KNOW YOUR RIGHTS

We have written this to help you understand some of your rights if you are questioned by government agents. You should be careful in the way you speak when approached by the police, FBI, or INS, and you should talk to a lawyer before you answer questions. If you give answers, they can be used against you in a criminal, immigration, or civil case. Non-citizens have special legal needs that we also tell you about here. None of this advice is meant to stop you from cooperating with proper law enforcement investigations.

I. WHAT CONSTITUTIONAL RIGHTS DO I HAVE?

The right to remain silent. The Fifth Amendment to the U.S. Constitution says that every person has the right to not answer questions asked by a government agent. They can ask you questions, but you cannot be arrested just for refusing to answer them. But the police or FBI may become suspicious of you if you refuse.

The right to be free from "unreasonable searches and seizures." The Fourth Amendment protects your privacy. Without a warrant, no government agent can search your home or office without your consent, and you have the right to refuse to let him or her in. But in emergencies (like when a person is heard inside calling for help) officers can enter and search without a warrant. If you are arrested in your home, the officers can search the area "close by," which usually means the room you are in at the time of the arrest. Be aware that the government may be monitoring your e-mail, your cell phone calls, or your telephone calls without your knowledge.

The right to advocate for change. The First Amendment protects groups and individuals who peacefully advocate for their rights or who oppose government policies. But, the U.S. Supreme Court has said that the INS can target non-citizens for deportation because of their First Amendment activities, as long as it could deport them for other reasons. This means the INS could target a visitor who overstayed a visa because it disliked his or her speech, views, or associations with individuals and groups.

II. WHAT IF THE POLICE OR FBI CONTACT ME?

Q: What if agents come to question me?
A: You have the right to remain silent. It's not a crime to refuse to answer questions, but refusing to answer might make the police suspicious about you. You can't be arrested for refusing to identify yourself on the street, but if you are stopped while driving a vehicle, you must show your license and registration. You do not have to talk to anyone even if you've been arrested, or even if you are in jail, especially without a lawyer present. Only a judge can order you to answer questions.

Q: Can agents search my house, apartment or office?
A: Your home cannot be searched by police or other law enforcement agents unless you consent, or unless they have a search warrant. Interfering with the search probably won't stop the search and you might get arrested for it. This is true even if the search is not legal. Your roommate or guest can legally consent to a search of your house if the police believe that person has the authority to give consent. Police and law enforcement need a warrant to search an office, but your employer can consent to a search of your workspace without your permission.

Q: Agents arrested me in my home. Can they search my house?
A: The area near where you are arrested can be searched without a warrant. But your entire house cannot be searched unless there is a warrant that describes in detail the places to be searched and the people or things to be seized.

Q: What if agents have a search warrant?
A: You have the right to see the warrant. The warrant must describe in detail the places to be searched and the people or things to be seized. If the police have a warrant, you cannot stop them from entering and searching, but you can and should tell them that you do not consent to a search. This will limit them to search only as authorized by the warrant. You may ask to observe the search. You should take notes including names, badge numbers, and what agency the officers are from. If others are present, have them act as witnesses. Give the information from you and your witnesses to your lawyer.

Q: Do I have to answer questions if the police have a search warrant?
A: No. You may be asked questions before, during, or after the search. A search warrant does not mean you have to answer questions.

Q: What if agents do not have a search warrant?
A: You do not have to let the police search your home, and you do not have to answer their questions. Your refusal to answer questions or let them search without a warrant cannot be used by the police to get a warrant to arrest you or to search your home or office.

Q: What if agents do not have a search warrant, but insist on searching my home even after I object?
A: Do not physically interfere with or obstruct the search or you may be arrested, even if the search is illegal. Try to have a witness there to show that you did not give consent, and to get the names and badge numbers of the searching officers. If the search is later found to be illegal, any evidence found during that search will not be admissible in a criminal case.

Q: What if I speak to the police anyway?
A: Anything you say to the police can be used against you and others. Keep in mind that lying to the government is a crime.

Q: What if the police stop me on the street?
A: You have the right to ask if you are free to go. If the police say you are not under arrest, but are not free to go, then you are being "detained". Being detained does not necessarily mean you will be arrested. The police can pat down the outside of your clothing if they have reason to suspect you might be armed and dangerous. If they search any more than this, say clearly, "I do not consent to a search." They may keep searching anyway. You do not need to answer any questions if you are detained or even if you are arrested.

