

TO: Sarah Aughenbaugh and Courteney Roessler
FROM: Anne Quincy, Christian Hokans, and Jessica Webster – staff attorneys with Mid Minnesota Legal Aid
RE: Status Questions at Food Shelves
DATE: June 13, 2017

It is our experience that immigration enforcement actions at food shelves deter documented and undocumented immigrants alike from accessing food and should thus be discouraged. The following are our recommendations for food shelf staff who ask how they can make their organization more welcoming to people of all races, national origins, language abilities, and immigration statuses, as well as whether and how they can help patrons exercise their legal rights.

Legal Aid would be available to answer questions from both food shelf staff and patrons. For staff, we'd prefer they call (612) 332-1441 and explain that they're calling in response to these recommendations. Our receptionists are instructed where to direct their questions. For food shelf patrons or anyone else calling about their individual situation, they can call our intake line (612-334-5970) from anywhere in the state, in any language. Our intake staff is prepared to talk with people calling with concerns about an interaction with immigration officers or local police and to connect them with a benefits attorney and/or our immigration intake. Because of limited resources, requests for immigration assistance may include a referral to other no or low-cost legal help.

Recommendations: (citations to legal authority follow some recommendations)

- Food shelf staff should make clear to patrons and police that access to food shelves is not based on immigration status in any way.
- If Immigration and Customs Enforcement (ICE) or local police show up at a food shelf without an invitation or a warrant and begin asking patrons about their immigration statuses, staff can ask the officers to leave the property. **[B, E]**
- If officers choose to wait off premises to continue questioning patrons as they come and go from the food shelf, staff can advise patrons that they only have to produce identification if the officer tells them they are not free to leave. **[C]**
- Everyone has the right to remain silent in response to police questioning, however, police may require patrons to produce identification during brief investigatory detentions called "Terry stops." Patrons should know that silence is always better than a lie when communicating with the police. Providing a false name or other information to the police may be a crime. **[C]**
- The best way to know if you must identify yourself is to ask the officer "am I free to leave?" Food shelf staff can ask the police this question on a patron's behalf if it appears the patron is having trouble communicating with the police. If the officer says yes, the patron can walk away immediately. If the officer says no, the patron may be required to stay and provide identification. **[C]**
- If food shelf staff observe local police forcing individuals to present I.D. or information about their immigration status and it appears that the only basis the officers had for asking was the person's race, staff can make a racial profiling complaint with their local police department and should contact our office. **[D]**
- When helping food shelf patrons fill out a SNAP application, food shelf staff should assure patrons that all the information contained in those applications will be kept confidential except in the rare circumstance that a court orders its release. **[A]**

Legal analysis supporting these recommendations:

- A. Food shelves get funding from the State to help people apply for SNAP benefits and therefore should follow MDHS’s Notice of Privacy Practices in order to safeguard the confidential information found in those applications. That Notice states that MDHS “will only share information about you as needed and as allowed or required by law.” This language means that food shelf employees should not disclose information about SNAP applicants to law enforcement unless they are presented with a valid court order like a warrant or subpoena.
- B. The 4th Amendment to the U.S. Constitution prohibits unreasonable searches and seizure by law enforcement officers.

The 4th Amendment requires law enforcement to get a warrant based on probable cause to enter private property, including food shelves, without staff consent. *Mapp v. Ohio*, 367 U.S. 643 (1961). There are exceptions to the warrant requirement in emergencies or other limited circumstances. In most cases, however, food shelf staff are within their rights to ask officers who arrive without a warrant to leave.

- C. Minnesota does **not** have a “stop and identify law,” which means police officers cannot randomly stop people and force them to produce identification. In Minnesota, an officer needs to comply with the 4th Amendment’s rules for so-called “*Terry* stops” in order to force a person on the street to produce identification. See *Mikkalson v. City of St. Paul*, Lexis #104735 (U.S. Dist. Minn. Aug. 8, 2016). A *Terry* stop is different from an arrest. It is a brief detention for safety or investigative purposes and it is named after *Terry v. Ohio*, a 1968 Supreme Court decision that established the rules for these stops. The case requires all law enforcement officers to have “reasonable suspicion” before detaining an individual in this way. According to a leading legal treatise, reasonable suspicion means,

“the officer must be able to point to specific and articulable facts, and the officer’s suspicion must be objectively reasonable. A stop is permitted when, under a totality of the circumstances, an officer of reasonable caution would approach. When deciding whether the officer’s stop of a person is justified, “hunches” or unparticularized suspicions are unacceptable. Only specific reasonable inferences that the officer is entitled to draw from the facts are considered reasonable.”

Moore's Federal Practice -- Criminal Procedure § 641.91 (2017).

The legal standard for determining whether an officer was merely asking for voluntary cooperation or making a *Terry* stop is whether “a reasonable person under the circumstances would feel free to leave.” *Florida v. Royer*, 460 U.S. 491 (1983). Often, the only way for people to know if they are being held under *Terry* is to ask the police officer if they are free to leave.

- D. No officer is entitled to draw reasonable suspicion from a person’s race. Detaining someone solely because of his or her race violates the Equal Protection Clause of the

U.S. Constitution and constitutes racial profiling under Minnesota Statute 626.8471. *Puc-Ruiz v. Holder*, 629 F.3d 771 (8th Circ. 2010). People who are the victims of this type of racial profiling may sue the individual officers and their departments who violate these laws.

- E. Finally, in 2012 the Supreme Court held that state police officers cannot arrest individuals based solely on probable cause that they are present in the United States unlawfully. *See Arizona v. United States*, 567 U.S. __ (2012). This means that local police departments cannot take it upon themselves to enforce federal immigration laws without some guidance and cooperation from federal immigration authorities.