

PROTOCOLS, I-9 AUDITS, AND WORKPLACE RAIDS

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If ICE Enters Your Workplace

- Remain calm
- If a staff member or patient runs, it will give ICE officers probable cause and might be seen as an admission of guilt.
- Tell them you cannot give them permission to enter staff only areas without consulting your manager.
- If you can, contact the Rapid Response Network to inform them that a raid is taking place (408-290-1144) They might be able to send legal observers.
- Observe and document everything ICE does.

What Are Your Rights?

- Every worker has rights regardless of immigration status .
- You have the right to remain silent.
- You have the right to be free from unreasonable search and seizure.
- You have the **right to an attorney**.
- If not under arrest you have the right to leave.



Sample Protocol
For Businesses

Sample Protocol for Responding to ICE Immigration Officers

Telephone Calls

- If you receive a telephone call from an immigration enforcement agency requesting information about an employee, or other individual do not provide the requested information in response to the inquiry, but instead proceed as set forth below:
- Request the caller's credentials (name, title, agency, identification number, and contact information).
- Inform the caller that the clinic has protocols in place to make sure that the inquiries are addressed in a timely manner. Inform the individual that you are not obstructing the caller's efforts but that you are following protocol.
- Inform the caller that another representative from the business will be in contact with them.

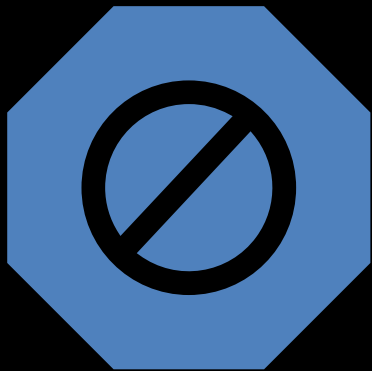
Telephone Calls

- Make a written summary of the telephone conversation (time, date, the caller's credentials, the information requested, and all other information regarding the nature and purpose of the call).
- Notify the designated person immediately after the call. Provide all information about the call to the designated person including the written summary. The designated person will immediately notify counsel.
- The designated person will assume responsibility for the matter and will contact the caller, unless decided otherwise in collaboration with counsel.
- Do not share the details of the conversation with individuals other than those who have a legitimate need to know the information in order to perform their job responsibilities.

Written Requests

- If you receive a written request (email, letter, document request, etc.) from an immigration enforcement agency requesting information about a student, employee, or other individual:
 - Notify the designated person immediately to inform them about the written request.
 - The designated person will immediately notify your attorney.
 - Send a copy of the written request by email to the designated person, with a copy to the attorney
 - Based on the nature of the request and any requirements under applicable law, the designated person and the attorney will determine the response to the written request.
 - Do not share the details of the written request with individuals other than person who have a legitimate need to know the information in order to perform their job responsibilities.

During An Immigration Enforcement Action



- Personnel should not attempt to physically interfere with an immigration enforcement agent, even if the agent appears to be acting without consent or exceeding the authorization given under a warrant or other document.
- If an agent enters nonpublic areas without consent, personnel shall make a record of the contact and forward the information to human resources and the attorney.

In Person Visits

- Notify the designated person immediately. Indicate that you have an urgent immigration situation, that a government agent is at your office, and that you need to speak with the designated person and/or an attorney.
- Immediately send a copy of the written request by email to the designated person, with a copy to the attorney
- The attorney will review the subpoena, search warrant, court order, or other document provided by the agent to ensure that it meets the legal requirements and will respond to you and/or the agent directly.
- When the agent leaves, make a written summary of the visit (time, date, the agent's credentials, the information requested, and all other information regarding the nature and purpose of the visit), and provide a copy to the attorney.
- Do not share the details of the visit with individuals other than University officials who have a legitimate need to know the information in order to perform their job responsibilities.

