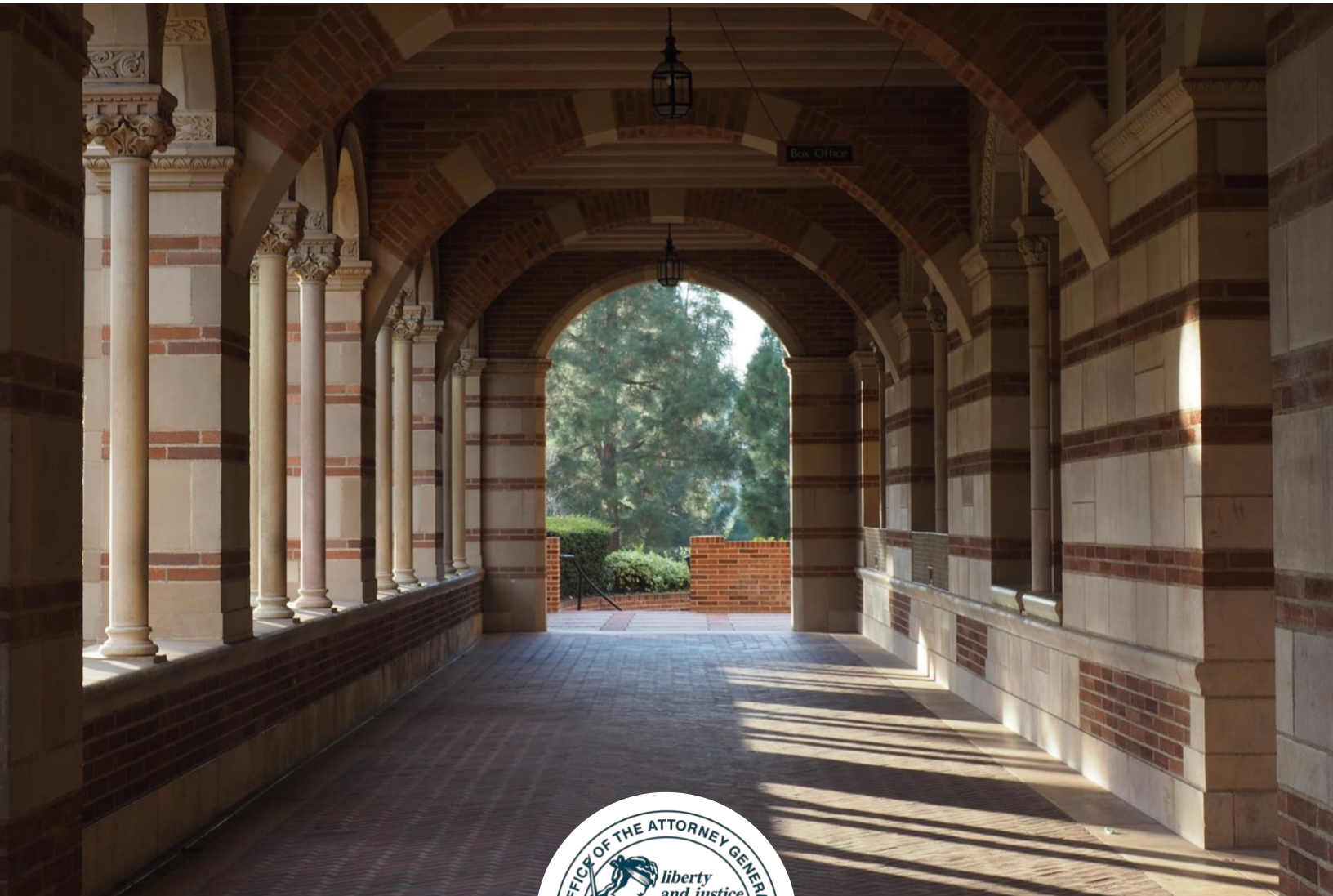


# Promoting a Safe and Secure Campus for All

Guidance and Model Policies to Assist California's Colleges and Universities in Responding to Immigration Issues



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# Introduction

California's higher education system includes three public segments—the University of California (UC), the California State University (CSU), and the California community colleges. Higher education in California also includes over 150 private nonprofit colleges and about 130 for-profit institutions.<sup>1</sup> In total, the State's colleges and universities enroll more than 2 million students from a wide range of backgrounds.<sup>2</sup> The State's postsecondary educators have the incredible opportunity, and responsibility, to provide effective learning environments for all students, regardless of nationality or immigration status.

As reported by the Migration Policy Institute, there are currently 150,090 Deferred Action for Childhood Arrivals (DACA) recipients in California.<sup>3</sup> Overall, in 2021, there were approximately 83,000 undocumented postsecondary students in California, approximately 38,000 of whom were DACA recipients.<sup>4</sup>

Immigration enforcement threats have led to questions about student information held by state community colleges and universities in support of students' pursuit of their educational goals. California's community colleges and universities welcome all students and support their educational rights and opportunities. Under the U.S. Constitution, all students have a right to receive an education without discrimination based on immigration status. In *Plyler v. Doe*, the U.S. Supreme Court recognized that undocumented immigrant students cannot be denied equal access to a public education on the basis of their immigration status.<sup>5</sup>

Under the California Constitution, all students and staff—regardless of immigration status—have a right to privacy<sup>6</sup> and “the inalienable right to attend campuses which are safe, secure and peaceful.”<sup>7</sup> The California Supreme Court has affirmed that an immigrant student's right to an equal educational opportunity is “a vitally important right in our society.”<sup>8</sup> Protections are expressly codified in California law to assure educational access for all, regardless of a student's immigration status, “in any [educational] program or activity conducted by an educational institution that receives, or benefits from, state financial assistance, or enrolls pupils who receive state financial aid.”<sup>9</sup>

## Purpose of this Guide

The first version of this guide was published after Senate Bill (SB) No. 54 (2017-2018 Regular Session) mandated that the Attorney General publish model policies “limiting assistance with immigration enforcement to the fullest extent possible consistent with federal and state law at public schools...and ensuring that they remain safe and accessible to all California residents, regardless of immigration status.”<sup>10</sup> SB 54 further required that public schools<sup>11</sup> implement the model policies, or equivalent policies, and encouraged the UC and all other organizations and entities that provide postsecondary education to adopt the model policies.<sup>12</sup>

In addition, Assembly Bill (AB) No. 21 (2017-2018 Regular Session) provided that the CSU Trustees, the governing boards for the California community college, and each qualifying independent institution<sup>13</sup> were required to—and the UC Regents were requested to—adopt and implement the model policies issued by the Attorney General pursuant to SB 54's mandate, or equivalent policies, by March 1, 2019.<sup>14</sup>

In 2018, then-California Attorney General Xavier Becerra issued an earlier version of this guide to all California colleges and universities to fulfill this mandate. California Attorney General Rob Bonta is now issuing a new edition of this guide to equip California colleges and universities with the updated information and resources necessary to support all their students and to safeguard the rights and privacy of immigrant students and their families.

This new edition is intended to assist higher education agencies in complying with California law, which limits state and local participation in immigration enforcement activities. Such participation diverts state resources, blurs lines of accountability, and threatens trust between immigrant communities and state and local agencies that provide critical public services. The model policies laid out in this guide are aimed at assisting California's colleges and universities in focusing their resources on their critical missions, while leaving immigration enforcement efforts to others.

This guide is intended to help colleges and universities establish practical steps to protect the rights of all students, including immigrant students, by stating the governing law and model policies for handling and responding to the following circumstances:

1. Gathering and Handling Student Information;
2. Responding to Law Enforcement Requests for Access to Campuses and Residential Units for Immigration Enforcement Purposes;
3. Responding to Law Enforcement Requests to Access Student Records for Immigration Enforcement Purposes; and
4. Responding to Immigration Actions Against Students or Family Members.

Information provided in this guide applies not only to information gathered from students and their families, but also to information obtained from other sources for educational purposes by the college or university (e.g., other educational institutions or related parties facilitating that transfer of information).

This guide aims to help ensure that California's colleges and universities remain an accessible resource for all residents to pursue higher education, and the Attorney General's model policies are intended to apply to immigration enforcement actions involving students attending each campus. This guide is not intended to cover the obligations arising from employer-employee relationships at colleges and universities. Colleges and universities should be aware that other laws may apply to immigration enforcement activities and requests for information directed at campus employees as the subjects.<sup>15</sup>

California law enforcement agencies are prohibited under state law from performing the functions of immigration enforcement officers.<sup>16</sup> But colleges and universities should be aware that, although U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) are the agencies with primary responsibility for federal immigration enforcement, there are instances in which other law enforcement agencies, may attempt to enforce federal immigration laws. In this guide, ICE, CBP, and other law enforcement agencies attempting to enforce immigration laws are treated the same, in terms of the advice given for how colleges and universities should handle interactions with them. Any policy adopted to address interactions between college and university personnel and

immigration enforcement officers should encompass all law enforcement agencies that seek to enforce immigration law, and should handle requests from all law enforcement agencies acting with that purpose in the same way.

To the extent that colleges and universities have developed policies that are aligned with or provide greater protections for immigrants, this guide is not intended to supersede those policies. Nor does the exclusion of a particular policy in this guide—whether recommended by an advocacy group or implemented by an agency—necessarily indicate the Attorney General’s disapproval of that policy. Rather, this guide offers foundational policies reflecting the minimum that should be present in the policies adopted by any California college or university and should serve as a resource to enhance current policies as needed and ensure alignment with the state law. Ultimately, the college’s or university’s policies must at minimum follow the model policies here, except where contrasting laws or circumstances require adjustments.

It is important that colleges and universities train staff for possible interaction with immigration enforcement officers, so that staff can be prepared in the event of an immigration enforcement activity, inquiry, or request at the college or university, including determining when, if at all, any potential disclosures of information will be necessary.

For colleges and universities that are required to adopt policies under SB 54 and AB 21, their policies must substantially reflect the model policies here, except where contrasting laws or circumstances require adjustments.

*This guide is not legal advice.* This guide is based on current law as of December 2024, which may change. College and university administrators should consult with their attorneys when formulating their own policies and practices—and in addressing any questions—regarding the issues covered in this guide.

## Purpose of this Section

- Provide college and university administrators with policies for collecting and retaining information to prevent unnecessary collection of information on the immigration status of students and their families.

## Governing Law

Federal law does not impose an affirmative duty on state or local government entities, including colleges and universities in admission decisions of students who graduated from a California high school or the equivalent, to collect, hold, or process information establishing a student's citizenship or immigration status.

California law prohibits California law enforcement agencies from "using any agency or department moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes" and generally prohibits "[i]nquiring into an individual's immigration status."<sup>17</sup> State law also prohibits California law enforcement agencies, including campus police and security departments,<sup>18</sup> from engaging in the following activities for the purposes of immigration enforcement:

### Law Enforcement Actions Prohibited under Senate Bill No. 54

- ✓ Generally providing personal information, as defined in section 1798.3 of the Civil Code, about an individual for immigration enforcement purposes, including, but not limited to, the individual's home address or work address, unless that information is available to the public;<sup>19</sup>
- ✓ Contracting with the federal government for use of local law enforcement facilities to assist in immigration enforcement;<sup>20</sup>
- ✓ Assisting immigration authorities, or performing any functions of an immigration officer, formally or informally;<sup>21</sup>
- ✓ Participating in programs under section 287(g) of the federal Immigration and Nationality Act<sup>22</sup> that allow federal immigration agencies to enter into agreements with local law enforcement agencies for the purpose of carrying out immigration enforcement actions.<sup>23</sup>

Section 1373 of title 8 of the United States Code provides that state and local government entities and officials cannot prohibit or restrict any government entity or official from maintaining information regarding a person's immigration status, exchanging information regarding a person's immigration status with other governmental entities, or sending or receiving information regarding the citizenship or immigration status of any individual to or from federal immigration enforcement authorities.<sup>24</sup> The Ninth Circuit construed section 1373 narrowly, finding that the scope of information covered by the statute is limited to "information strictly pertaining to immigration status (i.e., what one's immigration status is)" and clarifying that the federal statute does not apply to other categories of information, such as a student's home or work address.<sup>25</sup>

## 1. Admissions Information

### *Social Security Numbers*

Every individual has a privacy interest in retaining the confidentiality of his or her Social Security number (SSN).<sup>26</sup> The Family Educational Rights and Privacy Act (FERPA) protects the privacy of students by prohibiting all colleges and universities that receive federal funds from disclosing personally identifiable information contained in education records to any third party without the student's permission.<sup>27</sup> Under FERPA's implementing regulations, a student's SSN is considered personally identifiable information, and subject to limited exceptions, cannot be disclosed without written consent.<sup>28</sup> Thus, colleges and universities are prohibited from designating SSNs as directory information or allowing them to be used to identify the student or the student's records.<sup>29</sup>

One of the most significant exceptions to the consent requirement allows sharing personally identifiable information with school officials with a legitimate educational interest.<sup>30</sup> But none of these exceptions authorize or require disclosing information for immigration enforcement (which is not a legitimate educational interest), nor is there any other requirement, in either federal or state law, to provide information to officers engaged in immigration enforcement, the Department of Homeland Security (DHS), ICE, or any other agency within DHS, without a court order or judicial subpoena.<sup>31</sup>

During the admissions and enrollment process, a college or university may request a student's SSN for administrative purposes, to the extent required by federal law, including for Internal Revenue Service (IRS) related matters,<sup>32</sup> financial aid eligibility and disbursement, and the repayment of financial aid or other debts payable to the college or university.<sup>33</sup> However, students are not required to provide a SSN on applications to enroll in college or university. A student who is a DACA beneficiary, for example, or who has not obtained a SSN, may elect to leave the item blank on the application. Typically, the college or university will assign applicants a temporary student identification number for use in the application process and while attending the school.<sup>34</sup>

**Please Note:** The University of California recommends that undocumented students with a valid SSN for work authorization purposes (i.e. DACA beneficiaries), or those who possess an Individual Tax Payer Identification Number (ITIN), use any of these in their admissions application, but can choose to leave the item blank. Keep in mind that different campuses may have different funding opportunities available for undocumented students, and this information could help in rendering students eligible.<sup>35</sup> ***Additionally, if the student is also applying for state or institutional financial aid through the California Dream Act Application, it is recommended that the student input the same number included in that application for financial aid.***

### *Country of Citizenship*

Applicants seeking admission to a college or university are often asked to list a country of citizenship for financial aid purposes. All applicants, including undocumented students, have the option to leave this blank or choose "No Selection" if it is available in the application.<sup>36</sup> This option is considered a valid response for undocumented applicants, including those with DACA status. By choosing "No Selection," when available, the applicant will avoid being asked subsequent questions about permanent residency and visa status that are not applicable.

