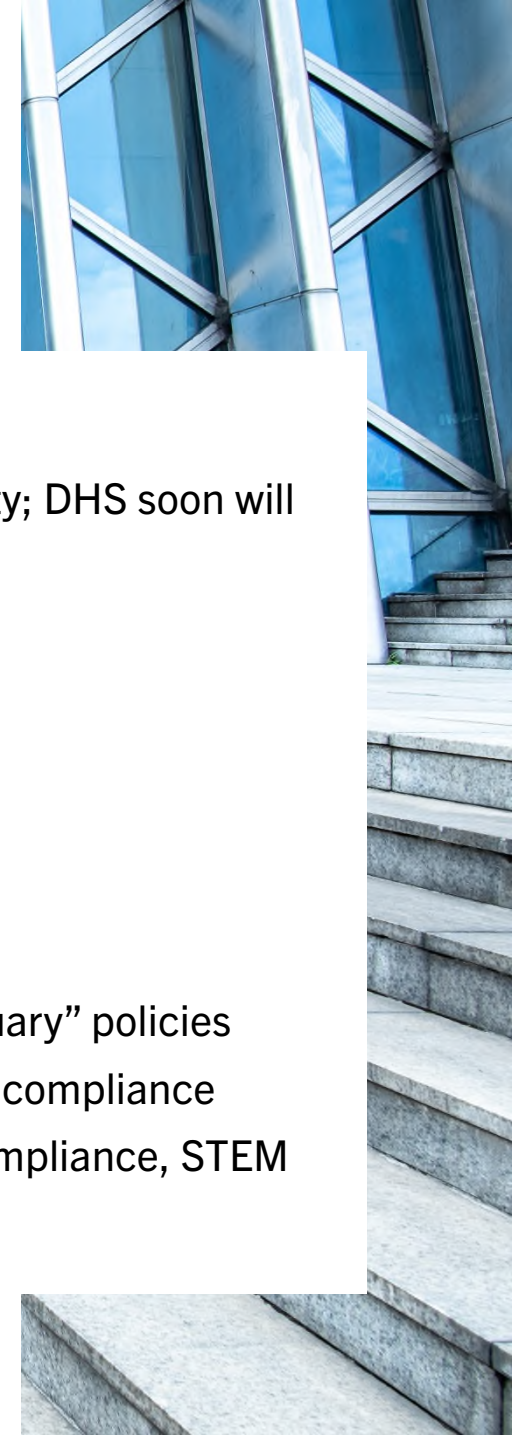
Immigration Enforcement – Lay of the Land

- On January 20, 2025, President Trump issued an executive order that directed all executive branch departments and agencies to “employ all lawful means” to ensure “total and efficient” enforcement of federal immigration laws.



Immigration Enforcement – Lay of the Land

- Shift of more investigative and prosecutorial resources to immigration enforcement
 - U.S. Department of Homeland Security (DHS) has increased removal operations and border security; DHS soon will increase
 - Form I-9, Employment Eligibility Verification inspections
 - E-Verify audits
 - May push for an E-Verify requirement nationwide
 - U.S. Department of Justice (DOJ) is more aggressively pursuing
 - Criminal charges for immigration-related violations where supported by the evidence
 - Uncooperative jurisdictions for interference with federal law enforcement
 - Pending lawsuits against the city of Chicago and the states of Illinois and New York for “sanctuary” policies
 - DHS and the U.S. Department of Labor (DOL) are expected to increase review of other immigration compliance
 - Site visits – e.g., Fraud Detection and National Security (FDNS), Labor Condition Application compliance, STEM Optional Practical Training
 - Other employment-based immigration case scrutiny



New Policy on Immigration Enforcement in Sensitive Locations

- DHS has rescinded its prior “protected” (sensitive) area policy that prevented immigration enforcement activities in or near certain areas without prior approval from DHS Headquarters in Washington or exigent circumstances. Sensitive locations include:
 - Schools
 - Medical facilities
 - Places of worship
 - Social service centers
 - Daycare centers
 - Shelters

FROM: Alejandro N. Mayorkas
Secretary

SUBJECT: **Guidelines for Enforcement Actions in or Near Protected Areas**

This memorandum provides guidance for ICE and CBP enforcement actions in or near areas that require special protection. It is effective immediately.

This memorandum supersedes and rescinds John Morton’s memorandum entitled, “Enforcement Actions at or Focused on Sensitive Locations” (number 10029.2, dated October 24, 2011), and David Aguilar’s memorandum entitled, “U.S. Customs and Border Protection Enforcement Actions at or Near Certain Community Locations” (dated January 18, 2013).

DHS Directive *Enforcement Actions in or Near Protected Areas* (Jan. 20, 2025)

The Department of Homeland Security (DHS) issued a directive — *Enforcement Actions in or Near Protected Areas* — on Jan. 20, 2025, for U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP), superseding and rescinding DHS’s Oct. 27, 2021, memorandum of the same title, which determined that certain locations require special protection from enforcement of U.S. immigration laws.

The Jan. 20, 2025, DHS *Enforcement Actions in or Near Protected Areas* directive recognizes that “officers frequently apply enforcement discretion to balance a variety of interests, including the degree to which any law enforcement action occurs in a sensitive location. Going forward, law enforcement officers should continue to use that discretion along with a healthy dose of common sense.”

