NONPROFIT EMPLOYER FAQS:

PROTECTING STAFF, CLIENTS, AND MISSION IN THE CURRENT IMMIGRATION ENFORCEMENT ENVIRONMENT

NONPROFIT RESILIENCY SERIES

NYLPI
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Connecting Lawyers, Nonprofits, and Communities

Lowenstein Sandler

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This guidance was prepared by Lowenstein Sandler LLP (Lowenstein Sandler), New York Lawyers for the Public Interest (NYLPI), Lawyers Alliance for New York, and the Nonprofit Resiliency Network to help nonprofit employers protect their staff, clients, and mission as they navigate the current immigration enforcement environment.

This document is designed for nonprofit leaders who may not be lawyers. It focuses on practical decision-making, risk management, and governance considerations that arise when organizations encounter immigration enforcement activity.

Because the authors are based in New York and New Jersey, the discussion includes examples and references to laws and policies in those states. It builds on prior guidance published by Lowenstein Sandler (the Lowenstein Advisory) and the Nonprofit Resiliency Network (the Nonprofit Resiliency Network Guidance), addressing how nonprofits may respond to immigration enforcement at their facilities—including when an organization may deny access to nonpublic areas and how staff should respond to requests for entry, warrants, subpoenas, and court orders.

This document takes a broader view than earlier guidance, focusing on employment law and operational and governance issues that may arise when nonprofit leaders, staff, volunteers, and clients encounter immigration agents, whether on-site or off-site. For ease of reference, this guidance sometimes refers to "ICE" (U.S. Immigration and Customs Enforcement) or "immigration agents," but those references should be understood more broadly to include other federal agencies or officers engaged in immigration enforcement activities, including U.S. Customs and Border Protection, the Drug Enforcement Administration, the Federal Bureau of Investigation, and other federal personnel acting in coordination with immigration enforcement.

This guidance was informed by questions that Lowenstein Sandler, NYLPI, and Lawyers Alliance for New York have received from nonprofit organizations and is designed to help nonprofit leaders anticipate, prepare for, and respond to situations that may arise in practice.

> This guidance provides general information only. It is not legal advice and does not substitute for consulting a lawyer about your nonprofit's specific facts and circumstances. If you have questions about this guide or seek pro bono legal representation, you may contact NYLPI through its intake form https://bit.ly/ClearinghouseIntake or Lawyers Alliance for New York at https://lawyersalliance.org/resource-calls. If you seek individualized legal advice, you may also email Lowenstein Sandler at nonprofithelp@lowenstein.com. Lowenstein Sandler cannot guarantee representation, but someone will respond to your inquiry.

EMPLOYEE RIGHTS, SAFETY, AND EMPLOYER RESPONSIBILITIES

Nonprofit employers face overlapping responsibilities during immigration enforcement activity, including workplace safety, nondiscrimination, wage and hour compliance, data privacy, and fiduciary governance. These obligations apply regardless of the immigration status of any individual employee or client.

1. What responsibilities do nonprofit employers have to ensure employee safety during immigration enforcement activity?

General Duty to Provide a Safe Workplace

Employers have a general duty under workplace safety laws to provide a reasonably safe workplace. This obligation does not change in the context of immigration enforcement.

In practice, this means employers should take reasonable, proactive steps to reduce foreseeable risks—particularly for programs that involve public-facing or unpredictable environments.

Key actions include:

- Conducting risk assessments for programs with higher exposure to law enforcement encounters, such as street outreach and accompaniment to ICE check-ins.
- Training staff on de-escalation and noninterference.
- Providing clear instructions that staff must not physically intervene in enforcement activity.
- Establishing a clear chain of command during enforcement encounters.
- Requiring prompt internal reporting and documentation of incidents
- Safety planning should be documented. Written protocols help demonstrate that the organization acted reasonably if an incident later leads to a claim.

Off-Site and Community-Based Work

Risk is higher for programs conducted outside the organization's physical premises, including:

- ICE check-in accompaniment
- Street outreach
- Home visits
- Food or medicine delivery
- Court support
- Transportation of clients

Employers should consider the following steps:

- Define scope of authorized activities with specificity.
- Train staff on the distinction between lawful observation and support and conduct that could be perceived as interference or obstruction.
- Establish "stop work" authority, allowing staff to disengage in work activities if safety deteriorates.
- Ensure insurance coverage reflects actual activities (including off-site work and transportation).
- Do not direct or encourage staff to engage in conduct intended to evade or obstruct law enforcement. Such conduct can create legal exposure for both the employee and the organization.

2. What legal protections may apply to employees who encounter immigration enforcement while performing job duties?

Constitutional Rights

As explained more fully in the Lowenstein Advisory and the Nonprofit Resiliency Network Guidance, employees retain constitutional rights, regardless of immigration status. Their core rights include:

- The right to remain silent (Fifth Amendment).
- The right to decline consent to a search of one's person, home/private workplace, or belongings absent a valid judicial search warrant (Fourth Amendment). (Note, however, that an employer may consent to a workplace search.)
- The right not to be arrested or detained without legal justification (Fourth and Fifth Amendments). (Note, however, that a judicial warrant is not required for an arrest, whereas a judicial warrant is required for a home/private workplace search.)
- The right to ask if they are free to leave (Fourth Amendment).

The practical implications of exercising these rights may vary depending on the individual's immigration status and circumstances. For example, U.S. citizens face different strategic considerations from noncitizens in exercising the right to remain silent, as some noncitizens have legal obligations to carry or present documentation when asked. Moreover, while the employees' constitutional rights are legally protected, they may not always be honored in practice. In some circumstances, asserting rights may prolong encounters with immigration enforcement officers or result in adverse consequences such as retaliation, detention, or other harms. Organizations and their employees should evaluate these risks based on their particular circumstances and risk tolerance.

Employers may provide employees with general "Know Your Rights" education and resources regarding immigration enforcement. Providing factual information about employees' legal rights and directing employees to reputable legal resources is different from encouraging unlawful conduct. Employers should take care, however, to provide general information rather than individualized legal advice, and should encourage employees to consult qualified immigration counsel regarding their specific circumstances.

Employers should not instruct employees to:

- Flee from law enforcement or immigration authorities.
- Hide or harbor individuals from law enforcement or immigration authorities.
- Provide false information or false documents.
- Physically interfere with or obstruct an immigration enforcement action.

Encouraging or engaging in such conduct may create significant legal risk and potential civil or criminal liability for both the employee and the organization.

Nondiscrimination Obligations

Immigration enforcement concerns do not alter core employment law obligations. Employers must not:

- Treat employees differently based on perceived immigration status
- Reverify work authorization selectively or without a lawful triggering event.
- Apply policies inconsistently in ways that create a hostile work environment.

Overreaction—such as heightened scrutiny of certain employees—can itself create liability under nondiscrimination laws.

