

# Promoting Fair and Safe Workplaces for All

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Guidance and Model Policies to Assist the Division of Labor Standards Enforcement, the Agricultural Labor Relations Board, and the Division of Workers Compensation in Responding to Immigration Enforcement



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# Introduction

California's economy is the fifth largest in the world, generating \$2.7 trillion in gross domestic product each year.<sup>1</sup> The state's employers and employees are essential to California's economic success, since their businesses and labor fuel our robust economy. Equally important are the state's labor agencies, which ensure that workers are treated fairly and have safe work environments. All workers are entitled to protections, rights, and remedies under state law, regardless of immigration status.<sup>2</sup>

Employers, employees, and labor agencies play a critical role in ensuring that the state's economy continues to thrive. In California, it is estimated that one in ten workers, or approximately 2.7 million individuals, are undocumented.<sup>3</sup> Undocumented immigrants are an integral part of California's economy, and each county's economy, paying an estimated three billion dollars in state and local taxes,<sup>4</sup> with a contribution of 180 billion dollars annually to the state's gross domestic product.<sup>5</sup> Despite these important contributions, undocumented immigrants are often subject to workplace abuses by employers seeking to exploit them because of their immigration status.<sup>6</sup> For example, in a 2009 study of wage theft, 37.1 percent of unauthorized immigrant workers reported being paid less than the minimum wage in the previous week, compared to 21.3 percent of documented immigrants and 15.6 percent of United States-born citizens surveyed.<sup>7</sup>

Fear of retaliation and the prospect of removal deters workers from reporting unpaid wages, substandard working conditions, and other unlawful practices by their employers.<sup>8</sup> As a result, undocumented workers are discouraged from accessing remedies afforded to them by law. Despite the sizeable undocumented immigrant labor force and its vulnerability to exploitation, the California Labor Commissioner's Office received fewer than 100 administrative complaints of immigration-related retaliation in 2017.<sup>9</sup> Undocumented workers are clearly deterred in reporting labor law violations. And when unscrupulous employers engage in exploitive practices against vulnerable employees, they gain a competitive advantage over law-abiding employers.

Thus, building trust between California's immigrant community and state labor standards enforcement agencies advances the safety of California's laborers, as well as the prosperity of law-abiding employers. This trust is threatened when state and local agencies are entangled with federal immigration enforcement, causing immigrant community members to fear reprisal if they report labor law violations or seek legal redress to which they are entitled.

## California's Labor Agencies

The State of California Labor and Workforce Development Agency, in its oversight of seven major departments, boards, and panels, ensures that California businesses and workers have a level playing field in which to compete and prosper.<sup>10</sup>

As a subagency of the Labor and Workforce Development Agency, the California Department of Industrial Relations' mission is to protect and improve the health, safety, and economic well-being of over 18 million workers. Additionally, the Department of Industrial Relations assists employers in complying with state labor laws.<sup>11</sup> Housed within the Department of Industrial Relations are two subagencies that carry out this mission:

1. The California Labor Commissioner’s Office—also known as the Division of Labor Standards Enforcement—adjudicates wage claims, investigates discrimination and public works complaints, and enforces labor law and Industrial Welfare Commission wage orders.<sup>12</sup>
2. The Division of Workers’ Compensation monitors the administration of workers’ compensation claims and provides administrative and judicial services to assist in resolving disputes that arise in connection with claims for workers’ compensation benefits.<sup>13</sup>

The California Agricultural Labor Relations Board provides a forum for all agricultural workers and stability in agricultural labor relations. The Board prescribes procedures for protecting, implementing, and enforcing the respective rights and responsibilities of employees, employers, and labor organizations in their relations with each other.<sup>14</sup>

## **Purpose of this Guide**

Senate Bill (SB) No. 54 (2017-2018 Regular Session) mandates that the Attorney General publish model policies “limiting assistance with immigration enforcement to the fullest extent possible consistent with federal and state law.”<sup>15</sup> The Division of Labor Standards Enforcement, the Agricultural Labor Relations Board, and the Division of Workers’ Compensation (each, a “Labor Agency,” and together, the “Labor Agencies”) are encouraged to adopt these policies.<sup>16</sup>

California Attorney General Xavier Becerra provides this guide to implement the California Legislature’s decision to limit state and local participation in immigration enforcement activities. Such participation diverts state resources, blurs lines of accountability, and threatens trust between immigrant communities and state and local agencies that provide critical public services. The model policies laid out in this guidance are aimed at assisting Labor Agencies and their staff members in focusing their resources on their distinct missions, while leaving immigration enforcement efforts to others.

To that end, this guide offers the Labor Agencies information about governing law and model policies for the following circumstances:

1. Affording legal protections to workers who may be the subject of immigration enforcement actions;
2. Responding to requests and attempts by immigration enforcement authorities to access labor agency facilities; and
3. Responding to written requests for information from immigration enforcement authorities.

This guide is intended to help each Labor Agency form practical plans to protect the rights of workers<sup>17</sup> who access services from and participate in enforcement activities of the Labor Agencies. To that end, this guide discusses procedures for responding to immigration enforcement actions and requests for information directed at the Labor Agencies. This guide, however, is not intended to address the duties that the Labor Agencies may have as employers when faced with the same requests about their own employees.<sup>18</sup>

California law enforcement agencies are prohibited under state law from performing the functions of an immigration enforcement officer.<sup>19</sup> Although U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) are the agencies with primary responsibility for federal immigration enforcement, there may be instances in which other law enforcement agencies may attempt to enforce federal immigration laws. ICE, CBP, and other law enforcement agencies attempting to enforce immigration laws are treated the same by this guide, in terms of the advice given for how Labor Agency should interact with them. Any policy adopted to address interactions between Labor Agency staff and immigration enforcement officers should encompass all law enforcement agencies that seek to enforce immigration law, and should handle requests from all law enforcement agencies acting with that purpose in the same way.

Each Labor Agency may have already adopted policies equivalent to, or exceeding, the protections afforded by the policies set forth in this guide. To the extent that a Labor Agency has developed policies that are aligned with or provide greater protections for immigrants and others seeking access to the Labor Agency's services, this guide is not intended to displace those policies. Nor does the exclusion of a particular policy in this guide—whether recommended by a stakeholder group or implemented by an agency—necessarily indicate the Attorney General's disapproval of that policy. Rather, this guide offers foundational elements reflecting the minimum that should be present in the policies adopted by any Labor Agency and should serve as a resource to enhance current policies as needed and ensure alignment with state law.

