

WORKPLACE RAIDS

Employer Rights and
Responsibilities



**LEGAL
AID AT
WORK**

Summer 2017

CONTENT

INTRODUCTION 01

BEFORE AN ICE RAID

Designate Non-Public Areas	02
Designate Primary Points of Contact	03
Train Your Employees: Do Not Consent	04
Train Your Employees: Document ICE's Actions	05
Inform Your Employees: Remain Silent and Ask for an Attorney	05
Inform Your Employees: Do Not Sign Any Documents	06
Keep Personnel Files and I-9s Separate	06

DURING AN ICE RAID

Identify ICE Agents	07
Contact a Rapid Response Network	08
Ask for a Signed, Judicial Search Warrant	09
If There is a Warrant, Examine It	10
Ensure ICE Activity is Documented	12
If ICE Does Not have a Judicial Search Warrant, Do Not Consent	13

AFTER AN ICE RAID

Contact a Rapid Response Network	14
Obtain Contact Information of the Detention Facility	14
Notify the Emergency Contacts of Those Detained	15
Assist Your Detained Employees with Legal Representation and Bond	15

CONCLUSION 16

Appendix A - Additional Resources	19
Appendix B - Reading a Warrant	20
Appendix C - Rapid Response Networks	24

INTRODUCTION

EMPLOYER RIGHTS & RESPONSIBILITIES

The United States is home to millions of immigrants. In recent months, immigration enforcement efforts have increased and taken many different forms. This has made it advisable for employers to know how to prepare for and respond to an Immigration and Customs Enforcement ("ICE")¹ worksite raid.²

This document provides information to help employers identify issues they may want to consider before, during, and after an ICE raid.

1. In some situations, workplace raids may be conducted by U.S. Customs and Border Protection ("CBP"), another agency within the Department of Homeland Security. For simplicity, this fact sheet will use "ICE" to refer to raids by either ICE or CBP.

2. A worksite raid is different from an I-9 audit (briefly discussed on page 9). As used in this document, a "worksite raid" refers to when ICE officers appear at a workplace, usually unannounced, in order to investigate and potentially arrest individuals at the worksite. This could form part of a civil and/or criminal investigation related to federal immigration law. An "I-9 audit," as used in this document, refers to when ICE seeks to inspect an employer's I-9 forms.

DISCLAIMER:

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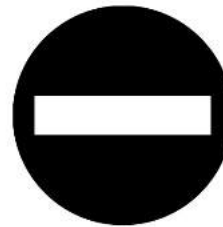
BEFORE AN ICE RAID

1. Designate Which Areas of Your Business Are Closed to the Public.

As an employer, you may designate which of your business's areas are not open to the public. ICE cannot lawfully enter these private areas without your consent or a judicial search warrant.

Areas open to the public are those you freely allow members of the public to enter. For example, in a restaurant, the public may enter the dining area; therefore, ICE may also enter it. Likewise, ICE can enter the open shopping areas of a mall. But without your consent or a valid judicial search warrant, ICE is generally not authorized to go into areas where the general public is not allowed – for example, a restaurant's kitchen, or a mall's employee break rooms.

Therefore, it is important to distinguish your business's public and non-public areas. Using "Employees Only" and "Staff Only" signs, physical barriers (doors, partitions, etc.), and other indicators, can be helpful. The more secure you keep these areas from entry by the general public, the better the argument that they are off limits to ICE.

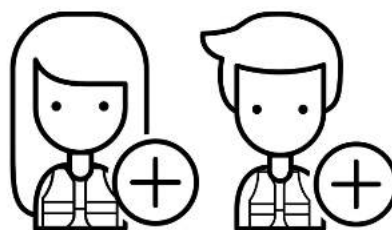


BEFORE AN ICE RAID

2. Designate Primary Points of Contact.

You may want to ask one or two volunteers who would be comfortable interacting with ICE agents to serve as primary points of contact. The primary points of contact would act as the liaison to ICE. S/he would be responsible for asking to see a warrant, and informing ICE that it does not have your consent to enter the non-public areas of your business. This person should also be trained to contact the local rapid response network, if applicable. See page 8.

