

Promoting Safe and Secure Libraries for All

Guidance and Model Policies to Assist California's Public Libraries in Responding to Immigration Issues



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Introduction

California's public libraries are trusted and inclusive community institutions that advance knowledge, connect people, and provide all local residents with the information necessary to participate in American society. Public libraries collectively provide much-needed information, programs, safe spaces, and local community connections to all 39 million Californians, roughly 27 percent of whom are immigrants.

Public libraries are valued in our communities as diverse, neutral, socially responsive institutions that facilitate individual peoples' independent decision-making as well as the empowerment—particularly among some of the most vulnerable members of our society—that accompanies the accumulation of knowledge and skills. According to a 2017 Pew Research Center study, 78 percent of American adults say that public libraries help provide reliable information.¹

According to the California State Library, in the 2016-17 fiscal year, there were over 149 million visits to California's 1,119 public libraries; over 276 million collection items were used; over 17.7 million reference questions were answered; and nearly 122,000 adult, and 41,000 young-adult, programs were used.² In addition to providing citizens with access to books, magazines, newspapers, the Internet, and computers, public libraries help citizens navigate social services, healthcare access, welfare and public assistance, housing resources, education resources, language classes, and employment resources. Many public libraries also promote civic engagement by presenting speakers, programs, and workshops.

Public libraries play critical roles in serving immigrant communities, which number about 10 million people. For many people new to the United States, public libraries serve as gateways to citizenship, offering English language learning, training materials, and trustworthy resources on immigration and citizenship. The U.S. Citizenship and Immigration Services (USCIS) of the U.S. Department of Homeland Security (DHS) encourages public libraries to create "citizenship corners" dedicated to offering educational materials and information about programs and classes on the naturalization process and the rights and responsibilities of U.S. citizenship.³ However, fears of immigration enforcement have led some residents to question whether it is safe to use the resources provided by public libraries.

Public libraries abide by federal, state, and local laws that address library governance, funding, services, and service areas. For example, the Library Services and Technology Act establishes a federal library grant program that supports state-level initiatives in expanding services for learning and accessing information resources in all types of libraries.⁴

The California Library Services Act assures that all people in California "have free and convenient access to all library resources and services that might enrich their lives, regardless of where they live or of the tax base of their local government."⁵ Additionally, portions of California's Education Code relating to public library finance,⁶ municipal libraries,⁷ and library districts and museums in unincorporated areas⁸ guarantee that California residents have free access to the State's public libraries.

The California State Library is California's central reference and research library, and a key consultant and advisor to California's public libraries. The California State Library assists

and encourages all public libraries in the State to implement literacy and English-acquisition programs. Specifically, the California Library Literacy and English Acquisition Services Program within the California State Library is a highly valued program designed to increase literacy among “native and nonnative English-speaking youth and adults residing in California.”⁹

To fulfill the ultimate goal of connecting all Californians to the trustworthy information that they need, California public libraries must first ensure that they create safe and secure environments that are welcoming and non-discriminatory, as well as protective of the confidentiality of patron information. Libraries can create such environments, in part, by developing plans for responding to requests related to immigration enforcement in a way that protects the safety and privacy of all patrons whenever legally possible.

Purpose of this Guide

Senate Bill (SB) No. 54 (2017-2018 Regular Session) mandates that the Attorney General publish model policies “limiting assistance with immigration enforcement to the fullest extent possible consistent with federal and state law at” several kinds of public institutions, including public libraries.¹⁰ Every public library in the State is encouraged to adopt these model policies, or an equivalent policy.¹¹

California Attorney General Xavier Becerra provides this guide to implement the California 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 public libraries and their staff members in focusing their resources on their distinct missions, while leaving immigration enforcement efforts to others.

Specifically, the guide: (1) outlines relevant federal and state protections for all individuals seeking access to California public libraries; (2) provides policy recommendations that comply with federal and state laws, and that may mitigate disruptions from immigration enforcement actions at public libraries; and (3) lists model policies that may be adopted by public libraries.

A quick reference guide for library staff about responding to on-site immigration enforcement and requests for patron information is also included as Appendix H.