*This guide is not legal advice.* It is based on law current as of the date of this publication, which, of course, may change. Labor Agencies' staff should consult with legal counsel when formulating their own policies and practices, and in addressing any questions regarding the issues covered in this guide.

## Purpose of this Section

To describe legal protections that apply to workers who may be the subject of immigration enforcement actions, and to share with Labor Agency staff recommended principles and protocols for daily operations to improve access for workers, regardless of their immigration status.

## Governing Law

### 1. Labor Rights of Immigrant Workers

All protections, rights, and remedies available under California law, except any reinstatement remedy prohibited by state or federal law, “are available to all individuals regardless of immigration status who have applied for employment, or who are or who have been employed in California.”<sup>20</sup> In proceedings or discovery undertaken to enforce those state laws, no inquiry is permitted into a person’s immigration status, except where the person seeking to make this inquiry has shown by clear and convincing evidence that the inquiry is necessary in order to comply with federal immigration laws.<sup>21</sup>

This general principle is also reflected in specific state employment law schemes. For example, the definition of “employee” that is used to determine eligibility for worker’s compensation benefits specifically includes undocumented workers.<sup>22</sup> Similarly, federal courts recognize that undocumented persons may enforce their own labor rights,<sup>23</sup> and that the specter of immigration enforcement may have a chilling effect on the exercise of employment rights, even for documented workers.<sup>24</sup>

### 2. Anti-Retaliation Laws Protecting Immigrant Workers

State labor law specifically protects individual workers who may be subject to retaliation by their employers because of their undocumented status. It prohibits employers from engaging in unfair immigration-related practices that retaliate against employees who exercise rights protected by the Labor Code or local ordinances.<sup>25</sup> Similarly, it is unlawful for employers to use threats related to one’s immigration status to retaliate against employees who have exercised their labor rights.<sup>26</sup> If an employer reports or threatens to report the immigration status of a worker or a worker’s family member, state law presumes that worker’s rights to have been violated.<sup>27</sup> Also, as a matter of internal policy, the Division of Labor Standards Enforcement may “with or without receiving a complaint” investigate an employer that it suspects to have engaged in retaliatory conduct in connection with “instances of suspected immigration-related threats.”<sup>28</sup>

The penalties for violating these anti-retaliation statutes can be severe. An employer’s business license may be revoked if the employer is found to have retaliated against an employee based on immigration status.<sup>29</sup> In addition, a lawyer who participates in retaliatory activities on behalf of an employer may be suspended or disbarred.<sup>30</sup>

### **3. Workers' Immigration Status Information**

As noted above, the Labor Agencies enforce state labor laws on behalf of all workers, regardless of immigration status, and no inquiry shall be permitted into a person's immigration status "except where the person seeking to make this inquiry has shown by clear and convincing evidence that the inquiry is necessary in order to comply with federal immigration law."<sup>31</sup> In other words, state law restricts the circumstances under which Labor Agency employees may inquire into a worker's immigration status.

Federal law does not affirmatively require a Labor Agency to share immigration status information in its possession. In addition, there have been successful constitutional challenges to section 1373 of title 8 of the United States Code, which provides that state and local government entities and officials cannot prohibit or restrict any government entity or official from maintaining information regarding a person's immigration status or exchanging information regarding a person's immigration status with federal immigration authorities or other governmental entities.<sup>32</sup> Specifically, federal courts outside of California have determined that this statute violates the Tenth Amendment to the U.S. Constitution.<sup>33</sup> A federal court in California has called the statute "highly suspect."<sup>34</sup> And the Attorney General is currently challenging the statute's constitutionality in federal litigation in California.<sup>35</sup> Counsel for Labor Agencies should continue to monitor developments in the law to determine this statute's continued applicability within California.

There have also been successful challenges to the federal government's expansive interpretation of section 1373. Federal courts have construed section 1373 narrowly, finding it covers only "information strictly pertaining to immigration status (i.e., what one's immigration status is)" and clarifying that the federal statute does not apply to other categories of information, such as a worker's home or work address.<sup>36</sup>

## **Policy Recommendations**

In addition to the model policies appearing in Section 4, the Attorney General makes the following policy recommendations:

### **1. Evaluate, Update, and Publish Policies and Procedures to Ensure that All Workers, Regardless of Immigration Status, Are Aware of Their Rights Under California Law**

Labor Agencies are encouraged to evaluate their current procedures and practices, and modify them as appropriate, to ensure that all workers, regardless of immigration status, feel safe in accessing the services available at Labor Agencies.

The following procedures are offered by way of example and may be adapted and modified in accordance with operational needs:

- Do not post hearing calendars in waiting areas or online. Instead, where possible, rely on support staff to communicate calendar information to workers and opposing parties;
- Where hearing calendars are posted in waiting areas, consider referring to matters on the calendar by their case or calendar numbers in lieu of party names identifying workers;
- Consider using case numbers or calendar numbers, not party names, to call matters;



- Provide secure waiting rooms for employers and workers;
- Permit remote appearances by phone or video where feasible;
- Permit witnesses to testify pseudonymously at evidentiary hearings; and
- Consider, to the extent permissible by law, continuing rather than dismissing ongoing matters in which a worker has failed to appear for reasons related to potential immigration enforcement actions.

Labor Agency staff should receive a copy of all model policies under this guide (or the equivalent policies adopted by the Labor Agency) and receive training about these policies.

## 2. Additional Resources

In the event that a worker or a worker’s family member is detained, Labor Agency staff should be aware of the following resources.

### *ICE Detainee Locator*

The ICE detainee locator (<https://locator.ice.gov/odls/homePage.do>) can help people determine if their family member has been detained and where the family member is being held. In using the ICE detainee locator, it is helpful to know the family member’s date of birth and “A-Number” (Alien Registration Number), if there is one. The ICE detainee locator is intended only for locating individuals who are already detained. If a worker has general questions about their immigration status, the worker should be referred to the list of legal service providers.

