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*"Rummaging in the government's attic"*

Description of document: U.S. Immigration and Customs Enforcement (ICE) Records released from the Nash v. ICE case, relating to 287(g) agreements allowing state/local law enforcement agencies to perform immigration enforcement actions, and also administrative subpoenas, 2007-2023

Requested date: 06-January-2025

Release date: 23-January-2025

Posted date: 10-February-2025

Source of document: FOIA Request  
U.S. Immigration and Customs Enforcement  
Freedom of Information Act Office  
500 12th Street, SW, Stop 5009  
Washington, DC 20536-5009  
Fax: (202) 732-4265  
Email: [ice-foia@ice.dhs.gov](mailto:ice-foia@ice.dhs.gov)  
[FOIA.gov](http://FOIA.gov)

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**U.S. Immigration  
and Customs  
Enforcement**

01/22/2025

RE: ICE FOIA Case Number 2025-ICFO-12656

Dear Requester:

This letter is the final response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated 1/6/2025. You have requested records pertaining to *Nash v. Immigration & Customs Enforcement (Nash II)*, No. 23-cv-6994. ICE has considered your request under the FOIA, 5 U.S.C. § 552.

ICE considered the foreseeable harm standard when reviewing the record set and has applied the FOIA exemptions as required by the statute and the Attorney General's Guidance.

A search of the ICE FOIA Office for records responsive to your request produced 568 pages and 1 excel spreadsheet that are responsive to your request. These records were previously released under 2023-ICLI-00031, it was determined that portions of 568 pages and 1 excel spreadsheet will be withheld pursuant to Exemptions of the FOIA as described below.

FOIA Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. After carefully reviewing the responsive documents, I have determined that portions of the responsive documents qualify for protection under the deliberative process privilege, the attorney-client privilege, and the attorney work-product privilege. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel. The attorney work-product privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation. The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. It applies to facts divulged by a client to his attorney, and encompasses any opinions given by an attorney to his



client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect client-supplied information. The attorney-client privilege is not limited to the context of litigation.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

FOIA Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

FOIA Exemption 7(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. I have determined that disclosure of certain law enforcement sensitive information contained within the responsive records could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

You have a right to appeal the above withholding determination. Should you wish to do so, you must send your appeal and a copy of this letter, within 90 days of the date of this letter following the procedures outlined in the DHS FOIA regulations at 6 C.F.R. Part 5 § 5.8. You may submit your appeal electronically at [GILDFOIAAppeals@ice.dhs.gov](mailto:GILDFOIAAppeals@ice.dhs.gov) or via regular mail to:

U.S. Immigration and Customs Enforcement  
Office of the Principal Legal Advisor  
U.S. Department of Homeland Security  
500 12th Street, S.W., Mail Stop 5900  
Washington, D.C. 20536-5900

Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at [www.dhs.gov/foia](http://www.dhs.gov/foia).

Provisions of FOIA allow DHS to charge for processing fees, up to \$25, unless you seek a waiver of fees. In this instance, because the cost is below the \$25 minimum, there is no charge.

If you have any questions, please contact FOIA Public Liaison Daniel Edgington at (866) 633-1182 or 500 12th St., SW Stop 5009 Washington, DC 20536-5009. Additionally, you have a right to right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at [ogis@nara.gov](mailto:ogis@nara.gov); telephone at 202-741-5770; toll free at 1-877-684-6448.

Sincerely,

Megan Davis  
Deputy FOIA Officer, Operations  
Enclosure(s): 568 page(s) and 1 excel spreadsheet

**From:** (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)  
**Sent:** 6/26/2017 7:14:54 PM  
**To:**

(b)(6),(b)(7)(C)

**Subject:** FW: Issuance of ERO Immigration Subpoenas  
**Attachments:** 2007\_07\_13\_Account\_of\_Immigration\_Subpoenas\_dro.pdf

(b)(6),(b)(7)(C)  
**Assistant Field Office Director**  
**South Texas Detention Complex**  
**566 Veteran's Drive**  
**Pearsall, Texas 78061**  
**Office 210-23**  
**Cell 210-336** (b)(6),(b)(7)(C)

**From:** (b)(6),(b)(7)(C)  
**Sent:** Monday, June 26, 2017 2:13 PM  
**To:** (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)  
(b)(6),(b)(7)(C)  
**Cc:** (b)(6),(b)(7)(C)  
**Subject:** FW: Issuance of ERO Immigration Subpoenas

*This message is sent on behalf of Acting Deputy Field Office Director* (b)(6),(b)(7)(C)

**To: All San Antonio Field Office Law Enforcement Officers and Supervisors**

**Subject: San Antonio Field Office Issuance of ERO Immigration Subpoenas**

On July 13, 2007, Immigration and Customs Enforcement issued a memorandum for the Accountability of Immigration Subpoenas (attached). Effective immediately the San Antonio Field office will account for all subpoenas issued within the Field Office Area of Operational Responsibility (AOR). A log will be maintained by AFOD Adrian Ramirez for the entire AOR and a copy of the subpoena will be saved and filed within the office that has issued the subpoena. The log will contain the following:

1. The title or type of proceedings for which the subpoena is issued;
2. The entity to whom the subpoena is served;
3. The issuing officer;
4. The reason for the subpoena was issued;
5. The date of service of the subpoena;
6. The means of service of the subpoena and

7. A tracking number for each subpoena.

Prior to submitting a subpoena for approval, the reviewing AFOD over the officer requesting the subpoena must contact AFOD (b)(6),(b)(7)(C) for a tracking number. Once the tracking is received all subpoenas will be forwarded to the FOD for signature through the chain of command. Subpoenas that are sensitive in nature, or subpoenas requesting information that pertains to a large group of individuals must be vetted through ICE ERO Headquarters. Examples of sensitive subpoenas include: subpoenas concerning a public official, a political candidate, the activities of a foreign government, the activities of a high foreign government official, the activities of a religious or political organization or the activities of the news media.

Thank you,

(b)(6),(b)(7)(C)

Assistant Field Office Director  
San Antonio Field Office

DHS ICE Enforcement and Removal Operations 210-283 (b)(6),(b)(7)(C) 210-389 (b)(6),(b)(7)(C) 1777 NE  
Loop 410, Suite (b)(6),(b)(7)(C) | San Antonio, TX | 78217

ORDER NUMBER:  
DRO 07-001.2

ISSUE DATE: JAN 06 2010

EFFECTIVE DATE:  
JAN 06 2010

**SUBJECT:**

**Authority to Issue Immigration Subpoenas Within the Office of Detention and Removal Operations**

**DELEGATED BY:**

Director, Office of Detention and Removal Operations

**DELEGATED TO:**

See below.

**SOURCE OF AUTHORITY BEING DELEGATED:**

ICE Delegation Order 73003.3 (November 30, 2009), or any superseding order delegating the same authority.

**SUPERSEDED ORDER(S):**

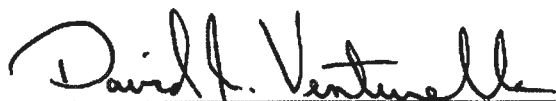
DRO Delegation Order 07-001.1, dated September 30, 2009.

**DELEGATION:**

By virtue of the authority granted to me by the Assistant Secretary in ICE Delegation Order 73003.3, dated November 30, 2009, I hereby delegate to the Office of Detention and Removal Operations Assistant Directors, Deputy Assistant Directors, Field Office Directors, Deputy Field Office Directors, and Assistant Field Office Directors the authority to:

1. Issue immigration subpoenas requiring the person or entity to which they are addressed to attend and give testimony;
2. Require such persons or entities to produce records (books, papers, or other documents) for use in criminal or civil investigations;
3. Effect service of immigration subpoenas upon the persons or entities named therein;
4. Administer oaths;
5. Take testimony from such persons or entities under oath and examine, or cause to be examined, records produced by such persons or entities; and,
6. In the event that the person or entity named in a subpoena neglects or refuses to comply with the requirement to attend and give testimony or to produce records, request the United States Attorney for the district in which the subpoena was issued report such neglect or refusal to the United States District Court and to request such court issue an order requiring the witness to appear and testify and/or produce the records designated in the subpoena.

This authority may not be redelegated.



David J. Venturella  
Acting Director, Office of Detention and Removal Operations



USE ADDITIONAL PLAIN BOND IF NECESSARY.



U.S. Immigration  
and Customs  
Enforcement

DEC - 3 2009

MEMORANDUM FOR: Assistant Directors  
Deputy Assistant Directors  
Special Agents in Charge

FROM:  Kumar C. Kibble **(b)(6), (b)(7)(C)**  
 Acting Director, Office of Investigations

SUBJECT: Issuance of Rebranded/Updated Subpoenas and Summons  
Forms

The legacy U.S. Customs Service and Immigration and Naturalization Service (INS) subpoena and summons forms have been rebranded/updated and reissued. These new forms, which are attached to this memorandum, include:

- Department of Homeland Security (DHS) Form 3115, "Summons," and the accompanying DHS Form 3115A, "Summons Notice," which supersede Customs Form (CF) 3115 and CF 3115A, respectively;
- DHS Form I-138, "Immigration Enforcement Subpoena," which supersedes legacy INS Form I-138;
- U.S. Immigration and Customs Enforcement (ICE) Form 73-021, "Controlled Substances Enforcement Subpoena," which supersedes CF 389; and
- ICE Form 73-022, "Export Enforcement Subpoena," which supersedes CF 337.

Special Agents in Charge (SACs) should continue to issue the subpoenas and summons in accordance with the legal authorities and general guidelines that governed the legacy forms. The following additional guidance and reminders apply to the use of the three subpoenas and the summons.

### Requirement to Maintain a Log

SACs are responsible for maintaining an accurate log of subpoenas or summonses issued each fiscal year, as well as copies of the subpoenas and summonses issued. The log must be kept for at least 5 years from the date of the last entry and shall contain, at a minimum, the following information:

1. the title of the proceedings, if any, for which the subpoena or summons is issued;
2. the entity to whom the subpoena or summons is served;
3. the issuing officer;
4. whether the subpoena or summons was issued to compel the appearance of a witness to provide testimony; the production of books, papers, or documents; or both;
5. the date of service of the subpoena or summons;
6. the means of service of the subpoena or summons; and
7. a tracking number for each subpoena or summons (tracked by fiscal year, e.g., NY-08-001; NY-08-002, etc.).

### Limitations Related to Indicted Defendants or Aliens in Removal Proceedings

The issuance of an administrative subpoena or summons is authorized after a case has been referred to the Department of Justice (DOJ) for criminal prosecution. However, once the subjects of investigation have been indicted or a criminal complaint has been filed and they become defendants, the subjects of the investigation should not be subpoenaed. OI Special Agents (SAs) can continue issuing subpoenas and summonses in ongoing civil and criminal investigations to obtain information, but not from indicted defendants.

Typically, when a grand jury returns an indictment, the grand jury investigation is concluded and the grand jury no longer has the ability to issue grand jury subpoenas. The conclusion of the grand jury subpoena process does not preclude the use of an administrative subpoena or summons. However, SAs should be cognizant of the potential appearance of impropriety that could result from issuing an administrative subpoena or summons in investigations where the grand jury process has ended.

SAs considering using an administrative subpoena or summons subsequent to the indictment of any defendants should consult with and obtain the concurrence of the Assistant United States Attorney handling the criminal investigation and the appropriate ICE Office of the Chief Counsel (OCC).



SAs requiring an immigration enforcement subpoena in any matter that has been referred to an immigration judge should consult with the local ICE OCC, who may petition the immigration judge for the subpoena.

#### Limitations related to the Right to Financial Privacy Act

Administrative subpoenas or summonses compelling production of customer records from a financial institution must comply with the Right to Financial Privacy Act (RFPA). Under the RFPA, unless specific exemptions apply, no Government authority may have access to or obtain copies of the financial records, or the information contained in the financial records, of any customer from a financial institution, except through the specific procedures defined in the statute, 12 U.S.C. § 3402. SAs considering the issuance of an administrative subpoena or summons compelling the production of records from a financial institution pursuant to 12 U.S.C. § 3405 must consult with the local ICE OCC or appropriate ICE attorney to ensure that ICE complies with the RFPA for appropriate notice to the financial institution and its customer, or that an exemption applies, such as 12 U.S.C. § 3413(g).

#### Authority with Respect to Subpoenas

As stated in the respective OI Delegation Orders, the authority to use the Immigration Enforcement Subpoena, the Controlled Substances Enforcement Subpoena, and the Export Enforcement Subpoena is delegated to the OI Assistant Directors, Deputy Assistant Directors, Special Agents in Charge, Deputy Special Agents in Charge, and Assistant Special Agents in Charge. This authority cannot be redelegated.

#### Authority with Respect to the Summons

As stated in the respective OI Delegation Order, the authority to use the 19 U.S.C. § 1509 Summons is delegated to OI Assistant Directors, Deputy Assistant Directors, and Special Agents in Charge. This authority cannot be redelegated.

#### Posting of the Subpoena/Summons Forms

The subpoena and summons forms have been made fillable and are posted on the OI Proprietary Website by clicking on “Documents” and then “Forms.”

#### Prohibition Against Making Changes to the Subpoena/Summons Forms

OI SAs and other personnel are prohibited from making any changes to the subpoena and summons forms.

#### Governing ICE Directives

ICE is developing directives which will provide policies and detailed procedures to be followed when using each of the rebranded/updated subpoenas and summons. Upon

**SUBJECT: Issuance of Rebranded/Updated Subpoenas and Summons Forms**  
**Page 4 of 4**

issuance of each of these directives, OI employees must comply with that directive when using the related summons or subpoena form. When all four directives are issued, this memorandum will be cancelled.

**Superseded Documents**

This memorandum supersedes OI memorandum entitled, "Accountability of Subpoenas and Summons," dated March 13, 2007, and Section 43.3 of the legacy INS Special Agent Field Manual entitled, "Administrative Subpoenas."

**Attachments**



U.S. Immigration  
and Customs  
Enforcement

# SAN DIEGO ICE/ERO CAP UNIT

Subpoena Creation  
Creation of DHS Form I-138 and G166c

REL000008562



# OVERVIEW

- Due to the California Values Act (SB 54) we have lost access from the SD Sheriff's Office website to valuable information necessary to perform some of the functions of the CAP Unit.
- SND began issuing subpoenas to San Diego Sheriff's Office requesting documents pertaining to specific subjects.
- Increase in subpoena submissions requires changes to current common practices within the CAP Unit.



# UPDATES TO COMMON PRACTICES IN CAP

- ▶ Upon rejection of Immigration Detainer (Form I-247) by SDSO, common business practice was to acknowledge the email and update the CAP SharePoint.
- ▶ Per SND Management, CAP Officers, upon acknowledgement, will now need to create a DHS Form I-138 and a G166c narrative along with updating the SharePoint.
  - ▶ Update the CAP SharePoint (as previously done)
  - ▶ Have the G166c narrative and DHS I-138 approved by SDDG.
  - ▶ Upload the G166c narrative to EAGLE.
  - ▶ Upload the DHS I-138 to the CAP SharePoint (by CAP Documentalists only)

REL000008562



# DHS Form I-138 Example

1 To: Name, Address, City, State, Zip Code Mr. J. R. Smith, 123 Main St., Suite 100 San Diego, California 92101 (123) 456-7890	DEPARTMENT OF HOMELAND SECURITY IMMIGRATION ENFORCEMENT SUBPOENA to Appear and/or Produce Records 8 U.S.C. § 1225(e), 8 C.F.R. § 287.3
Subpoena Number: 100-1000-1000-1000	
2. In Reference To: FEDERAL BUREAU OF INVESTIGATION, 4400 GARDEN DRIVE, SUITE 800, SAN DIEGO, CALIFORNIA 92121	

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), U.S. Citizenship and Immigration Services (USCIS) Office 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 OFFICE, or USCIS OFFICE 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 laws. 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)(1)(F).

3. (A) CBP, ICE or USCIS Office before whom you are required to appear: Name: George Rodriguez (George Rodriguez is the name) Title: Supervisory Detention and Deportation Officer Address: 600 Federal Street, San Diego, CA 92101 Telephone Number: (619) 571-3576	(B) Date: 12/28/2020 (C) Time: 10:00 a.m.
--	--

4. Records requested to be produced for inspection (Please see attachments):

5. Authorized Officer:

Signature: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: 12/28/2020

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

6. CERTIFICATE OF SERVICE

I certify that on \_\_\_\_\_, I served this subpoena on the addressee named in Block 1 in the following manner:

\_\_\_\_\_ (Name of law enforcement officer)  
 \_\_\_\_\_ (Signature of Officer serving Subpoena)  
 \_\_\_\_\_ (Printed Name of Officer Serving Subpoena)  
 \_\_\_\_\_ (Title of Officer Serving Subpoena)

7. ACKNOWLEDGMENT OF RECEIPT

I acknowledge receipt of a copy of the subpoena on the front of this form.

Signature: \_\_\_\_\_  
 Title: \_\_\_\_\_ Date: \_\_\_\_\_ Time:  a.m.  p.m.

In Reference To: JAMES EARL RAY, First (Last, First, Middle Initial) A000 000 000

8. Documents sufficient to establish the following for JAMES EARL RAY:

Place of birth, employment address, country of birth, date of birth, age, identification documents (e.g. driver license number, state, foreign identification card number and country, passport number and country), emergency contact address, phone number, copies of all identification documents, recent booking photographs, and all records related to entry/entry attempts with in your custody (Passport, non-arrival, departure, entry information and any other official entry issues and notations of date and time the subject will be released if such is custody).

9. Documents relating to the recent arrest and charges for JAMES EARL RAY to: JAMES EARL RAY, First (Last, First, Middle Initial) A000 000 000, including but not limited to incident/arrest reports, booking documents (photographs, fingerprints, and so on), and the charges, and convictions if any.

10. SIGNATURE OF OFFICER  
 \_\_\_\_\_  
 11. SIGNATURE OF OFFICER  
 \_\_\_\_\_



➤ DHS Form I-138 Page 1

Items that need to be changed:

1. Name of facility in Section 1
2. Name (include AKA if applicable)
3. A #
4. Date in Section 3 B (2 weeks from creation)
5. Date in Section 5 (Use date of creation)

**(b)(7)(e)**



1. Facility Name
2. Subjects Last name- Format needs to stay the same per DFOD request
3. A# - If subject does not have one type "Pending" in block

\*subpoena number will be generated by CAP HQ SharePoint and updated later

**(b)(7)(e)**

3. Date - Section 3 B: Two weeks from date of creation (Weekdays only)

4. Date - Section 5: Enter date of creation

\* Leave other sections as is until further notice

**(b)(7)(e)**

DHS Form I-138 (6/09)

REL000008562



# DHS Form I-138 Page 2

## Certificate of Service/Acknowledgment

- No updates to page 2
- To be filled out by Officer serving subpoena in person

**(b)(7)(e)**

DHS Form I-138 (5/09)

REL000008562

## DHS Form I-138 Page 3

Attachment page

- Needs to be completed by Officer
- Contains information relating to subject's arrest
  
- Need to complete information in lower portion
- Can include multiple booking #'s if subject has been arrested by SDSD multiple times

**(b)(7)(e)**



## DHS Form I-138 Page 3

### Changes needed:

- Subject's name (maintain same format throughout document)
- Charges – what subject was arrested for according to RAP sheet
- Subject's name (again)
- DOB
- Arrest Date
- Booking #
- FBI #

Note: This information needs to be filled out in the format shown on the right.

**(b)(7)(e)**

## G166C – MEMORANDUM OF INVESTIGATION

- Needs to be completed by Officer along with I-138
- Follow format of example narrative
  - These narratives are submitted to HQ as part of an Enclave summary and need to follow the format requested by HQ
- Must be submitted to SDDO for approval
- Upload to EAGLE after approval by SDDO

Examples will be forwarded to Officers via Email

**(b)(7)(e)**



# Uploading DHS Form I-138 to the CAP SharePoint

(b)(7)(e)

Click CAP Documents



SENSITIVE BUT ALLOWED

## Criminal Alien Program



# Criminal Alien Program

**OUR MISSION:** *safeguard the public through the identification, apprehension, prosecution and removal*

**KEEPING YOU SAFE! COVID-19 INFORMATION:**  
*Center for Disease Control (CDC) | DHS Update and Guidance*

**CAP Quick Links**

**CAP SNAPSHOTS**



REL000008562



CAP

**(b)(7)(e)**

REL000008562

Questions?

REL000008562

**From:** (b)(6), (b)(7)(c)  
**To:**  
**Subject:** Subpoena Tracker- SND AOR  
**Date:** Tuesday, July 28, 2020 2:13:35 PM  
**Attachments:** ERO Subpoenas Log Training (CLEARED 12.16.19).ppt  
DHS Form I-138.pdf  
Immigratrion Subpoena Process v1-Field.docx  
Subpoena; (b)(6),(b)(7)(c).pdf

Greetings Again,

I am attaching training material, informal immigration subpoena process document, and additional go-bys so you can become more familiar with the workflow. CAPHQ has granted you all access to the National Subpoena Log. Below are the links for the Test and Actual log in case you want to become more familiar with the workflow:

Test LOG

(b)(7)(e)

Actual LOG

(b)(7)(e)

(b)(6),(b)(7)(c) is the Requestor Official, and will provide more updates to the subpoena log. Every subpoena to non-compliant LEAs is tracked in Share Point. Once you prepare an electronic version of the form I-138, and identify (b)(6),(b)(7)(c) as the "Approving Official" (b)(6),(b)(7)(c) will receive an email to approve subpoena, and a subpoena number will be generated.

(b)(6),(b)(7)(c) needs to approve subpoena from link received through email notification.

My understanding is that you Field Office has identified a significant number of cases targeted through subpoenas being served to the same LEA, and POCs have been established. These subpoenas are served via email and in person on a weekly basis. I defer to HQ (b)(6),(b)(7)(c) for all details on this matter. I normally track the subpoenas for service and compliance through the subpoena log, unless information is not complete. Currently, there are 2 subpoenas in the queue with a due date for information to be received from the LEA this coming Friday, July 31<sup>st</sup>.

Again, do not hesitate to contact me via phone if you deem necessary to give you more background. There is a high level visibility from our ERO leadership on this initiative.

Regards,

(b)(6), (b)(7)(c)

Detention and Deportation Officer  
Criminal Alien Program  
U.S. Immigration and Customs Enforcement  
O (202)732-(b)(6),(b)(7)(c) | C (202)763-(b)(6),(b)(7)(c)



From: (b)(6), (b)(7)(c) @ice.dhs.gov

Sent: Tuesday, July 28, 2020 1:06 PM

Cc: (b)(6), (b)(7)(c) @ice.dhs.gov; (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c) @ice.dhs.gov; (b)(6), (b)(7)(c) @ice.dhs.gov; (b)(6), (b)(7)(c)

Subject: RE: Subpoena Tracker- SND AOR

Thanks for the notification, I wish you best of luck to you and HQ on your new endeavors.

(b)(6), (b)(7)(c) Welcome to the team, and looking forward to working with you. I am sure you know our esteemed colleague, DDO (b)(6), (b)(7)(c) from Field Operations who built the log that is used to track these type of subpoenas on non-compliant LEAs. I am copying (b)(6), (b)(7)(c) from CAD who will grant you access.

Do not hesitate to reach out to me in case you have questions with the subpoena workflow process. Let me know if you need the training material we shared with the field when this initiative started rolling.

(b)(6), (b)(7)(c)

Detention and Deportation Officer

Criminal Alien Program

U.S. Immigration and Customs Enforcement

O (202)732-(b)(6), (b)(7)(c) | C (202)763-(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c) @ice.dhs.gov

Sent: Tuesday, July 28, 2020 3:35 PM

To: (b)(6), (b)(7)(c) @ice.dhs.gov

Cc: (b)(6), (b)(7)(c) @ice.dhs.gov; (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c) @ice.dhs.gov; (b)(6), (b)(7)(c) @ice.dhs.gov; (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c) @ice.dhs.gov

Subject: Subpoena Tracker

Hi (b)(6), (b)(7)(c)

There recently have been some changes in the San Diego AOR. I will no longer be the AFOD for CAP.

(b)(6), (b)(7)(c) who is copied on this email, will be the acting AFOD for CAP. He will need an approver role in the HQ Subpoena Log Tracker. If possible, you can leave me as an approver too in case (b)(6), (b)(7)(c) is out.

Also, HQ will be transitioning to the Intel Unit. His replacement is SDDO (b)(6), (b)(7)(c) who is also

copied on this email [REDACTED] will need the same role as HQ. Please let me know if you have any questions.

Thanks,

[REDACTED]

1. To (Name, Address, City, State, Zip Code)	<b>DEPARTMENT OF HOMELAND SECURITY</b>  <b>IMMIGRATION ENFORCEMENT SUBPOENA</b>  <b>to Appear and/or Produce Records</b> 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number	
2. In Reference To	
<hr style="width: 80%; margin: 0 auto;"/> <div style="display: flex; justify-content: space-between; width: 80%; margin: 0 auto;"> <span>(Title of Proceeding)</span> <span>(File Number, if Applicable)</span> </div>	

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 laws. 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	(B) Date
Name	(C) Time <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.
Title	
Address	
Telephone Number	

4. Records required to be produced for inspection



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

5. Authorized Official  
  


---

 (Signature)  
  


---

 (Printed Name)  
  


---

 (Title)  
  


---

 (Date)

**CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT**

**A. CERTIFICATE OF SERVICE**

I certify that on \_\_\_\_\_, I served this subpoena on the witness named in Block 1 in the following manner:  
(Date)

\_\_\_\_\_  
(Details of how service was effected)

\_\_\_\_\_  
(Signature of Official Serving Subpoena)

\_\_\_\_\_  
(Printed Name of Official Serving Subpoena)

\_\_\_\_\_  
(Title of Official Serving Subpoena)

**B. ACKNOWLEDGMENT OF RECEIPT**

I acknowledge receipt of a copy of the subpoena on the front of this form.

Signature

Title

Date

Time

a.m.  
 p.m.



## Immigration Subpoena Procedures

**(b)(5)**

**(b)(5)**

**(b)(5)**

**(b)(5)**



**(b)(5)**

DRAFT

1. To (Name, Address, City, State, Zip Code) (b)(6),(b)(7)(C) and/or Officer/Person In Charge San Diego Central Jail 1173 Front Street, San Diego, CA 92101	DEPARTMENT OF HOMELAND SECURITY  <b>IMMIGRATION ENFORCEMENT SUBPOENA</b> to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4		
Subpoena Number ERG-ENF-SND-202000045			
2. In Reference To <table border="0" style="width:100%"> <tr> <td style="width:60%">           (b)(6),(b)(7)(C) (Investigation)  <small>(Title of Proceeding)</small> </td> <td style="width:40%">           (b)(6),(b)(7)(C)  <small>(File Number, if Applicable)</small> </td> </tr> </table>		(b)(6),(b)(7)(C) (Investigation) <small>(Title of Proceeding)</small>	(b)(6),(b)(7)(C) <small>(File Number, if Applicable)</small>
(b)(6),(b)(7)(C) (Investigation) <small>(Title of Proceeding)</small>	(b)(6),(b)(7)(C) <small>(File Number, if Applicable)</small>		

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 laws. 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: (b)(6),(b)(7)(C) @ice.dhs.gov Title: Supervisory Detention and Deportation Officer Address: 880 Front Street San Diego, CA 92101 Telephone Number: (619) 571-(b)(6),(b)(7)(C)	(B) Date 07/31/2020  (C) Time 3:00 <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.
---	---

4. Records required to be produced for inspection  
 Please see attachment.



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

5. Authorized Official (b)(6),(b)(7)(C)
<small>(Signature)</small>
(b)(6),(b)(7)(C)
<small>(Printed Name)</small> Assistant Field Office Director
<small>(Title)</small> 07/16/2020
<small>(Date)</small>

**CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT**

**A. CERTIFICATE OF SERVICE**

I certify that on July 20, 2020, I served this subpoena on the witness named in Block 1 in the following manner:  
(Date)

In Person

(Details of how service was effected)

(b)(6), (b)(7)(C)

(Signature of Official Serving Subpoena)

(b)(6), (b)(7)(C)

(Printed Name of Official Serving Subpoena)

Deportation Officer ICE/ERO

(Title of Official Serving Subpoena)

**B. ACKNOWLEDGMENT OF RECEIPT**

I acknowledge

Signature

(b)(6), (b)(7)(C)

Title

Sheriff Records & ID Clerk II

Date

7-20-20

Time

9:26

a.m.  
 p.m.



In Reference To: (b)(6),(b)(7)(C) n (Investigation)

(b)(6),(b)(7)(C)

1. Documents sufficient to establish the following for (b)(6),(b)(7)(C)  
(b)(6),(b)(7)(C)

Home address, employment address, country of birth, place of birth, age, identification documents (e.g. driver license number, state, foreign identification card number and country, passport number and country), emergency contact address, phone number, copies of all identification documents, recent booking photograph(s), any and all records related to disciplinary actions while in your custody, threat level, assaultive behavior, gang affiliation and any other officer safety issues and notification of date and time the subject will be released if still in custody.

2. Documents relating to the recent arrest and charges for Driving under the influence Alcohol/Drugs relating to (b)(6),(b)(7)(C) including but not limited to incident/arrest reports, booking documents (photographs, fingerprints, and so on), and the charges, and convictions if any.

(b)(6),(b)(7)(C)

1. To (Name, Address, City, State, Zip Code) (Name and Address of Entity)	DEPARTMENT OF HOMELAND SECURITY  <b>IMMIGRATION ENFORCEMENT  SUBPOENA</b> to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number (Subpoena Number from Log)	
2. In Reference To (Information Being Requested) _____ (Title of Proceeding)	XXXX XXX XXX (_____ 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 laws. 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 (Officer Name) Title (Officer Title) Address (Office Address)  Telephone Number (Office Telephone Number)	(B) Date (Month XX, 20XX)  (C) Time HH:MM <input checked="" type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.
--	---

REL000008564.0001

4. Records required to be produced for inspection

(Detailed explanation of information requested)



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

5. Authorized Official

AFOD or Above

(Signature)

(Printed Name)

(Title)

(Month XX, 20XX)

(Date)

DHS Form I-138 (6/09)

REL000008564.0001



**CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT**

**A. CERTIFICATE OF SERVICE**

I certify that on  (Month XX, 20XX) , I served this subpoena on the witness named in Block 1 in the following manner:  
(Date)

Certified Mail/E-Mail/Personal   
(Details of how service was effected)

(Officer Signature)   
(Signature of Official Serving Subpoena)

(Officer Name)   
(Printed Name of Official Serving Subpoena)

(Officer Title)   
(Title of Official Serving Subpoena)

**B. ACKNOWLEDGMENT OF RECEIPT**

I acknowledge receipt of a copy of the subpoena on the front of this form.

Signature

Title	Date	Time <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.
-------	------	--

## Immigration Subpoena Procedures

**(b)(5)**

**Other Partners**

- Local OPLA to assist identifying the information to be requested via subpoena
- The Office of Public Affairs to coordinate media release, when applicable

**(b)(5)**

**(b)(5)**



**(b)(5)**

DRAFT

---

**From:** (b)(6), (b)(7)(c)  
**Sent:** 11/6/2018 10:21:53 PM  
**To:** (b)(6), (b)(7)(c)  
**Subject:** FW: Delegation of Limited Customs Officer Enforcement Authority

**From:** SFR-ERO-Tasking  
**Sent:** Friday, May 27, 2016 12:21 PM  
**To:** #ERO SAN FRAN FLD OFC (b)(6), (b)(7)(c)@ice.dhs.gov>  
**Subject:** FW: Delegation of Limited Customs Officer Enforcement Authority

FYI,

Please see below message regarding Delegation of Limited Customs Officer Enforcement Authority. SFR OCC is currently working on the required training specified in this email.

Thank you,

SFR ERO Tasking

---

**From:** ERO Taskings  
**Sent:** Friday, May 27, 2016 8:26 AM  
**Subject:** Delegation of Limited Customs Officer Enforcement Authority

*The following message is sent on behalf of Thomas Homan, Executive Associate Director for Enforcement and Removal Operations:*

**To:** Assistant Directors, Deputy Assistant Directors, Field Office Directors, Deputy Field Office Directors, and Assistant Field Office Directors  
**Subject:** Delegation of Limited Customs Officer Enforcement Authority

Please immediately distribute this guidance to your employees.

As you are aware, on March 25, 2016, Director Saldaña executed ICE Delegation Order No. 002-2016, Delegation of Limited Customs Officer Enforcement Authority to Enforcement and Removal Operations, designating me a “customs officer” as defined by 19 U.S.C. § 1401(i) for the limited purposes set forth in 19 U.S.C. § 1589a, to:

- execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States; and
- make an arrest without a warrant for any offense against the United States committed in the officer’s presence or for a felony, cognizable under the laws of the United States, committed outside the officer’s presence if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony.

On April 4, 2016, I re-delegated this authority to all ERO immigration officers: Memorandum from Thomas Homan, Executive Associate Director for ERO, Delegation of Limited Customs Officer Enforcement Authority (Apr. 4, 2016). This limited Title 19 delegation will ensure that ERO officers have authority to act in today's complex immigration enforcement environment, and that ERO's at-large arrests and partnerships with federal, state, and local law enforcement to locate, arrest, and remove priority targets are fully supported by ICE's broad range of statutory authority.

As set forth in an April 4, 2016 memorandum from Deputy Director Ragsdale, and consistent with the requirements of DHS Delegation Order 7030.2, Delegation to the Assistant Secretary for U.S. Immigration and Customs Enforcement (dated Nov. 13, 2004), each ERO officer must attend training provided by the Office of the Principal Legal Advisor (OPLA) on the delegation and may not exercise authority under the delegation until the training is complete and his or her attendance at the training is recorded. This training will be incorporated into the ERO Refresher Training recently announced by ERO Field Operations. It will also be incorporated into additional training modules, such as the recurring Fourth Amendment Refresher Training and ICE Basic Immigration Enforcement Training.

Please work with your local Chief Counsel to schedule training sessions in your area of responsibility. (OPLA Headquarters will separately coordinate training for ERO Headquarters personnel.) Absent extraordinary circumstances, all ERO officers must complete the required training within 30 days of this message. Each Field Office Director will be required to document that all of their officers have attended the training. Field offices may document completion of the training using the following link. For assistance with SharePoint issues or access please contact (b)(6), (b)(7)(c)

**Limitation on the Applicability of this Guidance.** This message is intended to provide internal guidance to the operational components of U.S. Immigration and Customs Enforcement. It does not, is not intended to, shall not be construed to, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any person in any matter, civil or criminal.

NOTICE: This communication may contain privileged or otherwise confidential information. If you are not an intended recipient or believe you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use this information. Please inform the sender that you received this message in error and delete the message from your system.

From:  
Sent:  
To:  
CC:

**(b)(6), (b)(7)(C)**

**Subject:** RE: TIME SENSITIVE: Expanded Use of Immigration Subpoenas LES / FOUO [ENF]  
**Attachments:** (SFR AOR) Copy of Immigration Subpoena Users- II.xlsx

CAP HQ,

Please see attached.

ES/Subpoena in the works.

Thank you,

**(b)(6),(b)(7)(C)**

Assistant Field Office Director | San Francisco Field Office

U.S. Department of Homeland Security | Immigration and Customs Enforcement | Enforcement and Removal Operations  
O: (415) 844-**(b)(6),(b)(7)(C)**

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**From:** ERO Assistant Directors **(b)(7)(E)** <[redacted]@dhs.gov>

**Sent:** Thursday, January 16, 2020 7:44 AM

**Subject:** TIME SENSITIVE: Expanded Use of Immigration Subpoenas LES / FOUO [ENF]





## Enforcement and Removal Operations Assistant Director for Enforcement

To: Field Office Directors, Deputy Field Office Directors of BOS, CHI, NYC, PHI, SFR, SND

### LAW ENFORCEMENT SENSITIVE – FOR OFFICIAL USE ONLY

ERO is expanding the use of immigration subpoenas to promote information sharing between jails and prisons who refuse to, or are unable to, via ordinance or statute, comply with immigration detainers and associated information sharing requests. Accordingly, ICE is piloting the use of immigration subpoenas in non-cooperative jurisdictions to compel information disclosure to ICE to improve ERO's ability to effectuate arrests in such locations. **This is a priority for the ICE Office of the Director and ERO Office of the Executive Associate Director.**

#### Tasking:

Field Office Directors, Deputy Field Office Directors are required to submit the following information to the CAP HQ group mailbox (b)(6),(b)(7)(C) [ice.dhs.gov](mailto:(b)(6),(b)(7)(C)@ice.dhs.gov), no later than 12PM EST on Thursday, January 16, 2020:

- Identify an Assistant Field Office Director, or above, (or more if multiple jurisdictions are covered) as the authorized official to issue subpoenas
- Identify two Supervisory Detention and Deportation Officers, or above, (or more if multiple jurisdictions are covered) to be the service official
- **Please ensure these personnel are available today for a teleconference with CAP HQ.**

Field Office Directors, Deputy Field Office Directors are required to submit the following information to the CAP HQ group mailbox (b)(6),(b)(7)(C) [ice.dhs.gov](mailto:(b)(6),(b)(7)(C)@ice.dhs.gov), no later than COB on Thursday, January 16, 2020:

- Four cases per AOR with Executive Summaries and drafted subpoenas (attached as go-bys).
  - These cases need to be recent arrests that are still booked in jail, or
  - declined detainer cases released within the past three months;
  - egregious criminals;
  - and prior removals.
- Subpoenas must be submitted in an editable PDF format. **No signed copies should be submitted.**
- Link to Immigration Subpoena Form:  
<https://insight.ice.dhs.gov/hsi/oia/Documents/subpoenas-summons/i138.pdf#search=i-138>

The locations noted below have been self-identified by field offices to be non-compliant jails that present information sharing challenges to ERO. **Please ensure cases submitted to CAP have no viable means of notification or information sharing with ERO.**

- BOS AOR: Connecticut Department of Corrections, Connecticut State Police, Connecticut Court Support Services
- CHI AOR: Cook County, IL; Lake County, IL; Winnebago County, IL; Wayne County, IN
- NYC AOR: New York Department of Correction
- PHI AOR: Philadelphia Curran-Fromhold Correctional Facility
- SFR AOR: San Francisco County Jail; Santa Clara County Jail
- SND AOR: San Diego Central Jail; Vista Detention Facility

Questions relating to ~~this tasking~~ should be referred to the Criminal Alien Program Acting Unit Chief (b)(6) (b)(7) (C) at (b)(6), (b)(7)(C) [alice.dhs.gov](mailto:alice.dhs.gov) or (202) 732-(b)(6), (b)(7)(C)

*Chris Cronen*  
*ERO Assistant Director, Enforcement*

This message was sent in concurrence with AD Field Operations.

This message expires one year from the date it was sent, pursuant to ERO policy.

NOTICE: This communication may contain privileged or otherwise confidential information. If you are not an intended recipient or believe you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use this information. Please inform the sender that you received this message in error and delete the message from your system.

AOR	Full Name	Email Address	Title (AFOD, SDDO)
SFR	<b>(b)(6),(b)(7)(C)</b>	<u>ice.dhs.gov</u>	AFOD
SFR		<u>ice.dhs.gov</u>	SDDO
SFR		<u>h@ice.dhs.gov</u>	SDDO
SFR/SNJ	<b>(b)(6),(b)(7)(C)</b>	<u>@ice.dhs.gov</u>	(a)AFOD
SFR/SNJ		<u>ice.dhs.gov</u>	SDDO
SFR/SNJ		<u>ice.dhs.gov</u>	SDDO



**From:** Office of the Executive Associate Director for ERO [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F198F58B06A24754BA3E6943655B8D48-OFFICE OF T]  
**Sent:** 3/20/2020 9:27:58 PM  
**Subject:** Updated Delegation of Limited Customs Officer Authority [FO]



## Enforcement and Removal Operations Office of the Executive Associate Director

To: All ERO Personnel

Today I signed the [Updated Delegation of Limited Customs Officer Authority](#). This Delegation Order grants ERO officers additional limited authorities that will help safeguard our communities, as part of a whole-of-government approach to combatting the spread of COVID-19.

Pursuant to the attached, ERO officers are designated as customs officers for only the following specific purposes:

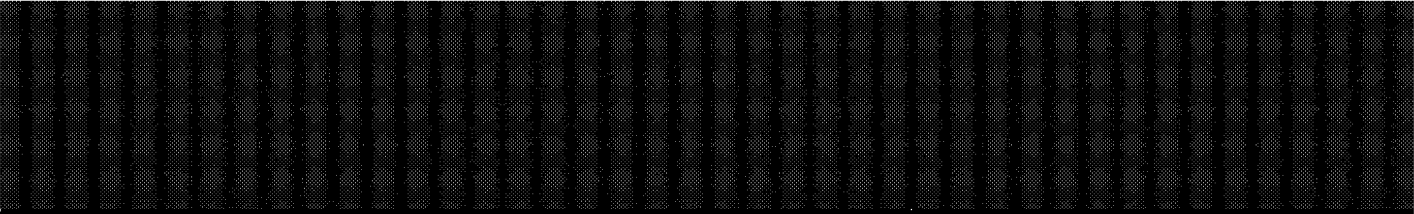
1. To execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States; and make an arrest without a warrant for any offense against the United States committed in the officer's presence or for a felony, cognizable under the laws of the United States, committed outside the officer's presence if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing a felony; and
2. To aid in the enforcement of quarantine rules and regulations as authorized and directed by the Director of the Centers for Disease Control and Prevention of the Department of Health and Human Services.

Please consult with your supervisor should you have any questions about the application of this Delegation Order.

*Enrique M. Lucero*  
*Executive Associate Director*  
*Enforcement and Removal Operations*

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**From:** (b)(6),(b)(7)(C)  
**To:**  
**Cc:**  
**Subject:** RE: 2023-ICLI-00031 - SFR Ext granted to 9/15/23 - OVERDUE  
**Date:** Wednesday, September 20, 2023 1:30:55 PM  
**Attachments:** [image001.png](#)

---

Hello,

I've added responsive records and search form from our electronic search into the Share Drive. We also conducted a manual search of paper files which yielded no responsive records. I am waiting on the search form for that and will add it to the Share Drive as soon as I receive it.

(b)(7)(e)

ERO San Francisco

202-ICLI-00031

Thank you,

(b)(6),(b)(7)(C)

San Francisco Field Office

Mobile: 415-76

Desk: 415-844

(b)(6),(b)(7)(C)

From:

(b)(6), (b)(7)(C)

Sent:

To:

Subject: RE: Admin Subpoena cases

Attachments: ES Presentation- Field Ops version 8-31-2018.ppt; ES ERO SEA (b)(6),(b)(7)(C).docx

Power Point training on Exec Summaries and one of the two I turned in. Basically be sure to stay in active voice and go through entire timeline.

Any questions at all, gimme a call. I'm here.

From: (b)(6),(b)(7)(C)@ice.dhs.gov>

Sent: Tuesday, May 12, 2020 8:06 AM

To: (b)(6),(b)(7)(C)@ice.dhs.gov>

Subject: FW: Admin Subpoena cases

(b)(6),(b)(7)(C)

Can I use one of your prior submissions as a go by?

Thank you,

(b)(6),(b)(7)(C)

Sent with BlackBerry Work  
(www.blackberry.com)

From: (b)(6),(b)(7)(C)@ice.dhs.gov>

Date: Tuesday, May 12, 2020, 7:25 AM

To: (b)(6),(b)(7)(C)@ice.dhs.gov>

Subject: RE: Admin Subpoena cases

Start working on the Executive Summaries. Ask (b)(6),(b)(7)(C) for some help with those. He went to the training and is very proficient.

(b)(6),(b)(7)(C)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/CAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97260  
Office 503-325-1000 | IF Phone 503-843-1000 (b)(6),(b)(7)(C)

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From: (b)(6),(b)(7)(C)@ice.dhs.gov>

Sent: Tuesday, May 12, 2020 7:22 AM

To: (b)(6),(b)(7)(C)@ice.dhs.gov>

Subject: RE: Admin Subpoena cases

The custodian of records from NCIC are below;

(b)(6),(b)(7)(C) Portland Police  
Multnomah Sheriff

(b)(6),(b)(7)(C)

From: (b)(6),(b)(7)(C)@ice.dhs.gov

Sent: Tuesday, May 12, 2020 7:08 AM

Subject: RE: Admin Subpoena cases

Hey, (b)(6),(b)(7)(C)

What counties did the subject receive his convictions? Who would be getting served the admin subpoenas?

(b)(6),(b)(7)(C)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/CAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-328-1212 | iPhone 503-849-1212

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From: (b)(6) (b)(7)(C)@ice.dhs.gov

Sent: Tuesday, May 12, 2020 7:01 AM

To: (b)(6),(b)(7)(C)@ice.dhs.gov

Subject: FW: Admin Subpoena cases

(b)(6),(b)(7)(C)

Here are my groups submissions. 340 is transient so any info we can obtain will help in locating him. 647 was arrested for a driving offense so it would be helpful to obtain vehicle information. We have not been able to definitively pinpoint his location from surveillance. Please let me know when you would like the executive summary due, I would like to review the A files as I am drafting them to make sure everything is completely accurate.

(b)(6),(b)(7)(C)

From: (b)(6),(b)(7)(C)

Sent: Tuesday, May 12, 2020 6:15 AM

To: (b)(6),(b)(7)(C)@ice.dhs.gov; (b)(6),(b)(7)(C)@ice.dhs.gov

Subject: Admin Subpoena cases

All,

Just wanted to do a deconfliction before I sent these up to (b)(6),(b)(7)(C) believe one had been lodged at Washington County for a period of time.

Thank you,

(b)(6),(b)(7)(C)



May 11, 2020

**(b)(5)**

**(b)(5)**

**Law Enforcement Sensitive – For Official Use Only**

**From:** (b)(6), (b)(7)(c)  
**Sent:**  
**To:** (FYDIBOHF23SPDLT)/cn=Recipients/cn=15d9cd104e894ab58749f4c09b76cd2d-Stricker, S]  
**Subject:** RE: Admin Subpoenas

Good to go!

(b)(6), (b)(7)(c)  
Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAPA/CAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-326- [redacted] | iPhone 503-84- [redacted]

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**From:** (b)(6), (b)(7)(c)@ice.dhs.gov  
**To:** (b)(6), (b)(7)(c)@ice.dhs.gov  
**Subject:** RE: Admin Subpoenas

I had started work on a different fella, a LAPR with sex crimes in WashCo, but while looking thru PCQS, it looks, according to ATS-P, like he left in February and hasn't returned, unless he EWI'd.

**From:** (b)(6), (b)(7)(c)@ice.dhs.gov  
**Sent:** Monday, May 11, 2020 1:36 PM  
**To:** (b)(6), (b)(7)(c)@ice.dhs.gov  
**Subject:** RE: Admin Subpoenas

Thank (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)  
Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAPA/CAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-326- [redacted] | iPhone 503-84- [redacted]

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**From:** (b)(6), (b)(7)(c)@ice.dhs.gov  
**Sent:** Monday, May 11, 2020 1:35 PM  
**To:** (b)(6), (b)(7)(c)@ice.dhs.gov  
**Subject:** RE: Admin Subpoenas

(b)(6), (b)(7)(c)

Executive Summaries are attached.

We have no reason to get a criminal warrant on either individual. We have both files. We do need to know the addresses that these fellas reported to the jail as part of the info they gave on intake.



**From:** (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Sent:** Monday, May 11, 2020 9:07 AM  
**To:** (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Cc:** (b)(6), (b)(7)(c) @ice.dhs.gov>; (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Subject:** RE: Admin Subpoenas

Once you have cases that you believe fit, confirm we cannot get a criminal warrant, confirm we have the file, and confirm we need information to locate the individual. If all the criteria is met, then send me the cases for review and begin working on an executive summary of the case.

(b)(6), (b)(7)(c)  
Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97220  
Office 503-324 (b)(6), (b)(7)(c) | Phone 503-344 (b)(6), (b)(7)(c)

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**From:** (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Sent:** Monday, May 11, 2020 6:06 AM  
**To:** (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Cc:** (b)(6), (b)(7)(c) @ice.dhs.gov>; (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Subject:** RE: Admin Subpoenas

What information do you need from us after we have identified our two cases?

(b)(6), (b)(7)(c)

**From:** (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Sent:** Friday, May 8, 2020 7:25 AM  
**To:** (b)(6), (b)(7)(c) @ice.dhs.gov>; (b)(6), (b)(7)(c) @ice.dhs.gov>; (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Subject:** Admin Subpoenas

Happy Friday Gents,

I think we are going to be on the hook for a second round of admin subpoenas. I have been called twice by HQ within a week. I told them that we would need more time to really pick out the best cases. Then we would have to meet with OPLA and the USAO so they could review.

With that being said, I want you to start going through case where detainers were not honored AND the subject was released from jail. Make sure these are not cases where we can get a criminal warrant, make sure we have the files, and make sure there is evidence that is needed to find the individuals.

I would like each of you to find two cases by next Wednesday.

Email or call if you have any questions.



(b)(6), (b)(7)(c)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VIS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-321-(b)(6), (b)(7)(c) Phone 503-321-(b)(6), (b)(7)(c)

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**From:**

**Sent:**

**To:**

**(b)(6), (b)(7)(c)**

**Subject:** Subpoena Log

Gents,

Make sure you get familiar with the Subpoena Log in CAPHQ in case Subpoenas are served by the end of the week. Below is a link for our Test mode in case you want try step by step what the Subpoena Log intends to capture.

**(b)(7)(e)**

**(b)(6), (b)(7)(c)**

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/CAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97224  
Office 503-326-**(b)(6), (b)(7)(c)** | iPhone 503-849-**(b)(6), (b)(7)(c)**

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---

**From:**

**Sent:**

**To:**

**CC:**

**(b)(6), (b)(7)(C)**

**Subject:** Affidavit for Search Warrant for Palm Print.s and DNA

**Attachments:** Affidavit for Search Warrant for Palm Print.s and DNA.docx

(b)(6),(b)(7)(C)

Just modify the introduction and agent background.

(b)(6),(b)(7)(C)

**(b)(5)**



**(b)(5)**

**(b)(5)**

**(b)(5)**

**(b)(5)**

**(b)(5)**



**(b)(5)**

From:

Sent:

To:

**(b)(6), (b)(7)(C)**

CC:

Subject: CAP Admin Subpoenas

Attachments: ES ERO SEA

**(b)(6), (b)(7)(C)**

FYSA.. **(b)(6), (b)(7)(C)** and I decided to drop the other two cases and focus on the two worst. There is one from Washington County and one from Multnomah County.

I need **(b)(6), (b)(7)(C)** to provide the case numbers for all the criminal history. No need to put them in the ES, just send them to me in an email.

**(b)(6), (b)(7)(C)**

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/CAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-322-**(b)(6), (b)(7)(C)** | iPhone 503-849-**(b)(6), (b)(7)(C)**

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May 11, 2020

**(b)(5)**

**(b)(5)**

**Law Enforcement Sensitive – For Official Use Only**

May 14, 2020

**(b)(5)**



**(b)(5)**

**Law Enforcement Sensitive – For Official Use Only**

**(b)(5)**

**Law Enforcement Sensitive – For Official Use Only**

From:

Sent:

To:

CC:

(b)(6), (b)(7)(C)

Subject: FW: Admin Subs

Attachments: ES ERO NYC - (b)(6), (b)(7)(C)

Fellas,

Here is the exact criteria they are seeking on cases. Please review and see what we can find.

As for the cases being reviewed, we strongly recommend to identify 4 cases from the State of Oregon, and 4 cases from the State of Washington. I know you mentioned prior that you have worked with local USAO, but to make sure we are in the same frequency, these cases to be identified, should ideally meet the following criteria:

- NOT in ICE custody
- These cases need to be recent arrests/declined detainers, egregious criminals, and-ideally-prior removals so that alienage is not an issue.
- If recent arrest is for a minor offense, make sure to expand in the ES why the individual is a threat to the community based on past criminal background.
- Ideally one individual remains in LEA custody, and the other three have been released to the community, and detainer not being honored.

The attachment contains an example of an ES.

(b)(6), (b)(7)(C)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-324- [redacted] | iPhone 503-849- [redacted]

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From: (b)(6), (b)(7)(C)@ice.dhs.gov>  
Sent: Friday, January 24, 2020 12:39 PM  
To: (b)(6), (b)(7)(C)@ice.dhs.gov>  
Cc: (b)(6), (b)(7)(C)@ice.dhs.gov>; P (b)(6), (b)(7)(C)@ice.dhs.gov>  
Subject: RE: Admin Subs

(b)(6), (b)(7)(C)

Thanks for the list..

\*\*\*\*Update: Things are moving very quickly as I mentioned in my previous email. I have been told by Enforcement leadership that Mr. Albence is very interested to mirror the outrage (significant media attention) conducted when the Immigration Subpoenas were served in the State of NY.

As for the cases being reviewed, we strongly recommend to identify 4 cases from the State of Oregon, and 4 cases from the State of Washington. I know you mentioned prior that you have worked with local USAO, but to make sure we are in the same frequency, these cases to be identified, should ideally meet the following criteria:

- NOT in ICE custody
- These cases need to be recent arrests/declined detainers, egregious criminals, and-ideally-prior removals so that alienage is not an issue.
- If recent arrest is for a minor offense, make sure to expand in the ES why the individual is a threat to the community based on past criminal background.
- Ideally one individual remains in LEA custody, and the other three have been released to the community, and detainer not being honored.

I look forward to working with you.

Cheers to you too!

(b)(6),(b)(7)(C)

---

**From:** (b)(6),(b)(7)(C) <ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 1:04 PM  
**To:** (b)(6),(b)(7)(C) <ice.dhs.gov>  
**Cc:** (b)(6),(b)(7)(C) <@ice.dhs.gov>; (b)(6),(b)(7)(C) <@ice.dhs.gov>  
**Subject:** RE: Admin Subs

(b)(6),(b)(7)(C)

I will work with my staff here in Oregon to find cases, Prepare the ES and Subpoenas, and submit them.

The Oregon AFOD and SDDOs that will need access to the Subpoena log are as follows:

(b)(6),(b)(7)(C)

I know we will want to loop in AFOD (b)(6),(b)(7)(C) in Seattle. He will be the AFOD handling the Washington cases. AFOD (b)(6),(b)(7)(C) is currently traveling today, but will be available on Monday for a phone conversation regarding the requirements.

Once I hear from AFOD (b)(6),(b)(7)(C) we can setup a time to talk on Monday.

Cheers,

(b)(6),(b)(7)(C)  
Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/MCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-334-1111 | iPhone 503-849-(b)(6),(b)(7)(C)

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---

**From:** (b)(6),(b)(7)(C) <@ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 9:41 AM  
**To:** (b)(6),(b)(7)(C) <@ice.dhs.gov>

Cc: N [redacted] (b)(6),(b)(7)(C) @ice.dhs.gov>

Subject: RE: Admin Subs

I can tell you that our ICE leadership (Mr. Albence and Mr. Lucero) are eager to conduct outreaches on this initiative, and the pace is significantly quicker than ours 😊...

We can work on different deadlines:

By Monday, January 27 (12 pm EST)- please provide me a list of SDDOs and AFODs who need access to the Subpoena Log and potential LEAs (I will be your main POC so I will be readily available if training is needed)

By Tuesday, and Wednesday 28-29- please provide the 4 ES and Subpoenas. They can be sent one by one, and I work with your Field making sure, they are properly redacted before sending them to OPLA HQ for review.

[redacted] (b)(6),(b)(7)(C)

Department of Homeland Security  
Immigration and Customs Enforcement  
Criminal Alien Division  
500 12<sup>th</sup> St SW  
Washington, DC 20024  
Office (202) 732-[redacted] Cell (202) 76-[redacted] (b)(6),(b)(7)(C)

From: [redacted] (b)(6),(b)(7)(C) @ice.dhs.gov>

Sent: Friday, January 24, 2020 12:24 PM

To: [redacted] (b)(6),(b)(7)(C) @ice.dhs.gov>

Cc: [redacted] (b)(6),(b)(7)(C) @ice.dhs.gov>

Subject: RE: Admin Subs

Thank you for the quick response.

I am going to meet with the SDDOs in Portland on Monday and begin the process of picking out cases. We should be able to provide the information on potential cases by the end of next week, January 31.

Does that timeframe work for you?

[redacted] (b)(6),(b)(7)(C)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-328-[redacted] iPhone 503-84-[redacted] (b)(6),(b)(7)(C)

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From: [redacted] (b)(6),(b)(7)(C) @ice.dhs.gov>

Sent: Friday, January 24, 2020 9:20 AM

To: [redacted] (b)(6),(b)(7)(C) @ice.dhs.gov>

Cc: [redacted] (b)(6),(b)(7)(C) @ice.dhs.gov>

Subject: RE: Admin Subs

Very good question! However, our ERO leadership wants that all subpoenas to LEAs go through the normal route that has been proceeding with in these cases. It is ok to share with OPLA SEA, but the coordination with DOJ has been



occurring at the main DOJ level with the local USAO, so we should not exclude main DOJ from the process and step on their toes in coordinating with the local USAO.

Let me know how soon can you identify potential cases?

(b)(6),(b)(7)(C)

**From:** (b)(6),(b)(7)(C)@ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 12:10 PM  
**To:** (b)(6),(b)(7)(C)@ice.dhs.gov>  
**Cc:** (b)(6),(b)(7)(C)@ice.dhs.gov>  
**Subject:** RE: Admin Subs

Thank you for providing the information.

Is there any issue with me providing a copy of the draft subpoenas with the USAO here in Oregon?

(b)(6),(b)(7)(C)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-326- (b)(6),(b)(7)(C) | iPhone 503-849- (b)(6),(b)(7)(C)

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**From:** (b)(6),(b)(7)(C)@ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 9:04 AM  
**To:** (b)(6),(b)(7)(C)@ice.dhs.gov>  
**Cc:** (b)(6),(b)(7)(C)@ice.dhs.gov>  
**Subject:** RE: Admin Subs

Good Morning,

Indeed, and it is a pleasure working with you.

These subpoenas are being reviewed at HQ level, so it is very important to work together in several steps. Please provide me the following (not sure if we should set together a deadline):

1. Identify LEAs
2. Present at least 4 ES and drafted Subpoenas
3. Provide a list of POCs (2 SDDOs and 1 AFOD) who can gain access to our HQ Subpoena Log
4. Have email of LEA's OIC ready for service (in addition to subpoenas being served in person)

I am attaching a go-by of clear language for subpoena, an ES, Excel Sheet to plug POCs for Subpoena Log, and PPT on the Subpoena Log in share point.

Feel free to call me if you have any questions,

(b)(6),(b)(7)(C)

Department of Homeland Security  
Immigration and Customs Enforcement  
Criminal Alien Division  
500 12<sup>th</sup> St SW  
Washington, DC 20024  
Office (202) 732- (b)(6),(b)(7)(C) | Cell (202) 76- (b)(6),(b)(7)(C)

**From:** (b)(6),(b)(7)(C) @ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 11:48 AM  
**To:** (b)(6),(b)(7)(C) @ice.dhs.gov>  
**Cc:** (b)(6),(b)(7)(C) @ice.dhs.gov>  
**Subject:** RE: Admin Subs

Good Morning (b)(6),(b)(7)(C)

I have had a number of conversations with the USAO here in Oregon. The USAO is very supportive and we had a teleconference this week to discuss how to move forward to begin this process.

Do you happen to have a copy of the language being used on the Admin Subpoenas by Denver and New York?

(b)(6),(b)(7)(C)  
Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/CAS & Fugitive Operations  
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Office 503-326-(b)(6),(b)(7)(C) Phone 503-845-(b)(6),(b)(7)(C)

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---

**From:** (b)(6),(b)(7)(C) @ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 8:38 AM  
**To:** (b)(6),(b)(7)(C) @ice.dhs.gov>; (b)(6),(b)(7)(C) @ice.dhs.gov (b)(6),(b)(7)(C) @ice.dhs.gov>  
**Cc:** (b)(6),(b)(7)(C) @ice.dhs.gov>; (b)(6),(b)(7)(C) @ice.dhs.gov>  
**Subject:** FW: Admin Subs

Good Morning Seattle Field Office,

I hope you are doing well. I am reaching out to you at the request of our DAD (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) from the Criminal Alien Division, so we can perhaps discuss deeply about immigration subpoenas on LEAs.

This is an initiative strongly supported by our ERO leadership, and we have already served the first subpoenas on uncooperative LEAs within the jurisdictions of Denver and New York, and continue working with other AORs for expansion.

According to our most recent tasking sent to all Field Offices related to LEAs with limited and non-cooperative with ICE your AOR provided us a list of 45 non-cooperative LEAs in the States of Washington (32+), and Oregon (approximately 9). Further, we receive from your AOR a weekly list of individuals being released to the community due to detainers not being honored. Enforcement would like to work with your AOR on identifying potential cases where the information requested through subpoenas can successfully lead to an at-large arrest.

I am copying all of you, so you can defer me to the right POC(s), so we can work together on this initiative. As you read in the email below, USAO is supportive to possible litigation in case the subpoenas are not honored by the LEAs.

Regards,

(b)(6),(b)(7)(C)

Department of Homeland Security  
Immigration and Customs Enforcement  
Criminal Alien Division  
500 12<sup>th</sup> St SW  
Washington, DC 20024  
Office (202) 732- (b)(6),(b)(7)(C) Cell (202) 76- (b)(6),(b)(7)(C)

---

**From:** Bernacke, Michael V (b)(6),(b)(7)(C) @ice.dhs.gov  
**Sent:** Friday, January 24, 2020 8:45 AM  
**To:** (b)(6),(b)(7)(C) @ice.dhs.gov (b)(6),(b)(7)(C) @ice.dhs.gov  
**Subject:** FW: Admin Subs

Heads up. Potentially more cases for us.

---

**From:** (b)(6),(b)(7)(C) @ice.dhs.gov  
**Sent:** Friday, January 24, 2020 8:32 AM  
**To:** Bernacke, Michael V (b)(6),(b)(7)(C) @ice.dhs.gov  
**Subject:** FW: Admin Subs

FYI from Seattle. I advised the Chief Counsel to have the FOD reach out to you, so (b)(6),(b)(7)(C) folks may be reaching out.

(b)(6),(b)(7)(C)

Chief  
Enforcement and Removal Operations Law Division  
Office of the Principal Legal Advisor  
U.S. Immigration and Customs Enforcement  
(202) 732- (b)(6),(b)(7)(C)

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**From:** (b)(6),(b)(7)(C) @ice.dhs.gov  
**Sent:** Friday, January 24, 2020 8:19 AM  
**To:** (b)(6),(b)(7)(C) @ice.dhs.gov  
**Cc:** (b)(6),(b)(7)(C) @ice.dhs.gov  
**Subject:** RE: Admin Subs

ERO should talk to (b)(6),(b)(7)(C) I've cc'd (b)(6),(b)(7)(C) here who is handling the liaison with US attorneys. He runs prospective AORs by main DOJ (b)(6),(b)(7)(C) and (b)(6),(b)(7)(C)

At first, they only wanted to try it in jurisdictions that had non hostile district courts, but I think the circle has expanded.

(b)(6),(b)(7)(C)

Deputy Chief  
Enforcement and Removal Operations Law Division  
Office of the Principal Legal Advisor  
DHS U.S. Immigration and Customs Enforcement  
202 732 (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) [ice.dhs.gov](mailto:ice.dhs.gov)

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From: (b)(6),(b)(7)(C) [ice.dhs.gov](mailto:ice.dhs.gov)

Sent: Thursday, January 23, 2020 7:43 PM

To: (b)(6),(b)(7)(C) [@ice.dhs.gov](mailto:ice.dhs.gov)

Subject: Admin Subs

(b)(6),(b)(7)(C)

Who do I talk to about getting on the list to pilot these? My US Attorney in Portland seems pretty open to the idea, and I think the US Attorney here in Washington would be open to it as well.

My ERO is really pushing for this.

(b)(6),(b)(7)(C)

Chief Counsel  
Office of the Principal Legal Advisor, Seattle  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security  
(206) 613 (b)(6),(b)(7)(C) Desk  
(202) 300 (b)(6),(b)(7)(C) Mobile

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January 11, 2020

**(b)(5)**



**(b)(5)**

**Law Enforcement Sensitive – For Official Use Only**

From:

Sent:

To:

CC:

(b)(6), (b)(7)(c)

Subject: FW: NEXT STEPS ON SEA SUBPOENAS

Importance: High

Hey (b)(6), (b)(7)(c)

Here is some of the direction I am getting from my HQ. Let me know if any of this seems problematic to you.

(b)(6), (b)(7)(c)  
Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-328-1000 | iPhone 503-349-1000

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From: (b)(6), (b)(7)(c)@ice.dhs.gov>

Sent: Friday, February 14, 2020 10:24 AM

To: (b)(6), (b)(7)(c)@ice.dhs.gov>

Subject: NEXT STEPS ON SEA SUBPOENAS

Importance: High

(b)(6), (b)(7)(c)

Per our conversation, let's agree upon completion of the following steps to ensure our ERO leadership is appraised by COB today, and prior to the long holiday weekend:

1. Provide copies of drafted subpoenas to be served (to have early visibility of the edits recommended in Block 4)
2. Provide the name of the Officer who will be serving the two subpoenas on Tuesday, February 18, 2020
3. Ensure subpoenas information is correct and logged in our CAPHQ Share point, so the right subpoena number is assigned in between blocks 1 and 2 fo I-138 form. (Let me know if you need assistance) link is below:

4. (b)(7)(E)

\*Note: Access to subpoena log is restricted to the SDDOs provided prior by your AOR from previous tasking.

On Tuesday, February 18, 2020 prior to serving subpoenas on WCSO:

1. Print two copies for each subpoena, and sign as issuing authority.
2. Subpoenas are to be served in person by 10:00 am (PST) by an official independent from the POCs shown in the subpoena forms.
3. The Officer serving subpoenas needs to ask for the LEA's highest rank currently at the Office. Page 2 of the I-138 needs to log the rank and name of the authority the subpoenas were served to, to include time of service.
4. One original served copy for each subpoena is returned to ERO.
5. Send email to me confirming subpoenas have been served to LEAs
6. Provide copies of served subpoenas as soon as possible. The served subpoenas need to be uploaded in the CAP HQ Subpoena log, too

Again, do not hesitate to call me if you have any questions.

(b)(6), (b)(7)(c)

Detention and Deportation Officer  
Criminal Alien Program  
U.S. Immigration and Customs Enforcement  
O (202)732-1000 | C (202)763-1000

From: (b)(6), (b)(7)(c) @ice.dhs.gov>

Sent: Friday, February 14, 2020 10:01 AM

To: (b)(6), (b)(7)(c) @ice.dhs.gov>

Subject: RE: Case Material

Hey (b)(6), (b)(7)(c)

Could you give me a call?

(b)(6), (b)(7)(c)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-326-1000 | iPhone 503-326-1000

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From: (b)(6), (b)(7)(c)

Sent: Friday, February 14, 2020 6:21 AM

To: (b)(6), (b)(7)(c) @ice.dhs.gov>

Subject: RE: Case Material

Good Morning (b)(6), (b)(7)(c)

The first attachment is the fax confirmation. The second attachment is the email I sent to Washington County

Sheriff (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-326-1000 | iPhone 503-326-1000

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From: (b)(6), (b)(7)(c) @ice.dhs.gov>

Sent: Friday, February 14, 2020 5:53 AM

To: (b)(6), (b)(7)(c) @ice.dhs.gov>

Subject: RE: Case Material

Good Morning (b)(6), (b)(7)(c)

I hope you had a good day out of the office. Friendly reminder to send me delivery confirmation receipts for the informal memo sent to WCSO of (b)(6), (b)(7)(c) case.

(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c) @ice.dhs.gov>

Sent: Wednesday, February 12, 2020 7:11 PM

To: (b)(6), (b)(7)(c) @ice.dhs.gov>

Subject: RE: Case Material

Hey (b)(6), (b)(7)(c)

I am out for the day and gone all day tomorrow. I can send you the fax confirmation on Friday.

Sent with BlackBerry Work

(www.blackberry.com)

From: (b)(6), (b)(7)(c) @ice.dhs.gov>

Date: Wednesday, Feb 12, 2020, 4:02 PM

To: (b)(6), (b)(7)(c) @ice.dhs.gov>

Subject: RE: Case Material

Can you send me a copy of delivery confirmation, please?

(b)(6), (b)(7)(c)

Criminal Alien Program  
Enforcement and Removal Operations

Immigration and Customs Enforcement

(202)763-(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)@ice.dhs.gov>

Date: Wednesday, Feb 12, 2020, 6:38 PM

To: (b)(6), (b)(7)(c)@ice.dhs.gov>

Subject: FW: Case Material

Request is attached. The only thing I dropped from the memo is the second paragraph, which will be the information we will seek from the request already sent to Hillsboro PD.

I faxed and emailed the request like we did the other requests.

(b)(6), (b)(7)(c)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VOCAS & Fugitive Operations  
4010 SW Macadam Avenue, Portland, OR 97239  
Office 503-326-XXXX | iPhone 503-84-XXXX

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From: (b)(6), (b)(7)(c)@ice.dhs.gov>

Sent: Wednesday, February 12, 2020 3:37 PM

To: (b)(6), (b)(7)(c)@ice.dhs.gov>

Subject: RE: Case Material

Ok, share with me the documents being sent today, and remember the deadline is Friday at 3:00 pm.

(b)(6), (b)(7)(c)

Criminal Alien Program  
Enforcement and Removal Operations  
Immigration and Customs Enforcement

(202)763-(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)@ice.dhs.gov>

Date: Wednesday, Feb 12, 2020, 6:33 PM

To: (b)(6), (b)(7)(c)@ice.dhs.gov>

Subject: FW: Case Material

Good Evening (b)(6), (b)(7)(c)

After thinking over the conversation you and I had today. I reached out to the Field Office, OPLA, and the USAO. I am going to send a memo request to Washington County on (b)(6), (b)(7)(c) today. That way we can subpoena both Hillsboro PD and the Washington County Sheriffs for his information.

Cheers

(b)(6), (b)(7)(c)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VOCAS & Fugitive Operations  
4010 SW Macadam Avenue, Portland, OR 97239  
Office 503-326-XXXX | iPhone 503-84-XXXX

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From: (b)(6), (b)(7)(c)@usdoj.gov>

Sent: Wednesday, February 12, 2020 3:20 PM

To: (b)(6), (b)(7)(c)@ice.dhs.gov>; Asher, Nathalie R <(b)(6), (b)(7)(c)@ice.dhs.gov>; Melendez, Michael

(b)(6), (b)(7)(c)@ice.dhs.gov>; (b)(6), (b)(7)(c)@ice.dhs.gov>

Cc: (b)(6), (b)(7)(c)@ice.dhs.gov>

Subject: RE: Case Material

(b)(5)



(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c)@ice.dhs.gov

Sent: Wednesday, February 12, 2020 3:10 PM

To: Asher, Nathalie R (b)(6), (b)(7)(c)@ice.dhs.gov; Melendez, Michael A (b)(6), (b)(7)(C)@ice.dhs.gov;

(b)(6), (b)(7)(c)@ice.dhs.gov

Cc: (b)(6), (b)(7)(C)@ice.dhs.gov; (b)(6), (b)(7)(C)@sa.doi.gov

Subject: RE: Case Material

Because we are getting down to crunch time today, I will go ahead and send the memo request to Washington County. That way (b)(6), (b)(7)(C) have the option of preparing a subpoena to both Washington County and Hillsboro PD.

(b)(6), (b)(7)(C)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/NCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-326-1111 / Phone 503-848-1111

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From: (b)(6), (b)(7)(C)

Sent: Wednesday, February 12, 2020 2:45 PM

To: Asher, Nathalie R (b)(6), (b)(7)(C)@ice.dhs.gov; Melendez, Michael A (b)(6), (b)(7)(C)@ice.dhs.gov

<(b)(6), (b)(7)(C)@ice.dhs.gov>; (b)(6), (b)(7)(C)@ice.dhs.gov

Cc: (b)(6), (b)(7)(C)@ice.dhs.gov; (b)(6), (b)(7)(C)@usdoj.gov

Subject: FW: Case Material

Good Afternoon All,

When I original sent the memo request on (b)(6), (b)(7)(C), I only sent the request to Hillsboro PD because we believed he was at-large. I have since found out that he is in the Washington County Jail.

We have two options with his case:

1. Since I only requested information from Hillsboro PD, we only subpoena them for FAJARDO's information.
2. If we want any information that Washington County Jail might have, I would need to send a memo requesting information today with a due date by this Friday. Then we could also subpoena Washington County for FAJARDO.

Thoughts?

We are still going to subpoena Washington County for (b)(6), (b)(7)(C)

(b)(6), (b)(7)(C)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/NCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-326-1111 / Phone 503-848-1111

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From: k (b)(6), (b)(7)(C)@ice.dhs.gov

Sent: Wednesday, February 12, 2020 2:38 PM

To: (b)(6), (b)(7)(C)@ice.dhs.gov

Subject: RE: Case Material

Can you direct this question to the larger group email? I think these kind of strategic decisions are above my pay grade...

(b)(6), (b)(7)(C)

Assistant Chief Counsel  
Office of the Principal Legal Advisor, Seattle (Portland)  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security  
Tel: (503) 326-1111 / Fax: (503) 326-2194

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**From:** (b)(6),(b)(7)(C) @ice.dhs.gov>

**Sent:** Wednesday, February 12, 2020 2:37 PM

**To:** (b)(6),(b)(7)(C) @ice.dhs.gov>

**Subject:** FW: Case Material

Hey (b)(6),(b)(7)(C)

On the (b)(6),(b)(7)(C) case. I think we should just stick with doing a subpoena to Hillsboro PD. I did not send a memo request to Washington County for any information on (b)(6),(b)(7)(C) because we didn't realize he was still in custody.

(b)(6),(b)(7)(C)

Assistant Field Office Director

ICE | Enforcement and Removal Operations

Portland CAP/VCAG & Fugitive Operations

4310 SW Macadam Avenue, Portland, OR 97239

Office 503-326- [redacted] iPhone 503-84 [redacted]

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**From:** (b)(6),(b)(7)(C)

**Sent:** Wednesday, February 12, 2020 1:33 PM

**To:** (b)(6),(b)(7)(C) @ice.dhs.gov>

**Subject:** Case Material

Hey (b)(6),(b)(7)(C)

Here is what we either have or need depending on where the request would go:

**Washington County:**

(b)(6),(b)(7)(C)

Currently in custody at Washington County

Requests to Washington County

We have a redacted Arrest Report.

**Hillsboro PD:**

(b)(6),(b)(7)(C)

Currently in custody at Washington County

I would think we need an Arrest Report and PC statement from Hillsboro and booking sheet and disciplinary

record from Washington County

**Oregon State Police:**

(b)(6),(b)(7)(C)

Currently at-large

Need an Arrest Report an PC Statement from Oregon State Police

**Clackamas County:**

(b)(6),(b)(7)(C)

Currently at-large

We have a redacted notice report, fingerprints, and mugshot from Clackamas county.

(b)(6),(b)(7)(C)

We have a copy of the official bond posting from current charges that includes an address. We have a Clackamas DA's Information that has a name and DOB, and a redacted Arrest report.

Let me know if you have any questions.

Cheers,

(b)(6),(b)(7)(C)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VIS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-325-1111 | Phone 503-848-1111

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From:  
Sent:  
To:

(b)(6), (b)(7)(C)

CC:

Subject: RE: Admin Subs

Flag: Follow up

Awesome! And thank you for the prompt response. I will coordinate with the AFODs for a call at their earliest convenience.

(b)(6), (b)(7)(C)

Criminal Alien Program  
Enforcement and Removal Operations  
Immigration and Customs Enforcement  
(202) 763- (b)(6), (b)(7)(C)

From: Melendez, Michael A (b)(6), (b)(7)(C) @ice.dhs.gov  
Date: Friday, Jan 24, 2020, 11:40 AM  
To: (b)(6), (b)(7)(C) @ice.dhs.gov, (b)(6), (b)(7)(C) @ice.dhs.gov (b)(6), (b)(7)(C) @ice.dhs.gov, (b)(6), (b)(7)(C) @ice.dhs.gov, (b)(6), (b)(7)(C) @ice.dhs.gov  
Cc: (b)(6), (b)(7)(C) @ice.dhs.gov, Asher, Nathalie R (b)(6), (b)(7)(C) @ice.dhs.gov  
Subject: RE: Admin Subs

Thanks (b)(6), (b)(7)(C)

I hope all is well with you...

Seattle's POCs are as follows:

- Seattle AFOD (b)(6), (b)(7)(C)
- Portland AFOD (b)(6), (b)(7)(C)

We look forward to getting this up and running!!

Thanks,

(b)(6), (b)(7)(C)

206-835- (b)(6), (b)(7)(C) /Office  
206-793- /Cell

From: (b)(6), (b)(7)(C) @ice.dhs.gov  
Sent: Friday, January 24, 2020 8:38 AM  
To: (b)(6), (b)(7)(C) @ice.dhs.gov, (b)(6), (b)(7)(C) @ice.dhs.gov (b)(6), (b)(7)(C) @ice.dhs.gov

(b)(6),(b)(7)(C)@ice.dhs.gov>

Cc: Melendez, Michael A <(b)(6),(b)(7)(C)@ice.dhs.gov>; (b)(6),(b)(7)(C)@ice.dhs.gov>

Subject: FW: Admin Subs

Good Morning Seattle Field Office,

I hope you are doing well. I am reaching out to you at the request of our DAD (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) from the Criminal Alien Division, so we can perhaps discuss deeply about immigration subpoenas on LEAs.

This is an initiative strongly supported by our ERO leadership, and we have already served the first subpoenas on uncooperative LEAs within the jurisdictions of Denver and New York, and continue working with other AORs for expansion.

According to our most recent tasking sent to all Field Offices related to LEAs with limited and non-cooperative with ICE your AOR provided us a list of 45 non-cooperative LEAs in the States of Washington (32+), and Oregon (approximately 9). Further, we receive from your AOR a weekly list of individuals being released to the community due to detainers not being honored. Enforcement would like to work with your AOR on identifying potential cases where the information requested through subpoenas can successfully lead to an at-large arrest.

I am copying all of you, so you can defer me to the right POC(s), so we can work together on this initiative. As you read in the email below, USAO is supportive to possible litigation in case the subpoenas are not honored by the LEAs.

Regards,

(b)(6),(b)(7)(C)

Department of Homeland Security  
Immigration and Customs Enforcement  
Criminal Alien Division  
500 12<sup>th</sup> St SW

Washington, DC 20024

Office (202) 732-(b)(6),(b)(7)(C) Cell (202)763-(b)(6),(b)(7)(C)

From: (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)@ice.dhs.gov>

Sent: Friday, January 24, 2020 8:45 AM

To: (b)(6),(b)(7)(C)@ice.dhs.gov>; (b)(6),(b)(7)(C)@ice.dhs.gov>

Subject: FW: Admin Subs

Heads up. Potentially more cases for us.

From: (b)(6),(b)(7)(C)@ice.dhs.gov>

Sent: Friday, January 24, 2020 8:32 AM

To: (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)@ice.dhs.gov>

Subject: FW: Admin Subs

FYI from Seattle. I advised the Chief Counsel to have the FOD reach out to you, so Nathalie's folks may be reaching out.

(b)(6),(b)(7)(C)

Chief

Enforcement and Removal Operations Law Division

Office of the Principal Legal Advisor

U.S. Immigration and Customs Enforcement

(202) 732-(b)(6),(b)(7)(C)

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From: (b)(6),(b)(7)(C)@ice.dhs.gov>

Sent: Friday, January 24, 2020 8:19 AM

To: (b)(6),(b)(7)(C)@ice.dhs.gov>

Cc: (b)(6),(b)(7)(C)@ice.dhs.gov>

Subject: RE: Admin Subs

ERO should talk to (b)(6),(b)(7)(C) I've cc'd (b)(6),(b)(7)(C) here who is handling the liaison with US attorneys. He runs prospective AORs by main DOJ – (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) only wanted to try it in jurisdictions that had non hostile district courts, but I think the circle has expanded.

Deputy Chief  
Enforcement and Removal Operations Law Division  
Office of the Principal Legal Advisor  
DHS U.S. Immigration and Customs Enforcement  
202 73 (b)(6),(b)(7)(C) Office)  
(b)(6),(b)(7)(C) @ice.dhs.gov

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From: (b)(6),(b)(7)(C) @ice.dhs.gov

Sent: Thursday, January 23, 2020 7:43 PM

To: (b)(6),(b)(7)(C) @ice.dhs.gov

Subject: Admin Subs

(b)(6),(b)(7)(C)

Who do I talk to about getting on the list to pilot these? My US Attorney in Portland seems pretty open to the idea, and I think the US Attorney here in Washington would be open to it as well.

My ERO is really pushing for this.

(b)(6),(b)(7)(C)

Chief Counsel  
Office of the Principal Legal Advisor, Seattle  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security  
(206) 613 (b)(6),(b)(7)(C) Desk  
(202) 300 (b)(6),(b)(7)(C) Mobile)

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From:

(b)(6), (b)(7)(C)

Sent:

To:

CC:

Subject: RE: Admin Subs

Attachments: ICE Subpoena ERO-ENF-DEN-202000004.pdf; CHI-ICE Subpoena (b)(6), (b)(7)(C) pdf; ES ERO NYC (b)(6), (b)(7)(C) ERO Subpoenas Log Training (CLEARED 12.16.19).ppt; Immigration Subpoena Users- II.xlsx

Flag: Follow up

Good Morning,

Indeed, and it is a pleasure working with you.

These subpoenas are being reviewed at HQ level, so it is very important to work together in several steps. Please provide me the following (not sure if we should set together a deadline):

1. Identify LEAs
2. Present at least 4 ES and drafted Subpoenas
3. Provide a list of POCs (2 SDDOs and 1 AFOD) who can gain access to our HQ Subpoena Log
4. Have email of LEA's OIC ready for service (in addition to subpoenas being served in person)

I am attaching a go-by of clear language for subpoena, an ES, Excel Sheet to plug POCs for Subpoena Log, and PPT on the Subpoena Log in share point.

Feel free to call me if you have any questions,

(b)(6), (b)(7)(C)

Department of Homeland Security  
Immigration and Customs Enforcement  
Criminal Alien Division  
500 12<sup>th</sup> St SW  
Washington, DC 20024  
Office (202) 732- (b)(6), (b)(7)(C) Cell (202) 763- (b)(6), (b)(7)(C)

From: (b)(6), (b)(7)(C) @ice.dhs.gov>  
Sent: Friday, January 24, 2020 11:48 AM  
To: (b)(6), (b)(7)(C) @ice.dhs.gov>  
Cc: Melendez, Michael A (b)(6), (b)(7)(C) @ice.dhs.gov>  
Subject: RE: Admin Subs

Good Morning (b)(6), (b)(7)(C)

I have had a number of conversations with the USAO here in Oregon. The USAO is very supportive and we had a teleconference this week to discuss how to move forward to begin this process.

Do you happen to have a copy of the language being used on the Admin Subpoenas by Denver and New York?

(b)(6), (b)(7)(C)  
Assistant Field Office Director  
ICE | Enforcement and Removal Operations

Portland CAP/VCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-325-(b)(6), (b)(7)(C) | iPhone 503-84-(b)(6), (b)(7)(C)

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**From:** (b)(6), (b)(7)(C) @ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 8:38 AM  
**To:** (b)(6), (b)(7)(C) @ice.dhs.gov>; (b)(6), (b)(7)(C) @ice.dhs.gov>; (b)(6), (b)(7)(C)  
(b)(6), (b)(7)(C) @ice.dhs.gov>  
**Cc:** Melendez, Michael A (b)(6), (b)(7)(C) @ice.dhs.gov>; (b)(6), (b)(7)(C) @ice.dhs.gov>  
**Subject:** FW: Admin Subs

Good Morning Seattle Field Office,

I hope you are doing well. I am reaching out to you at the request of our DAD (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) from the Criminal Alien Division, so we can perhaps discuss deeply about immigration subpoenas on LEAs.

This is an initiative strongly supported by our ERO leadership, and we have already served the first subpoenas on uncooperative LEAs within the jurisdictions of Denver and New York, and continue working with other AORs for expansion.

According to our most recent tasking sent to all Field Offices related to LEAs with limited and non-cooperative with ICE your AOR provided us a list of 45 non-cooperative LEAs in the States of Washington (32+), and Oregon (approximately 9). Further, we receive from your AOR a weekly list of individuals being released to the community due to detainers not being honored. Enforcement would like to work with your AOR on identifying potential cases where the information requested through subpoenas can successfully lead to an at-large arrest.

I am copying all of you, so you can defer me to the right POC(s), so we can work together on this initiative. As you read in the email below, USAO is supportive to possible litigation in case the subpoenas are not honored by the LEAs.

Regards,

(b)(6), (b)(7)(C)

Department of Homeland Security  
Immigration and Customs Enforcement  
Criminal Alien Division  
500 12<sup>th</sup> St SW  
Washington, DC 20024  
Office (202) 732-(b)(6), (b)(7)(C) Cell (202) 763-(b)(6), (b)(7)(C)

**From:** (b)(6), (b)(7)(C) (b)(6), (b)(7)(C) @ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 8:45 AM  
**To:** (b)(6), (b)(7)(C) @ice.dhs.gov>; (b)(6), (b)(7)(C) @ice.dhs.gov>  
**Subject:** FW: Admin Subs

Heads up. Potentially more cases for us.

---

**From:** (b)(6),(b)(7)(C) <[redacted]@ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 8:32 AM  
**To:** (b)(6),(b)(7)(C) <[redacted]@ice.dhs.gov>  
**Subject:** FW: Admin Subs

FYI from Seattle. I advised the Chief Counsel to have the FOD reach out to you, so Nathalie's folks may be reaching out.

(b)(6),(b)(7)(C)

Chief  
Enforcement and Removal Operations Law Division  
Office of the Principal Legal Advisor  
U.S. Immigration and Customs Enforcement  
(202) 732-[redacted]

--- ATTORNEY/CLIENT PRIVILEGE --- ATTORNEY WORK PRODUCT ---

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---

**From:** (b)(6),(b)(7)(C) <[redacted]@ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 8:19 AM  
**To:** (b)(6),(b)(7)(C) <[redacted]@ice.dhs.gov>  
**Cc:** (b)(6),(b)(7)(C) <[redacted]@ice.dhs.gov>  
**Subject:** RE: Admin Subs

ERO should talk to (b)(6),(b)(7)(C) I've cc'd (b)(6),(b)(7)(C) here who is handling the liaison with US attorneys. He runs prospective AORs by main DOJ - (b)(6),(b)(7)(C)

At first, they only wanted to try it in jurisdictions that had non hostile district courts, but I think the circle has expanded.

(b)(6),(b)(7)(C)

Deputy Chief  
Enforcement and Removal Operations Law Division  
Office of the Principal Legal Advisor  
DHS U.S. Immigration and Customs Enforcement  
202 732-[redacted] office  
(b)(6),(b)(7)(C) <[redacted]@ice.dhs.gov>

--- ATTORNEY/CLIENT PRIVILEGE --- ATTORNEY WORK PRODUCT ---

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---

**From:** (b)(6),(b)(7)(C) <[redacted]@ice.dhs.gov>  
**Sent:** Thursday, January 23, 2020 7:43 PM  
**To:** (b)(6),(b)(7)(C) <[redacted]@ice.dhs.gov>  
**Subject:** Admin Subs

(b)(6),(b)(7)(C)

Who do I talk to about getting on the list to pilot these? My US Attorney in Portland seems pretty open to the idea, and I think the US Attorney here in Washington would be open to it as well.

My ERO is really pushing for this.

(b)(6),(b)(7)(C)

Chief Counsel  
Office of the Principal Legal Advisor, Seattle  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security  
(206) 613- (b)(6) (b)(7)(C) (Desk)  
(202) 300- (b)(6) (b)(7)(C) (Mobile)

**\*\*\* WARNING \*\*\* ATTORNEY/CLIENT PRIVILEGE \*\*\* ATTORNEY WORK PRODUCT \*\*\***

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1. To (Name, Address, City, State, Zip Code) Interim Sheriff (b)(6),(b)(7)(C) and/or Officer/Person In Charge Van Cise-Simonet Detention Center 490 W Colfax Ave., Denver, CO 80204	DEPARTMENT OF HOMELAND SECURITY  <b>IMMIGRATION ENFORCEMENT SUBPOENA</b> to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number ERO-ENF-DEN-202000004	
2. In Reference To <div style="display: flex; justify-content: space-around;"> <div style="border: 1px dashed black; padding: 5px;">(b)(6),(b)(7)(C)</div> <div style="border: 1px dashed black; padding: 5px;">(b)(6),(b)(7)(C)</div> </div> <div style="display: flex; justify-content: space-around; font-size: small;"> <span>(Title of Proceeding)</span> <span>(File Number, if Applicable)</span> </div>	

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 laws. 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: (b)(6),(b)(7)(C) ce.dhs.gov Title Supervisory Detention and Deportation Officer Address 12445 E Caley Ave Centennial, CO 80111 Telephone Number 720-873-(b)(6),(b)(7)(C)	(B) Date 01/27/2020  (C) Time 3:00 <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.
--	---

4. Records required to be produced for inspection

1. Documents sufficient to establish the following for (b)(6),(b)(7)(C) Home Address, Employment Address, Country of Birth, Place of Birth, Age, Identification Documents (i.e. driver license number and state, foreign identification card number and country, passport number and country), Bond Information to include the obligor name and address, Federal Bureau of Investigation Number, Emergency Contact address and phone number, including copies of all identification documents.

2. Documents that show the criminal charge relating to (b)(6),(b)(7)(C) where the arrest date was November 29, 2019, and the charges were Making a False Report-False Information and two counts of Simple Assault-Domestic Violence, Booking Number: 19-376045.



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

5. Authorized Officer <div style="border: 1px dashed black; padding: 10px; font-size: 24px; text-align: center;">(b)(6),(b)(7)(C)</div> <hr/> (Printed Name) Assistant Field Office Director <hr/> (Title) 01/13/2020 <hr/> (Date)
---



CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT

A. CERTIFICATE OF SERVICE

I certify that on 1/13/2020, I served this subpoena on the witness named in Block 1 in the following manner:  
(Date)

In-person at the Denver Justice Center  
(Details of how service was effected)

(b)(6),(b)(7)(C)  
\_\_\_\_\_

(Serving Subpoena)

(b)(6),(b)(7)(C)  
\_\_\_\_\_

(Printed Name of Official Serving Subpoena)

Supervisory Detention and Deportation officer  
(Title of Official Serving Subpoena)

B. ACKNOWLEDGMENT OF RECEIPT

I acknowledge receipt of a copy of the subpoena on the front of this form.

Signature

(b)(6),(b)(7)(C)  
\_\_\_\_\_

Title

Captain

(b)(6),(b)(7)(C)  
\_\_\_\_\_

Date

1/13/2020

Time

4:12

a.m.  
 p.m.

<p>1. To (Name, Address, City, State, Zip Code)</p> <p>(b)(6),(b)(7)(C)</p> <p>and/or Officer/Person In Charge Cook County Sheriff's Office 3026 S California Avenue, Chicago, IL 60608</p>	<p>DEPARTMENT OF HOMELAND SECURITY</p> <p><b>IMMIGRATION ENFORCEMENT SUBPOENA</b></p> <p><b>to Appear and/or Produce Records</b> 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4</p>
<p>Subpoena Number ERO-ENF-CHI-20200001X</p>	
<p>2. In Reference To</p> <p>(b)(6),(b)(7)(C) investigation (b)(6),(b)(7)(C)</p> <p>(Title of Proceeding) (File Number, if Applicable)</p>	

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 laws. 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).

<p>3. (A) CBP, ICE or USCIS Official before whom you are required to appear</p> <p>Name: (b)(6),(b)(7)(C)@ice.dhs.gov</p> <p>Title Supervisory Detention and Deportation Officer</p> <p>Address 101 West Ida B. Wells Drive (b)(6),(b)(7)(C) Chicago, IL 60605</p> <p>Telephone Number 312-347-(b)(6),(b)(7)(C)</p>	<p>(B) Date 02/05/2020</p> <p>(C) Time 12:00 <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.</p>
---	---

4. Records required to be produced for inspection

1. Documents sufficient to establish the following for (b)(6),(b)(7)(C) Home Address, Employment Address, Country of Birth, Place of Birth, Age, Identification Documents (i.e. driver license number and state, foreign identification card number and country, passport number and country), Bond Information to include the obligor name and address, Federal Bureau of Investigations Number, Emergency Contact address and phone number, including copies of all identification documents.

2. Documents that show the criminal charge relating to (b)(6),(b)(7)(C) where the arrest was on 12/31/2018, for Aggravated Unlawful Use of a Weapon under Booking Number 20190101104.



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

5. Authorized Official

(Signature)  
(b)(6),(b)(7)(C)

(Printed Name)  
Assistant Field Office Director

(Title)  
01/23/2020

(Date)

**CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT**

**A. CERTIFICATE OF SERVICE**

I certify that on \_\_\_\_\_, I served this subpoena on the witness named in Block 1 in the following manner:  
(Date)

\_\_\_\_\_  
(Details of how service was effected)

\_\_\_\_\_  
(Signature of Official Serving Subpoena)

\_\_\_\_\_  
(Printed Name of Official Serving Subpoena)

\_\_\_\_\_  
(Title of Official Serving Subpoena)

**B. ACKNOWLEDGMENT OF RECEIPT**

I acknowledge receipt of a copy of the subpoena on the front of this form.

Signature

Title

Date

Time

a.m.  
 p.m.

January 11, 2020

**(b)(5)**

**(b)(5)**

**Law Enforcement Sensitive – For Official Use Only**



**From:**

**Sent:**

**To:**

**CC:**

**(b)(6), (b)(7)(c)**

**Subject:** RE: Admin Subs

**Flag:** Follow up

**(b)(6), (b)(7)(c)**

Thanks for the list..

\*\*\*\*Update: Things are moving very quickly as I mentioned in my previous email. I have been told by Enforcement leadership that Mr. Albence is very interested to mirror the outrage (significant media attention) conducted when the Immigration Subpoenas were served in the State of NY.

As for the cases being reviewed, we strongly recommend to identify 4 cases from the State of Oregon, and 4 cases from the State of Washington. I know you mentioned prior that you have worked with local USAO, but to make sure we are in the same frequency, these cases to be identified, should ideally meet the following criteria:

- NOT in ICE custody
- These cases need to be recent arrests/declined detainers, egregious criminals, and-ideally-prior removals so that alienage is not an issue.
- If recent arrest is for a minor offense, make sure to expand in the ES why the individual is a threat to the community based on past criminal background.
- Ideally one individual remains in LEA custody, and the other three have been released to the community, and detainer not being honored.

I look forward to working with you.

Cheers to you too!

**(b)(6), (b)(7)(c)**

**From:** **(b)(6), (b)(7)(c)** @ice.dhs.gov>

**Sent:** Friday, January 24, 2020 1:04 PM

**To:** **(b)(6), (b)(7)(c)** @ice.dhs.gov>

**Cc:** Melendez, Michael A **(b)(6), (b)(7)(c)** @ice.dhs.gov>; **(b)(6), (b)(7)(c)** @ice.dhs.gov>

**Subject:** RE: Admin Subs

**(b)(6), (b)(7)(c)**

I will work with my staff here in Oregon to find cases, Prepare the ES and Subpoenas, and submit them.

The Oregon AFOD and SDDOs that will need access to the Subpoena log are as follows:

AFOD  
 SDDO **(b)(6), (b)(7)(c)**  
 SDDO

I know we will want to loop in AFOD (b)(6), (b)(7)(c) in Seattle. He will be the AFOD handling the Washington cases. AFOD (b)(6), (b)(7)(c) is currently traveling today, but will be available on Monday for a phone conversation regarding the requirements.

Once I hear from AFOD (b)(6), (b)(7)(c) we can setup a time to talk on Monday.

Cheers,

(b)(6), (b)(7)(c)  
Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-325- (b)(6), (b)(7)(c) Phone 503-849- (b)(6), (b)(7)(c)

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**From:** (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 9:41 AM  
**To:** (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Cc:** Melendez, Michael A (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Subject:** RE: Admin Subs

I can tell you that our ICE leadership (Mr. Albence and Mr. Lucero) are eager to conduct outreaches on this initiative, and the pace is significantly quicker than ours ☺...

We can work on different deadlines:

By Monday, January 27 (12 pm EST)- please provide me a list of SDDOs and AFODs who need access to the Subpoena Log and potential LEAs (I will be your main POC so I will be readily available if training is needed)

By Tuesday, and Wednesday 28-29- please provide the 4 ES and Subpoenas. They can be sent one by one, and I work with your Field making sure, they are properly redacted before sending them to OPLA HQ for review.

(b)(6), (b)(7)(c)  
Department of Homeland Security  
Immigration and Customs Enforcement  
Criminal Alien Division  
500 12<sup>th</sup> St SW  
Washington, DC 20024  
Office (202) 732- (b)(6), (b)(7)(c) Cell (202)763- (b)(6), (b)(7)(c)

**From:** (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 12:24 PM  
**To:** (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Cc:** Melendez, Michael A (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Subject:** RE: Admin Subs

Thank you for the quick response.

