

# **On Thin ICE**

**Workplace Raids, Juiced-Up  
I-9 Audits, and Employer  
Penalties for Illegal Hiring  
and Defective Record  
Keeping**

# Meet Your Speaker



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ATTORNEYS & COUNSELORS

# ICE chief pledges quadrupling or more of workplace crackdowns

**“Juiced-up” I-9 enforcement: Paperwork violations and workplace enforcement are increasing!**

## ICE Targets 7-Eleven Stores In Nationwide Immigration Raids

January 11, 2018 - 4:25 AM ET

JAMES DOUBEK



ICE agents serve an employment audit notice at a 7-Eleven in Los Angeles Wednesday. Agents raided 98 stores across the country.


Chris Carlson/AP

# ICE audits fell sharply after 2013


I-9 audits peaked in 2013. After that, the Obama Administration shifted its focus from worksite enforcement to deporting undocumented individuals with criminal records.



SOURCE: IMMIGRATION AND CUSTOMS ENFORCEMENT

The background of the slide features a group of police officers in tactical gear, including helmets and vests, standing in a line. The image is dark and slightly blurred, serving as a backdrop for the text.

**What should you  
expect during an  
I-9 audit and  
workplace raid?**



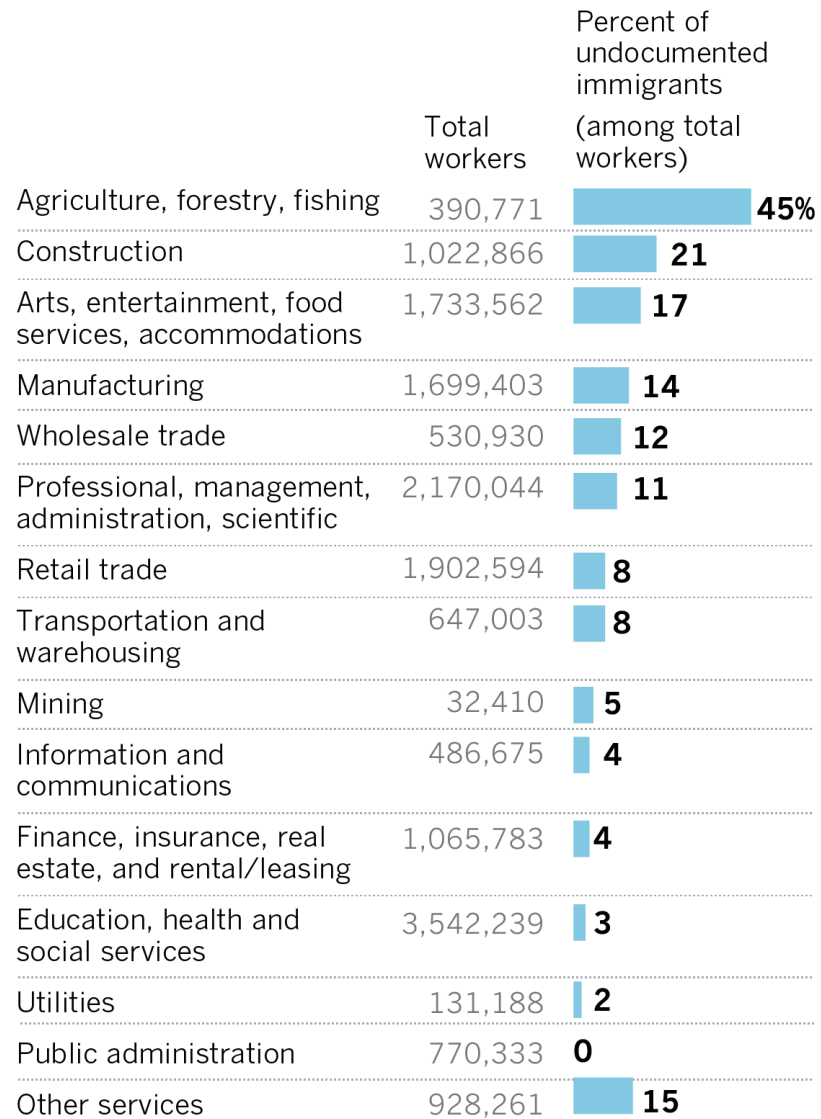
# ***Key Steps in the ICE Audit Process***

- **Notice of Inspection**
- **Employer responds within 3 days (unless negotiated)**
- **Notice of Suspect Documents**
- **Notice of Intent to Fine**
- **Appeal, if any**

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## Undocumented workers

Employment of undocumented workers in California, 16 and older, varies sharply by industry.



