

Bicameral Forum on Constitutional Abuses By Immigration and Customs Enforcement February 23, 2026

Prepared Statement
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Thank you, Senator Blumenthal and Representative Garcia, for your leadership on immigration issues and for giving me an opportunity to speak at today's forum.

My name is Steve Bunnell. I was the General Counsel of the Homeland Security Department from 2013 until early 2017. I previously had served 17 years as a career federal prosecutor, including several years as the Chief of the Criminal Division of the U.S. Attorney's Office in DC.

I am one of six former General Counsel and Acting General Counsel of DHS who recently co-authored a guest essay in the New York Times disagreeing with ICE's new practice of relying on administrative arrest warrants to forcibly enter a private residence to arrest someone for a civil immigration violation ([See We Were Top Homeland Security Lawyers. You Can't Wish Away the Fourth Amendment](#), New York Times, Feb. 2, 2026) (attached hereto). The six of us include top DHS lawyers from the Bush Administration, the Obama Administration, the first Trump Administration, and the Biden Administration. This is a group that doesn't always agree on policy issues, but we all agree on this point: The warrant requirement of the Fourth Amendment applies to ICE just like it applies to every other federal, state, and local law enforcement agency.

What also united — and frankly offended — all of us who signed the New York Times Op Ed, was the current general counsel characterizing DHS career attorneys as “deep state” operatives with some sort of hidden agenda to undermine the Department’s mission. This is a cheap shot, and it is wrong. It is not the so called “deep state” that for decades has kept ICE from entering a home using just an administrative warrant. It is the Fourth Amendment to the Constitution — and the lawyers who took an oath to support and defend it.

During our time at DHS, the six of us worked collectively with thousands of DHS lawyers. Those lawyers sought to ensure that DHS’s actions are lawful and to protect the constitutional rights of the people ICE agents encounter during operations. To smear career attorneys as deep state operatives for giving legal advice that is faithful to the Constitution is not only offensive but also dangerous. It sends a message: If you give your best professional advice and urge the department to respect the law, you will be attacked for doing your job.

It is a basic principle of Fourth Amendment law that searches and seizures inside a home without a warrant are presumptively unreasonable. Indeed, the Supreme Court has stated that the physical entry of the home is “the chief evil against which the working of the Fourth Amendment is directed.” The law is also clear that a warrant to enter someone’s home has to be issued by a “neutral and detached magistrate or judge.” In other words, the police can’t sign their own warrants.

This is a basic check and balance against tyranny and also a recognition that in the competitive enterprise of law enforcement, even a good, well-intentioned police officer is subject to the natural human biases that we all share, and therefore needs the approval of a neutral and independent judicial officer before taking an action as consequential as a forced entry into a person’s home.

It is important in the context of immigration enforcement to note that the 4th Amendment says that “the People” have the right to be protected from

unreasonable searches and seizures. It doesn't say "Citizens;" it says "the People." It is thus well established that the Fourth Amendment applies to everyone within the physical borders of the United States, including immigrants who are not lawfully present.

There are limited exigent circumstances where courts have allowed police to enter a private home without a warrant – for example when they are in hot pursuit of a dangerous suspect, where they believe evidence is being destroyed, or where there is a medical emergency inside the house. But ICE's claim that they can enter a house to make an immigration arrest is not based on the presence of any exigent circumstances. It appears to be based on an argument that ICE's general statutory detention authority combined with a final removal order by an immigration judge is sufficient to satisfy the Fourth Amendment. But that argument doesn't work. Not even close:

First, immigration judges are not neutral and detached judicial officers within the meaning of the Fourth Amendment. They work for the Executive Branch, and are subject to the control of the President and the Attorney General.

Second, a removal order issued by an immigration court is NOT an arrest warrant. A court order and a warrant are not the same thing.

Third, immigration judges don't have the authority to issue warrants, either for arrest or for a search. Indeed, they don't even have the authority to issue a bench warrant to arrest someone for failing to appear in court.

Fourth, there is no general authority for a federal magistrate or judge to issue a warrant to enter a private residence to arrest someone for a mere civil immigration violation. To get an arrest warrant from a federal court, ICE would need to establish to the court's satisfaction that there is probable cause to believe the person they want to arrest has committed a federal crime. ICE always has the option of seeking a criminal warrant for any illegal immigrant who is suspected of violating federal criminal law. And if

the individual is committing a state crime, they can report the crime to state and local police.

Fifth, Congress knows how to create authority for a federal judge to issue a warrant to enforce civil violations. It has done so for ICE with respect to searches and seizures of imported goods upon which duties have not been paid. See 19 USC 1595. But it has chosen not to do so for civil immigration violations. Perhaps, Congress believed that doing so would violate the Fourth Amendment, or would at least be bad policy?

Sixth, to the extent that ICE claims to need the convenience and speed of administrative warrants to arrest “the worst of the worst” who have been through immigration proceedings and are subject to a final order of removal, it begs the question why, if that individual is so dangerous, he wasn’t on the detained docket during his immigration proceedings. While some individuals are ordered removed in absentia, for those who were initially detained or otherwise appeared in immigration court, why did ICE or an immigration judge choose to release the individual into the community? Could it be that the court, or ICE itself, decided that the individual was neither dangerous nor a flight risk?

