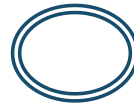


# Staying Legal for Nonprofits



**ALLEN MATTISON**  
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# Today's Agenda

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Overview of Trump Executive Orders and Other  
Actions to Date

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Government Investigations

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Steps for Safeguarding Your Organizations

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Detailed Look at Key Risk Areas

# Trump Executive Actions



- Federal Grant Freeze
  - Tied to NGOs, DEI, “woke gender ideology” and Green New Deal
  - EPA/FBI shut down \$20B in grants for home energy efficiency
- “Ending Illegal Discrimination and Restoring Merit-Based Opportunity,” EO 14173
  - Targets “large non-profit corporations,” large foundations, universities with endowments over \$1B
- “Ending Radical and Wasteful Government DEI Programs and Preferencing, EO 14151
  - Targets environmental justice

# Other Trump Actions



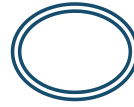
- Attacks on law firms
  - Paul Weiss, Skadden and others capitulated
  - Perkins Coie and others fought back – and won
- Attempts to control universities
  - Columbia submitted
  - Harvard fought back – and Trump threatened its tax exemption
- Presidential memo to Attorney General to investigate illegal use of federal grant funds for lobbying – Aug. 28, 2025
  - It's already illegal

# Identity-Based Activities



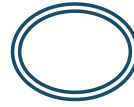
- *Students for Fair Admissions* (2023)
  - Supreme Court case that struck down consideration of race in college admissions.
- *Fearless Fund*
  - Lawsuit filed against Fearless Fund and Fearless Foundation regarding program that awarded grants of \$20,000 to Black-women-owned small businesses. Case settled.
- Department of Justice Memorandum, July 29, 2025
  - Aims to stamp out “discrimination based on protected characteristics.”
  - Federally funded entities cannot use “unlawful proxies” – e.g., “cultural competence,” “lived experience,” or “cross-cultural skills” to evaluate candidates based on race or ethnicity.

# Identity-Based Activities

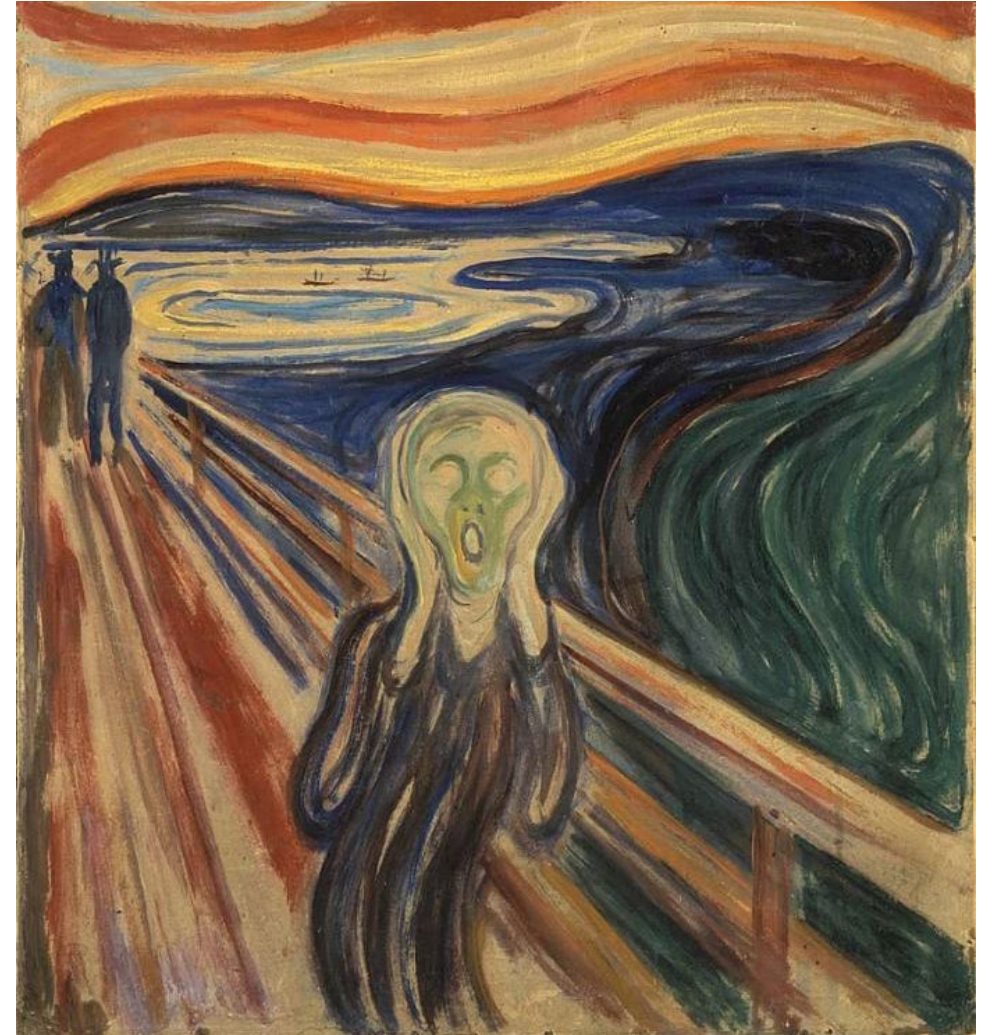


- Focus grant-making on outcomes and results:
  - What is the charitable/educational 501(c)(3) purpose of the activity?
  - Rely on data to show need (e.g., disparities in outcomes for Black maternal mortality)
  - Target recruitment and focus proposal evaluation on measurable qualifications (e.g., past success on the issue or analogous issues)

