

Nonprofit Response to Immigration Enforcement in New Jersey

January 25, 2025



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Inspiring Hope. Building New Lives.

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| CAVEAT



This is not legal advice. If you have particular questions about data collection and retention and how to manage the risk of immigration enforcement at your organization, you need to talk to a lawyer about the circumstances that give rise to the question.

You can contact nonprofithelp@lowenstein.com.

PREPARING IN THE FACE OF UNCERTAINTY

| EXECUTIVE ORDERS & POLICY CHANGES



AMONG THE MANY

- Protecting the American People Against Invasion, Executive Order, January 20, 2025

Sec. 19. Funding Review. The Attorney General and the Secretary of Homeland Security shall:

- (a) Immediately review and, if appropriate, audit all contracts, grants, or other agreements providing Federal funding to non-governmental organizations supporting or providing services, either directly or indirectly, to removable or illegal aliens, to ensure that such agreements conform to applicable law and are free of waste, fraud, and abuse, and that they do not promote or facilitate violations of our immigration laws;
 - (b) Pause distribution of all further funds pursuant to such agreements pending the results of the review in subsection (a) of this section;
 - (c) Terminate all such agreements determined to be in violation of law or to be sources of waste, fraud, or abuse and prohibit any such future agreements;
- DHS Directive rescinding the Sensitive Locations/Protected Areas Guidance Memorandum

WHAT PRELIMINARY STEPS CAN NONPROFITS TAKE TO BE WELL-PREPARED?

- Review data collection, retention, and destruction policies.
 - Collect only the information your organization needs. If you have no use for information about a client’s immigration status or country of origin, don’t collect it.
 - If such information is required by funders, collect it in a manner that protects the personal identifying information of the individuals you serve – e.g., aggregated, de-identified data.
 - Consider where and how you are storing information – is it on a secure network? Cell phones and personal email may be subject to a subpoena
- Make sure your organization has adequate Directors & Officers (D&O) insurance.
 - A D&O policy that covers defense costs can help an organization defend itself in a federal investigation or other enforcement action, without draining organizational resources or putting individual officers and directors at undue risk.
 - Even if you already have a D&O policy, speak with your provider to make sure it covers these potential actions, including inquiries into federal tax-exempt status compliance or working with non-U.S. governments or entities.

WHAT PRELIMINARY STEPS CAN NONPROFITS TAKE TO BE WELL-PREPARED?

- Review your organization's federal contracts to ensure you are aware of any strings attached to federal funds or other restrictions.
 - E.g. antidiscrimination requirements, extent to which federal agencies may audit the program and/or add new obligations.
 - Know the termination provisions in your contracts, including whether and how you can terminate, and any financial consequences if terminated.
 - Organizations receiving federal funding may be contractually obligated to provide the government with information about their programs and clients.
- Enact policies and train your staff on what to do if you receive inquiries, requests for information, or a subpoena from immigration authorities.
- Enact policies and train your staff on what to do if an immigration enforcement action occurs at or near your facilities.
- Create non-public spaces where you can serve your clients.

WHAT PRELIMINARY STEPS CAN NONPROFITS TAKE TO BE WELL-PREPARED?

- Make sure your organization meets other tax-exempt status compliance requirements in the event of an audit or investigation.
 - E.g. confirm annual 990's are up to date and accurate; report all legislative lobbying on the IRS 990; and stay within lobbying limits for a 501(c)(3).
 - If applicable, review relationship with 501(c)(4) affiliate with an attorney.
 - Ensure Certificate of Incorporation accurately reflects the organization's activities and does not authorize improper activities.
- Conduct an internal audit of any information your organization shares with government and non-government funders, or any other third-party vendors.
 - Consult an attorney to understand information-sharing obligations under existing agreements and relevant privacy laws.
 - Talk to any funders with whom you have shared sensitive information and advocate for them to keep it confidential to the extent possible.
 - Review all vendor contracts and other agreements with online services or software providers.

WILL AGENTS COME TO NONPROFIT/SOCIAL SERVICES FACILITIES?

We don't know, but current DHS policies make it more likely.

ICE is the federal agency that arrests and detains immigrants in the interior of the U.S. (as distinct from at the border). Pursuant to DHS policies, ICE has not traditionally engaged in enforcement at “Protected Areas/Sensitive Locations” such schools, places of worship, shelters, hospitals.