### *California Residency*

The rules governing state residency for postsecondary education purposes are determined by the California Education Code.<sup>37</sup> Public colleges and universities can request residency information from the applicant for tuition calculation purposes.<sup>38</sup>

Assembly Bill (AB) No. 540 (2001-2002 Regular Session) established an exemption from the payment of nonresident tuition for certain nonresident students who have attended high school in California and received a high school diploma or its equivalent.<sup>39</sup> Later legislation has provided opportunities for qualifying for nonresident tuition exemptions.<sup>40</sup>

The expanded tuition exemption opportunities also take into account time spent at California adult schools, community colleges, or a combination of high schools and elementary schools, when meeting time and coursework requirements.<sup>41</sup> Students can also become eligible for the nonresident tuition exemption by showing attainment of an associate degree from a California community college or fulfillment of minimum transfer requirements from a California community college to a UC or CSU campus.<sup>42</sup> Additionally, “in the case of a person without lawful immigration status,” California law requires “the filing of an affidavit with the institution of higher education stating that the student has filed an application to legalize his or her immigration status, or will file an application as soon as he or she is eligible to do so.”<sup>43</sup>

An exemption applicant must complete a form, often referred to as the AB 540 Affidavit or the California Nonresident Tuition Exemption, and submit it to the college or university he or she plans to attend. Under the law, any student information obtained in the implementation of AB 540 is confidential.<sup>44</sup>

**Please Note:** Successful submission of an AB 540 Affidavit does not classify the student as a California resident for enrollment purposes. But the student is exempt from paying nonresident tuition and will be charged in-state tuition and fees. Further, students with AB 540 status can be considered for state and institutional financial aid. Undocumented students who do not meet the AB 540 tuition requirements are not eligible for the exemption.<sup>45</sup>

The residency status of a student’s parent or legal guardian is not required when applying to a college or university. However, a college or university can consider a parent’s (or legal guardian’s) state residency to determine a student’s residency status for tuition purposes.<sup>46</sup>

### *International Students*

International students with a nonimmigrant F-1, M-1, or J-1 student classification visa are allowed to study in the United States like any other admitted college or university student. Thus, colleges and universities may also ask for the student’s SSN and country of citizenship. Generally, SSNs can be obtained by people who are authorized to work in the United States. Most international student visas do not grant work authorization.<sup>47</sup> As discussed above, students with no reported SSNs will likely be assigned a student identification number by their school. International students should answer the question of country of citizenship, which will lead them to identify which visa classification they possess.

FERPA itself does not distinguish between students based on their immigration status. Therefore, FERPA protects personally identifiable information contained in student records of international students.

Any college or university that enrolls nonimmigrant international students on F (academic)



and M (vocational) visas must be certified by ICE's Student and Exchange Visitor Program (SEVP).<sup>48</sup> SEVP-certified colleges and universities must comply with all SEVP data collection requirements or risk becoming ineligible to enroll foreign students.<sup>49</sup> Additionally, SEVP representatives are authorized to conduct site visits when a school seeks SEVP certification and recertification, and may visit campuses to monitor schools' participation and compliance with SEVP requirements.<sup>50</sup> ICE officials therefore may be present on campuses for purposes unrelated to apprehension and removal.

### *Personal Statements & Personal Insight Application Questions*

Personal essays and personal insight questions are often used by school admissions officers to assess a student's application. These essays and questions often include a main admissions essay, a series of short questions throughout the application process, or essay questions for specific housing programs or scholarships. These essays and questions do not require disclosure of an applicant's immigration status, such as whether they are undocumented, a DACA recipient, or the beneficiary of Temporary Protected Status (TPS). However, answers to these writing prompts may allow students to shed light on the various experiences and qualities that make their applications distinct from others. Providing this information can help admissions officers understand the circumstances an applicant has had to navigate or their resources available to afford college. Colleges and universities should only use this information during the process of considering applications and should establish policies and procedures for ensuring its protection and limited retention.<sup>51</sup> A student's personal statement and application become education records, subject to the protections of FERPA, when that student attends the college or university. Therefore, except as permitted under FERPA, a college or university cannot disclose this information without the express written consent of the student.<sup>52</sup>

## **2. Financial Aid**

Financial aid offices collect, manage, and have access to a large amount of confidential data about students and their parents. This information is often obtained through the Free Application for Federal Student Aid (FAFSA), the state-administered California Dream Application (intended to serve students with AB 540 status or pursuant to AB 2000,<sup>53</sup> as well as students who have a U visa or TPS), or by the submission of family tax returns or other documentation necessary to help establish financial aid eligibility. It can include a student's SSN and, in some cases, information about citizenship or immigration status.

To qualify for federal financial aid, a student must be a U.S. citizen, permanent resident, or eligible noncitizen.<sup>54</sup> Undocumented immigrants, including DACA beneficiaries, are not eligible for federal aid.<sup>55</sup> Eligibility is not affected if a student's parents are undocumented.<sup>56</sup> However, the FAFSA form requests parents' SSNs. Students whose parents do not have SSNs are advised by the U.S. Department of Education to select the box that indicates they do not have an SSN.<sup>57</sup>

The California Dream Act (AB 130 and AB 131)<sup>58</sup> allows students who qualify for AB 540/AB 2000/SB 68<sup>59</sup> non-resident tuition exemptions to apply for and receive state-administered financial aid (e.g., Cal Grants and CA Middle Class Scholarships), and financial aid administered by public institutions (including institutionally funded grants as well as those funded by private donors, alumni contributions, and departments, and the California DREAM Loan).<sup>60</sup>

To be eligible for these state aid programs, a student must first meet the AB 540/AB 2000/SB 68 criteria, discussed above. Students must then submit a California Dream Act application to the California Student Aid Commission, which shares the application with campuses designated by the applicant. The application requests the student's SSN or ITIN, but states that

providing this information is optional; the form does not request this information for parents.<sup>61</sup> For its financial aid programs, CSAC requires submission of a grade point average verification, which does not require a SSN.<sup>62</sup> Additionally, to be eligible to use state-funded or institutionally funded work study, AB 540-qualified students must also show that they are DACA recipients and therefore authorized to work in the United States.<sup>63</sup> The California Dream Application requires annual renewal, much like the FAFSA.<sup>64</sup>

Federal laws such as the Higher Education Act, FERPA, and the Privacy Act control and protect the use and release of this student data. For example, the Higher Education Act allows the FAFSA to collect a student's and parent's SSNs to verify identity and retrieve records,<sup>65</sup> but it also restricts the use of the FAFSA data to the application, award, and administration of aid awarded under federal student aid programs, state aid, or aid awarded by eligible institutions.<sup>66</sup> Additionally, the Higher Education Act also prohibits the use of National Student Loan Data System information for non-governmental research and marketing purposes.<sup>67</sup> As noted above, FERPA protects the privacy of students by prohibiting colleges and universities from disclosing personally identifiable information contained in education records, such as SSNs.<sup>68</sup> Similarly, the Privacy Act governs the collection, maintenance, and use of records maintained by federal agencies, such as the U.S. Department of Education, and generally prohibits agencies from disclosing data contained in those records without prior written consent from the individual.<sup>69</sup>

State and federal law also generally prohibit colleges and universities from releasing personally identifiable information in education records to third parties, absent informed consent.<sup>70</sup> However—and as stated in Sections 2 and 3, below—a college or university must comply with all valid judicial warrants, court orders, or subpoenas.<sup>71</sup>

**Please Note:** Under current immigration law, receiving publicly funded housing vouchers, medical or nutritional benefits does not make someone a “public charge,” a factor which negatively affects an immigrant’s chances of becoming a legal resident.<sup>72</sup> Importantly, the public-charge test does not apply to many categories of immigrants, including refugees, asylum seekers, certain victims of trafficking, self-petitioners, and some other persons.<sup>73</sup>

### 3. Campus Housing

University housing options vary from campus to campus, and therefore, housing offices may have cause to collect different information from students. This information may include students’ pre-college home address, phone number, e-mail address, and emergency contact information. College/university housing offices may also have access to information regarding whether students qualify for AB 540 or California Dream Act aid for the purposes of granting fee waivers or deferrals to students applying for on-campus housing. Further, applications for themed housing programs may include essay questions, in response to which, some students may choose to disclose their immigration status. This information is protected under FERPA. California law also requires colleges and universities to refrain from disclosing students’ personal information except “as part of a directory that does not include residence addresses... ”<sup>74</sup> Colleges and universities should store this information securely and inform students that this information is confidential. For more specific information on whether and when information must be released to officers engaged in immigration enforcement, see *Section 2: Responding to Law Enforcement Requests for Access to College Campuses and Residential Units for Immigration Enforcement Purposes* and *Section 3: Responding to Law Enforcement Requests to Access Student Records for Immigration Enforcement Purposes*, below.

#### 4. Campus Police

Among the California law enforcement agencies covered by SB 54 are the police and security departments of public schools.<sup>75</sup> Public college and university police departments shall not “[u]se agency or department moneys or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes.”<sup>76</sup> Additionally, campus police cannot initiate a contact, detention, questioning, or arrest of any student, employee, or other person on campus on the basis of his or her suspected undocumented immigration status or to discover the individual’s immigration status.<sup>77</sup> And campus police or security cannot undertake joint efforts with immigration authorities to investigate, detain, or arrest individuals for violation of immigration laws.<sup>78</sup>

Importantly, investigative reports and other files, documents, or records created and maintained by campus police for a law enforcement purpose are not considered education records under FERPA.<sup>79</sup> Rather, law enforcement agencies with responsibilities on or around public college and university campuses should also ensure that their policies regarding the use of non-criminal history information regarding students is in compliance with the requirements of SB 54.<sup>80</sup>

Nonetheless, the California Government Code prohibits college or university police from providing “personal information” about an individual for immigration enforcement purposes, unless that information is publicly available.<sup>81</sup> The definition of “personal information” incorporates any information that “identifies or describes an individual” including, but not limited to, an individual’s physical description, home or work address, telephone number, education, financial matters, medical or employment history, and statements made by, or attributed to, the individual. This would include a student’s course schedule, which is described as “personal information” protected by Education Code section 66093.3.<sup>82</sup> Therefore, SB 54 would generally prohibit sharing such other personally identifiable information, even if contained in investigative reports and other files, documents, or records created and maintained by campus police for a law enforcement purpose.

While the California Government Code does not prohibit campus police from sharing information regarding a person’s citizenship or immigration status with governmental entities,<sup>83</sup> California law prohibits public college and university law enforcement officers from asking a student about his or her immigration status for immigration enforcement purposes.<sup>84</sup>

For example, SB 54 contains a limited, express exemption permitting inquiry into immigration status where “necessary to certify an individual who has been identified as a potential crime or trafficking victim for a T or U visa”<sup>85</sup> In fact, California law provides additional protections for crime victims that reinforce the federal protections afforded under the Violence Against Women Act (for U visas), as well as under the Victims of Trafficking and Violence Prevention Act (for T visas). California’s Immigrant Victims of Crime Equity Act requires state and local law enforcement agencies, prosecutors, judges, and other entities and officials to certify the helpfulness of undocumented victims of qualifying crimes on a federal U Nonimmigrant Status Certification (Form I-918), also known as a “U visa certification” if certain conditions are met.<sup>86</sup> Upon request, prosecutors, judges, and other entities and officials are to complete U visa certifications for immigrant crime victims of qualifying criminal activity who possess information about the qualifying criminal activity and have been or are likely to be helpful to the investigation or prosecution of that qualifying criminal activity.<sup>87</sup> The 2023 Immigrants Rights Act strengthened these protections and applied them to indirect victims and bystander or witness victims as well.<sup>88</sup>

Under California law, there is a rebuttable presumption that an immigrant victim is helpful, has

been helpful, or is likely to be helpful, if the victim has not refused or has not failed to provide information and assistance reasonably requested by law enforcement.<sup>89</sup> A certifying official may withdraw a previously granted certification only if the victim refuses to provide information and assistance when reasonably requested.<sup>90</sup> Further, the certifying official must fully complete and sign the U visa certification and include “specific details about the nature of the crime investigated or prosecuted and a detailed description about the victim’s helpfulness or likely helpfulness to the detection or investigation or prosecution of the criminal activity.”<sup>91</sup>

This certification must be completed within 30 days of the request, unless the applicant is in immigration removal proceedings, in which case the certification must be completed within seven days of the first business day following the receipt of the request.<sup>92</sup> Further, a “certifying entity” is prohibited from disclosing the immigration status of a victim or person requesting the Form I-918 Supplement B certification, except to comply with federal law or legal process, or if authorized by the victim or person requesting the Form I-918 Supplement B certification.<sup>93</sup> The certifying entity must forward the completed Form I-918 Supplement B certification to the victim, victim’s family member, attorney, or authorized representative without requiring the victim to provide government-issued identification.<sup>94</sup> If the certifying entity does not certify a Form I-918 Supplement B certification, they must provide a written explanation for the denial, and they may not refuse because of the victim’s criminal or immigration history, extent of harm, or inability to produce a crime report, among other reasons.<sup>95</sup>

More detailed guidance on California’s Immigrant Victims of Crime Equity Act and the Immigrant Rights Act can be found in the California Department of Justice, Division of Law Enforcement, DLE Information Bulletin No. 2024-DLE-05, *Update to Information Bulletin 2020-DLE-01: New and Existing State and Federal Laws Protecting Immigrant Victims of Crime* (April 3, 2024), available at <https://oag.ca.gov/system/files/media/2024-dle-05.pdf>.

