

# Worksite Immigration Enforcement

## How the Employment-Verification Process Works

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What boards need to know about hiring, Form I-9 compliance,  
and the path of a federal worksite-enforcement action

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R. McConnell Group PLLC

# What Your Board Needs to Know

Five building blocks of worksite immigration compliance under 8 U.S.C. § 1324a

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## The Law

IRCA makes it unlawful to employ workers not authorized to work

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## Three Violations

Knowing hire, paperwork failures, and continued employment

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## Form I-9

Document verification is the compliance backbone

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## Knowledge

Actual, constructive, or willful blindness

5

## Penalties

Civil fines through criminal exposure

# The Statutory Framework

*The Immigration Reform and Control Act of 1986 created a comprehensive employment-verification scheme*

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## WHAT THE LAW PROHIBITS

- **To hire an unauthorized worker.** It is unlawful to hire, recruit, or refer for a fee an alien knowing the alien is unauthorized to work. § 1324a(a)(1)(A).
- **To skip verification.** It is unlawful to hire any individual without complying with the Form I-9 verification requirements. § 1324a(a)(1)(B).
- **To keep an unauthorized worker.** It is unlawful to continue employing an alien knowing the alien is or has become unauthorized. § 1324a(a)(2).

## WHY CONGRESS ENACTED IT

- Congress recognized that “employment is the magnet that attracts aliens here illegally” and sought to remove it.
- The law disqualifies any undocumented worker from employment as a matter of law.
- It also protects authorized workers and was meant to minimize the burden on employers, who are not expected to become document experts.

# Three Ways an Employer Violates the Statute

*Penalties under § 1324a flow from three distinct categories of prohibited conduct*

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§ 1324a(a)(1)(A)

## Knowing Hire

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Hiring, recruiting, or referring for a fee a worker the employer knows is unauthorized. A substantive violation.

§ 1324a(a)(1)(B)

## Verification Failure

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Hiring any individual without completing the Form I-9 process. A paperwork violation that applies regardless of work eligibility.

§ 1324a(a)(2)

## Continuing to Employ

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Keeping a worker after learning the worker is or has become unauthorized. Requires employers to periodically check status.

# Key Definitions

*Who and what the statute reaches—the terms that decide liability*

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## **“Employer”**

Any person or entity that engages a worker for wages, including an agent or anyone acting directly or indirectly in the interest of the employer. 8 C.F.R. § 274a.1(g).

## **“Employee” and “Hire”**

A person who provides services for compensation; independent contractors and sporadic casual domestic work are excluded. “Hire” means the actual commencement of employment. 8 C.F.R. § 274a.1.

## **“Unauthorized Alien”**

A worker who is neither lawfully admitted for permanent residence nor authorized to work by statute or by the Attorney General. Applying for asylum alone does not confer work authorization. § 1324a(h)(3).

## **“Knowledge”**

Either actual knowledge or constructive knowledge—including a reckless or wanton disregard, or willful blindness, that workers are unauthorized. 8 C.F.R. § 274a.1(l).

# The Form I-9 Verification Process

*Every new hire must be verified for both identity and work eligibility before employment*



**Good-faith standard:** An employer complies if a document “reasonably appears on its face to be genuine.” Employers are not required to be document experts or to conduct a rigorous forensic inspection.

# What Counts as “Knowledge”

*Liability does not require proof that the employer had actual knowledge*

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## Actual Knowledge

Direct proof—worker statements, business records, or documents showing the employer knew the worker was unauthorized.



## Constructive Knowledge

The employer received specific notice (such as a no-match letter or ICE “bad card” letter) and failed to inquire further or take corrective action.



