American Immigration Council

February 2026

ANALYSIS

How ICE Went Rogue

A Brief Analysis of the Legal Authorities Governing ICE and CBP Operations — and How They're Being Undermined and Violated by Policy and Practice

The aggressive actions of federal immigration agents in Minnesota and cities around the country have drawn attention to an important truth: Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP, which includes U.S. Border Patrol) agents are routinely going far beyond what the law allows them to do. Their aggressive tactics on the ground are backed up by unprecedented interpretations of their legal authorities, with the agencies secretly adopting aggressive new policies toward entering homes and making arrests without judicial warrants.

In some cases, the Trump administration's actions have taken advantage of broadly-worded provisions in federal law that they argue allow immigration agents a lot of power – despite what people's common-sense intuitions might be about what is allowed. In other cases, agency guidance and lack of accountability have combined to undermine the force of law, allowing immigration officials to engage in widespread violations.

What the Trump administration is doing cannot be stopped, or restrained, without understanding where these gaps are – between law, policy, practice, and common sense. This analysis looks at six key areas where immigration agents' powers have come under scrutiny: vehicle and street stops; entering a home; arrests; workplace enforcement; and the use of force.

Traffic Stops: Illegal Racial Profiling and Observer Harassment

When can immigration agents legally conduct traffic stops?

Federal agents cannot stop cars for traffic violations — that is only permitted by state and local law enforcement officers.

Immigration agents are legally allowed to stop a vehicle only for the purposes of enforcing federal law – both immigration law, and criminal law. –

In either case, the agent must have a "reasonable suspicion" that someone in the vehicle is violating the law: either that they are committing a crime (including obstruction of federal law enforcement), or that they are removable under U.S. immigration law. "Reasonable suspicion" is a legal standard with specific guidelines, not just an officer's personal opinion about what might be "suspicious."

Legally speaking, race or ethnicity are *not* sufficient to establish reasonable suspicion for enforcing immigration law – the agents must have some other indication that someone in the vehicle lacks legal status.

There is one exception to the general rule that traffic stops require reasonable suspicion: immigration agents can set up random immigration checkpoints within 100 miles of the U.S. border. Agents can then stop and question all vehicles passing through the checkpoint *without* reasonable suspicion. However, even within the 100-mile zone, unless there is a checkpoint, immigration agents cannot stop individual vehicles without reasonable suspicion.

In addition to federal agents making vehicle stops themselves, there are also circumstances in which they partner with state or local law enforcement, who will pull over a vehicle for a traffic violation and then have immigration agents —— or state and local law enforcement officers who are authorized to conduct

immigration enforcement on behalf of ICE – question the passengers.

Local police working with immigration agents pull vehicles over purportedly for minor traffic infractions but then have federal agents check whether anyone in the car is removable. In areas of the country where local law enforcement works closely with ICE – such as Tennessee or Texas – this has become routine.

The Supreme Court has long held that "pretextual stops" — stops in which local police use a traffic violation as an excuse to question the driver or passengers, and potentially arrest them for other crimes – are permissible, despite the Fourth Amendment's prohibition on "unreasonable searches." In practice, this allows local police to question vehicle occupants about something they lack reasonable suspicion for at the time. Even pretextual stops, however, require that law enforcement have reasonable suspicion to believe that a law or regulation has been violated. The law does not allow racial profiling as a basis for a vehicle stop – no matter whether federal or local agents are the ones pulling the car over.

Because the government is not required to publicly explain why it stopped a particular vehicle, it can be challenging to prove that cars are being stopped simply based on racial profiling or other impermissible reasons. However, the 2018 lawsuit *Castañon Nava et al. v. Department of Homeland Security et. al.* documented widespread evidence of apparent racial profiling in the Chicago area and a practice of carrying out warrantless ICE arrests in violation of legal requirements. The Castañon Nava case resulted in a settlement agreement that not only requires ICE to train its officers on their uses of warrantless arrests but also requires ICE to document the circumstances of any given traffic stop, and to issue a policy limiting the use of traffic stops.