This guide is intended to help public library personnel develop practical plans to protect the rights of, and access by, their patrons. To that end, this guide discusses procedures for responding to immigration enforcement actions and requests for information directed at libraries. This guide, however, is not intended to address the duties that libraries may have as employers when faced with the same requests about their own employees.¹²

California law enforcement agencies are prohibited under state law from performing the functions of immigration enforcement officers.¹³ But public libraries should be aware that, although U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) are the agencies with primary responsibility for federal immigration enforcement, there are instances in which other law enforcement agencies, including local

ones, may attempt to enforce federal immigration laws. In this guide, ICE, CBP, and local law enforcement officers attempting to enforce immigration laws are treated the same, in terms of the advice given for how public libraries should handle interactions with them. Any policy adopted to address interactions between library personnel and immigration officers should encompass all law enforcement agencies that seek to enforce immigration law, and should handle all requests from law enforcement agencies acting with that purpose in the same way.

This guide is also intended to provide relevant model policies for California public libraries. Under SB 54, all libraries are encouraged to adopt these model policies, or equivalent policies.¹⁴ To the extent that any specific library program presents circumstances that are not addressed in these materials, library personnel should consult with library administrators and counsel in adapting the model policies described here.

Some public libraries may have already adopted policies equivalent to, or exceeding the protections provided in the policies stated in this guidance. To the extent that libraries have developed policies that are aligned with or provide greater protections for immigrants, this guide is not intended to displace those policies. 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. Rather, this guide offers foundational elements reflecting the minimum that should be present in the policies of any California library and should serve as a resource to enhance current policies as needed and to ensure alignment with state law. Libraries that have already adopted policies should use this guide as a resource to ensure alignment, providing protections at least as strong as are described here. Ultimately, the policies of libraries must at minimum follow the model policies here, except where contrasting laws or circumstances require adjustments.

This guide is not legal advice. This guide is based on law as of the publication date, which, of course, may change. Library administrators should consult with their attorneys when formulating policies and practices, and in addressing any questions, regarding the issues covered in this guide.

01 Establishing Policies Regarding Public Library Access

Purpose of this Section

Provide California library administrators and staff with information and policies for assuring access to library resources by all California residents, including immigrants.

Governing Law

In California, all individuals are to be served by public libraries. California law provides that it is in the interest of everyone in the State that all people are afforded free and convenient access to all library resources.¹⁵ Moreover, each library must provide equal access to all residents.¹⁶

Where libraries are concerned, each person in California has a single legal residency, which is the place one remains, when not working elsewhere, and to which one returns for repose.¹⁷ To borrow materials from a lending library, an individual must supply that library with just his or her name and current residence address.¹⁸

Policy Recommendations

1. Policies for Assuring Access to Public Library Facilities

To the extent possible, libraries should make clear with signs on physical facilities, as well as statements on informational Internet sites, that all individuals, regardless of immigration status, are welcome inside libraries and may use those facilities' resources.

2. Issuing Library Cards for Borrowing Privileges

A library card for borrowing privileges should be issued to a person upon presentation of: (1) a valid photo identification; and (2) any document showing the individual's current address. An acceptable photo ID includes, but is not limited to, a valid driver license, including a "federal limits apply" license, a valid passport from any jurisdiction, or a valid photo ID issued by any governmental entity, foreign or domestic, including a school. An individual's photo ID may itself indicate, and thus confirm, that individual's current address. If not, to show a current address, an individual may present another document, including but not limited to U.S. mail received at that address or a residential rental agreement.

Purpose of this Section

Identify categories of patron information *not* subject to release by California public libraries, and provide model policies instructing library personnel and patrons on ways to protect against the release of patron information, to the extent permitted by law.

Governing Law

1. Citizenship and Immigration Status Information

Federal law does not affirmatively require a library to share immigration status information in its possession. In addition, there have been successful constitutional challenges to section 1373 of title 8 of the U.S. Code, which provides that state and local government 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 enforcement authorities or other governmental entities.¹⁹ Specifically, federal courts outside of California have determined that this statute violates the Tenth Amendment to the U.S. Constitution.²⁰ A federal court in California has called the statute "highly suspect."²¹ And the Attorney General is currently challenging the statute's constitutionality in federal litigation in California.²² Counsel for libraries should continue to monitor developments in the law to determine this statute's continued applicability in California.

