

# Promoting Safe and Secure Shelters for All

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Guidance and Model Policies to Assist California Shelters  
in Responding to Immigration Enforcement



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# Table of Contents

## **Acknowledgments**

<b>Introduction</b> . . . . .	1
Purpose of this Guide . . . . .	1
<b>Section 1: Affording Legal Protections for Shelter Clients</b> . . . . .	4
Purpose of this Section . . . . .	4
Governing Law . . . . .	4
Policy Recommendations . . . . .	7
<b>Section 2: Additional Legal Protections for Crime Victims</b> . . . . .	10
Purpose of this Section . . . . .	10
Governing Law . . . . .	10
Policy Recommendations . . . . .	12
<b>Section 3: Responding to Requests to Access Shelter Premises for Immigration Enforcement Purposes</b> . . . . .	14
Purpose of this Section . . . . .	14
Governing Law . . . . .	14
Policy Recommendations . . . . .	19
<b>Section 4: Responding to Requests for Information for Immigration Enforcement Purposes</b> . . . . .	22
Purpose of this Section . . . . .	22
Governing Law . . . . .	22
Policy Recommendations . . . . .	23
<b>Section 5: Model Policies</b> . . . . .	25
<b>Special Project Team</b> . . . . .	28
<b>Endnotes</b> . . . . .	30
<b>Appendix A: Reference Guide for Shelter Staff—What Should You Do If an Immigration Officer Comes to Your Shelter</b>	
<b>Appendix B: Immigration and Customs Enforcement “Arrest Warrant” (Form I-200)</b>	
<b>Appendix C: Immigration and Customs Enforcement “Removal Warrant” (Form I-205)</b>	
<b>Appendix D: Notice to Appear (Form I-862)</b>	
<b>Appendix E: Federal Search and Seizure Warrant (Form AO 93)</b>	
<b>Appendix F: Federal Arrest Warrant (Form AO 442)</b>	
<b>Appendix G: Department of Homeland Security Immigration Enforcement Subpoena (Form I-138)</b>	
<b>Appendix H: Federal Judicial Subpoena (Form AO 88B)</b>	

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# Introduction

Shelters in California serve a diverse group of people in need of temporary housing, including foster youth unable to live in their homes of origin, individuals seeking refuge from domestic violence, individuals experiencing homelessness, and those temporarily displaced from their homes due to a natural disaster or other emergency.<sup>1</sup> Shelter administrators help their clients feel safe and secure under extraordinarily challenging personal circumstances. In a state with more than ten million immigrants, where 27 percent of California residents are foreign-born, shelters of all kinds must be able to serve immigrants with sensitivity to fulfill their humanitarian goals.

Immigration enforcement<sup>2</sup> threats have led immigrants to question whether it is safe to seek shelter, even at times of crisis when there are no good alternatives. Rumors of immigration enforcement at emergency evacuation centers, for example, reportedly kept people from emergency shelters after a recent wave of forest fires.<sup>3</sup> In 2017, two shelter clients were arrested by immigration authorities near a church-run homeless shelter in Alexandria, Virginia.<sup>4</sup> Fears of immigration enforcement thus deter immigrants in need from using critical shelter services.

Although California cannot control the actions of federal immigration authorities, federal and state laws protect shelter clients who may be the subject of immigration enforcement actions. In order to provide a welcoming, safe environment to all clients, shelters can develop plans for addressing and responding to immigration enforcement in a way that advances client privacy, safety, and opportunity.

## Purpose of This Guide

Senate Bill No. 54 (2017-2018 Regular Session) mandates that the Attorney General publish “model policies limiting assistance with immigration enforcement to the fullest extent possible” for use by shelters, among other entities.<sup>5</sup> The law encourages “organizations and entities that provide services related to physical or mental health and wellness, education, or access to justice,” including shelters, to adopt the model policies.<sup>6</sup> Under Senate Bill 54, police officers and sheriffs’ deputies cannot initiate a contact, detention, questioning, or arrest of any shelter client, employee, or other person at a shelter on the basis of suspected undocumented immigration status, or in order to discover the individual’s immigration status.<sup>7</sup> Local law enforcement cannot undertake joint efforts with immigration authorities to investigate, detain, or arrest individuals for violation of immigration laws.<sup>8</sup>

California Attorney General Xavier Becerra provides this guide to implement the Legislature’s decision to limit state and local participation in immigration enforcement activities. Such participation diverts state resources, blurs lines of accountability, and threatens trust between immigrant communities and state and local agencies that provide critical public services. The model policies laid out in this guidance are aimed at assisting California’s shelter operators in focusing their resources on their distinct mission of protecting Californians in need of shelter, while leaving immigration enforcement efforts to others.<sup>9</sup>

Specifically, this guide (1) outlines relevant state and federal protections for shelter clients and their families; (2) provides policy recommendations that comply with state and federal laws and that may mitigate disruptions resulting from immigration enforcement activity at shelters; and (3) lists model policies implementing these recommendations. A reference guide for shelter staff about responding to immigration enforcement actions and requests for shelter client information is also included as Appendix A.

This guide offers shelters information about governing law and model policies regarding:

1. Affording legal protections for shelter clients;
2. Additional legal protections for crime victims;
3. Responding to requests to access shelter premises for immigration enforcement purposes; and
4. Responding to requests for information for immigration enforcement purposes.

This guide is intended to help shelter administrators develop practical plans to protect the rights of immigrant clients and their families. To that end, this guide discusses procedures for responding to immigration enforcement actions and requests for information directed at shelter clients and members of the public generally. This guide, however, is not intended to address the duties shelters have as employers when faced with the same requests about their employees.<sup>10</sup>

California law enforcement agencies are prohibited under state law from performing the functions of an immigration officer.<sup>11</sup> Although U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) are the agencies with primary responsibility for federal immigration enforcement, there are instances when other law enforcement agencies may attempt to enforce federal immigration laws. ICE, CBP, and other law enforcement agencies attempting to enforce immigration laws are treated the same by this guide, in terms of the advice given for how shelters should handle interactions with them. Any policy adopted to address interactions between shelter staff and immigration enforcement officers should encompass all law enforcement agencies that seek to enforce immigration law, and should handle requests from all law enforcement agencies acting with that purpose in the same way.

This guide is intended to provide model policies for both privately operated shelters and those operated by local and state agencies, although the policies for each may differ depending on their status as publicly or privately operated, as noted in this guide. Shelters under Senate Bill 54 may include diverse types of facilities, including homes for foster youth, domestic violence shelters, homeless shelters, and emergency shelters for those displaced by natural disasters. To the extent that any shelter's particular situation presents circumstances that are not addressed in these materials, shelter administrators should consult with their management and counsel (if available) in adapting the model policies described here.

Although this guide is primarily directed at site-based, overnight shelters, the model policies described here can be adapted and applied to a variety of programs and contexts, including human services organizations providing ancillary services affiliated with shelters. The Attorney

General strongly encourages these policies to be adopted more broadly among related service organizations to the extent they apply. Often, a client's first point of contact with the shelter system comes through outreach workers, day programs, or other supportive services. If immigrants do not receive assurance at all points in their receipt of related services that their rights to confidentiality and freedom from discrimination will be respected, they may be less likely to access needed shelter services. Thus, adapting these policies at affiliated services organizations will further promote access to shelter services.

Some local shelter agencies have already adopted policies in accordance with Senate Bill 54. To the extent that local agencies have developed policies that are aligned with or provide greater protections for clients and their families, this guide is not intended to displace those policies. Rather, this guide offers foundational elements reflecting the minimum that should be present in the policies adopted by any shelter and should serve as a resource to enhance current policies as needed and ensure alignment with state law. Their staff can also benefit from the Reference Guide at Appendix A, where appropriate.

*This guide is not legal advice.* It is based on law current as of the date of this publication, which, of course, may change. Nor does the exclusion of a particular policy in this guide – whether recommended by a stakeholder group or implemented by an agency – necessarily indicate the Attorney General's disapproval of that policy. Shelter administrators should consult with legal counsel, authorizing governmental agencies, or professional associations when formulating their own policies and practices, and in addressing any questions regarding the issues covered in this guide.

## Purpose of This Section

To describe legal protections that apply to shelter clients, including anti-discrimination principles and privacy rights relating to the collection of personal data from and communications with shelter clients.

## Governing Law

### 1. Shelter Clients Are Protected from Discrimination

The United States Supreme Court has recognized that undocumented immigrants are guaranteed due process and equal protection rights under the Fifth and Fourteenth Amendments to the United States Constitution.<sup>12</sup> In addition, most shelters are subject to either or both of the federal Fair Housing Act and its 1988 amendments, which protect people from negative housing actions that occur because of their race, color or national origin, among other protected classes,<sup>13</sup> or Title II of the 1964 Civil Rights Act, which prohibits discrimination in public accommodations.<sup>14</sup> Facilities that receive federal financial assistance also have a responsibility to provide language services and not to discriminate based on national origin against individuals with limited English proficiency under Title VI of the Civil Rights Act of 1964.<sup>15</sup>

California laws provide immigrants with robust protection against discrimination based on ancestry, national origin, and citizenship, among other protected categories. The Fair Employment and Housing Act prohibits housing owners, including shelter operators, from discriminating on the basis of race, color, national origin, or ancestry, among other protected characteristics.<sup>16</sup> The Unruh Civil Rights Act prohibits “all business establishments of every kind whatsoever” from engaging in discrimination based on “citizenship, primary language, or immigration status,” among other protected characteristics.<sup>17</sup> And any programs that receive state funding or provide public aid must do so without discrimination based on nationality or immigration status.<sup>18</sup>

It is unlawful for shelter operators to take adverse actions against clients based on their actual or perceived national origin or any other protected characteristic. Negative housing actions may include refusing to admit an individual to a shelter; setting different terms or conditions for residence at a shelter; or harassment, coercion, intimidation, or interference with shelter residents who exercise their rights to fair housing. The California Attorney General strongly recommends that shelter operators establish clear internal policies to avoid discrimination based on national origin.

To the extent that federal law limits certain types of assistance to individuals with verified immigration status, shelters are permitted to limit their services accordingly.<sup>19</sup> Many types of shelter services, however, are exempt from federal restrictions on immigrant access to benefits. Congress excepted services “such as soup kitchens, crisis counseling and intervention, and short-term shelter,” as specified by the United States Attorney General, which “(i) deliver in-kind services at the community level, including through public or private nonprofit agencies; (ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient’s income or resources; and (iii) are necessary for the protection of life or safety.”<sup>20</sup> Individuals with or without immigration status should monitor federal laws and regulations regarding

the impact of using public services on the ability to modify one's immigration status, in the event that such laws and regulations change, and consult with an attorney if possible.

## **2. Privacy Laws Protect Shelter Clients' Personal Information**

### *Personally Identifying Information*

Every individual has a privacy interest in retaining the confidentiality of one's Social Security number. California landlords may not require federally issued identification, such as a visa or Social Security number.<sup>21</sup> In some circumstances, however, shelters may need to collect clients' Social Security numbers when helping clients apply for public benefits.<sup>22</sup> This may include some information about an applicant's family members (including their income, tax filing status, and relationship to the client).

### *Personal Health Information*

The Health Insurance Portability and Accountability Act (HIPAA), among other federal and state privacy laws, generally prohibits the use or disclosure by covered entities of patient information without the patient's consent, except where required by law.<sup>23</sup> Social Security numbers and patients' addresses are considered personal health information. Although immigration status or evidence of foreign birth are not, by themselves, considered to be HIPAA-protected personal health information, such information may nevertheless be protected under the standard for information "[w]ith respect to which there is a reasonable basis to believe the information can be used to identify the individual."<sup>24</sup> California state and federal laws and regulations give clients the right to keep their medical records private in most circumstances.

