

I-9s and Worksite Enforcement: The Current State of Play



Presented by Klasko Immigration Law Partners, LLP

Tim D'Arduini

Natalia Gouz

Nick Lowrey



June 05, 2025



Today's Discussion

- The Current Landscape
- Government Inspections
- Compliance Strategies
- New Policies and Impacts
- Anticipating Enforcement Actions
- Engaging with the Government
- Questions & Answers



Tim D'Arduini
Partner

tdarduini@klaskolaw.com



Natalia Gouz
Senior Associate

ngouz@klaskolaw.com



Nick Lowrey
Counsel

nlowrey@klaskolaw.com



Current Landscape

- Executive orders
- DOJ requires AUSAs to report immigration investigations to HQ in DC, including preferential treatment of foreign workers over US workers
- Reallocation of professionals to immigration enforcement functions
- Funding proposals in the appropriations bill
- Creation of a sanctuary cities list and MOUs for Secure Communities
- Targeted I-9 inspections of DC and San Diego restaurants
- Harboring allegations against businesses and nonprofits

Basic I-9 Compliance Requirements

Section 1	<ul style="list-style-type: none"> • <i>Must</i> be completed by employee on or before first day of work • <i>Can</i> be completed as soon as job offer is accepted
Section 2	<ul style="list-style-type: none"> • <i>Must</i> be completed by employer or authorized representative • <i>Must</i> include only <u>sufficient</u> documents • <i>Note</i>: Careful of overdocumentation
Document Verification	<ul style="list-style-type: none"> • <i>Must</i> review <u>original</u> documents (see exceptions) • Document must “reasonably appear to be genuine and relate to the employee” • Documents <i>should</i> be unexpired • Examiner and employee must be physically present during document examination
Supplement B	<ul style="list-style-type: none"> • <i>Can</i> be completed with List A or List C • <i>Must</i> be completed before expiration of Section 2 (or most recent Supplement B) • <i>Note</i>: automatic document extensions are not formal reverifications
Alternative Procedure	<ul style="list-style-type: none"> • Digital I-9 document review process • More stringent requirements <ul style="list-style-type: none"> • Scans of front/back of all documents in advance • Live video with employee to present documents • Retain front/back of all documents • Check box on I-9 for alternative procedure • E-Verify employers only



The I-9 Inspection Process

- Notice of Inspection (NOI)
 - Timing: 72 hours to respond
 - Requesting extensions
 - Self-audit/notice
- Notice of Suspect Documents (NSD)
- Notice of Intent to Fine (NIF)
- Fines are based on violation percentage across I-9 files
- Challenging fines through OCAHO
- Knowingly employing undocumented workers may result in criminal prosecution



Proactive I-9 Compliance Strategies

Best Practices

- Develop a written I-9 policy
- Implement an internal compliance/training program
- Maintain copies of documents
- Consider electronic I-9 storage and/or generation
- Enforce policies and procedures to avoid discrimination – do not request specific I-9 documents
- Build protocols to respond to tips and constructive knowledge

Auditing

- Implement a secondary review
- Review your reverification protocols to track expirations
- Perform internal self-audits for all I-9s or regular sample populations
- I-9 audits by external law firm – reduces exposure & conducted under attorney/client privilege

Developing Your Policies

- ✓ DOJ-ICE Joint Guidance on I-9 Audits
- ✓ Fraud and Suspect Document Tools and Training
- ✓ 1997 INS Virtue Memo



Recent Policy Changes and Their Impacts

Current State of Temporary Protected Status for Venezuelans and Haitians

- *National TPS Alliance v. Noem*: SCOTUS overturned temporary stay of termination of TPS for Venezuelans

Termination of humanitarian parole programs, including parole for Ukrainians, Cubans, Haitians, Nicaraguans, and Venezuelan

- *Noem v. Svitlana Doe*: lifted injunction blocking the termination of CHNV parole.

Increase in visa revocations and SEVIS terminations for F-1 students

- Suits filed by F-1 students who have had visa revoked and/or SEVIS terminated.
- SEVIS reinstatements occurring across the country

How Can Employers Address?

- Evaluate the **risks** and potential **consequences** for identifying this specific population
- Update **I-9 records**
- Provide an opportunity to present **other documents**
- Develop **workforce planning** strategies

Anticipated Enforcement Environment



Expanded Data Sharing and Mining

Government data collection systems utilized frequently to identify irregularities and flag employers for further inquiry.



Increased I-9 Audits

Focus on employers with prior violations.
Leveraged to justify steep fines for errors.



Worksite Investigations Triggered by Tips

Expect more fishing expeditions launched from both corroborated and uncorroborated tips.



Criminal Liability for Executives

The administration may aggressively pursue criminal charges against employers.

Legal Representation & Investigative Protections

➤ Rapid Response Protocol

- Ensure legal, HR, and security teams are trained on a documented protocol for addressing interactions with law enforcement, including immigration officials

➤ Engage Counsel

- Confirm primary immigration and white-collar counsel; consider coordinating pool counsel if multiple parties are involved

➤ Maintain Privilege

- Structure communications and investigations to preserve attorney-client privilege

Workforce & Government Engagement Strategies

- Workforce Management
 - Develop strategies to address employee concerns and maintain workforce stability during investigations
- DOJ Engagement
 - Evaluate your workforce and plan for business continuity
 - Identify points for negotiations
- Settlement Strategy
 - Outline possible settlement approaches and contingencies

Questions?





For Further Information



Timothy D'Arduini

tdarduini@klaskolaw.com



Natalia Gouz

ngouz@klaskolaw.com



Nicholas Lowrey

nlowrey@klaskolaw.com

Follow us on social media:



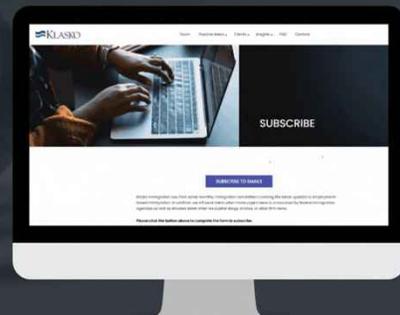
 Klasko Immigration Law Partners, LLP

  @klaskoimmigrationlaw

 @klaskolaw

Sign up for emails:

KlaskoLaw.com/subscribe





Disclaimer/Copyright

The materials contained in this PowerPoint do not constitute direct legal advice and is for informational purposes only. An attorney-client relationship is not presumed or intended by receipt or review of this presentation. The information provided should never replace informed counsel when specific immigration-related guidance is needed.

Copyright © 2025 Klasko Immigration Law Partners, LLP.
All rights reserved.