

DHS Warrantless Home Entry Memo's Fourth Amendment Problem

New ICE directive goes against longstanding policy — and the Constitution.



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Government Power

This article first appeared at [Just Security](#) [link-1].

In an [internal memo](#) [link-2] made public through a whistleblower report, the Acting Director of Immigration and Customs Enforcement (ICE) instructed ICE officers that they are permitted to enter homes to conduct immigration arrests without judicial authorization. This instruction is not only a departure from longstanding Department of Homeland Security (DHS) policy, but also contrary to core Fourth Amendment rights that protect both citizens and noncitizens within the United States.

The Fourth Amendment and ICE's Immigration Arrest Authority

The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” Its language [reflects](#) [link-3] the founding generation’s hostility to general warrants (or “writs of assistance”), which granted British colonial officials unbridled authority to search any home for any evidence of violations of British tax laws. The amendment’s [basic purpose](#) [link-4] is to protect individuals from arbitrary government intrusions on their property or person. It serves to safeguard multiple other rights, including the

First Amendment right to hold dissenting views and the Fifth Amendment right to due process.

Typically, under the Fourth Amendment, the government [must](#) [link-5] have probable cause that a person has committed a crime to arrest them. Unlawful presence in the United States, on its own, is [not a crime](#) [link-6] — it’s a [civil](#) [link-7] offense. As a result, Congress has [authorized](#) [link-8] ICE to carry out civil immigration arrests pursuant to administrative warrants (also known as “ICE warrants”) — and, in some circumstances, [without a warrant](#) [link-9] — if ICE has probable cause to believe that an individual is removable from the United States. The administrative warrants issued by ICE [differ](#) [link-10] from traditional criminal arrest warrants not only because they are not based on criminal activity but also because they are not issued by a judge. Rather, they are approved by [certain](#) [link-11] [supervisory](#) [link-12] immigration officers.

Courts [have](#) [link-13] [blessed](#) [link-14] the practice of relying on administrative warrants for civil immigration arrests conducted outside the home based on a combination of longstanding historical practice and the

necessity of non-criminal arrests to a system of civil immigration detention and deportation. [Most](#) [\[link-15\]](#) [rely](#) [\[link-16\]](#) on dicta from a Supreme Court ruling from 1960, [Abel v. United States](#) [\[link-17\]](#), for support. In that case, agents from the predecessor agency to ICE arrested the petitioner in his hotel room based on an administrative arrest warrant issued by the district director of the agency. The Court declined to rule on the validity of the warrant because the petitioner had disclaimed any challenge to the warrant's validity earlier in the case. The Court nonetheless went on to emphasize the "overwhelming historical legislative recognition of the propriety of administrative arrest for deportable aliens," a rationale that lower courts have [since](#) [\[link-18\]](#) [adopted](#) [\[link-19\]](#). All that said, *Abel* is over six decades old and, as Professor Orin Kerr has [written](#) [\[link-20\]](#), subsequent Supreme Court cases holding that home entries require authorization from a neutral and detached magistrate have undermined its dicta.

Importantly, lower courts have not blessed reliance on these administrative warrants as a basis for entering homes to carry out immigration arrests. Contrary to the administration's [claim](#) [\[link-21\]](#) that "the law is clear," the case law in this area is sparse. A California federal district court recently [concluded](#) [\[link-22\]](#) that ICE administrative warrants do not authorize ICE officers to enter homes to conduct an arrest. In January, the Minnesota federal district court also [held](#) [\[link-23\]](#) that a home entry, which appears to have been carried out under DHS's new policy, violated the Fourth Amendment. In 2021, Texas federal district court judge James Wesley Hendrix (the same judge recently [rebuked](#) [\[link-24\]](#) by the Supreme Court in another immigration case) noted the lack of case law on the issue and, unlike the California and Minneapolis courts, [wrote](#) [\[link-25\]](#) that *Abel* "indicates" that ICE officers can enter a home pursuant to an administrative warrant. (Although the agents in *Abel* entered the

petitioner's hotel room to make the arrest, he did not challenge reliance on the administrative warrant to enter his room and the court did not specifically address that issue; and in the Texas case, Hendrix acknowledges "officers did not enter Malagerio's home.") The paucity of case law is likely in part because DHS has [historically](#) [\[link-26\]](#) [conceded](#) [\[link-27\]](#) that administrative arrest warrants do not authorize ICE officers to enter people's homes to arrest them. As a result, courts have rarely had occasion to comment on the issue.

