

# Know Your Rights!



This last right - “the right of the people to be secure... against unreasonable searches and seizures” – is misunderstood and too seldom exercised. Immigrants and the native-born alike imagine that their freedom from “unreasonable searches and seizures” prevents authorities from asking certain questions or requesting identity/immigration documents. This is wrong!

## When is an officer’s demand “unreasonable”?

Any time we “voluntarily” give a public safety official what he asks for – be it information or access – his actions are “reasonable”! This only makes sense:

Any of us could approach a stranger and say, “Do you know what time it is?” Indeed, if we express no threat, we could ask that same stranger, “Would you mind taking your clothes off, please?”

The Constitution does not forbid authorities in the U.S. from asking certain questions on certain topics. What the Constitution does do is strictly limit their authority to demand of you any answer or action.

Simply put, the questions or requests a police (or other) officer makes cannot be “unreasonable” unless they are demands.

Who determines when an officer’s questions are really orders? You and I do!

## The nice police officer

In our roles as parents and bosses, we know better than to express ourselves always in commands. “Would you kindly...” we say, or “I’d really appreciate it if...” Since no one likes to be bossed around, parents and supervisors know to say “Please” and “Thank you” rather than barking orders.

Police officers do too. When they say, “Papers, please,” we imagine they are being polite. We imagine that they have the authority to demand action but choose to express themselves gently. In this we are quite often wrong!

## Answering a question with a question

As a practical matter – in order not to “escalate” the conversation – identify yourself to any public safety official when asked. This means providing your name and, at most, your address.

Once you have identified yourself, however, it becomes very, very difficult to determine whether an officer is demanding rather than asking you to do something. This is deliberate: when you “voluntarily” answer an officer’s question or welcome him into your home, whatever the officer discovers may be used against you in criminal or immigration proceedings.

Aware that “voluntary” responses are, to these officials, the most useful ones, public safety officers may “blur the line” between request and command. You and I must make this distinction clear. Here is how:

“You’ve got quite an accent. So, where are you from?”

“Are you detaining me, officer, or am I free to go?”

“Why won’t you just answer the question? Are you hiding something?”

“Are you detaining me, officer, or am I free to go?”

It is entirely possible that the officer will finally say, “Yes, I’m detaining you. Now where are you from?” Indeed, it is possible that he’ll take inappropriate or disproportionate action. But each

one of us, citizens and immigrants alike, have good reason always to find out whether the officer is claiming the authority to command.

## The authority to command

Apart from those times when we’re driving (discussed below) or working, police officers can demand of us only our names unless they “reasonably” suspect us of committing a crime. (To be “reasonable,” the suspicion cannot be based upon a foreign accent or appearance.)

Remembering that a mere question is always “reasonable,” we need to know whether an officer is asserting the authority to demand an answer:

“I haven’t seen you before in the neighborhood. Have you just moved here?”

“Are you detaining me, officer, or am I free to go?”

If the officer answers, “No,” you can politely walk away. But if the answer is “Yes,” this necessarily means the officer suspects you have committed a crime! It would be prudent to immediately assert your right to speak to a lawyer before answering any more questions.



## In your car

Cars are special. When we drive them, each of us is supposed to have a license and insurance sufficient to cover any damage we might cause while operating these big and powerful machines. Police officers have the authority to demand proof that we are licensed and insured.

Note, however: once he has shown his license, registration, and proof of insurance, the driver need not answer additional questions. He may politely ask, "Are you detaining me officer, or am I free to go?" Note also that the officer has no more authority over the passengers than he would on the street; absent "reasonable suspicion" a passenger has committed a crime, the officer can demand no more than the passenger's name.

#### At work

Unless you work in a public place, ICE must have either a warrant signed by a judge or the employer's permission to enter your workplace. Even during a raid, an officer can demand answers to his questions only if he has "reasonable" suspicion that you have committed a crime. This is a good reason to stay calm: running or hiding may give the officers sufficient reason to arrest you.

#### In your home

A "voluntary" search of your home is always "reasonable." If you do not welcome the police, FBI, or ICE into your home, they may demand entry only in certain very rare circumstances. Almost always, they must have a "warrant" – that is, a paper signed by a judge giving the officer permission to enter your home. The warrant will specify the areas that the official has the right to search.

The warrant should bear the signature of a judge, like this one:

12-2006 01:00	NO. 194 D
For the aforementioned reasons, I believe that probable cause exists for the issuance of a search warrant for the listed persons, places, and things.	
I request that a search warrant be issued commanding that an immediate search be made of the persons, premises and buildings described, and that the same be retained in the custody of affiant or in custody of the agency which affiant represents and disposed of according to law, pursuant to A.R.S. 13-3720.	
 <b>AFFIANT</b> <b>SERIAL NUMBER</b> #7353	
PHOENIX POLICE DEPARTMENT LAW ENFORCEMENT AGENCY	
SUBSCRIBED AND SWEORN to before me this <u>22nd</u> day of <u>November</u> , 2006.	
 <b>JUDGE, JUSTICE OF THE PEACE, MAGISTRATE</b> <small>of HONORABLE JAMES R. MCBROW MARIOPA COUNTY SUPERIOR COURT</small>	

Before you open the door, ask if the officers have a warrant. If they do not, do not open the door. If they say they do, ask to see it: ask the officers to hold it up to a window or otherwise display it so you do not need to open

the door. If this cannot be done—and they do have a warrant, denying them entry is probably not a good idea: it may cause the officers to "escalate"—for instance, by breaking in.

If you open the door and allow anyone to come into the house, you have "consented" to his coming inside. If officials enter without a warrant, clearly say that you did not "consent" to a search. Write down the names and badge numbers of all the officers, as well as the addresses and phone numbers of anyone who witnessed the incident.

If they do have a warrant, observe whether the official searches any other areas that are not listed in the warrant. Get a receipt for any property taken by the official, and insist that they leave you a copy of the warrant; this is your right!

#### Finding help

If you or a family member is arrested by police or Immigration and Customs Enforcement (ICE), contact an attorney right away. Those in police custody who are not U.S. citizens should consult two attorneys – a criminal defense lawyer and an immigration lawyer. Check for professional affiliation (such as the American Immigration Lawyers Association) or certification by the Texas State Board of Legal Specialization, look online for any disciplinary history, and try to meet the lawyer personally. Only by speaking with a lawyer can you tell who is right for you or your loved one.



"...from every mountainside  
Let freedom ring!"

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"Our nation, 'tis of thee  
Sweet land of liberty,  
Of thee I sing..."



Newcomers to this country do not need to be taught that the United States of America places great value on freedom. Indeed many of them came here because of that promise of liberty.

#### Our rights under the Constitution

Founded in order to free the American colonists from the king in faraway Great Britain, this nation enacted a fundamental law – the Constitution – that strictly limits government's power over individuals. It is thanks to that Constitution that today you and I enjoy the right to worship the god of our choosing (or to worship no god at all), the right to express our opinions and to march in support of them, and – in the words of Constitution itself – the "right... to be secure in [our] persons, houses, papers, and effects, against unreasonable searches and seizures."