



The Commonwealth of Massachusetts  
Committee for Public Counsel Services  
Immigration Impact Unit  
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**A Practice Advisory on ICE Use of Administrative Warrants and True Warrants in  
Immigration and Criminal Enforcement  
February 19, 2013**

**I. Introduction**

United States Immigration and Customs Enforcement (ICE) officers frequently employ “warrants” in the course of their duties as the enforcement arm of the Department of Homeland Security (DHS). This is often done in conjunction with, and arguably at the request of, local criminal law enforcement authorities. By way of example, the IIU recently learned that two ICE agents and six members of the Fall River Police Department vice squad entered the home of a Fall River man armed only with an ICE “administrative warrant,” arrested the man and seized crack cocaine. Defense attorneys should be aware of the nature of these “warrants” and be prepared to challenge their use as tools of criminal investigations.

ICE officers employ two types of “warrants.” The first category includes “warrants” issued pursuant to the various enforcement provisions outlined in the Immigration and Nationality Act (INA). *See* 8 USC §1101 *et seq.* These documents are not issued by a neutral magistrate, but instead are simply signed by an ICE officer. We call this category “administrative warrants.”

The second category includes true, civil warrants, issued by a neutral magistrate or judge. We call this category “true warrants.”

**II. Administrative Warrants**

An administrative warrant is any document, issued by a designated ICE official, purporting to document the authority of an ICE agent to arrest a person suspected of violating immigration laws. This arresting authority is outlined in 8 U.S.C. § 1357, 8 C.F.R. § 287.5. Most significantly, the administrative warrant is not issued by a neutral magistrate as required by the Fourth Amendment. Instead, it can be signed by any number of designated immigration officers. 8 C.F.R. § 287.5(e)(2); *see generally United States v. Abdi*, 463 F.3d 547, 551 (6th Cir. 2006) (describing the procedure for obtaining an administrative warrant).

These administrative warrants, because they are not true warrants issued by a neutral magistrate, do not give ICE officials authority to enter a place where there is a reasonable expectation of privacy. *Camara v. Municipal Court*, 387 U.S. 523 (1967) (holding administrative warrant insufficient to permit entry into residence); *See v. City of Seattle*, 387 U.S. 541 (1967) (holding that administrative warrant does not provide authority to enter non-public parts of business without owner's consent); *United States v. Castellanos*, 518 F.3d 965, 971-972 (8th Cir. 2008); *see Commonwealth v. Frodyma*, 386 Mass. 434, 438 (Mass. 1982) (“An administrative inspection warrant, granted under a lesser standard of probable cause than is required in traditional criminal searches and seizures, cannot be used as a device to seize evidence for use in a criminal prosecution.”).

ICE has acknowledged that administrative warrants do not allow officers to enter places where there is a reasonable expectation of privacy, without consent. At a training organized by the Federal Law Enforcement Training Center, the instructor observed that “the primary difference” between a criminal warrant and an administration warrant “is that, unlike a criminal warrant issued by the federal court, a removal warrant does not authorize the ICE officer to enter into an REP [reasonable expectation of privacy] area to execute the warrant.” <http://www.fletc.gov/training/programs/legal-division/podcasts/hot-issues-podcasts/hot-issues-transcripts/ice-administrative-removal-warrants-podcast-transcript.html>. Similarly, in a March 14, 2007 letter from Karyn Lang, director of the Office of Congressional Relations for DHS, to Representative Zoe Lofgren, Ms. Lang stated that “Officers are required to obtain consent before they enter private residences or non-public areas of businesses.”

### **III. True Warrants**

In addition to the administrative warrants discussed above, ICE may also pursue true warrants, issued by a neutral magistrate. *Blackie's House of Beef, Inc. v. Castillo & INS*, 659 F.2d 1211, 1218-19 (D.C. Cir. 1981); *Inn Molders' & Allied Workers' Local Union No. 164 v. 20 Nelson & INS*, 799 F.2d 547, 553 (9th Cir. 1986); *see United States v. M/V Sanctuary*, 540 F.3d 295, 300 (4th Cir. 2008). Attached you will find an application for a warrant of inspection, submitted by ICE, to authorize the search of a business.

There is a question regarding the standard necessary to issue a civil search warrant. In *Blackie's*, the D.C. Circuit concluded that the immigration service need only show “sufficient specificity and reliability to prevent the exercise of unbridled discretion by law enforcement officials” before a warrant to search a commercial establishment. *Blackie's*, 659 F.2d at 1225. They need not identify the specific undocumented individuals that are the subject of the search, on the theory that it would be impossible for ICE to know who they would find in a raid of a commercial business. *Id.*

Certainly, a search of a home is different from the search of a business. There is little case law on this issue, but one court, addressing this precise issue, concluded that a court reviewing an ICE application for a warrant to search a home must apply the same probable cause standard necessary for a criminal warrant. *Illinois Migrant Council v. Pilliod*, 531 F. Supp. 1011, 1021-1022 (N.D. Ill. 1982); *see also Castellanos*, 518 F.3d at 971-972.

