

# Nonprofits & Small Businesses: Know Your Rights! Interactions with Immigration Enforcement





# Disclaimer

This presentation is intended as a general overview and is for information purposes only. This presentation should not be construed as all-inclusive, nor as the provision of legal services to any individual or entity. Attending this presentation does not create any attorney-client relationship.



# Who are we?

Public Counsel is a nonprofit public interest law firm dedicated to advancing civil rights and racial and economic justice, as well as to amplifying the power of our clients through comprehensive legal advocacy.



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# Overview

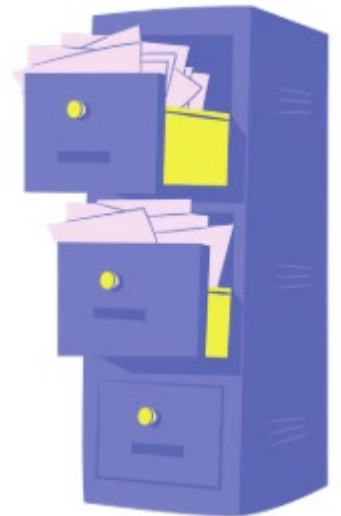
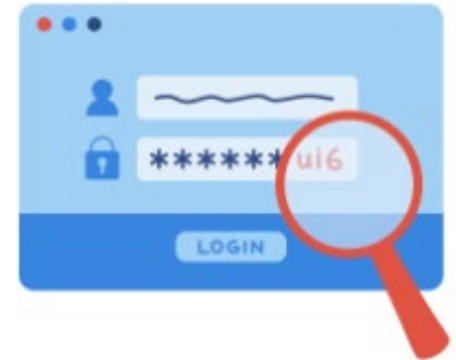
This webinar will cover rights and responsibilities in the event of an ICE visit to your office, business, or facility. We will cover:

- Storing of information
- Immigration Enforcement
  - I-9 related requirements, audits, and raids
  - General rights
- Why you should have a written policy regarding ICE interactions
- What the policy should consider and say
- How to implement the policy by giving guidance to staff if ICE shows up in person
- Protected/sensitive areas
- Caring for staff after a raid/audit
- Q&A



# Preparation: What Information Are You Storing?

- **DON'T STORE DATA UNLESS YOU HAVE TO FOR A SPECIFIC PURPOSE!**
- **What Client/Member information do you currently keep on file?**
  - Do you need to ask for this information in the first place?
    - If you need to ask for it, do you need to keep it?
    - If you need to keep it, how long do you need to keep it for?
- **Online retention vs physical files**
- **Do you have existing written policies that cover the retention and disclosure of Client/Customer information?**





# What Does Immigration Enforcement Look Like?





# What is the Form I-9 and What are I-9 Audits?



## Employment Eligibility Verification

Department of Homeland Security  
U.S. Citizenship and Immigration Services

USCIS  
Form I-9  
OMB No.1615-0047  
Expires 05/31/2027

**START HERE:** Employers must ensure the form instructions are available to employees when completing this form. Employers are liable for failing to comply with the requirements for completing this form. See below and the [Instructions](#).

**ANTI-DISCRIMINATION NOTICE:** All employees can choose which acceptable documentation to present for Form I-9. Employers cannot ask employees for documentation to verify information in **Section 1**, or specify which acceptable documentation employees must present for **Section 2** or Supplement B, Reverification and Rehire. Treating employees differently based on their citizenship, immigration status, or national origin may be illegal.

**Section 1. Employee Information and Attestation:** Employees must complete and sign Section 1 of Form I-9 no later than the **first day of employment**, but not before accepting a job offer.