New Policy on Immigration Enforcement in Sensitive Areas

- New Memo issued on January 31, 2025: “Common Sense Enforcement Actions in or Near Protected Areas”
 - “Common sense” and “good judgment” now guide whether to conduct enforcement in or near protected (sensitive) areas
 - Authority to authorize moved from Washington, D.C., to local or regional offices
 - Approval by Assistant Special Agent in Charge or Assistant Field Office Director unless exigent circumstances (national security, threat to public safety, other emergency circumstances)
 - To date, no significant enforcement activity in sensitive spaces since new policy

Expanding the Reach – Combined Federal Agency Efforts

- DHS's primary enforcement divisions
 - U.S. Immigration and Customs Enforcement (ICE) or its specialized unit, Homeland Security Investigations (HSI)
 - U.S. Customs and Border Protection (CBP)
- Additional federal agencies are partnering with DHS to increase DHS's reach
 - Federal Bureau of Investigation (FBI)
 - Department of State's Diplomatic Security (DSS)
 - Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF)
 - Secret Service
 - Others



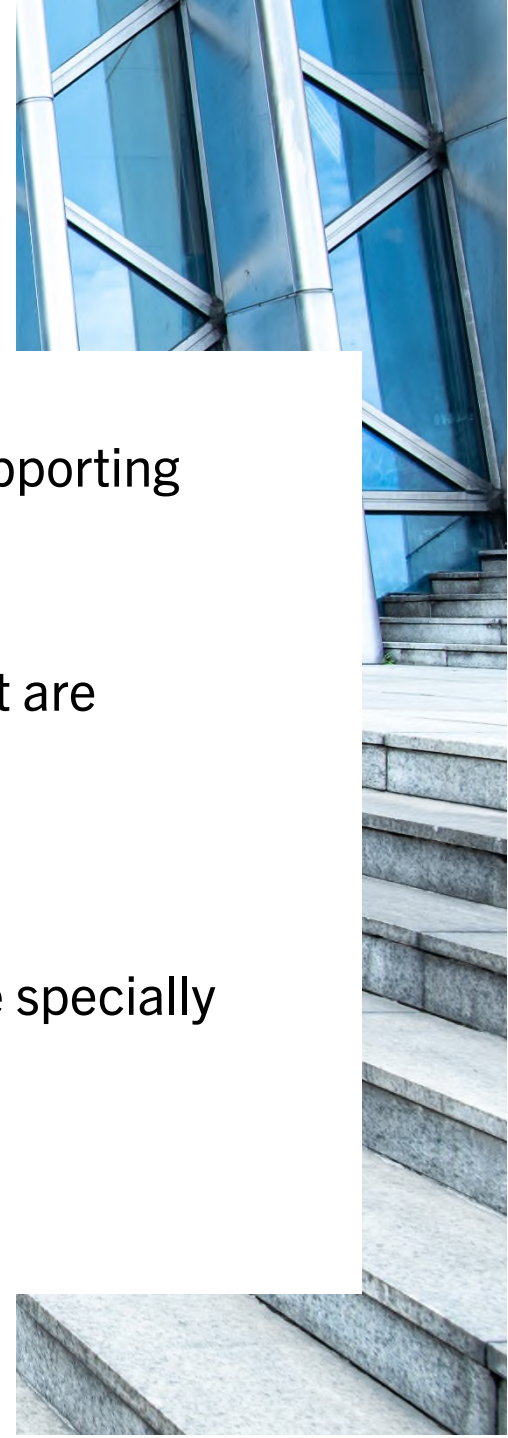
**U.S. Immigration
and Customs
Enforcement**



Review Your Policies

Review Your Policies

- With a greater focus on immigration enforcement, it is more likely that ICE or a supporting federal agency will visit a worksite or facility
- Immigration authorities are specialized law enforcement
- Policies that instruct employees how to respond to inquiries from law enforcement are applicable
- Review your organization's policies to identify the gaps and updates needed
- Train employees on these policies periodically
- Companies and other organizations should consider appointing “liaisons” who are specially trained and authorized to interact with law enforcement

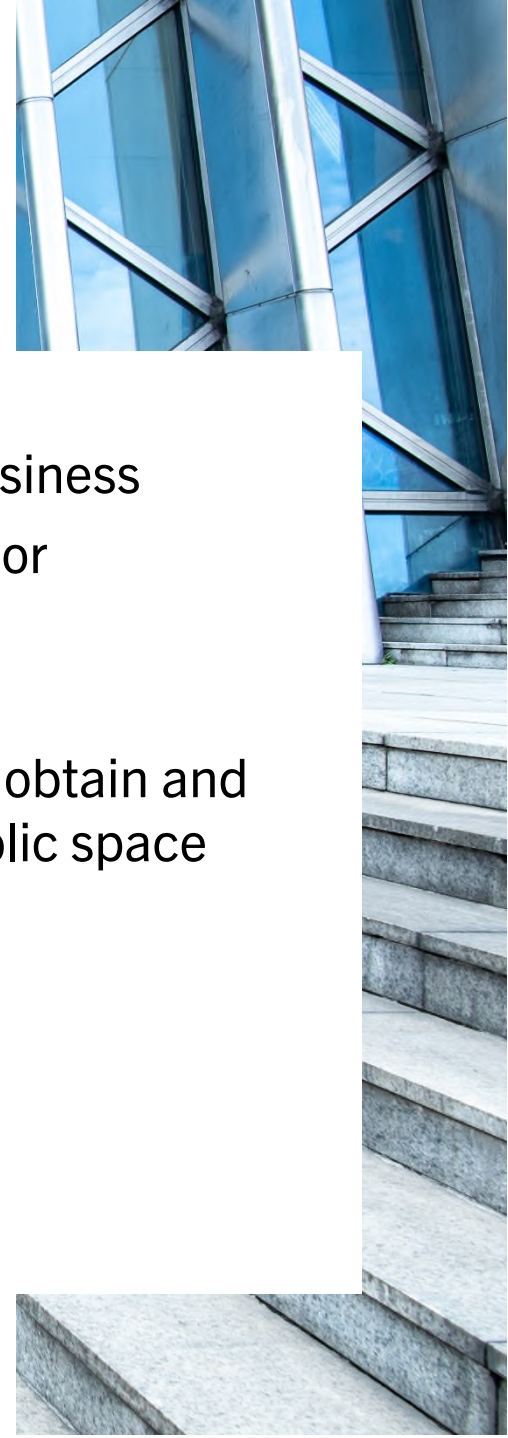




Delineate Between the Public and Private

Delineation Between Public and Private Space

- Immigration agents do not generally need permission to enter *public* areas of a business
 - Public areas are those that are accessible to the general public: visitors, clients or customers, employees, patients (for healthcare facilities), and others
 - This can include: parking lots, waiting areas, hallways, lobbies, entrances, etc.
- To go beyond public spaces into private spaces, enforcement agents may need to obtain and show a search warrant (not only to apprehend individual, but to enter the non-public space absent permission)
- Encourage clients to have a clear delineation of public and private areas

