# Interim Guidance on Immigration Enforcement Issues

*"When a foreigner resides among you in your land, do not mistreat them. [34] The foreigner residing among you must be treated as your native-born. Love them as yourself, for you were foreigners in Egypt. I am the Lord your God." – Leviticus 19: 33-34*

To our faithful colleagues and siblings in Christ in the Alaska Conference of The United Methodist Church, we share our gratitude for the heartfelt work you've done for generations, locally and through our United Methodist connection, to support and welcome foreigners as your neighbors in this land. We are living in unprecedented times of political upheaval regarding human rights and dignity for those whom scripture would deem the "least among us."

As you faithfully consider your relationship with immigrants in your community, we ask that you review this interim guidance on immigration enforcement issues in The United States. There are many things to consider, so please read carefully.

**This guidance is not legal advice.** It is simply information provided to your church so your church can make educated decisions and plan accordingly based on its needs and situation. This guidance is as accurate as possible as of the date it is written, but it is likely to become outdated as federal immigration policies are changing rapidly and various court challenges are pending.

*We are grateful to the Western North Carolina of the United Methodist Church for preparing the following materials.*

## Immigration Enforcement Changes for Churches

The United States Department of Homeland Security (DHS) is primarily responsible for enforcing immigration laws. Within DHS, two agencies implement certain aspects of immigration laws and department regulations: US Customs and Border Protection (CBP) and US Immigration and Customs Enforcement (ICE).

CBP has primary responsibility for border security and ports of entry in and out of the United States. This includes both the flow of people and the flow of goods and products. The agency does not engage in broad investigation or enforcement of immigration laws within the United States;

that is the primary responsibility of ICE.

You often see CBP and ICE mentioned in close proximity in media stories about immigration. The two agencies do not have the same responsibilities. ICE enforces immigration laws in the interior of the United States.

In 2011, the Obama administration enacted an enforcement policy for DHS, which designated certain places as "sensitive locations" for the purposes of immigration enforcement. "Sensitive locations" included churches, schools, and hospitals. Under that policy, ICE could not enter churches or schools for enforcement actions (i.e., arresting and detaining people) unless it was necessary to protect lives or prevent harm or injury to people. The purpose was to keep potentially volatile or violent confrontations out of confined building spaces where lots of people gathered, as well as not deterring children from attending school or deterring people from seeking medical treatment. This was not federal law. It was simply an agency policy of self-restraint adopted by DHS, which means DHS and/or a president could change it at any time.

In the last few weeks, the new administration terminated the policy. Federal law itself did not change; ICE always had statutory authority to enter churches, hospitals, etc., with valid warrants under federal statutes. But due to agency policy, they did not. That policy is now gone.

Whether the administration is engaging in fear-mongering as part of its immigration agenda or whether it seriously intends to send ICE into schools, hospitals and churches remains to be seen.

Federal statutes and case law never supported the concept of offering "sanctuary" to undocumented persons. However, the voluntary enforcement policy adopted by DHS tangentially supported it. That policy has been rescinded.

At the same time, the new administration has terminated certain provisional entry and status programs started under the Obama and Biden administrations. Valid immigration status under those programs has been revoked. In other words, people who were here legally under those programs now have no legal status. This has broadened the class of people subject to immigration enforcement, including detention and deportation.

For all the bells and whistles surrounding the highly publicized executive order purporting to revoke constitutionally guaranteed citizenship of persons born in the United States, a federal court has enjoined its enforcement, and litigation is now ongoing.

By its own terms, the executive order did not have retroactive application. It only applied to births after the date the order was issued. So, even if upheld, people already born in the US are still citizens. In other words, don't focus on this executive order for the time being. It is not part of this guidance.

# Basics of an ICE Enforcement Operation

ICE agents may wear vests or jackets that say DHS, ICE or Police. They are rarely plain clothed.

Under federal law, ICE may enter any "*public"* space to engage in enforcement activities. However, they cannot freely enter "private" spaces.

A "public" space in the context of a general business would be a parking lot, lobby, designated waiting areas and restrooms. "Private" spaces would be warehouses, manufacturing areas, offices, and similar operational areas.

**The church context is different and presents open legal questions.**

Some churches are arguing that the entire church building (or building in the context of a campus) is a private space not open to ICE. They have put signs up on their doors saying ICE is not welcome on the property and cannot enter the buildings because they are private. *The legality of this approach has not been addressed by courts*.

