

U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), and Undocumented Students: Key Information for UNM Instructors
UNM Sanctuary Campus Working Group
January 2018

The UNM Sanctuary Campus Working Group (SCWG) supports and stands with undocumented members of the UNM community. We call on UNM personnel to protect students who are undocumented or who have DACA (Deferred Action for Childhood Arrivals). In standing with them, we affirm our shared faith in the democratic process and our system of education. In this spirit, SCWG offers the following information for UNM instructors.

At the request of SCWG, the Faculty Senate passed a Resolution in February 2017 endorsing a proposal to have UNM declare itself a Sanctuary campus. The UNM administration has not done so, deferring to the Regents, and citing fear of losing federal funds. However, since 2016, the interim president and provost of UNM have made statements in support of undocumented students and the preservation of the DACA program. In 2017 the Office of the Provost appointed an Undocu Task Force to explore initiatives to benefit undocumented students, including expanded financial aid and employment opportunities. On September 29, 2017, the website undocumented.unm.edu went live.

In this spirit, SCWG offers the following information for the benefit of UNM instructors in particular. What can, or should you do if officers from Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) come to your classroom and you choose to act in solidarity with DACA and other vulnerable students?

In General

Caution should be exercised. For example, ICE agents do not wear uniforms. Plain-clothed, they generally wear identifying insignia or initials while CBP officers generally do wear uniforms.

Immigration law is largely administrative. Involving few criminal or constitutional laws, it deals much with executive decision-making with respect to matters like detention.

Two types of warrants are involved in immigration enforcement detention. They relate fundamentally to the distinction between public space and private space.

(1) The judicial warrant is signed by a judge. Only the judicial warrant holds the legal basis for searching a private space for purposes of detaining anyone. It is not easy for ICE to obtain a judicial warrant for a private location.

(2) The administrative warrant is signed by an enforcement official. ICE and CBP do not need a judicial warrant to detain suspected non-citizens in public spaces. However, the administrative Warrant for Arrest of Alien is only valid for arrests of suspected non-citizens in public spaces. Such administrative warrants are not valid for searches or arrests in private spaces.

A public university is generally considered public space, and UNM does not have authority to prohibit federal immigration enforcement officers from coming on campus or entering health facilities to enforce federal law. Nevertheless, ICE officials in Albuquerque and elsewhere in the United States are required to follow an ICE memorandum from 2011 entitled “Enforcement Actions at or Focused on Sensitive Locations.” The so-called “Sensitive Locations Policy” prohibits ICE enforcement actions on school grounds, including university campuses, in health centers and hospitals, and in houses of worship, with limited exceptions such as exigent

circumstances or prior approval. See <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf>.

On Approach

When an immigration officer asks for consent to enter your classroom, they should have the name of someone they are looking for (local police may have given the name of someone who is undocumented and has committed a crime). Before responding to a request for access, information or documents, take steps to ensure that it is appropriate for you to do so. Ask the officer for name, identification number and agency affiliation. Ask for a copy of any warrant they may have. UNM employees are not required to assist federal immigration authorities or grant permission to enter limited access space when officers do not have a judicial warrant to enter. Inform the officer that you are not obstructing them but that you need to contact appropriate campus authorities.

If an officer asks you for, or gives you a subpoena to acquire, personally identifiable private information or records about a student, employee or patient, be advised that personal and personally identifiable information in University records, and those records themselves, are protected by privacy laws and University policies (e.g., Family Education Rights & Privacy Act [FERPA] and PACAOS 130.00, Health Insurance Privacy and Accountability Act [HIPAA] and Confidentiality of Medical Information Act [CMIA]). As a University employee, you must maintain the confidentiality of personal and personally identifiable information, and records of such information. [The University generally requires federal immigration enforcement officers and other law enforcement officers to produce a subpoena authorizing the disclosure of student or patient records that contain personal or personally identifiable information. Without a subpoena, federal officers generally have no greater access to student or other University records than any member of the public.]

Although the classroom is generally considered public space, under certain conditions, it could be considered private. For example, an instructor has the authority to limit access to her classroom to registered students, UNM administrators, and invited guests. [See UNM Faculty Handbook, Information D75, “Classroom Conduct”]. As a legal matter, if the classroom is deemed a public space, a judicial warrant would not be required. However, if the classroom were deemed a private space, a judicial warrant would be required.

In general, federal officers have jurisdiction over non-citizens, including people with Legal Permanent Resident status (immigrants with “green cards”), “non-immigrants” (basically people with temporary visas, such as tourists, business visitors, students) and undocumented immigrants. ICE officers do NOT have jurisdiction over citizens. Moreover, everyone, citizen and non-citizen alike, has the right to remain silent in the presence of immigration officials. Because of ICE’s non-jurisdiction over citizens, one way that citizens can help protect non-citizens is not to volunteer their citizenship status. In this way, in a public space, it is not readily apparent who the non-citizens are that ICE has jurisdiction over. Declining to answer questions from an officer is not an unlawful interference with enforcement action.

