

To: Service Providers and Organizers
From: Immigrant Legal Resource Center
Re: Know Your Rights Flyers
Date: October 2006

This packet is intended to provide an overview of the rights an immigrant (whether here legally or not) or even a citizen may exercise if confronted by an immigration official.

Some of these rights are guaranteed by the Constitution, and others have been developed through case law and statutes. Each state may have differing laws regarding some of these rights, and this packet should be adapted accordingly. A significant variation worthy of noting is the right to remain silent; although constitutionally guaranteed by the 5th Amendment, some states have adopted statutes requiring anyone stopped by state and federal officials to provide his or her name. See the below for further details.

Supreme Court Case Effecting Fifth Amendment Right to Remain Silent

Hiibel v. Sixth Judicial District Court of Nevada

In *Hiibel*, the Supreme Court upheld Nevada's 'stop and identify' statute requiring a suspect to disclose his or her identity in the course of a reasonable detentive stop by law enforcement. The Court held that merely giving one's name to law enforcement does not constitute self-incrimination and therefore does not violate the 5th Amendment. Several states have similar self-identification statutes.

Under *Hiibel*, the right to remain silent as to self-identification is not protected by the 5th Amendment. Bear in mind that *Hiibel* requires only that a person stopped by law enforcement provide his or her name. *Hiibel* does not require further disclosure of personal information, such as where the person was born or his or her legal status.

In state with a statute similar to the *Hiibel* statute, an immigrant or noncitizen stopped by law enforcement is advised to provide his or her name, and then say "I will remain silent until I can speak with a lawyer," "I know I have the right to remain silent," "I don't want to say anything until I can speak with a lawyer," etc.

In non-*Hiibel* states, people are advised to exercise their right to remain silent and see a lawyer before answering any questions at all.

You should adapt these flyers as you see fit, especially if your state has a *Hiibel* statute like the one in Nevada. Then, please feel free to distribute these flyers widely so immigrants will know how to act if they are confronted by the Immigration Service.

REMAIN SILENT!

It is Your Right...

If the Immigration Service arrests you:

- **Do not answer any questions.**
- **Do not say anything about where you were born or how you entered the United States.**
- **Do not show any documents, except a letter from a lawyer. Above all, do not show any false documents!**
- **Do not sign anything, especially an Order of Voluntary Departure, without first talking to a lawyer.**
- **Tell the Immigration Service official that you want your hearing in the city closest to where you live where there is an immigration court (so that they do not transfer your case).**

If the Immigration Service comes to your home ...

DO NOT OPEN THE DOOR!

You have rights ...

- **Ask to see a Search Warrant. If the official does not show you one, you do not have to open the door.**
- **Do not sign anything, especially an Order of Voluntary Departure, without first talking to a lawyer.**
- **Do not answer questions. Do not tell them anything about where you were born or how you came to the United States.**
- **Do not show any documents if the officials do not show you a Search Warrant.**
- **Do not allow the official to enter your home. If you allow them in, you lose some of your rights.**

If you are working, do not panic ...

KNOW YOUR RIGHTS!

If the Immigration Service comes to your workplace:

- **Do not run! It is better to remain calm. You can calmly leave an area where the Immigration Service has come.**

If you are detained:

- **Do not answer any questions. Do not say anything about where you were born or how you entered the United States.**
- **Do not sign anything, especially an Order of Voluntary Departure, before talking with a lawyer.**

Prepared by the Immigrant Legal Resource Center – October 2006

Your Rights Before the Immigration Service

This packet contains information about your rights during an encounter with any of the Immigration Service agencies of the Department of Homeland Security.

In 2003, the Immigration and Naturalization Service (INS) was closed and replaced by three different agencies of the Department of Homeland Security. These three agencies are called the Immigration and Customs Enforcement (ICE), the Citizenship and Immigration Service (CIS), and the Customs and Border Patrol (CBP). In this packet we refer to them all as the Immigration Service.

It is very important that everyone, whether they are here legally or not, know their rights in front of the Immigration Service. If you do not know your rights and the Immigration Service finds you, you could lose some very important opportunities to remain in the United States.

The first part of this packet discusses the places where the Immigration Service may find you and what you can do to defend yourself and your families, neighbors, co-workers, and friends. The second part discusses the rights you have if the Immigration Service arrests you. The third part has information about what one can do if the Immigration Service violates your rights.

I. What You Can Do During an Encounter with the Immigration Service.

This information about your rights is very important, but you have to remember that each situation is different. When people encounter the Immigration Service, they have to make their own decisions about what they are going to do. For example, if an Immigration Service official is beating or threatening someone, maybe the person will not want to remain silent. In any case, when people know their rights, they usually will feel more confident and are able to make a more informed decision.

A. In the Home - If the Immigration Service arrives at your house and knocks on your door, you do not have to open the door. Usually the Immigration Service needs a search warrant or arrest warrant with your name and address in order to enter your house. A search warrant is an order from a judge giving the Immigration Service permission to enter a person's home. An arrest warrant is an order from a judge giving the Immigration Service permission to arrest someone. If they do not have a warrant, you do not have to let them enter. Even if they have a warrant and enter your home, you have the right to remain silent. This means that you do not have to give any information to Immigration Service officials. You can say simply that you do not want to speak or that you want to talk to a lawyer. So, the Immigration Service can enter your home only if they have a warrant, or you give them permission, or they think there is presently a crime being committed in your home.

