ABST Law

MEMO

From: Krista Andrews

Date: January 19, 2026

Re: Knowing your rights, responsibilities, and restrictions when interacting with ICE as a property manager or landlord.

I. Overview

This memorandum provides guidance for landlords, property managers, and onsite staff when encountering Immigration and Customs Enforcement ("ICE") Agents on or near residential property. Nothing in this memo should be construed as encouraging cooperation with or resistance to ICE. Rather, its focus is on understanding your legal obligations and the limits of ICE authority so that staff may respond legally, appropriately, and consistently.

II. Public vs. Private Spaces

An essential component of the law as it relates to ICE's access to residential buildings is the distinction between public and private spaces. Generally speaking, the Courts view these sections of an apartment building as follows:

Public [i, ii]	**Private** [iii]
Parking lots, even if it has "security measures" like scanned entry	All tenant dwellings
Shared entryways	Administrative offices
Lobbies	Leasing offices
Hallways and stairwells	
Communal spaces	

III. Entry Onto Private Property

A. Consent is required unless ICE presents a <u>criminal</u> warrant.

Property owners and commercial establishments have a right to privacy over the non-public areas of their buildings. Employers and staff are under no legal obligation to allow ICE into private spaces like those defined above.[iv]

Similarly, tenants and their families have a right to privacy in their units. ICE may not enter a tenant's unit, and property managers/landlords are legally barred from assisting ICE in their entry into that unit, unless **ICE presents a judicially-issued criminal warrant**.[v] This is different from a civil administrative warrant (sometimes referred to as a "deportation warrant" or "deportation order"), which will be discussed in more detail below.

IV. Types of ICE Documents and What They Mean

A. Civil warrants (a.k.a. "Immigration Warrants") do not grant ICE the authority to enter private property.

Most immigration enforcement is civil, not criminal. When ICE believes someone may lack lawful immigration status or is subject to a removal order, ICE may issue a civil administrative warrant signed by an ICE supervisor—not a judge.

These civil warrants do not authorize entry into private property.[vi] You as a landlord cannot grant ICE entry into private tenant units if you are presented only a civil administrative warrant.

An example of such a warrant is included below.

B. Criminal warrants do grant ICE the authority to enter private property.

In relatively limited circumstances, often involving allegations of criminal conduct wholly unrelated to immigration status, ICE may work with the Department of Justice to obtain a **criminal warrant** signed by a federal judge. This is exceedingly rare, and even more so during the current ICE "surge." A criminal warrant does authorize entry into private areas. Staff should confirm whether:

- The warrant is signed by a judge;
- The address is correct; and
- The warrant identifies the individual or place to be searched.

An example of a premise-entry granting criminal warrant is included below.

C. Judicial and Administrative Subpoenas

ICE may also serve either civil or judicial subpoenas. These require production of documents but **do not require immediate compliance**. Subpoenas carry deadlines for producing information and give you time to consult legal counsel; importantly, they do not grant authority to enter private property.[vii]

Should an ICE officer serve you with a subpoena, you as a landlord are strongly encouraged to politely but firmly inform the ICE officer that you will not be discussing the matter or cooperating with them in any way until you have had the opportunity to confer with counsel.

An example of a subpoena is included below.

V. Entry Into Public Spaces

ICE **is** permitted to conduct immigration enforcement activities without a warrant in the public areas defined above and may detain individuals present in them without consent of the landowner.

Crucially, while locked administrative spaces are considered public in the legal sense of the term, you as a property owner are not required to unlock any area for an ICE official without a criminal warrant.[viii] This is one of the trickier parts of immigration law – that certain "public areas" are still not available to ICE unless they have consent of the building owner – and we advise giving us a call as soon as possible to discuss should this situation arise.

VI. ICE has been documented attempting to pressure landlords into granting more access than is legally required. When in doubt, stay calm and confer with an attorney.

ICE has, on numerous occasions, used subpoenas or civil warrants in ways that pressure landlords to grant access to private areas. It is important to remember that allowing ICE into non-public spaces, such as a leasing office or a locked lobby, is entirely within the landlord's discretion, but you are not required to grant access based solely on a civil warrant or a subpoena.

However, that discretion **does not extend to a tenant's dwelling unit.** Landlords **cannot** authorize ICE to enter a tenant's home unless agents present a criminal warrant signed by a judge, and the warrant must precisely match the tenant's name and address.

VII. Handling Requests for Information About Tenants

Unless issued a subpoena as described above, property managers and landlords have **no obligation** to confirm whether a targeted individual lives on their property.

Staff are **not prohibited** from answering such a question, though we advise caution and consultation with counsel whenever possible.

Rent rolls, resident logs, tenant files, or other landlord records **may only be obtained with a subpoena**. No matter how forcefully an ICE agent or official may ask for them, you are barred from providing this information without legal cause. If you are served with a subpoena, we highly recommend you consult with us prior to providing any information to ICE or any other government official.