When the search intrudes into the home, the expectation of privacy is at its highest. The immigration statute itself explicitly limits searches of homes, even at the U.S. border, where ICE has expanded authority to search. 8 U.S.C. § 1357(a)(3) (“Any officer . . . shall have power without warrant . . . within a distance of twenty-five miles from any such external boundary to have access to private lands, but not dwellings, for

the purpose of patrolling the border to prevent the illegal entry of aliens into the United States.”) ; *Castellanos*, 518 F.3d at 971-972 (“Contrary to the government's position, 8 U.S.C. § 1357 does not relax the Fourth Amendment prohibition against warrantless entry into private dwellings.”).

#### **IV. Using Administrative Warrants to Conduct Criminal Investigations**

In addition, law enforcement may not circumvent criminal law and procedure (including the constitutional protections inherent in criminal cases) by using an administrative warrant. *Abel v. United States*, 362 U.S. 217, 226, 230 (1959) (“The deliberate use by the Government of an administrative warrant for the purpose of gathering evidence in a criminal case must meet stern resistance by the courts.”); *see United States v. Utecht*, 238 F.3d 882, 886 (7th Cir. 2001) (“[T]he government's use of civil subpoenas (or other kinds of administrative measures that do not require probable cause) principally to further a criminal investigation could undermine the Fourth Amendment's probable cause requirement.”); *United States v. Salter*, 432 F.2d 697, 699-70 (1<sup>st</sup> Cir. 1970). “The test is whether the decision to proceed administratively toward deportation was influenced by, and was carried out for, a purpose of amassing evidence in the prosecution for crime.” *Abel*, 362 U.S. at 230.

#### **V. Conclusion**

Defense attorneys should be aware of the nature and limited authority carried by an ICE administrative warrant, so that law enforcement cannot impermissibly justify an unlawful search by suggesting that such a search was authorized by a “warrant.” Defense attorneys should also insure that law enforcement officers are not permitted to circumvent constitutional protections by using civil or administrative warrants to execute criminal investigations.

**Facsimile Transmission**

**OFFICE OF CONGRESSIONAL RELATIONS  
Immigration & Customs Enforcement**



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Room 7030  
WASHINGTON, D.C. 20536

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Date: 3/14/07 4 Page(s) including cover

FROM: Ricardo Velazquez

TO: Saddov

SUBJECT: ICE Programs

FAX# 202-225-3737

COMMENTS:

*Office of Congressional Relations*U.S. Department of Homeland Security  
425 I Street, NW  
Washington, DC 20536U.S. Immigration  
and Customs  
Enforcement

MAR 14 2007

The Honorable Zoe Lofgren  
U.S. House of Representatives  
Washington, DC 20515

Dear Congresswoman Lofgren:

Thank you for your March 1, 2007, letter to Julie L. Myers, Assistant Secretary for Immigration and Customs Enforcement, regarding your request that U.S. Immigration and Customs Enforcement (ICE) provide information on specific ICE programs and procedures.

While the Department of Homeland Security (DHS) as a whole has committed significant resources to preventing aliens from illegally entering the United States (U.S.), significant resources have also been committed to arresting immigration-law violators within the Nation. The primary mission of the National Fugitive Operations Program (NFOP), which is a unit within the Compliance Enforcement Division (CED) of ICE's Office of Detention and Removal Operations (DRO), is to identify, locate, arrest, or otherwise reduce the fugitive alien population in the United States. An ICE fugitive is defined as *an alien who has failed to depart the United States pursuant to a final order of removal, deportation or exclusion; or who has failed to report to a Detention and Removal Officer after receiving notice to do so*. At present, there are over 600,000 ICE fugitives at large in the U.S., according to DRO's Deportable Alien Control System. NFOP was established to address the ongoing number of fugitive aliens present in the United States.

In Fiscal Year (FY) 2006, there was funding in place for 52 Fugitive Operations Teams (FOT's) teams. During FY 2006, the number of FOT's increased from 18 to 50 (as of February 2007, 53 teams are operational). During FY 2007, Congress provided funding for an additional 23 teams, increasing the total number of funded teams to 75. These teams are being deployed at DRO Field Offices throughout the United States. By the end of FY 2007, each of the 24 DRO Field Offices will have at least one operational FOT. Please note that FOT's neither specifically target illegal aliens, nor conduct "sweeps" or "raids,"; rather they focus their efforts on specific fugitive aliens at specific locations. According to policy, FOT's prioritize their efforts utilizing the following criteria:

- fugitives that are a threat to national security;
- fugitives that pose a threat to the community;
- fugitives convicted of violent crimes;
- fugitives with criminal records; and
- non-criminal fugitives.

