

The Immigration and Naturalization Service (INS) is now part of the Department of Homeland Security (DHS) and has been renamed and reorganized into:

1. The Bureau of Citizenship and Immigration Services (BCIS)
2. The Bureau of Customs and Border Protection (CBP)
3. The Bureau of Immigration and Customs Enforcement (ICE)

All three bureaus are part of the DHS and will be referred to as "DHS" for the purposes of this brochure.

I. WHAT IF THE POLICE, FBI OR DHS AGENTS CONTACT ME?

Q: Do I have to answer the questions asked by the agents?

A: You have the constitutional right to remain silent. It is not a crime to refuse to answer questions. It is a good idea to talk to a lawyer before agreeing to answer questions. You do not have to talk to anyone, even if you have been arrested or are in jail. Only a judge can order you to answer questions.

Q: Can I talk to a lawyer?

A: You have the right to talk to a lawyer before you answer questions, whether or not the police tell you of that right. The lawyer's job is to protect your rights. Once you say that you want to talk to a lawyer, officers should stop asking you questions. If you do not have a lawyer, you may still tell the officer you want to speak to one before answering questions. If you do have a lawyer, keep his or her business card with you. Show it to the officer, and ask to call your lawyer. Remember to get the name, agency and telephone number of any investigator who visits you, and give that information to your lawyer.

Q: Can agents search my home or office?

A: Police or other law enforcement agents cannot search your home unless you give them permission, or unless they have a search warrant. A search warrant is a court order that allows the police to conduct a specified search. Interfering with the search probably will not stop it and you

might get arrested. But you should say clearly that you have not given your consent and that the search is against your wishes. 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: What if agents have a search warrant?

A: If you are present when agents come for the search, you can ask to see the warrant. The warrant must specify in detail the places to be searched and the people or things to be taken away. Call your lawyer as soon as possible. Ask if you are allowed to watch the search; if you are allowed to, you should. Take notes, including names, badge numbers, what agency each officer is from, where they searched and what they took. If others are present, have them act as witnesses to watch carefully what is happening.

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

A: No. 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. The police cannot get a warrant based on your refusal.

Q: What if agents do not have a search warrant, but insist on searching my home even after I object?

A: Do not get in the way of the search. If someone is there with you, ask him or her to witness that you are not giving permission for the search. Call your lawyer as soon as possible. Get the names and badge numbers of the searching officers.

Q: What if I speak to government agents anyway?

A: Anything you say to law enforcement can be used against you and others. Keep in mind that lying to a government official is a crime. Remaining silent until you consult with a lawyer is not. Even if you have already answered some questions, you can refuse to answer other questions until you have a lawyer.

Q: What if the police stop me on the street?

A: Ask if you are free to go. If the answer is yes, consider just walking away. If the police say you are not under arrest, but are not free to go, then you are being detained. 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 arrested with one important exception. The police may ask for your name once you have been detained, and you can be arrested in some states for refusing to provide it.

Q: What if police stop me in my car?

A: Keep your hands where the police can see them. You do not have to consent to a search. But if the police have probable cause to believe that you have been involved in a crime or that you have evidence of a crime in your car, your car can be searched without your consent. Clearly state that you do not consent. Officers may separate passengers and drivers from each other to question them and compare their answers, but no one has to answer any questions.

Q: What if the police or FBI threatens 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 threatens to get a subpoena, you should call a lawyer right away. Anything you say can usually be used against you.

Q: Do I have to answer questions if I have been arrested?

A: No. If you are arrested, you do not have to answer any questions. Ask for a lawyer right away. Repeat this request to every officer who tries to talk to or question you. You should always talk to a lawyer before you decide to answer any questions.

Q: What if I am treated badly by the police or the FBI?

A: Write down the officer's badge number, name or other identifying information. You have a right to ask the officer for this information. Try to find witnesses and their names and phone numbers. If you are injured, seek medical attention and take pictures of the injuries as soon as you can. Call a lawyer or contact your local ACLU office.

II. WHAT IF I AM NOT A CITIZEN AND THE DHS CONTACTS ME?

Assert your rights. If you do not demand your rights or if you sign papers waiving your rights, the DHS may deport you before you see a lawyer or an immigration judge. **Never sign anything without reading, understanding and knowing the consequences of signing it.**

Talk to a lawyer. If possible, carry with you the name and telephone number of a lawyer who will take your calls. The immigration laws are hard to understand and there have been many recent changes.

