

# WARRANTS AND SUBPOENAS 101

SEPTEMBER 2020

## What are the different types of warrants and subpoenas?

A **judicial warrant** is:

- a written court order authorizing a law enforcement officer to make an arrest, a seizure, or a search of some private area, such as your home
- issued by a court and signed by a state or federal judge

You may not ignore or refuse to obey a judicial warrant. There are serious legal consequences for refusing to comply with a valid judicial warrant.

NOTE: A warrant signed by an immigration judge is an immigration warrant (not a judicial warrant).

An **immigration warrant** (often called an “ICE warrant”) is:

- a written document authorizing an officer from a federal agency, such as the U.S. Department of Homeland Security (DHS) or U.S. Immigration and Customs Enforcement (ICE), to make an arrest or a seizure
- issued by a federal agency and may be signed by an “immigration judge” or an “immigration officer” (such as an ICE agent)

Unlike a judicial warrant, an immigration warrant does not authorize a search or entry into your home or other private areas.

A **judicial subpoena** is:

- a written court order requiring a person to testify as a witness in an investigation or produce documents, papers, or other evidence
- issued by a court and signed by a “clerk of the court” or a judicial officer

A judicial subpoena requires compliance, which means that *you may not ignore or resist it*. There are serious legal consequences for refusing to comply with a judicial subpoena.

NOTE: A subpoena signed by an immigration judge is an immigration subpoena (not a judicial subpoena).

An **immigration subpoena** (often called an “ICE subpoena”) is:

- a written document from a federal agency such as DHS or ICE directed at a person to compel them to testify as a witness in an investigation or produce evidence
- issued by a federal agency and may be signed by an “immigration judge” or an “immigration officer” (such as an ICE agent)

Unlike with a judicial subpoena, *you do not have to immediately comply with* an immigration subpoena. Consequences for refusing to comply may occur only if the entity that issued the subpoena takes additional steps in U.S. district court to enforce it.

## How can you distinguish between warrants and subpoenas?

**Warrants v. Subpoenas Generally.** To determine what type of document you received:

- First, scan the document for the words “warrant” and “subpoena”; usually, the document will be titled or labeled as one or the other.
- Then skim through the document to confirm whether its contents match what the document claims to be in its title. If the document seems generally to authorize the law enforcer — such as an immigration agent— to conduct a search or to make an arrest, then this document is likely a *warrant*.
- If the document seems to be asking you to appear in court at some later date to testify *or* to produce dif-

ferent types of papers, forms, materials, information, etc., then the document is likely a *subpoena*.

- After you determine what kind of document you’re looking at, you must next determine whether it is the *judicial* version or the *immigration* version.

**Judicial Warrant v. Immigration Warrant.** An immigration officer from ICE or U.S. Customs and Border Protection (CBP) may not enter your home or any private areas without a *valid judicial warrant* or *consent* to enter. If ICE or any other immigration officer comes to your address demanding entry or a search with an immigration warrant or an *invalid* judi-

cial warrant, do not let them in and do not give them consent to enter. You have the right to refuse entry because an immigration warrant does not allow or require entry or a search of private areas. So if immigra-

tion authorities or other law enforcement agents present you with a document they're calling a "warrant," you should check for the following:

Judicial Warrant	Immigration Warrant
<p>To be valid, a judicial warrant <i>must</i>:</p> <ul style="list-style-type: none"> <li>• have been issued by a judicial court</li> <li>• be signed by a state or federal judge</li> <li>• state the address to be searched — make sure the stated address specifically pertains to <i>you</i> and <i>your address</i></li> <li>• be presented within the time period specified on the warrant (if the warrant is out-of-date, it is an invalid judicial warrant)</li> </ul>	<p>An immigration warrant:</p> <ul style="list-style-type: none"> <li>• is issued by a DHS agency (look for a DHS seal, label, and/or the actual form number, i.e., "Form I-200 Warrant for Arrest" or "Form I-205 Warrant of Removal/Deportation")</li> <li>• is signed by an immigration officer or immigration judge</li> <li>• will contain the word "Alien" in its title</li> </ul>

**Judicial Subpoena v. Immigration Subpoena.** An immigration officer from ICE, CBP, or U.S. Citizenship and Immigration Services (USCIS) may not command you to obey an immigration subpoena's demands *unless the officer also has a court order* from a U.S. district court that specifically requires you to obey the subpoena. If ICE or any other immigration officer presents you with an immigration subpoena telling you

to appear as a witness or to produce certain documents, you do not have to comply. Instead, you have the right to refuse to comply with the subpoena and ask the officer to leave. So if immigration authorities or other law enforcement agents present you with a document they're calling a "subpoena," you should check for the following:

Judicial Subpoena	Immigration Subpoena
<p>To be valid, a judicial subpoena <i>must</i>:</p> <ul style="list-style-type: none"> <li>• have been issued by a judicial court</li> <li>• be signed by a state or federal judge</li> <li>• state the address of the person the subpoena is directed to — make sure the stated address specifically pertains to <i>you</i> and <i>your address</i></li> </ul>	<p>An immigration subpoena:</p> <ul style="list-style-type: none"> <li>• is issued by an agency within DHS (look for a DHS seal, label, and/or the document's form number, which will start with "I-")</li> <li>• is signed by an immigration officer or an immigration judge (look for the words or initials "CBP," "ICE," or "USCIS Official," or a similar phrase)</li> <li>• will be titled "Immigration Enforcement Subpoena" or something similar</li> <li>• contains references to "U.S. immigration laws"</li> </ul>

## Know your rights, know your power

If ICE shows up at your door with what the officer claims is a warrant or subpoena, you can take these steps:

- Do not open the door.
- Ask the officer to slip any document under the door or hold it up to a window.
- Take pictures of the document and make sure you either (1) record the encounter through video or (2) write a detailed account afterward of what happened, including the types of officers, their names,

badge numbers, and what was said.

- Consult with a lawyer or a community defense group for support during (if possible) or immediately after the encounter.

To learn more about warrants and subpoenas, visit [www.NILC.org/warrants-and-subpoenas-facts/](http://www.NILC.org/warrants-and-subpoenas-facts/). To learn more about your rights and how to best respond when encountering ICE and law enforcement, visit [www.NILC.org/lawenf/](http://www.NILC.org/lawenf/).