

Office of Investigations

U.S. Department of Homeland Security
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**U.S. Immigration
and Customs
Enforcement**

MEMORANDUM FOR: Assistant Director
Deputy Assistant Directors
Special Agents in Charge

FROM: Marcy M. Forman
Director, Office of Investigations

SUBJECT: Worksite Enforcement Strategy

Worksite Enforcement Strategy

I. The Purpose and Priorities of Worksite Enforcement

The prospect for employment in the United States continues to be one of the leading causes of illegal immigration; creating a market for criminal smuggling organizations who exploit people willing to pay high fees, and take great risks to enter the United States without detection. Immigration and Customs Enforcement (ICE) has a vital responsibility to engage in effective worksite enforcement to reduce the pull of illegal employment, ease pressure at the border, and protect employment opportunities for the nation's lawful workforce.

DHS has extensive but finite resources with it must effectively allocate. Arresting and removing illegal workers must be part of a strategy to deter unlawful employment, but alone is insufficient as a comprehensive worksite enforcement strategy. Of the more than 6,000 arrests related to worksite enforcement in 2008, only 135 were of employers. Enforcement efforts focused on employers better target the root causes of illegal immigration. An effective strategy must do all of the following: 1) penalize employers who knowingly hire illegal workers; 2) deter employers who are tempted to hire illegal workers; and 3) encourage all employers to take advantage of well-crafted compliance tools. To accomplish these goals, ICE must prioritize the criminal prosecution of the actual employers who knowingly hire illegal workers because such employers are not sufficiently punished or deterred by the arrest of their illegal workforce.

Although criminal prosecution of employers will effectively advance the stated goal of worksite enforcement, ICE will not rely solely on that approach. ICE will continue to fulfill its responsibility to arrest and process for removal illegal workers encountered during worksite enforcement operations. Furthermore, ICE will use all available civil and administrative tools, including civil fines and debarment, to penalize and deter illegal employment.

ICE will strategically approach worksite enforcement efforts to maximize their impact. To that end, ICE offices should refer to this Worksite Enforcement Strategy when beginning any worksite enforcement investigation. ICE offices also must refer to the reporting requirements and humanitarian guidelines applicable to worksite enforcement operations.

II. Criminal Prosecution of Employers

- The criminal prosecution of employers¹ is a priority office's worksite enforcement (WSE) program and interior enforcement strategy.
- ICE is committed to targeting employers, owners, corporate managers, supervisors, and others in the management structure of a company for criminal prosecution through the use of carefully planned criminal investigations.
- ICE offices should utilize the full range of reasonably available investigative methods and techniques, including but not limited to: use of confidential sources and cooperating witnesses, introduction of undercover agents, consensual and nonconsensual intercepts and Form 1-9 audits.
- ICE offices should consider the wide variety of criminal offenses that may be present in a worksite case. ICE offices should look for evidence of the mistreatment of workers, along with evidence of trafficking, smuggling, harboring, visa fraud, identification document fraud, money laundering, and other such criminal conduct.
- Absent exigent circumstances, ICE offices should obtain indictments, criminal arrest or search warrants, or a commitment from a U.S. Attorney's Office (USAO) to prosecute the targeted employer before arresting employees for civil immigration violations at a worksite. In the absence of a timely commitment from a USAO, ICE offices should obtain guidance from ICE Headquarters prior to proceeding with a worksite enforcement operation.

III. Administrative and Civil Tools

ICE offices should use administrative tools to advance criminal cases and, in the absence of criminal charges, to support the imposition of civil fines or other available penalties.

A. Form 1-9 Audits

The most important administrative tool is the Notice of Inspection (NOI) and the resulting administrative Form 1-9 audit.

- The Form 1-9 audit process will be utilized in both criminal and administrative investigations to identify illegal workers, including criminal aliens employed at a business.
- Although auditors will assume primary responsibility for conducting Form 1-9 audits, ICE special agents and auditors must coordinate closely because this process will often serve as an important step in the criminal investigation and prosecution of employers.

¹ In this context "employer" refers to someone involved in the hiring or management of employees. This includes owners, CEOs, supervisors, managers and other occupational titles.

- ICE offices may issue documents to employers, including Discrepancy and Suspect Document letters, for the purpose of fostering prompt corrections in hiring and documentation practices and also laying the groundwork to establish probable cause to support subsequent criminal charges if corrections are not made.

B. Civil Fines

Civil fines, although not as key as criminal prosecution, are an important part of an effective worksite enforcement strategy. These fines provide a penalty when the evidence is not sufficient to support a criminal prosecution or as otherwise appropriate. In the mid-1990's, employers received notices of intent to fine (NIFs) totaling \$26 million.

- ICE offices should work with attorneys in OPLA when issuing a NIF, to facilitate the collection of civil fines for each worker employed in violation of the law.

C. Debarment Proceedings

Debarment precludes companies that have knowingly hired illegal workers from securing work on federal contracts. Debarment, therefore, carries highly significant consequences. As ICE increasingly pursues debarment, the practice may have a significant deterrent effect.

- ICE offices should initiate the debarment process, if appropriate, following the successful prosecution of an employer or the occurrence of another trigger to debarment.

D. Outreach

Through the ICE Mutual Agreement between Government and Employers (IMAGE) program and other means, ICE will continue to seek out employers who want to comply with our nation's immigration laws and provide them with the training and tools they need to minimize the risk of unwittingly hiring illegal workers.

IV. Critical Infrastructure and National Security Sites

- ICE has a responsibility to help assure a legal workforce at America's critical infrastructure workplaces and other security-sensitive locations. Based on careful investigative work, ICE will initiate audits, searches, and targeted employee interviews to remove unlawful workers from such worksites.
- Whenever possible, critical infrastructure protection enforcement operations also will target the employer, including contractors, for criminal or administrative penalties.

V. Executing a Worksite Enforcement Operation

Historically, ICE's worksite enforcement operations receive significant attention from Congress, non-governmental organizations, the press, and the public. In addition, particularly because the arrest of a number of illegal workers at the same site can have rippling

consequences on others in the community, ICE offices must refer to and comply with the following:

A. Reporting Requirements

All worksite investigations will adhere to pre-existing reporting requirements, including providing 14-day notice to ICE Headquarters in advance of developing or executing enforcement activity. Advance reporting should include a comprehensive operational plan with a section dedicated to the prosecution plan as well as the worksite operation checklist. Requests for exceptions due to exigent circumstances will require immediate telephonic notification to the Assistant Director, Operations.

B. Humanitarian Guidelines

The existing humanitarian guidelines, found on the Office of Investigation's intranet, remain in effect, except they will apply to all worksite enforcements involving 25 or more illegal workers rather than 150.

VI. Conclusion

ICE is committed to robust worksite enforcement. The above guidance re-prioritizes and refines the existing ICE worksite enforcement strategy and methodology, in order to emphasize the criminal prosecution of employers who violate the law. This strategy is subject to further refinements and improvements as deemed necessary. Additional guidance will be issued in the Special Agent Handbook currently under revision. While ICE is re-focusing efforts to develop criminal cases against employers who hire and use illegal workers, the administrative arrest of the illegal workforce under ICE's existing immigration authorities continues to be an integral aspect of the overall ICE worksite enforcement strategy. To ensure maximum deterrence, ICE also will pursue all other available tools to encourage employers to utilize and rely on this nation's lawful workforce.