

Buchalter

www.buchalter.com

January 2025

Immigration Enforcement: Guidelines and Strategies for Employers

Joshua Robbins and Kripa Upadhyay

➤ Immigration Enforcement

- ❖ Expected Increase in Enforcement
- ❖ I-9 Audits and Inspections
- ❖ Worksite Raids
- ❖ Potential Criminal and Civil Charges
- ❖ Compliance Steps for Employers

➤ Compliance is Crucial!

- Worksite Raids; I-9 Audits; FDNA Site Inspections – These are ALL going to come back in a big way!!

| Actions under Trump I | 2017 | 10/01/2017-05/04/2018 |
|------------------------------|-------------|------------------------------|
| Worksite Investigations | 1,716 | 3,510 |
| I-9 Audits | 1,360 | 2,282 |
| Criminal Arrests | 139 | 594 |
| Administrative Arrests | 172 | 610 |

➤ What to Expect?

- In 2018, the Trump administration announced a two-phase nationwide I-9 operation in which I-9 audit notices were served to more than 5,200 businesses around the country since January.
- **First phase** (Jan. 29 – March 30): HSI served 2,540 NOIs and made 61 arrests.
- **Second phase** (July 16 – 20): HSI served 2,738 NOIs and made 32 arrests.

➤ **Enforcement Statistics from 2016-2020 Term**

From Oct. 1, 2017, through July 20, 2018:

- HSI opened 6,093 worksite investigations
- Made 675 criminal and 984 administrative worksite-related arrests

➤ Immigration Reform and Control Act of 1986

- ❖ Unlawful for employers to knowingly hire or continue to employ unauthorized workers.
- ❖ ALL employers must complete and retain form I-9 for new employees and comply with retention rules.
- ❖ E-Verify is NOT a substitute for I-9 completion and retention requirements. Even if you use E-Verify, you must still properly complete and retain Form I-9 for each employee.

I-9 Audits

- ***I-9 forms MUST be completed for all full time employees irrespective of legal status or position in the company.***
- ***MUST use current version of the form so always check version date on uscis.gov.***
- ***E-Verify is NOT a replacement for I-9. MUST complete form I-9 even if you are a E-verify entity.***
- ***Covid era policies have largely ended so you cannot remotely verify without taking appropriate measures.***

➤ Sample Notice of Inspection for Forms I-9

Homeland Security Investigations
U.S. Department of Homeland Security
1000 2nd Avenue Suite 2300
Seattle, Washington 98104



U.S. Immigration
and Customs
Enforcement

NOTICE OF INSPECTION

June 14, 2013

Dear Sir/Madam:

Section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, requires employers to hire only United States citizens and aliens who are authorized to work in the United States. Employers must verify the employment eligibility of persons hired after November 6, 1986 using the Employment Eligibility Verification Form I-9.

Federal regulations require the provision of three days' notice prior to conducting a review of an employer's Forms I-9. This letter serves as advance notice that U.S. Immigration and Customs Enforcement Homeland Security Investigations (HSI) has scheduled a review of your forms for June 20, 2013. However, you may waive the three-day period, should you wish to do so, by annotating and signing page two of this letter and advising this office of your decision.

During the review, Auditor Sandra Hollcraft will discuss the requirements of the law with you and inspect your Forms I-9. In addition to the presentation of your Forms I-9, you will need to present any documents copied as part of the employment eligibility verification process. If your business utilizes software for the electronic generation and storage of Forms I-9, you will need to present: the name of the software and vendor utilized; the internal business practices/protocols related to the generation of, use of, storage of, security of, and inspection and quality assurance programs your electronically generated Forms I-9; the indexing system identifying how the electronic information contained in the Form I-9 is linked to each employee; documentation of the system used to capture the electronic signature, including the identity and attestation of the individual signing the Form I-9; and the audit trail. Further, pursuant to § CFR 274a.2(e)(8)(ii), Auditor Sandra Hollcraft may contact you in the future to schedule a live demonstration of the creation and maintenance of an electronically generated Form I-9.

