

## THOUGHT LEADERSHIP

ARTICLES

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## Service

Business  
Immigration and  
Global Mobility

## Professionals

KELLI J. MEILINK  
KANSAS CITY:  
816.983.8309  
KELLI.MEILINK@  
HUSCHBLACKWELL.COM

TIFFANY L. BALDWIN  
ST. LOUIS:  
314.480.1935  
TIFFANY.BALDWIN@  
HUSCHBLACKWELL.COM

# Guide for Interacting with Immigration and Customs Enforcement and Other Immigration Agencies at Employer Sites

Immigration and Customs Enforcement (ICE) and U.S. Citizenship and Immigration Services Homeland Security Investigations (HSI) are federal agencies that monitor and enforce an employer's compliance with federal immigration laws, including laws that regulate who can and cannot work in the United States. This document is intended to be a guide to help employers navigate how to handle on site interactions with ICE, HSI, and other agencies.

**Step 1:** Obtain the name of the agency official that has arrived on site. Ask for a business card or I.D. from the official as well as their supervisor's name and contact information. Be polite and calm.

**Step 2:** Ask why the agency official is at the worksite.

ICE may come on site to investigate an employer for three different reasons:

1. **To arrest an individual**, which usually requires an **arrest warrant** and **does not** require advance notification.
2. **To conduct a search of the premises** (sometimes called a raid), which requires a **search warrant** and **does not** require advance notification.
3. **To request documents**, such as Forms I-9 (e.g., an I-9 audit), which does not require a search warrant but **may require a subpoena or Notice of Inspection**.

If ICE does not produce documentation, such as a warrant, subpoena, or Notice of Inspection, to conduct their enforcement action, request that documentation.

<b>If the official is requesting Form I-9 records and has a subpoena or Notice of Inspection:</b>	<b>If the official is there to access the worksite or arrest an employee and has a warrant:</b>
<p><b>Step 3:</b> Obtain a copy of the written notice (called a Notice of Inspection) or subpoena for the I-9 records. <b>Do not</b> give immediate consent to an immediate review of I-9 records.</p> <p><b>Notice of Inspection:</b> You are not required to immediately respond to a Notice of Inspection.</p> <p><b>Subpoena for the immediate production of documents:</b> Review the document carefully and immediately contact counsel or the appropriate person in leadership before producing documents.</p>	<p><b>Step 3:</b> Ask for a copy of the warrant and examine it carefully:</p> <p><b>Search Warrant:</b> The warrant should be signed by a magistrate or judge, and the actual search must be conducted within the time period and within the business hours written in the warrant. It should identify:</p> <p>the agency or officers;</p> <p>the location to be searched; and</p> <p>a description of the items or individuals to be seized.</p> <p><b>ICE Administrative Warrant:</b> This warrant will be signed by an ICE officer and will list the individual's name to be arrested.</p> <p><b>Judicial Arrest Warrant:</b> This warrant will be signed by a federal judge or magistrate judge and list the individual's name to be arrested.</p>
<p><b>Step 4:</b> Immediately contact [LEGAL COUNSEL/IDENTIFIED COMPANY REPRESENTATIVE] (phone: _____) to assist in responding to request.</p> <p>Second point of contact: [NAME/TITLE] (phone: _____)</p> <p>You may ask the official to wait in a</p>	<p><b>Step 4:</b> Immediately contact [LEGAL COUNSEL/IDENTIFIED COMPANY REPRESENTATIVE] (phone: _____)</p> <p>Second point of contact: [NAME/TITLE] (phone: _____)</p> <p>Third point of contact: [NAME/TITLE] (phone: _____)</p>

waiting room, meeting space, or lobby while you contact the appropriate person.	You may ask the official to wait in a waiting room, meeting space, or lobby while you contact the appropriate person.
<p><b>Step 5:</b> If documents are produced, be sure to inventory and retain copies of all documentation produced.</p> <p>*In California, employers may be required to notify employees of an I-9 audit within 72 hours.</p>	<p><b>Step 5:</b></p> <p><b>If the officers are seeking an <i>employee</i>,</b> bring the employee to the officers where the officers are waiting.</p> <p><b>If the officers are requesting a <i>search of the premises</i>,</b> accompany officials on their search of the facility. Take detailed notes about what is occurring, marking them “Attorney-Client Privileged and Confidential.” Make an inventory of all items seized.</p>
	<p><b>Step 6:</b> Ensure you are complying with a few key do's and don't's:</p> <p><b>DO:</b></p> <p>Do follow the direction of legal counsel.</p> <p>Do accompany ICE officers at all times while they are on the premises.</p> <p>Do carefully review any documents provided to you.</p> <p>Do ensure you are allowing investigators to see only the records they are legally entitled to see pursuant to the warrant.</p> <p>Do make copies of any documents being removed from the facility, if possible.</p> <p>Do be polite and professional.</p> <p><b>DO NOT:</b></p>

Do not sign anything or answer any substantive questions, including questions regarding company policies or practices or particular employees.

Do not prevent access to the premises or block entrances.

Do not hide employees or advise them to escape the premises. However, you may ask officials to authorize the release of all non-essential employees for the day.

Do not interfere with the seizure of documents or equipment or the interrogation of employees.

Husch Blackwell's Business Immigration and Global Mobility team offers a Resource Center with insights to help employers navigate the evolving immigration policy landscape.