Last Name (Family Name)		First Name (Given Name)		Middle Initial (if any)	Other Last Names Used (if any)						
Address (Street Number and Name)		Apt. Number (if any)	City or Town		State	ZIP Code					
Date of Birth (mm/dd/yyyy)	U.S. Social Security Number		Employee's Email Address		Employee's Telephone Number						
<p>I am aware that federal law provides for imprisonment and/or fines for false statements, or the use of false documents, in connection with the completion of this form. I attest, under penalty of perjury, that this information, including my selection of the box attesting to my citizenship or immigration status, is true and correct.</p> <p>Check one of the following boxes to attest to your citizenship or immigration status (See page 2 and 3 of the instructions.):</p> <p><input type="checkbox"/> 1. A citizen of the United States</p> <p><input type="checkbox"/> 2. A noncitizen national of the United States (See Instructions.)</p> <p><input type="checkbox"/> 3. A lawful permanent resident (Enter USCIS or A-Number.)</p> <p><input type="checkbox"/> 4. A noncitizen (other than <b>Item Numbers 2.</b> and <b>3.</b> above) authorized to work until (exp. date, if any)</p> <p>If you check <b>Item Number 4.</b>, enter one of these:</p> <table><tr><td>USCIS A-Number</td><td>OR</td><td>Form I-94 Admission Number</td><td>OR</td><td>Foreign Passport Number and Country of Issuance</td></tr></table> <p>Signature of Employee _____ Today's Date (mm/dd/yyyy) _____</p> <p>If a preparer and/or translator assisted you in completing Section 1, that person <b>MUST</b> complete the <a href="#">Preparer and/or Translator Certification</a> on Page 3.</p>							USCIS A-Number	OR	Form I-94 Admission Number	OR	Foreign Passport Number and Country of Issuance
USCIS A-Number	OR	Form I-94 Admission Number	OR	Foreign Passport Number and Country of Issuance							

**Section 2. Employer Review and Verification:** Employers or their authorized representative must complete and sign **Section 2** within three business days after the employee's first day of employment, and must physically examine, or examine consistent with an alternative procedure authorized by the Secretary of DHS, documentation from List A OR a combination of documentation from List B and List C. Enter any additional documentation in the Additional Information box; see Instructions.

	List A	OR	List B	AND	List C
<b>Document Title 1</b>					
Issuing Authority					
Document Number (if any)					
Expiration Date (if any)					
<b>Document Title 2 (if any)</b>					
Issuing Authority					
Document Number (if any)					
Expiration Date (if any)					
<b>Document Title 3 (if any)</b>					
Issuing Authority					
Document Number (if any)					

	Additional Information
Document Title 1	
Issuing Authority	
Document Number (if any)	
Expiration Date (if any)	
Document Title 2 (if any)	
Issuing Authority	
Document Number (if any)	
Expiration Date (if any)	
Document Title 3 (if any)	
Issuing Authority	
Document Number (if any)	

## LISTS OF ACCEPTABLE DOCUMENTS

All documents containing an expiration date must be unexpired.

\* Documents extended by the issuing authority are considered unexpired.

Employees may present one selection from List A or a combination of one selection from List B and one selection from List C.

Examples of many of these documents appear in the Handbook for Employers (M-274).

LIST A Documents that Establish Both Identity and Employment Authorization	OR	LIST B Documents that Establish Identity	AND	LIST C Documents that Establish Employment Authorization
U.S. Passport Card		1. Driver's license or ID card issued by a State or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		1. A Social Security Account Number card, unless the card includes one of the following restrictions: (1) NOT VALID FOR EMPLOYMENT (2) VALID FOR WORK ONLY WITH INS AUTHORIZATION (3) VALID FOR WORK ONLY WITH DHS AUTHORIZATION
Resident Card or Alien's Receipt Card (Form I-551)		2. ID card issued by federal, state or local government agencies or entities, provided it contains a photograph or information such as name, date of birth, gender, height, eye color, and address		2. Certification of report of birth issued by the Department of State (Forms DS-1350, FS-545, FS-240)
Passport that contains a machine-readable notation on a machine-readable visa		3. School ID card with a photograph		3. Original or certified copy of birth certificate issued by a State, county, municipal authority, or territory of the United States bearing an official seal
Employment Authorization Document (EAD) that is a photograph (Form I-766)		4. Voter's registration card		4. Native American tribal document
Individual temporarily authorized to work for a specific employer because of status or parole:		5. U.S. Military card or draft record		5. U.S. Citizen ID Card (Form I-197)
Passport; and		6. Military dependent's ID card		6. Identification Card for Use of Resident Citizen in the United States (Form I-179)
U.S. or Form I-94A that has the same name as the employee; and endorsement of the individual's status or parole as of that period of employment has not yet expired and the proposed employment is not in conflict with any restrictions or conditions identified on the form.		7. U.S. Coast Guard Merchant Mariner Card		7. Employment authorization document issued by the Department of Homeland Security
		8. Native American tribal document		For examples, see <a href="#">Section 7</a> and <a href="#">Section 13</a> of the M-274 on <a href="#">uscis.gov/i-9-central</a> .
		9. Driver's license issued by a Canadian government authority		The Form I-766, Employment Authorization Document, is a List A, <b>Item Number 4</b> , document, not a List C document.
		<b>For persons under age 18 who are unable to present a document listed above:</b>		
		10. School record or report card		
		11. Clinic, doctor, or hospital record		
		12. Day-care or nursery school record		

