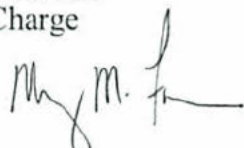




U.S. Immigration
and Customs
Enforcement

JUN 20 2008


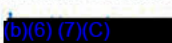
MEMORANDUM FOR: Assistant Directors
Deputy Assistant Directors
Special Agents in Charge

FROM: Marcy M. Forman 
Director

SUBJECT: Guide to Worksite Enforcement Investigations

The most effective strategy for reducing the magnet of employment is through criminal prosecution and the seizure of assets from those employers and business entities that utilize and profit from the labor of unauthorized aliens. (b) (7)(E)

(b) (7)(E)

Questions regarding this guide can be directed to Worksite Enforcement Unit Programs Section Chief (b)(6) (7)(C) at (202) 353- or at @dhs.gov.



U.S. Immigration and Customs Enforcement

Guide to Worksite Enforcement Investigations

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1 Introduction

1.1 Importance of Worksite Enforcement Investigations

U.S. Immigration and Customs Enforcement (ICE) plays a central role in implementing the interior enforcement strategy of the Department of Homeland Security (DHS). A core part of this strategy is to eliminate the magnet of illegal employment by targeting egregious employers, identity thieves, and aliens working at critical infrastructure sites. Within the Office of Investigations, Worksite Enforcement (WSE) investigations continue to be a priority of DHS and ICE. Strict enforcement of the law is necessary to protect the security of the U.S. and to ensure the integrity of our nation's workforce.

1.2 Purpose of Guide to Worksite Enforcement Investigations

(b) (7)(E)

(b) (7)(E) The guide will focus primarily on criminal investigations of egregious employers and other conspirators involved in illicit activities that encourage, enable or induce unauthorized aliens to enter or remain and work in the United States, as well as employers with a nexus to the nation's critical infrastructure who may be employing unauthorized aliens.

(b) (7)(E)

1.3 Focus of Worksite Enforcement Investigations

WSE cases are defined as the investigation of business entities suspected of violating the Immigration and Nationality Act (INA) and other statutes relating to the employment of illegal aliens, as well as a host of other crimes that facilitate or result from the unlawful employment of aliens (i.e. human trafficking, alien smuggling, document fraud, identity theft, money laundering, abuse/exploitation). (b) (7)(E)

(b) (7)(E)

(b) (7)(E) WSE should aggressively pursue criminal prosecution of known identity thieves and aliens who are present at critical infrastructure sites in order to have the greatest impact on national security, protecting the public, and eliminating the illegal employment magnet.

ICE believes criminal prosecutions, the seizure of assets, and meaningful civil penalties, upon employers and businesses that utilize and profit from the labor of undocumented aliens, is the most effective approach and has the greatest impact on WSE.

(b) (7) (E)

(b) (7) (E)

(b) (7)(E)

2 Brief History of Worksite Enforcement

Pre-1986

Prior to 1986, there were no laws related to the hiring of undocumented aliens. The Immigration and Naturalization Service (INS) thus did not have the authority to criminally prosecute or administratively fine employers who knowingly hired or continued to employ illegal aliens. As a result, unscrupulous employers used illegal aliens as a source of cheap labor, often subjecting these aliens to substandard wages or working conditions, and displacing United States citizens and lawful permanent resident aliens from the workplace.

2.1 Enactment of the Immigration Reform and Control Act

Congress took steps to address the rapid influx of undocumented aliens into the U.S. workforce by enacting the Immigration Reform and Control Act (IRCA) on November 6, 1986. IRCA was enacted to remove the “magnet” of employment attracting undocumented aliens by changing the hiring practices of employers to ensure that only those individuals authorized to reside and work in the United States were hired by these employers. Key provisions of IRCA called for the creation of the Employment Eligibility Verification Form (Form I-9)², and provided for criminal and civil penalties for employers who employ unauthorized aliens and/or fail to properly verify employment eligibility of workers. At the time IRCA was enacted, the INS set out to educate employers as to their responsibilities under the Act, and began to issue administrative warnings and fines for violations committed by employers.

Throughout the late-1980s and 1990s, the INS primarily relied on administrative authorities to identify, investigate and fine egregious employment violations. Today, ICE’s current worksite enforcement strategy which incorporates both administrative and criminal authorities, in conjunction with a focus on the financial gain of egregious employers has proven to be a far more effective approach than administrative efforts alone and serves as an effective deterrent for employers who may be in violation of the employment eligibility verification statutes.³

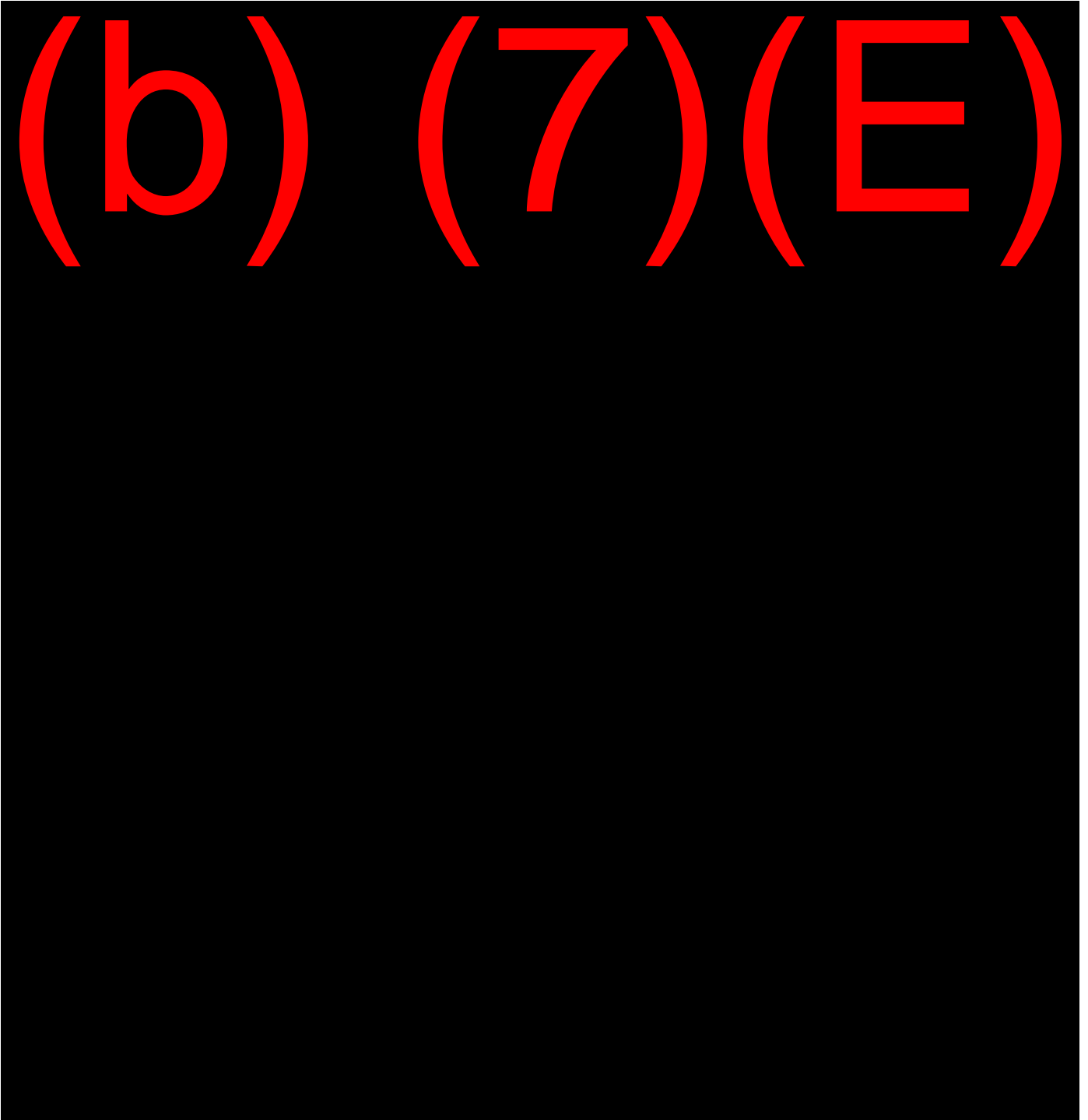
ICE continues to seek and create a culture of compliance among U.S. employers, by focusing WSE investigations on critical infrastructure protection (CIP) sites, the identification and prosecution of egregious employers, and offering robust outreach efforts to employers through programs such as the ICE Mutual Agreement between Government and Employers (IMAGE) program.

² Information on an employer’s responsibility to verify employment eligibility through the use of the Form I-9 is contained in 8 C.F.R. § 274a.2.

³ In March 2003, the investigative branches of the U. S. Customs Service and the U.S. Immigration and Naturalization Service were combined to form U.S. Immigration and Customs Enforcement under the Department of Homeland Security.

