

Rights of Immigrants in a Workplace Raid

A Resource for Communities
Before, During, and After a Raid



How to use this handbook

Police officers and immigration agents sometimes enter a workplace to investigate potential violations of the law. This handbook addresses what rights you have during a workplace raid in Arizona. It also provides general information about what workers, families, and communities can do to prepare for a raid, and steps they can take after a raid has taken place.

The rights described in this handbook apply to every person in the United States—regardless of immigration status. These rights may come from one or more of the following sources:

U.S. Constitution and the Bill of Rights: The highest law in our land is the U.S. Constitution, which has amendments known as the Bill of Rights. For more information, visit <http://www.law.cornell.edu/constitution>.

Arizona Constitution and Arizona Revised Statutes (Ariz. Rev. Stat.): These laws apply to persons who live in or travel in Arizona. Visit <http://www.azleg.gov>.

Immigration and Nationality Act (INA) and Title 8 of the Code of Federal Regulations (CFR): These are federal immigration laws that determine who may enter the United States, how long they may stay, and when they must leave. Visit <http://www.uscis.gov> and click on “Laws & Regulations.”

Courts: Some people who feel that their rights have been violated take their case to court. A case may be resolved in a state or federal court, or it may go all the way to the highest court, the U.S. Supreme Court. The decisions of a court become “law” and can have the same effect as laws made by the legislature.

This information is not legal advice. If you have been questioned, detained, or arrested by law enforcement, or believe that your rights have been violated, you should contact an attorney to get advice about your individual circumstances.

I. Background on Workplace Raids in Arizona

Who may enforce immigration law in Arizona?

The regulation of our borders and of immigrants is generally a matter of federal law. Therefore, immigration laws may be enforced by federal authorities, such as Immigrations and Customs Enforcement (“ICE”), Customs and Border Patrol (“CBP”) or Federal Bureau of Investigation (“FBI”) agents.

Under Section 287(g) of the Immigration and Nationality Act, ICE may also enter into memoranda of agreement (MOA) with state and local law enforcement agencies to share some of the responsibility for enforcing immigration law. Under these agreements, state and local authorities may receive training to question and detain non-U.S. citizens whom they encounter in their regular duties that they believe are in the country unlawfully. Therefore, you may also see some sheriff’s deputies, police and corrections officers enforcing immigration law. Agencies that have MOAs as of September 2008 include:

- Maricopa County Sheriff’s Office
- Phoenix Police Department
- Pima County Sheriff’s Office
- Pinal County Sheriff’s Office
- Yavapai County Sheriff’s Office
- Arizona Department of Public Safety
- Arizona Department of Corrections

An officer who has not been authorized by an MOA to perform immigration functions may contact federal authorities if they suspect you of being in the country unlawfully. However, they may not detain you for longer than it takes to resolve the state law issue unless federal authorities issue an immigration “detainer” asking that you be held until ICE can take custody.

Are there limits on what state and local authorities can do under 287(g) agreements?

Yes. Even with a 287(g) agreement, police cannot randomly ask you for your immigration status. They are only supposed to use their authority if you are suspected of committing a state crime that is more than a traffic offense. However, state and local authorities sometimes ignore this rule and investigate immigration status regardless of the circumstances. In any event, police acting under 287(g) agreements are bound by federal civil rights laws and may not single you out for questioning on the basis of your race or ethnicity.

What violations other than unlawful immigration status might authorities investigate during a workplace raid?

A federal law called the “employer sanctions” law prohibits employers from knowingly hiring or employing non-U.S. citizens who are not authorized to work in the United States. Employers are supposed to check the documentation of each new hire except independent contractors and casual domestic workers using a form called the “I-9.”

Arizona also has its own version of an employer sanctions law, which applies to new hires made after December 31, 2007. That law allows the state to suspend or take away business licenses of employers who are found to have knowingly hired or employed unauthorized immigrants. It requires all employers to sign up for a program called “E-Verify,” which checks your information against the Social Security Administration and Department of Homeland Security databases.

Arizona law also makes it a crime to submit fake documents or use the identity of another person (real or fictitious) to obtain employment.

What is a workplace raid?