On May 26, 2006, NFOP initiated "Operation Return to Sender," a nationwide interior enforcement initiative that applies an organized and methodical approach to the identification, location, and arrest of ICE fugitive aliens. This ongoing initiative pools the

The Honorable Zoe Lofgren

Page 2

resources of ICE with other Federal, state, and local law enforcement entities, targeting ICE fugitive aliens residing in specific regions. The goal of the initiative is to eliminate the backlog of ICE fugitive cases in the most fiscally efficient way.

During May 26, 2006, and March 2, 2007, DRO Field Offices, ICE agents and officers were involved in a concerted effort which resulted in the arrest of 18,860 criminal aliens, including illegal alien gang members, fugitive aliens, sexual predators and other immigration status violators. Of the total aliens arrested, 11,870 were ICE fugitive aliens. The remaining 6,990 arrests were comprised of non-fugitives (illegal aliens), of which, 1,362 were criminal aliens. Of the 18,860 aliens arrested, 292 were sexual predators and 9,565 were removed from the United States.

Upon an order of removal by an immigration judge, within the Department of Justice, DRO issues a Warrant of Deportation/Removal (Form I-205). If the alien fails to appear for removal, then the alien is deemed an ICE fugitive. Warrants of removal are administrative in nature, and do not grant the same authority as a criminal search or an arrest warrant.

While pursuing ICE fugitives, FOT's often locate targeted aliens at their residences or places of employment. Arresting fugitives at schools, hospitals, or places of worship is strongly discouraged, unless the alien poses an immediate threat to national security or the community. Officers are required to obtain consent before they enter private residences or non-public areas of businesses.

During the course of normal targeted operations, while attempting to arrest ICE fugitives, FOT's often encounter other individuals at the targeted location. Pursuant to section 287(a)(1) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1357(a)(1) (1996), as amended, an officer has the authority to question any person as to their right to enter, re-enter, pass through, or reside in the United States. If a person is deemed to be an alien in the U.S. illegally and is found to be amenable to removal, they may be arrested, without warrant, and processed accordingly for removal.

FOT's have encountered both ICE fugitives and non-fugitives at targeted arrest sites who are the primary care givers to children. If a determination has been made to take the alien into custody, officers will not depart the scene until the alien is afforded the opportunity to arrange appropriate care for the child. If the alien cannot make appropriate arrangements on his or her own, the arresting officer will elevate the situation by contacting his/her supervisor for guidance and approval of alternative arrangements. On occasion, when deemed necessary, ICE fugitives and non-fugitives who demonstrate childcare issues are released on an order of supervision, or on their own recognizance, respectively, and directed to report to the DRO Field Office at a later date, unless, of course, they are deemed to be a threat to national security or the community. DRO does not currently maintain statistics on arrested aliens who are the parents of U.S. citizen children under the age of 18.

While being processed for removal, both ICE fugitives and non-fugitives are given the opportunity to contact with the consular or diplomatic officers of the country of his or her nationality. Facilities for arrestees to make calls to family members and legal representatives are provided in every case. Persons requesting information on detained aliens can contact the DRO Field Office responsible for the respective area of responsibility (AOR) where the alien was arrested. Upon filing Form G-28, Notice of Entry of Appearance as an Attorney or Representative, information can be released. While in ICE custody, family members and representatives have the opportunity to visit the alien, but visitors must abide by the respective facility's visitation policy.

ICE officials routinely brief Members of Congress and their staffs on DRO enforcement operations, including fugitive operations and Operation Return to Sender. On September 22, 2006, John Torres, Director, DRO, personally briefed

The Honorable Zoe Lofgren  
Page 3

Congressman Sam Farr regarding Operation Return to Sender conducted in Santa Cruz, California. On January 24, 2007, and January 25, 2007, Mr. Torres participated in consecutive conference calls with Congresswoman Grace Napolitano and Norma Torres, Pomona, California City Mayor, regarding Operation Return to Sender in Pomona, California. On February 21, 2007, DRO representatives participated in a Congressional staff briefing organized by the House Homeland Security Committee, and discussed several DRO-related issues, including our fugitive operation program. On March 2, 2007, DRO representatives participated in the Monthly ICE Briefing for Congress "Ending Catch & Release: Detention and Removal - Lessons Learned" addressing issues that included the deployment of fugitive operations teams and Operation Return to Sender. In addition, ICE Field Office Directors continue to conduct outreach programs for nongovernmental organizations and the public in general.

I appreciate your interest in ICE. If we may be of further assistance, please contact my office.

