

# CENTER FOR HUMAN RIGHTS AND CONSTITUTIONAL LAW Foundation

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## YOUR RIGHTS

The following information is provided to help you understand some of your rights if you are questioned by government agents. Non-citizens we also address below. None of this advice is meant to stop you from cooperating with proper law enforcement investigations. However, 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 against you in a criminal, immigration, or civil case.

### 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. Know

- 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.

In general,, constitutional rights cannot be suspended, even during a state of emergency or wartime.

### 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*

jail, especially with  
judge can order you

*Q: Can agents search  
office?*

*A: Your home cannot  
other law enforcement  
or unless they have  
with the search prob  
you might get arres  
the search is not leg  
can legally consent  
police believe that p  
consent. Police and  
to search an office,  
to a search of your  
permission.*

*Q: Agents arrested  
search my house?*

*A: The area near wh*

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 have the right 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. You still do not have to tell them anything other than your name and address.

*Q: Do I have to answer questions if the police have a search warrant?*

A: No. A search warrant gives law enforcement officers the right to conduct a search: it 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

*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

*Q: I'm nervous about looking like I don't want to be guilty of something, trying to hide?*

A: You should talk to a lawyer. A lawyer does not mean that you need before you speak. Officers should stop you clearly say you want to need to have a lawyer after you've been arrested. Remember to get the number of any investigators give that information

*Q: I've been arrested, what questions now?*

A: No. If you are arrested, a statement or answer you arrested and do not you should ask for a right not to answer have talked to your make free local telephone your arrest. Generally a lawyer, a bail bondsman Demand your right

*Q: What if I think I'm being searched by the police or FBI?*

A: You have the right in public in a non-threatening they are doing. You

*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.

WHAT ARE MY RIGHTS IF I AM NOT A CITIZEN AND THE INS CONTACTS ME?

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: 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.

- The right to speak to an attorney before answering any questions or signing any documents;
- The right to a hearing with an immigration judge;
- The right to have an attorney at that hearing and in any interview with INS (however you do not have the right to a free, government-paid lawyer); and

for your ability to later enter or to gain legal immigration status in the U.S. 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.

*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*

that you have registered. If you do not have these papers, you may be charged with a misdemeanor if the government does not know it could at any time.

*Q: If the INS arrests me, can I be charged with immigration charges?*

A: Yes. Under INS regulations, you have 48 hours whether to prepare for proceedings and whether to release you on bond. If you do not have an attorney, you may have an "additional" 48 hours if there is an extraordinary circumstance. The government can keep you in custody until you can hire an attorney. You also pass a new law that allows the government to detain non-citizen for several days. If the Attorney General determines that a non-citizen may be a "terrorist threat" to national security.

*Q: Do I have the right to request my release?*

A: In most cases you can request release from detention. You can ask for a bond hearing with an immigration judge. You have the right to a hearing if you have been charged by the government. When an immigration judge orders you to be released, the judge may order you to be released or she finds that you are not a threat. You might try to get away from the government if you can't be released. If you are charged with terrorism or have committed

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

**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

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(AALDEF): (212) 7  
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and the ACLU.

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