

Immigration Enforcement at Universities

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US Immigration and Customs Enforcement (“ICE”) is a law enforcement arm of the Department of Homeland Security (“DHS”). On January 21, 2025, DHS rescinded a prior policy limiting ICE enforcement at “sensitive” or “protected” locations such as hospitals and schools. In preparation for potential immigration enforcement by ICE at universities, key contacts at each university should be trained and aware of the University’s obligations under the law. This fact sheet pertains primarily to enforcement actions affecting patients or other visitors to the University.

1. Definition of “immigration enforcement” for purposes of this fact/information sheet.

Immigration enforcement refers to any official action that ICE could take at a university. Immigration enforcement could include arresting students or seeking records / other personally identifiable information (PII) under the Family Educational Rights and Privacy Act (“FERPA”) and may be carried out by either or both of its component agencies – Homeland Security Investigations (“HSI”) or Enforcement and Removal Operations (“ERO”).

2. Best practices for dealing with ICE.

Appoint a Designated University Representative (“DUR”) to lead all interactions with ICE. Ideally, the DUR should be in-house counsel as ICE may present legal documentation for the University’s review. There should always be a DUR “on duty” as ICE could present itself at any time. If in-house counsel is not a feasible option, the DUR could be another senior administrator on-site who has direct access to in-house counsel. Whoever is designated as the DUR should be knowledgeable about the University’s rights and responsibilities with respect to ICE enforcement and should remain abreast of changes to governmental policies that may impact the University’s rights and responsibilities. If the DUR is not an attorney, a designated attorney must be contacted immediately. **All employees should be given the name, title, and contact information of the DUR.**

3. If an ICE agent presents themselves at our university, what do we do?

If you are not the DUR and an ICE agent enters the University, you should ask the agent to wait while you contact the DUR. **Contact the DUR immediately.** You should inform the agent that, due to protocol, you are not authorized to provide information or access to non-public areas (i.e., areas that require authorization before entry) of the University. Remain calm and professional.

If you are the DUR, first ask the agent for identification and a business card. ICE agents wear uniforms. Next, ask the agent to step into an office or room away from the reception area/lobby. Once the agent is in a private room, the DUR should ask the agent the reason for their visit and request the presentation of any legal documents. At this point, if the DUR is not an attorney, the DUR should wait for in-house counsel instruction.

4. When, if ever, must the university cooperate?

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Cooperation is directly dependent on the legal documentation the ICE agent presents. The University has the right to thoroughly review any document that the agent presents. If the DUR is not an attorney, an attorney must review the documentation provided before any action is taken. **If ICE does not present documentation, the University is not required to comply with any requests.**

5. What type of documentation might ICE present?

A subpoena and a warrant are both court orders serving different legal purposes. A subpoena is a document which generally compels appearance in court or the production of documentation by a specific court-imposed date and time. A warrant generally authorizes immediate action, most often an arrest of an individual or a search of a designated area.

There are several types of documents ICE may present, many of which the University is **not** required to immediately comply with.

| DOCUMENT TYPE | DESCRIPTION OF DOCUMENT | EFFECT ON UNIVERSITY |
|-------------------------|--|--|
| Judicial Warrant | A document signed by a judge which authorizes ICE to obtain records or make an arrest. | Compliance <u>is</u> required. If the accurate University name is listed on the warrant and it is signed by a judge, the University must comply. |
| Administrative Warrant | A document signed by an ICE official (not a judge) which authorizes ICE to obtain records or make an arrest. | The University <u>is NOT</u> required to comply with an administrative warrant. |
| Judicial Subpoena | A document signed by a judge compelling appearance or production of records by a certain date. | <u>Immediate compliance is NOT required, and the University may choose to challenge the judicial subpoena in court.</u> Note that there will almost certainly be a court-designated date and time listed when a response is required. The University must comply with this deadline but is not required to provide any documentation in that instant. |
| Administrative Subpoena | A document signed by an ICE official, rather than a judge, compelling appearance or production of records by a certain date. | The University <u>is NOT</u> required to comply with an administrative subpoena. |

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The ICE agent may also provide other documentation that suffices as proof of an ongoing emergency which requires the disclosure of the requested information. Refer to questions 9, 10, and 11. A Law Enforcement Unit (LEU) record may also be requested. Refer to question 9. If the requested information fits into one of these categories, the DUR (or in-house counsel, if not an attorney) may determine that disclosure is required.

6. The ICE agent presented a valid subpoena and told me that he or she will wait while the necessary information is collected. What should I do?

The DUR should let the ICE agent know that the University will respond by the deadline listed on the subpoena. Further interaction with the ICE agent is not required.

7. ICE says that immediate compliance with the arrest of a student is required even after establishing that a judge has not signed a warrant. What do I do?

Unless there is a signed warrant from a judge or there is an ongoing emergency that fits into the FERPA exception explained in question 9, compliance is not required.

8. The DUR has determined that the University must comply with the request of the ICE agent. How do we proceed?

If the DUR has made a determination that the University must comply immediately with a judicial warrant, he or she should request the warrant be executed in a minimally disruptive manner. The DUR should accompany the agent as the warrant is executed. In the event the University voluntarily chooses to comply with a request, this advice remains the same.

9. ICE has requested documentation containing PII in compliance with FERPA without a court order. What do I do?

The Family Educational Rights and Privacy Act generally prohibits disclosure of education records and PII to outside parties, including law enforcement unless there is: (1) a valid court order; or (2) written consent from the student's parent, or if the student is over the age of 18, the student.

Certain circumstances warrant disclosure of PII without a court order or written consent. Warranted circumstances include:

- (1) A request for Law Enforcement Unit (LEU) records, which are defined as records that are created by a LEU, created for law enforcement purposes, and maintained by the LEU; and/or
- (2) When an articulable and significant threat exists, and the information would assist in the protection of health and safety of students or other individuals. However, the records can only be shared *during* the emergency.

10. What PII might an ICE Agent request?

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An ICE agent may request information including, but not limited to, a student's name, date of birth, demographic information, immigration status, social security number, or contact information (address, phone number, etc.).

11. ICE responded to my declination to provide information without a court order by saying that a student is an immediate threat and intervention is necessary. Should I comply?

If the ICE agent provides proof that an articulatable and significant threat exists, the emergency is ongoing, and the requested information would assist in the protection of students and other individuals, then yes, you should comply.

If the ICE agent cannot provide valid proof of the threat, then no, you should not comply. Remember that ICE agents will try to be persuasive / entice you to provide the requested information. If the DUR has not yet been contacted, contact them. The DUR should then refer to questions 3 and 4.

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