A more conservative approach in interpretation is that parking lots, lobbies, and narthex would be "public" areas, while the sanctuary (worship space), offices, and classrooms would be private. Areas you wish to designate as "private" should be designated with a "Private" sign and kept locked when not in use. You should have a written policy stating visitors may not enter those areas without permission. Absent a valid judicial search warrant (discussed below), they are not supposed to enter private areas without your consent.

***However,*** if there is a preschool or private school on your campus, you should treat the ***entire*** building and campus as private space(s). This is an entirely reasonable approach due to the heightened security concerns of schools. School districts in many cities and states are doing this.

Simply being in a public area does NOT give ICE the authority to stop, question, or arrest just anyone. If ICE is in a public area at your church, volunteers and employees should NOT speak to them or give them permission to do anything or go anywhere. Instead, they should refer agents to the point person who is on the property.

The point person should ask agents for identification and badges. You are making sure that they are ICE and not simply local law enforcement. Local law enforcement officers have no authority to enforce immigration laws.

The point person should determine what ICE wants. Do they have warrants to arrest certain people, or do they search warrants to search the building and/or take documents? The type of warrant matters greatly and is discussed below.

If they cannot present you with a copy of a warrant, you can tell them that they may not enter any part of the property, that they are there without legal authority, and that you do not consent to any searches or entry. It is possible that they ignore you and enter anyway. Do not impede them or interfere. Simply continue to tell them they are not there legally and that you do not consent. Physically impeding their operations is a federal crime, even if they are wrongfully entering the property.

If possible, video the entire encounter. You can do that so long as you maintain a reasonable distance from agents and do not interfere with their operation. **Note:** They may threaten to arrest you for obstructing their investigation. How far you push videoing is based on your personal risk tolerance.

**Note:** No one has to talk to ICE, answer questions or produce any I.D. even if agents tell them they have to. They can refuse to answer or interact. They can also say they will not talk to ICE without a lawyer. This is perfectly fine and will be discussed below.

## Types of Warrants

The authority of ICE on your property depends on the type of warrant they have (if they have one):

- Administrative warrants are issued by DHS and are for the detention of specific people.
    - These warrants **DO NOT** authorize ICE to enter private places of your facility. Unless they are going to barge in without legal authority, they need your consent to enter a private area.
    - The warrants will say "U.S. Department of Homeland Security" at the top and be on Forms I-200 or I-205. An example of the forms is attached for your reference in **Exhibit A**.
    - These warrants are not related to criminal cases but rather related to civil removal cases.
    - These are the sorts of warrants more commonly seen in enforcement actions.

- Judicial warrants are issued by a judge in the federal judicial district you are in. These may be arrest warrants for a particular person or search warrants of the property (looking for undocumented people, generally, or for certain types of documents, computers, etc.).
    - **Agents may enter private areas with a valid judicial warrant.**
    - The federal judicial district in our conference is the U.S. District Court for Alaska.
    - The warrant must be signed by a judge.
    - The warrant will say "U.S. District Court" at the top.
    - If a federal court has issued a warrant that means it is part of a federal criminal case.
    - You must comply with a federal search warrant. But, you **do not** have to and ***should not*** answer any questions asked by agents, only direct them to locations to be searched and relevant materials sought. When they ask questions on factual issues, tell them you need to talk to your lawyer, and you decline to answer. For example, if they ask if you know of the undocumented status of person X, you can say, "I decline to answer and will talk to our lawyer".
    - An example of a judicial search warrant is attached as **Exhibit B**.

- These warrants relate to criminal cases and are far more serious in nature.
- The likelihood of a church or school being served with a criminal search warrant is probably not high during general ministry activities. However, the risk may increase in the current environment if the church is a very visible and highly active sanctuary site, especially if the church helps transport or house undocumented persons.
- While this has not happened yet, a search warrant could be served during worship services or activities specifically held for immigrant communities.

You should ask agents for their warrants so you can review them. You should ask them for copies and ask them if it is ok for you to have someone make a copy for your records. At the least, they should show you the warrant. Understand the type of warrant, who or what it is for, whether there is a deadline on the execution of the warrant or a time limit on their allowed entry (if a judicial warrant), and if judicial, which district court issued it, the signing judge, and also note the name of the US attorney assigned to the case.

If agents attempt to enter private areas without a judicial warrant, you cannot stop them. But you should state, "This is a private area. You cannot enter without a judicial warrant. Show me your judicial warrant. You do not have our consent to enter this space. Please leave immediately."

If agents have administrative warrants for particular people (whether parishioners or students at a school), you do not have to say if the person is present on the property. You do not have to take agents to the person if they are on the property. Do not help agents sort people by their status or country of origin.

