



ICE At The Schoolhouse Gate

Insights

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Over the past year, issues regarding immigration have consumed a great part of our nation's attention. The U.S. Immigration and Customs Enforcement Agency (ICE), created in 2003, serves as the primary investigative agency of the U.S. Department of Homeland Security (DHS). ICE is responsible for enforcing our country's immigration laws and its agents are the ones who arrest and remove illegal aliens, fugitives, and persons who illegally crossed our borders. Currently, ICE has 400 offices and more than 20,000 law enforcement and support personnel.

Some Statistics For Context

According to DHS reports, as of January 1, 2015, an estimated 12 million aliens resided in the United States. The 2016 Office of Immigration Statistics annual report (OIS 2016 annual report) noted that 15 percent more aliens were apprehended in 2016 than in 2015, mostly attributable to persons entering from the Northern Triangle of Central America (i.e. El Salvador, Guatemala, and Honduras).

According to a DHS Alien Incarceration Report for Fiscal Year 2017, Quarter 4, a total of 58,766 known or suspected aliens were in federal custody, 37,557 who have been confirmed as being in the country illegally. Of these, only a small percentage were attributed to ICE investigations. The report noted an increase in removal orders from 44 percent to 51 percent between 2017 Q3 and 2017 Q4.

How Does ICE Operate?

ICE's Enforcement and Removal Operations (ERO) is the specific section responsible for identifying and arresting illegal aliens. While primary targets are those aliens who present a danger to national security or a risk to public safety, the ERO is technically charged with removal of all illegal aliens necessary to properly enforce our immigration laws. While ICE/ERO arrest data for 2017 to present is not yet available, according to the OIS 2016 annual report, these arrests have been in a continuing downward trend since 2010.

Generally, ICE identifies potential targets by monitoring arrests and incarcerations by federal, state, and local law enforcement. ICE then evaluates each person and circumstance to develop an appropriate approach to detain these individuals for custody determinations. These determinations consider public safety and resource prioritization. Ultimately, ICE utilizes detention, release on bond or the alien's own recognizance, or supervised alternatives. The custody determination by ICE remains in place during any removal proceeding, which includes a hearing before an immigration judge.

Understanding ICE’s “Sensitive Locations” Policy

In 2011, the Director of ICE issued what is known as the ICE Sensitive Locations Policy (SL Policy), which remains in effect today. Under this policy, ICE may not carry out enforcement actions (e.g. interviews, searches, surveillance, raids, or arrests) at “sensitive locations” unless exigent circumstances exist. “Sensitive locations” include schools, medical treatment facilities, places of worship, religious or civil observances, or public demonstrations. “School” is defined to include licensed daycares, pre-schools, early learning programs, primary and secondary schools, colleges and universities, and school bus stops during periods when school children are present (provided these stops are “known” to the ICE officer).

Is ICE Prohibited From Coming Onto School Property?

While the ICE SL Policy weighs against carrying out enforcement actions on school property, it recognizes exigent circumstances may exist that require ICE to effectuate arrests or other action at a school. For example, if criminal activity is in process and the perpetrator runs onto school property, then ICE can follow and make the arrest. This also applies in situations involving national security, terrorism, imminent risk of death or violence, imminent danger to the public, or imminent risk of destruction of evidence.

In addition, an ICE officer may obtain prior approval to carry out an enforcement action at a school on a case-by-case basis. ICE has full discretion over how and when to carry out its enforcement actions and balances the public interest when implementing its SL Policy.

Can ICE Enter Schools For Any Other Reason?

ICE officers may obtain records, documents, and other items from school officials, serve subpoenas, conduct Student and Exchange Visitor Program compliance and certification visits, participate in school functions or community meetings, and be present to guard detainees entering school property.

What Should I Do If An ICE Agent Comes To My Building?

It is important to keep in mind that ICE would not be in your building unless it determined that the SL Policy did not apply OR that an exception to the policy applied. This is important because falling outside the policy means there is a higher likelihood that a threat to your school may exist. So, first and foremost, ask the ICE officer/agent why they are there and if there is an imminent threat to the school. If the answer is yes, ask what they need to do and figure out which of your internal protocols may apply (e.g. school evacuation policy). Make sure to cooperate with ICE and to also reach out to your attorney to guide you through the process, provided time and circumstance allows.

That said, if the ICE officer/agent asks to interview a student or staff member, ask for a moment to consult with the school’s legal counsel. Ultimately, any ICE interview should be handled as any other interview by law enforcement would be conducted, in accordance with school policy and procedures.

If ICE entered the building under its SL Policy, then ICE is likely there to obtain records, documents, or other items. Make sure to ask the agent for any paperwork regarding the visit (i.e. notice or subpoena). Take a moment to review the documents and reach out to your attorney for counsel on how to proceed. It is important to remember that, if your school is a public school or receives federal financial assistances, requirements of The Family Educational Rights and Privacy Act (FERPA) will apply to ICE. Consequently, student education records should not be released unless a FERPA exception applies (e.g. court order or lawfully issued subpoena). Remember, if the school is required to hand over student education records, FERPA still requires prior notice to the parent/guardian or student if over 18 years of age.

If your school is a private school that does not receive federal financial assistance, your school will still have privacy obligations for records of minors under state law. Therefore, you should ensure that you have received a lawfully issued subpoena, court order, or consent to release student records.

If a school official believes an ICE officer or agent violated the SL Policy, a complaint may be made with the ICE/ERO through the Detention Reporting and Information Line at 1-888-351-4024 or by email at ero.info@ice.dhs.gov or ice.civil.liberties@ice.dhs.gov. We recommend any school official with such concern work with the school's attorney before filing a complaint.

If ICE Arrives To Execute An Arrest, What Should We Do?

ICE cannot make an arrest unless the officer/agent has an arrest warrant. There are two types of arrest warrants: administrative warrant and criminal warrant. Make sure to make a photocopy of the warrant the ICE officer/agent presents to you.

Any arrest under an administrative warrant generally occurs in a place where the individual has no reasonable expectation of privacy. A criminal warrant authorizes arrest anywhere, even in a sensitive location.

Regardless of the type of warrant, school officials should try to work with the ICE officer/agent to minimize any interruption to the school's operations and to ensure safety. The school would have a good argument under an administrative warrant that a person has a reasonable expectation of privacy at a school, particularly given ICE's own SL Policy, and to request that the ICE officer/agent handle the matter off of school grounds. It will be harder to argue the point under a criminal warrant. If the ICE officer/agent insists on executing the warrant at the school, try to coordinate on how the arrest will be made and accompany the ICE officer/agent at all times.

If A Parent/Guardian Of A Student Is Arrested, What Should We Do?

The school should contact the local child and family service agency having jurisdiction over the school to report the situation. Generally, a case worker will be promptly dispatched to the school to meet with the student. Make sure to have the student remain in the school until the case worker arrives. If school is still in session, make sure to have eyes on the student as these children may present a higher flight risk. Follow up with the case worker on whether the student will return to

present a higher flight risk. Follow up with the case worker on whether the student will return to school the following day or how the matter is being handled so the school can determine its obligations moving forward.

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