Any shelter that offers medical services, such as mental health care, or a walk-in medical or dental clinic, is considered a covered entity under HIPAA and should already have in place policies to protect private medical information.<sup>25</sup> For detailed guidance about protecting patient privacy, health facilities should refer to the California Office of Health Information Integrity's Statewide Health Information Policy Manual.<sup>26</sup> For more information about immigration enforcement activities in health facilities, please refer to the California Department of Justice's publication *Promoting Safe and Secure Healthcare Access for All: Guidance and Model Policies to Assist California's Public Healthcare Facilities in Responding to Immigration Issues*.<sup>27</sup> Shelter clients seeking general information about their privacy rights and remedies may consult the Attorney General's guide, *Your Patient Privacy Rights: A Consumer Guide to Health Information Privacy in California*.<sup>28</sup>

### *Juvenile Information*

As is further discussed in Section 4 below, California laws protect information in juvenile court records. Specifically, the juvenile case file, including any portion of the case file and any information relating to the content of the case file, are protected from disclosure.<sup>29</sup> Information "relating to" the content of a juvenile case file includes the child's name, date or place of birth, and the immigration status of the juvenile.<sup>30</sup>

### *Immigration Status Information*

Generally speaking, shelters have no affirmative obligation to inquire into a client's immigration status. In some circumstances, immigration status information may be relevant to a government



determination of a client's eligibility for needed public benefits, or to a shelter's ability to provide services. A non-profit charitable organization that provides a federal, state or local public benefit, however, is expressly not required to determine proof of an applicant's eligibility for such benefits under federal law.<sup>31</sup>

If a shelter operated by a state or local government, such as certain emergency shelters, possesses immigration status information regarding a client, then federal law provides that state and local governments cannot prohibit or restrict any governmental employee from sending or receiving such information regarding any individual to or from federal immigration enforcement authorities, or prohibit or restrict agencies from maintaining immigration status information regarding a person.<sup>32</sup> There have been successful constitutional challenges to section 1373 of title 8 of the United States Code, which provides that state and local government-operated shelters or their employees in violation of entities and officials cannot prohibit or restrict any government entity or official from maintaining information regarding a person's immigration status or exchanging information regarding a person's immigration status with federal immigration authorities or other governmental entities.<sup>33</sup> Specifically, federal courts outside of California have determined that this statute violates the Tenth Amendment to the U.S. Constitution.<sup>34</sup> A federal court in California has called the statute "highly suspect."<sup>35</sup> And the Attorney General is currently challenging the statute's constitutionality in federal litigation in California.<sup>36</sup> Shelters should continue to monitor developments in the law to determine this statute's continued applicability within California.

There have also been successful challenges to the federal government's expansive interpretation of section 1373. Federal courts have construed section 1373 narrowly to prohibit restrictions on the sharing of, finding it covers only "information strictly pertaining to immigration status (i.e., what one's immigration status is)" and clarifying that the federal statute does not apply to other categories of information, such as a shelter client's address.<sup>37</sup>

### **3. Other Information**

Providing comprehensive advice about what types of information shelters do and do not need to collect from their clients is beyond the scope of this guide. The answer will vary depending on the type of shelter and the funding source for any services, among other factors. Shelters that are licensed by state agencies should contact their licensing agency for further information. Shelters may also seek legal counsel regarding their data collection, use and retention practices. The National Human Services Data Consortium has published a list of questions that human services organizations may wish to consider in determining what information to collect and retain.<sup>38</sup>

## **Policy Recommendations**

In addition to the model policies appearing in Section 5, the Attorney General makes the following policy recommendations.

## **1. Develop Policies Regarding the Collection, Retention, and Sharing of Sensitive Client Information**

### *Collecting Immigration Status Information*

Shelters are encouraged to avoid seeking immigration status information from shelter clients or their family members to the fullest extent possible and unless required for a client to access services. Shelters should develop policies regarding the shelter's privacy practices indicating that the shelter will only collect, retain, and share immigration status information or other sensitive personal information (including through shared database access) when necessary, such as where such information is required for a client to apply for or receive needed services from the shelter directly or as a gateway to services.

### *Protecting Client Confidentiality*

If operationally feasible and not detrimental to accessing services, shelters should allow clients to use pseudonyms in shelter records and databases. Privately operated shelters should respond promptly to requests from shelter clients to remove immigration status information from shelter records.

### *Protecting Juvenile Client Confidentiality*

Any shelter that provides housing to wards of the court should not disclose the name or identity of the children living in their shelter without a court order to disclose the child's name or identity.

## **2. Communicate Policies to Shelter Clients and Potential Clients**

Shelters are encouraged to inform their clients about shelter policies regarding the privacy of any sensitive personal information collected from clients.

Shelters are encouraged to state explicitly in their outreach materials that shelters do not discriminate on the basis of immigration status or nationality. This is an important step in helping break down perceived barriers to potential shelter beneficiaries who may be fearful about seeking out shelter services. Written material should be made available in multiple languages, when possible.

## **3. Additional Resources**

In the event that a shelter client or client's family member is detained, shelter staff should be aware of the following resources.

### *ICE Detainee Locator*

The ICE detainee locator (<https://locator.ice.gov/odls/homePage.do>) can help people determine if their family member has been detained and where the family member is being held. In using the ICE detainee locator, it is helpful to know the family member's date of birth and 'A-Number' (Alien Registration Number), if there is one. The ICE detainee locator is intended only for locating individuals who are already detained. If a shelter client has general questions about their immigration status, the shelter client should be referred to the list of legal service providers.

### *Legal Assistance*

Immigration lawyers in private practice, accredited representatives (who assist immigrants in immigration proceedings), or legal-aid organizations may be able to provide legal assistance to secure the release of, or arrange for visits to, a shelter client or client's family member.<sup>39</sup>

- ✓ An individual can determine that lawyers are licensed by and in good standing with the State Bar of California by checking online at <http://www.calbar.ca.gov/Attorneys>.
- ✓ Do not hire a notary or an immigration consultant if you are seeking advice and assistance regarding your immigration status. Notaries and immigration consultants are not attorneys or experts in immigration. In fact, they are not legally required to know anything about immigration law because they are only allowed to help with non-legal tasks like translating information. They cannot—and should not—provide advice or direction about immigration forms or speak to the government on a client's behalf.
- ✓ In addition, immigration consultants must be bonded and pass background checks with the Secretary of State, whose website, <https://specialfilings.sos.ca.gov/icbs>, provides information about whether individuals holding themselves out as immigration consultants have complied with these requirements.
- ✓ A list of California entities accredited by Board of Immigration Appeals (BIA) to represent immigrants before the Department of Homeland Security (DHS) and Executive Office of Immigration Review (EOIR) can be found at: <https://www.justice.gov/eoir/page/file/942306/download#CALIFORNIA>.
- ✓ California courts operate Self-Help Centers that may also be able to provide family-law assistance to individuals. A list of these centers across the state is available at <http://www.courts.ca.gov/selfhelp-selfhelpcenters.htm>.
- ✓ Individuals may be able to find legal assistance from legal aid offices and lawyer referral services at the California Department of Social Services Website, <http://www.cdss.ca.gov/Benefits-Services/More-Services/Immigration-Services/Immigration-Services-Contractors>, or at the California Courts Website, <http://www.courts.ca.gov/1001.htm>.

### Purpose of This Section

To identify specific legal protections available to shelter clients who have been victims of crime.

### Governing Law

#### 1. Personal Information Identifying Crime Victims

Immigrants in California constitute an extremely diverse population. Many immigrants have fled difficult situations in their home countries, some have been subjected to human trafficking, and others have found themselves in oppressive relationships in the United States, all of which can be exacerbated by a victim's undocumented status. Immigrant victims often feel trapped in abusive relationships because of immigration laws, language barriers, lack of financial resources, fear, cultural expectations, and social isolation. Abusers, perpetrators, and human traffickers often use victims' lack of legal status as leverage to exploit and control them. It is especially important that shelters that seek to serve victims of crime, including domestic violence shelters, are aware of the legal protections available to their clients.

Under federal laws protecting victims of domestic violence, sexual assault, hate crimes, human trafficking, and other crimes, victim services programs have certain obligations to maintain the confidentiality of victims seeking their services.

#### *Violence Against Women Act*

The Violence Against Women Act of 1994 (VAWA) provides protections to undocumented immigrants who are subjected to domestic violence by their United States citizen or lawful permanent resident (LPR) child, parent, or spouse.<sup>40</sup> VAWA allows undocumented immigrant victims of domestic violence to file their own petitions for lawful permanent residency and access public benefits, without the cooperation of their abusive spouse, parent, or child.<sup>41</sup> Normally, a United States citizen or LPR files a visa petition on behalf of a noncitizen family member (the beneficiary). Once the petition is approved, the beneficiary may obtain LPR status independently. Before the petition is approved, however, the United States citizen or LPR controls when and if the visa petition is filed at all. This avenue for adjustment of status is extremely problematic in circumstances in which the citizen or LPR petitioner is or was abusive toward the noncitizen spouse or child. Thus, VAWA offers victims of crime a way out of abusive relationships and an alternate path towards adjustment of status.

Importantly, VAWA prohibits any victim service provider from sharing any personally identifying information about victims without informed, written, and reasonably time-limited consent.<sup>42</sup> VAWA defines a victim service provider as a non-profit or non-governmental organization, including rape crisis centers, battered women's shelters, domestic violence transitional housing programs, and other programs whose primary mission is to provide services to victims of domestic violence, dating violence, sexual assault, or stalking. Personally identifying information is information that would identify an individual or that is "likely to disclose the location of a victim of domestic violence, dating violence, sexual assault, or stalking, regardless of whether the information is encoded, encrypted, hashed, or otherwise protected."<sup>43</sup> VAWA prohibits immigration officials from using information furnished solely by a spouse or parent who

has battered the individual or subjected an individual to extreme cruelty, including any live-in family members of the alleged abuser, as the basis for arresting and charging an undocumented immigrant with removability, unless the undocumented individual has been convicted of certain serious crimes (See Sections 3 and 4, below).<sup>44</sup> These protections under VAWA are in addition to protections under ICE/CBP “Sensitive Locations” policy discussed in Section 4 below.

#### *Victims of Crime Act and Family Violence Prevention and Services Act*

Along with VAWA, the Victims of Crime Act (VOCA) and the Family Violence Prevention and Services Act (FVPSA) are major pieces of legislation in the federal response to domestic violence in the United States. FVPSA is the primary federal funding stream dedicated to the support of emergency shelter and related assistance for victims of domestic violence and their children.<sup>45</sup> FVPSA further establishes confidentiality and privacy protections for the clients of domestic violence programs and services that receive federal funding.<sup>46</sup> Grantees and sub-grantees are prohibited from disclosing any personally identifying information collected in connection with services requested, and they are also prohibited from revealing such information without the written, informed, reasonably time-limited consent of the individual.<sup>47</sup> Additionally, VOCA requires that programs ensure client confidentiality in order to maintain funding without penalty.<sup>48</sup> Similarly, VOCA’s implementing regulations require that information that identifies or refers to a private person cannot be shared or used as evidence in any proceeding without the written consent of the individual in question.<sup>49</sup>

The confidentiality provisions that limit the sharing of victims’ personally identifying information under VAWA also include entering information into public records and databases. Many federally funded shelters are required by law to submit data to a Homeless Management Information System (HMIS), a database that records, stores, and tracks characteristics and service needs of homeless individuals. However, the VAWA Reauthorization of 2005 amended Section 605 of the McKinney-Vento Homeless Assistance Act<sup>50</sup> to prohibit all victim service providers receiving VAWA or FVSPA funding from entering personally identifying information into an HMIS database. Instead, a victim service provider must use a comparable database that adheres to the same technology data standards as mainstream HMIS systems but only provides information to the federal funding agency in an aggregated form.<sup>51</sup> Information in these reports must be non-identifying, which can include aggregate totals or other demographic information that does not identify a victim.