In Person Visits

- If you receive an in-person visit from an immigration enforcement agency requesting information about an employee, or other individual, do not provide the requested information in response to the inquiry, but instead proceed as set forth below:
- Request the agent's credentials (name, title, agency, identification number, and contact information). Typically, the agent will proactively show you photo identification. If not, please ask to see their photo identification.
- Inform the agent that the company/agency has protocols in place to make sure that the inquiries are addressed in a timely manner. Inform the individual that you are not obstructing the agent's efforts but that you are following the protocol.
- If the agent provides you with a subpoena, search warrant, court order, Notice to Inspect I9s, or other document supporting the agent's request for information, inform the agent that you are not authorized to review the document and ask the agent to wait while you contact the designated person.

Voluntary Consent to Allow Access to Nonpublic Areas

- **Voluntary Consent to Allow Access to Nonpublic Areas is Prohibited.**
- No employee or other person is authorized to provide voluntary consent for an immigration enforcement agent to enter any nonpublic areas. Such access to nonpublic areas requires a judicial warrant, court order, or judicial subpoena. Nonpublic areas include _____
- However:
- § You may take the immigration enforcement agent to a nonpublic area, where employees are not present, for the purpose of verifying whether the agent has a judicial warrant, court order, or judicial subpoena, provided no consent to search nonpublic areas is given in the process.
- § If the agent provides you with a Notice of Inspection of I-9 Employment Eligibility Verification forms, a judicial warrant, court order, or judicial subpoena is not required. The Notice of Inspection shall be provided to Human Resources and the attorney. See below for more information regarding the response to a Notice of Inspection.

Voluntary Disclosure of Employee Records Is Prohibited

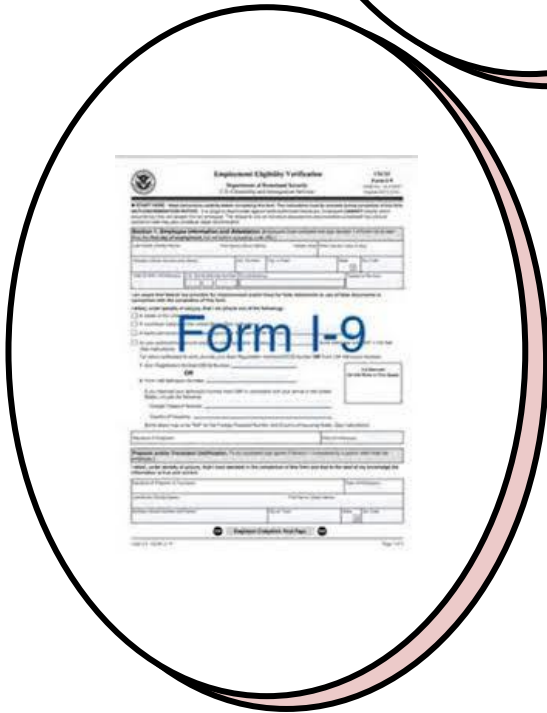
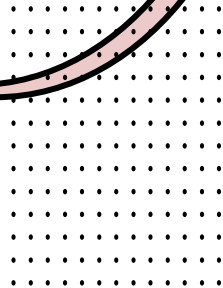
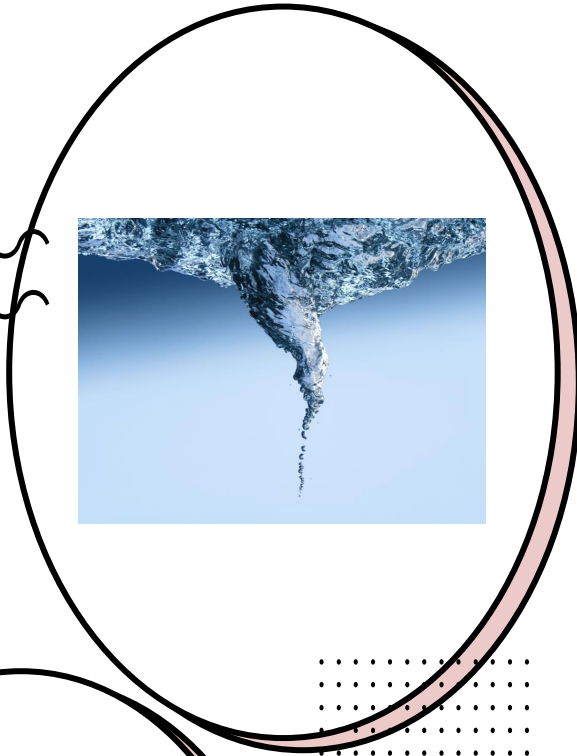
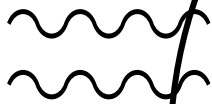
- No employee or other person is authorized to disclose employee records, except with the individual's consent, in response to a judicial warrant, court order, or judicial subpoena, or otherwise as permitted or required under applicable law.
- California Government Code Section 7285 et seq. prohibits employees from providing voluntary consent for an immigration enforcement agent to access, review, or obtain an employee's records maintained by a business.. Employees are required to safeguard private personnel information in the performance of their job responsibilities.
- • Inspection of I-9 Employment Eligibility Verification Forms
- § Federal law authorizes certain federal agencies to inspect an employer's I-9 Employment Verification Forms. A Notice of Inspection is required, with at least 72 hours' advance notice of the requested inspection.