What are immigration agents actually doing regarding traffic stops?

Under the second Trump administration, vehicle stops have become increasingly common — cars are routinely stopped in the middle of the street. CBP's Greg Bovino conducted a January 2025 raid in Kern County, CA that relied heavily on vehicle stops based on apparent racial profiling, before being tapped to orchestrate other immigration enforcement actions in Los Angeles, Chicago, North Carolina, and Minnesota.

In addition to stops for immigration enforcement, ICE and CBP agents have routinely stopped vehicles and questioned the occupants in apparent retaliation for being followed by community members monitoring their activities. In many cases, they subsequently attempted to charge these community members with federal crimes. A Reuters investigation found that as of February 2026, over 650 people had been charged with what Reuters characterized as a "catch-all" law punishing anyone who "forcibly assaults, resists, opposes, impedes, intimidates, or interferes" with federal agents.

In January 2026, a federal judge ordered agents not to stop vehicles, or detain drivers and passengers, unless there was a specific articulable reason to believe they were "forcibly obstructing or interfering" — and spelled out that following federal agents at a safe distance does not count as a sufficient reason to justify a vehicle stop. That ruling has been stayed by the appeals court.

Federal agents' aggression and recklessness in pulling over and stopping vehicles have often led to high-speed chases and crashes, threatening public safety.

Pedestrian Stops: Home Depot Sweeps And Coercive Tactics

When can immigration agents stop someone on the street?

Immigration agents — both ICE and CBP — are allowed to stop and briefly question someone that they suspect to be a noncitizen of the United States to ask about their immigration status. Federal immigration agents have no lawful authority to stop or question someone about their status if they know or suspect the individual is a citizen of the United States. Any person being stopped and questioned has the right to remain silent and walk away from an agent.

While agents can stop and question someone on the street based on suspicion, they can only *arrest* a person if they have “probable cause” to believe that the person is violating U.S. immigration law. “Probable cause” is a higher standard than “reasonable suspicion.”. While a person being stopped and questioned is free to walk away from a conversation with a federal agent, if the agent has evidence of a legal violation, then the person can be subject to arrest and cannot leave. During the course of an immigration arrest, a person still has the right to remain silent.

The basis for stopping and questioning someone cannot rely exclusively on their apparent race or ethnicity. However, in a September 2025 "shadow docket" ruling, the Supreme Court permitted the Trump administration to use race and ethnicity as one of a group of factors — along with speaking Spanish, or working in an immigrant-heavy profession such as landscaping or contracting — to establish reasonable suspicion in conducting immigration enforcement through "roving patrols" in Los Angeles. While the decision does not directly consider the constitutionality of using race alone for immigration enforcement, it gave federal agencies a green light to use race as a central factor in enforcement actions, emboldening their use of racial profiling.

Separately, as federal law enforcement officers, ICE and CBP agents have the authority to stop and arrest people (citizens and non-citizens) who they believe are violating other federal laws — including laws against “impeding” or “obstructing” an investigation or other law enforcement operation. However, to arrest these people, they would need probable cause that a crime had been committed.

What are immigration agents actually doing when they stop people on the street?

Under the second Trump administration, immigration agents have a mandate to arrest and detain as many people as possible. As a result, pedestrian stops — which previously have not been a significant part of immigration enforcement — have become routine. Federal agents will often conduct sweeps in places they suspect undocumented immigrants to be – such as the parking lot of Home Depot, residential homes under construction, or on a scooter for a food delivery service. Thanks to the Supreme Court’s ruling, these interactions have become known as “Kavanaugh stops.”

ICE and CBP often conduct these stops in ways that make it hard for the people being questioned to assert their legal right to walk away.

Federal agents are often armed. They may be masked or in military gear. They may not be identified as immigration agents. They may act aggressively toward the people they are questioning. All of these can give the impression that the person is required to answer their questions, even when the law says they are not.

