

# Workplace Enforcement and Immigration:

## The Evolution of an

## Annual FBA Program in Chicago

BY MARGARET H. MCCORMICK

U.S. Department of Justice  
Immigration and Naturalization Service

ON: 03 No. 1115-0136  
**Employment Eligibility Verification**

Please read instructions carefully before completing this form. The instructions must be available during completion of this form. **ANTI-DISCRIMINATION NOTICE:** It is illegal to discriminate against work eligible individuals. Employers CANNOT specify which document(s) they will accept from an employee. The refusal to hire an individual because of a future expiration date may also constitute illegal discrimination.

**Section 1. Employee Information and Verification.** To be completed and signed by employee at the time employment begins.

Print Name: Last First Middle Initial Maiden Name

Address (Street Name and Number) Apt. # Date of Birth (month/day/year)

City State Zip Code Social Security #

I am aware that federal law provides for imprisonment and/or fines for false statements or use of false documents in connection with the completion of this form.

I attest, under penalty of perjury, that I am (check one of the following):  
 A citizen or national of the United States  
 A Lawful Permanent Resident (Alien # A \_\_\_\_\_)  
 An alien authorized to work until \_\_\_\_/\_\_\_\_/\_\_\_\_ (Alien # or Admission # \_\_\_\_\_) Date (month/day/year)

Employee's Signature \_\_\_\_\_

**Preparer and/or Translator Certification.** (To be completed and signed if Section 1 is prepared by a person other than the employee.) I attest, under penalty of perjury, that I have assisted in the completion of this form and that to the best of my knowledge the information is true and correct.

Preparer's/Translator's Signature \_\_\_\_\_ Print Name \_\_\_\_\_  
Address (Street Name and Number, City, State, Zip Code) \_\_\_\_\_ Date (month/day/year) \_\_\_\_\_

**Section 2. Employer Review and Verification.** To be completed and signed by employer. Examine one document from List A OR examine one document from List B and one from List C, as listed on the reverse of this form, and record the title, number and expiration date, if any, of the document(s).

List A	OR	List B	AND	List C
Document title: _____		_____		_____
Issuing authority: _____		_____		_____
Document #: _____		_____		_____
Expiration Date (if any): ____/____/____		____/____/____		____/____/____
Document #: _____		_____		_____
Expiration Date (if any): ____/____/____		____/____/____		____/____/____

**CERTIFICATION - I attest, under penalty of perjury, that I have examined the document(s) presented by the above-named employee, that the above-listed document(s) appear to be genuine and to relate to the employee named, that the employee began employment on (month/day/year) \_\_\_\_/\_\_\_\_/\_\_\_\_, and that to the best of my knowledge the employee is eligible to work in the United States. (State employment agencies may omit the date the employee began employment.)**

Signature of Employer or Authorized Representative \_\_\_\_\_ Print Name \_\_\_\_\_ Title \_\_\_\_\_  
Business or Organization Name \_\_\_\_\_ Address (Street Name and Number, City, State, Zip Code) \_\_\_\_\_ Date (month/day/year) \_\_\_\_\_

**Section 3. Updating and Reverification.** To be completed and signed by employer.

A. New Name (if applicable) \_\_\_\_\_ B. Date of rehire (month/day/year) (if applicable) \_\_\_\_\_

C. If employee's previous grant of work authorization has expired, provide the information below for the document that establishes current employment eligibility:  
Document Title: \_\_\_\_\_ Document #: \_\_\_\_\_ Expiration Date (if any): \_\_\_\_/\_\_\_\_/\_\_\_\_

I attest, under penalty of perjury, that to the best of my knowledge, this employee is eligible to work in the United States, and if the employee presented document(s), the document(s) I have examined appear to be genuine and to relate to the individual.

Signature of Employer or Authorized Representative \_\_\_\_\_ Date (month/day/year) \_\_\_\_\_

Form I-9 (Rev. 11-21-19) (N) Page 2

An investigative report entitled “Illegal Aliens: Who Left the Door Open?” was published in *Time* on March 30, 2006.<sup>1</sup> Under a subheadline “Corporate America Thrives on Illegals,” the authors chronicled the failure of the government to enforce sanctions against employers who do not comply with immigration law requirements—from employers who do not properly verify employees’ work authorization status to those who knowingly hire unauthorized work-

ers. It was an incendiary article, pointing out that, rather than becoming more secure since Sept. 11, U.S. borders were growing even more porous. When the article was first published, not many people were thinking about workplace enforcement of immigration laws. Very few attorneys were counseling employers about sanctions because the government had virtually stopped investigating employers. Coincidentally, this report was released just as the Chicago Chapter of the Federal Bar Association was planning to establish an annual program dealing with enforcement of immigration laws in the workplace.

