Securing Equal Access to Justice for All

Guidance and Model Policies to Assist California's Superior Courts in Responding to Immigration Issues

Xavier Becerra
California Attorney General
October 2018

Table of Contents

Acknowledgments

The Attorney General's Office thanks the Office of Governor Edmund G. Brown Jr., and the California Judicial Council's Trial Court Presiding Judges Advisory Committee and Court Executives Advisory Committee—and most notably the Honorable Gary Nadler, Presiding Judge of the Sonoma County Superior Court, and Alex Calvo, Court Executive Officer for the Santa Cruz County Superior Court—for their assistance in drafting and reviewing this guide.

The Attorney General's Office also thanks the many members of the legal, judicial, advocacy, and law enforcement communities who generously gave their time, insight, and feedback to inform this guide for California's courts. We acknowledge and thank you for your contributions to this project. Most importantly, we thank you for the work you do every day to ensure access to justice for all of the state's residents.

Introduction

California's court system—in its capacity of providing access to justice and as a contact point to other public services—serves all state residents, regardless of immigration status. California is home to more than 10 million immigrants—approximately one-quarter of the entire foreign-born population nationwide.

Immigration enforcement actions at or near the state's court facilities have resulted in a chilling effect on immigrant residents who need access to California's courts. California cannot control the actions of federal immigration enforcement agencies. Nonetheless, to the extent permitted by state and federal law, the state has a responsibility to provide safe and secure access to court facilities to all residents regardless of immigration status.

Purpose of this Guide

Senate Bill (SB) No. 54 (2017-2018 Regular Session) mandates that the Attorney General publish model policies "limiting assistance with immigration enforcement to the fullest extent possible consistent with federal and state law" at several locations, including courts.[1] All state courts must implement the model policies or an equivalent policy.[2]

California Attorney General Xavier Becerra provides this guide to California's Superior Court presiding judges, court executive officers and staff to fulfill this mandate and to equip executive officers, judges, officers, clerks and staff with the information and resources to limit immigration enforcement activity at court facilities to the fullest extent under the law.

This guide implements the Legislature's decision to limit state and local participation in immigration enforcement activities. Such participation diverts state resources, blurs lines of accountability, and erodes trust between immigrant communities and state and local agencies that provide critical public services. The model policies laid out in this guide are aimed at assisting California courts in focusing their resources on their distinct mission of ensuring equal access to justice for all individuals, while leaving immigration enforcement efforts to others.

Specifically, the guide: (1) outlines relevant state and federal protections for all individuals seeking access to the court system; (2) provides policy recommendations that comply with state and federal laws that may mitigate disruptions from immigration enforcement actions at courts; and (3) lists model policies that must be adopted by state courts, unless equivalent policies already exist or are adopted.

This guide offers state court executive officers background and information on the applicable governing law and offers model policies for handling and responding to the following circumstances:

1. Establishing Policies for State Court Facility Access;
2. Protections for Specific Litigants;
3. Responding to Immigration Enforcement Activities at State Court Facilities; and
4. Responding to Requests for Information for Immigration Enforcement Purposes.

This guide is intended to help California state superior court presiding judges and court executive officers develop practical plans to protect the rights of immigrants and their families to safely access the courts. To that end, this guide discusses procedures for responding to immigration enforcement actions and requests for information directed at parties, witnesses, and members of the public generally. This guide is not, however, intended to address the duties courts have as employers when faced with the same requests about their employees.[3]

California law enforcement agencies are prohibited under state law from performing the functions of an immigration enforcement officer.[4] Although U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) are the agencies with primary responsibility for federal immigration enforcement, there may be instances in which other law enforcement agencies may attempt to enforce federal immigration laws. In this guide, and other law enforcement agencies attempting to enforce immigration laws are treated the same, in terms of the advice given for how court facilities should handle interactions with them.

Any policy adopted to address interactions between court facility personnel and immigration enforcement officers should encompass all law enforcement agencies that seek to enforce immigration law, and should handle requests from all law enforcement agencies acting with that purpose in the same way.[5]

Under SB 54, all courts shall adopt these model policies—or equivalent policies.[6] To the extent that any specific court program presents circumstances that are not addressed in these materials, court personnel should consult with the court executive officer, the presiding judge or their delegate in adapting the model policies described here.

Some court facilities[7] may have already adopted policies equivalent to or exceeding the protections provided with the model policies stated in this guidance. To the extent that courthouses have developed policies that are aligned with or provide greater protections for immigrants, this guide is not intended to displace those policies. Nor does the exclusion of a particular policy in this guide—whether recommended by a stakeholder group or implemented by an agency—necessarily indicate the Attorney General's disapproval of that policy. Rather, this guide offers foundational policies reflecting the minimum that should be present in the policies of any California court facility and should serve as a resource to enhance current policies as needed and ensure alignment with the state law. Ultimately, the courthouse's policies must at minimum follow the model policies here, except where contrasting laws or circumstances require adjustments.

It is important that court facilities train staff for possible interaction with immigration enforcement officers, so that staff can be prepared in the event of an immigration enforcement activity, inquiry, or request at the courthouse, including determining when, if at all, any potential disclosures of information will be necessary.

The guide is not legal advice. This guide is based on current law as of its publication date, which may change. Court executive officers and presiding judges should consult with counsel, as appropriate, when formulating court policies and practices—and in addressing any questions—regarding the issues covered in this guide.

01 Establishing Policies for State Court Facility Access

Purpose of this Section

- Inform judges, court executive officers, and staff of model policies in response to immigration enforcement actions and requests, as well as the underlying rationales for these policies.
- Inform judges, court executive officers, and staff of special requirements for immigration enforcement actions for victims and witnesses of crime at sensitive locations.

Governing Law

1. Federal Immigration Enforcement Policy at Courts

Federal immigration agencies' internal policies provide that certain immigration enforcement actions, such as arrests, interviews, searches, and surveillance, should generally be avoided at sensitive locations such as schools, churches, public demonstrations, and hospitals.[8]

Court facilities are generally not sensitive locations under those federal policies. In fact, federal immigration authorities have indicated that they intend to conduct broad civil immigration enforcement activities at courthouses nationwide.[9] A January 2018 federal immigration directive states that because individuals entering courts are typically screened for weapons, civil immigration enforcement actions within courts reduce safety risks to the public and law enforcement.[10] The policy indicates that, to the extent practicable, civil enforcement actions will take place in nonpublic areas inside the court, that federal officers engaged in immigration enforcement will use nonpublic entrances and exits, and that federal officers engaged in immigration enforcement expect that court security staff will assist in making these areas available.[11] Federal immigration authorities have also indicated that they will avoid actions within courts that are dedicated to non-criminal proceedings (i.e., family courts or small claims courts).[12]

ICE's 2011 policy on sensitive locations and its 2018 policy on courts are internal guidance documents, and as such are not enforceable statutes or regulations. There is no clear avenue for individuals to seek redress in instances where ICE officers or agents do not adhere to these internal policies.

There is an additional policy regarding crime victims and witnesses. Department of Homeland Security (DHS) policies in furtherance of federal law consider courthouses to be sensitive locations for the enforcement of the immigration laws against certain victims and witnesses of crime.[13] As discussed in *Section 2: Protections for Specific Litigants,* below, certifications are required for those non-citizens who are appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, trafficking, or stalking in which the person has been battered or subject to extreme cruelty or if the person is applying for a U- or T-visa.[14] There are penalties for the failure to comply with section 1367 of title 8 of the United States Code, and individuals may raise the failure to comply with these certification requirements in their removal proceedings.