Employees, volunteers, parishioners, and students do not have to tell agents anything. They can stay silent or ask for an attorney, and they do not have to present any documents or identification to agents.

If agents are executing a judicial search warrant, you should go with them into private areas if allowed so you can see what they are taking. If they are taking computers or documents, ask if you can make a copy of computer files or documents that you need for operational purposes. Make good notes on what is taken.

If they attempt to enter clergy offices or take clergy files, tell them you object, that those materials and spaces are subject to clergy/parishioner privileges and protected by the First Amendment and other federal laws. Do this, especially if videoing the encounter.

If the warrant is stale (executed after a deadline) or if agents go beyond the warrant's scope, point that out to them and protest their presence and seizure of materials.

If anyone is arrested, ask the agents where the people are being taken so you can tell their families.

Make detailed notes on the entire encounter.

# Response Plans

You should have plans for the following phases:

- The initial encounter
    - Have a point person on campus at all times. This is the only person that should interact with agents or talk with them.
    - Have a notification plan so personnel are notified agents are onsite. Tell agents that you need to let employees, volunteers, etc. know they are onsite for security reasons, particularly if there is a school onsite. The flipside is that you do not want to be accused of destroying documents, files, etc. or warning people so they can hide or flee. If you think that anyone would do the foregoing, you would **NOT** want to notify personnel and open yourself or anyone to those charges or accusations. You know your people, so act accordingly.
    - If possible, segregate employee files and I-9 forms into a single location.
    - Know what contact databases you have for members, parishioners and students and how to access those databases.
    - Keep a list of immigration attorneys and organizations that you can give to those affected
    - Make sure staff and volunteers understand the plan and can comply with it. You are not obstructing enforcement. You are simply exercising the legal rights of yourself (personally) and your church (yes, your church has a wide range of legal rights that it can invoke and protect).

- Have an information intake process to execute immediately after the encounter
    - All persons who witnessed the encounter should provide their narrative of what they witnessed.
    - If any people were detained or arrested, get lists of the people and where they were taken if known so family can be notified.
    - Immediately inventory documents, computers, and files that were subject to a search or seizure.
    - If there is security camera footage of events, secure the footage to ensure it is not erased.

- Have a crisis communication plan ready to execute.
    - The plan should account for a variety of scenarios
    - If it was a warrantless raid, it is fine to emphasize that
    - If children were taken, it is fine to emphasize that

- Have a spokesperson to talk with the media. They need to be experienced.
- Messaging should be correct and consistent
- Consider a social media point person to coordinate with the media spokesperson
- If you have a large immigrant ministry, staff, or private school, consider hiring a crisis firm on retainer. Plot a communications plan with them now.

- Think about private security after the operation.
    - Will there be threats from outside right-wing groups?
    - What precautions are reasonable under the circumstances?

## What we don't know yet

One way to view the current environment is to determine what legal tools the federal government could actually use against those providing ministry aid to undocumented persons. These are things that have not happened but could, in theory, happen. We can try to plan for what might happen.

- Federal law prohibits the transportation or harboring of undocumented persons or those with revoked status. Federal courts are split on whether or not simply employing undocumented persons is "harboring". It is silent on whether providing religious-based "sanctuary" is harboring within federal criminal statutes. It is possible that the federal government may charge sanctuary leaders with criminal violations. The rhetoric has seemed to indicate the administration is looking seriously at this as a tool.

- The federal government can seize real property if it is used in criminal activity. This is normally a civil forfeiture process, and it is often used in drug cases. Whether or not that will fit into the new administration's enforcement scheme is not clear, but it is a possible tool for them to use against sanctuary sites.

- Will the IRS seek to revoke the tax-exempt status of non-profit organizations assisting undocumented persons in sanctuary-type scenarios or where they knowingly provide other assistance like employment assistance, transportation, medical care, etc.? It is possible. There are those high up in the current administration who have publicly advocated revoking tax-exempt status for non-profits that they do not like or that are not cooperative with the administration.

- Will ICE comply with warrant requirements or just conduct operations without warrants and let a court sort it out? This is very possible. It may be probable in the context of businesses or private residences. Whether they would do that with a church or school is not clear. There is no track record yet of what operations at a school or church may look like.

# Exhibit A

**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**

This warrant is directed at federal immigration officers, not local law enforcement. Federal regulations only provide authority to ICE agents to execute an immigration warrant.

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

Since a charging document is also prepared and issued by ICE agents, its existence does not show that any neutral party has found probable cause that the person is subject to deportation.

☐ 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.

None of these checkboxes indicate that there is probable cause of a crime for which a person could be arrested by local law enforcement officers.

