

TIPS FOR CROSSING THE U.S. / CANADA BORDER

The bottom line on the border crossing is that if you are not a legal permanent resident of Canada, you have no legal right to enter Canada, and can be detained or refused entry for any reason.

Your car, your luggage, your person, and your electronic devices are all subject to search. When re-entering the US, citizens have a legal right to enter the country, but the 4th Amendment's protection against unreasonable search and seizure does not apply in the conventional sense in the border zone (within 100 miles of a border): your belongings and devices can be searched, and your data can be copied, all without a warrant.

Establishing a regular pattern of entry does not protect you against being searched, detained, or refused entry. It does nothing other than to provide you with a legit excuse for crossing the border (such as monthly visits with relatives).

What follows is a brief outline of some key things to keep in mind when crossing the US/Canada border.



Crossing into Canada as a US Citizen

- 1. You need a valid U.S. passport to cross.**
- 2. Canadian border agents have complete discretion over whether to admit you into the country.**
 - Unless you are a Canadian citizen or legal permanent resident, you have no legal right to enter Canada.
 - Establishing a record of regular entry does not grant you any additional protections.
 - Every time you cross the border, you are subject to search, detention, and denial of entry, at the total discretion of the border agents.

3. You will be profiled at the border. When answering the border agent’s questions, tell them only what you want them to know, make it sound like what they want to hear, and show them how you fit their profile of a good visitor.

What they want:

- *Tourists:*
 - Make yourself seem as dull and risk-free as possible. They want you to fit the profile of a law-abiding, money-spending, visitor to Canada.
- *A Legit Itinerary:*
 - Where you are going? Why? Where will you stay? When you will leave? This is all subject to verification so be ready to provide legit names, phone numbers, etc. of a hotel or person you are staying with, places you plan to spend money (shops, restaurants, resorts, theaters, museums, etc.).
- *Permanent Ties in the U.S.:*
 - You have a job, a family, a permanent address, you’re in school... etc. They want to see that you are not coming to Canada to stay forever.

What they don’t want:

- *Migrant Workers:*
 - They want to make sure you will not work in Canada.
- *Romantic Relationships:*
 - They don’t want to admit someone who might get married while in Canada?
- *Pets:*
 - If you are traveling with any non-human companions, you will likely be subject to additional scrutiny. Make sure you have documentation that they are up to date on all vaccinations. If you have documents such as a bill of sale or adoption papers from when you got the dog, bring it.
- *Kidnappers:*
 - If you’re traveling with children, they need proper documentation that they are your kids, and you will fare better with both parents present. If only one parent is present, make sure to have a signed, notarized letter from the other parent expressly permitting the child to cross the border with you.
- *Drugs:*
 - Obviously. If you work as a baggage handler, or at an import business, etc. reframe that as “warehouse work” or “retail. People with professional experience moving things across borders will be subjected to extra scrutiny.
- *Criminal Records:*
 - If you have a record, there is a higher likelihood that you will be searched, detained, and/or denied entry. A minor criminal charge, even from a long time ago, can make someone inadmissible. Even if you’ve been in and out of Canada a lot, you can be refused at any time on this basis, and new “data dumps” show up in the Canadian data base all the time, so a charge they didn’t see before can suddenly show up. Anecdotally, this happens to activists who have been identified by intelligence services.

4. Don't act sketchy.

- Don't dump your trash at the rest area near the border.
- Don't approach the border and then try to turn around.
- Don't drive too fast.
- Don't wear sunglasses or hats.

5. Everything is subject to search.

- Clean your car.
- Any fruits, vegetables, soils, or agricultural products can present problems.
- Political/protest posters, flyers, etc. are probably better left at home.
- Make sure you have absolutely NO drugs or drugs or drug paraphernalia, or anything that could be construed as such.
- Your cell phone, laptop, social media accounts, and anything else that you can think of can all be searched as part of their inspection. If this is problem for you, wipe your devices (which may be suspicious) or better yet, don't bring them. Consider leaving your primary devices at home and bringing just a basic tablet or phone for the trip that doesn't have all of your data on it.

6. Detentions.

- As a non-resident you can be subject to warrantless search and you can be detained for up to 48 hours on “reasonable” suspicion of failure to comply with border or visa regulations. Reasons you could be detained include:
 - You do not have identity documents that are satisfactory to Citizenship and Immigration Canada (CIC).
 - The Canadian Border Services Agency (CBSA) suspects that you are lying about your reason for coming to Canada.
 - CBSA suspects that if you enter Canada as a visitor, you will stay instead of leaving when you are supposed to.
 - CBSA suspects that you are lying about your citizenship or residency status.
- You will attend a Detention Review Hearing within 48 hours (longer if you're detained on a Friday). Non-residents are entitled to a lawyer and an interpreter (if necessary), and can remain silent after they've been arrested until they have consulted with a lawyer. But that's about it. There are a wide variety of reasons for which you can be detained after being arrested at a point of entry or anywhere in Canada. The “Immigration Rights Handbook” (pdf) prepared by Community Legal Education Ontario lists some of these reasons.

