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Immigration Law & Advocacy Clinic

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H-1B Worksite Visits in the K-12 Setting in California

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Employers who have sponsored employees for H-1B temporary work visas should be prepared for a potential visit from United States Citizenship and Immigration Services (USCIS) to the worksite of their H-1B employees. This resource provides background on such worksite visits, information about a recent policy update, recommendations for employers who may be new to sponsoring H-1Bs, and information specific to California and to sensitive work locations such as schools. Schools should consider separate (though potentially overlapping) policies for responding to an H-1B worksite visit and an ICE enforcement action. This may include guidance for staff on how to recognize the difference between an ICE enforcement action and an H-1B worksite visit.

1. USCIS Has a Longstanding Practice of Worksite Visits

Many employers have used H-1Bs to support their DACA-mented workforce to move away from DACA, a temporary program that may soon end. Moving to an H-1B can carry significant benefits, like being eligible to adjust status and more stable protection from deportation. However, many employers also want to know whether filing these petitions invites immigration officials to their front doorstep, particularly those who work with vulnerable populations.

An employer should be mindful that the H-1B comes with requirements, including the requirements to pay the wage identified in the labor condition application, and ensure that the worker is working in the occupation/role described in the petition and physical worksite identified in the H-1B. Further, the employee must continue to be employed with the employer per the conditions of the H-1B and the employer should notify USCIS if the conditions of employment change and withdraw the underlying labor condition application with the Department of Labor if the employment ceases. In some extreme cases, federal indictments have been lodged when H-1B's contain misrepresentations related to the conditions of employment or accuracy of the role.[1]

As a result of the ongoing requirements that are connected to the H-1B petition, USCIS has a longstanding practice of conducting "work site-visits" to confirm whether the conditions of employment are being met and the information submitted to USCIS is accurate, truthful and ongoing. The recent H-1B Modernization Rule memorialized this long-standing practice.

A site-visit such as this can cause alarm for employers and employees especially if the location is a school or hospital which may have a mixed immigration status population at any given time (i.e. persons without status). As explained below, these locations have traditionally been treated differently, however considering the ongoing public discourse related to enforcement actions, these institutions should consider how they will respond to such a worksite visit.

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2. The 2025 H-1B Modernization Rule Formalized Longstanding Practice [2]

Under recently enacted H-1B regulation, the USCIS may investigate an employer and employee who has filed an H-1B and in doing so, do the following:

- Verify petitioner's **basic business information**
- Visit petitioner's facilities
    - An inspection may be conducted at locations including the petitioner's headquarters, satellite locations, or the location where the beneficiary works OR will work, including the employees' home if the employee works remotely from home [3]
- **Interview petitioner's officials** OR **any other individuals possessing pertinent information**, (may be conducted in the absence of the employer or their representative or lawyer)
    - Interviews may be conducted on employer's property or in a neutral location
- **Review the petitioner's records** related to compliance with immigration laws and regulations.

These worksite visits and investigations can occur at any time, including before or after the H-1B is approved.

Worksite visits often occur after approval of the petition to confirm the truthfulness and veracity of the petition itself.

In practice, usually one or more USCIS officers from the Fraud Detection and National Security (FDNS) office appear at a worksite asking to speak with the employer and review the employee's workspace to confirm the work location. The officer will often ask basic questions about the nature of the work, hours, salary, and basic conditions of employment. The officer typically follows up with a written questionnaire for the employer and the employees to respond to in writing. The topics typically cover job title, job description, work location(s), hours per week worked, salary and any other pertinent information they deem necessary, ***even if the government has no legal basis to request the information*** [4]. If there are concurrent H-1B's, both employers would likely receive the same or similar questionnaire.

Per regulation, the failure to comply or cooperate with the investigation can carry serious consequences, mainly to the H-1B employee. Consequences could include revocation and/or denial of the H-1B petition. If this occurs, the employee could be left without status and be at risk of deportation.

3 . Worksite visits at K-12 settings and other sensitive locations

Despite the widespread and sweeping investigative authority the United States Citizenship and Immigration Services (USCIS) and Fraud Detection and National Security (FDNS) may have under the above regulations and case-law, it should be noted that these employees may be working in spaces that have been identified as "sensitive locations", such as schools and hospitals. Per long standing policy, ICE should not generally engage in arrests, interviews, searches, and/or enforcement-oriented surveillance at schools (including pre-schools, post-secondary schools and colleges and universities) and hospitals[5].

