

The Department of Homeland Security's "Sensitive Locations" Policies

The president issued a series of executive orders in January 2017 that effectively made all undocumented immigrants a priority for deportation. The executive orders also significantly increased the enforcement capacity of federal Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP). As a result, arrests in communities—notably among immigrants without criminal violations—have been particularly heightened under the Trump Administration.¹ Advocates, policymakers, and immigrant communities have responded with outrage over several high-profile incidents of immigrants being detained immediately before or after dropping their children off at school,² at or en route to the hospital,³ inside the courthouse,⁴ and outside church-affiliated homeless shelters.⁵

The U.S. Department of Homeland Security (DHS), which oversees both ICE and CBP, has longstanding policies that restrict immigration enforcement actions in certain "sensitive locations," including places of worship, schools, and health care facilities.⁶ These policies are not written into law but are based on agency guidance. The most recent memoranda on ICE and CBP policy about sensitive locations were issued in 2011 and 2013, respectively.⁷ ICE and CBP later issued two sets of Frequently Asked Questions (FAQs) to further clarify the types of locations that are considered "sensitive."⁸ However, reports of enforcement actions taking place near schools, churches, hospitals, and other locations call into question whether the policies are being consistently enforced. Moreover, the policies don't extend protections to other locations that are critical to immigrants' safety and security, including courthouses.⁹

The Center for Law and Social Policy's (CLASP) recent research confirmed that immigrant families are dramatically altering their daily lives and avoiding taking their children to child care, school, and the doctor's office for fear of coming in contact with immigration agents.¹⁰ This heightened fear and withdrawal from the community takes a toll on children's health and wellbeing.

In the current enforcement-driven immigration context, community members, advocates, and direct service providers must understand the sensitive locations policies and their limitations. This fact sheet provides an overview of DHS's sensitive locations policies: what they do, how they can be strengthened, and how advocates can lift up the existing policies and work to expand and codify them through legislation.

Current DHS Policies

Here's how the current ICE and CBP policies attempt to protect the rights of immigrants around sensitive locations.

Limiting enforcement actions at or focused on locations deemed "sensitive."

This means that, except in limited circumstances, immigration agents should not conduct apprehensions, arrests, interviews, searches, or surveillance for the purposes of immigration enforcement in the following locations:

- **Schools**, such as known and licensed early care and education programs (including child care programs, preschools, pre-kindergarten programs, and Head Start programs), K-12 schools, colleges and universities, after-care programs, and other education-related activities and events;
- **School bus stops** that are marked and/or known to the officer, during periods when school children are present at the stop;
- **Medical treatment and health care facilities**, such as hospitals, doctors' offices, accredited health clinics, and emergent or urgent care facilities;
- **Places of worship**, such as churches, synagogues, mosques, and temples;
- **Religious or civil ceremonies or observances**, such as funerals and weddings; and
- **Public demonstrations**, such as marches, rallies, or parades.

Both memos state that **this list is not exhaustive** and that agents should exercise caution at any location that could reasonably be viewed as sensitive.

Requiring agents to obtain approval and exercise caution before conducting an enforcement action at a sensitive location.

When conducting enforcement actions at these locations, ICE and CBP agents are required to obtain prior written approval from designated officials. The ICE sensitive locations memo notes that it will consider enforcement action requests if the only known address of the target is "at or near" a sensitive location.

The policies are clear that alternative measures should be considered if enforcement could reasonably be viewed as disrupting the normal operations of a sensitive location. ICE policy also urges agents to exercise particular caution at locations of organizations that assist certain vulnerable populations, including children.

Identifying exceptions to the sensitive locations policies. The policies clearly state that they do not categorically prohibit enforcement operations when there is an immediate need for action in certain limited circumstances. Specifically, agents are **not** required to obtain prior approval when the enforcement action is:

- Related to national security or terrorism;
- An issue of public safety; and
- To prevent the destruction of evidence related to an ongoing criminal case.

In these circumstances, officials are expected to conduct themselves "as discreetly as possible" and to "limit the time at or focused on the sensitive location."

Permitting immigration agents to conduct non-enforcement activities at sensitive locations. Officials are permitted to:

- Obtain records, documents, and similar materials from officials or employees;
- Provide notice to officials or employees;
- Serve subpoenas;
- Engage in Student and Exchange Visitor Program (SEVP) compliance and certification visits;
- Guard or secure detainees; and
- Participate in official functions or community meetings at sensitive locations.

Why the Sensitive Locations Policies Can and Should Be Expanded and Improved

Restricting immigration enforcement actions from occurring at certain locations is common-sense policy. Even the limited non-enforcement activities immigration agents are currently permitted to conduct at sensitive locations can significantly chill access to crucial services. No one should ever fear going to the doctor, attending school, or going to church. It is critical that DHS and its law enforcement agents recognize the need to ensure access to these services and implement steps further restricting permissible non-enforcement conduct at sensitive locations. The sensitive locations policies can and should be expanded and improved.

