



Guidance for Immigrant Communities in Minnesota

As federal Immigration and Customs Enforcement (ICE) agents have recently increased activities in Minnesota, Attorney General Ellison provides the following guidance on law enforcement's interactions with immigrant communities in Minnesota. This guidance provides information about Minnesota law and summarizes several formal opinions issued by Attorney General Ellison.

I. STATE AND LOCAL OFFICIALS CANNOT ARREST OR DETAIN A PERSON SOLELY BASED ON AN IMMIGRATION DETAINER

Whether a person may be subject to deportation or removal from the United States is a matter of federal civil immigration law, not criminal law. An immigration detainer is a request from ICE to hold someone who is already in jail or prison for up to 48 hours beyond the time they would otherwise be released so federal immigration officers may assume custody.¹ On February 6, 2025, Attorney General Ellison issued an [opinion](#) that Minnesota law prohibits state and local enforcement agencies from holding someone based on an immigration detainer if the person would otherwise be released from custody.

As an initial matter, a detainer is a request, not a command.² And under the Tenth Amendment of the United States Constitution, the federal government cannot "commandeer" state and local officials to enforce federal regulatory programs.³ Minnesota law also states that continued detention after a person should otherwise be released from custody is a new arrest that requires probable cause or a judicial warrant.⁴ Immigration detainees, including administrative warrants, however, are not judicial warrants signed by a state or federal judge. Instead, an administrative warrant is signed by a federal immigration official (not a judge) and is addressed to federal immigration officers for execution. Moreover, simply being a removable immigrant present in the United States is not a crime.⁵

In his [opinion](#), Attorney General Ellison discusses Minnesota's civil and criminal arrest statutes and explains that none of the statutes authorize state and local officials to carry out civil immigration arrests.⁶ Nor does federal law authorize state and local officials to carry out such

¹ 8 C.F.R. § 287.7.

² See 8 C.F.R. § 287.7(a).

³ *Murphy v. NCAA*, 584 U.S. 453, 470-73 (2018).

⁴ *Esparza v. Nobles County*, A18-2011, 2019 WL 4594512 (Minn. Ct. App. Sept. 23, 2019).

⁵ *Arizona v. United States*, 567 U.S. 387, 407 (2012).

⁶ Feb. 6, 2025 Op. at 5-7.

arrests.⁷ While county boards of commissioners can approve cooperative agreements between local law enforcement and ICE (sheriffs cannot enter into such agreements unilaterally), Attorney General Ellison issued a separate opinion explaining that such agreements cannot authorize state and local officials to arrest or detain someone solely based on an immigration detainer.⁸

Attorney General Ellison provided guidance on ICE enforcement in sensitive locations. The guidance explains that ICE cannot enter an organization's non-public spaces without permission from the organization or a judicial warrant signed by a judge. Attorney General Ellison has also issued guidance specifically on ICE activities in public schools, emphasizing the importance of student privacy and the right to an education. In public spaces, however, ICE can stop individuals for brief questioning about immigration status if ICE has reasonable suspicion that the individual is not present in the United States legally.

II. ICE OFFICERS CAN BE SUBJECT TO STATE PROSECUTION FOR VIOLATIONS OF STATE LAW

Some members of the Trump administration have suggested that ICE officers have absolute immunity from criminal prosecution. That is false. First, both the present and future federal administrations, subject to statutes of limitations, can prosecute federal officials for violations of federal law. ICE and other federal officers can also be subject to state criminal prosecution for their conduct in certain circumstances.

In a nearly 140-year-old opinion, *In re Neagle*, the United States Supreme Court explained that the Supremacy Clause of the United States Constitution could provide federal officials immunity from state criminal prosecution only if the official's actions were authorized under federal law and the official "did no more than what was necessary and proper for him to do."⁹ Courts have generally interpreted this second requirement to include both a subjective and objective element.¹⁰ In other words, to gain federal immunity, the officer must have had a subjectively honest and reasonable belief that what they did was necessary to perform their duties *and* their conduct must have been objectively reasonable under the existing circumstances. Courts across the country have found federal officials subject to state criminal prosecution when their conduct was not within the scope of their authority or was unreasonable.¹¹ Accordingly, ICE officers do not have blanket immunity but instead can be subject to state criminal prosecution under certain circumstances.