2. Judges' Authority to Establish Order Within the Court

State court judges have statutory and inherent authority to regulate individuals' conduct in the courtroom and in the judge's "immediate presence" to ensure the administration of justice.[15] While courtroom conduct shall be controlled by the judge presiding over the courtroom proceedings, it is the responsibility of the superior court's presiding judge to establish policies in his or her county that promote "access to justice for all members of the public."[16]

In certain civil and criminal actions, evidence of a person's immigration status is not permitted to be disclosed in open court unless the court first determines, during an in camera (i.e., closed) hearing requested by the party seeking disclosure, that the evidence is admissible.[17]

3. Spaces Restricted from Immigration Enforcement

There is no direct statutory or common law guidance determining those areas of a court facility that are restricted from immigration enforcement. It is therefore useful to look to existing restrictions, such as laws limiting access to places of public employment, for the purposes of law enforcement access for immigration enforcement.

AB 450 imposes obligations on public employer conduct and persons acting on their behalf, in the event that an immigration enforcement agent seeks to enter the employer's place of business, subject to certain specified exceptions.[18] Employers, or persons acting on behalf of the employer, are prohibited from providing "voluntary consent" for an immigration enforcement agent to enter "any nonpublic areas of a place of labor." This provision does not apply if the immigration agent provides a judicial warrant.[19] (Additional information about how to identify judicial warrants can be found in *Section 3: Responding to Immigration Enforcement Activities at State Court Facilities*, below.) This provision also does not preclude an employer from bringing an immigration enforcement agent into a nonpublic area of the workplace for the purpose of determining whether the agent has a judicial warrant, "provided no consent to search nonpublic areas is given in the process."[20] Employers who violate this provision may be subject to civil penalties.[21]

Whether voluntary consent has been provided by an employer, or a person working on behalf of an employer, is a fact-based determination that depends upon the specific circumstances of the interaction between the employer and the officer conducting immigration enforcement, including the conduct of, and words used by, the employer or person working on behalf of the employer. In general, for consent to be voluntary, it cannot be the result of duress or coercion, whether express or implied.

As of the date of this publication, AB 450 is subject to an order by a federal district court preliminarily enjoining a portion of enforcement against private employers.[22] This order does not impact the application of this provision to courts because they are public employers.

Policy Recommendations

In addition to the model policies appearing in Section 5, the Attorney General provides the following additional, discretionary policy recommendations.

1. Policies for Limiting Courtroom Detentions or Arrests for Immigration Enforcement Purposes

State court judges have statutory and inherent authority to regulate the conduct of individuals within their immediate presence to facilitate the access to and ensure the administration of justice.[23] Courts can exercise that authority by enacting a policy establishing that detentions or arrests for immigration enforcement purposes within the courtroom disrupt court proceedings and deny access to justice.[24]

2. Policies for Establishing Restrictions on Access in Courthouses

As noted above, officers engaged in immigration enforcement are restricted from entering "nonpublic places of labor" within public facilities without a judicial warrant.[25] Upon evaluation of their operations, court executive officers and presiding judges may find other opportunities to adopt policies that limit unauthorized access to areas in courthouse facilities. Policies establishing limited access areas in courthouses must clearly delineate what areas are intended to be accessed only by court personnel and those with permission to enter such areas—for example, in administrative areas or judicial chambers. Such nonpublic areas should be clearly marked and accessible only to persons with proper authorization or with business relating directly to a pending judicial proceeding.

The consideration of any such policies should take into account the traditional right of access to the courts enjoyed by the public, including members of state and federal law enforcement.

3. Policies for Facilitating Access to Court's Services

It is imperative for California's courts to establish clear policies that will facilitate access to justice for all who need to utilize the court's services and establish the parameters for conduct within and access to courthouses and courtrooms. Such policies should consider the following recommendations:

Use of Pseudonyms

Use of pseudonyms to the extent permitted by state law can assist access to justice by allowing a party to present its case in court, or a witness to testify in court, without utilizing his or her name in public documents. In California, a party to a proceeding may use a pseudonym without compromising his or her status as a party under certain circumstances.[26] Additionally, entities such as charities or advocacy organizations may protect the identity of their nonparty staff members or volunteers by using pseudonyms.[27] Under certain circumstances, witnesses may be identified by pseudonyms in open court and in court documents. Also, federal law restricts the release of personal or personally identifying information regarding victims of crime.[28] Courts may restrict disclosure of the identity of individuals upon the appropriate balancing of factors and in accordance with applicable legal standards.[29] Policies should encourage the consideration of the use of pseudonyms as appropriate depending on the facts of each individual case.

Reducing Nonessential In-Person Court Appearances

It is not always necessary to have parties appear in court. Different strategies can be utilized to minimize nonessential courtroom appearances, such as allowing for continuances in response to an individual's credible fears of immigration enforcement, utilizing tentative rulings or permitting appearances by an attorney or through remote means such as telephone, video, or other electronic media if available. For instance, judges should consider granting continuances, and not assess penalties for an individual's failure to appear if that person has a credible fear of immigration enforcement. Also, California's Civil Rules of Court promote the use of telephone appearances in civil cases to promote access to the courts.[30] In some situations, California law permits such appearances by a party's attorney, even in criminal proceedings, and criminal defendants may waive their personal appearance in court at certain stages of the proceedings depending upon the nature of the charged offenses.[31] Policies should promote the use of remote audio and video services for case hearings and case management meetings where appropriate and when permitted by law. Such policies should require court executive officers and employees not to inquire whether a request for remote appearance is related to immigration status.

4. Policies for Reporting Immigration Enforcement Activities

Although not required, the California Department of Justice recommends that court staff keep records of any immigration enforcement action at court facilities, including the date and time it occurred, the identity (if known) of any officers engaged in immigration enforcement and the agency or agencies they represent, and the location of the arrest.[32]

5. Additional Resources

In the event that an individual or family member is detained, the court executive, presiding judge or delegate should consider posting the following resources for assistance, including, but not limited to the following.

ICE Detainee Locator

The ICE detainee locator (https://locator.ice.gov/odls/homePage.do) can help people determine if their family member has been detained and where the family member is being held. In using the ICE detainee locator, it is helpful to know the family member's date of birth and 'A-Number' (Alien Registration Number), if there is one.

Please note: the ICE detainee locator is intended only for locating individuals who are already detained. If an individual has general questions about his or her immigration status, he or she should be referred to the list of legal service providers.

Legal Assistance

Immigration lawyers in private practice, accredited representatives (who assist immigrants in immigration proceedings), or legal-aid organizations may be able to provide legal assistance to secure the release of an individual or an individual's family member, or to help arrange for the individual to visit the family member.

- ✓ An individual can determine whether lawyers are licensed by and in good standing with the State Bar of California, by checking online at http://www.calbar.ca.gov/Attorneys.
- ✓ A list of California organizations accredited by Board of Immigration Appeals (BIA) to represent immigrants before the Department of Homeland Security (DHS) and Executive Office of Immigration Review (EOIR) can be found here: https://www.justice.gov/eoir/page/file/942306/download#CALIFORNIA.
- ✓ California courts operate Self-Help Centers that may also be able to provide family-law assistance to an individual or his or her family member. A list of these centers across the state is available at http://www.courts.ca.gov/selfhelp-selfhelpcenters.htm.
- ✓ An individual or his or her family member may be able to find legal assistance from legal-aid offices and lawyer-referral services at the California Department of Social Services Website, http://www.cdss.ca.gov/Benefits-Services/More-Services/Immigration-Services/Immigration-Services-Contractors, or at the California Courts Website, http://www.courts.ca.gov/1001.htm.

Individuals should not hire a notary or an immigration consultant if they are seeking advice and assistance regarding their immigration status. Notaries and immigration consultants are not attorneys or experts in immigration. In fact, they are not legally required to know anything about immigration law because they are only allowed to help with non-legal tasks like translating information. They cannot – and should not – provide advice or direction about an individual's immigration forms or speak to the government on his or her behalf.

Consulate or Embassy

The consulate or embassy of an individual's country of origin may be able to offer additional information and assistance.

Purpose of this Section

- Inform judges, court executive officers, and court personnel of special protections that exist for victims of crime and children.
- Inform judges, court executive officers, and court personnel of special requirements for Notices to Appear issued for victims of crime.
- Inform judges, court executive officers, and court personnel of requirements for completing U Nonimmigrant Status Certification (Form I-918) for certain crime victims.