Source: USC Center for the Study of Immigrant Integration

@latimesgraphics

In a recent five-day operation, ICE agents served 122 notices to L.A.-area companies that they would be conducting an audit of their I-9 forms. Several weeks earlier, the same notices were given to 77 companies in Northern California.

The background of the slide shows the lower half of several police officers in riot gear, including helmets and knee pads, standing in a line. The image is dark and semi-transparent, serving as a backdrop for the text.

**Why might your  
organization  
be targeted?**

# Why might your organization be targeted?

A business owner contacted ICE and complained that a competitor was hiring undocumented workers.

A disgruntled employee, seeking retaliation against the employer, contacted ICE and reported the company was harboring undocumented workers.

An employee, seeking to retaliate against a co-worker, contacted ICE to report that undocumented co-worker, which led ICE to investigate the whole company instead.

An undocumented employee was arrested for a traffic violation and referred to immigration officials; while being interviewed by immigration agents, the employee disclosed his employer, which prompted ICE to investigate.

You operate in an area of critical infrastructure.

All of the above.



**Be wary of that  
disgruntled employee  
and anonymous  
complaint!**

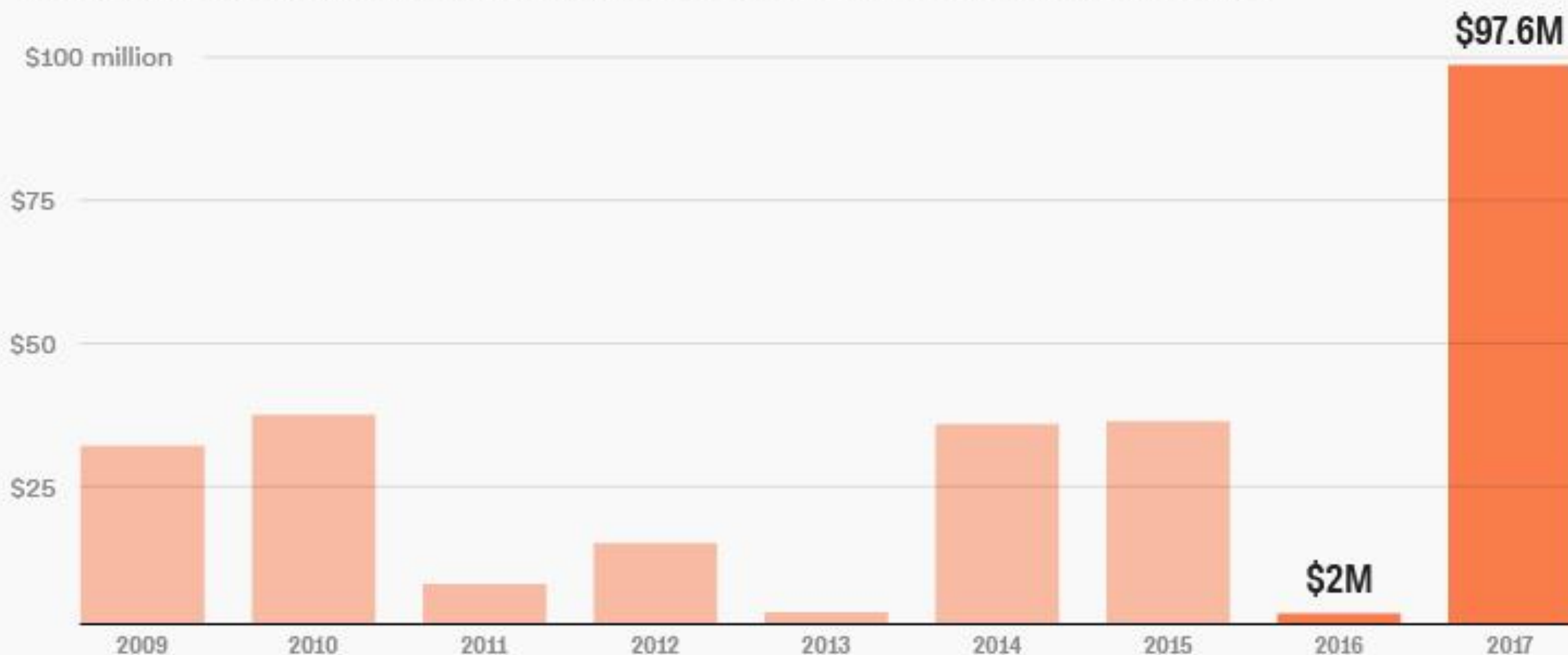
A target with concentric circles is visible in the background. An arrow is shown hitting the bullseye, with its shaft extending from the right side of the frame towards the center.

