

Does your local law enforcement agency's policies unlawfully allow collaboration with ICE?

Here's what to look for.

Under Oregon state law, your local law enforcement agency is prohibited from using its resources to help federal immigration officials enforce immigration laws. See ORS § 180.805, 181A.820. This unlawful assistance can take several forms, including holding people for up to an additional 48 hours so immigration officials can take the person into custody (also known as an immigration detainer), fulfilling requests from immigration officials for immigration enforcement purposes, and sharing nonpublic information about people in its custody with federal immigration officials.

RED FLAG #1:

Policy allows detaining a person under an **immigration detainer** – even if it requires the detainer to be accompanied by “**a warrant, affidavit of probable cause, or removal order.**”

- Why: Oregon state law does not allow state and local law enforcement to help federal immigration officials with enforcing immigration laws. State law requires that, if a state or local law enforcement agency receives such a request for assistance, the agency **must deny it** and report it to the Oregon Criminal Justice Commission. An immigration detainer is simply a federal immigration official's request for assistance—specifically, it's a request to hold a person for 48 hours after they should have been released on state/local matters so that immigration officials can apprehend them. Without more, a state or local law enforcement agency or jail may not continue holding the individual.
- Definitions
 - o Affidavit of probable cause: a sworn declaration from a federal immigration official stating specific reasons why the official suspects the individual violated immigration laws
 - o Removal order: an order stating that an individual is to be removed (deported) from the United States
- **Keep an eye out**: Affidavits of probable cause and removal orders are not enough. A warrant *may be* enough if it is issued by a court or it is an arrest warrant issued by a federal magistrate judge. When in doubt, notify Rural Organizing Project by email (office@rop.org) or phone (503-543-8417).

RED FLAG #2:

Policy allows state or local law enforcement agency to continue detaining a person “**for a reasonable period of time if requested by federal immigration officials.**”

- Some policies may emphasize that this is allowed only if the person violated a criminal immigration law. But it doesn't matter if the person violated a civil or criminal immigration law. An Oregon law enforcement agency must not comply and must report the request for information if all of the following are true:
 - o There is no subpoena issued by a court,
 - o There is no arrest warrant issued by a court, and
 - o There is no other court order allowing continued detention.
- **Keep an eye out:** Immigration officials may provide an administrative subpoena or warrant issued by their own agency (also called an ICE warrant or ICE subpoena). Under Oregon state law, *these are not enough* for a state or local law enforcement agency to continue holding an individual.

RED FLAG #3:

Policy allows state or local law enforcement agency to continue holding a person if they have “**probable cause to believe that a person...has committed a criminal immigration offense**” and allows contacting and requesting that a federal immigration official respond to arrest the person.

- It doesn't matter if the person violated a civil or criminal immigration law. An Oregon law enforcement agency must not comply and must report the request for information to the Criminal Justice Commission if all of the following are true:
 - o There is no subpoena issued by a court,
 - o There is no arrest warrant issued by a court, and
 - o There is no other court order allowing continued detention.
- **Keep an eye out:** Immigration officials may provide an administrative subpoena or warrant issued by their own agency (also called ICE warrant or ICE subpoena). Under Oregon state law, *these are not enough* for a state or local law enforcement agency to continue holding an individual.

RED FLAG #4:

Any reference to **8 U.S.C. § 1357(g) or INA § 287(g)**.

- It is unlawful for any law enforcement agency in Oregon to enter into any arrangement (even if not a formal contract) to help federal immigration officials with immigration enforcement.
- Example: “If the violation is a criminal violation, the deputy may continue to detain the person for a reasonable period of time if requested by federal immigration officials (8 USC § 1357(g)(10)).”
- Section 287(g) of the Immigration and Nationality Act is a law that authorizes state and local law enforcement to perform some functions typically performed by federal immigration officials. 8 U.S.C. § 1357(g) refers to the same law in the U.S. Code.

Looking for more support in understanding or reviewing your local law enforcement policy?

Please reach out to Rural Organizing Project at office@rop.org or call us at 503-543-8417!