Enforcement actions *near* sensitive locations. The lack of clarity in sensitive locations policy guidance has led to considerable confusion about how close immigration agents can be to a sensitive location before it constitutes a violation. A narrow interpretation of the sensitive locations policies would extend protections to property that is clearly marked and/or known to the officer as belonging to a sensitive location. This would include, for example:

- A private playground on the grounds of a child care center; or
- A private parking garage belonging to a hospital.

Many high-profile instances of questionable arrests have been *near*—but not *at*—a sensitive location. For example, last spring, a 19-year-old immigrant was arrested at a bus stop just outside a Portland hospital.¹¹ ICE agents reportedly watched him leave the hospital and walk to the bus stop at the hospital's entrance, where they apprehended and arrested him. The arrest raised public outcry, and the hospital indicated that the arrest violated ICE policy. An ICE statement following the Portland arrest noted the agency had taken an extremely narrow interpretation of the policy, stating that the man "was arrested by ICE's Enforcement and Removal Operations officers near *but not on* Legacy Emanuel Medical Center property."¹²

Sensitive locations policies are intended to protect immigrants' and their families' ability to carry out basic activities essential to their health and safety. The lack of clarity about enforcement actions *near* sensitive locations allows ICE and CBP agents to interpret the policies

more narrowly, reduces uniformity in how immigration enforcement arrests are conducted across the country, and ultimately limits the policies' effectiveness.

The ultimate effect of this lack of clarity is that families are afraid to seek the health, educational, and other resources that remain available to them. A parent in California clearly articulated this problem in a CLASP focus group: "ICE can't go *inside* the schools, but they can be outside. And if they are outside, it's the same thing as being inside, so people say it's better not to take the kids to school."¹³ Whether individuals are arrested in a school or across the street, in a church or around the block, in a hospital or at the bus stop just outside, the end result is the same: communities are terrified and families are deterred from using the services these locations offer.

Enforcement actions at courthouses. Courthouses are not protected under ICE or CBP sensitive locations policies. Until recently, neither agency had any formal guidance around apprehensions at courthouses. That was a source of frustration for judges, advocates, and community members who argue the practice undermines public safety.

In a January 2018 directive about civil immigration enforcement at federal, state, and local courthouses, ICE reinforced the agency's intention to continue conducting courthouse arrests.¹⁴ The directive states that ICE agents have the authority to carry out enforcement actions against specific, targeted immigrants who:

- Have criminal convictions;
- Are gang members;
- Are national security or public safety threats;
- Have an order of removal but have failed to depart; or
- Have re-entered the country without authorization after being removed.

Enforcement actions at courthouses may be carried out "when ICE agents or officers have information that leads them to believe the targeted aliens are present at that specific location." The directive states that non-targeted immigrants—such as family members, friends, or individuals serving as witnesses—encountered at courthouses will generally not be subject to enforcement actions. Additionally, ICE agents will generally avoid enforcement actions in courthouses (or areas within courthouses) that are dedicated to non-criminal proceedings, such as family court. However, neither of these practices is expressly prohibited. CBP has not issued any guidance about courthouse arrests.

Conducting enforcement actions at courthouses creates a chilling effect in immigrant communities, leaving them fearful of calling the police for help or appearing in court. For example, immigrant survivors of domestic violence report concerns about going to court to confront their abusers for fear of coming into contact with ICE agents.¹⁵ Local police forces indicate receiving fewer reports of sexual assault and violent crimes in immigrant communities.¹⁶ This has serious implications for public safety in communities around the country.

Enforcement actions at sensitive locations along the border. Sensitive locations within the "immediate vicinity" of the international border, including the functional equivalent of the border, are not protected by the policies. CBP policy states that certain operations—including smuggling prevention—are not subject to the policy.

Notably, neither ICE nor CBP policy clarifies the distance from the border that would constitute the "immediate vicinity." This lack of clarity causes confusion over where the policy applies. Hospitals, churches, schools, and other sensitive locations in border and coastal communities have a right to know whether their facilities are protected by sensitive locations policies.

Accountability measures to ensure the policy is being enforced. People can report potential violations of ICE or CBP sensitive locations policy to ICE Enforcement and Removal Operations (ERO), ICE's Civil Liberties Division, or the CBP Information Center. However, the current policies are not specific about what steps the agencies take when violations are reported. Moreover, the policies do not lay out any recourse for immigrants who are detained in an enforcement action that violates policy.

Without adequate accountability measures, ICE and CBP are effectively responsible for policing themselves. The lack of clarity in the policy memos and supplemental guidance gives agents considerable discretion and makes it difficult for advocates and community members to challenge agents' actions.

What Advocates Can Do

Those who care about the wellbeing of immigrants and their families can take a number of steps to protect immigrants' rights and ensure their access to basic services.

Educate advocates, service providers, and community members about the sensitive locations policies. Advocates and service providers should educate themselves and members of their communities about the sensitive locations policies and their limitations. Providers should be aware of their rights and responsibilities to protect the communities they serve and keep their information private. Advocates and providers should also educate immigrant communities about their rights.

Report potential violations of sensitive locations policies. We encourage anyone who witnesses a potential violation of the policies to report the incident to ICE or CBP. Reporting violations is critical in holding immigration agents accountable. Even if DHS does not act on reported violations directly, members of Congress or individuals can use processes to request information from DHS on violations.

