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Legal Sidebar

Immigration Arrests in the Interior of the United States: A Primer

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U.S. Immigration and Customs Enforcement (ICE), a component of the Department of Homeland Security (DHS), is primarily responsible for immigration enforcement in the interior of the United States. ICE has considerable authority to arrest and detain aliens identified for removal. While DHS's immigration enforcement priorities may change over time depending on the executive branch's policy objectives, the governing statutory authorities for ICE's enforcement actions have largely remained constant. This Legal Sidebar provides an overview of ICE's authority to conduct arrests and other enforcement actions. (A separate DHS entity, U.S. Customs and Border Protection [CBP], enforces federal immigration laws at or near the border and at U.S. ports of entry; a discussion of CBP's authorities can be found here.)

ICE's General Authority to Arrest and Detain

ICE was established following the creation of DHS in 2003. The authority for ICE officers to arrest and detain aliens believed to have committed immigration violations derives primarily from 8 U.S.C. §§ 1226 and 1357.

Section 1226(a) provides that, upon issuance of an administrative warrant (otherwise known as an ICE warrant), an immigration officer may arrest and detain an alien pending a decision as to whether the alien is subject to removal. An ICE warrant is issued by certain immigration officials who have been authorized or delegated such authority and is exclusively for use by immigration officers who have successfully completed immigration law enforcement training. Unlike judicial warrants issued in criminal cases, ICE warrants do not require a detached and neutral magistrate; instead, ICE warrants require the officer to establish that "there is probable cause to believe" that the individual named in the warrant is subject to removal.

Section 1226 further authorizes, during the pendency of formal removal proceedings, either the continued detention of the arrested alien or the release of the alien on either bond in the amount of at least $1,500 or on "conditional parole" (i.e., release on the alien's own recognizance subject to specified conditions). The statute provides that the bond or parole may be revoked at any time, and that the alien may be rearrested and detained under the original warrant.

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For some categories of aliens, including those who are deemed to be removable based on specified criminal or terrorist-related grounds, detention is mandatory and the alien may not be released from custody except in limited circumstances. These individuals are typically held without a bond hearing during the pendency of removal proceeding. The Supreme Court has rejected constitutional challenges to Section 1226.

While Section 1226 provides that an immigration-related arrest generally requires an administrative warrant, Section 1357(a)(2) lists two circumstances when an administrative warrant is not required for an immigration officer to arrest an alien for a suspected immigration violation:

1. the alien, in the presence or view of the immigration officer, is entering or attempting to enter the United States unlawfully; or
2. the immigration officer has "reason to believe" that the alien is in the United States unlawfully and is likely to escape before a warrant can be obtained.

The immigration officer or employee exercising authority under Sections 1226(a) and 1357(a) must have completed immigration law enforcement training and, for both provisions, be one of the designated immigration officers who have authority to execute administrative warrants (including warrants of removal) or conduct arrests without a warrant under DHS regulations.

It bears mentioning that ICE frequently investigates and arrests persons who may potentially be subject to both criminal prosecution and removal proceedings (e.g., transnational criminal street gangs). Section 1357(a)(4)-(5) permits designated immigration enforcement officers authorized under regulations to make warrantless arrests of aliens and other persons for criminal offenses in specified circumstances (e.g., when the offense is committed in the officer's presence, or the officer has reason to believe the suspect committed a felony and would likely escape before a warrant could be obtained) during the course of their immigration enforcement duties. DHS regulations require, among other things, that the immigration officer advise the person being arrested of his or her legal rights and arrange promptly for that person's initial appearance before a federal magistrate or district court judge.

The Supreme Court and lower courts have recognized that state or local law enforcement have limited authority to arrest or detain aliens for suspected immigration violations rendering them removable. Such immigration enforcement activity generally must occur in coordination with federal immigration authorities, including under the terms of a cooperative agreement entered into under 8 U.S.C. § 1357(g), which is discussed below.