Governing Law and Policy Recommendations

In addition to the model policies appearing in Section 5, the Attorney General provides the following discussion on the governing law and additional, discretionary policy recommendations.

1. Current Immigration Policies for Crime Victims and Children

Matters Involving Victims of Crime

While ICE does not generally identify courts as sensitive locations, its 2011 memorandum states that officers engaged in immigration enforcement or agents conducting immigration enforcement actions are required to exercise "particular care … with any organization assisting children, pregnant women, victims of crime or abuse, or individuals with significant mental or physical disabilities."[33] Any courthouse or courtroom dedicated to serving victims of abuse—whether adult or child—is considered an area within which those conducting immigration enforcement actions must exercise "particular care," including adequately assessing whether a planned enforcement action may cause significant disruption to the normal operations of the courthouse or courtrooms.[34]

Juvenile Matters

Similarly, ICE considers courthouses and courtrooms dedicated to serving children to be areas within which those conducting immigration enforcement operations must exercise "particular care."[35] Independent of this ICE directive, which, as discussed above, is not enforceable as a statute or regulation, California law deems California's delinquency system to be confidential in order to protect children in the delinquency system from the "stigma of criminality often attached to adult penal proceedings."[36] California's dependency system is confidential to protect children in the dependency system from the "embarrassment, emotional trauma, and additional stress" that can occur to victims of maltreatment.[37] California's juvenile court proceedings are typically closed to the public, including immigration authorities, in order to serve the rehabilitative goal of these proceedings. (Access to juvenile records is further discussed in *Section 4: Responding to Requests for Information for Immigration Enforcement Purposes*, below.) Juvenile courts may only be open to the public in very limited and specific circumstances, which do not include immigration enforcement.[38] While California's juvenile courts do have a limited role in adjudicating predicate orders for Special Immigrant Juvenile Status applications, this limited role does not open the courtroom doors for immigration enforcement activities.

2. Protections for Victims of Domestic Abuse

It is particularly important that victims of crime, including domestic violence, feel free to access California's courts in order to seek justice and any appropriate measures of relief, all while free from the threat of immigration enforcement. In 2006, the immigration committee of the Major Cities Chiefs Association (MCCA), a professional association that includes many of the largest law enforcement agencies in the United States, concluded that, "[i]mmigration enforcement by local police would likely negatively effect and undermine the level of trust and cooperation between local police and immigrant communities."[39] This impact, they concluded, "would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts."[40]

Recognizing the vulnerable position of those in the United States without lawful status, the federal government included in the Violence Against Women Act (VAWA) of 1994 protections for undocumented immigrants who have been subjected to domestic violence by their U.S. citizen or Lawful Permanent Resident (LPR) child, parent, or spouse.[41]

VAWA also places restrictions on the disclosure of information regarding certain victims and witnesses of crime.[42] If an immigration enforcement action leads to a removal proceeding, federal law and DHS policies require that DHS issue a Notice to Appear (NTA) including a specific certification that the agency complied with the restrictions on the disclosure of information under section 1367 of title 8 of the United States Code for those persons.[43] Individuals covered under that statute include those who were subject to an enforcement action at a courthouse while "appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, trafficking or stalking in which the alien has been battered or subject to extreme cruelty or if the alien is described in subparagraph (T) or (U) of section 101(a)(15)."[44]

Policy Recommendations

The issuance of an NTA also requires a specific certification that the issuing agency has complied with the restrictions on disclosure of information set forth in section 1367 when the enforcement action occurs "at a domestic violence shelter, a rape crisis center, supervised visitation center, family justice center, a victim services or victim services provider, or a community-based organization."[45] To the extent any of these locations are co-located with a court facility, in order for an NTA to be valid when served within these co-located areas, it must include the necessary certification regardless of whether there is evidence that the person being served has been battered, suffered extreme cruelty, or is described in T- or U-visa categories. While the ability to enforce a remedy for an invalid NTA lies with the person being detained, it is useful for court personnel to understand the NTA requirements when the NTAs are being served at courthouses, although court personnel are not expected to reach any conclusions regarding the validity of an NTA served at a courthouse.

3. The Immigrant Victims of Crime Equity Act

California law provides additional protections for crime victims. California's Immigrant Victims of Crime Equity Act requires state and local law enforcement agencies, prosecutors, judges, and other entities and officials to certify the helpfulness of victims of qualifying crimes on a federal U Nonimmigrant Status Certification (Form I-918), also known as a "U visa certification," if

certain conditions are met.[46] Upon request, prosecutors, judges, and other entities and officials are to complete U visa certifications for immigrant crime victims of qualifying criminal activity who possess information about the qualifying criminal activity and have been or are likely to be helpful to the investigation or prosecution of that qualifying criminal activity.[47]

There is a rebuttable presumption that an immigrant victim is helpful, has been helpful, or is likely to be helpful, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.[48] A certifying official may withdraw a previously-granted certification only if the victim refuses to provide information and assistance when reasonably requested.[49] Further, the certifying official must fully complete and sign the U visa certification and include "specific details about the nature of the crime investigated or prosecuted and a detailed description about the victim's helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity."[50]

This certification must be completed within 90 days of the request, unless the applicant is in immigration removal proceedings, in which case the certification must be completed within 14 days of the request.[51] Further, a "certifying entity"—such as a prosecutor or judge who has certified victim helpfulness on the Form I-918 Supplement B certification when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of that qualifying criminal activity—is prohibited from disclosing the immigration status of a victim or person requesting the Form I-918 Supplement B certification, except to comply with federal law or legal process, or if authorized by the victim or person requesting the Form I-918 Supplement B certification.[52]

More detailed guidance can be found in California Department of Justice, Division of Law Enforcement, DLE Information Bulletin No. DLE-2015-04, *New and Existing State and Federal Laws Protecting Immigrant Victims of Crime* (Oct. 28, 2015), available at https://oag.ca.gov/system/files/attachments/press_releases/dle-2015-04.pdf.

03 Responding to Immigration Enforcement Activities at State Court Facilities

Purpose of this Section

- Provide judges, court executive officers, and court personnel with policies and practices for responding to immigration enforcement activities at state court facilities.
- Provide examples of warrants, subpoenas, and court orders that might be used by officers engaged in immigration enforcement seeking access to a state court facility or nonpublic court records.

Governing Law and Policy Recommendations

In addition to the model policies appearing in Section 5, the Attorney General provides the following discussion of the governing law and additional, discretionary policy recommendations.

1. Limited Access/Restricted Areas of State Court Facilities

It is important to identify which areas of a courthouse are public. It is also important to identity who can access the nonpublic/restricted sections of courthouse facilities. Courts should acknowledge that immigration enforcement activities, and threats of such activities, interfere with judicial proceedings and should adopt policies on restricted areas and similar policies regarding access to facilities and individuals that promote a safe environment conducive to the court's mission. While restricted areas protect facility users and staff in other ways and promote the need for such a safe environment conducive to the institution's mission, such restrictions on access will not always equate to Fourth Amendment protection.

Policy Recommendations

Court executive officers and the presiding judge should specifically identify who may access each restricted area and what means of access is to be used—such as a key card, access code, or express permission from a judge, bailiff, or other authorized personnel. Absent a judicial warrant or exigent circumstances,[53] law enforcement personnel should not have access restricted areas of court facilities for immigration enforcement purposes. Presiding judges and court executive officers should develop internal protocols to provide courthouse personnel with direction for how to address immigration enforcement to
ensure that courthouse operations are not disrupted.

2. Warrants, Subpoenas, and Court Orders

Warrants and subpoenas issued by an officer engaged in immigration enforcement are not the same as judicial warrants, judicial subpoenas, and court orders issued by a federal court. Samples of each of the documents discussed here are included in Appendices A to G. Presiding judges and court executive officers should consider developing internal protocols providing local judges and staff with directions on how to address immigration-related warrants to ensure that the court's operations are not disrupted.

