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MEMORANDUM

TO: Maria Su, Executive Director
Department of Children, Youth & Their Families

FROM: Matthew Lee *ML*
Deputy City Attorney

DATE: January 27, 2017

RE: Limits on U.S. Immigration and Customs Enforcement Search Authority

In this memorandum, we respond to your request for written public guidance regarding legal limits on the authority of U.S. Immigration and Customs Enforcement (ICE) agents to request information or conduct searches in San Francisco, including on City property. City employees should immediately call the City Attorney's Office if ICE agents contact employees while they are performing their official duties, or if employees become aware that ICE agents are seeking to access City records or to come onto City property. Individuals and organizations that are funded by the City but are not part of City government should ensure that they comply with their agreements with the City, and should rely on their own counsel for legal advice.

Under the City's Sanctuary Ordinance, City agencies and employees are generally prohibited from assisting ICE in enforcing federal immigration laws. The purpose of this policy is to ensure that all residents trust City government, cooperate with City institutions, and participate in City programs that promote the public welfare. For example, the City needs crime victims and witnesses to cooperate with its police department, to make San Francisco's streets safe. The City needs parents to send their children to school, to keep San Francisco's economy strong. And the City needs people to seek medical care, to prevent the spread of disease. For these reasons, and others like them, the City needs all City residents to know they can access City services without fear of federal immigration consequences.

The City's Sanctuary Ordinance policies do not mean that federal immigration enforcement cannot happen in San Francisco. Instead, the policies provide specific restrictions on how City agencies and employees may interact with federal immigration authorities. Consistent with those policies and federal law, which does not allow the federal government to coerce local governments into performing immigration enforcement, we offer this guidance about City interaction with ICE agents on City property.

- **Whenever you encounter ICE agents:**
 - Except in the limited circumstances below where ICE agents have a valid subpoena or warrant, you are *not* required to cooperate with the agents.
 - You are *not* required to show ICE agents identification of any kind, including documents that prove citizenship or immigration status.
 - You are *not* required to answer ICE agents' questions.
 - You are *not* required to speak with ICE agents at all.

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- If you choose *not* to speak with ICE agents, you may tell ICE agents that you choose not to speak with them, and then say nothing else.
- As previously mentioned, City employees should immediately call the City Attorney's Office if ICE agents contact employees while they are performing their official duties, or if employees become aware that ICE agents are seeking access to City records or other City property.
- **If ICE agents have no warrant:**
 - ICE agents may ask for your permission to enter a non-public area or conduct some other kind of search, even if they do not have a warrant giving them the right to do so. But you do not need to give ICE agents permission to enter a non-public area, or conduct any other kind of search.
 - City employees acting in their official capacities should tell ICE that they cannot consent to any search of City property without first consulting the City Attorney's Office.
- **If ICE agents have a document they call a warrant:**
 - ICE agents may show you a piece of paper and tell you that they have a warrant.
 - But ICE uses the word "warrant" to refer to different kinds of legal documents.
 - Sometimes ICE uses warrants issued by federal judges.
 - Sometimes ICE uses warrants issued by administrative officials.
 - Each kind of warrant has different legal consequences.
 - City employees presented with a warrant during the course of their official duties should immediately call the City Attorney's Office.
 - ICE agents may also present a document called a "subpoena." This guidance addresses subpoenas separately.
- **Was the warrant issued by a federal judge, or was it issued by an administrative official?**
 - Was the warrant issued by someone called a "District Judge" or "Magistrate Judge"? Was the warrant issued by a court called a "U.S. District Court"? If so, the warrant was issued by a federal judge.
 - Was the warrant issued by *anyone other than* a "District Judge" or "Magistrate Judge"? Was the warrant issued by an institution called *anything other than* a "U.S. District Court"? If so, the warrant was issued by an administrative official.
 - "Immigration judges" and "administrative law judges" are **NOT** federal judges. They are administrative officials.

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- City employees should consult the City Attorney's Office in determining whether a warrant was issued by a federal judge or an administrative official.
- **If ICE agents have a warrant issued by an administrative official:**
 - ICE typically uses this kind of warrant to arrest the specific person named in the warrant.
 - An administrative official's arrest warrant does not allow ICE agents to enter any area that they could not have otherwise entered.
 - An administrative official's arrest warrant does not allow ICE agents to search anything that they could not have otherwise searched. This includes City records.
 - You do *not* need to tell ICE agents anything about the person they are looking for.
 - You do *not* need to help ICE agents find the person they are looking for.
 - You may inform ICE agents that you will not give them any information.
 - You may tell ICE agents that you do not consent to their presence on the premises.
 - You may ask ICE agents to leave.
- **If ICE agents have a warrant issued by a federal judge:**
 - ICE typically uses this kind of warrant to search property.
 - A valid judicial search warrant allows ICE agents to conduct any search authorized by the warrant.
 - If the warrant is invalid, or there are other problems with the search, it may be possible to challenge the search later.
- **If ICE agents have a document called a subpoena:**
 - A subpoena is a document that asks you to produce documents or other evidence. ICE has the power to issue subpoenas.
 - But you do *not* need to comply with an ICE subpoena on the spot.
 - If you are served with an ICE subpoena, you will have an opportunity to challenge the subpoena before a federal judge in U.S. District Court.
 - Again, "immigration judges" and "administrative law judges" are **NOT** federal judges. They are administrative officials.
 - A subpoena issued by an "immigration judge" or "administrative law judge" was **NOT** issued by a federal judge and does not require immediate compliance.

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- You cannot be punished for refusing to comply with an ICE subpoena until after you have had the opportunity to challenge it before a federal judge in U.S. District Court.
- **If ICE agents try to serve a subpoena on the City:**
 - Most City employees are not authorized to accept subpoenas issued to the City and County of San Francisco, or to decide whether to comply with those subpoenas.
 - City employees presented with subpoenas should immediately call the City Attorney's Office.