When a victim’s personally identifying information is disclosed in order to comply with a statute or court order, VAWA grantees and sub-grantees must provide notice to victims affected by the disclosure of information, and take reasonable steps to protect the privacy and safety of the persons affected by the release of the information.<sup>52</sup>

#### *Victims of Trafficking and Violence Prevention Act*

Alongside VAWA protections, federal law protects undocumented victims of crime under the U and T visa programs. The U visa was created by the Victims of Trafficking and Violence Prevention Act (VTVPA), enacted in October 2000 to protect certain noncitizen crime victims and encourage cooperation with law enforcement. By providing cooperating victims protection from deportation and a pathway to legal permanent residency, the U visa enhances law enforcement’s ability to investigate and prosecute crimes and furthers humanitarian interests

by protecting victims of serious crimes. U visas are set aside for undocumented victims of crimes who have suffered substantial abuse and are willing to assist law enforcement in the prosecution of the criminal activity.<sup>53</sup> U visa applicants must submit forms evidencing cooperation with law enforcement, known as the U Nonimmigrant Status Certification (Form I-918 Supplement B), or “U visa certification.”<sup>54</sup> Similar to the U visa, the VTVPA also created a T visa which grants an immigration benefit for victims of human trafficking who meet certain eligibility requirements.<sup>55</sup> The T visa was enacted to strengthen the ability of law enforcement agencies to investigate and prosecute serious crimes and trafficking of persons, while offering protections to victims of such crimes without the immediate risk of being removed from the country. Like a U visa, a T visa applicant must also submit forms evidencing cooperation with law enforcement (Forms I-914 and I-914B).

### *Immigrant Victims of Crime Equity Act*

California law provides additional protections for crime victims. California’s Immigrant Victims of Crime Equity Act requires state and local law enforcement agencies, prosecutors, judges, and other entities and officials to certify the helpfulness of victims of qualifying crimes on a federal U Nonimmigrant Status Certification (Form I-918), also known as a “U visa certification” if certain conditions are met.<sup>56</sup> Upon request, prosecutors, judges, and other entities and officials shall complete U visa certifications for immigrant crime victims of qualifying criminal activity who possess information about the qualifying criminal activity and have been or are likely to be helpful to the investigation or prosecution of that qualifying criminal activity.<sup>57</sup>

There is a rebuttable presumption that an immigrant victim is helpful, has been helpful, or is likely to be helpful, if the victim has not refused or failed to provide information and assistance reasonably requested by law enforcement.<sup>58</sup> A certifying official may withdraw a previously granted certification only if the victim refuses to provide information and assistance when reasonably requested.<sup>59</sup> Further, the certifying official must fully complete and sign the U visa certification and include “specific details about the nature of the crime investigated or prosecuted and a detailed description about the victim’s helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity.”<sup>60</sup>

This certification must be completed within 90 days of the request, unless the applicant is in immigration removal proceedings, in which case the certification must be completed within 14 days of the request.<sup>61</sup> A certifying entity is prohibited from disclosing the immigration status of a victim or person requesting the Form I-918 Supplement B certification, except to comply with federal law or legal process, or if authorized by the victim or person requesting the Form I-918 Supplement B certification.<sup>62</sup>

T and U visa applicants are afforded additional protections to ensure the confidentiality of their cooperation with law enforcement. State law prohibits any certifying entity from disclosing the immigration status of a victim or person requesting either form, (I-918 or I-914 Supplement B certification), except as needed to comply with federal law or legal process, or if authorized by the victim or person requesting either form.<sup>63</sup>

## **2. Restrictions on Disclosures of Information**

VAWA places restrictions on the disclosure of information for certain victims and witnesses of crime. If an enforcement action leads to a removal proceeding, federal law and DHS policies require that the agency issue a notice to appear (NTA) including a specific certification that the agency complied with the restrictions on disclosure of information under section 1367 of title 8 of the United States Code, for those persons.<sup>64</sup>

An NTA is a charging document issued by an immigration official to a noncitizen who the government believes is inadmissible or removable,<sup>65</sup> and who will not be subjected to a summary form of removal such as reinstatement of removal or expedited removal.<sup>66</sup> In other words, an NTA is a notice issued to place an individual in a full removal proceeding before an immigration judge, who will determine whether the noncitizen is to be removed (deported) or allowed to remain in the United States. Various officials within DHS are empowered to issue NTAs in a variety of circumstances. Shelter clients who are presented with an NTA are encouraged seek the advice of an immigration attorney.<sup>67</sup> (See Appendix D for a sample NTA.)

## **3. Domestic Violence Waivers**

A conviction for a crime of domestic violence could potentially subject a noncitizen to deportation.<sup>68</sup> Under the Immigration and Nationality Act, when an immigrant applicant seeks an immigration benefit, such as admission to the United States, a nonimmigrant visa, or an adjustment of status, the applicant must meet the eligibility requirements for such benefit, and further establish that the applicant is in fact “admissible” and not deportable. There are a number of grounds of inadmissibility<sup>69</sup> and deportability<sup>70</sup> that would render an immigrant ineligible to receive the immigration benefit, despite otherwise meeting the application requirements, including a conviction for a crime of domestic violence. In response to this issue, Congress created a waiver to the domestic violence ground of deportability or inadmissibility for domestic violence victims who are convicted of a crime of domestic violence but “not the primary perpetrator of violence in the relationship.”<sup>71</sup> This waiver allows an immigrant applicant to receive a U visa notwithstanding a prior domestic violence conviction.

## **Policy Recommendations**

In addition to the model policies appearing in Section 5, the Attorney General makes the following policy recommendations.

### **1. Develop Policies Regarding the Collection, Retention, and Sharing of Personal Information Identifying Crime Victims**

Shelters are encouraged to develop written policies consistent with the confidentiality protections offered under VAWA, FVSPA, VOCA and the VTVPA, that reassure shelter clients and interested community members of their privacy protections should they seek shelter services. Shelters are encouraged to develop policies for collecting, receiving, and processing client information that includes a crime victim’s immigration status. Shelter staff should inform clients that a client’s immigration status will not be disclosed unless required by federal law or to comply with legal process. Shelter staff should receive training on internal policies for processing and disclosing personal information that identifies victims of crime, and standards for providing notice of any disclosure to affected individuals where required by law.

## **2. Communicate Policies to Shelter Clients and Potential Clients**

Domestic violence shelters are encouraged to inform clients and potential clients that they do not collect immigration status information as a requirement of services, and that federal and state law broadly limits this information from victims of crime from being shared, and federal law specifically prohibits such information being used to “make an adverse determination of admissibility or deportability,” subject to limited exceptions.<sup>72</sup> To the extent aggregate data is provided or reported, shelters should clarify this limited use of demographic information. Written material should be made available in multiple languages, when possible.



## 03 Responding to Requests to Access Shelter Premises for Immigration Enforcement Purposes

### Purpose of this Section

To inform shelter staff about policies and practices for responding to officers engaged in immigration enforcement who seek access to shelter facilities and clients.

### Governing Law

#### 1. Constitutional Protections Regarding Searches Within Shelters

Shelter clients are protected from unreasonable searches and seizures by the Fourth Amendment to the United States Constitution. The type of legal authority required for law enforcement officers to access areas of a shelter depends on whether a shelter client—or any person in a shelter—has an expectation of privacy in the place to be entered. A home has the highest level of constitutional protection, and certain locations in shelters are similar to, or could be considered, a client’s home.<sup>73</sup> Generally, a judicial warrant is required to enter or search constitutionally protected areas if a client has a reasonable expectation of privacy in those areas. Areas in a shelter where persons do not have a reasonable expectation of privacy may be searched and persons within that area may be arrested based solely on an ICE administrative warrant, as described below.

Whether a reasonable expectation of privacy exists in an area within a shelter depends on the factual circumstances specific to that area. Constitutional protection will hinge on factors like the openness, security, and use of the area in question. Often these factors are influenced by the physical characteristics and operational needs associated with that area. Shelter clients may have a reasonable expectation of privacy in areas shared by many residents such as large sleeping quarters.<sup>74</sup> Different levels of constitutional protection may exist across different shelters even where the area in question is used for the same purpose, since the inquiry is fact-dependent. This guide does not address all of the factual circumstances that may arise relating to an individual’s Fourth Amendment protections in different areas of a shelter.

#### *Protected Spaces: Bedrooms and Apartments*

Peace officers generally do not have the right to enter living quarters, including a bedroom, unless they have a valid judicial warrant, an occupant of the living quarters consents to the entry, or an emergency situation requires swift action. Courts often refer to such emergency situations as “exigent circumstances.”<sup>75</sup>

A client who is using a semi-private room to sleep in generally has a reasonable expectation of privacy in that room.<sup>76</sup> Although a co-occupant may provide consent for an officer to enter into a shared space,<sup>77</sup> a co-occupant cannot consent to a search of another person’s belongings that are not in plain view, such as those that are kept in a closed box or suitcase.<sup>78</sup>

A shelter staff member lacks the authority to provide consent to an officer’s warrantless entry into or search of a client’s private or semi-private bedroom.<sup>79</sup> Shelter staff members and residents are under no affirmative obligation to consent to an officer’s warrantless entry into a bedroom or living quarters. Refusing to consent or asking to see a judicial warrant is not illegal harboring or an obstruction of justice.<sup>80</sup>

### *Public and Restricted Areas*

Shelters have different policies regarding access to areas in their facilities. Some shelters have public areas to which anyone can gain unregulated access. Generally, a judicial warrant is not required for peace officers to look for or approach shelter clients in public areas of a shelter. If a shelter client is located in a public area, an immigration officer can enter and arrest or detain the client without a judicial warrant.

Many shelters also include areas that are restricted, but still allow limited access to certain individuals. While restricted areas protect shelter clients and staff in other ways and promote the need for a safe environment conducive to the institution's mission, such restrictions on access will not always equate to Fourth Amendment protection. Not all restricted areas will provide the same level of constitutional protection as, for example, private residential areas. If access to an area is substantially restricted or the area is used for "intimate" activities, such as proceeding to and from shared shower facilities, residents may have a constitutionally protected reasonable expectation of privacy. Again, whether an occupant has a reasonable expectation of privacy while in a particular area will turn on the particular facts and circumstances that apply to the area in question.

## **2. Domestic Violence Shelters**

Federal law recognizes particular requirements for immigration enforcement actions that occur "at a domestic violence shelter, a rape crisis center, supervised visitation center, family justice center, a victim services, or victim services provider, or a community-based organization."<sup>81</sup> In cases where immigration enforcement actions at those locations lead to a removal proceeding, the notice to appear (NTA) must include a certification that the agency complied with section 1367 of title 8 of the United States Code. See Section 2 above for a more detailed discussion regarding NTA requirements in situations involving domestic abuse.

## **3. ICE and CBP Policies Regarding Access to Sensitive Locations for Shelters Located at Places of Worship and Shelters with Co-Located Substance Abuse Treatment Facilities or Schools**

Shelters are housed in a variety of locations and provide diverse services. Internal policies of federal immigration enforcement agencies provide that certain immigration enforcement actions, such as arrests, interviews, searches, and surveillance, should generally not occur at so-called "sensitive locations," which include schools, churches, public demonstrations, and hospitals.<sup>82</sup> Although shelters as a general category are not considered to be sensitive locations under these policies, those shelters that are located within places of worship (e.g., churches, synagogues, mosques, temples), or have co-located substance abuse treatment facilities or schools, are considered sensitive locations where immigration enforcement should not generally occur.

