



CATHOLIC LEGAL
IMMIGRATION
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CLINIC Transition Paper: Rethinking ICE and CBP Sensitive Locations

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The Catholic Legal Immigration Network, Inc., CLINIC, promotes the dignity and protects the rights of immigrants in partnership with our network of immigration legal services providers. Visit us at cliniclegal.org/transition.

Binsar's story

In September 2020, an Indonesian immigrant named Binsar Siahaan awoke from his home on the grounds of Glenmont United Methodist Church in Silver Spring, Md., when he received a knock on the door. Immigration and Customs Enforcement, or ICE, agents told Mr. Siahaan that they were there to ensure his ankle monitor was working. When he went outside, the officers handcuffed him and detained him in Baltimore. He was then transferred to a detention center in Georgia. By detaining Mr. Siahaan on church grounds, ICE violated longstanding policy of not moving forward with enforcement actions in certain locations such as places of worship.

Mr. Siahaan and his family lived in the house on church grounds, and he took care of the church they had attended for six years. He had been in the United States for over three decades and has two U.S. citizen children. Although he and his wife had tried to obtain asylum based on their religion, an attorney — who was later disbarred for failure to properly represent asylum clients — failed to argue for any exceptions to the one-year application deadline. Because of this, Mr. Siahaan and his wife received orders of deportation in 2005. In 2012, they entered into an order of supervision with ICE, where they continued to check in for eight years until ICE decided to arrest Mr. Siahaan. Nothing had changed for him — he did not commit any crimes that could have triggered ICE to pick him up in such an inhumane manner.

Federal Judge Paul W. Grimm blocked ICE from deporting Mr. Siahaan, recognizing that it would be impossible to help him if he were deported to Indonesia and was persecuted for his religion there.

Maryland Senator Chris Van Hollen expressed his deep concern to learn of this story, stating in an interview that, "ICE's sensitive locations policy seeks to, in its own words, enhance the public's understanding and trust to ensure that people seeking to participate in activities or services provided at any sensitive location are free to do so without fear or hesitation The violation of this policy undermines the public trust and spreads fear in places of safe haven."

Meagan Flynn (2020, Sept. 17). [ICE arrested an undocumented immigrant on church grounds. They lied to coax him out, family and attorney say.](#) Meagan Flynn, The Washington Post, Sept. 17, 2020.

[Judge grants Indonesian immigrant arrested on church grounds a temporary reprieve from deportation.](#) Meagan Flynn, The Washington Post, Oct. 3, 2020.

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Why the Sensitive Locations policy matters

On Oct. 24, 2011, the Director of U.S. Immigration and Customs Enforcement, or ICE, at the time, John Morton, issued a memorandum¹ on enforcement actions at or focused on sensitive locations, also known as the “Sensitive Locations Memo.” Organizations, including CLINIC and the United States Conference of Catholic Bishops, or USCCB, fought hard to highlight the importance of immigrants being able to participate in activities and utilize services at sensitive locations without fear. The purpose of the policy was to provide direction to agents to acknowledge the public interest at essential locations, such as hospitals, schools, places of worship, areas for public demonstrations, the site of funerals, weddings and other religious ceremonies. When the policy is violated by ICE agents, which has happened too often under the Trump administration, word spreads quickly and the immigrant community loses trust. Without consistent application of this memo, immigrants will not feel as though they can avail themselves of spiritual, health and other community services, causing a ripple effect of negative consequences throughout society.

Equally important to note is that ICE agents also often apply a very literal and narrow interpretation of the memo — without taking into consideration the intent of protecting the safety and well-being of the community. For example, there have been multiple reports of ICE officers in various jurisdictions across the country arresting immigrants at school² and public bus stops³ used for students. This highlights a critical flaw in the policy, as the memo protects schools but not areas where parents have to be in order to get their children back and forth safely. There have also been reports of ICE officers waiting outside of sensitive locations to apprehend immigrants once they step outside of the protected area. For example, there have been reports of immigrants arrested in parking lots of hospitals.⁴

Often, stops are based on profiling⁵ — with a focus on those who look a certain way, who have an accent, etc. If the United States truly wants to adhere to collective values of community safety and anti-discrimination, then it is essential to protect the places where they pray, protest, seek both mental and physical assistance, visit their elderly loved ones, act as witnesses in hearings, help their children and conduct so many other activities which are vital to people being able to live full, complete lives.

Number of people impacted

Anyone who could be targeted by ICE, including U.S. citizens⁶ since racial profiling affects all Black and Brown people. Furthermore, immigration enforcement priorities have expanded⁷ to the point that any of the estimated 10.5 million undocumented immigrants in the U.S.⁸ could be at risk. Two thirds of this population have been in the United States for more than a decade,⁹ so targeting these immigrants puts them in danger — people with well-established roots and families in the U.S.