A raid is a term used to describe enforcement actions by immigration agents or police against a large number of persons at one time. During a workplace raid, federal immigration agents may enter your workplace without advanced warning to investigate violations of immigration law, including the employer sanctions law. They may seize documents and

interrogate workers about their immigration status. Since the state employer sanctions law went into effect, the Maricopa County Sheriff's Office has also begun to conduct workplace raids to investigate potential violations by businesses and reports of identity theft by workers. Sheriff's deputies may enter without warning, seize documents, and interrogate workers much like immigration agents.

In addition to workplace raids, immigration agents or police may come to your home, or stop and detain you on the street or in your car. You can contact the ACLU or visit <http://www.aclu.org/kyr/> to get more information about your rights in those situations.

II. Before a Raid

What can I do to prepare for a workplace raid?

Know your rights. It is important to know that you have rights regardless of immigration status. Learn about your rights and share the information with others.

Talk to your co-workers. Tell them about the possibility of a raid and that they should remain calm and not run. Tell them about their right to remain silent. During a raid, authorities may ask workers to separate themselves into groups based on whether they are U.S. citizens or not. Ask your co-workers if they are willing to make a collective decision to exercise their right to remain silent in this case, regardless of their immigration status. If you belong to a union, contact your union and find out if they can help.

Plan for your family. If you have children or care for elderly relatives, make arrangements in advance for someone to take care of them if you are detained. Give someone an extra set of keys. Make sure other people know about this plan. Find someone who you trust to make decisions for you if you are detained. For example, you can sign something called a "power of attorney" that will allow this person to withdraw money for you or pay your bills.

Find an attorney. If you are arrested during a workplace raid, you may be charged with violating federal or state criminal law in addition to immigration law. Therefore, it may be a good idea to find both an immigration attorney who specializes in deportation defense and a criminal defense attorney you can trust. Memorize the name and phone number of attorneys and post this information near the telephone so that your family can call someone if you are detained. Be careful to avoid notaries or other persons claiming to be lawyers who take immigrants' money without providing services of any value.

Do I have a constitutional right to an attorney?

You always have a right to consult your attorney and have that attorney represent you. However, in a criminal proceeding, if you cannot afford an attorney, the government will provide one for you. In an immigration proceeding, you will be responsible for hiring an attorney, or you may represent yourself.

Know where important documents are. Collect important documents such as birth certificates, marriage certificates, court papers, and passports and place them in a secure location that your family can access easily. Give a copy of all papers that have been filed with immigration to a friend or family member who you trust. If you have an A# (Alien Number), make sure your family has your A#. Make a list of all the lawyers who have ever represented you and their contact information.

III. During a Raid

Can agents or police enter my workplace without a warrant?

Immigration agents and police may enter your workplace if your employer grants them permission to enter or if your workplace is publicly accessible (e.g., the public areas of a restaurant or a reception area). If your employer does not permit them to enter, then the general rule is that they must have a warrant signed by a judge to enter a business. This is similar to a home raid, where you do not have to open

the door to any law enforcement officer unless he or she has a court warrant allowing them to search your home or arrest someone inside.

If the authorities enter your workplace, do not run; this gives an agent or officer a reason to arrest you. Stay calm and, if possible, walk away. Be aware that sometimes officers will block the doorway.

What if an agent or officer wants to question me?

Ask if you are free to go. If the officer says yes, you may leave. If the officer says no, you have the right to remain silent and ask to speak to a lawyer before answering any questions.

Can I be detained while the authorities search my workplace?

If the agents or police have a warrant to search the premises, they may ask you to stay in a particular area to ensure officer safety while the search is being carried out. However, if they use force, it must be reasonable under the circumstances. In addition, they may not hold you for the purpose of questioning you after they have completed the search unless they have probable cause to believe you have committed a crime.

Do I have to tell an agent or officer my name? Do I have to answer questions about whether I am a U.S. citizen, where I was born, or other questions about my immigration status?

If you are asked by a police officer who is investigating a crime for your name, and you refuse to provide it after the officer tells you that you are lawfully required to do so, you may be arrested and face a misdemeanor charge under Arizona law. To comply with the law, you must state your true first and last name. Be aware that providing your name can carry some risk if you are subject to deportation.

Regardless of whether you are questioned by a federal agent or state or local police, you have the right not to answer any other questions, including questions about your immigration status. It is usually better not to answer questions about where you were born or how you entered the country.

