I. WHAT CONSTITUTIONAL RIGHTS DO I HAVE?

The right to remain silent. The Fifth Amendment to the U.S. Constitution says that you have the right not to 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 arrest. Be aware that the government may be monitoring 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 citizens and residents 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 I talk to a lawyer?
A: You have the right to talk to a lawyer before you answer questions. Once you say that you want to talk to a lawyer, officers should stop asking you questions. If you do decide to speak to a lawyer, the first lawyer you contact may have the right to talk to you without your consent. Any lawyer can represent you in court and testify about information you may have. 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 where the warrant authorizes. Ask if you are allowed to watch the search; if you are allowed to, you should.

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 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 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 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 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. Always carry with you the name and telephone number of a lawyer who will take your calls. Non-citizens have special legal needs that we also tell you about in Part IV. Part III is for non-citizens. Part IV is about airports.

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 don’t 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: You have the right to approach suspected agents in a non-aggressive 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. If you think government agents might be following you or, if they are harassing you, you can talk to a lawyer.

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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.

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Q: Do I have the right to talk to a lawyer before answering any INS questions or signing any INS papers?  
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.

A new law lets the INS detain a non-citizen for seven days before it brings immigration or criminal charges if the Attorney General has “certified” that the non-citizen may be a “terrorist” or a threat to national security. A “certified” detainee can challenge the detention in federal court.

Q: Do I have the right to a bond hearing to ask for my release?  
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.

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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 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 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 You’re Stopped By The Police, The FBI, The INS, Or The Customs Service  
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 leaving 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 (ACDO): (202) 244-2990  
Asian American Legal Defense and Education Fund (AALDEF): (212) 966-5932  
Asian American Legal Defense and Education Fund (AALDEF): (212) 966-5932  
National Lawyers Guild – Post 9/11 Project: (212) 505-9119; National Immigration Project: (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.