



'Uh, Mr. Lawyer?

There are 50 immigration officers at my front door'

By Gregory J. Palakow

If your client runs a business, this is a call you never want to receive.

Chances are, if there are 50 U.S. Immigration & Customs Enforcement (ICE) officers at the front door of your client's establishment, there 50 more are likely scattered around the perimeter of the building, manning the back door, rooftop exits, parking lots and emergency exits. Add that to the usual supporting effort of local or state law enforcement patrolling the roads and highways around the facility, and your client is in for an intimidating morning.

Maybe you never spoke to the client before about immigration and hiring procedures. More than likely, however, your client, through counseling, has been keeping a close eye on

human resources and the hiring, screening and recordkeeping procedures related to their workforce. Hopefully, they have kept an I-9 file separate from other employment file information. Hopefully, they have been advised to know the employment agencies with which they work and have been assured in writing that these agencies are verifying lawful employment eligibility if they are providing your client with any part of its workforce.

Hopefully your client knows how to identify altered, expired or fraudulent immigration documents and how to deal with social security mismatch notices and the terminations that usually result.

Likely, your client has begun to recruit harder and begun to pay higher wages just





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to keep a workforce intact and to keep the doors of the business open. Hopefully, you have coached them on re-verification of employment authorization when necessary. Chances are either your client or someone from HR has been advised it is the employer's responsibility to complete all boxes of the I-9 employment verification form (8 C.F.R. § 274a.2(b)(1)(ii)(A)).

The bottom line — whether your client knows it or not — they will be judged by a “knew or should have known” standard with reference to their hiring procedures and document preparation and retention related to those employees. If they were ignorant of federal law related to employment authorization and the I-9 employment verification process, they are in store for a very bad day.

Maybe they listened to your every word, but were raided anyway.

Why? They may have hired a worker with a final order of removal or an outstanding aggravated felony arrest warrant. Possibly, through no fault of their own, their industry or geographic region was targeted by ICE (Immigration and Customs Enforcement). Military contractors, power plants, oil refineries, airports, manufacturing and food processing have all felt the crunch of ICE enforcement actions on a large scale in recent months.

At stake

A stepped-up campaign against employers who knowingly hire illegal immigrants is increasingly resulting in arrests and criminal convictions, employing tactics previously used against mobsters and drug lords to infiltrate the organization, gain confidence and build the government's case. Investigators are using wiretaps, informants and undercover agents, as reported recently in *The Washington Post*.

At the American Immigration Lawyers Association's Spring CLE conference in April, ICE Principal Legal Advisor Barry O'Melinn noted this is a target-rich environment where the foremost targets are companies with complicity, egregious worksite violators and companies showing a massive pattern and practice of hiring illegal. Wide ranges of charges for criminal violations of federal law are sought and jail sentences a significant possibility.

Mr. O'Melinn is certainly on the money: In just the first nine months of the Department of Homeland Security's fiscal year, ICE made 937 criminal arrests at U.S. work places, more than 10 times as many as the organization arrested just five years ago. Alarming, 99 of the 937 criminal arrests were of supervisors.

Raid vs. audit

There may be a number of reasons why ICE officers knocks on the door of your client's facility.

It is entirely possible ICE wishes to conduct an I-9 audit. If this is the case, they will often make a courtesy stop in advance of the audit, dropping off some materials regarding I-9 compliance and advising they will return in the future on an unannounced date in order to conduct such an audit. Usually these officers will arrive in small numbers and with a non-adversarial tone.

It is also possible your client is employing a worker who provided documents that appeared valid for employment purposes but, in fact, is a fugitive or absconder from ICE resulting in a “special ops” fugitive warrant service. This type of raid may be focused solely on the one absconder for service of the warrant.

The other possibility is the most grim: Your client's facility is subject to a full-scale ICE raid looking for illegal undocumented

workers and patterns of illegal hiring procedures.

Handling the raid

1. Read the warrants

Your client will have very little time to react, but should be advised to fully review the warrants being served and request copies. Your client should review or pass on to counsel the actual warrant to see what judge issued it and who made the affidavit leading to the probable cause finding. If you are not knowledgeable concerning criminal law, this may be the time to call in a criminal defense specialist. However, some issues can be dealt with immediately, such as:

- Is the warrant signed?
- Does it specifically advise what may be seized?
- Is it valid on its face (served before its expiration date)?

2. Request an inventory log

Assuming the warrant is specific enough and served timely, the ICE will be seizing documents in support of their case. They should provide an “inventory log” which describes with some specificity what was taken from the employer's premises and from what area of the premises.

3. Find out what offenses are being investigated

The warrant should be reviewed to see if it describes what federal offenses are alleged.

For example, warrants accompanying ICE raids often allege violations of either Title 8 U.S.C. § 1324 (unlawful employment of aliens) or Title 18 U.S.C. § 1546 (fraudulent use of an identification document lawfully issued to another person). Does the warrant, in fact, go further to charge other offenses, such as RICO violations? Is the more serious “harboring” offense listed?

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4. Expect disruption of information systems

Your client should expect “imaging” of their computer systems by forensics consultants who will often expertly and quickly dismantle and reassemble the hard drives and operating systems in order to image the employer’s records. This will be horrendously disruptive for the day or more of the search itself, but should result in systems being fully operational at the expiration of the search and seizure.

5. Engage the ICE officers

Your client should take notes, obtain names of the officers and ask for badge numbers and cards. Most importantly, on receipt of the warrant, your client should immediately ask for the Special Agent In Charge. If not present, ask for access to them to try to gain as much information as possible about the raid and how it came about. ICE is generally difficult to reach and non-responsive once they have left the premises. So an effort to gain any information possible from them while they are present during the raid is a must. Gaining information from law enforcement without making admissions in the process is a difficult task, but can be done. If workers are detained they should attempt to discover exactly how many and request an immediate list of names of the workers taken. This will be helpful in dealing with inquiries from family in the coming hours and days after a raid.

6. Obtain knowledgeable legal counsel

Your client should contact immigration counsel fast or you should on their behalf. While many workers may have no avenue to avoid removal from the U.S., some might. Some may be completely legal workers who do not have identification or were too scared during the overwhelming raid to show identification. Some workers may be eligible for relief and many agents may attempt to overstep the bounds of the specificity of the warrant issued by the court. In some respects, the employer may have a longstanding relationship with certain employees and a desire to try to help them as much as possible. In this respect, the employer should be gathering information for loved ones and ensuring human rights issues are being screened by ICE workers, such as workers who have health issues; need scheduled medications; are the sole caregivers for children or the elderly now being detained and taken to undisclosed locations. It must be investigated where they are being detained and how soon visits can occur.

Following the raid, the employer must pick up the pieces and ready for the potential of an empty worksite (other workers are often too scared to return to work following a worksite raid), going through the hiring process all over again and the expectation of U.S. Citizenship & Immigration Services

(USCIS) fines and the possibility of criminal indictment.

Obviously, proper screening and hiring procedures and document retention are key to compliance with USCIS employment regulations and federal law. These are also the keys to surviving the raid and avoiding fines and criminal charges. However, regardless of the employer’s level of compliance, they have the ability to monitor a worksite raid and to use you as counsel to protect them and their interests during and after the raid itself. ☉



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