I am going to meet with the SDDOs in Portland on Monday and begin the process of picking out cases. We should be able to provide the information on potential cases by the end of next week, January 31.

Does that timeframe work for you?

(b)(6), (b)(7)(c)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-326-1111 | iPhone 503-349-1111

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**From:** (b)(6), (b)(7)(c) @ice.dhs.gov  
**Sent:** Friday, January 24, 2020 9:20 AM  
**To:** (b)(6), (b)(7)(c) @ice.dhs.gov  
**Cc:** Melendez, Michael A <(b)(6), (b)(7)(c)@ice.dhs.gov>  
**Subject:** RE: Admin Subs

Very good question! However, our ERO leadership wants that all subpoenas to LEAs go through the normal route that has been proceeding with in these cases. It is ok to share with OPLA SEA, but the coordination with DOJ has been occurring at the main DOJ level with the local USAO, so we should not exclude main DOJ from the process and step on their toes in coordinating with the local USAO.

Let me know how soon can you identify potential cases?

(b)(6), (b)(7)(c)

**From:** (b)(6), (b)(7)(c) @ice.dhs.gov  
**Sent:** Friday, January 24, 2020 12:10 PM  
**To:** (b)(6), (b)(7)(c) @ice.dhs.gov  
**Cc:** Melendez, Michael A <(b)(6), (b)(7)(c)@ice.dhs.gov>  
**Subject:** RE: Admin Subs

Thank you for providing the information.

Is there any issue with me providing a copy of the draft subpoenas with the USAO here in Oregon?

(b)(6), (b)(7)(c)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-326-1111 | iPhone 503-349-1111

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**From:** (b)(6), (b)(7)(c) @ice.dhs.gov  
**Sent:** Friday, January 24, 2020 9:04 AM  
**To:** (b)(6), (b)(7)(c) @ice.dhs.gov  
**Cc:** Melendez, Michael A <(b)(6), (b)(7)(c)@ice.dhs.gov>  
**Subject:** RE: Admin Subs

Good Morning,

Indeed, and it is a pleasure working with you.

These subpoenas are being reviewed at HQ level, so it is very important to work together in several steps. Please provide me the following (not sure if we should set together a deadline):

1. Identify LEAs
2. Present at least 4 ES and drafted Subpoenas
3. Provide a list of POCs (2 SDDOs and 1 AFOD) who can gain access to our HQ Subpoena Log
4. Have email of LEA's OIC ready for service (in addition to subpoenas being served in person)

I am attaching a go-by of clear language for subpoena, an ES, Excel Sheet to plug POCs for Subpoena Log, and PPT on the Subpoena Log in share point.

Feel free to call me if you have any questions,

**(b)(6), (b)(7)(c)**  
Department of Homeland Security  
Immigration and Customs Enforcement  
Criminal Alien Division  
500 12<sup>th</sup> St SW  
Washington, DC 20024  
Office (202) 733-(b)(6), (b)(7)(c) Cell (202) 733-(b)(6), (b)(7)(c)

**From:** **(b)(6), (b)(7)(c)** <(b)(6), (b)(7)(c)@ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 11:48 AM  
**To:** **(b)(6), (b)(7)(c)** <(b)(6), (b)(7)(c)@ice.dhs.gov>  
**Cc:** Melendez, Michael A <(b)(6), (b)(7)(c)@ice.dhs.gov>  
**Subject:** RE: Admin Subs

Good Morning **(b)(6), (b)(7)(c)**

I have had a number of conversations with the USAO here in Oregon. The USAO is very supportive and we had a teleconference this week to discuss how to move forward to begin this process.

Do you happen to have a copy of the language being used on the Admin Subpoenas by Denver and New York?

**(b)(6), (b)(7)(c)**  
Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4210 SW Macadam Avenue, Portland, OR 97239  
Office 503-325-(b)(6), (b)(7)(c) | Phone 503-849-(b)(6), (b)(7)(c)

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**From:** **(b)(6), (b)(7)(c)** <(b)(6), (b)(7)(c)@ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 8:38 AM  
**To:** **(b)(6), (b)(7)(c)** <(b)(6), (b)(7)(c)@ice.dhs.gov>; **(b)(6), (b)(7)(c)** <(b)(6), (b)(7)(c)@ice.dhs.gov>; **(b)(6), (b)(7)(c)** <(b)(6), (b)(7)(c)@ice.dhs.gov>  
**Cc:** Melendez, Michael A <(b)(6), (b)(7)(c)@ice.dhs.gov>; **(b)(6), (b)(7)(c)** <(b)(6), (b)(7)(c)@ice.dhs.gov>  
**Subject:** FW: Admin Subs

Good Morning Seattle Field Office,

I hope you are doing well. I am reaching out to you at the request of our DAD (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) from the Criminal Alien Division, so we can perhaps discuss deeply about immigration subpoenas on LEAs.

This is an initiative strongly supported by our ERO leadership, and we have already served the first subpoenas on uncooperative LEAs within the jurisdictions of Denver and New York, and continue working with other AORs for expansion.

According to our most recent tasking sent to all Field Offices related to LEAs with limited and non-cooperative with ICE your AOR provided us a list of 45 non-cooperative LEAs in the States of Washington (32+), and Oregon (approximately 9). Further, we receive from your AOR a weekly list of individuals being released to the community due to detainers not being honored. Enforcement would like to work with your AOR on identifying potential cases where the information requested through subpoenas can successfully lead to an at-large arrest.

I am copying all of you, so you can defer me to the right POC(s), so we can work together on this initiative. As you read in the email below, USAO is supportive to possible litigation in case the subpoenas are not honored by the LEAs.

Regards,

(b)(6), (b)(7)(c)

Department of Homeland Security  
Immigration and Customs Enforcement  
Criminal Alien Division  
500 12<sup>th</sup> St SW  
Washington, DC 20024  
Office (202) 732-(b)(6),(b)(7)(c) Cell (202)763-(b)(6),(b)(7)(c)

**From:** (b)(6),(b)(7)(C) (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 8:45 AM  
**To:** (b)(6), (b)(7)(c) @ice.dhs.gov> (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Subject:** FW: Admin Subs

Heads up. Potentially more cases for us.

**From:** (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 8:32 AM  
**To:** (b)(6),(b)(7)(C) (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Subject:** FW: Admin Subs

FYI from Seattle. I advised the Chief Counsel to have the FOD reach out to you, so Nathalie's folks may be reaching out.

(b)(6), (b)(7)(c)

Chief  
Enforcement and Removal Operations Law Division  
Office of the Principal Legal Advisor  
U.S. Immigration and Customs Enforcement  
(202) 732-(b)(6),(b)(7)(c)

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From: (b)(6), (b)(7)(c) <[REDACTED]@ice.dhs.gov>  
Sent: Friday, January 24, 2020 8:19 AM  
To: (b)(6), (b)(7)(c) <[REDACTED]@ice.dhs.gov>  
Cc: (b)(6), (b)(7)(c) <[REDACTED]@ice.dhs.gov>  
Subject: RE: Admin Subs

ERO should talk to (b)(6), (b)(7)(c) I've cc'd [REDACTED] here who is handling the liaison with US attorneys. He runs prospective AORs by main DOJ (b)(6), (b)(7)(c)

At first, they only wanted to try it in jurisdictions that had non hostile district courts, but I think the circle has expanded.

(b)(6), (b)(7)(c)  
Deputy Chief  
Enforcement and Removal Operations Law Division  
Office of the Principal Legal Advisor  
DHS U.S. Immigration and Customs Enforcement  
2027 [REDACTED] (office)  
(b)(6), (b)(7)(c) <[REDACTED]@ice.dhs.gov>

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From: (b)(6), (b)(7)(c) <[REDACTED]@ice.dhs.gov>  
Sent: Thursday, January 23, 2020 7:43 PM  
To: (b)(6), (b)(7)(c) <[REDACTED]@ice.dhs.gov>  
Subject: Admin Subs

(b)(6), (b)(7)(c)

Who do I talk to about getting on the list to pilot these? My US Attorney in Portland seems pretty open to the idea, and I think the US Attorney here in Washington would be open to it as well.

My ERO is really pushing for this.

(b)(6), (b)(7)(c)  
Chief Counsel  
Office of the Principal Legal Advisor, Seattle  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security  
(206) 613-6[REDACTED] Desk)  
(202) 300-1[REDACTED] Mobile)

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**From:**

**Sent:**

**To:**

**(b)(6), (b)(7)(C)**

**CC:**

**Subject:** FW: Admin Subs

**Flag:** Follow up

Good Morning Seattle Field Office,

I hope you are doing well. I am reaching out to you at the request of our DAD **(b)(6), (b)(7)(C)** **(b)(6), (b)(7)(C)** from the Criminal Alien Division, so we can perhaps discuss deeply about immigration subpoenas on LEAs.

This is an initiative strongly supported by our ERO leadership, and we have already served the first subpoenas on uncooperative LEAs within the jurisdictions of Denver and New York, and continue working with other AORs for expansion.

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Regards,

**(b)(6), (b)(7)(C)**

Department of Homeland Security  
Immigration and Customs Enforcement  
Criminal Alien Division  
500 12<sup>th</sup> St SW  
Washington, DC 20024

Office (202) 734-**(b)(6), (b)(7)(C)** Cell (202) 763-**(b)(6), (b)(7)(C)**

**From:** (b)(6),(b)(7)(C) <(b)(6),(b)(7)(C)@ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 8:45 AM  
**To:** (b)(6),(b)(7)(C) <(b)(6),(b)(7)(C)@ice.dhs.gov>; (b)(6),(b)(7)(C) <(b)(6),(b)(7)(C)@ice.dhs.gov>  
**Subject:** FW: Admin Subs

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(b)(6),(b)(7)(C)

Chief  
Enforcement and Removal Operations Law Division  
Office of the Principal Legal Advisor  
U.S. Immigration and Customs Enforcement  
(202) 732- (b)(6),(b)(7)(C)

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**Cc:** (b)(6),(b)(7)(C) <(b)(6),(b)(7)(C)@ice.dhs.gov>  
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(b)(6),(b)(7)(C)

Deputy Chief  
Enforcement and Removal Operations Law Division  
Office of the Principal Legal Advisor  
DHS U.S. Immigration and Customs Enforcement  
202 732- (b)(6),(b)(7)(C) office)  
(b)(6),(b)(7)(C)@ice.dhs.gov

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(b)(6),(b)(7)(C)

Chief Counsel

Office of the Principal Legal Advisor, Seattle

U.S. Immigration and Customs Enforcement

U.S. Department of Homeland Security

(206) 613- (Desk)

(202) 300- (Mobile)

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From:

Sent:

To:

CC:

(b)(6), (b)(7)(C)

Subject: FW: Admin Subs

Attachments: ES ERO NYC - (b)(6),(b)(7)(C)

Fellas,

Here is the exact criteria they are seeking on cases. Please review and see what we can find.

As for the cases being reviewed, we strongly recommend to identify 4 cases from the State of Oregon, and 4 cases from the State of Washington. I know you mentioned prior that you have worked with local USAO, but to make sure we are in the same frequency, these cases to be identified, should ideally meet the following criteria:

- NOT in ICE custody
- These cases need to be recent arrests/declined detainers, egregious criminals, and-ideally-prior removals so that alienage is not an issue.
- If recent arrest is for a minor offense, make sure to expand in the ES why the individual is a threat to the community based on past criminal background.
- Ideally one individual remains in LEA custody, and the other three have been released to the community, and detainer not being honored.

The attachment contains an example of an ES.

(b)(6),(b)(7)(C)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97230  
Office 503-325- | iPhone 503-84-

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From: (b)(6),(b)(7)(C)@ice.dhs.gov>

Sent: Friday, January 24, 2020 12:39 PM

To: (b)(6),(b)(7)(C)@ice.dhs.gov>

Cc: Melendez, Michael A (b)(6),(b)(7)(C)@ice.dhs.gov>; (b)(6),(b)(7)(C)@ice.dhs.gov>

Subject: RE: Admin Subs

(b)(6),(b)(7)(C)

Thanks for the list..

\*\*\*\*Update: Things are moving very quickly as I mentioned in my previous email. I have been told by Enforcement leadership that Mr. Albence is very interested to mirror the outrage (significant media attention) conducted when the Immigration Subpoenas were served in the State of NY.

As for the cases being reviewed, we strongly recommend to identify 4 cases from the State of Oregon, and 4 cases from the State of Washington. I know you mentioned prior that you have worked with local USAO, but to make sure we are in the same frequency, these cases to be identified, should ideally meet the following criteria:

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- If recent arrest is for a minor offense, make sure to expand in the ES why the individual is a threat to the community based on past criminal background.
- Ideally one individual remains in LEA custody, and the other three have been released to the community, and detainer not being honored.

I look forward to working with you.

Cheers to you too!

(b)(6),(b)(7)(C)

**From:** (b)(6),(b)(7)(C) <ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 1:04 PM  
**To:** (b)(6),(b)(7)(C) <ice.dhs.gov>  
**Cc:** Melendez, Michael A <(b)(6),(b)(7)(C) <ice.dhs.gov> (b)(6),(b)(7)(C) <ice.dhs.gov>  
**Subject:** RE: Admin Subs

(b)(6),(b)(7)(C)

I will work with my staff here in Oregon to find cases, Prepare the ES and Subpoenas, and submit them.

The Oregon AFOD and SDDOs that will need access to the Subpoena log are as follows:

AFOD  
SDDO (b)(6),(b)(7)(C)  
SDDO

I know we will want to loop in AFOD (b)(6),(b)(7)(C) Seattle. He will be the AFOD handling the Washington cases. AFO (b)(6),(b)(7)(C) is currently traveling today, but will be available on Monday for a phone conversation regarding the requirements.

Once I hear from AFOD (b)(6),(b)(7)(C) we can setup a time to talk on Monday.

Cheers,

(b)(6),(b)(7)(C)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VOCAS & Fugitive Operations  
4310 SW Macarthur Avenue, Portland, OR 97239  
Office 503-326-1234 | iPhone 503-841-1234 (b)(6),(b)(7)(C)

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**From:** (b)(6),(b)(7)(C) <ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 9:41 AM  
**To:** (b)(6),(b)(7)(C) <ice.dhs.gov>

Cc: Melendez, Michael A <(b)(6),(b)(7)(C)@ice.dhs.gov>

Subject: RE: Admin Subs

I can tell you that our ICE leadership (Mr. Albence and Mr. Lucero) are eager to conduct outreaches on this initiative, and the pace is significantly quicker than ours 😊...

We can work on different deadlines:

By Monday, January 27 (12 pm EST)- please provide me a list of SDDOs and AFODs who need access to the Subpoena Log and potential LEAs (I will be your main POC so I will be readily available if training is needed)

By Tuesday, and Wednesday 28-29- please provide the 4 ES and Subpoenas. They can be sent one by one, and I work with your Field making sure, they are properly redacted before sending them to OPLA HQ for review.

(b)(6),(b)(7)(C)

Department of Homeland Security  
Immigration and Customs Enforcement  
Criminal Alien Division  
500 12<sup>th</sup> St SW  
Washington, DC 20024  
Office (202) 732-(b)(6),(b)(7)(C) Cell (202) 763-(b)(6),(b)(7)(C)

From: (b)(6),(b)(7)(C)@ice.dhs.gov

Sent: Friday, January 24, 2020 12:24 PM

To: (b)(6),(b)(7)(C)@ice.dhs.gov

Cc: Melendez, Michael A <(b)(6),(b)(7)(C)@ice.dhs.gov>

Subject: RE: Admin Subs

Thank you for the quick response.

I am going to meet with the SDDOs in Portland on Monday and begin the process of picking out cases. We should be able to provide the information on potential cases by the end of next week, January 31.

Does that timeframe work for you?

(b)(6),(b)(7)(C)  
Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4010 SW Macadam Avenue, Portland, OR 97230  
Office 503-328-(b)(6),(b)(7)(C) | iPhone 503-841-(b)(6),(b)(7)(C)

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From: (b)(6),(b)(7)(C)@ice.dhs.gov

Sent: Friday, January 24, 2020 9:20 AM

To: (b)(6),(b)(7)(C)@ice.dhs.gov

Cc: Melendez, Michael A <(b)(6),(b)(7)(C)@ice.dhs.gov>

Subject: RE: Admin Subs

Very good question! However, our ERO leadership wants that all subpoenas to LEAs go through the normal route that has been proceeding with in these cases. It is ok to share with OPLA SEA, but the coordination with DOJ has been



occurring at the main DOJ level with the local USAO, so we should not exclude main DOJ from the process and step on their toes in coordinating with the local USAO.

Let me know how soon can you identify potential cases?

(b)(6),(b)(7)(C)

**From:** (b)(6),(b)(7)(C) @ice.dhs.gov  
**Sent:** Friday, January 24, 2020 12:10 PM  
**To:** (b)(6),(b)(7)(C) @ice.dhs.gov  
**Cc:** Melendez, Michael A <(b)(6),(b)(7)(C) @ice.dhs.gov>  
**Subject:** RE: Admin Subs

Thank you for providing the information.

Is there any issue with me providing a copy of the draft subpoenas with the USAO here in Oregon?

(b)(6),(b)(7)(C)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-326-6151 | iPhone 503-849-6304

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**To:** (b)(6),(b)(7)(C) @ice.dhs.gov  
**Cc:** Melendez, Michael A <(b)(6),(b)(7)(C) @ice.dhs.gov>  
**Subject:** RE: Admin Subs

Good Morning,

Indeed, and it is a pleasure working with you.

These subpoenas are being reviewed at HQ level, so it is very important to work together in several steps. Please provide me the following (not sure if we should set together a deadline):

1. Identify LEAs
2. Present at least 4 ES and drafted Subpoenas
3. Provide a list of POCs (2 SDDOs and 1 AFOD) who can gain access to our HQ Subpoena Log
4. Have email of LEA's OIC ready for service (in addition to subpoenas being served in person)

I am attaching a go-by of clear language for subpoena, an ES, Excel Sheet to plug POCs for Subpoena Log, and PPT on the Subpoena Log in share point.

Feel free to call me if you have any questions,

(b)(6),(b)(7)(C)

Department of Homeland Security  
Immigration and Customs Enforcement  
Criminal Alien Division  
500 12<sup>th</sup> St SW  
Washington, DC 20024  
Office (202) 732- (b)(6),(b)(7)(C) | Cell (202) 763- (b)(6),(b)(7)(C)

From: (b)(6),(b)(7)(C)@ice.dhs.gov  
Sent: Friday, January 24, 2020 11:48 AM  
To: (b)(6),(b)(7)(C)@ice.dhs.gov  
Cc: Melendez, Michael A <(b)(6),(b)(7)(C)@ice.dhs.gov>  
Subject: RE: Admin Subs

Good Morning (b)(6),(b)(7)(C)

I have had a number of conversations with the USAO here in Oregon. The USAO is very supportive and we had a teleconference this week to discuss how to move forward to begin this process.

Do you happen to have a copy of the language being used on the Admin Subpoenas by Denver and New York?

(b)(6),(b)(7)(C)  
Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97220  
Office 503-326- (b)(6),(b)(7)(C) iPhone 503-849- (b)(6),(b)(7)(C)

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From: (b)(6),(b)(7)(C)@ice.dhs.gov  
Sent: Friday, January 24, 2020 8:38 AM  
To: (b)(6),(b)(7)(C)@ice.dhs.gov; (b)(6),(b)(7)(C)@ice.dhs.gov; (b)(6),(b)(7)(C)@ice.dhs.gov  
Cc: Melendez, Michael A <(b)(6),(b)(7)(C)@ice.dhs.gov>; (b)(6),(b)(7)(C)@ice.dhs.gov  
Subject: Fw: Admin Subs

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Department of Homeland Security  
Immigration and Customs Enforcement  
Criminal Alien Division  
500 12<sup>th</sup> St SW  
Washington, DC 20024  
Office (202) 732-(b)(6),(b)(7)(C) Cell (202)763-(b)(6),(b)(7)(C)

---

**From:** (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)@ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 8:45 AM  
**To:** (b)(6),(b)(7)(C)@ice.dhs.gov>; (b)(6),(b)(7)(C)@ice.dhs.gov>  
**Subject:** FW: Admin Subs

Heads up. Potentially more cases for us.

---

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**Subject:** FW: Admin Subs

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(b)(6),(b)(7)(C)  
Chief  
Enforcement and Removal Operations Law Division  
Office of the Principal Legal Advisor  
U.S. Immigration and Customs Enforcement  
(202) 732-(b)(6),(b)(7)(C)

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(b)(6),(b)(7)(C)

Deputy Chief  
Enforcement and Removal Operations Law Division  
Office of the Principal Legal Advisor  
DHS U.S. Immigration and Customs Enforcement  
202 732 (b)(6),(b)(7)(C) office)

(b)(6),(b)(7)(C) @ice.dhs.gov

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From: (b)(6),(b)(7)(C) @ice.dhs.gov

Sent: Thursday, January 23, 2020 7:43 PM

To: (b)(6),(b)(7)(C) @ice.dhs.gov

Subject: Admin Subs

(b)(6),(b)(7)(C)

Who do I talk to about getting on the list to pilot these? My US Attorney in Portland seems pretty open to the idea, and I think the US Attorney here in Washington would be open to it as well.

My ERO is really pushing for this.

(b)(6),(b)(7)(C)

Chief Counsel  
Office of the Principal Legal Advisor, Seattle  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security  
(206) 613 (b)(6),(b)(7)(C) Desk  
(202) 300 (b)(6),(b)(7)(C) Mobile)

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January 11, 2020

**(b)(5)**

**(b)(5)**

**Law Enforcement Sensitive – For Official Use Only**



From:

Sent:

To:

CC:

(b)(6), (b)(7)(c)

Subject: FW: NEXT STEPS ON SEA SUBPOENAS

Importance: High

Hey (b)(6), (b)(7)(c)

Here is some of the direction I am getting from my HQ. Let me know if any of this seems problematic to you.

(b)(6), (b)(7)(c)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4310 SW Macquinn Avenue, Portland, OR 97239  
Office 503-326-2222 | iPhone 503-843-2222

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From: (b)(6), (b)(7)(c) <[redacted]@ice.dhs.gov>

Sent: Friday, February 14, 2020 10:24 AM

To: (b)(6), (b)(7)(c) <[redacted]@ice.dhs.gov>

Subject: NEXT STEPS ON SEA SUBPOENAS

Importance: High

(b)(6), (b)(7)(c)

Per our conversation, let's agree upon completion of the following steps to ensure our ERO leadership is appraised by COB today, and prior to the long holiday weekend:

(b)(5)

Again, do not hesitate to call me if you have any questions.

(b)(6), (b)(7)(c)

Detention and Deportation Officer  
Criminal Alien Program  
U.S. Immigration and Customs Enforcement  
O (202)732-2222 | C (202)763-2222

From: (b)(6), (b)(7)(c) @ice.dhs.gov>

Sent: Friday, February 14, 2020 10:01 AM

To: (b)(6), (b)(7)(c) @ice.dhs.gov>

Subject: RE: Case Material

Hey (b)(6), (b)(7)(c)

Could you give me a call?

(b)(6), (b)(7)(c)

Assistant Field Office Director

ICE | Enforcement and Removal Operations

Portland CAP/VCAS & Fugitive Operations

4310 SW Macadam Avenue, Portland, OR 97239

Office 503-326-1000 | iPhone 503-849-0909

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From: (b)(6), (b)(7)(c)

Sent: Friday, February 14, 2020 6:21 AM

To: (b)(6), (b)(7)(c) @ice.dhs.gov>

Subject: RE: Case Material

Good Mornin (b)(6), (b)(7)(c)

The first attachment is the fax confirmation. The second attachment is the email I sent to Washington County

Sheriff (b)(6), (b)(7)(c)

(b)(6), (b)(7)(c)

Assistant Field Office Director

ICE | Enforcement and Removal Operations

Portland CAP/VCAS & Fugitive Operations

4310 SW Macadam Avenue, Portland, OR 97239

Office 503-326-1000 | iPhone 503-849-0909

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From: (b)(6), (b)(7)(c) @ice.dhs.gov>

Sent: Friday, February 14, 2020 5:53 AM

To: (b)(6), (b)(7)(c) @ice.dhs.gov>

Subject: RE: Case Material

Good Morning (b)(6), (b)(7)(c)

I hope you had a good day out of the office. Friendly reminder to send me delivery confirmation receipts for the informal memo sent to WCSO on Fajardo's case.

(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c) @ice.dhs.gov>

Sent: Wednesday, February 12, 2020 7:11 PM

To: (b)(6), (b)(7)(c) @ice.dhs.gov>

Subject: RE: Case Material

Hey (b)(6), (b)(7)(c)

I am out for the day and gone all day tomorrow. I can send you the fax confirmation on Friday.

Sent with BlackBerry Work

(www.blackberry.com)

From: (b)(6), (b)(7)(c) @ice.dhs.gov>

Date: Wednesday, Feb 12, 2020, 4:02 PM

To: (b)(6), (b)(7)(c) @ice.dhs.gov>

Subject: RE: Case Material

Can you send me a copy of delivery confirmation, please?

(b)(6), (b)(7)(c)

Criminal Alien Program

Enforcement and Removal Operations

Immigration and Customs Enforcement

(202) 763-3333 (b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c) @ice.dhs.gov>

Date: Wednesday, Feb 12, 2020, 6:38 PM

To: (b)(6), (b)(7)(c) @ice.dhs.gov>

Subject: FW: Case Material

Request is attached. The only thing I dropped from the memo is the second paragraph, which will be the information we will seek from the request already sent to Hillsboro PD.

I faxed and emailed the request like we did the other requests.

(b)(6), (b)(7)(c)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VISAS & Fugitive Operations  
4310 SW MacArthur Avenue, Portland, OR 97239  
Office 503-522-3333 Phone 503-849-3333 (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c) @ice.dhs.gov>

Sent: Wednesday, February 12, 2020 3:37 PM

To: (b)(6), (b)(7)(c) @ice.dhs.gov>

Subject: RE: Case Material

Ok, share with me the documents being sent today, and remember the deadline is Friday at 3:00 pm.

(b)(6), (b)(7)(c)

Criminal Alien Program  
Enforcement and Removal Operations  
Immigration and Customs Enforcement

(202) 763-3333 (b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c) @ice.dhs.gov>

Date: Wednesday, Feb 12, 2020, 6:33 PM

To: (b)(6), (b)(7)(c) @ice.dhs.gov>

Subject: FW: Case Material

Good Evening (b)(6), (b)(7)(c)

After thinking over the conversation you and I had today, I read the Field Office, OPLA, and the USAO. I am going to send a memo request to Washington County on (b)(6), (b)(7)(c) today. That way we can subpoena both Hillsboro PD and the Washington County Sheriffs for his information.

Cheers

(b)(6), (b)(7)(c)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VISAS & Fugitive Operations  
4310 SW MacArthur Avenue, Portland, OR 97239  
Office 503-522-3333 Phone 503-849-3333 (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c) @usdoj.gov>

Sent: Wednesday, February 12, 2020 3:20 PM

To: (b)(6), (b)(7)(c) @ice.dhs.gov>; Asher, Nathalie R <(b)(6), (b)(7)(c) @ice.dhs.gov>; Melendez, Michael

A: (b)(6), (b)(7)(c) @ice.dhs.gov>; (b)(6), (b)(7)(c) @ice.dhs.gov>

Cc: (b)(6), (b)(7)(c) @ice.dhs.gov>

Subject: RE: Case Material

(b)(5)



(b)(6), (b)(7)(c)

From: (b)(6), (b)(7)(c) @ice.dhs.gov>

Sent: Wednesday, February 12, 2020 3:10 PM

To: Asher, Nathalie R <(b)(6), (b)(7)(c)@ice.dhs.gov>; Melendez, Michael A <(b)(6), (b)(7)(c)@ice.dhs.gov>; (b)(6), (b)(7)(c)@ice.dhs.gov>

Cc: (b)(6), (b)(7)(c)@ice.dhs.gov>; (b)(6), (b)(7)(c)@usa.doi.gov>

Subject: RE: Case Material

Because we are getting down to crunch time today, I will go ahead and send the memo request to Washington County. That way (b)(6), (b)(7)(c) have the option of preparing a subpoena to both Washington County and Hillsboro PD.

(b)(6), (b)(7)(c)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-326- (b)(6), (b)(7)(c) | iPhone 503-841- (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)

Sent: Wednesday, February 12, 2020 2:45 PM

To: Asher, Nathalie R <(b)(6), (b)(7)(c)@ice.dhs.gov>; Melendez, Michael A <(b)(6), (b)(7)(c)@ice.dhs.gov>; (b)(6), (b)(7)(c)@ice.dhs.gov>; (b)(6), (b)(7)(c)@ice.dhs.gov>

Cc: (b)(6), (b)(7)(c)@ice.dhs.gov>; (b)(6), (b)(7)(c)@usdoj.gov>

Subject: FW: Case Material

Good Afternoon All,

When I original sent the memo request on (b)(6), (b)(7)(c) I only sent the request to Hillsboro PD because we believed he was at-large. I have since found out that he is in the Washington County Jail.

We have two options with his case:

1. Since I only requested information from Hillsboro PD, we only subpoena them for (b)(6), (b)(7)(c) information.
2. If we want any information that Washington County Jail might have, I would need to send a memo requesting information today with a due date by this Friday. Then we could also subpoena Washington County for (b)(6), (b)(7)(c)

Thoughts?

We are still going to subpoena Washington County for (b)(6), (b)(7)(c)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-326- (b)(6), (b)(7)(c) | iPhone 503-849- (b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c) @ice.dhs.gov>

Sent: Wednesday, February 12, 2020 2:38 PM

To: (b)(6), (b)(7)(c) @ice.dhs.gov>

Subject: RE: Case Material

Can you direct this question to the larger group email? I think these kind of strategic decisions are above my pay grade...

(b)(6), (b)(7)(c)

Assistant Chief Counsel  
Office of the Principal Legal Advisor, Seattle (Portland)  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security  
Tel: (503) 326- (b)(6), (b)(7)(c) Fax: (503) 326-2194

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From: (b)(6), (b)(7)(c) <[redacted]@ice.dhs.gov>

Sent: Wednesday, February 12, 2020 2:37 PM

To: (b)(6), (b)(7)(c) <[redacted]@ice.dhs.gov>

Subject: FW: Case Material

Hey (b)(6), (b)(7)(c)

On the (b)(6), (b)(7)(c) case. I think we should just stick with doing a subpoena to Hillsboro PD. I did not send a memo request to Washington County for any information on (b)(6), (b)(7)(c) because we didn't realize he was still in

custody.

(b)(6), (b)(7)(c)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-321-(b)(6), (b)(7)(c) | Phone 503-849-(b)(6), (b)(7)(c)

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From: (b)(6), (b)(7)(c)

Sent: Wednesday, February 12, 2020 1:33 PM

To: (b)(6), (b)(7)(c) <[redacted]@ice.dhs.gov>

Subject: Case Material

Hey (b)(6), (b)(7)(c)

Here is what we either have or need depending on where the request would go:

**Washington County:**

(b)(6), (b)(7)(c)

Currently in custody at Washington County

Requests to Washington County

We have a redacted Arrest Report.

**Hillsboro PD:**

(b)(6), (b)(7)(c)

Currently in custody at Washington County

I would think we need an Arrest Report and PC statement from Hillsboro and booking sheet and disciplinary

record from Washington County

**Oregon State Police:**

(b)(6), (b)(7)(c)

Currently at-large

Need an Arrest Report an PC Statement from Oregon State Police

**Clackamas County:**

(b)(6), (b)(7)(c)

Currently at-large

We have a redacted police report, fingerprints, and mugshot from Clackamas county.

(b)(6), (b)(7)(c)

We have a copy of the official bond posting from current charges that includes an address. We have a Clackamas DA's Information that has a name and DOB, and a redacted Arrest report.

Let me know if you have any questions.

Cheers,

(b)(6), (b)(7)(c)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/CAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-324-1111 | Phone 503-840-1111

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From:

(b)(6), (b)(7)(c)

Sent:

To:

Subject: RE: Admin Subpoena cases

Attachments: ES Presentation- Field Ops version 8-31-2018.ppt; ES ERO SEA - (b)(6), (b)(7)(c).ocx

Power Point training on Exec Summaries and one of the two I turned in. Basically be sure to stay in active voice and go through entire timeline.

Any questions at all, gimme a call. I'm here.

From: (b)(6), (b)(7)(c)@ice.dhs.gov>

Sent: Tuesday, May 12, 2020 8:06 AM

To: (b)(6), (b)(7)(c)@ice.dhs.gov>

Subject: FW: Admin Subpoena cases

(b)(6), (b)(7)(c)

Can I use one of your prior submissions as a go by?

Thank you,

(b)(6), (b)(7)(c)

Sent with BlackBerry Work  
(www.blackberry.com)

From: (b)(6), (b)(7)(c)@ice.dhs.gov>

Date: Tuesday, May 12, 2020, 7:25 AM

To: (b)(6), (b)(7)(c)@ice.dhs.gov>

Subject: RE: Admin Subpoena cases

Start working on the Executive Summaries. Ask (b)(6), (b)(7)(c) for some help with those. He went to the training and is very proficient.

(b)(6), (b)(7)(c)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-822-XXXX | iPhone 503-849-XXXX

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From: (b)(6), (b)(7)(c)@ice.dhs.gov>

Sent: Tuesday, May 12, 2020 7:22 AM

To: (b)(6), (b)(7)(c)@ice.dhs.gov>

Subject: RE: Admin Subpoena cases

The custodian of records from NCIC are below;

1. (b)(6), (b)(7)(c) Portland Police
2. (b)(6), (b)(7)(c) Multnomah Sheriff

(b)(6), (b)(7)(c)

**From:** (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Sent:** Tuesday, May 12, 2020 7:08 AM  
**To:** (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Subject:** RE: Admin Subpoena cases

Hey (b)(6), (b)(7)(c)

What counties did the subject receive his convictions? Who would be getting served the admin subpoenas?

(b)(6), (b)(7)(c)  
Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-326- (b)(6), (b)(7)(c) | iPhone 503-849- (b)(6), (b)(7)(c)

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**From:** (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Sent:** Tuesday, May 12, 2020 7:01 AM  
**To:** (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Subject:** FW: Admin Subpoena cases

(b)(6), (b)(7)(c)

(b)(5)

(b)(6), (b)(7)(c)

**From:** (b)(6), (b)(7)(c)  
**Sent:** Tuesday, May 12, 2020 6:15 AM  
**To:** (b)(6), (b)(7)(c) @ice.dhs.gov>; (b)(6), (b)(7)(c) @ice.dhs.gov>  
**Subject:** Admin Subpoena cases

All,

Just wanted to do a deconfliction before I sent these up to (b)(6), (b)(7)(c). I believe one had been lodged at Washington County for a period of time.

Thank you,

(b)(6), (b)(7)(c)

From:

(b)(6), (b)(7)(c)

Sent:

To:

Subject: RE: Admin Subpoenas

Good to go!

(b)(6), (b)(7)(c)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/CAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-325-<sup>(b)(6), (b)(7)(c)</sup> | iPhone 503-84-<sup>(b)(6), (b)(7)(c)</sup>

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From: <sup>(b)(6), (b)(7)(c)</sup>@ice.dhs.gov>

Sent: Monday, May 11, 2020 1:38 PM

To: <sup>(b)(6), (b)(7)(c)</sup>@ice.dhs.gov>

Subject: RE: Admin Subpoenas

I had started work on a different fella, a LAPR with sex crimes in WashCo, but while looking thru PCQS, it looks, according to ATS-P, like he left in February and hasn't returned, unless he EWI'd.

From: <sup>(b)(6), (b)(7)(c)</sup>@ice.dhs.gov>

Sent: Monday, May 11, 2020 1:36 PM

To: <sup>(b)(6), (b)(7)(c)</sup>@ice.dhs.gov>

Subject: RE: Admin Subpoenas

Thanks <sup>(b)(6), (b)(7)(c)</sup>

(b)(6), (b)(7)(c)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/CAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-325-<sup>(b)(6), (b)(7)(c)</sup> | iPhone 503-84-<sup>(b)(6), (b)(7)(c)</sup>

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From: <sup>(b)(6), (b)(7)(c)</sup>@ice.dhs.gov>

Sent: Monday, May 11, 2020 1:35 PM

To: <sup>(b)(6), (b)(7)(c)</sup>@ice.dhs.gov>

Subject: RE: Admin Subpoenas

(b)(6), (b)(7)(c)

Executive Summaries are attached.

We have no reason to get a criminal warrant on either individual. We have both files. We do need to know the addresses that these fellas reported to the jail as part of the info they gave on intake.

**From:** (b)(6), (b)(7)(c) @ice.dhs.gov  
**Sent:** Monday, May 11, 2020 9:07 AM  
**To:** (b)(6), (b)(7)(c) @ice.dhs.gov  
**Cc:** (b)(6), (b)(7)(c) @ice.dhs.gov; (b)(6), (b)(7)(c) @ice.dhs.gov  
**Subject:** RE: Admin Subpoenas

Once you have cases that you believe fit, confirm we cannot get a criminal warrant, confirm we have the file, and confirm we need information to locate the individual. If all the criteria is met, then send me the cases for review and begin working on an executive summary of the case.

(b)(6), (b)(7)(c)  
Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VACAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-326-5100 | Fax 503-318-6000

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**From:** (b)(6), (b)(7)(c) @ice.dhs.gov  
**Sent:** Monday, May 11, 2020 6:06 AM  
**To:** (b)(6), (b)(7)(c) @ice.dhs.gov  
**Cc:** (b)(6), (b)(7)(c) @ice.dhs.gov; (b)(6), (b)(7)(c) @ice.dhs.gov  
**Subject:** RE: Admin Subpoenas

What information do you need from us after we have identified our two cases?

(b)(6), (b)(7)(c)

**From:** (b)(6), (b)(7)(c) @ice.dhs.gov  
**Sent:** Friday, May 8, 2020 7:25 AM  
**To:** (b)(6), (b)(7)(c) @ice.dhs.gov; (b)(6), (b)(7)(c) @ice.dhs.gov; (b)(6), (b)(7)(c) @ice.dhs.gov  
**Subject:** Admin Subpoenas

Happy Friday Gents,

I think we are going to be on the hook for a second round of admin subpoenas. I have been called twice by HQ within a week. I told them that we would need more time to really pick out the best cases. Then we would have to meet with OPLA and the USAO so they could review.

With that being said, I want you to start going through case where detainers were not honored AND the subject was released from jail. Make sure these are not cases where we can get a criminal warrant, make sure we have the files, and make sure there is evidence that is needed to find the individuals.

I would like each of you to find two cases by next Wednesday.

Email or call if you have any questions.

(b)(6), (b)(7)(c)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-326-[redacted] iPhone 503-349-[redacted]

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**From:**

**Sent:**

**To:**

**(b)(6), (b)(7)(c)**

**Subject:** Subpoena Log

Gents,

Make sure you get familiar with the Subpoena Log in CAPHQ in case Subpoenas are served by the end of the week. Below is a link for our Test mode in case you want try step by step what the Subpoena Log intends to capture.

**(b)(7)(E)**

**(b)(6), (b)(7)(c)**

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/VCAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-321-**(b)(6), (b)(7)(c)** | iPhone 503-849-**(b)(7)(E)**

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---

From:

Sent:

To:

CC:

**(b)(6), (b)(7)(C)**

**Subject:** Affidavit for Search Warrant for Palm Print.s and DNA

**Attachments:** Affidavit for Search Warrant for Palm Print.s and DNA.docx

**(b)(6), (b)(7)(C)**

Just modify the introduction and agent background.

**(b)(6), (b)(7)(C)**

From:

Sent:

To:

(b)(6), (b)(7)(C)

CC:

Subject: CAP Admin Subpoenas

Attachments: ES ERO SEA - (b)(6), (b)(7)(C).docx; ES ERO SEA - (b)(6), (b)(7)(C)

FYSA.. (b)(6), (b)(7)(C) and I decided to drop the other two cases and focus on the two worst. There is one from Washington County and one from Multnomah County.

I need (b)(6), (b)(7)(C) to provide the case numbers for all the criminal history. No need to put them in the ES, just send them to me in an email.

(b)(6), (b)(7)(C)

Assistant Field Office Director  
ICE | Enforcement and Removal Operations  
Portland CAP/CAS & Fugitive Operations  
4310 SW Macadam Avenue, Portland, OR 97239  
Office 503-326- (b)(6), (b)(7)(C) | iPhone 503-849- (b)(6), (b)(7)(C)

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May 14, 2020

**(b)(5)**

**(b)(5)**

**Law Enforcement Sensitive – For Official Use Only**

**(b)(5)**

**Law Enforcement Sensitive – For Official Use Only**



U.S. Immigration  
and Customs  
Enforcement

# SAN DIEGO ICE/ERO CAP UNIT

Subpoena Creation

Creation of DHS Form I-138 and G166c

REL000008562



# OVERVIEW

- Due to the California Values Act (SB 54) we have lost access from the SD Sheriff's Office website to valuable information necessary to perform some of the functions of the CAP Unit.
- SND began issuing subpoenas to San Diego Sheriff's Office requesting documents pertaining to specific subjects.
- Increase in subpoena submissions requires changes to current common practices within the CAP Unit.

REL000008562



# UPDATES TO COMMON PRACTICES IN CAP

- ▶ Upon rejection of Immigration Detainer (Form I-247) by SDSO, common business practice was to acknowledge the email and update the CAP SharePoint.
- ▶ Per SND Management, CAP Officers, upon acknowledgement, will now need to create a DHS Form I-138 and a G166c narrative along with updating the SharePoint.
  - ▶ Update the CAP SharePoint (as previously done)
  - ▶ Have the G166c narrative and DHS I-138 approved by SDDG.
  - ▶ Upload the G166c narrative to EAGLE.
  - ▶ Upload the DHS I-138 to the CAP SharePoint (by LAF Documents to DDEP)

REL000008562



# DHS Form I-138 Example

**1** To: Name, Address, City, State, Zip Code  
 Mr. J. R. Smith, 123 Main St., Suite 100  
 San Francisco, California 94102  
 (123) 456-7890, (415) 555-1234

**DEPARTMENT OF HOMELAND SECURITY**  
**IMMIGRATION ENFORCEMENT**  
**SUBPOENA**  
 to Appear and/or Produce Records  
 8 U.S.C. § 1225(e), 8 C.F.R. § 287.3

**2** In Reference To  
 IIR-2023-123456789 (Case #) / (Case #) / (Case #)

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) (collectively "USCIS") named in Block 3 at the place, date, and time specified, to testify and/or produce information relating to the matter indicated in Block 2.

(B)  PRODUCE the records, books, papers, or other documents indicated in Block 1, to the DHS/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 laws. 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)(1)(B).

**3** (A) DHS/ICE or USCIS Official before whom you are required to appear  
 Name: George Rodriguez (George Rodriguez is the name)  
 Title: Supervisory Inspector and Supervision Officer  
 Address: 800 Third Street, Suite 1234, San Francisco, CA 94102  
 Telephone Number: (415) 555-1234

(B) Date: 12/15/2023  
 (C) Time: 10:00 a.m. / 1:00 p.m.

**4** Records requested to be produced for inspection (Please use attachments):

**5** Authorized Official  
 Signature: [Signature]  
 Title: [Title]  
 Date: 12/15/2023

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

DHS Form I-138 (6/16)

**6** CERTIFICATE OF SERVICE  
 I certify that on [Date], I served this subpoena on the addressee named in Block 1 in the following manner:  
 [Signature]  
 (Type of Official Making Statement)

**7** ACKNOWLEDGMENT OF RECEIPT  
 I acknowledge receipt of a copy of the subpoena on the front of this form.  
 Signature: [Signature]  
 Title: [Title] Date: [Date] Time:  a.m.  p.m.

DHS Form I-138 (6/16)

In Reference To: IIR-2023-123456789 (Case #) / (Case #) / (Case #)

**8** Documents sufficient to establish the following for PATRICK JAMES SMITH (Last, First, Middle Initial):  
 Name, address, employment address, country of birth, place of birth, age, identification documents (e.g. driver license number, state, foreign identification card number and country, passport number and country), emergency contact address, phone number, copies of all identification documents, recent booking photographs, and all records related to entry/entry attempts with in your custody (past year), non-criminal conviction, gang affiliation and any other criminal safety issues and not a violation of date and time the subject will be released to public custody.

**9** Documents relating to the recent arrest and charges for PATRICK JAMES SMITH to WALTER JAMES SMITH, First, including but not limited to incident/crime reports, booking documents, photographs, fingerprints, and so on, and the charges, and convictions if any.

DOB: 01/01/1975  
 ARREST DATE: 09/15/2023  
 BOOKING: 123456789  
 FBI: 123456789

Attachment to DHS Form I-138



DHS Form I-138 Page 1

Items that need to be changed:

1. Name of facility in Section 1
2. Name (include AKA if applicable)
3. A #
4. Date in Section 3 B (2 weeks from creation)
5. Date in Section 5 (Use date of creation)

1. To (Name, Address, City, State, Zip Code) Special Agent William D. Gove and/or OFFICER/PERSON IN CHARGE San Diego Central Jail 1173 Front Street, San Diego, CA 92101	DEPARTMENT OF HOMELAND SECURITY  IMMIGRATION ENFORCEMENT SUBPOENA to Appear and/or Produce Records 8 U.S.C. § 1225(e); 5 C.F.R. § 287.4
Subpoena Number SD-017-000-002100000	
2. In Reference To PATRICK EAST-Notices Last, First (Investigation) 0000 000 000 (File 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 laws. 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		(B) Date 12/26/2020
Name (b)(6),(b)(7)(C) ice.dhs.gov		
Title Supervisory Detention and Deportation Officer		
Address 890 Front Street San Diego, CA 92101		(C) Time 3:00 p.m. a.m. p.m.
Telephone Number (619) (b)(6),(b)(7)(C)		
4. Records required to be produced for inspection Please see attachment.		



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

5. Authorized Official
(b)(6),(b)(7)(C)
(Printed Name) Deputy Field Office Director
(Title)
12/16/2020
(Date)

DHS Form I-138 (6/09)



1. Facility Name
2. Subjects Last name- Format needs to stay the same per DFOD request
3. A# - If subject does not have one type "Pending" in block

\*Subpoena number will be generated by CAP HQ SharePoint and updated later

1 To (Name, Address, City, State, Zip Code) Sheriff William D. Gore and/or Officer/Person In Charge San Diego Central Jail 1173 Front Street, San Diego, CA 92101	<b>DEPARTMENT OF HOMELAND SECURITY</b>  <b>IMMIGRATION ENFORCEMENT</b> <b>SUBPOENA</b> to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number ERO-ENF-SND-202100XXX	
2. In Reference To <u>FATHERS LAST-Mothers Last, First (Investigation)</u> <small>(Title of Proceeding)</small>	<u>A000 000 000</u> <small>(File Number, if Applicable)</small>

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.

REL000008562



3. Date - Section 3 B: Two weeks from date of creation (Weekdays only)

4. Date - Section 5: Enter date of creation

\* Leave other sections as is until further notice

3. (A) CBP, ICE or USCIS Official before whom you are required to appear		(B) Date 12/25/2020
Name (b)(6),(b)(7)(C) [redacted] [redacted] (ice.dhs.gov)		
Title Supervisory Detention and Deportation Officer		
Address 600 Front Street San Diego, CA 92101	(C) Time 3:00 <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.	
Telephone Number (619) (b)(6),(b)(7)(C) [redacted]		
4. Records required to be produced for inspection Please see attachment.		
  <div style="border: 1px solid black; padding: 5px; width: fit-content;">If you have any questions regarding this subpoena, contact the CBP, ICE, or USCIS Official identified in Block 3.</div>	5. Authorized Official	
	[redacted]	
	(Signature)	
	(b)(6),(b)(7)(C) [redacted]	
	(Printed Name)	
Deputy Field Office Director		
(Title)		
12/10/2020		
(Date)		

DHS Form I-138 (6/09)



# DHS Form I-138 Page 2

## Certificate of Service/Acknowledgment

- No updates to page 2
- To be filled out by Officer serving subpoena in person

**CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT**

**A. CERTIFICATE OF SERVICE**  
I certify that on \_\_\_\_\_, I served this subpoena on the witness named in Block 1 in the following manner:  
(Date)

\_\_\_\_\_  
(Date of later service, use only if applicable)

\_\_\_\_\_  
(Signature of Officer Serving Subpoena)

\_\_\_\_\_  
(Printed Name of Officer Serving Subpoena)

\_\_\_\_\_  
(Title of Officer Serving Subpoena)

**B. ACKNOWLEDGMENT OF RECEIPT**  
I acknowledge receipt of a copy of the subpoena on the front of this form.

Signature: \_\_\_\_\_

Title: _____	Date: _____	Time: <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.
--------------	-------------	---

DHS Form I-138 (5/09)



# DHS Form I-138 Page 3

## Attachment page

- Needs to be completed by Officer
- Contains information relating to subjects arrest
  
- Need to complete information in lower portion
- Can include multiple booking #'s if subject has been arrested by SD&D multiple times.

In Reference To: **FATHERS LAST-Mothers Last, First (Investigator) 8000 000 000**

1. Documents sufficient to establish the following for **FATHERS LAST-Mothers Last, First**:

Name address, employment address, country of birth, place of birth, and identification documents (e.g. driver license number, state, foreign identification card number and country, passport number and country), emergency contact address, phone number, copies of all identification documents, recent booking photograph(s), why and all records related to disciplinary actions while in your custody, threat level, associative behavior, gang affiliation and any other officer safety issues and certification of date and time the subject will be released to a jail or custody.

2. Document(s) relating to the recent arrest and charges for **FATHERS LAST-Mothers Last, First**, including but not limited to incident/arrest reports, booking documents (photographs, fingerprints, and so on), and the charges, and convictions if any.

DOB:MM/DD/YYYY  
ARREST DATE:MM/DD/YYYY  
BOOKING:SPXXXXX  
PRI:XXXXXXX

Attachment to DHS Form I-138



# DHS Form I-138 Page 3

## Changes needed:

- Subjects name (maintain same format throughout document)
- Charges – what subject was arrested for according to RAP sheet
- Subjects name (again)
- DOB
- Arrest Date
- Booking #
- FBI #

Note: This information needs to be filled out in the format shown on the right

1. Documents sufficient to establish the following for FATHERS LAST-Mothers Last, First:

Home address, employment address, country of birth, place of birth, age, identification documents (e.g. driver license number, state, foreign identification card number and country, passport number and country), emergency contact address, phone number, copies of all identification documents, recent booking photograph(s), any and all records related to disciplinary actions while in your custody, threat level, assaultive behavior, gang affiliation and any other officer safety issues and notification of date and time the subject will be released if still in custody.

2. Documents relating to the recent arrest and charges for INSERT CHARGES HERE to FATHERS LAST-Mothers Last, First, including but not limited to incident/arrest reports, booking documents (photographs, fingerprints, and so on), and the charges, and convictions if any.

DOB: MM/DD/YYYY

ARREST DATE: MM/DD/YYYY

BOOKING#: XXXXXXXX

FBI#: XXXXXXXX



# G166C – MEMORANDUM OF INVESTIGATION

- Needs to be completed by Officer along with I-38
- Follow format of example narrative
  - These narratives are submitted to HQ as part of an Executive Summary and need to follow the format requested by HQ.
- Must be submitted to SDDO for approval
- Upload to EAGLE after approval by SDDO

Examples will be forwarded to Officers via Email

U.S. Department of Homeland Security		MEMORANDUM OF INVESTIGATION	
Event No: SMC200280579			
Title Number	(b)(6),(b)(7)(C)	Control Office	(b)(6),(b)(7)(C)
		SND/SND	
<p>Memorandum of Investigation</p> <p>A thorough review of official immigration computer database record checks identified that (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) 41-year-old citizen of Mexico, entered the United States at an unknown date and place without having been admitted or paroled by an immigration officer to live, work, or remain in the United States legally.</p> <p>Immigration history shows (b)(6),(b)(7)(C) was ordered removed by an Immigration Judge on January 11, 2008 and has been removed two times since then.</p> <p>On February 27, 2023, (b)(6),(b)(7)(C) was arrested by the San Diego Sheriff Court Services for a violation of 84-493.5 PC ENTRY UNDER MENTORSHIP.</p> <p>(b)(6),(b)(7)(C) was booked into the San Diego Central Jail, where a Deportation Officer (b)(6),(b)(7)(C) screened and determined (b)(6),(b)(7)(C) alienage through official immigration computer database record checks identified (b)(6),(b)(7)(C) as a citizen of Mexico, by virtue of his birth in Mexico.</p> <p>On February 27, 2023, an Immigration Detainer (I-247A) and a Warrant for Arrest of Alien (I-206) were filed on (b)(6),(b)(7)(C) with the San Diego Central Jail Classification Deputy.</p> <p>At an unknown date and time, the San Diego Sheriff's office did not honor the Immigration Detainer and Warrant of Removal due to the California Values Act (CV 54) (b)(6),(b)(7)(C) was subsequently released from custody to the street and ICE HSO was not able to take custody of him. (b)(6),(b)(7)(C) is currently at large.</p> <p>On December 9, 2020, an Immigration Enforcement Subpoena (DES Form I-118) was prepared for (b)(6),(b)(7)(C) the San Diego Sheriff's Office (Subpoena No. SDC-ENF-SKD-202100151) to produce records (b)(6),(b)(7)(C) seized on February 27, 2023.</p>			
Investigator		Date	12/16/2020
Officer Name			
Form G-166C (08/01/07)		Page 1 of 1	

REL000008562



# Uploading DHS Form I-138 to the CAP SharePoint

(b)(7)(e)

Click CAP Documents



**ALLOWED** Criminal Alien Program

**ICE** Criminal Alien Program

**OUR MISSION:** safeguard the public through the identification, apprehension, prosecution and removal of criminal aliens.

**KEEPING YOU SAFE! COVID-19 INFORMATION:**  
Center for Disease Control (CDC) | DHS Update and Guidance

**CAP Quick Links**


**CAP SNAPSHOTS**

REL000008562



### CAP Documents

- Name ▾
- Detainer Reports
- Detainers
- FOW\_Target\_folder
- Images
- Joint Effort
- Narratives
- Subpoenas**
- Vehicle documents
- ACRIME CAP Log.xlsx



### CAP Documents Subpoenas

- Name ▾
- Arrested I-138 Lead Archives
- Backlog Subpoena Leads
- CAP Surge Spreadsheets
- DHS I-138 FY2021**



### Criminal Alien Program

+ New ▾   **Upload** ▾   Edit in grid view   Share   Copy

CAP Documents > Subpoenas > DHS I-138 FY2021

Name ▾



Questions?

REL000008562

# Immigration Subpoena Procedures

Enforcement and Removal Operations (ERO) proposes utilizing immigration subpoenas to obtain information from state or local LEAs who maintain custody of aliens issued immigration detainers, but who are non-compliant with immigration detainers, to obtain information related to the aliens' release from LEA custody, removability, alienage, and/or the aliens' post-release whereabouts.

## **Authority**

Pursuant to Section 235(d)(4)(A) of the Immigration and Nationality Act (INA), immigration officers have the authority to issue an immigration subpoena to require, "the attendance and testimony of witnesses before immigration officers and the production of books, papers, and documents relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of [the INA] . . . ."

## **Authority Official**

For ICE, the regulations authorize Enforcement and Removal Operations (ERO) Field Office Directors (FODs) and Deputy Field Office Directors (DFODs), and Homeland Security Investigations (HSI) Special Agents in Charge (SACs) and all Special Agents in supervisory positions, to issue subpoenas for criminal or civil investigations. 8 C.F.R. § 287.4(a)(1). The ICE Director delegated the authority to issue immigration subpoenas to the Executive Associate Directors for ERO and HSI (as well as the Assistant Director for the Office of Professional Responsibility). *ICE Delegation No. 73003.3, U.S. Immigration and Customs Enforcement Authority to Issue Immigration Subpoenas* (Nov. 30, 2009). The authority was re-delegated to ERO Assistant Directors, Deputy Assistant Directors, FODs, Deputy FODs, Assistant FODs, HSI Assistant Directors, Deputy Assistant Directors, SACs, Deputy SACs, and Assistant SACs. *See DRO Delegation No. 07-001.2, Authority to Issue Immigration Enforcement Subpoenas within the Office of Detention and Removal* (Jan. 6, 2010)

- Subpoena issuing officer (AFOD or above) and appearance/production officer (SDDO).

## **Service Official**

Pursuant to 8 C.F.R. § 287.4(c), the subpoena may be served by a person over 18 who is not a party to the case.

- Third party (ERO Officer), not involved in the case, to physically serve the subpoena.

## **Declarant**

- Declarant for potential ensuing litigation with the assistance of the U.S. Attorney's Office.



## Other Partners

- Local OPLA to assist identifying the information to be requested via subpoena
- The Office of Public Affairs to coordinate media release, when applicable

## Form I-138

The regulations require that all immigration subpoenas be issued on Form I-138, Immigration Enforcement Subpoena to Appear and/or Produce Records

The subpoenas will be seeking information related to:

- Booking
- Alien's release from LEA custody
- Address of alien and family members
- Alienage/Removability (to include any identity documents or copies thereof that the jail has in their records for the individual, such as a passport or cedula)
- Post release whereabouts (to include Probation and Parole requirements, employment information, etc...)

## Identification of LEAs

Identify the name of the highest authority to include, fax, email, phone number, and mailing address to serve informal letter, and subpoena information

## Identification of USAO

Should the LEA neglect or refuse to respond to the subpoena, an immigration officer may coordinate with the U.S. Attorney's Office for the district in which the subpoena was issued to seek an order from the U.S. District Court requiring production pursuant to INA § 235(d)(4)(B), 8 C.F.R. § 287.4(d).

The U.S. District Court should be the one where the LEA falls within. ERO Office should be within the same jurisdiction.

## Training

CAP HQ has created a Subpoena Log in share point, and all Users need to get trained and have access granted to it. CAP HQ will grant access to the SDDOs and AFODs identified by each AOR once names are submitted at (b)(7)(e)@ice.dhs.gov

Subpoena Log is located at:

(b)(7)(e)

Training material and other resources can be located at:

(b)(7)(e)

Requirements Potential Cases linked to Subpoenas

- (b)(5)

• These cases need to be:

- (b)(5)
- 
- 
- 

(b)(5)

Subpoena Steps

1. (b)(5)
2. (b)(5)
- 3.



○  
○  
○  
▼  
▼

**(b)(5)**

DRAFT



**U.S. Immigration  
and Customs  
Enforcement**

**JUL 13 2007**

**MEMORANDUM FOR:** Field Office Directors  
ICE Academy  
Detention and Removal Operations

**FROM:** John P. Torres   
Director  
Office of Detention and Removal Operations

**SUBJECT:** Accountability of Immigration Subpoenas

On behalf of ICE, the Office of Investigations is currently updating the legacy immigration subpoena directive and form. Until they are reissued, Detention and Removal Field Offices must continue using the legacy Immigration and Naturalization subpoena form (I-138). (See attached form)

Field Office Directors (FODs) are required to account for all subpoenas issued within their Area of Operational Responsibility (AOR) by maintaining both a log and copy of the subpoena issued. The log must contain, at minimum, the following information:

- 1) the title of proceedings, if any, for which the subpoena is issued;
- 2) the entity to whom the subpoena is served;
- 3) the issuing officer;
- 4) whether the subpoena was issued to compel the appearance of a witness to provide testimony, the production of books, papers or documents, or both appearance and production;
- 5) the date of service of the subpoena;
- 6) the means of service of the subpoena; and
- 7) a tracking number for each subpoena (tracked by fiscal year).

FODs must also ensure that all subpoenas are appropriately utilized and signed by the approved issuing authority. (See attached delegation order.)

Subpoenas that are sensitive in nature, or subpoenas requesting information that pertains to a large group of individuals, must be vetted through Headquarters Detention and Removal Operations (HQDRO) management. Examples of sensitive subpoenas include: a subpoena

**Memorandum for Field Office Directors**  
**Accountability of Immigration Subpoenas**  
**Page 2 of 2**

concerning a public official, a political candidate, the activities of a foreign government, the activities of a high foreign government official, the activities of a religious or political organization, or the activities of the news media.

If you have any questions or require additional information, please contact Mark Lenox, Deputy Assistant Director, Compliance Enforcement Division, at 202-616-

(b)(6),(b)(7)(C)

U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement

Office of Detention and Removal Operations  
Delegation Order

ORDER NUMBER:  
DRO DO 07-001

ISSUE DATE:  
MAR 13 2007

EFFECTIVE DATE:  
MAR 13 2007

**SUBJECT:**  
Authority to Issue Immigration Subpoenas Within the Office of Detention and Removal Operations .

**DELEGATED BY:**  
Director, Office of the Office of Detention and Removal Operations

**DELEGATED TO:**  
See below.

**SOURCE OF AUTHORITY BEING DELEGATED:**  
ICE Delegation Order 73003.1," dated February 6, 2007

**SUPERSEDED ORDER(S):**  
None.

**DELEGATION:**

By virtue of the authority granted to me by the Assistant Secretary in ICE Delegation Order 73003.1, dated February 6, 2007, I hereby delegate to Office of Detention and Removal Operations Assistant Directors, Deputy Assistant Directors, Field Office Directors, Deputy Field Office Directors, and Assistant Field Office Directors the authority to:

1. Issue immigration subpoenas requiring the person or entity to which they are addressed to attend and give testimony;
2. Require such persons or entities to produce records (books, papers, or other documents) for use in criminal or civil investigations;
3. Effect service of immigration subpoenas upon the persons or entities named therein;
4. Take testimony from such persons or entities under oath and examine, or cause to be examined, records produced by such persons or entities; and,
5. In the event that the person or entity named in a subpoena neglects or refuses to comply with the requirement to attend and give testimony or to produce records, request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court and to request such court to issue an order requiring the witness to appear and testify and to produce the records designated in the subpoena.

This authority may not be redelegated.

  
\_\_\_\_\_  
John P. Torres  
Director, Office of Detention and Removal Operations

USE ADDITIONAL PLAIN BOND IF NECESSARY.



U.S. Immigration  
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Enforcement

# **Accountability of Immigration Subpoenas Issued to Non-Compliant Law Enforcement Agencies**

Last Update: July 28, 2020

REL000008189





U.S. Immigration  
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# Training Goal

Pursuant to section 235(d)(4)(A) of the Immigration and Nationality Act (INA) and applicable regulations for this purpose, this training material is intended to provide Enforcement and Removal Operations (ERO) field personnel with guidance on the utilization of immigration subpoenas to state and local law enforcement agencies (LEAs) that do not comply with reasonable U.S. Immigration and Customs Enforcement requests for information, including advance notification of release dates pursuant to an immigration detainer.

Upon completion of training, ERO field personnel will understand the policies and procedures to continue issuing subpoenas to Non-compliant LEAs within their Area of Responsibility. ERO field personnel will reach out to ERO Criminal Alien Program at (b)(7)(E)@ice.dhs.gov to be granted access to the National Subpoena Log to account for subpoenas issued to Non-compliant LEAs within their Area of Responsibility.

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# Immigration Subpoena

**Definition:** A writ issued by authorized ICE officials to compel testimony by a witness before an immigration officer or production of information relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of the INA and the administration of ICE.



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## Non-Compliant Law Enforcement Agency (LEA)

**Definition:** A broad term that generally describes a police or sheriff's office that does not comply, complies in a manner not conducive to ICE law enforcement actions, or is precluded from compliance due to local statute, regulation, or ordinance, with immigration detainers, information sharing with ICE, or another action that impedes ICE's law enforcement actions.

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# Subpoena Usage

**General Use:** ERO has used administrative subpoenas (Form I-138) to obtain records from various information sources to include but not limited to: utilities, phone companies, apartment complexes and other information sources in order to obtain information on targeted aliens.

**Use to Non-Compliant LEAs:** ERO Directive (Policy 11165) provides field personnel with additional guidance for issuing subpoenas to state and local LEAs that do not comply with reasonable ERO requests for information, including advance notification of release dates pursuant to an immigration detainer.



Title 8 of the United States Code Section 1225(d)(4)(A) (INA Section 235) and 8 CFR 287.4 provide the basis of the authority for immigration officers to issue subpoenas. Specifically, delegated immigration officers "...may issue a subpoena requiring the production of records and evidence for use in criminal or civil investigations."

8 CFR 287.4(a)(1)





# Subpoena Log

On July 13, 2007, then Director John Torres issued a memorandum titled Accountability of Immigration Subpoenas. This memorandum requires that both a copy of every I-138 issued by a Field Office and a log of the action be maintained. The memorandum stated the log must contain:

- The title of the proceedings for the subpoena
- The entity to whom the subpoena was served
- The issuing officer
- Whether the subpoena compels the appearance of a witness, the production of documents, or both
- The date of service of the subpoena
- The means of service
- A tracking number for each subpoena



# Signing Authority for ERO Subpoenas

On January 6, 2010, then Acting Director David Venturella signed a delegation order titled Authority to Issue Immigration Subpoenas Within the Office of Detention and Removal Operations. This order delegated the authority to sign administrative subpoenas to the following:

- Assistant Directors (AD)
- Deputy Assistant Directors (DAD)
- Field Office Directors (FOD)
- Deputy Field Office Directors (DFOD)
- Assistant Field Office Directors (AFOD)

**This authority cannot be redelegated**



# Roles and Responsibilities

- ERO officers will continue to issue subpoenas in compliance with applicable laws, regulations, and ICE policy.
- ERO officers will exercise discretion, on a case-by-case basis, and will issue individual immigration subpoenas to non-compliant LEAs, requesting specific information related to specifically identified aliens who are or recently have been in their custody on criminal charges.
- ERO officers should consult with the OPLA to seek the assistance of DOJ Headquarters (HQ) and the relevant U.S. Attorney's Office (USAO) to file petitions to enforce immigration subpoenas.



## Roles and Responsibilities (2)

- ERO officers should utilize subpoenas to non-compliant LEAs only if obtaining the information through other means is not feasible. The information sought must not be unduly burdensome and will relate to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of the INA and the administration of ICE.
- ERO officers should refer to Policy 11165 for additional roles and responsibilities when issuing subpoenas to non-compliant LEAs.



## Workflow Process for the National Subpoena Log and I-138

- Roles are granted by Headquarters Criminal Alien Program (CAPHQ), and are obtained by sending an email to (b)(7)(e)@ice.dhs.gov.
- The process for requesting and issuing a subpoena begins when the Requestor (Case Officer) accesses the HQ CAP Subpoena Log on the ERO SharePoint site.
- The log can be accessed using the following link.  

**(b)(7)(e)**
- The case officer begins inputting data by clicking the New button.

**(b)(7)(e)**





# Workflow Process

**(b)(7)(e)**



## Workflow Process (2)

After the Requestor saves the information, the Authorizing Official receives an email notification of a pending request.

**(b)(7)(e)**



## Workflow Process (3)

The Authorizing Official then clicks the hyperlink next to Related Items.

**(b)(7)(e)**



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and Customs  
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## Workflow Process (4)

The Authorizing Official then clicks Edit Item.

**(b)(7)(e)**

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## Workflow Process (5)

- Authorizing Official then enters the decision.

**(b)(7)(e)**

- The Requestor will receive an email with the Authorizing Official's decision. If approved, the Requestor completes the I-138, and I-831 (when applicable) with Subpoena number generated from National Subpoena Log, and provides the Authorizing Official a hard copy for signature.





# How to Fill Out a Subpoena

<b>1. To (Name, Address, City, State, Zip Code)</b> (Name and Address of Entity)	<b>DEPARTMENT OF HOMELAND SECURITY</b>  <b>IMMIGRATION ENFORCEMENT</b> <b>SUBPOENA</b> <b>to Appear and/or Produce Records</b> <b>8 U.S.C. § 1225(d), 8 C.F.R. § 287.4</b>
<b>Subpoena Number</b> (Subpoena Number)	
<b>2. In Reference To</b>  <hr/> <div style="display: flex; justify-content: space-between;"> <span>(Title of Proceeding)</span> <span>(File Number, if Applicable)</span> </div>	

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 laws. 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).


<b>3. (A) CBP, ICE or USCIS Official before whom you are required to appear</b>  Name  Title  Address   Telephone Number	<b>(B) Date</b>    <b>(C) Time</b> <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.
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# Blank I-138

Use this standardized form to provide written request to the entity to produce records in connection with an investigation or inquiry relating to the enforcement of US immigration laws.

1. To (Name, Address, City, State, Zip Code)		DEPARTMENT OF HOMELAND SECURITY <b>IMMIGRATION ENFORCEMENT SUBPOENA</b> to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 237.4	
Subpoena Number _____			
2. In Reference To _____ <small>(Title or Proceedings) (File Number, if Applicable)</small>			
By the service of this subpoena upon you, YOU ARE HEREBY SUMMONED AND REQUIRED TO:			
<input type="checkbox"/> (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. <input type="checkbox"/> (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 laws. 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. § 1225a(c)(4)(B).			
3. (A) CBP, ICE or USCIS Official before whom you are required to appear		(B) Date	
Name _____		_____	
Title _____		(C) Time <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.	
Address _____		_____	
Telephone Number _____		_____	
4. Records required to be produced for inspection			
_____			
		5. Authorized Official	
<small>If you have any questions regarding this subpoena, contact the CBP, ICE, or USCIS Official identified in Block 3.</small>		_____ (Signature)	
		_____ (Printed Name)	
		_____ (Title)	
		_____ (Date)	
DHS Form I-138 (8/09)			

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# Blank I-831

Use as applicable to include  
additional information  
requested in section assigned  
for records required from I-138

U.S. Department of Homeland Security

Continuation Page for Form                     

Alien's Name	File Number	Date
[Large grid area for handwritten entries]		
Signature	Title	

Form I-831 Continuation Page (Rev. 06/01/07)

Page        of        Pages

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## Workflow Process (6)

For the next step, the Requestor must locate the case on the National Subpoena Log, highlight it and then click "Edit".

**(b)(7)(e)**





## Workflow Process (7)

The Requestor then uploads a signed copy of the I-138 to the SharePoint site and serves it on the entity.

**(b)(7)(e)**





## Workflow Process (8)

Requestor then updates the log.

**(b)(7)(e)**



## Workflow Process (9)

After receiving the response from the entity, the Requestor must again locate the case on the National Subpoena Log and click on the relevant entry. Fill out the appropriate fields and save. The outcome is then notated in the After-Action tab.

**(b)(7)(e)**



## Workflow Process (10)

If the entity complies with the subpoena, the Requestor enters the information. After clicking "Save", the log is complete.

**(b)(7)(e)**



## Workflow Process (11)

If the entity provides partial information or declines to honor the subpoena, the Case Officer will consult with local OPLA and USAO for further action on filing petitions to enforce subpoenas with the U.S. District Court, and update the National Subpoena Log.

**(b)(7)(e)**



## Workflow Process (12)

The Case Officer will update the National Subpoena Log when non-honored subpoena is presented to USAO for acceptance and further litigation with U.S. District Court.

**(b)(7)(e)**





- ERO officers should update the National Subpoena Log based on the LEAs level of compliance.
- ERO officers will notify CAP HQ at (b)(7)(e)@ice.dhs.gov when information received from served subpoenas leads to the arrest of the alien who is the target of the subpoena.



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# Additional Questions?

Additional questions or concerns can be emailed to CAP  
HQ at: (b)(7)(e)@ICE.DHS.GOV

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<b>U.S. Department of Homeland Security U.S. Immigration and Customs Enforcement</b>	<b>Office of Detention and Removal Operations Delegation Order</b>
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<b>ORDER NUMBER:</b> DRO 07-001.2	<b>ISSUE DATE:</b> JAN 06 2010	<b>EFFECTIVE DATE:</b> JAN 0 6 2010
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**SUBJECT:**  
**Authority to Issue Immigration Subpoenas Within the Office of Detention and Removal Operations**

<b>DELEGATED BY:</b> Director, Office of Detention and Removal Operations	<b>DELEGATED TO:</b> See below.
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<b>SOURCE OF AUTHORITY BEING DELEGATED:</b> ICE Delegation Order 73003.3 (November 30,2009), or any superseding order delegating the same authority.	<b>SUPERSEDED ORDER(S):</b> DRO Delegation Order 07-001 .1, dated September 30,2009.
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**DELEGATION:**

By virtue of the authority granted to me by the Assistant Secretary in ICE Delegation Order 73003.3, dated November 30,2009,1 hereby delegate to the Office of Detention and Removal Operations Assistant Directors, Deputy Assistant Directors, Field Office Directors, Deputy Field Office Directors, and Assistant Field Office Directors the authority to:

1. Issue immigration subpoenas requiring the person or entity to which they are addressed to attend and give testimony;
2. Require such persons or entities to produce records (books, papers, or other documents) for use in criminal or civil investigations;
3. Effect service of immigration subpoenas upon the persons or entities named therein;
4. Administer oaths;
5. Take testimony from such persons or entities under oath and examine, or cause to be examined, records produced by such persons or entities; and,
6. In the event that the person or entity named in a subpoena neglects or refuses to comply with the requirement to attend and give testimony or to produce records, request the United States Attorney for the district in which the subpoena was issued report such neglect or refusal to the United States District Court and to request such court issue an order requiring the witness to appear and testify and/or produce the records designated in the subpoena.

This authority may not be redelegated.



David J. Venturella  
 Acting Director, Office of Detention and Removal Operations

USE ADDITIONAL PLAIN BOND IF NECESSARY.

ORDER NUMBER: DO 73003.3

ISSUE DATE: 11/30/09

EFFECTIVE DATE: 11/30/09

**SUBJECT:**

**U.S. Immigration and Customs Enforcement Authority to Issue Immigration Subpoenas**

**DELEGATED BY:**

Assistant Secretary  
U.S. Immigration and Customs Enforcement

**DELEGATED TO:**

Director, Office of Detention and Removal Operations  
Director, Office of International Affairs  
Director, Office of Investigations  
Director, Office of Professional Responsibility  
Director, Office of Intelligence

**SOURCE OF AUTHORITY BEING DELEGATED:**

- Homeland Security Act of 2002, P.L. No. 107-296, *amended by* P.L. No. 108-7 (2003));
- Immigration and Nationality Act § 235(d), 8 U.S.C § 1225(d);
- 8 C.F.R. 287.4;
- Department of Homeland Security Delegation No 7030.2., Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement, para. 2(S) (November 13, 2004).

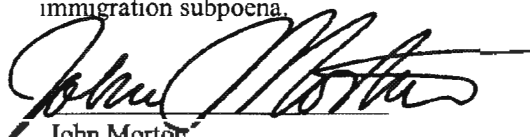
**SUPERSEDED ORDER(S):**

ICE Delegation Order DO 73003.2, U.S. Immigration and Customs Enforcement Authority to Issue Immigration Subpoenas (February 20, 2008).

**DELEGATION:**

By virtue of the authority granted to me by the Secretary of the Department of Homeland Security to enforce United States immigration laws, I hereby delegate to the Directors of the Office of Detention and Removal, the Office of International Affairs, the Office of Investigations, the Office of Professional Responsibility, and the Office of Intelligence the authority to:

1. Issue immigration subpoenas requiring the person or entity to which they are addressed to attend and give testimony;
2. Require such persons or entities to produce records (books, papers, or other documents) for use in criminal or civil investigations;
3. Effect service of immigration subpoenas upon the persons or entities named therein;
4. Administer oaths;
5. Take testimony from such persons or entities under oath and examine, or cause to be examined, records produced by such persons or entities; and
6. In the event that the person or entity named in a subpoena neglects or refuses to comply with the requirement to attend and give testimony or to produce records, request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court and to request such court to issue an order requiring the witness to appear and testify and to produce the records designated in the immigration subpoena.



John Morton  
Assistant Secretary  
U.S. Immigration and Customs Enforcement

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
ENFORCEMENT AND REMOVAL OPERATIONS**

**Accountability of Immigration Subpoenas Issued to Non-Compliant Law  
Enforcement Agencies**

**Policy Number:** 11165  
**Issue Date:** August 6, 2020  
**Effective Date:** August 6, 2020  
**Superseded:** None.  
**Federal Enterprise Architecture Number:** 306-112-002b

**1. Purpose/Background.**

- 1.1** This Directive provides Enforcement and Removal Operations (ERO) field personnel with policy and procedures for issuing immigration subpoenas to state and local law enforcement agencies (LEAs) that do not comply with reasonable U.S. Immigration and Customs Enforcement (ICE) requests for information, including advance notification of release dates pursuant to an immigration detainer. While many LEAs across the country still provide ICE with information to enhance ICE's investigations, many have recently either begun to refuse, or have been prohibited by state or local law or policy from cooperating with immigration enforcement.
- 1.2** This Directive is intended to provide guidance on the utilization of immigration subpoenas issued pursuant to section 235(d)(4)(A) of the Immigration and Nationality Act (INA) and applicable regulations for this purpose.<sup>1</sup> These provisions provide immigration officers with the authority to issue subpoenas requiring the production of records and evidence for use in criminal or civil investigations. Should the subject of an immigration subpoena fail to comply, U.S. district court may issue an order requiring such compliance, and the failure to comply with such order may be punished by an order of contempt by the district court.<sup>2</sup>

**2. Policy.**

- 2.1** ERO Officers will continue to issue subpoenas in compliance with applicable laws, regulations, and ICE policy. As required by regulations, immigration subpoenas will continue to be issued on Form I-138, *Immigration Enforcement Subpoena to Appear and/or Produce Records*<sup>3</sup> and will be served by an ERO

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<sup>1</sup> See 8 C.F.R. § 287.4.

<sup>2</sup> See INA § 235(d)(4)(B), and 8 C.F.R. § 287.4(d).

<sup>3</sup> 8 C.F.R. § 287.4(b).



Officer other than the issuing officer.<sup>4</sup>The requested information sought by the subpoenas will pertain to specifically identified aliens with criminal convictions, gang members, national security or public safety threats, aliens who have been ordered removed from the United States but have failed to depart, and aliens who have re-entered the country illegally after being removed. The authority to approve subpoenas is currently delegated to Assistant Field Office Directors (AFODs) and above, and cannot be redelegated.<sup>5</sup>

- 2.2** ERO Officers will exercise discretion, on a case-by-case basis, and will issue individual immigration subpoenas to non-compliant LEAs, requesting specific information related to specifically identified aliens who are or recently have been in their custody on criminal charges. The information sought may include, but is not limited to, information regarding the alien's anticipated release date from the LEA's custody, removability, alienage, post-release whereabouts, and other pertinent information that ERO officers reasonably believe will lead to an appropriate law enforcement action. ERO Officers should utilize subpoenas only if obtaining the information through other means is not feasible. The information sought must not be unduly burdensome and will relate to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of the INA.<sup>6</sup>
- 2.3** ERO should consult with the Office of the Principal Legal Advisor (OPLA) to seek the assistance of the Department of Justice (DOJ) Headquarters (HQ) and the relevant U.S. Attorney's Office (USAO) to file petitions to enforce the subpoenas.
- 3. Definitions.** The following definitions apply for purposes of this Directive only:
- 3.1 Immigration Subpoena.** A writ issued by authorized ICE officials to compel testimony by a witness before an immigration officer or production of information relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of the INA and the administration of ICE.
- 3.3 Non-Compliant Law Enforcement Agency.** A broad term that generally describes a police or sheriff's office that does not comply, complies in a manner not conducive to ICE law enforcement actions, or is precluded from compliance due to local statute, regulation, or ordinance, with immigration detainees,

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<sup>4</sup> See 8 C.F.R. § 287.4(c) Service. "A subpoena issued under this section may be served by any person, over 18 years of age not a party to the case over 18 years of age not a party to the case, designated to make such service by the ... Field Office Director; Deputy Field Office Director; Supervisory Deportation Officer; Supervisory Detention and Deportation Officer,...."

<sup>5</sup> ERO Delegation 07-001.2, *Authority to Issue Immigration Enforcement Subpoenas within the Office of Detention and Removal*, (Jan. 6, 2010).

<sup>6</sup> INA § 235(d)(4)(A).

information sharing with ICE, or another action that impedes ICE's law enforcement actions.

- 3.4 DHS Form I-138, *Immigration Enforcement Subpoena to Appear and/or Produce Records*.** A standardized form that provides written request to the respondent (a person or entity) to appear and/or produce records in connection with an investigation or inquiry relating to the enforcement of U.S. immigration laws.
- 3.5 Form I-831, Continuation Page.** A continuation Page form to include additional information requested in section assigned for records required from I-138 (as applicable).
- 4. Responsibilities.**
- 4.1 The Executive Associate Director for ERO** is responsible for ensuring compliance with the provisions of this Directive within ERO.
- 4.2 The Assistant Directors for Enforcement and Field Operations** are responsible for ensuring compliance with the provisions of this Directive within their respective Divisions and Programs.
- 4.3 Field Office Directors (FODs), or their supervisory designees (Deputy FODs and AFODs),** are responsible for:
- 1) Serving as the authorizing official for reviewing and approving or denying requests to issue an immigration subpoena, as applicable;
  - 2) Ensuring that field office personnel follow the procedures in this Directive for issuing, serving, and documenting immigration subpoenas;
  - 3) Ensuring that all subpoenas are appropriately utilized and signed by the approved issuing authority;
  - 4) Coordinating legal review by the local OPLA field location and USAO, and notifying the ERO Enforcement Division at least 48 hours prior to issuing subpoenas to non-compliant LEAs;
  - 5) Accounting for all the subpoenas issued within their AOR via the National Subpoena Log; and
  - 6) Ensuring that field office personnel comply with training requirements for subpoena enforcement actions.
- 4.4 The Deputy Assistant Director for Enforcement, Criminal Alien Division (CAD) HQ, or their designee,** is responsible for:

- 1) Notifying ERO Field Operations and OPLA HQ prior to providing FODs with concurrence, if necessary, to sign/issue subpoenas for purposes of procurement of information from non-compliant LEAs;
- 2) Consulting and coordinating with the ICE Office of Public Affairs, Office of Public Engagement and the Office of Congressional Relations, as appropriate; and
- 3) Consulting and coordinating with OPLA HQ regarding requests that the relevant USAO file petitions to enforce subpoenas.

**4.5 Supervisory Detention and Deportation Officers (SDDOs), are responsible for:**

- 1) Ensuring compliance with the provisions of this Directive;
- 2) Identifying, through their assigned Deportation Officers, individual aliens who are potentially amenable cases for issuing subpoenas;
- 3) Properly submitting subpoena requests to the designated authorizing officials; and
- 4) Completing subpoena forms, issuing subpoenas, recording and documenting subpoena and enforcement actions, and contacting the USAO, if applicable.

**5. Procedures.**

**5.1 Identifying Appropriate Cases for Issuance of Immigration Subpoenas.**

SDDOs will review cases in which aliens were recently arrested, released, or pending release by non-compliant LEAs and identify cases for which no other feasible means to obtain required information in the possession of the LEA is available. Once potential cases have been identified, SDDOs will prepare Executive Summaries (ES) for each case including a justification for issuing an immigration subpoena, including an explanation as to why obtaining the information through other means is not feasible. (see section 2.2).

**5.2 Initiating, Approving and Serving a Subpoena.** ERO Officers will ensure they have access and obtain Requestor or Authorizing Official roles, as applicable, to the National Subpoena Log by contacting the Criminal Alien Program (CAP) HQ at (b)(7)(e)@ice.dhs.gov.

- 1) Issuing the Subpoena. The Requestor will identify the name of the entity's highest authority to include, fax, email, phone number, and mailing address to send correspondence and serve the subpoena. The Requestor will complete Form I-138 annotating that the deadline to provide information regarding

aliens who remain in LEA custody is 3 calendar days, and for those who have been released is 14 business days.

- 2) Approving the Subpoena. The Authorizing Official will review Form I-138 and ES of alien mentioned in the form, and will consult with the local OPLA field location and USAO and submit his or her recommendation to CAP HQ for consultation with OPLA HQ and DOJ HQ. The Authorizing Official will enter the final decision in the National Subpoena Log indicating whether the request for a subpoena is approved or denied.
- 3) Serving the Subpoena. If approved, the Requestor will complete Form I-138 with the generated subpoena number and will provide the Authorizing Official with a hard copy for signature. Upon approval but prior to service, the Requestor may send an informal request, after consultation with the local USAO, requesting production of information on the subpoenas via email within 48 hours of receipt of request. If the LEA does not comply, the Requestor will upload the signed copy of Form I-138 to the Subpoena Log and serve it to the entity (see section 2.1).

**5.3 Post-Service and Enforcement Procedures.** Upon the deadline included in Form I-138, the Requestor will update the Subpoena Log based on the level of compliance and take further action, if applicable.

- 1) If full information is received, the Requestor will record the information and complete the National Subpoena Log. When such information leads to the arrest of the alien who is the target of the subpoena, the Requestor will notify the CAP HQ and annotate this information in the Subpoena Log, accordingly.
- 2) If partial information is received, the Requestor will record the information in the National Subpoena Log and consult the local OPLA field location and the USAO for further action on filing petitions to enforce subpoenas with the respective U.S. district court and update the the National Subpoena Log, accordingly.
- 3) If the LEA does not comply with the subpoena, the Requestor will annotate non-compliance in the Subpoena Log and consult with the local OPLA field location and the USAO for further action on filing petitions to enforce subpoenas with the respective US District Court and update the National Subpoena Log, accordingly.

**5.4 Accountability Procedures.** ERO Officers are required to account for all subpoenas issued within their AOR by maintaining both a log and a copy of the subpoena issued. The log must contain, at the minimum, the following information:

- 1) The title of proceedings, if any, for which the subpoena is issued;

- 2) The entity to whom the subpoena is served;
- 3) The issuing officer;
- 4) Whether the subpoena was issued to compel the appearance of a witness to provide testimony, the production of books, papers or documents, or both appearance and production;
- 5) The date of service of the subpoena;
- 6) The means of service of the subpoena; and
- 7) A tracking number for each subpoena (tracked by fiscal year).

## 5.5 Training.

All field personnel identified by each AOR as Users of the National Subpoena Log will complete mandatory training in DHS Performance and Learning Management System (PALMS).

6. **Recordkeeping.** All documents created or received by ICE must be maintained in accordance with a National Archives and Records Administration (NARA) General Records Schedule or an applicable DHS or ICE records schedule. If a schedule does not exist that covers the records, they are considered unscheduled. Unscheduled records cannot be destroyed or deleted until a schedule has been developed and approved by NARA.

## 7. Authorities/References.

- 7.1 *Immigration and Nationality Act of 1952, as amended (INA), Pub. L. No. 82-414, 66 Stat. 163, § 235(d)(4)(A-B).*
- 7.2 8 C.F.R. § 287.4(a-d), *Subpoena*.
- 7.3 ICE Delegation Order 73003.3, *U.S. Immigration and Customs Enforcement Authority to Issue Immigration Subpoenas*, (Nov. 30, 2009).
- 7.4 ERO Delegation Order 07-001.2, *Authority to Issue Immigration Enforcement Subpoenas within the Office of Detention and Removal*, (Jan. 6, 2010).
- 7.5 ICE Memorandum, *Accountability of Immigration Subpoenas*, (Jul. 13, 2007).

8. **Attachments.** None.



9. **No Private Right.** This document provides only internal ERO policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE. This guidance does not alter any provision of any statute or regulation that contains legally binding requirements, and it is not itself a regulation.



**Enrique M. Lucero**  
**Executive Associate Director**  
**Enforcement and Removal Operations**  
**U.S. Immigration and Customs Enforcement**

ORDER NUMBER:  
DRO 07-001.2

ISSUE DATE: JAN 06 2010

EFFECTIVE DATE:  
JAN 06 2010

**SUBJECT:**

**Authority to Issue Immigration Subpoenas Within the Office of Detention and Removal Operations**

**DELEGATED BY:**

Director, Office of Detention and Removal Operations

**DELEGATED TO:**

See below.

**SOURCE OF AUTHORITY BEING DELEGATED:**

ICE Delegation Order 73003.3 (November 30, 2009), or any superseding order delegating the same authority.

**SUPERSEDED ORDER(S):**

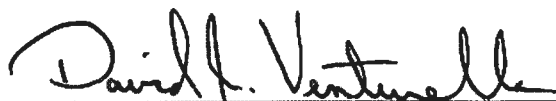
DRO Delegation Order 07-001.1, dated September 30, 2009.

**DELEGATION:**

By virtue of the authority granted to me by the Assistant Secretary in ICE Delegation Order 73003.3, dated November 30, 2009, I hereby delegate to the Office of Detention and Removal Operations Assistant Directors, Deputy Assistant Directors, Field Office Directors, Deputy Field Office Directors, and Assistant Field Office Directors the authority to:

1. Issue immigration subpoenas requiring the person or entity to which they are addressed to attend and give testimony;
2. Require such persons or entities to produce records (books, papers, or other documents) for use in criminal or civil investigations;
3. Effect service of immigration subpoenas upon the persons or entities named therein;
4. Administer oaths;
5. Take testimony from such persons or entities under oath and examine, or cause to be examined, records produced by such persons or entities; and,
6. In the event that the person or entity named in a subpoena neglects or refuses to comply with the requirement to attend and give testimony or to produce records, request the United States Attorney for the district in which the subpoena was issued report such neglect or refusal to the United States District Court and to request such court issue an order requiring the witness to appear and testify and/or produce the records designated in the subpoena.

This authority may not be redelegated.



David J. Venturella  
Acting Director, Office of Detention and Removal Operations

USE ADDITIONAL PLAIN BOND IF NECESSARY.





# U.S. Immigration and Customs Enforcement

## Immigration Subpoenas and Record Keeping



# Subpoena

**Definition:** A writ issued by a government agency to compel testimony by a witness or production of other evidence.

**Past and current uses of subpoenas by ERO:** Generally, ERO has used administrative subpoenas (Form I-138) to obtain records from utilities, phone companies, apartment complexes and other information sources in order to obtain information on targeted aliens.

**Future uses of subpoenas by ERO:** ERO, in collaboration with the Office of Principal Legal Advisor (OPLA) intends to expand the use of administrative subpoenas by field personnel.



U.S. Immigration  
and Customs  
Enforcement



# Legal Authority for ERO to Issue Subpoenas

Title 8 of the United States Code Section 1225(d)(4)(A) (INA Section 235) and 8 CFR 287.4 provide the basis of the authority for immigration officers to issue subpoenas. Specifically, delegated immigration officers “...may issue a subpoena requiring the production of records and evidence for use in criminal or civil investigations.” 8 CFR 287.4



U.S. Immigration  
and Customs  
Enforcement



# Signing Authority for ERO

## Subpoenas

On January 6, 2010, then Acting Director David Venturella signed a delegation order titled Authority to Issue Immigration Subpoenas Within the Office of Detention and Removal Operations. This order delegated the authority to sign administrative subpoenas to the following:

- Assistant Directors
- Deputy Assistant Directors
- Field Office Directors
- Deputy Field Office Directors
- Assistant Field Office Directors

This authority cannot be redelegated.



U.S. Immigration  
and Customs  
Enforcement



# Subpoena Log

On July 13, 2007, then Director John Torres issued a memorandum titled Accountability of Immigration Subpoenas. This memorandum requires that both a copy of every I-138 issued by a Field Office and a log of the action be maintained. The memorandum stated the log must contain:

- The title of the proceedings for the subpoena
- The entity to whom the subpoena was served
- The issuing officer
- Whether the subpoena compels the appearance of a witness, the production of documents, or both
- The date of service of the subpoena
- The means of service
- A tracking number for each subpoena.



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# Workflow Process for I-138 and Log

- Roles are granted by CAPHQ, and are obtained by sending an email to **(b)(7)(E)**@ice.dhs.gov.
- The process for requesting and issuing a subpoena begins when the Requestor (Case Officer) accesses the HQ CAP Subpoena Log on the ERO SharePoint site. The log can be accessed using the link below.

**(b)(7)(e)**

- The case officer begins inputting data by clicking the New button.

**(b)(7)(e)**



# Workflow Process

**(b)(7)(e)**



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# Workflow Process

- After the requestor saves the information, the authorizing official receives an email notification of a pending request.

**(b)(7)(e)**



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# Workflow Process

- The Authorizing Official then clicks the hyperlink next to Related Items.

**(b)(7)(e)**



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Enforcement

# Workflow Process

- The Authorizing Official then clicks Edit Item.

**(b)(7)(e)**



U.S. Immigration  
and Customs  
Enforcement



# Workflow Process

- Authorizing official then enters the decision.

**(b)(7)(e)**

- The requestor will receive an email with the authorizing official's decision. If approved, the requestor completes the I-138 with Subpoena number generated from share point log, and provides the authorizing official a hard copy for signature.



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# How to fill out a subpoena

1. To (Name, Address, City, State, Zip Code) (Name and Address of Entity)	DEPARTMENT OF HOMELAND SECURITY  <b>IMMIGRATION ENFORCEMENT          SUBPOENA</b> to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number (Subpoena Number from Log)	
2. In Reference To (Information Being Requested) <span style="float: right;">AXXX XXX XXX</span> <small>(Title of Proceeding) <span style="float: right;">(File Number, if Applicable)</span></small>	

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 laws. 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 (Officer Name) Title (Officer Title) Address (Office Address)  Telephone Number (Office Telephone Number)	(B) Date (Month XX, 20XX)  (C) Time HH:MM <input checked="" type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.
--	---



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# Blank I-138

1. To (Name, Address, City, State, Zip Code)	<b>DEPARTMENT OF HOMELAND SECURITY</b> <b>IMMIGRATION ENFORCEMENT</b> <b>SUBPOENA</b> to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number	
2. In Reference To	
_____	
(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 laws. 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	(B) Date
Name	
Title	
Address	(C) Time <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.
Telephone Number	
4. Records required to be produced for inspection	



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

5. Authorized Official
_____
(Signature)
_____
(Printed Name)
_____
(Title)
_____
(Date)



# Workflow Process

- For the next step, the requestor must locate the case on the HQ CAP Subpoena Log, highlight it and then click “Edit”.

**(b)(7)(e)**



U.S. Immigration  
and Customs  
Enforcement

# Workflow Process

- The requestor then uploads a signed copy of the I-138 to the SharePoint site and serves it on the entity.

**(b)(7)(e)**



U.S. Immigration  
and Customs  
Enforcement



# Workflow Process

- Requestor then updates the log.

**(b)(7)(e)**



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# Workflow Process

- After receiving the response from the entity, the requestor must again locate the case on the HQ CAP Subpoena Log and click on the relevant entry. Fill out the appropriate fields and save. The outcome is then notated in the After-Action tab.

**(b)(7)(e)**



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# Workflow Process

- If the entity complies with the subpoena, the requestor enters the information. After clicking “Save”, the log is complete.

**(b)(7)(e)**



U.S. Immigration  
and Customs  
Enforcement

# Workflow Process

- If the entity declines to honor the subpoena, the case officer will contact the local United States Attorney's Office for further action and document in the log.

**(b)(7)(e)**



U.S. Immigration  
and Customs  
Enforcement



# Workflow Process

**(b)(7)(e)**



U.S. Immigration  
and Customs  
Enforcement



# Additional Questions?

Additional questions or concerns can be emailed to CAP HQ at:

**(b)(7)(e)** ICE.DHS.GOV



U.S. Immigration  
and Customs  
Enforcement



**From:** (b)(6),(b)(7)(C) [/o=EXCHANGELABS/ou=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/cn=RECIPIENTS/cn=CE713DFD4BFA4C44BFE469199629DF90-COMPANY, LE]  
**Sent:** 1/24/2020 5:22:44 PM  
**To:** (b)(6),(b)(7)(C) =ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f0573adf93ec402290c7fd873b370976- (b)(6),(b)(7)(C)  
**CC:** (b)(6),(b)(7)(C) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4bff70186b8b42beb4ef04ddf6398d6a (b)(6),(b)(7)(C) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=7d043627b1af4dc493c5272aab053495 (b)(6),(b)(7)(C) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=eef20321781f4a12b26b220a3dadd4fa (b)(6),(b)(7)(C)  
**Subject:** RE: CHI Subpoena

(b)(5)

**From:** (b)(6),(b)(7)(C) @ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 12:07 PM  
**To:** (b)(6),(b)(7)(C) @ice.dhs.gov>  
**Cc:** (b)(6),(b)(7)(C) @ice.dhs.gov>; (b)(6),(b)(7)(C) @ice.dhs.gov>; (b)(6),(b)(7)(C) @ice.dhs.gov>  
**Subject:** RE: CHI Subpoena

OK, so they're both **required** then? We must serve via e-mail, and then also serve in person?

**From:** (b)(6),(b)(7)(C) @ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 11:06 AM  
**To:** (b)(6),(b)(7)(C) @ice.dhs.gov>  
**Cc:** (b)(6),(b)(7)(C) @ice.dhs.gov>; (b)(6),(b)(7)(C) @ice.dhs.gov>; (b)(6),(b)(7)(C) @ice.dhs.gov>  
**Subject:** RE: CHI Subpoena

Both methods will be used: first via email, and then in person.

