

KNOW YOUR RIGHTS



CIVIL LIBERTIES DEFENSE CENTER

A light green silhouette of a group of people with their arms raised in a fist, symbolizing protest or solidarity. The silhouettes are layered, with some appearing in front of others.

Civil Liberties Defense Center

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**Contact Us With Questions Or Comments
Become A CLDC Member and Support Our Work!**

A light green silhouette of a group of people celebrating, with several arms raised in the air. The text is centered over this graphic.

**Special thanks to Attorney Jennifer
Doreen for her assistance in
developing this training**

A light green silhouette of a group of people with their arms raised in a fist, symbolizing protest or civil rights. The silhouettes are positioned behind the text.

What rights do I have?

- Whether or not you're a citizen, you have these constitutional rights:
- **The Right to Remain Silent**
- **The Right to be Free From “Unreasonable Searches and Seizures”**
- **The Right to Advocate for Change**
- **YOU CAN WAIVE (GIVE UP) YOUR RIGHTS**

RIGHTS

- **RIGHT TO REMAIN SILENT**

(5th Amendment)

- **RIGHT TO REMAIN SILENT**

- You do not have to answer questions
- Anything you say **WILL** be used against you
- The only time that you have to answer is if a *judge* tells you that you must answer

DO NOT ANSWER ANY QUESTIONS

RIGHTS

- RIGHT TO AN ATTORNEY
 - You may have an attorney at any time
 - You must pay for an attorney in immigration cases
 - Tell the officer that you *want to leave, and if you're not free to leave, you want to talk to your attorney*

ASK FOR AN ATTORNEY

**ALWAYS CARRY AN ATTORNEY'S NUMBER
WITH YOU**

RIGHTS

- RIGHT TO BE FREE FROM UNREASONABLE SEARCH & SEIZURE (4th Amendment)
 - You can only be searched in certain circumstances
 - If you don't consent to the search and the proper guidelines are not followed, the evidence cannot be used against you
 - Cannot search your house without search warrant or special circumstances:
 - Exigent circumstances
 - “Plain view”
 - Patriot Act

DO NOT AGREE (CONSENT) TO BE SEARCHED

RIGHTS

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- **The right to advocate for change**
(1st Amendment)
- The First Amendment to the U.S. Constitution protects the rights of groups and individuals who advocate changes in laws, government practices, and even the form of government.
- However, ICE (*Migra*) can target non-citizens for deportation because of their First Amendment activities, as long as it could deport them for other reasons.

What affects the law?

- **Location**

- Outside the United States
- Border regions – 500 miles from Canadian and Mexican borders
- Inside the United States

- **Investigative Agencies**

- Federal Bureau of Investigation- FBI
- Local Police
- Immigration and Customs Enforcement – ICE (Migra)

Law Enforcement and Investigative Agencies

- Different agencies have different rights to search you and your home
- Some distinctions in what they *should* be focused on
- **HOWEVER** Secure Communities and Joint Terrorism Task Forces allow information to be exchanged between agencies.
- Local agents can also be deputized to perform tasks that would normally be outside of their jurisdiction.

A light green silhouette of a group of people with their arms raised in a fist, serving as a background for the text.

“Migra” or ICE

Immigrations and Customs Enforcement

- Investigates immigration violations
- Usually use specific information, focusing on an individual in particular.
 - Arrest warrant for a specific person
 - Rarely goes “fishing” for information
- Implementation in the workplace
- Immigration court (EOIR)

Police

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- Investigate all criminal activities
- Investigating immigration violations is NOT their primary goal
 - Police in the State of Oregon are NOT supposed to enforce Immigration laws
- Information gathered by police may be used by Immigration
- Varies by police department and officer

A light green silhouette of a crowd of people with their arms raised in a fist, serving as a background for the text.

Three kinds of initial police encounters:

- **Conversation**
- **Detention**
- **Arrest**

Conversation:

- *You are under no legal obligation to have a conversation with the police, FBI, ICE, TSA or investigator.*
- If you agree to talk to them, you will very likely *give* them the very information they need to arrest you or prosecute you or someone else.
- Your best bet is to ***politely but firmly*** refuse to speak to them.
- Always make your refusal to speak to them ***clear***, in words, as opposed to simply shaking your head.

Conversation:

- Every time you invoke your rights you need to do it in a clear, verbal manner. Don't rely on body language.
- Politely but firmly say:
 - “Officer, I am going to exercise my right to remain silent.”
 - “Sorry but I don't want to answer your questions.”
- Always ask: “Am I free to go?”

