



KNOW YOUR RIGHTS: HEALTH CARE PROVIDERS

SUMMARY

Before ICE Arrives:

1. **Establish a written policy** regarding law enforcement (including ICE) seeking physical access to restricted areas or private information.
2. **Train staff and volunteers** on the policy and protocol to follow it.
3. **Select staff to be liaisons** or points of contact with law enforcement.
4. **Train liaisons** to know the healthcare provider's legal rights and the difference between judicial warrant and administrative warrant.
5. **Designate private and public areas** within the facilities. If an area may be accessed by the general public without invitation or permission, it is public.
6. **Practice** to ensure staff and volunteers can remain calm if law enforcement does arrive.
7. **Avoid** any direct written reference to immigration status of any patient.

When ICE Arrives:

1. **Direct law enforcement to liaison.** Staff should be trained to notify the liaison immediately when law enforcement is present. If asked to give permission to enter private areas, staff should say they have no authority and direct the officer to the liaison.
2. **Ask for identification**, such as the officer's business cards, name and title, or contact information. ICE officers may wear vests or jackets that say Department of Homeland Security, Immigration and Customs Enforcement or Police. Officers may come from more than one law enforcement agency, for example, ICE and local police.
3. **Obtain documentation** from law enforcement, such as a subpoena, search or arrest warrant.
4. **Contact legal counsel** immediately. Inform law enforcement that counsel must be notified and consulted. Provide counsel with the details and documentation obtained from the officer.
5. **Review the documents.** ICE officers typically present an administrative warrant that does not give them authority to enter private areas without permission.
6. **Deny access** to private areas unless presented with a warrant signed by a judge or magistrate.
7. **Inform individuals of their rights.** ICE officers will have access to public areas and may question individuals they find there. Everyone has the right to remain silent and the right to speak to a lawyer before answering questions or signing documents.
8. **Video the encounter.** If possible, staff or the liaison should record the officers and their actions.

After ICE leaves:

1. **Document what happened.** Write details down, especially if someone was mistreated by law enforcement.
2. **If anyone's arrested, ask where they're being taken.** This will help their family find them.

GUIDANCE

This Guidance is not intended and should not be treated as legal advice. It is merely information shared so a healthcare provider¹ can make informed decisions. Please consult with legal counsel about specific questions and concerns to determine how the considerations discussed below relate to your particular circumstances and needs.

1. Establish policies and practices on interactions with law enforcement.

- A. A healthcare provider should have a written policy and practice with respect to staff interactions with law enforcement who seek physical access to restricted areas or private information, and the policy should apply whether it is local or state law enforcement or a federal agency such as Immigration and Customs Enforcement (ICE).
- B. There should be a designated representative or representatives who can act as a “liaison” to law enforcement. They can be senior on-site administrators who have direct access to legal counsel and who are knowledgeable about the provider’s rights and responsibilities with respect to law enforcement activities.
- C. The liaison serves as the point of contact. Staff should be trained to notify the designated liaison immediately when law enforcement is present. Staff should refer law enforcement to the liaison. If asked to provide permission to enter private areas, staff should say, “I can’t give you permission. You must speak with our designated representative.”
- D. The liaison should confirm law enforcement’s identity. The liaison should ask for the officer’s business card, name and title, or contact information.
- E. The liaison should obtain any documentation from law enforcement, such as a subpoena, search warrant, or arrest warrant.
- F. The liaison should inform the officer that prior to responding to their request, the liaison must notify and obtain guidance from legal counsel.
- G. Given the complexity of the issues involved, the liaison should contact the healthcare provider’s legal counsel as soon as possible and provide them with information and copies of documentation obtained from the officer.
- H. If, for whatever reason, there is no access to counsel who can advise on these matters, the liaison should be knowledgeable about the healthcare provider’s basic rights and how to

¹ A healthcare provider may provide services at a traditional facility or a mobile clinic. Special considerations will be highlighted in the context of a mobile clinic.

assert them with respect to law enforcement activities generally and immigration enforcement specifically, as described below.

2. Assert Rights: Limit Access Without a Judicial Warrant.

- A. Basic constitutional rights apply in the context of a law enforcement arrest or search. The Fourth Amendment protects individuals from unreasonable searches and seizures, and the Fifth Amendment guarantees the right to remain silent when confronted by law enforcement. While the federal government has changed its policy regarding ICE agents' authority to conduct arrests, interviews and searches at "sensitive locations," these basic constitutional rights still apply, and they cover everyone in the U.S.
- B. If possible, staff or the liaison should record the officers and their actions while on the premises to ensure that these rights are respected.
- C. Health care providers have the right to refuse law enforcement access to private areas or private information, unless they have a valid judicial warrant, signed by a judge or magistrate, that authorizes a search of specific premises or the arrest of a specific individual. A warrantless entry is permitted only where law enforcement asserts "exigent circumstances," a situation of such urgency that warrantless entry is necessary: if individuals are in imminent danger, a criminal suspect is fleeing, or evidence is being destroyed.
- D. An ICE agent will typically have what is known as an administrative warrant, signed by an immigration officer, which is not considered a constitutional warrant within the meaning of the Fourth Amendment and therefore does not require you to permit access to the private areas of the facility or to private patient information.
 - a. An administrative warrant is generated by Department of Homeland Security, Immigration and Customs Enforcement, typically on Forms I-200 or I-205, which say a "warrant for arrest of alien" and "warrant for removal/deportation," respectively. (See Appendices A & B for samples.)
 - b. An administrative warrant will be directed to "any immigration officer" and signed by an "immigration officer."
- E. If presented with an administrative warrant, the liaison may tell the ICE agent that they are not authorized to provide the agent with private information or access to non-public areas.²

