

KNOW THE FACTS *and* KNOW YOUR RIGHTS

For Arab, Middle Eastern, Muslim and South Asian Communities

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and Council on American Islamic Relations–California*

CONTACT

NORTHERN CALIFORNIA

American Civil Liberties Union of Northern California

415.621.2488 ♦ www.aclunc.org

Advancing Justice–Asian Law Caucus

415.848.7733 ♦ www.advancingjustice-alc.org

Council on American Islamic Relations–San Francisco Bay Area

408.986.9874 ♦ <https://ca.cair.com/sfba/>

Council on American Islamic Relations–Sacramento Valley

916.441.6269 ♦ <https://ca.cair.com/sacval/>

SOUTHERN CALIFORNIA

American Civil Liberties Union of Southern California

213.977.5253 ♦ www.aclusocal.org/en/seeking-legal-help-aclu

Advancing Justice–Los Angeles

888.349.9695 ♦ www.advancingjustice-la.org/contact

Council on American Islamic Relations–Greater Los Angeles Area

714.776.1177 ♦ <https://ca.cair.com/losangeles>

SAN DIEGO

American Civil Liberties Union of San Diego and Imperial Counties

619.232.2121 ext. 67 ♦ www.aclusandiego.org

Council on American Islamic Relations–San Diego Area

858.430.6768 ♦ <https://ca.cair.com/sandiego/>

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BACKGROUND

Arab, Middle Eastern, Muslim, and South Asian (AMEMSA) communities frequently face requests for “interviews” by federal and sometimes local law enforcement. These interviews have been distressing for many community members.

AMEMSA communities and those perceived to be members of AMEMSA communities also face hate incidents and hate crimes.

The federal government and local authorities working with them have subjected AMEMSA communities to surveillance in several ways, including:

1. Placing informants in community and religious organizations.
2. Encouraging the broader public to report “suspicious activity” which often results in prejudicial reports about AMEMSA community members that are then followed up on by law enforcement.
3. Physical surveillance of AMEMSA community members.
4. Collection of information about community members through use of various surveillance technologies and through monitoring of online activity.

The civil rights community is here to support AMEMSA communities. You can contact us if you have legal concerns about something that happened to you or your community, to request a “Know Your Rights” presentation, and for additional information and materials. We speak Arabic, Dari, Farsi, Hindi, Pashto, Spanish, Urdu, and other Asian languages.

◆ FEDERAL BUREAU OF INVESTIGATION “VOLUNTARY INTERVIEWS” ◆

IF THE FBI CONTACTS YOU

Since September 11, 2001, hundreds of thousands of AMEMSA community members have been contacted by the FBI, Department of Homeland Security and local law enforcement at their homes, places of business and places of worship. These community members are approached by law enforcement under various pretexts including issues of travel, immigration, civil rights, involvement at the masjid, or other “community concerns.” These conversations may initially be very cordial and you may be inclined to talk to the agents, but you should not speak with them without an attorney.

Here is what you should know:

We recommend you speak to an attorney before speaking to the FBI.

An attorney can assess the facts of your situation and advise you on the best way forward. If you speak to the FBI without legal assistance, you can expose yourself or your friends and family to harm. The organizations listed in this booklet can arrange for free legal representation in connection with any FBI interview request. Try to get the names, agencies, badge numbers, and business cards of ALL of the agents and officers who contact you.

You always have the right to remain silent. You are not obligated to attend the interview or to answer questions from an FBI agent. Your refusal to talk to the agent cannot be used against you in court. To assert this right, say “I want to speak to a lawyer and to remain silent.”

If you are at home when contacted, **an FBI agent is not permitted to enter your home unless they have a warrant or your consent to enter.**

If you have a cell phone with you, law enforcement agents are not allowed to search that device unless they have a warrant or unless you give them permission. If an officer tries to examine your phone, **do not physically resist, but tell them politely, “I do not consent to a search of this device.”**

Even if the agent takes your phone, if the phone has a passcode, you have no obligation to tell the agent the passcode.