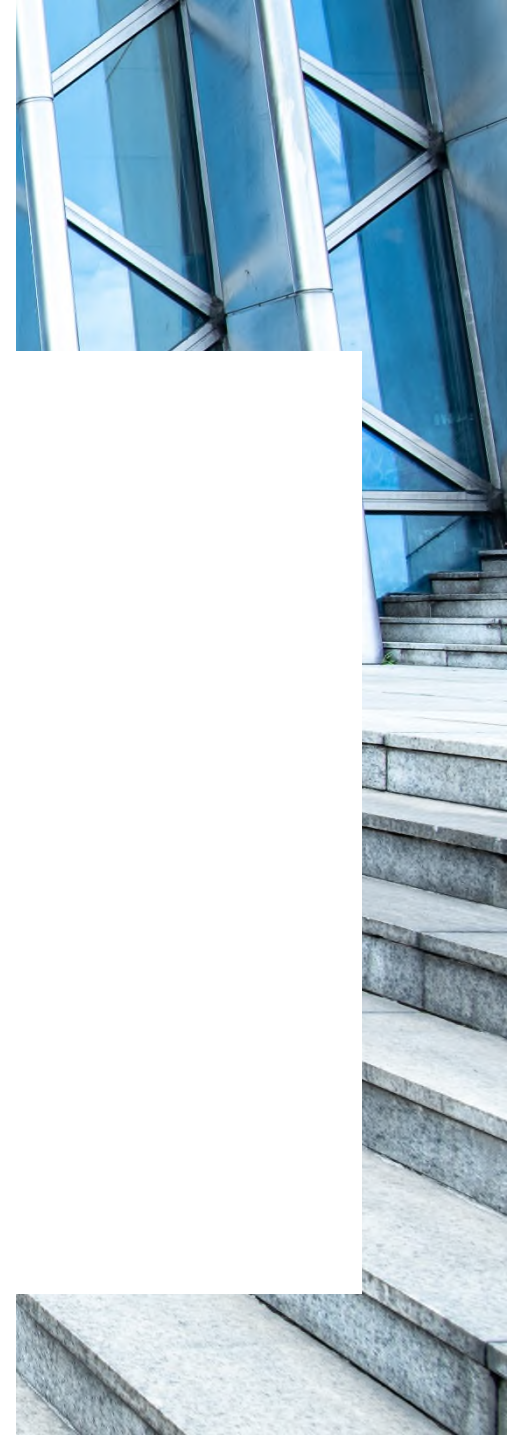




Read the Warrant

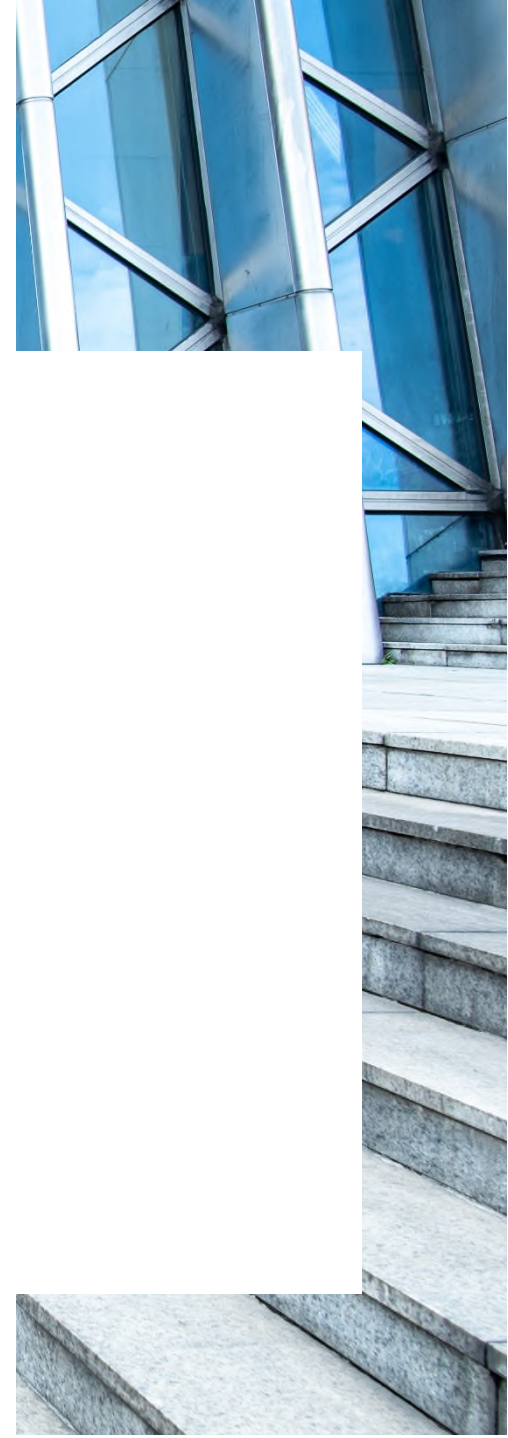
Review the Warrant

- Consent or no consent
- If no consent, employee must ask to see law enforcement's warrant
- Several types of warrants that could be used:
 - Judicial Warrant
 - Arrest of particular individual(s)
 - Search of a private space for a particular individual(s)
 - Search of particular place(s) for evidence
 - Administrative Warrant for arrest
 - “Blackie’s” Warrant for civil search



Judicial Warrants

- Issued by a court
 - Look for the specific court at the top
- Signed by judicial officer
 - Look for signature from a judge at the bottom
 - Most will be federal warrants signed by a Magistrate Judge
- What is the warrant authorizing?
 - Arrest
 - Search (space)
 - Search (individual)



- Permits law enforcement to search a particular individual or a particular private space **for persons or the items identified**

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Judicial Warrant: Arrest

- Does **not** permit law enforcement to enter a particular private space
- **Does** permit law enforcement to arrest the person listed in the warrant

AO 442 (Rev. 11/11) Arrest Warrant

UNITED STATES DISTRICT COURT

for the

United States of America
v.

Case No.

Defendant

ARREST WARRANT

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay
(name of person to be arrested),
who is accused of an offense or violation based on the following document filed with the court:

☐ Indictment ☐ Superseding Indictment ☐ Information ☐ Superseding Information ☐ Complaint
☐ Probation Violation Petition ☐ Supervised Release Violation Petition ☐ Violation Notice ☐ Order of the Court

This offense is briefly described as follows:

Date: _____

City and state: _____

Issuing officer's signature _____

Printed name and title _____

Return

This warrant was received on (date) _____, and the person was arrested on (date) _____
at (city and state) _____.

