

ALBANY  
 AMSTERDAM  
 ATLANTA  
 AUSTIN  
 BOSTON  
 CHICAGO  
 DALLAS  
 DELAWARE  
 DENVER  
 FORT LAUDERDALE  
 HOUSTON  
 LAS VEGAS  
 LONDON\*  
 LOS ANGELES  
 MIAMI  
 NEW JERSEY  
 NEW YORK  
 ORANGE COUNTY  
 ORLANDO  
 PALM BEACH COUNTY  
 PHILADELPHIA  
 PHOENIX  
 SACRAMENTO  
 SAN FRANCISCO  
 SHANGHAI  
 SILICON VALLEY  
 TALLAHASSEE  
 TAMPA  
 TYSONS CORNER  
 WASHINGTON, D.C.  
 WHITE PLAINS

*Strategic Alliances with Independent Law Firms\*\**

MILAN  
 ROME  
 ZURICH

## Arizona Snapshot Indicates Increased Odds for ICE Storm. Are You Gambling With Compliance?

Interestingly, Immigration and Customs Enforcement’s (ICE) Office of Investigations (OI) in Arizona [released](#) a snapshot of its weekly operations. No other ICE office has provided such statistics. It is clear that politics played a significant role in prompting the release of this snapshot, considering the amount of scrutiny Arizona’s [SB1070](#) has undergone in the past couple of weeks and with mid-term elections two months away. Regardless of ICE’s motives, the report provides evidence of the increasing worksite enforcement activity affecting employers. This should not come as a surprise to anyone who has been following our postings and [Alerts](#).



OI has 26 Special Agents in Charge (SACs) at its principal field offices throughout the United States. These offices are responsible for the administration and management of all investigative and enforcement activities within their respective geographic boundaries. The Arizona snapshot of the enforcement activity in one Area of Responsibility (AOR) provides insight into the kind of activity being experienced in other AORs throughout the country.

The Arizona report definitely supports the proposition that ICE is aggressively executing its mission. Administrative and criminal investigations have resulted in significant numbers of successful criminal prosecutions, civil monetary penalties, administrative arrests, and civil forfeitures.

But what employers should be focused on are the details of the report that relate to OI's worksite enforcement, and how those statistics may be interpreted alongside the 25 additional offices in the country to provide a clearer picture of audit activity and stepped-up administrative efforts.

*ICE audited 59 Arizona businesses, resulting in the inspection of 21,587 Forms I-9. Of the 21,587 Forms I-9 inspected, agents determined that 2,177 employees presented "Suspect Documents." Twenty-five businesses were served a Warning Notice and 23 were served a Notice of Compliance based upon the results of the Form I-9 audits. ICE is currently preparing several Notices of Intent to Fine for other business[es] audited in FY10. In FY09, ICE fined six Arizona companies with fine notices totaling more than \$270,000.*

Some may be questioning whether the snap-shot is representative of national trends: we are of the opinion that it is. At the recent ICE training, the enforcement division reported fine assessments greater than \$4M against 164 employers throughout the country, and noted that 147 employers have been criminally convicted or cited with worksite violations during the calendar year. With increases to the forensic auditor core and a new centralized Auditing Center opening up to assist with administrative reviews, ICE is poised to increase administrative investigations in an effort to continue to remind employers that the culture of compliance is something to take very seriously. The number of criminal investigations is also sure to rise. The recent statistics are certainly impressive, but we are still willing to wager that the agency will issue another round of [Notices of Inspection \(NOI\)](#) to employers in the next month or so. The SACs with larger resources will certainly be held responsible for more of these anticipated audits; we guesstimate another 500 to 750 audits will be announced. The number of NOIs may exceed 2,300 by the end of 2010. Companies located in the larger SAC jurisdictions including Atlanta, New York, Washington DC, Chicago, Dallas, Houston, Los Angeles, Phoenix and San Francisco are among the favored for the clusters in numbers. While the metrics for audit selection are not disclosed, ICE appears not to be discriminatory and clearly each SAC has a generous amount of latitude both in selecting companies for audits as well as for settlements. Generally investigations are based on leads, targets and other factors. The required number of audits for each SAC will vary with the size of the AOR, the number of auditors assigned to the SAC and those internal guidelines that ICE utilizes. No quotas, of course, but reports are publicized within the agency and "stats" are reviewed, need we say more? While we also have plenty of ideas on those metrics, nothing is concrete.

