

No Skating on Thin ICE:

Using Enforcement Preparedness Policies to Prevent Drowning in Frigid Immigration Waters

Nici Kersey* and Angelo A. Paparelli**

In the past decade, comparatively few U.S. employers proactively formulated or even considered adopting a formal corporate immigration compliance policy, apparently having concluded that such a policy was largely unnecessary. As long as employers believed that their inventory of executed Forms I-9 (Employment Eligibility Verifications) was in reasonably good shape, their attention tended to focus on other (seemingly more pressing) business matters. This insouciant approach had a firm grounding in reality. The Bush Administration's immigration enforcement philosophy tended to rely more on headline-grabbing worksite raids and the arrest of undocumented workers than on the painstaking detective work required to ferret out and punish employer violations of the immigration laws.¹

Today, however, immigration enforcement actions are on the rise, and a corporation without a strong immigration compliance policy is skating on thin ice, or, more precisely, may be in for a

* Nici Kersey is an Associate at Seyfarth Shaw LLP. Ms. Kersey is a member of the Seyfarth Workforce Authorization Team (SWATeam) and has extensive training in the workforce authorization compliance area. She provides advice relating to I-9 compliance, corporate best practices during the hiring process, and emerging Federal, state, and local workforce authorization laws and regulations.

http://www.seyfarth.com/index.cfm/fuseaction/attorney.attorney_detail/object_id/9745e78e-9619-45f1-abe0-ed8c365630b2/NicoleKersey.cfm

** Mr. Paparelli is a partner in the Immigration Practice Group of Seyfarth Shaw LLP. A Certified Immigration Law Specialist (CA), he is known among clients and peers for providing creative solutions to complex immigration law problems. Mr. Paparelli writes a blog (www.nationofimmigrants.com) covering (ranting about) immigration-related topics.

http://www.seyfarth.com/index.cfm/fuseaction/attorney.attorney_detail/object_id/cd504c46-2b4b-4939-8ca2-781517c5011c/AngeloPaparelli.cfm

¹ See, Angelo A. Paparelli and Ted J. Chiappari, "Homeland's Outsourcing of Enforcement Gains Impetus," *New York Law Journal*, Immigration Column, (Oct. 22, 2007) at 6 n. 4 ("[A]dministrative law judges in the Office of the Chief Administrative Hearing Officer . . . who hear civil immigration violations involving illegal employment are about as busy as the Maytag repairman. . . . [O]f the 66 published OCAHO decisions from 2000 to 2007, only two involved unlawful employment of aliens"). OCAHO cases from 2000 to 2007 can be found at: www.usdoj.gov/eoir/OcahoMain/publisheddecisions/Looseleaf/Volume9/vol9listforInternet.htm.

wholly unpleasant encounter with ICE – U.S. Immigration and Customs Enforcement – and with ICE’s many counterparts in immigration enforcement.²

Just as figure skaters are forced by new international judging rules to focus on the technical aspects of their skating programs (and perhaps thereby to reduce artistry, as some maintain),³ the government’s new enforcement strategies require employers to abide by the highly technical rules and regulations that govern immigration compliance. As the surfeit of web-based newsletters posted by business-hungry immigration lawyers confirms, employers who fail to comply may face hefty fines and prison sentences. A company that implements and follows a strong immigration compliance program, however, may minimize these adversities or avoid them altogether.⁴ In other words, if an Olympic figure skater, to win a medal, must now display strong technical prowess in presenting her artistic program, a company needs a strong technical compliance program to avoid spending time behind metal (bars).

² As this article will show, a host of federal agencies investigate and enforce the immigration laws, whether as a means of maintaining program integrity or punishing civil and criminal law violations. These include the Fraud Detection and National Security Directorate (FDNS) of U.S. Citizenship and Immigration Services (USCIS), a bureau of the U.S. Department of Homeland Security (DHS), and the Wage and Hour Division (WHD), within the Employment Standards Administration (ESA) of the U.S. Department of Labor (DOL). In addition, as a result of a plethora of recent state and municipal enactments that regulate and punish immigration law violations, the cast of immigration law enforcers is likely to grow significantly. This article will address a variety of immigration enforcement agencies whose operative strategies and current activities militate in favor of the formulation and adoption of proactive corporate immigration compliance policies.

³ See Frank Deford, “This is figure skating? Go figure,” *Sports Illustrated* (SI.com) http://sportsillustrated.cnn.com/2010/writers/frank_deford/02/10/skating/index.html (February 10, 2010).

⁴ See generally, The Immigration Compliance Book 2009-2010 Edition (Editors: Angelo A. Paparelli, L. Batya Schwartz Ehrens, and Dan Siciliano; Publisher: ILW.COM) (hereafter, “Compliance Book”) and The 2008 AILA Worksite Enforcement CLE Conference Workbook -- Cutting-Edge Issues in Worksite Compliance and Enforcement: Developments, Trends, and Practice Guidance (Editors: Josie Gonzalez, Richard A. Gump, Jr., and Mary E. Pivec; Publisher: AILA).

⁶ ICE’s website, www.ice.gov, features headlines touting its recent enforcement “victories.” Recent examples include “Owner of Reno electronics firm faces federal charges for employing illegal aliens” (<http://www.ice.gov/pi/nr/1003/100304reno.htm>), “Owner, employee of Miami language school charged with immigration fraud” (<http://www.ice.gov/pi/nr/1003/100304miami.htm>), “BAE Systems PLC pleads guilty and ordered to pay \$400 million criminal fine” (<http://www.ice.gov/pi/nr/1003/100301washingtondc.htm>), and “Owner of Casa Fiesta faces multiple charges for hiring illegal aliens” (<http://www.ice.gov/pi/nr/1001/100121cleveland.htm>).

This article argues that immigration compliance policies are no longer optional for U.S. businesses and provides an outline for one of the most-frequently overlooked aspects of a comprehensive immigration compliance program: the investigation preparedness and response protocol.

Status Quo

Large corporations and nonprofit organizations have long taken pride in developing and abiding by comprehensive business and legal compliance policies, procedures, and protocols that cover a wide array of situations: how to handle a tornado, who is in charge if the C.E.O. dies, what should happen to employees with drug addictions, where to store important paperwork and for how long, when to delete e-mails, how to handle discrimination charges, and what to do if someone steals the secret formula for a particular product. Strong immigration policies, however, rarely work their way into the corporate handbook until the lack of such policies becomes too expensive to ignore. Frequently, even the largest of corporations fail to implement policies and protocols relating to immigration until ICE or another government agency publicly embarrasses the corporation with a raid or another enforcement action.⁶

Increased Enforcement

In 2002, U.S. Immigration and Customs Enforcement (ICE), the enforcement arm of the U.S. Department of Homeland Security (DHS), reported 25 criminal and 485 administrative arrests at the worksite due to immigration-related violations.⁷ By 2008, the number of arrests skyrocketed; ICE completed more than 10 times as many administrative arrests and more than 40 times as many criminal arrests.⁸ In 2009, ICE fined employers approximately \$24 million for failure to comply with immigration laws and regulations (up from \$0 in 2006 and less than \$100,000 in 2002).⁹ The evidence all points to a single conclusion: immigration compliance cannot be ignored; employers can no longer afford to have weak or nonexistent compliance programs.

Program Elements

A strong figure skating program combines several technical elements (jumps, spins, lifts, steps, and turns). Similarly, a successful immigration compliance program will contain a number of elements: an immigration sponsorship policy;¹⁰ an I-9 audit and compliance policy;¹¹ an audit of

⁷ U.S. Immigration and Customs Enforcement, *Worksite Enforcement Overview*, April 30, 2009 (available at <http://www.ice.gov/pi/news/factsheets/worksite.htm>).

⁸ *Id.*

⁹ Eileen Scofield, Josie Gonzalez, Bonnie Gibson, and Dawn Lurie, Summary of Department of Homeland Security (DHS) Symposium “2009 Government and Employers: Working Together to Ensure a Legal Workforce,” November 19, 2009, Washington, D.C. (AILA InfoNet Doc. No. 10021060).