When discussing ICE apprehension, we need to look at the impact on the 4.2 million Black immigrants in the U.S. — 600,000 of which are undocumented.¹⁰ Black immigrants are subjected to the same disparities regarding detention and apprehension with ICE that occur in the U.S. criminal justice system. Black immigrants have been subjected to over-policing and are picked-up at higher rates so that even though they comprise only 7 percent of the immigrant population, they make up 20 percent of immigrants facing deportation before an immigration judge on criminal grounds.¹¹ To fully address racial inequities as the Biden administration has pledged to do, immigration must be an integral part of the conversation.

Previous administration's policy and the human consequences

Both ICE and the U.S. Customs and Border Protection, or CBP, have memos on sensitive locations. CBP's policy was released in 2013 — but cannot currently be accessed from their website.¹² Although these policies were created prior to the Trump administration, the last four years have particularly shown the policies' flaws in writing as well as in implementation. Allowing ICE and CBP discretion causes confusion and fear amongst the immigrant community. Not wanting to take a chance, immigrants often stop accessing these locations and the vital services offered. In the middle of the COVID-19 pandemic, this can be life-threatening.

In order to restore the public trust and safety, the Biden administration should do the following in the first 100 days:

Recommendation 1

Modify the Sensitive Locations Memo To Specifically List Various Areas per Topic

Although the Memo states that the sensitive locations in the policy are “not limited to” and that it is “not an exclusive list,” ICE has typically applied the policy literally and narrowly. In order to ensure that locations that share commonalities are protected, it is important to list them all while still maintaining the open-ended language that gives the ability to consider other locations as sensitive. For example, instead of only saying “schools,” the policy should specifically and affirmatively list different types of schools from child care to preschool up to university and also list libraries, parking lots, buses, bus stops and other adjacent or related areas.

Recommendation 2

Expand the Locations Listed in the Memo To Be More Comprehensive

Particularly in the middle of a pandemic, when food insecurity in the United States is at an all-time high and health care needs are skyrocketing, it is imperative that additional locations be protected. Currently, the Sensitive Locations Memo omits numerous important areas including courthouses, nursing homes, assisted

living facilities, libraries, domestic violence shelters, homeless shelters, food pantries and drug and alcohol rehabilitation centers. Too many immigrants are being scared away from testifying or are apprehended before they are able to offer key testimony either as victims or witnesses in crimes.¹³ When cases are unable to proceed for these reasons, it has a negative effect on our judicial system and leads to people not being held accountable for their actions. Furthermore, a lack of trust in the immigrant community for law enforcement has serious implications for public safety.

Recommendation 3

Clarify What Being “Near” a Sensitive Location Entails and What That Covers

Currently the policy is too vague to clearly identify when ICE or CBP commits a violation. CLINIC recommends the Biden administration clarify what will trigger the protection of a sensitive location. This should include designating that no enforcement will take place within 1,000 feet of a sensitive location so that parking lots can be included. Other areas associated with sensitive locations but not within 1,000 feet should also be listed, including playgrounds, areas where field trips are taken, places to park that may be more than 1,000 feet from the location, etc. The more guidance that can be provided and less discretion given to ICE and CBP, the more uniformity there will be in the application of this policy.

CLINIC recommends amending the Definitions section of the Sensitive Locations Memo to include the following:

No enforcement will take place within 1,000 feet of a sensitive location. The following sensitive locations (non-exclusive list) are covered by this policy:

- Schools
 - Including child care programs, preschools, pre-kindergarten programs, Head Start programs, primary schools, secondary schools, post-secondary schools up to and including colleges and universities, after-care programs, and other institutions of learning such as vocational or trade schools;
 - Scholastic or Education-related activities or events, including field trips and interscholastic events;
 - Libraries;
 - School buses, parking lots, school bus stops, municipal bus stops, metro stations, or any other location used for the transportation of students;
- Medical treatment or health care facilities
 - Hospitals, doctors’ offices, accredited health clinics, emergent or urgent care facilities, community health centers, physical therapy locations;
 - Mental health care including psychiatrists, psychologists, social workers, marriage and family therapists, psychiatric nurses, and other locations where individuals can receive psychotherapy;

- Any location being used as a facility to provide medical services, including COVID-19 testing;
- Pharmacies;
- Places of Worship
 - Churches, synagogues, mosques, Hindu temples, Buddhist temples, or other institutions of worship, such as buildings rented for the purpose of religious services;
- The sites of a funeral, memorial service, wedding, or other such public ceremony;
- Courthouses;
- Locations during the occurrence of a public demonstration, such as a march, rally or parade;
- Nursing homes, assisted living, inpatient hospice facilities, adult care centers, such as for Alzheimer's patients;
- Domestic violence shelters, rape crisis centers, supervised visitation centers, family justice centers, or victims services providers;
- Any organizations that assist children, pregnant women, victims of crime or abuse, or individuals with significant mental, developmental, or physical disabilities;
- Locations providing disaster relief or emergency social services and assistance, including, but not limited to, food banks and homeless shelters;
- Drug and/or alcohol rehabilitation centers, support group meetings;
- Public assistance offices;
- Social security offices;
- Departments of Motor Vehicles.