Detention:

- A Police officer may *only* detain you if he or she has a *reasonable suspicion that you are involved in a crime*.
- “Reasonable suspicion” *must be more than a mere hunch*.
- Police must be able to put their “reasonable suspicion” into words. Under the law, this is called the “articulable suspicion” provision.

What to do if you are stopped by the police

- Remember! What you say can and will be used against you. ***Stay calm and in control of your words and actions.*** Avoid arguing with the police but firmly assert your rights.
- ***Never run or physically resist*** even if you think that the stop is unreasonable or unlawful.
- ***Ask if you are free to leave;*** if they say yes, do so. You are not required to provide identification if they are not detaining you (unless you are the driver of a motor vehicle).

POLICE – Detention or “Stop”

What can the police do?

- Ask questions about who you are
 - **Name, address and date of birth**
 - **ID:** Tell them your lawyer said that you don’t need to give your ID unless you’re driving a motor vehicle.
- **REMEMBER:** You are not required to answer any other questions
- The police record all conversations and sometimes have video, **maintain control over your words and gestures.** Everything will be written literally in a police report, if you are in the patrol car, you are being recorded.
- **THEY CAN’T ASK** your migration status
- You have the right to have information translated to your native language: **USE IT!**

POLICE – “Stops”

What can the police do?

“Frisk”: Pat down for weapons

- Any person the officer *reasonably suspects* might be an imminent threat to officer safety can have their clothes patted down and the police may search anything in their wingspan for a weapon when they are being detained.

–Always say **“I do not consent to this search”**

POLICE - Detention or “stop”

- **Stops:** Keep your hands in view, on the wheel or out of pockets to show police that you are not a threat.
- **Expired License:** the same as not having a license:
 - Same consequences, arrest and car towed.
- **GIVING A FALSE NAME IS A CRIME**

COPS CAN LIE AND TRICK YOU

- **The police ARE allowed to lie to you or misinform you. Don't be fooled.**
- **They will promise you that your situation will be easier if you fully cooperate or tell them what they want to know, but they do not have to follow through on their promises.**

Arrest

Reason for arrest

- The police may arrest you if they *witness* you breaking the law, have *probable cause* to believe you have committed a crime
- They have an arrest warrant
- They have to present you in front of a court to determine if you are guilty and if so, what will be the punishment
- **Bench or arrest warrant**
 - Ordered by the court, specific name(s) of the person or people to be arrested

Arrest - Police

- What Can the Police Do?
 - Search
 - You (down to your skin)
 - Anything within an arm's reach of you
 - Any part of a car you are in when you are arrested
 - Areas of your house that might hide a person who could attack the police officer
 - Interrogate
 - Must pay for an attorney for you if you request one
 - Must tell you your rights (*Miranda Rights*)

ARREST

- The majority of deportations happen when a person is under arrest. **Avoid getting arrested.**
- You have 12-24 hours to get out on bail before ICE puts a hold against a person. Bail should be paid by somebody who is documented.
- **Attempt to bail as soon as possible!**
- **Release Agreement**, depending on the context of the crime, this must be signed before you will be released from jail. Ask that it's translated into your native language, read it and sign it.

What can immigrants can do to protect themselves...

