



ICE in Indian Country: 6 Considerations for Tribal Employers as Immigration Enforcement Agents Enter Homelands

Insights

8.14.25

Reports of federal immigration agents entering tribal lands without recognizing valid tribal identification have prompted urgent concerns for tribal employers nationwide. In early 2025, ICE enforcement actions in tribal communities including the Navajo Nation, Ute Mountain Ute Tribe, and Mescalero Apache Tribe reportedly led to wrongful detention or questioning of US-born Native citizens. With worksite enforcement on the rise and the legal boundaries in Indian Country far from settled, tribal public and private employers in every industry face unique risks that require careful planning. Here's what you need to know – and six proactive steps you should take before ICE agents enter your reservation.

Introduction to the Immigration and Naturalization Act

The Immigration and Nationality Act (INA) is the primary federal law governing immigration and the employment of noncitizens in the United States.

- Under the INA, employers are prohibited from knowingly hiring or continuing to employ individuals who are not authorized to work in the U.S.
- Section 274A of the INA requires all employers to verify the identity and employment eligibility of their workers using Form I-9.
- The form must be completed within three business days of the employee's start date, and employers must retain the form for a designated period.
- Failure to properly complete, retain, or make I-9s available for inspection can result in civil fines and, in some cases, criminal penalties.

Federal immigration laws, including I-9 employment verification requirements and prohibitions against hiring undocumented workers, apply to all US employers. This could include tribal enterprises engaged in commercial activity, such as casinos, construction companies, or health clinics.

However, there are limits to what Immigration and Customs Enforcement (ICE) can do on tribal lands and elsewhere. Enforcement actions, such as audits or raids, must still comply with constitutional standards. Tribal employers would not be obligated to allow ICE agents to enter non-

public areas of a worksite without a judicial warrant or the employer's consent, even if those agents were not barred by tribal sovereignty.

Does the INA Apply in Indian Country?

Whether federal immigration laws like the INA apply on tribal lands is still an open legal question – no court has issued a definitive ruling. Congress has the power to make federal laws apply in Indian Country, but it did not explicitly say the INA applies. Certain provisions of the statute, however, suggest Congress may have intended it to apply, such as recognizing US citizenship for tribal members born in the United States and addressing the movement of Canadian-born Native people.

Even if the INA does apply, there are potential exceptions involving treaty rights, tribal self-governance, and congressional intent. How those exceptions play out may vary from tribe to tribe, depending on treaty language and other factors. Because the law is unsettled, tribal employers should work with counsel to understand how these rules could affect enforcement activity on their lands.

Warrant Basics

Even if the statutes ICE enforces apply on tribal lands, ICE agents cannot enter a workplace without appropriate warrants. It is an open question whether a tribal government itself could require such warrants for entry to tribal land entirely, given that title to most tribal land is held by the United States itself.

Type of Warrant

When ICE seeks to enter a workplace, the type of warrant they carry – administrative or judicial – matters greatly.

- An administrative warrant, such as Form I-200 or I-205, is issued by ICE itself and authorizes the arrest or detention of individuals suspected of immigration violations. However, it does not grant ICE the right to enter private areas of a workplace without the employer's consent.
- In contrast, a judicial warrant signed by a federal judge or magistrate *does* provide ICE the legal authority to enter non-public areas and/or search property described in the warrant.

What Should You Do?

For employers, the key distinction is this: you are not required to allow ICE agents into non-public areas of your business unless they present a **judicial warrant**. This includes employee-only areas, offices, break rooms, and other restricted spaces.

If agents present an **administrative warrant**, you may legally decline access beyond public areas such as a lobby or reception. It is advisable to calmly request to see the warrant, review whether it is

signed by a judge, review the accuracy of the information in the warrant, and consult with legal counsel immediately before taking further action. Training designated staff on how to handle these scenarios can prevent confusion and protect both the employer and employees.

What About Document Review?

Additionally, employers should understand that they are not required to answer questions or provide employee records without a subpoena or judicial warrant. ICE may issue a Notice of Inspection (NOI) to audit I-9 forms. In that case, employers are entitled to three business days to produce the documents. You should use that time to review the records and consult counsel. Having a clear, written workplace policy for responding to ICE activity – including identifying who is authorized to interact with agents – can help ensure compliance with the law while safeguarding the rights of both the business and its workforce. Preparing and reviewing I-9 compliance protocols and I-9 records in advance can also minimize risk and uncertainty if a NOI is issued.

