

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
OFFICE OF THE GENERAL COUNSEL



1111 Franklin Street, 8th Floor • Oakland, California 94607-5200 • (510) 987-9800 • FAX (510) 987-9757

Charles F. Robinson
GENERAL COUNSEL AND VICE PRESIDENT - LEGAL AFFAIRS

Writer's direct line: (510) 987-9938
E-mail: charles.robinson@ucop.edu

March 20, 2017

Frequently Asked Questions for University Employees About Possible Federal Immigration Enforcement Actions on University Property

We know that many members of the University of California community are concerned about immigration enforcement actions occurring across the country and have asked about the possibility that enforcement actions could occur at UC. This FAQ responds to your questions and provides information about how to respond in such a situation. Please keep in mind that Department of Homeland Security (DHS) policies are in transition; we may update this guidance as warranted.

- 1. Will University Police Officers work with federal immigration officers to apprehend and remove individuals from campus?**
- 2. Can UC prevent federal immigration enforcement officers from coming on campus or entering hospitals, clinics or other University property?**
- 3. What federal immigration enforcement officers might seek access to the campus, and what authority do they have?**
- 4. Will federal immigration enforcement agencies target UC campuses?**
- 5. Can federal immigration enforcement officers enter houses, residence halls and apartments without consent from occupants?**
- 6. Can federal immigration enforcement officers enter University hospitals and clinics?**
- 7. What should I do if a federal immigration enforcement officer presents me with a warrant?**
- 8. What should I do if a federal officer asks me for or gives me a subpoena for personally identifiable private information or records about a student, employee or patient?**

9. Does it make a difference if a student is an international student?

#

1. Will University Police Officers work with federal immigration officers to apprehend and remove individuals from campus?

No. On November 30, 2016, the University issued Principles in Support of Undocumented Members of the University Community; you can find the full document [here](#). The Principles explain that jurisdiction over enforcement of federal immigration laws rests with the federal government and not with UCPD. UC Police are devoted to maintaining a safe and secure environment to support the University’s research, education and public service missions. University of California police departments will not divert their resources from this mission in order to enforce federal immigration laws.

Campus police officers will not contact, detain, question or arrest an individual solely on the basis of suspected undocumented immigration status or to discover the immigration status of any individual, and UC Police will not undertake joint efforts with federal immigration enforcement authorities to investigate, detain or arrest individuals for violation of federal immigration law.

Nonetheless, if U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) officers conduct immigration enforcement activities on campus, UC Police may be called in to prevent injuries or property damage. In addition, where other federal law enforcement agencies such as the Federal Bureau of Investigation (FBI) or Drug Enforcement Administration (DEA) have reason to pursue criminal suspects on campus, University Police may cooperate with those efforts to enforce criminal laws.

2. Can UC prevent federal immigration enforcement officers from coming on campus or entering hospitals, clinics or other University property?

Generally, no. UC is a public university and a large portion of UC property is open to the general public. UC does not have authority to prohibit federal immigration enforcement officers from coming on campus or entering health facilities to enforce federal law. The areas on campus that are open to the general public are also open to federal immigration enforcement officers.

However, public access is limited in certain areas of UC campuses and property because of privacy concerns, operational needs or safety considerations. Campus buildings and spaces in which access is physically restricted, such as by key card, locked doors or monitored entryways, including University housing and clinical areas, fall into this category. Limited access spaces also include some that may normally be left unlocked during the workday, including, for example, administrative or faculty offices, classrooms while classes are in session, hospital inpatient

rooms, clinic exam rooms, locker rooms, research laboratories, kitchens and food preparation areas, maintenance areas, storage facilities and physical plant operations.

UC employees are not required to affirmatively assist federal immigration authorities or grant permission to enter limited access space when officers do not have a judicial warrant to enter, and it is appropriate to seek guidance from Campus/Medical Center Counsel to understand your duties in particular circumstances. **However, federal law prohibits you from hiding evidence, concealing or hiding individuals who are the subjects of law enforcement activity, or interfering with an arrest. Further, you should not put yourself in physical danger.**

If an immigration officer seeks your consent to enter limited access space or requests information or documents from you about another individual, ***take steps to ensure that you have authority to provide the requested access, information or documents. Ask the officer for their name, identification number and agency affiliation; ask for a copy of any warrant they may have, inform the officer that you are not obstructing their process but need to contact Campus/Medical Center Counsel for assistance and contact Campus Counsel.*** See Question No. 6 below if you work in a hospital or clinic.