The DHS Memo

In a [memo](#) [\[link-28\]](#) dated May 12, 2025, DHS reversed its historical position, asserting that ICE officers may rely on one type of administrative warrant, called an [I-205 Warrant of Removal](#) [\[link-29\]](#), to enter homes to carry out immigration arrests. The memo does not provide the legal rationale behind that reversal. It merely states:

"Although the Department of Homeland Security (DHS) has not historically relied on administrative warrants alone to arrest aliens subject to final orders of removal in their residence, the DHS Office of the General Counsel has recently determined that the U.S. Constitution, the Immigration and Nationality Act, and the immigration regulations do not prohibit relying on administrative warrants for this purpose. Accordingly, in light of this legal determination, ICE immigration officers may arrest and detain aliens subject to a final order of removal . . . in their place of residence."

In addition to being a complete reversal of longstanding DHS policy and [training guidelines](#) [\[link-30\]](#) (as the memo itself acknowledges), this position is inconsistent with basic Fourth Amendment principles.

The Memo's Fourth Amendment Problem

The Fourth Amendment's protection against unreasonable search and seizure applies to citizens [and](#) [\[link-31\]](#) [noncitizens](#) [\[link-32\]](#) [within the](#)

[United States](#) [\[link-33\]](#). The Supreme Court has famously [stated](#) [\[link-34\]](#) that “physical entry of the home is the chief evil against which the wording of the Fourth Amendment is directed.” As Supreme Court Justice Antonin Scalia [wrote](#) [\[link-35\]](#), “When it comes to the Fourth Amendment, the home is first among equals.” In other words, the home receives the highest protection under the Fourth Amendment. Consistent with this principle, the Supreme Court has also [said](#) [\[link-36\]](#) that to enter a home to conduct an arrest, the government must have an arrest warrant or qualify for certain narrow exceptions to the warrant requirement (such as an emergency involving a threat to life). The DHS memo treats I-205 administrative warrants as the functional equivalent of traditional criminal arrest warrants — which permit law enforcement to enter homes to make arrests — but these two warrants are very different from a Fourth Amendment perspective.

The Supreme Court has [repeatedly](#) [\[link-37\]](#) [emphasized](#) [\[link-38\]](#) the importance of warrants being issued by “neutral and detached magistrates” to satisfy the Fourth Amendment. As the Court has [recognized](#) [\[link-39\]](#), an evaluation of the facts by an independent judge is a more reliable safeguard against improper or unjustified searches or seizures than an evaluation made by a law enforcement officer, who by virtue of their position cannot be expected to remain neutral. In the [words of the Court](#) [\[link-40\]](#), “prior judicial judgment ... accords with [the] basic constitutional doctrine that individual freedoms will best be preserved through a separation of powers and division of functions among the different branches.” Criminal arrest warrants issued by judges meet the “neutral and detached magistrate” standard, but I-205s clearly do not. I-205 administrative warrants are issued by immigration officers, which means that the same agency requesting the warrant is the one approving it. As a federal court recently [explained](#) [\[link-41\]](#), ICE administrative warrants

“lack the independent assurance guaranteed by the Fourth Amendment.”

The General Counsel for DHS, Jimmy Percival, has publicly [emphasized](#) [\[link-42\]](#) that immigration officers may issue I-205 administrative warrants only after an entry of a [final](#) [\[link-43\]](#) [order of removal](#) [\[link-44\]](#) (i.e., an order authorizing deportation). However, removal orders are typically issued by [immigration judges](#) [\[link-45\]](#), who are not “neutral and detached magistrates” for Fourth Amendment purposes. Despite their names, they are not actually part of the judicial branch; rather, they are employees of the executive branch who “[act](#) [\[link-46\]](#) as the Attorney General’s delegates in the cases that come before them.” A signature on a different document by another executive branch employee does not bring I-205s closer to complying with the “neutral and detached magistrate” requirement.