### Erratic Enforcement of Employer Sanctions Under the Immigration Reform and Control Act

The Immigration Reform and Control Act (IRCA), which was passed in 1986, was the first law that required employers to verify the employment authorization of any newly hired employee. Prior to the IRCA, the only consequence for employing a worker who was not authorized to work would have been against the worker, with deportation the likely punishment. There were no provisions in place for penalizing employers who violated the law. But once it was implemented, the IRCA coupled a vast legalization program with new penalties, both civil and criminal, against employers who employ unauthorized workers. Employment Eligibility Verification, required by the IRCA, is documented on Form I-9,<sup>2</sup> which is completed by a representative of the employer and by the new employee within three days of being hired.

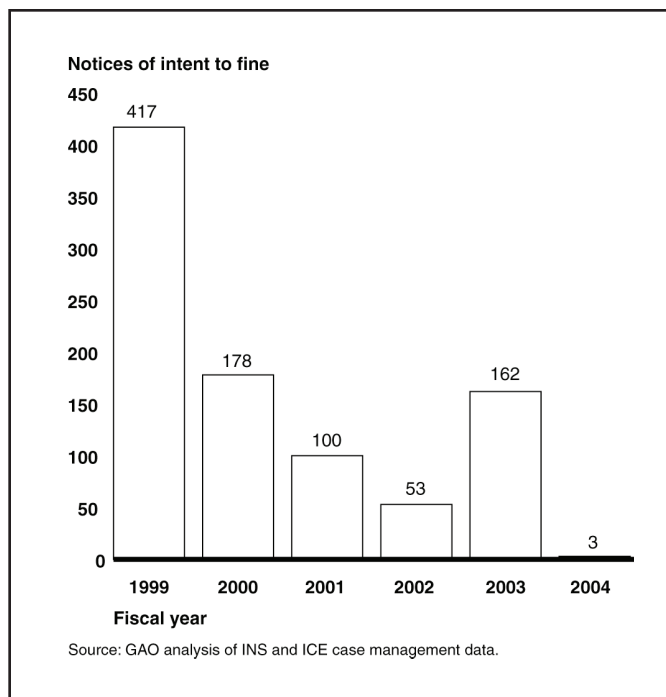
In the early 1990s, after an education period, enforcement of employer sanctions began. Most actions taken by the Immigration and Naturalization Service (INS) during that time were directed toward randomly selected employers, and the penalties were generally fines. Some employers perceived those penalties as the cost of doing business. But, in 1998, the INS shifted its strategy to target industries that showed a high incidence of violating the law and to pursue employers who were often flagrantly breaking not only immigration laws but also labor and safety laws.

The INS initiated “Operation Vanguard” to focus on the meatpacking industry and virtually stopped conducting random audits. In 1999, after a review of thousands of employee records at meatpacking plants, the INS found that, within the industry, 17 percent of the I-9 forms had discrepancies, indicating that a significant number of employees may have been unauthorized to work.<sup>3</sup> Workers were asked to clarify their status before the INS interviewed them during visits to the plant, and many of the workers quit before talking to the government’s agents. Before long, Nebraska’s governor complained that the INS was slowing down slaughter lines during the peak of the season. He appointed a task force to study the statewide effects of the INS’s activities. In October 2000, the task force recommended against resuming the program and ultimately, Operation Vanguard was abandoned because of the intense economic impact it had on the meatpacking industry.