III. MINNESOTANS DO NOT NEED TO PROVE IMMIGRATION STATUS TO OBTAIN A DRIVER'S LICENSE AND MINNESOTA LAW PROTECTS AN APPLICANT'S PRIVACY

All Minnesota residents may apply for a driver's license without an immigration status inquiry, and Minnesota law provides additional protections for driver's license data specifically as it relates to immigration enforcement. If you believe your data has been misused or improperly disclosed, please contact our office for assistance.

⁷ See *id.* at 7-8.

⁸ Dec. 12, 2025 Op. at 4-8.

⁹ 135 U.S. 1, 75 (1890).

¹⁰ *Clifton v. Cox*, 549 F.2d 722, 728 (9th Cir. 1977); *Kentucky v. Long*, 837 F.2d 727, 744-45 (6th Cir. 1988).

¹¹ See, e.g., *United States ex rel. Drury v. Lewis*, 200 U.S. 1, 6-8 (1906); *Arizona v. Files*, 36 F.Supp.3d 873, 883-885 (D. Az. 2014); *Battle v. State*, 258 A.3d 1009, 1021-1027 (Md. App. 2021).

1. The driver's license application process does not involve immigration status

Minnesota allows residents to apply for a driver's license without proof of immigration status through its Driver's License for All law.¹² This law, passed in 2023, expanded the acceptable types of documentation required to get a Minnesota standard or "noncompliant" (not a REAL ID) driver's license, making it easier to obtain a driver's license.

Standard driver's licenses may be obtained through the Department of Public Safety's Driver and Vehicle Services Division ("DVS"). Only two documents are necessary, with at least one including the resident's full name and date of birth.¹³ Residents must also submit their home address within Minnesota, or a designated address as allowed by law.¹⁴ Acceptable documents may be provided without disclosing immigration status at all. In fact, DVS is prohibited from asking about immigration status.¹⁵ Driver's license application forms may not identify the specific documents used to demonstrate identity, or any other information that would indicate citizenship, immigration status, or whether the applicant is lawfully present in Minnesota.¹⁶ This law assists residents regardless of immigration status in obtaining auto insurance for their vehicles, as required by Minnesota law,¹⁷ and encourages all driving residents to get a license, making Minnesota roads safer.

2. Minnesota law protects a driver's license applicant's privacy, including immigration status

Minnesota law protects driver's license applicants' data that is collected and retained by the State. The Commissioner of Public Safety must establish procedures to ensure that access to all not public data collected, created, or maintained by DVS is only available to necessary individuals.¹⁸

Both state and federal law restrict the release of DVS data. Federal law permits the release of DVS data only to certain entities for certain purposes.¹⁹ Minnesota law includes the federal restrictions and also provides additional restrictions around the sharing of DVS data related to noncompliant driver's licenses or identification cards.²⁰ Importantly, Minnesota law prohibits the Commissioner of Public Safety from sharing any data regarding noncompliant driver's licenses and identification cards with entities that primarily enforce immigration law unless there is a valid search warrant or court order signed by a judge.²¹ Additionally, data that indicates or could show a person's immigration status may not be shared with any law enforcement entities, state or

¹² Full session law available at <https://www.revisor.mn.gov/bills/93/2023/0/HF/4/versions/4/>; Driver's License for All information page available at <https://dps.mn.gov/divisions/dvs/license-and-id/dl-all>.

¹³ Minn. Stat. § 171.06, subd. 3.

¹⁴ *Id.*; Minn. Stat. § 5B.05.

¹⁵ Minn. Stat. § 171.06, subd. 3.

¹⁶ *Id.*

¹⁷ Minn. Stat. § 169.791, subd. 2; Minn. Stat. § 169.797.

¹⁸ Minn. Stat. 171.12, subd. 1a.

