

WHAT FACILITY MANAGEMENT SHOULD DO **BEFORE AN ENFORCEMENT ACTION**

DESIGNATE SPACE AS PUBLIC AND NON-PUBLIC ACCORDINGLY

In general, areas open to the public (for example, a reception area) are open to immigration agents, and agents may enter these spaces without a warrant. ICE agents must have a valid judicial search or arrest warrant to lawfully access private or non-public areas (for example, private offices or areas in a shelter where people sleep).

Because of this distinction, facilities should plainly identify any non-public spaces as such by placing signs reading “Private” or “Non-Public Area” on doors or hallways leading to non-public areas. Consider designating all or most of the facility “Private” or “Non-Public Area” if members of the public are not allowed to walk in. Facilities should also post signs outside of facilities to alert outsiders of the hours of visitation hours and entry requirements. Consider requiring any visitors to the facility to register with a designated member of the facility staff before they can enter or remain on the grounds.

For low/no barrier homeless shelters where the doors and space are open and accessible, facilities can still identify as “Non-Public” all spaces that are open to those seeking shelter, but not open to the general public. For example, private offices and areas in a shelter where people sleep are private, non-public areas.

In making any of the above changes, staff should clearly explain to clients why they are posting such signage to make clear it is intended as safety-creating, and not to create a carceral environment for the clients or their visitors. If access to a building is only via key/keycard or if the door is locked and you must be buzzed in, they are almost certain satisfying the requirements of private areas. While these facts would support designation as a non-public space, consideration should be still be given to having signage saying “Non-Public Area” to deter ICE agents from disregarding staff instructions.

UNDERSTAND THE TYPES OF WARRANTS AND OTHER DOCUMENTS

Immigration agents’ ability to lawfully access persons and private spaces often depends on the kind of documentation they have. Different types of documentation grants officers differing levels of access to persons and private spaces. Therefore, facility staff must know how to review documentation provided by ICE. At a minimum, staff should know how to identify and verify a properly executed judicial warrant and understand the permissions that the judicial warrant entails.

Types of Warrants:

- A **Judicial Warrant** can be either a search warrant or an arrest warrant. A federal judicial warrant requires prompt compliance. A judicial warrant must be:
 - 1) signed by a judicial officer (a judge or magistrate); and
 - 2) describe the place to be searched, and the persons or things to be seized and
 - 3) have the correct date and have been issued within the past 14 days.

If the warrant is missing one or more of these requirements, it is invalid. So, for example, if the warrant does not have the facility's correct address, the officers cannot conduct a search or make an arrest in the facility. And all warrants must be signed by a judge or magistrate, not an officer or ICE agent, or they are not valid.

- A **Search Warrant** is a type of judicial warrant that when properly executed, allows police to enter the address listed on the warrant, but officers can only search the areas and for the items listed in the warrant.
 - The warrant must state specifically the place to be searched and the items to be seized.
 - Staff should tell the officers that they are only allowed to search the areas identified in the warrant and point out those areas.
 - If officers search areas that are not identified in the warrant, Staff should tell the officers that they are searching in an area that is outside of the warrant and are out of bounds.
 - If the officers ask to search areas not identified in the warrant, Staff should say **“No. You are not authorized to search [requested area] and it is our policy not to allow searches without warrants.”**
- An **Arrest Warrant** allows police to detain a person for a particular crime. If a warrant is properly executed, staff should only provide agents with access to areas specified in the warrant.
 - Staff should say **“I’m sorry but this is private property, and we do not consent to your searching our facility,”** if officers request to access parts of the facility not identified in the warrant.
- An **ICE Administrative “Warrant”** is signed by an immigration officer, not a judicial officer (judge or magistrate). ICE administrative warrants are far more limited than judicial warrants.
 - An ICE administrative warrant allows ICE officers to arrest non-citizens suspected of committing immigration violations.
 - It does not give ICE officers the right to enter or search the non-public areas of a service providers' facility unless the facility consents to the search.

See **Exhibit 1** for an example of a properly executed judicial warrant and an ICE administrative “warrant.” In the case of an ICE administrative warrant, the document does

not require facility staff to provide any information, such as whether the person sought is or was at the facility.