SUBJECT: Notice of Inspection
Page 2

The purpose of this review is to assess your compliance with the provisions of the law. HSI will make every effort to conduct the review of records in a timely manner so as not to impede your normal business routine. For more information on the Form I-9 inspection process please visit <http://www.ice.gov/news/library/factsheets/i9-inspection.htm>.

Sincerely,

Aaron G. Wilson
Assistant Special Agent-in-Charge

Waiver of the Three-Day Period

I wish to waive the three day notice to which I am entitled by regulation.

(Printed Name) (Signature) (Date)

Certificate of Service

This Notice of Inspection was ^{mailed to} served upon the employer by me on 6-11-2013, in the following manner:

In person By certified mail, return receipt requested

(Signature of Agent/Auditor)

(Signature of Employer if personally served)

➤ Notice of Inspection: Subpoena for Documents

| | |
|---|--|
| 1. To (Name, Address, City, State, Zip Code) | DEPARTMENT OF HOMELAND SECURITY IMMIGRATION ENFORCEMENT SUBPOENA to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4 |
| Subpoena Number | |
| 2. In Reference To Request for Documents and Forms I-9 (Title of Proceeding) _____ (File Number, if Applicable) _____ | |

4. Records required to be produced for inspection continued

- 2) Employee roster or payroll report listing current and former employees hired since November 1, 2011 containing the following information:
 - Full employee name (First Name, Middle Initial, Last Name) and date of birth
 - Social security number
 - Date of hire and date of termination (if applicable). If employee has multiple dates of hire, provide all dates of hire and all dates of termination occurring from November 1, 2011 to present.
- 3) Monthly Payroll Reports for November 2011 through May 2013 with wage detail by employee.
- 4) Copies of the 4 most recent Washington State Unemployment Insurance Quarterly Tax Reports and Quarterly Wage Detail Reports.
- 5) Independent contractor roster listing the dates of hire and termination (if applicable) for all independent contractors employed from January 1, 2012 to present.
- 6) A current listing of all paid on-call individuals you employ on a sporadic, irregular, or intermittent basis and not deemed to be an employee.
- 7) Copies of any Citizenship and Immigration Services (CIS) Forms I-129 or I-140 petitions and Department of Labor (DOL) ETA-750 certifications submitted or received from 2012 to present.
- 8) Copy of articles of incorporation, business license and most recent annual report.
- 9) Employer Identification Number (EIN) and Taxpayer Identification Number (TIN) documentation. Names of all Managers, Supervisors and Legal Owners.
- 10) If available, copy of company procedures or policies regarding Form I-9 preparation.
- 11) Yes or No response to the following questions:
 - Participate in E-Verify program?
 - Previously received an I-9 Inspection by the Department of Labor?
 - Obtain employees from a temporary staffing agency? If yes provide the names of the temporary staffing agencies used from November 2011 to the present.

DHS Form I-138 (6/09)

| | |
|---|--|
| 1. To (Name, Address, City, State, Zip Code) | DEPARTMENT OF HOMELAND SECURITY IMMIGRATION ENFORCEMENT SUBPOENA to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4 |
| Subpoena Number | |
| 2. In Reference To Request for Documents and Forms I-9 (Title of Proceeding) _____ (File Number, if Applicable) _____ | |

By the service of this subpoena upon you, **YOU ARE HEREBY SUMMONED AND REQUIRED TO:**

- (A) **APPEAR** before the U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), or U.S. Citizenship and Immigration Services (USCIS) Official named in Block 3 at the place, date, and time specified, to testify and give information relating to the matter indicated in Block 2.
- (B) **PRODUCE** the records (books, papers, or other documents) indicated in Block 4, to the CBP, ICE, or USCIS Official named in Block 3 at the place, date, and time specified.

Your testimony and/or production of the indicated records is required in connection with an investigation or inquiry relating to the enforcement of U.S. immigration laws. Failure to comply with this subpoena may subject you to an order of contempt by a federal District Court, as provided by 8 U.S.C. § 1225(d)(4)(B).

| | |
|---|--|
| 3. (A) CBP, ICE or USCIS Official before whom you are required to appear Name Sandra Wolcott Title Auditor Address 1000 2nd Avenue, Suite 2300, Seattle, WA 98104 Telephone Number (206) 442-2235 | (B) Date 06/20/2013 (C) Time 10:00 <input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m. |
|---|--|

4. Records required to be produced for inspection

- 1) Original I-9 Forms, (Employment Eligibility Verification Forms) OR I-9 Forms electronically retained in a storage system, along with associated audit trails, and any copies of attached documents presented at time of I-9 completion for all current employees and all employees hired since November 1, 2011.
- Items 2) - 11) are listed on the continuation sheet.