3 Initiation of Worksite Enforcement Investigations

ICE Special Agents may receive information regarding WSE violations from a variety of sources. (b) (7)(E)



⁴ The ICE tip-line number is 1-866-347-2423 or 1-866-DHS-2ICE

(b) (7)(E)

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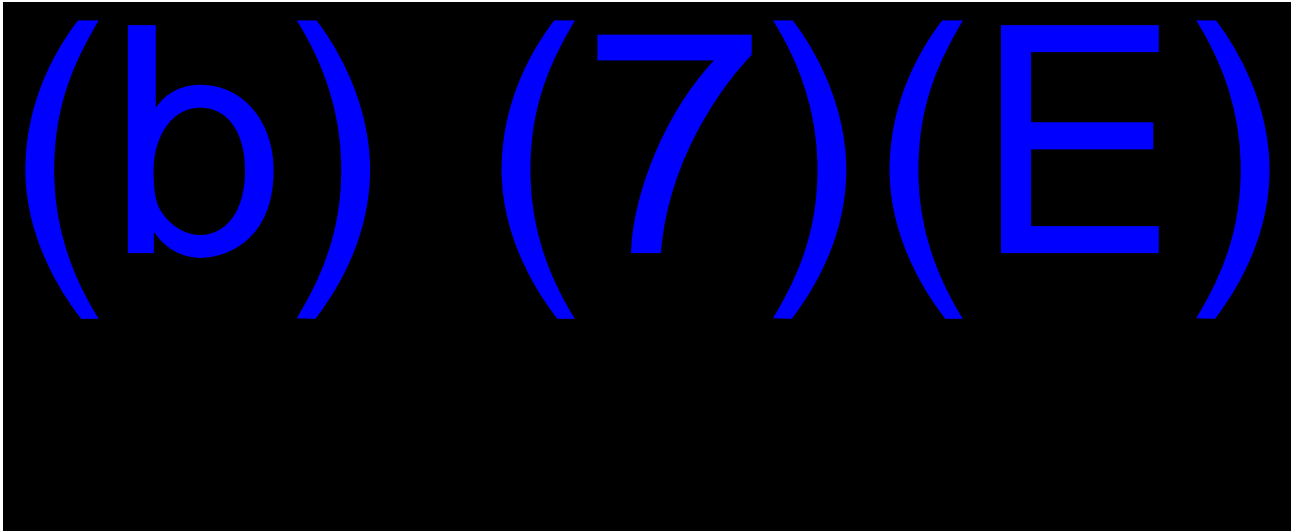
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4 Worksite Enforcement Investigative Priorities



4.1 Critical Infrastructure

Allegations involving the hiring of undocumented alien workers by employers engaged in businesses connected to the nation's critical infrastructure. CIP investigations reduce the risk of terrorist attacks on the nation's critical infrastructure by deterring employment by unauthorized workers in critical infrastructure facilities.

4.2 Egregious Employer Involvement

Information may sometimes indicate that an employer is actively involved in the underlying criminal activity designed to allow the undocumented employees to enter or remain in the U.S. This includes, but is not limited to, an employer's facilitation of an alien's entry into the U.S. to gain employment, harboring, smuggling, concealing, and/or transporting undocumented aliens for employment purposes.



(b) (7) (E)

(b) (7) (E)

4.4 Employment-Related Fraud

(b) (7) (E)

4.5 Exploitation

Information may suggest that an employer is exploiting undocumented workers through violations of labor and or wage standards, poor working or living conditions, significant health/safety violations, or by importing undocumented aliens for immoral purposes.

(b) (7) (E)

4.6 Human/Civil Rights Violations and Human Trafficking

Allegations that an employer is engaged in peonage, slavery, forced labor, indentured servitude, or physical/sexual abuse of undocumented aliens.

4.7 Money Laundering

Allegations that an employer is illegally laundering or concealing profits related to the unlawful employment of undocumented aliens.

5 Case Documentation

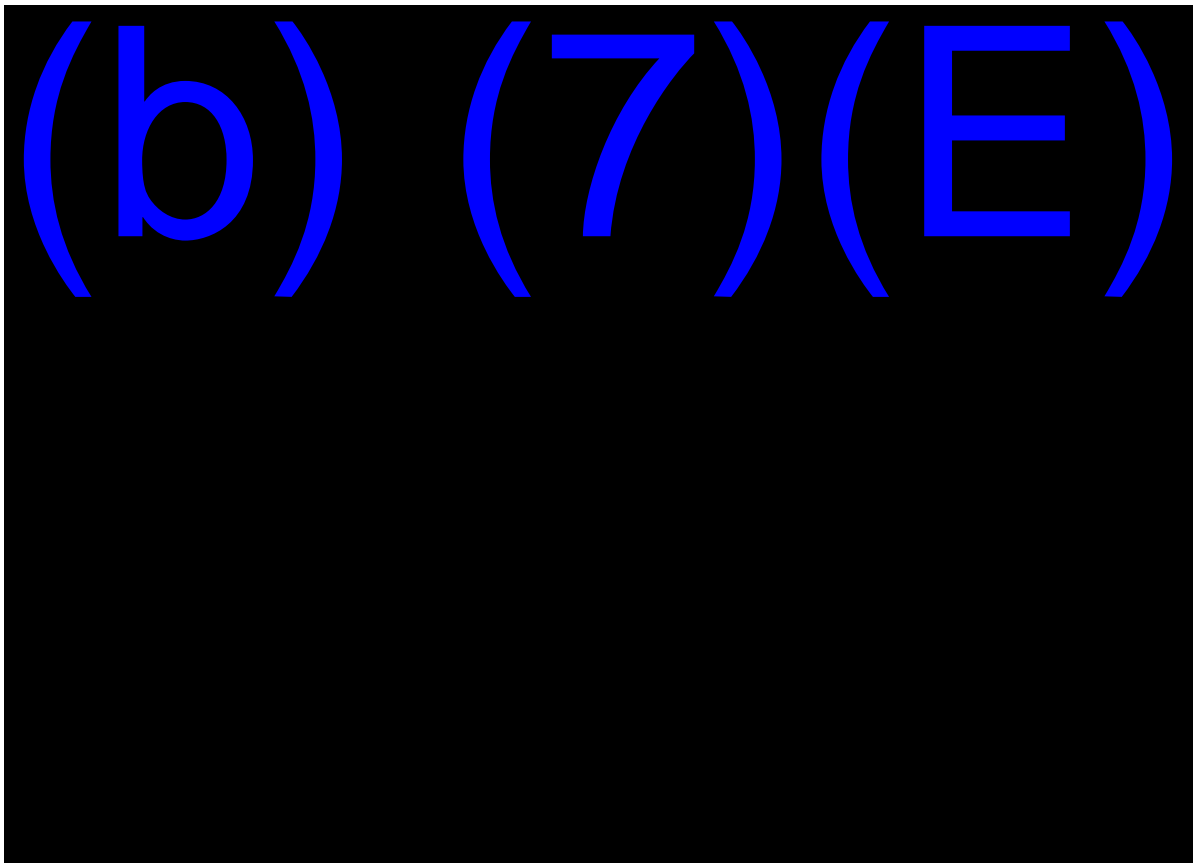


5.1 Case Category/Subcategory Codes for WSE Investigations

5.1.1

5.1.2

5.1.3



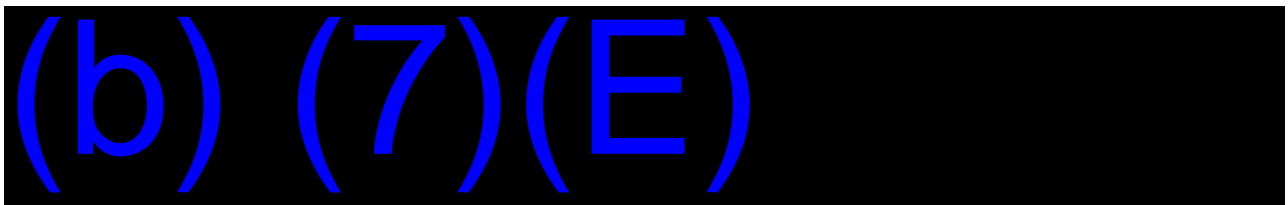
5.2

5.2.1

5.2.2

5.2.3

5.3 Other Investigations Involving a Significant Nexus to WSE



(b) (7)(E)

(b) (7)(E)

(b) (7)(E)

6 Criminal Prosecution of WSE Investigations

6.1 Applicable Criminal Statutes

Criminal violations relating to the employment of undocumented aliens are contained primarily in Title 8 of the U.S. Code. (b) (7)(E)

(b) (7)(E) ICE Special Agents must consider *all* applicable criminal statutes pertaining to violations discovered during the investigation. Common violations include, but are not limited to, the following:

6.1.1 8 U.S.C. § 1324(a)(1)(A)(i) – *Alien Smuggling* - (b) (7)(E)

(b) (7)(E)

6.1.2 8 U.S.C. § 1324(a)(1)(A)(ii) – *Transporting an Illegal Alien* - (b) (7)(E)

(b) (7)(E)

6.1.3 8 U.S.C. § 1324(a)(1)(A)(iii) – *Concealing, Harboring or Shielding an Illegal Alien from Detection* - (b) (7)(E)

(b) (7)(E)

6.1.4 8 U.S.C. § 1324(a)(1)(A)(iv) – *Encouraging or Inducing an Illegal Alien to Enter the United States* - (b) (7)(E)

(b) (7)(E)

6.1.5 8 U.S.C. § 1324(a)(3)(A) – *Felony Provision for Knowingly Hire/Continue to Employ Illegal Aliens* - (b) (7)(E)

