

Business Better (Season 5, Episode 1): The Looming Threat of Immigration Raids at Your Workplace – What to do When ICE Comes Knocking

Speakers: Stephen Stigall, Hank Hockeimer, and Dustin O'Quinn

Stephen Stigall:

Welcome to Business Better, a podcast designed to help businesses navigate the new normal. I'm your host today. My name is Stephen Stigall and I'm a partner here at Ballard Spahr in the White Collar Defense and Investigations Practice Group and also the co-chair of the State Attorney's General Initiative.

I'm joined today by two distinguished partners at the firm. First, Hank Hockeimer is a partner at the firm and is the practice leader of the White Collar Defense and Investigations Practice Group. Also with me is Dustin O'Quinn. Dustin recently joined us when Ballard Spahr merged with Lane Powell, a highly respected firm in the Pacific Northwest. Dustin is a partner and is the practice leader of the firm's immigration group.

In today's episode, we'll discuss what organizations can anticipate in light of recent executive orders and the administration's promises on immigration and what employers can do when the United States Immigration and Customs Enforcement comes to your workplace. So to kick this off, let's start with reasons ICE might come to a work location. I'm sure everyone has read the news or heard about recent workplace raids that were conducted by federal agents. But before we discuss the criminal investigation part, Dustin, tell us why Immigration and Customs Enforcement might come to an employer's workplace in the first instance, unrelated to criminal.

Dustin O'Quinn:

Hi, Stephen. Yeah, thanks for that. I know it can be pretty scary when an Immigration and Customs Enforcement officer shows up to a workplace, particularly unannounced, but there are several reasons that they could show up. And to your point, they don't all involve a federal immigration agent with a gun and a badge showing up for an enforcement reason. Oftentimes, an Immigration and Customs Enforcement contractor may show up with a suit and a tie. They'll still have a badge but no gun. And they may be there to inspect documents, whether they're I-9 documents or visa-related documents. They may simply be there to ask questions. Other times, Immigration and Customs Enforcement federal agents with that gun in the badge may also show up, but it's not necessarily to arrest anyone or engage in one of those criminal investigations.

So really quickly, I just want to summarize... So one of the ways is for an FDNS visit. FDNS stands for Fraud Detection and National Security. And these are Department of Homeland Security contractors, Citizenship and Immigration Services contractors, who are there simply to review documents for employees that you may have sponsored for a visa status, particularly employees in the H-1B or L1 visa categories. When you submit visa status applications to the Department of Homeland Security, that employee is going to work at a particular site in a particular job performing specific duties. An FDNS site visit simply gives Department of Homeland Security officer contractors an opportunity to make sure that that employee is doing what you said they were going to do. This is how the government cracks down on fraud or one of the ways they do so. FDNs site visits, again, are mostly for H-1Bs and L1's.

And the good news is, we found lately in our practice, that these contractors don't even show up unannounced. Rather, they send us emails, both to the attorney of record and the employer contact listed on the visa status application. And the email will simply say, "We are an FDNS contractor and we are going to show up next week at a

time that's convenient for you to ask the following questions. Please have this information ready." I find that this email that comes beforehand really alleviates a lot of the fear and confusion of having an officer show up unannounced. So if you've got questions about FDNS site visits, what that can look like or how to prepare, please feel free to ask me.

Another way that an ICE officer can show up and perhaps the most common out of all of the different types of ICE visits is for an I-9 audit. And the I-9 audit is when Immigration and Customs Enforcement simply wants to review an employer's forms I-9s to make sure that you are complying with these federal requirements for checking employees work authorization documents, and then documenting that information correctly on the form I-9.

The thing about a form I-9 audit is you don't have to hire foreign nationals to get an I-9 audit. You don't have to sponsor anyone for visas to get an I-9 audit. You could have a small company with all US employees and you could still get an I-9 audit because remember, every employer in the United States must fill out an I-9 for every employee, though not for contractors. So an I-9 audit means that the government just wants to make sure that you filled out the forms correctly, even if all 20 of your employees or all 20,000 are US citizens.