ICE Administrative "Warrant"

An ICE administrative "warrant" is the most typical type used by immigration enforcement officers. Such a document authorizes an immigration enforcement officer to arrest a person suspected of violating immigration laws. An ICE warrant can be issued by any authorized immigration enforcement officer. An ICE administrative warrant is *not* a warrant within the meaning of the Fourth Amendment to the U.S. Constitution, because an ICE warrant is not supported by a showing of probable cause of a criminal offense. An ICE warrant is not issued by a court judge or magistrate.

An ICE warrant does not grant an immigration enforcement officer any special power to compel courthouse personnel to cooperate with his or her requests. For example, an ICE warrant does not authorize access to nonpublic areas of a court facility. An ICE warrant alone does not allow an immigration enforcement officer to search court records. (See Appendix A for a sample ICE administrative "arrest warrant" (Form I-200), and Appendix B for a sample ICE "removal warrant" (Form I-205).)

Court personnel should not physically interfere with an immigration enforcement officer in the performance of his or her duties. However, a courthouse employee is not required to assist with the apprehension of a person identified in an ICE administrative warrant, nor is a courthouse employee required to consent to an immigration enforcement officer's search of court facilities. In fact, state courts, as public employers, may not provide voluntary consent to an immigration enforcement officer seeking access to a nonpublic area when presented with an ICE warrant.[54]

Federal Court Warrant

A federal court warrant is issued by a district judge or a magistrate judge of a U.S. District Court, based on a finding of probable cause authorizing the search or seizure of property, the entry into a nonpublic place to arrest a person named in an arrest warrant, or the arrest of a named person.

There are two types of federal court warrants, a search-and-seizure warrant and an arrest warrant.

- A federal search-and-seizure warrant allows an officer to conduct a search authorized by the warrant. (See Appendix C for a sample federal search and seizure warrant (Form AO 93).)
- A federal arrest warrant allows an officer to arrest the individual named in the warrant. (See Appendix D for a sample federal arrest warrant (Form AO 442).)

Prompt compliance with a federal court warrant is usually required. Where feasible, however, court personnel should consult with the court executive officer, presiding judge, or their delegate before responding.

Administrative Subpoena

An administrative subpoena is a document that requests production of documents or other evidence, and (in the immigration enforcement context) is issued by an immigration enforcement officer. The administrative subpoena will contain the following information: file number, subpoena number, mailing address to which to mail the requested information, a list of the regulations that apply, the request for information, and the signature(s) of the agent(s). (See Appendix E for a sample administrative subpoena (Form I-138).)

Court personnel generally do not need to immediately comply with an administrative subpoena. If an immigration enforcement officer arrives with a pre-designated administrative subpoena, the court may decline to produce the information sought and may choose to challenge the administrative subpoena before a judge. Therefore, court personnel should immediately contact the court executive officer, the presiding judge, their delegate, or legal counsel upon receipt of a subpoena.

Federal Judicial Subpoena

A federal judicial subpoena is a document that asks for the production of documents or other evidence. The federal judicial subpoena will identify a federal court and the name of the judge or judicial magistrate issuing the subpoena, and may require attendance at a specific time and location and the production of prescribed records. (See Appendix F for a sample federal judicial subpoena.)

As with an administrative subpoena, noted above, a court generally does not need to immediately comply with a federal judicial subpoena, and can challenge it before a federal judge in a U.S. District Court. Court personnel should therefore immediately contact the court executive officer, the presiding judge, their delegate, or legal counsel upon receipt of a federal judicial subpoena.

Court Orders

If an immigration enforcement officer arrives with a court order, the court executive officer, the presiding judge, or their delegate shall review the order with legal counsel or other designated persons, and then respond accordingly.

Notice to Appear

A Notice to Appear (NTA) is a charging document issued by ICE, CBP, or the United States Customs and Immigration Service (USCIS) seeking to commence formal removal proceedings against an individual before an immigration court. An NTA contains allegations made about a particular person's immigration status. An NTA notifies an individual that he or she is expected to appear before an immigration judge on a certain date. An NTA does not authorize an individual's arrest by immigration enforcement authorities or local law enforcement authorities.[55] (See Appendix G for a sample Notice to Appear form (Form I-862).)

An NTA does not require court staff to take any action or grant an officer engaged in immigration enforcement any special power to compel the court to cooperate with the officer. An NTA does not authorize access to nonpublic areas of the court facility. An NTA does not legally require court staff to allow authorities to search court records.

04 Responding to Requests for Information for Immigration Enforcement Purposes

Purpose of this Section

- Provide judges, court executive officers, and court personnel with guidance for responding to requests for information from officers engaged in immigration enforcement.
- Identify existing protections against sharing personal information for immigration enforcement purposes.
- Establish guidelines and policies for sharing information with agencies for immigration enforcement purposes.

Governing Law and Policy Recommendations

In addition to the model policies appearing in Section 5, the Attorney General provides the following discussion of the governing law and additional, discretionary policy recommendations.

1. Governing Law Regarding Court Records

Generally speaking, court records are open and accessible to the public.[56] A presumptive right of access is grounded in the common law, as well as the federal and state constitutions.[57]

This right of access attaches most strongly to judicial records—those documents that "accurately and officially" reflect the work of the court, such as orders, judgments, dispositions, official court minutes, oral proceedings, the master calendar, the assignment of judicial officers and executive officers, and the various other documents filed in or received by the court.[58] On the other hand, informal and preliminary notes, rough drafts, and memoranda are not subject to the right of public access.[59]

Regarding administrative records, courts are required to allow for public inspection and copying of nondeliberative and nonadjudicative court records, budget and management information, unless the records are exempt from disclosure under California Rules of Court, rule 10.500, or otherwise by law.[60]

Although much of the information collected by the courts is available to the public, special protections do exist for certain categories of sensitive information.[61]

2. Collection, Storage, and Release of Information

Under SB 54, California law enforcement agencies (LEAs) are prohibited from using resources to investigate, interrogate, detain, detect, or arrest any person for immigration enforcement purposes.[62] Further, federal law does not impose an affirmative duty on state or local government entities to collect information about an individual's citizenship or immigration status.

In addition, there have been successful constitutional challenges to section 1373 of title 8 of the United States Code, which provides that state and local government entities and officials cannot prohibit or restrict any government entity or official from maintaining information regarding a person's immigration status, exchanging information regarding a person's immigration status

with other governmental entities, or sending or receiving information regarding the citizenship or immigration status of any individual to or from federal immigration enforcement authorities.[63] Specifically, federal courts outside of California have determined that this statute violates the Tenth Amendment to the U.S. Constitution.[64] A federal court in California has called the statute "highly suspect."[65] And the Attorney General is currently challenging the statute's constitutionality in federal litigation in California.[66] Counsel for the court facilities should continue to monitor developments in the law to determine whether the prohibitions set forth in this federal statute still apply within California.

There have also been successful challenges to the federal government's expansive interpretation of section 1373. Federal courts have construed section 1373 narrowly, finding that the scope of information covered by the statute is limited to "information strictly pertaining to immigration status (i.e., what one's immigration status is)" and clarifying that the federal statute does not apply to other categories of information, such as an individual's release date or home or work address.[67]

Policy Recommendations

In light of California's current understanding of section 1373, courts and all other state and local governmental agencies should avoid collecting citizenship or immigration status information unless necessary or required by law, so as to avoid any restriction on court personnel that could violate federal law.

