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MEMORANDUM

TO: Carmen Chu, City Administrator

FROM: Karun Tilak *KT*
Jana Clark *JC*
Deputy City Attorneys

CC: Jennifer Johnston, Deputy City Administrator
Jorge Rivas, Executive Director, Office of Civic Engagement & Immigrant Affairs

DATE: January 16, 2025

RE: Limits on U.S. Immigration and Customs Enforcement Search Authority

In this memorandum, we provide written public guidance regarding legal limits on the authority of U.S. Immigration and Customs Enforcement (ICE) and other federal immigration enforcement agencies to request information or conduct searches in San Francisco, including on City property. ICE agents are most frequently responsible for federal immigration law enforcement, but other federal agencies may also attempt to enforce immigration laws. The guidance in this memorandum refers only to ICE but applies as well as to any other federal agencies attempting to enforce immigration laws.

City employees should immediately notify appropriate department staff designated by their department (e.g., a supervisor) if ICE agents contact employees while they are performing their official duties, or if employees become aware that ICE agents are seeking to access City records or to come onto City property. Employees or their supervisors should also immediately notify the liaison for their department in the City Attorney's Office. Individuals and organizations that receive City funding but are not part of City government should ensure that they comply with their agreements with the City, and should rely on their own counsel for legal advice.

Under the City's longstanding Sanctuary policies, codified in Administrative Code Chapters 12 H and 12 I, City agencies and employees are generally prohibited from using City funds or resources to assist ICE in enforcing federal immigration laws. There are very limited exceptions to this general prohibition. These City policies mean that City employees generally cannot participate in investigations, surveillance, and arrests conducted by ICE to enforce civil immigration laws, cannot share an individual's personal information (e.g., home or work contact information or emergency contacts) with ICE, and cannot collect immigration status information or condition benefits on immigration status except where otherwise required by law. But, as required by federal law, City employees are not prohibited from sharing information about an individual's immigration status with federal immigration officials.

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The purpose of these policies is to ensure that all residents trust City government, cooperate with City institutions, and participate in City programs that promote the public health, safety, and welfare. For example, the City needs crime victims and witnesses to cooperate with the Police Department, to make San Francisco's streets safe. The City needs parents to send their children to school, to keep San Francisco's economy strong. And the City needs people to seek medical care, to prevent the spread of disease. For these reasons, and others like them, the City needs all City residents to know they can access City services without fear of federal immigration consequences.

The City's Sanctuary policies do not mean that the City can prevent federal immigration enforcement from happening in San Francisco. The City's Sanctuary policies also do not prohibit individual employees from choosing to share immigration status information with the federal government, and nothing in this memorandum should be interpreted to suggest otherwise. Instead, the Sanctuary policies provide specific restrictions on how City agencies and employees may interact with federal immigration authorities. Consistent with those policies and federal law, which does not allow the federal government to coerce local governments into performing immigration enforcement, we offer this guidance about City employees' interaction with ICE agents on City property.

- **Whenever you encounter ICE agents:**
 - Except in the limited circumstances below where ICE agents have a valid subpoena or a warrant issued by a federal judge or federal magistrate, City employees are not required to cooperate with the agents.
 - City employees are not required to show ICE agents personal identification of any kind, including documents that prove citizenship or immigration status.
 - City employees are not required to answer ICE agents' questions.
 - City employees are not required to speak with ICE agents at all.
 - City employees may tell ICE agents that they choose not to speak with them or direct them to a supervisor, and then say nothing else.
 - As previously mentioned, City employees should immediately notify their supervisor if ICE agents contact employees while they are performing their official duties, or if employees become aware that ICE agents are seeking access to City records or other City property. Employees or their supervisors should also immediately call the liaison for their department in the City Attorney's Office.