Recommendation 4

Remove the Sensitive Locations Exemption and Apply the Policy Within 100 Miles of the Border

The Sensitive Locations Memo does not currently apply to enforcement operations within 100 miles of the border. This should be changed as, just this year in the middle of the pandemic, CBP followed a 15 year-old girl and arrested her and her aunt at the hospital after the child had gallbladder surgery.¹⁴ The policy should reflect this country's values and not allow either family separation at a hospital or the apprehension of a minor who just underwent surgery because they were within 100 miles of the border.¹⁵

Recommendation 5

Put in Place Accountability Measures and Codify the Policy

Currently, ICE and CBP are responsible for policing themselves and determine whether a location is protected or not. The Biden administration must establish accountability measures including clear and accessible processes for reporting violations, an independent body to conduct investigations and repercussions for violations to ensure that sensitive locations remain safe and accessible. The policy should be codified to ensure understanding, compliance and uniformity. Survivors of violence should not be afraid to leave her/his abuser and go to a shelter; a person in the middle of winter should not forego a night at a homeless shelter for fear of

being picked up by ICE; immigrants should be able to attend the most joyous occasions like weddings and the most sorrowful ones like funerals and memorial services without fear; parents should be able to pick up their children and drop them off safely; accessibility to food pantries should not be a political issue.¹⁶ The Sensitive Location Memo is about public trust, and the Biden administration must ensure protocols and procedures are implemented to safeguard that trust.

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To learn more about CLINIC's Administrative Advocacy Priorities, please visit: cliniclegal.org/advocacy.

Endnotes:

¹ *Enforcement Actions at or Focused on Sensitive Locations Memorandum*, Immigration and Customs Enforcement (Oct. 24, 2011), [ice.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf](https://ice.dhs.gov/doclib/ero-outreach/pdf/10029.2-policy.pdf).

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⁴ *Establishing Sanctuary Hospitals: Protecting the Right to Access Health Care*, Physicians for Human Rights (Sept. 2019), phr.org/wp-content/uploads/2019/09/PHR-Sanctuary-Hospitals-Fact-Sheet-FINAL.pdf.

⁵ Maria Ines Zamudio, *Group sues over federal agency over racial profiling of immigrants in Chicago*, WBEZ (Feb. 25, 2020), wbez.org/stories/group-sues-federal-agency-for-racial-profiling-of-immigrants-in-chicago/d01fe6a4-8ef6-460b-9b1e-1d17b1f1e459.

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⁸ Jens Manuel Krogstad, Jeffrey S. Passel and D'Vera Cohn, *5 facts about illegal immigration in the U.S.* Pew Research Center (June 12, 2019), pewresearch.org/fact-tank/2019/06/12/5-facts-about-illegal-immigration-in-the-u-s/.

⁹ Jeffrey S. Passel and D'Vera Cohn, *Mexicans decline to less than half the U.S. unauthorized immigrant population for the first time*. Pew Research Center (June 12, 2019), at pewresearch.org/fact-tank/2019/06/12/us-unauthorized-immigrant-population-2017/.

¹⁰ Karla McKanders, *Immigration and Blackness: What's race got to do with it?*, American Bar Association (May 16, 2019), americanbar.org/groups/crsj/publications/human_rights_magazine_home/black-to-the-future/immigration-and-blackness/.

¹¹ Emma Winger, *The jail-to-deportation pipeline turns deadly for immigrants in the pandemic*, Immigration Impact (July 16, 2020), immigrationimpact.com/2020/07/16/death-ice-detention-covid/#.X7vIQc1Kj-h.

¹² CBP Sensitive Locations Policy, Customs and Border Protection (2013), cbp.gov/faqs/do-department-homeland-security%E2%80%99s-policies-concerning-enforcement-actions-or-focused-sensitive.

¹³ Hannah Rappleye, Stephanie Gosk, Brenda Breslauer and John Carlos Frey, *Immigration crackdown makes women afraid to testify against abusers, experts warn*, NBC News (Sept. 22, 2018), nbcnews.com/politics/immigration/immigration-crackdown-makes-women-afraid-testify-against-abusers-experts-warn-n908271.

¹⁴ Camilo Montoya-Gonzalez, *15-year-old girl who spent her life in the U.S. facing deportation after hospital arrest*, CBS News (Sept. 25, 2020), cbsnews.com/news/15-year-old-girl-who-spent-her-life-in-the-u-s-facing-deportation-after-hospital-arrest/.

¹⁵ *Id.*

¹⁶ Liz Skalka, *Deportation fears spark avoidance of food pantries*, Stamford Advocate (April 21, 2017), stamfordadvocate.com/local/article/Deportation-fears-spark-avoidance-of-food-pantries-11087515.php.