Date: _____

Arresting officer's signature _____

Printed name and title _____

Administrative Warrant Authorizes an Arrest/Removal

- Authorizes officer from a federal agency, such as ICE or CBP, to make an arrest or remove/deport a particular person
- Issued by a **federal agency**, not a court
 - Signed by an “immigration judge” or “immigration official”
- Does **not** allow agents to enter a private area to apprehend a person or search an area, **even if the agents reasonably believe the person is located in that area**

U.S. DEPARTMENT OF HOMELAND SECURITY		Warrant for Arrest of Alien	
		File No. _____	
		Date: _____	
To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations			
I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:			
<input type="checkbox"/> the execution of a charging document to initiate removal proceedings against the subject;			
<input type="checkbox"/> the pendency of ongoing removal proceedings against the subject;			
<input type="checkbox"/> the failure to establish admissibility subsequent to deferred inspection;			
<input type="checkbox"/> biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or			
<input type="checkbox"/> statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.			
YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.			
		_____ (Signature of Authorized Immigration Officer)	
		_____ (Printed Name and Title of Authorized Immigration Officer)	
Certificate of Service			
I hereby certify that the Warrant for Arrest of Alien was served by me at _____ (Location)			
on _____ on _____, and the contents of this (Name of Alien) (Date of Service)			
notice were read to him or her in the _____ language. (Language)			
_____ Name and Signature of Officer		_____ Name or Number of Interpreter (if applicable)	

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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:

(Signature of immigration officer)

(Title of immigration officer)

(Date and office location)

“Blackie’s” Warrant

- Named after *Blackie’s House of Beef v. Castillo*
- Civil search warrant
- Issued by Magistrate Judge
- Does not always name or even describe the person or people sought
- Authorizes entry to private premises to enforce the civil/administrative provisions of law relating to exclusion/deportation
- *May* authorize search of a private space
- Out of favor in many jurisdictions

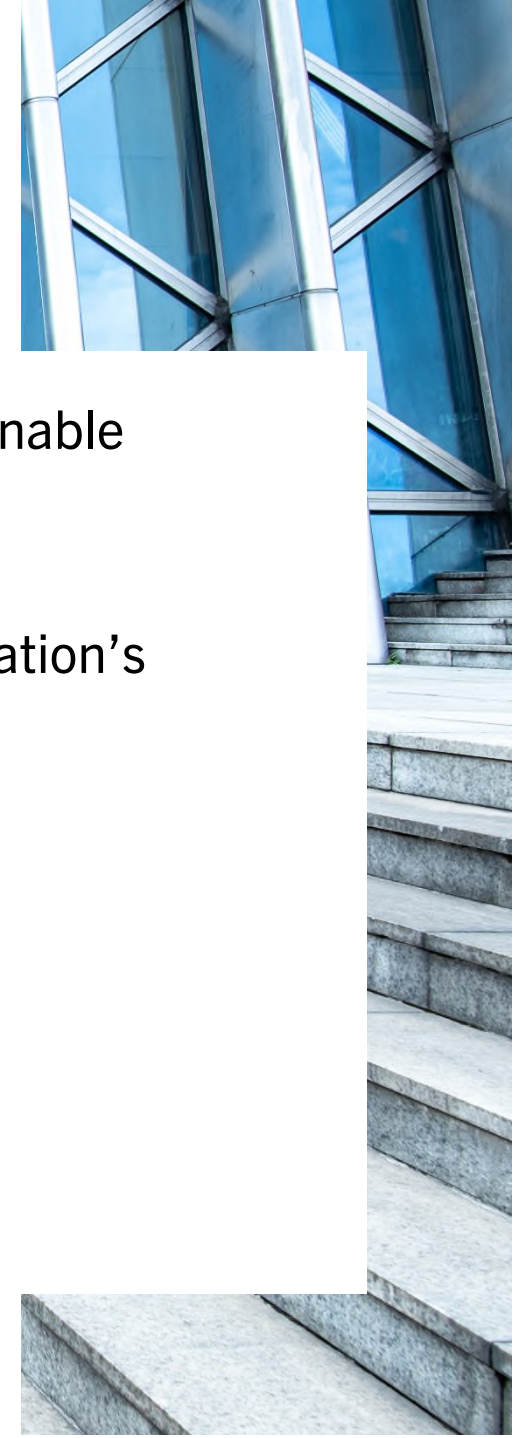
In our view, this warrant on the whole was reasonable, and reflects a balancing of public and private interests adequate for the purposes of the fourth amendment. What this warrant lacked in specificity as to the persons sought was counterbalanced by its specificity as to the places to be searched, the time and scope of the search, and its strong supporting affidavits. We therefore reverse *Blackie’s II*.



Triage

Training Employees to Triage

- Companies and other organizations should request from law enforcement a reasonable amount of time to review and perform an initial assessment of the warrant
- Escalate appropriately to legal counsel or point person as needed
 - Counsel should carefully review warrant to determine the company's or organization's obligations in interacting with law enforcement
- Reach out to your attorney to more fully assess implications





Employment Considerations

Risks to Employers: Federal Crimes



Pattern and practice in hiring undocumented workers (misdemeanor).
8 USC § 1324a(f)



Harboring/shielding undocumented workers from detection.
8 USC § 1324(a)(1)(iii)



Making false statements on a federal matter or false attestation on Form I-9 (Perjury and Visa Fraud).
18 USC §§ 1001, 1546(b)



Knowingly hiring 10 unauthorized workers (or more) in 12-month period.
8 USC § 1324(a)(3)



Encouraging or inducing undocumented workers to remain in violation of law.
8 USC § 1324(a)(1)(iv)

- Recently upheld by U.S. Supreme Court (*U.S. v. Hansen*)