As a safeguard, you may designate back-up points of contact in case the primary one is unavailable. If you decide to have primary points of contact, all employees should know who they are and how to contact them.

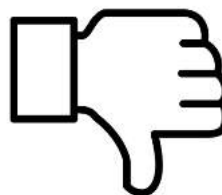


3. Train Your Employees: Do Not Consent.

You may train every employee, regardless of their position, that they ARE NOT authorized to consent to an ICE search, and that they should communicate this to ICE agents. This is especially important for supervisors and managers because ICE may ask them to consent on your behalf.

You may also train your employees to immediately report any contact with ICE at your business to you or to someone designated as a primary point of contact.

Special attention may be paid to training employees who may be more likely than others to encounter ICE agents first (e.g., receptionists, cashiers, head servers, hosts, front desk staff, security guards).



BEFORE AN ICE RAID

4. Train Your Employees: Document ICE's Actions.

You may create company policies or procedures to document ICE's actions in your workplace, and train your employees on these procedures. If ICE engages in illegal behavior while on your premises, having documentation could assist you or others in challenging any unlawful search, arrest, or other actions that may have taken place.

For instance, if you have a policy restricting the use of photography and/or video at your business, you may create an exception that applies in the case of an ICE raid.

Then, you may train your employees on ways of documenting ICE activity (i.e., video/audio recording, written or electronic notes). You and your employees may document important information such as:

- a. Names of the agents
- b. Number of agents
- c. Whether the agents carried weapons and/or used them
- d. Whether agents blocked exits and/or restricted employees' movements or activities
- e. Agents' badge numbers
- f. License plates, if any
- g. Questions asked and any statements made by ICE
- h. Any property taken / searched
- i. Persons questioned
- j. Names of other witnesses (anyone who observed the raid)
- k. Any persons detained
- l. Any details of agents using intimidation or force



For an example of a form to document home raids that may be adapted for use in the workplace, please see Appendix A.

BEFORE AN ICE RAID

5. Inform Your Employees: Remain Silent and Ask for an Attorney.

You and your employees have a constitutional right to refuse to speak with ICE agents.³

Therefore, prior to a raid, you may inform your employees that they can refuse to speak with ICE agents. If an employee answers questions, her answers could provide an ICE agent with a reason to detain her, or could be used against someone else.



Employees may also be informed that running away from ICE might, in itself, lead to being detained.

You may tell your employees that, in addition to refusing to answer an ICE agent's questions, they should say they want to speak to an attorney. You may encourage your employees to memorize their attorney's contact information. You may also provide your employees with "red cards," which list a person's rights when interacting with law enforcement.⁴ You, or an employee, can give this card to an ICE agent if the agent tries to question you or the employee.

You may also want to post examples of warrants and/or leave red cards by the entry points to your business (front door, back door, etc.).

3. It is critical to convey this information to employees in advance of any raid. Providing this advice--as important as it is--while a raid is underway may be interpreted by ICE as an attempt to obstruct the raid.

4. See prior footnote. It is critical to provide red cards to employees in advance of any raid. Providing this advice--as important as it is--while a raid is underway may be interpreted by ICE as an attempt to obstruct the raid.

BEFORE AN ICE RAID

6. Inform Your Employees: Do Not Sign Any Documents.

Prior to an ICE raid, you may also inform your employees they are not required to sign any documents that ICE asks them to sign without first speaking to an attorney. If an employee signs a document before being fully informed, there could be grave consequences, such as expediting a deportation or giving up a right to an attorney or a hearing.



7. Keep Personnel Files and I-9s Separate.

You may also consider keeping your employees' personnel files (which typically contain private information) separate from their I-9 forms. If ICE reviews your I-9 files (lawfully or otherwise) and they are stored with personnel files, it is more likely that ICE will attempt to review the personnel files as well.



DURING AN ICE RAID

1. Try To Identify ICE Agents Promptly.

ICE agents are also known as Department of Homeland Security (DHS) agents.

