



ICE ADMINISTRATIVE SUBPOENAS

By Innovation Law Lab*

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FREQUENTLY ASKED QUESTIONS

1. What is an ICE administrative subpoena?

An ICE administrative subpoena is a request from any immigration officer for documents or testimony from any person or witness for the purpose of enforcing federal immigration law. It is a form that is not signed by a judge and that need not be issued as part of any ongoing civil or criminal proceeding. In that way, an administrative “subpoena” is unlike an ordinary judicial subpoena, which is issued only in the context of a pending court case, is limited in scope, and is subject to closer judicial oversight.

2. What kind of information is ICE seeking with these subpoenas?

ICE is using these subpoenas to obtain information that generally is protected from disclosure under Oregon law—in other words, as an end-run around Oregon’s efforts to disentangle itself from federal immigration enforcement actions. The subpoenas identify a targeted individual and request, among other things, the individual’s home address, work address, country and place of birth, age, phone number, driver’s license number, passport number, and criminal records. Much of the information that ICE requests through the subpoena is available to ICE through other sources, demonstrating that ICE’s true purpose in issuing the subpoena is to intimate and retaliate against Oregon for its statewide policy of inclusivity.

3. What does an administrative subpoena look like?

An ICE administrative subpoena is prepared on a standard ICE form known as a Form I-138. A few of the forms issued to Oregon’s state and local

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governments are available in the toolkit. As you can see, the form directs the recipient to either appear and testify or produce documents, and provides instructions for when and how to comply. The form also warns the recipient that “[f]ailure to comply with this subpoena may subject you to an order of contempt by a federal District Court.” **This is a misstatement of law. A recipient cannot be held in contempt of court simply for refusing to respond to an ICE administrative subpoena.**

4. Are cities and counties required to respond to an ICE administrative subpoena?

No. We believe that federal law does not provide ICE the authority to issue administrative subpoenas to state and local governments. Under the law, only individuals or private organizations may be recipients of an ICE administrative subpoena. The law treats states and their political subdivisions, including cities and counties, differently—no federal law authorizes ICE or any federal immigration authority to serve an administrative subpoena on a state or local government for these purposes, nor does any law require a state or local government to comply with such a subpoena. What is more, ICE’s ostensible purpose for issuing the subpoenas is pretextual and not grounded in good faith, further undermining their legality.

5. Can my city or county officials be held in contempt for refusing to respond to an ICE administrative subpoena?

No. Mere failure to respond to an ICE administrative subpoena cannot subject the recipient to an order of contempt. Federal law requires ICE to first ask a federal court to enforce the subpoena. If ICE chooses to do so, the federal court will then review the subpoena and provide each party an opportunity to be heard. If the court accepts ICE’s arguments, it may then order the recipient to comply. Only if the recipient fails to comply with *that court order* may the recipient be held in contempt of court.

6. Does compliance with an ICE administrative subpoena without a court order violate state law?

Yes. Oregon’s information privacy law, ORS 180.805(1), prohibits any Oregon public body from disclosing for the purpose of federal immigration enforcement certain personal identifying information, including an individual’s address; workplace or hours of work; contact information, including telephone number or e-mail address; and any dates and times of

hearings, proceedings, or appointments with the public body that are not a matter of public record, unless disclosure is required by another state or federal law. Because ICE lacks the authority to issue these subpoenas, disclosure of the information ICE requested is not “required by federal law.” It is therefore prohibited under state law. **Absent a court order, state and local government officials that comply with these subpoenas are likely in violation of Oregon state law.**

7. What other jurisdictions have received administrative subpoenas?

ICE has issued administrative subpoenas in at least three other jurisdictions, including the City of New York, the City of Denver, and the State of Connecticut. Like Oregon, all of these jurisdictions have adopted immigrant-inclusive policies and have made decisions not to assist federal officials with the enforcement of federal immigration laws. ICE has retaliated against them by issuing these unlawful subpoenas as a means to circumvent those policies.