¹⁰ Such a policy will clarify the employer’s sponsorship process. The policy will be used by recruiters, human resources personnel, hiring managers, and foreign national employees to understand the employer’s criteria for nonimmigrant visa sponsorship and for green card

H-1B compliance,¹² a contractor/vendor policy requiring those that work for the company to comply with all relevant immigration laws and regulations;¹³ and the final element, a government investigation preparedness and response protocol.

Investigation Response Protocol

The present article describes and provides a template outlining the final element: an investigation preparedness and response protocol. Corporations frequently overlook this key element of a comprehensive immigration compliance program. Since January 2009, employers around the country have reported an upsurge in visits to their facilities by an array of investigators from various federal agencies to determine compliance with U.S. immigration laws and regulations. If employers do not prepare in advance, the corporate representative providing important documentation and information to these government investigators might be the receptionist.

A strong protocol will describe the various types of government investigations that a worksite may face (and the agencies that do the investigating), create a team of individuals who will be responsible for responding to the investigation, define the roles of each member of the response team, and outline the steps to be taken in the event of an investigation.

sponsorship. Such policies will guide employers through the steps to be taken upon hire, transfer, promotion, and termination of a foreign national employee. Some policies may require the employee to pay some portion of the cost of sponsorship (where allowed by law) or to be an employee in good standing for a period of time prior to becoming eligible for green card sponsorship.

¹¹ See, Loan T. Huynh and Laura J. Danielson, “Don’t Wait for ICE to Knock on the Door: A Practical Guide to Preparing Employers for I-9 Compliance/Audits and Worksite Investigations (With Supplements: Sample Proposed I-9 Policy and Procedures, Form I-9 Verification Procedures-Guidelines For Employers, and Checklist For I-9 Audit And Correction Guidelines)” in *The Immigration Compliance Book 2009-2010 Edition*, Editors: Angelo A. Paparelli, L. Batya Schwartz Ehrens, and Dan Siciliano, and Gabrielle M. Buckley, *Compliance Book*, *supra*, note 4 and “Corporate Compliance Programs,” AILA’s *Immigration & Nationality Law Handbook* 653 (2008-09 ed.).

¹² See, Alan Tafapolsky, Neil S. Dornbaum, Peter T. Shiron, Jr., and Andrew L. Wizner, “A Proactive Approach to DOL Audits--Bingo Revisited,” AILA’s *Immigration & Nationality Law Handbook* 521 (2006-07 ed.) and Angelo A. Paparelli and J. Ira Burkemper, “Skeletons in the Closet: LCA Audits in the Age of H-1B Uncertainty, Parts I and II,” *Interpreter Releases* (June 1996).

¹³ See, Angelo A. Paparelli and Ted J. Chiappari, “New Corporate Procurement Strategy: Minimizing Immigration Risks from Service Providers,” *New York Law Journal* (June 29, 2009), accessible at: <http://tinyurl.com/yf5j46y>.

Government Agencies that Conduct Immigration Investigations

The investigators that visit a corporate worksite may hail from a variety of federal government offices:

- **U.S. Citizenship and Immigration Services (USCIS)** – an agency within the Department of Homeland Security (DHS) – conducts random and targeted worksite investigations of employers who sponsor foreign workers, primarily in the H-1B and L-1 work visa categories, through **FDNS (the Fraud Detection and National Security division)**. FDNS has engaged outside private investigation firms to conduct 25,000 unannounced “administrative investigations” to test the accuracy of information in the business’s employment-based nonimmigrant visa petition submitted to USCIS. (Employers pay for this investigation through user fees [the \$500 anti-fraud fee] submitted with the initial petition on behalf of an H-1B or L-1 worker.)
- **U.S. Immigration and Customs Enforcement (ICE)** – another DHS unit – has launched an initiative to audit the Form I-9 (Employment Eligibility Verification) records of thousands of businesses across the United States. ICE also conducts criminal investigations, in cooperation with U.S. attorneys within the U.S. Department of Justice.
- **The Wage and Hour Division (WHD)** of the U.S. Department of Labor (**DOL**) also conducts immigration compliance investigations, primarily involving the H-1B visa category and the DOL regulations that create a range of worker protections for citizens and H-1B nonimmigrants.

Types of Investigations

There are four basic types of immigration-related investigations: I-9 inspections by Immigration and Customs Enforcement (ICE), worksite raids by ICE, surprise visits by the Fraud Detection and National Security Division (FDNS) of U.S. Citizenship and Immigration Services (USCIS), and compliance investigations by the U.S. Department of Labor (DOL).

- **I-9 Inspections** are generally initiated through in-person service of a Notice of Inspection (NOI) and/or subpoena. A company will typically have 72 hours to provide the I-9s, payroll records, and other information requested in the subpoena.
- **ICE worksite raids** are carried out without notice. These are the most disruptive form of investigations, as they are difficult to control and may result in the loss of key personnel. ICE often arrests employees during these raids, and the raids frequently attract media attention. Generally, several officers will enter with a warrant, which they will serve upon a company representative. The warrant will grant ICE agents access to specific documents and/or people – and it is crucial that the company understand the scope of the warrant so it does not inadvertently grant ICE access to areas not covered by the warrant.

- **FDNS investigations** occur without notice. FDNS is not an enforcement agency; rather, its mission is to detect, deter, and combat immigration benefit fraud. Although FDNS, after a finding of fraud, may refer a case to ICE for consideration of formal criminal investigation, FDNS primarily undertakes investigations to collect information about fraud related to the H-1B nonimmigrant visa program. Therefore, an FDNS investigation should not cause concern or alarm, so long as the company has policies and procedures in place to ensure compliance with immigration regulations. FDNS investigations are carried out by contract investigators who follow a well-defined script. (See the attached sample.)
- **DOL investigations** often cover much more than just immigration; in fact, the focus of the investigation is rarely immigration. However, wage & hour and other DOL investigations may include a review of the company's I-9s, its public access files for H-1B and E-3 employees and/or a review of the wages paid to those employees sponsored by the company for green cards. The DOL or WHD investigators typically do not show up without prior arrangements. Ordinarily, the government provides two weeks notice, and DOL will provide a list of immigration-related business records (going back about two years) that it seeks.

Response Team

It is crucial that company employees likely to be first approached by government agents, including reception staff, be briefed on the best protocol for handling an investigation or other enforcement action. Most importantly, these employees should be instructed that upon the arrival of government agents, they should immediately contact all of the members of the Response Team.

Well before an investigation occurs, the company should identify the key representatives within the organization who will be responsible for the company's immediate response to the investigation. These representatives should include the following individuals:

- **Receptionist at the affected site.** The Receptionist is likely to be the first individual to come into contact with the government agents or officers and must be prepared to immediately contact the other members of the Response Team to inform them of the government action. The Receptionist may provide basic information to the government agents.
- **Corporate Immigration Compliance Officer.** This individual will be responsible for coordinating the company's response and for reviewing any documentation that will be provided to the government and/or disseminated to the employees.
- **Business Unit or Site-Specific Immigration Compliance Officer.** This individual will work with the company's Immigration Compliance Officer to coordinate the local response to the government's visit and will serve as the liaison between the government agent(s) and the rest of the Response Team. This individual will work with local Human Resources representatives to communicate with local employees

about the investigation as necessary. (In smaller organizations, this role may be combined with the Corporate Immigration Compliance Officer role.)

- **Local Human Resources Representative(s).** These individuals will be responsible for compiling the documentation requested by the government and may be involved in replacing employees who are removed from the worksite by the government agents or whose employment is terminated based upon their lack of employment authorization. These individuals will work with the local Immigration Compliance Officer to communicate with employees about the government action as necessary.
- **Local Business Manager(s).** These individuals may be involved in replacing employees who are removed from the worksite by the government agents or whose employment is terminated based upon their lack of employment authorization. They may also be involved in assisting to gather the documentation and/or information requested by the government. (In some organizations, the Business Manager and Human Resources Representative roles may be combined.)
- **Information Technology Group.** An IT representative should be designated to assist agents in navigating through the company's system and locating the information covered by any search warrant presented by the government agents. This representative can minimize the chances of agents a) inadvertently causing damage to the system; b) downloading information that is beyond the scope of the search warrant; and c) disrupting critical operations of the business. This representative can also observe how the government conducts the search and should note what information and documentation the government takes.
- **Public Relations Specialist.** Internal and/or external public relations professionals should be on call to manage crisis communications in the event the situation involves significant employee terminations. The employer should be prepared to respond to any negative publicity that may result from the government investigation to mitigate brand damage and possible adverse impact on the stock price of a publicly traded company.¹⁴
- **In-House Counsel.** In-House Legal Counsel will be available to advise the Response Team regarding the proper response to the government visit and any requests made by the government. (In some organizations, this individual may serve as the Corporate Immigration Compliance Officer.)
- **Outside Immigration Counsel.** Outside Immigration Counsel will be available to advise In-House Legal Counsel and the Response Team regarding the proper response to the government visit and any requests made by the government.