**YOU ALWAYS HAVE THE
RIGHT TO REMAIN SILENT.**



You always have the right to request an attorney's assistance. Even if you have already started talking, you can stop at any time. Tell the agent you do not want to answer any more questions without a lawyer present. You can also ask the agent for his or her card and tell them that your lawyer will follow up with them.

Tell the truth, or remain silent. Lying can be a crime. It is a felony to make a false statement to an FBI agent. Sometimes, forgetting your dates of travel or when you last met or spoke with a particular individual can be used against you as a basis for criminal prosecution. If you assert your right to speak to an attorney first, an attorney can help make sure this doesn't happen.

Asking for an attorney cannot be used against you. Some people mistakenly believe they can prove they are innocent by speaking to the FBI. This is extremely risky.

Just because an FBI agent has contacted you does not necessarily mean that you have done anything wrong or even that you are under investigation. The FBI has targeted AMEMSA communities for questioning, even when there is no suspicion of a crime. But you should still take care to protect your rights.

If you have a pending application for immigration benefits or if the FBI references any pending application, consult an immigration lawyer before answering any questions. Anything you say, even innocent mistakes, might be used in making a determination on your pending application. See <https://www.aclusocal.org/en/CARRP>.

♦ RIGHTS AT AIRPORT AND THE U.S. BORDER ♦

The Constitution guarantees to every U.S. citizen an absolute, unqualified right to enter the United States. If you can prove your citizenship (usually by showing a valid passport), then the government must allow you to enter. The Constitution prohibits customs and border agents from performing stops, searches, detentions, or removals based solely on religion, race, national origin, gender, ethnicity, or political beliefs.

WHEN YOU ENTER OR LEAVE THE UNITED STATES

Customs and Border Protection (CBP) officers have the authority to ask your immigration status when you are entering or returning to the United States or leaving the country. They have the power to determine whether certain non-U.S. citizens have the right to enter the country. If you are a U.S. citizen and you have presented your valid passport, you do not have to answer officers' questions, although refusing to answer routine questions about the nature and purpose of your travel could result in delay and/or further

inspection. **If you are a lawful permanent resident returning from brief and innocent travel abroad, and you present your valid green card, you must be admitted into the country.** Your travel does not qualify as "brief and innocent" if you are subject to deportation for any of the reasons listed in 8 U.S.C. 1101(a) (13) (which concern criminal activity, lengthy travel outside the U.S., or abandonment of residence). **If you are a non-citizen visa holder, you may be denied entry into the U.S. if you refuse to answer officers' questions.**



PREPARE FOR TRAVEL THROUGH AIRPORTS AND OTHER PORTS OF ENTRY.

Sometimes border patrol agents go beyond questions related to a traveler's journey. Although the agent may have a good faith basis for seemingly irrelevant questions, you can ask to speak to a supervisor if you are concerned about intrusive or excessive questioning about matters such as your religious practices, political beliefs, or your family or religious community. After you leave the airport, you can file a complaint with the Department of Homeland Security's Office of Civil Rights and Civil Liberties if you feel you were improperly targeted or otherwise mistreated. See <https://www.dhs.gov/file-civil-rights-complaint>. We advise that you contact one of our organizations before you file this complaint so we can assist you.

Although CBP takes the position that you are not entitled to an attorney during primary and secondary inspection, we encourage you to have the telephone number of an attorney or legal services organization with you and ask to contact them if you feel your rights are being violated, such as you are being forced to answer improper questions (particularly those you feel could incriminate you), or if you have been detained for a lengthy amount of time, such as four hours or more.

IF YOU ARE STOPPED OR SEARCHED UPON ENTRY OR WHEN LEAVING THE UNITED STATES

Generally, CBP officers may stop, detain, and search any person or item at the border. It is unclear whether this power extends to laptops or cell phones, but in practice CBP officers sometimes search electronic devices. This is true even if there is nothing suspicious about you or your luggage and no evidence of wrongdoing. Officers, however, may not select you for a personal search or secondary inspection based solely on your religion, race, national origin, gender, ethnicity, or political beliefs. Under the law currently in effect in California, agents need reasonable suspicion to conduct a more detailed "forensic search" of a digital device using specialized equipment.

