

NAVIGATING TROUBLED WATERS A SURVIVAL SUGGESTION GUIDE FOR PARENTS OF NATIONAL ORIGIN OTHER THAN UNITED STATES

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Parents who have immigrated to the United States, no matter what their status, have good reason to feel anxiety as they read daily headlines about the government's changes in policies involving the enforcement of immigration laws.

Whether they are here lawfully on a "green card," in the process of adjusting status, or in an undocumented situation, there are many examples in which the government has not taken lawful status into account and has changed, with very little warning, years of enforcement philosophy.

This brief pamphlet will provide parents with information regarding the current state of affairs and suggest proactive measures, which can be undertaken regardless of status. We begin with a discussion of schools' obligations to serve all students regardless of status and then move on to a discussion of recent information from Homeland Security regarding enforcement, the current status of the DACA program enrollees and a discussion about the reality of being a non-United States Citizen in the current environment.

**SCHOOLS DO NOT ENFORCE IMMIGRATION LAWS – THEY ARE SUPPOSED TO
BE A SAFE HAVEN FOR CHILDREN DURING THE SCHOOL DAY**

As an initial matter, it is important to know that schools are not in the immigration enforcement business. In fact, it is well-settled law that schools may not discriminate in admissions or providing education to students based on their status as documented or undocumented. *See Plylar v. Doe*, 457 U.S. 202 (1982). Further, schools may not discriminate against admission of students based on their national origin.

Further, schools are deemed to be "sensitive locations" under the 2011 Immigration and Customs Enforcement Sensitive Locations Policy. A sensitive location is an area where enforcement actions (such as arrests, interviews, searches or surveillance) are prohibited unless, among other things, (a) exigent circumstances exist, (b) other law enforcement actions have led officers to a sensitive location. Exigent circumstances that may lead to actions at sensitive locations are situations involving national security or terrorism issues, imminent risk of death, violence or physical harm, the enforcement action involves the immediate arrest of pursuit of a dangerous felon, terrorist suspect, or an individual that presents an imminent danger to the public safety, or there is an imminent risk of destruction of evidence material to an ongoing case. *U.S. Immigration and Customs Enforcement Memorandum Regarding Enforcement Actions at or Focused on Sensitive Locations* (October 24, 2011). The Department of Homeland Security has recently re-affirmed that it would continue to abide by the policies laid out in this memorandum.

In the improbable event an ICE officer comes on campus seeking a student, it is appropriate to treat that officer as any law enforcement officer: access to students is not generally granted to students during the school day absent a warrant, information related to students may not be released to law enforcement under the Family Education Rights Privacy Act

(FERPA) without a specific exemption, which, in the circumstances, only legal counsel to the school is qualified to evaluate and parental contact is made contemporaneous with the visit by law enforcement. With regard to FERPA, it is important to note that if families have permitted their child's name, address, telephone number and other similar information to be maintained by the school as "directory information," it is subject to release and is not protected by FERPA. It is very important for schools to distribute the annual notices required by FERPA and to closely adhere to any parental "opt outs" from distribution of directory information.

CURRENT STATUS OF HOMELAND SECURITY ANNOUNCEMENTS IMPACTING SCHOOLS

Recently, the Secretary of Homeland Security has issued two memoranda dealing with ICE's priorities. Clark Hill PLC has summarized the memoranda at: <http://www.clarkhill.com/alerts/president-trump-s-immigration-enforcement-orders>. The first memorandum implements the President's Executive Order entitled "Enhancing Public Safety in the Interior of the United States." The Memorandum and FAQ document that accompanies the Memorandum, states that enforcement actions will be undertaken against individuals who are in violation of the immigration laws of the United States. Previously, there was an exercise of prosecutorial discretion in which only persons who had committed specific crimes were targeted. Under the Memorandum, there will be no priorities, and anyone who is in violation of the immigration laws of the United States or who has committed criminal acts, regardless of type, are subject to enforcement.