In an I-9 audit, the ICE officer could show up and simply say, "Hey, I'm delivering this notice of inspection and you've got three days to turn over your forms I-9. Here are some directions on how you can turn those over to me." What we found lately, again, is that an ICE officer in an I-9 audit may simply email us beforehand and say, "Hey, I'm going to show up on this specified date next week to deliver to you in person a notice of inspection." Or we can get the notice of Inspection by fax or email.

When you get a notice of inspection, it's really important to contact your counsel immediately because though you have three days to turn over forms I-9, three days is often not a lot of time to do so. Really good news is that ICE is allowed to extend that three days up to 10 days. And in our experience, they almost always do if we request in that initial three-day time period.

Stephen Stigall:

So Dustin, before you continue, I had a question on the I-9 audit. Some of our clients have raised concerns that Immigration and Customs Enforcement agents now are using the I-9 audit as a ruse. They appear to deliver the notice that you just described and then they demand or ask to actually see the forms then and there. Should an employer give those documents at that time?

Dustin O'Quinn:

It's a great question, Stephen, and our response is absolutely not. A rule-following Immigration and Customs Enforcement agent or contractor will know that you have a minimum of three days. And if they are there to perform a proper I-9 audit, they want to give you those three days to get your forms I-9.

This is a situation where sometimes, though not always, common sense comes into play as well, right? So lots of companies nowadays have their forms I-9 electronically, either through payroll software or specific I-9 software. So it's not necessarily to be expected that all the forms are there in the physical file cabinet and ready to be expected. In fact, that's why we have the three-day and 10-day rules for I-9s.

But to be clear, if an Immigration and Customs Enforcement agent requests to see I-9s on the spot, we suggest that you simply ask them for the subpoena for the form I-9s. They will have either a subpoena or a document called a notice of inspection. And by law, they are required to give you three days. So if they give you that subpoena or notice of inspection, you will be able to point to that three-day date and hopefully the officers will comply. If they do not have a subpoena or notice of inspection, then it is completely improper to turn over your forms I-9.

Stephen Stigall:

And Dustin, same question with respect to HB-1 visas or an L1 visa audit. Same analysis or different?

Dustin O'Quinn:

Pretty similar but a little bit different. And frankly, Stephen, it's a little bit harder because the FDNS contractor, which is the Department of Homeland Security contractor, will have a badge, an ICE badge or a USCIS badge. They will not have a subpoena, but they are by law entitled to review those records. Now, you also are entitled to not comply with Department of Homeland Security contractor, but we don't recommend not complying.

The good news is that the FDNS contractor will not only give you their badge and they also will not only give you approximately 10 days to turn over the information and documentation that they request, but they will also send you to a Department of Homeland Security website where you can verify their badge number and verify that this is a proper notice of inspection for the FDNS site visit for the H-1 and L1. We recommend that if you have questions or even if you don't, please send this information directly to your immigration counsel so that they can facilitate turning over this information to the Department of Homeland Security officer or contractor.

Stephen Stigall:

Great. So we've discussed now some non-criminal reasons why Immigration and Customs Enforcement may come onto a work site, but I think we've all read or seen in the news recent raids, frankly, by immigration or federal agents. Hank, is this sort of a new trend or is this something that we've seen before?

Hank Hockeimer:

Thanks, Stephen. So it is something we've seen before and specifically back in 2019 during the first Trump administration, ICE performed several raids. There were several in Mississippi, for example, that got a lot of national attention where they went to poultry processors, meat packers, and showed up with a search warrant, a judicially issued search warrant from a federal judge or a federal magistrate.

And the search warrant allowed them to do a few things. One, to enter the premises, enter private areas of the premises and seek documents that are set forth within the four corners of the search warrant. So to get a search warrant, just to back up, there has to be probable cause to believe that a crime is being committed and that evidence of that crime would be located on the premises sought to be searched. So here, the crime that they were looking at back in 2019 and they continue likely to be looking at is 8 USC 1324(a), which essentially makes it a crime to knowingly hire or continue to employ undocumented workers, illegal aliens as that's defined under the statute.

