

How Can I Prepare for a Contact from Immigration and Customs Enforcement (ICE)?

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Know Who on Campus You Can Call for Guidance and Support

Although [Immigration and Customs Enforcement \(ICE\)](#) officials prefer to get information directly from Designated School Officials (DSOs), there is no need for you to respond to government inquiries on your own. Depending on the size and set-up of your campus, you could look to a variety of offices (e.g., registrar, general counsel, or campus police) for a second opinion on the request and your planned response. If no one has more expertise in this area than you, in some cases it may be advisable to consult an outside office for reasons of politics or personal liability.

Develop Protocol

It is important to have a consistent protocol for dealing with government inquiries. If you ever get called to task for your response regarding a particular student or scholar, you need to be accountable for your actions. Review your campus policies periodically to make sure they are still effective. You may wish to verify the protocol with your immediate supervisor. The International Student Office on campus is not always ICE's first point of contact, so it is important to educate your campus colleagues about where to refer any inquiries that they receive.

Inform Students of Their Rights and Obligations

Many ICE inquiries and subsequent arrests seem to follow SEVIS record terminations. It is therefore important to educate students about how to maintain immigration status and follow campus policies. Despite our best outreach, there will always be students and scholars who violate status and get picked up by ICE officials. These individuals need to know how to react. The American Civil Liberties Union (ACLU) publishes a useful resource for nonimmigrants titled [Know Your Rights](#), which you may want to make available in your office and/or on your Web site.

Why Does ICE Make Inquiries?

The reasons for inquiries vary widely. For example, sometimes a student or an employer for whom the student works is under investigation for immigration law violations or criminal activity (that the officer will not disclose to you). Other inquiries are follow-ups on reinstatement applications or SEVIS record terminations. ICE usually makes its inquiries by fax, phone, and/or in-person visits.

What Should I Do When ICE Contacts Me?

If you receive a phone call, be sure to make a written record of the phone conversation. Ask the agent to fax a written inquiry on ICE letterhead. Carefully keep track of when and how ICE contacts you, whether or not the individual is in custody, what ICE is asking for, and how/when you responded.

Although in some cases the ICE official will be threatening and/or aggressive, there is no need to panic. Take a deep breath, and then take the time that you need to develop an informed response—keeping in mind the timelines outlined below. Inform the officer that you have protocols in place to make sure ICE inquiries are addressed, and assure him/her that the request will be addressed in a timely manner. Be sure to follow through, as ICE can threaten to revoke your institution's ability to enroll international students if they notice repeated occurrences of noncompliance.

How Quickly Do I Need to Respond?

If the student **is not** in custody, you are required to respond within three days of the initial inquiry, whether that came via telephone or in writing. If the student **is** in custody, you are required to give ICE officials the requested information over the phone on the same day, regardless of whether or not you have received anything in writing. In this situation the official is supposed to send you his/her request via fax as soon as possible (verifying that the student is in custody), even if you have already sent your reply.

What Kinds of Information are They Seeking?

ICE requests can be specific or broad and should also provide you a timeline for response. They may ask for data that DSOs are required to keep on file [for a complete list, see [8 CFR § 214.3\(g\)\(1\)](#)], or for information that you may not even have (e.g., whether or not a student has worked illegally, or the whereabouts of a student who no longer studies at your university). In many cases, ICE officials will request information that is already recorded in SEVIS. However, even if you think the requested information is easily accessible via SEVIS or other means, you must still comply with the request.

Don't I Need to Worry about the Family Educational Rights Privacy Act (FERPA)?

[FERPA](#) does not always apply to international students and scholars in F, M, or J status because the Patriot Act as implemented by 8 USC 1372 overrides it, allowing the U.S. Department of Homeland Security (DHS) access to obtain from the school any information needed to carry out its student/exchange visitor information collection program. In addition, when students sign page 1 of Form I-20, they authorize their schools "to release any and all information from my records which is needed by [DHS] pursuant to 8 CFR 214.3(g) to determine non-immigrant status." Students and scholars in F, J, and M status may continue to be covered by FERPA outside of the context of SEVIS/immigration status and consultation with university counsel is highly recommended."

What Can I Expect from an In-Person Visit from ICE?

There may be one or two officers/special agents who visit you. They will show you identification and present a subpoena. There are two types of subpoenas: administrative (obtained from within the ICE agency) and judicial (obtained through a judge). Most often the officers will have an administrative subpoena, since judicial subpoenas are more cumbersome to obtain.

