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March 3, 2025

Re: Federal Immigration Enforcement on School Campuses

Dear Stakeholders,

Since the beginning of the new federal administration, my Office has received questions from school administrators, educators, support staff, parents, and students about the impact of recent changes in federal immigration policy on Arizona schools.

I understand and share Arizonans' concerns about the impact of these policy changes on Arizona schools and communities, and I am committed to safeguarding the rights of all Arizona students to receive a free public education. Moreover, I understand that the confusion caused by these federal policy changes causes great harm. Like many Arizonans, I am concerned that immigration enforcement at or near schools could force families to choose between state law penalties or the risk of civil immigration consequences. *See* A.R.S. § 15-802(E). And immigration enforcement at or near schools would predictably deter students from attending school.

In an effort to help address these concerns, my office has added content to our website, [www.azag.gov/resources-for-schools](http://www.azag.gov/resources-for-schools), which provides general guidance and resources addressing some of the questions we have received.<sup>1</sup> I encourage all stakeholders to visit the website for more information.

Additionally, in this letter, I seek to address one of the most important and frequent questions right now—whether school officials must allow officers enforcing immigration law to enter nonpublic areas of school campuses. As is explained below, the answer to that question will frequently be “no.”

Federal immigration enforcement officers frequently perform their duties by executing administrative arrest warrants issued by the Department of Homeland Security (DHS). These

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<sup>1</sup> My Office cannot “directly or indirectly engage in the private practice of law” by giving legal advice to members of the public. A.R.S. § 41-191(B). Nor should this letter be construed as a formal Attorney General Opinion. *See* A.R.S. § 41-193(A)(7). Stakeholders should direct any questions about the commentary in this letter and on the website to their attorneys.

administrative warrants differ substantially from judicial warrants and court orders. School officials must comply with judicial warrants and court orders, and must cooperate with law enforcement directives in exigent circumstances. However, a DHS-issued administrative arrest warrant does not require a school to grant access to nonpublic areas of school campuses. This is based on longstanding federal policy and law, and is consistent with guidance issued by many other states.<sup>2</sup>

## **I. Background.**

### **A. Education is a fundamental right for all Arizona residents.**

Arizona’s Constitution establishes “education as a fundamental right of pupils between the ages of six and twenty-one years.” *Shofstall v. Hollins*, 110 Ariz. 88, 90 (1973); *see also* Ariz. Const. art. XI, §§ 1, 6 (requiring a “general and uniform public school system” including kindergarten through university education). The United States Constitution prohibits denying “a discrete group of innocent children the free public education” offered to other children solely because of their immigration status. *Plyler v. Doe*, 457 U.S. 202, 230 (1982); Ariz. Const. art. II, § 13 (providing similar equal protection guarantee).

In addition, “Title VI of the Civil Rights Act of 1964 forbids race, color, and national origin discrimination in federally funded programs or activities,” including schools. *Cummings v. Premier Rehab Keller, P.L.L.C.*, 596 U.S. 212, 218 (2022). It protects students when they are registering for school and when they are in the classroom. *See* 34 C.F.R. § 100.3(b)(2). Arizona law reflects these requirements, while also requiring that school-aged children and youth attend school, regardless of their citizenship status. *See* A.R.S. §§ 15-802, 15-803; *see also id.* § 15-802(B)(1) (requiring only proof of Arizona residency, not citizenship, for registration).

### **B. Arizona schools have a duty to keep students safe, and law enforcement agencies are important partners for schools.**

“[E]ducation is perhaps the most important function of state and local governments.” *Brown v. Bd. of Educ.*, 347 U.S. 483, 493 (1954). To implement that core function, Arizona law

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<sup>2</sup> *See, e.g.*, Cal. Att’y Gen. Rob Bonta, *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* 25 (Dec. 2025), <https://oag.ca.gov/sites/all/files/agweb/pdfs/bcj/school-guidance-model-k12.pdf>; Mass. Att’y Gen. Andrea Joy Campbell, *Attorney General Guidance: General Information for Massachusetts Service Providers Regarding Immigration Enforcement* 2 (Feb. 7, 2025), <https://www.mass.gov/doc/ago-service-providers-immigration-guidance-02072025/download>; *School-Related State and Federal Requirements Pertaining to Immigrant Students and Families*, N.J. Dep’t of Educ. (last visited Mar. 3, 2025), <https://nj.gov/education/security/studentrights/index.shtml>; N.Y. State Att’y Gen. Letitia James, *New York state guidance on safeguarding the rights of immigrant students* 3 (Jan. 2025), <https://ag.ny.gov/sites/default/files/2025-01/2025.1-oag-go-sed-immigration-students.pdf>; N.M. Dep’t of Just., *Ensuring a Safe and Secure Learning Environment for All* 4 (last visited Mar. 3, 2025), <https://nmdoj.gov/wp-content/uploads/Guidances-for-Primary-and-Secondary-Schools.pdf>.

requires that school districts ensure their campuses are physically safe and conducive to education. See A.R.S. §§ 15-341(A), 15-342; see also *Dinsmoor v. City of Phoenix*, 251 Ariz. 370, 373–74 ¶ 15 (2021) (describing schools’ duty to protect against unreasonable harm). That often means restricting access to nonpublic areas of campus.

