

Advisory to Nonprofit Organizations and Social Service Providers Regarding Immigration Enforcement

October 25, 2024

Lowenstein Sandler LLP, Make the Road New Jersey, and Morris County Organization for Hispanic Affairs prepared this Advisory to educate nonprofits on their rights to protect their immigrant clients and to help them establish best practices. This Advisory was heavily informed by an advisory drafted by Northwest Immigrant Rights Project and has been updated to address the current enforcement policies under the Biden Administration. A change in administration may result in a revocation or modification of the Department of Homeland Security's (DHS) current guidelines for enforcement actions, and anyone relying on this Advisory should consider the guidelines in effect at the time of their review.

Basics: Many nonprofits, especially social service providers, have asked questions about how they can protect their clients if immigration agents come to their building or otherwise try to detain their clients. We have prepared the following information to help address those questions.

Note, however, that this document is for informational purposes only, is not intended as legal advice, and does not substitute for consulting with a lawyer about specific facts and circumstances.

How likely is it that federal immigration agents might come to our facility?

We have not at this time seen any pattern of enforcement actions by Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP) at social service providers or other nonprofits. However, we cannot say for certain how likely such actions would be, given the shifting priorities and practices in immigration enforcement. As of now, if agents were to appear at your facility, it would probably be because an individual submitted to immigration officials the address of your agency as their home or mailing address. Whatever the likelihood of such an occurrence, it is important for your agency to be prepared and to make clear to the community you are serving that you will protect them to the greatest extent possible.

How likely is it that New Jersey law enforcement might come to our facility?

It is unlikely that local law enforcement will be involved in enforcement actions to apprehend individuals for violations of federal immigration laws. In November 2018, the Attorney General of New Jersey issued the ATTORNEY GENERAL LAW ENFORCEMENT DIRECTIVE NO. 2018-6 v2.0, more commonly known as the "[Immigrant Trust Directive](#)," (The Directive)¹ a statewide policy

¹ Office of the Attorney General of New Jersey, Law Enforcement Directive No. 2018-6 v2.0 (2019), available at <https://tinyurl.com/3mbhu97p>.

designed to strengthen trust between New Jersey's law enforcement officers and the state's diverse immigrant communities. The Directive aims to ensure that victims and witnesses feel safe reporting crimes to local police without fear of deportation. It also seeks to "ensure effective policing, protect the safety of all New Jersey residents, and ensure that limited state, county, and local law enforcement resources are directed towards enforcing the criminal laws of this state" – not the enforcement of immigration laws, which is primarily a federal responsibility. The Directive applies to state and local police officers, correctional officers working in state prisons and county jails, and state and county prosecutors.

The Directive recognizes the distinct responsibilities of state and local law enforcement and limits the types of voluntary assistance that law enforcement officers may provide to federal immigration authorities. For example, under federal and state law, local law enforcement agencies are not required to enforce civil administrative warrants or detainers issued by federal immigration officers (rather than federal or state judges); local law enforcement officers are also not responsible for enforcing civil immigration violations except in narrowly defined circumstances.

Although the Directive generally limits state and local law enforcement's ability to cooperate with federal immigration enforcement, there are some exceptions involving individuals with enumerated criminal charges, convictions, or final removal orders.

Note that the Directive is not codified into law and could be revoked by a future administration. There is also no apparent civil enforcement mechanism if the Directive is not being followed. If you observe a violation of the Directive, you can contact the Office of the Attorney General, [Division on Civil Rights \(DCR\)](#), to report it.²

Should we collect and keep immigration information about our clients?

Nonprofits should not collect or maintain information about the immigration status or country of origin of a client unless necessary to providing your agency's services to that client.

What should we do if immigration agents come to our facility?

In line with their respective missions, nonprofit agencies and social service providers should protect their clients and staff to the greatest extent possible. These agencies should consider developing policies and protocols consistent with the following guidelines:

- Nonprofits should not allow immigration agents access to any part of their facilities that is not open to the general public. It may be helpful to place signs at the entrances to areas that are restricted (e.g., NO ENTRY WITHOUT AUTHORIZATION). To gain access to nonpublic areas, agents need a judicial search warrant identifying the areas to be searched. (An example is attached as Appendix A, but such warrants take many forms; **look for the**

² New Jersey Division on Civil Rights, available at <https://tinyurl.com/bde22943> (last visited Oct. 24, 2024).

signature of a judge.) Immigration agents sometimes have “administrative” arrest warrants (signed by an immigration officer), but these do **not** authorize them to enter nonpublic areas, even if the person named in the administrative warrant is in that area. (An example is attached as Appendix B.) Note that areas open to the general public are also open to immigration agents.