An administrative subpoena will contain the following information:

1. File number and subpoena number
2. Mailing address to which you can mail the requested information
3. The regulations that mandate you to provide the information sought (example: 8CFR 287.4 or Patriot Act citations)
4. The request for student record information
5. The signature(s) of the special agent(s)

An administrative subpoena will usually be issued on Form I-138, as required by 8 CFR § 287.4(b), and will require the appearance and giving of testimony at a prescribed time and place, together with the production of specified "books, papers, or documents." A judicial subpoena will identify the federal or state court and the name of the judge or judicial magistrate issuing the subpoena, and

may likewise require attendance at a specific time and location and the production of prescribed records.

If a person or entity receiving an administrative subpoena neglects or refuses to comply with a subpoena, ICE may seek an order requiring compliance from a U.S. District Court under Immigration and Nationality Act (INA) § 235(d)(4)(B) and 8 U.S. Citizen § 287.5(d). Rather than ignoring an administrative subpoena, the better strategy is for the school, through its legal counsel, to file a motion to quash or limit the scope of the subpoena. The court would then schedule a hearing to decide whether the subpoena should be enforced, quashed, or narrowed in scope.

What If I Received a Letter from ICE, the FBI, or the “FISA Court”?

A letter may accompany an administrative subpoena that may include the following language: “Do not disclose the existence of this request for an indefinite period of time.” Read the letter carefully to see if it cites legal authority to prohibit disclosure of its contents to third parties. If the letter is issued by ICE, then this ban on disclosure may not be legally valid. Consult your school’s general counsel to determine whether the ban must be honored.

If the letter or other order you receive, however, is a so-called National Security Letter (NSL), then special precautions must be strictly followed. An NSL should bear the name of the Foreign Intelligence Surveillance Act Court (“the FISA Court”) and should be issued pursuant to § 501 of the Foreign Intelligence Surveillance Act of 1978, codified at 50 U.S.C. § 1861(a). The NSL may be issued under § 215 of the original Patriot Act or the renewal of that law, known as the USA PATRIOT Improvement and Reauthorization Act of 2005.

The FISA Court is authorized to issue an NSL for “educational records” only if the director or deputy director of the Federal Bureau of Investigation (FBI), or the FBI’s executive assistant director for national security, convinces the FISA Court that there are reasonable grounds to believe that the records sought in the NSL are relevant to an authorized investigation to obtain foreign intelligence information or to protect against international terrorism or clandestine intelligence activities.

No one who receives an NSL demanding production of books and records may disclose to anyone else the fact that the FBI has sought or obtained such items, with three exceptions. Disclosure may be made to (1) persons to whom disclosure is necessary to comply with the NSL; (2) an attorney to obtain legal advice or assistance with respect to the production of records in response to the NSL; or (3) other persons as permitted by the director of the FBI or an authorized designee of the director.

Does This Change My Record-Keeping Requirements?

DSOs are still required to maintain all information listed in 8CFR 214.3(g)(1), as well as other information required for SEVIS reporting. As stated above, you should also log any and all ICE inquiries that you receive. Be sure that neither you nor your staff alters or destroys documentation in the course of responding to an ICE inquiry. Doing so could result in a charge of obstruction of justice. The rule of thumb is still “document - document - document.” But the opposite can also be argued: If you do not keep unnecessary information on your students and scholars, then you cannot be compelled to release that information.

Am I Allowed to Inform the Student?

This question is up for debate. Some faxed inquiries that you receive from ICE (and most if not all subpoenas) will state specifically that you cannot tell anyone about the request. But there are other cases where nothing is mentioned one way or the other. The informed student can try to find an immigration attorney or begin gathering paperwork that will address the questions about his/her status. On the other hand, it could be construed that in informing the student of the inquiry, you are aiding in the potential flight of an illegal alien or obstructing justice. You may want to ask this question to the ICE official who contacts you and note the response. DSOs with access to campus legal counsel should consult that office as well.

To Whom am I Ultimately Responsible?

Though you may feel obligated first to your students, your campus administrators may feel differently. You have the title of “DSO” because your campus president (or chief executive officer) has conferred that title upon you. If DSOs are out of compliance with this and other government requirements, the school’s ability to enroll international students can be revoked, putting the institution at financial risk. A DSO’s failure to comply may also be a violation of institutional policy for employees. If you work for a public institution and are considered to be a state, county, or city employee, such behavior may violate state, county, or municipal codes for its workers. For these reasons, remember that you are accountable to your institution and its board of trustees. It is recommended that you discuss any concerns you may have regarding this issue with your supervisory “chain of command” and/or campus legal counsel.

Additional Resources

Immigration and Customs Enforcement (ICE)

<http://www.ice.gov>

Family Educational Rights Privacy Act (FERPA)?

<http://www.ed.gov/policy/gen/guid/fpco/ferpa/index.html>

Congressional Record 8 CFR § 214.3(g)(1)

http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/cfr_2003/pdf/8cfr214.3.pdf

ACLU *Know Your Rights*

<http://www.aclu.org/racialjustice/racialprofiling/15865pub20040714.html#attach>