Additional Important Documents and Definitions

- A **Notice to Appear** is a document that instructs an individual to appear before an immigration judge. This is the first step in starting removal proceedings against them. Notices to appear are not directed at public service organizations. This means that staff are under no obligation to deliver the notice to the person named in the document. Staff should not, for example, ask the person named in the Notice to step forward or come to the front desk. Once staff properly recognize the document as a notice to appear, the designated supervisor should inform the officer, on behalf of the facility, that they do not want to answer any questions and ask the officers to leave their contact information. The Supervisor should say, for example, **“Thank you, but we are not going to answer any questions, but please leave your contact information.”**
- A **Subpoena** is a written request for information that gives the recipient a certain amount of time to respond. Immediately after a staff member receives a subpoena, staff should maintain the subpoena and make a copy of it, note the date the subpoena was served, note how it was served and by whom, and report this information to the designated supervisor or administrator. Facilities should consult counsel as soon as a subpoena is received and before responding to subpoenas as they may not have to comply with some or all the subpoena requests. Facilities must respond to a subpoena within the time allocated on the subpoena. Failure to respond can result in adverse legal action.

TRAIN STAFF ON THE 6 BASIC COMPONENTS OF RESPONDING TO ENFORCEMENT ACTIONS

For staff to respond appropriately, they must be trained on their core responsibilities during an enforcement action. There is a more detailed list of “What to Do During an Enforcement Action” below, but for training purposes, these steps have been reduced to the following seven basic principles:

- 1) RESPECT--** Law enforcement officers, including ICE agents, should always be treated with respect. Never attempt to physically touch or interfere with an Officer’s movement.
- 2) NOTIFY A SUPERVISOR IMMEDIATELY--** In the event of any law enforcement action immediately notify the facility’s supervisor.
- 3) REQUEST TO SEE A WARRANT--** Law enforcement officers generally may not enter private areas of the facility without a warrant signed by a judge or an invitation by a facility supervisor, staff, or administrator. Exceptions for police officers may include circumstances such as in the event of an emergency. Police can search without a warrant if they believe that evidence may be destroyed, or someone may be in danger if they wait to get a warrant. For example, if police are in “hot pursuit” of a criminal, they can enter a private residence without a warrant. ICE agents, however, are not police, and the hot pursuit exception only applies to them if they are pursuing “an individual

who poses a public safety threat” or a person who the agent “personally observed border -crossing.” Moreover, ICE agents sometimes wear uniforms that say “Police,” even though they are not police officers. As staff gathers the officer’s name and badge number, they should also ask if they are Police or ICE agents. Make copies of all documents that the officer provides.

4) NO WARRANT = NO ACCESS AND NO INFORMATION-- Do not answer questions, provide information, or allow access to non-public areas of the facility without a warrant signed by a judge. All law enforcement officers should be immediately informed of the facility’s policy:

Law enforcement officers do not have consent or permission to enter the non-public areas of the facility or to access our records or information without a valid warrant signed by a judge.

5) DO NOT PHYSICALLY INTERFERE WITH ENFORCEMENT—Facility staff should not interfere with law enforcement officers, even if they are exceeding their authority. However, requesting to see a warrant, asking for identification, informing officers of facility policies, and denying access to non-public, private spaces is not interfering with law enforcement. **Do not fear refusing to give officers consent to search the facility or asking to see a judicial warrant. Verbally refusing to allow a search without a warrant or asking to see a warrant is *not* illegal harboring or an obstruction of justice.** Do not lie to immigration officers. Staff can instead decline to answer officer’s questions or remain silent.

For example, staff can say the following:

- “Officer; please give me your name, badge number and provide me with any warrant you have with you today. And are you with the police or ICE?”
- “I’m sorry, but this is private property, and we do not consent to your searching our facility without a warrant signed by a judge.”
- “I’m sorry but you are not authorized by a warrant to search [requested area] and it is our policy not to allow searches without proper warrants.”
- “Since you do not have a warrant, it is our policy that you are not allowed to enter non-public areas of the facility.”
- Please do not search [areas not listed in the warrant] because they are not identified in the warrant.”

6) CONTACT LEGAL COUNSEL AND DOCUMENT EVERYTHING-- All enforcement actions by law enforcement must be documented immediately. Request and record names and badge numbers of each officer. Use the **ICE/Police Enforcement Action Report** attached as **Exhibit 3**. Facility supervisors should contact legal counsel as soon as possible.

UNDERSTAND HOW TO HANDLE COLLECTING AND RETAINING CLIENT INFORMATION AND RESPONDING TO REQUESTS FOR INFORMATION

This section provides strategies for how facilities can collect and retain client information to protect their clients from immigration enforcement. It also advises facilities on how to respond to immigration enforcement requests for client information. Facilities should seek additional guidance regarding client data collection, retention, and disclosure if:

- a. they provide healthcare services or services to victims of domestic violence, sexual assault, hate crimes, human trafficking, and other crimes;
- b. they are co-located with substance abuse treatment facilities; or,
- c. they are covered under HIPAA.

Facilities should also seek guidance on the laws of the state they are operating in. Many state laws provide individuals in the state with greater control over the distribution of their personal information.