So two things to really big picture items. Number one, if there is a search warrant that's executed, they're looking for evidence of this and that evidence is likely any kind of identification records that employees provided to support the fact that they're documented, they're legal to begin with. And secondly, that if there are ultimately found widespread violations of employment here, HR managers, CEOs, management of the company can be and have been prosecuted for violations of 8 USC 1324(a). And under those prosecutions, you can serve up to six months in prison and it's \$3,000 per violation. So if you're talking about a large-scale poultry processing operation and you have hundreds of workers and, say, a substantial fraction of those are illegal, that monetary amount can add up, and certainly facing jail time is not something that any corporate executive wants to consider.

Stephen Stigall:

So Hank, with those penalties, is that considered a felony conviction?

Hank Hockeimer:

Correct. Yeah, these are felonies under the United States criminal code. Correct.

Stephen Stigall:

So it really begs the question then what both Dustin and Hank have discussed, what should an employer do in advance to prepare for what appears to be a new reawakening of these types of raids? So one thing that I'd like to discuss very briefly is just what should an employer do in advance in terms of preparing for these types of contacts by Immigration and Customs Enforcement?

Well, one thing is that we highly recommend preparing or having prepared for you a protocol of what to do so that it's usually on one or two sheets, it directs employees exactly what to do when an Immigration and Customs Enforcement officer, contractor, or someone with Homeland Security investigations or even the FBI appears at your work site. And it just gives a very rote menu to follow.

We prepare them for clients and I'll give some highlights of what they cover. Typically, we suggest having a point of contact at the employer so that that point of contact becomes the direct liaison between the organization, Immigration and Customs Enforcement, and possibly outside counsel if needed. Second, it directs employees who first interact with agents to see their credentials. Third, it delineates what constitutes public areas as opposed to private areas, because agents are permitted in public areas without a judicial warrant, but they are restricted from accessing private areas unless they have a judicial warrant.

The next part of the protocol covers what to do when agents request documents. Sort of is what Dustin was talking about before, if there was a request for an I-9 or to look at some documents, there may be time periods or, in fact, there are time periods that direct when an employer has to turn those over and it directs what to do when those requests are made. The protocol also addresses what to do when agents do have a search warrant or even an arrest warrant, as Hank was mentioning.

It also discusses what employees or volunteers at the organization, whoever may be on site at your organization, their rights to silence and counsel. How to handle interaction with ICE agents or other federal agents while on the physical plant. Documenting interaction with the agents both before and after, if there was a raid for example. And the fact that only the point of contact should be giving any type of consent to agents to go somewhere on the physical plant or to speak with anyone.

So with that said, I'd like to ask Dustin and Hank some additional follow-up questions.

Hank Hockeimer:

Stephen, before you do that, can I just jump in just for a second? When you're talking about protocols and preparing employers for these types of visits, I think it's interesting to note that back in 2019, when you look at the probable cause that ICE was able to marshal to get these search warrants, one of the things they cited were calls made to a tip line, the Homeland Security Investigative Services tip line, that a particular employer might be employing undocumented workers.

Similarly, I think it's really crucial for companies to monitor their own employee hotlines. With all of these raids in the news, I think it's more than likely that employers will be getting their own internal hotline calls from anonymous employees saying, "Hey, such and such a plant located in whatever location, we may have an issue with undocumented workers. We should look at that." And I think it's critical if it's an HR function or a compliance function, whoever, that information should quickly be fed to lawyers within the company and perhaps outside the company to say, "Hey, we need to look at this," and conduct some sort of review, conduct some sort of investigation and get ahead of the game if it's possible.

Dustin O'Quinn:

Yeah, let me just sort of amplify what Hank just said and talk about the importance of keeping your documents in order. A reminder that employers are not required to be document experts. So if someone in one of your locations has presented false employment authorization documents, the government says that they're not going to penalize you for that. But it's important to note that having even one employee have false documents or having a social security no match can be another reason that the government chooses to open investigation into your particular organization. So there could be one I-9 that you were not at fault because it was perhaps a really good fake, but now suddenly you are subject to an investigation which could lead to one of these criminal actions that my partners are talking about. So I think it highlights the fact that having a plan in place and having all of our documents be compliant is just of the utmost important, particularly in this climate of heightened enforcement.