We encourage people to report potential violations, even if the enforcement action occurs in the arguably "gray area" of *near but not at* a sensitive location. Collecting information on incidents near sensitive locations will help advocates make the case that enforcing the sensitive locations policies as currently written is necessary but insufficient to protect immigrants and their families. It also supports efforts to improve these policies.

You can report potential violations to:

- ICE's Enforcement and Removal Operations (ERO) by phone at (888) 351-4024 or by email at ERO.INFO@ice.dhs.gov.
- ICE's Civil Liberties Division by phone at (202) 732-0092 or by email at ICE.Civil.Liberties@ice.dhs.gov.
- CBP at the CBP Information Center by phone at (877) 227-5511 or online at <https://help.cbp.gov> (note the online form has the option to submit a complaint anonymously).

CLASP and NILC are also collecting information about sensitive locations violations. To report a violation to CLASP and NILC, or for assistance reporting a violation to ICE or CBP, please contact Rebecca Ullrich at rullrich@clasp.org and Mayra Joachin at joachin@nilc.org.

Collect information on courthouse arrests and their effects on communities.

Access to justice is essential to health and safety, and the presence of immigration agents in courthouses interferes with immigrants' ability to seek justice. By collecting stories from their communities that demonstrate the harmful impacts of ICE and CBP presence in courthouses, advocates can make the case for including courthouses under sensitive locations policies.

If you wish to share information related to a courthouse arrest in your community, please contact Rebecca Ullrich at CLASP and Mayra Joachin at NILC.

Resources for advocates and service providers

Various organizations have developed resources about immigration enforcement that explain the rights of health care providers and educators as well as the rights of people at courthouses. See for example:

- National Immigration Law Center's (NILC) **health care toolkit** provides information for providers and advocates about patient and provider protections in immigration enforcement actions; sample materials health facilities can use to create more welcoming environments for all patients; and relevant resources from states and localities to improve protections for patients.¹⁷
- NILC's **model policies for schools** provides sample language for K-12 school districts interested in adopting protections for their immigrant students. The model resolution can be adapted to fit the needs of your school district.¹⁸
- NILC's **practice advisory for sanctuary school policies** examines the core sources of legal authority for such policies and demonstrates how schools have used that authority to craft and pass resolutions to support their students.¹⁹
- NILC's **general Know Your Rights information** explains immigrants' rights in encounters with immigration agents and the steps they can take to be prepared for enforcement actions.²⁰
- Immigrant Defense Project's **tips for defense lawyers** offers response tips for lawyers who deal with immigration arrests at courthouses.²¹
- CLASP's **sensitive locations fact sheet** overviews the policies for early childhood providers and families with young children. Providers can post the English and Spanish fact sheets in their centers and distribute them to parents.²²

Advocate for the Protecting Sensitive Locations Act. The federal *Protecting Sensitive Locations Act* (H.R. 1815 and S. 845)²³ would expand and improve upon the existing sensitive locations policies in important ways by:

- Codifying existing guidance into enforceable, statutory law;
- Prohibiting agents from conducting enforcement actions within 1,000 feet of a sensitive location;
- Identifying a more comprehensive list of locations deemed sensitive;
- Outlining recourse for individuals who are arrested or detained in enforcement actions that violate sensitive locations policy;
- Requiring ICE and CBP to regularly report violations of sensitive locations policy to Congress; and
- Increasing transparency and accountability in all immigration enforcement actions at sensitive locations.

Call your members of Congress and urge them to support this important legislation.

Advocate for “safe spaces” policies at the state and local levels. Several states and localities are engaged in local efforts to strengthen protections at schools, courthouses, health care facilities, and other sites for their immigrant residents. For example:

- The *California Values Act* (SB 54, enacted in January 2018) requires the state’s Attorney General to publish model policies that certain locations—including public schools, public libraries, state-operated health facilities, courthouses, and shelters—can adopt to limit immigration enforcement at their facilities.²⁴
- The Massachusetts Office of the Attorney General issued guidance for health care providers²⁵ and educators²⁶ regarding how to protect patients’ and students’ private information and what to do if an ICE agent requests access to their facility.
- Legislators in the Colorado House of Representatives recently introduced a bill to reduce immigration enforcement actions at certain locations, including public schools, state-funded colleges and universities, public libraries, public health facilities, shelters, and courthouses.²⁷ If enacted, the Colorado Department of Human Services would be required to develop and publish model policies for these locations to adopt.

Advocates should lift up these efforts as models that can be replicated in their own states or localities.

Advocates Should Take Action Now

A parent should never have to choose between obtaining medical care, going to school, accessing the justice system, or celebrating or mourning their loved ones and keeping their families together. Sensitive locations policies can allow immigrants and their families to participate in these basic activities without fear or hesitation.

Now more than ever, it is vital to have policies protecting immigrant families' access to programs and services that meet their basic needs. Advocates must work to hold ICE and CBP accountable to existing agency guidelines and encourage stronger legal protections for immigrants and their families in the future.

Endnotes

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