The sensitive locations policies do not preclude enforcement actions at places of worship, health care facilities, or schools. Rather, these policies provide that enforcement actions at or focused on sensitive locations should generally be avoided and may occur only when prior approval is obtained from an appropriate supervisory official, or an emergency requires an officer's immediate, warrantless action without prior approval.<sup>83</sup>

These sensitive location policies cover actions taken by ICE or CBP to conduct surveillance, or to apprehend, arrest, interview, or search an individual for immigration-enforcement purposes.<sup>84</sup> These policies do not extend to such actions as obtaining records, documents, and similar materials from shelter officials or employees; providing notices to shelter personnel; serving subpoenas; or participating in official functions or community meetings.<sup>85</sup> CBP's sensitive locations policy also does not apply to CBP operations conducted at or near the international border, or that bear a nexus to the border.<sup>86</sup>

Although the sensitive locations policies remain in effect, they may be modified, superseded, or withdrawn at any time without notice. Accordingly, and because exceptions to the policies exist, shelters located within places of worship and shelters with co-located schools or substance abuse treatment facilities should have plans in place in the event that an immigration enforcement officer requests information or access to a shelter site or a shelter client for immigration enforcement purposes.

DHS policies in furtherance of federal law also consider domestic violence shelters, rape crisis centers, supervised visitation centers, family justice centers, victim services providers, and community-based organizations to be sensitive locations for the enforcement of the immigration laws against certain victims and witnesses of crime.<sup>87</sup> As discussed in Section 2, certifications are required for those noncitizens who are appearing in connection with a protection order case, child custody case, or other civil or criminal case relating to domestic violence, sexual assault, trafficking, or stalking in which the person has been battered or subject to extreme cruelty or if the person is applying for a U visa or T visa.<sup>88</sup> Individuals may raise the failure to comply with these certification requirements in their removal proceedings.

#### **4. Access to Nonpublic Areas in Shelters Operated by Public Entities**

The Immigrant Worker Protection Act (Assembly Bill No. 450, 2017-2018 Regular Session) imposes obligations on public employers and persons acting on their behalf, in the event an Officer engaged in immigration enforcement seeks to enter an employer's place of business, subject to certain exceptions.<sup>89</sup> As of the date of this publication, this provision is subject to an order by a federal district court preliminarily enjoining a portion of its enforcement against private employers.<sup>90</sup> This order does not impact the application of this provision to public employers, such as any shelter operated by a state or local government agency.

Employers, or persons acting on behalf of the employer, are prohibited from providing "voluntary consent" for an immigration enforcement agent to enter "any nonpublic areas of a place of labor." This provision does not apply if the agent provides a judicial warrant.<sup>91</sup> (Additional information about how to identify judicial warrants may be found below.) This provision also does not preclude an employer from bringing an immigration enforcement agent into a nonpublic area of the workplace for the purpose of determining whether the agent has a judicial warrant "provided no consent to search nonpublic areas is given in the process."<sup>92</sup> Employers who violate this provision may be subject to civil penalties.<sup>93</sup>

Whether voluntary consent has been provided by an employer or a person working on behalf of an employers is a fact-based determination that depends on the specific circumstances of the interaction between the employer and the officer conducting immigration enforcement, including

the conduct of, and words used by, the employer or person working on behalf of the employer. In general, for consent to be voluntary, it cannot be the result of coercion, whether express or implied.

## **5. Description of Warrants, Subpoenas, and Court Orders Used for Immigration Enforcement**

Shelters vary widely in terms of their physical features, mission, clientele, staff, rules, and privacy.<sup>94</sup> Whether a peace officer has authority to access areas within a shelter depends on whether a client has a reasonable expectation of privacy in a particular area, as discussed above, as well as whether the officer has obtained valid authority to enter or search a given location that would otherwise be unavailable to the officer without consent.

A peace officer who is seeking to enter a shelter to search for a client or make an arrest may present any of several different types of documents as authority to enter. Sometimes, the officer may present no documentary authority at all. Below, this guide provides an overview of various types of documentary authority an officer may present. Sample copies of each document are appended to this guide. It is important to understand, however, that not all of these documents provide legal authority to enter and search an area of a shelter. Also, a document that might appear to be valid authority to enter and search an area of a shelter may be defective in a way that is not apparent to someone without special legal training. It is important to understand that, when presented with a request by a peace officer to enter and search a shelter, shelter staff and clients are not required to provide consent to the officer to enter an area of the shelter or otherwise assist with any search or arrest. Shelter staff should not, however, attempt to physically interfere with the officer's entry.

Immigration officers may be in civilian clothing that does not display a badge or other insignia. Shelter staff should ask the officers to provide credentials. It is also important to obtain and review what the immigration officer provides as written authority to enter and search a shelter. For example, sometimes the immigration officers will provide what they propose to be a "warrant." As explained below, there are multiple types of "warrants," and some provide greater authority to enter and search a shelter than others. Shelters should take steps to verify the validity of any written authority provided, if they are able to do so. Shelters may respond differently depending on the type of warrant or other authority and the type of facility.

Shelter staff are encouraged to immediately seek the advice of an attorney if an officer notifies shelter staff about potential criminal penalties for failing to assist officers.

### *ICE Administrative "Warrant"*

An ICE administrative "warrant" is the most typical type used by immigration enforcement officers. Such a document authorizes an immigration enforcement officer to arrest a person suspected of violating immigration laws. An ICE warrant can be issued by any authorized immigration enforcement officer. An ICE administrative warrant is not a warrant within the meaning of the Fourth Amendment to the U.S. Constitution, because an ICE warrant is not supported by a showing of probable cause of a criminal offense. An ICE warrant is not issued by a court judge or magistrate.

An ICE warrant does not grant an immigration enforcement officer any special power to compel shelter personnel to cooperate with his or her requests. For example, an ICE warrant does not authorize access to nonpublic areas of a shelter. An ICE warrant alone does not allow an immigration enforcement officer to search shelter records. (See Appendix B for a sample ICE administrative “arrest warrant” (Form I-200), and Appendix C for a sample ICE “removal warrant” (Form I-205).)

Shelter staff should not physically interfere with an immigration enforcement officer in the performance of his or her duties. Shelter staff, however, are not required to assist with the apprehension of a person identified in an ICE administrative warrant, nor is a shelter employee required to consent to an immigration enforcement officer’s search of shelter facilities. In fact, a shelter that is a public employer may not provide voluntary consent to an immigration enforcement officer seeking access to a nonpublic area when presented with an ICE warrant.<sup>95</sup>

### *Notice to Appear*

A notice to appear (NTA) is a charging document issued by ICE, CBP or the U.S. Citizenship and Immigration Services (USCIS) seeking to commence formal removal proceedings against an individual before an immigration court. An NTA contains allegations made about a particular person’s immigration status, and has no bearing on shelter staff. An NTA notifies an individual that he or she is expected to appear before an immigration judge on a certain date. An NTA does not authorize an individual’s arrest by immigration enforcement authorities or local law enforcement authorities.<sup>96</sup> (See Appendix D for a sample of an NTA (Form I-862).)

An NTA does not require shelter staff to take any action or grant an officer engaged in immigration enforcement any special power to compel the shelter to cooperate with the officer. An NTA does not authorize access to nonpublic areas of a shelter. An NTA does not legally require shelter staff to allow authorities to search shelter records.

### *Federal Court Warrant*

A federal court warrant is issued by a district judge or a magistrate judge of a U.S. District Court based on a finding of probable cause authorizing the search or seizure of property, the entry into a nonpublic area to arrest a person named in an arrest warrant, or the arrest of a named person.

There are two types of federal court warrants, a search-and-seizure warrant and an arrest warrant .

- A federal search-and-seizure warrant allows an officer to conduct a search authorized by the warrant. (See Appendix E for a sample federal search and seizure warrant (Form AO 93).)
- A federal arrest warrant allows an officer to arrest the individual named in the warrant. (See Appendix F for a sample federal arrest warrant (Form AO 442).)

Prompt compliance with a federal court warrant usually is required. Where feasible, however, shelter staff should consult with a designated shelter administrator or legal counsel before responding.

### *Administrative Subpoena*

An administrative subpoena is a document that requests production of documents or other evidence, and (in the immigration enforcement context) is issued by an immigration enforcement officer. The administrative subpoena will contain the following information: file number, subpoena number, mailing address to which to mail the requested information, a list of the regulations that apply, the request for information, and the signature(s) of the officer(s). (See Appendix G for a sample administrative subpoena (Form I-138).)

A shelter generally does not need to immediately comply with an administrative subpoena. If an immigration enforcement officer arrives with a pre-designated administrative subpoena, the shelter may decline to produce the information sought and may choose to challenge the administrative subpoena before a judge. Therefore, shelter staff should immediately contact a designated administrator or the shelter legal counsel upon receipt of a subpoena.

### *Federal Judicial Subpoena*

A federal judicial subpoena is a document that asks for the production of documents or other evidence. The federal judicial subpoena will identify a federal court and the name of the judge or judicial magistrate issuing the subpoena, and may require attendance at a specific time and location and the production of prescribed records. (See Appendix H for a sample federal judicial subpoena.)

As with an administrative subpoena, noted above, a shelter generally does not need to immediately comply with a federal judicial subpoena, but may challenge it before a federal judge in a U.S. District Court. Shelter staff should therefore immediately contact a designated shelter administrator or legal counsel upon receipt of a federal judicial subpoena.

### *Court Order*

If an immigration enforcement officer arrives with a court order, a designated administrator or the shelter's legal counsel should review the order, and then respond accordingly.

## **Policy Recommendations**

In addition to the model policies appearing in Section 5, the Attorney General makes the following policy recommendations.

### **1. Establish Procedures for Monitoring and Receiving Visitors into Shelter Facilities and Access Restrictions**

Shelters are encouraged to have in place policies for receiving visitors to the shelter campus. Model policies for receiving and registering outsiders—including immigration authorities—are included in Section 5 of this guide. These policies should consider in which areas within the shelter facility clients may have a reasonable expectation of privacy in anticipation that immigration enforcement authorities may attempt to search those areas, and those areas should be noted specifically within the shelter's policy. Publicly operated shelters should consider which areas of the facility are nonpublic within the meaning of the Immigrant Worker Protection Act and note those areas in their policy as well. When appropriate, shelters may post a "Notice of Private Residential Area" at entrances where clients may have a reasonable expectation of privacy.

Designating restricted areas (such as through the use of keycards, signage, or locks) and limiting access to outsiders can promote the need for a safe environment conducive to the shelter's mission. Shelters should also acknowledge that immigration enforcement activities, and threats of such activities, interfere with shelter activities and should adopt policies on restricted areas and similar policies regarding access to facilities that promote the shelter's mission. While restricted areas protect shelter clients and staff in other ways and promote the need for a safe environment conducive to the institution's mission, such restrictions on access will not always equate to Fourth Amendment protection.

## **2. Develop Policies for Responding to Immigration Officer's Presence at Shelter Facilities**

Shelters are encouraged to designate one or more administrators to serve as liaisons on immigration-enforcement-related issues. The designated shelter administrator should become familiar with the relevant documents and procedures used for immigration enforcement. When the circumstances allow, shelter personnel should immediately notify shelter management or the designated shelter administrator of any request by an officer engaged in immigration enforcement for access to shelter clients or facilities, or to review of shelter documents (including for the services of lawful subpoenas, petitions, complaints, warrants, etc.). Also, shelter personnel should direct the immigration enforcement officer to the designated shelter administrator when an officer requests access to a shelter site, client or record. The shelter should, in turn, contact the shelter's legal counsel or designated administrator and inform the officer to direct requests and questions to the shelter organization's legal counsel.

The model policies in Section 5 of this guide describe specific actions local shelter personnel can follow in responding to immigration authorities who are present at the shelter site specifically for immigration enforcement purposes. (See also the Reference Guide for shelter staff at Appendix A.)

## **3. Develop Policies Regarding Parental Notification of Immigration Enforcement Actions Involving Minor Shelter Clients**

Shelter personnel are encouraged to obtain consent from a minor shelter client's parent or guardian,<sup>97</sup> or the minor client's attorney, if applicable, before a minor can be interviewed or searched by any officer seeking to enforce immigration laws at a shelter, unless the officer presents a valid, effective warrant signed by a judge (see, e.g., sample federal search and seizure warrant (Form AO 93), attached as Appendix E; see also sample federal arrest warrant (Form AO 442), attached as Appendix F), or presents a valid, effective court order. Local shelter personnel should immediately notify the minor's parent or guardian, or the minor client's attorney, if applicable, if a law enforcement officer requests or gains access to a minor for immigration enforcement purposes, unless such access was in compliance with a judicial warrant or subpoena that prohibits the disclosure of information to the parent or guardian.