Forced Labor/Benefitting from Forced Labor.
18 USC §§ 1589, 1590



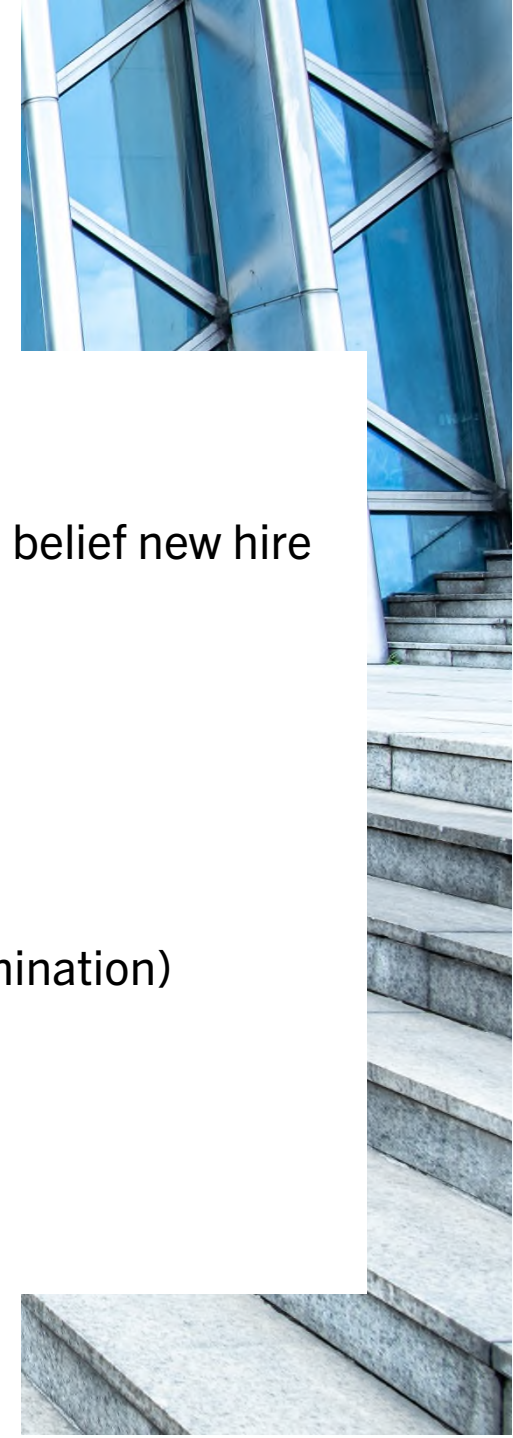
Current Enforcement Trends

- DHS Worksite Enforcement Strategy
 - Conduct I-9 audits and impose fines
 - Joint employment/temp agency
 - Prosecute employers who engage in unlawful activity
- DHS/DOJ Taskforce Approach
 - DHS (ICE or HSI) oversees investigation
 - DHS may send other federal agencies for on-site investigation



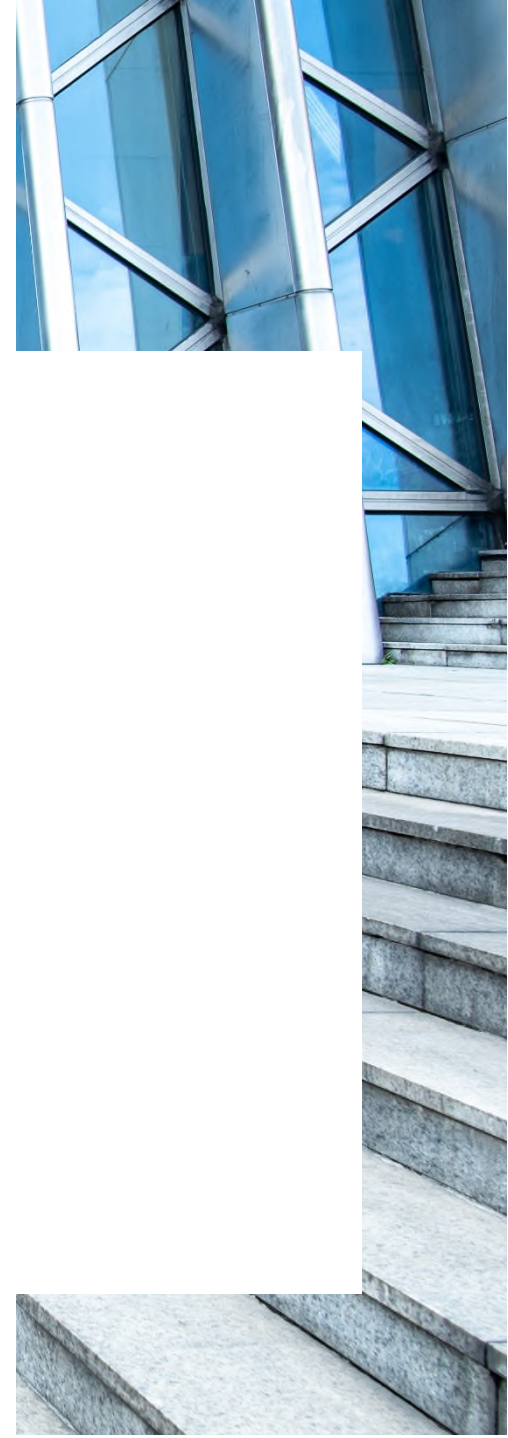
I-9 Compliance

- DHS Requires:
 - All new hires at all employers must properly complete/timely I-9 documentation
 - Employer review of evidence of identity and employment eligibility; must have good faith belief new hire is eligible to work in US
 - Good faith belief current employees/re-hires continue to be eligible to work
 - Properly run E-Verify (where required)
 - E-verify is all or nothing; cannot selectively use it.
 - Twenty-three states have laws which require some or all employers to use E-Verify
 - Storage of paperwork for statutory periods (later of 3 years after hire, or 1 year after termination)
- DOJ/EEOC Require:
 - Non-discrimination on the basis of national origin, citizenship, or immigration status
 - No unfair documentation practices



