

# **Florida Nonprofits and ICE**

*Guidance on what to do if ICE visits your organization*

February 2025

**This memorandum is meant to provide general information only, not legal advice. If you have any questions about this guide, or if your organization is contacted by any law enforcement officer, please contact an attorney.**

This guidance is intended to provide basic information regarding the rights and obligations of nonprofit organizations in the event an Immigration and Customs Enforcement (ICE) agent comes to your place of business. Much of this guidance reflects rights grounded in the United States Constitution, and in particular judicial decisions interpreting the Fourth Amendment, which are largely settled and unlikely to change significantly. While there are currently no imminent enforcement programs targeting nonprofits specifically, there is the possibility that an ICE officer—just like other law enforcement officers, government regulators, and other investigators—may come to your organization and ask for your assistance. You are obliged to follow the law and not interfere with any law enforcement official in the lawful exercise of their duties. You may also have legal obligations of confidentiality and privacy. Consequently, any time a law enforcement official, investigator or other individual comes to your organization requesting information or to take custody of someone, you should immediately contact legal counsel so you understand what the law requires you to do.

### **What is ICE?**

ICE, part of the Department of Homeland Security, is the primary federal law enforcement agency responsible for enforcing federal immigration laws. Other federal law enforcement agencies, such as Border Patrol, the Federal Bureau of Investigation (FBI), Homeland Security Investigation (HSI), Customs and Border Protection (CBP), even local Florida law enforcement agencies, to name a few, may also investigate immigration-related offenses in certain circumstances. Although this memorandum focuses on ICE agents, this guidance applies regardless of which agency is involved. Note that ICE agents sometimes wear uniforms that say “Police,” even though they are not police officers.

### **What should you do if an ICE Agent visits?**

1. Identify the visitor. Ask for their credentials. Confirm their identity by asking what agency they are with and getting their name and badge/ID number.
2. Confirm the purpose of their visit. Are they looking for records? If they are looking for a person is their intention to interview the person or to arrest, detain or take custody of them? Never make a false statement (e.g., if ICE agents ask about an individual who is in the building, staff should not say the person is not there). Staff should instead explain that they can’t respond until they consult with their supervisor and legal counsel.
3. Ask for a copy of any subpoena, warrant or other court order. Make copies or take pictures of these documents.
4. Once you have the foregoing information, call your legal counsel to get advice on how to proceed. Do not confirm or deny the existence of any information or otherwise provide any records without first speaking to counsel.

5. **Do not physically impede, interfere with or otherwise obstruct a government official in the course of carrying out their lawful duties.** As discussed below, if an agent has a valid judicial warrant, he or she may enter your premises with or without your permission.

### **Can a nonprofit deny immigration agents entry into its facility?**

Whether ICE agents can enter into a particular location, including locations within nonprofit facilities, is largely a Fourth Amendment question. The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures by the government. Fourth Amendment protections depend in part on whether spaces are public or nonpublic.

Areas open to the general public (i.e., public space—such as a reception area or a library reading room) are open to immigration agents, and agents may enter those public spaces without a warrant. When operating in public spaces, however, ICE agents must observe the same rules that any member of the public would. For example, ICE agents operating without a warrant do not have the right to disrupt the nonprofit’s activities or mission. Note that ICE agents may take photographs in public spaces. In general, ICE agents must have a valid judicial search or arrest warrant to lawfully access nonpublic areas (i.e., areas not open to the public—such as private offices or areas in a shelter where people sleep). Agents may act without a warrant where there is some urgency—e.g., ongoing criminal activity or imminent departure of an alien—which underscores the importance of seeking advice from counsel when confronted with these situations.

#### *Judicial search warrants*

To be valid, a judicial search warrant must, among other things, be signed by a judge or magistrate no more than 14 calendar days before the ICE agents use it to try to obtain access and must identify specific areas to be searched (see example of a judicial search warrant at Appendix A). In other words, a judicial warrant is valid only (a) if signed by a judge or magistrate, (b) for the areas identified in the warrant, and (c) on or before the date indicated as being the date by which it must be used, which will be no more than 14 days after it was signed.