### *Legal Assistance*

Immigration lawyers in private practice, accredited representatives (who assist immigrants in immigration proceedings), or legal-aid organizations may be able to provide legal assistance to secure the release of, or arrange for visits to, a worker or worker’s family member.<sup>37</sup>

- ✓ An Individual can determine that lawyers are licensed by and in good standing with the State Bar of California, by checking online at <http://www.calbar.ca.gov/Attorneys>.
- ✓ A list of California entities accredited by Board of Immigration Appeals (BIA) to represent immigrants before the Department of Homeland Security (DHS) and Executive Office of Immigration Review (EOIR) can be found at: <https://www.justice.gov/eoir/page/file/942306/download#CALIFORNIA>.
- ✓ California courts operate Self-Help Centers that may also be able to provide family law assistance to individuals. A list of these centers across the state is available at <http://www.courts.ca.gov/selfhelp-selfhelpcenters.htm>.
- ✓ Individuals may be able to find legal assistance from legal aid offices and lawyer referral services at the California Department of Social Services Website, <http://www.cdss.ca.gov/Benefits-Services/More-Services/Immigration-Services/Immigration-Services-Contractors>, or at the California courts website, <http://www.courts.ca.gov/1001.htm>.

- ✓ Do not hire a notary or an immigration consultant if you are seeking advice and assistance regarding your immigration status. Notaries and immigration consultants are not attorneys or experts in immigration. In fact, they are not legally required to know anything about immigration law because they are only allowed to help you with non-legal tasks like translating information. They cannot—and should not—provide advice or direction about your immigration forms or speak to the government on your behalf.
- ✓ In addition, immigration consultants must be bonded and pass background checks with the Secretary of State, whose website, <https://specialfilings.sos.ca.gov/icbs>, provides information about whether individuals holding themselves out as immigration consultants have complied with these requirements.

## Purpose of this Section

To provide Labor Agency staff with guidelines for responding to requests to access Labor Agency facilities for immigration enforcement purposes. This section also describes various types of documentary authority that immigration enforcement authorities may present in support of a search or arrest.

## Governing Law

### 1. Access to Labor Agency Facilities

#### *Fourth Amendment*

The Fourth Amendment to the United States Constitution protects individuals against unreasonable searches and seizures. What is required for law enforcement officers to access areas of a Labor Agency facility depends on whether a worker—or any person within a Labor Agency facility—has an expectation of privacy in the place to be entered. Where a reasonable expectation of privacy exists, the federal constitution prohibits access without consent, a judicial warrant, or the types of exigent circumstances that excuse the warrant requirement. This guide does not address all of the factual circumstances that may arise relating to an individual's Fourth Amendment protections in different areas of a Labor Agency facility.

#### *The Immigrant Worker Protection Act*

The Immigrant Worker Protection Act (Assembly Bill No. 450, 2017-2018 Regular Session) imposes obligations on the conduct of public employers and persons acting on their behalf, in the event an officer engaged in immigration enforcement seeks to enter an employer's place of business, subject to certain exceptions.<sup>38</sup> As of the date of this publication, this provision is subject to an order by a federal district court preliminarily enjoining a portion of its enforcement against private employers.<sup>39</sup> The order does not impact the application of this provision to the Labor Agencies, as public entities.

Employers, or persons acting on behalf of the employer, are prohibited from providing “voluntary consent” for an immigration enforcement agent to enter “any nonpublic areas of a place of labor.”<sup>40</sup> This provision does not apply if the agent provides a judicial warrant.<sup>41</sup> Additional information about identifying judicial warrants can be found in Subsection 3 below. This provision also does not preclude an employer from bringing an immigration enforcement agent into a nonpublic area of the workplace for the purpose of determining whether the agent has a judicial warrant, “provided no consent to search nonpublic areas is given in the process.”<sup>42</sup> Employers who violate this provision may be subject to civil penalties.<sup>43</sup>

Whether voluntary consent was provided by an employer or a person working on behalf of an employer is a fact-based determination that depends on the specific circumstances of the interaction between the employer and the officer conducting immigration enforcement, including the conduct of, and words used by, the employer or person working on behalf of the employer. In general, for consent to be voluntary, it cannot be the result of duress or coercion, whether express or implied.

## **2. Description of Warrants, Subpoenas, and Court Orders Used for Immigration Enforcement**

A peace officer who is seeking to enter a Labor Agency to search for or apprehend a worker may present any of several different types of documents as authority for the search or apprehension. Below, this guide provides an overview of various types of documentary authority an officer may present. Sample copies of each document are appended to this guide. Of course, not all of these documents provide legal authority to enter and search a particular area. Also, a document that might appear to be valid authority to enter and search a particular area may be defective in a way that is not apparent to someone without legal training. It is important to understand that, when presented with a request by a peace officer to enter and search a Labor Agency facility, Labor Agency staff and workers should not provide consent to the officer to enter an area of the facility or otherwise assist with any search or arrest. Labor Agency staff should not, however, attempt to physically interfere with the officer's entry, even if the officer appears to be acting in excess of authority and without consent.

Officers engaged in immigration enforcement may be in civilian clothing without displaying a badge or other insignia. Labor Agency staff should ask the officers to provide credentials.

### *ICE Administrative "Warrant"*

An ICE administrative "warrant" is the most typical type used by immigration enforcement officers. Such a document authorizes an immigration enforcement officer to arrest a person suspected of violating immigration laws. An ICE warrant can be issued by any authorized immigration enforcement officer. An ICE administrative warrant is not a warrant within the meaning of the Fourth Amendment to the U.S. Constitution, because an ICE warrant is not supported by a showing of probable cause of a criminal offense. An ICE warrant is not issued by a court judge or magistrate.

An ICE warrant does not grant an immigration enforcement officer any special power to compel Labor Agency personnel to cooperate with his or her requests. For example, an ICE warrant does not authorize access to nonpublic areas of a Labor Agency. An ICE warrant alone does not allow an immigration enforcement officer to search Labor Agency records. (See Appendix A for a sample ICE administrative "arrest warrant" (Form I-200), and Appendix B for a sample ICE "removal warrant" (Form I-205).)

Labor Agency staff should not physically interfere with an immigration enforcement officer in the performance of his or her duties. However, Labor Agency staff are not required to assist with the apprehension of a person identified in an ICE administrative warrant, nor are Labor Agency staff required to consent to an immigration enforcement officer's search of Labor Agency facilities. In fact, as a public employer, a Labor Agency may not provide voluntary consent to an immigration enforcement officer seeking access to a nonpublic area when presented with an ICE warrant.<sup>44</sup>

### *Notice to Appear*

A notice to appear (NTA) is a charging document issued by ICE, CBP, or the U.S. Citizenship and Immigration Services (USCIS) seeking to commence formal removal proceedings against an individual before an immigration court. An NTA contains allegations made about a particular person's immigration status. An NTA notifies an individual that he or she is expected to appear before an immigration judge on a certain date. An NTA does not authorize an individual's arrest by immigration enforcement authorities or local law enforcement authorities.<sup>45</sup> (See Appendix C for a sample of an NTA (Form I-862).)