If you have any questions regarding the subpoena, contact the CBP, ICE or USCIS Official identified in Block 3.

| |
|---|
| 5. Authorized Official (Signature) Aaron G. Wilson (Printed Name) Assistant Special Agent-in-Charge (Title) 6-11-2013 (Date) |
|---|

DHS Form I-138 (6/09)

➤ **FDNS Site Inspections**

The **Fraud Detection and National Security Directorate (FDNS)** makes **unannounced site visits** to employer locations where foreign national individuals on certain visa categories are located as a part of their job duties.

FDNS is a part of USCIS's compliance review to ensure that employers and employees are both in compliance with information provided to US Immigration authorities regarding the employment of certain Foreign Nationals.

Participation in FDNS site visits **was** voluntary, but under the H-1B modernization rule, it makes it clear that **refusal to comply is grounds for denial or revocation** of the pending I-129.

➤ FDNS Site Inspections

Crucial: IF you have employees placed at a third-party site and USCIS conducts an unannounced site inspection at that location and **the other site** refuses to admit/allow USCIS, then per the H-1B Modernization Act, that is **also grounds for denial or revocation** of the employee's I-129!

These visits are:

- **Unannounced** (although in some case, officers will send the employer an email asking to speak with a specific employee. They may also contact the employee directly!)
- **Meant to verify** that the employee's position is in accordance with the law AND in line with what the employer claimed the employee's job duties, salary and location would be per the LCA/Petition filed with USCIS.

➤ Worksite Raids: When Agents Show Up at Your Business



➤ **Have a Plan**

- ❖ Train key staff—e.g., front desk
- ❖ Have a point person
- ❖ Have a lawyer's number

➤ Do They Have a Warrant?

U.S. DEPARTMENT OF HOMELAND SECURITY

Warrant for Arrest of Alien

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:

- the execution of a charging document to initiate removal proceedings against the subject;
- the pendency of ongoing removal proceedings against the subject;
- the failure to establish admissibility subsequent to deferred inspection;
- 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
- 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 _____ (Name of Alien) on _____ (Date of Service), and the contents of this
notice were read to him or her in the _____ (Language) language.

Name and Signature of Officer _____
Name or Number of Interpreter (if applicable)

Form I-200 (Rev. 0916)

➤ No, a Real Warrant

U.S. DEPARTMENT OF HOMELAND SECURITY

U.S. DEPARTMENT OF HOME

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:

- the execution of a charging document to initiate removal proceedings against the subject;
- the pendency of ongoing removal proceedings against the subject;
- the failure to establish admissibility subsequent to deferred inspection;
- 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
- 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 _____, an individual named in the Immigration and Nationality Act, the above-

ve-named alien.

Certif

I hereby certify that the Warrant for Arrest of AI

on _____ on _____
(Name of Alien)

notice were read to him or her in the _____

Name and Signature of Officer

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Form I-200 (Rev. 0916)

➤ Judicial Warrant: Required for Entry without Consent

AO 93 (Rev. 01/09) Search and Seizure Warrant

UNITED STATES DISTRICT COURT
for the
Southern District of California

In the Matter of the Search of)
(Briefly)
or item)
2943 Reynard Avenue)
San Diego, California)

SEARCH AND SEIZURE

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney of the following person or property located in the Southern)
(Identify the person or describe the property to be searched and give its location):)
See Attachment A-2.)

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-2.

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

YOU ARE COMPLAINING THAT:

in the daytime 6:00 a.m.