**Everybody's a  
target**

**(but some more  
so than others)**

# I-9 violations could mean big fines for businesses

Monetary fines for I-9 violations soared between 2016 and 2017, after ICE levied its largest penalty ever against a company for immigration violations.



SOURCE: IMMIGRATION AND CUSTOMS ENFORCEMENT

**Knowing Hire / Continuing to Employ Fine Schedule**  
**(Effective for penalties assessed after January 27, 2017 whose associated violations occurred after November 2, 2015)**

	Standard Fine Amount		
Knowing Hire and Continuing to Employ Violations	First Tier \$548 - \$4,384	Second Tier \$4,384 - \$10,957	Third Tier \$6,575 - \$21,916
<b>0% – 9%</b>	<b>\$548</b>	<b>\$4,384</b>	<b>\$6,575</b>
<b>10% – 19%</b>	<b>\$1,140</b>	<b>\$6,322</b>	<b>\$8,547</b>
<b>20% – 29%</b>	<b>\$1,754</b>	<b>\$7,232</b>	<b>\$11,177</b>
<b>30% – 39%</b>	<b>\$2,411</b>	<b>\$8,174</b>	<b>\$13,807</b>
<b>40% – 49%</b>	<b>\$3,069</b>	<b>\$9,094</b>	<b>\$16,568</b>
<b>50% or more</b>	<b>\$3,726</b>	<b>\$10,026</b>	<b>\$19,242</b>

**Substantive / Uncorrected Technical Violation Fine Schedule**  
**(Effective for penalties assessed after January 27, 2017 whose associated violations occurred after November 2, 2015)**

Substantive Verification Violations	Standard Fine Amount		
	1st Offense \$220 - \$2,191	2nd Offense \$220 - \$2,191	3rd Offense + \$220 - \$2,191
<b>0% – 9%</b>	<b>\$220</b>	<b>\$1,096</b>	<b>\$2,191</b>
<b>10% – 19%</b>	<b>\$548</b>	<b>\$1,315</b>	<b>\$2,191</b>
<b>20% – 29%</b>	<b>\$876</b>	<b>\$1,534</b>	<b>\$2,191</b>
<b>30% – 39%</b>	<b>\$1,205</b>	<b>\$1,753</b>	<b>\$2,191</b>
<b>40% – 49%</b>	<b>\$1,534</b>	<b>\$1,972</b>	<b>\$2,191</b>
<b>50% or more</b>	<b>\$1,862</b>	<b>\$2,191</b>	<b>\$2,191</b>

### Enhancement Matrix

Factor	Aggravating	Mitigating	Neutral
Business size	+ 5%	- 5%	+/- 0%
Good faith	+ 5%	- 5%	+/- 0%
Seriousness	+ 5%	- 5%	+/- 0%
Unauthorized Aliens	+ 5%	- 5%	+/- 0%
History	+ 5%	- 5%	+/- 0%
Cumulative Adjustment	+ 25%	- 25%	+/- 0%



**Really bringing  
down the hammer:**  
**When multiple  
federal agencies  
investigate you**

# Best Practices




**Periodic self-audits**



**Periodic HR trainings**



**Providing recorded I-9 training materials to HR representatives**



***When was the last time you conducted an I-9 self-audit?***

- In the last 6 months
  - In the last 1 year
  - In the last 5 years
  - What's an I-9?
- 

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# When was the last time you conducted an I-9 self-audit?

