



Ensuring Safe and Secure Places of Worship for All

Guidance to Assist New Mexico's Places of Worship in
Responding to Immigration Issues

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Introduction

New Mexico's places of worship serve a diverse group of New Mexicans, regardless of immigration status. Immigration enforcement actions at or near places of worship could result in a chilling effect on immigrant residents who wish to access New Mexico's places of worship. New Mexico cannot control the actions of federal immigration enforcement agencies, but individual places of worship can take steps to provide safe and secure access to places of worship for all residents, immigrants and non-immigrants alike, consistent with state and federal law.

Purpose of this Guidance

This Guidance is aimed at assisting New Mexico places of worship in developing policies or taking actions to ensure equal access to places of worship for all individuals. Leaders and administrators of places of worship are encouraged to consult with counsel about the issues contained in this Guidance. This Guidance is not intended to provide legal advice or address the duties places of worship have as employers.

GOVERNING LAW

Fourth Amendment Principles

Immigration agents, like law enforcement officers, must comply with the Fourth Amendment. In a public place, the Fourth Amendment allows to approach an individual and asking questions without any level of suspicion as long as the officer does not act in a manner that would cause a reasonable person to believe they are not free to leave.¹ This includes immigration officers asking questions about a person's citizenship or immigration status.² Officers may not detain an individual in the absence of reasonable suspicion.³ Law enforcement officers may make a warrantless arrest in a public place based on probable cause without violating the Fourth Amendment even in the absence of exigent circumstances.⁴ Immigration officers are permitted to make a warrantless arrest if they

¹ *State v. Williams*, 2006-NMCA-062, ¶ 11, 139 N.M. 578.

² *INS v. Delgado*, 466 U.S. 210, 220-21 (1984).

³ *Terry v. Ohio*, 392 U.S. 1 (1968).

⁴ See *Payton v. New York*, 445 U.S. 573, 590-91 (1980). The New Mexico Constitution provides greater protection and requires probable cause and either exigent circumstances or a warrant to make a public arrest, *Campos v. State*, 1994-NMSC-012, ¶ 14, 117 N.M. 155, and the New Mexico Constitution applies to the actions of federal officers for purposes of determining whether evidence is admissible in a state court proceeding. See *State v. Cardenas-Alvarez*, 2001-NMSC-017, ¶ 18, 130 N.M. 386. These heightened

witness a person entering or trying to enter the United States unlawfully or if they have reason to believe the individual has committed a federal felony. Otherwise, they may only arrest someone without court order if they have reason to believe a person entered the country unlawfully and “is likely to escape before a warrant can be obtained.”⁵

Private property, including property used for non-residential purposes such as a business, receives Fourth Amendment protection but only to the extent of a property right or reasonable expectation of privacy.⁶ A private property owner may exclude others and may limit others’ use of the property, and those exclusions would apply to law enforcement. When an intrusion onto commercial property would be a trespass for a member of the public, law enforcement officers cannot enter the property without the owner’s consent, a warrant, or exigent circumstances. But when a non-residential private property owner allows access by the public, law enforcement officers, as members of the public, may enter the property at the times that the property is open to the public.⁷ Courts do not appear to have resolved whether a potential chilling effect on the First Amendment right to the free exercise of religion provides any heightened expectation of privacy in a place of worship.

When a place of worship has a policy for receiving visitors to the premises and restricting access to areas of the place of worship, those policies also apply to law enforcement officers and immigration enforcement officers and should be posted to ensure compliance.

Protected Area Policies

Under previous presidential administrations, both Republican and Democrat, places of worship were considered “protected areas” warranting caution before any immigration actions were taken on such grounds.⁸ This policy did not prohibit enforcement actions at such locations but sought to avoid such activity on or near protected areas unless prior approval was obtained from an appropriate supervisory official or exigent circumstances necessitated immediate action.

constitutional protections, however, do not restrict the ability of federal agents to follow and enforce federal law. *Id.* ¶ 19.

⁵ 8 C.F.R. § 287.8(c).

⁶ See *Florida v. Jardines*, 569 U.S. 1, 5-11 (2013) (discussing residential properties); See *v. City of Seattle*, 387 U.S. 541, 543-46 (1967) (discussing commercial property).

⁷ See *id.* at 7-10.

⁸ See Alejandro N. Mayorkas, *Memorandum, Guidelines for Enforcement Actions in or Near Protected Areas* (Oct. 27, 2021)

https://www.dhs.gov/sites/default/files/publications/21_1027_opa_guidelinesenforcement-actions-in-near-protected-areas.pdf (last accessed Jan. 7, 2024); see also U.S. Customs and Border Protection, DHS Protected Areas FAQs (April 11, 2024) <https://www.cbp.gov/border-security/dhsprotected-areas-faqs> (last accessed Jan. 7, 2025).

Because federal policies are subject to change and the current administration has announced a focus on immigration enforcement and mass deportation, places of worship may decide to implement policies that would assist in responding to immigration enforcement actions at the place of worship.

Warrants and Subpoenas for Immigration Enforcement

Warrants and subpoenas issued by an officer engaged in immigration enforcement are not the same as judicial warrants, judicial subpoenas, and court orders issued by a federal court. It is advisable for places of worship to have internal protocols that inform staff and administrators how to address immigration-related warrants both to ensure compliance with the law and to prevent the unnecessary disruption of religious activities.

ICE Administrative Warrant

Immigration officers frequently rely on ICE administrative warrants. These documents authorize an immigration enforcement officer to arrest a person suspected of violating immigration laws when that person is in a public location, and these documents are issued by a specifically authorized immigration official. An ICE administrative warrant is not a warrant within the meaning of the Fourth Amendment, like a traditional arrest warrant, because it is not issued by a neutral magistrate and is not based on a finding that probable cause exists to believe that someone committed a criminal offense.

ICE warrants do not authorize immigration officials to access nonpublic, restricted areas of a privately owned property. An ICE administrative warrant also is not a “court order” that would require the disclosure of the records held by a place of worship.

Federal Court Warrant

A judicial warrant issued by a federal district or magistrate judge based on a finding of probable cause satisfies the Fourth Amendment for purposes of authorizing the search or seizure of property, entry into a nonpublic place to arrest a person named in an arrest warrant known to be in that place, and the arrest of a named person.

Administrative Subpoena

An administrative subpoena is a document that requests production of documents or other evidence and is typically issued by an immigration officer.

As with most subpoenas, including those issued by a federal court or federal grand jury, immediate compliance with an administrative subpoena is not typically required because subpoenas can be challenged in court. It would be advisable to consult with counsel before disclosing records pursuant to an administrative subpoena.

Notice to Appear

A Notice to Appear (NTA) is a charging document issued by ICE, Customs and Border Patrol (CBP), or the United States Customs and Immigration Service (USCIS) seeking to commence formal removal proceedings against an individual before an immigration court. An NTA contains allegations 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.⁹

An NTA does not require the taking of any action. Nor does it grant an officer engaged in immigration enforcement any special authority to access nonpublic, restricted areas of private property or the production of records.

⁹ *Arizona v. United States*, 567 U.S. 387, 407 (2012).