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Grand Jury Subpoenas: A Primer for Assessing and Responding

Sept. 29, 2026

This resource provides information for state and local election officials about federal grand juries and provides some considerations for officials, should they receive a grand jury subpoena, to discuss with their attorneys. It does not address administrative subpoenas or administrative or judicial warrants, and does not constitute legal advice, nor create an attorney-client relationship. Consult with your counsel before assessing or responding to any grand jury subpoena.

What is a grand jury?

A federal grand jury is a panel of 16-23 citizens that determines whether there is probable cause to believe one or more individuals has committed a federal felony.[1] State court grand jury sizes vary by state.[2]

Unlike petit juries, also known as trial juries[3], grand juries usually don't meet daily, instead meeting on a regular calendar schedule throughout their term (i.e., one day every three weeks, one week a month, etc.). A grand jury meets in a space closed to the public and normally hears only evidence presented by a government attorney (a prosecutor). The prosecutor may question witnesses in front of the grand jury to investigate a crime and gather evidence. The prosecutor may also present evidence to the grand jury before asking the grand jury to issue an indictment (i.e., the document charging a person or persons with a federal crime).

Unlike in a trial courtroom, neither a judge nor defense counsel is present for the prosecutor's presentation of evidence. A grand jury does not determine guilt or innocence, only whether there is probable cause to believe that a crime was committed and that a specific person or persons committed it. The grand jury usually makes this determination by listening to witnesses and evaluating other evidence, including materials obtained through grand jury subpoenas. The grand jury typically does not hear evidence from the target of the investigation.[4]

What is a grand jury subpoena?

A grand jury subpoena is a legal order, issued in connection with a grand jury's investigation, commanding a person or organization to testify, produce documents or records, or both.[5] Importantly, a grand jury subpoena is an investigative tool to obtain information. It is not itself an accusation of any wrongdoing by the recipient, nor does it indicate that the recipient is the person or organization under investigation. Nor does the issuance of a grand jury subpoena necessarily indicate that the prosecutor consulted with members of the jury prior to seeking the information, as discussed further below.

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[1] *A Guide to Understanding the Federal Grand Jury*, Protect Democracy (April 3, 2026), https://protectdemocracy.org/work/grand-jury-explained/.
[2] Jeffrey Fagan & Bernard E. Harcourt, *Professors Fagan and Harcourt Provide Facts on Grand Jury Practice in Light of Ferguson Decision*, Columbia Law School (Dec. 5, 2014), https://www.law.columbia.edu/news/archive/professors-fagan-and-harcourt-provide-facts-grand-jury-practice-light-ferguson-decision. Because state court grand jury rules vary, this resource focuses on the rules applicable to federal grand juries and grand jury subpoenas.
[3] A trial jury sits for the duration of a trial and listens to the evidence offered by the prosecution and defense (if it chooses to offer any) during a criminal trial and returns a verdict of guilty or not guilty.
[4] *Handbook for Federal Jurors* at 3, Judicial Conference of the United States, https://www.flmd.uscourts.gov/sites/flmd/files/documents/handbook-for-federal-grand-jurors.pdf.
[5] Fed. R. Crim. P. 17.

What are the different kinds of grand jury subpoenas?

There are three types of grand jury subpoenas:[6]

1. **Subpoena ad testificandum** — requires the recipient to appear on a specific date and give oral testimony before the grand jury.
2. **Subpoena duces tecum** — requires the recipient to produce "books, papers, documents, data, or other objects," such as election records, communications, or logs pertaining to voting equipment, by a specific date. It may allow for production of documents without the recipient making a personal appearance.
3. **Combined subpoena** — requires both testimony before the grand jury and the production of documents or records.[7]

How does a grand jury subpoena get issued?

A grand jury can request to review documentary or physical evidence and to hear testimony from specific witnesses it wants to consider as part of an investigation.[8] It obtains this evidence and these witnesses through the issuance of a grand jury subpoena. In federal court, the clerk of court provides blank subpoena forms to the prosecutor, who fills in the details — who or what is being sought, and when the evidence is required to be produced and/or the witness is required to appear before the grand jury.[9] Judges do not typically review or approve grand jury subpoenas in advance.[10]

In practice, prosecutors and federal agents generally conduct investigations and subpoena materials on behalf of the grand jury without consulting the grand jury in advance. Grand jurors therefore often do not learn about the grand jury subpoenas that have been issued under their authority until either 1) a witness appears to testify before the grand jury; 2) a prosecutor presents to the grand jury a list of all subpoenas issued during a given period of time; or 3) a prosecutor presents evidence seeking an indictment of specific individual(s) for a specific crime.[11]

A federal grand jury subpoena may be served anywhere in the United States and must identify the court, the proceeding, and what is required to be produced.[12] It must also include a reasonable date by which to comply.[13] State grand juries follow similar processes under their own rules of criminal procedure, which can vary by state.