Folks, to be clear, this was **not** discussed during the IMAGE conference last week. But, alas, we are not true psychics- fair warning was given to companies by Senior Special Agent Todd Johnson and other ICE Representatives: take action, review your I-9 related compliance and institute a compliance plan NOW. Taking such corrective action after ICE serves an NOI just doesn't count as much.

What was not discussed during last week's meetings with ICE, but what is identified in the snap-shot, is the number of "Suspect Documents" identified during the inspections—2,177 out of the 21,587 Forms I-9 inspected. "Suspect Documents" is a phrase that relates to the number of employees who have presented documents to employers that cannot be verified by the government without further review; often, fraudulent documents are in play. Upon receipt of a Notice of Suspect Documents, employers are required to request alternative documents from the identified individuals, and if the issue cannot be resolved, they are referred to ICE. While a number of Suspect Documents issues can be resolved, the vast majority of workers receiving such notices are eventually terminated due to their inability to provide valid work authorization. Based on very rough math, SAC Arizona has inspected employers with workforces that are comprised of almost 10% unauthorized individuals.

Now, some may argue that the number is already high and reflects the composition of a workforce in a border state. That may be the case. But, even if the average is closer to 5%, even the most compliance-driven employers will have some exposure to "knowingly hire" and "continuing to employ" allegations. What should employers do? Be proactive. At a minimum, review and correct your I-9s before ICE does. Go further, take the Arizona statistics seriously—implement standard operating procedures and trainings designed to improve immigration compliance, employ comprehensive identity and work eligibility verification mechanisms, and consider rolling-out verification compliance software as well, to establish a "good faith defense."

Now is the time to consider implementing best practices. Enforcement activity will continue to increase prior to the adoption of minor, let alone true, comprehensive reform.



This *GT Alert* was written by Dawn M. Lurie and Kevin Lashus. Questions about this information can be directed to:

- Dawn M. Lurie — 703.903.7527 | [luried@gtlaw.com](mailto:luried@gtlaw.com)
- Kevin Lashus — 512.320.7219 | [lashusk@gtlaw.com](mailto:lashusk@gtlaw.com)
- Or any member of Greenberg Traurig's Business Immigration & Compliance team listed on the following page

[Greenberg Traurig's Business Immigration and Compliance Group](#) has extensive experience in advising multinational corporations on how to minimize exposure and liability regarding a variety of employment-related issues, particularly I-9 employment eligibility verification matters. In addition to assisting in H-1B (Labor Condition Application) audits, GT develops immigration-related compliance strategies and programs and performs internal I-9 compliance inspections. GT has also successfully defended businesses involved in large-scale government worksite enforcement actions, I-9 Audits and Department of Labor Wage and Hour investigations. GT attorneys provide counsel on a variety of compliance-related issues, including penalties for failure to act in accordance with government regulations, IRCA anti-discrimination laws-Office of Special Counsel Investigations, and employers' responsibilities when faced traditional no-match situations as well as more serious workplace identity theft or other alleged misrepresentations made by employees.

**Atlanta**  
678.553.2100  
*Joe D. Whitley*

**Austin**  
512.920.7200  
*Kevin Lashus*  
*Maggie Murphy*  
*Sujata Ajmera*

**Dallas**  
972.419.1250  
*Peter Wahby*

**Houston**  
713.374.3500  
*Martha Schoonover*  
*Adelaida Vasquez*

**Los Angeles**  
310.586.7700  
*Mahsa Aliaskari*  
*Jennifer Biloshmi<sup>†</sup>*

**Miami**  
305.579.0500  
*Oscar Levin*

**New York**  
212.801.9200  
*Marcela Bermudez*  
*Patricia Gannon*  
*Christina Pitrelli*

**Tysons Corner**  
703.749.1300  
*Lindsey Baldwin*  
*Kristin Bolayir<sup>†</sup>*  
*Patty Elmas<sup>†</sup>*  
*Dawn Lurie*  
*Laura Reiff*  
*Glenn E. Reyes<sup>†</sup>*  
*Rebecca Schechter*  
*Martha Schoonover*

**Washington, D.C.**  
202.331.3100  
*Laura Reiff*  
*Montserrat Miller*

<sup>†</sup>Not admitted to the practice of law.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ©2010 Greenberg Traurig, LLP. All rights reserved. \*Operates as Greenberg Traurig Maher LLP. \*\*Greenberg Traurig is not responsible for any legal or other services rendered by attorneys employed by the Strategic Alliance firms.*