¹⁴ In July 2009, American Apparel went public with news of its run in with government investigators in an attempt to mitigate damage to the brand. See <http://investors.americanapparel.net/releasedetail.cfm?ReleaseID=393357>.

The Corporate Immigration Compliance Officer should ensure that the Response Team members are included in a list serve and should disseminate periodic updates about the organization's immigration compliance efforts and any changes in the company's Immigration Investigation Response Protocol. Each worksite should maintain a copy of the attached worksheet with the names and contact information for each member of the Response Team (see the attachment to the sample protocol). Each Response Team member should be provided with a copy of the completed worksheet.

Some clients may be hesitant to involve individuals from each worksite and at many different levels of the organization in the investigation response. Without involvement and planning at every site, and without cooperation at each level, the response to a government investigation may be significantly hindered and may ultimately fail. Companies no longer have the luxury of avoiding this type of widespread involvement and buy-in on immigration compliance efforts. Immigration compliance should become as ingrained in the mindset of a company's workforce as its anti-discrimination policies.

Response Plan

See the attached sample response protocol for "Skating Co." for a suggested plan outline. A strong plan will provide clear guidance to each member of the Response Team so that each member understands his or her duties and may be held accountable for assigned tasks.

* * *

Just as Olympic figure skaters must execute a variety of technically challenging maneuvers (toe loops, triple flips, sit spins, and double salchows, to name a few), employers must include all of the elements that comprise a robust corporate immigration compliance policy: the sponsorship policy; an I-9 audit and compliance policy; a contractor/vendor policy; and policies for dealing with SSN mismatch letters, identity theft, and anonymous tips. The strongest of policies will also include protocols for responding to immigration investigations; these can be the most stressful of situations for company representatives. Ill-prepared employers, no less than technically deficient amateur skaters on outdoor ponds, are wont to fall painfully on their behinds -- or worse, perish in hypothermia-inducing waters.

Immigration Investigation Compliance/Response Protocol

I. Purpose

The purpose of this plan is to provide Skating Co. with an understanding of steps to be followed by Skating Co. representatives in the event of an immigration-related investigation or other enforcement action by a U.S. government agency or contractor. Such visits may include an I-9 inspection by Immigration and Customs Enforcement (ICE), a worksite raid by ICE, surprise visits by the Fraud Detection and National Security Division (FDNS) of U.S. Citizenship and Immigration Services (USCIS), and immigration compliance investigations by the Wage and Hour Division, U.S. Department of Labor (DOL).

II. Response Team

It is crucial that Skating Co. employees likely to be first approached by government agents, including reception staff, be briefed on the best protocol for handling an investigation or other enforcement action. Most importantly, these employees should be instructed that upon the arrival of government agents, they should immediately contact all of the members of the Response Team, as set out below. The designated Response Team members should communicate to government agents that Skating Co. will cooperate with their requests and that they have contacted legal counsel to assist them in complying with the agents' requests.

Well before an investigation occurs, Skating Co. should identify the key representatives within the organization who will be responsible for Skating Co.'s immediate response to the investigation. These representatives should include the following individuals:

- A. Receptionist at the affected site.** The Receptionist is likely to be the first individual to come into contact with the government agents or officers and must be prepared to immediately contact the other members of the Response Team to inform them of the government action. The Receptionist may provide very basic company information to the government agents and may confirm that a particular employee works for the company, but the Receptionist should generally refer all questions to the other members of the Response Team
- B. Skating Co.'s Immigration Compliance Officer (SCICO).** This individual will be responsible for coordinating Skating Co.'s response and for reviewing any documentation that will be provided to the government and/or disseminated to the employees.
- C. Business Unit or Site-Specific (Local) Immigration Compliance Officer (LICO).** This individual will work with Skating Co.'s Immigration Compliance Officer to coordinate the local response to the government's visit and will serve as the liaison between the government agent(s) and the rest of the Response Team. This individual will work with local Human Resources representatives to communicate with local employees about the investigation as necessary.
- D. Local Human Resources Representative(s) (HR).** These individuals will be responsible for compiling the documentation requested by the government and

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may be involved in replacing employees who are removed from the worksite by the government agents or whose employment is terminated based upon their lack of employment authorization. These individuals will work with the local Immigration Compliance Officer to communicate with employees about the government action as necessary.

- E. Local Business Manager(s) (BM).** These individuals may be involved in replacing employees who are removed from the worksite by the government agents or whose employment is terminated based upon their lack of employment authorization. They may also be involved in assisting to gather the documentation and/or information requested by the government.
- F. Information Technology Group (IT).** An IT Representative should be designated to assist agents in navigating through Skating Co.'s system and locating the information covered by any search warrant presented by the government agents. This representative can minimize the chances of agents a) inadvertently causing damage to the system; b) downloading information that is beyond the scope of the search warrant; and c) disrupting critical operations of the business. This representative can also observe how the search is conducted, and should note what information is taken during the search.
- G. In-House Counsel (IHC).** In-House Legal Counsel will be available to advise the Response Team regarding the proper response to the government visit and any requests made by the government.
- H. Outside Immigration Counsel (OIC).** Outside Immigration Counsel will be available to advise In-House Legal Counsel and the Response Team regarding the proper response to the government visit and any requests made by the government.
Public Relations Specialist (PR). Internal and/or external public relations professionals should be on call to manage crisis communications in the event the situation involves significant employee terminations. The employer should be prepared to respond to any negative publicity that may result from the government investigation to mitigate brand damage and possible adverse impact on the stock price of a publicly traded company.

These individuals should be on a list serve and should receive periodic updates about Skating Co.'s immigration compliance efforts and any changes in Skating Co.'s Immigration Investigation Response Protocol. Each worksite should complete the attached worksheet with the names and contact information for each member of the Response Team. Each Response Team member should be provided with a copy of the completed worksheet.

III. Government Agencies that Conduct Investigations

Since January 2009, employers around the country are increasingly reporting visits to their facilities by an array of investigators from various federal agencies to determine compliance with U.S. immigration laws and regulations. The investigators are dispatched by a variety of federal government offices:

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- A. U.S. Citizenship and Immigration Services (USCIS)** – an agency within the Department of Homeland Security (DHS) – conducts random and targeted worksite investigations of employers who sponsor foreign workers, primarily in the H-1B and L-1 work visa categories, through **FDNS (the Fraud Detection and National Security division)**. FDNS has engaged outside private investigation firms to conduct 25,000 unannounced “administrative investigations” to test the accuracy of information in the business’s employment-based nonimmigrant visa petition submitted to USCIS. (Employers pay for this investigation through user fees [the \$500 anti-fraud fee] submitted with the initial petition on behalf of an H-1B or L-1 worker.)
- B. U.S. Immigration and Customs Enforcement (ICE)** – another DHS unit – has launched an initiative to audit the Form I-9 (Employment Eligibility Verification) records of over 1,600 businesses across the United States. ICE also conducts criminal investigations, in cooperation with U.S. attorneys within the U.S. Department of Justice.
- C. The Wage and Hour Division (WHD)** of the U.S. Department of Labor (**DOL**) also conducts immigration-compliance investigations, primarily involving the H-1B visa category and the DOL regulations that create a range of worker protections for citizens and H-1B nonimmigrants.

IV. Types of Investigations

There are four basic types of immigration-related investigations: I-9 inspections by Immigration and Customs Enforcement (ICE), worksite raids by ICE, surprise visits by the Fraud Detection and National Security Division (FDNS) of U.S. Citizenship and Immigration Services (USCIS), and compliance investigations by the U.S. Department of Labor (DOL).