# Chaos & Confusion is the Point



- Vague standards in court cases
- Indefensible, clearly unconstitutional Trump Administration orders
- Philanthropy halting programs when doing so may not be necessary



# Steps to Safeguard Organizations



- Evaluate risks
- Identify goals
- Communicate risk tolerance
- Implement procedures to balance risk mitigation with mission focus

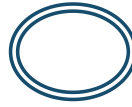


# Government Investigations



- Sources include:
  - Congressional committees
  - Federal agencies (ex. Dept. of Justice, Federal Election Commission)
  - State legislatures
  - State attorneys general
- All have different rules; often we have only limited ability to fight them
- May involve document requests, interviews, depositions, or public testimony
- Call your lawyer at first word of an investigation before responding

# IRS Audits



- Risks of targeted enforcement
- But that's combined with IRS staffing issues
- Audit triggers include:
  - Complaint filed with IRS
  - Something an agent finds on their own
  - Algorithm identifies discrepancies in 990s or other forms
  - IRS program that adopts criteria for audit

# IRS Audits



- Process
  - Request to produce documents – call your lawyer *first* and negotiate this
  - Interviews, examination of documents, possibly repeat
- Potential outcomes
  - Nothing
  - Recommendation to amend Form 990 or for compliance improvements
  - Advisory letter w/ later IRS follow-up to confirm compliance
  - Imposition of taxes
  - Reclassification of tax-exempt status
  - Loss of tax-exempt status



# IRS Audits

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Examine Board's practice of keeping minutes and adequate corporate and financial separation of entities.

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Review grants and contracts for "template creep."

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Train staff on key issues: Lobbying, election activity, time-keeping, responding to requests for 990s and exemption applications.



## Compliance With State & Local Law

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Confirm appropriate state registrations – business registrations, charitable registrations, state lobbyist registrations, ballot measure spending.

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Prepare state and local tracking documents to ensure all registrations and reports stay up-to-date.

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Train staff on key issues: lobbying and ballot measure registration and reporting triggers, time and expense tracking, etc.



# Internal Controls

Check your mail at least three times per week; limit key-holders.

Review every monthly bank statement – small print on most accounts gives you 60 days to report fraud.

Implement two-factor authentication on bank accounts.

Review account signatories and password holders every three to six months.

Background checks on financial staff and vendors, canvassers, and anyone who interacts with minors.

Separate roles for bill processor, bill approver, and outside accountant reviewing bank accounts.



## Governance, Liability & Security

Review Bylaws and key corporate policies. Address unfilled officer or board positions.

Review and implement document retention policy.

Check insurance coverage. Ensure grants and high-risk activities are covered.

Set emergency plan(s). Ensure security of physical space and staff, and electronic information.

Plan any civil disobedience carefully and strategically.

Train staff on key issues, including awareness of infiltration as tactic by hostile parties.



# Employment Law

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Review Form I-9 practices and identify areas for improvement.

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Review current independent contractor classifications under federal and state law.

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Review stipends or other payments made to volunteers and interns to avoid misclassification.





## Protecting Staff & Handling Warrants

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Call your lawyer immediately; meet law enforcement outside your office.

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Ask to see their identification and their warrant/subpoena.

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Tell them you want to schedule a meeting when your lawyer is able to attend.

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Record your interaction.

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Understand the difference between a judicial warrant and an administrative warrant.

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Ensure agents operate only within the bounds of their judicial warrant: Time, location, specified documents.

# Protecting Staff & Handling Warrants

## JUDICIAL SUBPOENAS v. IMMIGRATION SUBPOENAS

AD-108B (Rev. 03/14) 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.  
Defendant

Civil Action No.

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 specified 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

Signature of Clerk or Deputy Clerk

Signature of Attorney

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

person who issues or requests this subpoena of documents, electronically stored information, or tangible things or the and a copy of the subpoena must be served on each party in this case before Fed. R. Civ. P. 45(c)(4).

Is this directed to you?

Does it specify what documents are being sought?

Is it signed by a clerk of court?

IF THE ANSWER TO THESE IS YES, THEN IT IS LIKELY A VALID JUDICIAL SUBPOENA

DEPARTMENT OF HOMELAND SECURITY  
IMMIGRATION ENFORCEMENT  
SUBPOENA  
to Appear and/or Produce Records  
8 U.S.C. § 1225(e), 8 C.F.R. § 201.4

1. To (Name, Address, City, State, Zip Code)  
Manager:  
Hotels.org  
Oakland, California 94601

2. In Reference To  
Immigration filing on behalf of  
(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 law. 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  
Name  
Title Immigration Officer  
Address 00000 430 Jackson Street, 3rd. 1200  
San Francisco, California 94111  
Telephone Number 415-240-0613  
(B) Date 04/26/2017  
(C) Time 0900 (D) AM PM

4. Records required to be produced for inspection  
Please provide a copy of the lease for [redacted] Street, [redacted] in Oakland, California. The lease should include the names of the current occupants. If there are no current occupants, please provide a copy of the lease for the previous occupants.

5. Authorized Official  
(Signature)  
(Printed Name)  
Supervisory Immigration Officer  
(Title)  
04/24/2017  
(Date)

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

DHS Form I-138 (B01)

THESE ARE VISUAL CUES THAT THIS IS AN IMMIGRATION SUBPOENA



[https://www.nilc.org/wp-content/uploads/2025/01/2025-Subpoenas-Warrants\\_.pdf](https://www.nilc.org/wp-content/uploads/2025/01/2025-Subpoenas-Warrants_.pdf)

# Questions?