3. If an employee is injured during ICE activity, what are our obligations?

Workers' Compensation

If an employee is injured while performing job duties, workers' compensation typically provides the exclusive remedy against the employer. This generally shields the organization from tort liability, even if the injury results from third-party conduct (including law enforcement), provided:

- The employee was acting within the scope of employment.
- The employer did not engage in intentional or reckless misconduct

The "intentional or reckless misconduct" exception warrants close attention. Courts generally apply a high bar: the employer must have had actual knowledge that injury was substantially certain to occur or must have acted with conscious disregard of a known, serious risk. Employers who are assigning employees to a location where immigration enforcement activity is highly likely and/or there is a known, volatile environment that could lead to injury should consult with counsel about how to mitigate risks of liability.

Assigning Work in High-Risk Areas

If an organization directs employees to work in environments where enforcement activity is likely (e.g., in the vicinity of protests or high-profile enforcement operations), additional precautions may be warranted.

Employers may wish to consider taking the following steps:

- Conduct a risk assessment and engage in safety planning for activities that may involve interactions with immigration enforcement.
- Make participation in higher-risk assignments voluntary where operationally feasible.
- Avoid retaliation against employees who decline assignments for safety reasons.
- Provide appropriate training, resources, and personal protective equipment where warranted by the circumstances (for example, if large public demonstrations are anticipated).
- Ask employees to sign training acknowledgments or similar documentation confirming that they received information regarding the nature of the assignment, applicable safety protocols, and available organizational resources.

Potential Claims Against Federal Officers or the Federal Government

Employees injured during immigration-enforcement encounters may have potential claims against the federal officers or agencies involved, separate from any workers' compensation benefits. The availability of such claims is highly fact-specific and subject to significant procedural and immunity defenses.

The Federal Tort Claims Act, 28 U.S.C. §§ 1346(b), 2671–2680 (FTCA), permits certain claims against the United States for negligent or wrongful acts of federal employees acting within the scope of their employment. The FTCA contains important exceptions and ordinarily requires the claimant to present an administrative claim to the applicable federal agency before filing suit. See 28 U.S.C. § 2675(a).

In limited circumstances, an individual may also seek damages directly from a federal officer for certain constitutional violations under *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

New York has also enacted the New York State Bivens Act, N.Y. Civil Rights Law art. 8-A, § 85. The statute authorizes an action against a person acting under color of federal, state, territorial, or District of Columbia law who deprives another person of rights secured by the U.S. Constitution.

Available relief may include compensatory, punitive, nominal, injunctive, and declaratory relief, as well as reasonable attorneys' fees for a prevailing plaintiff. The statute applies retroactively to certain violations occurring on or after January 1, 2025, although damages for violations occurring before its effective date are subject to limitations. Because the statute is new, significant questions concerning its application—including potential federal immunity, preemption, removal, and Supremacy Clause issues—remain likely to be litigated.

Employers ordinarily will not be parties to these claims, but employees or their counsel may seek the organization's recordings, incident reports, witness information, or other documentation. Organizations should preserve potentially relevant materials, protect applicable privileges and client confidentiality, and consult counsel before responding to requests for records.

4. Do different considerations apply to volunteers, interns, and contractors?

Yes. These groups may not be covered by the same legal protections as employees. Volunteers often are not covered by workers' compensation. Interns may or may not be employees covered by workers' compensation depending on their compensation and the internship program structure. Independent contractors raise separate liability and insurance issues.

Organizations should:

- Clearly define worker roles and classification.
- Consider providing role-specific training that aligns with actual risk exposures.
- Consider requiring workers to sign training acknowledgments.
- Confirm insurance coverage extends to all categories of workers.

5. Can ICE conduct Form I-9 audits at my workplace?

Yes. ICE has the authority to inspect an employer's Forms I-9 and related records. In a routine administrative inspection, ICE generally mails a written Notice of Inspection requiring the employer to produce the records after at least three business days. ICE may serve the notice in person and may therefore arrive at a workplace without prior warning to deliver the notice. An employer ordinarily should not be required to produce its Forms I-9 immediately upon service of a routine Notice of Inspection.

ICE may, however, seek records through a subpoena or warrant without providing the ordinary three-business-day notice period. A Notice of Inspection does not by itself authorize ICE agents to enter nonpublic areas of the workplace, conduct a general search, or interview employees. Agents may enter areas open to the public, but entry into nonpublic areas generally requires the employer's consent, a judicial warrant, or exigent circumstances. Employers should promptly contact counsel and carefully review any subpoena or warrant presented.

Organizations engaged in visible immigrant rights advocacy should assume that increased scrutiny is possible and prepare accordingly.

Recommended steps include:

- Keep Form I-9 records separate from other employee records. Do not include the Form I-9 in an employee's personnel file. This ensures easy access and limits record production.
- Designate one or more individuals to respond to government visits.
- Train reception and security personnel not to consent to entry into nonpublic areas.
- Conduct internal Form I-9 audits, ideally with employment or immigration counsel.
- Correct technical or procedural errors in a compliant and transparent manner.
- Maintain consistent, neutral employment-verification practices.
- Document compliance efforts.

Good-faith compliance efforts may reduce penalties and demonstrate that the organization has taken its verification obligations seriously. Following an audit, employers should not engage in discriminatory or unnecessary reverification of employees who were not identified as having document deficiencies. Selective reverification based on national origin, ethnicity, or perceived immigration status may violate federal nondiscrimination law. Reverification should occur only when required by law, such as the expiration of an employee's time-limited employment authorization document noted on the Form I-9.

Responding When a Client, Employee, or Visitor Is Detained or Arrested

6. What should staff do if a client, employee, or visitor is detained or arrested?

Immediate Operational Response

If immigration or law enforcement officers detain or arrest an individual during work—for example, in or near the facility or while accompanying a client to an ICE check-in—staff should respond in a calm, consistent, and legally appropriate manner that prioritizes safety, preserves rights, and avoids interference.

A. **Maintain safety and do not interfere:** Staff should not physically interfere with an arrest or detention or attempt to block officers' actions. Interference could create safety risks and potential legal exposure for staff and the organization. Staff should instead:

- Remain calm and professional.
- Keep a reasonable distance from the interaction.
- Follow any lawful instructions related to safety or space.

B. **Observe and document the interaction:** Organizations generally have the right to observe and record enforcement activity, provided they do not interfere. Where feasible, staff may:

- Record the interaction from a safe distance (after announcing recording, if appropriate) and without interfering with enforcement activities. The ACLU has published helpful guidance on recording and documenting law enforcement agents.
- Take detailed written notes, including:
  - Date, time, location, and agency involved.
  - Number of officers present.
  - Names, badge numbers, and other identifying information (if available).
  - What officers said and did.
  - Whether a warrant was presented.

Recordings and other documentation can be important for protecting client rights, supporting legal challenges, and internal reporting and compliance. Employers may wish to adopt procedures requiring employees to promptly provide recordings to designated organizational leadership and prohibiting employees from altering, deleting, posting, or otherwise sharing recordings without official authorization. Such procedures should be consistent with the confidentiality, privacy, and record retention obligations that apply to the nonprofit's operations.

C. **Provide appropriate support without interfering:** For staff who do not represent the individual as legal counsel:

- Staff may provide general, accurate Know Your Rights information, but should not provide individualized legal advice.
- Staff may remind the individual that they have the right to remain silent, ask whether they are free to leave, and request to speak with an attorney.
- If safe and appropriate, staff may ask whether the individual would like assistance contacting a family member or an attorney.
- Staff should not answer questions on the individual's behalf, tell the individual to flee or hide, provide false information, or physically interfere with questioning, detention, or arrest.