In the wake of Sept. 11, many changes were introduced, including the complete dismantling of the INS and the establishment of the enormous Department of Homeland

Security (DHS). But there was no increase in the enforcement of employer sanctions. In fact, the record shows quite the opposite. The testimony of Richard Stana, director for homeland security and justice for the U.S. Government Accountability Office, delivered a critique to Congress on enforcement of immigration laws at the worksite; his testimony underscored the extraordinarily lax enforcement of the provision in the law that deals with employer sanctions. In FY2004, a year and a half after the DHS began its operations, enforcement actions were at a record low, with just three Notices of Intent to Fine violating employers levied during the entire year.<sup>4</sup>

**Figure 1. Number of Notices of Intent to Fine Employers for Violating Immigration Laws, 1999–2004**



### Establishment of an Annual FBA Workplace Enforcement Program in Chicago

In 2006, the FBA’s Chicago Chapter recognized the significance of the problem of illegal immigration—particularly, employment of unauthorized immigrants—in the United States at a time when it was not a focus of continuing legal education programming in most other places. Because of the variety and scope of the legal issues involved, the FBA is in a unique position to address this extremely volatile subject. The FBA, whose membership consists of attorneys involved in many relevant areas of federal law—including immigration, criminal, employment and labor, tax, and Social Security law—can bring to the table lawyers who counsel, defend, prosecute, and adjudicate cases involving all these issues. The complexity of issues, the implications for our society and for the security of our country, and the crossover into multiple areas of law all make the FBA the ideal bar association to examine the issues from different perspectives. In spring 2006, the Chicago Chapter’s Board

approved a plan for the chapter to present annual daylong events in Chicago to explore the issue of workplace enforcement of immigration law. We did not expect to attract a huge audience at the outset, but we were sure it would be possible to build a following over time.

### Implications for Labor and Employment Law

The first program was held at Northwestern University Law School in November 2006. The primary focus of the first program, labor and employment law and unauthorized workers, addressed the 2002 Supreme Court decision in *Hoffman Plastic Compounds Inc. v. NLRB*, 535 U.S. 137 (2002). The Court’s ruling in this case was the beginning of a trend to treat unlawful workers differently from the way authorized workers were treated. In that decision, the Supreme Court found that, in the case of an unauthorized worker who had been harmed, the National Labor Relations Board was precluded from ordering an employer to pay back pay even after a clear determination had been made that the employer had violated the National Labor Relations Act. As stated by Chief Justice Rehnquist, “We therefore conclude that allowing the Board to award back pay to illegal aliens would unduly trench upon explicit statutory prohibitions critical to federal immigration policy, as expressed in IRCA. It would encourage the successful evasion of apprehension by immigration authorities, condone prior violations of the immigration laws, and encourage future violations.” *Id.* at 151–52.

During the program, speakers explored the implications of treating unauthorized workers as ineligible for protection provided by labor laws because of their status. The program included a review of cases involving other areas of law, such as cases in which unauthorized workers were hurt on the job. Prior to *Hoffman Plastics*, as a way of ensuring a safe and fair worksite, labor law usually provided protection to workers regardless of their status. If the unlawful worker was not protected, an employer violating labor laws could avoid labor law penalties because of the status of the worker. Ironically, under *Hoffman Plastics*, the unscrupulous employer has an incentive to employ unauthorized workers, especially if there is little or no enforcement of the immigration laws.

### High-Stakes Criminal Prosecutions

A highlight of the second annual FBA Workplace Enforcement and Immigration conference was a panel presentation on the criminal prosecution of Tyson Foods in Chattanooga, Tenn. The report published in *Time* referred to above included a transcript of a secretly recorded conversation between a Tyson Foods manager and a federal undercover agent posing as an alien smuggler taking orders for illegal workers during the government’s multiyear investigation that was conducted for this prosecution. The Chicago Chapter was fortunate to have the lead prosecutor from Chattanooga, John MacCoon, and one of Tyson’s defense lawyers, Frank Volpe, from Sidley Austin, on the panel to discuss the details of the case. During the trial, the government claimed that Tyson Foods actively recruited and hired illegal workers to keep wages low and to make

sure that the company had enough workers. The company and three high-level managers were charged with conspiracy to smuggle undocumented workers to work on its production lines. Two other Tyson managers accepted plea bargains and appeared as witnesses for the government at trial. Another manager was charged, but he committed suicide just after he was indicted.