**From:** (b)(6),(b)(7)(C) @ice.dhs.gov>  
**Sent:** Friday, January 24, 2020 12:05 PM  
**To:** (b)(6),(b)(7)(C) @ice.dhs.gov>  
**Cc:** (b)(6),(b)(7)(C) @ice.dhs.gov>; (b)(6),(b)(7)(C) @ice.dhs.gov>; (b)(6),(b)(7)(C) @ice.dhs.gov>  
**Subject:** RE: CHI Subpoena

Understood...I just meant to clarify that *when approved*, we can serve these via e-mail? They no longer need to be in person?

From: (b)(6),(b)(7)(C)@ice.dhs.gov>  
Sent: Friday, January 24, 2020 11:05 AM  
To: (b)(6),(b)(7)(C)@ice.dhs.gov>  
Cc: (b)(6),(b)(7)(C)@ice.dhs.gov>; (b)(6),(b)(7)(C)@ice.dhs.gov>;  
(b)(6),(b)(7)(C)@ice.dhs.gov>  
Subject: RE: CHI Subpoena

No, no yet gentlemen. OPLA will advise when cases are cleared, and you will be notified, accordingly.

From: (b)(6),(b)(7)(C)@ice.dhs.gov>  
Sent: Friday, January 24, 2020 11:52 AM  
To: (b)(6),(b)(7)(C)@ice.dhs.gov>  
Cc: (b)(6),(b)(7)(C)@ice.dhs.gov>; (b)(6),(b)(7)(C)@ice.dhs.gov>;  
(b)(6),(b)(7)(C)@ice.dhs.gov>  
Subject: RE: CHI Subpoena

To confirm, we can now serve these via e-mail?

From: (b)(6),(b)(7)(C)@ice.dhs.gov>  
Sent: Friday, January 24, 2020 9:44 AM  
To: (b)(6),(b)(7)(C)@ice.dhs.gov>  
Cc: (b)(6),(b)(7)(C)@ice.dhs.gov>; (b)(6),(b)(7)(C)@ice.dhs.gov>  
Subject: RE: CHI Subpoena

(b)(5)

Feel free to contact me via phone or email if you have more questions.

Regards,

(b)(6),(b)(7)(C)  
Department of Homeland Security  
Immigration and Customs Enforcement  
Criminal Alien Division  
500 12<sup>th</sup> St SW  
Washington, DC 20024  
Office (202) 732-(b)(6),(b)(7)(C) Cell (202) 76-(b)(6),(b)(7)(C)



**From:** (b)(6),(b)(7)(C) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CE713DFD4BFA4C44BFE469199629DF9C (b)(6),(b)(7)(C)  
**Sent:** 1/13/2020 4:12:22 PM  
**To:** (b)(6),(b)(7)(C) o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f0573adf93ec402290c7fd873b370976 (b)(6),(b)(7)(C)  
**Subject:** RE: Immigration Subpoenas Follow Up

AFOD (b)(6),(b)(7)(C)

I know we discussed this before, but I need to triple check. Subpoenas will be useful in order to request from LEAs the following information:

Employment address, country of birth, place of birth, age, identification documents (i.e.: driver license number and state, foreign ID and country, passport and country), bond information to include obligor name, emergency contact address and phone number, and FBI number.

Do you deem beneficial to use subpoenas to receive this information on a relevant case?

(b)(6),(b)(7)(C)

**From:** (b)(6),(b)(7)(C) @ice.dhs.gov  
**Sent:** Monday, January 13, 2020 11:02 AM  
**To:** (b)(6),(b)(7)(C) @ice.dhs.gov  
**Subject:** RE: Immigration Subpoenas Follow Up

Good morning (b)(6),(b)(7)(C)

See attached.

Thanks,

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

Assistant Field Office Director  
Chicago Field Office  
312.347 (b)(6),(b)(7)(C) (desk)  
415.786 (b)(6),(b)(7)(C) (cell)  
(b)(6),(b)(7)(C) @ice.dhs.gov

*Warning: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this report should be furnished to the media, either in written or verbal form.*

**From:** (b)(6),(b)(7)(C) @ice.dhs.gov  
**Sent:** Friday, January 10, 2020 3:41 PM  
**To:** (b)(6),(b)(7)(C) @ice.dhs.gov; (b)(6),(b)(7)(C) @ice.dhs.gov; (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) ice.dhs.gov> (b)(6),(b)(7)(C) @ice.dhs.gov> (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) @ice.dhs.gov> (b)(6),(b)(7)(C) @ice.dhs.gov> (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) ice.dhs.gov> (b)(6),(b)(7)(C) ice.dhs.gov>

Cc: (b)(6),(b)(7)(C) ice.dhs.gov>

**Subject:** Immigration Subpoenas Follow Up

Greetings Gentlemen,

**(b)(5)**

The Workbook has been tabbed in different Sheets based on your AOR.

Please provide me with your responses NLT noon, Monday, January 13, 2020 by noon EST time.

Thank you again and have a nice weekend!

(b)(6),(b)(7)(C)

Department of Homeland Security  
Immigration and Customs Enforcement

Criminal Alien Division

500 12<sup>th</sup> St SW

Washington, DC 20024

Office (202) 732- (b)(6),(b)(7)(C) Cell (202) 763- (b)(6),(b)(7)(C)

**From:** (b)(6),(b)(7)(C) =EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F0573ADF93EC402290C7FD873B370976-PAULL, GREG]  
**Sent:** 9/23/2020 7:42:36 PM  
**To:** Hoelzer, John (b)(6),(b)(7)(C)@usdoj.gov  
**CC:** (b)(6),(b)(7)(C)@usdoj.gov; (b)(6),(b)(7)(C) =ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4bff70186b8b42beb4ef04ddf6398d6a (b)(6),(b)(7)(C)  
**Subject:** RE: US v. Jeffreys - Compliance with Administrative Subpoenas

(b)(5),(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C) can you please update the SharePoint for this case as well?

**From:** Hoelzer, John (USA ILC) (b)(6),(b)(7)(C)@doj.gov>  
**Sent:** Wednesday, September 23, 2020 2:08 PM  
**To:** (b)(6),(b)(7)(C)@ice.dhs.gov>  
**Cc:** (b)(6),(b)(7)(C)@usdoj.gov>  
**Subject:** FW: US v. Jeffreys - Compliance with Administrative Subpoenas

CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact ICE SOC SPAM with questions or concerns.

FYI

**From:** (b)(6),(b)(7)(C)@atg.state.il.us>  
**Sent:** Wednesday, September 23, 2020 2:02 PM  
**To:** Hoelzer, John (USA ILC) (b)(6),(b)(7)(C)@a.doj.gov>  
**Cc:** (b)(6),(b)(7)(C)@illinois.gov>; (b)(6),(b)(7)(C)@atg.state.il.us>; (b)(6),(b)(7)(C) (USA ILC) (b)(6),(b)(7)(C)@usa.doj.gov>  
**Subject:** Re: US v. Jeffreys - Compliance with Administrative Subpoenas

John,

Attached is IDOC's production in response to the subpoena relating to (b)(6),(b)(7)(C). Note that redactions have been applied to the name and other identifying information for a minor crime victim in the attached. You may follow up with (b)(6),(b)(7)(C) on this one, as well.

Respectfully,

(b)(6),(b)(7)(C)

**From:** (b)(6),(b)(7)(C)  
**Sent:** Wednesday, September 23, 2020 1:13 PM  
**To:** Hoelzer, John (USAILC)  
**Cc:** (b)(6),(b)(7)(C) (USAILC)  
**Subject:** Re: US v. Jeffreys - Compliance with Administrative Subpoenas

John,

Attached is IDOC's production in response to the subpoena relating to (b)(6),(b)(7)(C). You may contact IDOC's Chief Counsel, (b)(6),(b)(7)(C) Manning, with follow-up questions regarding the production. (b)(6),(b)(7)(C)'s cell is: 217-725-(b)(6),(b)(7)(C)

Respectfully,

(b)(6),(b)(7)(C)

---

**From:** Hoelzer, John (USAILC) (b)(6),(b)(7)(C) <(b)(6),(b)(7)(C)@usdoj.gov>  
**Sent:** Monday, September 21, 2020 2:33 PM  
**To:** (b)(6),(b)(7)(C)  
**Cc:** (b)(6),(b)(7)(C) (USAILC)  
**Subject:** RE: US v. Jeffreys - Compliance with Administrative Subpoenas

No objection.

Thanks,

John

---

**From:** (b)(6),(b)(7)(C) <(b)(6),(b)(7)(C)@atg.state.il.us>  
**Sent:** Monday, September 21, 2020 2:18 PM  
**To:** Hoelzer, John (USAILC) <(b)(6),(b)(7)(C)@usa.doj.gov>  
**Cc:** (b)(6),(b)(7)(C) <(b)(6),(b)(7)(C)@illinois.gov>; (b)(6),(b)(7)(C) <(b)(6),(b)(7)(C)@atg.state.il.us>  
**Subject:** Re: US v. Jeffreys - Compliance with Administrative Subpoenas

John,



Attached please find a proposed motion notifying the Court of IDOC's intent to comply with the subpoena and requesting a seven-day extension of the current filing deadlines. Please let me know if we may represent to the Court that the motion is unopposed.

Best,

(b)(6),(b)(7)(C)

From: (b)(6),(b)(7)(C)  
Sent: Monday, September 21, 2020 2:16 PM  
To: Hoelzer, John (USAILC)  
Cc: (b)(6),(b)(7)(C) usdoj.gov  
Subject: US v. Jeffreys - Compliance with Administrative Subpoenas

John,

Attached please find the letter I mentioned in our call earlier today. The Illinois Department of Corrections is compiling the documents and information sought in the administrative subpoenas and intends to produce them promptly.

I will send you a short proposed motion under separate cover.

Best,

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

Chief, Public Interest Division  
Office of the Illinois Attorney General  
100 W. Randolph St., (b)(6),(b)(7)(C)  
Chicago, Illinois 60601  
Pronouns: he/him  
Phone: 312-814 (b)(6),(b)(7)(C)

Email: (b)(6),(b)(7)(C) atg.state.il.us

**From:** (b)(6),(b)(7)(C) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=CE713DFD4BFA4C44BFE469199629DF96 (b)(6),(b)(7)(C)

**Sent:** 1/16/2020 4:54:46 AM

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**Subject:** \*\*\*\*\*SHORT TURN AROUND TASKING ON IMMIGRATION SUBPOENAS\*\*\*Due THURSDAY, JANUARY 16, 2020

**Attachments:** Immigration Subpoena Users- II.xlsx; ERO Subpoenas Log Training (CLEARED 12.16.19).ppt; ICE Subpoena ERO-ENF-DEN-202000002.pdf; ICE Subpoena ERO-ENF-DEN-202000001.pdf; ERO DEN Executive Summary - (b)(6),(b)(7)(C) docx; DHS Form I-138.pdf; authority-issue-immigration-subpoenas.pdf

**Importance:** High  
**Flag:** Flag for follow up

Greetings All,

Pardon for the late email, but our ERO leadership has instructed CAP HQ to work with your AORs on moving forward serving subpoenas on the LEAs nominated by each of your AORs. The GOAL is to serve the subpoenas on the LEAs as soon as Friday, January 17, 2019.

The following information is needed back to me Thursday, January 16, 2020 by 10:00 am/EST (8:00 am/PST): Add the following POCs in the Excel Spreadsheet (Immigration Subpoena Users-II)

1. Based on the LEA(s) to be served with subpoenas, identify the AFOD (or AFODs if different jurisdiction) issuing the subpoenas
2. Identify service SDDO
3. Identify a second/different SDDO to personally serve the document (more details will be provided later on)

\*\*CAP HQ has created a Subpoena Log in our share point, and all Users need to get trained and have access granted to it. I am attaching a PPT on Subpoena Log. CAP HQ will grant access to the SDDOs and AFODs identified by each AOR once names are submitted.

(b)(7)(e)

**The following information is needed back before COB Thursday, January 16, 2020:**

1. Present four (4) cases per AOR with Executive Summaries and drafted subpoenas (Attachments as go-bys). These cases need to be recent arrests/declined detainers, egregious criminals, and-ideally-prior removals so that alienage is not an issue.

**\*\*I am attaching two full subpoenas served this week by DEN AOR (one with an individual still detained and another one with an individual already released on bond), a blank subpoena form, and ES to go by.**

I am proposing a conference call tomorrow Thursday, January 16, 2020 tentatively at 2:00 pm EST/ 11 am PST. I will be sending invite early in the morning so we can go over material, asks, training, POCs, LEAs, etc. Please feel free to reach out directly to me prior to call, if you wish so I can clear any immediate doubts.

**P.S. ==TODAY's article on subpoenas served by DEN AOR:**

**<https://apnews.com/ba19871e3754e9c4c9838bd3b600154e>**

**(b)(6),(b)(7)(C)**

Department of Homeland Security

Immigration and Customs Enforcement

Criminal Alien Division

500 12<sup>th</sup> St SW

Washington, DC 20024

Office (202) 732-**(b)(6),(b)(7)(C)** Cell (202) **(b)(6),(b)(7)(C)**



1. To (Name, Address, City, State, Zip Code) Interim Sheriff (b)(6),(b)(7)(C) and/or Officer/Person In Charge Van Cise-Simonet Detention Center 490 W Colfax Ave., Denver, CO 80204	DEPARTMENT OF HOMELAND SECURITY  <b>IMMIGRATION ENFORCEMENT SUBPOENA</b> to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number ERO-ENF-DEN-202000002	
2. In Reference To (b)(6),(b)(7)(C) investigation (b)(6),(b)(7)(C) (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 laws. 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 (b)(6),(b)(7)(C) ce.dhs.gov Title Supervisory Detention and Deportation Officer Address 12445 E Caley Ave Centennial, CO 80111 Telephone Number 720-873-(b)(6),(b)(7)(C)	(B) Date 01/16/2020  (C) Time 3:00 <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.
---	---

4. Records required to be produced for inspection

1. Documents sufficient to establish the following for (b)(6),(b)(7)(C) Home Address, Employment Address, Country of Birth, Place of Birth, Age, Identification Documents (i.e. driver license number and state, foreign identification card number and country, passport number and country), Bond Information to include the obligor name and address, Federal Bureau of Investigation Number, Emergency Contact address and phone number, including copies of all identification documents.

2. Documents that show the criminal charge relating to (b)(6),(b)(7)(C) where the arrest date was November 9, 2019, the charges were Vehicular Homicide-Reckless Driving, and Hit and Run-Leaving the Scene of Accident involving Death, under Booking Number: 19-377871.



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

5. Authorized (b)(6),(b)(7)(C) (Printed Name) Assistant Field Office Director (Title) 01/13/2020 (Date)
--

**CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT**

**A. CERTIFICATE OF SERVICE**

I certify that on 1/13/2020, I served this subpoena on the witness named in Block 1 in the following manner:  
(Date)

*In-person at the Denver Justice Center*

(Details of how service was effected)

**(b)(6),(b)(7)(C)** (Printed Name of Official Serving Subpoena)

(Printed Name of Official Serving Subpoena)

*Supervisory Detention and Deportation Officer*  
(Title of Official Serving Subpoena)

**B. ACKNOWLEDGMENT OF RECEIPT**

I acknowledge receipt of a copy of the subpoena on the front of this form.

Signature

**(b)(6),(b)(7)(C)**

Title

Date

*1/13/2020*

Time

*4:12*

a.m.  
 p.m.

1. To (Name, Address, City, State, Zip Code) Interim Sheriff (b)(6),(b)(7)(C) and/or Officer/Person In Charge Van Cise-Simonet Detention Center 490 W Colfax Ave., Denver, CO 80204	DEPARTMENT OF HOMELAND SECURITY  <b>IMMIGRATION ENFORCEMENT SUBPOENA</b> to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number ERO-ENF-DEN-202000001	
2. In Reference To (b)(6),(b)(7)(C) investigation (b)(6),(b)(7)(C) <small>(Title of Proceeding) (File Number, if Applicable)</small>	

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 laws. 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 (b)(6),(b)(7)(C) ice.dhs.gov Title Supervisory Detention and Deportation Officer Address 12445 E Caley Ave Centennial, CO 80111 Telephone Number 720-873-(b)(6),(b)(7)(C)	(B) Date 01/27/2020  (C) Time 3:00 <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.
--	---

4. Records required to be produced for inspection

1. Documents sufficient to establish the following for (b)(6),(b)(7)(C) Home Address, Employment Address, Country of Birth, Place of Birth, Age, Identification Documents (i.e. driver license number and state, foreign identification card number and country, passport number and country), Bond Information to include the obligor name and address, Federal Bureau of Investigation Number, Emergency Contact address and phone number, including copies of all identification documents.

2. Documents that show the criminal charge relating to (b)(6),(b)(7)(C) where the arrest date was November 1, 2019, and the charge was Sexual Assault, under Booking Number 19-373567.



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

5. Authorized (b)(6),(b)(7)(C) <small>(Printed Name)</small> Assistant Field Office Director <small>(Title)</small> 01/13/2020 <small>(Date)</small>
--

CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT

A. CERTIFICATE OF SERVICE

I certify that on 1/13/2020, I served this subpoena on the witness named in Block 1 in the following manner:  
(Date)

Personal at the Denver Justice Center  
(Details of how service was effected)

**(b)(6),(b)(7)(C)**

(Signature of Official Serving Subpoena)

**(b)(6),(b)(7)(C)**

(Printed Name of Official Serving Subpoena)

Supervisory Detention and Deportation Officer  
(Title of Official Serving Subpoena)

B. ACKNOWLEDGMENT OF RECEIPT

I acknowledge receipt of a copy of the subpoena on the front of this form.

Signature

**(b)(6),(b)(7)(C)**

Title

Date

1/13/2020

Time

4:12

a.m.  
 p.m.



December 31, 2019

ERO Denver –

(b)(6),(b)(7)(C)

ISSUE:

**(b)(5),(b)(6),(b)(7)(C)**

BACKGROUND:

**(b)(5),(b)(6),(b)(7)(C)**

Deliberative  
Law Enforcement Sensitive – For Official Use Only

**(b)(5), (b)(6), (b)(7)(C)**

**Law Enforcement Sensitive – For Official Use Only**

1. To (Name, Address, City, State, Zip Code)	<b>DEPARTMENT OF HOMELAND SECURITY</b>  <b>IMMIGRATION ENFORCEMENT SUBPOENA</b>  <b>to Appear and/or Produce Records</b> 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number	
2. In Reference To	
_____	_____
(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 laws. 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	(B) Date
Name	(C) Time <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.
Title	
Address	
Telephone Number	

4. Records required to be produced for inspection



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

5. Authorized Official

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

**CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT**

**A. CERTIFICATE OF SERVICE**

I certify that on \_\_\_\_\_, I served this subpoena on the witness named in Block 1 in the following manner:  
(Date)

\_\_\_\_\_  
(Details of how service was effected)

\_\_\_\_\_  
(Signature of Official Serving Subpoena)

\_\_\_\_\_  
(Printed Name of Official Serving Subpoena)

\_\_\_\_\_  
(Title of Official Serving Subpoena)

**B. ACKNOWLEDGMENT OF RECEIPT**

I acknowledge receipt of a copy of the subpoena on the front of this form.

Signature

Title

Date

Time

a.m.  
 p.m.



ORDER NUMBER:  
DRO 07-001.2

ISSUE DATE: JAN 06 2010

EFFECTIVE DATE:  
JAN 06 2010

**SUBJECT:**

**Authority to Issue Immigration Subpoenas Within the Office of Detention and Removal Operations**

**DELEGATED BY:**

Director, Office of Detention and Removal Operations

**DELEGATED TO:**

See below.

**SOURCE OF AUTHORITY BEING DELEGATED:**

ICE Delegation Order 73003.3 (November 30, 2009), or any superseding order delegating the same authority.

**SUPERSEDED ORDER(S):**

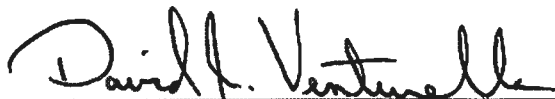
DRO Delegation Order 07-001.1, dated September 30, 2009.

**DELEGATION:**

By virtue of the authority granted to me by the Assistant Secretary in ICE Delegation Order 73003.3, dated November 30, 2009, I hereby delegate to the Office of Detention and Removal Operations Assistant Directors, Deputy Assistant Directors, Field Office Directors, Deputy Field Office Directors, and Assistant Field Office Directors the authority to:

1. Issue immigration subpoenas requiring the person or entity to which they are addressed to attend and give testimony;
2. Require such persons or entities to produce records (books, papers, or other documents) for use in criminal or civil investigations;
3. Effect service of immigration subpoenas upon the persons or entities named therein;
4. Administer oaths;
5. Take testimony from such persons or entities under oath and examine, or cause to be examined, records produced by such persons or entities; and,
6. In the event that the person or entity named in a subpoena neglects or refuses to comply with the requirement to attend and give testimony or to produce records, request the United States Attorney for the district in which the subpoena was issued report such neglect or refusal to the United States District Court and to request such court issue an order requiring the witness to appear and testify and/or produce the records designated in the subpoena.

This authority may not be redelegated.



David J. Venturella  
Acting Director, Office of Detention and Removal Operations

USE ADDITIONAL PLAIN BOND IF NECESSARY.

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**Subject:** Vehicle Stops & State Warrant Authority  
**Attachments:** M-69.pdf; Pennsylvania v. Mimms SC (Westlaw).pdf; Maryland v. Wilson SC.pdf; US v. De La Cruz 10 CC.pdf

Class since there may still be some unanswered questions relating to vehicle stops and the authority to detain solely on a state warrant, I'm providing you with some relevant documentation, which will hopefully help clarify these 2 issues.

The Legacy INS Law of Arrest, Search and Seizure for Immigration Officers is still a current document located in the ERO library. I recommend reviewing the Relations with Local and State Enforcement Agencies and the Vehicle Stops and Searches sections.

The Pennsylvania v. Mimms and the Maryland v. Wilson Supreme Court cases addressed the authority of law enforcement officers to be able to control the driver and the passengers respectively during vehicle stops.

The US v De La Cruz case is a decision rendered by the 10 CC, which is specific to an immigration stop in the interior of the US.

I can't render my own opinion since I'm not an Attorney, but I'm confident that once you read these documents you will have a better understanding of these issues.

V/R

**(b)(6),(b)(7)(C)**

Course Developer / Instructor  
ICE Academy Charleston

843-745-**(b)(6),(b)(7)(C)** Desk

202-369-**(b)(6),(b)(7)(C)** Cell

**(b)(6),(b)(7)(C)** [@ice.dhs.gov](mailto:<b>(b)(6),(b)(7)(C)</b>@ice.dhs.gov)



**THE LAW OF ARREST, SEARCH, AND SEIZURE  
FOR IMMIGRATION OFFICERS**

**M-69**

**January 1993 Edition**

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U.S. Department of Justice

Immigration and Naturalization Service

**THE LAW OF ARREST, SEARCH, AND SEIZURE FOR  
IMMIGRATION OFFICERS**

**M-69**

January 1993 Edition

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Immigration and Naturalization Service  
Office of the General Counsel  
425 Eye St., N.W. Rm. 6100  
Washington, D.C. 20536

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## INTRODUCTION

The Immigration and Naturalization Service (INS or the Service) is charged with the administration and enforcement of the Immigration and Nationality Act (the Act) and other laws relating to the immigration and naturalization of aliens. The methods that the INS uses to enforce the immigration laws enacted by Congress must conform to constitutional and statutory limitations as well as INS regulations. This is an update of the M-69, last updated in January 1983. It outlines the statutory and constitutional boundaries of an INS officer's authority. The enforcement activities of the INS involve both border operations (conducted along the border and its functional equivalents and at ports of entry) and operations conducted in the interior of the United States.

Questions regarding search and seizure requirements should be referred to supervisors or legal counsel. Counsel should be consulted before conducting any enforcement activities that might result in litigation, media attention, or public controversy. Early consultation will ensure the best possible legal support for the enforcement operation and permit timely legal advice to avoid potential problems.

The M-69 is intended for the daily use of INS officers. It is not a law textbook. It does not cover all aspects of the law of arrest, search, and seizure, but is limited to recurring circumstances where the authority of INS officers may be challenged.

Citations of authority are located at the end of the text. The authorities cited may be obtained from the district or regional counsel.



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CHAPTER I

SOURCES OF AUTHORITY

The primary sources of authority granted to officers of the INS are the Act, found in Title 8 of the United States Code, abbreviated as, “8 U.S.C.”, and other statutes relating to the immigration and naturalization of aliens. The secondary sources of authority are: (1) administrative regulations implementing those statutes (primarily those found in Title 8 of the Code of Federal Regulations, abbreviated as “8 C.F.R.”); (2) judicial decisions; and (3) administrative decisions of the Board of Immigration Appeals.<sup>1</sup>

The Constitution of the United States protects the rights of the people of the United States. All authority exercised by INS officers must conform to constitutional limitations, such as the fourth amendment. For example, while section 287(a)(3) of the Act appears to authorize officers to make warrantless vehicle stops in border areas, the Supreme Court in *United States v. Brignoni-Ponce*<sup>2</sup> concluded that the fourth amendment precluded stopping a vehicle to question the occupants concerning their immigration status on less than a reasonable suspicion that the vehicle may contain aliens illegally in the United States, except at the border or its functional equivalents. See Chapter III(B)(5), *infra*.

A. THE FOURTH AMENDMENT

The fourth amendment provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The amendment consists of two clauses. One clause prohibits unreasonable searches and seizures. The other requires that warrants be issued only upon a showing of probable cause and upon meeting certain other conditions regarding the place to be searched and the persons or things to be seized.

B. THE IMMIGRATION AND NATIONALITY ACT

Subject to constitutional limitations, INS officers may exercise the authority granted to them in the Act. The following statutory provisions relate to enforcement authority:

(1) *Section 287(a)(1)* [8 U.S.C. § 1357(a)(1)] -- provides authority, without a warrant, to interrogate any alien or person believed to be an alien as to his right to be or to remain in the United States.

(2) *Section 287(a)(2)* [8 U.S.C. § 1357(a)(2)] -- provides authority to make an arrest of an alien who in the officer's presence or view is entering or attempting to enter the United States in violation of the immigration laws, or who the officer has reason to believe (judicially construed to be the equivalent of probable cause under the fourth amendment) is in the United States in violation of the immigration laws and is likely to escape before an arrest warrant can be obtained.

(3) *Section 287(a)(3)* [8 U.S.C. § 1357(a)(3)] -- provides authority within a reasonable distance of any external boundary of the United States to board without a warrant any vessel within the territorial waters of the United States and any railway car, aircraft, or vehicle and search for aliens; and authority to enter private lands (but not dwellings) within 25 miles of the border for purposes of patrolling the border to prevent illegal entry of aliens.

(4) *Section 287(a)(4)* [8 U.S.C. § 1357(a)(4)] -- provides authority to arrest without a warrant for felonies which have been committed and which are cognizable under the federal criminal laws regulating the admission, exclusion and/or expulsion of aliens where the officer has reason to believe (probable cause) that the person arrested is guilty of such felony and is likely to escape before a warrant may be obtained, provided that the person arrested is taken without unnecessary delay before a magistrate for arraignment.

(5) *Section 287(a)(5)* [8 U.S.C. § 1357(a)(5)] -- provides authority to make general arrests without a warrant for crimes cognizable under federal law, to carry firearms, and to execute and serve any order, warrant, subpoena, summons, or other process issued under the authority of the United States. *Section 287(a)(5)(A)* provides that an INS officer may arrest for offenses against the United States committed in his or her presence. A person arrested must be taken without unnecessary delay before a magistrate for arraignment. *Section 287(a)(5)(B)* provides that an INS officer may arrest for any felony cognizable under the laws of the United States if the officer has reason to believe (probable cause) that the person to be arrested has committed or is committing such a felony.

To exercise authority under *section 287(a)(5)(A)* or (B), the officer must be performing duties relating to the enforcement of the immigration laws at the time of the arrest and there must be a likelihood the person will escape before an arrest warrant can be obtained. The officer also

must be certified as having completed a designated training program prior to making arrests under *section 287(a)(5)(B)*. The authority contained in *section 287(a)(5)(B)* cannot be exercised until the Attorney General promulgates final implementing regulations. A Notice of Proposed Rulemaking for such regulations was published in the Federal Register on October 14, 1992.<sup>3</sup>

(6) *Section 287(b)* [8 U.S.C. § 1357(b)] -- provides authority to administer oaths and consider evidence concerning the privilege of any person to enter, re-enter, pass through, or reside in the United States, or any other matter which is material and relevant to the enforcement of the Act.

(7) *Section 287(c)* [8 U.S.C. § 1357(c)] -- provides authority to search without a warrant persons and personal effects of applicants for admission for evidence which may lead to the individual's exclusion from the United States on grounds set forth in the Act.

(8) *Section 287(e)* [8 U.S.C. § 1357(e)] -- requires an immigration officer to obtain a warrant or the consent of the owner (or his agent) to enter the premises of a farm or other outdoor agricultural operation for the purpose of interrogating a person believed to be an alien as to the person's right to be or to remain in the United States.

(9) *Section 235(a)* [8 U.S.C. § 1225] -- provides authority at the border to board and search any vessel, aircraft, railway car, or other conveyance in which an immigration officer believes aliens are being brought into the United States. This section also empowers officers to administer oaths and take and consider evidence regarding any suspected alien's right to enter, re-enter, pass through or reside in the U.S. or any other matter which is relevant and material to the enforcement of the Act.

(10) *Section 274(b)* [8 U.S.C. § 1324(b)] -- provides authority to seize vehicles, vessels, or aircraft where there is probable cause to believe that the conveyance has been used in violation of *section 274(a)* (Alien smuggling, transporting, harboring, etc.).

(11) *Section 274(c)* [8 U.S.C. § 1324(c)] -- provides authority to arrest individuals for violations of *section 274(a)*.

(12) *Section 274A* [8 U.S.C. § 1324a] -- provides authority to investigate and assess a civil money penalty to any person or entity for the unauthorized employment of aliens and failure to comply with the employment verification requirements in violation of the Act.

(13) *Section 274C* [8 U.S.C. § 1324c] -- provides authority to investigate and assess a civil money penalty to any person or entity involved in civil document fraud related to any requirements under the Act.

C. OTHER STATUTORY SOURCES OF AUTHORITY

1. *Title 18 of the United States Code*

There are several provisions under Title 18 that specifically relate to enforcement of the immigration and nationality laws. These provisions are listed in *The INS Investigator's Handbook*, Appendix 5-5A (1985) or *INS Border Patrol Handbook*, Appendix 19-A (1985).<sup>4</sup>

2. *Title 19 of the United States Code; Customs Cross-Designation*

INS officers who have been specifically cross-designated under 19 U.S.C. § 1401(i) may make such customs arrests, searches, and seizures as delineated by Customs Form 55 and the Customs/Border Patrol Memorandum of Understanding, dated July 21, 1986.

3. *Title 21 of the United States Code; DEA Cross-Designation*

INS officers who have been specifically cross-designated under 21 U.S.C. § 878 may make such limited arrests, searches, and seizures as delineated by the Drug Enforcement Administration's (DEA) delegation of authority to the named agent and the DEA/INS Memoranda of Understanding of November 29, 1973, and August 1986.

4. *Local Law*

Some states accord "peace officer" status to INS officers stationed in that state. The nature and extent of such "peace officer" authority depends entirely upon applicable state law. INS personnel should contact legal counsel for information regarding the extent of any authority granted by state law.

D. ADMINISTRATIVE REGULATIONS

Title 8 of the Code of Federal Regulations, in particular Part 287, further delineates the enforcement authorities of INS officers. Section 287.3 of the regulations governs the disposition of cases of aliens arrested without a warrant. Section 287.4 governs procedures for executing, serving, and enforcing subpoenas. Section 287.5 gives any immigration officer the power and authority to administer oaths in or outside the United States. Section 287.7 provides that immigration detainers may be issued by an immigration officer as defined in section 101(a)(18) of the Act, 8 U.S.C. § 1101(a)(18), and only in the case of an alien who is amenable to exclusion or deportation proceedings under any provision of law. In response to Congressional mandate in section 287(a)(5) of the Act, 8 U.S.C. § 1357(a)(5), Part 287 will be subject to substantial revision in conjunction with the assumption of general arrest authority by immigration officers. As noted above, a proposed rule to this effect was published on October 14, 1992.

CHAPTER II

QUESTIONING, INVESTIGATIVE DETENTION, AND ARREST

At the border or a port of entry, section 235(b) of the Act authorizes the stopping and questioning of all persons seeking admission to the United States regarding their right to legally enter, and authorizes detaining any alien for further examination by an immigration judge unless the alien appears to the officer to be "clearly and beyond a doubt" entitled to enter. In the interior, section 287(a)(1) of the Act authorizes immigration officers to interrogate persons reasonably believed to be aliens as to their right to be in or remain in the United States. Generally, this authority extends to the limits permitted under the fourth amendment.<sup>5</sup> The limits of the fourth amendment depend upon the degree of intrusion on privacy and the nature of the encounter between an officer and individual.

The three principal levels of encounters between immigration officers and the public at locations other than the border are: (1) consensual encounters, where the person is free to leave at any time or may refuse to answer any questions; (2) investigative stops, which must be supported by the officer's reasonable suspicion, and which only permit a brief detention of the suspect; and (3) arrest, which must be supported by probable cause to believe the suspect has violated any law that the officer is authorized to enforce.

In encounters between the immigration officer and individuals represented by counsel, the officer should be thoroughly familiar with INS policy. The guidelines ensure recognition of the constitutionally protected area of attorney-client privilege. These guidelines are contained in Appendix B. Questions concerning the applicability of the guidelines should be referred to supervisors or legal counsel.

A. QUESTIONING AND DETENTION NOT AMOUNTING TO ARREST

1. *Questioning at the Border and Functional Equivalent of the Border*

Travelers may be stopped at the international border and required to identify themselves as entitled to enter the United States and to show that their belongings and effects may lawfully be brought into the country.<sup>6</sup> Section 235(a) of the Act authorizes an immigration officer to examine all persons arriving at ports of the United States and to question under oath any person suspected of being an alien concerning the right to enter, re-enter, pass through, or reside in the United States, or any other matter related to enforcement of the Act and concerning his or her purpose in coming to the United States. Such questioning and examination is not limited to ports of entry, but may be performed anywhere along the international border and at a functional equivalent of the border.

## 2. *Non-Border Consensual Encounters*

Not all personal interaction between government officers and private individuals is a seizure of the person.<sup>7</sup> As long as officers do not by means of physical force or show of authority restrain the freedom of an individual to walk away, no seizure has occurred and fourth amendment limitations do not apply.<sup>8</sup>

INS officers should address questions to individuals in a way that promotes cooperation. To this end, they should identify themselves as INS officers and perform their duties in a professional manner.

## 3. *Non-Border Detentive Encounters*

An encounter may constitute a seizure from the outset. An initially consensual encounter between an INS officer and an individual may escalate into a fourth amendment seizure. A seizure occurs when, in view of all circumstances surrounding the incident, a reasonable person would believe that he or she was not free to leave the presence of the officer.<sup>9</sup> The "reasonable person" test presumes an innocent person.<sup>10</sup>

Officers may briefly detain a person for questioning when the officer has a reasonable suspicion based on specific articulable facts that the person stopped is, was, or is about to be, engaged in a violation of a law the officer has the authority to enforce.<sup>11</sup> An officer has not seized a person merely by inquiring about identity, requesting some identification, or requesting consent to search luggage or other areas.

An INS officer may briefly detain a person if there is reasonable suspicion to believe that the person is or has violated any criminal statute which the officer is authorized to enforce.<sup>12</sup> INS officers also may briefly detain a person if they have reasonable suspicion that the person may be an alien who is illegally in the United States.<sup>13</sup>

In connection with a brief detention under these circumstances, officers may conduct a "frisk" or pat down search of the outer clothing of the individual for weapons to protect their safety and the safety of others if the officer reasonably believes the individual to be armed.<sup>14</sup> The officer may reach inside the outer clothing to remove any item he or she believes to be a weapon.<sup>15</sup> The officer may not, however, remove an item from the suspect's clothing that the officer does not reasonably believe is a weapon.

To determine whether an officer's articulated suspicions are "founded" or "reasonable," the courts will examine the totality of the circumstances, including: (1) objective observations, (2) information in police reports, (3) modes or patterns of operation of certain types of lawbreakers, (4) informant's tips, and/or (5) all other pertinent information.<sup>16</sup> Such evidence must be weighed in light of the particular officer's training and experience, and viewed with

common-sense deductions about human behavior. The whole picture must yield a reasonable suspicion that the particular individual stopped is engaged in criminal activity.<sup>17</sup>

While an encounter between an officer and a pedestrian does not necessarily constitute a fourth amendment seizure, a vehicle stop is always a "seizure" and, therefore, must be justified by reasonable suspicion that illegal aliens may be being transported within the vehicle.<sup>18</sup> However, once a vehicle is lawfully stopped based upon reasonable suspicion, officers may order the occupants to exit the vehicle for questioning if reasonably necessary to secure the officer's safety.<sup>19</sup> See Chapter III for further analysis of investigatory stops and searches of vehicles.

## B. ARREST

An arrest occurs when a reasonable person in the suspect's position would conclude that he or she is under arrest.<sup>20</sup> An arrest does not depend solely upon whether the officer announces that the suspect has been placed under arrest. If an officer's conduct is more intrusive than an investigatory stop, an arrest may take place.<sup>21</sup> In determining whether the officer's conduct is tantamount to an arrest, consideration must be given of facts and circumstances, such as: (1) when and where the encounter occurred; (2) the duration of the encounter; (3) the number of officers present; (4) what the officers and suspect said and did; (5) the use of weapons, handcuffs, a guard blocking the door, or other physical restraint; (6) the nature of the questioning; (7) whether officers escorted the suspect to another location for questioning; (8) whether the officer retained custody of important travel or identification documents during the encounter; and (9) whether the suspect was permitted to leave following the encounter.<sup>22</sup>

An arrest must be supported by probable cause to believe the person has committed an offense against the United States. Otherwise, the arrest will not withstand a fourth amendment challenge. Probable cause is knowledge or trustworthy information of facts and circumstances which would lead a reasonably prudent person to believe that an offense has been committed or is being committed by the person to be arrested. Probable cause is more than mere suspicion or the observation of behavior that is merely suspicious, but there does not have to be absolute certainty of guilt. In determining whether probable cause was present at the time of an arrest, courts consider the totality of the circumstances as viewed by a reasonable prudent officer coupled with the officer's training and experience. Pertinent factors include: personal knowledge or observation by the officer; information contained in official communication to the officer; information from reliable informants, victims or witnesses; actions and appearance of the suspect(s); criminal reputation of the suspects; inconsistent and unpersuasive answers to routine questions; and possession, disposal, or concealment of evidence.



An INS officer is authorized to make arrests for both administrative (civil) and criminal violations of the Act. The procedures for administrative and criminal arrests differ substantially and will be addressed separately.

1. *Administrative Arrest (Civil Arrest)*

a. *Authority and Purpose of Administrative Arrest*

The law strongly favors the use of an arrest warrant, even for a non-criminal arrest. Therefore, warrants are required unless a specific exception to the warrant requirement exists. The Act and regulations promulgated pursuant to the Act address the warrant requirement in administrative arrest situations, i.e., where the only legal action to be taken relates to the exclusion or deportation of an alien.

Section 287(a)(5) of the Act authorizes immigration officers to execute and serve any warrant, subpoena, summons, order, or other process issued under the authority of the United States. Section 242(a) of the Act provides the authority to arrest an alien upon warrant of the Attorney General pending a determination of his or her deportability. When an order of deportation becomes final, the alien may be detained or released on bond pursuant to section 242(c) of the Act. INS may detain an alien under section 235 of the Act at any time to exclude and deport him or her after he or she has been finally ordered excluded pursuant to section 236 of the Act.

Section 287(a)(2) of the Act empowers an INS officer to arrest without warrant any alien “who in his presence or view is entering or attempting to enter the United States” in violation of any immigration law or regulation, or any alien in the United States “if he has reason to believe” that the particular alien is in the United States in violation of any such law or regulation and is likely to escape before a warrant can be obtained for his arrest. The words “reason to believe” in this statute have been interpreted to mean “probable cause.”<sup>23</sup>

Likelihood of escape before a warrant can be obtained may be shown by evidence of previous escapes or evasions of immigration authorities,<sup>24</sup> as well as lack of ties to the community such as family, home, or a job. Attempted flight from an INS officer or nervous behavior suggesting that the suspect is looking for an opportunity to abscond may justify an arrest without a warrant.<sup>25</sup> The mobility of the suspect may justify a belief that the suspect is likely to escape before a warrant can be obtained.<sup>26</sup>

The regulations provide that an alien arrested without a warrant under section 287(a)(2) of the Act shall be taken without unnecessary delay before an INS officer other than the arresting INS officer and examined concerning his or her right to enter or remain in the United States. If no other qualified INS officer is readily available and it would entail unnecessary delay to take the alien before another INS officer, the arresting INS officer may examine the alien if the

conduct of such an examination is part of the duties assigned to that arresting INS officer. The purpose of this procedure is for the examining officer to decide if there is sufficient evidence to determine whether the individual is an alien who is excludable or deportable.<sup>27</sup>

b. *Warnings Required Following Administrative Arrest*

Once the examining officer determines that formal exclusion or deportation proceedings will be instituted, certain advisals must be given to the alien. The alien must be informed of the reason for the arrest, of the right to be represented by counsel of his or her choice at no expense to the Government, and of the availability of free legal services programs and of organizations recognized pursuant to 8 C.F.R. § 292.2 located in the district where the proceedings are to be held. The alien must be given a list of such programs and organizations. The alien also must be advised that any statement made may be used against him or her in a subsequent proceeding.<sup>28</sup> If arrested without a warrant, the alien must be advised that a decision will be made within 24 hours whether custody will be continued or whether release on bond or on personal recognizance will be available.<sup>29</sup> The I-221 (Order to Show Cause) provides the required warnings to aliens placed in deportation proceedings or granted administrative voluntary departure. *Miranda* warnings need not be given where the only contemplated legal action against the alien is exclusion, deportation, or voluntary departure. Where the alien is in custody and the focus of the interrogation shifts to contemplated criminal prosecution, *Miranda* warnings should be given. If *Miranda* warnings are not provided evidence derived is inadmissible, unless it is otherwise discoverable. See Chapter II(B)(2)(c), *infra*.

Pursuant to a stipulated settlement agreement with the agency that is effective through early 1995, aliens arrested under section 287(a)(2) of the Act will be provided with a “Notice of Rights” (Form I-826). Upon request, such aliens will also be given two hours to contact counsel before questioning can proceed. Those aliens whom the INS has determined will be offered the option of voluntary return in lieu of deportation proceedings, and who accept this offer, will be provided a “Request for Disposition” (Forms I-827A and I-827-B).

2. *Criminal Arrest*

a. *Authority*

Whenever feasible, INS officers should obtain a warrant prior to making an arrest.

Section 287(a)(4) of the Act permits officers authorized by the Attorney General through regulation to arrest without a warrant any person for felonies cognizable under the immigration laws if the officer has reason to believe (probable cause) that the particular person is guilty of such felony and is likely to escape before a warrant can be obtained. Felonies cognizable under the immigration laws include but are not limited to:

(1) bringing or attempting to bring a person to the United States at a place other than a designated port or place of entry [section 274(a)(1)(A) of the Act, 8 U.S.C. § 1324(a)(1)(A)];

(2) bringing to, transporting within, or harboring of an alien who is not entitled to enter, reside, or remain in the United States knowingly or in reckless disregard of the fact that the alien has come to, entered, or remains in the United States in violation of law [section 274(a)(1)(B)&(C) of the Act, 8 U.S.C. §§ 1324(a)(1)(B)&(C)];

(3) encouraging or inducing an alien to come to, enter, or reside in the United States, knowingly or in reckless disregard of the fact that such coming to, entry, or residence is, or will be, in violation of law [section 274(a)(1)(D) of the Act, 8 U.S.C. § 1324(a)(1)(D)];

(4) illegal entry by an alien for the second or subsequent time [section 275(a) of the Act, 8 U.S.C. § 1325(a)];

(5) marriage fraud [section 275(b) of the Act, 8 U.S.C. § 1325(b)];

(6) reentry of an arrested and deported or excluded alien without the advance permission of the Attorney General to reapply for admission, unless the alien demonstrates he or she was not required to obtain advance permission [section 276 of the Act, 8 U.S.C. § 1326];

(7) aiding or conspiring to aid a criminal or subversive alien to enter the United States [section 277 of the Act, 8 U.S.C. § 1327]; and

(8) importing or harboring aliens for any immoral purpose, such as prostitution [section 278 of the Act, 8 U.S.C. § 1328].

Section 287(a)(5) of the Act has expanded the arrest authority of those INS officers designated by the Attorney General through regulation to have such authority. Pursuant to section 287(a)(5)(A) of the Act an INS officer may arrest for offenses against the United States committed in his or her presence. Under section 287(a)(5)(B) of the Act, an INS officer may arrest for any felony under the laws of the United States, if the officer has reasonable grounds to believe that the person to be arrested has committed or is committing such a felony. To exercise authority under section 287(a)(5)(A) or (B) of the Act, an officer must be performing duties relating to the enforcement of the immigration laws at the time of the arrest and there must be a likelihood that the suspect will escape before a warrant can be obtained. An officer exercising authority pursuant to section 287(a)(5)(B) of the Act must be certified as having completed a designated training program. Exercise of authority under section 287(a)(5)(B) is dependent upon final promulgation of the Attorney General's implementing regulations.

Other felonies that fall within the jurisdiction of the INS include those described in sections 242(e) [8 U.S.C. § 1252(e)] and 266(d) [8 U.S.C. § 1306(d)] of the Act as well as certain felonies in Title 18 of the United States Code relating to false impersonation, nationality and citizenship, and passports and visas. General criminal offenses are found in Title 18 of the United States Code. However, other criminal offenses can be found in other titles. Other criminal offenses which immigration officers are likely to encounter may be found in Titles 19 and 21 of the United States Code, which relate to customs and narcotics violations. For a more complete and descriptive listing, consult *The INS Investigator's Handbook*, Appendix 5-5A and 5-5B (1985) or *INS Border Patrol Handbook*, Appendix 19-A (1985).

Rule 41 of the Federal Rules of Criminal Procedure sets forth the procedure for an arrest made pursuant to a criminal warrant. A person arrested without a warrant must be taken without unnecessary delay before a United States Magistrate. The judicial determination of probable cause should be held within 48 hours of the arrest, absent an emergency or extraordinary circumstances.<sup>30</sup> For purposes of computation, the time includes weekends and holidays.

b. *Use of Force to Effect an Arrest*

An INS officer may use the amount of force reasonably necessary to effectuate an arrest or detention that he or she is lawfully authorized to effectuate. The officer is immune from liability provided the force was not excessive.<sup>31</sup> In an excessive force case, the inquiry is an objective one under the fourth amendment: "Whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation."<sup>32</sup> INS policy permits the use of non-deadly physical force only in self-defense, in defense of a fellow officer or third party, or when it is necessary to make an arrest or prevent an escape.<sup>33</sup>

Deadly force should only be used in self-defense, in defense of another officer, or in the defense of a third party when death or grievous bodily harm is threatened.<sup>34</sup> Strict adherence to INS policy is required concerning any use of firearms. INS firearms policy provides that warning shots must not be fired.<sup>35</sup>

Section 287(a)(5) of the Act provides that under regulations prescribed by the Attorney General, an officer or employee of the Service may carry firearms. The general arrest authority of this section becomes effective only when the Attorney General publishes final regulations which state the categories of officers of the Service who may use force, including deadly force, and the circumstances under which such force may be used.<sup>36</sup> The designation of officers and employees who may carry a firearm and standards for use of firearms are currently set forth in the INS firearms policy.

c. *Miranda Warnings Following Criminal Arrest*

In *Miranda v. Arizona*<sup>37</sup> the Supreme Court held that prior to custodial interrogation for a criminal offense, an officer must provide the suspect certain warnings, or evidence procured as a result of that custodial interrogation will not be admissible in a later criminal case against the defendant. Specifically, a suspect must be advised that anything he or she says may be used against him or her and that he or she has the right to remain silent, to consult with a lawyer and to have a lawyer present during questioning, and, if indigent, to have counsel appointed. The purpose of these warnings, commonly termed *Miranda* warnings, is to protect the fifth amendment right against compulsory self-incrimination.

*Miranda* warnings are only required prior to interrogating an individual who is in custody.<sup>38</sup> Whether a person is in custody for *Miranda* purposes depends on whether there is “a formal arrest or restraint on freedom of movement associated with a formal arrest.” The key inquiry is whether a reasonable person in the suspect’s position would believe he or she is under arrest.<sup>39</sup> The fact that the person is a suspect or that the officer knows the person will not be allowed to depart, does not place the person “in custody” for purposes of *Miranda*.<sup>40</sup>

*Miranda* warnings are applicable to the enforcement of the criminal laws. Therefore, while *Miranda* warnings do not apply in routine immigration inquiries, such warnings must be given when any person in custody is questioned regarding information which might be used against that person in a criminal prosecution.<sup>41</sup> Similarly, a person in a local jail while under arrest on state charges must be given *Miranda* warnings where the INS officer asks questions that are “reasonably likely to elicit an incriminating response from the suspect.”<sup>42</sup> If the officer has no prior reason to suspect that the questioning is likely to elicit an incriminating response for purposes of criminal prosecution or has no intention of prosecuting the suspect based upon the information obtained, *Miranda* warnings are not necessary.

*Miranda* warnings are not applicable to evidence that is non-testimonial. Non-testimonial evidence could be the giving of blood samples, appearances in a line-up, repeating a given phrase, or providing handwriting exemplars.<sup>43</sup> *Miranda* warnings need not be given prior to searching for or seizing physical evidence.

Whenever *Miranda* warnings are given, they should be read verbatim from the *Miranda* card that is provided to each INS officer. This allows the INS officer to testify in court to the exact language used at the time warnings were given. It is also permissible to have the suspect read the warnings. It is the duty of the officer to ensure that the suspect understands the warnings. In cases where the suspect does not understand English, the warnings must be given in a language understood by the suspect. If the officer is not able to do this orally, the assistance of a qualified interpreter may be necessary. If the suspect is allowed to read the warnings, whether in English or another language that he or she understands, the officer must be sure that the suspect has the ability to read the text of the warnings.

Once an individual has requested an attorney, the interrogation must cease immediately and the suspect may not be interrogated about the case until after conferring with counsel or the suspect otherwise initiates further conversation.<sup>44</sup> In contrast, if the individual merely invokes his right to remain silent and does not request an attorney, the admissibility of statements obtained thereafter depends on whether the individual’s right to cut off questioning was “scrupulously honored.”<sup>45</sup> Generally, the “scrupulously honored” test requires officers to (1) immediately cease the interrogation, (2) resume questioning only after a significant passage of time and fresh set of *Miranda* warnings, and (3) either change the inquiry to another crime or wait for the suspect to initiate a conversation concerning the initial crime under investigation.

Whenever INS officers are unsure whether warnings should be provided they should check with their supervisors or legal counsel.

d. *Detention of Material Witnesses in Criminal Cases*

Pursuant to 18 U.S.C. § 3144, a judge may order the arrest of a witness in a criminal proceeding if a party files an affidavit indicating that the witness’s testimony is material and showing that it may be impracticable to secure the witness’s presence by subpoena. Aliens and United States citizens who witness a criminal act may under appropriate circumstances be taken into custody by the INS and brought before a magistrate as soon as possible for designation as a material witness. Once the magistrate orders the material witnesses to remain in custody, such witnesses are in the custody of the U.S. Marshall. The INS may not continue to maintain custody of United States citizens who are designated material witnesses. The INS may under certain circumstances, and with the agreement of the U.S. Marshalls’ Service, maintain custody of aliens designated as material witnesses while they are awaiting exclusion or deportation hearings.

Under the Bail Reform Act of 1984,<sup>46</sup> a material witness is entitled to substantially the same treatment regarding conditions of release as a criminal defendant.<sup>47</sup> The material witness must be released on personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the judicial officer determines that such a release on one’s own recognizance or bond will not reasonably assure the required appearance of the material witness.<sup>48</sup> If the latter determination is made, the judicial officer shall impose conditions for release as specified by statute.<sup>49</sup> No material witness may be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition and further detention is not necessary to prevent a failure of justice.<sup>50</sup> The government may seek review of an order of release and a person detained may file a motion for revocation or amendment of the order of detention. Such motions are to be decided promptly.<sup>51</sup>

The Supreme Court has held that prompt deportation of illegal alien witnesses is justified if the United States Attorney makes a good-faith determination that they possess no

evidence favorable to the defendant in a criminal prosecution. However, sanctions may be imposed on the Government for deporting witnesses if the criminal defendant makes a plausible showing that the testimony of the deported witnesses would have been material and favorable to the defense in ways not merely cumulative to the testimony of available witnesses.<sup>52</sup> This decision has the effect of limiting the Government, in most cases, to charge smugglers and transporters with bringing to or transporting a limited number of aliens and to hold as material witnesses only those aliens with whose transportation the defendant is charged.

Although not providing authority to detain, section 215 of the Act, 8 U.S.C. § 1185, permits the Service to prevent departure of aliens under certain circumstances. A departure control order may be entered by the Service if it is determined that the departure of an alien is deemed prejudicial to interests of the United States. The regulations at 8 C.F.R. § 215.3 set forth the categories of aliens whose departure is deemed prejudicial to the interests of the United States.

## CHAPTER III

### SEARCHES AND SEIZURES

The fourth amendment rule against unreasonable searches and seizures “protects people, not places.”<sup>53</sup> It protects a person’s reasonable expectation of privacy against government intrusion. The test of a legitimate expectation of privacy is: (1) whether the individual has a subjective expectation of privacy; and (2) whether that expectation is one which society is prepared to recognize as “reasonable.”<sup>54</sup>

#### A. USE OF SEARCH WARRANTS

The law favors the use of warrants to search or seize persons or property. Evidence, if seized without a warrant, may be inadmissible if a warrant could have been obtained prior to the seizure.<sup>55</sup> The fourth amendment generally requires a warrant in order for a search to be deemed “reasonable.” Therefore, absent some exception to the warrant requirement, warrantless searches and seizures are “unreasonable.” Moreover, warrants may only be issued in certain prescribed ways.

Warrant requirements vary depending on whether the suspected violation is civil or criminal. The warrant requirements for criminal violations are governed by Rule 41 of the Federal Rules of Criminal Procedure. The warrant requirements for civil or administrative violations are based upon the Act and judicial interpretations.

##### 1. *Ride 41 Warrants: Criminal Violations*

The fourth amendment precludes issuance of a warrant except upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.

Rule 41(c) of the Federal Rules of Criminal Procedure states that a warrant may issue upon an affidavit sworn to before a federal magistrate, if the magistrate is satisfied that the affidavit reflects probable cause. The affidavit generally must be in writing. In an emergency, a magistrate may issue a warrant based upon sworn oral testimony communicated by telephone.

When seeking a telephonic warrant, the officer, in conjunction with the appropriate Special Assistant United States Attorney or Assistant United States Attorney, should be prepared to show that: (1) he or she could not reach the magistrate in his or her office during regular business hours; (2) the officer who seeks to make the search is a significant distance away from the magistrate; (3) because of the particular factual situation it would be unreasonable for a substitute officer who is near the magistrate to prepare a written affidavit to



the magistrate in lieu of the telephonic application; and (4) the need for a search is such that absent the telephonic procedure a warrant could not be obtained and there is a significant risk that evidence would be destroyed.<sup>56</sup>

Probable cause exists where “the facts and circumstances within their [the officers’] knowledge, and of which they [have] reasonably trustworthy information . . . [are] sufficient in themselves to warrant a man of reasonable caution in the belief that . . . a crime has been or is being committed, and that property subject to seizure can be found at the place or on the person to be searched.”<sup>57</sup> Rule 41 also permits issuance of a warrant to search for and seize “any person for whose arrest there is probable cause, or who is unlawfully restrained.”

An affidavit that alleges facts based upon the personal observation of a law enforcement officer is generally sufficient to establish probable cause and will support the issuance of a warrant. However, personal knowledge is not essential and an affidavit may be based upon hearsay information provided to the officer by a confidential informant.<sup>58</sup>

If the affidavit is based upon hearsay, the affiant must identify the underlying circumstances, including the “veracity” and “basis of knowledge” of persons supplying the hearsay information so as to permit a magistrate to make a practical, common sense decision regarding the presence of probable cause.<sup>59</sup> Where the hearsay derives from information provided by an informant, the affidavit must contain evidence bearing on the veracity of the informant.<sup>60</sup> An informant’s veracity or trustworthiness may be established in several ways. If the informant has previously provided accurate information, the information provided is an admission against penal interest, or there is no motive to falsify and there is independent police corroboration of the details, the information may be considered reliable and trustworthy.<sup>61</sup>

## 2. Blackie’s and Barlow’s Warrants: Civil/Administrative Violations

In those enforcement operations where no criminal prosecution is contemplated, it is INS policy to use civil entry warrants. An administrative warrant may not be used as a pretext to gather evidence for a criminal prosecution.<sup>62</sup> The use of civil warrants was sanctioned in *Blackie’s House of Beef, Inc. v. Castillo*,<sup>63</sup> *International Molders v. Nelson*,<sup>64</sup> and *Marshall v. Barlow’s, Inc.*<sup>65</sup>

### a. Blackie’s Warrants

In *Blackie’s*, officers obtained a warrant to enter a commercial establishment in order to search for persons believed to be aliens in the United States without legal authority.<sup>66</sup> The warrant did not mention Rule 41; rather, the authority to search was premised upon sections 103(a) of the Act [8 U.S.C. § 1103(a)] and 287 of the Act [8 U.S.C. § 1357]. Further, the warrant

did not contain any “particularized description” of the individual aliens sought. In upholding the entry warrant as reasonable within the fourth amendment, the court held that the warrant need not specifically name the aliens so long as the warrant and accompanying affidavits narrowed down the field of potentially vulnerable persons to those whom officers had probable cause to believe were illegal aliens.

For a magistrate to issue a *Blackie’s* type warrant, the affidavit must demonstrate probable cause that illegal aliens will be found on the premises to be entered. However, the particularized description requirement is relaxed with respect to what is sought. The warrant must specify the places to be entered and the time and scope of the inspection. The affidavits should contain sufficient information to permit a magistrate to find probable cause to believe that aliens who are illegally in the United States will be found on the premises.

Officers may properly use *Blackie’s* warrants to gain entry onto premises for the purpose of searching for unnamed illegal aliens who are believed to be present on the premises. However, the federal district court in the Northern District of Illinois has suggested that *Blackie’s* warrants may not be used for residential premises.<sup>67</sup>

### b. Barlow’s Warrants

A *Barlow’s* warrant need not be based upon specific evidence of an existing violation but may be issued on the basis of a general administrative plan for enforcement based upon specific criteria that explain how a business falls into the general plan.<sup>68</sup> A *Barlow’s* warrant may be issued upon a showing that reasonable legislative or administrative standards for conducting an inspection are satisfied with respect to the establishment to be searched.<sup>69</sup>

In order to obtain a *Barlow’s* warrant, the agency must show that the warrant is based upon a general inspection plan. The first requirement of a general plan is identification of the source information. The source data may be gathered from neutral sources such as surveys, studies, expert opinion, and statistics.<sup>70</sup> The agency must also show that the general plan is consistent with the agency’s mission.<sup>71</sup> The third and fourth requirements are identification of the material used and the manner of its use in making a specific selection. The agency must show that it has a plan with specific criteria, that the criteria are neutral as to this specific employer, that the criteria came from a source other than the investigator, and that there is an adequate explanation as to how a particular employer falls within the plan.<sup>72</sup> The application for a warrant must show that: (1) the plan was derived from a neutral source that identified the group of businesses to be inspected under the plan; (2) the plan is consistent with the agency’s mission; (3) the specific criteria used in the plan and the fact that they are neutral to the business to be inspected; and (4) the particular business falls within the plan. A *Barlow’s* warrant may be useful in the investigation of employer sanctions cases under section 274A of the Act.

3. *Execution of the Search Warrant*

The manner of execution of a criminal search warrant is specified in Rule 41 of the Federal Rules of Criminal Procedure, Among other requirements, Rule 41 specifies the period for which the warrant is valid, the time of day it may be executed, the manner in which the executing officers may enter the premises to be searched, and the requirements regarding the property seized during the search.

Pursuant to 18 U.S.C. § 3105 the warrant may be executed by: (1) the person to whom the warrant is directed; (2) any officer authorized by law to execute a search warrant; or (3) any other person aiding someone authorized to execute a warrant, who is present and acting in execution of the warrant. Under 18 U.S.C. § 3105, unnamed federal agents may aid other federal agents who are named in the warrant. State officers may also assist federal agents in executing a federal warrant.

Under 18 U.S.C. § 3109, officers executing a search warrant are required to knock and announce their authority and purpose upon arrival at the place to be searched. If entry is refused, the officers may then use reasonable force to obtain entry.

In those circumstances where INS officers are asked to assist in the execution of a warrant obtained by state or local authorities, the INS officers must inquire about the nature and scope of that warrant to ensure that they are acting consistently with its authorization and limitations.<sup>73</sup>

B. WARRANTLESS SEARCHES AND SEIZURES

Warrantless searches and seizures are *per se* unreasonable under the fourth amendment unless they fall within a recognized exception,

1. *Search Incident to Lawful Arrest*

Incident to a lawful arrest, the arresting officer may search the arrestee's person and the area "within his immediate control" -- meaning the area from within which the arrestee might gain possession of a weapon or destructible evidence.<sup>74</sup> A search incident to arrest is an exception to the warrant requirement when four factors are present: (1) the arresting officer must have the authority to make a valid arrest; (2) the arrest must be based on probable cause; (3) the arrest must be made in good faith and not as a pretext to justify the search; and (4) the search must be contemporaneous with the arrest. There is no requirement that the facts of the particular case indicate a likelihood of finding either evidence or weapons.<sup>75</sup> The purpose of the search is to protect the arresting officers and to prevent the destruction of evidence.<sup>76</sup>

a. *Search of Vehicle Incident to Arrest*

When an occupant of a vehicle is arrested, the officer may, incident to this arrest, search the entire passenger compartment, including the glove compartment, as well as closed containers located therein.<sup>77</sup> See also Inventory Searches of Seized Vehicles and Container Searches at III-13, *infra*. The officers may also conduct a limited protected search of a vehicle when he or she has a reasonable belief that the motorist is dangerous and could grab a weapon inside the vehicle, even if the stop is only based upon reasonable suspicion. The scope of the search is limited to the location where a weapon could be accessible to the detainee.<sup>78</sup>

b. *Search of Premises Incident to Arrest*

If a person is arrested in a dwelling, only that area within the reach of an arrestee may ordinarily be searched pursuant to a lawful arrest without a search warrant.<sup>79</sup> However, if the officer making the arrest has a reasonable suspicion based upon specific articulable facts that a dwelling where the arrest occurred harbors an individual who presents a danger to those on the scene, a limited protective sweep of the area may be conducted.<sup>80</sup> The sweep in these circumstances extends only to a cursory inspection of those spaces where a person might be found; it does not include an in-depth search of the area.

If the person is arrested outside or near a dwelling, the dwelling may not constitutionally be searched except with consent or in exigent circumstances, as described below.<sup>81</sup>

2. *Consent Searches*

Officers may conduct a search of premises or effects without a warrant and without probable cause if the person in control of the premises or effects gives his or her voluntary consent. Whether consent is voluntary depends upon the totality of the circumstances, including "evidence of minimal schooling, low intelligence, and the lack of effective warnings to a person of his rights."<sup>82</sup> Consent is involuntary when it is the product of coercion or threat, express or implied.<sup>83</sup> Other factors affecting voluntariness include: an officer's claim or show of authority,<sup>84</sup> prior illegal government action, mental or emotional state of the person,<sup>85</sup> cooperation or lack thereof,<sup>86</sup> and custody.<sup>87</sup> Officers need not advise the subject that consent may be refused, although whether such an advisory is given is a factor in determining the voluntariness of the consent. Mere failure to object to a search or otherwise resist is not consent.<sup>88</sup> The burden is on the government to demonstrate that consent was voluntary. *Miranda* warnings are inapplicable. However, consent may not be obtained by trick or coercion.<sup>89</sup>

Consent to search may be given only by the person with the primary right to occupy the premises or a third party who possesses common authority over, or other sufficient relationship to, the premises or effect sought to be inspected.<sup>90</sup> A warrantless search will also be upheld when

based upon the consent of a third party whom the police, at the time of entry, reasonably believe to possess common authority over the premises, but who in fact does not.<sup>91</sup> Generally, courts uphold third-party consent to search a home given by a spouse, a live-in paramour, or a parent. In contrast, a landlord or hotel owner may not give valid consent to search the rented premises.

The duration and scope of a person's consent is measured by a standard of objective reasonableness. In other words, what would the typical reasonable person have understood by the exchange with the officer?<sup>92</sup> If an officer requests permission to search a car for drugs, it is reasonable for an officer to consider a suspect's general consent to search the vehicle to include unlocked containers within the car.<sup>93</sup> A person may revoke his or her consent to search at any time.

### 3. *Exigent Circumstances*

Officers may make a warrantless search based upon probable cause when some exigency or compelling urgency requires immediate action in order to protect law enforcement personnel or the public, or to prevent the destruction of contraband or evidence.<sup>94</sup> Factors which the court will consider in determining exigency to justify a warrantless search include: (1) the gravity or violent nature of the crime; (2) whether the suspect is believed to be armed; (3) a clear showing of probable cause to believe that the suspect committed the offense; (4) likelihood that the suspect will escape absent swift action; (5) level of force utilized in effecting the entry; (6) reason to believe that the suspect is on the premises; and (7) insufficient time to obtain even a telephonic warrant.<sup>95</sup>

Warrantless entries and searches are also permitted: (1) when officers reasonably believe that someone is in immediate need of assistance; (2) to protect or to preserve life; or (3) to avoid serious injury. At such times officers may seize any evidence that is in plain view.<sup>96</sup>

Warrantless entry and seizure of contraband or evidence is permissible if the officers believe that the evidence is probably being destroyed.

#### a. *Hot Pursuit*

An officer may enter private property in hot pursuit of a suspect who is fleeing to avoid arrest.<sup>97</sup> Upon entering the premises in hot pursuit, officers may briefly conduct a protective sweep of the premises to ensure their safety from other persons or weapons that may be hidden within.<sup>98</sup> Officers may enter upon private lands to make a warrantless arrest, provided the arrest is based upon probable cause and the person is in plain view.<sup>99</sup> A suspect may not defeat an otherwise proper arrest by retreating to a private place.<sup>100</sup>

Hot pursuit does have limitations. A claim of hot pursuit will not be sustained where there is no immediate or continuous pursuit of a suspect from the scene of a crime, or where the alleged offense is not a serious crime.<sup>101</sup>

#### b. *Arrest in a Public Place*

A law enforcement officer may enter a business establishment or a public place on the same basis as the public who is invited to transact business.<sup>102</sup> Any area where there is no expectation of privacy is considered a public place.<sup>103</sup> This includes observations made by INS officers in public areas which are not protected by the fourth amendment, since there is no legitimate expectation of privacy in public areas such as parks, roads, streets, alleys, private premises open to the public, and that portion of commercial establishments, lobbies or hallways of apartment houses that are open to the public.<sup>104</sup> Officers may enter onto farms or other outdoor agricultural operations that extend invitations to enter to the general public, such as "pick it yourself" orchards.

### 4. *Detention Facility Searches*

Fourth amendment protection is diminished in the area of supervisory searches of prisoners by governmental personnel.

#### a. *Searches of Detainee's Cell*

The Supreme Court has upheld the practice of conducting unannounced searches of prisoner cells at irregular intervals.<sup>105</sup> Prisoners' privacy rights during incarceration do not outweigh the need of the prison authorities to ensure security within penal institutions.<sup>106</sup> The Supreme Court has ruled that detainees have no right to observe a search of their cells.<sup>107</sup>

#### b. *Mail Searches*

Searches of incoming and outgoing mail at penal institutions, while within the fourth amendment, more frequently have been addressed on first amendment grounds.<sup>108</sup> Correspondence to and from prisoners is divided into two categories, privileged and non-privileged. Privileged mail includes mail from attorneys, courts, governmental officials, and in some instances, the media.<sup>109</sup> Privileged incoming mail may only be inspected in the presence of the inmate addressee, and only for contraband. The mail may not be read and/or censored. Privileged outgoing mail may not be opened, inspected, or censored.<sup>110</sup> This is subject to modification if the authorities can establish probable cause for search and seizure of privileged mail.<sup>111</sup>

Non-privileged mail may be inspected for contraband, but the intrusion should be minimal to protect the first amendment rights of the prisoner.<sup>112</sup> If the penal authorities elect to

ensor non-privileged mail, they must give appropriate notice to the intended recipient and a reasonable opportunity to challenge the decision, and they must refer complaints to a prison official other than the person who originally censored the correspondence.<sup>113</sup>

c. *Searches of Detainees*

The Supreme Court has upheld routine strip searches given the reasonable security concerns within penal institutions.<sup>114</sup> Among the factors which the Court considered were the scope of the intrusion and the manner and the place in which the search was conducted. Before undertaking any search, consideration should be given to the reason for the search and the relationship to the security concerns of the institution.

In the Western Region, pursuant to *Flores v. Meese*,<sup>115</sup> officers may not strip search juvenile alien detainees absent probable cause for the search.

5. *Border Searches*

Border searches are a recognized exception to the fourth amendment's general principle that a warrant be obtained prior to conducting the search. Border searches are reasonable without a warrant and without probable cause.<sup>116</sup> This exception also applies to searches at the functional equivalent of the border.

a. *Searches at International Borders*

The interrogation and search of individuals and their effects at the border is inherently reasonable for purposes of the fourth amendment.<sup>117</sup> INS officers may interrogate individuals to determine admissibility without probable cause or "reasonable suspicion."<sup>118</sup> INS officers may interrogate all persons seeking admission to the United States concerning any basis for which the individual may be excludable.<sup>119</sup> Routine searches of persons and things may be made upon their entry into the country without a search warrant or probable cause.<sup>120</sup> Routine searches of persons and things likewise may be made upon their exit from the country.<sup>121</sup> However, a warrantless border search is valid only if conducted by officials specifically authorized to conduct such searches.<sup>122</sup>

These border searches may be made when entry is made by land from the neighboring countries of Mexico and Canada, at the place where a ship docks in this country after having been to a foreign port, and at any airport in the country where international flights land.<sup>123</sup> Officers may search automobiles, baggage, and goods entering the country. Any person seeking to enter the country, despite the brevity of absence or intended period of stay in the United States, may be required to submit to a search of his or her outer clothing, purse, wallet, or pockets. However, border searches are subject to constitutional limitations. Searches of persons, particularly body cavity searches and similar intrusive procedures, require some level of

suspicion under the fourth amendment.<sup>124</sup> The border search authority extends to all persons or vehicles attempting to enter or seen entering the United States. The authority has been extended to permit searches where an automobile was kept in constant surveillance for a period of four hours and the search was conducted at a distance of twenty-five miles from the border,<sup>125</sup> and where a vehicle was seen coming from a "known river crossing" some 300 yards from the Rio Grande, since the vehicle was still within the "border nexus."<sup>126</sup>

b. *Extended Border Search*

An "extended border search" takes place after a person, vehicle, mail, or some other property has crossed the border or cleared a prior checkpoint, or a significant amount of time has elapsed since the object first arrived in the United States. An extended border search must be justified by "reasonable suspicion" that the subject of the search was involved in criminal activity.<sup>127</sup> In contrast, a search conducted at the border or its functional equivalent requires no suspicion and a roving patrol search requires probable cause. The determination of whether a valid extended border search has been undertaken is based on a multiplicity of factors. Generally, an extended border search requires: (1) reasonable suspicion of illegality; (2) reasonable certainty that the vehicle/person crossed the border; and (3) reasonable certainty that the condition of the vehicle/person remained unchanged since the border was crossed, often established through constant surveillance or tracking.<sup>128</sup> Courts have upheld border searches conducted thirty-six hours after the vessel entered Los Angeles harbor,<sup>129</sup> seven hours after border crossing and 105 miles from the border,<sup>130</sup> and where radar tracked a plane from Mexico entering into the United States.<sup>131</sup>

c. *Functional Equivalent*

The broad authority which exists at the international border also extends to areas found to be the "functional equivalent" of the border. This principle is based on common sense and geography when an interior location is one which persons crossing the border must pass to enter the domestic traffic flow. Generally, a functional equivalent of the border is a point marking the intersection of two or more roads extending from the border without any major intervening crossroad, or an airport which is the destination of a nonstop flight from outside the United States.

Three factors are used to determine whether a location other than the actual border is a "functional equivalent": (1) reasonable certainty that a border crossing has occurred; (2) lack of time or opportunity for the object to have changed materially since the crossing; and (3) execution of the search at the earliest practical point after the actual crossing. For example, customs agents conducted surveillance in the dock area where passengers leave cruise ships and observed an individual leaving the ship and entering a vehicle. The vehicle departed the area and was stopped some one and one-half mile from the docks, although still within the port area. A search at the gangplank area would have required the agents to disclose their routine hiding



places at the port. Since the car had not left the port area when it was stopped and the stop was effected at the earliest practical time, it fell within the “functional equivalent” exception.<sup>132</sup>

The functional equivalent of the border may be the mouth of a canyon, the confluence of trails or rivers, or a fixed checkpoint. Not all checkpoints are “functional equivalents.” The key factor for consideration in determining whether the location is the “functional equivalent” is whether the “person or item had entered into [the] country from outside.”<sup>133</sup> A “functional equivalent” will not be found where there is a mixture of domestic traffic with the traffic normally coming from the international border or where a major metropolitan area is located between the proposed location and the border.<sup>134</sup>

In the Fifth Circuit, which includes Texas, in order for a checkpoint to merit the designation of “border equivalent checkpoint,” the government must demonstrate with “reasonable certainty” that the traffic passing through the checkpoint is “international in character” and the checkpoint intercepts “no more than a negligible number of domestic travelers.”<sup>135</sup> Officers should be familiar with any “functional equivalent” within their jurisdiction.<sup>136</sup> The “functional equivalent” caveat is an exception to the general rules applicable to arrests, searches, and seizures that do not occur at the border. If there is any question whether the particular area is a “functional equivalent,” an officer should apply the reasonable suspicion and probable cause standards for searches and seizures that are applicable to interior locations.

d. *Entry of Lands Within 25 Miles of Border*

Under section 287(a)(3) of the Act, immigration officers may enter private lands, but not dwellings, within 25 miles from any external boundary of the United States for the purpose of patrolling the border to prevent the illegal entry of aliens into the United States. The regulations define the phrase “patrolling the border to prevent the illegal entry of aliens into the United States” as “conducting such activities as are customary, or reasonable and necessary, to prevent the illegal entry of aliens into the United States.” 8 C.F.R. § 287.1(f).

INS Operations Instructions (OIs) require that whenever possible immigration officers shall inform the owner or occupant of private lands that they propose to avail themselves of their power of access to those lands. If a direct challenge is made of the officer’s authority, the matter should immediately be brought to the attention of the officer’s supervisor. In most cases consent will be given in advance for extended periods; if not, and after all methods of persuasion have failed, including efforts by personal interview and the placing of the landholder on notice of the law by registered mail, officers may, if absolutely necessary, gain access to areas within the 25 mile area by the most expeditious means. This is an extreme measure and is to be resorted to only on the direction of a supervisory officer after careful consideration. If damaged, fences and gates should be repaired immediately and precautions taken to avoid further injury to the property.<sup>137</sup>

6. *Checkpoints*

The Border Patrol conducts two types of inland traffic-checking operations: checkpoints and roving patrols. Border Patrol agents may lawfully stop motorists at checkpoints located away from the border to determine the citizenship of the vehicle’s occupants. In *United States v. Martinez-Fuerte*, the Supreme Court established constitutional guidelines for checkpoint stops and searches. The inquiry must be brief and limited to the immigration status of the occupants of the vehicle and the only permissible search is a “plain view” inspection to ascertain whether there are any concealed illegal aliens.<sup>138</sup> Absent consent, a more in-depth search of the occupant or the vehicle requires probable cause.<sup>139</sup>

Probable cause can be developed by the agent’s questioning of the occupants and observation of their appearance.<sup>140</sup> Probable cause concerning the existence of contraband may also be developed through observation of material in plain view of the agent. Agents’ observations which have been held to support searches include situations where an agent observed marijuana debris on the floor of a vehicle and smelled the distinctive odor of marijuana.<sup>141</sup> Observation of marijuana seeds on the floor and nervousness of the driver were found sufficient to sustain a search for contraband,<sup>142</sup> and the Fifth Circuit has held that the aroma of marijuana alone was sufficient to justify a Border Patrol agent’s search of a vehicle.<sup>143</sup>

Where agents have probable cause to search at a checkpoint, no warrant need be obtained because, as discussed below, a vehicle is a traditional exception to the warrant requirement.

In *Martinez-Fuerte*, the Supreme Court distinguished a checkpoint from a “roving patrol.” At a checkpoint, the situation is controlled and causes the individual traveller less anxiety. Roving patrols, on the other hand, often operate at night and on seldom-traveled roads, presenting the possibility of frightening motorists. In validating the operation at the San Clemente checkpoint, the Court considered the government’s need to control the influx of illegal aliens, the characteristics of the operation, including the use of warning lights and signs, the minimal nature of the intrusion, and the routine and regularized manner in which stops were effected. The Court found that this type of routine stop did not require reasonable suspicion.<sup>144</sup>

In order to ensure that Border Patrol checkpoints continue to withstand challenges, all checkpoints should be operated in accordance with the instructions set forth in the *Border Patrol Handbook*.<sup>145</sup> Except for the absence of permanence, INS policy requires that temporary checkpoints should be operated in a manner as close as possible to permanent checkpoints to avoid legal difficulties.

7. *Vehicle Stops and Searches*

In *United States v. Brignoni-Ponce*,<sup>146</sup> the Supreme Court held that an INS officer on

roving patrol may stop a car briefly and investigate suspicious circumstances where the officer has a reasonable suspicion that a particular vehicle contains aliens who may be illegally in the United States.<sup>147</sup> Though not exclusive, circumstances which have been acknowledged to be pertinent in justifying vehicle stops include:

- (1) the characteristics of the area in which a vehicle is encountered, such as its proximity to the border, the usual patterns of traffic on the particular road, previous experience with alien traffic, and information about recent illegal border crossings;<sup>148</sup>
- (2) the driver's or passenger's behavior, including erratic driving or obvious attempts to evade officers;<sup>149</sup>
- (3) aspects of the vehicle, *e.g.*, station wagons with large compartments for fold-down seats or spare tires are frequently used for transporting concealed aliens; the vehicle may appear to be heavily loaded or to have an extraordinary number of passengers; or the officers may observe persons trying to hide;<sup>150</sup>
- (4) appearance of the occupants, including whether their mode of dress and/or haircut appear foreign;
- (5) information from outside sources such as reports of illegal border crossings, police reports, or informant information; and
- (6) an officer's experience and training, including previous experience with alien vehicle traffic and the inferences and deductions of a trained officer.<sup>151</sup>

The circumstances which lead to the stop may appear innocent to the untrained observer.<sup>152</sup> However, these circumstances must be considered in totality and not in isolation.<sup>153</sup>

Once the vehicle is lawfully stopped, the officer may question the driver and occupants concerning their citizenship and immigration status and ask for an explanation of the suspicious circumstances. In addition, when the vehicle is stopped, the officer may also order the occupants to exit the vehicle for questioning,<sup>154</sup> request consent to search the vehicle,<sup>155</sup> and examine the exterior and any portion of the interior of the vehicle which is open to view. Any further arrest or search must be based on consent or probable cause in order to comply with the fourth amendment.

Further detention of vehicles may be justified based upon a minimal suspicion of narcotics trafficking. Courts have found that a brief detention for the purpose of utilizing a narcotics dog to sniff the exterior of a vehicle was reasonable under the fourth amendment.<sup>156</sup>

INS officers on roving patrol may not stop a vehicle unless they are aware of specific articulable facts, together with rational inferences from those facts, that reasonably support the suspicion that the vehicle contains aliens who may be illegally in the country.<sup>157</sup>

#### 8. *Inventory Searches of Seized Vehicles*

Warrantless searches of vehicles for the purpose of making an inventory of the personal effects of the contents of the vehicle after a suspect has been taken into custody are reasonable under the fourth amendment.<sup>158</sup> "Inventory" searches of properly seized vehicles are reasonable and do not require probable cause where the purpose is not investigative, but rather: (1) to protect the police or the public from potential damages; (2) to protect the police against claims of lost property; or (3) to protect the owner's property while it is in police custody. The inventory search cannot be used as a subterfuge for a criminal investigative search.<sup>159</sup>

An inventory search not made on-the-scene, but rather, for example, after the vehicle has been moved to an impoundment lot, is also reasonable under the fourth amendment.<sup>160</sup> Where the law enforcement agency maintains a standard practice of conducting an "inventory" search, such a search is reasonable for fourth amendment purposes.<sup>161</sup>

#### 9. *Container Searches*

The general rule is that search of a closed container requires consent or a warrant based upon probable cause.<sup>162</sup> Under the vehicle exception, law enforcement officers who have lawfully stopped an automobile and who have probable cause to believe that contraband is concealed either specifically within a container or somewhere else within the car may conduct a warrantless search of any area within the vehicle that may conceal contraband.<sup>163</sup> This area includes closed containers located within the car as well as areas of the car that may require permanent damage to reach, such as slashing the upholstery to reveal the contraband.<sup>164</sup> The Supreme Court has recently reversed two decisions which held that officers could not conduct a warrantless search of a closed container in a vehicle unless they had probable cause to search the entire car.<sup>165</sup> In *California v. Acevedo*, the Court held that law enforcement officers do not need to obtain a warrant in order to search a container in a car "simply because they lack probable cause to search the entire car."<sup>166</sup> In such cases, the scope of the search is limited to any container which could reasonably be believed to contain the contraband. Probable cause to believe that undocumented aliens are being transported in a van will not justify warrantless search of a suitcase. However, the suitcase may be searched under an "inventory search" if appropriate.<sup>167</sup> If officers have probable cause to believe an individual is transporting drugs or other contraband in the vehicle or in a container within the vehicle, the officers may conduct a warrantless search of every part of the vehicle and its contents, including all containers and packages that may conceal the object of the search.<sup>168</sup> The object of the search defines the scope of the search.<sup>169</sup>

10. *Other Exceptions to the Warrant Requirement*

A warrant is not required before a search or seizure in the following additional circumstances.

a. *Evidence in Plain View*

When a police or INS officer while lawfully present uses one or more of his or her senses to make a detection, that detection is not a search within the fourth amendment. If an item is immediately recognized as seizable evidence or contraband without the necessity of picking up or touching the object to examine it, an officer who is lawfully present may seize the item without a warrant.<sup>170</sup> For example, an officer may gain a lawful vantage point while executing a warrant to search a given area for specified object, and in the course of the search the officer may observe in plain view some other article of incriminating character; or while in hot pursuit of a fleeing suspect an officer may observe contraband; or an officer in a public place or open area or standing on a sidewalk may smell the manufacturing of LSD, overhear the plotting of a criminal conspiracy, or see marijuana plants growing in a backyard.<sup>171</sup>

In the “plain smell” context no search occurs when an officer, lawfully present at a certain place, detects odors emanating from private premises, from a vehicle, or from some personal effects such as luggage.<sup>172</sup> The courts divide on whether the plain smell doctrine permits an officer to lightly squeeze luggage in order to detect the odor within the luggage.<sup>173</sup>

A case still comes within the plain view/senses doctrine when officers’ observations/detections are aided by flashlights, binoculars, cameras, or other common enhancement devices.<sup>174</sup> In determining whether a case fits within the plain senses doctrine, the court will consider the degree of sophistication of the equipment and the extent to which the incriminating objects or actions were out of the line of normal sight from contiguous areas where passersby or others might have made the observation.<sup>175</sup> For example, wiretapping invades privacy beyond that permitted under the plain hearing doctrine and requires a warrant.

Plain view allows an officer to view the contraband or incriminating article. To gain access to and seize that article, there must be either a warrant, consent, exigent circumstances, or some other exception to the warrant requirement.<sup>176</sup> If an object is observed on the person of an individual, the seizure of such article first requires an officer to either obtain a warrant, seize the article pursuant to a search incident to arrest, or justify the warrantless seizure under exigent circumstances.<sup>177</sup>

b. *Open Fields*

Open fields and any unoccupied or undeveloped area outside a dwelling or its curtilage may be searched without a warrant under the “open fields” exception to the warrant rule.<sup>178</sup> No

reasonable privacy expectation exists in “open fields” even if surrounded by a fence. A fenced area is not significant unless it constitutes a “curtilage.”<sup>179</sup> The area constituting curtilage depends on: (1) the proximity of the area to the home, (2) whether the area is enclosed in the same fence that surrounds the home, (3) what type of activity the area is used for, and (4) the steps taken to guard the area from observation.<sup>180</sup> “Trespass” by law enforcement officers is permissible onto “open fields” when the performance of duty so requires.<sup>181</sup>

However, in order to enter onto the premises of a farm or other outdoor agricultural operation for the purpose of questioning persons believed to be aliens regarding their right to be or remain in the United States, the officer must first obtain either the consent of the owner or his or her agent or obtain a properly executed warrant.<sup>182</sup> The warrant exceptions for exigent circumstances are also applicable in these instances.<sup>183</sup>

This limitation on the “open field” doctrine does not apply when the officer is entering onto the land for a purpose other than questioning persons believed to be aliens. Thus, the officer may enter land to obtain consent or for any other permissible purpose. An officer may conduct surveillance of activities occurring on farms or other outdoor agricultural operations.

c. *Canine “Sniffs”*

Generally, a canine sniff of an inanimate object such as luggage in a public place does not constitute a fourth amendment search or seizure.<sup>184</sup> In evaluating the propriety of a canine sniff as a law enforcement tool, the courts have balanced the intrusiveness of the sniff against the reasonableness of any privacy interest in the area to be sniffed.<sup>185</sup> For example, canines may be used to sniff the exterior of vehicles during immigration inspection at checkpoints or ports of entry.<sup>186</sup> The use of canines to sniff the outside of a vehicle in a public place is not a fourth amendment search.<sup>187</sup> Courts have upheld the legality of canine sniffs, undertaken without reasonable suspicion of the exterior of luggage in possession of a common carrier or the outside of lockers in a public transportation terminal.<sup>188</sup>

Canines may not be used in areas where an individual has a heightened expectation of privacy such as the body, clothing worn by a person, or personal property while it is being worn by or held in the physical possession of a person, absent reasonable suspicion or an applicable exception to the warrant requirement.<sup>189</sup> Similarly, the use of canines to sniff dwellings or the area immediately surrounding a dwelling (“curtilage”) requires a warrant, or a recognized exception to the warrant requirement.<sup>190</sup> Any seizure or detention of an object for exposure to a sniff by a canine must be supported by an officer’s reasonable suspicion that the object is or contains contraband and such detention must be brief in length, during which time the officers must diligently pursue the investigation.<sup>191</sup>

A positive alert by a properly trained canine generally constitutes sufficient probable cause to support a search or seizure.<sup>192</sup> However, unless the situation falls within a warrant

exception, the officer must still obtain a warrant before conducting a search or making an arrest.<sup>193</sup>

### C. ADMINISTRATIVE SUBPOENAS

Certain INS officers are authorized to issue administrative subpoenas pursuant to section 235(a) of the Act.<sup>194</sup>

Pursuant to 8 C.F.R. § 287.4(a), certain INS officers may issue a subpoena requiring the production of records and evidence for use in criminal or civil investigations or, if prior to the commencement of proceedings, for use in proceedings. If proceedings have commenced, a subpoena must be issued by an immigration judge. Pursuant to 8 C.F.R. 287.4(d), the INS may seek the aid of a United States District Court if a witness refuses to honor the administrative subpoena.

In addition to an officer's authority to issue subpoenas under section 235(a) of the Act, it is also possible for officers, once a complaint has been filed, to seek the issuance of subpoenas from administrative law judges under the provisions of sections 274A(e)(2) [8 U.S.C. § 1324a(e)(2)] and 274C(d) [8 U.S.C. § 1324c(d)] of the Act. Issuance of these subpoenas for employer sanctions and civil document fraud cases should be discussed with the District Counsel.

The fourth amendment requires that administrative subpoenas be sufficiently limited in scope, relevant in purpose, and specific in directive so that compliance will not be unreasonably burdensome.<sup>195</sup>

## CHAPTER IV

### SEIZURE AND FORFEITURE OF CONVEYANCE

Pursuant to section 274(b) of the Act, 8 U.S.C. § 1324(b), any conveyance, including vehicles, vessels, aircraft, and any appurtenances connected with such conveyance, may be seized by officers having probable cause to believe that the conveyance has been used in violation of section 274(a) of the Act. Such conveyances may be seized without a warrant if circumstances exist where a warrant is not constitutionally required. For example, where the conveyance is mobile and likely to be unavailable for later execution of a warrant, a warrant is not required.

The officer's report should articulate facts to support each element of the particular criminal offense which forms the basis for the seizure. Section 274(a) of the Act describes five separate criminal offenses including bringing to, bringing into, transporting within, harboring, and encouraging entry of illegal aliens, and any attempts to commit these violations.

\* Section 274(a)(1)(A) prohibits bringing a person known to be an alien to the United States at a place other than a designated port of entry or place designated by the Commissioner.

\* Section 274(a)(1)(B) prohibits transportation within the United States of an alien either knowingly or in reckless disregard of the fact that the alien has illegally come to, entered, or remains in the United States, where such transportation furthers the alien's illegally coming to, entering, or remaining in the United States.

\* Section 274(a)(1)(C) bars concealing, harboring, or shielding of an alien either knowingly or in reckless disregard of the fact that the alien has illegally come to, entered, or remains in the United States.

\* Section 274(a)(1)(D) proscribes encouraging or inducing an alien to come to, enter, or reside in the United States either knowingly or in reckless disregard of the fact that such coming to, entry, or residence is or will be unlawful.

\* Section 274(a)(2) makes it illegal to bring an alien to the United States either knowingly or in reckless disregard of the fact that the alien has not received prior official authorization to come to, enter or reside in the United States.

Since each of these offenses requires knowledge of either alienage or illegal status on the part of someone other than the transported alien, the mere presence of an illegal alien in a conveyance does not by itself provide the necessary probable cause for a seizure.



Following a lawful seizure of a conveyance and after due notice of seizure to the registered owner and any known lienholder, any person having a legally cognizable interest in a seized conveyance may present evidence to the INS to establish either: (1) that the conveyance was not "seizable;" i.e., there was no probable cause to believe a violation of section 274 of the Act occurred; (2) that the conveyance is not "forfeitable"; i.e., that title to the seized conveyance may not pass to the United States, since the owner was not involved in or privy to the smuggling; or (3) though title to the vehicle is forfeited to the United States, the vehicle should be returned to the interested party based upon mitigating circumstances or because the interested party was not directly involved in or privy to the smuggling. Accordingly, a forfeited conveyance may be "remitted" to a bank, lienholder, or registered owner who pays seizure costs and promises not to return the conveyance to any named culpable party. Similarly, a forfeiture may be "mitigated" in favor of a culpable party to whom the INS returns the vehicle in exchange for payment of a monetary fine and seizure costs.

In addition, an interested party may seek judicial review of any seizure under section 274 of the Act by timely filing a claim and a bond in accordance with 8 C.F.R. § 274.11. The case is then transmitted to the U.S. Attorney for institution of judicial forfeiture proceedings in U.S. District Court naming the conveyance as the defendant. All cases in which the appraised value of the conveyance is greater than \$100,000.00 must be so referred to the U.S. Attorney for judicial forfeiture proceedings, pursuant to 8 C.F.R. § 274.12.

For further information, please consult the INS Asset Forfeiture Office Manual on Conveyance Seizures.

## CHAPTER V

### INS UNDERCOVER OPERATIONS

The Attorney General issued Guidelines on INS Undercover Operations, effective March 19, 1984. An "undercover operation" is defined as "any investigative operation in which an undercover employee or cooperating private individual is used." All INS undercover operations fall into one of three categories under the Guidelines: (1) those undercover operations which must be authorized by the INS Commissioner with the concurrence of the Assistant Attorney General for the Criminal Division; (2) those which must be authorized by the appropriate Headquarters program;<sup>196</sup> and (3) those which must be authorized by the appropriate District Director or Chief Patrol Agent. The Guidelines also authorize the District Director or Chief Patrol Agent to approve undercover operations in the first two categories in emergency situations involving protection of life or substantial property, to apprehend or identify a fleeing offender, or to prevent the destruction of evidence or other grave harm.

In general, the greater the risk of harm or intrusiveness, the higher the approval level required. The Guidelines require periodic consultation by INS personnel with the U.S. Attorney or Strike Force Chief during the course of an undercover operation, no matter who has approved its implementation. The Guidelines also create an Undercover Operations Review Committee comprised of INS personnel and Criminal Division attorneys to review and make determinations on operations requiring Headquarters approval.

The Guidelines describe the manner in which application should be made for approval of an undercover operation. The guidelines are being revised. If you have any questions regarding the applicability of the guidelines, contact a supervisor or legal counsel.

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CHAPTER VI

RELATIONS WITH LOCAL AND STATE  
ENFORCEMENT AGENCIES

It is Department of Justice policy for INS officers to cooperate with local and state law enforcement officers who notify the INS of suspected violations under state law. This policy includes INS officers assisting in enforcing local law where the matter is serious and the need to act is imperative. Should an on-duty agent happen to witness a felony or violent misdemeanor cognizable under state law, the INS expects that the agent will take reasonable action as a law enforcement officer to prevent the crime and/or apprehend the violator. Unless specifically authorized as a peace officer under state law, the agent's authority in these situations is that of an ordinary citizen. The limitations and liabilities associated with such action are defined in state law. INS officers must be thoroughly familiar with the applicable state laws of their jurisdiction. Further, this policy does not apply to routine traffic violations or other minor offenses. The INS will fully support an agent's reasonable actions in the above situations, and the agent will be regarded as acting within the scope of federal employment and official duties. (See Representation of INS Employees, Chapter XI).

Further, INS agents may engage in joint operations with local officers that are expected to uncover violations of both immigration and local laws. The INS is regularly asked to assist local officers in tracking and locating lost persons or suspected criminals. INS agents will continue to assist such local enforcement efforts; however, INS officers may make arrests for non-immigration state criminal offenses only to the extent that the individual state laws permit them to do so as private citizens. As noted previously, state law may also provide peace officer status to federal officers which would also provide the right to make arrests for non-immigration offenses. However, such authority should only be exercised in conformity with INS policy. In working with local police, INS officers should make it clear that the INS officers are solely responsible for immigration law determinations. Local police are responsible for enforcement of local laws.

The following guidelines are to assist the INS in carrying out the policy of mutual cooperation:

- (1) INS officers may not direct, propose, or request that state or local law enforcement operations be carried out when these operations will be beneficial only to the INS;

- (2) Joint operations may not be conducted unless there are independent and articulable facts that clearly indicate that the involvement of both the INS and another law enforcement entity is required;
- (3) Local authorities should be consulted whenever an INS operation is likely to uncover a violation of state or local codes or result in, for example, a need for crowd or traffic control;
- (4) Information furnished pursuant to legalization applications cannot be examined by anyone other than officers or employees of the Department of Justice. This information cannot be used except to make a determination on the application or for federal criminal prosecutions for fraud in connection with the application;<sup>197</sup>
- (5) Information on the Form I-9 may not be used except to enforce provision of Title 8, United States Code or to prosecute violations of sections 1001, 1028, 1546, and 1621 of title 18, United States Code.<sup>198</sup>

## CHAPTER VII

### DETAINERS

Section 287(d) of the Act mandates that the INS make a prompt determination whether to issue a detainer when an alien is arrested by Federal, State or local law enforcement officers for a controlled substances violation. The provisions of this section are triggered if the official:

- (1) has reason to believe that the alien may not have been lawfully admitted into the United States, or is otherwise not lawfully present in the United States;
- (2) expeditiously informs an appropriate INS officer of the arrest and of facts concerning the status of the alien; and
- (3) requests a prompt determination.

If a detainer under these provisions is issued and the alien is not otherwise detained by Federal, State, or local officials, the Attorney General must expeditiously take custody of the alien.