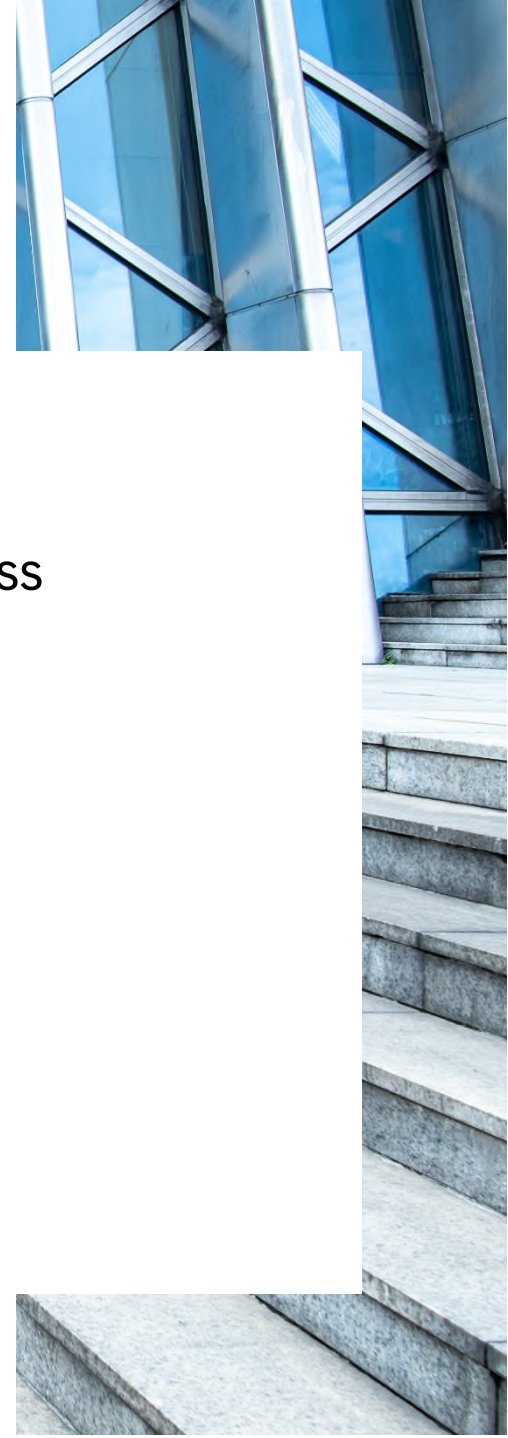
I-9 Compliance

- “Good Faith” belief of work authorization
 - Actual/constructive knowledge of unauthorized worker(s) may be found if:
 - Improper or missing I-9s
 - Expired temporary work authorization
 - Obviously fake/fraudulent documentation
 - Employee confession and allowed to continue to work
 - Use of contractors/staffing agencies to avoid I-9 requirements
 - Failure to act upon government notification



Possible Immigration Enforcement Activities

- “Knock and Talk”
 - Voluntary cooperation requested of employer to answer questions about business practices or a specific individual
- Notice of Inspection
 - Audit of Form I-9s, payroll records, status of workforce, use of temp labor services/contractors
- Worksite Enforcement (i.e., a “raid”)
 - Element of surprise used to minimize evasive efforts

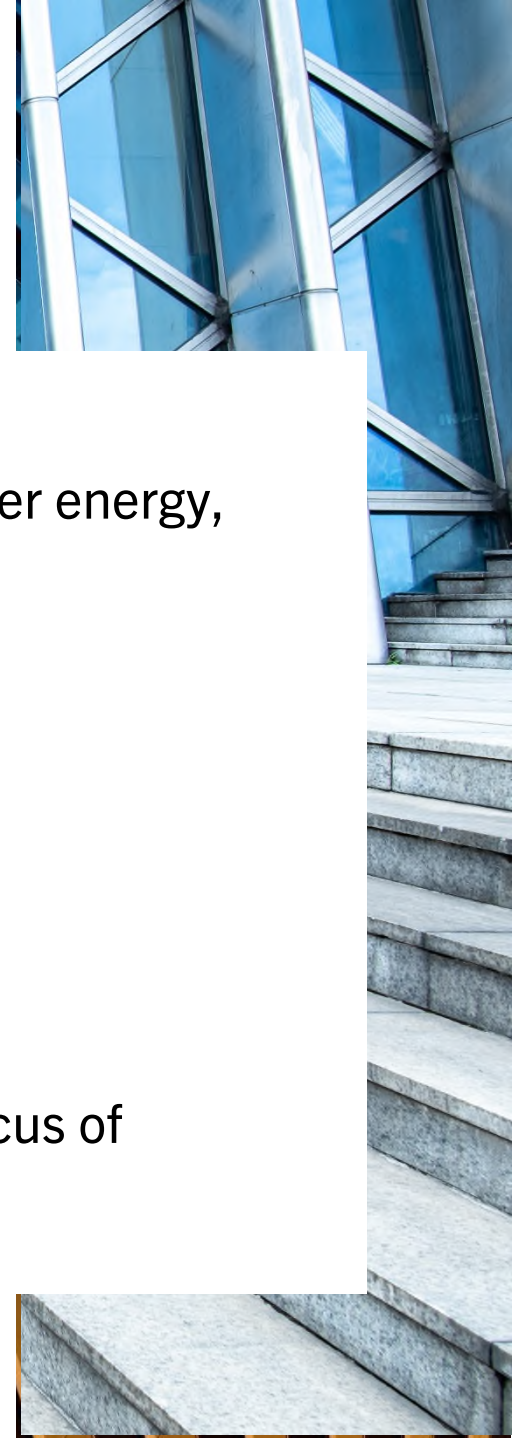


I-9 Inspections

- ICE (or its specialized unit HSI) will initiate the I-9 inspection by serving a Notice of Inspection (NOI) upon an employer
 - Have at least ***three business days*** to produce the Form(s) I-9 requested in the NOI
- ICE/HSI generally also request supporting documentation
 - Most recent quarterly payroll
 - List of active and terminated employees
 - Articles of Incorporation, business licenses, certain contracts
 - Other evidence
- ICE/HSI may issue different notices during the inspection process, including a Notice of Technical or Procedural Failures
 - At least 10 business days to make corrections
 - Monetary fines for all substantive violations and **uncorrected** *technical or procedural failures*