I-9 Audit Protocol

- Human Resources should request that they take the records to ICE's offices.
- Human Resources may be designated to oversee the inspection.
- Pursuant to California Labor Code Section 90.2, and except as otherwise required by federal law, Human Resources will take the following steps after receiving a Notice of Inspection :
- Notify each current employee (and their collective bargaining representative, if any) of any inspections of I-9 Employment Verification forms or other employment records conducted by an immigration agency.
- The notice shall be provided within 72 hours of receiving the Notice of Inspection.
- A template of the notice, including the information set forth in Section 90.2, can be found on the California Labor Commissioner's website at:
https://www.dir.ca.gov/dlse/LC_90.2_EE_Notice.pdf.
- Provide to an affected employee, upon reasonable request, a copy of the Notice of Inspection of I-9 Employment Verification forms.

I-9 Audit Protocol

- Provide a copy to each affected employee (and their collective bargaining representative, if any) of the immigration agency's written notice of the results of the inspection of I-9 Employment Eligibility Verification forms or other employment records within 72 hours of receipt of the notice, as well as written notice of the clinic and the affected employee's obligations arising from the results of the inspection.



I-9 AUDITS

I-9 Audits

- An I-9 is the form the employer asked you to complete when you were hired to prove that you were authorized to work in the U.S.
- An immigration I-9 Audit occurs when federal immigration officials review or “audit” an employer’s I-9 forms to make sure they are accurate and that all employees have work authorizations.
- The Audit may be conducted by ICE or Homeland Security (HSI).
- Immigration officials do not need a warrant to conduct an I-9 Audit. They issue employers a **Notice of Inspection** at least 3 days before the Audit.

I-9 Audits

- Employers must keep the I-9 forms of all current workers.
- They must keep the I-9 forms of former workers for *three years* after the employee's date of hire or for *one year* following his or her date of termination, *whichever* date is later
- The information is checked against the DHS database so ICE will know if you are documented or using someone else's identity or documents that don't exist.

I-9 Audits

- Under California state law, employers must give written notice to employees of the upcoming audit within 72 hours after it receives the Notice of Inspection. Labor Code Section 90.2.
- Notice must be given in a language the employee understands.
- The worker has the right to remain silent, not sign any documents and speak to an attorney before answering any questions from immigration officials.

I-9 Audits

- A template of the notice, including the information set forth in Section 90.2, can be found on the California Labor Commissioner's website at:
https://www.dir.ca.gov/dlse/LC_90.2_EE_Notice.pdf

I-9 Audits

- The written notice must include (1) the name of the immigration agency conducting the audit; (2) the date the employer received the Notice; (3) what documents will be inspected; and (4) a copy of the Notice of Inspection.
- Employees may also request a copy of the Notice of Inspection from their employer.

I-9 Audits

- *Nonpublic areas and Employer Records.* An immigration officer may not enter nonpublic areas without a warrant. An employer cannot provide immigration agents with access to employment records other than the I-9. SB 450 imposes penalties of \$2,000–\$5,000 for a first violation and \$5,000–\$10,000 for each subsequent violation of the prohibitions against consenting to enter nonpublic areas and permitting agents access to employment records. The courts have enjoined the penalty.
- *Notice.* Employers that fail to provide the required notices to employees are subject to penalties of \$2,000–\$5,000 for a first violation and \$5,000–\$10,000 for each subsequent violation. This provision is still in effect.