Misleadingly, ICE agents might also identify themselves as “police” officers. Likewise, their vests and/or clothing might say “POLICE ICE” or “POLICE” or “POLICE U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT” or “DEPARTMENT OF HOMELAND SECURITY POLICE.”

ICE agents might not always identify themselves – they may engage in deception to solicit information.

ICE agents may be dressed either in plain clothes or in uniform.



DURING AN ICE RAID

2. Contact a Raids Response Network.

Various raid rapid response networks have been established to respond to ICE enforcement actions across the country. These rapid response networks differ, but many involve hotlines to report ICE activity, volunteers who can be dispatched to document and monitor ICE agents during raids, and attorneys who can be dispatched during or after the raid to assist those affected. For a list of rapid response networks, see Appendix C. Note that there may be a rapid response network in your area that is not included in this list.



DURING AN ICE RAID

3. Determine the Scope of the Visit. Ask for a Signed, Judicial Search Warrant.

You have a right to refuse to allow ICE to enter the non-public areas of your business. ICE agents can legally do so ONLY IF they (1) obtain your voluntary consent or (2) have a signed, judicial search warrant. ICE may try to convince you—either politely or through threats—that an ICE administrative warrant, an arrest warrant, or no warrant at all is sufficient. However, their entry without (1) or (2) would be illegal.

If ICE agents come to your business, you may instruct your employees to promptly contact you or, if you're unavailable, the primary points of contact. You or the primary points of contact would attempt to determine ICE's purpose: e.g., whether it's an I-9 audit or a worksite raid.

Worksite Raid: If ICE's purpose is to conduct a worksite raid, you may state that you do not consent to a search and promptly request a signed, judicial search warrant. If they do not have one, you may deny them entry by not providing your consent to enter. If there is a warrant, see below.

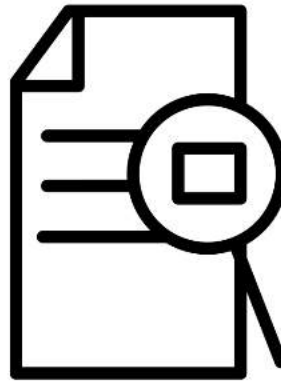
I-9 Audit: If ICE's purpose is to conduct an I-9 audit, ICE is required to give you at least three business days to produce employee I-9s. ICE agents can show up at your business unannounced and request to see employee I-9s; without three days' notice, however, they cannot immediately inspect them unless you consent or they have a signed, judicial search warrant. In such a case, you may assert your right to proper notice and deny ICE access to employee I-9s until the three-day period has lapsed. During these three days, you may want to contact an attorney.

DURING AN ICE RAID

4. If There Is a Warrant, Examine It.

ICE often does not have the type of warrant that would authorize them to enter the private areas of your business without your consent. If they claim to have a warrant that authorizes them to enter, ask to examine it.

Determine what type of warrant it is: administrative immigration, judicial arrest, or judicial search warrant. See below #5.



5. Determine the Type of Warrant.

There are three types of warrants an ICE agent may present: (a) an administrative immigration warrant; (b) a judicial arrest warrant; or (c) a judicial search warrant. For examples of each, see Appendix B.

11

BEFORE

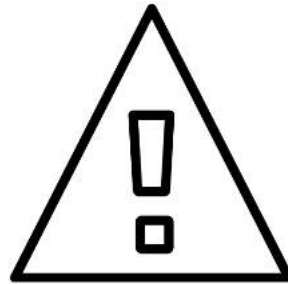
DURING

AFTER

DURING AN ICE RAID

6. If ICE Does Not Have a Judicial SEARCH WARRANT, Do Not Consent.

If ICE agents do not have a valid judicial search warrant, you have a right to deny them entry into non-public areas of your business. ICE agents might insist, including through intimidation, that they do not need a warrant, or that an “administrative warrant” is all they need. As noted before, this is not the case, and the search would be illegal. If ICE agents enter anyway, you should continue to verbally refuse consent and document their actions, but do not obstruct their entry.