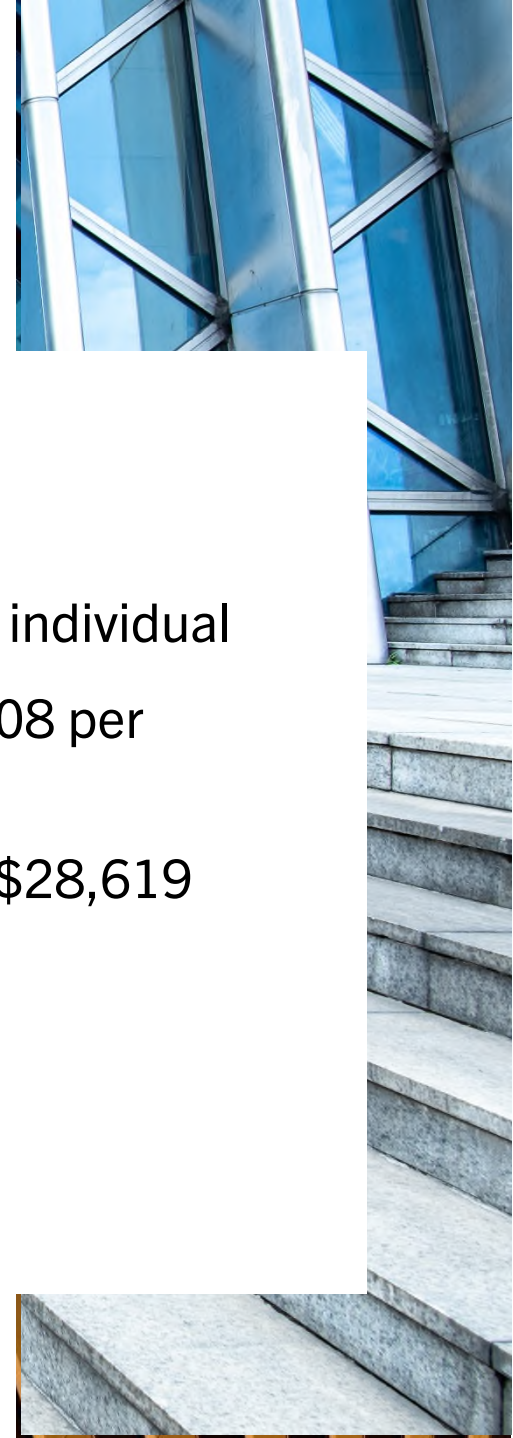
I-9 Inspections – Some Triggers

- Employers at higher risk
 - Engaged in critical infrastructure or national security (e.g., electrical grid, other energy, transportation, certain technology, other)
 - Operates in an industry that may struggle to maintain a lawful workforce
 - Hospitality, retail, and temporary staffing services
 - Food processing and related manufacturing
 - Construction
 - Agriculture
 - Larger operations
 - Recent government visits or inquiries, prior history of violations, or current focus of criminal investigation



I-9 Inspections

- Current Penalties (fine schedule set in January 2025)
 - I-9 Paperwork Violations: \$288 to \$2,861 per Form I-9
 - Knowingly Employing Unauthorized Alien (First Offense): \$716 to \$5,724 per individual
 - Knowingly Employing Unauthorized Alien (Second Offense): \$5,724 to \$14,308 per individual
 - Knowingly Employing Unauthorized Alien (Third or More Offense): \$8,586 to \$28,619 per individual

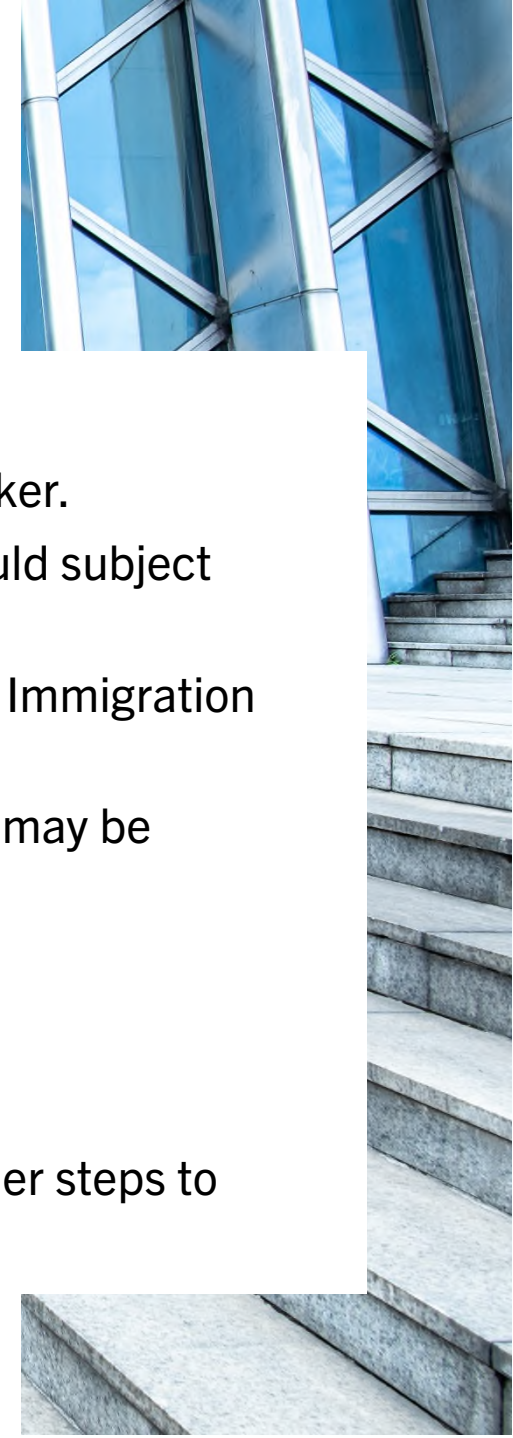


Additional Concern for Employers: Revocation of Status

- Temporary Protected Status (TPS) is a temporary immigration status that allows people from certain countries to stay in the United States. It's granted when it's unsafe for people to return to their home country due to armed conflict, natural disasters, or other humanitarian emergencies.
- 17 countries are currently designated. Those on TPS are eligible for work authorization.
- On February 1, 2025, Secretary of Homeland Security Noem terminated the 2023 designation of Venezuela for TPS. (approx. 350,000)
- On February 24, 2025, DHS Secretary Kristi Noem partially vacated the 2024 decision that extended and redesignated Haiti for Temporary Protected Status (TPS), shortening the period from 18 to 12 months, with a new end date of August 3, 2025 (approx. 500,000).
- On March 25, 2025, the U.S. Department of Homeland Security (DHS) announced the immediate termination of the Cuba, Haiti, Nicaragua, and Venezuela (CHNV) parole programs, affecting approximately 532,000 individuals who will lose their parole and associated benefits by April 24, 2025.