3. What federal immigration enforcement officers might seek access to the campus, and what authority do they have?

The immigration officers who seek to apprehend and remove (or “deport”) an individual unlawfully present in the United States are most often officers of U.S. Immigration and Customs Enforcement (ICE), who are part of the agency’s Enforcement and Removal Operations (ERO). U.S. Customs and Border Protection (CBP) officers could also seek to apprehend and remove individuals on certain campuses. These ICE and CBP officers work for the Department of Homeland Security (DHS) and they are typically acting on civil, not criminal, authority. **The warrants these officers carry to apprehend individuals are generally administrative warrants that do not authorize officers to enter limited access areas of the University without consent.**

In some cases, ICE and CBP officers may be exercising criminal enforcement powers or may work with criminal law enforcement officers who may present a criminal arrest or search warrant that gives them greater authority to enter UC premises that are not open to the general public. Execution of judicial warrants does not require consent.

ICE and CBP officers may appear on campus for reasons unrelated to apprehending and removing an individual they believe is unlawfully present in the United States. For example, many international students participate in the U.S. State Department’s Student and Exchange Visitor Program (SEVP). The University is required to report certain information about SEVP students to ICE, and ICE may come to UC campuses to meet with SEVP students and /or University staff who have responsibilities under the SEVP program. ICE and CBP may also come on campus in connection with regulations that do not involve alleged immigration violations. **It is a mistake to assume that any ICE employee visiting campus is present to apprehend or**

remove a member of the UC community. False rumors about ICE enforcement actions on campus can spread anxiety and panic. If you observe ICE employees on campus and have concerns about their activities, call Campus Police.

4. Will federal immigration enforcement agencies target UC campuses?

We do not know whether federal immigration enforcement agencies will conduct enforcement activities on UC campuses. Under the Obama administration, the Department of Homeland Security (DHS) issued memos to ICE and CBP officers providing that arrests, interviews, searches and surveillance should not generally focus on “sensitive locations,” including schools, university campuses, hospitals and institutions of worship. The ICE memo also includes sites during the occurrence of a public demonstration, such as a march, rally or parade. The CBP memo also includes “community centers.” A DHS “Q&A” dated February 21, 2017 indicates that the “sensitive locations” guidance memos remain in effect. However, these memos could be withdrawn or immigration enforcement officers could fail to follow them. Even while they are in effect, they do not provide a guarantee that ICE and CBP will never take these disfavored actions on campus or at a UC facility. In fact, the sensitive locations guidance is subject to explicit exceptions for enforcement actions involving national security or terrorism matters, or involving the immediate arrest or pursuit of a “dangerous felon, terrorist subject, or [others who] present an imminent danger to public safety.”

5. Can federal immigration enforcement officers enter houses, residence halls and apartments without consent from occupants?

As a general matter, individuals have a reasonable expectation of privacy in their homes, including homes both on and off campus property. **The immigration officers who are seeking to apprehend and remove an individual pursuant to a civil or administrative warrant do not have the authority to enter the premises without the occupant’s consent.** In fact, the occupant need not respond to the officer’s questions or statements. Accordingly, undocumented students have a personal choice whether to grant an immigration officer with a civil or administrative warrant consent to enter their residence, and whether to speak with the immigration officer. Students may access pro bono legal advice relating to their immigration status through the UC Undocumented Legal Services Center, ucimm@law.ucdavis.edu, (530) 752-7996. **In contrast, when a law enforcement officer has a criminal search or arrest warrant, the officer does not need consent to enter the premises or arrest an individual named in the warrant.**

If you are asked as a University employee to allow access into University housing, with or without a warrant, ***ask the officer for their name, identification number and agency affiliation; ask for a copy of any warrant or subpoena presented, inform the officer that you are not obstructing their process but need to consult with Campus/Medical Center Counsel for assistance, and contact Campus or Medical Center Counsel at 415-476-8005. For after-hours***

situations or incidents at any of our medical center facilities please contact the Administrative Officer on Call.

6. Can federal immigration enforcement officers enter University hospitals and clinics?

Some areas of UC medical facilities (medical centers, hospitals and affiliated clinics) are open to the general public, and thus to federal immigration enforcement officers, while others may require a warrant to enter. If a federal immigration enforcement officer seeks to enter a limited access area in your workplace, such as patient rooms, treatment areas or closed wards, contact the senior official (e.g., Administrator on Call or AOC) to whom you would ordinarily direct surveyors (e.g., California Department of Public Health (CDPH), Centers for Medicare & Medicaid Services (CMS), The Joint Commission (TJC)) appearing for unannounced inspections. You should also contact Medical Center Counsel to advise you and to review any warrants or subpoenas and determine whether entry is permitted or required. ***Ask the officer for their name, identification number and agency affiliation; inform the officer that you are not obstructing their process but need to contact your AOC and Medical Center Counsel for assistance at 415-476-8005. For after-hours situations or incidents at any of our medical center facilities please contact the Administrative Officer on Call.***