If the government succeeded, it planned to use a forfeiture claim to seize more than \$100 million from Tyson Foods. If Tyson was found guilty, in addition to any money that the government seized, the company would lose all government contracts and the managers would face significant jail time. But, on March 26, 2003, a federal jury acquitted Tyson Foods and the three managers of all charges in the case.<sup>5</sup>

### **Failed Legislative Reform Efforts and Involvement of the Social Security Administration**

Between 2005 and 2007, several efforts to pass comprehensive immigration reform failed. The last major effort—the Secure Borders, Economic Opportunity and Immigration Reform Act of 2007—would have, among other things, provided legal status and a path to citizenship for the millions of undocumented immigrants in the United States. President George W. Bush strongly supported this bill, and, in March 2007, DHS Secretary Michael Chertoff testified “that the DHS is committed to the President’s vision of immigration reform based on five main pillars: (1) gaining effective control of the border; (2) building a robust interior enforcement program; (3) establishing a Temporary Worker Program (TWP); (4) bringing illegal aliens who are now in the U.S. out of the shadows; and (5) promoting assimilation of new immigrants into our society.”<sup>6</sup> When Congress failed to pass Comprehensive Immigration Reform, Secretary Chertoff vowed to use whatever tools were available to combat illegal immigration and employment of unauthorized workers in the United States.

In August 2007, the DHS issued the so-called No Match regulation, which outlined the obligations of an employer who received a No Match letter from the Social Security Administration (SSA) or a letter from the DHS indicating that there is a discrepancy between the agency’s records and the Form I-9 employment eligibility documents. A discrepancy in the records could occur for an innocent reason or because a fraudulent document was used to establish employment authorization.<sup>7</sup> The No Match regulation was tricky for the SSA, because the DHS issued the regulation based on correspondence sent out by the SSA.

That year, the Chicago Chapter was honored to have Patrick O’Carroll, the SSA’s inspector general, speak at our program about the functions of the SSA and its reluctance to play a role in enforcement of immigration laws. The SSA’s mission has nothing to do with enforcing immigration laws. The job of the SSA is to maintain a Social Security insurance fund and to collect the correct amount money from the right person and then to distribute funds to the proper person at the right time. The integrity of the SSA’s programs is related to DHS’s regulations—such as authentic identity and accurate numbers, which are obviously undermined when an individual’s social security number

is sold or stolen. But under the DHS’s No Match regulation, a letter sent out by the SSA regarding a social security number would trigger the possibility that the employer has constructive knowledge that a worker is not authorized to work, causing that employee to be dismissed. The big fear with the No Match regulation was that American citizens could lose their employment if they were unable to resolve a No Match situation at the SSA within the period of time required by the regulation. The regulation drew the SSA into a new enforcement role. Several organizations sued both the DHS and the SSA over the No Match rule, and the rule was eventually rescinded. Even before it was withdrawn, SSA stopped sending out No Match letters.

Beyond the No Match regulation, the DHS sought an important SSA resource to help enforce the immigration laws against unauthorized employment: the SSA database that had specific numbers associated with U.S. workers. The DHS continues to have access to the SSA database as part of the E-Verify program—an Internet-based voluntary system that is used to confirm a worker’s eligibility for employment by comparing information provided in the employee’s Form I-9, Employment Eligibility Verification form, with data found in DHS and SSA records. The program is being used more widely each year, particularly because its use is required for all government contractors and because a growing number of states have made it mandatory for companies within that state.<sup>8</sup>

### **Raid in Postville, Iowa**

The 2008 FBA Workplace Enforcement and Immigration program featured a panel that included Jane Kelly, the assistant federal public defender for the Northern and Southern Districts of Iowa; Erik Camayd-Freixas, a certified Spanish interpreter for federal courts; and Tom McQueen, a Chicago trial lawyer. The panelists revealed the riveting details of the largest workplace raid in U.S. history that took place at a kosher slaughterhouse in Postville, Iowa. On May 12, 2008, the DHS, in conjunction with the Department of Justice, arrested almost 400 workers and charged them with identity theft, document fraud, use of stolen social security numbers, and related offenses.

An essay by Erik Camayd-Freixas, published in the *New York Times*, provided a detailed account of the legal proceedings that ensued. In his article, the author described the makeshift court set up at the National Cattle Congress, a 60-acre cattle fairground that had been transformed into a court house and detention center:

Driven single-file in groups of 10, shackled at the wrists, waist and ankles, chains dragging as they shuffled through, the slaughterhouse workers were brought in for arraignment, sat and listened through headsets to the interpreted initial appearance, before marching out again to be bused to different county jails, only to make room for the next row of 10. They appeared to be uniformly no more than 5 ft. tall, mostly illiterate Guatemalan peasants with Mayan last names ... some in tears; others with faces of worry, fear, and embarrassment.<sup>9</sup>

In her presentation at the conference, Jane Kelly, the assistant federal defender, explained the “fast-tracking” system the government used in cooperation with the U.S. District Court for the Northern District of Iowa. The government charged the defendants with social security fraud and aggravated identity theft. The government offered a uniform plea agreement that dismissed the aggravated identity theft charge, which carried a mandatory sentence of a minimum of two years in prison, in exchange for a plea of guilty of social security fraud, which carried a five-month sentence; the plea bargain also included a stipulated order of removal under the Immigration and Nationality Act. Faced with the choice of five months in prison and deportation or six months in prison waiting for a trial that could lead to two years in prison and deportation, most defendants chose the plea agreement.