As explained more fully in the section below, an attorney who represents the individual may provide individualized legal advice and may request confidential access to the client. The attorney should clearly identify themself as counsel and should not physically interfere if officers refuse immediate access.

D. **Facilitate communication (with consent)**

- If the individual consents, staff may contact a designated emergency contact, notify legal counsel, and share basic factual information about the detention.
- Absent consent, staff should be mindful of confidentiality obligations and avoid sharing identifying information unnecessarily.

E. Internal follow-up after detention or arrest

- Prepare a written incident report (using a standardized form if available).
- Notify designated internal leadership.
- Consult legal counsel where appropriate.
- Evaluate whether any policy or training updates are needed.
- Consider whether staff will provide legal or financial support to affected individuals.
- Consider how to communicate with staff, clients, and the community.

The Nonprofit Resiliency Network Guidance includes a model reporting protocol for enforcement encounters, which is helpful for institutional documentation.

Special Note for Staff Attorneys

The guidance below is directed principally to staff members who are not acting as the lawyer of the arrested or detained person. If an employee is an attorney and represents the individual in the matter or encounter, the attorney has different professional responsibilities and may be more directly involved in advocating for and representing the employee. Federal immigration regulations recognize a right to representation in examinations conducted under the immigration regulations and require certain persons arrested without a warrant and placed in formal proceedings to be advised of the right to representation at no expense to the government. See 8 C.F.R. §§ 292.5(b), 287.3(c). Notwithstanding these regulations, access to a client during the initial stages of an arrest may be limited or disputed. Counsel should remain calm, clearly state their role, document any denial of access, and pursue appropriate legal remedies rather than physically interfering.

Detention and Arrest-Related Employment Law Considerations

An employee's detention or arrest is generally not, by itself, a basis for disciplinary action or termination. Employers should consider the following before taking adverse employment action:

- Whether the employee is able to return to work.
- Whether leave policies apply (paid/unpaid leave).
- Whether Form I-9 compliance obligations are implicated (e.g., if the employee's work authorization is called into question).

7. How should employers approach situations where an employee is detained or arrested outside of work?

When an off-duty arrest or detention is unrelated to work, employers should:

- Apply standard HR policies.
- Avoid immigration-status-based assumptions.
- Evaluate job impact neutrally.
- Consider leave options before termination.

If detention creates a prolonged absence, consult counsel before making separation decisions. Many jurisdictions—including New York and New Jersey—have laws that restrict adverse employment action based solely on an arrest or pending criminal charges.

Unless there is a specific organizational reason to comment publicly, the organization should avoid statements about an employee's detention or arrest to avoid potential legal claims and to safeguard employee privacy and confidentiality. Any necessary communications should focus on operational continuity and be neutral in tone.

8. Can the nonprofit pay for an employee's immigration attorney or bail?

Paying an employee's legal fees or bail is permissible in some circumstances but requires careful analysis under nonprofit governance and tax law. The board must evaluate both whether the expenditure serves a legitimate organizational purpose and whether it gives rise to tax or compensation reporting obligations. This guidance provides a framework for that analysis.

Fiduciary Duty and Mission Alignment

Board members owe duties of care and loyalty to their nonprofits. Before authorizing financial support, the board should consider:

- Does supporting this employee further the organization's charitable mission?
- Is the employee critical to program continuity?
- Is the support necessary to protect institutional interests?
- Would similar support be available to other employees under objective criteria?

Boards should document in minutes their reasoning, any alternatives considered, and how the expenditure advances organizational interests—without including unnecessary narrative detail that could be misinterpreted in future litigation or audit.

The Council on Foundations has issued guidance for foundations considering similar questions about supporting leaders during legal proceedings.

Tax and Compensation Issues

Payment of legal fees for an employee may constitute taxable compensation to the employee under federal tax law, particularly if the employee was engaged in activities outside of their job duties. Taxable compensation must be reported on the employee's Form W-2 and is subject to federal income tax withholding and FICA (which funds Social Security and Medicare). Failure to properly withhold and report creates exposure for the employer to tax penalties and other enforcement risks.

Selective benefits risk private benefit concerns under federal tax law. The private benefit doctrine requires that a tax-exempt organization operate exclusively for exempt purposes; more than incidental benefit to private individuals can jeopardize tax-exempt status. The related but distinct prohibition on private inurement prohibits an organization's net earnings from inuring to the benefit of insiders. Legal fee payments may be defensible against both doctrines when they are consistent with the organization's charitable mission; available under objective, generally applicable criteria (not ad hoc decisions favoring particular individuals); and not disproportionately benefiting organizational insiders such as board members, officers, or their family members. In addition, total compensation, including the legal fees, should be reasonable.

Boards considering funding legal fees would be well advised to adopt a written policy establishing eligibility criteria and maximum benefit amounts.

Special Bail Considerations

Bail payments raise distinct considerations depending on the type of proceeding. Organizations should distinguish between:

Immigration bonds: Set by an immigration judge or ICE in removal proceedings, immigration bonds are typically refundable upon the individual's compliance with all hearing requirements. If the individual appears at all required hearings, the bond (less a small administrative fee) is returned to the obligor regardless of the outcome of the removal case. However, if the individual fails to appear, the bond is forfeited in full. Organizations considering posting immigration bonds should assess this forfeiture risk against their financial capacity.

Criminal bail: Bail in criminal proceedings follows state law and may involve cash bail, bail bonds through a surety, or release on recognizance. The financial risk profile, recovery timeline, and organizational exposure differ from immigration bonds. Organizations should consult with counsel experienced in the relevant criminal jurisdiction before posting criminal bail.

A threshold legal question for bond payments is whether posting bond could expose the organization to allegations under 8 U.S.C. § 1324 (harboring or encouraging unlawful presence). The prevailing legal analysis is that paying bond does not constitute harboring. Bond payment is a lawful act facilitated by the immigration system itself—the government sets the bond precisely to enable release pending proceedings. Payment does not conceal anyone from detection. Rather, it is premised on the individual's continued appearance before immigration authorities. Moreover, the *mens rea* requirement (knowledge or reckless disregard that one is facilitating unlawful presence) is not satisfied by an act that the legal system explicitly provides for. Nonetheless, organizations should document the lawful purpose of bond payments, ensure board authorization, and maintain records demonstrating that the payment was made to support the employee's participation in legal proceedings—not to facilitate evasion.

Attorney-Client Privilege Considerations

If a nonprofit pays for an employee's immigration attorney, questions arise regarding who holds the attorney-client privilege. Generally, the privilege belongs to the client (the employee), not the payor. This means the nonprofit may not have access to communications between the attorney and the employee, even though the nonprofit is funding the representation. Nonprofits should clarify this arrangement in writing at the outset, and both the organization and the employee should understand that (a) the attorney's duty of loyalty runs to the employee; (b) the organization cannot direct the attorney's strategic decisions; and (c) potential conflicts of interest may arise if the organization's interests diverge from the employee's—for example, if the employee's legal situation creates reputational or compliance risk for the organization. In such cases, the attorney may need to withdraw, or separate counsel may be required.