There have also been successful challenges to the federal government's expansive interpretation of section 1373. Federal courts have construed section 1373 narrowly, finding that 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 an individual's home or work address.²³

2. Confidentiality of Public Library Registration and Circulation Records

Library registration records, attendance lists for library programs, circulation records, and other library access records are confidential under the California Public Records Act, California Government Code section 6267.²⁴ The statute states that "all registration and circulation records of any library which is in whole or in part supported by public funds shall remain confidential and shall not be disclosed to any person, local agency, or state agency," with the exceptions of library administrators acting within the scopes of their duties, when authorized in writing by the individual to whom the records pertain, or "by order of the appropriate superior court."²⁵

California Government Code section 6254 further protects from public disclosure "library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes."²⁶

Policy Recommendations

1. Policies and Procedures Regarding Information Sharing by Public Libraries

Public libraries should develop policies and procedures that seek to achieve the following goals:

- Prohibit the unauthorized collection or disclosure of information that might indicate an individual's or family's citizenship or immigration status;
- Provide notification of individual and family privacy rights to everyone who seeks to use library resources (see below);
- Develop policies regarding nondisclosure of information for individuals participating in library programs that may disproportionately serve undocumented persons;
- Prohibit sharing of library registration records, attendance lists for library programs, circulation records, and other library access records;
- Refer all information requests to a designated person or persons, such as a library administrator or legal counsel, who will have the authority to respond to law enforcement requests, specifically immigration enforcement-related requests; and
- Train all library workers, including volunteers, about the library's procedures for handling law enforcement requests, specifically immigration-enforcement-related ones, for information about a library patron. The training should emphasize the governing law on the subject.

2. Notice to Individuals Regarding Information Policy

All residents who seek to use library resources or programs should be provided with a statement of the library's privacy policies, and all applicable privacy laws. By being conspicuously posted in a prominent place in the library, these statements should be made available to everyone who requests a library card or who is using library resources, with or without a card. These statements should be made available in the various languages commonly spoken by people in the local community. The statements should specifically include:

- A description of the types of records about patrons maintained by the library;
- The conditions under which the library might release personal information to outside entities; and
- Policies (or summaries of policies) and laws (or summaries of laws) regarding the retention at the library, and destruction, of personally identifiable information, including options for individuals to view or request destruction of their personal information.

Model Policies

Under California Government Code section 7284.8, subdivision (a), all public libraries 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 and Procedures Regarding Library Information-Sharing with Law Enforcement Authorities

- [Public library] should develop and post internally model information-sharing policies in multiple relevant languages, and make the policies accessible on the [public library] Internet site.
- [Public library] should develop procedures for handling information requests by telephone, such as requiring a call-back process through a publicly listed agency telephone number.
- [Public library] should consult legal counsel to help determine when and to what extent [public library] is required to comply with an administrative request for information.
- [Public library] should ask to see, and make a copy of or note, a requesting officer's credentials (name and badge number).
- [Public library] should establish policies that provide guidance on determining whether a document labeled "subpoena," "warrant," or "summons" has been issued by a court or judicial officers, as opposed to a non-court/non-judicial source.
- After a decision is made, in consultation with legal counsel, to disclose information to law enforcement authorities, [public library], again in consultation with legal counsel, should document what information or circumstances supported making that decision.

03 Responding to Requests for Physical Access to Public Libraries for Immigration Enforcement Purposes

Purpose of this Section

Inform library personnel of policies and practices for responding to immigration enforcement officers' presence in public libraries, and requests by immigration enforcement officers for physical access to different places within the libraries.

Governing Law

The Fourth Amendment to the U.S. Constitution protects individuals against unreasonable searches and seizures. What is required for law enforcement officers to access different areas of a library depends on whether patrons have expectations of privacy in the place to be entered. Where a reasonable expectation of privacy exists, the U.S. Constitution prohibits access without consent, a judicial warrant, or the types of exigent circumstances that excuse the warrant requirement. 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 facility.