Within four days, most of these workers submitted guilty pleas and were sentenced to five months in prison, which they served, followed by deportation. This was a dramatic example of a movement to criminalize economic migrants coming to the United States for work, both in the media and in the government at federal, state, and local levels. Only five of the 390 workers who were originally arrested had any prior criminal record, yet all were treated as criminals, with very few due process rights being afforded.

### **RICO and Immigration**

Howard Foster, a Chicago lawyer, was featured in one of our programs because of his novel use of the Racketeer Influenced and Corrupt Organizations (RICO) Act in private actions against employers. Foster has made a name for himself in RICO civil class actions against employers alleged to have hired unauthorized workers. RICO provides for criminal penalties and a civil cause of action for acts performed as part of an ongoing criminal organization. Because the civil RICO statute allows private citizens to sue for triple damages, an employer has significant exposure to substantial penalties. The basis of the RICO claim in the immigration arena is that alleged hiring practices depress wages for legal American workers.

In 2006, Foster filed a class action suit, *Mohawk Indus. Inc. v. United States*, 547 U.S. 516 (2006), in which the plaintiffs were U.S. workers at Mohawk. In order to establish a federal civil RICO violation, the plaintiffs had to prove conduct of an enterprise through a pattern of racketeering activity. The plaintiffs accused Mohawk of directing an enterprise engaged in three types of criminal acts under the immigration laws: (1) knowingly hiring at least 10 workers with actual knowledge that the individuals were not authorized; (2) concealing, harboring, or shielding from protection aliens who had illegally entered the United States; and (3) encouraging aliens to enter or reside in the United States knowing they were or would be violating the law in doing so. The alleged common purpose of the criminal enterprise was to provide illegal workers to Mohawk so that the company could reduce its labor costs and increase business for the recruiters. Mohawk employees who were authorized workers were found to have standing to sue for injuries caused by the violations of immigration law. The

case went all the way to the U.S. Supreme Court, where it was dismissed and remanded to the Eleventh Circuit Court of Appeals. The litigants later reportedly settled for \$18 million.<sup>10</sup>

### **Federal Pre-emption Issues: State and Local Initiatives**

A very important trend in the development of U.S. immigration policy over the past several years is the proliferation of state and local laws and ordinances barring immigrants who are illegal residents from working, obtaining housing, using public benefits, or even entering into contracts. Although the U.S. Congress has repeatedly failed to pass comprehensive immigration reform, state and local governments have increasingly responded with immigration measures of their own. Probably the most famous is the Arizona law, Support Our Law Enforcement and Safe Neighborhoods Act, known as SB1070,<sup>11</sup> which was signed by Gov. Jan Brewer in April 2010.

SB1070 requires Arizona’s state and local law enforcement officials to inquire about the immigration status of an individual who is stopped lawfully or arrested when there is reasonable suspicion that the individual is an illegal immigrant. The law makes it a misdemeanor for immigrants to fail to carry proper immigration documents. It mandates the impoundment of any vehicle used to transport an unauthorized immigrant and mandates that an officer may not release anyone from custody until his or her immigration status has been verified. SB1070 prohibits cities, towns, and counties in the state from having any policy in place that limits the investigation of violations of federal immigration laws and allows private citizens to sue state law enforcement agencies if the citizens believe law enforcement is not enforcing federal immigration laws. In addition, the law makes it illegal for unauthorized immigrants to solicit work in any public space, and it authorizes local police to arrest any person they believe is “removable from the United States” without a warrant.

