

Immigration and Customs Enforcement (ICE) Primer for Oregon Agricultural Producers



Background

Immigration and Customs Enforcement (ICE) is the interior investigative and enforcement agency within the Department of Homeland Security. One of the responsibilities of this agency is to ensure the departure of illegal aliens from the United States through the enforcement of the nation's immigration laws. Recently, ICE has stepped up enforcement activities and it is possible these efforts could include attempts to access farms and farm worker housing in Oregon. While it is important to cooperate with ICE, this primer aims to educate agricultural producers about ICE enforcement activities and methods to minimize the disruption of agricultural business activities caused by such enforcement.

What Immigration Can and Cannot Do

- 1. Consensual questioning** - Immigration can ask questions of anyone as long as they do not restrain the freedom of the individual to walk away.
- 2. Detention** - Immigration cannot stop a car, or detain a person in some other way, unless they have a "reasonable suspicion, based on specific articulable facts," that that person is not lawfully in the United States. Immigration cannot detain a person solely because of their skin color, inability to speak English, status as a farm worker and/or their out of state car. A specific tip, erratic driving or fleeing from agents, the employee's false immigration papers obtained from an employer during an audit, the inability to furnish identification documents, or a referral from a local or state enforcement official, do give the agents the right to detain. Detentions of persons based solely upon ethnic appearance are illegal.
- 3. Arrest** - Immigration can arrest a person if they have an arrest warrant, or if they have probable cause to believe a person is not lawfully in the United States and is likely to escape before a warrant can be obtained.
- 4. Searches of housing** - Immigration cannot come into a dwelling unless they have a search warrant, or unless the occupant gives them permission to enter. A landlord cannot give Immigration permission to enter a tenant's home; an employer cannot give permission for a search of an employee's housing, where the employer provides the housing. To get permission, Immigration must knock at the door and identify themselves before they enter.
- 5. Farm operations** - Immigration cannot enter a farm or "other outdoor agricultural operation" to question a person suspected of being an alien unless they have either the consent of the owner or a warrant. ICE may search, without a warrant, private lands (not dwellings) within 25 miles of an external boundary of the United States.

*IMPORTANT NOTE: This information is a general overview of the legal issues discussed herein and should not be considered legal advice, readers are urged to consult with legal counsel for precise answers to individual questions and the application of these legal principles to their individual situations.

**Oregon Farm Bureau acknowledges New York Farm Bureau's research and analysis which served as the basis for this Primer.

6. Manner of questioning - Immigration may not use threats, coercion, or physical abuse to induce a person to waive his or her rights or to make a statement.

Be Prepared

Adequate preparation and education is one of the best ways for producers to minimize the disruption of their business operations. After educating yourself about your rights, as a property owner, you should consider sharing information concerning individual rights to your employees and fellow colleagues.

ICE At Your Work Place

There are several ways ICE may contact you:

1. An I-9 audit. If ICE wishes to audit your records, you are usually able to request three days to prepare for the audit. If ICE issues a subpoena, the three day rule is not applicable. The agent may request to take your original documents. Request a receipt and keep a copy, if this occurs. It is advisable to contact a qualified attorney to assist you with this preparation.

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

3. Search warrant. ICE or another federal agency may obtain an administrative search warrant based on probable cause of illegal activity. Obtain a business card and a copy of the warrant, read the warrant, and allow the agency or person specified in the warrant to conduct the actions specified. Get the business card of every person who enters your property. As soon as you have read the warrant, contact your attorney.

Workplace Procedures

Develop a clear company policy regarding who can grant access to your property and post signs directing visitors to report to the office and/or provide a cell phone number on the sign that a visitor may use to contact the appropriate representative. If you are confronted with an agent seeking access to your operation, try to find out the purpose of the visit, obtain a business card, and determine which of the circumstances from above (audit, subpoena, arrest warrant, or search warrant) applies.

In the case of a subpoena, it may be advisable to have a pre-made copy of your current employees I-9 forms in a separate folder. If you discover an agent at your farm or other outdoor agricultural operation, identify the agent, politely ascertain his/her business, and ask to see any warrant. If the agent does not produce a warrant, inform him/her that you have not granted permission to enter, and ask him/her to leave. Also, immediately contact your attorney to report the incident.

What Should You Tell Your Workers

Workers should be instructed that they must not flee from an ICE agent, that they may not grant permission for any government agent to enter your property, and that the only question they must answer is their name. Crew leaders and workers should be prepared to give the name and phone

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number of the person or persons you have designated to deal with individuals who seek access to your property. Suggest workers carry an immigration card to help communicate their rights to an ICE agent, an example can be found below.

Immigration Card

Below is an example of a card that can be produced and given to farm workers to aid them in communication with ICE agents.

Front

TO WHOM IT MAY CONCERN

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

Back

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