1. U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection Policies Regarding Access to Sensitive Locations

ICE and CBP have each issued a memorandum and accompanying Frequently Asked Questions describing policies regarding immigration enforcement actions at or focused on "sensitive" locations.²⁷ These sensitive-location policies do not preclude law enforcement actions at such locations. Rather, the policies provide that enforcement actions at or focused on sensitive locations should generally be avoided. Such actions may take place at sensitive locations only when either (a) prior approval is obtained from an appropriate supervisory official, or (b) "exigent circumstances" necessitate immediate action without prior approval.²⁸

Libraries are not specifically included in the list of locations designated as sensitive locations for purposes of ICE and CBP enforcement actions, and therefore are likely not covered under those policies. Regardless, libraries should have plans in place in the event that a law enforcement officer requests information or physical access to a nonpublic area of the library for immigration enforcement purposes.

2. Description of Warrants, Subpoenas, and Court Orders Used for Immigration Enforcement

Because public libraries often provide significant assistance to immigrant populations, there are several foreseeable scenarios in which law enforcement officers might enter libraries for purposes of immigration enforcement. For example, an immigration enforcement officer may enter a library to request access to patron records or to target a specific individual or group of people. Public libraries should be prepared for such potential visits by immigration enforcement officers. One thing to keep in mind is that an immigration enforcement officer may be dressed in plain clothes.

While an immigration enforcement officer may enter a public area of the library without a search or arrest warrant, as discussed below, library personnel *cannot* allow the immigration enforcement officer to enter nonpublic areas of the library without a judicial warrant.²⁹ Each

library should establish a written policy that certain areas of the library are not open to the general public, and should post signs that clearly indicate which areas of the library are private.

If such an immigration enforcement officer requests access to library records or nonpublic areas of the library, library personnel should first ask to see the immigration enforcement officer's credentials and the written authority for the request. Sometimes, an immigration enforcement officer will provide what he or she calls a "warrant." If so, it is important to determine whether it is an ICE administrative warrant or a traditional federal court warrant. A library may lawfully respond differently depending on the type of warrant, as explained below.

3. Access to Nonpublic Areas in Public Libraries

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.³⁰ As of the date of this publication, this provision is subject to an order by a federal trial court preliminarily enjoining a portion of its enforcement against private employers.³¹ The order does not impact the application of this provision to public employers, such as any library 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."³² This provision does not apply if the immigration enforcement officer provides a judicial warrant.³³ (Additional information about how to identify judicial warrants can 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."³⁴ Employers who violate this provision may be subject to civil penalties.³⁵

Whether voluntary consent has been provided by an employer, or a person working on behalf of an employer, is a fact-based determination that depends upon 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 duress or coercion, whether express or implied.

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 library personnel to cooperate with his or her requests. For example, an ICE warrant does

not authorize access to nonpublic areas of a library. An ICE warrant alone does not allow an immigration enforcement officer to search library records. See Appendix A for a sample ICE administrative “arrest warrant” (Form I-200), and Appendix B for a sample ICE “removal warrant” (Form I-205).

Library personnel should not physically interfere with an immigration enforcement officer in the performance of his or her duties. However, a library employee is not required to assist with the apprehension of a person identified in an ICE administrative warrant, nor is a library employee required to consent to an immigration enforcement officer’s search of library facilities. In fact, a library 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.³⁶

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 place 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 C 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 D for a sample federal arrest warrant (Form AO 442).)

Prompt compliance with a federal court warrant is usually required. Where feasible, however, library staff should consult with a designated library 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 E for a sample administrative subpoena (Form I-138).)

A library generally does not need to immediately comply with an administrative subpoena. If an immigration enforcement officer arrives with an administrative subpoena, the library may decline to produce the information sought and may choose to challenge the administrative subpoena before a judge. Therefore, library personnel should immediately contact a designated administrator or the library’s 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 F for a sample federal judicial subpoena (Form AO 88B).)