² Immigration status is increasingly viewed as a social determinant of health; accordingly, it should be deemed protected health information under the Healthcare Insurance Portability and Accountability Act (HIPAA) and protected from disclosure unless one of several exceptions apply. Certain exceptions are permissive rather than mandatory; that is, the healthcare provider would have the option to disclose, without the patient's authorization, but would not be required to make the disclosure. This is true of the exception for information requested by law enforcement officials for law enforcement purposes. However, if the information sought is subject to a judicial

- F. Even if only in possession of an administrative warrant, an ICE agent may nonetheless access areas in the facility that are open to and accessible by the public.
- G. While in a public area, where there is no reasonable expectation of privacy, an ICE agent may look at anything that is in “plain view” – i.e., visible with the naked eye. For example, an ICE agent may look at documents or computer screens that are visible from the visitor’s side of reception. Similarly, an ICE agent may take note of any sounds within “plain hearing,” such as a conversation in a private area that can be overheard, with unaided ears, from a public area.
 - a. Staff should be careful not to leave patient information visible in or from public areas.
 - b. Staff should be trained, for example, to turn computer monitors away from public view when they display private patient information and cover documents containing such information when visible from public areas.
- H. Once in a public area, moreover, an ICE agent may seek to question individuals who happen to be there. Individuals have the right to remain silent.³ Health care providers should provide information through posters, brochures, and Know Your Rights cards to ensure that patients and visitors are aware of their rights. If possible, these materials should be made available in multiple languages.
- I. If an ICE agent’s presence or questioning of individuals in a public area, such as a waiting room, were to become disruptive to the healthcare provider’s normal operations, the liaison could ask the ICE agent to leave, as it would any other person who undermined the healthcare’s ability to maintain a safe and orderly environment.⁴ ICE does not have a right to interfere with the immediate provision of health care, including disruption in the waiting room, especially if the ICE action prevents or deters candid discussion between patient and provider.

warrant or order, the provider should strictly comply; the provider should not disclose more than the information required by the order and should limit the disclosure to the manner specified in the order.

³ Some states require individuals to provide their name if asked to identify themselves, but these laws would only apply to state or local law enforcement.

⁴ The mere presence of an ICE agent, coupled with the potential for discrimination or disclosure of private information, likely will deter some immigrant patients from obtaining the medical treatment and care they need, which, in turn, may endanger the health and safety of their broader communities. This impact on the right to access healthcare would suggest that litigation may be necessary to protect the entirety of a healthcare facility, so that all patients may access healthcare facilities and engage their doctors without fear or intimidation.

- J. If law enforcement presents a judicial warrant signed by a judge,⁵ the liaison should notify legal counsel immediately so counsel may review the warrant’s validity.
- K. The liaison also should review the warrant to ensure that it is signed by a judge and, in the case of a search warrant that the correct address of the healthcare provider is listed and that the warrant is being executed during the authorized time period.
 - 1. A judicial warrant will identify the name of the court, such as “U.S. District Court,” and include the name and signature of the judge or magistrate who issued it.
 - 2. If it is an arrest warrant, it also will identify the individual to be arrested and the violation or offense they are accused of. (See Appendix C for Sample Federal Arrest Warrant.)
 - 3. If it is a search warrant, it also will identify the address of the premises to be searched, provide a time period in which the warrant may be executed, and describe the scope of a search. (See Appendix D for Sample Texas Search Warrant.)⁶
- L. The liaison should deny access to information, records, or areas beyond those specified in the judicial warrant.
- M. The liaison should monitor officers to see if they are complying with the judicial warrant—for example, confining their search to the areas specified in the warrant or seizing only the types of objects specified.
- N. The liaison should object if officers exceed the scope of their authority under the judicial warrant, and the liaison should document all facts relevant to a search that exceeds the scope of the warrant.
- O. The liaison should direct at least one staff member to accompany each ICE agent around the facility.

⁵ Even without a judicial warrant, law enforcement may state that entering private areas is required to avoid imminent harm or risk. If the officers claim exigent circumstances, the healthcare provider should not interfere with their attempts to gain access to non-public areas, but it is not required to consent to the entry.

⁶ Given that laws and policies change and that HIPAA does not bar disclosure of information that is subject to a judicial warrant or subpoena, “[i]f immigration status is needed to facilitate the patient’s receipt of services or resources, conversations with clinicians should be prioritized over written communications.” G. Kim, U. Sanchez Molina, and A. Saadi, *AMA Journal of Ethics* Jan. 2019, Vol. 21, No. 1:8-16, at 12. Alternatively, “clinicians can use indirect language in the health record to describe social context (eg, ‘immigration stressors’ or ‘ineligible for insurance’).” *Id.* Such steps are necessary to maintain the trust between doctor and patient needed to ensure the best quality of care; otherwise, if patients are fearful that their status may be disclosed, they may not speak with the candor necessary for their health needs to be met.

