WHAT TO DO IF IMMIGRATION COMES TO YOUR WORKPLACE

NELP NATIONAL EMPLOYMENT LAW PROJECT

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President Trump's attack on immigrants affects immigrant workers **and** employers. This guide explains:

- the most common immigration actions affecting employers,
- recommendations for how employers can prepare,
- employers' rights and responsibilities, and
- what employers can do after an Immigration and Customs Enforcement (ICE) action.

Important! This guide is general information. **It is *not* legal advice**. It is not tailored to your situation. Talk to an immigration lawyer for advice in your case.

WHAT EMPLOYERS CAN DO IF IMMIGRATION COMES TO A WORKPLACE

Immigration agents may come to your workplace for a **Form I-9 audit**; a **raid**; or to **detain specific people**.

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

- Form I-9 is required for all new employees.
- You must keep I-9 forms on file for 3 years after hiring or 1 year after the worker's last day of work, whichever is later.
- Do not ask a worker to fill out Form I-9 more than once unless their work permit is about to expire or you have another valid, legal reason.
- Note: You do not have to keep copies of a worker's ID or work authorization documents.

If the Audit Does Not Go Well . . .

- If ICE decides you did not follow the Form I-9 rules, you may face:
  - An order to stop hiring people without valid work permits.
  - Civil and criminal fines and penalties.
- Learn more about Form I-9 in the Handbook for Employers at https://www.uscis.gov/sites/default/files/files/form/m-274.pdf.

What Is an ICE Raid?

- ICE agents go to a worksite without warning as part of an investigation into an employer.
- ICE agents are not police officers. But their uniforms may say "Police" or "Federal Agent." They may carry guns. Sometimes local police officers go with ICE agents on ICE raids.

What if ICE Wants to Detain a Specific Worker?

- ICE agents may come to your business to try to find a particular person (or people). While they are there, they may try to question, detain, and even arrest other people.

HOW EMPLOYERS CAN PREPARE FOR ICE ACTIONS

1. Make a Written Response Plan Ahead of Time

- Talk to other businesses or business associations. Ask what they are doing to prepare.
- 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.
- Connect with immigration response networks in your area. They provide support with family, legal, financial, and media concerns if immigration agents come to your business.

2. Train Your Staff to NOT TALK to ICE Agents

- Train all workers to NOT allow ICE agents to enter your workplace.
- A worker can say, *"I can't give you permission to enter. You must speak with my employer."*
- Train all workers to NOT interact with ICE agents. If ICE agents have questions or requests, workers should say nothing, or say, *"You are not allowed to enter. Talk to my employer."*

3. Know Your Rights!

Employers have rights when ICE goes to a business. ICE agents do not always have a right to enter your business, stop or arrest your workers, or take documents.

Work with a community or legal group to arrange a "Know Your Rights" training for you and your staff and pay your staff for the time they spend in training.

WHAT EMPLOYERS SHOULD DO WHEN ICE ARRIVES

For Public Areas

- Anyone – including ICE agents – can enter *public* areas of your business without permission.
- Public areas include a dining area in a restaurant; parking lot; lobby or waiting area.
- 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.

For Private Areas

- Immigration agents can enter a private area ONLY IF they have a *judicial warrant*.
- A judicial warrant must be **signed by a judge** and say "**U.S. District Court**" or a **State Court** at the top.
- 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.
- Sometimes, ICE agents try to use an *administrative warrant* to enter. But an administrative warrant does NOT allow agents to enter private areas without your permission. **Administrative warrants** are *not* from a court. They say "Department of Homeland Security" and are on Forms I-200 or I-205.

During the Raid

- **Stay calm!** Ask your workers to stay calm, too. Do not run to the exits. This will make things worse because ICE agents can say that people who are running are likely violating immigration laws.
- When ICE shows you an administrative warrant with an employee's name on it:
  - You do **NOT** have to say if that employee is working on that day or not.
  - 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).
- Do NOT help ICE agents sort people by their immigration status or the country they are from.
- Watch the agents and see if they are complying with what's written in the warrant.
- If you or an employee is willing, you should video or record what the ICE agents do at your workplace. You may be able to prove the agents violated your rights or your workers' rights.

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

- ICE agents may try to stop, question, or even arrest a worker without the proper authority.
- The best way for workers to protect their rights is to **stay silent and ask for an attorney.**
- Workers do not have to hand over any IDs or papers to ICE. All workers have this right.
- Any information that workers give to ICE can be used against them later.

