

了解您的权利: Warrant (令状)

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什么是令状?

令状是法院或政府机构签发的官方文件。它允许执法人员某些执行行为,例如进入私人空间搜查某物,或逮捕某人。

您应当了解三种令状类型:

司法令状由法院签发并由法官(但并不是移民法官)或治安法官签署。治安法官是具有部分法官权力(但不是全部)的法院官员。司法令允许执法人员逮捕某人、扣押某物,或搜查某物或某人。获得这类搜查令,执法人员必须向法官证明他们存在“合理理由”认为(或有理由相信)某个犯罪已经发生。

行政或移民令状是由例如移民与海关执法局(ICE)或海关与边境保护局(CBP)的联邦机构签发的文件。这些令状由移民官员或其他联邦官员签署。行政令状不允许执法人员进入私人空间,例如住宅,但可以允许他们在公共场所或(被允许)的私人场所内逮捕某人。

布莱基搜查令(Blackie's warrant)是由法官或治安法官签发的民事搜查令。它以一个名为布莱基牛肉屋诉卡斯蒂略案(*Blackie's House of Beef v. Castillo*)的法院案件命名的。在该案件中,法院表示移民官员可以使用法官签发的民事搜查令来搜查工作场所。

布莱基搜查令与刑事搜查令不同,因为执法人员无需证明有犯罪发生的“合理理由”才可获得。相反,他们只需证明具有“合理理由”认为(或有理由相信)在一特定工作场所的某人并非合法地在美国境内。此搜查令仍然必须明确说明他们要搜查的地点。

我怎么知道一个文件是什么类型的令状?

下表将帮助您判断一个文件属于哪种令状:

	司法令状	行政令状	布莱基搜查令
文件是谁发布的?	法院	机构 (例如国土安全部 DHS 或移民与海关执法局 ICE)	法院
是谁签署的文件?	法官/治安法官	官员	法官/治安法官
是否列出了他们想搜查的地址?	是	否	是
标题中是否有“alien”(“外籍人士”)这个词?	否	是 (“Warrant for Alien Arrest” “外籍人士逮捕令”)	否
表格是否以字母“I”开头 (例如 I-200 或 I-205 表格) ?	否	是 (以字母“I”开头的表格可能表示它是移民表格)	否

在什么情况下移民执法人员逮捕某人时不需要令状?

法律规定，在极少数情况下，移民机关才可以在没有令状的情况下逮捕某人。在无令状逮捕某人之前，联邦法律要求移民执法人员能够证明：

- ▶ 此人非法在美国境内，并且
- ▶ 在执法人员能够取得令状之前，该人很可能逃跑。

根据法律，如果车辆位于靠近国际边境的地区（通常为100英里范围内），移民机关可以在没有令状的情况下搜查车辆。无论移民在什么地点拦下某人，上述规则都适用：移民执法人员只有在具备合理理由相信某人没有获得许可而在美国境内，且他们可能在令状签发前逃离的情况下，才可以进行无令状逮捕。

移民执法人员如何使用这些令状？

在美国您最常遇到的移民执法人员通常是 ICE，但您也可能在美国境内遇到CBP，即使在距离边境很远的地方。您有时并不知道这些执法人员身份，因为他们并不总是向公众说明身份，所以我们在这里统一称他们为“移民执法人员”。

无令状

移民执法人员经常会在没有令状的情况下逮捕他人。有时，这些逮捕会在法庭上被质疑。

在刑事法庭中，检察官通常不能使用非法取得的证据。这个规则叫做“排除规则”。但在移民法庭，这个规则通常不适用。这意味着即使逮捕是违法且没有令状的，ICE 仍然可以试图将某人递解出境。只有在一些特殊情况下，当执法人员的行为属于更大范围的滥用模式时，才可能例外适用。

司法令状

当移民执法人员认为发生了犯罪时，他们会使用这些令状进入住宅或商业场所。犯罪行为可以与移民相关，比如未经许可进入美国，或在被递解后再次进入美国。

司法令状允许执法人员进入私人区域，例如住宅或企业中不对公众开放的部分。他们只能搜查令状上列明的地点，并且只能取走令状上列出的物品。移民执法人员几乎从不使用司法令状。如果他们没有司法令状，则需要得到当事人的许可（即“同意”）才能进入住宅、商业场所或任何私人空间。一旦您给予了许可，就很难限制执法人员在私人空间内的行为。