On January 20, 2025, the Trump administration ended this policy of protecting "sensitive locations" from enforcement actions. The National Immigration Law Center (NILC) has published: *"Factsheet: Trump's Rescission of Protected Areas Policies Undermines Safety for All."*[6] At this time, it is not clear if all memos related to sensitive locations have been rescinded. The *NILC Factsheet* discusses the general parameters of Fourth Amendment protections that still apply to all locations and make general recommendations for these locations.

Please note that the comments to the worksite inspection regulations addressed the sensitive locations memo and confirmed that USCIS did not believe there was a conflict between those memos and H-1B worksite visits [7].

Per NILC's Fact Sheet:

Will ICE still need a warrant to enter areas that were previously protected?

> *Yes, but only for places within those areas that are considered private, since the Fourth Amendment protects areas where people have a "reasonable expectation of privacy." In the context of protected areas, areas open to the public such as lobbies, waiting areas and parking lots are considered public, while interior areas and those marked "private" with a sign are considered private. For immigration enforcement to search or enter a private area within a formerly protected area, the Fourth Amendment requires a valid judicial warrant signed by a federal judge unless staff at those areas consent to the search.2*

Id.

Please note that the long-standing policy regarding sensitive locations has never been a blanket exception to investigations and actions being taken at sensitive locations. The 2011 memo regarding sensitive locations states: *"Actions not covered by this policy include actions such as obtaining records, documents and similar materials from* ***officials or employees****, providing notice to officials or employees, serving subpoenas, engaging in Student and Exchange Visitor Program (SEVP) compliance and certification visits, or participating in official functions or community meetings."*

In essence, even per the long standing existing legal and policy framework there were carveout exceptions for USCIS and immigration officials to interact with employers and employees at sensitive locations.

However, the Supreme Court in *Plyler v. Doe*, 457 US 202 (1982) held that undocumented children are "people" within the ordinary sense of the term and should be afforded Fourteenth Amendment protection. This means that any public school system must establish a "compelling interest" if they wished to deny them a public education. Thus, ICE or USCIS should not impede on these important rights, in accordance with the decision; enforcement actions and investigations could well be said to impede on this important right to education.

In accordance with these important protections of K-12 educational settings, the Attorney General in California has issued policy guidance for K-12 schools and reinforced these principles:

> *Federal law and California law also prohibit local educational agencies from engaging in any practices with the purpose or effect of discriminating against students on the basis of race, color, or national origin. Inquiries into a student's or parent's immigration or citizenship status may have such a discriminatory effect.25 California law specifically prohibits discrimination on the basis of an individual's immigration status, for any program or activity conducted by an educational institution that either receives or benefits from state financial assistance, or that enrolls students who receive state financial aid.26 In addition, state law requires "full and equal accommodations, advantages, facilities, privileges, or services" for students regardless of their citizenship or immigration status.27 Local educational agencies should review their student-enrollment, residency, and data-collection policies and practices, not only to ensure that they comply with these federal and state laws,* ***but also to safeguard against inadvertently discouraging immigrant/undocumented children from enrolling in or attending school because of the content of the enrollment forms or the mechanics of the enrollment process.***[8]

The question is, how do we protect our H-1b workforce and remain compliant in the event of a worksite visit and at the same time protect other vulnerable immigrants who may be accessing resources at these same locations.

4. California Specific Guidance for K-12 institutions

The California Attorney General's Office has drafted materials to assist K-12 institutions in crafting policies to deal with immigration related information requests made to schools.[9] The full set of policies are listed therein and there are specific rules and requirements for the collection and dissemination of student information that is outside of the scope of this piece. However, in the event of a worksite visit that is based upon an H-1B investigation, student data should be maintained and protected in accordance with California State Law and the Attorney General's recommendation as well as school policies. The California Attorney General's Office has policy recommendations for sharing student and family information which include:[10]