¹⁹ 18 U.S.C. 2721.

²⁰ Minn. Stat. 171.12, subds. 7(a), 7b, 11.

²¹ Minn. Stat. § 171.12, subds. 7b, 11(d).

federal.²² Data regarding noncompliant driver's licenses and identification cards that are not immigration status data may be shared with non-immigration law enforcement or other entities only if that entity will not use the data for civil immigration enforcement or share the information with another entity that will.²³ Circumstances in which data that is not immigration status data may be shared include where the data will be used in relation to the operation of a motor vehicle, in relation to public safety actions or investigations, or to increase voter registration by disclosure to the secretary of state.²⁴

All driver's license and identification card applicants can also request that their residential address be classified as not public data under the Minnesota Government Data Practices Act.²⁵ If data is to be shared, any data requestor must first certify that it will not use the data for civil immigration enforcement purposes or disclose it to any state or federal entity that primarily enforces immigration.²⁶ Civil and/or criminal penalties may apply if this provision is violated.²⁷

Separately, but relatedly, the disclosure of race and ethnicity data provided to DVS under an application for a license, permit, or identification card is protected under the Minnesota Government Data Practices Act. Disclosure of such data is limited to the Traffic Safety Office, also within the Department of Public Safety, for the purposes of research, evaluation, and public reports.²⁸

IV. MINNESOTA LAW REQUIRES STATE AND LOCAL LAW ENFORCEMENT TO PROCESS U AND T VISA CERTIFICATION REQUESTS

The relationship between law enforcement agencies and the communities they serve plays a vital role in keeping communities safe. The most effective law enforcement efforts result from relationships built on trust that victims and bystanders who report crimes will not face negative personal consequences as a result of making the report. The U²⁹ and T³⁰ visa programs are an important tool to keep crime in check. By providing a pathway to remain in the United States, T and U visas encourage noncitizens who might otherwise remain silent to contact local law enforcement if they have been the victim of a crime. The U and T visa programs assist law enforcement in investigations, prosecutions, and more, holding those who commit crimes in our community accountable for their actions.

U and T visas are created by federal law and granted by the federal government. U visas are visas provided by the federal government to victims of qualifying criminal activity to encourage and facilitate cooperation in criminal investigations or prosecutions. T visas are provided by the federal government to victims of severe forms of human trafficking, including sex

²² Minn. Stat. § 171.12, subds. 7b, 11(b). Minnesota law only allows immigration status data to be shared within DVS or with the secretary of state for purposes of improving the accuracy of voter registration records. *Id.*

²³ Minn. Stat. 171.12, subd. 11(c); Minn. Stat. § 13.02, subd 7a.

²⁴ Minn. Stat. § 171.12, subd. 7a; 18 U.S.C. 2721.

²⁵ Minn. Stat. § 171.12, subd. 7.

²⁶ *Id.*

²⁷ *Id.*

²⁸ Minn. Stat. § 13.69, subd. 1.

²⁹ https://www.uscis.gov/sites/default/files/document/guides/U_Visa_Law_Enforcement_Resource_Guide.pdf.

³⁰ <https://www.uscis.gov/sites/default/files/document/guides/T-Visa-Law-Enforcement-Resource-Guide.pdf>.

trafficking and labor trafficking. U.S. Citizenship and Immigration Services is the agency within the federal government responsible for reviewing U and T visa applications.

An important part of both the U³¹ and T³² visa application process is the law enforcement certification form. These forms allow state and local law enforcement agencies to certify that the applicant has been the victim of a qualifying crime or human trafficking and has assisted with all reasonable requests from law enforcement. While completion of the law enforcement certification form does not guarantee an applicant's eligibility for a U or T visa, state and local law enforcement agencies can play an important role by completing U and T visa certification requests.