Of course, law enforcement officers have an important role in ensuring the safety of school campuses and protecting their educational functions. For instance, the Arizona Department of Education uses the school safety program to “promote and enhance safe and effective learning environments” by supplying funds for school resource officers. A.R.S. § 15-154(A). “[S]chool resource officers are authorized,” for example, “to respond to situations that present the imminent danger of bodily harm.” A.R.S. § 15-105(E). And law enforcement officers preserve schools’ educational missions by enforcing criminal laws on school campuses.

There is an important distinction, however, between the enforcement of criminal laws and the enforcement of immigration laws, which are mostly civil in nature. “[M]ere unauthorized presence in the United States is not a crime.” *Melendres v. Arpaio*, 695 F.3d 990, 1000 (9th Cir. 2012). And also, importantly, all students “retain an expectation of privacy when they enter the school grounds.” *B.C. v. Plumas Unified Sch. Dist.*, 192 F.3d 1260, 1267 (9th Cir. 1999).

### **C. Recent changes to federal immigration policy raise questions about immigration enforcement at schools.**

Since at least 1993, the federal government has directed law enforcement to “attempt to avoid apprehension of persons and to tightly control investigative operations on the premises of schools.”<sup>3</sup> DHS reinforced that general practice in a 2021 memorandum, directing that Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) officers and employees “[t]o the fullest extent possible ... should not take an enforcement action in or near a location that would restrain people’s access to essential services or engagement in essential activities,” recognizing the detrimental impact that “an enforcement action would have on people’s willingness to be in” a “pre-school, primary or secondary school, vocational or trade school, or college or university.”<sup>4</sup>

On January 20, 2025, Acting DHS Secretary Benjamine Huffman rescinded “guidelines for [ICE] and [CBP] enforcement actions ... in or near so-called ‘sensitive’ areas,” including schools.<sup>5</sup> This 2025 directive “supersede[d] and rescind[ed]” the 2021 memorandum, stating that law enforcement officers should use “a healthy dose of common sense” and “discretion to

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<sup>3</sup> Memorandum from James A. Puleo, Acting Assoc. Comm’r, INS, *Enforcement Activities at Schools, Places of Worship, or at funerals or other religious ceremonies* 1 (May 17, 1993).

<sup>4</sup> Memorandum from Alejandro N. Mayorkas, Sec’y, DHS, *Guidelines for Enforcement Actions in or Near Protected Areas* 2 (Oct. 27, 2021).

<sup>5</sup> Dep’t of Homeland Sec., *Statement from a DHS Spokesperson on Directives Expanding Law Enforcement and Ending the Abuse of Humanitarian Parole* (Jan. 21, 2025), <https://www.dhs.gov/news/2025/01/21/statement-dhs-spokesperson-directives-expanding-law-enforcement-and-ending-abuse>.

balance ... the degree to which any law enforcement action occurs in a sensitive location.”<sup>6</sup> A subsequent directive gives ICE Assistant Field Office Directors and Assistant Special Agents in Charge the “responsibility for making case-by-case determinations regarding whether, where, and when to conduct an immigration enforcement action in or near a protected area.”<sup>7</sup>

The January 20, 2025 change has caused confusion around the country, including in Arizona.

## **II. DHS-issued arrest warrants alone do not permit officials enforcing civil immigration law a right to access school areas where there is a reasonable expectation of privacy.**

Longstanding principles of law make clear that civil administrative arrest warrants—like the ones used by DHS for immigration enforcement—do not require school officials to provide immigration officials access to nonpublic areas of schools.

For starters, it is important to remember that most federal immigration enforcement is civil, not criminal: “mere unauthorized presence in the United States is not a crime.” *Melendres*, 695 F.3d at 1000.<sup>8</sup> Although federal law enforcement officers may make arrests pursuant to a warrant for these civil violations, *see Gonzalez v. United States Immigr. & Customs Enf’t*, 975 F.3d 788, 825 (9th Cir. 2020), this authority is distinct from law enforcement officers’ criminal enforcement duties in important respects.