#### *Administrative warrants*

Instead of having a valid judicial warrant, ICE agents may have “administrative” warrants signed by an immigration officer, not signed by a judge or magistrate. Administrative warrants authorize ICE to detain persons but, unlike judicial search warrants, do not authorize ICE entry to nonpublic areas (see excerpt of an administrative warrant at Appendix B). If agents seek entry into nonpublic areas with an administrative warrant, not a judicial warrant, it is lawful to deny entry—so a nonprofit can instruct staff not to consent to entry in such circumstances. A warrant issued by an immigration court judge may not have the same authority to search as a warrant issued by United States District Court. Another reason to confer with counsel when confronted with a warrant.

### *Public v. nonpublic spaces*

Nonprofits should consider expressly demarcating nonpublic spaces, for example, by affixing signs reading “Private” or similar wording, on doors leading to nonpublic areas. Nonprofits should additionally consider designating specific employees as persons authorized to consent to entry into nonpublic spaces and instruct all other staff to refer anyone seeking admittance to nonpublic space to those authorized individuals.

### *What if the Agent does not have a warrant of any kind?*

You should understand when you have an obligation to give an ICE agent entry to your premises and when you have the right to decide whether to allow or deny entry. ICE agents may say things to gain entry without a warrant, such as, “We are investigating a crime. Can you help us identify this person?” and “Is [name] here? We just need them to step into the hallway to talk to them.” In order to understand their obligations and rights, staff may ask whether those seeking entry are police or ICE agents. No matter the agency involved, the same judicial warrant requirement applies—meaning that both police and ICE agents must have a judicial search warrant to enter nonpublic areas. If ICE agents do not have a judicial warrant, staff may ask the agents to wait before entering any nonpublic areas until the staff contacts counsel. Staff may also ask the agents to leave the premises. If ICE agents do have a judicial warrant, staff may ask the agents to wait before entering any nonpublic area until staff contacts counsel, but the agents need not wait if the judicial warrant authorizes them to enter nonpublic areas.

### *Providing information about a client to ICE*

Nonprofits may owe their clients a duty of confidentiality or privacy and should not disclose information about clients without consulting legal counsel or the client consents to the release of the requested information, unless ICE agents have a judicial warrant. Where ICE agents have a valid judicial search warrant, staff should provide access only to the areas specified in the warrant—because this can be difficult to discern staff should confer with counsel before attempting to limit agent access to any areas. Staff should promptly notify senior staff and counsel that ICE agents have entered private areas pursuant to a judicial warrant. If ICE enters with a subpoena rather than a judicial warrant, staff should contact counsel before complying with the subpoena. As is also discussed below, however, nonprofits may be prohibited from releasing certain information as a matter of law. ICE agents may not require access to information contained on a personal phone or email account without a judicial warrant. However, any information saved on a publicly accessible computer (e.g., in a library reading room) can be accessed without a warrant.

### **What can staff tell clients and others during an immigration enforcement action?**

Staff members should tell clients and others that they have the rights to: ask for an attorney, remain silent if ICE agents ask questions, or say “I do not want to answer any questions.” Staff should also encourage any such individuals to remain calm and not attempt to leave while ICE agents are present. More importantly, just as staff should not lie or impede the officers, staff should not hide or conceal any person on the premises—doing so may constitute

criminal harboring, discussed below. This does not mean that staff is obligated to produce a client for ICE agents, unless the agents have a judicial arrest warrant (i.e., a warrant signed by a judge authorizing the arrest of a specific individual).

### **What should staff members do if ICE agents question them?**

Staff members should ask ICE agents if they are free to go. If the agent says “yes,” the person is free to leave. If the agent says “no,” the person may ask to consult with an attorney and otherwise remain silent. Individuals are required to identify themselves to agents and under certain circumstances may be detained for the safety of law enforcement. Staff should (1) never attempt to flee from law enforcement, (2) never physically resist an agent, and (3) never make a false statement. Staff should instead explain that they can’t respond until they consult with their supervisor and legal counsel.

