

Your Legal Rights When Dealing with ICE Immigration Enforcement

Given our current political climate, people are justifiably concerned about what will happen to their friends, neighbors, and colleagues who may be immigrants without documentation. In particular, farmers and other employers are worried about increased activity by Immigration and Customs Enforcement (ICE), part of the Department of Homeland Security (DHS). There are an estimated 10,000+ undocumented employees in the WI dairy sector alone, with many more in agricultural processing plants, restaurants, groceries, as well as the construction, sanitation, and healthcare industries. Without the presence of these essential workers, the state's economy would suffer a serious collapse, not to mention the huge loss their disappearance would create in Wisconsin communities where they have been a vibrant presence for decades.

In order to detain and deport those suspected of being in the U.S. without proper papers, federal ICE agents may suddenly appear in your community. They may be assisted in this effort by local police and/or county sheriffs, in particular if they have a standing ICE agreement, known as a 287-G. Currently in WI, the following counties have such a 287-G deal with ICE: Brown, Fond du Lac, Kenosha, Kewaunee, Manitowoc, Marquette, Outagamie, Sauk, Sheboygan, Walworth, Washington, Waukesha, Waupaca, Waushara, Winnebago, and Wood. If you are unsure whether or not your local police and/or sheriff department is willing to cooperate with ICE, it is worth contacting them directly to get their official policy. Being public officials that are either elected or appointed, they are democratically accountable to their local constituents.

Regardless of whether ICE agents are alone or working in conjunction with other officers, you have certain rights (ex. 4th Amendment) that you can exercise to limit their adverse impact on a business and its employees. This factsheet offers an overview, but should not be considered formal legal advice. Readers are urged to consult an attorney for precise answers to questions about how the law applies to their situation.

What ICE Can and Cannot Do at Your Workplace and In Your Community

1. Question – Immigration can ask questions of anyone as long as they consent and ICE does not restrain the freedom of the individual to walk away. ICE can not use verbal threats, coercive tactics, or physical abuse to force a person to waive their rights or to make a statement. but agents can also be quite intimidating and people often consent out of fear.

2. Detain – Immigration can not stop a car, or detain a person in any way, unless they have a “reasonable suspicion, based on specific articulable facts,” that the person is not legally in the United States. ICE can not detain someone because of their perceived race/ethnicity, proficiency with English, or because they happen to work on a farm, at a processor or in a restaurant. A specific tip or police referral, erratic driving, inability to furnish documents or presenting false documents could all serve as valid reasons for ICE detention.

3. Arrest – Immigration can arrest a person if they have an arrest warrant, or if they have probable cause to believe a person is not lawfully in the United States and is likely to escape before a warrant can be obtained.

4. Search – Immigration can not enter a dwelling, property, or business without the owner's permission. For example, a farmer can refuse to allow ICE on their land. Without the owners permission, the other option is for ICE agents to present a valid search warrant. A landlord can not give ICE permission to enter a tenant's home; an employer also can not give ICE permission to search an employee's housing. To enter without a search warrant, ICE must knock at the door or appear at the gate, identify themselves, and receive consent. But, as already mentioned, agents can be quite scary and people often feel forced to consent.



How to Be Prepared if ICE Appears At Your Door or Gate

Being adequately prepared and educated is one of the best ways to deter ICE agents. If you are an employer and/or owner, it is very important that you share proper legal information and discuss how to best defend one's rights with workers and colleagues. Develop a clear policy regarding who can grant access to the property and post signs directing visitors to report to the office and/or provide a cell phone number on the sign that a visitor may use to contact the appropriate representative. Sample signs can easily be found online and downloaded.

1. An I-9 audit. If ICE wishes to audit your records, you are usually able to request three days to prepare for the audit. If ICE issues a subpoena, the three day rule is not applicable. The agent may request to take your original documents – for that reason, it is advisable to have pre-made copies of your current employees I-9 forms in a separate folder. Always request a receipt and retain a copy of any records that ICE may take. If this situation occurs, it is best to contact a qualified attorney as soon as possible.

2. Arrest warrant. An agent may appear with an administrative arrest warrant to detain a person who is not lawfully in the United States and has committed a felony. In this case, discreetly cooperate with the agent with as little fanfare as possible. If ICE believes the person is armed and dangerous, he/she may enter your property without seeking permission or even notifying you.

3. Search warrant. A judicial search warrant can also be issued based upon probable cause of illegal activity. If ICE says it has such a search warrant, ask to see a copy, read the warrant, make sure it is signed by a judge, and allow those specified in the warrant to conduct the actions specified. Be sure to get the business card of every person who enters your property. You are allowed to accompany the agents to monitor and/or photograph their activities as long as you maintain a reasonable distance and do not interfere. It is also good to take notes of any property that may be seized as evidence. In the event of such a search, it is best to contact a qualified attorney as soon as possible.

If the agent does not produce a valid warrant, inform him/her that you have not granted permission to enter, and ask him/her to leave. It is helpful to have multiple witnesses to any such ICE encounter. Also, immediately contact your attorney to report the incident. You should also report any ICE activity in your area to the Voces de la Frontera WI hotline at #1-800-427-0213.

Workers should be warned that they must not flee from an ICE agent, that they may not grant permission for any government agent to enter the property, and that the only question they must answer is providing their name. Crew leaders and workers should be prepared to give the name and phone number of the person or persons you have designated to deal with individuals who seek access to a property or business. It is strongly recommended that all immigrant workers possess and carry a card to help them defend their rights before an ICE agent. Such "Know Your Rights" cards in multiple languages can easily be found online and downloaded. An example in English and Spanish is printed below.

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TO WHOM IT MAY CONCERN

I am handing you this card because I do not wish to speak with you or have further contact with you. Please be informed that I choose to exercise my right to remain silent and to refuse to answer your questions. If I am detained, I request that I immediately be allowed to contact an attorney. I will exercise my right to refuse to sign anything until I am allowed to speak to an attorney.

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Si usted es detenido por agentes de Inmigracion entregue esta tarjeta al agente, dele su nombre y mantengase en SILENCIO. Esta tarjeta explica al agente que usted se niega a contestar sus preguntas o firmar algo hasta que hable con un abogado.