

# **Immigration and Customs Enforcement (ICE) Enforcement Activities: Common Questions**

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## **Under what circumstances can the Immigration and Customs Enforcement (ICE) enter my home?**

ICE (enforcement branch of what was formerly called INS) may not enter a home unless the officers have a warrant based on probable cause, or unless you "consent." If ICE obtains your consent through force or threats of force, your consent is invalid. For example, if several ICE vehicles with flashing lights surround your house in the dark and approach it with weapons drawn, then ask your consent, a court would probably say that was illegal. However, if one ICE officer comes to your home in broad daylight and asks if he can enter, and you say "yes," a court will probably say that your consent is valid. If an ICE agent arrests a person away from his or her home, then accompanies the person home to get his or her belongings, this is also considered "consensual."

## **What is probable cause?**

Legally, probable cause means a suspicion based on enough evidence that would lead a reasonable person to believe something is true. Probable cause to believe a person is an undocumented alien has been found to exist where persons flee after seeing ICE agents.

## **Can ICE come into an orchard where I am working without a warrant?**

No. ICE may not enter fields and orchards without a warrant or consent given by the owner or manager.

## **If ICE comes to my workplace to check I-9 forms, can they make me answer questions?**

ICE officers are free to ask you questions about your status as long as they are lawfully in your workplace. However, you can refuse to answer those questions. You have a right to keep silence. ICE officers may not detain you simply because you refuse to answer questions. You also have the right to consult with a lawyer.

## **I am a lawful permanent resident and must carry my green card. Can I be arrested if I refuse to produce it when ICE asks me for it?**

The law requires that everyone over 18 to carry their alien registration card. Failure to carry it constitutes a misdemeanor. However, since the Fourth Amendment requires that government officers must have a reasonable suspicion of illegal activity before they detain someone, the ICE does not have the authority to force an alien to produce evidence of registration unless it has a reason to believe that he or she will be unable to do so.

## **What is a "detention?"**

A "detention" or a "seizure" occurs under the fourth amendment when that person yields to any official show of authority or physical force. For example, if five ICE officers surround you at

your workplace, tell you that you cannot go back to work until you have answered their questions, you have probably been "detained," or "seized." If ICE officers stop your car, you have been "detained." If one officer casually comes up to you and asks to see your papers, you have probably not been "detained."

### **What kind of proof does ICE have to have to "detain" me?**

ICE may not detain you unless the officer has a "reasonable suspicion" that you are an undocumented alien.

### **Under what circumstances can ICE stop my car?**

An ICE stop of a car is a "detention." Therefore, ICE may stop a car only if the officers have a reasonable suspicion that undocumented aliens are in the car.

### **What is a "reasonable suspicion?"**

A reasonable suspicion is a standard less than probable cause. It means facts that would lead the officer to believe there are undocumented aliens present. The officer may not base a stop of a car or detention of a person on a "hunch," or solely on the driver's or occupants' ethnic appearance or name. Therefore they cannot detain you or stop your car solely because you look like a Hispanic person.

However, ICE may base a suspicion of illegal alienage on a combinations of factors, which may include attempts to avoid Border Patrol agents, location with respect to the border, tips that undocumented workers are in the area, speech, manner of dress, presence in a vehicle commonly used for smuggling across the border, and prior presence of undocumented workers in the area or employment.

### **Do I have to answer questions by ICE on the street?**

ICE may question anyone on the street about their status, as long as that person appears to be a foreigner. ICE usually takes advantage of the opportunity to find out about the status of the person it is questioning, and to make an arrest. Thus ICE gathers evidence while the person is not "detained," and then uses that information to form a reasonable suspicion that allows ICE to legally "detain" the alien.

You are always free to refuse to answer questions. ICE can not detain nor can they deport you simply because you refuse to answer. Some people choose not to speak at all. Others choose to identify themselves by name and ask to speak with an attorney. If you are ultimately arrested, you may want to identify yourself by name so that friends and family members can contact you.

### **Can the local police ask me for my papers?**

Until recently, the local police have not had the authority to stop your car or detain you only to ask for your immigration papers. However, the Department of Justice is currently seeking different ways to enlist the assistance of local enforcement agencies in enforcing "immigration violations." Furthermore, if you are in custody for a criminal violation you can expect the local police will ask for your papers and will make a referral to ICE.

As is always the law, you have the right to refuse to answer questions about your status to both the police and to ICE officials.

### **If I give a ride to an undocumented alien, can I be prosecuted for harboring?**

Probably not. Under the harboring statute, you have not committed an offense if your giving of a ride is not "in furtherance of" the person's illegal presence in the United States. If you simply give a ride to the store to someone you know is undocumented, you are probably not guilty of a crime.

### **What if I let my undocumented uncle stay in my upstairs bedroom?**

The standard for harboring is very broad. Some courts have held that merely giving a place to stay to an undocumented person violates the law. However, it is unlikely that people would be prosecuted merely because an undocumented alien is living with them, unless there is a suspicion that the housing is related to smuggling.

### **Can ICE enter my church, school or local clinic to check for papers?**

ICE has a written policy that it will curtail enforcement activities that interfere with religious services such as church services or funerals. The policy also covers activities at schools. It has no such policy with respect to other public places.

ICE officers have the legal right to be present in public areas of public establishments. In order to enter private areas, they must have a warrant based on probable cause, or consent. Thus, an ICE officer could enter a grocery store parking lot without a warrant, but could not enter examining rooms of a clinic.

*Prepared by Columbia Legal Services*

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