Recent Developments: Tribal and Federal Concerns

While the federal government has previously indicated that it would consult with tribal nations before undertaking certain immigration actions, it is unclear whether the current Administration shares the same view.

- In 2022, the Biden-era DHS issued a directive to ensure agency officials established procedures to consult with tribes on policies, programs, and services that impact tribal nations ([Directive # 071-04: Consultation and Coordination with Tribal Nations](#)).
- However, it is unclear whether the current DHS has actually consulted with any tribe since President Trump took office.

The Navajo Nation has documented at least 15 encounters with ICE between January and March, prompting it to lodge formal complaints to the Department of Homeland Security (DHS). Tribal leaders argued that ICE's actions violated the tribe's sovereignty and endangered the civil rights of tribal citizens. Similar reports were confirmed by Native rights organizations such as the Native American Rights Fund, which described a growing pattern of ICE disregarding tribal status and documentation.

In response, [a group of 15 US Senators submitted a joint letter to DHS](#) urging the agency to suspend enforcement operations on tribal lands unless it engages in tribal consultation in accordance with the 2022 Directive.

- The letter emphasized that immigration enforcement must not violate the constitutional rights of Indigenous people or override longstanding government-to-government protocols.
- It stressed the legislators' "growing concern over reports that, since President Trump issued the Executive Order on birthright citizenship, United States-born citizens of federally recognized

Tribes have been stopped and questioned by Immigration and Customs Enforcement (ICE) agents on suspicion of being undocumented migrants.”

- The Senators asked DHS to issue guidance and training to ICE agents on the type of tribal identification acceptable as proof of United States citizenship.
- The letter also asked DHS to explain its conduct on tribal lands and the impact of such conduct on reservations that touch the border and are inhabited by tribes that actually cross the border.

DHS does not appear to have responded. Likewise, the Federal Register does not reflect any action by DHS concerning tribal affairs, except minor notes regarding tribal grants from the Federal Emergency Management Agency.

The issue also surfaced in litigation in Florida, where the Miccosukee Tribe objected to the construction of a federal immigration facility near tribal lands, arguing it violated both environmental and cultural protections. Although the legal outcome remains pending, the case has amplified calls for federal agencies to acknowledge and respect tribal sovereignty in immigration matters.

Recommendations for Tribal Employers

Given the legal complexity and rising enforcement trends, tribal employers should take proactive steps to safeguard their workplaces and employees. The following six recommendations provide a starting point:

1. Establish a Tribal ID Recognition Policy

Work with your tribal government to ensure that all employees carry valid tribal IDs and understand how to present them during enforcement encounters. Distribute laminated guides to ICE-recognized documents and consider negotiating ID validation protocols with DHS.

2. Create Workplace Access Protocols

Develop and implement a written policy designating a tribal official, employee, and/or legal liaison to handle all ICE interactions. The protocol should instruct the representative to require an appropriate judicial warrant before entering tribal workplaces and to properly document all interactions with ICE.

3. Make Know-Your-Rights Information Available

Have resources available to employees – both Native and non-Native – on their rights during ICE encounters. Many legal aid organizations have free “know your rights” materials discussing the right to remain silent, the right to legal counsel, and the difference between a warrant signed by a judge versus an administrative order.

4. Request Formal Consultation with DHS

Through your tribal council, request formal consultation under DHS's tribal engagement policy. Seek agreements that require ICE to notify tribal governments prior to enforcement actions on tribal lands. Tribes may wish to engage their federal representatives in this effort.

5. Establish a Legal Rapid Response Team

Collaborate with local attorneys, legal aid organizations, and tribal court personnel to form a rapid response network. Ensure emergency contact numbers are posted in employee areas and that staff know how to report enforcement incidents.

6. Document and Report All Encounters

If ICE visits your premises, document everything: names, badge numbers, time of entry, legal documents presented, and actions taken. Use this information to report any improper conduct to tribal leadership, DHS, or legal advocacy groups.

Conclusion

For legal support or to develop a compliance plan, tribal employers should consult experienced counsel with expertise in both immigration and federal Indian law. If you have any questions, please contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in our [Immigration Practice Group](#). Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox.

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