

Know your rights

What rights do I have as a non-immigrant, F-1/J-1 visa holder?

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 and are deportable, the Department of Homeland Security (DHS) can target you based on your political activities.

CONSTITUTIONAL RIGHTS CANNOT BE SUSPENDED – EVEN DURING WARTIME.

Q: What if police, FBI, or immigration agents contact me? Do I have to answer questions?

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. There is only one exception: in some states it can be a crime to refuse to give your name if you have been detained. You do not have to show ID or give any other information such as your address or immigration status.

Q: Do I need a lawyer?

A: You have the right to talk to a lawyer before you decide whether to answer questions. And if you do agree to be interviewed, you have the right to have a lawyer present. The lawyer's job is to protect your rights. Once you tell the agent that you want to talk to a lawyer, they should stop trying to ask questions 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 a reduced rate.

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

A: 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 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 they 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."

Q: Can agents search my home or office?

A: You do not have to let police or agents into your home or office unless they have a 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 lawyer or the NLG. Your roommate or guest can legally

consent to a search of your house if the police believe that person had the authority to give consent, and 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. 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.

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 speak to government agents anyway?

A: 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 or agents 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 put 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 have to answer any questions.

Q: Do I have to give my name?

A: Refusing to give your name may make them suspicious and lead to your arrest, so use your judgment. If you fear that your name may be incriminating, you can claim the right to remain silent, and if you are arrested, this may help you later. Giving a false name could be a crime.

Q: What if police or an agent stop me in my car?

A: Keep your hands where the police can see them. If you are driving a vehicle, you must show your license, registration and 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.

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. 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. Receiving a subpoena to testify before a grand jury doesn't mean that you are suspected of a crime. You may have legal grounds to stop the subpoena. If you do receive a subpoena, contact a criminal lawyer right away. Anything you say can usually be used against you.

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

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 as soon as possible.

Q: What if a DHS agent 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 an immigration lawyer who will take your calls. The immigration laws often hard to understand and there have been many recent changes.

Based on today's laws, regulations and DHS guidelines, non-citizens usually have the right 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. 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 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 I-94 arrival record, Employment Authorization Card, a valid I-20 that prove you are in legal statues 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 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, and border patrol agents.

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 officer further. You may be better off remaining silent and talking to a lawyer first. 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. But if the officer request evidence and you fail to provide it, there is chance they will arrest you.

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

Q: What happened 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 DHS, even on the phone. Many DHS officers view “enforcement” as their primary job and will not explain all of your options to you.

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 to 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 passenger if he or she believes the passenger is a threat to the safety of the flight. The pilot's decisions must be reasonable and based on observations of you, not stereotypes.

Q: What if I am under 18? Do I have to answer questions?

A: 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.

Q: What If I am detained?

A: If you are detained at a community detention facility or Juvenile Hall, you normally must be released to a parent or guardian. If charged are filed against you, you have the right to have a lawyer appointed to represent you at no cost.

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

A: 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.

Q: Can my backpack or locker be searched?

A: School officials can search student's 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.

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.

Produced by the National Lawyers Guild, S.F. Bay Area Chapter, the ACLU of Northern California, and the American Arab Anti-Discrimination Committee (ADC-SF), which are solely responsible for its content. Nothing herein is intended to interfere with any legitimate law enforcement investigation.