- Nonprofits should not release information about their clients to immigration officials unless a judicial warrant or subpoena specifically requires the release of that information or the client has consented to the release of personal information to the immigration agency. In many cases, nonprofit agencies may actually be prohibited from such release of information as a matter of law, policy, or regulation.
- Nonprofits should train their staff (particularly those at reception areas or who have initial contact with the public) on how to respond if immigration agents come to their location and set up a protocol for such encounters. (A suggested template is attached as Appendix C.)
- If immigration agents come to your facility, your staff should be trained to take the following actions:
 - Staff should inform immigration agents that they do not have permission to enter nonpublic areas of the facility unless they have a judicial warrant (as opposed to an administrative arrest warrant issued by ICE or CBP). Staff should be trained not to accept agents’ claims of having a warrant, but should ask to **see** the warrant. If the immigration agents do not present a warrant, staff should inform the agents that the social service provider or other nonprofit has a policy of denying access in the absence of a valid warrant.
 - If the agents present a warrant, reception staff should be trained to consult with a supervisor. Supervisory staff should be trained to review the warrant to ensure that (1) it is signed by a judge, not an immigration official; (2) it authorizes a search of the nonprofit’s facility; and (3) it has not expired. Supervisors should then ensure that any authorized search remains within the spatial boundaries set by the warrant. Supervisors should consult with legal counsel, if possible, about the validity and scope of the warrant.
 - Staff should advise any clients who are nearby that they have the right to remain silent and do not have to answer any questions posed by immigration agents. Staff should be careful, however, **not to direct** clients not to speak to the agents, as this might be interpreted as interference.
 - Staff and clients should be informed that, at any point during an encounter with immigration agents, they can ask the agents if they are free to go. If the agent says yes, they are of course free to leave. If the agent says the person

is not free to go, the person has the right to ask to talk to a lawyer and to remain silent otherwise. (But remember **not** to advise clients that they should not answer questions.)

- If immigration agents question staff, staff should politely inform the agents that they are not authorized to answer questions without consulting with a supervisor.
- Staff should never lie to immigration agents. For instance, if immigration agents ask about an individual who is actually in the building, staff should not say the person is not there but should instead decline to answer questions and consult with a supervisor.
- Staff should document the name/contact information of the agents and the supervisor of the agents (ask for their cards). If the agents are in plain clothes, staff should ask to see their badges or other credentials and record their names and badge numbers.
- If possible, other staff members who are not directly interacting with the agents should record the encounter with immigration agents, but they should announce they are making a recording and keep a safe distance so as not to interfere.
- After any interaction, staff should write a thorough report of the encounter. (A sample reporting form is attached as Appendix D.)
- Staff should not take any action to hide or conceal any person, or aid in their escape from the premises. (See information below regarding congregations considering offering active “sanctuary” to community members.)

Are there special protections for certain types of facilities?

Yes. ICE and CBP have [policies](#)³ relating to enforcement actions in or near areas that require special protection, referred to as “**Protected Areas**.” Examples of “protected areas” include:

- A **school**, such as a pre-school; primary or secondary school; vocational or trade school; or college or university.
- A **medical or mental healthcare facility**, such as a hospital; doctor’s office; health clinic; vaccination or testing site; urgent care center; site that serves pregnant individuals; or community health center.

³ U.S. Dep’t of Homeland Security, Guidelines for Enforcement Actions in or Near Protected Areas (2021), available at <https://tinyurl.com/muz3zkah>.

- A **place of worship or religious study**, whether in a structure dedicated to activities of faith (such as a church or religious school) or a temporary facility or location where such activities are taking place.
- A place **where children gather**, such as a playground; recreation center; childcare center; before- or after-school care center; foster care facility; group home for children; or school bus stop.
- A **social services establishment**, such as a crisis center; domestic violence shelter; victims services center; child advocacy center; supervised visitation center; family justice center; community-based organization; facility that serves disabled persons; homeless shelter; drug or alcohol counseling and treatment facility; or food bank/pantry or other establishment distributing food and/or other essentials to people in need.
- A place **where disaster or emergency response and relief is being provided**, such as along evacuation routes; where shelter or emergency supplies, food, or water are being distributed; or registration for disaster-related assistance or family reunification is underway.
- A place where a **funeral, graveside ceremony, rosary, wedding**, or other religious or civil ceremonies or observances occur.
- A place where there is an **ongoing parade, demonstration, or rally**.