3. Confidentiality of Victim Information and Juvenile Records

In California, juvenile confidentiality laws protect juvenile information and files. These laws protect information arising from dependency and delinquency proceedings from being disclosed without the juvenile court's permission. Only certain individuals and agencies, such as those associated with the court proceedings, including the minor, the minor's parents or guardians, the attorneys for the parties, and court personnel, have access to this information.[68] All other persons must petition the court for access.[69] Those limited individuals who do have access to the information cannot further disseminate it.[70]

These protections also apply to information related to the minor, including name, date or place of birth, and immigration status that is obtained or created independent of or in connection with juvenile court proceedings about the juvenile and maintained by any government agency.[71] Therefore, no government entity can provide the minor's information to outside entities, including to immigration authorities, unless authorized by the presiding judge of the juvenile court proceeding.[72]

4. Prohibitions on Disclosing Immigration Status in Court Proceedings

The California Evidence Code sets forth specific restrictions regarding the disclosure of a person's immigration status in courtroom proceedings:

- Evidence of a person's immigration status cannot be admitted into evidence in civil actions for personal injury or wrongful death, nor is discovery into a person's immigration status permitted.[73]

- In a civil action not governed by Evidence Code section 351.2, a party or his or her attorney shall not disclose evidence of a person's immigration status in open court unless the judge presiding over the matter first determines that the evidence is admissible in an in camera hearing requested by the party seeking disclosure of the person's immigration status. However, this prohibition does not:
  - ✓ Apply to cases in which a person's immigration status is necessary to prove an element of a claim or an affirmative defense.
  - ✓ Impact otherwise applicable laws governing the relevance of immigration status to liability or the standards applicable to inquiries regarding immigration status in discovery or proceedings in a civil action, including Civil Code section 3339, Government Code section 7285, Health and Safety Code section 24000, and Labor Code section 1171.5.
  - ✓ Prohibit a person or his or her attorney from voluntarily revealing his or her immigration status to the court.[74]
- In a criminal action, evidence of a person's immigration status shall not be disclosed in open court by a party or his or her attorney unless the judge presiding over the matter first determines that the evidence is admissible in an in camera hearing requested by the party seeking disclosure of the person's immigration status. However, this prohibition does not:
  - ✓ Apply to cases in which a person's immigration status is necessary to prove an element of an offense or an affirmative defense.
  - ✓ Limit discovery in a criminal action.
  - ✓ Prohibit a person or his or her attorney from voluntarily revealing his or her immigration status to the court.[75]

05 Model Policies

All state courts shall adopt the following model policies, or equivalent policies, under Government Code section 7284.8, subdivision (a). The text below should be adapted by inserting the information sought in the bracketed portions.

1. Establishing Policies for State Court Facility Access

Model Policies Protecting Access to Justice

- Courts shall implement policies permitting wide access to justice through the use of pseudonyms, where feasible, appropriate to protect an individual's safety, and permitted by applicable state law.
- [Court] personnel are not required to disclose citizenship or immigration status information about any person, unless the requirements of Evidence Code sections 351.2, 351.3, and 351.4 are met and such disclosure is specifically required by judicial warrant or order, or by state or federal law.
- [Court] personnel shall not inquire about the immigration status of an individual, including a crime victim or a witness, unless such inquiry is required for the performance of the court personnel's regular duties.
- [Court] policies reducing the frequency with which parties need to appear in court shall be implemented, where feasible and permitted under applicable state law. For example, appearances may be waived for conferences where the parties' appearances are not needed to make decisions or provide testimony, and technology may be used to permit remote appearances by phone or video when possible, as permitted under local rules, the California Rules of Court, and applicable state law.
- All court staff shall be trained on the requirements of these policies, or a court's equivalent policies, and receive a copy of the policies.

2. Protections for Specific Litigants

Model Policies for Protecting Children

- It is presumed that immigration enforcement does not have a "direct and legitimate interest in individual dependency proceedings nor in the work of the court."
- In order to protect the best interests of children, arrests for immigration enforcement purposes are prohibited within juvenile courthouses or courtrooms unless there is an immediate risk to the safety and protection of the public.

Model Policies for Protecting Immigrant Crime Victims

- ➤ Courts shall require that, upon request, all hearing officers complete U Nonimmigrant Status Certifications (Form I-918) for immigrant crime victims of criminal activity listed in Penal Code section 679.10, subdivision (c), who possess information about the qualifying criminal activity, unless the victim has refused or failed to provide information reasonably requested by law enforcement.
- ➤ Courts shall prohibit all hearing officers who have certified victim helpfulness on the Form I-918 from disclosing the immigration status of a victim or person requesting the Form I-918 Supplement B certification, except to comply with federal law or legal process, or if authorized by the victim or person requesting the Form I-918 Supplement B certification.

3. Responding to Immigration Enforcement Activities at State Court Facilities

Model Policies Regarding Training Court Staff on Responding to Immigration Enforcement Activity

- ➤ Courts shall establish protocols for use by [court] personnel likely to receive in-person, written, telephonic, or electronic requests for information related to immigration enforcement.
- ➤ Courts shall identify nonpublic restricted locations within the court facilities. [Court] personnel shall be trained on who may access restricted locations.
- ➤ [Court] personnel shall receive training regarding the different types of warrants, subpoenas, and court orders that may be presented to effect an arrest or to obtain records in immigration enforcement actions. This training shall include the following requirements:
  - ✓ The ability to differentiate between administrative warrants and judicial warrants signed by a judge or magistrate.
  - ✓ The ability to differentiate between administrative and judicial subpoenas.
  - ✓ The procedure for responding to any warrant, subpoena, or order issued in connection with immigration enforcement activities.
- ➤ [Court] personnel shall be trained that DHS administrative subpoenas and federal court subpoenas do not require immediate compliance despite the warning language that may be included on the form. Subpoenas shall be submitted for review and a decision [by the court executive officer, the presiding judge, their delegate, or court counsel] on whether to comply with or challenge the subpoena.
- ➤ [Court] personnel are prohibited from assisting in immigration enforcement actions, including by engaging in any of the activities listed in Government Code section 7284.6, subdivision (a), unless the exceptions set forth in section 7284.6 (as applicable to law enforcement agencies) are applicable.

Model Policies for Responding to Requests for Access for Immigration Enforcement Purposes

- ➤ As soon as possible, [court] personnel shall notify the [court executive officer, the presiding judge, or their delegate] of any request by officers engaged in immigration enforcement for access to nonpublic restricted areas of a courthouse or any requests for review of nonpublic court documents.
- ➤ In addition to notifying the [court executive officer, the presiding judge, or their delegate], [court] personnel shall take the following steps in response to the service of a subpoena or a request for access to execute an administrative arrest warrant:
  1. Advise the officer that before proceeding with his or her request, [court] personnel must first notify and receive direction from the [court executive officer, the presiding judge, or their delegate].
  2. [Court] personnel should ask to see, and make a copy of or note, the officer's credentials (name and badge number). Also ask for and copy or note the phone number of the officer's supervisor.
  3. [Court] personnel should ask the officer for his/her reason for being at the courthouse and note the response.
  4. [Court] personnel should ask the officer to produce any documentation that authorizes court access.
  5. If the officer orders immediate access to court facilities, [court] personnel should not refuse the officer's orders and immediately contact the [court executive officer, the presiding judge, or their delegate].
  6. State that [Court] does not consent to entry of [Court] facilities or portions.
  7. Without expressing consent, [court] personnel shall respond as follows if presented with the following documentation:
     - **An ICE administrative "warrant" (see Appendices A and B):** Immediate compliance is *not* required. [Court] personnel shall inform the officer that he or she cannot consent to any request without first consulting with the [court executive officer, the presiding judge, or their delegate]. Provide copy of the warrant to the [court executive officer, the presiding judge, or their delegate] (where possible, in consultation with legal counsel) as soon as possible.
     - **A federal judicial warrant (either search-and-seizure warrant or arrest warrant; see Appendices C and D):** Prompt compliance with such a warrant *is* usually legally required, but where feasible, consult with the [court executive officer, the presiding judge, or their delegate] before providing the officer access to the person or materials specified in the warrant.
     - **A subpoena for production of documents or other evidence (see Appendices E and F):** Immediate compliance is *not* required. Inform the officer that [court] personnel cannot respond to the subpoena until after it has been reviewed by legal counsel for the court. Provide a copy of the subpoena to the [court executive officer, the presiding judge, or their delegate] or legal counsel as soon as possible.