Percival also [claims](#) [\[link-47\]](#) there is “broad judicial recognition that illegal aliens aren’t entitled to the same Fourth Amendment protections as U.S. citizens.” That assertion has no support in Supreme Court precedent. The Court has never held, nor [suggested](#) [\[link-48\]](#), that undocumented immigrants within the United States receive lesser Fourth Amendment protection than citizens or noncitizens with legal status. Among lower courts, the [prevailing](#) [\[link-49\]](#) [view](#) [\[link-50\]](#) is that undocumented immigrants within the United States have the same Fourth Amendment protections as U.S. citizens. This is consistent with the language of the Fourth Amendment, which guarantees its protections to “the people” — not to “citizens.” While a small number of district courts

have [held](#) [\[link-51\]](#) or [suggested](#) [\[link-52\]](#) that there may be some undocumented immigrants who do not have sufficient connections with the United States to fall within “the people” protected by the Fourth Amendment, those decisions fall far short of holding that undocumented immigrants as a class receive lesser

Fourth Amendment protection — let alone establishing any “broad judicial recognition” of that position.

“Different Types of Warrants”

When asked about the memo in a press conference, Vice President JD Vance [explained](#) [\[link-53\]](#) that there are “different types of warrants” in the U.S. legal system and that the government can “enforce the immigration laws of the country under an administrative order if you have an administrative warrant. That’s what we think.” While administrative warrants do exist in the U.S. legal system, it does not follow that they can be used to enter homes for the purpose of carrying out immigration arrests. The Supreme Court has permitted the use of administrative search warrants in certain cases to enter private premises for purposes other than criminal law enforcement. These purposes have included [inspecting a home](#) [\[link-54\]](#) after a fire to determine the cause or to [ensure compliance](#) [\[link-55\]](#) with a municipal housing code.

Entering a home to carry out an arrest is a very different purpose — and one that looks much closer to traditional criminal law enforcement — than housing-code or fire inspections. Indeed, although arrests based on removability are considered civil arrests, the Supreme Court has [recognized](#) [\[link-56\]](#) that deportation “is a particularly severe penalty, which may be of greater concern ... than any potential jail sentence.” And although the Court has [suggested](#) [\[link-57\]](#) that administrative search warrants “may but do not necessarily have to be issued by courts,” its administrative search warrant cases [routinely](#) [\[link-58\]](#) [refer](#) [\[link-59\]](#) to the necessity of warrants being issued by “neutral officers” or “neutral magistrates” — which, as discussed above, supervisory immigration officers are not. Allowing the government to use ICE administrative warrants to enter homes — where Fourth Amendment protections are at their zenith — for the purpose of conducting arrests would mark a radical

departure from the case law and settled understanding of the Constitution’s constraints.

The administration [claims](#) [\[link-60\]](#) that the Eighth Circuit (which has jurisdiction over Minnesota) “expressly recognized that administrative warrants may be used to enter a residence to capture a fugitive.”

This [appears](#) [\[link-61\]](#) to be a reference to [United States v. Lucas](#) [\[link-62\]](#). In that case, Tylan Lucas escaped from prison and was arrested in a third party’s home pursuant to an administrative warrant issued by the director of the Department of Corrections. Although a majority of the 13 judges who heard the case *en banc* concluded that no Fourth Amendment violation occurred, the judges split evenly (5–5) on the validity of the administrative warrant (the remaining three judges ruled on other grounds). In other words, the administration cites the case for a proposition that did not command a majority of the court. Moreover, the judges who endorsed reliance on the administrative warrant invoked several rationales that would not be applicable to arrests pursuant to the DHS policy — most notably, Lucas’s [status](#) [\[link-63\]](#) as a prison escapee and the fact that the warrant was issued by his custodian, rather than by a prosecuting authority. Civil immigration arrests pursuant to ICE administrative warrants bear little resemblance to the arrest at issue in *Lucas*, rendering the case of minimal help to the administration’s position.