Public college and university law enforcement agencies should adopt policies limiting their own collection of immigration status information. College and university police or security departments should not maintain a database or aid federal efforts to create a registry containing individuals’ country of birth or based on any protected characteristic of victims, witnesses, or suspects of crimes, unless required by law for specified purposes.

## **5. University Disciplinary Records**

While disciplinary records maintained by a college or university are protected as “education records” under FERPA,<sup>96</sup> there are certain narrow circumstances in which disciplinary records may be disclosed without the student’s consent. A college or university may disclose to an alleged victim of any crime of violence or a nonforcible sex offense the final results of a disciplinary proceeding against the alleged perpetrator of that crime, regardless of the results.<sup>97</sup> A college or university may disclose to anyone—not just the victim—the final results of a disciplinary proceeding conducted against a student who is an alleged perpetrator of a crime of violence or a nonforcible sex offense, if the institution determines that the student has committed a violation of the institution’s rules or policies with respect to the offense.<sup>98</sup> Final results are limited to name, violation and sanction and would not include immigration status.

For more information on whether and how college and university law enforcement must comply with requests for information or physical access to nonpublic spaces on school property, see *Section 2: Responding to Law Enforcement Requests for Access to Campuses and Residential Units for Immigration Enforcement Purposes* and *Section 3: Responding to Law Enforcement Requests to Access Student Records for Immigration Enforcement Purposes*, below.

## 6. Campus Healthcare Facilities

Colleges and universities may provide health or medical services to students. While the records in most medical facilities in the United States would be governed by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the HIPAA privacy rules do not extend to student medical treatment records and other records protected by FERPA.<sup>99</sup> In a health and safety emergency, FERPA permits school officials to disclose without student consent education records, including personally identifiable information from those records, if disclosure is necessary to protect the health or safety of students or other individuals.<sup>100</sup> Records and information may be released to “any person whose knowledge of the information is necessary to protect the health or safety of the student or other individuals.”<sup>101</sup> Additional guidance promulgated by the United States Department of Education on use of the “health and safety emergency” lists law enforcement as a possible recipient of student information in case of a health and safety emergency.<sup>102</sup> The United States Department of Education interprets FERPA to also permit institutions to disclose information from education records to parents, if the agency determines there is an articulated and significant threat to health and safety that disclosure of certain limited information to a parent would prevent.<sup>103</sup> However, release of information for purposes of immigration enforcement is not among the enumerated exceptions to the consent requirements within FERPA.

For more detailed information on privacy and immigration protections in public health facilities, please see the guide titled *Promoting Safe and Secure Healthcare Access for All: Guidance and Model Policies to Assist California’s Healthcare Facilities in Responding to Immigration Issues* (October 2018), available at <https://oag.ca.gov/sites/all/files/pdfs/immigration/healthcare-guidance.pdf>.

## Policy Recommendations

In addition to the model policies appearing in Section 5, the Attorney General makes the following additional, discretionary policy recommendations.

Colleges and universities should review their student enrollment, residency, and data collection policies and practices to ensure that they comply with these federal and state laws. The review should also aim to safeguard against inadvertently discouraging immigrant or undocumented students from applying to or enrolling in colleges and universities because of the content of the application or enrollment forms or the mechanics of the application or enrollment processes.

## **1. Policies for Gathering and Handling Student and Family Information**

### *Dissemination of Information to Students*

Policies and procedures for gathering and handling sensitive student information during application, enrollment, or otherwise should be set out in writing and posted on the institution's website. Staff should receive training on these policies and procedures.

### *Documents/Record Retention*

As discussed below, colleges and universities should avoid seeking or collecting information about the immigration status of students or their families. However, if the college or university is required to ask students for demographic information because of federal reporting requirements, or if a student discloses this information, such information should be held in accordance with applicable laws and shall not impede admissions decisions or educational access of the student to courses or degree programs. Moreover, the college and university should not use such information to create a registry based on race, gender, sexual orientation, religion, ethnicity, or national origin, unless required by law for specified purposes.

College and university officials involved in administering financial aid should limit the collection of sensitive student information to that which is required for financial aid determinations and award processes. Sensitive information, such as student or parent SSNs and AB 540 determinations, should remain confidential, consistent with federal and state law. Offices collecting sensitive information should provide assurances to students that their information is subject to confidentiality protections under state and federal law. Procedures for complying with warrants, orders, or subpoenas, including verifying that they have been lawfully issued, should also be adopted.

## **2. Immigration Status, Citizenship Status, National Origin Information**

Colleges and universities should not collect personally identifiable information about a student, including citizenship and immigration status, unless required by law. They should not at any time seek or require, to the exclusion of other sufficient and permissible information, data regarding or probative of a students' or their parents' citizenship (U.S. citizenship or foreign citizenship) or immigration status (e.g., immigration number). Any data gathered shall remain confidential consistent with federal and state law and shall be used only for the limited purpose for which it was intended.

## Purpose of this Section

- Provide college and university administrators with policies and practices for responding to requests for access to campus facilities and residential units, and for contact with students for immigration enforcement purposes.
- Provide a description of the types of documents law enforcement officers may present when seeking to access students and documents.

## Governing Law

### 1. Protected Area Policies

Schools, which include postsecondary schools, colleges, universities, and vocational or trade schools, are considered “protected areas” under the policy in effect at the time of publication of this guide.<sup>104</sup> DHS’s current policies, which govern both ICE and CBP, do not prohibit enforcement actions at protected areas. Rather, the policy provides that enforcement actions in or near protected areas should be avoided to the fullest extent possible.<sup>105</sup>

The protected-area policies cover any actions taken by ICE or CBP to apprehend, arrest, interview, or search for an individual or to conduct surveillance for immigration enforcement purposes. These policies do not extend to actions such as obtaining records, documents, and similar materials from officials or employees; providing notice to officials or employees; engaging in the Student and Exchange Visitor Program (SEVP); or participating in official functions or community meetings.<sup>106</sup>

The published protected-area policies in place when this guide was drafted may be modified, superseded, or withdrawn at any time with little or no notice. The following discussion of documents that law enforcement officers may present when seeking to access campuses and student records is accurate as of the time of publication.

### 2. Warrants, Subpoenas, and Court Orders

A college campus may have areas that are open to the public, areas that have restricted access, and areas, such as residences, that cannot be accessed by law enforcement, including immigration enforcement, absent valid consent or a duly-issued judicial warrant. The different documents that permit access to persons, locations, and records are discussed here and included in Appendix A to G.

Additionally, as required by AB 21, each CSU, community college, and qualifying independent institution shall advise all students, faculty, and staff having contact with officers engaged in immigration enforcement who are executing any federal immigration order, to refer the officers to the office of the chancellor or president or that office’s designee for purposes of verifying the legality of these listed documents.<sup>107</sup>

### *ICE Administrative “Warrant”*

An ICE administrative “warrant” is the most typical type used by immigration enforcement officers. Such a document authorizes an immigration enforcement officer to arrest a person suspected of violating immigration laws. An ICE warrant can be issued by any authorized immigration enforcement officer. An ICE administrative warrant is not a warrant within the meaning of the Fourth Amendment to the U.S. Constitution, because an ICE warrant is not supported by a showing of probable cause of a criminal offense. An ICE warrant is not issued by a court judge or magistrate.

An ICE warrant does not grant an immigration enforcement officer any special power to compel college or university personnel to cooperate with his or her requests. For example, an ICE warrant does not authorize access to nonpublic areas of a college or university. An ICE warrant alone does not allow an immigration enforcement officer to search college or university records. (See Appendix A for a sample ICE administrative “arrest warrant” (Form I-200), and Appendix B for a sample ICE “removal warrant” (Form I-205).)

College and university personnel should not physically interfere with an immigration enforcement officer in the performance of his or her duties. However, a college or university employee is not required to assist with the apprehension of a person identified in an ICE administrative warrant, nor is he or she required to consent to an immigration enforcement officer’s search of college or university facilities. In fact, a college or university that is a public employer may not provide voluntary consent to an immigration enforcement officer seeking access to a nonpublic area when presented with an ICE warrant.<sup>108</sup>

### *Federal Court Warrant*

A federal court warrant is issued by a district judge or a magistrate judge of a U.S. District Court, based on a finding of probable cause authorizing the search or seizure of property, the entry into a nonpublic place to arrest a person named in an arrest warrant, or the arrest of a named person.

There are two types of federal court warrants, a search-and-seizure warrant and an arrest warrant.

- A federal search-and-seizure warrant allows an officer to conduct a search authorized by the warrant. (See Appendix C for a sample federal search and seizure warrant (Form AO 93).)
- A federal arrest warrant allows an officer to arrest the individual named in the warrant. (See Appendix D for a sample federal arrest warrant (Form AO 442).)

Prompt compliance with a federal court warrant is usually required. Where feasible, however, college and university personnel should consult with the designated campus official or legal counsel before responding.

### *Administrative Subpoena*

An administrative subpoena is a document that requests production of documents or other evidence, and (in the immigration enforcement context) is issued by an immigration enforcement officer. The administrative subpoena will contain the following information: file number, subpoena



number, mailing address to which to mail the requested information, a list of the regulations that apply, the request for information, and the signature(s) of the agent(s). (See Appendix E for a sample administrative subpoena (Form I-138).)

College and university staff generally do not need to immediately comply with an administrative subpoena. If an immigration enforcement officer arrives with a pre-designated administrative subpoena, the college or university may decline to produce the information sought and may choose to challenge the administrative subpoena before a judge.<sup>109</sup> Therefore, college and university personnel should immediately contact a designated campus official or legal counsel upon receipt of a subpoena.

#### *Federal Judicial Subpoena*

A federal judicial subpoena is a document that asks for the production of documents or other evidence. The federal judicial subpoena will identify a federal court and the name of the judge or judicial magistrate issuing the subpoena, and may require attendance at a specific time and location and the production of prescribed records. (See Appendix F for a sample federal judicial subpoena.)

As with an administrative subpoena, noted above, a college or university generally does not need to immediately comply with a federal judicial subpoena, and can challenge it before a federal judge in a U.S. District Court. Court personnel should therefore immediately contact the designated campus official upon receipt of a federal judicial subpoena.

#### *Court Order*

If an immigration enforcement officer arrives with a court order, the designated campus official shall review the order with legal counsel or other designated person, and then respond accordingly.

#### *Notice to Appear*

A Notice to Appear (NTA) is a charging document issued by ICE, CBP, or the United States Customs and Immigration Service (USCIS) seeking to commence formal removal proceedings against an individual before an immigration court. An NTA contains allegations made about a particular person's immigration status. An NTA notifies an individual that he or she is expected to appear before an immigration judge on a certain date. An NTA does not authorize an individual's arrest by immigration enforcement authorities or local law enforcement authorities.<sup>110</sup> (See Appendix G for a sample Notice to Appear form (Form I-862).)

An NTA does not require college or university staff to take any action or grant an officer engaged in immigration enforcement any special power to compel the college or university to cooperate with the officer. An NTA does not authorize access to nonpublic areas of the campus. An NTA does not legally require college or university staff to allow authorities to search student or other school records.

### **3. Immigrant Worker Protection Act**

The Immigrant Worker Protection Act (Assembly Bill No. 450, 2017-2018 Regular Session) imposes obligations on public employer conduct, and persons acting on their behalf, at colleges and universities in the event an immigration enforcement agent seeks to enter the employer's place of business, subject to certain specified exceptions.<sup>111</sup> Public employers, or persons acting on behalf of the employer, are prohibited from providing "voluntary consent" for an immigration enforcement agent to enter "any nonpublic areas of a place of labor." This provision does not apply if the immigration agent provides a judicial warrant.<sup>112</sup> This provision also does not preclude a public employer from bringing an immigration enforcement agent into a nonpublic area of the workplace for the purpose of determining whether the agent has a judicial warrant, "provided no consent to search nonpublic areas is given in the process."<sup>113</sup>

Whether voluntary consent has been provided by a public employer, or a person working on behalf of an employer, is a fact-based determination that depends upon the specific circumstances of the interaction between the employer and the officer conducting immigration enforcement, including the conduct of, and words used by, the employer or person working on behalf of the employer. In general, for consent to be voluntary, it cannot be the result of duress or coercion, whether express or implied.

## **Policy Recommendations**

In addition to the model policies appearing in Section 5, the Attorney General makes the following additional, discretionary policy recommendations.