Continued on the next page

Model Policies for Responding to Requests for Access for Immigration Enforcement Purposes, *continued*

- **A notice to appear (see Appendix G):** This document is not directed at the [court facility]. [Court] personnel is under no obligation to deliver or facilitate service of this document to the person named in the document. If you get a copy of the document, give it to the [court executive officer, the presiding judge, or their delegate] or legal counsel as soon as possible.

8. If the officer orders staff to provide immediate access to facilities, court staff should not refuse the officer's order and immediately contact the [court executive officer, the presiding judge, or their delegate]. [Court] personnel shall not attempt to physically interfere with the officer, even if the officer appears to be exceeding the authorization given under a warrant or other document. If an officer enters a restricted area without consent, [court] personnel shall document his or her actions.
9. [Court] personnel shall document the officer's actions while in [court] premises in as much detail as possible, but without interfering with the officer's movements.
10. [Court] personnel shall complete an incident report that includes the information gathered as described above and the officer's statements and actions.
11. To the extent practicable, all [court] personnel who observe any immigration enforcement action taking place in, or in the immediate vicinity of, any court facility, shall report the incident to the [court executive officer, the presiding judge, or their delegate].

4. Responding to Requests for Information for Immigration Enforcement Purposes

Model Policies Regarding the Collection and Dissemination of Personal Information

➤ Unless necessary to perform one's official duties, or required by law, [Court] personnel shall not:

- Inquire into an individual's immigration status;
- Provide, to an officer engaged in immigration enforcement, information regarding a person's release date unless: (1) the officer has a valid judicial warrant, subpoena, or court order; (2) the person subject to the search has a criminal history that meets the criteria of California Government Code section 7282.5, subdivisions (a) and (b); or (3) the information is available to the public; or
- Provide, to an officer engaged in immigration enforcement, personal information unless: (1) the officer has a valid judicial warrant, subpoena, or court order; or (2) the information is available to the public.

✓ Personal information means any information that identifies or describes an individual, including, but not limited to, his or her name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history.

Continued on the next page

Model Policies Regarding the Collection and Dissemination of Personal Information *continued*

- ➤ All other [court] personnel shall not:
  - Collect and maintain personal information, except as required by law or as necessary to perform one's official duties.
  - Ask an individual about his or her immigration status, except as required by law or as necessary to perform one's official duties.
- ➤ [Court] personnel shall not share information regarding any juvenile case file for the purposes of immigration enforcement unless specifically authorized to do so by a judicial order.

Model Policies Regarding Responses to Requests for Information for Immigration Enforcement Purposes

- ➤ [Court] personnel shall not provide personal information to any person or entity for immigration enforcement purposes, unless: (1) such information is available to the public; or (2) is subject to a valid judicial warrant, subpoena, or court order.
- ➤ [Court] personnel shall not provide information regarding a person's release date or respond to requests for notification by providing release dates or other information unless that information: (1) is available to the public; (2) is subject to a valid judicial warrant, subpoena, or court order; or (3) is in response to a notification request from immigration authorities in accordance with Government Code section 7282.5.
- ➤ [Court] personnel shall not use immigration authorities as interpreters when an interpreter is necessary to conduct the court's business.
- ➤ [Court] personnel shall revise the terms and use policies that permit access to their case management systems or any other database that contains non-criminal history information as follows:

  All users of the court's case management systems or any other database that contains non-criminal history information shall agree, as a condition to being provided access to the systems and databases, that they shall not access or use any information contained within these databases for immigration enforcement purposes, except that users are not restricted in the use of criminal history information and are not restricted in the use of information regarding a person's immigration or citizenship status pursuant to Sections 1373 and 1644 of title 8 of the United States Code.

Special Project Team

Executive Office of Attorney General Xavier Becerra

Daniel Costa	Special Assistant to the Attorney General
Kelli Evans	Special Assistant to the Attorney General
Melanie Fontes Rainer	Special Assistant to the Attorney General
Eleanor Blume	Special Assistant to the Attorney General
Laura Stuber	Policy Director
Liz Saldivar	Director, External Affairs
Brenda Vargas	External Affairs Associate

Appeals, Writs & Trials Section

Doris Calandra	Deputy Attorney General
Clara Levers	Deputy Attorney General

Bureau of Children's Justice

Sarah E. Belton	Deputy Attorney General
Christine Chuang	Deputy Attorney General
Rebekah Fretz	Deputy Attorney General
Christina M. Riehl	Deputy Attorney General
Lee Sherman	Deputy Attorney General

Civil Rights Enforcement Section

Michael L. Newman	Senior Assistant Attorney General
Nancy A. Beninati	Supervising Deputy Attorney General
Cherokee DM Melton	Deputy Attorney General
Catherine Z. Ysrael	Deputy Attorney General
Kelsey Geiser	Associate Governmental Program Analyst
Madeleine Salah	Legal Extern
Faye Hipsman	Legal Extern

Correctional Law Section

Martine D'Agostino	Deputy Attorney General

Government Law Section

Thomas S. Patterson	Senior Assistant Attorney General
Stepan A. Haytayan	Supervising Deputy Attorney General
Anna T. Ferrari	Deputy Attorney General
Jonathan M. Eisenberg	Deputy Attorney General
Anthony P. O'Brien	Deputy Attorney General
Emily Gargiulo	Associate Governmental Program Analyst

Health, Education & Welfare Section

Hamsa Murthy	Deputy Attorney General

Healthcare Strike Force

Brenda Ayon Verduzco	Deputy Attorney General
Karli Eisenberg	Deputy Attorney General
Anna Rich	Deputy Attorney General

Office of the Solicitor General

Sam Siegel	Deputy Solicitor General

Underground Economy Unit

Marisa Hernández-Stern	Deputy Attorney General
Michele Wong	Deputy Attorney General

The analysis, recommendations, and policies expressed in this guide are based on research and input from the staff of the Attorney General's Special Project Team and office, and should not be considered as representing the views of any agency or organization that contributed to the report.

Endnotes

[1] Gov. Code, § 7284.8, subd. (a). SB 54 defines "immigration enforcement" to include "any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person's presence in, entry, or reentry to, or employment in, the United States." (Gov. Code, § 7284.4, subd. (f).) This guide adopts that definition.

[2] Gov. Code, § 7284.8, subd. (a).

[3] For example, Assembly Bill (AB) No. 450 (2017-2018 Regular Session) prohibits an employer, or a person acting on behalf of the employer, from providing voluntary consent to an immigration enforcement agent to access, review or obtain the employer's employee records without a subpoena or judicial warrant, unless certain exceptions apply. (Gov. Code, § 7285.2, subd. (a)(1).) Public employers, including courts, should review their obligations under AB 450 and all other applicable laws to ensure that all policies and practices are consistent with state and federal law. As of the date of this publication, this provision is subject to an order by a federal district court preliminarily enjoining part of its enforcement against private employers. (See *United States v. California* (E.D. Cal. July 5, 2018) 314 F.Supp.3d 1077, 1096, 1112 [enjoining enforcement of Government Code sections 7285.1 and 7285.2 and Labor Code section 1019.2, subdivisions (a) and (b) on intergovernmental immunity grounds].)

[4] Gov. Code, § 7284.6, subd. (a)(1)(G). See also Cal. Dept. of Justice, Div. of Law Enforcement, Information Bulletin No. DLE-2018-01, *Responsibilities of Law Enforcement Agencies Under the California Values Act, California TRUST Act, and the California TRUTH Act* (Mar. 28, 2018) https://oag.ca.gov/sites/all/files/agweb/pdfs/law_enforcement/dle-18-01.pdf (as of Sept. 10, 2018), at pp. 2-3.

[5] California law enforcement agencies are prohibited from engaging or assisting in immigration enforcement, including performing the functions of an immigration officer or making or assisting in arrests based on civil immigration warrants. (Gov. Code, § 7284.6, subds. (a)(1)(E), (a)(1)(G).) Accordingly, employees of law enforcement agencies who work at courthouses are advised to review the Information Bulletin issued by the Department of Justice's Division of Law Enforcement on March 28, 2018, entitled *Responsibilities of Law Enforcement Agencies Under the California Values Act, California TRUST Act, and the California TRUTH Act,* No. DLE-2018-01, available at https://oag.ca.gov/sites/all/files/agweb/pdfs/law_enforcement/dle-18-01.pdf (as of Sept. 10, 2018).