An NTA does not require Labor Agency staff to take any action or grant an officer engaged in immigration enforcement any special power to compel the Labor Agencies to cooperate with the officer. An NTA does not authorize access to nonpublic areas of the Labor Agencies. An NTA does not legally require Labor Agency staff to allow authorities to search Labor Agency records.

### *Federal Court Warrant*

A federal court warrant is issued by a district judge or a magistrate judge of a U.S. District Court, based on a finding of probable cause authorizing the search or seizure of property, the entry into a nonpublic area to arrest a person named in an arrest warrant, or the arrest of a named person.

There are two types of federal court warrants, a search-and-seizure warrant and an arrest warrant.

- A federal search-and-seizure warrant allows an officer to conduct a search authorized by the warrant. (See Appendix C for a sample federal search and seizure warrant (Form AO 93).)
- A federal arrest warrant allows an officer to arrest the individual named in the warrant. (See Appendix D for a sample federal arrest warrant (Form AO 442).)

Prompt compliance with a federal court warrant usually is required. Where feasible, however, Labor Agency staff should consult with a designated Labor Agency administrator or legal counsel before responding.

### *Administrative Subpoena*

An administrative subpoena is a document that requests production of documents or other evidence, and (in the immigration enforcement context) is issued by an immigration enforcement officer. The administrative subpoena will contain the following information: file number, subpoena number, mailing address to which to mail the requested information, a list of the regulations that apply, the request for information, and the signature(s) of the officer(s). (See Appendix E for a sample administrative subpoena (Form I-138).)

A Labor Agency generally does not need to immediately comply with an administrative subpoena. If an immigration enforcement officer arrives with a pre-designated administrative subpoena, the Labor Agency may decline to produce the information sought and may choose to challenge the administrative subpoena before a judge. Therefore, Labor Agency staff should immediately contact a designated Labor Agency administrator or counsel upon receipt of a subpoena.

### *Federal Judicial Subpoena*

A federal judicial subpoena is a document that asks for the production of documents or other evidence. The federal judicial subpoena will identify a federal court and the name of the judge or judicial magistrate issuing the subpoena, and may require attendance at a specific time and location and the production of prescribed records. (See Appendix F for a sample federal judicial subpoena.)

As with an administrative subpoena, noted above, a Labor Agency generally does not need to immediately comply with a federal judicial subpoena, and can challenge it before a federal judge in a U.S. District Court. Labor Agency staff should therefore immediately contact a designated Labor Agency administrator or legal counsel upon receipt of a federal judicial subpoena.

### *Court Order*

If an immigration enforcement officer arrives with a court order, a designated Labor Agency administrator or legal counsel shall review the order with legal counsel or other designated person, and then respond accordingly.

## **Policy Recommendations**

In addition to the model policies appearing in Section 4, the Attorney General makes the following policy recommendations:

### **1. Designate Restricted Access Areas Within the Facility**

Labor Agency facilities should develop policies to enhance the privacy available to facility users consistent with their mission. Labor Agency facilities should consider which areas of their facility should have restricted access and clearly designate those areas through mapping, signage, locks or other access restrictions, or a combination thereof. Designating restricted areas and developing policies limiting access to outsiders can promote the Labor Agencies' ability to operate a safe and efficient environment in which to enforce labor laws that is conducive to the Labor Agencies' mission. Labor Agencies should acknowledge that immigration enforcement activities, and threats of such activities, interfere with their missions and should adopt policies on restricted areas and similar policies regarding access to facilities and users that promote a safe environment conducive to the Labor Agency's mission. While restricted areas protect facility users and staff in other ways and promote the need for a safe environment conducive to the institution's mission, such restrictions on access will not always equate to Fourth Amendment protection.

As noted above, Labor Agency staff cannot provide "voluntary consent" to allow officers seeking to engage in immigration enforcement to enter "nonpublic places of labor" within government-operated facilities, such as Labor Agency offices and facilities, without a judicial warrant. Each Labor Agency should identify which areas within its offices and facilities meet this standard. The Labor Agency should consider designating those areas accordingly, including by posting signs.<sup>46</sup> Each Labor Agency may also consider other measures to enhance expectations regarding privacy within areas of the Labor Agency's offices and facilities, such as by adopting policies limiting public access and installing access controls.

## **2. Establish Procedures for Staff to Respond to the Presence of Officers Seeking to Engage in Immigration Enforcement at Labor Agency Facilities**

The Attorney General recommends that Labor Agency administrators consider developing internal protocols providing administrative law judges and staff with direction for how to address immigration-related warrants to ensure that hearings and other operations are not disrupted.

Each Labor Agency should train staff to be familiar with the relevant documents and procedures used by immigration enforcement authorities. Staff should follow model policies, such as the ones in Section 4 of this guide, regarding responding to requests to access Labor Agency facilities, workers, and records regarding workers.

If operational needs require a Labor Agency to conduct enforcement activities offsite, such as to accommodate parties who reside or work in remote locations, such Labor Agency should attempt to host these activities in government-operated facilities rather than privately operated facilities, where operationally feasible and otherwise consistent with agency needs. Where possible, the Labor Agency should ascertain in advance whether the site affords sufficient privacy for workers.

Each Labor Agency is encouraged to track incidents or other contacts involving immigration enforcement. The Labor Agency can employ an incident report form to ensure that pertinent details involving in-person visits and written or telephonic requests for information by immigration enforcement authorities are memorialized. Such form should include, at minimum, the following information:

- Name of staff person who responded to the contact or incident, including position and contact information;
- Name of any other staff members involved, including staff's position and contact information;
- Date, time, location, and manner of the contact (e.g., in-person, by phone);
- Name, agency, and badge number of all involved officers;
- Stated purpose of the visit or contact, described in as much detail as possible;
- Description of any records or information requested;
- Description of area(s) of facilities that the officer entered;
- Description of interaction with the officer, including any communications regarding consent and circumstances of forced entry; and
- Copies of any documents provided by the officer.