- *The [local educational agency] shall avoid the disclosure of information that might indicate a student's or family's citizenship or immigration status if the disclosure is not authorized by the Family Educational Rights and Privacy Act (FERPA) [Local educational agency] personnel shall take the following action steps upon receiving an information request related to a student's or family's immigration or citizenship status: Notify a designated [local educational agency] official about the information request. Provide students and families with appropriate notice and a description of the immigration officer's request. Document any verbal or written request for information by immigration authorities. Unless prohibited, provide students and parents/guardians with any documents issued by the immigration-enforcement officer.*

- *The [local educational agency] shall require written parental or guardian consent for release of student information, unless the information is relevant for a legitimate educational interest or includes directory information only. Neither exception permits disclosing information to immigration authorities for immigration-enforcement purposes; no student information shall be disclosed to immigration authorities for immigration- enforcement purposes without a court order or judicial subpoena.*

- *The [local educational agency's] request for written parental, guardian, or eligible student consent for release of student information must include the following information: (1) the signature and date of the parent, guardian, or eligible student providing consent; (2) a description of the records to be disclosed; (3) the reason for release of information; (4) the parties or class of parties receiving the information; and (5) if requested by the parents, guardians or eligible student, a copy of the records to be released. The [local educational agency] shall permanently keep the consent notice with the record file*

Per advice given from the California Attorney General's Office, the school should have a policy in place to accept outside visitors on campus, and clearly identify the difference between public and private spaces. [11]

5. Recommendations for K-12 institutions who are employing H-1B's

K-12 administrators should consider whether the policies for an H-1B worksite visit may be different from a more generalized enforcement action. The current model Attorney General policies cite "exigent circumstances" to be requested before allowing an ICE officer access to the school.[12] An officer conducting an H-1B site visit will not cite to exigent circumstances, however they may deny an H-1B due to the lack of compliance with an investigation. Unlike an enforcement action which is generally intended to target individuals for arrest and possible removal, an H-1B worksite visit is an investigative tool to determine eligibility for an immigration benefit. In the event a school is non-cooperative the petition may be denied and/or revoked, and the employee would be left without status and potentially removable as a result. Considering this, schools should develop separate (though potentially overlapping) policies for responding to an H-1B worksite visit, including guidance for staff on how to recognize the difference between an ICE enforcement action and an H-1B worksite visit.

Below are suggested options in alignment with current California guidance[13]:

1. Review the schools Immigration Officer's Presence on Campus Policy; *When the circumstances allow, local educational agency personnel shall immediately notify the Superintendent or other designated administrator of any request by an immigration enforcement officer for school or student access, or any requests for review of school documents (including for the services of lawful subpoenas, petitions, complaints, warrants, etc.);*[14]

2. *Identify the reason for the visit. If an H-1B site investigation is the basis ask the officer whether a meeting outside of normal school hours and possibly at a non-sensitive location, would be possible so as to comply with the investigation but not impede on the educational rights and access afforded by the 14th Amendment of the constitution'*

3. *In accordance with existing policy you can also indicate: No outsider—which would include immigration-enforcement officers—shall enter or remain on school grounds of the [local educational agency] during school hours without having registered with the principal or designee.82 If there are no exigent circumstances necessitating immediate action, and if the immigration officer does not possess a judicial warrant or court order that provides a basis for the visit, the officer must provide the following information to the principal or designee:*

> *Name, address, occupation; Age, if less than 21; Purpose in entering school grounds; Proof of identity; and any other information as required by law.83*[15]

4. *The [local educational agency] shall post signs at the entrance of its school grounds to notify outsiders of the hours and requirements for registration.85*[16]

5. Train front desk staff to confirm what the basis of the action is when the officer appears. Identify the HR Representative or School Official on campus, in advance, who will respond ONLY to the H-1B worksite investigation and answer H-1B specific questions about the role and responsibilities and comply with any record request related to the H-1B specifically;

6. Notify any H-1B staff member in advance that they may be contacted by an immigration officer related to a worksite inspection and this may occur at their residence if there is a work-from-home situation.[17] Providing this information once an H-1B is filed may be more important in the event the person lives in a mixed status household and needs to ensure others in the home are made aware and have plans in place to respond appropriately to such a visit;

7. If you have H-1B workers on-site you may want to consider drafting an explainer, in advance, to your staff/ administrators and if necessary, families and community members, should an immigration officer appear and/or be identified as such within the school so as to avoid panic;

8. Limit the scope of any worksite request to the questions at hand, to be focused only on the H-1B worker, limiting the scope of the information to specific information requested by the investigator.Please note that per current 9th Circuit case law and the worksite regulations- the scope of the inquiry could be broad and there may be a need to balance the outcome of the adjudication of the H-1B petition with privacy concerns;

9. Keep the H-1B petition information in a separate location from any other confidential information that should not be accessible to US immigration officials and non-school personnel.

