

Immigration and Customs Enforcement (ICE) frequently uses warrants in conducting immigration enforcement actions. Because recent events indicate that ICE will likely expand its enforcement activities further into the spheres of local law enforcement and state criminal justice systems, it is important for defense counsel to understand the nature of ICE warrants, their limitations, and when they may be subject to challenge.

ICE uses two types of warrants in its enforcement activity. The first type of warrant is a so-called administrative warrant, issued by a designated ICE official. ICE officers have authority under 8 U.S.C. § 1357 to arrest persons suspected of violating immigration laws, and administrative warrants simply document this authority with regard to a particular individual. This type of warrant frequently appears on Form I-200 (Warrant of Arrest) or Form I-205 (Warrant of Removal). The signature line on these forms typically reads “Signature of [Authorized, Designated] Immigration Officer.”

Importantly, administrative warrants are not true warrants, because they are not reviewed and signed by a neutral magistrate. Rather, they can be signed by any designated ICE official, and undergo no independent determination of probable cause. Administrative warrants therefore do not authorize ICE officers to enter places where there is a reasonable expectation of privacy without consent. *See Camara v. Mun. Court of City & Cty. of San Francisco*, 387 U.S. 523, 538 (1967); *United States v. Castellanos*, 518 F.3d 965, 971–72 (8th Cir. 2008).

ICE may also use “true” civil warrants signed by a neutral magistrate. These warrants do authorize ICE officers to enter the place identified in the warrant, and conduct the searches and seizures that are within the scope of the warrant. Civil warrants authorizing the search of a home should likely be held to the same probable cause standard as criminal warrants, but civil warrants authorizing the search of a business are held to a lower standard of probable cause. *See Castellanos*, 518 F.3d 965, 971–72; *Blackie’s House of Beef, Inc. v. Castillo*, 659 F.2d 1211, 1219 (D.C. Cir. 1981). The most important point for defense counsel to be aware of with regard to civil warrants is that the lowered probable cause standard may not be used to circumvent the requirements of criminal law and procedure. *Abel v. United States*, 362 U.S. 217, 230 (1960) (“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.”); *United States v. Agriprocessors, Inc.*, No. 08-CR-1324-LRR, 2009 WL 2255729, at *3 (N.D. Iowa July 28, 2009).

Defense counsel should be prepared for the possibility that ICE warrants will appear in connection with state criminal cases. Counsel should be prepared to challenge the use of administrative warrants to justify unlawful searches, and the use of civil warrants to circumvent the constitutional protections that apply to a criminal investigation.