

# **DEFENDING YOUR FARM**

**(without crossing the line)**

**2023 APMA FORUM**

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# Your Interests

- Operating your business
  - For the long run
  - Profitably
  - Lawfully
  - Without undue interruption or interference
- Controlling access to your premises
  - Phytosanitation
  - Security of premises and personnel

# Your Interests

- Avoiding legal entanglements
  - Administrative (gov't. agency) enforcement actions
  - Civil lawsuits
  - Criminal prosecutions
- Avoiding unionization
- Promoting a positive image
- Avoiding bad publicity

# Law Enforcers - California

- Div. of Labor Standards Enforcement
  - Office of the Labor Commissioner
  - Includes Bureau of Field Enforcement
  - Wage-and-hour laws (CA Labor Code statutes)
  - Industrial Welfare Commission wage orders
  - Farm labor contractor laws & regulations
  - Child labor laws & regulations
  - Workers' compensation coverage

# Law Enforcers - California

- Div. of Occupational Safety & Health
  - DOSH or Cal/OSHA
  - Safety & health laws & regulations
- Employment Development Dept. (EDD)
  - Underground Economy Operations
    - » Payroll-tax fraud
- Labor Employment Task Force
  - DLSE, DOSH, EDD plus others including CA Dept. of Justice (Attorney General)

# Law Enforcers - Federal

- U.S. Dept. of Labor Wage & Hour Division
  - Fair Labor Standards Act
    - Minimum wage
    - Overtime premium pay (non-ag)
    - Time records
    - Child labor
  - Migrant & Seasonal Ag Worker Protection Act
  - U.S. Citizenship & Immigration Services Form I-9, Employment Eligibility Verification

# Law Enforcers - Federal

- U.S. Dept. of Homeland Security  
Immigration and Customs Enforcement (ICE)
  - Prohibition against employing a person known to be ineligible to be employed in the U.S.
  - Requirement to verify the employment eligibility of newly hired employees on USCIS Form I-9, Employment Eligibility Verification

# Your Property Rights— Law Enforcers

- Valid consent, a judicial search warrant, or an administrative inspection warrant is generally required to enter areas of business premises from which the public is excluded.
- A judicial search warrant requires a showing of probable cause that the location to be searched contains evidence of criminal activity.



# Your Property Rights— Law Enforcers

- An administrative inspection warrant is generally issued for cause, meaning in accordance with reasonable legislative or administrative standards or because there's reason to believe a condition of nonconformity exists at the location.
- As an administrative warrant can often be readily obtained, one might choose to consent under conditions such as
  - Limiting the inspection's scope
  - Accompanying the inspector during the inspection

# Your Property Rights— Law Enforcers

- Exceptions
  - Open Fields Doctrine: Entry onto an open field is not a search within the meaning of the Fourth Amendment to the U.S. Constitution.
    - Open fields are areas beyond the home and its curtilage.
    - Even if it was a trespass, evidence obtained from the entry is not excludible in a prosecution of the landowner/controller.
  - Probable cause plus exigent circumstances

# Statutory Protection

## 8 U.S.C. § 1357(e)

- Federal immigration officers need the owner's consent or a warrant to enter a farm or other outdoor ag operation to question a suspected alien as to the person's right to be in the U.S.
- Exception: Neither consent nor a warrant is needed for access onto private lands within 25 miles from a U.S. border to patrol it to prevent the illegal entry of aliens into the U.S.

# Non-Law Enforcers

- Invitees who misbehave
  - Employees
    - Ordinary employees
    - “Undercover” investigators hired under false pretenses
  - Members of the public
    - Customers
    - Vendors
    - Tour groups

# Non-Law Enforcers

- CA Rural Legal Assistance (CRLA) agents
- Labor union agents
- TV and other news-media reporters
- Attorneys, private investigators
- Legislators, “advocates”
- Hikers, hunters, rubbish dumpers
- Animal activists / terrorists
- Thieves / vandals

# Non-Law Enforcers

- You can prohibit these private individuals from entering or being on your land.
- Ag Labor Relations Board access regulation?
  - Struck down in *Cedar Point Nursery* (2021)
- But by agreeing to a “labor peace compact” under AB 2183, an ag employer must give union organizers worksite access under the terms of the ALRB’s defunct access regulation.

# Non-Law Enforcers

- Control their access
- Designate the areas that are open or closed to the public
- Signage
- Consider
  - Using an agreement and liability release
  - Forbidding the use of image-capture devices or
  - Limiting the use of captured images

# Tips

- Watch for suspicious persons and vehicles
  - Get license numbers of suspicious vehicles
  - Photograph suspicious persons and vehicles
  - Carefully approach and question strangers
    - Get names, business cards, photograph ID cards
    - Order them to leave if they do not establish their right to be on your land.
- If appropriate, contact law enforcement
  - Provide specific information
  - Ask for drive-bys
- Train supervisors and FLCs



# Tips

- Maintain strict security measures
  - Gates , buildings and equipment locked
  - Fences in good repair
  - Signage
  - Sensors and alarms
  - Proper placement of
    - Night lighting
    - Video cameras
    - Security personnel
- Share information with your neighbors, law enforcement, and ag organizations

Thank you!

Questions?