As with an administrative subpoena, noted above, a library generally does not need to immediately comply with a federal judicial subpoena, and can challenge it before a federal judge in a U.S. District Court. Library personnel should therefore immediately contact a designated library 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 library administrator shall review the order with legal counsel or other designated person, and then respond accordingly.

Notice to Appear

A Notice to Appear (NTA) is a charging document issued by ICE, CBP, or 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. 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.³⁷ (See Appendix G for a sample notice to appear form (Form I-862).)

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

Policy Recommendations

1. Develop Policies for Responding to Requests for Access to Public Libraries for Immigration Enforcement Purposes

Public libraries should designate the person or persons, such as a library administrator or the library director, who will be responsible for responding to requests by immigration enforcement officers, and should make available to library personnel the contact information of the designated individual(s) if not present in the library during a visit from an immigration enforcement officer.

When the circumstances allow, library personnel should immediately notify the designated administrator(s) of any request by an immigration enforcement officer for physical access to nonpublic areas of the library, and any requests for review of library records. The administrator should, in turn, contact the library's legal counsel and inform the immigration enforcement officer to direct requests and questions to the library's legal office.

Important Note: An ICE administrative warrant does not allow an immigration enforcement officer to enter or to search any area that the officer could not otherwise enter as a member of the public. The officer may ask for permission, or consent, to access nonpublic areas of the library, even without a judicial warrant giving the officer the power to do so. Absent “exigent circumstances”³⁸ or a judicial warrant, public library personnel *cannot* give an immigration enforcement officer permission or consent to enter a nonpublic area of the library, or to conduct a search of any kind. Nor is that employee required to provide information or records about a library patron without a judicial warrant or order.

2. Develop Training Programs for Library Staff

Public libraries should establish and administer training programs regarding immigration issues for all library personnel, including volunteers and security guards employed by the library. This training should include information on responding to a request from an officer enforcing immigration law for physical access to nonpublic areas of the library or library records.

3. Additional Resources

In the event that a patron is detained, the library should refer the patron or his or her family members to other resources for assistance, including but not limited to the following.

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. Please note: The ICE detainee locator is intended only for locating individuals who are already detained. If an individual has general questions about his or her immigration status, he or she 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 a patron, or his or her family member, or to help arrange for the patron to visit the family member.

An individual can determine whether lawyers are licensed by and in good standing with the State Bar of California by checking online at <http://www.calbar.ca.gov/Attorneys>.

A list of California organizations accredited by the Board of Immigration Appeals (BIA) to represent immigrants before the DHS and the Executive Office of Immigration Review (EOIR) can be found here: <https://www.justice.gov/eoir/page/file/942306/download#CALIFORNIA>.

California courts operate Self-Help Centers that may also be able to provide relevant family-law assistance. A list of these centers across the State is available at <http://www.courts.ca.gov/selfhelp-selfhelpcenters.htm>.

An individual or his or her family member 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>.

Individuals should not hire a notary or an immigration consultant if they are seeking advice and assistance regarding their 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 an individual’s immigration forms or speak to the government on his or her behalf.

Consulate or Embassy

The consulate or embassy of an individual’s country of origin may be able to offer additional information and assistance.

4. Restricted Areas

Libraries can have different policies in place regarding restricted areas, such as areas accessible only to library staff. 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 library’s mission. Libraries should acknowledge that immigration enforcement activities, and threats of such activities, interfere with their mission and should adopt policies on restricted areas and similar policies regarding access to facilities and patrons that promote a safe environment conducive to the library’s mission. While restricted areas and similar policies protect facility users and staff in other ways and promote the need for a safe environment conducive to the institution’s mission, such restrictions will not always equate to Fourth Amendment protection.

Model Policies

Under California Government Code section 7284.8, subdivision (a), all California public libraries 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 Responding to Immigration Enforcement Officers’ Presence in Public Libraries

As soon as possible, [public library] personnel shall notify the [designated library administrator] of any request (including subpoenas, petitions, complaints, warrants, or court orders) by an immigration law enforcement officer to access a library facility, or any requests for the review of [public library] documents.

