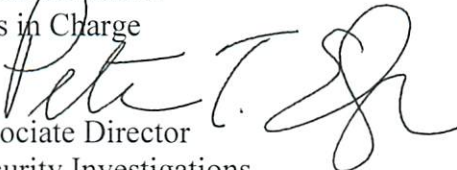




**U.S. Immigration
and Customs
Enforcement**

MAY 10 2016

MEMORANDUM FOR: Assistant Directors
Deputy Assistant Directors
Special Agents in Charge

FROM: Peter T. Edge 
Executive Associate Director
Homeland Security Investigations

SUBJECT: Guidance on Civil Inspections of the Employment Eligibility
Verification Form (Form I-9) During Labor Disputes

U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) respects the labor rights of workers, regardless of immigration status. The requirements outlined below guide HSI conduct during civil inspections of the employment eligibility verification form (Form I-9) at a business during a labor dispute and provide guidance for HSI civil investigations that may uncover labor or employment issues.

When information is received concerning the unauthorized employment of aliens, consideration should be given to whether the information is being provided for the purpose of interfering with a genuine labor organizing campaign or employment dispute between workers and the management or ownership of the business or organization concerning, but not limited to, the rights of employees to:

- form, join, or assist labor organizations or to exercise their rights not to do so;
- participate in collective bargaining or negotiation, or engage in protected concerted activities;
- be paid minimum legal wage, a promised or contracted wage, and overtime;
- receive family medical leave and employee benefits to which they are legally entitled;
- have a safe workplace and receive compensation for work related injuries;
- be free from unlawful discrimination; and
- be free from retaliation for seeking to enforce the above rights.

Prior to the initiation of a civil I-9 inspection, HSI will deconflict its investigation with the Department of Labor (DOL), National Labor Relations Board (NLRB), and Equal Employment Opportunity Commission (EEOC) pursuant to the December 7, 2011, *Revised Memorandum of Understanding between the Departments of Homeland Security and Labor Concerning Enforcement Activities at Worksites* ("MOU"), the May 6, 2016, *Addendum to that Revised Memorandum of Understanding* ("Addendum"), and any other required deconfliction processes.

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In the event that DOL, NLRB, or EEOC has an open and active investigation of a labor dispute, the procedures set forth in the MOU and the Addendum shall be followed.

In the absence of a DOL, NLRB, or EEOC investigation, when reasonable suspicion exists that an HSI I-9 inspection might involve HSI in a labor dispute, the inspection should proceed in accordance with the requirements of this memorandum.

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While it is appropriate to take into consideration whether or not an I-9 inspection interferes with employees' rights to form, join, or assist a labor organization, the mere existence or non-existence of a union should not be a consideration in determining whether or not to conduct an I-9 inspection.

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In those cases where HSI undertakes an I-9 inspection while a labor dispute is ongoing that leads to the detention of an alien for removal, the lead HSI special agent supervising the inspection shall, to the extent practicable, make available for interview to the appropriate agency any alien needed for the investigation or litigation of any labor/employment violation. Interviews will be allowed provided the interview is consistent with federal and state law, would not compromise an ongoing ICE investigation or prosecution, and is approved by the relevant U.S., state or local attorney's office (when applicable). Any arrangements for individuals to be so interviewed shall be at the expense of the labor/employment agency or private counsel seeking the interview and

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shall not unreasonably interfere with or delay removal proceedings. This should be done in coordination with ICE Enforcement and Removal Operations.

In taking civil enforcement action against unauthorized aliens, special agents are reminded to refer to all relevant existing policies, including policies related to treatment of victims and witnesses as well as DHS's civil immigration enforcement priorities.

For HSI WSE criminal investigations where a labor dispute may be ongoing, the HSI field office should consult with the U.S. Attorney's Office, the local Office of Chief Counsel and any relevant agencies involved prior to proceeding with the investigation.

This memorandum supersedes the Office of Investigations memorandum entitled *Guidance on Worksite Enforcement Investigations During Labor Disputes*, dated February 12, 2007, including its attachment entitled *Questioning Persons During Labor Disputes* (Section 14(h) of Chapter 33 of the Immigration and Naturalization Service (INS) Special Agent Field Manual (previously INS Operations Instruction 287.3a)).

Please forward the attached policy to all HSI personnel within your respective areas of responsibility and ensure that it is implemented immediately. Questions regarding this guidance should be directed to (b)(6) (7)(C), Deputy Assistant Director (202) 732- (b)(6) (7)(C) or (b)(6) (7)(C)@ice.dhs.gov.