## **4. Develop Training Programs for Shelter Staff**

On-site shelter staff fulfill a critical gatekeeping function in regulating the access to shelter facilities. Shelter organizations are encouraged to establish training regarding immigration-related issues for shelter staff, including procedures for how to respond to a request from an

officer enforcing immigration law to visit a shelter site or to have access to a shelter client. If feasible, the shelter should also designate an immigrant affairs liaison to develop training programs for staff, help provide non-legal advice to families, and assist in communications with the shelter organization and other stakeholders in local and state government. Shelter staff should receive a copy of all model policies under this guide (or the equivalent policies adopted by the shelter).

## **5. Encourage Client Preparedness**

Shelter clients should be encouraged to attend community “Know Your Rights” trainings and update their emergency contacts.<sup>98</sup> Shelters can provide clients with contact information for nonprofit legal assistance organizations to assist clients in making family preparedness plans in the event a parent is taken into immigration custody (e.g., designate a standby legal guardian for minor children).<sup>99</sup>



## 04 Responding to Requests for Information for Immigration Enforcement Purposes

### Purpose of this Section

To identify applicable privacy protections that apply to requests for personal information and records regarding shelter clients, and to provide shelter staff with guidance for responding to such requests.

### Governing Law

#### 1. Disclosure of Immigration Status Information by Publicly Operated Shelters

As noted above in Section 1, federal law does not impose an affirmative duty on state or local government entities to collect immigration status information about an individual, but state and local governments cannot prohibit or restrict any governmental employees from sending or receiving citizenship or immigration status information regarding any individual to or from federal immigration enforcement authorities.<sup>100</sup>

#### 2. Restrictions Upon Release of Juvenile Records

In California, juvenile confidentiality laws protect information regarding juveniles involved in dependency and delinquency proceedings from being disclosed without the juvenile court's permission. Only certain individuals and agencies, such as those associated with the court proceedings, including the minor, the minor's parents or guardians, the attorneys for the parties, and court personnel, have access to this information.<sup>101</sup> All others must petition the court for access.<sup>102</sup> Those limited individuals with rights to access to the information cannot further disseminate it.<sup>103</sup>

Outside of juvenile court proceedings, these protections also apply to information related to the youth, including name, date or place of birth and immigration status that is obtained or created independent of or in connection with juvenile court proceedings about the juvenile and maintained by any government agency.<sup>104</sup> Therefore, governmental shelters housing youth also cannot disseminate the youth's information to outside entities, including to immigration authorities, unless required by a federal court order or federal judicial warrant, or authorized by the presiding judge of the juvenile court proceeding.<sup>105</sup>

#### 3. Restrictions Upon Release of Medical Information

To the extent that shelters that are covered entities under HIPAA (see Section 1 above) collect sensitive medical information about clients, such information must be withheld from disclosure unless a limited exception applies. Immigration authorities may attempt to obtain such information by relying on an exception permitting disclosures to law enforcement officials and correctional institutions.<sup>106</sup> This exception is not mandatory, however, therefore giving the responding entity the option of whether to provide the information. Further, it applies only when the official or institution has "lawful custody" over the subject of the records or the records themselves.

#### **4. Prohibition of Discrimination Based on Ancestry, Race, Color, National Origin, Citizenship, Primary Language, Religion or Immigration Status**

In California, all persons are entitled to equal treatment by business establishments of every kind whatsoever, regardless of their immigration status, race, color, ancestry, religion or national origin, among other protected categories.<sup>107</sup> Further, it is unlawful for the owner of a housing accommodation to discriminate or harass against any person because of any person's ancestry, race, color, religion, or national origin, among other protected categories.<sup>108</sup> And under state law, any programs that provide public aid must do so without discriminating based on nationality or immigration status.<sup>109</sup> (See Section 1 above.)

#### **5. Confidentiality Protections for Crime Victims**

For information about protecting crime victim confidentiality, please see Section 2 above.

#### **6. Confidentiality Requirements for Substance Abuse Treatment Facilities**

A shelter with a co-located substance abuse treatment facility must comply with federal confidentiality provisions that apply to patients of the facility. Such a shelter cannot disclose information regarding any client, including whether the client is present at that shelter, without the client's consent.<sup>110</sup>

#### **7. Procedural Requirements for Requests for Access to Information for Immigration Enforcement Purposes**

Before releasing any information about shelter clients in response to a request from immigration enforcement authorities, such as a subpoena, please consult Section 3 above regarding responding to such requests.

### **Policy Recommendations:**

In addition to the model policies appearing in Section 5, the Attorney General makes the following policy recommendations.

#### **1. Develop Policies and Procedures Regarding Information Sharing**

Shelters are encouraged to develop policies and procedures that seek to achieve the following goals:

- Avoid the unauthorized disclosure of immigration status information regarding a shelter client, or the family member of a shelter client;
- Provide notification of individual and family's privacy rights upon admittance to the shelter (see below);
- Refer all requests for information about individual shelter clients or their family members to a designated shelter administrator (working in consultation with legal counsel, where possible);
- Develop focused policies regarding nondisclosure of information for individuals participating in programs that may disproportionately serve undocumented individuals or families.

## **2. Provide Notice of Information Requests from Immigration Authorities**

Shelters should provide clients with appropriate notice if and when immigration enforcement requests have been made about them. Shelters should document any verbal or written request for information by immigration authorities. Shelters should report such requests for information to the designated shelter administrator (working in consultation with legal counsel, where possible).

If possible, shelters should provide documents regarding the request for immigration information to the subject client. If the individual is not English proficient, efforts should be made to provide the documents in the client's primary language.

## **3. Provide Notice to Individuals Regarding Information Policies**

Upon arrival, shelters should provide clients with a copy of its privacy policy. The policy should include the following:

- A description of the types of records maintained by the shelter;
- Information regarding the retention and destruction of personal information; and
- The circumstances under which the shelter might disclose personal information about shelter clients to outside entities, including notice of who will receive the information, the purpose of the disclosure, and how long that information may be retained by the receiving party.

Under Government Code section 7284.8, subdivision (a), all California shelters are encouraged to adopt the following model policies, or equivalent policies. The text below should be adapted by inserting the information sought in the bracketed portions.

### **Model Policies for Collecting, Retaining and Disclosing Shelter Client Information**

- [Shelter] staff shall treat all clients equitably in the receipt of all services, including, but not limited to, the gathering of client information in connection with the provision of services and benefits programs.
- [Shelter] staff should maintain in writing the policies and procedures for gathering and handling client personal information, and relevant personnel should receive training regarding those policies and procedures.
- [Shelter] should provide staff training (particularly for those at reception areas or who have initial contact with the public) on how to respond if officers come to their location to seek to enforce the immigration laws. [Shelter] should establish a protocol for such situations.
- Any sensitive information, such as Social Security numbers or immigration status information, collected by [Shelter] or disclosed by a shelter client, should be maintained only for as long as legally required.
- When addressing requests from immigration enforcement authorities, [Shelter] staff and volunteers should be trained to make clear that they are a service program required to maintain the confidentiality of program participant information under VAWA, FVSPA, VOCA and the VTVPA, or are sites considered “sensitive locations” under ICE or CBP policy, if applicable.
- When addressing requests from immigration enforcement authorities, [Shelter] staff should immediately consult with a supervisor or program administrator before responding to any immigration officer’s request, and should inform immigration officers that they are not authorized to answer questions without first consulting with a designated supervisor or administrator.
- [Shelter] should establish policies prohibiting the release of information about program participants unless the request is supported by a valid judicial warrant or subpoena specifically requiring the release of that information.
- [Shelter] administrators (or staff, to the extent possible) should be trained to distinguish between valid judicial warrants, and administrative warrants. (See Section 3, above.) [Shelter] supervisors or administrators should be trained to review the scope of any warrant to ensure its validity and also that it is being executed within its permitted time frame.

### **Model Policies for Monitoring and Receiving Visitors into Shelter Facilities**

- No visitor to [Shelter]—which would include immigration enforcement authorities—may enter or remain on [Shelter] grounds without having registered with a designated member of [Shelter] staff.
- [Shelter] should post signs at the entrance of its facility to notify outsiders of the hours of visitation and requirements for entry. Restricted areas should be identified as such using signs.

## Model Policies for Responding to Immigration Enforcement at Shelters

- As early as possible, [Shelter] staff should notify [designated administrator] of any request by an immigration enforcement officer to access [Shelter] facilities or clients, or any requests to obtain [Shelter] records (including in connection with the service of any subpoena, petition, complaint, warrant, etc.).
- If [designated administrator] is unavailable, [Shelter] staff should notify a supervisor. Shelter staff should allow [designated administrator] or supervisor to interact directly with the officer. While [Shelter] staff is waiting for [designated administrator] or supervisor, or if neither is available, continue taking the following actions:
  1. Advise the officer that before proceeding with the request, [Shelter] staff must first notify and receive direction from [designated administrator];
  2. Ask to see and make a copy of or note, the officer's credentials (i.e., name and badge number). Also ask for and copy or note the phone number of the officer's supervisor;
  3. Ask the officer to explain the purpose of the officer's visit, and note the response;
  4. Ask the officer to produce any documentation that authorizes access to [Shelter] facilities;
  5. Make copies of all documents provided by the officer.
  6. Decline to answer questions posed by the officer and direct them to speak to [designated administrator];
  7. State that [Shelter] does not consent to entry into [Shelter] facilities or portions thereof;
  8. Without expressing consent, respond based on the documentation provided that purports to authorize the request. If the officer has:
    - a. **An ICE administrative "warrant" (see samples in Appendix, items B & C):** Immediate compliance is *not* required. Inform the officer that [Shelter] cannot respond to the warrant until after it has been reviewed by a designated administrator. Provide copy of the warrant to [designated administrator] as soon as possible.
    - b. **A notice to appear (see sample in Appendix, item D):** This document is not directed at [Shelter] facilities. [Shelter] staff is under no obligation to deliver or facilitate service of this document to the person named in the document. If you receive a copy of the document, give it to [designated administrator] as soon as possible.
    - c. **A federal judicial warrant (either a search-and-seizure warrant or an arrest warrant; see samples in Appendix, items E & F):** Prompt compliance usually *is* required, but where feasible, staff should consult with [designated administrator] (where possible, in consultation with legal counsel) before responding.
    - d. **A subpoena for the production of documents or other evidence (see samples in Appendix, items G & H).** Immediate compliance is *not* required. Inform the officer that [Shelter] cannot respond to the subpoena until after it has been reviewed by [designated administrator]. Provide a copy of the subpoena to [designated administrator] or legal counsel as soon as possible.

9. If the officer orders staff to provide immediate access to facilities, [Shelter] staff should not refuse the officer's order and immediately contact [designated administrator]. Do not attempt to physically interfere with an officer, even if the officer appears to be acting without consent or exceeding the purported authority provided by a warrant or other document;
10. Document the officer's actions while in [Shelter] premises in as much detail as possible, but without interfering with the officer's movements;
11. Complete an incident report that includes the information gathered as described above and the officer's statements and actions; and
12. In turn, [designated administrator] should submit a timely report to [Shelter]'s management or governing board regarding the officer's requests and actions and [Shelter]'s response(s).

### **Model Policies for Immigration Enforcement Actions Against Minor Clients**

- [Shelter] staff should inform an immigration officer that they are not authorized to allow the officer to interview a minor client without consent from the client's parent or legal guardian. Before seeking consent, staff should inform the parent or guardian of the officer's intent to conduct an immigration enforcement interview.
- [Shelter] staff shall immediately notify the minor client's parent or guardian if an officer requests or gains access to a minor client for immigration enforcement purposes, unless such access was in compliance with a judicial warrant or subpoena that restricts the disclosure of the information to the parent or guardian.