(b) (7)(E)

(b) (7)(E)

(b) (7)(E)

6.1.6 8 U.S.C. § 1326 – *Reentry of Removed Aliens* – (b) (7)(E)

(b) (7)(E)

6.1.7 8 U.S.C. § 1328 – *Importation of Aliens for Immoral Purposes* – (b) (7)(E)

(b) (7)(E)

6.1.8 18 U.S.C. § 1546 – *Fraud or Misuse of Visas* – (b) (7)(E)

(b) (7)(E)

6.1.9 18 U.S.C. § 1028(A) – *Aggravated Identity Theft* – (b) (7)(E)

(b) (7)(E)

6.1.10 18 U.S.C. § 1581 – *Peonage* – (b) (7)(E)

(b) (7)(E)

6.1.11 18 U.S.C. § 1589 – *Forced Labor* – (b) (7)(E)

(b) (7)(E)

6.1.12 18 U.S.C. § 1590 – *Trafficking with Respect to Peonage, Slavery, Involuntary Servitude or Forced Labor*. - This statute prohibits the recruitment, harboring,

(b) (7)(E)

6.1.13 18 U.S.C. § 1592 – *Unlawful Conduct with Respect to Documents In Furtherance of Trafficking, Peonage, Slavery, Involuntary Servitude or Forced Labor*

(b) (7)(E)

6.1.14 18 U.S.C. § 1001 – *False Statements* - (b) (7)(E)

(b) (7)(E)

6.1.15 18 U.S.C. § 911 – *False Claim to U.S. Citizenship* - (b) (7)(E)

(b) (7)(E)

6.1.16 31 U.S.C. § 5324 – *Structuring Transactions to Evade Reporting Requirements*

(b) (7)(E)

6.1.17 18 U.S.C. § 1956 – *Money Laundering* - (b) (7)(E)

(b) (7)(E)

(b) (7)(E)

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(b) (7)(E)

6.1.18 18 U.S.C. § 371 – *Conspiracy* - (b) (7)(E)

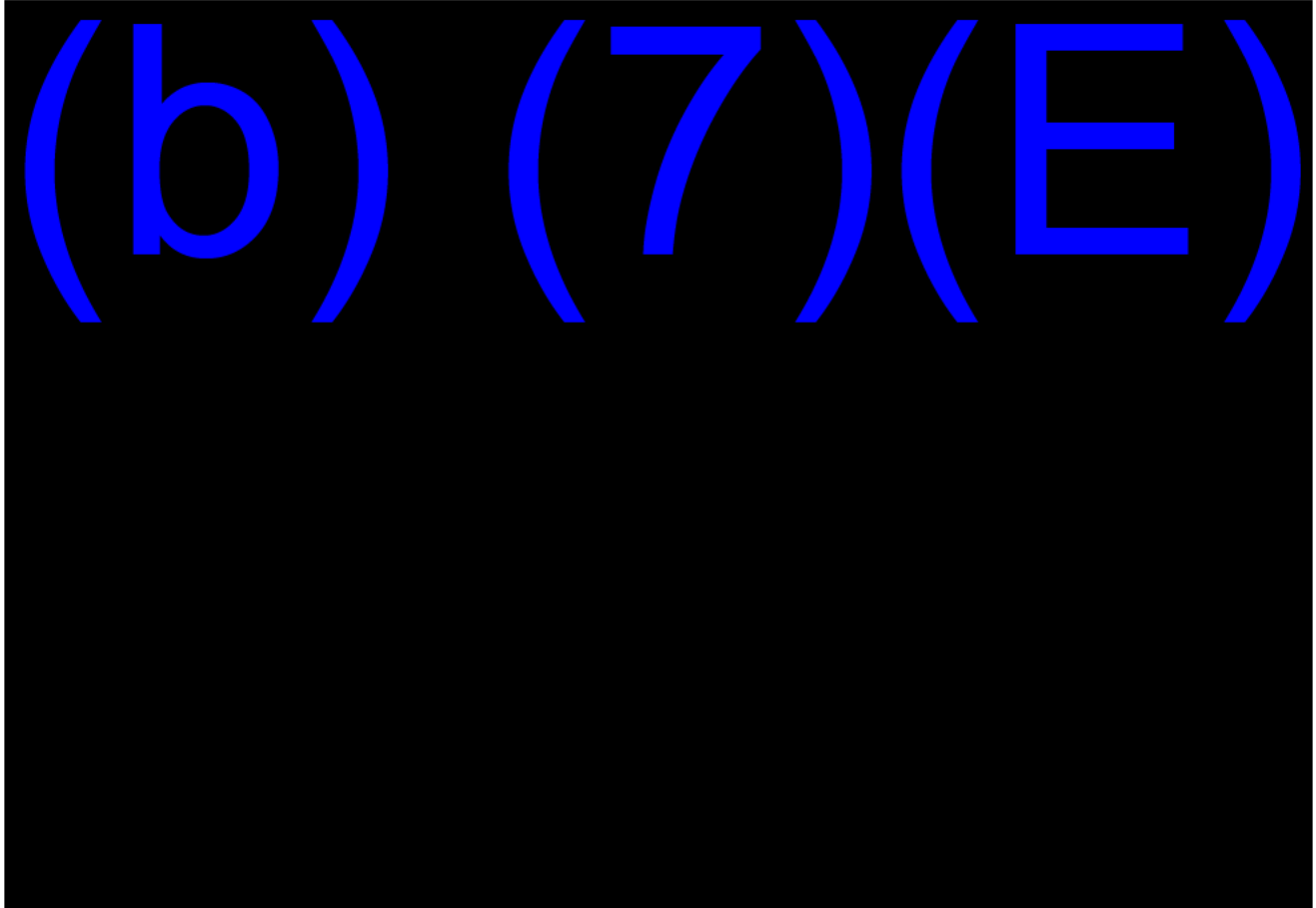
(b) (7)(E)

(b) (7)(E)

7 Criminal Case Presentation¹³

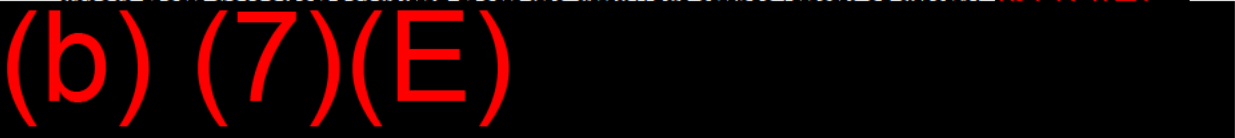
ICE Special Agents **must** involve an AUSA at the earliest possible point in a WSE investigation. (b) (7)(E)

7.1 (b) (7)(E)



7.2 Knowledge of Applicable Criminal Statutes and WSE Regulations

(b) (7)(E) be prepared to explain all facets of the various criminal statutes related to WSE investigations to an AUSA. This includes statutes related to various financial schemes that may be used by employers in laundering or shielding assets from detection resulting from the unlawful employment of aliens. (b) (7)(E)



(b) (7)(E)

7.3 (b) (7)(E)

(b) (7)(E)

7.4 (b) (7)(E)

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7.6 (b) (7)(E)

(b) (7)(E)

8

(b) (7)(E)

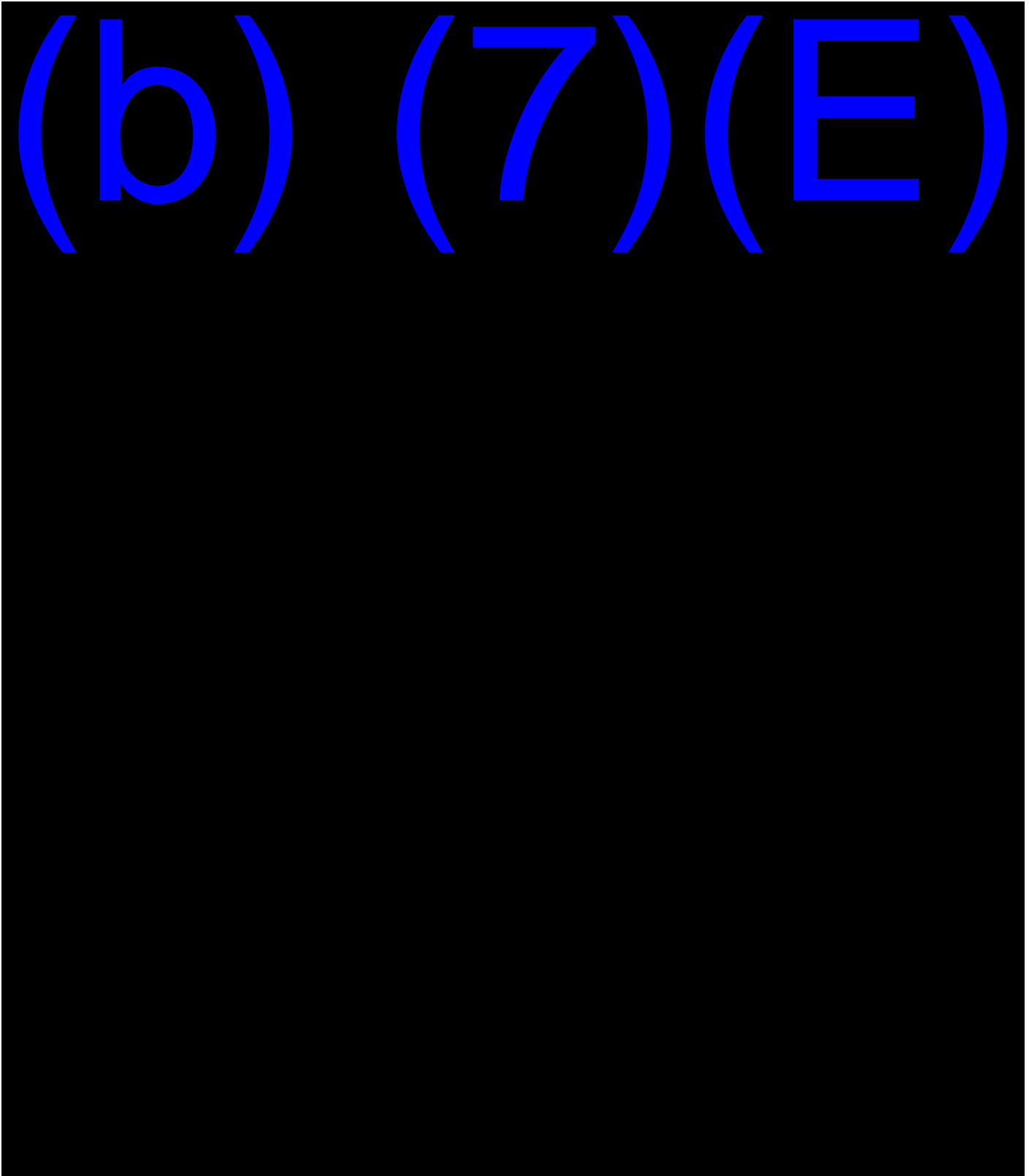
(b) (7)(E)