Sincerely,



Karyn V. Lang  
Director

AQ106 (Rev. 12/03) Affidavit for Search Warrant

UNITED STATES DISTRICT COURT

NORTHERN

DISTRICT OF

IOWA

In the Matter of the Search of
(Name, address or brief description of person, property or premises to be searched)
Agriprocessors, Incorporated and/or Nevel Properties,
Corporation with complete description of premises to be
searched incorporated in Attachment 1

APPLICATION AND AFFIDAVIT
FOR SEARCH WARRANT

Case Number: 08-MJ-110

RECEIVED
U.S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA
2008 MAY 12 AM 9:00
CEDAR RAPIDS HOURS OFFICE

I, Senior Special Agent David Hoagland being duly sworn, depose and say
I am a(n) Senior Special Agent and have reason to believe
Official Title

that on the person of on the property or premises known as (name, description and/or location)
Agriprocessors, Incorporated and/or Nevel Properties, Corporation with complete description of premises to be searched
incorporated in Attachment 1

in the Northern District of Iowa

there is now concealed a certain person or property, namely (describe the person or property to be seized)

See Attachment 2

which is (state one or more bases for search and seizure set forth under Rule 41(c) of the Federal Rules of Criminal Procedure)
contraband; property that constitutes evidence of the commission of a criminal offense; and property designed or intended
for use or which is or has been used as the means of committing a criminal offense.

concerning a violation of Title 8 & 18 & 42 United States code, Section(s) 1324,1326 &1546,1015,1028A&408

The facts to support a finding of probable cause are as follows:

See attached Affidavit

Continued on the attached sheet and made a part hereof:

Yes No

Signature of Affiant

Sworn to before me and subscribed in my presence,

Date May 9, 2008

at Cedar Rapids IA
City State

Jon Stuart Scoles Magistrate
Name of Judge Title of Judge

Signature of Judge

Attachment 1  
08-MJ-110

Description of Premises:

Building or buildings commonly referred to as Agriprocessors, Incorporated and/or Nevel Properties, Corporation using the mailing addresses of: 220 West Street, Postville, Iowa 52162; 735 West Tilden Street, Postville, IA 52162; PO Box 920, Postville, IA 52162; 150 North West Street, Postville, IA 52162; or PO Box 947, Postville, IA 52162; or any other address associated with these entities, and in the area geographically located, relatively:

- a. to the north of US Highway # 18 (AKA: Tilden Street),
- b. to the west of West (AKA: North West) street,
- c. to the south of the single relatively east-west direction service road located to the south of the Postville, Iowa, water treatment plant area, and
- d. to the east of the road known as Pole Line Road.

These areas are primarily encompassed by a chain-link fence. The areas to be excluded from any search are identified by the Allamakee County Assessors Office as Parcel # 1932377014 (commonly referred to as "Szabo Construction Company"), Parcel # 1932326005 (visually apparent at main entrance to Agriprocessors, Incorporated as propane storage tanks), and Parcel # 1932376015 (two beige or yellow in color metal buildings, with a driveway off US Highway # 18, with a small shed behind the larger metal building). This includes any and all areas which are normally used in the course of hiring and processing of applicants for employment, to include the Human Resources office, and any other areas normally used in the storage of employee records, as well as any and all areas used in what is commonly referred to as the processing and packaging of any commercial meat product; to include beef, poultry, lamb, or other livestock or fowl.

Thus, the premises to be searched are marked as areas A, B & C in Exhibit "1 attached to this search warrant application, including any and all buildings, structures, and vehicles located thereon, but excluding all other areas shown on Exhibit 1.

**Attachment # 2**

Items and Persons to be Searched for, Identified, and/or Seized

All records relating to violations of the offenses listed on the warrant, those records including:

1. Any and all personal identification documentation, including but not limited to, Agriprocessors-issued identification cards, swipe or proximity cards, drivers' licenses, resident alien cards, social security cards, and any other forms or documents pertaining to the identity of any person in the Agriprocessors facility located any where on the premises or on the person of anyone believed to be an employee of Agriprocessors.
2. Any and all pay checks, pay stubs, bank records, financial records, or other documentation regarding compensation to, or hours worked by, employees of Agriprocessors.
3. Any and all biometric information, including biometric information gathered when agents executing this warrant have employees place their hands on biometric scanning devices in the Agriprocessors facility, along with any electronic or computer devices, hardware, or software, which operate, gather, or store data from the biometric scanning system.
4. Vehicle title and registrations for any vehicles bearing license plates from Des Moines County, Iowa.
5. Books, records, notes, receipts, ledgers, invoices, contracts, diaries, cash receipts and disbursement journals, and any other items evidencing the employment process and/or relating to the employer and all past, current, or potential employees.
6. Any and all immigration documents, visas, visa applications, passports and other items relating to the employment and application process or copies thereof.
7. Any and all Forms I-9 (Employment Eligibility Verification Form), correspondence to and/or from the Social Security Administration relating to former and current employees or applicants for employment, documents pertaining to the withholding of taxes from former and current employment, documents pertaining to the withholding of taxes from former and current employees or applicants for employment, and any other government forms relating to the employment process.