## 03 Responding to Written Requests for Information from Immigration Enforcement Authorities

### Purpose of this Section

To provide Labor Agency staff with guidance for responding to written requests by officers engaged in immigration enforcement for information regarding workers.

### Governing Law

#### 1. Workers' Immigration Status Information

As noted above in Section 1, Labor Agencies are generally restricted from inquiring into worker immigration status, but state and local governments cannot prohibit or restrict any governmental employees from sending or receiving information regarding the citizenship or immigration status of any individual to or from federal immigration enforcement authorities.<sup>48</sup>

#### 2. Workers' Compensation Records

Workers' compensation records that contain individually identifiable information, and are not associated with an adjudicated claim, are protected from disclosure under state law. Specifically, persons or entities who are not parties to a worker's compensation claim, including public entities, "may not obtain individually identifiable information obtained or maintained by the division on that claim."<sup>49</sup> "Individually identifiable information" for this purpose refers to "any data concerning an injury or claim that is linked to a uniquely identifiable employee, employer, claims administrator, or any other person or entity."<sup>50</sup>

Any records contained in workers' compensation claim files maintained by the Workers' Compensation Appeals Board, however, are not similarly protected.<sup>51</sup> Even though it is located in the Department of Industrial Relations, an executive agency, the Workers' Compensation Appeals Board is actually considered under state law to be a court because a portion of the state's judicial power has been conferred on it by statute.<sup>52</sup> Therefore, the Workers' Compensation Appeals Board case files are court records, and court proceedings and records are open to public review.<sup>53</sup>

Once an individual files an application for adjudication with the Workers' Compensation Appeals Board in connection with his or her workers' compensation claim, the information contained in that individual's Workers' Compensation Appeals Board case file is open to public inspection, except for judicially sealed documents.<sup>54</sup> Individually identifiable information contained in Workers' Compensation Appeals Board case files are not to be provided to any person or public or private entity who is not a party to the claim unless the identity of the requesting party is provided, along with the reason for making the request.<sup>55</sup> Generally, residential addresses are deemed to be confidential and should not be disclosed to any person or public or private entity, except that they may be provided to a party to the claim, a law enforcement agency, an office of a district attorney, any person for a journalistic purpose, or other governmental agency.<sup>52</sup>



## **Policy Recommendations**

In addition to the model policies appearing in Section 4, the Attorney General makes the following policy recommendations:

### **1. Account for Applicable Exemptions and Restrictions Regarding the Disclosure of Confidential Worker Information**

In evaluating and responding to a written request for records or information regarding workers, a Labor Agency should identify and consider any applicable exemptions from disclosure or other confidentiality requirements that apply to information encompassed by the request.

### **2. Notify Workers Regarding Any Requests for Information by Immigration Enforcement Authorities**

A Labor Agency should consider providing notice to any worker who is the subject of such a request, especially to the extent that doing so would further the Labor Agency's goal of protecting labor and workplace rights and preventing retaliation in the workplace.

## 04 Model Policies

Under Government Code section 7284.8, subdivision (a), the Labor Agencies are encouraged to adopt the following model policies, or equivalent policies. The text below should be adapted by inserting the information sought in the bracketed portions.

### Model Policies for Improving Worker Access to Labor Agencies

- [Labor Agency] shall evaluate current procedures and practices, and modify them as appropriate, to ensure [Labor Agency] remains accessible to workers who seek to enforce their labor rights and who may be the subject of immigration enforcement actions.
- [Labor Agency] shall develop and maintain written policies and procedures on reviewing and responding to warrants, administrative warrants, subpoenas, court orders, and the release of [Labor Agency] records containing worker information.
- [Labor Agency] shall train front-line staff regarding how to respond to incidents involving officers engaged in immigration enforcement. [Labor Agency] shall train staff on [Labor Agency]'s policies and procedures regarding how to respond to requests for [Labor Agency] records that may include worker information, and any applicable confidentiality requirements.
- [Labor Agency] shall train and designate staff counsel to advise and assist staff regarding immigration enforcement and responding to requests for information regarding workers. Designated staff counsel will be available to respond to [Labor Agency] front-line staff on short notice and during regular business hours. The contact information and availability of designated staff counsel will be communicated to [Labor Agency] staff.

### Model Policies for Responding to Immigration Enforcement Activities at Labor Agency Facilities and Written Requests

- In the event of an in-person visit by an officer engaged in immigration enforcement to [Labor Agency] facilities, [Labor Agency] staff shall immediately ask the officer to leave the premises immediately because their presence is disruptive to the agency's business and report the presence of the officers to a supervisor. The supervisor should contact [designated administrator or staff counsel].
- [Labor Agency] staff should allow [designated administrator or staff counsel] to interact directly with the officer. While waiting for the designated staff counsel or administrator, or if neither is available, [Labor Agency] staff shall take the following actions:
  1. Advise the officer that before proceeding with any request, staff must notify [designated administrator or staff counsel] to follow up with the officer;
  2. Ask to inspect, and make a copy of or note, the officer's credentials (i.e., name and badge number). Also ask for and copy or note the phone number of the officer's supervisor;
  3. Ask the officer to explain the purpose of the officer's visit, and document the response;

## Model Policies for Responding to Immigration Enforcement Activities at Labor Agency Facilities and Written Requests (Continued)

4. Ask the officer to produce any documentation that authorizes access to [Labor Agency] facilities;
5. Make a copy of all documents provided by the officer;
6. Decline to answer questions posed by the officers and direct the officer to speak to a [Labor Agency] supervisor or designated staff counsel;
7. State that [Labor Agency] does not consent to entry into [Labor Agency] facilities or portions thereof;
8. Without expressing consent, respond based on the documentation provided that purports to authorize the request. If the officer has:
  - **An ICE administrative “warrant” (see samples in Appendix, items A & B):** Immediate compliance is *not* required. Inform the officer that [Labor Agency] cannot respond to the warrant until after it has been reviewed by legal counsel. Provide copy of the warrant to [designated administrator or staff counsel] as soon as possible.
  - **A notice to appear (see sample in Appendix, item C):** This document is not directed at [Labor Agency’s] facility. [Labor Agency] staff is under no obligation to deliver or facilitate service of this document to the person named in the document. If you receive a copy of the document, give it to [designated administrator or staff counsel] as soon as possible.
  - **A federal judicial warrant (either a search-and-seizure warrant or an arrest warrant; see samples in Appendix, items D & E):** Prompt compliance usually *is* required, but where feasible, staff should consult with legal counsel before responding.
  - **A subpoena for the production of documents or other evidence (see samples in Appendix, items F & G).** Immediate compliance is *not* required. Inform the officer that [Labor Agency] cannot respond to the subpoena until after it has been reviewed by legal counsel. Provide a copy of the warrant to legal counsel as soon as possible.
9. If the officer orders staff to provide immediate access to facilities, [Labor Agency] staff should not refuse the officer’s order and immediately contact [designated administrator or staff counsel]. Do not attempt to physically interfere with an officer, even if the officer appears to be acting without consent or exceeding the purported authority provided by a warrant or other document;
10. Document the officer’s actions in as much detail as possible when they enter [Labor Agency] premises, but without interfering with the officer’s movements; and
11. Complete an incident report that includes the information gathered or described above and the officer’s statements and actions.

