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What you — yes, you — should know about interacting with ICE

A legal expert explains the rights immigrants — and U.S. citizens — have when facing immigration officials.

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The Trump administration is aware that Americans [broadly support](#) the deportation of undocumented immigrants who have committed violent crimes. Rather than using it as the basis for deporting violent immigrants, though, the administration often works backward: Knowing that Americans want to see violent criminals sent out of the country, it sends people out of the country, while [arguing that they were violent criminals](#).

There is a dangerous catch-22 at play. The government reserves the right to scoop people up and send them to foreign prisons, but, by ignoring due process, reserves for itself the ability to determine whether that treatment is warranted. Immigration officials can [and have](#) detained U.S. citizens. Without due process, claims that they are criminal immigrants pits their word against Uncle Sam's.

Last week, I [wrote about the recent pattern](#) of immigration officials conducting searches and arrests while wearing plain clothes and, at times, without presenting identification. That prompted a secondary question: How should those approached by immigration officers conduct themselves? What rights do they have during such encounters? And — to the point above — what rights exist for U.S. citizens or legal permanent residents upon seeking entry to the country or in [the nonzero event](#) that they, too, are swept up in immigration raids?

I talked to David Leopold, the past president of the American Immigration Lawyers Association and a practicing attorney in Ohio.

“The overriding right is to remain silent,” Leopold said of Immigration and Customs Enforcement encounters when we spoke last week. “That should always be first and foremost in everybody's mind. You don't have to give a statement. You don't have to talk about anything. You don't have to make any admissions about your immigration status — [and you shouldn't](#).”

There are some questions worth asking, however. Particularly if being confronted by plainclothes officers, you can ask for names and badge numbers of the officers. You can also ask if you are free to leave.

“Just because the person identifies themselves as an ICE agent doesn’t mean you’re under arrest,” he said. “ICE has to have what’s called reasonable suspicion or probable cause or a warrant to arrest you. And, if they don’t, if they just approached you in the street, I think the best way to protect your rights is to politely walk away because you are free to leave unless they explain why they’re going to hold you.”

Sometimes, ICE will appear at people’s homes with *administrative* warrants, he added — documents that are signed by immigration officers, not judges. (You can [see examples here](#).)

Compliance with such warrants isn’t required, but officers often use them to intimidate people into letting the officers into their homes. If you don’t consent to a search, you should articulate that explicitly.

Leopold noted that immigrants and those in the U.S. on visas have [a right to legal counsel](#).

Representation has been [shown to make a huge difference](#) in the outcome of immigration cases.

“Everybody who thinks they could be detained by ICE or who’s worried about it,” he said, “should prepare a detention plan in advance,” including identifying counsel. If immigration officials present documents to be signed, you should only do so after consulting with an attorney.

In preparation for legal arguments — even ones that might occur after someone has been sent to a foreign country — he advised that encounters be documented as thoroughly as possible. If you are stopped, “keep mental notes of exactly what’s going on, who’s doing what,” information that might prove helpful. If someone can record the encounter on video, all the better — though he noted that it was worth complying with any orders to stop recording even though doing so is legal in public places. ICE officers [will arrest bystanders](#) they claim are interfering with their efforts.

Immigrants to the U.S. are often required by law to carry documentation with them. Legal permanent residents, for example, must carry their green cards. Leopold recommended that tourists in the U.S. carry documentation as well (such as visas or arrival-departure records) though it isn’t required. Given the environment, an abundance of caution is warranted, and might make potential legal proceedings easier to resolve.

All of this applies to encounters on the street. In an email, Leopold also explained what rights and what protections exist when seeking entry to the U.S.

Citizens and legal residents, for example, only have to answer questions aimed at establishing identity and citizenship (as well as customs questions). Saying more than that (much less [engaging in lengthy conversations](#)) will in practice only be used against you. Refusing to answer questions may cause delays, Leopold explained, but you must be allowed into the country. (Only a judge can revoke legal permanent residency.) Noncitizens may also refuse to answer questions — but also may not be allowed entry.

“Do not carry electronic devices you do not want searched,” Leopold recommended. Citizens and green-card holders can refuse to have their phones searched, he said, but the government argues it can seize and conduct a search anyway. Those concerned about searches can take an additional step: removing information from the phone and setting it to airplane mode, preventing border officials from connecting to any personal information stored online.

Since its inception, ICE has been a law enforcement arm of the federal government — a powerful entity for any individual to confront. Over the past four months, it’s been empowered further by a president and administration that’s broadly uninterested in balancing its power with that of its targets. An administration that has repeatedly demonstrated that it isn’t even interested in establishing that its targets are legitimate targets. An administration that would rather allege that judges appointed by Donald Trump are un-American than admit that it made mistakes.

If you think the government has any reason to make your life difficult, then, it’s useful to heed Leopold’s advice. Get an attorney. Don’t sign anything. Don’t consent to being searched. And, most of all, don’t say a word you don’t have to.