In addition to notifying the [designated library administrator], [public library] personnel shall take the following steps in response to an officer present at the library’s facility for immigration law enforcement purposes:

1. Advise the officer that, before proceeding with his or her request, [public library] staff must first notify and receive direction from the [designated library administrator].
2. Ask to see, and make a copy of or note, the officer's credentials (name and badge number). Also ask for and copy or note the telephone 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 library facility access.
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 the [designated library administrator].
7. State that [public library] does not consent to entry of [public library] facilities or portions thereof.
8. Without expressing consent, respond according to the requirements of the documentation. If the officer has:
 - a. **An ICE administrative "warrant" (see samples in Appendix, items A & B):** Immediate compliance is not required. Inform the officer that the library cannot respond to the warrant until after it has been reviewed by a designated administrator. Provide a copy of the warrant to the designated administrator as soon as possible.
 - b. **A federal judicial warrant (either a search-and-seizure warrant or an arrest warrant; see samples in Appendix, items C & D):** Prompt compliance usually *is* required, but, where feasible, staff should consult with legal counsel before responding.
 - c. **A subpoena for the production of documents or other evidence (see samples in Appendix, items E & F):** Immediate compliance is *not* required. Inform the officer that the library cannot respond to the subpoena until after it has been reviewed by a designated administrator. Give your copy of the subpoena to the designated administrator or legal counsel as soon as possible.
 - d. **A notice to appear (see sample in Appendix, item G):** This document is not directed at the library facility. Library staff is under no obligation to deliver or facilitate service of this document to the person named in the document. If you get a copy of the document, give it to your designated library facility administrator as soon as possible.
9. Document the officer's actions in as much detail as possible when he or she enters [public library] premises, but without interfering with the officer's movements.
10. If the officer orders staff to provide immediate access to facilities, [public library] staff should comply with the officer's order, and immediately contact a designated administrator. Personnel also should not attempt to physically interfere with the officer, even if the officer appears to be acting without consent or appears to be exceeding the purported authority given by a warrant or other document. If an officer enters the premises without authority, [public library] personnel shall simply document the officer's actions while at the facility.
11. [Public library] staff should document the officer's actions while in [public library] premises in as much detail as possible, but without interfering with the officer's movements.
12. [Public library] staff should complete an incident report that includes the information gathered as described above and the officer's statements and actions.

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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

- ¹ Pew Research Center, *Most Americans—Especially Millennials—Say Libraries Can Help Them Find Reliable, Trustworthy Information* (2017) (available online at <http://www.pewresearch.org/fact-tank/2017/08/30/most-americans-especially-millennials-say-libraries-can-help-them-find-reliable-trustworthy-information/> [last visited Aug. 8, 2018]).
- ² California State Library, *California Public Library Statistics* (2017) (available online at www.library.ca.gov/services/to-libraries/statistics/ [last visited Aug. 28, 2018]).
- ³ USCIS, *Libraries* (available online at <https://www.uscis.gov/citizenship/organizations/libraries> [last visited Sep. 8, 2018]).
- ⁴ 20 U.S.C., § 9121.
- ⁵ Educ. Code, §§ 18700-18767.
- ⁶ Educ. Code, §§ 18010-18032.
- ⁷ Educ. Code, §§ 18900-18965.
- ⁸ Educ. Code, §§ 19600-19734.
- ⁹ Educ. Code, §§ 18880-18883.
- ¹⁰ 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.
- ¹¹ Gov. Code, § 7284.8, subd. (a).
- ¹² Public employers 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 officer to access, review, or obtain the employer’s employee records without a subpoena or judicial warrant, unless certain exceptions apply. (Gov. Code, § 7282.2, subd. (a)(1).) Employers should ensure that all of their policies are consistent with applicable state and federal law.
- ¹³ Gov. Code, § 7284.6, subd. (a)(1)(G). See also Cal. Dept. of Justice, Div. of Law Enforcement, Information Bulletin No. DLE-2018-01 *Responsibilities of Law Enforcement Agencies Under the California Values Act, Californai Trust Act, and the California Truth Act* (Mar. 28, 2018), pp. 2-3 (available online at https://oag.ca.gov/sites/all/files/agweb/pdfs/law_enforcement/dle-18-01.pdf [last visited Sept. 10, 2018]).
- ¹⁴ Gov. Code, § 7284.6, subd. (a)(1)(G).
- ¹⁵ Educ. Code, § 18701.
- ¹⁶ Educ. Code, § 18743.
- ¹⁷ Educ. Code, § 20203, subd. (a).
- ¹⁸ Educ. Code, § 20206.
- ¹⁹ 8 U.S.C. § 1373, subds. (a), (b).
- ²⁰ *City of Chicago v. Sessions* (N.D. Ill. July 27, 2018) ___ F.Supp.3d ___, ___, 2018 WL 3608564, at *10; *City of Philadelphia v. Sessions* (E.D. Pa. 2018) 309 F.Supp.3d at 289, 331.
- ²¹ *United States v. California*, (E.D. Cal. 2018) 314 F.Supp.3d 1077, 1101.
- ²² See generally *id.*; *California v. Sessions*, Case No. 3:17-cv-485-WHO (N.D. Cal.).