Unless delayed notice is taken to the person from whom the property was taken, the officer executing the inventory as required by law at Hon. David H. Bartick)
(name))
San Diego, California)

I find that immediate notice of trial, and authorize the officer searched or seized (check the appropriate box)

Date and time issued: 1/31/2014 5:24

City and state: San Diego, California

SEARCH AND SEIZURE WARRANT

In the Matter of the Search of)
(Briefly)
or item)
2943 Reynard Avenue)
San Diego, California)

Case No. **'14 MJ 0396**

Any authorized law enforcement officer

Until, the facts justifying, the later specific date of _____

1/31/2014 5:24 [Signature]
Judge's signature

Hon. David H. Bartick, U.S. Magistrate Judge
Printed name and title

➤ **If No Judicial Warrant**

- ❖ No warrant, no entry to non-public areas
- ❖ . . . unless you consent (Don't – AB 450)
- ❖ You don't have to provide information (Don't)

➤ **If No Judicial Warrant**

- ❖ You can call a lawyer (Do)
- ❖ Do not physically interfere with them
- ❖ Do not hide or destroy evidence

➤ If They Have a Judicial Warrant

❖ Read it.

AO 93 (Rev. 9/1/09) Search and Seizure Warrant

UNITED STATES DISTRICT COURT
for the
Southern District of California

Case No. '14 MJ0396

2943 Reynard Avenue
San Diego, California

RE WARRANT

attorney for the government requests the search
District of California

(Identify the person or describe the property to be searched and give its location):
See Attachment A-2.

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-2.

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 February 17, 2014
(not to exceed 10 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 Hon. David H. Barlick
(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: 1/21/2014 5:14 [Signature]
Judge's signature

City and state: San Diego, California Hon. David H. Barlick, U.S. Magistrate Judge
Printed name and title

➤ If They Have a Judicial Warrant

❖ Read it.

ATTACHMENT A-13

PROPERTY TO BE SEARCHED

██████████ is a three-story office building with ground retail. Suite 300 is believed to be the offices of ██████████ located on the third floor of the building. The building has a corrugated metal facade with part of the third-floor painted orange and ██████████ written on the top left of the building. There is a nylon sign in the parking lot that lists tenants occupying the building, which includes ██████████. A glass door located in the middle of the office building is used to gain entry inside for the office suites on the second and third floor. The numbers ██████████ in white are to the left of the glass door along with the numbers ██████████ in white above the glass door. There is a directory call box located on the adjacent wall to the left of the door. The directory call box shows ██████████. The lobby area on the first floor has a directory at the elevator showing ██████████ as the tenant of the third floor.

The requested searches shall include any rooms, attics, basements, porches, locked containers and safes, and other parts therein, as well as the surrounding grounds, driveways, garages, carports, storage rooms, storage lockers, trash containers, and outbuildings that are associated with and/or used by the occupants of ██████████ (such as mailboxes, lock boxes, or other locked or secured locations).



➤ If They Have a Judicial Warrant

❖ Read it.

ATTACHMENT B-2
ITEMS TO BE SEIZED 27)

The
Property and
Attachment,
Attachment A-8 ("SUBJECT PREMISES 3"), Attachment A-9 ("SUBJECT PERSON 4"),

These records and materials are more specifically described below.

1. Evidence, records, or communications related to any state or local government body or public official.
2. Evidence, records, or communications related to [REDACTED] LLC.
3. Evidence, records, or communications related to any infrastructure or housing programs funded in whole or in part with public money.
4. Evidence, records or communications related to the [REDACTED] [REDACTED]
5. Evidence, records, or communications related to any actual, contemplated, proposed, or negotiated contracts between the [REDACTED] and any waste election.
5. Evidence, records, or communications related to any actual, contemplated, proposed, or negotiated contracts between the City of Oakland and any waste

➤ **If They Have a Judicial Warrant**

❖ Call a lawyer. Tell the agents you have one.

➤ **If They Have a Judicial Warrant**

ABA Model Rule 4.2

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order.

➤ **If They Have a Judicial Warrant**

- ❖ Call a lawyer. Tell the agents you have one.
- ❖ Do not agree to interview.
- ❖ Do not give false information.

➤ **If They Have a Judicial Warrant**

- ❖ Keep a record.
- ❖ Ask for agents' names and IDs.
- ❖ Ask to monitor the search.