## Acceptable Receipts

May be presented in lieu of a document listed above for a temporary period.

For receipt validity dates, see the M-274.

Receipt for a replacement of a lost, stolen, or damaged List A document	OR	Receipt for a replacement of a lost, stolen, or damaged List B document	OR	Receipt for a replacement of a lost, stolen, or damaged List C document



# Employer's Responsibilities: I-9s

- **What are my obligations when confirming authorization to work in the hiring process?**
- **How long must I retain the I-9s?**
- **Am I required to re-verify work authorization after I have hired an employee?**

Put your answer in the chat: An employee with DACA indicates their authorization to work expires on May 1, 2025. Does the employer have to re-verify?





# All About I-9 Audits

- What might trigger an I-9 audit and what do they look for in an audit?
- ✓ Prohibit staff from signing waiver of required three-day period.
- ✓ Do not give ICE consent to speak with employees.
- ✓ Post required employee notice (AB 450) to let employees know about the audit.
- What if ICE finds unauthorized employees in your organization?





# General Rights With Respect to Immigration Enforcement

- Right to stay silent
- Right to ask for identification
- Right to document and record
- Right to deny entry into private spaces (if no warrant) and ask for supporting documentation (e.g. warrants/subpoena)



# Big Picture: Written Policies

- Why have a written policy?
- What should the policy say?
- How should you implement the policy?





# Why Have a Written Policy?



- Useful tool for training staff on how to protect both your clients' and organization's legal rights in the event of immigration enforcement activity at your site.
- Encourages discussion and agreement within the organization.
- Reassures staff of their protections.



# Contents of Policy



- ☐ Scope of Policy
- ☐ Organizational/Employee information
- ☐ Data Collection and Preservation
- ☐ Monitoring and Receiving Visitors to the Space
  - ☐ Public vs. Private Spaces
- ☐ What To Do During an Encounter with Law Enforcement



# Scope of Policy

- Purpose statement – when should the policy be applied?
- Specify which properties the policy applies to
- Talk about different staff roles / locations
  - Owner
  - Property Manager
  - On-site vs. off-site staff
  - Front desk/Reception
  - Security
  - Maintenance
- Policy should address ALL interactions with law enforcement (and other official visitors), not just visits from ICE.





# Drafting Your Policy: Public vs. Private Spaces

- What is your **visitor access policy**?
- What areas are **private**?
  - “reasonable expectation of privacy”
- Remember the “**plain view**” rule!
- Have signs designating private areas vs public.







