

YOU HAVE THE RIGHT TO REMAIN SILENT

**A Know Your Rights Guide for
Law Enforcement Encounters**



**National Lawyers Guild
Bay Area Hotline 415-285-1041**

What Rights Do I Have?

Whether or not you're a citizen, you have rights under the United States Constitution. The Fifth Amendment gives every person the right to remain silent: not to answer questions asked by a police officer or government agent. The Fourth Amendment restricts the government's power to enter and search your home or workplace, although there are many exceptions and new laws have expanded the government's power to conduct surveillance. The First Amendment protects your right to speak freely and to advocate for social change. However, if you are a non-citizen, the Department of Homeland Security may target you based on your political activities.

What If FBI Agents or Police Contact Me?

What if an agent or police officer comes to the door?

Do not invite the agents or police into your home. Do not answer any questions. Tell the agent that you do not wish to talk with him or her. You can state that your lawyer will contact them on your behalf. You can do this by stepping outside and pulling the door behind you so that the interior of your home or office is not visible, getting their contact information or business cards and then returning inside. They should cease questioning after this. If the agent or officer gives a reason for contacting you, take notes and give the information to your attorney. Anything you say, no matter how seemingly harmless or insignificant, may be used against you or others in the future. Lying to or misleading a federal agent is a crime. The more you speak, the more opportunity for federal law enforcement to find something you said (even if not intentionally) false and assert that you lied to a federal officer.

Do I have to answer questions?

You have the constitutional right to remain silent. It is not a crime to refuse to answer questions. You do not have to talk to anyone, even if you have been arrested or are in jail. You should affirmatively and unambiguously state that you wish to remain silent and that you wish to consult an attorney. Once you make the request to speak to a lawyer, do not say anything else. The Supreme Court recently ruled that answering law enforcement questions may be taken as a waiver of your right to remain silent, so it is important that you assert your

rights and maintain them. Only a judge can order you to answer questions. There is one exception: some states have “stop and identify” statutes which require you to provide identity information or your name if you have been detained on reasonable suspicion that you may have committed a crime. A lawyer in your state can advise you of the status of these requirements where you reside.

Do I have to give my name?

As above, in some states you can be detained or arrested for merely refusing to give your name. And in any state, police do not always follow the law, and refusing to give your name may make them suspicious or more hostile and lead to your arrest, even without just cause, so use your judgment. Giving a false name could in some circumstances be a crime.

Do I need a lawyer?

You have the right to talk to a lawyer before you decide whether to answer questions from law enforcement. It is a good idea to talk to a lawyer if you are considering answering any questions. You have the right to have a lawyer present during any interview. The lawyer’s job is to protect your rights. Once you tell the agent that you want to talk to a lawyer, he or she should stop trying to question you and should make any further contact through your lawyer. If you do not have a lawyer, you can still tell the officer you want to speak to one before answering questions. Remember to get the name, agency and telephone number of any investigator who visits you, and give that information to your lawyer. The government does not have to provide you with a free lawyer unless you are charged with a crime, but the NLG or another organization may be able to help you find a lawyer for free or at a reduced rate.

If I refuse to answer questions or say I want a lawyer, won't it seem like I have something to hide?

Anything you say to law enforcement can be used against you and others. You can never tell how a seemingly harmless bit of information might be used or manipulated to hurt you or someone else. That is why the right not to talk is a fundamental right under the Constitution. Keep in mind that although law enforcement agents are allowed to lie to you, lying to a government agent is a crime. Remaining silent is not. The safest things to say are “I am going to remain silent,” “I want to speak to my lawyer,” and “I do not consent to a search.” It is a common practice for law enforcement agents to try to get you to waive your rights by telling you that if you have nothing to hide you would talk or that talking would “just clear things up.” The fact is, if they are questioning you, they are looking to incriminate you or someone you may know, or they are engaged in political intelligence gathering. You should feel comfortable standing firm in protection and defense of your rights and refusing to answer questions.

Can agents search my home or office?

