

Immigration Enforcement Guidance *for non-profit organizations*

Relevant Laws

- U.S. Constitution - 4th Amendment
 - The Fourth Amendment is a constitutional right for all individuals to be free from illegal searches or seizures.
 - The Fourth Amendment may limit immigration enforcement agents' activities at a non-profit organization.
 - Under the Fourth Amendment, the reasonableness of a search depends on whether a person has a reasonable expectation of privacy in the areas searched.
 - Even public buildings or the offices of organizations that serve the general public may have areas where an individual has a reasonable expectation of privacy.

Who Enforces Immigration Law?

Immigration is regulated by federal law and enforced by the U.S. Department of Homeland Security (DHS). Absent a specific agreement (known as a 287(g) agreement), state and local law enforcement cannot enforce immigration law.

One way in which DHS enforces immigration laws is by apprehending and repatriating (“removing”) people back to their home countries if they do not have permission to be in the United States. Without a final removal order from an immigration judge, DHS must provide due process, including an appearance before an immigration judge, before it can deport someone.

Immigration and Customs Enforcement (ICE), a sub-agency of DHS, is responsible for non-border enforcement and for detention and removal operations. Other federal law enforcement agencies have also been tasked with assisting ICE in enforcement operations.

Throughout this guide, terms like “ICE agent”, “immigration official”, and “immigration agent” all refer to federal law enforcement officers empowered to enforce immigration law.

FAQs

Are non-profits required to enforce immigration laws or cooperate with immigration officials?

Non-profits are not required and cannot be forced to enforce immigration laws. Furthermore, non-profits do not need to cooperate with or assist ICE absent a valid judicial warrant or court order.

All employers are required to obtain an I-9 form from new employees. Form I-9 confirms a worker's identity and authorization to work. Employers must keep these records on file throughout a person's employment, and for 3 years after hiring or 1 year after the worker's last day of work, whichever is later. Employers should maintain these files separately from the HR files for all employees, so that if audited, they will only be required to turn over the I-9 file. Employers are required to comply with ICE during an I-9 audit.

For more information about I-9 audits, please refer to the [National Immigration Law Center's Guide for Employers](#).

Does a non-profit need to collect immigration status information for the people whom they serve?

No, there is no legal obligation for non-profits to collect immigration status information of those they serve unless mandated by state laws. As an ethical best practice, avoid asking for immigration status or immigration-related information and, if you must collect such information, ensure it is secure and stored in a private location.

Can ICE conduct a search at a non-profit?

In general, non-profits must allow ICE agents into any areas where they would allow general members of the public. However, ICE agents may be excluded from "private areas"—areas where there is a reasonable expectation of privacy.

How can the Fourth Amendment protect people in private places at non-profits?

Under the Fourth Amendment, the permissibility of a search depends on whether a person has a reasonable expectation of privacy in the area searched. The test is: at the time of the search, was it the person's subjective, actual expectation that the place or things searched were private, and was that expectation objectively reasonable, i.e., would it be generally recognized by society?

FAQs

What are considered public areas v. private areas and how does this impact immigration enforcement?

Public areas include lobbies, waiting areas, and any other places open to the public. Non-public areas of a non-profit could include offices, treatment rooms, sleeping quarters, staff lounge areas, etc., essentially anyplace not open to the public.

Non-profits should identify and distinguish (ideally with legal advice) their private spaces from their public ones, if any. This can be done by placing signs identifying private areas and clearly restricting access to private areas, such as by placing a staff member at the main entrance tasked with signing in visitors.

Can an immigration agent access a private area at a non-profit?

No. Immigration agents cannot access private areas without (1) consent or (2) a valid judicial warrant.

If an organization does not give permission for immigration agents to enter its non-public spaces, then they cannot enter without a valid judicial warrant.

To be valid, a judicial warrant must:

- be signed by a US district court or a state court judge;
- describe the location to be searched and/or the persons or items to be seized; and
- be dated and issued within the past 14 days.
- All information in the warrant must be correct in order for the warrant to be valid.

What is an administrative warrant?

DHS issues its own forms, sometimes referred to as “administrative warrants” or “ICE warrants,” which direct immigration agents to arrest a named individual for alleged violations of federal immigration law. An administrative arrest warrant or immigration enforcement subpoena is not the same as a judicial warrant and does not require a non-profit to grant immigration agents access to private areas.