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The analysis, recommendations, and policies expressed in this guide are based on research and input from the staff of the Attorney General's Special Project Team and office, and should not be considered as representing the views of any agency or organization that contributed to the report.

## Endnotes

- <sup>1</sup> Associated Press, California is now the world's fifth-largest economy, surpassing United Kingdom, L.A. Times (May 4, 2018), <http://www.latimes.com/business/la-fi-california-economy-gdp-20180504-story.html> (as of Sept. 10, 2018).
- <sup>2</sup> Gov. Code, § 7285, subd. (a).
- <sup>3</sup> Joseph Hayes & Laura Hill, Undocumented Immigrants in California, Public Policy Institute of California (March 2017), <http://www.ppic.org/publication/undocumented-immigrants-in-california/> (as of Sept. 10, 2018).
- <sup>4</sup> Institute on Taxation and Economic Policy, State and Local Tax Contributions of Undocumented Californians: County-by-County Data (Apr. 24, 2017), <https://itep.org/state-and-local-tax-contributions-of-undocumented-californians-county-by-county-data/#.WQdqr4grKJA> (as of Sept. 10, 2018).
- <sup>5</sup> Valerie Hamilton, California's undocumented workers help the economy grow – but may pay the cost, PRI (Mar. 6, 2017), <https://www.pri.org/stories/2017-03-06/californias-undocumented-workers-help-grow-economy-theres-cost> (as of Sept. 10, 2018).
- <sup>6</sup> Andrew Khouri, More workers say their bosses are threatening to have them deported, L.A. Times (Jan. 2, 2018), <http://www.latimes.com/business/la-fi-immigration-retaliation-20180102-story.html> (as of Sept. 10, 2018).
- <sup>7</sup> Bernhardt, Annette, et al., Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in America's Cities (2009), Center for Urban Economic Development, National Employment Law Project, and UCLA Institute for Research on Labor and Employment, <https://www.nelp.org/wp-content/uploads/2015/03/BrokenLawsReport2009.pdf> (as of Sept. 10, 2018).
- <sup>8</sup> See *United States v. Brignoni-Ponce* (1975) 422 U.S. 873, 879 (finding that undocumented immigrants “are vulnerable to exploitation because they cannot complain of substandard working conditions without risking deportation”).
- <sup>9</sup> Khouri, *supra*, at endnote 6.
- <sup>10</sup> Cal. Labor & Workforce Dev. Agency, LWDA Mission and Goals, [https://www.labor.ca.gov/Mission\\_and\\_Goals.htm](https://www.labor.ca.gov/Mission_and_Goals.htm) (as of Sept. 10, 2018).
- <sup>11</sup> Cal. Dept. of Industrial Relations, About Us (Apr. 2013), <https://www.dir.ca.gov/aboutdir.html> (as of Sept. 10, 2018).
- <sup>12</sup> Cal. Dept. of Industrial Relations, About DLSE (Apr. 2016), <https://www.dir.ca.gov/dlse/aboutdlse.html> (as of Sept. 10, 2018).
- <sup>13</sup> Cal. Dept. of Industrial Relations, Division of Workers' Compensation (2018), <https://www.dir.ca.gov/dwc/> (as of Sept. 10, 2018).
- <sup>14</sup> Cal. Agric. Rel. Board, About the Agricultural Relations Board (2013), <https://www.alrb.ca.gov/AboutUs.shtml> (as of Sept. 10, 2018).
- <sup>15</sup> Gov. Code, § 7284.8, subd. (a). SB 54 defines “immigration enforcement” to include any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person's presence in, entry, or reentry to, or employment in, the United States. (Gov. Code, § 7284.4, subd. (f).) This guide adopts that definition.
- <sup>16</sup> Gov. Code, § 7284.8, subd. (a).
- <sup>17</sup> This guide uses the term “worker” in reference to those who report labor law violations to the Labor Agencies, who participate in the Labor Agencies' enforcement activities (including as a witness, union representative, or non-attorney representative appearing on behalf of a claimant, and who contact the Labor Agencies to learn more about their labor rights and how to enforce them. The term “worker” is not intended to refer to employees of the Labor Agencies.
- <sup>18</sup> Public employers, including the Labor Agencies, have state and federal obligations based on their status as employers that this guide does not reach. For example, Assembly Bill (AB) No. 450 (2017-2018 Regular Session) prohibits an employer, or a person acting on behalf of the employer, from providing voluntary consent to an immigration enforcement agent to access, review or obtain the employer's employee

records without a subpoena or judicial warrant, unless certain exceptions apply. (Gov. Code, § 7285.2, subd. (a)(1).) Employers should ensure that all of their policies are consistent with applicable state and federal law.

<sup>19</sup> Gov. Code, § 7284.6, subd. (a)(1)(G). See also Cal. Dept. of Justice, Div. of Law Enforcement, Information Bulletin No. DLE-2018-01, *Responsibilities of Law Enforcement Agencies Under the California Values Act, California TRUST Act, and the California TRUTH Act* (Mar. 28, 2018), available at [https://oag.ca.gov/sites/all/files/agweb/pdfs/law\\_enforcement/dle-18-01.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/law_enforcement/dle-18-01.pdf) (as of Sept. 10, 2018), at pp. 2-3.

<sup>20</sup> See Gov. Code, § 7285, subd. (a); Lab. Code, § 1171.5, subd. (a). See also *Salas v. Sierra Chemical Co.* (2014) 59 Cal.4th 407, 418 (emphasis omitted).

<sup>21</sup> Lab. Code, § 1171.5, subd. (b).

<sup>22</sup> Lab. Code, § 3351, subd. (a).

