

Immigration Enforcement: A New ICE Age?



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Legal Prohibitions:

- ▶ Since 1952 - against the law for anyone to enter the country without proper authorization or remain past their authorized stay.
- ▶ Since 1986 - against the law to hire anyone not legally present and authorized to work in the United States.
- ▶ Since 1986 - against the law to make a pattern or practice of hiring anyone not authorized to work in the U.S.
- ▶ Since 1986 - against the law to hire anyone without completing the I-9 employment verification process.
- ▶ Since 1986 - against the law to discriminate in the hiring process on the basis of immigration related status.
- ▶ Since 1986 - against the law to “harbor” anyone not legally present in the U.S.

Enforcing Agencies:

- ▶ Department of Homeland Security
 - ▶ Customs and Border Protection (CBP)
 - ▶ Immigration and Customs Enforcement (ICE)
 - ▶ Homeland Security Investigations (HSI)
- ▶ Department of Labor
 - ▶ Wage and Hour
 - ▶ Employment and Training
- ▶ Department of Justice
 - ▶ Immigrant and Employee Rights Section - for discrimination (IER)
 - ▶ Criminal Division for harboring and pattern and practice

Recent Cases and Penalties:

- ▶ \$45.5 million - Waste Management - discrimination
- ▶ \$96 million - Asplundh - pattern and practice
- ▶ 3,000 workers lost- Brightview-I-9 Audit no match
- ▶ **Headlines:**
 - ▶ [ICE began 2018 in dramatic fashion, in coordinated raid across 17 states and Washington, D.C. - January 10, 2018](#)
 - ▶ [Massive raid in Florida and Puerto Rico, arresting 271, almost two-thirds of whom did not have any criminal record whatsoever - March 28, 2018](#)
 - ▶ [On June 5, 2018, ICE detained 114 workers](#)
 - ▶ [Just two weeks after, ICE detained 146 workers - June 20, 2018](#)
 - ▶ [ICE arrests 132 in the D.C. Metro Area - July 20, 2018](#)
 - ▶ [So far in fiscal year 2018, there have been five times as many arrests of immigrants at workplaces than in all of FY2017 - July 24, 2018](#)
 - ▶ [Immigration agents raid Texas business, detain 160 undocumented workers in surprise raid - August 29, 2018](#)

Trends:

▶ Enforcement on steroids:

- ▶ 10,000 new DHS personnel in the FY18 appropriations bill
- ▶ I-9 audits to increase 400%



Trends Continued:

- ▶ 2017 arrests resulted in \$97.6 million in judicial penalties and \$7.8 million in civil fines.
- ▶ 2018 expansion of interior removals:
 - ▶ 82,000 in 2017 to 95,000 in 2018
 - ▶ Still less than 1% of estimated undocumented population
- ▶ Policy of Deterrence:
 - ▶ Rhetoric coupled with high profile raids and prosecution
 - ▶ Adjustment of policies to discourage entry (extreme vetting) and encourage self-deportation (enforcement/public charge)

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Impacts on Ag Labor:

- ▶ Geographic shortages continue
- ▶ Increase in use of labor enhancing technology (mechanization)
- ▶ Increased use of H-2A foreign worker program
 - ▶ 2013 - 77,000
 - ▶ 2018 - 240,000
- ▶ Opportunities for reform
 - ▶ Regulations on H-2A headed to OMB
 - ▶ AEWR legislation and litigation
 - ▶ New Congress - House package by Spring