### **1. Access to Areas of Campus**

The Fourth Amendment to the United States Constitution protects individuals against unreasonable searches and seizures. What is required for law enforcement officers to access areas of a campus depends on whether a student—or any person on campus—has an expectation of privacy in the place to be entered. For example, a warrant is not required to enter a quad open to the public, but a warrant would be required for any officer to enter a dormitory room occupied by a student resident without the student's permission. Where a reasonable expectation of privacy exists, the federal Constitution prohibits access without consent, a judicial warrant, or the types of emergency situations that excuse the warrant requirement (e.g., a fleeing suspect or the imminent destruction of evidence).

#### *Classrooms and Restricted Areas*

This guide does not address all of the factual circumstances that may arise relating to an individual's Fourth Amendment protections in different areas of a campus. However, California colleges and universities can have, and indeed do have, different policies in place regarding restricted areas—for instance, areas designated for staff or students only. Universities and colleges have the authority to regulate, compatible with their educational mission, the use of their campuses and facilities and to set limitations on access of their campus and facilities. As an example, at some campuses, classrooms are not restricted, and at others a key card or staff/student ID is required to access a building containing classrooms or labs, or such rooms within an otherwise unrestricted building, either at all times or after regular business hours. Designating

restricted areas (such as through the use of keycards, signage, or locks) and limiting access to outsiders can promote the need for a safe learning environment conducive to the college's and university's mission. Higher education institutions should acknowledge that immigration enforcement activities, and threats of such activities, interfere with classroom learning and should adopt policies on restricted areas and similar policies regarding access to facilities and students that promote a safe learning environment conducive to the college's and university's mission. While restricted areas and similar policies protect facility users and staff in other ways and promote the need for a safe environment conducive to the institution's mission, such restrictions will not always equate to Fourth Amendment protection.

Under California law, a California law enforcement officer, including police and security departments for public colleges and universities, cannot, for the purpose of investigating immigration violations, detain a student by preventing him or her from leaving campus or by taking the student out of class.<sup>114</sup>

#### *Resident Halls/Student Housing*

Law enforcement officers do not have the right to enter a residence, including a college dormitory or other university or college residence, to make an arrest unless they have a judicial warrant or, consent from a tenant, or it is an emergency situation requiring immediate action. As in any landlord-tenant relationship, students and their families residing in dormitories or other residences provided by the institution have a reasonable expectation of privacy in their residences. Campus officials cannot consent to the warrantless entry into or search of these residences by law enforcement officers conducting criminal investigations even if the housing contract permits inspections by staff.<sup>115</sup> The same rules apply to officers engaged in the enforcement of immigration laws.

Student tenants do not have an affirmative obligation to consent to the entry into their resident hall or living quarters. A tenant's refusal to consent or a request to see a judicial warrant is not an obstruction of justice.<sup>116</sup> It also does not provide a basis for a charge of resisting arrest or interfering with a peace officer in the performance of his or her duties.<sup>117</sup>

#### *Healthcare Facilities and Social Services Establishments*

All healthcare facilities have been designated by DHS as "Protected Areas" at which immigration enforcement actions should not generally occur."<sup>118</sup> Similarly, social services establishments, including crisis centers, domestic violence shelters, victims services centers, child advocacy centers, supervised visitation centers, family justice centers, community-based organizations, facilities that serve disabled persons, homeless shelters, drug or alcohol treatment facilities, and food banks are considered protected areas. Two separate guides - titled *Promoting Safe and Secure Healthcare Access for All: Guidance and Model Policies to Assist California's Healthcare Facilities in Responding to Immigration Issues* (available at [Publications | State of California - Department of Justice - Office of the Attorney General](#)) and *Promoting Safe and Secure Shelters for All: Guidance and Model Policies to Assist California Shelters in Responding to Immigration Enforcement* (available at [Publications | State of California - Department of Justice - Office of the Attorney General](#)) - discuss ICE's and CBP's current "protected areas" policy as related to California's public healthcare facilities and to shelters.

#### *Libraries*

Libraries are not identified by DHS as protected areas.<sup>119</sup> A separate guide titled *Promoting Safe and Secure Libraries for All: Guidance and Model Policies to Assist California's Public Libraries in Responding to Immigration Issues* (available at [Publications | State of California - Department of Justice - Office of the Attorney General](#)) discuss ICE's and CBP's current "protected areas" policy and the extent to which it relates to California's public libraries.

## **2. Notifications and Points of Contact for Immigration Enforcement Actions**

CSU, community colleges, and qualifying private institutions are required — and UC campuses are encouraged — to “[a]dvice all students, faculty, and staff to notify the office of the chancellor or president, or his or her designee, as soon as possible, if he or she is advised that an officer engaged in immigration enforcement is expected to enter, will enter, or has entered the campus to execute an immigration order.<sup>120</sup> Campus police should also be notified so that they are aware of immigration enforcement activity on campus.

Additionally, campuses should designate a staff person to serve as a point of contact for any student who may or could be subject to an immigration order or inquiry on campus. AB 21 is very specific as to how the reported information is to be handled: “Unless the disclosure is permitted by state and federal education privacy law, faculty and staff persons shall be prohibited from discussing the personal information, including immigration status information, of any student, faculty, or staff person with anyone, or revealing that personal information to anyone.”<sup>121</sup>

### Purpose of this Section

- Provide college and university administrators with policies and practices for responding to requests for student records for immigration enforcement purposes.

### Governing Law and Policy Recommendations

As with access to nonpublic spaces on campus (discussed in Section 2, above), access to a student's records similarly depends on whether the records are confidential and, if so, whether a court or other authorized agency nonetheless has authorized access to the otherwise confidential records.

In addition to the model policies appearing in Section 5, the Attorney General provides the following governing law and additional, discretionary policy recommendations.

#### 1. Restrictions on Release of Personal Information or Educational Records

As described in Section 1, FERPA and the California Education Code generally protect the confidentiality of student educational records.

As a condition of federal funding, federal law restricts postsecondary educational institutions like colleges and universities from releasing certain private student information without the consent of the eligible student.<sup>122</sup> Federal funding may be withheld from a college or university that has a policy of releasing educational records or personally identifiable information (other than directory information; see discussion below) of students, without the student's written consent.<sup>123</sup> "Personally identifiable information" includes direct identifiers (such as a student or other family member's name or student ID number), and indirect identifiers (such as a student's date of birth, place of birth, or mother's maiden name), as well as any information that, alone or in combination, is linked to a specific student and would allow the student to be identified with reasonable certainty.<sup>124</sup>

##### *Policy Recommendations*

At a minimum, colleges and universities must provide students and families with annual notice, at the beginning of each school year, of institutional policies for student privacy and the abilities of parents or eligible students to inspect student information.<sup>125</sup>

Such written consent must be signed and dated by the eligible student (who is 18 years of age or older, or attending a post-secondary institution) before disclosure of the information, and must specify the records that may be disclosed, the purpose of the disclosure, and the party or class of parties to whom the disclosure may be made.<sup>126</sup> If desired by the eligible student, the college or university must provide a copy of the records to be released.<sup>127</sup> The party to whom the information is disclosed may not disclose the information to any other party without the prior consent of the eligible student.<sup>128</sup>

## **2. Exceptions Permitting Disclosure of Information Without Consent**

A college or university may provide access to educational records without consent of the eligible student in limited circumstances. Such circumstances include information relevant to the legitimate educational interests of the requestor — such as for reviewing school attendance issues, providing schools with information on transferring students, or evaluating federally funded educational programs.<sup>129</sup> An agency may also provide information without consent in response to a judicial order or lawfully issued subpoena. (See *Section 2: Responding to Law Enforcement Requests for Access to College Campuses and Residential Units for Immigration Enforcement Purposes*, above.)<sup>130</sup>

But none of these exceptions authorize or require disclosing information for immigration enforcement (which is not a legitimate educational interest), nor is there any separate requirement in federal or state law to provide information to officers engaged in immigration enforcement without a judicial warrant, court order, or judicial subpoena.<sup>131</sup> An ICE “warrant” does not allow officers to search student records, and it does not provide authority to obtain otherwise confidential student records or protected information.<sup>132</sup>

Also, unless the college or university is served with a law enforcement subpoena prohibiting disclosure of the existence of the subpoena to the student, pursuant to FERPA, the student must be notified of any judicial order or subpoena before the institution complies with the order.<sup>133</sup>

## **3. Release of Personal Information Obtained by Campus Police**

In addition to the protections afforded to students in FERPA, the California Government Code prohibits campus police from providing “personal information” about an individual for immigration enforcement purposes, unless that information is publicly available.<sup>134</sup> The definition of “personal information” incorporates any information that “identifies or describes an individual” including, but not limited to, a student’s physical description, home or work address, telephone number, education, financial matters, medical or employment history, and statements made by, or attributed to, the individual.<sup>135</sup> The California Government Code does not prohibit campus police from exchanging information regarding a person’s citizenship or immigration status with governmental entities included in police records,<sup>136</sup> which are exempt from FERPA’s “education records” protections.<sup>137</sup> Additional information on these restrictions appears under the caption *Restrictions on Release of Personal Information or Educational Records*, above.

## **4. Directory Information**

Directory information is basic student information that may be shared with outside parties, unless a student opts out of the release of the information.<sup>138</sup> Examples of directory information include the following:

### Examples of Directory Information

- |  |  |
|--|--|
| ✓ Name                                       | ✓ Dates of attendance  |
| ✓ Address                                    | ✓ Most recent previous school                                  |
| ✓ Telephone number                           | attended   |
| ✓ Weight and height of athletic team members | ✓ Participation in officially-recognized activities and sports |
| ✓ Date of birth                              | ✓ Degrees and awards received <sup>139</sup>                   |
| ✓ E-mail address                             |  |
| ✓ Major field of study                       |  |

No law mandates that colleges and universities provide directory information.<sup>140</sup> However, colleges and universities are permitted to disclose such information to designated individuals, officials, and organizations without the impacted student's explicit consent, but subject to the opt-out described below.<sup>141</sup>

#### *Policy Recommendations*

Colleges and universities must give annual notice of the school's directory information policy and afford an opportunity to opt out of disclosure of directory information to eligible students. Specifically, notices to eligible students must describe the following:

- The kind of information that the school has identified as directory information;
- The eligible student's ability to refuse to let the school designate the information as directory information, which could be disclosed to outside entities;
- The period of time in which the eligible student has to notify the school in writing that he or she does not want the information designated as directory information; and
- That opting out by the noted deadline is the student's only way to prevent the release of directory information.<sup>142</sup>

## 04 Resources for Responding to Immigration Actions Against Students or Family Members

### Purpose of this Section

- Provide college and university administrators with resources for responding to immigration actions against a student or a member of a student's family.

### Governing Law

If there is a reason to suspect that a student, faculty member, or staff person has been taken into custody as a result of an immigration action, colleges and universities must notify the person's emergency contact that the person has been taken into custody.<sup>143</sup> Colleges and universities must designate a staff person as a point of contact for any student, faculty, or staff person who may or could be subject to an immigration order or inquiry on campus.<sup>144</sup> Unless the disclosure is permitted by state and federal law, faculty and staff are prohibited from discussing the personal information, including immigration status information, of any student, faculty, or staff person with anyone, or revealing that personal information to anyone.<sup>145</sup>

Colleges and universities must maintain a contact list of legal service providers who provide legal immigration representation, and they must provide this list free of charge to any students who request it.<sup>146</sup> The list must include, but not necessarily be limited to, the legal service provider's name and contact number, email address, and office address.<sup>147</sup> The list should include only attorneys licensed by and in good standing with the State Bar of California or the highest court or state licensing entity of another state; or organizations that employ such attorneys or organize services by such individuals.

If a student is detained or deported, or is unable to attend to his or her academic requirements due to an immigration order, colleges and universities must make all reasonable efforts to assist the student in retaining any eligibility for financial aid, fellowship stipends, exemption from nonresident tuition fees, funding for research or other educational projects, housing stipends or services or other benefits the student has been awarded or received subject to and in compliance with university policy.<sup>148</sup> The student must be permitted to reenroll if and when the student is able to return to the college or university, subject to and in compliance with university policy.<sup>149</sup> Colleges and universities should make reasonable and good faith efforts to provide for a seamless transition in the student's reenrollment and reacquisition of campus services and supports.<sup>150</sup>

College and university staff must be available to assist, in a sensitive manner, undocumented students, as well as other students, faculty, and staff who may be subject to an immigration order or inquiry, or who may face similar issues, and whose education or employment is at risk because of immigration actions.<sup>151</sup>



## Policy Recommendations

In addition to the model policies appearing in Section 5, the Attorney General makes the following additional, discretionary policy recommendations.

### 1. Develop an Emergency Plan

To the extent possible, colleges and universities should encourage students to develop an emergency plan to be prepared for an immigration action against a student or a member of the student's family. If a student has children, such a plan may identify a trusted adult who can care for the children if no parent or guardian can do so.

- ✓ The Legal Aid Society has developed an Emergency Plan in Case of the Detention or Deportation of Family Members, available at <https://storage.googleapis.com/ii-assets/2017/03/Emergency-Plan-English.pdf>.
- ✓ For an example of a Family Safety Plan, see: [https://www.ilrc.org/sites/default/files/resources/family\\_preparedness\\_plan.pdf](https://www.ilrc.org/sites/default/files/resources/family_preparedness_plan.pdf) (safety plan example) and <https://www.commteam.org/wp-content/uploads/2019/07/KNOW-YOUR-RIGHTS-Protect-Yourself-And-Your-Family-During-Immigration-Raids.pdf> (safety plan checklist and sample children's information and emergency contact forms)..