Q: What if police stop me in my car?
A: Upon request, show them your license, registration, and proof of insurance. You do not have to consent to a search. But in some cases your car can be searched without your consent if the police have probable cause.

Q: What if the police or FBI threaten me with a grand jury subpoena if I don't answer their questions?
A: A grand jury subpoena is a written order for you to go to court and testify about information you may have. If the police or FBI threaten to give you one, you should call a lawyer right away. If you speak without a lawyer, you may be subpoenaed anyway, and anything you tell law enforcement agents may lead them to ask you more questions later. If you are subpoenaed before a grand jury, you may have a legal right to refuse to answer questions; you should meet with your lawyer to find out your rights.

Q: I'm nervous about refusing to talk. Won't this look like I don't want to cooperate, or that I'm guilty of something, or that I have information I am trying to hide?
A. You should talk to a lawyer first. Meeting a lawyer does not mean that you won't cooperate. It does mean that you will get the legal advice you need before you speak to government agents. Officers should stop questioning you once you clearly say you want to talk to a lawyer. You don't need to have a lawyer already, but can meet one after you've been approached by the police or FBI. Remember to get the name, agency, and telephone number of any investigator who visits you, and give that information to your lawyer.

Q: I've been arrested. Do I have to answer questions now?
A: No. If you are arrested, you do not have to give a statement or answer any questions. If you are arrested and do not want to answer any questions, you should ask for a lawyer right away. You have a right not to answer any questions until after you have talked to your lawyer.

Q: What if I think I am being watched or followed by the police or FBI?
A: Thinking smart is best, no matter what or whom you suspect, or why. You have the right to approach suspected agents in a non-angry way, in public, and to ask what they are doing. You may want to bring along a witness. Even if the person you suspect does not answer, that person at least now knows that you know you are being watched. It is not illegal for law enforcement officers to engage in surveillance in public places. But, if you think government agents might be following you, or if they are harassing you, you can talk to a lawyer.

Q: What if I am treated badly by the police or the FBI?
A: Remember the officer's badge number, name, or other identifying information. You have a right to ask the officer for this information. Write down everything as soon as you can. Try to find witnesses and their names and phone numbers. If you are injured, take pictures of the injuries as soon as you can. Call a lawyer.

III. WHAT IF I AM NOT A CITIZEN AND THE INS CONTACTS ME?

Assert your rights. If you do not demand your rights or if you sign papers waiving (giving away) your rights, the INS may deport you before you see a lawyer or an immigration judge.

Talk to a lawyer to know your rights. Always carry with you the name and telephone number of an attorney who will take your calls. The immigration laws are hard to understand and many changes are being proposed because of the events of September 11. The government is thinking about passing new laws that let it arrest and jail non-citizens it thinks are terrorists.

Based on today's laws, regulations and INS guidelines, non-citizens usually have the rights below, no matter what your immigration status. The following information may change:

IMPORTANT NOTE: *The following rights apply to non-citizens who are inside the U.S. Foreign nationals at the border (air or land) who are trying to enter the U.S. have additional restrictions and do not have all the same rights.*

Q: Do I have the right to talk to a lawyer before answering any INS questions or signing any INS papers?
A: Usually, yes. You have the right to call a lawyer or your family if you are detained, and you have the right to be visited by a lawyer in detention. You have the right to have your attorney with you at any hearing before an immigration judge. You do not have the right to a government-appointed attorney. You must hire an attorney or find someone who will represent you for free. If you need help finding an attorney, contact one of the groups listed at the end of this document.

Q: Am I required to give my immigration status if I am stopped by the INS?
A: No. You can explain your immigration status to an INS agent, if you want. But you are better off talking to a lawyer first. If the INS asks anything about your political beliefs, groups you belong to, things you have said, where you have traveled, or other questions that do not seem right, you do not have to answer them.

Q: Should I carry my green card or other immigration papers with me?
A: Yes. The law requires that you carry many types of official immigration papers with you at all times. This includes your green card, I-94, Employment Authorization Card, Border Crossing Card and/or other required INS papers that prove that you have registered with the INS. If you do not have these papers with you, you could be charged with a misdemeanor crime. The government does not always enforce this law, but it could at any time.