Finally, the administration seeks to overcome the limited authority of administrative warrants on

the [grounds](#) [\[link-64\]](#) that “Congress hasn’t created a mechanism [for ICE officers] to obtain a judicial warrant.” In investigations involving suspected criminal activity, however, ICE can avail itself of

the [standard](#) [\[link-65\]](#) federal rules of criminal procedure for obtaining judicial warrants, in accordance with instructions in its own [training materials](#) [\[link-66\]](#). And constraints on ICE’s ability to obtain judicial warrants in purely civil immigration investigations may very well reflect Congress’s decided judgment that civil

immigration violations should not be pursued by entering people's homes. In any event, DHS's view that it lacks sufficient access to judicial warrants is not a valid basis for the agency to dispense with the requirements of the Fourth Amendment.

The Consequences

Judicial authorization of home entries is not merely a constitutional formality; it serves as an important safeguard for every household. Independent evaluation of the facts helps ensure that officers do not, for example, enter the wrong homes (as immigration officers have done recently in [Portland](#) [\[link-67\]](#) and [Minnesota](#) [\[link-68\]](#)) or for the

wrong reasons. Allowing ICE to enter homes using administrative warrants would be concerning even under an administration that has demonstrated strong commitment to the rule of law. But the current stakes are much higher. ICE's recent [pattern](#) [\[link-69\]](#) of [unlawful](#) [\[link-70\]](#) behavior and [aggressive](#) [\[link-71\]](#) enforcement tactics, combined with a [gutting](#) [\[link-72\]](#) of internal oversight mechanisms and [refusal](#) [\[link-73\]](#) to hold officers accountable for blatant misconduct, makes plain that the executive branch cannot be trusted to police itself. Courts must play their constitutionally assigned role to protect the civil liberties of the people in this country.

MORE ON

[Privacy Rights](#) [\[link-74\]](#)

Links

[link-1](#): Just Security <https://www.justsecurity.org/130497/dhs-warrantless-home-entry-fourth-amendment/>

[link-2](#): internal memo <https://www.documentcloud.org/documents/26499371-dhs-ice-memo-1-21-26/>

[link-3](#): reflects <https://supreme.justia.com/cases/federal/us/379/476/>

[link-4](#): basic purpose https://www.supremecourt.gov/opinions/17pdf/16-402_h315.pdf?inline=1#page=8

[link-5](#): must <https://supreme.justia.com/cases/federal/us/379/89/>

[link-6](#): not a crime <https://supreme.justia.com/cases/federal/us/567/387/>

[link-7](#): civil <https://supreme.justia.com/cases/federal/us/468/1032/>

[link-8](#): authorized <https://www.law.cornell.edu/uscode/text/8/1226>

link-9: without a warrant <https://www.law.cornell.edu/uscode/text/8/1357>

link-10: differ <https://www.fletc.gov/ice-administrative-removal-warrants-mp3>

link-11: certain <https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-241/subpart-A/section-241.2>

link-12: supervisory [https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-287/section-287.5#p-287.5\(e\)\(3\)](https://www.ecfr.gov/current/title-8/chapter-I/subchapter-B/part-287/section-287.5#p-287.5(e)(3))

link-13: have https://scholar.google.com/scholar_case?case=13102920333906919974&q

link-14: blessed https://scholar.google.com/scholar_case?case=2498991776410235370&q

link-15: Most <https://cases.justia.com/federal/appellate-courts/ca5/17-50762/17-50762-2018-05-08.pdf?ts=1525822213&inline=1>

link-16: rely https://scholar.google.com/scholar_case?case=14891519799883716899&q

link-17: Abel v. United States <https://supreme.justia.com/cases/federal/us/362/217/>

link-18: since https://scholar.google.com/scholar_case?case=2498991776410235370&q

link-19: adopted https://scholar.google.com/scholar_case?case=14891519799883716899&q

link-20: written <https://reason.com/volokh/2026/01/22/can-ice-enter-a-home-to-make-an-arrest-with-only-an-administrative-warrant/>

