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# Immigration Enforcement and Protected Areas (Formerly Known as Sensitive Locations)

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**UPDATE: On January 21, 2025, Acting Department of Homeland Security Secretary Benamine Huffman [issued a directive](#) rescinding, in its entirety, the 2021 Memorandum on “Guidelines for Enforcement Actions in or Near Protected Areas.”<sup>1</sup> No new related guidance has been published publicly by the Department at this time. Therefore, much of the information below is now for historical reference purposes only. Just as the prior guidance did not entirely prevent civil immigration enforcement from occurring in or near protected areas, the revocation of this guidance does not necessarily mean enforcement is now certain to occur in or near such areas.**

For over a decade, both U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) issued separate policies regarding immigration enforcement in “sensitive locations.” In October 2021, the Department of Homeland Security (DHS) issued joint guidance for both agencies and the rest of DHS, rescinding former policies (the “2021 Memo”).<sup>2</sup>

Under the new guidance, DHS explained that, “to the fullest extent possible”, enforcement agencies should not take an enforcement action (whether it is an arrest, search, service of a subpoena, or other action) in or near a location that would restrain people’s access to essential services or engagement in essential activities. Under the 2021 Memo, such areas were referred to as “protected areas” instead of “sensitive locations”.

Per DHS’s guidance, protected areas required an understanding of the activities that take place in the location, the importance of the activities to the well-being of people and communities, and the impact that enforcement actions would have on people and their willingness to partake in the essential services and activities that take place in the location. Some examples of protected areas included, but were not limited to:

- **Schools** (pre-school, primary or secondary school, vocational or trade school, or college or university)
- **Medical or mental healthcare facilities** (hospital, doctor’s office, health clinic, vaccination or testing site, urgent care center, pregnancy center, or community health center)

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<sup>1</sup> Press Release, Statement from a DHS Spokesperson on Directives Expanding Law Enforcement and Ending the Abuse of Humanitarian Parole (Jan. 21, 2025), <https://www.dhs.gov/news/2025/01/21/statement-dhs-spokesperson-directives-expanding-law-enforcement-and-ending-abuse>.

<sup>2</sup> Memorandum from Alejandro N. Mayorkas on “Guidelines for Enforcement Actions in or Near Protected Areas,” (Oct. 27, 2021), [https://www.dhs.gov/sites/default/files/publications/21\\_1027\\_opa\\_guidelines-enforcement-actions-in-near-protected-areas.pdf](https://www.dhs.gov/sites/default/files/publications/21_1027_opa_guidelines-enforcement-actions-in-near-protected-areas.pdf).

- **Places of worship or religious study** (whether in a structure dedicated to activities of faith, such as a church or religious school, or a temporary facility or location where such activities are taking place)
- **Places where children gather** (such as a playground, recreation center, childcare center, before- or after-school care center, foster care facility, group home for children, or school bus stop)
- **Social services establishments** (such as a crisis center, domestic violence shelter, victims services center, child advocacy center, supervised visitation center, family justice center, community-based organization, facility that serves disabled persons, homeless shelter, drug or alcohol counseling and treatment facility, or food bank or pantry or other establishment distributing food or other essentials of life to people in need)
- **Places where disaster or emergency response and relief are provided** (such as along evacuation routes, where shelter or emergency supplies, food, or water are being distributed, or registration for disaster-related assistance or family reunification is underway)
- **A place where a funeral, graveside ceremony, rosary, wedding, or other religious or civil ceremonies or observances occur**
- **A place where there is an ongoing parade, demonstration, or rally**

The 2021 Memo further specified that enforcement actions taken near a protected area may have a similar impact to actions taken inside a specific location, and that must be considered as well.

### **There were certain circumstances in which an enforcement action may have “needed” to be carried out in protected areas.**

The 2021 Memo was not absolute. DHS recognized that there are some instances in which enforcement may take place in or near a protected area. Some examples included:

- Instances where the enforcement action involves a national security threat
- There is imminent risk of death, violence, or physical harm to a person
- The enforcement involves the hot pursuit of an individual who is a public safety threat
- The enforcement involves the hot pursuit of an individual personally observed crossing the border
- There is an imminent risk that evidence material to a criminal case will be destroyed
- A safe alternative location does not exist

Absent these or other exigent circumstances, an agent or officer needed to seek prior approval from their agency headquarters before taking enforcement action in a protected area. Further, ports of entry and Border Patrol stations were not considered to be in or near protected areas and enforcement actions are permissible in these locations.

Courthouses were not considered protected areas; however, ICE guidance stated that civil immigration enforcement actions may take place near a courthouse where there were exigent

circumstances present, or, in the absence of hot pursuit, against an individual who posed a threat to the public when there are no feasible alternative locations and supervisory approval had not been granted.<sup>3</sup>

## **Regardless of whether administrative guidance is in place to limit immigration enforcement, certain legal protections still apply.**

Section 287 of the Immigration and Nationality Act provides DHS officers and agents with the authority to arrest noncitizens without a judicial warrant. Just as local police officers do not need a warrant when they encounter someone breaking the law in a public space, the same holds true for federal officials enforcing immigration law. Obstructing or otherwise interfering with immigration enforcement is a crime, and anyone involved in such activities may be subject to prosecution under federal law.<sup>4</sup> However, the Fourth Amendment to the U.S. Constitution still applies to immigration enforcement actions on private property, meaning DHS officers and agents attempting enforcement in a private home or area require: (1) consent from an individual with authority over a place; (2) a judicial warrant (a warrant signed by a judge); or (3) the presence of exigent circumstances (similar to those listed above). Importantly, I-9 site inspections at places of employment generally do not require an administrative or judicial warrant when three days' notice is provided.<sup>5</sup>

## **If you believe that an enforcement action has been taken in violation of any person's legal rights, you can file a complaint.**

The following agencies can be contacted to report violations of legal rights in the course of immigration enforcement:

- DHS Office of the Inspector General by phone at (800) 323-8603 or through [oig.dhs.gov](https://oig.dhs.gov)
- DHS Office of Civil Rights and Civil Liberties by phone at (866) 644-8360 or submit an email to [CRCLCompliance@hq.dhs.gov](mailto:CRCLCompliance@hq.dhs.gov)

*The latest version of this resource will be available at [uscbb.org/migrationpolicy](https://uscbb.org/migrationpolicy).*

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<sup>3</sup> Memorandum from Tae Johnson & Troy Miller on “Civil Immigration Enforcement Actions in or Near Courthouses,” (Apr. 27, 2021), <https://www.cbp.gov/sites/default/files/assets/documents/2021-Apr/Enforcement-Actions-in-Courthouses-04-26-21.pdf>.

<sup>4</sup> *See, e.g.*, 8 U.S.C. § 1324 (making it a crime to conceal, harbor, or shield from detection, or attempt to conceal, harbor, or shield a noncitizen from detection when one knows, or acts in reckless disregard of the fact that, the noncitizen entered or remains in the United States unlawfully).

<sup>5</sup> United States Citizenship and Immigration Services, *Inspections*, <https://www.uscis.gov/i-9-central/legal-requirements-and-enforcement/inspections> (last updated Nov. 27, 2019).