Supporting Immigrant Clients in Challenging Times

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Who We Are

National Immigration Law Center (NILC)

Our mission is to defend & advance the rights & opportunities of low-income immigrants and their family members.

We combine policy advocacy, litigation and strategic communications to protect immigrants’ rights and to advance their access to health care, education and economic opportunity.
Disclaimers

Things are changing fast!
There are still a lot of unknowns.
We are sharing the information we have at this time.
We are providing general information and not legal advice. Consult with an attorney who can advise your organization.
Community Concerns
The Current Environment

Trump’s Executive Orders – including orders that have been leaked but not signed yet – have created a climate of fear in immigrant communities.

Implications - Chilling effect in accessing healthcare and other services
- People are afraid to come to appointments
- People asking to be dis-enrolled from WIC, Medicaid, and other programs

Why?
- Fear of immigration enforcement actions at health and other facilities
- Fear around the privacy of personal information found in benefits applications and patient medical records
- Fear that using benefits will hurt immigration status or lead to deportation (public charge)
What is an Executive Order?

An official statement from the President about how the agencies he or she oversees are to use their resources

- An EO has the ‘full force of law’ when issued pursuant to authority granted to the President by Congress or the Constitution
- An EO cannot contradict or override laws or the Constitution
  - Can be reversed by the courts for conflict with law or Constitution
  - Can be overridden by subsequent Congressional actions

The President cannot make laws unilaterally!
Leaked Order: Public Charge

On January 25th, Vox leaked the text of several Executive Orders. One EO, which has not been signed, would affect lawfully present immigrants’ use of public benefits and US Citizens and LPRs’ ability to sponsor their family members.

Concerns about the EO are already having an impact on immigrant communities.

Remember:
- It has not been signed
- It might never be signed
- If it is, it could be different
Background – Public Charge

A person is a public charge if they are dependent on the government for basic subsistence (costs of daily living)

A public charge assessment is made when a person applies to enter the US from abroad or applies to adjust their status to become a **lawful permanent resident**

Whether a person will become a public charge is based on an assessment of all relevant factors, including their age, resources, health, education, income, skills and prior employment

Longstanding policy and guidance provide that only two types of benefits – **cash assistance for income maintenance and institutionalization for long-term care at government expense** – are considered in a public charge determination
Leaked Order: Public Charge

Benefits considered in a public charge determination could include all public benefits “for which eligibility or amount is determined in any way on the basis of income, resources or financial need”
Leaked Order: Sponsor Liability

Family-based immigrants are required to have a sponsor, who signs an “affidavit of support” on their behalf.

- The affidavit of support authorizes the government to pursue reimbursement from the sponsor if the immigrant uses certain federal benefits while it is in effect - “Sponsor liability”
- In practice, government agencies have not pursued sponsors

The leaked order:

- expands the benefits subject to sponsor liability to all public benefits “for which eligibility or amount is determined in any way on the basis of income, resources or financial need”
- Requires federal agencies to pursue sponsors for reimbursement
Interior Enforcement Order

Creates new enforcement priorities:
- entered US w/o documents
- have an order of removal
- charged with a criminal offense or committed acts that constitute a chargeable offense
- knowingly defrauded the government or a public benefit system to obtain benefits

➢ Not being a priority does not protect a person

10,000 new Immigration and Customs Enforcement (ICE) Agents (triples force)
Enforcement in Practice

The number of immigration arrests has increased
• Arrests in the first quarter of 2017 increased almost 40% over first quarter of 2016
• Arrests of people with no criminal history up >260%

ICE is engaging in the following enforcement practices:
• Going to homes and workplaces to arrest people, both in individual actions and through sweeps of large apartment complexes.
• Making “collateral” arrests - ICE is arresting people who happen to be in a place where ICE is looking for someone else).
• Using mobile biometrics units to more quickly identify people who may be deportable.
  • A mobile biometric unit is a handheld device used to take people’s fingerprints, to check to see if they are deportable.
Limits to enforcement in ‘sensitive locations’

Enforcement at or near ‘sensitive locations’ allowed only under exigent circumstances or with prior approval:

- schools and other educational institutions
- hospitals and other health facilities
- churches and other institutions of worship
- the site of a funeral, wedding, or other public religious ceremony; and
- a site during the occurrence of a public demonstration, such as a march, rally or parade.

➢ not included: other social services, courts
Preparing for, and Responding to, Immigration Enforcement
Enforcement Activity is Limited by the Constitution

The 4th Amendment provides constitutional protection against *unreasonable* search and seizure

What’s unreasonable?
- Searches in areas in which one has a *reasonable expectation of privacy*
  - Except where there is **consent** or a warrant

  - **What’s a reasonable expectation?**
    - Privacy interest would be generally recognized by the community

No reasonable expectation of privacy in public space
- ICE/law enforcement can enter, look at anything ‘in plain view’
- Can question persons present
  - they have a right to remain silent
Maximizing Fourth Amendment protections

1. Establish and adhere to a written policy designating areas of your facility as private
   • Ex: waiting room is open to the public, all areas beyond the waiting room are private
   • Ex: only patients and people accompanying them are permitted to enter the clinic
     ➢ Must be reasonable

2. Establish policies limiting the materials ‘in plain view’ in public areas

3. Provide posters, know your rights cards and other educational materials reassuring patients and advising them of their rights
A Message to All Our Patients

- All are welcome here.
- Our facility is a safe space for everyone we serve.
- Our spaces are reserved for our patients and their relatives and friends.
- Maintaining this safe space and protecting the privacy of the information you share with us are our top priorities.
- Please reach out to our staff if you have any questions.

