

If you are arrested for a criminal charge, remember the following rights:

Right to Remain Silent

- You have the right to remain silent about the facts of your criminal case when speaking with the police or other law enforcement and you must claim the right by saying that you are exercising your right to remain silent.
- You have the right to remain silent if interviewed by immigration officials.
- You have the right to **remain silent about your citizenship status** – you do not need to reveal which country you were born in.
- In Texas, you are **required to identify yourself** and the refusal to provide a law enforcement officer with your accurate name, residence address, and/or date of birth can lead to a misdemeanor criminal charge.
- If you give law enforcement a fake name or address or if you lie about your citizenship status, that can lead to additional criminal charges.

Right to an Attorney

- You have the right to an attorney to represent you in your criminal case if your charge may be punished with jail time.
- You have the right to speak to an attorney before you answer any questions or sign any documents.
- Your right to an attorney is not affected by your citizenship status.
- If you cannot afford to hire an attorney, you have the right to an attorney appointed by the court.
- You can request an attorney when you appear in front of the magistrate or at anytime after that.

Right to Confidentiality in Your Conversations with Your Attorney

EVERYTHING you discuss with your attorney is **CONFIDENTIAL** – your attorney cannot disclose what you tell him/her without your permission unless you tell your attorney you are planning to harm someone or commit a crime.

Your right to an attorney is not affected by your citizenship status.

Right to Advice from Your Attorney Regarding any Clear Consequences Your Criminal Case Could Have on Your Immigration Status

- Your attorney has a duty to work to negotiate a plea that will have the best outcome for you – this means that if you are worried about potential immigration consequences, your attorney must try to negotiate a plea that minimizes possible immigration consequences.
- Your attorney must inform you of any clear immigration consequences of any plea deal you consider on your criminal charge.

Right to Call/Contact Your Consulate

- If you are not a U.S. citizen, you have the right to call your consulate or have the police inform your consulate of your arrest.



I Am Not a U.S. Citizen and I Have a Criminal Conviction – What Can I Do?

- If you entered a guilty plea, or agreed to deferred adjudication, without understanding the potential immigration consequences of your plea, you may be able to get help in criminal court.
- In 2010, in *Padilla v. Kentucky*, the Supreme Court held that criminal defense attorneys must tell their clients of any clear immigration consequences of a potential plea agreement. This holding generally applies only to those pleas entered after this court decision, though some states (other than Texas) have applied it to cases resolved before the decision.
- If you think that you did not receive appropriate advice from your criminal defense attorney about the immigration consequences of a plea agreement, you should contact an attorney who specializes in criminal and immigration law for more information about whether you can help.
- If you want to file a grievance against your attorney because you think that your attorney failed to fully advise you about the impact of a plea on your immigration status or advocate for an outcome that would minimize the impact of a conviction on your immigration status, you can call the State Bar of Texas's Grievance Information Helpline at 1-800-932-1900 for more information about the grievance process.

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TFDP

TEXAS FAIR DEFENSE PROJECT

**Know Your Rights
if You Are Not a
United States Citizen
and You Are Arrested
for a Criminal Charge**

What Should I Discuss with My Criminal Defense Attorney?

- **Immigration Status** – make sure your attorney understands your immigration status;
- **ANY and ALL Prior Criminal Convictions and Arrests** – tell your attorney about all felony, misdemeanor, and municipal cases, as well as the outcomes of the cases (including lengths of imprisonment, lengths of probation, amounts of restitution, and information about diversion or deferred prosecutions);
- **Prior Deportations** – tell your attorney whether you have ever appeared before an immigration judge, as well as whether you signed any removal orders or if you agreed to anything else, such as a voluntary return;
- **Family Ties** – tell your attorney about your family ties in the U.S. and your country of origin; and
- **Concerns and Priorities** – think about what your priorities are and discuss them with your attorney – are you more concerned about jail in the U.S. or are you more concerned about your immigration status? What else are you worried about?

What Is an ICE Detainer and What Does It Mean if I Have an ICE Detainer or Hold?

- An ICE detainer or hold is a request from Immigration and Customs Enforcement (“ICE”) to law enforcement to hold a person on behalf of ICE for up to 48 hours after law enforcement could otherwise release you. **ICE holds are NOT automatic** and you should ask your attorney to help you determine if you have an ICE hold and whether a hold is appropriate.
- Often, when ICE wants to detain someone, ICE asks a jail to notify them of the individual’s release date so ICE can pick up the individual upon his/her release from jail. Ask your attorney if your situation falls within one of ICE’s deportation priority areas.

