

Executive Summary

The U.S. Immigration and Customs Enforcement (“ICE”) have conducted an increase in removal actions (informally known as “ICE raids”) across the country. According to media reports, it is anticipated that the immigration enforcement efforts will primarily target undocumented immigrants with criminal histories. In general, ICE agents attempt to arrest individuals under the suspicion that they are unlawfully present in the country.

This memorandum addresses concerns expressed regarding the possibility of raids by ICE officials at churches or facilities within the Diocese. This document provides guidance on the steps to take when confronted by ICE agents with the following: (1) a search warrant, (2) an arrest warrant, or (3) an administrative warrant.

Search Warrant Basics

A search warrant is a type of judicial warrant that permits ICE agents to search a specified location for evidence related to immigration violations or crimes. The search warrant must specify the exact location or area to be searched and what can be seized, such as property or documents.

Federal Rule of Criminal Procedure 41 governs the process by which federal search warrants are applied for, issued, and served. The standard procedure for the issuance of a warrant involves an agent, usually accompanied by a federal prosecutor, presenting an application with an attached factual affidavit to a U.S. Magistrate Judge for review. The application and affidavit must allege that one or more federal crimes have been committed and that evidence of the specified crimes will be located upon the premises (or person) to be searched. The judge’s duty is to objectively determine whether probable cause to believe the allegations set forth in the affidavit exists, and, if so, to sign the warrant.

Under the applicable provisions of Rule 41(c), the warrant may be used to search for and seize: (1) “evidence of a crime”; (2) “contraband, fruits of crime, or other items illegally possessed”; (3) “property designed for use, intended for use, or used in committing a crime”; or (4) “a person to be arrested or a person who is unlawfully restrained.” Fed. R. Crim. P. 41(c)(1)–(4).

Arrest Warrant Basics

An arrest warrant is a type of judicial warrant that permits ICE agents to arrest an individual based on probable cause that they have violated immigration laws or committed other crimes. The arrest warrant must specify the person to be arrested and the charges against the person; it cannot be a generalized or open-ended warrant targeting multiple individuals.

Federal Rules of Criminal Procedure 4 and 5 govern the issuance of arrest warrants. Specifically, Rule 4 covers the issuance of a warrant or summons by a U.S. Magistrate Judge, and Rule 5 outlines the initial appearance and detention of the arrested individual.

Under the applicable provisions of Rule 4(b), an arrest warrant must include: (1) “the defendant’s name or, if it is unknown, a name or description by which the defendant can be identified with

reasonable certainty”; (2) “describe the offense charged in the complaint”; (3) “command that the defendant be arrested and brought without unnecessary delay before a magistrate judge or, if none is reasonably available, before a state or local judicial officer”; and (4) “be signed by a judge.” Fed. R. Crim. P. 4(b)(1)(A)–(D).

Administrative Warrant Basics

An administrative warrant, also called an immigration warrant or “ICE warrant,” is a form issued by certain immigration officers that names an allegedly deportable non-citizen and directs ICE agents to arrest that individual. Unlike the judicial warrants discussed above, an administrative warrant is issued by an authorized immigration officer, and it is issued for those who are in violation of civil immigration laws, not criminal laws.

Steps to Follow if ICE Agents Arrive

If ICE agents arrive, the following steps should be taken:

1. **Politely Request and Review Identification and Warrant:** review the ICE agents’ official credentials, noting their names and badge numbers, and the details of the search, arrest, or administrative warrant. To be a valid judicial warrant, the warrant must be signed and dated by a judge. If the warrant is a search warrant, ensure that it is limited to a specific time frame and area. If the warrant is an arrest warrant, ensure that it pertains to a specific individual. Request a copy of the warrant and send it to the undersigned counsel.
2. **Immediately Contact Legal Counsel:** inform the ICE agents that the Diocese has legal representation. Do not answer any questions until your lawyer is present on the scene or available by phone for counsel.
3. **Do Not Allow Unauthorized Access:** if the ICE agents do not have a valid warrant, they are still permitted to enter any public areas (e.g., the parking lot, lobby, or waiting area). They cannot, however, enter any private areas without the consent of the Diocese or a representative of the Diocese. Similarly, if the search warrant is limited to certain areas, the ICE agents are not permitted to exceed the scope of the warrant.
4. **Cooperate and Do Not Obstruct Law Enforcement:** although you should be diligent in protecting your employees’ and other individuals’ rights, do not physically touch or interfere with ICE agents in their execution of a valid search, arrest, or administrative warrant. Obstructing law enforcement may expose the Diocese and its representatives to criminal liability.
5. **Document Interactions with ICE Agents:** keep a log of times, dates, and ICE agent interactions. Also note any items or documents seized by ICE agents and the names of any person arrested by ICE agents. Be prepared to debrief with legal counsel after the visit from ICE. All follow-up communications with ICE should be handled through counsel.

In closing, although the Diocese cannot instruct its employees or volunteers to remain silent, they should understand their right to remain silent and the right to legal counsel. Should the Diocese need further clarification or require immediate legal support in response to an ICE raid, the undersigned will be available to assist in any capacity and ensure that the Diocese remains a safe space for those in need.