8. Any and all employee applications, questionnaires, or other forms relating to the employment process.
9. Address and/or telephone books and papers reflecting names, addresses and/or telephone numbers of former or current employees.
10. Any and all documents relating to applications for citizenship or seeking adjustment or change in immigration status.
11. Books, records, receipts, notes, ledgers and other papers, documents or records, relating to the transportation, ordering, purchase, mailing, shipment, manufacture, alteration, counterfeiting or other action taken or planned in regard to any identification document or matter to be submitted in support of a request for issuance of an identification document, regardless of whether said information is maintained in paper, digital, electronic or other format.
12. All copying or duplicating equipment, laminating equipment, copy machines, cameras, memory chips for digital cameras, electronic media, electronic storage devices, scanners (including by not limited to the Ingersoll Rand Hand Punch 4000 biometric scanner), and imaging equipment, paper cutters and formatting tools and equipment, and any other mechanical or electronic implements of document storage or reproduction, and any film, memory sticks or other accessories and peripherals for the above equipment.
13. Any and all records and documents related to advertising for employment and the transportation of potential employees from other parts of the State of Iowa, the United States, or a foreign country, to the United States, the State of Iowa, or Postville, Iowa, for possible employment at Agriprocessors.
14. Any and all bank records, checkbooks, statements, or other financial records relating to or used in the process of compensating employees of Agriprocessors.
15. All computer hardware, computer software, passwords, encryption keys, and instruction manuals necessary to read and meaningfully comprehend electronically stored records that are otherwise called for by this warrant, including but not limited to: electronic devices which are capable of analyzing, creating, displaying, converting, or transmitting electronic or magnetic computer impulses or data; computer components; computer peripherals; word processing equipment; and other computer related and electronic devices.

16. All 695 people on the attached list for whom there is a criminal complaint on file, and any identification documents pertaining to those people.

The terms "records" and "information" include all of the foregoing items of evidence in whatever form and by whatever means they may have been created or stored, including any electrical, electronic, or magnetic form (such as any information on an electronic or magnetic storage device, including floppy diskettes, hard disks, ZIP disks, USB drives, memory sticks, CD-ROMs, optical discs, backup tapes, printer buffers, smart cards, memory calculators, pagers, personal digital assistants as well as printouts or readouts from any magnetic storage device); any handmade form (such as writing, drawing, painting); any mechanical form (such as printing or typing); and any photographic form (such as microfilm, microfiche, prints, slides, negatives, videotapes, motion pictures, photocopies).

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U.S. Magistrate Judge James P. Donahue

FEB 23 2009 RE

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In Re The Search of  
YAMATO ENGINE SPECIALISTS 1990  
LTD.,  
Located at 2020 E. Bakerview Rd.,  
Bellingham, Washington 98226

No. MS-08-**MS090030**JPD

APPLICATION FOR  
WARRANT OF INSPECTION

1. Relief Sought.

The United States Immigration and Customs Enforcement ("ICE") hereby makes application to this Court, pursuant to section 287(a) of the U.S. Immigration and Nationality Act ("INA"), 8 U.S.C. § 1357(a), for a Warrant of Inspection to search at Yamato Engine Specialists 1990 Ltd., located in Bellingham, Washington, for persons believed to be working in the United States without authorization.

2. Premises to be Searched.

Based on the accompanying Affidavit of ICE Special Agent Randell S. Southland, there is reason to believe that undocumented persons who are subject to removal proceedings pursuant to section 240 of the INA, 8 U.S.C. § 1229a, are currently working at Yamato Engine Specialists 1990 Ltd., which operates out of a large manufacturing warehouse situated on 8.32 acres located on the southeast corner of East Bakerview Road and Irongate Road, 2020 East Bakerview Road, Bellingham, Washington, 98226. The warehouse is approximately 75,000 square feet in size. It is tan in color with brown trim. On the north side of the building are several loading bays for

1 semi trucks, in addition to a fifty-foot section of glass comprising the main entrance centered on  
2 the north side of the building. There are large blacktop parking lots on the north and east sides  
3 of the building. The warehouse sits back off of East Bakerview Road approximately seventy  
4 yards, with open field between the road and the warehouse.

5 This Warrant of Inspection is sought in order to enter the subject premises between the  
6 hours of 6:00 a.m. and 6:00 p.m., Pacific Standard Time; search any building (other than a  
7 residential dwelling) or vehicle upon said premises and appurtenances thereto, in which a person  
8 could hide, including areas barred by locked entrances, and adjacent open fields; to seize any and  
9 all documentary evidence upon said premises, including evidence contained in vehicles and  
10 storage buildings on said premises, which may indicate said aliens' time and method of arrival in  
11 the United States, dates of hire, and other information specific to the employment of said aliens,  
12 including identity and/or nationality, assumed or real; and to take appropriate legal action as  
13 authorized by the INA.