8.1

(b) (7)(E)

(b) (7)(E)

(b) (7)(E)



8.5 Administrative Arrest of Unauthorized Workers

(b) (7)(E)

8.5.1 (b) (7)(E)

(b) (7)(E)
(b) (7)(E)

8.5.2 (b) (7)(E)

(b) (7) (E)

(b) (7) (E)

8.6 Other Agency Information and Assistance

(b) (7) (E)

8.6.1 U.S. Department of Labor – Office of Inspector General

(b) (7) (E)

8.6.2 Social Security Administration

(b) (7) (E)

(b) (7) (E)

8.6.2.1 Social Security No-Match Data

(b) (7) (E)

(b) (7) (E)

(b) (7) (E)

8.6.3 U.S. Citizenship and Immigration Services

(b) (7) (E)

(b) (7)(E)

8.6.3.1 E-Verify

USCIS is responsible for administering the E-Verify program (formerly known as the Basic Pilot/Employment Eligibility Verification Program), which is an Internet-based system that allows participating employers to electronically verify the employment eligibility of their newly hired employees. Employers enter information captured on the Employment Eligibility Verification form (I-9) in E-Verify, which compares employee information against records contained in SSA and DHS databases to verify employment eligibility. (b) (7)(E)

(b) (7)(E)

(b) (7)(E)

(b) (7)(E)

(b) (7)(E)

8.7 Inspection of Forms I-9 and Other Employment Records

(b) (7)(E)

8.7.1 Notice of Inspection

(b) (7)(E)

(b) (7)(E)

¹⁴ Further information on an employer's responsibility to complete and maintain Forms I-9 can be found in 8 C.F.R. 274a.2.

(b) (7)(E)

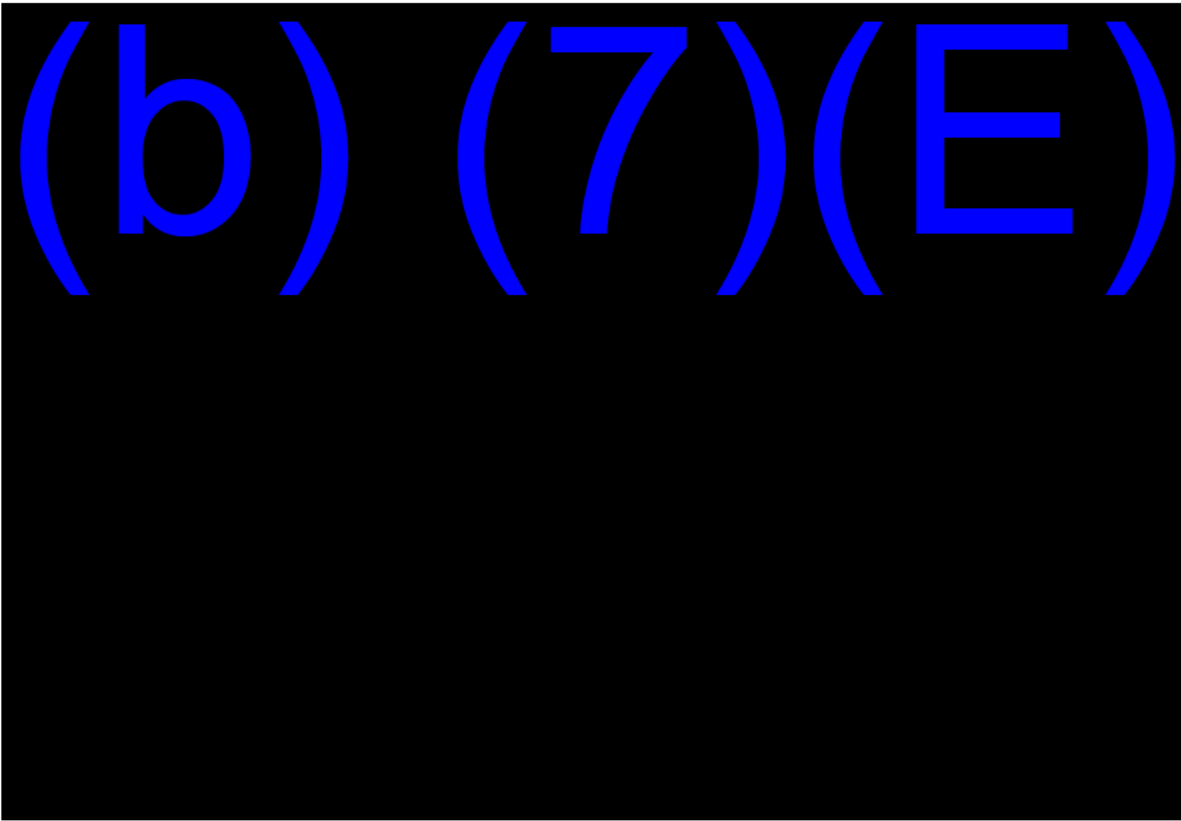
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8.7.3 Inspection of Forms I-9

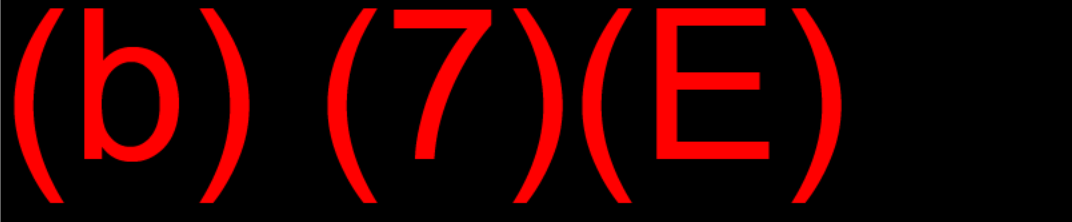
(b) (7)(E)



8.7.4 Disposition of Administrative Case

The following outcomes may occur as the result of a Form I-9 inspection in an administrative WSE investigation:

8.7.4.1 “Notification of Inspection Results” Letter – (b) (7)(E)



8.7.4.2 “Notice of Technical or Procedural Failures” Letter – This letter is used in instances where a Form I-9 inspection reveals minor technical or procedural failures on behalf of an employer to meet employment verification requirements. (b) (7)(E)



If an employer fails to correct the technical failures in the allotted time or provide an explanation why the failures cannot reasonably be corrected, ICE should seek an administrative fine against the employer.

