NATIONAL IMMIGRATION LAW CENTER

# Factsheet: Trump's Rescission of Protected Areas Policies Undermines Safety for All

On January 20, 2025, the Trump Administration rescinded a Biden-era policy that protected certain areas—such as churches, school, and hospitals—from immigration enforcement, replacing it with an unreleased directive that gives ICE agents unbridled power to take enforcement actions in any of these spaces using so-called "common sense." Protecting sensitive locations from immigration enforcement is essential to ensuring all our community members can access basic services and support without fear—the policy's rescission constitutes an attack on immigrant communities' wellbeing and undermines safety for all. In the wake of a litany of cruel executive orders targeting immigrants—and sanctuary policies—the rescission is especially pernicious in its attempt to make immigrants feel unsafe even in spaces that are the core of a civil society.

This factsheet describes what the protected areas policy was, what laws apply to those areas now, and what steps advocates and communities can take to support immigrants in continuing to access critical community spaces and services. For more Know Your Rights information, please see NILC's general KYR guidance and check back for area- and issue-specific updates.

**What are Protected Areas Policies?**

Since 2011, the Department of Homeland Security (DHS) has maintained standing guidance requiring Immigration and Customs Enforcement (ICE) to refrain from immigration enforcement actions in certain areas (previously known as "Sensitive Locations"). In 2021, the Biden administration issued a new memo expanding the definitions of these areas, which included **schools** (including preschools, K-12 schools, and higher education institutions); **healthcare facilities** (including hospitals, doctor's offices, and community health clinics); **places of worship; places where children gather** (including playgrounds and bus stops); **social services establishments** (such as domestic violence shelters and food pantries); **disaster/emergency response** sites (including evacuation routes); **weddings, funerals, and religious ceremonies**; and **parades, demonstrations, and rallies.** The memo also specified that officers should refrain from enforcement actions "near" these protected areas, including surrounding areas like sidewalks, entrances, and parking lots. Lastly, the Biden administration issued a separate memorandum limiting the circumstances in which immigration enforcement actions could take place in **courthouses**. The Trump Administration has not clarified if all three memos were rescinded—or if it will issue a new one—though it has stated explicitly that ICE could take enforcement action in schools and churches.

**What does rescission of the Protected Areas memos mean for immigrant communities and public health and safety?**

The rescission is a fear tactic by the Trump administration to make immigrant communities feel less safe even in spaces that are at the heart of a civil society. These are areas and institutions that individuals, families, and children rely on for basic services and survival needs. The rescission will have a chilling effect on immigrant communities now afraid to access medical care, education, childcare, and places of worship for fear that they or a loved one will be ripped away from the community. Protected areas are also unique in that overall public health and safety suffer if any particular community is precluded or afraid to access them. Public health suffers on a large scale, for example, when any one community becomes unable or afraid to access vaccination sites or clinics to receive care for contagious diseases.

**What legal protections remain in place after rescission of the memos?**
All people in the United States have certain rights regardless of immigration status. However, now that the protected areas (aka "sensitive locations") and courthouse memos have been rescinded, these areas no longer enjoy special protections from ICE enforcement. Instead, individuals will need to rely on basic constitutional protections in these spaces. Specifically, the Fourth Amendment protects all individuals from unreasonable searches and seizures, and the Fifth Amendment ensures the right to remain silent when confronted by law enforcement. Certain states and localities have enacted laws and policies that limit cooperation with federal immigration enforcement, though they do not prevent ICE from taking enforcement actions in these areas.

Note an important caveat to the above protections: within 100 miles of a land or sea border—where two thirds of the US population reside—Customs and Border Patrol (CBP) has special legal authority to board buses, trains, and boats in order to search for individuals without lawful status. Although individuals in these zones retain the right to remain silent, their Fourth Amendment rights are reduced by the federal laws that allow CBP to conduct these searches.[1]

**Will ICE still need a warrant to enter areas that were previously protected?**
Yes, but only for places within those areas that are considered private, since the Fourth Amendment protects areas where people have a "reasonable expectation of privacy." In the context of protected areas, areas open to the public such as lobbies, waiting areas and parking lots are considered public, while interior areas and those marked "private" with a sign are considered private. For immigration enforcement to search or enter a private area within a formerly protected area, the Fourth Amendment requires a valid judicial warrant signed by a federal judge *unless* staff at those areas consent to the search.[2] Note that the same caveats as above apply to formerly protected areas within 100 miles of the border.