This is not an exhaustive list. The foundational principle is that these agencies “should not take an enforcement action in or near a location that would restrain people’s access to essential services or engagement in essential activities.” If your location could constitute a “Protected Area” under these policies, your staff should be trained to make this clear to immigration agents and/or their supervisor if they do show up at the location.

Limitations on Scope of Policy:

The policy **does not** say that immigration agents cannot enter these locations, only that enforcement actions, including arrests, civil apprehensions, searches, inspections, seizures, interviews, and surveillance activities at **or near** these locations are discouraged. This means that ICE agents have to go through a supervisory review process within ICE before enforcement actions in these spaces are undertaken, unless certain narrow exigent circumstances apply.

Examples of circumstances when ICE or CBP will engage in enforcement actions at or near a “protected area.”

- The enforcement action involves a national security threat.
- There is an imminent risk of death, violence, or physical harm to a person.
- The enforcement action involves the hot pursuit of an individual who poses a public safety threat.

- The enforcement action involves the hot pursuit of a personally observed border crosser.
- There is an imminent risk that evidence material to a criminal case will be destroyed.
- A safe alternative location does not exist.

What if immigration agents do not come into our building but are seen outside?

First, you may want to verify that the situation involves immigration agents. A supervisor can go outside and attempt to ascertain the identity of the individuals who are perceived to be immigration agents. It is possible that the report resulted from fear or confusion, and it would be best not to create concern when it is not warranted. If the agents are indeed from ICE or CBP, or it is not possible to confirm they are not, then the supervisor can inform them that your organization is a Protected Area (if this is so) and request that they leave. Staff may also inform clients inside your facility of the situation and advise that they have the right to remain silent and not answer any questions that the agents might pose to them when they leave.

Could our organization be accused of breaking the law if we do not grant immigration authorities access to our building?

Nonprofit organizations and social service agencies are **not** violating federal law when they refuse to provide ICE or CBP agents access to **nonpublic** areas of their facilities in the absence of a judicial warrant or when they refuse to turn over information unless the agents present a subpoena or judicial warrant.

However, nonprofits and their staff should be aware that if they take affirmative steps to conceal an individual or aid in a person's escape from immigration authorities, they could be accused of violating federal laws against "harboring" undocumented individuals. Some faith congregations or other entities may consider engaging in such activities as a form of civil disobedience (this is often referred to as becoming a "sanctuary" congregation). Organizations that make this decision should understand the potential risks involved and should consult with an attorney for specific advice as to their legal risks.

It bears repeating, however, that asserting the right not to answer questions about individuals who may or may not be present in a facility or refusing to collect information regarding the immigration status of your clients would not implicate federal prohibitions against harboring undocumented people.

What if a client is detained in or near our facility?

You have a right to observe the arrest from a reasonable distance, so as not to interfere, and to record the incident (it is best to announce that you are doing so). To the extent possible without interfering with the arrest, remind your client that they have the right to remain silent and ask if the

client would like you to contact a family member or an attorney. If the client consents, you may contact an attorney or family member to let them know that the person has been detained.

If a client has no attorney and cannot afford one, are referrals available for free legal help?

Resources for possible legal help are available at this [link](#).⁴

Are there free presentations that could help our immigrant clients understand their rights? Are there other Know Your Rights resources?

Please refer clients to the following organizations for more information:

- Contact NJ Alliance for Immigrant Justice to learn about “Know Your Rights” presentations in their area, by emailing info@njimmigrantjustice.org.

You may also want to keep Know Your Rights materials on hand.

- The ACLU has prepared Know Your Rights cards in several languages – click [here](#)⁵
- The American Immigration Lawyers Association has prepared one-page Know Your Rights materials in several languages – click [here](#)⁶
- The NJ Alliance for Immigrant Justice has prepared many resources, including Know Your Rights cards in several languages – click [here](#)⁷
- The New Jersey Consortium for Immigrant Children has prepared an Immigrants’ Rights Toolkit – click [here](#)⁸

⁴ Administrative Relief Resource Center, <https://tinyurl.com/4bu2uare> (last visited Oct. 23, 2024).

⁵ American Civil Liberties Union (ACLU), <https://tinyurl.com/3a6m7vny> (last visited Oct. 23, 2024).

⁶ American Immigration Lawyers Association (AILA), <https://tinyurl.com/ms6f2vd7> (last visited Oct. 23, 2024).