- A. I-9 Inspections** are generally initiated through in-person service of a Notice of Inspection (NOI) and/or subpoena. Skating Co. will typically have 72 hours to provide the I-9s, payroll records, and other information requested in the subpoena. If the scheduled time is inconvenient, LICO should contact in-house or outside counsel to arrange for a rescheduling within a reasonable time. **(See the attached sample subpoena and notice of inspection.)**
- B. ICE worksite raids** are carried out without notice. These are the most disruptive form of investigations, as they are difficult to control and may result in the loss of key personnel. Employees are often arrested during these raids, and the raids frequently attract media attention. Generally, several officers will enter with a warrant, which they will serve upon a company representative. The warrant will grant ICE agents access to specific documents and/or people – and it is crucial that Skating Co. understand the scope of the warrant so that ICE is not inadvertently granted access to areas not covered by the warrant.
- C. FDNS investigations** occur without notice. FDNS is not an enforcement agency; rather, its mission is to detect, deter, and combat immigration benefit fraud.

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Although FDNS, after a finding of fraud, may refer a case to ICE for consideration of formal criminal investigation, the FDNS primarily undertakes investigations to collect information about fraud related to the H-1B nonimmigrant visa program. Therefore, an FDNS investigation should not cause concern or alarm, especially given the policies and procedures in place at Skating Co. to ensure compliance with immigration regulations. FDNS investigations are carried out by contract investigators who follow a well-defined script. **(See the attached sample.)**

These visits typically focus on a particular employee for whom Skating Co. has filed an immigration petition. If the visit is not unreasonably disruptive of business, and the LICO is confident about the information to be provided, it is best to cooperate with the FDNS investigator. If the investigator's visit has not come at a convenient time for LICO, or LICO and the designated alternate are unavailable, a responsible person should politely ask the investigator to return at a different day or time, and offer dates and times to the investigator for when he or she may return.

- D. DOL investigations** often cover much more than just immigration; in fact, the focus of the investigation is rarely immigration. However, wage & hour and other DOL investigations may include a review of Skating Co.'s I-9s, its public access files for H-1B and E-3 employees and/or a review of the wages paid to those employees sponsored by Skating Co. for green cards. The DOL or WHD investigators typically do not show up without prior arrangements. Ordinarily, two weeks notice is provided, and DOL will provide a list of immigration-related business records going back about two years that it seeks. The two-week appointment date and the scope of the documents requested may be subject to negotiation by your legal counsel. **(See the attached sample H-1B DOL Business Profile Report and DOL Investigation Questionnaire.)**

V. Responding to Investigations

When government agents appear at the worksite, the Receptionist will likely be the first to make contact with the officers. The Receptionist should inquire about the purpose of the visit and the identify of the government agent and should then immediately contact the local Immigration Compliance Officer (ICO). Inform your receptionist that s/he is not authorized to give consent to enter the premises or respond to questions. The receptionist should merely alert LICO that a government investigator or contractor is in the waiting area, and LICO should take it from there. The outlines below set out the specific steps to take in response to each type of investigation.

Regardless of the type of investigation, all Response Team members must be as cooperative as possible with the government agents. Attempt to cooperate with the agents, but work to ensure that the investigation does not exceed the scope of the warrant, subpoena, or other written request.

As a preliminary matter, LICO should take the following steps (regardless of the type of investigation):

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- A. Identify the government agency that dispatched the investigator.** LICO should ask the investigator for identification and note the person's name, title, agency, and contact information. You may also ask for his or her business card. Request information on the nature of the inquiry. In most instances, investigators conducting unannounced visits are from the FDNS or a private contracting firm. Contractor personnel typically provide a card listing no name but a USCIS customer service 800 number. FDNS investigators typically will not present a subpoena or search warrant, but instead will wish simply to talk to someone of authority at the company, as well as the H or L worker.
- B. Determine if the investigator is presenting official documents.** If the investigator presents any official documents, LICO should read them carefully to see if the document is a National Security Letter or Judicial Subpoena (which must be honored) or an Administrative Subpoena (which may be challenged).
- C. Contact Legal Counsel.** Before answering any of the investigator's questions or turning over documents in response to an administrative subpoena, LICO should first speak with inhouse corporate counsel (IHC) or outside immigration counsel (OIC), listed below. Counsel may want to come to the location or speak by phone with the investigator. LICO should be guided by counsel's instructions.
- D. Document the visit.** Use the attached "Checklist for Visit from Government Investigator" to record important information about the visit and to serve as a reminder of some key points to keep in mind throughout the visit.

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VI. Overview of Response Plans

I-9 Notice of Inspection (NOI)

1. ICE officer serves NOI and/or subpoena at worksite.
2. Receptionist contacts L Local Immigration Compliance Officer (LICO).
3. Receptionist and LICO request credentials (badge and/or business card) from the officer. Receptionist and ICO must note, in writing, the name and contact information of the officer.
4. LICO contacts In-House Counsel (IHC) and forwards the NOI, credentials, and subpoena to Skating Co.'s Immigration Compliance Officer (SCICO) and IHC.
5. LICO and/or SCICO contact the ICE officer in charge of the investigation to determine why Skating Co. was selected for inspection; they ask whether they may deliver the required documents to the ICE office, rather than having the officer appear at the worksite.
6. IHC or Outside Immigration Counsel (OIC) also confirms with ICE agent that corrections to I-9s that do not obliterate any existing information and are dated and initialed may be made.
7. LICO, IHC, and SCICO review the NOI and subpoena (with assistance from OIC as needed) and work with Human Resources (HR) and Information Technology (IT) to gather the required documentation.
8. LICO forwards documentation to SCICO & IHC.
9. SCICO, IHC, and OIC review the documentation and suggest changes, providing corrective instructions.
10. LICO, Business Manager (BM), and HR work to make the corrections to the documentation.
11. LICO delivers documentation to ICE office or ICE officer picks up the documentation at the worksite. Be sure to keep a copy of all of the documentation provided to ICE. ICE will require that you provide originals, and the originals may not be returned for several years.
12. LICO, IHC, and SCICO document the investigation and determine whether to involve PR at this time
13. As follow-up documentation is received from ICE, such documentation (notices of suspect documents, requests to clarify or correct documents, notices of intent to fine) is scanned/faxed to OIC, IHC, and SCICO for action.
14. Once the investigation is closed, SCICO and IHC communicate the outcome to the Response Team and use it as a basis for training.

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FDNS Investigation

1. Agents arrive with a warrant.
2. Receptionist and Local Immigration Compliance Officer (LICO) request credentials (badge and/or business card) from the agents. Receptionist and LICO must note, in writing, the name and contact information of the agents.
3. Receptionist and LICO inform the government agents that Skating Co. will cooperate with the investigation, but that they will wait for the arrival of legal counsel before answering any questions.
4. Receptionist contacts LICO, Skating Co.'s Immigration Compliance Officer (SCICO), In-House Counsel (IHC), and Outside Immigration Counsel (OIC), then the rest of the Response Team.
5. Receptionist scans/faxes copy of warrant and credentials to OIC, IHC, SCICO, and LICO.
6. Receptionist and LICO inform the government agents that they do not consent to any search beyond that which is authorized by the warrant.
7. IHC and/or OIC speak with ICE agents to obtain information about the nature and focus of the investigation (why has Skating Co. been targeted?).
8. LICO, and IHC, SCICO, and/or OIC, as available, negotiate with ICE, explaining Skating Co.'s willingness to cooperate, and indicating that "strong-arm" tactics are not necessary.
9. LICO, IHC, SCICO, and/or OIC, as available, negotiate with ICE to make copies of any company documents covered by the warrant prior to their removal from the premises.
10. LICO, IHC, SCICO, and/or OIC, as available, communicate the limits of the warrant to the agents and keep a record of the activities of the agents during the search, making note of any activities that seem to exceed the scope of the warrant.
11. Response Team insists, to the extent possible, on being present during the search.
12. Response Team is cooperative, but not overly forthcoming. Provide the requested documents and items if they are within the scope of the warrant, but do not suggest or volunteer information or items to the government that are not specifically requested.
13. LICO and HR work with SCICO, OIC, and IHC to minimize the negative media impact of the raid.
14. Work with Human Resources (HR) and Business Manager (BM) to minimize the impact on the business of any loss of employees.
15. As follow-up documentation is received from ICE, such documentation (notices of suspect documents, requests to clarify or correct documents, notices of intent to fine) is scanned/faxed to OIC, IHC, and SCICO for action.