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The analysis, recommendations, and policies expressed in this guide are based on research and input from the staff of the Attorney General's Special Project Team and office, and should not be considered as representing the views of any agency or organization that contributed to the report.

## Endnotes

- <sup>1</sup> This guide does not apply to shelters housing individuals in federal immigration custody.
- <sup>2</sup> For purposes of this guide, the term “immigration enforcement” has the meaning provided in Government Code section 7284.4, subdivision (f): “Immigration enforcement’ includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person’s presence in, entry, or reentry to, or employment in, the United States.” This guide uses variously the terms “immigration officer,” “immigration enforcement officer,” and “officer engaged in immigration enforcement.” All of these terms are used in reference to any officer or official seeking to enforce federal immigration law.
- <sup>3</sup> Bizjak, *Wine County Fires Flush Undocumented Workers to Sonoma Coast, Fearful of Deportation*, Sacramento Bee (Sept. 10, 2017), <http://www.sacbee.com/news/state/california/fires/article178502386.html> (as of Sept. 10, 2018).
- <sup>4</sup> Carey, ICE Agents Arrest Men Leaving Fairfax County Church Shelter, NBC Washington (Feb. 15, 2017), <https://www.nbcwashington.com/news/local/ICE-Agents-Arrest-Men-Leaving-Alexandria-Church-Shelter-413889013.html> (as of Sept. 10, 2018).
- <sup>5</sup> Gov. Code, § 7284.8, subd. (a). SB 54 defines “immigration enforcement” to include “any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person’s presence in, entry, or reentry to, or employment in, the United States.” (Gov. Code, § 7284.4, subd. (f).) This guide adopts that definition.
- <sup>6</sup> *Ibid.*
- <sup>7</sup> Cal. Dept. of Justice, Div. of Law Enforcement, Information Bulletin No. DLE-2018-01, *Responsibilities of Law Enforcement Agencies Under the California Values Act, California TRUST Act and the California TRUTH Act, Responsibilities of Law Enforcement Agencies Under the California Values Act, California TRUST Act, and the California TRUTH Act* (Mar. 28, 2018), [https://oag.ca.gov/sites/all/files/agweb/pdfs/law\\_enforcement/dle-18-01.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/law_enforcement/dle-18-01.pdf) (as of Sept. 10, 2018), at pp. 2-3
- <sup>8</sup> Gov. Code, § 7284.6, subds. (a), (b)(3).
- <sup>9</sup> Gov. Code, § 7284.2, subd. (d).
- <sup>10</sup> Public employers, including government-operated shelters, have state and federal obligations based on their status as employers that this guide does not reach. For example, Assembly Bill (AB) No. 450 (2017-2018 Regular Session) prohibits an employer, or a person acting on behalf of the employer, from providing voluntary consent to an immigration enforcement agent to access, review, or obtain the employer’s employee records without a subpoena or judicial warrant, unless certain exceptions apply. (Gov. Code, § 7285.2, subd. (a)(1).) Employers should ensure that all of their policies are consistent with applicable state and federal law.
- <sup>11</sup> Gov. Code, § 7284.8, subd. (a).
- <sup>12</sup> See *Plyler v. Doe*, 457 U.S. 202 (1982) (holding that Fourteenth Amendment protects undocumented immigrants from discrimination by states); *Matthews v. Diaz*, 426 U.S. 67, 77 (1976) (holding that the Fifth Amendment protects undocumented immigrants from discrimination by the federal government).
- <sup>13</sup> 42 U.S.C. § 3604. Non-profits run by religious organizations are allowed to give preferences to persons of the same religion, “unless membership in such religion is restricted on account of race, color, or national origin.” 42 U.S.C. § 3607(a).
- <sup>14</sup> A shelter program may be considered a “dwelling” under the Fair Housing Act depending on the circumstances, and considering the provider’s mission, relevant licensing, funding sources, and the level of time and resources allocated to services in relation to housing. 42 U.S.C. § 3602 (b). The Fair



Housing Act has been interpreted broadly to apply to emergency shelters depending on the expectations and intentions of the persons staying at the shelter, the duration of their stay, and whether the persons consider the shelter their residence. (See, e.g., *Community House, Inc. v. City of Boise* (9th Cir. 2007) 490 F.3d 1041, 1048 fn. 2 [declining to address whether all temporary shelters fit within the definition of “dwelling” but applying Fair Housing Act to 49-unit transitional overnight housing facility].)

<sup>15</sup> See 42 U.S.C. § 2000d (barring discrimination based on national origin and other protected characteristics in federally funded programs); *Lau v. Nichols*, (1974) 414 U.S. 563 (interpreting Title VI prohibition on national origin discrimination to include discrimination based on inability to speak English).

<sup>16</sup> Gov. Code, § 12955, subd. (a)

<sup>17</sup> Civ. Code, § 51, subd. (b).

<sup>18</sup> Gov. Code, § 11135, subd. (a); Welf. & Inst. Code, § 10000.

<sup>19</sup> Civ. Code, § 51, subd. (g).

<sup>20</sup> 8 U.S.C. §§ 1611(b)(1)(D), 1621(b)(4). The U.S. Department of Justice, the U.S. Department of Health and Human Services, and the U.S. Department of Housing and Urban Development emphasized this point as recently as August 5, 2016, when they reminded recipients of federal financial assistance in a letter “that they should not withhold certain services based on immigration status when the services are necessary to protect life or safety.” Loretta E. Lynch, Sylvia M. Burwell, Julián Castro, letter to Recipients of Federal Financial Assistance, Aug. 5, 2016, <https://www.hudexchange.info/resources/documents/HUD-HHS-DOJ-Letter-Regarding-Immigrant-Access-to-Housing-and-Services.pdf> (as of Sept. 10, 2018).

<sup>21</sup> Civ. Code, § 1940.3, subd. (b)(1). In addition, it is “unlawful for a landlord to disclose to any immigration authority, law enforcement agency, or local, state, or federal agency information regarding or relating to the immigration or citizenship status of any tenant occupant, or other person known to the landlord to be associated with a tenant or occupant, for the purpose of, or with the intent of” purposes such as harassment, intimidation, or retaliation. (*Id.*, § 1940.35, subd. (a).)

<sup>22</sup> For example, a Social Security number is required to apply for Supplemental Security Income. (See Social Security Administration, “Form SSA-16: Information You Need to Apply for Disability Benefits,” available at <https://www.ssa.gov/forms/ssa-16.html> (as of Sept. 4, 2018).) For information about eligibility for health benefits, consult the Attorney General’s guidance regarding public healthcare facilities, *infra* endnote 25.

<sup>23</sup> Federal authority on health information privacy arises from HIPAA and its Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164. California has several laws on health information privacy, including the Confidentiality of Medical Records Act, Civil Code § 56 et seq., the Patient Access to Health Records Act, Health & Saf. Code § 123110 et seq., the Insurance Information and Privacy Protection Act, Ins. Code § 791 et seq., and the Information Practices Act, Civ. Code § 1798 et seq.

<sup>24</sup> 45 C.F.R. § 160.103.

<sup>25</sup> 42 U.S.C. §§ 1395x(u), 1395x(s).

<sup>26</sup> Cal. Health & Human Svcs. Agency, Statewide Health Information Policy Manual (SHIPM) Documents, <http://www.chhs.ca.gov/OHII/Pages/SHIPM.aspx> (as of Sept. 10, 2018). The California Hospital Association also publishes guidance to its members regarding privacy in its California Health Information Privacy Manual, available at <https://www.calhospital.org/privacy> (as of Sept. 10, 2018).

<sup>27</sup> A copy of “Promoting Safe and Secure Healthcare Access for All: Guidance and Model Policies to Assist California’s Public Healthcare Facilities in Responding to Immigration Issues” may be found at [www.oag.ca.gov/sites/all/files/pdfs/immigration/healthcare-guidance.pdf](http://www.oag.ca.gov/sites/all/files/pdfs/immigration/healthcare-guidance.pdf) (as of Sept. 10, 2018).

<sup>28</sup> Cal. Dept. of Justice, Your Patient Privacy Rights: A Consumer Guide to Health Information Privacy in California, <https://oag.ca.gov/privacy/facts/medical-privacy/patient-rights> (as of Sept. 10, 2018).

<sup>29</sup> Welf. & Inst. Code § 827, subd. (a)(4).

<sup>30</sup> *Id.*, § 831, subd. (e).

<sup>31</sup> 8 U.S.C. § 1642, subd. (d).

<sup>32</sup> 8 U.S.C. § 1373, subd. (a), (b). This federal law applies to only government entities and does not apply to shelters operated by private organizations.

<sup>33</sup> *Ibid.*

<sup>34</sup> *City of Chicago v. Sessions* (N.D. Ill. July 27, 2018) \_\_\_ F.Supp.3d \_\_\_, \_\_\_, 2018 WL 3608564, at \*10; *City of Philadelphia v. Sessions*, 309 F.Supp.3d 289, 331;

<sup>35</sup> *United States v. California*, (E.D. Cal. 2018) 314 F. Supp. 3d 1107, 1101.

<sup>36</sup> See generally *id.*; *California v. Sessions*, Case No. 3:17-cv-485-WHO (N.D. Cal.).

<sup>37</sup> *United States v. California*, *supra*, 314 F.Supp.3d at p. 1102 (declining to interpret 8 U.S.C. § 1373 to include release dates and addresses); see also *City of Philadelphia v. Sessions*, *supra*, 309 F.Supp.3d at pp. 332–33; *Steinle v. City and County of San Francisco* (N.D. Cal. 2017) 230 F.Supp.3d 994, 1015–1016.

<sup>38</sup> National Human Svcs. Data Consortium, *Recommendation to Update Data Use and Retention Policies* (2017), <https://us4.campaign-archive.com/?u=3850920ad451d9c7f689c8968&id=cbeef5444e> (as of Jul. 12, 2018). These questions include:

- Why is the information collected?
- Does the information benefit the household or individual enrolled in the services?
- If the household's life/safety is at risk, does the custodian of the records have sufficient authority to hash, remove, archive, or destroy a data element not required by statutory or grant obligations?
- Has the organization that owns the system discussed and determined a course of action for any resulting legal action?

<sup>39</sup> For information about who may represent individuals in immigration proceedings, see U.S. Department of Justice, *Can Someone Represent You Before EOIR?* (Apr. 27, 2017), available at <https://www.justice.gov/eoir/can-someone-represent-you-eoir> (as of Sept. 10, 2018).

<sup>40</sup> VAWA was passed as part of the Violent Crime and Law Enforcement Act of 1994, Pub. L. No. 103-322, § 40701, 40702, 40703, 108 Stat. 1796 (Sept. 13, 1994). Since its original enactment, VAWA's immigration provisions have undergone several amendments and are codified principally at United States Code title 8, section 1154, subdivision (a).

<sup>41</sup> 8 U.S.C. § 1154(a)(1)(A).

<sup>42</sup> 34 U.S.C. § 12291, subd. (b)(2) (transferred from 42 U.S.C. § 13925, amended by VAWA 2013 Section 3); Welf. & Inst. Code, § 18301.

<sup>43</sup> *Id.*, subd. (a)(20).

<sup>44</sup> See 8 U.S.C. § 1367(a)(1).

<sup>45</sup> 42 U.S.C. § 10406; Pen. Code, § 13823.4.

<sup>46</sup> 42 U.S.C. §10406(c)(5).

<sup>47</sup> *Id.*, §(c)(5)(B)(ii).

<sup>48</sup> 28 C.F.R. § 94.115.

<sup>49</sup> 28 C.F.R § § 22.2, 22.28.

<sup>50</sup> 42 U.S.C. § 11383

<sup>51</sup> *The Violence Against Women and Department of Justice Reauthorization Act of 2005: Applicability to HUD Programs*, 72 Fed. Reg. 12696, 12699 (Mar. 16, 2007).