Appendix-Endnotes

[1] Baron, E. (2025) *H-1B visa: South Bay executives must be re-charged with visa fraud, judges rule, Silicon Valley*. Available at: https://www.siliconvalley.com/2025/01/15/h-1b-visa-south-bay-executivesmust-be-re-charged-with-visa-fraud/ (Accessed: 27 January 2025). "Under longstanding principles, the government may protect itself against 'those who would swindle it' even if the government demanded answers to questions it had no right asking," Bumatay wrote in the Tuesday decision. "So lying on H-1B visa applications remains visa fraud even when the lies were given in response to questions the government can't legally ask — as long as the misrepresentations could have influenced USCIS at the time they were made."

[2] Modernizing H–1B Requirements, Providing Flexibility in the F–1 Program, and Program Improvements Affecting Other Nonimmigrant Workers (2024) Federal Register (89 FR 103054, 12/18/24). Available at: https://www.govinfo.gov/content/pkg/FR-2024-12-18/pdf/2024-29354.pdf (Effective: 17 January 2025). The new H-1B worksite visit language reads as follows:

> *The information provided on an H–1B petition and the evidence submitted in support of such petition may be verified by USCIS through lawful means as determined by USCIS, including telephonic and electronic verifications and on-site inspections.*
>
> *Such verifications and inspections may include, but are not limited to: electronic validation of a petitioner's or third party's basic business information; visits to the petitioner's or third party's facilities; interviews with the petitioner's or third party's officials; reviews of the petitioner's or third party's records related to compliance with immigration laws and regulations; and interviews with any other individuals possessing pertinent information, as determined by USCIS, which may be conducted in the absence of the employer or the employer's representatives; and reviews of any other records that USCIS may lawfully obtain and that it considers pertinent to verify facts related to the adjudication of the H–1B petition, such as facts relating to the petitioner's and beneficiary's H–1B eligibility and compliance.*
>
> *The interviews may be conducted on the employer's property, or as feasible, at a neutral location agreed to by the interviewee and USCIS away from the employer's property. An inspection may be conducted at locations including the petitioner's headquarters, satellite locations, or the*

> *location where the beneficiary works, has worked, or will work, including third party worksites, as applicable. USCIS may commence verification or inspection under this paragraph (h)(4)(i)(B)(2) for any petition and at any time after an H–1B petition is filed, including any time before or after the final adjudication of the petition. The commencement of such verification and inspection before the final adjudication of the petition does not preclude the ability of USCIS to complete final adjudication of the petition before the verification and inspection are completed.*

[3] AILA Doc. No. 24122433 (ed.) (2025) *Top Ten Key Takeaways of the H-1B Modernization Rule, American Immigration Lawyers Association*. Available at: https://www.aila.org/library/practice-alert-topten-key-takeaways-of-the-H-1B-modernization-rule (Accessed: 27 January 2025).
"The Rule contains expanded authority and compliance requirements for H-1B site inspections. Under the rule, USCIS is authorized to conduct site visits at the petitioner's worksite, neutral locations, and other places where H-1B work will be performed, including third-party customer locations (including, according to the Supplementary Information accompanying the Rule, at the private residence of the H-1B beneficiary, if H-1B work is remotely performed in the home). If USCIS is unable to verify facts, including situations in which the petitioner or a third party refused or declined to cooperate in an inspection, USCIS is authorized to deny or revoke any petition for H-1B workers performing services at these locations."

[4] See, US v PatNaik No. 23-10043, 9th Cir (January 14,2025) at: https://cdn.ca9.uscourts.gov/datastore/opinions/2025/01/14/23-10043.pdf :
"Yet, under longstanding principles, the government may protect itself against "those who would swindle it" ***even if the government demanded answers to questions it had no right asking***. See United States v. Kapp, 302 U.S. 214, 218 (1937). So lying on H-1B visa applications remains visa fraud even when the lies were given in response to questions the government can't legally ask—as long as the misrepresentations could have influenced USCIS at the time they were made."