Stephen Stigall:

Those are excellent points. So having a written response plan ahead of time is critical, as is the fact to make sure that, as Hank and Dustin just mentioned, making sure that if any reporting comes into the organization, that that is quickly investigated and addressed because in particular, as Hank noted, that otherwise can form the basis of probable cause which would allow government to obtain a search warrant and then appear. And at that point, Hank, are agents permitted to go pretty much anywhere on site or is it limited to what's on the face of the search warrant? Meaning let's assume, for example, you mentioned a poultry manufacturing operation, will the warrant say the entire premises or would perhaps delineate specific areas at that premises to be searched?

Hank Hockeimer:

The warrant would typically delineate specific areas. So for example, in a poultry processing plant, they would want access to the workers, but equally, if not more importantly, they would want access to where the employment documents are housed, whether it's in a HR office or some sort of office adjacent to the plant. But the warrant would provide specific locations where the search would be allowed. Those could be private locations, but if the warrant allows the agents to conduct the search, they can conduct the search in areas that are specifically delineated within the warrant.

Stephen Stigall:

So that's a really good point to really clarify, and this is a question to either of you. What constitutes a public area versus a private area at an organization?

Dustin O'Quinn:

So this is one of those situations where the government's definition for purposes of these ICE visits or raids does mirror our understanding or common sense definition a little bit. So a public area is any area where any other member of the public would be allowed. Obviously, depending on your premise, campus, community, or location, that would look really different. But think about a lobby or a reception area. The public is generally not allowed behind the reception desk and they're certainly not allowed anywhere that you would need a keypad to enter, for example.

But one way to make this distinction a little bit easier moving forward in this particular circumstance would be signage. Because if you have signs to public that say, "No one but staff allowed beyond this point, or, "Private," or, "Badge Needed," then that is an indication of the distinction between the public and private area and that indication will be appropriate for this particular ICE raid situation.

Stephen Stigall:

And for either of you, what about clients who have, we've talked about industrial processing plants, but what about clients that are in the healthcare space or schools, where the people who are normally at those locations have duties to protect certain information? Medical information is protected by HIPAA, for example, or students who are under 18 years old obviously should not be interacting with federal agents. So Dustin, you mentioned signage, but are there any heightened ideas for how to restrict or notify anyone coming onto that campus or that facility that, in fact, this is a private area, badge required?

Dustin O'Quinn:

Well, I would note regarding the types of people, documents, or information that might be protected from such a visit or an inquiry, I would just note that remember that these ICE agents are federal officers. And as Hank described, we were talking about situations where they show up with a judicial warrant.

So in the situation where an ICE officer has appeared with a judicial warrant, we're talking about a valid federal investigation, so we don't typically recommend doing anything that impedes this investigation. Now, there are very rare and limited circumstances where an industry or particular geographic area may have some local considerations that must be analyzed when coming up with your protocol documents for how to engage with ICE. But the end result is that if an ICE officer does not have the appropriate documentation or credentials, then they should only be allowed in the public areas. And if they do have a signed judicial warrant, then it's a valid investigation and there's typically not another law that's going to impede that.

Hank Hockeimer:

The other thing, Stephen, just to follow up on what Dustin said is there are two constitutional amendments at play here, right? There's the Fourth Amendment and the Fifth Amendment. The reason why they have to get a search warrant to search private areas is you have an expectation of privacy in those areas. And for them to overcome that, they have to have a federal judge, usually a magistrate, agree that there's probable cause to believe that a crime has been committed and that evidence or instruments of that crime are located in those areas, as we mentioned in the areas that are delineated by the search warrant.

So the Fourth Amendment requires it. And then secondly, when you're talking about, if it's a campus or healthcare provider or really any entity, what can they advise their employees? You're under no obligation to talk to anyone. The investigators will try to interview people. It's helpful to their case. It's helpful to do a search warrant, not just to grab the evidence that is called for by the warrant, but to talk to people and gather that evidence. You have an absolute right under the Fifth Amendment not to incriminate yourself. You do not have to talk to anybody.