Detainers may also be placed against any other alien who is amenable to exclusion and deportation proceedings under any provision of the law.<sup>199</sup> Detainers may only be issued by immigration officers pursuant to 8 C.F.R. §§ 242.2 and 287.7. A detainer is lodged by filing Form I-247 "Immigration Detainer - Notice of Action by Immigration and Naturalization Service." This document is merely a notice to the institution and a request for thirty (30) days notice prior to release of the alien from custody. It does not limit the institution's discretion in any decision affecting the offender's classification, work and quarters assignment or other treatment which he would otherwise receive, and this is specifically stated on the face of the notice. Unlike detainers issued pursuant to section 287(d) of the Act, these notices do not require the INS to take custody of the alien upon release from custody.

The provisions of 8 C.F.R. § 242.2(a) also authorize detainers to be issued in two other circumstances. Telephonic detainers may be placed by officers. These detainers must be confirmed in writing within twenty-four (24) hours of issuance. These detainers must contain substantially the same language in the Form I-247. They are also merely a notice to the institution and a request that INS be notified prior to release of the individual. This provides INS officers the opportunity to question the individual prior to release to determine whether he or she is a deportable alien who should be arrested.

Temporary detention of an alien can be obtained at the Service request.<sup>200</sup> This "detainer" is unlike those previously discussed because it is not a mere notice and request for information prior to release. This section applies only when the individual is no longer subject to detention by the criminal justice agency. It authorizes the alien to be maintained in custody for "a period not to exceed forty-eight hours, in order to permit assumption of custody by the Service."<sup>201</sup> A detainer placed under this subsection is an arrest which must be supported by probable cause. These detainees should be followed by an Order to Show Cause. Since it is difficult to establish that these aliens are likely to abscond before a warrant can be obtained to support an arrest without warrant under section 287(a)(2) of the Act, a warrant of arrest should be issued and served upon the alien. Except as provided in 8 C.F.R. § 242.2(a)(4), a detainer does not bind the INS to any fiscal responsibility until custody is actually assumed by the Service.

## CHAPTER VIII

### POSSIBLE CONSEQUENCES OF IMPROPER ACTIONS BY IMMIGRATION OFFICERS

#### A. EXCLUSION OF EVIDENCE

##### 1. *Criminal Prosecutions*

The fourth amendment guarantees the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. Any evidence secured through an unreasonable search or seizure may be barred from use in any subsequent criminal prosecution. This bar on the use of such evidence is known as the "exclusionary rule." The fourth amendment guarantees the people's right to privacy. The courts have fashioned the exclusionary rule to protect that right and to deter overzealous law enforcement officers. Convictions based on unlawful searches and seizures are often reversed on the basis of the exclusionary rule.<sup>202</sup>

The exclusionary rule applies to evidence obtained in violation of other constitutional and statutory rights such as the sixth amendment right to counsel and the fifth and fourteenth amendment rights to due process of law.

##### 2. *Administrative (Civil) Proceedings*

The Supreme Court has held that the exclusionary rule does not apply to civil deportation proceedings.<sup>203</sup> Nevertheless, the Board of Immigration Appeals has excluded evidence seized in violation of the due process requirement of the fifth amendment where the officer's conduct was outrageous.<sup>204</sup> In addition, illegally seized evidence which is admissible in deportation proceedings will remain subject to the exclusionary rule in any subsequent criminal prosecution.

Although illegally seized evidence may be admissible in civil deportation proceedings, the Department of Justice in no way condones illegal searches. On the contrary, officers who conduct unconstitutional searches may still be subject to disciplinary action, civil suit, and criminal prosecution. If there is any doubt about the legality or propriety of a proposed plan of action, the safest course is to obtain advance instructions from a supervisor or legal counsel. This can be done by telephone or radio where prompt action is imperative.

##### 3. *Effect on Validity of Proceedings*

If a search or seizure has been made in violation of the Constitution, that fact alone will not necessarily invalidate criminal proceedings. If there is untainted evidence -- not illegally



seized and not derived from an illegal search or seizure -- upon which to base a conviction, the proceedings are valid and need not be terminated.<sup>205</sup> The Supreme Court has also ruled that, under certain circumstances, a "reasonable good-faith exception" to the exclusionary rule may apply where illegally seized evidence is acquired pursuant to a defective search warrant. This decision recognizes that an improper warrantless search cannot be deterred where the officer has no reason to believe that there has been any impropriety.

## B. CIVIL LIABILITY

### 1. *Personal Liability of Federal Agents*

The Supreme Court, in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*,<sup>207</sup> held that violation of the fourth amendment by a federal agent acting under color of authority gives rise to a cause of action for damages based on unconstitutional conduct.

Federal officials generally are entitled to absolute immunity only in those exceptional situations where it is demonstrated that absolute immunity is essential for the conduct of public business.<sup>208</sup> Other federal officials entitled to absolute immunity are: (1) hearing examiners or administrative law judges when they are performing judicial acts; (2) agency officials who perform functions analogous to those of a prosecutor for their parts in the decision to initiate or continue a proceeding subject to agency adjudication; and (3) agency attorneys presenting evidence at agency hearings. Otherwise, federal executive officials are entitled only to qualified immunity for those actions taken in the performance of their official duties.

Federal officials are shielded from liability for civil damages if their conduct does not violate "clearly established" statutory or constitutional rights which a reasonable person would have known.<sup>209</sup> This is an important reason for officers to remain familiar with the laws of arrest, search, and seizure.

Department of Justice policy also permits, in the discretion of the Attorney General, indemnification of Department employees who suffer adverse money judgments as a result of official acts.<sup>210</sup> This provides additional protection to officers who perform reasonable actions under often difficult circumstances necessitating split-second judgments.

Congress has also recognized that federal officials merit additional legal protection and therefore enacted the "Federal Employees Liability Reform and Tort Compensation Act." While not providing protection against unreasonable violations of constitutional rights, such as the so-called *Bivens* actions previously mentioned, this does protect officers for violations of law resulting from actions taken within the scope of employment.<sup>211</sup> This statute substitutes the United States as the defendant in lieu of the officer.

Officers may also wish to obtain personal liability insurance. This insurance is comparatively inexpensive. It provides peace of mind and eliminates the need to rely upon discretionary determinations to provide legal counsel or to indemnify against adverse judgments.

### 2. *Liability of the United States for Money Damages*

Since 28 U.S.C. § 2680(h) was amended in March 1974, the United States has been amenable to civil actions on claims of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution because of acts or omissions of investigative or law enforcement personnel acting within the scope of their office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.<sup>212</sup> If a plaintiff wins a judgment against the United States, subsequent suits against the officers in their individual capacity for the same subject matter are barred by 28 U.S.C. § 2676. Judgment against an individual officer does not preclude later action against the United States. However, double recovery is not permissible.<sup>213</sup>

If the actions of an officer are outside the scope of employment, the action would be against that officer in his or her personal capacity. The United States could not be sued.<sup>214</sup>

## C. CRIMINAL LIABILITY

An INS officer who acts improperly in performance of assigned duties may risk prosecution for violation of state or federal criminal laws. Such crimes include: criminal trespass, breaking and entering, harassment, assault and battery, kidnapping, homicide, maliciously procuring a search warrant, liability for traffic violations, exceeding authority in executing a search warrant, searching a dwelling without a search warrant, maliciously and without reasonable cause searching any other building or property without a search warrant, and depriving an inhabitant of the United States of constitutional or other legal rights, privileges, or immunities under color of law.

## D. DISCIPLINARY ACTIONS

For any of the improper actions discussed above, whether any civil or criminal proceedings are commenced, the INS officer may be subject to agency disciplinary action with possible penalties ranging from an official letter of reprimand to removal from employment, which may bar future federal employment.

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CHAPTER IX

REPRESENTATION OF INS EMPLOYEES SUED IN THEIR  
INDIVIDUAL CAPACITIES

A. DEPARTMENT POLICY

It is the policy of the Department of Justice to represent a federal employee who is sued in a state criminal action or in a state or federal civil action or subpoenaed in his or her individual capacity if it is considered in the best interests of the United States.<sup>215</sup>

Representation by the Department is never available in a federal criminal proceeding or investigation or in an agency disciplinary proceeding.<sup>216</sup> Representation by the Department is not available in a civil case if the employee is the subject of a federal criminal investigation for the same act or acts.<sup>217</sup> The Department in its discretion may provide a private attorney to the employee at government expense, provided that no decision has been made to seek an indictment against the employee.<sup>218</sup>

Every INS employee sued in his or her individual capacity has the right to hire private counsel at his or her expense and the Department has no right to intervene (except perhaps in an *amicus* capacity) unless requested.

The Department criteria for personal representation of an employee who is personally sued for damages or the subject of state criminal proceedings or the subject of a congressional or judicial subpoena are:

- (1) The employee's actions must reasonably appear to have been performed within the scope of the federal employment; and
- (2) It must be in the interest of the United States to provide the requested representation.

B. PROCEDURE FOR REQUESTING REPRESENTATION

Every INS officer or employee who is sued in his or her individual capacity or is the subject of a subpoena, and who believes that he or she needs and qualifies for Department representation, must request it in writing.

The representation request must be submitted to the Office of the General Counsel with a copy of the summons and complaint or other legal papers. The request should contain answers to the following questions:

- (1) Were you personally served?
- (2) If so, what was the time, place, and manner of service?
- (3) If not, was anyone served who was authorized by you to accept service?
- (4) Do you in good faith believe that you were acting within the scope of your employment?
- (5) If so, what is the basis for your belief?

The officer or employee also should provide answers to the allegations in the complaint that relate to him or her and state what he or she actually did with regard to the actions complained of. The request for representation should be accompanied by a properly executed DOJ Form 399. The Civil Division of the Department of Justice adjudicates all requests for representation with the advice and recommendation of the General Counsel.

#### C. ATTORNEY-CLIENT PRIVILEGE

Department of Justice attorneys who undertake representation of individual clients personally sued for money damages have a full attorney-client relationship with those individuals.<sup>219</sup> This also extends to all DOJ attorneys, which includes INS attorneys who review or transmit a request for representation. The attorney-client relationship commences at such point as the individual requests representation and applies to communications made for the purpose of securing such representation. No material contained in the request nor confidences exchanged during the process may be used against the individual defendant in agency disciplinary or other proceedings, even if the DOJ declines representation.

When an INS employee requests DOJ representation, it is recommended that he or she submit the request directly to the appropriate District Counsel and clearly mark on each written communication that the information is subject to the attorney-client privilege. The material submitted with the request for representation must not be provided to anyone except legal counsel or the attorney-client privilege may be lost.

#### D. INDEMNIFICATION POLICY

An INS defendant employee may apply for indemnification upon the entry of an adverse verdict, judgment, or other monetary award. The indemnification policy of the Department of Justice is as follows:

- (1) The Department of Justice may indemnify the Department of Justice employee, for any verdict, judgment, or other monetary award which is rendered against such employee, provided that the conduct giving rise to the verdict, judgment, or award was taken within the scope of employment and that such indemnification is in the interest of the United States, as determined by the Attorney General or his or her designee.
- (2) The Department of Justice may settle or compromise a personal damages claim against a Department of Justice employee by the payment of available funds, at any time, provided the alleged conduct giving rise to the personal damages claim was taken within the scope of employment and that such settlement or compromise is in the interest of the United States, as determined by the Attorney General or his or her designee.
- (3) Absent exceptional circumstances as determined by the Attorney General or designee, the Department will not entertain a request either to agree to indemnify or to settle a personal damages claim before entry of award.
- (4) The Department of Justice employee may request indemnification to satisfy a verdict, judgment, or award entered against the employee. The employee shall submit a written request, with appropriate documentation including copies of the verdict, judgment, award, or settlement proposal, if on appeal, to the head of his or her employing component, who shall then submit to the appropriate Assistant Attorney General, in a timely manner, a recommended disposition of the request. Where appropriate, the Assistant Attorney General shall seek the views of the United States Attorney; in all such cases the Civil Division shall be consulted. The Assistant Attorney General shall forward the request, the employing component's recommendation, and the Assistant Attorney General's recommendation to the Attorney General for decision.
- (5) Any payment under this section either to indemnify a Department of Justice employee or to settle a personal damages claim shall be contingent upon the availability of appropriated funds of the employing component of the Department of Justice.

#### E. PROCEDURE FOR REQUESTING INDEMNIFICATION

As with requests for representation, requests for indemnification should be submitted to the office of the General Counsel. They may be transmitted through the Regional Counsel, with the District Counsel being the point of local contact. Pursuant to Department policy, this request can be made only after entry of a judgment against the officer.

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NOTES

1. See 8 C.F.R. § 3.1(g).
2. *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975).
3. 57 Fed. Reg. 47011 (October 14, 1992).
4. For an extensive and substantive discussion on criminal prosecutions of immigration violations, see THE UNITED STATES ATTORNEYS' MANUAL, title 9, chap. 73 (Oct. 1, 1988).
5. *Zepeda v. INS*, 753 F.2d 719 (9th Cir. 1985).
6. *Carroll v. United States*, 267 U.S. 132, 154 (1925).
7. *Florida v. Bostwick*, 111 S. Ct. 2382 (1991); *INS v. Delgado*, 466 U.S. 210, 215 (1984); *Florida v. Royer*, 460 U.S. 491, 497 (1983) (plurality opinion); *United States v. Mendenhall*, 446 U.S. 544 (1980); *Terry v. Ohio*, 392 U.S. 1, 19 n.16 (1968).
8. *Delgado*, 466 U.S. at 215; *Royer*, 460 U.S. at 497-98; *Zepeda v. INS*, 753 F.2d 719 (9th Cir. 1985); *United States v. Alvarez-Sanchez*, 774 F.2d 1036, 1040 (11th Cir. 1985); *Cuevas-Ortega v. INS*, 588 F.2d 1274, 1277 (9th Cir. 1979); *Cordon de Ruano v. INS*, 554 F.2d 944, 946 (9th Cir. 1977). *But see La Duke v. Nelson*, 762 F.2d 1318, 1329 (9th Cir. 1985) (holding that the actions of immigration officers in conducting a farm ranch check precluded a finding of voluntary consent).
9. *Delgado*, 466 U.S. at 215; *Royer*, 460 U.S. at 502; *Mendenhall*, 446 U.S. at 554.
10. *Florida v. Bostwick*, 111 S. Ct. 2382 (1991); *Royer*, 460 U.S. at 519 n.4.
11. *United States v. Sokolow*, 490 U.S. 1 (1989); *Terry v. Ohio*, 392 U.S. 1, 27 (1968); *United States v. Sugrim*, 732 F.2d 25, 28 (2d Cir. 1984); *United States v. Reyes-Oropesa*, 596 F.2d 399 (9th Cir. 1979).
12. *United States v. Hensley*, 469 U.S. 221 (1985); *United States v. Cortez*, 449 U.S. 411, 417 n.2 (1981).
13. *United States v. Brignoni-Ponce*, 422 U.S. 873, 884 (1975).
14. *Michigan v. Long*, 463 U.S. 1032, 1049-1050 (1983); *Adams v. Williams*, 407 U.S. 143, 146-47 (1972); *Terry v. Ohio*, 392 U.S. 1, 23-24 (1968).
15. *Terry*, 392 U.S. at 24.



16. *Alabama v. White*, 110 S. Ct. 2412, 2415-17 (1990); *United States v. Sharpe*, 470 U.S. 675 (1985); *United States v. Cortez*, 449 U.S. 411, 417 (1981); *United States v. Nargi*, 732 F.2d 1102, 1104 (2d Cir. 1984).
17. *White*, 110 S. Ct. at 2417; *Cortez*, 449 U.S. at 417; *Brignoni-Ponce*, 422 U.S. at 884.
18. *Brignoni-Ponce*, 422 U.S. at 884
19. *Pennsylvania v. Mimms*, 434 U.S. 106 (1977); *United States v. Hensley*, 469 U.S. 221, 235 (1985).
20. *Berkemer v. McCarty*, 468 U.S. 420, 442 (1984).
21. *United States v. Rose*, 731 F.2d 1337, 1343 (8th Cir. 1984).
22. *Berkemer*, 468 U.S. at 437-38; *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977); *W. LAFAVE & J. ISRAEL, CRIMINAL PROCEDURE* § 6.6(C) at 290 (Student ed. 1985).
23. *Min-Shey Hung v. United States*, 617 F.2d 201, 202 (10th Cir. 1980); *Avila-Gallegos v. INS*, 525 F.2d 666, 667 (2d Cir. 1975); *Ojeda-Vinales v. INS*, 523 F.2d 286 (2d Cir. 1975); *United States v. Cantu*, 519 F.2d 494, 496 (7th Cir.), *cert. denied*, 423 U.S. 1035 (1975); *Au Yi Lau v. INS*, 445 F.2d 217, 222 (D.C. Cir.), *cert. denied*, 404 U.S. 864 (1971).
24. *Yam Sang Kwai v. INS*, 411 F.2d 683 (D.C. Cir.), *cert. denied*, 396 U.S. 877 (1969); *Hon Keung Rung v. INS*, 356 F. Supp. 571, 576 (E.D. Mo. 1973).
25. *United States v. Garcia*, 616 F.2d 210 (5th Cir. 1980); *United States v. Hernandez-Rajas*, 470 F. Supp. 1212, 1220 (E.D.N.Y.), *aff'd*, 615 F.2d 1351 (2d Cir. 1979), *cert. denied*, 449 U.S. 864 (1980); *Au Yi Lau v. INS*, 445 F.2d at 223-224.
26. *Hernandez-Rojas*, 470 F. Supp. at 1220; *Cantu*, 519 F.2d at 496.
27. *Min-Shey Hung v. United States*, 617 F.2d 201, 202 (10th Cir. 1980); *Yiu Fong Cheung v. INS*, 418 F.2d 460 (D.C. Cir. 1969).
28. 8 C.F.R. § 287.3; 8 C.F.R. § 242.2(c)(2); *Navia-Duran v. INS*, 568 F.2d 803 (1st Cir. 1977).
29. 8 C.F.R. § 287.3.
30. *County of Riverside v. McLaughlin*, 111 S. Ct. 1661 (1991).
31. *Brower v. County of Inyo*, 489 U.S. 593 (1989).

32. *Graham v. Connor*, 490 U.S. 386 (1989).
33. *See Border Patrol Handbook* at 17-5 (Rev. 4/1/85).
34. *See Tennessee v. Garner*, 471 U.S. 1 (1985).
35. *See BORDER PATROL HANDBOOK* at 17-5 and 24-3.
36. *See note 3, supra*.
37. *Miranda v. Arizona*, 384 U.S. 436 (1966).
38. *Berkemer v. McCarty*, 468 U.S. 420 (1984); *United States v. Alvarado Garcia*, 781 F.2d 422 (5th Cir. 1986).
39. *See Berkemer*, 468 U.S. 420; *Chavez-Raya v. INS*, 519 F.2d 397 (7th Cir. 1975); *United States v. Mata-Abundiz*, 717 F. 2d 1277 (9th Cir. 1983); *United States v. Henry*, 604 F.2d 908 (5th Cir. 1979) (requiring *Miranda* warnings).
40. *Beckwith v. United States*, 425 U.S. 341, 346-347 (1976).
41. *Henry*, 604 F.2d at 914.
42. *Mata-Abundiz*, 717 F.2d at 1279. *See generally Mathis v. United States*, 391 U.S. 1 (1968).
43. *Schmerber v. California*, 384 U.S. 757 (1966); *United States v. Wade*, 388 U.S. 218 (1967); *Gilbert v. California*, 388 U.S. 263 (1967).
44. *Minnick v. Mississippi*, 111 S. Ct. 486 (1990); *Michigan v. Harvey*, 494 U.S. 344 (1990); *Connecticut v. Barrett*, 479 U.S. 523, 528-29 (1987); *Smith v. Illinois*, 469 U.S. 91 (1984); *Oregon v. Bradshaw*, 462 U.S. 1039, 1044 (1983); *Edwards v. Arizona*, 451 U.S. 477, 484-85 (1981).
45. *Michigan v. Mosley*, 423 U.S. 96, 104 (1975).
46. *Amending* 18 U.S.C. §§ 3041, 3141-3143, 3146-3152, 3568.
47. 18 U.S.C. § 3144, *referencing* 18 U.S.C. § 3142.
48. 18 U.S.C. § 3142(b).
49. 18 U.S.C. § 3142(c).

50. 18 U.S.C. § 3144.
51. 18 U.S.C. § 3145.
52. United States v. Valenzuela-Bernal, 458 U.S. 858 (1982).
53. Smith v. Maryland, 442 U.S. 735, 739 (1979).
54. *Smith*, 442 U.S. at 740; United States v. Katz, 389 U.S. 347, 357 (1967).
55. United States v. Leon, 468 U.S. 325 (1984).
56. FED. R. CRIM. P. 41(c)(2); United States v. Rome, 809 F.2d 665 (10th Cir. 1987).
57. Carroll v. United States, 267 U.S. 132, 162 (1925); Brinegar v. United States, 165 F.2d 512, 514 (10th Or. 1948), *aff'd*, 338 U.S. 160 (1949).
58. See Illinois v. Gates, 462 U.S. 213 (1983) (abandoning the “two-pronged test” established in *Aguilar and Spinelli* and reaffirming the totality of the circumstances analysis for probable cause determinations); see also Aguilar v. Texas, 378 U.S. 108 (1964); Spinelli v. United States, 393 U.S. 410 (1969).
59. *Gates*, 462 U.S. at 236; United States v. Seybold, 726 F.2d 502, 503 (9th Cir. 1984).
60. United States v. Estrada, 733 F.2d 683, 685 (9th Cir.), *cert. denied*, 105 S. Ct. 168 (1984).
61. United States v. Alexander, 761 F.2d 1294, 1300 (9th Cir. 1985); United States v. Roberts, 747 F.2d 537, 543 (9th Cir. 1984); United States v. Gagnon, 635 F.2d 766, 768 (10th Cir.), *cert. denied*, 451 U.S. 1018 (1981).
62. Michigan v. Clifford, 464 U.S. 287 (1984); Michigan v. Tyler, 436 U.S. 499 (1978).
63. Blackie’s House of Beef, Inc. v. Castillo, 659 F.2d 1211 (D.C. Cir. 1981), *cert. denied*, 455 U.S. 940 (1982). See also Marshall v. Horn Seed Co., 647 F.2d 96 (10th Cir. 1981).
64. International Molders’ and Allied Workers’ Local Union No. 164 v. Nelson, 799 F.2d 547 (9th Cir. 1986), *on remand*, 674 F. Supp. 294 (N.D. Cal. 1987). The warrants do not authorize seizure.
65. Marshall v. Barlow’s, Inc., 436 U.S. 307 (1978).
66. The leading case on factory surveys is INS v. Delgado, 466 U.S. 210 (1984); see also, Kotler Industries v. INS, 586 F. Supp. 72 (N.D. 111. 1984); Babula v. INS, 665 F.2d 293 (3d Cir.

- 1981); Mendoza v. INS, 559 F. Supp. 842 (W.D. Tex. 1982).
67. Illinois Migrant Council v. Pilliod, 531 F. Supp. 1011, 1022-23 (N.D. 111. 1982).
68. Marshall v. Barlow’s, Inc., 436 U.S. 307, 320-21 (1978).
69. *Barlow’s*, 436 U.S. at 320, *citing* Camara v. Municipal Court, 387 U.S. 523 (1967).
70. See In the Matter of Establishment Inspection of Gilbert & Bennett Manufacturing Co., 589 F.2d 1335 (7th Cir.), *cert. denied*, 444 U.S. 884 (1979).
71. Stoddard Lumber Co. v. Marshall, 627 F.2d 984 (9th Cir. 1980).
72. Donovan v. Wollaston Alloys, 695 F.2d 1 (1st Cir. 1983); Stoddard Lumber Co. v. Marshall, 627 F.2d 984 (9th Cir. 1980).
73. Guerra v. Sutton, 783 F.2d 1371, 1375 (9th Cir. 1986).
74. Chimel v. California, 395 U.S. 752, 763 (1969); United States v. Chadwick, 433 U.S. 1 (1977).
75. United States v. Robinson, 414 U.S. 218 (1973).
76. *Chimel*, 395 U.S. at 763.
77. New York v. Belton, 453 U.S. 454, 460 (1981).
78. Michigan v. Long, 463 U.S. 1032 (1983).
79. *Chimel*, 395 U.S. at 763; Mapp v. Ohio, 367 U.S. 643 (1961); United States v. Jackson, 576 F.2d 749 (8th Cir.), *cert. denied*, 439 U.S. 858 (1978).
80. Maryland v. Buie, 494 U.S. 325, 334-334 (1990).
81. Agnello v. United States, 269 U.S. 20 (1925); James v. Louisiana, 382 U.S. 26 (1965); United States v. Anthon, 648 F.2d 669, 675-76 (10th Cir. 1981).
82. Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973).
83. Schneckloth, 412 U.S. at 227; United States v. Lopez, 777 F.2d 543, 548 (10th Cir. 1985); United States v. Ritter, 752 F.2d 435 (9th Cir. 1985) (all holding consent to be voluntary). Compare LaDuke v. Nelson, 762 F.2d 1318, 1329 (9th Cir. 1985) (consent to search of migrant farm housing held not voluntary where INS officers failed to advise occupants of right to refuse consent; where occupants had inherent fear of uniformed officers and were of limited education and linguistic ability; and where searches occurred in early morning or late evening).

84. *Bumper v. North Carolina*, 391 U.S. 543 (1968); *LaDuke v. Nelson*, 762 F.2d at 1329.
85. *Commonwealth v. Angivoni*, 417 N.E.2d 422 (Mass. 1981); *LaDuke v. Nelson*, 762 F.2d at 1329.
86. *Higgins v. U.S.*, 209 F.2d 819, 820 (D.C. Cir. 1954); *LaDuke v. Nelson*, 762 F.2d at 1329.
87. *United States v. Watson*, 423 U.S. 411 (1976).
88. *United States v. Baggatts*, 646 F. Supp. 589, 591 (D.D.C. 1986).
89. *United States v. Ritter*, 752 F.2d 435 (9th Cir. 1985).
90. *United States v. Matlock*, 415 U.S. 164, 171 (1974).
91. *Illinois v. Rodriguez*, 497 U.S. 177 (1991).
92. *Florida v. Jimeno*, 111 S. Ct. 1801, 1805 (1991); *Illinois v. Rodriguez*, 497 U.S. at 183-189; *Florida v. Royer*, 460 U.S. 491, 501-502 (1983).
93. *Jimeno*, 111 S. Ct. at 1805-1806 (1991).
94. *Warden v. Hayden*, 387 U.S. 294 (1967).
95. *United States v. Gomez*, 652 F. Supp. 715, 718 (S.D.N.Y. 1987); *United States v. Echegoyen*, 799 F.2d 1271 (9th Cir. 1986); *Welsh v. Wisconsin*, 466 U.S. 740, 753 (1984) (no exigency where underlying DWI was a non-criminal traffic offense and suspect was off the road).
96. *Mincey v. Arizona*, 437 U.S. 385, 392-93 (1978).
97. *Warden v. Hayden*, 387 U.S. 294 (1967).
98. *Warden v. Hayden*, 387 U.S. at 298-99.
99. *United States v. Santana*, 427 U.S. 38 (1976).
100. *Santana*, 427 U.S. 38; *United States v. Varkonyi*, 645 F.2d 453 (5th Cir. 1981).
101. *Welsh v. Wisconsin*, 466 U.S. 740 (1984) (no hot pursuit where police entered suspect's home minutes after a witness had observed suspect in an apparently intoxicated condition fleeing from the scene of an accident, a civil offense); *United States v. Morgan*, 743 F.2d 1158 (6th Cir. 1984) (no hot pursuit where officers met at a local coffee shop and assessed the situation, waited for the arrival of the sheriff before proceeding to defendant's house).

102. *Maryland v. Macon*, 472 U.S. 463 (1985).
103. *Hester v. United States*, 265 U.S. 57, 59 (1924); *Oliver v. United States*, 466 U.S. 170 (1984).
104. *Harris v. United States*, 390 U.S. 234 (1968); *United States v. Miguel*, 340 F.2d 812 (2d Cir.), *cert. denied*, 382 U.S. 859 (1965).
105. *Bell v. Wolfish*, 441 U.S. 520 (1979).
106. *Hudson v. Palmer*, 468 U.S. 517 (1984).
107. *Block v. Rutherford*, 468 U.S. 576 (1984).
108. *Procurier v. Martinez*, 416 U.S. 396 (1974).
109. *Wolff v. McDonnell*, 418 U.S. 539 (1974).
110. *Wolff*, 418 U.S. at 576-577; *Taylor v. Sterrett*, 532 F.2d 462 (5th Cir. 1976).
111. *Wolff*, 418 U.S. 539 (1976).
112. *Procurier*, 416 U.S. at 413.
113. *Procurier*, 416 U.S. at 418-419.
114. *Daughtery v. Harris*, 476 F.2d 292 (10th Cir.), *cert. denied*, 414 U.S. 872 (1973).
115. *Flores v. Meese*, 681 F. Supp. 665 (C.D. Cal. 1988).
116. *United States v. Ramsey*, 431 U.S. 606, 621 (1977).
117. *Ramsey*, 431 U.S. at 616-619.
118. *Carroll v. United States*, 267 U.S. 132 (1925); *Boyd v. United States*, 116 U.S. 616 (1886).
119. *Section 235 of the Act*; 8 U.S.C. § 1225.
120. *Ramsey*, 431 U.S. at 616-619.

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121. *United States v. Duncan*, 693 F.2d 971, 977 (9th Cir. 1982), *cert. denied*, 461 U.S. 961 (1983); *United States v. Ajlouny*, 629 F.2d 830, 834 (2d Cir. 1980), *cert. denied*, 449 U.S. 1111 (1981), *citing*, *California Bankers Ass'n v. Shultz*, 416 U.S. 21, 63 (1974) (*dicta* that “those entering and leaving the country may be examined as to their belongings and effects, all without violating the fourth amendment”).
122. *United States v. Whiting*, 781 F.2d 692, 696 (9th Cir. 1986).
123. *Almeida-Sanchez v. United States*, 413 U.S. 266 (1973); *United States v. Charleus*, 871 F.2d 265 (2d Cir. 1989).
124. *United States v. Montoya de Hernandez*, 473 U.S. 531 (1985); *United States v. Oyekan*, 786 F.2d 832 (8th Cir. 1986); *United States v. Vega-Barvo*, 729 F.2d 1341 (11th Cir. 1984), *cert. denied* 469 U.S. 1088 (1984).
125. *United States v. Lincoln*, 494 F.2d 833 (9th Cir. 1974).
126. *United States v. Rogers*, 504 F.2d 1079 (5th Cir. 1974), *cert. denied*, 422 U.S. 1042 (1975).
127. *United States v. Alfonso*, 759 F.2d 728, 734 (9th Cir. 1985).
128. *United States v. Gavia*, 805 F.2d 1108, 1112-14 (2d Cir. 1986) (customs); *United States v. Alfonso*, 759 F.2d 728, 734-35 (9th Cir. 1985); *United States v. Barbin*, 743 F.2d 256, 261 (5th Cir. 1984) (tire and trailer tracks established border crossing); *United States v. Jacobson*, 647 F.2d 990 (9th Cir. 1981); *United States v. Richards*, 638 F.2d 765, 771-772 (5th Cir. 1981); *United States v. Espericueta-Reyes*, 631 F.2d 616, 619-620 (9th Cir. 1980); *United States v. Bowman*, 502 F.2d 1215, 1219 (5th Cir. 1974); *Castillo-Garcia v. United States*, 424 F.2d 482 (9th Cir. 1970).
129. *United States v. Alfonso*, 759 F.2d 728, 734 (9th Cir. 1985).
130. *Castillo-Garcia v. United States*, 424 F.2d 482, 485 (9th Cir. 1970).
131. *United States v. Driscoll*, 632 F.2d 737, 739 (9th Cir. 1980).
132. *United States v. Hill*, 939 F.2d 93 (11th Cir. 1991).
133. *United States v. Ramsey*, 431 U.S. 606, 620 (1977); *United States v. Jackson*, 825 F.2d 853, 859 (5th Cir. 1987) (en banc); *see also* *United States v. Montoya de Hernandez*, 473 U.S. 531, 537-38 (1985).
134. *Carroll v. United States*, 267 U.S. 132 (1925); *Jackson*, 825 F.2d at 858.

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135. *Jackson*, 825 F.2d at 860, 866 (holding Sierra Blanca checkpoint is not a “border equivalent checkpoint”).
136. There are currently no permanent checkpoints judicially recognized as functional equivalents.
137. O.I. § 287.30
138. *United States v. Martinez-Fuerte*, 428 U.S. 543 (1976); *United States v. Gordo-Marin*, 497 F. Supp. 432 (S.D. Fla. 1980), *aff'd*, 659 F.2d 58 (5th Cir. 1981).
139. *United States v. Ortiz*, 422 U.S. 891 (1975).
140. *United States v. Faulkner*, 547 F.2d 870 (5th Cir. 1977) (nervousness of the driver); *United States v. Reyna*, 546 F.2d 103 (5th Cir. 1977) (nervousness of passengers coupled with suspicious story of misplaced trunk key).
141. *United States v. Kidd*, 540 F.2d 210 (5th Cir. 1976) (per curiam).
142. *Faulkner*, 547 F.2d 870.
143. *United States v. Gorthy*, 550 F.2d 1051 (5th Cir.), *cert. denied*, 434 U.S. 834 (1977); *United States v. Leal*, 547 F.2d 1222 (5th Cir. 1977) (per curiam).
144. *Martinez-Fuerte*, 428 U.S. at 556-560; *see also* *Michigan Dept. of State Police v. Sitz*, 444 U.S. 444 (1990).
145. BORDER PATROL HANDBOOK, Chapter 9; *Jasinski v. Adams*, 781 F.2d 843 (11th Cir. 1986); *see also* citations at notes 33 and 35 *supra*.
146. 422 U.S. 873 (1975).
147. The pursuit of a vehicle does not in and of itself constitute a seizure of the vehicle for fourth amendment purposes. *California v. Hodari*, 111 S.Ct. 1547 (1991) (chase of juvenile by officer did not constitute ‘seizure’ by officer); *Broyer v. County of Inyo*, 489 U.S. 593 (1989) (20 mile chase by police cars with flashing lights was not deemed to produce a seizure for fourth amendment purposes); *Michigan v. Chesternut*, 486 U.S. 567 (1988) (a brief acceleration to catch up with respondent followed by a short drive alongside him was not so intimidating that the respondent could reasonably be believed that he was not free to disregard the police presence).
148. *United States v. Franco-Munoz*, 952 F.2d 1055, 1057 (9th Cir. 1991) (vehicle stop supported by reasonable suspicion based on officers’ experience with smugglers on particular highway, loaded appearance of vehicle, type of vehicle, driver’s failure to acknowledge officers, and fact that driver was Hispanic male); *United States v. Lujan-Miranda*, 535 F.2d 327 (5th Cir.



1976); *United States v. De Witt*, 569 F.2d 1338 (5th Cir. 1978) (stop occurred near checkpoint where aliens stopped to see if checkpoint was operating). *But see United States v. Rodriguez*, 976 F.2d 592, 594-96 (9th Cir. 1992) (holding invalid a vehicle stop based on profile similar to that in *Franco-Munoz*).

149. *Compare Franco-Munoz*, 952 F.2d at 1057 with *Rodriguez*, 976 F.2d at 595; *see also United States v. Barnard*, 553 F.2d 389 (5th Cir. 1977); *United States v. Payne*, 555 F.2d 475 (5th Cir. 1977). *Cf. United States v. Lopez*, 564 F.2d 710 (5th Cir. 1977) (failure to make eye contact does not support reasonable suspicion).

150. *Barnard*, 553 F.2d 389; *Payne*, 555 F.2d 475.

151. *Compare Franco-Munoz*, 952 F.2d at 1057 with *Rodriguez*, 976 F.2d at 595-596.

152. *United States v. Cortez*, 449 U.S. 411 (1981).

153. *Cortez*, 449 U.S. 411.

154. *Pennsylvania v. Mimms*, 434 U.S. 106 (1977); *United States v. Hensley*, 469 U.S. 221 (1985).

155. *See Schneckloth v. Bustamonte*, 412 U.S. 218 (1973).

156. *United States v. Taylor*, 934 F.2d 218 (9th Cir. 1991); *United States v. Morales-Zamora*, 914 F.2d 200 (10th Cir. 1990).

157. *United States v. Brignoni-Ponce*, 422 U.S. 873 (1975); *Nicacio v. INS*, 797 F.2d 700 (9th Cir. 1985).

158. *Colorado v. Bertine*, 428 U.S. 364 (1976); *Illinois v. Lafayette*, 462 U.S. 640 (1983).

159. *South Dakota v. Opperman*, 428 U.S. 364 (1976) (establishing that the inventory search constitutes a well-defined exception to the warrant requirement).

160. *Opperman*, 428 U.S. 364.

161. *Florida v. Wells*, 495 U.S. 1 (1990); *Colorado v. Bertine*, 479 U.S. 367 (1987); *Illinois v. Lafayette*, 462 U.S. at 648; *United States v. Andrade*, 784 F.2d 1431 (9th Cir. 1986); *United States v. Rabenberg*, 766 F.2d 355 (8th Cir. 1985); *United States v. Griffin*, 729 F.2d 475 (7th Cir.) *cert. denied*, 469 U.S. 830 (1984).

162. *Mincey v. Arizona*, 437 U.S. 385, 390 (1978)

163. *United States v. Ross*, 456 U.S. 798 (1982) (upholding search of paper bag containing drugs); *Carroll v. United States*, 267 U.S. 132, 158-59 (1925) (upholding search in car upholstery for contraband whiskey).

164. *Carroll v. United States*, 267 U.S. 132 (1925); *California v. Acevedo*, 111 S. Ct. 1982 (1991) (*overruling United States v. Chadwick*, 433 U.S. 1 (1977)), which involved the search of a double locked footlocker contained within the trunk of a car.

165. *California v. Acevedo*, 111 S. Ct. 1982 (1991) (*overruling Arkansas v. Sanders*, 442 U.S. 753 (1979)) and *United States v. Chadwick*, 433 U.S. 1 (1977)).

166. *Acevedo*, 111 S. Ct. at 1988.

167. *Florida v. Wells*, 495 U.S. 1 (1990); *United States v. Ross*, 456 U.S. 798 (1982); *United States v. Johns*, 469 U.S. 478 (1985).

168. *United States v. McGuire*, 957 F.2d 310 (7th Cir. 1992).

169. *Acevedo*, 111 S. Ct. at 1988; *Ross*, 456 U.S. 798.

170. *Horton v. California*, 110 S. Ct. 2301 (1990) (eliminating requirement that the evidence be discovered 'inadvertently' by the officer).

171. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971); *Hester v. United States*, 265 U.S. 57 (1924) (open fields doctrine); *United States v. McMillon*, 350 F. Supp. 593 (D.D.C. 1972); *United States v. Fisch*, 474 F.2d 1071 (9th Cir. 1973) ("plain hearing" case wherein officers rented connecting hotel room to suspects, listened at connecting door and overheard information respecting narcotics conspiracy); *Texas v. Brown*, 460 U.S. 730 (1983) (after making a routine stop at a driver's license checkpoint, officer saw in driver's hand an opaque party balloon and in the glove compartment plastic vials, loose white powder, and extra balloons; plain view doctrine applied).

172. *United States v. Ventresca*, 380 U.S. 102 (1965) (officers smelled fermenting mash from suspected dwelling); *United States v. Johnston*, 497 F.2d 397 (9th Cir. 1974) (odor from suitcase); *United States v. Pierre*, 932 F.2d 377 (5th Cir. 1991).

173. *Compare Hernandez v. United States*, 353 F.2d 634 (9th Cir. 1966) (disallowing squeezing), with *United States v. Lovell*, 849 F.2d 910 (5th Cir. 1988); *United States v. Hahn*, 849 F.2d 932 (5th Cir. 1988).

174. *United States v. Lee*, 274 U.S. 559 (1927) (Coast Guard used search light); *On Lee v. United States*, 343 U.S. 747 (1952) (use of bifocals, field glasses, or telescope to magnify an object not forbidden); *Dow Chemical Co. v. United States*, 476 U.S. 227 (1986) (\$22,000 aerial

mapping camera to view commercial premises upheld); *Florida v. Riley*, 488 U.S. 445 (1989) (helicopter observation into defendant's residential greenhouse from 400 feet above ground fell within plain view doctrine).

175. *United States v. Kim*, 415 F. Supp 1252 (D. Haw. 1976) (800 millimeter telescope with a 60 millimeter opening to view inside suspect's apartment violated fourth amendment where enhanced to point could see what suspect was reading 1/4 mile away).

176. *Coolidge v. New Hampshire*, 403 U.S. 443 (1971); *Taylor v. United States*, 286 U.S. 1 (1932) (where police, standing where they had a right to be, saw contraband in open view in a garage by looking through a small opening, their warrantless entry to seize the contraband was unconstitutional; the information gained from the lawful view could have been used to obtain a search warrant).

177. *Cupp v. Murphy*, 412 U.S. 291 (1973).

178. *Oliver v. United States*, 466 U.S. 170 (1984); *Hester v. United States*, 265 U.S. 57 (1924).

179. *United States v. Dum*, 480 U.S. 294 (1987).

180. *Id.*

181. *Oliver v. United States*, 466 U.S. 170 (1984).

182. Section 287(e) of the Act, 8 U.S.C. § 1357(e).

183. Section 287(d) of the Act, 8 U.S.C. § 1357(d).

184. *United States v. Jacobson*, 466 U.S. 109 (1984); *United States v. Place*, 462 U.S. 696 (1983); *United States v. Beale*, 736 F.2d 1289 (9th Cir.), *cert. denied*, 496 U.S. 1072 (1984).

185. *Horton v. Goose Creek Ind. School District*, 690 F.2d 470 (5th Cir. 1982), *cert. denied*, 463 U.S. 1207 (1983); *United States v. Massac*, 867 F.2d 174 (3d Cir. 1989); *United States v. Lovell*, 849 F.2d 910 (5th Cir. 1988) (brief detention of luggage in custody of third party carrier to sniff for narcotics was not a search for fourth amendment purposes); *United States v. Gutierrez*, 849 F.2d 940 (5th Cir. 1988). *But see United States v. Cagle*, 849 F.2d 924 (5th Cir. 1988) (prolonged detention of defendant's suitcase constituted a seizure which exceeded limits of investigatory detention and could only be based upon probable cause).

186. *United States v. Taylor*, 934 F.2d 218 (9th Cir. 1991); *United States v. Morales-Zamora*, 914 F.2d 200 (10th Cir. 1990).

187. *United States v. Tartaglia*, 864 F.2d 837 (D.C. Cir. 1989); *United States v. Stone*, 866 F.2d 359 (10th Cir. 1989); *United States v. Hardy*, 855 F.2d 359 (10th Cir. 1989); *United States v. DiCesare*, 765 F.2d 890 (9th Cir.), *amended*, TTI F.2d 543 (9th Cir. 1985).

188. *United States v. Place*, 462 U.S. 696 (1983); *United States v. Lovell*, 849 F.2d 910 (5th Cir. 1988); *United States v. Attard*, 796 F.2d 257 (9th Cir. 1986); *United States v. McCranie*, 703 F.2d 1213 (10th Cir.), *cert. denied*, 464 U.S. 922 (1983) (airport); *United States v. Goldstein*, 635 F.2d 356 (5th Cir.), *cert. denied*, 452 U.S. 962 (1981) (luggage in custody of common carrier).

189. *Horton*, 690 F.2d at 481; *Jones v. Latexo Schools*, 499 F. Supp 223 (E.D. Tex. 1980). *But see Doe v. Renfrow*, 475 F. Supp. 1012 (N.D. Ind. 1979), *aff'd in part*, 631 F.2d 91 (7th Cir. 1980), *cert. denied*, 451 U.S. 1022 (1982).

190. *United States v. Thomas*, 757 F.2d 1359 (2d Cir. 1985), *cert. denied*, 474 U.S. 819 (1986); *accord*, *United States v. Dicesare*, 765 F.2d 890 (9th Cir. 1985). *But see United States v. Solis*, 536 F.2d 880 (9th Cir. 1976) (canine sniff outside a mobile home in a public place where founded suspicion preceded use of dog held to be reasonable).

191. *United States v. Erwin*, 803 F.2d 1505 (9th Cir. 1986); *United States v. Attardi*, 796 F.2d 257 (9th Cir. 1986); *United States v. McCranie*, 703 F.2d 1213 (10th Cir.), *cert. denied*, 464 U.S. 922 (1983).

192. *United States v. Massac*, 867 F.2d 174 (3d Cir. 1989); *Erwin*, 803 F.2d 1505; *McCranie*, 703 F.2d 1213; *Horton*, 690 F.2d 470.

193. *United States v. Katz*, 389 U.S. 347 (1967); *United States v. Goldstein*, 635 F.2d 356 (5th Cir.), *cert. denied*, 452 U.S. 962 (1981); *United States v. Bronstein*, 521 F.2d 459 (2d Cir. 1975), *cert. denied*, 424 U.S. 918 (1976); *see also United States v. Whitehead*, 849 F.2d 849 (4th Cir. 1988) (finding that trains, like cars, have the same type of mobility and potential for flight from the jurisdiction justifying an exception to the warrant requirement); *accord*, *United States v. Trayner*, 701 F. Supp. 250 (D.D.C. 1988); *United States v. Liberto*, 660 F. Supp. 889 (D.D.C. 1987), *aff'd*, 838 F.2d 571 (D.C. Cir. 1988).

194. *See* 8 C.F.R. § 287.4(a) for the list of INS officers authorized to issue subpoenas.

195. *See v. City of Seattle*, 387 U.S. 541, 544 (1967); *Donovan v. Lone Steer, Inc.*, 464 U.S. 408, 415 (1984).

196. The Guidelines refer to regional commissioners. As these positions no longer exist, operational units should contact the appropriate headquarters component for further direction.

197. Sections 245A(c)(5) and 210(b)(6) of the Act.

198. Section 274A(b)(5) of the Act.
199. 8 C.F.R. § 242.2(a).
200. 8 C.F.R. § 242.2(a)(3).
201. 8 C.F.R. § 242.2(a)(4).
202. *Cf.* United States v. Leon, 468 U.S. 897 (1984) (when officer acts in good faith belief that warrant was issued by magistrate but warrant was in fact defective, and action of officer is objectively reasonable, evidence seized may be admissible).
203. INS v. Lopez-Mendoza, 468 U.S. 1032 (1984).
204. *Matter of Toro*, 17 I&N Dec. 340 (BIA 1980).
205. Wong Sun v. United States, 371 U.S. 471 (1963).
206. United States v. Leon, 468 U.S. 897 (1984).
207. 403 U.S. 388 (1971).
208. Harlow v. Fitzgerald, 457 U.S. 800 (1982); Butz v. Economou, 438 U.S. 478 (1978).
209. Harlow v. Fitzgerald, 457 U.S. 800 (1982).
210. 51 Fed. Reg. 27021 (July 29, 1986).
211. 28 U.S.C. § 1679(b)(1).
212. 28 U.S.C. § 1346(b), 2680(h) (1982).
213. United States v. Gilman, 347 U.S. 507 (1954).
214. Pennington v. United States, 406 F. Supp. 850 (E.D.N.Y. 1976).
215. *See* 28 C.F.R. § 50.15 *et seq.*
216. 28 C.F.R. § 50.15(a)(4) and (b).
217. 28 C.F.R. § 50.15(a)(4)-(6).
218. 28 C.F.R. § 50.15(a)(6).
219. 28 C.F.R. § 50.15(a)(3).

98 S.Ct. 330  
Supreme Court of the United States  
Commonwealth of PENNSYLVANIA  
v.  
Harry MIMMS.

No. 76-1830. | Dec. 5, 1977.

Defendant was convicted in the Court of Common Pleas, Philadelphia County, 746 October Session, 1970, of carrying a concealed weapon and of unlawfully carrying a firearm without a license, and he appealed. The Superior Court, 314 October Term, 1973, 232 Pa.Super. 486, 335 A.2d 516, affirmed, and defendant appealed. The Supreme Court, 45 January Term, 1976, reversed and remanded, 471 Pa. 546, 370 A.2d 1157, and certiorari was granted. The Supreme Court held that: (1) where police officers on routine patrol observed defendant driving an automobile with an expired license plate and lawfully stopped vehicle for purpose of issuing a traffic summons, order of one of officers that defendant get out of automobile was reasonable and thus permissible under Fourth Amendment, notwithstanding that officers had no reason to suspect foul play from defendant at time of the stop since there had been nothing unusual or suspicious about his behavior, and (2) bulge in jacket of defendant automobile operator, who had been lawfully ordered out of automobile following stop for traffic violation, permitted officer to conclude that defendant was armed and thus posed a serious and present danger to safety of officer thus justifying "pat-down" search of defendant whereby weapon was discovered.

Judgment of Supreme Court of Pennsylvania reversed and case remanded.

Opinion on remand, 477 Pa. 553, 385 A.2d 334.

Mr. Justice Marshall dissented and filed an opinion.

Mr. Justice Stevens dissented and filed an opinion in which Mr. Justice Brennan and Mr. Justice Marshall joined.

West Headnotes (6)

[1] Criminal Law

✦ Grounds of dismissal in general

The possibility of a criminal defendant suffering collateral legal consequences from a sentence already served permits him to have his claims reviewed in Supreme Court on the merits.

31 Cases that cite this headnote

[2] Federal Courts

✦ Criminal matters

The prospect of the State's inability to impose burdens following a reversal of conviction of a criminal defendant in its own courts is sufficient to enable the State to obtain review of its claims on the merits in Supreme Court.

10 Cases that cite this headnote

[3] Searches and Seizures

✦ Fourth Amendment and reasonableness in general

Touchstone of analysis under Fourth Amendment is always the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security; reasonableness depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers. U.S.C.A.Const. Amend. 4.

398 Cases that cite this headnote

[4] Automobiles

✦ Ordering occupants out of vehicle

Where police officers on routine patrol observed defendant driving an automobile with an expired license plate and lawfully stopped vehicle for purpose of issuing a traffic summons, order of one of officers that defendant get out of automobile was reasonable and thus permissible under Fourth Amendment, notwithstanding that officers had no reason to suspect foul play from defendant at time of the stop since there had been nothing unusual or suspicious about his behavior. U.S.C.A.Const. Amends. 4, 14.

1767 Cases that cite this headnote



**[5] Automobiles**

Ordering occupants out of vehicle

Once a motor vehicle has been lawfully detained for a traffic violation, the police officer may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures. U.S.C.A.Const. Amends. 4, 14.

1788 Cases that cite this headnote

**[6] Automobiles**

Weapons; protective searches; pat-down

Bulge in jacket of defendant automobile operator, who had been lawfully ordered out of automobile following stop for traffic violation, permitted officer to conclude that defendant was armed and thus posed a serious and present danger to safety of officer thus justifying "pat-down" search of defendant whereby weapon was discovered. U.S.C.A.Const. Amends. 4, 14.

999 Cases that cite this headnote

**Opinion**

**\*106 \*\*331 PER CURIAM.**

Petitioner Commonwealth seeks review of a judgment of the Supreme Court of Pennsylvania reversing respondent's conviction for carrying a concealed deadly weapon and a firearm without a license. That court reversed the conviction because it held that respondent's "revolver was seized in a \*107 manner which violated the Fourth Amendment to the Constitution of the United States." 471 Pa. 546, 548, 370 A.2d 1157, 1158 (1977). Because we disagree with this conclusion, we grant the Commonwealth's petition for certiorari and reverse the judgment of the Supreme Court of Pennsylvania.

The facts are not in dispute. While on routine patrol, two Philadelphia police officers observed respondent Harry Mimms driving an automobile with an expired license plate. The officers stopped the vehicle for the purpose of issuing a traffic summons. One of the officers approached and asked respondent to step out of the car and produce his owner's

the officer noticed a large bulge under respondent's sports

jacket. Fearing that the bulge might be a weapon, the officer frisked respondent and discovered in his waistband a .38-caliber revolver loaded with five rounds of ammunition. The other occupant of the car was carrying a .32-caliber revolver. Respondent was immediately arrested and subsequently indicted for carrying a concealed deadly weapon and for unlawfully carrying a firearm without a license. His motion to suppress the revolver was denied; and, after a trial at which the revolver was introduced into evidence, respondent was convicted on both counts.

As previously indicated, the Supreme Court of Pennsylvania reversed respondent's conviction, however, holding that the revolver should have been suppressed because it was seized contrary to the guarantees contained in the Fourth and Fourteenth Amendments to the United States Constitution.<sup>1</sup> The Pennsylvania court did not doubt that the officers acted reasonably in stopping the car. It was also willing to assume, *arguendo*, that the limited search for weapons was proper once the officer \*\*332 observed the bulge under respondent's coat. But the court nonetheless thought the search constitutionally infirm \*108 because the officer's order to respondent to get out of the car was an impermissible "seizure." This was so because the officer could not point to "objective observable facts to support a suspicion that criminal activity was afoot or that the occupants of the vehicle posed a threat to police safety."<sup>2</sup> Since this unconstitutional intrusion led directly to observance of the bulge and to the subsequent "pat down," the revolver was the fruit of an unconstitutional search, and, in the view of the Supreme Court of Pennsylvania, should have been suppressed.

[1] [2] [3] We do not agree with this conclusion.<sup>3</sup> The touchstone of \*109 our analysis under the Fourth Amendment is always "the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security." *Terry v. Ohio*, 392 U.S. 1, 19, 88 S.Ct. 1868, 1878, 20 L.Ed.2d 889 (1968). Reasonableness, of course, depends "on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers." *United States v. Brignoni-Ponce*, 422 U.S. 873, 878, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975).

In this case, unlike *Terry v. Ohio*, there is no question about the propriety of the initial restrictions on respondent's freedom of movement. Respondent was driving an automobile with expired license tags in violation of the Pennsylvania Motor Vehicle Code.<sup>4</sup> Deferring for a moment

the legality of the “frisk” once the bulge had been observed, we need presently deal only with the narrow question of whether the order to get out of the car, issued after the driver was lawfully detained, was reasonable and thus permissible under the Fourth Amendment. This inquiry must therefore focus not on the intrusion resulting from the request to stop the vehicle or from the later “pat down,” but on the incremental intrusion resulting from the request to get out of the car once the vehicle was lawfully stopped.

Placing the question in this narrowed frame, we look first to that side of the balance which bears the officer's interest in taking the action that he did. The State **\*\*333** freely concedes the officer had no reason to suspect foul play from the particular driver at the time of the stop, there having been nothing unusual or suspicious about his behavior. It was apparently **\*110** his practice to order all drivers out of their vehicles as a matter of course whenever they had been stopped for a traffic violation. The State argues that this practice was adopted as a precautionary measure to afford a degree of protection to the officer and that it may be justified on that ground. Establishing a face-to-face confrontation diminishes the possibility, otherwise substantial, that the driver can make unobserved movements; this, in turn, reduces the likelihood that the officer will be the victim of an assault.<sup>5</sup>

We think it too plain for argument that the State's proffered justification—the safety of the officer—is both legitimate and weighty. “Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties.” *Terry v. Ohio, supra*, 392 U.S. at 23, 88 S.Ct. at 1881. And we have specifically recognized the inordinate risk confronting an officer as he approaches a person seated in an automobile. “According to one study, approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile. Bristow, Police Officer Shootings—A Tactical Evaluation, 54 J.Crim.L.C. & P.S. 93 (1963).” *Adams v. Williams*, 407 U.S. 143, 148 n. 3, 92 S.Ct. 1921, 1924, 32 L.Ed.2d 612 (1972). We are aware that not all these assaults occur when issuing traffic summons, but we have before expressly declined to accept the argument that traffic violations necessarily involve less danger to officers than other types of confrontations. *United States v. Robinson*, 414 U.S. 218, 234, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973). Indeed, it appears “that a significant percentage of murders of police officers occurs when the officers are making traffic stops.” *Id.*, at 234, n. 5, 94 S.Ct. at 476, n. 5.

**\*111** The hazard of accidental injury from passing traffic to an officer standing on the driver's side of the vehicle

may also be appreciable in some situations. Rather than conversing while standing exposed to moving traffic, the officer prudently may prefer to ask the driver of the vehicle to step out of the car and off onto the shoulder of the road where the inquiry may be pursued with greater safety to both.

**[4] [5]** Against this important interest we are asked to weigh the intrusion into the driver's personal liberty occasioned not by the initial stop of the vehicle, which was admittedly justified, but by the order to get out of the car. We think this additional intrusion can only be described as *de minimis*. The driver is being asked to expose to view very little more of his person than is already exposed. The police have already lawfully decided that the driver shall be briefly detained; the only question is whether he shall spend that period sitting in the driver's seat of his car or standing alongside it. Not only is the insistence of the police on the latter choice not a “serious intrusion upon the sanctity of the person,” but it hardly rises to the level of a “‘petty indignity.’” *Terry v. Ohio, supra*, 392 U.S. at 17, 88 S.Ct. at 1877. What is at most a mere inconvenience cannot prevail when balanced against legitimate concerns for the officer's safety.<sup>6</sup>

**\*\*334 [6]** There remains the second question of the propriety of the search once the bulge in the jacket was observed. We have as little doubt on this point as on the first; the answer is controlled by *Terry v. Ohio, supra*. In that case we thought the officer justified in conducting a limited search for weapons **\*112** once he had reasonable concluded that the person whom he had legitimately stopped might be armed and presently dangerous. Under the standard enunciated in that case—whether “the facts available to the officer at the moment of the seizure or the search ‘warrant a man of reasonable caution in the belief’ that the action taken was appropriate”<sup>7</sup>—there is little question the officer was justified. The bulge in the jacket permitted the officer to conclude that Mimms was armed and thus posed a serious and present danger to the safety of the officer. In these circumstances, any man of “reasonable caution” would likely have conducted the “pat down.”

Respondent's motion to proceed *in forma pauperis* is granted. The petition for writ of certiorari is granted, the judgment of the Supreme Court of Pennsylvania is reversed, and the case is remanded for further proceedings not inconsistent with this opinion.

*It is so ordered.*

Mr. Justice MARSHALL, dissenting.

I join my Brother STEVENS' dissenting opinion, but I write separately to emphasize the extent to which the Court today departs from the teachings of *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

In *Terry* the policeman who detained and “frisked” the petitioner had for 30 years been patrolling the area in downtown Cleveland where the incident occurred. His experience led him to watch petitioner and a companion carefully, for a long period of time, as they individually and repeatedly looked into a store window and then conferred together. Suspecting that the two men might be “casing” the store for a “stick-up” and that they might have guns, the officer followed them as they walked away and joined a third man with whom they had earlier conferred. At this point the officer approached the men and asked for their names. When they “mumbled something” in response, the officer grabbed petitioner, spun \*113 him around to face the other two, and “patted down” his clothing. This frisk led to discovery of a pistol and to petitioner's subsequent weapons conviction. *Id.*, at 5–7, 88 S.Ct., at 1871–1872.

The “stop and frisk” in *Terry* was thus justified by the probability, not only that a crime was about to be committed, but also that the crime “would be likely to involve the use of weapons.” *Id.*, at 28, 88 S.Ct., at 1883. The Court confined its holding to situations in which the officer believes that “the persons with whom he is dealing may be armed and presently dangerous” and “fear[s] for his own or others' safety.” *Id.*, at 30, 88 S.Ct., at 1884. Such a situation was held to be present in *Adams v. Williams*, 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972), which involved a person who “was reported to be carrying . . . a concealed weapon.” *Id.*, at 147, 92 S.Ct., at 1924; see *id.*, at 146, 148, 92 S.Ct., at 1923, 1924.

In the instant case, the officer did not have even the slightest hint, prior to ordering respondent out of the car, that respondent might have a gun. As the Court notes, *ante*, at 333, “the officer had no reason to suspect foul play.” The car was stopped for the most routine of police procedures, the issuance of a summons for an expired license plate. Yet the Court holds that, once the officer had made this routine stop, he was justified in imposing the additional intrusion of ordering respondent out of the car, regardless of whether there was any individualized reason to fear respondent.

Such a result cannot be explained by *Terry*, which limited the nature of the intrusion by reference to the reason for the stop. The Court held that “the officer's action [must be] reasonably related in scope to the \*\*335 circumstances which justified the interference in the first place.” 392 U.S., at 20, 88 S.Ct., at 1879.<sup>1</sup> In *Terry* there was an obvious connection, emphasized by the Court, *id.*, at 28–30, 88 S.Ct., at 1883–1884, between the officer's suspicion that an armed robbery was being planned and his frisk for weapons. \*114 In the instant case “the circumstance . . . which justified the interference in the first place” was an expired license plate. There is simply no relation at all between that circumstance and the order to step out of the car.

The institutional aspects of the Court's decision trouble me as much as does the Court's substantive result. The Court extends *Terry*'s expressly narrow holding, see *id.*, at 30, 88 S.Ct., at 1884, solely on the basis of certiorari papers, and in the process summarily reverses the considered judgment of Pennsylvania's highest court. Such a disposition cannot engender respect for the work of this Court.<sup>2</sup> That we are deciding such an important issue by “reach[ing] out” in a case that “barely escapes mootness,” as noted by Mr. Justice STEVENS, *post*, at 336 n. 4, and that may well be resolved against the State on remand in any event,<sup>3</sup> simply reinforces my view that the Court does \*115 institutional as well as doctrinal damage by the course it pursues today. I dissent.

Mr. Justice STEVENS, with whom Mr. Justice BRENNAN and Mr. Justice MARSHALL join, dissenting.

Almost 10 years ago in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889, the Court held that “probable cause” was not required to justify every seizure of the person by a police officer. That case was decided after six months of deliberation following full argument and unusually elaborate briefing.<sup>1</sup> The approval in *Terry* of a \*\*336 lesser standard for certain limited situations represented a major development in Fourth Amendment jurisprudence.

Today, without argument, the Court adopts still another—and \*116 even lesser—standard of justification for a major category of police seizures.<sup>2</sup> More importantly, it appears to abandon “the central teaching of this Court's Fourth Amendment jurisprudence”<sup>3</sup>—which has ordinarily required individualized inquiry into the particular facts justifying every police intrusion—in favor of a general rule covering countless situations. But what is most disturbing is



the fact that this important innovation is announced almost casually, in the course of explaining the summary reversal of a decision the Court should not even bother to review.

Since Mimms has already served his sentence, the importance of reinstating his conviction is minimal at best.<sup>4</sup> Even if the Pennsylvania Supreme Court has afforded him greater protection than is required by the Federal Constitution, the conviction may be invalid under state law.<sup>5</sup> Moreover, the \*117 Pennsylvania Supreme Court may still construe its own constitution to prohibit what it described as the “indiscriminate procedure” of ordering all traffic offenders out of their vehicles. 471 Pa. 546, 553, 370 A.2d 1157, 1161.<sup>6</sup> In all events, whatever error the state court has committed affects only the Commonwealth of Pennsylvania. Its decision creates no conflict requiring resolution by this Court on a national level. In most cases, these considerations would cause us to deny certiorari.

No doubt it is a legitimate concern about the safety of police officers throughout the Nation that prompts the Court to give this case such expeditious treatment. I share that concern and am acutely aware that almost every decision of this Court holding that an individual's Fourth Amendment rights have been invaded makes law enforcement somewhat more difficult and hazardous. That, however, is not a sufficient reason for this Court to reach out to decide every new Fourth Amendment issue as promptly as possible. In this area of constitutional adjudication, as in all others, it is of paramount importance that the Court have the benefit of differing judicial evaluations of an issue before it is finally resolved on a nationwide basis.

This case illustrates two ways in which haste can introduce a new element of confusion \*\*337 into an already complex set of rules. First, the Court has based its legal ruling on a factual assumption about police safety that is dubious at best; second, the Court has created an entirely new legal standard of justification for intrusions on the liberty of the citizen.

Without any attempt to differentiate among the multitude of varying situations in which an officer may approach a person \*118 seated in an automobile, the Court characterizes the officer's risk as “inordinate” on the basis of this statement: “ ‘According to one study, approximately 30% of police shootings occurred when a police officer approached a suspect seated in an automobile. Bristow, Police Officer Shootings—A Tactical Evaluation, 54 J.Crim.L.C. & P.S. 93 (1963).’ *Adams v. Williams*, 407 U.S. 143, 148 n. 3, 92 S.Ct. 1921, 1924, 32 L.Ed.2d 612 (1972).” *Ante*, at 333.

That statement does not fairly characterize the study to which it refers. Moreover, the study does not indicate that police officers can minimize the risk of being shot by ordering drivers stopped for routine traffic violations out of their cars. The study reviewed 110 selected police shootings that occurred in 1959, 1960, and 1961.<sup>7</sup> In 35 of those cases, “officers were attempting to investigate, control, or pursue suspects who were in automobiles.”<sup>8</sup> Within the group of 35 cases, there were examples of officers who “were shot through the windshield or car body while their vehicle was moving”; examples in which “the officer was shot while dismounting from his vehicle or while approaching the suspect[']s vehicle”; and, apparently, instances in which the officer was shot by a passenger in the vehicle. Bristow, *supra*, n. 7, at 93.

In only 28 of the 35 cases was the location of the suspect who shot the officer verified. In 12 of those cases the suspect was seated behind the wheel of the car, but that figure seems to include cases in which the shooting occurred before the officer had an opportunity to order the suspect to get out. In \*119 nine cases the suspect was outside the car talking to the officer when the shooting occurred.

These figures tell us very little about the risk associated with the routine traffic stop;<sup>9</sup> and they lend no support to the Court's assumption that ordering the routine traffic offender out of his car significantly enhances the officer's safety. Arguably, such an order could actually aggravate the officer's danger because the fear of a search might cause a serious offender to take desperate action that would be unnecessary if he remained in the vehicle while being ticketed. Whatever the reason, it is significant that some experts in this area of human behavior strongly recommend that the police officer “never allow the violator to get out of the car . . . .”<sup>10</sup>

\*\*338 Obviously, it is not my purpose to express an opinion on the \*120 safest procedure to be followed in making traffic arrests or to imply that the arresting officer faces no significant hazard, even in the apparently routine situation. I do submit, however, that no matter how hard we try we cannot totally eliminate the danger associated with law enforcement, and that, before adopting a nationwide rule, we should give further consideration to the infinite variety of situations in which today's holding may be applied.

The Court cannot seriously believe that the risk to the arresting officer is so universal that his safety is *always* a



reasonable justification for ordering a driver out of his car. The commuter on his way home to dinner, the parent driving children to school, the tourist circling the Capitol, or the family on a Sunday afternoon outing hardly pose the same threat as a driver curbed after a high-speed chase through a high-crime area late at night. Nor is it universally true that the driver's interest in remaining in the car is negligible. A woman stopped at night may fear for her own safety; a person \*121 in poor health may object to standing in the cold or rain; another who left home in haste to drive children or spouse to school or to the train may not be fully dressed; an elderly driver who presents no possible threat of violence may regard the police command as nothing more than an arrogant and unnecessary display of authority. Whether viewed from the standpoint of the officer's interest in his own safety, or of the citizen's interest in not being required to obey an arbitrary command, it is perfectly obvious that the millions of traffic stops that occur every year are not fungible.

Until today the law applicable to seizures of a person has required individualized inquiry into the reason for each intrusion, or some comparable guarantee against arbitrary harassment.<sup>11</sup> A factual demonstration \*\*339 of probable cause is required \*122 to justify an arrest; an articulable reason to suspect criminal activity and possible violence is needed to justify a stop and frisk. But to eliminate any requirement that an officer be able to explain the reasons for his actions signals an abandonment of effective judicial supervision of this kind of seizure and leaves police discretion utterly without limits. Some citizens will be subjected to this minor indignity while others—perhaps those with more expensive cars, or different bumper stickers, or different-colored skin—may escape it entirely.

The Court holds today that “third-class” seizures may be imposed without reason; how large this class of seizures may be or become we cannot yet know. Most narrowly, the Court has simply held that whenever an officer has an occasion to speak with the driver of a vehicle, he may also order the driver out of the car. Because the balance of convenience and danger is no different for passengers in stopped cars, the Court's logic necessarily encompasses the passenger. This is true even though the passenger has committed no traffic offense. If the rule were limited to situations in which individualized inquiry identified a basis for concern in particular cases, then the character of the violation might justify different treatment

of the driver and the passenger. But when the justification rests on nothing more than an assumption about the danger associated with every stop—no matter how trivial \*123 the offense—the new rule must apply to the passenger as well as to the driver.

If this new rule is truly predicated on a safety rationale—rather than a desire to permit pretextual searches—it should also justify a frisk for weapons, or at least an order directing the driver to lean on the hood of the car with legs and arms spread out. For unless such precautionary measures are also taken, the added safety—if any—in having the driver out of the car is of no value when a truly dangerous offender happens to be caught.<sup>12</sup>

I am not yet persuaded that the interest in police safety requires the adoption of a standard any more lenient than that permitted by *Terry v. Ohio*.<sup>13</sup> In this case the offense might well have gone undetected if respondent had not been ordered out of his car, but there is no reason to assume that he otherwise would have shot the officer. Indeed, there has been no showing of which I am aware that the *Terry* standard will not provide the police with a sufficient basis to \*\*340 take appropriate protective measures whenever there is any real basis for concern. When that concern does exist, they should be able to frisk a violator, but I question the need to eliminate the requirement of an articulable justification in each case and to authorize the indiscriminate invasion of the liberty of every citizen stopped for a traffic violation, no matter how petty.

Even if the Pennsylvania Supreme Court committed error, that is not a sufficient justification for the exercise of this \*124 Court's discretionary power to grant review, or for the summary disposition of a novel constitutional question. For this kind of disposition gives rise to an unacceptable risk of error and creates “the unfortunate impression that the Court is more interested in upholding the power of the State than in vindicating individual rights.” *Idaho Dept. of Employment v. Smith*, 434 U.S. 100, 105, 98 S.Ct. 327, 330, 54 L.Ed.2d 324 (Stevens, J., dissenting).

I respectfully dissent from the grant of certiorari and from the decision on the merits without full argument and briefing.

#### All Citations

434 U.S. 106, 98 S.Ct. 330, 54 L.Ed.2d 331

#### Footnotes

1 Three judges dissented on the federal constitutional issue.

2 471 Pa., at 552, 370 A.2d, at 1160.

3 We note that in his brief in opposition to a grant of certiorari respondent contends that this case is moot because he has already completed the 3-year maximum of the 1½- to 3-year sentence imposed. The case has, he argues, terminated against him for all purposes and for all time regardless of this Court's disposition of the matter. See *St. Pierre v. United States*, 319 U.S. 41, 63 S.Ct. 910, 87 L.Ed. 1199 (1943).

But cases such as *Sibron v. New York*, 392 U.S. 40, 53–57, 88 S.Ct. 1889, 1897–1900, 20 L.Ed.2d 917 (1968); *Street v. New York*, 394 U.S. 576, 89 S.Ct. 1354, 22 L.Ed.2d 572 (1969); *Carafas v. LaVallee*, 391 U.S. 234, 88 S.Ct. 1556, 20 L.Ed.2d 554 (1968); and *Ginsberg v. New York*, 390 U.S. 629, 88 S.Ct. 1274, 20 L.Ed.2d 195 (1968), bear witness to the fact that this Court has long since departed from the rule announced in *St. Pierre*, *supra*. These more recent cases have held that the possibility of a criminal defendant's suffering "collateral legal consequences" from a sentence already served permits him to have his claims reviewed here on the merits. If the prospect of the State's visiting such collateral consequences on a criminal defendant who has served his sentence is a sufficient burden as to enable him to seek reversal of a decision affirming his conviction, the prospect of the State's inability to impose such a burden following a reversal of the conviction of a criminal defendant in its own courts must likewise be sufficient to enable the State to obtain review of its claims on the merits here. In any future state criminal proceedings against respondent, this conviction may be relevant to setting bail and length of sentence, and to the availability of probation. 18 Pa.Cons.Stat. Ann. §§ 1321, 1322, 1331, 1332 (Purdon Supp. 1977); Pa. Rule Crim. Proc. 4004. In view of the fact that respondent, having fully served his state sentence, is presently incarcerated in the federal penitentiary at Lewisburg, Pa., we cannot say that such considerations are unduly speculative even if a determination of mootness depended on a case-by-case analysis.

4 Operating an improperly licensed motor vehicle was at the time of the incident covered by 1959 Pa. Laws, No. 32, which was found in Pa. Stat. Ann., Tit. 75, § 511(a) (Purdon 1971), and has been repealed by 1976 Pa. Laws, No. 81, § 7, effective July 1, 1977. This offense now appears to be covered by 75 Pa. Cons. Stat. Ann. §§ 1301, 1302 (Purdon 1977).

5 The State does not, and need not, go so far as to suggest that an officer may frisk the occupants of any car stopped for a traffic violation. Rather, it only argues that it is permissible to order the driver out of the car. In this particular case, argues the State, once the driver alighted, the officer had independent reason to suspect criminal activity and present danger and it was upon this basis, and not the mere fact that respondent had committed a traffic violation, that he conducted the search.

6 Contrary to the suggestion in the dissent of our Brother STEVENS, *post*, at 339, we do not hold today that "whenever an officer has an occasion to speak with the driver of a vehicle, he may also order the driver out of the car." We hold only that once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment's proscription of unreasonable searches and seizures.

7 392 U.S., at 21–22, 88 S.Ct., at 1880.

1 See also 392 U.S., at 19, 88 S.Ct., at 1878 ("[t]he scope of the search must be 'strictly tied to and justified by' the circumstances which rendered its initiation permissible"); *id.*, at 29–30, 88 S.Ct., at 1884–1885.

2 Professor Ernest Brown wrote nearly 20 years ago:

"[S]ummary reversal on certiorari papers appears in many cases to raise serious question whether there has not been decision without that hearing usually thought due from judicial tribunals. . . . [T]here [is] the question whether the Court does not pay a disproportionate price in public regard when it defeats counsel's reasonable expectation of a hearing, based upon the Court's own rules. If the Court exercises its certiorari jurisdiction to deal with problems of national legal significance, it hardly needs demonstration that such matters warrant hearing on the merits." The Supreme Court 1957 Term—Foreword: Process of Law, 72 Harv. L. Rev. 77, 80, 82 (1958).

See also R. Stern & E. Gressman, *Supreme Court Practice* § 5.12 (4th ed. 1969). Mr. Justice BRENNAN has singled out cases from the state courts as ones where we should be particularly reluctant to reverse summarily. *State Court Decisions and the Supreme Court*, 31 Pa. Bar Assn. Q. 393, 403 (1960).

3 On remand the Pennsylvania Supreme Court will have open to it the option of reaching the same result that it originally reached, but doing so under its state counterpart of the Fourth Amendment, Pa. Const., Art. 1, § 8, rather than under the Federal Constitution. A disposition on such an independent and adequate state ground is not, and could not be, in any way foreclosed by this Court's decision today, nor could this Court review a decision of this nature. See generally Brennan, *State Constitutions and the Protection of Individual Rights*, 90 Harv. L. Rev. 489 (1977); Project Report: *Toward an Activist Role for State Bills of Rights*, 8 Harv. Civ. Rights—Civ. Lib. L. Rev. 271 (1973).

In addition, respondent's conviction may be reversed on a ground entirely unrelated to the search at issue here. At trial the prosecutor questioned a defense witness about respondent's religious affiliation, a matter not raised on direct

examination of the witness. Two concurring justices of the Pennsylvania Supreme Court contended that this questioning provided an independent reason for reversing respondent's conviction under Pennsylvania law. 471 Pa. 546, 556–557, 370 A.2d 1157, 1162–1163 (1977) (Nix, J., joined by O'Brien, J., concurring).

1 Briefs of *amici curiae*, urging reversal, were filed by Jack Greenberg, James M. Nabrit III, Michael Meltsner, Melvyn Zarr, and Anthony G. Amsterdam for the NAACP Legal Defense and Educational Fund, Inc., and by Bernard A. Berkman, Melvin L. Wulf, and Alan H. Levine for the American Civil Liberties Union et al.

Briefs of *amici curiae*, urging affirmance, were filed by Solicitor General Griswold, Assistant Attorney General Vinson, Ralph S. Spritzer, Beatrice Rosenberg, and Mervyn Hamburg for the United States; by Louis J. Lefkowitz, *pro se*, Samuel A. Hirshowitz, First Assistant Attorney General, and Maria L. Marcus and Brenda Soloff, Assistant Attorneys General, for the Attorney General of New York; by Charles Moylan, Jr., Evelle J. Younger, and Harry Wood for the National District Attorneys' Assn.; and by James R. Thompson for Americans for Effective Law Enforcement. See 392 U.S., at 4, 88 S.Ct., at 1871.

2 The Court does not dispute, nor do I, that ordering Mimms out of his car was a seizure. A seizure occurs whenever an "officer, by means of physical force or show of authority, . . . in some way restrain[s] the liberty of a citizen . . ." *Id.*, at 19 n. 16, 88 S.Ct., at 1879 n. 16. See also *Adams v. Williams*, 407 U.S. 143, 146, 92 S.Ct. 1921, 1923, 32 L.Ed.2d 612.

3 In *Terry*, the Court made it clear that the reasonableness of a search is to be determined by an inquiry into the facts of each case:

"[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." 392 U.S., at 21, 88 S.Ct., at 1880.

In a footnote, the Court continued:

"This demand for specificity in the information upon which police action is predicated is the central teaching of this Court's Fourth Amendment jurisprudence." *Id.*, at 21 n. 18, 88 S.Ct., at 1880 n. 18 (citing a long list of authorities).

4 For the reasons stated in n. 3 of the Court's opinion, I agree that the case is not moot. Nevertheless, the fact that the case barely escapes mootness supports the conclusion that certiorari should be denied.

5 Two members of the court were persuaded that introducing testimony about Mimms' Muslim religious beliefs was prejudicial error, and three others specifically reserved the issue. 471 Pa. 546, 555 n. 2, and 556–557, 370 A.2d 1157, 1158 n. 2, and 1162–1163.

6 Cf. *State v. Opperman*, 89 S.D. 25, 228 N.W.2d 152 (1975), rev'd, 428 U.S. 364, 96 S.Ct. 3092, 49 L.Ed.2d 1000, judgment reinstated under state constitution, — S.D. —, 247 N.W.2d 673 (1976).

7 As the author pointed out, "[n]o attempt was made to obtain a random selection of these cases, as they were extremely hard to collect." Bristow, *Police Officer Shootings—A Tactical Evaluation*, 54 J.Crim.L.C. & P.S. 93 (1963).

8 *Ibid.* Since 35 is 32% of 110, presumably this is the basis for the "30%" figure used in the Court's statement. As the text indicates, however, not all of these cases involved police officers approaching a parked vehicle. Whether any of the incidents involved routine traffic offenses, such as driving with an expired license tag, is not indicated in the study.

9 Over the past 10 years, more than 1,000 police officers have been murdered. FBI, *Uniform Crime Reports 289* (1977). Approximately 10% of those killings, or about 11 each year, occurred during "traffic pursuits and stops," but it is not clear how many of those pursuits and stops involved offenses such as reckless or high-speed driving, rather than offenses such as driving on an expired license, or how often the shootings could have been avoided by ordering the driver to dismount.

10 "2. *Never allow the violator to get out of the car* and stand to its left. If he does get out, which should be avoided, walk him to the rear and right side of the car. Quite obviously this is a much safer area to conduct a conversation." V. Folley, *Police Patrol Techniques and Tactics* 95 (1973) (emphasis in original).

Another authority is even more explicit:

"The officer should stand slightly to the rear of the front door and doorpost. This will prevent the violator from suddenly opening the door and striking the officer. In order to thoroughly protect himself as much as possible, the officer should reach with his weak hand and push the lock button down if the window is open. This will give an indication to the driver that he is to remain inside the vehicle. It will also force the driver to turn his head to talk with the officer.

"The officer should advise the violator why he was stopped and then explain what action the officer intends to take, whether it is a verbal or written warning, or a written citation. If the suspect attempts to exit his vehicle, the officer should push the door closed, lock it, if possible, and tell the driver to 'please stay in the car!' Then he should request [the] identification he desires and request the violator to hand the material out of the window away from the vehicle. The officer should not stare at the identification but [should] return to his vehicle by backing away from the suspect car. As the patrolman backs away, he should keep his eyes on the occupant(s).



"The officer should remain outside of the patrol unit to use the radio or to write a ticket. The recommended position for him at this time would be to the right side of the patrol unit. Should the driver of the violator vehicle make exit from his seat, the officer should direct the violator to the rear center of his vehicle or the front center area of the patrol unit. Preferably, the officer should verbally attempt to get the violator to re-enter and remain in the vehicle." A. Yount, *Vehicle Stops Manual, Misdemeanor and Felony 2-3* (1976).

Conflicting advice is found in an earlier work, G. Payton, *Patrol Procedure* 298 (4th ed. 1971). It is worth noting that these authorities suggest that any danger to the officer from passing traffic may be greatly reduced by the simple and unintrusive expedient of parking the police car behind, and two or three feet to the left of, the offender's vehicle. Folley, *supra*, at 93; *Payton, supra*, at 301; *Yount, supra* at 2.

11 Government intrusions must be justified with particularity in all but a few narrowly cabined contexts. Inspections pursuant to a general regulatory scheme and stops at border checkpoints are the best known exceptions to the particularity requirement. And even these limited exceptions fit within a broader rule—that the general populace should never be subjected to seizures without some assurance that the intruding officials are acting under a carefully limited grant of discretion. Health and safety inspections may be conducted only if the inspectors obtain warrants, though the warrants may be broader than the ordinary search warrant; officials may not wander at large in the city, conducting inspections without reason. *Camara v. Municipal Court*, 387 U.S. 523, 87 S.Ct. 1727, 18 L.Ed.2d 930. Similar assurances of regularity and fairness can be found in public, fixed checkpoints:

"[C]heckpoint operations both appear to and actually involve less discretionary enforcement activity [than stops by roving patrols]. The regularized manner in which established checkpoints are operated is visible evidence, reassuring to law-abiding motorists, that the stops are duly authorized and believed to serve the public interest. The location of a fixed checkpoint is not chosen by officers in the field, but by officials responsible for making overall decisions as to the most effective allocation of limited enforcement resources. We may assume that such officials will be unlikely to locate a checkpoint where it bears arbitrarily or oppressively on motorists as a class. And since field officers may stop only those cars passing the checkpoint, there is less room for abusive or harassing stops of individuals than . . . in the case of roving-patrol stops." *United States v. Martinez-Fuerte*, 428 U.S. 543, 559, 96 S.Ct. 3074, 3083, 49 L.Ed.2d 1116.

There is, of course, a general rule authorizing searches incident to full custodial arrests, but in such cases an individualized determination of probable cause adequately justifies both the search and the seizure. In that situation, unlike this one, the intrusion on the citizen's liberty is "strictly circumscribed by the exigencies which justify its initiation." *Terry v. Ohio*, 392 U.S. 1, 26, 88 S.Ct. 1868, 1882, 20 L.Ed.2d 889. In this case, there was no custodial arrest, and I assume (perhaps somewhat naively) that the offense which gave rise to the stop of Mimms' car would not have warranted a full custodial arrest without some additional justification. See *Gustafson v. Florida*, 414 U.S. 260, 266–267, 94 S.Ct. 488, 492–493, 38 L.Ed.2d 456 (Stewart, J., concurring); *id.*, at 238 n. 2, 94 S.Ct., 494 n. 2 (Powell, J., concurring).

12 *Terry v. Ohio, supra*, at 33, 88 S.Ct., at 1886 (Harlan, J., concurring):

"Just as a full search incident to a lawful arrest requires no additional justification, a limited frisk incident to a lawful stop must often be rapid and routine. There is no reason why an officer, rightfully but forcibly confronting a person suspected of a serious crime, should have to ask one question and take the risk that the answer might be a bullet."

13 I do not foreclose the possibility that full argument would convince me that the Court's analysis of the merits is correct. My limited experience has convinced me that one's initial impression of a novel issue is frequently different from his final evaluation.



## Syllabus

MARYLAND *v.* WILSONCERTIORARI TO THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 95–1268. Argued December 11, 1996—Decided February 19, 1997

After stopping a speeding car in which respondent Wilson was a passenger, a Maryland state trooper ordered Wilson out of the car upon noticing his apparent nervousness. When Wilson exited, a quantity of cocaine fell to the ground. He was arrested and charged with possession of cocaine with intent to distribute. The Baltimore County Circuit Court granted his motion to suppress the evidence, deciding that the trooper's ordering him out of the car constituted an unreasonable seizure under the Fourth Amendment. The Maryland Court of Special Appeals affirmed, holding that the rule of *Pennsylvania v. Mimms*, 434 U.S. 106, that an officer may as a matter of course order the driver of a lawfully stopped car to exit his vehicle, does not apply to passengers.

*Held:* An officer making a traffic stop may order passengers to get out of the car pending completion of the stop. Statements by the Court in *Michigan v. Long*, 463 U.S. 1032, 1047–1048 (*Mimms* “held that police may order *persons* out of an automobile during a [traffic] stop” (emphasis added)), and by Justice Powell in *Kakas v. Illinois*, 439 U.S. 128, 155, n. 4 (*Mimms* held “that *passengers* . . . have no Fourth Amendment right not to be ordered from their vehicle, once a proper stop is made” (emphasis added)), do not constitute binding precedent, since the former statement was dictum, and the latter was contained in a concurrence. Nevertheless, the *Mimms* rule applies to passengers as well as to drivers. The Court therein explained that the touchstone of Fourth Amendment analysis is the reasonableness of the particular governmental invasion of a citizen's personal security, 434 U.S., at 108–109, and that reasonableness depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by officers, *id.*, at 109. On the public interest side, the same weighty interest in officer safety is present regardless of whether the occupant of the stopped car is a driver, as in *Mimms*, see *id.*, at 109–110, or a passenger, as here. Indeed, the danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car. On the personal liberty side, the case for passengers is stronger than that for the driver in the sense that there is probable cause to believe that the driver has committed a minor vehicular offense, see *id.*, at 110, but there is no such reason to stop or detain

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passengers. But as a practical matter, passengers are already stopped by virtue of the stop of the vehicle, so that the additional intrusion upon them is minimal. Pp. 411–415.

106 Md. App. 24, 664 A. 2d 1, reversed and remanded.

REHNQUIST, C. J., delivered the opinion of the Court, in which O'CONNOR, SCALIA, SOUTER, THOMAS, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed a dissenting opinion, in which KENNEDY, J., joined, *post*, p. 415. KENNEDY, J., filed a dissenting opinion, *post*, p. 422.

*J. Joseph Curran, Jr.*, Attorney General of Maryland, argued the cause for petitioner. With him on the briefs were *Gary E. Bair*, *Mary Ellen Barbera*, and *Kathryn Grill Graeff*, Assistant Attorneys General.

*Byron L. Warnken*, by appointment of the Court, 519 U. S. 804 (1996), argued the cause and filed a brief for respondent.

*Attorney General Reno* argued the cause for the United States as *amicus curiae* urging reversal. On the brief were *Acting Solicitor General Dellinger*, *Acting Assistant Attorney General Keeney*, *Deputy Solicitor General Dreeben*, *David C. Frederick*, and *Nina Goodman*.\*

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\*Briefs of *amici curiae* urging reversal were filed for the State of Ohio et al. by *Betty D. Montgomery*, Attorney General of Ohio, *Jeffrey S. Sutton*, State Solicitor, and *Simon B. Karas* and *Stuart A. Cole*, Assistant Attorneys General, joined by the Attorneys General for their respective jurisdictions as follows: *Jeff Sessions* of Alabama, *Grant Woods* of Arizona, *Winston Bryant* of Arkansas, *Daniel E. Lungren* of California, *Gale A. Norton* of Colorado, *Richard Blumenthal* of Connecticut, *M. Jane Brady* of Delaware, *Robert Butterworth* of Florida, *James E. Ryan* of Illinois, *Tom Miller* of Iowa, *Carla J. Stovall* of Kansas, *A. B. Chandler III* of Kentucky, *Richard P. Ieyoub* of Louisiana, *Scott Harshbarger* of Massachusetts, *Frank J. Kelley* of Michigan, *Hubert Humphrey III* of Minnesota, *Mike Moore* of Mississippi, *Joseph P. Mazurek* of Montana, *Don Stenberg* of Nebraska, *Frankie Sue Del Papa* of Nevada, *Jeffrey R. Howard* of New Hampshire, *Tom Udall* of New Mexico, *Dennis C. Vacco* of New York, *Michael F. Easley* of North Carolina, *Heidi Heitkamp* of North Dakota, *W. A. Drew Edmondson* of Oklahoma, *Theodore Kulongoski* of Oregon, *Thomas Corbett, Jr.*, of Pennsylvania, *Jeffrey B. Pine* of Rhode Island, *Charles Condon* of South Carolina, *Mark W. Barnett* of South Dakota,

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CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

In this case we consider whether the rule of *Pennsylvania v. Mimms*, 434 U. S. 106 (1977) (*per curiam*), that a police officer may as a matter of course order the driver of a lawfully stopped car to exit his vehicle, extends to passengers as well. We hold that it does.

At about 7:30 p.m. on a June evening, Maryland state trooper David Hughes observed a passenger car driving southbound on I-95 in Baltimore County at a speed of 64 miles per hour. The posted speed limit was 55 miles per hour, and the car had no regular license tag; there was a torn piece of paper reading "Enterprise Rent-A-Car" dangling from its rear. Hughes activated his lights and sirens, signaling the car to pull over, but it continued driving for another mile and a half until it finally did so.

During the pursuit, Hughes noticed that there were three occupants in the car and that the two passengers turned to look at him several times, repeatedly ducking below sight level and then reappearing. As Hughes approached the car on foot, the driver alighted and met him halfway. The driver was trembling and appeared extremely nervous, but nonetheless produced a valid Connecticut driver's license. Hughes instructed him to return to the car and retrieve the rental documents, and he complied. During this encounter, Hughes noticed that the front-seat passenger, respondent Jerry Lee Wilson, was sweating and also appeared extremely

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*Charles W. Burson* of Tennessee, *Jan Graham* of Utah, *Jeffrey L. Amestoy* of Vermont, *Julio A. Brady* of the U. S. Virgin Islands, *Christine O. Gregoire* of Washington, *Darrell McGraw, Jr.*, of West Virginia, and *James E. Doyle* of Wisconsin; for Americans for Effective Law Enforcement, Inc., et al. by *Fred E. Inbau*, *Wayne W. Schmidt*, *Robert Weuenerholm*, *James P. Manek*, *John Kaye*, *Richard M. Weintraub*, and *Bernard J. Farber*; for the National Association of Police Organizations, Inc., by *William J. Johnson*; and for the Criminal Justice Legal Foundation by *Kent S. Scheidegger* and *Charles L. Hobson*.

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nervous. While the driver was sitting in the driver's seat looking for the rental papers, Hughes ordered Wilson out of the car.

When Wilson exited the car, a quantity of crack cocaine fell to the ground. Wilson was then arrested and charged with possession of cocaine with intent to distribute. Before trial, Wilson moved to suppress the evidence, arguing that Hughes' ordering him out of the car constituted an unreasonable seizure under the Fourth Amendment. The Circuit Court for Baltimore County agreed, and granted respondent's motion to suppress. On appeal, the Court of Special Appeals of Maryland affirmed, 106 Md. App. 24, 664 A. 2d 1 (1995), ruling that *Pennsylvania v. Mimms* does not apply to passengers. The Court of Appeals of Maryland denied certiorari. 340 Md. 502, 667 A. 2d 342 (1995). We granted certiorari, 518 U. S. 1003 (1996), and now reverse.

In *Mimms*, we considered a traffic stop much like the one before us today. There, Mimms had been stopped for driving with an expired license plate, and the officer asked him to step out of his car. When Mimms did so, the officer noticed a bulge in his jacket that proved to be a .38-caliber revolver, whereupon Mimms was arrested for carrying a concealed deadly weapon. Mimms, like Wilson, urged the suppression of the evidence on the ground that the officer's ordering him out of the car was an unreasonable seizure, and the Pennsylvania Supreme Court, like the Court of Special Appeals of Maryland, agreed.

We reversed, explaining that “[t]he touchstone of our analysis under the Fourth Amendment is always ‘the reasonableness in all the circumstances of the particular governmental invasion of a citizen’s personal security,’” 434 U. S., at 108–109 (quoting *Terry v. Ohio*, 392 U. S. 1, 19 (1968)), and that reasonableness “depends ‘on a balance between the public interest and the individual’s right to personal security free from arbitrary interference by law officers,’” 434 U. S., at 109 (quoting *United States v. Brignoni-Ponce*, 422 U. S. 873,



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878 (1975)). On the public interest side of the balance, we noted that the State “freely concede[d]” that there had been nothing unusual or suspicious to justify ordering Mimms out of the car, but that it was the officer’s “practice to order all drivers [stopped in traffic stops] out of their vehicles as a matter of course” as a “precautionary measure” to protect the officer’s safety. 434 U. S., at 109–110. We thought it “too plain for argument” that this justification—officer safety—was “both legitimate and weighty.” *Id.*, at 110. In addition, we observed that the danger to the officer of standing by the driver’s door and in the path of oncoming traffic might also be “appreciable.” *Id.*, at 111.

On the other side of the balance, we considered the intrusion into the driver’s liberty occasioned by the officer’s ordering him out of the car. Noting that the driver’s car was already validly stopped for a traffic infraction, we deemed the additional intrusion of asking him to step outside his car “*de minimis*.” *Ibid.* Accordingly, we concluded that “once a motor vehicle has been lawfully detained for a traffic violation, the police officers may order the driver to get out of the vehicle without violating the Fourth Amendment’s proscription of unreasonable seizures.” *Id.*, at 111, n. 6.

Respondent urges, and the lower courts agreed, that this *per se* rule does not apply to Wilson because he was a passenger, not the driver. Maryland, in turn, argues that we have already implicitly decided this question by our statement in *Michigan v. Long*, 463 U. S. 1032 (1983), that “[i]n [*Mimms*], we held that police may order *persons* out of an automobile during a stop for a traffic violation,” *id.*, at 1047–1048 (emphasis added), and by Justice Powell’s statement in *Rakas v. Illinois*, 439 U. S. 128 (1978), that “this Court determined in [*Mimms*] that *passengers* in automobiles have no Fourth Amendment right not to be ordered from their vehicle, once a proper stop is made,” *id.*, at 155, n. 4 (Powell, J., joined by Burger, C. J., concurring) (emphasis added). We agree with respondent that the former statement was dictum, and the

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latter was contained in a concurrence, so that neither constitutes binding precedent.

We must therefore now decide whether the rule of *Mimms* applies to passengers as well as to drivers.<sup>1</sup> On the public interest side of the balance, the same weighty interest in officer safety is present regardless of whether the occupant of the stopped car is a driver or passenger. Regrettably, traffic stops may be dangerous encounters. In 1994 alone, there were 5,762 officer assaults and 11 officers killed during traffic pursuits and stops. Federal Bureau of Investigation, Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted 71, 33 (1994). In the case of passengers, the danger of the officer's standing in the path of oncoming traffic would not be present except in the case of a passenger in the left rear seat, but the fact that there is more than one occupant of the vehicle increases the possible sources of harm to the officer.<sup>2</sup>

On the personal liberty side of the balance, the case for the passengers is in one sense stronger than that for the driver. There is probable cause to believe that the driver has committed a minor vehicular offense, but there is no such reason to stop or detain the passengers. But as a practical

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<sup>1</sup> Respondent argues that, because we have generally eschewed bright-line rules in the Fourth Amendment context, see, e. g., *Ohio v. Robinette*, ante, p. 33, we should not here conclude that passengers may constitutionally be ordered out of lawfully stopped vehicles. But, that we typically avoid *per se* rules concerning searches and seizures does not mean that we have always done so; *Mimms* itself drew a bright line, and we believe the principles that underlay that decision apply to passengers as well.

<sup>2</sup> JUSTICE STEVENS' dissenting opinion points out, *post*, at 416, that these statistics are not further broken down as to assaults by passengers and assaults by drivers. It is, indeed, regrettable that the empirical data on a subject such as this are sparse, but we need not ignore the data which do exist simply because further refinement would be even more helpful. JUSTICE STEVENS agrees that there is "a strong public interest in minimizing" the number of assaults on law officers, *ibid.*, and we believe that our holding today is more likely to accomplish that result than would be the case if his views were to prevail.

## Opinion of the Court

matter, the passengers are already stopped by virtue of the stop of the vehicle. The only change in their circumstances which will result from ordering them out of the car is that they will be outside of, rather than inside of, the stopped car. Outside the car, the passengers will be denied access to any possible weapon that might be concealed in the interior of the passenger compartment. It would seem that the possibility of a violent encounter stems not from the ordinary reaction of a motorist stopped for a speeding violation, but from the fact that evidence of a more serious crime might be uncovered during the stop. And the motivation of a passenger to employ violence to prevent apprehension of such a crime is every bit as great as that of the driver.

We think that our opinion in *Michigan v. Summers*, 452 U. S. 692 (1981), offers guidance by analogy here. There the police had obtained a search warrant for contraband thought to be located in a residence, but when they arrived to execute the warrant they found Summers coming down the front steps. The question in the case depended “upon a determination whether the officers had the authority to require him to re-enter the house and to remain there while they conducted their search.” *Id.*, at 695. In holding as it did, the Court said:

“Although no special danger to the police is suggested by the evidence in this record, the execution of a warrant to search for narcotics is the kind of transaction that may give rise to sudden violence or frantic efforts to conceal or destroy evidence. The risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation.” *Id.*, at 702–703 (footnote omitted).