What if an agent or officer presses me for information or threatens me?

During a raid, it is natural to feel scared or intimidated. However, you should assert your right to remain silent and speak to a lawyer. Immigration law is very complicated, and a lawyer can advise you how to answer and help you avoid a problem. Remember that even if you have answered some questions, you can still decide that you do not want to answer any more questions.

If the agent or officer orders you to do something or threatens to use force, you should comply. Do not get into an argument with an officer, touch any officer, or physically interfere with their search or interrogation.

Do I have to show the agent or officer my immigration documents?

Certain categories of non-U.S. citizens who are 18 or older who have been issued immigration documents are required to carry them at all times. In general, if an immigration agent or officer insists on seeing your immigration documents, and you have a valid, unexpired document that verifies your legal status, you may want to show it to the officer. If you are arrested and have valid immigration documents somewhere else, ask someone to bring them to you.

If you say you are not a U.S. citizen and cannot prove that you are in the country legally, there is a good chance you will be arrested. At that point, you still have the right to remain silent.

If you do not have a valid immigration document, it is important that you **do not** show the officer fake documents. Do not lie or say you are a U.S. citizen if you are not. Also, do not carry papers from another country. The government can use all of this information against you.

What else might happen during a workplace raid?

Immigration agents or police may keep you on the premises for many hours until their investigation is complete. They may not allow you to use

the phone or give you anything to eat or drink. Some of these actions may violate your constitutional rights.

What should I do if my rights have been violated?

Try to note as much detail about the raid as possible, including officers' badge numbers, and encourage others to do so as well. You may contact the ACLU of Arizona to make a complaint.

IV. After a Raid

What rights do I have if I am arrested?

You have the right to **make a phone call** to your lawyer, family member, or union representative. Memorize the number you want to call if you only get one. Make sure that number is to a landline and not a cellular phone.

You have the right to **consult with your attorney** before answering any questions or signing any document. Try not to sign any documents without talking to your lawyer first.

If you are not a U.S. citizen, you have the right to **contact your consulate** and ask them to connect you with a lawyer or other help.

You have a right to have important documents and proceedings translated into a **language you can understand**.

Where will I be taken?

Most likely, you will first be taken to be booked at a local or county jail. If you are facing criminal charges (see below), you may be detained and denied the opportunity to ask for bail if the state court determines that there is probable cause to believe you entered or remained in the United States unlawfully.

If you are not facing criminal charges, but the authorities have reasonable grounds to believe that you are deportable, you may be held

in a local or county jail for up to a maximum of 48 hours (excluding weekends and holidays) on an immigration detainer. ICE is responsible for issuing detainers at the request of local law enforcement; however, sometimes police acting under 287(g) agreements will issue a detainer themselves. In any event, if a transfer to ICE custody does not take place within that time, then you should be released.

Can I be transferred?

Yes. A person who is initially held in a local jail may be transferred to a federal detention or other facility after a few days. Some detainees are transferred several times. Transfers may occur without notice to family members or lawyers.

Can I be charged on criminal grounds if I am arrested in a workplace raid?

Maybe. In addition to possible immigration violations, you may be charged on criminal grounds if the government has evidence that you used fake documents to work or misrepresented yourself as a U.S. citizen. See Ariz. Rev. Stat. §§ 13-2008, 13-2009; 18 U.S.C. §§ 911, 1015(e), 1546(a); 42 U.S.C. § 408(a) (7)(B).

Depending on your circumstances, you may also be subject to prosecution under other criminal laws that affect immigrants, for example, a state anti-smuggling law, Ariz. Rev. Stat. §§ 13-2319 (for agreeing with a coyote to “smuggle” yourself into the United States), or reentering the United States after having been previously deported. 8 U.S.C. § 1326.

If you are charged on any of these grounds, you will be placed in criminal proceedings before the commencement of immigration proceedings. Make sure to ask your lawyer about the effect that a conviction or a plea bargain could have on your immigration status.

Do I have the right to an immigration hearing?

Yes. In most cases only an immigration judge can order you deported. However, if you have an outstanding deportation order or agree to voluntary removal, you may be deported without a hearing.