<sup>23</sup> See *Sure-Tan, Inc. v. NLRB* (1984) 467 U.S. 883, 892 (undocumented immigrants are employees under the NLRA).

<sup>24</sup> *Rivera v. NIBCO, Inc.* (9th Cir. 2004) 364 F.3d 1057, 1065 (denying defendants' request to discover plaintiffs' immigration status as unduly burdensome and contrary to the public interest in enforcing employment discrimination laws) ("Granting employers the right to inquire into workers' immigration status in cases like this would allow them to raise implicitly the threat of deportation and criminal prosecution every time a worker, documented or undocumented, reports illegal practices or files a Title VII action. Indeed, . . . countless acts of illegal and reprehensible conduct would go unreported.").

<sup>25</sup> Lab. Code, § 1019.

<sup>26</sup> *Ibid.*

<sup>27</sup> Lab. Code, § 244.

<sup>28</sup> Div. of Labor Standards Enforcement, Enforcement Policies and Interpretations Manual (Apr. 2017), [https://www.dir.ca.gov/dlse/dlsemanual/dlse\\_encmanual.pdf](https://www.dir.ca.gov/dlse/dlsemanual/dlse_encmanual.pdf), at p. 17-2 (as of Sept. 10, 2018).

<sup>29</sup> Bus. & Prof. Code, § 494.6, subd. (a).

<sup>30</sup> Bus. & Prof. Code, § 6103.7.

<sup>31</sup> Lab. Code, § 1171.5, subd. (b).

<sup>32</sup> 8 U.S.C. § 1373(a), (b).

<sup>33</sup> *City of Chicago v. Sessions* (N.D. Ill. July 27, 2018) \_\_\_ F.Supp.3d \_\_\_, \_\_\_, 2018 WL 3608564, at \*10; *City of Philadelphia v. Sessions*, (E.D. Pa. 2018) 309 F.Supp.3d 289, 331.

<sup>34</sup> *United States v. California* (E.D. Cal. 2018) 314 F.Supp.3d 1077, 1101.

<sup>35</sup> See generally *id.*; *California v. Sessions*, Case No. 3:17-cv-485-WHO (N.D. Cal.).

<sup>36</sup> *United States v. California*, *supra*, 314 F.Supp.3d at p. 1102 (declining to interpret 8 U.S.C. § 1373 to include release dates and addresses); see also *City of Philadelphia v. Sessions*, *supra*, 309 F.Supp.3d at pp. 332–33; *Steinle v. City and County of San Francisco* (N.D. Cal. 2017) 230 F.Supp.3d 994, 1015–1016.

<sup>37</sup> For information about who may represent individuals in immigration proceedings, see U.S. Department of Justice, Can Someone Represent You Before EOIR? (Apr. 27, 2017), <https://www.justice.gov/eoir/can-someone-represent-you-eoir> (as of Sept. 10, 2018).

<sup>38</sup> Gov. Code, § 7285 et seq.

<sup>39</sup> See *United States v. California*, *supra*, 314 F.Supp.3d at pp. 1096, 1112 (enjoining enforcement of Government Code sections 7285.1 and 7285.2 on intergovernmental immunity grounds).

<sup>40</sup> Gov. Code, § 7285.1, subd. (a).

<sup>41</sup> *Ibid.*

<sup>42</sup> *Id.*, subd. (c).

<sup>43</sup> *Id.*, subd. (b).

<sup>44</sup> Gov. Code, § 7285.1.

<sup>45</sup> *Arizona v. United States* (2012) 567 U.S. 387, 407.

<sup>46</sup> For example, the Labor Commissioner's office has posted such a sign that reads: "Only individuals seeking assistance or information from the Labor Commissioner about state labor laws, or those filing

or involved in a claim or investigation before our agency (including parties, witnesses, representatives, family members, or persons assisting an individual with a claim), may enter this office. Solicitation is prohibited. Any person whose presence would interfere with agency proceedings is not permitted to enter this office.”

<sup>47</sup> See endnotes 33–38, *supra*, and accompanying text.

<sup>48</sup> Lab. Code, § 138.7, subd (a).

<sup>49</sup> *Ibid.*

<sup>50</sup> *Id.*, subd. (b)(5).

<sup>51</sup> Cal. Const., art. XIV, § 4; Lab. Code § 111, subd. (a).

<sup>52</sup> *NBC Subsidiary (KNBC-TV), Inc. v. Superior Court* (1999) 20 Cal.4th 1178.

<sup>53</sup> Lab. Code, § 138.7, subd. (b)(5)(A).

<sup>54</sup> *Id.*, subd. (b)(5)(B).

<sup>55</sup> *Id.*, subd. (b)(5)(C).

# Appendix A

## Immigrations and Customs Enforcement "Arrest Warrant" (Form I-200)

U.S. DEPARTMENT OF HOMELAND SECURITY      Warrant for Arrest of Alien

File No. \_\_\_\_\_

Date: \_\_\_\_\_

**To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations**

I have determined that there is probable cause to believe that \_\_\_\_\_  
is removable from the United States. This determination is based upon:

- the execution of a charging document to initiate removal proceedings against the subject;
- the pendency of ongoing removal proceedings against the subject;
- the failure to establish admissibility subsequent to deferred inspection;
- biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

**YOU ARE COMMANDED** to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

\_\_\_\_\_  
(Signature of Authorized Immigration Officer)

\_\_\_\_\_  
(Printed Name and Title of Authorized Immigration Officer)

### Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at \_\_\_\_\_  
(Location)

on \_\_\_\_\_ on \_\_\_\_\_, and the contents of this  
(Name of Alien) (Date of Service)

notice were read to him or her in the \_\_\_\_\_ language.  
(Language)

\_\_\_\_\_  
Name and Signature of Officer

\_\_\_\_\_  
Name or Number of Interpreter (if applicable)



**Appendix B**  
**Immigrations and Customs Enforcement “Removal Warrant” (Form I-205)**

DEPARTMENT OF HOMELAND SECURITY  
U.S. Immigration and Customs Enforcement  
**WARRANT OF REMOVAL/DEPORTATION**

File No: \_\_\_\_\_

Date: \_\_\_\_\_

To any immigration officer of the United States Department of Homeland Security:

\_\_\_\_\_  
(Full name of alien)

who entered the United States at \_\_\_\_\_ on \_\_\_\_\_  
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- an immigration judge in exclusion, deportation, or removal proceedings
- a designated official
- the Board of Immigration Appeals
- a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