Our advice typically is be cordial, be polite, don't do anything to interfere with it, interfere with the investigation. But if there is a call for an interview, you contact counsel and counsel will interface with the agent or the assistant US attorney who issued or was involved in issuing the warrant and say, "Look, tell us who you want to talk to. We'll take that list and we'll get back to you." And you just leave it there, but you do not allow the agents to sort of run rampant through the facility and just start interviewing people. I think that's always a bad idea.

Stephen Stigall:

So Hank, you've mentioned sort of what is occurring during the raid, and I think I'd like to drill down on a couple of questions. Let's assume for the moment that federal law enforcement agents show up with a judicial search warrant. Should the point of contact immediately call their outside counsel? And if so, what can outside counsel do at that point?

Hank Hockeimer:

Well, there should be a protocol in place. So the receptionist should likely call in-house counsel, a specific in-house counsel who's responsible for that kind of area or substantive area of the company, an employment lawyer, whatever. And then that person in turn should contact outside counsel to make them aware of what's going on here, and an outside counsel will reiterate the points that we're talking about here. Did you see the warrant? Was the warrant issued within 10 days? Typically, a warrant has to be served and returned within a 10-day period. Did they show you the warrant? Do you have a copy of the warrant? What do they want? Do they want to talk to anybody? Have you advised your employees that they have no obligation to talk to people? So all of that should be done. There should be sort of prep work in advance, but there also should be, in real time, reiteration of the points that we're making here.

Stephen Stigall:

And Hank, when the raid is actually occurring, what advice would you give to the employees at the organization who are kind of witnessing this? There have been anecdotal instances of people running for the exits, for example. Is that a good idea or a bad idea?

Hank Hockeimer:

That's a bad idea. No one should be running for the exits unless they're watching a really bad movie or something. But they should be calm, they should be cordial, they should be polite. They shouldn't anything to obstruct, but they should not run. Running could be an indication of some sort of conscious guilt of some kind. So just remain calm, it'll be over relatively soon, and move on with your life if you can afterwards. But they should not do anything to raise the ire or suspicion of the investigating agents.

Stephen Stigall:

Now, at this point, we've discussed what happens with a judicially authorized warrant, but Dustin, aren't there instances where there are what are known as administrative warrants that might say, for example, on it, "Department of Homeland Security"?

Dustin O'Quinn:

There are administrative warrants where Department of Homeland Security will issue its own warrant, sort of a notice, a self-serving notice to allow its officers to search for documents or a particular area on site. And we advise that they should be treated differently. In fact, those administrative warrants carry significantly less weight than a warrant signed by a judge.

So depending on an organization's desire to comply with an ICE officer, assuming their credentials are valid, we note that you don't have to comply with an administrative warrant. Again, it doesn't carry the same weight. So basically letting an ICE officer into a particular area or viewing particular documents with an administrative warrant is the same as simply giving your consent for them to go into that area, not because of a judicial warrant, but because you simply are allowing them to do so. Most employers do not want to do so, and we recommend that you don't, absent a signed judicial warrant.

Stephen Stigall:

And going back for a minute to the judicial warrant situation, Hank, what if ICE agents try to detain an employee or a volunteer on site and try to either talk to them? You've already touched on this, you've talked about how they can invoke their right to silence. What about right to counsel? Or what should an employer do in that situation?

Hank Hockeimer:

Well, as a practical matter, during the execution of the warrant, employees can be told they have to stay in the location while the search is being conducted. But if it goes beyond a reasonable time, and again, counsel should be involved in this conversation, and the employees feel like they're not free to leave, they're being detained, they would be considered under arrest at that point and they would have to have their rights read to them and there would have to be probable cause to arrest them, whether it's a written arrest warrant or whether the investigator on site believes that there's probable cause for exigent circumstances to execute an arrest right then and there. But unlimited detention during a search warrant is unlawful and counsel should be immediately brought into this to interface with the agents and the prosecutor involved in the issuance of the search warrant to essentially let those employees leave.