### 2. Complete Emergency Contact Information

In addition to facilitating the development of an emergency plan, colleges and universities should implement policies that ensure that all students' emergency contact information (including the listing of secondary contacts) is complete and regularly updated. This information should be treated as confidential information.

### 3. Additional Resources

In the event that a student or a student's family member is detained, the college or university should refer the student or his or her family members to other resources for assistance, including, but not limited to the following.

#### *ICE Detainee Locator*

The ICE detainee locator (<https://locator.ice.gov/>) can help people determine whether their family member has been detained and where the family member is being held.

In using the ICE detainee locator, it is helpful to know the family member's date of birth and 'A-Number' (Alien Registration Number), if there is one.

**Please Note:** the ICE detainee locator is intended only for locating individuals who are already detained. If a student has general questions about his or her immigration status, the student should be referred to the list of legal service providers.

#### *Legal Assistance*

Immigration lawyers in private practice, accredited representatives (who assist immigrants in immigration proceedings), or legal-aid organizations may be able to provide legal assistance to secure the release of a student or a student's family member, or to help arrange for the student to visit the family member.

- ✓ A student or his or her family member can determine whether lawyers are licensed by and in good standing with the State Bar of California, by checking online at <https://apps.calbar.ca.gov/attorney/LicenseeSearch/QuickSearch>
- ✓ A list of California entities accredited by Board of Immigration Appeals (BIA) to represent immigrants before the Department of Homeland Security (DHS) and Executive Office of Immigration Review (EOIR) can be found here: <https://www.justice.gov/eoir/page/file/942306/dl#CALIFORNIA>.
- ✓ California courts operate Self-Help Centers that may also be able to provide family-law assistance to a student or his or her family member. A list of these centers across the state is available at <http://www.courts.ca.gov/selfhelp-selfhelpcenters.htm>.<sup>152</sup>
- ✓ A student or his or her family member may be able to find legal assistance from legal aid offices and lawyer referral services at the California Department of Social Services Website, <https://www.cdss.ca.gov/immigrationcontractors>, or at the California Courts Website, <https://selfhelp.courts.ca.gov/immigration/legal-resources>.

**Students should not hire a “notario” or an immigration consultant if they are seeking advice and assistance regarding their immigration status.** Notarios and immigration consultants are not attorneys or experts in immigration. In fact, they are not legally required to know anything about immigration law because they are only allowed to help with non-legal tasks like translating information. They cannot – and should not – provide advice or direction about a student’s immigration forms or speak to the government on his or her behalf.

#### *Consulate or Embassy*

The consulate or embassy of the student’s country of origin may be able to offer additional information and assistance.

All California State University campuses and community college districts, and each independent institution qualifying under Education Code section 69432.7, subdivision (l), were required to adopt the following model policies, or equivalent policies, by March 1, 2019. The University of California system and private postsecondary institutions were encouraged to adopt these model policies as well. The text below should be adapted by inserting the information sought in the bracketed portions.

### 1. Gathering and Handling Student Information

#### Model Policies for Collecting and Retaining Student Information

- ▶ [College or university personnel] shall treat all students equitably in the receipt of all school services, including, but not limited to, the gathering of student and family information for the institution's benefit programs.
- ▶ The [title of appropriate official or name of unit] shall maintain in writing [college or university] policies and procedures for gathering and handling sensitive student information, and appropriate personnel shall receive training regarding those policies and procedures.
- ▶ [College or university] will provide students and families with annual notice, at the beginning of each school year, of institutional policies for student privacy and the abilities of parents or eligible students to inspect student information.
- ▶ [College or university] will provide students an opportunity to opt out of disclosure of directory information. Notices must describe the following:
  - ✓ The kind of information that the school has identified as directory information;
  - ✓ The eligible student's ability to refuse to let the school designate the information as directory information, which could be disclosed to outside entities;
  - ✓ The period of time in which the eligible student has to notify the school in writing that he or she does not want the information designated as directory information; and
  - ✓ That opting out by the noted deadline is the students' only way to prevent the release of directory information.
- ▶ Any sensitive information, such as a student's, parent's, or guardian's SSN, any AB 540 determinations, or citizenship status information collected by the [college or university] or disclosed by the student, should be maintained only for as long as necessary.
- ▶ If the [college or university] possesses information that could indicate immigration status or citizenship status, [college or university personnel] shall not consider the acquired information in admissions decisions or access to educational courses or degree programs.
- ▶ Students may elect not to provide immigration or citizenship status information to the institution, and this election shall not impede admissions or enrollment in educational programs.
- ▶ [College or university personnel] shall not create a list of student names linked with immigration status.

*Continued on the next page*

### **Model Policies for Collecting and Retaining Student Information, *continued***

- ▶ [College or university] police or security departments shall not inquire into an individual's immigration status for immigration enforcement purposes.
- ▶ [College or university] police or security departments shall not aid any effort to create a registry containing individuals' country of birth or based on any other protected characteristics of victims, witnesses, or suspects of crimes unless required by law for specified purposes.

### **Model Policies for Responding to Inquiries of Immigration Status, Citizenship Status, and National Origin Information**

- ▶ Unless required by federal or state law, [college or university personnel] shall not inquire specifically about a student's citizenship or immigration status or the citizenship or immigration status of a student's parents or guardians; nor shall personnel seek or require, to the exclusion of other permissible documentation or information, documentation or information that may indicate a student's immigration status, such as a green card, voter registration, a passport, or citizenship papers.
- ▶ Where any law contemplates submission of immigration status or citizenship status information to satisfy the requirements of a special program, [college or university personnel] shall not use that documentation or information for decisions related to admissions or enrollment in courses or degree programs.
- ▶ [College or university] is not permitted to use immigration status, citizenship status, or national origin information in personal statements outside the application process, other than for legitimate educational interests, including the provision of a service or benefit relating to the student, such as health care, counseling, job placement or financial aid.
- ▶ If [college or university] learns of a student's immigration status through its application process (including the students' personal statement or answers to personal insight questions), [college or university] shall create policies and procedures to protect such personal identifiable information and retain the information only to the extent it is necessary or required by law. The [college or university] shall avoid the disclosure of information that might indicate a student or family's citizenship or immigration status if the disclosure is not authorized by the Family Educational Rights and Privacy Act (FERPA) or state law.
- ▶ Where permitted by law, the [title of officer or unit] of [college or university] shall enumerate alternative means to establish residency, age, or other eligibility criteria for enrollment or programs, and those alternative means shall include among them documentation or information that are available to persons regardless of immigration status or citizenship status, and that do not reveal information related to citizenship or immigration status.

*Continued on the next page*

## **Model Policies for Responding to Inquiries of Immigration Status, Citizenship Status, and National Origin Information, *continued***

- ▶ Examples of documents that can be used as proof of residency include but are not limited to:
  - Registering a motor vehicle operated in California;
  - Obtaining a California driver's license or California identification card;
  - Filing a resident or nonresident California state income tax return;
  - Listing a California address on a federal income tax return;
  - Listing a permanent military address or home of record in California;
  - A professional or vocational license obtained from a California state licensing agency (e.g., nursing, teaching credentials);
  - Maintaining active resident memberships in California based professional organizations (e.g., police union, teachers' union); and
  - Maintaining an active bank account at a California bank.<sup>153</sup>
  
- ▶ Where a [college or university] is permitted by law to request a minor student's parent's residency information in order to determine tuition or aid, the educational institution shall only require documentation or information that is available to persons regardless of immigration status (as noted above).
  
- ▶ Where residency, age, and other eligibility criteria for purposes of enrollment or any program may be established by alternative documents or information permitted by law or this [resolution/policy], the [college or university's] procedures and forms shall describe to the applicant, and accommodate, all alternatives specified in law and all alternatives authorized under this [resolution/policy].
  
- ▶ Specifically, where [college or university] must determine a student's residency for purposes of in-state tuition, a [college or university] shall not inquire about a parent/guardian's citizenship or immigration status, and shall enumerate alternative means of establishing a parent/guardian's residency. If the student is considered a minor dependent of a California resident, the college or university shall only require documents to determine whether the parent has resided in California for one year (e.g. vehicle registration, lease agreements, etc.).<sup>154</sup>

## 2. Responding to Law Enforcement Requests for Access to Campuses and Residential Units for Immigration Enforcement Purposes

### Model Policies for Responding to Requests for Access for Immigration Enforcement Purposes

- ▶ [College and university personnel] shall provide guidance and offer to campus employees training addressing law enforcement access to campus buildings and student residences. This guide shall include the following required topics:
  - ✓ Instructions that law enforcement officers cannot enter living quarters to make arrests without a judicial warrant, valid consent, or exigent circumstances.
  - ✓ Instructions that [college and university personnel], including campus police, cannot consent to the entry into a residence or dormitory for the purpose of a search or arrest, but a judicial warrant or exigent circumstances may authorize officer entry without consent.
  - ✓ Campus police contact information to report concerns about the presence of officers engaged in immigration enforcement on any campus property.
  - ✓ Samples of warrant and subpoena documents that could be used for access onto campus property, or to seize or arrest students or other individuals on campus (see Appendices A to G).
  - ✓ Sample responses for [building personnel or residence hall staff] to use in response to officers seeking access for immigration enforcement purposes that avoids classroom interruptions, and that preserves the peaceful conduct of the school's activities.
- ▶ [College and university personnel] shall advise all students, faculty, and staff to immediately notify the office of the chancellor or president, or his or her designee, if he or she is advised that an officer engaged in immigration enforcement is expected to enter, will enter, or has entered the campus for immigration enforcement purposes. Campus police should also be notified as soon as possible.
- ▶ No personnel may consent to entry of [college or university] facilities or portions thereof.
- ▶ [College and university personnel] shall advise all students, faculty, and staff responding to or having contact with an officer engaged in immigration enforcement executing an immigration order, to refer the entity or individual to the office of the chancellor or president, or his or her designee, for purposes of verifying the legality of any warrant, court order, or subpoena.
- ▶ If the officer declares that exigent circumstances exist and demands immediate access to the campus, [college or university personnel] should not refuse the officer's orders and immediately contact the [designated administrator or campus police liaison].

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## Model Policies for Responding to Requests for Access for Immigration Enforcement Purposes, *continued*

- ▶ The office or designee of the chancellor's or president's office shall determine what type of authorization is being provided to support the officer's request for access:
  - **A U.S. Immigrations and Customs Enforcement (ICE) "warrant" (see Appendices A and B):** Immediate compliance is *not* required. [College and university personnel] shall inform the officer that he or she cannot consent to any request without first consulting with the [designated campus official]. Provide copy of the warrant to the designated administrator (where possible, in consultation with legal counsel) as soon as possible.
  - **A federal judicial warrant (search-and-seizure warrant or arrest warrant; see Appendices C and D):** Prompt compliance with such a warrant *is* usually legally required, but where feasible, consult with the [designated campus official] before responding.
  - **A subpoena for production of documents or other evidence (see Appendices E and F):** Immediate compliance is *not* required. Inform the officer that the [college or university] cannot respond to the subpoena until after it has been reviewed by a designated administrator. Provide a copy of the subpoena to a designated administrator or legal counsel as soon as possible.
  - **A notice to appear (see Appendix G):** This document is not directed at the [college or university]. [College and university personnel] is under no obligation to deliver or facilitate service of this document to the person named in the document. If you get a copy of the document, give it to a designated administrator as soon as possible.
- ▶ College or university personnel should not attempt to physically interfere with an officer, even if the officer appears to be acting without consent or exceeding the authorization given under a warrant or other document. If an officer enters the premises without consent, [college or university personnel] shall make a record of the contact and forward the information to the office of the president or chancellor.
- ▶ In making record of the contact with an immigration enforcement officer, [college or university personnel] shall provide the following information:
  - ✓ Name of the officer, and, if available, the officer's credentials and contact information;
  - ✓ Identity of all school personnel who communicated with the officer;
  - ✓ Details of the officer's request;
  - ✓ Whether the officer presented a warrant, subpoena, or court order to accompany his/her request, what was requested in the warrant/subpoena/court order, and whether the warrant/subpoena/court order was signed by a judge;
  - ✓ [College or university personnel's] response to the officer's request;
  - ✓ Any further action taken by the immigration officer; and
  - ✓ Photo or copy of any documents presented by the agent.
- ▶ [College or university personnel] shall provide a copy of those notes, and associated documents collected from the officer, to the [general counsel or other designated campus official].
- ▶ In turn, the [general counsel or designated campus official] shall submit a timely report to the [college's or university's] governing board and the campus public safety office regarding the officer's requests and actions and the [college's or university's] response(s).

### 3. Responding to Law Enforcement Requests to Access Student Records for Immigration Enforcement Purposes

#### Model Policies for Responding to Request for Access to Student Records for Immigration Enforcement Purposes

- ▶ [College or university] must obtain a student’s written consent before disclosing educational records, unless the information is relevant for a legitimate educational interest or includes directory information only. Neither exception permits disclosing information for immigration enforcement purposes; no student information shall be disclosed for immigration enforcement purposes without a court order or judicial warrant. Without a court order or a judicial warrant, written consent must be signed and dated by the student, or (if the student is a minor) by the student’s parent(s) or guardian(s), before disclosure of the information, and must specify the records that may be disclosed, the purpose of the disclosure, and the party or class of parties to whom the disclosure may be made. If desired by the student, [the college or university] must provide a copy of the records to be released. The party to whom the information is disclosed may not redisclose the information to any other party without the prior consent of the student or subsequent court order.
- ▶ [College and university personnel] shall develop a written policy for interactions with immigration authorities seeking to review student records. At minimum, such policies shall include the following information:
  - ✓ Contact information [name, title, e-mail addresses, and phone numbers] for the correct person to review and respond to a request for student records.
  - ✓ Access to sample warrant and subpoena documents that could be used for access onto campus property, or to seize or arrest students or other individuals on campus (see Appendices A to G).
  - ✓ [College and university personnel] shall provide a set of responses for [building personnel or residence hall staff] to use in response to officers seeking access to records for immigration enforcement purposes.
- ▶ In addition to notifying the [designated campus official], [college or university personnel] shall take the following action steps in response to an officer other than campus police requesting access to student records:
  1. Ask for the officer’s name, identification number, and agency affiliation;
  2. Record or copy this information;
  3. Ask for a copy of any warrants;
  4. Inform the officer that you are not obstructing his or her efforts but that you need to contact a campus administrator or campus counsel for assistance.