As seen in Minneapolis and elsewhere, anyone who encounters immigration agents and attempts to criticize or even simply to record them – or who is just on the scene observing or trying to help — can be subjected to aggressive questioning or other retaliation. Federal agents have attempted to charge protesters and observers with “obstructing” or “interfering with” law enforcement operations, sometimes arguing that by being in the way of federal agents or vehicles they are violating federal law.

Furthermore, the Trump administration has taken the position that they are entitled to handcuff suspected noncitizens and take them to a second location for biometric screenings to prove their immigration status, using an app known as “Mobile Fortify” which the agency has told officers should be trusted above actual documentation of U.S. citizenship. In practice, this has led the agency to arrest noncitizens who are not violating any U.S. immigration law, but also U.S. citizens — despite the law prohibiting them from detaining anyone who they know or suspect to be a citizen. Federal agencies have been holding these people anywhere from several minutes to several hours while transporting them to a secondary location for scanning.

Arrests: Redefining “Likely to Escape” To Create a Catch-22

When are immigration agents legally allowed to arrest someone?

Federal agents (including ICE and CBP) are allowed to arrest anyone for whom they have a warrant signed by a federal judge, or an "administrative warrant" filled out by ICE. In addition to the I-205 form, issued for people who have already been ordered removed by an immigration judge, ICE can issue an I-200 form — which they also call an "administrative warrant." — This form is used for anyone federal agents believe to be present in the United States in violation of federal immigration law. Someone may be the target of Form I-200 if they are in removal proceedings before an immigration judge; if their visa has expired and they do not appear to have left the United States; or if they have been arrested by another law enforcement agency that shares information with the Department of Homeland Security (DHS) that shows they are removable.

Under some circumstances, ICE and CBP can arrest someone even without having a warrant. There are two requirements for a warrantless arrest: agents must have probable cause to believe that the person is in the United States without valid legal status, and agents must determine that the person is a "likely to escape" if not immediately arrested. Both requirements must be fulfilled in order for an agent to arrest a person.

For decades, "likely to escape" has been understood to mean that the person is a "flight risk" — that if they were released, they would probably abscond from federal law enforcement and fail to appear for their immigration proceedings. In other words, the agent must not only believe that the person is removable, but that simply giving them a Notice to Appear before an immigration judge for removal proceedings would not be enough — they must be arrested and detained to guarantee they appear in court for their immigration court hearing. To make this determination, an agent must consider the details of a person's circumstances — such as how well established they are in their community. This interpretation was upheld by federal courts around the United States in 2025 and 2026.

Additionally, under certain circumstances federal immigration agents have the authority to conduct arrests without a warrant for violations of federal criminal law — such as laws against "impeding" or "obstructing" law enforcement operations.

What are ICE and CBP using to justify arrests now?

Under the second Trump administration, immigration agents have expanded both their use of "administrative warrants" to arrest people, and warrantless arrests — reportedly in a manner that violates the legal requirements for both categories of arrests.

Instead of issuing I-200 "administrative warrants" *before* an enforcement operation as a way of selecting targets, enforcement agencies have sent supervisors into the field alongside the agents conducting the arrests, so that they can fill out and sign I-200 administrative warrant forms on the fly or immediately *after* an arrest. In other words, rather than carefully issuing an administrative warrant in advance of an arrest or operation, agents are using "administrative warrants" to justify arrests of people agents happen to encounter during large-scale enforcement actions.

Under past administrations, warrantless immigration arrests of non-citizens living in the United States usually happened in the context of "collateral arrests": agents would look for one person they identified in advance as being in violation of immigration law but would encounter others at the same location who they had probable cause to believe were also in violation of immigration law. Administrations have taken different approaches to "collateral arrests." Both the Obama and Biden administrations implemented strict restrictions on the use of collateral immigration arrests. Collateral arrests were broadly permitted under the first Trump administration, though the Castañon Nava litigation set limits on when they could be used.

Because the second Trump administration will often stop and question people at random without any specific target in the first place, the distinction between "collateral arrests" and other arrests has faded. A January 2026 memo from ICE director Todd Lyons explicitly directs supervisors to issue an administrative warrant in real time for someone who has already been stopped and questioned, if ICE has probable cause to believe the person is removable, so agents can then make an arrest.