Officers have sometimes asked for passcodes to electronic devices such as cell phones or laptops, for assistance unlocking devices, or for passwords to online accounts or social media.

U.S. citizens cannot be denied entry to the U.S. for any reason, including for refusing to produce passwords, provide device access, or submit electronic devices for a search. Lawful permanent residents cannot be refused entry unless their travel was not brief and innocent as defined in 8 U.S.C. 1101(a)(13). All travelers should be aware that as a practical matter, **refusal to provide a password might lead to delay, lengthy questioning, and/or officers seizing your device for further inspection.** For non-citizen visa holders, refusing to cooperate might also lead to officers denying your entry into the country.

If an officer searches and/or confiscates your laptop or cell phone, write down his or her name. If your device is confiscated, get a receipt for your property.

There are practical steps you can take before travelling to protect your digital data. For example, you can back up your device's data to a cloud-based service and completely erase the device before transiting across the border. To ensure your data is secure in the cloud, encrypt it before backing it up. Once you arrive at your destination, you can then download the backup and restore your data onto the device.

As an additional precaution, you could mail your digital devices to your destination, keeping in mind that customs agents may search international packages and anything inside that they deem suspicious, so this is not a guaranteed way to protect your privacy. Make sure the devices are powered down before packaging them.

It is always a good idea to encrypt your digital devices and use a strong passcode—doing so will make it more difficult for agents to read your information if you refuse to give them your passwords. Shut down your devices before arriving at the border checkpoint (do not just put the devices to sleep). For additional information see Electronic Frontier Foundation, "Digital Privacy at the U.S. Border: Protecting the Data on Your Devices and in the Cloud," available at <https://www.eff.org/wp/digital-privacy-us-border-2017>.

IF AN OFFICER SEARCHES AND/OR CONFISCATES YOUR LAPTOP OR CELL PHONE, WRITE DOWN HIS OR HER NAME.

IF YOUR DEVICE IS CONFISCATED, GET A RECEIPT FOR YOUR PROPERTY.

WEARING RELIGIOUS HEAD COVERINGS

You should assert your right to wear your religious head covering if asked to remove it before going through airport security screening. If an alarm goes off, however, airport security officers may request additional screening.



They may then conduct a pat-down of your religious head covering or ask you to remove it. You have the right to request that the pat-down or removal be conducted by a person of your gender and that it occur in a private area. If you do not want CBP or Transportation Security Administration (TSA) officers to touch your religious head covering, you must refuse and say that you would prefer to pat down your own religious head covering. You will then be taken aside and a TSA officer will supervise you as you pat down your religious head covering. After the pat-down, the TSA officer may rub your hands with a small cotton cloth and place it in a machine to test for chemical residue. If you pass this chemical residue test, you should be allowed to proceed to your flight. If the TSA officer insists on the removal of your religious head covering, you have a right to ask that it be done in a private area. Officers may not conduct additional screening based solely on your race, national origin, religion, gender, ethnicity, or political beliefs.

REMOVAL FROM FLIGHT BY AIRLINE

An airline pilot may refuse to fly a passenger if he or she reasonably believes, based on observation, that the passenger is a threat to flight safety. A pilot may not, however, question you or refuse to allow you on a flight because of biased stereotypes, including any based on your religion, race, national origin, gender, ethnicity, or political beliefs.

RETURNING TO THE UNITED STATES

If you are a U.S. citizen or green-card holder denied boarding in a foreign country due to apparent inclusion on the No Fly List or other watchlist, the U.S. government must help you return to the U.S. on a commercial flight. For additional information if you are denied boarding on a flight or believe you are on the No Fly List, visit <https://www.aclu.org/know-your-rights/what-do-if-you-think-youre-no-fly-list>.