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### **Model Policies for Responding to Request for Access to Student Records for Immigration Enforcement Purposes, *continued***

- ▶ Campus police shall not provide personal information about an individual for immigration enforcement purposes, unless that information is publicly available, or required by a court order or judicial warrant. “Personal information” is defined as any information that identifies or describes an individual, and includes but is not limited to, a student’s physical description, home or work address, telephone number, education, financial matters, medical or employment history, and statements made by, or attributed to, the individual. This restriction does not apply to information regarding the immigration or citizenship status of an individual.
- ▶ Unless [college or university] is served with a judicial subpoena or court order that by its terms prohibits disclosure to the student, the student must be notified of any judicial order or subpoena before the institution complies with the order in accordance with FERPA.

## **4. Responding to Immigration Actions Against Students or Family Members**

### **Model Policies for Responding to Immigration Actions Against Students or Family Members**

- ▶ If there is reason to suspect that a student, faculty member, or staff person has been taken into custody as the result of an immigration action, [college and university personnel] shall notify the person’s emergency contact that the person may have been taken into custody.
- ▶ [College and university personnel] shall designate a staff person as a point of contact for any student, faculty member, or staff person who may or could be subject to an immigration order or inquiry.
- ▶ [College and university personnel] shall not discuss the personal information, including immigration status information, of any student, faculty member, or staff person with anyone, or reveal the personal information to anyone, unless disclosing this information is permitted by federal and state law.
- ▶ [College and university personnel] shall maintain a contact list of legal service providers who provide legal immigration representation and provide this list free of charge to any student who requests it. At minimum, the list shall include the legal service provider’s name and contact number, e-mail address, and office address.
- ▶ If a student is detained or deported, or is unable to attend to his or her academic requirements because of an immigration order, [college and university personnel] shall make all reasonable efforts to assist the student in retaining any eligibility for financial aid, fellowship stipends, exemption from nonresident tuition fees, funding for research or other educational projects, housing stipends or services, or other benefits the student has been awarded or received subject to and in compliance with its policy.

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### **Model Policies for Responding to Immigration Actions Against Students or Family Members, *continued***

- ▶ [College and university personnel] shall permit a student who is subject to an immigration order to reenroll if and when the student is able to return to [the college or university], subject to and in compliance with its policy and will make reasonable and good-faith efforts to provide for a seamless transition in the student's reenrollment and reacquisition of campus services and support.
- ▶ [College and university personnel] shall be available to assist any student, faculty, and staff who may be subject to an immigration order or inquiry, or who may face similar issues, and whose education or employment is at risk because of immigration enforcement actions.

## Endnotes

- <sup>1</sup> *California's Higher Education System*, Public Policy Institute of California (January 2024), <https://www.ppic.org/wp-content/uploads/californias-higher-education-system.pdf> (as of Nov. 24, 2024).
- <sup>2</sup> *Ibid.*
- <sup>3</sup> *Deferred Action for Childhood Arrivals (DACA) Data Tools*, Migration Policy Institute (2024) <https://www.migrationpolicy.org/programs/data-hub/deferred-action-childhood-arrivals-daca-profiles> (as of Nov. 27, 2024).
- <sup>4</sup> *Undocumented Students in Higher Education*, American Immigration Council (Aug. 2023) [https://www.higheredimmigrationportal.org/wp-content/uploads/2023/08/07.23-Undocumented-Students\\_v3.pdf](https://www.higheredimmigrationportal.org/wp-content/uploads/2023/08/07.23-Undocumented-Students_v3.pdf) (as of Nov. 27, 2024).
- <sup>5</sup> *Plyler v. Doe* (1982) 457 U.S. 202, 210.
- <sup>6</sup> See, e.g., *White v. Davis* (1975) 13 Cal.3d 757, 775-777 (monitoring noncriminal conduct of students in public and private areas of a university campus was a violation of students' privacy rights under state law).
- <sup>7</sup> Cal. Const., art. I, § 28, subd. (f)(1).
- <sup>8</sup> *Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1293.
- <sup>9</sup> Ed. Code, § 220; see also Ed. Code, § 200 ("It is the policy of the State of California to afford all persons in public schools, regardless of their . . . immigration status, equal rights, and opportunities in the educational institutions of the state").
- <sup>10</sup> Gov. Code, § 7284.8, subd. (a). SB 54 defines "immigration enforcement" to include "any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal civil immigration law, and also includes any and all efforts to investigate, enforce, or assist in the investigation or enforcement of any federal criminal immigration law that penalizes a person's presence in, entry, or reentry to, or employment in, the United States." (Gov. Code, § 7284.4, subd. (f).) This guide adopts that definition.
- <sup>11</sup> Model policies for K-12 public schools are provided in the guidance issued by the Attorney General under Assembly Bill No. 699, published on March 30, 2018 and updated on December 4, 2024. See Bureau of Children's Justice, Office of the Attorney General, *Promoting a Safe and Secure Learning Environment for All: Guidance and Model Policies to Assist California's K-12 Schools in Responding to Immigration Issues* (December 2024) <https://oag.ca.gov/sites/all/files/agweb/pdfs/bcj/school-guidance-model-k12.pdf> (as of Dec. 3, 2024).
- <sup>12</sup> Gov. Code, § 7284.8, subd. (a).
- <sup>13</sup> A qualifying institution includes a California public postsecondary educational institution, a nonprofit institution accredited by the Western Association of Schools and Colleges (where 10 percent of the institution's operating budget is used for institutionally funded student financial aid), and a private or independent postsecondary educational institutions that participate in the Pell Grant Program and in at least two federal student aid programs limited to the Federal Work-Study Program, the Federal Stafford Loan Program, or the Federal Supplemental Educational Opportunity Grant Program. (Ed. Code, § 69432.7, subd. (l)(1).)
- <sup>14</sup> Ed. Code, § 66093.3, subd. (h).
- <sup>15</sup> Public employers have federal and state obligations based on their statuses as employers, and this guide does not address those obligations. For example, Assembly Bill No. 450 (2017-2018 Regular Session) prohibits an employer, or a person acting on the employer's behalf, from providing voluntary consent to an immigration enforcement agent to access, review, or obtain the employer's employee records without a subpoena or judicial warrant, unless certain exceptions apply. (Gov. Code, § 7285.2, subd. (a)(1).) Employers should ensure that all their policies are consistent with applicable federal and state law.
- <sup>16</sup> Gov. Code, § 7284.6, subd. (a)(1)(G). See also Cal. Dept. of Justice, Div. of Law Enforcement, DLE Information Bulletin No. DLE-2018, *Responsibilities of Law Enforcement Agencies Under the California Values Act, California TRUST Act, and the California TRUTH Act* (Mar. 28, 2018) [https://oag.ca.gov/sites/all/files/agweb/pdfs/law\\_enforcement/dle-18-01.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/law_enforcement/dle-18-01.pdf) (as of Nov. 25, 2024), at pp. 2-3.
- <sup>17</sup> Gov. Code, § 7284.6, subd. (a)(1)(A). Employees of law enforcement agencies who work at colleges and

universities are bound by the prohibitions stated in SB 54 and are therefore advised to review the Information Bulletin issued by the Department of Justice's Division of Law Enforcement on Sept. 10, 2018, entitled *Responsibilities of Law Enforcement Agencies Under the California Values Act, California TRUST Act, and the California TRUTH Act*, No. DLE-2018-01 [https://oag.ca.gov/sites/all/files/agweb/pdfs/law\\_enforcement/dle-18-01.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/law_enforcement/dle-18-01.pdf) (as of Nov. 25, 2024).

<sup>18</sup> Gov. Code, § 7284.6, subd. (a); Gov. Code § 7284.4, subd. (a).

<sup>19</sup> Gov. Code, § 7284.6., subd. (a)(1)(D).

<sup>20</sup> *Id.*, subd. (a)(6).

<sup>21</sup> *Id.*, subds. (a)(1)(F)-(G).

<sup>22</sup> 8 U.S.C. § 1357(g).

<sup>23</sup> Gov. Code, § 7284.6, subd. (a)(1)(G).

<sup>24</sup> 8 U.S.C. § 1373(a), (b).

<sup>25</sup> *United States v. California*, 314 F.Supp.3d 1077, 1102, *aff'd in part & rev'd in part* (9th Cir. 2019) 921 F.3d 865, 891 (declining to interpret 8 U.S.C. § 1373 to include release dates and addresses).

<sup>26</sup> See *In re Crawford* (9th Cir. 1999) 194 F.3d 954, 958 (“[I]ndiscriminate public disclosure of SSNs, especially when accompanied by names and addresses, may implicate the constitutional right of informational privacy.”).

<sup>27</sup> 20 U.S.C. § 1232g(b)(1); 34 C.F.R. § 99.3. Section 99.3 defines “educational records” to encompass records that are directly related to a student and maintained by an educational institution or by a party acting for the agency or institution, with exceptions for certain kinds of records. Further, “personally identifiable information” includes but is not limited to a student’s name, the name of a student’s parent or other family member, the address of a student or the student’s family; personal identifiers, such as the student’s SSN, student number, or biometric record; or indirect identifiers, such as the student’s date of birth, place of birth, and mother’s maiden name. It also includes information that, alone or in combination, is linked or linkable to a specific student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

<sup>28</sup> 34 C.F.R. § 99.3 as provided by 20 U.S.C. § 1232g.

<sup>29</sup> 34 C.F.R. § 99.3 as provided by 20 U.S.C. § 1232g(a)(5)(A).

<sup>30</sup> 20 U.S.C. § 1232g(b)(1). See also U.S. Department of Education, An Eligible Student Guide to the Family Educational Rights and Privacy Act (FERPA) <https://studentprivacy.ed.gov/resources/eligible-student-guide-family-educational-rights-and-privacy-act-ferpa> (as of Nov. 26, 2024). A school must inform eligible students of how it defines the terms “school official” and “legitimate educational interest” in its annual notification of FERPA rights. School officials generally have a legitimate educational interest if they need to review an education record to fulfill their professional responsibility.

<sup>31</sup> See 20 U.S.C. § 1232g(b)(1)(C).

<sup>32</sup> 26 U.S.C. § 6109.

<sup>33</sup> Cal. Code Regs., tit. 5, § 41201. The California State University uses SSNs to identify students and their records including identification for purposes of financial aid eligibility and disbursement and the repayment of financial aid and other debts payable to the institution. (California State University, *Mandatory Catalog Copy Policy* (effective March 2024) <https://calstate.policystat.com/policy/15274496/latest> [as of Nov. 26, 2024], Section XIV.) Other colleges and universities may have similar practices. California law “does not prevent the collection, use, or release of a SSN as required by state or federal law or the use of a SSN for internal verification or administrative purposes.” (Civ. Code, § 1798.85, subd. (b).)

<sup>34</sup> Educators for Fair Consideration, *Advice for Undocumented Students Applying to California Public Colleges: How to Fill Out Application Forms* (Nov. 16, 2010); see also California State University Bakersfield, *Resources for Undocumented Students, Frequently Asked Questions* <https://www.csub.edu/equity-inclusion-compliance/resources-undocumented-students/> (as of Nov. 26, 2024); University of California, *Undocumented Student Resources, Applying to UC* <https://undoc.universityofcalifornia.edu/applying-to-uc.html> (as of Nov. 26, 2024).

<sup>35</sup> The University of California uses SSNs to match a student application to things like the student’s test score report, final transcript(s), or the Free Application for Federal Student Aid. (University of California, Admissions <https://admission.universityofcalifornia.edu/apply-now.html> [as of Nov. 26, 2024].) Accuracy

and consistency in reported SSNs on both the financial aid application (as applicable to the student) and the campus admissions application allows for speedy matching of information and timely disbursement of funds.

<sup>36</sup> Applies to California community colleges, California State University, and the University of California systems. See Educators for Fair Consideration, *Advice for Undocumented Students Applying to California Public Colleges: How to Fill Out Application Forms*, (Nov. 16, 2010). See also University of California, *Undocumented Student Resources* <http://undoc.universityofcalifornia.edu/applying-to-uc.html> (as of Nov. 26, 2024).

<sup>37</sup> See Ed. Code, §§ 68040, 68017 (defining resident students as having one year of residence immediately preceding the determination date), 68018 (defining a nonresident student as one who does not have a resident in the state for more than one year immediately preceding the residence determination date).

<sup>38</sup> See Ed. Code, §§ 68040, 68050, 68052.

<sup>39</sup> Ed. Code, § 68130.5.

<sup>40</sup> *Ibid.*

<sup>41</sup> *Id.*, subd. (a)(1).

<sup>42</sup> *Id.*, subd. (a)(2)(B), (C).

<sup>43</sup> *Id.*, subd. (a)(4) (emphasis added).

<sup>44</sup> *Id.*, subd. (d).

<sup>45</sup> *Undocumented Student Resources, Applying to UC*, University of California <http://undoc.universityofcalifornia.edu/applying-to-uc.html> (as of Nov. 26, 2024).