In summary, danger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car. While there is not the same basis for ordering the passengers out of the car as there is

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for ordering the driver out, the additional intrusion on the passenger is minimal. We therefore hold that an officer making a traffic stop may order passengers to get out of the car pending completion of the stop.<sup>3</sup>

The judgment of the Court of Special Appeals of Maryland is reversed, and the case is remanded for proceedings not inconsistent with this opinion.

*It is so ordered.*

JUSTICE STEVENS, with whom JUSTICE KENNEDY joins, dissenting.

In *Pennsylvania v. Mimms*, 434 U. S. 106 (1977) (*per curiam*), the Court answered the “narrow question” whether an “incremental intrusion” on the liberty of a person who had been lawfully seized was reasonable. *Id.*, at 109. This case, in contrast, raises a separate and significant question concerning the power of the State to make an initial seizure of persons who are not even suspected of having violated the law.

My concern is not with the ultimate disposition of this particular case, but rather with the literally millions of other cases that will be affected by the rule the Court announces. Though the question is not before us, I am satisfied that—under the rationale of *Terry v. Ohio*, 392 U. S. 1 (1968)—if a police officer conducting a traffic stop has an articulable suspicion of possible danger, the officer may order passengers to exit the vehicle as a defensive tactic without running afoul of the Fourth Amendment. Accordingly, I assume that the facts recited in the majority’s opinion provided a valid justi-

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<sup>3</sup> Maryland urges us to go further and hold that an officer may forcibly detain a passenger for the entire duration of the stop. But respondent was subjected to no detention based on the stopping of the car once he had left it; his arrest was based on probable cause to believe that he was guilty of possession of cocaine with intent to distribute. The question which Maryland wishes answered, therefore, is not presented by this case, and we express no opinion upon it.



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fication for this officer's order commanding the passengers to get out of this vehicle.<sup>1</sup> But the Court's ruling goes much further. It applies equally to traffic stops in which there is not even a scintilla of evidence of any potential risk to the police officer. In those cases, I firmly believe that the Fourth Amendment prohibits routine and arbitrary seizures of obviously innocent citizens.

## I

The majority suggests that the personal liberty interest at stake here, which is admittedly "stronger" than that at issue in *Mimms*, is outweighed by the need to ensure officer safety. *Ante*, at 413, 414–415. The Court correctly observes that "traffic stops may be dangerous encounters." *Ante*, at 413. The magnitude of the danger to police officers is reflected in the statistic that, in 1994 alone, "there were 5,762 officer assaults and 11 officers killed during traffic pursuits and stops." *Ibid*. There is, unquestionably, a strong public interest in minimizing the number of such assaults and fatalities. The Court's statistics, however, provide no support for the conclusion that its ruling will have any such effect.

Those statistics do not tell us how many of the incidents involved passengers. Assuming that many of the assaults were committed by passengers, we do not know how many occurred after the passenger got out of the vehicle, how many took place while the passenger remained in the vehicle, or indeed, whether any of them could have been prevented

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<sup>1</sup>The Maryland Court of Special Appeals held, *inter alia*, that the State had not properly preserved this claim during the suppression hearing. See App. to Pet. for Cert. 4a. The State similarly fails to press the point here. Pet. for Cert. 4, n. 1; Brief for Petitioner 4, n. 1. The issue is therefore not before us, and I am not free to concur in the Court's judgment on this alternative ground. See *Caldwell v. Mississippi*, 472 U.S. 320, 327 (1985); this Court's Rule 14.1(a).

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by an order commanding the passengers to exit.<sup>2</sup> There is no indication that the number of assaults was smaller in jurisdictions where officers may order passengers to exit the vehicle without any suspicion than in jurisdictions where they were then prohibited from doing so. Indeed, there is no indication that any of the assaults occurred when there was a complete absence of any articulable basis for concern about the officer's safety—the only condition under which I would hold that the Fourth Amendment prohibits an order commanding passengers to exit a vehicle. In short, the statistics are as consistent with the hypothesis that ordering passengers to get out of a vehicle increases the danger of assault as with the hypothesis that it reduces that risk.

Furthermore, any limited additional risk to police officers must be weighed against the unnecessary invasion that will be imposed on innocent citizens under the majority's rule in the tremendous number of routine stops that occur each day. We have long recognized that “[b]ecause of the extensive regulation of motor vehicles and traffic . . . the extent of police-citizen contact involving automobiles will be substantially greater than police-citizen contact in a home or office.” *Cady v. Dombrowski*, 413 U. S. 433, 441 (1973).<sup>3</sup> Most traffic

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<sup>2</sup>I am assuming that in the typical case the officer would not order passengers out of a vehicle until after he had stopped his own car, exited, and arrived at a position where he could converse with the driver. The only way to avoid all risk to the officer, I suppose, would be to adopt a routine practice of always issuing an order through an amplified speaker commanding everyone to get out of the stopped car before the officer exposed himself to the possibility of a shot from a hidden weapon. Given the predicate for the Court's ruling—that an articulable basis for suspecting danger to the officer provides insufficient protection against the possibility of a surprise assault—we must assume that every passenger, no matter how feeble or infirm, must be prepared to accept the “petty indignity” of obeying an arbitrary and sometimes demeaning command issued over a loud speaker.

<sup>3</sup>See also *New York v. Class*, 475 U. S. 106, 113 (1986); *South Dakota v. Opperman*, 428 U. S. 364, 368 (1976); cf. *Whren v. United States*, 517 U. S. 806, 810, 818 (1996).

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stops involve otherwise law-abiding citizens who have committed minor traffic offenses. A strong interest in arriving at a destination—to deliver a patient to a hospital, to witness a kickoff, or to get to work on time—will often explain a traffic violation without justifying it. In the aggregate, these stops amount to significant law enforcement activity.

Indeed, the number of stops in which an officer is actually at risk is dwarfed by the far greater number of routine stops. If Maryland's share of the national total is about average, the State probably experiences about 100 officer assaults each year during traffic stops and pursuits. Making the unlikely assumption that passengers are responsible for one-fourth of the total assaults, it appears that the Court's new rule would provide a potential benefit to Maryland officers in only roughly 25 stops a year.<sup>4</sup> These stops represent a minuscule portion of the total. In Maryland alone, there are something on the order of one million traffic stops each year.<sup>5</sup> Assuming that there are passengers in about half of the cars stopped, the majority's rule is of some possible advantage to police in only about one out of every twenty thousand traffic stops in which there is a passenger in the car. And, any benefit is extremely marginal. In the overwhelming majority of cases posing a real threat, the officer would almost

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<sup>4</sup> This figure may in fact be smaller. The majority's data aggregate assaults committed during "[t]raffic [p]ursuits and [s]tops." Federal Bureau of Investigation, Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted 71 (1994). In those assaults that occur during the *pursuit* of a moving vehicle, it would obviously be impossible for an officer to order a passenger out of the car.

<sup>5</sup> Maryland had well over one million nontort motor vehicle cases during a 1-year period between 1994 and 1995. Annual Report of the Maryland Judiciary 80 (1994-1995). Though the State does not maintain a count of the number of stops performed each year, this figure is probably a fair rough proxy. The bulk of these cases likely represent a traffic stop, and this total does not include those stops in which the police officer simply gave the driver an informal reprimand. I presume that these figures are representative of present circumstances.

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certainly have some ground to suspect danger that would justify ordering passengers out of the car.

In contrast, the potential daily burden on thousands of innocent citizens is obvious. That burden may well be “minimal” in individual cases. *Ante*, at 415. But countless citizens who cherish individual liberty and are offended, embarrassed, and sometimes provoked by arbitrary official commands may well consider the burden to be significant.<sup>6</sup> In all events, the aggregation of thousands upon thousands of petty indignities has an impact on freedom that I would characterize as substantial, and which in my view clearly outweighs the evanescent safety concerns pressed by the majority.

## II

The Court concludes today that the balance of convenience and danger that supported its holding in *Mimms* applies to passengers of lawfully stopped cars as well as drivers. In *Mimms* itself, however, the Court emphasized the fact that the intrusion into the driver’s liberty at stake was “occasioned not by the initial stop of the vehicle, which was admittedly justified, but by the order to get out of the car.” 434 U. S., at 111. The conclusion that “this additional intrusion can only be described as *de minimis*” rested on the premise that the “police have already lawfully decided that the driver shall be briefly detained.” *Ibid.*<sup>7</sup>

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<sup>6</sup>The number of cases in which the command actually protects the officer from harm may well be a good deal smaller than the number in which a passenger is harmed by exposure to inclement weather, as well as the number in which an ill-advised command is improperly enforced. Consider, for example, the harm caused to a passenger by an inadequately trained officer after a command was issued to exit the vehicle in *Board of Comm’rs of Bryan Cty. v. Brown*, 67 F. 3d 1174 (CA5 1995), cert. granted, 517 U. S. 1154 (1996).

<sup>7</sup>Dissenting in *Mimms*, I criticized the Court’s reasoning and, indeed, predicted the result that the majority reaches today. 434 U. S., at 122–123.



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In this case as well, the intrusion on the passengers' liberty occasioned by the initial stop of the vehicle is not challenged. That intrusion was a necessary by-product of the lawful detention of the driver. But the passengers had not yet been seized at the time the car was pulled over, any more than a traffic jam caused by construction or other state-imposed delay not directed at a particular individual constitutes a seizure of that person. The question is whether a passenger in a lawfully stopped car may be seized, by an order to get out of the vehicle, without any evidence whatsoever that he or she poses a threat to the officer or has committed an offense.<sup>8</sup>

To order passengers about during the course of a traffic stop, insisting that they exit and remain outside the car, can hardly be classified as a *de minimis* intrusion. The traffic violation sufficiently justifies subjecting the driver to detention and some police control for the time necessary to conclude the business of the stop. The restraint on the liberty of blameless passengers that the majority permits is, in contrast, entirely arbitrary.<sup>9</sup>

In my view, wholly innocent passengers in a taxi, bus, or private car have a constitutionally protected right to decide whether to remain comfortably seated within the vehicle rather than exposing themselves to the elements and the observation of curious bystanders. The Constitution should not be read to permit law enforcement officers to order innocent passengers about simply because they have the misfor-

<sup>8</sup>The order to the passenger is unquestionably a "seizure" within the meaning of the Fourth Amendment. As we held in *United States v. Brignoni-Ponce*, 422 U. S. 873, 878 (1975): "The Fourth Amendment applies to all seizures of the person, including seizures that involve only a brief detention short of traditional arrest. *Davis v. Mississippi*, 394 U. S. 721 (1969); *Terry v. Ohio*, 392 U. S. 1, 16-19 (1968)."

<sup>9</sup>Cf. *Ybarra v. Illinois*, 444 U. S. 85, 91 (1979) ("[A] person's mere proximity to others independently suspected of criminal activity does not, without more, give rise to probable cause to search that person" (citing *Sibron v. New York*, 392 U. S. 40, 62-63 (1968))).

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tune to be seated in a car whose driver has committed a minor traffic offense.

Unfortunately, the effect of the Court's new rule on the law may turn out to be far more significant than its immediate impact on individual liberty. Throughout most of our history the Fourth Amendment embodied a general rule requiring that official searches and seizures be authorized by a warrant, issued "upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."<sup>10</sup> During the prohibition era, the exceptions for warrantless searches supported by probable cause started to replace the general rule.<sup>11</sup> In 1968, in the landmark "stop and frisk" case *Terry v. Ohio*, 392 U. S. 1 (1968), the Court placed its stamp of approval on seizures supported by specific and articulable facts that did not establish probable cause. The Court crafted *Terry* as a narrow exception to the general rule that "the police must, whenever practicable, obtain advance judicial approval of searches and seizures through the warrant procedure." *Id.*, at 20. The intended scope of the Court's major departure from prior practice was reflected in its statement that the "demand for specificity in the information upon which police action is predicated is the central teaching of this Court's Fourth Amendment jurisprudence." *Id.*, at 21, n. 18; see also *id.*, at 27. In the 1970's, the Court twice rejected attempts to justify suspicionless seizures that caused only "modest" intrusions on the liberty of passengers in automobiles. *United States v. Brignoni-Ponce*, 422 U. S. 873, 879-880 (1975); *Delaware v. Prouse*, 440 U. S. 648, 662-663

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<sup>10</sup> See, e. g., *Amos v. United States*, 255 U. S. 313, 315 (1921); *Weeks v. United States*, 232 U. S. 383, 393 (1914).

<sup>11</sup> See, e. g., *Carroll v. United States*, 267 U. S. 132, 149 (1925) (automobile search). We had also recognized earlier in dictum the now well-established doctrine permitting warrantless searches incident to a valid arrest. See *Weeks*, 232 U. S., at 392; see also J. Landynski, *Search and Seizure and the Supreme Court* 87 (1966).

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(1979).<sup>12</sup> Today, however, the Court takes the unprecedented step of authorizing seizures that are unsupported by any individualized suspicion whatsoever.

The Court's conclusion seems to rest on the assumption that the constitutional protection against "unreasonable" seizures requires nothing more than a hypothetically rational basis for intrusions on individual liberty. How far this ground-breaking decision will take us, I do not venture to predict. I fear, however, that it may pose a more serious threat to individual liberty than the Court realizes.

I respectfully dissent.

JUSTICE KENNEDY, dissenting.

I join in the dissent by JUSTICE STEVENS and add these few observations.

The distinguishing feature of our criminal justice system is its insistence on principled, accountable decisionmaking in individual cases. If a person is to be seized, a satisfactory explanation for the invasive action ought to be established by an officer who exercises reasoned judgment under all the circumstances of the case. This principle can be accommodated even where officers must make immediate decisions to ensure their own safety.

Traffic stops, even for minor violations, can take upwards of 30 minutes. When an officer commands passengers innocent of any violation to leave the vehicle and stand by the side of the road in full view of the public, the seizure is serious, not trivial. As JUSTICE STEVENS concludes, the command to exit ought not to be given unless there are objective circumstances making it reasonable for the officer to issue the order. (We do not have before us the separate question whether passengers, who, after all, are in the car by choice,

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<sup>12</sup> Dissenting in *Delaware v. Prouse*, 440 U. S. 648 (1979), then JUSTICE REHNQUIST characterized the motorist's interest in freedom from random stops as "only the most diaphanous of citizen interests." *Id.*, at 666.

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can be ordered to remain there for a reasonable time while the police conduct their business.)

The requisite showing for commanding passengers to exit need be no more than the existence of any circumstance justifying the order in the interests of the officer's safety or to facilitate a lawful search or investigation. As we have acknowledged for decades, special latitude is given to the police in effecting searches and seizures involving vehicles and their occupants. See, e. g., *Chambers v. Maroney*, 399 U. S. 42 (1970); *New York v. Class*, 475 U. S. 106 (1986); *New York v. Belton*, 453 U. S. 454 (1981). Just last Term we adhered to a rule permitting vehicle stops if there is some objective indication that a violation has been committed, regardless of the officer's real motives. See *Whren v. United States*, 517 U. S. 806 (1996). We could discern no other, workable rule. Even so, we insisted on a reasoned explanation for the stop.

The practical effect of our holding in *Whren*, of course, is to allow the police to stop vehicles in almost countless circumstances. When *Whren* is coupled with today's holding, the Court puts tens of millions of passengers at risk of arbitrary control by the police. If the command to exit were to become commonplace, the Constitution would be diminished in a most public way. As the standards suggested in dissent are adequate to protect the safety of the police, we ought not to suffer so great a loss.

Since a myriad of circumstances will give a cautious officer reasonable grounds for commanding passengers to leave the vehicle, it might be thought the rule the Court adopts today will be little different in its operation than the rule offered in dissent. It does no disservice to police officers, however, to insist upon exercise of reasoned judgment. Adherence to neutral principles is the very premise of the rule of law the police themselves defend with such courage and dedication.

Most officers, it might be said, will exercise their new power with discretion and restraint; and no doubt this often



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will be the case. It might also be said that if some jurisdictions use today's ruling to require passengers to exit as a matter of routine in every stop, citizen complaints and political intervention will call for an end to the practice. These arguments, however, would miss the point. Liberty comes not from officials by grace but from the Constitution by right.

For these reasons, and with all respect for the opinion of the Court, I dissent.

**From:** Office of the Executive Associate Director for ERO [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F198F58B06A24754BA3E6943655B8D48-OFFICE OF T]  
**Sent:** 8/7/2020 6:32:26 PM  
**Subject:** Accountability of Immigration Subpoenas Issued to Non-Compliant Law Enforcement Agencies [FO]



To: All ERO Employees

On August 6, 2020, I signed Enforcement and Removal Operation (ERO) Directive [11165: Accountability of Immigration Subpoenas Issued to Non-Compliant Law Enforcement Agencies \(LEAs\)](#), which supplements ERO guidance on accountability of immigration subpoenas and updates procedures for utilizing the National Subpoena Log for approving, issuing, serving, and tracking these subpoenas.

In the past, ICE has served subpoenas to places where an alien is known to work, or apartment complexes where an alien might live, to find out more information about the targeted alien. Historically, ICE has not had the need to issue subpoena to LEAs because most LEAs throughout the country willingly cooperate with ICE to provide information regarding aliens arrested for crimes in the interest of public safety. Absent that partnership, ICE will use every tool available to obtain information on the whereabouts of aliens, or other pertinent biographical information from jurisdictions that have recently begun to refuse or have been prohibited by state or local law or policy from cooperating with immigration enforcement. The public has the right to know the types of individuals their local LEAs are letting out of jail.

ERO Officers will continue to issue subpoenas in compliance with applicable laws, regulations and ICE Policy. This Directive provides ERO Supervisory Officers with discretion, on a case-by-case basis, to issue individual immigration subpoenas to non-compliant LEAs, requesting specific information related to specifically identified aliens who are or recently have been in their custody on criminal charges, and procedures for working with the relevant U.S Attorney's Office to ensure compliance. All field personnel identified by each area of responsibility as Users of the National Subpoena Log are required to complete mandatory training in PALMS. Also, Field Offices are encouraged to work with the ICE Office of Public Affairs and their community relations officers prior to issuing the subpoenas.

Any questions relating to the Directive may be directed to ERO Policy at (b)(7)(e) [@ice.dhs.gov](mailto:(b)(7)(e)@ice.dhs.gov) or ERO Enforcement at (b)(7)(e) [ice.dhs.gov](mailto:(b)(7)(e)@ice.dhs.gov).

*Enrique M. Lucero*  
*Executive Associate Director*  
*Enforcement and Removal Operations*

*To protect the homeland through the arrest and removal of aliens who undermine the safety of our communities and the integrity of our immigration laws.*



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Chief, Criminal Alien Program  
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**US Immigration and Customs Enforcement**  
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Enforcement and Removal Operations Law Division  
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**Date:** Saturday, Apr 24, 2021, 8:03 AM  
**To:** Hoelzer, John (USAILC) <(b)(6),(b)(7)(c)@usdoj.gov>; (b)(6),(b)(7)(c) <(b)(6),(b)(7)(c)@ice.dhs.gov>  
**Cc:** (b)(6),(b)(7)(c) <(b)(6),(b)(7)(c)@usdoj.gov>; (b)(6),(b)(7)(c) <(b)(6),(b)(7)(c)@usdoj.gov>; (b)(6),(b)(7)(c) <(b)(6),(b)(7)(c)@usdoj.gov>  
**Subject:** RE: ICE Subpoena re: (b)(6),(b)(7)(c)

(b)(6),(b)(7)(c)

Apologies for the delayed response, I thought I hit send last night, but it was still sitting in my box this AM. I confirmed that ICE will not be requesting DOJ to take any further judicial action on the (b)(6),(b)(7)(c) subpoena. Because this case continues to be a priority for the FOD, we would be grateful for any release information IDOC is able to provide. Happy to discuss further Monday AM. Enjoy the weekend.

(b)(6),(b)(7)(c)



(b)(6),(b)(7)(c)

Chief Counsel, Chicago  
Office of the Principal Legal Advisor  
U.S. Immigration and Customs Enforcement

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Sent: Friday, April 23, 2021 9:41 AM

To: (b)(6),(b)(7)(c)@ice.dhs.gov>; (b)(6),(b)(7)(C)@ice.dhs.gov>

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(b)(6),(b)(7)(c)@usdoj.gov>

Subject: ICE Subpoena re (b)(6),(b)(7)(c)

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Hello (b)(6),(b)(7)(c) and (b)(6),(b)(7)(c)

As IDOC continues to evaluate changes to its policy, I wanted to bring your attention to an offender that is due for release this Friday: (b)(6),(b)(7)(c) She is currently in custody for residential burglary, although I understand that the nature of her offense is more than meets the eye. In speaking with Illinois Assistant Attorney General Chris Wells, he advised that he was getting questions about how this offender fits with DHS's public safety prioritization. He asked if we could share additional information and/or documents regarding this offender. I did not get the impression that IDOC wants us to take them to court over this; rather, I think they are confused as to how this offender is in the same category as the last three sex offenders (which IDOC has supplied information about).

Please let me know how you would like to proceed. As always, I'm happy to talk anytime. My direct line is 217-49 (b)(6),(b)(7)(c)

Thanks,

John

John D. Hoelzer  
Assistant United States Attorney  
Central District of Illinois  
318 South 6<sup>th</sup> Street  
Springfield, Illinois 62701  
(217) 492 (b)(6),(b)(7)(c)

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**CC:** [(b)(6),(b)(7)(c)] USAILC [(b)(6),(b)(7)(c)]@usdoj.gov  
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**Subject:** Re: US v. Jeffreys - Compliance with Administrative Subpoenas

John,

Attached is IDOC's production in response to the subpoena relating to [(b)(6),(b)(7)(c)]. You may contact IDOC's Chief Counsel [(b)(6),(b)(7)(c)] with follow-up questions regarding the production. [(b)(6),(b)(7)(c)] cell is: 217-725 [(b)(6),(b)(7)(c)]

Respectfully,

[(b)(6),(b)(7)(c)]

**From:** Hoelzer, John (USAILC) [(b)(6),(b)(7)(c)]@usdoj.gov>  
**Sent:** Monday, September 21, 2020 2:33 PM  
**To:** [(b)(6),(b)(7)(c)]  
**Cc:** [(b)(6),(b)(7)(c)]  
**Subject:** RE: US v. Jeffreys - Compliance with Administrative Subpoenas

No objection.

Thanks,

[(b)(6),(b)(7)(c)]

**From:** [(b)(6),(b)(7)(c)]@atg.state.il.us>  
**Sent:** Monday, September 21, 2020 2:18 PM  
**To:** Hoelzer, John (USAILC) [(b)(6),(b)(7)(c)]@usa.doj.gov>  
**Cc:** [(b)(6),(b)(7)(c)]@illinois.gov>, [(b)(6),(b)(7)(c)]@atg.state.il.us>  
**Subject:** Re: US v. Jeffreys - Compliance with Administrative Subpoenas

(b)(6),(b)(7)(c)

Attached please find a proposed motion notifying the Court of IDOC's intent to comply with the subpoena and requesting a seven-day extension of the current filing deadlines. Please let me know if we may represent to the Court that the motion is unopposed.

Best,

(b)(6),(b)(7)(c)

---

**From:** (b)(6),(b)(7)(c)  
**Sent:** Monday, September 21, 2020 2:16 PM  
**To:** Hoelzer, John (USAILC)  
**Cc:** (b)(6),(b)(7)(c) <[redacted]@usdoj.gov>  
**Subject:** US v. Jeffreys - Compliance with Administrative Subpoenas

John,

Attached please find the letter I mentioned in our call earlier today. The Illinois Department of Corrections is compiling the documents and information sought in the administrative subpoenas and intends to produce them promptly.

I will send you a short proposed motion under separate cover.

Best,

(b)(6),(b)(7)(c)

(b)(6),(b)(7)(c)

Chief, Public Interest Division  
Office of the Illinois Attorney General  
100 W. Randolph St., 12th Flr.  
Chicago, Illinois 60601  
Pronouns: he/him  
Phone: 312-814-(b)(6),(b)(7)(c)  
Email: (b)(6),(b)(7)(c)@atg.state.il.us

1. To (Name, Address, City, State, Zip Code) (b)(6),(b)(7)(c) IDOC Acting Director c/o (b)(6),(b)(7)(c) 1301 Concordia Court, P.O. Box 19277 Springfield, IL 62794-9277	DEPARTMENT OF HOMELAND SECURITY  <b>IMMIGRATION ENFORCEMENT SUBPOENA</b>  to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number ERO ENF CHI 202000042	
2. In Reference To  (b)(6),(b)(7)(c) _____ 361 _____ <div style="display: flex; justify-content: space-between; font-size: small;"> <span>(Title of Proceeding)</span> <span>(File Number, if Applicable)</span> </div>	

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 laws. 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 (b)(6),(b)(7)(c) Title c/o Assistant US Attorney John D. Hoelzer Address Central District of IL 318 South 6th Street Springfield, IL 62701 Telephone Number 312-347-(b)(6),(b)(7)(c) 217-492-(b)(6),(b)(7)(c)	(B) Date 07/23/2020  (C) Time 12:00 <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.
--	--

4. Records required to be produced for inspection Please See Attachment.
---



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

5. Authorized Official (b)(6),(b)(7)(C) _____ (Signature)
(b)(6),(b)(7)(C) _____ (Printed Name)
Assistant Field Office Director (Title)
07/08/2020 (Date)



**CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT**

**A. CERTIFICATE OF SERVICE**

I certify that on 07/08/2020, I served this subpoena on the witness named in Block 1 in the following manner:  
 (Date)

Via e-mail to IDOC Chief Legal Counsel: (b)(6),(b)(7)(c) (Illinois.gov)

(b)(6),(b)(7)(C)

(Details of how service was effected)

(Signature of Official Serving Subpoena)

(b)(6),(b)(7)(C)

(Printed Name of Official Serving Subpoena)

Assistant Field Office Director

(Title of Official Serving Subpoena)

**B. ACKNOWLEDGMENT OF RECEIPT**

I acknowledge receipt of a copy of the subpoena on the front of this form.

Signature

Title	Date	Time <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.
-------	------	--

Attachment for I-138 Subpoena Number ERO ENF CHI 202000042

**(b)(6),(b)(7)(c)**

1. Documents sufficient to establish the following for **(b)(6),(b)(7)(c)** home address, employment address, country of birth, place of birth, age, identification documents (i.e. driver license number, state, foreign identification card number and country, passport number and country), emergency contact address, phone number, copies of all identification documents, recent booking documents (photograph, fingerprints, and so on) any and all records related to disciplinary actions while in your custody, threat level, assaultive behavior, gang affiliation and any other officer safety issues, and probation records.
2. Notification of the calculated location, date, and time the subject will be released (based on good time credit and for any other applicable benefits).
3. Notification of any subsequent rescheduled date, time and location of subject's release.

**Law Enforcement Sensitive – For Official Use Only**

### Institutional Data

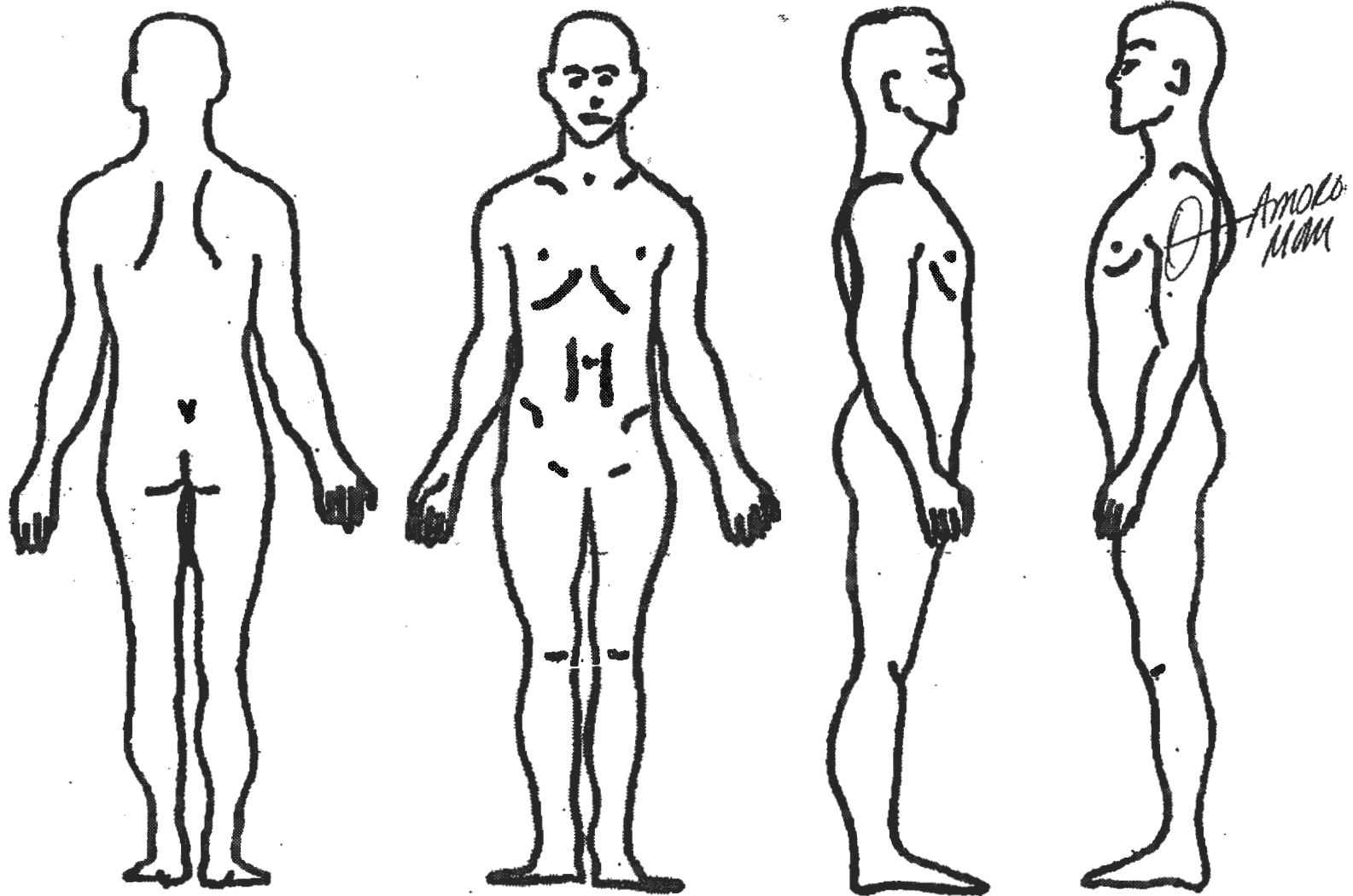
#### Demographics

Name:		Alias:	(b)(6),(b)(7)(c)
Offender #:		Location:	
SSN:	(b)(6),(b)(7)(c)	Grade:	A
Age:		Height:	502
DOB:		Weight:	150
POB:	MEXICO	Eyes:	Brown
Sex:	Male	Hair:	Black
Religion:	NO RELIGION	Race:	Hispanic
MST:	SC R KNEE / TAT L SHLD / SC L ARM		

#### Arrest Data

FBI Num:	(b)(7)(e)	Projected Discharge:	10/13/2022
BOI Num:	33765710	County Received Date:	04-16-2009
IRI Num:		Sentence:	0014 yr 00 mn 0000 dy
Crime:	AGG DUI/DEATH OF ANOTHER	<input type="checkbox"/>	Weapons Violator
Committing County:	MCHENRY	<input type="checkbox"/>	Sex Offender
		<input type="checkbox"/>	Assault

Close



COMMENTS

NAME	(b)(6), (b)(7)(c)	NUMBER	(b)(6), (b)(7)(c)	DATE RECEIVED	1/24/13
		*Inmate	Staff	INTERNAL AFFAIRS TATTOO IDENTIFICATION	
			(b)(6), (b)(7)(c)		



Illinois Department of Corrections  
Bureau of Identification  
Offender Report

Run Date: 09/22/2020

(b)(6), (b)(7)(c)

Photo Taken At: TAY On: December 31, 2019 11:54:50

Offender # (b)(6), (b)(7)(c)

Alias: (b)(6), (b)(7)(c)

**Demographics**

Age: (b)(6), (b)(7)(c)

DOB: (b)(6), (b)(7)(c)

Hair: Black

Weight: 150

POB: MEXICO

SMT: Loc: SC R KNEE Desc:

Loc: TAT L SHLD Desc: "AMOR/MOM"

Loc: SC L ARM Desc:

Loc: Desc:

Sex: Male

Race: Hispanic

Eyes: Brown

Height: 502

SSN: (b)(6), (b)(7)(c)

**Arrest Data**

IBI Num: (b)(7)(e)

IRI Num: (b)(7)(e)

FBI Num: (b)(7)(e)

Crime: AGG DUI/DEATH OF ANOTHER

Sentence: 0014 yr 00 mn 0000 dy

Projected MSR Date: 10/13/2020

Discharge Date: 10/13/2022

County Released To:

Committing County: MCHENRY

Received Date: 04-16-2009

**Illinois Department of Corrections  
OFFENDER FINGERPRINT CARD**

RESIDENT'S NAME <b>(b)(6),(b)(7)(C)</b>		INSTITUTION TAY		REGISTER NUMBER <b>(b)(6),(b)(7)(C)</b>			
ALIAS(S) <b>(b)(6),(b)(7)(C)</b>		COLOR	NATIONALITY HSF		SEX M		
<b>(b)(6),(b)(7)(C)</b>		DATE OF BIRTH <b>(b)(6),(b)(7)(C)</b>		PLACE OF BIRTH MEXICO			
		AGE 41	HEIGHT 502	WEIGHT 150	HAIR BLK	EYES BRO	
		BUILD		COMPLEXION	SOC. SEC. NO. <b>(b)(6),(b)(7)(C)</b>		
		MARRIED	SINGLE	DIVORCED	SEPARATED		
		EDUCATION (CIRCLE HIGHEST GRADE COMPLETED)					
		Grade		High		College	
		1	2	3	4	5	6
		7	8	9	10	11	12
		RECEIVED FROM (COUNTY) MCHENRY			DATE RECEIVED 04-16-2009		
		CHARGE AGG DUI/DEATH OF ANOTHER					
SENTENCE <b>(b)(6),(b)(7)(C)</b>							
PAROLED (DATE)			DISCHARGED (DATE)				

MARKS AND SCARS  
"AMOR/MOM"

CRIMINAL HISTORY

OFFENDER FINGERPRINT CARD

RESIDENT'S NAME	(b)(6),(b)(7)(C)	CLASSIFICATION	
ALIAS(S)	(b)(6),(b)(7)(C)	REFERENCE	IRI Number:
REGISTER NUMBER	(b)(6),(b)(7)(C)	COLOR	HSP
		SEX	M

1. Right Thumb	2. Right Index Finger	3. Right Middle Finger	4. Right Ring Finger	5. Right Little Finger
----------------	-----------------------	------------------------	----------------------	------------------------

(b)(6),(b)(7)(C)

FBI NUMBER	(b)(7)(E)	INDEX OF I NUMBER	(b)(6),(b)(7)(C)	<b>(b)(6),(b)(7)(C)</b>
IMPRESSION	(b)(6),(b)(7)(C)			
DATE	9/18/17			

PLEASE DO NOT FOLD THIS CARD  
Side 1

DOC 0308 (Rev. 7/2006)  
(Replace DC1713)

Emergency Contact

General Administration Related

Offender	<b>(b)(6),(b)(7)(C)</b>	Relationship	<input checked="" type="checkbox"/> UNCLE
First Name			
Last Name			

Address			
Street	<b>(b)(6),(b)(7)(C)</b>		
Apartment	---	Home Phone	---
State	<input checked="" type="checkbox"/> ILLINOIS	Cell Phone	---
City	<input checked="" type="checkbox"/> Harvard	Work Phone	---
Zip	60033	Other Phone	---
Email	---		



Emergency Contact

General Administration Related

Offender	<b>(b)(6),(b)(7)(C)</b>	Relationship	<input checked="" type="checkbox"/> UNKNOWN
First Name			
Last Name			

Address

Street	<b>(b)(6),(b)(7)(C)</b>		
Apartment	---	Home Phone	81594 <b>(b)(6),(b)(7)(C)</b>
State	<input checked="" type="checkbox"/> ILLINOIS	Cell Phone	---
City	<input checked="" type="checkbox"/> Harvard	Work Phone	---
Zip	---	Other Phone	---
Email	---		



ILLINOIS DEPARTMENT of CORRECTIONS  
 NEXT OF KIN NOTIFICATION  
 LOGAN CORRECTIONAL CENTER



DATE: MAY 05 2009

FILL OUT THIS FORM IN PRINT ONLY.

INMATE NAME: (b)(6),(b)(7)(C)

INMATE NUMBER: (b)(6),(b)(7)(C)

IN CASE OF EMERGENCY PLEASE NOTIFY THE FOLLOWING PERSONS:

NAME: (b)(6),(b)(7)(C)

RELATIONSHIP: uncle

STREET ADDRESS: (b)(6),(b)(7)(C)

CITY, STATE and ZIP: HARVARD IL. 60033

PHONE NUMBER: \_\_\_\_\_ OR \_\_\_\_\_

NAME: \_\_\_\_\_

RELATIONSHIP: \_\_\_\_\_

STREET ADDRESS: \_\_\_\_\_

CITY, STATE and ZIP: \_\_\_\_\_

PHONE NUMBER: \_\_\_\_\_ OR \_\_\_\_\_

SIGNATURE (b)(6),(b)(7)(C) NUMBER (b)(6),(b)(7)(C)

LOG-113 (Eff.07/02)  
 (Replaces IL 426-5687/DCA 19663)

**DEMOGRAPHIC INFORMATION SHEET**

INMATE NAME (b)(6),(b)(7)(C) INMATE NUMBER (b)(6),(b)(7)(C)

DATE ADMITTED 117109 COUNTY MCKENRY

HIEGHT 5-7 WIEGHT 150 HAIR BLACK EYES BROWN

RACE Spanish BIRTH STATE SONORA BIRTHDATE (b)(6),(b)(7)(C)

SOCIAL SECURITY NUMBER (b)(6),(b)(7)(C)

RELIGION CRISTIAN

**INMATE EMERGENCY CONTACT INFORMATION**

**LIST ONE PERSON!!!**

DATE 04 117 109

INMATE NAME (b)(6),(b)(7)(C) INMATE NUMBER

NAME OF EMERGENCY CONTACT (b)(6),(b)(7)(C)

ADDRESS (b)(6),(b)(7)(C)

CITY HARVARD STATE ILLINOIS ZIP-CODE 60033

RELATIONSHIP UNCLE TELEPHONE ( ) (b)(6),(b)(7)(C)

I HAVE RECEIVED MY ORIENTATION INSERTS AS WELL AS SEXUAL ABUSE/ ASSAULT/ MISCONDUCT PREVENTION AND INTERVENTION INFORMATION.

SIGNATURE (b)(6),(b)(7)(C) DATE 04/17/09

4

**State of Illinois -- Department of  
Corrections Disciplinary Tracking Inmate  
Disciplinary Card**

Name: (b)(6),(b)(7)(C)

IDOC #: (b)(6),(b)(7)(C)

Transferred In: 2013-09-18

Disciplinary History from 1/1/1998 through 9/22/2020

Living Unit: TAY/O3/A /04

**Incident Date**

**Incident/Summ#/Inst.**

**Ticket Type**

**Offense Codes, Descriptions**

**Disciplinary Action**

5/1/2010	404 Violation Of Rules Comments: 90	<u>Guilty</u>	1 Months B Grade/Level
201001271/1-LOG			
Minor			
8/13/2010	403 Disobeying A Direct Order	<u>Guilty</u>	1 Months C Grade/Level
201002649/1-LOG			15 Days Segregation
Major			Revoke GCC or SGT 15 Days
6/20/2013	203 Drugs & Drug Paraphernalia Comments: expired ear drops	<u>Not Guilty</u>	14 Days Gym/Yard Restriction
201303294/1-SHE	308 Contraband/Unauthorized Property	<u>Guilty</u>	
Major			
1/6/2016	305 Theft	<u>Guilty</u>	Other : destroy contraband
201600028/1-TAY	308 Contraband/Unauthorized Property	<u>Guilty</u>	14 Days Commissary Restriction
Minor			
5/12/2016	308 Contraband/Unauthorized Property Comments: dietary supplies	<u>Guilty</u>	Verbal Reprimand
201600632/1-TAY			
Minor			
11/18/2018	104 Dangerous Contraband Comments: 1 razor, 1 sharpened pc. metal	<u>Guilty</u>	1 Months C Grade/Level
201800628/1-TAY	308 Contraband/Unauthorized Property	<u>Guilty</u>	4 Days Segregation
Major	Comments: 1 btl. glue, 2btl. wax, 2 watch		



District 2 R-Regular Parole/MSR  
Residence Plan

I-INVESTIGATION  
Residence Plan Status

Parole Agent

(b)(6),(b)(7)(C)

Offender

General Agent Details Administration Related

Plan Effective Date \* 9/3/2020

Overridden By

(b)(6),(b)(7)(C)

Residence Plan Type  
Overridden Yes

Add Default Counties

Address Details

Special Address

Reside With

(b)(6),(b)(7)(C)

District \* District 2

Relationship

MALE COUSIN

Apartment

Telephone

815-4 (b)(6),(b)(7)(C)

Street 1

(b)(6),(b)(7)(C)

Secondary Telephone

Zip \* 60033

Home Phone

City \* Harvard

Work Phone

County \* MCHENRY

Mobile Phone

State \* ILLINOIS

District 2 R-Regular Parole/MSR  
Residence Plan

I-INVESTIGATION  
Residence Plan Status

Parole Agent

(b)(6),(b)(7)(C)  
Offender

General Agent Details Administration Related

Plan Effective Date	9/3/2020	Overridden By	(b)(6),(b)(7)(C)
Residence Plan Type Overridden	Yes	Add Default Counties	<input type="checkbox"/>

Address Details

Special Address	---	Reside With	(b)(6),(b)(7)(C)
District	District 2	Relationship	FEMALE COUSIN
Apartment	---	Telephone	815-404-(b)(6),(b)(7)(C)
Street 1	(b)(6),(b)(7)(C)	Secondary Telephone	---
Zip	60033	Home Phone	---
City	Harvard	Work Phone	---
County	MCHENRY	Mobile Phone	---
State	ILLINOIS		

# INTERSTATE COMPACT R-Regular Parole/MSR

Residence Plan

I-INVESTIGATION

Residence Plan Status

Parole Agent

(b)(6),(b)(7)(C)

Offender

General Agent Details Administration Related

Plan Effective Date	* 6/11/2020	Overridden By	(b)(6),(b)(7)(C)
Residence Plan Type	Yes	Add Default Counties	<input type="checkbox"/>

## Address Details

Special Address	---	Reside With	(b)(6),(b)(7)(C)
District	* <input checked="" type="checkbox"/> INTERSTATE COMPACT	Relationship	* <input checked="" type="checkbox"/> MALE COUSIN
Apartment	---	Telephone	262-741 (b)(6),(b)(7)(C)
Street 1	(b)(6),(b)(7)(C)	Secondary Telephone	---
Zip	* 53585	Home Phone	---
City	* <input checked="" type="checkbox"/> SHARON	Work Phone	---
County	* <input checked="" type="checkbox"/> OUT-OF-STATE	Mobile Phone	---
State	* <input checked="" type="checkbox"/> WISCONSIN		

R-Regular Parole/MSR

Residence Plan

P-PENDING

Residence Plan Status

Parole Agent

(b)(6),(b)(7)(C)

Offender

General Agent Details Administration Related

Plan Effective Date \* 6/18/2020

Overridden By

(b)(6),(b)(7)(C)

Residence Plan Type

Yes

Add Default Counties

Overridden

Address Details

Special Address

Immigration Jerome Combs Detention C...

Reside With

\* Immigration Jerome Combs Detention Center

District

---

Relationship

\*  AGENCY/INSTITUTION

Apartment

---

Telephone

815-802-7272

Street 1

\* 3050 Justice Way

Secondary Telephone

---

Zip

\* 60901

Home Phone

---

City

\*  Kankakee

Work Phone

---

County

\*  KANKAKEE

Mobile Phone

---

State

\*  ILLINOIS



District 1 R-Regular Parole/MSR  
Residence Plan

A-APPROVED  
Residence Plan Status

SS7 - CHICAGO HTS/AREA SOUTH SUPV  
Parole Agent

(b)(6),(b)(7)(C)  
Offender

Agent Details Administration Related

Plan Effective Date	9/23/2020	Overridden By	
Residence Plan Type	No	Add Default Counties	

Address Details

Special Address		Reside With	* Lifehouse Group
District	* District 1	Relationship	* AGENCY/INSTITUTION
Apartment		Telephone	312-451-9996
Street 1	* (b)(6),(b)(7)(C)	Secondary Telephone	
Zip	* 60406	Home Phone	
City	* Blue Island	Work Phone	
County	* COOK	Mobile Phone	
State	* ILLINOIS		



PRESENT THIS DOCUMENT FOR BOARDING

RESERVATION NUMBER D64DD2

RES# D64DD2-23SEP20

SPI



CHI

One-Way

SPRINGFIELD, IL

CHICAGO-UNION STA, IL

SEPTEMBER 24, 2020

TRAIN	TEXAS EAGLE	SPRINGFIELD - CHICAGO (UNION STATION)	DEPARTS	ARRIVES (Thu Sep 24)
22	Sep 24, 2020	1 Coach Seat	9:55 AM	1:52 PM

PASSENGERS (1)

AMTRAK GUEST REWARDS

(b)(6),(b)(7)(C)

ADULT

No member number provided. Join at Amtrak.com

Proper identification is required for all passengers. This document is valid for only passengers listed. See www.amtrak.com/ID for details.

IMPORTANT INFORMATION

CANCELLATION FEE MAY APPLY.

- At Chicago Union Station, Coach class customers may purchase a day-pass to the Metropolitan Lounge, which offers numerous amenities along with priority boarding. Sleeping Car and Business class customers, as well as Amtrak Guest Rewards Select Executive and Select Plus members, have complimentary access to the Metropolitan Lounge and to priority boarding privileges. See any Amtrak agent for details.
- Facial coverings:** All customers and employees must wear a face covering or mask while in stations and on trains or thruway buses. Face masks can be removed when customers are in their private rooms.
- Cashless service:** Amtrak is accepting cashless payments only onboard.
- State quarantines:** We encourage customers to check local and state travel advisories prior to travel. Visit [Amtrak.com/quarantine](http://Amtrak.com/quarantine) for the latest updates on state mandatory quarantines on travelers from COVID-19 hotspots.
- eTickets for Reserved services are valid only for the specific train number, date and accommodation type booked.
- Customers are encouraged to arrive at the station 30 minutes before departure or 60 minutes if in need of ticketing and/or baggage assistance, or if you're boarding at a Canadian station. Check the recommended arrival times for your departure station at [Amtrak.com/stations](http://Amtrak.com/stations).
- Tickets are non-transferable. They are valid only for the personal use of the passenger(s) named on the ticket.
- For Amtrak travel information, or to make adjustments to your travel plans, please visit [Amtrak.com](http://Amtrak.com), or call 1-800-USA-RAIL (1-800-872-7245).
- Your printed eTicket travel document shows the services you booked. If you change your booking but do not reprint the document, it will not reflect your current itinerary. Your eTicket is automatically updated in the Amtrak mobile app, and you can view an updated copy on Amtrak.com. At some stations, a gate agent may need to view your eTicket prior to boarding (learn more at [Amtrak.com/boarding](http://Amtrak.com/boarding)).
- Changes to your itinerary may result in an increase to your fare, and may also result in fees or forfeiture of value. For more information, visit [Amtrak.com/changes](http://Amtrak.com/changes).
- Carry-on baggage is limited to 2 personal items under 14x11x7 inches & 25 lbs. per item, and 2 bags under 28x22x14 inches & 50 lbs. per bag, per passenger. You may be charged a baggage fee or denied boarding if your items exceed these limitations. See the baggage policy at [Amtrak.com/baggage](http://Amtrak.com/baggage).
- At most stations where checked baggage service is available, baggage check-in normally must be completed by 45 minutes prior to departure, unless a different time limit applies to your specific station and/or train. See the baggage policy at [Amtrak.com/checked-baggage](http://Amtrak.com/checked-baggage).
- Check the departure board or ask a uniformed Amtrak employee to find out where to board your train.

• If You See Something Say Something! Contact Amtrak Police at 1-800-331-0008 or Text to APD11 (27311).

**From:** Hoelzer, John (USAILC) (b)(6),(b)(7)(C)@usdoj.gov  
**Sent:** 9/23/2020 9:35:55 PM  
**To:** (b)(6),(b)(7)(C)@ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f0573adf93ec402290c7fd873b370976-(b)(6),(b)(7)(C)  
**CC:** (b)(6),(b)(7)(C)@usdoj.gov  
**Subject:** FW: US v. Jeffreys - Compliance with Administrative Subpoenas  
**Attachments:** V (b)(6),(b)(7)(C) Admin Subponea Response.pdf  
**Flag:** Follow up

CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact ICE SOC SPAM with questions or concerns.

FYI

**From:** (b)(6),(b)(7)(C)@atg.state.il.us>  
**Sent:** Wednesday, September 23, 2020 4:32 PM  
**To:** Hoelzer, John (USAILC) (b)(6),(b)(7)(C)@usa.doj.gov>  
**Cc:** (b)(6),(b)(7)(C)@illinois.gov>; (b)(6),(b)(7)(C)@atg.state.il.us>; (b)(6),(b)(7)(C) (USAILC) (b)(6),(b)(7)(C)@usa.doj.gov>  
**Subject:** Re: US v. Jeffreys - Compliance with Administrative Subpoenas

John,

Attached is IDOC's production in response to the subpoena relating to (b)(6),(b)(7)(C). My understanding is that, although the IDOC website shows (b)(6),(b)(7)(C) projected parole date as October 8, 2020, it is unlikely that he will be released at that time and his submitted residence plan has been denied. Please contact (b)(6) (b)(7)(C) for additional information.

Respectfully,

(b)(6),(b)(7)(C)

---

**From:** (b)(6),(b)(7)(C)  
**Sent:** Wednesday, September 23, 2020 2:02 PM  
**To:** Hoelzer, John (USAILC)  
**Cc:** (b)(6),(b)(7)(C)  
**Subject:** Re: US v. Jeffreys - Compliance with Administrative Subpoenas

John,

Attached is IDOC's production in response to the subpoena relating to (b)(6),(b)(7)(C). Note that redactions have been applied to the name and other identifying information for a minor crime victim in the attached. You may follow up with (b)(6),(b)(7)(C) on this one, as well.

Respectfully,

(b)(6),(b)(7)(C)

---

**From:** (b)(6),(b)(7)(C)  
**Sent:** Wednesday, September 23, 2020 1:13 PM



To: Hoelzer, John (USAILC)  
Cc: (b)(6),(b)(7)(C) (USAILC)  
Subject: Re: US v. Jeffreys - Compliance with Administrative Subpoenas

John,

Attached is IDOC's production in response to the subpoena relating to (b)(6),(b)(7)(C). You may contact IDOC's Chief Counsel, (b)(6),(b)(7)(C), with follow-up questions regarding the production. (b)(6),(b)(7)(C) cell is: 217-72 (b)(6),(b)(7)(C)

Respectfully,

(b)(6),(b)(7)(C)

---

From: Hoelzer, John (USAILC) (b)(6),(b)(7)(C) @usdoj.gov>  
Sent: Monday, September 21, 2020 2:33 PM  
To: (b)(6),(b)(7)(C)  
Cc: (b)(6),(b)(7)(C) (USAILC)  
Subject: RE: US v. Jeffreys - Compliance with Administrative Subpoenas

No objection.

Thanks,

(b)(6),(b)(7)(C)

---

From: (b)(6),(b)(7)(C) @atg.state.il.us>  
Sent: Monday, September 21, 2020 2:18 PM  
To: Hoelzer, John (USAILC) (b)(6),(b)(7)(C) @usa.doj.gov>  
Cc: (b)(6),(b)(7)(C) @illinois.gov>; (b)(6),(b)(7)(C) @atg.state.il.us>  
Subject: Re: US v. Jeffreys - Compliance with Administrative Subpoenas

John,

Attached please find a proposed motion notifying the Court of IDOC's intent to comply with the subpoena and requesting a seven-day extension of the current filing deadlines. Please let me know if we may represent to the Court that the motion is unopposed.

Best,

(b)(6),(b)(7)(C)

---

From: (b)(6),(b)(7)(C)  
Sent: Monday, September 21, 2020 2:16 PM  
To: Hoelzer, John (USAILC)  
Cc: (b)(6),(b)(7)(C) @usdoj.gov  
Subject: US v. Jeffreys - Compliance with Administrative Subpoenas

John,

Attached please find the letter I mentioned in our call earlier today. The Illinois Department of Corrections is compiling the documents and information sought in the administrative subpoenas and intends to produce them promptly.

I will send you a short proposed motion under separate cover.

Best,

(b)(6),(b)(7)(C)

**(b)(6),(b)(7)(C)**

Chief, Public Interest Division

Office of the Illinois Attorney General

100 W. Randolph St., (b)(6),(b)(7)(C)

Chicago, Illinois 60601

Pronouns: he/him

Phone: 312-814-(b)(6),(b)(7)(C)

Email: (b)(6),(b)(7)(C)@tg.state.il.us

1. To (Name, Address, City, State, Zip Code) <b>(b)(6),(b)(7)(C)</b> IDOC Acting Director C/O <b>(b)(6),(b)(7)(C)</b> Chief Legal Counsel 1301 Concordia Court, P.O. Box 19277 Springfield, IL 62794- <b>(b)(6),(b)(7)(C)</b>	DEPARTMENT OF HOMELAND SECURITY  <b>IMMIGRATION ENFORCEMENT SUBPOENA</b> to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number ERO ENF CHI 202000040	
2. In Reference To <div style="display: flex; justify-content: space-between;"> <div data-bbox="183 422 451 470"><b>(b)(6),(b)(7)(C)</b></div> <div data-bbox="1027 436 1243 470"><b>(b)(6),(b)(7)(C)</b></div> </div> <div style="display: flex; justify-content: space-between; font-size: small;"> <div data-bbox="464 478 646 506">(Title of Proceeding)</div> <div data-bbox="1094 478 1341 506">(File Number, if Applicable)</div> </div>	

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 laws. 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 <b>(b)(6),(b)(7)(C)</b> SDDO Title c/o Assistant US Attorney John D. Hoelzer Address Central District of IL 318 South 6th Street Springfield, IL 62701 Telephone Number 312-347- <b>(b)(6),(b)(7)(C)</b> 217-492- <b>(b)(6),(b)(7)(C)</b>	(B) Date 07/23/2020  (C) Time 12:00 <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.
--	--

4. Records required to be produced for inspection  
 Please See Attachment.



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

5. Authorized Official

**(b)(6),(b)(7)(C)**  
 (Signature)

**(b)(6),(b)(7)(C)**  
 (Printed Name)  
 Assistant Field Office Director

(Title)  
 07/08/2020  
 (Date)

CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT

A. CERTIFICATE OF SERVICE

I certify that on 07/08/2020, I served this subpoena on the witness named in Block 1 in the following manner:  
(Date)

Via e-mail to IDOC Chief Legal Counsel Robert Fanning (b)(6),(b)(7)(C) illinois.gov)

(b)(6),(b)(7)(C)

(Details of how service was effected)

(Signature of Official Serving Subpoena)

(b)(6),(b)(7)(C)

(Printed Name of Official Serving Subpoena)

Assistant Field Office Director

(Title of Official Serving Subpoena)

B. ACKNOWLEDGMENT OF RECEIPT

I acknowledge receipt of a copy of the subpoena on the front of this form.

Signature

(b)(6),(b)(7)(C)

Title

Chief Legal Counsel

Date

7/8/20

Time

3:20

a.m.  
 p.m.



**(b)(6),(b)(7)(C)**

1. Documents sufficient to establish the following for **(b)(6),(b)(7)(C)** home address, employment address, country of birth, place of birth, age, identification documents (i.e. driver license number, state, foreign identification card number and country, passport number and country), emergency contact address, phone number, copies of all identification documents, recent booking documents (photograph, fingerprints, and so on) any and all records related to disciplinary actions while in your custody, threat level, assaultive behavior, gang affiliation and any other officer safety issues, and probation records.
2. Notification of the calculated location, date, and time the subject will be released (based on good time credit and for any other applicable benefits).
3. Notification of any subsequent rescheduled date, time and location of subject's release.

**Law Enforcement Sensitive – For Official Use Only**

STATE OF ILLINOIS --- DEPARTMENT OF CORRECTIONS  
INSTITUTION GRAPHICS

Date: 9/22/2020

(b)(6), (b)(7)(C)

Photo Taken At: DAN On: 7/1/2020 08:53:49

IDOC

(b)(6), (b)(7)(C)

Nickname:

**Demographic Information**

Location: DAN-03-D Cell: 26  
Age: 45 Sex: Male  
DOB: 05-13-1975 Race: Hispanic  
Hair: Black Eyes: Brown  
Weight: 190 Height: 508

**Nicknames**

**Security Threat Group**

Unknown

**Security Information**

Sentence:	0007 yr 00 mn 0000 dy	Escape Risk:	Moderate
Transfer:	2016-07-27	Aggrn Level:	Unknown
Crime:	PRED CRIM SEX ASLT/VICTIM <13	Grade:	A
Security:	Minimum	Display Msr:	10/08/2020
Unassign:	N	Job:	Participant
Assignment:	UNASSIGNED		

OFFENDER FINGERPRINT CARD

Resident Name (b)(6),(b)(7)(C)

Classification Minimum

Alias

Reference

Reg. No # (b)(6),(b)(7)(C)

Race Hispanic

Sex Male

DCN (b)(6),(b)(7)(C)

1. Right Thumb

2. Right Index Finger

3. Right Middle Finger

4. Right Ring Finger

5. Right Little finger

(b)(6),(b)(7)(C)

FBI No. (b)(7)(e)

IL BOI No 27626171

Resident Signature

Impression Taken By LIVESCAN

Date 2020/07/01

OFFENDER FINGERPRINT CARD

Resident Name (b)(6),(b)(7)(C)

Institution DANVILLE

Reg. No # (b)(6),(b)(7)(C)

Alias

Race Hispanic Nationality

Sex Male

DOB 1975/05/12

Birth Place MEXICO

SSN (b)(6),(b)(7)(C)

Build

Marital Status

DIVORCED

Complexion

Hair BLACK

EDUCATION (CIRCLE HIGHEST GRADE COMPLETED)

Grade High  
1 2 3 4 5 6 7 8 9 10 11 12

College  
1 2 3 4 5 6

Recieved from KANE

Date Recieved 2016/07/05

Charge 14CF622

Sentence (b)(6),(b)(7)(C)

Weight 190

Paroled date

Discharge Date

Height 5

Eye BROWN

Marks AND Scars

Criminal History



OFFENDER FINGERPRINT CARD

IDENTIFICATION NO. (b)(6),(b)(7)(C)	LAST NAME (b)(6),(b)(7)(C)	FIRST NAME (b)(6),(b)(7)(C)	MIDDLE NAME	SID NUMBER (b)(6),(b)(7)(C)	UNIVERSAL CONTROL NO.
DATE PRINTED 2020/07/01	SIGNATURE OF OFFICIAL TAKING PRINTS		ID NUMBER	CONTRIBUTOR (ORI)	

**(b)(6),(b)(7)(C)**



**OFFENDER FINGERPRINT CARD**

**(b)(6), (b)(7)(C)**

FEDERAL BUREAU OF INVESTIGATION, UNITED STATES DEPARTMENT OF JUSTICE  
1000 CUSTER HOLLOW ROAD, CLARKSBURG, WEST VIRGINIA 26306

Distribution: Master File

**PLEASE DO NOT FOLD THIS CARD**

DOC0308(Rev. 7/2006)

OFFENDER FINGERPRINT CARD

THUMB

INDEX

MIDDLE

RING

LITTLE

**(b)(6), (b)(7)(C)**

IDENTIFICATION NO.

LAST NAME

FIRST NAME

MIDDLE NAME

SID NUMBER

UNIVERSAL CONTROL NO.

**(b)(6), (b)(7)(C)**

DATE PRINTED

SIGNATURE OF OFFICIAL TAKING PRINTS

ID NUMBER

CONTRIBUTOR (ORI)

2020/07/01

**(b)(6), (b)(7)(C)**

OFFENDER FINGERPRINT CARD



**(b)(6), (b)(7)(C)**

FEDERAL BUREAU OF INVESTIGATION, UNITED STATES DEPARTMENT OF JUSTICE  
1000 CUSTER HOLLOW ROAD, CLARKSBURG, WEST VIRGINIA 26306

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OFFENDER FINGERPRINT CARD

THUMB

INDEX

MIDDLE

RING

LITTLE

**(b)(6), (b)(7)(C)**

Distribution: Master File

PLEASE DO NOT FOLD THIS CARD

DOC0308(Rev. 7/2006)

DAN

**DEMOGRAPHIC INFORMATION SHEET**

INMATE NAME (b)(6),(b)(7)(C) INMATE NUMBER (b)(6),(b)(7)(C)

DATE ADMITTED 7/5/16 COUNTY Wene

HIEGHT 5'2" WIEGHT 190 HAIR BRN EYES BRN

RACE Isomno BIRTH STATE Mexico BIRTHDATE (b)(6),(b)(7)(C)

SOCIAL SECURITY NUMBER (b)(6),(b)(7)(C)

RELIGION Catolico

**INMATE EMERGENCY CONTACT INFORMATION**

**LIST ONE PERSON!!!**

DATE 7/10/16

INMATE NAME (b)(6),(b)(7)(C) INMATE NUMBER (b)(6),(b)(7)(C)

NAME OF EMERGENCY CONTACT (b)(6),(b)(7)(C)

ADDRESS PO Box 16941

CITY Encino STATE California ZIP-CODE 91416

RELATIONSHIP Sister/low TELEPHONE (818) 807-8189  
818 916 (b)(6),(b)(7)(C)

I HAVE RECEIVED MY ORIENTATION INSERTS AS WELL AS SEXUAL ABUSE/ ASSAULT/ MISCONDUCT PREVENTION AND INTERVENTION INFORMATION

SIGNATURE (b)(6),(b)(7)(C) DATE 7/10/16

Illinois Department of Corrections Disciplinary Tracking Inmate  
Disciplinary Card

Name: (b)(6),(b)(7)(C)

IDOC # (b)(6),(b)(7)(C)

Transferred In: 7/27/2016

Disciplinary history from 01/01/98 through 09/22/20

Living Unit: DAN/DAN/03/D/26

Incident Date

Incident/Summ#/Inst.

Ticket Type

Offense Codes, Descriptions

Disciplinary Action

*No Discipline on System*

T/S

7/5/16

DC 1321

SINGLE OR CONCURRENT DETERMINATE SENTENCES UNDER 1978 LAW AND JAIL CREDIT

NAME (b)(6),(b)(7)(C) NUMBER (b)(6),(b)(7)(C) DATE 7/7/16

(STEP 1)(A)

Yr. Mo. Day

(Rel. on Bond, Etc.) (Arrest Date) (Jail Credits) (Add 1 Day) (Jail Credits) + 1

(STEP 2)

Yr. Mo. Day

(Jail Credits-A) (Jail Credits-B) (Jail Credits-C) (Jail Credits-D) (Total Jail Credits) +

(STEP 1)(B)

Yr. Mo. Day

(Rel. on Bond, Etc.) (Arrest Date) (Jail Credits) (Add 1 Day) (Jail Credits) + 1

(STEP 3)

Yr. Mo. Day

(Old Custody Sentence Date) (Total Jail Credits) (New Custody Date) 14CF622

(STEP 1)(C)

Yr. Mo. Day

(Rel. on Bond, Etc.) (Arrest Date) (Jail Credits) (Add 1 Day) (Jail Credits) + 1

(STEP 4) MITTENS NO.

PROJECTED OUT DATE - 7 YRS

1/2 Yr. Mo. Day 14-10-26 (New Custody Date) 05-11-12 (Sentence Less) GCC 20-10-8 (Projected Out Date) - (Previous Time Lost/Awarded) + or - (Adj. Proj. Out Date)

(STEP 1)(D)

Yr. Mo. Day

(Rel. on Bond, Etc.) (Arrest Date) (Jail Credits) (Add 1 Day) (Jail Credits) + 1

(STEP 5)

MANDATORY OUT DATE

Yr. Mo. Day 14-10-26 (New Custody Date) 7 (Sentence) 21-10-26 (Mandatory Out Date)

Adj. Proj. Out Date 10-8-20 Terminal Operator (b)(6),(b)(7)(C) Mandatory Out Date 10-26-21 Date Entered (b)(6),(b)(7)(C) Calculated By (b)(6),(b)(7)(C)

DC 1321 (Rev 10/98) IL 428-00521

Handwritten signature and date 9-16-16

**IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT  
KANE COUNTY, ILLINOIS**

Case No. 14 CF 622

5/13/17 H

TS

Plaintiff(s) <u>state</u>	Defendant(s) <b>(b)(6),(b)(7)(C)</b>	Y14621	
Plaintiff(s) Atty. <u>Schmidt</u>	Defendant(s) Atty. <u>Yoon</u>		
Judge <u>Hallak (42)</u>	Court Reporter <u>Mariano</u>		Deputy Clerk <u>Mabal</u>
A copy of this order <input type="checkbox"/> should be sent <input type="checkbox"/> has been sent			
<input type="checkbox"/> Plaintiff Atty. <input type="checkbox"/> Defense Atty. <input type="checkbox"/> Other _____		File Stamp	

**JUDGMENT ORDER  
Illinois Department of Corrections**

@ 85%

Crime For Which Defendant Convicted: predatory crim. sex ass. of child (C.I.X)

Chapter and Section: 720 ILCS 5/11 - 1.4D (a)(1)

Date of Offense: 1.5.2004 ~ 1.4.09

Credit for Time Served: 10.26.14 to present

Kane County Jail:  
612 Day(s) \_\_\_\_\_ Month(s)  NONE

Other Credit: \_\_\_\_\_  
(Type/Place/Agency)  
\_\_\_\_\_ Day(s) \_\_\_\_\_ Month(s)  NONE

Costs of These Proceedings:

Fine \_\_\_\_\_

Sheriff's Costs \_\_\_\_\_

Sub-total \_\_\_\_\_ (A)

Bond on Deposit \_\_\_\_\_

Less 10% (if applicable) (\_\_\_\_\_)

Credit Amount( \_\_\_\_\_ )(B)

**BALANCE DUE (A-B)** \_\_\_\_\_

Balance Due: \_\_\_\_\_

Instanter  \_\_\_\_\_ (date)

Sentence of the Court:

\_\_\_\_\_ Day(s) \_\_\_\_\_ Month(s) 7 Year(s)

Concurrent  Consecutive with Case Number(s):  
MSR = 3 to 1:fe

Finding of guilty but mentally ill

Municipality of Arrest (if over 25,000 pop.):  
Aurora

THE COURT being advised in the premises:

IT IS HEREBY ORDERED that the defendant named herein is guilty of the crime set forth in this case; and,

IT IS FURTHER ORDERED that the defendant be given credit for such time served as determined by the Court; and, that the defendant pay all costs of these proceedings.

NOW, THEREFORE, is Ordered, Adjudged and Decreed that the defendant be sentenced to the Illinois Department of Corrections for the crime he/she stands convicted, for a term of days, months or years as set forth herein; and,

FURTHER, that the defendant be taken from the bar of this Court to the Kane County Jail, and from there, by the Sheriff of Kane County, to the nearest reception and classification center of the Illinois Department of Corrections, and the Illinois Department of Corrections is hereby required and commanded to take the body of the defendant and confine him/her in a Penitentiary or State Penal Farm, according to the law, from and after delivery thereof until discharged according to law, provided such term of imprisonment shall be not less than nor more than the term of days, months or years for which the defendant stands convicted.

Date: 6-29-16

Judge: \_\_\_\_\_

A true copy of the original is on file in my office

Attested to this 6/29/16

**Thomas M. Hartwell**  
Clerk of the Circuit Clerk  
Kane County, Illinois

By: Thomas M. Hartwell  
Deputy Clerk



**IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT  
KANE COUNTY, ILLINOIS**

Case No. 14 CF 622

People of State of Illinois <b>Plaintiff(s)</b>	<b>(b)(6),(b)(7)(C)</b> <b>Defendant(s)</b>	414621
Schmidt <b>Plaintiff(s) Atty.</b>	Youn <b>Defendant(s) Atty.</b>	
(W) Hallock <b>Judge</b>	Marianne <b>Court Reporter</b>	
A copy of this order <input type="checkbox"/> should be sent <input type="checkbox"/> has been sent		
<input type="checkbox"/> Plaintiff Atty. <input type="checkbox"/> Defense Atty. <input type="checkbox"/> Other		File Stamp

**JUDGMENT ORDER (JG/MTO)**

- The Court/Jury having found the defendant guilty of: Predatory Criminal Sex Assault of Child (C.I. X)
  - Original  Lesser/Incl.  Amended Statute: 720 ILCS 5/11 - 1.40 (a)(1)
  - A motor vehicle was involved in the commission of the felony
- Judgment entered on conviction and sentence

Nolle Prosequi Count(s) any remaining counts  
**UPON THE DEFENDANT'S PLEA/VERDICT OF GUILTY THE FOLLOWING SENTENCE IS HEREBY IMPOSED**

- |   | Months | Days |
|---|--------|------|
| <input type="checkbox"/> 208 - Withhold Judgment - Court Supervision  |        |      |
| <input type="checkbox"/> 215 - Withhold Judgment - 720 ILCS 550/710 Probation   |        |      |
| <input type="checkbox"/> 216 - Withhold Judgment - 720 ILCS 570/410 Probation   |        |      |
| <input type="checkbox"/> 204 - Probation \$50 per month fee or <input type="checkbox"/> _____ per month fee <input type="checkbox"/> fee waived             |        |      |
| <input type="checkbox"/> 210 - Intensive Probation for _____ months.  |        |      |
| <input type="checkbox"/> 206 - Conditional Discharge, \$100 per year fee or <input type="checkbox"/> _____ per year fee <input type="checkbox"/> fee waived |        |      |
| <input type="checkbox"/> 213 - Electronic Monitoring: \$ _____ (per day) \$ _____ (total)   |        |      |
| <input type="checkbox"/> 209 - Perform public service _____ hours, to be completed by _____ \$50 for 6 months, \$25 per month thereafter                    |        |      |
| <input type="checkbox"/> fee waived <input type="checkbox"/> Defendant exempt   |        |      |

The Defendant to report to  Judge  Court Services  Judge and Court Services  Non Reporting

Fine: \$ 400  Fine: \$ ~~400~~ after Pretrial Detention Credit  Costs: \$ 410  Sex Assault Fee \$100 200

Statutory Assessment Fee: \$ \_\_\_\_\_  Sex Registration Fee: \$ 500  Drug Assessment Fee \$ \_\_\_\_\_

DNA Fee \$200  Spinal Cord Injury \$5  Drug Fine: \$ \_\_\_\_\_  Trauma Center Fee \$100  Abuser Serv. Fee \$20

Drug Testing Fee: \$ \_\_\_\_\_  IPS-Fee \$200  Crime Lab Fee \$100  Pub Def Fee of \$ \_\_\_\_\_  Reserved

Restitution: \$ \_\_\_\_\_ to \_\_\_\_\_ (Name and Address)

Sheriffs costs: \$ \_\_\_\_\_  Fee Waived  Other \$ CAC = 30

**THE DEFENDANT SHALL PAY FINES, COSTS, AND FEES, totaling (including probation, conditional discharge, and supervised community service) \$ \_\_\_\_\_ in monthly payments of \$ \_\_\_\_\_ per month, with the first payment due \_\_\_\_\_.** Monthly payment does not include weekend fees or any fees assessed prior to or post disposition.

**THE DEFENDANT TO SERVE THE FOLLOWING PERIODS OF INCARCERATION** Years Months Days

201 - Department of Corrections MSR = 3 to life 7

202 - Kane County Jail

203 - Periodic Imprisonment (\$20 per day-weekend equals 3 days)

250 - Credit for time served: 612 actual days since 10-20-14 to present.

The sentence of \_\_\_\_\_ shall run  Consecutive  Concurrent to the term imposed by the Circuit Court of \_\_\_\_\_ County, case number \_\_\_\_\_

Defendant to begin incarceration on \_\_\_\_\_

**THE DEFENDANT TO COMPLY WITH THE FOLLOWING CONDITIONS:**  Judgment entered and any on filing F+C + send to coll

Follow all rules of  Probation  Conditional Discharge  Electronic Home Monitoring  Community Service  TASC

Alcohol/Drug Evaluation  KCDC Evaluation/Treatment  No Contact with \_\_\_\_\_

Other: write any court dates in this. Recall any warrant on the

Date: 6-29-16 Judge: \_\_\_\_\_

**From:** Hoelzer, John (USAILC) (b)(6),(b)(7)(C)@usdoj.gov  
**Sent:** 9/23/2020 9:52:21 PM  
**To:** (b)(6),(b)(7)(C)@o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=f0573adf93ec402290c7fd873b370976 (b)(6),(b)(7)(C)  
**CC:** (b)(6),(b)(7)(C)@usdoj.gov  
**Subject:** FW: US v. Jeffreys - Compliance with Administrative Subpoenas  
**Attachments:** Alvarado - Subpoena Response.pdf  
**Flag:** Flag for follow up

CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact ICE SOC SPAM with questions or concerns.

FYI

**From:** (b)(6),(b)(7)(C)@atg.state.il.us>  
**Sent:** Wednesday, September 23, 2020 4:49 PM  
**To:** Hoelzer, John (USAILC) <(b)(6),(b)(7)(C)@usa.doj.gov>  
**Cc:** (b)(6),(b)(7)(C)@illinois.gov>; (b)(6),(b)(7)(C)@atg.state.il.us>; (b)(6),(b)(7)(C)@usa.doj.gov>  
**Subject:** RE: US v. Jeffreys - Compliance with Administrative Subpoenas

John,

Attached is IDOC's production in response to the subpoena relating to (b)(6),(b)(7)(C). Please contact (b)(6),(b)(7)(C) if you have follow-up questions.

Respectfully,

(b)(6),(b)(7)(C)

**From:** (b)(6),(b)(7)(C)  
**Sent:** Wednesday, September 23, 2020 4:31 PM  
**To:** Hoelzer, John (USAILC)  
**Cc:** (b)(6),(b)(7)(C) (USAILC)  
**Subject:** Re: US v. Jeffreys - Compliance with Administrative Subpoenas

(b)(6),(b)(7)(C)

Attached is IDOC's production in response to the subpoena relating to (b)(6),(b)(7)(C). My understanding is that, although the IDOC website shows (b)(6),(b)(7)(C) projected parole date as October 8, 2020, it is unlikely that he will be released at that time and his submitted residence plan has been denied. Please contact (b)(6),(b)(7)(C) for additional information.

Respectfully,

(b)(6),(b)(7)(C)

**From:** (b)(6),(b)(7)(C)  
**Sent:** Wednesday, September 23, 2020 2:02 PM  
**To:** Hoelzer, John (USAILC)  
**Cc:** (b)(6),(b)(7)(C) (USAILC)  
**Subject:** Re: US v. Jeffreys - Compliance with Administrative Subpoenas

(b)(6),(b)(7)(C)

Attached is IDOC's production in response to the subpoena relating to (b)(6),(b)(7)(C). Note that redactions have been applied to the name and other identifying information for a minor crime victim in the attached. You may follow up with (b)(6),(b)(7)(C) on this one, as well.

Respectfully,

(b)(6),(b)(7)(C)

---

**From:** (b)(6),(b)(7)(C)  
**Sent:** Wednesday, September 23, 2020 1:13 PM  
**To:** Hoelzer, John (USAILC)  
**Cc:** (b)(6),(b)(7)(C) (USAILC)  
**Subject:** Re: US v. Jeffreys - Compliance with Administrative Subpoenas

John,

Attached is IDOC's production in response to the subpoena relating to (b)(6),(b)(7)(C). You may contact IDOC's Chief Counsel, (b)(6),(b)(7)(C) with follow-up questions regarding the production. (b)(6),(b)(7)(C) cell is: 217-725-(b)(6),(b)(7)(C)

Respectfully,

(b)(6),(b)(7)(C)

---

**From:** Hoelzer, John (USAILC) <(b)(6),(b)(7)(C)@sdoj.gov>  
**Sent:** Monday, September 21, 2020 2:33 PM  
**To:** (b)(6),(b)(7)(C)  
**Cc:** (b)(6),(b)(7)(C)  
**Subject:** RE: US v. Jeffreys - Compliance with Administrative Subpoenas

No objection.

Thanks,

(b)(6),(b)(7)(C)

---

**From:** (b)(6),(b)(7)(C) <(b)(6),(b)(7)(C)@tg.state.il.us>  
**Sent:** Monday, September 21, 2020 2:18 PM  
**To:** Hoelzer, John (USAILC) <(b)(6),(b)(7)(C)@sa.doj.gov>  
**Cc:** (b)(6),(b)(7)(C) <(b)(6),(b)(7)(C)@illinois.gov>; (b)(6),(b)(7)(C) <(b)(6),(b)(7)(C)@atg.state.il.us>  
**Subject:** Re: US v. Jeffreys - Compliance with Administrative Subpoenas

John,

Attached please find a proposed motion notifying the Court of IDOC's intent to comply with the subpoena and requesting a seven-day extension of the current filing deadlines. Please let me know if we may represent to the Court that the motion is unopposed.

Best,

(b)(6),(b)(7)(C)

From: (b)(6),(b)(7)(C)

Sent: Monday, September 21, 2020 2:16 PM

To: Hoelzer, John (USAILC)

Cc: (b)(6),(b)(7)(C)@usdoj.gov

Subject: US v. Jeffreys - Compliance with Administrative Subpoenas

John,

Attached please find the letter I mentioned in our call earlier today. The Illinois Department of Corrections is compiling the documents and information sought in the administrative subpoenas and intends to produce them promptly.

I will send you a short proposed motion under separate cover.

Best,

(b)(6),(b)(7)(C)

Chief, Public Interest Division  
Office of the Illinois Attorney General  
100 W. Randolph St., 12th Flr.  
Chicago, Illinois 60601  
Pronouns: he/him  
Phone: 312-814-(b)(6),(b)(7)(C)  
Email: (b)(6),(b)(7)(C)@atg.state.il.us



1. To (Name, Address, City, State, Zip Code) (b)(6),(b)(7)(C) Acting Director c/o (b)(6),(b)(7)(C) 1301 Concordia Court, P.O. Box 19277 Springfield, IL 62794-9277	DEPARTMENT OF HOMELAND SECURITY  <b>IMMIGRATION ENFORCEMENT SUBPOENA</b> to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number ERO ENF CHI (b)(6),(b)(7)(C)	
2. In Reference To (b)(6),(b)(7)(C) _____ (b)(6),(b)(7)(C) (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 laws. 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 (b)(6),(b)(7)(C) SDDO Title c/o Assistant US Attorney John D. Hoelzer Address Central District of IL 318 South 6th Street Springfield, IL 62701 Telephone Number 312-347 (b)(6),(b)(7)(C) 217-492 (b)(6),(b)(7)(C)	(B) Date 07/23/2020  (C) Time 12:00 <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.
---	--

4. Records required to be produced for inspection Please See Attachment.
---



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

5. Authorized Official (b)(6),(b)(7)(C) (Signature)
(b)(6),(b)(7)(C) (Printed Name) Assistant Field Office Director
(Title)
07/08/2020 (Date)



**CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT**

**A. CERTIFICATE OF SERVICE**

I certify that on 07/08/2020, I served this subpoena on the witness named in Block 1 in the following manner:  
 (Date)

Via e-mail to IDOC Chief Legal Counsel (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)llinois.gov

**(b)(6),(b)(7)(C)**

(Details of how service was effected)

(Signature of Official Serving Subpoena)

**(b)(6),(b)(7)(C)**

(Printed Name of Official Serving Subpoena)

Assistant Field Office Director

(Title of Official Serving Subpoena)

**B. ACKNOWLEDGMENT OF RECEIPT**

I acknowledge receipt of a copy of the subpoena on the front of this form.

Signature

Title

Date

Time

a.m.  
 p.m.

Attachment for I-138 Subpoena Number ERO ENF (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

1. Documents sufficient to establish the following for (b)(6),(b)(7)(C) home address, employment address, country of birth, place of birth, age, identification documents (i.e. driver license number, state, foreign identification card number and country, passport number and country), emergency contact address, phone number, copies of all identification documents, recent booking documents (photograph, fingerprints, and so on) any and all records related to disciplinary actions while in your custody, threat level, assaultive behavior, gang affiliation and any other officer safety issues, and probation records.
2. Notification of the calculated location, date, and time the subject will be released (based on good time credit and for any other applicable benefits).
3. Notification of any subsequent rescheduled date, time and location of subject's release.

**Law Enforcement Sensitive – For Official Use Only**

STATE OF ILLINOIS -- DEPARTMENT OF CORRECTIONS  
INSTITUTION GRAPHICS

Date: 9/22/2020

(b)(6), (b)(7)(C)

Photo Taken At: EMO On: 8/14/2020 14:00:11

IDOC #: (b)(6), (b)(7)(C)

Nickname:

**Demographic Information**

Location: EMO-AD-04 Cell: 08  
Age: 32 Sex: Male  
DOB: 08-03-1988 Race: Hispanic  
Hair: Black Eyes: Brown  
Weight: 260 Height: 511

**Nicknames**

**Security Threat Group**

Ambrose

**Security Information**

Sentence: 0015 yr 00 mn 0000 dy  
Transfer: 2018-02-21  
Crime: ATTEMPT SOLICITATION/MURDER/FOF  
Security: Minimum  
Unassign: N  
Assignment: ADMIN. BUILDING  
Escape Risk: Moderate  
Aggrn Level: Unknown  
Grade: A  
Display Msr: 12/09/2020  
Job: Showers

AS OF DATE: 6/13/2017

OFFENDER 360

RUN DATE: 6/13/2017

EXECUTIVE SUMMARY

RUN TIME: 1:29:54 PM

IDOC: (b)(6),(b)(7)(C)

P A Pending

STA:NRC:RV:02:13:L1

S U M M A R Y

INMATE: (b)(6),(b)(7)(C) IS A 29 YEAR OLD HISPANIC MALE RECEIVED ON 5/26/2017 AT STATEVILLE RECEPTION CENTER AS A DIRECT FROM COURT ADMISSION. THE CURRENT HOLDING OFFENSE IS ATTEMPT SOLICITATION/MURDER/FOR HIRE, (A CLASS 1 FELONY), WITH A SENTENCE OF 15 YEARS 0 MONTHS 0 DAYS. THE COMMITTING COUNTY IS COOK.

INMATE: (b)(6),(b)(7)(C) IS SERVING SENTENCES FOR:

OFFENSE	MIT ADMT	TIME TO SERV	CLS	CNTS	CC/CS
ATTEMPT SOLICITATION/MURDER/FOR HIRE	5/26/2017	0015 00 0000	1	1	CC

ADMISSION TYPE: DIRECT FROM COURT ADMIT DATE: 5/26/2017 11:10 AM  
 PROJ MSR DATE: 5/16/2021 PROJ DISC: 5/16/2023  
 LAST CALC DATE: 6/13/2017

I D E N T I F I C A T I O N

HEIGHT: 5 FT. 11 IN. IR:  
 WEIGHT: 260 LBS. BOI: (b)(6),(b)(7)(C)  
 BIRTHDATE: 8/3/1988 FBI:  
 BIRTHPLACE: ILLINOIS SSN:  
 RACE: Hispanic DCN #: (b)(6),(b)(7)(C)  
 ETHNIC PREF:  
 HAIR COLOR: BLACK  
 EYES COLOR: BROWN

--- LOCATION MARKS/SCARS --- DESCRIPTION OF MARK/SCAR--

E D U C A T I O N

E M P L O Y M E N T

E M E R G E N C Y C O N T A C T S

(b)(6),(b)(7)(C)

MOTHER

Cicero ILLINOIS 60804

3123 (b)(6),(b)(7)(C)

M E D I C A L / P S Y C H O L O G I C A L

P E R S O N A L

SOURCE:

LAST ADDRESS: MARITAL STATUS: SINGLE  
 COUNTY NUMBER OF CHILDREN: 00  
 CITIZENSHIP: NATIVE BORN RELIGION: AL-ISLAM (MUSLIM)  
 SPOKEN LANGUAGES:

DEPARTMENT OF HOMELAND SECURITY  
IMMIGRATION DETAINER - NOTICE OF ACTION

Subject ID:  
Event #:

(b)(6),(b)(7)(C)

File No: (b)(6),(b)(7)(C)  
Date: 08 | 14 | 17

TO: (Name and Title of Institution - OR Any Subsequent Law Enforcement Agency)  
Illinois Department of Corrections  
Stateville Correctional Center  
16830 Broadway St.  
Crest Hill, IL 60403

FROVI: (Department of Homeland Security Office Address)  
CHICAGO, IL, DOCKET CONTROL OFFICE  
ICE  
ERO CHICAGO FIELD OFFICE  
101 W CONGRESS PARKWAY 4TH FLOOR  
CHICAGO, IL 60605

Name of Alien: (b)(6),(b)(7)(C)

Date of Birth: (b)(6),(b)(7)(C) Citizenship: Mexico Sex: M

1. DHS HAS DETERMINED THAT PROBABLE CAUSE EXISTS THAT THE SUBJECT IS A REMOVABLE ALIEN. THIS DETERMINATION IS BASED ON (complete box 1 or 2).

- A final order of removal against the alien;
- The pendency of ongoing removal proceedings against the alien;
- Biometric confirmation of the alien's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- Statements made by the alien to an immigration officer and/or other reliable evidence that affirmatively indicate the alien either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

2. DHS TRANSFERRED THE ALIEN TO YOUR CUSTODY FOR A PROCEEDING OR INVESTIGATION (complete box 1 or 2).

- Upon completion of the proceeding or investigation for which the alien was transferred to your custody, DHS intends to resume custody of the alien to complete processing and/or make an admissibility determination.

IT IS THEREFORE REQUESTED THAT YOU:

- Notify DHS as early as practicable (at least 48 hours, if possible) before the alien is released from your custody. Please notify DHS by calling  U.S. Immigration and Customs Enforcement (ICE) or  U.S. Customs and Border Protection (CBP) at (312)735-1258. If you cannot reach an official at the number(s) provided, please contact the Law Enforcement Support Center at: (802) 872-6020.
- Maintain custody of the alien for a period NOT TO EXCEED 48 HOURS beyond the time when he/she would otherwise have been released from your custody to allow DHS to assume custody. The alien must be served with a copy of this form for the detainer to take effect. This detainer arises from DHS authorities and should not impact decisions about the alien's bail, rehabilitation, parole, release, diversion, custody classification, work, quarter assignments, or other matters
- Relay this detainer to any other law enforcement agency to which you transfer custody of the alien.
- Notify this office in the event of the alien's death, hospitalization or transfer to another institution.

- If checked: please cancel the detainer related to this alien previously su

(b)(6),(b)(7)(C)

(Name and title of Immigration Officer)

(b)(6),(b)(7)(C)

Notice: If the alien may be the victim of a crime or you want the alien to remain in the United States for a law enforcement purpose, notify the ICE Law Enforcement Support Center at (802) 872-6020. You may also call this number if you have any other questions or concerns about this matter.

TO BE COMPLETED BY THE LAW ENFORCEMENT AGENCY CURRENTLY HOLDING THE ALIEN WHO IS THE SUBJECT OF THIS NOTICE:

Please provide the information below, sign, and return to DHS by mailing, emailing or faxing a copy to \_\_\_\_\_

Local Booking/Inmate #: \_\_\_\_\_ Estimated release date/time: \_\_\_\_\_

Date of latest criminal charge/conviction: \_\_\_\_\_ Last offense charged/conviction: \_\_\_\_\_

This form was served upon the alien on \_\_\_\_\_, in the following manner:

- in person  by inmate mail delivery  other (please specify): \_\_\_\_\_

(Name and title of Officer)

(Signature of Officer) (Sign in ink)



Y22000

File No: (b)(6),(b)(7)(C)

Date: 08/16/17

To: Any immigration officer authorized pursuant to sections 236 and 287 of the Immigration and Nationality Act and part 287 of title 8, Code of Federal Regulations, to serve warrants of arrest for immigration violations

I have determined that there is probable cause to believe that (b)(6),(b)(7)(C) is removable from the United States. This determination is based upon:

- the execution of a charging document to initiate removal proceedings against the subject;
- the pendency of ongoing removal proceedings against the subject;
- the failure to establish admissibility subsequent to deferred inspection;
- biometric confirmation of the subject's identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

YOU ARE COMMANDED to arrest and take into custody for removal proceedings under the Immigration and Nationality Act, the above-named alien

(b)(6),(b)(7)(C)

(Printed Name and Title of Authorized Immigration Officer)

Certificate of Service

I hereby certify that the Warrant for Arrest of Alien was served by me at ILLINOIS RIVER CC (Location)

on (b)(6),(b)(7)(C) on 08/16/17, and the contents of this (Date of Service)

notice was read to (b)(6),(b)(7)(C) language. (Language)

(b)(6),(b)(7)(C)

Name and Signature of Officer

Name or Number of Interpreter (if applicable)

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
CHICAGO, ILLINOIS

File No. (b)(6),(b)(7)(C)

Date: May 8, 2019

In the Matter of:

(b)(6),(b)(7)(C)

Respondent.

)  
)  
)  
)  
)

IN REMOVAL PROCEEDINGS

CHARGE: INA § 212(a)(6)(A)(i) -- Unlawful presence.

ON BEHALF OF THE RESPONDENT:

*Pro se*

ON BEHALF OF THE GOVERNMENT:

(b)(6),(b)(7)(C) Assistant Chief Counsel  
Department of Homeland Security  
525 West Van Buren Street, Suite 701  
Chicago, Illinois 60607

**DECISION OF THE IMMIGRATION JUDGE**

Respondent is a thirty-year-old native and citizen of Mexico who entered the United States under unknown circumstances. Exh. 1. On July 29, 2011, the Department of Homeland Security filed a Notice to Appear charging him with inadmissibility under INA §§ 212(a)(6)(A)(i), for unlawful presence. Respondent, through counsel, admitted the factual allegations, conceded removability, and the Court designated Mexico for removal. INA § 241(b)(2)(D). On August 1, 2013, Respondent applied for Asylum, Withholding of Removal, and Protection under the Convention Against Torture. Exh. 2.

In December 2013, Respondent was convicted of Attempted Solicitation / Murder For Hire and sentenced to 15 years' incarceration, which he is serving at the East Moline Correctional Center. On November 7, 2017, Respondent, through counsel, withdrew his applications for relief and protection from removal and requested to be ordered removed. Counsel explained the consequences of withdrawing his applications, and the Court ordered Respondent removed.

On December 5, 2017, Respondent's new counsel filed a Motion to Reopen Respondent's case with a visa petition apparently filed by Respondent's United States citizen brother. The Court granted the motion *sua sponte* on January 8, 2018. On May 7, 2019, Respondent's counsel informed the Court that he did not believe Respondent was eligible for relief. After careful consideration, the Court agrees with Respondent's counsel and finds that he is not eligible for any relief. There are no pending applications before the Court. Accordingly, the Court enters the following order:

**ORDER OF THE IMMIGRATION JUDGE**

IT IS ORDERED that Respondent be removed to MEXICO.



---

KATHRYN L. DEANGELIS  
IMMIGRATION JUDGE

Inmate Name:

(b)(6),(b)(7)(C)

Thursday, May 25, 2017

### COOK COUNTY SHERIFF'S OFFICE BOOKING CARD

7:19:26 PM

Prisoner Type: Pre-Trial

Bkg Date/Time: 1/5/2014 4:13 PM

Hair Color: Black

Citizen Of: USA

Age: 25

Eye Color: Brown

Birth Place: Mexico

DOB:

Height: 5 ft 9 In

Religion: Catholic

SSN #:

Weight: 235

Gang: AMBROSE

FBI #:

(b)(6),(b)(7)(C), (b)(7)(e)

Build: Medium

Cell Location:

(b)(6),(b)(7)(C)

SID #:

IR #:

Arrest Address:

Home Address:

(b)(6),(b)(7)(C)

City: Cicero

State: IL

Zip: 60804

Phone #:

Emergency Name:

(b)(6),(b)(7)(C)

Relationship: Mother

CCOMS Case	Type	Docket #	Current Bond	Last Court Date	Court ID
399077	State Statute Ship to IDOC	14CR0214202	\$0	5/25/2017 9:30 AM	Maywood

Alias Full Name

Date of Birth

SSN

Associated Booking

Date

Alias Type

(b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

10/8/2014

Name



# Illinois State Police DNA Indexing Laboratory --- Sample Information

## Illinois River Correctional Center

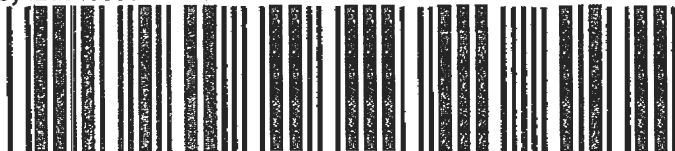
Last Name: (b)(6),(b)(7)(C)  
 First Name: (b)(6),(b)(7)(C)  
 Sex: Male  
 Race: Hispanic  
 DOB: 8/3/1988  
 SID: IL51873090  
 DOC Number: Y22000  
 Conviction Date: 5/25/2017  
 Collection Date: 6/19/2017  
 Collection Reason: 720-5/8-1.2  
 Received Date: 6/20/2017  
 Received By: Burrist  
 Kit Barcode: 1077134  
 Eligibility Status: Adult



**If any of the above information is incorrect, please make changes on this sheet and FAX to the DNA Indexing Laboratory at (217)786-6956.**

For additional information, please call (217)786-6160.

Printed on 7/17/2017  
Entry by IL0848800\ebarbr







ILLINOIS DEPARTMENT OF CORRECTIONS  
OFFENDER 360  
ISP DNA BUCCAL REPORT



DNA INDEXING DATABASE

SAMPLE RECEIPT

\*\*\*\*\*  
\*  
\*  
\* ISP Bar Code (ISP Use Only) \*  
\*  
\*\*\*\*\*

(1) Identifying Information

Last Name: (b)(6),(b)(7)(C) Init  
Birth Date: (b)(6),(b)(7)(C)  
Race: HSP  
Sex: M

(2) Collection Certification

I hereby certify that I have on this date witnessed the collection of a buccal swab sample from the above individual who was positively identified to me using one or more of the following:

(Check all that apply)

Subject was accompanied by judicial employee with knowledge of the offenders identification.

Drivers License/State Photo ID

Other (please specify)

Witness Sign: (b)(6),(b)(7)(C)

DNA2IL(BS):DCC2.1 7/03

(3) Collection Date

06-19-2017  
MM DD CCYY

(4) Identification Numbers

SID #: (b)(6),(b)(7)(C)  
IDOC #: (b)(6),(b)(7)(C)  
DCN #: (b)(6),(b)(7)(C)

(5) Supervising Criminal Justice Agency

Contact: Record Office Supervisor  
ILLINOIS RIVER  
P.O. BOX 999  
CANTON, IL 61520  
Telephone: 309-647-2030

(6) Conviction Information

Conviction Date: 5/25/2017

(7) Offense Code

ATTEMPT SOLICITATION/MURDER/FOR HIRE  
720ILCS5/8-1.2(A),8-4<1>

(8) Sentence (check any that apply)

Sexually Dangerous Person (725ILCS/205/1.01 et seq)  
 Sexually Violent Person (725ILCS 207/1 et seq)  
 Interstate Transfer (specify state) \_\_\_\_\_  
 Juvenile (check one)  
 Convicted \_\_\_\_\_ Adjudicated \_\_\_\_\_

\*\*\*\*\*  
\* For Laboratory Use Only \*  
\*\*\*\*\*  
\* Sealed \_\_\_\_\_ \*  
\* Date Received: \_\_\_\_\_ \*  
\* Received By: \_\_\_\_\_ \*  
\*\*\*\*\*

\*\*\*\*\*  
\*  
\*  
\* Mi: 1077134 umber \*  
\*  
\* Collection Agency use only \*  
\*\*\*\*\*

(9) RIGHT THUMBPRINT TO BE TAKEN AT THE TIME OF SWAB COLLECTION. SAMPLES WILL NOT BE ACCEPTED WITHOUT A CLEAR THUMBPRINT.