I-9 AUDITS

- When the audit is finished, ICE will give the results to the employer and give the employer some time to re-verify the work authorization documents of workers whom ICE identifies as workers with problems with documents. .
- In California the employer must notify in writing every worker ICE identified as having problems with documents and union reps of the results of the I-9 audit within 72 hours.
- ICE now has contact information that workers placed on the I-9 form. If workers have a criminal history or prior deportation or removal order, they should contact an immigration lawyer. ICE arrests people with prior deportation or removal orders even at their homes.

I-9 Audits

- After reviewing the I-9 forms, ICE may find some employees are not authorized to work.
- If that happens, ICE will give you 10 days to provide valid work authorization for these employees. If you can't provide the documents by that time, you will be told to end their employment.
- You can ask ICE for more time. This will give affected workers more time to talk to an immigration lawyer.

I-9 Audit

- After the audit, the employer must provide a written notice to the employees that states. (1) the problems in the employer records identified by immigration; (2) how much time will be given to the employee to fix the problems; (3) the time and date of any meeting with the employer and immigration officials to make corrections; and (4) that the employee has the right to have an attorney or other 3rd party (another worker or union rep) present at the meeting with the employer.

I-9 Audits

- Employers may not specify which documents an employee must present to correct the form.
- Employees have the right not to discuss their immigration status with their employers.
- The employee should never present false information.

I-9 Audits

- Immigration officials may not always follow the law and may try to speak with and arrest workers even when the law says they cannot.
- Employees should remain silent, refuse to sign documents, and speak to an attorney before answering any questions.
- If ICE's true purpose is to question, arrest, or detain workers instead of to audit records, any arrests may be illegal.

I-9 Audits

- If immigration requests a meeting, employees who are undocumented or who are non-US citizens who have criminal records should consider the risks of meeting with immigration officials such as the risk of being arrested.
- In any meeting with an employer and/or immigration officials, all employees have the right to remain silent, not to sign any documents, and not to answer questions without consulting an attorney.
- They also have a right to have an attorney or 3rd party (such as a co-worker or union rep) present.

I-9 Audits

- Employees have the right to not discuss their immigration status with their employers.
- If an employers knows or should know that employees are not authorized to work, they may risk civil or criminal penalties by continuing to employ them.
- An employer may not use an I-9 audit as a reason to retaliate against or intimidate employees.

I-9 AUDITS

- If documents used in I-9 forms cannot be reverified, the employer will have to terminate the employee.
- The Employer will be fined or face criminal penalties if the employer continues to employ a person who is undocumented.
- An employer may not request eligibility verification at any time during employment other than when hired **unless there is an audit**. Otherwise, it is unlawful document abuse in violation of the Immigration Reform and Control Act.
- Employers that violate the prohibition on reverification are subject to a penalty of up to \$10,000 per AB 450. See DIR AB 450 FAQ's
<https://oag.ca.gov/sites/all/files/agweb/pdfs/immigrants/immigration-ab450.pdf>

I-9 AUDITS v. WORKPLACE RAIDS



Workplace Raids

- ICE Agents go to a worksite without warning to investigate an employer
- They do not need advance notice of raid but they are required to have a warrant.
- ICE is not police but often wear police insignia or request support from local police forces.
- ICE can enter without a warrant any public areas accessible by the public.
- ICE must have a warrant signed by a judge or the employer's permission to enter private areas of your workplace.

Warrants (ICE v. Judge)

U.S. Department of Homeland Security

Warrant for Arrest of Alien


File No. _____
 Event No: P00160600346
 FINS #: 1150253900 Date: September 1, 2016

To any officer delegated authority pursuant to Section 287 of the Immigration and Nationality Act:

From evidence submitted to me, it appears that:

(Full name of alien)
 an alien who entered the United States at or near _____ on _____
(Date)
 _____ is within the country in violation of the immigration laws and is therefore liable to being taken into custody as authorized by Section 236 of the Immigration and Nationality Act.