Un mensaje para todos nuestros pacientes

- Todos son bienvenidos aquí.
- Nuestra oficina es un espacio seguro para todos los que servimos.
- Nuestros espacios son reservados para nuestros pacientes y sus parientes y amigos.
- Mantener un espacio seguro y proteger la privacidad de la información que usted comparte con nosotros son nuestras prioridades principales.
- Por favor, consulte con uno de nuestros empleados si tiene preguntas.
Maximizing Fourth Amendment protections

Do not allow ICE to enter any non-public areas of your facility without a valid warrant from court!

- They are allowed to enter if they have consent
- Don’t consent, document!

4. Designate one or two specific staff members as responsible for handling interactions with ICE/CBP and other law enforcement.
   - Train other staff to refer ICE/law enforcement to them and to refuse to answer law enforcement questions or requests without their authorization

5. Establish a relationship with an immigration lawyer!
Train Staff to be Prepared to Interact with ICE

If a law enforcement officer enters your facility, your designated staff member should:

◦ Promptly ask them to identify themselves (Are they local police or immigration?)
◦ Write down the full name of the officer/s present.
◦ Ask why he/she is there and request to see a warrant. If the officer lacks a warrant or presents an administrative warrant, respectfully ask that the officer leave your premises.

If the officer has a judicial warrant, you should:
◦ Try to limit interactions with the officer to only the individuals named in the warrant,
◦ Contact a local immigration attorney for advice.
Judicial warrant

Look for:
1. Issued by a court
2. Signed by a judge
3. Address of premises
4. Date

Signed by judge or magistrate
To any officer of the United States Immigration and Naturalization Service:

[Full name of alien]

who entered the United States at _______ on _______.

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 district director or a district director's 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:

Section 241(a)(5) of the Immigration and Nationality Act (Act), as amended.

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Attorney General under the laws of the United States and by his or 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 the appropriation, "Salaries and Expenses Immigration and Naturalization Service 2002," including the expense of an attendant if necessary.

[Signature of Director, Immigration and Naturalization Service]

Date: _______

[Signature of Director, CBP or ICE]
Preparing for Enforcement

Any member of your staff can:

◦ Inform all those present (including patients) that your staff will engage directly with the officers, and remind everyone present of their right to remain silent.
◦ Tell the officers they need to meet with the designated person and ask them to wait

➢ It is helpful to roleplay these actions
Other ways to minimize enforcement risk

Avoid asking questions about immigration status or country of origin
- If it is necessary to obtain this information, do not record it

Don’t require clients to present a photo ID, or don’t maintain a copy

Don’t ask clients for social security numbers

Work with an attorney to develop a policy that maximizes the protections of applicable privacy laws
- HIPAA permits disclosure of Protected Health Information under various circumstances, but requires it under fewer
Messages for Consumers

Federal and state laws that protect the privacy of information people provide when they apply for health and public benefit programs have not changed – and cannot be changed by EO

- Never misrepresent any information on a benefits application!

Trump’s Executive Orders and Immigrants’ Access to Health, Food, and Other Public Programs - Things to Keep in Mind When Talking with Immigrants
Information for Consumers

Create a safety plan.

Memorize the phone number of a friend, family member, or attorney that you can call if you are arrested.

If you take care of children or other people, make a plan to have them taken care of if you are detained.

Keep important documents such as birth certificates and immigration documents in a safe place where a friend or family member can access them if necessary.

Make sure your loved ones know how to find you if you are detained by ICE. They can use ICE’s online detainee locator to find an adult who is in immigration custody. Or they can call the local ICE office. Make sure they have your alien registration number written down, if you have one.

You can call the Executive Office for Immigration Review (EOIR) hotline number at 240-314-1500 or 1-800-898-7180 (toll-free) 24 hours a day, 7 days a week to get information on your case’s status.
Clients’ Rights During an Encounter with ICE

Clients can:
- refuse to answer questions until they have had a chance to consult with an attorney
- choose not to speak at all by saying “I want to remain silent”
- decline to share information about where they were born or how they entered the United States
- carry a “know your rights” card and provide it to immigration officers if stopped

Clients should never run, or give false information!

**KNOW YOUR RIGHTS!**
If you are stopped by immigration or the police:
- Hand this card to the officer, and remain silent.
- The card explains that you are exercising your right to refuse to answer any questions until you have talked with a lawyer.

**To: Immigration or Other Officer**
Right now I am choosing to exercise my legal rights.
- I will remain silent, and I refuse to answer your questions.
- If I am detained, I have the right to contact an attorney immediately.
- I refuse to sign anything without advice from an attorney.

Thank you.
Questions?
Resources

Unpacking the References to Public Benefits and the Privacy Act in Trump’s Executive Order on Interior Enforcement

Immigrant and Refugee Children: A Guide for Educators and School Support Staff

Executive Order on Immigration Enforcement and Sanctuary Cities

Everyone has Certain Basic Rights, No Matter who is President

Health Care Providers and Immigration Enforcement: Know Your Rights, Know Your Patients' Rights
Resources for Referrals

Local legal services offices
  ◦ In California, http://www.lawhelpcalifornia.org/

American Immigration Lawyers Association lawyer referral service: http://www.ailalawyer.com/

Executive Office of Immigration Review list of pro bono resources: https://www.justice.gov/eoir/list-pro-bono-legal-service-providers-map
For more information: www.nilc.org