行政令状

移民执法人员通常使用这些令状在公共场所逮捕某人。有时执法人员会试图利用行政令状来说服人们让他们进入住宅或商业场所，但这些令状并不允许他们这样做。如果没有当事人的许可，或没有司法令状，执法人员不能进入住宅或其他私人空间。

如果移民执法人员只有行政令状，您没有义务允许他们进入您的私人空间。但如果您知令状上有其姓名的人就在里面，而您否认他们在场并且拒绝让执法人员进入，您可能会被控以一项名为“隐藏罪”（concealment）的罪名。

布莱基搜查令

移民执法人员曾尝试使用这些民事行政检查令状对工作场所进行突击检查。若无合理理由（或合理认定），执法人员无法获得这些令状，并且他们不能以该令状为借口搜查令状之外的内容。移民执法人员声称布莱基搜查令允许他们进入工作场所以调查移民违规行为，但这可能违反了法律。这些搜查令很可能违反了美国宪法第四修正案，且它们不能被用于搜查人员或犯罪行为。

当移民执法人员持令状上门时，您有哪些权利？

如果移民官员盘问或逮捕您，您始终有权保持沉默。一定要要求查看他们的证件并询问他们的意图。保持冷静。不要逃跑、反抗或打斗。永远不要撒谎或提供伪造的文件。

以下是如若在不同地点遇到移民执法人员的一些建议：

在家中

- ▶ 您不必开门。即使稍微打开一点门也可能算作允许（同意）官员进入。
- ▶ 大声且清晰地说：“I do not consent to you entering my house.”（我不同意你们进入我的房子。）
- ▶ 如果他们想进来，要求查看令状。他们可以通过窗户或窥视孔展示，或者从门缝塞进来。如果不是司法令状，未经您的许可他们不能进入。
- ▶ 如果他们持有允许他们进入的令状，请行使您的权利保持沉默。
- ▶ 如果他们强行进入，不要打斗或反抗。

在交通拦截或街道上

- ▶ 起初您可能不知道这些官员是移民执法人员，因为他们可能直到逮捕您后才告诉您。询问他们是谁并要求查看证件。
- ▶ 除非他们要求，否则不要摇下车窗。如果摇下，只摇下一点点，让他们无法把手伸进来。请注意，他们可能会打破窗户或强行打开车门。
- ▶ 如果他们要求查看身份证件，只出示您的驾照或其他美国政府签发的身份证件。不要出示外国文件。
- ▶ 未经司法令状或您的同意，移民执法人员不能搜查您的汽车或物品。为了确认安全或在逮捕某人时，他们可以隔着衣服对某人进行拍身搜查。

在企业（雇主处）

- ▶ 您不必同意搜查。
- ▶ 移民执法人员可以在未经您许可的情况下进入公共区域（如停车场或大厅），但他们不能进入私人区域。即使他们在里面，没有令状也不能扣留、逮捕或盘问任何人。
- ▶ 用“Private”（私人区域）等标志清楚标记私人区域，锁好门，并规定访客未经许可不得进入这些区域。
- ▶ 如果官员出示令状，确保那是列出了可以搜查的区域和物品的司法令状。任何未列出的东西都不能被搜查或带走。
- ▶ 如果官员出示带有员工姓名的行政令状，您不必透露该人是否在那里（除非被问及）或带他们去找该员工。
- ▶ 有关如果移民执法人员来到您的工作场所该怎么办的更多信息，请参阅[此处](#)。

令状长什么样?

行政移民令状

圈出的部分表明这些是移民令状，而不是司法令状。关键词“Immigration Officer”（移民官员），“Alien”（外国人）和“Department of Homeland Security”（国土安全部）有助于判断这一点。

U.S. DEPARTMENT OF HOMELAND SECURITY Warrant for Arrest of Alien

File No. _____
Date: _____

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 _____ 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.

(Signature of Authorized Immigration Officer)
(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 _____ (Location)

on _____ (Name of Alien) on _____ (Date of Service), and the contents of this notice were read to him or her in the _____ language.