7. Don't keep trying.

- If you've been denied entry at one border crossing, trying to cross again in a different place can get you banned from the country for five years.

Further Reading from IMMIgroup:

<https://www.immigroup.com/news/know-your-rights-canada-us-border>
<https://www.immigroup.com/news/border-crossing-dos-and-donts>

Crossing Back into the US

1. Can I be stopped or searched at the border?

- Yes. Even if you are an American citizen, a green card holder, or a visa holder, Customs and Border Protection (CBP) agents can stop you and take you to ‘secondary inspection’. This might happen because the agents need more information about you or your immigration status to decide whether you should be allowed into the country, or it could be a random search.

2. Do I have the same legal rights at the border that I would elsewhere?

- No. The Fourth Amendment, which protects people from searches and seizures without probable cause of a crime being committed, doesn’t apply in the same way at the border.
- Probable cause and reasonable suspicion are not needed to search people – Americans or foreign visitors – at the border.

3. Can CBP officers take my green card away and not allow me back in the country?

- No. Officers at the border cannot make you sign a form that would abandon your permanent resident status.
- In most cases (unless you’ve committed a serious crime and are being deported), legal permanent residents have a right to a hearing before an immigration judge. So you would be allowed back into the country to wait until that hearing.

4. Could my laptop, phone or other electronic devices be searched?

- Yes, even if you’re a green card holder or an American citizen, your devices can be searched for many reasons, including incomplete travel documents or because you have the same name as a person of interest. It also could be a random search.

5. What about my data on my phone?

- Border agents are allowed to search your phone and other devices.
- The government can also copy the data on your device.
- But courts are still grappling with this issue. A federal appellate court ruled in 2013 that if border agents wanted to conduct a “forensic search” they have to suspect you of criminal wrongdoing.

- o Remember: “The Border” includes any place within 100 miles of any border.



- o You do not have the same rights at “The Border” as you do outside the 100-mile zone. In practice, however, border agents do not typically invoke the ‘border exception’ to the 4th Amendment beyond about 15 miles from the actual border line.
(Source: <http://gshlaw.net/know-your-rights-at-the-us-and-canadian-border/>)

More on interior Border Checkpoints from the NY ACLU:

<https://www.northcountrypublicradio.org/news/story/33726/20170407/know-your-rights-with-border-amp-immigration-agents-updated-2017>

What if I am Arrested in Canada?

1. Your rights are similar to the US.

- o You have the right to know why you’re arrested, to speak with a lawyer immediately, and to be told that you have that right. You also have the right to a trial.
- o If you have been arrested, you should be brought before a provincial court judge or a justice of the peace within 24 hours, or be released, unless a justice of the peace is not available during this period. In exceptional circumstances, this period could be extended by the judge by up to 3 days.

2. You may be taken to a police station and charged, given a warning, or released, within 24 hours of your arrest. You might also be given a notice to appear in court. You do not have to go to a police station if you are not under arrest.

3. Americans arrested or detained in Canada have the right to communicate with an American Consular Officer.

- o In all communications with the Consular Officer, the right to privacy is protected by U.S. law under the *Privacy Act*. The Embassy or consulate will not release information related to the detained U.S. citizen to anyone – regardless of their relationship to the citizen – unless the detainee specifically authorizes the release by signing a Privacy Act Waiver.

4. **If you are arrested, you must give your real name, age, and address.** You have a right to get a lawyer (AND parent if you are under 18-years old). Remember that if you don't identify yourself, the police can hold you until they find out who you are.

5. **Can I go back to my home country if I have been released pending my trial?**
 - This depends on the conditions of your release. You may, for example, be required to remain in a particular area, or to surrender your passport. It is important that you fully understand the conditions of your release and seek legal advice before you decide whether or not to return to your home country on bail.

6. **If there is a removal order against you (Deportation order):**
 - You may be forced to leave Canada and you will need special permission from immigration authorities to come back.
 - Your family members who are not Canadian citizens may also have to leave Canada.

See more regarding the rights of non-residents who've been arrested in Canada:
<http://www.cleo.on.ca/en/publications/stat-en>

See more generally:

<https://www.fairtrials.org/arrested-abroad/arrested-in/arrested-in-canada/>

<https://ca.usembassy.gov/u-s-citizen-services/arrest-of-a-u-s-citizen/>

<https://www2.gov.bc.ca/gov/content/justice/criminal-justice/bcs-criminal-justice-system/if-you-are-accused-of-a-crime/your-rights>

<https://ca.usembassy.gov/embassy-consulates/>