In the last 6  
months

In the last 1  
year

In the last 5  
years

What's an I-9?

# Best Practices: Self-Audit

**Step 1:** Gather All I-9 Forms on File


**Step 2:** Obtain Forms I-9 for Current Employees Who Are Missing I-9s

**Step 3:** Audit Forms I-9 of Current Employees

**Step 4:** Correct Errors

**Step 5:** Terminated Employee I-9 Forms

**Step 6:** Complete the Audit

The background of the slide is a blurred photograph of a group of people sitting in a room, likely attending a meeting or training session. The image is dark and out of focus, with the audience members' heads and shoulders visible in the foreground and middle ground. The lighting is dim, with some light coming from windows or screens in the background.

**Are you  
due for an  
I-9  
training?**

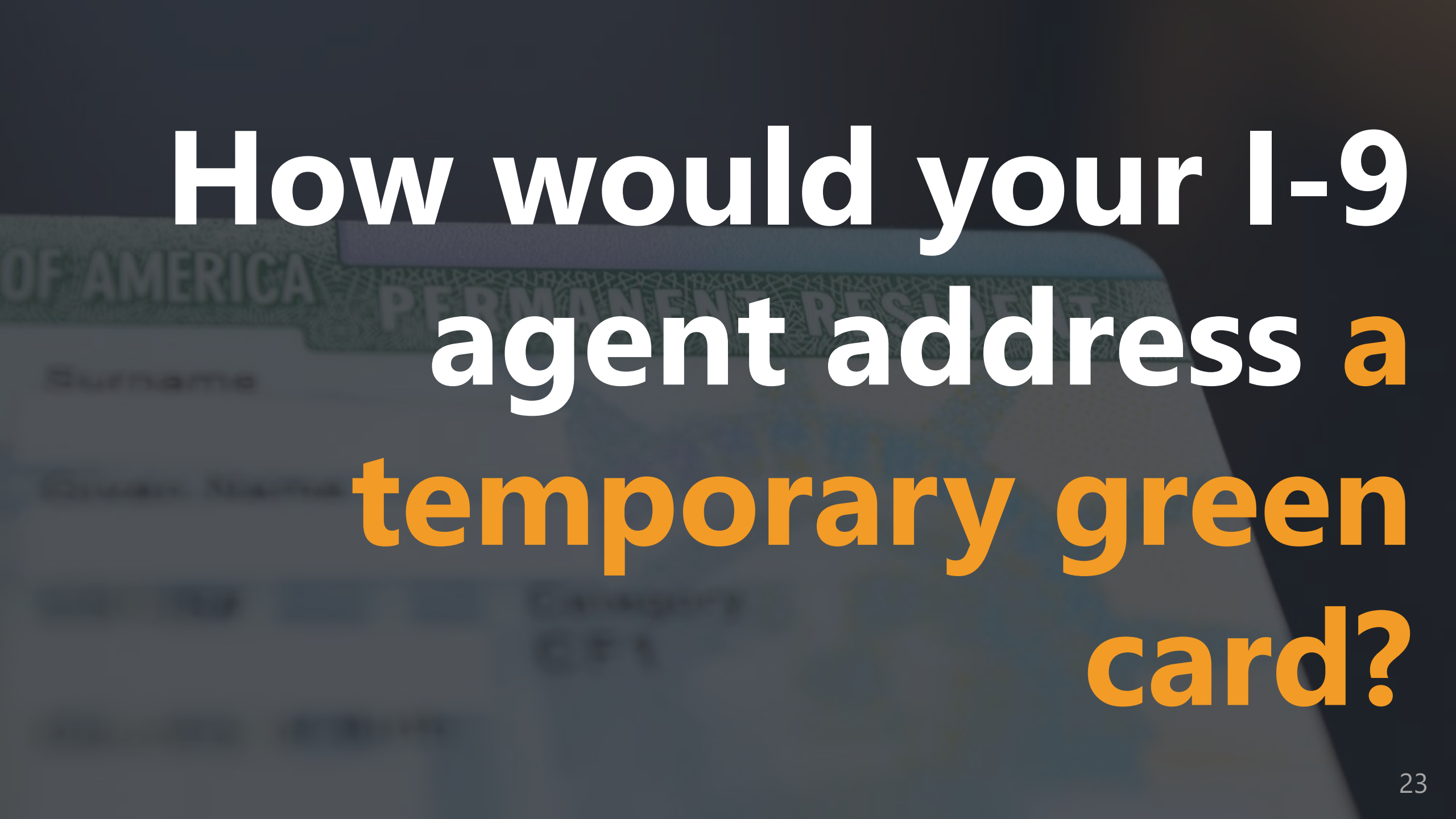
# **Taking action based on an I-9 self audit:**

