



KPB Immigration Law Firm

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Article: Know Your Rights Before the Immigration Service Part 3: What to do if You're Arrested by the Immigration Service

By: **Christopher A. Kerosky, Esq.**

This article provides more detailed information about immigrants' rights if they are arrested by the Immigration and Customs Enforcement ("ICE"). Part 1 explored immigrants' general rights. Part 2 discussed what to do if confronted by ICE at home, at work or in other situations.

Right to remain silent

If you are arrested, you do not have to answer any questions. This includes information about where you were born, when and how you came to the U.S., or even what your immigration status is. This is different than if ICE asks you about your status in public without an arrest. When they ask you in public, you are required by law to have proof of your legal status. If you do not, ICE can charge you with a crime. In the case of an arrest by ICE, you have the right not to say anything about your status, whether you have a legal status or not. If you tell them that you are not in the U.S. legally, ICE can use that information to deport you.

Right to talk to an attorney

If you are arrested, tell ICE that you want an attorney. If you do now have one, ICE must give you a list of free or low-cost lawyers. Do not answer any questions or sign any papers until you speak to an attorney. This is especially important because ICE will sometimes try to make you sign an "Order of Voluntary Departure" saying that you agree to leave the U.S. or an admission that you used false documents. This is usually a mistake. In most cases agreeing to voluntary departure means that you will not be able to come back to the United States legally for at least 10 years, and if you try to come back illegally, you will be subject to a long prison sentence and a permanent bar from the U.S.

Right to a hearing before an Immigration Judge

Most people that are arrested inside the U.S. by ICE have the right to ask for a hearing before an Immigration Judge. In most cases, ICE 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 staying in the U.S. through other means, such as asylum or through a family member.

It is almost never advisable to accept voluntary departure in front of a judge. It typically results in you being banned from the country for 10 years and prohibited from being reunited with your family for that time.

There are almost always ways for an attorney to delay or even prevent your removal from the United States by raising certain legal defenses and legal rights you have in court.

Right to a Reasonable Bond

In many cases, ICE will set a bond so that a person can go free while they wait for their hearing with a judge. If you think that your bond is too high or if ICE denies you a bond, you can ask for a hearing with a judge to lower or eliminate the bond. You almost always have the right to ask a judge to set a bond for you. If you pay the bond set by the judge, you are usually released within 24 hours.

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About the author:

Christopher A. Kerosky of the law firm of KEROSKY PURVES & BOGUE LLP has practiced law since 1984 and has been recognized as one of the top immigration lawyers in Northern California for the last seven years by San Francisco Magazine "Super Lawyers" edition (2006-2012). He graduated from University of California, Berkeley Law School and was a former counsel for the U.S. Department of Justice in Washington D.C.

WARNING: The foregoing is an article discussing legal issues. It is not intended to be a substitute for legal advice. We recommend that you get competent legal advice specific to your case. If you would like such advice from our office, call (415) 777-4445 (San Francisco); (916) 349-2900 (Sacramento), (707) 224-2722 (Napa); (707) 433-2060 (Santa Rosa) or (707) 376-1010 (Ukiah)