<sup>46</sup> Ed. Code, § 68062, subs. (f), (g). A residence is the place where one remains when not called elsewhere for labor or other special or temporary purpose, and to which he or she returns in seasons of repose. (Ed. Code, § 68062, subd. (b).) Moreover, the residence of an unmarried minor foreign national shall be derived from his or her parents under subdivisions (f) and (g).

<sup>47</sup> International students who wish to seek on-campus employment should contact the designated college or university official for international students.

<sup>48</sup> United States Immigration and Customs Enforcement (ICE), Student and Exchange Visitor Program <https://www.ice.gov/sevis> (as of Nov. 26, 2024).

<sup>49</sup> ICE, Student and Exchange Visitor Program Operating Instructions: ICE Statement on Protected Areas (Oct. 29, 2021) <https://www.ice.gov/sevis/operating-instructions#tab2> (as of Nov. 26, 2024).

<sup>50</sup> *Ibid.*

<sup>51</sup> See *Undocumented Student Resources, Applying to UC*, University of California <http://undoc.universityofcalifornia.edu/applying-to-uc.html> (as of Nov. 26, 2024).

<sup>52</sup> FERPA defines “student” as “any individual who is or has been in attendance at an educational... institution.” (20 U.S.C. § 1232g(a)(6); 34 C.F.R. § 99.3.) Once a student is in attendance, all the students’ application materials become education records. The personal statements and other application materials of applicants who do not become students in attendance are not protected by FERPA. (20 U.S.C. § 1232g(a)(6).)

<sup>53</sup> Assembly Bill No. 2000 (2013-2014 Reg. Sess.) amended Education Code section 68130.5 by providing in-state tuition eligibility for immigrant students who graduate early from a California high school.

<sup>54</sup> 20 U.S.C. § 1091(a)(5).

<sup>55</sup> U.S. Department of Education, *Undocumented Students and Financial Aid* <https://studentaid.gov/apply-for-aid/fafsa/filling-out/undocumented-students> (as of Nov. 26, 2024).

<sup>56</sup> *Ibid.*

<sup>57</sup> *Ibid.*

<sup>58</sup> Ed. Code, §§ 68130.7, 68130.5, 66021.6, 66021.7, 76300.5.

<sup>59</sup> Senate Bill No. 68 (2017-2018 Reg. Sess.) further amended Education Code section 68130.5 by providing in-state tuition eligibility to immigrant students with: (1) at least 3 years’ attendance at a California high school, California adult school or California Community College; and (2) graduation from a California

high school (or equivalent degree) or attainment of an associate degree from a California community college.

<sup>60</sup> Ed. Code, §§ 66021.6, 660217.7, 68130.5, 68130.7, 76300.5.

<sup>61</sup> California Student Aid Commission, July 1, 2024-June 30, 2025 California Dream Act Application [https://www.csac.ca.gov/sites/default/files/file-attachments/2024-25\\_english\\_paper\\_cadaa.pdf](https://www.csac.ca.gov/sites/default/files/file-attachments/2024-25_english_paper_cadaa.pdf) (as of Nov. 26, 2024).

<sup>62</sup> *Financial Aid Information for AB540 and Undocumented Students* (last updated Sept. 24, 2024) <http://financialaid.ucdavis.edu/undergraduate/apply/undocumented.html> (as of Nov. 26, 2024).

<sup>63</sup> *Ibid.*

<sup>64</sup> *California Dream Act FAQ for Parents and Students*, California Student Aid Commission (Sept. 2023) [http://www.csac.ca.gov/sites/main/files/file-attachments/california\\_dream\\_act\\_faq.pdf](http://www.csac.ca.gov/sites/main/files/file-attachments/california_dream_act_faq.pdf) (as of Nov. 26, 2024), p.8.

<sup>65</sup> 20 U.S.C. § 1091(a)(4)(B).

<sup>66</sup> 20 U.S.C. § 1090(a)(3)(E).

<sup>67</sup> 20 U.S.C. § 1092b(d)(2), (d)(5)(b)

<sup>68</sup> 20 U.S.C § 1232g; 34 C.F.R. § 99.3.

<sup>69</sup> 5 U.S.C. § 552a. However, the Privacy Act allows for the release of data to institutions for the “routine use” for which the data was collected.

<sup>70</sup> 20 U.S.C. § 1232g; Ed. Code § 66093.3.

<sup>71</sup> 20 U.S.C. § 1232g(b)(2)(B); Ed. Code, § 66093.3, subd. (a). The California code prohibits the disclosure of a student’s personal information, except when: (1) the student identified provides consent, or if the parent or guardian of a minor student provides consent; (2) disclosure is permitted by state and federal privacy laws; (3) it serves a programmatic purpose for which the information was obtained; (4) it is used as part of a directory that does not include residence addresses or individual persons’ course schedules and that the student has not elected to opt out of; or (5) it is in response to a judicial warrant, court order, or subpoena.

<sup>72</sup> The one exception is for individuals who are receiving long-term care in nursing facilities or other institutions at government expense. These people may face barriers in qualifying for green cards under current public-charge rules. U.S. Citizenship and Immigration Services, *Policy Manual Chapter 7 – Consideration of Current and/or Past Receipt of Public Cash Assistance for Income Maintenance or Long-term Institutionalization at Government Expense* <https://www.uscis.gov/policy-manual/volume-8-part-g-chapter-7> (as of Nov. 16, 2024).

<sup>73</sup> 8 U.S.C. § 1182(a)(4)(E)(i)-(iii).

<sup>74</sup> Ed. Code, § 66093.3, subd. (a)(4).

<sup>75</sup> Gov. Code, § 7284.4, subd. (a).

<sup>76</sup> Gov. Code, § 7284.6, subd. (a)(1).

<sup>77</sup> *Id.*, subds. (a)(1)(A), (a)(1)(B), (a)(1)(E).

<sup>78</sup> *Id.*, subds. (a), (b)(3).

<sup>79</sup> 34 C.F.R. § 99.8.

<sup>80</sup> See Department of Justice, Division of Law Enforcement, DLE Information Bulletin No. DLE-2018-101, *Responsibilities of Law Enforcement Agencies Under the California Values Act, California TRUST Act, and the California TRUTH Act* (Mar. 28, 2018), available at [https://oag.ca.gov/sites/all/files/agweb/pdfs/law\\_enforcement/dle-18-01.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/law_enforcement/dle-18-01.pdf) (as of Nov. 26, 2024).

<sup>81</sup> Gov. Code, § 7284.6, subd. (a)(1)(D).

<sup>82</sup> Civ. Code, § 1798.3, subd. (a).

<sup>83</sup> Gov. Code, § 7284.6, subd. (e).

<sup>84</sup> Gov. Code, § 7284.6, subd. (a)(1)(A); Gov. Code, § 7284.4, subd. (a).

<sup>85</sup> Gov. Code, § 7284.6, subd. (b)(4); see also California Department of Justice, Division of Law Enforcement, DLE Information Bull. No. DLE-2015-04, *New and Existing State and Federal Laws Protecting Immigrant Victims of Crime* (Oct. 28, 2015) [https://oag.ca.gov/system/files/attachments/press\\_releases/dle-2015-04.pdf](https://oag.ca.gov/system/files/attachments/press_releases/dle-2015-04.pdf) (as of Aug. 8, 2018).

<sup>86</sup> Pen. Code, § 679.10.

<sup>87</sup> *Ibid.*

<sup>88</sup> *Id.*, subd. (o)(1). See also California Department of Justice, Division of Law Enforcement, DLE Information Bulletin No. 2024-DLE-05, *Update to Information Bulletin 2020-DLE-01: New and Existing State and Federal Laws Protecting Immigrant Victims of Crime* (April 3, 2024), <https://oag.ca.gov/system/files/media/2024-dle-05.pdf> (as of Nov. 27, 2024).

<sup>89</sup> *Id.*, subd. (h).

<sup>90</sup> *Id.*, subd. (l).

<sup>91</sup> *Id.*, subd. (i)(1).

<sup>92</sup> *Id.*, subd. (j).

<sup>93</sup> *Id.*, subd. (m). The statute defines a “certifying entity” as including a prosecutor or judge who has certified victim helpfulness on the Form I-918 Supplement B certification when the victim was a victim of a qualifying criminal activity and has been helpful, is being helpful, or is likely to be helpful to the detection or investigation or prosecution of the qualifying criminal activity. (*Id.*, subds. (a), (e).)

<sup>94</sup> *Id.*, subd. (g)(1).

<sup>95</sup> *Id.*, subds. (i)(2), (k)(3).

<sup>96</sup> 20 U.S.C. § 1232g(h)(1).

<sup>97</sup> 20 U.S.C. § 1232g(b)(6)(A).

<sup>98</sup> 20 U.S.C. § 1232g(b)(6)(B); 34 C.F.R. §§ 99.31(a)(13)-(14).

<sup>99</sup> 45 C.F.R. § 160.103; 20 U.S.C. § 1232g(a)(4)(B)(iv).

<sup>100</sup> U.S. Department of Education, *Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Colleges and Universities* (Oct. 2007) <https://www.govinfo.gov/content/pkg/GOVPUB-ED-PURL-gpo14871/pdf/GOVPUB-ED-PURL-gpo14871.pdf> (as of Nov. 27, 2024); see also 34 C.F.R. §§ 99.31(a)(10), 99.36.

<sup>101</sup> 34 C.F.R. § 99.36(c). This exception to FERPA’s general consent rule is limited to the period of the emergency and generally does not allow for a blanket release of personally identifiable information from a student’s education records.

<sup>102</sup> U.S. Department of Education, *Balancing Student Privacy and School Safety: A Guide to the Family Educational Rights and Privacy Act for Colleges and Universities* (Oct. 2007) <https://www.govinfo.gov/content/pkg/GOVPUB-ED-PURL-gpo14871/pdf/GOVPUB-ED-PURL-gpo14871.pdf> (as of Nov. 27, 2024).

<sup>103</sup> *Ibid.*

<sup>104</sup> See Alejandro N. Mayorkas, *Memorandum, Guidelines for Enforcement Actions in or Near Protected Areas* (Oct. 27, 2021) [https://www.dhs.gov/sites/default/files/publications/21\\_1027\\_opa\\_guidelines-enforcement-actions-in-near-protected-areas.pdf](https://www.dhs.gov/sites/default/files/publications/21_1027_opa_guidelines-enforcement-actions-in-near-protected-areas.pdf) (as of Nov. 27, 2024); see also U.S. Customs and Border Protection, DHS Protected Areas FAQs (April 11, 2024) <https://www.cbp.gov/border-security/dhs-protected-areas-faqs> (as of Nov. 27, 2024).

<sup>105</sup> In his 2021 memorandum, the DHS Secretary stated that immigration enforcement actions may take place at protected areas only when either: (a) prior approval is obtained from Agency headquarters or delegate; or (b) there are exigent circumstances necessitating immediate action without prior approval. The memorandum lists the following, non-exhaustive examples of exigent circumstances: (a) an enforcement action involving national security; (b) imminent risk of death, violence, or physical harm to a person; (c) an enforcement action involving the hot pursuit of an individual who poses a public safety threat; (d) the hot pursuit of a personally observed border crosser; (e) an imminent risk of destruction of evidence material to an ongoing criminal case; or (f) a safe alternative location does not exist. (Mayorkas, *Memorandum, Guidelines for Enforcement Actions in or Near Protected Areas* (Oct. 27 2021), [https://www.dhs.gov/sites/default/files/publications/21\\_1027\\_opa\\_guidelines-enforcement-actions-in-near-protected-areas.pdf](https://www.dhs.gov/sites/default/files/publications/21_1027_opa_guidelines-enforcement-actions-in-near-protected-areas.pdf) (as of Nov. 27, 2024).)

<sup>106</sup> Additionally, DHS’s protected-areas policy also applies to operations conducted at or near the international border, unlike previous guidance, unless in hot pursuit of a personally observed border crosser. (U.S. Customs and Border Protection, DHS Protected Areas FAQs (April 11, 2024) <https://www.cbp.gov/border-security/dhs-protected-areas-faqs> (as of Nov. 27, 2024).

<sup>107</sup> Ed. Code, § 66093.3, subd. (e). The Regents of the University of California are also requested to implement this requirement. (Ed. Code, § 66093.3.)

<sup>108</sup> Gov. Code, § 7285.1.

<sup>109</sup> Disclosure of information that is protected under FERPA in response to an administrative subpoena could violate FERPA. (20 U.S.C. § 1232g, 34 C.F.R., § 99.3.) College or university personnel must therefore provide notice to and receive written consent from the student before turning over his or her student records. (34 C.F.R. §§ 99.3, 99.30.)

<sup>110</sup> *Arizona v. United States* (2012) 567 U.S. 387, 407.

<sup>111</sup> The Immigrant Worker Protection Act contains other terms regulating the actions of employers and persons acting on their behalf, including, for example, when responding to requests by immigration enforcement agents for employee records. (Gov. Code, § 7285.2.) These terms, and other legal requirements running between employers and their employees, fall outside the scope of this guide. A federal district court previously preliminarily enjoined part of the Immigrant Worker Protection Act as it pertains to private employers, but the preliminary injunction was dissolved on April 6, 2021, and the Act is now fully in effect. (See *United States v. California*, *supra*, 314 F.Supp.3d 1077, *aff'd in part, rev'd in part and remanded* (9th Cir. 2019) 921 F.3d 865.) And as stated in the Introduction, this guide is not intended to cover obligations arising from the employer-employee relationship, which may be impacted by AB 450.

