

# Immigration Compliance in the Extreme Vetting Era



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Woodruff Arts Center  
Rich Theatre

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# New Standard for Immigration Adjudications: Extreme Vetting

Federal agencies implementing extreme vetting standard:

- U.S. Immigration and Customs Enforcement (ICE)
- U.S. Customs and Border Protection (CBP)
- U.S. Department of Justice (DOJ)
- U.S. Citizenship and Immigration Services (USCIS)

# 400% Increase in Worksite Enforcement Investigations

## **FY 2017**

- 1,691 Worksite Investigations
- 1,360 I-9 Audits
- 139 Criminal Arrests
- 172 Administrative Arrests

## **FY 2018**

- 6,848 Worksite Investigations
- 5,981 I-9 Audits;
- 779 Criminal Arrests
- 1,525 Administrative Arrests

# Why Worksite Enforcement Increased

- ICE issued directive to increase worksite enforcement investigations
- Statements from Acting Executive Associate Director for HSI, Derek N. Benner:
  - *“Our worksite enforcement strategy continues to focus on the criminal prosecution of employers who knowingly break the law, and the use of I-9 audits and civil fines to encourage compliance with the law.”*
  - *“Employers need to understand that the integrity of their employment records is just as important to the federal government as the integrity of their tax files and banking records. All industries, regardless of size, location and type are expected to comply with the law.”*

# *Largest* Immigration Fine in History - 2017

- **\$95 Million Dollar Fine**
- Pennsylvania company specializing in tree pruning and vegetation management for utilities/government agencies.
- Pled guilty to unlawfully employing foreign nationals.
- 2010 – 2014, company accepted identification documents it knew to be false and fraudulent.
- Six year investigation.
- Company decentralized hiring so highest levels of management could remain *willfully* blind while 2nd and 3rd level supervisors hired unauthorized workers in the field.



## *Second* Largest Immigration Fine in History

- **\$34 Million Dollar Fine**
- Texas software company
- Failed to maintain I-9 records for foreign nationals.
- Failed to re-verify employment authorization for large percentage of foreign national employees.
- Fraudulently used B-1 visa holders to perform jobs that required a work visa.

## 5 Step Plan to Avoid a Similar Fate

How to ensure extreme vigilance in an era of extreme vetting:

1. Ensure I-9 compliance policies and programs are in place, up-to-date, and followed.
2. Complete I-9 forms if any are lost or missing. All current employees hired after November 6, 1986 must have an I-9 form on file.
  - Do not knowingly hire an alien who is not authorized to work.
  - Do not hire any individual without verifying identity and work authorization.
  - Do not continue employing person if you know **or should know** person is not authorized to work.

## 5 Step Plan to Avoid a Similar Fate (cont.)

3. Train staff and managers on how to complete a Form I-9, and what actions to take when they are made aware that an employee may not be authorized to work in the U.S.
4. Conduct regular internal I-9 audits and remedy identified errors. (Have outside counsel conduct periodic I-9 audits.)
5. Train a rapid response raid team on what to do in the event of a visit from enforcement officials.



# ICE Arrives - Notice of Inspection

- Three days notice prior to ICE review of I-9 Forms allowed (may waive but not recommended).
- Original, microfilm, microfiche or electronic I-9 forms acceptable for inspection.
- Personal appearance to give testimony and turn over documents may be required.
- Subpoena/warrant not required for I-9 inspection.