# Is it a Public or Private Space?



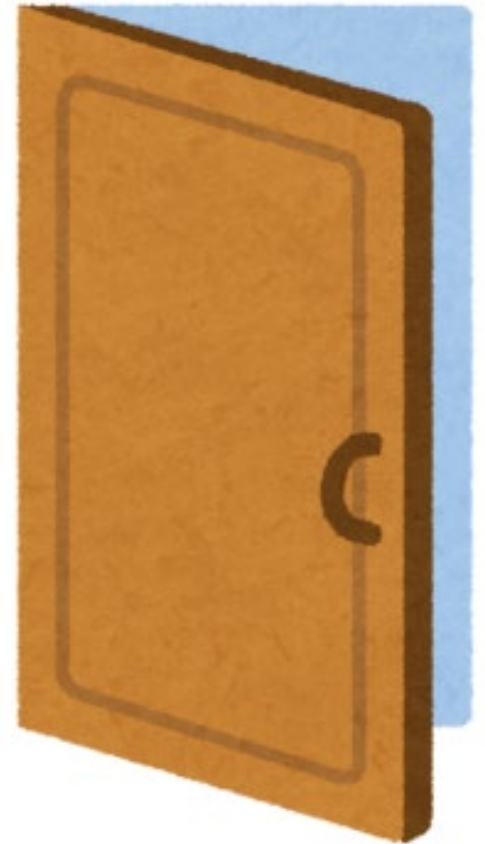
- To be considered a private space under the 4<sup>th</sup> Amendment, there must be
  - A “reasonable expectation of privacy”. This expectation must exist both from the individuals subjective point of view and from an objective societal perspective.
- A trespassory search is when a government official (not any ordinary person), without a warrant, comes into a private space with the intent to search it without a warrant.



# What do you think?

## **Answer in the chat:**

- 1.) Does “buzzing” people into the lobby make it a private space?
- 2.) Does opening the front door of your business or doors to private offices give a government officials more power to search them?





# In Your Policy: What To Do During an Encounter with Law Enforcement

- **Most Importantly:** Do not lie.
  - Either follow the policies or remain silent.
- **Policy: ICE/Law Enforcement may not enter without a warrant.**
- **List the designated/authorized contact person(s) and their duties:**
  - Familiar with different types of warrants / subpoenas
  - Comfortable checking date, location, and scope of warrant
  - Asks for, checks, and documents the agent's credentials
  - Authorized to interact with law enforcement on behalf of organization
  - On-site vs. off-site? Available after hours?
  - Has contact info for / relationship with attorney or legal services organization.





# So HSI/ICE Is At The Door!

1. Stay calm. **Don't run**. Contact the Authorized Person.
2. Inform the agents they do not have permission to enter nonpublic areas without a judicial warrant. Ask them to stay in a designated area.
3. Have the authorized person inspect the documentation that ICE provides.
4. If no warrant, say “We have a policy of denying access without a valid warrant.”
5. If valid warrant, have them double check with another staff member before taking action. Then, ensure that the authorized search remains only within the boundaries of the warrant by accompanying them throughout and documenting.







This is a judicial search warrant. It DOES authorize agents to enter your home.

# UNITED STATES DISTRICT COURT

Issued by a COURT.

for the  
Eastern District of California

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

540 Oak Avenue  
Davis, California 95616

Case No.

## SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

2:11-SW-0161 EFB

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 EASTERN District of CALIFORNIA.  
(Identify the person or describe the property to be searched and give the location):  
**SEE ATTACHMENT A, ATTACHED HERETO AND INCORPORATED BY REFERENCE**

Read attachments to make sure they are regarding YOU and YOUR address, not someone else's.

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, ATTACHED HERETO AND INCORPORATED BY REFERENCE**

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

Date for warrant, not  
to exceed 14 days

**YOU ARE COMMANDED** to execute this warrant on or before

5-9-2011

(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: 4-25-2011  
9:10:00 AM

Signed by a JUDGE.

City and state: SACRAMENTO, CALIFORNIA

EDMUND F. BRENNAN, U.S. MAGISTRATE JUDGE  
Printed name and title

U.S. Department of Justice  
Immigration and Naturalization Service

## Warrant of Removal/Deportation

File No: \_\_\_\_\_

Date: \_\_\_\_\_

To any officer of the United States Immigration and Naturalization Service:

(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 a 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 (Act), 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, commanded 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 Naturalization Service 2002," including the expense of an attendant if necessary.