It will therefore be very important for families who feel they may fit the description of persons subject to enforcement action in the Executive Order and the Memorandum to seek and obtain the advice of counsel who is competent in immigration law. A list of resources will be provided as part of this pamphlet.

STATUS OF DACA RECIPIENTS

A policy from the Obama administration, called the Deferred Action for Childhood Arrivals ("DACA") program provided enrollees with renewable two-year reprieves from deportation. Neither Memorandum released by Homeland Security addresses the status of DACA recipients, but neither Memorandum specifically stated that the program would be continued. While officials at Homeland Security have informally opined that the program will continue, and the government has continued to take and process DACA applications and renewals, individuals are reasonably concerned about the ramifications of identifying themselves and their future status. Recipients of DACA status, or those who may be candidates for the program, should confer with their legal counsel regarding their options.

THOUGHTS FOR NON UNITED STATES CITIZENS

Regardless of their status, non-United States Citizens are justifiably concerned in the current environment. The immigration laws of the United States are complex, and there is a great deal of well-meaning, but inaccurate information about these laws. Adding to the complexity is the fact that there have been reports of legal permanent residents and DACA

recipients being detained by ICE. It is therefore very important that, at the very least, families address plans in these three areas to ensure the best chance for the best possible outcomes of encounters with ICE or Homeland Security.

First – Get Legal Advice: Regardless of one's status, it will be important for any non-United States Citizen to seek advice of their legal counsel with regard to their status. If an expiration date is approaching, individuals should pro-actively seek the advice of what, specifically, they need to do to maintain their status. If they are out of status, it is very important to understand what they need to do, and how to do it. The only persons able to give advice on these important topics are licensed attorneys or representatives who are accredited through the Bureau of Immigration Affairs. Regarding attorneys, it is very important to ensure that counsel knows the area of immigration law as a specialty practice.

Second – Have a Plan: In the event a person is caught up in an enforcement action, or identified by ICE, it is very important to be able to promptly produce valid documentation of one's status. To that end, it is important to maintain your documentation on your person, in a secure manner, at all times. It is also very important to ensure that appropriate, legal copies of all documents pertaining to your family are in a safe place where they may be accessed to prove status. In addition to maintaining access to documents, families should consider plans for a situation where one of their members is detained. A plan should be made for caring for minor children or fragile elderly family members, care for the family's assets and affairs and other types of situations unique to each family.

Third – Stay Informed: There are a number of organizations which provide up-to-the-minute guidance on the state of affairs in this rapidly-changing area. The American Civil Liberties Union has an accessible and informative link: <https://www.aclu.org/know-your-rights>. It is very important that families stay informed so that they may obtain the best, least disruptive outcomes in the event of enforcement or detention. A brief blog with some more in depth questions and answers for schools and students can be found at: <http://educationvotes.nea.org/2017/02/21/5-questions-educators-asking-ice-raids-supporting-immigrant-youth/>

HELPFUL ORGANIZATIONS

This non-exhaustive list of helpful legal organizations should be a good starting point for locating competent legal immigration counsel.

The Michigan Immigrant Rights Center: mirc@michiganimmigrant.org

MIRC has offices in Ann Arbor and Kalamazoo.

Ann Arbor Office:

Michigan Immigrant Rights Center
220 E. Huron Street, Suite 600A
Ann Arbor, MI 48104
Phone: 734-239-6863
Fax: 734-998-9125

Kalamazoo Office

Michigan Immigrant Rights Center
3030 S. 9th Street, Suite 1B
Kalamazoo, MI 49009
Phone: 269-492-7196
Fax: 269-492-7198

The Catholic Diocese of Grand Rapids:

<http://www.dioceseofgrandrapids.org/ministries/Outreach/Pages/Immigration-Legal-Services.aspx>
213 Sheldon Blvd SE
Grand Rapids, MI 49503
Phone: (616) 551-4746

The American Immigration Lawyers Association

<http://www.ailalawyer.org/>