Fourth Amendment Limitations to ICE's Arrest Authority for Civil Immigration Violations

There are constitutional limitations on ICE's authority to arrest individuals suspected of committing civil immigration violations. According to the Supreme Court, the Fourth Amendment's protections "against unreasonable searches and seizures" generally apply to immigration-related arrests and detentions. As discussed in CRS Report R46601, *Searches and Seizures at the Border and the Fourth Amendment*, most reviewing courts have held or assumed that the Fourth Amendment's protections extend to aliens within the interior of the United States regardless of their immigration status. In any event, reviewing courts have interpreted the "reason to believe" standard for warrantless immigration arrests authorized under Section 1357(a) to be equivalent to the Fourth Amendment's probable cause standard. Under this standard, courts have held that an immigration officer must have sufficient facts that would lead a reasonable person to believe, based on the circumstances, that the alien has violated federal immigration laws and is likely to escape before an ICE warrant can be obtained.

In the criminal context, the Supreme Court has also held that the Fourth Amendment's prohibition against unreasonable seizures precludes the use of excessive force during an arrest. Lower courts have considered

this restriction when analyzing whether immigration officers used excessive force during arrests or other enforcement actions. DHS regulations provide that "non-deadly force" may be used only when the immigration officer reasonably believes that such force is warranted, and that a "minimum" level of non-deadly force should be employed unless circumstances warrant a greater degree of force. The regulations instruct that "deadly force"—defined as "any use of force that is likely to cause death or serious physical injury"—may be used only when the officer reasonably believes that such force is necessary to protect the officer or others from death or serious harm. The regulations also prohibit the use of threats or physical abuse to compel an individual to make a statement or waive his or her legal rights.

The Supreme Court has also long held that, absent certain exceptions, the Fourth Amendment prohibits the government's nonconsensual entry into a person's *home* without a judicial warrant. The Court has explained that the prohibition against warrantless searches may extend to other areas where there is a "constitutionally protected reasonable expectation of privacy." These locations may include, for example, the non-public part of a workplace or business, a hotel room, or school buildings that are not openly accessible to the public. The Court has additionally applied the Fourth Amendment's warrant requirement to searches of electronic devices such as cell phones, citing the increased privacy concerns implicated by government searches of digital data.

Unlike *judicial* warrants, warrants issued by ICE are purely administrative, as they are neither reviewed nor issued by a judge or magistrate, and therefore do not confer the same authority as judicially approved arrest warrants. Thus, some lower courts have ruled that ICE agents violated the Fourth Amendment by forcibly entering homes without a judicial warrant when no recognized exceptions to the Fourth Amendment's warrant requirement existed, such as exigent circumstances (e.g., risk of harm to the public, potential destruction of evidence) or the owner's consent to the entry of the home.

On the other hand, the Supreme Court has explained that warrantless searches and seizures occurring in areas deemed accessible to the public are not unreasonable because an individual has a diminished privacy expectation in these circumstances. For example, courts have held that police officers could enter hospitals to investigate criminal activity without a warrant, arrest a person on a walkway outside of a residential building without a warrant, and conduct warrantless surveillance in a parking lot. Additionally, at least one court has held that immigration officers could conduct warrantless surveillance inside a church (but a different court has ruled that immigration enforcement actions in or near places of worship likely infringe upon congregants' First Amendment right to expressive association and their exercise of religion under the Religious Freedom Restoration Act (RFRA)). Although a judicial warrant might not be required in these public spaces, as discussed above, courts have ruled that immigration officers under governing statute must have probable cause of an alien's unlawful presence and likelihood of escape in order to conduct a warrantless arrest.

ICE had historically adopted a policy that restricted immigration enforcement actions (e.g., arrests, interviews, searches, and surveillance) in or near "sensitive locations," except in specified circumstances, such as if there is a national security threat or an imminent risk of physical harm to a person. These designated locations included, among others, schools (including postsecondary institutions), hospitals, places of worship, funerals, and public demonstration sites, such as a march, rally or parade. In 2021, DHS established a "protected areas" policy (applicable to both ICE and CBP) that expanded these locations to include, for example, all medical facilities, vaccination sites, playgrounds, child care centers, emergency response locations, and homeless shelters. The agency's 2021 policy memorandum superseded and rescinded its prior 2011 "sensitive locations" policy. A similar memorandum from ICE and CBP established a policy that limited enforcement actions in or near courthouses. In 2025, DHS issued a directive to ICE and CBP that superseded and rescinded the "protected areas" policy and explained that immigration officers should apply their enforcement discretion when deciding whether to enter a protected area. (However, because of a federal court order, ICE must adhere to its 2021 policy when

conducting enforcement actions at certain places of worship.) ICE also provided guidance in 2025 concerning enforcement actions in or near courthouses.