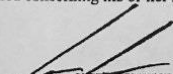
By virtue of the authority vested in me by the immigration laws of the United States and the regulations issued pursuant thereto, I command you to take the above-named alien into custody for proceedings in accordance with the applicable provisions of the immigration laws and regulations.


(Signature of Designated Immigration Officer)
JOHN KOHLMAN
(Print name of Designated Immigration Officer)

DDO
(Title)

Certificate of Service

Served by me at Portland, OR on September 28, 2016 at 06:20 AM.
 I certify that following such service, the alien was advised concerning his or her right to counsel and was furnished a copy of this warrant.


(Signature of officer serving warrant)
Andrew Johnson
(Title of officer serving warrant)

Form I-260 (Rev. 08-01-07)

AO 93 (Rev. 12/09) Search and Seizure Warrant

UNITED STATES DISTRICT COURT
 for the
 Eastern District of California

In the Matter of the Search of _____)
(Briefly describe the property to be searched or identify the person by name and address)) Case No. _____)
)
 540 Oak Avenue)
 Davis, California 95616)

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer **2:11-SW-0161 EFB**

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the EASTERN District of CALIFORNIA
(Identify the person or describe the property to be searched and give its location):
SEE ATTACHMENT A, ATTACHED HERETO AND INCORPORATED BY REFERENCE

The person or property to be searched, described above, is believed to conceal (Identify the person or describe the property to be seized):
SEE ATTACHMENT B, ATTACHED HERETO AND INCORPORATED BY REFERENCE

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property.

YOU ARE COMMANDED to execute this warrant on or before 5-9-2011
(not to exceed 14 days)


in the daytime 6:00 a.m. to 10 p.m. at any time in the day or night as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to United States Magistrate Judge _____
(name)

I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box) for _____ days (not to exceed 30).
 until, the facts justifying, the later specific date of _____.

Date and time issued: 4-25-2011
9:10:00 AM


Judge's signature

City and state: SACRAMENTO, CALIFORNIA **EDMUND F. BRENNAN, U.S. MAGISTRATE JUDGE**
Printed name and title

Public v. Private Areas

- No one can enter a private area of your business without your permission or a judicial warrant.
- If ICE agents try to enter a private area, you should say: “This is a private area. You cannot enter without a judicial warrant signed by a judge. Do you have a judicial warrant?”
- If ICE agents tell you that they have a judicial warrant, ask for a copy and read it. Being in a public area does NOT give ICE the authority to stop, question, or arrest just anyone.
- TIP: To show that some areas are private, mark them with a “Private” sign, keep the doors closed or locked, and have a policy that visitors and the public cannot enter those areas without permission.

Workplace Raids

- Do NOT help ICE agents sort people by their immigration status or the country they are from.
- Watch the agents and see if they are complying with what's written in the warrant.
- If you or an employee is willing, you should video or record what the ICE agents do at your workplace. You may be able to prove the agents violated your rights or your workers' rights.

Workplace Raids

- If the agents have a judicial warrant signed by a judge, ask for a copy and read it. Make a copy if you can.
- Watch the agents carefully. Keep track of what they do.
- See if they are following what is written on the warrant. For example, the warrant may limit the areas the agents can search.
- If ICE agents try to question you or your workers, remind your workers they have a right to stay silent and to ask for a lawyer.
- When immigration agents leave, record or write down everything you saw. This will help you remember the details when you talk to a lawyer later.

Immediately After the Raid

- Write or record these things after ICE leaves:
- How many ICE agents were present (inside and outside)?
- How were the agents dressed?
- How were they armed?
- Did the agents make you or your workers believe you could not move or leave?
- Did the agents mistreat anyone? If yes, how?
- If ICE arrests any of your workers or patients, ask the ICE agents where they are being taken. This information will help the worker's family and lawyer find the person.



OPTIONS FOR
HANDLING
FINANCIAL
AFFAIRS IF
A BUSINESS
OWNER IS
DETAINED



Power of Attorney

- A POA can be used to handle financial matters, such as paying bills, managing investments, and real estate transactions
- A POA can be used to handle legal matters, such as signing contracts or sale documents
- A POA can be used to handle healthcare matters, such as making decisions about care when the principal is incapacitated.
- You want a durable power of attorney which stays in effect if you are not available.