8.7.4.3 **Warning Notice - (b) (7)(E)**

(b) (7)(E)

8.7.4.4 **Application for Notice of Intent to Fine – An Application for a Notice of Intent to Fine (Form I-761) is issued in instances where the Form I-9 inspection has identified substantive hiring or verification violations committed by the employer. (b) (7)(E)**

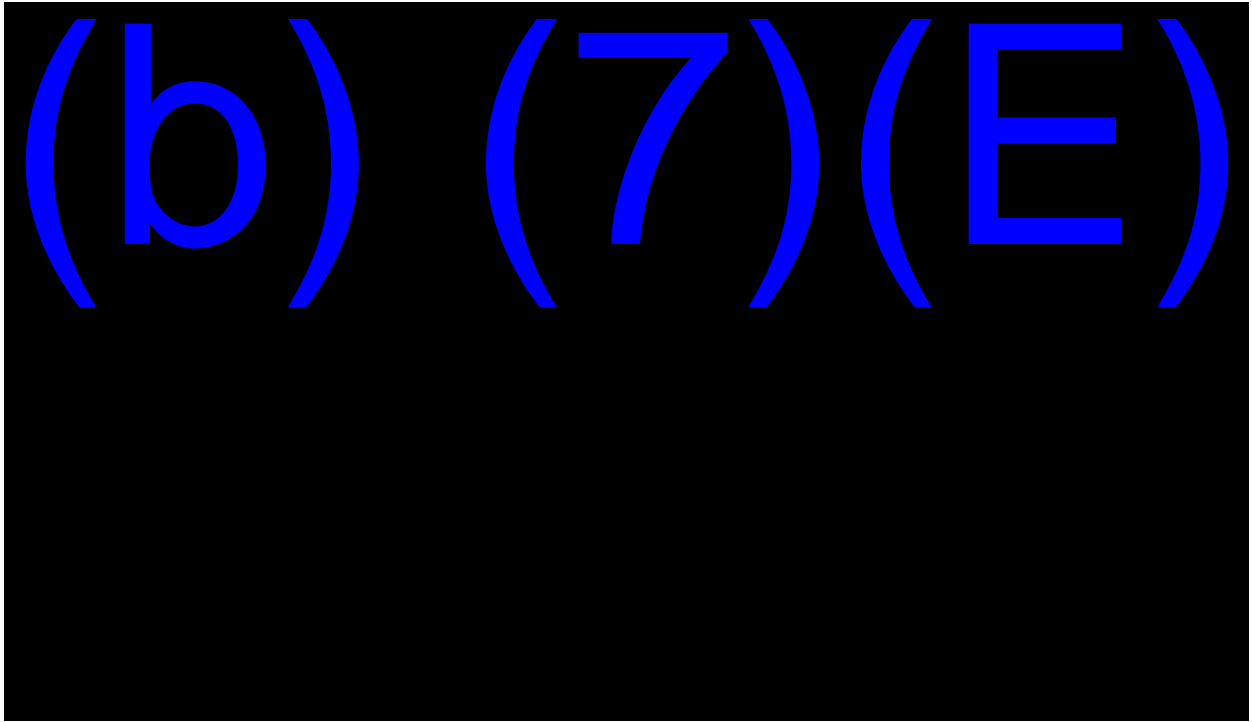
(b) (7)(E)

(b) (7)(E)

(b) (7)(E)

8.8 (b) (7)(E)

8.8.1 Financial Aspects



Please refer to the following documents for further guidance and instruction:

- Memorandum dated July 26, 2006 titled (b) (7)(E)
- Memorandum dated July 9 2007 titled (b) (7)(E)

(b) (7) (E)

(b) (7) (E)

8.8.2 Asset Removal Aspects

(b) (7) (E)

8.9 Use of Warrants in WSE Investigations

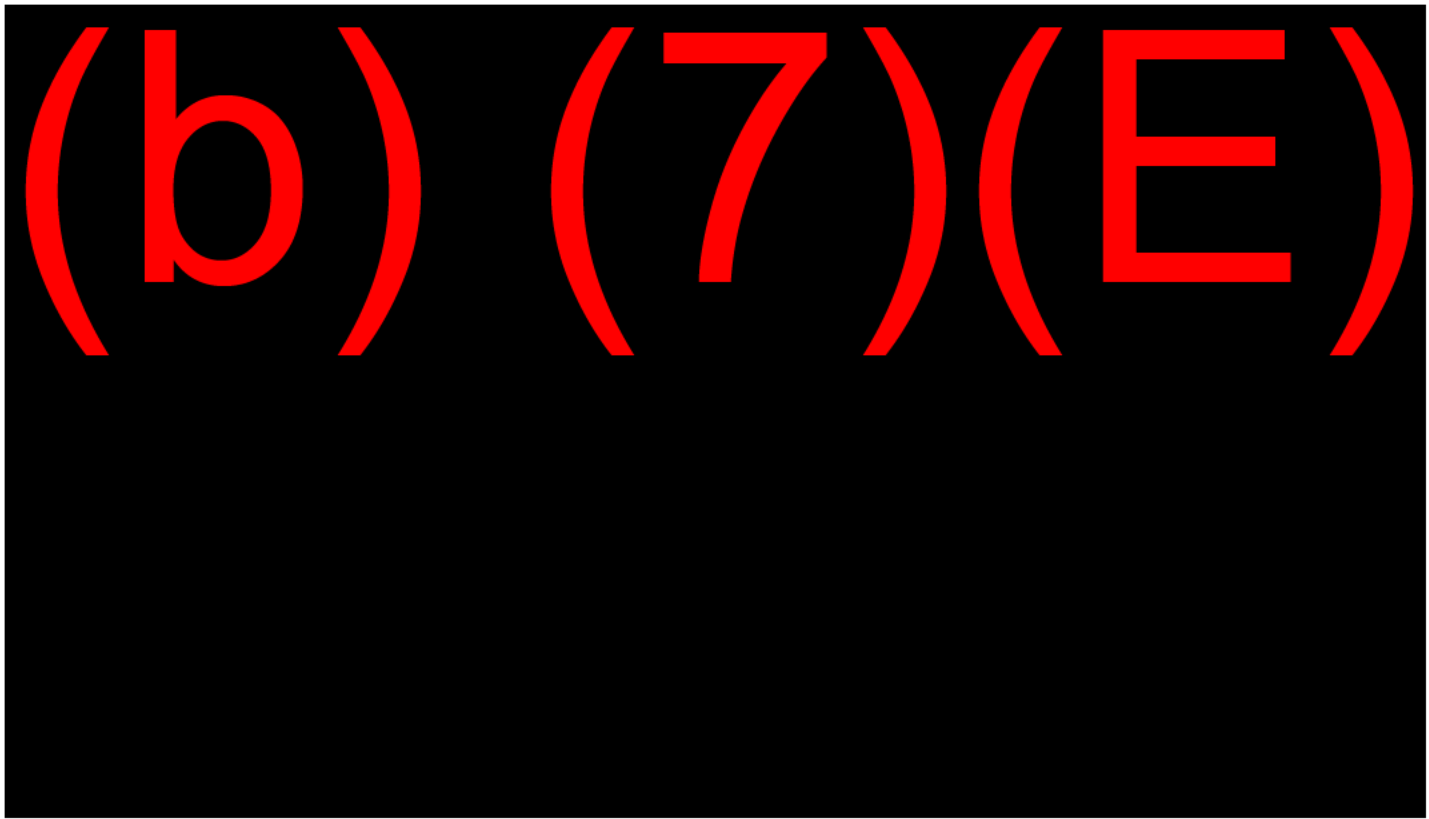
ICE Special Agents must work closely with an AUSA and their local ICE Office of Chief Counsel (OCC) to determine the need for criminal and civil warrants in WSE investigations. (b) (7)(E)

8.9.1 Criminal Search Warrant

Criminal search warrants (also known as Rule 41 warrants) should be used whenever possible to obtain evidence of criminal WSE violations. Federal Rule of Criminal Procedure 41(c) authorizes a federal law enforcement officer to search for and seize (1) evidence of a crime; (2) contraband, the fruits of crime, or other items illegally possessed; (3) property designed for use, intended for use, or used in committing a crime; or (4) a person to be arrested or a person who is unlawfully restrained. (b) (7)(E)

(b) (7)(E)

(b) (7) (E)



(b) (7)(E)

8.9.2 Criminal Arrest Warrant

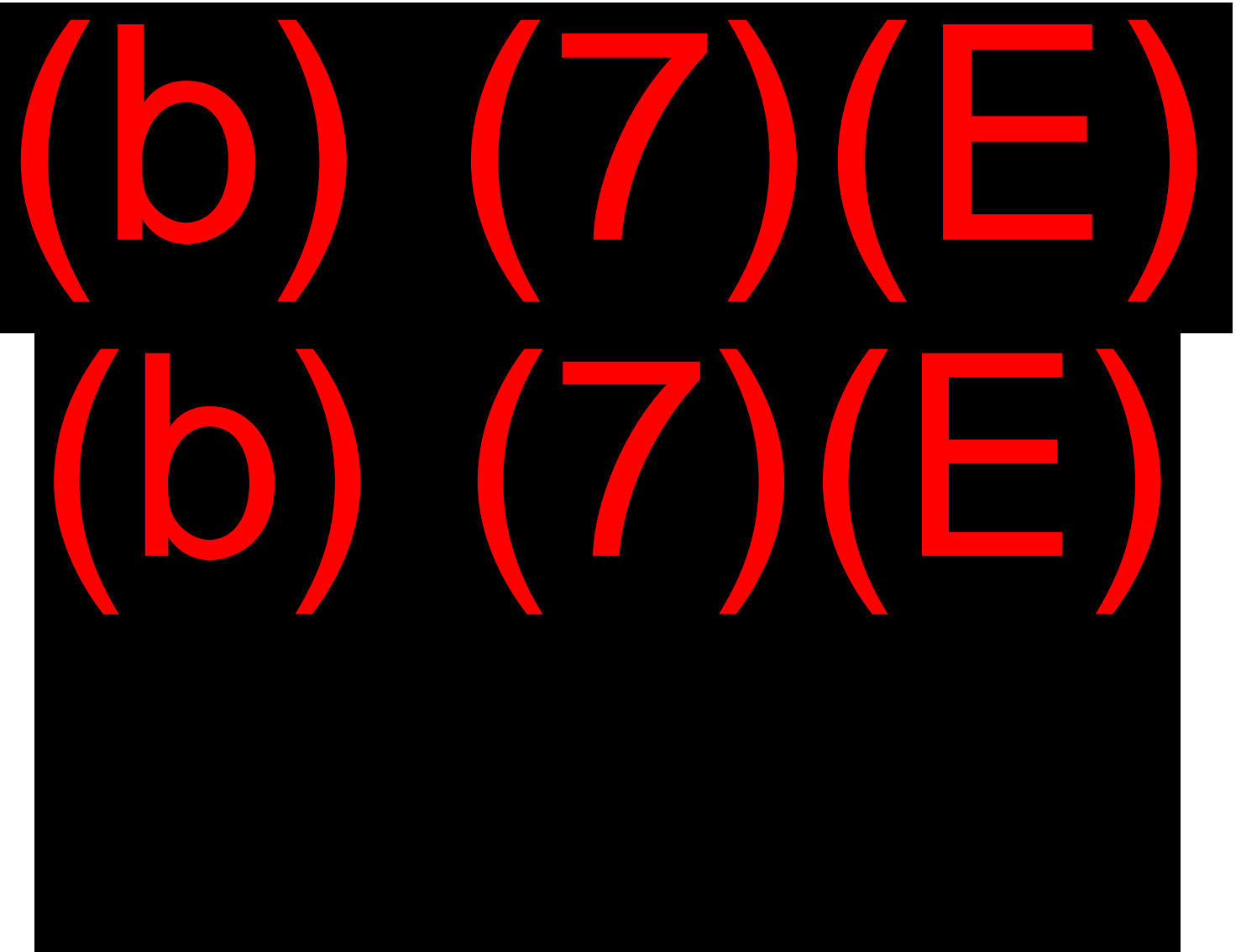
Criminal arrest warrants are used to make arrests for criminal WSE violations, or other criminal violations commonly uncovered during WSE investigations. (b) (7)(E)