Stephen Stigall:

Okay, so now, moving forward, let's assume that the raid has now occurred. What should the employer do immediately after a raid in terms of documenting what took place?

Hank Hockeimer:

Write down everything. Get copies of the business cards of whoever visited, whoever the agents are. Write down the time that they showed up, the time they left, who they tried to speak with, if anybody. Just really memorialize in as great a detail as possible what went on during the execution of this search warrant or raid.

Stephen Stigall:

I agree. And I would add to what Hank just said, that I would try to document how many ICE agents were present, both inside and outside the location at the time. How were they dressed? Were they armed or not? Did the agents make workers believe that they could move or not leave or could not move? Was there any mistreatment of anyone? We're not suggesting by any stretch of the imagination that federal agents are mistreating employees, but occasionally skirmishes occur or there are incidents. If so, what occurred from any witness's perspective?

So in addition to documenting everything, Hank or Dustin, what about an employer asking of the agents if they do take someone, they've arrested them or they've detained them, can an employer ask the agents, "Where are you taking these individuals?"

Dustin O'Quinn:

Sure. In my experience, the employer can ask the agents on site for a raid or an arrest anything. Again, I want to amplify what Hank said. We always recommend being both calm, courteous, and professional. But at the end of the day, yes, they have a judicial warrant and it may be an arrest warrant and they're allowed to take individuals, but this is your premises and you're certainly allowed to calmly ask them where they're taking.

Not to incite a lot of fear, in my experience, in at least 50% of these situations, when you are there, the agents are compliant and somewhat courteous. They may not be overly friendly and may not be smiling, they are there to make an arrest, but they are professional and courteous. On the other hand, if agents appear to be aggressive or not willing to be chatty with you, then remain calm and courteous and understand that you may not get your questions answered. They will let you know if they don't want to talk to you. And that is something that you should also record when you write everything down immediately following the incident.

Stephen Stigall:

Dustin, that's really great point. And one question that I'd like to ask as a follow-up, because we've talked about recording, meaning writing things down after the fact as it occurred. But in this day and age, everyone seems to have a cell phone with a camera. What's your advice on employees trying to take video of the agents during the execution of a warrant?

Dustin O'Quinn:

That's another good question. So legally, you are allowed to video record the incident and what's happening at the incident, and I think we've all seen some of that footage at raids in certain sites. My advice, however, is not to do so. That's what I advise most clients. I don't want your recording to be viewed as or deemed impeding this valid federal investigation in any way, and it certainly could be. And I think that we all know that sometimes a recording just adds a layer of tension to a particular situation.

But most importantly, if you're following an agent around and getting in the way physically while doing the recording, then you may be deemed to be impeding this investigation and putting your own freedom, license at risk. So I don't recommend taking a physical recording. However, it is all the more important to write everything down so that you have a fresh record of what happened immediately following the incident.

Hank Hockeimer:

I'll just add to what Dustin said. I agree, it's good advice not to have employees engage in recording. What's interesting is we've seen through press reports that ICE has been filming some of these raids. In fact, they've been bringing along people like Dr. Phil, I think in Chicago. Kristi Noem, head of Homeland Security, was along one of those.

So if there are ultimate charges filed, one of the things that you really want to make sure you ask for in discovery, they probably give it to you, but you want to make sure is any recordings that they have, that they made during the course of these raids, you'd be entitled to that if you're representing somebody who's been charged here. And I think it's important to, when you're memorializing, writing down everything that happened, note whether anybody was recording. And also note whether somebody who's not a member or an employee of the government is along for the searches. I think you memorialize it, but you also want to get any video that was taken during the course of these searches.

Stephen Stigall:

So we've been talking about the aftermath of a raid, and Hank, you earlier mentioned that the advice would be that if an agent wants to speak with an employee, for example, that counsel sort of get involved to make arrangements. I assume that interview, if the employee wishes to waive their right to silence and engage in some sort of an interview, that would take place after the fact, meaning after the raid. Is that correct?