Organizations have the right to read the warrant and check that it is a judicial warrant and that it authorizes the agent to enter private spaces for specific purposes. It is critical that staff be able to distinguish between a valid judicial search warrant and administrative warrants.

Should a non-profit designate a specific person to interact with ICE if they arrive at a facility?

Yes, non-profits should designate an “authorized person” who is trained to interact with immigration agents and who understands how to identify a valid judicial warrant and confer with legal counsel before allowing a search to occur. All other staff should be trained to refer immigration agents to the “authorized person.”

FAQs

What should non-profit staff do if they don't have an "authorized person" or are waiting for them to arrive? Ask the agent for identification and a business card. Ask the agent to step outside. Once there, you can discuss what the agent wants and whether they have any legal documents.

What is the "plain view" doctrine, and how does it apply to non-profits?

Immigration agents can search the public area of a building without the need for consent or a valid judicial warrant. This includes speaking with anyone in public areas, listening to conversations that can be heard in public areas, and reading information that is in "plain view" in public areas.

An object is in "plain view" if it is obvious to the senses. For example, an immigration official may visually inspect anything—including papers and files—that are clearly visible from the visitors' side of the reception desk. They can also rely on conversations that they overhear. Unless they have a warrant, however, they may not move an object in plain view to expose other portions of it or anything under it.

What if a judicial warrant is presented? Staff should always contact their designated "authorized person." If a judicial warrant appears to be valid, preferably, consult with legal counsel before taking any action. Always get a copy of the warrant.

What if a search is required by a judicial warrant?

If ICE presents a valid judicial warrant, then the non-profit must allow the immigration agents to enter the private areas specified in the warrant. Staff have the right to monitor agents to ensure they comply with the judicial warrant, i.e., they are only entering private areas designated in the warrant.

Staff may also take audio or video recordings of any interaction with ICE; however, staff should not interfere with the agents' lawful search. Staff have a right to remain silent and are not required to answer any questions for immigration officials. Providing false information to ICE agents is illegal and can result in severe penalties, including criminal charges.

What if an ICE agent says a client needs to be arrested to avoid imminent harm or risk, or threatens the organization with harboring for not allowing a search? Without a valid judicial warrant, cooperation is not required. Denying access to private areas absent a valid judicial warrant is not harboring.

Can immigration officials be stationed outside or near a non-profit?

Yes. If there are ICE agents outside or near your establishment, you can send a designated, well-trained staff member outside to verify the individuals' identities. If they can confirm they are immigration agents, that person can reenter and remind people of their rights, or prepare should the agents attempt to gain entry.

Recommendations for non-profit organizations

Prepare and implement an internal policy to protect staff and clients from immigration enforcement.

- Establish a written policy designating private areas.
- Internal protocol on the procedure to interact with immigration agents, including protocol for handling law enforcement requests.
- Prohibiting non-profit staff from asking questions about immigration status or from listing them on client forms (unless required by state law).
- Establish a policy for staff to limit information in “public view.”
- Designate an “authorized person” to handle any interactions with immigration agents and a well-trained individual to approach ICE agents outside or near the property.
- Train all other staff to inform immigration or other law enforcement officers that, as a matter of policy, only the authorized person may review a warrant or provide consent to enter private areas.
- Train all staff to decline to answer questions unless they are authorized to do so by the authorized staff person.

Create a registration system for all law enforcement officials, including immigration agents.

Upon arriving at a non-profit, all law enforcement officials could be required to present the following:

- Name, address, title;
- Purpose for entering the facility;
- Proof of identity and/or law enforcement credentials.
- Create a notification system for employees when law enforcement is present.

Create and disseminate educational materials and “Know Your Rights” (KYR) trainings for non-profit staff.

- [ACLU Know Your Rights: Fight Back Against Mass Deportation](#)
- [Know Your Rights wallet cards/”red cards” \(ILRC\)](#)
- [Judicial v. Administrative warrants.](#)
- [We Have Rights videos.](#)

Post KYR materials throughout non-profit buildings.

- [ACLU Know Your Rights: Immigration Enforcement](#)

Host or provide emergency safety planning for immigrant families.

- [Family Safety Planning Guide](#)

Compile and provide contact information for local organizations providing legal assistance for families.

- [Legal Resources in Alaska.](#)