9. Can nonprofit board members or supporters fundraise to support detained employees?

Possibly. Process matters, and the tax implications depend heavily on how the fundraising is structured. There are several approaches, each with distinct legal considerations:

- **A personal fundraising campaign (e.g., GoFundMe) run entirely outside the nonprofit**. Funds raised this way are not tax-deductible for the donor, but they avoid implicating the organization's tax-exempt status. Board members participating in their personal capacity should clearly disclaim any organizational affiliation in the campaign description.

- **A board-approved hardship fund administered by the organization**. This approach allows donors to claim a charitable deduction, but requires careful structuring to avoid jeopardizing tax-exempt status, ideally with input from an exempt organizations or tax attorney. If charitable funds are used, the organization should ensure clear charitable class or hardship criteria, transparent accounting, and board approval of fund disbursements, as reflected in corporate minutes.

Additional legal considerations for organizational fundraising include:

- **Earmarked gift rules:** Contributions earmarked for the benefit of a specific, named individual generally do not qualify as tax-deductible charitable contributions under federal tax law because the donor has not made a gift to a charitable organization with full discretion over the funds. To preserve deductibility, the organization must retain ultimate control and discretion over how funds are distributed—even if the donor expresses a preference. Solicitations should make clear that the organization retains discretion and that contributions are not conditioned on distribution to any particular individual.

- **Charitable solicitation registration:** If the organization solicits funds from the public—including through online campaigns, email appeals, or social media—it may trigger state charitable solicitation registration requirements. Most states require registration before soliciting, and soliciting in multiple states requires registration in each. Organizations should confirm registration status before launching any public fundraising campaign.

- **Restricted vs. unrestricted funds:** Organizations must not use donor-restricted funds for purposes inconsistent with the restriction. If the organization intends to use general operating funds for employee bail or legal support, it should confirm that those funds are unrestricted. Using restricted grant funds for a purpose outside the grant's scope may constitute a breach of the grant agreement, trigger claw back provisions, and create reporting obligations to the funder and, in some states, to the state attorney general.

- **Private benefit limitations:** As with direct legal fee payments (**FAQ 8 above**), fundraising through the organization for the benefit of employees must be structured to avoid private benefit. The key is that distributions must be made pursuant to objective criteria that define an eligible class of beneficiaries—not on an ad hoc basis to favored individuals. The IRS has approved disaster relief and hardship programs where the organization maintains full discretion, applies objective need-based criteria, and documents each distribution. Consultation with an exempt organizations or tax lawyer is recommended.

Clients, Program Participants, and Children in Organizational Care

10. What general responsibilities do nonprofit service providers have toward clients during immigration enforcement activity?

Nonprofits have no obligation to assist federal immigration enforcement beyond complying with valid judicial warrants or court orders. However, organizations do have legal obligations to:

- Protect client safety.
- Maintain confidentiality. Do not release client records absent a valid judicial warrant, a judicial subpoena, client consent, or a clear statutory obligation. Depending on the program, applicable confidentiality frameworks may include:
    - Family Educational Rights and Privacy Act (FERPA) – schools and certain education programs.
    - Health Insurance Portability and Accountability Act (HIPAA) – health-related services.
    - Violence Against Women Act (VAWA) – services to victims of domestic violence.
    - State childcare regulations.
    - Contractual confidentiality clauses.
    - Attorney-client privilege – legal services providers.

Additionally, staff may provide accurate rights-based education, including advising clients that they:

- Have the right to remain silent.
- May ask to see a judicial warrant.
- May ask if they are free to leave.
- May ask to speak with an attorney.

11. How should organizations respond if a client is detained or arrested while receiving services?

Staff should be trained to take the following steps if ICE detains an adult client at or near the nonprofit's facility:

- Do not physically interfere.
- Staff may observe from a reasonable distance.
- Staff may document what occurs.
- Staff may inform the individual of their right to remain silent.
- Staff may ask where the individual will be detained.

The Nonprofit Resiliency Network guidance outlines how to respond to enforcement encounters and how to document them.

12. What additional considerations apply when the individual who immigration authorities seek to arrest is a minor in the nonprofit's care?

For programs serving minors, the analysis is more complex. We recommend the following steps:

- Request to see a judicial warrant (an example of which can be found here).
- Notify leadership immediately.
- Contact legal counsel if possible.
- Document the interaction.

Licensed childcare providers (e.g., New York City Department of Education-regulated centers, New York State Office of Children and Family Services-licensed programs, and New Jersey Department of Children and Families-licensed programs) have regulatory obligations to:

- Maintain continuous supervision of minors in their care.
- Release children only to individuals authorized under the relevant law and regulations.
- Maintain attendance and release records.

If federal immigration authorities or officers present a valid judicial (as opposed to administrative) warrant:

- The organization is legally required to permit access to the areas and individuals specified in the warrant.[1]
- Staff should not physically interfere.
- Staff should document the event thoroughly.
- Staff should immediately notify the parent/guardian unless prohibited by the order itself (in which case staff should consult counsel before proceeding).

If federal immigration authorities or officers present only an administrative warrant:

- The organization may refuse entry to nonpublic areas and should not voluntarily surrender custody absent a judicial warrant.
- However, an administrative warrant is sufficient to arrest someone in a public area.

13. May the organization pay for the minor's legal representation

Unlike employees, minors receiving services are typically program beneficiaries rather than organizational insiders. The conflict of interest and private benefit analysis therefore differs. A nonprofit may provide or fund legal assistance for a minor if doing so advances the organization's charitable mission—for example, if the mission includes immigrant advocacy, youth defense, or family stabilization.

Boards should consider:

- Adopting written criteria.
- Avoiding ad hoc decisions.
- Documenting that assistance advances charitable purposes.
- Ensuring that no private benefit or inurement results from the expenditure.

Organizations must not use restricted funds for purposes inconsistent with the donor's stated intent. When in doubt, review grant and gift agreements before committing funds.

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[1] Note, if ICE apprehends a child who qualifies as an unaccompanied child, DHS typically refers the child to the Office of Refugee Resettlement, which is part of the U.S. Department of Health and Human Services and is responsible for the care and placement of unaccompanied children in federal immigration custody.

14. What planning steps can organizations take to prepare for situations where a parent or guardian is unexpectedly unavailable due to an ICE arrest or detention and does not pick up their child?

This scenario is highly fact specific and governed primarily by state child welfare law. Organizations should develop written protocols in advance and, where possible, consult with counsel familiar with the relevant state's child welfare requirements.

Emergency Contacts

Best practice:

- Maintain multiple (at least two) emergency contacts for each child.
- Update contact information regularly.
- Encourage parents to complete standby guardianship or caregiver authorization forms where permitted by state law.

If a parent or guardian fails to appear at pickup:

- Attempt to reach the parent or guardian.
- Attempt to reach emergency contacts.
- Document all attempts.

When Must the Organization Contact Child Protective Services?

This depends on:

- Whether the child is abandoned.
- Whether the child faces imminent risk.
- Whether mandatory reporting statutes are triggered.

An ICE arrest does not automatically require a report to child protective services if:

- The child is safe.
- Authorized emergency contacts are available.
- There is no evidence of neglect or abuse.