14 3. Authority.

15 Federal courts are empowered to issue civil administrative search warrants authorizing ICE  
16 officers to enter and inspect private premises to locate, question and apprehend illegal aliens.  
17 INA §§ 235(a) and 287(a), 8 U.S.C. §§ 1225(a) and 1357(a); 28 U.S.C. § 1651 (All Writs Act);  
18 Blackie's House of Beef, Inc. v. Castillo & INS, 659 F.2d 1211, 1218-19 (D.C. Cir. 1981), *cert.*  
19 *denied*, 455 U.S. 940 (1982); *accord*, Int'l Molders' & Allied Workers' Local Union No. 164 v.  
20 Nelson & INS, 799 F.2d 547, 553 (9th Cir. 1986).

21 ICE administrative search warrants may issue on a lesser showing of probable cause than in  
22 the criminal context because ICE workplace searches are conducted pursuant to the agency's  
23 civil administrative mandate. Blackie's, 659 F.2d at 1222-1225. Generally, ICE administrative  
24 search warrants ("*Blackie's Warrants*") may issue on a showing of a reasonable likelihood that  
25 the establishment contains illegal aliens; thus a specific description of every suspected alien is  
26 not required. Int'l Molders', 799 F.2d at 553 ("We agree with the District of Columbia Circuit  
27 that 'warrants and accompanying affidavits [that] narrow down the field of potentially  
28 vulnerable persons to those employees whom INS agents might reasonably believe to be aliens,'

1 659 F.2d at 1226, satisfy the requirements of the Fourth Amendment even where the targeted  
2 persons are not identified by name.”).

3 Nonetheless, ICE administrative inspection warrants and supporting affidavits should  
4 contain as much specificity of description as reasonably possible with respect to the persons  
5 sought, the place to be searched, and the time within which the search may take place.  
6 Blackie’s, 659 F.2d at 1226; *see generally* 5 W. LaFave, Search and Seizure § 10.5(j) at pg. 258  
7 n.316 (4th ed. 2004); 6 C. Gordon, S. Mailman & S. Yale-Loehr, Immigration Law and  
8 Procedure § 72.02[3][e] (rev. ed. 2004); 34 Am. Jur. 2d Aliens and Citizens § 82 (2005). For  
9 purposes of an administrative search warrant such as the one applied for herein, “probable cause  
10 justifying the issuance of a warrant may be based not only on specific evidence of an existing  
11 violation but also on a showing that ‘reasonable legislative or administrative standards for  
12 conducting an . . . inspection are satisfied with respect to a particular [establishment].”  
13 Marshall v. Barlow’s Inc., 436 U.S. 307, 320, 98 S.Ct. 1816 (1978).

14 ICE officers are authorized by INA § 287(a), 8 U.S.C. § 1357(a), to question and arrest  
15 aliens believed to be living and/or working in the United States illegally. Mere police  
16 questioning does not constitute a seizure; hence, officers executing a search warrant do not need  
17 reasonable suspicion to ask persons on the premises for their names, dates and places of birth, or  
18 immigration status, and to request identification. Muehler v. Mena, 544 U.S. 93, 96, 101, 125  
19 S.Ct. 1465, 1471 (2005); INS v. Delgado, 466 U.S. 210, 212, 104 S.Ct. 1758 (1984) (upholding  
20 constitutionality of INS/ICE “factory surveys”). Occupants of the premises may be reasonably  
21 detained during execution of a search warrant. Michigan v. Summers, 452 U.S. 692, 101 S.Ct.  
22 2587 (1981).

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FEB 23 2009 RE

U.S. Magistrate Judge James P. Donahue

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In Re The Search of

YAMATO ENGINE SPECIALISTS 1990  
LTD.,

Located at 2020 E. Bakerview Rd.,  
Bellingham, Washington 98226

No. MS-08-**MS090030**JPD

AFFIDAVIT OF  
RANDELL S. SOUTHLAND

RANDELL S. SOUTHLAND, being duly sworn, deposes and says:

1. I am a Special Agent employed by United States Immigration and Customs Enforcement, Department of Homeland Security ("ICE"), and have been so employed by ICE since December 2, 2001. I was previously employed by the United States Immigration and Naturalization Service, where I entered on duty March 30, 1997, as an Immigration Inspector. Prior to becoming an Immigration Inspector, I served in the United States Marine Corps at multiple overseas and domestic locations. I am a graduate of the Federal Law Enforcement Training Center, successfully completing the required course work in the Immigration Officer Basic Training Course ("IOBTC"), Advanced IOBTC, Special Agent Criminal Investigator Transition Training, and the ICE Special Agent Cross Training Program. I have been involved in multiple large scale worksite enforcement operations. Based on the facts set forth in this Affidavit, I have reason to believe that there are one or more aliens, not lawfully entitled to reside or work within the United States, who are presently employed at the premises known and

1 operated as Yamato Engine Specialists 1990 Ltd. ("Yamato"), located at 2020 East Bakerview  
2 Road, Bellingham, Washington 98226. The following information is a detailed chronology of  
3 the investigative efforts that have been accomplished thus far in this case.