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- **If ICE agents have no warrant:**
 - ICE agents may ask for permission to enter a non-public area or conduct some other kind of search, even if they do not have a warrant giving them the right to do so.
 - No federal law requires City employees to admit ICE agents into non-public areas for any purpose, including to arrest someone or conduct a search, without a warrant.
 - City employees should tell ICE that they cannot consent to any search of City property without those employees first separately consulting the department liaison in the City Attorney's Office.
 - City employees do not need to help ICE agents find the person they are looking for or give them any information.
- **If ICE agents have a document they call a warrant:**
 - ICE agents may present a piece of paper and say that they have a warrant. But ICE often uses the word "warrant" to refer to different kinds of legal documents.
 - Sometimes ICE uses warrants issued by federal judges or federal magistrates.
 - Sometimes ICE uses warrants issued by administrative officials.
 - Each kind of warrant has different legal consequences. See below for additional guidance on how to determine the type of warrant at issue and the appropriate responses. Examples of judicial and administrative warrants are included in Attachments A and B.
 - City employees presented with a warrant during the course of their official duties should immediately notify their supervisors and the department's liaison in the City Attorney's Office.
 - ICE agents may also present documents called "subpoenas" and "notices to appear." See below for additional guidance on these documents. Example subpoenas and notices to appear are included in Attachments C and D.
- **Was the warrant issued by a federal judge, or was it issued by an administrative official?**
 - Was the warrant issued by a "District Judge" or "Magistrate Judge" in a court called a "U.S. District Court"? If so, the warrant was issued by a federal judge. Please see Attachment A for examples of judicial warrants.

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- Was the warrant issued by anyone *other than* a “District Judge” or “Magistrate Judge” in an institution called anything *other than* a “U.S. District Court”? If so, the warrant is an “administrative warrant” issued by an administrative official. For example, administrative warrants may be issued by the Department of Homeland Security, an immigration judge, or immigration officer. “Immigration judges” and “administrative law judges” are NOT federal judges. They are administrative officials. Please see Attachment B for examples of administrative warrants.
- Whenever possible, City employees should consult their department’s liaison in the City Attorney’s Office in advance to determine whether a warrant was issued by a federal judge or an administrative official.
- **If ICE agents have a warrant issued by an administrative official:**
 - ICE typically uses this kind of warrant to arrest the specific person named in the warrant.
 - An administrative official’s arrest warrant does not allow ICE agents to enter any area that they could not have otherwise entered.
 - An administrative official’s arrest warrant does not allow ICE agents to search anything, including City records, that they could not have otherwise searched.
 - As with the situation where ICE has no warrant (described above), no federal law requires City employees to admit ICE agents into non-public areas for any purpose, including to arrest someone or conduct a search, based only on an administrative warrant.
 - If ICE agents are looking for a particular person, City employees do not need to tell ICE agents anything about the person they are looking for.
 - City employees do not need to help ICE agents find the person they are looking for.
 - City employees may inform ICE agents that they will not give them any information.
 - City employees may tell ICE agents that they do not consent to the agents’ presence in non-public areas of City property, and may ask ICE agents to leave non-public areas.
- **If ICE agents have a warrant issued by a federal judge:**
 - ICE typically uses this kind of warrant to search property, although they may also obtain judicial warrants to arrest individuals.

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- A valid judicial search warrant allows ICE agents to conduct any search authorized by the warrant. A valid judicial arrest warrant allows ICE agents to arrest the person named.
- City employees and officials should comply with the warrant.
- If the warrant is invalid, or there are other problems with the search, it may be possible for the City to challenge the search later in court or through other appropriate processes.
- **If ICE agents have a document called a subpoena:**
 - A subpoena is a document that requests the City or a City department or employee to produce documents or other evidence. ICE has the power to issue subpoenas. Please see Attachment C for example subpoenas.
 - City employees do not need to comply with an ICE subpoena right then, on the spot.
 - City employees cannot be punished for refusing to comply with an ICE subpoena until after the City has had the opportunity to challenge it in court.
- **If ICE agents try to serve a subpoena on the City:**
 - Most City employees are not authorized to accept subpoenas issued to the City and County of San Francisco, or to decide whether to comply with those subpoenas.
 - City employees presented with subpoenas should immediately call their supervisor and their department's liaison in the City Attorney's Office.
- **If ICE agents have a document called a Notice to Appear ("NTA")**
 - A notice to appear is a charging document issued by ICE, Customs and Border Patrol (CBP), or the United States Customs and Immigration Service (USCIS) seeking to commence formal removal proceedings against an individual before an immigration court. Please see Attachment D for an example NTA.
 - An NTA does not allow ICE agents to enter any area that they could not have otherwise entered.
 - An NTA does not allow ICE agents to search anything, including, but not limited to, City records, that they could not have otherwise searched.
 - No federal law requires City employees to admit ICE agents into non-public areas for any purpose, including to arrest someone or conduct a search, based only on an NTA.