You do not have to let police or agents into your home or office unless they have and produce a valid search warrant. A search warrant is a written court order that allows the police to conduct a specified search. Interfering with a warrantless search probably will not stop it and you might get arrested. But you should say “I do not consent to a search,” and call a criminal defense lawyer or the NLG. You should be aware that a roommate or guest can legally consent to a search of your house if the police believe that person has the authority to give consent, and your employer can consent to a search of your workspace without your permission.

What if agents have a search warrant?

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. Tell the agents you do not consent to the search so that they cannot go beyond what the warrant authorizes. 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. If the agents ask you to give them documents, your computer, or anything else, look to see if the item is listed in the warrant. If it is not, do not consent to them taking it without talking to a lawyer. You do not have to answer questions. Talk to a lawyer first. (Note: If agents present an arrest warrant, they may only perform a cursory visual search of the premises to see if the person named in the arrest warrant is present.)

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

No. If you are arrested, you do not have to answer any questions. You should affirmatively and unambiguously state that you wish to assert your right to remain silent. Ask for a lawyer right away. Do not say anything else. Repeat to every officer who tries to talk to or question you that you wish to remain silent and that you wish to speak to a lawyer. You should always talk to a lawyer before you decide to answer any questions.

What if I speak to government agents anyway?

Even if you have already answered some questions, you can refuse to answer other questions until you have a lawyer. If you find yourself talking, stop. Assert that you wish to remain silent and that you wish to speak to a lawyer.

What if the police stop me on the street?

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. If this happens, do not resist because you can be charged with assault or resisting arrest. You do not have to answer any questions. You do not have to open bags or any closed container. Tell the officers you do not consent to a search of your bags or other property.

What if police or agents stop me in my car?

Keep your hands where the police can see them. If you are driving a vehicle, you must show your license, registration and, in some states, proof of insurance. You do not have to consent to a search. But the police may have legal grounds to search your car anyway. Clearly state that you do not consent. Officers may separate passengers and drivers from each other to question them, but no one has to answer any questions.

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

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 as soon as possible.

What if the police or FBI threaten me with a grand jury subpoena if I don't answer their questions?

A grand jury subpoena is a written order for you to go to court and testify about information you may have. It is common for the FBI to threaten you with a subpoena to get you to talk to them. If they are going to subpoena you, they will do so anyway. You should not volunteer to speak just because you are threatened with a subpoena. You should consult a lawyer.

What if I receive a grand jury subpoena?

Grand jury proceedings are not the same as testifying at an open court trial. You are not allowed to have a lawyer present (although one may wait in the hallway and you may ask to consult with him or her after each question) and you may be asked to answer questions about your activities and associations. Because of the witness's limited rights in this situation, the government has frequently used grand jury subpoenas to gather information about activists and political organizations. It is common for the FBI to threaten activists with a subpoena in order to elicit information about their political views and activities and those of their associates. There are legal grounds for stopping ("quashing") subpoenas, and receiving one does not necessarily mean that you are suspected of a crime. If you do receive a subpoena, call the NLG Bay Area Hotline at 415-285-1041 or the NLG National Hotline at 888-NLG-ECOL (888-654-3265) or call a criminal defense attorney immediately.

The government regularly uses grand jury subpoena power to investigate and seek evidence related to politically-active individuals and social movements. This practice is aimed at prosecuting activists and, through intimidation and disruption, discouraging continued activism.

Federal grand jury subpoenas are served in person. If you receive one, it is critically important that you retain the services of an attorney, preferably one who understands your goals and, if applicable, understands the nature of your political work and why it is being targeted and has experience in dealing with these kinds of issues. Most lawyers are trained to provide the best legal defense for their client, often at the expense of others. Beware lawyers who summarily advise you to cooperate with grand juries, testify against friends, or cut off contact with your friends and political activists. Cooperation usually leads to others being subpoenaed and investigated. You also run the risk of being charged with perjury, a felony, should you omit any pertinent information or should there be inconsistencies in your testimony. Frequently prosecutors will offer “use immunity,” meaning that the prosecutor is prohibited from using your testimony or any leads from it to bring charges against you. If a subsequent prosecution is brought, the prosecutor bears the burden of proving that all of its evidence was obtained independent of the immunized testimony. You should be aware, however, that they will use anything you say to manipulate associates into sharing more information about you by suggesting that you have betrayed confidences.