ICE can exercise jurisdiction over non-citizens in various ways. Immigration officials may enforce immigration law; they may interrogate anyone believed to be a non-citizen; they may walk up to anyone and ask for papers. Non-citizens have the right to remain silent (to refuse to answer ICE questions), and to ask to speak to a lawyer.

Citizens are not required to answer questions from ICE officers (right to remain silent). While in general citizens are not under ICE jurisdiction, if a citizen commits a federal crime in the presence of an officer, they can be arrested. This includes interfering with an officer doing

their job. ICE Officers are not supposed to coordinate with local police, but in the real world police often accompany federal operations.

University officials cannot stop ICE from coming onto campus. They are not required to assist or answer questions from agents, but they cannot hide evidence or anyone who is undocumented. The Obama administration's Sensitive Locations Memo (SLM) is a policy (not a statute) that provides guidance limiting ICE presence in certain settings, such as churches, synagogues, hospitals, funerals, weddings, schools, and post-secondary institutions, including universities. SLM states that ICE can go into these types of places, but only for a specific enforcement action. SLM has NOT been withdrawn or replaced by the Trump administration. It remains an important document that ICE can be urged to follow.

Should ICE appear on campus, there is no obligation on anyone's part to show an ID. One can inform UNM or departmental administration. As an instructor, you should try to find out what the University wants you to do. For example, there may be certain situations in which it is appropriate to lock the classroom. Learn what your departmental policies are, and try to think creatively.

Other Things One Can Do

Options are available to instructors: (1) call a lawyer if immigration officers persist in trying to enter (immigration lawyers will assist); (2) announce to the class that ICE is here—this is not considered interference; (3) listen to what undocumented individuals want; (4) recognize that others in a room where someone in particular is being apprehended can be arrested as well (collateral detention); (6) make sure you do not reveal an individual as undocumented. To repeat, be careful not to physically interfere with the work of agents;

If you know any undocumented students, please try to notice small things, such as a shift in personality. Checking in could lead to needed advisement/counseling. You can refer them to resources. You can also make your work place an obvious safe space by using posters or other kinds of signs. You can distribute a short statement regarding your availability should an undocumented student need counseling/advice.

Additional General Information

Here are points about private spaces. (1) Dormitory rooms are limited (private) spaces. Like a home, a dorm room requires a key. (2) If ICE shows up at your home, you are not required to open the door, as an administrative warrant is NOT a legal basis for entering a private space. (3) ICE may declare that it has a proper warrant, but it is best not to open the door, since in doing so you are giving consent to a warrantless entry. (4) If an ID is required to enter a building, it could be considered limited (quasi-private) space. (5) Petitions to an ICE office regarding particular situations can sometimes be effective as officials have discretion in responding to citizen concerns (judges can be difficult, however). (6) Citizens do not have to tell ICE they are citizens, which can be used to help protect undocumented. (7) Public/ charter schools can be considered limited spaces (quasi-private) as visitors need to sign in to be on the premises. (8) The question of harboring an undocumented person is a hard one. It is a federal offense to harbor a wanted individual. Jurisdictions vary. The 10th Circuit, which includes New Mexico, says one is not allowed to help, hide, or assist an undocumented person escape. Permitting someone to live in your house is not harboring. (9) Transporting someone who has been identified by ICE is a federal offense. (10) Using one's body or taking any other kind of physical step to stop ICE is definitely against the law (although the 10th Circuit's definition of

physical interference is ambiguous). (11) You should not put yourself in physical danger. (12) You take your chances when engaging in civil disobedience. Questions of interference are likely to be decided in court. (13) Filming, video-taping, and recording ICE in action is permitted except in places expressly prohibited, like a court room. Anyone can video tape without “obstructing” as long as they do not get between the ICE officer and the person they are attempting to detain. (Students may do this instinctively.)

With respect to President Trump’s rescinding of DACA, announced September 5, 2017, some pertinent points are: (1) Current DACA holders have 2-year work permits and 2-year deferrals of deportation; these permits are good until they expire, based on their current term, regardless of whether that expiration date occurs after March 5, 2018. (2) DACAmented individuals whose 2-year permits expired BEFORE March 5, 2018, had the opportunity to renew their permits, but they must have done so before Oct. 5, 2017. (3) Beyond those filed as of Sept. 5, 2017, no more new DACA applications will be accepted. (4) In the works for possible pathways to citizenship are the proposed Dream Act of 2017 (Durban, Graham), American Children Act (Curbelo), and the American Hope Act.