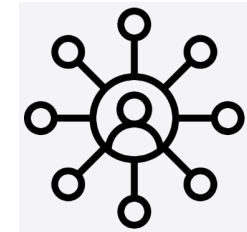
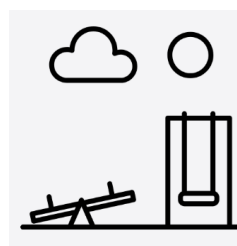
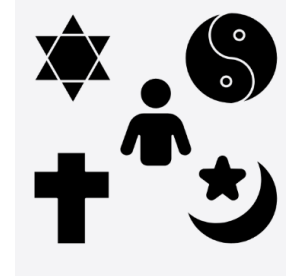


DHS has rescinded its policies restricting enforcement actions at “Protected Areas.” Unclear whether old guidance will be in effect.

“PROTECTED AREAS” ARE NO LONGER RESTRICTED LOCATIONS FOR IMMIGRATION ENFORCEMENT

Under *prior federal policies*, enforcement actions were restricted (NOT banned) in locations, including:

- Schools
- Healthcare facilities
- Houses of worship
- Places where children gather (e.g., playgrounds)
- Social service agencies
- Emergency response sites
- Weddings, funerals, etc.
- Parades, demonstrations, rallies



“To the fullest extent possible, we 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. Such a location is referred to as a **‘protected area.’**”



DON'T PANIC ABOUT THE RESCISSION OF THE "PROTECTED AREAS" POLICIES

- These now-rescinded policies always provided limited protections anyway
 - Restrictions, not a ban
 - Did not prevent immigration agents from entering protected areas
 - Discouraged enforcement actions, but had important exceptions:
 - Allowed ICE to engage in enforcement actions so long as agents went through supervisory review process or could show exigent circumstances
- **The strongest protections from immigration enforcement actions arise under the U.S. Constitution (4th & 5th Amendments)** and this change in DHS policy in no way impacts your ability to assert rights on behalf of your clients and your organization

ENFORCEMENT ACTIONS

WILL LOCAL LAW ENFORCEMENT BE INVOLVED IN IMMIGRATION ENFORCEMENT ACTIONS?

Not likely.

Because of NJ's [Immigrant Trust Directive](#), (“ITD”) it is less likely that **local law enforcement** will accompany ICE on raids.

In 2018, the AG issued the ITD to strengthen trust between law enforcement and NJ’s diverse immigrant communities. The Directive is designed to ensure that, regardless of their immigration status, victims and witnesses feel safe reporting crimes to the local police. **It therefore limits state and local cooperation with ICE.**

However, it is possible that local law enforcement will be involved anyway. The Directive is not absolute, and federal law overrides it.

WILL LOCAL LAW ENFORCEMENT BE INVOLVED IN IMMIGRATION ENFORCEMENT ACTIONS?

Not likely.

In September of 2024 Senate Bill 3672, known as the [Immigrant Trust Act](#) (“ITA”) was introduced into the NJ Legislature and aims to strengthen and codify the Directive into NJ law and expand its protections.

If passed, the ITA will:

- Protect personal information by limiting the circumstances under which public agencies can collect information related to immigration status
- Require public schools, health care facilities, libraries, and shelters to adopt model policies to help people feel safer seeking the public services to which they are eligible
- Prohibit state and local law enforcement from cooperating with federal immigration authorities when doing so is *voluntary* under federal law

*The Bill is currently under review in the NJ Legislature.



| IF ICE AGENTS SHOW UP, WHAT SHOULD YOU DO?



In general, consider exercising your rights as follows, though there will always be judgment calls :

- Remain Calm!
- Do not allow immigration agents access to any area that is **not open to the general public**. Agents have access to public areas. e.g., reception areas, areas where food is served in a soup kitchen.
Rule of thumb: if the public is allowed in the area, then agents are also allowed.
- Mark private areas, e.g., **NO ENTRY WITHOUT AUTHORIZATION**.
- To enter a private area, **agents need a JUDICIAL search/arrest warrant or CONSENT**. *An ICE warrant is NOT sufficient.
- 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.
- After any interaction, staff should write a thorough report of the encounter.

| IF ICE AGENTS SHOW UP, WHAT SHOULD YOU DO?



Staff should be trained in advance of any possible encounter with ICE agents.