link-21: claim https://www.wsj.com/opinion/how-the-deep-state-thwarted-ice-administrative-warrants-1a847297?gaa_at=eafs&gaa_n=AWetsqdD-LitPtZLXpTgDu9pECzF_HrwT5S-IYDqUIWYu6KrsCngxq_jq-BWoHuaG8U%3D&gaa_ts=697a2f79&gaa_sig=9dru0-0k2EWdWWu-JPSBeDPwuBSaV2CeZwYmMXyJKw4RH4BGEMJvpgsmLwut1brUwKEImZLwQsZht19xhMYfYQ%3D%3D

link-22: concluded https://www.aclusocal.org/app/uploads/drupal/sites/default/files/kidd_msj_order.pdf?inline=1

link-23: held <https://www.justsecurity.org/wp-content/uploads/2026/02/garrison-g-minnesota-district-court-ice-warrantless-home-entry.pdf?inline=1>

link-24: rebuked <https://www.stevevladeck.com/p/151-the-supreme-courts-alien-enemies>

link-25: wrote <https://www.scribd.com/document/988917085/US-v-Malagerio-Order-on-Motion-to-Suppress>

link-26: historically <https://perma.cc/CAA2-VARE>

link-27: conceded <https://s3.documentcloud.org/documents/26499371/dhs-ice-memo-1-21-26.pdf?inline=1#page=22>

link-28: memo <https://www.documentcloud.org/documents/26499371-dhs-ice-memo-1-21-26/>

link-29: I-205 Warrant of Removal https://www.ice.gov/sites/default/files/documents/Document/2017/I-205_SAMPLE.PDF

link-30: training guidelines <https://s3.documentcloud.org/documents/26499371/dhs-ice-memo-1-21-26.pdf?inline=1#page=22>

link-31: and <https://supreme.justia.com/cases/federal/us/413/266/>

link-32: noncitizens <https://cases.justia.com/federal/appellate-courts/ca2/11-4916/11-4916-2013-07-31.pdf?ts=1410918936&inline=1>

link-33: within the United States <https://supreme.justia.com/cases/federal/us/494/259/>

link-34: stated <https://supreme.justia.com/cases/federal/us/407/297/>

link-35: wrote <https://supreme.justia.com/cases/federal/us/569/1/>

link-36: said <https://supreme.justia.com/cases/federal/us/445/573/>

link-37: repeatedly <https://supreme.justia.com/cases/federal/us/403/443/>

link-38: emphasized <https://supreme.justia.com/cases/federal/us/407/345/>

link-39: recognized <https://supreme.justia.com/cases/federal/us/403/443/>

link-40: words of the Court <https://supreme.justia.com/cases/federal/us/407/297/>

link-41: explained https://www.aclusocal.org/app/uploads/drupal/sites/default/files/kidd_msj_order.pdf?inline=1

link-42: emphasized https://www.wsj.com/opinion/how-the-deep-state-thwarted-ice-administrative-warrants-1a847297?gaa_at=eafs&gaa_n=AWetsqdD-LitPtZLXpTgDu9pECzF_HrwT5S-IYDqUIWYu6KrsCngxq_jq-BWoHuaG8U%3D&gaa_ts=697a2f79&gaa_sig=9dru0-0k2EWdWWu-JPSBeDPwuBSaV2CeZwYmMXyJKw4RH4BGEM.JVpgsmLwut1brUwKEImZLwQsZht19xhMYfYQ%3D%3D

link-43: final <https://www.law.cornell.edu/cfr/text/8/1241.1>

link-44: order of removal <https://www.americanimmigrationcouncil.org/fact-sheet/removal-system-united-states-overview/>

link-45: immigration judges <https://www.law.cornell.edu/cfr/text/8/1003.10>

link-46: act <https://www.ecfr.gov/current/title-8/chapter-V/subchapter-A/part-1003/subpart-B/section-1003.10>

link-47: claims https://www.wsj.com/opinion/how-the-deep-state-thwarted-ice-administrative-warrants-1a847297?gaa_at=eafs&gaa_n=AWetsqfk7xUSv9LMDiagtT795JBkBaA5z0GlybgrOogwuPvc5ejhd3Gq0S2ASpr3pCE%3D&gaa_ts=6976c6dd&gaa_sig=oQZU6COMZWpJ3KBCJOLCyLnbM43dro2lXjk5OlzlgTzQA8RVotH