Unlike with a judicial warrant or court order, a civil arrest warrant under 8 U.S.C. § 1226 or 8 C.F.R. § 241.2(a) is issued by a DHS official and not by a “neutral and detached magistrate.” *See United States v. U.S. Dist. Ct.*, 407 U.S. 297, 317 (1972) (immigration officials are not “neutral and detached magistrates,” as contemplated by the Fourth Amendment). As a result, executive-issued administrative warrants do not “adhere[ ] to judicial processes” and cannot thereby authorize officers’ entry to a space where there is a reasonable expectation of privacy. *Katz v. United States*, 389 U.S. 347, 357 (1967) (cleaned up); *see also City of Los Angeles v. Patel*, 576 U.S. 409, 421 (2015) (holding that “for an administrative search to be constitutional, the subject of the search must be afforded an opportunity to obtain precompliance review before a neutral decisionmaker”).

These basic Fourth Amendment principles are not controversial. Indeed, DHS has long recognized that its warrants do not grant “the same authority to enter dwellings as a judicially approved search or arrest warrant.”<sup>9</sup> And this reasoning is not limited to dwellings. DHS’s

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<sup>6</sup> Memorandum from Benjamine C. Huffman, Acting Sec’y, DHS, *Enforcement Actions in or Near Protected Areas* (Jan. 20, 2025) (“2025 Rescission”).

<sup>7</sup> Memorandum from Caleb Vitello, Acting Dir., ICE, *Common Sense Enforcement Actions in or Near Protected Areas* (Jan. 31, 2025).

<sup>8</sup> *See also Arizona v. United States*, 567 U.S. 387, 407 (2012) (“As a general rule, it is not a crime for a removable alien to remain present in the United States.”). Removal proceedings are “purely civil action[s] to determine eligibility to remain in this country, not to punish an unlawful entry.” *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984).

<sup>9</sup> Letter from DHS Sec’y Michael Chertoff to Sen. Christopher J. Dodd (June 14, 2007),

manuals have clearly stated that its warrants do not authorize entry into a “residence *or anywhere else affording a reasonable expectation of privacy.*”<sup>10</sup> Although DHS officials may issue valid arrest warrants for civil immigration enforcement, they must obtain a judicial warrant or court order to access spaces where there is a reasonable expectation of privacy, absent exigent circumstances or consent. And it has long been clear that students “retain an expectation of privacy when they enter the school grounds.” *B.C.*, 192 F.3d at 1267.

### **III. Arizona law reinforces that administrative warrants should not provide a special right of access to nonpublic areas of school campuses.**

As a result, it is this Office’s view that—under federal law—DHS administrative warrants do not authorize entry to nonpublic areas of schools. And thus, school officials need not permit entry to those areas based on an administrative warrant alone. Although no “official or agency” may “limit or restrict the enforcement of federal immigration laws to less than the full extent permitted by federal law,” there is no requirement that schools assist execution of a DHS-issued arrest warrant. *See* A.R.S. § 11-1051(A).

Arizona law reinforces this conclusion. As is noted above, Arizona’s Constitution establishes “education as a fundamental right of pupils between the ages of six and twenty-one years.” *Shofstall*, 110 Ariz. at 90. On a more granular level, providing immigration enforcement officials access to campuses to enforce civil immigration laws could also have a “restraining impact” inconsistent with laws preserving maintenance and order on campus. *See* Mayorkas, *supra*, note 4, at 3. For instance, Arizona law requires rules and enforcement mechanisms for “the maintenance of public order on all property of any educational institution.” A.R.S. § 13-2911(D); *see also id.* § 15-341(A) (listing requirements related to “disorderly conduct,” “adequate supervision,” reporting to law enforcement, emergency response plans); *id.* § 15-342 (listing governing boards’ powers to address similar concerns). It prohibits certain disruptions of the “normal operations of an educational institution.” *Id.* § 13-2911(A)(1), (C). And it prevents presence in certain circumstances at a school without a “specific legitimate reason for being there” or “written permission.” *Id.* § 13-2905(A)(4).

Additionally, Arizona law outlines the circumstances in which law enforcement officers may take students into custody, which grants the “right of immediate access to a student.” Ariz. Att’y Gen. Op. I04-003 at 2 (2004). But enforcing civil immigration law typically does not involve any of the circumstances detailed in Arizona law, such as “an order of the juvenile court,” “a warrant issued according to the laws of arrest,” “a delinquent act,” a criminal act, incorrigibility, runaway status, or for the child’s protection. *See* A.R.S. §§ 8-303, 8-304, 8-821.

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<https://www.scribd.com/document/22093146/Michael-Chertoff-Letter-to-Senator-Christopher-June-14-2007>; *see also* Cong. Rsch. Serv., *Immigration Arrests in the Interior of the United States: A Primer* (Nov. 30, 2021) (“Unlike *judicial* warrants, ICE warrants are purely administrative, as they are neither reviewed nor issued by a judge or magistrate, and therefore do not confer the same authority as judicially approved arrest warrants.”), <https://crsreports.congress.gov/product/pdf/LSB/LSB10362>.