AS OF DATE:  
2/18/2020



OFFENDER 360



RUN DATE: 2/18/2020

GED EARNED TIME MEMORANDUM

MEMORANDUM

DATE: February 18, 2020  
TO: WARDEN Robert Hamilton  
FROM: Record Office Supervisor  
SUBJECT: GED EARNED PROGRAM SENTENCE CREDIT

Name: (b)(6),(b)(7)(C)

IDOC Number: Y22000

Offense(s)	Sentence	Crime Class		
ATTEMPT SOLICITATION/MURDER/FOR HIRE - 07153005783	0015 - 00 - 0000	1		
Pending Time Adjustments	Time	Min/Max	Eff.Date	
PENDING ET G - GED	0000 - 03 - 0000	Min	2/14/2020	
Projected Release Date: 3/9/2021      Date Received at IDOC: 5/26/2017				
Current Admission Date: 5/26/2017      Offender Location: EMO:EMO:AD:04:08:L1				
Date GED Test Taken: 1/23/2020      Date Certificate Received: 2/14/2020				

Committed offenders are NOT eligible for Earned Program Sentence Credit at the rate of .50 if they have been sentenced for a conviction of first degree murder or terrorism. The awarding of the below credits shall not reduce the sentence of the offender to less than the following amounts per Illinois Statute 730ILCS5/3-6-3(a)(4.7): 85% of his or her sentence if the offender is required to serve 85% of his or her sentence; or 60% of his or her sentence if the offender is required to serve 75% of his sentence, except if the offender is serving a sentence for gunrunning it shall be reduced to no less than 75%. Offenders serving a 50% sentence that require registration under the sex offender registration act are ineligible to receive an award of sentence credits unless participating in sex offender treatment or authorized to receive credit from the Director. Offenders serving a 50% sentence that can provide a certificate of completion of sex offender treatment approved by the sex offender management board are eligible for an award of sentence credits.

The above named committed person is eligible to receive GED Earned Program Sentence Credit, by passing the test of General Educational Development on 1/23/2020 and receiving his/her GED certificate on 2/14/2020

ram Sentence Credits.

(b)(6),(b)(7)(C)

Record Office Supervisor

2-18-2020  
Date

In accordance with 730 ILCS 5/3-6-3, I hereby award 90 days of Earned Program Sentence Credit.

(b)(6),(b)(7)(C)

Chief Administrative Officer

2/18/20  
Date

GOOD CONDUCT CREDITS

NAME

(b)(6),(b)(7)(C)

NUMBER

(b)(6),(b)(7)(C)

DATE

2-18-2020

90 days

(STEP 1)

Yr. Mo. Day

3

(Earned Good Conduct Credits Awarded On 2-18-2020)

(STEP 2) (MITTIMUS NUMBER (b)(6),(b)(7)(C))

PROJECTED RELEASE DATE

Yr. Mo. Day

13 12 15

(Custody Date)

+

7

6

(Sentence Less G.C.C.)

21

6

15

(Projected Release Date or PRB Projected Release Date)

⊖

+ or -

23

28

(Previous Time - Lost/Awarded)

729 from MIT

21

6

15

(Projected Release Date)\*

20

3

9

(Earned Good Conduct Credits Awarded)

20

12

9

(Adjusted Projected Release Date)

(NOTATION)

Yr. Mo. Day

(Recustody Date)

(Bond, Escape, Etc.)

(Time Lost)

Adj. Proj. Release Date Calculated By

12-9-2020

(b)(6),(b)(7)(C)

Terminal Operator Date Entered

(b)(6),(b)(7)(C)

2-18-2020

2/18/2020

DC 1396 (Rev.10/96) IL 426-16144

OFFENDER FINGERPRINT CARD

RESIDENTS NAME	(b)(6),(b)(7)(C)		CLASSIFICATION	
ALIAS(S)		REFERENCE	IRI Number:	(b)(6),(b)(7)(C)
REGISTER NUMBER	(b)(6),(b)(7)(C)	COLOR HSP	SEX	M

1. Right Thumb	2. Right Index Finger	3. Right Middle Finger	4. Right Ring Finger	5. Right Little Finger
----------------	-----------------------	------------------------	----------------------	------------------------

**(b)(6),(b)(7)(C),(b)(7)(E)**

IMPRESSIONS TAKEN BY:	(b)(6),(b)(7)(C),(b)(7)(E)
DATE	02/21/2018

**X**

Distribution: Master File  
B of I File

PLEASE DO NOT FOLD THIS CARD  
Side 1

DOC 0308 (Rev. 7/2006)  
(Replace DC1713)

Illinois Department of Corrections  
Bureau of Identification  
Offender Demographic Report

Run Date: 09/22/2020

(b)(6), (b)(7)(C)

Photo Taken At: EMO On: August 14, 2020 14:00:11

Offender # (b)(6),(b)(7)(C)

Alias:

Demographics

<b>Age:</b> 32	<b>Sex:</b> Male
<b>DOB:</b> 08-03-1988	<b>Race:</b> Hispanic
<b>Hair:</b> Black	<b>Eyes:</b> Brown
<b>Weight:</b> 260	<b>Height:</b> 511
<b>POB:</b> ILLINOIS	<b>SSN:</b> 000-00-0000
<b>SMT:</b> Loc: TAT OTHER Desc: UPPER R ARM- SKILLS, REAPER, BIO	
Loc: Desc:	
Loc: Desc:	
Loc: Desc:	



**State of Illinois -- Department of  
Corrections Disciplinary Tracking Inmate  
Disciplinary Card**

Name: (b)(6),(b)(7)(C)

IDOC # (b)(6),(b)(7)(C)

Transferred In: 2018-02-21

Disciplinary History from 1/1/1998 through 9/22/2020

Living Unit: EMO/AD/04/08

Incident Date	Incident/Summ#/Inst.	Ticket Type	Offense Codes, Descriptions	Disciplinary Action
4/30/2018	201802037/1-EMO	Minor	307 Unauthorized Movement 404 Violation Of Rules	<u>Guilty</u> <u>Not Guilty</u> Verbal Reprimand
5/14/2018	201802228/1-EMO	Minor	307 Unauthorized Movement	<u>Guilty</u> 7 Days Unit Restriction
5/18/2018	201802263/1-EMO	Major	307 Unauthorized Movement 310 Abuse Of Privileges 313 Disobeying a Direct Order	<u>Guilty</u> <u>Guilty</u> <u>Not Guilty</u> 14 Days Unit Restriction
6/13/2018	201802793/1-EMO	Minor	307 Unauthorized Movement	<u>Guilty</u> 21 Days Unit Restriction
6/13/2018	201802795/1-EMO	Minor	307 Unauthorized Movement Comments: dayroom hours	<u>Guilty</u> 21 Days Unit Restriction
7/3/2018	201803042/1-EMO	Major	202 Damage Or Misuse of Property 308 Contraband/Unauthorized Property	<u>Guilty</u> <u>Guilty</u> 2 Months C Grade/Level 1 Months Segregation
7/25/2018	201803407/1-EMO	Minor	307 Unauthorized Movement Comments: In dayroom during non dayroom hours	<u>Guilty</u> 14 Days Day Room Restriction
10/8/2018	201804566/1-EMO	Major	205 Gang Or Unauthorized Organization Activity Comments: Wearing items on wrist to represent gang	<u>Guilty</u> 1 Months C Grade/Level 1 Months Commissary Restriction 6 Months Contact Visits Restriction
11/10/2018	201805018/1-EMO	Minor	404 Violation Of Rules	<u>Guilty</u> Verbal Reprimand
11/17/2018	201805108/1-EMO	Major	307 Unauthorized Movement	<u>Guilty</u> 7 Days Day Room Restriction
5/31/2019	201902168/1-EMO	Minor	307 Unauthorized Movement Comments: In Unauthorized area 313 Disobeying a Direct Order Comments: Failure to comply with R/O orders	<u>Guilty</u> <u>Guilty</u> Verbal Reprimand
7/9/2019	201902715/1-EMO	Minor	303 Giving False Information To An Employee	<u>Guilty</u> 7 Days Unit Restriction

**State of Illinois -- Department of  
Corrections Disciplinary Tracking Inmate  
Disciplinary Card**

Name: (b)(6),(b)(7)(C)

IDOC #: (b)(6),(b)(7)(C)

Transferred In: 2018-02-21

Disciplinary History from 1/1/1998 through 9/22/2020

Living Unit: EMO/AD/04/08

**Incident Date**

**Incident/Summ#/Inst.**

**Ticket Type**

**Offense Codes, Descriptions**

**Disciplinary Action**

7/11/2019 201902693/1-EMO Minor	308 Contraband/Unauthorized Property Comments: tape / pills	<u>Guilty</u>	7 Days Unit Restriction
10/4/2019 201904131/1-EMO Minor	404 Violation Of Rules Comments: school rule #5	<u>Guilty</u>	7 Days Unit Restriction
10/18/2019 201904188/1-EMO Minor	405 Failure To Report Comments: G.E.D class	<u>Guilty</u>	7 Days Commissary Restriction
12/14/2019 201904910/1-EMO Minor	308 Contraband/Unauthorized Property	<u>Guilty</u>	Verbal Reprimand
8/24/2020 202001856/1-EMO Major	304 Insolence Comments: spit on floor 313 Disobeying a Direct Order Comments: refused to swallow meds 402 Health,Smoking Or Safety Violations Comments: not wearing mask properly\ spit floor	<u>Guilty</u> <u>Guilty</u> <u>Guilty</u>	14 Days Commissary Restriction



U.S. Immigration  
and Customs  
Enforcement

**TO:** Cook County Sheriff's Office  
**ATTN.** (b)(6),(b)(7)(C)  
And/or Officer/ Person in Charge

**FROM:** (b)(6),(b)(7)(C)  
Supervisory Detention and Deportation Officer  
ICE ERO Chicago Field Office

**SUBJECT:** Request for Documents

ICE Enforcement and Removal Operations, Chicago Field Office is requesting information pertaining to the following individuals:

(b)(6),(b)(7)(C)

To proceed with an investigation, we request the below information for each individual:

1. Documents sufficient to establish Home Address, Employment Address, Country of Birth, Place of Birth, Age, Identification Documents (i.e. driver license number and state, foreign identification card number and country, passport number and country), Bond Information to include the obligor name and address, Federal Bureau of Investigation number, Emergency Contact address and phone number, including copies of all identification documents..
2. Documents and/or electronic files to show the criminal charges relating to:
  - (b)(6),(b)(7)(C) where the arrest date was on December 31, 2018, and the charges were for Aggravated Unlawful Use of a Weapon.



U.S. Immigration  
and Customs  
Enforcement

- **(b)(6),(b)(7)(C)** where the arrest date was on December 29, 2019, and the charges were for Aggravated Driving under the Influence.
- **(b)(6),(b)(7)(C)** where the arrest date was on November 28, 2019, and the charges were Driving on Suspended License, Obstructing Driver on Highway, Disregard Official Traffic Device, DUI/Alcohol.
- **(b)(6),(b)(7)(C)** where the arrest date was on November 29, 2019 and the charge was for Domestic Battery/Bodily Harm.
- **(b)(6),(b)(7)(C)** where the arrest was on November 18, 2019, and the charges were for domestic battery, aggravated assault/use deadly weapon/rifle

Please send your response via email to **(b)(6),(b)(7)(C)**@ice.dhs.gov, by fax to (860) 240-**(b)(6),(b)(7)(C)** or in person to:  
ICE/ERO/Chicago Field Office  
Attn. Supervisory Detention and Deportation Officer **(b)(6),(b)(7)(C)**  
101 West Ida B. Wells Drive **(b)(6),(b)(7)(C)**  
Chicago, IL 60605

Your response is needed by COB on Thursday, January 30, 2020 by 3:00 pm


Respectfully,



U.S. Immigration  
and Customs  
Enforcement

MAR 13 2007

MEMORANDUM FOR: Special Agents in Charge  
Office of Investigations

FROM: Marcy M. Forman   
Director, Office of Investigations

SUBJECT: Accountability of Subpoenas and Summons

The Office of Investigations (OI) is currently updating all the subpoena and summons directives, delegation orders, and forms. Until they are reissued, OI field offices must continue using the legacy Customs or INS forms. (See attached forms.)

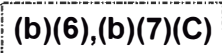
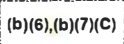
In the meantime, Special Agents in Charge (SACs) are required to account for all subpoenas and summonses issued within their area of responsibility by maintaining logs and copies. The log must contain, at a minimum, the following information: 1) the date of issuance; 2) the entity to whom the subpoena or summons is served; 3) the issuing Special Agent/officer; and 4) a tracking number for each, tracked by fiscal year.

A separate log will be maintained for each subpoena or summons issued, including the:

- 1) Controlled Substances Enforcement Subpoena (Customs Form (CF) 389)
- 2) Export Enforcement Subpoena (CF 337)
- 3) Immigration Subpoena (I-138)
- 4) Customs Summons (CF 3115)

In addition, SACs must ensure that all subpoenas or summons issued are appropriately used, and that they are signed by the approved issuing authority. (See attached delegation orders.)

OI will be creating a database which will allow field offices to enter data on each subpoena or summons issued. This database will allow reports to be generated, as needed.

If you have any questions, please contact  Chief, Policy Unit, Mission Support Division, at (202) 301-.

Attachments



**CUSTOMS CONTROLLED SUBSTANCES ENFORCEMENT SUBPOENA**

1. TO (Name, Address, City, State, ZIP)	<p>DEPARTMENT OF THE TREASURY UNITED STATES CUSTOMS SERVICE</p> <p><b>SUBPOENA</b></p> <p>TO APPEAR AND/OR PRODUCE RECORDS</p>
---	--

By the service of this subpoena upon you, YOU ARE HEREBY REQUIRED TO:

- (A)  APPEAR before the Customs Special Agent named in Block 2 below at the place, date, and time indicated, to testify and give information.
- (B)  PRODUCE the records (including statements, declarations, other documents, and tangible things) indicated in Block 3 below, before the Customs officer named in Block 2 at the place, date, and time indicated.


Your testimony and/or the production of the indicated records is required in connection with an investigation or inquiry concerning the enforcement of section 545, Title 18, U.S. Code (relating to the smuggling of goods into the United States), with respect to any controlled substance.

Failure to comply with this subpoena will render you liable to proceedings in a U.S. District Court to enforce compliance with this subpoena as well as other sanctions.

2. (A) NAME, TITLE, ADDRESS, AND TELEPHONE NUMBER OF CUSTOMS SPECIAL AGENT BEFORE WHOM YOU ARE TO APPEAR	(B) DATE  (C) TIME
--	--------------------------

3. RECORDS REQUIRED TO BE PRODUCED FOR INSPECTION

Issued under authority of 21 U.S.C. 967, Public Law 97-258, section 1, as amended.

4. NAME OF PERSON AUTHORIZED TO SERVE SUBPOENA  or any other Customs Special Agent  	5. DATE OF ISSUE  COMMISSIONER OF CUSTOMS  BY (Signature) 6. NAME, TITLE, ADDRESS, AND TELEPHONE NUMBER OF PERSON ISSUING THIS SUBPOENA
---	---

If you have any questions regarding this subpoena, contact the Customs Special Agent identified in Block 2.

Customs Form 389 (020792)

**CERTIFICATE OF SERVICE AND ACKNOWLEDGEMENT OF RECEIPT**

**A. CERTIFICATE OF SERVICE OF SUBPOENA**

I certify I served the subpoena on the front of this form as follows:

<input type="checkbox"/>	I delivered a copy of the subpoena to the person to whom it was directed, as follows:	ADDRESS OR LOCATION	DATE
			TIME
<input type="checkbox"/>	(For corporations, partnerships, and incorporated associations which may be sued under a common name) I delivered a copy of the subpoena to an officer, managing or general agent, or agent authorized to accept service of process as follows:	PERSON TO WHOM SUBPOENA WAS DELIVERED: ADDRESS OR LOCATION	NAME TITLE DATE
			TIME
SIGNATURE	TITLE	DATE	

<b>B. ACKNOWLEDGE OF RECEIPT</b>		
I acknowledge receipt of a copy of the subpoena on the front of this form.		
SIGNATURE	TITLE	
<b>X</b>	DATE	TIME

Customs Form 389 (020792)(Back)

\*U.S. GOVERNMENT PRINTING OFFICE: 1992-312-754/50252

1 TO (Name, Address, City, State, ZIP)

DEPARTMENT OF THE TREASURY  
UNITED STATES CUSTOMS SERVICE

**SUMMONS**  
**TO APPEAR AND/OR PRODUCE RECORDS**

By the service of this summons upon you, **YOU ARE HEREBY SUMMONED AND REQUIRED TO:**

- (A)  APPEAR before the Customs officer named in Block 2 below at the place, date, and time indicated to testify and give information.
- (B)  PRODUCE the records (including statements, declarations, and other documents) indicated in Block 3 below, before the Customs officer named in Block 2 at the place, date, and time indicated.

Your testimony and/or the production of the indicated records is required in connection with an investigation or inquiry to ascertain the correctness of entries, to determine the liability for duties, taxes, fines, penalties or forfeitures, and/or to insure compliance with the laws or regulations administered by the U.S. Customs Service.

Failure to comply with this summons will render you liable to proceedings in a U.S. District Court to enforce compliance with this summons as well as other sanctions.

2 (A) NAME, TITLE, ADDRESS, AND TELEPHONE NUMBER OF CUSTOMS OFFICER BEFORE WHOM YOU ARE TO APPEAR

(B) DATE

(C) TIME

3 RECORDS REQUIRED TO BE PRODUCED FOR INSPECTION

*You are requested not to disclose the existence of this summons for an indefinite period of time. Any such disclosure will impede this investigation and thereby interfere with the enforcement of Federal law.*

Issued under authority of section 509, Tariff Act of 1930, as amended by Public Law 95-410 (19 U.S.C. 1509); Customs Delegation Order No. 55 (44 F.R. 2217)

4 NAME OF PERSON AUTHORIZED TO SERVE SUMMONS:

or any other Customs officer.

5 DATE OF ISSUE

COMMISSIONER OF CUSTOMS

BY  
(Signature):

6 NAME, TITLE, ADDRESS, AND TELEPHONE NUMBER OF PERSON ISSUING THIS SUMMONS



If you have any questions regarding this summons, contact the Customs officer identified in Block 2.

Customs Form 3115 (101091)

**CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT**

**A. CERTIFICATE OF SERVICE OF SUMMONS**

I CERTIFY THAT I SERVED THE SUMMONS ON THE FRONT OF THIS FORM AS FOLLOWS:

<input type="checkbox"/> <p>I delivered a copy of the summons to the person to whom it was directed, as follows:</p>	ADDRESS OR LOCATION	DATE
		TIME

<input type="checkbox"/> <p><i>(For corporations, partnerships, and unincorporated associations which may be sued under a common name)</i> I delivered a copy of the summons to an officer, managing or general agent, or agent authorized to accept service of process as follows:</p>	PERSON TO WHOM SUMMONS WAS DELIVERED	NAME	TITLE
	ADDRESS OR LOCATION		

	DATE
	TIME

SIGNATURE	TITLE	DATE
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<b>B. ACKNOWLEDGMENT OF RECEIPT</b>		
I acknowledge receipt of a copy of the summons on the front of this form.		
SIGNATURE	TITLE	
X		DATE
		TIME

Customs Form 3115 (101091)(Back)

# CUSTOMS EXPORT ENFORCEMENT SUBPOENA

1. TO (Name, Address, City, State, ZIP)	DEPARTMENT OF THE TREASURY UNITED STATES CUSTOMS SERVICE  <b>SUBPOENA</b>  TO APPEAR AND/OR PRODUCE RECORDS
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By the service of this subpoena upon you, YOU ARE HEREBY SUMMONED AND REQUIRED TO:

- (A)  APPEAR before the Customs officer named in Block 2 below at the place, date, and time indicated, to testify and give information.
- (B)  PRODUCE the records (including statements, declarations, and other documents) indicated in Block 3 below, before the Customs officer named in Block 2 at the place, date, and time indicated.

Your testimony and/or the production of the indicated records is required in connection with an investigation or inquiry to insure compliance with: 1) the Export Administration Act of 1979, as amended; 2) the Arms Export Control Act; and/or 3) \_\_\_\_\_, and to determine liability for any penalty, forfeiture, or other sanction arising thereunder.

Failure to comply with this subpoena will render you liable to proceedings in a U.S. District Court to enforce compliance with this subpoena as well as other sanctions.

2. (A) NAME, TITLE, ADDRESS, AND TELEPHONE NUMBER OF CUSTOMS OFFICER BEFORE WHOM YOU ARE TO APPEAR	(B) DATE   (C) TIME
--	------------------------------

3. RECORDS REQUIRED TO BE PRODUCED FOR INSPECTION

Issued under authority of: section 12(a) of the Export Administration of 1979, as amended, 50 USC, App. 2411(a)(1); the Arms Export Control Act, 22 USC 2778(e); or \_\_\_\_\_

4. NAME OF PERSON AUTHORIZED TO SERVE SUBPOENA:  or any other Customs officer.	5. DATE OF ISSUE   <b>COMMISSIONER OF CUSTOMS</b>  BY (Signature):
If you have any questions regarding this subpoena, contact the Customs officer identified in Block 2.	6. NAME, TITLE, ADDRESS, AND TELEPHONE NUMBER OF PERSON ISSUING THIS SUBPOENA

Customs Form 337 (041886)



## CERTIFICATE OF SERVICE AND ACKNOWLEDGE OF RECEIPT

### A. CERTIFICATE OF SERVICE OF SUBPOENA

I certify that I served the subpoena on the front of this form as follows:

<input type="checkbox"/> I delivered a copy of the subpoena to the person to whom it was directed, as follows:	ADDRESS OR LOCATION	DATE
		TIME

<input type="checkbox"/> (For corporations, partnerships, and unincorporated associations which may be sued under a common name) I delivered a copy of the subpoena to an officer, managing or general agent, or agent authorized to accept service of process as follows:	PERSON TO NAME WHOM SUBPOENA WAS DELIVERED:	DATE
	ADDRESS OR LOCATION	
		TIME

<input type="checkbox"/> I left a copy of the subpoena at the last and usual dwelling or place of abode of the person to whom it was directed as follows:	ADDRESS OR LOCATION	DATE
		TIME
NAME OF PERSON WITH WHOM SUBPOENA LEFT (if Any)		

SIGNATURE	TITLE	DATE

### B. ACKNOWLEDGMENT OF RECEIPT

I acknowledge receipt of a copy of the subpoena on the front of this form.

SIGNATURE	TITLE	
	DATE	TIME
X		

\*U.S. Government Printing Office: 1986-491-107/52307

Customs Form 337 (041886) (Back)

Office address: \_\_\_\_\_  
\_\_\_\_\_

File No. \_\_\_\_\_

Date: \_\_\_\_\_

In re: \_\_\_\_\_  
\_\_\_\_\_

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You are hereby commanded to appear before \_\_\_\_\_  
at \_\_\_\_\_ on \_\_\_\_\_  
at \_\_\_\_\_ a.m./p.m., to give testimony in connection with \_\_\_\_\_  
proceeding being conducted under authority of the Immigration and Nationality Act, relating to \_\_\_\_\_  
\_\_\_\_\_ concerning:

You are further commanded to bring with you the following books, papers, and documents, viz:

[seal]

\_\_\_\_\_  
(Signature of authorized INS official)  
\_\_\_\_\_  
(Printed name of official)  
\_\_\_\_\_  
(Title)

**Certificate of Service**

I certify that on \_\_\_\_\_, I served the above subpoena on the witness named above in the following manner: \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature of officer serving warrant)  
\_\_\_\_\_  
(Print name of official)  
\_\_\_\_\_  
(Title of officer serving warrant)

U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement

Office of Investigations  
Delegation Order

ORDER NUMBER: OI DO 07-003

ISSUE DATE: 02/23/2007

EFFECTIVE DATE: 02/23/2007

**SUBJECT:**

**Authority with Respect to the Title 21 Controlled Substances Enforcement Subpoena and the Examination of Records Within the Office of Investigations**

**DELEGATED BY:**

Director, Office of Investigations

**DELEGATED TO:**

See below.

**SOURCE OF AUTHORITY BEING DELEGATED:**

ICE Delegation Order 73002.1," dated July 21, 2006

**SUPERSEDED ORDER:**

OI DO 06-005, dated September 7, 2006

**DELEGATION:**

By virtue of the authority granted to me by the Assistant Secretary in ICE Delegation Order 73002.1, I hereby delegate to the Office of Investigations Deputy Director, Assistant Directors, Deputy Assistant Directors, Special Agents in Charge, Deputy Special Agents in Charge, and Assistant Special Agents in Charge the authority to:

1. administer oaths and affirmations;
2. subpoena witnesses and compel their attendance;
3. take evidence; and
4. require the production of records

relevant or material to an investigation of violation or possible violation of 18 U.S.C. § 545 (relating to smuggling goods into the United States) with respect to any controlled substance (as defined in 21 U.S.C. § 802).

The attendance of witnesses and the production of records may be required from any place within the customs territory of the United States, except that a witness shall not be required to appear at any hearing distant more than 100 miles from the place where he or she was served with the subpoena. Witnesses so summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. Oaths and affirmations may be made at any place subject to the jurisdiction of the United States.

This authority may not be redelegated.

**(b)(6),(b)(7)(C)**

Marcy M. Forman  
Director, Office of Investigations

USE ADDITIONAL PLAIN BOND IF NECESSARY.

Department of Homeland Security  
U.S. Immigration and Customs Enforcement

Office of Investigations  
Delegation Order

ORDER NUMBER: OI DO 07-004

ISSUE DATE: 03/05/2007

EFFECTIVE DATE: 03/05/2007

SUBJECT:

Authority to Use Export Enforcement Acts within the Office of Investigations

DELEGATED BY:

Director, Office of Investigations (OI)  
U.S. Immigration and Customs Enforcement (ICE)

DELEGATED TO:

See below.

SOURCE OF AUTHORITY BEING DELEGATED:

ICE Delegation Order (DO) 73-004.1, dated  
February 28, 2007

SUPERSEDED ORDER(S):

U.S. Customs Service OI Internal Delegation Order  
03-05, dated October 25, 2002

DELEGATION:

By virtue of the authority granted to me by the Assistant Secretary in ICE DO 73-004.1, dated February 28, 2007, I hereby delegate the authority to:

1. Examine, or cause to be examined, records, statements, declarations and documents; and
2. Subpoena, upon reasonable notice, any person to appear before an ICE OI Special Agent for the purpose of producing records and giving testimony, under oath

to ensure compliance with the Acts referenced in ICE DO 73-004.1, and to determine liability for any penalty, forfeiture, or other sanction arising thereunder.

I delegate this authority to the OI Deputy Director, Assistant Directors, Deputy Assistant Directors, Special Agents in Charge, Deputy Special Agents in Charge, and Assistant Special Agents in Charge.

This authority may not be redelegated.

(b)(6),(b)(7)(C)

Marcy M. Forman  
Director, Office of Investigations

USE ADDITIONAL PLAIN BOND IF NECESSARY.

<b>U.S. Department of Homeland Security</b> <b>U.S. Immigration and Customs Enforcement</b>	<b>Office of Investigations</b> <b>Delegation Order</b>
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<b>ORDER NUMBER:</b> OI DO 07-002	<b>ISSUE DATE:</b> 02/23/2007	<b>EFFECTIVE DATE:</b> 02/23/2007
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**SUBJECT:**  
**Authority to Issue Immigration Subpoenas Within the Office of Investigations**

<b>DELEGATED BY:</b> Director, Office of Investigations	<b>DELEGATED TO:</b> See below.
--	------------------------------------

<b>SOURCE OF AUTHORITY BEING DELEGATED:</b> ICE Delegation Order 73003.1," dated February 6, 2007	<b>SUPERSEDED ORDER(S):</b> None.
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**DELEGATION:**

By virtue of the authority granted to me by the Assistant Secretary in ICE Delegation Order 73003.1, dated February 6, 2007, I hereby delegate to Office of Investigations Deputy Director, Assistant Directors, Deputy Assistant Directors, Special Agents in Charge, Deputy Special Agents in Charge, and Assistant Special Agents in Charge the authority to:

1. Issue immigration subpoenas requiring the person or entity to which they are addressed to attend and give testimony;
2. Require such persons or entities to produce records (books, papers, or other documents) for use in criminal or civil investigations;
3. Effect service of immigration subpoenas upon the persons or entities named therein;
4. Take testimony from such persons or entities under oath and examine, or cause to be examined, records produced by such persons or entities; and,
5. In the event that the person or entity named in a subpoena neglects or refuses to comply with the requirement to attend and give testimony or to produce records, request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court and to request such court to issue an order requiring the witness to appear and testify and to produce the records designated in the subpoena.

This authority may not be redelegated.

**(b)(6),(b)(7)(C)**

(b)(6),(b)(7)(C) **Marcy M. Fornan**  
**Director, Office of Investigations**

USE ADDITIONAL PLAIN BOND IF NECESSARY.





DEPARTMENT OF THE TREASURY  
UNITED STATES CUSTOMS SERVICE

**INTERNAL DELEGATION ORDER**

ORDER NUMBER

03-13

ISSUE DATE

January 29, 2003

EFFECTIVE DATE

January 29, 2003

SUBJECT

Authority to Use the Customs Summons Authority Within the Office of Investigations

DELEGATED BY

Assistant Commissioner  
Office of Investigations

DELEGATED TO

See Below

SOURCE OF AUTHORITY BEING DELEGATED

DO 00-010  
May 19, 2000

SUPERSEDED ORDER(S) (Order Number(s) and Date(s) Only)

OI IDO 00-14  
June 27, 2000

**OFFICE OF INVESTIGATIONS**

DELEGATION

Pursuant to the authority delegated in Customs Delegation Order 00-010, "Use of Customs Summons Authority," dated May 19, 2000, regarding Section 509, Tariff Act of 1930, as amended (19 U.S.C. 1509), I redelegate the authority to use the Customs summons authority within the Office of Investigations to Special Agents in Charge; Executive Directors and Deputy Executive Directors, Investigative Programs and Operation Green Quest; and Directors, Smuggling Investigations, Strategic Investigations, Financial Investigations, Fraud Investigations, Cybersmuggling Center, Special Operations, Covert Operations, and Investigative Services.

This Internal Delegation Order grants authority to the above-listed officials to:

- A. examine, or cause to be examined, upon reasonable notice, any record (which includes, but is not limited to, any statement, declaration, document, or electronically-generated or machine-readable data) described in the notice (Customs Form 3115A, "Summons to Appear and/or Produce Records," dated June 2002) with reasonable specificity, which may be relevant to an investigation or inquiry conducted for the purpose of ascertaining the correctness of any entry; for determining the liability of any person for duties, fees, and taxes due or duties, fees, and taxes which may be due to the United States; for determining the liability for fines and penalties; or for ensuring compliance with the laws of the United States administered by the U.S. Customs Service;
- B. summon, upon reasonable notice, to appear before a Customs officer for the purpose of producing records and giving testimony under oath,
  - (a) any person who—
    - 1. imported, or knowingly caused to be imported, merchandise into customs territory of the United States;
    - 2. exported merchandise, or knowingly caused merchandise to be exported to a North American Free Trade Agreement country (as defined in Section 3301(4) of U.S.C. 19) or to Canada during such

time as the United States-Canada Free-Trade Agreement is in force with respect to, and the United States applies that Agreement to, Canada;

3. transported or stored merchandise that was or is carried or held under customs bond, or knowingly caused such transportation or storage; or
4. filed a declaration, entry, or drawback claim with the U.S. Customs Service;

(b) any officer, employee, or agent of such person;

(c) any person having possession, custody, or care of records relating to such activity; or

(d) any other person the above-delegated individuals deem proper to the investigation or inquiry.

This authority may not be redelegated.

**(b)(6), (b)(7)(C)**

Acting Assistant Commissioner  
Office of Investigations

**From:** (b)(6),(b)(7)(C) O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A2F55DC08A2D4BCFBC8E08FC8308F2E5 (b)(6),(b)(7)(C)  
**Sent:** 6/8/2021 4:52:00 PM  
**To:** (b)(6),(b)(7)(C) ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=108135f6604d43ce892688d468968e3e (b)(6),(b)(7)(C)  
**CC:** (b)(6),(b)(7)(C) ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=892bc1a9368b4df69d1cdacfa097a263 (b)(6),(b)(7)(C)  
**Subject:** Admin Subpoena  
**Attachments:** Subpoena (b)(6),(b)(7)(C).pdf

(b)(6),(b)(7)(C)

Here is the form. This is one I drafted last year when HQ was going to do a nationwide subpoena "Op" that eventually vanished. (b)(5)

(b)(5)

(b)(6),(b)(7)(C)

**Supervisory Detention and Deportation Officer (SDDO)**  
**ERO Criminal Prosecutions (ECP)**  
**Denver Field Office**  
**Enforcement and Removal Operations**  
**Immigration and Customs Enforcement**  
**Desk: 720-87 (b)(6),(b)(7)(C) Cell: 303-257 (b)(6),(b)(7)(C)**  
**12445 E Caley Ave**  
**Centennial, CO 80111**

This communication is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this communication should be furnished to the media, either in written or verbal form.

1. To (Name, Address, City, State, Zip Code)  Denver Justice Center 490 W Colfax Ave Denver, CO 80204	DEPARTMENT OF HOMELAND SECURITY  <b>IMMIGRATION ENFORCEMENT SUBPOENA</b>  to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number	
2. In Reference To <div style="display: flex; justify-content: space-between;"> <div style="border: 1px dashed black; padding: 2px;">(b)(6), (b)(7)(c)</div> <div>investigation</div> <div style="border: 1px dashed black; padding: 2px;">(b)(6), (b)(7)(c)</div> </div> <div style="display: flex; justify-content: space-between; font-size: small;"> <span>(Title of Proceeding)</span> <span>(File Number, if Applicable)</span> </div>	

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 laws. 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 <span style="border: 1px dashed black; padding: 2px;">(b)(6), (b)(7)(c)</span> Title <b>Supervisory Detention and Deportation Officer</b> Address <b>12445 E Caley Ave Centennial, CO 80111</b> Telephone Number <b>720-873-</b> <span style="border: 1px dashed black; padding: 2px;">(b)(6), (b)(7)(c)</span>	(B) Date <b>xx/xx/2020</b>  (C) Time <b>1200</b> <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.
---	---

4. Records required to be produced for inspection

Requesting documents you are unable or unwilling to provide voluntarily that are sufficient to show the following: Home Address, Employment Address, Country of Birth, Place of Birth, Age, Identification Documents (i.e.: driver license number and state, foreign identification card number and country, passport number and country), Bond Information to include the obligor name and address, Federal Bureau of Investigation Number, Emergency Contact address and phone number, criminal charge: **ARREST DATE: June 6, 2020; CHARGE: Homicide-Attempted 1st Degree Murder. Booking Number: 20-390375** Send the requested information to the name and address in box 3 above.



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

5. Authorized Official

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Printed Name)  
**Assistant Field Office Director**

\_\_\_\_\_ (Title)

\_\_\_\_\_ **xx/xx/2020** (Date)

**CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT**

**A. CERTIFICATE OF SERVICE**

I certify that on \_\_\_\_\_, I served this subpoena on the witness named in Block 1 in the following manner:  
(Date)

\_\_\_\_\_  
(Details of how service was effected)

\_\_\_\_\_  
(Signature of Official Serving Subpoena)

\_\_\_\_\_  
(Printed Name of Official Serving Subpoena)

\_\_\_\_\_  
(Title of Official Serving Subpoena)

**B. ACKNOWLEDGMENT OF RECEIPT**

I acknowledge receipt of a copy of the subpoena on the front of this form.

Signature

Title

Date

Time

a.m.  
 p.m.



**From:** (b)(6), (b)(7)(c) [DN [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=59F1C861057D4D37BEED94D3D6176359-TRAINING, D]  
**Sent:** 8/11/2020 8:36:53 PM  
**To:** FDN ERO [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=63894cecbe1442bf80455fc7190ad4a-FDN ERO]  
**Subject:** FW: Mandatory course- Accountability of Immigration Subpoena Issued to Non-Compliant Law Enforcement Agencies

**Importance:** High

*The following message is sent with the concurrence of Acting Deputy Field Office Director, Ronald Strong:*

The following PALMS course is mandatory for *all law-enforcement personnel* in the AOR:

**Accountability of Immigration Subpoenas Issued to Non-Compliant Law Enforcement Agencies**

The deadline to complete this course is **9/30/20**.

As always, please contact me if you experience any issues with PALMS.

Thank you.

(b)(6), (b)(7)(c)

Department of Homeland Security  
Immigration and Customs Enforcement  
Enforcement & Removal Operations  
Senior Field Training Officer

12445 East Caley Avenue Centennial, Colorado 80111 | Office: 720-871-(b)(6), (b)(7)(c) | Cell: 303-472-(b)(6), (b)(7)(c)

**CONFIDENTIALITY NOTICE:**

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From: (b)(6), (b)(7)(c) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=108135F6604D43CE892688D468968E3E (b)(6), (b)(7)(c)  
Sent: 6/11/2021 11:08:25 PM  
To: (b)(6), (b)(7)(c) =ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=892bc1a9368b4df69d1cdacfa097a263 (b)(6), (b)(7)(c)  
CC: (b)(6), (b)(7)(c) ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a2f55dc08a2d4bcfbc8e08fc8308f2e5 (b)(6), (b)(7)(c)  
Subject: RE: Denver Records Subpoena - (b)(6), (b)(7)(c)  
Attachments: (b)(6), (b)(7)(c) (warrant).PNG

Afternoon, fellas. Sorry for the delay.

The warrant info is below and attached..

```
*** CONFIRM VALIDITY AT ONCE WITH ORI ***
MIS/FELONY - WANTED PERSON
MIS/FEL FELONY -
CIC (b)(6), (b)(7)(c) MI (b)(6), (b)(7)(c)
ORI/CODPD0001 DENVER POLICE DEPARTMENT
MIS (b)(6), (b)(7)(c) SEX/M RAC/W
DOB (b)(6), (b)(7)(c)
HGT/507 WGT/170 EYE/BRO HAIR/BRO
MIS (b)(6), (b)(7)(c)
MIS/N
MIS/NCEX-VALID IN COLORADO ONLY/ IF ARRESTED OUTSIDE OF COLORADO, NOTIFY
ORI FOR POSSIBLE EXTRADITION DUE TO NATURE OF CRIME/ WANTED FOR
CRIMINAL ATTEMPT TO COMMIT MURDER IN THE FIRST DEGREE (X2), ASSAULT
IN THE IN THE FIRST DEGREE (X2)/ BOND TO BE SET AT FIRST APPEARANCE
OFF/0999 HOMICIDE - SEE MIS
OFF/0999
OFF/1399
OFF/1399
EXL/LIMITED EXTRADITION SEE MIS FIELD
OCR/20200522494 DOW/20200903
R00/01 - RESIDENCE (LAST KNOWN)
SHU/1155 SNA/N DECATUR ST CTX/DENVER STR/CO COU/DENVER

SUPPLEMENTAL ADDRESS INFORMATION

OTE/20200903 TME/2159 TID/DF2 TOI/19493
DLU/20201219 TLM/0755 VTO (b)(6), (b)(7)(c)
(b)(6), (b)(7)(c) VLD/20201219
ORI/CODPD0001 DENVER POLICE DEPARTMENT
MIS 9583574 IN: HFS1 26907 AT 17:06 11JUN21
OFF: ICE0022 2 AT 17:06 11JUN21
```

From: (b)(6), (b)(7)(c) @ice.dhs.gov>  
Sent: Friday, June 11, 2021 3:04 PM  
To: (b)(6), (b)(7)(c) @ice.dhs.gov>  
Cc: (b)(6), (b)(7)(c) @ice.dhs.gov>  
Subject: RE: Denver Records Subpoena - (b)(6), (b)(7)(C)

(b)(6), (b)(7)(c)

I have spoken with the Chief of the Criminal Division at the USAO today during our Strike Force meeting, and he is trying to see what they are able to do to assist. Any chance (b)(6), (b)(7)(c) was able to find a case number or Warrant number on this?

(b)(6), (b)(7)(c)

I included you, because he plans to discuss this with (b)(6), (b)(7)(c) and wanted to keep you in the loop in case she reaches out to you.

Thanks,

(b)(6),(b)(7)(C)  
Assistant Field Office Director  
(c) (973)607 (b)(6), (b)(7)(c)

**From:** (b)(6), (b)(7)(c) ice.dhs.gov>  
**Sent:** Wednesday, June 9, 2021 6:43 AM  
**To:** (b)(6),(b)(7)(C) (b)(6), (b)(7)(c) ice.dhs.gov>  
**Subject:** RE: Denver Records Subpoena (b)(6),(b)(7)(C)

Not a problem.

I understood *that* to be current consensus on these but wanted to make sure.

We'll hold off until you're able to speak with (b)(6), (b)(7)(c)

Thanks.

Sent with BlackBerry Work  
(www.blackberry.com)

---

**From:** (b)(6),(b)(7)(C) (b)(6), (b)(7)(c) ice.dhs.gov>  
**Date:** Wednesday, Jun 09, 2021, 06:26  
**To:** (b)(6), (b)(7)(c) ice.dhs.gov>  
**Subject:** RE: Denver Records Subpoena (b)(6),(b)(7)(C)

**(b)(6), (b)(7)(c), (b)(5)**

Thanks,

(b)(6),(b)(7)(C)  
Assistant Field Office Director  
(c) (973)607 (b)(6), (b)(7)(c)

**From:** (b)(6), (b)(7)(c) ice.dhs.gov>  
**Sent:** Wednesday, June 9, 2021 5:52 AM  
**To:** (b)(6),(b)(7)(C) (b)(6), (b)(7)(c) ice.dhs.gov>  
**Subject:** Denver Records Subpoena (b)(6), (b)(7)(c)

Good morning.



(b)(6), (b)(7)(c) sent me the attached FOW yesterday along with the email he received from Denver PD when requesting a copy of any/all records pertaining to the subject of the FOW. This is not a COVOTF case, just a final order that popped up on his docket.

I wanted to run this by you to see where we are on subpoenas from Denver for records such as these; I know when this initiative was in full swing we had support from the USAO and I'm not sure if that has changed. If this looks like a good case to push I'll draft the subpoena today.

If you have any questions or need more information please let me know.

(b)(6), (b)(7)(c)  
Supervisory Detention and Deportation Officer  
Fugitive Operations Team 1  
Denver Field Office  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement  
Cell: 303-356-(b)(6), (b)(7)(c)

Sent with BlackBerry Work  
([www.blackberry.com](http://www.blackberry.com))

---

**From:** (b)(6), (b)(7)(c) <ice.dhs.gov>  
**Date:** Tuesday, Jun 08, 2021, 08:46  
**To:** (b)(6), (b)(7)(c) <ice.dhs.gov>  
**Subject:** FW: Police Report request

Sent with BlackBerry Work  
([www.blackberry.com](http://www.blackberry.com))

---

**From:** Civil Liability Bureau - DPD <(b)(7)(e)@denvergov.org>  
**Date:** Tuesday, Jun 08, 2021, 8:40 AM  
**To:** (b)(6), (b)(7)(c) <ice.dhs.gov>  
**Subject:** RE: Police Report request

CAUTION: This email originated from outside of DHS. DO NOT click links or open attachments unless you recognize and/or trust the sender. Contact ICE SOC SPAM with questions or concerns.

Please place your request online and pay the necessary fees at [www.denvergov.org/policerecords](http://www.denvergov.org/policerecords) under the Civil Liability tab.

Thank you.



DPD-Civil Liability | City & County of  
Denver  
phone: (720) 913-6370 se

[311](http://311) | [pocketgov.com](http://pocketgov.com) | [denvergov.org](http://denvergov.org) | [Denver 8 TV](http://Denver8TV) | [Facebook](https://www.facebook.com) | [Twitter](https://twitter.com) | [Instagram](https://www.instagram.com)

**From:** (b)(6), (b)(7)(c)@ice.dhs.gov>  
**Sent:** Tuesday, June 8, 2021 6:47 AM  
**To:** Civil Liability Bureau - DPD <(b)(7)(e)@denvergov.org>  
**Subject:** [EXTERNAL] Police Report request

Good Morning,

I would like to request a police report for the below subject regarding an active Denver Police warrant for Homicide issued on 09/03/2020.

(b)(6), (b)(7)(c)

Thank you

(b)(6), (b)(7)(c)

Deportation Officer, Fugitive Operations Team One  
Denver Field Office  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement

ICE Tip Line 866-347-2423

Online Detainee Locator System (ODLS): <https://locator.ice.gov/odls/homePage.do>

*CONFIDENTIALITY NOTICE: This e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. Parts of this document may contain sensitive security information that is controlled under the provisions of 49 CFR 1520. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.*

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\*\*\* CONFIRM VALIDITY AT ONCE WITH ORI \*\*\*

MKE/FELONY - WANTED PERSON

RTY/FEL FELONY -

CIC/ (b)(6), (b)(7)(c)

ORI/CODPD0001 DENVER POLICE DEPARTMENT

NAM/ (b)(6), (b)(7)(c) SEX/M RAC/W

DOB/ (b)(6), (b)(7)(c)

HGT/ WGT/ EYE/ HAI/

AKA/ (b)(6), (b)(7)(c)

NOA/N

MIS/NOEX-VALID IN COLORADO ONLY/ IF ARRESTED OUTSIDE OF COLORADO, NOTIFY  
ORI FOR POSSIBLE EXTRADITION DUE TO NATURE OF CRIME/ WANTED FOR  
CRIMINAL ATTEMPT TO COMMIT MURDER IN THE FIRST DEGREE (X2), ASSAULT  
IN THE IN THE FIRST DEGREE (X2)/ BOND TO BE SET AT FIRST APPEARANCE

OFF/0999 HOMICIDE - SEE MIS

OFF/0999

OFF/1399

OFF/1399

EXL/LIMITED EXTRADITION SEE MIS FIELD

OCA/20200522494 DOW/20200903

ADD/01 - RESIDENCE (LAST KNOWN)

SNU CTY/DENVER STA/CO COU/DENVER

SUPPLEMENTAL ADDRESS INFORMATION

DTE/20200903 TME/2159 TID/DP2 TOI/19493

DLU/20201219 TLU/0755 ITO/ (b)(6), (b)(7)(c)

VLN/ (b)(6), (b)(7)(c)

ORI/CODPD0001 DENVER POLICE DEPARTMENT

MRI 9583574 IN: HFS1 26907 AT 17:06 11JUN21

OUT: I 2 A 7:06 11JUN21





# U.S. Immigration and Customs Enforcement

## Immigration Subpoenas and Record Keeping



# Subpoena

**Definition:** A writ issued by a government agency to compel testimony by a witness or production of other evidence.

**Past and current uses of subpoenas by ERO:** Generally, ERO has used administrative subpoenas (Form I-138) to obtain records from utilities, phone companies, apartment complexes and other information sources in order to obtain information on targeted aliens.

**Future uses of subpoenas by ERO:** ERO, in collaboration with the Office of Principal Legal Advisor (OPLA) intends to expand the use of administrative subpoenas by field personnel.



U.S. Immigration  
and Customs  
Enforcement



# Legal Authority for ERO to Issue Subpoenas

Title 8 of the United States Code Section 1225(d)(4)(A) (INA Section 235) and 8 CFR 287.4 provide the basis of the authority for immigration officers to issue subpoenas. Specifically, delegated immigration officers "...may issue a subpoena requiring the production of records and evidence for use in criminal or civil investigations." 8 CFR 287.4



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# Signing Authority for ERO

## Subpoenas

On January 6, 2010, then Acting Director David Venturella signed a delegation order titled Authority to Issue Immigration Subpoenas Within the Office of Detention and Removal Operations. This order delegated the authority to sign administrative subpoenas to the following:

- Assistant Directors
- Deputy Assistant Directors
- Field Office Directors
- Deputy Field Office Directors
- Assistant Field Office Directors

This authority cannot be redelegated.



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# Subpoena Log

On July 13, 2007, then Director John Torres issued a memorandum titled Accountability of Immigration Subpoenas. This memorandum requires that both a copy of every I-138 issued by a Field Office and a log of the action be maintained. The memorandum stated the log must contain:

- The title of the proceedings for the subpoena
- The entity to whom the subpoena was served
- The issuing officer
- Whether the subpoena compels the appearance of a witness, the production of documents, or both
- The date of service of the subpoena
- The means of service
- A tracking number for each subpoena.



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# Workflow Process for I-138 and Log

- Roles are granted by CAPHQ, and are obtained by sending an email to **(b)(7)(e)**@ice.dhs.gov.
- The process for requesting and issuing a subpoena begins when the Requestor (Case Officer) accesses the HQ CAP Subpoena Log on the ERO SharePoint site. The log can be accessed using the link below.

**(b)(7)(e)**

- The case officer begins inputting data by clicking the New button.

**(b)(7)(e)**



# Workflow Process

**(b)(7)(e)**



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# Workflow Process

- After the requestor saves the information, the authorizing official receives an email notification of a pending request.

**(b)(7)(e)**



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# Workflow Process

- The Authorizing Official then clicks the hyperlink next to Related Items.

**(b)(7)(e)**



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# Workflow Process

- The Authorizing Official then clicks Edit Item.

**(b)(7)(e)**



U.S. Immigration  
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Enforcement

# Workflow Process

- Authorizing official then enters the decision.

**(b)(7)(e)**

- The requestor will receive an email with the authorizing official's decision. If approved, the requestor completes the I-138 with Subpoena number generated from share point log, and provides the authorizing official a hard copy for signature.



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Enforcement

# How to fill out a subpoena

1. To (Name, Address, City, State, Zip Code) (Name and Address of Entity)	DEPARTMENT OF HOMELAND SECURITY  <b>IMMIGRATION ENFORCEMENT          SUBPOENA</b> to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number (Subpoena Number from Log)	
2. In Reference To (Information Being Requested) <span style="float: right;">XXXX XXX XXX</span> <small>(Title of Proceeding) <span style="float: right;">(File Number, if Applicable)</span></small>	
By the service of this subpoena upon you, <b>YOU ARE HEREBY SUMMONED AND REQUIRED TO:</b>	
(A) <input checked="" type="checkbox"/> <b>APPEAR</b> 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) <input checked="" type="checkbox"/> <b>PRODUCE</b> 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 laws. 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 (Officer Name) Title (Officer Title) Address (Office Address)  Telephone Number (Office Telephone Number)	(B) Date (Month XX, 20XX)  (C) Time HH:MM <input checked="" type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.



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# Blank I-138

1. To (Name, Address, City, State, Zip Code)	DEPARTMENT OF HOMELAND SECURITY <b>IMMIGRATION ENFORCEMENT SUBPOENA</b> to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number	
2. In Reference To	
_____	
(Title of Proceeding) <span style="float: right;">(File Number, If Applicable)</span>	

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 laws. 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	(B) Date
Name	
Title	
Address	(C) Time <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.
Telephone Number	
4. Records required to be produced for inspection	



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

5. Authorized Official
_____
(Signature)
_____
(Printed Name)
_____
(Title)
_____
(Date)



# Workflow Process

- For the next step, the requestor must locate the case on the HQ CAP Subpoena Log, highlight it and then click "Edit",

**(b)(7)(e)**



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and Customs  
Enforcement

# Workflow Process

- The requestor then uploads a signed copy of the I-138 to the SharePoint site and serves it on the entity.

**(b)(7)(e)**



U.S. Immigration  
and Customs  
Enforcement



# Workflow Process

- Requestor then updates the log.

**(b)(7)(e)**



U.S. Immigration  
and Customs  
Enforcement

# Workflow Process

- After receiving the response from the entity, the requestor must again locate the case on the HQ CAP Subpoena Log and click on the relevant entry. Fill out the appropriate fields and save. The outcome is then notated in the After-Action tab.

**(b)(7)(e)**



U.S. Immigration  
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# Workflow Process

- If the entity complies with the subpoena, the requestor enters the information. After clicking “Save”, the log is complete.

**(b)(7)(e)**



U.S. Immigration  
and Customs  
Enforcement

# Workflow Process

- If the entity declines to honor the subpoena, the case officer will contact the local United States Attorney's Office for further action and document in the log.

**(b)(7)(e)**



U.S. Immigration  
and Customs  
Enforcement

# Workflow Process

**(b)(7)(e)**



U.S. Immigration  
and Customs  
Enforcement



# Additional Questions?

Additional questions or concerns can be emailed to CAP HQ at:  
**(b)(7)(e)** @ICE.DHS.GOV



U.S. Immigration  
and Customs  
Enforcement



Department of Homeland Security  
U.S. Immigration and Customs Enforcement

## ERO Delegation Order

**ORDER NUMBER:**  
ERO DO 0003.1

**FEA NUMBER:**  
306-112-002b

**ISSUE DATE:**  
01/06/2020

**EFFECTIVE DATE:**  
01/06/2020

**SUBJECT:**

Re-delegation of authority to administer and enforce provisions relating to civil penalties for failure to depart.

**DELEGATED BY:**

Executive Associate Director (EAD)  
Enforcement and Removal Operations

**DELEGATED TO:**

Assistant Directors  
Deputy Assistant Directors  
Unit Chief for the Bond Management Unit  
Enforcement and Removal Operations

**SOURCE OF AUTHORITY BEING**

**DELEGATED:**

ICE Delegation Order 01-2018 "Delegation of Authority to Administer and Enforce Provisions Relating to Civil Penalties for Failure to Depart," dated June 19, 2018;  
Immigration and Nationality Act (INA) §§ 240B and 274D; 8 U.S.C. §§ 1229c and 1324d; and 8 C.F.R. Part 280.

**SUPERSEDED ORDER(S):**

None.

**DELEGATION:**

By virtue of the authority delegated to the Executive Associate Director (EAD) for Enforcement and Removal Operations (ERO) in U.S. Immigration and Customs Enforcement Delegation Order 01-2018, *Delegation of Authority to Administer and Enforce Provisions Relating to Civil Penalties for Failure to Depart* (June 19, 2018), I hereby re-delegate to ERO Assistant Directors, Deputy Assistant Directors and the Unit Chief for the Bond Management Unit, the authority to administer and enforce provisions relating to civil penalties for failure to depart under INA §§ 240B and 274D, 8 U.S.C. §§ 1229c and 1324d, and 8 C.F.R. Part 280. This Delegation Order does not supersede authority granted by Delegation Order 01-2018 to the Deputy EAD, and Field Office Directors to also administer and enforce 240B and 274D provisions, including authority to redelegate such authorities, in writing, to no further than the level of an Assistant Field Office Director.

The authorities delegated herein may not be further re-delegated.

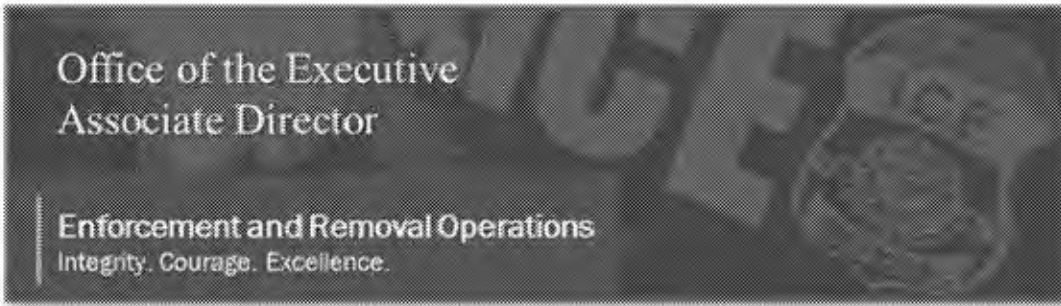
Nothing in the delegation provided by this order shall be construed to limit my exercise of such authority, or my authority to direct and control such employees in their exercise of the delegated authority.



**Timothy S. Robbins**  
Acting Executive Associate Director  
Enforcement and Removal Operations

**From:** Office of the Executive Associate Director for ERO  
**Subject:** Accountability of Immigration Subpoenas Issued to Non-Compliant Law Enforcement Agencies [FO]  
**Date:** Friday, August 7, 2020 2:33:07 PM  
**Attachments:** [image002.png](#)  
[image004.png](#)

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To: All ERO Employees

On August 6, 2020, I signed Enforcement and Removal Operation (ERO) Directive [11165: Accountability of Immigration Subpoenas Issued to Non-Compliant Law Enforcement Agencies \(LEAs\)](#), which supplements ERO guidance on accountability of immigration subpoenas and updates procedures for utilizing the National Subpoena Log for approving, issuing, serving, and tracking these subpoenas.

In the past, ICE has served subpoenas to places where an alien is known to work, or apartment complexes where an alien might live, to find out more information about the targeted alien. Historically, ICE has not had the need to issue subpoena to LEAs because most LEAs throughout the country willingly cooperate with ICE to provide information regarding aliens arrested for crimes in the interest of public safety. Absent that partnership, ICE will use every tool available to obtain information on the whereabouts of aliens, or other pertinent biographical information from jurisdictions that have recently begun to refuse or have been prohibited by state or local law or policy from cooperating with immigration enforcement. The public has the right to know the types of individuals their local LEAs are letting out of jail.

ERO Officers will continue to issue subpoenas in compliance with applicable laws, regulations and ICE Policy. This Directive provides ERO Supervisory Officers with discretion, on a case-by-case basis, to issue individual immigration subpoenas to non-compliant LEAs, requesting specific information related to specifically identified aliens who are or recently have been in their custody on criminal charges, and procedures for working with the relevant U.S Attorney's Office to ensure compliance. All field personnel identified by each area of responsibility as Users of the National Subpoena Log are required to complete mandatory training in PALMS. Also, Field Offices are encouraged to work with the ICE Office of Public Affairs and their community relations officers prior to issuing the subpoenas.

Any questions relating to the Directive may be directed to ERO Policy at [EROPolicy@ice.dhs.gov](mailto:EROPolicy@ice.dhs.gov) or ERO Enforcement at [CAPHQ@ice.dhs.gov](mailto:CAPHQ@ice.dhs.gov).

Enrique M. Lucero  
Executive Associate Director  
Enforcement and Removal Operations



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**U.S. Immigration  
and Customs  
Enforcement**

DEC - 3 2009

**MEMORANDUM FOR:** Assistant Directors  
Deputy Assistant Directors  
Special Agents in Charge

**FROM:**

(b)(6), (b)(7)(C) (b)(6), (b)(6)(7)(c)  
Acting Director, Office of Investigations

**SUBJECT:** Issuance of Rebranded/Updated Subpoenas and Summons  
Forms

The legacy U.S. Customs Service and Immigration and Naturalization Service (INS) subpoena and summons forms have been rebranded/updated and reissued. These new forms, which are attached to this memorandum, include:

- Department of Homeland Security (DHS) Form 3115, "Summons," and the accompanying DHS Form 3115A, "Summons Notice," which supersede Customs Form (CF) 3115 and CF 3115A, respectively;
- DHS Form I-138, "Immigration Enforcement Subpoena," which supersedes legacy INS Form I-138;
- U.S. Immigration and Customs Enforcement (ICE) Form 73-021, "Controlled Substances Enforcement Subpoena," which supersedes CF 389; and
- ICE Form 73-022, "Export Enforcement Subpoena," which supersedes CF 337.

Special Agents in Charge (SACs) should continue to issue the subpoenas and summons in accordance with the legal authorities and general guidelines that governed the legacy forms. The following additional guidance and reminders apply to the use of the three subpoenas and the summons.



Requirement to Maintain a Log

SACs are responsible for maintaining an accurate log of subpoenas or summonses issued each fiscal year, as well as copies of the subpoenas and summonses issued. The log must be kept for at least 5 years from the date of the last entry and shall contain, at a minimum, the following information:

1. the title of the proceedings, if any, for which the subpoena or summons is issued;
2. the entity to whom the subpoena or summons is served;
3. the issuing officer;
4. whether the subpoena or summons was issued to compel the appearance of a witness to provide testimony; the production of books, papers, or documents; or both;
5. the date of service of the subpoena or summons;
6. the means of service of the subpoena or summons; and
7. a tracking number for each subpoena or summons (tracked by fiscal year, e.g., NY-08-001; NY-08-002, etc.).

Limitations Related to Indicted Defendants or Aliens in Removal Proceedings

The issuance of an administrative subpoena or summons is authorized after a case has been referred to the Department of Justice (DOJ) for criminal prosecution. However, once the subjects of investigation have been indicted or a criminal complaint has been filed and they become defendants, the subjects of the investigation should not be subpoenaed. OI Special Agents (SAs) can continue issuing subpoenas and summonses in ongoing civil and criminal investigations to obtain information, but not from indicted defendants.

Typically, when a grand jury returns an indictment, the grand jury investigation is concluded and the grand jury no longer has the ability to issue grand jury subpoenas. The conclusion of the grand jury subpoena process does not preclude the use of an administrative subpoena or summons. However, SAs should be cognizant of the potential appearance of impropriety that could result from issuing an administrative subpoena or summons in investigations where the grand jury process has ended.

SAs considering using an administrative subpoena or summons subsequent to the indictment of any defendants should consult with and obtain the concurrence of the Assistant United States Attorney handling the criminal investigation and the appropriate ICE Office of the Chief Counsel (OCC).

SAs requiring an immigration enforcement subpoena in any matter that has been referred to an immigration judge should consult with the local ICE OCC, who may petition the immigration judge for the subpoena.

#### Limitations related to the Right to Financial Privacy Act

Administrative subpoenas or summonses compelling production of customer records from a financial institution must comply with the Right to Financial Privacy Act (RFPA). Under the RFPA, unless specific exemptions apply, no Government authority may have access to or obtain copies of the financial records, or the information contained in the financial records, of any customer from a financial institution, except through the specific procedures defined in the statute, 12 U.S.C. § 3402. SAs considering the issuance of an administrative subpoena or summons compelling the production of records from a financial institution pursuant to 12 U.S.C. § 3405 must consult with the local ICE OCC or appropriate ICE attorney to ensure that ICE complies with the RFPA for appropriate notice to the financial institution and its customer, or that an exemption applies, such as 12 U.S.C. § 3413(g).

#### Authority with Respect to Subpoenas

As stated in the respective OI Delegation Orders, the authority to use the Immigration Enforcement Subpoena, the Controlled Substances Enforcement Subpoena, and the Export Enforcement Subpoena is delegated to the OI Assistant Directors, Deputy Assistant Directors, Special Agents in Charge, Deputy Special Agents in Charge, and Assistant Special Agents in Charge. This authority cannot be redelegated.

#### Authority with Respect to the Summons

As stated in the respective OI Delegation Order, the authority to use the 19 U.S.C. § 1509 Summons is delegated to OI Assistant Directors, Deputy Assistant Directors, and Special Agents in Charge. This authority cannot be redelegated.

#### Posting of the Subpoena/Summons Forms

The subpoena and summons forms have been made fillable and are posted on the OI Proprietary Website by clicking on “Documents” and then “Forms.”

#### Prohibition Against Making Changes to the Subpoena/Summons Forms

OI SAs and other personnel are prohibited from making any changes to the subpoena and summons forms.

#### Governing ICE Directives

ICE is developing directives which will provide policies and detailed procedures to be followed when using each of the rebranded/updated subpoenas and summons. Upon

**SUBJECT: Issuance of Rebranded/Updated Subpoenas and Summons Forms**  
**Page 4 of 4**

issuance of each of these directives, OI employees must comply with that directive when using the related summons or subpoena form. When all four directives are issued, this memorandum will be cancelled.

**Superseded Documents**

This memorandum supersedes OI memorandum entitled, "Accountability of Subpoenas and Summons," dated March 13, 2007, and Section 43.3 of the legacy INS Special Agent Field Manual entitled, "Administrative Subpoenas."

**Attachments**

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
ENFORCEMENT AND REMOVAL OPERATIONS**

**Accountability of Immigration Subpoenas Issued to Non-Compliant Law  
Enforcement Agencies**

**Policy Number:** 11165  
**Issue Date:** August 6, 2020  
**Effective Date:** August 6, 2020  
**Superseded:** None.  
**Federal Enterprise Architecture Number:** 306-112-002b

**1. Purpose/Background.**

- 1.1** This Directive provides Enforcement and Removal Operations (ERO) field personnel with policy and procedures for issuing immigration subpoenas to state and local law enforcement agencies (LEAs) that do not comply with reasonable U.S. Immigration and Customs Enforcement (ICE) requests for information, including advance notification of release dates pursuant to an immigration detainer. While many LEAs across the country still provide ICE with information to enhance ICE's investigations, many have recently either begun to refuse, or have been prohibited by state or local law or policy from cooperating with immigration enforcement.
- 1.2** This Directive is intended to provide guidance on the utilization of immigration subpoenas issued pursuant to section 235(d)(4)(A) of the Immigration and Nationality Act (INA) and applicable regulations for this purpose.<sup>1</sup> These provisions provide immigration officers with the authority to issue subpoenas requiring the production of records and evidence for use in criminal or civil investigations. Should the subject of an immigration subpoena fail to comply, U.S. district court may issue an order requiring such compliance, and the failure to comply with such order may be punished by an order of contempt by the district court.<sup>2</sup>

**2. Policy.**

- 2.1** ERO Officers will continue to issue subpoenas in compliance with applicable laws, regulations, and ICE policy. As required by regulations, immigration subpoenas will continue to be issued on Form I-138, *Immigration Enforcement Subpoena to Appear and/or Produce Records*<sup>3</sup> and will be served by an ERO

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<sup>1</sup> See 8 C.F.R. § 287.4.

<sup>2</sup> See INA § 235(d)(4)(B), and 8 C.F.R. § 287.4(d).

<sup>3</sup> 8 C.F.R. § 287.4(b).



Officer other than the issuing officer.<sup>4</sup>The requested information sought by the subpoenas will pertain to specifically identified aliens with criminal convictions, gang members, national security or public safety threats, aliens who have been ordered removed from the United States but have failed to depart, and aliens who have re-entered the country illegally after being removed. The authority to approve subpoenas is currently delegated to Assistant Field Office Directors (AFODs) and above, and cannot be redelegated.<sup>5</sup>

- 2.2** ERO Officers will exercise discretion, on a case-by-case basis, and will issue individual immigration subpoenas to non-compliant LEAs, requesting specific information related to specifically identified aliens who are or recently have been in their custody on criminal charges. The information sought may include, but is not limited to, information regarding the alien's anticipated release date from the LEA's custody, removability, alienage, post-release whereabouts, and other pertinent information that ERO officers reasonably believe will lead to an appropriate law enforcement action. ERO Officers should utilize subpoenas only if obtaining the information through other means is not feasible. The information sought must not be unduly burdensome and will relate to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of the INA.<sup>6</sup>
- 2.3** ERO should consult with the Office of the Principal Legal Advisor (OPLA) to seek the assistance of the Department of Justice (DOJ) Headquarters (HQ) and the relevant U.S. Attorney's Office (USAO) to file petitions to enforce the subpoenas.
- 3. Definitions.** The following definitions apply for purposes of this Directive only:
- 3.1 Immigration Subpoena.** A writ issued by authorized ICE officials to compel testimony by a witness before an immigration officer or production of information relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of the INA and the administration of ICE.
- 3.3 Non-Compliant Law Enforcement Agency.** A broad term that generally describes a police or sheriff's office that does not comply, complies in a manner not conducive to ICE law enforcement actions, or is precluded from compliance due to local statute, regulation, or ordinance, with immigration detainees,

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<sup>4</sup> See 8 C.F.R. § 287.4(c) Service. "A subpoena issued under this section may be served by any person, over 18 years of age not a party to the case over 18 years of age not a party to the case, designated to make such service by the ... Field Office Director; Deputy Field Office Director; Supervisory Deportation Officer; Supervisory Detention and Deportation Officer,...."

<sup>5</sup> ERO Delegation 07-001.2, *Authority to Issue Immigration Enforcement Subpoenas within the Office of Detention and Removal*, (Jan. 6, 2010).

<sup>6</sup> INA § 235(d)(4)(A).

information sharing with ICE, or another action that impedes ICE's law enforcement actions.

- 3.4 DHS Form I-138, *Immigration Enforcement Subpoena to Appear and/or Produce Records*.** A standardized form that provides written request to the respondent (a person or entity) to appear and/or produce records in connection with an investigation or inquiry relating to the enforcement of U.S. immigration laws.
- 3.5 Form I-831, Continuation Page.** A continuation Page form to include additional information requested in section assigned for records required from I-138 (as applicable).
- 4. Responsibilities.**
- 4.1 The Executive Associate Director for ERO** is responsible for ensuring compliance with the provisions of this Directive within ERO.
- 4.2 The Assistant Directors for Enforcement and Field Operations** are responsible for ensuring compliance with the provisions of this Directive within their respective Divisions and Programs.
- 4.3 Field Office Directors (FODs), or their supervisory designees (Deputy FODs and AFODs),** are responsible for:
- 1) Serving as the authorizing official for reviewing and approving or denying requests to issue an immigration subpoena, as applicable;
  - 2) Ensuring that field office personnel follow the procedures in this Directive for issuing, serving, and documenting immigration subpoenas;
  - 3) Ensuring that all subpoenas are appropriately utilized and signed by the approved issuing authority;
  - 4) Coordinating legal review by the local OPLA field location and USAO, and notifying the ERO Enforcement Division at least 48 hours prior to issuing subpoenas to non-compliant LEAs;
  - 5) Accounting for all the subpoenas issued within their AOR via the National Subpoena Log; and
  - 6) Ensuring that field office personnel comply with training requirements for subpoena enforcement actions.
- 4.4 The Deputy Assistant Director for Enforcement, Criminal Alien Division (CAD) HQ, or their designee,** is responsible for:

- 1) Notifying ERO Field Operations and OPLA HQ prior to providing FODs with concurrence, if necessary, to sign/issue subpoenas for purposes of procurement of information from non-compliant LEAs;
- 2) Consulting and coordinating with the ICE Office of Public Affairs, Office of Public Engagement and the Office of Congressional Relations, as appropriate; and
- 3) Consulting and coordinating with OPLA HQ regarding requests that the relevant USAO file petitions to enforce subpoenas.

**4.5 Supervisory Detention and Deportation Officers (SDDOs), are responsible for:**

- 1) Ensuring compliance with the provisions of this Directive;
- 2) Identifying, through their assigned Deportation Officers, individual aliens who are potentially amenable cases for issuing subpoenas;
- 3) Properly submitting subpoena requests to the designated authorizing officials; and
- 4) Completing subpoena forms, issuing subpoenas, recording and documenting subpoena and enforcement actions, and contacting the USAO, if applicable.

**5. Procedures.**

**5.1 Identifying Appropriate Cases for Issuance of Immigration Subpoenas.**

SDDOs will review cases in which aliens were recently arrested, released, or pending release by non-compliant LEAs and identify cases for which no other feasible means to obtain required information in the possession of the LEA is available. Once potential cases have been identified, SDDOs will prepare Executive Summaries (ES) for each case including a justification for issuing an immigration subpoena, including an explanation as to why obtaining the information through other means is not feasible. (see section 2.2).

**5.2 Initiating, Approving and Serving a Subpoena.** ERO Officers will ensure they have access and obtain Requestor or Authorizing Official roles, as applicable, to the National Subpoena Log by contacting the Criminal Alien Program (CAP) HQ at [\(b\)\(7\)\(E\)@ice.dhs.gov](mailto:(b)(7)(E)@ice.dhs.gov).

- 1) Issuing the Subpoena. The Requestor will identify the name of the entity's highest authority to include, fax, email, phone number, and mailing address to send correspondence and serve the subpoena. The Requestor will complete Form I-138 annotating that the deadline to provide information regarding

aliens who remain in LEA custody is 3 calendar days, and for those who have been released is 14 business days.

- 2) Approving the Subpoena. The Authorizing Official will review Form I-138 and ES of alien mentioned in the form, and will consult with the local OPLA field location and USAO and submit his or her recommendation to CAP HQ for consultation with OPLA HQ and DOJ HQ. The Authorizing Official will enter the final decision in the National Subpoena Log indicating whether the request for a subpoena is approved or denied.
- 3) Serving the Subpoena. If approved, the Requestor will complete Form I-138 with the generated subpoena number and will provide the Authorizing Official with a hard copy for signature. Upon approval but prior to service, the Requestor may send an informal request, after consultation with the local USAO, requesting production of information on the subpoenas via email within 48 hours of receipt of request. If the LEA does not comply, the Requestor will upload the signed copy of Form I-138 to the Subpoena Log and serve it to the entity (see section 2.1).

**5.3 Post-Service and Enforcement Procedures.** Upon the deadline included in Form I-138, the Requestor will update the Subpoena Log based on the level of compliance and take further action, if applicable.

- 1) If full information is received, the Requestor will record the information and complete the National Subpoena Log. When such information leads to the arrest of the alien who is the target of the subpoena, the Requestor will notify the CAP HQ and annotate this information in the Subpoena Log, accordingly.
- 2) If partial information is received, the Requestor will record the information in the National Subpoena Log and consult the local OPLA field location and the USAO for further action on filing petitions to enforce subpoenas with the respective U.S. district court and update the the National Subpoena Log, accordingly.
- 3) If the LEA does not comply with the subpoena, the Requestor will annotate non-compliance in the Subpoena Log and consult with the local OPLA field location and the USAO for further action on filing petitions to enforce subpoenas with the respective US District Court and update the National Subpoena Log, accordingly.

**5.4 Accountability Procedures.** ERO Officers are required to account for all subpoenas issued within their AOR by maintaining both a log and a copy of the subpoena issued. The log must contain, at the minimum, the following information:

- 1) The title of proceedings, if any, for which the subpoena is issued;



- 2) The entity to whom the subpoena is served;
- 3) The issuing officer;
- 4) Whether the subpoena was issued to compel the appearance of a witness to provide testimony, the production of books, papers or documents, or both appearance and production;
- 5) The date of service of the subpoena;
- 6) The means of service of the subpoena; and
- 7) A tracking number for each subpoena (tracked by fiscal year).

### 5.5 Training.

All field personnel identified by each AOR as Users of the National Subpoena Log will complete mandatory training in DHS Performance and Learning Management System (PALMS).

6. **Recordkeeping.** All documents created or received by ICE must be maintained in accordance with a National Archives and Records Administration (NARA) General Records Schedule or an applicable DHS or ICE records schedule. If a schedule does not exist that covers the records, they are considered unscheduled. **Unscheduled** records cannot be destroyed or deleted until a schedule has been developed and approved by NARA.

### 7. Authorities/References.

- 7.1 *Immigration and Nationality Act of 1952, as amended (INA), Pub. L. No. 82-414, 66 Stat. 163, § 235(d)(4)(A-B).*
- 7.2 8 C.F.R. § 287.4(a-d), *Subpoena.*
- 7.3 ICE Delegation Order 73003.3, *U.S. Immigration and Customs Enforcement Authority to Issue Immigration Subpoenas*, (Nov. 30, 2009).
- 7.4 ERO Delegation Order 07-001.2, *Authority to Issue Immigration Enforcement Subpoenas within the Office of Detention and Removal*, (Jan. 6, 2010).
- 7.5 ICE Memorandum, *Accountability of Immigration Subpoenas*, (Jul. 13, 2007).

8. **Attachments.** None.

9. **No Private Right.** This document provides only internal ERO policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE. This guidance does not alter any provision of any statute or regulation that contains legally binding requirements, and it is not itself a regulation.



**Enrique M. Lucero**  
**Executive Associate Director**  
**Enforcement and Removal Operations**  
**U.S. Immigration and Customs Enforcement**

U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement

Office of Detention and Removal Operations  
Delegation Order

ORDER NUMBER:  
DRO 07-001.2

ISSUE DATE: JAN 06 2010

EFFECTIVE DATE:  
JAN 06 2010

**SUBJECT:**

**Authority to Issue Immigration Subpoenas Within the Office of Detention and Removal Operations**

**DELEGATED BY:**

Director, Office of Detention and  
Removal Operations

**DELEGATED TO:**

See below.

**SOURCE OF AUTHORITY BEING DELEGATED:**

ICE Delegation Order 73003.3 (November 30, 2009), or  
any superseding order delegating the same authority.

**SUPERSEDED ORDER(S):**

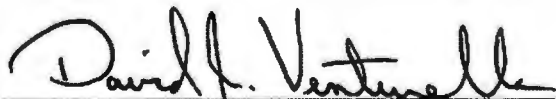
DRO Delegation Order 07-001.1, dated September  
30, 2009.

**DELEGATION:**

By virtue of the authority granted to me by the Assistant Secretary in ICE Delegation Order 73003.3, dated November 30, 2009, I hereby delegate to the Office of Detention and Removal Operations Assistant Directors, Deputy Assistant Directors, Field Office Directors, Deputy Field Office Directors, and Assistant Field Office Directors the authority to:

1. Issue immigration subpoenas requiring the person or entity to which they are addressed to attend and give testimony;
2. Require such persons or entities to produce records (books, papers, or other documents) for use in criminal or civil investigations;
3. Effect service of immigration subpoenas upon the persons or entities named therein;
4. Administer oaths;
5. Take testimony from such persons or entities under oath and examine, or cause to be examined, records produced by such persons or entities; and,
6. In the event that the person or entity named in a subpoena neglects or refuses to comply with the requirement to attend and give testimony or to produce records, request the United States Attorney for the district in which the subpoena was issued report such neglect or refusal to the United States District Court and to request such court issue an order requiring the witness to appear and testify and/or produce the records designated in the subpoena.

This authority may not be redelegated.



David J. Venturella  
Acting Director, Office of Detention and Removal Operations

USE ADDITIONAL PLAIN BOND IF NECESSARY.

**From:** Los Angeles Statistics and Taskings Unit [/O=IRMMAIL/OU=MBX SERVERS - LOS/CN=RECIPIENTS/CN=LSTU]  
**Sent:** 6/27/2017 1:05:23 AM  
**To:** (b)(6), (b)(6)(7)(c) [/O=IRMMAIL/OU=MBX Servers - LOS/cn=Recipients/cn=aarcinas]; (b)(6), (b)(6)(7)(c) [/O=IRMMAIL/OU=MBX Servers - COW/cn=Recipients/cn= (b)(6), (b)(6)(7)(c) [/O=IRMMAIL/OU=MBX Servers - LOS/cn=Recipients/cn=aeward]; (b)(6), (b)(6)(7)(c) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=ef90919252d84894b315bc25051acd01; (b)(6), (b)(6)(7)(c) [/O=IRMMAIL/OU=MBX Servers - LOS/cn=Recipients/cn=jrfield]; (b)(6), (b)(6)(7)(c) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=8d601c95aed54ed3aaee9e4899c1de1; (b)(6), (b)(6)(7)(c) (b)(6), (b)(6)(7)(c) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=849c684d927043d0a91dd6911f6bdb89; (b)(6), (b)(6)(7)(c) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=d198ade8fa574a74ab2ab10cdcb2a9e6; (b)(6), (b)(6)(7)(c) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4c1ed2d869d64cea89dc74472630e369; (b)(6), (b)(6)(7)(c) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9c215650dc05404791977f70c69b3; (b)(6), (b)(6)(7)(c) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=b1980a063f5a4fcb59db013fce01640; (b)(6), (b)(6)(7)(c) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=23c642ec13c146c6a1b68828f8093bf; (b)(6), (b)(6)(7)(c) (b)(6), (b)(6)(7)(c) [/O=IRMMAIL/OU=MBX Servers - SFR/cn=Recipients/cn= (b)(6), (b)(6)(7)(c) [/O=IRMMAIL/OU=MBX Servers - DAL/cn=Recipients/cn= (b)(6), (b)(6)(7)(c); (b)(6), (b)(6)(7)(c) ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=85853ae49114408b1d1aec150a998ec; (b)(6), (b)(6)(7)(c) (b)(6), (b)(6)(7)(c) ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f7246f844b148658177ec2f93ced9c; (b)(6), (b)(6)(7)(c) [/O=IRMMAIL/OU=MBX Servers - LNC/cn=Recipients/cn= (b)(6), (b)(6)(7)(c); Los Angeles Statistics and Taskings Unit [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ef527a4445f4eac90ba518709b9cad3-Los Angeles; (b)(6), (b)(6)(7)(c) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9398ad3a6a4e49de921be111ff4e0468; (b)(6), (b)(6)(7)(c)  
**CC:** (b)(6), (b)(6)(7)(c) [/O=IRMMAIL/OU=MBX Servers - SFR/cn=Recipients/cn= (b)(6), (b)(6)(7)(c) (b)(6), (b)(6)(7)(c) ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=85853ae49114408b1d1aec150a998ec; (b)(6), (b)(6)(7)(c) (b)(6), (b)(6)(7)(c) ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=2f7246f844b148658177ec2f93ced9c; (b)(6), (b)(6)(7)(c) [/O=IRMMAIL/OU=MBX Servers - LNC/cn=Recipients/cn= (b)(6), (b)(6)(7)(c); Los Angeles Statistics and Taskings Unit [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=5ef527a4445f4eac90ba518709b9cad3-Los Angeles; (b)(6), (b)(6)(7)(c) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=9398ad3a6a4e49de921be111ff4e0468; (b)(6), (b)(6)(7)(c)  
**Subject:** ERO 2.0-Immigration Subpoena  
**Attachments:** Subpoena Accountability- Immigration Subpoenas.pdf; Authority to Issue-Immigration-Subpoenas.pdf; Enforcement\_Ops\_Property\_Protocol.pdf; Updated-Subpoenas-Summons-Forms-Memo.pdf; Safeguarding\_PII.PDF; Immigration Subpoena.pdf

**Flag:** Follow up

**To:** Assistant Field Office Directors  
Los Angeles Field Office

**Subject:** ERO 2.0- Immigration Subpoenas

*This message is being sent on behalf of the ERO 2.0 At-Large Workstream*

In accordance with the ongoing Enforcement and Removal Operations (ERO) 2.0 program, the at-large work stream is providing all law enforcement officers within the Los Angeles area of responsibility, a “go-by” list of instructions for utilizing Immigration Subpoenas. Furthermore, ICE Subpoenas can be a beneficial and valuable immigration enforcement resource. Moreover, ICE subpoenas can be utilized to acquire records related to, but not limited to, telephonic, school, business, apartment management records, etc. As a result, please see the attached subpoena, guidance and policies, as well as the instructions listed below.

**Steps for completing, managing, and issuing ICE Subpoenas:**



- 1) Identify and verify the recipient/companies name, address, and fax number (**Section 1 on Subpoena**)
  - Subpoenas can be served either in-person, email, or via fax
- 2) Contact the Los Angeles Statistics and Tasking's Unit  
(b)(7)(e) @ice.dhs.gov for a designated subpoena number (**Section 1**)
- 3) Include the subject of the investigations biographical information (**Section 2**)
  - Do not disclose any Personally Identifiable Information or PII in accordance with the attached ICE policy
  - This includes items such as alien registration numbers, FBI numbers, Social Security Numbers (A-numbers should appear as such: AXXX-XXX-846)
- 4) Check the box designating which records must be produced, either *testimonial or document* (**Section 2 A or B**)
- 5) Provide your contact information to include, name, title, address, and telephone number (**Section 3a**)
- 6) Designate the date and time the records must be received by (**Section 3b**)
- 7) Explain the records required for inspection (**Section 4**)
- 8) Your program's Assistant Field Office Director must approve and sign subpoena issuance (**Section 5**)
- 9) Complete the certification of service and acknowledgement portion (**A and B of page 2**)
  - Have the person receiving the subpoena sign, complete section B, and return a copy to the case officer
- 10) All subpoena records must be maintained in the alien file



**U.S. Immigration  
and Customs  
Enforcement**

JUL 13 2007

MEMORANDUM      Field Office Directors  
FOR:                ICE Academy  
                         Detention and Removal Operations

FROM:              John P. Torres  
                         Director  
                         Office of Detention and Removal  
                         Operations

SUBJECT:          Accountability of Immigration Subpoenas

A handwritten signature in black ink, appearing to read "John P. Torres".

On behalf of ICE, the Office of Investigations is currently updating the legacy immigration subpoena directive and form. Until they are reissued, Detention and Removal Field Offices must continue using the legacy Immigration and Naturalization subpoena form (I-138). (See attached form)

Field Office Directors (FODs) are required to account for all subpoenas issued within their Area of Operational Responsibility (AOR) by maintaining both a log and copy of the subpoena issued. The log must contain, at minimum, the following information:

- 1) the title of proceedings, if any, for which the subpoena is issued;
- 2) the entity to whom the subpoena is served;
- 3) the issuing officer;
- 4) whether the subpoena was issued to compel the appearance of a witness to provide testimony, the production of books, papers or documents, or both appearance and production;
- 5) the date of service of the subpoena;
- 6) the means of service of the subpoena; and
- 7) a tracking number for each subpoena (tracked by fiscal year).

FODs must also ensure that all subpoenas are appropriately utilized and signed by the approved issuing authority. (See attached delegation order.)

Subpoenas that are sensitive in nature, or subpoenas requesting information that pertains to a large group of individuals, must be vetted through Headquarters

Memorandum for Field Office Directors  
Accountability of Immigration Subpoenas  
Page 2 of 2

Detention and Removal Operations (HQDRO) management. Examples of sensitive subpoenas include: a subpoena concerning a public official, a political candidate, the activities of a foreign government, the activities of a high foreign government official, the activities of a religious or political organization, or the activities of the news media.

If you have any questions or require additional information, please contact [REDACTED]  
[REDACTED] Deputy Assistant Director, Compliance Enforcement Division, at 202-616-  
[REDACTED]

U.S. Department of Homeland Security U.S. Immigration and Customs Enforcement	Office of Detention and Removal Operations Delegation Order
--	--

ORDER NUMBER: DRO DO 07-001	ISSUE DATE: MAR 13 2007	EFFECTIVE DATE: MAR 17 2007
--------------------------------	----------------------------	--------------------------------

**SUBJECT:**  
**Authority to Issue Immigration Subpoenas Within the Office of Detention and Removal Operations.**

<b>DELEGATED BY:</b> Director, Office of the Office of Detention and Removal Operations	<b>DELEGATED TO:</b> See below.
--	------------------------------------


<b>SOURCE OF AUTHORITY BEING DELEGATED:</b> ICE Delegation Order 73003.1, dated February 6, 2007	<b>SUPERSEDED ORDER(S):</b> None.
---	--------------------------------------

**DELEGATION:**

By virtue of the authority granted to me by the Assistant Secretary in ICE Delegation Order 73003.1, dated February 6, 2007, I hereby delegate to Office of Detention and Removal Operations Assistant Directors, Deputy Assistant Directors, Field Office Directors, Deputy Field Office Directors, and Assistant Field Office Directors the authority to:

1. Issue immigration subpoenas requiring the person or entity to which they are addressed to attend and give testimony;
2. Require such persons or entities to produce records (books, papers, or other documents) for use in criminal or civil investigations;
3. Effect service of immigration subpoenas upon the persons or entities named therein;
4. Take testimony from such persons or entities under oath and examine, or cause to be examined, records produced by such persons or entities; and,
5. In the event that the person or entity named in a subpoena neglects or refuses to comply with the requirement to attend and give testimony or to produce records, request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court and to request such court to issue an order requiring the witness to appear and testify and to produce the records designated in the subpoena.

This authority may not be redelegated.



John P. Torres  
Director, Office of Detention and Removal Operations

USE ADDITIONAL PLAIN BOND IF NECESSARY.



<b>1. To (Name, Address, City, State, Zip Code)</b>  AT&T 11760 US Highway 10 World Way Run Rm. (b)(6),(b)(7)(C) North Palm Beach, FL 33408 FAX: 888-938-4715	<b>DEPARTMENT OF HOMELAND SECURITY</b>  <b>IMMIGRATION ENFORCEMENT SUBPOENA</b>  <b>to Appear and/or Produce Records</b> 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
<b>Subpoena Number</b> 0054	
<b>2. In Reference To</b> <div style="display: flex; justify-content: space-between; align-items: center;"> <div style="border: 1px dashed black; padding: 2px; margin: 5px;">(b)(6),(b)(7)(C)</div> <div style="border: 1px dashed black; padding: 2px; margin: 5px;">(b)(6),(b)(7)(C)</div> </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <span>(Title of Proceeding)</span> <span>(File Number, if Applicable)</span> </div>	

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 laws. 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).

<b>3. (A) CBP, ICE or USCIS Official before whom you are required to appear</b>  Name  Title DEPORTATION OFFICER  Address 300 N. LOS ANGELES ST (b)(6),(b)(7)(C) LOS ANGELES CA 90012  Telephone Number 213-830 (b)(6),(b)(7)(C)	<b>(B) Date</b>    <b>(C) Time</b> <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.
---	---

**4. Records required to be produced for inspection**

Information relating to (b)(6),(b)(7)(C)

Subscriber information relating to telephone number 310-638 (b)(6),(b)(7)(C) such as:

- 1) BILLING USER ADDRESS
- 2) EMERGENCY CONTACTS
- 3) ANY RELAVANT INFORMATION



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

**5. Authorized Official**

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Printed Name)

\_\_\_\_\_ (Title)

\_\_\_\_\_ AFOD

\_\_\_\_\_ (Date)

**CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT**

**A. CERTIFICATE OF SERVICE**

I certify that on \_\_\_\_\_, I served this subpoena on the witness named in Block 1 in the following manner:  
(Date)

\_\_\_\_\_  
(Details of how service was effected)

\_\_\_\_\_  
(Signature of Official Serving Subpoena)

\_\_\_\_\_  
(Printed Name of Official Serving Subpoena)

Deportation Officer  
\_\_\_\_\_  
(Title of Official Serving Subpoena)

**B. ACKNOWLEDGMENT OF RECEIPT**

I acknowledge receipt of a copy of the subpoena on the front of this form.

Signature

Title

Date

Time

a.m.  
 p.m.











**From:** (b)(6),(b)(7)(C) [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=0BB7FD3B99A84DA48A0475C24CC32B4A (b)(6),(b)(7)(C)]  
**Sent:** 1/10/2023 8:45:55 PM  
**To:** (b)(6),(b)(7)(C) ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a58fc9bc52984cf0878128a67a9d2c6f (b)(6),(b)(7)(C)  
**Subject:** RE: Subpoena Log Question

(b)(6),(b)(7)(C) added those in there today. I have asked some questions on it as I'm not convinced the criminal prosecution part of it is accurate. I'll update it though if I sign them and delete them if I don't.

Thanks,

(b)(6),(b)(7)(C)  
AFOD  
(612) 968 (b)(6),(b)(7)(C)

---

**From:** (b)(6),(b)(7)(C) @ice.dhs.gov>  
**Sent:** Tuesday, January 10, 2023 2:18 PM  
**To:** (b)(6),(b)(7)(C) ice.dhs.gov>  
**Subject:** RE: Subpoena Log Question

LOL—good to know now. As long as our current tracker captures the below necessary information (for future FOIAs) and the officers update our local log as they should, we should be good to go. I see you just added these two new subpoenas to the FY'23 log. The thing is, I don't remember anyone ever spelling out that only subpoenas going to LEAs were tracked on the HQ subpoena log. Always learning aren't we (b)(6),(b)(7)(C)

- The title of the proceedings for the subpoena
- The entity to whom the subpoena was served
- The issuing officer
- Whether the subpoena compels the appearance of a witness, the production of documents, or both
- The date of service of the subpoena (*and when it was successfully answered to*)
- The means of service
- A tracking number for each subpoena.

Enjoy your afternoon and thanks for the follow up on this!

(b)(6),(b)(7)(C)

Acting Deputy Field Office Director  
St. Paul, MN Field Office  
**Enforcement and Removal Operations**  
**U.S. Immigration and Customs Enforcement**  
Desk: (515) 829 (b)(6),(b)(7)(C) Cell: (515) 82 (b)(6),(b)(7)(C)

This communication is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this communication should be furnished to the media, either in written or verbal form.

**From:** (b)(6),(b)(7)(C) <[redacted]@ice.dhs.gov>  
**Sent:** Tuesday, January 10, 2023 2:03 PM  
**To:** (b)(6),(b)(7)(C) <[redacted]@ice.dhs.gov>  
**Subject:** FW: Subpoena Log Question

I did all that research this morning and requested access to the HQ subpoena log and everything.... Just to find out that we still do our local subpoenas to companies like Artic Cat via the old local method. Good to know. ☺

(b)(6),(b)(7)(C)  
AFOD  
(612) 968-[redacted]

**From:** (b)(6),(b)(7)(C) <[redacted]@ice.dhs.gov>  
**Sent:** Tuesday, January 10, 2023 11:48 AM  
**To:** (b)(6),(b)(7)(C) <[redacted]@ice.dhs.gov>  
**Cc:** CAP HQ <[redacted]@ice.dhs.gov>  
**Subject:** RE: Subpoena Log Question

Good afternoon,

The HQ subpoena log is for LEAs. You can use a local log to track any other subpoenas in your office.

Thank you,

(b)(6),(b)(7)(C)  
Detention and Deportation Officer  
Headquarters Criminal Apprehension Program  
**Enforcement and Removal Operations**  
**U.S. Immigration Customs Enforcement**  
c: 703-400-[redacted]

**From:** CAP HQ <[redacted]@ice.dhs.gov>  
**Date:** Tuesday, Jan 10, 2023 at 10:54 AM  
**To:** EROHQCAP (internal) <[redacted]@egov.onmicrosoft.com>  
**Subject:** FW: Subpoena Log Question

**From:** (b)(6),(b)(7)(C) <[redacted]@ice.dhs.gov>  
**Sent:** Tuesday, January 10, 2023 10:54:19 AM (UTC-05:00) Eastern Time (US & Canada)  
**To:** CAP HQ <[redacted]@ice.dhs.gov>  
**Subject:** Subpoena Log Question

Good morning,



Our office is contemplating issuing an immigration subpoena to a private company. We have found what seems to be competing guidance regarding the logging of the subpoena. Should we utilize the SharePoint log for this subpoena or is that log only for subpoenas issued to law enforcement agencies?

Thank you,

**(b)(6),(b)(7)(C)**

Assistant Field Office Director

Saint Paul Field Office

Enforcement and Removal Operations

U.S. Immigration and Customs Enforcement

d: (612) 843-**(b)(6),(b)(7)(C)**; (612) 968-**(b)(6),(b)(7)(C)**

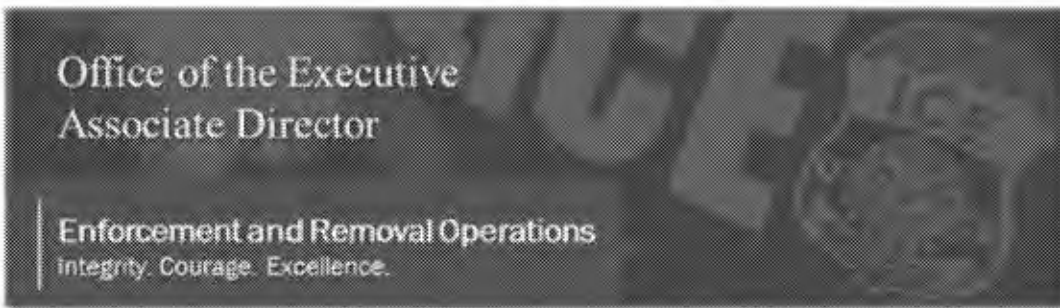
**From:** (b)(6),(b)(7)(C) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=91C164D1410B4BA48E9BF205CB6B2D5F-SIEVING, JA]  
**Sent:** 1/21/2022 4:54:01 PM  
**To:** (b)(6),(b)(7)(C) =ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=335ff5b99a7546fa9f7bd784face860- (b)(6),(b)(7)(C) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=085cc6a3ee824e6cacada806881c3b86- (b)(6),(b)(7)(C) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=c0a38489186a4da192eb54f147acfab2- (b)(6),(b)(7)(C) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=a58fc9bc52984cf0878128a67a9d2c6f- (b)(6),(b)(7)(C) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=50f16abc77784069b801c926e8d004e6- (b)(6),(b)(7)(C)  
**Subject:** FW: Accountability of Immigration Subpoenas Issued to Non-Compliant Law Enforcement Agencies [FO]  
**Attachments:** ERO Accountability of Immigration Subpoenas to Non-Compliant LEAs-FINAL.pptx

After dealing with this latest FOIA, I discovered this email. I also found the attached PowerPoint. I think we'll all need to get together on this to make sure we are doing everything correct.

(b)(6),(b)(7)(C)

Assistant Field Office Director  
St. Paul Field Office  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement  
612-843- (b)(6),(b)(7)(C)

**From:** Office of the Executive Associate Director for ERO (b)(7)(e) @ice.dhs.gov>  
**Sent:** Friday, August 7, 2020 1:32 PM  
**Subject:** Accountability of Immigration Subpoenas Issued to Non-Compliant Law Enforcement Agencies [FO]



To: All ERO Employees

On August 6, 2020, I signed Enforcement and Removal Operation (ERO) Directive 11165: Accountability of Immigration Subpoenas Issued to Non-Compliant Law Enforcement Agencies (LEAs), which supplements ERO guidance on accountability of immigration subpoenas and updates procedures for utilizing the National Subpoena Log for approving, issuing, serving, and tracking these subpoenas.