**Can ICE arrest individuals inside protected areas?**
Yes, under some circumstances. If ICE agents enter a formerly protected area—either a public area or by gaining access to a private area through a warrant or consent—they can arrest people if they have a valid administrative warrant for that person or if they have probable cause to believe that the person is "removable" from the United States—i.e. the person does not have current lawful status or that they have engaged in conduct such as involvement in the criminal legal system that gives ICE the authority to begin deportation proceedings against them. Probable cause can be established through questioning of individuals who disclose their immigration status or documentation that indicates they are noncitizens—which is why it is so important to remain silent! Running from ICE agents can also establish probable cause.

**How can staff members at formerly protected areas prepare for potential ICE actions?**
Staff at formerly protected areas should be aware of their rights not to cooperate with ICE. NILC's multi-lingual guide for employers has additional information. For individuals impacted by the rescission, please see NILC's KYR guidance and other community-facing materials.

[1] This resource on 100 Mile Border Zones provides more information and scenarios.
[2] Please review NILC's resource on warrants & subpoenas for more information.

**What actions can communities take to support and protect immigrants in formerly protected areas?**

Staff and administrators at formerly protected areas should be aware of key rights and best practices that apply to all these spaces, as well as location-specific ones.[3]

**IMPORTANT STEPS FOR ALL FORMERLY PROTECTED AREAS:**

- **Develop a written response policy & preparedness plans in advance.**
- **Designate an authorized person to review warrants & subpoenas.**
- **Understand the distinctions between public and private areas.**
- **Train non-authorized staff & volunteers on how to respond to ICE requests.**
- **Document all interactions with immigration enforcement.**
- **Connect with immigration response networks in your area.**

**Recommendations for school administrators and staff:**

- **Identify any applicable federal, state, and local laws and policies that protect immigrant students and ensure staff are trained on them.** For example, teacher and administrator associations, school districts, and other educational institutions and organizations can host trainings on the laws and policies that protect students' data, such as the Family Educational Rights and Privacy Act (FERPA).
- **Re-evaluate data collection practices**. Schools should think through and limit to the extent possible the information that is collected from students and their families, for what purpose, under what protections, and who has access. Avoid collecting information about immigration status, which has a deep chilling effect for families and possibly violates *Plyler v. Doe,* the Supreme Court decision guaranteeing access to K-12 public education for all children regardless of immigration status. See NILC's resource on *Plyler* & Data Collection for more information.
- **Share "Know Your Rights" information widely.** For example, promote the creation of Family Emergency Plans.
- **Create or update School Resolutions**. Such resolutions can play an important role in creating a safe environment of trust. Resolutions can affirm your school's commitment to support immigrant families, list what services and supports will be provided (e.g., legal services) in case of an immigration enforcement action, and describe what policies and protocols are in place to protect them. Such resolutions can also explicitly share with the community the school's preparedness plan if immigration law enforcement shows up at or near a school.[4]

[3] The California Attorney General's Office has created model guidelines for nearly all formerly protected areas.
[4] The Century Foundation has additional proposals for protective actions school districts can take.

**Recommendations for hospitals and health centers:**

NILC's resource for health care providers includes additional details on protecting the rights of health care facilities, staff, and patients. Recommendations include:

- **Minimize disclosure of patient information.** While immigration status or evidence of foreign birth are not, by themselves, considered personal health information (PHI) protected under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), health care providers have no affirmative legal obligation to inquire into or report to federal immigration authorities about a patient's immigration status.
- **Reevaluate data collection policies.** Avoid asking for patients' immigration status and, if you must collect such information for a purpose such as Medicaid enrollment, avoid including that information in the patient's medical and billing records.[5]
- **Scrutinize scope of the warrant.** In the healthcare context, special scrutiny should be given to the scope of the warrants to ensure that officials do not search other areas (for example, a warrant that covers an emergency room would not authorize ICE to enter other areas of a hospital).
- **Educate and reassure patients.** Healthcare facilities should endeavor to provide know your rights information such as posters, brochures, and KYR cards so that patients are aware of their rights and confidentiality laws.