Routine Questioning and Brief Investigative Detentions

ICE may conduct interrogations and brief detentions as part of an investigation into possible immigration violations. Section 1357(a)(1) states that an immigration officer may, without a warrant, "interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States." The exercise of this authority is subject to constraint under the Fourth Amendment. The Supreme Court has declared that law enforcement officers do not violate the Fourth Amendment by merely questioning individuals in public places. In *INS v. Delgado*, the Court held that immigration officers did not violate the Fourth Amendment by entering factory buildings (which the Court treated as "public places" because the officers had acted on either a warrant or the employer's consent) and questioning employees about their citizenship, even if there were armed officers stationed near the exit doors. The Court reasoned that the questioning was "nothing more than a brief encounter" that did not prevent the employees from going about their business.

The Supreme Court has long held that certain, more intrusive encounters that do not rise to the level of an arrest, such as a brief detention or "stop and frisk," may be justified only if there is reasonable suspicion that a crime is afoot. The Court has held that this standard, lower than the probable cause threshold for an arrest, requires specific, articulable facts—rather than a mere hunch—that reasonably warrant suspicion of unlawful activity. The Court has applied this standard to immigration-related detentions. For example, in *United States v. Brignoni-Ponce*, the Court held that random automobile stops near the border to question the occupants about their immigration status require reasonable suspicion that the occupants are aliens who may be unlawfully present in the United States. (Conversely, in *INS v. Delgado*, immigration authorities did not require any individualized suspicion to question factory employees because they were not being detained.)

The Supreme Court has not decided, more generally, whether immigration authorities may briefly detain individuals solely on a reasonable suspicion that they are aliens, absent reasonable suspicion of their unlawful presence. Some lower courts have ruled that an immigration officer may not detain an alien to investigate his or her immigration status (e.g., stopping a pedestrian on the street) absent reasonable suspicion of the alien's unlawful presence. Some courts have held that the officer may not rely solely on "generalizations," such as an individual's appearance, ethnicity, or inability to speak English, to establish reasonable suspicion.

Reflecting some of these Fourth Amendment constraints, DHS regulations provide that an immigration officer may question an individual so long as the officer "does not restrain the freedom of an individual, not under arrest, to walk away." An immigration officer may "briefly detain" an individual for questioning only if there is reasonable suspicion that the person is "engaged in an offense against the United States or is an alien illegally in the United States." The information obtained from the immigration officer's questioning "may provide the basis for a subsequent arrest" (e.g., if the immigration officer forms probable cause that the alien is unlawfully present in the United States).

Worksite Inspections

ICE also has statutory authority to conduct worksite inspections to enforce federal immigration laws regulating the employment of aliens. Under 8 U.S.C. § 1324a, it is unlawful for "a person or other entity" knowingly to employ an "unauthorized alien," defined as an alien who is not lawfully admitted for permanent residence or otherwise authorized to be employed in the United States. The statute requires an employer to complete a Form I-9 attesting that a person hired for employment is not an unauthorized alien. The employer must also retain the I-9 form for inspection for three years after the hiring. DHS

regulations allow ICE to conduct the inspection at the employer's place of business with at least three business days' notice. I-9 site inspections do not require an administrative or judicial warrant, or probable cause of an immigration violation. Under DHS regulations, ICE may conduct a worksite inspection so long as there is reasonable suspicion that there are aliens at the site who are "illegally in the United States" or "engaged in unauthorized employment."

Mirroring the Fourth Amendment's restrictions, DHS regulations provide that an immigration officer conducting an inspection may not enter the *non-public* areas of a business, a residence, a farm, or other outdoor agricultural operation (excluding private lands near the border) to question the occupants or employees about their immigration status in the absence of a judicial warrant or the property owner's consent. The immigration officer may enter publicly accessible parts of a business without any warrant, consent, or reasonable suspicion of the unlawful presence of aliens. As noted above, the Supreme Court in *INS v. Delgado* held that immigration officers who had legally entered worksites could briefly question employees about their citizenship as long as the employees were not restrained. Some lower courts have ruled that *detaining* employees during such questioning, without permitting them to leave, is unlawful absent reasonable suspicion.