### **What if a person is detained in or near the nonprofit facility?**

Staff has the right to observe from a reasonable distance but should not interfere with the actions of ICE agents. Staff may ask for the names of ICE agents. If agents are in plainclothes, staff may ask to see credentials and make note of agents’ names and badge numbers. Staff may lawfully take video to make a record of the action. Staff may ask ICE agents for permission to obtain from a detained person the contact information of anyone who should be informed of the person’s detention (e.g., a family member, friend or attorney). Staff may also ask where the person will be detained. If the person being detained authorizes them to do so, staff may provide all information obtained from ICE agents to the friend or family member so identified.

### **May nonprofits provide clients and others with “Know Your Rights” resources?**

Yes. Nonprofits may offer written materials or presentations for clients. Note that many civil rights and immigrants’ rights organizations have prepared informative “Know Your Rights” guides.

### **How can a nonprofit service provider proactively prepare for potential immigration enforcement?**

Nonprofits should consult with counsel to create an internal plan on what to do if law enforcement shows up at the office and ensure all staff are trained on this internal plan. In addition, nonprofit service providers should prepare for an I-9 audit by ICE/Homeland Security Investigations (HSI). If an organization receives a Notice of Inspection indicating that there will be an I-9 audit, the organization has only 3 days to produce their I-9s. Employers who commit severe I-9 violations can be debarred from federal contracts and other government benefits. Ideally, nonprofit service providers should contract outside counsel experienced in compliance and immigration to conduct an internal I-9 audit. Attorney-client confidentiality applies when an audit is conducted by counsel instead of non-attorney compliance officer(s). Nonprofit service providers should draft holistic internal policies including but not limited to policies regarding sending reminders to employees with expiring work permits and how the organization approaches gaps in work authorization. Ideally, an

employment attorney should review these policies, as there are employment laws in each state around temporary employee suspension if employment authorization documents (“EADs”) are expired. This is particularly important as we anticipate a slowdown in EAD production under the incoming administration, allowing for more frequent and longer EAD gaps.

**What is the appropriate way to handle a “subpoena” related to ICE enforcement activities?**

A subpoena can compel the disclosure or production of information or compel a person to give sworn testimony. A subpoena is typically signed by a lawyer, not a judge, and always gives a certain amount of time to comply. Usually these time frames are flexible and can be negotiated by counsel, as long as the recipient acts promptly once the subpoena is received. Failure to timely respond to a valid subpoena may result in a contempt of court finding. Upon receipt of a subpoena, nonprofits should take note of the date it was served, method of service, and deadline for responding. Nonprofits should then promptly engage counsel and instruct staff to preserve potentially relevant documents.

**Can a nonprofit avoid disclosure of information in response to a subpoena?**

Federal law protects certain personal information from a subpoena. For instance, the Health Insurance Portability and Accountability Act (“HIPAA”) protects individually identifiable health information, which generally can only be disclosed in response to a subpoena after the nonprofit holding the requested information has taken certain steps, including notifying the patient or obtaining the patient’s authorization. The Family Educational Rights and Privacy Act (often called “FERPA”) protects students’ education records, which schools generally may not produce without taking certain steps to notify the student or parent. Other protections may apply depending on circumstances.

When responding to a subpoena, nonprofits, preferably acting through their attorneys, are only required to turn over the specific documents requested, and only if those documents are not privileged or protected by a federal statute. A subpoena does not require a nonprofit to volunteer other information. Nonprofits will likely be most concerned about subpoenas that request clients’ confidential information like names, addresses, phone numbers, Social Security numbers, and other personal identifying information.

As a general matter, nonprofits that receive a subpoena requesting clients’ personal information should consult counsel to determine if the subpoena must be complied with or can be blocked or “quashed” in whole or in part. Moreover, in order to ensure maximum privacy for clients and others, nonprofits should consider what information about an individual’s immigration status is actually necessary to provide and document services consistent with legal requirements. Nonprofits should then consult with counsel concerning appropriate document retention policies and practices for documents that do contain immigration status information.