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16. Once the investigation is closed, SCICO and IHC communicate the outcome to the Response Team and use it as a basis for training.

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ICE Raid

1. Agents arrive with a warrant.
2. Receptionist and Local Immigration Compliance Officer (LICO) request credentials (badge and/or business card) from the agents. Receptionist and LICO must note, in writing, the name and contact information of the agents.
3. Receptionist and LICO inform the government agents that Skating Co. will cooperate with the investigation, but that they will wait for the arrival of legal counsel before answering any questions.
4. Receptionist contacts LICO, Skating Co.'s Immigration Compliance Officer (SCICO), In-House Counsel (IHC), and Outside Immigration Counsel (OIC), then the rest of the Response Team.
5. Receptionist scans/faxes copy of warrant and credentials to OIC, IHC, SCICO, and LICO.
6. Receptionist and LICO inform the government agents that they do not consent to any search beyond that which is authorized by the warrant.
7. IHC and/or OIC speak with ICE agents to obtain information about the nature and focus of the investigation (why has Skating Co. been targeted?).
8. LICO, and IHC, SCICO, and/or OIC, as available, negotiate with ICE, explaining Skating Co.'s willingness to cooperate, and indicating that "strong-arm" tactics are not necessary.
9. LICO, IHC, SCICO, and/or OIC, as available, negotiate with ICE to make copies of any company documents covered by the warrant prior to their removal from the premises.
10. LICO, IHC, SCICO, and/or OIC, as available, communicate the limits of the warrant to the agents and keep a record of the activities of the agents during the search, making note of any activities that seem to exceed the scope of the warrant.
11. Response Team insists, to the extent possible, on being present during the search.
12. Response Team is cooperative, but not overly forthcoming. Provide the requested documents and items if they are within the scope of the warrant, but do not suggest or volunteer information or items to the government that are not specifically requested.
13. LICO and Human Resources (HR) work with SCICO, OIC, and IHC to minimize the negative media impact of the raid. Contact Public Relations Specialist (PR) as needed.
14. Work with HR and Business Manager (BM) to minimize the impact on the business of any loss of employees.
15. As follow-up documentation is received from ICE, such documentation (notices of suspect documents, requests to clarify or correct documents, notices of intent to fine) is scanned/faxed to OIC, IHC, and SCICO for action.

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16. Once the investigation is closed, SCICO and IHC communicate the outcome to the Response Team and use it as a basis for training.

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DOL/WHI Investigation

1. The investigation begins typically with a letter notifying that an immigration-related audit and requesting immigration-related documentation.
2. As soon as I-9 documentation, LCA documents, or PERM documents are requested, the Skating Co. representative handling the investigation contacts Local Immigration Compliance Officer (LICO), Skating Co.'s Immigration Compliance Officer (SCICO), and In-House Counsel (IHC).
3. LICO, IHC, and SCICO review any request for documentation (with assistance from Outside Immigration Counsel (OIC) as needed).
4. IHC or SCICO contacts OIC.
5. IHC or OIC contacts WHI investigator to try to limit documents that must be submitted and confirm that the corrective actions that do not obliterate any existing information and are dated and initialed may be made.
6. SCICO works with Human Resources (HR) and Information Technology (IT) to gather the required documentation.
7. OIC works with IHC and SCICO to review the documentation to be provided to the DOL and provides instructions for any corrections that may be made.
8. LICO, Business Manager (BM), and HR work to make the corrections to the documentation.
9. Documentation is delivered to the DOL, or, DOL investigator comes to work site. Investigator may ask to speak privately with particular H-1B employees or U.S. workers.
10. SCICO, OIC or IHC may ask to be present during interview of employees but investigator will probably decline.
11. LICO, IHC, and SCICO document the investigation, attempt to persuade investigator to limit any preliminary findings to only technical violations and await report of findings by DOL.

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VII. Frequently Asked Questions (and Answers)

Q: How can we best prepare for investigations?

A: In addition to preparing a response plan (as set out above), the best way to be ready for an investigator's visit is by taking precautions in advance. These include a review of all immigration-compliance activities within your company and the requirements for recordkeeping, payment of wages, recruitment and notice to the public and to the government. The requirements apply to all employers (in the case of the I-9 employment verifications rules) and to specific employers who sponsor foreign workers under the employment-based nonimmigrant and immigrant visa categories. Voluntary internal immigration compliance audits are highly recommended but should generally be done by outside counsel to preserve the attorney-client privilege and provide recommendations for curative measures, if any are required.

Q: What will happen during an FDNS investigation?

A: During an FDNS visit, the investigator typically asks to meet with a company representative as well as with the H-1B or L-1 worker. Frequently, the investigator will be interested in viewing the actual worksite. The representative at your company should accompany the investigator at all times and take detailed notes on the questions asked of the company and employee. You should not allow the investigator to speak alone with any employee, whether that is the H-1B/L-1 worker or any other employee, nor should you permit the investigator to roam the premises unescorted.

Q: What questions will the FDNS investigator ask?

A: In general, the investigator will seek information relating to the petitioning employer; the relationship between the petitioner and beneficiary; whether the beneficiary is or will be employed in the capacity described, and at the location(s) specified in the petition; and whether the beneficiary has the requisite experience and/or qualifications.

More specifically, questions from FDNS investigators have focused on the following areas:

- Details about the employer including ownership structure, financial information, number of employees, office locations in the U.S., number of H and L petitions, and recent layoffs;
- Employer policies with respect to immigration matters including repayment agreements, H-1B hiring policies and green card policies;
- Details about the specific petition under investigation including job title, duties, day-to-day functions, salary, work schedule, work location(s), and dates of employment; and
- Qualifications of the H-1B or L-1 employee including education, work experience, and prior immigration history.

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Q: How can I prepare our company in advance for a visit from an investigator from FDNS or ICE?

A: The best way to prepare for either an unannounced visit by the FDNS to inspect your H/L program compliance, or the receipt of a Notice of Inspection from ICE for your I-9 records, is as follows:

1. Conduct your own internal review of the employment of all of your H-1B/L-1 workers to be sure that their job duties, work sites and salary are consistent with the petition the company filed with USCIS. In addition, you should review the Public Access File for each H-1B worker to be sure that it contains all of the documents required by the regulations that pertain to the Labor Condition Application (LCA). You should also verify that the company is complying with all representations made in the LCA. Our firm is well versed in the laws and regulations that govern LCAs as well as the documents that should be maintained in the Public Access File. We can assist you in conducting your own internal audit to ensure that your company has complied with these regulations.
2. Conduct your own audit of the company's I-9 records to ensure that they have been filled out properly and are up to date. Our firm can offer you detailed guidance as to how I-9s should be prepared and filled out, and we can also assist you in reviewing your I-9 records.
3. Select a person from Human Resources as well as at least one other individual from the company who should be prepared to meet with any investigator should an unannounced visit occur. Provide those individuals with this memo and the checklists we have included so that they can be additionally prepared during any investigator's visit.
4. Speak with your corporate counsel's office to advise them of the possibility that your company may get a visit from USCIS or a Notice of I-9 Inspection from ICE. Make sure you have the name of a specific attorney from your corporate counsel's office and know how that attorney can be reached at all times. Our firm will provide you with the name and contact information of one or more of our attorneys who you will be able to reach at any time.

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VIII. Immigration Investigation Response Protocol - Response Team Contact Information

Office/Worksite	Office Address General Telephone Number General Fax
Receptionist	Name Telephone E-Mail Fax
Skating Co.'s Immigration Compliance Officer (SCICO)	Name Telephone E-Mail Fax
Site-Specific Immigration Compliance Officer (LICO)	Name Telephone E-Mail Fax
Human Resources Manager (HR)	Name Telephone E-Mail Fax
Information Technology Manager (IT)	Name Telephone E-Mail Fax
Business Manager (BM)	Name Telephone E-Mail Fax
In-House Legal Counsel (IHC)	Name Telephone E-Mail Fax
Outside Immigration Counsel (OIC)	Name Telephone E-Mail Fax

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IX. Checklist for Visit from Government Investigator

Date: _____

Company Location: _____

Agent's Name: _____

Badge Number: _____

Agency: _____

Agent's Phone #: _____

Agent's Email: _____

Office Address: _____

Reason for visit:

Main Purpose:

Records he/she
wants to see:

Individual(s) he/she
wants to interview:

At this point, ask the investigator to wait while you contact the company's corporate counsel and one of the attorneys from our office.