However, if no authorized caregiver can be located and the organization cannot legally retain or release the child, it may be necessary to contact child protective authorities. Providers should consult state-specific legal counsel whenever possible, as the applicable reporting thresholds and timelines vary by jurisdiction.

Note: ICE has used protocols in the past designed to facilitate arrangements for child placement before an arrest; however, these practices are not guaranteed, vary by enforcement context, and cannot be relied upon as a substitute for organizational planning.

15. Can a school or childcare provider alert parents if ICE is observed nearby?

Alerting staff and parents about observed law enforcement presence may be lawful if done neutrally and factually. Messaging should focus on safety and factual observation.

Nonprofits may:

- Share neutral, factual information about ICE's location and activity.
- Alert leadership.
- Implement safety protocols consistent with your emergency response plan.

Nonprofits should not:

- Direct individuals to flee law enforcement.
- Coordinate evasive actions.
- Physically obstruct officers.

Transportation and Off-site Service Delivery

Off-site service models—transporting clients, home visits, food/medicine delivery, street outreach, and accompaniment to court or ICE check-ins—raise a different set of risks than on-site programming. The nonprofit has less control over the environment, staff are more exposed to unpredictable law enforcement encounters, and the line between lawful service delivery and perceived interference can become blurry in real time.

This section is written for a national audience, with special attention to nonprofits and programs in New York and New Jersey serving youth, promoting food security, and serving families.

16. What precautions should be taken by employers who transport or accompany clients as part of service delivery?

Clearly Define Scope of Services

Before training staff, leadership should make clear what the organization is (and is not) authorizing. Transportation and accompaniment can mean, for example:

- Transporting minors to school/programming.
- Transporting families to medical appointments.
- Delivering food/medicine.
- Accompanying a client to court or an ICE check-in.
- Transporting clients from shelters or community sites.

Adopt a Policy for Staff Transporting or Accompanying Clients

The policy should set forth:

- Which activities are authorized (e.g., giving clients factual, rights-related information).
- What staff should do if approached by law enforcement.
- What staff should never do (e.g., lying, physical interference, evasion).

Safety, Training, and "Stop Work" Authority

A practical operational safeguard is to empower staff to disengage. Policies should make clear:

- Employees should not physically intervene in an arrest or enforcement action.
- Employees may observe from a safe distance and document (if consistent with policy and safety).
- Employees should prioritize getting themselves and any minors to safety.
- Employees should have clear authority to stop the activity and call a supervisor if an encounter escalates.

Vehicle Ownership and Insurance

If vehicles are owned by the nonprofit:

- Confirm commercial auto liability coverage.
- Confirm coverage for contractor drivers.
- Review umbrella coverage limits and examine the relevant underlying policies' endorsements and exclusions to understand the full scope of umbrella coverage.

If employees, volunteers, or contractors use personal, leased, hired, or borrowed vehicles:

- Ensure that commercial auto liability coverage includes a hired and non-owned auto (HNOA) coverage section or endorsement.
- In the case of contractors, review and understand the nature of additional insured status arising under the contractor driver's insurance policy. If possible, request to be added to the endorsement as a specifically named additional insured. If that is not possible, ensure agreements with contractors specifically require additional insured status under the relevant policy and endorsement. Retain documentation establishing coverage status.
- Clarify responsibility for deductibles and claims.

Youth-serving nonprofits should have a vehicle use policy that covers:

- Supervision ratios during transport.
- Release/transfer rules at drop-off.
- Emergency procedures if the driver cannot complete the trip.

Documentation and Confidentiality in the Field

Off-site work increases the risk that staff will carry or access sensitive information (e.g., names, addresses, immigration-related details, or benefit paperwork). This can create exposure if devices are lost, searched, subpoenaed, or informally "looked at" during an encounter.

A strong risk-reduction step is to minimize what staff carry:

- Carry only what is needed for that shift.
- Avoid carrying copies of sensitive documents.
- Avoid retaining client immigration status information unless truly necessary.

Additional considerations may apply to staff who travel across international borders. Such considerations are beyond the scope of this guide.

The Nonprofit Resiliency Network's Data Protection Best Practices for Nonprofits guidance document discusses the importance of data minimization, access controls, and reducing what is stored on phones/ personal email.

17. What additional safety and risk management considerations apply to home visits, deliveries, or street level outreach?

Street-level delivery and outreach involve a higher likelihood of contact with immigration enforcement in public spaces, where staff have less ability to control the environment. Training should instruct staff on the following:

Home Visits

Home visits implicate both safety and privacy. Even if the organization is acting lawfully, a home visit can intersect with enforcement activity near the residence. Employers may wish to take the following steps:

- Conduct a pre-visit safety check-in (time, address, and staff pairings where appropriate).
- Maintain a "check-in/check-out" system.
- Define when staff should leave immediately (e.g. weapons present, active law enforcement activity, and threats).
- Instruct staff to avoid entering a home if staff do not feel safe.

Partner Events and Shared Sites

Many food security and youth programs operate at shared sites—such as schools, faith institutions, city facilities, and partner organizations. This creates unique risks around uncertainty about who controls the space, who may consent to entry, and how staff will respond consistently to an enforcement encounter.

Best practices include:

- Pre-identification of who is "site lead" at each partner site.
- Alignment on a single protocol (even if each organization has its own internal chain of command).
- Clarification of whether areas are public/nonpublic and how they are marked.

In New York, the site lead should also determine whether the premises qualify as a “sensitive location” under N.Y. Civil Rights Law § 29, as discussed more fully in FAQ 28. At shared sites, organizations should determine which entity owns or operates the relevant space, which portions are open to the public, who has authority to consent to entry, and whether the entities will follow a coordinated written access policy.

ICE encounter when delivering client services

Policies should be explicit that staff may:

- Step away, call a supervisor, and document from a safe distance.
- Provide clients with calm, factual information about their rights (not individualized legal advice).
- Prioritize safety of minors.

Policies should be explicit that staff may not:

- Direct people to flee or hide.
- Coordinate evasion.
- Give false information to agents.

18. How can training and internal protocols reduce risk for both staff and clients during off-site work?

Training builds confidence and consistency, helping staff respond calmly and avoid actions that could escalate situations or expose the organization to unnecessary risk. Consistent training also reduces both criminal exposure and reputational risk.

Training should be tailored to different roles (e.g., drivers, outreach staff, home visit staff, accompaniment staff) and emphasize:

- Safety first.
- No physical interference.
- No false statements.
- Immediate reporting internally.

Documentation protocols should be structured to:

- Use a standard incident report form.
- Record only facts (what happened, who was present, and what documents were shown).
- Avoid speculation about immigration status or motives.

Because off-site work relies heavily on phones and messaging, device and data rules should be clear:

- Define when staff may use personal devices versus work devices.
- Prohibit storing sensitive client documents in personal email/text.
- Require prompt upload to secure systems and deletion from devices where feasible.
- Train staff that phones and personal communications can be subpoenaed.

New York Immigration Coalition's "Know Your Rights" materials provide plain-language scripts for public/workplace/home contexts that may be useful for staff education.