## **Criminal Harboring Laws**

Particularly for social services organizations whose mission involves serving immigrant communities, staff should be aware of harboring laws and how to protect themselves and their organization from liability. Chapter 8, United States Code, Section 1324, for example, makes it a crime to knowingly or in recklessly, conceal, harbor, or shield from detection, or to attempt to conceal, harbor or shield from detection, any person who entered or remained in the United States illegally. It is also a crime to conspire to harbor an illegal alien or aid or abet the harboring of an illegal alien. The potential scope of this offense is vast and could encompass any officer or board member of a nonprofit who is aware of and substantially assists in their organization's efforts to "conceal, harbor or shield" undocumented immigrants. Enforcement of this statute has been rare in the past—particularly in cases involving non-violent immigrants and nonprofit social services organizations—but the new administration may choose to enforce this law more broadly. Florida law also provides for criminal penalties for those who knowingly transport an undocumented immigrant into the state. Nonprofits should contact counsel to properly advise them and to train staff on these issues to avoid criminal exposure for staff and the organization as a whole.

### **501(c)(3) Compliance**

Nonprofits should also consider obtaining legal counsel to ensure 501(c)(3) compliance. Given the pattern of nonprofits serving immigrant communities coming under greater scrutiny, social services organizations should have legal counsel available to respond to subpoena requests, and if they have 501(c)(3) status, to ensure the organization is fully in compliance.

## **Florida-Specific Immigration Laws**

Immigration legislation and enforcement is committed to the authority of the federal government, but states take different approaches as to whether, and how much, to cooperate in that effort. Florida passed a law in 2019 banning sanctuary cities and requiring local law enforcement to cooperate with ICE agents. It is a crime in Florida to knowingly transport an undocumented immigrant into the state, and businesses can be subject to fines and other penalties for knowingly employing an undocumented immigrant.

On February 12, 2025, Governor DeSantis signed two new immigration bills into law in Florida:

- SB4-C: This bill makes it a misdemeanor for immigrants over age 18 to "knowingly" enter Florida "after entering the United States by eluding or avoiding examination or inspection by immigration officers." It also imposes the death penalty for immigrants lacking permanent legal status who are convicted of capital crimes such as murder or sexual abuse of minors under 12.

- SB2-C: This bill does a few things:
  - Creates a state board of immigration consisting of the governor, the commissioner of agriculture, the attorney general, and the chief financial officer. This new board will distribute \$250 million in grants to local law enforcement agencies that work with federal officials to enforce immigration laws.
  - Requires state and local government entities and law enforcement agencies to cooperate with federal immigration agencies.
  - Imposes harsher criminal penalties on undocumented gang members or those convicted of felonies.
  - Repeals in-state tuition rates to public colleges and universities for students lacking permanent legal status, also known as “Dreamers.”
  - Prohibits undocumented aliens from obtaining state issued drivers licenses or identification cards.
  - Finally, this bill makes it a felony for non-citizens to willfully vote in an election or for anyone to solicit a non-citizen to vote with knowledge that such person is not a citizen.

Although these bills could impact the policies of certain nonprofit organizations, they appear unlikely to substantially change the advice in this memorandum. Nonprofits should nevertheless regularly consult with counsel to determine whether any new or existing state or local laws may impact their operations.



## APPENDIX A

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

### 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)  
123 Broad Street, Newark, NJ, Apt. 4

Case No. 17-1234

This judicial search and seizure warrant is legally sufficient to allow agents into homes and other non-public places.

### 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.

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

Judge's signature

City and state: Newark, NJ

Jane Smith, United States Magistrate Judge

Printed name and title

## APPENDIX B

DEPARTMENT OF HOMELAND SECURITY U.S. Immigration and Customs Enforcement WARRANT OF REMOVAL/DEPORTATION	
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:	
<input type="checkbox"/> an immigration judge in exclusion, deportation, or removal proceedings	
<input type="checkbox"/> a designated official	
<input type="checkbox"/> the Board of Immigration Appeals	
<input type="checkbox"/> 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:	
SAMPLE	
This ICE Warrant is <u>NOT</u> legally sufficient to allow immigration agents into homes or the <u>non-public</u> areas of facilities, buildings, organizations, businesses, or other premises.	
_____ (Signature of immigration officer)	
_____ (Title of immigration officer)	
_____ (Date and office location)	
Page 1 of 2	