Q: If the INS arrests me, does it have to bring immigration charges?
A: Yes. Under INS rules, they must decide in 48 hours whether to put you into immigration proceedings and whether to keep you in custody or to release you on bond.

Under a new rule, the INS has an "additional reasonable period of time" past 48 hours if there is an "an emergency or other extraordinary circumstance" to decide if they will keep you in custody or not. The government might also pass a new law that would let the INS detain a non-citizen for seven days until it brings charges, if the Attorney General has "certified" that a non-citizen may be a "terrorist" or a threat to national security.

Q: Do I have the right to a bond hearing to ask for my release?
A: In most cases you have the right to ask for release from detention once you pay a bond, and to ask for a bond hearing before an immigration judge. You have these rights even if you have not been charged by the INS. The law does not say when an immigration judge must hear your case. The judge may order you to stay in detention if he or she finds that you are a danger to society or might try to get away. In some cases, the law says you can't be released if you are charged with terrorism or have certain criminal convictions.

Q: Do I have the right to a hearing before an immigration judge to defend myself against deportation charges?
A: Yes. In most cases only an immigration judge can order you deported. But if you waive (give up) your rights or take "voluntary departure" (agree to leave) you could be deported without a hearing. If you have criminal convictions, were arrested at the border, or have been ordered deported in the past, you could be deported without a hearing.

Q: Can I call my consulate if I am arrested by the INS?
A: Yes. Foreign nationals arrested in the U.S. have the right to call their consulate or to have the police tell the consulate of your arrest. The police must let your consulate visit or speak with you. Your consulate might help you find a lawyer or offer other help. You also have the right to refuse help from your consulate.

Q: What happens if I give up my right to a hearing or leave the U.S. before the hearing is over?
A: You could lose your right to apply for immigration status, and you could be kept from returning to the U.S. in the future. Under the law, leaving the U.S. can cause serious legal problems for a non-citizen. You should always talk to an immigration attorney before you decide. Even a legal permanent resident or applicant for a green card could be kept from returning. An undocumented immigrant who has been unlawfully in the country for more than six months could be kept from returning for many years even if he or she has never been in immigration proceedings.

Q: What should I do if I want to contact the INS?
A: Always talk to a lawyer before contacting the INS (even on the phone). Many INS officers view "enforcement" as their primary job and will not explain options to you.

Special note: *Non-citizens who are victims of domestic abuse should talk to a lawyer who is expert in both immigration law and domestic violence.*

IV. WHAT ARE MY RIGHTS AT AIRPORTS?

IMPORTANT NOTE: *It is illegal for any of the following stops, scans, searches, detentions, or removals to be done to you based on your race, national origin, religion, sex, or ancestry.*

Q: If I'm entering the U.S. with valid travel papers may I be stopped and searched by a U.S. Customs agent?
A: Yes. The Customs Service prevents items like drugs and weapons from being brought in. They have the right to stop and search every person and item. Having valid travel documents will not stop you from being questioned, searched, or detained, but they may help keep the questioning short.

Q: Can my bags or I be searched after going through detectors with no problem, or after security sees that something on the scanners was not a weapon?
A: You give them permission to scan you by buying a ticket and going to the airport. But they do not have the right to search you further if the initial screen does not reveal anything suspicious. Once you or your bag have set off scanners, security may conduct a further search. Courts are divided about whether you can refuse a further search by deciding not to fly and departing the airport.

Q: If I'm on an airplane, can an airline employee interrogate me or ask me to get off ?
A: The pilot (captain) of an airplane has the right to refuse to fly a passenger if he or she believes the passenger is a threat to the safety of the flight.The pilot's decision must be reasonable and based on observations of you, not guesses.

CONTACT INFORMATION

American Civil Liberties Union (ACLU): (212) 549-2500

American-Arab Anti-Discrimination Committee (ADC): (202) 244-2990

Asian American Legal Defense and Education Fund (AALDEF): (212) 760-9110

National Immigration Project of the National Lawyers Guild: (617) 227-9727

U.S. Commission on Civil Rights (UCCR): (800) 552-6843

Racial Profiling is when police, FBI, or other law enforcement stop, question, search or investigate you because of your race, ethnicity, or religion. If you believe you have been the victim of racial profiling, call the **ACLU's free hotline** at **1-877-6-PROFILE** to get a complaint form.

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What To Do If You're Stopped By The Police, The FBI, The INS, Or The Customs Service

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