If you choose to answer the investigator's questions, be sure to follow these guidelines:

- Meet with the investigator in a conference room rather than in an open area or your office.
- Take detailed notes about the questions *you* are asked by the investigator as well as your responses.
- Do not let the investigator wander through the company's premises. The investigator must tell you specifically what he or she wants to see on the premises, and you should insist that you accompany the investigator at all times.
- Take detailed notes about every place the investigator looks and what he or she specifically looks at or asks about.

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- Make sure you are present during every conversation the investigator has with any employee.
- Take detailed notes about the investigator's conversation with any employee, including the employee's responses.
- Take detailed notes about any records you allow the investigator to review.
- If the investigator asks to inspect any records, ask the investigator to be very specific about what he or she wants to see. We do not recommend that you simply hand over files which may contain private or confidential information, or information that is not specifically necessary for the investigator's stated purpose.
- Do not allow the investigator to remove any documents from the company's files. If the investigator asks for photocopies of any documents, tell the investigator you will prepare those copies after he or she leaves and that you will forward them to his or her office address.
- Please contact us, or your corporate counsel, if you have any questions at all.



We are making an investigation of the firm, ABC COMPANY, to determine if it is complying with the requirements of the H-1B provisions of Immigration Nationality Act (INA). In doing so, it is customary to ask some of the present and former employees for certain information by direct correspondence. The fact that we are asking for this information does not imply that this firm has violated any law.

While you are not required to respond, we ask that you assist us by answering the questions below. Our investigation is limited to the past two years; for this reason, your answers should refer only to the period or periods during which you worked for this firm **within the past 2 years**.

Your identity will be kept confidential to the maximum extent possible under existing law. Please do not ask the employer to fill out this form for you.

Your prompt response is appreciated.

PLEASE ANSWER THE FOLLOWING QUESTIONS AS BEST AS YOU CAN

Name: _____ Phone Number: _____

Home Address: _____

E-mail Address: _____

Date of Hire: _____ Date of Separation (if current employee, enter current): _____

Date you began working for a new H-1B employer if your H-1B was transferred from ABC COMPANY to new H1-B employer and the name of the new H-1B employer

1. Are you currently an H-1B worker, or were you an H-1B worker during the past two years?
2. If your status is no longer H-1B, when did it change?
3. What is your educational background (field of study and type of degree)?
4. How did you hear of ABC COMPANY and who hired you?
5. If you were outside the United States when ABC COMPANY petitioned to hire you, answer the following questions:
 - a. On what date did you arrive in the United States?
 - b. On what date did you begin working for ABC COMPANY?
 - c. Would you have been available to begin working for ABC COMPANY sooner?

If yes, why was your employment with ABC COMPANY delayed and were you paid your full wages during this delay?

6. If you were inside the United State when you were hired by ABC COMPANY, answer the following questions:

- a. On what date did you begin working for ABC COMPANY?
- b. Would you have been available to begin working for ABC COMPANY sooner?

If yes, why was your employment with ABC COMPANY delayed and were you paid your full wages during this delay?

7. Do you have copies of your LCA, I-129, I-797, I-94, and petition letter?

If yes, please e-mail copies of the documents you have to (*e-mail address redacted*) or mail them to the address listed on the first page of this questionnaire.

8. Were you required to sign an employment agreement when you began working with ABC COMPANY?

If yes, please e-mail a copy to(*e-mail address redacted*) or mail a copy to the address listed on the first page of this questionnaire.

9. Were you required by ABC COMPANY to pay an early termination fee or were you required to pay "liquidate damages" for ending your employment with ABC COMPANY before a pre-determined date?

If you paid an early termination fee or a liquidated damage amount, please provide an explanation.

10. For what periods of time and at what locations did you work for ABC COMPANY or their clients during the past two years?

11. What was your position title(s) while working for ABC COMPANY or its clients and what were your duties?

12. Did you always perform the type of work specified on your LCA?

If not, for what period of time did you perform different duties, what type of work did you do, and at what rate were you paid for those duties?

13. What was your rate of pay (i.e. \$30 per hour; \$60,000 per year, etc)?

- a. Was it the same rate that you were told your rate would be?
- b. If not, explain.
- c. Please e-mail copies of your pay statements for the past 2 years to(*e-mail address redacted*) or mail them to the address listed on the first page of this questionnaire.

14. Did you receive any other kind of pay (bonuses, travel expenses, per diem etc.)?

If yes, how much and why?

15. Have you ever received any deductions (non-statutory) from your pay?
- If so, what were they for and what were the amounts?
 - Did you voluntarily agree in writing to these deductions or were they a condition of your employment?
16. Did ABC COMPANY charge you any of the fees associated with obtaining your H1B visa (i.e. change of status fees, filing fees, attorney expenses, etc.)?
- If so, when, how much and what was it for?
 - How were these fees paid by you?
 - If you have copies of documents that support your payment/reimbursement of those fees, please e-mail copies to *(e-mail address redacted)* or mail a copy to the address listed on the first page of this questionnaire.
17. How many hours did you work per week?
18. Did you keep a record of the hours you worked?
- If you have copies of your hours worked records for the past 2 years, please e-mail copies to *(e-mail address redacted)* or mail copies to the address listed on the first page of this questionnaire.
19. If you worked more than 40 hours per week, were you paid a premium for overtime hours?
- If yes, please explain how overtime hours were paid.
20. Was all of your vacation/personal time off taken voluntarily at your request?
- Please identify the dates you were on voluntary vacation/personal time during the past two years.
 - If vacation/personal time was not taken at your choice, what were the reasons and the time periods for which you were on involuntary vacations (i.e. layoff, client site closures, holidays, etc.)?
21. Identify periods or days when you were not paid by ABC COMPANY due to having no project, site shut downs, holiday closures, or other reasons not by your choice?
22. Were you offered the same fringe benefits as other ABC COMPANY workers?
23. Did you ever work in a geographic area different than the one specified on the LCA?
- If yes, when and where?
 - How were you paid for the work at the other location?
 - Did you receive per diem or payment for travel to a temporary assignment?

24. Do you know if ABC COMPANY or their clients posted notice at your worksite of filing for an LCA or placing an H-1B worker at the work site?
25. Is there a collective bargaining agreement between employees and ABC COMPANY?
If so, do you know if they were notified of the hiring or placing an H-1B worker?
26. Are you aware of the displacement of any U.S. workers due to the placement of an H-1B worker?
If yes, please provide names, dates, locations, etc.
27. If you no longer work for ABC COMPANY, please answer the following questions:
- When did you stop working for ABC COMPANY?
 - Did you resign or were you terminated?
 - How were you notified of your termination?
 - Did you go back to work for ABC COMPANY? If so, when?
 - Were you paid in full for your final pay period of employment?
 - Did you return to your home country?
If yes, did ABC COMPANY offer you return travel expenses?
If no, how much was your airfare to return home?
If you have documentation of the airfare cost, please e-mail that documentation to (e-mail address redacted) or mail copies to the address listed on the first page of this questionnaire.
28. If you are currently working at a client site for ABC COMPANY, or worked at an ABC COMPANY client site during the past two years, please answer the following questions (note: a client site is a work location other than office space occupied by ABC COMPANY):
- Client name and address
 - Dates you worked at the client site
 - Did you work on the client's project or a project/service sold to the client by ABC Company?
 - Is your supervisor employed by the client or ABC COMPANY?
 - Was the person who assigned your work, set your hours of work, and directed your work an employee of the client or ABC COMPANY?
 - Who supplied your work materials (computer, telephone, paper, pens, desk, etc.), the client or ABC COMPANY?
 - Who could assign additional projects or make changes to the project on which you were working; the client or ABC COMPANY?