In 2021, Minnesota passed a law that improves the process for victims in Minnesota who request a certification form from state or local law enforcement. process U and T visas certification requests within 90 days of receiving the request, or 14 days if the survivor is already in removal proceedings.³³ If the victim made a report to law enforcement and cooperated with all reasonable requests for assistance, there is no requirement that there be an active investigation, that charges be filed, that there is a prosecution, or that there is a conviction, in order to obtain the certification.³⁴

1. U Visas

In 2000, Congress passed the Victims of Trafficking and Violence Protection Act (VTVPA)³⁵ and created the U visa program to encourage immigrants who were survivors of criminal activity to report it to law enforcement rather than remaining silent for fear of deportation. A survivor of certain serious crimes that were committed in the U.S. or its territories³⁶ may be eligible if they assist law enforcement in the investigation or prosecution of the crime.³⁷ U visa holders can live and work in the U.S. for a period of time up to four years, and U visas may be extended in certain circumstances. U visa holders have a pathway to legal permanent residence, and if desired, citizenship.³⁸ Certain close relatives of the U visa applicant may also apply for a U visa.³⁹

In order for an applicant to qualify for a U visa, law enforcement has to assist by completing a certification form attesting that the applicant is the victim of a qualifying criminal activity and has cooperated with reasonable requests for assistance from law enforcement.⁴⁰

2. T Visas

³¹ <https://www.uscis.gov/sites/default/files/document/forms/i-918supb.pdf>.

³² <https://www.uscis.gov/sites/default/files/document/forms/i-914supb.pdf>.

³³ Minn. Stat. § 611A.95, subd. 2(b).

³⁴ *Id.* at 2(c).

³⁵ 8 U.S.C. § 1101 et seq.

³⁶ Certain laws provide for jurisdiction for crimes outside of the U.S. and its territories.

³⁷ 8 U.S.C. §§ 1101(a)(15)(U)(i), § 1184(p).

³⁸ 8 U.S.C. §§ 1184(p), 1255, 1427.

³⁹ 8 U.S.C. § 1101(a)(15) (U)(ii).

⁴⁰ 8 U.S.C. § 1184(p).

Also in the VTVPA, Congress created the T visa to encourage victims of human trafficking to come forward and report crimes to law enforcement. To qualify for a T visa, an applicant must be the victim of a severe form of human trafficking and have cooperated with all reasonable requests for assistance from law enforcement.⁴¹ T visa applicants also have the option of applying for T visas for certain close relatives.⁴¹ While a certification form from law enforcement is not necessary to establish eligibility for a T visa, state and local law enforcement continue to play an important role by completing certification requests on behalf of applicants. If approved, T visa holders may live and work in the United States for a period up to four years, which may be extended in certain situations.⁴² As with U visas, T visa holders may seek permanent legal resident status, and if desired, citizenship.⁴³

3. Minnesota Law Limits Disclosure of Information Related to U and T Visa Certification Requests

Besides the requirement to be responsive to requests for certifications and comply with deadlines for the same, Minnesota law also requires that law enforcement provide outreach to inform survivors of crimes about their ability to seek a U or T visa and the law enforcement certification process.⁴⁴ Law enforcement is also required to record all certification requests and responses under this law.⁴⁵ Further, to ensure that survivors who do not speak English are still served, the law requires state and local law enforcement agencies to implement a language access protocol for all non-English-speaking victims of criminal activity.⁴⁶ Law enforcement also prohibited from providing the immigration status of a victim of criminal activity, except as required by federal law or a legal process, unless the victim authorizes it.⁴⁷ U and T visas are a specialized area of law. Immigrants are encouraged to meet with a qualified immigration attorney regarding any U or T visa matters.

V. CONCLUSION

Minnesota law limits the authority of state and local law enforcement to enforce federal immigration law. Federal immigration officials can also be subject to state criminal prosecution under certain circumstances. Minnesota law also provides protections for immigrants seeking driver's licenses and visas.

⁴¹ 8 U.S.C. §§ 1101(a)(15) (T)(ii); 1184(o).

⁴² 8 U.S.C. § 1184(o).

⁴³ 8 U.S.C. §§ 1184(o), 1255, 1427.

⁴⁴ Minn. Stat. § 611A.95, subd. 3.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ Minn. Stat. § 611A.95, subd. 4.