<sup>52</sup> 34 U.S.C. § 12291(b)(2)(C) (transferred from 42 U.S.C. §13925, amended by VAWA 2013 Section 3).

<sup>53</sup> The U visa was created by the Victims of Trafficking and Violence Prevention Act, enacted in October 2000. Pub. L. 106-386, 114 Stat. 1464 (Oct. 28, 2000). To be eligible, the person must: have been

the victim of a qualifying crime or similar activity in the U.S. (or that violated U.S. laws); have suffered substantial physical or mental abuse as a result; have information about the crime and has been helpful, is helpful, or is likely to be helpful to law enforcement in the investigation or prosecution of the crime; have a certification from a federal, state, or local law enforcement authority certifying his or her helpfulness; and be admissible to the U.S. or be eligible for a waiver of inadmissibility.

<sup>54</sup> Pen. Code § 679.11.

<sup>55</sup> Pub.L. No.106-386, (Oct. 28, 2000) 114 Stat. 1464-1548. An individual is eligible for a T visa if the individual is or was a victim of a severe form of trafficking in persons (which may include sex or labor trafficking), as defined by federal law; in the United States, American Samoa, the Commonwealth of the Northern Mariana Islands or at a U.S. port of entry because of trafficking; has complied with any reasonable request from a law enforcement agency for assistance in the investigation or prosecution of human trafficking; and would suffer extreme hardship involving unusual and severe harm if removed from the United States.

<sup>56</sup> Pen. Code, § 679.10. More detailed guidance on California's Immigrant Victims of Crime Equity Act may be found in Cal. Dept. of Justice, Div. of Law Enforcement, Information Bulletin No. DLE-2015-04 (Oct. 28, 2015), [https://oag.ca.gov/system/files/attachments/press\\_releases/dle-2015-04.pdf](https://oag.ca.gov/system/files/attachments/press_releases/dle-2015-04.pdf) (as of August 13, 2018).

<sup>57</sup> Pen. Code, §679.10, subd. (e).

<sup>58</sup> *Id.*, subd. (f).

<sup>59</sup> *Id.*, subd. (j).

<sup>60</sup> *Id.*, subd. (g).

<sup>61</sup> *Id.*, subd. (h).

<sup>62</sup> *Ibid.*

<sup>63</sup> *Id.*, subd. (k); Penal Code § 679.11, subd. (k).

<sup>64</sup> 8 U.S.C. § 1229(e); DHS Implementation of Section 1367 Information Provisions, at 12, [https://www.dhs.gov/sites/default/files/publications/implementation-of-section-%201367-%20information-provisions-instruction-002-02-001\\_0\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/implementation-of-section-%201367-%20information-provisions-instruction-002-02-001_0_0.pdf). This requirement also applies to certain persons subject to arrest at courthouses. For more information about immigration enforcement activities in courthouses, please refer to the California Department of Justice's publication "Securing Equal Access to Justice for All: Guidance and Model Policies to Assist California's Courthouses in Responding to Immigration Issues," available at [www.oag.ca.gov/sites/all/files/pdfs/immigration/court.pdf](http://www.oag.ca.gov/sites/all/files/pdfs/immigration/court.pdf) (as of Oct. 1, 2018).

<sup>65</sup> 8 U.S.C. § 1231(a)(5). Reinstatement of removal is a summary removal procedure that generally applies to noncitizens who return to the United States after a prior removal.

<sup>66</sup> 8 U.S.C. § 1225(b)(1)(A)(i). Expedited removal is a form of summary removal that may apply to noncitizens seeking entry or who have recently entered the country. By statute, they may be removed without any further court proceedings.

<sup>67</sup> Shelter clients and their families should be aware that immigration consultants are not lawyers and cannot provide legal advice. In addition, immigration consultants must be bonded and pass background checks with the Secretary of State, whose website, <https://specialfilings.sos.ca.gov/icbs>, provides information about whether individuals holding themselves out as immigration consultants have complied with these requirements.

<sup>68</sup> See 8 U.S.C. § 1227(a)(2)(E). This grounds for deportation includes domestic violence, stalking, and child abuse, as well as the violation of a protective order.

<sup>69</sup> 8 U.S.C. § 1182.

<sup>70</sup> 8 U.S.C. § 1227.

<sup>71</sup> 8 U.S.C. § 1227(a)(7).

<sup>72</sup> See 8 U.S.C. § 1367(a); see also Pen. Code, §§ 679.10, subd. (k); 679.11, subd. (k).

<sup>73</sup> *People v. Trujillo* (2017) 15 Cal.App.5th 574, 587.

<sup>74</sup> See *Community for Creative Non-Violence v. Unknown Agents of U.S. Marshals Service* (D.D.C. 1992) 791 F.Supp. 1, 6 (finding that homeless shelter residents have a reasonable expectation of privacy because the shelter is “the place most akin to their ‘home’”).

<sup>75</sup> See *United States v. Camou* (9th Cir. 2014) 773 F.3d 932, 940 (“We have defined exigent circumstances as “those circumstances that would cause a reasonable person to believe that entry [or search] ... was necessary to prevent physical harm to the officers or other persons, the destruction of relevant evidence, the escape of the suspect, or some other consequence improperly frustrating legitimate law enforcement efforts.”).

<sup>76</sup> See *Piazzola v. Watkins* (5th Cir. 1971) 442 F.2d 284, 288 (a dorm room has Fourth Amendment protections “analogous to an apartment or hotel room”).

<sup>77</sup> *People v. Hamilton* (1985) 168 Cal.App.3d 1058, 1067.

<sup>78</sup> *United States v. Fultz* (9th Cir. 1998) 146 F.3d 1102, 1106 (tenant who allowed homeless friend to stay in her house had no authority to consent to officer’s search of the friend’s closed boxes containing personal belongings).

<sup>79</sup> See *People v. Superior Court (Walker)* (2006) 143 Cal.App.4th 1183, 1205-1206 (college dorm room is similar to landlord-tenant relationship lacking a third party’s authority to consent).

<sup>80</sup> *United States v. Prescott* (9th Cir. 1978) 581 F.2d 1343, 1350-1351.

<sup>81</sup> 8 U.S.C. § 1229(e)(2)(A).

<sup>82</sup> Morton, U.S. Immigration and Customs Enforcement (ICE) Mem., Enforcement Actions at or Focused on Sensitive Locations (Oct. 24, 2011), <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf> (as of Sept. 10, 2018), at p. 2. See also Aguilar, U.S. Customs and Border Protection (CBP) Mem., Enforcement Actions at or Near Certain Community Locations (Jan. 18, 2013), [https://foiarr.cbp.gov/docs/Policies\\_and\\_Procedures/2013/826326181\\_1251/1302211111\\_CBP\\_Enforcement\\_Actions\\_at\\_or\\_Near\\_Certain\\_Community\\_Locations\\_%7BSigned\\_M.pdf](https://foiarr.cbp.gov/docs/Policies_and_Procedures/2013/826326181_1251/1302211111_CBP_Enforcement_Actions_at_or_Near_Certain_Community_Locations_%7BSigned_M.pdf) (as of Sept. 10, 2018); ICE, *FAQs on Sensitive Locations and Courthouse Arrests* (Jan. 31, 2018), <https://www.ice.gov/ero/enforcement/sensitive-loc> (as of Sept. 10, 2018); CBP, *Sensitive Locations FAQs* (Aug. 22, 2016), <https://www.cbp.gov/border-security/sensitive-locations-faqs> (as of Sept. 10, 2018). Sensitive locations include, but are not limited to, schools (including pre-schools, primary and secondary schools, post-secondary schools including colleges and universities, and vocational or trade schools); hospitals; churches, synagogues, mosques, or 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.

<sup>83</sup> *Ibid.*

<sup>84</sup> *Ibid.*

<sup>85</sup> *Ibid.*

<sup>86</sup> Aguilar, *supra* endnote 82, at p. 2.

<sup>87</sup> See 8 U.S.C. § 1229(e)(2)(A); DHS Implementation of Section 1367 Information Provisions, [https://www.dhs.gov/sites/default/files/publications/implementation-of-section-%201367-%20information-provisions-instruction-002-02-001\\_0\\_0.pdf](https://www.dhs.gov/sites/default/files/publications/implementation-of-section-%201367-%20information-provisions-instruction-002-02-001_0_0.pdf), at p. 12.

<sup>88</sup> 8 U.S.C. §1229(e)(2)(A).

<sup>89</sup> The Immigrant Worker Protection Act contains other terms regulating the actions of employers and persons acting on their behalf, including, for example, when responding to requests for employee records. (Gov. Code, § 7285.2). These terms, and other legal requirements running between employers and their employees, fall outside the scope of this guide.

<sup>90</sup> See *United States v. California*, *supra*, 314 F.Supp.3d at pp. 1096, 1112 (enjoining enforcement of Government Code sections 7285.1 and 7285.2 and Labor Code section 1019.2(a) & (b) on intergovernmental immunity grounds).

<sup>91</sup> *Id.*, § 7285.1

<sup>92</sup> *Id.*, subd. (c).

<sup>93</sup> *Id.*, subd. (b).

<sup>94</sup> Morrison, *The Fourth Amendment's Applicability to Residents of Homeless Shelters* (2009) 32 Hamline L. Rev. 319, 322 (discussing Fourth Amendment cases involving a large, institutional-style homeless shelter where clients stayed briefly and a home-like shelter with individual rooms and long-term residents).

<sup>95</sup> Gov. Code, § 7285.1.

<sup>96</sup> *Arizona v. United States* (2012) 567 U.S. 387, 407.

<sup>97</sup> To the extent a minor's parent or guardian is contacted to give consent for an interview connected to immigration enforcement, this will not alter the parent or guardian's access to other protected information such as health care details or diagnoses.

<sup>98</sup> "Know Your Rights" materials that have been translated into various languages may be found at <https://oag.ca.gov/immigrant/rights> (as of Sept. 10, 2018).

<sup>99</sup> Instructions on how to develop a family preparedness plan, affidavits, and sample emergency cards for minors may be found at [https://www.ilrc.org/sites/default/files/resources/family\\_preparedness\\_plan.pdf](https://www.ilrc.org/sites/default/files/resources/family_preparedness_plan.pdf) (as of Jul. 12, 2018).

<sup>100</sup> See endnotes 32 & 37, *supra*, and accompanying text.

<sup>101</sup> Welf. & Inst. Code, § 827, subd. (a)(1).

<sup>102</sup> *Id.*, subd. (a)(1)(P).

<sup>103</sup> *Id.*, subd. (a)(4) ("A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section.").

<sup>104</sup> *Id.*, subd. (e).

<sup>105</sup> *Id.*, subd. (a)(4).

<sup>106</sup> 45 C.F.R. § 164.512(k)(5)(i). This regulation provides, in full, that a covered entity "may disclose to a correctional institution or a law enforcement official having *lawful custody* of an inmate or other individual protected health information about such inmate or individual, if the correctional institution or such law enforcement official represents that such protected health information is necessary for (A) The provision of health care to such individuals; (B) The health and safety of such individual or other inmates; (C) The health and safety of the officers or employees of or others at the correctional institution; (D) The health and safety of such individuals and officers or other persons responsible for the transporting of inmates or their transfer from one institution, facility, or setting to another; (E) Law enforcement on the premises of the correctional institution; or (F) The administration and maintenance of the safety, security, and good order of the correctional institution." (*Ibid.*)

<sup>107</sup> Civ. Code, § 51, subd. (b).

<sup>108</sup> Gov. Code, § 12955.

<sup>109</sup> Welf. & Inst. Code, § 10000; Gov. Code, § 11135, subd. (a).

<sup>110</sup> 42 C.F.R. § 2.13.