Compliance Review Report Job Aid for Employment (H1B) - Based

This instruction set is to assist Site Inspectors (SI) conducting administrative visits (ASV) at locations of employment in support of the Administrative Site Visit Verification Program (ASVVP). The purpose of this document is to communicate the type of information USCIS is seeking when SIs are conducting ASVs at worksites and to define certain terms used in the CR Report. The type of information identified must be addressed in the narrative portion under each question on the worksheet.

SIs will identify themselves with USCIS issued credentials prior to speaking with individuals. First priority is to speak with the petitioner. If the petitioner is not available, the SI should ask to speak with a knowledgeable representative of the organization (normally HR staff).

If an individual requests the presence of an attorney, and the attorney is not immediately available, the ASV will be terminated. The SI will annotate a request for counsel was made in the report.

SIs will not conduct the ASV if there is an officer safety issue. The SI will annotate the officer safety issue in the report.

USCIS is dedicated to being respectful of all cultures and backgrounds. SIs will encounter persons from a diverse array of cultures. Demonstrating respect for the diversity of American society is of paramount importance. The SI must prepare themselves to be respectful to all people, at all times. The SI should understand this and take precautions as not to offend these individuals.

Definition of Terms:

Petition: A form used by a United States citizen or lawful permanent resident, or qualified organization to establish either a familial or employment based relationship.

Petitioning Organization: A qualified organization that requests an immigration benefit on behalf of a foreign national.

Petitioner: U.S. citizen or lawful permanent resident that requests an immigration benefit on behalf of a foreign national.

Signatory: Individual whose signature appears on the petition.

Organizational Representatives: Individual with knowledge of the organization, petition, petitioner and beneficiary.

Beneficiary: A foreign national that is the recipient of an immigration benefit based on either a familial or employment based relationship with a U.S. citizen or lawful permanent resident, or qualified organization.

Business: A corporate or legal entity that employs individuals in the United States in the regular, systematic, and continuous provision of either goods or services.

Yes: Sufficient information was obtained to support an affirmative response.

No: Sufficient information was obtained to support a negative response.

Updated 12/05/2008

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Not Determined (N/D): Insufficient information was obtained to support either a negative or affirmative response (i.e., petitioner claims the beneficiary is being paid the stated salary, however, no pay stubs or W-2s are provided).

SECTION 1: Administrative Site Visit (ASV) Information

(To be completed by SI)

This information will be provided in the ASV assignments. The SI will ensure this information is entered onto the worksheet.

SECTION 2: Site Inspector

1: Does the facility visually appear to be that of the organization?

Yes: A facility appearing to be that of a business exists at the site location and the organization's name is displayed on signage.

No: The facility cannot be located and/or the organization's name is not displayed on signage. Inquire with neighboring business and/or residents to determine if others are familiar with the organization.

Not Determined: If no determination is made whether or not the organization exists at the location, please provide a detailed explanation in the narrative box of the efforts that were attempted.

Include in narrative box:

- 1) Description of the location:
 - Commercial office unit;
 - Apartment or condominium complex;
 - Single family residence;
 - Mail center/postal location; or
 - Virtual office (a business with multiple small workstations leased to numerous entities).
- 2) Indicate if any other businesses are sharing the site location and the names.

Photographs should also be taken of the location, to include building number and signage when possible. Provide a brief description of the location in the narrative box.

2: Was an organizational representative authority present?

Yes: Contact was made with organizational representative.

No: Contact was not made with an organization representative. In cases where contact cannot be made with organization representatives or they are unwilling to comply with a site visit, inquire with neighboring businesses and/or residents to determine:

- If the business actively engaged in business activities.
- The business' normal hours of operations.
- If they familiar with the beneficiary and/or petitioner.

Not Determined: If it cannot be determined if an organization representative is present or at the location, please explain in full detail in the narrative box.

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Include in narrative:

- 1) Name and title of the individual interviewed.
- 2) Contact telephone number of individual interviewed.
- 3) Information obtained by others when contact cannot be made with an organizational representative.

3: Did results of site visit suggest the presence of a legitimate organization?

Request a tour of the facilities. Make observations and ask general questions about the organization.

Yes: The organization appears to be actively engaged in appropriate business activities and is more than just a "store front".

No: The organization does not appear to be actively engaged in appropriate business activities and appears to be in existence for the sole purpose of filing immigration petitions.

Not Determined: If the legitimacy of the organization cannot be determined please explain in full detail in the narrative box.

Include in narrative:

- 1) Indicate the product and/or service the company provides.
- 2) Number of employees.
- 3) Number of H1B employees that work full time.
- 4) Number of H1B employees that work part time.
- 5) Number of employees working on-site at this location, verses off site.
- 6) Number of clients the company has where their H1B employees are working.
- 7) Number of employees how that are nonimmigrant aliens.
- 8) Number of employees that are lawful permanent residents.
- 9) Length of time the organization has been in business.
- 10) Number of other locations the organization is located. List other locations.

4: Did the organization have knowledge of the beneficiary and the petition filed on behalf of the beneficiary?

Ask petitioner/signatory/organizational representative general questions about the beneficiary and the petitioning organization's knowledge of the beneficiary.

Yes: The petitioner/signatory/organizational representative accurate knowledge of the petition filed on behalf of the beneficiary as well as the beneficiary's hours of duty, salary and job duties.

No: The petitioner/signatory/organizational representative does not have knowledge of the petition filed and/or the beneficiary's hours of duty, salary and duties.

Not Determined: No interviews were conducted with the petitioner, signatory, and/or organizational representative.

Include in narrative:

- 1) List the beneficiary's hours of duty, salary, work location and job duties.
- 2) If the employer is familiar with the petitioner.
- 3) If the employer is familiar with the beneficiary.
- 4) If the petitioner had authority to file the petition on behalf of the employer.

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- 5) Length of time the employer has employed the beneficiary.
- 6) Indicate the type of visa the petition for. (immigrant visa or nonimmigrant visa)

5: Was the beneficiary working for the organization?

Yes: The organization confirms the beneficiary is currently working for them and has supplied sufficient proof in support of the beneficiary's employment.

No: The organization is not currently employing the beneficiary.

Not Determined: The organization indicates the beneficiary is currently employed, but cannot provide proof of the beneficiary's employment.

Include in narrative:

- 1) Whether or not the beneficiary is employed by the organization and what supporting documentation was reviewed (i.e., recent pay stubs, business cards, employee ID).
- 2) If the beneficiary is not currently employed by the organization:
 - Indicate where the beneficiary is currently working; and
 - Why the beneficiary is not employed by the organization.
- 3) The hours the beneficiary works.
 - Full-time or part-time position.
- 4) If the beneficiary is employed somewhere else:
 - Where?
 - What type of work?

6: Were you able to identify and speak to the beneficiary?

Yes: The beneficiary was located on site and identified by work or government issued identification.

No: The beneficiary was not located on site or does not work for the organization.

Not Determined: The beneficiary was located on site, but could not provide identification.

Include in narrative:

- 1) The type of identification reviewed.
- 2) Do not include any document numbers or the date of birth of the beneficiary.

7: Was the beneficiary knowledgeable, cooperative, and forthcoming with questions posed?

Ask the beneficiary questions about his/her employment with the organization (i.e., hours of duty, salary, job title, daily job duties)

Yes: The beneficiary provided the accurate information relating to his/her employment with the organization.

No: There were discrepancies between the information provided in Section 1, what the petitioner provided and what the beneficiary provided.

Not Determined: The beneficiary was not located on site or available for interview.

Include in narrative:

1) Indicate the following as described by the beneficiary:

- Beneficiary's title
- Job duties
- Hours of duty
- Job duties
- Salary
- Work location

2) Indicate whether the beneficiary or petitioner paid for the USCIS filing costs of the I-129 petition and if the organization deducted the filing costs for the beneficiary's paycheck.

3) Indicated what type of degree the beneficiary has. (Associates, Baccalaureate, Masters, Doctorate)

4) Indicate where what institution of higher education the beneficiary attended, major, years attended and when the degree was awarded.

8: Was the beneficiary being paid the salary as indicated?

Yes: The beneficiary was being paid the salary indicated in Section 1 and supporting documentation was provided.

No: The beneficiary was not being paid the salary indicated in Section 1.

Not Determined: The beneficiary was located on site, but could not provide identification.