(b) (7)(E)

8.9.3 Administrative Search Warrant

Administrative search warrants (also known as (b) (7)(E)) are used to search for unauthorized aliens and are particularly useful in WSE investigations. (b) (7)(E)



8.9.4 Administrative Arrest Warrant

An ICE Administrative Arrest Warrant **(b) (7)(E)** should be used by ICE Special Agents when an agent has “reason to believe” that an alien is in the United States in violation of any immigration law and is likely to escape before a warrant can be obtained for his/her arrest. However, an ICE Special Agent has the right to interrogate (with or without a warrant) any alien or person believed to be an alien regarding his or her immigration status and issues surrounding his or her right to be present in the United States. **(b) (7)(E)**

(b) (7)(E)

(b) (7)(E)

(b) (7)(E)

(b) (7) (E)

(b) (7) (E)

¹⁷ For further details, see OI memorandum from John P. Clark, Interim Director to all Special Agents in Charge, dated August 1, 2003, titled "Expansion on the Definition of a Worksite Enforcement Operation".

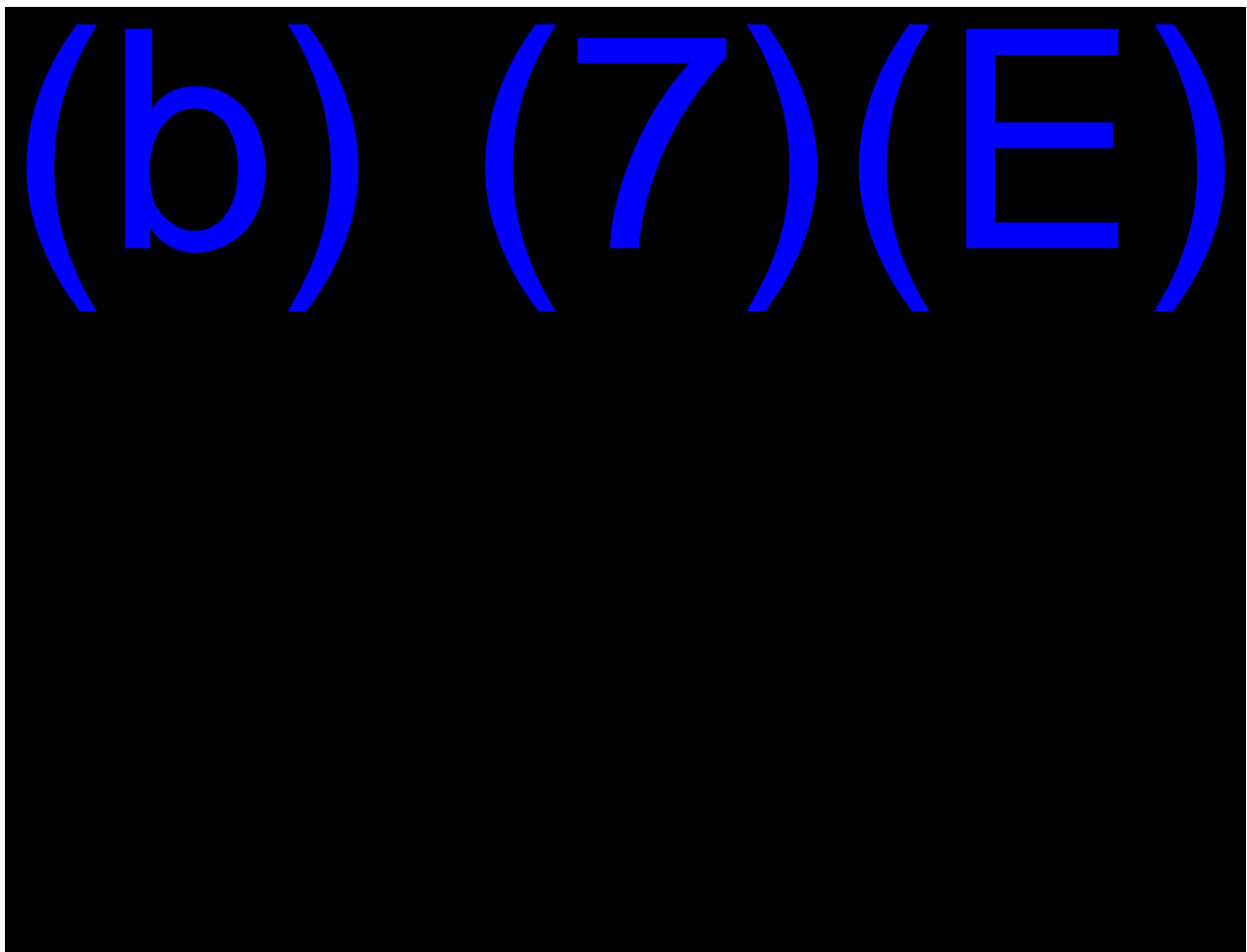
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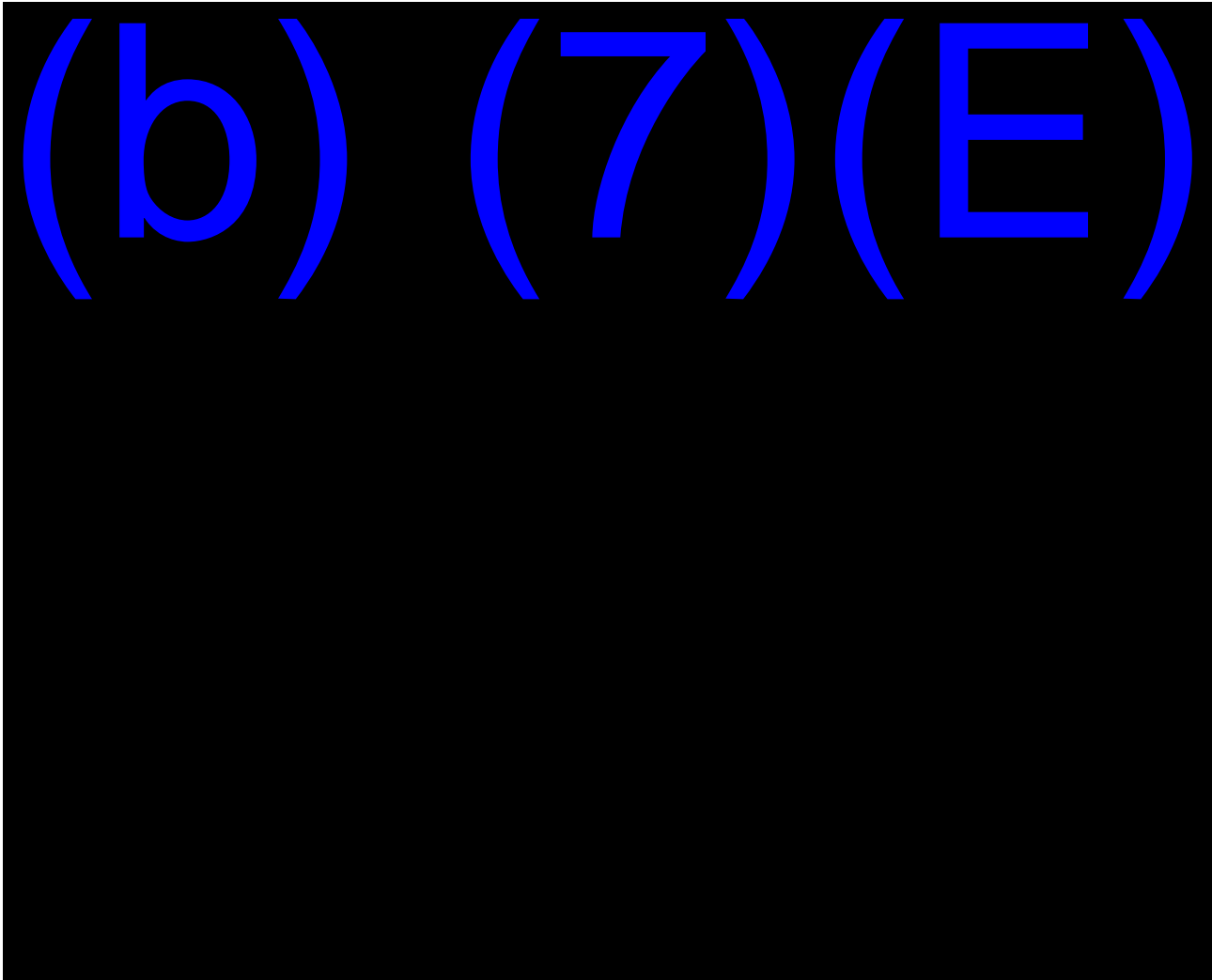
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9.2.2 Alien Processing Considerations