7. Communication with Employees During a Raid:

Once a raid is underway, if employees ask you whether they are required to speak to an ICE agent, you may let them know they have the right to speak or not to speak to the agent. If they ask you whether to sign a document that ICE gives them, you can let them know they can refuse to sign the document or they can sign the document. Important: Please note that this is different from how you may want to communicate this information to your employees before a raid occurs. See page 5, #5 above.

DURING AN ICE RAID

8. Ensure ICE Activity is Documented.

Regardless of whether ICE has a valid judicial search warrant, you should consider documenting ICE's actions. You and your employees may accompany ICE agents throughout their search. While you should NOT interfere with or obstruct ICE's search, you may document everything that happens and the individuals and/or objects seized. If you choose to permit your employees to engage in recording in the event of an ICE worksite raid, ensure they know so they can decide whether they want to do so. You may also want to discuss the possibility of having your primary points of contact wear distinctive clothing or accessories (i.e., fluorescent vests, bands, etc.). This may reduce employee confusion. See page 3, #2 above.



AFTER AN ICE RAID

1. Contact a Raids Response Network.

Various raid response networks have been established in distinct geographic regions to respond to and document ICE activity. You may reach out to a raid response network during or after the ICE raid to report the activity and to assist in mobilizing community and legal support for detained workers. See Appendix C.



2. Obtain Contact Information of the Detention Facility.

You may request information from ICE agents regarding the name, location, and phone number of the ICE detention facility or facilities where your employees are being held. However, depending on the ICE agent, this information might or might not be provided. As an alternative, you may familiarize yourself with surrounding detention facilities, as detained individuals are often transported and held at nearby locations, including city and county jails.



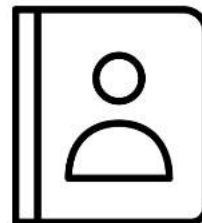
You may also attempt to use ICE's online detainee locator system to locate detained employees:

<https://locator.ice.gov/odls/home>
Page.do.

AFTER AN ICE RAID

3. Notify the Emergency Contacts of Those Detained.

If any of your employees have been detained by ICE, once ICE has left you may want to notify their emergency contacts. If the employee did not provide an emergency contact, you may determine whether other employees have this information and can either provide that information or inform the contact themselves. You may also consider connecting the emergency contact with the detained employee's consulate.



4. Determine Whether You Want To Assist Your Detained Employees in Obtaining Legal Representation.

If any of your employees have been detained, you may consider whether you want to help them obtain legal representation. Without legal representation, it will be much more difficult for your employees to successfully defend themselves.

For organizations that provide immigration legal services, you can visit:

<https://www.immigrationadvocates.org/nonprofit/legaldirectory/>.

For private immigration lawyers, you can visit:

<http://www.aialawyer.org/>.

You may also consider writing letters of support for detained employees.



BEFORE

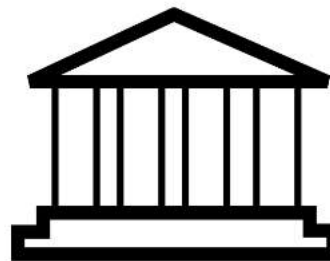
DURING

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AFTER AN ICE RAID

5. Determine Whether To Post Your Detained Employee's Bond, if Available, While S/he Awaits Further Action.

After ICE has detained a person, it will typically set a bond to ensure someone's presence at a future proceeding. Immigration or deportation proceedings can take years to conclude. By posting bond for your employee, you can help ensure they do not have to spend that time incarcerated.



Remember: Follow Applicable Employment Laws

You must, for instance, pay your employees for work they have already performed-- even if they have been detained.

You may also not discriminate against individuals, based on their race, religion, national origin, including language, or a variety of other protected bases, in anticipation of a raid or after a raid.

These and other workplace rights apply to all workers, regardless of immigration status.

For more information, visit Legal Aid at Work's website:
www.legalaidatwork.org

There you can find fact sheets on workers' rights. For example:
<https://legalaidatwork.org/factsheet/undocumented-workers-employment-rights/>

LEGAL AID AT WORK

Our organization engages in litigation, direct services, policy work and community education to defend and expand the civil and labor rights of low-wage workers, community members, and students.