**Recommendations for social services organizations:**

Social services organizations should implement policies and procedures similar to those outlined above for all employers.[6]

- **Identify applicable confidentiality and privacy laws.** Depending on the type of services provided, social services organizations may be able to invoke additional protections for those who seek their services, such as HIPAA (health-related social services), FERPA (education-related services), or attorney-client privilege (legal services).
- **Minimize public areas where service seekers gather.** Although this will depend on the physical space, consider rearranging waiting areas and other potentially public spaces to be behind closed doors rather than in open entry areas. Also clearly mark spaces as "private."
- **Train staff on harboring laws.** Particularly for social services organizations whose mission involves serving immigrant communities, staff should be aware of harboring laws and how to protect themselves and their organization from liability.[7]
- **Obtain legal counsel to advise on subpoenas and ensure 501(c)(3) compliance.** Given the troubling pattern of nonprofits serving immigrant communities coming under greater scrutiny, social services organizations should have legal counsel available to respond to subpoena requests,

[5] Two states—Texas and Florida—are currently requiring hospitals to ask patients about their immigration status and to report the aggregate amount of uncompensated care provided to undocumented patients. However, providers' legal obligations to provide care is not affected by a patient's decision not to provide their status.

[6] In addition to specific considerations below, this resource provides information specifically for non-profit organizations.

[7] This CLINIC resource provides additional information on harboring laws.

and if they have 501(c)(3) status, to ensure the organization is fully in compliance.

**Recommendations for places of worship:**

- **Identify non-public spaces.** ICE agents may enter public spaces that are open to congregants but cannot enter private areas such as offices and parsonages. Places of worship should clearly delineate what areas are private and/or if areas are only open to the public at certain times.
- **Understand the laws that impact sanctuary congregations.** Congregations that choose to designate themselves as "sanctuaries" should be aware of potential legal implications, including criminal law against "harboring" of undocumented immigrants,[8] and potential legal protections under the Religious Freedom Reform Act (RFRA).[9]

**Recommendations for Courthouses:**

- **Be aware of existing—or advocate for—state level protection from ICE enforcement in courthouses.** For example, the Oregon Supreme Court has issued a standing order requiring a warrant for ICE to arrest individuals in or around courthouses, including entrances, sidewalks, and parking lots. Other states like New York and California have legislation that similarly protects courthouses.[10]
- **Familiarize yourself with other Constitutional protections:** Multiple constitutional rights apply to individuals regardless of status protect the right to attend court proceedings, including the First Amendment (right to petition); Fifth Amendment (right to due process); and Sixth Amendment (right to confront witnesses).

**Is it possible that protected areas will come back into effect?**
Yes. Community members and advocates should stay alert for updates regarding legal or legislative changes and continue to advocate for policies—especially at the state and local level—that allow immigrant communities not only to be safe, but to thrive.

- **Legal Action:** There may be legal challenges to Trump's rescission, which could result in a court blocking the administration's action. Such injunctions may be nationwide and cover all protected areas or be limited to certain states or regions and/or to certain types of protected areas. These legal developments can change quickly as the cases move through the courts so it will be important to check NILC's website and other trusted sources regularly for updates.
- **Federal Legislative Advocacy:** U.S. Representative Adriano Espaillat and Senator Richard Blumenthal have led legislation entitled the Protecting Sensitive Locations Act that would codify the majority of the protected areas memos' protections. NILC and partners will continue to support this bill's advancement.
- **Future Executive Action:** Just as the Trump Administration rescinded the Biden administration's memos, a future administration could revive or even bolster these protections.

*This resource was prepared by Lynn Damiano Pearson, NILC Attorney (last updated January 21, 2025).*

[8] This ACLU resource addresses harboring in and sanctuary congregations.
[9] This article discusses potential RFRA protections for sanctuary churches.
[10] For example, see New York's ICE Out of Courts Campaign.