Know Your Rights in Encounters with Federal Law Enforcement
Fourth Amendment Rights For Nonprofits
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Overview of major federal law enforcement agencies
ICE: Immigration and Customs Enforcement

Immigration Enforcement
(Department of Homeland Security)
Immigration Enforcement (Department of Homeland Security)

CBP: Customs and Border Protection
Immigration Enforcement
(Department of Homeland Security)

Border Patrol
A sub-agency within CBP.
ICE, CBP, and Border Patrol operate in San Diego and Imperial Counties.

- ICE operates anywhere within the United States.

- CBP operates at and near ports of entry, including international airports, seaports and land border crossings.

- Border Patrol operates within 100 miles of any land border or coast and between ports of entry.
FBI: Federal Bureau of Investigation

Housed with DOJ; principal federal law enforcement agency, domestic intelligence and security; operates across the country.
Federal immigration and criminal law enforcement agents must follow the Constitution

• **The border region is not a Constitution-free zone.**

• Statutes or regulations cannot create power greater than the Constitution allows.

• “It is clear, of course, that no Act of Congress can authorize a violation of the Constitution.”  
  *Almeida-Sanchez v. United States, i413 U.S. 266, 272 (1973).*
Overview of Fourth Amendment
The Fourth Amendment of the Constitution prohibits government officials from making “unreasonable searches and seizures” of “persons, houses, papers and effects.”

Search:
1. Physical trespass on “persons, houses, papers and effects,” or
2. Invasion or reasonable expectation of privacy.

Seizure:
1. Physical restraint, or
2. Show of authority under which reasonable person is not free to leave.
Officer do not need a warrant or any reason to enter areas open to the public. Entry into area open to public is not a “search.”

Officers need a warrant:

• To enter nonpublic areas during working hours; and
• To enter when businesses are closed.

Fourth Amendment Rights
Rules for Businesses (including nonprofits)
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Rules for Businesses (including nonprofits)

Exceptions to warrant requirements...

1. Consent by owner, manager, or employee with apparent authority.

2. Exigent circumstances, emergency, hot pursuit.

3. “Closely regulated” industries for example, liquor, firearms, vehicle dismantling, daycare.
   
   **NOT** ordinary businesses, organizations, or clinics.
Warrants
An arrest warrant is used to take an individual into custody.

1. Arrest warrant authorizes entry of named individual’s residence to make arrest if reason believe individual is present.

2. Arrest warrant does not by itself authorize entry of third party’s home or business to make arrest.
An **search** warrant is to search specified premises for:

1. Contraband;
2. Instrumentality of offense;
3. Evidence of offense, including documents;
4. Health & safety inspection;
5. Individual named in arrest warrant; and/or
6. Individuals reasonably believed to be in the U.S. unlawfully.
Warrants
Arrest or Search

In general, arrest or search warrants:

1. Must be based on probably cause; and

2. Signed by neutral and detached magistrate.
   a. A warrant lacking a judge’s signature cannot authorize entry into a home or third party’s business.
Enforcement in public
Enforcement in Public

- Law enforcement does not need a warrant or reason to operate in a public place.

- Police may arrest someone in public without a warrant if they have probable cause to believe individual committed a crime.
Enforcement in Public

• Immigration agents may arrest an individual in public without a warrant if they have probable cause to believe individual is in U.S. unlawfully.

• Federal law does not prohibit immigration enforcement in sensitive locations.
Enforcement in Public

- DHS has “policies concerning enforcement actions at or focused on sensitive locations” such as schools, hospitals, clinics and places of worship.

- According to DHS, “the sensitive locations guidance remains in effect for both ICE and CBP.”

- The policies have exceptions and are not binding law.
State or local governments may decline to participate in federal enforcement but may not restrict operations of federal government.
Interrogation and subpoenas
Authority to Interrogate

• With or without a warrant or reason, law enforcement officers may ask any questions they wish about immigration status or other matters.

• Individuals may refuse to answer.
Subpoena is a demand to produce documents at a date and time specified, unlike warrant for search when served.

To enforce subpoena, an agency must go to court.

Recipient may object and need not produce documents until ordered by court.
Do’s and Don’ts For Responding to Federal Law Enforcement…
DO…

1. Remain calm – breathe.

2. Contact a lawyer ASAP.

3. Ask officer(s) for name, identification and agency.
DO...

4. Ask for a copy of any warrant.

5. If possible, verify:
   a. If warrant is signed by judge or immigration officer;
   b. If warrant is an arrest warrant or search warrant.
6. State clearly you do not consent to search or entry of any non-public area.

7. State clearly you decline to answer questions you don’t want to answer

Video, if you can.
DON’T…

1. Grant consent to search or enter any non-public area.

2. Physically attempt to restrain or obstruct officers.

3. Lie to officers.
DON’T…

4. Conceal or destroy evidence.

5. Conceal individuals.

6. Interfere with any detention or arrest.
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Thank you!