²³ *United States v. California*, *supra*, 314 F.Supp.3d at p. 1102 (declining to interpret section 1373 to include release dates and addresses); see also *City of Philadelphia v. Sessions*, *supra*, at pp. 332–33; *Steinle v. City and County of San Francisco* (N.D. Cal. 2017) 230 F.Supp.3d 994, 1015–1016.

²⁴ Gov. Code, § 6267.

²⁵ *Ibid.*

²⁶ Gov. Code, § 6254, subd. (j).

²⁷ See Morton, ICE, *Enforcement Actions at or Focused on Sensitive Locations* (Oct. 24, 2011) (available online at <https://www.ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf> [last visited Aug. 30, 2018]); ICE, FAQs on Sensitive Locations and Courthouse Arrests (available online at <https://www.ice.gov/ero/enforcement/sensitive-loc> [last visited Jul. 11, 2018]); CBP, *U.S. Customs and Border Protection Enforcement Actions at or Near Certain Community Locations* (Jan. 18, 2013) (available online at https://foiarr.cbp.gov/docs/Policies_and_Procedures/2013/826326181_1251/1302211111_CBP_Enforcement_Actions_at_or_Near_Certain_Community_Locations_%7BSigned_M.pdf [last visited Sept. 19, 2018]); CBP, *Sensitive Locations FAQs* (available online at <https://www.cbp.gov/border-security/sensitive-locations-faqs> [last visited Sep. 19, 2018]).

²⁸ The 2011 ICE memorandum lists the following exigent circumstances: (a) an enforcement action involving a national-security or terrorism matter; (b) imminent risk of death, violence, or physical harm to a person or property; (c) an enforcement action involving the immediate arrest or pursuit of a dangerous felon, terrorist suspect, or any other individual posing an imminent danger to public safety; or (d) an imminent risk of destruction of evidence material to an ongoing criminal case. (Morton, *supra*.) The policy further states that, when proceeding with an enforcement action under “exigent circumstances,” officers and agents must conduct themselves as discretely as possible, consistent with officer and public safety, and make every effort to limit the time at or focused on the sensitive location.

²⁹ Gov. Code, § 7285.1.

³⁰ The Immigrant Worker Protection Act contains other terms limiting cooperation with immigration enforcement agents by employers and persons acting on their behalf, including, for example, when responding to requests by immigration enforcement agents 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.

³¹ See *United States v. California*, *supra*, 314 F.Supp.3d at pp. 1096, 1112 (enjoining enforcement of Government Code section 7285.1 on intergovernmental immunity grounds).

³² Gov. Code, § 7285.1, subd. (a).

³³ *Ibid.*

³⁴ Gov. Code, § 7285.1, subd. (c).

³⁵ Gov. Code, § 7285.1, subd. (b).

³⁶ Gov. Code, § 7285.1.

³⁷ *Arizona v. United States* (2012) 567 U.S. 387, 407.

³⁸ 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’”).