Can I Avoid ICE Picking Me up if I Have an ICE Hold?

- If you are able to post bond **before you are detained** at the jail, you may avoid law enforcement communicating your information to ICE.
- You have the right to refuse to speak to immigration officials and to request your attorney be present at any conversation you have with immigration officials.

Should I Pay a Criminal Bond?

- A criminal bond is your promise to appear in court on your criminal charges if you are released from jail.
- If the court sets a criminal bond, you can choose to pay a percentage of the bond (usually 10%) through a bonding company to secure your release from jail while your charges are pending. If you post bond and are released, you must appear for any court date in your case or you will forfeit the money you paid towards your bond, your bond will be revoked and you can go back to jail.
- **If you are not a U.S. citizen, you should think very carefully before posting a criminal bond.** Speak to your criminal defense attorney and an immigration attorney about your concerns.
- If the judge sets a bond for your criminal charge and ICE has placed a detainer or hold on you, as soon as you pay that bond and can be released from jail, ICE could take you into immigration custody.
- Just because you are eligible for a bond in your criminal case does not mean that you will be eligible for a bond in immigration court.
- If you remain in law enforcement custody while you resolve your criminal case, and you do not post a criminal bond, you may be able to count the days you spend in jail toward any criminal sentence.
- If you are released on bond, and taken into ICE custody while your criminal case is pending, **ICE may refuse to transport you to your criminal hearings, which will make it nearly impossible for you to resolve the criminal charge.**
- You should consult with your criminal defense attorney and an immigration attorney to determine whether you are eligible for an immigration bond and whether you can afford to pay both your criminal and immigration bonds.

If ICE Takes Me into Immigration Custody, Can I Post an Immigration Bond?

- Some individuals are eligible for bond in immigration court. You should speak with your immigration attorney about your eligibility for an immigration bond. ICE will first make a decision about whether to hold someone in custody and then make a decision about bond.
- Though the minimum immigration bond is \$1,500, immigration bond is usually set much higher than that. If you do have a bond set in your immigration case, you must pay the full amount of the bond to gain release, rather than a percentage as you can for criminal bond. Payment of your bond is your promise to appear in immigration court for any hearings, as well as your promise to leave the country at the end of your immigration case if you lose.
- People who are not eligible for an immigration bond remain detained until their immigration case is resolved.
- You will likely not be eligible for an immigration bond if you were convicted of certain criminal offenses and sentenced to jail after October 8, 1998. The types of convictions that can make you ineligible for an immigration bond include, but are not limited to:
 - Theft, fraud, burglary;
 - Drug offenses, including drug trafficking;
 - Firearm offenses, including firearms trafficking;
 - Crimes of violence with a penalty of more than one year, including charges of family violence;
 - Money laundering, racketeering, and some gambling offenses;



- Smuggling and human trafficking;
- Arson;
- Kidnapping;
- Sex offenses, including rape and sexual abuse;
- Prostitution business;
- Crimes related to campaign bribery;
- Crimes related to the obstruction of justice, perjury, suborning perjury, or bribing witnesses;
- Malicious destruction of property;
- Criminal possession of stolen property;
- Failure to appear to serve a sentence after conviction;
- Failure to appear in court on a felony charge with a sentence of two or more years; and
- Apprehension at the border or an airport trying to enter illegally.

What Are the Immigration Consequences if I Get a Criminal Conviction?

- Any consequences of a conviction are **PERMANENT**; they will never expire.
- The consequences vary depending on the particular offense and its circumstances, as well as the sentence. Your attorney must analyze your case individually to determine the likely consequences.
- **Any disposition aside from a not guilty finding may lead to immigration consequences**, including convictions (as defined by immigration law), vacated pleas or convictions, violations or other dispositions that are not necessarily considered criminal, even admissions to conduct, without a conviction, which may be admitted to receive deferred adjudication or probation.
- **Remember, you have the right for your defense attorney to try to craft a plea that minimizes any impact on your immigration status.**
- The types of criminal offenses that can lead to immigration consequences include, but are not limited to:
 - Murder, rape, or sex abuse;
 - Drug offenses (including marijuana possession);
 - Theft, burglary, robbery, fraud, tax evasion;
 - Assault, domestic violence, or violations of orders of protection;
 - Firearm offenses;
 - Bail jumping, perjury, bribery, or forgery;
 - Prostitution, gambling;
 - Attempt, conspiracy, and many others.