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Appendix A

ADDITIONAL RESOURCES

If you or your employees would like more information on ICE raids, see:

-National Employment Law Center and National Immigration Law Center, "WHAT TO DO IF IMMIGRATION COMES TO YOUR WORKPLACE" Guide
<http://www.nelp.org/publication/what-to-do-if-immigration-comes-to-your-workplace/>

Immigrant Defense Project, Sample Raid Documentation Template
<https://www.immigrantdefenseproject.org/wp-content/uploads/2016/03/home-raid-poster-ENG-2017.pdf>

If you or your employees would like more information on immigration-related topics, see:

-Legal Aid at Work (www.legalaidatwork.org)
Know your rights materials, sample letters and helpline on immigrant workers' rights – <https://legalaidatwork.org/our-programs/immigrant-and-ethnic-minority-workers/>

-National Immigration Law Center (www.nilc.org)
Know your rights materials on ICE raids – <https://www.nilc.org/protectyourself/>
Know your rights materials on I-9 audits – <https://www.nilc.org/wp-content/uploads/2015/11/I-9-audits-primer-2009-07-23.pdf>

-National Employment Law Project (www.nelp.org)
Know your rights materials on Social Security No Match Letters - https://www.nilc.org/wp-content/uploads/2015/12/top_ten_tips_11-07-07.pdf

-Immigrant Legal Resource Center (www.ilrc.org)
Community Legal Resources – <https://www.ilrc.org/community-resources>
Family Preparedness Plan – <https://www.ilrc.org/family-preparedness-plan>
Know your rights materials on DACA – https://www.ilrc.org/sites/default/files/resources/daca_community_info_sheet_march_1_2017_clean.pdf
The Basics on ICE Warrants and ICE Detainers – https://www.ilrc.org/sites/default/files/resources/ice_warrants_summary.pdf

-National Day Laborer Organizing Network (<http://altotrump.com>)
Know your rights materials -- <http://altotrump.com/resources/know-your-rights/>

-Catholic Legal Immigration Network, Inc. (www.cliniclegal.org)
Know your rights materials (In-depth factsheet on interacting with law enforcement, including ICE) – <https://cliniclegal.org/sites/default/files/resources/presidential-transition/Know-Your-Rights-Law-Enforcement.pdf>

If you or your employees would like to find an immigration attorney, you can visit:

-Immi (www.immi.org)

-Immigration Advocates Network (www.immigrationadvocates.org)

-American Immigration Lawyers Association (www.aila.org)

Appendix B

READING A WARRANT

If ICE agents do not have a valid judicial search warrant, you have the right to refuse them entry. For a warrant to be valid, it must meet the following:



ADMINISTRATIVE IMMIGRATION WARRANTS

These types of warrants (sometimes referred to as warrants of removal or deportation, or warrants for arrest of alien) are NOT search warrants!

These warrants do not give ICE the authority to enter the non-public areas of your business. You may deny ICE access to these areas of your business.

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement
WARRANT OF REMOVAL/DEPORTATION

File No: _____
Date: _____

To any immigration officer of the United States Department of Homeland Security:

(Full name of alien)

who entered the United States at _____ on _____
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

☐ an immigration judge in exclusion, deportation, or removal proceedings
☐ a designated official
☐ the Board of Immigration Appeals
☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien pursuant to law, at the expense of:

(Signature of immigration officer)

(Title of immigration officer)

(Date and office location)



ADMINISTRATIVE IMMIGRATION WARRANTS (continued)

U.S. DEPARTMENT OF HOMELAND SECURITY Warrant for Arrest of Alien

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____
is removable from the United States. This determination is based upon:

- ☐ the execution of a charging document to initiate removal proceedings against the subject;
- ☐ the pendency of ongoing removal proceedings against the subject;
- ☐ the failure to establish admissibility subsequent to deferred inspection;
- ☐ biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- ☐ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____
(Location)

on _____ on _____, and the contents of this
(Name of Alien) (Date of Service)

notice were read to him or her in the _____ language.
(Language)

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

Form I-200 (Rev. 09/16)



JUDICIAL ARREST WARRANTS

A valid arrest warrant must:

- Be signed by a judge.
- Correctly state the name of the person to be arrested.