Documentation, Recording, and Use of Devices

19. May employees document or observe immigration enforcement activity encountered during their work?

Observation, documentation, and recording of public law enforcement activity is generally lawful if:

- It does not interfere with law enforcement activity.
- It does not violate privacy laws.

Employee observation and documentation activities should comply with applicable policies and procedures adopted by the nonprofit.

Risks increase if:

- Recording captures confidential client information.
- Staff obstructs officers while filming.

20. What are the risks and best practices related to recording or photographing enforcement activity?

Recording law enforcement activity can create legal, safety, and privacy risks. Some of the risks, discussed more fully in the Lowenstein Advisory, include physical confrontation with officers, inadvertent capture of confidential client information, and potential use of footage in litigation. Nonprofits can mitigate these risks by adopting policies and providing employee training to emphasize noninterference with law enforcement activities, protection of client confidentiality, and disclosure of recordings and photographs only with official authorization from the nonprofit.

21. How should organizations think about the use of personal versus work issued devices?

Both work-issued and personal devices carry risks in the context of law enforcement documentation. Organizations should weigh these tradeoffs carefully.

Work devices are subject to organizational data retention policies and litigation holds and are discoverable in litigation and government investigation.

Personal devices may be harder for the organization to control, retrieve, or wipe remotely. Additionally, an employee's use of personal devices may blur the line between personal and organizational conduct, complicating liability analysis.

Law enforcement generally may not search the contents of a cell phone in connection with an arrest without a warrant. This protection applies to both personal and work-issued devices. However, this protection can be overcome with a valid search warrant, consent, or recognized exceptions such as exigent circumstances. Organizations should train staff that they are not required to unlock devices or provide passwords to officers absent a judicial warrant, and should implement strong encryption and passcode policies on work-issued devices. For personal devices, the organization's ability to mandate security measures is limited, but the organization should establish clear policies about what organizational data (if any) may be stored on personal devices and address remote-wipe capabilities in any "bring your own device" (BYOD) agreement.

Organizations may wish to consider adopting a policy on whether personal or work-issued devices should be used for law enforcement documentation activities and train staff accordingly. Employers should review footage before dissemination to ensure that confidential client data is protected.

ICE Watch, Observation, and Civil Protest Activities

Nonprofits increasingly face questions about whether they may:

- Authorize staff to engage in "ICE watch" or observation activities.
- Distribute "Know Your Rights" materials in real time.
- Participate in or host community protests.
- Provide safety tools (e.g., whistles and alert systems).
- Issue real-time alerts about ICE presence.

This section addresses the legal boundaries between protected First Amendment activity and conduct that could create criminal, tax-exemption, employment, or government funding risks.

The key principle: rights education and factual observation are generally protected; directing or facilitating unlawful evasion or obstruction is not.

22. What general legal and organizational risks arise when employees or volunteers engage in ICE watch or observation activities?

Observation and educational speech about constitutional rights is protected under the First Amendment. This includes:

- Explaining the right to remain silent.
- Explaining the difference between judicial and administrative warrants.
- Providing general scripts (e.g., "I do not consent to a search").
- Reporting factual information about government presence.

The First Amendment does not protect speech that is part of unlawful conduct—for example, obstructing law enforcement, hiding someone from law enforcement, or giving false information to federal officers. There is an important difference between educating people about their rights and telling them how to avoid or interfere with law enforcement in a specific situation. The critical legal distinction is between general education (protected) and specific direction or coordination of unlawful evasion (unprotected).

To reduce risk of ICE observation activities, nonprofit employers may wish to adopt a written policy defining:

- Authorized ICE observation conduct.
- Required ICE observation training.
- Prohibited actions.

23. What training and conduct standards should apply to staff and volunteers engaged in these activities?

Training for staff and volunteers engaged in ICE observation activities should emphasize safety, non-interference, neutral/factual communication, and adherence to organizational documentation protocols.

24. Can we distribute whistles or other alert tools?

Possibly. Distributing whistles or similar alert tools for general community safety purposes is not inherently unlawful. The legal and organizational risk depends largely on how the tools are described, distributed, and used in practice.

The safer approach is to frame these tools as part of a broader safety or emergency-preparedness effort, rather than as a mechanism for helping particular individuals avoid contact with law enforcement. For example, an organization is on stronger ground if it distributes alert tools as part of general community safety planning, without tying them to instructions about fleeing, hiding, or otherwise avoiding enforcement activity.

Because there is little published case law directly addressing whistle distribution in the immigration enforcement context, the legal boundaries are not sharply defined. For that reason, organizations should proceed with caution and focus on purpose, messaging, and documentation.

In practice, risk is lower where the tool is presented as:

- A general safety tool.
- Part of a broader emergency alert or community safety strategy.
- Not linked to instructions about avoiding or interfering with enforcement activity.

Risk is higher where the tool is distributed or described in a way that suggests it is intended to help particular individuals evade enforcement or frustrate law enforcement activity.

Organizations considering this type of distribution should document the purpose in writing and make clear that the tools are intended to promote general community awareness and safety. Any related staff or volunteer guidance should emphasize neutral, factual communication and should not encourage concealment, flight, or interference.

25. Does it matter whether immigration related advocacy is explicitly stated in the organization's governing documents (e.g., certificate of incorporation) and mission?

Yes. Activities should align with the organization's stated charitable purposes. If immigrant rights protection or community defense is clearly within the mission, risk is lower. If the mission is narrowly defined (e.g., "food pantry services"), visible ICE watch activity could raise:

- *Ultra vires* concerns (i.e., action outside the scope of the organization's stated corporate purposes).
- Funder alignment questions.
- Governance scrutiny.

Boards may wish to consider:

- Reviewing mission language.
- Clarifying programmatic rationale for ICE watch activities.
- Documenting alignment of ICE watch activities with nonprofit mission in board minutes.

26. What about hosting or participating in protests?

Peaceful, lawful protest is protected First Amendment activity. However, nonprofits that are tax-exempt under Section 501(c)(3) of the Internal Revenue Code must be mindful of two distinct limitations:

- The absolute prohibition on endorsing or opposing candidates for public office.
- The requirement that legislative advocacy (lobbying) may not constitute a "substantial part" of the organization's activities.

Many protests do not involve legislative advocacy or election-related activity. Organizations with 501(c)(3) status whose protests do involve legislative advocacy may wish to consider making the 501(h) expenditure test election under IRC § 501(h) (by filing IRS Form 5768). The 501(h) election replaces the vague "substantial part" standard with a more precise and often more favorable formula based on the organization's exempt purpose expenditures. Under this formula, eligible organizations may spend up to 20% of the first $500,000 of exempt purpose expenditures on lobbying (with declining percentages above that threshold, subject to a $1 million ceiling). The election provides greater certainty and may be particularly valuable for organizations engaged in visible immigration advocacy that includes communications with legislators. Not all 501(c)(3) organizations are eligible—churches, private foundations, and certain other entities are excluded—but most public charities may elect.

Furthermore, nonprofits that receive government funding should:

- Review grant terms for conduct clauses.
- Ensure protest activities are mission aligned.
- Clarify whether participation is organizational or individual.

Youth-serving nonprofits should avoid exposing minors to foreseeable harm.