4 2. Yamato operates out of a large manufacturing warehouse situated on 8.32 acres  
5 located on the southeast corner of East Bakerview Road and Irongate Road, 2020 East  
6 Bakerview Road, Bellingham, Washington, 98226. The warehouse is approximately 75,000  
7 square feet in size. It is tan in color with brown trim. On the north side of the building are  
8 several loading bays for semi trucks, in addition to a fifty-foot section of glass comprising the  
9 main entrance centered on the north side of the building. There are large blacktop parking lots  
10 on the north and east sides of the building. The warehouse sits back off of East Bakerview Road  
11 approximately seventy yards, with open field between the road and the warehouse.

12 3. On April 9, 2008, ICE Special Agents Dave Than and Edward Moore, III, contacted a  
13 citizen of Thailand who was found to be present in the United States with an outstanding order  
14 of deportation. The subject was a known "Tiny Rascals" gang member who stated he was  
15 employed at Yamato.

16 4. On April 23, 2008, Special Agents Than and Moore contacted a citizen of Cambodia  
17 who was found to be lawfully present but deportable, based on convictions for crimes involving  
18 moral turpitude (CIMT). The subject was identified as another "Tiny Rascals" gang member  
19 who stated he too was employed at Yamato.

20 5. On June 3, 2008, ICE Special Agent David Herschlip forwarded a list of the names of  
21 approximately one hundred Yamato employees, received from Washington State Employment  
22 Security, to the Social Security Center for Security and Integrity, Seattle, Washington, for  
23 verification. Approximately 35 names had discrepancies, which indicate fraudulent use of alien  
24 and/or Social Security numbers.

25 6. On August 29, 2008, I served Yamato with a subpoena demanding all company Forms  
26 I-9 (Employment Eligibility Verification). I received those documents from Yamato on  
27 September 4, 2008.

28

1 7. The following 17 individuals presented themselves for employment at Yamato as  
2 lawful permanent residents, authorized to live and work in the United States. These individuals  
3 were determined to be using another person's alien number:

4	AGUILAR, Victor	██████-4470
5	ARREOLA-GONZALES, Gerardo	██████-0974
6	BARRANCO-MORALES, Leandro	██████-2065
7	BARRANCO-MORALES, J. Pedro	██████-5342
8	CAMARGO-DIAZ, Estevan	██████-9216
9	CHAVES, Jorge	██████-6202
10	FARJARDO, Omar	██████-9031
11	FLORES, Isaias	██████-7542
12	GONZALEZ, Sandra	██████-7890
13	HERNANDEZ, Maurilio	██████-2669
14	HERNANDEZ, Amadeo	██████-4632
15	HERRERA, Antonio	██████-9675
16	LOPEZ-SANCHEZ, Yadira	██████-6222
17	RAMOS, Luis	██████-4217
18	REBOLLAR-LOPEZ, Edgar J.	██████-3149
19	SAMBRANO, Sijilfrido	██████-3892
20	SANCHEZ-RAMOS, Adelina	██████-7285

21 8. The following six employees provided Social Security numbers and/or alien  
22 registration numbers which have never been assigned:

23	BARRANCO-MORALES, Hugo	██████-0118
24	COLLADO, Jorge	██████-6202
25	FLORES, Oscar	██████-9031
26	MARTINEZ, Marcos	██████-8416
27	MARTINEZ-MARTIN, Leopoldo	██████-7865
28	PALERMO, Edwin	██████-5612

1 9. On September 9, 2008, I ran checks with National Crime Information Center (NCIC)  
2 and Central Index System (CIS) in order to find criminal or immigration records. No evidence  
3 of citizenship or authorization to work or reside in the United States was found for any of the 23  
4 above-listed aliens.

5 10. Based upon the above, I request that court process be issued to me and/or other ICE  
6 employees as may be designated, authorizing such persons to enter Yamato Engine Specialists  
7 1990 Ltd., located at 2020 East Bakerview Road, Bellingham, Washington 98226 and search any  
8 building (other than a residential dwelling), including vehicles and areas which may be barred by  
9 locked entrances, to interrogate individuals pursuant to Title 8, United States Code, Section 1357

10  
11 

12  
13 RANDELL S. SOUTHLAND  
14 Special Agent  
15 U.S. Immigration and Customs Enforcement  
16 Seattle, Washington

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SUBSCRIBED AND SWORN TO this 23<sup>rd</sup> day of February, 2009.