Immediately After the Raid

- Write or record these things after ICE leaves:
  - How many ICE agents were present (inside and outside)?
  - How were the agents dressed? How were they armed?
  - Did the agents make you or your workers believe you could not move or leave?
  - Did the agents mistreat anyone? If yes, how?
- Notify the employees' union.
- If ICE arrests any of your workers, ask the ICE agents where they are being taken. This information will help the worker's family and lawyer find the person.

What to Do in an I-9 Audit

When ICE notifies you that there will be a Form I-9 audit, contact an immigration lawyer. Also notify your workers and their union representative about the audit.

- The law gives you **3 work days** to produce your I-9 Forms. Do not provide your documents early.
- You have the right to speak to your lawyer before answering questions or signing ICE documents.
- Allow your employees to have coworkers or union representatives present when discussing I-9 audits.
- After reviewing the I-9 forms, ICE may find some employees are not authorized to work. If that happens, ICE will give you 10 days to provide valid work authorization for these employees. If you can't provide the documents by that time, you will be told to end their employment.
- If this happens, you **must** notify the affected workers of the audit.
- Ask ICE for more time. This will give affected workers more time to talk to an immigration lawyer.
- If your workers belong to a union, you may need to provide copies of the audit documents to the union and work with the union as you respond to the audit.

What to Do After an ICE Raid or I-9 Audit

After an ICE raid or I-9 audit, one or more of your workers may face deportation or be unable to return to work. This could impact your business and the morale of your workers.

Here is what you can do to provide support to your staff and community.

OFFER LEAVE WHILE AFFECTED WORKERS APPLY FOR WORK AUTHORIZATION

- Give affected workers leave while they take care of getting their papers, or allow them to return to their same positions with full seniority and benefits once they provide their authorization papers.

PAY OWED WAGES & BENEFITS PROMPTLY

- Pay workers any owed wages and any accrued benefits as soon as possible when employment ends.
- Make sure you follow the requirements of federal and state labor laws.

PROVIDE SEPARATION PAY TO WORKERS WHO CANNOT RETURN TO WORK

- Workers who are not able to return to work will need money to support themselves and their families. They may need to pay for legal assistance.
- If you do not have a separation pay policy, consider giving extra funds to workers in this situation.

CONTRIBUTE TO AN IMMIGRATION LEGAL FUND

- An employee facing deportation will need a good lawyer, and may get the option to be free on **bond** until their hearing. That means they can stay with their families and communities during this time.
- They may need your help and their co-workers' help to raise money for the lawyer or bond.
- You can contribute to an immigration legal fund for this purpose. Or you can set one up.

PROVIDE A REFERENCE TO WORKERS FOR FUTURE JOBS

- Let your workers know you can provide a reference to their potential future employers.

STAY CONNECTED TO YOUR COMMUNITY'S IMMIGRATION RESPONSE EFFORTS

- Community organizations and lawyers often organize a response to a workplace raid or other immigration actions.
- A community's response may include fundraising for legal defense and help for an individual's family.
- Employers and workers can find support, guidance, and useful information by staying connected to community response efforts.