B. On the Street - If an Immigration Service official begins to ask you questions while you are walking down the street or in another public place such as a park, you can continue walking. The Immigration Service has to let you keep walking if they do not have a good reason to continue asking you questions. An example of a good reason is if you are leaving a place where they have previously found many undocumented workers. They cannot stop you just because you are Latino or because you have an accent. These are not good reasons. Remember that you have the right to remain silent. Do not run! If you run, you are giving them a good reason to arrest you.

C. At Work - The Immigration Service can enter areas open to the public at workplaces. This means that they can enter places such as the reception area of a business. In order to enter places that are not open to the public, they need a warrant or permission from the boss or owner. If the Immigration Service enters your workplace with or without a warrant, you always have the right to remain silent. They should only ask you questions if they have a good reason to believe that you are not a U.S. citizen. If all workers, documented or undocumented, behave in the same way or do the same thing (for example, remain silent and continue working), the Immigration Service will not have any good reason to arrest any workers.

D. In the Car - The Immigration Service needs a good reason to stop you and search your car. If the Immigration Service has a good reason for stopping you (for example, they see drugs in your car), they can search your car without a search warrant. They are allowed to do this because the car could be moved before they have a chance to get a search warrant. Usually it is very important not to give them permission to search your car. If the police stop you, you do not have to show them any papers apart from your driver's license and car registration. The police should not ask you any questions about your legal status in this country.

E. At the Border - Your rights at the border are different. The "border" includes not only the line between the U.S. and Mexico or Canada, but also airports and areas close to the border, for example, the border checkpoint near San Clemente, California. In these

border places, you have to prove that you have legal permission to be in the U.S. or the Immigration Service can detain you to ask more questions. They can also search you or your bags without a search warrant. Remember that you always have the right to remain silent.

II. What Happens if the Immigration Service Arrests You?

In any of the situations discussed above, it is possible that the Immigration Service will arrest you. If this happens, you must not forget that you have rights that protect you. However, it is very likely that the Immigration Service will not tell you about those rights. Usually, the Immigration Service will ask you questions about your legal status in this country. If the Immigration Service gets this information legally, they can use this information against you, and even use it to deport you. Usually the Immigration Service gets the necessary information to deport people by asking the people themselves for the information. It is very important to remain silent until you have spoken with a lawyer, because there may be some way for you to remain in the United States or some rights that you do not know about.

Often the official from the Immigration Service tells you to sign an order of “Voluntary Departure.” Usually signing this paper means that you must leave the United States immediately. An Order of Voluntary Departure does not have as severe consequences as an Order of Deportation or a Removal Order, but all of these orders may affect your future chances to return to the United States and stay here.

The Immigration Service might threaten to put you in jail for a long time if you do not sign an Order of Voluntary Departure. The Immigration Service should not make these threats. Even if the Immigration Service arrests you, you have certain rights to protect yourself.

The Immigration Service might try to convince you to sign a paper admitting that you were using fake documents like a fake green card, passport, birth certificate, certificate of U.S. citizenship, or social security card. Do not sign this paper without speaking with a lawyer first. Signing the paper could result in extreme consequences and you may be deported from the U.S. without the possibility of returning.

A. If the Immigration Service arrests you, you can:

- **Remain silent.** You do not have to answer any question. Above all, you do not have to tell them where you were born, how you entered the U.S., or what your immigration status is (whether or not you are in the United States legally). If you tell the Immigration Service your immigration status and you are not here legally, the Immigration Service can use it to try to deport you.

- Insist on talking with a legal representative. If you do not have a legal representative, you can ask the Immigration Service for a list of free or low-cost lawyers.
- Refuse to sign all papers from the Immigration Service when they arrest you unless you speak to a lawyer first. It is especially important not to sign, above an “Order of Voluntary Departure” and an admission that you were using fake documents, without talking with a lawyer first. If you sign the Order of Voluntary Departure or the admission that you used fake documents, you may lose the possibility of remaining in the United States.

B. The Right to a Hearing before an Immigration Judge - Most people that are arrested inside the U.S. by the Immigration Service have the right to ask for a hearing before an Immigration Judge. In most cases, the Immigration Service cannot deport someone without giving them the opportunity to go before an Immigration Judge. A hearing is very important for any person who may have the possibility of remaining in the United States. For example, a person may qualify for Family Unity, “Cancellation of Removal” if he or she has lived in the United States for 10 years, or for asylum.

C. The Right to be Released after 48 Hours - In most situations, if the Immigration Service takes you into custody they have 48 hours (2 days) to determine whether you should remain in custody or be released on bond, unless there is an emergency or extraordinary circumstances. If the Immigration Service decides to continue to detain you beyond the 48 hour period, the Immigration Service must issue a “Notice to Appear” against you. A “Notice to Appear” is a paper that explains why the Immigration Service wants to deport you. The Immigration Service must issue the “Notice to Appear” within 72 hours (3 days) of arresting you. If you remain silent and do not give them any information, the Immigration Service might not have any proof that you are here illegally, they might not have any reason to deport, and they may be forced to release you.

D. The Right to a Reasonable Bond - In many cases, the Immigration Service must set a reasonable bond so that a person can go free while awaiting a hearing with a judge. If you think that your bond is very high, you can ask for a hearing with a judge to lower or eliminate the bond.