27. How should organizations think about potential government scrutiny, audits, or retaliation risks?

Organizations should assume that visible immigration advocacy may increase scrutiny, including Form I-9 audits (described above). Organizations should adopt strong governance, documentation, and compliance practices as risk management tools.

28. Do different immigration enforcement cooperation requirements apply if my nonprofit receives funding from or operates in New York City, New York State, New Jersey, or another state or municipality that has policies in place governing cooperation with federal immigration enforcement activities?

Government funding relationships may impose additional requirements that affect a nonprofit's obligations when interacting with immigration officials. Nonprofits should carefully review their funding sources and understand applicable state and local laws—that may govern their operations.

New York City

NYC Administrative Code § 4-210 (Local Law 246) imposes restrictions on certain city contractors regarding cooperation with immigration enforcement in nonpublic spaces. The law generally prohibits covered entities from permitting federal immigration authorities to access nonpublic areas without a judicial warrant and restricts the sharing of certain information about individuals' immigration status, release dates, and personal information. The scope of "nonpublic areas" encompasses spaces not generally open to the public, including offices, treatment rooms, residential areas, and similar spaces. Limited exceptions exist, including for compliance with valid judicial warrants and certain law enforcement coordination scenarios specified in the statute. Mayor Zohran Mamdani signed Executive Order No. 13 announcing his plan to audit city agency compliance with this law.

Nonprofit Resiliency Network guidance discusses how city contractors providing human services may be required to refuse access to nonpublic areas absent a judicial warrant, subject to limited exceptions.

Nonprofit leadership should carefully review government contract terms and consult counsel regarding any cooperation clauses if the organization:

- Operates in city-owned facilities.
- Receives city funding for social services including day care, foster care, home care, homeless assistance, housing and shelter assistance, preventive services, youth services, and senior centers; health or medical services; legal services; employment assistance services and vocational and educational programs; or recreation programs.

Nonprofits receiving city funding should not assume that a request from immigration authorities can be handled informally at the front desk. Instead, they should have a clear protocol identifying who is authorized to respond, how warrants and subpoenas are reviewed, and when counsel must be contacted. Organizations should also confirm who controls nonpublic spaces at the site, especially where services are provided in shared buildings, schools, shelters, or municipal facilities.

New York State

In New York, the site lead should also determine whether the premises qualify as a “sensitive location” under N.Y. Civil Rights Law § 29. This law, enacted in 2026 as the Sensitive Location Protection Act, applies to specified privately owned or operated sensitive locations. The covered categories include certain childcare and youth-service programs, health and behavioral-health facilities, houses of worship, housing accommodations, nonpublic schools, higher-education institutions, nursery schools, summer camps, senior centers, parks and recreation facilities, and polling places.

The law empowers a covered location to adopt policies denying immigration enforcement personnel access to portions of the location that are not accessible to the general public. It also protects the location from liability under state law for denying such access for civil immigration enforcement unless officers present the federal judicial process specified in the statute. The Attorney General, the Office of Immigrant Trust, an individual, or the owner or operator of the sensitive location may seek appropriate injunctive or declaratory relief for a violation.

The statute does not apply to all nonprofit workplaces. Organizations should review the statutory categories carefully rather than describe their premises as a sensitive location solely because they provide community services or serve immigrants.

The Sensitive Location Protection Act was enacted as part of a broader 2026 immigration-enforcement package that is subject to pending federal litigation. Because the litigation is ongoing and the sensitive-location provision is new, organizations should confirm the current status of the law with counsel before relying on it in a live enforcement encounter.

New Jersey

New Jersey follows a statewide policy known as the Immigrant Trust Directive (the Directive) that has been in place since November 2018 and remains in force. The Directive is a statewide policy that is intended to limit how state and local law enforcement may assist federal immigration authorities. The purpose of the Directive is to ensure that immigrant communities feel safe reporting crimes and accessing services and to ensure that local law enforcement resources are focused on enforcing state criminal laws—not federal immigration laws. The Directive applies to state and local police officers, correctional officers working in state prisons and county jails, and state and county prosecutors.

Organizations should confirm with counsel that the Directive remains in full force before relying on its protections. The Directive does not prevent federal immigration officers from conducting independent enforcement operations in New Jersey; it limits only the participation of state and local law enforcement in such operations. As in New York, New Jersey nonprofits that receive state or local funding should adopt clear protocols for responding to requests from immigration authorities.

Caution: State and local policies relating to local participation in federal immigration enforcement activities are subject to ongoing legal challenge and executive action. The New Jersey Immigrant Trust Directive, NYC Local Law 246, and similar protections may be modified or revoked at any time. Organizations should periodically verify with counsel that the protections described herein remain in effect and should not rely on prior legal guidance without confirming its continued applicability. This is particularly important given the current federal administration's stated enforcement priorities and ongoing litigation over the scope of state and local authority in immigration matters.

Across jurisdictions, government-funded nonprofits should review grant and contract documents for provisions concerning access to premises, cooperation with government investigations, confidentiality, data sharing, and incident reporting. They should also consider whether funder rules intersect with sector-specific confidentiality obligations under laws such as HIPAA, FERPA, state childcare regulations, or attorney-client privilege. In many cases, the key operational question is not whether the organization must cooperate with immigration enforcement in the abstract, but who within the organization is authorized to assess immigration-related requests and how to respond in a way that is both lawful and consistent with the nonprofit's duties to funders, clients, and employees.

29. Do I have to let immigration authorities into my nonprofit building if my nonprofit receives federal funding?

Not merely because the organization receives federal funding, although certain federal funding streams may require cooperation with ICE. The basic legal framework governing access to a nonprofit's premises does not change simply because the nonprofit receives a federal grant or contract. Immigration officials may enter public areas open to the general public, but entry into nonpublic areas ordinarily requires consent, a valid judicial warrant, or another recognized legal basis. Administrative warrants signed by immigration officers do not, standing alone, authorize entry into nonpublic areas. Likewise, requests for records should be evaluated separately from requests for physical access; the fact that an organization receives federal funds does not automatically require it to volunteer confidential information outside the ordinary legal process.

For New York facilities that qualify as sensitive locations, N.Y. Civil Rights Law § 29, described in FAQ 28, provides additional express authority to adopt policies denying immigration-enforcement access to nonpublic portions of the premises, subject to the judicial-process exception stated in the statute.

That said, federal funding can increase practical risk and complexity. Federal awards may contain certifications, compliance representations, access provisions, or audit rights that should be reviewed carefully. Those provisions typically do not authorize staff to disregard constitutional protections, confidentiality obligations, or ordinary legal processes, but they may require a thoughtful, well-documented response if a federal agency seeks information or alleges noncompliance. Furthermore, some federal funding streams may come with a requirement to cooperate with ICE. Boards and senior management of federally-funded organizations should therefore work with counsel to review funding documents in advance, rather than waiting until an enforcement encounter occurs.