See also *Modernizing H–1B Requirements, Providing Flexibility in the F–1 Program, and Program Improvements Affecting Other Nonimmigrant Workers (2024) Federal Register (89 FR 103054, 12/18/24*). Available at: https://www.govinfo.gov/content/pkg/FR-2024-12-18/pdf/2024-29354.pdf, comments to the Regulations:

> *The language of the new regulations makes clear that USCIS officers will limit their review to pertinent information, which includes information that was provided by the petitioner, material to eligibility, or needed to make a determination on continued compliance with the terms and conditions of the petition. This universe of information will vary according to the specific petition being reviewed. Because DHS does not limit the evidence used by petitioners to demonstrate eligibility and compliance with the terms and conditions of the petition, DHS likewise will not limit the types of evidence that may be requested by USCIS officers, as long as such evidence is pertinent to their inquiry.*

DHS declines to add any additional ''reasonableness standard,'' as the new regulations sufficiently limit the universe of information that could be addressed in a site visit to that which is pertinent to eligibility and continued compliance with the terms and conditions of the petition.https://www.govinfo.gov/content/pkg/FR-2024-12-18/pdf/2024-29354.pdf at 103144 (p.91).

[5] Morton, J. (2011) *Enforcement Actions at or Focused on Sensitive Locations, ice.gov*. Available at: https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf (Accessed: 27 January 2025).

[6] Pearson, L.D. (2025) *Factsheet: Trump's Rescission of Protected Areas Policies Undermines Safety for All , www.nilc.org*. Available at: https://www.nilc.org/wp-content/uploads/2025/01/Protected-Areas-Policies-Undermines-Safety-for-All-.pdf (Accessed: 27 January 2025); *A Guide for Employers: What to Do if Immigration Comes to Your Workplace (2024) National Immigration Law Center.* Available at: https://www.nilc.org/resources/a-guide-for-employers-what-to-do-if-immigration-comes-to-your-workplace/ (Accessed: 27 January 2025).

[7] The comments to the Rule addressed this discrete question and explained that one commenter raised this conflict: *"Similarly, a research organization urged DHS to rescind its policy memorandum Guidelines for Enforcement Actions in or Near Protected Areas, stating that no ''robust worksite enforcement'' can take place while ICE is constrained by that memo"*. The response to this question from CIS was:

"*Regarding the mentioned policy memorandum, USCIS does not anticipate that the requirements of that memorandum would interfere with the activities of USCIS officers conducting on-site inspections in a way that would limit their ability to interview pertinent individuals*. To the extent that the commenter is discussing only the impact of the memo on ICE, that is outside the scope of this rule." *Modernizing H–1B Requirements, Providing Flexibility in the F–1 Program, and Program Improvements Affecting Other Nonimmigrant Workers (2024) Federal Register (89 FR 103054, 12/18/24). Available at: https://www.govinfo.gov/content/pkg/FR-2024-12-18/pdf/2024-29354.pdf* at 103147 (p. 94):

[8] Bonta, R. (2024) *Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues, Office of the Attorney General, California Department of Justice. Available* at: https://oag.ca.gov/sites/all/files/agweb/pdfs/bcj/school-guidance-model-k12.pdf (Accessed: 27 January 2025).

[9] *Id.*

[10] *Id*. at p. 20-21

[11] *Id* at p. 28

[12] *Id*. at p. 31

[13] *Id*. at p. 28

[14] *Id*. at p. 28

[15] This is a model policy suggested and taken from Id. at p. 28

[16] *Id*. at p. 29.

[17] *"As noted, the purpose of a site visit is to verify the information that was provided in the petition with review of an accurate and unrehearsed view of the work being performed. As such, site visits are generally unannounced. DHS further declines to otherwise restrict the ability of USCIS officers to visit and interview employees at their assigned work location, including if it is the employee's residence." Modernizing H–1B Requirements, Providing Flexibility in the F–1 Program, and Program Improvements Affecting Other Nonimmigrant Workers (2024) Federal Register (89 FR 103054, 12/18/24). Available at: https://www.govinfo.gov/content/pkg/FR-2024-12-18/pdf/2024-29354.pdf* at 103146 (p. 93):