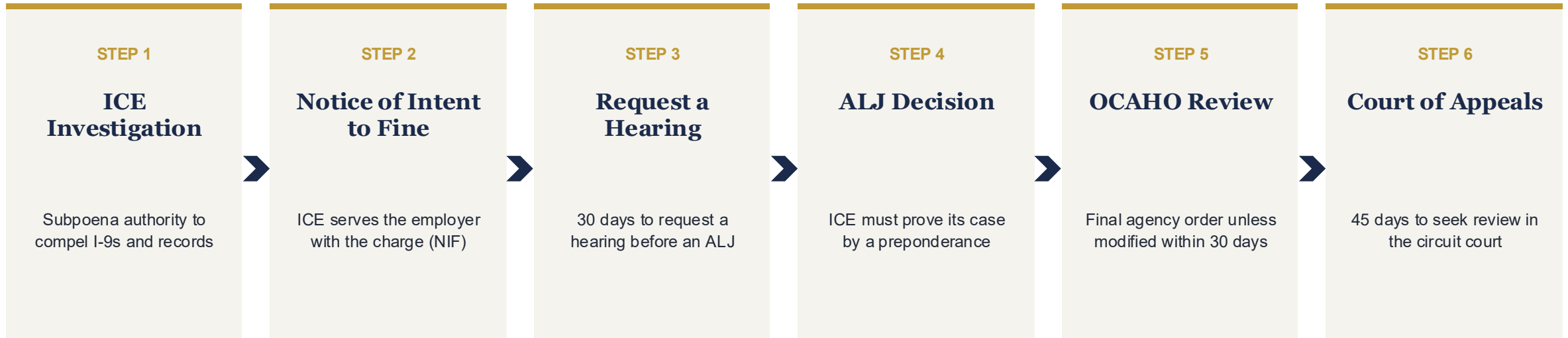
## Willful Blindness

Awareness of a high probability that workers are unauthorized, while purposely avoiding confirmation—treated as the equivalent of actual knowledge.

**The reasonableness test:** Once on notice, an employer must take corrective action within a reasonable time—not instantly, but it cannot ignore the warning.

# The Path of an Enforcement Action

*How a worksite case moves from investigation through final review*



**Why timing matters:** An ICE sanction becomes final and unappealable if the employer does not timely request a hearing—deadlines are jurisdictional.

# Defenses and Penalties

What an employer can raise—and what is at stake

## DEFENSES

- **Good-faith verification.** Completing the I-9 process in good faith is an affirmative defense to a knowing-hire charge—but not to continuing-employment or paperwork charges.
- **Technical-violation cure.** A good-faith attempt excuses technical or procedural I-9 errors if corrected within the period ICE allows, which must be at least ten business days after notice.
- **Limits.** The defense is lost once ICE gives notice of a violation or where there is a pattern or practice of violations.

## PENALTIES

**\$716–\$5,724**

per worker for a first knowing-hire offense (higher ranges apply for repeat offenders, up to \$28,619)

**\$288–\$2,861**

per individual for I-9 paperwork violations

**≤ 6 months**

for engaging in a pattern or practice of knowing hires

**Felony**

for knowingly hiring 10+ unauthorized workers brought in illegally

*Civil-penalty amounts are adjusted for inflation annually; figures shown are the amounts in effect for 2026. 8 C.F.R. § 274a.10.*

# Board Implications

*Where oversight of worksite compliance intersects with the board's role*

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## Own the I-9 Program

Confirm the company maintains a current Form I-9 program with self-audits, training, and clear procedures across all locations.

## Respond to Notices

Ensure prompt, documented responses to no-match letters and ICE notices—inaction can create constructive knowledge.

## Diligence in Deals

Address I-9 and worksite exposure in M&A, and govern hiring practices of subsidiaries and labor contractors.

## Document Engagement

Cooperation, remediation, and discipline of responsible individuals can support a non-prosecution outcome—record the board's involvement.

# Firm Lawyers

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**Matthew Boyden** is a trial lawyer and former federal prosecutor with more than thirty-five years of experience. He represents companies and executives in high-stakes criminal, civil, regulatory, and governance matters. He is regularly engaged where litigation risk, regulatory scrutiny, and institutional exposure intersect. Matthew's practice includes federal criminal defense, complex civil litigation, internal investigations, and board-level advisory work. He has represented clients in matters involving securities fraud, sanctions and trade controls, anti-corruption, anti-money laundering, and financial misconduct, as well as parallel civil and regulatory proceedings.

**Larry Finder** is a trial lawyer and former United States Attorney with more than four decades of experience handling complex criminal, civil, and regulatory matters of national significance. He represents individuals, corporations, and boards confronting serious legal, institutional, and reputational risk. He joined the U.S. Department of Justice, serving in increasingly senior leadership roles, including Chief of the Criminal Division and First Assistant U.S. Attorney, before being appointed United States Attorney for the Southern District of Texas in 1993.

**Ryan McConnell** is a former federal prosecutor and trial lawyer who represents companies, boards, and executives in high-stakes criminal, civil, and governance matters. He is called when litigation risk, regulatory exposure, and institutional credibility intersect. Ryan has tried nearly twenty federal jury trials and conducted hundreds of investigations involving complex fraud, cross-border enforcement, and sensitive regulatory issues. His practice focuses on federal criminal defense, complex civil litigation, internal investigations, and advising boards and senior executives on governance issues and matters requiring judgment under pressure.