\_\_\_\_\_  
(Signature of immigration officer)

\_\_\_\_\_  
(Title of immigration officer)

\_\_\_\_\_  
(Date and office location)

# Appendix C Notice to Appear (Form I-862)

U.S. Department of Homeland Security

## Notice to Appear

### In removal proceedings under section 240 of the Immigration and Nationality Act

File No: \_\_\_\_\_

In the Matter of:

Respondent: \_\_\_\_\_ currently residing at: \_\_\_\_\_

(Number, street, city, state and ZIP code)

(Area code and phone number)

- 1. You are an arriving alien.
- 2. You are an alien present in the United States who has not been admitted or paroled.
- 3. You have been admitted to the United States, but are deportable for the reasons stated below:

The Department of Homeland Security alleges that you:

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

Section 235(b)(1) order was vacated pursuant to:  8 CFR208.30(f)(2)  8CFR235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: \_\_\_\_\_

(Complete Address of Immigration Court, including Room Number, if any)

on \_\_\_\_\_ at \_\_\_\_\_ to show why you should not be removed from the United States based on the charge(s) set forth above.

(Signature and Title of Issuing Officer)

Date: \_\_\_\_\_

(City and State)

**See reverse for important information**

Form I-862 (Rev. 08/01/07)

Appendix D  
Federal Search and Seizure Warrant (Form AO 93)

AO 93 (Rev. 11/13) Search and Seizure Warrant

---

**UNITED STATES DISTRICT COURT**  
for the

In the Matter of the Search of \_\_\_\_\_ )  
(Briefly describe the property to be searched )  
or identify the person by name and address) ) Case No. \_\_\_\_\_ )  
 ) )  
 ) )  
 ) )

**SEARCH AND SEIZURE WARRANT**

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the \_\_\_\_\_ District of \_\_\_\_\_  
(Identify the person or describe the property to be searched and give its location):

I find that the affidavit(s), or any recorded testimony, establish a probable cause to search and seize the person or property described above, and that such search will reveal (identify the person or describe the property to be seized):

**YOU ARE COMMANDED** to execute this warrant on or before \_\_\_\_\_ (not to exceed 14 days)  
 in the daytime 6:00 a.m. to 10:00 p.m.  at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to \_\_\_\_\_  
(United States Magistrate Judge)

Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box)  
 for \_\_\_\_\_ days (not to exceed 30)  until, the facts justifying, the later specific date of \_\_\_\_\_

Date and time issued: \_\_\_\_\_ Judge's signature \_\_\_\_\_

City and state: \_\_\_\_\_ Printed name and title \_\_\_\_\_

**Appendix E**  
**Federal Arrest Warrant (Form AO 442)**

**AO 442 (Rev. 11/11) Arrest Warrant**

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**UNITED STATES DISTRICT COURT**

for the

United States of America  
 v. \_\_\_\_\_ )  
 ) Case No. \_\_\_\_\_ )  
 )  
 )  
 )  
 )  
 )  
 )  
 \_\_\_\_\_ )  
 Defendant )

**ARREST WARRANT**

To: Any authorized law enforcement officer

**YOU ARE COMMANDED** to arrest and bring before a United States magistrate judge without unnecessary delay (name of person to be arrested) \_\_\_\_\_, who is accused of an offense or violation based on the following document filed with the court:

Indictment     Superseding Indictment     Information     Superseding Information     Complaint  
 Probation Violation Petition     Supervised Release Violation Petition     Violation Notice     Order of the Court

This offense is briefly described as follows:

SAMPLE

Date: \_\_\_\_\_  
 \_\_\_\_\_  
*Issuing officer's signature*

City and state: \_\_\_\_\_  
 \_\_\_\_\_  
*Printed name and title*

**Return**

This warrant was received on (date) \_\_\_\_\_, and the person was arrested on (date) \_\_\_\_\_  
 at (city and state) \_\_\_\_\_.

Date: \_\_\_\_\_  
 \_\_\_\_\_  
*Arresting officer's signature*

\_\_\_\_\_

*Printed name and title*

# Appendix F

## Department of Homeland Security Immigration Enforcement Subpoena (Form I-138)

1. To (Name, Address, City, State, Zip Code)	DEPARTMENT OF HOMELAND SECURITY  <b>IMMIGRATION ENFORCEMENT SUBPOENA</b> to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number	
2. In Reference To	
(Title of Proceeding)	(File Number, if Applicable)

By the service of this subpoena upon you, **YOU ARE HEREBY SUMMONED AND REQUIRED TO:**

- (A)  **APPEAR** before the U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), or U.S. Citizenship and Immigration Services (USCIS) Official named in Block 3 at the place, date, and time specified, to testify and give information relating to the matter indicated in Block 2.
- (B)  **PRODUCE** the records (books, papers, or other documents) indicated in Block 4, to the CBP, ICE, or USCIS Official named in Block 3 at the place, date, and time specified.

Your testimony and/or production of the indicated records is required in connection with an investigation or inquiry relating to the enforcement of U.S. immigration laws. Failure to comply with this subpoena may subject you to an order of contempt by a federal District Court, as provided by 8 U.S.C. § 1225(d)(4)(B).

3. (A) CBP, ICE or USCIS Official before whom you are required to appear	(B) Date
Name	
Title	
Address	(C) Time <input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m.
Telephone Number	

4. Records required to be produced for inspection



If you have any questions regarding this subpoena, contact the CBP, ICE, or USCIS Official identified in Block 3.

5. Authorized Official

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

Appendix G  
Federal Judicial Subpoena (Form AO 88B)

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

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**UNITED STATES DISTRICT COURT**  
for the

<i>Plaintiff</i>	)	
v.	)	Civil Action No.
<i>Defendant</i>	)	

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS  
OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION**

To: \_\_\_\_\_  
*(Name of person to whom this subpoena is directed)*

**Production:** YOU ARE COMMANDED to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Place:	Date and Time:
--------	----------------

**Inspection of Premises:** YOU ARE COMMANDED to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: \_\_\_\_\_

*CLERK OF COURT* OR

_____ <i>Signature of Clerk or Deputy Clerk</i>	_____ <i>Attorney's signature</i>
--	--------------------------------------

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* \_\_\_\_\_, who issues or requests this subpoena, are:

---

**Notice to the person who issues or requests this subpoena**

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).