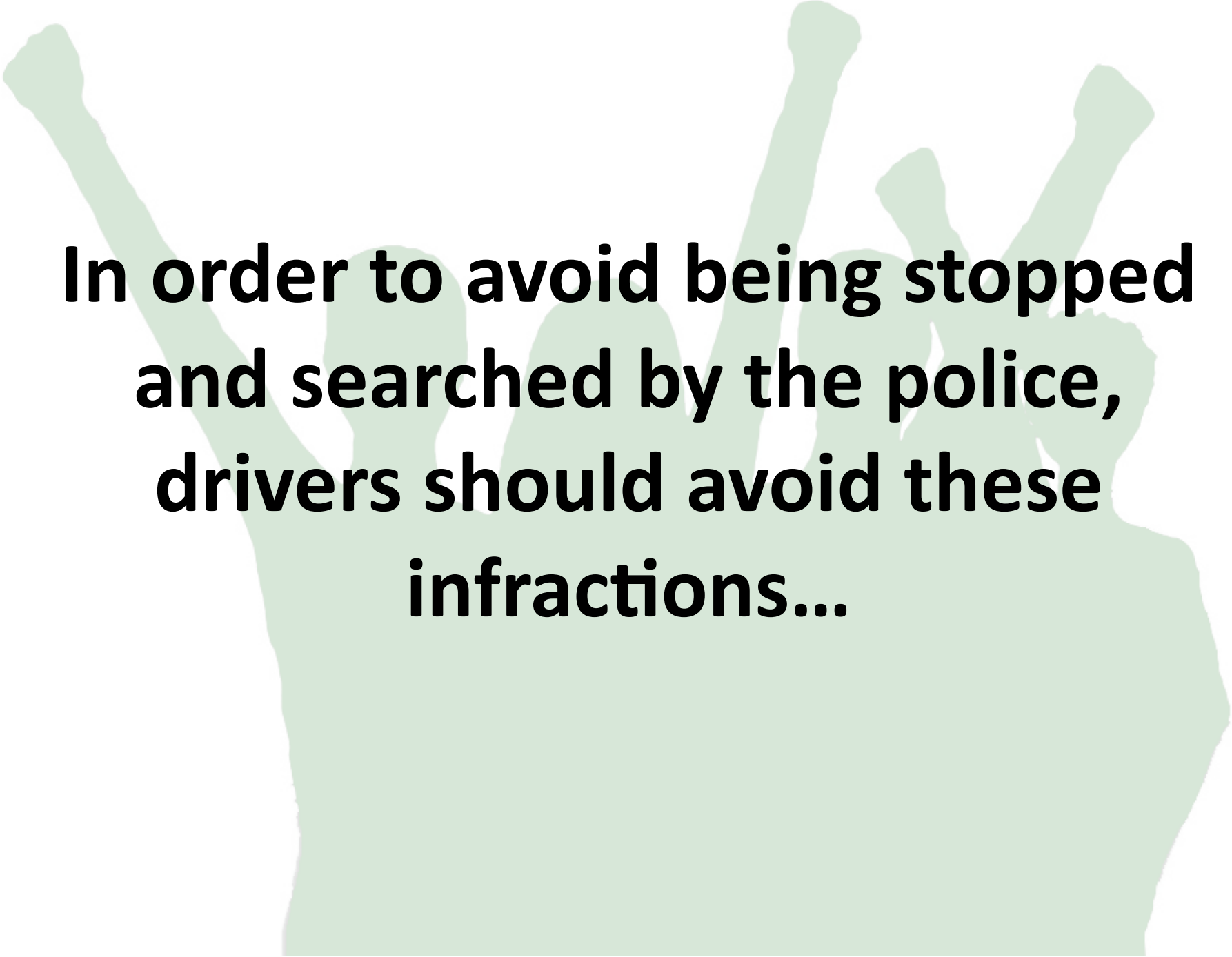
- 1) Drive with a foreign license with an international driving permit
- 2) Avoid being stopped and searched while driving
- 3) Apply for an Oregon driver's card January 1, 2014



It is legal to drive with a foreign license for up to a year after arriving in Oregon

- Visitors need to carry their foreign licenses and it is suggested that they carry an international driving permit.
- An international driving permit is only a translation of a foreign license. It is not legal in Oregon to only drive with a international driving permit.
- Here is the Oregon DMV site in Spanish.

<http://www.oregon.gov/ODOT/DMV/español/index.shtml>



**In order to avoid being stopped
and searched by the police,
drivers should avoid these
infractions...**

Equipment

- Window obstruction
- Lack of windshield wipers
- Emissions limits violations
- Operation without adequate mud flaps or fenders
- Tinted windows with irregular colors
- Tinted windows which exceed the top 6 inches of the windshield
- Excessive sound
- Operation without a rearview mirror
- Low-riders
- Operation without an adequate exhaust pipe
- Operations of a rented car without a speedometer
- Operation without adequate signal lights

Driving Infractions

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- Carrying a minor or dog outside the cab
- Lack of seatbelts
- Speeding
- Running a red light
- Lack of signaling
- Crossing the median
- Cheating the carpool lane
- Not stopping for a school bus
- Driving in the shoulder
- Passing in a no passing zone
- Drunk driving
- Driving without a license, insurance, or registration

Special Concerns for DUI stops

Any person who operates a vehicle upon premises/highways open to the public shall be deemed to have given consent to submit to field sobriety tests upon the request of a police officer for the purpose of determining if the person is under the influence of intoxicants if the police reasonably suspect that the person has committed the offense of driving under the influence of intoxicants.