DATA MINIMIZATION IS A BEST PRACTICE. *Facilities should collect only the personal information necessary to provide services and avoid collecting unnecessary information.* Unless required by law, regulation, or funding requirements, facilities should not collect or retain any data regarding immigration status.

Collection of information regarding immigration status is not generally necessary to provide essential services. If law enforcement understands that data regarding immigration status is not collected or maintained, there is less of a basis to request such data from the facility.

NOTIFY CLIENTS OF THE FACILITY'S PRIVACY POLICY. *Facilities should ensure clients are familiar with the facility's privacy policy upon admittance.* The privacy policy should detail what type of records the facility maintains and when the facility will delete clients' personal information. Clients should be notified of when the facility may disclose personal information about them to outside entities, including who will receive the information, the purpose for disclosure, and how long that outside party may retain that information. Facilities should avoid seeking immigration status information, such as a visa or Social Security numbers from clients or their family members unless required for a client to access services.

THE HOMELESS MANAGEMENT INFORMATION SYSTEM ("HMIS"). The U.S. Department of Housing and Urban Development ("HUD") and its federal partners require some shelters to collect certain data to "better inform homeless policy and decision making at the federal, state, and local levels." All projects participating in HMIS, regardless of funding source, must collect the following information from everyone they serve: (1) Name, (2) Social Security number (or that the client refused to provide one), (3) Date of birth, (4) Race and Ethnicity, (5) Gender, and (6) Veteran Status.

- Be sure to inform all clients that they do not have to provide their Social Security number if they do not want to or do not have one.
- Please consult with local counsel to determine whether your facility is subject to HMIS requirements.

- Facilities should maintain sensitive client information, like Social Security numbers and immigration status, securely and for only as long as is legally required regardless of whether the information is disclosed by a client or collected by the facility.

DESIGNATE A CONTACT PERSON TO RESPOND TO DATA REQUESTS. *An organization should designate an administrator or supervisor to inform when a request is made to anyone at the facility.* The person should be the only one who has the authority and is responsible to act on behalf of the organization in immigration enforcement matters. No one other than a supervisor designated to handle information requests should disclose any clients', or their family members', information related to immigration status. Staff should inform immigration authorities that they are not authorized to answer questions without first consulting with a designated supervisor or administrator. For example, staff can state, "I am not authorized to release any client information. Please leave your contact information and I will provide it to my supervisor."

REQUIRE A VALID SUBPOENA BEFORE RESPONDING TO ANY REQUEST FOR INFORMATION. In general, *ICE cannot access a facility's records unless they have a validly executed subpoena (or potentially a search warrant).* The facility should not turn over information absent a validly executed subpoena or search warrant that specifically identifies the information.

Facilities that receive subpoenas, especially subpoenas requesting a client's personal information like their names, addresses, phone numbers, Social Security numbers, should immediately consult counsel to determine if the subpoena must be complied with, can be blocked, or can be blocked in part. However, the facility must respond to subpoenas in a timely manner. Failure to do so may result in a contempt of court finding. **If the facility does not have counsel, they can reach out to the National Homelessness Law Center, 202-638-2535 or info@homelesslaw.org or National Immigration Law Center, (213) 639-3900 or info@nilc.org, for a possible referral.**

When responding to a subpoena, facilities are only required to turn over the specific documents requested, and only if those documents are not privileged or protected by federal statutes like HIPAA.

If the facility receives a subpoena in person at the facility, the designated administrator or supervisor should inform the officer that they do not want to answer any questions and ask them to leave their contact information.

NOTIFY CLIENTS OF REQUESTS WHEN POSSIBLE. If a client's immigration data has been requested, notify the client whenever possible. Staff should also document, but not respond to, any verbal or written requests for information by immigration authorities that are not supported by a subpoena or warrant.

INFORM CLIENTS ON THEIR RIGHTS. Display the "**Know Your Rights**" Poster (Exhibit 2) in a place where clients can see it. Translate the poster into languages of clients as you do other important notices. These posters tell clients what to do when they encounter ICE, whether in public or in their homes. The most important advice to give clients is to remain calm and assert their rights during any interaction with ICE.

DO NOT DESTROY DATA. Facility generally cannot simply delete a client's personal information from their records. Doing so could violate privacy laws and potentially hinder the individual's access to necessary services. Most jurisdictions have laws protecting personal information, including that collected by homeless shelters, meaning they must handle data responsibly and not arbitrarily delete it. Because privacy laws vary from state to state, if a facility currently has unnecessary data or information reflecting client immigrant status that they want to delete, they should consult counsel for assistance in data and information minimization efforts.