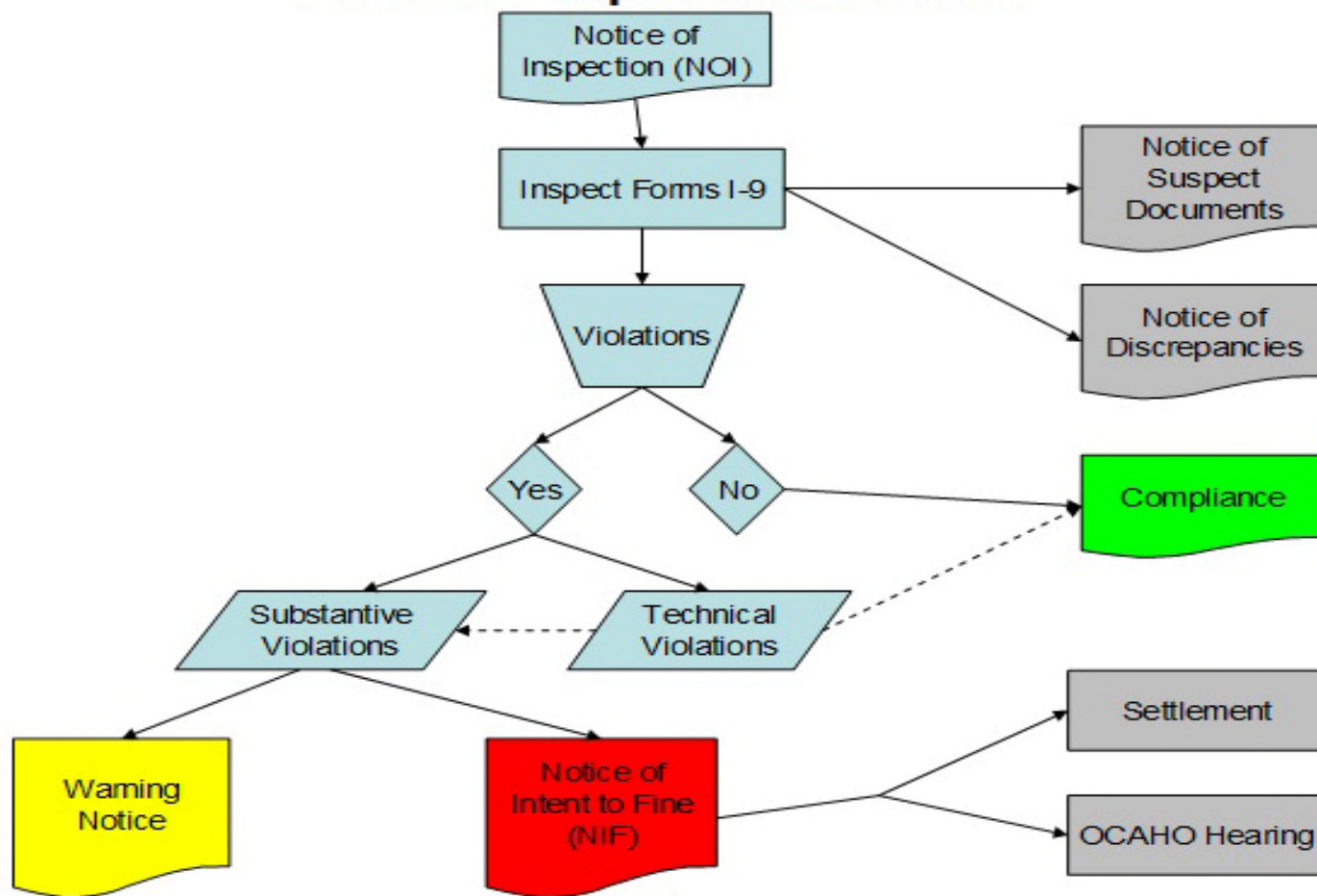
# ICE Raid – Search Warrant

- No 3 day notice required.
- Review search warrant.
- Monitor the search but do not interfere.
- Comply with terms of warrant.
- Do not resist.
- Notify/contact management and legal counsel immediately.
- Keep track of what is seized/taken.
- Prepare to address media during and after raid.

# What May Be Inspected?

- I-9 Forms for current employees hired after Nov. 6, 1986.
- I-9 Forms for terminated employees within retention period.
- Electronic employee listing.
- Quarterly wage and hour reports.
- Payroll data.
- SSA Mismatch correspondence.
- E-verify and/or SSNVS documents.
- Business information (Employer ID number, owner's SSN/address, business licenses, etc.)

## Form I-9 Inspection Process



# After ICE Inspection

- ICE issues Notice of Inspection Results if found in compliance.
- If not in compliance, may receive:
  - Notice of Technical or Procedural Failures
  - Notice of Suspect Documents
  - Notice of Discrepancies
  - Warning Notice
  - Notice of Intent to Fine
- Notice of Intent to Fine – employer has opportunity to negotiate settlement or request hearing.

