



**AGC**  
THE CONSTRUCTION  
ASSOCIATION

IMMIGRATION ENFORCEMENT UNDER TRUMP

# IMMIGRATION ENFORCEMENT UNDER TRUMP

Bruce E. Buchanan

Littler Mendelson, P.C.

[bbuchanan@littler.com](mailto:bbuchanan@littler.com)

# Presented by Bruce Buchanan, Littler



Bruce E. Buchanan is Special Counsel for Littler, located in their Nashville, TN office. He represents employers in various aspects of immigration law, with a special emphasis on immigration compliance, and labor law - NLRB and wage & hour matters.

Bruce received his J.D. from the Vanderbilt University in 1982. Before going into private practice in 2003, he served as senior trial specialist for the NLRB for 20 years. Bruce also served from 1991 to 2003 as Adjunct Law Professor at William H. Bowen UALR School of Law.

Bruce is co-author of *The I-9 and E-Verify Handbook* (2024 & 2017 ed.). He is admitted to practice in Tennessee, Georgia, & Florida and may be reached at [bbuchanan@littler.com](mailto:bbuchanan@littler.com) or (615) 514-4122.

# Under Trump, Where is Immigration Compliance Headed?



- In first Trump administration, ICE enforcement of immigration compliance was at all time high;
  - 5981 in FY18, 6450 - FY19 ICE I-9 audits w/ goal of 15,000 in FY20 but COVID hit;
  - ICE raids of employers resumed in 2018, after 10 years of no ICE raids.
- By comparison, Biden Administration had 300-900 a year of ICE I-9 audits while Bush and Obama never had more than 3,000 a year;
- It is expected that Trump Administration will increase ICE I-9 audits to at least 15,000 a year with ICE worksite raids being 100 or more.



# ICE I-9 AUDITS

# Is Construction Industry Being Targeted for I-9 Audits?



- These industries being targeted by ICE/HSI:
  - **Construction**
  - Hospitality – restaurants and hotels
  - Manufacturing/food processing
  - Critical infrastructure (power plants, airports)
- Why are these industries targeted?
  - Industries with the most undocumented workers.

# What is an ICE I-9 Audit?



- ICE agents hand-deliver a Notice of Inspection (NOI) and subpoena.
- NOI/subpoena demands contractor produce:
  - Forms I-9 of current & terminated employees & supporting documentation, if retained, including passport, green card, EAD, driver's license, & Social Security card, any E-Verify confirmations;
  - List of current employees; Payroll and quarterly reports; Names of staffing companies; Articles of Incorporation and business licenses; Whether a participant in E-Verify.

# How to Prepare for ICE I-9 Audit



- Have immigration attorney conduct internal I-9 audit – cure substantive errors on I-9 forms & ID undocumented workers;
- Ensure designated staff properly trained on preparation & maintenance of I-9s;
- Consider enrolling in E-Verify, which streamlines employment eligibility verification;
- Create immigration compliance policy, including designated employee to be POC in case ICE shows up on property;
- Maintain copies of documentation accepted as proof of identity & employment authorization with Form I-9.

# What to do in ICE I-9 Audit



- When ICE arrives with Notice of Inspection (NOI), what to do?
  - Notify designated manager to communicate with ICE, if possible;
  - Get business cards from ICE agents;
  - Never waive the 3-day period to produce I-9s;
  - Immediately contact your lawyer as time is of essence;
  - Only allow ICE into public areas of worksite;
  - ICE may only enter non-public areas of workplace with employer's consent or search warrant from federal judge.



# Contractors and I-9 Audits



- In past 10 years, there have been many ICE I-9 audits of contractors;
- Contractors may lose 25 to 50% of workforce, who are undocumented;
- Few examples of contractors which have been audited in past and results:
  - Florida paving company - \$767,000
  - Masonry company - \$232,000
  - Maverick Construction - \$183,000



# ICE RAIDS

# Return of ICE Raids



- ICE raids returned, in April 2018, after 10-year absence, at several locations, including: Bean Station, TN slaughterhouse; Ohio meat supplier; Ranches and farms in Minn. & Neb.; and Texas trailer manufacturer;
- ICE raid continued for 2 years and ended in 2020;
- Border Czar Homan has promised return of raids.

# What is an ICE Raid?



- ICE agents surround the premises and usually have aerial presence, airplane or helicopter.
- ICE agents & other government agencies enter the business with a criminal search warrant issued by a federal judge.
- Search warrant will have a detailed description of what and where agents are going to search and what they may seize.
- Additionally, during a worksite raid, if ICE discovers unauthorized workers at the site, they will arrest, detain them, and place them in Immigration Court, or federal court if a federal crime, such as identity theft has occurred.

# Difference between ICE I-9 Audits vs. ICE Raids



1. ICE raid = likely facing criminal liability;
2. ICE raid is going to be much more disruptive to business than ICE I-9 audit;
3. ICE raid will cause you to immediately lose significant portion of your workforce.

# What should Contractor do and not do during ICE raid?



- Employer rep is not required to answer questions;
- Employer reps may not obstruct or provide false/misleading information;
- Employer should immediately call immigration counsel.
- Record the names of ICE supervising agents assigned to case;
- Assign designated company reps to accompany ICE agents as they go about workplace;
- Object to any searches that are outside the scope of the warrant;
- Obtain a list of items seized during the search.

# ICE Raid – How to Prepare



- Is there a way to prepare for an ICE raid?
  - Yes, don't commit criminal/civil violations, such as paying employees in cash, not using I-9 forms, committing tax fraud, harboring undocumented workers, etc.

# PENALTIES



# What are Penalties?



- ICE has discretion to assess range of money penalties for I-9 violations.
- Penalties for substantive I-9 errors are between \$281–\$2,789 per violation;
- All undocumented workers must be terminated; if not, ICE will charge contractor with knowingly employing undocumented workers.
- Knowingly hiring/employing unauthorized workers carry penalties between \$698–\$5,579 per violation;

# Criminal Penalties



- Can there be criminal penalties for immigration violations?
  - Yes, where ICE finds an employer knowingly employed individuals who lack work authorization or harbored undocumented workers, ICE may pursue criminal charges which could result in imprisonment of individuals involved for up to six months under the INA.
  - Further financial penalties on individuals and employers may be imposed under federal law.



**Questions?**