Before the tests are administered, you must be informed of the consequences of refusing to take or failing to submit to the tests.

ORS 813.135

Refusing or Failing to Submit to the Tests

If a person refuses or fails to submit to field sobriety tests as required, evidence of the person's refusal or failure to submit is admissible in any criminal or civil action or proceeding arising out of allegations that the person was driving while under the influence of intoxicants.

ORS 813.136

DUI TESTS



Required non-testimonial tests:

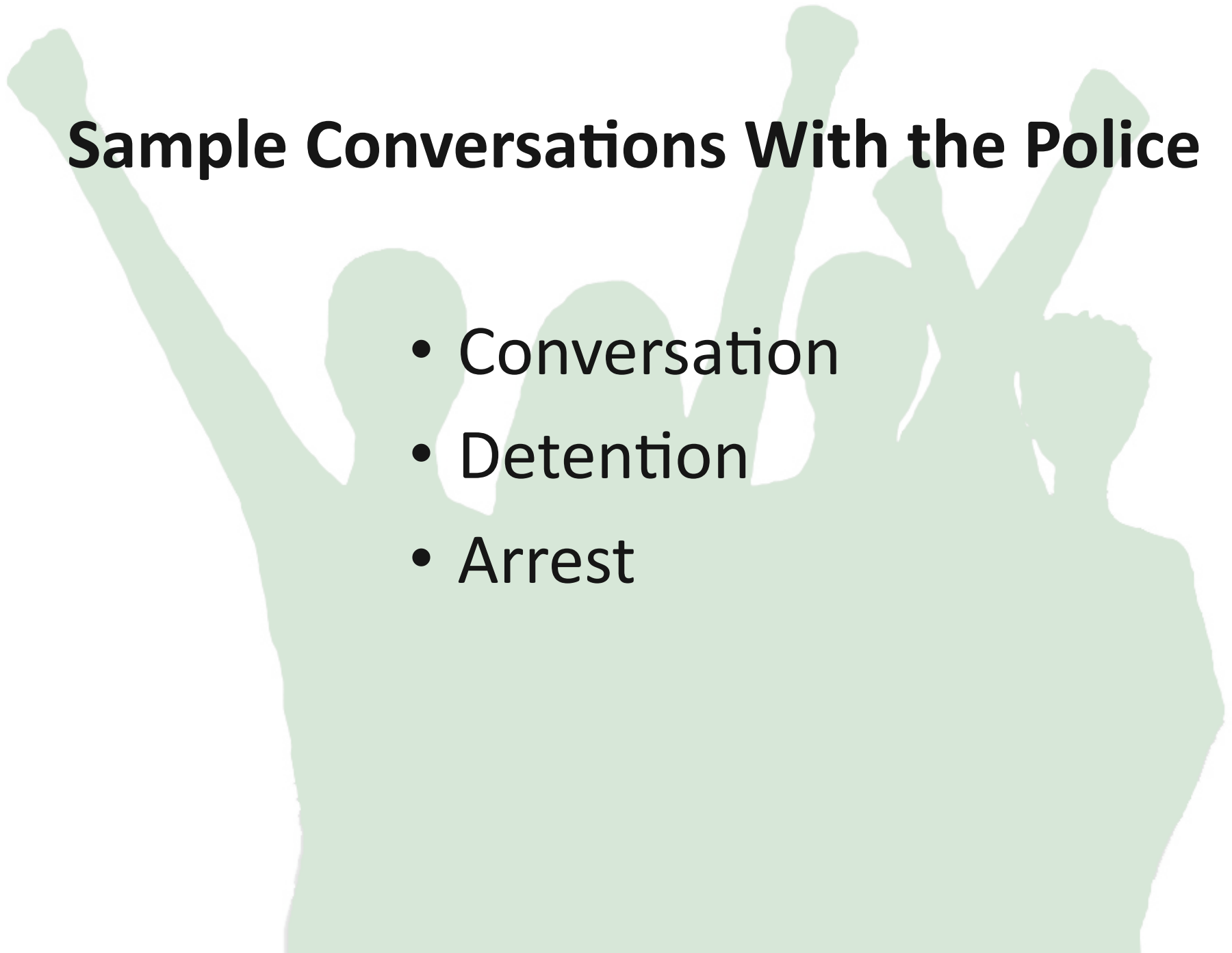
- Horizontal gaze nystagmus,
- Walk and turn
- One leg stand,
- Romberg balance,
- Finger to nose test

Not Required testimonial tests such as:

- Finger count,
- Alphabet,
- Counting,
- Internal clock test,
- Questions about how impaired, or how much you've had to drink,
- How did you do in performing these tests

Sample Conversations With the Police

- Conversation
- Detention
- Arrest



CONVERSATION

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- COP: “Hi, can I ask you a couple of questions?”
- YOU: **“Are you detaining me or am I free to go?”**
- COP: “I just want to talk to you.”