P. The liaison should take note of people interviewed or items seized by the officers.

3. Designate private areas.

- A. Because ICE agents will have access to areas that are (open to the) public, healthcare providers should identify in writing which areas within their facilities are closed to the public.
- B. These may be areas where only employees are permitted access, such as medical labs, break rooms, and storage rooms.
- C. To the extent possible, access to private areas for patient examination or treatment should be limited to patients receiving care and those necessary or requested to be present for such care, such as medical staff, a family member, or partner.
 - 1. In the case of a mobile clinic, where services are provided in buses, vans, or RVs, the interior of the vehicles will be private as access is limited for patient examination or treatment.
 - 2. The challenge will be how to designate a waiting area outside the vehicle that is private as well. There must be a reasonable expectation of privacy for a location to be considered private.
 - 3. It is recommended that an enclosed tent be used to create such an area and that access be limited to patients and their companions. It is not clear whether a canopy or a roped off area, which may have been used during the Covid pandemic to create a waiting area, would suffice for these purposes.
- D. Signage should be posted to indicate private areas and, if possible, staff should escort the patient and family in and out of private areas. (See Appendix E for Sample Signage.)
- E. Staff should be trained to know the various protections that are available to patients and visitors and know which of the healthcare provider's areas are public and which are private.

4. After law enforcement leaves, document what happened.

- A. When law enforcement leaves, staff should document the event in writing, including:
 - 1. the names of all officers and their badge numbers;
 - 2. how many officers were present (inside and outside);

3. how officers were dressed (plainclothes, uniform);
 4. if officers were armed and if any removed their firearms from their holsters;
 5. if officers acted improperly or mistreated anyone
- B. Should law enforcement arrest any staff, patients, or visitors, ask officers where they are being taken. This information will help their family and attorney find them.
- C. Review what happened to determine if any changes need to be made to the policy, practice, or training.

Appendix A: ICE Form I-200

U.S. DEPARTMENT OF HOMELAND SECURITY Warrant for Arrest of Alien

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that _____ is removable from the United States. This determination is based upon:

- the execution of a charging document to initiate removal proceedings against the subject;
- the pendency of ongoing removal proceedings against the subject;
- the failure to establish admissibility subsequent to deferred inspection;
- biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at _____
(Location)

on _____ on _____, and the contents of this
(Name of Alien) (Date of Service)

notice were read to him or her in the _____ language.
(Language)

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

Form I-200 (Rev. 09/16)

Appendix B: ICE Form I-205

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement
WARRANT OF REMOVAL/DEPORTATION

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:

(Signature of immigration officer)

(Title of immigration officer)

(Date and office location)

Appendix C: Federal Judicial Arrest Warrant

AO 442 (Rev. 11/11) Arrest Warrant

UNITED STATES DISTRICT COURT

for the

_____ District of _____

United States of America

v.

)

)

)

)

)

)

Case No.

Defendant

ARREST WARRANT

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States magistrate judge without unnecessary delay

(name of person to be arrested) _____,

who is accused of an offense or violation based on the following document filed with the court:

- Indictment Superseding Indictment Information Superseding Information Complaint
 Probation Violation Petition Supervised Release Violation Petition Violation Notice Order of the Court

This offense is briefly described as follows:

Date: _____

Issuing officer's signature

City and state: _____

Printed name and title

Appendix D: Texas Search Warrant

SEARCH WARRANT (Arts. 18.01, 18.02, and 18.04, C.C.P.)

THE STATE OF TEXAS, §
CITY OF _____ §
_____ COUNTY §

TO ANY PEACE OFFICER OF THE STATE OF TEXAS – GREETINGS:

WHEREAS, the Affiant, whose name appears on the attached affidavit hereto, is a peace officer under the laws of the State of Texas and did heretofore this day subscribe and swear to said affidavit before me (now made a part hereof and incorporated herein as if written verbatim within this document), and whereas I find that the verified facts stated by Affiant in said affidavit show that Affiant has probable cause for the belief he/she expresses herein and establishes the existence of proper grounds for issuance of this warrant;

Now, therefore, you are hereby commanded to enter the suspected place, vehicles, and premises described in said affidavit, to wit: _____ . At said places you shall search for and, if same be found, seize and bring before me the property described in the affidavit which the suspected party, or others in control of the suspected place, are alleged to be concealing and to have in his/her possession in violation of the laws of the State of Texas, to wit:

_____.

Herein fail not, but make due service and return of this warrant, showing how you executed the same.

Signed this ____ day of _____, 20__ [at _____ o'clock ____m. (include time of issuance if information for the warrant was provided by telephone or reliable electronic means under Art. 18.01(b-1)].

Magistrate

Magistrate's Printed or Typewritten Name
Municipal Judge, City of _____

County, Texas

Appendix E: Sample Signs – Private/Restricted Areas