Based on today's laws, regulations and DHS guidelines, non-citizens usually have the rights below, no matter what their immigration status. The following information may change, so it is important to contact a lawyer.

The following rights apply to non-citizens who are inside the U.S. Non-citizens at the border 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 DHS questions or signing any DHS papers?

A: 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 for immigration proceedings, but if you have been arrested, immigration officials must show you a list of free or low cost legal service providers.

Q: Should I carry my green card or other immigration papers with me?

A: If you have documents authorizing you to stay in the U.S., you must carry them with you. Presenting false or expired papers to DHS may lead to deportation or criminal prosecution. An unexpired green card, I-94, Employment Authorization Card, Border Crossing Card or other papers that prove you are

in legal status will satisfy this requirement. If you do not carry these papers with you, you could be charged with a misdemeanor crime. Always keep a copy of your immigration papers with a trusted family member or friend who can fax it to you, if need be. Check with your immigration lawyer about your specific case. You may be required to show your identification to police officers, border patrol agents and aircraft pilots as well.

Q: Am I required to talk to government officers about my immigration history?

A: Once you have shown evidence of your status, you do not have to talk to officers further – it is up to you. You may be better off remaining silent and talking to a lawyer first, depending on your situation. Immigration law is very complicated. You may have a problem without realizing it. A lawyer can protect your rights, advise you and help you avoid giving answers that might hurt you. If DHS asks anything about your political and religious beliefs, groups you belong to or contribute to, things you have said, where you have traveled or other questions that do not seem right, you do not have to answer them. An officer may not request evidence of your immigration status in your home or another private place unless he or she has a warrant.

Q: If I am arrested for immigration violations, 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 your rights or take “voluntary departure,” agreeing to leave the country, you could be deported without a hearing. If you have criminal convictions, were arrested at the border, came to the U.S. through the visa waiver program or have been ordered deported in the past, you could be deported without a hearing. Contact a lawyer immediately to see if there is any relief for you.

Q: Can I call my consulate if I am arrested?

A: Yes. Non-citizens 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 if consular officials decide to do so. Your consulate might help you find a lawyer or offer other help.

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 eligibility for certain immigration benefits, and you could be barred from returning to the U.S. for a number of years. You should always talk to an immigration lawyer before you decide to give up your right to a hearing.

Q: What should I do if I want to contact DHS?

A: Always talk to a lawyer before contacting the DHS, even on the phone. Many DHS officers view “enforcement” as their primary job and will not explain all of your options to you.

III. WHAT ARE MY RIGHTS AT AIRPORTS?

IMPORTANT NOTE: *It is illegal for law enforcement to perform any stops, searches, detentions or removals based solely on your race, national origin, religion, sex or ethnicity.*

Q: If I am entering the U.S. with valid travel papers can a U.S. customs agent stop and search me?

A: Yes. Customs agents have the right to stop, detain and search every person and item.

Q: Can my bags or I be searched after going through metal detectors with no problem or after security sees that my bags do not contain a weapon?

A: Yes. Even if the initial screen of your bags reveals nothing suspicious, the screeners have the authority to conduct a further search of you or your bags.

Q: If I am on an airplane, can an airline employee interrogate me or ask me to get off the plane?

A: The pilot 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 stereotypes.

IF YOU HAVE BEEN PROFILED at the airport, please fill out the Passenger Profiling Complaint Form that can be found in the Racial Equality section of our Web site at www.aclu.org/airlineprofiling

REFERRAL CONTACT INFORMATION

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

American Immigration Lawyers Association (AILA):
1-800-954-0254

Asian American Legal Defense and Education Fund (AALDEF):
(212) 966-5932

Council on American-Islamic Relations (CAIR):
(202) 488-8787

Mexican American Legal Defense and Educational Fund (MALDEF):
(213) 629-2512

National Lawyers Guild:
(212) 679-5100

National Immigration Project:
(617) 227-9727

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

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THE AMERICAN CIVIL LIBERTIES UNION is the nation’s premier guardian of liberty, working daily in courts, legislatures and communities to defend and preserve the individual rights and freedoms guaranteed by the Constitution and the laws of the United States.

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KNOW YOUR RIGHTS

What to Do If Questioned by Police, FBI, Customs Agents or Immigration Officers