[6] Gov. Code, § 7284.8, subd. (a).

[7] Government Code section 70301, subdivision (d) defines "court facilities" as consisting of the following:

(1) Rooms for holding superior court.

(2) The chambers of the judges of the court.

(3) Rooms for the attendants of the court, including, but not limited to, rooms for accepting and processing documents filed with the court.

(4) Heat, ventilation, air-conditioning, light, and fixtures for those rooms and chambers.

(5) Common and connecting space to permit proper and convenient use of the rooms.

(6) Rooms for secure holding of a prisoner attending court sessions, together with secure means of transferring the prisoner to the courtroom.

(7) Any other area within a building required or used for court functions.

(8) Grounds appurtenant to the building containing the rooms.

(9) Parking spaces historically made available to one or more users of court facilities.

For purposes of this guide, the term "courthouse," "court facility," and "court facilities" are used interchangeably and have the same meaning as that provided in section 70301.

[8] According to ICE internal policies, "sensitive locations" include, but are not limited to: schools (preschools, primary and secondary schools, and post-secondary schools—which include colleges,

universities, and vocational or trade schools); hospitals; churches, synagogues, mosques, or other institutions of worship; the site of a funeral, wedding or other public religious ceremony; and a site during the occurrence of a public demonstration, such as a march, rally, or parade. (Morton, U.S. Immigration and Customs Enforcement (ICE), Memorandum, *Enforcement Actions at or Focused on Sensitive Locations* (Oct. 24, 2011) https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf [as of July 18, 2018] [hereafter "Oct. 24, 2011, ICE Memorandum"].)

[9] ICE civil immigration enforcement actions inside courts include "actions against specific, targeted aliens with criminal convictions, gang members, national security or public safety threats, aliens who have been ordered removed from the United States but have failed to depart, and aliens who have re-entered the country illegally after being removed." The ICE directive states that individuals accompanying ICE targets to court appearances or serving as witnesses should not expect to be the target of enforcement actions, "absent special circumstances." (January 10, 2018, ICE Directive https://www.ice.gov/sites/default/files/documents/Document/2018/ciEnforcementActionsCourthouses.pdf [as of July 18, 2018] [hereafter "Jan. 10, 2018, ICE Directive"].)

[10] Jan. 10, 2018, ICE Directive.

[11] *Ibid*

[12] *Ibid*

[13] *See* 8 U.S.C. § 1229 (e)(2)(B); *DHS Implementation of Section 1367 Information Provisions,*

https://www.dhs.gov/sites/default/files/publications/implementation-of-section-%201367-%20information-provisions-instruction-002-02-001_0_0.pdf (as of Sept. 7, 2018), p.12.

[14] See 8 U.S.C. §§ 1229(e), 1367.

[15] Code Civ. Proc., § 128; see also *Walker v. Superior Court* (1991) 53 Cal.3d 257, 266 ("We have often recognized the "inherent powers of the court … to insure the orderly administration of justice"); *id.* at p. 267 ("it is established that the inherent powers of the courts are derived from the Constitution (art. VI, § 1 [reserving judicial power to courts])"); *Alvarado v. Superior Court* (2000) 23 Cal.4th 1121, 1150 ("A trial court … retains broad discretion to control courtroom proceedings in a manner directed toward promoting the safety of witnesses.").

[16] Cal. Rules of Court, rule 10.603(a).

[17] Evid. Code, §§ 351.2, 351.3, 351.4.

[18] Public employers, including courts, have state and federal obligations based on their status as employers that this guide does not reach. For example, AB 450 prohibits an employer, or a person acting on behalf of the employer, from providing voluntary consent to an immigration enforcement agent to access, review or obtain the employer's employee records without a subpoena or judicial warrant, unless certain exceptions apply. (Gov. Code, § 7285.2, subd. (a)(1).) Employers should ensure that all of their policies are consistent with applicable state and federal law.

[19] Gov. Code, § 7285.1.

[20] *Id.*, subd. (c).

[21] *Id.*, subd. (b).

[22] See *United States v. California, supra*, 314 F.Supp.3d at p. 1112 (enjoining enforcement of Government Code sections 7285.1 and 7285.2 on intergovernmental immunity grounds).

[23] Code Civ. Proc., § 128, subd. (a).

[24] Code Civ. Proc., § 177.

[25] Gov. Code, § 7285.1.

[26] *Doe v. Lincoln Unified School District* (2010) 188 Cal.App.4th 758, 765 ("The question for purposes of standing is not the name used by the party suing but whether the party suing is the party possessing the right sued upon").

[27] *Planned Parenthood Golden Gate v. Superior Court* (2000) 83 Cal.App.4th 347, 370.

[28] 34 U.S.C. § 12291(b)(2).

[29] The California Constitution expressly provides that all people have the "inalienable" right to privacy. (Cal. Const., art. I, § 1.) Where the compelled disclosure of witnesses' identities implicates the right to privacy, courts must balance the privacy interest against the state interest compelling disclosure. (*Williams v. Superior Court* (2017) 3 Cal.5th 531, 552.) In criminal matters, "the trial court clearly [has] discretion to permit the prosecution to withhold pretrial disclosure of the witnesses' names and photographs" upon a showing of good cause. (*Alvarado v. Superior Court* (2000) 23 Cal.4th 1121, 1136.) But "should the witnesses provide … crucial testimony at trial, the confrontation clause would prohibit the prosecution from relying upon this testimony while refusing to disclose the identities of the witnesses under circumstances in which such nondisclosure would significantly impair the defense's ability to investigate or effectively cross-examine them." (*Id.* at p. 1147.)

[30] Cal. Rules of Court, rule 3.670.

[31] Pen. Code, § 977.

[32] To ensure the privacy of the individual being arrested, the court should avoid collecting that individual's identity when recording the immigration enforcement activity.

[33] Oct. 24, 2011, ICE Memorandum.

[34] *Ibid.*

[35] *Ibid.*

[36] *T.N.G. v. Superior Court* (1971) 4 Cal.3d 767, 775.

[37] *San Bernardino Cty. Dep't of Pub. Soc. Servs. v. Superior Court* (1991) 232 Cal.App.3d 188, 200.

[38] Welf. & Inst. Code, §§ 345, 346, 675, 676.

[39] Major Cities Chiefs, M.C.C. *Immigration Committee Recommendations for Enforcement of Immigration Laws by Local Police Agencies,* (June 2016) https://www.majorcitieschiefs.com/pdf/MCC_Position_Statement.pdf (as of Sept. 7, 2018).

[40] *Ibid.*

[41] VAWA was passed as part of the Violent Crime and Law Enforcement Act of 1994, Pub. L. No. 103-322, §§ 40701-40703, 108 Stat. 1796 (Sept. 13, 1994). Since the original enactment, the VAWA immigration provisions have undergone several amendments and are codified principally at section 204 (a) of the Immigration and Naturalization Act (8 U.S.C. § 1154(a)).

[42] 8 U.S.C. § 1367(b)(2).

[43] 8 U.S.C. § 1229(e); *DHS Implementation of Section 1367 Information Provisions*, https://www.dhs.gov/sites/default/files/publications/implementation-of-section-%201367-%20information-provisions-instruction-002-02-001_0_0.pdf (as of Sept. 7, 2018) p. 12.

[44] 8 U.S.C. § 1229(e)(2)(B).

[45] 8 U.S.C. § 1229(e)(2)(A).

[46] Pen. Code, § 679.10.

[47] *Ibid.*

[48] *Id.*, subd. (f).

[49] *Id.*, subd. (j).

[50] *Id.*, subd. (g).

[51] *Id.*, subd. (h).

[52] *Id.*, subd. (k).