Furthermore, that same memo radically expands ICE's definition of who constitutes a person "likely to escape" and can therefore be arrested without an administrative warrant.

Under the January 2026 memo, the Trump administration redefines flight risk. Specifically, ICE declares that anyone who might not wait at the scene of their encounter with immigration agents for a warrant to be created should be considered "likely to escape."

In other words, if an agent who has stopped someone on a street corner to ask for their papers believes that the person would walk away before the agent had a chance to fill out an "administrative warrant" and get it approved, they can skip the administrative warrant and arrest them on the spot.

This creates a catch-22: noncitizens have the legal right to leave rather than continuing to be questioned by federal agents, but asserting that right and walking away gives agents a purported basis to arrest them without a warrant — even when the noncitizen would willingly show up to immigration check-ins or court hearings.

This redefinition is in line with the second Trump administration's efforts to re-arrest and detain people when they come to immigration court; both demonstrate that the primary concern is not ensuring compliance with the law but arresting as many noncitizens as possible.

Entering Homes: The Secret I-205 Policy

When can immigration agents legally enter someone's home?

Like any law enforcement officer, immigration agents are allowed to enter someone's home if someone inside agrees to let them in. However, there are stricter rules governing when immigration agents are allowed to forcibly enter the home.

Under the Fourth Amendment, any law enforcement officer generally cannot forcibly or without consent enter someone's home without a judicial warrant. The Supreme Court has said that a "warrant" refers specifically to a document signed by a "neutral and detached magistrate." Courts have interpreted this to refer to an Article III federal judge, not an immigration judge or an immigration agent.

When is this administration claiming it is allowed to enter someone's home?

For months, ICE has been operating under a policy that asserts agents' authority to enter a home by force if they believe someone inside the home is named on a form known as the I-205 — which is one of the forms that ICE calls an "administrative warrant." The I-205 authorizes an immigration officer to arrest and deport someone who has previously been ordered removed from the United States.

While the I-205 has the word "WARRANT" on the top of the form, it is not signed by a judge; it is signed by an ICE supervisor. ICE issues these administrative warrants based on a removal order signed by an immigration judge (themselves an employee of the Department of Justice). However, ordering that someone be removed from the United States is not the same as authorizing agents to knock down a door to find them.

The way ICE has implemented this policy demonstrates how the agency has evaded accountability. While ICE leadership signed the memo authorizing use of these I-205 administrative warrants to enter homes in May 2025, its existence did not become publicly known until January 2026, thanks to a complaint two government whistleblowers filed with Congress and confirmed to reporters. According to the whistleblowers, only certain agents were allowed to learn about the new policy. When supervisors told the selected agents about the new policy, they showed a copy of the memo but prohibited agents from taking it out of the room to use for reference. This deliberate secrecy not only made it impossible for the public to know what ICE was doing for several months, but limited any internal pushback, ensuring that the only people who knew the agency's policy were those who would most aggressively enforce it.

It's unknown how often ICE has used this policy to forcibly enter homes. In at least one case, a U.S. citizen arrested by ICE in his home said that agents never showed him a warrant after their forcible entry during an

operation looking for two men who did not live in the home, one of whom was in state prison at the time. An unknown number of people who were arrested under this policy who lack immigration status, however, may still be in detention – or may have been deported.

Use of Force: Widespread Violations, No Accountability

What are the legal restrictions on immigration officers' use of force?

In general, when determining whether a law enforcement officer used excessive force in a situation, the Supreme Court has held law enforcement officers to a minimum standard of "objective reasonableness": that a reasonable person in a similar situation would similarly believe that amount of force was necessary. Federal regulations spell out that an immigration officer "shall use the minimum non-deadly force necessary to accomplish the officer's mission," and that deadly force may only be used if the officer has "reasonable grounds to believe" that the use of force is necessary to protect themselves, or someone else, from "imminent danger of death or serious physical injury." DHS' use of force policy, issued in 2023, states that excessive use of force "shall be subjected to all applicable administrative and criminal penalties."