⁷ New Jersey Alliance for Immigrant Justice, https://www.njimmigrantjustice.org/know_your_rights_cards (last visited Oct. 23, 2024).

⁸ New Jersey Consortium for Immigrant Children, *Immigrant Rights Toolkit*, <https://www.njcic.org/immigrant-rights-resources> (last visited Oct. 23, 2024).

APPENDIX A

AO 93 (Rev. 11/13) Search and Seizure Warrant

A judicial warrant issued
by a court;
Una orden judicial es
emitida por una corte

UNITED STATES DISTRICT COURT

for the
District of New Jersey

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)

Case No. 17-1234

123 Broad Street, Newark, NJ, Apt. 4

A judicial warrant includes the
address being searched;
Una orden judicial incluye la
dirección de la búsqueda

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search
of the following person or property located in the District of New Jersey
(identify the person or describe the property to be searched and give its location):

123 Broad Street, Newark, NJ: Apt. 4 and all common hallways and lobby of building

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property
described above, and that such search will reveal (identify the person or describe the property to be seized):

John Doe, A-123-456-789, a deportable alien with convictions for crimes involving moral turpitude;
Goods stolen from XYZ Retail at 123 Commerce Street, Newark, NJ, on April 1, 2017, in a robbery allegedly involving John
Doe.

A judicial warrant includes the time
when the search must take place;
Una orden judicial incluye el tiempo
cuando la búsqueda debe de ocurrir

YOU ARE COMMANDED to execute this warrant on or before April 24, 2017 (not to exceed 14 days)
☒ in the daytime 6:00 a.m. to 10:00 p.m. ☐ at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the
person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the
property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory
as required by law and promptly return this warrant and inventory to Jane Smith, U.S.M.J.
(United States Magistrate Judge)

☐ Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C.
§ 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose
property, will be searched or seized (check the appropriate box)

☐ for days (not to exceed 30) ☐ until, the facts justifying, the later specific date of

Date and time issued: 04/10/2017 10:00 am

City and state: Newark, NJ

Jane Smith
Judge's signature

Jane Smith, United States Magistrate Judge
Printed name and title

A judicial warrant must be
signed by a judge;
Una orden judicial debe de
estar firmado por una juez

APPENDIX B

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

WARRANT OF REMOVAL/DEPORTATION

 An administrative warrant is issued
by DHS or ICE, not a court;
Una orden administrativa de ICE es
emitida por DHS o ICE, no una corte

File No: _____

Date: _____

To any immigration officer of the United States Department of Homeland Security:

(Full name of alien)

who entered the United States at _____ on _____
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- ☐ an immigration judge in exclusion, deportation, or removal proceedings
- ☐ a designated official
- ☐ the Board of Immigration Appeals
- ☐ a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

An ICE administrative warrant is signed by an
immigration officer or an immigration judge;
Una orden administrativa de ICE es firmada por un
oficial de inmigración o juez de inmigración



(Signature of immigration officer)

(Title of immigration officer)

(Date and office location)

APPENDIX C

SAMPLE PROTOCOL REGARDING INTERACTIONS WITH IMMIGRATION AGENCIES

[Note: This template is a generic protocol that should be adapted to the particular circumstances of your agency. Each agency should consult with an attorney whenever possible to evaluate and provide advice regarding your specific circumstances.]

POLICY

It is the policy of [Agency] to ensure that our clients are safe and protected when they use our facilities and services. [Agency] will take steps to the greatest extent possible under the law to protect our clients and their information. [Agency] will not collect or maintain information about its clients' immigration status or country of origin except when necessary to serve the client appropriately. It is the policy of [Agency] not to allow agents or employees of U.S. Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP) access to our facilities, records, or information unless this is required by law or a valid judicial warrant. The same policies and procedures apply to police officers who are acting with or at the request of ICE/CBP agents to enforce the immigration laws.

PROCEDURES

Procedures regarding access to [Agency] facilities/buildings:

If any agents or employees from ICE or CBP attempt to enter [Agency]'s facilities, staff will follow this protocol:

1. Reception staff [*or insert front-line staff title*] will inform ICE/CBP agents that they do NOT have consent to enter the nonpublic areas of the building or facility unless they have a valid judicial warrant.
2. [If applicable because your Agency qualifies as a "protected area" under ICE/CBP policy:] Staff should inform ICE/CBP agents that [Agency] qualifies as a "protected area" under ICE/CBP policy. [*Explain why your agency is a protected area*].
3. Staff should inform supervisors [*include information on which supervisor(s) should be contacted and how*] about ICE/CBP presence in [Agency]'s facility as soon as possible.
4. Staff should advise any clients who are nearby that they have the right to remain silent and do not have to answer any questions posed by immigration agents, but *should not direct* clients not to answer questions.
5. If the ICE/CBP agents claim to have a warrant to enter the facility, staff should ask for a copy of the warrant, inform the agents to wait at a specified location, and contact a supervisor for assistance.