If the warrant appears valid, ICE can arrest the named person if s/he is found in the public areas of your business. In general, however, it does not allow ICE to enter the private areas of your business in order to carry out the arrest.

AO 442 (Rev. 11/11) Arrest Warrant

UNITED STATES DISTRICT COURT

for the

United States of America

v.

)

)

)

)

)

)

Case No.

Defendant

ARREST WARRANT

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay

(name of person to be arrested)

who is accused of an offense or violation based on the following document filed with the court:

- ☐ Indictment ☐ Superseding Indictment ☐ Information ☐ Superseding Information ☐ Complaint
☐ Probation Violation Petition ☐ Supervised Release Violation Petition ☐ Violation Notice ☐ Order of the Court

This offense is briefly described as follows:

Date: _____

Issuing officer's signature

City and state: _____

Printed name and title

Return

This warrant was received on (date) _____, and the person was arrested on (date) _____
at (city and state) _____.

Date: _____

Arresting officer's signature

Printed name and title



JUDICIAL SEARCH WARRANTS

To be valid, ICE's search warrant must:

- Be signed by a judge.
- Correctly identify the place to be searched, including your business's address and items to be seized, if any.
- Contain an issuance and expiration date.

You may examine the warrant to determine whether everything is filled out properly. You may also want to double check to ensure it has not expired.

If the warrant is valid, it authorizes ICE to enter the non-public areas of your business.

If the warrant does not appear to be valid, you may refuse ICE entry to your business. If ICE agents enter anyway, you should continue to verbally refuse consent and document their actions, but do not obstruct their entry.

AO 93 (Rev. 11/13) Search and Seizure Warrant

UNITED STATES DISTRICT COURT

for the

In the Matter of the Search of
*(Briefly describe the property to be searched
or identify the person by name and address)*

)
)
)
)
)
)

Case No. _____

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

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 _____ District of _____
(identify the person or describe the property to be searched and give its location):

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal *(identify the person or describe the property to be seized):*

YOU ARE COMMANDED to execute this warrant on or before _____ *(not to exceed 14 days)*

☐ in the daytime 6:00 a.m. to 10:00 p.m. ☐ at any time in the day or night because good 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)

☐ Pursuant to 18 U.S.C. § 3103a(b), 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: _____

Judge's signature

City and state: _____

Printed name and title

Appendix C

RAPID RESPONSE NETWORKS

NATIONAL

United We Dream - 844.363.1423
National Korean American Service & Education Consortium - 844.500.3222

REGIONAL

Alabama
Montgomery - Southern Poverty Law Center - 800.591.3656

Arizona
Phoenix - United Farm Workers Foundation - 877.881.8281

California
San Francisco - San Francisco Immigrant Legal & Education Network (SFILN) - 415.200.1548
Alameda County - Alameda County Immigration Legal & Education Partnership (ACILEP) - 510.241.4011
Los Angeles - Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA) - 888.624.4752
Central Valley (Monterey, Fresno, Tulare, and Kern Counties) - United Farm Workers Foundation - 877.881.8281

Georgia
Atlanta - Asian Americans Advancing Justice - 404.890.5655
Atlanta - Georgia Latino Alliance for Human Rights - 770.454.5232

Illinois
Chicago - Illinois Coalition for Immigrant & Refugee Rights - 855.435.7693

Maryland
Maryland - CASA de Maryland - 301.431.4185

New York
New York - Immigrant Defense Project - 212.725.6422
Long Island - Long Island Dream Act Coalition - 516.387.2043

Pennsylvania
Pennsylvania - CASA - 301.431.4185
Philadelphia - New Sanctuary Movement of Philadelphia - 267.333.9530 (Spanish), 267.345.5248 (Indonesian)

Texas
Austin - Linea de Defensa Comunitaria - 512.270.1515

Washington
San Juan County - San Juan County Immigrant Protection Group - 360.376.7101, 206.365.2225

Virginia
Northern Virginia - CASA - 301.431.4185