(Ask **“am I free to go?”** until given “yes” or “no”)

- YOU: **“I choose not to talk to you.”** (you walk away)

DETENTION

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- COP: “Hi, can I ask you a couple of questions?”
- **YOU: “Are you detaining me or am I free to go?”**
- COP: “I'm detaining you. Hands against the wall, feet back, and spread 'em.”
- **YOU: “Why am I being detained?” (What is your reasonable suspicion?)**

(Memorize and report the response.)

A light green silhouette of a group of people with their arms raised in a fist, symbolizing protest or resistance. The word 'ARREST' is centered in bold black text over the image.

ARREST

- COP: “I’m placing you under arrest.”
- **YOU: “I am going to remain silent. I want to contact an attorney.”**
- COP: “That’s fine. You’ll be able to contact your lawyer at the police station.”

How can the police help?

- Security
- Immigration status
 - Abuse by a citizen family member or legal permanent resident (VAWA)
 - Document the abuse
 - report it to the police and help in their investigation
 - Victims of violent crimes who cooperates during the investigation and conviction process (U-Visa)
 - Minor under protective custody of the states

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Interactions with Immigration and Customs Enforcement

(ICE, Migra)

In order to deport, Immigration Police (ICE) has to prove that:

- The person is not a citizen of the United States
- The country of origin (nationality)
- That the person does not have a legal right to be in the USA
 - Lack of legal status and documentation
 - Has violated some part of their legal status
 - Committed a deportable crime

Detention or “Stop” - ICE

- **Reason for “stop”**
 - Reasonable suspicion that you do not have the proper documentation to be in the United States
- **What can ICE do?**
 - Ask questions to find out your name
 - Ask your immigration status

Arrest – ICE (Migra)

- **Reason for Arrest**

- Reliable information that reasonable person would believe that you are in the USA without legal status or have violated part of your legal status.
- Deportation order or arrest warrant, ICE can't enter your house unless you open the door and give them permission.

- **What can ICE do (Migra)?**

- Interrogate, Ask questions
 - you have the right to talk to a lawyer, but you have to pay for it
 - They will not tell you your rights until after the interrogation

WHAT TO DO

- **DON'T answer any questions**
- **DON'T open the door** or you give them permission to enter the house. They can't enter **unless you let them!**
 - You have to say verbally that you do not want to answer any questions.
 - Shaking your head or not saying anything is not enough.
 - **Politely but firmly decline to respond**
 - “I would like to help you but I don't feel comfortable answering these questions”

WHAT TO DO

- **ASK to speak to a lawyer**
 - Tell the officer you want to leave and *if you're not free to leave that you want to speak to a lawyer.*
- **DON'T GIVE CONSENT to any search**
 - They can't search you and your belongings unless you are under arrest
 - To search your house, unless something is in plain view, they need to get a SEARCH WARRANT
 - Ask to see the warrant
 - Ask that they put the warrant under the door
 - Make sure they only look in areas designated in the search warrant
 - Call a lawyer to review the warrant

DON'T OPEN THE DOOR

WHAT NOT TO DO

- **DON'T RUN**
 - This gives officers reasonable suspicion to question search and arrest you.
- **DON'T LIE**
 - This can result in criminal charges
 - **If you lie about your immigration status even ONCE it will make you ineligible to gain legal status in the future**
- **DON'T SIGN** any documents until you have talked to your lawyer and they tell you to sign it.
 - Saying you're guilty of something could affect your legal status
 - Immigration documents, **you could be signing your own deportation order!**

In the Workplace

- ICE focuses on employers
- The majority of investigations by ICE start as criminal investigations against the employer (not paying wages, treating their employees badly)

ASK TO LEAVE

ASK FOR A LAWYER

DON'T SIGN ANYTHING

Immigration “Holds”

- When the police arrest and detain you, they take you to the federal or county jail
- ICE checks immigration statuses of people who arrive in jail
- If ICE believes you are deportable, they request a “hold”
- Once released from criminal custody turned over to ICE custody
- Taken to ICE “jail”
- Immigration court – ask for a hearing, **if you don’t request it, you renounce the right and become deportable**
- In this hearing it is possible to get out on bail

