

AG IMMIGRATION LAW BASICS:

IMMIGRATION ENFORCEMENT AT THE WORKSITE



Presented By New York Farm Bureau and Rural Law Initiative

This webinar is presented by New York Farm Bureau and the Rural Law Initiative.



Farm Bureau is a non-governmental, volunteer organization financed and controlled by member families for the purpose of solving economic and public policy issues challenging the agricultural industry. The mission of New York Farm Bureau is “To Serve And Strengthen Agriculture.”



The Rural Law Initiative offers legal assistance to entrepreneurs, small businesses, and farmers in upstate New York. The Rural Law Initiative is a pilot project housed at the Government Law Center at Albany Law School and has satellite offices in Herkimer, Otsego, and Schoharie counties.



**Kendra Sena, Esq.
Senior Staff Attorney
Government Law Center
Albany Law School**



Disclaimer

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IMMIGRATION ENFORCEMENT AT THE WORKSITE



IMMIGRATION ENFORCEMENT AT THE WORKSITE 2017-2018

	2017	2018
Worksite investigations	1,691	6,848
I-9 audits	1,360	5,981
Criminal worksite arrests	139	779
Administrative worksite arrests	172	1,525

Source: <https://www.ice.gov/news/releases/ice-worksite-enforcement-investigations-fy18-surge>



WHY MIGHT IMMIGRATION OFFICERS COME TO YOUR FARM?

- There are **two reasons** that immigration officers may visit a place of business:
 - To conduct an **inspection** of a business' I-9 employment authorization records
 - To conduct an **enforcement** action to find and detain people, documents, or property within a business
- **Farmers should be prepared for both types of visits**



WHAT'S AT STAKE

- Potential consequences:
 - Employers may be fined and in some instances criminally prosecuted; fines range from \$110 for document errors to \$16,000 for knowing and repeated violations;
 - Workers—including authorized workers—may be detained and deported; and
 - Businesses may be barred from federal contracts.

OBJECTIVES

- Inspection v. Enforcement
- Public v. Private spaces
- Judicial v. Administrative warrants
- Actions steps before, during and after a raid

INSPECTION v. ENFORCEMENT



INSPECTION: PREPARING I-9 FORMS

Federal law requires employers to complete an **I-9 Form** for each new employee to verify their identity and eligibility to work in the United States. An I-9 form must be completed for all employees, including U.S. Citizen employees, and retained for inspection by federal agents.

INSPECTION: PREPARING I-9 FORMS

You are **required** to :

- Complete an I-9 Form for all new employees
- Keep I-9 forms on file for every current employee.
- Maintain the forms for 3 years after hire date or 1 year after termination, whichever is later.

You are **not required** to:

- Be a document expert
- Keep copies of the documents an employee presents

You are **not permitted** to:

- Request more or different documents than are required, reject reasonably genuine-looking documents, or specify certain documents over others
- Discriminate by asking for more or different documents from a worker based on race, ethnicity, or national origin

INSPECTION: PREPARING I-9 FORMS

For more on I-9s, see **USCIS Employer Handbook**, available at:

<https://www.uscis.gov/i-9-central/>

INSPECTION:THE I-9 AUDIT

Federal agencies may inspect a business' I-9 forms to ensure compliance:

- **Department of Homeland Security**
- **Department of Justice**, Immigrant and Employee Rights Section (IER)
- **Department of Labor**

An I-9 audit begins with a **Notice of Inspection (NOI)**. You are entitled to 3 days' notice before you must turn over your files.



INSPECTION:THE I-9 AUDIT

Conduct self-audits to ensure compliance: Best practices

- Keeps I-9s separate from employee personnel files
- Make sure all of your current and recent employees have an I-9 on file
- Keep the forms for 3 years after hire date or 1 year after termination, whichever is later
- If you have workers with temporary authorization, update their I-9s when their authorization expires
- If you discover a mistake, correct it:
 - *Make the edit on the original I-9: strike out, correct, date, and initial; do not use white-out.*
 - *If you must complete a new I-9, attach the original with a memo explaining the changes.*
 - *If you are missing an I-9 Form, complete one. Enter the actual hire date and the date the form is completed.*

INSPECTION AND ENFORCEMENT

- **Inspection**

- I-9 form for each new employee
- Audits look for compliance and retention
- Notice of Inspection (NOI):
You are entitled to 3 days' notice

- **Enforcement**

- AKA a “raid”
- Without warning
- Often follows an I-9 audit or other investigation.



ENFORCEMENT:WHO

- Field Agents from the U.S. Department of Homeland Security Immigration and Customs Enforcement (ICE)
 - Are not police officers, but may identify as such
 - May be accompanied by local police



ENFORCEMENT: WHAT

If federal agents want to enter the private areas of your business to look for:

- Documents
- Property
- People

They must have either your permission or a **judicial warrant**.



ENFORCEMENT: WHERE

ICE agents, can enter public areas of your business without permission

> *Public areas include:* parking lots, lobbies, restaurant dining areas, sales floors, farm stands and retail shops that are open to the public

ICE agents may not enter private areas of your business without either your permission or a judicial warrant.

> *Private areas include:* back offices, kitchens, factory floors, fields, barns, worker housing, and any other area that is not open to the public



ENFORCEMENT: STEPS TO PREPARE

1. Clearly mark private spaces

Post signs that say “Private,” “Employees Only,” or “Do Not Enter.”