Can your attorney negotiate the terms of a grand jury subpoena with the government prosecutor?

Yes, in most cases. Especially if the prosecutor is requesting a large number of documents or materials, your attorney may consider discussing with the government how to narrow the number of items produced and how to manage the production process. Where the prosecutor has demanded materials that cannot be produced consistent with state or federal election law, for example, your attorney may be able to negotiate an alternative solution, such as suggesting that the government inspect the materials in person in lieu of producing originals; providing copies; or providing redacted materials or the requested information in a different form. Where the return date on the subpoena is unreasonably short, your attorney may consider requesting additional time to respond, or suggest providing a partial response by the return date, with the remaining materials to follow (a "rolling" response).

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[6] Fed. R. Crim. P. 17(c).

[7] Though issued very rarely, there is also a type of subpoena known as a "forthwith" subpoena, which directs the person to whom it is addressed to appear to testify or provide subpoenaed items immediately. *E.g.*, *United States v. Triumph Capital Group, Inc.*, 211 F.R.D. 31 (D. Conn. 2002); *In re Grand Jury Subpoenas Dated Dec. 10, 1987*, 926 F.2d 847 (9th Cir. 1991); *United States v. Lartey*, 716 F.2d 955 (2d Cir. 1983). Per Department of Justice policy, forthwith grand jury subpoenas are only used when an immediate response is justified and require the approval of the United States Attorney. U.S. Dep't. of Just., Just. Manual, § 9-11.140 (2018).

[8] Protect Democracy, *supra* note 1.

[9] Charles Doyle, Cong. Rsch. Serv., 95-1135, The Federal Grand Jury (2025), https://www.congress.gov/crs-product/95-1135.

[10] *See United States v. Navarro*, 608 F.3d 529, 536 (9th Cir. 2010) ("All the judge does, unless a motion comes to him, is swear in and charge the grand jury before it begins its work, and days, weeks, or months later, receive the indictments it hands down. A district judge does not preside in or even enter the grand jury room." (citation modified)); *see also In re Grand Jury Proceedings*, 142 F.3d 1416, 1425 (11th Cir. 1998); *In re Grand Jury Proceedings*, 241 F.3d 308, 312 (3d Cir. 2001).

[11] *See* Doyle, *supra* note 9 at 8–9 (citing *Lopez v. DOJ*, 393 F.3d 1345, 1349 (D.C. Cir. 2005) ("[T]he term 'grand jury subpoena' is in some respects a misnomer, because the grand jury itself does not decide whether to issue the subpoena; the prosecuting attorney does.")).

[12] Fed. R. Crim. P. 17.

[13] *Id.*

Can you challenge a grand jury subpoena?

Yes. While these motions are rare, a recipient of a grand jury subpoena may have their attorney file a motion asking the court to quash (void) or modify the subpoena.[14] The recipient can seek to quash or modify a subpoena if compliance would be unreasonable or oppressive, if the subpoena seeks privileged or otherwise protected material, or if it conflicts with state or federal law – for example, those governing the confidentiality or custody of election records.[15] This motion must generally be filed promptly, before the compliance date, in the court that issued or supervises the subpoena.

What is the standard courts apply to quash or modify a grand jury subpoena?

Courts set a high bar to quash or modify a subpoena. Courts start from the premise that grand juries have broad investigative power — a grand jury "can investigate merely on suspicion that the law is being violated, or even just because it wants assurance that it is not." *United States v. Morton Salt Co.*, 338 U.S. 632, 642-43 (1950). Because of this broad power, a court will generally presume a grand jury subpoena issued through normal channels is reasonable, and the burden falls on the recipient to prove otherwise. *United States v. R. Enterprises, Inc.*, 498 U.S. 292, 301 (1991).[16]

A grand jury subpoena recipient may move to quash or modify the subpoena in the issuing court on the grounds that compliance would be "unreasonable or oppressive."[17] Courts will consider objections that the subpoena lacks relevance, is unduly burdensome, overbroad, seeks privileged or protected materials, or was issued for an improper purpose, such as to harass the recipient or exert pressure on the recipient in an unrelated matter.[18] To succeed on a motion to quash a grand jury subpoena for lack of relevance, the recipient must show "that there is no reasonable possibility that the category of materials the Government seeks will produce information relevant to the general subject of the grand jury's investigation," *R Enterprises, Inc.*, 498 U.S. at 301—a high bar when the government does not have to describe the matter under investigation to the subpoenaed party, and is permitted to investigate to determine that a crime was *not* committed.[19]

Can your attorney accompany you during a grand jury hearing?