In the past, ICE has served subpoenas to places where an alien is known to work, or apartment complexes where an alien might live, to find out more information about the targeted alien. Historically, ICE has not had the need to issue subpoena to LEAs because most LEAs throughout the country willingly cooperate with ICE to provide information

regarding aliens arrested for crimes in the interest of public safety. Absent that partnership, ICE will use every tool available to obtain information on the whereabouts of aliens, or other pertinent biographical information from jurisdictions that have recently begun to refuse or have been prohibited by state or local law or policy from cooperating with immigration enforcement. The public has the right to know the types of individuals their local LEAs are letting out of jail.

ERO Officers will continue to issue subpoenas in compliance with applicable laws, regulations and ICE Policy. This Directive provides ERO Supervisory Officers with discretion, on a case-by-case basis, to issue individual immigration subpoenas to non-compliant LEAs, requesting specific information related to specifically identified aliens who are or recently have been in their custody on criminal charges, and procedures for working with the relevant U.S Attorney's Office to ensure compliance. All field personnel identified by each area of responsibility as Users of the National Subpoena Log are required to complete mandatory training in PALMS. Also, Field Offices are encouraged to work with the ICE Office of Public Affairs and their community relations officers prior to issuing the subpoenas.

Questions relating to the Directive may be directed to ERO Policy at [ice.dhs.gov](mailto:(b)(7)(e)@ice.dhs.gov) or ERO Enforcement at [ice.dhs.gov](mailto:(b)(7)(e)@ice.dhs.gov).

*Enrique M. Lucero*  
*Executive Associate Director*  
*Enforcement and Removal Operations*



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**From:** (b)(6),(b)(7)(C) /O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=A58FC9BC52984CF0878128A67A9D2C6 (b)(6),(b)(7)(C)  
**Sent:** 1/25/2022 4:45:33 PM  
**To:** (b)(6),(b)(7)(C) xchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=e42d4d08bf9f413492018a82d753daf (b)(6),(b)(7)(C) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=fb9d53dd7f0d43b5b2f55a9a21478b94 (b)(6),(b)(7)(C) [/o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=4f733004ef26491b8ec9f4a623c40556 (b)(6),(b)(7)(C)  
**CC:** (b)(6),(b)(7)(C) /o=ExchangeLabs/ou=Exchange Administrative Group (FYDIBOHF23SPDLT)/cn=Recipients/cn=cf6f60aa9fa34867ba65a9464db3db66 (b)(6),(b)(7)(C)  
**Subject:** FW: Accountability of Immigration Subpoenas Issued to Non-Compliant Law Enforcement Agencies [FO]  
**Attachments:** ERO Accountability of Immigration Subpoenas to Non-Compliant LEAs-FINAL.pptx

Good morning,

This is just an FYI at this point in time, but something that may be discussed further today on our FOD call. According to the attached PowerPoint, we should be utilizing the National Subpoena Log (via the ERO SharePoint site/CAP HQ). No need to request access at this point in time, but wanted to share for your awareness as something more will likely be coming out regarding our process for tracking Administrative Subpoenas.

Thanks everyone,

(b)(6),(b)(7)(C)

Assistant Field Office Director, Fugitive Operations  
St. Paul, MN Field Office, Des Moines, IA Sub-office  
**Enforcement and Removal Operations**  
**U.S. Immigration and Customs Enforcement**  
Desk: (515) 323 (b)(6),(b)(7)(C) Cell: (515) 822 (b)(6),(b)(7)(C)

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**From:** (b)(6),(b)(7)(C)@ice.dhs.gov>  
**Sent:** Friday, January 21, 2022 10:54 AM  
**To:** (b)(6),(b)(7)(C)@ice.dhs.gov>; (b)(6),(b)(7)(C)@ice.dhs.gov>; (b)(6),(b)(7)(C)@ice.dhs.gov>; (b)(6),(b)(7)(C)@ice.dhs.gov>; (b)(6),(b)(7)(C)@ice.dhs.gov>; (b)(6),(b)(7)(C)@ice.dhs.gov>  
**Subject:** FW: Accountability of Immigration Subpoenas Issued to Non-Compliant Law Enforcement Agencies [FO]

After dealing with this latest FOIA, I discovered this email. I also found the attached PowerPoint. I think we'll all need to get together on this to make sure we are doing everything correct.

(b)(6),(b)(7)(C)

Assistant Field Office Director  
St. Paul Field Office  
Enforcement and Removal Operations



U.S. Immigration and Customs Enforcement  
612-843 (b)(6),(b)(7)(C)

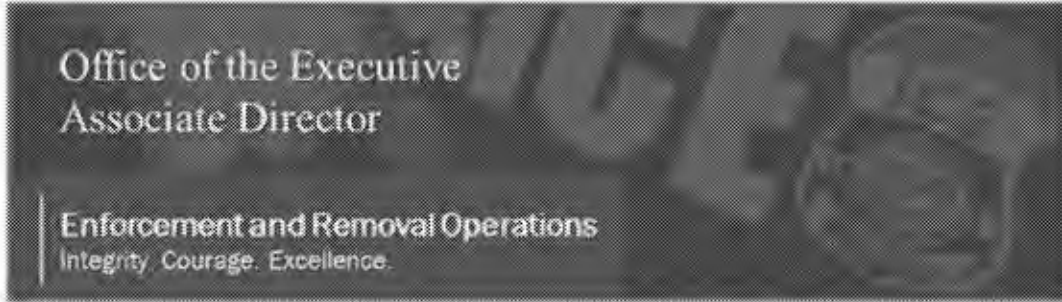
From: Office of the Executive Associate Director for ERO

(b)(7)(E)

@ice.dhs.gov>

Sent: Friday, August 7, 2020 1:32 PM

Subject: Accountability of Immigration Subpoenas Issued to Non-Compliant Law Enforcement Agencies [FO]



To: All ERO Employees

On August 6, 2020, I signed Enforcement and Removal Operation (ERO) Directive 11165: Accountability of Immigration Subpoenas Issued to Non-Compliant Law Enforcement Agencies (LEAs), which supplements ERO guidance on accountability of immigration subpoenas and updates procedures for utilizing the National Subpoena Log for approving, issuing, serving, and tracking these subpoenas.

In the past, ICE has served subpoenas to places where an alien is known to work, or apartment complexes where an alien might live, to find out more information about the targeted alien. Historically, ICE has not had the need to issue subpoena to LEAs because most LEAs throughout the country willingly cooperate with ICE to provide information regarding aliens arrested for crimes in the interest of public safety. Absent that partnership, ICE will use every tool available to obtain information on the whereabouts of aliens, or other pertinent biographical information from jurisdictions that have recently begun to refuse or have been prohibited by state or local law or policy from cooperating with immigration enforcement. The public has the right to know the types of individuals their local LEAs are letting out of jail.

ERO Officers will continue to issue subpoenas in compliance with applicable laws, regulations and ICE Policy. This Directive provides ERO Supervisory Officers with discretion, on a case-by-case basis, to issue individual immigration subpoenas to non-compliant LEAs, requesting specific information related to specifically identified aliens who are or recently have been in their custody on criminal charges, and procedures for working with the relevant U.S Attorney's Office to ensure compliance. All field personnel identified by each area of responsibility as Users of the National Subpoena Log are required to complete mandatory training in PALMS. Also, Field Offices are encouraged to work with the ICE Office of Public Affairs and their community relations officers prior to issuing the subpoenas.

Any questions relating to the Directive may be directed to ERO Policy (b)(7)(E) @ice.dhs.gov or ERO Enforcement at

(b)(7)(E) @ice.dhs.gov.

*Enrique M. Lucero*  
Executive Associate Director  
Enforcement and Removal Operations

*To protect the homeland through the arrest and removal of aliens who undermine  
the safety of our communities and the integrity of our immigration laws.*



## **Enforcement and Removal Operations**

*Integrity. Courage. Excellence.*

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1. To (Name, Address, City, State, Zip Code)  G&A Partners 10813 S River Front Parkway, Suite (b)(6),(b)(7)(C) South Jordan, Utah 84095	DEPARTMENT OF HOMELAND SECURITY  <b>IMMIGRATION ENFORCEMENT SUBPOENA</b> to Appear and/or Produce Records 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number 04192023-01	
2. In Reference To <div style="display: flex; justify-content: space-between;"> <div style="border: 1px solid black; padding: 5px; width: 45%;">(b)(6),(b)(7)(C) <small>(Title of Proceeding)</small></div> <div style="border: 1px solid black; padding: 5px; width: 45%;">(b)(6),(b)(7)(C) <small>(File Number, if Applicable)</small></div> </div>	

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 laws. 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 Department of Homeland Security Title Immigration Customs Enforcement Address 2975 South Decker Lake Drive, Suite 1 (b)(6),(b)(7)(C) West Valley City, Utah 84119 Telephone Number 801-886- (b)(6),(b)(7)(C)	(B) Date 04/21/2023  (C) Time 12:00 <input type="checkbox"/> a.m. <input checked="" type="checkbox"/> p.m.
---	--

4. Records required to be produced for inspection

Records pertaining to individuals names, DHS I-9 Form, job application, identification cards, social security numbers, vehicles, photos, social media accounts, email addresses, current employer/employment history, job site locations.



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

5. Authorized Official

**(b)(6),(b)(7)(C)**

(Printed Name)  
(A) Field Office Director

(Title)  
04/19/2023

(Date)

**CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT**

**A. CERTIFICATE OF SERVICE**

I certify that on \_\_\_\_\_, I served this subpoena on the witness named in Block 1 in the following manner:  
(Date)

\_\_\_\_\_  
(Details of how service was effected)

\_\_\_\_\_  
(Signature of Official Serving Subpoena)

(b)(6),(b)(7)(C)

\_\_\_\_\_  
(Printed Name of Official Serving Subpoena)

Deportation Officer

\_\_\_\_\_  
(Title of Official Serving Subpoena)

**B. ACKNOWLEDGMENT OF RECEIPT**

I acknowledge receipt of a copy of the subpoena on the front of this form.

Signature

Title	Date	Time <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.
-------	------	--





# U.S. Immigration and Customs Enforcement

Document Number: ERO 11157.1

Effective Date: 5/14/2013

Office of Primary Responsibility: AD for Secure Communities and Enforcement

Law Enforcement Sensitive – For Official Use Only

## Enforcement and Removal Operations Criminal Alien Division Criminal Alien Program Handbook

Version 1.0

This document was prepared for authorized distribution only.  
It has not been approved for public release.

Approved by: **(b)(6), (b)(7)(C)**  
Title: AD for Secure Communities & Enforcement  
Date signed: 5/14/13

Criminal Alien Program Handbook

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## Criminal Alien Program Handbook

## PURPOSE AND SCOPE

This handbook provides policies and best practices that are to be followed by all personnel performing Criminal Alien Program (CAP) duties. The handbook is intended to be the foundation for CAP training in Enforcement and Removal field offices and focuses on the identification of criminal aliens, case preparation, and removal proceedings, while allowing for the flexibility to adhere to established local operational procedures. While the handbook contains investigative tools and resources, it should not be construed as an exhaustive guide to conducting CAP operations.

It is the responsibility of the Senior Field Training Officer to monitor and document all CAP training. A complete list of all forms mentioned in this handbook can be found in [Appendix 1: List of Forms](#).

## CAP OVERVIEW

One of the most important mandates to U.S. Immigration and Customs Enforcement (ICE) is the enhancement of public safety and the security of the American public. ICE's broad authority allows for the identification and removal of dangerous, often recidivist, criminal aliens engaged in crimes such as murder, predatory sexual offenses, narcotics trafficking, alien smuggling, and a host of other crimes that have a profoundly negative impact on our society. The Criminal Alien Division (CAD) supports this mandate through strategic planning and the establishment of sound policies which augment ICE's ability to arrest and remove these dangerous individuals from the United States. CAD is responsible for allocating resources and personnel to the 24 Enforcement and Removal Operations (ERO) Field Offices, as well as developing and monitoring performance metrics which measure the overall effectiveness of its planning and field office enforcement efforts. CAD achieves these important goals through its three supporting units: CAP, 287(g), and Secure Communities.

CAP's mission is to provide ICE-wide direction and support in the identification and apprehension of foreign born nationals who are incarcerated within federal, state, and local prisons and jails, as well as at-large criminal aliens. It is incumbent upon ICE to ensure that all efforts are made to investigate, arrest, and remove individuals from the United States by processing the alien expeditiously and securing a final order of removal for an incarcerated alien before the alien is released to ICE custody. The identification and processing of incarcerated criminal aliens, before release from jails and prisons, decreases or eliminates the time spent in ICE custody awaiting removal, thereby reducing the overall cost to the federal government.



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Additionally, integral to the effective execution of this program is the aggressive prosecution of criminal offenders identified by ERO officers during the course of their duties.

In accordance with its programmatic oversight, CAP oversees the following initiatives:

### **Violent Criminal Alien Section (VCAS)**

The primary responsibility of VCAS is to enforce violations of criminal immigration law found through the enforcement activities of Enforcement and Removal Operations (ERO). The aggressive prosecution of criminal offenders identified by ERO officers, in conjunction with the U.S. Attorney's Office, further enhances public safety and provides a significant deterrent to recidivism.

### **Joint Criminal Alien Removal Taskforce (JCART)**

#### **Mission Statement:**

To uphold public safety and national security through the establishment of taskforces in collaboration with federal, state and local law enforcement agencies to identify and arrest at-large criminal aliens.

#### **Responsibilities:**

JCART is responsible for the identification, investigation and arrest of at large criminal aliens with, but not limited to, convictions for a multitude of crimes such as drug trafficking offenses, crimes of violence and sex offenses. JCART will also identify and target aliens involved in human trafficking, smuggling, and Transnational Organized Crime (TOC) for increased information collection. JCART will partner with other agencies such as Probation and Parole Offices, the United States Marshals Service, Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI), U.S. Customs and Border Protection (CBP), the Bureau of Prisons (BOP), and at the request of local law enforcement agencies (LEA) conducting special operations.

### **Law Enforcement Agency Response Unit (LEAR)**

#### **Mission Statement:**

Respond to requests for assistance from federal, state and local law enforcement agencies, to identify and arrest foreign born nationals found illegally in the United States and to disrupt high-risk smuggling pathways.

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**Responsibilities:**

The Law Enforcement Agency Response Unit (LEAR) was established in the ICE Office of Enforcement and Removal Operations (ERO) in Phoenix, Arizona, to provide 24/7 response to all calls for assistance from state and local law enforcement agencies (LEAs) related to suspected immigration law violators. LEAR determines nationality, immigration status and amenability to removal; makes arrests; places immigration detainees; provides transportation; and processes aliens found amenable to removal. LEAR operations will facilitate ICE disruption efforts against human trafficking, smuggling and Transnational Organized Crime.

**Probation and Parole**

ERO enforcement officers may conduct probation and parole enforcement efforts in order to identify, investigate, and arrest foreign born nationals who have been convicted of crimes which render them eligible for removal.

**U.S. Citizenship and Immigration Services (USCIS) Egregious and Non-Egregious Referrals**

Working in collaboration with USCIS, ERO receives and investigates referrals in order to place into removal proceedings those applicants who have been denied immigration benefits.

**Rapid Repatriation of Eligible Custodial Aliens Accepted for Transfer (Rapid REPAT)**

Rapid REPAT is a joint partnership with state correctional/parole agencies designed to expedite the process of identifying and removing criminal aliens from the U.S. by allowing selected non-violent criminal aliens incarcerated in U.S. prisons and jails to accept early release in exchange for voluntarily returning to their country of origin.

**Treaty Transfer**

Under U.S. law (18 U.S.C. §§ 4100-4115), foreign nationals convicted of a crime in the United States, and United States citizens or nationals convicted of a crime in a foreign country, may apply for a prisoner transfer to their home country if a treaty providing for such transfer is in effect between the United States and the foreign country involved. The list of nations currently holding treaty transfer status is published on the Department of Justice (DOJ) website. <http://www.justice.gov/criminal/oco/iptu/lists.html>

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**DEPORT Center**

Located in Chicago, the DEPORT serves as the designated centralized interview and processing site for convicted criminal aliens incarcerated by the Federal Bureau of Prisons. Through the combined effort of the DEPORT Center and local ERO resources, criminal aliens from all 14 federal detention facilities are taken into ERO custody upon completion of their sentences.

**ROLES AND RESPONSIBILITIES**

**Field Office Director (FOD):** Implements policies and procedures as set forth by the Executive Associate Director of ERO, within the field office's area of operational responsibility (AOR).

**Deputy Field Office Director (DFOD):** Ensures FOD directives are implemented within the field office's AOR.

**Assistant Field Office Director (AFOD):** Assists the FOD and DFOD in managing the daily operations and procedures of enforcement, detention, and removal management throughout the field office's AOR.

**Supervisory Detention and Deportation Officer (SDDO):** Supervises a staff responsible for the enforcement, detention, and removal of aliens, including conducting legal research to support decisions on the deportation / exclusion of aliens and assisting attorneys in representing the government in court actions. Additionally, SDDOs supervise enforcement operations, detention management, case-management functions, removable alien processing, and operations.

**Deportation Officer (DO):** Reviews case files and ensures that all documents are legally sufficient for submission to the Office of the Principal Legal Advisor. Function as an Immigration Enforcement Agent or as an SDDO if operational needs dictate.

**Immigration Enforcement Agent (IEA):** Identifies, apprehends arrests, prosecutes, detains, and removes aliens and apprehends absconders from removal proceedings. Process for removal any aliens encountered who are not authorized to be in or work in the United States.

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**Office of Principal Legal Advisor (OPLA):** The Office of Principal Legal Advisor (OPLA) provides legal advice, training, and services to support the ICE mission and defends the interests of the United States in the administrative and federal courts. OPLA protects the security of the United States by providing professional, highly motivated, and client-focused staff in sufficient numbers to promptly and effectively prosecute immigration and customs law violators, particularly those who threaten the safety of our citizenry.

## ACCESSING RECORDS

ERO enforcement personnel routinely encounter cases that involve, or appear to involve, removable aliens. In such instances, enforcement personnel must first identify whether an individual is an alien and being truthful about his or her presence in the United States. Next, a determination must be made as to whether the individual has had prior encounters with ICE, the Department of Homeland Security (DHS) or other law enforcement agency, and whether they should be placed in removal proceedings, is amenable to any form of administrative removal, has an outstanding order of final removal, or is eligible for relief from removal. Enforcement personnel who develop successful interview skills and become proficient in document examination are best able to make sound decisions regarding enforcement actions. In addition, familiarization with all automated systems and databases containing information related to the individual's identity, immigration status, and other pertinent records is essential.

Useful automated systems include:

**(b)(7)(E)**



**(b)(7)(E)**

## INTERVIEWS

An interview is a formal or informal questioning of a witness or other individual with knowledge of the matter under inquiry.

Interviews consist of formal questioning of persons, be they the subject of an investigation or a witness, and are designed to elicit specific, pertinent information. During interviews, special techniques and cross-examination may be used. Keep in mind that as an interview progresses and as more information is made known, the interview may develop into an interrogation.

Standard practice is to memorialize interview and interrogation results in writing on Records of Deportable / Inadmissible Aliens, Memoranda of Investigation, Reports of Investigation, and Sworn Statements. Any notes taken by ERO enforcement officers in the course of conducting an interview or interrogation of a potential witness, informant, suspect or subject of an investigation in a criminal case are subject to discovery. When interviewing a subject on a criminal matter, ERO enforcement officers must preserve such notes, even if their contents have been subsequently documented in another system.

Interviews conducted by ERO officers can take place in any number of environments including, but not limited to, federal detention centers, federal and state detention facilities, local jails, and impromptu locations in the field. Various interview methods can be used, which include, but are not limited to, in-person, telephonic, through an interpreter, or via video conferencing (VTC). However the interview is conducted, it must follow a distinct line of questioning that ultimately leads to a determination of alienage and removability. This determination is the basis for future detention and processing of the alien and may lead the subject on the path to administrative removal or may lead to the filing of criminal charges.

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All attempts will be made to interview an individual in person. If an in-person interview is not possible, VTC or telephonic interviews are acceptable. Even if the interview is not conducted in person, the ERO enforcement officer still must be able, in good faith, to assess the subject's physical and mental states prior to making a determination of alienage.

**Interviews of Potential Non-Citizens**

ERO enforcement officers should thoroughly prepare in advance for interviews to ensure that all pertinent details are covered. Complete familiarity with all available facts prior to an interview will enable the interviewing officer to detect any discrepancies or misrepresentation of facts. This preparation will also allow the interviewer to immediately confront the subject when discrepancies are identified and provide the interviewer with the opportunity to persuade the subject to provide accurate information. Furthermore, thorough preparation is vital to the successful prosecution of an individual, to include a possible false claim to United States citizenship. All information obtained both during the course of and subsequent to the interview, will be processed into the Enforcement Integrated Database (EID) (i.e., ENFORCE system).

There are three categorical outcomes to the interviews conducted by CAP officers, as the individual is categorized as: 1) an illegal alien; 2) as an alien legally present in the United States (such as a Lawful Permanent Resident (LAPR) or a non-immigrant who is in status); or 3) as a United States Citizen (by birth, derived, or naturalized). (See November 19, 2009 memorandum from ICE Director John Morton, "Superseding Guidance on Reporting and Investigation of Claims to United States Citizenship.")

All ERO enforcement officers who encounter a foreign born individual who makes a claim to United States Citizenship shall immediately notify the FOD through their chain of command. The FOD shall make the appropriate notification to Headquarters (HQ) ERO. FODs shall ensure that all claims to United States Citizenship made by an individual encountered within their AOR, both by ICE ERO staff or 287(g) cross-trained staff, are appropriately reported and investigated.

If an individual is in custody and subjected to questions that are likely to elicit an incriminating response (i.e., information or admission relating to criminal conduct involving the individual being interviewed), ERO enforcement officers must provide the Miranda warning. (See Appendix 2: Miranda Warning.) If they do not administer the warning, officers risk the ability to use statements made by the individual in a subsequent criminal prosecution.

If criminal prosecution is being contemplated and alienage is an element of the crime [e.g., prosecution under 8 U.S.C. § 1325, 8 U.S.C. § 1326, or 18 U.S.C. § 922g(5)],

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then questioning about the individual's alienage should not proceed without first advising the individual of his or her rights.

In the event that a foreign-born individual makes a claim to United States citizenship, ERO enforcement officers shall advise them of their Miranda rights as per ICE Form 73-025 and further inform the individual that any false statements will be in violation of 18 U.S.C. § 1001 and that any false claims to United States citizenship will be in violation of 18 U.S.C. § 911. A sworn statement shall be taken and witnessed to ensure that false statements and/or claims to United States citizenship post-Miranda will be admissible in criminal proceedings. The FOD, in consultation with OPLA or the local Office of Chief Counsel, will determine whether sufficient evidence exists to place that individual into removal proceedings or to present the case for criminal prosecution to the local USAO.

## United States Citizen Interviews

If, while investigating the commission of a crime during the course of routine duties, an ERO enforcement officer interviews a United States Citizen, and that interview expands beyond basic biographical information, the officer shall administer the Miranda warnings. If the officer determines that there is probable cause to believe that a federal crime has been committed, the subject can be arrested and the case shall be immediately referred to the United States Attorney's Office.

## ADVISAL OF RIGHTS

### Legal Considerations

Knowledge of the INA and the laws applicable to the specific offense(s) under investigation prior to conducting an interview or interrogation will assist ERO enforcement officers in evaluating the relevance of the information they receive, as well as in detecting incriminating and relevant statements that may further support the government's prosecution efforts.

It is imperative that ERO enforcement officers understand the differences between a criminal proceeding and an administrative proceeding as each requires its own advisement of rights specific to that proceeding. When criminal prosecution is contemplated, the law requires the individual be advised of his or her right against self-incrimination prior to any custodial interrogation. However, in those instances where only administrative proceedings are contemplated, the individual must be advised of his or her rights pursuant to 8 C.F.R. § 287.3(c).

## Criminal Alien Program Handbook

**Administrative Proceedings within the Context of Title 8**

As stated in ICE memorandum entitled “Superseding Guidance on Reporting and Investigating Claims to United States Citizenship:” issued by ICE Director John Morton on November 19, 2009:

“While performing their duties, U.S. Immigration and Customs Enforcement (ICE) officers, agents, and attorneys, may encounter aliens who are not certain of their status or claim to be United States citizens. As the Immigration and Nationality Act (INA) provides numerous avenues for a person to derive or acquire U.S. citizenship, ICE officers, agents, and attorneys should handle these matters with the utmost care and highest priority. While some cases may be easily resolved, because of the complexity of citizenship and nationality law, many may require additional investigation and substantial legal analysis. As a matter of law, ICE cannot assert its immigration enforcement authority to arrest and or detain a U.S. citizen. Consequently, investigations into an individual’s claim to U.S. citizenship should be prioritized and Office of Enforcement and Removal (ERO) ... personnel must consult with the Office of the Principal Legal Advisor’s (OPLA) local Office of the Chief Counsel (OCC)...”

As set forth in the INA § 287(a)(1), 8 U.S.C. § 1357(a)(1), and its implementing regulations at 8 C.F.R. § 287.5(1), ERO enforcement officers may question, without a warrant, any alien or person believed to be an alien as to his or her right to be or to remain in the United States. Questioning alone does not constitute a Fourth Amendment seizure. The individual being interviewed, however, must voluntarily remain during the interview. If the individual refuses to speak to the ERO enforcement officer, the individual may not be detained, absent reasonable suspicion that the individual is unlawfully present.

Non-immigrants must provide full and truthful information regarding their immigration status when requested to do so by ERO enforcement officers, and failure to do so shall constitute a failure to maintain their non-immigrant status under INA § 237(a)(1)(C)(i), and 8 U.S.C § 1227 (a)(1)(C)(i). (See also 8 C.F.R. § 214.1(f).)

If the ERO enforcement officer is not seeking information that will be used to criminally prosecute the alien, the interview, including the taking of a sworn statement, should proceed, utilizing standard processing methods, which include advising the individual of his or her rights under the INA. The absence of Miranda warnings does not render an otherwise voluntary statement by the respondent inadmissible in a deportation hearing. Thus, there is no need to provide Miranda warnings to an alien being processed for removal proceedings.



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**Required Advisements in Administrative Proceedings**

An ERO enforcement officer who arrests an alien for an administrative immigration violation without a warrant is not obligated to advise the alien of his right to counsel or that statements made during interrogation may be used against them in a removal proceeding. Once it is determined that an individual is subject to removal from the United States and before the NTA has been filed with the Court, the ERO enforcement officer should advise him or her that:

- He or she has been arrested because it is believed that he or she is an alien not lawfully entitled to be or to remain in the United States;
- He or she has the right to be represented by counsel of their own choice at no expense to the U.S. Government; and
- Any statement he or she makes can be used against him or her in a subsequent administrative proceeding.

Additionally, as set forth in 8 C.F.R. § 287.3(c), at the time ERO enforcement officers provide the individual with a Notice to Appear (NTA), the ERO enforcement officer shall provide the alien with a list of available free legal services. ERO enforcement officers should note on form I-213 that such a list was provided to the alien.

**General Privileges During Administrative Proceedings**

The removable alien is generally provided a hearing before the Immigration Court to determine whether the alien may remain in the United States. (This is not the case in reinstatements, administrative removals, or visa waiver violations.)

The alien may request to return to his or her country as soon as possible, without a hearing.

The alien may contact an attorney or other legal representative to represent the alien at hearings, or to answer any questions regarding the alien's legal rights in the United States. (See 8 C.F.R. § 292.5.)

The alien may communicate with the consular or diplomatic officer from the alien's country. (This is to be noted on the I-213)

The alien may use a telephone to call a lawyer, other legal representative, or consular officer at any time prior to the alien's departure from the United States.

If the alien wants to consult with counsel or have counsel present, ERO enforcement officers shall obtain the biographic information needed to continue the processing and

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allow the alien to call counsel. ERO enforcement officers can reinstate communication about the case at any time for administrative proceedings.

### **Miranda Warnings (Criminal Proceedings)**

The United States Constitution and statutory authorities require ERO enforcement officers to respect the rights of witnesses and suspects. Confessions, and testimony related to the confessions, are inadmissible at trial if illegally or improperly obtained. Therefore, it is crucial that information obtained during interviews and interrogations is obtained legally. Under no circumstances can ERO enforcement officers justify a violation of an individual's Constitutional rights. ERO enforcement officers must advise an alien of his or her rights pursuant to *Miranda v. State of Arizona*, 384 U.S. 436 (1966) prior to custodial questioning. Two recent Supreme Court decisions provide further guidance regarding Miranda warnings:

- On February 24, 2010, the United States Supreme Court issued a decision outlining the applicability of the Miranda warnings to criminal suspects in custody. *Maryland v. Shatzer*, 130 S.Ct. 1213 (2010). The court determined that an incarcerated individual, who has invoked his right to the presence of counsel during custodial interrogation, may be questioned again if there is a break in *Miranda* custody lasting more than two weeks between the first and second attempts at interrogation.
- On June 1, 2010, the United States Supreme Court delivered its decision in *Berghuis v. Thompkins*, 130 S.Ct. 2250 (2010) that clarifies the process for asserting Miranda rights for criminal suspects. Pursuant to this decision, an individual who makes statements after being advised that he or she “has the right not to” has not exercised his right to remain silent. While the rights to remain silent and to have an attorney present during questioning are key warnings cited in *Miranda*, an individual must verbally invoke them. The Supreme Court's majority decision states that suspects must unambiguously invoke their right to remain silent by verbally communicating it to an officer, and the same rule applies when a suspect wants a lawyer.

Additional case law precedent was set in *United States v. Chen*, 439 F.3d 1037, 1040 (9th Cir. 2006). The defendant made statements during an interview with an Immigration and Naturalization Service (INS) agent who was investigating a third party smuggling ring. At the time of the interview, the defendant was in custody on an administrative deportation warrant. The district court concluded that the INS agent was required to give a Miranda warning before the interview, and therefore granted the defendant's motion to suppress. The Ninth Circuit Court of Appeals affirmed the district court's decision to suppress the defendant's statements.

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**Administering Miranda Warnings**

ERO enforcement officers should read the Miranda warning directly from the ICE Form 73-025 (Statement of Rights) as it is the only version of the Miranda warning authorized by ICE. ERO enforcement officers should not attempt to recite the warnings from memory as reading the Miranda warnings ensures that the warnings are recited in the same manner to each and every individual and supports the ERO enforcement officer's claim that the entire Miranda warning was presented to the individual.

ERO enforcement officers should always document the reading of the Miranda warning by having the individual sign the ICE Form 73-025 in the designated location. Whenever possible, the reading and signing of the form should be witnessed by another ERO enforcement officer and documented by the ERO enforcement officer's signature on the form in the designated location. If another ERO enforcement officer is not available, then another law enforcement officer or other reliable person may witness the reading of the rights.

Whenever possible, ERO enforcement officers should record all statements which may be used in criminal proceedings against the individual in a written sworn statement or in electronic media. This statement should reiterate the advisement of rights and should also state clearly that the individual's rights were explained fully and that the individual freely waived his or her rights before the statement was recorded.

If there is a significant time lapse during the interview process, it is best practice to re-advise an individual of the Miranda rights and again obtain a waiver prior to resuming the interview. At a minimum, ERO enforcement officers should confirm that the individual still understands his or her rights and wishes to continue with the interview.

**Circumstances in Which Miranda Warnings Are Not Required**

Custody is defined as a situation in which a person has been arrested or deprived of his or her freedom of action in any significant way. Miranda warnings are not required if an individual is not in custody. If ERO enforcement officers engage an individual in a consensual interview, defined as one in which the individual believes that he or she is free to terminate the encounter at any time, then the ERO enforcement officers may ask questions without providing the Miranda warnings.

Miranda warnings are not required when interviewing an individual if the sole purpose is to obtain evidence concerning the guilt of someone else, so long as the questions are not likely to elicit an incriminating response and the anticipated answer will not incriminate the individual making the statement.

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The Miranda warnings do not have to be provided for custodial interrogation that is reasonably prompted by a concern for the public safety. This occurs in circumstances that give rise to an immediate concern for the safety of the public or officers and applies solely to questions that are reasonably prompted by that concern.

### **The Right to Remain Silent**

If, at any time prior to or during the interview, the individual verbally indicates a wish to remain silent, ERO enforcement officers should not initiate or must terminate the interview. Once the individual has invoked his or her right to remain silent, ERO enforcement officers should not ask any additional questions of the individual being interviewed. There are two circumstances when the interview may continue:

- 1) If the individual requests on his or her own volition that the interview be resumed; or
- 2) After waiting a reasonable period of time, ERO enforcement officers may once again approach the individual in an effort to re-initiate the interview but should advise the individual of his or her rights again. See *Maryland v. Shatzer*, 130 S.Ct. 1213 (2010) *Miranda* custody interview guidance.

### **The Right to Counsel**

If the individual wants to consult with counsel, ERO enforcement officers must not initiate any questioning or must immediately cease all questioning and terminate the interview if the interview has already started. A subsequent waiver of Miranda rights by an individual who has previously invoked his or her right to counsel under Miranda, and who is re-approached by ERO enforcement officers, is presumed to be involuntary. Questioning of the individual may resume if the individual being interviewed re-initiates communication about the case with the ERO enforcement officer and verbally indicates that he or she wants to continue with the interview without consulting counsel. This should be properly documented within the person's file.

## **USE OF INTEPRETERS**

It is imperative that ERO enforcement officers communicate with any individual being interviewed as to alienage and removability in a language the individual understands and speaks. Often it will be necessary to utilize an interpreter to comply with this mandate. The willingness to proceed without an interpreter on the part of the individual being interviewed cannot be the sole factor upon which ERO enforcement officers rely in making the determination as to whether or not to utilize an interpreter. The ERO enforcement officer must ensure that the individual is able



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to understand and answer all questions being asked. If there is any doubt, the services of an interpreter must be utilized.

If the interpreter is an ICE employee, no oath is necessary; the interpreter is simply identified for the record. If the interpreter is not an ICE employee, the interpreter's qualification to interpret in the language of the individual being interviewed must also be established in the record. This can be accomplished by asking the interpreter to confirm for the record his or her ability to understand the language the individual being interviewed is speaking, as well as his or her ability to translate from that language into English and vice versa.

### **Documentation of Interpreter Information in the Record**

Whether or not an interpreter is used, the record should always include questions and answers concerning the need for an interpreter. When an interpreter is used, the record should indicate that the interpreter and the individual being interviewed have conversed, and that they are able to clearly understand each other.

Many languages have several different dialects which require that the interpreter and the individual being interviewed establish that they are able to clearly understand each other in the specific dialect being utilized. Again, this information should be documented in the written record of the interview.

Any difficulties in communication should be included in the record of the interview, along with the steps taken to resolve the difficulty. Interpreters from the Department of Homeland Security (DHS) Interpreter Pool should be utilized whenever possible.

### **Precise Instructions for Interpreters**

When utilizing an interpreter, ERO enforcement officers must ensure that the interpreter is instructed to translate everything the individual being interviewed says, including any requests for clarification. There should be no side conversations between the individual and the interpreter, including attempts on the part of the interpreter to help the individual understand the question, or to coach the individual as to how to answer a question.

ERO enforcement officers may be unaware of what is transpiring unless they insist the interpreter repeat all answers *verbatim*. Interpreters should never be permitted to say, "He says..." or "She says..." instead of translating exactly what is said by the person being interviewed.

### **Substitutions of Interpreters**

When necessary, a second interpreter may be substituted for the initial interpreter during the course of the interview. As a quality control check, select questions that

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were asked through the original interpreter to ensure that they can be repeated; the answers made through the new interpreter will serve both as a check on the veracity of the individual being interviewed, as well as on the ability and performance of the interpreters.

### **Clarification of Legal and Other Technical Terminology**

Care must be taken to ensure the interpreter understands the specific meaning of a word or phrase in an immigration enforcement context. The interviewer should explain to the interpreter that if a word or phrase is used that the interpreter does not clearly understand, the interpreter should ask the interviewer to clarify the specific meaning of that word or phrase.

## **DETAINERS**

### **Legal Authority**

ICE issues immigration detainers to federal, state, and local LEAs to provide notice of ICE's intent to assume custody of an individual presently in a LEA's custody. ICE's detainer authority, codified in 8 C.F.R. § 287.7 and 8 U.S.C. 1357, arises from the Secretary's power under INA § 103(a)(3) to provide regulations "necessary to carry out [her] authority," and from ICE's general authority to detain individuals who are subject to removal or removal proceedings.

Detainers are a particularly important tool in helping ICE to satisfy Congressional mandates to take custody of criminal aliens. For example, INA § 241(a)(1)(B)(iii) requires ICE to take custody of aliens with final removal orders upon release from criminal detention or confinement. Similarly, INA § 236(c) requires ICE to take custody of certain criminal aliens subject to removal proceedings when they are released from criminal custody, including those who are inadmissible.

Immigration detainers have three key functions: 1) to notify a LEA that ICE intends to arrest or remove an alien in the LEA's custody once the alien is no longer subject to the LEA's detention; 2) to request information from a LEA about an alien's impending release so ICE may assume custody before the alien is released from the LEA; and 3) to request that the LEA maintain custody of an alien who would otherwise be released for a period not to exceed 48 hours (excluding Saturdays, Sundays, and holidays) to provide ICE time to assume custody if ICE cannot immediately assume custody. This third function allows ICE to take custody of aliens arrested in remote areas where ICE may not have personnel in place. Immigration detainers have been used in this fashion for several decades and are critical to ICE's mission and function.

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**Proxy Arrests**

To facilitate ICE arrests, 8 C.F.R. § 287.7(d) allows ICE to request the LEA “maintain custody” of aliens who are “not otherwise detained.” The “not otherwise detained” language has historically been interpreted to refer to aliens who were arrested by another LEA, but whose detention has ended. If an alien is lawfully arrested but the charges are dropped, bail is granted, or the alien completes his criminal sentence, then the individual is “not otherwise detained.” This interpretation is consistent with the phrase “maintain custody,” which indicates that the individual is already in the LEA’s custody, and with the regulation provision regarding detainers issued on an “alien presently in the custody of [another] agency.”

**Priorities for the Apprehension, Detention, and Removal of Aliens**

ICE is charged with enforcing the nation’s immigration laws. This is a critical mission with direct significance for our national security, public safety, and the integrity of our border and immigration controls. In light of the large number of administrative violations the agency is charged with addressing and the limited enforcement resources, ICE must prioritize the use of its enforcement personnel, detention space, and removal resources to ensure that the removals the agency does conduct promote the agency’s priorities of national security, public safety, and border security.

As outlined in the March 2, 2011 memorandum from ICE Director John Morton regarding “Civil Immigration Enforcement: Priorities for the Apprehension, Detention, and Removal of Aliens,” the following shall constitute ICE’s enforcement priorities, with the first being the highest priority and the second and third constituting equal, but lower, priorities.

**Priority 1:** Aliens who pose a danger to national security or a risk to public security. These aliens include, but are not limited to:

- Aliens engaged in or suspected of terrorism or espionage, or who otherwise pose a danger to national security;
- Aliens convicted of crimes, with a particular emphasis on violent criminals, felons, and repeat offenders;
- Aliens not younger than 16 years of age who participated in organized criminal gangs;
- Aliens subject to outstanding criminal warrants; and
- Aliens who otherwise pose a serious risk to public safety.

For purposes of prioritizing the removal of aliens convicted of crimes, ICE personnel should refer to the following offense levels defined by the Secure Communities Program, with Level 1 and Level 2 offenders receiving principal attention.

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- Level 1 offenders: aliens convicted of “aggravated felonies,” as defined in INA § 101(a)(43) of the Immigration and Nationality Act, or two or more crimes each punishable by more than one year, commonly referred to as “felonies;”
- Level 2 offenders: aliens convicted of any felony or three or more crimes each punishable by less than one year, commonly referred to as “misdemeanors;” and
- Level 3 offenders: aliens convicted of crimes punishable by less than one year.

**Priority 2:** Recent illegal entrants.

In order to maintain control at the border and at ports of entry, and to avoid a return to the prior practice commonly and historically referred to as “catch and release,” the removal of aliens who have recently violated immigration controls at the border, at ports of entry, or through the knowing abuse of the visa and visa waiver programs shall be a priority.

**Priority 3:** Aliens who are fugitives or otherwise obstruct immigration controls.

In order to ensure the integrity of the removal and immigration adjudication process, the removal of aliens who are subject to a final order of removal and abscond, fail to depart, or intentionally obstruct immigration controls, shall be a priority. These aliens include:

- Fugitive aliens, in descending priority as follows;
  - fugitive aliens who pose a danger to national security;
  - fugitive aliens convicted of violent crimes or who otherwise pose a threat to the community;
  - fugitive aliens with criminal convictions other than a violent crime;
  - fugitive aliens who have not been convicted of a crime;
- Aliens who reenter the country illegally after removal, in descending priority as follows:
  - previously removed aliens who pose a danger to national security;
  - previously removed aliens convicted of violent crimes or who otherwise pose a threat to the community;
  - previously removed aliens with criminal convictions other than a violent crime;
  - previously removed aliens who have not been convicted of a crime;
- Aliens who obtain admission or status by visa, identification, or immigration benefit fraud.



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**Liaison with Other Law Enforcement Agencies**

To enhance efforts to identify arrest and remove aliens in accordance with ICE removal priorities, FODs may engage in taskforce partnerships and cooperative enforcement activities with federal, state, and local LEAs when such partnerships are available and advantageous to ICE.

Participation in enforcement partnerships with other LEAs is at the discretion of the FOD. A formal Memorandum of Understanding is not required by ERO HQ prior to the inception of a cooperative effort with a LEA. Rather, FODs may enter into partnerships after careful review and consideration of issues and concerns by participating LEAs and ERO. FODs should analyze the local situation and scope of the partnership being considered, and should weigh the advantages and disadvantages of the agreement based on local resources, staffing, and other policy considerations.

While working with other agencies, ERO officers will adhere to all applicable ICE practices and policies. Only immigration officers may issue detainers, which also includes officers of states or political subdivisions of a state who are delegated such authority under INA § 287(g).

**Aliens Requiring Detainers (Form I-247)**

Immigration officers shall issue detainers only after a LEA has exercised its independent authority to arrest an alien for a criminal violation. If an immigration officer has reason to believe that an individual arrested by the LEA is subject to ICE detention for removal or removal proceedings and issuance of the detainer appears to advance ICE's enforcement priorities, then the officer may issue a detainer.

Particular care is required when dealing with certain individuals that claim legal status (i.e., LAPR, Asylee, Refugee, and Naturalized United States Citizen) because they may not be removable unless convicted. Claims of legal status should be verified through ICE databases and if at that time the alien is not removable, the officer should inform that LEA that ICE is not taking any action at this time. This notice should be provided in writing and should further request the LEA to notify ICE if the alien is convicted of the crime for which he or she is being held so that his or her removability can be re-evaluated.

**IMMIGRATION REMOVAL PROCESSING**

The removal process involves four phases: 1) identification and processing; 2) case preparation; 3) administrative removal proceeding; and 4) removal.

In passing the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Congress equipped ICE with a number of significant tools to more

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effectively and efficiently process criminal aliens. In relevant part, IIRIRA amended the INA to provide for the following:

- Administrative reinstatement of prior deportation, exclusion and removal orders, pursuant to INA § 241(a)(5);
- Administrative deportation of non-permanent resident aliens convicted of aggravated felonies, pursuant to INA § 238(b); and
- Expanded definition of the term “*aggravated felony*,” broadening the list of crimes constituting aggravated felonies [INA § 101(a)(43)].

Combined, these statutory changes streamlined the removal process by eliminating cumbersome deportation proceedings for most previously removed aliens and expanding the retroactive application of felony offenses, thereby reducing the number of removal cases processed in the immigration courts. In many cases, the avenues of relief from removal were eliminated completely, but aliens processed under these procedures may still apply for withholding of removal and protection under the United Nations Convention Against Torture.

### **Reinstatement of Prior Order of Removal**

INA § 241(a)(5) authorizes ICE to reinstate a final order against an alien who has reentered the United States illegally after having been removed or having departed voluntarily (‘self-deports’) while under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after the reentry. (See also 8 U.S.C. § 1231(a)(5).)

### **Reinstatement Procedures**

As set forth in 8 C.F.R. § 241.8, before reinstating a prior order, the ERO enforcement officer processing the case must determine that the alien believed to have illegally re-entered was previously excluded, deported, or removed from the United States. Included in this class of aliens are those who voluntarily departed the United States while subject to a final order of exclusion, deportation, or removal (“self-deported”). An alien who complied with the terms of a voluntary departure order is not subject to reinstatement since the voluntary departure order is issued in lieu of a removal order. If, however, the alien failed to depart in accordance with the terms of the voluntary departure order, then the alien is subject to the civil penalties of INA § 240B(d). Aliens who have been previously removed pursuant to an expedited removal order are also subject to reinstatement.

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The ERO enforcement officer must obtain the alien's A-file or copies of the documents contained therein to verify that the alien was subject to a final order and that the previous order was executed. (Guides to A-files can be found in [Appendix 3: A-File Guides](#).) Generally, suitable database printouts to document these facts will suffice.

If the alien did not depart the United States after having been issued a final order of removal, that order, if still valid, should be executed. In order to reinstate a removal order, identity must be established to ensure that the alien believed to have re-entered illegally is the same individual who was previously removed. If the alien admits to having been previously excluded, deported, or removed, or to having self-deported by leaving after the expiration of a voluntary departure period with an alternate order, the Form I-213 and the sworn statement must so indicate. If a record check or fingerprint hit reveals such prior adverse action, that information must be included in the A-file. The alien should be questioned and confronted with any relevant adverse information from the A-file, record check, or fingerprint hit, and, if applicable, the information must be included in the I-213 and sworn statement.

If the alien disputes the fact that he/she was previously removed, a comparison of the alien's fingerprints with those in the A-file documenting the previous removal must be completed to positively confirm the alien's identity. The fingerprint comparison must either be completed by a locally available expert or by the Forensic Document Laboratory. In the absence of fingerprints in a disputed case, the alien shall not be removed pursuant to section 241(a)(5) INA.

The alien must, in fact, have illegally re-entered the United States. In making this determination, the ERO enforcement officer shall consider all relevant evidence, including statements made by the alien and any evidence in the alien's possession. The ERO enforcement officer shall attempt to verify an alien's claim of lawful admission, if one is made, by searching those data systems available to the ERO enforcement officer.

If the ERO enforcement officer finds that the alien has a former order of deportation or removal that should be reinstated, but is in possession of a seemingly valid visa permitting him or her to seek admittance to the United States, the officer should determine whether the alien applied for and was granted permission to re-enter the United States from the Attorney General or his successor, the Secretary of DHS. If the alien did not apply for and receive permission to re-enter, he or she illegally re-entered the United States, despite having the allegedly valid visa, and is therefore subject to reinstatement.

If the ERO enforcement officer determines that the alien is subject to removal by reinstatement, then the officer must verbally notify the alien with notice by serving them Form I-871, Notice of Intent/Decision to Reinstate Prior Order, of such determination and advise the alien that he or she may make a written or oral statement

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contesting the determination. Once all the requirements of 8 C.F.R. § 241.8(a) are met, the alien must be removed under the prior order of exclusion, deportation, or removal in accordance with INA § 241(a)(5), unless one of the regulatory exceptions applies.

In any case in which the ERO enforcement officer is not able to satisfactorily establish the preceding facts, the previous order cannot be reinstated and the alien must be processed for removal through other applicable procedures, such as administrative removal under INA § 238, or removal proceedings before an immigration judge under INA § 240.

### **Record of Sworn Statement**

In all cases in which an order may be reinstated, the ERO officer must create a *Record of Sworn Statement* utilizing Form I-877 or ENFORCE Form I-215B. In addition to addressing routine informational elements (identity, alienage, and the required elements listed), these forms will document all statements relevant to determining whether the alien is subject to reinstatement. These forms will also serve to document whether the alien, when asked by the officer, expresses a “reasonable” fear of persecution or torture if removed to the country designated in the prior removal order should that order be reinstated.

If the alien refuses to provide a sworn statement, the record should reflect this refusal. An alien's refusal to execute a sworn statement does not preclude reinstatement of a prior order, provided that the record establishes that all of the required elements discussed have been satisfied. If the alien refuses to give a sworn statement, the ERO enforcement officer must record whatever information the alien has orally provided that relates to reinstatement of the order, or to any claim of possible persecution or torture.

### **Reinstatement of a Final Order**

If the processing officer determines that the alien's prior order should be reinstated, the officer shall create the Record of Proceedings (ROP) for presentation to the deciding official. The ROP shall contain the following:

- Notice of Intent / Decision to Reinstate Prior Order (Form I-871)
- The prior final order and executed Warrant of Removal (Form I-205) or Notice to Alien Ordered Removed / Departure Verification (Form I-296)
- Warning to Alien Ordered Removed or Deported (Form I-294)
- The alien's sworn statement / declination to provide such statement or ERO enforcement officer's / agent's attestation of the alien's declination
- Any evidence provided by the alien
- Any additional documentation that rebuts the alien's assertion that reinstatement was improper



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- Certified fingerprint match, if required
- Record of Deportable Alien (Form I- 213)

The ERO enforcement officer presents the ROP and all relevant evidence to any officer authorized to issue a Notice to Appear, as listed in 8 C.F.R. § 239.1, for review and signature at the bottom of Form I-871.

These procedures are set forth and standardized in the April 27, 2006 memorandum from John P. Torres entitled, "Record of Proceedings in Reinstatement and Administrative Removal Cases."

### **Procedure**

After the deciding officer signs the Form I-871 reinstating the prior order, the ERO enforcement officer issues a new Warrant of Removal, Form I-205, in accordance with 8 C.F.R. § 241.2.

The ERO enforcement officer indicates on Form I-205, in the section reserved for provisions of law, that removal is pursuant to § 241(a)(5) of the Act, as amended by IIRIRA.

### **Index and Certification**

The ROP shall contain an index noting which documents are contained in the ROP. A blue ROP coversheet should be placed on top of the **Index and documents**.

Ultimately, the ERO enforcement officer is responsible for the certification of authenticity of the ROP. The certification should be placed under the ROP coversheet.

### **Exceptions to Reinstatements**

Per 8 C.F.R. § 241.8(d), applicants for benefits under section 902 of the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) or sections 202 or 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA) are excepted from the provisions of INA § 241(a)(5). If an alien who is otherwise subject to any of these sections has applied for adjustment of status under either section 902 of the HRIFA or section 202 of NACARA, the provisions of §241(a)(5) INA shall not apply. The ERO enforcement officer may not reinstate the prior order in accordance with this section unless and until a final decision to deny the application for adjustment has been made. If the application for adjustment of status is granted, the prior order shall be rendered moot.

Reinstatement is not applicable to an alien who was granted voluntary departure by an Immigration Judge and who left the United States in compliance with the terms of

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that issuance. In such instances, the alien was not subject to a final order of deportation or removal and consideration whether to place the individual in removal proceedings should be based on their current status in the United States.

Reinstatement of removal does not apply to non-citizens who did not execute their removal orders by leaving the United States. In addition, the reinstatement provision does not apply to excluded or deported individuals who, prior to returning to the United States, obtained consent from the Attorney General or his successor, the Secretary of the Department of Homeland Security, to reapply for admission.

### Required Documentation

- I-213 - Record of Deportable/Excludable Alien
- I-217 - Information for Travel Document or Passport (unless from Mexico)
- I-247 - Immigration Detainer (Copy)
- I-871 - Notice of Intent/Decision to Reinstate Prior Order
- I-877 - Record of Sworn Statement in Administrative Proceedings
- Immigration History
- Criminal History (NCIC/TECS, IAFIS)
- FD 249 - Arrest and Institution Fingerprint Card
- Previous removal documents (copies if A-file is not readily available)

### Reinstatements and Criminal Prosecution

Reinstatement does not preclude criminal prosecution in accordance with local procedures and guidelines. However, in order to properly preserve a case for criminal prosecution, the processing ERO enforcement officer must advise an alien of his or her Miranda rights pursuant to *Miranda v. State of Arizona*, 384 U.S. 436 (1966), prior to taking the alien's sworn statements.

Whenever possible, reinstatement processing should be completed before referring an alien for criminal prosecution. Aliens whose reinstatement processing is completed prior to criminal prosecution will be removed more quickly after any criminal sentence is served. Upon remanding the subject to the custody of another LEA, the ERO enforcement officer must lodge a detainer, Form I-247, and should note on the form that a final order has been entered. ERO enforcement officers must be aware that once the Order of Removal is final, the detention of the alien is permissible only to the extent described as the Removal Period in INA § 241(a)(1), as interpreted in *Zadvydas v. Davis*, 533 U.S. 678, for the purpose of executing the Warrant of Removal.

Additional reference material can be found in the DROPPM, Chapter 14, Removal Process Non-Hearing Removal Cases.

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**NOTICE TO APPEAR****Notice to Appear (NTA)**

Pursuant to 8 C.F.R. § 239.1, ERO officers are authorized to initiate removal proceedings against aliens who have been determined to be removable from the United States by serving them with a NTA (Form I-862). Practically speaking, most criminal aliens will be encountered by ERO in the custody of other law enforcement agencies at federal, state, county, and local jail facilities. ERO enforcement officers assigned to monitor the population of these facilities screen, identify, and issue Immigration Detainers (Form I-247) against removable aliens before an alien's release, whenever possible and practical, in order to pursue immigration charges and secure a final order of removal. In some cases, enforcement personnel issuing immigration detainers may identify aliens who may also be placed in removal proceedings while in the custody of the other law enforcement agency, or who may be subject to administrative removal, reinstatement, or execution of existing final orders of removal.

When an ERO enforcement officer identifies a suspected alien in the custody of another law enforcement agency, the officer must interview the alien, conduct extensive records checks, and verify/establish alienage. When alienage is firmly established, either a new A-File is created after requesting one from a first line supervisor or the original A-file is located and ordered through the Central Index System (CIS). When the original A-file is requested, a temporary file, or T-file, must be created and used pending receipt of the A-file. To maintain file integrity, all alien files—original and created—should be inputted into the National File Tracking System (NFTS).

If the alien is been determined to be removable under § 212 or § 237 of the INA, the enforcement officer issues an immigration detainer [subject to the limitations set forth in 8 C.F.R. § 236.2(b)]. Generally, a detainer can only be lodged immediately against Present Without Admission (PWA), Overstay, Final Order / Reinstatement, and VWP cases, with some exceptions. A detainer should not be placed in any case involving an alien who is not, at the time the detainer is issued, removable from the United States. For example, absent any other immigration violations, a LPR whose conviction is on direct appeal may not be removable pending resolution of the appeal. Because the need to establish removability may take time, individuals may be released from custody before a detainer can be lodged. Issuing an immigration detainer after determining removability may also be delayed pending receipt of certified conviction documents.

Convictions for the types of offenses listed below are among those that may render an alien otherwise lawfully in the United States removable:

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- An aggravated felony
- A crime involving moral turpitude (CIMT) committed within five years of the date of admission and for which a sentence of one year or longer may be imposed
- Two CIMTs at any time after admission
- A controlled substance offense (other than a single offense involving possession for one's own use of 30 grams or less of marijuana)
- Certain firearms offenses
- A crime of domestic violence (including violation of an order of protection)

Further reference can be obtained in INA § 212 and INA § 237.

**Required Documentation for a NTA**

- I-200 - Warrant of Arrest
- I-213 - Record of Deportable Alien
- I-217- Information for Travel Document or Passport (unless from Mexico)
- I-247 - Immigration Detainer (Copy)
- I-265 - Notice to Appear, Bond and Custody Processing Sheet
- I-286 -Notice of Custody Determination
- I-826 - Notice of Rights / I-770 (Juveniles) / I-848A (Salvadorans)
- I-862 - Notice to Appear
- List of legal services
- Criminal History (NCIC/TECS, IAFIS)
- Immigration History
- FD-249 - Arrest and Institution Fingerprint Card
- Conviction documents-certified, if possible (if applicable)
- Notice that the convictions supporting the charge of removability are final, meaning NOT on direct appeal.

**STIPULATED ORDERS OF REMOVAL**

In lieu of a hearing before an immigration judge, an alien may elect to enter into a written agreement with ICE to accept a stipulated order of removal/deportation from an immigration judge by filing with the court a document entitled "Stipulated Request for Order of Removal" and "Waiver of Hearing." The immigration judge must confirm that the alien is making the request for removal knowingly, voluntarily, and intelligently before he or she issues the final order. (See INA § 240(d) and 8 C.F.R. § 1003.25(b).) Such an agreement is advantageous to the alien and ICE because it allows the alien to depart the United States sooner rather than remain in detention pending scheduling of removal hearings, allows the court to schedule earlier hearings in cases involving disputed removal, and lessens detention costs for ICE. An



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additional benefit of a stipulated removal is that the alien swears to an affidavit before the immigration court, clearly stating his citizenship and desire to return to his country. Should the subject re-enter the United States, this affidavit can prove extremely useful in subsequent proceedings.

Before pursuing this alternate form of removal, each ERO enforcement officer should consult the local Office of Chief Counsel to determine local policy regarding the use of stipulated removals in the AOR.

### **Procedure**

After service of the charging document (Form I-862, Notice to Appear) listing the allegations and INA violations, the ERO enforcement officer can explain the stipulated removal process to the alien and inquire whether he or she would like to submit a request for stipulated removal to the immigration judge.

### **Preparation of a Stipulated Request**

Prior to drafting a stipulated request for removal and hearing waiver, confirmation that the alien agrees or complies with the following statements should be obtained:

- Admits the truth of the allegations contained in the charging document;
- Concedes deportability or inadmissibility, as charged;
- Declines the opportunity to apply for any form of relief under the INA,
- Designates a country for deportation or removal;
- Concedes to the introduction of the written stipulation as an exhibit to the Record of Proceeding (documents filed with the court);
- Understands and accepts the consequences of the stipulated request and acknowledges that such request is made knowingly, voluntarily, and intelligently; and
- Agrees to accept a written order of exclusion or removal as final, thus waiving the right to appeal

ICE enforcement personnel should consult with local Office of Chief Counsel (OCC) to request a template for the stipulated agreement, or a legal sufficiency review of the draft Stipulated Request for Order of Removal and Waiver of Hearing. An attorney within OCC must sign the order prior to submission of the request with the court.

This packet may include the following documents:

- Cover Sheet
- Stipulated Request for Order of Removal and Waiver of Hearing
- I-200 - Warrant for Arrest of Alien
- I-213 - Record of Deportable / Inadmissible Alien
- I-286 - Notice of Custody Determination

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- I-862 - Notice to Appear
- List of Free Legal Service Providers
- Notice of Right to Consular Notification and Communication
- Proposed Order of Removal

The original charging document must be included in the filing to the DOJ, Executive Office of Immigration Review (EOIR).

### **Required Signatures**

The immigration officer must certify that he or she read the Stipulated Request for Order of Removal and Waiver of Hearing, or similar form, to the alien exactly as written and specify the language used. In addition, the request and waiver must be signed by the interpreter, if applicable, the Assistant Chief Counsel representing the government, and by the alien and/or the alien's attorney or representative.

### **Review by the EOIR**

The immigration judge will review the charging document and the written stipulation, as well as any supporting documentation to determine whether an order of removal should be entered without a hearing and outside the presence of the parties. ICE may remove the alien from the United States as soon as the immigration judge signs the removal order, which is an administratively final order.

### **Restrictions**

Stipulated Removals should not be used for unaccompanied alien children, refugees, asylees, or aliens that have been granted any form of relief including Temporary Protected Status, American Baptist Church (ABC), NACARA, or HRIFA. This list represents the more common forms of relief available but is not a comprehensive list of forms of relief exempt from the Stipulated Removal process. If an alien is eligible for a form of relief, the alien should be presented before an immigration judge.

Local OCC should be consulted to determine local policy regarding the use of Stipulated Removals against LPRs, whether represented or unrepresented by counsel.

## **VOLUNTARY DEPARTURE**

Voluntary departure is a discretionary practice whereby an alien, other than an arriving alien, is permitted to depart the U.S. at his or her own expense in lieu of a formal order of removal.

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FODs are authorized to use their discretionary authority under INA § 240B(a) to grant voluntary departure for a period up to 120 days. FODs may attach conditions to the grant of voluntary departure and have the authority to revoke their grant. However, a FOD does not have authority to revoke a grant made by an immigration judge.

**EOIR**

An immigration judge may grant voluntary departure to a maximum of 120 days if an alien requests voluntary departure prior to the completion of removal proceedings. The alien may be asked to post a departure bond to be surrendered to the surety upon proof of departure within the time period allowed. If an alien requests voluntary departure at the conclusion of such proceedings, an immigration judge is authorized to grant the application only after the alien establishes: 1) physical presence in the U.S. for the year preceding service of the NTA; 2) good moral character during the past five years; 3) that the alien is neither a convicted aggravated felon nor a threat to national security; and 4) that the alien has established by clear and convincing evidence that the alien has the means to depart and intends to do so. The period of voluntary departure at the conclusion of proceedings may not exceed 60 days and the alien is required to post a departure bond.

Whether granted prior to the completion of proceedings or at the conclusion of such proceedings, an alien's failure to comply with a voluntary departure grant within the time allotted is subject to a \$1,000 - \$5,000 fine and the alien will be ineligible for certain forms of relief for a period of ten years.

The grant of voluntary departure converts to an order of removal if the alien fails to depart the United States as ordered.

**Restrictions on Voluntary Departure**

Statutory prohibitions: An alien in any of the following categories is ineligible for voluntary departure:

- Aggravated felons or terrorists removable under INA § 237(a)(2)(A)(iii) or INA § 237(a)(4)(B);
- Aliens previously granted voluntary departure after having been found inadmissible under INA § 212(a)(6)(A);
- Aliens who illegally reenter the United States after being deported, excluded, or removed from the United States under a final order, or who departed voluntarily while under a final order of deportation, exclusion, or removal ("self-deports");

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- Aliens who violated the terms of a previous grant of voluntary departure within the past 10 years; or
- Arriving aliens.

Additional restrictions on the eligibility of certain classes may be imposed pursuant to INA § 240B(e).

### Required Documentation for Voluntary Departure

- I-94 - Arrival-Departure Record
- I-213 - Record of Deportable / Inadmissible Alien
- I-217 - Information for Travel Document or Passport (if Other Than Mexican)
- Form I-247 - Immigration Detainer (Copy)
- I-826 - Notice of Rights and Request for Disposition
- G-146 - Departure Verification Letter
- FD-249 - Arrest and Institution Fingerprint Card
- Criminal History (NCIC, TECS, IAFIS)
- Immigration History

## ADMINISTRATIVE REMOVAL

An alien who is not a LPR (including an alien who may have LPR status on a conditional basis as described in INA § 216) when the administrative removal process begins and who has a final conviction for an aggravated felony as defined by INA § 237(a)(2)(A)(iii) may be ordered removed without referral to an immigration judge for INA § 240 proceedings. (See INA § 238(b) and 8 C.F.R § 238.)

### Procedure

Before starting this process, the ERO enforcement officer encountering the alien must consider the following factors when considering issuing an Administrative Removal:

- Alienage;
- Immigration status (not a lawful permanent resident); and
- The existence of a final conviction for an aggravated felony per ICE guidelines.

The following are highlights of the administrative removal process, which incorporates the procedural protections given to the alien:

- 1) The ERO enforcement officer encountering the alien determines that the alien's case meets the statutory criteria for administrative removal.



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- 2) The ERO enforcement officer prepares or requests preparation of a charging document called a Notice of Intent to Issue a Final Administrative Removal Order (NOI, or the Notice) on Form I-851.
- 3) The ERO enforcement officer determines for the record that the alien upon whom the NOI is to be served is the alien named in the NOI and annotates this determination on the NOI.
- 4) The ERO enforcement officer serves the NOI on the alien as soon as possible after issuance.
- 5) The alien has an opportunity to be represented by counsel authorized to practice in removal proceedings at no expense to the government and is provided with a list of available free legal services programs.
- 6) The alien has a reasonable opportunity to inspect the government's evidence and rebut the allegations supporting the charges.
- 7) The alien may, in writing, accept immediate issuance of a Final Administrative Removal Order (Order). The alien may also waive the 14-day period for executing the order in writing.
- 8) If the alien chooses not to waive the 14-day period and contests the NOI, he or she must submit evidence supporting this rebuttal within 14 days. After 14 days, the service officer submits a memorandum to the deciding service officer describing the evidence submitted by the alien if any, and a recommendation as to whether or not the Order should be issued.
- 9) ICE may not execute a Final Administrative Removal Order during the 14-day period unless the alien waives this period.
- 10) ICE creates and maintains a permanent Record of Proceedings (ROP), as outlined below.
- 11) The Designated Service Official (DSO) (not the same person who issues the NOI) determines whether to issue the Final Administrative Removal Order. If the DSO decides to issue the order, he or she will sign the Form I-851A. The alien has 30 days to rebut the Order. The DSO may also determine additional evidence is required prior to making a decision, or may terminate the administrative removal proceedings and cause a NTA to be issued to initiate removal proceedings under INA § 240.
- 12) If the alien claims a fear of return, the DSO must, after issuing the Final Administrative Removal Order, immediately refer the alien's case to an asylum officer for a reasonable fear determination. Although the alien is not statutorily eligible for asylum or any other benefit under the INA, he or she may be eligible for withholding of removal. If the alien is determined to have a reasonable fear, he or she will be referred to an immigration judge for withholding proceedings only. The immigration judge lacks jurisdiction to review the Order or the grounds of removability.

**Required Documentation for Record of Proceeding**

8 C.F.R. § 238.1(h) requires the creation and maintenance of an ROP for an administrative removal. At a minimum, the ROP must include copies of:

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- Cover Sheet
- Index
- Certification Document
- I-200 - Administrative Warrant of Arrest
- I-205 - Warrant of Removal / Deportation
- I-213 - Record of Deportable / Inadmissible Alien
- I-217- Information for Travel Document or Passport (if Other Than Mexican),
- I-247 - Immigration Detainer (Copy), if applicable.
- I-286 - Notification of Custody Conditions
- I-826 - Notice of Rights
- I-851 - Notice of Intent to issue a Final Administrative Removal Order
- I-851A - Final Administrative Removal Order
- I-862 - Notice to Appear
- I-877 - Record of Sworn Statement in Administrative Proceedings
- Certified Conviction Documents
- Criminal History (NCIC/TECS, IAFIS)
- Immigration History
- FD-249 - Arrest and Institution Fingerprint Card, if applicable.

If the NOI is contested, a memorandum from the service officer to the deciding service officer should be included in file, after the fourteen day time period has expired.

## Expedited Removal

Expedited Removal (ER), provided for in 8 U.S.C. § 1225, is an administrative procedure that authorizes DHS to remove, without a hearing before an immigration judge, aliens arriving in the United States who are inadmissible under INA § 212(a)(6)(C) or 212(a)(7).

ER proceedings may be applied to two categories of aliens. First, INA § 235(b)(1)(A)(i) permits expedited removal proceedings for “arriving aliens” as defined by 8 C.F.R. 1.2, which includes certain parolees (i.e., those paroled after April 1, 1997 who did not receive advance parole). Second, INA § 235(b)(1)(A)(iii) permits the Secretary of DHS to designate certain other aliens to whom expedited removal may be applied. However, the statute limits the application of expedited removal to aliens who were not admitted or paroled and who cannot affirmatively show that they have been continuously present in the United States for the two years period immediately prior to the date they were determined to be inadmissible under the expedited removal procedures. To date, only two groups of aliens have been designated under this category: 1) aliens arriving by sea; and 2) aliens encountered within fourteen days of crossing into the United States and within 100 miles of an international land border.

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Aliens subject to ER who indicate an intention to apply for asylum or who assert a fear of persecution or torture must be referred to an asylum officer for a credible fear determination in accordance with 8 C.F.R. § 208.30. If the alien is deemed to have a credible fear by the asylum officer, the asylum officer will inform the alien of his determination and issue a Form I-862, Notice to Appear, for full consideration of the asylum and withholding of removal claim in INA § 240 proceedings before an immigration judge. If the asylum officer determines that the alien does not have a credible fear of return, the asylum officer shall provide written notice of the determination and inquire if the alien would like to have an immigration judge review the officer's decision. If the alien requests review (or refuses to indicate whether or not he would like a review), the asylum officer will refer the alien for a hearing before an immigration judge using Form I-863.

In the event an alien subject to ER claims they are a LPR, an asylee, or a U.S. citizen, and the officer cannot verify that status, the officer, in accordance with 8 C.F.R. § 235.3(b)(5)(iv), shall refer that alien to an immigration judge for review of the expedited removal order under INA § 235(b)(1)(C) and 8 C.F.R. § 235.6(a)(2)(D). Persons placed in ER proceedings are generally to be detained without bond pending their reasonable fear determination, after which they may be considered for parole.

### **Required Documentation for Expedited Removal**

8 C.F.R. § 235.3(b)(2)(i) requires the creation and maintenance of a ROP in cases of ER. At a minimum, the ROP must include copies of:

- I-213 - Record of Deportable / Inadmissible Alien
- I-217 - Information for Travel Document or Passport (if Other Than Mexican)
- I-247 - Immigration Detainer (Copy), if applicable
- I-296 - Notice to Alien Ordered Removed / Departure Verification
- I-860 - Notice and Order of Expedited Removal
- I-867A and B - Record / Jurat of Sworn Statement in Proceedings under INA §235(b)(1)
- Criminal History (NCIC, TECS, IAFIS)
- Immigration History
- FD-249 - Arrest and Institution Fingerprint Card, if applicable.

### **Restriction**

ERO enforcement officers may not issue ER orders for confirmed refugees, asylees, or aliens who have been granted any form of relief under the INA, including, but not limited to, the following: temporary protected status, ABC, NACARA, and HRIFA. The mere claim of legal status does not preclude initiating ER procedures under INA § 235; however, it may result in a review of the claim of status before an immigration judge pursuant to 8 C.F.R. § 235.3(b)(5).

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**Visa Waiver Program Removal Orders**

The Visa Waiver Program (VWP) described in this section is established pursuant to the provisions of INA § 217, 8 U.S.C. 1187, and 8 C.F.R. § 217.

**Application**

An alien admitted, or who seeks admission under the VWP, even if by fraud, is considered a visa waiver entrant or applicant, respectively. A VWP entrant who violates status or stays beyond the 90-day admission period is not eligible for a removal hearing before an immigration judge, having “waived” that right as a condition of entry. The order of removal from the FOD (or authorized delegate) advises the alien that he or she has violated the terms of his or her admission under the VWP and that the alien is ordered removed from the United States.

Effective January 12, 2009, eligible citizens or nationals from all VWP countries must obtain approval through the Electronic System of Travel Authorization (ESTA) prior to traveling to the United States under the VWP. With the implementation of ESTA, VWP travelers arriving at air and sea ports of entry no longer complete an I-94W, Nonimmigrant Visa Waiver Arrival or Departure Document. If an alien with a VWP removal order files a petition for review with a federal court of appeal and/or a writ of habeas corpus with a United States District Court, a copy of either the I-94W or ESTA should be obtained and included in the required documentation. Some federal courts require that DHS produce proof that the alien waived his or her right to a removal hearing before an immigration judge.

A VWP entrant or applicant who indicates an intent to apply for asylum must be issued a Form I-863, Notice of Referral to an Immigration Judge and referred for a proceeding on the merits of the alien’s asylum application only.

**Required Documentation for Visa Waiver Program Removal Orders**

- I-200 - Warrant for Arrest of Alien
- I-213 - Record of Deportable / Inadmissible Alien
- I-217 - Information for Travel Document or Passport
- I-247 - Immigration Detainer (Copy), if applicable.
- I-259 - Notice to Detain, Remove, or Present Alien
- I-286 - Notice of Custody Determination
- VWP I-294, Notice of Country to which Removal has been directed and Penalty for Re-entry without Permission
- VWP Warrant



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- VWP Notice of Intent to Deport / Remove for Violating Terms of Admission under § 217 of the Immigration and Nationality Act
- VWP Order
- FD-249 - Arrest and Institution Fingerprint Card, if applicable.
- Criminal History (NCIC, TECS, IAFIS)
- Immigration History

## SPECIAL CIRCUMSTANCES PROCESSING

### *Orantes Injunction*

The “*Orantes Injunction*” requires ICE to provide notice to detained El Salvadorans of the right to apply for asylum and prohibits the agency from taking actions that may be perceived as coercing or otherwise discouraging El Salvadorans from seeking asylum. The *injunction* also requires ICE to provide El Salvadorans with access to telephones during processing, updated legal service lists, and 24-hour notice to counsel if an El Salvadoran citizen or national is to be removed from the United States. Under the *injunction*, ICE is also prohibited from transferring unrepresented El Salvadorans from the district of their apprehension for at least seven days to allow them the opportunity to obtain counsel. The *injunction* does not apply to El Salvadorans that have received final orders of removal pursuant to expedited removal proceedings. See *Orantes-Hernandez v. Smith*, 541 F. Supp. 351 (C.D. Cal. 1982), 504 F. Supp. 2d 825 (C.D. Cal. 2007), and Docket No. 855, *Orantes-Hernandez v. Holder*, No. 82-01107 (C.D. Cal. filed Nov. 26, 2007), for additional information and a complete listing of *injunction* provisions.

### **Additional Required Documentation for *Orantes Injunction* Cases**

- I-217 - Information for Travel Document or Passport
- I-848/I-848A - Notice of Right to Salvadorans
- I-867 A and B - Record/Jurat of Sworn Statement in Proceedings under § 235(b)(1) of the Act
- Expedited Removal Cases with Credible Fear need M-444

### **Removability of Individuals in Temporary Protected Status (TPS)**

TPS is codified in 8 U.S.C. § 1254(a). Per INA § 244(a)(4), the government shall not remove an alien with a pending application for TPS who has established prima facie eligibility for TPS. Prima facie eligibility for TPS is established upon the filing of a completed application containing factual information that, if un rebutted, will establish a claim of eligibility. (See 8 C.F.R. § 244.1 and § 1244.1.) Per INA § 244(d)(4), the government shall not detain an alien provided TPS on the basis of the alien’s immigration status. Per 8 C.F.R. § 244.18 and § 1244.18, the issuance of a NTA on

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grounds of deportability or inadmissibility that would have rendered the alien statutorily ineligible for TPS may constitute grounds for detention.

TPS regulations also require that written notice of the opportunity to apply for TPS must be given to all aliens who are in pending proceedings during the time a foreign state is designated for TPS. (See 8 C.F.R. § 244.7(d) and §1244.7(d).) Countries currently designated for TPS are found here:

<http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnextoid=848f7f2ef0745210VgnVCM100000082ca60aRCRD&vgnextchannel=848f7f2ef0745210VgnVCM100000082ca60aRCRD#Countries>. However, if an alien's TPS has expired and the subject has neglected to reapply for TPS and therefore failed to have his or her status extended, the alien is amenable to removal proceedings and can be processed as such. Additionally, an alien's TPS status may be withdrawn if the alien fails to maintain eligibility for TPS as a result of a felony conviction or two or more misdemeanor convictions based on crimes committed in the U.S. (See INA § 244(c)(2)(B)(i) and § 244(c)(3)(A).) Accordingly, an alien whose TPS status is withdrawn and who otherwise does not have lawful status, is amenable to removal.

#### **Additional Required Documentation for TPS cases**

- I-821 - Application for Temporary Protected Status

#### **Issuance of Charging Documents on Aliens with United States Military Service and Their Immediate Relatives**

A NTA shall not be issued against any current or former member of the armed forces without prior approval from the FOD. Additionally, such an alien must also be advised, prior to the issuance of the NTA, of any discretionary relief that may be available.

Within ERO, the authority to approve issuance of a NTA, Administrative Order, or Reinstatement in these cases rests with the FOD of each field office. In cases in which an alien is still on active duty when ERO seeks to serve an NTA, Administrative Order, or Reinstatement, FODs should consider the implications of placing an active duty alien into proceedings. This decision will, at a minimum, take into consideration the circumstances in each case as identified below, and will require a memorandum to file for the subject, addressing:

- Whether coordination with the enforcement arm or administration of that branch of the service in which the alien is serving is possible;
- Whether the alien is likely to abscond if he or she is discharged prior to being placed in proceedings; and

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- Whether service of the NTA, Administrative Order, or Reinstatement can be coordinated so that the alien may be immediately served upon discharge. Whenever possible, the alien should be served upon being discharged.

This information is not all encompassing and only provides some of the factors to consider when deciding whether or not to exercise prosecutorial discretion in the issuance of a NTA, Administrative Order, or Reinstatement against an alien who has served, or is currently serving, in the United States military. In each specific case, the factors considered and the decision that is ultimately made must be entered into a memorandum to file (with a copy placed in the alien's A-file) in ENFORCE. This memorandum to file will be referenced on the Form I-213, Record of Deportable and Admissible Alien, that is completed for the case. As in all cases, the FOD shall seek assistance from the OCC as necessary.

**Additional Required Documentation for Aliens with U.S. Military Service**

- DHS Concurrence Letter
- A memorandum with a brief overview of the facts considered shall specifically authorize issuance of the NTA, Administrative Order, or Reinstatement. Prior to making a decision to issue a NTA, a thorough review to determine eligibility for United States Citizenship under INA § 328 and § 329 must be completed in these cases because those sections contain special naturalization provisions for members of the military and, under certain circumstances, an order of removal does not preclude their naturalization.
- DD Form 214 (Certificate of Release or Discharge from Active Duty) for all periods of service

ERO enforcement officers charged with processing aliens for NTAs, Administrative Orders, or Reinstatements should be periodically reminded to inquire about military service during such processing in all cases where service may be a possibility. If an alien's prior military service record does not come to the attention of ICE until after issuance of the NTA, Administrative Order, or Reinstatement, appropriate action should be taken to comply with this guidance, to include exercising discretion by terminating any issued NTA.

Additional references include: Memorandum, “Issuance of Notices to Appear, Administrative Orders of Removal, or Reinstatement of a Final Removal Order on Aliens with United States Military Service,” by Victor X. Cerda, 2004; and Memorandum, “Department of Defense (DOD) Enlistment of Certain Nonimmigrant and other Aliens Determined to be Vital to the National Interest,” by David J. Venturella, October 14, 2009.

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**INS vs. St. Cyr, 533 U.S. 289, 121 S.Ct. 2271 (2001)**

On March 8, 1996, Enrico St. Cyr, a lawful permanent resident, pleaded guilty to a charge of selling a controlled substance. That conviction made him deportable; however, under the pre-Antiterrorism and Effective Death Penalty Act (AEDPA) of 1996 law applicable at the time of his conviction, St. Cyr would have been eligible for an INA § 212(c) waiver of deportation at the discretion of the Attorney General. Since removal proceedings against St. Cyr were not commenced until April 10, 1997, after both AEDPA and the IIRIRA became effective, St. Cyr was no longer eligible for a 212(c) waiver according to the Attorney General's interpretation of the new statutes.

Upon appeal, the Board of Immigration Appeals ruled that St. Cyr was removable by reason of having pleaded guilty to an aggravated felony and was ineligible to apply for discretionary relief from deportation. This decision was later reversed by the Federal District Court with jurisdiction over the case and affirmed by the U.S. Court of Appeals.

On final appeal to the U.S. Supreme Court, the Court held that the provisions of AEDPA and IIRIRA repealing discretionary relief from deportation did not apply retroactively to St. Cyr, who pled guilty before the statutes' enactment.

Consistent with the St. Cyr decision, only aliens who entered into plea agreements prior to the enactment of AEDPA or IIRIRA will be eligible to apply for section 212(c) relief. The rule does not benefit aliens who were found guilty as a result of a trial because the St. Cyr decision focused primarily on an alien's reliance on section 212(c) relief as an inducement for entering into a plea agreement.

Under the rule, aliens who pleaded guilty to crimes prior to the enactment of AEDPA on April 24, 1996, may apply for section 212(c) as it existed prior to that date. Section 212(c), as it existed prior to April 24, 1996, was available to most lawful permanent residents who had resided in the United States for at least seven years. It was not available to aliens who had been convicted of one or more aggravated felonies and had served a term of imprisonment of at least five years.

Aliens who pleaded guilty to crimes after April 24, 1996, but prior to IIRIRA's effective date of April 1, 1997, may apply for section 212(c) relief as it existed during that time period. The version of section 212(c) that existed during that time period was the version modified by AEDPA. AEDPA restricted the availability of section 212(c) relief and made it unavailable to aliens who were deportable by reason of their convictions for certain criminal offenses, including aggravated felonies, controlled substance offenses, certain firearms offenses, espionage, or more than one crime of moral turpitude.



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Aliens who pleaded guilty to crimes on or after April 1, 1997, would remain ineligible for section 212(c) relief because section 212(c) was repealed as of that date. (News Release-St. Cyr Rule Affording Relief to Certain Criminal Aliens)

**Required Documentation**

- I-200 - Warrant of Arrest
- I-213 - Record of Deportable Alien
- I-217 - Information for Travel Document or Passport (if Other Than Mexican)
- I-247 - Immigration Detainer (copy if applicable)
- I-265 - Notice to Appear, Bond and Custody Processing Sheet
- I-286 - Notice of Custody Determination
- I-826 - Notice of Rights / I-770 (Juveniles) / I-848A (El Salvadorans)
- I-862 - Notice to Appear
- List of legal services
- Certified Criminal Conviction Documents
- Criminal History (NCIC, TECS, IAFIS)
- Immigration History
- FD-249 - Arrest and Institution Fingerprint Card (if applicable)
- Conviction documents-certified, if possible (if applicable)

In addition to the conviction documents, a notice that there are no appeals pending on the criminal conviction is necessary, as convictions on appeal cannot be used against an alien in a removal hearing.

**United States v. Lujan-Castro, 602 F.2d 877 (9th Cir. 1979)**

Carlos Lujan-Castro moved the U.S. District Court for the District of Arizona to dismiss the indictment against him for transporting illegal aliens on the grounds that the waiver of his right to have the government maintain the presence of four deportable alien witnesses was ineffective. The Court of Appeals for the Ninth Circuit affirmed the district court's denial of the motion to dismiss, and Lujan-Castro subsequently was convicted of two counts of transporting illegal aliens, in violation of 8 U.S.C. § 1324(a)(2).

**Required Documentation to satisfy *United States v. Lujan-Castro***

With regard to the arrest of a subject for violation of a crime that requires a material witness, per *United States v. Lujan-Castro*, it is imperative that the arresting ERO enforcement officer obtain written documented evidence that the subject knowingly and intelligently waived his/her right to retain a deportable alien witness, so that the waiver is effective.

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**FUGITIVE ALIENS**

Fugitive aliens are aliens not currently in the custody or control of ICE who have failed to depart the United States pursuant to a final order of removal, deportation, or exclusion, or who have failed to report to an ICE officer after having received notice to do so. ERO enforcement officers regularly encounter fugitive aliens in the course of routine CAP duties, and should therefore be fully knowledgeable of the proper processing requirements.

**Procedure**

ERO enforcement officers will be able to identify fugitive aliens through interviews and records searches. Some common identifiers of fugitive aliens include recognizing the Case Category for a fugitive in the ENFORCE Alien Removal Module (EARM):

**(b)(7)(E)**

All fugitive aliens should be processed through the Initial Event screen of ENFORCE, which includes an in-depth narrative detailing the alien's relatives, address, any documents that verify his identity, as well as any and all information that may be useful if this alien is encountered in the future.

**Required Documentation**

- I-205 - Warrant of Removal/Deportation
- I-213 - Record of Deportable/Excludable Alien

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- I-217 - Information for Travel Document or Passport (if Other Than Mexican)
- I-294 - Warning to Alien Ordered Removed or Deported
- Verification of identity (IAFIS Rap Sheet, IDENT )
- Immigration History
- Criminal History
- The current Administrative Removal Order
- FD-249 - Arrest and Institution Fingerprint Card

## Criminal Prosecutions

The criminal prosecution program is a critical component of any enforcement action that ERO undertakes. An effective prosecution program in compliance with prosecutorial guidelines issued by the USAO permits ERO to target individuals who constitute the most serious enforcement challenges and are the greatest threats to the community. Furthermore, there is a deterrent effect by incarcerating such individuals for significant periods as consequences for the crimes committed. Most violators encountered by ERO have committed, at a minimum, a misdemeanor violation of the criminal provisions of the INA.

Through criminal prosecution, ERO seeks to increase community safety. ERO will target all federal violations within its statutory and regulatory authority, focusing primarily on violations of 8 U.S.C. § 1326 committed by those aliens encountered through any ERO enforcement action.

## General Guidelines for ERO Prosecution Program

Any guidelines for the ERO prosecution program must be general in nature and must provide ample flexibility for adaptation to conditions in each AOR. At a minimum, each prosecution program should contain the following elements:

**Case Review:** A supervisor or other designated third party within the agency should review all cases proposed for prosecution to verify the following:

- 1) Sufficient evidence exists to substantiate the offense being charged;
- 2) The elements of the offense being charged are satisfied;
- 3) Jurisdiction and venue questions have been correctly addressed; and,
- 4) The applicable and appropriate prosecutorial guidelines have been followed.

**Determination to Pursue Criminal Prosecution or Administrative Remedies:** The resources of the federal judicial system are limited, and most violations of the INA encountered by ERO enforcement officers will be handled through removal proceedings. All prosecution programs should have

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a provision for a regular review of cases proposed for prosecutions. These reviews will assist ERO in determining whether administrative remedies can satisfactorily resolve the cases, or whether the violations cause such a serious impact on our society, innocent members of the public, and agency operations that criminal prosecution should be pursued.

**Notification to USAO:** All prosecution programs must have a procedure for the appropriate notification to the proper USAO of proposed prosecutions.

**Notification to Federal Court:** All prosecution programs must have a procedure for notifying the appropriate Federal Court of cases approved for prosecution and, if necessary and at the discretion of the local USAO, scheduling the defendant's initial court appearance.

Dependent upon local court procedures, the prosecution program may also be responsible for notification of Pre-Trial Services (if available), for making the defendants available to that agency, and for providing defense attorneys for interviews before the defendants' initial court appearance.

Also dependent upon local court procedures, the prosecution program may be responsible for notifying the USMS and or booking the defendants into a designated jail facility following their initial court appearance.

**Preparation of Prosecution Reports:** All prosecution programs shall be responsible for preparing statistical prosecution reports for field office directors and ensuring data quality and validity of said reports.

Powers of immigration officers and employees are granted under 8 U.S.C. § 1357 and INA § 287.

## Establishing a Criminal Case

The establishment of a criminal case can be both a very simple matter and a highly complex procedure.

The responsibility for the most important steps in establishing a prosecutable case lies with the investigating ERO enforcement officer. The ERO enforcement officer's direct observations, evidence gathering, and documentation of the facts are the foundation upon which all successful prosecutions are built. At every stage of the initial processing of a case, the ERO enforcement officer must evaluate the evidence at hand and determine if it is sufficient to prove the elements of the criminal charge being contemplated. Adequate evidence to prove each element of the crime being charged must be obtained prior to a prosecution being submitted for acceptance. (See Federal Rules of Criminal Procedure, Title IV, Rule 16, Discovery and Inspection regarding statements of defendant.)



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Careful attention must be paid to proper evidence seizure requirements. Thorough documentation of the chain of evidence, from initial discovery to admission must be treated with equal respect and care. The seizure must be extensively documented, both in the ERO enforcement officer's reports and in evidence logs. Any break in the chain of custody of the evidence or, more commonly, failure to properly document any portion of the chain of custody, will result in a successful Motion to Suppress by defense counsel, which could inevitably lead to dismissal of the case. (See Federal Rule of Evidence 901, Requirement of Authentication or Identification; 902, Self-authentication, and 803 Hearsay Exceptions; Availability of Declarant Immaterial.)

### Case Preparation and Presentation

Case preparation must be comprehensive and must set forth all relevant information for consideration by the prosecutor and the court. Careful attention should be administered to ensure that all factors, both probative and exculpatory, are fully investigated and clearly documented. The Assistant U.S. Attorney (AUSA) handling the case should be apprised of all the facts and circumstances relating to the case.

Although case preparation and presentation procedures must be strictly followed, those procedures can significantly vary depending upon the judicial district in which the offense was committed. ERO enforcement officers routinely work in two or more judicial districts on a daily basis.

Within general guidance from DHS and DOJ, each USAO has its own priorities, procedures and prosecutorial guidelines that are specifically tailored to conditions in each USAO office. ERO enforcement officers must be constantly aware of the guidelines and the requirements of the judicial district in which they are working. To successfully prosecute a case, ERO enforcement officers must be aware of, and comply with, the applicable regulations and guidelines.

The USAOs in some judicial districts require all of the reports and possible exhibits be presented to the AUSA handling the case prior to the acceptance of a criminal prosecution. The presentation of criminal violations for prosecution under this variety of conditions obviously makes a single method of case presentation impossible. However, common practices exist in order to guide the ERO enforcement officer's presentation of all cases involving potentially prosecutable criminal violations:

- Where applicable, prosecution guidelines must be thoroughly understood, and the facts of each particular case must be evaluated against the local guidelines to ensure compliance.
- Case preparation must be thorough and complete in all cases to be considered for criminal prosecution. All cases must set forth all relevant information for consideration by the prosecuting attorneys and the courts.

## Criminal Alien Program Handbook

- It is absolutely imperative that all factors, both probative and exculpatory, be clearly detailed in the presentation. The AUSA handling the case must be informed of all facts and circumstances relating to the case. It is an axiom of all good trial attorneys that a question should not be asked in court unless the attorney asking the question already knows the answer to that question. Likewise, it should be an axiom of all ERO enforcement officers presenting cases for criminal prosecution that the AUSA handling the case is never surprised by information previously known or available to the ERO enforcement officers involved in the case. Case officers should also provide information regarding knowledge of those officers who may encounter *Giglio issues* (*Giglio v. United States*, 405 U.S. 150 (1972)) should the case proceed to trial.

## Jurisdiction and Venue

The distinction must be clearly understood between “jurisdiction” and “venue.” These terms are defined below.

The term “jurisdiction,” as ordinarily used, is the authority to adjudicate concerning the subject matter in a given case. Jurisdiction includes not only the authority to hear and determine, but also the authority to render the particular judgment in the particular case. The district courts of the United States have original jurisdiction, exclusive of the courts of the States, over all offenses against the laws of the United States. (See 18 U.S.C. § 3231.)

The term “venue” refers to the judicial district in which a case is to be tried. The Constitution of the United States provides that a defendant shall have the right to be tried in the district where the crime was committed. (See Federal Rules of Criminal Procedure, Title V, Rule 18, Place of Prosecution and Trial.)

ERO enforcement officers must work closely with the local AUSA when determining if there is proper jurisdiction to exist, although venue in a particular district may seem improper. It is possible for an action to be brought in the appropriate venue (geographic location), although the forum in which it is brought lacks jurisdiction to hear the case (e.g., holding a trial for a violation of a federal criminal statute before a state court).

The most important difference between “jurisdiction” and “venue” is that a party may consent to an action in a district that otherwise would be an improper venue, and that the party waives objection to venue if there is a failure to properly assert it. However, it would be improper for a person properly charged with violation of a federal criminal statute to be tried before a state court for that federal violation, whether or not the defendant requests such an arrangement.

## Criminal Alien Program Handbook

**Transfer of a Defendant’s Case between Districts:** A prosecution may be transferred from the district where the indictment or information is pending, or from which a warrant on a complaint or indictment has been issued. If the following conditions are met, a prosecution may be transferred to the district where the defendant is arrested, held, or present:

- The defendant states in writing a wish to plead “guilty” or “nolo contendere” and to waive trial in the district where the indictment, information, or complaint is pending;
- The defendant consents in writing to the court’s disposing of the case in the transferee district;
- The defendant files the statement in the transferee district; and,
- The U.S. Attorneys in both districts approve the transfer in writing.

(See Federal Rules of Criminal Procedure, Title V, Rule 20, Transfer for Plea and Sentence.)

Trial for an offense which began or was committed outside of the United States shall be in the district where the offender, or any one of two or more joint offenders, is arrested or is first brought. (See 18 U.S.C. § 3238.)

Any offense against the United States committed in more than one district may be prosecuted in any district in which such offense was begun, continued, or completed. (See 18 U.S.C. § 3237.)

### Common Criminal Codes

INA § 287(a)(5)(A) and 8 U.S.C. § 1357(a)(5)(A) confer through regulations prescribed by the Attorney General or his successor, the Secretary of the Department of Homeland Security, the authority to make warrantless arrests under certain conditions “for any offense against the United States, if the offense is committed in the officer’s or employee’s presence.” To make the most efficient use of the agency’s resources, exercise of the authority to make warrantless arrests will be limited to those federal criminal offenses that are directly under the investigative jurisdiction of ICE or that are most commonly encountered by ICE.

Common criminal codes used by ERO enforcement officers in presenting cases for prosecutions are discussed below. Ensure that consultation with the local AUSA is done prior to charging a person to ensure a successful case.

- 8 U.S.C. § 1324 deals with bringing in and harboring certain aliens and has numerous subsections. Those most commonly encountered by ERO enforcement officers are frequently referred to as “smuggling,” “transporting,” and “harboring.”

## Criminal Alien Program Handbook

- 8 U.S.C. § 1325 is concerned with the entry of aliens at improper times or places; avoidance of examination or inspection; misrepresentation, and concealment of facts. Commonly referred to as EWI (Entry Without Inspection), § 1325 encompasses multiple criminal subsections and includes provisions for imposing civil penalties.
- 8 U.S.C. § 1326. Re-entry of removed aliens
- 18 U.S.C. § 2. Principals, Aiding and Abetting
- 18 U.S.C. § 3. Accessory after the Fact
- 18 U.S.C. § 371. Conspiracy to commit offense or to defraud United States
- 18 U.S.C. § 922(g) relates to aliens/felons and firearms.
- 18 U.S.C. § 911 addresses false claims to United States citizenship.
- 18 U.S.C. § 1001 Fraud and False Statements.
- 18 U.S.C. § 1546. Fraud and misuse of visas, permits, and other documents
- 8 U.S.C. § 1253(b). Willful failure to comply with terms of release under supervision
- 8 U.S.C. § 1304(e) addresses failure of alien to carry with, and have in his / her possession an alien registration receipt card or certificate of alien registration.
- 8 U.S.C. § 1306(a) addresses willful failure of aliens to apply for registration and to be fingerprinted, failure of aliens to give written notice of change of address, fraudulent alien registration, and unlawfully photographing, printing, or creating the likeness of any certificate of alien registration or alien registration card.
- 8 U.S.C. § 1327 addresses aiding or assisting certain (convicted aggravated felons, terrorists, saboteurs, espionage agents and subversives) aliens to enter the United States.
- 8 U.S.C. § 1328. Importation of aliens for immoral purposes.

## Case Management and Prosecution Reporting

In order to accurately track the prosecutorial efforts of ERO field offices, all cases formally presented to the USAO will be recorded in ENFORCE, TECS, IDENT, and the alien's A-file. No blanket declinations will be recorded in TECS or sought by ERO offices. (See Memorandum, "Prosecution Reporting," James T. Hayes Jr., September 08, 2008.)

TECS is a critical tool in the statistical reporting of ERO's prosecutorial efforts. In order to maintain data integrity, it is imperative that the input regarding these cases fully encompasses all information, from initial presentation to conclusion. In order to quickly and accurately access the information, field offices will be accountable for training their personnel in the proper use of TECS case management.

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## Criminal Alien Program Handbook

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Following these procedures enables HQ to produce accurate statistical reports. Any required modifications to cases after supervisory approval in TECS must be routed, through the appropriate channels, to the HQ CAP Unit Chief or his or her designee, who will take action.

### **Criminal Arrests**

In order to accurately track criminal arrests, ERO enforcement officers must use Seized Asset and Case Tracking System (SEACATS) for statistical purposes regarding a criminal arrest in all criminal prosecution cases. The SEACATS Incident Report should be completed within 24 hours of the criminal arrest. The criminal arrest takes place when the alien is remanded to the custody of the USMS.

In addition to following the SEACATS requirement, ERO supervisors are to ensure that all cases initiated in TECS are completed in compliance with ICE directives. Creation and maintenance of a prosecution file is also required. ERO enforcement officers must create and maintain prosecution files for every person that has been criminally arrested. These files are to be considered sensitive, and the attached procedures must be followed to ensure utmost security and maintenance.

### **SECURE COMMUNITIES**

Secure Communities is a federal information-sharing partnership that utilizes the biometric systems from the DHS and the DOJ — DHS's Automated Biometric Identification System (IDENT) and DOJ's Integrated Automated Fingerprint Identification System (IAFIS) — to assist ICE with identifying criminal aliens and those others who fall within ICE's enforcement priorities.

## Criminal Alien Program Handbook

When state and local law enforcement arrest or book someone into a jail facility for a violation of a state criminal offense, they will generally fingerprint the person. After fingerprinting the person, the state and local authorities electronically submit the fingerprints to DOJ's biometric system for a criminal history check. These fingerprints are automatically sent to DHS's biometric system to check against its immigration and law enforcement records. If the fingerprints match those in DHS's biometric system, ICE's LESC will receive an automatic notification.