2. Train your workers and managers

Do not consent to ICE agents entering private areas.

3. Keep your I-9 files separate.

Do not turn over extra files. Remember you are entitled to 3-days’ notice after an NOI



ENFORCEMENT: STEPS TO PREPARE

4. Establish a protocol. Assign a point person who will:

- Speak with ICE agents and determine the purpose of their visit
 - Ask to see a warrant
 - Decline to consent to a search if presented with an Administrative Warrant
 - Contact the business owner, attorney, or other authority
 - Document ICE actions
- Make sure all your workers know your point person



AN IMPORTANT NOTE

- The rights, responsibilities, and interests of **your employees** are different from yours. Your attorney should not also represent your workers.
- Connect your workers with attorneys or advocates who can train them on what to do when interacting with immigration officials. Contact the **New Americans Hotline 1-800-566-7636** at the NYS Office of New Americans.



WARRANTS



ADMINISTRATIVE AND JUDICIAL WARRANTS

Issued by ICE

U.S. Department of Justice
Immigration and Customs Enforcement

Warrant of Removal/Deportation

File No: _____
Date: _____

You may see a Warrant of Removal/Deportation or Arrest

To any officer of the United States Immigration and Customs Enforcement:

(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 district director or 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 (Ace), 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 Customs Enforcement" including the expense of an attendant if necessary.

(Signature of ICE Official)

(Title of ICE Official)

(Date and Office Location)

Signed by ICE

Issued by a Court

UNITED STATES DISTRICT COURT
for the _____

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

Case No. _____

A search warrant will name your business, address, and premises to be searched. SEARCH AND SEIZURE WARRANT

An arrest warrant will name a specific person to be arrested.

To: Any authorized law enforcement officer

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 _____ District of _____
(Identify the person or describe the property to be searched and give its location).

The person or property to be searched, described above, is believed to conceal: (Identify the person or describe the property to be seized).

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 _____
(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: _____
City and state: _____

Judge's signature

Printed name and title

Signed by Judge



JUDICIAL WARRANTS

- Are issued by a Court
- Are signed by a judge
- You **must** comply with a judicial warrant

AO 99 (Rev. 12/00) Search and Seizure Warrant

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UNITED STATES DISTRICT COURT
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I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property.

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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: Judge's signature

City and state: Printed name and title

Signed by Judge

ADMINISTRATIVE WARRANTS

- Are issued by an agency
- Are not signed by a judge
- You **do not have to** comply with a
an administrative warrant

Issued by ICE

U.S. Department of Justice
Immigration and Customs Enforcement

Warrant of Removal/Deportation

File No: _____
Date: _____
You may see a Warrant of Removal/Deportation or Arrest

To any officer of the United States Immigration and Customs Enforcement:

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(Signature of ICE Official)

(Title of ICE Official)

(Date and Office Location)

Signed by ICE



DURING A RAID



IF ICE PRESENTS AN ADMINISTRATIVE WARRANT

- You do not have to consent to a search
- You may decline to answer any questions about the subject of the warrant. You can say:
 - This is an administrative warrant. I will only comply with a judicial warrant.
 - I do not give you permission to enter. I do not consent to a search.
 - I do not wish to answer any questions. I wish to speak with a lawyer.
- If ICE agents enter anyway:
 - Do not obstruct them
 - State clearly that you do not consent
 - Document their actions



IF ICE PRESENTS A JUDICIAL WARRANT

- Read it and understand **the scope of the warrant**. It may identify a person to arrest, list certain locations to search, or identify documents or property to seize.
 - Check for an **expiration date**
 - Check for **accuracy**
 - Check that ICE **follows the warrant**
 - Document the actions of the ICE agents



AN IMPORTANT NOTE

ICE does not need a warrant to enter the private spaces of your business when there are “**exigent circumstances**.” ICE may enter private spaces without a warrant to respond to an emergency, apprehend a fleeing suspect, or stop the destruction of evidence. This means that if ICE sees people running, they may have reason to chase.



AFTER A RAID



AFTER A RAID

- If an employee is taken into ICE custody:
 - Ask ICE agents where they will be detained
 - Notify the employee's emergency contact or other appropriate person
 - Consider how you may help your affected workers:
 - Connect them to legal services. Contact the **New Americans Hotline: 1-800-566-7636** at the NYS Office of New Americans.
 - If a detained employee is offered bond, consider paying it. Detention separates a person from their support system and makes it much harder to prepare a case.
 - Pay your employees for work they have performed, even if they are detained. Speak with your employee to determine how they will be paid.
 - Report the action. **Contact: Immigrant Defense Project, 212-725-6422**



REVIEW

- Inspection v. Enforcement
- Public v. Private spaces.
- Judicial v. Administrative warrants
- During a raid: Stay calm; do not obstruct or assist ICE agents.
- After a raid:
 - Document ICE actions
 - Assist any affected workers



FOR MORE INFORMATION

Kendra Sena

Senior Staff Attorney

Government Law Center

Albany Law School

80 New Scotland Avenue

Albany, NY 12208-3494

(T) 518-445-2345

ksena@albanylaw.edu

<http://www.albanylaw.edu/centers/government-law-center/the-rural-law-initiative>