<sup>10</sup> DHS Enf’t & Removal Operations, *Fugitive Operations Handbook* at 16 (Feb. 23, 2010) (emphasis added), [https://www.ice.gov/doclib/foia/policy/handbookFugOps\\_07.03.2010.pdf](https://www.ice.gov/doclib/foia/policy/handbookFugOps_07.03.2010.pdf).

And even when complying with law enforcement requests, schools must exercise reasonable care and “strive to strike the appropriate balance” between their interests and the aims of law enforcement. Ariz. Att’y Gen. Op. I04-003 at 4; Ariz. Att’y Gen. Op. I82-094 at 1 (1982). As a result, Arizona law does not permit officers possessing a DHS-issued arrest warrant a right of access to students any greater than that given to law enforcement officers with no warrant at all.<sup>11</sup>

In contrast, there are persuasive arguments that schools’ duty to protect students “against the unauthorized or illegal removal of students while on school grounds” encompasses not granting access to students solely because an officer possesses a DHS-issued arrest warrant. Ariz. Att’y Gen. Op. I82-094 at 1. This well-established duty requires protection against risks “that occur while the student is at school or otherwise under the school’s control.” *Dinsmoor*, 251 Ariz. at 374 ¶ 17 (citation omitted); *see also, e.g.*, A.R.S. § 15-341(A)(16) (requiring “adequate supervision over pupils”). It includes a general prohibition on taking from lawful custody any child “entrusted by authority of law to the custody of another person or institution.” A.R.S. § 13-1302(A); *see also* A.R.S. § 1-602 (parents’ bill of rights, providing that “[a]ll parental rights are exclusively reserved to a parent of a minor child without obstruction or interference from this state, any political subdivision of this state, any other governmental entity or any other institution”).

In sum, schools are not obligated to permit entry when presented with a DHS administrative warrant if they would not otherwise permit entry to a state or local official in similar circumstances. Unlike a judicial warrant or court order, a DHS administrative warrant provides no special right of access to nonpublic areas of schools.

#### **IV. There are serious questions about the validity of the 2025 Rescission.**

The above analysis does not depend on the recent change in federal policy—with or without that change, DHS administrative warrants do not require school officials to permit entry to nonpublic areas of campus. However, it is worth noting briefly that there are serious questions about the validity of the recent policy change.

Among other potential problems, the recent rescission may violate the Administrative Procedure Act (APA), which prohibits agency action that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). When changing its position, an agency “must examine the relevant data and articulate a satisfactory explanation for its action.” *Motor Vehicle Mfrs. Ass’n v. State Farm Mut. Auto Ins. Co.*, 463 U.S. 29, 43 (1983).

Here, where the rescission was issued immediately after the new administration took office and was not accompanied by any detailed reasoning, very good arguments exist that DHS has failed to consider “important aspect[s] of the problem,” *id.*, and has failed to “provide

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<sup>11</sup> To be sure, there are sometimes “special needs” on school campuses that “make the warrant and probable-cause requirement impracticable.” *Vernonia Sch. Dist. 47J v. Acton*, 515 U.S. 646, 654 (1995). But those “special needs” are typically in the context of criminal violations or other violations of school rules. *See, e.g., id.* at 343-44 (cigarettes and marijuana); *Bd. of Educ. v. Earls*, 536 U.S. 822, 830 (2002) (drug testing).

reasoned explanation for its action,” *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009). Among other things, DHS does not appear to have adequately considered:

- How federal civil immigration enforcement at schools will undermine States’ sovereign interests and obligations to educate all children;
- How the threat of civil immigration enforcement will likely deter students from attending school, thus interfering with a fundamental right;
- Whether the 2025 Rescission will interfere with the right to family integrity; and
- Whether the 2025 Rescission runs afoul of the Tenth Amendment.

Thus, it should be no surprise that lawsuits have already been filed challenging the rescission under the APA. *See, e.g., Phila. Yearly Meetings of the Religious Soc’y of Friends v. U.S. Dep’t of Homeland Sec.*, No. 8:25-cv-00243 (D. Md.); *Denver Pub. Schs. v. Noem*, No. 1:25-cv-00474 (D. Colo.); *Mennonite Church USA v. U.S. Dep’t of Homeland Sec.*, No. 1:25-cv-00403 (D.D.C.).

### **Conclusion**

The recent change in federal policy has caused confusion and understandable concern about a wide array of legal issues. Districts should proactively plan for how to respond to the possibility of federal immigration enforcement. And they should clearly communicate those plans to students and parents. Confusion itself can cause great harm—leading to fear and changes in behavior, such as not attending school. Schools can take immediate steps to alleviate that confusion by communicating clear policies to students and parents. I hope my analysis above and the content I include on my website will help further those efforts.

Sincerely,



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