➤ **If They Have a Judicial Warrant**

- ❖ Tell employees they have right to lawyer / silence.
- ❖ Do not tell employees not to talk.
- ❖ Do not interfere with search or destroy evidence.

➤ **If They Have a Judicial Warrant**

❖ **Do not** send non-privileged emails or texts about the investigation.

➤ If They Have a Judicial Warrant

From: [REDACTED] <[REDACTED]>

Sent: Thursday, October 10, 2022 8:58 AM

To: [REDACTED]

Cc: [REDACTED]

Subject: FBI Raid

Importance: High

Oh s[REDACTED]! They caught us.

Do you think they found the fake invoices?

Stay Calm

➤ **What they can prosecute you for**

- ❖ **Employing Unauthorized Immigrants (8 U.S.C. §1324a): Up to 6 months**
- ❖ **False Statements (18 U.S.C. § 1001): Up to 5 years**
- ❖ **Obstruction of Justice (18 U.S.C. §§ 1505 / 1510 / 1512): Up to 5 years**

➤ **What they can prosecute you for**

Up to 10 Years

- ❖ **Bringing In Unauthorized Immigrants (8 U.S.C. § 1324)**
- ❖ **Immigration Document Fraud (18 U.S.C. § 1546)**

➤ **What they can prosecute you for**

Up to 20 years

❖ **Human Trafficking (18 U.S.C. § 1590)**

❖ **Racketeering (RICO) (18 U.S.C. § 1962)**

➤ What they can prosecute you for

Tree Company to Pay Record \$95M Fine for Immigration Practices

Asplundh Tree Expert Co. was ordered to pay a total of \$95 million. Prosecutors said it employed thousands of unauthorized workers between 2010 and 2014.

➤ **What they can sue you for**

- ❖ Racketeering (RICO) (18 U.S.C. § 1962)
- ❖ False Claims Act (31 U.S.C. § 3729)
- ❖ Unfair Competition (State law)

➤ Steps for Employers

- 1. Immigration Plan:** Employers should take stock of their foreign worker population, both those who are working on employer-sponsored visas and those who maintain their own work authorization. This will help employers assess the potential impact to their workforce of the potential shifts in immigration policy and adjudications practice; and take proactive steps to mitigate the impacts of those changes, such as filing renewals early, identifying lower-risk work visa options, and starting the green card sponsorship process for essential foreign workers.
- 2. Independent I-9 Audit: Absolutely crucial to do this!** Independent, attorney led audits often will help reduce your monetary fines because you are able to demonstrate a good faith effort to maintain compliance.
- 3. Intentional Hiring:** Do NOT hire employees who need visa sponsorship without having concrete work for them to do! Work with Immigration counsel to assess your need v. the employee's education and skill to arrive at a job code that will withstand scrutiny from USCIS. Computer Occupations all others and other catch all job codes with lower wages will NOT work!

➤ Steps for Employers

- 4. PERM:** If you know the employee is crucial, start the PERM process early. This is already taking 2 years at present (will likely increase) under Trump 2.0.
- 5. Immigration Enforcement Readiness Plan: I-9 Audit v. FDNS Site Visit v. Worksite Raid – Make Plans!**
- 6. Advising Employees:** As hard as this is, I think it is best practice to advise employees NOT to leave the US unless absolutely necessary. Policies in the past tended to change on a Friday afternoon and went into immediate effect which risks employees being stuck outside the US, unable to return.

➤ Resources

Buchalter Articles:

<https://www.buchalter.com/publication/workplace-raids-a-guide-for-employers-on-your-rights-and-responsibilities/>

<https://www.buchalter.com/publication/corporate-immigration-compliance-preparing-for-enhanced-enforcement-under-trump-2-0/>

<https://www.buchalter.com/publication/best-practices-for-i-9-compliance-in-2024/>

Government Resources:

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

Handbook for Employers: <https://www.uscis.gov/i-9-central/form-i-9-resources/handbook-for-employers-m-274>

➤ CALL US!

Kripa Upadhyay (Hindi, Nepali, Spanish and Urdu)

kupadhyay@Buchalter.com

206-319-7007

206-225-1167 (c)

Joshua Robbins (Spanish)

jrobbins@Buchalter.com

949-224-6284