If you appear before the grand jury you do not have the same protections as in a trial. You have no Fifth Amendment right to remain silent (if you invoke your right to remain silent you may be held in contempt) and no Sixth Amendment right to counsel, although you can consult with one outside of the grand jury room.

Grand jury non-cooperation

If you receive a grand jury subpoena and elect to not cooperate, you may be held in civil contempt. There is a chance that you may be jailed or imprisoned for the length of the grand jury in an effort to

coerce you to cooperate. Regular grand juries sit for a basic term of 18 months, which can be extended up to a total of 24 months. It is lawful to hold you in order to coerce your cooperation, but unlawful to hold you as a means of punishment. In rare instances you may face criminal contempt charges.

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 Department of Homeland Security (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 an immigration lawyer who will take your calls. The immigration laws are hard to understand and there have been many recent changes. DHS will not explain your options to you. As soon as you encounter a DHS agent, call your attorney. If you can't do it right away, keep trying. Always talk to an immigration lawyer before leaving the U.S. Even some legal permanent residents can be barred from returning.

Based on today's laws, regulations and DHS guidelines, non-citizens usually have the following rights, no matter what their immigration status. This 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. do not have all the same rights.

Do I have the right to talk to a lawyer before answering any DHS questions or signing any DHS papers?

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.

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

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 crime. Always keep a copy of your immigration papers with a trusted family member or friend who can fax them to you, if need be. Check with your immigration lawyer about your specific case.

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

If you are undocumented, out of status, a legal permanent resident (green card holder), or a citizen, you do not have to answer any questions about your immigration history. (You may want to consider giving your name; see above for more information about this.) If you are not in any of these categories, and you are being questioned by a DHS or FBI agent, then you may create problems with your immigration status if you refuse to provide information requested by the agent. If you have a lawyer, you can tell the agent that your lawyer will answer questions on your behalf. If answering questions could lead the agent to information that connects you with criminal activity, you should consider refusing to talk to the agent at all.

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?

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.

Can I call my consulate if I am arrested?

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. You also have the right to refuse help from your consulate.

What happens if I give up my right to a hearing or leave the U.S. before the hearing is over?

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.

What should I do if I want to contact DHS?

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

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.

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

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

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?

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.

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

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.

What If I Am Under 18?

Do I have to answer questions?

No. Minors too have the right to remain silent. You cannot be arrested for refusing to talk to the police, probation officers, or school officials, except in some states you may have to give your name if you have been detained.

What if I am detained?

If you are detained at a community detention facility or Juvenile Hall, you normally must be released to a parent or guardian. If charges are filed against you, in most states you are entitled to counsel (just like an adult) at no cost.

Do I have the right to express political views at school?

Public school students generally have a First Amendment right to politically organize at school by passing out leaflets, holding meetings, etc., as long as those activities are not disruptive and do not violate legitimate school rules. You may not be singled out based on your politics, ethnicity or religion.

Can my backpack or locker be searched?

School officials can search students' backpacks and lockers without a warrant if they reasonably suspect that you are involved in criminal activity or carrying drugs or weapons. Do not consent to the police or school officials searching your property, but do not physically resist or you may face criminal charges.

Disclaimer

This booklet is not a substitute for legal advice. You should contact an attorney if you have been visited by the FBI or other law enforcement officials. You should also alert your relatives, friends, co-workers and others so that they will be prepared if they are contacted as well.

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Legal Resources

NLG Bay Area Legal Hotline for Persons Contacted by FBI, ICE, etc. in Northern California

415-285-1041

www.nlgsf.org

General information 415-285-5067

NLG National Hotline for Activists Contacted by the FBI

888-NLG-ECOL

(888-654-3265)

Council on American-Islamic Relations (CAIR)–S.F. Bay Area

Free legal assistance for community members who have been contacted by FBI, surveilled or discriminated against.

http://ca.cair.com

408-986-9874

ACLU of Northern California

If you have been contacted by the F.B.I., surveilled or racially profiled.

415-621-2488

www.aclunc.org

General information 415-621-2493

Arab Resource and Organizing Center

Free legal assistance with immigration matters.

Bilingual (Arabic/ English).

415-861-7444

www.araborganizing.org