



## **Employers' Rights In An ICE Raid**

### **I. Without a Warrant, ICE or CBP Officers May:**

- Question a person concerning his right to be in the US if the officer has a reasonable suspicion, based on articulable facts, that the person is an alien.
- Detain a person and ask for proof of authorized status if the officer has reasonable suspicion that the person is an alien illegally in the U.S.
- Arrest an alien if the officer has probable cause to believe that the person is present in the U.S. illegally and is likely to escape before the officer can obtain an arrest warrant.
- Frisk a person who has not been arrested if the officer has a reasonable suspicion that the person is armed and seize any object reasonably believed to be a weapon.
- Perform complete search of an arrested person and the area within the arrested person's immediate reach and control.
- On a roving patrol, stop a vehicle if the officer has a reasonable suspicion that the vehicle contains an alien illegally within the U.S.
- Search the vehicle if a person is not arrested, if the officer has probable cause.
- Enter private lands (not a dwelling) within 25 miles of any external boundary of the U.S. to prevent the illegal entry of aliens into the U.S.
- Enter public property or property that is open to the public (including bus stations, train stations, retail store parking lots etc AND any public areas on your farm..), and question workers if the officer has a reasonable suspicion of their alienage. It is therefore

advisable to mark as 'Private' any areas or access roads which are not held open to the public in order to minimize disruption.

- Time their vehicle stops, interrogations and other enforcement activity when workers are off your property and engaged in common public activities, such as traveling to or from church, shopping in grocery and other retail stores, or attending a social event.
- Enter your property without a warrant to seek consent to search.
- Continue legal pursuit of a fleeing suspect onto your property. Additionally, if during the chase, your workers begin to flee, ICE/CBP may pursue those workers. However, in such circumstances, ICE/CBP officers cannot generally conduct a search of your entire workforce.
- Pursue a worker who flees after seeing an ICE/CBP officer who is legally on your farm; the flight provides the officer with probable cause to believe the person is illegally present in the US and is likely to escape before the officer can obtain a warrant. Again, in these circumstances, they will not be able to search the entire workforce.

## **II. Without a Warrant, ICE and CBP Officers May NOT:**

- Create probable cause by unlawfully entering your property or by taunting or threatening employees.
- Enter fields, orchards, packing sheds or other non public areas of private property without a search warrant or consent. Officers may, however, rely on consent given by individuals who appear to be in control of the work site.

To prevent unauthorized people from giving consent, you can inform all personnel, including supervisory employees:

1. They do not have the authority to consent to a search by any law enforcement agency;
2. They should advise any officer that they do not have the authority; and
3. They should direct the officer to wait while they locate you. This is VERY important because ICE /CBP officers will be happy to roam

around your farm looking for you unless your employee asks them to wait in a designated area while the employee finds you.

### **III. Asking for a Warrant**

If ICE officers ask your permission to search your farm you are entitled to ask for a warrant (although they may not be happy that you do). They may have one already which they have chosen not to disclose to you. You should consider in advance whether you will consent to a search without a warrant. You may also want to speak to your attorney before giving the officers a response.

Before you tell the officers whether you consent you should obtain the names and badge numbers of all the officers on your property and write it down. You may write down the information in the presence of the officers. To maintain an accurate record of ICE/CBP activity, be prepared to document the officers' conduct as soon as possible, possibly through videotaping the search..

If you refuse to consent to a search the officers may try to persuade you to change your decision, for example, by suggesting that the employer has something to hide. Such conduct should be documented.

If you consent to the search, it is not necessarily true that ICE / CBP will be lenient in conducting the search; however, in some circumstances the request for consent may provide an opportunity to negotiate the scope of the search (i.e. the areas to be searched, the number of agents and the timing of the search) to minimize the disruption to your operation caused by the investigation.

You should contact your legal counsel to address the particular circumstances raised by the ICE/ CBP search request.