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 her speech, views, or associations with indi
dividuals and groups.

II. IF I'M 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 with respect to what you tell the police. 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 any 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 way, if they do 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 oth
ers are present, have them act as witnesses. Give the informa
tion 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 police are not lawfully searching you, evidence found dur
ing 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 put the out
side of your clothing if they have reason to suspect you might be carrying something dangerous. If they search any more than this, say clearly, “I do not consent to a search.” They may keep search
ing 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. You must answer questions. If you refuse, 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 held in jail later. If you refuse, 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 held in jail later. If you refuse to answer any 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
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If You’re Stopped By The Police, The FBI, The INS, Or The Customs Service

Q: Do I have the right to talk to a lawyer before answering any INS or law enforcement questions or signing any INS papers? A: Usually yes. You have the right to talk to 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 “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 terror-ist 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 terr- orism 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 your deportation. 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 consultant if I am arrested by the INS? A: Yes. Foreign nationals arrested in the U.S. have the right to call their consultant or to have the police tell the consultant of your arrest. The police must let your consultant visit or speak with you. Your consultant might help you find a lawyer or offer other help. You also have the right to refuse help from your consultant.

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 new law, leaving the U.S. can cause serious legal prob-lems for a non-citizen. You should always talk to an immigra-tion 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 immigra-tion law and domestic violence.

IV. WHAT ARE MY RIGHTS AT AIRPORTS?

Q: Do I have the right to a bond hearing to ask for my release after an immigration stop? A: Yes. If you are stopped by the INS while entering the U.S. with valid travel papers, you have the right to a bond hearing to ask for your release. The INS must explain the reason for your stop, scan, search, or removal to be done. The bond hearing must be held in the same or a nearby city. You also have the right to have a lawyer present at your bond hearing. The judge will decide whether to order your release or removal.

Q: Can INS agents search me at the airport? A: Yes. The INS has 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 personnel 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: Do I have the right to a bond hearing to ask for my release before being deported? A: No. The INS has the right to deport you without a bond hearing if it finds that you pose a danger to society or have committed a crime. If the INS has charged you with a crime, you have the right to a bond hearing to ask for your release. The INS must explain the reason for your stop, scan, search, or removal to be done. The bond hearing must be held in the same or a nearby city. You also have the right to have a lawyer present at your bond hearing. The judge will decide whether to order your release or removal.

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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): (617) 760-9110
National Immigration Project of the National Lawyers Guild: (617) 227-9727
U.S. Commission on Civil Rights (UCCR): (800) 487-0758

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

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.