An attorney can come with you to a federal grand jury hearing but cannot be present in the room while you are giving testimony to the grand jury. Only the following individuals may be present while a federal grand jury is in session: the grand jurors, government attorneys, the witness being questioned, an interpreter if needed, and a court reporter or recording operator.[20]
You may, however, consult an attorney before testifying and, while testifying, step out of a federal grand jury room to confer with an attorney waiting outside.[21] Some states allow a witness's counsel inside the grand jury room; this, however, varies by state.[22]

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[14] Fed. R. Crim. P. 17(c)(2).
[15] Gary Restaino, *Preparing for Law Enforcement Demands for Election Materials*, Brennan Center for Justice (Apr. 22, 2026), https://www.brennancenter.org/our-work/analysis-opinion/preparing-law-enforcement-demands-election-materials.
[16] *C.f.* Jordan Ascher, *What the Presumption of Regularity's Erosion Means for Challenges to Executive Action*, Just Security (Sept. 1, 2026), https://www.justsecurity.org/155321/presumption-regularity-erosion-challenges-executive-action/ (explaining that "[t]he presumption of regularity encompasses the idea that, in a range of legal contexts, courts presume that public officials have properly discharged their official duties. This doctrine has long been taken for granted in litigation against the federal government. But… the presumption of regularity has come under unprecedented strain.") (citation modified).
[17] Fed. R. Crim. P. 17(c)(2).
[18] *See generally* Francis Amendola & Karl Oakes, Grand Juries, Corpus Juris Secundum § 140: Grounds for quash or modification of grand jury subpoena (April 2026 ed.); 2 Wright & Miller's Federal Practice & Procedure § 276 (4th ed. 2026); *see also In re Grand Jury Proceeding,* 971 F.3d 40, 54 (2d Cir. 2020) (noting that a party "must present particularized proof of an improper purpose to overcome the presumption of propriety of the grand jury subpoena" (citation modified); *see also United States v. Powell*, 379 U.S. 48, 58 (1964).
[19] *Morton Salt Co.*, 338 U.S. at 642-43.
[20] Fed. R. Crim. P. 6(d).
[21] Federal courts have generally recognized the right of a grand jury witness to suspend his or her testimony in order to consult with an attorney immediately outside the grand jury room, *In re Grand Jury Subpoena*, 97 F.3d 1090, 1092–93 (8th Cir. 1996); *Gabbert v. Conn*, 131 F.3d 793, 801 (9th Cir. 1997), *rev'd on other grounds*, 526 U.S. 526 (1999).
[22] Subject to various limitations, a number of states permit state grand jury witnesses to have an attorney present when they testify. *See, e.g.*, Ariz. Rev. Stat. § 21-412 (2025) (only targets of investigation); Colo. Rev. Stat. § 16-5-204(4)(d) (2025); Fla. Stat. § 905.17 (2025); Mich. Comp. Laws § 767.3 (2025); Minn. R. Crim. P. 18.03 (only witnesses who have waived or been granted immunity); Nev. Rev. Stat. § 172.239 (2025) (only target of grand jury investigation).

What should you do if you receive a grand jury subpoena?

1. **Read it carefully.** Note the issuing court, the return date or appearance date, and exactly whose testimony or what records are being demanded.
2. **Contact your counsel right away,** well before the return date. This may be your county attorney, agency counsel, or your state attorney general's office, as relevant.
    a. Only your counsel should be in direct communication with the prosecutor(s) and agent(s) who are identified on the subpoena.
3. **Discuss any concerns you may have with your counsel. Questions to consider may include:**
    a. Is the requested information in your possession?
    b. Can the requested materials leave your possession, consistent with state and federal election law?
    c. Are there modifications you could propose that would ensure compliance with both the subpoena and state and federal election law, e.g., permitting inspection of the materials by federal agents, rather than permitting the materials to leave your custody; producing partially redacted materials; producing the materials on a different timeframe; or producing the information requested in a different format?
    d. Are the requests in the subpoena onerous or burdensome to produce? Would requesting additional time, or a "rolling" production be helpful?
    e. If the subpoena requests testimony, is the correct person or position named? Would you propose substituting a different witness? Would the government consider a voluntary interview in lieu of a grand jury appearance?
4. **Preserve everything responsive.** Do not destroy, alter, or hide any document, record, or data covered by the subpoena, even in the ordinary course of business — doing so can create separate legal risk.