Seventh, the establishment of immigration arrest and removal quotas aggravates the biases that the warrant requirement protects against. It is hard enough for an individual law enforcement officer in a run of the mill case to objectively balance the interests of public safety against the importance of protecting the privacy of a home, but when the officer is subjected to strong institutional pressure to meet an arbitrary arrest target, it further strengthens the need for a judicial warrant.

I’m happy to flesh out these points and others during my testimony.

In closing, I urge the Homeland Security Department to adhere to the Constitution and end the practice of conducting forcible entry into homes without judicial warrants.

GUEST ESSAY

We Were Top Homeland Security Lawyers. You Can't Wish Away the Fourth Amendment.

Feb. 2, 2026

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By **Stevan Bunnell, Gus Coldebella, Ivan Fong, Kara Lynum, Jonathan Meyer and John Mitnick**

The authors all served as general counsels or acting general counsels for the Department of Homeland Security.

Immigration and Customs Enforcement has reportedly issued a memorandum that authorizes its agents to enter private residences forcibly without a judicial warrant. James Percival, the general counsel for the Department of Homeland Security, recently defended the department's policy and wrote that "deep-state actors in the federal government have for decades told ICE officers that they may not enter a fugitive alien's home even with a final order of removal and administrative warrant."

We disagree.

We previously sat in the seat he now occupies, serving in both Republican and Democratic administrations; this is not a partisan issue. We disagree not only with Mr. Percival's position but also with his characterization of lawyers at the Department of Homeland Security and elsewhere who seek to uphold the rule of law.

It is not the so-called deep state that has restrained ICE from entering homes using only administrative warrants. It is the Fourth Amendment to the Constitution — and the lawyers who took an oath to support and defend it. We worked with thousands of homeland security lawyers. They sought to ensure that the department's actions are lawful and protect the constitutional rights of the people its agents encounter in day-to-day operations. Attempting to tarnish department attorneys as “deep state” operatives for giving legal advice that is faithful to the Constitution is not only offensive but also dangerous. It sends a message: If you give your best professional advice and urge the department to respect the law, you will be attacked for doing your job.

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The job of the general counsel is not to provide convenient legal cover or constitutional workarounds. It is to provide sound legal analysis and advice, even when that advice may be inconvenient for the administration. Often that involves partnering with internal clients to find lawful ways to carry out department policies. Sometimes, however, that means advising that a policy is unlawful. That is not sabotage; it is upholding the rule of law.

The Fourth Amendment has long protected the sanctity of the home. Courts have consistently held that law enforcement must clear a high constitutional bar before crossing that threshold. A warrant signed by a judge who is independent of the executive branch is a constitutional safeguard that separates legitimate law enforcement from arbitrary government power. This bedrock principle applies with equal — if not greater — force when the government is merely enforcing a civil immigration order.

Today the Department of Homeland Security seeks to justify forcible home entries on the basis of administrative warrants — warrants issued by the executive, not the judicial branch. While Mr. Percival and the department have not made clear

which cases, if any, they are relying on, at least one analysis speculates that they are using a mere nonbinding observation from a 1960 Supreme Court case. However, the weight of subsequent Supreme Court authority strongly supports the view that a judicial warrant is required for such entry — a view reflected by the Federal District Court judge in Texas who ordered the release on Saturday of 5-year-old Liam Conejo Ramos and his father from immigration custody.

Aside from relying on an unsound constitutional justification, the use of administrative warrants to justify forcible entry runs counter to years of practice and precedent, as well as training designed to ensure constitutional compliance and protect the public from abuses of power. Indeed, the Homeland Security Act of 2002, which created the department in the wake of Sept. 11, expressly requires it to pursue its critically important missions while ensuring that “the civil rights and civil liberties of persons are not diminished by efforts, activities and programs aimed at securing the homeland.”

It is also wrong to state, as Mr. Percival did, that there is “broad judicial recognition” that the Fourth Amendment does not attach the same protections to all people in the United States. The Constitution does not reserve the right to be secure in one’s home only for American citizens. The amendment’s protections exist precisely because unchecked government power has always posed the greatest danger to individual liberty, particularly for those least able to protect themselves.

According to a complaint filed by a group representing whistle-blowers, the ICE memorandum containing this new interpretation of the law was not widely distributed. Apparently, employees were expected not to retain the memorandum but only to read it before returning it to their supervisors. This secrecy speaks volumes about the weakness of its arguments.

All of us made difficult decisions during our service at the Department of Homeland Security, but none of us needed to lean into conspiracy theories to justify them. We have not always agreed with one another, but we served with dedication and integrity and were honored to work for the American people. We provided our

best counsel based on fidelity to the law. We urge the Department of Homeland Security to adhere to the Constitution and end the practice of conducting forcible entry into homes without judicial warrants.

Stevan Bunnell, Gus Coldebella, Ivan Fong, Kara Lynum, Jonathan Meyer and John Mitnick served as general counsels or acting general counsels for the Department of Homeland Security. They are writing in their personal capacities, not those of any organization with which they are affiliated.

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