- If agents seek to enter a nonpublic area, ask to **see the warrant**.
- If the agents do not present a warrant, politely inform them that your organization's policy is to deny access in the absence of a warrant.
- If the agents present a warrant, consult a supervisor.
- Supervisory staff should be trained to review a warrant to determine whether it:
 - (1) Is signed by a judge, not an immigration official;
 - (2) Is issued by a court
 - (3) includes address being searched
 - (4) includes the time when the search must take place; and
 - (5) Is not expired.
- If possible, consult a lawyer about the scope of the warrant.
- If the warrant is valid, observe the search to ensure it stays within the bounds of the warrant.

| **JUDICIAL WARRANT**

VS.

ADMINISTRATIVE WARRANT

IF ICE AGENTS SHOW UP, WHAT SHOULD YOU DO?



JUDICIAL WARRANT

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

Case No. 17-1234

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 Commercial 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

Jane Smith
Judge's signature

City and state: Newark, NJ

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

A JUDICIAL WARRANT IS ISSUED BY A COURT AND INCLUDES THE ADDRESS BEING SEARCHED

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A JUDICIAL WARRANT IS SIGNED BY A JUDGE

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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

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


ADMINISTRATIVE WARRANT



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)

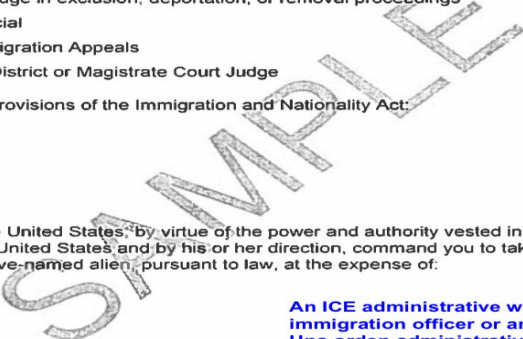
who entered the United States at _____ on _____
(Place of entry) (Date of entry)

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)

AN ADMINISTRATIVE WARRANT IS NOT ISSUED BY A COURT; IT IS ISSUED BY DHS OR ICE

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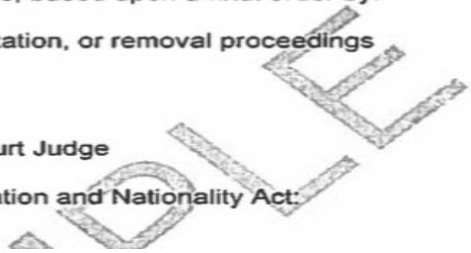
_____ (Full name of alien)

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AN ADMINISTRATIVE WARRANT IS ISSUED BY AN IMMIGRATION OFFICER OR IMMIGRATION JUDGE

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)

| IF ICE AGENTS SHOW UP, WHAT SHOULD YOU DO?



- Staff may advise 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 may hand out red cards to clients (slide 28).
 - But do NOT direct clients not to answer questions, as this may be viewed as interference.
- At any point in the encounter, staff or clients may ask the agents if they are free to go. If the agent says yes, they are free to leave.
- If questioned by agents, staff should politely say that they are not authorized to answer questions without first consulting with a supervisor.

IF ICE AGENTS SHOW UP, WHAT SHOULD YOU NOT DO?

- Staff should NEVER lie to agents. E.g., if agents ask if a particular person is in the building, and the person is there, staff should decline to answer question and consult with a supervisor.
- Staff should not release information about clients to immigration agents unless a JUDICIAL warrant or subpoena requires the release of that information, or the client has consented to the release of the information to immigration officials. Disclosure without these safeguards may violate privacy laws, regulations, or policies. The NJ Immigrant Trust Act, if it passes, would prohibit release of such information except to comply with a court order or with the client's express consent.
- Staff should NOT take action to conceal a person or help them escape.
- Staff members who are not directly interacting with agents may record the encounter, but they should announce that they are doing so and keep a safe distance.



| WHAT IF ICE AGENTS ARE OUTSIDE?



- If they wish, staff may go outside to confirm that the agents are actually affiliated with ICE.
- Staff may advise clients that they have the right to remain silent and do not have to answer questions (again, *without* advising this course).
- Staff may hand out red cards to clients.
- If there are questions about individual clients' situations, e.g. a client who has a regular ICE check-in schedule, they should speak with a lawyer about their particular circumstances.

KEY INFORMATION AND RESOURCES

WHAT ACTIONS TO ASSIST IMMIGRANTS COULD GET THE NONPROFIT OR ITS STAFF IN TROUBLE?

These actions should NOT be taken without tailored and privileged legal advice:

- Concealing a person for whom ICE is searching;
- Assisting a person in escaping from ICE;
- Instructing a person not to answer questions from ICE (as distinct from advising that the person has a right not to answer questions).