VIII. When a Tenant Is Detained or Taken Into Custody

A tenant's detention by ICE **does not terminate the tenancy**. Housing providers must still follow state eviction laws, including:

- Serving notices at the unit through normal methods, even if the tenant is no longer present;
- Identifying a valid, permissible ground for eviction (e.g., nonpayment of rent);
- Proceeding through the ordinary eviction process.

Tenant property: Even after eviction, landlords must store and protect the personal belongings of detained or deported tenants **for at least thirty (30) days**, consistent with state law.

IX. Conclusion

Property owners and managers retain significant rights during interactions with ICE. The key principles are:

- You are not required to grant access to private areas without a judicial warrant.
- You are permitted to decline to answer questions or provide information unless compelled by lawful process.
- Written policies and staff training are essential to ensure consistent, legally compliant responses.

Our office is available to assist in developing formal policies, training staff, reviewing any warrants or subpoenas you receive, and advising on tenancy issues involving detained individuals.

[i] See Rountree v. Lopinto, 976 F.3d 606 (5th Cir. 2020). See also United States v. Jones, 893 F.3d 66 (2d Cir. 2018).

[ii] See United States v. Correa, 635 F. Supp. 2d 379 (D.N.J. 2009). See also United States v. Eisler, 567 F.2d 814 (8th Cir. 1977). See also United States v. Gray, 283 F. App'x 871 (2d Cir. 2008). See also United States v. Brown, 169 F.3d 89 (1st Cir. 1999).

For a specific analysis of the Eight Circuit's analysis of the issue:

The Eighth Circuit independently developed its own line of cases in the locked common area context. Its analysis in this area, however, proves little better than that of the circuits discussed above because it relies on the mistaken premise that an absolute right to exclude is necessary to establish a legitimate expectation of privacy. In its seminal case, United States v. Eisler, the Eighth Circuit rejected the defendant's contention that police officers violated his Fourth Amendment rights when they entered the locked common hallway of his apartment building and eavesdropped outside his door. The court invoked the Katz test, but it concluded that the defendant had no legitimate expectation of privacy within the locked common areas of his apartment building because those areas were open to use by other tenants, their guests, the landlord, and other authorized individuals. The court refused to recognize the defendant's limited privacy interests in these areas as meriting constitutional protection, stating, "An expectation of privacy necessarily implies an expectation that one will be free of any intrusion, not merely unwarranted intrusions."

Sean M. Lewis, The Fourth Amendment in the Hallway: Do Tenants Have A Constitutionally Protected Privacy Interest in the Locked Common Areas of Their Apartment Buildings?, 101 Mich. L. Rev. 273, 287 (2002)

[iii] Drawing on limited case law in the matter, the general principles suggest these spaces would likely be treated as private areas protected by the Fourth Amendment, distinct from common areas like lobbies and hallways. While courts uniformly hold that tenants lack reasonable expectations of privacy in shared common areas accessible to multiple residents, locked offices used exclusively for business purposes by property management would fall into a different category—more analogous to private commercial spaces than to common residential areas. The concept of "commercial curtilage" provides guidance here. Courts have recognized that businesses can have reasonable expectations of privacy in areas not open to the public, particularly when steps are taken to restrict access. A California district court held that fenced areas of a commercial nursery where production work occurred and the public was not granted access enjoyed Fourth Amendment protection as commercial curtilage Pearl Meadows Mushroom Farm, Inc. v. Nelson, 723 F.Supp. 432 (1989). Similarly, a Florida district court found that a small wholesale nursery business had a reasonable expectation of privacy in its commercial curtilage where the public did not have access U.S. v. Seidel, 794 F.Supp. 1098 (1992). The key factor in both cases was that the areas were integral to the business operations and protected from public intrusion.

[iv] 8 C.F.R. § 287.8

(2) An immigration officer may not enter into the non-public areas of a business, a residence

including the curtilage of such residence, or a farm or other outdoor agricultural operation, except as provided in section 287(a)(3) of the Act, for the purpose of questioning the occupants or employees concerning their right to be or remain in the United States unless the officer has either a warrant or the consent of the owner or other person in control of the site to be inspected. When consent to enter is given, the immigration officer must note on the officer's report that consent was given and, if possible, by whom consent was given. If the immigration officer is denied access to conduct a site inspection, a warrant may be obtained.

[v] See 8 C.F.R. § 287.8.

Affirmed and clarified in In re Sealed Search Warrant Application, 784 F. Supp. 3d 970 (S.D. Tex. 2025).

[vi] Kidd v. Mayorkas, 734 F. Supp. 3d 967 (C.D. Cal. 2024).

[vii] Donovan v. Lone Steer, Inc., 464 U.S. 408, 104 S. Ct. 769, 78 L. Ed. 2d 567 (1984).
[viii] See United States v. Elliott, 50 F.3d 180 (2d Cir. 1995).