When are immigration agents using deadly and non-deadly force?

Under the second Trump administration, immigration agents are routinely using violent force in immigration enforcement and arrests. Immigration agents often break the windows of vehicles to remove their occupants. Individuals being arrested are often pushed to the ground. Agents often spray chemical crowd-control agents at people who appear to be merely observing the scene or recording officers. Several people have been shot in the course of immigration enforcement operations, and five of them have been killed.

In many of these cases, government officials have lied about the circumstances in which force was used to exaggerate the threat to officers; however, footage from cameras of the scene has confirmed that the government's account was incorrect. In other cases, however, there is no video footage, and so it is impossible to authoritatively correct the government's account of what happened.

Even when evidence confirms that the officer's use of force was not justified by the threat, however, "applicable administrative and criminal penalties" are not being sought.

In March 2025, DHS all but eliminated its Office of Civil Rights and Civil Liberties, which had been entrusted with investigating use-of-force complaints. The office had to abandon 550 pending complaints (on use-of-force and other matters). Theoretically, responsibility for investigating use of force has devolved to each agency's Office of Professional Responsibility — however, these bodies either have been prohibited from, or have simply not initiated, investigations and sanctions for officers involved in force incidents. In cases where officers may have violated criminal law — such as the killings of Renee Good and Alex Pretti — federal prosecutors have been instructed from Department of Justice leadership not to investigate or charge anyone responsible for the deaths.

The absence of self-policing leaves civil suits as the only available avenue for punishing use-of-force violations. However, there are extremely limited circumstances in which people are allowed to sue federal agents for violations of their rights – there is no specific cause of action in U.S. law for suing individual federal agents (while there is one for state and local law enforcement), and the Supreme Court has continued to narrow the circumstances in which lawsuits are justified.

To be clear, both ICE and CBP have often been accused of using excessive force in the past. CBP has often used vehicle chases and crashes as an enforcement tactic, and has famously lagged in disciplining its own agents. In one lawsuit, an ICE agent punched someone in the face during a worksite raid; during discovery in that lawsuit, video footage was found of the same agent putting his boot on the neck of a different worker. The question, in the past and now, is not whether agents are using excessive force, but whether they face any consequences if they do.

Workplace Enforcement

When does the law allow immigration agents to enter a worksite and question or arrest people there?

Federal law requires immigration agents to have a valid search warrant to enter any *non-public* areas of a workplace, unless given permission to enter. For example, agents would be allowed to enter the dining area of a restaurant — and would be governed by the typical rules for stopping and questioning people there — but would need a valid warrant to enter a closed-off kitchen.

What are immigration agents doing to enter workspaces for immigration enforcement?

Under current and past administrations, immigration agents have often engaged in workplace raids that target immigrant workers. They have often done so either with the permission of the employer to enter the workplace, or by producing warrants for a different purpose, but then engaging in mass questioning and detention of workers once they enter.

In some cases, agents have used search warrants that allow them to seize *documents* from a workplace as a justification for detaining and questioning workers who are then arrested and placed in immigration proceedings. In other cases, warrants have targeted the employer for criminal violations – including violating immigration law by hiring or "harboring" undocumented workers — but the employer is never prosecuted after the raid, while workers are detained and deported instead. In order to do this, of course, agents are relying on the existing ambiguities around when they are allowed to detain and question individuals under any circumstances.

Under this administration, ICE agents have also used I-9 "paper" audits as an excuse for aggressive in-person enforcement: showing up heavily armored to serve a paper notice of inspection, and therefore making it much more likely that they will be allowed to enter the premises due to intimidation or an employer or worker's mistaken belief that they must be allowed entry.

There is substantial Fourth Amendment caselaw around what constitutes "unreasonable search" of a home, but potential constitutional violations in workplace settings have received less scrutiny. . But even in clear-cut cases of violations, it is, again, hard to secure accountability. Immigration courts generally do not allow immigrants or their lawyers to "suppress" (that is, exclude) evidence that was unconstitutionally obtained.