Remember, though, that you are entirely within your rights should you decide:

- Not to answer questions from ICE;
- Not to collect immigration information you don't need;
- Not to allow ICE into nonpublic areas without a judicial search warrant;
- Not to turn over client information to ICE without a judicial warrant or subpoena, or the client's consent to the specific disclosure. (Indeed, nondisclosure may be required.)

| WHAT RESOURCES ARE AVAILABLE FOR YOU?



- The [Advisory for Nonprofits](#), upon which this presentation is based, includes:
 - a model Policy and Procedures for nonprofits to consider adopting. The Policy guides responses to immigration enforcement actions, including requests from ICE for access to facilities or for information about clients.
 - A model Reporting Form to document encounters with ICE so that your organization has a contemporaneous, standard record of what occurred. Such a record is important in:
 - Responding to any problems that may arise from ICE,
 - Responding to any problems that may arise from clients,
 - Lodging complaints with ICE about its conduct or participating in litigation against ICE.

WHO IS AT RISK OF DEPORTATION?

- Any person who is undocumented
- People with legal status (lawful permanent residents, refugees, people with visas)

*The risk is higher for those people who have **committed crimes** or even **traffick violations**



| KNOW YOUR RIGHTS CARDS/RED CARDS

You can keep “red cards” on hand for clients to take. They come in more than a dozen languages, and order info is on slide 32.



They are not all identical, but typically they cover these points:

- I do not wish to speak with you, answer your question, or sign or hand you any documents based on my 5th Amendment rights under the United States Constitution.
- I do not give you permission to enter my home based on my 4th Amendment rights under the United States Constitution unless you have a warrant to enter signed by a judge or magistrate with my name on it that you slide under the door.
- I do not give you permission to search any of my belongings based on my 4th Amendment rights.
- I choose to exercise my constitutional rights.

WHAT IF A CLIENT IS ARRESTED IN OR NEAR YOUR FACILITY?

If an ICE arrest is occurring in your presence, you can:

- Observe the arrest from a reasonable distance without interfering;
- Record the incident, after announcing that you are doing so (you do NOT need permission);
- Remind your client that they have the right to remain silent;
- Ask your client if they would like you to contact a lawyer or family member on their behalf and inform these contacts of the arrest if authorized by the client.

WHAT RESOURCES ARE AVAILABLE FOR IMMIGRANT CLIENTS?

- For organizations that provide free legal representation for some immigrant clients, check [here](#).
- For information on “Know Your Rights” presentations in the area, check with the NJ Alliance for Immigrant Justice at info@njimmigrantjustice.org.
- For various “Know Your Rights” cards and one-pagers, check:
 - The [ACLU](#)
 - The [American Immigration Lawyers Association](#)
 - The [NJ Alliance for Immigrant Justice](#)
 - [Red Card Rights](#)
- The NJ Consortium for Immigrant Children has created an [Immigrant Rights Toolkit](#), which is extremely helpful, along with other resources [here](#).

| POWER OF ATTORNEY



For those of you who deal with immigrant families, there is an additional important resource to learn about and perhaps use to assist your clients.

In 2020, NJ law was amended to make it easier for parents to identify alternative caregivers for their children in the event that the parent is not able to provide such care. The instrument parents use is a Power of Attorney.

- The model Power of Attorney Form is [here](#), along with an introduction on emergency planning for parents facing possible detention/deportation.
- The FAQs to guide you and your clients through the form are [here](#).

Although the conversation about alternative caregivers is sensitive, the time to have that conversation is now.

DON'T FORGET TO EDUCATE THE IMMIGRANT POPULATIONS YOU SERVE ABOUT THEIR RIGHTS

- Immigrants, including undocumented immigrants, have a right to drive legally in NJ. They can apply for valid licenses and should not drive w/o them.
- Children (up to 19, and on a more limited basis, between 19-21) have a right to coverage for health care through Cover All Kids/NJ Family Care, and undocumented status is not a barrier.
- When landlords threaten to call ICE on tenants who refuse to vacate their apartments, the landlords violate NJ's Law Against Discrimination, and the tenant can and should report to the Division on Civil Rights.
- Victims of domestic violence have rights to benefits such as restraining orders, shelter, and housing protections (as well as some immigration benefits) w/o regard to their immigration status.
- Undocumented immigrants have rights against their employers for nonpayment of wages, and they have rights to compensation for workplace injuries, even when they are undocumented and employed without authorization.

THANK YOU