

### **10 Tips for Fraud Detection and National Security (“FDNS”) Site Visits**

1. Ensure all reception, security personnel, and HR employees understand what an FDNS visit is, and adheres to an FDNS visit plan. It is recommended that one individual is designated as the primary contact to respond to an FDNS visit, and one alternative contact. Reception should immediately contact the organization’s designated contact if an FDNS investigator or any other government investigator arrives at a worksite.
2. Request identification from the officer/investigator (or a business card) and take down all information in the event a follow-up is necessary (e.g. date, location, agent’s name, badge number, agency, telephone, email, reason for visit, records requested, individual requesting to interview, etc.).
3. Determine whether it is an FDNS visit (rather than an Immigration and Customs Enforcement matter, Wage & Hour matter, etc.). It should be noted that FDNS site visits are generally related to H-1B and L-1 petitions, distinguishable from Immigration and Customs Enforcement (“ICE”) visits, which may involve I-9 worksite audits.
4. Contact your Wolfsdorf counsel as soon as possible. Based upon anecdotal reports, FDNS officers will not reschedule a site visit to allow counsel to be present. However, some investigators will allow legal counsel to be teleconferenced in to the interview. USCIS and FDNS take the position that the submission of an H or L petition by an employer constitutes a knowing waiver of the Fourth Amendment right to privacy and therefore a subpoena is not required to complete a site visit. While this position remains untested, since FDNS investigators appear to be asking questions from a standard script for now, we recommend cooperation with FDNS officers.
5. FDNS investigators typically ask to meet with the foreign national and a company representative (e.g. HR or a supervisor or manager). The questions should be limited to the facts presented in the H or L petition, including job duties, salary, qualifications and work location. Ensure that these individuals are familiar with the process and questions they may be asked about the H or L petition. A list of sample questions is attached. FDNS typically do not ask to see documentation, particularly if you are able to respond to their questions. Visits may be related to a pending or an approved H-1B or L-1 petition.
6. If you are unsure of an answer to a question or if the questions do not reasonably relate to the H or L petition, ask to respond at a later date so you can verify the answer rather than invent a response. Under no circumstances should one guess or provide inaccurate information.
7. If an investigator makes a request for specific documents, ask to see a warrant or subpoena. If there is no warrant or subpoena, you can ask to have legal counsel present. Generally, a subpoena requires a court order to enforce it and you may insist upon a court order without being penalized, whereas a warrant is a court order for which an employer can be penalized for non-compliance. If the investigator has a warrant or subpoena, please review it to determine what the issue is and how much time you have to respond

(e.g.; for an H-1B audit, the standard period to produce Public Disclosure files is one day; for ICE I-9 audit, the standard period to respond is three days). Please note that complete refusal may result in an “obstruction of justice” charge.

8. It appears that the FDNS investigators are assigned to verify information, and primarily work from a checklist of standard questions with no independent authority or decision-making capability. As mentioned above, they will confirm whether a foreign national is working at the listed location, doing the work described in the H or L petition, earning the salary indicated in the petition and what their educational qualifications are. They may take photos to confirm the employment location, but should not ask to search the workplace. FDNS uses this information to assist USCIS with developing a fraud detection database.
9. Employers should insist that at least one individual (preferably the designated contact) accompany the investigator at all time. The officer should not be permitted to wander around the company premises. Employees should not be interviewed alone, and an HR or company representative should be present at all times. Be sure to meet in a conference room and not in an open area. Take detailed notes during any interview and forward the details to Wolfsdorf counsel.
10. To prepare for an FDNS visit, conduct your own internal audit of H-1B and L-1 petitions to ensure that their job duties, work locations and salary are consistent with the petitions that were filed with USCIS, and that all Public Disclosure Files are up-to-date.

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For more information about any of the above-mentioned issues, or any immigration-related questions or concerns, please contact our team of professionals or your assigned WILG professional at (800) VISA-LAW or via email at [visalaw@wolfsdorf.com](mailto:visalaw@wolfsdorf.com)

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