

# KNOW YOUR RIGHTS IN NEW ORLEANS

**Whether or not you're a US 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). The First Amendment protects your right to speak freely and to advocate for social change. It also protects your right to petition your government and your religious freedom. However, **if you are a non-citizen and are deportable**, the DHS\* can target you based on political activities.

## **CONSTITUTIONAL RIGHTS CANNOT BE SUSPENDED- EVEN DURING WARTIME or time of declared emergency.**

\*The INS is now part of the Department of Homeland Security (DHS) and their officers are called ICE Police.

**Remaining Silent:** 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. Although the cops 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."

**Traffic Stops:** If ordered by cops, the driver of a vehicle must stop, show identification, and may answer routine questions (name, date of birth, and address). Cops may order the driver or passengers out of the vehicle and may frisk them to check for weapons. Cops do not need a warrant to search your car, but they must have a reason to think that a car contains illegal things in order to search. (If they can see it or smell it, they can search.) They may not need a warrant to look in the trunk or glove box, but they do need one to look through containers in cars such as bags, backpacks, and purses (unless you are under arrest). If you consent to a search of any of these items, it removes the warrant requirement for the police. That means that anything found can be held against you in court because you waived the right to challenge the search as warrantless by your consent to it. If a vehicle is impounded, cops may look through everything left in the car including bags and containers. Never give consent for a search. Tell the officer, "I do not consent to a search of this vehicle or my person or possessions."

**Searches of Home:** 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 allowing the police to conduct a specified search. Interfering with or trying to stop a warrantless search probably will not stop it and you might get arrested. But

you should always say "I do not consent to a search", and call a criminal lawyer. Your roommate or guest can legally consent to a search of your house if the police believe that person has the authority to give consent, and your employer can consent to a search of your workspace without your permission. Make it clear that you do not consent to a warrantless search by repeating "I do not consent" throughout the illegal search will help during any criminal defense - it provides evidence that you did not consent and can make things retrieved by cops inadmissible. When the cops arrive at your door requesting a search, it is a good idea to step outside to check on the legality of the warrant, rather than allowing them to enter as you check. If you wait until after they have crossed the threshold of your home, they can claim that you consented.

**If the cops have a Search Warrant:** If you are present when agents come for the search, ask to see the warrant. You have the right to see it. It must specify in detail the places to be searched and the people or things to be taken away. Tell the cops 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 cops ask you to give them documents, your computer, or anything else, look to see if it 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.

### **IF YOU OR OTHERS ARE CONFRONTED BY POLICE**

- You NEVER have to speak to police. You ALWAYS have a right to remain silent.** You may calmly ask if you are free to go- and if so leave. {If DRIVING, you must provide your drivers license to police.}
- You can ALWAYS ask if you are being detained. IF police are NOT detaining you --- you can ALWAYS leave.**
- You can ALWAYS tell the police you DO NOT consent to a search.** It can preserve your rights at trial if things go badly for you. If officers search without asking, state clearly "I do not consent to a search of myself or my belongings." They may still search but it may mean that any evidence found could be kept out of a criminal proceeding against you.
- Do not voluntarily open your bag, the trunk of your car or empty your pockets, etc. for the cops - but DO NOT RESIST if they search anyway.** Tell your lawyer if they do. Interfering physically with a police search may result in VERY SERIOUS charges. For example, touching any part of a cop, even a part of his or her uniform, can qualify as Assault on a Police Officer (APO). This type of overcharging would possibly be dismissed early on in the criminal proceedings process, but it could lead to your being held much longer on an undeserved felony charge.
- You should ALWAYS remember/ get contact info for whatever witnesses were present during the confrontation.** Note date, location, time and officer badge[s], name[s], car number[s]. Write down everything you remember ASAP.
- Cops LIE to get you to talk.** NEVER believe what they are saying.

They are allowed to break the law (do drugs, etc). If you do talk, the cops can write down that you said something different on their report.

- REMAIN as CALM and controlled as possible in the confrontation. Don't** allow your anger to control your actions or words. Your calmness may encourage the cops to be calmer and more respectful.
- Always keep your hands where the police can see them.** If you want to get your wallet or ID tell the police what you doing and where it is. "I am getting my wallet out of my back left pocket."
- If being detained, cops can only search/frisk you to see if you have weapons, however if they feel something illegal (drug vial, etc) it can be held against you.**
- If you witness a police confrontation; consider COPWATCHING**-observing the police behavior and documenting it to help the civilian if bad cop behavior should occur. Note date, location, time and officer badge[s], name[s], car number[s], other witnesses, and the civilian's information, if possible. Offer to help file a complaint, if the cops violate the civilian's rights or are abusive or brutal. This is a very valuable community service that brings people together in solidarity against police misconduct. The more you copwatch for others, the more likely it will be that someone will copwatch for you if / when the police mess with you.

### **If the cops are at the door:**

- Do ask** if they have a warrant.
- Do not** let them in without a warrant.
- Do say** "I do not consent to a search."
- Do speak** clearly so that others can hear you

### **Additionally, if they have a warrant:**

- Do go** outside and close the door behind you to examine the warrant.
- Do not** lock the door behind you.