Include in narrative:

1) The type of documentation was reviewed (i.e., W-2, pay stub) and salary indicated on the documentation.

9: Was the beneficiary performing the duties as indicated?

Yes: The beneficiary was performing the duties indicated in Section 1.

No: The beneficiary was not performing the duties indicated in Section 1.

Not Determined: It could not be determined what duties the beneficiary is performing, indicate why in the narrative.

Include in narrative:

1) Indicate discrepancies between the beneficiary's duties as described by the beneficiary and organizational representative in comparison with the duties listed in Section 1.

10: Do you recommend further inquiry?

Explain and provide additional observations made while conducting the ASV.

BUSINESS PROFILE REPORT



Company Information									
Representative				Title			Date		
Trade Name				Legal Name					
Business Address						Case Number			
City			State		Zip		Federal Tax ID		
Phone		Fax		Type of Business Entity <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation					
Main Office Address						Phone ()			
City			State		Zip		Fax ()		
Owners/Officers								Date Began Operation	
Title	Name				% Ownership		Date Incorporated		
							State, Incorporated in		
Accountant Name					Attorney Name				
Street Address					Street Address				
City			ST	Zip	City			ST	Zip
Phone ()		Fax ()		Phone ()		Fax ()			
Other Branch					Other Branch				
Street Address					Street Address				
City			ST	Zip	City			ST	Zip
Phone ()		Fax ()		Phone ()		Fax ()			
Nature of Business									
Where do you buy your supplies?					1.				
2.					2.				
3.					3.				
ADV	YTD \$		2001 \$		2000 \$		1999 \$		
Other									

Employee Information

Total Number of Employees _____

Salaried Employees

Name	Title	Weekly Salary	Name	Title	Weekly Salary
1. _____	_____	_____	5. _____	_____	_____
2. _____	_____	_____	6. _____	_____	_____
3. _____	_____	_____	7. _____	_____	_____
4. _____	_____	_____	8. _____	_____	_____

Any Minors?

1. Name _____	DOB _____	Age _____	3. Name _____	DOB _____	Age _____
2. Name _____	DOB _____	Age _____	4. Name _____	DOB _____	Age _____

What days do you open in a week? _____ When does the workweek begin/end? _____ What time a workday begin/ends? _____

Who prepares payroll? _____ Pay Period _____ Pay Day _____ Date of Last Payroll _____

How are Ees paid and how many?
☐ Hourly _____ ☐ Piece Rate _____ ☐ Commissions _____ ☐ Other _____

Employee Paid with
☐ Company Check ☐ Personal Checks ☐ Cash ☐ Other _____

How many Shifts? _____
 1. Shift Hours _____ 2. Shift Hours _____ 3. Shift Hours _____

Do Ees get lunch break? How long? When? _____

Are there any other breaks? How long? When? _____

How do you record Ees' hours worked? _____

Are any Ees work over 40 hours a week? How are they paid for OT hours? _____

Do you pay bonus? If yes, how is the bonus determined & when? _____

Do you make any deductions? Uniforms? _____

Are there any driver? If yes, their names? _____

Are there any independent contractor? _____

Are there any outside salespeople? _____

Who are you claiming for exemption for OT? _____

Do you have any Govt. Contracts currently or have you had any? _____

Other Info _____



UNITED STATES OF AMERICA
U.S. DEPARTMENT OF HOMELAND SECURITY
Immigration and Customs Enforcement

SUBPOENA

Office of Origin:
Department of Homeland Security, ICE
Office of Investigations
1000 Second Avenue Suite 2300
Seattle, WA 98104
Phone: (206) 442-2234
Fax: (206) 442-2205

Date: November 19, 2009

SE19PR10S [REDACTED]
10-SE-IMM [REDACTED]

Re: Request for Documents

To: [REDACTED]

You are hereby commanded to appear before Forensic Auditor Timothy Garreis at 1000 2nd Avenue, Suite 2300, Seattle, Washington 98104 on November 25, 2009 at 10 am to give testimony and/or produce business records in connection with an official investigative proceeding being conducted under the authority of the Immigration and Nationality Act concerning an alleged offense against the United States.

You are further commanded to provide the following books, papers, and documents:

- 1) Original I-9 Forms, (Employment Eligibility Verification Forms) and any copies of attached documents presented at time of I-9 completion for all current employees, and all terminated employees from October 1, 2008 to present.
- 2) Employee roster or payroll report listing all persons employed from October 1, 2008 to present containing the following information:
 - Full employee name (First Name, Middle Initial, Last Name)
 - Social security number
 - Date of birth
 - Date of hire and date of termination (if applicable). If employee has multiple dates of hire, provide all dates of hire and all dates of termination occurring from October 1, 2008 to present.
- 3) Monthly Payroll Reports for October 2008 to November 2009 with wage detail by employee.
- 4) Copies of the 4 most recent Washington State Unemployment Insurance Quarterly Tax Reports (Form 5208 A) and Quarterly Wage Detail Reports (Form 5208 B).
- 5) Copies of the Quarterly Tax Statements (IRS Form 941) pertaining to all employees from 2008 to the present.
- 6) Independent contractor roster listing the dates of hire and termination (if applicable) for all independent contractors employed from October 1, 2008 to present.

- 7) Copies of Tax Form 1099 filed from 2007 to 2008, for all independent contractors.
- 8) A current listing of all paid on-call individuals you employ on a sporadic, irregular, or intermittent basis and not deemed to be an employee.
- 9) Copy of Social Security Administration Employer Correction Requests received from October 1, 2008 to present.
- 10) Copies of any Citizenship and Immigration Services (CIS) forms I-129 or I-140 petitions and Department of Labor (DOL) ETA-750 certifications submitted or received from 2008 to present.
- 11) Copy of articles of incorporation, business license and most recent annual report
- 12) Employer Identification Number (EIC) and Taxpayer Identification Number (TIN) documentation.
- 13) If available, copy of company procedures or policies regarding Form I-9 preparation.
- 14) Yes or No response to the following questions:
 1. Participate in E-verify program.
 2. Previously received an I-9 Inspection by the Department of Labor.
 3. Obtain employees from a temporary staffing agency. If yes provide the names of the temporary staffing agencies used from October 2008 to the present.

If possible please provide the Employee Roster and Payroll Reports in electronic format (text, excel, pdf).

Compliance with this subpoena may be satisfied by personal service to an officer of the Immigration and Customs Enforcement on or before the date of appearance. Compliance can also be satisfied by certified mail delivery to Forensic Auditor Timothy Garreis at the address indicated above. If you have any questions you may contact Forensic Auditor Timothy Garreis at (206) 442-2234.



Aaron Wilson
Assistant Special Agent in Charge

RETURN OF SERVICE OF SUBPOENA

I hereby certify that on the 19 day March 2009 I served the above subpoena on the witness named above by:


Timothy Garreis
Forensic Auditor

Office of Investigations

U.S. Department of Homeland Security
1000 2nd Avenue, Suite 2300
Seattle, WA 98104



U.S. Immigration
and Customs
Enforcement

NOTICE OF INSPECTION

November 19, 2009

SE-10-NOI- [REDACTED]

[REDACTED]
[REDACTED]
Dear Sir/Madam:

Section 274A of the Immigration and Nationality Act, as amended by the Immigration Reform and Control Act of 1986, requires employers to hire only United States citizens and aliens who are authorized to work in the United States. Employers must verify employment eligibility of persons hired after November 6, 1986 using the Employment Eligibility Verification Form I-9.

U.S. Immigration and Customs Enforcement (ICE) regulations require the provision of three days notice prior to conducting a review of an employer's Forms I-9. This letter serves as advance notice that ICE has scheduled a review of your forms for November 25, 2009. You may, however, waive the three-day period, should you wish to do so, by annotating and signing the bottom of this letter and advising this office of your decision.

During the review, Forensic Auditor Timothy Garreis, (206) 442-2234, will discuss the requirements of the law with you and inspect your Forms I-9. The purpose of this review is to assess your compliance with the provisions of the law. ICE will make every effort to conduct the review of records in a timely manner so as not to impede your normal business routine.

Sincerely,

Aaron Wilson
Assistant Special Agent-in-Charge

I wish to waive the three day notice to which I am entitled by regulation.

(Printed Name)

(Signature)

(Date)