The Chicago Chapter’s Workplace Enforcement and Immigration program held in 2010 included an extensive panel discussion on these initiatives and gave special consideration to the Arizona law. The U.S. Department of Justice filed a lawsuit challenging Arizona’s immigration law, claiming that it interferes with federal immigration responsibilities. The U.S. Chamber of Commerce also filed a lawsuit against the state, arguing that federal law prohibits Arizona and other states from making the use of E-Verify mandatory. *Chamber of Commerce v. Whiting*, 191 S. Ct. 1968 (2011).

In May 2011, the U.S. Supreme Court decided the *Chamber of Commerce* case and upheld the mandatory E-verify requirements in the Arizona law. In December 2011, the Supreme Court granted certiorari in *United States v. Arizona*, 641 F.3d 339 (9th Cir. 2011).<sup>12</sup> A consequence of the failure of Congress to pass a comprehensive immigration law is the growing number of states and municipalities that have chosen to pass laws to deal with the problem, creating a confusing patchwork of rules from one state to another.

## ICE Audits Under the Obama Administration

Since we began our annual Workplace Enforcement and Immigration program in 2006, there has been a steady shift toward audits of employees' I-9 forms and administrative fines, most prominently during the Obama administration. It is far more common for an employer to be notified by U.S. Immigration Customs Enforcement (ICE)—the enforcement arm of the DHS—that the company's I-9 forms will be inspected. Most employers who are served with a Notice of Inspection (NOI) will contact counsel, and as more and more employers receive NOIs, more and more lawyers are receiving these calls.

The Obama administration has specifically declared that it is more interested in the employer than the unauthorized workers. In FY2010, ICE conducted more than 2,200 audits of I-9 forms—up from approximately 1,400 audits conducted in FY2009—and, as of July 2011, ICE had conducted 2,300 audits, surpassing the number conducted in 2010. As the government becomes more proficient in conducting these audits and more effective at assessing fines and other penalties against employers, there is no question that the number of these audits will increase.

Compliance has become a major interest, particularly for large employers. Form I-9 itself is arguably deceptive; when one fills out a single page, the form appears straightforward enough. But the government provides an instruction manual that is 65 pages long,<sup>13</sup> and as companies conduct self-audits, they are learning of the many pitfalls in maintaining I-9 compliance. Fortunately, we will welcome

all interested parties to Chicago each fall to learn the latest on workplace enforcement activities.

## Construction of the Chicago Chapter's Annual Program on Workplace Enforcement and Immigration

The sixth annual Workplace Enforcement and Immigration program presented by the Chicago Chapter of the FBA was held at the law firm of Sidley Austin on October 25, 2011. A number of factors have contributed to the success of this program. First, Marketa Lindt, who has spoken at every conference, co-chaired the program for the past two years. Lindt leads Sidley Austin's Form I-9 compliance practice, counseling companies, defending against government workplace enforcement actions, and developing policies to avoid employer sanctions. She is the chair the Immigration Subsection on Employer Sanctions of the FBA Chicago Chapter. We are extremely pleased and fortunate that Sidley Austin has been willing to host the program for the past two years, and all indications suggest that the firm will continue to do so.

Second, we have had a sponsor for the program every year for the six years that it has been presented. Each year Law Logix, a vendor with expertise in immigration case management, electronic Form I-9 maintenance, and E-Verify, has provided the program with flash drives for written materials, has underwritten the cost of the food served, and has provided marketing assistance. Law Logix also hosts the chapter's website, which makes it possible for parties to register for the program online.

## What to Do When ICE Arrives at Your Client's Doorstep

BY PATRICIA LUNA

The mere idea of a visit by ICE agents can strike a paralyzing chord of fear in some clients. Other clients may consider the possibility of an ICE investigation similar to the likelihood of an asteroid hitting the earth and they dismiss it entirely. As counsel, you might feel pressure from these clients to let them take the "it won't happen to me" approach. However, ICE has significantly ramped up its Form I-9 audits all across the country. What is particularly unsettling for clients is that these investigations begin without prior notice. ICE can come knocking on your client's door seemingly out of the blue with a warrant in hand or with a notice to inspect records.

Now more than ever, it is more likely than not that ICE will visit one of your clients. If ICE agents should come calling at your client's place of business, follow these basic action steps to help get your clients through the shock of the initial visit. This summary will give you a guidepost of the actions you will need to undertake to respond to a Form I-9 audit by ICE.