Upon notification of a fingerprint match in DHS's biometric system, the LESC will evaluate the immigration information and make an initial immigration status determination as to the individual's amenability for removal. The LESC will send the status determination to the ICE field office that has jurisdiction over the area in which the LEA resides to determine appropriate enforcement action based upon ICE's enforcement priorities.

### **RAPID REMOVAL OF ELIGIBLE PAROLEES ACCEPTED FOR TRANSFER (Rapid REPAT)**

Rapid REPAT is a joint partnership between ICE and state correctional / parole agencies that allows for the early release of non-violent aliens with final orders of removal from state custody to ICE custody for the purpose of removal from the United States. Rapid REPAT is one component of the ICE ACCESS (ICE Agreements of Cooperation in Communities to Enhance Safety and Security) initiative whereby ICE seeks to partner with state governments to maximize immigration enforcement capabilities by promptly removing eligible aliens upon completion of their criminal sentence.

Under Rapid REPAT, aliens incarcerated in state prison and who have been convicted of non-violent offenses may receive early conditional release if they have a final order of removal and agree not to return to the United States. Eligible aliens agree to waive appeal rights associated with their state conviction(s). If an alien who was removed under Rapid REPAT re-enters the United States, the federal statute mandates confinement of the alien for the remainder of the sentence that was pending at the time of the parole or supervised release. Additionally, the alien may be prosecuted under a federal statute that provides for a fine and or up to 20 years in prison for illegally reentering the United States. Rapid REPAT allows state agencies to capitalize on ICE's ability to efficiently identify and remove criminal aliens from the United States while still preserving the integrity of the criminal justice system.

Rapid REPAT is administered by ERO pursuant to INA §241(a)(4)(B)(ii) and 8 U.S.C.1231(a)(4)(B)(ii), which requires i) that the alien is confined pursuant to a final conviction for a non-violent offense; ii) that removal is appropriate and in the best interest of the state; and iii) that the state submits a written request to ICE that the alien be removed.

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**Benefits**

Rapid REPAT is another ICE law enforcement tool that assists the CAP program in meeting its overall goal. Non-violent criminal aliens are identified and processed for removal prior to their release from institutions, which helps prevent criminal aliens from being released without ICE's knowledge. Obtaining a final order of removal / deportation prior to release from state custody allows ICE to more efficiently remove such aliens from the United States, thereby maximizing detention space and conserving taxpayer resources.

**EVIDENCE AND SEIZURES**

On March 17, 2009, Robert Helwig, Assistant Director for Removal Management, sent guidance to the Field Office Directors on recovering firearms, ammunition and contraband processing, which was also approved by Marc J. Moore, Assistant Director for Field Operations.

The guidance noted that during the course of daily field office enforcement activities, ERO enforcement officers often recover contraband, such as narcotics, ammunition and weapons, which are routinely turned over to other agencies (OA) or held as evidence in a pending case and then referenced the ICE Firearms Policy.

According to the Interim ICE Firearms Policy (July 7, 2004), Parts 6.I.1., and 2.:

“When a confiscated / seized or abandoned firearm (other than an ICE-issued firearm) comes into the custody of an ICE officer, that firearm must be immediately reported by the responsible ICE officer to the Senior Firearms Instructor (SFI) and a record of that firearm entered into the ICE automated firearms inventory system, ensuring compliance with federal property control regulations. During all subsequent legal proceedings the confiscated / seized or abandoned firearm will be controlled by the ICE evidence system. All firearms confiscated / seized or acquired by abandonment by ICE must be

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To comply with Federal Rules of Criminal Procedure, Title VIII, Rule 41, Search and Seizure, it is imperative that all ERO enforcement officers performing law enforcement functions document recovered firearms, ammunition, and other contraband incident to an arrest or investigation. Therefore, on March 17, 2009, it was ordered that all recovered and or seized firearm(s), ammunition, and or any other contraband will require the generation of an I-44 through the ENFORCE system. This will allow a record of the event to be created and will facilitate the proper

## Criminal Alien Program Handbook

handling of recovered firearms, ammunition, and other contraband according to established policy and procedure.

During the course of duty, Office of Enforcement and Removal Operations (ERO) enforcement officers encounter evidence of criminal or administrative violations, contraband or other property, including abandoned property. The following policies are relevant to the seizure of property by ERO officers and agents:

Under U.S. Immigration and Customs Enforcement (ICE) protocols (i.e., the *DRO/OI Protocols* agreement), ERO coordinates law enforcement and intelligence gathering activities with Homeland Security Investigations (HSI). This includes case de-confliction and ensures referral to HSI any criminal investigation other than those violations listed in the ICE protocols (i.e., 8 U.S.C. 1324, 8 U.S.C. 1546)

Regarding seized firearms, ERO officers are to coordinate with HSI in accordance with the above mentioned *Protocols* memo. If HSI is unable to assist with the seizure and forfeiture of a firearm, and/or if ICE does not possess the statutory authority for forfeiture, officers are to follow the Office of the Principal Legal Advisor (OPLA) Memorandum, *Disposition of seized firearms that have not been abandoned or forfeited*. This memorandum directs ICE officers to pursue judicial forfeiture or promptly seek assistance from the Bureau of Alcohol, Tobacco, Firearms, and Explosives or state or local law enforcement. In addition, the OPLA Memorandum states that officers must document evidence, contraband, or other forfeitable property confiscated, seized or acquired by abandonment through search warrants, consent searches, grand jury subpoenas, administrative summonses, surveillances, trash runs, or other means.

ERO enforcement officers who seize property to be used as evidence **must** attempt to turn over seized property to HSI. If HSI is unable to accept said property, ERO officers may seek to transfer property to another law enforcement agency, or temporarily detain said property. At all times, ERO officers will document such seizures and transfers by preparing an I-44 (Report of Apprehension or Seizure) in the ENFORCE system to document the recovery of the contraband. ERO may also store such property if the other agencies decline to accept the property (e.g., due to its de-minimus value) in accordance with current CBP and ICE policies.

The ERO enforcement officer will record in a ROI and I-44 narrative the facts of this encounter: (b)(7)(E) The SFI will secure contraband, specifically firearms, pending its transfer to HSI or another agency in accordance with the Interim ICE Firearms policy. A signed copy of the I-44 will remain attached to the contraband for proper identification. All I-44 reports will be reviewed and approved by a first line supervisor. If the contraband will be turned over to another agency, an I-44 must still be completed to properly document the recovery and transfer action of the contraband. The receiving agency officer must sign the I-44 accepting the contraband from the releasing officer /



## Criminal Alien Program Handbook

agency. The receiving agency will be provided a copy of the signed I-44 with the contraband.

FODs shall ensure that all law enforcement officers comply with the requirement to complete an I-44 when a weapon(s), ammunition, or any other contraband is recovered in the performance of official duties. (See Memorandum, "DRO/OI Protocols," Marcy M. Foreman/John P. Torres, August 20, 2007.)

## CRIMINAL ALIEN PROGRAM OVERSIGHT REQUIREMENTS

This serves as guidance for all personnel to ensure proper compliance with handbook and electronic CAP statistical reporting requirements. Consistently following proper statistical reporting requirements assists in effectively tracking cases that involve subjects who have been arrested and processed by ERO for the purposes of performance measurement, resource allocation, statistical tracking, and assigning future human resources. A CAP case is defined as any removable alien identified in a federal, state, and local jail/prison or at-large in the community, *regardless of the status of conviction.*

### Procedures

All detainees lodged with an institution will be processed utilizing ENFORCE. In addition, ENFORCE must be updated to reflect the appropriate Crime Code, Status Code, and Status Date. For additional guidance on the procedures, review the following memoranda:

- September 1, 2009, "Updated Directives for the CAP Case Identification in ENFORCE," David J. Venturella.
- July 29, 2011, "Enforcement and Removal Encounters," Gary Mead.

The following three blocks from ENFORCE will allow CAP staff to track and report statistical information on cases that are processed at each level of incarceration. The codes noted below are used in the appropriate blocks of ENFORCE on all cases processed by ERO personnel.

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It is crucial that these procedures are followed for all CAP cases to ensure that ERO has reliable data integrity in the management of CAP cases and that ERO receives credit for all CAP cases identified, processed and removed. This is not an inclusive set of instructions for a CAP event. ERO enforcement officers are to follow the most current ERO processing procedures at all times.

### **CAP Stats in ENFORCE**

CAP data captured from all 24 Field Offices will be consolidated and routinely analyzed. HQ CAP works with Field Offices to ensure that this information is correctly inputted.

HQ CAP provides access to its ICE Integrated Decision System (IIDS) reports weekly through a shared server. These reports provide a view of a field offices statistics that re not to be used for official reporting but are to be used for the review of a field office internally. Contact your HQ CAP POC to request access to this shared server.

Consistently, HQ CAP reviews the following for data quality and/or progress:

- 1) Encounter processing and duplication of encounters
- 2) Screenings vs. coverage
- 3) Detainers lodged

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- 4) Charging Document Issued (CDIs)
- 5) SURGE and at large operations
- 6) The percentage of processing occurring prior to the release of an alien from an LEA.
- 7) Criminal removals
- 8) Criminal prosecutions presented/accepted/indicted/convicted

**Electronic CAP Reporting Requirements**

HQ CAP will only capture, maintain and retrieve statistical data electronically. CAP data will not be manually reported, and field offices will ensure that:

- Create and update all appropriate EARM/RCA/CES and booking screens and fields once an encounter is created and a detainer is lodged;
- Process all CAP Charging Documents in ENFORCE and ensure all processing requirements are followed in accordance with the current ERO processing guide.
- Continue to monitor and update case status, if applicable, in EARM; and
- Continue to record and update all ERO criminal prosecution cases in TECS and EARM.

These procedures are set forth in the September 8, 2008 memorandum from John P. Torres entitled, “Reporting Guidance for the Criminal Alien Program (Follow-up to Director’s July 11, 2006 Memorandum).”

**Record Checks**

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# APPENDICES

## Criminal Alien Program Handbook

**Appendix 1: List of Forms**

<b>G--46</b>	Departure Verification Letter
<b>I-94</b>	Arrival/Departure Record
<b>I-94W</b>	Nonimmigrant Visa Waiver Arrival or Departure Document
<b>I-200</b>	Warrant of Arrest/Warrant for Arrest of Alien/Administrative Warrant of Arrest
<b>I-205</b>	Warrant of Removal/Deportation
<b>I-213</b>	Record of Deportable/Inadmissible Alien
<b>I-215</b>	Applicant's Record of Sworn Statement in Affidavit Form
<b>I-217</b>	Information for Travel Document or Passport (Unless from Mexico)
<b>I-247</b>	Immigration Detainer
<b>I-259</b>	Notice to Detain, Remove, or Present Alien
<b>I-265</b>	Notice to Appear, Bond and Custody Processing Sheet
<b>I-286</b>	Notice of Custody Determination
<b>I-294</b>	Warning to Alien Ordered Removed or Deported
<b>I-296</b>	Notice to Alien Ordered Removed / Departure Verification
<b>I-770</b>	Notice of Rights and Request for Disposition (for Juveniles)
<b>I-821</b>	Application for Temporary Protected Status
<b>I-826</b>	Notice of Rights and Request for Disposition
<b>I-848</b>	Notice of Rights and Request for Disposition for El Salvadorans
<b>I-848A</b>	Notice of Rights and Request for Disposition for El Salvadorans (Spanish version)
<b>I-851</b>	Notice of Intent to Issue a Final Administrative Removal Order
<b>I-851A</b>	Final Administrative Removal Order
<b>I-860</b>	Notice and Order of Expedited Removal
<b>I-862</b>	Notice to Appear
<b>I-863</b>	Notice of Referral to Immigration Judge

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<b>I-867 A and B</b>	Record / Jurat of Sworn Statement in Proceedings under INA §235(b)(1)
<b>I-871</b>	Notice of Intent/Decision to Reinstate Prior Order
<b>I-877</b>	Record of Sworn Statement in Administrative Proceedings
<b>ICE Form 73-025</b>	Miranda Rights
<b>VWP I-294</b>	Notice of Country to which Removal has been Directed and Penalty for Re-entry without Permission
<b>G-146</b>	Departure Verification Letter
<b>FD-249</b>	Arrest and Institution Fingerprint Card
<b>M-444</b>	Information About Credible Fear Interview

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**Appendix 2: Miranda Warning /Disposition of Firearms**



Statement of Rights  
(Miranda) Form.pdf



ICE Disposal of  
Firearms (2009) (2).p



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Appendix 3: A-File Guides

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**Appendix 4: Glossary of Acronyms**

<b>ABC</b>	American Baptist Church
<b>AFOD</b>	Assistant Field Office Director
<b>AOR</b>	Area of Responsibility
<b>BOP</b>	Bureau of Prisons
<b>CAD</b>	Criminal Alien Division
<b>CAP</b>	Criminal Alien Program
<b>CBP</b>	Customs and Border Protection
<b>CCD</b>	Consular Consolidated Database
<b>DFOD</b>	Deputy Field Office Director
<b>DHS</b>	Department of Homeland Security
<b>DO</b>	Deportation Officer
<b>DOJ</b>	Department of Justice
<b>DoS</b>	Department of State
<b>DSO</b>	Designated Signing Official
<b>EARM</b>	ENFORCE Alien Removal Module
<b>EID</b>	Enforcement Integrated Database
<b>EOIR</b>	Executive Office of Immigration Review
<b>ER</b>	Expedited Removal
<b>ERO</b>	Enforcement and Removal Operations
<b>FOD</b>	Field Office Director
<b>HQ</b>	Headquarters
<b>HRIFA</b>	Haitian Refugee Immigration Fairness Act
<b>HSI</b>	Homeland Security Investigations
<b>IAFIS</b>	Integrated Automated Fingerprint Identification System
<b>ICE</b>	Immigration and Customs Enforcement
<b>ICE ACCESS</b>	ICE Agreements of Cooperation in Communities to Enhance Safety and Security
<b>IDENT</b>	Automated Biometric Identification System
<b>IEA</b>	Immigration Enforcement Agent
<b>IIRIRA</b>	Illegal Immigration Reform and Immigrant Responsibility Act

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<b>INA</b>	Immigration and Nationality Act
<b>JCART</b>	Joint Criminal Alien Removal Taskforce
<b>LEA</b>	Law Enforcement Agency
<b>LEAR</b>	Law Enforcement Agency Response
<b>LEO</b>	Law Enforcement Online
<b>LPR</b>	Lawful Permanent Resident
<b>NACARA</b>	Nicaraguan Adjustment and Central American Relief Act
<b>NOI</b>	Notice of Intent
<b>NTA</b>	Notice to Appear
<b>OPLA</b>	Office of the Principal Legal Advisor
<b>PACER</b>	Public Access to Court Electronic Records
<b>PIERS</b>	Passport Information Electronic Records System
<b>Rapid REPAT</b>	Rapid Repatriation of Eligible Custodial Aliens Accepted for Transfer
<b>ROP</b>	Record of Proceedings
<b>SEACATS</b>	Seized Asset and Case Tracking System
<b>SDDO</b>	Supervisory Detention and Deportation Officer
<b>TOC</b>	Transnational Organized Crime
<b>TPS</b>	Temporary Protected Status
<b>USAO</b>	United States Attorney's Office
<b>USCIS</b>	United States Citizenship and Immigration Services
<b>USMS</b>	United States Marshals Service
<b>VCAS</b>	Violent Criminal Alien Section
<b>VTC</b>	Video Teleconferencing
<b>VWP</b>	Visa Waiver Program

1. To (Name, Address, City, State, Zip Code)	<b>DEPARTMENT OF HOMELAND SECURITY</b>  <b>IMMIGRATION ENFORCEMENT SUBPOENA</b>  <b>to Appear and/or Produce Records</b> 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number	
2. In Reference To	
<hr style="border: 0; border-top: 1px solid black; margin-bottom: 5px;"/> <span style="display: inline-block; width: 45%; text-align: center;">(Title of Proceeding)</span> <span style="display: inline-block; width: 45%; text-align: center;">(File Number, if Applicable)</span>	

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 laws. 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	(B) Date
Name	
Title <code>Deportation Officer</code>	
Address	(C) Time <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.
Telephone Number	

4. Records required to be produced for inspection



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

5. Authorized Official
  
  


---

(Signature)


---

(Printed Name)


---

(Title)


---

(Date)

**CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT**

**A. CERTIFICATE OF SERVICE**

I certify that on \_\_\_\_\_, I served this subpoena on the witness named in Block 1 in the following manner:  
(Date)

\_\_\_\_\_  
(Details of how service was effected)

\_\_\_\_\_  
(Signature of Official Serving Subpoena)

\_\_\_\_\_  
(Printed Name of Official Serving Subpoena)

Deportation Officer  
\_\_\_\_\_  
(Title of Official Serving Subpoena)

**B. ACKNOWLEDGMENT OF RECEIPT**

I acknowledge receipt of a copy of the subpoena on the front of this form.

Signature

Title

Date

Time

a.m.  
 p.m.





**Homeland  
Security**

October 27, 2021

MEMORANDUM TO: Tae D. Johnson  
Acting Director  
U.S. Immigration and Customs Enforcement

Troy A. Miller  
Acting Commissioner  
U.S. Customs and Border Protection

Ur M. Jaddou  
Director  
U.S. Citizenship and Immigration Services

Robert Silvers  
Under Secretary  
Office of Strategy, Policy, and Plans

Katherine Culliton-González  
Officer for Civil Rights and Civil Liberties  
Office of Civil Rights and Civil Liberties

Lynn Parker Dupree  
Chief Privacy Officer  
Privacy Office

FROM: Alejandro N. Mayorkas  
Secretary

A handwritten signature in black ink, appearing to read "AN Mayorkas", written over the printed name and title.

SUBJECT: **Guidelines for Enforcement Actions in or Near Protected Areas**

---

This memorandum provides guidance for ICE and CBP enforcement actions in or near areas that require special protection. It is effective immediately.

This memorandum supersedes and rescinds John Morton's memorandum entitled, "Enforcement Actions at or Focused on Sensitive Locations" (number 10029.2, dated October 24, 2011), and David Aguilar's memorandum entitled, "U.S. Customs and Border Protection Enforcement Actions at or Near Certain Community Locations" (dated January 18, 2013).

## **I. Foundational Principle**

In our pursuit of justice, including in the execution of our enforcement responsibilities, we impact people's lives and advance our country's well-being in the most fundamental ways. It is because of the profound impact of our work that we must consider so many different factors before we decide to act. This can make our work very difficult. It is also one of the reasons why our work is noble.

When we conduct an enforcement action – whether it is an arrest, search, service of a subpoena, or other action – we need to consider many factors, including the location in which we are conducting the action and its impact on other people and broader societal interests. For example, if we take an action at an emergency shelter, it is possible that noncitizens, including children, will be hesitant to visit the shelter and receive needed food and water, urgent medical attention, or other humanitarian care.

To the fullest extent possible, we 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. Such a location is referred to as a "protected area."

This principle is fundamental. We can accomplish our enforcement mission without denying or limiting individuals' access to needed medical care, children access to their schools, the displaced access to food and shelter, people of faith access to their places of worship, and more. Adherence to this principle is one bedrock of our stature as public servants.

## **II. Protected Areas**

Whether an area is a "protected area" requires us to understand the activities that take place there, the importance of those activities to the well-being of people and the communities of which they are a part, and the impact an enforcement action would have on people's willingness to be in the protected area and receive or engage in the essential services or activities that occur there. It is a determination that requires the exercise of judgment.

The following are some examples of a protected area. The list is not complete. It includes only examples:

- A school, such as a pre-school, primary or secondary school, vocational or trade school, or college or university.
- A medical or mental healthcare facility, such as a hospital, doctor's office, health clinic, vaccination or testing site, urgent care center, site that serves pregnant individuals, or community health center.
- A place of worship or religious study, whether in a structure dedicated to activities of faith (such as a church or religious school) or a temporary facility or location where such activities are taking place.

- A place where children gather, such as a playground, recreation center, childcare center, before- or after-school care center, foster care facility, group home for children, or school bus stop.
- A social services establishment, such as a crisis center, domestic violence shelter, victims services center, child advocacy center, supervised visitation center, family justice center, community-based organization, facility that serves disabled persons, homeless shelter, drug or alcohol counseling and treatment facility, or food bank or pantry or other establishment distributing food or other essentials of life to people in need.
- A place where disaster or emergency response and relief is being provided, such as along evacuation routes, where shelter or emergency supplies, food, or water are being distributed, or registration for disaster-related assistance or family reunification is underway.
- A place where a funeral, graveside ceremony, rosary, wedding, or other religious or civil ceremonies or observances occur.
- A place where there is an ongoing parade, demonstration, or rally.

We need to consider the fact that an enforcement action taken near – and not necessarily in – the protected area can have the same restraining impact on an individual’s access to the protected area itself. If indeed that would be the case, then, to the fullest extent possible, we should not take the enforcement action near the protected area. There is no bright-line definition of what constitutes “near.” A variety of factors can be informative, such as proximity to the protected area, visibility from the protected area, and people’s behavioral patterns in and around the protected area. The determination requires an analysis of the facts and the exercise of judgment.

The fundamental question is whether our enforcement action would restrain people from accessing the protected area to receive essential services or engage in essential activities. Our obligation to refrain, to the fullest extent possible, from conducting a law enforcement action in or near a protected area thus applies at all times and is not limited by hours or days of operation.

Whether an enforcement action can be taken in or near a courthouse is addressed separately in the April 27, 2021 Memorandum from Tae Johnson, ICE Acting Director, and Troy Miller, CBP Acting Commissioner, entitled “Civil Immigration Enforcement Actions in or Near Courthouses,” which remains in effect.

### **III. Exceptions and Limitation on Scope**

The foundational principle of this guidance is that, to the fullest extent possible, we should not take an enforcement action in or near a protected area. The phrase “to the fullest extent possible” recognizes that there might be limited circumstances under which an enforcement action needs to be taken in or near a protected area. The following are some examples of such limited circumstances:

- The enforcement action involves a national security threat.
- There is an imminent risk of death, violence, or physical harm to a person.
- The enforcement action involves the hot pursuit of an individual who poses a public safety threat.
- The enforcement action involves the hot pursuit of a personally observed border-crosser.
- There is an imminent risk that evidence material to a criminal case will be destroyed.
- A safe alternative location does not exist.

This list is not complete. It includes only examples. Here again, the exercise of judgment is required.

Absent exigent circumstances, an Agent or Officer must seek prior approval from their Agency's headquarters, or as you otherwise delegate, before taking an enforcement action in or near a protected area. If the enforcement action is taken due to exigent circumstances and prior approval was therefore not obtained, Agency headquarters (or your delegate) should be consulted post-action. To the fullest extent possible, any enforcement action in or near a protected area should be taken in a non-public area, outside of public view, and be otherwise conducted to eliminate or at least minimize the chance that the enforcement action will restrain people from accessing the protected area.

Enforcement actions that are within the scope of this guidance include, but are not limited to, such actions as arrests, civil apprehensions, searches, inspections, seizures, service of charging documents or subpoenas, interviews, and immigration enforcement surveillance. This guidance does not apply to matters in which enforcement activity is not contemplated. As just one example, it does not apply to an Agent's or Officer's participation in an official function or community meeting.

This guidance does not limit an agency's or employee's statutory authority, and we do not tolerate violations of law in or near a protected area.

#### **IV. Training and Reporting**

Please ensure that all employees for whom this guidance is relevant receive the needed training. Each of your respective agencies and offices should participate in the preparation of the training materials.

Any enforcement action taken in or near a protected area must be fully documented in your Agency's Privacy Act-compliant electronic system of record in a manner that can be searched and validated. The documentation should include, for example, identification of the protected area; the reason(s) why the enforcement action was taken there; whether or not prior approval was obtained and, if not, why not; the notification to headquarters (or headquarters' delegate) that occurred after an action was taken without prior approval; a situational report of what

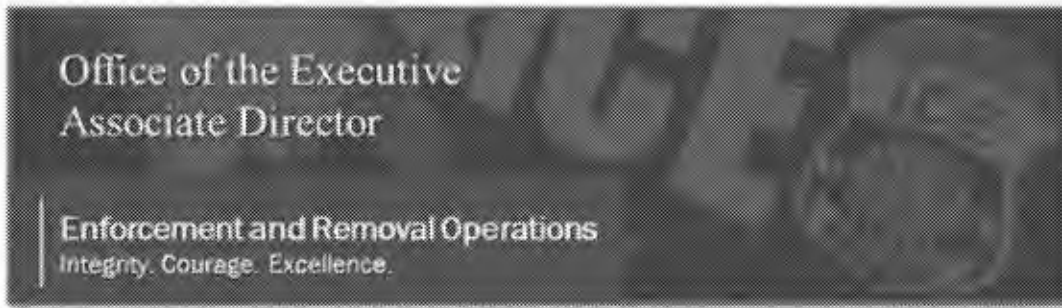
occurred during and immediately after the enforcement action; and, any additional information that would assist in evaluating the effectiveness of this guidance in achieving our law enforcement and humanitarian objectives.

**V. Statement of No Private Right Conferred**

This guidance is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.



**From:** Office of the Executive Associate Director for ERO [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=F198F58B06A24754BA3E6943655B8D48-OFFICE OF T]  
**Sent:** 8/7/2020 6:32:26 PM  
**Subject:** Accountability of Immigration Subpoenas Issued to Non-Compliant Law Enforcement Agencies [FO]



To: All ERO Employees

On August 6, 2020, I signed Enforcement and Removal Operation (ERO) Directive 11165: Accountability of Immigration Subpoenas Issued to Non-Compliant Law Enforcement Agencies (LEAs), which supplements ERO guidance on accountability of immigration subpoenas and updates procedures for utilizing the National Subpoena Log for approving, issuing, serving, and tracking these subpoenas.

In the past, ICE has served subpoenas to places where an alien is known to work, or apartment complexes where an alien might live, to find out more information about the targeted alien. Historically, ICE has not had the need to issue subpoena to LEAs because most LEAs throughout the country willingly cooperate with ICE to provide information regarding aliens arrested for crimes in the interest of public safety. Absent that partnership, ICE will use every tool available to obtain information on the whereabouts of aliens, or other pertinent biographical information from jurisdictions that have recently begun to refuse or have been prohibited by state or local law or policy from cooperating with immigration enforcement. The public has the right to know the types of individuals their local LEAs are letting out of jail.

ERO Officers will continue to issue subpoenas in compliance with applicable laws, regulations and ICE Policy. This Directive provides ERO Supervisory Officers with discretion, on a case-by-case basis, to issue individual immigration subpoenas to non-compliant LEAs, requesting specific information related to specifically identified aliens who are or recently have been in their custody on criminal charges, and procedures for working with the relevant U.S Attorney's Office to ensure compliance. All field personnel identified by each area of responsibility as Users of the National Subpoena Log are required to complete mandatory training in PALMS. Also, Field Offices are encouraged to work with the ICE Office of Public Affairs and their community relations officers prior to issuing the subpoenas.

Any questions relating to the Directive may be directed to ERO Policy at (b)(7)(E) [ice.dhs.gov](mailto:ice.dhs.gov) or ERO Enforcement at (b)(7)(E) [ice.dhs.gov](mailto:ice.dhs.gov).

*Enrique M. Lucero*  
*Executive Associate Director*  
*Enforcement and Removal Operations*

*To protect the homeland through the arrest and removal of aliens who undermine  
the safety of our communities and the integrity of our immigration laws.*



## **Enforcement and Removal Operations**

*Integrity. Courage. Excellence.*

NOTICE: This communication may contain privileged or otherwise confidential information. If you are not an intended recipient or believe you have received this communication in error, please do not print, copy, retransmit, disseminate, or otherwise use this information. Please inform the sender that you received this message in error and delete the message from your system.

---

**From:** ICE Office of the Director [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=370BE0A6DD3F4B53884B7B687A064E38-ICE-OFFICE\_]   
**Sent:** 10/27/2021 6:16:35 PM   
**Subject:** Department Guidance for Enforcement Action at Protected Areas   
**Attachments:** Guidelines for Enforcement Actions in or Near Protected Areas[38].pdf

## **A Message from Acting Director Tae D. Johnson**

**To All ICE Employees**  
**October 27, 2021**

### **Department Guidance for Enforcement Action at Protected Areas**

Today, the Secretary issued DHS's first-ever Department-wide policy to guide ICE and CBP civil immigration enforcement actions in or near protected areas, which replaces previous sensitive locations policies. Effective immediately, enforcement actions should not be taken in or near a location that would restrain people's access to essential services or engagement in essential activities.

This new policy supersedes and rescinds John Morton's memorandum entitled, "Enforcement Actions at or Focused on Sensitive Locations" (ICE Directive No. 10029.2, dated October 24, 2011), and David Aguilar's memorandum entitled, "U.S. Customs and Border Protection Enforcement Actions at or Near Certain Community Locations" (dated January 18, 2013). The April 27, 2021, Joint ICE and CBP Memorandum entitled "Civil Immigration Enforcement Actions in or Near Courthouses" remains in effect.

Please stay safe and be well.

Tae D. Johnson  
Acting Director  
U.S. Immigration and Customs Enforcement



**Homeland  
Security**

October 27, 2021

MEMORANDUM TO: Tae D. Johnson  
Acting Director  
U.S. Immigration and Customs Enforcement

Troy A. Miller  
Acting Commissioner  
U.S. Customs and Border Protection

Ur M. Jaddou  
Director  
U.S. Citizenship and Immigration Services

Robert Silvers  
Under Secretary  
Office of Strategy, Policy, and Plans

Katherine Culliton-González  
Officer for Civil Rights and Civil Liberties  
Office of Civil Rights and Civil Liberties

Lynn Parker Dupree  
Chief Privacy Officer  
Privacy Office

FROM: Alejandro N. Mayorkas  
Secretary

A handwritten signature in black ink, appearing to read "Alejandro N. Mayorkas".

SUBJECT: **Guidelines for Enforcement Actions in or Near Protected Areas**

---

This memorandum provides guidance for ICE and CBP enforcement actions in or near areas that require special protection. It is effective immediately.

This memorandum supersedes and rescinds John Morton's memorandum entitled, "Enforcement Actions at or Focused on Sensitive Locations" (number 10029.2, dated October 24, 2011), and David Aguilar's memorandum entitled, "U.S. Customs and Border Protection Enforcement Actions at or Near Certain Community Locations" (dated January 18, 2013).

## **I. Foundational Principle**

In our pursuit of justice, including in the execution of our enforcement responsibilities, we impact people's lives and advance our country's well-being in the most fundamental ways. It is because of the profound impact of our work that we must consider so many different factors before we decide to act. This can make our work very difficult. It is also one of the reasons why our work is noble.

When we conduct an enforcement action – whether it is an arrest, search, service of a subpoena, or other action – we need to consider many factors, including the location in which we are conducting the action and its impact on other people and broader societal interests. For example, if we take an action at an emergency shelter, it is possible that noncitizens, including children, will be hesitant to visit the shelter and receive needed food and water, urgent medical attention, or other humanitarian care.

To the fullest extent possible, we 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. Such a location is referred to as a "protected area."

This principle is fundamental. We can accomplish our enforcement mission without denying or limiting individuals' access to needed medical care, children access to their schools, the displaced access to food and shelter, people of faith access to their places of worship, and more. Adherence to this principle is one bedrock of our stature as public servants.

## **II. Protected Areas**

Whether an area is a "protected area" requires us to understand the activities that take place there, the importance of those activities to the well-being of people and the communities of which they are a part, and the impact an enforcement action would have on people's willingness to be in the protected area and receive or engage in the essential services or activities that occur there. It is a determination that requires the exercise of judgment.

The following are some examples of a protected area. The list is not complete. It includes only examples:

- A school, such as a pre-school, primary or secondary school, vocational or trade school, or college or university.
- A medical or mental healthcare facility, such as a hospital, doctor's office, health clinic, vaccination or testing site, urgent care center, site that serves pregnant individuals, or community health center.
- A place of worship or religious study, whether in a structure dedicated to activities of faith (such as a church or religious school) or a temporary facility or location where such activities are taking place.



- A place where children gather, such as a playground, recreation center, childcare center, before- or after-school care center, foster care facility, group home for children, or school bus stop.
- A social services establishment, such as a crisis center, domestic violence shelter, victims services center, child advocacy center, supervised visitation center, family justice center, community-based organization, facility that serves disabled persons, homeless shelter, drug or alcohol counseling and treatment facility, or food bank or pantry or other establishment distributing food or other essentials of life to people in need.
- A place where disaster or emergency response and relief is being provided, such as along evacuation routes, where shelter or emergency supplies, food, or water are being distributed, or registration for disaster-related assistance or family reunification is underway.
- A place where a funeral, graveside ceremony, rosary, wedding, or other religious or civil ceremonies or observances occur.
- A place where there is an ongoing parade, demonstration, or rally.

We need to consider the fact that an enforcement action taken near – and not necessarily in – the protected area can have the same restraining impact on an individual’s access to the protected area itself. If indeed that would be the case, then, to the fullest extent possible, we should not take the enforcement action near the protected area. There is no bright-line definition of what constitutes “near.” A variety of factors can be informative, such as proximity to the protected area, visibility from the protected area, and people’s behavioral patterns in and around the protected area. The determination requires an analysis of the facts and the exercise of judgment.

The fundamental question is whether our enforcement action would restrain people from accessing the protected area to receive essential services or engage in essential activities. Our obligation to refrain, to the fullest extent possible, from conducting a law enforcement action in or near a protected area thus applies at all times and is not limited by hours or days of operation.

Whether an enforcement action can be taken in or near a courthouse is addressed separately in the April 27, 2021 Memorandum from Tae Johnson, ICE Acting Director, and Troy Miller, CBP Acting Commissioner, entitled “Civil Immigration Enforcement Actions in or Near Courthouses,” which remains in effect.

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- The enforcement action involves the hot pursuit of an individual who poses a public safety threat.
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- There is an imminent risk that evidence material to a criminal case will be destroyed.
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This list is not complete. It includes only examples. Here again, the exercise of judgment is required.

Absent exigent circumstances, an Agent or Officer must seek prior approval from their Agency's headquarters, or as you otherwise delegate, before taking an enforcement action in or near a protected area. If the enforcement action is taken due to exigent circumstances and prior approval was therefore not obtained, Agency headquarters (or your delegate) should be consulted post-action. To the fullest extent possible, any enforcement action in or near a protected area should be taken in a non-public area, outside of public view, and be otherwise conducted to eliminate or at least minimize the chance that the enforcement action will restrain people from accessing the protected area.

Enforcement actions that are within the scope of this guidance include, but are not limited to, such actions as arrests, civil apprehensions, searches, inspections, seizures, service of charging documents or subpoenas, interviews, and immigration enforcement surveillance. This guidance does not apply to matters in which enforcement activity is not contemplated. As just one example, it does not apply to an Agent's or Officer's participation in an official function or community meeting.

This guidance does not limit an agency's or employee's statutory authority, and we do not tolerate violations of law in or near a protected area.

#### **IV. Training and Reporting**

Please ensure that all employees for whom this guidance is relevant receive the needed training. Each of your respective agencies and offices should participate in the preparation of the training materials.

Any enforcement action taken in or near a protected area must be fully documented in your Agency's Privacy Act-compliant electronic system of record in a manner that can be searched and validated. The documentation should include, for example, identification of the protected area; the reason(s) why the enforcement action was taken there; whether or not prior approval was obtained and, if not, why not; the notification to headquarters (or headquarters' delegate) that occurred after an action was taken without prior approval; a situational report of what

occurred during and immediately after the enforcement action; and, any additional information that would assist in evaluating the effectiveness of this guidance in achieving our law enforcement and humanitarian objectives.

**V. Statement of No Private Right Conferred**

This guidance is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.

From:  
Sent:  
To:

**(b)(6), (b)(7)(C)**

CC:

Subject: FW: Issuance of ERO Immigration Subpoenas  
Attachments: 2007\_07\_13\_Account\_of\_Immigration\_Subpoenas\_dro.pdf  
Flag: Flag for follow up

*This message is sent on behalf of Acting Deputy Field Office Director (b)(6), (b)(7)(C)*

**To: All San Antonio Field Office Law Enforcement Officers and Supervisors**

**Subject: San Antonio Field Office Issuance of ERO Immigration Subpoenas**

On July 13, 2007, Immigration and Customs Enforcement issued a memorandum for the Accountability of Immigration Subpoenas (attached). Effective immediately the San Antonio Field office will account for all subpoenas issued within the Field Office Area of Operational Responsibility (AOR). A log will be maintained by AFOD (b)(6), (b)(7)(C) for the entire AOR and a copy of the subpoena will be saved and filed within the office that has issued the subpoena. The log will contain the following:

1. The title or type of proceedings for which the subpoena is issued;
2. The entity to whom the subpoena is served;
3. The issuing officer;
4. The reason for the subpoena was issued;
5. The date of service of the subpoena;
6. The means of service of the subpoena and
7. A tracking number for each subpoena.

Prior to submitting a subpoena for approval, the reviewing AFOD over the officer requesting the subpoena must contact AFOD (b)(6), (b)(7)(C) for a tracking number. Once the tracking is received all subpoenas will be forwarded to the FOD for signature through the chain of command. Subpoenas that are sensitive in nature, or subpoenas requesting information that pertains to a large group of individuals must be vetted through ICE ERO Headquarters. Examples of sensitive subpoenas include: subpoenas concerning a public official, a political

candidate, the activities of a foreign government, the activities of a high foreign government official, the activities of a religious or political organization or the activities of the news media.

Thank you,

(b)(6),(b)(7)(C)

Assistant Field Office Director  
San Antonio Field Office

DHS | ICE | Enforcement and Removal Operations | 210-283 (b)(6),(b)(7)(C) 210-389 (b)(6),(b)(7)(C) | 1777 NE  
Loop 410, Suite (b)(6),(b)(7)(C) | San Antonio, TX | 78217



From:  
Sent:  
To:

**(b)(6), (b)(7)(C)**

Subject: FW: Issuance of ERO Immigration Subpoenas  
Attachments: 2007\_07\_13\_Account\_of\_Immigration\_Subpoenas\_dro.pdf

**(b)(6), (b)(7)(C)**

*Assistant Field Office Director  
South Texas Detention Complex  
566 Veteran's Drive  
Pearsall, Texas 78061  
Office 210-23  
Cell 210-336*

**(b)(6), (b)(7)(C)**

From **(b)(6), (b)(7)(C)**

Sent: Monday, June 26, 2017 2:13 PM

To: **(b)(6), (b)(7)(C)**

**(b)(6), (b)(7)(C)**

Cc: **(b)(6), (b)(7)(C)**

Subject: FW: Issuance of ERO Immigration Subpoenas

*This message is sent on behalf of Acting Deputy Field Office Director **(b)(6), (b)(7)(C)***

**To: All San Antonio Field Office Law Enforcement Officers and Supervisors**

**Subject: San Antonio Field Office Issuance of ERO Immigration Subpoenas**

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Prior to submitting a subpoena for approval, the reviewing AFOD over the officer requesting the subpoena must contact AFOD (b)(6),(b)(7)(C) for a tracking number. Once the tracking is received all subpoenas will be forwarded to the FOD for signature through the chain of command. Subpoenas that are sensitive in nature, or subpoenas requesting information that pertains to a large group of individuals must be vetted through ICE ERO Headquarters. Examples of sensitive subpoenas include: subpoenas concerning a public official, a political candidate, the activities of a foreign government, the activities of a high foreign government official, the activities of a religious or political organization or the activities of the news media.

Thank you,

(b)(6),(b)(7)(C)

Assistant Field Office Director  
San Antonio Field Office

DHS ICE Enforcement and Removal Operations 210-283 (b)(6),(b)(7)(C) 210-339 (b)(6),(b)(7)(C) 1777 NE  
Loop 410, Suite (b)(6),(b)(7)(C) | San Antonio, TX | 78217

Office address: \_\_\_\_\_  
\_\_\_\_\_

File No. \_\_\_\_\_

Date: \_\_\_\_\_

In re: \_\_\_\_\_  
\_\_\_\_\_

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

You are hereby commanded to appear before \_\_\_\_\_  
at \_\_\_\_\_ on \_\_\_\_\_  
at \_\_\_\_\_ a.m./p.m., to give testimony in connection with \_\_\_\_\_  
proceeding being conducted under authority of the Immigration and Nationality Act, relating to \_\_\_\_\_  
concerning:

You are further commanded to bring with you the following books, papers, and documents, viz:

[seal]

\_\_\_\_\_  
(Signature of a authorized INS official)

\_\_\_\_\_  
(Printed name of official)

\_\_\_\_\_  
(Title)

**Certificate of Service**

I certify that on \_\_\_\_\_, I served the above subpoena on the witness named above in the following manner: \_\_\_\_\_

\_\_\_\_\_  
(Signature of officer serving warrant)

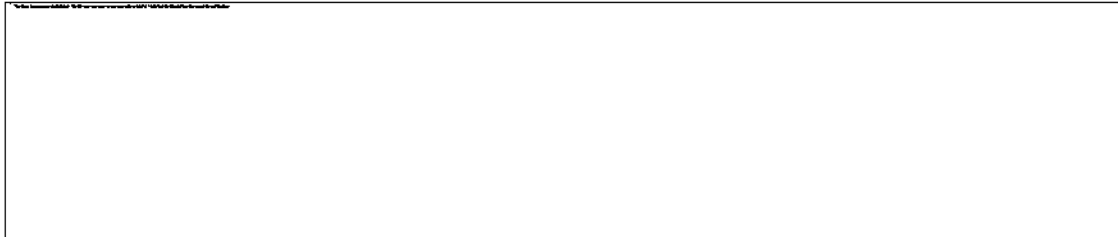
\_\_\_\_\_  
(Print name of official)

\_\_\_\_\_  
(Title of officer serving warrant)



---

**From:** ICE Office of the Director [REDACTED]@info.ice.dhs.gov  
**Sent:** 6/13/2022 4:25:59 PM  
**To:** [REDACTED]  
**Subject:** Issuance of ICE Directive 10093.1, Use of Compulsory Investigative Tools to Obtain Information or Records Related to the Journalistic Activities of Members of the News Media



**To All ICE Employees**  
**June 13, 2022**

**Issuance of ICE Directive 10093.1, Use of Compulsory Investigative Tools to Obtain Information or Records Related to the Journalistic Activities of Members of the News Media**

---

On June 13, 2022, I signed U.S. Immigration and Customs Enforcement (ICE) Directive 10093.1, Use of Compulsory Investigative Tools to Obtain Information or Records Related to the Journalistic Activities of Members of the News Media, which establishes agency policy regarding the application of compulsory investigative tools with respect to members of the news media.

ICE Directive 10093.1 mandates that, absent limited exceptions, the ICE Deputy Director must approve in advance the use of a compulsory investigative tool that seeks to obtain or is reasonably likely to result in the disclosure or encountering of information or records related to the journalistic activities of members of the news media. It applies to the use of any compulsory investigative tool, including administrative and judicial subpoenas, and court orders. It also applies to applications for warrants under Federal Rule of Criminal Procedure 41 to search premises or property where such a search is reasonably expected to encounter information or records regarding the journalistic activities of a member of the news media.

Pursuant to the policy, the ICE Deputy Director may only approve the use of an investigative tool to obtain information or records related to the journalistic activities of members of the news media where certain prerequisites are satisfied and where the tool is drawn as narrowly as is reasonably possible to minimize the risk that any nonessential information or records, or information about confidential sources, will



be disclosed. The use of a compulsory investigative tool should only be approved where there is reason to believe that a crime has been committed and the information or records related to the journalistic activities of the member of the news media are essential to the investigation and following attempts by ICE to first obtain the essential information from alternative, non-media sources.

Finally, ICE Directive 10093.1 requires that officers and agents receive annual training regarding the policy's requirements. This training will be forthcoming, and additional guidance will be provided when it is available.

Questions regarding this Directive should be directed to the Office of Regulatory Affairs and Policy through the chain of command and Directorate or Program Office leadership. Please note, however, that case-specific questions should be addressed by Directorate or Program Office leadership.

Please stay safe and be well.

Tae D. Johnson  
Acting Director  
U.S. Immigration and Customs Enforcement

Attachment:

- [ICE Directive 10093.1](#)



This email was sent to [jacqueline.duran@ice.dhs.gov](mailto:jacqueline.duran@ice.dhs.gov) by: U.S. Immigration and Customs Enforcement (ICE) - U.S. Department of Homeland Security - Washington, DC 20526 - 202-732-4242

June 26, 2017 email sent from SNA front office

***This message is sent on behalf of Acting Deputy Field Office Director*** (b)(6),(b)(7)(C)

(b)(6),(b)(7)(C)

**To: All San Antonio Field Office Law Enforcement Officers and Supervisors**

**Subject: San Antonio Field Office Issuance of ERO Immigration Subpoenas**

On July 13, 2007, Immigration and Customs Enforcement issued a memorandum for the Accountability of Immigration Subpoenas (attached). Effective immediately the San Antonio Field office will account for all subpoenas issued within the Field Office Area of Operational Responsibility (AOR). A log will be maintained by AFOD (b)(6),(b)(7)(C) for the entire AOR and a copy of the subpoena will be saved and filed within the office that has issued the subpoena. The log will contain the following:

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2. The entity to whom the subpoena is served;
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Prior to submitting a subpoena for approval, the reviewing AFOD over the officer requesting the subpoena must contact AFOD (b)(6),(b)(7)(C) for a tracking number. Once the tracking is received all subpoenas will be forwarded to the FOD for signature through the chain of command. Subpoenas that are sensitive in nature, or subpoenas requesting information that pertains to a large group of individuals must be vetted through ICE ERO Headquarters. Examples of sensitive subpoenas include: subpoenas concerning a public official, a political candidate, the activities of a foreign government, the activities of a high foreign government official, the activities of a religious or political organization or the activities of the news media.

Thank you,

(b)(6),(b)(7)(C)

Assistant Field Office Director  
San Antonio Field Office

U.S. Department of Homeland Security  
8940 Fourwinds Drive  
San Antonio, TX 78239



U.S. Immigration  
and Customs  
Enforcement

JUL 26 2007

MEMORANDUM FOR: All Supervisors  
San Antonio Field Office

THROUGH: AFODs and OTCs

FROM: ~~Marc J. Moore~~  
Field Office Director

SUBJECT: Subpoena Policy

Please review the attached memorandum issued by Director Torres and myself regarding Immigration Subpoenas. Director Torres' Memorandum of July 13, 2007 requires several clarifications to my original guidance and policy in this area and detailed as follows.

This guidance is hereby expanded to include not only subpoenas but search warrants, arrest warrants not associated with a specific immigration proceeding or administrative or criminal processes not associated with or a standard part of an immigration case. The Field Office will develop and primarily maintain a log capable of recording the seven areas delineated in the July 13, 2007 memorandum and additionally the type of process (Subpoena, search warrant, etc.), date requested, and the office the requesting officer is from, the date signed and by whom. (b)(6),(b)(7)(C) will maintain the log and will also create a binder divided into a category for each type of document that will store a copy of each subpoena, search warrant, etc. that is submitted and each category will be further divided into two groups. The first will be copies of those submitted that are denied by the signatory authority and the second those that are approved by the signatory authority. Each copy will be marked with the tracking number assigned as detailed in the July 13, 2007 memorandum and the filing order designed to allow location of a particular document.

All of the Field Office's front office staff will have access to both the log and the binder(s) and should be familiarized with the locations and processes for each.

Mr. Torres' Memorandum also speaks to delegated authorities which are detailed in the attachment. He has made an allowance for delegation to the Deputy and Assistant Field Office Directors. While his document provides me the latitude to delegate to the Assistant Field Office Directors, my policy of June 11, 2007 in this regard stands. None of these will be approved absent my personal and original signature; this is not delegated in any fashion as of this date and will only occur after being fully briefed by the Assistant Field Office Director and/or the Deputy.

From:

(b)(6),(b)(7)(C)

Sent:

6/19/2018 6:28:44 PM

To:

(b)(6),(b)(7)(C)

Subject:

Subpoena Protocol Clarification Concerning ERO Prosecutions

Attachments:

Travel Worksheet.xls

**This message is sent on behalf of Deputy Field Office Director Denice Seemiller:**

The subpoena protocol process does not apply to cases where ERO has presented the case for prosecution by the United States Attorney's Office (USAO) and the Assistant United States Attorney (AUSA) is calling the case officer or other ERO personnel to testify. In this specific situation, a subpoena is not required to secure the officer's testimony. Accordingly, there is no need for Office of Principal Legal Advisor - San Antonio (OPLA-SNA) to prepare a Touhy letter for the officer to testify.

If there are any questions regarding the subpoena protocol, please contact the appropriate duty attorney:

- San Antonio: (b)(7)(E)@ice.dhs.gov
- Harlingen: (b)(7)(E)@ice.dhs.gov
- South Texas Detention Complex (STDC): (b)(7)(E)@ice.dhs.gov
- Port Isabel Detention Center (PIDC): (b)(7)(E)@ice.dhs.gov

Warning: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. No portion of this report should be furnished to the media, either in written or verbal form.

From: (b)(7)(E)

Sent: Tuesday, June 5, 2018 12:28 PM

To: (b)(7)(E)@ice.dhs.gov (b)(7)(E)@ice.dhs.gov>

Subject: Subpoena Protocol

**This message is sent on behalf of Deputy Field Office Director Denice Seemiller:**

*\*AFODs: Please forward to your employees*

**To: SNA ERO Employees**

**Subject: Subpoena Protocol**

Enforcement Removal Operations (ERO) officers cannot testify or produce documents pursuant to a subpoena unless they receive written approval from the Office of Chief Counsel (OCC), San Antonio. Department of Homeland Security (DHS) regulations bar all DHS components and its employees from providing documents, oral testimony or written testimony relating to information acquired while such persons were employed by DHS unless authorized to do so by the Department's Office of General Counsel or its designees, such as the OCC (6 C.F.R. § 5.44). Additionally, DHS regulations require the party seeking testimony or documents to first set forth in writing, with as much specificity as possible, the nature and relevance of the information sought [6 C.F.R. § 5.45(a)].

*When an ERO officer is subpoenaed by the federal government*, the officer should immediately notify his/her supervisor and the appropriate OCC Duty Attorney of the subpoena to testify. Additionally, if the officer's testimony is in connection with a matter or coordinated operation that involves Homeland Security Investigations (HSI), the officer shall also inform the HSI Agent overseeing the officer's participation or involvement.

The ERO supervisor will then contact the respective Assistant United States Attorney (AUSA) to confirm the date(s) that the officer is needed. Once the supervisor confirms the date(s), he/she should notify the respective chain of command.

If the subpoena is requesting employee testimony, OCC will contact the officer and the AUSA to better understand the nature of the expected testimony and provide a "Touhy" letter, which will authorize the employee to testify and outline the scope of the authorized testimony. If the subpoena is for documents, OCC will review the documents to be released to determine if any information needs to be redacted.

*If an ERO officer is subpoenaed by a state or local attorney*, the officer *must* get written authorization from the local OCC by contacting the Duty Attorney prior to testifying. If the officer works in San Antonio the contact number is (210) 564-(b)(7)(E) and the Duty Attorney email address is (b)(7)(E)@ice.dhs.gov; in Harlingen, (956) 389-(b)(7)(E) and (b)(7)(E)@ice.dhs.gov. If the officer works at the South Texas Detention Complex (STDC) or at the Port Isabel Detention Center (PIDC), please email the respective Duty Attorney: STDC at (b)(7)(E)@ice.dhs.gov and PIDC at (b)(7)(E)@ice.dhs.gov. Once OCC reviews the subpoena with the officer, they will likely reach out to the attorney who had the subpoena issued to determine the relevance and nature of the information sought. Once this information is received, OCC will then determine whether to comply with the subpoena. If the determination is to comply, OCC will review the documents to be released to determine if any information needs to be redacted, or if the subpoena is requesting employee testimony, OCC will provide a "Touhy" letter authorizing the employee to testify and outlining the scope of the authorized testimony. When traveling is required to comply with a subpoena, the officer will submit the attached travel worksheet to the appropriate travel arranger. The San Antonio Travel Unit will assist the employee with his/her travel affairs if necessary. If OCC determines that the agency will not comply, the OCC will send notification in writing to the requestor.

If you are subpoenaed, contact your local OCC office **IMMEDIATELY - do not wait until it is time to testify**. The review and authorization process takes time. Furthermore, if you are not authorized to testify and the attorney issuing the subpoena contests this determination, ERO and OCC may have to involve the appropriate United States Attorney's Office who may be required to appear in the state court proceedings and file a motion to quash or take other measures. Therefore, it is very important that subpoenas for documents submission, testimony, or both be brought to OCC's attention immediately.



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**From:** EROSNAFrontOffice [/O=IRMMAIL/OU=MBX SERVERS - DAL/CN=RECIPIENTS/CN=SNADROFO]  
**Sent:** 2/10/2014 3:24:11 PM  
**To:** ^ICE-ERO-SanAntonio-DG [/O=IRMMAIL/OU=MBX Servers - DAL/cn=Recipients/cn=user95671548]  
**Subject:** Subpoena Protocol  
**Attachments:** Travel Worksheet-2012 updated.xls

**Importance:** High

**This message is sent on behalf of Deputy Field Office Director Jace Calderas:**

**To: SNA ERO Employees**

**Subject: Subpoena Protocol**

Enforcement Removal Operations (ERO) officers cannot testify or produce documents pursuant to a subpoena unless you receive Office of Chief Counsel (OCC) approval. Department of Homeland Security (DHS) regulations bar all DHS components and its employees from providing documents, oral testimony or written testimony relating to information acquired while such persons were employed by DHS unless authorized to do so by the Department's Office of General Counsel or its designees, such as the Office of Chief Counsel (6 C.F.R. § 5.44). Additionally, DHS regulations also require the party seeking testimony or documents to first set forth in writing, with as much specificity as possible, the nature and relevance of the information sought [6 C.F.R. § 5.45(a)].

*When an ERO officer is subpoenaed by the federal government*, OCC approval is implicit as the subpoena will have originated from an Assistant United States Attorney (AUSA). Once subpoenaed, the officer should notify his/her supervisor of the subpoena to testify. The supervisor will then contact the respective AUSA to confirm the date(s) that the officer is needed. If the supervisor is unsure, he/she can reach out to the local San Antonio OCC or AUSA POC for guidance. Once the supervisor confirms the date(s), he/she should notify their respective chain of command and the San Antonio travel unit. The travel unit will assist the employee with their travel affairs if necessary.

*If you are subpoenaed by a state or local attorney*, you must get authorization from our local OCC by contacting the duty attorney. If you work in San Antonio that number is (210) 967- (b)(7)(E) in Harlingen, (956) 389- (b)(7)(E). Once OCC reviews the subpoena with you, they will likely reach out to the attorney who had the subpoena issued to determine the relevance and nature of the information sought. Once this information is received, OCC will then determine whether or not to comply with the subpoena. If the determination is to comply, OCC will review the documents to be released to determine if any information needs to be redacted or, if the subpoena is requesting employee testimony, provide a "Touhy" letter authorizing the employee to testify and outlining the scope of the authorized testimony. If OCC determines that the agency will not comply, they will send notification in writing to the requestor. In order to testify, you *must have* written authorization from the Office of Chief Counsel.

If you are subpoenaed, contact your local OCC office **IMMEDIATELY - do not wait until it is time to testify**. The review and authorization process takes time. Furthermore, if you are not authorized to testify and the attorney issuing the subpoena contests this determination, our office may have to involve the appropriate United States Attorney's Office who may be required to appear in the State court proceedings and file a motion to quash or take other measures. Therefore, it is very important that subpoenas or requests for documents or testimony be brought to OCC's attention immediately.

In addition, when traveling is required to comply with a subpoena, a travel worksheet should be filled out, routed through your respective chain of command, and sent to the San Antonio Travel Department for travel arrangements. Attached you will find the latest travel worksheet.

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U.S. Department of Homeland Security  
8940 Fourwinds Drive  
San Antonio, TX 78259



U.S. Immigration  
and Customs  
Enforcement

JUL 26 2007

MEMORANDUM FOR: All Supervisors  
San Antonio Field Office

THROUGH: AFODs and OICs

FROM: ~~Marc J. Moore~~  
Field Office Director

SUBJECT: Subpoena Policy

Please review the attached memorandum issued by Director Torres and myself regarding Immigration Subpoenas. Director Torres' Memorandum of July 13, 2007 requires several clarifications to my original guidance and policy in this area and detailed as follows.

This guidance is hereby expanded to include not only subpoenas but search warrants, arrest warrants not associated with a specific immigration proceeding or administrative or criminal processes not associated with or a standard part of an immigration case. The Field Office will develop and primarily maintain a log capable of recording the seven areas delineated in the July 13, 2007 memorandum and additionally the type of process (Subpoena, search warrant, etc.), date requested, and the office the requesting officer is from, the date signed and by whom. (b)(6), (b)(7)(C) will maintain the log and will also create a binder divided into a category for each type of document that will store a copy of each subpoena, search warrant, etc. that is submitted and each category will be further divided into two groups. The first will be copies of those submitted that are denied by the signatory authority and the second those that are approved by the signatory authority. Each copy will be marked with the tracking number assigned as detailed in the July 13, 2007 memorandum and the filing order designed to allow location of a particular document.

All of the Field Office's front office staff will have access to both the log and the binder(s) and should be familiarized with the locations and processes for each.

Mr. Torres' Memorandum also speaks to delegated authorities which are detailed in the attachment. He has made an allowance for delegation to the Deputy and Assistant Field Office Directors. While his document provides me the latitude to delegate to the Assistant Field Office Directors, my policy of June 11, 2007 in this regard stands. None of these will be approved absent my personal and original signature; this is not delegated in any fashion as of this date and will only occur after being fully briefed by the Assistant Field Office Director and/or the Deputy.

www.ice.gov

Memorandum to: All Officers  
Re: Subpoena Policy Memo  
July 26, 2007



**ACKNOWLEDGEMENT OF RECEIPT OF MEMORANDUMS**

By signing this statement, you acknowledge that you have received, read and understood the memorandums “, and acknowledge personal responsibility for complying with Department and Agency policy and guidelines set forth.

\_\_\_\_\_  
Employee's Name (Printed)

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

**FAO/**  
\_\_\_\_\_  
Duty Station/Branch or Unit

**DATE, SIGN AND RETURN TO**

**(b)(6),(b)(7)(C)**

**AFODM**

By Close of Business 8/10/07





U.S. Immigration and Customs Enforcement

Office of Origin:

Case No. \_\_\_\_\_

SUBPOENA

In re: \_\_\_\_\_
To: Verizon
Subpoena Compliance Center
Verizon East, 1095 Avenue of Americas, NY, NY 10036
Office: 888-483-2600, Fax: 212-921-4636

Date January 26, 2007

ATTN: Custodian of Records
Or any REPRESENTATIVE

You are hereby commanded to appear before (Case Officer Name), a duly appointed officer of the United States Department of Homeland Security, U.S. Immigration and Customs Enforcement, at 601 West 26th Street, Ste. 700, New York, NY 10001, forthwith, to give testimony and to bring with you and produce for examination the following books, records, and papers:

Verizon New York Accounts
Phone numbers 718-(b)(6),(b)(7)(C) & 718-(b)(6),(b)(7)(C)

Any and all Subscriber, billing, Call Detail, LUDS and TOLLS information from July 1, 2006 thru January 22, 2007, for the above referenced Verizon New York accounts.

In connection with an official investigation being conducted under the authority of the United States Department of Homeland Security, relating to possible violations of Title 8, 18 and 21 of the United States Code.

This subpoena may be satisfied by appearing in person {no appearance necessary if records are mailed, faxed or emailed to (Case Officer Name), telephone desk- or cell- at: (Your office mailing address), attn: (Case Officer) - fax, email }

YOU ARE HEREBY COMMANDED NOT TO DIVULGE THE EXISTENCE OF THIS SUBPOENA AT ANY TIME, AS ANY DISCLOSURE COULD IMPEDE A CRIMINAL INVESTIGATION, UNLESS ORDERED TO DO SO BY COMPETANT JUDICIAL OR ADMINISTRATIVE AUTHORITY OF THE UNITED STATES OF AMERICA.

(Name)

(Title)

RETURN ON SERVICE ON SUBPOENA

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2007, I served the above subpoena on the witness named above by \_\_\_\_\_

(Name)

(Title)

Form I-138 (Rev. 11-5-70) Y



# U.S. Immigration and Customs Enforcement

Office of Origin: \_\_\_\_\_

Case No. \_\_\_\_\_

## SUBPOENA

In re: \_\_\_\_\_  
To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date \_\_\_\_\_

ATTN: Custodian of Records  
Or any REPRESENTATIVE

You are hereby commanded to appear before **(Case Officer Name)**, a duly appointed officer of the United States Department of Homeland Security, U.S. Immigration and Customs Enforcement, at **(Office address)**, forthwith, to give testimony and to bring with you and produce for examination the following books, records, and papers:

### Documents or information subject to the subpoena

In connection with an official investigation being conducted under the authority of the United States Department of Homeland Security, relating to possible violations of Title 8, 18 and 21 of the United States Code.

This subpoena may be satisfied by appearing in person {no appearance necessary if records are mailed, faxed or emailed to **(Case Officer Name)**, telephone desk- or cell- at: **(Your office mailing address)**, attn: **(Case Officer)** - fax, email }

**YOU ARE HEREBY COMMANDED NOT TO DIVULGE THE EXISTENCE OF THIS SUBPOENA AT ANY TIME, AS ANY DISCLOSURE COULD IMPEDE A CRIMINAL INVESTIGATION, UNLESS ORDERED TO DO SO BY COMPETANT JUDICIAL OR ADMINISTRATIVE AUTHORITY OF THE UNITED STATES OF AMERICA.**

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

### RETURN ON SERVICE ON SUBPOENA

I hereby certify that on the \_\_\_\_\_ day of \_\_\_\_\_, 2008, I served the above subpoena on the witness named above by \_\_\_\_\_

\_\_\_\_\_  
(Name)

\_\_\_\_\_  
(Title)

Form I-138  
(Rev. 11-5-70) Y



U.S. Immigration  
and Customs  
Enforcement

JUN 11 2007

MEMORANDUM FOR: All Personnel  
San Antonio Field Office

FROM: ~~Marc J. Moore~~  
Field Office Director

SUBJECT: Use of Search Warrants, Subpoenas and other Administrative  
Actions

The robust expansion of the San Antonio Field Office has brought with it an expansion of law enforcement activities. These activities have been expanded even further with the addition of 6 Criminal Alien Program Teams and a total of 3 Fugitive Operations Units. All of these expansions have produced changes in the way we do business within the San Antonio Field Office. For instance, there has been a dramatic increase in the number of apprehensions relating to Criminal Aliens and Fugitives. These enforcement functions at times may require applying for criminal search and or Blackie's warrants, or applying for or serving administrative subpoenas or other processes which may include aggressive negotiations with the U.S. Attorney's office, other ICE components, other Field Offices and officers such as county and state attorneys, police departments, sheriff's departments or the Texas Department of Public Safety.

In all cases, these require a measured consideration of not only the desired outcome of the enforcement operation but a full and detached assessment of the overall impact to ICE both within this Field Office and nationally. Our enforcement actions are important to the nation and the effective and fair enforcement of our nation's immigration laws. While I fully encourage the use of these as tools to fully discharge our law enforcement obligations, our activities and use of these tools must always take into full account all of the possibilities and consequences, both intended and un-intended before we utilize them. The only effective means, at present, for that to occur is for my office to be fully informed and personally engaged in the cases that seek to employ these tools.

To that end, all of these enforcement functions and processes will require a detailed brief to the respective AFOD overseeing that unit or office prior to any action or activity to obtain these. That AFOD will personally brief the Deputy and myself and receive my positive concurrence before proceeding. In all cases and in keeping with my prior policy on the use of my signature stamp these processes require my personal and original signature and that signatory authority is not delegated in any fashion.



**U.S. Immigration  
and Customs  
Enforcement**

**JUL 13 2007**

**MEMORANDUM FOR:** Field Office Directors  
ICE Academy  
Detention and Removal Operations

**FROM:** John P. Torres   
Director  
Office of Detention and Removal Operations

**SUBJECT:** Accountability of Immigration Subpoenas

On behalf of ICE, the Office of Investigations is currently updating the legacy immigration subpoena directive and form. Until they are reissued, Detention and Removal Field Offices must continue using the legacy Immigration and Naturalization subpoena form (I-138). (See attached form)

Field Office Directors (FODs) are required to account for all subpoenas issued within their Area of Operational Responsibility (AOR) by maintaining both a log and copy of the subpoena issued. The log must contain, at minimum, the following information:

- 1) the title of proceedings, if any, for which the subpoena is issued;
- 2) the entity to whom the subpoena is served;
- 3) the issuing officer;
- 4) whether the subpoena was issued to compel the appearance of a witness to provide testimony, the production of books, papers or documents, or both appearance and production;
- 5) the date of service of the subpoena;
- 6) the means of service of the subpoena; and
- 7) a tracking number for each subpoena (tracked by fiscal year).

FODs must also ensure that all subpoenas are appropriately utilized and signed by the approved issuing authority. (See attached delegation order.)

Subpoenas that are sensitive in nature, or subpoenas requesting information that pertains to a large group of individuals, must be vetted through Headquarters Detention and Removal Operations (HQDRO) management. Examples of sensitive subpoenas include: a subpoena

**Memorandum for Field Office Directors**  
**Accountability of Immigration Subpoenas**  
**Page 2 of 2**

concerning a public official, a political candidate, the activities of a foreign government, the activities of a high foreign government official, the activities of a religious or political organization, or the activities of the news media.

If you have any questions or require additional information, please contact (b) (6), (b) (7) (C)  
Deputy Assistant Director, Compliance Enforcement Division, at 202- (b) (6), (b) (7) (C)



U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement

Office of Detention and Removal Operations  
Delegation Order

ORDER NUMBER:  
DRO DO 07-001

ISSUE DATE:  
MAR 13 2007

EFFECTIVE DATE:  
MAR 13 2007

SUBJECT:  
Authority to Issue Immigration Subpoenas Within the Office of Detention and Removal Operations .

DELEGATED BY:  
Director, Office of the Office of Detention and Removal Operations

DELEGATED TO:  
See below.

SOURCE OF AUTHORITY BEING DELEGATED:  
ICE Delegation Order 73003.1," dated February 6, 2007

SUPERSEDED ORDER(S):  
None.

DELEGATION:

By virtue of the authority granted to me by the Assistant Secretary in ICE Delegation Order 73003.1, dated February 6, 2007, I hereby delegate to Office of Detention and Removal Operations Assistant Directors, Deputy Assistant Directors, Field Office Directors, Deputy Field Office Directors, and Assistant Field Office Directors the authority to:

1. Issue immigration subpoenas requiring the person or entity to which they are addressed to attend and give testimony;
2. Require such persons or entities to produce records (books, papers, or other documents) for use in criminal or civil investigations;
3. Effect service of immigration subpoenas upon the persons or entities named therein;
4. Take testimony from such persons or entities under oath and examine, or cause to be examined, records produced by such persons or entities; and,
5. In the event that the person or entity named in a subpoena neglects or refuses to comply with the requirement to attend and give testimony or to produce records, request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court and to request such court to issue an order requiring the witness to appear and testify and to produce the records designated in the subpoena.

This authority may not be redelegated.

  
John P. Torres  
Director, Office of Detention and Removal Operations

USE ADDITIONAL PLAIN BOND IF NECESSARY.



**U.S. Immigration  
and Customs  
Enforcement**

**JUL 13 2007**

**MEMORANDUM FOR:** Field Office Directors  
ICE Academy  
Detention and Removal Operations

**FROM:** John P. Torres   
Director  
Office of Detention and Removal Operations

**SUBJECT:** Accountability of Immigration Subpoenas

On behalf of ICE, the Office of Investigations is currently updating the legacy immigration subpoena directive and form. Until they are reissued, Detention and Removal Field Offices must continue using the legacy Immigration and Naturalization subpoena form (I-138). (See attached form)

Field Office Directors (FODs) are required to account for all subpoenas issued within their Area of Operational Responsibility (AOR) by maintaining both a log and copy of the subpoena issued. The log must contain, at minimum, the following information:

- 1) the title of proceedings, if any, for which the subpoena is issued;
- 2) the entity to whom the subpoena is served;
- 3) the issuing officer;
- 4) whether the subpoena was issued to compel the appearance of a witness to provide testimony, the production of books, papers or documents, or both appearance and production;
- 5) the date of service of the subpoena;
- 6) the means of service of the subpoena; and
- 7) a tracking number for each subpoena (tracked by fiscal year).

FODs must also ensure that all subpoenas are appropriately utilized and signed by the approved issuing authority. (See attached delegation order.)

Subpoenas that are sensitive in nature, or subpoenas requesting information that pertains to a large group of individuals, must be vetted through Headquarters Detention and Removal Operations (HQDRO) management. Examples of sensitive subpoenas include: a subpoena

**Memorandum for Field Office Directors**  
**Accountability of Immigration Subpoenas**  
**Page 2 of 2**

**concerning a public official, a political candidate, the activities of a foreign government, the activities of a high foreign government official, the activities of a religious or political organization, or the activities of the news media.**

**If you have any questions or require additional information, please contact [ (b)(6),(b)(7)(C) ]  
Deputy Assistant Director, Compliance Enforcement Division, at 202-[ (b)(6),(b)(7)(C) ]**

U.S. Department of Homeland Security  
U.S. Immigration and Customs Enforcement

Office of Detention and Removal Operations  
Delegation Order

ORDER NUMBER:  
DRO DO 07-001

ISSUE DATE: MAR 13 2007

EFFECTIVE DATE: MAR 13 2007

SUBJECT:

Authority to Issue Immigration Subpoenas Within the Office of Detention and Removal Operations.

DELEGATED BY:

Director, Office of the Office of Detention and Removal Operations

DELEGATED TO:

See below.

SOURCE OF AUTHORITY BEING DELEGATED:

ICE Delegation Order 73003.1," dated February 6, 2007

SUPERSEDED ORDER(S):

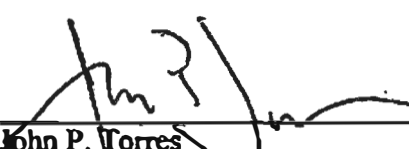
None.

DELEGATION:

By virtue of the authority granted to me by the Assistant Secretary in ICE Delegation Order 73003.1, dated February 6, 2007, I hereby delegate to Office of Detention and Removal Operations Assistant Directors, Deputy Assistant Directors, Field Office Directors, Deputy Field Office Directors, and Assistant Field Office Directors the authority to:

1. Issue immigration subpoenas requiring the person or entity to which they are addressed to attend and give testimony;
2. Require such persons or entities to produce records (books, papers, or other documents) for use in criminal or civil investigations;
3. Effect service of immigration subpoenas upon the persons or entities named therein;
4. Take testimony from such persons or entities under oath and examine, or cause to be examined, records produced by such persons or entities; and,
5. In the event that the person or entity named in a subpoena neglects or refuses to comply with the requirement to attend and give testimony or to produce records, request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court and to request such court to issue an order requiring the witness to appear and testify and to produce the records designated in the subpoena.

This authority may not be redelegated.

  
John P. Torres  
Director, Office of Detention and Removal Operations

USE ADDITIONAL PLAIN BOND IF NECESSARY.



U.S. Immigration  
and Customs  
Enforcement

DEC - 3 2009

MEMORANDUM FOR: Assistant Directors  
Deputy Assistant Directors  
Special Agents in Charge

FROM: (b)(6),(b)(7)(C) (b)(6),(b)(7)(C) (b)(6),(b)(7)(C)  
Acting Director, Office of Investigations

SUBJECT: Issuance of Rebranded/Updated Subpoenas and Summons  
Forms

The legacy U.S. Customs Service and Immigration and Naturalization Service (INS) subpoena and summons forms have been rebranded/updated and reissued. These new forms, which are attached to this memorandum, include:

- Department of Homeland Security (DHS) Form 3115, "Summons," and the accompanying DHS Form 3115A, "Summons Notice," which supersede Customs Form (CF) 3115 and CF 3115A, respectively;
- DHS Form I-138, "Immigration Enforcement Subpoena," which supersedes legacy INS Form I-138;
- U.S. Immigration and Customs Enforcement (ICE) Form 73-021, "Controlled Substances Enforcement Subpoena," which supersedes CF 389; and
- ICE Form 73-022, "Export Enforcement Subpoena," which supersedes CF 337.

Special Agents in Charge (SACs) should continue to issue the subpoenas and summons in accordance with the legal authorities and general guidelines that governed the legacy forms. The following additional guidance and reminders apply to the use of the three subpoenas and the summons.



**Requirement to Maintain a Log**

SACs are responsible for maintaining an accurate log of subpoenas or summonses issued each fiscal year, as well as copies of the subpoenas and summonses issued. The log must be kept for at least 5 years from the date of the last entry and shall contain, at a minimum, the following information:

1. the title of the proceedings, if any, for which the subpoena or summons is issued;
2. the entity to whom the subpoena or summons is served;
3. the issuing officer;
4. whether the subpoena or summons was issued to compel the appearance of a witness to provide testimony; the production of books, papers, or documents; or both;
5. the date of service of the subpoena or summons;
6. the means of service of the subpoena or summons; and
7. a tracking number for each subpoena or summons (tracked by fiscal year, e.g., NY-08-001; NY-08-002, etc.).

**Limitations Related to Indicted Defendants or Aliens in Removal Proceedings**

The issuance of an administrative subpoena or summons is authorized after a case has been referred to the Department of Justice (DOJ) for criminal prosecution. However, once the subjects of investigation have been indicted or a criminal complaint has been filed and they become defendants, the subjects of the investigation should not be subpoenaed. OI Special Agents (SAs) can continue issuing subpoenas and summonses in ongoing civil and criminal investigations to obtain information, but not from indicted defendants.

Typically, when a grand jury returns an indictment, the grand jury investigation is concluded and the grand jury no longer has the ability to issue grand jury subpoenas. The conclusion of the grand jury subpoena process does not preclude the use of an administrative subpoena or summons. However, SAs should be cognizant of the potential appearance of impropriety that could result from issuing an administrative subpoena or summons in investigations where the grand jury process has ended.

SAs considering using an administrative subpoena or summons subsequent to the indictment of any defendants should consult with and obtain the concurrence of the Assistant United States Attorney handling the criminal investigation and the appropriate ICE Office of the Chief Counsel (OCC).

SAs requiring an immigration enforcement subpoena in any matter that has been referred to an immigration judge should consult with the local ICE OCC, who may petition the immigration judge for the subpoena.

#### Limitations related to the Right to Financial Privacy Act

Administrative subpoenas or summonses compelling production of customer records from a financial institution must comply with the Right to Financial Privacy Act (RFPA). Under the RFPA, unless specific exemptions apply, no Government authority may have access to or obtain copies of the financial records, or the information contained in the financial records, of any customer from a financial institution, except through the specific procedures defined in the statute, 12 U.S.C. § 3402. SAs considering the issuance of an administrative subpoena or summons compelling the production of records from a financial institution pursuant to 12 U.S.C. § 3405 must consult with the local ICE OCC or appropriate ICE attorney to ensure that ICE complies with the RFPA for appropriate notice to the financial institution and its customer, or that an exemption applies, such as 12 U.S.C. § 3413(g).

#### Authority with Respect to Subpoenas

As stated in the respective OI Delegation Orders, the authority to use the Immigration Enforcement Subpoena, the Controlled Substances Enforcement Subpoena, and the Export Enforcement Subpoena is delegated to the OI Assistant Directors, Deputy Assistant Directors, Special Agents in Charge, Deputy Special Agents in Charge, and Assistant Special Agents in Charge. This authority cannot be redelegated.

#### Authority with Respect to the Summons

As stated in the respective OI Delegation Order, the authority to use the 19 U.S.C. § 1509 Summons is delegated to OI Assistant Directors, Deputy Assistant Directors, and Special Agents in Charge. This authority cannot be redelegated.

#### Posting of the Subpoena/Summons Forms

The subpoena and summons forms have been made fillable and are posted on the OI Proprietary Website by clicking on “Documents” and then “Forms.”

#### Prohibition Against Making Changes to the Subpoena/Summons Forms

OI SAs and other personnel are prohibited from making any changes to the subpoena and summons forms.

#### Governing ICE Directives

ICE is developing directives which will provide policies and detailed procedures to be followed when using each of the rebranded/updated subpoenas and summons. Upon

**SUBJECT: Issuance of Rebranded/Updated Subpoenas and Summons Forms**  
**Page 4 of 4**

issuance of each of these directives, OI employees must comply with that directive when using the related summons or subpoena form. When all four directives are issued, this memorandum will be cancelled.

**Superseded Documents**

This memorandum supersedes OI memorandum entitled, "Accountability of Subpoenas and Summons," dated March 13, 2007, and Section 43.3 of the legacy INS Special Agent Field Manual entitled, "Administrative Subpoenas."

**Attachments**

U.S. Department of Homeland Security  
8940 Fourwinds Drive  
San Antonio, TX 78239



U.S. Immigration  
and Customs  
Enforcement

JUN 11 2007

**MEMORANDUM FOR:** All Personnel  
San Antonio Field Office

**FROM:** Marc J. Moore  
Field Office Director

**SUBJECT:** Use of Search Warrants, Subpoenas and other Administrative  
Actions

The robust expansion of the San Antonio Field Office has brought with it an expansion of law enforcement activities. These activities have been expanded even further with the addition of 6 Criminal Alien Program Teams and a total of 3 Fugitive Operations Units. All of these expansions have produced changes in the way we do business within the San Antonio Field Office. For instance, there has been a dramatic increase in the number of apprehensions relating to Criminal Aliens and Fugitives. These enforcement functions at times may require applying for criminal search and or Blackie's warrants, or applying for or serving administrative subpoenas or other processes which may include aggressive negotiations with the U.S. Attorney's office, other ICE components, other Field Offices and officers such as county and state attorneys, police departments, sheriff's departments or the Texas Department of Public Safety.

In all cases, these require a measured consideration of not only the desired outcome of the enforcement operation but a full and detached assessment of the overall impact to ICE both within this Field Office and nationally. Our enforcement actions are important to the nation and the effective and fair enforcement of our nation's immigration laws. While I fully encourage the use of these as tools to fully discharge our law enforcement obligations, our activities and use of these tools must always take into full account all of the possibilities and consequences, both intended and un-intended before we utilize them. The only effective means, at present, for that to occur is for my office to be fully informed and personally engaged in the cases that seek to employ these tools.

To that end, all of these enforcement functions and processes will require a detailed brief to the respective AFOD overseeing that unit or office prior to any action or activity to obtain these. That AFOD will personally brief the Deputy and myself and receive my positive concurrence before proceeding. In all cases and in keeping with my prior policy on the use of my signature stamp these processes require my personal and original signature and that signatory authority is not delegated in any fashion.

1. To (Name, Address, City, State, Zip Code)	<b>DEPARTMENT OF HOMELAND SECURITY</b>  <b>IMMIGRATION ENFORCEMENT SUBPOENA</b>  <b>to Appear and/or Produce Records</b> 8 U.S.C. § 1225(d), 8 C.F.R. § 287.4
Subpoena Number	
2. In Reference To	
_____	_____
(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 laws. 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	(B) Date
Name	
Title <code>Deportation Officer</code>	
Address	(C) Time <input type="checkbox"/> a.m. <input type="checkbox"/> p.m.
Telephone Number	

4. Records required to be produced for inspection



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

5. Authorized Official

\_\_\_\_\_ (Signature)

\_\_\_\_\_ (Printed Name)

\_\_\_\_\_ (Title)

\_\_\_\_\_ (Date)



**CERTIFICATE OF SERVICE AND ACKNOWLEDGMENT OF RECEIPT**

**A. CERTIFICATE OF SERVICE**

I certify that on \_\_\_\_\_, I served this subpoena on the witness named in Block 1 in the following manner:  
(Date)

\_\_\_\_\_  
(Details of how service was effected)

\_\_\_\_\_  
(Signature of Official Serving Subpoena)

\_\_\_\_\_  
(Printed Name of Official Serving Subpoena)

Deportation Officer  
\_\_\_\_\_  
(Title of Official Serving Subpoena)

**B. ACKNOWLEDGMENT OF RECEIPT**

I acknowledge receipt of a copy of the subpoena on the front of this form.

Signature

Title

Date

Time

a.m.  
 p.m.

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
ENFORCEMENT AND REMOVAL OPERATIONS**

**Accountability of Immigration Subpoenas Issued to Non-Compliant Law  
Enforcement Agencies**

**Policy Number:** 11165  
**Issue Date:** August 6, 2020  
**Effective Date:** August 6, 2020  
**Superseded:** None.  
**Federal Enterprise Architecture Number:** 306-112-002b

**1. Purpose/Background.**

- 1.1** This Directive provides Enforcement and Removal Operations (ERO) field personnel with policy and procedures for issuing immigration subpoenas to state and local law enforcement agencies (LEAs) that do not comply with reasonable U.S. Immigration and Customs Enforcement (ICE) requests for information, including advance notification of release dates pursuant to an immigration detainer. While many LEAs across the country still provide ICE with information to enhance ICE's investigations, many have recently either begun to refuse, or have been prohibited by state or local law or policy from cooperating with immigration enforcement.
- 1.2** This Directive is intended to provide guidance on the utilization of immigration subpoenas issued pursuant to section 235(d)(4)(A) of the Immigration and Nationality Act (INA) and applicable regulations for this purpose.<sup>1</sup> These provisions provide immigration officers with the authority to issue subpoenas requiring the production of records and evidence for use in criminal or civil investigations. Should the subject of an immigration subpoena fail to comply, U.S. district court may issue an order requiring such compliance, and the failure to comply with such order may be punished by an order of contempt by the district court.<sup>2</sup>

**2. Policy.**

- 2.1** ERO Officers will continue to issue subpoenas in compliance with applicable laws, regulations, and ICE policy. As required by regulations, immigration subpoenas will continue to be issued on Form I-138, *Immigration Enforcement Subpoena to Appear and/or Produce Records*<sup>3</sup> and will be served by an ERO

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<sup>1</sup> See 8 C.F.R. § 287.4.

<sup>2</sup> See INA § 235(d)(4)(B), and 8 C.F.R. § 287.4(d).

<sup>3</sup> 8 C.F.R. § 287.4(b).

Officer other than the issuing officer.<sup>4</sup>The requested information sought by the subpoenas will pertain to specifically identified aliens with criminal convictions, gang members, national security or public safety threats, aliens who have been ordered removed from the United States but have failed to depart, and aliens who have re-entered the country illegally after being removed. The authority to approve subpoenas is currently delegated to Assistant Field Office Directors (AFODs) and above, and cannot be redelegated.<sup>5</sup>

- 2.2** ERO Officers will exercise discretion, on a case-by-case basis, and will issue individual immigration subpoenas to non-compliant LEAs, requesting specific information related to specifically identified aliens who are or recently have been in their custody on criminal charges. The information sought may include, but is not limited to, information regarding the alien's anticipated release date from the LEA's custody, removability, alienage, post-release whereabouts, and other pertinent information that ERO officers reasonably believe will lead to an appropriate law enforcement action. ERO Officers should utilize subpoenas only if obtaining the information through other means is not feasible. The information sought must not be unduly burdensome and will relate to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of the INA.<sup>6</sup>
- 2.3** ERO should consult with the Office of the Principal Legal Advisor (OPLA) to seek the assistance of the Department of Justice (DOJ) Headquarters (HQ) and the relevant U.S. Attorney's Office (USAO) to file petitions to enforce the subpoenas.
- 3. Definitions.** The following definitions apply for purposes of this Directive only:
- 3.1 Immigration Subpoena.** A writ issued by authorized ICE officials to compel testimony by a witness before an immigration officer or production of information relating to the privilege of any person to enter, reenter, reside in, or pass through the United States or concerning any matter which is material and relevant to the enforcement of the INA and the administration of ICE.
- 3.3 Non-Compliant Law Enforcement Agency.** A broad term that generally describes a police or sheriff's office that does not comply, complies in a manner not conducive to ICE law enforcement actions, or is precluded from compliance due to local statute, regulation, or ordinance, with immigration detainees,

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<sup>4</sup> See 8 C.F.R. § 287.4(c) Service. "A subpoena issued under this section may be served by any person, over 18 years of age not a party to the case over 18 years of age not a party to the case, designated to make such service by the ... Field Office Director; Deputy Field Office Director; Supervisory Deportation Officer; Supervisory Detention and Deportation Officer,...."

<sup>5</sup> ERO Delegation 07-001.2, *Authority to Issue Immigration Enforcement Subpoenas within the Office of Detention and Removal*, (Jan. 6, 2010).

<sup>6</sup> INA § 235(d)(4)(A).

information sharing with ICE, or another action that impedes ICE's law enforcement actions.

- 3.4 DHS Form I-138, *Immigration Enforcement Subpoena to Appear and/or Produce Records*.** A standardized form that provides written request to the respondent (a person or entity) to appear and/or produce records in connection with an investigation or inquiry relating to the enforcement of U.S. immigration laws.
- 3.5 Form I-831, Continuation Page.** A continuation Page form to include additional information requested in section assigned for records required from I-138 (as applicable).
- 4. Responsibilities.**
- 4.1 The Executive Associate Director for ERO** is responsible for ensuring compliance with the provisions of this Directive within ERO.
- 4.2 The Assistant Directors for Enforcement and Field Operations** are responsible for ensuring compliance with the provisions of this Directive within their respective Divisions and Programs.
- 4.3 Field Office Directors (FODs), or their supervisory designees (Deputy FODs and AFODs),** are responsible for:
- 1) Serving as the authorizing official for reviewing and approving or denying requests to issue an immigration subpoena, as applicable;
  - 2) Ensuring that field office personnel follow the procedures in this Directive for issuing, serving, and documenting immigration subpoenas;
  - 3) Ensuring that all subpoenas are appropriately utilized and signed by the approved issuing authority;
  - 4) Coordinating legal review by the local OPLA field location and USAO, and notifying the ERO Enforcement Division at least 48 hours prior to issuing subpoenas to non-compliant LEAs;
  - 5) Accounting for all the subpoenas issued within their AOR via the National Subpoena Log; and
  - 6) Ensuring that field office personnel comply with training requirements for subpoena enforcement actions.
- 4.4 The Deputy Assistant Director for Enforcement, Criminal Alien Division (CAD) HQ, or their designee,** is responsible for:

- 1) Notifying ERO Field Operations and OPLA HQ prior to providing FODs with concurrence, if necessary, to sign/issue subpoenas for purposes of procurement of information from non-compliant LEAs;
- 2) Consulting and coordinating with the ICE Office of Public Affairs, Office of Public Engagement and the Office of Congressional Relations, as appropriate; and
- 3) Consulting and coordinating with OPLA HQ regarding requests that the relevant USAO file petitions to enforce subpoenas.

**4.5 Supervisory Detention and Deportation Officers (SDDOs), are responsible for:**

- 1) Ensuring compliance with the provisions of this Directive;
- 2) Identifying, through their assigned Deportation Officers, individual aliens who are potentially amenable cases for issuing subpoenas;
- 3) Properly submitting subpoena requests to the designated authorizing officials; and
- 4) Completing subpoena forms, issuing subpoenas, recording and documenting subpoena and enforcement actions, and contacting the USAO, if applicable.

**5. Procedures.**

**5.1 Identifying Appropriate Cases for Issuance of Immigration Subpoenas.**

SDDOs will review cases in which aliens were recently arrested, released, or pending release by non-compliant LEAs and identify cases for which no other feasible means to obtain required information in the possession of the LEA is available. Once potential cases have been identified, SDDOs will prepare Executive Summaries (ES) for each case including a justification for issuing an immigration subpoena, including an explanation as to why obtaining the information through other means is not feasible. (see section 2.2).

**5.2 Initiating, Approving and Serving a Subpoena.** ERO Officers will ensure they have access and obtain Requestor or Authorizing Official roles, as applicable, to the National Subpoena Log by contacting the Criminal Alien Program (CAP) HQ at (b)(7)(e)ce.dhs.gov.

- 1) Issuing the Subpoena. The Requestor will identify the name of the entity's highest authority to include, fax, email, phone number, and mailing address to send correspondence and serve the subpoena. The Requestor will complete Form I-138 annotating that the deadline to provide information regarding



aliens who remain in LEA custody is 3 calendar days, and for those who have been released is 14 business days.

- 2) Approving the Subpoena. The Authorizing Official will review Form I-138 and ES of alien mentioned in the form, and will consult with the local OPLA field location and USAO and submit his or her recommendation to CAP HQ for consultation with OPLA HQ and DOJ HQ. The Authorizing Official will enter the final decision in the National Subpoena Log indicating whether the request for a subpoena is approved or denied.
- 3) Serving the Subpoena. If approved, the Requestor will complete Form I-138 with the generated subpoena number and will provide the Authorizing Official with a hard copy for signature. Upon approval but prior to service, the Requestor may send an informal request, after consultation with the local USAO, requesting production of information on the subpoenas via email within 48 hours of receipt of request. If the LEA does not comply, the Requestor will upload the signed copy of Form I-138 to the Subpoena Log and serve it to the entity (see section 2.1).

**5.3 Post-Service and Enforcement Procedures.** Upon the deadline included in Form I-138, the Requestor will update the Subpoena Log based on the level of compliance and take further action, if applicable.

- 1) If full information is received, the Requestor will record the information and complete the National Subpoena Log. When such information leads to the arrest of the alien who is the target of the subpoena, the Requestor will notify the CAP HQ and annotate this information in the Subpoena Log, accordingly.
- 2) If partial information is received, the Requestor will record the information in the National Subpoena Log and consult the local OPLA field location and the USAO for further action on filing petitions to enforce subpoenas with the respective U.S. district court and update the the National Subpoena Log, accordingly.
- 3) If the LEA does not comply with the subpoena, the Requestor will annotate non-compliance in the Subpoena Log and consult with the local OPLA field location and the USAO for further action on filing petitions to enforce subpoenas with the respective US District Court and update the National Subpoena Log, accordingly.

**5.4 Accountability Procedures.** ERO Officers are required to account for all subpoenas issued within their AOR by maintaining both a log and a copy of the subpoena issued. The log must contain, at the minimum, the following information:

- 1) The title of proceedings, if any, for which the subpoena is issued;

- 2) The entity to whom the subpoena is served;
- 3) The issuing officer;
- 4) Whether the subpoena was issued to compel the appearance of a witness to provide testimony, the production of books, papers or documents, or both appearance and production;
- 5) The date of service of the subpoena;
- 6) The means of service of the subpoena; and
- 7) A tracking number for each subpoena (tracked by fiscal year).

### 5.5 Training.

All field personnel identified by each AOR as Users of the National Subpoena Log will complete mandatory training in DHS Performance and Learning Management System (PALMS).

6. **Recordkeeping.** All documents created or received by ICE must be maintained in accordance with a National Archives and Records Administration (NARA) General Records Schedule or an applicable DHS or ICE records schedule. If a schedule does not exist that covers the records, they are considered unscheduled. Unscheduled records cannot be destroyed or deleted until a schedule has been developed and approved by NARA.

### 7. Authorities/References.

- 7.1 *Immigration and Nationality Act of 1952, as amended (INA), Pub. L. No. 82-414, 66 Stat. 163, § 235(d)(4)(A-B).*
- 7.2 8 C.F.R. § 287.4(a-d), *Subpoena*.
- 7.3 ICE Delegation Order 73003.3, *U.S. Immigration and Customs Enforcement Authority to Issue Immigration Subpoenas*, (Nov. 30, 2009).
- 7.4 ERO Delegation Order 07-001.2, *Authority to Issue Immigration Enforcement Subpoenas within the Office of Detention and Removal*, (Jan. 6, 2010).
- 7.5 ICE Memorandum, *Accountability of Immigration Subpoenas*, (Jul. 13, 2007).

8. **Attachments.** None.

9. **No Private Right.** This document provides only internal ERO policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE. This guidance does not alter any provision of any statute or regulation that contains legally binding requirements, and it is not itself a regulation.



**Enrique M. Lucero**  
**Executive Associate Director**  
**Enforcement and Removal Operations**  
**U.S. Immigration and Customs Enforcement**

Department of Homeland Security  
U.S. Immigration and Customs Enforcement

ICE Delegation Order

ORDER NUMBER:

DO 73002.1

ISSUE DATE:

07/21/06

EFFECTIVE DATE:

07/21/06

SUBJECT:

Authority with Respect to the Title 21 Controlled Substances Enforcement Subpoena and the Examination of Records

DELEGATED BY:

Assistant Secretary for  
Immigration and Customs Enforcement (ICE)

DELEGATED TO:

Director, Office of Investigations  
Director, Office of Professional Responsibility

SOURCE OF AUTHORITY BEING DELEGATED:

- 21 U.S.C. § 967, Smuggling of controlled substances; investigations; oaths; subpoenas; witnesses; evidence; production of records; territorial limits; fees and mileage of witnesses
- Homeland Security Act of 2002
- DHS DO 7030.2, Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement

SUPERSEDED ORDER(S):

United States Customs Service Delegation Order 00-022, "Authority with Respect to the Title 21 Controlled Substances Enforcement Subpoena and the Examination of Records," issued December 11, 2000, no longer applies to ICE.

DELEGATION:

By virtue of the authority granted to me in the above-listed sources of authority, I hereby delegate to the Directors of the Offices of Investigations and Professional Responsibility the authority to:

- (a) administer oaths and affirmations;
- (b) subpoena witnesses and compel their attendance;
- (c) take evidence; and
- (d) require the production of records

relevant or material to an investigation of violation or possible violation of Section 545 of Title 18 U.S.C. (relating to smuggling goods into the United States) with respect to any controlled substance (as defined in Section 802 of Title 21 U.S.C.)

The attendance of witnesses and the production of records may be required from any place within the customs territory of the United States, except that a witness shall not be required to appear at any hearing more than 100 miles distance from the place where he or she was served with the subpoena. Witnesses so summoned shall be paid the same fees and mileage that are paid witnesses in the court of the United States. Oaths and affirmations may be made at any place subject to the jurisdiction of the United States.

This authority may be re-delegated, but not below the level of Resident Agent in Charge.

Assistant Secretary for  
Immigration and Customs Enforcement

*Quinn Myers*

USE ADDITIONAL PLAIN BOND IF NECESSARY.

ORDER NUMBER: DO 73003.3

ISSUE DATE: 11/30/09

EFFECTIVE DATE: 11/30/09

**SUBJECT:**

**U.S. Immigration and Customs Enforcement Authority to Issue Immigration Subpoenas**

**DELEGATED BY:**

Assistant Secretary  
U.S. Immigration and Customs Enforcement

**DELEGATED TO:**

Director, Office of Detention and Removal Operations  
Director, Office of International Affairs  
Director, Office of Investigations  
Director, Office of Professional Responsibility  
Director, Office of Intelligence

**SOURCE OF AUTHORITY BEING DELEGATED:**

- Homeland Security Act of 2002, P.L. No. 107-296, *amended by* P.L. No. 108-7 (2003));
- Immigration and Nationality Act § 235(d), 8 U.S.C § 1225(d);
- 8 C.F.R. 287.4;
- Department of Homeland Security Delegation No 7030.2., Delegation of Authority to the Assistant Secretary for U.S. Immigration and Customs Enforcement, para. 2(S) (November 13, 2004).

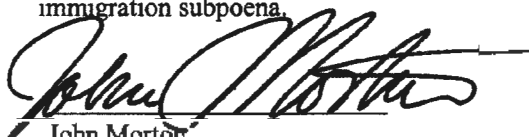
**SUPERSEDED ORDER(S):**

ICE Delegation Order DO 73003.2, U.S. Immigration and Customs Enforcement Authority to Issue Immigration Subpoenas (February 20, 2008).

**DELEGATION:**

By virtue of the authority granted to me by the Secretary of the Department of Homeland Security to enforce United States immigration laws, I hereby delegate to the Directors of the Office of Detention and Removal, the Office of International Affairs, the Office of Investigations, the Office of Professional Responsibility, and the Office of Intelligence the authority to:

1. Issue immigration subpoenas requiring the person or entity to which they are addressed to attend and give testimony;
2. Require such persons or entities to produce records (books, papers, or other documents) for use in criminal or civil investigations;
3. Effect service of immigration subpoenas upon the persons or entities named therein;
4. Administer oaths;
5. Take testimony from such persons or entities under oath and examine, or cause to be examined, records produced by such persons or entities; and
6. In the event that the person or entity named in a subpoena neglects or refuses to comply with the requirement to attend and give testimony or to produce records, request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court and to request such court to issue an order requiring the witness to appear and testify and to produce the records designated in the immigration subpoena.



John Morton  
Assistant Secretary  
U.S. Immigration and Customs Enforcement



(SFR AOR) Copy of Immigration Subpoena Users- II

AOR	Full Name	Email Address	Title (AFOD, SDDO)
SFR	(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)	AFOD
SFR	(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)	SDDO
SFR	(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)	SDDO
	(b)(6), (b)(7)(c)		
SFR/SNJ	(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)	(a)AFOD
SFR/SNJ	(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)	SDDO
SFR/SNJ	(b)(6), (b)(7)(c)	(b)(6), (b)(7)(c)	SDDO