**Typically, Section 1 can only be updated by an employee.**

**Section 2 can typically be completed by an employer.**

**Questions that could arise:**

- What should you do if the supporting documents do not appear valid on a self-audit?**
- What should you do if the wrong version of the I-9 form was completed?**



How would your I-9  
agent address **a**  
**temporary green**  
**card?**

A wooden gavel with a dark handle and a rectangular wooden base is positioned diagonally in the upper left. The base of the gavel has a recessed rectangular area with the word 'VERIFIED' embossed in it. Below the gavel, there is a large, rectangular, reddish-brown stamp with the word 'VERIFIED' in a bold, sans-serif font. The background is a solid dark gray.

**Should your HR  
representative  
re-verify a  
List A document?**

# E-Verify

**an Internet-based system that compares information from your Form I-9, Employment Eligibility Verification, to Department of Homeland Security (DHS), Social Security Administration (SSA), and Department of State (DOS) records to confirm that you are authorized to work in the United States**

Form I-9	E-Verify
Form used for verifying identity employment authorization	Internet-based system to determine employment eligibility
Mandatory for all employers	Mandatory for federal contractors and employers in some states
Completed by both employee and employer	Submitted electronically by the employer (or its representative)
Does not require a social security number	Requires a social security number
Must be used to re-verify expired employment authorization	MAY NOT be used to re-verify expired employment authorization

# E-Verify Advantages

- **While generally voluntary, some states require employers to use E-Verify, and it is mandatory for some federal government contracts**
- **Could become mandatory nationwide - adopting it earlier affords employers more time to become familiar with it and adapt**
- **Helps companies avoid hiring and training a person who turns out to be ineligible to work**
- **If an employer hires foreign nationals who recently received a STEM degree, enrolling in E-Verify may make those workers eligible to work an additional 24 months without the employer having to file H-1B petitions on their behalf**
- **Although using E-Verify does not provide a "safe harbor" from prosecution, it creates a "rebuttable presumption" that the employer has not violated section 274A(a)(1)(A) of the Immigration and Nationality Act ("Unlawful Employment of Aliens")**

# E-Verify Disadvantages

- **Not entirely free - Employers must allot time and resources to training and supervising staff to use the system and deal with the results of queries**
- **Mistakes are made - issuing Tentative or Final Non-Confirmations for workers who are authorized to work, or stating "Employment Authorized" for workers who are not**
- **Tentative Non-Confirmations open employers up to new legal risks - for example, employees have sued employers for discrimination for not providing proper notice and instructions for contesting a Tentative Non-Confirmation**
- **Can lead to liability for privacy and discrimination violations**
- **The government can use E-Verify to mine data and may find employers' hiring mistakes that otherwise would not have been discovered**
- **Unless enrollment is mandatory, may be considered a subject of bargaining with a union**

# Be Proactive Be Prepared



**Do you have a designated person (or persons) tasked with all I-9 record creation?**



**Are your original I-9 records safely and securely maintained?**



**How quickly can you pull these records if necessary?**



**Do you use an electronic I-9 system?**

# **Advantages of an electronic I-9 system:**

- **May be easier to store and manage**
- **May ensure accuracy of completion**
- **Easier to audit**
- **Automated reminders when I-9s are expiring**

**Is this right for everybody?**

- **Paper may make more sense for you if your office is centralized**
- **Carefully evaluate any electronic I-9 systems for compliance with DHS regulations**



# Questions?