

Does ICE seek to enforce immigration law on college campuses?

Under a 2011 policy memorandum, ICE policy excludes enforcement of immigration policies at “sensitive locations,” which include schools, hospitals, and churches, among other places, unless (a) exigent circumstances exist; (b) other law enforcement actions have led officers to a sensitive location; or (c) ICE officers have prior approval from specific supervisors. Similar to DACA, the new administration can change the policies that recognize schools as sensitive locations where immigration enforcement activities are generally avoided. Thus, schools and colleges are awaiting further guidance and developments regarding immigration enforcement policies on campus.

Does the district need to comply with privacy laws in responding to subpoenas, warrants or requests for information from ICE or other federal agencies?

Yes, the district must comply with privacy laws in responding to requests for non-public information about specific individuals, such as social security numbers, medical information, and residency information. The District cannot release such information without the individual’s consent unless it is required to do so by law, pursuant to a subpoena, warrant or court order.

These protections apply to all employees and students.

With regard to students, the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232g (“FERPA”) and the California Education Code provide that education records are not subject to disclosure, unless a specific exception applies. However, even if a request seeks directory information, the institution is not required to disclose information. (34 C.F.R. § 99.31(d).) The same is true of the Education Code protections, which are structured in most ways to mirror FERPA. (See Cal. Educ. Code 76243(a) [access “may” be permitted if exception applies].)

INITIAL COMMENTS:

This is a dynamic area, with changes in Executive Orders already occurring. Some of these use broad and vague language, and how they will be interpreted and applied is still unclear. Some may also be the subject of legal challenges. Additional changes to immigration law and policy are also anticipated. So, guidance will continue to change and evolve.

What do we do if an immigration officer comes to my class room looking for one of my students?

The Immigration Nationality Act (INA) (8 U.S.C. §1324), prohibits concealing, harboring, or shielding from detection unauthorized aliens. Penalties include fines, imprisonment for one year or less, or both. Attempts to block or obstruct the lawful exercise of authority by a federal immigration officer would likely be viewed as a violation of the INA.

Whether/how the District may establish protocols that federal immigration officers must follow to enter campus buildings (e.g. warrants, subpoenas, etc.) is still being evaluated and may be affected by the Executive Order signed 1/25/17 entitled “Enhancing Public Safety in the Interior of the United States.” The Order includes language authorizing the Secretary of Homeland Security to sanction jurisdictions he designates as “sanctuary jurisdictions” and to withhold federal grants from jurisdictions that “hinder” immigration enforcement. Our legal counsel Liebert Cassidy Whitmore has already prepared a brief legal alert on the 1/25/17 Executive Order, and it is attached.

What if we are “raided” by an immigration sweep?

So long as the action of immigration officers falls within the lawful exercise of their authority to enforce the INA, efforts to impede them will likely be unlawful. Again, the District is evaluating what parameters it may lawfully set—which is difficult given the changing landscape.

Does immigration officers need a warrant to come onto campus and into my classroom?

It depends. First, many parts of community college campuses are open and public spaces. We do not think a warrant is required to enter such spaces, or just to come onto a community college campus. In contrast, a warrant would be required to search a private office, in an instance where a warrant would otherwise be required.

As to classrooms, the answer is less clear. However, we think that more likely than not a classroom at a public community college district would not be viewed as a space where there is the “reasonable expectation of privacy” necessary to require a warrant, just to enter the room to look for a person of interest. Searching the contents of a room (file drawers, desks, etc. in would require a different analysis.) Further, any assertion that a warrant is required to enter a classroom will have to be made by the District. Individual instructors do not have the authority to require a warrant for a law enforcement official to enter a classroom.

Are my students safe?

It depends on what is meant by “safe”. We think our campuses are physically safe places and that students enjoy a high degree of safety from violence on campus.

If this refers to students’ feeling “safe” from harassment or xenophobia, creating a campus culture of respect is an on-going process. We all need to work together to encourage and support empathy, curiosity and compassion through training and engaging students.

If this refers to safety of undocumented students from deportation, it is unclear to what extent the new administration will target students. The 1/25/17 Order removes the prioritization process that might have shielded students to some extent, and a new Executive Order on DACA is expected to be released shortly. We will know more after that Order is released.

What does “sanctuary” statues mean and does it protect us?

After the 1/25/17 Executive Order “sanctuary” has 2 meanings.

Its original meaning refers to a jurisdiction that does not inquire about documentation status in order to encourage undocumented individuals to report crime and seek needed services without fear. It also refers to a range of policies or practices a jurisdiction may choose to implement that are designed to provide supports to undocumented persons. It is not a legal definition and self-identifying as a “sanctuary” jurisdiction provides no legal protections for undocumented individuals.

The 1/25/17 Executive Order characterizes sanctuary jurisdictions as those that willfully refuse to comply with Section 1373 of the INA. Section 1373 provides that federal, state, and local government entities may not prohibit or restrict any government entity or official from sending (or receiving) information regarding the citizenship or immigration status of any individual to the Immigration and Naturalization Service. The Order also authorizes the Secretary to designate a jurisdiction as a “sanctuary jurisdiction,” subjecting it to sanctions for violation of Section 1373.

What is the role of our campus Police forces play in all of this?

Generally, local law enforcement agencies cannot be required to devote resources to the enforcement of federal immigration law or act as immigration officers. However, local law enforcement agencies are authorized to enter into cooperative agreements with immigration enforcement officials pursuant to section 287(g) of the INA. District police have entered into no such cooperative agreement and do not act to enforce federal immigration law.

The 1/25/17 Order commands the Secretary of Homeland Security to engage with state governors and “local officials” for the purpose of entering into agreements empowering local law enforcement agencies to act as immigration officers pursuant to section 287(g). Thus, it is possible that community college districts could be approached by the Secretary to establish cooperative agreements. It is unclear whether a refusal to enter such an agreement could subject a local agency to sanctions.

Additionally, whether or not campus police enter into cooperative agreements, it is important to flag that community colleges are required to enter into mutual aid agreements with local law enforcement agencies under California Education Code, § 67381 (The Kristin Smart Campus Safety Act.) The 1/25/17 Order signals an intent to increase, to the fullest extent possible under the law, the ability of local law enforcement to, “perform the functions of immigration officers in relation to the investigation, apprehension, or detention of aliens in the United States under the direction and the supervision of the Secretary.” Thus, it appears likely that the Secretary will approach local law enforcement agencies with whom SJECCD has mutual aid agreements. It remains to be seen whether modifying District mutual aid agreements to limit local police from performing these functions on college campuses will be seen as “hindering” the enforcement of federal law in violation of the Executive Order and risk loss of federal funding.