As a practical matter, organizations receiving federal funding should: (1) review grant and contract certifications, reporting obligations, and access clauses; (2) adopt written internal protocols so that reception staff, supervisors, HR, and program staff know how to respond to requests for entry, records, or interviews; (3) make clear that staff must not obstruct law enforcement, provide false information, or interfere physically with enforcement activity; and (4) consider how funding-related compliance reviews, audits, or certification requests will be escalated internally and documented. Where possible, organizations should also separate legal analysis from real-time operational decision-making by identifying in advance who will contact counsel, who will review legal process, and who will communicate with the funder if an incident occurs.

Organizational Policies, Governance, and Risk Mitigation

30. What core policies should nonprofit boards and leadership consider adopting related to immigration enforcement and staff conduct?

Depending on the nonprofit's activities, recommended policies may include:

- ICE Response Protocol
- Staff Transporting Policy
- Off-Site Service and Accompaniment Policy
- ICE Watch/Observation Policy
- Incident Recording and Disclosure Policy
- Document Retention and Destruction Policy
- Media and Communications Policy
- AI/Technology Use Policy (including caution regarding AI transcription of board meetings)
- Legal Assistance/Hardship Support Policy

31. How do data privacy, record retention, and technology use intersect with organizational risk?

Data privacy is a significant risk area for nonprofits working in the immigration context. Organizations should collect only the data necessary for program purposes, limit retention periods, and understand where cloud-stored data resides and who can access it.

The Nonprofit Resiliency Network has published a guide, Data Protection Best Practices for Nonprofits, that may help. The guide recommends:

- Data mapping
- Data minimization
- Deletion of unnecessary information
- Limiting access to sensitive data
- Preparing in advance for subpoenas

Note: Collecting sensitive immigration information increases both subpoena exposure and cybersecurity risk. Before collecting such information, the board should consider:

- Is immigration status required for program eligibility?
- Is it required by a specific funder?
- Can we collect in aggregated or de-identified form instead?

32. What governance practices can help protect the organization?

Sound governance requires that boards document decisions and their underlying rationale clearly—but without unnecessary detail that could be taken out of context in future litigation or government review. Boards should assume that minutes may be discoverable and draft accordingly.

Board minutes should:

- Reflect major decisions and general rationale.
- Avoid verbatim transcripts.
- Avoid speculative, inflammatory, or unnecessarily detailed commentary, particularly on sensitive programmatic decisions.

33. How should nonprofits assess insurance coverage in the current environment?

Insurance is an important but often overlooked component of organizational risk management. Nonprofit boards should confirm that coverage reflects the organization's actual activities—including any immigration-related advocacy, ICE observation, or off-site accompaniment programs—and periodically review policies in light of evolving risk. Many standard nonprofit insurance policies were not written with immigration enforcement encounters in mind, and exclusions for "criminal acts," "intentional conduct," or "government investigations" may create gaps that boards should identify proactively. Boards should specifically review:

- **D&O coverage**
  - Policy definition of "wrongful act." Consider whether it is broad enough to encompass policy-level decisions about immigrant protection programs such as accompaniment and observation programs, and whether any "failure to supervise," "bodily injury," or "professional services" exclusions could be invoked to bar or limit coverage for claims arising out of these programs.
  - Coverage for government investigations.
  - Coverage for regulatory inquiries.
  - Exclusions related to intentional or criminal conduct.
- **Employment practices liability**
  - Claims arising from termination after detention.
  - Claims of discriminatory treatment.
  - Retaliation claims.
- **General liability**
  - Incidents at public events.
  - Injury during protests.
  - Third-party injury during enforcement encounters.
- **Volunteer coverage**
  - If volunteers engage in off-site programming or observation, confirm that coverage extends to them.

When reviewing coverage, boards should pay particular attention to:

- Whether policies contain exclusions such as those relating to assault and battery, abuse and molestation, professional services, or expected or intended injury that could be triggered by ICE-related incidents.
- Whether off-site activities (such as street outreach, ICE accompaniment, and home visits) are within the scope of covered operations or require a rider.
- Whether the definition of "claim" or "occurrence" in the policy would encompass an immigration enforcement encounter.
- The notice requirements for reporting potential claims (as notice requirements vary widely by state).

Organizations may wish to ask their broker specifically about coverage intended for immigration-related exposure. If feasible, nonprofits engaged in immigration advocacy should consult with an insurance coverage attorney.

34. How might funding sources affect organizational obligations and risk exposure?

As discussed in **FAQ 29**, federal funding may include certifications, representations, and compliance obligations that intersect with immigration enforcement. For example, some grants require the organization to certify cooperation with applicable federal law, which may be asserted to require cooperation with immigration enforcement. Boards should carefully review grant certifications and consult counsel regarding their scope. At a minimum, boards should document how organizational policies and staff training are designed to avoid obstruction or unlawful conduct, so that the organization can demonstrate good-faith compliance if its practices are questioned.

Communications and Preparedness

35. How should organizations think about visible advocacy and government scrutiny?

Visible advocacy can increase media attention, donor scrutiny, government oversight, and subpoena risk. Preparation is one of the most effective ways to reduce legal, operational, and reputational risk associated with visible advocacy. Organizations should aim for consistency, clarity, and role-based decision-making rather than ad hoc responses.

Core preparedness steps include:

- Adopting a written ICE response protocol that clearly defines who is authorized to interact with immigration officials; how to escalate requests for entry, records, or interviews; and when counsel must be contacted. The protocol should be reviewed periodically and updated as enforcement practices or organizational activities change.
- Establishing a clear internal chain of command so staff knows who to contact during an incident, who has authority to make decisions, and how to document and report incidents internally.
- Conducting role-based training tailored to different staff functions: front desk and reception staff (who are most likely to have initial contact), program staff, supervisors, and senior leaders. Training should be refreshed at least annually or following any significant enforcement encounter.
- Practicing common scenarios (e.g., an agent requests entry, or a client is detained nearby) to reduce panic, promote consistent responses, and surface gaps in protocols.

Additional Sector Resources

36. For further sector wide guidance and capacity building resources, nonprofit employers may wish to consult the following:

- **Nonprofit Resiliency Network (New York Lawyers for the Public Interest and Lawyers Alliance for New York)** — Practical tools to support nonprofit governance, compliance, and operational resilience https://www.nylpi.org/nonprofit-resiliency-network

- **Council on Foundations** — Guidance for foundations and nonprofits interacting with immigration officials on organizational property https://cof.org/

- **Democracy 2025** – Access reports, legal memos, messaging toolkits, and other resources to best respond to anti-democratic threats https://democracy2025.org/tools/

- **National Council of Nonprofits** – Tools and resources on nonprofit governance, risk management, data privacy, and staff training https://councilofnonprofits.org/

- **National Immigration Project** – Various resources including guidance on harboring, transporting, smuggling, and encouraging https://nipnlg.org/work/resources

- **New York Immigration Coalition** – Know Your Rights Materials https://nyic.org/KYR

NONPROFIT RESILIENCY NETWORK

ABOUT THE NONPROFIT RESILIENCY NETWORK

The Nonprofit Resiliency Network strengthens and protects the nonprofit sector by providing informational resources, relationship-building, practical training, and legal advice and representation to nonprofits and CBOs dealing with the changing landscape at a time when nonprofits are needed more than ever. It will foster collaboration, build capacity, and distribute essential resources and legal advice to build resilient nonprofits.

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We wish to thank

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