7. What should I do if a federal immigration enforcement officer presents me with a warrant?

If you are presented with a warrant by a federal immigration enforcement officer seeking to enter University housing or other limited access areas of your workspace on University property, take steps to ensure that the immigration enforcement officers have authority to enter the property before admitting them. As noted above, civil and administrative warrants **do not** authorize entry without consent, but a criminal search or arrest warrant may authorize entry without consent. Because it can be difficult to distinguish among different kinds of warrants, ***ask the officer for their name, identification number and agency affiliation; ask for a copy of the warrant or subpoena presented, inform the officer that you are not obstructing their process but need to consult with Campus/Medical Center Counsel for assistance, and contact Campus or Medical Center Counsel at 415-476-8005. For after-hours situations or incidents at any of our medical center facilities please contact the Administrative Officer on Call.***

8. What should I do if a federal officer asks me for or gives me a subpoena for personally identifiable private information or records about a student, employee or patient?

Personal and personally identifiable information in University records, and those records themselves, are protected by a wide variety of privacy laws and University policies (Family Education Rights & Privacy Act [FERPA] and PACAOS 130.00, Health Insurance Privacy and Accountability Act [HIPAA] and Confidentiality of Medical Information Act [CMIA], to name a few). As a University employee, you are required to maintain the confidentiality of personal

and personally identifiable information, and records containing such information. The University generally requires federal immigration enforcement officers and other law enforcement officers to produce a valid subpoena authorizing the disclosure of student or patient records that contain personal or personally identifiable information. Federal officers generally have no greater access to student or other University records than any member of the public unless they have a valid subpoena.

If you receive a request for personal or personally identifiable information or records containing such information, or if a federal immigration enforcement officer gives you a warrant or subpoena seeking such records or information, you should **take steps to ensure that you have authority to provide access to the specified records or information. Ask the officer for their name, identification number and agency affiliation; ask for a copy of any warrant or subpoena presented, inform the officer that you are not obstructing their process but need to contact Campus/Medical Center Counsel for assistance, and contact Campus or Medical Center Counsel at 415-476-8005. For after-hours situations or incidents at any of our medical center facilities please contact the Administrative Officer on Call.**

For patient records covered by CMIA, the law generally requires disclosure to federal immigration enforcement officials if they produce a judicial warrant or subpoena authorizing the disclosure of patient records containing protected health information. HIPAA permits disclosures that are required by other laws such as CMIA. HIPAA also permits, but does not require, disclosure in other circumstances — e.g., where the law enforcement official is seeking a fugitive or person suspected of committing a crime, where the health care facility suspects that a crime has been committed on the premises, and other circumstances. (Different rules may apply to a subpoena or judicial warrant for psychotherapy notes or records.) If you work in a UC medical facility (medical centers, hospitals and affiliated clinics) contact the Administrator on Call to whom employees ordinarily would direct surveyors appearing for unannounced inspections (e.g., California Department of Public Health (CDPH), Centers for Medicare & Medicaid Services (CMS), The Joint Commission (TJC)) and Medical Center Counsel if any law enforcement official requests access to patient records. As noted above, **ask the officer for their name, identification number and agency affiliation; ask for a copy of any warrant or subpoena; inform the officer that you are not obstructing their process but need to contact the AOC and Medical Center Counsel for assistance, and make those contacts: 415-476-8005. For after-hours situations or incidents at any of our medical center facilities please contact the Administrative Officer on Call.**

9. Does it make a difference if a student is an international student?

International students and scholars are subject to different requirements. Universities are required to exchange data with federal immigration agencies on the status of international students on F-1, J-1 or M visas through use of a government database named “SEVIS,” which is part of the Student and Exchange Visitor Program (SEVP). In addition, certain information

about those students is required to be retained and produced by the University upon request from DHS and ICE.

According to the Department of Education, the Family Education Rights & Privacy Act (FERPA) permits institutions to comply with information requests from DHS in order to comply with the requirements of the SEVP program. However, this does NOT create a blanket waiver of an international student's FERPA rights; the information that can be disclosed is limited to the categories listed in DHS regulations, and a request must be made to a campus Designated School Official (DSO). Other information about international students is entitled to the same FERPA protection that otherwise governs student records. **If you are not a DSO, you should refer any DHS or ICE request for information about an international student to the DSO and Campus or Medical Center Counsel at 415-476-8005. For after-hours situations or incidents at any of our medical center facilities please contact the Administrative Officer on Call.**