JAMES P. DONAHUE  
United States Magistrate Judge  
Western District of Washington  
Seattle, Washington

FILED  
LOGGED

ENTERED  
RECEIVED

FEB 27 2009

RE

U.S. Magistrate Judge James P. Donohue

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
BY DEPUTY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

In Re The Search of

YAMATO ENGINE SPECIALISTS 1990  
LTD.,

Located at 2020 E. Bakerview Rd.,  
Bellingham, Washington 98226

No. MS09-0030-JPD

RETURN OF U.S. IMMIGRATION  
AND CUSTOMS ENFORCEMENT

RANDELL S. SOUTHLAND, being duly sworn, deposes and says:

1. I am a Special Agent employed by United States Immigration and Customs Enforcement, Department of Homeland Security ("ICE"). Acting in my capacity as an ICE Special Agent, I applied for issuance of a Warrant of Inspection to enter the premises known and operated as Yamato Engine Specialists 1990 Ltd. ("Yamato"), located at 2020 East Bakerview Road, Bellingham, Washington 98226, to permit ICE to search for unauthorized aliens working and/or residing there.

2. I received the Warrant of Inspection on February 23, 2009. The Warrant was executed on February 24, 2009, between the hours of 6:00 a.m. and 6:00 p.m. Attached hereto is an inventory of the search. On February 24, 2009, I left a copy of the Warrant of Inspection and said inventory at the premises searched. Any unauthorized aliens listed in the attached inventory have been or are being placed in removal proceedings by ICE.



INVENTORY-YAMATO ENGINE SPECIALISTS-FEBRUARY 24, 2009

Persons arrested:

AILON-VELASQUEZ, Julio - [REDACTED]/79 - Mexico - A98 [REDACTED]  
ARREOLA-GONZALEZ, Gerardo - [REDACTED]/80 - Mexico - A98 [REDACTED]  
BARRANCO-MORALES, Leandro - [REDACTED]/82 - Mexico - A98 [REDACTED]  
BARRANCO-MORALES, Hugo - [REDACTED]/71 - Mexico - A98 [REDACTED]  
BARRANCO-MORALES, Jose Pedro - [REDACTED]/61 - Mexico - A95 [REDACTED]  
BARRANCO-MORALES, Jose - [REDACTED]/80 - Mexico - A98 [REDACTED]  
BURGOS-QUINTANAR, Ricardo - [REDACTED]/63 - Mexico - A98 [REDACTED]  
COLLADO-SANCHEZ, Jorge - [REDACTED]/80 - Mexico - A98 [REDACTED]  
COLLADO-SANCHEZ, Jose Angel - [REDACTED]/77 - Mexico - A98 [REDACTED]  
ESTRELLA-VALERIO, Marco - [REDACTED]/77 - Mexico - A98 [REDACTED]  
FAJARDO-CORTES, Omar - [REDACTED]/86 - Mexico - A98 [REDACTED]  
FLORES-GUERRA, Oscar - [REDACTED]/85 - Honduras - A98 [REDACTED]  
HERNANDEZ-HERNANDEZ, Amadeo - [REDACTED]/85 - Mexico - A79 [REDACTED]  
HERRERA, Fredy Isaias - [REDACTED]/90 - Mexico - A98 [REDACTED]  
MARTINEZ-FLEISER, Marcos - [REDACTED]/85 - Mexico - A98 [REDACTED]  
MARTINEZ-LOPEZ, Victor - [REDACTED]/80 - Guatemala - A98 [REDACTED]  
MARTINEZ-MARTINEZ, Leopoldo - [REDACTED]/65 - Mexico - A98 [REDACTED]  
NOLASCO, Oscar Armando - [REDACTED]/70 - El Salvador - A98 [REDACTED]  
PALERMO-RAMOS, Carlos - [REDACTED]/78 - Mexico - A98 [REDACTED]  
PALERMO-RAMOS, William - [REDACTED]/77 - Mexico - A98 [REDACTED]  
RAMOS-MARISCAL, Luis - [REDACTED]/78 - Mexico - A98 [REDACTED]  
RAMOS-PINA, Hugo - [REDACTED]/86 - Mexico - A98 [REDACTED]  
REBOLLAR-LOPEZ, Edgar Jose - [REDACTED]/87 - Mexico - A98 [REDACTED]  
RESENDEZ DE LA CRUZ, Cezar - [REDACTED]/87 - Mexico - A89 [REDACTED]  
RODRIGUEZ-CRUZ, Bertin - [REDACTED]/86 - Mexico - A98 [REDACTED]  
LOPEZ-SANCHEZ, Yadira - [REDACTED]/80 - Mexico - A98 [REDACTED]  
GONZALEZ-GOMEZ, Sandra - [REDACTED]/78 - Mexico - A98 [REDACTED]  
RAMOS-SANCHEZ, Elsa - [REDACTED]/72 - Mexico - A79 [REDACTED]