Hank Hockeimer:

Correct.

Stephen Stigall:

Okay. And given that, what about instances where English is not the first language of the employee? Do you have any recommendations about interpreters to use? Do you use your own hired by counsel? Or do you allow the agency to provide an interpreter for that interview?

Hank Hockeimer:

We typically would have interpreters that we have used in the past and that counsel would provide it. If the government is objecting to that, they could certainly have their own interpreter there and then maybe you have two interpreters. But I think it's important to have someone that you have used in the past, that you trust to provide accurate interpretation.

Dustin O'Quinn:

That's right. And at that point, it really becomes an individual's immigration action. That individual is in deportation proceedings and the company's exposure is separate, right? That is when if that warrant was...

And this is what we've seen most of the times, is that what you said, Hank, right? They'll have a warrant for arresting certain individuals, and it might also include their documents. But if the warrant doesn't say, "Give me your documents," or, "We're here to inspect documents," we're just here to arrest these people, rest assured that soon thereafter, they're going to ask for the rest of your documents, and there will be both an investigation that includes your personnel documents, and separately, there will be an I-9 audit. So I think that to your point, that's what they still have to deal with over the following weeks.

Stephen Stigall:

So along the lines of what happens in the aftermath of one of these presence of ICE being at your work site, either through an I-9 audit or it's a raid, Hank, what then happens? Everybody kind of focuses on the fact that this was very emotionally draining, it was shocking. Everybody kind of focuses on the day in question, but what about the aftermath? What happens next?

Hank Hockeimer:

Yeah, it's a great question. So, typically, following the execution of a search and the obtainment of documents that were called for by the search warrants, the agents will collect everything. Sometimes it's a voluminous amount of materials. They're required to provide an inventory, which typically is not very detailed. It should be more detailed, it depends on the agent. But they're required to give at least some inventory of what was seized and where it was seized. So room number, typically there'll be a map of the facility and they'll number the rooms, room number one, cabinet searched, documents obtained. They'll go through all the rooms where they seized documents, they'll give you the inventory.

They'll then take those documents back to wherever their workplace is, the agents. And at that point, they're reviewing evidence. And there could be significant lag time between the time of the search and the time that you hear from the government.

At that point, it's really critical to have counsel retained and counsel reaches out to the prosecutor who is overseeing this search and say, "Hey, look, we'd like to come and talk to you about what happened. What are your concerns? What have you guys seen?" And really press that.

And communication and dialogue is critical during this time because there are two major things happening. There are employees that may be detained, may be deported, and you have to deal with that aspect of it. But there's also management employees who may be on the hook for the statute I mentioned before, which makes it a crime to hire an employee, undocumented aliens. And if they're going that route, it's really important for the company to stay on top of the investigators and the prosecutors involved to see where their head is, what they're thinking from a charging standpoint. Do we have to get separate counsel for the individual management people or can the company

represent everybody? There are all sorts of issues that come up post-search, and that's really where the significant work is done from a company standpoint in defending their practices and what the government is looking at.

Dustin O'Quinn:

I'll add to that, while that comprehensive investigation is going on, the government oftentimes issues an I-9 audit as well. And I know that an I-9 audit may be thought of as a narrowly specific type of investigation that ICE performs on its own, but the information that comes out of an I-9 audit can still be a little different than the information that comes out of one of these criminal immigration investigations.

And remember that an I-9 audit is a tool to get more fines. Department of Homeland Security is completely funded, it does not shut down when the government shuts down. And one of the ways that it funds itself is the fines that are automatic and specific through an I-9 audit. So you could be exposed to fines and jail time through both this criminal investigation and the I-9 audit, which could be going on simultaneously in the aftermath of one of these site visits or raids.

Stephen Stigall:

That's great insight. Dustin and Hank, I want to thank both of you for joining me today in our podcast, and we hope that everyone listening has found this extremely helpful. We're hoping that no one has to undergo one of the contacts with Immigration and Customs Enforcement. But I think given the priorities set by the current administration, it is a very critical risk that everyone should be prepared for.

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