◆ MAKING CHARITABLE DONATIONS ◆



It is not a crime to make charitable donations to an organization unless the organization has been designated as a terrorist organization under specific federal laws (such as 8 U.S.C. 1189 and 50 U.S.C. 1701, et seq) **or you know that the donations are going to further terrorist activity as defined under federal law** (as in 18 U.S.C. 2339A).

You should continue to give money to the causes you believe in, but you should be careful in choosing which charities to support. For helpful tips, see Muslim Advocates' toolkit guide on charitable giving available at <https://www.muslimadvocates.org/charities/donor-toolkit/>.

◆ INFORMANTS ◆

INFORMANTS IN AMEMSA COMMUNITIES

The FBI defines an informant as “any individual who is believed to be providing useful and credible information to the FBI for any authorized information collecting activity, and from whom the FBI expects or intends to obtain additional useful and credible information in the future, and whose identity, information or relationship with the FBI warrants confidential handling.”

The number of informants used by the FBI and other federal agencies has grown substantially in recent years and many communities have complained about abuses by informants.

IF YOU SUSPECT SOMEONE IS AN INFORMANT

If you think someone at your mosque or other organization is an informant you should raise your concerns with your imam or organizational leadership, and you or the leadership should consult a lawyer.

IF YOU ARE APPROACHED TO BE AN INFORMANT

If law enforcement asks you to become an informant, you have a right to refuse. Law enforcement officers might offer money or promise leniency on criminal charges or in immigration proceedings in exchange for becoming an informant. An officer might also threaten to impose more severe criminal charges, negatively adjust immigration status, or place a person on a government blacklist, like the No Fly List, for refusing to become an informant. It is important to know that if you agree to become an informant, the FBI maintains that it does not have to keep any promises made in exchange for cooperation. The FBI also does not guarantee that a person’s identity as an informant will be kept secret.

We strongly urge you to talk to a lawyer before deciding to become an informant. It is especially important to consult a lawyer if a law enforcement officer threatens to impose more severe criminal charges, change your immigration status, or place you on a government blacklist if you refuse to become an informant.

◆ LAW ENFORCEMENT INTERACTIONS ◆

IF POLICE OR FEDERAL AGENTS APPROACH YOU

If you are stopped on foot, you do not have to answer any questions, but providing your name, address, and age if asked (and ID if you are being given a citation) may help you avoid arrest. **Do not reach into bags or pockets without telling an officer you are about to do so** (they might think you are reaching for a weapon).



Never give any false information—lying to the police or federal agents can lead to serious consequences. The officer may “pat down” your clothing if they suspect a concealed weapon. Do not physically resist, but tell them politely, “I do not consent to a search.” Ask the officer, “am I free to leave?” If the officer says yes, tell them you are going to walk away and then calmly walk away. Do not make any sudden movements (an officer might argue that they were “threatening”). **Do not argue with the officer, or run away, even if you believe that what is happening is unfair. This could lead to your arrest.**

If you have a cell phone with you, law enforcement agents are not allowed to search that device unless they have a warrant or unless you give them permission. If an officer tries to examine your phone, do not physically resist, but tell them politely, “I do not consent to a search of this device.”

**CALMLY AND CLEARLY
STATE “I DO NOT
CONSENT TO A SEARCH.”**

If you are pulled over in a car, upon request, show your driver’s license, registration, and proof of insurance.

Sign your ticket if you are given one, and contact the court by the date on the ticket. There are limits on the authority of

the police to search your car, but you can waive those limits if you consent. If officers begin to search your car or ask for your consent, calmly and clearly state, “I do not consent to a search,” but do not physically interfere with their actions.