<sup>112</sup> Gov. Code, § 7285.1, subd. (a).

<sup>113</sup> *Id.*, subd. (c).

<sup>114</sup> See Gov. Code, § 7284.6, subd. (a).

<sup>115</sup> *People v. Superior Court (Walker)* (2006) 143 Cal.App.4th 1183, 1207-1208.

<sup>116</sup> *United States v. Prescott* (9th Cir. 1978) 581 F.2d 1343, 1350-1351.

<sup>117</sup> See Pen. Code, § 148.

<sup>118</sup> See Mayorkas, Memorandum, Guidelines for *Enforcement Actions in or Near Protected Areas* (Oct. 27, 2021), [https://www.dhs.gov/sites/default/files/publications/21\\_1027\\_opa\\_guidelines-enforcement-actions-in-near-protected-areas.pdf](https://www.dhs.gov/sites/default/files/publications/21_1027_opa_guidelines-enforcement-actions-in-near-protected-areas.pdf) (as of Nov. 27, 2024.)

<sup>119</sup> *Ibid.*; see also U.S. Customs and Border Protection, DHS Protected Areas FAQs (April 11, 2024) <https://www.cbp.gov/border-security/dhs-protected-areas-faqs> (as of Nov. 27, 2024).

<sup>120</sup> Ed. Code, § 66093.3, subd. (b).

<sup>121</sup> *Id.*, subd. (f).

<sup>122</sup> 34 C.F.R. § 99.3 (defining “eligible student” as “a student who has reached 18 years of age or is attending an institution of postsecondary education”).

<sup>123</sup> 20 U.S.C. § 1232g(b)(1), (b)(2).

<sup>124</sup> See 34 C.F.R. § 99.3 (defining “personally identifiable information”).

<sup>125</sup> 34 C.F.R. § 99.7(a)(1).

<sup>126</sup> 20 U.S.C. § 1232g(b)(2)(A); 34 C.F.R. §§ 99.3, 99.30.

<sup>127</sup> 20 U.S.C. § 1232g(b)(2)(A).

<sup>128</sup> 34 C.F.R. § 99.33(a)(1).

<sup>129</sup> 20 U.S.C. § 1232g(b)(1)(A)-(J), (b)(3), (b)(5); 34 C.F.R. § 99.35.

<sup>130</sup> 20 U.S.C. § 1232g(b)(2)(B); 34 C.F.R. § 99.31.

<sup>131</sup> See 20 U.S.C. § 1232g(b)(1)(C).

<sup>132</sup> See Section 2, above; see also transcript of an interview with John Seaman, senior legal instructor with the Legal Division at the Federal Law Enforcement Training Center, <https://www.fletc.gov/ice-administrative-removal-warrants-mp3> (as of Nov. 27, 2024).

<sup>133</sup> 20 U.S.C. § 1232g(b)(1)(J)(i),(ii), (b)(2)(B).

<sup>134</sup> Gov. Code, § 7284.6, subd. (a)(1)(D).

<sup>135</sup> Civ. Code, § 1798.3, subd. (a).

<sup>136</sup> Gov. Code, § 7284.6, subd. (e).

<sup>137</sup> 34 C.F.R. § 99.8(c)(2).

<sup>138</sup> 34 C.F.R. § 99.3 (defining directory information); 34 C.F.R. § 99.37(a).

<sup>139</sup> Ed. Code, § 49061, subd. (c).

<sup>140</sup> 34 C.F.R. § 99.37 (institutions “may” disclose directory information).



<sup>141</sup> 20 U.S.C. § 1232g(b)(2).

<sup>142</sup> 34 C.F.R. § 99.37(a).

<sup>143</sup> Ed. Code, § 66093.3, subd. (c).

<sup>144</sup> Ed. Code, § 66093.3, subd. (f).

<sup>145</sup> *Ibid.*

<sup>146</sup> *Id.*, subd. (g).

<sup>147</sup> *Ibid.*

<sup>148</sup> *Id.*, subd. (j)(1).

<sup>149</sup> *Ibid.*

<sup>150</sup> *Ibid.*

<sup>151</sup> *Id.*, subd. (j)(2).

<sup>152</sup> For further guidance on attorneys and representatives qualified to provide representation in immigration courts and the Board of Immigration Appeals, please see the United States Department of Justice, *Can Someone Represent You before EOIR (Executive Office of Immigration Review)*, available at <https://www.justice.gov/eoir/can-someone-represent-you-eoir> (as of Dec. 3, 2024).

<sup>153</sup> See Cal. Code Regs., tit. 5, § 41905.

<sup>154</sup> Ed. Code, § 68076.

**Appendix A**  
**Immigrations and Customs Enforcement "Arrest Warrant"**  
**(Form I-200)**

**U.S. DEPARTMENT OF HOMELAND SECURITY**

**Warrant for Arrest of Alien**

File No. \_\_\_\_\_

Date: \_\_\_\_\_

**To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations**

I have determined that there is probable cause to believe that \_\_\_\_\_ is removable from the United States. This determination is based upon:

- the execution of a charging document to initiate removal proceedings against the subject;
- the pendency of ongoing removal proceedings against the subject;
- the failure to establish admissibility subsequent to deferred inspection;
- biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

**YOU ARE COMMANDED** to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien.

\_\_\_\_\_  
(Signature of Authorized Immigration Officer)

\_\_\_\_\_  
(Printed Name and Title of Authorized Immigration Officer)

**Certificate of Service**

I hereby certify that the Warrant for Arrest of Alien was served by me at \_\_\_\_\_  
(Location)

on \_\_\_\_\_ on \_\_\_\_\_, and the contents of this  
(Name of Alien) (Date of Service)

notice were read to him or her in the \_\_\_\_\_ language.  
(Language)

\_\_\_\_\_  
Name and Signature of Officer

\_\_\_\_\_  
Name or Number of Interpreter (if applicable)

Form I-200 (Rev. 09/16)

**Appendix B**  
**Immigrations and Customs Enforcement “Removal Warrant”**  
**(Form I-205)**

DEPARTMENT OF HOMELAND SECURITY  
U.S. Immigration and Customs Enforcement  
**WARRANT OF REMOVAL/DEPORTATION**

File No: \_\_\_\_\_

Date: \_\_\_\_\_

To any immigration officer of the United States Department of Homeland Security:

\_\_\_\_\_  
(Full name of alien)

who entered the United States at \_\_\_\_\_ on \_\_\_\_\_  
(Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- an immigration judge in exclusion, deportation, or removal proceedings
- a designated official
- the Board of Immigration Appeals
- a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, by virtue of the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

\_\_\_\_\_  
(Signature of immigration officer)

\_\_\_\_\_  
(Title of immigration officer)

\_\_\_\_\_  
(Date and office location)

# Appendix C

## Federal Search and Seizure Warrant (Form AO 93)

AO 93 (Rev. 11/13) Search and Seizure Warrant

### UNITED STATES DISTRICT COURT

for the

In the Matter of the Search of \_\_\_\_\_ )  
*(Briefly describe the property to be searched* )  
*or identify the person by name and address)* ) Case No. \_\_\_\_\_ )  
 )  
 )

### SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

An application by a federal law enforcement officer or an attorney for the government requests the search of the following person or property located in the \_\_\_\_\_ District of \_\_\_\_\_  
*(identify the person or describe the property to be searched and give its location):*

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property described above, and that such search will reveal *(identify the person or describe the property to be seized):*

**YOU ARE COMMANDED** to execute this warrant on or before \_\_\_\_\_ *(not to exceed 14 days)*  
 ' in the daytime 6:00 a.m. to 10:00 p.m. ' at any time in the day or night because good cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to \_\_\_\_\_  
*(United States Magistrate Judge)*

' Pursuant to 18 U.S.C. § 3103a(b), I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized *(check the appropriate box)*  
 ' for \_\_\_\_\_ days *(not to exceed 30)* ' until, the facts justifying, the later specific date of \_\_\_\_\_.

Date and time issued: \_\_\_\_\_  
 \_\_\_\_\_  
*Judge's signature*

City and state: \_\_\_\_\_  
 \_\_\_\_\_  
*Printed name and title*

# Appendix D Federal Arrest Warrant (Form AO 442)

AO 442 (Rev. 11/11) Arrest Warrant

## UNITED STATES DISTRICT COURT

for the

United States of America

v.

)

)

)

)

)

)

Case No.

\_\_\_\_\_  
*Defendant*

### ARREST WARRANT

To: Any authorized law enforcement officer

**YOU ARE COMMANDED** to arrest and bring before a United States magistrate judge without unnecessary delay  
(name of person to be arrested) \_\_\_\_\_,  
who is accused of an offense or violation based on the following document filed with the court:

Indictment     Superseding Indictment     Information     Superseding Information     Complaint  
 Probation Violation Petition     Supervised Release Violation Petition     Violation Notice     Order of the Court

This offense is briefly described as follows:

Date: \_\_\_\_\_

\_\_\_\_\_  
*Issuing officer's signature*

City and state: \_\_\_\_\_

\_\_\_\_\_  
*Printed name and title*

#### Return

This warrant was received on (date) \_\_\_\_\_, and the person was arrested on (date) \_\_\_\_\_  
at (city and state) \_\_\_\_\_.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Arresting officer's signature*

\_\_\_\_\_  
*Printed name and title*

# Appendix E

## Department of Homeland Security Immigration Enforcement Subpoena (Form I-138)

1. To (Name, Address, City, State, Zip Code)	DEPARTMENT OF HOMELAND SECURITY  <b>IMMIGRATION ENFORCEMENT SUBPOENA</b> to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number	
2. In Reference To	
(Title of Proceeding)	(File Number, if Applicable)

By the service of this subpoena upon you, **YOU ARE HEREBY SUMMONED AND REQUIRED TO:**

- (A)  **APPEAR** before the U.S. Customs and Border Protection (CBP), U.S. Immigration and Customs Enforcement (ICE), or U.S. Citizenship and Immigration Services (USCIS) Official named in Block 3 at the place, date, and time specified, to testify and give information relating to the matter indicated in Block 2.
- (B)  **PRODUCE** the records (books, papers, or other documents) indicated in Block 4, to the CBP, ICE, or USCIS Official named in Block 3 at the place, date, and time specified.

Your testimony and/or production of the indicated records is required in connection with an investigation or inquiry relating to the enforcement of U.S. immigration laws. Failure to comply with this subpoena may subject you to an order of contempt by a federal District Court, as provided by 8 U.S.C. § 1225(d)(4)(B).

3. (A) CBP, ICE or USCIS Official before whom you are required to appear	(B) Date
Name	
Title	
Address	(C) Time <input checked="" type="checkbox"/> a.m. <input type="checkbox"/> p.m.
Telephone Number	

4. Records required to be produced for inspection



If you have any questions regarding this subpoena, contact the CBP, ICE, or USCIS Official identified in Block 3.

5. Authorized Official

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

DHS Form I-138 (6/09)

# Appendix F Federal Judicial Subpoena (Form AO 88B)

AO 88B (Rev. 02/14) Subpoena to Produce Documents, Information, or Objects or to Permit Inspection of Premises in a Civil Action

## UNITED STATES DISTRICT COURT

for the

\_\_\_\_\_) )  
Plaintiff ) )  
v. ) ) Civil Action No.  
\_\_\_\_\_) )  
Defendant ) )

### SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS OR TO PERMIT INSPECTION OF PREMISES IN A CIVIL ACTION

To:

\_\_\_\_\_  
(Name of person to whom this subpoena is directed)

**Production:** **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and to permit inspection, copying, testing, or sampling of the material:

Place:

Date and Time:

**Inspection of Premises:** **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:

Date and Time:

The following provisions of Fed. R. Civ. P. 45 are attached – Rule 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so.

Date: \_\_\_\_\_

CLERK OF COURT

OR

\_\_\_\_\_  
Signature of Clerk or Deputy Clerk

\_\_\_\_\_  
Attorney's signature

The name, address, e-mail address, and telephone number of the attorney representing (name of party) \_\_\_\_\_, who issues or requests this subpoena, are:

#### Notice to the person who issues or requests this subpoena

If this subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, a notice and a copy of the subpoena must be served on each party in this case before it is served on the person to whom it is directed. Fed. R. Civ. P. 45(a)(4).

# Appendix G

## Notice to Appear Form (Form I-862)

U.S. Department of Homeland Security	<b>Notice to Appear</b>
<b>In removal proceedings under section 240 of the Immigration and Nationality Act</b>	
	File No: _____
In the Matter of:	
Respondent: _____ currently residing at:	
(Number, street, city, state and ZIP code)	(Area code and phone number)
<input type="checkbox"/> 1. You are an arriving alien.	
<input type="checkbox"/> 2. You are an alien present in the United States who has not been admitted or paroled.	
<input type="checkbox"/> 3. You have been admitted to the United States, but are deportable for the reasons stated below:	
The Department of Homeland Security alleges that you:	
<b>SAMPLE</b>	
On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:	
<input type="checkbox"/> This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.	
<input type="checkbox"/> Section 235(b)(1) order was vacated pursuant to : <input type="checkbox"/> 8 CFR208.30(f)(2) <input type="checkbox"/> 8CFR235.3(b)(5)(iv)	
YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: _____	
(Complete Address of Immigration Court, Including Room Number, if any)	
on _____ at _____ to show why you should not be removed from the United States based on the	
(Date)	(Time)
charge(s) set forth above.	
	(Signature and Title of Issuing Officer)
Date: _____	(City and State)
<b>See reverse for important information</b>	
Form I-862 (Rev. 08/01/07)	