Name and Signature of Officer _____
Name or Number of Interpreter (if applicable)

**DEPARTMENT OF HOMELAND SECURITY
U.S. Immigration and Customs Enforcement**

WARRANT OF REMOVAL/DEPORTATION

File No: _____
Date: _____

To any immigration officer of the United States Department of Homeland Security:
(Full name of alien)

who entered the United States at _____ on _____ (Place of entry) (Date of entry)

is subject to removal/deportation from the United States, based upon a final order by:

- an immigration judge in exclusion, deportation, or removal proceedings
- a designated official
- the Board of Immigration Appeals
- a United States District or Magistrate Court Judge

and pursuant to the following provisions of the Immigration and Nationality Act:

I, the undersigned officer of the United States, do have the power and authority vested in the Secretary of Homeland Security under the laws of the United States and by his or her direction, command you to take into custody and remove from the United States the above-named alien, pursuant to law, at the expense of:

(Signature of immigration officer)
(Title of immigration officer)
(Date and office location)



司法令状

突出显示的部分表明这些是司法令状。提示特征包括：它们包含“Search and Seizure”（搜查和扣押）或“Arrest”（逮捕）；由法院签发；由非移民法官签署；并且具体说明了要搜查的人员/财产/区域。

仅限搜查的令状：

This is a judicial search warrant. It DOES authorize agents to enter your home.

UNITED STATES DISTRICT COURT Issued by a COURT.

for the
Eastern District of California

In the Master of the Search of)
(Briefly describe the property to be searched)
or identify the person by name and address)
Case No.)
S40 Oak Avenue)
Davis, California 95616)

SEARCH AND SEIZURE WARRANT

To: Any authorized law enforcement officer

2:11-SW-0161 EFB

An application by a federal law enforcement officer or an attorney for the Government requests the search of the following person or property located in the EASTERN District of CALIFORNIA
(Identify the person or describe the property to be searched and give its location)

SEE ATTACHMENT A, ATTACHED HERETO AND INCORPORATED BY REFERENCE

Read attachments to make sure they are regarding YOU and YOUR address, not someone else's.

The person or property to be searched, described above, is believed to conceal (Identify the person or describe the property to be seized).
SEE ATTACHEMNT B, ATTACHED HERETO AND INCORPORATED BY REFERENCE

I find that the affidavit(s), or any recorded testimony, establish probable cause to search and seize the person or property.

Date for warrant, n

YOU ARE COMMANDED to execute this warrant on or before 5-9-2011 *(not to exceed 14 days)*

in the daytime 6:00 a.m. to 10 p.m. at any time in the day or night as I find reasonable cause has been established.

Unless delayed notice is authorized below, you must give a copy of the warrant and a receipt for the property taken to the person from whom, or from whose premises, the property was taken, or leave the copy and receipt at the place where the property was taken.

The officer executing this warrant, or an officer present during the execution of the warrant, must prepare an inventory as required by law and promptly return this warrant and inventory to United States Magistrate Judge

(initials)

I find that immediate notification may have an adverse result listed in 18 U.S.C. § 2705 (except for delay of trial), and authorize the officer executing this warrant to delay notice to the person who, or whose property, will be searched or seized (check the appropriate box) for _____ days *(not to exceed 30)*.
Or until, the facts justifying the later specific date of _____.

Date and time issued: 4-25-2011 *at 10:00 AM*

Michael P. Brennan

Signed by a JUDGE.

Printed name and title

City and state: SACRAMENTO CALIFORNIA

EDMUND F. BRENNAN, U.S. MAGISTRATE JUDGE

逮捕令：

AO 442 (Rev. 11/11) Arrest Warrant

UNITED STATES DISTRICT COURT

for the



United States of America

v.

)
)
)
)
)
)
)

Case No.

Defendant

ARREST WARRANT

To: Any authorized law enforcement officer

YOU ARE COMMANDED to arrest and bring before a United States magistrate or judge without unnecessary delay
(name of person to be arrested) _____, who is accused of an offense or violation based on the following document filed with the court:

Indictment Superseding Indictment Information Superseding Information Complaint
 Probation Violation Petition Suspense Release Violation Petition Violation Notice Order of the Court

This offense is briefly described as follows:

SAMPLE

Date: _____

Issuing officer's signature

City and state: _____

Printed name and title