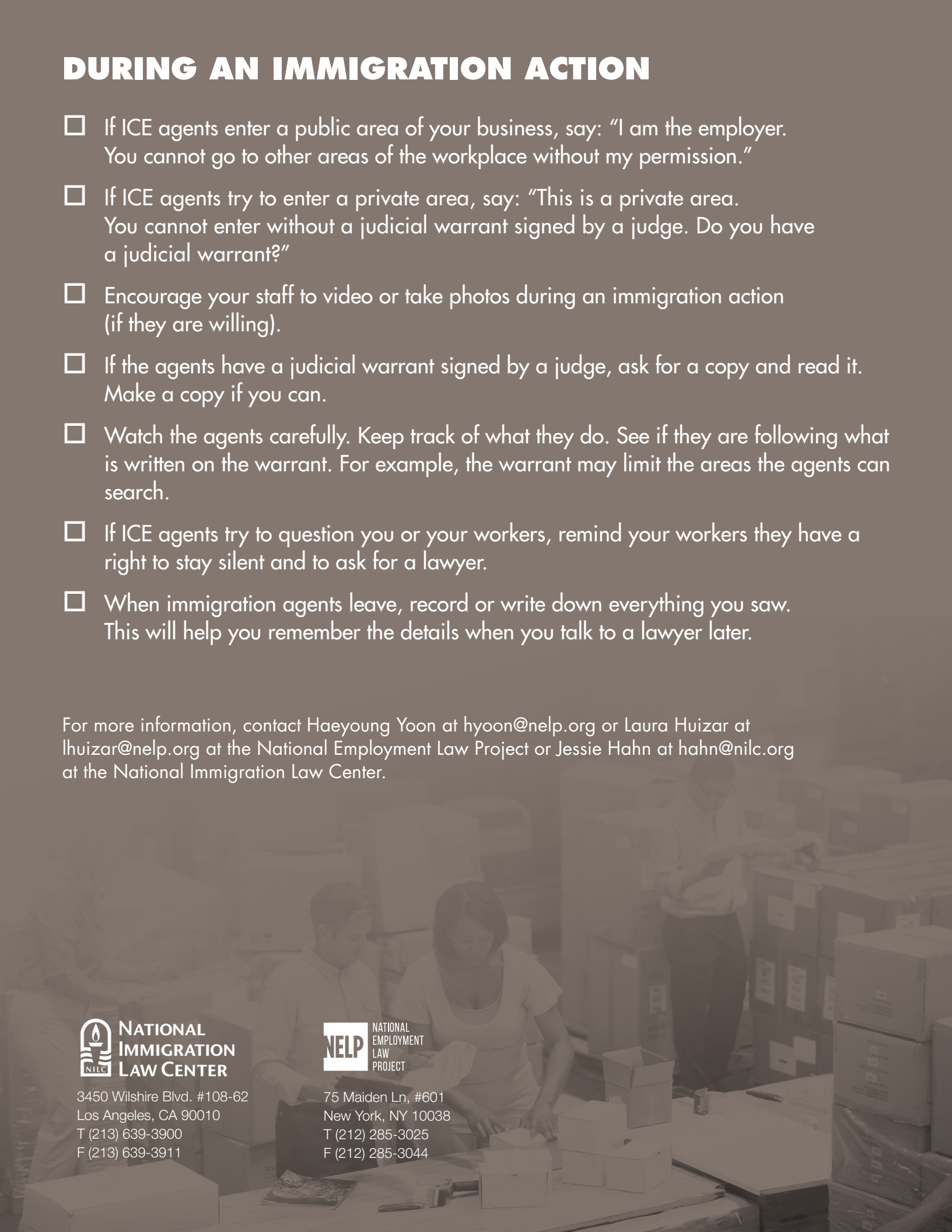
BEFORE AN IMMIGRATION ACTION

- ☐ Find a qualified immigration lawyer **now** – *before* anything happens.
- ☐ Make a written *Response Plan*. Practice your plan with your workers. Practice what to say, what to do.
- ☐ Provide a Know-Your-Rights training for all your staff.
- ☐ Train your staff:
  - *Do NOT run away if ICE agents show up. Running away could give ICE a legal reason to arrest workers.*
  - *Do NOT give ICE agents permission to enter your workplace.*
  - *Do NOT answer questions or give any information.*
- ☐ You and your workers have the right to stay silent and to ask to talk to a lawyer.
- ☐ Give your workers a list of lawyers or organizations that can provide high quality, free, or low-cost immigration legal advice for them and their families.
- ☐ Connect with an immigration response network in your area.

DURING AN IMMIGRATION ACTION

- ☐ If ICE agents enter a public area of your business, say: "I am the employer. You cannot go to other areas of the workplace without my permission."
- ☐ If ICE agents try to enter a private area, say: "This is a private area. You cannot enter without a judicial warrant signed by a judge. Do you have a judicial warrant?"
- ☐ Encourage your staff to video or take photos during an immigration action (if they are willing).
- ☐ If the agents have a judicial warrant signed by a judge, ask for a copy and read it. Make a copy if you can.
- ☐ Watch the agents carefully. Keep track of what they do. See if they are following what is written on the warrant. For example, the warrant may limit the areas the agents can search.
- ☐ If ICE agents try to question you or your workers, remind your workers they have a right to stay silent and to ask for a lawyer.
- ☐ When immigration agents leave, record or write down everything you saw. This will help you remember the details when you talk to a lawyer later.

For more information, contact Haeyoung Yoon at hyoon@nelp.org or Laura Huizar at lhuizar@nelp.org at the National Employment Law Project or Jessie Hahn at hahn@nilc.org at the National Immigration Law Center.



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