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- City employees do not need to tell ICE agents anything about the person they are looking for.
- City employees do not need to help ICE agents find the person they are looking for.
- City employees may inform ICE agents that they will not give them any information.
- **If ICE agents do not cooperate with the requests of a City employee:**
 - If ICE agents continue to demand access to non-public areas or records even where City employees are not required to provide access as outlined above, please do not physically interfere with the agents, even if the agents appear to be acting without consent or appear to be exceeding the purported authority given by a warrant or other document. City employees may inform the ICE agent that “I do not consent. But because I have no other choice at this time, I will not interfere with your order.” They must immediately notify appropriate department staff and the department liaison in the City Attorney’s Office. They must also carefully document the agents’ actions while they are at the facility (if safe to do so), or as soon as possible after the agents leave.

Please contact your department’s liaison in the City Attorney’s Office if you have any questions about the above guidance.

ATTACHMENT A
Example Judicial Warrants

AO 95 (Rev. 11/93) 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 establishing 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 90) until, the facts justifying, the later specific date of _____

Date and time issued: _____

Judge's signature

City and state: _____

Printed name and title

SD 912 (Rev. 11/01) Arrest Warrant

UNITED STATES DISTRICT COURT

for the

United States of America

v.

)
)
)
)
)
)

Case No. _____

Deputy

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:

SAMPLE

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

ATTACHMENT B
Example Administrative Warrants

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

File No. _____

Date: _____

To: Any immigration officer authorized pursuant to sections 236 and 237 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
- statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

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

(Signature of Authorized Immigration Officer)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

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

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

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

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

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, acting with the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by her direction, command you to take into custody and remove from the United States the above-named alien pursuant to law, at the expense of:

(Signature of immigration officer)

(Title of immigration officer)

(Date and office location)

ATTACHMENT C Example Subpoenas

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	(B) Date
Name	(C) Time <input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m.
Title	
Address	
Telephone Number	

4. Records required to be produced (describe)



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)

AO 88B (Rev. 12/17) 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. Defendant Civil Action No.

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(g)(3).

ATTACHMENT D
Example Notice to Appear

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 CFR 208.30(f)(2) 8 CFR 235.3(b)(5)(iv)

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

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

Date: _____

See reverse for important information

Form I-862 (Rev. 03/01/07)

QUICK GUIDE FOR INTERACTIONS WITH ICE AGENTS

The following quick guide addresses how to respond if you encounter ICE during work or on City property. For additional guidance please consult the January 16, 2025 Memo from Karun Tilak and Jana Clark to Carmen Chu entitled "Limits on U.S. Immigration and Customs Enforcement Search Authority." If you have any questions, please call your supervisor or the department liaison at the City Attorney's Office.

- 1. Immediately notify a supervisor and the liaison at the City Attorney's Office.**
- 2. Ask if ICE has a warrant**
 - No warrant: You are not required to provide ICE access to non-public areas to arrest or search. You are not required to give ICE any information. You may ask ICE to leave.
 - If ICE presents a warrant: Go to Step 3.
 - If ICE presents a subpoena or Notice to Appear ("NTA"): Go to Step 4.
- 3. If ICE shows you a warrant:**
 - Is it a judicial warrant?
 - Issued by "U.S. District Judge" or "U.S. Magistrate Judge" from "U.S. District Court."
 - You are required to comply with a judicial warrant and must allow ICE to search.
 - Is it an administrative warrant?
 - Issued by "Department of Homeland Security," "Immigration Judge," or "Immigration Officer."
 - You are not required to provide access to non-public areas to arrest or search. You are not required to give ICE any information. You may ask ICE to leave.
- 4. If ICE shows you a subpoena or NTA:**
 - ICE Subpoenas
 - This is a document requesting that the City turn over documents or evidence.
 - You do not need to provide documents on the spot and are not required to give ICE consent to search.
 - Provide the subpoena to your supervisor and the City Attorney's Office department liaison.
 - Notice to Appear ("NTA")
 - This is a document notifying a person of removal proceedings.
 - You are not required to provide access to non-public areas to arrest or search. You are not required to give ICE any information. You may ask ICE to leave.
- 5. If ICE demands access after you tell them you do not consent:**
 - Do not physically interfere with ICE.
 - You may say: "I do not consent. But because I have no other choice at this time, I will not interfere with your order."
 - Document ICE's actions if safe to do so.