Demand of Rights

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- I will not talk to you or anyone about anything.
- I demand to have an attorney present before I speak to you or anyone.
- I will not answer any questions, or reply to any charges, without my attorney present.
- I do not agree to perform any test, consent to any searches, or participate in any line-ups, except DUI tests that don't involve words.
- I will not sign anything unless my attorney agrees I should do so, except jail release agreement.
- **I will not waive any of my constitutional rights.**

Make a Plan

- Inform your family who to contact in case of arrest
- **SECURITY PACKET:** important documents, extra keys
- **Power of attorney** – gives legal custody to somebody who is documented in the case of a parent getting detained, after 6 months, parents lose legal custody and parental rights.
- Protect possessions and finances

PHRASES TO MEMORIZE

- Memorize at least 2 phrases in English. If you can memorize these in your best English, you may be allowed to leave.
- **“Am I Free to leave?”** Tengo la libertad de retirarme?
- **“I want an attorney”** Quiero a un abogado
- **“I will remain silent”** Voy a permanecer en silencio

Deferred Action for Childhood Arrivals (DACA)

- WHAT IT DOES
 - Temporarily shields eligible youth from deportation and enables them to live and work with authorization in the US.
 - Allows some to work legally
 - It lasts up to 2 years if approved
 - Can be done when already in the deportation process, even if final deportation order has been served
 - People in immigration detention may not request consideration but can identify themselves.
- WHAT IT DOES **NOT** DO
 - DACA is not a path to citizenship
 - A long term solution for 11 million people

Deferred Action Checklist

- Must have come to the US before the age of 16;
- Must have not yet turned 31 when the application is submitted;
- Must have continuously resided in the US since June 15, 2007, and must have been physically present in the US in June 15, 2012;
- Must be currently enrolled in school, or have received a high school diploma or the equivalent GED, or been honorably discharged from the US Armed Forces or the Coast Guard
- Must not have been convicted of a felony, a “significant misdemeanor,” multiple misdemeanor offenses, or otherwise pose a threat to national security or public safety. Anyone applying for deferred action would need to go through a criminal background check.

Costs and Forms

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- Forms
 - I-821D “Consideration for Deferred Action for Childhood Arrivals
 - I-765 “Application for Employment Authorization
 - I-765WS
- Costs
 - \$360 application fee,
 - \$85 biometrics fee (fingerprints and photograph)

Applying

- Talk to a lawyer or non-profit organization that helps with immigration cases
 - Applications are processed on a case by case basis
 - DHS can deny any application even if the applicant meets all requirements
- Be careful of scams, fraud and *notarios*
 - They may promise you faster processing or a guarantee of approval if you pay them more, do not believe them!

Concerns with DACA

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- DHS can deny any application, even if applicant meets all requirements
- If application is denied some people may be referred to ICE and put in deportation proceedings, according to USCIS they will only do this if the case involved a criminal conviction of fraud
- Deferred action, once granted, can be terminated at any time without justification or review.
- There is no right to appeal or review *unless* there was an administrative error
- Very few opportunities for fee waivers

Conclusion

- People who are undocumented can't drive legally after a year in Oregon, because they don't have a social security number
- It is legal to drive for up to a year with an international permit
- The police can be avoided by following traffic laws.
- It's important that people know their own rights, because they will not be told them
- Memorize key English phrases for your benefit
- **HAVE AN EMERGENCY PLAN**

Immigration Help

- **NLG – National Immigration Project**

References to immigration lawyers and help for lawyers on immigration cases

617.227.9727 <http://www.nationalimmigrationproject.org>

- **American Immigration Lawyers Association**

References to immigration lawyers and help for lawyers on immigration cases

1-800-954-0254, www.aila.org

- **Access the Law – 245 West 13th Avenue, Eugene, Oregon**

Affordable lawyers and legal advice

(541) 686-4890 <http://accessthelaw.org/>

- **American Civil Liberties Union**

<http://www.aclu.org/immigrants-rights>

- **Coalition for Humane Immigrant Rights of Los Angeles (CHIRLA)**

Information about rights, deferred action

213-353-1333 <http://www.chirla.org/>

- **Causa Oregon**

Legal offices in Salem, orientations and information about Deferred Action

(503) 409-2473 <http://causaoregon.org/>