6. Supervisors reviewing warrants should contact legal counsel if possible. Supervisors should review the warrant to ensure that (a) it is signed by a judge or magistrate, (b) it identifies [Agency's] facility as the place to be searched, and (c) it has the correct date and has not expired (if there was an expiration date listed in the warrant). If possible, supervisors should accompany the agents during the search, maintaining a respectful distance, to ensure that the search is confined to those areas identified in the warrant as the places to be searched. Administrative arrest or removal warrants that are signed by an immigration officer (rather than a judge or magistrate) do *not* grant authority for ICE/CBP to enter nonpublic areas of the facility or building.
7. Besides informing ICE/CBP agents that they do not have consent to enter the facility without a valid judicial warrant, staff should not answer questions posed by the agents without consulting with a supervisor. In particular, staff should not answer questions about whether a particular person (client or staff) is currently in the building or facility, but should state instead that they are not authorized to answer questions.
8. Staff should document the name/contact information of the ICE/CBP agents seeking access to the facility. This can be done by asking for business cards or asking the agents directly.
9. To the extent possible, staff who are not interacting with the ICE/CBP agents should record any interactions with the agents, but they should announce that they are making a recording. Staff should remain a reasonable distance from such incidents so as not to interfere.
10. Staff and clients should know (or be informed) that, at any point during an encounter with immigration agents, they can ask the agents if they are free to go. If the agent says yes, they are of course free to leave. If the agent says the person is not free to go, the person has the right to ask to talk to a lawyer and to remain silent otherwise. (But remember not to advise clients that they should not answer questions.)
11. Staff should complete a written report of the enforcement action.

PROCEDURES

Procedures regarding immigration agents' request for access to [Agency] records/files:

If any agents or employees from ICE or CBP request access to records or documents regarding [Agency]'s clients or staff, staff will follow this protocol:

1. Staff should inform the ICE/CBP agents that [Agency]'s policy is not to release information without a client's consent, unless disclosure is required by judicial order or subpoena or otherwise required by law.
2. If ICE/CBP agents claim to have a warrant or subpoena, staff should not release information without consulting with a supervisor. Staff should request a copy of the warrant or subpoena, ask for the agents' contact information, and consult with a supervisor. Whenever possible, the supervisor should consult with an attorney.

APPENDIX D

REPORT ON ENFORCEMENT ACTION BY IMMIGRATION OFFICIALS

Date: _____ Time: _____

How many officers? _____

Names and/or badge numbers:

How did their uniforms identify them?

Who did they say they were and why did they say they were there?

Did you ask to see a warrant? _____

Did the agents present a warrant? _____

If not, did you deny them consent to enter? What did you say?

How did they react if you denied them consent to enter?

If the agents presented a warrant, was a supervisor alerted? Who?

Was the warrant an administrative warrant, signed by an immigration official? _____

If it was an administrative warrant, did you tell the agents that your organization has a policy of denying access to nonpublic areas in the absence of a judicial warrant?

What did you say?

How did the agents react if you denied them consent to enter based on an administrative warrant?

Did the agents present a judicial warrant, signed by a judge? _____

If so, please describe the warrant:

- What was the date on the warrant? _____
- What items or persons were the subject of the search?

- What areas were identified to be searched?

- What judge signed the warrant? _____

Did you allow the agents entry based on a judicial warrant? _____

If so, did you or another staff member accompany them on their search? Who?

Did the agents stay within the areas they were authorized to search by the warrant? If not, what other areas did they enter? Did they look in closed closets, cabinets, or drawers? Did they ask permission first?

Did they keep anyone from moving around freely? Who?

Did they arrest anyone? Who?

Did they seize any items? What?

Did they take pictures of documents? If so, whose? How did they get the documents?

Did they take fingerprints? If so, whose?

Were there children present? If so, whose? How many?

Did the agents yell at anyone? Who? Why?

Did the agents have guns drawn or were they touching their weapons?

Is there anything else to add about the enforcement action?