# Monetary Penalties

- I-9 substantive/uncorrected technical violations (e.g., missing I-9) range from \$216 to \$2,156 per violation.
- Knowing hire/continuing to employ violations range from:
  - \$539-\$4,313 (1<sup>st</sup> violation)
  - \$4,313-\$10,781 (2<sup>nd</sup> violation)
  - \$6,469-\$21,563 (Subsequent violation)





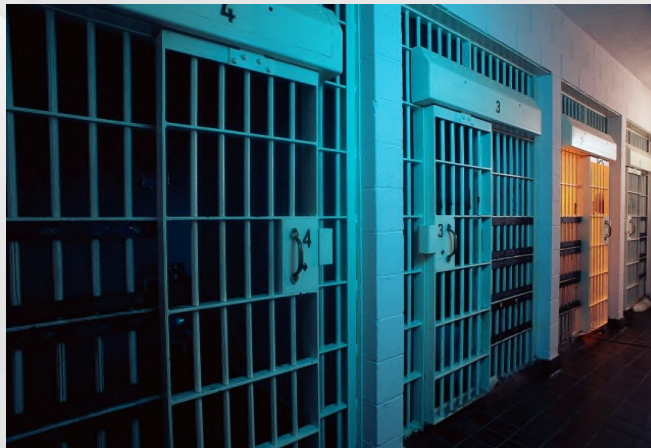
# Determining Penalty Amounts

- Factors considered for enhancement of fine or mitigation:
  - Good faith effort to comply;
  - Seriousness of violation;
  - Whether the violation involved unauthorized workers;
  - Size of business; and
  - History of previous violations.
- Violation percentage calculated to determine amount of fine for first, second, subsequent violations.



# Criminal Penalties

- 10 years and/or \$250,000 fine for harboring, smuggling, concealing, or transporting illegal aliens for financial gain.
- Criminal sanctions for conspiracy to harbor, smuggle, conceal, or transport.



# USDOJ Discrimination Charges

- Charges of Discrimination
  - I-9 Violations
    - Citizenship Status
    - Immigration Status
    - National Origin
    - Retaliation
  - E-Verify Violations



# How to Minimize Risk of Discrimination Charge

- Do not require specific documents or combination of documents for I-9 Form.
- Do not require more or different documents than minimally required for I-9 Form.
- Do not refuse to accept documents that reasonably appear to be genuine.
- Allow the employee to choose which of the acceptable Form I-9 documents to present.

# How to Minimize Risk of Discrimination Charge

- Do not ask candidates about specific immigration status until an offer is made.
  - *Employer may ask if applicant is currently authorized to work in US or will require sponsorship.*
- Do not refuse to hire an individual solely because employment authorization document will expire in the future.
- Be cautious about language in job advertisements relating to immigration status requirements and visa sponsorship.

# Federal Government Barriers to Hiring Qualified Foreign Nationals

- USCIS denial rates and requests for evidence rates escalate.
- USCIS increased scrutiny of third-party placements of H-1B workers.
- USCIS ends deference to prior approvals in work visa extension petitions.



# Federal Government Barriers to Hiring Qualified Foreign Nationals

- USCIS encourages officers to deny work visa petitions without allowing employers to provide additional information.
- New H-1B lottery process.
- USCIS processing delays reach crisis levels.
- CBP new policy to not process L1 extensions at border.

# Social Security Administration: Employer Correction Request

- SSA started issuing notices in March 2019
- Employer has 60 days to respond.
- Register for Business Services Online (BSO)
- Input Activation Codes in BSO (one-time required step to retrieve name and SSN errors)
- Retrieve Name and SSN Errors
- Work with your employees to resolve the error.
- Fix errors using W-2c.

# Social Security Administration: Employer Correction Request

- The letter states not to use letter to take any adverse action against an employee such as laying off, suspending, firing, or discriminating against employee.
- Seek legal counsel if you obtain information outside the letter that makes you question whether employee is authorized to work.

# Questions



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# Thank You



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