(Signature of INS officer)

(Title of INS officer)

(Date and office location)



# Suggested Conduct for Non-Authorized On-Site Staff

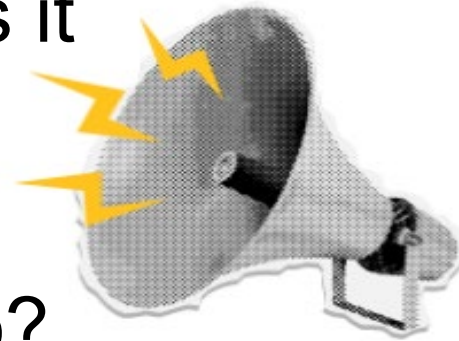
- Ensure other staff know who the designated staff member is. Otherwise can say they are not authorized to speak.
- Do not consent to entry or search
  - HAVE YOUR STAFF PRACTICE: “I DO NOT CONSENT TO YOUR ENTRY.”
- Do not provide any documents or information
- Do not engage in unnecessary conversation
- Do not physically interfere, make false statements, or otherwise obstruct
- You MAY direct clients/others nearby that they have a right to remain silent and do not have to answer questions from the agent. You MAY NOT direct them NOT to speak to the agent.
- Document the interaction (e.g. record with phone) if you feel comfortable.





# Let's Practice Key Phrases!

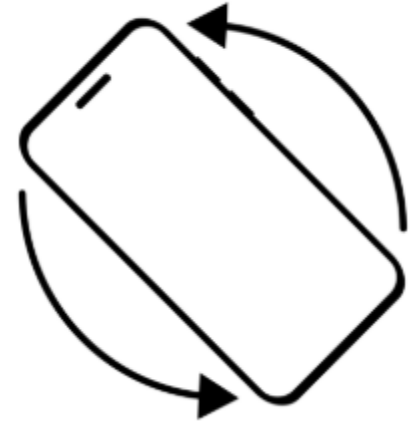
- I am not authorized to speak with you.
- I do not want to answer any of your questions.
- Do you have a warrant? Please pass it under the door.
- I do not consent to your entry.
- Am I being detained? Am I free to go?
- I do not give you permission to search me.
- (If you are not free to leave): I do not want to talk to you until I talk to a lawyer.





# Documentation Tips!

- Phone recording etiquette
  - Announce you are making a recording
  - Stay a safe distance
  - Record the agents, not others.
- What to record:
  - Date and time
  - How many officers?
  - Their names and badge numbers – Ask for their card or credentials. Take a photo of it.
  - Who did they say they were and why did they say they were there?
  - Did they present a warrant? Did you ask? Take a photo of the documentation they present.
  - What happened next?





# Protected/Sensitive Areas

- According to ICE, they instruct officers to refrain from enforcement at or near “protected” or “sensitive” areas.
- What facilities are covered by ICE “sensitive locations” policy?
  - Schools, Hospitals, Funerals, Places of Worship, etc.
- Although there are no current changes to the protected areas policy:
  - The incoming Trump Administration may rescind this policy possibly as early as the first day the Administration is in office.





# Implementing Your Policy

- Work with attorney / legal services organization to draft customized policies
- Nonprofits and Corporations -- seek approval by your Board of Directors
- Conduct staff trainings
  - Explain reasoning behind policies
  - Do role play exercises to get staff comfortable with policies
  - Explain how to respond to client concerns
  - May want to hold different trainings for different staff types





# Caring for Your Staff After a Raid/Audit



- Provide a space to debrief and discuss collective grief and fatigue.
- Encourage time for self-care and self compassion.
- Offer leave while workers apply for work authorization.
- Pay wages and benefits promptly.
- Provide a reference to workers for future jobs.
- Provide separation pay if workers cannot return to work.
- Stay connected to the community's immigration response efforts.



# Q&A



# Need More Help?



Public Counsel

Community Development Project

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# Additional Resources

- Work Authorization for Employers Guide  
<https://publiccounsel.org/publications/work-authorization-faq-for-employers/>
- ICE Detainee Locator <https://locator.ice.gov/odls/#/search>
- National Immigration Help Search  
<https://www.immigrationlawhelp.org/>
- Guide for Nonprofits and Businesses  
[https://lawyersalliance.org/userFiles/uploads/legal\\_alerts/Guidance\\_to\\_Nonprofits\\_Regarding\\_Immigration\\_Enforcement.pdf](https://lawyersalliance.org/userFiles/uploads/legal_alerts/Guidance_to_Nonprofits_Regarding_Immigration_Enforcement.pdf)
- Red Cards - <https://www.ilrc.org/red-cards>
- USCIS I-9 Guide  
<https://www.uscis.gov/book/export/html/59502>