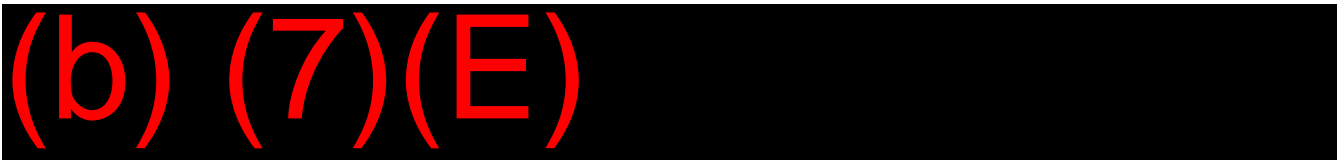
9.2.3 Humanitarian Concerns



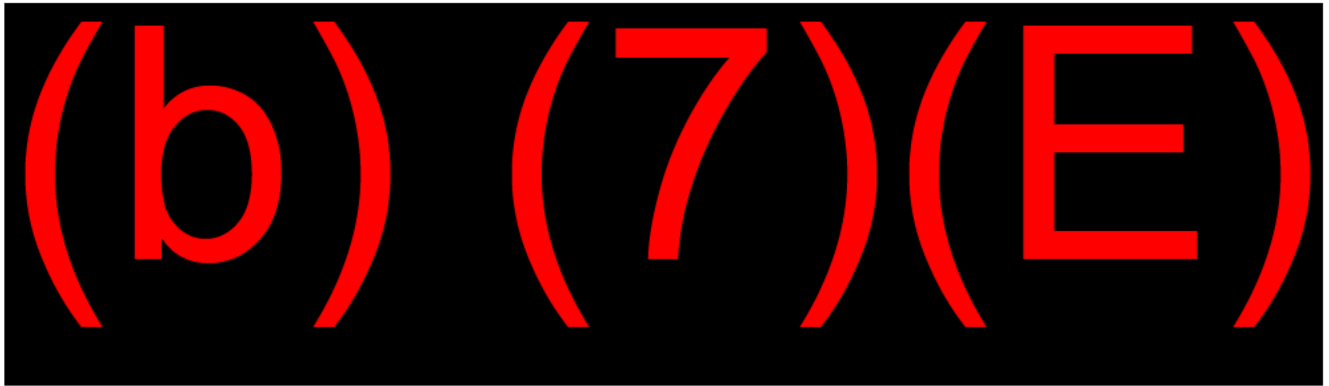


All apprehended aliens are advised of their right to a hearing before an immigration judge and to be represented by legal counsel. They are also provided with a list of free local legal service providers. The individuals are given access to telephones to enable them to contact an attorney, family members or their consulates. ICE makes an effort to facilitate attorney/client access at processing sites and provides attorney/client interview rooms for confidential discussions. In addition, ICE notifies the consular representatives of each country whose nationals were arrested as a result of an enforcement action.

9.3 Internal Coordination of WSE Operations



9.3.1 Office of Detention and Removal Operations (DRO) – Close coordination is required with DRO to determine the availability and location of detention space for aliens apprehended during a WSE operation. (b) (7)(E)



9.3.2 Office of the Principal Legal Advisor (OPLA) – (b) (7)(E)
[Redacted]
[Redacted] Coordination with OPLA is necessary to ensure that OPLA representatives are at the arrest and/or alien processing location (b) (7)(E)
[Redacted]

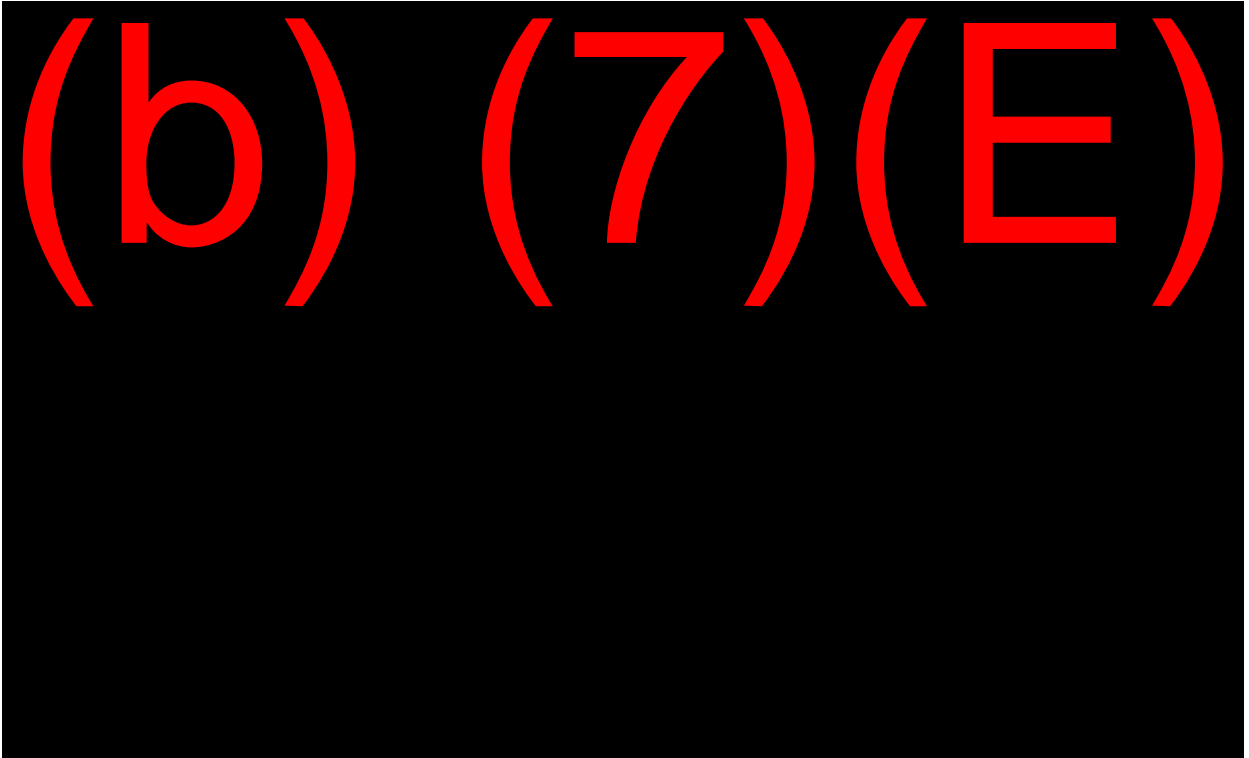
9.3.3 Public Affairs Office (PAO) – Representatives from PAO will develop a media communications plan for WSE operations and can be on-site at arrest and/or processing locations to address media concerns. (b) (7)(E)
[Redacted]

9.3.4 Office of Congressional Relations (OCR) – Representatives from OCR will develop a plan to make advance notification to Congressional Committees, elected officials and state delegations affected by a WSE operation. (b) (7)(E)
[Redacted]