Additional Concern for Employers: Revocation of Status and Arrests

- With the revocation of status comes automatic revocation of work authorization.
- When that happens, it is illegal for an employer to continue to employ an unauthorized worker.
- Failure to terminate when work authorization is lost, even if done with charitable intent, could subject the employer and individual managers to criminal prosecution.
- At the same time, terminating individuals prior to loss of work authorization is a violation of Immigration Reform and Control Act (“IRCA”) and potentially, national origin discrimination.
- An additional concern for employers is the potential that employees with temporary status may be subject to arrest and immediate deportation at any time and any place.
- Pay attention to the news:
 - A federal court recently [temporarily enjoined DHS’s termination of TPS for Venezuelans.](#)
 - The other revocations also may be subject to legal challenges in the courts.
- It is likely the administration will continue to revoke the TPS of other nationals and take other steps to revoke work authorization





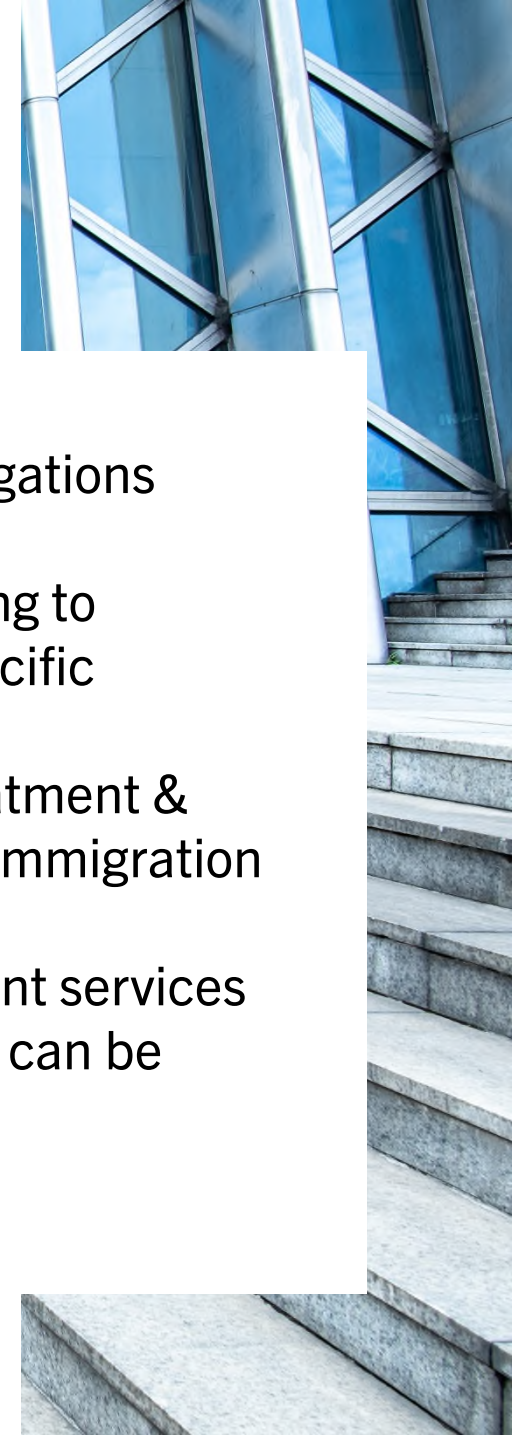
Considerations in the Healthcare Space

Consider HIPAA

- Companies may need to review a warrant or informal request to ensure compliance with applicable privacy laws
- PHI (protected health information) may be disclosed under HIPAA and state law in limited circumstances
- HIPAA permits:
 - Disclosure of PHI in compliance with warrant, subpoena, or summons
 - Disclosure pursuant to administrative requests for which response is required by law if:
 - Information sought is relevant and material to law enforcement agency
 - Information sought is specific and limited in scope
 - De-identified information could not be reasonably used

State Law Considerations

- Health care providers need to assess applicable state laws and patient-care obligations when responding to immigration visits.
- Some states have issued guidance for certain health care providers on responding to immigration enforcement activities in the state, and may require adoption of specific policies and procedures.
- Hospitals need to consider compliance with the federal Emergency Medical Treatment & Labor Act (EMTALA) and parallel state laws when evaluating the response to an immigration visit.
- Health care providers also need to evaluate the need to provide ongoing treatment services to patients when responding to immigration visits and consider whether patients can be safely discharged.





Avoid Obstruction

Employees and Companies Should Avoid the Appearance of Obstruction of Law Enforcement

- Even if activities appear to go beyond the scope of the warrant, interfering is **not helpful** and may risk ***criminal charges***
- Legal remedies for unlawful search/seizure are addressed later in the process
- Avoid actions that may escalate already tense situations
- May risk federal funding by obstructing

Justice Department directs prosecutors to probe local efforts to obstruct immigration enforcement

Story by Eric Tucker and Alanna Durkin Richer • 3w • ⌚ 1 min read

Justice Dept. to Investigate Local Officials Who Obstruct Immigration Enforcement

A memo asserts that state and local officials are bound to cooperate and could face criminal prosecution or civil penalties if they fail to comply.



WHAT EMPLOYERS SHOULD BE DOING NOW

How Employers Can Prepare

- Train employees who have involvement with all of the topics covered today so they may respond appropriately and know who to inform in the event of a law enforcement visit.
- This includes security, HR, receptionists, and those in charge on “off” shifts.
- Consider the PR aspects of any enforcement action against your company and have a response ready.
- Review or audit your I-9s now to ensure they are properly completed. *Consult with counsel on the I-9 rules.*
- Review or audit your I-9s now to determine if you have employees who will lose work authorization. *Consult with counsel on the legal rules.*
- Watch for the outcome of court cases as well as additional revocations of temporary permissions to remain in the United States.



QUESTIONS?

About Foley

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