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

No judge or neutral magistrate is involved in the issuance of an ICE warrant. This warrant does not meet the basic constitutional standard for being a warrant, which is review by a judge.

_____
(Signature of Authorized Immigration Off

_____
(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)

DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement

**WARRANT OF REMOVAL/DEPORTATION**

This is a warrant for civil immigration violations, not a crime. It is generally not enforceable by local law enforcement officers.

**File No:** _____

**Date:** _____

**To any immigration officer of the United States Department of Homeland Security:**

This warrant is directed at federal immigration officers, not local law enforcement. Federal regulations only provide authority to ICE agents to execute an immigration warrant.

_____
(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

Many removal orders are issued by ICE or CBP agents without a hearing before a judge. These include expedited removal orders, administrative removal orders, and stipulated removal orders.

and pursuant to the following provisions of the Immigration and Nationality Act:

Although the underlying removal order may have been issued by a judge, this warrant for a new arrest still lacks any finding of probable cause by a neutral magistrate, which is the minimum standard for a constitutionally sufficient warrant.

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:

This warrant directs ICE or CBP to arrest and deport the person without any further hearing or judicial review.



_____
(Signature of immigration officer)

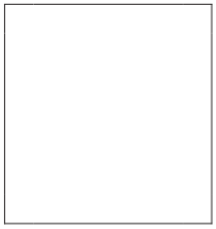
_____
(Title of immigration officer)

_____
(Date and office location)

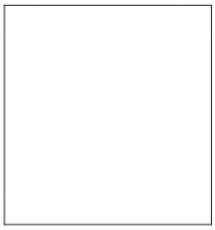
To be completed by immigration officer executing the warrant: Name of alien being removed:

_____

**Port, date, and manner of removal:** _____



Photograph of alien removed



Right index fingerprint of alien removed

_____
(Signature of alien being fingerprinted)

_____
(Signature and title of immigration officer taking print)

There is no place on this form to indicate that ICE/CBP checked whether the person expressed a fear of return, indicating that they might be eligible for asylum or withholding of removal.

Departure witnessed by: _____
(Signature and title of immigration officer)

If actual departure is not witnessed, fully identify source or means of verification of departure:

_____

_____

_____

_____

If self-removal (self-deportation), pursuant to 8 CFR 241.7, check here. ☐

Self-removal means that the person leaves the country under an order of removal or voluntary departure, but they are not detained in the process; they arrange their own departure to a destination of their choice.

Departure Verified by: _____
(Signature and title of immigration officer)

# Exhibit B



AO 106A (08/18) Application for a Warrant by Telephone or Other Reliable Electronic Means

## UNITED STATES DISTRICT COURT

for the

Central District of California

FILED
CLERK, U.S. DISTRICT COURT
Jan. 23, 2023
CENTRAL DISTRICT OF CALIFORNIA
BY: IV DEPUTY

In the Matter of the Search of:

Computer servers assigned the IP addresses [redacted] (the "Target Servers"), stored at premises located at [redacted] California [redacted] as described more fully in Attachment A

Case No. 2:23-mj-281

**APPLICATION FOR A WARRANT BY TELEPHONE OR OTHER RELIABLE ELECTRONIC MEANS**

I, a federal law enforcement officer or an attorney for the government, request a search warrant and state under penalty of perjury that I have reason to believe that on the following person or property:

*See Attachment A*

located in the Central District of California, there is now concealed:

*See Attachment B*

The basis for the search under Fed. R. Crim. P. 41(c) is:

- ☒ evidence of a crime;
- ☒ contraband, fruits of crime, or other items illegally possessed;
- ☒ property designed for use, intended for use, or used in committing a crime;
- ☐ a person to be arrested or a person who is unlawfully restrained.

The search is related to a violation of:

| *Code Section* | *Offense Description* |
|---|---|
| 18 U.S.C. § 1029 | Access device fraud |
| 18 U.S.C. § 1030 | Computer fraud |
| 18 U.S.C. §§ 371, 1029, 1030 | Conspiracy |

The application is based on these facts:

*See attached Affidavit*

☒ Continued on the attached sheet.

☐ Delayed notice of _____ days (*give exact ending date if more than 30 days*: _____) is requested under 18 U.S.C. § 3103a, the basis of which is set forth on the attached sheet.

/s/
*Applicant's signature*

SA Timothy Callinan, FBI
*Printed name and title*

Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1 by telephone.

Date: January 23, 2023

Patricia Donahue
*Judge's signature*

City and state: Los Angeles, CA

Magistrate Judge Patricia Donahue
*Printed name and title*