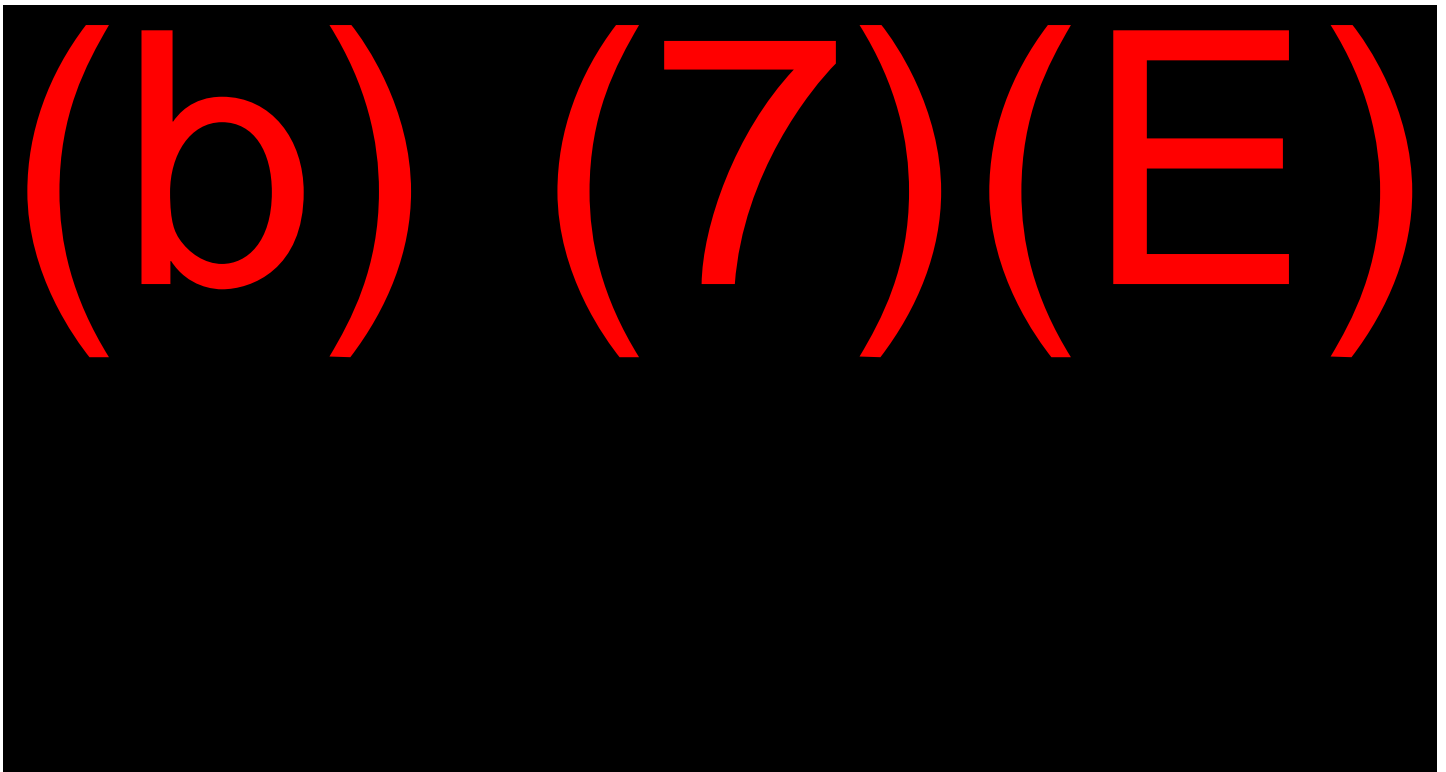
9.3.5 Office of International Affairs (OIA) - OIA will develop a notification plan for affected foreign embassies and consulates and can make arrangements for consular access at alien processing sites.

9.3.6 Office of the Chief Information Officer (OCIO) – OCIO can coordinate the efforts of information technology staff, including deployment to the field at processing sites, in order to ensure the continuity of IT capabilities. (b) (7)(E)
[Redacted]

9.3.7 Office of Procurement and Budget/Office of Acquisition Management –
These offices can assist with the following aspects of a large-scale WSE operation:



9.4 External Coordination of WSE Operations



(b) (7) (E)

9.5 Use of Consent in WSE Operations

(b) (7) (E)

9.6 Employee/Employer Interviews During WSE Operations


(b) (7) (E)

(b) (7) (E)

10 WSE Case Reporting Requirements

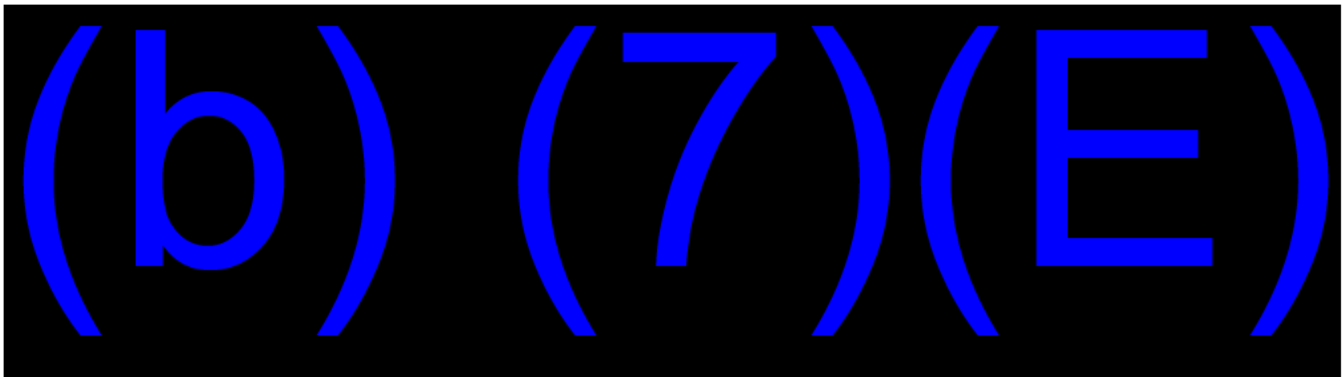
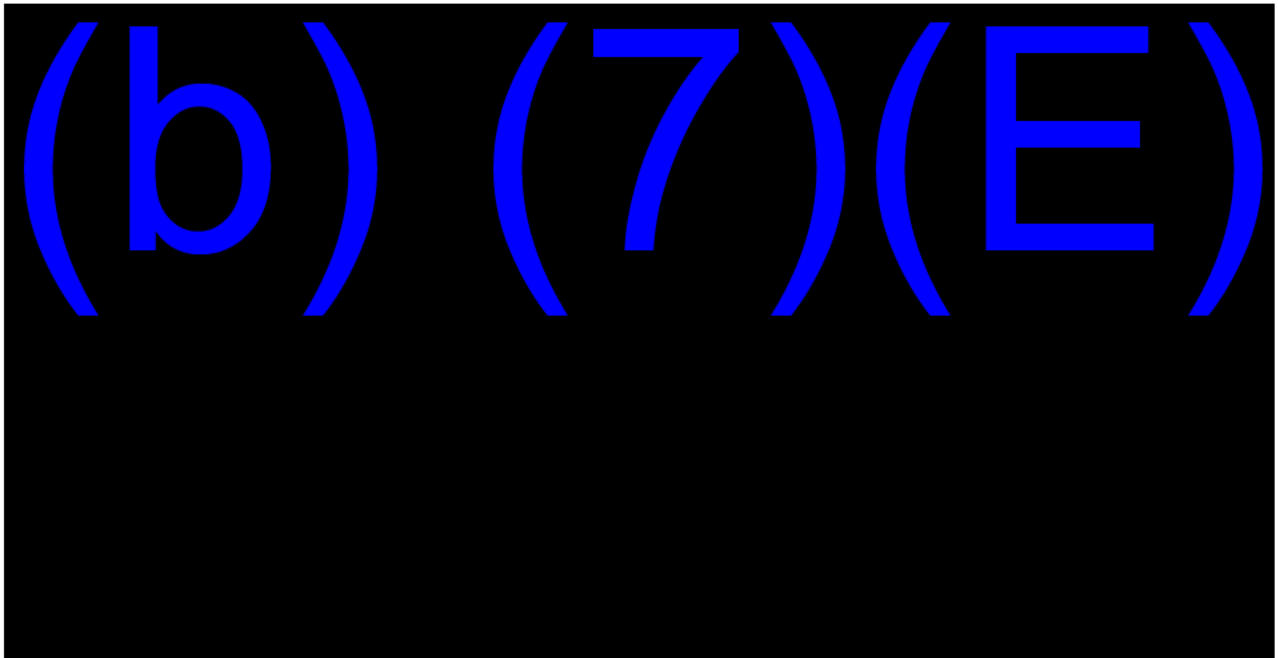
10.1 Coordination with the HQ WSE Unit

ICE Special Agents, through their SAC Office designated personnel, are required to communicate with their HQ WSE National Program Manager regarding all ongoing WSE investigations **at the earliest opportunity** through required WSE status reports and case updates. (b) (7)(E)



This requirement also pertains to investigations in other programmatic areas with a significant nexus to WSE.

10.2 Reporting of Planned WSE Operations/Activities



(b) (7) (E)

(b) (7) (E)

10.5 Use of Arrest Tracking Sheets During WSE Operations

(b) (7) (E)

(b) (7)(E)

10.6 Reporting Results of WSE Operations/Activities

(b) (7)(E)

(b) (7)(E)

11 Conclusion

(b) (7) (E)

The illegal employment of undocumented aliens continues to have a significant impact on our nation's economy, often displacing U.S. citizens and lawful permanent resident aliens from our nation's workforce. These unscrupulous business practices represent a significant vulnerability in the security of our nation when these unlawful hiring practices occur in industries connected to the critical infrastructure of the United States. In addition, some egregious employers use undocumented aliens as a source of cheap labor, often subjecting these aliens to substandard wages or dangerous working conditions. The employment of undocumented aliens also has a direct impact on the occurrence of other criminal violations, such as the sale and manufacture of fraudulent identity documents and incidents of identity theft, wherein unauthorized aliens assume the identity of a U.S. citizen in order to obtain employment. For these reasons, Worksite Enforcement investigations continue to be a priority of the Department of Homeland Security and U.S. Immigration and Customs Enforcement.

(b) (7) (E)