Appendix A
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 B
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 C

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, 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 D 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 E

Department of Homeland Security Immigration Enforcement Subpoena (Form I-138)

1. To (Name, Address, City, State, Zip Code)	DEPARTMENT OF HOMELAND SECURITY IMMIGRATION ENFORCEMENT SUBPOENA 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)	(File Number, if Applicable)

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 F 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

Plaintiff)
v.) Civil Action No. _____

Defendant)

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).

Appendix G

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: _____	
<small>(Number, street, city, state and ZIP code)</small>	<small>(Area code and phone number)</small>
<input type="checkbox"/> 1. You are an arriving alien.	
<input type="checkbox"/> 2. You are an alien present in the United States who has not been admitted or paroled.	
<input type="checkbox"/> 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:	
SAMPLE	
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:	
<input type="checkbox"/> This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.	
<input type="checkbox"/> Section 235(b)(1) order was vacated pursuant to : <input type="checkbox"/> 8 CFR208.30(f)(2) <input type="checkbox"/> 8CFR235.3(b)(5)(iv)	
YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: _____	
<small>(Complete Address of Immigration Court, Including Room Number, if any)</small>	
on _____ at _____ to show why you should not be removed from the United States based on the	
<small>(Date)</small>	<small>(Time)</small>
charge(s) set forth above.	
	_____ <small>(Signature and Title of Issuing Officer)</small>
Date: _____	_____ <small>(City and State)</small>
See reverse for important information	
<small>Form I-862 (Rev. 08/01/07)</small>	

Appendix H

Quick Reference Guide for Public Library Personnel

1. As soon as possible, [public library] personnel shall notify the [designated library administrator] of any request (including subpoenas, petitions, complaints, warrants, or court orders) by an immigration law enforcement officer to access a library facility, or any requests for the review of [public library] documents.
2. Advise the officer that before proceeding with his or her request, you must first notify and receive direction from a designated library administrator.
3. Ask to see, and make a copy of or note, the officer's credentials (name and badge number). Also ask for and copy or note the telephone number of the officer's supervisor.
4. Ask the officer to explain the purpose of the officer's visit, and note the response.
5. Ask the officer to produce any documentation that authorizes library facility access.
6. Make copies of all documents provided by the officer.
7. Decline to answer questions posed by the officer and direct him or her to speak to the designated library administrator.
8. State that the library does not consent to entry of the library facilities or portions thereof.
9. Without expressing consent, respond according to the requirements of the documentation. If the officer has:
 - a. **An ICE administrative "warrant" (see samples in Appendix, items A & B):** Immediate compliance is not required. Inform the officer that the library cannot respond to the warrant until after it has been reviewed by a designated administrator. Provide a copy of the warrant to the designated administrator as soon as possible.
 - b. **A federal judicial warrant (either a search-and-seizure warrant or an arrest warrant; see samples in Appendix, items C & D):** Prompt compliance usually is required, but, where feasible, consult with legal counsel before responding.
 - c. **A subpoena for the production of documents or other evidence (see samples in Appendix, items E & F):** Immediate compliance is not required. Inform the officer that the library cannot respond to the subpoena until after it has been reviewed by a designated administrator. Give your copy of the subpoena to the designated administrator or legal counsel as soon as possible.
 - d. **A notice to appear (see sample in Appendix, item G):** This document is not directed at the library facility. There is no obligation to deliver this document or facilitate service to the person named in the document. If you get a copy of the document, give it to your designated library facility administrator as soon as possible.
10. Document the officer's actions in as much detail as possible when he or she enters library premises, but without interfering with the officer's movements.
11. If the officer orders staff to provide immediate access to facilities, comply with the officer's order and immediately contact a designated administrator. Do not attempt to physically interfere with the officer, even if the officer appears to be acting without consent or appears to be exceeding the purported authority given by a warrant or other document. If an officer enters the premises without authority, [public library] personnel shall simply document the officer's actions while at the facility.

12. [Public library] staff should document the officer's actions while in [public library] premises in as much detail as possible, but without interfering with the officer's movements.
13. [Public library] staff should complete an incident report that includes the information gathered as described above and the officer's statements and actions.