

Northwest Immigrant Rights Project

Advisory to Nonprofit Organizations and Social Service Providers Regarding Immigration Enforcement

Rev. 04-03-2017

Basics: We have been receiving a number of questions from nonprofit partners, social service providers and others about how they can protect their clients if immigration agents came to their building or otherwise tried to detain their clients. We wanted to provide the following information to address those questions.

How likely is it that immigration agents might come to a nonprofit or social service provider? In our opinion, the risk that an immigration agent from either Immigration and Customs Enforcement (ICE) or Customs and Border Protection (CBP) would come to a nonprofit agency or social service provider is relatively low. If it happens, it will most likely be because an individual submitted the address of the nonprofit or social service provider as their home or mailing address to ICE or U.S. Citizenship and Immigration Services (USCIS). Nonetheless, it is important for everyone to be prepared for this situation and to make it clear to the community you are serving that you will protect them to the greatest extent possible.

What is your advice if immigration agents come to our building or facility? We believe that nonprofit agencies and social service providers should protect their clients and staff to the greatest extent possible. We recommend these agencies develop policies and protocols consistent with the following guidelines:

- Nonprofits should not allow immigration agents access to non-public areas of their building and facilities unless the agents have a judicial search warrant (signed by a judge or magistrate within the past fourteen days) granting them that access to search for the listed items. Note that immigration agents sometimes have “administrative” arrest warrants (signed by an immigration officer) but these do NOT grant them permission to enter areas that are not open to the public, even if the person named in the administrative warrant is inside of the building.
- Nonprofits should not release information about their clients to immigration agencies unless those agencies have a judicial warrant (or subpoena) specifically requiring the release of that information or unless the client has consented to such release in order to help them with an immigration matter. 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 do come to their location and set up a protocol for such situations (a suggested template is attached as Appendix A).
- If an immigration agent does come to your agency’s building, we recommend that your staff be trained to take the following actions:
 - Staff should inform immigration agents that they do not have permission to enter non-public areas of the building and facility unless they have a judicial warrant (as opposed to an administrative arrest warrant issued by ICE or CBP). If the agents claim to have a warrant, staff should contact a supervisor who can review the documents and follow up with legal counsel if necessary.
 - Staff should be trained that only valid judicial warrants are acceptable for entry and that they should not accept agents’ claims of having a warrant as sufficient to grant access. We recommend that reception staff be trained to consult with a supervisor and for supervisory

staff to be trained to review the scope of any warrant and also that it is being executed within its permitted time frame.

- If the immigration agents do not have a judicial warrant to search the building, staff should inform the agents that they are not authorized to consent to grant access to the facility.
- 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. If possible, clients should be moved to a private location of the facility until the situation has been resolved.
- Staff and clients should be informed that if they are engaged in questioning by 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, they should explain that they would like the opportunity to consult with an attorney and otherwise remain silent.
- If staff members are asked questions by immigration agents, they should be advised to tell the agent that they are not authorized to answer those questions without consulting with a supervisor.
- Staff should not lie to immigration officers. For instance, if immigration agents are asking about an individual who is actually in the building, staff should not say the person is not there but should simply decline to answer questions about that individual 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) and, if possible, record the interactions with immigration agents (but they should announce they are making a recording). After any interaction, staff should prepare a thorough report of the interaction.
- 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. Both ICE and CBP have “sensitive locations” [policies](#) that apply to certain locations including, but not limited to, schools, hospitals and institutions of worship (including churches, mosques and synagogues). This is not an exhaustive list; for example, under their policy, ICE is also required to exercise caution at organizations assisting children, pregnant women, victims of domestic abuse or individuals with significant mental or physical disabilities. The policy does not say that immigration agents cannot enter these locations, only that enforcement actions at these locations are discouraged and that ICE agents have to go through a supervisory review process within ICE before they are undertaken, unless certain narrow exigent circumstances apply. If your location could constitute a “sensitive location” under these policies, your staff should be trained to make this clear to immigration agents and/or their supervisor if they do show up to the location. In addition, domestic violence shelters and survivors accessing those facilities should be aware of certain confidentiality protections that apply to them. More information on those protections can be found at [this link](#).

What if immigration agents do not come into our building but are seen outside? Our first recommendation is to verify that the situation involves immigration agents. A supervisor can go outside and engage the individuals who are perceived to be immigration agents and attempt to ascertain their identity. If this applies to your facility, the supervisor can inform them that your organization is a sensitive location, and request that they leave. It is possible that the report about immigration agents may have been the result of confusion and it would be best to not 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 it is appropriate to inform clients inside your building of the situation and advise that they have the right to remain silent and not answer any questions that the agents might pose 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 can provide important protection to their clients by following the recommendations in this advisory and they are entirely within their legal rights to do so. In other words, nonprofits are NOT violating federal law by refusing to provide ICE or CBP agents access to non-public areas of their facilities when they do not have a warrant or by refusing to turn over information absent a subpoena or judicial warrant. However, nonprofits and their staff should be aware that if they take affirmative steps to conceal the whereabouts of an individual being sought by immigration authorities or they aid in the person's escape from those authorities they could be accused of violating federal laws against "harboring" undocumented individuals. We recognize that 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). We of course respect that decision but we would simply urge that they do so understanding the potential risks involved. A good resource is [this FAQ](#) from our colleagues at the ACLU.