Requirements for a POA in California

- The principal must be at least 18 years old and mentally competent
- The POA must comply with California Probate Code
- The POA must be signed in the presence of a notary public or two witnesses. For real estate a notary is preferred.

Power of attorney

- You may select from the following specific powers or add specific acts such as the following:
- **Property:** Real estate, physical items
- **Finances:** Banks and financial institutions, taxes, businesses, personal and family maintenance, benefits from governmental programs and civil or military service
- **Assets:** Stocks and bonds, insurance and annuities, retirement plans
- **Estate:** Gifts, establish, contribute to, and manage properties, trusts, and other beneficial interests
- **Legal Affairs:** Claims and litigation
- **Miscellaneous:** Support the principal's pets, manage the principal's funeral and burial arrangements, power to take all other actions on the principal's behalf.
- **Taking a Child out of the Country:** A Power of Attorney will not allow the agent to take the child out of the country.

Guardianship v. Power of Attorney

- **Court involvement:**
- A power of attorney does not require court involvement, while a guardianship requires a court hearing and decision to appoint a guardian.
- **Decision-making authority:**
- A power of attorney can be limited to specific tasks or areas of decision-making, while a guardian usually has broader authority over personal and financial matters.

When to consider each option:

- **Power of attorney:**
- If you want to proactively choose someone to manage your affairs if you are unavailable, while still retaining control while you are available.
- **Guardianship:**
- If someone is unavailable and cannot make basic decisions for themselves. It requires court oversight to appoint a guardian. A guardianship will allow the guardian to take a child out of the country but check with the airlines. In a guardianship you give up your parental rights and have to go to court to get them back. In a CAA or power of attorney, you do not relinquish any rights.

What Happens to My Business?

- **Business Structure:**
 - **Sole Proprietorship:** If you are the sole owner, your business could be considered part of your personal assets. The assets could be sold.
 - **Partnership:** In a partnership, the remaining partners would typically take over operations, but legal agreements should outline how ownership would be handled in case of a partner's death or deportation.
 - **LLC or Corporation:** With a well-structured LLC or Corporation, ownership can be transferred through a succession plan even if you are no longer able to manage the business.

Transferring Ownership

- **Transferring Ownership of an LLC or Partnership :**
- **Designated successor:** If you have a designated successor (family member, business partner, etc.) they can take over the business operations with proper legal documentation.
- **Sale of Business:** The business can be sold to a third party, with proceeds distributed according to ownership agreements.
- **Liquidation:**
- If no suitable successor is available or if the business cannot be sold, assets may need to be liquidated to pay off debts.

Sole Proprietorship

- **A sole proprietorship is not a separate entity:**
- Unlike an LLC or corporation, a sole proprietorship doesn't exist as a separate legal entity from the owner, so you can't "sell" the business itself.
- **You would need to sell the business assets to another person:**
- To transfer a sole proprietorship, you would sell all the business assets (like inventory, equipment, customer lists) to another person.
- **The new owner could establish a new business formation:**
- The new owner would then use those purchased assets to establish a new business entity, potentially under a different legal structure like an LLC.

Can You Transfer a Sole Proprietorship Through a Power of Attorney?

- **You need specific authorization:**
- To transfer a sole proprietorship through a Power of Attorney, the document must explicitly state the agent's power to sell or transfer business assets, including any licenses, permits, and intellectual property associated with the business.
- **Without an explicit statement there are legal implications:**
- If the Power of Attorney does not explicitly allow for business transfer, attempting to do so could be considered a breach of fiduciary duty and potentially lead to legal consequences.
- **CONSULT A BUSINESS LAW ATTORNEY.**

General Information

Red Card to Distribute

Print your own Red Cards to distribute in multiple languages here: <https://www.ilrc.org/red-cards-tarjetas-rojas>

Usted tiene derechos constitucionales.