[53] See *United States v. Camou* (9th Cir. 2014) 773 F.3d 932, 940 ("We have defined exigent circumstances as 'those circumstances that would cause a reasonable person to believe that entry [or search] ... was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts'").

[54] Gov. Code, § 7285.1.

[55] *Arizona v. United States* (2012) 567 U.S. 387,407.

[56] See *Sander v. State Bar of California* (2013) 58 Cal.4th 300, 318, quoting *Estate of Hearst* (1977) 67 Cal.App.3d 777, 782 ("Absent strong countervailing reasons, the public has a legitimate interest and right of general access to court records...."). See generally, Cal. Rules of Court, rule 10.500 (public access to judicial administrative records); Judicial Council of California, Trial Court Records Manual (revised Jan. 1, 2018) http://www.courts.ca.gov/documents/trial-court-records-manual.pdf (as of Sept. 7, 2018).

[57] *Sander v. State Bar of California, supra*, 58 Cal.4th at pp. 318-323; *Copley Press, Inc. v. Superior Court* (1992) 6 Cal.App.4th 106, 111; U.S. Const., 1st Amend.; Cal. Const., art. I, § 2, subd. (a).

[58] *Sander v. State Bar of California, supra*, 58 Cal.4th at pp. 318–319, quoting *Copley Press, Inc. v. Superior Court, supra,* 6 Cal.App.4th at pp. 113-115.

[59] *Sander v. State Bar of California, supra*, 58 Cal.4th at p. 319.

[60] Cal. Rules of Court, rule 10.500(e)(1).

[61] See generally, Judicial Council of California, *Trial Court Records Manual* (revised Jan. 1, 2018) http://www.courts.ca.gov/documents/trial-court-records-manual.pdf (as of Sept. 7, 2018), Section 10 (Public Access to Court Records), pp. 68 et seq.

[62] Gov. Code, § 7284.6, subd. (a).

[63] 8 U.S.C. § 1373(a), (b).

[64] *City of Chicago v. Sessions* (N.D. Ill. July 27, 2018) ___ F.Supp.3d ___, ___, 2018 WL 3608564, at *10; *City of Philadelphia v. Sessions* (E.D. Pa. 2018) 309 F.Supp.3d 289, 331.

[65] *United States v. California, supra,* 314 F.Supp.3d at p. 1101.

[66] See generally *id.; California v. Sessions*, Case No. 3:17-cv-485-WHO (N.D. Cal.).

[67] *United States v. California, supra,* 314 F.Supp.3d at p. 1102 (declining to interpret 8 U.S.C. § 1373 to include release dates and addresses); see also *City of Philadelphia v. Sessions, supra,* 309 F.Supp.3d at pp. 332–33; *Steinle v. City and County of San Francisco* (N.D. Cal. 2017) 230 F.Supp.3d 994, 1015–1016.

[68] Welf. & Inst. Code, § 827, subd. (a)(1).

[69] *Id.,* subd. (a)(1)(Q).

[70] *Id.,* subd. (a)(4) ("A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section").

[71] Welf. & Inst. Code, §§ 827, subd. (e), 831, subd. (e).

[72] Welf. & Inst. Code, §§ 827, subd. (a)(4), 831, subds. (c)-(d).

[73] Evid. Code, § 351.2, subd. (a). But see subdivision (b): "This section does not affect the standards of relevance, admissibility, or discovery set forth in Civil Code § 3339, Government Code § 7285, Health and Safety Code § 24000, and Labor Code § 1171.5."

[74] Evid. Code, § 351.3, subd. (b)(3); this prohibition expires on January 1, 2022. *(Id.,* subd. (c).)

[75] Evid. Code, § 351.4, subd. (b)(3); this prohibition expires on January 1, 2022. *(Id.,* subd. (c).)

Appendix A
Immigrations and Customs Enforcement "Arrest Warrant" (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 _____ (Name of Alien) on _____ (Date of Service), and the contents of this 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
Immigrations and Customs Enforcement "Removal Warrant" (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 Homela Security under the laws of the United States and by his or her direction, command you to take into custody and remo 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 Search and Seizure Warrant (Form AO 93)

AO 93 (Rev. 11/13) Search and Seizure Warrant

UNITED STATES DISTRICT COURT

for the

In the Matter of the Search of
(Briefly describe the property to be searched or identify the person by name and address)

Case No.

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 _____
(identify the person or describe the property to be searched and give its location):

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)*:

YOU ARE COMMANDED to execute this warrant on or before _____ *(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 _____.
(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: _____ _____
Judge's signature

City and state: _____ _____
Printed name and title

Appendix D
Federal Arrest Warrant (Form AO 442)

AO 442 (Rev. 11/11) Arrest Warrant

UNITED STATES DISTRICT COURT

for the

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

Return

This warrant was received on *(date)* _____ , and the person was arrested on *(date)* _____
at *(city and state)* _____ .

Date: _____
Arresting officer's signature

Printed name and title

Appendix E
Department of Homeland Security Immigration Enforcement Subpoena (Form I-138)

1. To (Name, Address, City, State, Zip Code)	DEPARTMENT OF HOMELAND SECURITY **IMMIGRATION ENFORCEMENT SUBPOENA** **to Appear and/or Produce Records** 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number	
2. In Reference To (Title of Proceeding) (File Number, if Applicable)	

By the service of this subpoena upon you, **YOU ARE HEREBY SUMMONED AND REQUIRED TO:**

(A) ☐ **APPEAR** before the U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), or U.S. Citizenship and Immigration Services (USCIS) Official named in Block 3 at the place, date, and time specified, to testify and give information relating to the matter indicated in Block 2.

(B) ☒ **PRODUCE** the records (books, papers, or other documents) indicated in Block 4, to the CBP, ICE, or USCIS Official named in Block 3 at the place, date, and time specified.

Your testimony and/or production of the indicated records is required in connection with an investigation or inquiry relating to the enforcement of U.S. immigration laws. Failure to comply with this subpoena may subject you to an order of contempt by a federal District Court, as provided by 8 U.S.C. § 1225(d)(4)(B).

3. (A) CBP, ICE or USCIS Official before whom you are required to appear Name Title Address Telephone Number	(B) Date (C) Time ☒ a.m. ☐ p.m.
4. Records required to be produced for inspection	

If you have any questions regarding this subpoena, contact the CBP, ICE, or USCIS Official identified in Block 3.

5. Authorized Official

(Signature)

(Printed Name)

(Title)

(Date)

DHS Form I-138 (6/09)

Appendix F
Federal Judicial Subpoena (Form AO 88B)

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____)
Plaintiff)
v.) Civil Action No.
_____)
Defendant)

SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To: _____

(Name of person to whom this subpoena is directed)

❒ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Place:	Date and Time:

❒ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: _____

CLERK OF COURT

OR

_____ _____
Signature of Clerk or Deputy Clerk *Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing *(name of party)* _____ _____, who issues or requests this subpoena, are:

Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

Appendix G
Notice to Appear Form (Form I-862)

U.S. Department of Homeland Security **Notice to Appear**

In removal proceedings under section 240 of the Immigration and Nationality Act

File No: _____

In the Matter of:

Respondent: _____ currently residing at:

_____ _____
(Number, street, city, state and ZIP code) (Area code and phone number)

☐ 1. You are an arriving alien.
☐ 2. You are an alien present in the United States who has not been admitted or paroled.
☐ 3. You have been admitted to the United States, but are deportable for the reasons stated below:

The Department of Homeland Security alleges that you:

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

☐ This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

☐ Section 235(b)(1) order was vacated pursuant to : ☐ 8 CFR208.30(f)(2) ☐ 8CFR235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: _____

(Complete Address of Immigration Court, Including Room Number, if any)

on _____ (Date) at _____ (Time) to show why you should not be removed from the United States based on the charge(s) set forth above.

_____
(Signature and Title of Issuing Officer)

Date: _____ _____
(City and State)

See reverse for important information

Form I-862 (Rev. 08/01/07)