Within 72 hours of your arrest or the end of your criminal proceedings, you should be given a document called a Notice to Appear (“NTA”) that contains the immigration charges against you. You will also be assigned an immigration officer. Write down the name and phone number of the officer assigned to your case. Remember not to sign the NTA or any other document. Even if you think that nothing can be done in your case, it is important that you do not waive any rights without first consulting with a lawyer.

Can I ask to be released while my immigration case is pending?

If you are detained by immigration, you may ask for a bond hearing before an immigration judge. Some persons who have prior deportation orders or who have been convicted of a crime may not be eligible; ask if you are not sure.

At a bond hearing, you will want to document factors that show you are not a “flight risk” (that you will appear for later hearings), such as having a fixed address, owning a home, having family ties including U.S. citizen children, having steady employment or attendance at school, being active in your church, or having insurance. It is helpful to have friends, family, employers and community leaders write letters on your behalf or come to a bond hearing to support you. However, persons without legal status should not go to court hearings. Do not lie to an immigration judge; this can hurt your chances of remaining in the country. If you are granted bond, make arrangements to have someone with legal status pay the bond.

What should I do if my family member or friend is detained?

To find out where someone is being held pending a state criminal proceeding, contact the sheriff’s office in the county where the raid took place. In Maricopa County, you can locate an inmate and find out general

information about the jails by calling (602) 876-0322. In Pima, call (520) 351-8111. In Yavapai, call (928) 567-7734 (Camp Verde). And in Coconino, call (928) 226-5200. If someone is being held awaiting a federal criminal proceeding, you should contact the Federal District Court where the raid took place at (602) 332-7200 (Phoenix), (520) 205-4200 (Tucson), (928) 774-2566 (Flagstaff), or (928) 329-4766 (Yuma).

To find out where someone is being detained by immigration, start by contacting the local ICE Office of Detention and Removal Operations at (602) 257-5900 and local ICE facilities (see list below). Be prepared to provide the full name and A# for the person. If you cannot get an answer, ask to speak with a supervisory officer or assistant field office director. Don't panic if you are not successful the first time. Most likely, you will be unable to locate the person until they have been in custody for 24 hours.

Florence Detention Center
3250 N. Pinal Parkway
Florence, Arizona 85232
Tel: (520) 868-5862

**Pinal County Adult Detention
Sheriff's Office**
971 Jason Lopez Circle
Florence, AZ 85232
Tel: (520) 866-5014

Eloy Detention Center
1705 E. Hanna Road
Eloy, AZ 85231
Tel: (520) 464-3000

It is possible that your family member or friend may be held at a county jail pending an immigration proceeding if the county has a contract with ICE to do so. In that case, you should contact the county (see above).

If your family member or friend calls from a jail or detention facility, they may have trouble reaching you; ask your telephone company to remove any blocks on your phone.

Before visiting the person, find out what the visitation restrictions and hours are. Individuals without legal status should not visit the jail or detention center.

Additional resources:

A list of free or low-cost immigration services providers is available at <http://www.usdoj.gov/eoir/probono/freelglchtAZ.htm>. You can find general information about legal services providers in your county by visiting <http://www.azlawhelp.org/>.

To check if someone is licensed to practice law, contact the bar association of the state where the person says they are licensed. If that state is Arizona, you can call (602) 340-7239. To check if a non-lawyer is authorized to represent you in immigration proceedings, visit <http://www.usdoj.gov/eoir/statspub/accreditedreproster.pdf>.

For information about the status of your immigration court case, call the EOIR 24-hour hotline at (800) 568-5157. For information about the status of a pending application, call US Citizenship and Immigration Services at (800) 375-5283.

For more information about I-9, E-Verify, and immigrant workers' rights, visit <http://www.nilc.org/immsemplymnt/ircaempverif/index.htm>.

REMEMBER:

- Do not run. Ask if you are free to leave.**
- Remain silent even if you are scared and intimidated.**
- Tell the officer that you want to speak to a lawyer.**
- You do not have to answer questions about your immigration status, where you were born, or how you entered the country.**
- Do not lie or give the officer fake documents.**
- Do not sign anything before consulting with a lawyer.**

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The American Civil Liberties Union of Arizona is the state's premier guardian of liberty, working daily in the courts, legislature and communities to defend and preserve individual rights and freedoms guaranteed to all by the Constitution and the laws of the United States and Arizona. The ACLU of Arizona is an affiliate of the ACLU with more than 500,000 members.

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