- NO ABRA LA PUERTA SI UN AGENTE DEL SERVICIO DE INMIGRACION ESTA TOCANDO A LA PUERTA.
- NO CONTESTE NINGUNA PREGUNTA DEL AGENTE DEL SERVICIO DE INMIGRACION SI EL TRATA DE HABLAR CON USTED. Usted tiene derecho a mantenerse callado. No tiene que dar su nombre al agente. Si está en el trabajo, pregunte al agente si está libre para salir y si el agente dice que sí, váyase. Usted tiene derecho de hablar con un abogado.
- ENTREGUE ESTA TARJETA AL AGENTE. NO ABRA LA PUERTA

I do not wish to speak with you, answer your questions, or sign or hand you any documents based on my 5th Amendment rights under the United States Constitution.

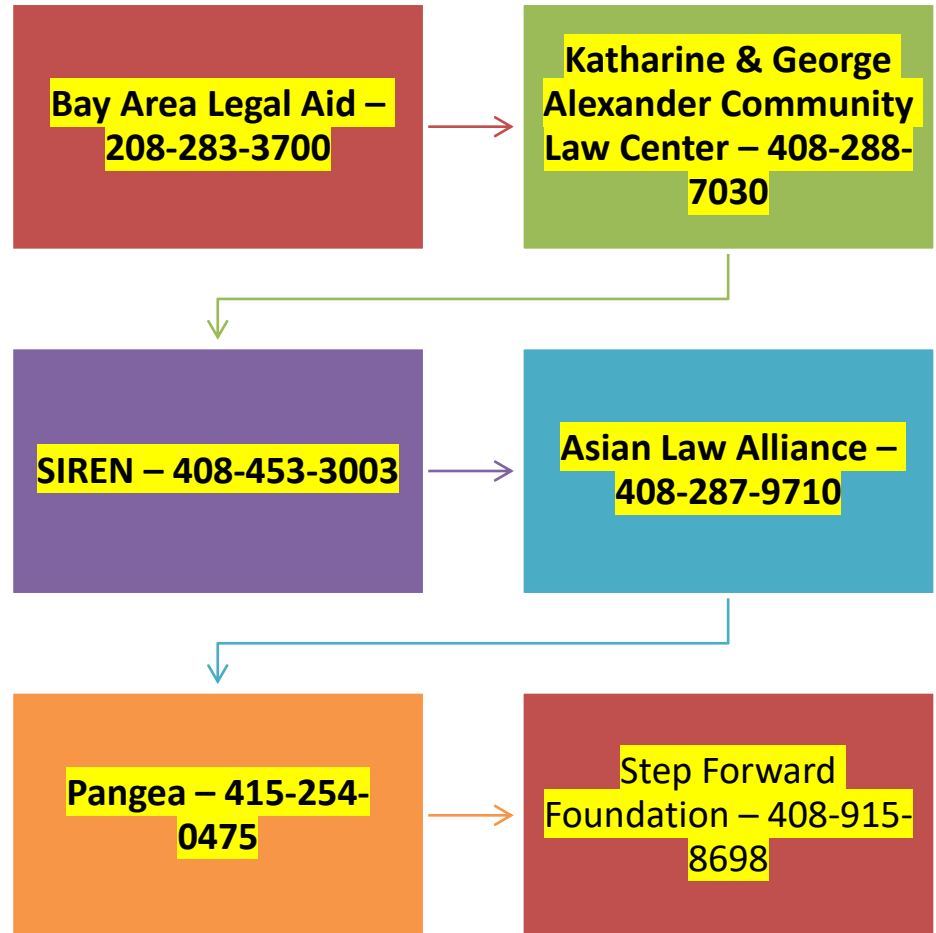
I do not give you permission to enter my home based on my 4th Amendment rights under the United States Constitution unless you have a warrant to enter, signed by a judge or magistrate with my name on it that you slide under the door. I do not give you permission to search any of my belongings based on my 4th Amendment rights.



I choose to exercise my constitutional rights.

These cards are available to citizens and noncitizens alike.

Nonprofit Immigration Lawyers in Santa Clara County



Free OLSE Legal Advice Line for Workers and Employers

Attorneys provide advice and referrals and schedule appointments for direct assistance with workplace issues and labor compliance.



Call **1-866-870-7725** toll free

English
Español

Tagalog
Visayan

Tiếng Việt
中文



OFFICE OF LABOR
STANDARDS ENFORCEMENT



FAIR WORKPLACE
COLLABORATIVE

QUESTIONS

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