### **IF YOU ARE DETAINED (NOT FREE TO GO) OR ARRESTED IN POST KATRINA N.O.**

*NOTE: You May Not Have Access To An Attorney, Or To A Telephone, Before Making Important Decisions, Or Before Appearing In Court, So Please Study This Section Carefully!!!!!!)*

- You ALWAYS have a right to remain silent.** To exercise this right you must say: "I am going to remain silent. I want to speak to an attorney." Cops don't need to read you your rights unless you are under arrest and the cops want to question you! - Don't wait for the cops to read you your rights to say, "I am going to remain silent..." You may be asked, but are NOT REQUIRED, to sign a "rights card." If you do sign a "rights card" always indicate that you DO NOT waive your rights and DO NOT wish to speak WITHOUT an attorney by

checking those boxes on the card. {With the exception of a ticket, rights card, or a Promise to Appear, **do not** sign anything unless a lawyer is present.}

•If you are not free to go, you are being detained. They are free to ask you questions but **you do not have to answer.**

**If you are arrested in the post Katrina New Orleans, you will *most likely* be taken to the Orleans Parish Central Lockup processing center at Broad and Tulane. Currently both lock-ups and initial arraignment hearing [bail, etc] are being held there. We are being told that you will probably not be allowed access to a phone [ it is NOT a right] or to an attorney until your appearances at the arraignment.**

**NOTE:** If you want a trial, you will want to plead **NOT GUILTY**. ALL OPTIONS where you plead Not Guilty will preserve your right to a trial but will REQUIRE future court appearances. Failure to appear in court can result in an ARREST WARRANT which can be executed in ANY state. People with PENDING CRIMINAL CASES, on PROBATION or PAROLE, have an INCREASED RISK of being held.

## OTHER NEW ORLEANS ARREST ISSUES

**Over Charging** Police and prosecutors sometimes engage in "over charging" (charging people with exaggerated offenses). For example, in cases where police use unreasonable force in making an arrest it is not unusual for police to then charge the arrestee with Assault on a Police Officer. Resisting arrest by using ANY physical force whatsoever, can be charged as a Felony Assault on a Police Officer. Using ANY object whatsoever (even your foot/shoe) in a threatening manner could be charged as a Felony Assault with a Dangerous Weapon. NOTE: Felony charges carry substantial criminal penalties and increase the chance of being held. Also note that the government may not necessarily obtain a conviction against you just because you are "charged" with a crime.

**Non-Citizens** Non-Citizens who are arrested RISK immigration consequences including deportation, exclusion from admission, or denial of naturalization depending on the seriousness of the charges and the end result of the case. . If Detained or arrested, do NOT sign anything without a lawyer present!

**Medication** It is possible that people who need medication or medical attention MAY NOT be given the medication or treatment they are entitled to while in police custody. People with SERIOUS medical conditions should demand to be taken to a treatment facility. Treatment will PROBABLY result in a delay in release.

**Minors** People under 18 are kept segregated from adults and are SOMETIMES released without charges but are also often charged and held until released to a parent or custodian.

*If your rights are violated or you are verbally or physically assaulted by N.O. Police or other law enforcement officers, please call our legal hotline at  
**504-913-2892***

If you wish to sue, a letter must be sent to pertinent officials as soon as possible that states the possibility that you might sue and that gives certain specific details of the incident. You may consult with one of our volunteer attorneys, or your own attorney, for the exact details of what is needed for a letter to secure your rights.

**More Resources** for information on your rights:

**Book:** Beat the Heat: How to Handle Encounters With Law Enforcement By Katya Komisaruk  
--available at the Iron Rail Infoshop at 511 Marigny

### Internet:

[www.no-law.org](http://www.no-law.org) - New Orleans Legal Action Workers  
[www.lawhelp.org/la](http://www.lawhelp.org/la) - Louisiana Legal Aid  
[www.katrinalegalaid.org](http://www.katrinalegalaid.org) - Help for Katrina survivors  
[www.justiceforneworleans.org](http://www.justiceforneworleans.org) - articles and info  
[www.lawcollective.org](http://www.lawcollective.org) - Just Cause Legal Collective ;  
[www.justiceandsolidarity.org](http://www.justiceandsolidarity.org)

We also offer a  
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# Free Legal Clinic

every Saturday from 12 to 4 pm  
at the  
Common Ground Relief Center  
Louisa & Robertson St.

Lawyers are available for free consultations and legal advice.

Call 504-913-2892 for information

- **Lawyers and other groups interested in protecting your rights:**
- New Orleans Legal Aid: 504-529-1000
  - 1010 Common St. Suite 1400A
- ACLU - Baton Rouge, LA 225-761-3324
- Critical Resistance New Orleans  
Phone: 504-488-2994
  - [crno@criticalresistance.org](mailto:crno@criticalresistance.org)  
[www.criticalresistance.org](http://www.criticalresistance.org)

We are New Orleans Legal Action Workers [ N.O.-L.A.W.], a project of Common Ground Collective. We are volunteers committed to the belief that all people are entitled to legal justice. Among other projects we hope to develop, we monitor police interactions [copwatch] & sponsor a legal clinic on Saturdays.  
For more info, contact us at 504-913-2892