Delegation of Authority to other State and Federal Officers

Federal statues permit entities outside of DHS to perform delegated immigration enforcement functions in some cases. For example, under 8 U.S.C. § 1357(g), the DHS Secretary may enter into a written agreement authorizing state or local law enforcement officers to perform functions related to the investigation, apprehension, or detention of aliens. The Supreme Court has observed that, due to "significant complexities involved in enforcing federal immigration law," the statute requires that agreements reached under this provision "contain written certification that officers have received adequate training to carry out the duties of an immigration officer." Under 8 U.S.C. § 1103(a)(10), state and local officers may, by written agreement, be delegated any "powers, privileges, or duties" conferred upon DHS employees if there is "an actual or imminent mass influx of aliens arriving off the coast of the United States, or near a land border . . . requiring an immediate Federal response" (in January 2025 DHS invoked this statutory authority for the first time and extended the use of the authority in March 2025). Section 1252c permits state and local officers (to the extent permitted by state and local law) to arrest and detain (after consultation with DHS) an unlawfully present alien convicted of a felony in the United States who has been deported or left this country after the conviction, pending the alien's transfer to DHS custody. Section 1324(c) authorizes designated immigration officers and "all other officers whose duty it is to enforce criminal laws" to arrest a person engaged in a criminal offense relating to the smuggling or harboring of aliens.

Additionally, 8 U.S.C. § 1103(a)(4) authorizes the DHS Secretary to "require or authorize any employee of [DHS] or the Department of Justice to perform or exercise any of the powers, privileges, or duties" statutorily conferred upon DHS employees; and 8 U.S.C. § 1103(a)(6) and its implementing regulation enables the DHS Secretary "to confer or impose upon any employee of the United States" (with the relevant agency's consent) "any of the powers, privileges, or duties" conferred upon DHS employees. Based on this authority, the DHS Secretary in 2025 reportedly delegated immigration enforcement-related functions to certain officials within the Department of Justice, the Department of State, and the Internal Revenue Service.

Considerations for Congress

There has been some debate about the federal government's exercise of its immigration enforcement powers, including its efforts to expand the detention and removal of unlawfully present aliens and to delegate enforcement functions to entities outside DHS. Advocates for recent immigration enforcement

initiatives policies argue that these measures address public safety and national security threats and reduce unlawful migration. Opponents of these initiatives contend they adversely and indiscriminately impact certain communities, businesses, and industries. Additionally, following DHS's 2025 rescission of an earlier "protected areas" policy, there have been legal challenges to the agency's action, including on the grounds that enforcement actions at places of worship violate congregants' right to expressive association under the First Amendment and their exercise of religion under RFRA; and that the agency's action violated requirements under the Administrative Procedure Act. In one case, a federal district court held in February 2025 that the plaintiffs were likely to succeed on their First Amendment and RFRA claims and issued a preliminary injunction requiring DHS to abide by its former "protected areas" policy with respect to enforcement actions at the plaintiffs' places of worship, except in cases where DHS conducts arrests pursuant to an administrative or judicial warrant.

Legislation introduced in the 118th and 119th Congresses has addressed these arguments. Some bills, such as the Protecting Sensitive Locations Act (S. 455 and H.R. 1061, 119th Congress), the New Way Forward Act (H.R. 2374, 118th Congress), and the Dignity for Detained Immigrants Act (S. 1208 and H.R. 2760, 118th Congress), would constrain immigration enforcement actions by specifying areas where ICE may not conduct arrests, restricting the detention of certain "vulnerable persons" placed in removal proceedings, ending mandatory detention of certain aliens, or prohibiting state and local authorities' participation in immigration enforcement. Other bills would expand ICE's enforcement powers. For example, the Laken Riley Act (P.L. 119-1), which was enacted into law, increases the classes of criminal aliens subject to mandatory detention during removal proceedings. Also in the 119th Congress, the House-passed Preventing Violence Against Women by Illegal Aliens Act (S. 158 and H.R. 30), the POLICE Act of 2025 (S. 212 and H.R. 31), the House-passed Agent Raul Gonzalez Officer Safety Act (H.R. 35 and S. 512), and the Deport Alien Gang Members Act (H.R. 175), would increase the classes of aliens who are subject to removal (e.g., aliens who commit other crimes beyond those currently enumerated in statute or who are associated with gangs). Lastly, some bills, such as the State Border Defense Act (H.R. 6074 and S. 3007, 118th Congress) and the State Immigration Enforcement Act (H.R. 218, 119th Congress), would allow states to authorize law enforcement officers to perform certain immigration enforcement functions.

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