We reiterate, however, that asserting the right not to answer questions about persons who may or may not be present in a building or refusing to collect information regarding the immigration status of individuals served would not implicate federal prohibitions against the harboring of undocumented individuals.

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 (but we recommend that you announce that you are recording the incident). To the extent that it is possible to do so without interfering with the immigration agents carrying out the arrest, remind your client that they have the right to remain silent and ask them if they would like you to help them contact a family member or an attorney.

If the person gives you consent and has an attorney, you may contact them to let them know that the person has been detained. If they do not have an attorney and may not be able to hire a private attorney, you may contact NWIRP's Tacoma office at tacoma@nwirp.org or at 253-383-0519. You can leave a message with the name of the individual for him or her to be seen for a group presentation and then, if he or she requests it, an individual meeting. Note that individuals referred in this way are not guaranteed legal representation and our resources allow us to provide direct representation in immigration court to only a portion of those in need of assistance.

Please Note: This advisory will be updated as new information becomes available. Please visit www.nwirp.org/resources/community-information/ for the latest version of this advisory.

Northwest
**IMMIGRANT
RIGHTS**
Project

NWIRP offices:

Western WA (Seattle) – 206-587-4009

Yakima Valley (Granger) – 509-854-2100

North Central WA (Wenatchee) – 509-570-0054

For individuals detained at NW Detention Center – 253-383-0519

www.nwirp.org

APPENDIX A

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. We encourage each agency to 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. 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 federal court warrant.

PROCEDURES

Procedures regarding access to [Agency] facilities/buildings:

If any agents or employees from ICE or CBP should attempt to enter [Agency]'s buildings or 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 building or facility unless they have a valid judicial warrant.
2. [If applicable because your Agency qualifies as a "sensitive location" under ICE/CBP policy:] Staff should inform ICE/CBP agents that [Agency] qualifies as a "sensitive location" under ICE/CBP policy. [*Explain why your agency is a sensitive location*].
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. If possible, clients should be moved to a private location of the facility until the situation has been resolved, but clients should not be assisted to escape, nor hidden.
5. If the ICE/CBP agents claim to have a warrant to enter the facility/building, 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 claimed warrants should contact legal counsel if possible. Supervisors should at least review the warrant to ensure that a) it is signed by a federal court judicial officer (judge or magistrate), b) it describes [Agency]'s building as the place to be searched, c) it has the correct date and has not expired (was issued within the past 14 days), and d) the search is not exceeding the scope of the items authorized to be searched for. Administrative arrest or removal warrants that are signed by an immigration officer (rather than a federal court judge or magistrate) do not grant authority for ICE/CBP to enter non-public 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 instead state 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 a business card 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 if they are engaged in questioning by 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, they should explain that they would like the opportunity to consult with an attorney and otherwise remain silent.

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

If any agents or employees from ICE or CBP should 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 federal judicial order or subpoena specifically requiring the release of the information 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.

Appendix B - Sample Judicial Search Warrant

AO 93 (Rev. 12/09) Search and Seizure Warrant (USAO CDCA Rev. 01/2013)

COPY _{AUSA}

UNITED STATES DISTRICT COURT

for the
Central District of California

In the Matter of the Search of
(Briefly describe the property to be searched
or identify the person by name and address)
LG (VX9100) cellular telephone

)
)
) Case No. CR 13-
)
)
)

13-2895M

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 Central District of California
(Identify the person or describe the property to be searched and give its location):

See Attachment A

The person or property to be searched, described above, is believed to conceal (identify the person or describe the property to be seized):

See Attachment B

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property. Such affidavit(s) or testimony are incorporated herein by reference and attached hereto.

YOU ARE COMMANDED to execute this warrant on or before 14 days from the date of its issuance
(not to exceed 14 days)

☒ in the daytime 6:00 a.m. to 10 p.m. ☐ at any time in the day or night as I find reasonable 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 United States Magistrate Judge on duty at the time of the return through a filing with the Clerk's Office.

(name)

☐ 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: 11-4-13 11:30 am ALICIA G. ROSENBERG
Judge's signature

City and state: Los Angeles, California Alicia G. Rosenberg, U.S. Magistrate Judge
Printed name and title

USA: Patrick R. Fitzgerald

PRF