- Advise your client to be calm and professional in all interactions with the ICE special agent.
- Instruct your client to call you as soon as the ICE agent arrives. If it is geographically feasible to go to the client's worksite, go there if only to introduce yourself to the ICE agent and create a rapport with him or her.
- If you are unable to go to the client's worksite, instruct your client to ask for the ICE special agent's name and contact information so that you may contact the agent with your questions regarding ICE's request for an inspection.
- Instruct the client to take notes of all the ICE agent's questions and comments as well as the client's responses.
- Advise the client to refrain from misspeaking! If the client does not know the answer to a question, he or she can offer to obtain accurate information for ICE.
- If a warrant is issued, the client should remain with the ICE special agent at all times while ICE inspects the premises. The client should take care to record

Third, we attract speakers from around the country. Each year, we have a dinner with the speakers the night before the conference to allow them to interact and have discussions on this extremely important issue. Many members of the audience are repeat attendees. We have attracted immigration and employment lawyers, corporate counsel, and human resources professionals, ICE attorneys, SSA officials, foreign consuls, and students.

## Conclusion

The Immigration Reform and Control Act has been the law for more than 25 years, but it really has been a short time since the government has attempted systematic enforcement of the employer sanctions provisions of the law. But enforcement of employer sanctions is but a prelude to the country's facing up to the real issue of illegal immigration. People come to the United States today for the same reasons they came here throughout our history; in earlier days we did not call them "illegal aliens," preferring, instead, to refer to the "huddled masses yearning to breathe free"—even though they were often greeted with the same level of skepticism. Unlawful employment occurs in many industries because employers cannot find suitable workers but, of course, it also occurs because the "illegal" class of workers is easier to exploit. The United States shares a border with a country that has many residents who have for decades relied on remittances received from relatives in the United States. Some people say we have an immigration problem because too many people want to come to the United States. But there is also the possibility that we

would have a much bigger problem if people stop wanting to come to the United States.

The issues are profound. It is critical to find solutions to the problem, and they are slow to emerge. We can observe the problems from a variety of lenses: from the lens of the investigator and prosecutor who is obliged to enforce the law; from the lens of the defense counsel, trying to make sure that a client is given due process; from the lens of employers, struggling to comply with the law or perhaps struggling to find people to work for them or struggling to deal with employees who decide to bypass the law; from the lens of the immigrant workers, who may themselves be caught up in criminal activities for their own profit or, perhaps more often, may simply be illegally in the United States, fleeing poverty and looking for a better life; and from the lens of the government agencies trying to balance their missions from the SSA, the DHS, the Department of Justice, the Department of Labor, the Equal Employment Opportunity Commission, and Office of Special Counsel. Because of the diversity of FBA membership and the expertise of our members, we can offer perspectives that take so many aspects into account. The Chicago Chapter of the FBA is pleased to have created a forum where these issues can continue to be examined in the years to come. **TFL**

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any items seized and identify all employees who are interrogated.

- If ICE does not have a warrant, the agent may not conduct a warrantless search of the company's premises.
- If ICE gives the company a Notice of Inspection asking to inspect the company's Form I-9 records and supporting documentation, ICE will generally give the company three days to prepare the records for review by the ICE agent. However, you may ask the ICE agent for additional time to prepare your client's Form I-9 records and supporting documentation if necessary.
- Before you start preparing your client's Form I-9 records for ICE review, call experienced immigration counsel, who can guide you through the process.
- When you are preparing the client's Form I-9 records and supporting documentation—such as payroll records, Social Security information, and the employer's quarterly tax statements (IRS Form 941)—take the opportunity to review all documents for any inconsistencies or deficiencies. During your internal audit, you should also correct all known defects on your client's Form I-9 records prior to handing them over to ICE.

- Compare your client's Form I-9 records to the company's payroll records to make sure a Form I-9 exists for each employee in the company.
- Do not destroy Form I-9 records, particularly those with erroneous information. Instead, make corrections on your client's existing Form I-9 records. Using a different color pen like green or red, mark a line through the erroneous information so that you can still discern what was written underneath. Once you have drawn a line through inaccurate information, neatly write the correct information nearby and directly on the Form I-9 record; include the date, your initials, and the words "internal audit." In this way, the ICE special agent will see that the company is not trying to hide its attempts to correct Form I-9 errors.
- Keep a record and make copies of all documentation provided to ICE.
- Provide the requested documentation to ICE in a timely manner.
- Discuss the results of the Form I-9 internal audit with the client and prepare the client for ICE's possible responses to submitted documentation, including potential fines.