If you are at home and police, FBI, or immigration officers knock and ask to enter, do not allow them to enter or search your home. You can speak to them through the closed door, or if you don’t have reason to fear arrest and feel more comfortable doing so, you can step outside and close the door behind you when talking with them. **Law enforcement personnel can enter without consent only in limited circumstances:**

- ◆ The officers have a warrant signed by a judge—ask to see it. Check the address and scope of area to be searched, and object to any search beyond what is listed in the warrant. Make sure the warrant is signed.
- ◆ The officer is aware that you are on probation or parole with a search condition that allows the officer to enter.
- ◆ There is an emergency, such as a person screaming for help inside your home or the police are chasing someone.

For your safety, do not physically resist law enforcement officers seeking to enter your home even if they have not met these criteria. Simply state that you do not consent to the search.

IF YOU ARE QUESTIONED ABOUT YOUR IMMIGRATION STATUS

You have the right to remain silent and do not have to discuss your citizenship status with police, immigration agents, or any other officials.

You do not have to answer questions about where you were born, whether you are a U.S. citizen, or when or how you entered the country. Any immigration information you provide in response to these questions can be used against you in immigration court.

If you have a green card, you are required to present it to an immigration officer upon request. Do not lie about your citizenship status or provide fake documents, and avoid carrying false identity documents if possible. If you are on a non-immigrant visa, consult with an immigration attorney about what documents to carry with you.

IF YOU ARE UNDER ARREST

If you are arrested, the police have a right to search you and the area around you. However, you always should state politely and clearly, "I do not consent to a search."

The officer should read you your Miranda rights before questioning you, which include your right to remain silent and your right to an attorney. In order to protect your right to remain silent, you should state politely and clearly, "I want to speak to a lawyer and to remain silent." If you are under 18, you can also ask to speak to your parent or guardian.

You have a right to ask for the officer's name and badge number.

Keep your hands where the police can see them. Do not resist, run away, or touch the police officer. Stay calm and do not argue. If you are placed near or in a police car, and even if the police officer is not near you and you think you are alone, keep in mind anything you say may be recorded.



SOCIAL MEDIA PRIVACY

Law enforcement entities have been known to monitor social media posts, groups, and profiles available to the public. **Acquaint yourself with the privacy settings of the social media services that you use.** The default settings on some services will make posts and profiles publicly visible by default. If you choose to adjust your privacy settings, it is important to remember that even non-public posts are visible to persons who are friends with the original poster. Similarly, content within "private" groups is visible to group members, including group members you may not know. Law enforcement entities may also be able to obtain non-public information by sending sufficient legal process to the social network.

◆ HATE CRIMES/INCIDENTS ◆

A hate crime is an incident directed against a person or property that is motivated in whole or in part by the victim's race, religion, sexual orientation, gender, gender identity or expression, disability, national origin, or ethnicity. Such an incident can include physical violence, verbal attacks, and attacks on property. There has been an increase in hate crimes/incidents directed at AMEMSA communities.



IF YOU NEED TO DE-ESCALATE A HATE CRIME AS IT IS HAPPENING

If it is possible to walk away, walk away from the situation, do not engage. If safe to do so, attempt to document the situation. If you are driving and are being followed, drive to a well-lit, public area such as a shopping mall or grocery store.

If you witness someone being subjected to a hate crime or incident do not confront the perpetrator. Instead, engage the victim in conversation and ignore the perpetrator. Discuss a random subject with the victim and create a safe space until the perpetrator leaves. Escort the victim to a safe place if necessary.

WHAT TO DO AFTER A HATE CRIME/INCIDENT

- ◆ **Seek medical and mental health care.**
- ◆ **Document the incident.** Write down what happened, language used, and if appropriate take pictures.
- ◆ **Report.** In order to have the particular incident addressed and to ensure others are not subjected to further harassment, report to one of our legal organizations, your congressperson's office, or your local police department.
- ◆ If you are in a non-urgent situation, and you have concerns about your immigration status, including past criminal convictions that may be grounds for removal, please reach out to an immigration attorney for free advice on what kind of information you will be asked to provide to law enforcement, your rights, and advice on how reporting may involve your immigration case.