## Appendix A

### Reference Guide for Shelter Staff—What Should You Do If an Immigration Officer Comes to Your Shelter?

Shelter clients have rights to privacy. Some parts of a shelter are like a client's home and are private. For example, a bedroom is usually a private part of a shelter. Shared spaces may or may not be private. Make sure you understand which areas of your shelter are private. If you are not sure, ask a supervisor.

An officer may ask your shelter to help detain or deport your clients who are immigrants. He or she may come to the shelter in person or ask for information in a phone call or in writing. You should protect your clients' privacy and not share confidential information with immigration officials unless they have a valid order from a judge, and should decline to consent to their access to private areas of the shelter, unless they have a judicial warrant. If you are not sure how to respond, ask a supervisor for help.

#### What if an individual comes to your shelter seeking information about immigrants or saying they are enforcing immigration law?

If an officer saying they are enforcing immigration law comes to your shelter, follow these steps:

1. Check your organization's own rules about privacy and immigration. Tell the officer that you must follow these policies before you answer any questions or give them access to the shelter.
2. Tell your shelter's director about the request. Tell the officer that you are not allowed to help them unless your director is involved. If the director is unavailable, tell a supervisor. Allow the director or supervisor to handle all discussions with the officer. While you are waiting for a supervisor, or if no supervisor is available, continue taking the steps noted below.
3. Ask to see the officer's name and badge number, and request the phone number of the officer's supervisor. Write down or make a copy of this information.
4. Ask the officer why the officer is at the shelter. Write down the officer's response.
5. Ask the officer for a warrant or any documents that allows them to search inside the shelter. Make a copy of the warrant or other documents.
6. Tell the officer that you do not give consent for the officer to enter any private area inside the shelter. You may say this even if the officer states that he has a document such as a warrant that gives the officer permission to go into that area. You may tell the officer that the officer needs to speak to your supervisor or director.
7. Understand that even if you tell the officer that you do not give consent, the officer may still have authority to enter private areas if the officer has a valid judicial warrant or if there are emergency circumstances.
8. If the officer does not have a warrant and asks to enter a private area of the shelter, tell the officer no. Tell the officer you are not allowed to give them private information or access to a private area without approval from your director.
9. If the officer orders you to provide access to an area inside the shelter, do not refuse the officer's order, and do not physically block the officer from entering. Write a note describing what happened in as much detail as you can and contact your director immediately.
10. After any visit from an immigration officer, take detailed notes right away about the matters discussed above. Provide a copy of your notes and documents to your shelter's director.

## **What if an individual asks for personal information about a shelter client or the client's family members for immigration related purposes?**

A shelter client's personal information is private. Be sure to follow your shelter's rules about client privacy.

1. Tell your shelter's director about the request. If the director is unavailable, tell a supervisor. Allow the director or supervisor to respond to the request. While you are waiting for a supervisor, or if no supervisor is available, follow the steps noted below.
2. Do not share any information that might reveal a shelter client's or family member's immigration status, unless you have the person's consent, or unless the officer gives you a court order, warrant, or subpoena signed by a federal court judge.
  - You should inform an immigration officer that you are not authorized to allow the officer to interview a minor client without consent from the client's parent or legal guardian. Prior to seeking consent, staff should inform the parent or guardian of the officer's intent to conduct an immigration enforcement interview.
3. If you work at a domestic violence shelter, tell the officer that the law requires you to maintain the privacy of clients under VAWA, U-Visa, or T-Visa laws. If your shelter is inside a place of worship, or shares a location with a school or detox facility, tell the officer that it is a "sensitive location" under ICE or CBP policy.
4. If you receive a request for information about your client's or their family's immigration status, check to see if a judicial warrant or order signed by a judge has been provided. If so, prompt compliance usually is required, but you should try to consult with the shelter director, who may be able to contact an attorney for advice before responding.
5. If your client's personal information has been shared with immigration enforcement authorities, tell your client right away. If your client does not speak English, arrange for an interpreter if possible. Give your client (or a minor client's parent or guardian) a copy of the information disclosed and any documents you receive from officers.
6. Help your clients to be prepared. Give your clients phone numbers for non-profit legal assistance organizations that can help with immigration issues, and make sure clients understand that notarios and immigration consultants are not qualified to advise on legal issues. Help your clients make family preparedness plans in case a parent is detained or deported.
  - Instructions on how to develop a family preparedness plan, affidavits, and sample emergency cards for minors can be found at [https://www.ilrc.org/sites/default/files/resources/family\\_preparedness\\_plan.pdf](https://www.ilrc.org/sites/default/files/resources/family_preparedness_plan.pdf)

**Appendix B**  
**Immigrations and Customs Enforcement “Arrest Warrant”**  
**(Form I-200)**

**U.S. DEPARTMENT OF HOMELAND SECURITY      Warrant for Arrest of Alien**

File No. \_\_\_\_\_

Date: \_\_\_\_\_

**To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations**

I have determined that there is probable cause to believe that \_\_\_\_\_ is removable from the United States. This determination is based upon:

- the execution of a charging document to initiate removal proceedings against the subject;
- the pendency of ongoing removal proceedings against the subject;
- the failure to establish admissibility subsequent to deferred inspection;
- biometric confirmation of the subject’s identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

**YOU ARE COMMANDED** to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

\_\_\_\_\_  
(Signature of Authorized Immigration Officer)

\_\_\_\_\_  
(Printed Name and Title of Authorized Immigration Officer)

**Certificate of Service**

I hereby certify that the Warrant for Arrest of Alien was served by me at \_\_\_\_\_  
(Location)

on \_\_\_\_\_ on \_\_\_\_\_, and the contents of this  
(Name of Alien) (Date of Service)

notice were read to him or her in the \_\_\_\_\_ language.  
(Language)

\_\_\_\_\_  
Name and Signature of Officer

\_\_\_\_\_  
Name or Number of Interpreter (if applicable)



**Appendix C**  
**Immigrations and Customs Enforcement “Removal Warrant” (Form I-205)**

DEPARTMENT OF HOMELAND SECURITY  
U.S. Immigration and Customs Enforcement  
**WARRANT OF REMOVAL/DEPORTATION**

File No: \_\_\_\_\_

Date: \_\_\_\_\_

**To any immigration officer of the United States Department of Homeland Security:**

\_\_\_\_\_  
(Full name of alien)

who entered the United States at \_\_\_\_\_ on \_\_\_\_\_  
(Place of entry) (Date of entry)

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 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:

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security 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:

\_\_\_\_\_  
(Signature of immigration officer)

\_\_\_\_\_  
(Title of immigration officer)

\_\_\_\_\_  
(Date and office location)

**Appendix D**  
**Notice to Appear (Form I-862)**

U.S. Department of Homeland Security

**Notice to Appear**

**In removal proceedings under section 240 of the Immigration and Nationality Act**

File No: \_\_\_\_\_

In the Matter of:

Respondent: \_\_\_\_\_ currently residing at:

(Number, street, city, state and ZIP code)

(Area code and phone number)

- 1. You are an arriving alien.
- 2. You are an alien present in the United States who has not been admitted or paroled.
- 3. You have been admitted to the United States, but are deportable for the reasons stated below:

The Department of Homeland Security alleges that you:

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

Section 235(b)(1) order was vacated pursuant to:  8 CFR208.30(f)(2)  8CFR235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: \_\_\_\_\_

(Complete Address of Immigration Court, Including Room Number, if any)

on \_\_\_\_\_ at \_\_\_\_\_ to show why you should not be removed from the United States based on the charge(s) set forth above.

(Signature and Title of Issuing Officer)

Date: \_\_\_\_\_

(City and State)

**See reverse for important information**

Form I-862 (Rev. 08/01/07)

# Appendix E Federal Search and Seizure Warrant (Form AO 93)

AO 93 (Rev. 11/13) Search and Seizure Warrant

## UNITED STATES DISTRICT COURT

for the

In the Matter of the Search of \_\_\_\_\_ )  
(Briefly describe the property to be searched )  
or identify the person by name and address ) Case No. \_\_\_\_\_ )  
)  
)  
)

### SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the \_\_\_\_\_ District of \_\_\_\_\_  
(Identify the person or describe the property to be searched and give its location):

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal (Identify the person or describe the property to be seized):

**YOU ARE COMMANDED** to execute this warrant on or before \_\_\_\_\_ (not to exceed 14 days)  
 in the daytime 6:00 a.m. to 10:00 p.m.  at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to \_\_\_\_\_  
(United States Magistrate Judge)

Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box)  
 for \_\_\_\_\_ days (not to exceed 30)  until, the facts justifying, the later specific date of \_\_\_\_\_

Date and time issued: \_\_\_\_\_  
\_\_\_\_\_  
Judge's signature

City and state: \_\_\_\_\_  
\_\_\_\_\_  
Printed name and title

# Appendix F Federal Arrest Warrant (Form AO 442)

AO 442 (Rev. 11/11) Arrest Warrant

## UNITED STATES DISTRICT COURT

for the

United States of America

v.

Case No.

Defendant

### ARREST WARRANT

To: Any authorized law enforcement officer

**YOU ARE COMMANDED** to arrest and bring before a United States magistrate judge without unnecessary delay  
(name of person to be arrested) \_\_\_\_\_,  
who is accused of an offense or violation based on the following document filed with the court:

- Indictment     Superseding Indictment     Information     Superseding Information     Complaint  
 Probation Violation Petition     Supervised Release Violation Petition     Violation Notice     Order of the Court

This offense is briefly described as follows:

Date: \_\_\_\_\_

Issuing officer's signature

City and state: \_\_\_\_\_

Printed name and title

#### Return

This warrant was received on (date) \_\_\_\_\_, and the person was arrested on (date) \_\_\_\_\_  
at (city and state) \_\_\_\_\_.

Date: \_\_\_\_\_

Arresting officer's signature

Printed name and title

# Appendix G

## DHS Immigration Enforcement Subpoena (Form I-138)

1. To (Name, Address, City, State, Zip Code)	DEPARTMENT OF HOMELAND SECURITY  <b>IMMIGRATION ENFORCEMENT SUBPOENA</b> to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number	
2. In Reference To	
_____ (Title of Proceeding) <span style="float: right;">(File Number, if Applicable)</span>	

By the service of this subpoena upon you, **YOU ARE HEREBY SUMMONED AND REQUIRED TO:**

- (A)  **APPEAR** before the U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), or U.S. Citizenship and Immigration Services (USCIS) Official named in Block 3 at the place, date, and time specified, to testify and give information relating to the matter indicated in Block 2.
- (B)  **PRODUCE** the records (books, papers, or other documents) indicated in Block 4, to the CBP, ICE, or USCIS Official named in Block 3 at the place, date, and time specified.

Your testimony and/or production of the indicated records is required in connection with an investigation or inquiry relating to the enforcement of U.S. immigration laws. Failure to comply with this subpoena may subject you to an order of contempt by a federal District Court, as provided by 8 U.S.C. § 1225(d)(4)(B).

3. (A) CBP, ICE or USCIS Official before whom you are required to appear	(B) Date
Name	
Title	
Address	(C) Time <input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m.
Telephone Number	

4. Records required to be produced for inspection



If you have any questions regarding this subpoena, contact the CBP, ICE, or USCIS Official identified in Block 3.

5. Authorized Official

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

# Appendix H

## Federal Judicial Subpoena (Form AO 88B)

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

### UNITED STATES DISTRICT COURT

for the

_____ )	
<i>Plaintiff</i> )	
v. )	Civil Action No.
_____ )	
<i>Defendant</i> )	

#### SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

\_\_\_\_\_

*(Name of person to whom this subpoena is directed)*

**Production: YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Place:	Date and Time:
--------	----------------

**Inspection of Premises: YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
--------	----------------

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: \_\_\_\_\_

CLERK OF COURT

OR

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

\_\_\_\_\_  
*Attorney's signature*

The name, address, e-mail address, and telephone number of the attorney representing (*name of party*) \_\_\_\_\_, who issues or requests this subpoena, are:

**Notice to the person who issues or requests this subpoena**  
If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).