link-48: suggested <https://www.stevevladeck.com/p/206-administrative-warrants-and-the>

link-49: prevailing <https://cases.justia.com/federal/appellate-courts/ca2/11-4916/11-4916-2013-07-31.pdf?ts=1410918936&inline=1#page=21>

link-50: view <https://caselaw.findlaw.com/court/us-8th-circuit/1542855.html>

link-51: held <https://www.scribd.com/document/991218856/United-States-v-Gutierrez-Casada>

link-52: suggested <https://www.scribd.com/document/991210666/United-States-v-Aispuro-Haros>

link-53: explained <https://www.forbes.com/sites/antoniopequenoiv/2026/01/22/vance-defends-ice-memo-telling-agents-they-can-raid-homes-without-a-judges-warrant/>

link-54: inspecting a home <https://supreme.justia.com/cases/federal/us/436/499/>

link-55: ensure compliance <https://supreme.justia.com/cases/federal/us/387/523/>

link-56: recognized https://www.supremecourt.gov/opinions/17pdf/15-1498_1b8e.pdf?inline=1

link-57: suggested <https://supreme.justia.com/cases/federal/us/483/868/>

link-58: routinely <https://supreme.justia.com/cases/federal/us/436/307/>

link-59: refer <https://supreme.justia.com/cases/federal/us/387/523/>

link-60: claims https://www.wsj.com/opinion/how-the-deep-state-thwarted-ice-administrative-warrants-1a847297?gaa_at=eafs&gaa_n=AWetsqdD-LitPtZLXpTgDu9pECzF_HrwT5S-IYDqUIWYu6KrsCngxq_jq-BWoHuaG8U%3D&gaa_ts=697a2f79&gaa_sig=9dru0-0k2EWdWWu-JPSBeDPwuBSaV2CeZwYmMXyJKw4RH4BGEM.JVpgsmLwut1brUwKEImZLwQsZht19xhMYfYQ%3D%3D

link-61: appears <https://reason.com/volokh/2026/01/23/more-on-administrative-warrants-to-enter-homes-thoughts-on-lucas/>

link-62: United States v. Lucas https://scholar.google.com/scholar_case?case=11906985145287880604&q

link-63: status <https://reason.com/volokh/2026/01/23/more-on-administrative-warrants-to-enter-homes-thoughts-on-lucas/>

link-64: grounds https://www.wsj.com/opinion/how-the-deep-state-thwarted-ice-administrative-warrants-1a847297?gaa_at=eafs&gaa_n=AWETsqdD-LitPtZLXpTgDu9pECzF_HrwT5S-IYDqUIWYu6KrsCngxq_jq-BWoHuaG8U%3D&gaa_ts=697a2f79&gaa_sig=9dru0-0k2EWdWWu-JPSBeDPwuBSaV2CeZwYmMYJkKw4RH4BGEMJVpgsmLwut1brUwKEImZLwQsZht19xhMYfYQ%3D%3D

link-65: standard https://www.law.cornell.edu/rules/frcmp/rule_41

link-66: training materials <https://s3.documentcloud.org/documents/26499371/dhs-ice-memo-1-21-26.pdf?inline=1#page=23>

link-67: Portland <https://www.cbsnews.com/news/ice-portland-raid-wrong-home-marcos-charles/>

link-68: Minnesota <https://www.nytimes.com/2026/01/20/us/chongly-scott-thao-ice-arrest.html>

link-69: pattern <https://theintercept.com/2025/07/07/ice-raids-la-violence-video-bystanders/>

link-70: unlawful <https://www.nytimes.com/2026/01/18/us/minneapolis-federal-agents-misconduct-protesters.html>

link-71: aggressive <https://www.cnn.com/interactive/2026/01/09/us/dhs-immigration-crackdown-ice-arrests-protests-vis/index.html>

link-72: gutting <https://www.reuters.com/world/us/trump-moved-cut-funding-ice-body-cameras-pared-back-oversight-2026-01-25/>

link-73: refusal <https://www.nytimes.com/2026/01/15/us/politics/trump-ice-immunity.html>

link-74: Privacy Rights <https://www.brennancenter.org/topics/government-power/privacy-rights>